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Francine M. Kanne, Chief Assistant City Attorney (State Bar 139028)
2 **CITY OF FRESNO**
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3 Fresno, California 93721-3602

4 **BETTS & RUBIN, A Professional Corporation**
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E-FILED
9/21/2018 1:24 PM
FRESNO COUNTY SUPERIOR COURT
By: K. Daves, Deputy

7 James B. Betts (State Bar #110222)
Joseph D. Rubin (State Bar #149920)
8 Attorneys for Defendant City of Fresno
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF FRESNO
12

13 PINEDALE COUNTY WATER DISTRICT,)
14 a County Water District,)
15 Plaintiff,)
16 v.)
17 CITY OF FRESNO, a Municipal)
18 Corporation, and DOES 1 through 5)
19 inclusive,)
20 Defendant.)
21

Case No. 18CECG02957

REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF DEFENDANT
CITY OF FRESNO'S DEMURRER
TO COMPLAINT

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

1 Pursuant to Evidence Code Sections 450, 451, 452 and 453, the City of Fresno
2 requests judicial notice of the following court records:

3 1. In a matter styled City of Fresno v. Pinedale County Water District, Madera
4 County Superior Court Case No. MCV043413:

5 A. Second Amended Judgement dated April 6, 2015, attached as Exhibit A.

6
7 2. In a matter styled City of Fresno v. Pindale County Water District, Kings County
8 Superior Court Case No. 18C-0051:

9 B. Petition for Writ of Mandate, attached as Exhibit B

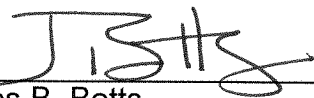
10 C. Cross-Complaint of Pinedale Water District, attached as Exhibit C.

11 D. Tentative Ruling on Demurrer, attached as Exhibit D.

12 E. Transcript of Proceedings, attached as Exhibit E.

13
14 Dated: September 2, 2018

BETTS & RUBIN

15
16 By 
17 James B. Betts
18 Attorney 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 **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT CITY OF FRESNO'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

EXHIBIT A

1 **BETTS & RUBIN, A Professional Corporation**
Attorneys at Law

2 907 Santa Fe Avenue, Ste. 201

3 Fresno, California 93721

4 Telephone: (559) 438-8500

5 Facsimile: (559) 438-6959

6 James B. Betts (State Bar #110222)

7 Joseph D. Rubin (State Bar #149920)

8 Attorneys for Plaintiff CITY OF FRESNO

FILED
MADERA SUPERIOR COURT

APR 8 6 2015

BONNIE THOMAS

CLERK

DEPUTY

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF MADERA

11 CITY OF FRESNO,

12 Plaintiff,

13 v.

14 PINEDALE COUNTY WATER DISTRICT;
and DOES 1 through 15, inclusive,

15 Defendants.
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Case No. MCV043413

SECOND AMENDED JUDGMENT

20 On January 23, 2012, the Court entered its Amended Judgment in this matter in
21 the amount of \$86,658.58. On December 18, 2013, the City filed its Memorandum of
22 Costs on Appeal in the amount of \$938.91, and no motion to tax such costs was filed.
23 On January 31, 2014, this Court issued its Order Granting Plaintiff's Motion to Fix
24 Attorney's Fees on Appeal, and awarded additional attorney's fees in the amount of
25 \$39,918.00 to be included as part of the Judgment.

26 Thus, IT IS ORDERED, ADJUDGED AND DECREED that the Amended
27 Judgment should be amended to specifically include the referenced costs and fees,
28

1 and that Defendant City of Fresno shall recover the sum of \$127,515.84 against
2 Defendant Pinedale County Water District.

3
4 Dated: 4-6-, 2015

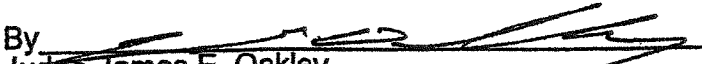
5 By 
6 Judge James E. Oakley
7 Judge of the Superior Court
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EXHIBIT B

1 **BETTS & RUBIN, A Professional Corporation**
Attorneys at Law
2 907 Santa Fe Avenue, Ste. 201
Fresno, California 93721
3 Telephone: (559) 438-8500
Facsimile: (559) 438-6959
4

5 James B. Betts (State Bar #110222)
Joseph D. Rubin (State Bar #149920)

6 Attorneys for Petitioner CITY OF FRESNO
7

E-FILED
06/16/2017
FRESNO COUNTY SUPERIOR COURT
By: M.Sanchez, Deputy

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF FRESNO
10

11 CITY OF FRESNO,

12 Petitioner,

13 v.

14 PINEDALE COUNTY WATER DISTRICT;
and DOES 1 through 15, inclusive,

15 Respondent.
16
17

Case No. 17CECG02055

PETITION FOR WRIT OF
MANDATE TO COMPEL
RESPONDENT TO PAY
JUDGMENT
[Government Code §970.2]

18
19 Petitioner, City of Fresno, alleges as follows:

- 20 1. Respondent Pinedale County Water District is a local public entity, as set
21 forth in Government Code §970(c), with its principal place of business located in Fresno
22 County, California.
- 23 2. On or about June 3, 2008, Petitioner initiated the underlying action against
24 Respondent in a matter styled City of Fresno v Pinedale County Water District, et al.,
25 Fresno County Superior Court Case No. 08CECG01899. That action was subsequently
26 transferred to the Madera County Superior Court pursuant to Code of Civil Procedure
27 §394, and assigned Madera County Superior Court Case No. MCV043413.
- 28 3. The underlying action arose out of Respondent's breach of a written

1 agreement commonly referred to as the "2007 Agreement", a copy of which is attached
2 hereto as Exhibit 1.

3 4. The underlying action proceeded to trial on April 25, 2011, in Department
4 5 of the Madera County Superior Court, the Hon. James E. Oakley, presiding.

5 5. On or about October 4, 2011, the Madera County Superior Court issued
6 Judgment in the underlying action in favor of Petitioner and against Respondent, a copy
7 of which (including the Court's Statement of Decision) is attached hereto as Exhibit 2.

8 6. Following the rendition of Judgment in Petitioner's favor, Respondent
9 appealed the Court's Judgment to the Fifth District Court of Appeal, and subsequently
10 appealed the Court's post-trial award of Petitioner's attorney's fees and costs.
11 Respondent's appeals were unsuccessful, and the Trial Court's Judgment and award of
12 attorney's fees and costs were affirmed on appeal. (See Appellate Opinions attached
13 as Exhibits 3 and 4, respectively.)

14 7. Pursuant to Petitioner's Judgment, and the Court's ensuing orders, the
15 following sums are due and owing to Petitioner by Respondent:

- 16 • \$86,658.53 in fees and costs (See Amended Judgment attached
17 hereto as Exhibit 5);
- 18 • \$938.91 for costs on appeal, which were not taxed by Respondent
19 (See Memorandum of Costs attached hereto as Exhibit 6); and
- 20 • \$39,918.00 in appellate attorney's fees as ordered by this Court on
21 January 31, 2014. (See Notice of Entry of Order on Motion to Fix
22 Attorney's Fees, attached hereto as Exhibit 7.)

23 8. The amount owed by Respondent to Petitioner totals \$127,515.84, plus
24 interest thereon.

25 9. There are no conditions precedent to Respondent's duty to satisfy
26 Petitioner's Judgment, which remains owing and unpaid.

27 10. On or about February 11, 2014, Petitioner demanded that Respondent
28 pay said Judgment, but Respondent has failed and refused, and continues to fail and

1 refuse, to do so.

2 11. Under the provisions of §970.4 of the Government Code, Respondent is
3 expressly required to pay Petitioner's Judgment with interest thereon. It is apparent
4 that Respondent does not intend to satisfy its lawful obligations to pay Petitioner's
5 Judgment, and Petitioner has no plain, speedy and/or adequate remedy in the ordinary
6 course of law, or any remedy other than this proceeding, which is expressly authorized
7 by the provisions of §970.2 of the Government Code.

8 WHEREFORE, Petitioner prays as follows:

- 9 1. That this Court issue its peremptory writ of mandate compelling
10 Respondent to pay Petitioner's Judgment with interest;
11 2. For an award of attorney's fees incurred in the prosecution of this
12 action, as provided in the 2007 Agreement.
13 3. For costs of suit; and
14 4. For such other and further relief as this Court may deem just and
15 appropriate.

16
17 Dated: June 16, 2017

BETTS & RUBIN

18
19 By James B. Betts
20 James B. Betts
21 Attorneys for Petitioner CITY OF FRESNO
22
23
24
25
26
27
28

EXHIBIT C

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

6 Attorneys for Pinedale County Water District

7 NO FILING FEE REQUIRED GOVERNMENT CODE §6103

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF KINGS**

10 CITY OF FRESNO,

11 Petitioner,

12 v.

13 PINEDALE COUNTY WATER
DISTRICT, and DOES 1 through 15,
14 inclusive,

15 Respondent

16
17 PINEDALE COUNTY WATER
DISTRICT, a County Water District,

18 Cross-Complainant,

19 v.

20 CITY OF FRESNO, a Municipal
Corporation, and DOES 1 through 5
21 inclusive,

22 Defendants.
23

CASE NO. 18C-0051

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

24 Respondent and Cross-Complainant, Pinedale County Water District, a County
25 Water District organized and existing under the County Water District law of the State of
26 California alleges:

27 **PARTIES**

28 1. Cross-Complainant is a County Water District and a Public Entity organized and

CROSS-COMPLAINT

1 existing under California law.

2 2. Petitioner and Cross-Defendant, City of Fresno, is a Charter City organized and
3 existing under the laws of the State of California.

4 **BACKGROUND ALLEGATIONS**

5 3. On June 16, 2017, Cross-Defendant, City of Fresno, filed a Petition for Writ of
6 Mandate to compel Respondent to pay judgment in the Fresno County Superior Court
7 Case No. 17 CECG 02055. The proceeding was subsequently transferred to this Court
8 pursuant to Code of Civil Procedure §394.

9 4. On June 3, 2008, Cross-Defendant, City of Fresno filed an action naming
10 Pinedale County Water District as Defendant in Fresno County Superior Court Case No.
11 08 CECG 01899 which was subsequently transferred to the Madera County Superior Court
12 as Case No. MCV04341.

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

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

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

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

17 9. On January 15, 2015, Cross-Defendant, City of Fresno, recorded a release of
18 both Abstracts of Judgment.

19 10. The Agreement for Transportation and Treatment of Pinedale County Water
20 District Sewage, a copy of which is attached as Exhibit 1 to the Petition for Mandate to
21 compel Cross-Complainant to pay Judgment is between Cross-Defendant, a "Public Entity
22 crated by and under the laws of the State of California" and the Cross-Defendant, City a
23 "Municipal Corporation". In or about 1976, Cross-Complainant, Pinedale County Water
24 District, operated its own sewage collection and wastewater treatment works and in or
25 about that year, the District's collection system was connected to the City interceptor line
26 causing all sewage generated within the boundaries of Pinedale County Water District to
27 be transported to the wastewater treatment facility owned and operated by the City. The
28 Cross-Complainant, District, retains ownership of its existing and since, expanded, sewage

1 collection system and the sewage collected by virtue of its connection to the interceptor
2 line, transports all sewage collected to the wastewater treatment facility owned and
3 operated by the City of Fresno. The Agreement, Exhibit 1 to the Petition on file herein at
4 Section 4, requires the District to adopt the same rates for sewer charges as set forth in
5 any Ordinance or regulation of the City of Fresno as it now exists or as thereafter modified,
6 and provides for a specified percentage of the amount billed and collected as required by
7 that Section 4 of the Agreement to be paid to the City. (Petition Exhibit 1. at page 2-3,
8 Section 4). At Section 7, the Agreement requires the District to "adopt and enforce a
9 regulation prohibiting discharges as City imposes on discharges within the City of Fresno
10 pursuant to" a specified City Ordinance "as it now reads or it may hereafter be amended".
11 Section 15 of the Agreement, Exhibit 1 to the Petition, provides that it is "perpetual and
12 may not be cancelled or terminated except by mutual written consent of the Parties thereto".

13 **FIRST CAUSE OF ACTION**

14 **(RESCISSION OF CONTRACT)**

15 11. Cross-Complainant, Pinedale County Water District, incorporates by reference
16 each and every allegation made and contained in paragraphs 1 through 10, of this Cross-
17 Complaint as though fully set forth at this point.

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

1 13. The Agreement, Exhibit 1 to the Petition is illegal, invalid and void in that the
2 District has no authority to contract away its statutory and constitutional authority to set
3 rates for sewer service and is precluded by law from delegating to any other person or
4 entity, or public entity, its statutory power and obligation to set sewer rates in accordance
5 with applicable provisions of statute. The Agreement, Exhibit 1 to the Petition, is an
6 improper, perpetual agreement that cannot be terminated and therefore requires the
7 District and its governing board in advance and forever, to refrain from exercising their
8 judgment and authority with respect to sewer collection services and rates and requires
9 that the District exercise a legislative power granted to it by statute, the power to set rates
10 for sewage service in a manner that is contrary to statutes and Constitution of the State of
11 California and other provisions of law that govern its exercise so that the Agreement is
12 invalid, illegal and contrary to the public policy of the State of California.

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

16 15. Because the perpetual contract unlawfully surrenders discretionary and
17 mandatory governmental powers and requires the District to act in a manner that is
18 contrary to law the District is entitled to rescind the Agreement, Ex. 1 to the Petition, and
19 recover from Cross-Defendant, City of Fresno, the consideration paid under the Agreement
20 together with interest at the legal rate. Cross-Complainant, Pinedale County Water District
21 has not received any benefit from the Agreement that it has not already paid for.

22 16. Cross-Complainant has notified Cross-Defendant that the Agreement, Exhibit
23 1 to the Petition is, in fact, unlawful and subject to rescission; but, Plaintiff has not yet given
24 formal notice of its exercise of its right to rescind the Agreement and pursuant to the
25 provisions of Civil Code §1691 the service of this Cross-Complaint in this action shall be
26 deemed to be such notice and an offer to restore to Cross-Defendant, if anything,
27 everything of value that has been received by the Cross-Complainant, District, under the
28 contract.

SECOND CAUSE OF ACTION
(DECLARATORY RELIEF)

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

18. Although Petitioner and Cross-Defendant, City of Fresno, knows, and alleges in its Petition that the only means by which a money judgment may be collected from a public entity is by Petition for Writ of Mandate (see Petition p. 3, ¶11), the City intentionally and maliciously recorded the aforementioned Abstracts of Judgment in Fresno and Madera County in an effort to enforce the monetary judgment that is the subject of the Petition on May 13 and June 2, 2014.

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

20. An actual controversy has arisen and now exists between Cross-Complainant and Cross-Defendant regarding their respective rights and duties under the Judgments that are the subject of the Petition. Cross-Complainant maintains that by recording the release of abstracts following a wrongful recordation, carried out for the purpose of maliciously injuring Cross-Complainant, Pinedale County Water District, that said Cross-Defendant is discharged from any underlying debt represented by the Judgments that are the subject of the Petition; whereas, Cross-Defendant contends that it may wrongfully abuse the court's process making itself a secured creditor and still release, unilaterally and voluntarily, the abstracts of judgment without regard to the provisions of CCP §726(a) by attempting to obtain payment on the debt alleged in the Petition or to reach unpledged assets before exhausting the security it created by the recording of the abstracts.

1 21. Cross-Defendant desires a judicial determination of its rights and duties and
2 a declaration that the recording of the release of the abstracts, pursuant to the provisions
3 of CCP §726(a) released and discharged the Cross-Complainant from any obligation under
4 the judgments that are the subject of the Petition.

5 22. A judicial declaration is necessary and appropriate at this time under all the
6 circumstances so that Cross-Defendant may determine its rights and duties under the
7 judgments.

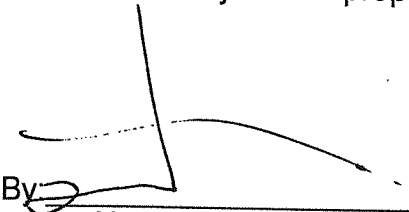
8 Wherefore Cross-Complainant demands judgment as follows:

- 9 1. Rescinding the Agreement, Exhibit 1 to the Petition;
10 2. Awarding Cross-Complainant the sum of \$150,000, the amount paid to Cross-
11 Defendant as consideration for the Agreement, Exhibit 1 to the Petition;
12 3. A declaration of the court that Cross-Defendant is released and discharged from
13 the obligation, if any, created by the Judgments that are the subject of the Petition;
14 4. For attorney's fees and costs, as allowed by contract or statute;
15 5. For such other and further relief as the court deems just and proper.

16 //

17 //

18 Dated: April 3, 2018

By 

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

PROOF OF SERVICE

The undersigned declares:

I, Julia Sellers, the undersigned, declare that:

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

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

On April 3, 2018, I served the foregoing document described as:

CROSS-COMPLAINT FOR RESCISSION OF CONTRACT, DECLARATORY RELIEF

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

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

as addressed below:

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

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

Date: April 3, 2018


Julia Sellers

Law Offices
COSTANZO & ASSOCIATES
A Professional Corporation
575 E. Locust Avenue, Suite 115
Fresno, CA 93720
(559) 261-0163
FAX (559) 261-0706

Neal E. Costanzo, Michael G. Slater
Attorneys at Law

=====

FAX TRANSMITTAL

Date: April 3, 2018

Time: 11:51

File No. 3343-006

From: Julia Sellers

TOTAL NUMBER OF PAGES (INCLUDING THIS PAGE): 13

<u>DELIVER TO:</u> James B. Betts <u>COMPANY:</u> Betts & Rubin <u>TELEFAX NO:</u> (559) 438-6959	<u>DELIVER TO:</u> <u>COMPANY:</u> <u>TELEFAX NO:</u>

COMMENT: RE: City of Fresno v. Pinedale County Water District: Answer to Petition and Cross-Complaint for Rescission of Contract

=====

PREPARER: JS

ORIGINAL WILL FOLLOW:

Yes X No

AUTHORIZATION: NEC

=====

The information contained in this facsimile message is intended only for the **CONFIDENTIAL** use of the designated addressee named above. The information transmitted is subject to the attorney-client privilege and/or represents confidential attorney work product. If YOU are not the designated addressee named above or the authorized agent responsible for delivering it to the designated addressee you received this document through inadvertent error and any further review, dissemination, distribution or copying of this communication by you or anyone else is strictly prohibited. IF YOU RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONING THE SENDER NAMED ABOVE AT (559) 261-0163 AND RETURN THE ORIGINAL OF THIS COMMUNICATION TO US BY MAIL AT THE ABOVE-ADDRESS.

EXHIBIT D

The city's demurrer to Pinedale's cross-complaint is sustained without leave to amend. Pinedale has failed to cite persuasive authority that it may file a cross-complaint to a petition for writ of mandate filed in accordance with Government Code sections 970.2 and 970.4. The city obtained a judgment confirming its contractual right to audit the records of Pinedale. As the prevailing party under the contract, the city was awarded its attorney fees and costs. (2007 Agreement ¶18) The judgment as to this dispute (which was affirmed on appeal to the Fifth District Court of Appeal) is final. Pinedale has filed an answer asserting affirmative defenses, which the city does not dispute the right of Pinedale to assert. However, no case or statutory authority was cited to support the filing of the cross-complaint in this special proceeding to enforce a judgment against a public entity. Pinedale argues that this court has authority to entertain the cross-complaint. (*Tidewater Associated Oil Company v Superior Court* (1955) 43 Cal.2d 815, 825.) Even if this court has discretion to entertain a cross-complaint, the court will not exercise that discretion to allow the filing of the cross-complaint to a petition filed to enforce a final judgment in the city's favor. Given this ruling, the other arguments in support of or in opposition to the demurrer are moot.

EXHIBIT E

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA.

2 IN AND FOR THE COUNTY OF KINGS

3 HONORABLE JAMES LaPORTE, JUDGE

4 DEPARTMENT #8

5 ---oOo---

6 CITY OF FRESNO,)
7 Plaintiff,)
8 vs.) NO. 18C-0052
9 PINEDALE COUNTY WATER)
10 DISTRICT,)
11 Defendant.)
-----)

12 Hanford, California July 23, 2018

13 ---oOo---

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15
16
17 REPORTER'S TRANSCRIPT

18 of

19 CROSS-DEFENDANTS' DEMURRER TO CROSS-COMPLAINT

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21
22
23 **WARNING! PURSUANT TO CALIFORNIA GOVERNMENT CODE**
24 **SECTION 69954 NO PARTY OR PERSON SHALL PROVIDE OR SELL**
25 **A COPY OR COPIES OF A COURT REPORTER'S TRANSCRIPT TO**
26 **ANY OTHER PARTY OR PERSON.**
27
28

1 ---oOo---

2 BE IT REMEMBERED THAT, the above-entitled
3 matter came on regularly for hearing in the
4 Superior Court of the State of California, in and
5 for the County of Kings, before HONORABLE JAMES
6 LaPORTE, Judge, on July 23, 2018.

7
8 For the Plaintiff:

9 BETTS & RUBIN

10 BY: JAMES BRIAN BETTS.

11
12
13 For the Defendant:

14 NEIL EDWIN COSTANZO.

15 Attorney at Law

16 ---oOo---

1 purportedly this action is based upon, there's no
2 cross-complaint discussed at all in any of the cases.

3 MR. COSTANZO: There is not, your Honor.

4 THE COURT: So...

5 MR. COSTANZO: There is also no
6 cross-complaint discussed in, for example --

7 THE COURT: Let me ask you a question. This
8 looks like a special statutory procedure so that
9 governmental agencies don't have the ability
10 to contrarily set it up, of course; otherwise what
11 happens is the judgement creditor would say, if they
12 had an action against the Superior Court of
13 Kings County, they would say, "We're taking your
14 building or we're taking your employee's money."

15 So it looks like that's what the legislature
16 did in this particular circumstance; is that your
17 understanding as well?

18 MR. COSTANZO: I don't think that's correct,
19 your Honor.

20 THE COURT: Why did they set a special
21 procedure then?

22 MR. COSTANZO: I think they left that open.

23 THE COURT: It looks like it's a two-step
24 process for collection. So it looks like what happens
25 is a judgment creditor gets a judge and then the
26 judgment debtor, the governmental agency, essentially
27 decides whether there's any unavailing money or
28 unappropriated money for that in the first year, and

1 then they're supposed to look for it next year and see
2 if they can appropriate, and then if they haven't
3 bothered to do that then there's a special code
4 section that was passed to allow you to try to collect
5 over a ten-year period. That looks like what the
6 statutory scheme is.

7 MR. COSTANZO: I agree with you, your Honor.

8 THE COURT: So what did Pinedale do in terms
9 of paying the money?

10 MR. COSTANZO: I'm sorry?

11 THE COURT: What did Pinedale do in terms of
12 paying the money? Isn't there already a Fifth
13 District Court of Appeal decision in this case?

14 MR. COSTANZO: Pinedale has been in
15 negotiations with the City of Fresno relative to
16 primarily our affirmative defenses and what is in the
17 cross-complaint for a very long time.

18 THE COURT: The affirmative defenses clearly
19 can be brought in this particular case. I'm just
20 curious about the cross-complainant who tries to get
21 rid of the underlying debt.

22 MR. COSTANZO: If you look at the other
23 special proceedings that are allowed to go as special
24 proceedings, imminent domain, for example, it
25 expressly prohibits cross-complaints.

26 THE COURT: Okay.

27 MR. COSTANZO: This one does not.

28 THE COURT: Okay.

1 MR. COSTANZO: Neither does 1085, traditional
2 mandate, for example.

3 THE COURT: That's true.

4 MR. COSTANZO: So you fall back to Section
5 1109 of the Code of Civil Procedure which says,
6 "Except as otherwise provided in this title, the
7 provisions of Part (Roman Numeral) II of this code are
8 applicable to and constitute the rules of practice in
9 proceedings mentioned in this title."

10 THE COURT: Let me ask a question.

11 So normally in most collection actions that
12 we do in this Court and probably every place in the
13 state you can do a collateral attack upon the
14 underlying judgment and that happens sometimes, you
15 know, in terms of collection cases, somebody disputes
16 a malpractice issue or whatever, right?

17 In this case, it seems like the legislature
18 has set up in mechanism to not allow a judgment
19 creditor to do lots of things that they otherwise
20 could do, and also it seems they've restricted the
21 ability of a judgment debtor.

22 But, you know, I'm interested in that issue,
23 of course, I just don't understand how it would work.

24 MR. COSTANZO: I don't believe they have
25 limited the judgment debtor.

26 THE COURT: Let me ask a question. Is the
27 Fifth District Court of Appeal decision at all binding
28 upon this Court?

1 MR. COSTANZO: I'm sorry, your Honor?

2 THE COURT: Well, didn't they make a decision
3 in this case with reference to the underlying debt
4 which was an attorney fees issue; right?

5 MR. COSTANZO: Correct.

6 THE COURT: Did they make a decision in this
7 particular area? Did they already decide that there
8 was or was not a judgment that was collectible on that
9 debt?

10 MR. COSTANZO: They affirmed a judgment of
11 the trial court, yes, your Honor, a monetary judgment.

12 THE COURT: So you want to collaterally
13 attack that, right?

14 MR. COSTANZO: Not exactly.

15 THE COURT: Okay.

16 MR. COSTANZO: A collateral attack would be
17 basically on the grounds that the judgment was
18 obtained by fraud. I am attacking it on a different
19 basis. First of all, I'm attacking the underlying
20 contract on which that judgment is based.

21 THE COURT: Okay.

22 MR. COSTANZO: If the contract is void, and
23 under the *Moorpark* decision and numerous decisions
24 that we've cited, when you surrender your power, your
25 legislative power to set sewer rates, that is a void
26 provision.

27 THE COURT: The argument you are making under
28 218, as I understood it, was that you weren't able to

1 actually enforce something as a pass-through plus
2 charging extra money because that particular provision
3 had some restrictions with reference to whether you
4 had had enough majority votes or majority agreement,
5 etcetera, etcetera, etcetera. Right?

6 MR. COSTANZO: Well, that provision requires
7 me to charge the same rates they charge. This is not
8 a pass-through.

9 THE COURT: I thought it was based upon
10 whether there was a reasonable connection between the
11 cost of whether you're charging them the service that
12 was being rendered.

13 MR. COSTANZO: That's what it's supposed to
14 be based on.

15 THE COURT: Okay.

16 MR. COSTANZO: And it's not.

17 THE COURT: So the next question, so if you
18 have a contract that you entered into with somebody to
19 collect your garbage, for instance, don't you have to
20 try to figure out how to pay for your contract as well
21 as whatever additional administrative expenses you
22 have?

23 MR. COSTANZO: That's not the situation here,
24 your Honor. The situation here is they decide what
25 the rate is. We have to impose that rate.

26 THE COURT: Well, was there a contract
27 arrangement you all negotiated as to what the rates
28 were?

1 MR. COSTANZO: There is a contract that
2 provides for that.

3 THE COURT: So the gentleman behind you keeps
4 on nodding his head, just so you'll know. Go ahead.

5 MR. COSTANZO: All I'm saying, your Honor, is
6 we believe that contract or contractual provision is
7 void.

8 THE COURT: And wait, wait.

9 Can you file a declaration under relief
10 separate from this collection procedure to challenge
11 that?

12 MR. COSTANZO: I can't, but what would be the
13 point?

14 THE COURT: That's the next question. Is
15 this a mandatory cross-complaint or is it
16 discretionary?

17 MR. COSTANZO: It's discretionary, your
18 Honor, because mandatory, compulsory cross-complaints
19 are expressly exempted from special proceedings. The
20 compulsory cross-complaint rule does not apply to a
21 special proceeding.

22 THE COURT: I agree.

23 MR. COSTANZO: That's how this provision of
24 1109 operates. It says that unless otherwise provided
25 in Part 3 of the code, then Part 2 of the code, the
26 provision of which allows the filing of a
27 cross-complaint, non-compulsory cross-complaint is
28 applicable.

1 And the word "action" as used in that, in the
2 Part 2 of the Code of Civil Procedure is required to
3 be construed to mean the same thing whenever that's
4 necessary as an action.

5 THE COURT: Okay. Let me stop you for just a
6 second because I hate for -- is it Mr. Betts?

7 MR. BETTS: Good morning, your Honor.

8 THE COURT: Mr. Betts, I think he wants to do
9 something other than nodding his head or yes no. So
10 why don't I let you get a shot. You can tell me --
11 you've heard all the arguments with reference to the
12 issue of why it should be, essentially, a
13 discretionary cross-complaint. Go ahead.

14 MR. BETTS: Good morning, your Honor, Jim
15 Betts for the City of Fresno.

16 Obviously, we concur with the tentative
17 ruling. This is a special proceeding. It's a simple
18 proceeding. This is a tortulous path that we've led
19 to get to the point that we have a judgment. It's
20 been affirmed by the fifth.

21 THE COURT: Let me ask you a question.

22 So at one point you all decided to file
23 abstracts?

24 MR. BETTS: Yes, sir.

25 THE COURT: Okay, and then probably counsel,
26 Mr. Costanzo, noted that you weren't allowed to do
27 that.

28 MR. BETTS: Yes, sir.

1 THE COURT: And then you all withdraw them?

2 MR. BETTS: Yes, sir.

3 THE COURT: So do you agree that that meant
4 there was essentially a tacit arrangement with
5 reference to your agreeing that the debt was imposed
6 in some way?

7 MR. BETTS: No, sir.

8 THE COURT: Okay.

9 I'm just repeating to you some of the
10 arguments you made.

11 MR. BETTS: No, no, we don't agree with that.
12 Mr. Castanzo --

13 THE COURT: How about the statute of
14 eliminations issue then?

15 MR. BETTS: On?

16 THE COURT: On whether the fact that you at
17 some point triggered the collection action and then
18 you didn't bring your enforcement action within a
19 certain timeframe.

20 MR. BETTS: The judgment is good for ten
21 years, so the process under 970.2 would be fully
22 available to us during the time period in which the
23 judgment is enforceable.

24 So I don't think there's -- I'm not aware of
25 a statute of limitations on the enforcement aspect of
26 the judgment.

27 THE COURT: Well, doesn't .6 give you ten
28 years max?

1 MR. BETTS: So, no -- well, we have ten years
2 unless there's renewal of the judgment.

3 We have pleaded with Pinedale to pay this
4 judgment for the last two years. They haven't done
5 it, so finally a decision was made to seek this
6 statutory remedy.

7 THE COURT: All right.

8 Let me ask another question from, and organic
9 question for Mr. Castanzo.

10 In terms of what Pinedale is, it's a water
11 district --

12 MR. COSTANZO: It's a county water district.

13 THE COURT: Oh.

14 Kings County has a county water district. I
15 used to be the attorney in Kings County for the county
16 counsel's office, so you've got some issues along
17 those lines.

18 MR. COSTANZO: It's a county water district
19 and that's just because that's what it's called in the
20 statute.

21 THE COURT: Okay.

22 MR. COSTANZO: It has no connection to the
23 county of Fresno.

24 THE COURT: Okay, just curious.

25 MR. COSTANZO: It's a totally independent
26 public entity.

27 THE COURT: Okay, thank you. Got it.

28 It's a separate district.

1 MR. COSTANZO: Correct. It's a totally
2 independent district.

3 THE COURT: Correct.

4 MR. COSTANZO: It's governed by a board of
5 five persons. It's required to set it's own sewer
6 rates.

7 THE COURT: Of course.

8 MR. COSTANZO: And the contract --

9 THE COURT: Let me ask another question. It
10 is not a subrogation of the county then in any way?

11 MR. COSTANZO: Not in any way.

12 THE COURT: So all its authority comes from,
13 through the water code not through the provisions of
14 say a special district that is set up by the county.

15 MR. COSTANZO: Correct. There is a county
16 water district law in the water code --

17 THE COURT: Correct.

18 MR. COSTANZO: -- that prescribes our powers,
19 our functions. One of those powers is we are required
20 to set the sewer rates.

21 THE COURT: Okay. I just want to make sure I
22 wasn't moving off in the wrong direction.

23 Okay, so let me talk to Mr. Betts again.

24 Okay, Mr. Betts, there's been raised an issue
25 with reference to why a discretionary cross-complaint
26 could not be brought under this particular statutory
27 procedure since it can be brought in other type of
28 1085-type motions, etcetera.

1 MR. BETTS: So that's the *Tidewater* case,
2 right, that's the *Tidewater* case where the California
3 Supreme Court looked at an action and said the
4 gravamen of this action is really a claim for relief,
5 and there is a related claim that can be asserted by
6 cross-complaint so it exercises the discretion.

7 That is not what we have here. The right to
8 pursue the rescission claim is unlimited at this point.
9 Pinedale is no prejudice to bring that in a separate
10 action, and it's not going to effect its obligation
11 under this judgment except to delay these proceedings
12 and to possibly complicate jury questions of fact on
13 the combined issues versus this is a purely bench
14 issue on the payment plan to satisfy the judgment, so
15 our argument is --

16 THE COURT: Can I ask a question then?

17 So is the issue with reference to confusing
18 the jury a major concern that the -- that the city has
19 with reference to why discretionary cross-complaint
20 shouldn't be brought? Because I think that they're
21 asking the Court if it doesn't find that there is an
22 ability to bring it directly, they want to be able to
23 have the Court decide that there is a -- to exercise
24 its discretion as a discretion process.

25 MR. BETTS: I would assume that --

26 MR. COSTANZO: Your Honor, it's partially
27 right. I'm not saying it's a compulsory
28 counter-claim.

1 THE COURT: I agree.

2 MR. COSTANZO: I'm saying it's a
3 counter-claim that I'm entitled to file simply because
4 it relates to his claim.

5 And to say that we suffer no prejudice to
6 have this brought in a separate action I think is
7 wrong, your Honor.

8 What sense would it make to jump to the
9 question of whether or not this judgment is
10 enforceable before you get to the question of whether
11 or not we can rescind the contract and thereby
12 eliminate the judgment entirely, or whether or not
13 they have forfeited the underlying debt.

14 THE COURT: Because --

15 MR. COSTANZO: By filing an Abstract of
16 Judgment.

17 THE COURT: Okay.

18 MR. COSTANZO: And then unilaterally
19 withdrawing that and failing to pursue the security
20 first as required by CCP Section 726.

21 There are cases I have cited to you that
22 involve involuntary liens that are treated exactly the
23 same as a deed of trust or a mortgage.

24 When you fail, when you unilaterally withdraw
25 your lien, the law is that you have forfeited the
26 underlying debt. That's just the way it operates.
27 There is --

28 THE COURT: So, Mr. Betts, are you conceding

1 that?

2 MR. BETTS: No, sir.

3 THE COURT: Just curious.

4 All right, go ahead.

5 MR. COSTANZO: It's simply the way the single
6 action rule operates.

7 THE COURT: Let me ask you a question.

8 If there was a ground for a recision,
9 couldn't you bring that ground for recision at any
10 time? For instance, can't you bring it even before
11 they started the collection action or afterwards?

12 MR. COSTANZO: Yes, yes.

13 THE COURT: So why does it have to be in the
14 situation with reference to whether there are or is a
15 debt of some kind incurred approved by the Fifth
16 District Court of Appeal and then you want to say that
17 you want to wipe out that debt because you have
18 another theory with reference to getting rid of the
19 underlying contractual arrangement, even though there
20 already is an order of judgment and appellate approval
21 for the attorney's fees issue.

22 Do you understand my question?

23 MR. COSTANZO: I do.

24 THE COURT: I mean, it's sort of like me. We
25 have a law of the case and you say "we don't like the
26 law of the case." We could go back and attack the
27 underlying arrangement so that you theoretically then
28 couldn't even bring a collection action. You couldn't

1 do anything, even though I assume, and I don't know
2 enough about how you're sewer system works, I assume
3 that Mr. Betts' folks have already processed your
4 effluent; the sewage. You already did that, right?

5 MR. COSTANZO: The way it's set up is simply
6 this. We have a sewage collection system that's
7 connected to their interceptor line that goes to their
8 waste line treatment plant.

9 THE COURT: So there he already processed
10 your effluent.

11 MR. COSTANZO: They have and they have for
12 many, many years, yes.

13 THE COURT: And now we're having a discussion
14 whether you have to pay for it or not.

15 MR. COSTANZO: No, your Honor.

16 THE COURT: All right. What is the
17 discussion then?

18 MR. COSTANZO: We're are having a discussion
19 as to whether or not the manner in which they've set
20 up this arrangement is or is not void because it
21 surrenders a power that we are required to exercise.

22 THE COURT: Just on one note, I'm a little
23 confused because in many circumstances the government
24 has set a tipping wage for collection of garbage.
25 They set effluent rates for water. The government
26 does that locally in Kings County. It does it
27 probably the same way in every other county. They set
28 a specific rate, and then the question is whether the

1 other independent districts, they pay that rate or
2 they want to get out of the contract.

3 MR. COSTANZO: Well --

4 THE COURT: It's a negotiated contract
5 depending on what kind of political power you have or
6 economic power, but you're saying to me that there was
7 a debt that was already incurred and you want to get
8 rid of the underlying contractual arrangement so
9 therefore you don't have to pay the debt even though
10 it was already held up on appeal by the Fifth
11 District, right?

12 MR. COSTANZO: That is correct, your Honor.

13 THE COURT: I just wanted to make sure I
14 understood it.

15 MR. COSTANZO: But there is good reason for
16 it.

17 THE COURT: Yeah, I've heard your arguments.
18 I've read your points and authorities.

19 MR. COSTANZO: You're not allowed to
20 perpetually surrender your statutory authority to set
21 the rates.

22 THE COURT: Okay.

23 MR. COSTANZO: I can't comply with
24 Proposition 218. If I get a majority protest on the
25 rate that he's, that the City of Fresno requires me to
26 set, say they up the rates --

27 THE COURT: Right.

28 MR. COSTANZO: -- under the contract, we're

1 required to charge that rate.

2 THE COURT: Okay.

3 MR. COSTANZO: Under the law, I'm required to
4 give notice to all the connections in my district.

5 THE COURT: Right.

6 MR. COSTANZO: If I get a majority protest,
7 that means I'm not allowed to --

8 THE COURT: Okay.

9 MR. COSTANZO: -- set that rate.

10 THE COURT: Let's take another step.

11 So you have another couple options. You can
12 build your own waste water treatment program which
13 would cost millions and millions of dollars, half a
14 billion maybe.

15 You can try to go to another entity this time
16 by having a line that goes outside of the county to
17 some other entity. You have lots of options if your
18 legal concerns is with reference to the 218 issues,
19 but you want to receive the benefits in this
20 particular case, you just don't want to pay the cost.

21 MR. COSTANZO: No, the cost that we have been
22 paid --

23 THE COURT: Yes.

24 MR. COSTANZO: -- relative to the processing
25 of sewage --

26 THE COURT: Yes.

27 MR. COSTANZO: -- is water under the bridge
28 and is not, and is not at all affected by these

1 cross-complaints.

2 And I think the question you're really
3 grappling with here is whether or not a
4 cross-complaint is allowed. I don't know that you're
5 saying that this contract is valid.

6 THE COURT: No. I'm saying that there are
7 other options you have with reference to your effluent
8 with you didn't like the now agreement, and the folks
9 in your district decided they didn't like the cost
10 that were accrued. You had to build your own system.
11 You had to go to somewhere else, so you decided to
12 receive the benefits from the City of Fresno and then
13 decided not to pay the cost.

14 That's what it looks like.

15 MR. COSTANZO: Well, that's not at all what
16 we're doing.

17 THE COURT: I know there's lots of legal
18 issues that are involved. They're very well put in
19 your points and authorities. I'm just trying to grasp
20 from a --

21 MR. COSTANZO: And I'm just trying to get at
22 the basis of your ruling.

23 THE COURT: The basis of my ruling is real
24 simple. It's set forth in the tentative which says
25 there's two problems. One of them we couldn't find
26 anything with reference to the code sections that
27 allow a governmental agency like the City of Fresno to
28 be able to do its collection action other than through

1 these statutory proceedings.

2 We couldn't find anything with reference to a
3 cross-complaint that was specifically allowed, and all
4 this is in the face of a situation in which the Fifth
5 District Court of Appeal has already approved an
6 underlying judgment.

7 The other question is with reference to
8 whether the Court was going to entertain a cross
9 complaint on a discretionary basis, and the Court is
10 indicating it's not inclined to do that.

11 So that's the basis. It's all set forth. I
12 was just asking all the other issues with reference to
13 those you seem to raise in your points and authorities
14 and I'm not ruling on them specifically.

15 MR. COSTANZO: I think where we're, you and I
16 are partying company here, your Honor, is simply this.
17 You're treating a non-compulsory cross-complaint --

18 THE COURT: Right.

19 MR. COSTANZO: -- as a matter of discretion
20 as opposed to a matter of statutory right. I'm saying
21 that under Section 1109 of the Code of Civil
22 Procedure, the provisions in the Code of Civil
23 Procedure that govern actions are expressly
24 applicable.

25 THE COURT: Stop there. Let's hear from
26 Mr. Betts on that issue. Are you conceding that
27 point?

28 MR. BETTS: I'm sorry, your Honor.

1 I was musing hearing dates because we have a
2 case status conference on this case that follows this
3 hearing. I wasn't tracking. I'm sorry.

4 THE COURT: So he was saying that because of
5 the provisions of CCP Section that they're entitled --

6 MR. BETTS: Oh, no, no, absolutely not, and
7 we briefed this in our moving papers and our reply
8 papers. I'll restate it, if you like, but absolutely
9 not.

10 THE COURT: Put it on the record then.

11 MR. BETTS: Okay.

12 So under 428 of the Code of Civil Procedure
13 someone that is -- against whom a claim is asserted
14 for a cause of action or relief is entitled to file a
15 cross-complaint which is then identified, is limited
16 by CCP Section 22 which says that in an action, in an
17 action a party against whom relief is sought can file
18 a cross-complaint, but excepted from that are special
19 proceedings.

20 We then aside cite *Tidewater*, we cite the
21 *ALRB* case which says in a special proceedings you
22 don't get to file a cross-complaint.

23 *Tidewater* is a supreme court case in which
24 the California court exercises discretion to say no,
25 the claim here, it may be titled as a writ but it
26 really is an injunction. It really is a claim for
27 affirmative relief so we're going to allow the
28 cross-complaint in this case.

1 I think the ALRB case that we cited really
2 explains *Tidewater* and says it was an exercise of
3 discretion. Here there is no exclaim for relief. Our
4 right to relief is already established.

5 The duty to pay it is set forth in 970.4 and
6 .6. So this is like a writ of execution. This is a
7 statutory writ of execution. You can't file a
8 cross-complaint under a writ of execution.

9 There's no prejudice to a Pinedale because
10 they have plenary ability to assert an affirmative
11 claim for recision if they want to.

12 I will point out that that claim is going to
13 have to go through Fresno which has venue for that
14 particular issue, and there may be legitimate reasons
15 why Fresno courts hold on to that particular lawsuit.

16 It certainly can't just be assumed that that
17 can be filed in Hanford because that issue has not
18 been ruled on.

19 THE COURT: I can tell you the issue with
20 reference to why it came to Hanford has nothing to do
21 with our reaching out and trying to take the case out
22 and away from the court in Fresno County.

23 It was assigned here by, I think, probably
24 the Judicial Council because no one in Fresno was
25 willing to take the case. I don't know how it
26 otherwise --

27 MR. BETTS: Fresno ordered it transferred to
28 Kings County.

1 THE COURT: I appreciate that. I'm saying
2 that was because there wasn't a judge who was willing
3 to hear the case in Fresno.

4 MR. COSTANZO: No, your Honor, and that is
5 because we made a motion of transfer of it. Any time
6 you have a case between public entities --

7 THE COURT: I know what the code section
8 says. I'm just saying that the point that was made by
9 Mr. Betts is that none of the judges really wanted to
10 hear the case.

11 In any event, the Court's going to adopt the
12 tentative. Thank you all very much for your fine
13 points and authorities.

14 We do have a case management now.

15 How do you want to deal with that issue?

16 MR. BETTS: If the Court would give us an
17 idea of a time period to set the hearing on the writ.

18 My preference would be that I meet and confer
19 with counsel, we put together a briefing schedule, put
20 it in a stipulation, and then provide it to the Court
21 to approve.

22 THE COURT: What month are you looking at?

23 MR. BETTS: I would think October.

24 MR. COSTANZO: I have to go and look at
25 filing a separate lawsuit now, your Honor.

26 THE COURT: Of course.

27 MR. COSTANZO: And as he properly points out,
28 I'll have to file that in Fresno County, at least

1 originally.

2 THE COURT: Right.

3 MR. COSTANZO: And I'll move to have it
4 transferred, but I think the filing of that would be a
5 basis for holding this in abeyance.

6 THE COURT: Okay.

7 MR. COSTANZO: And that's a motion that I
8 would make.

9 THE COURT: I'm the assigned judge in this
10 case. Other judges usually hear this so you'll have a
11 new set of eyes and ears so you won't have to worry
12 about it, but we can set the matter for like November
13 or December if that would give you enough time to do
14 what you have to do; a day or two days, how long would
15 it take?

16 MR. BETTS: Oh, one day.

17 THE COURT: Do you agree with at least one
18 day concession?

19 MR. COSTANZO: I would be asking to have my
20 affirmative defenses tried first.

21 THE COURT: Okay.

22 MR. COSTANZO: And I think it would take more
23 than one day.

24 THE COURT: Okay. So you want to set it for
25 two days or three?

26 MR. COSTANZO: I would think two days would
27 be more than sufficient.

28 THE COURT: Okay, Madam Clerk, two days.

1 THE CLERK: So we're setting a two-day
2 hearing on writ?

3 THE COURT: Correct.

4 THE CLERK: Okay, let me look.

5 MR. COSTANZO: You were suggesting December,
6 your Honor?

7 THE COURT: All right, because that will give
8 you enough time to do whatever you have to do in terms
9 of filing. Is October too soon?

10 MR. COSTANZO: October is too soon. I don't
11 have any days available in October.

12 THE CLERK: I didn't know what day we were
13 looking at. How about December 13th and 14th?

14 MR. COSTANZO: That will work.

15 MR. BETTS: That will work.

16 THE CLERK: We can start that at 1:30.

17 MR. BETTS: In this department?

18 THE CLERK: We can start at 9:30.

19 THE COURT: The judge normally here is Judge
20 Chrissakis.

21 THE CLERK: So December 13th and 14th, and
22 we'll start at 9:30 each day this department.

23 THE COURT: Thank you both.

24 MR. BETTS: Thank you, your Honor.

25 MR. COSTANZO: Thank you.

26 (Whereupon, the proceedings were concluded.)
27
28