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FRESNO COUNTY SUPERIOR COURT
By: L. Whipple, 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,)

Case No. 18CECG02957

11 Plaintiff,)

12 v.)

MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
DEMURRER TO COMPLAINT

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

DATE: October 24, 2018

15 Defendants.)

TIME: 3:30 p.m.

DEPT: 502

16
17 **I. INTRODUCTION**

18 The City of Fresno, filed a Demurrer and Motion to Strike specified allegations of
19 the Complaint on file in this action. The Demurrer states that it is made on three grounds,
20 that; (1) the Court has no jurisdiction of the subject matter of the Cause of Action alleged,
21 specifically the Second Cause of Action only for declaratory relief; (2) the pleading does
22 not state facts sufficient to constitute a cause of action; and (3) that there is another action
23 pending between the same parties on the same cause of action. The Memorandum filed
24 in Support of the Demurrer is slightly more than three pages long and, recites the fact that
25 Pinedale filed a Cross-Complaint in a writ proceeding now pending in the Kings County
26 Superior Court (Case No. 18C-0051), that Fresno demurred to that Cross-Complaint and
27 the Court sustained that demurrer without leave to amend. Supplied with the Demurrer and
28 Motion to Strike was a Request for Judicial Notice which reflects that the Kings County

1 Court's order on that demurrer is not memorialized by any executed order, only by a
2 tentative ruling and a transcript of the proceedings before the Court.

3 As those proceedings Fresno's Attorney, the same Attorney filing this frivolous
4 demurrer, acknowledges that Pinedale's remedy is to file the action anew in this court,
5 which is precisely what Pinedale has done. Pinedale also filed an Answer in the Kings
6 County Superior Court which alleges as an affirmative defense the fact by operation of the
7 single action rule and the unlawful and willfully wrongful abstracts of judgment filed by
8 Fresno relative to the April 6, 2015, Second Amended Judgment, included with the
9 Request for Judicial Notice, and subsequent unilateral release of these abstracts renders
10 the Judgment unenforceable and fully satisfied. The action in the Kings County Superior
11 Court is a Petition for Mandate seeking to enforce that Judgment.

12 The Complaint request declaratory relief to the effect that the Judgment in its
13 entirety is satisfied and the debt released by operation of the single action rule. (CCP
14 §726). The affirmative defense, as shown by the Request for Judicial Notice does not, and
15 could not seek that declaration.

16 II. ARGUMENT

17 A. THE DEMURRER MUST BE OVERRULED AND THE MOTION TO STRIKE 18 DENIED BECAUSE BOTH ARE UNSUPPORTED.

19 The grounds for the Demurrer are stated above. The Memorandum of Points and
20 Authorities in support of the Demurrer argues, without the citation to any authority
21 whatsoever, that the Court has no jurisdiction over the subject matter of the Second Cause
22 of Action of the Complaint. None of the remaining grounds for the Demurrer are supported
23 by the Memorandum and the lack of subject matter jurisdiction claimed by the Demurrer
24 is supported only to a citation to the statement in *People v. National Automobile and*
25 *Casualty Company* (2000) 82 Cal App 4th 120,125 that "lack of jurisdiction in its most
26 fundamental or strict sense means an entire absence of power to hear or determine the
27 case, an absence of authority over the subject matter of the parties". The statement is
28 made in that case to distinguish a lack of subject matter jurisdiction from the issue involved

1 there which was an act in excess of jurisdiction. The case obviously has nothing to do with
2 whether a court has jurisdiction over this declaratory relief claim, the substance of which
3 forms the basis for an affirmative defense asserted in a separate case.

4 The Memorandum cites *Statten v. Webb* (2001) 99 Cal App 4th 365, 374, for the
5 proposition that a jurisdictional defense appearing on the face of a complaint or from facts
6 judicially noticed is subject to a demurrer. The case also has nothing to do with whether
7 a Court lacks jurisdiction over the declaratory claim, the substance of which is also raised
8 as an affirmative defense in a separate action. No other authorities are cited in the
9 Memorandum supporting the Motion to Strike which seeks to strike specific paragraphs of
10 the Cross-Complaint that are background allegations for the Second Cause of Action for
11 Declaratory Relief. The sole basis for the Motion to Strike is that the identified paragraphs
12 are, according to Fresno, "irrelevant".

13 The Memorandum contains no authority or argument whatsoever in support of the
14 other grounds for the demurrer, another action pending and failure to state facts to support
15 a claim. The Memorandum also does not explain how it is this Court lacks subject matter
16 jurisdiction over the declaratory relief claim.

17 Rule 3.1113 provides that a Party filing a Motion must serve and file a supporting
18 Memorandum which must contain a statement of facts, a concise statement of the law,
19 evidence and arguments relied upon, and a discussion of the statutes, cases, and text
20 books cited in support of the position advanced. The failure to file such a memorandum is
21 to be construed by the Court as an admission that the Motion is not meritorious and cause
22 for its denial and in the case of a demurrer, as a waiver of all grounds not supported.

23 III. CONCLUSION

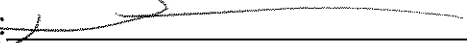
24 Because this Demurrer and Motion to Strike is not supported by any memorandum,
25 law or other authority for the position apparently attempted to be advanced, that the Court
26 lacks subject matter jurisdiction, the Court should deny the Motion. The Court should also
27 deem the two grounds asserted, another action pending and failure to state facts sufficient

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1 to support a claim as having been waived because none of them are supported.

2 //

3 Dated: October 11, 2018

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

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1 PROOF OF SERVICE

2 The undersigned declares:

3 I, Shirlene Capuchino, 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 11, 2018, I served the foregoing document described as:

11 **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO**
12 **DEMURRER TO COMPLAINT**

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

- 14 (☐) Telecopied Via Facsimile
15 (☒) Placed in a sealed envelope with postage thereon fully prepaid in the
16 designated area for outgoing mail
17 (☒) Electronic Mail
18 (☐) Sent Via Overnight Delivery (see below)

19 as addressed below:

20 James B. Betts
21 Joseph D. Rubin
22 Betts & Rubin
23 907 Santa Fe Avenue, Suite 201
24 Fresno, CA 93721
25 Email: br@bettsrubinlaw.com

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

28 Date: October 11, 2018


Shirlene Capuchino