

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

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10/15/2018 4:04 PM
FRESNO COUNTY SUPERIOR COURT
By: J. Nelson, 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,)

11 Plaintiff,)

12 v.)

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

15 Defendants.)
16

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO TRANSFER ACTION TO
KINGS COUNTY**

DATE: December 5, 2018

TIME: 3:30 p.m.

DEPT: 502

17 **I. INTRODUCTION**

18 As shown by the Complaint, Defendant, City of Fresno, is a city. Plaintiff, Pinedale
19 County Water District, is a county water district, a local agency within the meaning of CCP
20 §394 and, this action is one in which a city and a local governmental agency located in the
21 same county are adversaries. Plaintiff objects to the action being heard in Fresno County.
22 Pinedale is required by law to file this action in the proper county, but is entitled to transfer
23 upon request to a neutral county, which would of course include the County of Kings, a
24 county to which this court previously transferred what was Case No. 17CECG02055 which
25 was a petition for writ of mandate against Plaintiff, Pinedale County Water District, by the
26 Defendant, City of Fresno. An action or proceeding brought by a local agency against a
27 city, both of which are in the same county, is required to be transferred to a neutral county,
28 or to a disinterested judge from a neutral county, when requested by either party. Transfer

CROSS-COMPLAINT

1 is mandatory.

2 II. ARGUMENT

3 This action is required to be transferred to a neutral county, because the City and
4 Pinedale County Water District, a local agency, are adversaries both located in the forum
5 county and Plaintiff objects to the matter being tried in this County.

6 CCP §394 is a convoluted statute addressing a variety of situations involving
7 actions by or against a city, county, city and county, or any local agency. For the purposes
8 of §394, a "local agency means any governmental district, board or agency or any other
9 local governmental body or corporation but does not include the state or any of its
10 agencies, departments or commissions or boards". The phrase plainly includes a county
11 water district which is a district formed pursuant to the county water district law (Water
12 Code §30000). This case is controlled by the first sentence of §394 which, as simplified,
13 reads as follows:

14 "An action or proceeding against a . . . city . . . may be tried in . . . the
15 county in which such city . . . is situated, unless such action or proceeding
16 is brought by a . . . local agency, in which case it may be tried in any county
17 . . . in which the city . . . is not situated.

18 In *City of Alameda v. Superior Court* (1974) 42 Cal.App.3d 312, 316, the City of
19 Oakland sued the City of Alameda which that court held, and subsequent decisions have
20 concurred, was a case indisputably falling within the provisions of the first sentence of
21 §394. (See *County of San Bernardino v. Superior Court* (1994) 30 Cal.App.4th 378, 385).
22 There, the plaintiff city sued the defendant city in Alameda County in which both parties
23 were situated. The case was, therefore, one in which the plaintiff had filed the action in a
24 county as mandated by the venue statutes and the Court of Appeal held that transfer of
25 the action to a neutral county, (or assignment to a disinterested judge from a neutral
26 county) was mandatory on the request of the defendant, City of Alameda. §394 provides
27 for the "removal of a case which is pending in a proper county and is not a venue statute.
(*County of San Bernardino, supra*, 30 Cal.App.4th at p. 385, and cases cited).

28 In *County of San Bernardino, supra*, instead of filing in a county as dictated by the

1 venue rules, the County of San Bernardino sued the City of Aelanto, both of which are in
2 San Bernardino County and improperly attempted to file suite in Riverside County.
3 Because CCP §394 operates as a removal statute and presupposes filing in the proper
4 county as mandated by the venue rules, the County of San Bernardino was not permitted
5 to select its own neutral county and file in Riverside County, but was required to file in San
6 Bernardino County and could later request removal to a neutral county selected by the
7 court. (Id. at p. 382, 385-386).

8 Here, although the statute remains, unfortunately, one which has been called a
9 “complicated ‘mass of cumbersome phraseology’”, it is clear from the interpretation
10 ascribed to that section by County of San Bernardino and City of Alameda that Pinedale
11 County Water District, as a local agency, is required to file this action in Fresno County and
12 that a transfer, or assignment to a disinterested judge, provided certain conditions are met,
13 is mandatory on request. There is already pending, as alleged in the Complaint on which
14 this motion is based a suit transferred from this court to the Kings County Superior Court
15 by the City against Pinedale County Water District. The cases are related in that the case
16 by Fresno now pending in the Kings County Superior Court, selected pursuant to
17 Pinedale’s motion in that case, as the neutral county seeks an order compelling payment
18 of a judgment entered in a Madera County case between these parties that resulted in a
19 monetary judgment against Pinedale. That case arose under the same contract which is
20 sought to be rescinded by the Complaint filed by Pinedale in this case. Since the effect of
21 the rescission would be to place the parties back in the position in which they occupy prior
22 to the making of the contract, validity of the judgments and the merit of the proceeding filed
23 against Pinedale by Fresno now pending in Kings County is dependent upon whether the
24 contract is required to be rescinded. Kings County has been established as a neutral
25 county, and there is simply no reason not to transfer this action to that county where it can
26 be consolidated with or tried prior to the action by Fresno against Pinedale pending in
27 Kings County.

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3 Dated: October __, 2018

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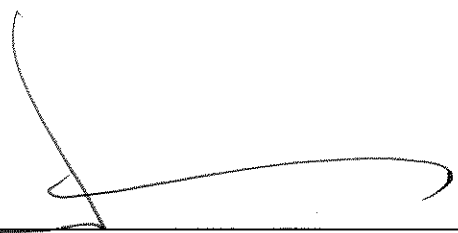
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By: 

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

1 PROOF OF SERVICE

2 The undersigned declares:

3 I, Julia Sellers, 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 15, 2018, I served the foregoing document described as:

11 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO**
12 **TRANSFER ACTION TO KINGS COUNTY**

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 15, 2018


Julia Sellers