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9

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10/17/2018 2:31 PM

FRESNO COUNTY SUPERIOR COURT
By: A. Ramos, Deputy

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF FRESNO
13

14 PINEDALE COUNTY WATER DISTRICT,)
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.)
21 _____)
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Case No. 18CECG02957

REPLY MEMORANDUM OF
POINTS AND AUTHORITIES IN
FURTHER SUPPORT OF
DEMURRER

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

1 **I. LEGAL ARGUMENT**

2 There are two presently pending actions between the parties:

- 3 • First, the City is prosecuting a Petition for Writ of Mandate in Kings County
4 Superior Court (Case No. 18C-0051) to recover sums due under a Second
5 Amended Judgement issued against Pinedale; and
- 6 • Second, Pinedale has filed the instant action seeking: 1) the rescission of the
7 parties' Sewage Transfer Agreement; and 2) for a judicial declaration that
8 Pinedale is excused from paying the judgement that is the subject of the
9 City's writ petition pending in King's County.

10 Since the date that the City's instant demurrer was filed, the Kings County Superior
11 Court has denied Pinedale's motion to transfer this action to Kings County and to
12 consolidate it with the City's pending writ proceeding.¹

13 By the instant demurrer, the City does not challenge Pinedale's first cause of action,
14 for rescission of the subject contract. However, Pinedale's second claim for relief was
15 improperly filed in this court. Specifically, there is another action pending between these
16 parties in Kings County dealing specifically with the enforcement of the subject judgment.
17 In fact, Pinedale's opposition concedes that its declaratory relief claim seeks relief relating
18 to the City's writ petition in Kings County:

19 "The complaint request[s] declaratory relief to the effect that the Judgment
20 in its entirety is satisfied and the debt released by operation of the single
action rule", (Opposition p.2:12-13)

21 Although Pinedale's opposition complains about the scope of this City's supporting
22 points and authorities, the demurrer was and is specifically predicated upon CCP §§
23 430.10 (a), (c) and (e). As such, other than matters subject to judicial notice, no other
24 supporting authorities are needed.

25 ///

26
27 ¹ Pursuant to Evidence Code Sections 450 et seq, the City requests Judicial Notice of the Kings
28 County Superior Court tentative ruling to deny Pinedale's motion to transfer, a copy of which is attached
hereto as Exhibit F, as well as the proposed order submitted to Judge Chrissakis to reflect her ruling of
October 4, 2018, to adopt that ruling, a copy of which is attached hereto as Exhibit G.

1 **II. CONCLUSION**

2 Pinedale's second cause of action, for declaratory relief, is subject to demurrer as
3 the issues raised therein are already pending between the parties in Kings County. As
4 Pinedale has not requested an opportunity to amend, and because any amendment would
5 be futile, the demurrer should be sustained with prejudice.

6
7 Dated: October 17, 2018

BETTS & RUBIN

8
9 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 October 17, 2018, I served **REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN FURTHER SUPPORT OF DEMURRER** 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 October 17, 2018, at Fresno, California.

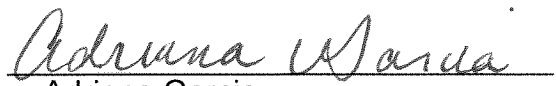

Adriana Garcia

EXHIBIT F

City of Fresno v Pinedale County Water District

Case No. 18 C0051

Pinedale's motion to order a Fresno Superior Court lawsuit transferred and consolidated with this writ of mandate is denied. This court has already considered the arguments made by Pinedale contesting the legality of the contract on which a judgment affirmed on appeal arose. This court found that Pinedale failed to cite persuasive authority to support the filing of a cross-complaint in a special proceeding brought as a collection matter against a public entity under Government Code sections 970.2 and 970.4.

This court sustained the demurrer to the cross-complaint without leave to amend. The prevailing party failed to draft a formal order. Under these circumstances, the non-prevailing party may submit an order to the court, in order to obtain appellate review of the ruling on demurrer. (California Rule of Court, rule 3.1312 (d).) Pinedale's decision to file a complaint in Fresno Superior Court (which alleges the same causes of action as alleged in the stricken cross-complaint) and then seek transfer, consolidation and a stay to conduct discovery is an improper and unsupported attempt to seek reconsideration of the court ruling on the demurrer. Motions for reconsideration are jurisdictional, they apply to interim orders, and they must be supported by new and different facts or law. (Code Civ. Proc. §1008, subd. (a) and (e).) No new facts or law have been cited to support the consolidation of a complaint alleging the same causes of action as the stricken cross-complaint. Nothing the visiting judge said at the hearing on the demurrer would support an argument that the decision would be different if a complaint was before the court, as opposed to a cross-complaint. The motion for transfer, consolidation and a stay is denied.

There are no other tentative rulings. Consistent with California Rule of Court, rule 3.1308 (a)(2), no notice of intent to appear is required. If the non-prevailing party does not appear for hearing, the tentative ruling will become the order of the court. The prevailing party shall prepare an order for the court's signature.

There are no tentative rulings for Wednesday, October 3, 2018

There are no tentative rulings for Tuesday, October 2, 2018

Tentative Rulings for Monday, October 1, 2018 for Department 8, Judge Chrissakis presiding

EXHIBIT G

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 110222 NAME: James B. Betts FIRM NAME: Betts & Rubin STREET ADDRESS: 907 Santa Fe Avenue, Suite 201 CITY: Fresno STATE: CA ZIP CODE: 93721 TELEPHONE NO.: (559) 438-8500 FAX NO.: (559) 438-6959 E-MAIL ADDRESS: br@bettsrubinlaw.com ATTORNEY FOR (name): City of Fresno	FOR COURT USE ONLY CASE NUMBER: 18C-0051
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Kings STREET ADDRESS: 1640 Kings County Drive MAILING ADDRESS: CITY AND ZIP CODE: Hanford, CA 93230 BRANCH NAME:	
PLAINTIFF/PETITIONER: City of Fresno DEFENDANT/RESPONDENT: Pinedale County Water District OTHER:	JUDICIAL OFFICER: Hon. Valerie R. Chrissakis
PROPOSED ORDER (COVER SHEET)	DEPT: 8

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
Petitioner City of Fresno
2. Title of the proposed order:
Order to Deny Motion to Transfer, Consolidate and Stay Proceedings.
3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding: Writ Petition to Enforce Judgement.
 - b. Date and time: October 4, 2018 at 8:15 a.m.
 - c. Place: Department 8
4. The proposed order was served on the other parties in the case.

James B. Betts

(TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY)

1 Douglas T. Sloan, City Attorney (State Bar #194996)
Francine M. Kanne, Chief Assistant City Attorney (State Bar 139028)
2 **CITY OF FRESNO**
2600 Fresno Street, Room 2031
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7 James B. Betts (State Bar #110222)
Joseph D. Rubin (State Bar #149920)
8
9 Attorneys for Petitioner City of Fresno

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

13 CITY OF FRESNO,)
14)
Petitioner,)
15)
v.)
16)
PINEDALE COUNTY WATER DISTRICT,)
17 and DOES 1 through 15, inclusive,)
18)
Respondent)
19 _____)

Case No. 18C-0051

ORDER TO DENY MOTION TO
TRANSFER, CONSOLIDATE AND
STAY PROCEEDINGS

Date: October 4, 2018
Time: 8:15
Dept: 8
Judge: Valerie Chrissakis

1 On October 4, 2018, Respondent Pinedale County Water District's Motion to
2 Transfer, Consolidate and Stay Proceedings came on regularly for hearing. Respondent
3 and Moving Party Pinedale County Water District appeared by and through its counsel of
4 record, Neal E. Costanzo; Petitioner and Responding Party City of Fresno appeared by
5 and through its counsel of record, James B. Betts.

6 Having considered the briefs and submissions of the parties, and having received
7 oral argument from counsel, this Court ruled as follows:

8 To deny Respondent's Motion to Transfer, Consolidate and Stay Proceedings on
9 the grounds set forth in this Court's tentative ruling, a copy of which is attached hereto.

10 This ruling does not preclude Respondent from pursuing a motion to amend its
11 answer as it deems appropriate.

12
13 IT IS SO ORDERED.

14
15 Dated: _____, 2018

Judge of the Superior Court

1 PROOF OF SERVICE

2 I am a citizen of the United States of America, a resident of Fresno County,
3 California, over the age of 18 years and not a party to the within-entitled cause or
4 matter. My business address is 907 Santa Fe Avenue, Suite. 201, Fresno, CA. On
5 October 16, 2018, I served **PROPOSED ORDER (COVER SHEET) AND ORDER TO
DENY MOTION TO TRANSFER** on the parties in this action by placing an original/a
true copy in an envelope and delivering it as follows:

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

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

9 X **(By Mail)** I placed the envelope for collection and processing for mailing following
10 this business' ordinary practice with which I am readily familiar. On the same
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11 X **(By Electronic Mail)** I caused each document to be sent electronically to the
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13 Each envelope was addressed as follows:

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

Attorneys for:
PINEDALE COUNTY WATER DISTRICT

18
19 _____ **(By E-Mail)** I caused each document to be sent by e-mail.

20 I declare under penalty of perjury under the laws of the State of California that
21 the above is true and correct. Executed on October 16, 2018, at Fresno, California.

22
23 Adriana Garcia
Adriana Garcia