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FRESNO COUNTY SUPERIOR COURT
By: J. Nelson, Deputy

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

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 Defendants)
21

Case No. 18CECG02957

MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
MOTION TO TRANSFER VENUE

Date: December 5, 2018
Time: 3:30 p.m.
Courtroom: 502

22 Defendant City of Fresno ("City") respectfully submits its Memorandum of Points
23 and Authorities in Opposition to Motion to Transfer Venue.
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1 **I. BACKGROUND FACTS**

2 The instant action is the latest in a long series of judicial actions between the
3 parties.

4 **A. The Underlying Action**

5 The underlying action was filed by the City against Pinedale arising out of a dispute
6 regarding the parties' written contract entitled "Transportation and Treatment of Pinedale
7 Water District Sewage" (Transfer Agreement") (See Exhibit 1 to Petition for Writ of
8 Mandate, attached as Exhibit A to Request for Judicial Notice ("RJN")). At the completion
9 of trial, the Madera County Superior Court issued its Statement of Decision finding for the
10 City on all issues, and awarded costs, including attorney's fees, to the City. (See Exhibit
11 2 to Petition for Writ of Mandate, attached as Exhibit A to RJN). Pinedale appealed that
12 judgment, and the Fifth District Court of Appeal affirmed the City's Judgment in all
13 respects. (See Exhibits 3 and 4 to Petition for Writ of Mandate, attached as Exhibit A to
14 RJN).

15 **B. The Collection Action**

16 Following the rendition of the Trial Court's Judgment (and Second Amended
17 Judgment (See RJN Exhibit B)), Pinedale failed and refused to pay any or all of the
18 awarded attorney's fees, and demanded that the City pursue collection through the filing
19 of a writ of mandate. (See RJN Exhibit A) Following the filing of the City's writ in Fresno
20 County, Pinedale sought to transfer venue pursuant to CCP § 354. The City agreed to the
21 transfer of the action, but sought a transfer to Madera County. This court ultimately
22 selected Pinedale's chosen neutral county; Kings County. As a result, the City's writ is
23 currently scheduled for trial in Kings County on May 28, 2019.

24 Following the transfer of the City's writ petition to Kings County, Pinedale filed a
25 cross-complaint in that matter which is identical to Pinedale's complaint in this litigation.
26 (RJN Exhibit C) In response to the City's demurrer, the Kings County Superior Court
27 dismissed Plaintiffs' cross-complaint with prejudice. (RJN Exhibit D)

28 Following the dismissal of its cross-complaint, Pinedale filed the instant action

1 (which, once again, is a duplicate of the cross-complaint originally filed in Kings County).
2 Thereafter, Pinedale moved the Kings County Superior Court to order this action
3 transferred to Kings County. Judge Chrissakis of the Kings County Superior Court recently
4 denied Pinedale's motion to transfer. (RJN Exhibit E).

5 **C. The Instant Action**

6 By the instant action, Pinedale asserts causes of action against the City for
7 recession of the Parties' Transfer Agreement, and for a judicial declaration to discharge
8 Pinedale from any obligation under the Second Amended Judgment issued by the Madera
9 County Superior Court, (which is the subject to the pending collection action in Kings
10 County.) In response, the City filed a demurrer and motion to strike Plaintiff's complaint
11 in this case, which motions have been consolidated for hearing with Pinedale's motion to
12 transfer venue.

13 As set forth below, Pinedale's complaint in this action does not present any issues
14 which require a jury trial, and venue should remain in Fresno County, albeit after
15 assignment of this matter to a disinterested judge. Moreover, this Court should grant the
16 City's demurrer and motion to strike portions of Pinedale's pending complaint.
17 Alternatively, if this Court is inclined to transfer Plaintiff's case, it should be transferred to
18 Madera County.

19 **II. PLAINTIFF'S MOTION TO TRANSFER VENUE SHOULD BE DENIED**

20 Pinedale seeks to transfer the instant action to Kings County Superior Court
21 pursuant to Code of Civil Procedure Section 394. However, Pinedale's moving papers
22 offer no explanation as to why such a transfer is appropriate given the fact that Kings
23 County has already dismissed Plaintiffs' complaint when it was fashioned as a cross-
24 complaint to the City's pending writ. (RJN Exhibit C) Similarly, Kings County has also
25 declined to order the instant action transferred to Kings County. (RJN Exhibit D) Simply
26 stated, all that is pending in King's County is a collection action, and Kings County has no
27 interest in hearing any further claims which Pinedale chooses to assert.

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1 Code of Civil Procedure § 394 requires a change of venue in actions in which
2 certain governmental entities are adversaries and either one objects to venue in the County
3 where the defendant government entity resides. However, a requested transfer may be
4 denied where a jury is not a matter of right or is waived. In such cases, the Court may, in
5 lieu of transfer, request assignment of a disinterested judge from a neutral county. Code
6 of Civil Procedure § 394(a); Brennan v. Superior Court (1994) 30 Cal.App 4th 454, 457.

7 In the instant action, and as discussed in detail below, Plaintiff is not entitled to a
8 jury trial on its claim for recession (predicated upon the assertion that the parties' contract
9 is unlawful) or for declaratory relief (predicated upon the one form of action rule).
10 Specifically, the City has wasted enough resources traveling back and forth to Kings
11 County to indulge Plaintiff's various transfer motions. Both the Madera and Kings County
12 venues, but more particularly Kings County, are simply located too far away from Fresno,
13 where all of the parties, witnesses and documents are located. As such, pursuant to Code
14 of Civil Procedure Section 394, the City requests that this Court assign this matter to a
15 disinterested Judge.

16 **IV. PLAINTIFFS' CLAIMS DO NOT INVOKE ANY RIGHT TO JURY TRIAL**

17 Plaintiff's complaint asserts two causes of action; for recession and for declaratory
18 relief. Neither triggers the right to a jury trial.

19 The California Constitution guarantees an individual's right to a jury trial in actions
20 at law. Cal. Const., Art. I, § 16. Actions at law typically consist of those claims that were
21 recognized at common law at the time the California Constitution was adopted. See
22 Paularena v. Sup. Ct. (1965) 231 Cal.App.2d 906, 911-912. Courts have therefore
23 acknowledged "that the right [to a jury trial] . . . is the right as it existed at common law in
24 1850, when the Constitution was first adopted, and what that right is, is a purely historical
25 question, a fact which is to be ascertained like any other social, political or legal fact."
26 C & K Engineering Contractors v. Amber Steel Company, Inc. (1978) 23 Cal.3d 1, 8,
27 quoting People v. One 1941 Chevrolet Coupe (1951) 37 Cal.2d 283, 287.

28 The right to a jury trial does not extend to equitable actions. Southern Pac.

1 Transportation Co. v. Sup. Ct. (1976) 58 Cal.App.3d 433, 436; Ceriale v. Sup. Ct. (1996)
2 48 Cal.App.4th 1629, 1634. An equitable claim is generally one whose resolution depends
3 upon the application of equitable doctrines, a task that falls squarely within the province of
4 the Court and not the jury. See Van de Kamp v. Bank of America (1988) 204 Cal.App.3d
5 819 (holding that breach of fiduciary duty claim was equitable and plaintiff was not entitled
6 to jury trial because resolution of claim depended upon application of equitable principles).

7 These considerations are not exclusive when determining whether an action is one
8 at law or in equity and whether a party has a right to a jury trial. "[T]he court is not bound
9 by the form of the action but rather by the nature of the rights involved and the facts of the
10 particular case - the gist of the action. A jury trial must be granted where the gist of the
11 action is legal, where the action is in reality cognizable at law." Arciero Ranches v. Meza
12 (1993) 17 Cal.App.4th 123-124, citing People v. One 1941 Chevrolet Coupe, supra, 37
13 Cal.2d at p. 299.

14 A party is not necessarily entitled to a jury trial simply because he or she requests
15 money damages in the complaint. Where a party seeks the legal remedy of damages, the
16 action may nevertheless be an equitable one if the damages requested depend upon the
17 application of equitable principles. Van de Kamp v. Bank of America, supra, 204
18 Cal.App.3d at p. 865.

19 **A. Pinedale's First Cause Of Action For Rescission Is Equitable And**
20 **Should Be Tried To The Court**

21 A cause of action for rescission of a contract is equitable in nature and does not
22 entitle the claimant to a jury trial. Nelson v. Pearson Ford Co. (2010) 186 Cal.App. 4th 983,
23 1018; Padula v. Superior Court (1965) 235 Cal.App. 2d 567, 570; Bank of America v.
24 Greenbach (1950) 98 Cal.App.2d 220, 227, 229; Fairbairn v. Eaton (1935) 6 Cal.App.2d
25 264, 267-268. "The incidental award of money damages by a court in the exercise of its
26 equitable jurisdiction does not convert the proceeding into a legal action." Snelson v.
27 Ondulando Highlands Corp. (1970) 5 Cal.App.3d 243, 259.) As stated, rescission of a
28 contract is a purely equitable claim that lies particularly within the province of the Court.

1 Bank of America v. Greenbach, *supra*, 98 Cal.App.2d at p. 229.

2 Our Supreme Court noted in Runyan v. Pacific Air Industries (1970) 2 Cal. 3d 304
3 that the Law Revision Commission has reported, with respect to the addition of Section
4 1692 to Civil Code in 1961, that under the new law “all such actions will be to enforce a
5 rescission, the right of the parties to a jury and the court in which the action must be
6 brought will be determined by the nature of the substantive relief requested and not by the
7 form of the complaint. For example, if a bare money judgment is sought, a justice court
8 will have jurisdiction in appropriate cases, and the plaintiff may not convert the action into
9 an equity action and thus deprive the justice court of jurisdiction merely by a prayer for
10 rescission.” Runyan, *supra*, 2 Cal.3d at p.313; see also Paularena v. Superior Court, *supra*
11 231 Cal.App. 2d at 914, [where gist of action for rescission of a contract is the recovery of
12 a money judgment, the action is legal and the plaintiffs are entitled to a jury trial];
13 Lectrodryer v. SeoulBank (2000) 77 Cal.App. 4th 723, 728, [same].)

14 In the instant case, Plaintiff seeks recession predicated upon its assertion that the
15 Parties’ Transfer Agreement is unlawful and void. (Complaint ¶¶ 13, 15, 6, 16 and Prayer
16 for Relief ¶ 1). Pinedale also attempts to assert that it is also seeking the return of
17 everything of value which it paid as consideration for the contract, and identifies that sum
18 in its prayer for relief as \$150,000.00. (Complaint ¶ 16 and Prayer for Relief ¶ 2).
19 However, the express terms of the Parties’ contract demonstrates that Pinedale did not pay
20 any consideration for the subject Transfer Agreement. Rather, the Transfer Agreement
21 explicitly states that Pinedale’s payment of \$150,000.00 was to settle a then pending
22 lawsuit between the Parties’: Specifically, ¶ 11 of the Transfer Agreement provides:

23 “11. Satisfaction of Claims between the Parties. In full and final settlement and
24 satisfaction of the Action, District agrees to pay City the sum of \$150,000 on
25 or before January 1, 2007 and enter into this Agreement. Upon the
26 execution and approval of this Agreement by the last party, City shall dismiss
27 the Action with prejudice. It is expressly understood by the parties, by
28 reason of the consideration hereinabove mentioned, that the parties admit
absolutely no liability of any sort and have made no representations as to
any liabilities or obligations and have made no agreements or promises to
do or omit to do any act or thing not herein set forth.” (Transfer Agreement
¶ 11 attached as Exhibit 1 to RJN Exhibit A)

1 Thus, Pinedale's complaint seeks to enforce recession, as opposed to seeking the
2 recovery of damages under the Agreement. Under these facts, Pinedale does not
3 possess a right to a jury trial on its recession claim. See also, Nmsbpcslldhb v. County of
4 Fresno (2007) 152 Cal.App.4th 954, in which the Fifth District specifically determined that
5 a rescission action that seeks recovery of something other than the consideration paid (i.e.
6 a judicial determination of rescission) is an equitable action and in such cases the plaintiff
7 is not entitled to a jury trial. (Id. at pp. 956, 963.)

8 **B. Pinedale's Second Cause of Action, For Declaratory Relief, Is Also An**
9 **Equitable Claim**

10 First, Courts have stated repeatedly that an action under Code of Civil Procedure
11 section 1060 for declaratory relief is equitable in nature. Dills v. Delira Corporation (1956)
12 145 Cal.App.2d 124, 129; see also City of Los Angeles v. City of Glendale (1943) 23
13 Cal.2d 68, 81.

14 Second, Pinedale's declaratory relief claim seeks to assert a one form of action
15 defense to the City's writ petition, which is currently pending in Kings County. As stated
16 in the City's concurrently filed demurrer, this cause of action is fatally defective because
17 the writ proceeding is currently pending in another court between these Parties' and
18 involves the exact same subject matter as that addressed by Plaintiff's second cause of
19 action. (CCP § 430.10(c)).

20 Third, Plaintiff's defense under the one form of action rule seeks to assert an
21 estoppel defense to the City's collection action. See Kirkpatrick v. Westamerica Bank
22 (1998) 65 Cal.App. 4th 982, 990-91. Estoppel is an equitable remedy to which no right to
23 a jury trial exists. Thus, the resolution of a judicial controversy regarding the application
24 of the one form of action rule does not involve any right to jury trial. See Fowler v. Ross
25 (1983) 142 Cal.App.3d 472, 478; Strauss v. Summerhays (1984) 157 Cal.App.3d 806, 812-
26 813 [no right to jury where claim underlying declaratory relief is equitable].

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1 **III. CONCLUSION**

2 For the forgoing reasons, Plaintiff's motion to transfer should be denied, and the
3 court should assign the matter to a disinterested judge for trial in Fresno County.
4 Alternatively, if this Court is inclined to grant Plaintiff's request to transfer, such transfer
5 should be to Madera County, which is readily accessible by the Parties', their counsel and
6 all witnesses, as opposed to Kings County, which is a far less convenience forum.

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8 Dated: November 20, 2018

BETTS & RUBIN

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10 By 
11 James B. Betts
12 Attorneys for Defendant City of Fresno
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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 matter.
4 My business address is 907 Santa Fe Avenue, Suite. 201, Fresno, CA. On November 20,
5 2018, I served **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
6 **CROSS-DEFENDANT'S DEMURRER TO CROSS-COMPLAINT** on the parties in this
7 action by placing an original/a true copy in an envelope and delivering it as follows:

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

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

12 X **(By Mail)** I placed the envelope for collection and processing for mailing following
13 this business' ordinary practice with which I am readily familiar. On the same day
14 correspondence is placed for collection and mailing, it is deposited in the ordinary
15 course of business with the United States Postal Service with postage fully prepaid.

16 X **(By Electronic Mail)** I caused each document to be sent electronically to the
17 address below.

18 Each envelope was addressed as follows:

19 Neal E. Costanzo Esq.
20 Costanzo & Associates
21 A Professional Corporation
22 575 E. Locust Avenue, Suite 115
23 Fresno, CA 93720
24 Email: ncostanzo@costanzolaw.com

Attorneys for:
PINEDALE COUNTY WATER DISTRICT

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

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

28 
Adriana Garcia