

**GIFFIN v. VASCONCELLOS**

**23CV46905**

**MOTION FOR SANCTIONS**

This is an action for partition of real property. Before the Court is defendant's "Motion for Sanctions".

All matters noticed for the Law & Motion calendar shall include the following language in the notice:

**Pursuant to Local Rule 3.3.7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court.**

**Failure to include this language in the notice is a basis for the Court to deny the motion.**

In addition to this procedural shortcoming, the Court notes no legal basis is provided for defendant's claimed relief, and no evidence is presented other than non-admissible, non-credible hearsay.

Based on the foregoing, the motion is DENIED on both procedural and substantive grounds.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal Order is required.

# HATFIELD v. UNION PUBLIC UTILITY DISTRICT

Case No. 23CV46786

## DEFENDANT UNION PUBLIC UTILITY DISTRICT'S DEMURRER TO PLAINTIFF'S SECOND AMENDED COMPLAINT

This action challenges a component of the rates charged by defendant independent special water service district formed under the California Public Utility District Act Sections 15501-17501. Plaintiff is a ratepayer and customer of defendant who challenges the imposition and collection of portions of charged water rates. Plaintiff seeks certification of a class action, a fee refund, and a declaration that an element of defendant's fee is invalid.

Defendant has demurred pursuant to Code of Civil Procedure section 430.10 (e), contending the second amended complaint fails to state facts sufficient to constitute a cause of action in that they are barred by the applicable statute of limitations outlined in Government Code section 53759 (a), and asserting that the Court has no jurisdiction over the subject matter alleged due to plaintiff's failure to comply with the reverse validation procedures and file a reverse validation action, as required by Government Code section 53759 (b).

Plaintiff requests a determination of the validity of specific rates, fees and charges. Although Plaintiff does not cite any specific code section, Code of Civil Procedure Sections 860-870 and Government Code section 53759(b) set forth the applicable period of limitation.

Government Code section 53759 provides:

(a) Any judicial action or proceeding to attack, review, set aside, void, validate, or annul an ordinance, resolution, or motion adopting a fee or charge for water or sewer service, or modifying or amending an existing fee or charge for water or sewer service, shall be commenced within 120 days of the effective date or of the date of the final passage, adoption, or approval of the ordinance, resolution, or motion, whichever is later.

(b) Any action under this section by a local agency or interested person shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure, except that the time limits of subdivision (a) shall apply.

\* \* \*

The reverse validation procedures allow a plaintiff to obtain jurisdiction of all interested parties by properly publishing the summons (CCP §§ 861, 861.1, 863.). No required proof of publication is contained in the Court's file.

Plaintiff argues that the Second Amended Complaint challenges only the 2022 rate study and fee schedule, not the rate schedule and program first adopted in 2016. Said program contemplates periodic rate reviews and fee adjustments. Plaintiff cites no authority for this argument. The Court independently searched for any such authority and found none.

Judicial actions or proceedings to attack, review, set aside, void, raise Proposition 218 issues or annul an ordinance, resolution or motion fixing or changing rates or charges such as a resolution setting a district's water rates generally are subject to the 120-day statute of limitations (Public Utilities Code, § 14402; see also California Constitution, Article XIII D, § 6 (b)).

The Court SUSTAINS the demurrer to the Second Amended Complaint in its entirety, WITHOUT leave to amend.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendant to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

**MARTIN v. FRASER**

**22CV46236**

**MOTION TO BE RELIEVED AS COUNSEL**

Paul C. Kozlow, the attorney of record for defendant, moves to be relieved as counsel in this matter.

Determination of a request by counsel to withdraw is entrusted to the sound discretion of the trial court. (*People v. Mickey* (1991) 54 Cal. 3d 612.) An attorney may withdraw from a case if withdrawal can be accomplished without undue prejudice to the client's interests. (*Ramirez v. Sturdevant* (1994) 21 Cal.App.4th 904, 915.) Counsel's declaration meets the legal standard for a motion to withdraw.

Motion is GRANTED.

The Clerk shall provide notice of this Ruling to the parties forthwith. Moving party to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

**PHILLIPS, et al. v. RADER-COLEMAN, et al.**

**22CV46116**

**PLAINTIFFS' MOTION TO BIFURCATE**

Plaintiffs move to bifurcate the trial issues of abutter's rights, contending resolution of this issue may resolve the suit in its entirety. No opposition to the motion has been filed.

California Code of Civil Procedure section 598 provides, in pertinent part, that "[t]he court may, when . . . the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby... make an order... that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case."

Additionally, CCP § 1048(b) allows the court to order a separate trial of any cause of action, any separate issue, or any number of causes of action or issues "in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy . "As the cases explain, the objective of the bifurcation of the issues is avoidance of waste of time and money caused by the trial of issues which may be rendered moot." (*Bedolla v. Logan & Frazer* (1975) 52 Cal.App.3<sup>rd</sup> 118, 135.)

The Court also notes that Defendant's failure to oppose this motion lends it merit. (See California Rule 3.1342: "The failure of the opposing party to serve and file a written opposition may be construed by the court as an admission that the motion is meritorious, and the court may grant the motion without a hearing on the merits"; *Sexton v. Superior Court* (1997) 58 Cal.App.4<sup>th</sup> 1403, 1410 )

Motion is GRANTED.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiffs are to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.