

1 RUTAN & TUCKER, LLP
Jeffrey M. Oderman (State Bar No. 63765)
2 joderman@rutan.com
William M. Marticorena (State Bar No. 77309)
3 bmarticorena@rutan.com
611 Anton Boulevard, Suite 1400
4 Costa Mesa, California 92626-1931
Telephone: 714-641-5100
5 Facsimile: 714-546-9035

6 ARNOLD, LAROCHELLE, MATHEWS, VANCONAS & ZIRBEL, LLP
Dennis LaRoche (State Bar No. 71599)
7 dlarochelle@atozlaw.com
300 Esplanade Drive, Suite 300
8 Oxnard, CA 93036

9 Attorneys for Respondents/Defendants

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF VENTURA

13 GOLDEN STATE WATER COMPANY,
a California corporation,

14 Petitioner/Plaintiff,

15 vs.

16 CASITAS MUNICIPAL WATER DISTRICT,
17 et al.,

18 Respondents/Defendants.

Case No. 56-2013-00433986-CU-WM-VTA

CASITAS MUNICIPAL WATER DISTRICT'S
SUR-REPLY BRIEF RE HEARING ON
INVALIDATION OF CASITAS MWD'S
MELLO-ROOS ACT FINANCING PLAN

Date Action Filed: March 26, 2013

Trial:
Date: October 15, 2013
Time: 8:30 a.m.
Dept.: 43

20 1. August 27, 2013, CFD Election Results. CMWD requests that the Court take
21 judicial notice of the Ventura County Registrar of Voters' certificate of the results of the August
22 27, 2013, Community Facilities District No. 2013-1 (Ojai) special election attached hereto as
23 Exhibit "A." (Evid. Code §§ 451(f) and 452(c), (g), and (h).) The voters in GSW's Ojai service
24 area approved the CFD by a resounding margin of 87.42% in favor and only 12.58% opposed.

25 2. GSW Has Failed to Timely Obtain Jurisdiction Over All Persons Interested in the
26 Validity of the CFD and, Accordingly, This Action Must Be Dismissed. In its June 10, 2013,
27 minute order, this Court ruled that GSW's validation action was filed prematurely and that GSW
28 should have filed it within thirty (30) days *after* the August 27, 2013, CFD election. (Govt. Code

1 §§ 53341 and 53359.) On the date this Sur-Reply Brief is being filed, 30 days will have elapsed
2 since the election and GSW has neither (1) filed a new or supplemental validation complaint or (2)
3 re-published the summons needed to obtain jurisdiction over “all persons interested.” The time
4 has now run for GSW to take these actions and, accordingly, its action must be dismissed.

5 An action cannot be maintained if it is commenced prematurely, before accrual of the
6 cause of action that is sought to be enforced, and an action commenced prematurely should be
7 dismissed. *Tatum v. Ackerman* (1905) 148 Cal. 357; *Berkowitz v. Palm Springs La Quinta*
8 *Development Co.* (1940) 37 Cal.App.2d 249; *Nevills v. Shortridge* (1905) 146 Cal. 277. The
9 nonexistence of a cause of action when the suit was commenced ordinarily is a fatal defect that
10 cannot be cured by the accrual of a cause of action *after* suit is filed. *Kredo v. Phelps* (1904) 145
11 Cal. 526; *Owen v. Meade* (1894) 104 Cal. 179. “Even validation actions are not exempt from the
12 traditional principle that a justiciable action must satisfy the requirements of both ripeness and
13 standing.” *City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 66.

14 It is now too late for GSW to file a *new* validation action, as such an action would be
15 barred by the 30-day limitations period in Govt. Code §§ 53341 and 53359. The question then
16 becomes whether GSW can now either (1) file a supplemental complaint alleging the results of the
17 August 27, 2013, CFD election and relate that new pleading back to its original (premature) March
18 26, 2013, Complaint for statute of limitations purposes or (2) simply proceed to trial on the merits
19 without filing a supplemental complaint. CMWD submits it can do neither.

20 CMWD recognizes that in a typical case involving *in personam* jurisdiction the filing of a
21 premature complaint is still effective to obtain jurisdiction over the named (and personally served)
22 defendant(s) and does not prevent the plaintiff from later filing a supplemental complaint and
23 relating it back to the filing date of the original complaint for statute of limitations purposes.

24 *Radar v. Rogers* (1957) 49 Cal.2d 243, 246-250.¹ This is an *in rem* proceeding, however, in which

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26 ¹ *Radar* involved the proper application of Probate Code §§ 707, 714, and 716, which provide
27 that (1) before an action can be instituted against an estate the plaintiff must first file a claim with
28 the administrator of the estate and (2) the lawsuit must be filed within three months *after* the date
the administrator rejects the claim. The plaintiffs in *Radar* filed their suit against the estate before
the administrator was appointed. Later, after the administrator was appointed, plaintiffs filed a
claim with the administrator, which was rejected, and *more* than three months later plaintiffs filed
a supplemental complaint to allege these post-filing events. On appeal from a trial court ruling

1 “[t]he only way for the court to acquire jurisdiction over the matter is to ensure that notice is given
2 to all interested persons so that the resulting judgment can be conclusive as against them.”

3 “Failure to publish a summons in accordance with the statutory requirements deprives the court of
4 the power to rule upon the matter. . . [T]he court cannot overlook a defective summons. Unless
5 the plaintiff has published a summons in compliance with the statutory requirements, the court has
6 no jurisdiction to rule upon the matter that is the subject of the action.” *Katz v. Campbell Union*
7 *High School Dist.* (2006) 144 Cal.App.4th 1024, 1032. Accord, *Community Youth Athletic Center*
8 *v. City of National City* (2009) 170 Cal.App.4th 416, 428 (“CYAC”).

9 The summons GSW used to obtain jurisdiction over “all persons interested” in this matter
10 was published in April 2013 and purported to require anyone wishing to file a responsive pleading
11 to do so by May 2, 2013, *almost 4 months prior to the time this action first became “ripe” for*
12 *adjudication.* (See Summons filed by GSW on March 29, 2013.) This summons was clearly
13 defective, as no interested person lawfully could be compelled to appear in court by May 2, 2013,
14 to defend the validity of the CFD when an uncertain and essential prerequisite to the creation of
15 the CFD and sale of CFD bonds—2/3 voter approval—had not yet occurred. See, e.g., *Katz,*
16 *supra* (validation action properly dismissed because published summons failed to specify concrete
17 response date and response date calculable from language of summons provided 6 days less than
18 the amount of time required), *CYAC, supra*, 170 Cal.App.4th at 428-429 (defect in published
19 summons, which shortened response period by 3 days, “cannot be considered to be minor or
20 inconsequential, but instead is jurisdictional”), and *County of Riverside v. Superior Court* (1997)
21 54 Cal.App.4th 443, 446-451 (published summons which informed its readers they had 30 days to
22 file responsive pleading but which failed to specify precise date was defective; dismissal required).

23 Strong public policy reasons support strict enforcement of the rule requiring clear and
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26 sustaining the defendant’s demurrer to the supplemental complaint, the Supreme Court reversed,
27 finding that the purpose of the Probate Code claims provisions had been satisfied and the
28 administrator had notice of the lawsuit and had suffered no prejudice. A number of similar cases
arise in the context of the Government Code claims presentation requirements. See, e.g., *State of*
California v. Superior Court of Kings County (2004) 32 Cal.4th 1234, 1243-1245, and cases cited
(purpose of claims statutes satisfied; no prejudice to defendant). But see *Lee v. Bank of America*
NT&SA (1994) 27 Cal.App.4th 197 (no relation back; *Radar* distinguished if revised claim is not
based on the same general set of facts alleged in original complaint).

1 accurate notice to the public of their deadline for filing a responsive pleading in a validation
2 action. “In a validation or reverse validation action, . . . published notice to members of the public
3 is the *primary* means of notice. Such actions involve matters of general public interest, and there
4 is at least some reasonable expectation that potentially concerned parties will observe the notice
5 and consider whether or not to take action on one side or the other.” *County of Riverside, supra*,
6 54 Cal.App.4th at 450. Moreover, even though CMWD is the only indispensable party, “it does
7 not matter that all indispensable parties have appeared in the action. Our concern is with the
8 court’s jurisdiction over the matter to be validated.” *Katz, supra*, 144 Cal.App.4th at 1033. Nor
9 does it matter that CMWD has suffered no prejudice. “The alleged absence of prejudice does not
10 supply a *reason* for plaintiff’s failure to comply with the statutes.” *Id.* at 1036; *emph. in original.*

11 At this point, it is too late for GSW to file a supplemental Complaint and try to start the
12 service process over. (See Govt. Code §§ 53341 and 53359 and CCP § 863, which requires the
13 plaintiff in a reverse validation action to file proof of its publication of the summons “within 60
14 days from the filing of his complaint.”) Nor can GSW establish “good cause” under CCP § 863
15 for its failure to comply with the law. First of all, “good cause” does *not* extend the 30-day
16 limitations period in Govt. Code §§ 53341 and 53359; it applies only to service. Secondly, GSW
17 knew full well from the Court’s June 10, 2013, minute order that its case was prematurely filed
18 and therefore it was on notice that its prematurely published summons was not effective.
19 “[I]gnorance of the law coupled with negligence in ascertaining it will certainly sustain a finding
20 denying relief.” *City of Ontario v. Superior Court* (1970) 2 Cal.3d 335, 346; *Community*
21 *Redevelopment Agency of Los Angeles v. Superior Court* (1967) 248 Cal.App.2d 164, 174. “The
22 procedure to be followed with respect to the form and publication of summons in such a case as
23 this is not complex. . . . the law was in all the books and readily available to plaintiffs’ attorney.”
24 (*Id.* at 174-175.)

25 Dated: September ____, 2013

RUTAN & TUCKER, LLP

26
27 By: _____

Jeffrey M. Oderman
Attorneys for Respondents/Defendants