WILKINS DROLSHAGEN & CZESHINSKI LLP
ATTORNEYS

James H. Wilkins
Michael J. Czeshinski
Marissa J. Facciani
Quentin Cedar
Andrew D. Trippel

6785 N. Willow Avenue
Fresno, California 93710

Telephone (559) 438-2390
Facsimile (559) 438-2393
wdc@wdcllp.com

John A. Drolshagen
Retired

Hilda R. Lopez
Office Administrator

April 10, 2018

Fresno County A-C/T-C
Attn: Manjit Dhaliwal
P.O. Box 1192
Fresno, CA 93715-1192
mdhaliwal@co.fresno.ca.us

Re: JHS Family Limited Partnership et. al. v. County of Fresno
Fresno Superior Court Case No. 15CECG02007
Assessor's Parcel number (APN) 487-150-26S
Tax Deed to Purchaser Document Number 2014-0050157

Dear Fresno County Board of Supervisors:

As you must be aware, our office represents the owners of the Subject Property, JHS FAMILY LIMITED PARTNERSHIP, JCH FAMILY LIMITED PARTNERSHIP, and DBH FAMILY LIMITED PARTNERSHIP (collectively as "JHS"), and has been representing them as plaintiffs in the aforementioned lawsuit against the County of Fresno ("County") captioned JHS Family Limited Partnership et. al. v. County of Fresno, Fresno Superior Court Case No. 15CECG02007.

This letter is in response to the County's proposal to rescind the March 2014 sale of the tax defaulted property, Assessor's Parcel number (APN) 487-150-26S located at 2696 South Maple Avenue, Fresno, California, 93725-2108 (the "Subject Property"). JHS hereby opposes the proposed rescission of sale of the Subject Property. The County is not entitled to make any such rescission and should not make such a rescission of the Subject Property.

For your reference, this letter contains the following attachments:

- April 9, 2018 letter to the Fresno County Board of Supervisors with Mr. Hovannisian declaring under penalty of perjury that JHS has incurred over $300,000 in expenses for remediation of the Subject Property;
- The February 27, 2018 Opinion by the Fifth District Court of Appeals holding that the County, by undertaking a separate specific contractual obligation beyond the tax sale procedure, subjected itself to liability for breach based on contract principles; and

- Memorandum of Points and Authorities in Support of County's Demurrer to the Complaint dated August 10, 2015.
- Reply in Support of County's Demurrer to the Complaint dated September 16, 2015.

Background Facts

JHS purchased the Subject Property, a 14-acre parcel with a 130,000 square foot industrial building, at a Fresno County tax sale auction in March of 2014. JHS agreed to pay the entire tax lien of approximately $460,000.

The County published binding terms of sale that formed the contract between any successful bidder and the County. Regarding possible contamination at the property, these terms of sale stated:

> **NOTICE OF CONTAMINATED/POSSIBLE CONTAMINATED PROPERTIES**
>
> When we become aware of properties on our sales list that are known or suspected to be contaminated, the Asset Page will identify these properties and the Lead Agency's name and address where all available information may be reviewed . . .

The County was aware of claims regarding known or suspected contaminants located on the Subject Property. Nevertheless, the County did not give notice of this contamination.

After the purchase, in December of 2014, JHS received notice that the Subject Property was contaminated and that the estimated cost to remediate the contamination was in excess of $500,000.

Thereafter, in June of 2015, JHS filed suit against the County for breach of contract, based upon the County's failure to honor its express and specific promise to potential bidders to disclose any possibly contaminated properties. JHS seeks damages from the County based on it having breached its obligation to disclose known or suspected contaminants, to which the County had agreed.

The County challenged the operative complaint twice, which was ultimately sustained by the trial court without leave to amend. In December of 2015, the trial court sided with the County finding that "purchaser's at a tax sale engage in highly speculative and risky purchase, taking the property 'as is,' and subjecting themselves to the doctrine of caveat emptor." The trial court also agreed with the County that it is immune from liability for any patent or latent conditions of the property sold at a tax sale, whether known or unknown, under Revenue and Taxation Code section 3692.3, concluding that there was no basis for a damage award pursuant to a breach of contract theory in the context of a tax sale.

In March of 2016, JHS appealed the trial court's judgment. After briefing and oral argument, the Fifth District Court of Appeals reversed the trial court's judgment and remanded the case for further proceedings based on its finding that "the County undertook a separate specific contractual

obligation beyond the tax sale procedure." "Accordingly, the County subjected itself to liability for breach based on contract principles." While noting that the statutory scheme provided no warranty of the validity or regularity of the proceedings, the appellate court found that by promising to disclose contamination as part of the bid process, the County undertook a separate contractual obligation beyond the tax sale procedure, and therefore is not immune from liability for breach of contract. The appellate court held that "the County subjected itself to liability for breach based on contract principles."

The Proposed Rescission under the Revenue and Taxation Code Is Not an Available Remedy

Four years following the sale of the Subject Property, the County now and for the first time contends that it has the unilateral power to rescind the tax sale deed. Because the appellate court rejected the County's argument that it is free to make whatever express and specific representations without consequence, the County now seeks to rescind the sale to avoid liability.

The County asserts that the reason for the rescission is "that the property is contaminated by hazardous materials and the purchaser at the tax sale alleges that the County was obligated to notify prospective purchasers of the contamination, and that the County is obligated to pay for remediation of the contamination." The County further contends that it is only obligated to refund the purchase price paid plus interest, and that JHS should not have incurred any expenses to remedy the contamination or made any repairs at the subject property. The County has disavowed any obligation to reimburse JHS for the over $300,000 in expenses incurred in remediating the Subject Property since its purchase.

The County contends that its power to rescind the March 2014 tax sale comes from Revenue and Taxation Code section 3731. That statute provides that "[w]hen a tax deed to a purchaser of property sold by the tax collector pursuant to this part is recorded ***and it is determined that the property should not have been sold***, the sale may be rescinded by the board of supervisors . . ." either with the consent of the purchaser or without such consent if a scheduled hearing is noticed and held before the Board of Supervisors. The key to that provision is the meaning of the determination that the property should not have been sold.

One need not look very far to find the County's interpretation of the phrase, as it has argued extensively as to the meaning of the phrase "the property should not have been sold" in the present case. Throughout this matter, County has consistently maintained that the phrase "the property should not have been sold" requires the property to have been owned by a governmental entity at the time of sale. The County in its court filings in the present case, the County argued as to Section 3731:

> Under the Revenue and Taxation Code, a purchaser at a tax sale is entitled to a remedy (refund of purchase money paid) *only where* the court determines the tax deed is 'void,' or the property 'should not have been sold,' (e.g., because it was owned by a governmental entity at the time of sale), without reference to invalidity or irregularity of the sale *proceedings*. Rev. & Tax §§ 3729, 3731. The question is whether any of the statutory remedies apply to Plaintiffs in the instant case.

> By statute then, Plaintiffs would have a statutory right to a refund under a properly advanced theory, for example, IF they had alleged could prove the tax deed to be void (Rev. & Tax Code, § 3729), or if they had alleged and it is determined the property "should not have been sold" pursuant limited grounds (Rev. & Tax Code, § 3731). But just like *Craland, supra*, Plaintiffs in this case obtained a ***valid*** tax deed and do not have any facts to establish the limited grounds under which the property "should not have been sold," as that term has been interpreted by the Courts.
>
> Moreover, it is undisputed that the County never owned the subject Property, and was selling it pursuant to statute only for taxes owed. It also cannot be disputed that Bidders in this case, including Plaintiffs, were in fact ***expressly warned*** by the same "terms of sale" to **thoroughly inspect and research the value *and condition*** of the property and that the County "assumed no liability"... (See County's Demurrer to the Complaint, at 9:6-23 [emphasis in original].)

The County further hammered-home its point in its Reply papers where it reiterated that none of the statutory remedies, including Section 3731, when it is determined the property "should not have been sold" **did not apply**.

> Defendants are immunized and *cannot* be liable for non-statutory common-law breach of contract or misrepresentation in any instance in connection with said sale. Rather, Plaintiffs are ***limited exclusively to statutory remedies*** set forth in *Rev. & Tax. Code*. As explained in the Demurrer, and even as Plaintiffs' opposition makes clear, none of these apply. (See County's Reply in Support of its Demurrer to the Complaint, at 5:23-28 [emphasis in original].)

As the County has consistently acknowledged and maintained until this hearing, and as was held in Van Petten "a purchaser at a tax sale is entitled to a refund of purchase money paid only where the court determines the tax deed is void (§ 3729) or the property 'should not have been sold' (§ 3731). There is no statutory remedy of rescission or refund based on ... misrepresentation and breach of contract ... ." (Van Petten v. County of San Diego (1995) 38 Cal.App.4th 43, 51.) As the court in Ribeiro v. County of El Dorado (2011) 195 Cal.App.4th 354, 369 explained "Sections 3728 through 3729 involve invalidity of tax deeds, and section 3731 addresses rescission of a tax sale of property which 'should not have been sold' (e.g., because it was owned by a governmental entity at the time of sale), without reference to invalidity or irregularity of the sale proceedings. . . .We agree with the Van Petten court's explanation." (Id., at 369; see also People v. Chambers (1951) 37 Cal. 2d 552, 562.) Therefore, according to the well-established case law as well as the County's own representations made to the trial court in this case, the rescission pursuant to Section 3731 is not available or applicable to this matter.

Rescission under the Civil Code Is Also Not Available as a Remedy

In general, rescission of contract is governed by Civ. Code §1688 *et seq*. A contract may be rescinded if all the parties to the contract consent. (Civ. Code §1689(a).) That is not present in this

case since JHS opposes rescission four years after the tax-sale and after it has spent over $300,000 to remediate the property and remove the contamination as mandated by the administrative agency.

If the other party will not consent to rescind the contract, a party may rescind only if its consent was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he or she rescinds, or of any party jointly interested with that party. (See Civ. Code §1689(b)(1); see, e.g., Wong v. Stoler (2015) 237 Cal.App.4th 1375, 1388 [for purposes of rescission, negligent misrepresentation is form of actual fraud]; Chan v. Lund (2010) 188 Cal.App.4th 1159, 1174, 1179 [party who enters into contract under duress may obtain rescission against another contracting party].) Here, as to the first element of unilateral rescission, the County does not even claim to have made any mistake or that it sold the Subject Property under duress. Moreover, even if the County attempted to claim mistake or duress, it certainly could never establish the second component, that JHS knew of the County's mistake or duress.

Thus, in addition to not being entitled to the proposed statutory rescission under the Revenue and Taxation Code, the County cannot establish it is entitled to rescission under the Civil Code, either.

The County's Delay Also Prevents it from being Entitled to Rescission

Even assuming for the sake of argument that"the property should not have been sold" because it was owned by another governmental entity in the present case, the County has waited too long, and JHS has been prejudiced by the delay so as to preclude the remedy of rescission.

The equitable doctrine of laches is available as a defense to rescission even where the statute of limitations period has no lapsed, where the party seeking to rescind the agreement has delayed in doing so and the defendant demonstrates that he or she was prejudiced by the delay, or that the plaintiff has acquiesced in the defendant's conduct. (See Estate of Peebles (1972) 27 Cal.App. 3d 163, 166; Conti v. Board of Civil Service Commissioners (1969) 1 Cal.3d 351, 362; Meigs v. Pinkham (1910) 159 Cal. 104, 111.) Civil Code section 1693, which sets forth the effect upon relief of delay in notice of rescission or in restoration of benefits. Section 1693 provides that relief "shall not be denied because of delay in giving notice of rescission unless such delay has been substantially prejudicial to the other party."

Circumstances that are material to a determination that a claim is so stale that a court of equity will not enforce it include the following: considerable lapse of time; difficulty of doing entire justice when the original transactions have become obscure by time; loss of evidence; claim not made until after the death of those who could have explained the transaction; change in the value and character of the property; and considerations of public policy (Bell v. Hudson (1887) 73 Cal. 285, 288–290.)

Here, had the County given notice of rescission shortly after execution of the tax deed, JHS would have been promptly reimbursed the purchase money from the transaction, and would have been able to avoid the four years of property taxes paid on the property, would have had avoided the four years in attorney fees incurred in litigating the issues surrounding the tax sale, but most importantly, would have been able to avoid incurring the over $300,000 in remediation expenses which were mandatory in connection with its ownership of the Subject Property. JHS had no choice

in incurring such remediation expenses as its failure to do so would have subjected it to fines and penalties. As the facts so amply show, the four years of delay before the County sought to rescind the tax sale was surely "substantially prejudicial" to JHS. (See Saret-Cook v. Gilbert, Kelly, Crowley & Jennett (1999) 74 Cal.App.4th 1211, 1227.)

The County Has Waived Any Such Right to Seek Rescission

By now seeking to rescind the tax sale pursuant to Section 3731, after previously expressly denying such relief was applicable, the County here attempts to apply a "moving target" strategy, changing from one position to another as appears necessary to avoid liability. Such tactics are not permissible. (See Saret-Cook, supra, 74 Cal.App.4th at 1227.)

The doctrine of waiver has judicially been defined in several cases as follows:

> A waiver may occur by (1) an intentional relinquishment or (2) as a result of an act which, according to its natural import, is so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished.

Ins. Co. of the West v. Haralambos Beverage Co., 195 Cal.App.3d at 1321; Scott v. Federal Life Ins. Co., 200 Cal.App.2d 384, 391 (1962); Gaunt v. Prudential Ins. Co., 255 Cal.App.2d 18, 23 (1967).

The doctrine of waiver looks to "the act, or the consequence of the act, of one side only" in contrast to the doctrine of estoppel which "is applicable where the conduct of one side has induced the other to take such a position that it would be injured if the first should be permitted to repudiate its acts." Intel Corp. v. Hartford Acc. & Indem. Co., 952 F.2d 1551, 1559 (9th Cir. 1992); Haralambos, 195 Cal.App.3d at 1320; McDaniels v. General Ins. Co., 1 Cal.App.2d 454, 459 (1934); Elliano v. Assurance Co. of America, 3 Cal.App.3d 446, 450 (1970); Morgan v. International Aviation Underwriters, Inc., 250 Cal.App.2d 176, 180 (1967).

In Neet v. Holmes (1944) 25 Cal. 2d 447, 457-458, the Supreme Court stated: ". . . [A] party to a contract who wishes to rescind cannot play fast and loose. He cannot conduct himself so as to derive all possible benefit from the transaction and then claim the right to rescind. [P] . . . HN3 The right to rescind may be waived. [Citations.] It is waived by recognition of the existence of the contract after the right to rescind was created. [Citation.] Waiver of a right to rescind will be presumed against a party who, having full knowledge of the circumstances which would warrant him in rescinding, nevertheless accepts and retains benefits accruing to him under the contract. [Citation.]" The Neet court gave this example: ". . . [A]n affirmance of the contract at a time subsequent to the discovery of the falsity of the representations inducing its execution [inducement of contract by false representations provides a basis for rescission analogous to lack of capacity to contract] forecloses the exercise of the right of rescission." (Id. at p. 458.)

Here, the reason the County gives to justify its claim for rescission ("that the property is contaminated by hazardous materials and the purchaser at the tax sale alleges that the County was obligated to notify prospective purchasers of the contamination, and that the County is obligated to pay for remediation of the contamination") has been known by the County since 2015. Thus, by having full knowledge of the circumstances which the County now claims to warrant rescission, but nevertheless accepted and retained benefits accruing to it under the tax-sale, establish the County has

waived any claimed right to rescind the sale. Moreover, by arguing for three years that the tax sale could not be rescinded, that the "Plaintiffs in this case obtained a **valid** tax deed and do not have any facts to establish the limited grounds under which the property 'should not have been sold,' as that term has been interpreted by the Courts," the County has further disavowed any right to rescind the sale. (See County's Demurrer to the Complaint, at 9:16-18 [emphasis in original].)

The County Is Estopped From Any Such Right to Seek Rescission

Evidence Code section 623 provides: "Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it."

As previously explained, the County, by having consistently maintained that the remedy of rescission was not available under the circumstances of the case, has deliberately led JHS to believe that it would never claim such right, and JHS has acted upon that belief, incurring over $300,000 in expenses in remediating the Subject Property. JHS had no choice in incurring such remediation expenses as its failure to do so would have subjected it to fines and penalties. Furthermore, prior to its sale of the Subject Property, the County was aware of claims that had been made, by among others the California Regional Water Quality Control Board, Valley Region, about known contaminants located on the Subject Property. The County also knew that the purchaser of the Subject Property would incur expenses to remediate the contamination at the Subject Property. Nevertheless, the County knowing these expenses in remediation were being incurred, waited four years before seeking to rescind the sale of the Subject Property. Therefore, the County is estopped from rescinding the tax-sale.

Very truly yours,

WILKINS, DROLSHAGEN
& CZESHINSKI LLP

James H. Wilkins

JHW:clf
Attachments

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James H. Wilkins
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April 9, 2018

Fresno County A-C/T-C
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P.O. Box 1192
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Re: JHS Family Limited Partnership et. al. v. County of Fresno
Fresno Superior Court Case No. 15CECG02007
Assessor's Parcel number (APN) 487-150-26S
Tax Deed to Purchaser Document Number 2014-0050157

Dear Fresno County Board of Supervisors:

I, Bryce Hovannisian, declare as follows:

1. I have been since prior to 2014 and remain the Operations Manager for JD Home Rentals, and in that capacity have been charged with maintaining the building on the aforementioned property, the subject of this hearing, which is located at 2696 South Maple Avenue, Fresno, California, 93725-2108 (the "Subject Property").

2. In may capacity as operations manager, my responsibilities include overseeing the maintenance and repairs of the Subject Property by JD Home Rentals Construction. I am responsible for assigning employees of JD Home Rentals Construction to repair the property and for purchasing from suppliers the materials utilized in the repairs at the Subject Property. Additionally, in my capacity as operations manager, I also am responsible for overseeing the remediation efforts that have been undertaken at the Subject Property, which includes but is not limited to the payment of outside vendors.

3. In addition, to being operations manager for JD Home Rentals Construction, I am also a limited partner in each of the limited partnerships that hold title to the Subject Property: JHS Family Limited Partnership; JCH Family Limited Partnership; and DBH Family Limited Partnership. I am familiar with the repairs undertaken as well as the remediation efforts that have taken place at the Subject Property. I have personal knowledge of the matters set forth herein and would testify to the same if called as a witness.

4. Although the remediation of the contamination as required by the California Regional Water Quality Control Board, Valley Region is not yet complete at this time, to this date the Subject Property's owners have incurred over $300,000 in expenses in effectuating such remediation.

5. In addition, since its acquisition in 2014, the Subject Property's owners have undertaken repairs.

I declare under penalty or perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed this 9th day of April, 2018, in Fresno, California.

Bryce Hovannisian

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COURT OF APPEAL
FIFTH APPELLATE DISTRICT
FILED

FEB 27 2018

By _____ Deputy

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

JHS FAMILY LIMITED PARTNERSHIP et al., Plaintiffs and Appellants, v. COUNTY OF FRESNO, Defendant and Respondent.	F073369 (Super. Ct. No. 15CECG02007) **OPINION**

APPEAL from a judgment of the Superior Court of Fresno County. Donald S. Black, Judge.

Wilkins, Drolshagen & Czeshinski, James H. Wilkins and Quentin Cedar for Plaintiffs and Appellants.

Daniel C. Cederborg, County Counsel, and Scott C. Hawkins, Deputy County Counsel, for Defendant and Respondent.

-ooOoo-

This action arises out of appellants' purchase of commercial property at a tax sale auction conducted by respondent, County of Fresno (County). After the purchase, appellants discovered the property was contaminated. They filed the underlying complaint for breach of written contract alleging the County breached a provision in the

binding terms of the auction promising to give notice of contaminated or possibly contaminated properties of which it was aware.

The trial court sustained the County's demurrer without leave to amend. The trial court concluded appellants could not state a cause of action because purchasers at tax sales take the property "as is" and the County is immune from liability for any patent or latent conditions of property sold at a tax sale, whether known or unknown. Further, tax sale purchasers are limited to statutory remedies.

Appellants contend the County is not immune from liability for breaching an express term of the sale requiring disclosure of known or possible contamination. Therefore, appellants argue, they have stated a cause of action for breach of contract.

Appellants are correct. Accordingly, the judgment is reversed.

BACKGROUND

Since the appeal is from the sustaining of a demurrer without leave to amend, we derive the facts from the complaint. This court must give the complaint a reasonable interpretation and assume the truth of all facts properly pleaded. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.) However, we will not accept contentions, deductions or conclusions of law as true. (*Id.* at p. 967.)

Appellants purchased the subject property, a 14-acre parcel with a 130,000 square foot industrial building, at a Fresno County tax sale auction in March 2014. Appellants agreed to pay the entire tax lien of approximately $460,000.

The County published binding terms of sale that formed the contract between any successful bidder and the County. These terms generally encouraged prospective purchasers to "**inspect the property before investing**" and "examine the title, location and desirability of the properties available to their own satisfaction prior to the sale." The terms further warned that **"[t]he burden is on the purchaser to thoroughly research, before the sale, any matters relevant to his or her decision to purchase, rather than**

on the county, whose sole interest is the recovery of back taxes." The terms of sale emphasized **"ALL PROPERTIES ARE SOLD AS IS."**

Regarding possible contamination, the terms of sale stated:

> **"NOTICE OF CONTAMINATED/POSSIBLE CONTAMINATED PROPERTIES**
>
> "When we become aware of properties on our sales list that are known or suspected to be contaminated, the Asset Page will identify these properties and the Lead Agency's name and address where all available information may be reviewed...."

According to appellants, the County was aware of claims regarding known or suspected contaminants located on the subject property. Nevertheless, the County did not give notice of this contamination.

In December 2014, appellants received notice that the subject property was contaminated and that the estimated cost to remediate the contamination was in excess of $500,000.

Thereafter, appellants filed the underlying action against the County for breach of contract. According to appellants, the County failed to honor its express and specific promise to potential bidders to disclose any possibly contaminated properties. Appellants allege they relied on the County's written obligation to disclose known or suspected contaminants and, as a proximate result of this breach, suffered damages.

The trial court sustained the County's demurrer to appellants' second amended complaint without leave to amend. The trial court noted that "purchasers at a tax sale engage in a highly speculative and risky purchase, taking the property 'as is,' and subjecting themselves to the doctrine of caveat emptor." The court further opined that the County is immune from liability for any patent or latent conditions of property sold at a tax sale, whether known or unknown, under Revenue and Taxation Code section 3692.3. Therefore, the trial court concluded, there is no basis for a damages award pursuant to a breach of contract theory in the context of a tax sale.

DISCUSSION

1. *Standard of review.*

In reviewing a ruling on a demurrer, the appellate court's only task is to determine whether the complaint states a cause of action. (*Gentry v. eBay, Inc.* (2002) 99 Cal.App.4th 816, 824.) In doing so, the court treats the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Further, the court must give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. (*Ibid.*) The complaint's allegations must be liberally construed with a view to attaining substantial justice among the parties. (*Semole v. Sansoucie* (1972) 28 Cal.App.3d 714, 719.)

2. *The trial court erred in sustaining the demurrer.*

Appellants argue the County is not immune from liability because it specifically and unambiguously promised to disclose known or suspected contaminations to prospective buyers. Appellants speculate that the County voluntarily undertook this obligation because it expected and received an economic benefit by expanding the pool of potential buyers. According to appellants, the County's specific representation that it would disclose known or suspected contamination is inconsistent with the general "as is" provision and therefore this disclosure provision governs and controls.

a. Tax sale proceedings.

"A tax sale proceeding is wholly a creature of statute." (*Craland, Inc. v. State of California* (1989) 214 Cal.App.3d 1400, 1403 (*Craland*).) The procedure begins when the owner of a parcel of real property defaults on the assessed taxes. (Rev. & Tax. Code, § 3436.)[1] The tax collector then declares the taxes to be in default and the property becomes "'tax defaulted.'" (§ 3439.) Following the expiration of a redemption period,

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1 All further statutory references are to the Revenue and Taxation Code.

the tax defaulted property becomes subject to sale in the manner set forth in section 3691 et seq.

"'Property sold by public auction ... goes to the highest bidder. [Citation.] The minimum purchase price is the "total amount necessary to redeem [the property]," which is defined as the sum of the defaulted taxes, delinquent penalties and costs, redemption penalties and a redemption fee.'" (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 40.)

b. Purchaser's remedies.

It is settled law that the County is immune from tort liability arising from any misrepresentations made in conjunction with the tax sale. (*Craland, supra,* 214 Cal.App.3d at p. 1405.) However, the tort immunity statutes have no effect on the contractual liabilities of public entities. Nevertheless, with the exception of *Schultz v. County of Contra Costa* (1984) 157 Cal.App.3d 242, a case that has been widely disagreed with, California courts have not applied ordinary contract law to determine the rights of the purchaser against the seller. (*Ibid.*)

Further, a purchaser of property at a tax sale takes the property "as is" and assumes the risk of any defect in the proceedings in the taxation process. (§ 3692.3, subd. (a); *Routh v. Quinn* (1942) 20 Cal.2d 488, 490 (*Routh*).) "[I]n tax sales the doctrine of *caveat emptor* applies in all its vigor." (*Routh, supra,* 20 Cal.2d at p. 490.)

Thus, in general, purchasers of property at a tax sale are limited to statutory remedies. (*Van Petten v. County of San Diego* (1995) 38 Cal.App.4th 43, 51 (*Van Petten*).) Under the Revenue and Taxation Code, a purchaser is entitled to a refund when a court determines the tax deed is void (§ 3729) or may be entitled to rescission if the property should not have been sold (§ 3731).

Accordingly, a tax sale purchaser may not recover damages for lost profits on the ground the state or county did not disclose all known, hidden defects as would be required of an ordinary seller. Neither the state nor the county owes any nonstatutory

duty of care to the purchaser. (*Craland, supra,* 214 Cal.App.3d at pp. 1405, 1407-1408.) In so ruling, the *Craland* court observed that, the "overwhelming body of decisional law governing tax sales establishes that the State and County, *absent a representation to the contrary,* do not warrant the validity or regularity of tax sale proceedings." (*Craland, supra,* 214 Cal.App.3d at p. 1405, italics added.)

Similarly, a tax sale purchaser is not entitled to rescind the sale because the sales brochure inaccurately listed the parcels' assessed values. (*Van Petten, supra,* 38 Cal.App.4th at p. 51.) The statutory scheme does not provide a warranty of the validity or regularity of tax sale proceedings. (*Id.* at p. 50.) The *Van Petten* court reasoned that the brochure explicitly stated the property would be sold "as is" and warned bidders to research before investing. (*Van Petten, supra,* 38 Cal.App.4th at pp. 50-51.) Further, the purchaser could have easily compared the "assessed" values listed in the brochure with the assessed values listed in the assessor's office before the sale. (*Id.* at p. 51.)

Additionally, a dissatisfied tax sale purchaser cannot invoke the remedy of rescission due to mistake. (*Ribeiro v. County of El Dorado* (2011) 195 Cal.App.4th 354, 361 (*Ribeiro*).) In *Ribeiro,* the purchaser based his cause of action for rescission upon his claim that he had no notice of bond arrearages and that he was "a 'bona fide' purchaser with 'every assurance that the tax sale bid price included all amounts owing.'" (*Id.* at p. 362.) The court rejected this claim finding that the purchaser was aware of the bond arrearages and knew he did not know the amount. The court noted that no county employee gave the purchaser incorrect information and thus it was not a case where the purchaser was misled by the County's conduct. (*Ribeiro, supra,* 195 Cal.App.4th at p. 363.)

c. Appellants can state a cause of action for breach of contract.

While caveat emptor applies to tax sales and generally precludes a purchaser from relying on general contract principles, there is an additional element in this case. Unlike *Craland, Van Petten,* and *Ribeiro,* the County made a specific express promise to identify

possibly contaminated properties that it was aware of. The County was not statutorily required to include this disclosure provision in the terms of sale. Rather, the County voluntarily made this representation.

Appellants' complaint alleges the County was aware of claims regarding known or suspected contaminants located on the subject property but did not give notice of this contamination. Appellants further allege that they relied on this disclosure provision in making their bid. Since we are reviewing the sustaining of a demurrer, we must accept this allegation as true. Thus, the County failed to fulfill its specific promise to identify contaminated properties.

As noted above, the statutory scheme provides no warranty of the validity or regularity of the proceedings. (*Routh, supra,* 20 Cal.2d at p. 490.) However, by promising to disclose contamination as part of the bid process, the County undertook a separate contractual obligation beyond the tax sale procedure. The County is not immune from liability for breach of contract. (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 740-741.) Because this obligation was in addition to the standard terms and conditions of a tax sale, it falls outside the tax sale immunities. Therefore, the County subjected itself to liability for breach based on contract principles.

Craland and *Ribeiro* provide some support for this conclusion. Although dicta, those courts indicated that contract principles could apply if the public entity gave warranties or representations that misled the purchaser. As discussed above, the *Craland* court qualified the general rule that the state and county do not warrant the validity or regularity of tax sale proceedings with the phrase "absent a representation to the contrary." (*Craland, supra,* 214 Cal.App.3d at p. 1405.) In *Ribeiro*, the court supported its conclusion that the purchaser was not entitled to relief with the observation that the county did not engage in conduct that misled him. (*Ribeiro, supra,* 195 Cal.App.4th at p. 363.)

The County argues that the terms of sale adequately informed appellants that they were bidding on the property at their own risk. The County notes appellants were warned that the County "cannot guarantee the condition of the property" and that the burden was on appellants "to thoroughly research" any matters relevant to the decision to purchase the property. The terms of sale further emphasized that "all properties are sold as is" and that the County "makes no guarantee, expressed or implied, relative to the title, location or condition of the properties for sale."

However, the terms of sale also included the County's specific promise to inform purchasers of known or suspected contamination. This specific representation conflicts with the general "sold as is" provision. In such a situation, the specific provision controls. (*Continental Cas. Co. v. Zurich Ins. Co.* (1961) 57 Cal.2d 27, 35.)

The County further asserts that it is immune from liability under section 3692.3. That section provides, in part:

> "(a) All property sold under this chapter is offered and sold as is.
>
> "(b) The state, the county, and an employee of these entities acting in the employee's official capacity in preparing, conducting, and executing a sale of property under this chapter, are not liable for any of the following:
>
> "(1) Known or unknown conditions of this property, including, but not limited to, errors in the assessor's records pertaining to improvement of the property."

However, appellants have not based their breach of contract cause of action on the existence of "known or unknown conditions" of the subject property. Rather, appellants claim the County breached its voluntarily assumed contractual obligation to disclose known or suspected contaminations in those limited instances where the County was aware of the situation. Accordingly, section 3692.3 is inapplicable.

Finally, the County contends that California Constitution, article XIII, section 32 prohibits appellants' cause of action. That section "bars a court from issuing any 'legal or equitable process ... against this State or any officer thereof to prevent or enjoin the

collection of any tax.'" (*State Bd. of Equalization v. Superior Court* (1985) 39 Cal.3d 633, 638.) The policy behind this provision "'is to allow revenue collection to continue during litigation so that essential public services dependent on the funds are not unnecessarily interrupted.'" (*Ibid.*)

According to the County, appellants are violating this section in that, if successful on their claim for damages, they would be effectively preventing the collection of the tax owed on the subject property. In other words, appellants would deprive the County of the revenue generated by the tax sale.

Contrary to the County's position, appellants are not seeking to prevent or enjoin the collection of any tax. The tax has been fully collected. Appellants are not challenging the tax sale auction nor seeking declaratory relief. Rather, they are claiming that the County breached its specific promise to disclose known or suspected contaminations. Therefore, article XIII, section 32 is inapplicable.

In sum, the County undertook a separate specific contractual obligation beyond the tax sale procedure. Accordingly, the County subjected itself to liability for breach based on contract principles.

DISPOSITION

The judgment is reversed and the matter is remanded for further proceedings. Appellants are awarded costs on appeal.

Levy
LEVY, Acting P.J.

WE CONCUR:

Gomes
GOMES, J.

Franson
FRANSON, J.

CALENDARED

DANIEL C. CEDERBORG
County Counsel
SCOTT C. HAWKINS
Deputy County Counsel – State Bar No. 207236
FRESNO COUNTY COUNSEL
2220 Tulare Street, 5th Floor
Fresno, California 93721
Telephone: (559) 600-3479
Facsimile: (559) 600-3480

Attorneys for Defendant, COUNTY OF FRESNO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

JHS FAMILY LIMITED PARTNERSHIP; JCH FAMILY LIMITED PARTNERSHIP; AND DBH FAMILY LIMITED PARTNERSHIP, Plaintiff, v. COUNTY OF FRESNO and Does through 25, inclusive, Defendants..	Case No. 15 CE CG 02007 DSB **DEFENDANT, COUNTY OF FRESNO'S, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF GENERAL DEMURRER TO PLAINTIFFS' UNVERIFIED COMPLAINT FOR DAMAGES** Date: September 24, 2015 Time: 3:30 pm Dept.: 502 The Honorable Donald S. Black

Defendant, FRESNO COUNTY (hereafter "County"), hereby submits the following Memorandum of Points and Authorities in support of its General Demurrer to the unverified complaint of Plaintiffs JHS FAMILY LIMITED PARTNERSHIP, JCH FAMILY LIMITED PARTNERSHIP, AND DBH FAMILY LIMITED PARTNERSHIP (hereinafter "Plaintiffs").

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CALIFORNIA CASES

CALIFORNIA CODES

Civil Procedure

Government Code

TREATISES

OTHER

REVENUE AND TAXATION CODE

I.

Summary of Facts

Plaintiffs filed this action against the County on July 7, 2015. The allegations involve real property Plaintiffs described as a 14 acre parcel of land located at 2696 South Maple Avenue, Fresno California, APN 487-150-26S," (the "Property"). Plaintiffs allege they acquired the Property at an approved tax sale auction which took place on or about March 7 thru March 10, 2014. *(Compl.¶ 8).*

Plaintiffs' allege that on or about March 7, 2014, Plaintiffs made a bid to purchase the Property "pursuant to terms of the tax lien auction conducted by COUNTY OF FRESNO." *(Compl.¶ 13).* Plaintiffs further allege that prior to March 7, 2014, the County published binding terms of sale which, according to Plaintiffs, formed the basis of the contract between any successful bidder and the County. Plaintiffs also acknowledge that these same terms indicated that all properties were being sold "as is." *(Compl.¶ 11).*

Plaintiffs base their entire action a specific section of these terms, which states:

> NOTICE OF CONTAMINATED / POSSIBLE CONTAMINATED PROPERTIES: When we become aware of properties on our sales list that are known or suspected to be contaminated, the Asset Page will identify these properties and the Lead Agency's name and address where all available information may be reviewed.

Plaintiffs go on to allege that prior to the March 2, 2014 auction, that the County "was aware of claims that had been made, by among others the California Regional Water Quality Control Board, Valley Region ("Water Board"), about known or suspected contaminants located on the Property." *(Compl.¶ 14).*

Plaintiffs allege that contrary to the Terms of Sale for the auction that the County "failed to make the required and agreed disclosure." Plaintiffs allege that "in reliance on the Terms of Sale," that Plaintiffs submitted the successful bid and acquired the Property by agreeing to pay the entire tax lien of approximately $460,000. *(Compl.¶ 15-16).*

Plaintiffs go on to allege that subsequently, on or about December 2014, Plaintiffs received notice from the Water Board that the Property had been contaminated and that the estimated cost to remediate the contamination was in excess of $500,000. *(Compl.¶ 17).*

Based apparently on these "General Allegations" Plaintiffs allege a PRAYER for relief against the County for "General damages, costs of suit and other relief." *(Compl.¶ PRAYER).* Although the caption of the face page of the Complaint states "Complaint for Breach of Contract," that is the only place in the entire Complaint that indicates what cause of action Plaintiffs claim to assert. The body of the Complaint contains no reference to any "Cause of Action" at all.

Plaintiffs "general allegations" assert a "*failure to honor its promise, to disclose to potential bidders on properties subject to COUNTY OF FRESNO's tax lien auction, any properties known or suspected to have been contaminated, including providing the Lead Agency's name and address constitutes a breach of contract." (Compl.¶ 19).*

Plaintiffs finally allege that as a proximate result of the breach of written contract, Plaintiffs have suffered "damages" in an amount to be determined at the time of trial. Again, the Complaint does not assert or contain any "Cause of Action," for a breach of contract or anything else required by CRC 2.112.

On or about March 26, 2015, Plaintiffs filed a claim with the County. On or about June 2, 2015, the County Board of Supervisors voted to reject Plaintiffs' claim in its entirety. *(Compl.¶ 22).*

Without regard to Plaintiffs' general allegations as to the existence or breach of a contract and resulting damages, or the past or current condition of the Property relative to claims of contamination, or even whether the County knew of, did not know of, or should have known of and disclosed any such issues, Plaintiffs entire complaint and its only cause of action fails in any event to state a claim against the County as a matter of law, and therefore must be dismissed without leave to amend.

II.

Authority For Demurrer

Code of Civil Procedure § 430.10 states, in relevant part, that:

> The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds:
>
> * * *
>
> (e) The pleading does not state facts sufficient to constitute a cause of action.

A general demurrer serves to test the sufficiency of the complaint as a matter of law. *Johnson v. County of Los Angeles* (1983) 143 Cal.App.3d 298, 306; *Banerian v. O'Malley* (1974) 42 Cal.App.3d 605, 611. With a public entity defendant, "every fact material to the existence of its statutory liability must be pleaded with particularity." *Peter W. v. San Francisco Unified Sch. Dist.* (1976) 60 Cal.App.3d 814, 819. Also, while material facts properly pleaded must be taken as true for purposes of deciding the sufficiency of a complaint against a demurrer, doing so does not constitute an admission of any "contentions, deductions, or conclusions of law or fact." *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

III.

Summary of Legal Argument

The instant demurrer is being made on the basis that Plaintiffs have failed to state a valid cause of action against the County because their case stems from a statutory sale of a tax-defaulted property, and as such, their remedies are: 1) expressly defeated by the County's various immunities, including but not limited to those found in Revenue and Taxation Code section 3692.3, California Constitution, Article 13, § 32, and California Government Code sections 860.2, and 815 – 822; and 2) otherwise strictly limited to those provided for in the Revenue & Taxation Code. Accordingly, Plaintiffs general allegations sounding in breach of contract fail to state a facts sufficient to constitute a cause of action.

V.

Legal Analysis

A. The County is Expressly Immune From Liability For Plaintiffs' Claim.

This demurrer should be sustained without leave to amend because: 1) the County is expressly immune from a "breach of contract" allegation/cause of action; and 2) even if it was not immune, Plaintiffs' remedies are strictly limited tot eh Revenue and Taxation Code, and they are not entitled to pursue non-statutory, common-law contract remedies in connection with a County tax sale.

A tax sale proceeding "is wholly a creature of statute." *Craland, Inc. v. State of California* (1989) 214 Cal.App.3d 1400, 1403. A tax-defaulted property becomes subject to sale following the expiration of a five-year redemption period, and a sale must be attempted within two years thereafter. *Rev. & Tax. Code* §§ 3691, 3692. When the property is sold to private persons by public auction, the property is sold to the highest bidder. *Rev. & Tax. Code* § 3706. The proceeds from the sale are distributed according to statute. See *Rev. & Tax. Code* § 4672, *et seq.*

Plaintiffs appear to allege that they were essentially induced, through an alleged failure by the County to follow its Terms of Sale, to bid on the subject property, and/or that they justifiably relied on the lack of certain information regarding the Property, which resulted in their bidding on and purchasing the Property. Based on these allegations, Plaintiffs filed their complaint alleging *garden-variety allegations* that the County breached an alleged contract.

The following express statutory immunities insulate the County:

i) Rev. & Taxation Code § 3692.3:

Effective January 1, 2005, the legislature enacted *Rev. & Tax. Code* § 3692.3, specifically immunizing the County from Plaintiffs allegations, providing in relevant part:

> **"Property sold as is; no liability for state, county, or employees in preparing, conducting, and executing sale in specified circumstances.**

> (a) All property sold under this chapter is offered and sold as is.
>
> (b) The state, the county, and an employee of these entities acting in the employee's official capacity in preparing, conducting, and executing a sale of property under this chapter, are not liable for any of the following:
>
> (1) Known or unknown conditions of this property, including, but not limited to, errors in the assessor's records pertaining to improvement of the property."

This "tax-sale" specific statue contains no qualifying language. The clear and unambiguous terms specifically and expressly immunizes the County for *any* **known or unknown "conditions"** of a tax-defaulted property that is sold at auction. See *9 Witkin, Summary 10th (2005) Tax, § 266, p. 398.* For this reason alone, Plaintiffs' complaint for damages founded on an alleged failure by the County to disclose an alleged "known" condition on the property cannot, as a matter of law, state a cause of action against the County. Since this immunity cannot be defeated by pleading other facts, the County's demurrer must be granted without leave to amend.

ii) **California Constitution, Article 13, § 32:**

Article 13, § 32 of the California Constitution bars a court from issuing any "legal or equitable process ... against this State or any officer thereof to prevent or enjoin the collection of any tax." "The fear that persistent interference with the collection of public revenues, for whatever reason, will destroy the effectiveness of government has been expressed in many judicial opinions. [Citation.]." *Rickley v. County of Los Angeles* (2004) 114 Cal.App.4th 1002, 1013, citing *State Bd. of Equalization v. Superior Court* (1985) 39 Cal.3d 633, 638–639. This has been codified as *Rev. & Tax. Code* § 4807.

By attempting to sue the County for alleged "money damages," this is exactly what Plaintiffs seek to accomplish. Since by the sale of a tax-defaulted property the County is merely attempting to collect a tax owed, a suit for money damages in this case, should it succeed, is nothing more than a legal process effectively preventing the collection of that tax by seeking to deprive the County of the very revenue generated by

the sale. When read together with the other immunities applicable to tax-sales by the County, the common policy objectives are evident. For this reason also, Plaintiffs' complaint fails to state a cause of action.

iii) **California Government Code sections 860.2, and 815 – 822:**

Apart from the separate immunities cited above, Section 860.2 provides:

> "Neither a public entity nor a public employee is liable for an injury caused by: **(a)** Instituting any judicial or administrative proceeding or action for or incidental to the assessment or collection of a tax; or **(b)** An act or omission in the interpretation or application of any law relating to a tax."

Here, Plaintiffs are seeking money-damages, *i.e.*, out-of-pocket losses, as opposed to other (*e.g., injunctive)* type relief. As the County is not subject to common-law contractual liability in connection with its tax sales, and because purchasers are limited to statutory remedies found in the Rev. & Taxation Code, the "injury" (out-of-pocket property loss) sought to be remedied by Plaintiffs' in this action falls squarely under 860.2. The County is therefore expressly immune from liability for its actions and proceedings, including all of its acts or omissions, in connection with its sale of the subject Property in this case. *Craland, Inc. v. State of California* (2nd Dist. 1989) 214 Cal.App.3d 1400, 1407-1408 [holding that the State and County are not subject to ***contractual*** liability and that purchasers at a tax sale are limited to statutory remedies.].

Moreover, as is also settled, it is of no consequence whether the County's acts or omissions in connection with the tax sale were intentional or otherwise. **The bottom line is:** "The County may lawfully record liens to collect taxes it concludes are owed. Such liens are matters of public record and Plaintiffs cannot overcome the immunity conferred on the County. Immunity statutes insulate public entities from liability even where their conduct would otherwise impose liability on a private entity." *Rickley v. County of Los Angeles, supra, at 1016.* Accordingly, the County's conduct in assessing and collecting a claim for real property taxes according to the established legislative scheme, falls squarely within Government Code section 860.2." See *Mitchell v.*

Franchise Tax Board (1986) 183 Cal.App.3d 1133, 1136.

Finally, to the extent Plaintiffs' attempt to broaden their arguments relative to their claim in response to this Demurrer, and notwithstanding the foregoing tax-specific immunities, Government Code section 815, except as otherwise provided by statute, provides the County is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person. This means, general negligence, another common-law theory, is generally inapplicable to the County; section 815.2, subdivision (b) also precludes liability to the County where an employee who committed the alleged act or omission is immune; section 818.8 precludes liability to the County where the alleged injury is caused by an employee's misrepresentation; section 820.2 precludes liability to the County or its employee for injury resulting from the exercise of discretion; and section 822.2 precludes liability to the County's employee for misrepresentations unless the employee "is guilty of actual fraud, corruption or actual malice" (i.e., a conscious intent to deceive, vex, annoy or harm the injured party. *Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 648; *Schonfeld v. City of Vallejo* (1975) 50 Cal.App.3d 401, 409-410).

Plaintiffs' claim for money damages therefore, based on allegations sounding in "breach of contract," or any other conceivable theory, is equally doomed by immunities, and must be dismissed on the grounds presented above. Notwithstanding this fact, however, and because this action involves a "tax sale" (wholly a creature of statute) Plaintiffs are limited to remedies provided by the specific statutes relative to these sales -- ***and have no common-law remedies.*** Thus, their breach of contract claim fails on this basis as well.

B. **Plaintiffs Are Limited to "Statutory" Remedies Under the R&T Code, And No Such Remedies Apply.**

As a separate ground for sustaining the County's demurrer in this case, settled California law otherwise provides that the remedies set forth in the Revenue & Taxation Code § 3725, et seq., are the ***exclusive*** remedies for a private purchaser of a tax sale

property. *Ribeiro v. County of El Dorado* (3rd Dist. 2011) 195 Cal.App.4th 354, 356-357; *Van Petten v. County of San Diego* (4th Dist. 1995) 38 Cal.App.4th 43, 47-50; *Craland, Inc. v. State of California* (2nd Dist. 1989) 214 Cal.App.3d 1400, 1407-1408]; indeed, all cases refuse to follow and heavily criticize as wrongly decided an earlier case: *Schultz v. County of Contra Costa* (1st Dist. 1984) 157 Cal.App.3d 242. It is also well settled, that the doctrine of "caveat emptor" applies at tax sales "in all of its vigor." Thus, absent an explicit and applicable statutory remedy, Plaintiffs do not have a remedy in this situation. *Craland at 1400.*

In Craland, supra, The property at issue there was "underlain by a large landslide." Information concerning the property's geological status was contained in a review prepared before the sale by the engineering geology section of the county engineer design division, but was not known to the purchaser. Having brought suit against the state and county, the purchaser asserted that the defendants "breached their contractual duty, as knowing sellers, to disclose ... the landslides ... prior to [the purchase]" and that defendants owed the same duty as to ordinary sellers of real property to disclose all known, hidden defects." (*Id.* at pp. 1402-1405.).

The Court disagreed, and also refused to place the burden of searching public records on the State and County. Based the overwhelming body of decisional law governing "tax sales," the court held that "neither the State nor the County owes a non-statutory duty of care with respect to the purchaser." Instead, "purchasers at a tax sale are limited to statutory remedies." (*Id.* at pp. 1407-1408.). Period.

A few years later, the court in *Van Petten, supra,* 38 Cal.App.4th 43, reached the same conclusion. The purchaser there had been given a brochure listing the assessed value of the parcels available for bid. At the auction, he was told that the assessed values "reflected 'a recent appraisal of the current values.' " (*Id.* at p. 44.) He later learned that the value of property he had purchased had been overstated by a factor of 10. He sued the county for restitution and rescission under a number of theories, including mistake, intentional and negligent misrepresentation, and breach of contract.

The Court followed the "well-settled rule of *Craland* and others like it that purchasers of property at a tax sale are limited to statutory remedies" and expressly rejected *Schultz's* holding to the contrary, (*Id.* at p. 51.), ***holding "there is no statutory remedy of rescission or refund based on ... misrepresentation and breach of contract...."*** *Van Petten, supra,* 38 Cal.App.4th at p. 51.

Under the Revenue and Taxation Code, a purchaser at a tax sale is entitled to a remedy (refund of purchase money paid) *only where* the court determines the tax deed is "void," or the property "should not have been sold," (e.g., because it was owned by a governmental entity at the time of sale), without reference to invalidity or irregularity of the sale *proceedings. Rev. & Tax. Code* §§ 3729, 3731. The question then, is whether *any* of the statutory remedies apply to Plaintiffs in the instant case.

By statute then, Plaintiffs would have a statutory right to a refund under a properly advanced theory, for example, IF they had alleged and could prove the tax deed to be void (Rev. & Tax. Code, § 3729), or if they had alleged and it is determined the property "should not have been sold" pursuant limited grounds (Rev. & Tax Code, § 3731). But just like in *Craland, supra,* Plaintiffs in this case obtained a ***valid*** tax deed and do not have any facts to establish the limited grounds under which the property "should not have been sold," as that term has been interpreted by the Courts.

Moreover, it is undisputed that the County never owned the subject Property, and was selling it pursuant to statute only for taxes owed. It also cannot be disputed that Bidders in this case, including Plaintiffs, were in fact ***expressly warned*** by the same "terms of sale" to **thoroughly inspect and research the value *and condition*** of the property, and that the County "assumed no liability":

> "• **The sale of these properties should not, in any way, be equated to real estate sales by licensed salesmen, brokers and realtors.** The Fresno County Auditor-Controller/Treasurer-Tax Collector **cannot guarantee** the **condition** of the property **nor assume any responsibility for conformance to codes, permits or zoning ordinances.**

You should inspect the property before investing. The burden is on the purchaser to thoroughly research, before the sale, any matters relevant to his or her decision to purchase, rather than on the county, whose sole interest is the recovery of back taxes.

• It is recommended that bidders consult with the Zoning Department of any city within which a particular parcel lies. Tax-defaulted property will be **sold on an "as is" basis.**

• Should the successful purchaser desire a survey of the property, it will be at the purchaser's own initiative and expense. **No warranty is made by the County, either expressed or implied, relative to the usability, the ground location, or property lines of the properties.** The **exact location, desirability and usefulness of the properties must be determined by the prospective purchaser."**

Plaintiffs, therefore, were not only warned in advance of the action that they were solely responsible for determining these factors and were bidding at their own risk, but they can point to no statute which provides a remedy against the County for "compensatory-type" relief based on the circumstances present here, *i.e.*, Plaintiffs' failure to investigate on their own pursuant to express warnings and disclaimers of the sale, including public records and data-bases concerning the suitability or condition of the property. One such data-base would have been the Water Board, the very agency they claim provided them with notice of the alleged defects.

As the dissenting justice in the *Shultz case observed, "It is a minimal burden on bidders to require them to obtain information about the property from public agencies before they bid. If [the purchaser there] had consulted the City Building Department before he bid at the tax sale, he would have discovered, ... that the property was unbuildable. [¶] ... Should such a successful bidder at a tax sale be able to rescind the sale due to his unilateral mistake and his own failure to investigate? I think not." Schultz, supra,* 157 Cal.App.3d at pp. 251-252, dis. opn. of King, J...

Settled law as well as common knowledge (and in this case express warnings) also establishes that tax-defaulted real property is sold on an "as is" basis at public auction, as Plaintiffs also acknowledge in their complaint, and that Caveat Emptor applies there "with all its vigor." *Rev. & Tax.C. § 3691 et seq.* See also "Special caveat

for buyers of tax-defaulted property," Cal. Prac. Guide Real Prop. Trans. Ch. 4-E, §4:351.1-1a.

In Plaintiffs' case, they have alleged no diligence of their own whatsoever before purchasing the Property. Moreover, ignorance of these special laws and rules applicable to sales of tax-defaulted properties is no excuse for the utter failure to heed the County's warnings and disclaimers and perform independent due diligence. Plaintiffs are all sophisticated buyers and investors and had ample warning and opportunity to contact County departments or contact and/or search relevant public data-bases and records to uncover any alleged issues of the kind they claim has caused them damages.

Finally, whether the County knew or did not know of any such contamination on this property is of no legal significance. As we have seen, neither negligence on the part of the entity (see *Routh v. Quinn* (1942) 20 Cal.2d 488) nor concealment of a *known* fact (*Craland*, RT§ 3692.3) can save Plaintiffs from the County's immunities, or avoid the rule that has been followed for nearly a century: "[P]urchasers at a tax sale are limited to statutory remedies." (*Craland,* 214 Cal.App.3d at pp. 1407-1408 .). They knew caveat emptor applied to the tax sale, and that they were under no compulsion to bid. Plaintiffs therefore stand squarely in the shoes of the many dissatisfied tax-sale buyers preceding them who were denied recovery, because **tax sales are highly speculative**, and are subject to **caveat emptor**. See *Ribeiro v. County of El Dorado* (3rd Dist. 2011) 195 Cal.App.4th 354, supra, citing *American Inv. Co. v. Beadle County* (1894) 5 S.D. 410, 415, 59 N.W. 212, 213 ["one who buys land at a tax sale is never a *bona fide* purchaser"].).

As Plaintiffs' allegations sounding in common-law breach of an alleged "term of sale" is *not* one of the specific statutory remedies provided in the Revenue & Taxation Code, the Complaint on its face is insufficient as a matter of law. Therefore, and as a separate ground, the instant demurrer should be sustained without leave. See *Van Petten v. County of San Diego, supra*, 38 Cal.App.4th at 51.

C. **Leave to Amend Should Be Denied As The Defects Cannot Be Cured And Because No Other Viable Causes of Action Exists.**

Based on the facts of this case, the County's many and broadly interpreted immunities, and the lack of statutory remedy for Plaintiffs, there is no other conceivable theory by which Plaintiffs could state a viable cause of action against the County. There underlying claim presented to the County was limited to the allegations sounding in breach of contract. Nowhere have Plaintiffs alleged any fraud, deceit, collusion or other wrong doing by the County or any employee, nor could they.

For Plaintiffs, it boils down to the County having no "statutory" obligation or duty to perform any such diligence consistent with the law of tax-defaulted properties and its immunities, or to make any of the alleged disclosures in *any* event, whether or not known to the County, to a private purchaser of a tax-defaulted property.

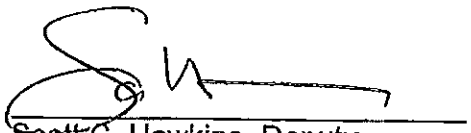
VI.

Conclusion

Based on the foregoing, and because Plaintiff can plead no other facts consistent with the applicable statutes and sufficient to overcome the many immunities enjoyed by the County, the County respectfully requests that the Court sustain the instant demurrer in its entirety, without leave to amend.

Dated: August 10, 2015,

DANIEL C. CEDERBORG
County Counsel

By: 
Scott C. Hawkins, Deputy
Attorneys for Defendant
FRESNO COUNTY

PROOF OF SERVICE

I, MARY LOU HINOJOSA, declare as follows:

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. I am employed at the Fresno County Counsel's Office, 2220 Tulare Street, Fifth Floor, Fresno, California, 93721.

On August 12, 2015, I served a copy of the within

DEFENDANT, COUNTY OF FRESNO'S, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF GENERAL DEMURRER TO PLAINTIFFS' UNVERIFIED COMPLAINT FOR DAMAGES

on the interested parties in said action addressed as follows:

James H. Wilkins
Quentin C. Cedar
WILKINS, DROLSHAGEN & CZESHINSKI LLP
6785 N. Willow Ave.
Fresno, CA 93710

Counsel for Plaintiff

☒ by placing the document(s) listed above for mailing in the United States mail at Fresno, California, in accordance with my employer's ordinary practice for collection and processing of mail, and addressed as set forth above.

☐ by transmitting via facsimile the above listed document(s) to the fax number(s) set forth above on this date before 5:00 p.m. pacific daylight time.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth above.

☐ by placing the document(s) listed above in a sealed envelope, and placing the same for overnight delivery by California Overnight at Fresno, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 12, 2015, at Fresno, California.

MARY LOU HINOJOSA

FILED
SEP 17 2015
FRESNO SUPERIOR COURT
By _____ DEPUTY

DANIEL C. CEDERBORG
County Counsel
SCOTT C. HAWKINS
Deputy County Counsel – State Bar No. 207236
FRESNO COUNTY COUNSEL
2220 Tulare Street, 5th Floor
Fresno, California 93721
Telephone: (559) 600-3479
Facsimile: (559) 600-3480

Attorneys for Defendant, COUNTY OF FRESNO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

JHS FAMILY LIMITED PARTNERSHIP; JCH FAMILY LIMITED PARTNERSHIP; AND DBH FAMILY LIMITED PARTNERSHIP, Plaintiff, v. COUNTY OF FRESNO and Does through 25, inclusive, Defendants.	Case No. 15 CE CG 02007 DSB **DEFENDANT, COUNTY OF FRESNO'S, REPLY TO PLAINTIFFS' OPPOSITION TO GENERAL DEMURRER** Date: September 24, 2015 Time: 3:30 pm Dept.: 502 The Honorable Donald S. Black

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FRESNO COUNTY SUPERIOR COURT

Defendant, FRESNO COUNTY (hereafter "County"), hereby submits the following Reply to Plaintiffs JHS FAMILY LIMITED PARTNERSHIP, JCH FAMILY LIMITED PARTNERSHIP, AND DBH FAMILY LIMITED PARTNERSHIP (hereinafter "Plaintiffs") Opposition to General Demurrer to the unverified complaint.

Preface

In response to Plaintiffs' "general observation," Defendants raise the following counter-observation:

I. **[Plaintiffs' Opposition: "A. General Observation".]**

The fate of Plaintiffs' complaint was pre-ordained. In the specific context of a County "Tax-sale," the issue of government liability to private purchasers has been unquestionably

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defined and put to rest in California, both by statute and by case law. As for statute, *Gov. Code § 815, and specifically* ***Rev. & Tax. Code*** **§ 3692.3** expressly immunize Defendants from liability, including against Plaintiffs' common-law contract theory. As for the case law, a simple reading of the seminal decades-old line of cases already cited in Defendants' Demurrer authoritatively ends the matter. See *People v. Chambers, (1951) 37 Cal.2d 552, 561*; *Craland, Inc. v. State of California, (1989) 214 Cal. App. 3d 1400*; *Van Petten v. County of San Diego, (1995) 38 Cal.App.4th 43, 47-50*; *Quelimane Co. v. Stewart Title Guaranty Co., (1998) 19 Cal. 4th 26, 40-45;* and *Ribeiro v. County of El Dorado, (2011) 195 Cal. App. 4th 354*. To understand these holdings, explored in detail in Defendants' moving memorandum, is to fully understand the erroneousness of Plaintiffs' position.

Reply

II. [Plaintiffs' Opposition: "B. Revenue and Taxation Code § 3692.3".]

Defendants readily acknowledge the meaning of this Statute, titled **"Property Sold As Is; Immunity From Liability,"** and admit that *Defendants'* reading of it set forth in their Demurrer is correct. (Oppos. p.5:1-5]. Plaintiffs simply argue that nothing in the language of this special "tax-sale" immunity specifically *prohibits* the government from "contracting in connection with or supplemental to the tax-auction." Plaintiffs further allege that the County, through a single provision contained in the auction's general adviso to the public, essentially chose to shed the cloche of immunity provided by 3692.3 and thereby "contract" with Plaintiffs (a private bidder with whom the County had no contact) to disclose certain conditions of the tax-defaulted property. [1]

This argument is wholly dependent on the idea that Defendants not only intended to take-on obligations that the entire frame-work of specific enactments governing the tax-sale and decades-old supporting line of appellate decisions clearly has absolved it from, but also that said provision in the adviso effected a valid "waiver" of these statutory protections. As

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[1] The very same document was used by the Court in *Craland* (at p.1407) to illustrate that the County made no warranties or representations that could survive the plethora of disclaimers showered on the purchaser of the tax-defaulted property.

we see below, and in light of the foregoing authorities and numerous other disclaimers and warnings in the adviso to the contrary, Plaintiffs' argument is without merit.

In 2005, seven-years after the decision in *Quelimane Co. v. Stewart Title Guaranty Co., (1998), supra,* the legislature enacted an express immunity for the government in connection with tax-sales in *Rev. & Tax. Code § 3692.3.* In fact, later, *Ribeiro, supra,* raised and asked the Court to consider this immunity, though since his claim in that case predated its enactment the Court declined. *(Ribeiro, at 360.).* Thus by 2005, sixteen-years *post-Craland*, the legislature had before it for its consideration decades of consistent prior decisions (except for *Ribeiro).* It then passed *§3692.3,* squarely resolving any doubts or questions raised by the dictum in *Craland* in favor of outright immunity for the County in connection with its tax-sale proceedings, including as to all *known or unknown conditions.* Indeed, Plaintiffs openly admit that without their contract argument, *Rev. & Tax. Code §3692.3,* "would almost certainly apply". (See Oppos. at P. 5:12-13).

There is a presumption that "the Legislature, when enacting a statute, was aware of existing related laws and intended to maintain a consistent body of rules. [Citation.]" *Stone Street Capital, LLC v. California State Lottery Com., (2008) 165 Cal.App.4th 109, 118.* Thus, the 2005 enactment evidences the legislature's clear intent to codify the case law before it, to specifically protect the public policy, and to immunize the County for *anything* done in preparing, conducting, and executing a sale of property under this chapter. This necessary included any issues related to the public advisos, and of course known or unknown conditions of the property. There can be no doubt this legislation was designed to prevent the very situation we now have with Plaintiffs' claim.

To try and avoid this fatal problem, Plaintiffs' create a sort of reverse-engineering narrative that because *Rev. & Tax. Code §3296.3* does not affirmatively state that it "prohibits" a County from freely contracting with Plaintiffs "in connection with or supplemental to its tax sale auction," that the statute either condones it or simply doesn't apply. (Oppos. p. 8:9-10.) This logic is of course patently false. When statutory language is clear and unambiguous there is no need for construction, and courts should not indulge in it.

Solberg v. Superior Court, (1977) 19 Cal.3d 182; Caminetti v. Pac. Mutual L. Ins. Co., (1943) 22 Cal.2d 344, 353-354. Mitchell v. Franchise Tax Bd., 183 Cal. App. 3d 1133 [holding the language of section 860.2 is clear and unambiguous and made no distinction between discretionary and ministerial acts. "We must therefore reject plaintiffs' request that we indulge in construction and interpret section 860.2 to apply only to discretionary acts."].

Courts are also mindful in reading statutes that words are to be given their plain and commonsense meaning. [Citation.]" *Murphy v. Kenneth Cole Productions, Inc., (2007) 40 Cal.4th 1094, 1103.* And when construing a statute, they are "careful not to rewrite an unambiguous statute by inserting qualifying language. [Citations.]" *Coburn v. Sievert, (2005) 133 Cal.App.4th 1483, 1495*; *see Code Civ. Proc., § 1858.* Because the language of *Rev. & Tax. Code § 3692.3* is clear and unambiguous, "it may not be changed to accomplish a purpose that does not appear on [its] face." *Sabatasso v. Superior Court, (2008)167 Cal. App. 4th 791, 798, and Kalway v. City of Berkeley, (2007) 151 Cal.App.4th 827, 833.* Accordingly, Plaintiffs attempt at reverse-engineering the statutes fails.

"General" statutes also cannot be read to control the more specific language of a statute like *§ 3692.3*, which pertains directly to the issue of liability in connection with a tax-sale. *Sabatasso, supra, at 798.* "If a specific statute is enacted covering a particular subject, the specific statute controls and takes priority over a general statute [even] encompassing the same subject" *Los Angeles County Dependency Attorneys, Inc. v. Department of General Services, (2008) 161 Cal.App.4th 230, 236.*

Gov. Code § 814 for example, raised by Plaintiffs, is a general statute designed merely to preserve general contractual liabilities among certain tort immunities in that part. It simply has no bearing on, and cannot defeat the clear and unambiguous immunity and legislative intent in *Rev. & Tax. Code § 3296.3.* This express immunity provided by the same State Code governing the entirety of the sales of tax–defaulted properties is simply unaffected by *§ 814.* See *Caldwell v. Montoya, (1995) 10 Cal.4th 972, at 985,* [specific immunities . . . "prevail over general rules..."]. In *Caldwell,* our Supreme Court rejected similar attempts to narrow the scope of governmental immunity by reference to rules of

general application.

Additionally, in *People ex rel. Grijalva v. Superior Court, (2008) 159 Cal. App. 4th 1072, 1079*, Real parties in interest contended their affirmative defense of failure to mitigate damages survived challenge because Health and Safety Code section 13009 created an implied-in-law contract between petitioners and real parties in interest. The Court held that this affirmative defense is just a "back door" attempt to introduce comparative fault or mitigation principles where they have been barred by the more specific provisions of the Government Code. The Court held those defenses, though potentially available against a private litigant, were foreclosed where the state is a party.

Finally, the indisputable fact is that "sovereign immunity" is the *rule* in California, *and governmental liability is limited to exceptions specifically set forth by statute. See Cal. Gov. Code § 815; Wright v. State of California, (2004) 122 Cal App 4th 659; and Cochran v. Herzog Engraving Co., (1984) 155 Cal. App. 3d 405, 409. Gov. Code § 815* also establishes that there is no "implied" waiver of a statutory immunity. This would apply to *Rev. & Tax. Code § 3692.3* as well, and establishes that Defendants could not have so waived this immunity. These statutes *grant* immunity, rather than waive it, and to the extent the law once recognized an implied waiver of the state's immunity, those cases have been superseded by adoption of Government Code section 815. *People ex rel. Grijalva v. Superior Court, (2008) 159 Cal. App. 4th 1072, 1079.* Since Plaintiffs admit in their opposition that their suit but a "simple (common-law) breach of contract action," it necessarily follows that there is not a liability arising—as is required—from a statute. Unfortunately for Plaintiffs this admission reveals the fatal flaw in their action.

Based on these authorities, and despite Plaintiffs" attempt to plead around the immunity, Defendants are immunized and <u>*cannot*</u> be liable for non-statutory common-law breach of contract or misrepresentation in any instance in connection with said sale. Rather, Plaintiffs are ***limited exclusively to statutory remedies*** set forth in the *Rev. & Tax. Code.* As explained in the Demurrer, and even as Plaintiffs' opposition makes clear, none of these apply.

III. **[Plaintiffs' Opposition: "C: California Constitution, Article 13, § 32."]**

Plaintiffs argue that their common-law contract claim will not prevent or interfere with Defendants ability to collect a tax. This is factually erroneous. The public would be harmed as the tax-sale furthers the public's interest by collecting the taxes owed upon the property, and by returning the property to the tax rolls by placing it into the hands of those who do pay their taxes. *Quelimane Co. v. Stewart Title Guaranty Co., (1998), supra,19 Cal.4th 26, 33.* So this is exactly what the result would be if Plaintiffs and those like them were allowed to "back door" the law in this case and collect damages (*i.e., the taxes and more)* for a claim specifically precluded by law. Again, that the statutes do not specifically state a "prohibition" for contracting with Plaintiffs and, therefore, the statutes must be inapplicable, is an absurd theory. To say that would eviscerate every statute ever enacted by simply saying, well, it doesn't say we *can't* do that, so it must mean we can. This argument is also without merit.

IV. **[Plaintiffs' Opposition: "D: Government Code §§ 860.2 and 815-822."]; and [Plaintiffs' Opposition: "E: Applicable Contract Law."]**

Apart from the immunity of *§ 3692.3,* Defendants reiterate that the court in *Van Petten, supra, 38 Cal.App.4th at pp. 50-51,* emphasized that "[t]he principle of caveat emptor ***as it forcefully applies to tax sales*** was particularly applicable in that case, as the 'sales brochure' Van Petten received in advance of the tax sale (like plaintiffs' adviso in this case) explicitly stated, '[t]ax defaulted property will be sold on an **'as is'** basis[,]' and warned bidders: 'RESEARCH BEFORE YOU INVEST!' " *(*Id. at p*p. 50-51.)*

The disclaimers in the adviso to purchasers in the instant case, cited by Defendants in their Demurrer (at p. 9:21-10:17) were likewise strong and numerous, such that any reliance by Plaintiffs could not be said to have been justified in any event. See below. And even assuming for the sake of argument only that Plaintiffs wholly relied upon the statement in the alleged adviso, which Defendants deny, said reliance was not and likewise could not have been reasonable or justifiable given the strong and numerous disclaimers in the same

document.[2]

The *Van Petten* Court ended saying, "We follow the well-settled rule of *Chambers* and *Craland* ***that purchasers of property at a tax sale are limited to statutory remedies*** and ***reject*** *Schultz*'s holding to the contrary. Under the Revenue and Taxation Code, a purchaser at a tax sale is entitled to a [remedy] refund of purchase money paid **only** where the court determines the tax deed is void (§ 3729) or the property 'should not have been sold' (§ 3731). ***There is no statutory remedy of rescission or refund based on the misrepresentation and breach of contract theories alleged by Van Petten in the instant case.***" This line of authority was fully reiterated again nine-years later in *Quelimane, supra, 19 Cal. 4th 26, 40-41*, and finally again in *Ribeiro v. County of El Dorado, (2011), supra, 195 Cal. App. 4th 354.* The Court in *Ribeiro* also held that a claim of rescission due to mistake cannot coexist with caveat emptor, and that *CC § 1635* (cited by Plaintiffs among other contract statutes), "did not change the rule that caveat emptor applies at tax-sales."

Now, without a shred of supporting authority, Plaintiffs ask the Court to ignore the 800 lb. Gorilla in the room and hold that a few words of pure unexplained dictum by the Court in *Craland, Inc. v. State of California, (1989), supra,* one of the fore mentioned seminal cases cited by Defendants, supports their common-law theory. Otherwise, Plaintiffs' opposition is notably devoid of a single case or other shred of valid California law supporting their position. This goes double for *Rev. & Tax. Code § 3692.3 (2005).*

The dicta (stated next **in bold**) reads as follows: *"The overwhelming body of decisional law governing tax sales establishes that the State and County,* ***absent a representation to the contrary,*** *do not warrant the validity or regularity of tax sale proceedings. (*Routh *v.* Quinn *(1942) 20 Cal.2d 488, 490-49.) For this reason, neither the*

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[2] In another case, *Wunderlich v. State, (1967) 65 Cal. 2d 777, 785-787* (a case where the existence of a contract was not in dispute as it is here) Whatever the statements may be considered to have been represented to bidders, they could not justifiably rely on certain statements made in the document regarding quantity where the same contract ***explicitly and clearly*** disclaimed any representations as to the quantity of acceptable material. "The very paragraphs containing the alleged warranty also contain direct references to disclaimer paragraphs and to a specific disclaimer of the attributes of the source allegedly warranted."

State nor the County owes any non-statutory duty of care with respect to the purchaser. (Id. at p. 492.)" Craland at p. 1405.[3] Note that the reference to the phrase "The overwhelming body of decisional law governing tax sales . . " refers to the very line of cases stated above and supporting Defendants' position. Nothing in any of these cases, however, including *Routh* v. *Quinn (1942),* explains or provides any basis for the dictum, and certainly none rely upon it to arrive at their unified conclusions defeating Plaintiffs' claims. For these reasons, Plaintiffs argument is without merit and the Demurrer should be granted without leave to amend.

As for the Tort immunities referenced in Plaintiffs "D," *i.e., Government Code §§ 860.2 and 815-822,* Plaintiffs admit in their opposition at p.2:1-2, and p. 8:9-10 that they have no basis for a claim in tort. Therefore these immunities are not at issue. The rest of the arguments in that section are mere repetitions of Plaintiffs' claim involving the dictum in *Craland,* addressed above, which Defendants have squarely addressed. As for the reference to *Gov. Code § 814 here*, that section provides, "*Nothing **in this part** affects liability based on contract or the right to obtain relief other than money or damages against a public entity or public employee.*" The "***in this part***" language is simply a reference to the immunities of the Torts Claims Act. Again, as Plaintiff admits this is not a case alleging a tort cause of action, *§ 814* to the extent it exists only in reference to "tort" immunities, is admittedly inapplicable.

In any event, contracts with a Government entity are wholly derivative of the government's authority and intent to contract. The board of supervisors of the County is vested with legislative, judicial, and executive powers. *Bixler v. Board of Supervisors, (1881) 59 Cal 698, 1881. A* county may therefore exercise its powers only through the board of supervisors or through agents and officers acting *under authority of the board or authority conferred by law. Gov. Code § 23005.* When a contract is entered into by board of

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[3] Dictum is an observation or remark made by a judge in pronouncing an opinion upon a cause, concerning some rule, principle, or application of law, but not necessarily involved in the case or essential to its determination. Black's Law Dictionary Free Online Legal Dictionary, 2nd Ed.

supervisors and signed by chairman, then, and only then, is it a contract of the County, and it is binding thereon only when made in strict conformity to statute. *Babcock v. Goodrich, (1874) 47 Cal 488, 1874*; and *Murphy v. Napa County, (1862) 20 Cal 497*. And any contract, authorization, allowance, payment, or liability to pay, made or attempted to be made in violation of [said] law, is void, and shall not be the foundation or basis of a claim against the treasury of any county. *Gov. Code § 23006.* As a separate and additional basis defeating Plaintiffs arguments, Plaintiffs did not and cannot allege that the statement in the public adviso (the alleged contract) met with these onerous requirements for contracts with and/or by a public entity. Thus there is no contract for these reasons as well.

V. [Plaintiffs' Opposition: "F: Plaintiffs Are Not Limited To Statutory Remedies Under the Cal. Rev. & Tax. Code."]

The above-cited authorities holding that Purchasers at a tax-sale are limited to the statutory remedies simply cannot be disputed, and Plaintiffs' reliance on *Craland* for this point, again, cannot save them.[4]

Conclusion

California law regarding "tax-sales" as embodied by the cases and statutes set forth above, furthers the public's interest through the governance and protection of public entities, and holds that Plaintiffs' non-statutory claim for damages is at odds with these interests. For these reasons, Plaintiffs common-law action fails. Since no amendment can cure the problems, the Demurrer should be granted without leave to amend.

Dated: September 16, 2015,

DANIEL C. CEDERBORG
County Counsel

By: _____
Scott C. Hawkins, Deputy
Attorneys for Defendant
FRESNO COUNTY

[4] This is precisely the reason by the way that Plaintiffs plead only their common-law contract allegation. They knew full well that no statutory remedy applied and that they could not defeat the Tort immunities.

PROOF OF SERVICE

I, MARY LOU HINOJOSA, declare as follows:

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. I am employed at the Fresno County Counsel's Office, 2220 Tulare Street, Fifth Floor, Fresno, California, 93721.

On September 17, 2015, I served a copy of the within

DEFENDANT, COUNTY OF FRESNO'S, MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO PLAINTIFFS' OPPOSITION TO GENERAL DEMURRER

on the interested parties in said action addressed as follows:

James H. Wilkins
Quentin C. Cedar
WILKINS, DROLSHAGEN & CZESHINSKI LLP
6785 N. Willow Ave.
Fresno, CA 93710

Counsel for Plaintiff

[xxx] by placing the document(s) listed above for mailing in the United States mail at Fresno, California, in accordance with my employer's ordinary practice for collection and processing of mail, and addressed as set forth above.

☐ by transmitting via facsimile the above listed document(s) to the fax number(s) set forth above on this date before 5:00 p.m. pacific daylight time.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth above.

☐ by placing the document(s) listed above in a sealed envelope, and placing the same for overnight delivery by California Overnight at Fresno, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 17, 2015, at Fresno, California.

MARY LOU HINOJOSA

11