Case No. F087092

# IN THE COURT OF APPEAL
# OF THE STATE OF CALIFORNIA

## FIFTH APPELLATE DISTRICT

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**COUNTY OF FRESNO**,
*Appellant/Defendant,*

vs.

**JHS FAMILY LIMITED PARTNERSHIP, JCH FAMILY LIMITED PARTNERSHIP, AND DBH FAMILY LIMITED PARTNERSHIP**,
*Respondents/Plaintiffs.*

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On Appeal from a Judgment of the
Superior Court of California, County of Fresno
The Honorable D. Tyler Tharp
Case No. 15CECG02007

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# PROPOSED BRIEF OFAMICUS CURIAE THE CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF APPELLANT, COUNTY OF FRESNO

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1 Witkin, Summary of California Law, 11th Ed. Contracts § 1011 (2023), Unauthorized Contracts 15

## Introduction

Amicus curiae California State Association of Counties (CSAC) is a non-profit corporation that exists to serve as the effective advocate and unified voice of California's 58 Counties. Counties rely upon the long-established limitation of contract authority to agreements expressly approved or authorized by their Board of Supervisors -- or state statutes. The County of Fresno's Briefs filed in this action focus on the law articulating this principle of existential importance to the viability of government entities.

To hold Counties liable for unauthorized "contracts" in documents generated by subordinate county officials without oversight or approval or express statutory authority would make it impossible to anticipate and manage risk of liabilities and budget accordingly. The limitation is intended to protect the public and the taxpayers from the consequences of improvident and ill-considered decisions by staff or individual elected officials. The protection provided by the limitation of contract authority is analogous to governmental statutory immunities under Government Claims Act (Gov. Code §§ 810, *et seq.*)– and equally important to viability of governmental entities.

One critical County function, the collection of unpaid property taxes through the statutorily established procedures for the sale of tax defaulted property, presents potentially great risks if common law and statutory immunities do not apply. Not infrequently, as in the facts of this case, the revenue recovery

realized through tax sales is a fraction of the value of the property being sold, and the potential liabilities and regulatory burdens that may be associated with contaminated property can be significant. Counties should be able to share whatever information they may have about the condition of the property without incurring liability or excusing the buyer from standard due diligence normally undertaken in private property transactions.

Counties are hierarchical organizations with the ultimate authority vested in the Board of Supervisors. Within that hierarchy, counties are complex organizations, with many departments having diverse responsibilities with little or no relationship to one another, often operating within virtual silos. The Tax Collector's office and the Environmental Health Department implicated in this case are just two examples. Too often the Plaintiffs and the trial court conflated individuals and diverse departments into a kind of County monolith in which the knowledge of any county employee at any time in the past or present is attributable to all other employees engaged in preparing for tax sale, and to hold the County liable for any error. To attribute knowledge of one individual or department within the county to everyone in the county for all time, and to the County as a whole is untenable. Communications break down. Mistakes are made.

In the proceedings below, the trial court appears to have been influenced by its perception of equitable rather than strictly legal considerations (Colloquy between Court and Counsel RT 225 -235).

That concern may be fairly characterized as that the County's defense could perpetrate a wrong without a remedy. It disparaged the County's well-supported legal argument that unauthorized contracts are void as, "an argument only a governmental bureaucracy would be bold enough to make." (Statement of Decision, 9 CT 2644, lines 3 – 4). The trial court's frustration perhaps led it to err in its findings to reach a result that neither the facts nor the law support.

The Tax Sale Statute does provide a remedy to unwind sales that should not have been made because of mistakes by County staff – Rescission through Revenue and Taxation Code section 3731. However, the Plaintiffs in this case elected to pursue a different remedy in their demand letter dated March 26, 2015 – to allege a contract, retain possession of the property and sue for damages. Even if the demand is ambiguous enough that it could somehow be construed as a formal demand for recission, Plaintiffs' subsequent complaints filed in this action never sought rescission. Plaintiffs wanted to keep the property even when they knew of the contamination. Plaintiffs got such a good deal they were willing to take the risk they could not prove their case.

The trial court's finding that Plaintiffs sought rescission that the Board of Supervisors rejected was clear error, not supported by Plaintiffs' own document. The trial court's holding that the Board of Supervisors' rejection of liability for a term that it never authorized

or approved somehow constituted a ratification of a "contract" is simply a non-sequitur and should not be sustained on appeal.

The trial court's finding that the Tax Sale Statute grants authority to the Tax collector to contractually bind the County that could subject it to liability is also clearly erroneous. The origin of the notice of contaminated property clause in the terms of sale may be obscure but appears to have been prompted by recommendations published by the California State Controller. The California State Controller has statutory authority to instruct, advise, and direct tax collectors as to their duties under the laws. (Gov. Code, § 30300.) The Controller publishes a County Tax Sale Procedural Manual and a County Tax Collectors' Reference Manual, which include recommendations and suggested forms. Although the manuals recommend withholding designated Superfund sites from tax sale, and only offering sites otherwise known to be contaminated after disclosing that information, and with advice of County Counsel, the manuals contain no specific suggestions of the form that disclosure should take. Nothing in the manuals or the Tax Sale Statute authorizes Tax Collectors to adopt terms of sale that could impose contractual liability on County taxpayers if the disclosure is somehow mistaken. The trial court erred in concluding that the statute does so.

For the reasons more fully set forth in the County of Fresno's briefs, and in this amicus brief, the trial court's judgment should be vacated, and the trial court be directed to dismiss the action.

## Standard of Review

On appeal of a judgment based on a statement of decision following a bench trial, questions of law are reviewed de novo, and the substantial evidence standard applies to finding of fact. (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981.) The interpretation of a legal document – such as the Plaintiffs' attorney March 26, 2015 letter -- is a matter of law, which is reviewed de novo. (*Peterson v. Wells Fargo Bank, N.A.* (2015) 236 Cal.App.4th 844, 850.) Where the material facts are undisputed, and the question is how to apply statutory language to a given factual and procedural context, the reviewing court applies a de novo standard of review to the legal determinations made by the trial court. (*Vosburg v. County of Fresno* (2020) 54 Cal.App.5th 439, 450, quoting *McGuigan v. City of San Diego* (2010) 183 Cal.App.4th 610, 623.).

## Argument

### I. LIMITATION OF CONTRACT LIABILITY TO TERMS EXPRESSLY APPROVED OR AUTHORIZED BY THE BOARD OF SUPERVISORS IS ESSENTIAL FOR VIABLE GOVERNANCE AND TAXPAYER PROTECTION.

In its Statement of Decision, the trial court disparaged the well-supported defense that formation of a contract with a County requires the express approval or authorization of the Board of Supervisors put forth by the County of Fresno as, "an argument only a governmental bureaucracy would be bold enough to make." (Statement of Decision, 9 CT 2644, lines 3 – 4). On the contrary, the proposition is well-settled virtually black letter law, extending in an unbroken line from the early decades of California statehood to the present, as set forth in the County's briefs, applicable throughout

many states. See, e.g. 10 McQuillin Mun. Corp. § 29:20 (3d ed.) Who may act in behalf of municipality:

> . . .In case of a county, the governing power lies in the board of county commissioners, supervisors, or other governing authority of the county. No matter the governing body, it, must act at a legal meeting and as a board since the individual members acting singly have no authority to bind the municipality.

10 McQuillin Mun. Corp. § 29:22 (3d ed.) Who may act in behalf of municipality—Contract made by wrong officer or board:

> If the wrong officer or board makes a contract in behalf of a municipality, or if such officer or board had the power to make the contract when properly authorized in particular cases but such authority was not conferred, or if the contract was made by an unauthorized agent who cannot be said to be an officer and the municipality issued on such contract, it may successfully set up the defense that the contract was unauthorized and the contract will be declared void, provided that there has been no ratification and no estoppel exists.
>
> However, there is a broad distinction between the acts of an officer or agent of a public municipal corporation and those of an agent for a private individual. In cases of public agents, the government or other public authority is not bound unless it manifestly appears that the agent is acting within the scope of his or her authority, or he or she is held out as having authority to do the act. ***The reason for the rule is founded in public policy, and the rule indeed seems indispensable in order to guard the public against losses and injuries arising from the fraud, or mistake, or rashness and indiscretion of their agents.*** [Emphasis added.]

Also see, 1 Witkin, Summary of California Law, 11th Contracts § 1011 (2023), Unauthorized Contracts, summarizing cases relied upon

in County of Fresno's briefs. See, e.g. *Torres v. City of Montebello* (2015) 234 Cal.App.4th 382, 395-395:

> Because 'restrictions on a municipality's power to contract … are designed to protect the public, not those who contract with the municipality'. . . , the Government Code's 'jurisdictional prerequisite' must be scrupulously enforced in this case to ensure the public is protected from hasty decisions by elected officials that impact taxpayer finances. (citations omitted)

See also, *City of Orange v. San Diego County Employees Ret. Ass'n* (2002) 103 Cal.App.4th 45, 49; *G. L. Mezzetta v. City of Am. Canyon* (2000) 78 Cal.App.4th 1087, 1093, citing 10 McQuillin, Municipal Corporations (3d ed. 1999 rev.) § 29.05, p. 255. As the County of Fresno's briefs readily explain, a California county's authority to contract is governed by Government Code sections 23004 and 23005. Were this not the case, County taxpayers could be held liable for contracts haphazardly formed by county employees or subordinate officials. No county or other local government could long survive such unlimited and uncontrollable liability exposure.

While tort immunities do not cover government contracts, the policy limiting contract authority of public agencies to statutorily authorized formalities is analogous to the rationale undergirding tort immunities in the California Government Claims Act (Gov. Code, §§ 810, et seq.) As Professor Arvo Van Alstyne[1] put it:

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[1] Professor Van Alstyne served as the research consultant to the California Law Revision Commission in its two volume Recommendation Relating to Sovereign Immunity, January 1963, which was instrumental in the comprehensive adoption of the

> The mere abolition of the doctrine of governmental immunity by *Muskopf* [*Muskopf v. Corning Hospital Dist.* (1961) 55 Cal.2d 211] did not alleviate many of the most difficult problems in this area. It in fact created new and perplexing problems of interpretation of statutes and of application of pre-*Muskopf* case law. The need for order and predictability, however, is great. *Efficient and foresighted planning of governmental activities and their fiscal ramifications becomes extremely difficult, if not impossible, when the threat of possibly immense but unascertainable tort obligations hangs like a dark cloud on the horizon. Moreover, it would seem likely that the danger of tort liability may, in certain areas of public responsibility, so seriously burden the public entity as to actually interfere with the prosecution of programs deemed essential to the public welfare.* GOVERNMENTAL TORT LIABILITY: A PUBLIC POLICY PROSPECTUS, 10 UCLA L. Rev. 463, 466-467. [Emphasis Added]

CSAC strongly supports the strict application of the rule requiring that Counties may only be held liable for contracts that were approved or authorized by the Board of Supervisors, or by other county officials when otherwise authorized by statute.

As is more fully set forth in Points III and IV of this brief, *infra.* there is no evidence in this case that a valid contract binding the County of Fresno existed with respect to the notice of contaminated

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California Government Claims Act, Stats. 1963, Ch. 1681. Van Alsyne's complete study for the Commission, which includes the above-quoted text on p. 268, is published by the Commission and available at http://www.clrc.ca.gov/pub/Printed-Reports/Pub050.pdf.

properties provision of the tax sale terms of sale. Therefore, the trial court judgment must be reversed.

## II. THE TRIAL COURT ERRED IN FINDING THAT PLAINTIFFS ATTEMPTED TO RESCIND THE TAX SALE.

The trial court found:

> JHS [the Plaintiffs] contacted a person at the tax collector's office named Natalie and asked whether the County. would rescind the sale due to the failure to notify JHS of known contamination issues at the subject property. (RT 42:15-43:15; 63: 4-10; 89:5-17.[2]) Natalie asserted rescission was not an option and that the sale was final. (RT 42:15 -43:15; 63: 4-10; 89: 5-17.) On March 26, 2015, JHS served the County with a formal demand to rescind the purchase. The County rejected JHS' demand on June 2, 2015. (RT 43:16- 44:14).
>
> [CT 6:2642:24 – 2643:2]

### A. PLAINTIFFS NEVER PETITIONED THE BOARD OF SUPERVISORS TO RESCIND THE SALE

The finding regarding the nature of Plaintiffs' demand dated March 26, 2015, is directly contradicted by text of the demand letter itself. (Joint Exhibit 18, CT 6:1789-1793). Nowhere in that document does the Plaintiffs' attorney request that the County rescind the tax sale of a tax deed to the property. Instead, it is entitled, "Claim for Damages." Page 2 of the demand letter states, "The failure on the part of Fresno County and your office to make the obligated

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[2] Reporter's Transcript Page references in the trial court's Statement of Decision are found in Volume 2 of 2 of the Reporter's Transcript on Appeal. To find the reference in the Reporter's Transcript on Appeal add 100 to the page number, e.g. RT 42:15-43 in the Statement of Decision is RT 142:15-43 in the Reporter's Transcript on Appeal.

disclosure of said contamination breached the contract established by Fresno County's written Terms of Sale." The letter attaches a Summary of Buyer's Claim for Damages. That attachment includes the statement, "Claimants are being required to remediate the contamination on the subject real property. The estimated cost of remediation will be at least $500,000.00, and likely more." The clear implication is that Plaintiffs seek damages for the cost of remediation of the property, not that Plaintiffs want to rescind the tax sale deed[3].

As further confirmation of Plaintiffs' intent to claim a contract and seek money damages, not rescission, Plaintiffs' original complaint filed June 26, 2015 (CT 1:18-22, does not seek to compel the County of Fresno to rescind the tax sale, even in the alternative. Neither does the Amended Complaint filed July 7, 2015, even mention rescission. (CT 1:24-40). The same is true for Plaintiffs' Second and Third Amended Complaints filed in 2015 and 2018 (CT 1:101-116; CT 2:242-445).

The legal standard and procedure to rescind a tax sale deed at the behest of the buyer is set forth in Revenue and Taxation Code section 3731, subd. (a):

> When a tax deed to a purchaser of property sold by the tax collector pursuant to this part is recorded and it is

[3] Respondents' Brief on p. 53 admits that the March 15 claim demand did not request recision [sic.], claiming that "does not change the fact that the COUNTY was presented with the opportunity to do so upon receiving the demand." Plaintiffs' election of remedies cannot be ignored.

> determined that the property should not have been sold, the sale may be rescinded by the board of supervisors *with the written consent* of the county legal adviser *and the purchaser of the property* . . .

Section 3731, subd. (g) requires:

> A proceeding may be commenced in a court pursuant to Section 3725 *only if the person commencing the proceeding first petitions the board of supervisors to rescind the sale of a tax deed pursuant to this section*. [Emphasis added.]

Section 3725, subd. (a) provides:

> (a) A proceeding based on alleged invalidity or irregularity of any proceedings instituted under this chapter can only be commenced in a court if both of the following are satisfied:
>
> (1) *The person commencing the proceeding has first petitioned the board of supervisors pursuant to Section 3731 within one year of the date of the execution of the tax collector's deed.* [Emphasis added.]
>
> (2) The proceeding is commenced within one year of the date the board of supervisors determines that a tax deed sold under this part should not be rescinded pursuant to Section 3731.

Plaintiffs' March 26, 2015 letter cannot reasonably be construed as a petition to the Board of Supervisors to rescind the sale of a tax deed pursuant to Section 3731. It is not therefore "a formal request for rescission" as found by the trial court. (CT 6:2642:28 – 2643:1.) Plaintiffs' counsel who prepared the March 26, 2015 letter is charged with knowledge of the legal requirements for rescission under Revenue and Taxation Code section 3731. (*A.S. v. Palmdale School Dist.* (2023) 94 Cal.App.5th 1091, 1101.)

Interpretation of the legal effect of Plaintiffs' demand is a matter of law subject to de novo review. The only reasonable construction of the demand is that Plaintiffs sought to allege a contract, retain the property, and sue for damages due to the County's failure to identify the property as being known or suspected to be contaminated on its Asset Page, not to rescind the sale. The court's finding that the Plaintiffs served the County with a formal request to rescind the sale is erroneous as a matter of law.

### B. RESCISSION PURSUANT TO SECTION 3731 WOULD HAVE BEEN THE PROPER REMEDY IN 2015 HAD PLAINTIFFS IN FACT REQUESTED IT.

Section 3731 Rescission may indeed have been the most appropriate remedy in 2015 under the circumstances. Unlike the case of *Ribeiro v. County of El Dorado* (2011) 195 Ca1.App.4th 354, as discussed in this Court's unpublished opinion in 2018 (CT 1:258), the mistake or inadvertence in this instance was the Environmental Health Department's failure to identify the subject property as contaminated when the Tax Collector's personnel inquired by email on December 16, 2013. In *Ribiero* the mistake of fact was alleged by a subsequent bona fide purchaser from the tax sale buyer, *Ribiero, supra,* 195 Cal.App.4th at pp 361-363. The *Ribiero* 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.

Under the facts of the present case at issue in this appeal, the Tax Collector's office personnel received incorrect information from

the Environmental Health Department. (Joint Exhibit 12, CT 7:2039; Testimony of Steven Rhodes, RT 165:25 – 168: 8; RT 169:18 – 170:9; Testimony of Manjit Dhaliwal, RT 238:23 – 239:13) The tax sale Asset Page for the online auction therefore failed to identify the property in question as contaminated or potentially contaminated and provide the Lead Agency's name and address where all available information might be reviewed. Plaintiffs claim to have relied upon that omission and as a result conducted no independent due diligence regarding contamination. Had the property been identified as contaminated, Plaintiffs' agent would not have bid on the property.

Under the recommendations of the Property Tax Sale Procedural Manual published by the California State Controller's Office (See Part IV, *infra.* of this Brief), the subject property should not have been sold without the disclosure of contamination. The threshold requirement for rescission in Section 3731 (a) that the property should not have been sold was therefore met. Had the tax sale deed been rescinded under section 3731, the Plaintiffs would have been entitled to a refund of the $460,000.00 they paid, plus interest. (Rev. & Tax. Code, § 3731, subd. (c)). When the rescission is recorded, the tax deed becomes null and void as though never issued[4]. (Rev. & Tax. Code, § 3731, subd. (d)). In effect, title would

[4] Plaintiffs' argument that having taken title to the property, they would irrevocably be liable, "stuck," for monitoring and cleanup costs is a red herring. Rescission in 2015 would have in effect remove Plaintiffs from the chain of title.

be restored to the prior tax-defaulted owner. Plaintiffs would be required to surrender possession of the property. However, Plaintiffs never pursued rescission as a remedy, either in the March 26, 2015 Claim for Damages, or in their subsequently filed complaints. It is reasonable to ask why.

### C. PLAINTIFFS' BUSINESS OBJECTIVE WAS TO ALLEGE A CONTRACT, RETAIN THE PROPERTY, AND ATTEMPT TO HOLD THE COUNTY LIABLE FOR REMEDIATION COSTS.

At common law, and under the Civil Code sections 1688 and 1689, a private party to a real estate contract has two different remedies when it has been injured by a breach of contract or fraud and lacks the ability or desire to keep the contract alive. (*Wong v. Stoler* (2015) 237 Cal.App.4th 1375, 1384-1385; *Akin v. Certain Underwriters at Lloyd's London* (2006) 140 Cal.App.4th 291, 296 (*Akin*).) The party may disaffirm the contract, treating it as rescinded, and recover damages resulting from the rescission. (*Ibid.*) Alternatively, the party may affirm the contract, treating it as repudiated, and recover damages for breach of contract or fraud. Rescission and damages are alternative remedies. (*Akin, supra*, 140 Cal.App.4th at p. 296.) A party may seek rescission or damages for breach of contract or fraud "in the event rescission cannot be obtained" in the same action. (*Williams v. Marshall* (1951) 37 Cal.2d 445, 457 [defrauded vendee], citing *Bancroft v. Woodward* (1920) 183 Cal. 99; *Walters v. Marler* (1978) 83 Cal.App.3d 1, 16 [breach of contract], disapproved on another ground in *Gray v. Don Miller & Associates, Inc.* (1984) 35 Cal.3d 498, 505–507.) **But "[t]he election of**

**one [remedy] bars recovery under the other."** (*Akin,* at p. 296, citing *Alder v. Drudis* (1947) 30 Cal.2d 372, 383.) *Also see, Cook v. Superior Court of Los Angeles County* (5th Dist. 1966) 240 Cal.App. 2d 880, 886-887, where the Court noted that,

> The critical fact here is that petitioners have not alleged a rescission, they have not alleged the contract is void or even voidable; rather, they affirm the contract and plead damages because of the failure of Houston and MacDonald to live up to its terms. It is well established that: 'An action for damages is based on an affirmance of the contract; an action for rescission on a disaffirmance thereof. [Citations.] *The two remedies are mutually inconsistent*, although damages may be prayed for in the event rescission cannot be had. (*Davis v. Rite-Lite Sales Co.*(1937) 8 Cal.2d 675, 678.) [Emphasis added].

It is abundantly clear that Plaintiffs elected to allege a contract, purported to affirm that alleged contract, and sue for damages, and never sought to rescind the tax sale. To prevail on their claim, Plaintiffs must prove that a valid contract binding the County of Fresno exists. With their election of the contract damages remedy, Plaintiffs assumed the risk that they may be unable to prove the necessary elements of the cause of action for breach of contract- the authority for binding the County to the notice of contaminated property clause in particular. That has yet to be determined depending on the outcome of this appeal.

The circumstances suggest Plaintiffs' election not to seek rescission was deliberate, and priced in the risk Plaintiffs may not prevail in its claim for damages. Plaintiffs acquired a 10.43 acre

industrially-zone property with a 151,254 square foot warehouse[5] for only $460,000.00. Plaintiffs had inspected the property before placing its tax sale bid and determined the deteriorated condition of the warehouse would require about $1.5 million to renovate and repair.

Public information provided upon request pursuant to Revenue and Taxation Code section 408.3, indicates that there are 15 other industrially zoned properties developed with warehouses of at least 50,000 sq. ft. in size located within one-half mile of the subject property (Amicus' Request for Judicial Notice, Attachment 1 to Declaration of Marilyn Tanaka, filed herewith). Plaintiffs are sophisticated real estate investors[6] with ready access to this same information.

The average assessed land value per acre of those other nearby properties is $93,971.00 per acre, with a range of from a low of $52,065.00 to a high of $216,254.00 per acre. If those land values were attributed to Plaintiffs' 10.34-acre parcel, it would be assessed

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[5] See RJN, attachment to Declaration of Marilyn Tanaka,

[6] Plaintiffs' agent Hovannisian testified about the three family entities owning "tons" of residential and commercial income properties (RT 123:7 -8) acquired through tax sales, trustee sales, etc. (RT 123:26 – 124:3) in Fresno and surrounding counties (RT 123:12). Acquiring the warehouse would allow Plaintiffs to store equipment and materials used by 250 maintenance personnel on a daily basis instead of all going to Home Depot (RT 124:24 – 125:15). The warehouse also houses office space and a call center for the enterprise. (CT 2:406:10- 407:2)

at a low of $538,349.00, a high of $2,236,071.00, or an average of $971.662.00 for the land alone. The assessed value of the improvements of the 15 other warehouse properties ranges from $9.54 per square foot to a high of $58.72 per square foot, with an average of $25.07 per square foot.

Using average values for land and improvements for the 15 other warehouse properties, Plaintiffs' parcel would be assessed at a total of $4,616,331.00. The current assessed value of the subject parcel, based on Plaintffs' purchase price with annual 1.1% adjustments per Proposition 13, is instead only $542,105.00, roughly 11.47% of the value of comparable properties, resulting in a considerable savings in annual property tax liability for the past ten years. Plaintiffs' costs for the property to date are $460,000.00 to purchase, $1.5 million to repair and renovate to suit, and $564,219.33 for monitoring and remediation costs incurred up to the date of July 14, 2023 (for which the trial court held the County of Fresno liable) for a total of $2,524,219.00. All in all, a bargain, with a margin over $2,000,000.00 in value should additional remediation costs be required. It is far from certain that any additional remediation costs will be incurred.

The foregoing information is offered to offset the concern expressed by the trial court and argued by Plaintiffs in their Respondents' Brief[7], that the County's contract invalidity defense is inequitable, would work a wrong without a remedy, or be a

[7] Respondents' Brief, p. 65.

technical "gotcha.," motivated by greed. Plaintiffs deliberately chose to forego rescission and sue for damages, hoping to foist contaminated property monitoring and remediation costs on the County and its taxpayers, while enjoying the benefits of owning a facility acquired for a bargain of beneficial use to their business operations with extensive commercial and residential real estate holdings in Fresno and surrounding counties. Plaintiffs must accept responsibility for the consequences of their choice should they not be successful on appeal.

Plaintiffs' agent testified and the trial court found that Plaintiffs relied upon the notice of contaminated property clause in foregoing due diligence on potential contamination. Whether that reliance is reasonable, especially by a sophisticated real estate investor with a portfolio of both commercial and residential properties, is certainly questionable.

Industrial properties, such as the parcel in question, are commonly recognized as "red flags" that require more intensive investigation than is required for a single-family residence. (Miller & Starr, 11 California Real Estate § 39:4 (4th ed) Environmental investigation (due diligence)). The first phase of environmental due diligence consists of a preliminary review of the past and present use of the property, and it includes obtaining a chain-of-title report on the property, a review of public records including records of federal, state, and local agencies dealing with health and environmental issues, a visual inspection of the property and its

surroundings, and interviews with past and present occupants. (*Ibid.)*

The County did not conceal from or prevent Plaintiff's agent from himself checking the available online databases regarding contamination, including the subject property prior to bidding at the tax sale auction. A database maintained by the County has a 7-page list of accessible documents concerning the subject property with entries dating back to January 1986 until November 2012 prior to the date of tax sale auction.[8], The State Department of Toxic Substances Control online database, established in 2004,[9]contains data regarding the contamination of the subject property. The California State Water Resources Control Board online database is the most complete repository of information concerning the subject property.[10]

Plaintiffs' agent admitted at trial that if the County didn't know anything about the contamination of the property, he still would have bought it, and "That would have been the risk." (RT 183:25). Plaintiffs took the risk resulting from their own lack of due diligence. If equitable considerations are to be factored into the

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[8] Available at: https:///www/fresnohealthinspections.org/search-results/inspection/facility?id=FA00272040.

[9] Available at: https://www.envirostor.dtsc.ca.gov/public/profile_report?global_id=60002483

[10] Available at: https://GeoTracker.waterboards.ca.gov/profile_report?global_id=SL0601998443

determination of this action, the above factors should be taken into account. It is inequitable to allocate the risk Plaintiffs took on the sophisticated real estate investor on the taxpaying public.

## III. THE TRIAL COURT ERRED IN FINDING THAT THE COUNTY ENTERED INTO OR RATIFIED A CONTRACT INCLUDING THE CONTAMINATED PROPERTY CLAUSE.

### A. THE TRIAL COURT EXPRESSLY FOUND THAT THE BOARD OF SUPERVISORS DID NOT REVIEW, APPROVE OR AUTHORIZE THE TERMS OF SALE.

The trial court found in the Judgment entered August 31, 2023,

> 1. The County entered into a valid contract with JHS for sale of the subject property.
>
> 2. The contract included the terms of sale provided to Bid4Assets by the tax collector;
>
> 3. The terms of sale include a promise by the County to notify JHS of any known or suspected contamination issues at the subject property;
>
> (CT 9:2636:1 – 8.)

However, the trial court also found in the attached Statement of Decision, Exhibit A to Judgment:

> The Board does not participate in drafting or approving the terms of sale used by the tax collector. (CT 9:2640:12-13)
>
> The Board has not participated in the drafting or approval of the terms of sale at any time since the inception of the sale of tax-delinquent properties in the County. (CT 9:2640:28 – 2641:2).

The trial court found that the Board of Supervisors on December 3, 2013, approved the tax sale of the subject property. The evidence supporting that finding is Joint Exhibit 70, CT 5:1391 -1438, in which the subject property is one of 438 parcels approved for sale

Item 98 on page 7 of 44 of the attached Tax Sale List. The Board approved the recommended action to 1. approve selling the properties on the list at a public internet auction, subject to the Tax Collector's power to sell, and 2. direct the Tax Collector to sell the properties in accordance with Chapter 7 of Part 6 of Division 1 of the California Revenue and Taxation Code. CT 5:1392. Nowhere does the Board action authorize the Tax Collector to add terms of sale that would add to or contradict the provisions for tax sales in the Code, including but not limited to the immunities set forth in Section 3692.3.

The trial court found:

> On January 29, 2013, the Board approved an agreement between the County and Bid4Assets to utilize Bid4Assets as the platform on which the sale of tax-delinquent properties would. be conducted. (RT 145: 1-6) Under the agreement the tax collector was to provide Bid4Assets the terms of sale to be used for the auction and Bid4Assets was to list those terms of sale on their platform. (RT 75: 13 - 76:l0; 78:5 ., 79:22) CT 6:2640:20 – 28.

That agreement is Joint Exhibit 13 CT 7:1843 – 1858. The obligations of the County under that agreement are set forth on pages 4 and 5 of that agreement. It reads:

> COUNTY shall provide to CONTRACTOR the following Information concerning California property tax sales, to be included in the acknowledgement language:
>
> • This is a "buyer beware" sale;
>
> • All sales are "as is, where is and final";
>
> • You must be 18 years of age in order to bid;

- Redemption rights and timing;
- Tax deed information;
- California documentary transfer tax;
- Payment information. default auction:
- Burden of due diligence (bidder responsibility);
- Survey responsibility (bidder responsibility);
- Liability for liens, encumbrances and easements (bidder responsibility):

Nowhere in the agreement is the tax collector to provide Bid4Assets the terms of sale. The agreement itself is the best evidence of the terms of the agreement, not the parol evidence or testimony of witnesses relied upon by the trial court. (Code of Civ. Proc., § 1856; *Arechiga v. Dolores Press, Inc*. (2011) 192 Cal.App.4th 567, 574; *Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 334.)

The trial court's ultimate finding that the County entered into a valid contract with JHS for the sale of the subject property that includes the notice of contaminated property clause is contradicted by the court's more specific findings and is otherwise not supported by substantial evidence.

### B. THE COUNTY'S REJECTION OF PLAINTIFFS' CLAIM FOR DAMAGES IS NOT A RATIFICATION OF THE EXISTENCE OF A CONTRACT.

On June 2, 2015, the County Board of Supervisors rejected the Plaintiffs' demand without explanation and thereafter gave notice to Plaintiffs' attorney that the that the claim was rejected. (CT 1:38 -40; Joint Exhibit 19, CT 6:1787-1788).

The trial court found at (CT 6:2648:1 -17):

> If the County is correct no contract was initially formed, the court finds the County subsequently ratified the terms of sale and is bound by them.
>
> After the water board notified JHS of contamination at the subject property, JHS notified the County and demanded the sale be rescinded. The. County refused to rescind the contract and took the position JHS was bound by the contract.
>
> The County was given the opportunity to rescind the sale of the subject property; refund the $460,000 paid by JHS, and avoid the current claim for breach of contract. Instead, the County refused to rescind the sale, kept the $460,000.00, told JHS it was bound by the 1erms of the contract. However, the contract the County insisted on enforcing only included the terms of sale favorable to it while disavowing the express terms of sale that exposed it to liability for breach of contract.
>
> As stated above, the court finds the County entered into a lawful contract with JHS for the sale of the subject property. The contract includes the terms of sale authorized by the tax collector. Assuming arguendo no contract was formed, the court finds the County of Fresno ratified the sale of the subject property, including the terms of sale, by refusing to rescind the sale, refund the $460,000, and insisting that JHS was bound by its agreement to purchase the subject property.

As explained above in Part II. A. of this brief, *supra*, Plaintiffs never submitted a demand to the Board of Supervisors to rescind the sale, only a claim for money damages for an alleged breach of contract. Therefore, the Board of Supervisors cannot be found to have refused to rescind the sale. The trial court's finding that it did is not supported by any evidence.

The Board's rejection of the claim was silent as to its reasons. As noted by the trial court, the County's position throughout this litigation is that no contract was formed. To somehow construe the County's rejection of a contract damage claim as a ratification of the contract is unsupported factually, and erroneous as a matter of law.

## IV. THE TRIAL COURT ERRED IN FINDING THAT THE TAX SALE STATUTES AUTHORIZED THE COUNTY TAX COLLECTORS TO ADOPT TERMS OF SALE THAT SUBJECTED FRESNO COUNTY TO LIABILITY FOR BREACH OF CONTRACT INDEPENDENT OF BOARD OF SUPERVISOR APPROVAL.

The trial court's Statement of Decision (at CT 2609 – 2611) includes an extensive discussion of the Tax Sale Statute, concluding that nothing in the law prohibits the tax collector from adding to the terms of sale the Notice of Contaminated/Possible Contaminated Properties provision, as part of the Tax Collector's power under the statute to conduct tax sales, concluding:

> "Put simply, the Board did not have to delegate authority to enter into a contract for the sale of tax-delinquent properties to the tax collector. The California State Legislature did that when it enacted Revenue and Taxation Code § 3691."

The trial court misinterprets the law. Once the Board of Supervisors authorized the Tax Collector to conduct the sale, the Tax Collector is to conduct the sale strictly in accordance with the statute. Nothing in the Tax Sale Statutes authorizes the Tax Collector

to adopt terms of sale that would abrogate immunities set forth in Section 3692.3[11].

The exact origin of the term of sale clause regarding disclosure of contaminated property in tax sale at issue is undetermined. It was apparently included in terms of sale from at least 2008 when the County of Fresno first began conducting tax sales through an online vendor, bid4ssets.com. (RT 127:4 – 9) The record indicates that the term was simply copied from the terms of sale used by other counties for their online auctions (RT 130:13 – 15; RT 210:3 – 14; CT 9:2640:27  28). Review of the terms of sale for current auctions listed online on bid4assets.com Auction Calendar for April, May and June, 2024[12]and govease.com indicates that at least six counties (Lassen, Madera, Modoc, San Benito, Siskiyou, and Tuolumne) still include the identical notice of contaminated property clause in the term of sale as is at issue in the case.

The clause as it appeared in Fresno County Tax Sale Terms of sale in 2014, and other counties more than likely was a well-

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[11] Also see, Gov. Code, § 860.2: 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.
(b) An act or omission in the interpretation or application of any law relating to a tax.

[12] Available at:
https://www.bid4assets.com/county-tax-sales,
Also
https://liveauctions.govease.com/Bidder/CompleteESignForm?AuctionID=1376&UserID=77966&DocumentTypeID=421&Edit=False

intentioned but inartful attempt to implement the recommendations concerning tax sales of contaminated properties in State of California County Tax Sale Procedural Manual Volume I: Chapter 7 Tax Sales[13], and The County Tax Collectors' Reference Manual, Chapter 8000: Sale of Tax-Defaulted Property[14], published by the California State Controller's Office. Pursuant to Government Code section 30300:

> The State Controller shall instruct, advise, and direct tax collectors as to their duties under the laws. He may obtain the opinion of the Attorney General upon any questions of law relating to such actions in such cases as he deems necessary.

Government Code section 30301 provides:

> The State Controller shall prescribe tax levying and collecting procedures under this division. The procedures, which shall include the prescription and use of forms, shall be adopted under the provisions of Chapter 4.5 (commencing with Section 11371) of Part 1, Division 3, Title 2 of the Government Code and published in the California Administrative Code. The State Controller shall prescribe such procedures only after consultation with the Committee on County Tax Collecting Procedures.

Neither the Tax Sale Procedure Manual nor the Tax Collectors Reference Manual have been adopted in accordance with the

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[13] Available at: https://sco.ca.gov/Files-ARD-Tax-Info/Tax-Collector-Ref-Man/ctspm_v1_2016.pdf (ca.gov)

[14] Available at https://sco.ca.gov/Files-ARD-Tax-Info/Tax-Collector-Ref-Man/ctcrm_chapter8.pdf

Administrative Procedure Act, nor published in the California Administrative Code in Title 2, Chapter 2 promulgated by the State Controller, and therefore do not have the force of law and are not binding on County Tax Collectors. The Tax Sale Procedural Manual Introduction includes the following disclaimer:

> NOTICE: This publication is provided by the State Controller's Office, Property Tax Standards Unit, as a general resource for California's county tax collectors. Processes and forms are recommended to assist the counties in performing their duties under the law. This publication is written primarily for use by county tax collectors and does not constitute legal advice. This publication has been reviewed by The Committee on County Tax Collecting Procedures and members of the California Association of Treasurer Tax Collectors. [emphasis added].

The Tax Collectors Reference Manual contains a nearly identical disclaimer.

The Tax Sale Procedural Manual includes recommendations for determining the condition of properties that may be disqualifying, including bankruptcy, unprobated property and contaminated property (pp. 12 – 13). With respect to contamination, the manual cites no statutory authority, but suggests that in preparation of the tax sale list the Tax Collector's staff should:

> Ask the environmental health and safety agency to review the list of properties to determine if any are or may be contaminated[15].

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A[15] Joint Exhibit 12 (CT 7:2039-2041; RT 167:25 – 168:8; RT 16918 – 170:2) shows that on December 16, 2013 Fresno County Tax

The Tax Sale Procedural Manual recommends that if the environmental health agency identifies a property that is or may be contaminated, then:

> Properties that are on the Superfund list, if any, should be removed from the sale. Contaminated properties not on the Superfund list may be offered for sale, but information about the contamination should be disclosed to prospective buyers.

Appendix II of the Tax Sale Procedure Manual, entitled Disqualifying Property Conditions, Subsection 9) Contaminated Property (p. 56), states:

> It is recommended that any property on the Superfund list not be sold at a tax sale. Property not on the Superfund list but known or suspected to be contaminated may be sold. In such cases, consult county counsel on the specific circumstances. If the sale goes forward, disclose all that is known; do not attempt

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Collection Office personnel sent an email asking the County's environmental health agency to review the tax sale list for contaminated properties. Joint Exhibit 70 shows the properties approved by the Board of Supervisors on December 3, 2013 consists a 44 page list of 438 parcels. The Environmental Health Division response on December 17, 2013 identified only three properties on the list, and the parcel at issue in this litigation was not among them. The County's representative of the Tax Collector's Office, Manjit Dhaliwal, testified at trial that as a result of his investigation he concluded that disclosure was not made because, "it was just missed." (RT 239:7 12) Respondents' Brief disingenuously claims the omission was never explained (at p. 21), or was intentional to entrap an unsuspecting buyer to pay the property tax arrears and restore the property to the tax rolls out of greed. Nothing in the record supports such a contention. (Respondents' Brief, p. 23 fn 3.)

to estimate the extent of the contamination or the cost of cleanup.

Similarly, the Tax Collector Reference Manual, Chapter 8, section 8124 on P. 13 recommends:

> CONTAMINATED PROPERTIES ON SUPERFUND CLEANUP LIST Properties on the Superfund list should not be sold at a tax sale. Information on current Superfund sites is available at the United States Environmental Protection Agency website, http://www.epa.gov/region9/superfund/superfundsites.html.
>
> NOTE: It may be possible to sell property not on the Superfund list but known or suspected to be contaminated. In such cases, consult county counsel on the specific circumstances. If the sale of property either known to be contaminated or suspected of being contaminated goes forward in a tax sale, disclose all that is known about the contamination. Do not attempt to estimate the extent of the contamination or the cost of cleanup.

Section 8243 on p. 29 reads:

> TRUTH AND DISCLOSURE AT PUBLIC AUCTION If a particular condition, such as a hazard is affecting a property being offered for sale and it is known by the tax collector, this information should be disclosed to the potential bidders before the property is offered for sale.
>
> Examples of conditions that should be disclosed include, but are not limited to, the following:
>
> • The property has an IRS lien. Bidders should be informed that the IRS may exercise its right of redemption up until 120 days after the sale.

- A 1911 delinquent bond may affect the property and must be paid current, in addition to the purchase price of the property.
- The property is known to contain toxic agents and may constitute a chemical hazard.
- A taxing agency, in order to preserve its lien, has objected to the sale of the property.

These Manual recommendations are no doubt intended to articulate salutary best practice in conducting tax sales. Perhaps the authors borrowed from common law disclosure obligations applicable to private contractual real estate transactions, which, by law are inapplicable to tax sales common law and statutory "caveat emptor" "as-is" property condition, without representations or warranty. Notably nothing in the manual suggests that a County Tax Collector had the authority contractually obligate their County to fulfill these recommendations in a manner that might override the statutory immunities included in the tax sale statutes, Revenue and Taxation Code section 3692.3. Neither do these recommendations suggest that the County may be liable for the cost of cleanup if the environmental health department fails to identify a property that is or may be contaminated. No statute mandates County Tax Collectors disclose the contaminated condition of properties on the tax sale list or withhold Superfund sites from sale.

What the Manuals' recommendations do suggest is that known contaminated properties should not be sold unless the condition is disclosed. Should a sale occur without disclosure as a result of error by County personnel, as the County of Fresno

stipulated having occurred in this case, the remedy under the statute is rescission pursuant to Revenue and Taxation Code section 3731, not an action for contract damages. Plaintiffs failed to submit a petition to rescind the sale of a tax deed as required by section 3731 (g) (See Point II, *infra),* and are therefore precluded from commencing a proceeding based on an alleged invalidity or irregularity of the tax sale, as provided in section 3725 (a)(1).

What is abundantly clear from the record, and the trial court explicitly found, is that the Fresno County Board of Supervisors never reviewed, approved or authorized the inclusion of the contaminated property clause in the terms of sale. (citation) As the County's opening and reply briefs clearly demonstrate, for the County of Fresno (and by extension, its taxpayers) to be contractually liable, the terms of the contract must be approved or authorized by the Board of Supervisors. There is no independent statutory authority to be found in the Revenue and Taxation Code, or the State Controller's Manuals respecting tax sales granting Tax Collectors to contractually bind Counties to liability if disclosure is inadvertently not made. Without that essential element, there is no contract and therefore no contractual liability.

How County Tax Collectors have implemented the Tax Sale Procedure Manual and Reference Manual recommendations regarding contaminated properties varies widely throughout the State of California and continues to evolve. Review of the terms of sale for current auctions listed online on the websites listed in

footnote 11, p. 29 of this Brief, indicates that at least six counties (Lassen, Madera, Modoc, San Benito, Siskiyou, and Tuolumne) still include the identical contaminated property term of sale as is at issue in the case as previously noted. Five counties have no provision concerning contaminated properties (Butte, Lake, Merced, San Joaquin, and Santa Barbara). Merced includes a link on its auction page to an environmental health department spreadsheet list of properties without explanation of its significance. San Joaquin posts a separate memo from the environmental health department regarding some of properties on the tax sale list with a disclaimer as to its completeness. Santa Cruz County's terms of sale includes the following:

> Possible Contaminated Properties
>
> Parcels offered for sale may contain hazardous wastes, toxic substances, or other substances regulated by federal, state, and local agencies. The County in no way assumes any responsibility, implied or otherwise, for any costs or liability of any kind imposed upon or voluntarily assumed by a purchaser or owner to clean up, or otherwise bring into compliance according to federal, state or local environmental laws for any parcel purchased. The County shall not have any duty to investigate the status of any parcel with regard to contamination by environmentally hazardous materials.

Los Angeles County's Tax Sale Terms and Conditions provides:

> "I. CONTAMINATED PROPERTIES Prospective bidders can obtain information regarding contaminated properties from the following agencies:
>
> • Los Angeles County Department of Public Works, Environmental Program Division at 900 South Fremont

Avenue, Third Floor Annex, Alhambra, California 91803, (626) 458-3517.

• City of Los Angeles, Department of Public Works Bureau of Sanitation, 1149 South Broadway, Los Angeles, California 90015, (213) 485-3791.

• California Environmental Protection Agency, Department of Toxic Substances Control, CalSites Help Desk, (877) 786-9427 or (916) 323-3400 or at envirostor.dtsc.ca.gov/public/. This agency maintains a Superfund cleanup list of sites contaminated with hazardous substances referred to as "CalSites."

• Water Quality Control Board. This agency maintains a website containing a list of potentially contaminated properties in the County of Los Angeles. The web address for properties in the Los Angeles Region is waterboards.ca.gov/losangeles and for properties in the Antelope Valley, waterboards.ca.gov/lahontan/.

Please be aware that not all contaminated property sites are on the Superfund list or identified by either the Department of Public Works, the City of Los Angeles, or listed on any of the sites referenced above. If the TTC has knowledge of contaminated property, the TTC may provide that information on its website at ttc.lacounty.gov. However, the TTC is NOT always aware of the condition of the properties in the sale and does not conduct any investigation to determine or confirm the existence or extent of the contamination. Therefore, it is ultimately the bidder's responsibility to investigate the condition and desirability of the property before purchasing at the auction. Again, the TTC urges bidders to conduct a thorough investigation and to contact the above agencies concerning contamination of a particular property"

Fresno County no longer provides a document entitled terms of sale in conjunction with its tax sales since this 2018 Court's unpublished ruling on the County's demurrer. Instead, it requires bidders to read and understand a document entitled, "Information and Warnings"[16] It begins:

> • NOT A CONTRACT: The sale of tax-defaulted property is a statutory process that is conducted according to Division 1, Part 6, Chapter 7 (beginning with section 3691) of the California Revenue and Taxation Code. No part of the County's tax-sale process is intended to alter or deviate in any way from that statutory scheme. No part of the County's tax sale process is intended to create or creates a contract, either express or implied, between the bidder and the County. This information and these warnings do not create a contract and shall not be construed as creating a contract between the bidder and the County. This information and these warnings are offered solely as a courtesy to help bidders understand the process for the sale of tax-defaulted property. If anything in this information and these warnings conflicts with the statutes governing the sale of tax defaulted property, the statutes control. If you are not sure what that means, you should consult with your own legal counsel before participating in the tax sale."

And on page two in a separate clause it reads:

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[16] Available online at: https://fresnocounty.california.taxdefaultsale.com/CORE/Public/documents/Bidder%20Acknowledgements%20-%20Information%20and%20Warnings.pdfBidder Acknowledgements - Information and Warnings.pdf (taxdefaultsale.com)

- NO REPRESENTATION BY COUNTY REGARDING HAZARDOUS MATERIALS: The County of Fresno has no obligation to make any representation regarding the presence or absence of hazardous materials on the properties available for tax sale. You are solely responsible to research and to investigate thoroughly the suitability, desirability, and condition of any property that you choose to bid on. Under California Revenue and Taxation Code section 3692.3, the County of Fresno and its employees acting in their official capacity are not liable for any known or unknown conditions of the property. No representation by the County of Fresno or any of its employees, vendors, or agents excuses you from your sole responsibility to research and to investigate thoroughly the condition of any property that you choose to bid on.

The practical result of sustaining the trial court judgment against Fresno County in this case will have no public policy benefit affecting tax sale practices throughout the state. Instead, o avoid potential liability County Tax Collectors will in future exclude any reference to or representation in the terms of sale about the possible contaminated condition of properties on the tax sale list, as Butte, Lake, Merced, San Joaquin, and Santa Barbara Counties do. The risk of liability is simply too great. The disclaimer may be explicit, as with Santa Cruz County and the current Fresno County documentation. At most, like Los Angeles County, reference will be made to other publicly available city, state and federal agencies with jurisdiction over contaminated properties and leave purchasers to make their own investigations. As is most consistent with the Tax Sale Statute and the cases heretofore construing it, cited in the County of Fresno's briefs, tax sales should be conducted in a manner

that does not expose counties to liability for inadvertent non-disclosure of contaminated properties. Sound public policy supports disclosure, but in a manner that does not invite claims of liability if made in error.

In sum, the intent of the contaminated property clause in Fresno County's 2014 Tax Sale Terms of Sale by its Tax Collector was to conform to the recommendations in the State Controller's Office Tax Sale Manuals – not to form a contract for which the County -- and ultimately its taxpayers -- could be held liable. As the County's briefs make abundantly clear, the County of Fresno cannot legally be held liable on an alleged contract unless the Board of Supervisors approves or authorizes an officer or agent of the County to form such a contract, or there is clear statutory authority for a subordinate public official such as the Tax Collector to create and enter into such a contract. Plaintiffs have not proven the existence of such authority, and the trial court erred in concluding that the Revenue and Taxation Code grants that authority to the Tax Collector.

**Conclusion**

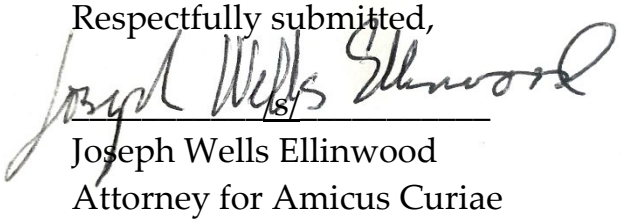
The trial court erred in finding that Plaintiffs attempted to rescind the sale (would that they had) and that the County Board of Supervisors refused to rescind. From there, the trial court's findings went further awry in its attempt to right a perceived injustice. The Plaintiffs deliberately and consistently sought to allege and then to affirm an alleged contract, not rescind the tax sale deed, without proving that the term is relies upon was validly undertaken by the

County of Fresno. The Plaintiffs are sophisticated real estate investors who substantially benefited from the transaction and should not be allowed to allocate the risk they knowingly undertook to the taxpayers of Fresno County.

For all of the reasons more specifically set forth in the briefs filed by the County of Fresno, and in this amicus on behalf of counties throughout the State of California, this misguided judgment must be reversed.

Respectfully submitted,

Dated: July 2, 2024



/s/

Joseph Wells Ellinwood
Attorney for Amicus Curiae
California State Association of Counties

**CERTIFICATION OF COMPLIANCE WITH CALIFORNIA RULES OF COURT, RULE 8.204(c)(1)**

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Palatino typeface. According to the word count feature in my Microsoft Word software, this brief contains 9,107 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 2d day of July, 2024 in Sacramento, California.

Respectfully submitted,

Dated: July 2, 2024

/s/
Joseph Wells Ellinwood
Attorney for Amicus Curiae
California State Association of Counties

## PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to this action. My business address is 1100 K Street, Suite 101, Sacramento, CA 95814.

On the date set forth below, I served:

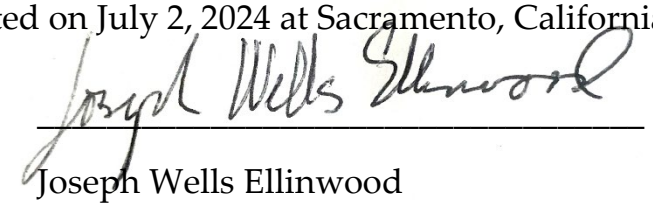
**CALIFORNIA STATE ASSOCIATION OF COUNTIES AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT COUNTY OF FRESNO**

on the following party(ies) in this action: *see attached list.*

**BY FIRST CLASS MAIL:** I enclosed the documents in an envelope addressed to the parties at the addresses above with postage paid. I mailed the documents on the date set forth below, from the place set forth below, by placing the mail at a business mail drop where I know the mail is picked up each day and deposited with the United States Postal Service.

**BY ELECTRONIC MAIL:** By causing true copy(ies) of PDF versions of said document(s) to be sent to the e-mail addresses of each party listed. The email address from which I served the documents is jellinwood@counties.org.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 2, 2024 at Sacramento, California.



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**Service by First Class Mail**