No. 20-190

**In the**
**Supreme Court of the United States**

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DANIEL SOHN AND JULIET SOHN,

Petitioners,

v.

COUNTY OF MARIPOSA, etc., et al.,

Respondents.

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**On Petition for Writ of Certiorari to the California Court of Appeal, Fifth Appellate District**

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# OPPOSITION TO PETITIONERS' PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Should this Court decline review of the California Court of Appeal's decision, which raises no conflict between the lower courts, and which is a fact-based determination that is unique to these parties?

2. Should this Court decline review of the California Court of Appeal's decision, which holds that Petitioners' proposed amended claims under 42 U.S.C. §1983 are time-barred due to Petitioners' constructive notice of the facts underlying their claims from the grant deed that Petitioners received in 1999?

3. Are Petitioners barred by the applicable two-year statute of limitations from bringing 42 U.S.C. §1983 civil rights claims in 2016 that arise out of offers of dedication contained in subdivision parcel maps that were recorded between 1977 and 1987, where California state law explicitly provides that the recordation of such maps provides constructive notice to the public of the contents of such maps?

4. Where Petitioners allege that their proposed amended civil rights claims under 42 U.S.C. §1983 arise out of a county's alleged invalid interpretation, circumvention and evasion of the requirements of the California Subdivision Map Act in relation to parcel maps that are recorded in the public records between 1977 and 1990, are such claims time-barred by the applicable two-year statute of limitations when Petitioners seek to file such claims for the first time in 2016.

## PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Defendants/Respondents include the County of Mariposa, Mariposa County Department of Public Works, and current or former employees of the County of Mariposa: Tony Stobbe, Gary Taylor, Russell Marks, and Mike Ziegenfuss. None of the Defendants/ Respondents are corporations within the meaning of Rule 29.6.

Petitioners Daniel Sohn and Juliet Sohn are individuals, who assert that they are not corporations within the meaning of Rule 29.6.

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Respondents respectfully request that this Court deny Petitioners' Petition For Writ Of Certiorari ("Petition") which seeks review of the judgment of the California Court of Appeal, Fifth Appellate District.

## OPINIONS BELOW

Petitioners' Appendix provides all orders and judgments by the Superior Court of California, the opinion by the California Court of Appeal, the Court of Appeal's order denying a Petition for Rehearing, and the California Supreme Court's order denying Petitioners' Petition for Review. Respondents are attaching to this Opposition selected portions of the Reporters' Transcript of proceedings of the Superior Court as Appendix E, App 34-App 43.

## CONSTITUTIONAL & STATUTORY PROVISIONS THAT ARE NOT SET OUT IN THE PETITION

**California Government Code § 66468 (Deerings 2020).**

The filing for record of a final or parcel map by the county recorder shall automatically and finally determine the validity of such map and when recorded shall impart constructive notice thereof.

## INTRODUCTION

This action arose out of Petitioners' ongoing dispute with their neighbors over the use of a shared easement over their respective properties. Petitioners and their neighbors' properties were created by

subdivision parcel maps that were accepted by the County of Mariposa and recorded in 1980. Those parcel maps included offers of dedication of a public access easement to the County. The County accepted those offers in 1991 in compliance with the California Subdivision Map Act ("SMA"), Cal. Govt. Code § 66410, *et seq*. (Deerings 2020). Petitioners acquired their property eight years later in 1999. As long ago as 2004, County staff informed Petitioners of the County's acceptance of the public easement in those parcel maps.

A dispute later arose between Petitioners and their neighbors over Petitioners placing obstructions and encroachments within the public easement area. In May 2015, County staff was compelled to remove Petitioners' obstructions and encroachments in the public easement area when Petitioners refused to do so. Petitioners' refusal to acknowledge the public nature of the easement was due to their erroneous belief about the validity of the Respondent's acceptance of the easement that was signed and recorded in 1991, over a quarter century ago.

Petitioners' erroneous belief became the centerpiece of this action against the County that was filed on November 4, 2016. Petitioners' purported First and Second Causes of Action challenged the validity of that acceptance in 1991. Petitioners' purported Third Cause of Action asserted a civil rights claim under 42 U.S.C. § 1983 based on the actions of the County staff in removing the obstructions and encroachments placed by Petitioners in the public easement area in May 2015.

When Respondents filed a demurrer against

Petitioners' First Amended Complaint, Petitioners acknowledged the defects in their pleading, and sought leave to amend their First, Second and Third Causes of Action. Respondents argued to the trial court that the amendments that Petitioners proposed failed to state facts that constitute valid causes of action. The trial court sustained Respondents' demurrer as to all of the causes of action, without leave to amend, and then granted judgment in favor of Respondents and against Petitioners.

On appeal to the California Court of Appeal, Fifth Appellate District, Petitioners argued that they should be granted leave to amend their complaint to add two new proposed 1983 claims under the purported "Third Cause of Action." One of those proposed claims attempts to elevate Petitioners' erroneous belief about the validity of the County's acceptance of the public easement in 1991 into a federal civil rights claim for damages under section 1983 ("Easement Claim"). Petitioners' second proposed amended 1983 claim alleges that the subdivision including Petitioners' property was an illegal "4x4" subdivision under the SMA when it was created in 1980 ("'4x4' Subdivision Claim").

The California Court of Appeal properly found below that both of Petitioners' proposed amended 1983 claims are based on alleged wrongful actions that Petitioners had constructive notice of when they received their grant deed in 1999. County staff also informed Petitioners in 2004 of the County's acceptance of the easement, which placed Petitioners on inquiry notice of the facts underlying their proposed Easement Claim. As the Court of Appeal

properly concluded, both of Petitioners' proposed amended 1983 claims are barred by the applicable two-year statute of limitations.

The instant Petition For Writ Of Certiarori ("Petition") therefor raises a strictly factual challenge to the findings by the California Court of Appeal that support the conclusion that both of Petitioners' proposed amended 1983 claims are time-barred. Those facts are unique to these parties alone. There is no conflict between the lower courts raised in the Petition. Accordingly, this Court should deny the Petition in its entirety.

## STATEMENT OF THE CASE

### A. Factual Background

In 1980, Gary Bishop subdivided a contiguous piece of property into four parcels lettered A through D. The January 21, 1980 "PARCEL MAP [¶] FOR [¶] GARY BISHOP," recorded on page 10 of Book 17 of County's Parcel Maps, showed Parcels A, B, and C each comprised between 5.2 and 5.6 acres." (Petitioners' Appendix, App. 13.) Parcel D, on the other hand, comprised 21.4 acres. The Bishop map also contained the following language: "NOTE: [¶] ALL EASEMENTS SHOWN ON THIS MAP ARE 60' WIDE NON-EXCLUSIVE EASEMENTS FOR PUBLIC USE AND PUBLIC UTILITIES: OFFERED FOR DEDICATION BY THIS MAP; SEE OWNERS CERTIFICATE ...." (Petitioners' Appendix, App 11.) g The Bishop map also stated:

> OWNER[:] [¶] The UNDERSIGNED, being the parties having a record title interest in the land as plotted by this map, hereby consent to the preparation and recordation of this map, and offer for dedication to . . . County all easements as shown on this map and so marked as offered for dedication. This offer of dedication to . . . County shall remain open until either accepted or rejected, in writing, by . . . County. [Petitioners' Appendix, App 12.]

Later that year, Dennis Huntley acquired the area identified as Parcel D on the Bishop map and subdivided it into four parcels lettered A through D. (Petitioners' Appendix, App 12.) The June 4, 1980 "PARCEL MAP [¶] FOR [¶] DENNIS HUNTLEY," recorded on page 24 of Book 17 of County's Parcel Maps, showed Parcels A, B, C, and D each comprised between 5.1 and 6.1 acres. Petitioners' Appendix, App 12. Parcels A and D bordered land labeled "(BISHOP)." (Petitioners' Appendix, App 12.) The Huntley map also showed a "60' NON-EXCLUSIVE P.U. & ACCESS EASEMENT BY PARCEL MAP BOOK 17 PAGE 10." (Petitioners' Appendix, App 12.) In addition, the Huntley map showed a "60' WIDE NON-EXCLUSIVE P.U. & ACCESS EASEMENT OFFERED FOR DEDICATION BY THIS MAP."

(Petitioners' Appendix, App 12.) The Huntley further stated:

> OWNER[:] [¶] THE UNDERSIGNED, BEING THE PARTIES HAVING A RECORD TITLE INTEREST IN THE LAND AS PLOTTED BY THIS MAP, HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS MAP, AND OFFER FOR DEDICATION TO . . . COUNTY ALL EASEMENTS AS SHOWN ON THIS MAP AND SO MARKED AS OFFERED FOR DEDICATION. THESE OFFERS OF DEDICATION TO . . . COUNTY SHALL REMAIN OPEN UNTIL EITHER ACCEPTED OR REJECTED, IN WRITING[,] BY . . . COUNTY. [Petitioners' Appendix, App 12-13.]

On April 5, 1991, County recorded a document numbered 911744 and titled "ACCEPTANCE OF DEDICATION" ("1991 Acceptance"). (Petitioners' Appendix, App 13.) It read in part:

> This is to certify that the County Engineer hereby accepts on behalf of the public, the Dedication of Easements along the non-County maintained roads as shown on: [¶] … [¶]

> that certain "Parcel Map for GARY BISHOP", recorded JANUARY 21, 1980 in Book 17 of Parcel Maps at Page 10, Mariposa County Records; and marked as offered for dedication. [¶]
> . . . [¶]
> that certain "Parcel Map for DENNIS HUNTLEY", recorded APRIL 6, 1980 in Book 17 of Parcel Maps at Page 24, Mariposa County Records; and marked as offered for dedication. [Petitioners' Appendix, App 13.]

On June 28, 1999, via grant deed, Petitioners acquired the area described as "Parcel A as shown on the Parcel Map for Dennis Huntley filed June 4, 1980 in Book 17 of Parcel Maps at Page 24, Mariposa County Records." (Petitioners' Appendix, App 14.) The strip of land offered for dedication by the Bishop and Huntley maps lies in part on this property. (Petitioners' Appendix, App 14.)

In a letter dated May 28, 2004, Respondent responded to Petitioners' "request for an investigation . . . regarding a fence that has been constructed within the access easement for Vista Grande Way." (Petitioners' Appendix, App 14.) That letter read in part:

> 1. Property owners . . . Fredric and Muriel Temps . . . installed fencing, landscaping, and an address structure in a

> road easement . . . for Vista Grande Way. . . .
>
> 2. The road easement was created by a recorded parcel map (recorded in Book 17 of Parcel Maps at Page 10) and offered for dedication for public access, utilities and maintenance.
>
> 3. The offer of dedication was accepted by . . . County for public access and public utilities, but rejected for public maintenance. [Petitioners' Appendix, App 14.]

**B. Proceedings Below**

On November 4, 2016, Petitioners filed their original complaint. (Petitioners' Appendix, App 18.) On April 18, 2017, they filed the operative First Amended Complaint ("FAC") in which they pled multiple causes of action, including one for damages under section 1983 against County defendants. (Petitioners' Appendix, App 18.)

On June 23, 2017, Respondents filed a demurrer to the entire FAC, and to each cause of action alleged in the FAC. (Petitioners' Appendix, App 19.) A hearing on the demurrer was held on September 15, 2017. There, the Sohns' counsel requested leave to amend the complaint. (Petitioners' Appendix, App 20.)

Following the hearing, in an order filed on the same day, the trial court sustained the general demurrer "to the entire [complaint]" without leave to amend. The judgment of dismissal was also entered on the same day. (Petitioners' Appendix, App 20.)

On appeal, Petitioners challenged the trial court's ruling solely as it pertains to the proposed amended section 1983 claims against Respondents that Petitioners requested leave to add to the purported Third Cause of Action. (Petitioners' Appendix, App 21.) Thus, the trial court's Judgment as to the purported First and Second Causes of Action was never challenged by Petitioners on appeal.

On March 18, 2020, the Court of Appeal held that "[t]he Sohns' proposed amendments to their complaint are barred by the statute of limitations. Accordingly, we find the superior court did not abuse its discretion when it sustained County defendants' demurrer without leave to amend. We affirm the judgment." (Petitioners' Appendix, App 11.)

The Court of Appeal denied Petitioners' Petition For Rehearing. (Petitioners' Appendix, App 32.)

The California Supreme Court denied Petitioners' Petition For Review. (Petitioners' Appendix, App 33.)

## REASONS FOR DENYING THE PETITION

### A. The Decision Below Is Solely Based On The Facts In This Particular Case. Petitioners Identify No Conflict Among The Lower Courts.

The fact-bound resolution of this California case has no determinate future implications and that alone is reason the Petition should be denied. *See Rice v. Sioux City Mem'l Park Cemetery,* 349 U.S. 70, 79 (1955) [recognizing the importance of limiting grants of certiorari to cases "of importance to the public, as distinguished from that of the parties."] In the end, the Petition is nothing more than a complaint that case-specific facts were found against Petitioners, a wholly inadequate basis for a grant of certiorari.

Additionally, the Petition does not refer to any conflict either between the circuit courts of appeals or between *any* lower courts on the issues raised in the Petition. Denial of certiorari is warranted on that basis alone. *See e.g., R. Simpson & Co. v. Commissioner*, 321 U.S. 225, 227 (1944) ["There appearing to be no conflict of decision between circuits, we on November 9, 1942 denied certiorari"]; *General Talking Pictures Corp. v. Western Electric Co.*, 304 U.S. 175, 178-179 (1938) ["Nor would the writ be granted to review the questions of anticipation and invention that petitioner argues, for as to them there is no conflict between decisions of circuit courts of appeals."] *See also Watt v. Alaska*, 451 U.S. 259, 274 (1981) (STEVENS, J, concurring) ["The decision of the Court of Appeals did not conflict with any other judicial decision, and there is no reason to anticipate that a comparable issue will arise in another Circuit in the foreseeable future." "[T]he public interest would have been better served by allowing this litigation to terminate in the Court of Appeals."]

## B. The Decision By The California Court Of Appeal Is Correct.

### 1. The two-year statute of limitations bars Petitioners' proposed amended claims under 42 U.S.C. §1983 because Petitioners received constructive notice of the facts underlying those claims from their 1999 grant deed.

The California Court of Appeal held below that both of Petitioners' proposed amended 1983 claims were time-barred. That is because the Bishop and Huntley maps – which were referenced in the grant deed given to Petitioners in 1999 – gave Petitioners constructive notice of the facts underlying those proposed amended 1983 claims. The California Court of Appeal explained:

> On even a cursory examination, the Bishop and Huntley maps openly display how Bishop's original property was apportioned into seven parcels of roughly similar size. Moreover, assuming the facts pleaded by the Sohns are true, these maps would not have a recording of County's acceptance of their offers of dedication, a certificate of said offers, or a separate instrument of said offers

> recorded concurrently with or prior to the maps' filing. [Petitioners' Appendix, App 29.]

The California Court of Appeal concluded:

> Here, because the Sohns had constructive notice of the Bishop and Huntley maps well before 2004, more than 12 years before they filed their original complaint, they cannot claim ignorance of what they have set forth as the "true state of facts." [Petitioners' Appendix, App 30.]

Those conclusions by the Court of Appeal are based on well-established law. Federal courts recognize that grant deeds give constructive notice of their contents. *See Ayers v. Davidson*, 285 F.2d 137, 139-140 (5th Cir. 1960) ["'Constructive notice of the making of a deed begins the moment it is lodged with the proper officer for record.' Besides, where the alleged fraudulent conveyance is recorded, the circumstances are public and the means of finding out the character of the transaction are available. Consequently, the running of the statute of limitation is not prevented." (Citations omitted.)] *See also Friedeberg v. Bullard*, 2019 U.S. Dist. LEXIS 52898 at *16, 2019 WL 1416473 (E.D.Ark. 2019) ["The recording of the deed gave him constructive notice of its contents"]; *Warwick v. Bank of N.Y. Mellon*, 2016 U.S.Dist.LEXIS 68167 at *69 (C.D.Ca. 2016) ["Because plaintiffs had constructive notice of the assignment when the Assignment of Deed was recorded in the Ventura County Recorder's Office in

May 2011, the statute of limitations [on plaintiffs' federal Truth In Lending Act claim] began to run - at the latest – from that date."] California state law similarly holds that "[a] recorded instrument . . . [gives] constructive notice . . . of its own contents and of other documents referred to by it." *Caito v. United California Bank,* 20 Cal.3d 694, 702, 576 P.2d 466, 470, 144 Cal.Rptr. 751, 755 (Cal. 1978). *See American Medical International, Inc. v. Feller,* 59 Cal.App.3d 1008, 1020-1021, 131 Cal.Rptr. 270, 277-278 (Cal.Ct.App. 1976) [rule of constructive notice extends to whatever knowledge would be gained from investigating document referenced in recorded instrument.] Petitioners concede that the California Court of Appeal's conclusion about the constructive notice given by the Petitioners' grant deed "is true." (Petition, 26.)

**2. Petitioners received constructive notice of the alleged "scheme" that underlies their "4X4 Subdivision claim" from the parcel maps that were recorded between 1977 and 1987.**

Petitioners challenge the California Court of Appeal's decision on the ground that "the knowledge that Bishop's original property was subdivided into seven parcels by two different owner/developers over a short period of time did nothing to provide actual or constructive notice to the Sohns that this same one-two tactic played out dozens of times over the course of ten years." (Petition, 26.) Petitioners argue that

nothing in the Bishop and Huntley maps, "standing alone, would have led the Sohns, or any reasonable person, to suspect that the seemingly ordinary approval of these two subdivisions was part of a much larger, ongoing fraudulent scheme to evade the requirements of the SMA." (Petition, 26.) However, those arguments are not persuasive for two reasons.

First, the contents of the Bishop and Huntley maps put Petitioners on inquiry notice of the alleged "scheme to circumvent the SMA".

Second, Petitioners had constructive notice of *all* of the parcel maps that Petitioners assert were part of the alleged "scheme" that underlies their proposed amended 1983 claims. That constructive notice to Petitioners (and to the rest of the public) arose the moment that each of those parcel maps were recorded between 1977 and 1987. As Justice Mosk of the California Supreme Court stated: "Even in its earliest incarnations, California subdivision law has sought to ensure at the very least that subdividers provided accurate maps with sufficient information to give constructive notice of the subdivision to the public and to subsequent purchasers." *Morehart v. County of Santa Barbara*, 7 Cal.4th 725, 766; 872 P.2d 143, 169, 29 Cal.Rptr.2d 804, 830 (Cal. 1994)(J. Mosk, concurrence).

Since 1975, California's subdivision law has provided that "[t]he filing for record of a final or parcel map by the county recorder shall automatically and finally determine the validity of such map and when recorded shall impart constructive notice thereof." Cal. Govt. Code § 66468 (Deerings, 2020) (emphasis added.) *See also* Daniel J. Curtin, Jr., *et al.*, California

Subdivision Map Act And The Development Process (2d ed.), CEB, September 2020 Update, §10.43, p. 10-35 ["Filing a final map or parcel map for recording automatically and finally determines the validity of the map and imparts constructive notice of its existence."]) California state law treats parcel maps like grant deeds in that a subdivision map, when recorded, gives "constructive notice to transferees" and "partakes of the qualifications of a conveyance," *John Taft Corp. v. Advisory Agency*, 161 Cal.App.3d 749, 756, 207 Cal.Rptr. 840, 844 (Cal.Ct.App. 1984), and, as the Fifth Circuit Court of Appeal recognizes, the circumstances of the recording of a deed are "public and the means of finding out the character of the transaction are available." *Ayers v. Davidson*, *supra*, 285 F.2d at 139-140.

Therefore, for decades before they filed their lawsuit, Petitioners not only had constructive notice of the allegedly illegal subdivision arising out of the Bishop and Huntley maps, but they also had constructive notice of *all* of the parcel maps that were recorded between 1977 and 1987 that comprise the alleged "scheme" upon which they based their proposed amended 1983 claims. "Whatever is notice enough to excite attention and put the party on his guard and call for inquiry, is notice of everything to which such inquiry might have led. When a person has sufficient information to lead him to a fact, he shall be deemed conversant of it." *Wood v. Carpenter*, 101 U.S. 135, 141 (1879). Contrary to Petitioners' argument, "[i]nquiry notice does not require full knowledge of the material facts; rather, plaintiffs are on inquiry notice when they have sufficient knowledge to raise their

suspicions to the point where persons of ordinary intelligence and prudence would commence an investigation that, if pursued would lead to the discovery of the injury." *Norman v. Elkin*, 961 F.3d 275, 290 (3rd Cir. 2020). Here, Petitioners' inquiry notice of the alleged "scheme" was received from the Petitioners' constructive notice of the parcel maps that were recorded between 1977 and 1987. That "[c]onstructive notice 'is the equivalent of actual knowledge; i.e. knowledge of its contents is conclusively presumed.'" *Citizens for Covenant Compliance v. Anderson*, 12 Cal.4th 345, 355, 906 P.2d 1314, 1320, 47 Cal.Rptr. 898, 904 (Cal. 1995). "'[W]here the plaintiff has notice or information of circumstances to put a reasonable person on inquiry, or has the opportunity to obtain knowledge from sources open to his investigation … the statute commences to run.'" *Sanchez v. South Hoover Hospital*, 18 Cal.3d 93, 101, 553 P. 2d 1129, 1135, 132 Cal.Rptr. 657, 663 (Cal. 1976).

In short, Petitioners' proposed amended "4x4" Subdivision Claim, which arises out of the allegedly illegal subdivisions created by parcel maps that were recorded between 1977 and 1987, is barred by the applicable two-year statute of limitations. The decision by the California Count of Appeal, below, was correct.

**3. Petitioners received constructive notice of the County's allegedly illegal acceptance of the offer of dedication in the Bishop and**

**Huntley maps when that acceptance was recorded in 1991.**

Petitioners' proposed amended Easement Claim, which involves the alleged invalidity of the 1991 Acceptance, is also time-barred because the statute of limitations on that claim began to run in April 1991.

According to Petitioners, the alleged violation of the SMA by Respondents regarding the Bishop and Huntley maps occurred in 1980 and 1991. Petitioners allege that "[t]heir complaint for violations of their civil rights" are based on the "invalid easement." (Petition, p. 25). Petitioners allege that their civil rights were violated by Respondents' actions in May 2015 because "there was never a valid acceptance of the Bishop or Huntley offers of dedication of easements." (Petition, p. 22.) That allegedly invalid acceptance by the County in 1991 was allegedly because "no such rejection [by the County] occurred with respect to the Bishop and Huntley offers," (Petition, p. 24), which offers were made in 1980. Thus, Petitioners' proposed amended civil rights cause of action in the Easement Claim is based on alleged wrongful conduct that took place no later than 1991.

The County's recordation of the 1991 Acceptance as Instrument No. 911744 on April 5, 1991 gave constructive notice to the public (including Petitioners and their predecessors in interest) of the County's acceptance of the offers of dedication in the Bishop and Huntley maps. "The official act of recordation and the common use of a notary public in

the execution" of real property records "assure their reliability, and *the maintenance of the documents in the recorder's office makes their existence and text capable of ready confirmation*, thereby placing such documents beyond reasonable dispute." *Fontenot v. Wells Fargo Bank, N.A.*, 198 Cal.App.4th 256, 264-265, 129 Cal.Rptr.3d 467, 474 (Cal.Ct.App. 2011) (emphasis added), *disapproved on other grounds, Yvanova v. New Century Mortgage Corp.*, 62 Cal. 4th 919, 939, 199 Cal.Rptr.3d 66, 82, 365 P. 3d 845, 858 (Cal. 2016). *Cf. Sacramento v. Jensen*, 146 Cal.App.2d 114, 122, 303 P. 2d 549, 554 (Cal.Ct.App. 1956) [after County Board of Supervisors rejected an original offer to dedicate a street, "it did not in any way require that the following offer and acceptance should take such form as to be entitled to public record, thus giving constructive notice that despite the original rejection, a subsequent dedication had occurred"]; *Galeb v. Cupertino Sanitary Dist.*, 227 Cal.App.2d 294, 302-303, 38 Cal.Rptr.580, 586 (Cal.Ct.App. 1964) [recordation of resolution of acceptance of a street dedication (required under former statute) affords constructive notice.]

In addition, Petitioners had actual knowledge in 2004 of facts that gave Petitioners inquiry notice of the 1991 Acceptance. Petitioners admit that "[i]n 2004, the Respondent represented to the Sohns, in writing, that the road easement "was created by a recorded parcel map (recorded in Book 17 of Parcel Maps, at Page 10), and that "[t]he offer of dedication was accepted by Mariposa County." (Petition, p. 24.) That fact alone establishes that Petitioners were placed on inquiry notice of the 1991 Acceptance in

2004. Thus, the two-year statute of limitations ran out long before Petitioners filed this action.

Petitioners argue that they "had no reason to doubt this representation [by the Respondent in 2004], and no reason to investigate it," and that it was not until much later that Petitioners "had reason to investigate the specifics of the easement and learned, for the first time, that in fact, there never was a valid easement." (Petition, pp. 24-25.) That argument is not persuasive. According to Petitioners, the alleged invalidity of the 1991 Acceptance is due to the alleged invalidity of the offers of dedication that is on the face of the Bishop and Huntley maps. Petitioners argue

> Because no such rejection[of the offers of dedication] occurred with respect to the Bishop and Huntley offers, the Respondent was without legal authority to retroactively "accept" the offers eleven years after the offers were made and the subdivided parcels resold. (Petition, p. 21.)

Petitioners had constructive notice of the offers of dedication on the Bishop and Huntley maps from Petitioners' 1999 grant deed. Those maps gave Petitioners inquiry notice of the alleged lack of a rejection on the face of those maps. Therefore, the County's representation to Petitioners in 2004 of the County's acceptance of those offers of dedication, despite the alleged lack of an express acceptance or rejection on the face of those maps, would have given Petitioners reason to investigate the validity of that acceptance by the County. *See Peregrine Funding, Inc.*

*v. Sheppard Mullin Richter & Hampton LLP,* 133 Cal.App.4th 658, 682, 35 Cal.Rptr.3d 31, 42 (Cal.Ct.App. 2005) [The "statute of limitation begins to run when a plaintiff suspects or should suspect 'that someone has done something wrong to [him or] her'" (citation)]; *Mangini v. Aerojet-General Corp.* (1991) 230 Cal.App.3d 1125, 1150, 281 Cal.Rptr.3d 827, 848 (Cal.Ct.App. 1991) ["If a person becomes aware of facts which would make a reasonably prudent person suspicious, he or she has a duty to investigate further and is charged with knowledge of matters which would have been revealed by such an investigation."]

In short, the two-year statute of limitation on Petitioners' proposed Easement Claim ran out long before they filed their complaint in 2016. Petitioners are time-barred from raising that claim.

**4. Contrary to Petitioners' erroneous argument, the County did raise the statute of limitations defense to Petitioners' alleged amended 1983 claims in the original proceeding in the trial court.**

Petitioners argue that Respondents did not raise a statute of limitations defense to the Third Cause of Action for violation of civil rights (Petition, p. 8), and that the statute of limitations "had not been raised as a defense and was not the basis of the challenged order." (Petition, p. 8.) That is not true. At the hearing on the demurrer, Petitioners' counsel described the new civil rights claims that Petitioners sought to add to the Third Cause of Action, and

counsel for Respondents objected to those proposed amended 1983 claims, as follows:

> MR. ROBERTS: … The other actions deal with the civil rights violations, and I have indicated as well that I would seek leave to amend those.
>
> I think to a certain extent, I will have some difficulty in alleging what has been stated in the first portion of the original demurrer to the Complaint as opposed to the reply. But, nevertheless, I think under the circumstances that I have now been confronted with regard to how the County acted as it related to these particular maps, and how they potentially have acted with regard to other maps, the same type in four-by-four type of subdivisions in contravention of the Subdivision Map Act that I believe that there is a cause of action for violation of the civil rights of the Sohns as it relates to a potential conspiracy between the County itself and each of those persons that submitted a map and then a subsequent map to subdivide these pieces of properties above and beyond the limit four that is

set forth in the Subdivision Map. Act.

And I believe that I can adequately, based upon the demurrers and the information that is provided in the demurrers with regard to the headings of those, I believe I can adequately plead that we believe there was a conspiracy to the defraud the public and my clients with regard to how they were handling these subdivisions.

And my clients have received damages, and I've asked the Court previously that I would like to amend to allege those damages and, secondly, in this case, with regard to the civil rights, I believe that based upon what I have seen now that I can adequately – I still have time to do that as far as the statute of limitations for the violation of civil rights, and to that extent I would ask the Court for leave to amend in that respect as well.

THE COURT: Any response?

MR. HANSEN: Two responses, your Honor.

…[¶]

Furthermore, the reality here is that they are estopped by decades of acquiescence, and I would say, as a matter of law, from asserting that kind of an argument because it's the most fundamental of juris prudential things that when someone has accepted the benefits of a legal error and acquiesced to that, they have in the language of Civil Code 2516, quote, lost the right of objecting to it.

In this case, we're talking about the Sohns having – they have owed the property since 1999 under their own allegation in their Complaint, and they have accepted the benefits of that property and the benefits of that subdivision that they are now opposing for this many years, quarter century, and, therefore, they have lost the right to object to that.

Furthermore, if I'm now hearing this correctly, that they seek to **amend to have a civil rights type claim** for a conspiracy of what? That in 1991, the County conspired with everybody to wrongfully accept the dedications or that they

conspired in 1980 to accept the maps? I would say by the fact that the Sohns purchased their property in 1991 and everything they're objecting --

THE COURT: '99.

MR. HANSEN: They bought in 1999. Thank you.

That everything they're objecting to is a matter of public record, recorded against their property at the time that they bought the property, they had constructive notice at the time they bought their property, and I'm sure it was – I would venture to suggest that they have – well, let's just put it this way: They bought with constructive notice of everything they're now alleging in 1999 and any **statute of limitations** they could possibly assert would apply to **civil rights**, they would have had their discovery being a reasonable notice of a public record, any statute of limitations would have lost in, what, 2002, 2003, 2004. They're 15 years late." [Reporter's Transcript Of Court Hearing, September 15, 2017, 39:23-43:12, attached

hereto as Appendix E (App 34-43).

Thus, as shown above from the Reporter's Transcript of the hearing before the trial court, Respondents raised the statute of limitations defense to the proposed amended 1983 civil rights claims that Petitioners asked the trial court leave to add to the purported Third Cause of Action in the complaint.

### C. Even If The Statute Of Limitations Was No Bar In This Case, Petitioners' Underlying Claims That Are Based Entirely On California State Law Are Without Legal Merit.

Petitioners spend a considerable amount of time in the Petition discussing the merits of their allegations that Respondents violated the Subdivision Map Act, even though Petitioners concede that "the Court of Appeal never considered [their allegations] on the merits." (Petition, p. 11.) This Court should not grant review on that ground because even those underlying allegations are legally erroneous under California state law.

Contrary to Petitioners' legal contention, the County could legally accept the offers of dedication of the easement in the Bishop and Huntley Maps by way of the 1991 Acceptance. Petitioners' argument overlooks long-established case law that holds that "since the statute required that the offeree either accept or reject an offer of dedication at the time the map was approved, *the refusal to accept constituted a rejection* of the offer to dedicate." (*Sacramento v.*

*Jensen, supra,* 146 Cal.App.2d at 117, 303 P.3d at 551 (emphasis added).) Thus, by failing to accept the offers of dedication at the time the maps were recorded, the County "rejected" those offers for purposes of section 66477.2. And even if the County failed to accept or reject the offers of dedication at the time the maps were filed in 1980, "[d]edication is not governed by the ordinary rules applicable to the law of contracts" *Coppinger v. Rawlins,* 239 Cal.App.4th 608, 614, 191 Cal.Rptr.3d 414, 418 (Cal.Ct.App.2015) and both maps explicitly state that the offers shall "remain open" until either accepted or rejected by the County "in writing." In the FAC, the only "writing" by the County that is alleged is the 1991 Acceptance. Therefore, the County did "reject" the offers of dedication for purposes of the SMA.

Furthermore, Government Code section 66477.2 recognizes the County's authority to accept easement dedications after parcel maps are filed. Section 66477.2, subdivision (a), provides:

> If *at the time the final map is approved*, any streets, paths, alleys, public utility easements, rights-of-way for local transit facilities such as bus turnouts, benches, shelters, landing pads, and similar items, which directly benefit the residents of a subdivision, or storm drainage easements are rejected, subject to Section 771.010 of the Code of Civil Procedure, *the offer of dedication shall remain open*

> and the legislative body may by resolution *at any later date*, and without further action by the subdivider, rescind its action and *accept* and open the *streets*, paths, alleys, rights-of-way for local transit facilities such as bus turnouts, benches, shelters, landing pads, and similar items, which directly benefit the residents of a subdivision, or storm drainage easements for public use, which acceptance shall be recorded in the office of the county recorder. [Emphasis added.]

Based on those legal principles, the California Supreme Court in *Stump v. Cornell Construction Co.,* 29 Cal.2d 448, 452, 175 P.2d 510, 511 (Cal. 1946), held that an offer of dedication was properly accepted by the City of Los Angeles in 1944 after the parcel map was approved and filed in 1941. The Subdivision Map Act requires that the city either accept or reject an offer of dedication at the time it approves the final map. In the present case the city's acceptance of the offer to dedicate certain streets and alleys specifically excepted "those strips marked 'future street' and 'future alley.'" This constituted a rejection by the city of the offer to dedicate the "future alley," but *by the terms of the statute the rejection was not final*, *the offer was deemed to remain open*, and the city was authorized to rescind the rejection and accept the offer of dedication at any later date. The offer to dedicate

the alley here involved was accepted and the dedication was completed in conformity with the statute by the resolution of the city council on August 22, 1944. *Stump, supra,* 29 Cal.2d at 451-452, 175 P.2d at 512 (emphasis added). *See also County of Orange v. Cole*, 96 Cal.App.2d 163, 170-171, 215 P.2d 41, 46-47 (Cal.Ct.App. 1950) ["the rejection of an offer of dedication does not require that a new offer be made by the proposer. …[S]uch rejection no longer terminates the offer, but it 'shall remain open.'"] *See e.g., Ratchford v. County of Sonoma*, 22 Cal.App.3d 1056, 1071-1072, 99 Cal.Rptr. 887, 896-897 (Cal.Ct. App. 1972) [offer made in 1908 could be accepted in 1968.]

Consequently, when the County neither expressly accepted nor expressly rejected the offers of dedication when it approved the Bishop and Huntley Maps in 1980, "[t]his constituted a rejection by the [County] of the offer[s] to dedicate the [Easement], but by the terms of the statute the rejection was not final, the offer was deemed to remain open, and the [County] was authorized to rescind the rejection and accept the offer of dedication at any later date." *Stump, supra,* 29 Cal.2d at 451-452, 175 P.2d at 512. Indeed, the explicit language in the Bishop and Huntley Maps allowed the offer to remain open until it was accepted by the County in writing.

In short, the fundamental legal contention underlying Petitioners' proposed Easement Claim is erroneous, as a matter of law.

## CONCLUSION

The Petition For Writ Of Certiorari raises no conflict between the lower courts. Instead, it challenges an entirely fact-based determination by the California Court of Appeal that establishes that both of the proposed amended 1983 claims that Petitioners seek leave to add to their purported Third Cause of Action are barred by the applicable two-year statute of limitations. Respondents raised that defense in the oral argument in the trial court. Furthermore, the underlying legal contention behind Petitioners' proposed Easement Claim is meritless under California's Subdivision Map Act, as a matter of law. Thus, the Court of Appeal correctly held that the trial court properly sustained Respondents' demurrer to the Third Cause of Action without leave to amend, because "it appears that under applicable substantive law there is no reasonable possibility that an amendment could remedy the defects." *See Dalton v. East Bay Municipal Utility District,* 18 Cal.App.4th 1566, 1570-1571 , 23 Cal.Rptr.2d 230, 231-232 (Cal.Ct.App.1993). Accordingly, this Court should deny the Petition For Writ Of Certiorari in its entirety.

Respectfully submitted,

*/s/ Glen C. Hansen*
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Counsel for Respondents

# APPENDIX E

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF MARIPOSA
Before Honorable Leslie C. Nichols, Judge

DANIEL SOHN and JULIET SOHN,
Plaintiffs,

vs.

COUNTY OF MARIPOSA, MARIPOSA COUNTY BOARD OF SUPERVISORS, MARIPOSA COUNTY DEPARTMENT OF PUBLIC WORKS, AND ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN, OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFFS' TITLE OR ANY CLOUD ON PLAINTIFFS' TITLE THERETO, and
DOES 1 through 50,
. Defendants.

Case No. 10841

Mariposa, California
Friday, September 15, 2017, at 1:33 p.m.

REPORTER'S TRANSCRIPT OF COURT HEARING (EXCERPT PAGES 39-44)

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…..We did not find an acceptance of those maps. And code section of the Subdivision Map Account at 66477.1 speaks specifically to what must be done to certify a map, and in this case that was not done.

So the issue is, just because it got recorded after the fact, does that then presume that there was an acceptance? And I don't know that it does. And because of that, we may have to be back to 1980, what the County was doing at that particular time.

THE COURT: And are there any other arguments you'd like to- I've been pretty interactive. I just want to give you a full chance without interruption to address any of the arguments raised on the County's related to defendants' demurrer before we turn to the second demurrer.

MR. ROBERTS: Those are dealing, your Honor, if I may, to the first and second cause of action.

THE COURT: Any cause of action.

MR. ROBERTS: I understand. Thank you. The other actions deal with the civil rights violations, and I have indicated as well that I would seek leave to amend those. I think to a certain extent, I will have some difficulty in alleging what has been stated in the first portion of the original demurrer to the Complaint as opposed to the reply. But, nevertheless, I think under the circumstances that I have now been

confronted with with regard to how the County acted as it related to these particular maps, and how they potentially have acted with regard to other maps, the same type in four-by-four type of subdivisions in contravention of the Subdivision Map Act that I believe that there is a cause of action for violation of the civil rights of the Sohns as it relates to a potential conspiracy between the County itself and each of those persons that submitted a map and then a subsequent map to subdivide these pieces of properties above and beyond the limit four that is set forth in the Subdivision Map Act.

And I believe that I can adequately, based upon the dem urrersand the information that is provided in the demurrers with regard to the headings of those, I believe I can adequately plead that we believe there was a conspiracy to the defraud the public and my clients with regard to how they were handling these subdivisions.

And my clients have received damages, and I've asked the Court previously that I would like to amend to allege those damages and, secondly, in this case, with regard to the civil rights, I believe that based upon what I have seen now that I can adequately -- I still have time to do that as far as the statute of limitations for the violation of civil rights, and to that extent I would ask the Court for leave to amend in that respect as well.

THE COURT: Any response?

MR. HANSEN: Two responses, your Honor. First to the idea of nullification of the 1980 maps, I would say, number one, if they were successful in that, they have just lost their standing to bring the case because if the maps are nullified, the Sohns have no property and they have just walked right out of all standing.

Furthermore, the reality here is that they are estopped by decades of acquiescence, and I would say, as a matter of law, from asserting that kind of an argument because it's the most fundamental of jurisprudential things that when someone has accepted the benefits of a legal error and acquiesced to that, they have in the language of Civil Code 2516, quote, lost the right of objecting to it.

In this case, we're talking about the Sohns having -- they have owned the property since 1999 under their own allegation in their Complaint, and they have accepted the benefits of that property and the benefits of that subdivision that they are now opposing for this many years, quarter century, and, therefore, they have lost the right to object to that.

Furthermore, if I'm now hearing this correctly, that they seek to amend to have a civil rights type claim for a conspiracy of what? That in 1991, the County conspired with everybody to wrongfully accept the

dedications or that they conspired in 1980 to accept the maps? I would say by the fact that the Sohns purchased their property in 1991 and everything they're objecting –

THE COURT: '99.

MR. HANSEN: They bought in 1999. Thank you.

That everything they're objecting to is a matter of public record, recorded against their property at the time that they bought the property, they had constructive notice at the time they bought their property, and I'm sure it was I would venture to suggest they have -- well, let's just put it this way: They bought with constructive notice of everything they're now alleging in 1999 and any statute of limitation they could possibly assert would apply to civil rights , they would have had their discovery being a reasonable notice of a public record, any statute of limitations would have been lost in, what, 2002, 2003, 2004. They're 15 years late .

THE COURT : Thank you. Are we concluded with the arguments for the County?

MR. CARDELLA: If I may add.

THE COURT: State your name once again.

MR. CARDEL LA: Nicholas Cardella.

Regarding the fourth cause of action, your Honor, I just want to address the

Plaintiffs' request for leave to amend.

No reasonable possibility exists that the Fourth Cause of Action can be amended in a matter to –

THE COURT: That cause of action seeks what relief.

MR. CARDELLA: That is the Section 1983 claim relating to false imprisonment and false arrest. With respect to that action, the statute of limitations

THE COURT: Is there a. false imprisonment or false arrest claim pending in the 10647?

MS. FLORES: Yes, there is, your Honor.

THE COURT: Are you suggesting that there would be an effort to amend to complete that same claim in this case?

MR. CARDELLA: Well, he's asserting under the basis of a section 1983 civil rights violation, and a factual basis for that is a false arrest. This is related to the fourth cause of action in this case.

The fourth cause of action is time barred, your Honor, so there is no reasonable possibility that any amendment could save that cause of action. For section 1983 claims, the Supreme Court, appellate courts have confirmed on numerous occasions that the general personal injury statute of limitations applies to section 1983 claims.

STATE OF CALIFORNIA,

COUNTY OF MERCED

ss.

I, Christine M. Cradit, do hereby certify:

That I am a licensed, Certified Shorthand Reporter, duly qualified and certified as such by the State of California;

That the said foregoing transcript was by me recorded stenographically at the time and place first therein mentioned; and the foregoing pages constitute a full, true, complete and correct record made;

That I am a disinterested person, not being in any way interested in the outcome of said action, nor connected with, nor related to any of the parties in said action, or to their respective counsel, in any manner whatsoever.

Dated this 26th day of September, 2017.

C.M. CRADIT, CSR No. 3805