

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Plaintiffs Alejandro Rodriguez and Emma Rodriguez (“Plaintiffs”) allege in their
4 Complaint that in 1986 Defendant Mr. Rose sold a house to Gerardo Rodriguez, Jr. and
5 Gloria Rodriguez (“Rodriguez Family”) without disclosing whether the fence was built
6 on the proper property boundaries. Plaintiffs then purchased the property in 1993 from
7 the Rodriguez Family. Plaintiffs now file an action against Mr. Rose for failing to
8 disclose the fence was not built on the proper boundaries.

9 Plaintiffs’ complaint fails to state facts sufficient to constitute a cause of action
10 against Mr. Rose because (1) the Plaintiffs were not legal purchasers of the property in
11 1986 and (2) the Plaintiffs’ action against Mr. Rose violates the Statute of Limitations.

12
13 **LEGAL STANDARD FOR FILING A DEMURRER**

14 California Code of Civil Procedure section 431.10(e) permits a defendant to object
15 by demurrer to a pleading on the ground that the “pleading does not state facts sufficient
16 to constitute a cause of action. For purposes of testing the sufficiency of the causes of
17 action within a complaint, the demurrer admits the truth of all material facts, but not legal
18 conclusions. *Serrano v. Priest*, 5 Cal. 3d 584, 591 (1971).

19 This purpose of this Demurrer is to show the Court that even if the facts of the
20 Complaint are true, Plaintiffs would nonetheless have no valid legal case against
21 Defendant Mr. Rose.

22
23 **SUMMARY OF FACTS, AS ALLEGED IN THE COMPLAINT**

24 Defendant Mr. Rose sold a house on 7136 Lisbon Street, San Diego, CA (“House”
25 or “Subject Property”) to Rodriguez Family in October 1986. The Rodriguez Family
26 purchased the property but intended to convey ownership to Plaintiffs. According to the
27 Complaint, “...Rose (was) aware that Plaintiffs could not obtain the necessary credit for
28 the purchase of subject property.... (thus) for the benefit of Plaintiff(s), (the Rodriguez

1 Family) agreed that they would obtain the necessary loans for the purchase of subject
2 property. It was agreed that although the Rodriguez’s obtained the credit, Plaintiffs
3 would pay the monthly mortgage payments, property taxes, and all other costs with
4 regard to purchase and ownership of subject property...” [Page 3, lines 5-11].

5 In August 1993, the Rodriguez Family sold the House to Plaintiffs. In December
6 2005, the Plaintiffs got in a dispute with a neighbor regarding the proper placement of the
7 fence that was erected sometime prior to the 1986 sale of the House. Mr. Rose did not
8 disclose whether the fence was built on the neighbor’s property.

9
10 **LEGAL ANALYSIS**

11 **A. Pursuant to the Statute of Frauds, Mr. Rose did not have a contractual**
12 **relationship with Plaintiffs**

13 California law states parties cannot obtain an ownership interest in real property
14 without a written contract. California Code of Civil Procedure section 1624 (Statute of
15 Frauds) states in pertinent part:

16 (a) The following contracts are invalid, unless they, or some note or
17 memorandum thereof, are in writing and subscribed by the party to be
18 charged...: (3) ... for the sale of real property, or of an interest therein....

19 Turning to Plaintiff’s allegations, Mr. Rose sold the property to the Rodriguez
20 Family in 1986. Plaintiffs allege, however, in the Complaint that “Plaintiffs would be in
21 fact the ‘true’ owner of subject property” (emphasis in the Complaint, page 3, line 14).
22 In August 1993, Plaintiffs indeed purchased the property, in writing, from the Rodriguez
23 family.

24 Plaintiffs do their best to circumvent the Statute of Frauds by alleging an unwritten
25 agreement existed between the parties as to the intent of what the plaintiffs call the “true”
26 owner. In 1986, Mr. Rose sold the property to the Rodriguez Family, not the Plaintiffs
27 (who coincidentally have the same last name, but not to be confused with the party that
28 entered into the written agreement). Thus, the Rodriguez Family bought the House in

1 1986 and the Plaintiffs did not have an ownership interest until the 1993 written
2 agreement with the Rodriguez family.

3 Since Mr. Rose did not have a legal relationship with the Plaintiffs in the 1986 sale
4 of the House, his alleged failure to disclose the proper property line of the fence's
5 location does not equate to a proper cause of action for the Plaintiffs.

6 **B. The Two-Year Statute of Limitations bars Plaintiffs' request for relief**
7 **for a failure to disclose during a 1986 sale of property**

8 California Code of Civil Procedure section 339(1) allows a party two years to file
9 an action relating to the "guaranty of title of real property." The statute of limitations
10 begins to run when plaintiffs know or should know about the facts relating to the cause of
11 action. In *Shamsian v. Atlantic Richfield Co.*, 107 Cal. App. 4th 967, the court ruled the
12 statute of limitations begins once the plaintiff is in possession of knowledge that gives
13 right to a legal cause of action. *Id.* at 980. In a dispute relating to property nuisance, the
14 court ruled a "plaintiff is charged with 'presumptive knowledge so as to commence the
15 running of the statute once he or she has 'notice or information of circumstances to put a
16 reason person on inquiry, or has the opportunity to obtain knowledge from sources open
17 to his investigation...'. (emphasis by the court) *Id.* The law gives potential plaintiffs
18 an extension of the statute of limitations if the facts are not known, but the law does not
19 give an extension to plaintiffs who have the facts in their possession but not aware of
20 their legal rights.

21 Plaintiffs may argue the two-year statute of limitations does not begin to run until
22 December 2005, which is when their neighbor informed them the fence was on her
23 property. However, Plaintiffs started living in the House in 1986, and legally purchased
24 the House in 1993. When the Plaintiffs purchased the House in 1993, they were afforded
25 the opportunity to inspect the House and were given documents relating to the legal
26 description of the Subject Property. Giving the Plaintiffs the benefit of the doubt, they
27 may have had no reason to know the fence was not built on the correct property while
28 they were not the legal owners of the property during the period of 1986 - 1993. But in

1 1993, they had all the facts in front of them when they purchased the home; they knew
2 where the fence was built and they had the legal description of the land.

3 Plaintiffs cannot argue that the statute of limitations should begin when the
4 neighbor informed them of the legal significance of the property dispute. California law
5 is clear, as evidenced in the court's ruling in *Shamsian v. Atlantic Richfield Co.*, that the
6 statute begins once a party knows the facts that lead to a legal cause of action. The
7 Plaintiffs' ignorance of the legal significance of the legal descriptions of the Subject
8 Property and the location of the fence does not toll the statute of limitations.

9 If Plaintiffs' theory were correct, they could have filed a lawsuit indefinitely into
10 the future depending on the happenstance of when a neighbor would have alerted them
11 about the legal significance of the placement of the fence facts and legal descriptions of
12 the property – all of which was available to Plaintiffs by 1993. California's two-year
13 statute of limitations does not want claims to be stale indefinitely when parties are aware
14 of the facts; thus, this case should be dismissed as it pertains to Defendant Mr. Rose.

15
16 **CONCLUSION**

17 Based on the above argument, Mr. Rose should be dismissed from this action.

18
19 Dated:

LAW OFFICES OF JOSEPH Z. SAMO

20 By:

21 _____
Joseph Z. Samo