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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ESTUARDO ARDON, on behalf of himself and all others similarly situated,
Plaintiff and Appellant,

vs.

CITY OF LOS ANGELES
Defendant and Respondent.

After A Decision By The Court Of Appeal
Second Appellate District, Division Three
Case No. B201035

Superior Court for the County of Los Angeles
Hon. Anthony J. Mohr, Judge
Trial Court Case No. BC363959

PETITION FOR REVIEW

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PETITION

To the Honorable Chief Justice and the Honorable Associate Justices of the California Supreme Court:

Petitioner Estuardo Ardon respectfully petitions for review of the Opinion by the Court of Appeal, Second Appellate District, Division Three (Kitching, J., with Klein, P.J., concurring and Croskey, J., dissenting.) The Court of Appeal's opinion, published at *Ardon v. City of Los Angeles* (2009) 174 Cal.App.4th 369 [94 Cal.Rptr.3d 245] (*Ardon*), affirmed the order of the trial court: (1) granting the City of Los Angeles' ("City") motion to strike the class allegations; and (2) partially sustaining the City's demurrer. A copy of the Opinion and the Order Modifying Opinion [No Change In Judgment] are appended to this Petition. Petitioner did not file a petition for rehearing with the Court of Appeal.

ISSUES PRESENTED

(1) Does Government Code section 910, as construed by this Court's decision in *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 457 [115 Cal.Rptr. 797] (*City of San Jose*), permit the filing of a class claim with a local public entity for the refund of local taxes? (Yes.)

(2) Does article XIII, section 32 of the California Constitution apply to actions against local entities for the refund of local taxes? (No.)

INTRODUCTION

Presiding Justice Klein specifically requested that this Court grant review in her concurring opinion below, stating that whether a class claim for tax refunds against a local public entity is permissible under Government Code section 910 ("section 910") is a "major statewide issue." (*Ardon, supra*, 174 Cal.App.4th at p. 386 (conc. opn. of Klein, P.J.).) Indeed, the entire *Ardon* Panel expressly recognized the statewide

importance of the issues before it in their invitation to amici curiae to submit briefs in conjunction with the appeal. (*Ardon v. City of Los Angeles*, (Court of Appeal of California, Second Appellate Dist., Division 3, 2009, No. B201035) [10/3/2008 Docket Entry].)

Local government entities impose numerous individually small and inconspicuous taxes upon the public that, in the aggregate, raise hundreds of millions of dollars annually. The telephone utility taxes ("TUT") at issue here are a prime example. Unlike property taxes, for example, which are relatively large and highly visible to property owners (and for which the Legislature has created a specific refund procedure (Rev. & Tax. Code § 5097)), the TUT (for which the Legislature has not enacted a specific refund procedure) is relatively small and almost invisible to the ordinary taxpayer. Typical local TUTs range from five to ten percent of telephone charges which, for an average monthly phone bill of around $50, results in a monthly tax of around $2.50 to $5.00. There is no requirement that telephone service providers separately state the amount of the TUT collected. The providers that do separately list the TUT typically include it in a laundry list of other taxes and fees, including numerous federal and state surcharges and taxes. Therefore, the TUT goes largely unnoticed by taxpayers.

In 2006, however, Plaintiff Ardon discovered that the TUT had been improperly collected on telephone charges for long distance and bundled service after several federal courts held that a federal telephone tax (the "FET"), which had been incorporated into the local City of Los Angeles TUT, was not applicable to those services. As required by section 910, he filed an administrative refund claim with the City. Pursuant to *City of San Jose*, *supra*, 12 Cal.3d 447, which held that class claims against government entities are authorized by section 910 (*id.* at p. 457), he filed his refund claim on behalf of himself and all other taxpayers similarly

situated. As this Court has stated, the purpose of such an administrative claim is to allow the City an opportunity to investigate and settle the claim without the expense of litigation. (*City of San Jose*, *supra*, 12 Cal.3d at p. 455.) The claims statutes are not intended to "thwart class relief." (*Id.* at p. 457.) The City rejected Ardon's claim.

The Government Claims Act (Gov. Code, § 910 et seq.) is a general claims statute enacted by the California Legislature in 1959 in order to provide a uniform statewide procedure by which claims for money or damages should be presented against local and state government entities. The purpose of the default procedure was to create a uniform system for the presentation of claims and to eliminate the confusing patchwork of local and state procedures that had existed prior to 1959, which was "unduly complex, inconsistent, ambiguous and difficult to find, ... productive of much litigation and ... often result[ed] in the barring of just claims." (Recommendation and Study Relating to the Presentation of Claims Against Public Entities (Jan. 1959) 2 Cal. Law Revision Commission Rep. (1959) at p. A-7.) The Legislature went to great lengths to ensure that the procedures it enacted in the Government Claims Act would create a statewide, uniform system including, among other things, amending the State Constitution to ensure that the procedures would apply to charter cities and counties, and amending the Code of Civil Procedure to make clear that statutes of limitations would be governed by the Government Claims Act.

Under the default procedure established in section 910, claims against government entities may be presented by "the claimant or by a person acting on his behalf...." (Gov. Code, § 910.)

In *City of San Jose*, this Court held that section 910, which expressly allows claims to be filed "by a person acting on [a claimant's] behalf," permits the filing of class claims. (*City of San Jose*, *supra*, 12 Cal.3d at

p. 455.) This Court never overruled or narrowed its 1974 holding in *City of San Jose* that class claims are permitted under section 910. Nor has the Legislature taken any steps to do so, even though it has amended section 910 in other respects.

Construing section 910 pursuant to *City of San Jose*, in January 2008, the Second Appellate District, Division Three unanimously held, in a case indistinguishable from this one in relevant respects, that class refund claims to recover local taxes from a local entity were proper under section 910. (*County of Los Angeles v. Superior Court* (2008) 159 Cal.App.4th 353, 357 [71 Cal.Rptr.3d 485, 487], overruled (*Oronoz*).) On April 30, 2008, this Court rejected a Petition for Review in *Oronoz*. (*County of Los Angeles v. Superior Court (Oronoz)*, No. S161501.)

Sixteen months after the issuance of the unanimous *Oronoz* opinion, however, a differently composed panel of Division Three of the Second Appellate District refused to apply *City of San Jose* in this case, overruling its own decision in *Oronoz* and violating the principle of *stare decisis*. Justice Croskey issued a strong dissent. Presiding Justice Klein concurred, but requested that this Court review the opinion to clarify the confusion created by the *Ardon* opinion and because of the importance of the issues presented herein upon the public fisc.

If this Court does not grant this petition, the Court of Appeal's decision in this case will have a deleterious impact for years to come, not only because it wrongly interprets and applies this Court's precedents, the Government Claims Act, and the California Constitution, but because the practical impact of its decision is to strip payors of local taxes of any means of redress. Local governments should not be permitted to retain illegally collected taxes merely because they claim to have planned upon the flow of such illegally collected funds.

GROUNDS FOR REVIEW

This court "may order review of a Court of Appeal decision ... [w]hen necessary to secure uniformity of decision or to settle an important question of law...." (Cal. Rules of Court, rule 8.500(b)(1).) As Presiding Justice Klein stated in her concurring opinion, whether a class claim for tax refunds against a local public entity is permissible under section 910 is a "major statewide issue." (*Ardon, supra,* 174 Cal.App.4th at p. 386 (conc. opn. of Klein, P.J.).)[1] For example, there are at least two other appeals, involving the County of Los Angeles and the City of Long Beach, pending in Division Three of the Second Appellate District which involve the same issue: *Granados v. County of Los Angeles* (B200812, app. pending); and *McWilliams v. City of Long Beach* (B200831, app. pending).

The Court of Appeal, expressly recognizing the magnitude and statewide importance of this issue, invited *amici curiae* to submit briefs.[2] In all, thirteen *amici curiae* submitted or joined in briefs.[3]

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[1] This Court has recognized that "the filing of claims for money or damages against California government units is an area of statewide concern ...." (*Volkswagen Pacific, Inc. v. City of Los Angeles* (1972) 7 Cal.3d 48, 63 [101 Cal.Rptr. 869, 496 P.2d 1237].)

[2] The letter from the Court of Appeal stated, "Due to ***the statewide importance of the issues presented by this case*** and the potential impact of this matter on the public fisc, the court is inviting input from prospective amici curiae." (See *Ardon v. City of Los Angeles* (Court of appeal of California, Second Appellate Dist. Division 3, 2009, No. B201035) [10/3/2008 Docket Entry], emphasis added.)

[3] Amici curiae who submitted briefs included: Consumer Action, Howard Jarvis Taxpayers Association, National Association of Shareholder and Consumer Attorneys, The Utility Reform Network, Consumer Federation of California, The Tax Foundation, Paul E. Heidenreich of Huskinson, Brown, Heidenreich & Carlin LLP (plaintiffs' counsel in *Oronoz*), Willie Granados, John W. McWilliams, The League of California Cities, the California State Association of Counties, the California Special Districts Association, and the County of Los Angeles.

Moreover, as also recognized by Presiding Justice Klein, there has been considerable confusion as to the appropriate resolution of this issue. (*Ardon, supra*, 174 Cal.App.4th at p. 386 (conc. opn. of Klein, P.J.).) This confusion has occurred both at the trial court level and in the Court of Appeal. In *Oronoz,* the trial court judge, the Honorable Emilie H. Elias, certified a class of taxpayers where the plaintiff had filed a claim with the County of Los Angeles on behalf of himself and all others similarly situated for the refund of local utility users taxes. (*Oronoz*, *supra*, 159 Cal.App.4th at p. 357.) The County of Los Angeles filed a petition for writ of mandate and the Court of Appeal denied the petition. (*Id.* at pp. 357, 368.) This Court then denied the County of Los Angeles' Petition for Review. (*County of Los Angeles v. Superior Court* (*Oronoz*), No. S161501.)[4]

Then, just across the hall from Judge Elias' courtroom, Judge Anthony Mohr struck Mr. Ardon's class allegations in this case on nearly identical facts, preventing him from bringing a class claim. On appeal, a

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[4] While the general rule is that "no weight" is to be given to this Court's denial of a petition for review (*Trope v. Katz* (1995) 11 Cal.4th 274, 287, fn. 1 [45 Cal.Rptr.2d 241]), the appellate courts have, on a number of occasions, referred the this Court's denial of a petition for review as an expression of the court's "unspoken views." (See, e.g., *In re Eli F.* (1989) 212 Cal.App.3d 228, 235 [260 Cal.Rptr. 453] [where Court of Appeal concluded that this Court had "made its unspoken views clear" by denying a petition for review of an earlier opinion]; *People v. Dee* (1990) 222 Cal.App.3d 760, 764 [272 Cal.Rptr. 208] ["It is hardly unprecedented for the Courts of Appeal to seek implicit guidance from denial of review"]; *Wathen v. Greater Los Angeles Zoo Assn.* (1997) 56 Cal.App.4th 48, 53, fn. 5 [64 Cal.Rptr.2d 805] ["We agree with *Hoover* (and apparently, so does the Supreme Court – a petition for review was denied.")]; *Macedo v. Bosio* (2001) 86 Cal.App.4th 1044, 1052, fn. 6 [104 Cal.Rptr.2d 1] ["We will not jump into the middle of the disagreements between our sister court in San Diego and the Illinois court, except to note that ... our Supreme Court unanimously denied review in *Cortez.*"].) Therefore, review in this case is also necessary to preclude any confusion caused by this Court's denial of the petition for review in *Oronoz.*

different panel in the same Division that had affirmed Judge Elias' order granting class certification in *Oronoz* affirmed the trial court's ruling striking the class allegations in this case and overruled its decision in *Oronoz*, demonstrating the uncertainty in the law on this issue.[5] Presiding Justice Klein, acknowledging her change in position since *Oronoz*, concurred with the majority opinion, but stated that "it would be helpful for the Supreme Court to grant review in this case in order to resolve the conflict between the *Oronoz* decision and the majority opinion herein." (*Ardon, supra*, 174 Cal.App.4th at p. 386 (conc. opn. of Klein, P.J.).) By overruling the decision of a different panel of the same court issued only sixteen months earlier, the Court has violated the principle of *stare decisis* and opened the door for subsequent panels to do the same thing.

At this point, only this Court can provide uniformity to the law on this issue, because the confusion arises from conflicting interpretations and application of two cases decided by this Court: *City of San Jose*, *supra*, 12 Cal.3d at p. 457, which directly construes section 910 and holds that it allows class claims, and *Woosley v. State of California* (1992) 3 Cal.4th 758 [13 Cal.Rptr.2d 30, 838 P.2d 758] (*Woosley*), which deals with tax refund statutes other than section 910 and disallows class claims under those statutes. Although Petitioner is confident that both *City of San Jose* and *Woosley* allow the filing of class claims against local entities for local tax refunds under section 910, the *Woosley* opinion contains language which, when viewed out of context, has led courts to come to the opposite conclusion.

This Court in *City of San Jose* held that class claims are permitted under section 910. That holding has never been overruled, nor has the

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[5] Presiding Justice Klein and Justice Croskey sat on both the *Oronoz* and *Ardon* panels. Justice Aldrich, who sat on the *Oronoz* panel, was replaced on the *Ardon* panel by Justice Kitching.

Legislature ever acted to change this Court's interpretation. (*City of San Jose*, *supra*, 12 Cal.3d at p. 457.) *City of San Jose* analyzed section 910, a general claim presentation statute, in order to determine whether class claims were permitted and concluded that "claimant" in section 910 means the class itself and that an individual claim need not be filed for each member of the purported class. (*Ibid.*) "*City of San Jose* involved a claim governed by the general claim presentation requirement of section 910, rather than a claim governed by a statute prescribing procedures specifically for tax refunds." (*Ardon, supra,* 174 Cal.App.4th at p. 387 (dis. opn. of Croskey, J.).)

Woosley "neither construed nor applied" section 910. (*Ardon, supra*, 174 Cal.App.4th at p. 388 (dis. opn. of Croskey, J.).) In *Woosley*, this Court analyzed other ***specific*** tax refund statutes enacted by the Legislature (and which are excepted by Government Code section 905 from section 910's application) to determine whether ***those*** statutes permitted the filing of class claims. This Court construed the applicable tax refund statutes which dealt with either state taxes or local taxes subject to specific state mandated refund procedures other than section 910 in light of article XIII, section 32 of the California Constitution, which precludes it "from expanding the methods for seeking tax refunds expressly provided by the Legislature," and concluded that the specific statutes before it did not authorize class claims. (*Woosley*, *supra*, 3 Cal. 4th at pp. 789-92.)

While Petitioner believes that the purported conflict between *City of San Jose* and *Woosley* is more perceived than real, the appellate court has used it to justify issuance of an opinion which severely curtails the rights of taxpayers and rewrites section 910. The majority opinion here, authored by Justice Kitching, improperly seizes upon and takes out of context a phrase in *Woosley* which states, "[W]e conclude, for the reasons that follow, that the holding in [*City of San Jose*] should not be extended to include claims

for tax refunds." (*Ardon, supra*, 174 Cal.App.4th at p. 380.) *Woosley*, however, "did not limit or call into question the holding from *City of San Jose* as applied to claims under Government Code section 910, but held only that the rule from *City of San Jose* should not be extended to claims governed by statutes prescribing procedures specifically for tax refunds." (*Id.* at p. 388 (dis. opn. of Croskey, J.).)

The majority also applied the purported policy behind article XIII, section 32 (the State's "overriding interest in fiscal planning based on expected tax revenues") to this action against a local entity, even though the Constitutional provision explicitly states, and this Court has held on at least three occasions, that section 32 applies only to actions against the State, essentially "rewriting the provision by substituting the court's own determination as to the desired scope of the law for that of the enacting body." (*Ardon, supra*, 174 Cal.App.4th at p. 388 (dis. opn. of Croskey, J.).)[6] It is key to remember here that the Legislature never took issue with *City of San Jose*'s definition of the word "claimant" in section 910 to include class claims.

Ardon is the second of two opinions issued in one month by Division Three of the Second Appellate District that takes an overly-broad view of article XIII, section 32's application. In *Loeffler v. Target Corp.* (2009) 173 Cal.App.4th 1229 [93 Cal.Rptr.3d 515] (*Loeffler*), the plaintiff filed a class action against a private company, Target Corporation, for refund of

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[6] Article XIII, section 32 of the California Constitution provides:

> No legal or equitable process shall issue in any proceeding in any court against this State or any officer thereof to prevent or enjoin the collection of any tax. After payment of a tax claimed to be illegal, an action may be maintained to recover the tax paid, with interest, in such manner as may be provided by the Legislature.

excess sales tax imposed on purchases of hot coffee "to go" because sales tax was allegedly not due on such purchases. The court's opinion, again authored by Justice Kitching, relies in part upon *Woosley* and other decisions issued by this Court that it felt had "broadly construed article XIII, section 32 in light of the overriding policies behind that provision." (*Loeffler*, *supra*, 173 Cal.App.4th at p. 1251.) In both this case and *Loeffler*, the Court of Appeal has improperly extended the reach of article XIII, section 32 beyond state actors to local government and private entities to effectively deny taxpayers and consumers alike any remedy for the illegal collection of taxes or tax reimbursements.

Article XIII, section 32 of the California Constitution is known as the "pay first, litigate later" rule, and this Court held in *State Bd. of Equalization v. Superior Court* (1985) 39 Cal.3d 633, 639 [217 Cal.Rptr. 238, 703 P.2d 1131] (*State Bd. of Equalization*) that the important public policy behind this constitutional provision is to allow revenue collection to continue during litigation so that essential public services dependent on the funds are not unnecessarily interrupted. The Court of Appeal, however, has expanded this policy to one of "fiscal stability," bordering on immunity for local governments who illegally collect taxes, by rendering opinions that are "contrary to recognized policy favoring [class actions]." (*City of San Jose*, *supra*, 12 Cal.3d at p. 457.)

BACKGROUND

The trial court struck Petitioner's class action allegations in this action against the City for the refund of local taxes, and the Court of Appeal affirmed.

Petitioner's Complaint alleges that the City improperly required telephone companies to collect and remit taxes from telephone users. Section 21.1.3(a) of the City's Municipal Code (its TUT) excluded from taxation all amounts paid for telephone services to the extent that the

amounts paid for such services are exempt from or not subject to the tax imposed under the FET. (Los Angeles Mun. Code § 21.1.3(d).)

Petitioner filed a claim with the City pursuant to section 910 on behalf of himself and all other similarly situated taxpayers, seeking return of the money that had been illegally collected and retained by the City. The City rejected Petitioner's claim and Petitioner filed the instant action for declaratory and injunctive relief, money had and received, violation of the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution and writ of mandamus.

The City demurred to Petitioner's complaint and brought a Motion to Strike, requesting an order striking the portions of Petitioner's Complaint seeking to prosecute a class action. On July 6, 2007, Judge Mohr partially sustained the demurrer without leave to amend and struck Plaintiffs' class allegations.

On May 28, 2009, the Court of Appeal, Second Appellate District, Division Three affirmed the order of the trial court. The majority opinion, authored by Justice Kitching, held that:

(1) In *Woosley*, *supra*, 3 Cal.4th at p. 792, this Court held that article XIII, section 32 "prohibits the courts from expanding the methods for seeking tax refunds expressly provided by the Legislature;"

(2) The policy underlying article XIII, section 32 is "that strict legislative control over the manner in which tax refunds may be sought is necessary so that governmental entities may engage in fiscal planning," and that, therefore;

(3) "Ardon cannot assert a class claim under section 910 for a tax refund." (*Ardon, supra*, 174 Cal.App.4th at p. 373.)

The Court of Appeal's split decision in *Ardon* overruled a unanimous decision made by the same Division (including two of the same panel members) just sixteen months earlier in *Oronoz*, which held that

under *City of San Jose*, a section 910 claim for a refund of local taxes ***could*** be asserted against a local government on behalf of a class. (*Oronoz*, *supra*, 159 Cal.App.4th at p. 357.)

In *Ardon*, Presiding Justice Klein concurred, but acknowledged her "change of position" since *Oronoz*. (*Ardon, supra,* 174 Cal.App.4th at p. 386 (conc. opn. of Klein, P.J.).) Justice Croskey, who authored the unanimous opinion in *Oronoz*, issued a strong dissent, adhering to his position in that case that "a class claim for tax refunds against a local public entity [is] permissible under Government Code section 910 in the absence of a specific tax refund statute prescribing procedures to claim a refund of the taxes at issue." (*Id.* at p. 387 (dis. opn. of Croskey, J.).)

LEGAL DISCUSSION

I. A Class Claim For Tax Refunds Against A Local Public Entity Is Permissible Under Government Code Section 910

A. *City of San Jose* Permits the Filing Of A Class Claim Under Government Code Section 910

The appellate court's ruling, that taxpayers have no right to file class refund claims under section 910, impermissibly conflicts with this Court's decision in *City of San Jose*. In *City of San Jose, supra,* 12 Cal.3d at p. 457, this Court analyzed section 910 in order to ascertain whether that statute permitted the filing of class claims. Interpreting section 910, this Court held that class claims are permitted under the statute, and that holding has never been overruled.

Specifically, this Court held that "claimant" in section 910 means the class itself, that an individual claim need not be filed for each member of the purported class, and that the claim must provide the name, address, and other specified information concerning the ***representative*** plaintiff and sufficient information to identify and make ascertainable the class. (*City of San Jose, supra*, 12 Cal.3d at p. 457.) This court explicitly rejected the idea that section 910 requires individualized information as to each claimant.

City of San Jose was decided thirty-five years ago, and yet the Legislature has never sought to overturn or even limit that holding. Even while amending section 910 in other respects, the Legislature has not amended section 910 to in any way redefine the word "claimant" or to disallow class claims in tax refund cases against local entities for the refund of local taxes. Nothing in section 910 or *City of San Jose* suggests that the meaning of "claimant" varies with the nature of the claim.

Here, the majority improperly limited the holding in *City of San Jose* to inverse condemnation and nuisance cases. (*Ardon, supra*, 174 Cal.App.4th at pp. 379, 384.) The court then made its own assessment of whether section 910 permits class claims in tax refund cases and found that the "syntax and diction" of section 910 "does not contemplate different occurrences or transactions related to various members of a class asserting a collective claim." (*Id.* at p. 382.) It concluded that "[t]he absence of express language in section 910 regarding claims on behalf of a class indicates that the Legislature did not intend to allow such claims for tax refunds." (*Ibid.*) In effect, the majority substituted its own definition of the word "claimant" in section 910 for that as expressed by this Court in *City of San Jose*.

The majority justified its definition of the word "claimant" in section 910, which is completely at odds with this Court's definition of section 910 in *City of San Jose*, by "strictly" rather than "substantially" construing the statute,[7] relying on *Woosley* and article XIII, section 32 of the California Constitution. (*Ardon, supra,* 174 Cal.App.4th at p. 381.) However, as discussed below, neither *Woosley* nor article XIII, section 32 require a different definition of the word "claimant" within section 910 than the one given by this Court in *City of San Jose*.

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[7] It is not clear what it means to "substantially" construe a statute.

The Court of Appeal framed the issue as follows:

> [W]hether a claimant can file a section 910 claim on behalf of a class depends on whether the claimant is required to comply strictly with the requirements of the statute or whether the claimant can merely substantially comply. ***If strict compliance is required, the claimant cannot pursue a class claim. On the other hand, if the claimant's substantial compliance can satisfy the statute, he or she can pursue such a claim.***

(*Ardon, supra*, 174 Cal.App.4th at p. 378, emphasis added.)

The Court of Appeal incorrectly concluded that "where, as here, the claimant seeks a refund of taxes, ***strict compliance*** is required." (*Ardon, supra*, 174 Cal.App.4th at p. 378, emphasis added.) The Legislature expressly provided that a ***substantial compliance*** standard applies to claims presented pursuant to section 910. Specifically, section 910.8 provides that if the board to whom a claim is submitted under the Act determines that "a claim as presented fails to ***comply substantially*** with the requirements of Sections 910," it may give written notice stating with particularity the defects or omissions in the claim. (Gov. Code, § 910.8, emphasis added.) Further, "a failure or refusal to amend a claim ... shall not constitute a defense to any action brought upon the cause of action for which the claim was presented if the court finds that the claim as presented ***complied substantially*** with Section 910 ...." (Gov. Code, § 910.6, emphasis added.) Indeed, even a failure to substantially comply with the form requirements is waived if notice is not provided within a specified time pursuant to section 911 of the Government Claims Act. (See Gov. Code, §§ 910.8, 911.)

The Court of Appeal wrongly held that substantial compliance doesn't apply to tax refund claims, despite the substantial compliance standard expressly adopted by the Legislature under section 910 and confirmed by this Court in *City of San Jose*.

B. *Woosley* Neither Construed Nor Applied Government Code Section 910

This Court in *Woosley* neither disapproved *City of San Jose* nor suggested that its holding with respect to claims under section 910 should be limited to only inverse condemnation and nuisance claims, but instead refused to extend the holding in *City of San Jose* to tax refund claims governed by ***other*** statutes. Contrary to the majority's conclusion that this Court's opinion in *Woosley* turned on the nature of the claims asserted, *i.e.*, tax refund claims versus inverse condemnation and nuisance claims (*Ardon, supra*, 174 Cal.App.4th at pp. 383-384), the opinion turned on the fact that the Legislature had provided specific refund statutes for the taxes at issue in that case. This Court analyzed the language in those tax refund statutes, which provided specific methods for the refund of those taxes, to determine whether those statutes authorized class claims.

The Court of Appeal read *Woosley* too broadly. While the majority found that *Woosley* "required the plaintiff to strictly comply with the applicable claims statute" (*Ardon, supra*, 174 Cal.App.4th at p. 381), the words "strict compliance" or "strictly comply" appear nowhere in this Court's opinion in *Woosley*. *Woosley* simply recognized that article XIII, section 32, of the California Constitution precludes courts from ***expanding*** the methods for seeking tax refunds ***expressly provided*** by the Legislature. Here, however, the Legislature has not expressly provided a tax refund procedure for the refund of local utility user taxes.[8] Section 910 is a general claims statute and it specifically does not apply to claims made pursuant to the Revenue and Taxation Code or other "statute" prescribing

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[8] Moreover, as discussed below, this Court has held on multiple occasions that article XIII, section 32 applies only to actions against the state, holdings which the majority did not address.

procedures for the refund, rebate, etc. "of any tax." (Gov. Code, § 905(a).) As Justice Croskey recognized in his dissent:

> *Woosley* did not limit or call into question the holding from *City of San Jose* as applied to claims under Government Code section 910, but held only that the rule from *City of San Jose* should not be extended to claims governed by statutes prescribing procedures specifically for tax refunds.

(*Ardon, supra*, 174 Cal.App.4th at p. 388 (dis. opn. of Croskey, J.).)

What the *Woosley* Court expressly took issue with was that lower courts had subsequently utilized *City of San Jose*'s holding regarding section 910 to conclude by "***analogy***" that the language found in specific Revenue & Taxation Code claims statutes should also be interpreted to authorize class claims. (See *Schoderbek v. Carlson* (1980) 113 Cal.App.3d 1029, 1033 [170 Cal.Rptr. 400]; *Lattin v. Franchise Tax Board* (1977) 75 Cal.App.3d 377, 381 [142 Cal.Rptr. 130]; *Santa Barbara Optical Co. v. State Bd. of Equalization* (1975) 47 Cal.App.3d 244, 247-249 [120 Cal.Rptr. 609].) The *Woosley* Court held that where the Legislature has provided a specific tax refund mechanism, article XIII, section 32 of the California Constitution prevents courts from expanding the methods expressly provided therein for seeking refunds. After examining the language contained in the statutes which provided the methods for seeking refunds of vehicle license fees and use taxes, this Court concluded that "[w]ithin the context of [Veh. Code, §42231], the term 'person' does not include a class" and that "the Legislature [did] not authorize[] class claims for refunds of use (and sales) taxes." (*Woosley*, *supra*, 3 Cal.4th. at pp. 790, 792.)

Here, in contrast, the Legislature has not enacted a specific refund statute with respect to local utility user taxes. Therefore, section 910 applies. This Court has already decided that the word "claimant" in section 910 includes a class. (*City of San Jose*, *supra*, 12 Cal.3d at p. 457.)

Moreover, contrary to the majority's erroneous conclusion that "there is no material difference between the language of section 910 and the statutes interpreted by *Woosley*" (*Ardon, supra*, 174 Cal.App.4th at p. 383), the language contained in section 910 and in the Vehicle Code section analyzed by this Court in *Woosley* are very different. Vehicle Code section 42231 only authorized the filing of a claim by "*the person* who has paid the erroneous or excessive fee or penalty, *or his agent on his behalf*," (*Woosley, supra*, 3 Cal.4th at p. 790, italics in original), whereas section 910 permits a claim to be filed by "the claimant or by a person acting on his or her behalf." (*City of San Jose, supra*, 12 Cal.3d at pp. 455-456.) As this Court recognized in *Woosley*, an "agent" is defined by statute and common law: "[A] class representative who files a claim on behalf of all others similarly situated, without the knowledge or consent of such other persons, is not ***the agent*** of the members of the class." (*Woosley, supra*, 3 Cal.4th at p. 790, emphasis added) (citing Civ. Code, §§ 2299, 2300; 2 Witkin, Summary of Cal. Law (9th ed. 1987) Agency & Employment, § 36-40, pp. 49-52.) Section 910 has no such agency requirement. Instead, section 910 allows a claim to be filed by a "claimant or by a person acting on his or her behalf." (Gov. Code, § 910.) As this Court has already concluded that language permits the filing of a class claim.

Finally, here the individual tax refund amounts are small and difficult for each taxpayer to determine on their own (if they even know about the tax), and the City has continued to unlawfully collect the tax even after it became clear that the tax was illegal (unlike the Internal Revenue Service, which voluntarily ceased collection of the FET and established a simple, specific refund mechanism for return of tax monies). These circumstances demonstrate the importance of the availability of the class action mechanism. Claims for refund of the individually small TUT are the type that fit most perfectly under the rule allowing class claims, because

without a class claim procedure TUT taxpayers would, for all practical purposes, be left without any remedy whatsoever.

II. Article XIII, Section 32 Does Not Apply To Actions Against Local Government Entities For The Refund Of A Local Tax

The appellate court's ruling also relies on an overbroad interpretation of article XIII, section 32 that is unsupported by its text and conflicts with this Court's prior decisions. As Justice Croskey recognized in his dissent, article XIII, section 32 is inapplicable to actions against local public entities for the refund of local taxes because "it applies only to actions against the state." (*Ardon, supra*, 174 Cal.App.4th at p. 388 (dis. opn. of Croskey, J.).) (citing *Pacific Gas & Electric Co. v. State Bd. of Equalization* (1980) 27 Cal.3d 277, 281, fn. 6 [165 Cal.Rptr.122, 611 P.2d 463] (*Pacific Gas & Electric*); *Oronoz, supra*, 159 Cal.App.4th at p. 363, fn. 6.) This Court has so stated in at least three opinions.

First, in *Eisley v. Mohan* (1948) 31 Cal.2d 637, 641 [192 P.2d 5] (*Eisley*) this Court held that the predecessor to section 32, or article XIII, section 15, "applies only to an action against the state or an officer thereof with respect to his duties in assessing or collecting a state tax for state purposes." (*Eisley, supra*, 31 Cal.2d at p. 641.)[9]

Then, in *Pacific Gas & Electric*, this Court specifically stated, "Section 32 applies only to actions against the state." (*Pacific Gas &*

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[9] "A similar provision [to article XIII, section 32] appeared in former article XIII, section 15 of the California Constitution until November 1974, when the voters repealed former article XIII and added a new article XIII, including section 32 (Assem. Const. Amend. No. 32, Stats. 1974 (1973-1974 Reg. Sess.) res. ch. 70, pp. 3678, 3690.) *Pacific Gas & Electric, supra*, 27 Cal.3d at p. 280, fn. 3, characterized this constitutional amendment as one of 'numerous minor revisions and renumberings' of essentially the same provision." (*Ardon, supra*, 174 Cal.App.4th at p. 388, fn. 2 (dis. opn. of Croskey, J.).)

Electric, *supra*, 27 Cal.3d at p. 282, fn. 6) (citing *Eisley*, *supra*, 31 Cal.2d at p. 641.)

Finally, this Court in *Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 822, fn. 5 [107 Cal.Rptr.2d 369, 23 P.3d 601] (*La Habra*) stated, "Article XIII, section 32... [does not] appl[y] to this action against two local governments."

The majority, disregarding these explicit statements, invoked the purported ***policy*** underlying section 32 and applied that policy, rather than section 32 itself, in this action against a local public entity for the refund of local taxes. As Justice Croskey stated in his dissent:

> Many statutes and constitutional provisions are motivated by policies that, construed broadly, would support provisions broader than those actually enacted. To apply the policy underlying a provision rather than the provision itself means, essentially, rewriting the provision by substituting the court's own determination as to the desired scope of the law for that of the enacting body.

(*Ardon, supra*, 174 Cal.App.4th at p. 388 (dis. opn. of Croskey, J.).)

The majority's conclusion that the policy behind section 32 is to give governmental entities "sufficient notice of claims to allow for predictable and reliable fiscal planning" (*Ardon, supra*, 174 Cal.App.4th at p. 381) is incorrect. While *Woosley* states that section 32 "rests on the premise that strict legislative control over the manner in which tax refunds may be sought is necessary so that governmental entities may engage in fiscal planning based on expected tax revenues" (*Woosley*, *supra*, 3 Cal.4th at p. 789), this Court's immediately subsequent citation to *State Bd. Of Equalization*, *supra*, 39 Cal.3d at p. 638, and a plain reading of section 32 are telling. As this Court stated in *State Bd. of Equalization*:

> The important public policy behind this constitutional provision 'is to allow revenue collection to continue ***during litigation*** so that essential public services dependent on the funds are not unnecessarily interrupted.' ... 'The prompt

> payment of taxes is always important to the public welfare. It may be vital to the existence of a government. The idea that every taxpayer is entitled to ***the delays of litigation*** is unreason.' ... The constitutional provision has been construed broadly to bar not only injunctions but also a variety of ***prepayment*** judicial declarations or findings which would impede the prompt collection of a tax.

(*State Bd. of Equalization, supra*, 39 Cal.3d at pp. 638-639, emphasis added and internal quotations and citations omitted.)[10] In other words, the public policy behind article XIII, section 32 is not "fiscal certainty" at the expense of justice and appropriate class action remedies, but merely one that prevents courts from enjoining the collection of a tax prior to its payment, *i.e.*, the "pay first, litigate later" rule. Once the taxpayer pays the tax, he or she may then bring an action against the state for refund of the tax "in such manner as may be provided by the Legislature." (Cal. Const., art. XIII, § 32.) No one disputes that Mr. Ardon paid the tax at issue prior to presenting a claim and filing this action.

Moreover, as this Court has recognized, a policy favoring the predictability of revenue forecasting "'is not a trump card that somehow requires the courts to countenance *ultra vires* or illegal tax practices.'" (*La Habra, supra*, 25 Cal.4th at p. 824.) No governmental entity is entitled to keep the proceeds of illegally collected taxes.

In sum, as Justice Croskey noted in his dissenting opinion below, the Court of Appeal's decision is based on an overly broad interpretation and application of the policy (not the words) of article XIII, section 32 of the California Constitution. That provision of the Constitution does not bar class claims against local public entities for the refund of local taxes under

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[10] See also *Pacific Gas & Electric, supra*, 27 Cal.3d at p. 283 ("The policy behind section 32 is to allow revenue collection to continue during litigation so that essential public services dependent on the funds are not unnecessarily interrupted.") (citing *Modern Barber Colleges v. Cal. Emp. Stabilization Com.* (1948) 31 Cal.2d 720, 726 [192 P.2d 916].)

section 910 because it only applies to actions against the State. Furthermore, the public policy of preventing courts from enjoining the collection of a tax prior to its payment is not applicable here.

The opinion in this case was the second time within three weeks that the Second Appellate District applied an overly broad interpretation of article XIII, section 32 to restrict or eliminate the rights of taxpayers and consumers. (See *Loeffler*, *supra*, 173 Cal.App.4th 1229.) In *Loeffler*, the plaintiff filed a class action against Target Corporation for refund of excess sales tax reimbursement on purchases of hot coffee "to go" because sales tax was allegedly not due on such purchases. The court's opinion, again authored by Justice Kitching, held that the plaintiff customers "do not have standing to commence a sales tax refund suit." (*Id.* at p. 1235.) The Court arrived at its holding by relying, in part, on article XIII, section 32, which it found "prohibits injunctions against the collection of *any* state taxes." (*Id.* at p. 1245, italics in original.) Despite this provision's explicit application to actions against the State and not private parties, the Court reasoned that "if" the trial court concluded that sales tax was not due on purchases of hot coffee "to go" at Target and enjoined Target from collecting sales tax reimbursement on such purchases, Target "might" rely on the ruling and stop paying sales tax on these purchases, which would restrain the collection of sales tax by the State, which is prohibited by article XIII, section 32. (*Id.* at p. 1248.)

The *Ardon* and *Loeffler* opinions conflict with this Court's well-established precedents. Moreover, the Court of Appeal's rulings establish a *de facto* bar to meritorious refund claims for local taxes which will severely impair the rights of California citizens and consumers to recover illegally collected local taxes.

CONCLUSION

This Court held thirty-five years ago in *City of San Jose* that class claims are permitted under section 910. The Legislature has never sought to narrow or overturn that holding. The current fiscal condition of California's local governments is a concern for government and taxpayers alike. However, temporary financial conditions should not interfere with the interpretation of statutes and the Constitution to effectively preclude any remedy whatsoever to taxpayers and consumers who have been subjected to illegal taxation. The issues presented by this petition are of manifest constitutional and statewide importance. Consequently, it is necessary that this Court grant review to resolve these important questions of law and the confusion surrounding this Court's precedents.

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CERTIFICATE OF WORD COUNT
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174 Cal.App.4th 369, 94 Cal.Rptr.3d 245, 09 Cal. Daily Op. Serv. 6569, 2009 Daily Journal D.A.R. 7706
(Cite as: 174 Cal.App.4th 369, 94 Cal.Rptr.3d 245)

H

Court of Appeal, Second District, Division 3, California.
Estuardo ARDON, Plaintiff and Appellant,
v.
CITY OF LOS ANGELES, Defendant and Respondent.
No. B201035.

May 28, 2009.
As Modified June 16, 2009.

Background: City resident filed purported class action lawsuit against city, alleging that city's telephone users tax was an illegal tax and seeking a refund of the tax. The Superior Court, Los Angeles County, No. BC363959,Anthony J. Mohr, J., granted city's motion to strike resident's class action allegations, and resident appealed.

Holdings: The Court of Appeal, Kitching, J., held that:
(1) municipal code section governing claims for refund of overpayment of business or use taxes did not apply;
(2) municipal code section providing that individuals who qualify for a low-income seniors and disabled persons exemption may seek a refund of the tax did not apply; and
(3) resident could not maintain class action against city for refund; overruling *County of Los Angeles v. Superior Court*, 159 Cal.App.4th 353, 71 Cal.Rptr.3d 485.

Affirmed.

Klein, P.J., concurred with opinion.

Croskey, J., dissented with opinion.

West Headnotes

[1] Municipal Corporations 268 ⚿977

268 Municipal Corporations
268XIII Fiscal Matters
268XIII(D) Taxes and Other Revenue, and Application Thereof
268k977 k. Refunding or Recovery of Tax Paid. Most Cited Cases
Municipal code section governing claims for refund of overpayment of business or use taxes did not apply to city resident's purported class action alleging that city's telephone users tax was an illegal tax.

[2] Taxation 371 ⚿3700

371 Taxation
371IX Sales, Use, Service, and Gross Receipts Taxes
371IX(H) Payment
371k3699 Refunding Taxes Paid
371k3700 k. In General. Most Cited Cases
Municipal code section providing that individuals who qualify for a low-income seniors and disabled persons exemption may seek a refund of the city telephone users tax did not apply to city resident's purported class action alleging that tax was illegal; resident did not allege that he, or any member of the class he purported to represent, was a senior citizen or disabled, and resident's claim of illegality was not within the ambit of the refund procedure.

[3] Parties 287 ⚿35.63

287 Parties
287III Representative and Class Actions
287III(C) Particular Classes Represented
287k35.63 k. Constitutional Challenges and Actions Against Government in General. Most Cited Cases
Whether a claimant can file a claim against the government on behalf of a class depends on whether the claimant is required to comply strictly with the requirements of the statute or whether the claimant can merely substantially comply; if strict compliance is required, the claimant cannot pursue a class

claim, but on the other hand, if the claimant's substantial compliance can satisfy the statute, he or she can pursue such a claim. West's Ann.Cal.Gov.Code § 910.

[4] Parties 287 ⇐35.65

287 Parties
287III Representative and Class Actions
287III(C) Particular Classes Represented
287k35.65 k. Taxpayers and License Holders or Applicants. Most Cited Cases
City resident could not maintain class action against city for refund of city telephone users tax, as Legislature did not expressly provide for a class action to recover the refund; overruling *County of Los Angeles v. Superior Court*, 159 Cal.App.4th 353, 71 Cal.Rptr.3d 485. West's Ann.Cal. Const. Art. 13, § 32; West's Ann.Cal.Gov.Code § 910.
See Cal. Jur. 3d, Sales and Use Taxes, § 86; Cal. Jur. 3d, Municipalities, § 621; 3 Witkin, Cal. Procedure (5th ed. 2008) Actions, §§ 235, 239.
[5] Statutes 361 ⇐223.2(.5)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k223 Construction with Reference to Other Statutes
361k223.2 Statutes Relating to the Same Subject Matter in General
361k223.2(.5) k. In General. Most Cited Cases
Where statutes involving similar issues contain language demonstrating the Legislature knows how to express its intent, the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed with reference to the different statutes.
****246** Wolf Haldenstein Adler Freeman & Herz, Francis M. Gregorek, Rachele R. Rickert, San Diego; Cuneo Gilbert & Laduca, Jon Tostrud, Los Angeles; Chimicles & Tikellis, Timothy N. Mathews, for Plaintiff and Appellant, and Willy Granados and John W. McWilliams, as amici curiae on behalf of Plaintiff and Appellant.

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Raymond G. Fortner, Jr., County Counsel (Los Angeles), Albert Ramseyer, Principal Deputy County Counsel, for the County of Los Angeles as Amicus Curiae on behalf of Defendant and Respondent.

KITCHING, J.

***373** Plaintiff and appellant Estuardo Ardon (Ardon) appeals an order striking his class action allegations in an action against the City of Los Angeles (City). Ardon contends the City's telephone users tax (TUT) is an illegal tax. He seeks "on behalf of himself and all others similarly situ-

ated" a refund of TUT. We affirm.

The City and Ardon agree that a prerequisite to pursuing a tax refund action is that the plaintiff must first file a government claim with the City. The primary issue in this appeal is whether Ardon was entitled to present a single claim to the City on behalf of himself and the entire class, or whether each member of the purported class is required to file an individual claim with the City prior to filing suit.

Ardon contends he properly filed a government claim with the City on his own behalf and on behalf of the class he purports to represent. The City contends Ardon is limited to filing an individual claim on his own behalf. We hold that Ardon cannot present a claim on behalf of the entire purported class.

In *Woosley v. State of California* (1992) 3 Cal.4th 758, 792, 13 Cal.Rptr.2d 30, 838 P.2d 758 (*Woosley*), our Supreme Court held that article XIII, section 32 of the California Constitution (article XIII, section 32) prohibits the courts from expanding the methods for seeking tax refunds expressly provided by the Legislature. The policy underlying article XIII, section 32 is that strict legislative control over the manner in which tax refunds may be sought is necessary so that governmental entities may engage in fiscal planning.

Here, the applicable claims statute is Government Code section 910 (section 910), which does not expressly allow a class action claim. Under *Woosley* and the policy underlying article XIII, section 32, Ardon cannot assert a class claim under section 910 for a tax refund.

*374 FACTUAL AND PROCEDURAL BACKGROUND

1. *Ardon's government claim.*

On October 19, 2006, Ardon presented a claim to the City, "on behalf [of] himself and all similarly situated taxpayers in the City of Los Angeles," requesting cessation of the collection of TUT and the return of monies collected under the tax during the prior two years. Ardon claims that the Los Angeles Municipal Code exempts from the TUT all amounts paid for telephone services to the extent those amounts are exempt from the Federal Excise Tax (FET). Because the FET was allegedly improperly collected, Ardon contends, so too was the TUT.

On December 7, 2006, the city attorney responded to Ardon's claim: "To the extent that the October 19 letter presents a tax refund claim against the City by Mr. Estuardo Ardon, notice is hereby given ****248** that the claim is rejected by the City. To the extent that the letter attempts to present a tax refund claim on behalf of a class, that purported claim is denied as well, in part on the basis that there is no legal standing to file a claim on behalf of a class." On December 27, 2006, Ardon filed suit against the City.

2. *Ardon's operative pleading.*

On March 29, 2007, Ardon, on behalf of himself and all others similarly situated, filed a corrected first amended class action complaint for declaratory, injunctive, monetary and other relief.[FN1] The complaint set forth counts for declaratory and injunctive relief preventing further improper collection of the TUT (count one),[FN2] declaratory relief regarding the alleged unconstitutional amendment of the TUT (count two), money had and received (count three), unjust enrichment (count four), violation of the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution (count five), and a claim for writ of mandamus (count six). By way of relief, the complaint sought, inter alia, certification of the matter as a class action (***375**Code Civ. Proc., § 382), an accounting by the City of the TUT funds collected, and prompt return of those monies to the members of the class.

FN1. Shortly after Ardon filed suit, the

City amended Los Angeles Municipal Code section 21.1.3 to delete any reference to the FET. The amending ordinance was passed by the City Council on January 9, 2007. It states "the FET was not a basis or authority for the City's imposition of the TUT" and that the TUT's reference to the FET "was added in 1967, shortly after the TUT was adopted, for the administrative convenience of telephone service providers, who were able to bill customers based on an existing tax base." (L.A.Ord. No. 178219.)

FN2. During the pendency of this appeal, on February 5, 2008, the voters of the City adopted Proposition S, an ordinance which amended article 1.1 of chapter 2 of the Los Angeles Municipal Code to modernize and clarify the TUT by replacing it with a Communications Users Tax. Ardon concedes that the approval of Proposition S moots his claims for declaratory and injunctive relief to prevent further improper collection of the TUT.

3. *The City's demurrer and motion to strike.*

The City demurred to the entire complaint, asserting, inter alia: there is no authorization for a class action; the California Constitution prohibits courts from enjoining the collection of a tax; and a tax refund is an adequate remedy at law so that an injunction is not available.

The City concurrently filed a motion to strike all class action allegations from the complaint on the ground Ardon was not permitted to file an government claim with the City on behalf of a purported class. The City contended that pursuant to *Woosley* a class claim for a tax refund is not permitted unless the Legislature has expressly authorized one. Before Ardon could bring a class action lawsuit, the City argued, *each* member of the purported class was required to have filed an government claim with the City.

The trial court granted the City's motion to strike the class allegations. It also partially overruled and partially sustained the demurrer without leave to amend, and stayed certain causes of action. Ardon filed a timely notice of appeal from the order on the City's motion to strike and demurrer.[FN3]

FN3. This appeal is from an interlocutory order striking Ardon's class allegations. The order was appealable because it was tantamount to a dismissal of the action as to all members of the class other than Ardon. (See *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470, 174 Cal.Rptr. 515, 629 P.2d 23; *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 699, 63 Cal.Rptr. 724, 433 P.2d 732.)

****249 CONTENTIONS**

Ardon makes two main arguments on appeal. He first argues that he was required to file a claim in the manner set forth in the Government Claims Act, not in the manner set forth in the Los Angeles Municipal Code. Ardon's second argument is that the trial court erred in interpreting *Woosley* to prohibit a class action in this case. We agree with Ardon's first contention but do not agree with his second.[FN4]

FN4. Ardon also purports to challenge various aspects of the trial court's ruling on the demurrer. At this juncture, however, appellate review is confined to the order insofar as it struck the class action allegations. Appellate review of the other rulings by the trial court will have to await any appeal from the final judgment.

***376 DISCUSSION**

1. *Ardon was required to file a claim in the manner*

set forth in the Government Claims Act prior to pursuing an action for a tax refund against the City.

Under the Government Claims Act, "no suit for 'money or damages' may be brought against a public entity until a written claim has been presented to the public entity and the claim either has been acted upon or is deemed to have been rejected. (Gov.Code, §§ 905, 945.4.)" [FN5] (*Hart v. County of Alameda* (1999) 76 Cal.App.4th 766, 778, 90 Cal.Rptr.2d 386.) In general, claims for money or damages against a local public entity must be presented in the manner set forth in the Government Claims Act, unless the claim falls within specified exceptions. (See Gov.Code, § 905.) However, if the claim falls into one of the specified exceptions, and the claim is not "governed by any other statutes or regulations expressly relating thereto, [it] shall be governed by the procedure prescribed in any charter, ordinance or regulation adopted by the local public entity." (Gov.Code, § 935, subd. (a).)

> FN5. Ardon seeks "money or damages" within the meaning of the Government Claims Act. (See generally *City of Los Angeles v. Superior Court* (2008) 168 Cal.App.4th 422, 427-430, 85 Cal.Rptr.3d 560.)

The City contends that Ardon must file a claim under Los Angeles Municipal Code section 21.07 (section 21.07) and former section 21.1.12 (section 21.1.12).[FN6] Ardon, conversely, contends that sections 21.07 and 21.1.12 are preempted by the Government Claims Act. (Compare *Batt v. City and County of San Francisco* (2007) 155 Cal.App.4th 65, 78-79, 65 Cal.Rptr.3d 716 (*Batt*) with *County of Los Angeles v. Superior Court* (2008) 159 Cal.App.4th 353, 360-361, 71 Cal.Rptr.3d 485 (*Oronoz*).) We need not decide the preemption issue because we hold, for the reasons stated below, that sections 21.07 and 21.1.12 do not apply to the claims asserted by Ardon. Accordingly, Ardon was required to present a claim to the City in the manner set forth in the Government Claims Act.

> FN6. Section 21.1.12 was amended effective March 15, 2008. (L.A. Ord. No. 179,686.)

We interpret sections 21.07 and 21.1.12 de novo (see *Bohbot v. Santa Monica Rent Control Bd.* (2005) 133 Cal.App.4th 456, 462, 34 Cal.Rptr.3d 827 (*Bohbot*)) by the same rules applicable to statutes. (See *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd.* (1999) 70 Cal.App.4th 281, 290, 82 Cal.Rptr.2d 569; *Bohbot* at p. 462, 34 Cal.Rptr.3d 827.) Our fundamental task is to ascertain the city council's intent. (See *Smith v. Superior Court* (2006) 39 Cal.4th 77, 83, 45 Cal.Rptr.3d 394, 137 P.3d 218 (*Smith*).) The meaning of a provision of a municipal code " 'may not be determined from a single word or sentence; the words must be constructed in context....' " (See ****250 *377***People v. Shabazz* (2006) 38 Cal.4th 55, 67, 40 Cal.Rptr.3d 750, 130 P.3d 519.) Where reasonably possible, we also avoid any construction that renders "particular provisions superfluous or unnecessary" (see *Dix v. Superior Court* (1991) 53 Cal.3d 442, 459, 279 Cal.Rptr. 834, 807 P.2d 1063) or that would lead to absurd consequences. (See *Smith,* at p. 83, 45 Cal.Rptr.3d 394, 137 P.3d 218.)

A. *Section 21.07.*

[1] Section 21.07 is irrelevant to this case. It governs claims for refund of overpayment of taxes "imposed by Article 1 and 1.5 of Chapter 2 of [the Los Angeles Municipal Code.]" (L.A. Mun. Code, § 21.07.) Article 1 pertains to business taxes, and Article 1.5, which is suspended, pertains to use taxes. The TUT appears in Article 1.1. (L.A. Mun. Code, ch. 2, art. 1.1, § 21.1.3.) Therefore, the claim procedure contained in section 21.07, by its terms, is inapplicable.

B. *Section 21.1.12.*

[2] Section 21.1.12 is entitled "Senior Citizen Ex-

emption-Refunds." Subdivision (a) of section 21.1.12 provides an exemption from the TUT for any individual 62 years of age or older or any disabled individual who lives in a household with less than a specified combined income.[FN7] Subsection (c) of section 21.1.12, in turn, provides: "[F]or individuals 62 years of age or older, and ... for disabled individuals, any individual entitled to be exempt from the taxes imposed by this article [TUT] who used telephone, electric or gas services and paid more than $3.00 in such taxes may ... apply for a refund thereof on forms provided by the Director of Finance." Section 21.1.12, subdivision (c) further provides: "Except as otherwise provided in this section, refunds of overpaid taxes shall be made in the same manner as is provided in Section 21.07 of this chapter for refunds of overpayments in Business Taxes."

> FN7. Section 21.1.12, subdivision (a) provides in relevant part: "The tax imposed by this article shall not apply to any individual 62 years of age or older or any disabled individual who uses telephone, electric, or gas services in or upon any premises occupied by such individual, provided the combined adjusted gross income (as used for purposes of the California Personal Income Tax Law) of all members of the household in which such individual resided was less than Ten Thousand Nine Hundred and Fifty Dollars ($10,950) for the calendar year prior to the fiscal year (July 1 through June 30) for which the exemption provided in this Article is applied for."

Under the plain language of section 21.1.12, individuals who qualify for the low-income seniors and disabled persons exemption set forth in subdivision (a) may seek a refund of the TUT under subdivision (c) thereof. Ardon's claim does not implicate section 21.1.12 for two reasons. First, Ardon has not alleged that he, or any member of the class ***378** he purports to represent, is 62 years of age or older or is disabled. Second, Ardon's claim of TUT illegality is not within the ambit of the section 21.1.12 refund procedure. Because section 21.1.12 is not implicated, we need not reach the issue of whether section 21.1.12 is preempted by the Government Claims Act.

2. *Ardon cannot present a Government Claims Act claim for a tax refund on behalf of a class.*

We now turn to the issue of whether Ardon can make a claim on behalf of the class he purports to represent. This presents a question of law, which we review de novo. (*Oronoz, supra,* 159 Cal.App.4th at p. 359, 71 Cal.Rptr.3d 485.)

****251** Government Code section 910 provides that a claim is filed by a "claimant." [FN8] Although no provision in section 910 expressly allows a claimant to assert a claim on behalf of a class, Ardon contends that under *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 457, 115 Cal.Rptr. 797, 525 P.2d 701 (*City of San Jose* or *San Jose*), he may file a section 910 claim on behalf of the class he purports to represent. We reject this contention. As we will explain, article XIII, section 32, as interpreted by *Woosley* prohibits us from expanding the scope of section 910 to allow class claims for tax refunds.

> FN8. Section 910 states: "A claim shall be presented by the claimant or by a person acting on his or her behalf and shall show all of the following: [¶] (a) The name and post office address of the claimant. [¶] (b) The post office address to which the person presenting the claim desires notices to be sent. [¶] (c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted. [¶] (d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim. [¶] (e) The name or names of the public em-

> ployee or employees causing the injury, damage, or loss, if known. [¶] (f) The amount claimed if it totals less than ten thousand dollars ($10,000) as of the date of presentation of the claim...."

[3] As we will further explain, whether a claimant can file a section 910 claim on behalf of a class depends on whether the claimant is required to comply strictly with the requirements of the statute or whether the claimant can merely substantially comply. If strict compliance is required, the claimant cannot pursue a class claim. On the other hand, if the claimant's substantial compliance can satisfy the statute, he or she can pursue such a claim. We shall conclude that where, as here, the claimant seeks a refund of taxes, strict compliance is required. (See *Batt, supra,* 155 Cal.App.4th at p. 73, 65 Cal.Rptr.3d 716 [strict compliance with ordinance in action for refund of local taxes]; *IBM Personal Pension Plan v. City and County of San Francisco* (2005) 131 Cal.App.4th 1291, 1299, 32 Cal.Rptr.3d 656 [strict compliance of statute in action for refund of property taxes]; *Neecke v. City of Mill Valley* (1995) 39 Cal.App.4th 946, 961, 46 Cal.Rptr.2d 266 (*Neecke*) ["a taxpayer must show strict, rather than substantial, compliance with the administrative procedures established by the Legislature"].)

***379** A. *Under City of San Jose, a section 910 class claim may be filed in an inverse condemnation or nuisance action.*

In earlier cases, the courts held that strict compliance with claims statutes was essential to maintain an action against a governmental entity. (See 3 Witkin, Cal. Procedure (5th ed. 2008) Actions, § 274, pp. 356-357 (Witkin).) This rule sometimes led to harsh results. (Witkin, § 275, pp. 357-358.) Thus over time the courts allowed substantial compliance with claims statutes. (Witkin, § 275, pp. 358-360.)

In *City of San Jose, supra,* 12 Cal.3d at pp. 456-457, 115 Cal.Rptr. 797, 525 P.2d 701, the Supreme Court described the circumstances under which a claim could substantially comply with a claims statute: "[T]o gauge the sufficiency of a particular claim, *two* tests shall be applied: Is there *some* compliance with *all* the statutory requirements; and if so, is this compliance sufficient to constitute *substantial* compliance?" A claim substantially complies with a claims statute if there is sufficient information "to reasonably enable the public entity to make an adequate investigation of the merits of the claim and to settle it without the expense of a lawsuit [.]" (*Id.* at p. 456, 115 Cal.Rptr. 797, 525 P.2d 701.)

****252** In *City of San Jose,* the plaintiff sought damages against a city under nuisance and inverse condemnation theories of recovery. The issue was whether the plaintiff could file a section 910 claim on behalf of a class. Applying the substantial compliance test, the court concluded that the term " 'claimant,' as used in section 910, must be equated with the class itself," and thus rejected "the suggested necessity for filing an individual claim for each member of the purported class." (*City of San Jose, supra,* 12 Cal.3d at p. 457, 115 Cal.Rptr. 797, 525 P.2d 701.) The court further reasoned: "To require such detailed information in advance of the complaint would severely restrict the maintenance of appropriate class actions-contrary to recognized *policy* favoring them. (Code Civ. Proc., § 382....)" (*City of San Jose,* at p. 457, 115 Cal.Rptr. 797, 525 P.2d 701, italics added.) The court thus held that "claims statutes," including section 910, "do not prohibit class actions against governmental entities *for inverse condemnation and nuisance.*" (*City of San Jose,* at p. 457, 115 Cal.Rptr. 797, 525 P.2d 701, italics added.)

B. *Woosley rejected the extension of the City of San Jose case to tax refund claims.*

Several Court of Appeal decisions "extended" the holding of *City of San Jose* to permit the filing of class claims seeking tax refunds. (*Woosley, supra,* 3 Cal.4th at p. 788, 13 Cal.Rptr.2d 30, 838 P.2d 758,

citing *Schoderbek v. Carlson* (1980) 113 Cal.App.3d 1029, 170 Cal.Rptr. 400 (*Schoderbek*), *Lattin v. Franchise Tax Board* (1977) 75 Cal.App.3d 377, 142 Cal.Rptr. 130 (*Lattin*), and *Santa Barbara Optical Co. v. State Bd. of Equalization* (1975) 47 Cal.App.3d 244, 120 Cal.Rptr. 609***380** (*Santa Barbara Optical*).) In *Santa Barbara Optical,* the court held that the plaintiffs could file a claim with the State Board of Equalization for a refund of sales taxes on behalf of a class. (*Santa Barbara Optical.* at pp. 247-248, 120 Cal.Rptr. 609.) In *Lattin,* the court held that the plaintiffs could file a claim with the Franchise Tax Board for a refund of state income taxes on behalf of a class. (*Lattin,* at p. 381, 142 Cal.Rptr. 130.) Both *Santa Barbara Optical* and *Lattin* relied on *City of San Jose.* (*Santa Barbara Optical* at pp. 247-249, 120 Cal.Rptr. 609; *Lattin,* at pp. 380-381, 142 Cal.Rptr. 130.) [FN9]

> FN9. After *Santa Barbara Optical,* in 1987, the Legislature amended Revenue and Taxation Code section 6904 to permit class claims for sales and use tax refunds. (Stats.1987, ch. 38, § 5.) Similarly, after *Lattin,* in 1993, the Legislature enacted Revenue and Taxation Code section 19322, which allows class claims for income tax refunds. (Stats.1993, ch. 31, § 26.) The Legislature, however, strictly limited the means by which such class claims could be filed. (See fn. 9, *post.*)

In *Schoderbek,* the plaintiffs brought a class action for a refund of local property taxes and other relief against county officials and others. Revenue and Taxation Code section 5142 provided that a suit for a property tax refund could not be brought unless a claim for a refund had been filed. The plaintiffs argued that they should be excused from filing any refund claim because they represented approximately 138,000 homeowners and it would be an undue burden to require so many homeowners "to go through the expense of pursuing their administrative remedies." (*Schoderbek. supra,* 113 Cal.App.3d at p. 1033, 170 Cal.Rptr. 400.) The court, however, cited *City of San Jose* and stated: "Plaintiffs' argument overlooks the simple fact that they could have filed a claim for the refund with the county on behalf of themselves and on behalf of the members ****253** of the class they represent." (*Schoderbek,* at p. 1033, 170 Cal.Rptr. 400.)

Ardon argues that we should apply *City of San Jose* to his claim against the City for a refund of the TUT he and members of his purported class paid. In *Woosley,* however, our Supreme Court rejected the extension of *City of San Jose* to tax refund claims. The court stated: "Contrary to the line of Court of Appeal decisions cited above [i.e., *Schoderbek, Lattin.* and *Santa Barbara Optical*], we conclude, for the reasons that follow, that the holding in *City of San Jose...* should not be extended to include claims for tax refunds." (*Woosley, supra,* 3 Cal.4th at p. 789, 13 Cal.Rptr.2d 30, 838 P.2d 758.)

C. *The underlying policy of article XIII, section 32.*

In the following paragraph, the *Woosley* court explained why it would not extend the holding of *City of San Jose* to tax refund claims: "The California Constitution expressly provides that actions for tax refunds must be brought in the manner prescribed by the Legislature. Article XIII, section 32, of the California Constitution provides in this regard: 'After payment of a tax claimed to be illegal, an action may be maintained to recover the tax paid, ***381** with interest, *in such manner as may be provided by the Legislature.*' (Italics added.) This constitutional limitation rests on the premise that strict legislative control over the manner in which tax refunds may be sought is necessary so that governmental entities may engage in fiscal planning based on expected tax revenues." (*Woosley, supra.* 3 Cal.4th at p. 789, 13 Cal.Rptr.2d 30, 838 P.2d 758, citing *State Bd. of Equalization v. Superior Court* (1985) 39 Cal.3d 633, 638, 217 Cal.Rptr. 238, 703 P.2d 1131.)

Woosley follows a line of Supreme Court cases that

broadly construed article XIII, section 32 in light of the paramount policy underlying that provision. (See *State Bd. of Equalization v. Superior Court, supra,* 39 Cal.3d at p. 639, 217 Cal.Rptr. 238, 703 P.2d 1131; *Pacific Gas & Electric Co. v. State Bd. of Equalization* (1980) 27 Cal.3d 277, 283, 165 Cal.Rptr. 122, 611 P.2d 463 (*Pacific Gas & Electric*); *Modern Barber Col. v. Cal. Emp. Stab. Com.* (1948) 31 Cal.2d 720, 731-732, 192 P.2d 916.) These cases emphasized that article XIII, section 32 serves the important purpose of prohibiting an unplanned disruption of revenue collection, " 'so that essential public services dependent on the funds are not unnecessarily interrupted.' " (*State Bd. of Equalization v. Superior Court,* at p. 638, 217 Cal.Rptr. 238, 703 P.2d 1131, quoting *Pacific Gas & Electric,* at p. 283, 165 Cal.Rptr. 122, 611 P.2d 463; see also *Modern Barber Col. v. Cal. Emp. Stab. Com.*, at pp. 731-732, 192 P.2d 916.)

This policy is especially important where, as here, a plaintiff seeks to assert a class action on behalf of very large numbers of people, and the governmental entity faces an unexpected and huge liability. It is vital that the Legislature retain control over the manner in which claims may be asserted, so that governmental entities have sufficient notice of claims to allow for predictable and reliable fiscal planning.

D. *Under Woosley, Ardon can only file an individual claim, not a claim on behalf of a class.*

In *Woosley,* the plaintiff sought to assert a claim for a refund of vehicle license fees and use taxes on behalf of a class. In light of article XIII, section 32 and its underlying policy, the court stated: "[W]e hold that the class claim filed in the present case was not authorized by the statutes governing claims for refunds of vehicle license fees and use taxes. Accordingly, that claim is valid only as to Woosley in his ****254** individual capacity, and the class in the present class action properly may include only persons who timely filed valid claims for refunds." (*Woosley, supra,* 3 Cal.4th at p. 788, 13 Cal.Rptr.2d 30, 838 P.2d 758.)

In reaching its decision, the court required the plaintiff to strictly comply with the applicable claims statute. (See *Woosley, supra,* 3 Cal.4th at pp. 789-790, 13 Cal.Rptr.2d 30, 838 P.2d 758.) Vehicle Code section 42231 provided that a claim for a refund of vehicle license fees could be filed by "the person who has paid the ***382** erroneous or excessive fee or penalty, or his agent on his behalf." The court held: "Within the context of this statute, the term 'person' does not include a class, and a class representative who files a claim on behalf of all others similarly situated, without the knowledge or consent of such other persons, is not the agent of the members of the class. [Citations.] Accordingly, a class claim for refunds of vehicle license fees, such as the one here at issue, is not authorized by statute." (*Woosley,* at p. 790, 13 Cal.Rptr.2d 30, 838 P.2d 758, fn. omitted.)

The court concluded: "In sum, article XIII, section 32, of the California Constitution precludes this court from expanding the methods for seeking tax refunds expressly provided by the Legislature." (*Woosley, supra,* 3 Cal.4th at p. 792, 13 Cal.Rptr.2d 30, 838 P.2d 758.) It also overruled *Schoderbek, Lattin,* and *Santa Barbara Optical* to the extent they expressed views to the contrary. (*Woosley,* at p. 792, 13 Cal.Rptr.2d 30, 838 P.2d 758)

[4] Under *Woosley,* Ardon cannot file a section 910 claim for tax refunds on behalf of a class. The language of section 910 is similar to the language of Vehicle Code section 42231: a claim must be filed by "the claimant or by a person acting on his or her behalf." (Gov.Code, § 910.) When strictly, rather than substantially construed, the syntax and diction of section 910 indicate that it applies to *individual* claims, not to claims on behalf of a class. For example, section 910 provides that the claim must state the "name and post office address of the claimant."(§ 910, subd. (a).) This language implies that the claim is being asserted by an individual, not a class. Likewise, section 910 provides that a claim must state the "date, place and other circumstances

of the occurrence or transaction which gave rise to the claim asserted."(§ 910, subd. (c).) This language does not contemplate different occurrences or transactions related to various members of a class asserting a collective claim. Indeed, no mention is made of a claim filed on behalf of a class.

By contrast, when the Legislature wanted to authorize class claims for refunds of particular state taxes, it used very different language. In two statutes, the Legislature has *expressly* allowed class claims, albeit with stringent restrictions.[FN10] Revenue and Taxation Code section 6904, subdivision (b) and section 19322 both provide for "[a] claim filed for or on behalf of a class of taxpayers...."

> FN10. To present a claim on behalf of a class for a sales or use tax refund or for an income tax refund, the purported class representative must obtain a written authorization from "each taxpayer sought to be included in the class." (Rev. & Tax.Code, §§ 6904, subd. (b)(1), 19322, subd. (a).)

[5] The absence of express language in section 910 regarding claims on behalf of a class indicates that the Legislature did not intend to allow such claims for tax refunds. "Where statutes involving similar issues contain ***383** language demonstrating the Legislature knows how to express its intent, ' "the omission of such provision from a similar statute concerning a related subject****255** is significant to show that a different legislative intent existed with reference to the different statutes." ' " (*County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 825, 81 Cal.Rptr.3d 461.)

Under *Woosley,* a section 910 claim for a tax refund cannot be pursued in a manner not expressly provide by the Legislature. Ardon therefore cannot present a section 910 claim on behalf of the class he purports to represent.

E. *Oronoz was incorrectly decided.*

In *Oronoz,* this court held that under *City of San Jose,* a section 910 claim for a refund of local taxes could be asserted on behalf of a class. (*Oronoz, supra,* 159 Cal.App.4th at p. 367, 71 Cal.Rptr.3d 485.) We overrule that aspect of *Oronoz* in this case.

We stated in *Oronoz:* " *Woosley* did not disapprove *San Jose* or suggest that its holding with respect to claims under Government Code section 910 should be limited, but refused to extend the holding in *San Jose* to tax refund claims *governed by other statutes.*" (*Oronoz, supra,* 159 Cal.App.4th at p. 365, 71 Cal.Rptr.3d 485, italics added.) That is incorrect. *Woosley* did not limit the holding of *City of San Jose* to tax refund claims "governed by other statutes." Rather, *Woosley* stated that the holding of *City of San Jose* should not be extended to include "claims for tax refunds," period. (*Woosley, supra,* 3 Cal.4th at p. 789, 13 Cal.Rptr.2d 30, 838 P.2d 758.)

Further, the holding of *Woosley,* by its plain terms, applies to *section 910 claims* for tax refunds filed on behalf of a class. *Woosley* stated that " *City of San Jose* held that a class claim could be filed pursuant to Government Code section 910...." (*Woosley, supra,* 3 Cal.4th at p. 788, 13 Cal.Rptr.2d 30, 838 P.2d 758.) *Woosley* concluded that this holding regarding section 910 claims "should not be extended to include claims for tax refunds." (*Woosley,* at p. 789, 13 Cal.Rptr.2d 30, 838 P.2d 758.) Thus a section 910 claim for a tax refund on behalf of a class is precisely the type of claim that is prohibited by the plain language of *Woosley.*

Moreover, as noted above, for purposes of determining whether a claimant can assert a claim on behalf of a class, there is no material difference between the language of section 910 and the statutes interpreted by *Woosley.* (Compare Gov.Code, § 910, ["A claim shall be presented by the claimant or by a person acting on his or her behalf ...."] with Veh.Code, § 42231 ["the person who has paid the erroneous or excessive fee or penalty, or his agent on his behalf, may apply for and receive a refund...."].) Thus, contrary to *Oronoz,* the *Woosley* decision did not decline to extend the holding of

City of San Jose based on ***384** any purported difference between section 910 and the claims statutes at issue in *Woosley*. *Woosley* instead turned on *the nature of the claims asserted*-a claim for a tax refund must be treated differently than a claim for inverse condemnation and nuisance. (See *Woosley, supra,* 3 Cal.4th at pp. 788-792, 13 Cal.Rptr.2d 30, 838 P.2d 758.) This is because article XIII, section 32 and its underlying policy require different treatment.

In *City of San Jose,* the court did not consider article XIII, section 32 or its underlying policy. Rather, the court relied upon the policy in favor of class actions, as expressed by statute (i.e., Code Civ. Proc., § 382). (*City of San Jose, supra,* 12 Cal.3d at p. 457, 115 Cal.Rptr. 797, 525 P.2d 701.) But as *Woosley* recognized, claims for tax refunds are different. The constitutionally mandated strict legislative control over how to obtain tax refunds outweighs the statutory policy in favor of ****256** class actions. (See *Woosley, supra,* 3 Cal.4th at p. 789, 13 Cal.Rptr.2d 30, 838 P.2d 758.) Accordingly, Ardon's section 910 claim for tax refunds must receive a different treatment from the section 910 claim for damages asserted by the plaintiff in *City of San Jose.*

Ardon argues that *Woosley* does not control in this case because its holding relied on article XIII, section 32, a provision which Ardon contends applies to *state,* not local taxes. In *Oronoz,* we agreed with this argument. (See *Oronoz, supra,* 159 Cal.App.4th at p. 363, fn. 6, 71 Cal.Rptr.3d 485, citing *Eisley v. Mohan* (1948) 31 Cal.2d 637, 641, 192 P.2d 5 and *Pacific Gas & Electric, supra,* 27 Cal.3d at p. 281, fn. 6, 165 Cal.Rptr. 122, 611 P.2d 463.)

Oronoz, however, interpreted *Woosley* too narrowly. The reasoning of *Woosley* applies with equal force to claims for refunds of local taxes. The holding of *Woosley* was based on the premise that strict legislative control over tax refunds was necessary so that governmental entities could engage in fiscal planning. (*Woosley, supra,* 3 Cal.4th at p. 789, 13 Cal.Rptr.2d 30, 838 P.2d 758.) Local public entities, like the state, have an overriding interest in fiscal planning based on expected tax revenues.

We therefore join a line of Court of Appeal cases which have applied the policy underlying article XIII, section 32 to local taxes. In *Neecke,* the court held that under *Woosley,* the plaintiff was prohibited from pursuing a class claim for a property tax refund. In reaching its decision, the *Neecke* court stated: "Nothing in the language of *Woosley* indicates an intent to limit that case's holding to claims statutes addressed to state, as opposed to local, taxes; indeed, that part of the court's opinion dealing with the class claim issue twice uses the term 'governmental entities.' (*Woosley, supra.* 3 Cal.4th at pp. 788, 789[, 13 Cal.Rptr.2d 30, 838 P.2d 758].)" (*Neecke, supra.* 39 Cal.App.4th at p. 962, 46 Cal.Rptr.2d 266.) We agree with this analysis. The phrase "governmental entities" is broad and plural, and thus does not appear to be limited to the state alone.

***385** The *Neecke* court also correctly observed: "[T]he *Woosley* court expressly overruled *Schoderbek v. Carlson, supra,* 113 Cal.App.3d 1029, 170 Cal.Rptr. 400, to the extent that it was inconsistent with *Woosley.* Relying upon *City of San Jose v. Superior Court, supra.* 12 Cal.3d 447, 115 Cal.Rptr. 797, 525 P.2d 701, *Schoderbek* held, in the context of whether administrative remedies had been exhausted, that Revenue and Taxation Code sections 5097 and 5140 permit class claims and class actions for refunds of local property taxes.... There was simply no reason for the Supreme Court to disapprove of *Schoderbek* unless the court intended its *Woosley* holding to apply to local, as well as state, taxes." (*Neecke, supra,* 39 Cal.App.4th at pp. 962-963, 46 Cal.Rptr.2d 266.)

In *Batt,* the court held that under *Woosley,* the plaintiff could not assert a claim for a refund of a city hotel tax on behalf of a class. The plaintiff argued, as Ardon does here, that *Woosley* was not controlling and should be " 'narrowly applied.' " (*Batt, supra,* 155 Cal.App.4th at p. 76, 65

Cal.Rptr.3d 716.) The *Batt* court, however, rejected this argument, and stated: "It may be true, as plaintiff asserts, that *Woosley* does not 'categorically' forbid class actions in tax refund cases. But it did in effect preclude refund class actions except where the antecedent administrative claim on behalf of the putative class is expressly authorized by statute. (See *Woosley*, supra, 3 Cal.4th 758, 788-792, 795[, 13 Cal.Rptr.2d 30, 838 P.2d 758].)" (*Batt*, at p. 77, 65 Cal.Rptr.3d 716.) The ****257** *Batt* court also stated that although article XIII, section 32"expressly applies to the state, we have accepted that its guiding principle is equally applicable to smaller units of government." (*Batt*, at p. 84, 65 Cal.Rptr.3d 716, citing *Flying Dutchman Park, Inc. v. City and County of San Francisco* (2001) 93 Cal.App.4th 1129, 113 Cal.Rptr.2d 690 (*Flying Dutchman*).)

In *Writers Guild of America, West, Inc. v. City of Los Angeles* (2000) 77 Cal.App.4th 475, 91 Cal.Rptr.2d 603 (*Writers Guild*), the plaintiffs sought to enjoin the collection of a city business tax. The court, however, held that the plaintiffs could not obtain an injunction in light of the public policy against injunctions prohibiting the collection of a tax, as expressed by article XIII, section 32 and the cases interpreting that provision. (*Id.* at p. 483, 91 Cal.Rptr.2d 603.)

Similarly, in *Flying Dutchman, supra.* 93 Cal.App.4th 1129, 113 Cal.Rptr.2d 690, the plaintiffs sought an injunction prohibiting the enforcement of a city parking tax. The plaintiff Flying Dutchman urged the court not to follow the *Writers Guild* decision. However, the court held: "[W]e see no need to reexamine the issues resolved in *Writers Guild,* particularly its holding that the prepayment requirement for obtaining judicial review applies equally to local taxes as well as state taxes. Because the wisdom of preventing the judiciary from interfering with tax schemes pertains as strongly to local taxes as it does to ***386** state taxes, we would be hard pressed to endorse the distinction Flying Dutchman attempts to make based on the identity of the taxing entity." (*Id.* at p. 1137, 113 Cal.Rptr.2d 690.) [FN11]

> FN11. See also *Macy's Dept. Stores, Inc. v. City and County of San Francisco* (2006) 143 Cal.App.4th 1444, 1457, 50 Cal.Rptr.3d 79, fn. 23 ["As Macy's appears to recognize, its argument that article XIII, section 32 of the California Constitution applies only to statewide taxes was rejected in [*Flying Dutchman*]"]; *Rickley v. County of Los Angeles* (2004) 114 Cal.App.4th 1002, 1013, 8 Cal.Rptr.3d 406 [applying policy of article XIII, section 32 to claim for declaratory relief regarding collection of county taxes].

Likewise, we are hard pressed to distinguish this case from *Woosley* based on the identity of the taxing entity. The wisdom and language of *Woosley* pertains as strongly to claims for refunds for local taxes as it does to claims for refunds of state taxes.

DISPOSITION

The order striking the class action allegations is affirmed. The City shall recover costs on appeal.

I concur: KLEIN, P.J.KLEIN, P.J., Concurring.
I concur in the majority opinion. I write separately to explain my change of position with respect to whether Government Code section 910 authorizes a class claim for tax refunds. Although I joined in this court's opinion in *County of Los Angeles v. Superior Court* (2008) 159 Cal.App.4th 353, 71 Cal.Rptr.3d 485 (*Oronoz*), upon further consideration, I believe the majority opinion herein sets forth the better view.

I am mindful the California Supreme Court denied a petition for review in *Oronoz.* However, the order of denial is not an expression of the Supreme Court on the correctness of the Court of Appeal opinion. (*DiGenova v. State Bd. of Education* (1962) 57 Cal.2d 167, 178, 18 Cal.Rptr. 369, 367 P.2d 865; 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, §§

501, 502, 932(5).)

In view of the confusion in this area, it would be helpful for the Supreme Court to grant review in this case in order to resolve****258** the conflict between the *Oronoz* decision and the majority opinion herein.

Review is further warranted because the question presented, i.e., whether Government Code section 910 authorizes a class claim for tax refunds, is a major statewide issue with serious implications for the public fisc. Currently, this Division alone has at least two other appeals involving the same issue.

***387** With these observations, I concur in the court's opinion authored by Justice Kitching.

CROSKEY, J., Dissenting.
I respectfully dissent. We held in *County of Los Angeles v. Superior Court* (2008) 159 Cal.App.4th 353, 367, 71 Cal.Rptr.3d 485 (*Oronoz*), that a class claim for tax refunds against a local public entity was permissible under Government Code section 910 in the absence of a specific tax refund statute prescribing procedures to claim a refund of the taxes at issue. I continue to adhere to that view.

Government Code section 910 establishes procedural requirements for claims against the state and local public entities generally. Section 910 does not mention tax refunds. Government Code section 905, subdivision (a) states that claims under statutes prescribing procedures for tax refunds are excepted from the claim presentation requirements of section 910. Thus, section 905, subdivision (a) distinguishes claims under statutes prescribing procedures for tax refunds from claims subject to the general claim presentation requirements of section 910.

City of San Jose v. Superior Court (1974) 12 Cal.3d 447, 115 Cal.Rptr. 797, 525 P.2d 701 (*City of San Jose*) held that the word "claimant" in Government Code section 910 referred to the class rather than to each individual class member and that a class claim was permissible under section 910 without the need for an individual claim by each class member. (*City of San Jose,* at p. 457, 115 Cal.Rptr. 797, 525 P.2d 701.) *City of San Jose* involved a claim governed by the general claim presentation requirement of section 910, rather than a claim governed by a statute prescribing procedures specifically for tax refunds.

Woosley v. State of California (1992) 3 Cal.4th 758, 13 Cal.Rptr.2d 30, 838 P.2d 758 (*Woosley*) involved claims against the state for refunds of vehicle license fees and use taxes. *Woosley* stated that article XIII, section 32 of the California Constitution (section 32) [FN1] required tax refund claims to be made in the manner prescribed by the Legislature and that "[t]his constitutional limitation rests on the premise that strict legislative control over the manner in which tax refunds may be sought is necessary so that governmental entities may engage in fiscal planning based on expected tax revenues. [Citation.]" (*Woosley,* at p. 789, 13 Cal.Rptr.2d 30, 838 P.2d 758.) *Woosley* stated that vehicle license fees and use taxes were excise taxes within the ambit of section 32 and that the Legislature had prescribed procedures for seeking refunds of those taxes. (*Woosley,* at p. 789, 13 Cal.Rptr.2d 30, 838 P.2d 758.) Construing the applicable tax refund statutes in light of section 32, *Woosley****388** concluded that those statutes did not authorize class claims. ****259**(*Woosley,* at pp. 789-792, 13 Cal.Rptr.2d 30, 838 P.2d 758.) *Woosley* neither construed nor applied Government Code section 910.

> FN1. Article XIII, section 32 states: "No legal or equitable process shall issue in any proceeding in any court against this State or any officer thereof to prevent or enjoin the collection of any tax. After payment of a tax claimed to be illegal, an action may be maintained to recover the tax paid, with interest, in such manner as may be provided by the Legislature."

Woosley disapproved several Court of Appeal opinions that had "reasoned by analogy to the claims

statute construed in *City of San Jose* that the existing tax-refund statutes could and should be interpreted to authorize the filing of class claims. [Citations.]" (*Woosley, supra,* 3 Cal.4th at p. 788, 13 Cal.Rptr.2d 30, 838 P.2d 758.) *Woosley* stated, "we conclude, for the reasons that follow, that the holding in *City of San Jose v. Superior Court, supra,* 12 Cal.3d 447, 115 Cal.Rptr. 797, 525 P.2d 701, should not be extended to include claims for tax refunds." (*Id.* at p. 789 [, 115 Cal.Rptr. 797, 525 P.2d 701].) The reasons that followed were that the applicable tax refund statutes, construed in light of section 32, did not authorize class claims. (*Woosley,* at pp. 789-792, 13 Cal.Rptr.2d 30, 838 P.2d 758.) Thus, *Woosley* did not limit or call into question the holding from *City of San Jose* as applied to claims under Government Code section 910, but held only that the rule from *City of San Jose* should not be extended to claims governed by statutes prescribing procedures specifically for tax refunds.

Section 32 is inapplicable here because it applies only to actions against the state. (*Pacific Gas & Electric Co. v. State Bd. of Equalization* (1980) 27 Cal.3d 277, 281, 165 Cal.Rptr. 122, 611 P.2d 463, fn. 6 (*Pacific Gas & Electric*); *Oronoz, supra,* 159 Cal.App.4th at p. 363, fn. 6, 71 Cal.Rptr.3d 485.) [FN2]The majority does not assert otherwise, but instead invokes the policy underlying section 32 and applies that policy, rather than section 32 itself, to this action against a local public entity and involving local taxes. Many statutes and constitutional provisions are motivated by policies that, construed broadly, would support provisions broader than those actually enacted. To apply the policy underlying a provision rather than the provision itself means, essentially, rewriting the provision by substituting the court's own determination as to the desired scope of the law for that of the enacting body. I would decline to follow the Court of Appeal opinions that have done so.

> FN2. A similar provision appeared in former article XIII, section 15 of the California Constitution until November 1974, when the voters repealed former article XIII and added a new article XIII, including section 32. (Assem. Const. Amend. No. 32, Stats. 1974 (1973-1974 Reg. Sess.) res. ch. 70, pp. 3678, 3690.) *Pacific Gas & Electric, supra,* 27 Cal.3d at p. 280, fn. 3, 165 Cal.Rptr. 122, 611 P.2d 463 characterized this constitutional amendment as one of "numerous minor revisions and renumberings" of essentially the same provision. *Eisley v. Mohan* (1948) 31 Cal.2d 637, 641, 192 P.2d 5 (*Eisley*) stated that former article XIII, section 15 "applies only to an action against the state or an officer thereof with respect to his duties in assessing or collecting a state tax for state purposes." *Eisley* therefore concluded that the provision did not preclude a proceeding against a county assessor challenging the assessment of a county real property tax. (*Eisley,* at pp. 641-642, 192 P.2d 5.) Citing *Eisley, Pacific Gas & Electric* stated, "Section 32 applies only to actions against the state." (*Pacific Gas & Electric, supra,* 27 Cal.3d at p. 281, fn. 6, 165 Cal.Rptr. 122, 611 P.2d 463.)

***389** Absent a specific tax refund statute prescribing procedures to seek a refund of the telephone user tax here at issue, I would follow our opinion in *Oronoz, supra,* 159 Cal.App.4th 353, 71 Cal.Rptr.3d 485, by holding that the claim is governed by Government Code section 910 and that a class claim is permissible under the rule from *City of San Jose, supra,* 12 Cal.3d 447, 115 Cal.Rptr. 797, 525 P.2d 701.

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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ESTUARDO ARDON,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES,

Defendant and Respondent.

B201035

(Los Angeles County Super. Ct. No. BC363959)

ORDER MODIFYING OPINION [NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on May 28, 2009, be modified as follows:

1. The first sentence of the first full paragraph of page 6 is modified to state: "The City contends that Ardon must file a claim under Los Angeles Municipal Code section 21.07 (section 21.07) and former section 21.1.12 (section 21.1.12.)"

2. A new footnote is added to the end of the sentence modified by item 1 of this order that states the following: "Section 21.1.12 was amended effective March 15, 2008. (L.A. Ord. No. 179,686.)"

There is no change in judgment.

DECLARATION OF SERVICE

I, Maureen Longdo, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested in the within action; that declarant's business address is 750 B Street, Suite 2770, San Diego, California. 92101.

2. That on July 7, 2009, declarant served the PETITION FOR REVIEW via Federal Express Overnight Delivery in a sealed envelope fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is regular communication between the parties.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of July 2009, at San Diego, California.

Maureen Longdo

MAUREEN LONGDO

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