S202037

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

JOHN W. McWILLIAMS, on behalf of himself and all others similarly situated,
Plaintiff and Appellant,

vs.

CITY OF LONG BEACH
Defendant and Respondent.

After A Decision By The Court Of Appeal
Second Appellate District, Division Three
Case No. B200831

Superior Court for the County of Los Angeles
Hon. Anthony J. Mohr, Judge
Trial Court Case No. BC361469

ANSWER BRIEF ON THE MERITS

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
FRANCIS M. GREGOREK (144785)
RACHELE R. RICKERT (190634)
MARISA C. LIVESAY (223247)
gregorek@whafh.com
rickert@whafh.com
livesay@whafh.com
750 B Street, Suite 2770
San Diego, CA 92101
Telephone: 619/239-4599
Facsimile: 619/234-4599

CHIMICLES & TIKELLIS LLP
NICHOLAS E. CHIMICLES (*pro hac vice*)
TIMOTHY N. MATHEWS (*pro hac vice*)
One Haverford Centre
361 West Lancaster Avenue
Haverford, Pennsylvania 19041
Telephone: 610/642-8500
Facsimile: 610/649-3633

TOSTRUD LAW GROUP, P.C.
JON TOSTRUD (199502)
tostrud@yahoo.com
1901 Avenue of the Stars,
2nd Floor
Los Angeles, CA 90067
Telephone: 310/278-2600
Facsimile: 310/278-2640

CUNEO GILBERT
& LADUCA, LLP
SANDRA W. CUNEO (110388)
330 South Barrington Ave., #109
Los Angeles, CA 90049
Telephone: 424/832-3450
Facsimile: 424/832-3452

Attorneys for Plaintiff/Appellant John W. McWilliams

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE

CASES

RULES AND STATUTES

OTHER AUTHORITIES

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

Plaintiff/Appellant John W. McWilliams ("Plaintiff" or "McWilliams") hereby respectfully submits his Answer Brief on the Merits.

INTRODUCTION

As in *Ardon v. City of Los Angeles* (2011) 52 Cal.4th 241 [128 Cal.Rptr.3d 283, 255 P.3d 958] (*Ardon*), Plaintiff's Class Action Complaint For Declaratory, Injunctive, Monetary and Other Relief ("Complaint") alleges that a local governmental entity, here the City of Long Beach (the "City"), has improperly required telephone companies to collect and remit taxes from telephone users on long distance and bundled telephone services where calls were not charged by both elapsed time and distance and which were, therefore, not subject to taxation under the express terms of the City code.

Plaintiff McWilliams's class claim for a tax refund from the City is governed by and permissible under the Government Claims Act, Cal. Gov. Code § 810, et seq. (the "GCA") rather than the local ordinances proffered by the City here. Therefore, this Court's unanimous *Ardon* decision is dispositive of this appeal and requires that this Court affirm the Court of Appeal's unanimous reversal of the trial court's dismissal of Plaintiff's claims and remand for further proceedings, as discussed in detail below.[1]

Section 910[2] clearly and expressly applies to all claims for money or damages against local governmental entities, including the City, unless section 905 excepts such claims from section 910's coverage. (§ 905.) However, subdivision (a) of section 905 (hereinafter section 905(a)), the only ostensibly applicable subdivision, exempts only those tax refund claims governed by "[c]laims under the Revenue and Taxation Code or

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[1] The Second Appellate District, Division Three (Kitching, J., with Klein, P.J. and Croskey, J. concurring), in an unpublished opinion filed on March 28, 2012 (Case No. B200831) (the "Opinion"), from which a Petition for Rehearing was denied April 12, 2012, unanimously reversed in pertinent part the trial court's order granting the City of Long Beach's demurrer to Plaintiff's Complaint and dismissing the case.

[2] Unless otherwise stated, all section references are to the Government Code.

other statute...." The term "statute", as used in section 905(a), is defined by section 811.8 to include ***only*** acts adopted by "the Legislature of this State or by the Congress of the United States, or a statewide initiative act." The City's municipal ordinances do not fall within this definition and, therefore, are inapplicable to McWilliams's claim. This conclusion is supported by the holding in *County of Los Angeles v. Superior Ct. of Los Angeles County* (2008) 159 Cal.App.4th 353, 361 [71 Cal.Rptr.3d 485] (*Oronoz*) and also the analysis in *Volkswagen Pacific, Inc. v. City of Los Angeles* (1972) 7 Cal.3d 48, 62 [101 Cal.Rptr. 869, 496 P.2d 1237] (*Volkswagen Pacific*), the only other courts to have analyzed section 811.8 as applied to section 905(a).[3] *Batt v. City and County of San Francisco* (2007) 155 Cal.App.4th 65 [65 Cal.Rptr.3d 716] (*Batt*), the opinion upon which the City wholly relies, failed to even mention, much less analyze section 811.8. As a result, *Batt* was wrongly decided.

The statutory language of the Government Code is so plain and clear that the City's attempt to demonstrate that the word "statute" in section 905(a) does not mean "statute" as it is ***explicitly*** defined in section 811.8 is futile. When statutory language is clear and unambiguous, there is no need for statutory construction or resort to other indicia of legislative intent, such as legislative history. (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349 [45 Cal.Rptr.2d 279, 902 P.2d 297] (*Cal. Fed.*).)

Even if examination of the legislative history of section 905(a) were appropriate, the City's Opening Brief on the Merits ("Brief") completely misstates that history and

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[3] The City cites to the appellate decision in *Ardon* as support for its claim that *Oronoz* was repudiated by "the very appellate panel that decided [it] ... leading to this Court's 2011 decision in that case." (Brief at p. 3, fn. 4 [citing *Ardon v. City of Los Angeles* (2009) 174 Cal.App.4th 369, review granted and opinion superseded, 216 P.3d 522 (2009) and rev'd, 52 Cal.4th 241 (2011)].) The City incorrectly implies that the *Ardon* and *Oronoz* panels were identical, apparently hoping to make the point that the *Oronoz* panel had reversed itself. More important are the facts that the appellate panel in *Ardon* was unanimously reversed by this Court and that the *Ardon* appellate panel, which the City claims "repudiated" *Oronoz*, actually ***is*** identical to that which issued the appellate decision in this action that reaffirmed *Oronoz*.

rests wholly on the erroneous assumption that "[i]n 1959 the Law Revision Commission recommended, and the Legislature adopted, § 905, subd. (a) to exclude tax refund claims...." (Brief at p. 52; see also *id.* at p. 19). As recognized by this Court in *Ardon*, this is a factual mistake.

The *Ardon* opinion noted that, although the Law Revision Commission ("LRC") had proposed that the uniform procedures prescribed in the GCA would not apply to "[c]laims under the Revenue and Taxation Code or other ***provisions of law*** prescribing procedures for the refund ... of any tax," the Legislature "specifically rejected" that proposed language in enacting the GCA. (*Ardon, supra*, 52 Cal.4th at p. 247, emphasis added.) Instead, the Legislature rewrote the proposed language in section 905(a) (which was at that time numbered 703, subdivision (a)) to exclude from the GCA only those "'[c]laims under the Revenue and Taxation Code or other ***statute*** prescribing procedures for the refund ... of any tax....'" (*Ibid.*, emphasis added.) Therefore, the contrary language in *Pasadena Hotel Development Venture v. City of Pasadena* (1981) 119 Cal.App.3d 412, 415, fn. 3 [174 Cal.Rptr. 52] (*Pasadena Hotel*) and in *Batt, supra*, 155 Cal.App.4th at p. 79, has been implicitly overruled by *Ardon*, and the City's repeated citations to *Pasadena Hotel* and *Batt* in support of its claims that the GCA was enacted in the form proposed by the LRC misrepresent the legislative history and cannot stand. (See, e.g., Brief at pp. 21, 23-24, 36, 37, 39-40.)[4]

Furthermore, the Opinion expressly and correctly rejected the City's argument that when the Legislature enacted section 811.8 in 1963 it did not intend to affect section 905(a) based on principles of statutory construction and legislative history. (Opinion, *supra*, at pp. 8-9, fn. 5.) The court properly held that in construing a statute:

"[W]e presume the Legislature has knowledge of all prior laws and enacts

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[4] Plaintiff requested publication of Division Three's Opinion below because it explicitly recognized and corrected the misreading of legislative history underlying that Division's decision in *Pasadena Hotel*, which *Batt* relied upon. (Opinion at pp. 10-11.) Critically, Presiding Justice Klein, a member of the *Pasadena Hotel* panel, joined in the unanimous decision below.

> and amends statutes in light of those laws." (*In re Marriage of Cutler* (2000) 79 Cal.App.4th 460, 475.) Further, section 811.8 was enacted pursuant to Senate Bill No. 42 (1963-1964 Reg. Sess.) on the same day former section 703 was renumbered to section 905 pursuant to Senate Bill No. 43 (1963-1964 Reg. Sess.). We thus presume that when the Legislature enacted section 811.8, it was aware of section 905, subdivision (a).

(Opinion at p. 9, fn. 5.) As a consequence, the GCA clearly limits local government authority to enact claims procedures.

This power to regulate ***claims filing procedures*** was constitutionally delegated by article XI, section 12 to the Legislature in connection with the adoption of the GCA. The state Constitution was amended contemporaneously with the GCA to ensure that the new GCA procedures would apply to charter cities and counties as well as non-charter cities and counties. (Cal. Const., art. XI, § 12, amending Cal. Const. art. XI, § 10 (Nov. 8, 1960).) Therefore, the City's argument that article XI, section 5, the "home rule" provision of the State Constitution, grants cities and counties the power to tax ***and*** to regulate local tax refunds (Brief at p. 49) lacks any basis. Not surprisingly, the City mentions article XI, section 12 only once, near the very end of its brief (p. 47), and provides no analysis countering that section's fatal impact on its position.

Even if the City had the power to enact an ordinance governing McWilliams's claim, which it does not given article XI, section 12 and the GCA, there is no such applicable ordinance here. The ordinance proffered by the City refers solely to refunds sought by service suppliers and does not even require an administrative claim by them before a lawsuit can be filed – consequently, the section says absolutely nothing about what a taxpayer/service user would actually need to do to comply. The City argues that any procedure not expressly stated is disallowed, but no procedure is specified for service users at all. Carried to its logical conclusion, the City could deny claims filed on blue paper because the code does not expressly allow the filing of claims on blue paper.

Furthermore, even assuming the existence of an applicable ordinance, the GCA would preempt it under traditional preemption principles. (See *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897-98 [16 Cal.Rptr.2d 215, 844 P.2d 534]

(*Sherwin-Williams*).) The Legislature went to great lengths to ensure that the procedures it enacted in the GCA would eliminate balkanized local claims procedures. As this Court recognized in *Ardon*, the entire purpose of the GCA was to provide a comprehensive, statewide set of claims procedures. (*Ardon*, *supra*, 52 Cal.4th at pp. 246-47.) And, as also recognized by this Court in *Volkswagen Pacific*, *supra*, 7 Cal.3d at p. 62, fn. 7 and as the City itself concedes (Respondent's Brief in Court of Appeal ("Resp. Brf.") at pp. 18, 28; Brief at p. 47), the claims procedure of the GCA effectively "occupie[s] the entire field." The addition of article XI, section 12 cements this goal.

Finally, the City's argument with respect to California Constitution, article XIII, section 32 is irrelevant and has no bearing on whether Plaintiff's class claim is proper. This Court has consistently recognized that this provision, by its express terms, only applies to actions against the State. (*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] ["Article XIII, section 32 ... [does not] appl[y] to this action against two local governments."]; *Brown v. County of Los Angeles* (1999) 72 Cal.App.4th 665, 670 [85 Cal.Rptr.2d 414] [Section 32 "applies to actions against the State of California, not those involving assessments by local governments."].)

Even if applicable, however, article XIII, section 32 simply requires litigants to "pay first, litigate later," which Plaintiff has done. (Opinion at p. 13.) As in *Ardon*, the "pay first" principle is not a bar here, where the GCA allows class claims and the plaintiff has paid the contested tax before filing his action. (*Ardon*, *supra*, 52 Cal.4th at p. 252.)

The issue in this appeal is whether local municipalities are entitled to *sua sponte* reject the procedure painstakingly established by the Legislature through extensive study, debate, legislation, and a constitutional amendment, with their own contradictory, vague and ambiguous, and often unstated requirements, thereby allowing local municipalities to deny otherwise valid claims on virtually any basis they wish. The uniformity provided by article XI, section 12 of the Constitution and the GCA were expressly intended to put an end to this source of chaos.

FACTUAL BACKGROUND AND PROCEEDINGS

This is a class action brought by McWilliams against the City challenging the legality of the City's telephone users tax ("TUT") as applied to certain telephone service. Plaintiff's Complaint alleges that the City has improperly required telephone companies to collect and remit taxes from telephone users on long distance and bundled telephone services where calls are not charged by both elapsed time and distance. (Clerk's Transcript ("CT") 5-6 at ¶ 4; 7 at ¶ 8; 14 at ¶ 53.)

Section 3.68.050, subdivision (A) of the Long Beach Municipal Code ("LBMC") imposes a tax on amounts paid for all telephone services used by every person or entity located within the City. (CT 5, 9, 44; App. A.[5]) However, at the time this action was filed, the TUT expressly 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 section 4251 of title 26 of the internal revenue code" (hereinafter, the "FET").[6] (LBMC § 3.68.050, subdivision (D); CT 10 at ¶ 28; 11 at ¶¶ 36; 47; App. A.) Therefore, telephone services not subject to the tax imposed by the FET were not subject to the TUT. (CT 12-13.)[7]

In numerous cases brought by corporate taxpayers seeking refunds from the IRS of improperly collected FET, the federal courts held that in order to be taxable under the plain language of the FET, charges for long-distance telephone services ***must*** be based on

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[5] Citations to "App." refer to the Appendices to Appellants' Opening Brief, filed with the Court of Appeal on February 1, 2008.

[6] Contrary to the description by the City that its ordinance "makes reference to the FET in defining" its tax base (Brief at p. 5), it expressly incorporates the FET by reference.

[7] The City's contention that it relied upon a 1979 Internal Revenue Service ("IRS") ruling in enacting its tax (Brief at p. 5) is irrelevant to the issues on appeal and introduces factual matters that are not part of the record and should not be considered. (See California Rules of Court, rule 8.204(a)(2)(C).)

both distance ***and*** elapsed transmission time.[8] Since most modern telephone service is charged on a "postalized" structure, where charges do not vary by distance, the federal courts concluded that the FET had been improperly applied.[9] As of August 1, 2006, after these numerous adverse court decisions, the IRS ceased collecting the FET on long distance and bundled services and allowed taxpayers to receive a refund simply by checking a box on their federal tax return. (See IRS Notice 2006-50 (CT 25-38).)[10] Nevertheless, even after the IRS conceded and capitulated, the City blatantly continued, until November 2008, to illegally collect the TUT on long distance and bundled services, to which neither the FET nor the TUT applied, and has refused to pay refunds. (CT 5-7.)

On August 11, 2006, Plaintiff sought redress on behalf of himself and all other similarly situated taxpayers by serving a written claim in compliance with the requirements of the GCA on the Long Beach Mayor, City Council, and Director of

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[8] See *Reese Bros., Inc. v. U.S.* (W.D. Pa. Nov. 30, 2004) No. 03-CV-745, 2004 WL 2901579, affd. (3d Cir. 2006) 447 F.3d 229 (App. C); *Hewlett-Packard Co. v. U.S.* (N.D. Cal. Aug. 5, 2005) No. C-04-03832 RMW, 2005 WL 1865419 (App. D); *Fortis, Inc. v. U.S.* (S.D.N.Y. 2004) 420 F.Supp.2d 166, affd. (2d Cir. 2006) 447 F.3d 190; *America Online, Inc. v. U.S.* (Fed.Cl. 2005) 64 Fed.Cl. 571; *Honeywell Internat. Inc. v. U.S.* (Fed.Cl. 2005) 64 Fed.Cl. 188; *National Railroad Passenger Corp. v. U.S.* (D.D.C. 2004) 338 F.Supp.2d 22, affd. (D.C. Cir. 2005) 431 F.3d 374; *OfficeMax, Inc. v. U.S.* (N.D. Ohio 2004) 309 F.Supp.2d 984, affd. (6th Cir. 2005) 428 F.3d 583, rehg. en banc den. (6th Cir. Mar. 30, 2006) No. 04-CV-4009, 2006 U.S. App. Lexis 8294; *American Bankers Ins. Group, Inc. v. U.S.* (S.D. Fla. 2004) 308 F.Supp.2d 1360, revd. (11th Cir. 2005) 408 F.3d 1328.

[9] The term "postalized" derives from the fact that the charge to mail a letter does not vary by distance.

[10] Contrary to the City's (at best) misleading "statement of facts," it was ***the FET itself*** that was incorporated into the City's TUT ordinance, not the IRS's ***interpretation*** of the FET. Plaintiff's allegations do not simply "involve the effect of the changing interpretation of the [FET] on telephony on local agencies' interpretation of their own telephone taxes" or claim that the IRS's "changes in the interpretation of the FET require a reduction in the City's TUT tax base...." (Brief at pp. 4-5). Plaintiff clearly and plainly alleges, rather, that under the City's TUT ordinance and the plain language of the FET, "charges for telephone service that do not vary by time and distance have ***never*** been taxable." (CT 7 at ¶ 10.)

Financial Management seeking return of the money that had been illegally collected and retained by the City. (CT 15-16 at ¶¶ 65-67, 40-42.) Rather than respond to Plaintiff's valid claim, the City attempted to illegally amend the TUT, purportedly to merely "clarify its original intent," to eliminate its incorporation of the FET and to tax telephone service regardless of whether it is charged by both elapsed time and distance.[11] (CT 16.) In other words, the City attempted to apply the TUT to telephone service to which it previously did not apply. The City also added subdivision D to section 3.68.160 of the LBMC, which became effective October 13, 2006, two months after Plaintiff's claim was filed and several weeks after it was deemed denied pursuant to section 912.4 of the GCA. Because the purported amendment adopted a new tax on services to which the TUT previously did not apply, the City was required by Proposition 218 to submit the new tax to a vote by the electorate and receive a majority vote. (CT 16.) It was not until November 2008 that the City finally amended its TUT by obtaining the required voter approval.

Plaintiff's Complaint contains six causes of action:

1. Count I is a Claim for Declaratory and Injunctive Relief "challenging the legality of the TUT" (Opinion at p. 13);
2. Count II is a Claim for Declaratory and Injunctive Relief "challenging the legality of the City's amendment to its municipal code relating to the TUT" (Opinion at p. 13)[12];
3. Count III is a claim for Money Had and Received;
4. Count IV is a claim for Unjust Enrichment;

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[11] A case cited by the City says, "It is well established, of course, that when the Legislature declares that an amendment is intended simply to 'clarify' the meaning of a preexisting version of a statute, such a declaration is not determinative as to the meaning of the earlier version." (*People v. Cruz* (1996) 13 Cal.4th 764, 781 [55 Cal.Rptr.2d 117, 919 P.2d 731].)

[12] Because the City finally obtained voter approval to amend its TUT in 2008, this claim now only seeks a declaration that the taxes collected between 2007 and 2008 were done so illegally.

5. Count V is a claim for Violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution; and

6. Count VI is a Claim for Writ of Mandamus.[13]

(CT 18-21.) The City demurred generally to Plaintiff's Complaint based upon Code of Civil Procedure sections 430.10 and 425.10, Government Code section 905, et seq., and "supporting case law." (CT 65.) On April 13, 2007, Judge Anthony J. Mohr sustained Defendant's Demurrer and dismissed the Complaint with leave to amend. (Reporter's Transcript on Appeal ("RT") A-64:23 to A-65:18.) On May 8, 2007, the parties appeared before the trial court ex parte, and Plaintiff indicated he did not plan to plead any further. (RT B-6:2-4.) The trial court therefore dismissed the case and, on June 12, 2007, entered an order sustaining Defendant's demurrer to the Complaint and dismissing the action. (RT B-6:13; CT 148-51.) On July 19, 2007, Plaintiff filed a Notice of Appeal from the dismissal order. (CT 158.)

On March 28, 2012, the Court of Appeal unanimously reversed the trial court's order with respect to the first, second, third and fourth causes of action of the Complaint, and affirmed the trial court's order with respect to the fifth and sixth causes of action of the Complaint. (Opinion at p. 14.) The Court of Appeal held that under *Ardon, supra*, 52 Cal.4th 241, "McWilliams can file a class claim for a TUT refund," that the "City is not authorized under the [GCA] to establish its own claims procedure for TUT refunds and, in any case, the City's claims procedures do not require McWilliams or other payers of the TUT to file a claim prior to pursuing a tax refund action." (Opinion at p. 2.)

LEGAL DISCUSSION

I. THE STANDARD OF REVIEW IS DE NOVO

The Court must review the *McWilliams* pleading de novo. (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 879 [6 Cal.Rptr.2d 151].) The Court must

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[13] The Court of Appeal affirmed the trial court's order sustaining the City's demurrer with respect to the fifth and sixth causes of action based upon its holding that under this Court's ruling in *Ardon*, Plaintiff has an adequate "post-deprivation" remedy. (Opinion at p. 14.)

"assume that the complaint's properly pleaded material allegations are true and give the complaint a reasonable interpretation by reading it as a whole...." (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125 [271 Cal.Rptr. 146, 793 P.2d 479].) Also, the Court must accept as true all facts that may be implied or inferred from the facts that have been expressly alleged. (*Marshall v. Gibson, Dunn & Crutcher* (1995) 37 Cal.App.4th 1397, 1403 [44 Cal.Rptr.2d 339].) "Courts must also consider judicially noticed matters." (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081 [6 Cal.Rptr.3d 457, 79 P.3d 569].)

II. THE CITY'S PURPORTED CLAIMING ORDINANCES HAVE NO APPLICATION HERE BECAUSE THEY ARE NOT EXCEPTED BY THE GOVERNMENT CLAIMS ACT, SECTION 905(a)

The Court of Appeal held that Plaintiff's properly filed class claim was governed by section 910, which applies to all claims against local governmental entities – unless specifically excepted by section 905 – and allows class claims, as this Court held in *Ardon*, *supra*, 52 Cal.4th 241. The City's local ordinances have no application here because they are not excepted from section 910's application by section 905(a), the only ostensibly applicable exception to the general rule stated by section 905.

A. The City's Ordinances Are Not Excepted "Statutes" Under The Plain Language Of Section 905(a)

The term "statute" in section 905(a) is a clear and unambiguous ***defined term***. Therefore, there is no need for resort to other indicia of legislative intent, such as legislative history. (*Cal. Fed., supra*, 11 Cal.4th at p. 349.)[14] "A 'court cannot, ... in the exercise of its power to interpret, rewrite the statute. ... That is a legislative and not a judicial function.'" (*Estate of Sanders* (1992) 2 Cal.App.4th 462, 476 [3 Cal.Rptr.2d 536] (quoting *Blair v. Pitchess* (1971) 5 Cal.3d 258, 282 [96 Cal.Rptr.42, 486 P.2d 1242,

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[14] The City's own citation confirms that when construing a statute, "[t]he words of the statute are the starting point.... If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature...." (*Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977 [90 Cal.Rptr.2d 260, 987 P.2d 727] (citations omitted); Brief at p. 34.)

45 A.L.R.3d 1206], [citing *Seaboard Acceptance Corp. v. Shay* (1931) 214 Cal. 361, 369 [5 P.2d 882]].))

Section 811.8 defines the term "statute" as "an act adopted by the Legislature of this State or by the Congress of the United States, or a statewide initiative act." The City's purported claiming ordinances do not fall within any of these three categories. Therefore, as the court correctly concluded in *Oronoz*[15] – an opinion that this Court in *Ardon* cited repeatedly and favorably – local ordinances such as the City's are not "'statute[s]' within the meaning of Government Code section 905, subdivision (a)...."[16] (*Oronoz*, *supra*, 159 Cal.App.4th at p. 361 [citing Gov. Code, § 811.8 and *Volkswagen Pacific*, *supra*, 7 Cal.3d at p. 62, which opined that local enactments were not statutes excepted under section 905(a)]; see also, *Societa per Azioni de Navigazione Italia v. City of Los Angeles* (1982) 31 Cal.3d 446, 463-64 [183 Cal.Rptr. 51, 645 P.2d 102] ["As defined by the act, the term 'statute' does not include local ordinances or regulations. (§ 811.8);" finding void a "tariff-as-ordinance" to the extent it purported "to exculpate the City [of Los Angeles] from its respondeat superior liability for pilot negligence"].)

The City's argument that the word "statute" in section 905(a) does not really mean "statute" as it is defined in section 811.8 flies in the face of the clear language of the GCA. Without citing any legal authority to support its position that definitional section 811.8 should be disregarded, the City characterizes these definitions as "unnecessary"

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[15] Despite the express and unambiguous definition provided in section 811.8, the City attributes the *Oronoz* decision to "language which can easily trap the unwary – such as the *Oronoz* panel." (Brief at p. 53.) Presiding Justice Klein and Justices Croskey and Aldrich constituted the *Oronoz* Panel. Justice Croskey authored the opinion.

[16] As noted in the detailed analysis by this Court in *Volkswagen Pacific*, in contrast to the definition of "statute" in section 811.8, section 810.6 defines "enactment" as "a constitutional provision, statute, charter provision, ordinance or regulation." (*Volkswagen Pacific*, *supra*, 7 Cal.3d at p. 62.) Had the Legislature intended section 905(a) to include local ordinances, it would have used the word "enactment" instead of "statute." (*Ibid.*) Whether or not this Court's discussion in *Volkswagen Pacific* of the meaning of the word "statute" in section 905(a) is considered dicta, this Court's reasoning and analysis there are persuasive and its conclusion sound. (*Ibid.*)

and claims "the 1963 amendments had absolutely nothing to do with the scope of claiming procedures." (Brief at pp. 25-26.) However, in doing so, it ignores well established case law, as recognized by the Court of Appeal below, that "[i]n construing a statute ... 'we presume the Legislature has knowledge of all prior laws and enacts and amends statutes in light of those laws.'" (Opinion at pp. 8-9, fn. 5 [quoting *In re Marriage of Cutler, supra*, 79 Cal.App.4th at p. 475].) In other words, no principle of statutory construction allows the Court to presume the Legislature made a mistake when it enacted a definition that is neither vague nor ambiguous.

Further, the Court below cites the historical facts strengthening the applicability of section 811.8's definitions to section 905(a):

> [S]ection 811.8 was enacted pursuant to Senate Bill No. 42 (1963-1964 Reg. Sess.) on the same day former section 703 was renumbered to section 905 pursuant to Senate Bill No. 43 (1963-1964 Reg. Sess.). We thus presume that when the Legislature enacted section 811.8, it was aware of section 905, subdivision (a).

(Opinion at p. 9, fn. 5.)

Relying heavily on section 810, the City also asserts that this is a situation where the "context" "requires" the definition of "statute" to be something other than the one specified by the Legislature in section 811.8.[17] The City provides no legal authority in support of this conclusory assertion. The one case it cites for the concept that language which is unambiguous on its face may be ambiguous in context is inapposite.[18] Here,

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[17] As part of this argument, the City claims that section 935(a) "authorizes local public entities to enact claim procedures," and serves as "the backstop for due process." (Brief at pp. 31, 52.) However, section 935 only applies if claims are first "excepted by Section 905." (§ 935.) Since Plaintiff's claim here is not so excepted, section 935 is irrelevant to the McWilliams claim.

[18] *Kennedy Wholesale, Inc. v. State Bd. Of Equalization* (1991) 53 Cal.3d 245, 249, [279 Cal.Rptr. 325, 806 P.2d 1360] is distinguishable because in that case the words "any changes" were not defined terms and because the ordinarily plain meaning of those words became ambiguous when read in the context of another Constitutional provision. Here, however, interpreting "statute" as defined by section 811.8 does not put section 905(a) in direct conflict with any other provision of the GCA. And because applying section

Plaintiff merely seeks a direct application of section 910 as written to effectuate a straightforward, uniform claims procedure. Applying the GCA here, as this Court did in *Ardon*, would hardly lead to absurd consequences or render any part of the statute meaningless. Rather, it would implement the recognized goal of uniformity.

The City attempts to create some ambiguity by (1) referring to a potential ambiguity in the definition of the word "regulation" in section 811.6, a term which is not at issue here, and (2) by misreading section 995.2. Both attempts fail to create any ambiguity in the definition of the word "statute."

First, since section 811.6 defines the term "regulation" to mean only regulations enacted by agencies of the state or the federal government, while at the same time section 935 refers to "any charter, ordinance or regulation adopted by the local public entity," the City argues that the definition of "statute" cannot be given its plain meaning because the definition of "regulation," a term not at issue here, does not make sense as it is used in section 935, a section which is not at issue here. Colloquially speaking, the City wants to throw out the baby with the bath water. Simply because a defined term irrelevant to this action may be ambiguous or extraneous when used in a different section of the GCA does not mean that all the other definitions can no longer be relied upon.

Second, the City misreads section 995.2 to try to create an ambiguity as the word "statute" is used in that section, but any imprecision is entirely of the City's own making. Specifically, section 995.2 refers to a conflict of interest "as specified by statute ***or*** by a rule or regulation of the public entity." (Emphasis added.) The conjunction (i.e., "or") makes clear that the phrase "of the public entity" modifies only "rule or regulation." At best, this is another situation where there is a potential ambiguity in the term

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811.8's definition of "statute" to section 905(a) does not create "absurd consequences" or render section 905(a) meaningless or inoperative, *Horwich v. Superior Court* (1999) 21 Cal.4th 272, 280 [87 Cal.Rptr.2d 222, 980 P.2d 927], and *Hassan v. Mercy Am. River Hosp.* (2003) 31 Cal.4th 709, 715-716 [3 Cal.Rptr.3d 623, 74 P.3d 726], respectively, are also distinguishable.

"regulation," a term not at issue in this litigation, as used in different sections of the GCA, which are also not at issue in this litigation.

The City's examples may well be situations where the context requires a different interpretation because applying the definitions to ***those*** statutes creates ambiguities, but that is not the case ***here***. The language of sections 905(a) and 811.8 is clear and unambiguous, and provides for the sensible outcome recognized by this Court in *Ardon*, namely the creation of a "standardized procedure" under the GCA to provide uniformity in place of the "myriad state statutes and local ordinances" that existed prior to the GCA's adoption. (*Ardon*, *supra*, 52 Cal.4th at p. 246.)[19]

The City further attempts to create the false impression that there exists a ***long line*** of cases holding that local tax refund claiming ordinances are "statutes" within the meaning of section 905(a). (See, e.g., Brief at p. 35 [referencing "[l]ong [s]tanding" local claiming authority and "[l]ong-[e]stablished [l]ocal [l]egislation [g]overning [t]ax [r]efund [c]laims"]; *id.* at p. 4 [referencing "the many [unspecified] cases concluding that Government Code § 905, subd. (a) preserves local government power to establish reasonable procedures for refunds of taxes"]; *id.* at p. 11 [stating that the *Batt* decision represents a "long line of authority"].) Charitably, the City is, at best, mistaken. To the contrary, the only three opinions to have ever considered section 811.8's definition of "statute" as applied to section 905(a) – that of the court below, *Oronoz* and *Volkswagen Pacific* – concluded that local tax refund claiming ordinances are ***not*** "statutes."

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[19] The GCA clearly and consistently distinguishes statutes from city and county charters and ordinances. When the Legislature wanted to refer to local procedures in the GCA as enacted in 1959, it never used the term "statute" alone. For example, former section 730 (now section 935), provided that claims excepted by section 703 which were not governed by "other statutes or regulations" would be subject to the "procedure prescribed in any charter, ordinance or regulation adopted by the local public entity." (Cal. Stats. 1959, ch. 1724, § 1, p. 4138.) Similarly, section 704, which dealt with interim procedures for claims presented before the effective date of the new GCA, stated that claims presented previously that were in compliance with pre-existing procedures "established by ... statute, charter, or ordinance," would be deemed to comply with the new GCA. (*Id.* at p. 4134).

First, although this Court in *Volkswagen Pacific*, *supra*, 7 Cal.3d at p. 62, enforced a local tax ***collection*** ordinance, it did ***not*** enforce a local tax ***refund claiming*** ordinance as the City implies. (Brief at p. 35.) This Court concluded that a local business tax was improperly assessed against the defendants and needed to be redetermined (*Volkswagen Pacific*, *supra*, 7 Cal.3d at pp. 54, 59), and, "[s]ince it appear[ed] reasonably probable that the question of the applicable statute of limitations [would] be raised upon the retrial of [the] action," it then considered whether refund was barred by section 945.6 of the Government Code, which provided a six-month period of limitations. (*Id.* at p. 60.) This Court then reviewed sections 810, 810.6 (defining "enactment") and 811.8 (defining "statute") and stated:

> There is nothing in the legislative history to suggest that "statute" within section 905, subdivision (a), is to have a special meaning unique to that section. It would appear that if the Legislature intended to except all tax refund actions, rather than just those arising under state law, it would have used "enactment" rather than "statute."

(*Id.* at p. 62.) This Court then held that, "even if section 905, subdivision (a) is read to except all tax refund actions, the claim in the instant case is still governed by section 945.6," because section 935 provides the procedure for claims excepted by section 905(a) and provides that the claim is still subject to the six-month limitations period provided by section 945.6. (*Id.* at p. 62.) So, as the City admits, *Volkswagen Pacific* did not determine "whether local tax refund claim provisions are permitted" (Brief at p. 38) and therefore did not "enforce" a local tax refund claiming provision.

The City also incorrectly cites *Howard Jarvis Taxpayers Assn. v. City of Los Angeles*, (2000) 79 Cal.App.4th 242 [93 Cal.Rptr.2d 742] (*HJTA*), and *Flying Dutchman Park, Inc. v. City & County of San Francisco* (2001) 93 Cal.App.4th 1129 [113 Cal.Rptr.2d 690] (*Flying Dutchman*) as enforcing municipal code claiming provisions. (Brief at pp. 39, 40.) In neither case was the enforceability of municipal code claiming provisions at issue, because in neither case did the plaintiff contend that the GCA rather than the municipal code applied. *HJTA*, rather, held that the plaintiff's action challenging the imposition of local fees and taxes was barred by the 90-day statute of limitations set

forth in former Government Code section 65009(c)(2), and that, even if it was not, the plaintiff association, which did not file a claim, was precluded from pursuing a refund on behalf of others who also failed to file claims in that non-class-action litigation. (*HJTA*, *supra*, 79 Cal.App.4th at pp. 248-49.) Moreover, the *Flying Dutchman* court held that the pay-first, litigate-later rule applied to bar the plaintiff's lawsuit since the plaintiff failed to pay the tax prior to initiating suit. (*Flying Dutchman*, *supra*, 93 Cal.App.4th at pp. 1135-38.) In neither case was there any discussion or analysis of section 905(a) or section 811.8's definition of "statute", because whether or not the municipal code claiming provisions were enforceable was not at issue.

The City also cites to *Pasadena Hotel*, *supra*, 119 Cal.App.3d at p. 415, fn. 3, as holding that section 905(a) allows a "municipal ordinance to supply tax-refund claiming requirements that displace those of the Government Claims Act," (Brief at p. 37) even though the Court of Appeal below here – the same court that issued *Pasadena Hotel* – stated that it had erred: "[T]o the extent *Pasadena Hotel* impliedly determined that a city charter provision relating to tax refunds was a 'statute' within the meaning of section 905, subdivision (a), that determination was incorrect." (Opinion at p. 10.) *Pasadena Hotel* also did not consider section 811.8's definition of "statute."

Finally, the case the City wholly relies upon, *Batt*, *supra*, 155 Cal.App.4th 65, does not, contrary to the City's argument, demonstrate that its position on the scope of section 905(a) reflects "established precedent." (Brief at p. 39.) As demonstrated above, none of the cases the City or the *Batt* court rely upon comprise a "long line of cases" that establish the enforceability of local tax refund claiming provisions. To the contrary, *Batt* was incorrectly decided, because it relied almost entirely upon *Pasadena Hotel*, which, as discussed above, was later rejected by that same court as erroneous. (Opinion at p. 10.) Moreover, the *Batt* court arrived at its erroneous conclusion regarding section 905(a) without any reference to the definition of "statute" provided in section 811.8. In contrast, Justice Croskey in *Oronoz* correctly considered the definition of "statute" provided by section 811.8 and this Court's *Volkswagen Pacific* opinion in concluding that section

905(a) did not except the plaintiffs' claim from the GCA because the County of Los Angeles code was not a "statute." (*Oronoz, supra*, 159 Cal.App.4th at pp. 360-61.)

In sum, rather than a "long line of cases" or "established precedent" supporting the City's position, the only courts to have ever considered whether "statute" in section 905(a) includes or excludes local claiming procedures are this Court in *Volkswagen Pacific*, the Second Appellate District, Division Three in *Pasadena Hotel*, *Oronoz* and *McWilliams*, and the First Appellate District in *Batt*. Of those cases, the only ones that considered the definition of "statute" in section 811.8 as applied to section 905(a) were *Volkswagen Pacific*, *Oronoz* and *McWilliams*, and each of them correctly concluded that "statute" in section 905(a) ***does not*** include local tax refund claiming provisions.[20]

B. The Legislative History Of The GCA Demonstrates That Local Ordinances Purporting to Regulate Tax Refund Claims Are Not Excepted By Section 905(a)

Given the clear language of sections 905(a) and 811.8, examination of the legislative history of section 905(a) to determine the Legislature's intent is unnecessary. However, even if one considers such history, it is absolutely clear that the Legislature never used the word "statute" in the GCA to include local ordinances – either at the time the GCA was enacted in 1959, or any other time for that matter. As this Court recognized in *Ardon, supra*, 52 Cal.4th at pp. 246-47, and as the Court below also stated (Opinion at p. 10), the City's argument that "[in] 1959, the Law Commission recommended, and the Legislature adopted, § 905, subd. (a) to exclude tax refund claims from the sweep of an ambitious effort to standardize claiming requirements" (Brief at p. 52) is erroneous and flatly contradicted by the facts.

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[20] This Court in *Societa per Azioni de Navigazione Italia v. City of Los Angeles, supra*, 31 Cal.3d at p. 463, also concluded that the term "statute" in section 815 "does not include local ordinances or regulations" based upon the definition provided in section 811.8. "[T]he act expressly denies the public entity the power to enact an ordinance abridging its statutory liabilities or expanding its statutory immunities." (*Ibid.*)

Contrary to the City's assertion that the 1959 recommendation of LRC was adopted, the legislative history of section 905(a) clearly reflects the rejection of the LRC's Proposal. As this Court explained in *Ardon*:

> As originally proposed, the standardized procedures of the Act embodied in section 910 would not have applied to "[c]laims under the Revenue and Taxation Code or ***other provisions of law*** prescribing procedures for the refund ... of any tax ...." (Recommendation and Study relating to The Presentation of Claims Against Public Entities (Jan. 1959) 2 Cal. Law Revision Com. Rep. (1959) p. A-12, italics added [proposed former § 703, subd. (a)].) However, ***the Legislature specifically rejected this proposal*** and instead enacted former section 703, subdivision (a) (now § 905, subd. (a)), which exempted from section 910 "[c]laims under the Revenue and Taxation Code or other *statute* prescribing procedures for the refund ... of any tax...." (Stats. 1959, ch. 1724, § 1, pp. 4133-4134, italics added.)

(*Ardon*, *supra*, 52 Cal.4th at p. 247, additional emphasis added; see also Opinion at p. 10.)[21]

The Legislature's deliberate choice of "statute" over "other provisions of law" in section 905(a) (formerly section 703, subdivision (a)) is clearly manifested by a comparison of the Legislature's treatment of the LRC's recommendations with respect to other subdivisions. As proposed by the LRC, section 703, subdivisions (a), (b), and (e), all of which were enacted in 1959 and dealt with exclusions from the GCA's general claiming requirements, would have exempted claims under "other provisions of law." (LRC Rep. at p. A-12, Appendix A attached hereto.)[22] While the Legislature enacted

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[21] A comparison of the LRC's recommendation with the statute actually enacted also demonstrates that this Court's conclusion in *Ardon* is accurate. (Compare Recommendation and Study Relating to the Presentation of Claims Against Public Entities (Jan. 1959) 2 Cal. Law Revision Com. Rep. ("LRC Rep.") at p. A-12 [proposed former § 703, subd. (a)] (Appendix A attached hereto) with Section 905(a).)

[22] Subsection 703(a) would have exempted claims for tax refunds provided under "the Revenue and Taxation Code or other provisions of law," subsection 703(b) would have exempted claims in connection with mechanics' liens under "any provision of law," and subsection 703(e) would have exempted claims under "the Welfare and Institutions Code or other provisions of law." (*Ibid.*)

section 703, subdivisions (b) and (e) exactly as proposed by the LRC,[23] the Legislature did *not* enact the LRC's proposal with respect to subdivision (a). (Cal. Stats. 1959, Ch. 1724, § 1, pp. 4133-34.) The fact that the Legislature changed the LRC's proposed language in subdivision (a), but did not change the LRC's identical proposed language in subdivisions (b) or (e), subdivisions that were (and are) in the same section, demonstrates that the difference was intentional and meaningful.[24]

Therefore, the City's repeated assertion that the Legislature adopted the GCA as proposed by the LRC to exclude ***all*** tax claims (see, e.g., Brief at pp. 19, 23, 52) in continued reliance on the footnote in *Pasadena Hotel*, *supra*, 119 Cal.App.3d 412, is erroneous and directly contrary to this Court's statement in *Ardon* that the Legislature "specifically rejected" the LRC's proposal. (Compare *Pasadena Hotel*, *supra*, 119 Cal.App.3d at p. 415, fn. 3 with *Ardon*, *supra*, 52 Cal.4th at p. 247.)

The City's position also completely ignores acknowledgement by the Court of Appeal below, the same court that issued *Pasadena Hotel*, that its analysis of legislative history in that case was incorrect and that, in fact, the Legislature did ***not*** enact section 703, subdivision (a) (now 905(a)) in the form proposed by the LRC. (Opinion at p. 10.)[25]

Indeed, the pertinent case law makes plain that "[t]he rejection by the Legislature of a specific provision contained in an act as originally introduced is most persuasive to the conclusion that the act should ***not*** be construed to include the omitted provision." (*Estate of Sanders*, *supra*, 2 Cal.App.4th at pp. 473-74, emphasis added (citing *Rich v. State Bd. of Optometry* (1965) 235 Cal.App.2d 591, 607 [45 Cal.Rptr. 512]).) "Further, it is nearly impossible to square [one party's] construction of the Act with the Legislature's

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[23] In 2008, section 703, subdivision (b) was amended to change "any provision of law" to "any law." (Cal. Stats. 2008, Ch. 383, § 1.)

[24] For the same reason, the LRC's use of "claims statutes" in its introduction is irrelevant because the Legislature deliberately did not use this terminology.

[25] The Honorable Joan D. Klein, P.J., a member of the *Pasadena Hotel* panel, joined in the unanimous opinion of the Panel below which found that *Pasadena Hotel*'s "analysis of legislative history was incorrect." (Opinion p. 10.)

deletion of a section of the original draft that unambiguously would have accomplished [that party's] purpose." (*Ung v. Koehler* (2005) 135 Cal.App.4th 186, 200 [37 Cal.Rptr.3d 311].)

The City misrepresents that Professor Van Alstyne's use of the terms "claim statutes" and "claim provisions" interchangeably was applied to the 1959 legislation (Brief at p. 21), when, in fact, the use of such short-hand terminology was not adopted even by the LRC anywhere in its actual proposed – yet rejected – statutory text, which was careful to distinguish between statutes, charters, and ordinances. (LRC Rep. at pp. A-11 to A-16, Appendix A attached hereto.)[26] Moreover, the purpose of the study was not to provide statutory terminology, but rather to study the diverse variety of claims requirements that then existed and suggest whether a reform was needed. (See LRC Rep. at p. A-7, Appendix A attached hereto.) The City would have the Court give unprecedented weight to the study by Van Alstyne which is legislative history twice removed. Van Alstyne's study and the LRC's Recommendation are similar to legislative committee reports, which "are certainly not conclusive" in "determining legislative intent" (*Committee of Seven Thousand v. Superior Court of Orange County* (1988) 45 Cal.3d 491, 508 [247 Cal.Rptr. 362, 754 P.2d 708]), and the "Legislature of course may choose to reject proposed legislation for reasons not apparent from the record." (*Fernandez v. California Dept. of Pesticide Regulation* (2008) 164 Cal.App.4th 1214, 1232 [80 Cal.Rptr.3d 418].)

Clearly, as recognized by this Court in *Ardon* and the court below, the Legislature

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[26] The fact that judicial opinions cited by the City from 1950, 1951 and 1958 loosely used the term "statute" to include local claiming provisions has no bearing on the Legislature's clear and deliberate choice to use the term "statute" without reference to local ordinances in passing the GCA in 1959, and specifically in exclusion of them in 1963. (Brief at p. 22.) Again, nothing in the language of the Act itself shows a choice by the Legislature to utilize "statute" as a generic phrase; indeed the Legislature's deliberate and careful choice of language, as manifested above in the comparison of its discriminating treatment of the Law Revision Commission's recommendations with respect to sections 703, subdivisions (a), (b), and (e), demonstrates otherwise.

did ***not*** enact the LRC's Recommendation here. Given that fact, the Court below properly excluded consideration of the LRC's proposal in determining the Legislature's intent. (Opinion at p. 10.)

C. The Legislature Further Clarified The Meaning Of "Statute" And Has Not Delegated Its Authority To Create A Tax-Specific Refund Procedure To Local Governments

The Legislature's intent that the term "statute" in section 905(a) not include local ordinances was cemented in 1963 when it enacted the current definition of "statute" in section 811.8, which does ***not*** include local ordinances. As the Court of Appeal correctly held, "[i]n construing a statute [courts] 'presume the Legislature has knowledge of all prior laws and enacts and amends statutes in light of those laws.'" (Opinion at pp. 8-9, fn. 5 [quoting *In re Marriage of Cutler, supra*, 79 Cal.App.4th at p. 475].) No amount of speculation about what the Legislature might have meant in 1959 can change the Legislature's express pronouncement in 1963. The Court of Appeal correctly presumed "that when the Legislature enacted section 811.8, it was aware of section 905, subdivision (a)." (Opinion at p. 9, fn. 5.) By exempting claims under the "the Revenue and Taxation Code or other statute," the Legislature provided that tax refund procedures would be governed by local procedures only if the Legislature specifically conferred that power on local public entities by statute.

When it intends to do so, the Legislature frequently prescribes tax-specific refund procedures tailored to the taxes to which they apply. (See, e.g., Veh. Code, § 42231, et seq. [providing refund procedures for application fees assessed under the Vehicle Code].) The same is true for locally collected taxes – in many instances the Legislature creates a uniform, tax-specific refund procedure even where the tax is assessed and collected locally. (See, e.g., Rev. & Tax. Code, §§ 5097, 5140 [specifying refund claim procedures for property taxes]; see also Bus. & Prof. Code, § 5499.14 [specifying refund claim procedures for city and county refunds of assessments for illegal advertising displays].) In some instances the Legislature has also delegated authority to prescribe tax-specific refund claim procedures. (See, e.g., Ed. Code, § 17033 [delegating to the State Allocation

Board authority to prescribe refund procedures for rent and fees charged in connection with the rental of school buildings].) Here, however, the Legislature has neither prescribed a tax-specific refund procedure governing the TUT, nor delegated authority to create a tax-specific refund procedure. Consequently, the GCA applies, and no attempt to create a different procedure has been authorized by the Legislature.

In sum, the City's argument that the word "statute" in section 905(a) includes a local ordinance is flatly contradicted by both the GCA's unambiguous statutory language and this Court's finding in *Ardon* regarding the Legislature's rejection of the LRC's Recommendation.[27]

III. EVEN IF THE GCA PERMITTED MUNICIPAL CONTROL OF TAX REFUND PROCEDURES, THE CITY HAS NO APPLICABLE REFUND ORDINANCE

Even if the Legislature had excluded tax refund claims under local ordinances from the GCA's coverage in section 905(a), the City, just as the City of Los Angeles in *Ardon*, *supra*, 52 Cal.4th at p. 246, fn. 2, ***has no ordinance*** that requires service users, such as Plaintiff, to file a claim with the City for refund of the TUT prior to filing suit. (Opinion, at pp. 2, 4, 11 & fn. 7.) Therefore, just as in *Ardon*, section 910 applies.

LBMC section 3.68.160 by its plain terms does not apply to the tax refund claim at issue here; it merely provides a mechanism by which ***service providers*** may seek refunds on behalf of their subscribers. It does not even speak to ***individual taxpayer*** refund

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[27] While the City places much weight on the fact that this Court distinguished rather than rejected *Batt* in its *Ardon* decision, this Court did not address, because it did not need to, whether municipal ordinances can provide the applicable claims procedure for local tax refunds or if section 910 preempts them. It did, however, reject many of *Batt*'s conclusions and speak of *Oronoz* with approval. (Compare, e.g., *Batt*, *supra*, 155 Cal.App.4th at pp. 74-75 [citing with approval *HJTA*, *supra*, 79 Cal.App.4th 242], with *Ardon*, 52 Cal.4th at p. 250 ["like the *Oronoz* court, we specifically disagree with the overbroad statement in [*HJTA*] that 'class-action-type lawsuits seeking a refund of fees and taxes are barred unless each plaintiff has first filed an administrative refund claim with the City.'" ([*HJTA*], at p. 249.) The statement is especially incorrect 'as applied to claims against local public entities that are not governed by specific tax refund statutes.' (*Oronoz*, *supra*, [159 Cal.App.4th] at p. 365, fn. 9.)"].)

claims.[28] LBMC section 3.68.160, subdivision (A) provides, in relevant part, "Whenever the amount of any tax has been overpaid ... or has been erroneously or illegally collected or received ... under this Chapter, ***it may be refunded as provided in this section.***" (CT 73; App. A; see also CT 10, emphasis added.) LBMC section 3.68.160, subdivision (B) grants a substantive claiming right to ***service suppliers***, stating, "A service supplier may claim a refund" on behalf of its customers. (CT 10, 73.) LBMC section 3.68.160, subdivision (C) imposes a procedural requirement for those service suppliers to follow, stating, "No refund shall be paid under the provisions of this section unless the ***claimant*** established his or her right thereto by written records showing entitlement thereto." (CT 73; see also CT 11, emphasis added.) The term "claimant" in subdivision (C) can only refer to service suppliers entitled to seek refunds because subdivision (A) states that refunds may only be sought "as provided in this section."

Moreover, as the Court of Appeal correctly held, LBMC section 3.68.160 does not state that a claim under that provision is a prerequisite to the filing of a lawsuit. (Opinion at p. 11, fn. 7.) It merely provides that a service provider "may" request a refund and that it shall not be paid a refund under the provisions of that section unless it has first submitted a claim pursuant to that section.[29] Therefore, unlike the GCA, LBMC section

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[28] Service ***users/taxpayers*** are precluded from requiring service ***suppliers*** to obtain refunds on their behalf by California Public Utilities Code, section 799, which grants service suppliers immunity from such claims. (CT 11.) As a result, service suppliers have no economic or legal incentive to file refund claims on behalf of their customers. (See *Javor v. State Bd. of Equalization* (1974) 12 Cal.3d 790, 801 [117 Cal.Rptr. 305, 527 P.2d 1153] [the Court found itself called upon to fashion a remedy since, "[u]nder the procedure set up by the [State] Board [of Equalization], the retailer is the only one who can obtain a refund from the Board; yet, since the retailer cannot retain the refund himself, but must pay it over to his customer, the retailer has no particular incentive to request the refund on his own."].)

[29] The City argues that its "controlling ordinance says nothing about class claims and cannot be construed to allow them." (Brief at p. 13.) However, as discussed above, the City's ordinance is not controlling, especially in the context of an individual taxpayer refund claim. Moreover, the City's citation to *Woosley v. State of California* (1992) 3 Cal.4th 758, 792 [13 Cal.Rptr.2d 30, 838 P.2d 758] (*Woosley*), for the proposition that

3.68.160 does not provide a claim procedure for individual taxpayers, does not require the filing of an administrative claim before a lawsuit can be filed, and says absolutely nothing about what an individual taxpayer would actually need to do to comply.[30]

Nor do LBMC sections 3.48.060 or 3.48.070 provide a claim procedure for taxpayers. First, sections 3.48.060 and 3.48.070 are part of a chapter that provides a default procedure applicable only when another "ordinance of the City or any law applicable thereto" does not apply. (See LBMC, § 3.48.070 ["If any ordinance of the city or any law applicable thereto expressly authorizes, in certain contingencies, the making of a refund of money paid to the City or prescribes the procedure therefor said ordinance shall control in making the refund."] (CT 75).) So, to the extent the City argues that LBMC section 3.68.160 applies, then LBMC sections 3.48.060 and 3.48.070 do not.

Second, far from supporting the City's arguments, LBMC section 3.48.070 actually directly contradicts the City's argument that any refund procedure (such as a class refund procedure) is barred unless it is expressly authorized. LBMC section 3.48.070 says:

> The council declares that its intent ... is to provide for the making of refunds ... ***not otherwise expressly prohibited*** by any ordinance or law applicable to the City or ***not otherwise expressly authorized*** by such ordinance or law.

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express authorization is required for class claims is misplaced. (Brief at p. 49.) "*Woosley* held that article XIII, section 32 of the California Constitution compelled an action for tax refunds ***against the state*** to be brought in the manner that the Legislature specified under the statutes at issue." (*Ardon, supra*, 52 Cal.4th at p. 248, emphasis added.) *Woosley* and article XIII, section 32 are inapplicable to this action against a local government for the refund of a local tax. (See § V, *infra*.)

[30] The City's brief repeatedly refers to subsection D in arguing that Plaintiff failed to comply with the requirements of the LBMC. (Brief at pp. 13-14.) Subsection D, however, was not enacted until two months after Plaintiff filed his claim, and nothing in the language indicates an intent that it apply retroactively. It, therefore, is inapplicable. (See *Aktar v. Anderson* (1997) 58 Cal.App.4th 1166, 1179 [68 Cal.Rptr.2d 595].) In any event, the addition of subsection D changes nothing since it provides that the "claimant," who, according to subsection B, is the service provider, shall not be paid a refund unless it has "submitted a claim pursuant to this section."

(Emphasis added) (CT 75.) In other words, LBMC section 3.48.070 declares that it is the intent of the City Council to provide for making refunds, even if the procedures are not "expressly authorized," so long as they are not "expressly prohibited." Therefore, assuming LBMC section 3.48.070 applies, as the City asserts, it directly contradicts the City's argument that any procedure not expressly authorized is prohibited.

Finally, Section 3.48.060[31] grants no substantive right to claim a refund but prohibits ***the City*** from refunding any money without the appropriate authorization and requires ***the City*** to refund the money within one year of it being paid or the filing of an application for refund. It does not even specify who the persons are that are "entitled to the money." (*Ibid.*) In the context of the TUT, LBMC section 3.48.060 provides that service suppliers who file timely refund claims with supporting documentation (and not individual taxpayers) are the persons entitled to the money.

Unlike the GCA, the LBMC does not specify who may file a claim or how to file a claim, provide a specific time for the City to respond, an opportunity to correct any deficiency, the information needed to file a claim or to whom the claim should be delivered. Indeed, the City's argument that any procedure that is not expressly stated is disallowed rings hollow when the City's ordinances ***specify no procedure at all.***

The City's argument that the GCA will not suffice here because "local governments must tailor refund ordinances to the manner in which taxes are collected" (Brief at p. 28) ignores the problem that the service providers have no incentive to request a tax refund on behalf of their customers. (See fn. 28, *supra.*) The City cannot create a

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[31] LBMC section 3.48.060 provides:

> Any refund made pursuant to this Chapter must be authorized by the department head with the approval of the City Attorney or the City Attorney and the City Council, provided the refund is made within one year after payment of the money to the City, or if an application for a refund is filed by the person entitled to the money, the application therefor must be filed within said one-year period.

(CT 74.)

tax collection scheme that leaves a taxpayer without recourse for illegally collected taxes. To do so would violate due process. (*McKesson Corp. v. Division of Alcoholic Beverages & Tobacco, Dept. of Business Regulation of Florida* (1990) 496 U.S. 18, 39 [110 S.Ct. 2238, 110 L.Ed.2d 17] [requiring the government to not only provide taxpayers with a "clear and certain remedy," but with a "fair opportunity to challenge the accuracy and legal validity of their tax obligation"]; see also *Javor v. State Bd. of Equalization*, *supra*, 12 Cal.3d at p. 800 ["[T]he Board cannot use the refund procedure to abdicate its responsibility to the customer, particularly where the Board stands to unjustly profit under such circumstances."].)[32] Moreover, there are approximately 145 cities and counties in California with a telephone user tax. They are all collected the same way – i.e., by carriers. There is no legitimate interest in having 145 different claims procedures for the refund of those taxes.

The City also makes a generic argument that its ordinances must be construed to avoid constitutional issues and with deference to the City's interpretation of such ordinances. (Brief at pp. 16-18.) However, there is no evidence that the City has acted in any way to provide an "interpretation" for this Court to follow, nor does it cite to any in its brief. (Brief at p. 17.)[33] Moreover, adopting Plaintiff's interpretation of the City's ordinances will not render the ordinances unconstitutional, but merely render them inapplicable to Plaintiff's claim, which simply means section 910 applies, as it did in *Ardon*.

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[32] *IBM Personal Pension Plan v. City & County of San Francisco* (2005) 131 Cal.App.4th 1291, 1305 [32 Cal.Rptr.3d 656] is distinguishable because it presented a tracing issue that made it difficult to tell that the money came from the taxpayer in payment of the subject taxes, which is not the case here.

[33] Nor do the cases cited by the City provide much help to its position. In *Los Altos El Granada Investors v. City of Capitola* (2006) 139 Cal.App.4th 629, 638 [43 Cal.Rptr.3d 434], the court specifically discussed the analyst research and other supporting evidence for the Rent Review Board's interpretation at issue. There is no such supporting evidence or even a history of interpretation to help the City here. In *Van Wagner Communications, Inc. v. City of Los Angeles* (2000) 84 Cal.App.4th 499, 509-510 [100 Cal.Rptr.2d 922], the court did not defer to the administrative Board's rulings as they were inconsistent with one another, and instead, concluded that interpretation of the ordinance at issue was "solely a judicial function."

IV. THE GCA PREEMPTS LOCAL CLAIMING PROCEDURE FOR THE REFUND OF LOCAL TAXES UNDER TRADITIONAL PREEMPTION ANALYSIS AND THE HOME RULE DOCTRINE DOES NOT APPLY

Even if the plain language of the GCA and article XI, section 12 were not clear, the City's ordinances would be preempted by the GCA under traditional preemption principles. The analytical framework used to resolve whether or not a matter is preempted, or falls within the home rule authority of charter cities provided by Article XI, section 5, subdivision (a) of the California Constitution, was recently reiterated by this Court in *State Building*:

> First, a court must determine whether the city ordinance at issue regulates an activity that can be characterized as a "municipal affair." ... Second, the court "must satisfy itself that the case presents an actual conflict between [local and state law]." ... Third, the court must decide whether the state law addresses a matter of "statewide concern." ... Finally, the court must determine whether the law is "reasonably related to ... resolution" of that concern ... and "narrowly tailored" to avoid unnecessary interference in local governance .... "If ... the court is persuaded that the subject of the state statute is one of statewide concern and that the statute is reasonably related to its resolution [and not unduly broad in its sweep], then the conflicting charter city measure ceases to be a 'municipal affair' pro tanto and the Legislature is not prohibited by article XI, section 5 (a), from addressing the statewide dimension by its own tailored enactments."

(*State Building and Construction Trades Council of California, AFL-CIO v. City of Vista* (2012) 54 Cal.4th 547, 556 [143 Cal.Rptr.3d 529, 279 P.3d 1022] (*State Building*) [quoting *Cal. Fed.*, *supra*, 54 Cal.3d at pp. 16-17, 24].)[34]

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[34] *State Building*, a case where the ordinance at issue was upheld under the "home rule" doctrine, is distinguishable from this case because the subject matter in that case – the wage levels of contract workers on locally funded public works – was a well established "municipal affair" in line with longstanding legal authority. In addition, while in *State Building* the Court did not find a "'convincing basis' for the state's action – a basis that 'justif[ies]' the state's interference in what would otherwise be a merely local affair" (*State Building*, *supra*, 54 Cal.4th at p. 560), here, that convincing basis is evident in the sweeping changes by the GCA to create a uniform system for claims presentation, and the amendment to the California Constitution meant to assure the priority of the GCA. (See § IVA, *infra.*) In addition, that case concerned whether or not the local

Moreover, "[a]lthough the home rule provision clearly embraces taxation for local purposes and although such power is very broad, it does not include the right to take property illegally or to escape the obligation to redress such wrongs once committed." (*Todd Shipyards Corp. v. City of Los Angeles* (1982) 130 Cal.App.3d 222, 227-228 [181 Cal.Rptr. 652] [citing *Weekes* v. *City of Oakland* (1978) 21 Cal.3d 386, 400 [146 Cal.Rptr. 558, 579 P.2d 449]].)

A. Article XI, Section 12 Vests The Legislature With The Power To Prescribe Claims Procedures Against Local Governments

The California Constitution was amended contemporaneously with the GCA to provide that "[t]he Legislature may prescribe procedure for presentation, consideration, and enforcement of claims against counties, cities, their officers, agents, or employees," in order to ensure that the uniform procedures of the GCA would apply without regard to any "statewide concern" versus "municipal affair" distinction. (Cal. Const., art. XI, § 12, amending Cal. Const. art. XI, § 10 (Nov. 8, 1960).)[35] Therefore, it makes no difference that the power to tax may be a municipal affair. Claims procedures are not governed by the "home rule" doctrine, and the City has cited no case law where article XI, section 12 has been limited by the "home rule" concept.[36] To further ensure uniformity, the

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government could ***spend*** public funds with autonomy ("at the heart of what it means to be an independent governmental entity"), not whether the City can legislate claims procedures when not excepted from the GCA. (*State Building, supra*, 54 Cal.4th at p. 562.)

[35] The LRC recommended this constitutional amendment to "confirm the Legislature's power to prescribe procedures governing the presentation, consideration and enforcement of claims against [chartered counties and cities]." (See LRC Rep. at p. A-9, Appendix A attached hereto.)

[36] It is unclear how a provision regarding the collection of local utility taxes in the Public Utilities Code demonstrates "that local legislation controlled claiming procedures" as the City claims. (Brief at p. 29.) The addition of PUC section 799 to protect utility suppliers from liability in 1996 does not provide for local regulation or clarify anything with respect to the claims procedures at issue here. The City confuses the power to collect tax and the power to control the applicable claims procedures. While the first is a power reserved for charter cities such as this, the latter is not. The only case cited by the

Legislature also amended the Code of Civil Procedure to make clear that statutes of limitations applicable to suits against public entities and employees would be governed by the GCA, as opposed to general statutes of limitation, as reflected in the *Volkswagen Pacific* decision.[37]

As this Court held in *Volkswagen Pacific, supra*, 7 Cal.3d at p. 62, fn. 7, and as the City admitted both in its briefing before the Court of Appeal (Resp. Brf. at pp. 18, 28) and here (Brief at p. 47), the regulation of claims against governmental entities is one of "statewide concern." Therefore, even if the GCA were not buttressed by article XI, section 12, the clear purpose behind enactment of the GCA – procedural uniformity – is a matter of "statewide concern" and would overcome the "home rule" prerogative. As this Court recognized in *State Building*, "state laws at issue set forth generally applicable *procedural* standards, and consequently impinged less on local autonomy than if they had imposed substantive obligations," and were more likely to be a matter of statewide concern. (*State Building, supra*, 54 Cal.4th at p. 564 [citing *People ex. rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, 600 [205 Cal.Rptr. 794, 685 P.2d 1145]].)[38]

City as an example of "decisions [that] enforced local refund claim procedures" (Brief at p. 29, emphasis omitted) did not actually enforce a local refund claim procedure but applied the statute of limitations provided by the GCA. (See *Volkswagen Pacific, supra*, 7 Cal.3d at p. 62.)

[37] California Code of Civil Procedure § 313 provides: "The general procedure for the presentation of claims as a prerequisite to commencement of actions for money or damages against the State of California, counties, cities, cities and counties ... and against the officers ... thereof, is prescribed by [the GCA]."

[38] See also *Fiscal v. City and County of San Francisco* (2008) 158 Cal.App.4th 895, 919 [70 Cal.Rptr.3d 324] ["If every city and county were able to opt out of the statutory regime simply by passing a local ordinance, the statewide goal of uniform regulation ... would surely be frustrated. Clearly, the creation of a *uniform* regulatory scheme is a matter of statewide concern, which should not be disrupted by permitting this type of contradictory local action."].)

B. There Is A Clear Conflict Between The Refund Procedures Provided By The City's Ordinance And The Government Claims Act

Is it well established that "A conflict between state law and an ordinance exists if the ordinance duplicates or is coextensive therewith, is contradictory or inimical thereto, or enters an area either expressly or impliedly fully occupied by general law." (*American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1251 [23 Cal.Rptr.3d 453, 104 P.3d 813] (*American Financial*).) Here, the Legislature has occupied the field and the City's ordinances contradict state law.

1. The Legislature Has Occupied The Field

As this Court noted in *American Financial*:

> [L]ocal legislation enters an area that is 'fully occupied' by general law when the Legislature has expressly manifested its intent to 'fully occupy' the area [citation], or when it has impliedly done so in light of one of the following indicia of intent: '(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the' locality [citations].

(*American Financial*, *supra*, 34 Cal.4th at p. 1252 [citing *Sherwin-Williams*, *supra*, 4 Cal.4th at p. 898].)

Since the entire purpose of the GCA was to eliminate the balkanization of claims procedures that existed prior to 1959 and, as the City itself admits, "to standardize claiming requirements" (Brief at p. 19), resolution of the issue of whether the Legislature has occupied the field is clear and easily made. Without preemption of local procedures, the enactment would have been meaningless. As the *Ardon* decision affirms, since 1959, claims for money or damages against local government entities have been subject to the plenary control of the state Legislature:

> Before 1959, taxpayer and other claims against the state, local, and municipal governments were governed by myriad state statutes and local ordinances. Finding this system too complex, the Legislature enacted the Government Claims Act (the Act), which established a standardized procedure for bringing claims against local governmental entities. (Stats. 1959, ch. 1724, § 1, p. 4133, enacting Gov. Code, former § 700 et seq. [replacing more than 150 separate procedures for directing claims against local governmental entities]; now § 900 et seq.)

(*Ardon, supra*, 52 Cal.4th at pp. 246-47.) As the City admits (Brief at p. 47), and as this Court has concluded (*Volkswagen Pacific, supra*, 7 Cal.3d at p. 62, fn. 7), the procedures for claims against public entities are a matter of statewide concern and the Legislature has occupied the entire field. In so doing, the Legislature has not authorized municipalities to create their own diverse claims procedures.

2. The Local Ordinances Purport To Contradict State Law

Moreover, even assuming the Legislature had not occupied the field (which it did), and further assuming that the City's ordinances apply here to bar class refund claims (which they do not), the Long Beach ordinances – as alleged to exist by the City's counsel – would be contradictory to state law and are therefore preempted.

Local legislation "is 'contradictory' to general law when it is inimical thereto." (*Sherwin-Williams, supra*, 4 Cal.4th at p. 898.) Local legislation is inimical to state law when it prohibits what state law allows. (See, e.g., *Ex parte Daniels* (1920) 183 Cal. 636, 641-48 [192 P. 442] [finding contradiction in a local ordinance that set the maximum speed limit for vehicles below that set by state law]; see also *Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109, 1125 [67 Cal.Rptr.2d 420] ["Local authorities ... are preempted from imposing more stringent standards and making impermissible that which the [state] expressly permits."].)

In *Eastlick*, this Court held that a Los Angeles charter provision, which purported to require itemization of claims for damages, was preempted by the state claims procedure, which did not require such itemization. (*Eastlick v. City of Los Angeles* (1947) 29 Cal.2d 661, 667 [177 P.2d 558].) This Court squarely concluded that Los Angeles could not "impose more onerous conditions affecting any ... matter covered by

the statute ... [because it would] necessarily [be] inconsistent with the general form of claim presentation adopted by the Legislature for operation throughout the state." (*Ibid.*; see also *Taylor v. City of Los Angeles* (1960) 180 Cal.App.2d 255, 261-62 [4 Cal.Rptr. 209]; *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1075 [63 Cal.Rptr.3d 67, 162 P.3d 583] [ordinance conflicted with state law where anyone engaging in conduct covered by the ordinance – "conduct exclusively within the purview of state law – is subject to penalties in excess of those prescribed by the Legislature"]; *Tosi v. County of Fresno* (2008) 161 Cal.App.4th 799, 806 [74 Cal.Rptr.3d 727] [ordinances that "regulate in a more restrictive manner the very conduct regulated in state law ... impermissibly conflict with state law" and are preempted].)

Here, the GCA allows the filing of class claims (*Ardon, supra*, 52 Cal.4th 241)[39] while the City claims that its ordinances bar class claims by simply failing to address whether a taxpayer needs to file a claim before seeking redress in court. Therefore, because the City's ordinances purport to impose inconsistent and more onerous requirements for the presentation of claims by prohibiting class claims, they conflict with section 910 and are preempted.

C. The Government Claims Act Is Reasonably Related And Sufficiently Narrowly Tailored To Resolving A Legitimate Statewide Concern

As set forth in greater detail above, the GCA served to address a legitimate statewide concern by eliminating confusing and varied claiming procedures and replacing them with a detailed, uniform and standardized system. (*Ardon, supra*, 52 Cal.4th at pp. 246-47.) The GCA provides narrowly tailored procedural standards governing the presentation and consideration of claims against public entities and cannot be considered a state law "dictating the *substance*" of a public issue. (*State Building*, 54 Cal.4th at p.

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[39] The GCA was not "'intended to thwart class relief.'" (*Ardon, supra*, 52 Cal.4th at p. 248 [quoting *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 457 [115 Cal.Rptr. 797, 525 P.2d 701]].)

564.) Indeed, the GCA is extremely specific in its uniformity, providing the who, what, when, where and how of presenting a claim. (See §§ 910 to 915.4.)

V. ARTICLE XIII, SECTION 32 DOES NOT PRECLUDE THIS ACTION

The City's argument that article XIII, section 32 of the California Constitution bars Plaintiffs' class claim is meritless. The City fails to explain how this "pay first, litigate later" rule helps its position, let alone how it applies here, since there is no dispute that Plaintiff McWilliams paid the tax before commencing this action.[40]

Moreover, Article XIII, section 32, however, does not even apply to this action against a local government. Contrary to the City's attempt to split section 32 in two and argue that even though the first sentence explicitly applies only to actions against the State, the second sentence applies to actions against local governments, this Court has held that article XIII, section 32's two sentences must be read together (*State Bd. of Equalization v. Superior Court* (1985) 39 Cal.3d 633, 638 [217 Cal.Rptr.238, 703 P.2d 1131]), and has also repeatedly held that the provision, by its very terms, only applies to actions against the State. (*Howard Jarvis Taxpayers Assn. v. City of La Habra, supra*, 25 Cal.4th at p. 822, fn. 5 ["Article XIII, section 32 ... [does not] appl[y] to this action against two local governments"]; *Oronoz, supra*, 159 Cal.App.4th at p. 363, fn. 6; *City of Anaheim v. Superior Court* (2009) 179 Cal.App.4th 825, 830 [102 Cal.Rptr.3d 171]; *Brown v. County of Los Angeles, supra*, 72 Cal.App.4th at p. 670 [Section 32 "applies to actions against the State of California, not those involving assessments by local governments."].)

Even if, however, the provision could arguably be split into two separate parts, and

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[40] For this reason, and as recognized by the Court of Appeal, *Flying Dutchman, supra*, 93 Cal.App.4th at p. 1138 is inapposite because unlike there, Plaintiff here has paid the tax at issue. (Opinion at p. 13.) This equally applies to *Writer's Guild of America, West, Inc. v. City of Los Angeles* (2000) 77 Cal.App.4th 475, 483 [91 Cal.Rptr.2d 603] (emphasizing that "[t]his decision merely holds that the individual plaintiffs, in order to initiate a suit for relief, must make a tax payment and sue in superior court for a refund....").

"even assuming article XIII, section 32 is equally applicable to tax actions against local governments, [this Court] ha[s] already determined that section 910 provides the necessary legislative authorization for class claims of taxpayer refunds against local governmental entities." (*Ardon, supra*, 52 Cal.4th at p. 252.) Since, as discussed *supra*, the GCA provides the applicable claim procedure and authorizes class claims, "there is nothing in the constitutional provision that would preclude the present action." (*Ibid.*)[41]

Finally, the City purports to make repeated "public policy" arguments in favor of upholding local tax refund procedures and barring class claims. (See, e.g., Brief at pp. 18, 39-41.) In reality, these arguments are simply a "cover" for the result desired by Long Beach City Attorney Robert E. Shannon, who stated: "If people were left to the task of filing individual claims, they by and large wouldn't bother." (See Plaintiff's Motion to Consider Additional Evidence, Exhibit A [Daily Journal article dated April 13, 2012].) Nevertheless, in *Ardon*, this Court addressed and rejected these same public policy arguments made by these same counsel favoring the barring of class claims for tax refunds:

> [T]he important public policy behind article XIII, section 32 " 'is to allow revenue collection to continue during litigation so that essential public services dependent on the funds are not unnecessarily interrupted.' " (*State Bd. of Equalization v. Superior Court* (1985) 39 Cal.3d 633, 638 [217 Cal.Rptr. 238, 703 P.2d 1131], quoting *Pacific Gas & Electric Co. v. State Bd. of Equalization* (1980) 27 Cal.3d 277, 283 [165 Cal.Rptr. 122, 611 P.2d 463].) This policy is intended to ensure the uninterrupted flow of tax revenue, so that refunds that are authorized must be processed in orderly procedures that the Legislature allows. That policy favoring fiscal responsibility, however, does not justify precluding legitimate class proceedings for the refund of allegedly illegal taxes, and is indeed satisfied here because section 910 allows the present taxpayer class claim.

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[41] Contrary to the City's contention, nowhere did this Court in *Ardon* hold that, following *Woosley, supra*, 3 Cal.4th at p. 792, class claims for tax refunds require express legislative authorization. (Brief at p. 9.) In fact, this Court found "no reason to construe section 910 in light of *Woosley*.... the relevant governing claims statute here is section 910.... *Oronoz* held that class claims are permitted under section 910." (*Ardon, supra*, 52 Cal.4th at p. 251.)

(*Ardon*, *supra*, 52 Cal.4th at p. 252.) The idea that the City can always be trusted to deal fairly with its citizens is, regrettably, a romanticized notion, and not one upon which our system of checks and balances was built. If the City really wanted to treat its taxpayers fairly and avoid unnecessary expenditure on legal fees, it should have attempted to settle Plaintiff's claim long ago, instead of fighting every step of the way for over six years as it has done.[42]

Again, as recognized by this Court in *Ardon*, precluding class claims would not make good public policy.[43] There is no fundamental principle of government that favors collection of illegal taxes over the right of individuals to join together to seek the return of those taxes, particularly where, as here, the vast majority of individual refunds would be insufficient to justify the expense of litigation.

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[42] The City's citations to ***other*** states laws that supposedly do not allow class tax refund claims (Brief at pp. 44-46) are wholly irrelevant. The importance of the class action device to the vindication of individual rights is recognized by California courts. (See, e.g., *Javor v. State Bd. of Equalization*, *supra*, 12 Cal.3d at p. 797 ["Since in many instances, the small amount involved may discourage an individual action as economically impractical, the state would be unjustly enriched, if a class suit were not permitted."].) Moreover, there are many states that *do* allow class action tax refund claims. (See, e.g., *Arizona Dept. of Revenue v. Dougherty* (2001) 200 Ariz. 515 [29 P.3d 862]; *Buckley Powder Co. v. State of Colo.* (2002) 70 P.3d 547 [2002 Colo. App. LEXIS 2189]; *City of Somerset v. Bell* (2005) 156 S.W.3d 321 [2005 Ky. App. LEXIS 3]; *American Trucking Assns., Inc. v. Sect. of Administration* (1993) 415 Mass. 337 [613 N.E.2d 95]; *American Trucking Assn. Inc. v. Kline* (1986) 8 N.J. Tax 181, 188 [1986 N.J. Tax LEXIS 30]; *Bailey v. State of N.C.* (1998) 348 N.C. 130, 166-167 [500 S.E.2d 54].) There is no generally recognized principle of American law that disfavors class actions in the context of tax refund claims. Indeed, such a principle would seem exceedingly dangerous in light of Chief Justice Marshall's renowned observation that "the power to tax involves the power to destroy." (*McCulloch v. State of Md.* (1819) 17 U.S. 316, 431 [4 L.Ed. 579].)

[43] The City makes a melodramatic plea to this Court to give greater weight to the purported benefits of limiting tax refund claims to individual actions for "the collective benefit" of taxpayers and society. (Brief at pp. 41-42.) However, where, as here, the Legislature has not seen fit to impose a class action bar, it is not up to the courts to revise such an unambiguous statute as section 905(a).

Finally, the City claims that it would be prejudiced if it had to return the proceeds of the TUT tax to class members since this would upset its financial planning. In fact, what it really wants is to be rewarded for collecting an illegal tax long after it knew the tax to be illegal simply because it chose not to go to the voters to amend the tax ordinance. Even after the IRS had conceded that the tax was illegal, had stopped collecting the tax and subsequently offered a simple methodology for taxpayers to secure a refund, the City continued to illegally collect the tax with impunity for another 27 months, expecting no one would notice and no one would commence litigation seeking a refund. Only after Plaintiff filed his claim with the City on August 11, 2006, did the City seek to amend the TUT ordinance but, then, without the required voter approval. It wasn't until two years later that it finally sought voter approval to amend the tax ordinance. It now comes to this Court and claims clean hands when the facts are clearly otherwise.

CONCLUSION

The unanimous Opinion reversing the trial court's dismissal of the Complaint's first through fourth causes of action should be affirmed.

DATED: October 26, 2012

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
FRANCIS M. GREGOREK
RACHELE R. RICKERT
MARISA C. LIVESAY

FRANCIS M. GREGOREK

750 B Street, Suite 2770
San Diego, CA 92101
Telephone: 619/239-4599
Facsimile: 619/234-4599

CHIMICLES & TIKELLIS LLP
NICHOLAS E. CHIMICLES
TIMOTHY N. MATHEWS
One Haverford Centre
361 West Lancaster Avenue
Haverford, Pennsylvania 19041
Telephone: 610/642-8500
Facsimile: 610/649-3633

CUNEO GILBERT & LADUCA, LLP
SANDRA W. CUNEO
330 South Barrington Ave., #109
Los Angeles, CA 90049
Telephone: 424/832-3450
Facsimile: 424/832-3452

TOSTRUD LAW GROUP, PC
JON TOSTRUD
1901 Avenue of the Stars, 2nd Floor
Los Angeles, CA 90067
Telephone: 310/278-2600
Facsimile: 310/278-2640

Attorneys for Plaintiff/Appellant

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WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
FRANCIS M. GREGOREK
RACHELE R. RICKERT

FRANCIS M. GREGOREK

750 B Street, Suite 2770
San Diego, CA 92101
Telephone: 619/239-4599
Facsimile: 619/234-4599

CHIMICLES & TIKELLIS LLP
NICHOLAS E. CHIMICLES
TIMOTHY N. MATHEWS
One Haverford Centre
361 West Lancaster Avenue
Haverford, Pennsylvania 19041
Telephone: 610/642-8500
Facsimile: 610/649-3633

CUNEO GILBERT & LADUCA, LLP
SANDRA W. CUNEO
330 South Barrington Avenue, #109
Los Angeles, CA 90049
Telephone: 424/832-3450
Facsimile: 424/832-3452

TOSTRUD LAW GROUP, PC
JON TOSTRUD
1901 Avenue of the Stars, 2nd Floor
Los Angeles, CA 90067
Telephone: 310/278-2600
Facsimile: 310/278-2640

Attorneys for Plaintiff/Appellant

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION AND STUDY

relating to

The Presentation of Claims Against Public Entities

January 1959

RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

Relating to Presentation of Claims Against Public Entities

The law of this State contains many statutes and county and city charters and ordinances which bar suit against a governmental entity for money or damages unless a written statement or "claim" setting forth the nature of the right asserted against the entity, the circumstances giving rise thereto and the amount involved is communicated to the entity within a relatively short time after the claimant's cause of action has accrued. Such provisions are referred to in this Recommendation and Study as "claims statutes."

Claims statutes have two principal purposes. First, they give the governmental entity an opportunity to settle just claims before suit is brought. Second, they permit the entity to make an early investigation of the facts on which a claim is based, thus enabling it to defend itself against unjust claims and to correct the conditions or practices which gave rise to the claim.

The principle justifying claims statutes has been extensively accepted in California over a long period of time. Claims statutes appeared as early as 1855. Today there are at least 174 separate claims provisions in the law of this State, scattered through statutes, charters, ordinances and regulations. As appears below and more fully in the research consultant's report, these provisions differ widely as to many material matters, including claims covered, time for filing, and information required to be furnished.

It has become increasingly clear in recent years that the implementation of the claims statute principle in this State by the enactment of numerous and conflicting claims provisions has created grave problems both for governmental entities and those who have just claims against them. The Law Revision Commission was, therefore, authorized and directed to study and analyze the various provisions of law relating to the filing of claims against public bodies and public employees to determine whether they should be made uniform and otherwise revised.[1] The Commission has made an exhaustive study of existing claims statutes and the judicial decisions interpreting and applying them.

On the basis of this study the Commission has concluded that the law of this State governing the presentation of claims against governmental entities is unduly complex, inconsistent, ambiguous and difficult to find, that it is productive of much litigation and that it often results in the barring of just claims. This conclusion is supported by the following facts among others disclosed by the Commission's study:[2]

1. There are at least 174 separate claims provisions in California. Yet a large number of cities, districts and other local entities are not protected by any claims statute.

[1] Cal. Stat. 1956, res. c. 35, p. 256.
[2] For a more complete statement of the defects in existing claims statutes see research consultant's study, *infra* at A-17.

entities in prompt notice of claims against them will be adequately protected while, by virtue of the ready accessibility and general coverage of the new statute, just claims can be easily filed and the substantial rights of claimants preserved.

The principal features of the legislation recommended by the Commission are the following:

Claims Presentation Procedure. The basic scheme of the proposed general claims statute is simple: no suit may be brought against a governmental entity on a cause of action to which the statute is applicable until a written claim relating thereto has been presented to the entity and time has been allowed for action thereon by its governing body. The claim must be presented not later than 100 days after the cause of action to which it relates has accrued. Thereafter the governing body has 80 days within which to act upon the claim. If it does not act within 80 days, the claim is deemed denied as a matter of law. Suit must be brought within nine months after the date on which the claim was presented.

Provisions Designed To Avoid Injustice. The statute incorporates three provisions designed to alleviate hardship to claimants which have been recognized, albeit not uniformly, in the decisions or statutes of this and other states:

(a) Defects in a claim are waived unless the claimant is given written notice thereof by the entity.

(b) Time for filing is extended for a period not to exceed one year in the case of the claimant's death, minority, or physical or mental disability during the claim-presenting period, if the governmental entity will not be unduly prejudiced thereby.

(c) The governmental entity is estopped to assert the claimant's failure to comply with the statute if he relied upon a representation made by an officer, employee or agent of the entity that a presentation of claim was not necessary or that a claim as filed conformed to legal requirements.

Constitutional Amendment. If the goal of general uniformity of claims provisions is to be realized in respect of chartered counties, cities and counties and cities it is desirable to amend the Constitution to confirm the Legislature's power to prescribe procedures governing the presentation, consideration and enforcement of claims against such entities. The Commission has drafted and recommends the adoption of a constitutional amendment for this purpose. The statutes proposed by the Commission expressly provide that they shall not take effect as to a chartered county or city which has a claims procedure prescribed by charter or pursuant thereto until this constitutional amendment has been adopted.

Coverage of General Claims Statute. The proposed new statute does not govern the presentation of all claims against all governmental entities in this State. Claims against the State itself have been omitted therefrom because the State is unique in comparison with other entities, its legislative body does not meet regularly throughout the year, and the existing statutory provisions governing the filing of claims

presently found in their charters, ordinances and regulations lest these become traps for unwary citizens. The Commission hopes that this coordination of local law with the new statute will be expeditiously accomplished soon after the enactment of the new general claims statute. It is anticipated, however, that at best it will take some time to accomplish all repeals and amendments of existing claims provisions which will be necessary to coordinate them with the new statute. The Commission has, therefore, included in the general claims statute a provision that until July 1, 1964 (nearly five years after the effective date of a bill enacted by the 1959 Session of the Legislature) a claim may be presented in conformity *either* with the new statute *or* with any existing claims procedure established by or pursuant to a statute, charter or ordinance in effect immediately prior to the effective date of the new claims statute and not yet repealed at the time the claim is presented.

Claims Against Public Officers and Employees. There are several provisions in the law of this State which require that a claim be filed before suit can be brought against a public officer or employee on his personal liability to the claimant. These provisions are in many respects ambiguous, uncertain and overlapping, thus sharing most of the defects found in existing claims provisions pertaining to public entities. Substantial questions exist as to whether such provisions are justifiable and, if so, whether they should be made uniformly applicable to officers and employees of all local public entities. If it is determined that such provisions should remain in existence as to some or all entities they should be amended to eliminate existing ambiguities and overlaps.

The Law Revision Commission has not had an opportunity to give public officer and employee claims statutes sufficient study to be prepared to make a recommendation concerning them at this time. The Commission intends to study these claims statutes further and to present a recommendation concerning them to a later session of the Legislature.

The Commission's recommendation that a new general claims statute be established would be effectuated by the enactment of the following measures:

I

An act to add Division 3.5 commencing with Section 700 to Title 1 of the Government Code, to repeal Section 342 of the Code of Civil Procedure and to add Sections 313 and 342 to said code, relating to claims against the State, local public entities and public officers and employees.

The people of the State of California do enact as follows:

SECTION 1. Division 3.5 commencing with Section 700 is added to Title 1 of the Government Code, to read:

DIVISION 3.5. CLAIMS AGAINST THE STATE, LOCAL PUBLIC ENTITIES AND OFFICERS AND EMPLOYEES

CHAPTER 2. CLAIMS AGAINST LOCAL PUBLIC ENTITIES

Article 1. General

700. As used in this chapter, "local public entity" includes any county or city and any district, local authority or other political subdivision of the State but does not include the State or any office, officer, department, division, bureau, board, commission or agency thereof claims against which are paid by warrants drawn by the Controller.

701. Until the adoption by the people of an amendment to the Constitution of the State of California confirming the authority of the Legislature to prescribe procedures governing the presentation, consideration and enforcement of claims against chartered counties, cities and counties and cities and against officers, agents and employees thereof, this chapter shall not apply to a chartered county or city while it has a claims procedure prescribed by charter or pursuant thereto.

702. This chapter applies only to claims relating to causes of action which accrue subsequent to its effective date.

703. Articles 1 and 2 of this chapter apply to all claims for money or damages against local public entities except:

(a) Claims under the Revenue and Taxation Code or other provisions of law prescribing procedures for the refund, rebate, exemption, cancellation, amendment, modification or adjustment of any tax, assessment, fee or charge or any portion thereof, or of any penalties, costs or charges related thereto.

(b) Claims in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any provision of law relating to mechanics', laborers' or materialmen's liens.

(c) Claims by public officers and employees for fees, salaries, wages, mileage or other expenses and allowances.

(d) Claims for which the workmen's compensation authorized by Division 4 of the Labor Code is the exclusive remedy.

(e) Applications or claims for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance.

(f) Applications or claims for money or benefits under any public retirement or pension system.

(g) Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.

(h) Claims which relate to a special assessment constituting a specific lien against the property assessed and which are payable from the proceeds of such an assessment, by offset of a claim for damages against it or by delivery of any warrant or bonds representing it.

(i) Claims by the State or a department or agency thereof or by another local public entity.

704. A claim against a local public entity presented in substantial compliance with any other applicable claims procedure established by

or pursuant to a statute, charter or ordinance in effect immediately prior to the effective date of this chapter shall satisfy the requirements of Articles 1 and 2 of this chapter, if such compliance takes place before the repeal of such statute, charter or ordinance or before July 1, 1964, whichever occurs first. Sections 715 and 720 are applicable to claims governed by this section.

705. The governing body of a local public entity may authorize the inclusion in any written agreement to which the entity, its governing body, or any board or officer thereof in an official capacity is a party, of provisions governing the presentation, by or on behalf of any party thereto, of any or all claims arising out of or related to the agreement and the consideration and payment of such claims. A claims procedure established by an agreement made pursuant to this section exclusively governs the claims to which it relates, except that the agreement may not require a shorter time for presentation of any claim than the time provided in Section 714, and that Sections 715 and 720 are applicable to all such claims.

Article 2. Claim as Prerequisite to Suit

710. No suit for money or damages may be brought against a local public entity on a cause of action for which this chapter requires a claim to be presented until a written claim therefor has been presented to the entity in conformity with the provisions of this article and has been rejected in whole or in part.

711. A claim shall be presented by the claimant or by a person acting on his behalf and shall show:

(a) The name of the claimant;

(b) The residence or business address of the person presenting the claim;

(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; and

(e) The amount claimed as of the date of presentation of the claim, together with the basis of computation thereof.

A claim may be amended at any time before final action thereon is taken by the governing body of the local public entity. The amendment shall be considered a part of the original claim for all purposes.

712. If in the opinion of the governing body of the local public entity a claim as presented fails to comply substantially with the requirements of Section 711 the governing body may, at any time within 60 days after the claim is presented, give the person presenting the claim written notice of its insufficiency, stating with particularity the defects or omissions therein. The governing body may not take final action on the claim for a period of ten days after such notice is given. A failure or refusal to amend the 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 711.

713. When suit is brought against a local public entity on a cause of action for which this chapter requires a claim to be presented, the

local public entity may assert as a defense either that no claim was presented or that a claim as presented did not comply substantially with the requirements of Section 711, unless such defense has been waived. Any defense based upon a defect or omission in a claim as presented is waived by failure of the governing body to give notice of insufficiency with respect to such defect or omission as provided in Section 712, except that no notice need be given and no waiver shall result when the claim as presented fails to give the residence or business address of the person presenting it.

714. A claim may be presented to a local public entity (1) by delivering the claim personally to the clerk or secretary thereof not later than the one hundredth day after the cause of action to which the claim relates has accrued or (2) by sending the claim to such clerk or secretary or to the governing body at its principal office by mail postmarked not later than such one hundredth day. A claim shall be deemed to have been presented in compliance with this section even though it is not delivered or mailed as provided herein if it is actually received by the clerk, secretary, or governing body within the time prescribed.

For the purpose of computing the time limit prescribed by this section, the date of accrual of a cause of action to which a claim relates is the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable thereto if the claim were being asserted against a defendant other than a local public entity.

715. The superior court of the county in which the local public entity has its principal office shall grant leave to present a claim after the expiration of the time specified in Section 714 if the entity against which the claim is made will not be unduly prejudiced thereby, where no claim was presented during such time and where:

(a) Claimant was less than 16 years of age during all of such time; or

(b) Claimant was physically or mentally incapacitated during all of such time and by reason of such disability failed to present a claim during such time; or

(c) Claimant died before the expiration of such time.

Application for such leave must be made by verified petition showing the reason for the delay. A copy of the proposed claim shall be attached to the petition. The petition shall be filed within a reasonable time, not to exceed one year, after the time specified in Section 714 has expired. A copy of the petition and the proposed claim and a written notice of the time and place of hearing thereof shall be served on the clerk or secretary or governing body of the local public entity not less than ten days before such hearing. The application shall be determined upon the basis of the verified petition, any affidavits in support of or in opposition thereto, and any additional evidence received at such hearing.

716. Within 80 days after a claim is presented, the governing body shall take final action on the claim in one of the following ways:

(a) If the governing body finds the claim is not a proper charge against the local public entity, it shall reject the claim.

(b) If the governing body finds the claim is a proper charge against the local public entity and is for an amount justly due, it shall allow the claim.

(c) If the governing body finds the claim is a proper charge against the local public entity but is for an amount greater than is justly due, it shall either reject the claim or allow it in the amount justly due and reject it as to the balance. If the governing body allows the claim in part and rejects it in part it may require the claimant to accept the amount allowed in settlement of the entire claim.

Notice of any action taken under this section shall be given in writing by the clerk or secretary of the local public entity to the person who presented the claim. Action taken under this section shall be final and may not be reconsidered by the governing body, but nothing herein shall prohibit the governing body from compromising any suit based upon the cause of action to which the claim relates.

717. If the governing body of the local public entity fails or refuses to act on a claim in the manner provided in Section 716 within 80 days after the claim has been presented, the claim shall be deemed to have been rejected on the eightieth day.

718. Where this chapter requires that a claim be presented to the local public entity and a claim is presented and final action thereon is taken by the governing body:

(a) If the claim is allowed in full no suit may be maintained on any part of the cause of action to which the claim relates.

(b) If the claim is allowed in part and the claimant accepts the amount allowed, no suit may be maintained on that part of the cause of action which is represented by the allowed portion of the claim.

(c) If the claim is allowed in part no suit may be maintained on any portion of the cause of action where, pursuant to a requirement of the governing body to such effect, the claimant has accepted the amount allowed in settlement of the entire claim.

Nothing in this article shall be construed to deprive a claimant of the right to resort to writ of mandamus or other proceeding against the local public entity or the governing body or any officer thereof to compel it or him to act upon a claim or pay the same when and to the extent that it has been allowed.

719. Except as provided in Section 718, when suit is brought against a local public entity on a cause of action for which this chapter requires a claim to be presented, neither the amount set forth in a claim relating thereto or any amendment of such claim nor any action taken by the governing body of the entity on such claim shall constitute a limitation upon the amount which may be pleaded, proved or recovered.

720. When suit is brought against a local public entity on a cause of action for which this chapter requires a claim to be presented, the entity shall be estopped from asserting as a defense to the action the insufficiency of the claim as to form or content or as to time, place or method of presentation of the claim if the claimant or person presenting the claim on his behalf reasonably and in good faith relied on any representation, express or implied, made by any officer, employee or agent of the entity, that a presentation of claim was unnecessary or that a claim had been presented in conformity with legal requirements.

721. Any suit brought against a local public entity on a cause of action for which this chapter requires a claim to be presented must be

commenced within nine months after the date of presentation of the claim.

Article 3. Claims Procedures Established by Local Public Entities

730. Claims against a local public entity for money or damages which are excepted by Section 703 from Articles 1 and 2 of this chapter, and which are not governed by any other statutes or regulations expressly relating thereto, shall be governed by the procedure prescribed in any charter, ordinance or regulation adopted by the local public entity. The procedure so prescribed may include a requirement that a claim be presented and rejected as a prerequisite to suit thereon, but may not require a shorter time for presentation of any claim than the time provided in Section 714 of this code, and Sections 715 and 720 of this code shall be applicable to all claims governed thereby.

SEC. 2. Section 342 of the Code of Civil Procedure is hereby repealed.

SEC. 3. Section 342 is added to the Code of Civil Procedure, to read:

342. An action against a local public entity, as defined in Section 700 of the Government Code, upon a cause of action for which a claim is required to be presented by Chapter 2 (commencing with Section 700) of Division 3.5 of Title 1 of the Government Code must be commenced within the time provided in Section 721 of the Government Code.

SEC. 4. Section 313 is added to the Code of Civil Procedure, to read:

313. The general procedure for the presentation of claims as a prerequisite to commencement of actions for money or damages against the State of California, counties, cities, cities and counties, districts, local authorities, and other political subdivisions of the State, and against the officers and employees thereof, is prescribed by Division 3.5 (commencing with Section 600) of Title 1 of the Government Code.

II

A resolution to propose to the people of the State of California an amendment to the Constitution of the State by adding Section 10 to Article XI thereof, relating to the presentation, consideration and enforcement of claims against chartered counties, cities and counties and cities and against officers, agents and employees thereof.

Resolved by the Assembly, the Senate concurring, That the Legislature of the State of California at its 1959 Regular Session commencing on the 5th day of January, 1959, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended by adding Section 10 to Article XI thereof, to read:

SEC. 10. No provision of this article shall limit the power of the Legislature to prescribe procedures governing the presentation, consideration and enforcement of claims against chartered counties, cities and counties and cities, or against officers, agents and employees thereof.

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 October 26, 2012, declarant served the ANSWER BRIEF ON THE MERITS via Federal Express Overnight Delivery in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List and the Supreme Court of the State of California.

3. That there is regular communication between the parties.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 26th day of October 2012, at San Diego, California.

Maureen Longdo

MAUREEN LONGDO

CITY OF LONG BEACH
Service List -- January 8, 2007
Page 1

COUNSEL FOR PLAINTIFFS

Francis M. Gregorek
Rachele R. Rickert
WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
750 B Street, Suite 2770
San Diego, CA 92101
619/239-4599
619/234-4599 (fax)

Nicholas E. Chimicles
Timothy N. Mathews
Benjamin F. Johns
CHIMICLES & TIKELLIS LLP
One Haverford Centre
361 West Lancaster Avenue
Haverford, Pennsylvania 19041
610/642-8500
610/649-3633 (fax)
timothymathews@chimicles.com

Jonathan W. Cuneo
William Anderson
CUNEO GILBERT & LADUCA, LLP
507 C Street, NE
Washington, DC 20002
202/789-3960
202/789-1813 (fax)
wanderson@cuneolaw.com

Sandra W. Cuneo
CUNEO GILBERT & LADUCA, LLP
330 South Barrington Avenue, #109
Los Angeles, CA 90049
424/832-3450
424/832-3452
scuneo@cuneolaw.com

Jon Tostrud
TOSTRUD LAW GROUP, P.C.
1901 Avenue of the Stars, 2nd Floor
Los Angeles, CA 90067
310/278-2600
310/278-2640
jtostrud@tostrudlaw.com

COUNSEL FOR DEFENDANTS

Robert E. Shannon
Belinda R. Mayes
CITY ATTORNEY OFFICE
333 West Ocean Blvd., 11th Floor
Long Beach, CA 90802-4664
562/570-2200
562/436-1579 (fax)

Michael G. Colantuono
Sandra J. Levin
Holly O. Whatley
COLANTUONO & LEVIN, P.C.
One California Plaza
300 South Grand Avenue, 27th Floor
Los Angeles, CA 90071
213/542-5700
213/542-5710 (fax)
mcolantuono@cllaw.us
slevin@cllaw.us
hwhatley@cllaw.us

COURTESY COPIES

Hon. Anthony J. Mohr
COUNTY OF LOS ANGELES
SUPERIOR COURT OF CALIFORNIA
600 South Commonwealth Ave., Room 314
Los Angeles, CA 90005

Clerk of the Court
COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
300 South Spring Street,
Second Floor, North Tower
Los Angeles, CA 90013
213/830-7000