

COPY

LIU, J.

S202037

IN THE SUPREME COURT OF THE  
STATE OF CALIFORNIA

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JOHN W. MCWILLIAMS  
*Plaintiff and Appellant,*

v.

CITY OF LONG BEACH,  
*Defendant and Respondent.*

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SUPREME COURT  
FILED

MAY - 1 2012

Frederick K. Onrich Clerk  

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Deputy

**SUPPLEMENT TO NOTICE OF MOTION  
AND MOTION FOR JUDICIAL NOTICE**

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After Decision of the Second Appellate District of the  
Court of Appeal  
Case No. B200831

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Appeal from the Superior Court of  
the State of California for the County of Los Angeles, Case No. BC361469  
Honorable Anthony J. Mohr, Presiding

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

Please take notice that, pursuant to California Rule of Court 8.252 and Evidence Code section 452, subd. (d), and pursuant to the request of the Court Clerk, Petitioner City of Long Beach hereby submits this Supplement to Notice of Motion and Motion for Judicial Notice, and moves this Court to take judicial notice for the purposes of the Petition for Review file concurrently with the Notice of Motion and Motion for Judicial Notice filed on April 27, 2012, of the following true and correct documents, which are attached as Exhibits A through I to the Declaration of Tiana J. Murillo attached to that original Motion:

- A. Unpublished Opinion of the Court of Appeal, Second Appellate District, Division 3, in the matter of *Granados v. County of Los Angeles*, Court of Appeal Case No. B200812, filed March 28, 2012.
- B. "Petition For Review and Request for Immediate Stay" filed on April 5, 2012 in the Supreme Court of California by the City of Chula Vista, re *Chula Vista v. Superior Court of the State of California*, Court of Appeal Case No. D061561.
- C. "First Amended Complaint for Refunds of Taxes Erroneously Collected and Paid" filed in *Sipple et al. v. City of Alameda et al.* on January 5, 2012 in the Los Angeles County Superior Court, Case Number BC462270.

- D. "Notice of Demurrer and General and Special Demurrer to Plaintiffs' First Amended Complaint and Memorandum of Points and Authorities in Support Thereof," filed in *Sipple et al. v. City of Alameda et al.* on January 31, 2012 in the Los Angeles County Superior Court, Case Number BC462270.
- E. Excerpts from "Defendant AT&T Mobility LLC's Memorandum in Support of Motion for Final Approval of Settlement," filed in the matter of *In Re AT&T Mobility Wireless Data Service Tax Litigation* (court order approving final settlement), Case No. 1:10-cv-02278 in the United States District Court for the Northern District of Illinois, Eastern Division, assigned to Hon. Amy J. St. Eve, dated February 23, 2011.
- F. Excerpts from "Global Class Action Settlement Agreement," filed in the matter of *In Re AT&T Mobility Wireless Data Service Tax Litigation*, Case No. 1:10-cv-02278 in the United States District Court for the Northern District of Illinois, Eastern Division, assigned to Hon. Amy J. St. Eve. A full copy of this document, with exhibits, can be found at:  
<http://attmsettlement.com/files/Settlement%20Agreement%20with%20Exhibits%2009-24-10.pdf>.
- G. "First Amended Individual and Class Action Complaint Against the City of El Paso De Robles for Violation of

California Constitution Articles XIII C and D and Declaratory and Injunctive Relief," filed in *Borst et al. v. City of Paso Robles* on July 28, 2009 in the San Luis Obispo County Superior Court, Case Number CV 09-8117.

- H. "Defendant's Memorandum of Points and Authorities in Opposition to Plaintiff's Motion for Class Certification," filed in *Shames v. City of San Diego* on May 27, 2005 in the San Diego County Superior Court, Case Number GIC831539.
  
- I. "Class Action Complaint For Injunctive and Declaratory Relief, Replevin, Constructive Trust, Restitution, Money Had and Received, Violation of Constitutional Rights," filed in *Hanns v. City of Chico* on February 3, 2010 in the Butte County Superior Court, Case Number 149292.

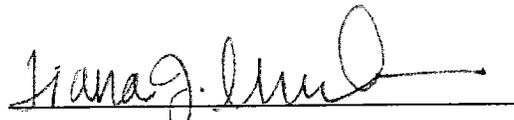
The motion supplemented here is based on the attached Memorandum of Points and Authorities and the following documents attached to the City's Notice of Motion and Motion for Judicial Notice filed on April 27, 2012: true and correct copies of the above documents, which are attached as Exhibits A through I to the Declaration of Tiana J. Murillo, and the proposed order granting this motion.

DATED: April 30, 2012

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. THE REQUESTED JUDICIAL NOTICE IS APPROPRIATE

#### A. General Principles of Judicial Notice.

Judicial notice may be taken of “records of ... any court of this state or ... any court of record of the United States.” (Cal. Evid. Code § 452, subd. (d).) A reviewing court, such as the Supreme Court, may take judicial notice of any matter specified in Evidence Code § 452. (Cal. Evid. Code § 459.)

“Judicial notice is the recognition and acceptance by the court, for use by ... the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter.” (*Lockley v. Law Office of Cantrell, Green, et al.* (2001) 91 Cal.App.4<sup>th</sup> 875, 882 (citations and quotations omitted); Cal. Evid. Code § 454). The underlying theory of judicial notice is that a matter judicially noticed is a law or fact that is not reasonably subject to dispute. (*Lockley v. Law Office of Cantrell, Green, et al.* (2001) 91 Cal.App.4<sup>th</sup> at 882; Cal. Evid. Code § 452(h).)

#### B. The Court Should Take Judicial Notice of Pleadings in Related Court Actions.

The Court should judicially notice the documents in Exhibits A through I. These documents are pleadings filed in pertinent court actions, both state and federal courts, and are subject to notice pursuant to Evidence Code § 452 (d). Pursuant to Evidence Code § 459, this Court, as a

reviewing court, may notice these matters.

As discussed in its Petition, the City of Long Beach is only one of many California municipalities now defending a purported class challenge to a local tax refund ordinance on the ground that such challenges are barred by local claiming ordinances. Plaintiffs here and in the cases of which judicial notice is sought argue that such ordinances are preempted by the Government Claims Act, Government Code §§ 810 et seq. and the Second District Court of Appeal so held in the decision of which review is sought by the petition which accompanies this motion. Notice of these other cases will demonstrate to this Court that review of this petition is appropriate to allow prompt resolution of an issue which is generating significant litigation around the state.

Recent months have seen a wave of class challenges in California trial courts to local telephone taxes, utility rates and other fees. Notice of the existence of such cases, evidenced by Exhibits A through I, will aid this Court's review of the City's Petition for Review by demonstrating that the questions the Petition presents are of pressing concern to a number of California local governments, not just the City.

The matters noticed in Exhibits A through I are pleadings related to cases that are pending (or were recently pending) in various courts across the state, affecting more than 100 local governments, millions of dollars of local taxes and fees, and essentially all Californians. Each of the cases noticed through Exhibits A through I would directly benefit from, or would have benefitted from, this Court's answer to the questions raised in

the City's Petition, namely:

- Did the Legislature use "statute" in Government Code § 905(a) to exclude local legislation and to require claims for refunds of local taxes, assessments, fees and charges to be governed by the Government Claims Act?
- If so, does § 905(a) violate the home rule power to tax conferred on charter cities by Article XI, §§ 3, 5 and on all cities and counties by Article XI, § 7 of the California Constitution?
- Does the second sentence of California Constitution, Article XIII, § 32, which requires express legislative authorization for tax refunds, apply to local government?

**C. The City's Motion for Judicial Notice Complies with Rule of Court 8.252.**

The Court should likewise judicially notice the documents in Exhibits A through I because the City's Motion complies with California Rule of Court 8.252 governing such motions.

First, as discussed in Section B, *supra*, this motion is relevant to the City's Petition for Review because Exhibits A through I are court records from a variety of lawsuits brought against municipal defendants, all of which bring class or class-like challenges to municipal taxes and fees. These pleadings demonstrate that the questions presented by the City's Petition affect nearly all local governments in the state, many of which are facing (or have recently faced) lawsuits similar to the case at bar. Notice of

Exhibits A through I will demonstrate to the Court that the issues presented in the instant Petition go well beyond the facts and circumstances of this case, and show that local governments around our state would benefit from the Court's resolution of the questions presented for review.

Second, Exhibits A through I were not presented to the trial court, because a decision by the trial court did not stand to clarify the law for parties beyond the parties to this appeal. Accordingly, because the City did not present Exhibits A through I to the trial court, that court had no occasion to take judicial notice of those matters.

Third, all matters but Exhibit H relate to proceedings occurring after the April 13, 2007 decision of the Los Angeles County Superior Court to grant the City's demurrer in the case which is the subject of the Petition for Review. Judicial notice of these lawsuits will therefore demonstrate the ongoing nature and urgency of the questions presented for review.

Accordingly, because this motion complies with California Rule of Court 8.252, the City respectfully asks this Court to grant its motion to judicially notice Exhibits A through I.

## II. CONCLUSION

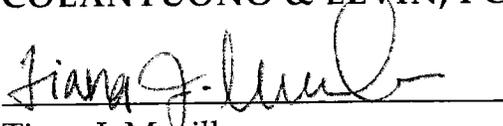
Therefore, the City respectfully submits this Court should, after expiration of opposing counsel's opportunity to respond under rule 8.54(a)(3) of the California Rules of Court, grant Petitioner City of Long Beach's motion to judicially notice the materials attached as Exhibits A through I to the City's Notice of Motion and Motion for Judicial Notice filed on April 27, 2012.

DATED: April 30, 2012

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## CERTIFICATE OF SERVICE

I, Kimberly Nielsen, 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 Los Angeles, over the age of 18 years, and not a part to or interested in the within action; that declarant's business address is 300 South Grand Avenue, Suite 2700, Los Angeles, California 90071.

2. That on April 30, 2012, declarant served the **SUPPLEMENT TO NOTICE OF MOTION AND MOTION FOR JUDICIAL NOTICE** via U.S. Mail in a sealed envelope fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is regular communication between the parties.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of April, 2012, at Los Angeles, California.

COLANTUONO & LEVIN, P.C.

By   
Kimberly Nielsen

**McWilliams v. City of Long Beach, et al.**

Case No. B200831

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**McWilliams v. City of Long Beach, et al.**

Case No. B200831

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**McWilliams v. City of Long Beach, et al.**

Case No. B200831

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