LIU, J.

SUPREME COURT
FILED

MAY 16 2012

Frederick K. Ohlrich Clerk

Deputy

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

PLAINTIFF'S OPPOSITION TO MOTION FOR JUDICIAL NOTICE

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I. INTRODUCTION

Plaintiff opposes the City's Motion[1] on the grounds that the materials it is requesting this Court take judicial notice of (hereinafter referred to as the "Exhibits") are ***irrelevant*** to the facts presented by ***this*** appeal. The City does not dispute the Court of Appeal's finding that the City has no applicable claiming ordinance. Furthermore, the City admits that this Court's decision in *Ardon v. City of Los Angeles* (2011) 52 Cal.4th 241 [128 Cal.Rptr.3d 283, 255 P.3d 958], has already determined that "in the absence of a local claiming ordinance, class tax refund claims may be brought under the Government Claims Act." (Petition for Review ("Petition") at p. 29.) As a result, the City also admits that its Petition and the Exhibits presented on this Motion "go well beyond the facts and circumstances of this case." (Suppl. Motion at p. 8.) Although the Exhibits ***may*** be relevant to whether the preemption of local claiming ordinances by the Government Claims Act is at issue in ***other*** cases, because preemption is not at issue ***here*** given the absence of an applicable ordinance, the Exhibits are not proper subjects of judicial notice.

II. LEGAL DISCUSSION

Generally, this Court "may" take judicial notice of "[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States." (Cal. Evid. Code, §§ 452, subd. (d), 459, subd. (a).) However, California Rule of Court 8.252(a)(2)(A) requires the movant to state in its motion "[w]hy the matter to be noticed is relevant to the appeal."

California appellate courts ordinarily will not take judicial notice of matters

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[1] The City of Long Beach (the "City") filed a Notice of Motion and Motion For Judicial Notice ("Original Motion") and then, at the request of the Clerk, filed a Supplement To Notice of Motion and Motion for Judicial Notice ("Supplemental Motion" or "Suppl. Motion"). (See Docket entry on April 27, 2012 ["Court requests supplement to address the specific provisions of rule 8.252."].) The Original Motion and the Supplemental Motion are collectively referred to herein as the "Motion."

irrelevant to the dispositive point on appeal. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 544, fn. 4 [67 Cal.Rptr.3d 330, 169 P.3d 559] [denying request for judicial notice of court of appeal file in another case and legislative history material because the movant failed to "demonstrate the relevance of this material"]; *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1089, fn. 4 [6 Cal.Rptr.3d 457, 79 P.3d 569] [denying request for judicial notice where materials were not "relevant to the action"]; *Deveny v. Entropin, Inc.* (2006) 139 Cal.App.4th 408, 418 [42 Cal.Rptr.3d 807] [denying judicial notice where movant failed to "demonstrate that the matter as to which judicial notice is sought is both relevant to and helpful toward resolving the matters before this court"].)

The City's assertion that the Exhibits are relevant because they demonstrate the importance of the issues presented in its Petition has no basis. (Suppl. Motion at p. 6.) Although the City's Exhibits ***may*** be relevant to whether ***other*** cases pending in California present the question of whether local ordinances or charters that prohibit the filing of class claims for tax refunds are preempted by the Government Claims Act[2], the Exhibits are ***not*** relevant to ***this*** case, where there is

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[2] The City's Exhibits do not actually support its claim that "Plaintiffs here and in the cases of which judicial notice is sought argue that [local tax refund] ordinances are preempted by the Government Claims Act, Government Code §§ 810 et seq." (*Ibid.*) For example, Exhibit G, the first amended complaint in *Borst et al. v. City of El Paso De Robles*, San Luis Obispo Super. Ct., No. CV 09-8117, does not even mention a relevant local tax refund claiming ordinance but only that the Government Claims Act, rather than the Revenue & Taxation Code or Health and Safety Code, provides the applicable claims procedures. (*Id.* at ¶ 18.) Moreover, there is no ***tax*** refund claiming ordinance at issue in *Hanns v. City of Chico*, Butte County Super. Ct., No. 149292 (Exhibit I), since the class action admittedly challenges "a ***fee*** on those arrested for driving under the influence." (Petition at p. 8, emphasis added.) Furthermore, *Shames v. City of San Diego*, San Diego Super. Ct. No. GIC831539 (Exhibit H) settled over ***five*** years ago, so any decision by this Court on the preemption issue would clearly not aid the Court in that case. (See *California Restaurant Management Systems v. City of San Diego* (2011) 195 Cal.App.4th 1581, 1589 [126 Cal.Rptr.3d 160].) Finally, the City concedes that the preemption issue is also irrelevant in *Granados v. County of Los Angeles*, Court of Appeal Case No. B200812, filed March 28, 2012

no dispute that ***no such ordinance or charter exists*** and preemption is, therefore, not an issue.

As the Court of Appeal held in its opinion below, the City does not have an ordinance that requires service users, such as Plaintiff, to file a claim with the City for refund of the taxes at issue prior to filing suit. (*McWilliams v. City of Long Beach* (March 28, 2012, No. B200831) 2012 Cal. App. Unpub. LEXIS 2402, at p. *5 ["This refund provision does not provide a mechanism for an individual service user (i.e., taxpayer) to seek a refund of illegally collected TUT."]; *Id.* at p. *18-19, fn. 7.) The City does not challenge this holding in its Petition, but instead requests review of the Court of Appeal's alternative holding on the preemption issue. As the City admits, the issues it presents in its Petition "go well beyond the facts and circumstances of this case." (Suppl. Mot. at p. 8.)

The Exhibits are not relevant to the dispositive point on this appeal. As in *Ardon v. City of Los Angeles*, *supra*, 52 Cal.4th at p. 246, fn. 2, where the City of Los Angeles also had no applicable claiming ordinance, the Government Claims Act applies, and this Court need not reach the preemption issue.

III. CONCLUSION

The City's Motion for Judicial Notice should be denied.

DATED: May 15, 2012

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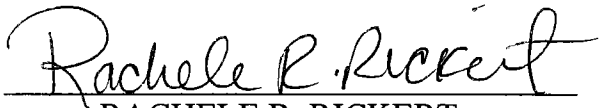

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(Exhibit A). (Petition at p. 5 ["*Granados*, like *Ardon*, did not involve a local ordinance barring class relief."].)

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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 May 15, 2012, declarant served the PLAINTIFF'S OPPOSITION TO MOTION FOR JUDICIAL NOTICE via U.S. Mail in a sealed envelope with postage thereon 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 15th day of May 2012, at San Diego, California.

Maureen Longdo

MAUREEN LONGDO

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