



DENNIS J. HERRERA
City Attorney

PETER J. KEITH
Deputy City Attorney

DIRECT DIAL: (415) 554-3908
E-MAIL: peter.keith@sfgov.org

August 6, 2009

The Honorable Ronald M. George, Chief Justice
The Honorable Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, California 94102-7303

Re: *Estuardo Ardon v. City of Los Angeles*
Supreme Court Case No. S174507 (Second District, Division 3, Case No. B201035)
California State Association of Counties, League of California Cities, and the
California Special Districts Association's Joint Letter Opposing Estuardo Ardon et al.'s
Petition For Review (Rule 8.500(g))

Dear Chief Justice George and Associate Justices:

We write on behalf of the California State Association of Counties,¹ the League of California Cities,² and the California Special Districts Association³ to oppose the petition for review in the above case.

¹ The California State Association of Counties (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

² The League of California Cities is an association of 480 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide—or nationwide—significance. The Committee has identified this case as being of such significance.

³ The California Special Districts Association is a nonprofit association representing over 1,000 special districts throughout California. These special districts provide a wide variety of public services to both suburban and rural communities, including fire suppression and emergency medical services; water supply, treatment and distribution; sewage collection and treatment; recreation and parks; security and police protection; airport services; harbor and port services; solid waste collection, transfer, recycling and disposal; cemeteries; libraries; mosquito and vector control; road construction and maintenance; and animal control services. These services are funded in whole or in part by property taxes, special taxes, and assessments that have been approved by a majority of the property owners to be assessed. This case therefore involves matters affecting special districts represented by CSDA, in view of the reliance of all

Letter to Chief Justice George and Associate Justices

Page 2

August 6, 2009

Taken together, the League, CSAC, and CSDA represent more than 1,500 local public entities that collect the vast majority of local taxes in this State and administer refund procedures for these local taxes. The League, CSAC, and CSDA have a common and important interest in the issue that the Court of Appeal decided in *Ardon v. City of Los Angeles*: that “class claims” for local tax refunds are not allowed unless expressly authorized by statute.

Amici concur with the City of Los Angeles that the Second District Court of Appeal’s decision in *Ardon* was correct, and by overruling *County of Los Angeles v. Super. Ct. (Oronoz)* (2008) 159 Cal.App.4th 353 – which allowed “class claims” for tax refunds – this decision *restored uniformity* among the Courts of Appeal regarding the prohibition on such class claims.

I. As This Court Already Recognized In *Woosley v. State of California*, Whether “Class Claims” For Tax Refunds Are Authorized – And The Potentially Dire Fiscal Consequences Of Such Claims – Is A Matter For The Legislature, Not The Judiciary

The Court of Appeal’s decision was consistent with the California Constitution, the Government Code’s claiming provisions, and this Court’s decision in *Woosley v. State of California* (1992) 3 Cal.4th 758. It was also consistent with the public policy concerns that underlie tax refund claiming procedures. Both state and local governments in California must balance their budgets based on projected revenue and expenditures, and plan responsibly for anticipated liabilities. Moreover, both state and local governments rely on tax revenues to fund the provision of essential and basic public services. Unauthorized “class” tax refund claims are a serious threat to all governmental entities’ ability to fulfill these responsibilities.

Any government presented with a “class claim” for tax refund – on behalf of a named taxpayer and unidentified “similarly situated” taxpayers – will be put on notice of a substantial potential liability. But because the potential class contains an unknown number of persons claiming tax refunds of different amounts, the extent of liability can require months or years of discovery and investigation to ascertain. Thus, it can be difficult or even impossible for a governmental entity to quantify its potential liability. Class claims for tax refund thus defeat the chief purpose of the pre-lawsuit claim presentation requirement, which is to allow governmental entities to plan for potential liabilities.

Moreover, even if governments could quantify that kind of liability, the potential liability is staggering. Class claims for tax refunds, if allowed, would force governmental entities either to impound tax revenue – and thus make revenue unavailable to meet basic needs – or to spend the revenue to meet basic needs now, and risk major financial distress later. As courts have recognized, tax liabilities are different in kind from other public liabilities, such as those arising from torts. “[M]oney is the lifeblood of modern government. Money comes primarily from taxes, and, as the importance of a predictable income stream from taxes has grown, governments at all levels have established procedures to minimize disruptions...” (*Batt v. City and County of San Francisco* (2007) 155 Cal.App.4th 65, 72 (*Batt*)). If there are to be class claims for tax refunds, then that is a policy decision that only the legislature is authorized to make.

Contrary to Petitioner’s arguments, taxpayers have an adequate remedy for an unlawful tax. A taxpayer may still bring his own suit for refund, and obtain a judicial declaration of the validity of the tax in connection with that suit for refund. Plaintiffs are “not hindered or aggrieved in that quest by the absence of a class behind them.” (*Farrar v. Franchise Tax Bd.* (1993) 15 Cal.App.4th 10, 21.)

special districts on local taxes and assessments as a source of revenue to fund essential public services.

Letter to Chief Justice George and Associate Justices
Page 3
August 6, 2009

II. The Court Of Appeal's Decision Restored Uniformity Among The Courts Of Appeal Regarding This Issue – Thus Eliminating Any Need For Supreme Court Review

The Supreme Court may order review of a Court of Appeal decision “[w]hen necessary to secure uniformity of decision or to settle an important question of law.” (Cal. Rules of Court, rule 8.500(b)(1).) The petition does not meet this requirement.

Here, when the Court of Appeal issued its decision in *Ardon*, the court overruled its previous decision in *County of Los Angeles v. Superior Ct. (Oronoz)* (2008) 159 Cal.App.4th 353. In doing so, the Court of Appeal restored uniformity among the Courts of Appeal, and obviated any need for Supreme Court review. *Oronoz* was inconsistent with previous Court of Appeal decisions, which – unlike *Oronoz* – applied this Court’s decision in *Woosley* and held that “class claims” for refunds of local taxes were not permitted. (*Batt, supra*, 155 Cal.App.4th 65, at pp. 76-77 [First Dist.] [city transient occupancy tax]; *Howard Jarvis Taxpayers Assn. v. City of Los Angeles* (Second Dist. 2000) 79 Cal.App.4th 242, 249 [city business license tax]; *Cod Gas & Oil Co. v. State Bd. of Equalization* (Third Dist. 1997) 59 Cal.App.4th 756, 759-760 [local supplemental sales tax]; *Neecke v. City of Mill Valley* (First Dist. 1995) 39 Cal.App.4th 946, 962 [city property tax]; *Kuykendall v. State Bd. of Equalization* (Fourth Dist. 1994) 22 Cal.App.4th 1194 [local supplemental sales tax]; *Rider v. County of San Diego* (Fourth Dist. 1992) 11 Cal.App.4th 1410, 1419-1421 [local supplemental sales tax].) With *Oronoz* overruled, there is now uniformity of decision among the Courts of Appeal.

Nor is it necessary for this Court to grant review “to settle an important question of law.” Petitioners identify the question whether this Court’s decision in *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447 – which authorized a class claim for a nuisance action against a local public entity under the Government Claims Act – also authorizes class claims for local tax refunds. This Court already settled this question of law, in *Woosley*: “[W]e conclude, for the reasons that follow, that the holding in *City of San Jose v. Superior Court, supra*, 12 Cal.3d 447, should not be extended to include claims for tax refunds.” (*Woosley, supra*, 3 Cal.4th at pp. 788-89.) That the Court has “settled” this question is evident from the unanimity among the Courts of Appeal regarding this issue – unanimity restored by the *Ardon* decision itself.

III. The Court Of Appeal Carefully Reached Its Decision After Inviting Input From Amici On Both Sides

After oral argument in the Court of Appeal, the court formally invited interested amici to file briefs addressing specific questions pertinent to the issue whether “class claims” for refunds of local taxes were authorized. (Clerk’s Letter of October 3, 2008.) The Court of Appeal correctly recognized the potential fiscal impact of its previous decision in the *Oronoz* action, which allowed such “class claims.” Many amici, on both sides of this case, responded to the Court of Appeal’s invitation to participate. The organizations submitting this joint letter earlier filed a joint amicus brief in support of the City of Los Angeles.

The number of amici who filed briefs in the Court of Appeal weighs *against* review, not in favor of it. The Court of Appeal’s decision followed input from interested parties on both sides, who were given an opportunity to share their views on the legal and policy matters at issue. The level of amicus participation at the Court of Appeal exceeded the level of amicus participation in many cases before this Court. After receiving this input, the Court of Appeal agreed with the majority view of the Courts of Appeal, and overruled its own previous outlier decision in *Oronoz*. Because the Court of Appeal thoroughly considered these issues and then issued a decision that restored uniformity among the Courts of Appeal, there is no need for this Court to revisit this issue.

Letter to Chief Justice George and Associate Justices
Page 4
August 6, 2009

For the foregoing reasons, Amici respectfully urge this Court to deny the petition for review.

Very truly yours,

DENNIS J. HERRERA
San Francisco City Attorney

PETER J. KEITH
Deputy City Attorney

Counsel for Amici
California State Association of Counties,
the League of California Cities, and
the California Special Districts Association

cc: Jennifer Henning, Esq., Litigation Counsel, California State Association of Counties
Patrick Whitnell, Esq., General Counsel, League of California Cities
Vicki Hartigan, Esq., McMurchie Law Office,
Counsel for California Special Districts Association
Counsel for the Parties (see Service List)