S174507

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ESTUARDO ARDON, [redacted]

Plaintiff and Appellant,

vs.

CITY OF LOS ANGELES
Defendant and Respondent.

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

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

REPLY IN SUPPORT OF PETITION FOR REVIEW

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I. INTRODUCTION

Defendant's Answer does not even mention Presiding Justice Klein's request that review be granted here. As Presiding Justice Klein noted below, review should be granted because the primary question presented, whether Government Code section 910 ("Section 910") permits the filing of class claims against local government entities for the refund of local taxes, is a major issue of statewide importance and one that has caused confusion in the Court of Appeal. (*Ardon v. City of Los Angeles* (2009) 174 Cal.App.4th 369, 386 [94 Cal.Rptr.3d 245] (*Ardon*) (conc. opn. of Klein, P.J.).)

The confusion surrounding and the statewide importance of the primary question presented are amply demonstrated in the Second District where separate appeals on the same issue concerning the City of Long Beach and the County of Los Angeles are also pending.

Contrary to the City's contention, the only two Court of Appeal opinions that have directly addressed this question are *County of Los Angeles v. Superior Court* (2008) 159 Cal.App.4th 353, 357 [71 Cal.Rptr.3d 485, 487], overruled (*Oronoz*), and the opinion below. (*Ardon*, *supra*, 174 Cal.App.4th 369.) These two cases came to opposite conclusions within sixteen months of each other, despite the fact that the panel composition was nearly the same.

Moreover, contrary to the City's argument that it is inapplicable, *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 457 [115 Cal.Rptr. 797] (*City of San Jose*) is the only opinion issued by this Court to decide whether class claims are permitted under Section 910. The answer was "yes," and that decision, which *Oronoz* relied on, remains good law to this day.

Woosley v. State of California (1992) 3 Cal.4th 758 [13 Cal.Rptr.2d 30, 838 P.2d 758] (*Woosley*) did not abrogate the holding in *City of San*

Jose with respect to Section 910, which indisputably governs Plaintiff Ardon's claim. Moreover, the policy considerations at issue in *Woosley* have no application here since article XIII, section 32 of the California Constitution, by its express terms and as construed by opinions of this Court, applies only to actions against the State and Ardon paid the disputed tax before filing suit.

The "pay first, litigate later" policy underlying article XIII, section 32 prevents courts from enjoining the collection of a tax prior to its payment, ***unnecessarily*** interrupting the State's revenue stream ***prior to any adjudication*** on the merits of the claim. This policy does not in any way touch on the availability of class actions, much less is it anti-class action. Yet, in the interest of protecting the City against the claims of its citizens by making them less likely to be brought, this is what the court below has held. No government, however, can have a legitimate expectation of continually receiving the proceeds of an illegally collected tax.

II. LEGAL DISCUSSION

A. Supreme Court Review Is Necessary To Settle An Important Question Of Law

Defendant does not dispute that the opinion below presents issues of statewide importance. Indeed, Presiding Justice Klein specifically stated that whether a class claim for tax refunds against a local public entity is permissible under Section 910 is a "major statewide issue." (*Ardon*, *supra*, 174 Cal.App.4th at p. 386 (conc. opn. of Klein, P.J.).) Further, the entire *Ardon* Panel expressly recognized the statewide importance of the issues before it in their invitation to *amici curiae* to submit briefs in conjunction with the appeal. (*Ardon v. City of Los Angeles*, (Court of Appeal of

California, Second Appellate Dist., Division 3, 2009, No. B201035) [10/3/2008 Docket Entry].)[1]

Presiding Justice Klein recognized that important questions of law need to be settled here and "the confusion in this area" when she requested this Court grant review. (*Ardon, supra*, 174 Cal.App.4th at p. 386 (conc. opn. of Klein, P.J.).) Between the *Oronoz* and *Ardon* decisions, six votes have been cast on the question whether Section 910 permits class claims for tax refunds against a local government entity. Four of those six votes have answered the question in the affirmative. Yet, the *Ardon* decision, which denies such relief on the basis of the only two negative votes, is currently the prevailing opinion in the Second District.

B. The Confusion Stems From A Perceived Conflict Between Two Decisions Issued By This Court: *City Of San Jose* And *Woosley*

1. The Conflicting *Ardon* And *Oronoz* Opinions Are The Only Court of Appeal Decisions That Have Addressed The Question Of Whether A Class Claim For The Refund Of Taxes Is Permitted Where Government Code Section 910 Is The Applicable Refund Statute

The City incorrectly contends that Petitioner's position is that "*Woosley* should not apply to refunds of local taxes." (See Answer to Petition For Review (hereinafter "Answer"), filed July 27, 2009, at p. 6.)

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[1] This Court need not find that a "conflict" exists amongst the Courts of Appeal in order to grant this Petition. This Court "may order review of a Court of Appeal decision ... [w]hen necessary to secure uniformity of decision or to settle an important question of law...." (Cal. Rules of Court, rule 8.500(b)(1).) The City ignores the disjunctive nature of rule 8.500(b)(1), and instead seizes upon the first half of the rule, arguing that there is no conflict to resolve here. Nevertheless, this case does squarely present a conflict which requires resolution by this Court, as discussed below.

The reason for the City's lack of citation to the Petition is simple: this is not Petitioner's position. Whether the tax is a local tax or a state tax is not the issue. The issue is: what is the applicable tax refund statute?

The applicable refund claim statute here is indisputably Section 910. The only Court of Appeal opinions that have decided whether Section 910 permits the filing of a class claim for the refund of taxes are the opinion below and *Oronoz*.

None of the other Court of Appeal cases cited by the City decides this question. The applicable tax refund claim statute in *Neecke v. City of Mill Valley* (1995) 39 Cal.App.4th 946, 951 [46 Cal.Rptr.2d 266] (*Neecke*) and *IBM Personal Pension Plan v. City and County of San Francisco* (2005) 131 Cal.App.4th 1291, 1300 [32 Cal.Rptr.3d 656, 661-62], was ***Revenue and Taxation Code section 5097***. In *Kuykendall v. State Board of Equalization* (1994) 22 Cal.App.4th 1194 [27 Cal.Rptr.2d 783] and *Cod Gas & Oil Co. v. State Bd. of Equalization* (1997) 59 Cal.App.4th 756, 760 [69 Cal.Rptr.2d 366], the applicable claim statute was ***Revenue and Taxation Code section 7275***. The courts in *Batt v. City and County of San Francisco* (2007) 155 Cal.App.4th 65 [65 Cal.Rptr.3d 716] (*Batt*) and *Howard Jarvis Taxpayers Assn. v. City of Los Angeles* (2000) 79 Cal.App.4th 242 [93 Cal.Rptr.2d 742] applied dispositive ***local claiming ordinances*** barring class actions. In *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410 [14 Cal.Rptr.2d 885] (*Rider*), the applicable refund statute was contained in ***Revenue and Taxation Code section 6901 et seq.***[2] *Thomas v. City of East Palo Alto* (1997) 53 Cal.App.4th 1084 [62 Cal.Rptr.2d 185] (*Thomas*) did not concern Section 910, nor did *Loeffler v.*

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[2] *Rider*, moreover, was not a refund action and did not address the issue of whether class claims were permitted, as the City contends. (*Rider*, *supra,* 11 Cal.App.4th at p. 1420; Answer, *supra*, at p. 12.)

Target Corp. (2009) 173 Cal.App.4th 1229 [93 Cal.Rptr.3d 515].

The only two Court of Appeal decisions that have answered the primary question presented here, *Oronoz* and *Ardon*, came to opposite conclusions, despite the fact that Presiding Justice Klein and Justice Croskey sat on both panels. Presiding Justice Klein, acknowledging her change in position since *Oronoz*, stated nonetheless that "it would be helpful for the Supreme Court to grant review in this case in order to resolve the conflict between the *Oronoz* decision and the majority opinion herein." (*Ardon*, *supra*, 174 Cal.App.4th at p. 386 (conc. opn. of Klein, P.J.).)

2. *City of San Jose* Interpreted Section 910 And Is Directly Applicable Here

In *City of San Jose*, *supra*, 12 Cal.3d at p. 457, this Court held that class claims are permitted and that holding has never been overruled. Specifically, this Court held that "claimant" in Section 910 means the class itself. (*Ibid.*)

The City's contention that "[*City of*] *San Jose* simply has no applicability here" (Answer, *supra*, at p. 16) is preposterous. *City of San Jose* is the only opinion issued by this Court that decides whether Section 910 permits the filing of class claims. This is why the *Ardon* and *Oronoz* courts spent ***pages*** in each of their opinions discussing *City of San Jose*.

3. *Woosley* Did Not Construe Or Apply Section 910

Woosley neither construed nor applied Section 910. Furthermore, *Woosley* neither disapproved *City of San Jose* nor suggested that its holding with respect to claims under Section 910 should be limited, but instead refused to extend the holding in *City of San Jose* to tax refund claims

governed by ***other*** statutes.[3]

The City pulls a sentence from *Woosley* out of context to argue that *City of San Jose* doesn't apply to ***any*** tax refund claims. However, the *Woosley* Court, when it said that *City of San Jose* "should not be extended to include claims for tax refunds," was expressly denouncing the practice that lower courts had engaged in of utilizing *City of San Jose*'s holding regarding Section 910 to conclude "***by analogy***" that the language found in specific Revenue & Taxation Code claims statutes should also be interpreted to authorize class claims. (*Woosley*, *supra*, 3 Cal.4th at pp. 788-89, 792) (citing *Schoderbek v. Carlson* (1980) 113 Cal.App.3d 1029, 1033 [170 Cal.Rptr. 400]; *Lattin v. Franchise Tax Board* (1977) 75 Cal.App.3d 377, 381 [142 Cal.Rptr. 130]; *Santa Barbara Optical Co. v. State Bd. of Equalization* (1975) 47 Cal.App.3d 244, 247-249 [120 Cal.Rptr. 609].) As Justice Croskey recognized in his dissent:

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

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

Nevertheless, the majority opinion below perceived a conflict between this Court's interpretation of Section 910 and *City of San Jose* and its later decision in *Woosley*. Specifically, the Court of Appeal believed that *Woosley* somehow limited the holding of *City of San Jose* itself with

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[3] As discussed *infra*, *Woosley* analyzed the tax refund statutes at issue in that case, namely Vehicle Code section 42231 and Revenue and Taxation Code sections 6901 et seq., to determine whether class claims were permitted under those statutes. (*Woosley*, *supra*, 3 Cal.4th at p. 790.) "Claims under the Revenue and Taxation Code or other statute prescribing procedures for the refund ... of any tax" are excluded from Section 910 by Government Code section 905(a). (Gov. Code, § 905(a).)

respect to its interpretation of Section 910. (*Ardon*, *supra*, 174 Cal.App.4th at p. 382.) As Justice Croskey pointed out, that is a false conflict, but one that only this Court can resolve. (*Id.* at p. 388 (dis. opn. of Croskey, J.).)

The City's Answer contains several inaccuracies about *Woosley*. First, nowhere in *Woosley* does this Court say that plaintiffs in tax refund actions must "strictly comply" with the applicable claims statutes, as the City contends, because two of its own decisions are involved. (Answer, *supra*, at p. 4.)[4]

Woosley analyzed the tax refund statutes at issue in that case, namely Vehicle Code section 42231 and Revenue and Taxation Code sections 6901 et seq., to determine whether class claims were permitted under those statutes. (*Woosley*, *supra*, 3 Cal.4th at p. 790.) Because Vehicle Code section 42231 required the "*person who paid the erroneous or excessive fee or penalty, or his agent on his behalf*" to file the claim, and because a class representative is not an "agent," this Court concluded that "[w]ithin the context of that statute," a class claim was not permitted. (*Id.*, italics in original.) As to Revenue and Taxation Code sections 6901 et seq., this Court studied "the entire statutory scheme" and determined that "class claims were not contemplated" because the refund procedures provided therein required that notice of any deficiency determination "must be given to each individual taxpayer," which would have been inconsistent with the use of a class claim where notice of deficiencies would only be sent to the

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[4] Similarly, contrary to Defendant's assertion, there is no language in *Thomas* recognizing "the requirements of express legislative authorization and strict compliance." (Answer, *supra*, at p. 12; *Thomas*, *supra*, 53 Cal.App.4th 1084.) Since each of the class members in *Thomas* had filed an administrative claim with the city, the court distinguished the case from *Neecke* and *Woosley* on this basis and did not reach the issue of whether *Woosley* and/or article XIII, section 32 apply to actions against local governments. (*Thomas, supra*, 53 Cal.App.4th at p. 1095.)

class representative.[5] (*Woosley, supra*, 3 Cal.4th at pp. 790-91.) *Woosley* does not say that strict compliance with claims statutes is required as the City claims. (Answer, *supra*, at p. 4.) What *Woosley* does require is an analysis of the relevant claims statutes to determine whether the Legislature intended to allow class claims under those statutes. Here, the relevant claims statute is Section 910 and, as this Court held in *City of San Jose*, class claims are permitted under Section 910.

The City and the opinion below reference a "line" of cases supposedly "follow[ed]" by *Woosley* which "broadly construed" article XIII, section 32, namely *State Bd. of Equalization v. Superior Court* (1985) 39 Cal.3d 633, 639 [217 Cal.Rptr. 238, 703 P.2d 1131] (*State Bd. of Equalization*), *Pacific Gas & Electric Co. v. State Bd. of Equalization* (1980) 27 Cal.3d 277, 283 [165 Cal.Rptr.122, 611 P.2d 463] (*Pacific Gas & Electric*), and *Modern Barber Colleges v. Cal. Emp. Stabilization Com.* (1948) 31 Cal.2d 720, 731-32 [192 P.2d 916] (*Modern Barber*). As the court below asserted, "These cases emphasized that article XIII, section 32 serves the important purpose of prohibiting an unplanned disruption of revenue collection, so that essential public services dependent on the funds are not ***unnecessarily*** interrupted." (*Ardon, supra*, 174 Cal.App.4th at p. 381, emphasis added, internal quotations and citations omitted.) However, what the court below omitted from its discussion of those cases was that in each one, the plaintiff was attempting to obtain equitable relief to prevent the collection of a tax ***before its payment***. This Court, in each of those cases, expressed that the policy underlying article XIII, section 32 was to bar pre-payment injunctions, judicial declarations or findings which would

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[5] In stark contrast, Section 910 specifies that the claimant shall provide a "post office address to which the person presenting the claim desires notices to be sent." (Gov. Code, § 910(b).)

impede the prompt collection of a tax.[6] So, the "unnecessar[y]" and "unplanned disruption" that article XIII, section 32 seeks to prevent by its "pay first, litigate later rule" is the disruption an injunction or other equitable remedy would cause to tax collection if it were issued ***prior to the payment of the tax*** and ***prior to a decision on the merits***. The court below, however, took this prohibition on pre-payment tax litigation and converted it into a policy against class actions – a policy not found in this "line of Supreme Court cases." (*Ardon*, *supra*, 174 Cal.App.4th at p. 381.)[7]

4. Article XIII, Section 32 Doesn't Apply To Actions Against Local Entities For The Refund Of Local Taxes

As Justice Croskey recognized in his dissent, article XIII, section 32 is inapplicable to actions against local public entities for the refund of local taxes because "it applies only to actions against the state." (*Ardon*, *supra*, 174 Cal.App.4th at p. 388 (dis. opn. of Croskey, J.).) (citing *Pacific Gas & Electric*, *supra*, 27 Cal.3d at p. 281, fn. 6; *Oronoz*, *supra*, 159 Cal.App.4th at p. 363, fn. 6; see also *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.").)

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[6] See *State Bd. Of Equalization*, *supra*, 39 Cal.3d at p. 638 ("The important public policy behind this constitutional provision 'is to allow revenue collection to continue during litigation so that essential public services dependent on the funds are not unnecessarily interrupted.'") (quoting *Pacific Gas & Electric*, *supra*, 27 Cal.3d at p. 283.)

[7] These Supreme Court cases do not hold, as the court below concluded, that the purpose behind article XIII, section 32 is to give "governmental entities ... sufficient notice of claims to allow for predictable and reliable fiscal planning." (*Ardon, supra*, 174 Cal.App.4th at p. 381.) Moreover no governmental entity can have a legitimate expectation in the continued flow of revenue from a tax found to be illegally imposed and collected.

The City attempts to distinguish this clear Supreme Court precedent by splitting the provision in half and pulling the second sentence out of its context, arguing that the first sentence applies to actions against the State, but the second sentence does not contain that restriction.[8] However, this Court in *State Bd. Of Equalization*, *supra*, 39 Cal.3d at p. 638, recognized that these two sentences are to be read together:

> Article XIII, section 32 provides that an action to recover an allegedly excessive tax bill may be brought "[a]fter payment of [that] tax ...." Additionally, the section bars a court from issuing any "legal or equitable process ... against this State or any officer thereof to prevent or enjoin the collection of any

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[8] The City notes as "interesting" that even the first sentence of article XIII, section 32, in spite of its plain language, has been applied to state and local taxes alike. First, the issue is state versus local ***governments***, not state versus local ***taxes***. Second, *Batt*, in overbroad dictum, relies entirely on *Flying Dutchman Park, Inc. v. City and County of San Francisco* (2001) 93 Cal.App.4th 1129 [113 Cal.Rptr.2d 690] (*Flying Dutchman*) and *Writers Guild of America West, Inc. v. City of Los Angeles* (2000) 77 Cal.App.4th 475, 483 [91 Cal.Rptr.2d 603] (*Writers Guild*) for the proposition that article XIII, section 32 is equally applicable to actions against local governments. (*Batt*, *supra*, 155 Cal.App.4th at pp. 79, 84.) *Flying Dutchman,* in turn, relies entirely on *Writers Guild* for that same extension of law. (*Flying Dutchman*, *supra*, 93 Cal.App.4th at pp. 1136-37 ["Until recently, no law existed on precisely this question"].) Yet the *Writers Guild* court recognized it could not cite to any authority as it extended the "public policy" underlying article XIII, section 32 to an action against a local government simply because it "[saw] no reason why [it] should not." (*Writers Guild*, *supra*, 77 Cal.App.4th at p. 483.) This was a baseless departure from section 32's plain language and this Court's precedent.

Moreover, the *Neecke* court only extended the reasoning of *Woosley* to apply to claims for refund against local governments of local taxes because the plaintiff had filed a claim for a tax refund pursuant to a specific tax refund statute enacted by the Legislature: Revenue & Taxation Code section 5097. (*Neecke*, *supra*, 39 Cal.App.4th at p. 962) *Neecke* did not hold that class claims were impermissible under Section 910 or apply the strict compliance test to claims under Section 910. (N.B.: *Flying Dutchman*, *Neecke* and *Batt* were all decided by the First District, Division Two.)

> tax." ***Read together***, these two portions of section 32 establish that ***the sole legal avenue for resolving tax disputes is a postpayment refund action***. A taxpayer may not go into court and obtain adjudication of the validity of a tax which is due but not yet paid.

(*Id.*, emphasis added.)

Moreover, the City's contention that the provision at issue in *Eisley v. Mohan* (1948) 31 Cal.2d 637, 641 [192 P.2d 5], the predecessor to article XIII, section 32, contained "markedly different language" (Answer, *supra*, at p. 21) and therefore a different meaning, is squarely contradicted by this Court's conclusion in *Pacific Gas & Electric*, *supra*, 27 Cal.3d at p. 280, fn. 3, which characterized this constitutional amendment as one of "numerous minor revisions and renumberings" of essentially the same provision. This Court cited to *Eisley* in support of its holding in *Pacific Gas & Electric* that article XIII, section 32 "applies only to actions against the state." (*Pacific Gas & Electric*, *supra*, 27 Cal.3d at p. 281, fn. 6.)

As mentioned above, the Second Appellate District has now considered these issues twice, with conflicting results, and the view which received only two of six votes is currently the controlling precedent. As Presiding Justice Klein recognized, there are at least two other cases pending in the Second Appellate District which present the exact same issues and, depending upon which justices those cases draw, it is entirely possible that a different panel could overrule *Ardon* and reinstate *Oronoz*, resulting in repeated inconsistent opinions. This Court should resolve the perceived conflict involving its own decisions.

5. The Legislature Expressly Provided That A Substantial Compliance Standard Applies To Claims Submitted Pursuant To Section 910

Even assuming *Woosley* requires strict compliance with all claims statutes and that article XIII, section 32 applies to actions against local governments, the Legislature has expressly provided that a ***substantial***

compliance standard applies to claims presented pursuant to Section 910. Specifically, Government Code section 910.8 provides that if the board to whom a claim is submitted under the Act determines that "a claim as presented fails to ***comply substantially*** with the requirements of Sections 910," it may give written notice stating with particularity the defects or omissions in the claim. (Gov. Code, § 910.8, emphasis added.) Further, "[a] failure or refusal to amend a claim ... shall not constitute a defense to any action brought upon the cause of action for which the claim was presented if the court finds that the claim as presented ***complied substantially*** with Section [] 910...." (Gov. Code, § 910.6, emphasis added.) Indeed, even a failure to substantially comply with the form requirements is waived if notice is not provided within a specified time pursuant to section 911 of the Government Claims Act. (See Gov. Code, §§ 910.8, 911.)

Therefore, if the question is whether a claim under Section 910 must strictly comply with its claim requirements, the answer is "no" because the Legislature expressly adopted a substantial compliance standard.

C. As Stated By Presiding Justice Klein, The Issue Presented Is Whether A Class Claim For Tax Refunds Against A Local Public Entity Is Permissible Under Section 910

Presiding Justice Klein stated the issue presented here is "whether Government Code section 910 authorizes a class claim for tax refunds." (*Ardon*, *supra*, 174 Cal.App.4th at p. 386 (conc. opn. of Klein, P.J.).) Furthermore, the majority stated the primary issue on appeal was:

> ... whether Ardon was entitled to present a single claim to the City on behalf of himself and the entire class, or whether each member of the purported class is required to file an individual claim with the City prior to filing suit.

(*Ardon, supra*, 174 Cal.App.4th at p. 373.) Since Section 910 indisputably applies, the majority and Presiding Justice Klein are in agreement as to the primary issue in this appeal.

Because *City of San Jose* is the only opinion issued by this Court to analyze whether class claims are permitted under Section 910, Petitioner's framing of the primary issue presented is perfectly appropriate. The City's proposed framing of the issues ***completely ignores that the applicable claiming statute here is Section 910.***

The City doesn't dispute that Petitioner's second issue, whether article XIII, section 32 applies to actions against local entities for the refund of local taxes, is pertinent here. In fact, the City argues that "[t]he decision below cannot be separated from its reliance on *Woosley*'s discussion of article XIII, section 32...." (Answer, *supra*, at p. 27.) If article XIII, section 32 doesn't apply here (and it doesn't), then, without more, the entire reasoning behind the holding in *Woosley* and the holding itself are inapplicable.

D. The City's Request To Depublish *Oronoz* Is Improper And Untimely

The City's request that, should this Court grant this Petition, *Oronoz* be depublished (Answer, *supra*, at p. 29.) is improper and untimely. California Rules of Court, rule 8.1125 provides that a request that this Court order that an opinion certified for publication not be published "must not be made as part of a petition for review, but by a separate letter to the Supreme Court...." Moreover, it "must be delivered to the Supreme Court within 30 days after the decision is final in the Court of Appeal." (*Id.*) The *Oronoz* opinion was issued on January 24, 2008. Therefore, not only is the City's request specifically prohibited by rule 8.1125, but its request to depublish *Oronoz* is untimely. The request should be denied.

III. CONCLUSION

Mr. Ardon requests, as Presiding Judge Klein did in her concurring opinion below, that this Court grant review to resolve these important questions of law and the confusion surrounding this Court's precedents.

DATED: August 6, 2009

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CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.504(d)(1))

The text of this reply consists of 4,179 words as counted by the Microsoft Word 2003 word-processing program used to generate the brief.

DATED: August 6, 2009

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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 August 6, 2009, declarant served the REPLY IN SUPPORT OF PETITION FOR REVIEW via Federal Express Overnight Delivery in a sealed envelope fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is regular communication between the parties.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 6th day of August 2009, at San Diego, California.

Maureen Longdo

MAUREEN LONGDO

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