Civil No. BC 462270

In the Court of Appeal of the State of California
SECOND APPELLATE DISTRICT

Donald Sipple, et al.,
Plaintiffs and Respondents
v.
The City of Alameda, California, et al.,
Defendants and Respondents.

Appeal from the Superior Court of the State of California
for the County of Los Angeles
Honorable William F. Highberger, Judge Presiding

AMICI CURIAE BRIEF OF THE LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES

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APPLICATION FOR PERMISSION TO FILE AMICI CURIAE BRIEF

TO THE HONORABLE PRESIDING JUSTICE:

Pursuant to Rule 8.200(c) of the California Rules of Court, the League of California Cities and the California State Association of Counties (jointly, "Amici") respectfully request permission to file the amici curiae brief that is combined with this application. Amici have a substantial interest in this case because many of their respective member cities and counties collect the communications users' taxes at issue, and their financial health and overall fiscal planning effectiveness is dependent in part on the continuing ability to collect those taxes. Amici and their respective members have a substantial interest in litigation that interprets the statutory and constitutional requirements for the collection and potential refund of such taxes. Because Amici believe it is imperative that cities and counties continue to collect telephone user taxes and enforce their well-established "refund first" subrogation requirements, they write to support the decision of the trial court.

For the reasons stated in this application and further developed in the Introduction and Interest of Amici Curiae portion of the proposed brief, Amici respectfully request leave to file the amici curiae brief that is combined with this application.

The amici curiae brief was authored by James D. Ciampa and Jenny S. Kim of Lagerlof, Senecal, Gosney & Kruse, LLP. No party, person, or entity made a monetary contribution to fund the preparation of this brief.

Dated: November 15, 2013

Respectfully submitted:
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By: _____
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I. INTRODUCTION AND INTEREST OF AMICI

New Cingular Wireless PCS LLC, one of AT&T Mobility, LLC's many affiliates ("New Cingular"), along with representative individual plaintiffs, have filed this suit against 134 public agencies in California ("Respondent Cities"), seeking payment of communications user taxes allegedly paid to those entities between November 1, 2005 and September 30, 2010. There are several issues in this case, but the legal issues addressed in this brief will be limited to: (1) whether Government Code section 910 preempts local claiming ordinances, and (2) whether New Cingular has standing to pursue an administrative refund claim on behalf of its customers.

Amicus Curiae, the League of California Cities ("League"), is an association of 467 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 have statewide or nationwide significance.

Amicus Curiae, the California State Association of Counties ("CSAC"), is a non-profit corporation consisting of 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.

Amici have identified this case as having statewide significance for several reasons. First, all cities and counties have an interest in whether business entities that collect and remit taxes can file refund suits against cities and counties before first refunding such taxes to the customers who paid those taxes. Such refund

suits expose cities and counties to the same potential liability as class actions, but without any of the procedural protections and without any downside risk to the plaintiffs. Second, cities and counties also have a significant interest in not being bound by the terms of settlement agreements or class certifications to which they were not parties. Third, whether service providers, such as New Cingular, and individual service users can file suit against California cities and counties without having complied with local ordinances affects the applicability and enforcement of such ordinances.

II. FACTS AND PROCEDURAL HISTORY

Rather than restate the facts and procedural history in detail, *Amici* adopt the description of facts as set forth in the "Brief of Respondent City of Alhambra, et al".

III. ARGUMENT

A. GOVERNMENT CODE SECTION 910 DOES NOT PREEMPT RESPONDENTS' ORDINANCES.

The trial court properly granted the Respondent Cities' demurrers in this case because New Cingular and the individual plaintiffs failed to adhere to the tax refund claims requirements of each city before filing suit in superior court. Each of the Respondent Cities has municipal code provisions or ordinances that create the right of a service supplier or service user to pursue a claim for a tax refund when the conditions in those provisions are satisfied. The orderly functioning of local agencies requires compliance with local ordinances before a refund can be distributed to service users (the individual plaintiffs in this case), and before the collecting service supplier (here, New Cingular) can demand a refund from the taxing agency. Moreover, the individual plaintiffs did not file claims with any of the Respondent Cities before filing this suit in the lower court, and they therefore

failed to comply with the procedural requirements of the Government Claims Act (Gov. Code, Div. 3.6, Title 1, or "GCA").

Article XI, section 7 of the California Constitution grants cities and counties authority to make and enforce all local ordinances and regulations not in conflict with general laws. As to charter cities and charter counties, a city or county charter is the supreme law of the city or county, as applicable, subject only to conflicting provisions in the federal and state Constitutions and to preemptive state law. *Howard Jarvis Taxpayers Assn. v. City of Roseville* (2003) 106 Cal.App.4th 1178, 1186. Thus, a municipal ordinance has the same force within the corporate limits of the city adopting it as does a statute throughout the state. *Simons v. City of Los Angeles* (1977) 72 Cal.App.3d 924, 934. Indeed, "[i]n California, a duly enacted local ordinance has the same binding force as a state statute." *Leagues of Residential Neighborhood Advocates v. City of Los Angeles* (2007) 498 F.3d 1052, 1055. As to general law cities and counties, any county, city, town, or township organized under the general laws may make and enforce within its limits all such local police, sanitary, and other regulations as are not in conflict with general laws. *City of San Mateo v. Railroad Commission* (1937) 9 Cal.2d 1, 8. Moreover, every presumption is in favor of the validity of a municipal ordinance (*Rubalcava v. Martinez* (2007) 158 Cal.App.4th 563, 575), and the burden of proof is on the one attacking its validity to show the invalidity of the ordinance. *City of Industry v. Willey* (1970) 11 Cal.App.3d 658, 663. At the same time, ordinances are to be construed in concert with applicable provisions of charters, state law, constitution, and public policy. *Johnson v. Bradley* (1992) 4 Cal.4th 389, 399.

While Appellants are not attacking the validity or constitutionality of the municipal ordinances at issue in this case, they claim that Government Code section 910 preempts Respondents' tax refund ordinances in their entirety and assert that they have met the statutory requirements of section 910. (12 AR 2826-2840.)

The California Constitution expressly prohibits a city or county from enacting a local law that conflicts with general or state laws. (Cal. Const. art XI, § 7.) However, a conflict exists within the meaning of article XI, section 7, only if local legislation: (1) enters an area fully occupied by state law, whether expressly or by legislative implication; (2) duplicates state law; or (3) contradicts state law. *Roble Vista Associates v. Bacon* (2002) 97 Cal.App.4th 335, 339. As discussed below, none of these conditions is met with respect to substantive local claiming requirements that allow a carrier to become subrogated to the claims of their customers only after issuing a refund to customers who paid invalid taxes.

1. No Full Occupation by State Law.

While cities have no inherent power to tax (*Myers v. City of Pismo Beach* (1966) 241 Cal.App.2d 237, 240), there are many examples of taxation authority that has been conferred to local governments, including the transient occupancy tax (Rev. & Tax. Code §§ 7280-7283.51), utility users' tax (Cal. Const. art. IX, § 5), and the Bradley-Burns Uniform Local Sales and Use Tax (Rev. & Tax. Code §§ 7200-7226). Through delegating such taxing authority to local agencies, the Legislature has demonstrated that it has not expressly or impliedly preempted the area of communications tax law, nor of any other areas of local taxation to which it has granted cities and counties that taxing authority, even with the enactment of Government Code section 910 or any other provision similar to the Respondent Cities' "refund first" requirements.

2. No Duplication.

Because section 910 has not fully occupied the field relative to local agency taxing authority, preemption will only be found if that statute either duplicates or contradicts state law.

Section 910 provides: "A claim shall be presented by the claimant or by a person acting on his or her behalf" and requires that contents of the claim show all of the following: (a) the name and address of claimant, (b) the address to which the claimant desires notices to be sent, (c) the circumstances of the event that gave

rise to the claim, (d) a general description of the indebtedness, obligation, injury, damage or loss the claimant incurred, (e) the name(s) of the public employee(s) causing such loss, if known, and (f) the amount claimed. (Gov. Code § 910.) The statute essentially addresses who can submit a claim and what must be included within the contents of that claim.

The local ordinances at issue, on the other hand, generally require that a service supplier or provider must first refund any overpayment to its service users before it can request a refund from the city. For example, the municipal codes of Glendale, Burbank and El Monte provide:

> "...the Tax Administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed...to claim credit for such overpayment...**provided that...the tax administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit."** (Glendale Municipal Code § 4.38.150(H); Burbank Municipal Code § 2-4-1119(C); El Monte Municipal Code § 3.22.150(C).) [emphasis added]

The City of Sierra Madre similarly states:

> "A service supplier may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received, when it is established in a manner prescribed by the tax administrator that the service user from whom the tax has been collected did not owe the tax; **provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the service user or credited to charges subsequently payable by the service user to the person required to collect and remit."** (Sierra Madre Municipal Code § 3.36160(B).) [emphasis added]

The local ordinances at issue herein do not duplicate or contradict section 910. Duplication occurs when local law is identical to state law or the two laws are coextensive, so that the duplication creates an "inevitable conflict of

jurisdiction." *Pipoly v. Benson* (1942) 20 Cal.2d 366, 371; *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897, 902. The requirement that a service supplier must first refund any tax overpayments to its service users before filing a claim is distinctly different from the content requirements of section 910, which requires names and addresses of claimants, the claim amount, and reasons for the claim -- for purposes of collecting claim information.

Moreover, a careful review of the Respondent Cities' ordinances reveals that local legislative bodies have refrained from enacting provisions pertaining to the content of claims, as those procedural requirements have already been set forth in the Government Code. Thus, the "refund first" substantive requirement does not duplicate Government Code section 910, but rather supplements it by allowing a carrier to become subrogated to customer claims when subrogation is warranted. Here, New Cingular has not refunded any portion of the disputed tax to any customer, and it therefore cannot become subrogated to customer claims.

3. No Contradiction.

A local law contradicts state law "when its purpose is inimical to the purpose of the state law, prohibits what the legislature intends to authorize, or otherwise fails to follow state mandates." See *Ex Parte Daniels* (1920) 183 Cal. 636, 641; *Northern Cal. Psychiatric Soc'y v. City of Berkeley* (1986) 178 Cal.App.3d 90, 105; see also *Bank of the Orient v. Town of Tiburon* (1990) 220 Cal.App.3d 992, 1003. The mere fact that local law imposes restraints that the state law does not impose does not establish a conflict. *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 707. "On the contrary, the absence of a statutory restraint is the very occasion for municipal initiative." *Id.*

The "refund first" requirement is not inimical to the purpose of section 910, which is to statutorily outline the general and relevant information needed by government agencies for purposes of processing claims. Courts have long recognized that the GCA established a standardized procedure for bringing claims against local government entities. *Ardon v. City of Los Angeles* (2011) 52 Cal.4th

241, 251. One of its primary goals is "to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation." *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 455 [emphasis added]. Section 910 was also not limited to tax refund claims, but addresses any and all claims for money against government entities in the state of the California.

Respondents Cities' ordinances, however, were enacted by local legislative bodies to specifically address issues pertaining to refund claims for overpayment of communications or utility users' taxes. They impose an additional substantive requirement of refunding tax overpayments to service users before a service provider can become subrogated to a customer's claim, and this subrogation establishes a service provider's right to file that claim – more of which is discussed below. As such, Respondents Cities' "refund first" ordinances do not contradict and are not in conflict with section 910 and should be enforced.

Because there is no legislative occupation of the field relative to the "refund first" requirement and because that requirement does not duplicate or contradict Government Code section 910, the Respondent Cities' "refund first" requirement is a valid substantive prerequisite to a carrier obtaining a refund of the taxes it collected. Therefore, failure to comply with that requirement deprives New Cingular of its purported claim.

B. CITIES AND COUNTIES MUST BE ALLOWED TO CONTINUE TO IMPOSE SUBSTANTIVE REQUIREMENTS ON CLAIMS SUBMITTED FOR TAX REFUNDS.

There is an important distinction between the substantive and procedural aspects of the GCA. This distinction is important because it affects whether local ordinances are applicable.

Appellants claim that compliance with Respondents Cities' tax refund ordinances is unnecessary because section 910 is preemptive, despite the fact that

the ordinances are not in conflict with the GCA as previously discussed. However, even if it is assumed that section 910 has a preemptive effect, section 910 would preempt only the procedural aspects of the refund ordinances. The "refund first" rule requiring a claimant (here, New Cingular) to first refund any communications or utility tax overpayment to its service users prior to filing a claim with a city or county is a substantive rule, and thus section 910 would not affect the applicability of such an ordinance.

"Law is substantive if it creates, defines, and regulates the rights and duties of the parties and may give rise to a cause for action, whereas procedural law pertains to and prescribes the practice and procedure or the legal machinery by which the substantive law is determined or made effective." (1A C.J.S. Actions § 41, June 2013.) Put differently, procedural requirements pertain to the mode by which a legal right is enforced, as distinguished from the substantive law that gives or declares the right. *Bohme v. Southern Pac. Co.* (1970) 8 Cal.App.3d 291, 298, disapproved of on other grounds by *Lund v. San Joaquin Valley R.R.* (2003) 31 Cal.4th 1.

Section 910 presents procedural hurdles that must be cleared by any claimant in order to file a claim against a governmental entity, all of which pertain to content or information collection for processing and investigative purposes. Thus, it requires information such as names, addresses, claim amount and reason for the claim. The statute does not, however, establish the right of a claimant to file a claim. "The policy underlying the claims presentation requirements is to afford prompt notice to public entities. This permits early investigation and evaluation of the claim and informed fiscal planning in light of prospective liabilities." *California Restaurant Management Systems v. City of San Diego* (2011) 195 Cal.App.4th 1581, 1591 [emphasis added]. It is well established that issues concerning the adequacy of notice are inherently procedural. *International Ass'n of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Shopman's Local 493 v. EFCO Corp. and Const. Products, Inc.* (2004) 359 F.3d 954, 956.

Furthermore, the fact that section 910 is procedural in nature is reflected in the structure of the GCA. Part 2 of the GCA, entitled "Liability of Public Entities and Public Employees," sets forth the various substantive rules concerning when public entities and employees can be exposed to liability. Gov. Code § 814 et seq., added by Stats.1963, ch. 1681, p. 3267.

However, Part 3 of the GCA was enacted separately, and includes section 910. Gov. Code § 900 et seq., added by Stats.1963, ch. 1715, p. 3372. Claims presentment within Part 3 is organized further into substantive and procedural rules. This organizational split is implicated within the language of section 905: "There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) all claims for money or damages against local public entities..." Gov. Code § 905. Chapter 1, which contains sections 900 through 907, provides various substantive rules on the types of claims a claimant can make against public entities, such as inverse condemnation claims (§ 905.1), claims against the state for additional reimbursement (§ 905.3), and claims against judicial branch entities (§ 905.7). These statutes create the rights upon which a claimant may file a claim against public entities.

However, Chapter 2 of Part 3 (§ 910 et seq.) is entitled "Presentation and Consideration of Claims," and provides the procedural aspects of presenting claims with governmental entities, such as contents of a claim (§ 910), signature (§ 910.2), amendment (§ 910.6), timing of claim presentation (§ 911.2), and various notice requirements (§§ 910.8, 911, 911.8, 913) -- all of which have been statutorily mandated so that government entities can acquire sufficient information to investigate those claims.

The "refund first" ordinances define and create the right of a service supplier, such as New Cingular, to pursue a GCA claim for a tax refund only after the supplier satisfies the threshold condition of refunding any overpayment of taxes to its service users. Section 910 then provides the mode by which New

Cingular can assert that right once it has been established. Section 910, along with the rest of the statutes in Chapter 2 of Part 3, simply provides the procedural requirements that a claimant must adhere to, but does not give or declare the right to a claim. The "refund first" ordinances do not infringe, invade or even implicate the procedural requirements of section 910, as they do not pertain to the contents of a refund claim. Instead they establish which service suppliers have the substantive right to file a claim for a refund. Service suppliers with that substantive right are those that have already issued a refund to their service users. Only then can those service suppliers request a refund or reimbursement from the local taxing authority under principles of subrogation. Thus, these ordinances impose an additional substantive requirement beyond the general procedural requirements imposed by section 910, and should remain in full force and effect.

Appellants rely on the rule recently established by the California Supreme Court in *McWilliams v. City of Long Beach* (2013) 56 Cal.4th 613, a case in which the Court concluded that the GCA permits a class action claim by taxpayers against local municipalities for the refund of an unlawful tax. The McWilliams Court held that a local ordinance is not a "statute" within the meaning of the GCA. *Id.* at 626. However, the holding in *McWilliams* stands only for the proposition that taxpayers may file class action claims against local governments for overpayment of taxes. *McWilliams* did not address the effectiveness of a substantive requirement such as the "refund first" requirement, and nothing in *McWilliams* authorizes taxpayers to simply forego compliance with local claims ordinances. Thus, *McWilliams* does not support the assertion that section 910 preempts all aspects of local claims ordinances.

In sum, section 910 merely imposes procedural requirements for the content of claims. It does not address substantive requirements to establish standing to bring an action for tax refunds. Therefore, section 910 and the "refund first" ordinances should be applied together, and public agencies should be permitted to continue to impose local substantive requirements.

C. MUNICIPALITIES AND COUNTIES MUST BE ABLE TO GOVERN THEIR OWN TAXING FOR FISCAL PLANNING PURPOSES.

Judicial construction of municipal tax laws should adhere to "the natural and probable legislative purpose, while at the same time, avoid conflict and harmonize all the applicable provisions of the law on the subject, if possible." McQuillian, Municipal Corporation, 3rd Ed., Vol. 16, Taxation, § 44.12; *City of Los Angeles v. Belridge Oil Co.* (1954) 42 Cal.2d 823, 827. One of the primary legislative goals behind tax refund statutes and ordinances is to enable governmental entities' advance fiscal planning.

Local governments possess the power to assess and collect taxes for municipal purposes when that power is delegated by the state legislature or by virtue of constitutional provisions conferring such power directly on political subdivisions of a state. *Easthampton Sav. Bank v. City of Springfield* (2012) 874 F.Supp.2d 25, 33; *NetJets Aviation, Inc. v. Guillory* (2012) 207 Cal.App.4th 26, 40-41, as modified on denial of reh'g, (July 18, 2012), review denied (Oct. 10, 2012). Specifically as to tax refunds, the California Constitution expressly provides such actions must be brought in the manner prescribed by the Legislature. (Cal. Const., art. XIII, § 32.) As recognized by the California Supreme Court, "[t]his constitutional limitation rests on the premise that strict legislative control over the manner in which tax refunds may be sought is necessary so that governmental entities may engage in fiscal planning based on expected tax revenues." *Woosley v. State of California* (1992) 3 Cal.4th 758, 789, [emphasis added]; see also *State Bd. of Equalization v. Superior Court* (1985) 39 Cal.3d 633, 638.

As previously noted, the GCA was designed to "give the public entity an opportunity to settle a claim before suit is brought, to permit early investigation of the facts, to facilitate fiscal planning for potential liabilities, and to avoid similarly caused injuries or liabilities in the future." *Garcia v. Los Angeles Unified School*

Dist. (1985) 173 Cal.App.3d 701, 712; *Weston Construction v. County of Sacramento* (2007) 152 Cal.App.4th 183, 200.

Local tax refund ordinances serve the same function. It is imperative for a local government to be able to oversee the administration of its own tax, including its refund policies so that it can properly assess its financial obligations for fiscal planning purposes. Understandably, this need should not work in contradiction to statutory mandates and federal laws. However, absent such conflict, there is a presumption of validity of ordinances and every intendment should be indulged in favor of validity, except where an ordinance transcends the power of local government. *California Veterinary Medical Ass'n v. City of West Hollywood* (2007) 152 Cal.App.4th 536, 548.

The judicial branch must harmonize state and local rules so that they are applied appropriately. As discussed in the previous section, Respondent Cities have been granted the right to legislatively create substantive rules addressing the tax refund claims at issue here, and subrogation is a substantive requirement that allows a taxing authority to identify the appropriate claimant and protects against multiple and conflicting claims. This aspect of local claiming requirements is therefore within the purview of local government agencies.

At the same time, the "refund first" rule affords local government agencies the opportunity to fiscally plan ahead, which is especially important in a time when numerous California cities and counties are suffering from revenue shortfalls and resulting budget limitations. Thus, although section 910 covers the area of claims presentment against local entities, it does not intrude on a local agency's ability to administer the substantive aspects of tax refunds; nor does it disrupt the important fiscal planning benefits derived by local subrogation requirements.

Finally, it is important to highlight the fact that the individual Appellants have not filed claims with any of the Respondent Cities in this case, contrary to their assertions in the lower court. Therefore, the trial court properly granted the Respondent Cities' demurrer in this case because (1) New Cingular failed to

comply with the "refund first" ordinances, and (2) the individual Appellants failed to comply with the GCA's procedural requirements by submitting claims at all.

D. NEW CINGULAR LACKS STANDING TO MAINTAIN THIS SUIT.

Apart from the preemption issue, New Cingular lacks proper standing to maintain this suit, as section 910 is a procedural claims statute and does not create standing. The trial court correctly concluded in its Notice of Ruling on Certain Defendants' Demurrers to the First Amended Complaint and Order of Stay that "a party with actual injury (and thus standing) has to make the claim, separate and apart from the question of whether or not such a hypothetical representative can pursue a class claim on behalf of others." (15 AR 3774.) Claim presentation requirements, such as those established under section 910, are independent of standing and independent of the basis for liability against a government agency. While the effect of *McWilliams* is that section 910 allows class representatives to file claims under certain circumstances, that holding does not dispose of the "injury in fact" requirement for filing a lawsuit. *McWilliams v. City of Long Beach, supra,* 56 Cal.4th at 619-620, 629. Otherwise, anyone that presented a claim that satisfied section 910's informational requirements would automatically have standing to sue.

All plaintiffs must meet the minimal constitutional requirements of standing, which require the following: (1) the plaintiff suffered an injury in fact, (2) there is a causal connection between the injury and the conduct complained of, and (3) the injury is likely to be redressed by a favorable decision of the court. (U.S.C.A. Const., art. III, § 2; *Lujan v. Defenders of Wildlife* (1992) 504 U.S. 555, 560.) Furthermore, it is the plaintiff's burden to establish standing. *Lujan v. Defenders of Wildlife, supra,* (1992) 504 U.S. at 560.

New Cingular lacks standing to sue on its own behalf because it suffered no injury in fact. New Cingular alleges in its complaint that it "erroneously charged

its customers state and/or local tax on internet access on its monthly bills in California and paid those taxes to the defendant cities" in violation of the Internet Tax Freedom Act. (1 AR 204-205). As a service provider, New Cingular essentially acted as a "middle man" or conduit to transmit such taxes to Respondent cities. However, New Cingular has failed to provide its customers a refund of the alleged overpayment of taxes, and thus has not suffered any injury. The allegedly overpaid taxes were paid by New Cingular's customers, not New Cingular, and New Cingular was not itself primarily liable for those taxes. New Cingular did not suffer an economic loss, suffer injury, or even incur risk of loss as the result of its tax collection practices; nor does it allege that it was itself a taxpayer.

Therefore, New Cingular has not suffered an injury in fact and lacks standing to bring this action.

IV. CONCLUSION.

Cities and counties depend on various tax revenues for effective budgeting and fiscal health. The Legislature has granted them authority to impose and implement taxes, and to manage substantive local taxing requirements. As demonstrated above, the "refund first" requirements at issue in this case are not preempted by Government Code section 910 and are a valid substantive requirement that does not conflict with section 910's procedural requirements. Also, because New Cingular itself did not pay any of the subject taxes, it has suffered no injury and therefore lacks standing to pursue the claims herein.

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Cities and counties throughout the state must continue to be able regulate the collection of local taxes and manage claims for subrogation. *Amici* therefore respectfully request that this court affirm the trial court's judgment.

Dated: November 15, 2013

Lagerlof, Senecal, Gosney & Kruse, LLP

By: _____
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CERTIFICATION ON LENGTH OF BRIEF

[Cal. Rules of Court, rules 8.204(c), 8.520(c)]

The text of this brief is generated in 13-point Times New Roman print type and consists of 4,599 words as counted by the Microsoft Word word-processing program used to generate this brief.

Dated: November 15, 2013

James D. Ciampa
Attorney for Amicus Curiae

SIPPLE, et al. v. THE CITY OF ALAMEDA, et al.
California Court of Appeals, Second District
Case No. BG242893

I, the undersigned, say: I am a citizen of the United States and a resident of the County of San Bernardino, State of California. I am over the age of 18 years and am not a party to the within action. My business address is: 301 North Lake Avenue, 10th Floor, Pasadena, California 91101

On the date of execution of the foregoing document, I placed a true and correct copy of the:

***AMICI CURIAE* BRIEF OF THE LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES**

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Executed on November 18, 2013, at Pasadena, California.

Linda Lane

Linda Lane

SIPPLE, et al. v. THE CITY OF ALAMEDA, et al.
California Court of Appeals, Second District
Case No. BG242893

I, the undersigned, say: I am a citizen of the United States and a resident of the County of San Bernardino, State of California. I am over the age of 18 years and am not a party to the within action. My business address is: 301 North Lake Avenue, 10th Floor, Pasadena, California 91101

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***AMICI CURIAE* BRIEF OF THE LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES**

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LASC Case No. BC462270

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