F060148

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

CITY OF CLOVIS, et al.
Plaintiffs and Respondents,
v.
COUNTY OF FRESNO,
Defendant and Appellant.

On Appeal from the Superior Court of the State of California,
County of Fresno
Case No. 08 CECG03535
Honorable Jeffrey Hamilton

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES TO FILE AN *AMICUS* BRIEF IN SUPPORT OF THE RESPONDENTS CITY OF FRESNO; PROPOSED BRIEF OF *AMICUS CURIAE*

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APPLICATION FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF

TO THE HONORABLE PRESIDING JUSTICE OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIFTH DISTRICT:

The League of California Cities ("the League"), pursuant to Rule 8.200(c) of the California Rules of Court, requests permission of the Presiding Justice to file the accompanying *amicus curiae* brief in support of the Defendants and Appellants City of Clovis, et al.

The League of California Cities is an association of 469 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 comprises 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. The Committee has identified this case as having such significance.

The League and its member cities have a substantial interest in the outcome of this case. Starting with the 2006-07 tax year, most counties in California dramatically increased the Property Tax Administration Fee, or PTAF, that they charge cities for the cost to assess, collect, and allocate property taxes. The League and many cities objected to these increases, contending that they were unlawful. However, most counties, including the County of Fresno, continued to collect the increased PTAF. Lawsuits were filed challenging this process, but most counties only stopped collecting the increased PTAF when the Supreme Court ruled in *City of Alhambra v. County of Los Angeles* (2012) 55 Cal.4th 707 that the increases were unlawful. Now cities across the state are seeking refunds of the PTAF overcharges, and a universal issue is whether the counties should pay

interest to the cities for the unlawful PTAF increases, and if so, at what rate. This case addresses this issue.

The League believes that its perspective on these issues is important for the Court to consider and will assist the Court in deciding this matter. The undersigned counsel has examined the briefs on file in this case and is familiar with the issues involved and the scope of their presentation. This *amicus* brief primarily addresses relevant arguments which were not presented in the parties' briefs. The League thus hereby requests leave to allow the filing of the accompanying *amicus curiae* brief.

The majority of the initial draft of the brief, as well as the final draft of this brief, was prepared by Jarvis, Fay, Doporto & Gibson, LLP, and represents its professional judgment. The Jarvis, Fay firm prepared and filed this brief as a pro bono service to the League of California Cities, in compliance with subdivision (c)(3) of Rule 8.200.

Initial drafts of some portions of this brief were prepared by Colantuono & Levin, PC, counsel for the plaintiff cities in *City of Alhambra v. County of Los Angeles* (2012) 55 Cal.4th 707, which also represents 29 Los Angeles County cities not party to this action in a pending dispute with that County regarding its obligation to repay excess PTAF withheld from them.[1] Among the issues in that dispute is the interest issue litigated here. Accordingly, those cities — as do all California cities — have a substantial stake in this Court's decision which will likely establish authority to be applied should their dispute lead to litigation. Rather than burden this Court with multiple amicus briefs, those cities

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[1] Those 29 cities are Avalon, Azusa, Claremont, Cudahy, Downey, Duarte, El Monte, El Segundo, Hermosa Beach, Hidden Hills, Inglewood, La Canada Flintridge, La Puente, La Verne, Lancaster, Malibu, Maywood, Palos Verdes Estates, Pasadena, Rolling Hills, Rolling Hills Estates, San Fernando, San Gabriel, South Pasadena, Temple City, Torrance, Vernon, Walnut, and West Hollywood.

compensated Colantuono & Levin to contribute to this brief.

Dated: June 6, 2013

JARVIS, FAY, DOPORTO & GIBSON, LLP

By: _____
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LEAGUE OF CALIFORNIA CITIES

AMICUS CURIAE BRIEF

I. INTRODUCTION

The issue in this case is whether the Defendant and Appellant County of Fresno ("the County") must pay interest on funds that it improperly appropriated from the Plaintiffs and Respondents the Cities of Clovis, Fowler, Fresno, Kerman, Kingsburg, Sanger, and Selma ("the Cities") and kept for its own uses.

In the 2006-07 tax year, counties across California, including the County of Fresno, dramatically increased the amount of Property Tax Administration Fee, or PTAF, that they charge cities for the cost of assessing, collecting, and allocating property taxes. This increase was based on the "Triple Flip" and the "VLF Swap," as explained by the Supreme Court in *City of Alhambra v. County of Los Angeles* (2012) 55 Cal.4th 707, 715-17.

Many cities, including the Cities in this case, objected. Nevertheless, Fresno County continued to collect the increased fees. The Cities sued and prevailed. The trial court found that the PTAF increases were improper, and on March 18, 2010, judgment was entered against the County. The judgment included an award of prejudgment and postjudgment interest at the rate of 7% per annum. The County appealed from that judgment.

In the meantime, a similar case in Los Angeles County had proceeded through the Second District of the Court of Appeal (which also agreed with the cities), and the Supreme Court had granted review. Since the Supreme Court's decision would presumably resolve the issue, the Cities and the County agreed to stay this appeal.

On November 19, 2012, the Supreme Court issued its decision in which it agreed with the cities and held that the counties had been wrong to increase the PTAF. (*City of Alhambra v. County of Los Angeles*, *supra*, 55

Cal.4th 707.) This decision conclusively established that Fresno County's PTAF increase for the 2006-07 tax year and the subsequent years had been improper. Thus, the only remaining issue in this appeal is whether the Cities are entitled to interest – both prejudgment and postjudgment – on these improper PTAF increases.

The County's argument is primarily a play on words. Although the case is unambiguously about money – the County took money to which the Cities were entitled and the Cities sued to get it back – the County argues that prejudgment interest cannot be awarded because the award was not for "damages" and that postjudgment interest cannot be awarded because the judgment was not a "money judgment." The County is elevating form over substance. As the County itself admits, the purpose of interest is to compensate a party who has been wrongfully deprived of money for the loss of use of that money. (See Appellants' Reply Brief, pp. 21-22.) In this case, the County appropriated the Cities' money for several years, during the worst economic recession since the Great Depression. Across California, cities were laying off workers and cutting services. These funds would undoubtedly have been very useful to these cities during this time. Instead, the County misappropriated these funds for its own use during the recession, and deprived the Cities of their funds. The Cities should be compensated for this loss.

The appropriateness of the award of interest can be illustrated by asking the County one critical question: Has the County yet even paid the Cities ***any*** of the principal PTAF amounts it improperly withheld since 2006-2007? *Amici* herein are informed that the County has not. As the County is now forced to acknowledge in its briefs, it cannot dispute that these excess PTAF withholdings were improper under the *City of Alhambra* decision. So why has the County ***still*** taken no action to rectify this? Is it simply because the judgment is not yet final so it does not legally have to

pay it yet? It is the purpose of interest awards to ensure that judgment debtors are "made whole" for delays suffered in receiving payment, including (but not limited to) delays during any appellate process. Without requiring that interest be paid, then all counties throughout the State (like the County here) would have a disincentive to take prompt corrective action in refunding excess withheld PTAF, an issue of potential concern to all California cities represented by *amici* herein.

II. ARGUMENT

A. The Cities should be awarded prejudgment interest.

"The purpose of prejudgment interest is to compensate plaintiff for loss of use of his or her property." (*Lewis C. Nelson & Sons, Inc. v. Clovis Unified School Dist.* (2001) 90 Cal.App.4th 64, 71-72.) Here, the County wrongfully appropriated the Cities' money for its own use for several years. During this time the Cities did not have the use of this money, and now interest should be awarded to compensate the Cities for this loss of use.

The right to prejudgment interest is codified in section 3287 of the Civil Code. "[I]n order to recover interest, a claimant must satisfy three conditions: '(1) There must be an underlying monetary obligation; (2) the recovery must be certain or capable of being made certain by calculation; and (3) the right to recovery must vest on a particular day.'" (*Todd Shipyards Corp. v. City of Los Angeles* (1982) 130 Cal.App.3d 222, 226 quoting *Tripp v. Swoap* (1976) 17 Cal.3d 671, 682.[2])

The Cities have met these three conditions. First, this case is certainly based on a monetary obligation. The County has an obligation to properly allocate to the Cities the property taxes the County collects for them. (*City of Dinuba v. County of Tulare* ("*Dinuba*") (2007) 41 Cal.4th

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[2]*Tripp v. Swoap* was overruled on other grounds in *Frink v. Prod* (1982) 31 Cal.3d 166, 180.

859, 865 ["counties have a mandatory duty to collect property taxes, then allocate and distribute the appropriate amounts to various taxing entities"].) The County is allowed to withhold PTAF from the Cities' property tax allocations, but it has an obligation to withhold only the legal amount. (*City of Alhambra v. County of Los Angeles*, *supra*, 55 Cal.4th 707, 711.) In this case, the County did not comply with its obligation, and it withheld more PTAF from the Cities than legally allowed.

Second, the amount of the recovery is certain or capable of being made certain by calculation. Both the decision of the trial court in this case and the decision of the Supreme Court in *City of Alhambra v. County of Los Angeles*, *supra*, 55 Cal.4th 707, directed how the correct PTAF should be calculated, and from that the amount of the refunds can be made certain.

Third, the right to recovery vested as soon as the County improperly charged the Cities too much PTAF – when the County made property tax distributions from which too much PTAF had been deducted.

Because these three requirements have been met, interest should be awarded under section 3287 of the Civil Code. The County proffers various arguments why prejudgment interest should not be awarded, but, as discussed further below, all of these arguments are without merit.

1. Prejudgment interest is properly awarded on a writ of mandate under Civil Code section 3287 when the writ is based on an underlying monetary obligation.

The County argues that prejudgment interest cannot be awarded because the Cities' cause of action is a petition for writ of mandate. But as the Respondents' Brief showed, prejudgment interest under section 3287 of the Civil Code is frequently awarded when a court issues a writ of mandate. "[O]ur courts on numerous occasions have awarded prejudgment interest in mandamus proceedings brought to recover sums of money pursuant to a statutory obligation." (*Aguilar v. Unemployment Ins. Appeals Bd.* (1990)

223 Cal.App.3d 239, 242; see, e.g, *Tripp v. Swoap* (1976) 17 Cal.3d 671, 682.) "In order to recover section 3287(a) interest in the mandamus action, the claimant must show: (1) an underlying monetary obligation, (2) damages which are certain or capable of being made certain by calculation, and (3) a right to recovery that vests on a particular day." (*American Federation of Labor v. Unemployment Ins. Appeals Bd.* (1996) 13 Cal.4th 1017, 1022.)

> "Although some decisions suggest that interest cannot be recovered in a mandamus action [citations], we hold that the present action in mandamus may support a judgment for interest since it involves recovery upon a general underlying monetary obligation. (*Mass v. Board of Ed. of San Francisco Unified School Dist.* (1964) 61 Cal.2d 612, 625-26.)

Thus, courts typically award interest on writs of mandate involving payment of money. (See, e.g., *Aguilar v. Unemployment Ins. Appeals Bd.*, *supra*, 223 Cal.App.3d 239; *Tripp v. Swoap*, *supra*, 17 Cal.3d 671; *Mass v. Board of Ed. of San Francisco Unified School Dist.*, *supra*, 61 Cal.2d 612.)

2. Prejudgment interest is not limited to "damages" as restrictively defined by the County.

The County focuses on the use of the word "damages" in Civil Code section 3287 and argues that interest can only be awarded on a claim for "damages," such as "damages" awarded for a tort. But this definition of "damages" is much too restrictive. For section 3287 of the Civil Code, "damages" means any "detriment from the unlawful act or omission of another."

The definition for the term "damages" as used in section 3287 of the Civil Code is found in section 3281 of the Civil Code, which is located in the same chapter. This definition is broad and includes compensation for any detriment caused by an unlawful act. It states:

> "§ 3281. Damages; person suffering detriment
> "PERSON SUFFERING DETRIMENT MAY RECOVER

> DAMAGES. Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages."

In this case, the County violated a statutory obligation – the obligation to correctly calculate PTAF and to pay over to the Cities the property taxes to which they are entitled. (Rev. & Tax Code §§ 95.3, 95.75; *City of Alhambra v. County of Los Angeles*, *supra*, 55 Cal.4th 707.) The County's violation of these statutes deprived the Cities of their lawful revenues, which was certainly to their detriment. The refund of the improper PTAF charges is compensation for these improper charges, and therefore the refunds are "damages" as defined in section 3281 of the Civil Code.

Many cases have awarded interest in situations where the damage is either an equitable violation or the violation of a statute. "Civil Code § 3287 has been consistently applied to require the award of prejudgment interest where the judgment is for money owed or to be refunded pursuant to a statutory obligation." (*Irwin v. Mascott* (N.D. Cal. 2000) 112 F.Supp.2d 937, 956.) Interest under Section 3281 has been applied to restitution awards. (*Ibid.*) It has been awarded for tax refunds by local governments, running from the date the improper tax was collected. (*Macy's Department Stores, Inc. v. City and County of San Francisco* (2006) 143 Cal.App.4th 1444, 1458; *ITT Gilfillan, Inc. v. City of Los Angeles* (1982) 136 Cal.App.3d 581, 585; *Todd Shipyards Corp. v. City of Los Angeles*, *supra*, 130 Cal.App.3d 222, 224-25.) Interest has been awarded for the refund of fees, accruing from the dates the improper fees were paid. (*Collins v. City of Los Angeles* (2012) 205 Cal.App.4th 140, 152). Interest has been awarded when a writ directs the payment of unemployment benefits (*Aguilar v. Unemployment Ins. Appeals Bd.*, *supra*, 223 Cal.App.3d 239, 245), or the payment of disability benefits (*Tripp v. Swoap*, *supra*, 17 Cal.3d 671, 681-82), or the payment of back pay (*Mass v.*

Board of Ed. of San Francisco Unified School Dist., *supra*, 61 Cal.2d 612, 625-26).

The County argues that interest cannot be awarded against the County because the basis for interest against the county must be rooted in a statute. (Appellant's Reply Brief, pp. 18, 23.) However, there clearly is a statutory basis to award interest — section 3287 of the Civil Code — which was the basis used by all of the cases in the preceding paragraph. The County cites the case of *Ball v. County of Los Angeles* (1978) 82 Cal.App.3d 312, but both *ITT Gilfillan, Inc. v. City of Los Angeles*, *supra*, 136 Cal.App.3d 581 and *Todd Shipyards Corp. v. City of Los Angeles*, *supra*, 130 Cal.App.3d 222, distinguished *Ball v. County of Los Angeles* in a way that makes it clearly inapplicable to the present case and shows why interest is appropriate here. In *Ball*, a county had improperly charged the plaintiff property tax although she was exempt. As soon as the plaintiff applied for an exemption, the county refunded the taxes. The court in *Todd Shipyards Corp. v. City of Los Angeles*, *supra*, 130 Cal.App.3d 222 explained that this distinguished *Ball*.

> "While there was a dispute between the taxpayer and the City of Los Angeles in this case, and the taxes were paid under protest, in *Ball* the taxpayer paid the taxes voluntarily though in error. As soon as the error was discovered by the taxpayer and pointed out to the county, the taxpayer's claim for a refund was processed, verified, and paid." (*Id.* at p. 227; see *ITT Gilfillan, Inc. v. City of Los Angeles*, *supra*, 136 Cal.App.3d 581, 585 [same distinction].)

In the present case, the Cities objected to the increased PTAF charges, but the County persisted in imposing it, and the Cities had to sue the County to recover the improper charges. Therefore, under *ITT Gilfillan, Inc. v. City of Los Angeles*, *supra*, 136 Cal.App.3d 581 and *Todd Shipyards Corp. v. City of Los Angeles*, *supra*, 130 Cal.App.3d 222, an award of prejudgment interest is warranted.

The County also argues that *Dinuba*, *supra*, 41 Cal.4th 859, precludes an award of interest because it holds that a reallocation of property taxes is not "damages." It does not. In fact, *Dinuba* does not even address the question of interest. It is a case about government immunity. In *Dinuba*, a city and its redevelopment agency sued a county claiming that the county had failed to allocate property taxes owed to the redevelopment agency. (*Dinuba*, *supra*, 41 Cal.4th at 862-63.) The county demurred, and the trial court sustained the demurrer holding that the claim was barred by the immunity in section 860.2 of the Government Code. (*Id.* at 864.) The Supreme Court held that the plaintiffs could proceed and that their claim was not barred by government immunity. Contrary to the County's assertion, the Court's determination in *Dinuba* that the cause of action was not barred by Government Code section 860.2 was not based on a broad determination that the plaintiffs were not seeking damages; instead it was based on a very narrow interpretation of the definition of "injury" or "damage" under the Government Claims Act. The *Dinuba* court explained:

> "Defendants' failure to comply with their statutory duty to correctly allocate and distribute tax revenue to other public entities does not constitute an 'injury' within the narrow meaning of sections 810.8 and 860.2." (*Dinuba* at p. 867.)

The Court further explained that the definition of "damages" under the immunity provisions of the Government Claims Act are only concerned with tort damages. "[T]he immunity provisions of the Act are only concerned with shielding public entities from having to pay money damages for torts." (*Dinuba* at p. 867.) As we have shown above, the definition of "damages" under Civil Code section 3287 is much broader, as defined in Civil Code section 3281, and therefore prejudgment interest under Civil Code section 3287 is regularly awarded in non-tort cases, such as writs of mandate, tax and fee refunds, restitution awards, and the payment of disability or unemployment benefits, or the payment of back pay.

The County's arguments assume – without acknowledgment or explanation – that the term "damages" as it is used in Civil Code section 3287 should be interpreted to have the same meaning as it is used in the Government Claims Act (Gov. Code § 810 *et seq.*). Specifically, the County argues: (i) section 3287 awards prejudgment interest when a party is entitled to "damages," (ii) mandamus actions like the Cities' do not seek "damages" within the meaning of the Government Claims Act, and therefore (iii) the Cities are not entitled to prejudgment interest. (See Appellant's Opening Brief at p. 3.)

This syllogism ignores the very different contexts in which the two laws at issue were passed. Civil Code section 3287 was adopted in 1872 as part of California's original Field Codes, and was amended in 1955 to add language regarding government defendants. (See Stats. 1955, ch. 1477, § 1, p. 2689.) As such, it is part of the foundations of California statutory law, laying out broad concepts such the general equitable principle of interest on damages to account for the time value of money.

The immunity provisions of the Government Claims Act at issue in *Dinuba*, on the other hand, were adopted in 1963 – just shy of a century after Civil Code section 3287 – for a much more specific purpose. The 1963 statute which gave us the modern Government Claims Act was intended to establish the scope of government liability in the wake of *Muskopf v. Corning Hospital District* ("*Muskopf*") (1961) 55 Cal.2d 211, which had abrogated the ancient rule of sovereign immunity. Its basic concept is that public entities are liable to the extent provided by statute. (See Gov. Code § 815 [public entities only liable "as . . . provided by statute"]; *Thompson v. City of Lake Elsinore* (1993) 18 Cal.App.4th 49, 62 [Government Claims Act sought to partly restore sovereign immunity after *Muskopf*].) The Act also identifies fundamental bases for public entity liability (e.g., dangerous conditions of public property under Government

Code section 835) and immunities from liability (e.g., the immunity for discretionary administration of tax laws under Government code section 860.2 at issue in *Dinuba*).

Thus, the Government Claims Act speaks of "damages" to specify the existence and extent of public agency ***liability***. By contrast, Civil Code section 3287 is concerned with ***remedy*** for liability once determined. The different contexts and historical eras in issue would make it surprising if the Legislature had the same meaning in mind when it spoke of "damages" in the Civil Code and in the Government Claims Act.

In light of this history, the error of the County's analysis of *Dinuba* becomes even more apparent. The County reads *Dinuba* to state that "a mandamus action seeking correction of a misallocation of property taxes is not an action for 'damages' under California law, even if the judgment results in a payment of money to the petitioner/plaintiff." (Appellant's Opening Brief at p. 3.) However, *Dinuba* examined a county's misallocation of property tax funds, which inappropriately denied revenues to a city's redevelopment agency. When the redevelopment agency sued to recover its funds, the county declared immunity under the Government Claims Act, specifically Government Code section 860.2. (*Dinuba* at pp. 862-863.) In finding the Act inapplicable, the *Dinuba* court did not discuss damages in general, but rather, as explained above, focused on the kind of damages covered by the Government Claims Act. As the Court explained:

> "For example, had plaintiffs sought compensatory damages for a downgraded bond rating or increased interest rates as a result of defendants' failure to disburse the funds to which plaintiffs were entitled, ***such damages*** would likely be precluded. But plaintiffs do not seek ***such damages*** and thus section 860.2 does not bar their action." (*Id.* at pp. 867-868 [emphasis added].)

Therefore, *Dinuba* merely describes the species of "damages" as to which tax collectors are immune and holds that mandamus actions do not pursue

"such damages." The opinion thus does not sustain the County's reading. That mandamus actions do not seek "such damages" that trigger immunity under the Government Claims Act says nothing about the intent of the Legislature in using that term more than a century earlier in Civil Code section 3287. The broader remedial purpose of that older, more general statute is what controls here.[3]

3. Section 96.1 of the Revenue and Taxation Code does not preclude an award of interest.

The County argues that interest cannot be awarded because it is not mentioned in Section 96.1 of the Revenue and Taxation Code. In response, the Respondents have shown that section 96.1 does not apply to this case. But even if it did, the fact that interest is not mentioned in section 96.1 hardly means that interest cannot be awarded. The relevant part of section 96.1 states:

> "If, by . . . discovery by an entity on or after July 1, 2001, it is determined that an allocation method is required to be adjusted and a reallocation is required for previous fiscal years, ... The reallocation shall be completed in equal increments within the following three fiscal years." (Rev. & Tax Code § 96.1, subd.(c)(3).)

Nothing in this provision prohibits an award of interest. It only provides that a reallocation of property taxes to correct an error will be spread over

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[3]The County similarly cites *Board of Administration of the Public Employees' Retirement System v. Wilson* (1997) 52 Cal.App.4th 1109 for the proposition that a writ is not an action for "damages." (Appellant's Reply Brief, p. 14.) However, like *Dinuba, Board of Administration of the Public Employees' Retirement System v. Wilson* focused on the definition of "damages" in the Government Claims Act. The question was whether the claim was subject to the claims presentation requirements of the Act, and the court held that it was not. (*Id.* at p. 1125.) Like *Dinuba*, this holding does not concern the broader definition of "damages" in the Civil Code for the purposes of awarding prejudgment interest under section 3287 of the Civil Code.

three years, which is intended to lessen the hardship caused by a mistake. But an award interest is not incompatible with section 96.1. As anybody with a house mortgage knows, interest is compatible with installment payments and is very common. Therefore, even if section 96.1 were applicable to this case, it would not in any way prohibit an award of interest.

4. Under analogous circumstances, the Legislature has expressly recognized that counties should pay interest on amounts improperly withheld from other local agencies.

Finally, it should be noted that, under very analogous circumstances, the Legislature has expressly authorized interest in similar types of disputes between local public entities. Specifically, Government Code section 907 authorizes counties to withhold tax proceeds from other local public entities to pay for delinquent amounts due and owing – but also provides that, if the withholding is later found to be unwarranted, the amount improperly withheld will later have to be repaid with 10% interest. Specifically, that section provides in part:

> "A local public entity, as defined in Section 900.4 [to include counties, cities, and special districts], may offset any delinquent amount due it for services rendered to any other local public entity. The offset may be charged, against any amount reciprocally owing, upon the giving of 30 days advance written notice, if no written dispute is received from the debtor within the 30-day notice period. . . . ***For purposes of this section, an amount reciprocally owing includes any tax revenue collected by a local public entity for disbursement to another local public entity.***" (Gov. Code § 907 [emphasis added].)

As counties are the only local agencies which collect and distribute local tax revenues, counties are the primary beneficiary of this section. Thus, under section 907, a county may withhold property taxes from a city if it claims that the city owes the county any sum allegedly due for any service. However, this section goes on to also provide for both pre- and

postjudgment interest on disputes:

> ". . . If a dispute notice is received and the dispute is subsequently resolved in favor of the entity to whom an amount is due, interest on the principal amount from the date that amount was originally owing shall be assessed at the legal rate per annum established pursuant to Section 685.010 of the Code of Civil Procedure." (*Ibid.*)

Code of Civil Procedure section 685.101 authorizes 10% interest on a "money judgment."

Thus, the County's desire to cabin the phrase "money judgment" to the Civil Code to the exclusion of disputes between public agencies fails, for the Legislature itself makes the cross-reference between these spheres. Indeed, the interest of 7% awarded here is less than the 10% interest authorized under Government Code section 907.[4]

B. The Cities should be awarded postjudgment interest.

The Respondents' brief clearly explained that the Cities are entitled to postjudgment interest. (See Respondents' Brief, pp. 21-23.) They showed that Article XV, section 1 of the California Constitution mandates an award of interest at 7%, and they correctly pointed out that the County's argument against an award of postjudgment interest, which is based on sections 685.010 and 680.270 of the Code of Civil Procedure and the use of the term "money judgment" in these sections, does not apply to the judgment in this case because the Supreme Court has held that these

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[4] *Amici* recognize that the amount of interest awarded is not in dispute in the present appeal. However, in case it is of interest to this Court, *Amici* note that the Legislature now has the issue of the amount of the appropriate interest rate under consideration. AB 748, which was recently approved by the Assembly and is now pending consideration before the Senate, would reduce interest due from public agencies under Civil Code section 3287 and tie it to prevailing interest rates rather than the present, fixed 7% per year. (See Motion for Judicial Notice filed concurrently herewith, Exhibits A & B.)

sections do not apply to local governments. (*California Federal Savings and Loan Assoc. v. City of Los Angeles* (1995) 11 Cal.4th 342, 347, 352-53 [7% interest applied to refund of business license tax].)

In its reply brief, the County largely ignores the Cities' argument, and continues to argue that postjudgment interest cannot be awarded because the Cities have not obtained a "money judgment." There is a fundamental absurdity to this argument – of course this case clearly involves a "money judgment" – this entire case is about money, and the judgment requires the County to repay to the Cities the money that it improperly took from them. But, even ignoring that absurdity, the County is incorrect in asserting that the judgment needs to be a "money judgment" in order for interest to accrue in the first place.

The County agrees that the purpose of postjudgment interest is to compensate a plaintiff for the loss of use of its money, but the County continues to argue that it does not have to pay postjudgment interest because the judgment in this case is not a "money judgment."

> "The County does not dispute – and has never disputed – that the general purpose of awards of post-judgment interest is to compensate a judgment creditor for the loss of use of money. The question with respect to the award of post-judgment interest, however, does not turn on the general and undisputed purpose of post-judgment interest awards. Rather, it turns on whether the award in this case is a 'money judgment' within the meaning of Cal. Const. art. XV, § 1." (Appellants' Reply Brief, pp. 21-22.)

But Article XV, section 1, of the California Constitution does not use the term "money judgment." It refers to "any judgment," not just a "money judgment." It states:

> "The rate of interest upon a ***judgment*** rendered in any court of this state shall be set by the Legislature at not more than 10 percent per annum. Such rate may be variable and based upon interest rates charged by federal agencies or economic indicators, or both.

> "In the absence of the setting of such rate by the Legislature, the rate of interest on ***any judgment*** rendered in any court of the state shall be 7 percent per annum." (Cal. Const. art. XV, § 1; emphasis added.)

The County's focus on the term "money judgment" is based entirely on section 680.270 of the Code of Civil Procedure, which provides a definition of a "money judgment" as "that part of a judgment that requires the payment of money." However, this statutory provision is completely irrelevant because Article XV, section 1, of the California Constitution does not use the term "money judgment." It uses the term "any judgment," and the judgment granting a writ of mandate is clearly a judgment.

Furthermore, all of Title 9 of Part 2 of the Code of Civil Procedure (starting with section 680.010) is inapplicable to local public entities. (*California Federal Savings and Loan Assoc. v. City of Los Angeles*, *supra*, 11 Cal.4th 342, 347; Gov. Code § 970.1, subd.(b).) Section 680.270 of the Code of Civil Procedure is in Title 9 of Part 2 of the Code of Civil Procedure, and therefore its definition of "money judgment," even if it were relevant, would not apply to the County.[5] Consequently, under the Supreme Court's holding in *California Federal Savings and Loan Assoc. v. City of Los Angeles*, *supra*, 11 Cal.4th 342, the Cities are entitled to 7% interest on the judgment.

III. CONCLUSION

As the Supreme Court has explained, "the judgment rate of interest is a 'judicial tool' for enforcing judgments because it reduces the incentive to delay payment." (*California Federal Savings and Loan Assoc. v. City of*

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[5] If Title 9 of Part 2 of the Code of Civil Procedure was applicable to local government, then the more relevant definition would be that for a judgment, which is defined in section 680.230 as "a judgment, order, or decree entered in a court of this state," which would certainly include the judgment in this case.

Los Angeles, *supra* 11 Cal.4th at p. 350.) An award of interest is necessary to encourage the County, and other counties, to do the right thing and not to keep the Cities' funds.

The effect of the County's position is to ask a court of equity to countenance unjust enrichment: the County got the illegal, forced use of city revenues during the most dire economic difficulties America has seen in three generations. Now that the County is being forced to disgorge the funds, it wants to do so without interest. Allowing this to happen would only encourage counties to ignore the objections of cities when it is to the counties' advantage, and cities would have no alternative but to audit frequently and sue early and often, since the longer they wait, the less the recovery will be worth.

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WORD COUNT CERTIFICATION

I certify that this brief and accompanying application contains a total of 5724 words as indicated by the word count feature of the Word Perfect computer program used to prepare it.

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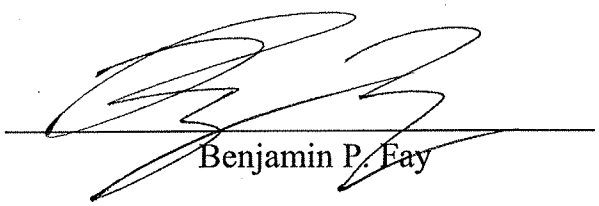

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