**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FIFTH APPELLATE DISTRICT**

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| CITY OF CLOVIS, et al.,<br><br>Plaintiffs and Respondents,<br><br>vs.<br>COUNTY OF FRESNO,<br>Defendant and Appellant. | Case No. F060148<br><br>(Fresno County Superior Court Case No. 08CECG03535) |

On Appeal From the Stanislaus County Superior Court
The Honorable Jeffrey Hamilton, Jr.

# APPLICATION FOR LEAVE TO FILE LATE AMICUS CURIAE BRIEF AND PROPOSED AMICUS BRIEF IN SUPPORT OF DEFENDANT AND APPELLANT COUNTY OF FRESNO BY THE CALIFORNIA STATE ASSOCIATION OF COUNTIES

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## APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF

The California State Association of Counties ("CSAC") respectfully moves this Court, pursuant to California Rules of Court, rule 8.200(c), [1] for leave to file the attached brief in support of Defendant and Appellant County of Fresno. Though this application is filed after the filing deadline specified in the Rules of Court, CSAC seeks leave to file this late brief in order to provide this Court with a county perspective on the issues raised by the League of California Cities in the brief filed on June 11, 2013. Because that brief raises legal issues that were not addressed by the party briefs,[2] CSAC respectfully requests that this Court accept this brief and permit the view of both the cities and counties on this important statewide issue to be fully briefed before this Court.

## INTEREST OF AMICUS CURIAE

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee,

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[1] No party or counsel to a party authored any part of this brief or made any monetary contribution toward the preparation of this brief.

[2] As noted on Page 2 of the League's application to file, its brief "primarily addresses relevant arguments which were not presented in the parties' briefs."

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.

Many of CSAC's member counties have a direct interest in the outcome of this litigation. Following the Supreme Court's decision in *City of Alhambra v. County of Los Angeles* (2012) 55 Cal.4th 707, counties that implemented the method of calculating the Property Tax Administration Fee (PTAF) that the Supreme Court determined was unlawful were left to determine the proper remedy. While many cities and counties have reached settlements on the PTAF issue, many still have disputes over whether interest is owed, and if so, how the interest is calculated. As such, any decision from this Court concerning the availability and calculation of interest is of a direct and significant statewide interest for counties.

## SUBJECT OF PROPOSED AMICUS BRIEF

Counsel for CSAC has reviewed the briefing already submitted in this case. Rather than repeat those arguments, the brief will focus on the definition of "damages" as that term is used in both the Civil and Government Codes, and explain why the position advocated by Plaintiffs/Respondents and the League is not consistent with statutory interpretation principles. The proposed amicus brief will provide the Court with a view of the legislative history of Revenue and Taxation Code section

96.1, and explain why the burdens imposed on all taxing agencies, favors the interpretation proposed by the counties.

For the foregoing reasons, CSAC respectfully requests that the Court accept the accompanying amicus curiae brief.

Dated: June 19, 2013

Respectfully submitted,

By: /s/ Jennifer B. Henning
_____
JENNIFER B. HENNING
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California State Association of Counties

## AMICUS CURIAE BRIEF

## I. INTRODUCTION

In *City of Alhambra v. County of Los Angeles* (2012) 55 Cal.4th 707, the California Supreme Court held that the property tax revenue that was diverted from the Education Revenue Augmentation Fund (ERAF) in support of the VLF Swap[3] and the Triple Flip[4] should not be counted as property tax for purposes of calculating the Property Tax Administrative Fee (PTAF) charged by County Auditor-Controllers to cities. Pursuant to the California Association of County Auditors Guidelines, most County Auditors included that property tax for purposes of calculating the PTAF. Accordingly, the cities were charged a higher fee and received less property

[3] The VLF Swap diverted property tax revenue from ERAF to fully compensate each city for the Vehicle License Fee (VLF) revenue lost when VLF went from 2% of vehicle market value to 0.65%. That property tax revenue would otherwise have been allocated to each county's ERAF. (See Rev. & Tax. Code, § 97.70.)

[4] In 2004, the voters approved Proposition 57, the California Economic Recovery Bond Act, which allowed the state to sell up to $15 billion in bonds to close the state budget deficit. (See Gov. Code, § 99050.) In order to create a dedicated revenue source to guarantee repayment of these bonds without raising taxes, the Legislature had passed already Revenue and Taxation Code section 97.68, a temporary revenue measure that shifts revenue in a three-stage process known as the "Triple Flip." In the first "flip," 0.25 percent of local sales and use tax revenues are diverted to the state for bond repayment. (See Rev. & Tax. Code, §§ 97.68, 7203, 7204.) In the second "flip," the lost local sales and use tax revenues are replaced by property tax revenue that would have been placed in the county ERAF but are instead set aside in a Sales and Use Tax Compensation Fund established in each county's treasury. (See Rev. & Tax. Code, § 97.68.) In the final "flip," any shortfall to schools caused by the reduction of funds to the county ERAF is compensated out of the state's general fund.

tax than they would have received had the PTAF been calculated as later outlined by the Supreme Court.

As in *City of Alhambra*, the Cities of Clovis, Fowler, Fresno, Kerman, Kingsburg, Sanger, and Selma (collectively, the "Cities") sought a Writ of Mandate against the County of Fresno (the "County") to compel it to reallocate the property taxes owed to the Cities to correct for the County's retention of the incorrectly calculated PTAF. That action resulted in a judgment against the County and in favor of the Cities. That judgment was filed on March 18, 2010 and is the judgment from which this appeal arises.

The issue presented is whether the County must pay interest on the reallocation of property taxes. Amicus California State Association of Counties respectfully asks the Court to answer that question in the negative.

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## II. ARGUMENT

### A. THE CITIES ARE NOT ENTITLED TO PREJUDGMENT INTEREST UNDER CIVIL CODE SECTION 3287 BECAUSE THAT SECTION ONLY PROVIDES FOR PREJUDGMENT INTEREST ON A CLAIM FOR DAMAGES; BECAUSE AN ACTION TO REALLOCATE PROPERTY TAXES IS NOT AN ACTION FOR DAMAGES; AND BECAUSE THERE IS NO LEGAL DISTINCTION BETWEEN DAMAGES UNDER THE GOVERNMENT CODE AND DAMAGES UNDER THE CIVIL CODE

County and Amicus League of Cities argue that prejudgment interest on "damages" under Civil Code section 3287 is allowed on a reallocation of property taxes even though an action for a reallocation of property taxes is not an action for damages because, under California law, "damages" does not mean "damages." No authority is cited for this proposition, however.

In relevant part, Civil Code section 3287, subdivision (a) expressly provides:

> Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor from paying the debt. This section is applicable to recovery of damages and interest from any such debtor, including the state or any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state.

(Civ. Code, § 3287, subd. (a).)

In *City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 863, 867, the California Supreme Court held that an action to reallocate property taxes was not an action for damages. Instead it was an action to compel the

performance of a statutory duty to reallocate the property taxes notwithstanding the action would result in the payment of money. (*Id*. at p. 867.)

However, Cities and Amicus League of Cities argue that the Supreme Court did not mean what it said in *Dinuba*. Their argument goes that "damages" under the Civil Code is not the same thing as "damages" under the Government Code. So when the *Dinuba* court said that a reallocation of property taxes is not an action for "damages" it did not foreclose the possibility that such an action really is an action for damages after all.

Nevertheless, such an argument is undercut by the fact that under the Government Code a claim is required for an action seeking "damages" under the Civil Code. It stands to reason that the Government Code's reference to damages is a reference to "damages" under the Civil Code. Consequently, "damages" does mean "damages." Accordingly, when the *Dinuba* court said that the action was not an action for damages, the court meant that it was not an action for damages under the Civil Code. Therefore, there is no legal distinction between the Government Code's reference to damages and the Civil Code's reference to damages.

Amicus League of Cities argues that Civil Code section 3281 provides a definition of damages as a detriment from the unlawful act or omission of another. However, Section 3281 provides no such definition.

Instead Section 3281 provides that persons suffering detriment may recover money as damages. Section 3281 does not set-forth a special definition of "damages" under the Civil Code that is different from the definition of "damages" under the Government Code.

Section 3281 of the Civil Code merely provides:

> 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.

(Civ. Code, § 3281.)

Consequently, Section 3281 of the Civil Code merely says that an action for damages may be maintained.

Section 905 of the Government Code controls claims for damages against public entities. Section 911.2 of the Government Code provides for a one year limitations period on such claims for damages.

In relevant part, Section 905 of the Government Code provides:

> 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.)

In relevant part, Section 910 of the Government Code provides:

> A claim shall be presented by the claimant or by a person acting on his or her behalf….

(Gov. Code, § 910.)

In relevant part, Section 911.2 (a) of the Government Code provides:

> A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with Section 915) not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented as provided in Article 2 (commencing with Section 915) not later than one year after the accrual of the cause of action.

(Gov. Code, § 911.2, subd. (a).)

Consequently, the Government Code says that when one seeks civil damages, one needs to file a claim with the public entity within one year if the action is not for death or injury to personal property. Therefore, the Government Code incorporates the concept of civil damages into it. Accordingly, "damages" under the Government Code means the same thing as "damages" under the Civil Code.

Nevertheless, in the trial court the Cities took the position that the one year limitations period of Section 911.2 of the Government Code did not apply because they were not seeking "damages." On the other hand, Cities and Amicus League of Cities argue that the Cities are seeking damages for purposes of prejudgment interest under Civil Code section 3287. So it would seem that Cities want their cake and eat it too.

Once again Amicus League of Cities and Cities are arguing that "damages" does not mean "damages" under California law. Such an absurd argument runs counter to the cannon of statutory construction that the same

word used in different places in the law is to be interpreted as having the same meaning.

A word given a particular meaning in one part of the law should be given the same meaning in other parts. (See *California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 643.)

In addition, construing the word "damages" differently in the Civil Code from the Government Code would violate the canon of construction that one should seek to construe statutes not as antagonistic laws but as parts of the whole system which must be harmonized. (See *People v. Seeley* (1902) 137 Cal. 13, 15.) As a general rule, statutes are to be construed to avoid interpretations which would be disharmonious. (See *Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 24.)

The *Dinuba* court found that the reallocation of property taxes was not an action for damages under the Government Code and the Civil Code. (*City of Dinuba v. County of Tulare*, *supra*, 41 Cal.4th at pp. 863, 867.) For the City and Amicus League of Cities to claim that an action for a reallocation of property taxes, nevertheless, resulted in damages for purposes of Section 3287 of the Civil Code, is to argue that damages under the Government Code does not mean damages under the Civil Code. The Court should not condone such a disharmonious result.

When the *Dinuba* court concluded that an action to reallocate property taxes was not an action for damages, the Court meant just that.

Accordingly, we endorse the arguments and position of the County in Appellants Opening Brief and Reply Brief. (See *City of Dinuba v. County of Tulare*, *supra*, 41 Cal.4th at pp. 867-868.)

Because "damages" means "damages" and because an action to reallocate property taxes is not an action for damages, prejudgment interest cannot be awarded under Civil Code section 3287 which provides for prejudgment interest on "damages."

Because prejudgment interest can only be awarded when authorized by statute (see *Ball v. County of Los Angeles* (1978) 82 Cal.App.3d 312, 316) and because no statute authorizes the award of prejudgment interest in the immediate case, no prejudgment interest can be awarded. Consequently, the Cities are not entitled to prejudgment interest.

## B. AWARDING INTEREST IS INCONSISTENT WITH THE LEGISLATIVE HISTORY OF REVENUE AND TAXATION CODE SECTION 96.1

Assembly Bill No. 169 (2001) provided for the amendment to Revenue and Taxation Code section 96.1. With regard to any error in property tax revenue allocations, Assembly Bill No. 169 prohibits a cumulative reallocation or adjustment that exceeds one percent of the current year's original secured roll tax levy and further provides that any

required reallocation be completed in three equal annual installments. (Legislative Counsel's Digest, Assembly Bill No. 169.)[5]

As reflected in the bill analysis for AB 169, the purpose of these amendments was to alleviate the serious financial strain for local governments who must plan out their budgets from one year to the next and cannot withstand a large reallocation. (AB 169 Bill Analysis, p. 3.)[6]

In relevant part, Revenue and Taxation Code section 96.1 provides:

> If, by audit begun on or after July 1, 2001, or 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 cumulative reallocation or adjustment may not exceed 1 percent of the total amount levied at a 1-percent rate of the current year's original secured tax roll. The reallocation shall be completed in equal increments within the following three fiscal years, or as negotiated with the Controller in the case of reallocation to the Educational Revenue Augmentation Fund or school entities.

(Rev. & Tax. Code, § 96.1, subd. (c)(3).)

The Legislature's intent in amending Revenue and Taxation Code section 96.1 to provide restrictions on the reallocation of property taxes was to alleviate the severe financial hardship on Counties in making such

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[5] The Court can utilize legislative history in the form of the Legislative Counsel's Digest to determine legislative intent. (See *California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 646.)

[6] The Court can utilize legislative history in the form of a bill analysis to determine legislative intent. (See *People v. Taylor* (2007) 157 Cal.App.4th 433, 437-438. See also *Brooks v. Workers' Compensation Appeals Board* (2008) 161 Cal.App.4th 1522, 1535.)

adjustments. The Legislature put a cap on the maximum amount of property tax reallocations as well as providing for the reallocations to take place over a period of years. Because the Legislature intended to minimize the burdens of property tax reallocations and to protect Counties from financial hardship related to such reallocations, it stands to reason that the Legislature would not have intended that Counties be subjected to the increased financial burden of paying interest on property tax reallocations.

Instead, Section 96.1 is a comprehensive remedy available in property tax reallocation cases. If the Legislature had intended for interest to be payable on property tax reallocations, it could easily have provided for interest in Section 96.1. In fact, the Legislature has provided for the payment of interest in other sections of the Revenue and Taxation Code. For example, the Legislature has provided for interest on refunds of property taxes. (See Rev. & Tax. Code, § 5151.)

The existence of express statutory authorization for interest in other sections of the Revenue and Taxation Code negates the conclusion that there is generally an entitlement to interest even when the Legislature has not expressly provided for it. (See *Ball v. County of Los Angeles*, *supra*, 82 Cal.App.3d at pp. 318-320.) Under the doctrine of "the expression of one excludes the other" the failure of the Legislature to provide expressly for the payment of interest on property tax allocations under Section 96.1 while expressly providing for interest in other circumstances in other sections of

the Revenue and Taxation Code indicates an intention to exclude interest on property tax reallocations. (*Ibid*.)

Consequently, it does not appear that the Legislature intended for Counties to have to pay interest on property tax reallocations. Instead, the Legislature intended to reduce the financial burdens on Counties associated with making property tax reallocations.

Accordingly, the City is not entitled to receive interest on the County's reallocation of property taxes.

## C. AWARDING INTEREST ON MISALLOCATIONS OF PROPERTY TAXES WOULD VIOLATE PUBLIC POLICY BECAUSE IT BURDENS THE PUBLIC FISC OF ALL TAXING ENTITIES

Not only would awarding interest in property tax reallocations be inconsistent with the Legislature's intent to minimize the financial burdens on Counties, but cities and other taxing entities could also be burdened by having to pay interest on reallocations when those cities and taxing entities are erroneously allocated too much property tax.

Instead of minimizing the financial burdens associated with property tax reallocations, the award of interest on those reallocations would increase financial pressure on any entity that received a misallocation in its favor.

Public policy favors minimizing the financial burdens on Counties, Cities, and all taxing entities and preserving the public fisc. (*State ex rel Hindin v. Hewlett-Packard Co.* (2007) 153 Cal.App.4th 307, 320; See also *Air Quality Products, Inc. v. State* (1979) 96 Cal.App.3d 340, 352.) Meaningful fiscal planning and legislative control over appropriations could prove illusory for all affected public entities if interest were required on reallocations of property taxes. Accordingly, the Court should not require interest to be paid on property tax reallocations.

## III. CONCLUSION

Cities are not entitled to prejudgment interest on the reallocation of property taxes under Civil Code section 3287 because an action to reallocate property taxes is not an action for damages and because Section 3287 only provides for prejudgment interest on damages. Furthermore, awarding interest would be inconsistent with the legislative history of Revenue and Taxation Code section 96.1, which provides restrictions on the reallocation of property taxes to minimize the financial burdens on Counties. Although the Legislature could have provided for interest in property tax reallocation cases, it did not do so. Moreover, the award of interest in property tax reallocation cases would violate public policy by imposing extra, needless, financial burdens on all taxing entities who receive misallocations in their favor.

For the foregoing reasons, the Court should hold that the County is not required to pay prejudgment or post-judgment interest to Cities.

Dated: June 19, 2013

Respectfully submitted,

By: /s/ Jennifer B. Henning
_____
JENNIFER B. HENNING
Attorney for Amicus Curiae
California State Association of Counties

WORD COUNT CERTIFICATION

I certify that this brief and accompanying application contain a total of 2,993 words as indicated by the word count feature of the Word Perfect computer program used to prepare it.

Dated: June 19, 2013

Respectfully submitted,

By: /s/ Jennifer B. Henning
_____
JENNIFER B. HENNING
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Proof of Service by Mail

*Citizens for Ceres v. Superior Court*
Case No. F065690

I, Mary Penney, declare:

That I am, and was at the time of the service of the papers herein referred to, over the age of eighteen years, and not a party to the within action; and I am employed in the County of Sacramento, California, within which county the subject mailing occurred. My business address is 1100 K Street, Suite 101, Sacramento, California, 95814. I served the within **APPLICATION FOR LEAVE TO FILE LATE AMICUS CURIAE BRIEF AND PROPOSED AMICUS BRIEF IN SUPPORT OF DEFENDANT AND APPELLANT COUNTY OF FRESNO BY THE CALIFORNIA STATE ASSOCIATION OF COUNTIES** by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

**Proof of Service List**

| Party | Attorney |
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| Citizens of Clovis, et al.: Plaintiffs and Respondents | Nancy A. Jenner<br>McCormick, Kabot, Foley, Jenner<br>1220 West Main Street<br>Visalia, CA 93291 |

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 19, 2013, at Sacramento, California.

/s/ Mary Penney

MARY PENNEY