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VIA FEDEX

The Honorable Chief Justice Tani Cantil-Sakauye
The Honorable Associate Justices
Supreme Court of the State of California
350 McAllister Street
San Francisco, CA 94102-4783

Re: *Sipple v. City of Hayward, et al.*, Case No. S218677

Letter on Behalf of the League of California Cities and California State Association of Counties in Support of the Joint Petition for Review

To the Honorable Chief Justice and Associate Justices of the Supreme Court:

Pursuant to rule 8.500(g) of the California Rules of Court, the League of California Cities ("League") and the California State Association of Counties ("CSAC") submit this letter in support of the joint petition for review that 57 cities have filed with this Court in the case of *Sipple v. City of Hayward, et al.,* Supreme Court Case No. S218677.

I. The League and CSAC's Interest.

The League is an association of 471 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.

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

The League and CSAC have identified this case as having clear statewide significance. All California cities and counties and their residents have an interest in whether business entities that simply collect and remit local taxes to cities or counties can then file refund suits against those agencies -- without any basis for standing -- on behalf of the entities' customers. Such refund suits expose cities and counties to the same potential liability as class actions, but without any of the procedural protections associated with class actions and without any downside risk to the business entity plaintiffs. Those protections are critically important to cities, counties, and their residents, and the Court of Appeal's decision in this case jeopardizes those protections.

II. Review of this Case is Necessary to Settle an Important Question of Law.

This case merits review to settle an important question of law pertaining to the standing necessary to maintain a tax refund action against a public entity. (Cal. R. Ct. 8.500, subd. (b)(1).) Specifically, the joint petition for review in this case asks the Court to grant review to determine whether a telephone company, having suffered no "injury in fact" itself but only collected local taxes from its customers, may represent those customers in a de facto class action for refunds of those taxes when none of the customers is a party to the tax refund action and no class action procedures and due process protections were applied.

The need for review in this case is evidenced by New Cingular's argument that its standing is rooted in Government Code section 910 (see page 13 of Appellants [sic] Answer to Joint Petition for Review). However, section 910 is a procedural claims statute independent of standing[1] and independent of the basis for liability against a

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[1] The requirements for standing are well-established: (1) the plaintiff must suffer an injury in fact, (2) there must be a causal connection between the injury and the conduct complained of, and (3) the injury must likely be redressed by a favorable decision of the

government agency. Thus, section 910 does not itself create standing, as was noted by the trial court in this case: "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." That principle is not changed by this Court's decision in *McWilliams v. City of Long Beach* (2013) 56 Cal.4th 613, as that decision does not dispose of the injury in fact requirement for the standing required to file a lawsuit. *Id.* at 619-620, 629. Otherwise, anyone that presented a claim that satisfied section 910's informational requirements would automatically have standing to sue. Section 910's requirements are distinct from the established requirements for standing and the Court of Appeal's decision in this case must be clarified to ensure that distinction is understood and preserved.

As noted, New Cingular lacks standing to sue on its own behalf in this case because it suffered no injury in fact. As a service provider, it essentially acted as a "middle man" or conduit to transmit the local taxes to the petitioning cities. That fact is undisputed, and now New Cingular claims that its standing is derived in a representative capacity. The Court of Appeal concluded New Cingular's pursuit of the action in that representative capacity conveyed standing because New Cingular had "direct involvement in the events underlying" the dispute at issue. Such a ruling erodes the essential standing requirement present in any lawsuit as it could provide standing to potentially any person or entity that has some presently unknown level of involvement in a dispute. The League and CSAC believe this Court should address this important question to provide guidance and ensure clarity with respect to application of the standing requirements discussed above.

Lastly, the appellate court's ruling that New Cingular has standing in this case circumvents the procedural protections that are set forth in Code of Civil Procedure section 382 and Rules of Court 3.760 et seq. As stated at pages 8 and 9 of the Joint Petition for Review, the law is presently unclear as to whether non-class action representative cases under section 382 should be treated as class actions in some or all respects, and courts disagree as to whether such cases should be subject to stricter procedural standards than class actions. This case therefore presents the Court with an opportunity to provide clarification on this question and ensure that the procedural

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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.

protections the Legislature has put in place are duly applied in this case and all similar cases that will certainly follow.

III. Conclusion.

The joint petition for review filed by the 57 cities in this case provides an opportunity for the Court to provide important guidance and clarification on the issues related to the intersection of non-class action representative actions and standing. Such guidance and clarification is important to cities and counties throughout the State, as well as to a much broader audience. Resolving this important issue now, rather than through repeated lower court litigation, will benefit all the litigants in this case and in later cases, the lower courts, and California taxpayers. For these reasons, the League and CSAC respectfully urge this Court to grant the joint petition for review.

Very truly yours,

James D. Ciampa
Attorneys for Amicus Curiae,
League of California Cities and
California State Association of Counties

JDC/cc

Attachment: Proof of Service