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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

WILLY GRANADOS, on behalf of himself and all others similarly situated, Plaintiff, v. COUNTY OF LOS ANGELES, Defendant.	Case No. BC361470 NOTICE OF ENTRY OF ORDERS: (1) GRANTING PLAINTIFF'S MOTION FOR CLASS CERTIFICATION; (2) CONTINUING THE HEARING ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION AND THE TRIAL SETTING CONFERENCE; AND (3) SETTING A STATUS CONFERENCE REGARDING NOTICE TO THE CLASS DEPT: 307 JUDGE: Hon. Maren Nelson

TO THE PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on May 23, 2017, the Court entered the following orders:

(1) GRANTING Plaintiff's motion for class certification. The Court adopted its tentative ruling, attached hereto as **Exhibit A**, as its final ruling;

(2) Continuing the hearing on Plaintiff's Motion for Summary Judgment or, in the Alternative, Summary Adjudication and the Trial Setting Conference from August 8, 2017 at 10:00 a.m. to August 25, 2017 at 1:45 p.m.; and

(3) Setting a Status Conference regarding notice to the Class for June 19, 2017 at 9:30 a.m. The parties are to meet-and-confer on a notice plan, and if they come to agreement they are to submit a Stipulation and Proposed Order and the Status Conference will be taken off calendar. If the parties are unable to come to agreement, they are to submit a Joint Status Conference report on or before June 12, 2017, setting forth each party's position and their respective proposed forms of notice to the Class as well as a redlined notice which indicates the difference(s) between the parties' draft notices.

DATED: May 24, 2017

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EXHIBIT A

Case: *Granados v. County of Los Angeles*
Case No.: BC361470
Motion(s): Motion for Class Certification
E-Service: Case Anywhere
Hearing: May 23, 2017 at 9:00 a.m.

Tentative: Grant.

Counsel to argue the scope of the release in *Oronez*.

Motion Paper Considered:

- Plaintiff's Notice of Motion and Motion for Class Certification; Memorandum of Points and Authorities in Support Thereof filed 2/21/17
  - Declaration of William Fitzsimmons filed 2/21/17
  - Declaration of Willy Granados in Support of Plaintiff's Motion for Class Certification filed 2/21/17
  - Declaration of Rachele R. Rickert in Support of Plaintiff's Motion for Class Certification filed 2/21/17
  - Plaintiff's Request for Judicial Notice in Support of Motion for Class Certification filed 2/21/17
- The County's Opposition to Plaintiff's Motion for Class Certification filed 5/9/17
  - Declaration of Erica L. Reilley in Support of the County's Opposition to Plaintiff's Motion for Class Certification filed 5/9/17
  - Declaration of David C. Holland of Rust Consulting in Support of the County's Opposition to Plaintiff's Motion for Class Certification filed 5/9/17
- Plaintiff's Reply Memorandum in Further Support of Motion for Class Certification filed 5/16/17
  - Declaration of David C. Holland filed 5/16/17

I. Background

Plaintiff Willy Granados ("Plaintiff") commenced this putative class action lawsuit on behalf of himself and other similarly situated taxpayers against Defendant County of Los Angeles ("County" or "Defendant") in connection with the County's alleged improper collection and administration of the Los Angeles County Telephone Utility Users Tax ("TUUT"). Plaintiff moves for class certification of the Class defined as:

> "All persons, including corporate and non-corporate entities wherever organized and existing, who paid telephone utility user taxes to the County of Los Angeles on telephone service utilized from August 25, 2005 to November 4, 2008, other than

local-only telephone services, teletypewriter exchange service, and long distance telephone services where the charged varied by both time and distance, and who have not already received a refund of such tax." (Mot. at p.6.)

The proposed class period is from August 25, 2005 to November 4, 2008, i.e. one year prior to the date Plaintiff presented his administrative claim (Gov't Code, §900 et seq.) to the County, until the effective date of an amendment to the TUUT.

The TUUT in question was found at LACC UUT, §4.62.060(d). It imposed a 5% tax on amounts paid for interstate, intrastate, and international calls, teletypewriter exchange services, and cellular telephone services utilized by persons or entitles located within unincorporated areas in the County. (Rickert Decl., Ex. A [LACC UUT], §4.62.060(A).) The statute provided that telephone services that were not taxable under the Federal Excise Tax (FET at 26 U.S.C. §4251) were also not taxable under the TUUT.

Plaintiff contends that County ignored this statutory limitation and collected tax on telephone services which were exempt from the FET. Specifically, the FET imposed charges on "communication services," which included toll telephone service that were charged by "distance *and* elapsed transmission time." (26 U.S.C. §§4251(a)(1), (b)(1)-(2), 4252 (emphasis added).) Plaintiff argues that by 2005, and due to changes in the telecommunications industry, long distance landline services were no longer charged by distance and elapsed time, but were charged only by time and thus were not taxable under the FET or the County ordinance. Similarly, cellphone services were charged by nation-wide calling plans, where both local and long distance services were charged on a flat monthly, or by per minute rate without regard to distance. (See Mot. at p.4, FN6; Compl., ¶4, FN4.) Nevertheless, telephone service providers in the County of Los Angeles were required to collect tax on their customers' monthly bill, and remit the tax to the County. (LACC UUT, §§4.62.060(C), 4.62.130.) Plaintiff alleges that the County improperly collected the TUUT until November 4, 2008.[1]

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[1] The UUT ordinance was amended effective on November 4, 2008 to eliminate the reference to the FET.

Plaintiff is a long distance telephone service customer of Sprint PCS, and paid and continues to pay the County's TUUT to Sprint, which he alleges is unlawful. (Granados Decl., ¶5, Ex. B.) Plaintiff seeks injunctive, declaratory, and equitable relief, as well as damages in the amount of taxes improperly collected by the County.

Plaintiff's complaint, filed on November 6, 2006, alleges causes of action for:

(1) Declaratory and injunctive relief preventing further improper collection of the TUUT;

(2) Money had and received;

(3) Unjust enrichment;

(4) Violation of the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution; and

(5) Claim for Writ of Mandamus.

Plaintiff now moves for class certification. In opposition, County argues this action is barred based on a prior class action settlement in *Oronoz v. County of Los Angeles* (BC334027) where claims regarding the same TUUT (and other utility user taxes) were settled and released. County further argues that Granados was a member of the *Oronoz* class, did not object or opt-out, is bound by the settlement in that action, and is thus an improper class representative. Plaintiff disputes the propriety of considering the effect of the *Oronoz* settlement in this motion and argues that, on the merits, the claims in this case were not settled in *Oronoz*.

For the reasons that follow, and considering the admissible evidence,[2] certification is properly granted.

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[2] Plaintiff requests judicial notice of several exhibits to the Rachele R. Rickert Declaration.

Exhibit A includes Chapter 4.62 of the Los Angeles County Code, Utility User Tax, §4.62.010 et seq. The request is granted under Evidence Code §§451(a) and 452(b). (See also *Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 8 FN2.)

Exhibits B, C, Q, R, S, T, and U are documents and orders filed in *Ardon v. City of Los Angeles* (BC362959). Exhibits E, F, J, and L are documents and orders filed in *Oronoz* (BC334027). Exhibit K is a minute order dated September 14, 2012, from *Villa v. City of Chula Vista* (Case No. 37-2011-00093296-CU-MC-CTL, San Diego County Superior Court). The

II. Timeline of Events

- 5/25/05: *Oronoz v. County of Los Angeles* (BC334027) filed
- 8/25/06: Plaintiff served a demand letter on the County Board of Supervisors, Treasurer, and Auditor-Controller seeking return of the money that had been improperly collected and retained by the County on behalf of himself and others, pursuant to LACC, §4.04.050 and the Government Code. (Granados Decl., Ex. A.) He did not receive a response.
- 11/6/06: *Granados* Complaint filed
- 1/2007: *Oronoz* motion for class certification granted.
- 1/3/07: County filed a demurrer in the *Granados* action arguing, among other things, that Plaintiff could not bring a class action under Gov't Code, §910 or LACC Ch. 4.04 or 4.62.
- 4/13/07: *Granados* demurrer with leave to amend
- 6/12/07: Plaintiff advised it would not amend and Judge Mohr sustained the demurrer and dismissed the action in *Granados*
- 7/19/07: Plaintiff filed a notice of appeal in *Granados*

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request is granted as judicial notice may be taken of court records (Evid. Code §452(d)), but the truth of matters asserted in such documents is not subject to judicial notice. (*Board of Pilot Commissioners v. Superior Court* (2013) 218 Cal.App.4th 577, 597.)

Exhibit D is an IRS Notice 2006-50 entitled "Communications Excise Tax; Toll Telephone Service." The request is granted under Evidence Code, §452(b). (See *Cal. School of Culinary Arts v. Lujan* (2003) 112 Cal.App.4th 16, 26; *Rader v. Apple Valley Bldg. & Development Co.* (1968) 261 Cal.App.2d 308, 236; *Hickey v. Roby* (1969) 273 Cal.App.2d 752, 756.)

Exhibit I is document entitled "Profile of General Demographic Characteristics YR 2000 vs. YR 2007: Unincorporated Los Angeles County." Exhibit W is a spreadsheet reflecting the number of business licenses issued by the County of Los Angeles. According to Plaintiff, they are found on the County's website. The request is denied as Plaintiff fails to establish sufficient information to enable the Court to take judicial notice of the documents (Evid. Code, §453). Furthermore, Plaintiff relies on *Ste. Marie v. Riverside County Regional Park & Open-Space District* (2009) 46 Cal.4th 282, 293 FN7 and *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 907 FN2, but these cases do not state that documents found on a County's website are judicially noticeable as public record.

- 11/4/08: California voters approved Measure U, amending the County's UUT and removing any reference to FET.
- 11/20/08: The Court granted preliminary approval of the *Oronoz* settlement
- 12/008: *Oronoz* notice of settlement was sent out. Ultimately, there was 1 objector and 13 opt-outs. Plaintiff did not opt out. Approximately 135,000 claim forms were received, resulting in 58,605 refund checks for a total of $24,120,340.90 in tax refunds to class members. Approximately $31 million (remaining balance) was transferred to a cy pres fund.
- 4/28/09: The Court granted final approval of the *Oronoz* settlement.
- 3/28/12: Appellate opinions filed by Court of Appeals in *Granados v. County of Los Angeles* (Ct. App. (2d Dist.) Mar. 28, 2012) 2012 WL 1036028, 2012 Cal. App. Unpub. LEXIS 2399. The Court of Appeal reversed the orders re demurrer and dismissal as to the first, second, and third causes of action, and affirmed with respect to the fourth and fifth causes of action
- 5/29/12: Remittitur issued in *Granados*
- 6/4/12, 6/7/12: The *Granados* trial court entered the remittitur on 6/4/12 and it was entered in the docket on 6/7/12

III. Applicable Law Regarding Class Certification

A class action is authorized "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court . . . ." (Code Civ. Proc., § 382.)

"The party advocating class treatment must demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives." (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021 (*Brinker*); *Dailey v. Sears, Roebuck and Co.* (2013) 214 Cal.App.4th 974, 988.)

These requirements are commonly articulated in terms of four primary requirements:

"Numerosity" – The proposed class is numerous in size (see *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934);

"Ascertainability" – It is possible to ascertain who is a member of the class by resort to common, objective characteristics (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 915) because "the right of each individual to recover [is] not [] based on a separate set of facts applicable only to him" (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 809);

"Community of Common Interest" – Common questions of law or fact predominate and class representatives have claims or defenses typical of the class and can adequately represent the class (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470); and

"Superiority" – Proceeding with the case as a class action is superior to other methods of adjudication (*Fireside Bank v. Superior Court* (2007) 40 Cal. 4th 1069, 1089).

IV. Analysis

A. Res Judicata

1. The res judicata defense is properly considered on this motion

County argues that Plaintiff's claims are barred by the doctrine of res judicata and that therefore this class should not be certified. Plaintiff contends that this issue goes to the merits of the case and should not be determined on this motion. (Reply at p.8)

Brinker, supra, 53 Cal.4th at 1023, makes clear that "[t]he certification question is 'essentially a procedural one that does not ask whether an action is legally or factually meritorious.'" (Quoting *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) There are times, however, when issues affecting the merits of a case may be enmeshed with class action requirements, such that a court must evaluate aspects of the merits, when the evidence or legal questions germane to the certification question bear on them. (*Brinker*, supra, 53 Cal.4th at.1023-24.) Thus, while certification should not be conditioned upon a showing that class claims for relief are likely to prevail, this does not foreclose the possibility in exceptional cases where the defense has no other reasonable pretrial means to challenge the merits of the claim to be asserted by a proposed class or when both parties jointly request that the court rule on the legal sufficiency of the claims. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 443.) "The key to deciding whether a merits resolution is permitted, then, is whether certification 'depends upon' the disputed issue." (*Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, 537.)

Applying that test here, the res judicata defense based on the settlement in *Oronoz* is properly considered on this motion. The County's res judicata defense does not reach the "merits" of whether County unlawfully collected tax under the TUUT. Rather, the defense bears on the issue of whether the claims in this action were released by the putative class members, which affects class certification issues such as the number of class members remaining if res

judicata applies (i.e., numerosity based on opt-outs from the *Oronoz* settlement or who received refunds of the taxes), adequacy, and typicality. This is particularly true since Plaintiff did not opt out of the *Oronoz* settlement.

Further, Plaintiff substantively responds to the res judicata defense. Thus, because both parties seek the Court's ruling on the legal sufficiency of County's defense and given its relation to the motion, the merits of res judicata are addressed here.

2. Res judicata does not apply

Res judicata prevents the relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. (*Gabriel v. Wells Fargo Bank, N.A.* (2010) 188 Cal.App.4th 547, 556.) Res judicata applies if: "(1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding." (*Boekenn v. Philip Morris USA, Inc.* (2010) 48 Cal.App.4th 788, 797.) "Res judicata applies to a court-approved settlement agreement in a class action dismissed with prejudice" and will operate to bar subsequent suits by class members. (*Villacres v. ABM Industries Inc.* (2010) 189 Cal.App.4th 562, 577; *Louie v. BFS Retail & Commercial Operations, LLC* (2009) 178 Cal.App.4th 1544, 1555.)

The parties discuss at length the question of whether the "primary rights" settled in *Oronoz* are the same as those asserted here. The Court need not reach this issue as it is apparent from the plain language of the *Oronoz* settlement agreement that the claims asserted here were not released. Further, the notice to class members in *Oronoz* did not make clear the position the County now asserts.

The *Oronoz* settlement agreement stated that the plaintiffs in *Oronoz* (consolidated with *Kaufman v. County of Los Angeles* [LASC Case No. BC334145]) alleged that the UUT in LACC Ch. 4.62 was an illegal tax because of the alleged violations of Proposition 52 (Gov't Code, §§53720 to 53730), Proposition 13 (Cal. Const., Art. XIII), and state and federal equal protection rights. (Reilley Decl., Ex. 3 [*Oronoz* Settlement Agreement] at p.1.) The UUT in *Oronoz*'s settlement agreement (p.4) referred to several taxes--the telephone user tax (LACC, §4.62.060), the gas user tax (LACC, §4.62.090), and the electricity user tax (LACC, §4.62.080) collected by the County through the telephone, gas, and electricity utility providers. The class include "all

taxpayers of the Los Angeles County UUT" from February 16, 2004 to November 4, 2008. The "Released Claims" included:

> "[A]ny and all claims, demands, rights, damages, obligations, suits, and causes of action of every nature and description whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including both known and unknown claims, of the Plaintiffs and all Class Members that were or could have been brought against the County and/or their Related Parties, or any of them, in the Complaint, from the beginning of the Class Period to November 4, 2008, arising from the facts alleged in the Complaint, including but not limited to charging, billing, or collection activity related to the UUT, of or on behalf of the County, based on the alleged failure to seek voter approval of the UUT and equal protection allegations raised in the Complaint. **'Released Claims' does not include those claims raised in *Granados v. County of Los Angeles*, LASC Case No. BC361470 or *Tracfone Wireless v. County of Los Angeles*, LASC Case No. BC 357628, which are not being released by this Settlement Agreement."**

(*Id.* at pp. 4, 13 (emphasis supplied).) The release included a Civil Code §1542 acknowledgement and waiver.

The Final Order recognized that the *Oronoz* settlement agreement and order have "res judicata and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of the Class Representatives or any other Class Member **[other than those claims raised in *Granados v. County of Los Angeles*, LASC Case No. BC361470 or *Tracfone Wireless v. County of Los Angeles*, LASC Case No. BC357628, which were not released by the Settlement Agreement]...."** (Reilley Decl., Ex. 2 [*Oronoz* Final Order] at p.4.)(emphasis supplied). The notice to putative class members likewise states: **"The Settlement does not affect your ability to pursue any claims you may have against the County of Los Angeles in *Granados v. County of Los Angeles*, LASC Case No. BC361470 or *Tracfone Wireless v. County of Los Angeles*, LASC Case No. BC 357628."** (Reilley Decl., Ex. 4 [Fenwick Decl.], ¶8 & Ex. A [Notice] at p.8 (emphasis supplied).)

There is no dispute that the second and third elements of res judicata have been met—the prior *Oronoz* action resulted in the class action settlement and the parties in *Granados* include County and a class member of *Oronoz*. What is at issue is whether the *Oronoz* settlement agreement released the causes of action alleged in the *Granados* action.

In *Oronoz*, the release language clearly stated that "Released Claims" do *not* include "those claims raised in *Granados* ... which are not being released by this Settlement

Agreement." Based on a plain read of the release, the claims alleged in *Granados* were not released in *Oronoz.*

Notwithstanding this language County argues that the *Oronoz* release only carved out the particular *claims* alleged in *Granados* rather than "the action." This argument is unavailing. An action is only made up of claims. The release here *excluded* "claims raised in *Granados*" and must be given its plain English meaning. (Cf. *Villacres v. ABM Industries Inc.* (2010) 189 Cal.App.4th 562, 588 (Release of 'any and all claims that were or could have been asserted by [the plaintiff] in the [present lawsuit]' barred subsequent action).
and *Louie v. BFS Retail & Commercial Operations, LLC* (2009) 178 Cal.App.4th 1544, 1561 (Federal consent decree that excluded claims for damages did not act as a bar to state law claim for same). Further, the class members were told that the *Oronoz* claims were not being released. No explanation was provided to the effect that this meant something other what appears to be a plain English reading of the release language. To now preclude class members who did not submit a claim from asserting this action would violate their substantive due process rights. Id.

B. Numerosity Has Been Established

"A party seeking class certification bears the burden of satisfying the requirements of Code of Civil Procedure section 382, including numerosity, and the trial court is entitled to consider 'the totality of the evidence in making [the] determination' of whether a 'plaintiff has presented substantial evidence of the class action requisites.'" (*Soderstedt v. CBIZ S. Cal., LLC* (2011) 197 Cal.App.4th 133, 154 [quoting *Quacchia v. DaimlerChrysler Corp.* (2004) 122 Cal.App.4th 1442, 1448].) "No set number is required as a matter of law for the maintenance of a class action." (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934 [citing examples wherein classes of as little as 10 (*Bowles v. Superior Court* (1955) 44 Cal.2d 574) and 28 (*Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017) were upheld].) To be certified, a class must be "numerous" in size such that "it is impracticable to bring them all before the court." (Cal. Civ. Proc., §382.)

Plaintiff states approximately 98% of the 3.2 million households in the County during the class period had telephones. (Fitzsimmons Decl., ¶5 [relying on California Public Unities Commission data].) This establishes numerosity.

As stated above, not set number is required to bring a class action and class actions can be comprised of as little as 10 individuals. Therefore, the element of numerosity has been met.

V. *Ascertainability Has Been Established*

The class definition is straightforward and adequate. (*Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919 ["Ascertainability ... requires a class definition that is precise, objective and presently ascertainable."].) The Class is identifiable from records maintained by either the taxpayer or the service providers/carriers who collected the UUT (which could be obtained by the County). (Mot. at p.13.) Also, class members who received a full refund as a result of *Oronoz* or otherwise are identifiable from the *Oronoz* claims administrator's records and can be excluded from the class. (Reply at p.4.) Furthermore, the 13 individuals who opted out of the *Oronoz* settlement may also be identified. (Reillet Decl., Ex. 4 [Fenwick Decl.] at ¶13, Ex. C [List of Exclusions].) This is not at issue in the opposition.

The element of ascertainability has been met.

C. Commonality/Predominance

"[T]he 'ultimate question' for predominance is whether 'the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.' [Citations.]" (*Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 28, quoting *Collins v. Rocha* (1972) 7 Cal.3d 232, 238.) "'As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages.'" (*Brinker*, supra, 53 Cal.4th at 1022.) "However . . . class treatment is not appropriate 'if every member of the alleged class would be required to litigate numerous and substantial questions determining his individual right to recover following the 'class judgment'' on common issues." (*Duran*, supra, 59 Cal.4th at 28, quoting *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 459.)

For the class, Plaintiff poses the common questions as follows: (1) whether County, during the class period, collected UUT for services to which the FET, incorporated in the TUUT ordinance, did not apply; (2) whether Plaintiff and class members are entitled to recover illegally collected taxes and, if so, for what services and for what time period; and (3) whether County is

legally required to refund those illegally collected taxes at issue. (Mot. at p.9.) This can be determined by looking at the language of the Los Angeles County Code sections, and County's liability would not be dependent on individual inquiries. However, regarding declaratory and injunctive relief, Plaintiff has already admitted that the claim for declaratory and injunctive relief is moot. (*Id.* at p.5, FN9.)

As for the claims for money had and received, unjust enrichment, pre- and post-deprivation remedies for the collected taxes, and writ of mandate, there is no dispute by the parties that County had a common course of conduct charging the TUUT to putative class members pursuant to the County Code during the class period. (Mot. at p.8; Opp. at p.17; Rickert Decl., Ex. A at LACC §4.62.060.) Even County admits that "common questions as to potential claims for specific tax funds validly remaining for the thirteen individuals who opted out of the *Oronoz* settlement might also exist...." (Opp. at p.17.)

There is no dispute that common questions predominate over individual questions. Accordingly, this element has been met.

D. Superiority/Manageability

Courts are required to carefully weigh respective benefits and burdens and to allow maintenance of the class action only where substantial benefits accrue both to litigants and the courts. (*See Linder*, supra, 23 Cal.4th at 435.) As the Supreme Court stated in *Duran*, supra, 59 Cal.4th at 27, "trial courts deciding whether to certify a class must consider not just whether common questions exist, but also whether it will be feasible to try the case as a class action."

A class action is superior given the relatively small amounts at issue and that judicial access is not available absent class certification, as these small amounts would not justify the effort involved in seeking individual claims. (See Mot. at p.12.) While County argues that a group of taxpayers or 13 opt outs is not appropriate, County does not state why a class action is not a superior method to adjudicate their claims. (Opp. at p.17.)

Although Plaintiff does not provide a proposed trial plan on how trial would be conducted, Plaintiff suggests that resolution of liability will be straightforward, without need for mini-trials, bifurcated proceedings, bellwether trials, or other complex procedures. Because what is at issue is a question of law regarding whether the TUUT was assessed against the class

for telephone services that were not taxable under the FET during the class period and the resulting refunds thereto, Plaintiff points out this can be done through a dispositive motion.

The elements of manageability and superiority have been met.

E. Adequacy and Typicality

" 'The adequacy inquiry ... serves to uncover conflicts of interest between named parties and the class they seek to represent.' [Citation.] '... To assure "adequate" representation, the class representative's personal claim must not be inconsistent with the claims of other members of the class.' [Citations.] Similarly, the purpose of the typicality requirement 'is to assure that the interest of the named representative aligns with the interests of the class.' [Citation.] 'Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought.' [Citations.] The test of typicality 'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.' [Citation.]" (*Johnson v. GlaxoSmithKline, Inc.* (2008) 166 Cal.App.4th 1497, 1509.)

1. Adequacy and Typicality of Plaintiff Have Been Met

"Absent any conflict between the interests of the representative and other [class members], and absent any indication that the representative will not aggressively conduct the litigation, fair and adequate protection of the class may be assumed." (*See Guarantee Ins. Agency Co. v. Mid-Cont'l Realty Corp.* (N.D. Ill. 1972) 57 F.R.D. 555, 565-66.)

Plaintiff states that he is an adequate class representative because his interests do not conflict with the interests of the class members with which he seeks to represent and he attest to his understanding and willingness to serve as a class representative. (Mot. at p.11; Granados Decl., ¶¶2, 6, 7.) He also states that his claims are typical of the class because he too is seeking refunds for UUT paid to the County during the class period in connection with his cellular telephone services. (Granados Decl., ¶¶3, 5, Ex. B [Phone Bills].)

County argues that Plaintiff is neither adequate nor typical because he did not opt out of the *Oronoz* settlement. (Opp. at p. 17; Reilley Decl., Ex. 7 [Granados Depo.] at 30:18-25; 5/9/17 Holland Decl. [Rust Consulting], ¶¶3-4.) "[E]vidence that a representative is subject to unique

defenses is one factor to be considered in deciding the propriety of certification." (*Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1090 [re typicality]; see *Melong v. Micronesian Claims Commission* (D.C. Cir. 1980) 643 F.2d 10, 13 [stating that class members who executed releases could not be represented by individuals who did not execute a release].) This argument turns on County's assertion that the claims asserted here are barred by the doctrine of res judicata. They are not. Plaintiff is thus an adequate representative.

2. Adequacy of Class Counsel

"Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." (*See McGhee v. Bank of Am.* (1976) 60 Cal. App. 3d 442, 450.) Here, class counsel is qualified to litigate this class action as they are sufficiently experienced in class actions. (See Rickert Decl., ¶¶14-17, Exs. M-P [resumes of class counsels' firms].) Class counsel has also simultaneously been litigating cases in related tax refund cases. (Mot. at p.11; see e.g., *Ardon v. City of Los Angeles* (2011) 52 Cal.4th 241; *McWilliams v. City of Long Beach* (2013) 56 Cal.4th 613.) Class counsel states they will continue to provide dedicated and vigorous representations for the class. There does not appear to be any conflicts that would prevent Plaintiff's counsel from vigorously and diligently prosecuting the action. Thus, adequacy of class counsel have been met.

F. Conclusion

Res judicata does not bar Plaintiff's claims for monetary relief. Numerosity, adequacy and typicality are met. The element of commonality is conceded by County. A class action is superior and would be manageable.

The motion for class certification is granted as to those individuals identified in the class definition.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

WILLY GRANADOS, on behalf of himself and all others similarly situated, Plaintiff, v. COUNTY OF LOS ANGELES, Defendant.	Case No. BC361470 **CERTIFICATE OF SERVICE**

I, Windy Loritsch, the undersigned, do declare as follows:

I am a resident of the County of San Diego; I am over the age of 18 years, and not a party to, or have any interest in, this legal action; my business address is 750 B Street, Suite 2770, San Diego, California 92101.

On May 24, 2017, I served the within:

1. **NOTICE OF ENTRY OF ORDERS: (1) GRANTING PLAINTIFF'S MOTION FOR CLASS CERTIFICATION; (2) CONTINUING THE HEARING ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION AND THE TRIAL SETTING CONFERENCE; AND (3) SETTING A STATUS CONFERENCE REGARDING NOTICE TO THE CLASS**

On all interested parties to the said action as follows:

SEE ATTACHED SERVICE LIST

(XX) VIA ELECTRONIC SERVICE – I electronically transmitted a copy of the within documents in a pdf or word processing format via **CASE ANYWHERE** to those person noted on the attached Service List at their respective electronic service addresses pursuant to Cal. Rules of Court, rule 2.251(g) on the date set forth.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 24th day of May 2017, at San Diego, California.

By: W. Loritsch
WINDY LORITSCH

COUNTY OF LA: 23567

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