

LITIGATION ROSTER

SALES AND USE TAX

NOVEMBER 2019

**Sales and Use Tax  
LITIGATION ROSTER  
NOVEMBER 2019**

**NEW CASES**

**Case Name**

**Case Number**

**CLOSED CASES**

**Case Name**

BRISBANE, CITY OF  
MAINSTREET ENTERPRISES  
MCCLAIN, MICHAEL  
VERIZON CALIFORNIA, INC.

**Case Number**

A151168  
BC648293  
S241471  
C084551

Please refer to the Case roster for more detail regarding new and closed Cases

**Sales and Use Tax**  
**LITIGATION ROSTER**  
**NOVEMBER 2019**

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**BARRETT, JAMES G. v. Selnek-Is Tem-Al Corp; State Board Of Equalization; David Gau; California Tax And Fee Administration; David Botelho; California Department Of Alcoholic Beverage Control; Jacob Appelsmith; California Office Of The State Controller; Betty Yee;**

Imperial County Superior Court: ECU09960

Filed – 09/11/17

*Plaintiff's Counsel*

Pro Se

*CDTFA's Counsel*

Craig Rust

*CDTFA Attorney*

Wendy Vierra

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Issue(s): Plaintiff contends that the CDTFA is not performing its statutory and mandatory duties in enforcing the Sales & Use Tax Law against certain tribal retailers, including defendant Selnek-is Tem-al Corp., a tribal retailer operating a gas station and convenience store in Imperial County. Plaintiff alleges that a non-tribal retailer, Salton Sea Venture, which operated a convenience store/gas station in the same area (up through January 2017) and paid its taxes due under the law, has been damaged as a result. Plaintiff alleges that he is suing in the capacity of an "absolute assignee" of the rights held by Salton Sea.

Audit/Tax Period: None

Amount: Unspecified

Status: On February 26, 2018, defendant Alcoholic Beverage Control filed a motion to transfer venue, scheduled for hearing on March 27, 2018. On March 16, 2018, defendant Selnek-is Tem-al Corporation filed a motion to quash, scheduled for hearing on April 17, 2018. On March 21, 2018, CDTFA filed a motion to transfer venue of the case to Sacramento. Hearing on CDTFA's motion is set for April 17, 2018, to be heard concurrently with defendant Selnek-is Tem-al's motion to quash. On March 23, 2018, at an ex parte hearing, defendant California Department of Alcoholic Beverage Control requested that the court continue the hearing date on its motion to transfer venue from March 27, 2018, to April 17, 2018, to be heard concurrently with CDTFA and defendant Selnek-is Tem-al's motions. Rather than continuing the hearing date, the court granted ABC's motion

to transfer venue, transferring venue to Sacramento County. On May 4, 2018, the Sacramento County Superior Court issued an order acknowledging that it received the documents and pleadings in this case from the Imperial County Superior Court. CDTFA's response is due June 4, 2018. The court also set a Case Management Conference for November 1, 2018. On June 4, 2018, the CDTFA filed a demurrer to Plaintiff's complaint. The hearing on the Demurrer is scheduled for July 12, 2018. On its own Motion, the court continued the demurrer hearing to July 25, 2018, and then again to August 10, 2018. On June 19, 2018, Defendant Selnek-is Tem-al Corporation motion to quash was granted. On June 19, 2018, ABC filed a motion for sanctions against plaintiff. The hearing on CDTFA's demurrer was held on August 10, 2018. The Court took the case under submission. On August 24, 2018, the trial court entered a minute order, sustaining CDTFA's demurrer to the complaint without leave to amend. On September 11, 2018, the court entered a final judgment for CDTFA. On September 24, 2018, CDTFA served a notice of entry of judgment. On November 15, 2018, Plaintiff filed a notice of appeal from the trial court's judgment in favor of CDTFA after the court sustained CDTFA's demurrer without leave to amend. On January 4, 2019, Plaintiff/Appellant filed his Mediation Statement. On January 28, 2019, the CDTFA filed its Case Management and Mediation Statements. On January 29, 2019, the Third District Court of Appeal notified the parties that the case is not suitable for mediation and remains on the active list for disposition. On May 16, 2019, the Third District Court of Appeal notified the parties that the record on appeal has been filed and plaintiff's opening appellant's brief is due by June 25, 2019. On June 13, 2019, defendant Selnek-is Tem Al Corporation filed a motion to augment the record on appeal. Plaintiff filed his Appellant's Opening Brief on July 8, 2019. CDTFA filed its Respondent's Brief on August 7, 2019. Defendants/Respondents Selnek-is Tem-al Corporation and ABC filed their Respondent Briefs on August 8, 2019, and August 28, 2019, respectively. On September 17, 2019, plaintiff filed an application with the Court of Appeal, requesting a one-day extension of time to file his optional Reply Brief. The Court of Appeal granted his request, extending the deadline to September 18, 2019. On September 18, 2019, plaintiff filed his optional Reply Brief.

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**BEKKERMAN, ALINA; BRANDON GRIFFITH; JENNY LEE; and CHARLES LISSER  
v. California Department of Tax and Fee Administration, et al.**

Sacramento County Superior Court: 34-2015-80002242

Filed – 11/25/15

Plaintiffs' Counsel

Daniel M. Hattis

Tony J. Tanke, Law Offices of Tony J. Tanke

Jeffrey Burke, Burke Law Group

CDTFA's Counsel

Mike Sapoznikow

CDTFA Attorney

Wendy Vierra

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Issue(s): Whether [Regulation 1585, subdivisions \(a\)\(4\) and \(b\)\(3\)](#), are invalid and contrary to the Sales and Use Tax Law in that the Regulation imposes sales tax on the "unbundled sales price" of a mobile phone bundled with a service contract rather than the actual price paid by the consumer to the retailer. Whether the Board failed to adequately assess the economic impact of Regulation 1585 and failed to adequately consider less burdensome alternatives.

Audit/Tax Period: None

Amount: Unspecified

Status: Plaintiff agreed to an extension of time for BOE to respond to January 12, 2016. The BOE filed its Answer on January 12, 2016. On February 8, 2016, Plaintiff served the BOE with a notice of hearing on the merits, which is set for October 21, 2016. Based on the local rules, the parties would then have the following deadlines: Opening Brief Due September 6, 2016; Opposition Brief Due September 26, 2016; and Reply Brief Due October 6, 2016. On February 9, 2016, Plaintiff's counsel served the BOE with Form Interrogatories and Requests for Production of Documents. Response was initially due March 18, 2016, but Plaintiff granted the BOE an extension to April 18, 2016. On March 29, 2016, the parties stipulated to a new briefing schedule. Petitioners' Opening Brief is now due on August 9, 2016, the BOE's Respondent's Brief is due September 12, 2016, and Petitioners' Reply Brief is due October 6, 2016. Plaintiffs granted the BOE an extension to respond to Plaintiffs' discovery requests to May 2, 2016. BOE served its Responses to Plaintiffs' written discovery requests on May 6, 2016. On February 17, 2017, the Court issued an Order granting Petitioners' request for a continuance of the writ hearing and resetting the briefing schedule. The new dates are as follows: (1) Petitioners' opening memorandum is due August 4, 2017; (2) the BOE's opposition is due September 29, 2017; (3) Petitioners' Reply Brief

is due November 23, 2017; and the (4) hearing on the merits of the writ petition is December 8, 2017. On July 25, 2017, Plaintiffs filed a Motion to consolidate this action with its class refund action (Sacramento County Superior Court, Case No. 34-2016-80002287). Hearing on Plaintiffs' Motion to consolidate is set for August 18, 2017. On July 28, 2017, pursuant to the Petitioners' *ex parte* request, the Court vacated its prior Order on February 17, 2017, setting the briefing and hearing dates on the merits. The Court reserved January 12, 2018, as the new hearing date, but did not set any new briefing dates at this time. On August 7, 2017, the State Defendants (CDTFA and State of California) opposed the Motion to consolidate. On August 11, 2017, Plaintiffs filed their Reply Brief in support of their Motion to consolidate. On August 18, 2017, the Court held Oral Argument on the Motion to consolidate. That same date, the Court issued a Minute Order denying Plaintiffs' Motion to consolidate in light of its ruling sustaining the CDTFA's Demurrer to Plaintiffs' class action complaint in Plaintiffs' related Class Action litigation. On August 25, 2017, the presiding justice signed the Order substituting the CDTFA for the Board of Equalization. On February 23, 2018, the Court granted Plaintiffs' motion for leave to file a first amended complaint seeking to add "class allegations, a full scope of remedies arising from the invalidity of [Regulation 1585], and procedural claims under the California Administrative Procedure Act," over CDTFA's objections. On April 20, 2018, the Court approved the parties' stipulation setting a briefing schedule for CDTFA's Motion to Strike portions of Plaintiffs' First Amended Complaint. The stipulation provides as follows: CDTFA's Motion to Strike is due on June 1, 2018; Plaintiffs' Response to CDTFA's Motion to Strike is due July 6, 2018; and CDTFA's Reply Brief is due August 10, 2018. On June 1, 2018, CDTFA filed Motion to Strike Portions of Plaintiff's First Amended Complaint. On June 12, 2018, Plaintiffs took the deposition of John L. Waid. The hearing on CDTFA's Motion to Strike Portions of Plaintiff's First Amended Complaint is scheduled for September 7, 2018. On July 6, 2018, plaintiffs filed an objection to CDTFA's Motion to Strike Portions of the First Amended Complaint. On August 10, 2018, CDTFA filed its reply brief in support of its Motion to Strike Portions of the First Amended Complaint. On September 7, 2018, the trial court affirmed its September 6, 2018, tentative ruling, in which the court granted (in part) CDTFA's Motion to Strike Portions of the First Amended Complaint. On September 20, 2018, CDTFA filed its answer to the First Amended Complaint. On November 18, 2019, Plaintiffs served a Notice of Hearing on the Merits of Writ Petition, setting the hearing date for June 19, 2020.

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**BRISBANE, CITY OF v. California Department of Tax and Fee Administration, et al.**

San Francisco County Superior Court: CPF-09-509232

First District Court of Appeal: A137185

Filed – 04/21/09

Plaintiff's Counsel

Charles Coleman - Holland & Knight, LP

CDTFA's Counsel

Karen Yiu

CDTFA Attorney

John Waid

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Issue(s): Whether BOE's characterization of transactions where the property sold is shipped to California customers from points out of state and the retailer has a business operation in Brisbane as being subject to use tax is valid.

Audit/Tax Period: 2001 - Present

Amount: Unspecified

Status: Trial Court: The parties stipulated and filed a Motion to assign the *City of Alameda v. BOE*; *City of Brisbane v. BOE*; and the *City of South San Francisco v. BOE* to a single judge for all purposes. Trial began on October 17, 2011, and further trial proceedings were continued to November 1, 2011. The Court accepted Petitioners' argument and judgment was entered on September 18, 2012. BOE filed its Notice of Appeal on November 16, 2012.

Court of Appeal: On August 19, 2013, counsels for Appellants City of El Segundo and Cities of Alameda, et al., filed certificates of interested entities. In a letter to the Court, the City of El Segundo joined the combined Respondents' Brief and Appellants' Opening Brief of the Cities and did not file its own. On November 15, 2013, the parties' stipulated request to consolidate appeals was granted and the appeals were ordered consolidated for all purposes. BOE filed its Reply Brief on December 3, 2013, in its own appeal, and a Cross-Respondent's Brief in the Petitioner's Cross-Appeal. The Intervenor's Reply Briefs were filed on December 19, 2013. On March 18, 2014 BOE filed Appellant's Opening Brief. On March 21, 2014, Appellant's Brief on the merits was filed with the Court of Appeal. On or about May 12, 2014, the parties agreed Petitioners would have until June 17, 2014 to file Respondents' Briefs on the attorneys' fees issue. On July 17, 2014, the Respondents' Brief was filed. BOE's Reply Brief was filed on September 21, 2014. Oral Argument was set for October 21, 2014. On September 15, 2014 the Court vacated the Oral Argument. The letter Brief ordered by the Court was filed on January 7, 2015. On January 20, 2015, BOE

filed its Reply Brief. The Court of Appeal scheduled Oral Argument in the Brisbane Case for March 17, 2015. The Court also scheduled Oral Argument for all three attorney appeals for the same day. On March 25, 2015, the Court of Appeal issued its unpublished opinion remanding the Case back to the trial Court for fact-finding proceedings. On June 2, 2015, the Court of Appeal remanded the Case to the San Francisco County Superior Court for further proceedings in accordance with its opinion.

Remand to Trial Court: On August 13, 2015, BOE filed a Peremptory Challenge. On August 17, 2015, Brisbane filed an Opposition. On August 21, 2015, BOE filed a Reply. The Court sustained BOE's Peremptory Challenge and scheduled a Case Management Conference for September 18, 2015. At the Case Management Conference on September 18, 2015, the Court set the following briefing schedule: Opening Brief due November 20, 2015; Reply Brief due January 11, 2016. Court trial was set for January 25, 2016. On November 20, 2015, the parties filed their Opening Briefs on remand with respect to the issue of whether title transferred in California for any of the sales at issue. On January 11, 2016, the BOE filed its Reply Brief. The trial took place January 25, 27, and 29, 2016. The Court ordered the parties to submit draft Statements of Decision by close of business February 22, 2016. The Case will not be deemed submitted for decision until the Court has reviewed the proposed Statements to ensure they do not contain new matter. On February 22, 2016, the City and the BOE filed proposed Statements of Decision. On August 2, 2016, the Court issued its Tentative Decision in favor of the BOE. Plaintiff City of Brisbane filed its objections to the Tentative Decision on August 19, 2016. On January 4, 2017, the trial Court issued a Statement of Decision in favor of the BOE – finding that the Internet sales at issue were properly allocated to California jurisdictions other than Brisbane as local use tax. The sales at issue were subject to use tax, rather than sales tax. On January 20, 2017, the trial Court entered Judgment in favor of the BOE. On March 1, 2017, Plaintiff City of Brisbane filed a notice of appeal. On March 9, 2017, the City filed a notice designating its record on appeal. On May 7, 2017, Appellant filed its Civil Case Information Statement. By stipulation, the Appellant's Opening Brief is now due August 11, 2017, and the Respondent's Brief is due November 13, 2017. On August 1, 2017, the DOJ moved to substitute the California Department of Tax and Fee Administration (CDTFA) for the BOE as a Defendant in this action. On August 18, 2017, Appellant City of Brisbane filed its Opening Brief in the Court of Appeal. On August 28, 2017, the Court granted the unopposed Motion substituting the CDTFA for the BOE. On November 17, 2017, the CDTFA filed its Respondent's Brief. On December 5, 2017, the Respondent's Brief was filed by Intervener and Respondent, City of Alhambra. On December 7, 2017, the City of Brisbane filed its Appellant's Reply Brief. The case is now fully briefed and awaits scheduling of Oral Argument. On January 16, 2018, the Department filed its Request for Oral Argument. Brisbane previously filed its Request on January 12, 2018. The Court of Appeal scheduled oral argument for September 18, 2018. On September 6, 2018, the Attorney General's Office filed a motion to continue oral argument from September 18, 2018 to October 29, 2018. Oral argument was held on October 29, 2018, and the court



took the matter under submission. On November 14, 2018, the First District Court of Appeal affirmed the trial court's judgment in full and ordered that CDTFA and intervenors shall recover costs on appeal. The opinion is unpublished. On remand from *City of Brisbane v. California State Board of Equalization* (Mar. 25, 2015, A137185) [unpublished opinion], the trial court had considered two issues: (1) whether any of the transactions before the court had taken place in California; and (2) whether any of the transactions qualified as sales on approval. If the trial court had answered either of these questions in the affirmative, sales tax would have applied to the affected transactions. In January of 2017, the trial court ruled that none of the transactions qualified in either category; thus, as a result, use tax applied to the subject transactions. The Court of Appeal affirmed this decision. On January 14, 2019, the court issued the remittitur in this case sending the case back to the trial court for further action. The memorandum of costs was filed by February 22, 2019. On August 30, 2019, the Attorney General's Office filed an Acknowledgement of Satisfaction of Judgment and the case will be closed.

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**BYRON III v. NICOLAS MADUROS, DIRECTOR OF THE CALIFORNIA  
DEPARTMENT OF TAX AND FEE ADMINISTRATION, et al.**

United States District Court – Central District of California: 2:19-CV-06742-DDP-RAO  
Filed – 08/02/19

Plaintiff's Counsel

J. David Nick

CDTFA's Counsel

Laura Robbins

CDTFA Attorney

Kiren Chohan

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Issue(s): Plaintiff asserts that CDTFA improperly assessed sales tax on his retail sales of “medical marijuana” for the period January 1, 2008 through December 31, 2009, and also improperly imposed a fraud penalty. Plaintiff alleges that the SUTL does not authorize CDTFA to assess sales tax on his retail sales of marijuana because marijuana is nontaxable contraband; and, as such, CDTFA’s assessment is also in violation of Plaintiff’s 5th Amendment right against self-incrimination. Plaintiff also asserts that CDTFA violated his 14th Amendment due process rights by failing to provide a meaningful hearing during which Plaintiff could appeal the assessment at issue.

Audit/Tax Period: None

Amount: Unspecified

Status: On August 2, 2019, Plaintiff filed his initial Complaint for Injunctive and Declaratory Relief against CDTFA as the sole named defendant in the action ("Complaint"). Plaintiff did not serve CDTFA with the Complaint. Thereafter, on August 26, 2019, Plaintiff filed the First Amended Complaint for Prospective Relief, Injunctive and Declaratory Relief ("FAC") against Nicolas Maduros, Director of CDTFA, as the sole named defendant in the action. On September 25, 2019, CDTFA executed a waiver of the service of the First Amended Complaint. CDTFA's deadline to file the first responsive pleading to the FAC is November 25, 2019. On November 5, 2019, CDTFA filed its Motion to Dismiss the complaint. The hearing on CDTFA's motion is scheduled for December 9, 2019. On November 15, 2019, the parties filed a Stipulation to Continue the Hearing Date on CDTFA's Motion to Dismiss currently scheduled for December 9, 2019, to January 6, 2020, which requires court approval before the date will be moved. The Court continued the hearing date on CDTFA's Motion to Dismiss the Complaint from December 9, 2019, to January 6, 2020. Plaintiff's opposition to the motion is due December 16, 2019, and CDTFA's optional reply is due

December 23, 2019.

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**COLAVITO, PHILIP v. CDTF**

Riverside County Superior Court: 1904499

Filed – 07/02/2019

Plaintiff's Counsel

Pro Se

CDTF's Counsel

Andrea Schoor

CDTF Attorney

Kiren Chohan

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Issue(s): Plaintiff brings this action for damages alleging that the CDTF improperly collected \$10,183 on June 26, 2008, for a sales and use tax liability through a levy on real property owned by an individual who he asserts was not responsible for the tax liability. Plaintiff seeks a refund of \$10,183 plus interest.

Audit/Tax Period: None

Amount: \$10,183.00

Status: CDTF was improperly served by mail on July 16, 2019. On July 23, 2019, Deputy Attorney General notified plaintiff's counsel that the CDTF had not been served and would not be responding until service was effected.

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**EL CERRITO REDEVELOPMENT AGENCY SUCCESSOR AGENCY, et al. v. The California Director of Finance, et al.**

Sacramento County Superior Court: 34-2013-80001671

Filed – 10/22/13

*Plaintiff's Counsel*

Dante Foronda - Meyers, Nave, Ribak, Silver & Wilson

*CDTFA's Counsel*

Patty Li

*CDTFA Attorney*

John Waid

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Issue(s): The Court should enjoin Finance from: (1) demanding that the Successor Agency remit \$1,981,989.00 to the Contra Costa County Auditor-Controller for the purposes of distributing the funds to affected taxing entities pursuant to California Health & Safety Code Section 34179.5, as added by Assembly Bill 1484 ([AB 1484](#)), and (2) directing Petitioners to reverse the \$1,981,989.00 in tax increment payments, \$10,168,319.00 in property conveyances and a payment of \$400,243.00 in bond proceeds by the El Cerrito Redevelopment Agency. Petitioners also request an Order that the self-help provisions of AB 1484 are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: On December 2, 2013, the DOJ, attorney for State Respondents, filed notice of representation of the BOE in lieu of Response to complaint. State Respondents filed their Answer to amended petition for writ of mandate and complaint for declaratory relief on the same date. On December 10, 2013, Real Party in Interest, Alameda-Contra Costa Transit District, filed its Response and Answer to amended petition for writ of mandate and complaint for declaratory relief. The State Respondents' opposition was filed on April 30, 2014. The Reply Brief was due on May 15, 2014. The hearing was scheduled for May 30, 2014. At the May 30, 2014 hearing, the judge requested Supplement Briefs, which were filed on June 27, 2014. On September 3, 2014 the trial Court issued its ruling, finding that the local sales and use tax withhold provisions of AB 1484 violate [California Constitution article XIII, section 24, subdivision \(b\)](#). On February 11, 2015, DOF filed an abandonment of Cross-Appeal. BOE is not participating in the appeal. On January 4, 2016, the Court of Appeal accepted the Respondents' Brief which was initially filed on December 28, 2015. The Case is now fully briefed.

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**FIRST AMERICAN TITLE INSURANCE COMPANY, a Nebraska Corporation, v.  
California Department of Tax and Fee Administration**

Orange County Superior Court: 30-2018-00998977-CU-WM-CJC

Filed – 06/18/18

*Plaintiff's Counsel*

Leighton M. Anderson – Bewley, Lassleben & Miller LLP

Joseph A. Vinatieri – Bewley, Lassleben & Miller LLP

*CDTFA's Counsel*

Suman R. Matthews

*CDTFA Attorney*

Kiren Chohan

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Issue(s): Petitioner, First American Title Insurance Company, argues that it is entitled to a refund of taxes in the amount of \$721,205.53 paid to CDTFA by petitioner because the elected State Board of Equalization (SBE) ordered petitioner's "claim for refund granted in part, denied in part" at SBE's December 12, 2017 hearing on petitioner's claim. Petitioner asserts that on multiple occasions it requested CDTFA to refund the amount awarded by SBE to petitioner. CDTFA filed a petition for rehearing of the SBE's December 12, 2017 decision with the Office of Tax Appeals (OTA) on April 5, 2018, which the OTA acknowledged receipt of on May 14, 2018. Petitioner argues that OTA lacks jurisdiction to reconsider a decision made by the SBE at a meeting. Petitioner asks the court for the following relief: (1) to issue a writ of mandate to compel CDTFA to implement the SBE's December 12, 2017 decision, (2) a hearing on the legal issue of whether [Regulation 1660\(c\)\(1\)](#) is invalid because it violates [California Constitution Article XIII, section 28\(f\)](#) or is in excess of CDTFA's jurisdiction to implement existing provisions of the Revenue and Taxation Code; and (3) a writ to compel CDTFA to vacate its regulation and to adopt a new and different regulation providing that leases of tangible personal property to exempt taxpayers are not subject to tax on any basis. Petitioner also seeks costs of suit and attorney's fees to the extent provided by law.

Audit/Tax Period: None

Amount: \$721,205.53

Status: CDTFA was served with this complaint on June 18, 2018. On June 26, 2018, the Department filed a Motion to Transfer the Action to Los Angeles County Superior Court. On August 3, 2018, Petitioner filed an opposition to CDTFA's Motion to Transfer Venue to Los Angeles County Superior Court. On August 9, 2018, CDTFA filed a reply in support of CDTFA's Motion to Transfer Venue to Los Angeles County Superior Court. On August 15, 2018, the Court issued its

tentative ruling staying the action until December 3, 2018. On August 16, 2018, the court rescheduled the hearing on CDTFA's Motion to Transfer Venue to Los Angeles to be heard on October 4, 2018 and asked both parties to submit simultaneous briefs on September 24, 2018. On September 24, 2018, CDTFA and Petitioner each filed supplemental briefs on the issue of proper venue for this action at the court's request. On October 4, 2018, the court transferred venue to San Diego County, but gave petitioner until November 19, 2018 to file a petition for writ with the Court of Appeal challenging its order to transfer venue. On October 26, 2018, the court issued an order transferring this case to San Diego County Superior Court. On November 8, 2018, the Court of Appeal denied Petitioner's Petition for Writ. On December 28, 2018, the San Diego Superior Court issued a Notice of Case Assignment. CDTFA's response to the Petition is due January 28, 2019. On January 28, 2019, CDTFA filed a Demurrer to Petitioner First American Title Insurance Company's Verified Petition for Writ of Mandate (Civ. Proc. Code, § 1084) and for Other Relief ("Petition") on the grounds that: (1) the Court does not have jurisdiction of Petitioner's tax refund action because Petitioner failed to exhaust its administrative remedies prior to filing the Petition; (2) the Petition fails to state facts sufficient to constitute a cause of action because there is no case or controversy; (3) the Court lacks jurisdiction of Petitioner's request for a writ of mandate to compel a tax refund because Petitioner may only pursue a refund action for sales and use taxes under the statutory procedures set forth in the Revenue and Taxation Code; and (4) the Court lacks jurisdiction of Petitioner's challenge to invalidate California Code of Regulations, title 18, Regulation 1660, subdivision (c) (1) because Petitioner must challenge the validity of the regulation in a tax refund action after exhausting its administrative remedies. The hearing on CDTFA's Demurrer is scheduled for May 3, 2019. On April 22, 2019, Plaintiff filed its Opposition to CDTFA's Demurrer to its Complaint. On April 26, 2019, CDTFA filed its Reply in Support of its Demurrer to the Complaint. The hearing on CDTFA's Demurrer is scheduled for May 3, 2019. The hearing on CDTFA's Demurrer to the Petition was held on May 3, 2019, and the court denied CDTFA's Demurrer. The court ordered CDTFA to submit a brief of no more than 5 pages by July 15, 2019, and to lodge the administrative record with the court by August 2, 2019. A status conference was scheduled for August 2, 2019. On July 15, 2019, CDTFA and Petitioner each filed a brief regarding whether the administrative record was sufficient to determine the amount of refund applicable to the Board of Equalization's December 12, 2017 decision granting Petitioner's claim for refund, in part, and what additional information, if any, was needed in order to issue a refund consistent with that decision. On August 2, 2019, CDTFA and FAT each filed a separate Administrative Record with the court. At the August 2, 2019 status conference, the court ordered the parties to file a joint administrative record. As requested by the court, CDTFA and Petitioner filed a joint administrative record on August 30, 2019. At the August 30, 2019 case management conference, the trial court set a hearing date for January 24, 2020, to hear Petitioner's challenge to the validity of Regulation 1660, subdivision (c). The parties will file simultaneous Opening Briefs, which are due by December 6, 2019. Reply Briefs are due by January 3, 2020. Petitioner filed an

Acknowledgement of Notice of Satisfaction of Order with the court on November 6, 2019, which resolves the Refund Cause of Action in the Petition. Petitioner continues to challenge the validity of Regulation 1660(c)(1) in its Petition.

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**GROSZ, STANLEY v. CALIFORNIA DEPARTMENT OF TAX AND FEE  
ADMINISTRATION, ET AL.**

Los Angeles County Superior Court: 19STCV27757

Filed – 08/06/2019

Plaintiff's Counsel

CDTFA's Counsel

Andrea Schoor

CDTFA Attorney

John Waid

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Issue(s): Plaintiff Stanley E. Grosz brings this complaint for injunctive and declaratory relief pursuant to [California Code of Civil Procedure § 526a](#), to compel CDTFA to comply with an alleged mandatory duty to collect sales and use taxes due to the State of California from Amazon.com, Inc. and/or its affiliates, with respect to sales of products supplied by Amazon's third party vendors sold through its Fulfillment by Amazon program. Plaintiff also seeks attorneys' fees.

Audit/Tax Period: None

Amount: Unspecified

Status: Plaintiff filed the complaint on August 6, 2019 and served CDTFA with a copy on August 22, 2019. Plaintiff agreed to an extension for CDTFA and the Director to file their responses to the complaint by November 7, 2019. A stipulation and request for court order setting the new deadline as November 7, 2019, was filed with the court. On August 22, 2019, the court reassigned the case to Judge Barbara Meiers, following plaintiff's preemptory challenge to the former judge assigned to the matter. On August 29, 2019, the court approved CDTFA's stipulated request to extend the response date to plaintiff's complaint to November 7, 2019. On September 24, 2019, Plaintiff served his First Amended Complaint, adding Amazon.com, Inc., and other Amazon affiliates, as Real Parties In Interest. On or about November 12, 2019, the court approved the parties' stipulation to extend the time to respond to the First Amended Complaint to November 27, 2019. On November 27, 2019, CDTFA filed a demurrer to Plaintiff's First Amended Complaint. On November 29, 2019, Real Parties in Interest Amazon.com (and its affiliated entities) also filed a demurrer to the First

Amended Complaint, as well as a joinder in CDTFA's demurrer. The hearing on both of the demurrers is scheduled for February 4, 2020.

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**Howard Jarvis Taxpayers Association v. County of Yuba, et al.**

Court of Appeal, Third Appellate District: C090473

Yuba County Superior Court: CVG18-02127

Filed – 12/21/2018

*Plaintiff's Counsel*

*CDTFA's Counsel*

Robert E. Asperger

*CDTFA Attorney*

Kiren Chohan

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Issue(s): Plaintiffs filed a Verified Reverse Validation Action and Complaint for Declaratory and Injunctive Relief seeking (1) declaratory relief that the district tax was not validly enacted, and (2) an injunction to prevent CDTFA from collecting and administering the tax on behalf of the County of Yuba. The plaintiffs base their entire complaint on the ground that the County of Yuba enacted the subject tax at the November 6, 2018 election with 54.1 percent voter approval, where two-thirds voter approval was allegedly required under Proposition 218, Proposition 13, and [Government Code section 50077](#).

Audit/Tax Period: None

Amount: Unspecified

Status: Plaintiffs agreed to extend CDTFA's deadline to respond to the complaint to February 19, 2019. On February 19, 2019, CDTFA filed a demurrer to Plaintiffs' Verified Reverse Validation Action and Complaint for Declaratory and Injunctive Relief. In its demurrer, CDTFA argues that it is not a proper party to this action based on the plain language in [Revenue and Code section 7270.5](#), which provides that the “state shall not be made a party to the action or proceeding” and therefore, CDTFA should be dismissed from the action. The hearing on CDTFA's demurrer is set for March 18, 2019. On February 21, 2019, Plaintiffs filed a Motion for Preliminary Injunction and Declaratory Relief, seeking a preliminary injunction to enjoin Defendants County of Yuba and CDTFA, and all persons acting pursuant to their control and direction, from taking any actions to enter into or continue



with any contractual agreement under the provisions for which the CDTFA is to administer the subject Yuba County tax. Plaintiffs also seek a declaration that the challenged special tax is invalid on the basis that it failed to garner the required two-thirds voter approval required for special taxes. The hearing on this motion is scheduled for March 18, 2019, which is the same day as the hearing on CDTFA's Demurrer to the complaint on the basis that CDTFA is not a proper party to the lawsuit. On March 11, 2019, CDTFA filed its Reply in Support of the Demurrer to the complaint. The hearings on Plaintiffs' Motion for Preliminary Injunction and CDTFA's Demurrer to be dismissed as a party have been rescheduled from March 18, 2019 to March 19, 2019. On March 19, 2019, the hearing on CDTFA's Demurrer to the complaint seeking to be dismissed as a party and Plaintiffs' Motion for Preliminary Injunction was heard. The court sustained CDTFA's Demurrer without leave to amend. And the Plaintiffs' motion for preliminary injunction was denied. CDTFA is no longer a party to this action. On September 9, 2019, the court ruled on the issue of whether the district tax ("Measure K") proposed a general or special tax. The Court determined that Measure K proposed a special tax. A special tax requires a two-thirds majority to pass pursuant to [California Constitution article XIII, section 2](#). The Court held that Measure K was invalid because it did not obtain the required two-thirds majority. On September 18, 2019, the County of Yuba filed an appeal with the Third District Court of Appeal. The County of Yuba filed an appeal with the Third District Court of Appeal on September 18, 2019. CDTFA is not a party to this action; however, CDTFA administers the district tax at issue and therefore has an interest in the outcome of this appeal.

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**KINTNER I**

**KINTNER, JEREMY DANIEL v. CA. BOARD OF EQUALIZATION AND CA.  
DEPARTMENT OF TAX AND FEE ADMINISTRATION**

Los Angeles County Superior Court: BC684614

Filed: 12/8/2017

Plaintiff's Counsel

Mark Bernsley, A PROF. CORP.

CDTFA's Counsel

Laura Robbins

CDTFA Attorney

Kiren Chohan

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Issue(s): The Board voted 5 to 0 to predetermine the petition. Plaintiff challenges what he asserts to be a CDTFA policy of assessing and collecting from officers and shareholders of controlling closely held corporations, the amount of sales taxes collected from customers if and for any period during which the corporation's powers were suspended by the Franchise Tax Board for failure to pay franchise taxes. In addition, Plaintiff challenges the validity of [CDTFA Regulation 1702.6](#) ("Regulation"), and alleges a denial of due process. In general, plaintiff seeks the determination and declaration that (1) the Policy is invalid and cannot be implemented as it is preempted by [Revenue and Taxation Code section 6829](#) and the Regulation; (2) the Regulation is unconstitutional and invalid and (3) plaintiff was denied due process because SBE did not consider the illegality of the Regulation during the administrative appeal, and therefore, the assessment against plaintiff for the tax liability is illegal, unconstitutional, and void. As to the underlying basis for this litigation: Plaintiff asserts that on or about May 28, 2009, the corporate powers of HK Architectural Supply, Inc. (HK Inc.), a California Corporation, were suspended. Then, on or about February 22, 2012, the Department issued a Notice of Determination against plaintiff asserting and assessing plaintiff for sales tax liability incurred by HK Inc. Plaintiff alleges that all administrative appeals and remedies in opposition to this liability have been exhausted. CDTFA denies plaintiff's allegations.

Audit/Tax Period: January 1, 2008 through December 31, 2010

Amount: Unspecified

Status: On January 23, 2018, the CDTFA's Answer was filed and served. On April 13, 2018, CDTFA filed a motion for judgment on the pleadings asserting that plaintiff's action is premature because he has not paid all taxes and penalties due,

and further that BOE is not a proper defendant in this action. At the April 16, 2018, Case Management Conference, the Court set the following deadlines: Post-Mandatory Settlement Conference is November 28, 2018; Final Status Conference is January 30, 2019; and Trial is February 11, 2019. On May 24, 2018, CDTFA filed a reply to plaintiff's opposition to CDTFA's motion for judgment on the pleadings. The hearing on CDTFA's motion is scheduled for June 1, 2018. On June 1, 2018, the Court granted CDTFA's motion for judgment on the pleadings with 20 days leave to amend on the grounds that the court does not have jurisdiction to hear this matter until plaintiff first pays his tax liability, and granted CDTFA's motion to dismiss BOE as a defendant in the action without leave to amend. On June 20, 2018, plaintiff served CDTFA with a First Amended Complaint. On July 25, 2018, CDTFA filed a Demurrer to Plaintiff's First Amended Complaint. The hearing on CDTFA's Demurrer is scheduled for September 18, 2018. On August 23, 2018, the Court, on its own motion, continued the CDTFA's Demurrer hearing from September 18, 2018 to October 29, 2018. On October 29, 2018, the trial court denied CDTFA's demurrer, in part, ruling that plaintiff may proceed under [Government Code section 11350](#) to challenge the validity of Regulation 1702.6, but not with the refund action. On November 8, 2018, CDTFA filed an answer to Plaintiff's first amended complaint. CDTFA filed its Petition for Writ of Mandate with the Second District Court of Appeal on December 13, 2018. On December 18, 2018, the Court of Appeal granted CDTFA's request for a stay of the trial proceedings. Trial is set for February 11, 2019. On January 14, 2019, the trial court issued a minute order due to the Court of Appeal's Order of December 18, 2018 granting an immediate stay of the trial court proceedings, vacating all future dates pending resolution of the Petition for Writ of Mandate or further order. On the trial court's own motion, the Final Status Conference scheduled for January 30, 2019 and Non-Jury Trial scheduled for February 11, 2019 were vacated. On November 20, 2019, the Court ordered cases Kintner I and Kintner II to be assigned to one judge as related cases. The Court also ordered all motions in Kintner II to be taken off calendar, including the hearing on CDTFA's demurrer that was scheduled for March 10, 2020. The Court set a status conference for January 8, 2020.

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**KINTNER II**

**KINTNER, JEREMY DANIEL v. CALIFORNIA DEPARTMENT OF TAX AND FEE  
ADMINISTRATION**

Los Angeles County Superior Court: 19STCV12687

Filed: 04/10/2019

Plaintiff's Counsel

Mark Bernsley, A PROF. CORP.

CDTFA's Counsel

Laura Robbins

CDTFA Attorney

Kiren Chohan

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Issue(s): Plaintiff filed this Complaint for Refund seeking a judgment that the liability assessed against him was illegally and wrongly assessed and a refund of \$7,450.98. CDTFA was served with the complaint on April 24, 2019. The facts in this new action are substantially the same as Plaintiff's action for declaratory relief, Superior Court Case No. BC684614, that was stayed on December 18, 2018, pursuant to an order by the Second District Court of Appeal, Division Two, in which plaintiff argues that CDTFA improperly imposed tax against plaintiff as a responsible person of a suspended corporation pursuant to [Regulation 1702.6](#), and further that this Regulation is invalid.

Audit/Tax Period:

Amount: \$7,450.98

Status: On April 26, 2019, CDTFA was served with a Complaint for Refund. On May 23, 2019, CDTFA filed a Demurrer to Plaintiff's Complaint for Refund. The hearing on CDTFA's Demurrer is scheduled for October 18, 2019. Any opposition to our Demurrer is due October 4, 2019, and our final Reply Brief is due October 10, 2019. At the August 19, 2019 case management conference, the court moved the hearing on CDTFA's Demurrer to March 10, 2020. Plaintiff's opposition brief is now due February 26, 2020, and CDTFA's reply brief is due March 3, 2020. The case management conference was also continued to March 10, 2020. The court ordered the parties to have counsel meet in person by January 31, 2020, to discuss settlement and ordered CDTFA to file a status report by March 2, 2020 regarding the status of the related case (Kintner I). On November 20, 2019, the Court ordered cases Kintner I and Kintner II to be assigned to one judge as related cases. The Court also ordered all motions in Kintner II to be taken off calendar, including the hearing on CDTFA's demurrer that was scheduled for March 10, 2020. The Court set a status conference for January 8, 2020.

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**LITTLEJOHN, LARRY v. Costco Wholesale Corp., et al.**

San Francisco County Superior Court: CGC-13-531835

First District Court of Appeal: A144440

Filed – 8/06/2014

*Plaintiff's Counsel*

Daniel Berko - Law Office of Daniel Berko

*CDTFA's Counsel*

Debbie J. Vorous

*CDTFA Attorney*

Wendy Vierra

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Issue(s): Plaintiff seeks a refund of sales tax reimbursement on behalf of himself and a class of others paid on purchases of Ensure related products to Costco and other retailers from May 31, 2009 to the present. Plaintiff contends that Costco and other retailers improperly charged sales tax reimbursement on certain Ensure products when such products were considered food products not subject to sales tax under California's Sales and Use Tax law, including [Regulation 1602](#). Plaintiff also alleges breach of contract and various tort claims against Costco and Abbott Laboratories.

Audit/Tax Period: May 31, 2009 to the present

Amount: Unspecified

Status: Demurrers were filed on November 4, 2014. The Case Management Conference was held November 7, 2014. Oppositions to the pending Demurrers were due November 21, 2014, and replies were due December 9, 2014. The hearing on the Demurrers was set for December 17, 2014. On December 9, 2014, BOE filed its Reply Brief to Plaintiff's Opposition to BOE's Demurrer to the Second Amended Complaint. On December 17, 2014, the Court heard Oral Argument on BOE's Demurrer to Plaintiff's Second Amended Complaint. The Court issued a written opinion following Oral Argument in which the Court sustained BOE's Demurrer with leave to amend. Plaintiff filed his Third Amended Complaint on December 26, 2014. On January 12, 2015, BOE filed its Demurrer to Plaintiff's Third Amended Complaint, and on January 14, 2015, its Opposition to Plaintiff's Motion to Compel Costco to File a Refund Application with the BOE. BOE's Demurrer and Plaintiff's Motion to Compel were scheduled to be heard on January 21, 2015. On February 10, 2015, final judgment was entered in favor of the BOE and electronically served. Notice of Appeal was due to be filed by Plaintiff on or before April 10, 2015. On February 19, 2015, Plaintiff filed his Notice of Appeal. The appeal is in the First District Court of Appeal, Case No.

A144440. On July 16, 2015, Appellant filed his Appellant's Opening Brief. The parties filed a joint stipulation to extend the BOE's time to file its Respondent's Brief. The BOE's deadline to file its Respondent's Brief was September 23, 2015. Pursuant to the stipulation of the parties, the Court granted Appellant's Motion to file an amended Appellant's Opening Brief. Appellant filed his amended Opening Brief pursuant to the Order. The BOE's Brief was due to be filed on October 26, 2015. On October 15, 2015, the BOE filed a stipulation extending the time to file its Respondents' Brief to November 18, 2015. On December 7, 2015, BOE filed its Respondent's Brief. Pursuant to a stipulation of the parties, the Court of Appeal extended Appellant's time to file its Reply Brief to January 19, 2016. On January 26, 2016, Appellant filed his Reply Brief with the Court of Appeal. On February 4, 2016, the Court concluded that the matter was fully briefed and eligible for Oral Argument. On February 9, 2016, Appellant requested Oral Argument. On August 3, 2017, the DOJ moved to substitute the California Department of Tax and Fee Administration (CDTFA) for the BOE as a Defendant in this action. On August 25, 2017, the Court granted the unopposed Motion substituting the CDTFA for the BOE as a defendant in this action. On April 9, 2018, the First District Court of Appeal set oral argument on April 25, 2018. On April 11, 2018 the Court denied CDTFA's request to continue oral argument, which remains scheduled on April 25, 2018. Oral argument was held on April 25, 2018. The case was taken under submission. On July 13, 2018, the First District Court of Appeal issued a decision affirming the Superior Court ruling granting CDTFA's demurrer to plaintiff's complaint because "this case does not involve allegations of unique circumstances showing the Board has concluded consumers are owed refunds for taxes paid on sales of Ensure." On July 30, 2018, Plaintiffs/Appellants filed a Petition for Rehearing. On August 3, 2018, the Court of Appeal denied the petition for rehearing, and filed a modified opinion, with no change in its judgment. The opinion was modified as follows: BY THE COURT: It is ordered that the opinion filed herein on July 13, 2018, be modified as follows: 1. On page 2, in the first paragraph of the section entitled "BACKGROUND," the word "not" in the quotation in the second full sentence is to be underlined, so it will now read: "not subject to sales tax." 2. On page 9, in the paragraph commencing with the words "In contrast" the fourth full sentence which begins with the words "As counsel for the Board advised this court" is deleted and the following sentence is inserted in its place : "There appear to be many such letters issued each year. On August 3, 2018, the petition for rehearing was denied. There was no change in judgment. On August 22, 2018, Appellant submitted a petition for review to the California Supreme Court. On October 19, 2018, the Supreme Court extended the time for granting or denying review in this case to November 21, 2018. On October 24, 2018, the California Supreme Court granted the petition for review but deferred further action and additional briefing pending consideration and disposition of a related issue in McClain v. Sav-On Drugs, S241471, or pending further order of the court. On May 22, 2019, the California Supreme Court transferred the case back to the Court of Appeal, First Appellate District, with directions to vacate its decision and reconsider the cause in light of McClain v. Sav-on Drugs (2019) 6 Cal.5th 951. Following the California Supreme Court's remand of this case back to the Court of Appeal, the

parties were given until June 6, 2019, to file an optional supplemental brief with the court, and until June 21, 2019, to file responses to same. On May 30, 2019, Defendant Costco submitted a letter brief informing the First District that McClain controls (requiring an affirmance of the trial court judgment in favor of defendants Costco and CDTFA) and it would not be filing an optional supplemental brief at this time; however, it reserved its right to file a response to plaintiff's supplemental brief. On June 6, 2019, plaintiffs and CDTFA each filed their respective supplemental briefs in this case. Responses to the supplemental briefs are due on June 21, 2019. On June 21, 2019, CDTFA and Costco filed separate responses to plaintiff's supplemental brief on appeal. On August 22, 2019, the First District Court of Appeal issued an unpublished opinion in which it affirmed the trial court's judgment in favor of CDTFA in this putative class action brought by a consumer seeking a refund of sales tax reimbursement paid on purchases of Ensure products from Costco. The Court of Appeal previously affirmed the judgment in favor of CDTFA in an earlier decision; however, that decision was vacated by the California Supreme Court following the Court's decision in *McClain v. Sav-On Drugs* (2019) 6 Cal.5th 951 (holding that consumers had no right of action for a refund of sales tax reimbursement unless they could show, as a threshold requirement, that a prior legal determination has established their entitlement to a refund), and the Court remanded the case back to the First District to reconsider in light of the McClain decision. The First District once again affirmed judgment in favor of CDTFA, finding that "[b]ecause there has been no legal determination that consumers are entitled to a refund for sales tax reimbursement paid on purchases of Ensure, we again hold that [plaintiff] cannot state a cause of action." On September 6, 2019, plaintiff filed a Petition for Rehearing following the Court of Appeal's August 22, 2019 decision affirming judgment for the CDTFA. On September 10, 2019, Plaintiff filed an Amended Petition for Rehearing following the Court of Appeal's unpublished decision affirming judgment in favor of the CDTFA. This petition amends Plaintiff's original petition, filed on September 6, 2019. On September 17, 2019, the Court of Appeal issued an order modifying its prior August 22, 2019 opinion in favor of CDTFA, making two corrections to its unpublished opinion. No change in judgment resulted from the corrections and the trial court's judgment in favor of CDTFA remains. On September 30, 2019, plaintiff filed a petition for review with the California Supreme Court. The Court has up to 90 days to decide whether to grant the petition. On October 3, 2019, CDTFA also informed the Court that CDTFA would not be filing a response unless one is requested by the Court. On November 13, 2019, the California Supreme Court denied plaintiff's petition for review of the First District Court of Appeal's decision affirming judgment in favor of CDTFA. On November 14, 2019, the case became final, and the Court of Appeal issued its remittitur returning the case to the trial court. This case will be closed.

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**LOS BANOS DESIGNATED LOCAL AUTHORITY v. The California Director of Finance, et al.**

Sacramento County Superior Court: 34-2012-80001352

Filed -12/28/2012

*Plaintiff's Counsel*

John G. McClendon - Leibold McClendon & Mann, P.C.

*CDTFA's Counsel*

Jeff Rich

*CDTFA Attorney*

John Waid

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Issue(s): Dispute is over certain provisions of Assembly Bill 1484 [AB 1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: Some of the real parties in interest have answered the petitions. However, BOE, as a remedial defendant, has an open extension of time to respond to the petitions.



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**MAINSTREET ENTERPRISES v. California Department of Tax and Fee Administration**  
Los Angeles County Superior Court: BC648293  
Filed – 01/26/2017

Plaintiff's Counsel  
Michael L. Schack

CDTFA's Counsel  
Van Nguyen

CDTFA Attorney  
Crystal Yu

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Issue(s): Plaintiff seek refund of sales and use taxes that they allegedly overpaid to the Board during the audit periods from October 1, 2008 to February 28, 2016, in the amount of approximately \$384,000. Plaintiffs also contend that Board staff recklessly disregarded the Board audit procedures by failing to perform an adequate and complete audit as required by the Board's published audit manual. Plaintiffs allege that, as the consequence, they suffered significant financial losses, so they brought this action for damages under [Revenue and Taxation Code section 7099](#) for over \$2 million.

Audit/Tax Period: 10/1/2008-9/30/2011; 1/1/2012-2/28/2016  
Amount: \$5,000,000.00

Status: BOE's Response to Plaintiff's complaint is due April 10, 2017. On April 21, 2017, Plaintiffs filed the First Amended Complaint. On May 22, 2017, the BOE filed its Demurrer, Motion to Strike, and Request for Judicial Notice. On June 27, 2017, Plaintiffs filed the Second Amended Complaint. On July 27, 2017, CDTFA filed a Demurrer and Motion to Strike Portions of Plaintiffs' First Amended Complaint (the Second Amended Complaint was refiled as the First Amended Complaint per Court Order), Requests for Judicial Notice, and an application for change of Case title to substitute CDTFA for BOE. On August 24, 2017, CDTFA filed replies to Plaintiffs' oppositions to CDTFA's Demurrer and Motion to strike. The hearing on CDTFA's Demurrer and Motion to strike is scheduled for August 30, 2017. On August 30, 2017, the Court rescheduled the hearing on CDTFA's Demurrer and Motion to strike for September 13, 2017. On August 31, 2017 Plaintiffs served form interrogatories and request for production of documents, CDTFA's Response is due on October 2, 2017. On September 13, 2017, following Oral Argument, the court sustained the CDTFA's Demurrer to Plaintiffs' second cause of action for damages under Revenue and Taxation Code section 7099, on the grounds that plaintiffs' action was untimely. The court denied CDTFA's Demurrer as to the portion of the first cause of action relating to the first audit period; the court ruled it was an issue of fact as to whether this action was

untimely. At the conclusion of the September 13th hearing, the court agreed to the substitution of CDTFA for BOE, and indicated it would sign the formal substitution Order. On September 29, 2017, Plaintiffs filed a Second Amended Complaint per court order and a Petition for Relief from claim requirement under Government Code section 946.6. On October 10, 2017, the Court entered an Order substituting the CDTFA for the BOE in this case. On October 30, 2017, the CDTFA filed a Demurrer to plaintiffs' complaint and a Motion to Strike portions of the Complaint. On November 17, 2017, the CDTFA filed its opposition to plaintiffs' Petition for Relief from Claim Requirement. Hearings on CDTFA's demurrer and Motion to Strike, and also plaintiffs' Petition for Relief from Claim Requirements are set for January 17, 2018. On January 22, 2018, Oral Argument on CDTFA's Demurrer and Motion to Strike was held, and the Superior Court took the matter under submission. On January 24, 2018, the Court denied Defendants' Demurrer and Motion to Strike portions of the Second Amended Complaint, and granted Plaintiffs' Petition for Relief from claim requirement. The Court ordered Defendants to file an Answer to the Second Amended Complaint within 10 days. On February 2, 2018, Defendants filed an answer in response to the court's order. On March 26, 2018, CDTFA filed an Amended Answer to Plaintiffs' Second Amended Complaint. On May 23, 2018, CDTFA filed Reply to Plaintiffs' Opposition to CDTFA's motion to quash the court's jury trial order. On May 31, 2018, the Court held oral argument on CDTFA's motion to quash jury trial order. CDTFA's motion was granted and the matter has been set for bench trial on January, 9 2019. Discovery is in process. On September 16, 2018, CDTFA filed a motion for summary adjudication. Court hearing on the motion is scheduled on December 3, 2018. On October 17, 2018, CDTFA filed an opposition to Plaintiffs' motion for summary judgment/summary adjudication, supporting declarations, and evidentiary objections. At the Status Conference on October 31, 2018, the judge continued the trial date to February 1, 2019. On November 16, 2018, Plaintiffs filed a Notice of Mandatory Settlement Conference ("MSC"). A MSC was scheduled on December 18, 2018. The MSC was held on December 18, 2018. On January 11, 2019, the Court signed the order to continue the MSJ/MSA hearing to February 1, 2019. The trial date has been vacated and instead a trial setting conference will take place on February 1, 2019. On January 31, 2019, the Court took the hearing on the Cross-Motions for Summary Judgment/Adjudication off calendar. A new date has not been set. On February 4, 2019, the court rescheduled the hearing for the cross-motions for summary judgment to April 2, 2019. On April 2, 2019, the court held a hearing on plaintiffs' and CDTFA's cross Motions for Summary Judgment/Adjudication. The court denied both motions, finding there were issues of fact on all major points. The court scheduled trial to begin on August 21, 2019. During the final status conference before trial held on August 12, 2019, the Court ordered a second mandatory settlement conference. On October 25, 2019, this lawsuit was dismissed. The case will be now be closed.

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**McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.**

Los Angeles County Superior Court: BC325272

Second Appellate District: B265011 and B265029

California Supreme Court: S241471

Filed – 02/24/06

Plaintiffs' Counsel

Taras P. Kick, The Kick Law Firm, APC

G. James Strenio, The Kick Law Firm, APC

Bruce R. Macleod, McKool Smith Hennigan P.C.

Shawna L. Ballard, McKool Smith Hennigan P.C.

CDTFA's Counsel

Lisa Chao

CDTFA Attorney

Wendy Vierra

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Issue(s): Whether sales tax reimbursement were properly collected from Plaintiffs on their purchases of glucose test strips and skin puncture lancets from Defendant retailers, or were the sales of these items exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By Order dated November 17, 2007, the trial Court ruled in favor of Defendants Sav-On Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE were still pending. On July 6, 2011, the Court heard Walgreen's Motion for summary judgment or summary adjudication of issues. The Court denied summary judgment as to all issues against both Plaintiffs. The Court granted summary adjudication as to the sales of skin lancets as to both Plaintiffs and as to the sales of glucose test strips as to Plaintiff Feigenblatt. Plaintiff Feigenblatt was dismissed from the Case. Plaintiff McClain remains in the Case but only as to sales of glucose test strips. The Court did not grant summary judgment as to all causes of action because the Court is still awaiting the California Supreme Court's ruling in *Loeffler*. At the October 25, 2011 hearing, the Court continued the stay on the Plaintiffs' Motion to compel discovery and Defendants' Motion for judgment on the pleadings. On February 20, 2014, Notice of Change of Attorney was filed, substituting DAG Anthony Sgherzi for DAG Bonnie Holcomb. On June 26, 2014, parties filed a stipulation with the Court agreeing to lift the stay so that Plaintiffs' counsel could file a Motion for Leave to File a Fourth Amended Complaint. The parties agreed to allow Plaintiffs' counsel until July 28, 2014, to file the Motion. Notice of Motion

and Motion for Leave to Amend Complaint, as well as a proposed draft of the Fourth Amended Complaint, were filed on July 28, 2014. As permitted by the Court at the August 7, 2014 Status Conference, Plaintiffs filed their Fourth Amended Complaint on August 11, 2014. On October 1, 2014, BOE filed a Demurrer. Hearing was set for January 9, 2015. On November 26, 2014, Plaintiffs filed their Opposition to BOE's Demurrer to the Fourth Amended Complaint and Cross-Complaint. On December 15, 2014, BOE filed its Reply Brief in support of its Demurrer to the Fourth Amended Complaint. On February 24, 2015, following Oral Argument, the trial Court granted the Demurrers of BOE and the corporate Defendants without leave to amend. Judgment in favor of Defendants was entered on April 15, 2015.

Appeal: Plaintiffs filed their Notice of Appeal on June 11, 2015. On June 30, 2015, the Superior Court issued Notices of Default to Plaintiffs for failure to designate the record on appeal. Plaintiffs subsequently designated the record on appeal. The deadline for the Court reporter to deliver transcripts of the four hearings to the Court of Appeal was October 9, 2015. The Court was to set a briefing schedule after that date. The parties moved to consolidate the appeals. The Court ordered that the appeals be consolidated on October 8, 2015. The Second District Court of Appeal, Division 8, ordered that the appeals be consolidated on October 8, 2015 (Case Nos. B265011 and B265029). On December 14, 2015, the Second District Court of Appeal issued an Order setting the due date for Plaintiff's Opening Brief as January 13, 2016. The Respondents' Briefs were due February 12, 2016. Appellants failed to file their Opening Brief on time. As a result, on February 22, 2016, the Court issued a notice that if the Briefs were not on file within 15 days after the date of this notice, or good cause shown for relief from default, the appeal would be dismissed. The Opening Brief was due on or before March 8, 2016. Appellant filed a request for extension of time to file his Appellant's Opening Brief on March 9, 2016, which was denied by the Court of Appeal. Appellant served his Opening Brief, Appendix, and a Motion to File Over length Brief on March 9, 2016. On April 22, 2016, the parties stipulated to extending Respondents' time to file their Respondents' Briefs. On July 13, 2016, the BOE filed its Respondent's Brief. On September 12, 2016, Plaintiffs/Appellants filed their Reply Brief. Briefing is now complete. On November 17, 2016, the Second District Court of Appeal transferred the matter from Division Eight to Division Two due to a recusal of the majority of the Justices in Division Eight. On December 14, 2016, the Court of Appeal scheduled the hearing in this matter for January 26, 2017. On December 16, 2016, the Court of Appeal granted the BOE's request to continue the hearing date in this matter due to a conflict with the January 26th date. On February 24, 2017, the parties presented Oral Argument on the matter before the Second District Court of Appeal. Appellants filed a Petition for Rehearing on March 30, 2017. On April 10, 2017, the Court of Appeal issued an Order modifying its earlier opinion, and denying Plaintiff's Petition for Rehearing. The Court's modified opinion continues to affirm the trial Court's prior ruling in favor of the BOE. On April 24, 2017, Plaintiffs/Appellants filed a Petition for Review. A Response, if one is to be filed, is due May 15, 2017. BOE filed a Response to

Plaintiffs'/Appellants' Petition for Review on May 15, 2017. On June 14, 2017, the Supreme Court granted Plaintiffs'/Appellants' Petition for Review. On August 14, 2017, Petitioners' Opening Brief was filed. On August 15, 2017, the Court granted the unopposed Motion substituting the CDTFA for the BOE. On September 8, 2017, CDTFA requested an extension of time to file its answer brief to October 13, 2017. On September 12, 2017, the California Supreme Court extended CDTFA's time to file its Answer Brief to October 13, 2017. On October 11, 2017, the Supreme Court granted the CDTFA's Request for an Extension of Time to file the Answer Brief to November 13, 2017. On November 13, 2017, the Supreme Court granted CDTFA's request to file its Answer Brief to December 13, 2017. On December 13, 2017, the CDTFA filed its Answer Brief and a Motion for Judicial Notice. The other named Defendants and Respondents also filed their Answer Briefs on December 13, 2017. The Supreme Court granted Petitioners' request to file their Reply Brief on February 1, 2018. On February 1, 2018, the Supreme Court granted Petitioner's request extended the filing deadline for Petitioner's Reply Brief to and including March 2, 2018. On March 2, 2018, Appellants filed an application requesting permission to file an oversized Reply Brief on the merits. On March 14, 2018, Appellants filed a Reply Brief on the merits. On April 5, 2018, Public Citizen, Inc. filed an Amicus Curiae Brief in support of Appellants. The League of California Cities and the California State Association of Counties filed an Amicus Brief on April 20, 2018. Howard Jarvis Taxpayers Association filed an Amicus Brief and Request for Judicial Notice on April 20, 2018. On May 1, 2018, an amicus brief was filed by Larry Littlejohn, the plaintiff in *Littlejohn v. CDTFA*, a related case pending before the First District Court of Appeal (Case No. A144440). On May 21, 2018, an amicus brief was filed by Alina Beckerman, Brandon Griffith, Jenny Lee, and Charles Lisser, who are the plaintiffs in a pending class action lawsuit against the CDTFA (Sacramento County Superior Court, Case No. 34-2016-80002287). The California Supreme Court extended the time for Retailer-Respondents and CDTFA to respond to the amicus briefs filed in this case to July 30, 2018. On July 12, 2018, CDTFA filed its response to the amicus curiae briefs. On July 20, 2018, the Retailer-Respondents filed their response to the amicus briefs. On November 8, 2018, the Supreme Court set oral argument for December 5, 2018. Oral argument was held on December 5, 2018 before the California Supreme Court, and the matter taken under submission. A decision will be issued within 90 days. On March 4, 2019, the California Supreme Court affirmed judgment in favor of CDTFA. The Court found that while consumers may bring a refund action pursuant to its earlier decision in *Javor v. State Board of Equalization* (1974) 12 Cal.3d 790 in limited circumstances, the consumers "must show, as a threshold requirement, that a prior legal determination has established their entitlement to a refund." The Court found that because the CDTFA had not made a prior legal determination on the issue of taxability (i.e., whether the retailers' sales of the strips and lancets were exempt from sales tax and that a refund was owed), plaintiffs had not met this threshold requirement to bring suit. On May 31, 2019, plaintiffs filed a Petition for Writ of Certiorari with the U.S. Supreme Court. The U.S. Supreme Court will decide whether to grant or deny plaintiffs' petition for a writ of certiorari at the beginning of its next term, commencing October 1, 2019.

On June 6, 2019, the DOJ filed a waiver with the U.S. Supreme Court, informing the Court that CDTFA would not be filing a response to the petition unless one is requested by the Court. On October 7, 2019, the United States Supreme Court denied plaintiff's petition for a writ of certiorari. This case will now be closed.

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**MENDOTA DESIGNATED LOCAL AUTHORITY v. The California Director of Finance,  
et al.**

Sacramento County Superior Court: 34-2012-80001353  
Filed –12/23/12

Plaintiff's Counsel

John G. McClendon, Leibold McClendon & Mann, P.C.

CDTFA's Counsel

Jeff Rich

CDTFA Attorney

John Waid

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Issue(s): Dispute is over certain provisions of Assembly Bill 1484 [AB 1484](#) (2012).  
Plaintiff alleges that statutes that may require the Board to withhold local tax  
distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: Some of the real parties in interest have answered the petitions. However, BOE, as  
a remedial defendant, has an open extension of time to respond to the petitions.

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**MERCED DESIGNATED LOCAL AUTHORITY v. The California Director of Finance, et al.**

Sacramento County Superior Court: 34-2012-80001351

Filed -12/28/12

*Plaintiff's Counsel*

John G. McClendon - Leibold McClendon & Mann, P.C.

*CDTFA's Counsel*

Jeff Rich

*CDTFA Attorney*

John Waid

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Issue(s): Dispute is over certain provisions of Assembly Bill 1484 [AB 1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: Some of the real parties in interest have answered the petitions. However, BOE, as a remedial defendant, has an open extension of time to respond to the petitions.

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**MONTEREY PARK, CITY OF, et al. v. California Board of Equalization**

Sacramento County Superior Court: 34-2014-80001777

Filed -03/14/2014

*Plaintiff's Counsel*

Mark D. Hensley - Jenkins & Hogin, LLP

*CDTFA's Counsel*

Aaron Jones

*CDTFA Attorney*

John Waid

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Issue(s): Dispute is over certain provisions of Assembly Bill 1484 [AB 1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: On March 17, 2014, Case was assigned to DAG Aaron Jones. On April 11, 2014, the BOE filed its Answer to Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief. There has been no recent activity in this case.



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**MOYAL v. CDTFA**

Alameda County Superior Court: R919019905

Filed -05/22/2019

Plaintiff's Counsel

CDTFA's Counsel

Heather Hoesterey

CDTFA Attorney

Crystal Yu

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Issue(s): In pro per plaintiff, Elan Moyal, asserts an action for breach of contract, alleging a violation of [Business and Professions Code section 16102](#). Plaintiff contends that pursuant to section 16102, he is exempt from payment of any sales and use taxes as an honorably discharged Marine veteran with a service-connected disability.

Audit/Tax Period:

Amount: Unspecified

Status: Plaintiff served CDTFA with his complaint on June 6, 2019. On June 27, 2019, CDTFA met and conferred with plaintiff regarding multiple deficiencies with his complaint. Plaintiff agreed to an extension of time for CDTFA to respond to his complaint to July 22, 2019, while he considers CDTFA's grounds for dismissal. Plaintiff has informed CDTFA that he will be filing an amended complaint. Therefore, the parties filed a joint stipulation with the court extending CDTFA's deadline to file a response until thirty days after the first amended complaint is filed and served on CDTFA. On November 8, 2019, Plaintiff filed a First Amended Complaint.

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**REDWOOD CITY, CITY OF v. The State of California**

Court of Appeal, Third Appellate District: C076431

Sacramento County Superior Court: 34-2012-80001447

Filed – 03/22/13

Plaintiff's Counsel

Iris Yang - Best & Krieger, LLP

CDTFA's Counsel

Jonathan Eisenberg

CDTFA Attorney

John Waid

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Issue(s): Dispute is over certain provisions of Assembly Bill 1484 [AB 1484](#) (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: BOE's Response was filed on April 25, 2013. On October 31, 2013, the Court tentatively denied Petitioner's petition for writ of mandate. On November 22, 2013, Petitioners filed a Supplemental Brief in support of petition for writ of mandate. On January 4, 2014, the Court issued an Order denying the petition for writ of mandate.

Appeal: On April 29, 2014, Petitioners filed a Notice of Appeal. The BOE is not participating in the Appeal. The Case has been fully briefed. The parties are waiting for the Court of Appeal to set a date for Oral Argument. On December 13, 2018, the court sent a letter to all parties requesting supplemental briefing on the issue of what if any effect the decision in *Cuenca v. Cohen* (2017) 8 Cal.App.5th 200, also from Third District Court of Appeal, should have on the appeal, with Appellant's supplemental letter brief to be served and filed on or before January 3, 2019, Respondent's supplemental letter brief to be served and filed within 20 days from the filing of Appellant's letter brief, and Appellant's supplemental letter reply brief, if any, due 10 days thereafter. On January 2, 2019, Real Party in Interest, Legal Aid Society of San Mateo filed a supplemental brief. On January 3, 2019, Plaintiff and Appellant, City of Redwood et al. filed a supplemental brief. On January 23, 2019, Defendant and Respondent, Keely M. Bosler et al. filed a supplemental brief. On February 4, 2019, Legal Aid Society of San Mateo filed another supplemental brief. On February 7, 2019, Respondent Bosler filed a notice of errata to its supplemental letter brief filed on January 23, 2019.

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**ROSENBAUM, ROBERT v. BOE, ET AL.**

Fresno County Superior Court: 19CECG01798

Filed – 05/24/2019

Plaintiff's Counsel

Stephen L. Lebiak

CDTFA's Counsel

Craig Rust

CDTFA Attorney

Kiren Chohan

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Issue(s): Plaintiff Robert Rosenbaum DBA “Carr Bazaar” filed a complaint against CDTFA and the Board of Equalization, in which he alleges several causes of action, specifically, deceit, constructive fraud, negligence, refund of sales and use taxes, violation of Plaintiff’s due process rights and other constitutional rights. Plaintiff contends that CDTFA’s sales tax assessment for unreported taxable sales and disallowed bad debt was improper, and that requiring Plaintiff to first pay the tax assessment prior to bringing a refund action in court violated his rights. Plaintiff seeks a refund of taxes paid of \$141,810.06, with interest, a determination of the amount of taxes due, damages for physical, emotional and financial harm, and attorneys’ fees, among other things.

Audit/Tax Period: 07/01/2003 through 12/31/2006

Amount: \$141,810.06

Status: Plaintiff served CDTFA with this complaint on June 21, 2019. Plaintiff agreed to a 15-day extension to CDTFA’s deadline to respond to Plaintiff’s complaint. CDTFA’s response is now due August 5, 2019. Plaintiff’s opposition brief is due September 5, 2019, and CDTFA’s reply is due September 11, 2019. On August 5, 2019, CDTFA and BOE filed a joint demurrer to Counts 1-4 and 6-8 in this complaint, with only the refund action under Count 5 to remain as a valid cause of action. The demurrer also asks that BOE be dismissed as a party. The hearing on this demurrer is scheduled for September 18, 2019. Plaintiff filed its Opposition to CDTFA’s Demurrer on September 4, 2019. On September 11, 2019, CDTFA filed its Reply Brief in Support of its Demurrer. On September 18, 2019, the court sustained CDTFA’s Demurrer to causes of action 1-4 and 6-8 in Plaintiff’s complaint, with leave to amend, and dismiss BOE as a defendant. On September 26, 2019, the court continued the case status conference from October 3, 2019 to December 12, 2019. On September 30, 2019, Plaintiff filed an amended complaint with only the refund action remaining and dismissed BOE as a

defendant. CDTFA's response to the first amended complaint is due October 30, 2019. On October 25, 2019, CDTFA filed its answer to Plaintiff's First Amended Complaint, and a Motion to Dismiss Demand for Jury Trial. The hearing on CDTFA's motion is scheduled for January 23, 2020.

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**SAN JOSE CANNABIS BUYER COLLECTIVE, LLC. v. California Department of Tax and Fee Administration**

Sacramento County Superior Court: 34-2017-80002729

Filed – 11/06/2017

Plaintiff's Counsel

Law Office of Lerman, Editte D.

CDTFA's Counsel

Mike Sapoznikow

CDTFA Attorney

Kiren Chohan

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Issue(s):       Petitioner contends: Petitioner seeks declaratory relief to set aside CDTFA's decision denying its claim for refund related to the 2009-2010 tax year.

CDTFA position: Taxpayer's claim for refund was properly denied. Also, taxpayer should have brought a refund action and not a petition for writ of mandate when challenging CDTFA's denial of a claim for refund.

Audit/Tax Period: 2009/2010

Amount: Unspecified

Status:       On January 22, 2018, CDTFA filed a demurrer to petitioner's petition on the basis that (1) a refund action is the exclusive means by which a taxpayer may seek a tax refund, and the Petition for Writ of Mandate is improper; (2) petitioner failed to exhaust its administrative remedies for the period at issue; and (3) petitioner has not yet paid its taxes in full and, therefore, may not pursue a refund action. The hearing on CDTFA's Demurrer was rescheduled to July 27, 2018. Plaintiff's opposition is due on July 16, 2018, and CDTFA's reply is due on July 20, 2018. The hearing on CDTFA's Demurrer was rescheduled for August 24, 2018. On August 13, 2018, SJCBC filed its opposition to CDTFA's demurrer to SJCBC's petition. On August 15, 2018, the parties stipulated and jointly requested a court order that : (1) the August 24, 2018 hearing on CDTFA's demurrer be vacated, (2) this case be reassigned to Department 39 for Case Management and Department 53 for Law and Motion, (3) SJCBC may file an amended complaint on or before August 30, 2018, and (4) CDTFA may file a demurrer or other appropriate responsive pleading on or before September 20, 2018, and the scope of any

demurrer by CDTFA is not limited in any way by CDTFA's January 22, 2018 demurrer. On August 23, 2018 the Court signed the parties' stipulation. On August 29, 2018, SJCBC filed a first amended complaint. CDTFA's response is due September 20, 2018. On September 20, 2018, CDTFA filed a Demurrer to Plaintiff's First Amended Complaint. On October 16, 2018, plaintiff filed an opposition brief which was due on October 12, 2018. On October 18, 2018, CDTFA filed a reply brief in support of its demurrer. The hearing on CDTFA's demurrer was held on October 25, 2018, and the trial court denied CDTFA's demurrer. CDTFA filed its answer to Plaintiff's first amended complaint on November 5, 2018. Discovery is ongoing. On March 21, 2019, the Court issued the following order: Plaintiff's counsel must notify the court of the selection of Mandatory Settlement Conference and Trial dates no later than 60 days after August 22, 2019. If the parties have not agreed on dates before the 60th day, court staff shall assign Mandatory Settlement Conference and Trial dates that are next available, unless an extension of time has been granted by the appropriate Case Management Program Judge. CDTFA filed a Motion for Summary Judgment to Plaintiff's First Amended Complaint on June 27, 2019, on the grounds that the court does not have jurisdiction over this matter because taxpayer has not paid all the tax and penalties assessed for the period at issue. The hearing on CDTFA's motion is scheduled for September 19, 2019. The opposition to CDTFA's motion is due September 5, 2019, and CDTFA's reply brief is due September 12, 2019. On September 10, 2019, the court approved a new hearing date and briefing schedule for CDTFA's motion for summary judgment, as follows: Plaintiff's response brief is due September 20, 2019, CDTFA's reply brief is due October 3, 2019, and the hearing on CDTFA's motion for summary judgment is scheduled for October 10, 2019. On September 20, 2019, Plaintiff filed its opposition to CDTFA's motion for summary judgment. CDTFA filed its reply brief on October 3, 2019. The hearing on CDTFA's Motion for Summary Judgment is scheduled for October 10, 2019. On October 10, 2019, the court affirmed its tentative ruling in favor of CDTFA granting CDTFA's Motion for Summary Judgment. In its motion, CDTFA argued that this action was barred by [California Constitution article XIII, section 32](#) ("Section 32") because Plaintiff failed to first pay all the tax and penalties assessed and exhaust its administrative remedies with CDTFA before bringing a refund action in court as required by Section 32. Plaintiff asserted that this case fell into an exception to the "pay first, litigate " rule set forth in the California Supreme Court's decision in *Western Oil & Gas Ass'n v. State Bd. Of Equalization* (1987) 44 Cal.3d 208 ("Western Oil"). The court agreed with CDTFA, concluding that this action was barred by Section 32 because Plaintiff did not pay the full amount of tax and penalties at issue and the exception to the "pay first, litigate later" rule under *Western Oil* only applies when federal constitutional considerations are at issue and thus, did not apply here. On November 26, 2019, CDTFA filed a proposed order and proposed judgment for the Court's consideration reflecting its ruling in favor of CDTFA on the Motion for Summary Judgment. On November 27, 2019, the Court signed an order and judgment granting CDTFA's Motion for Summary Judgment.

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**VERIZON CALIFORNIA INC. v. California Department of Tax and Fee Administration**

Sacramento County Superior Court: 34-2016-00196022-CU-MC-GDS

Third District Court of Appeal: C084551

Filed – 06/15/2016

*Plaintiff's Counsel*

Douglas Mo, Sutherland Asbill & Brennan

*CDTFA's Counsel*

Debbie J. Vorous

*CDTFA Attorney*

Wendy Vierra

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Issue(s): Whether [Revenue and Taxation Code section 6016.5](#) excludes such items as completed telephone cables, conduit, and poles from the definition of “tangible personal property.”

Audit/Tax Period: July 1, 2000-December 1, 2011

Amount: \$19,613.34

Status: On August 15, 2016, BOE filed its Demurrer to the complaint. On September 9, 2016, BOE filed a reply in support of its Demurrer. The hearing on the BOE's Demurrer set for September 16, 2016, was continued on the Court's own Motion to October 21. The hearing on the Demurrer was rescheduled for October 31, 2016. On October 31, 2016, on the Court's own Motion, the BOE's Demurrer to Verizon California, Inc.'s First Amended Complaint was continued to December 2, 2016, on the grounds that the declaration in support of the meet and confer efforts does not comply with [Code of Civil Procedure section 430.41](#). After the tentative ruling posted, counsel for Plaintiff filed a Peremptory Challenge pursuant to [Code of Civil Procedure section 170.6](#) as to Judge David I. Brown. Judge Cadei having previously disqualified himself pursuant to [Code of Civil Procedure section 170.1](#), the Case was ordered transferred to the Presiding Judge for assignment. On November 15, 2016, the Court continued the hearing on the BOE's Demurrer while it considered whether the Demurrer was stayed by Plaintiff's filing of a Motion to Transfer Venue. The Court requested the parties provide briefing on the issue of the stay. On November 17, 2016, Plaintiff filed a request to withdraw its Motion to Transfer Venue. The Court reset the hearing on BOE's Demurrer to December 7, 2016. On December 9, 2016, the Court sustained the BOE's Demurrer with leave to amend. On December 21, 2016, Plaintiff filed a second amended complaint. The BOE's Response is due on January 19, 2017. On January 19, 2017, the BOE filed its Demurrer to Plaintiff's second amended complaint. A hearing on the Demurrer is set for February 22,

2017. On February 14, 2017, the BOE filed a reply in support of its Demurrer. On February 21, 2017, the Court rescheduled the hearing on the BOE's Demurrer, set for February 22, 2017, to March 14, 2017. On March 13, 2017, the Court issued a tentative ruling in favor of the BOE, sustaining the BOE's Demurrer to Plaintiff's Second Amended Complaint. On March 24, 2017, the Court entered an Order affirming its tentative ruling in favor of the BOE. The judgment of dismissal as to the BOE was filed on April 20, 2017. Plaintiff filed its notice of appeal on April 21, 2017. On August 4, 2017, pursuant to the Plaintiff's request, the Court of Appeal granted an extension for Plaintiff/Appellant Verizon California to file its Opening Brief to October 16, 2017. On September 27, 2017, the Third District Court of Appeal granted the State Board of Equalization's Motion to Substitute the California Department of Tax & Fee Administration for itself as a party. On October 16, 2017, plaintiff filed its Opening Brief on Appeal. On January 16, 2018, CDTFA filed its Respondent's Brief. Plaintiff and Appellant, Verizon California, filed its Reply Brief on January 31, 2018. Case fully briefed. On June 8, 2018, Appellant made the following substitution with new legal representative Douglas Mo. The case is fully briefed and awaits scheduling of oral argument. On June 25, 2019, the Third District Court of Appeal notified the parties that it is prepared to render a decision without oral argument unless argument is requested by one of the parties before July 5, 2019. Following a recent published decision in a related case (brought by a Verizon affiliate) in CDTFA's favor, CDTFA does not intend to request oral argument. On July 23, 2019, the Court of Appeal issued an unpublished opinion affirming the trial court decision in favor of CDTFA. Plaintiff's September 3, 2019 deadline to file a petition for review of the Third District Court of Appeal's decision affirming judgment in favor of CDTFA has now passed. On September 24, 2019, the Court of Appeal issued the remittitur to the trial court and awarded CDTFA costs on appeal. CDTFA will now be closing the case.

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**ZIMMER US, INC., v. CALIFORNIA DEPARTMENT OF TAX AND FEE  
ADMINISTRATION, an Agency of the State of California**

Alameda County Superior Court: RG19006445

Filed – 02/11/2019

*Plaintiff's Counsel*

Edwin Antolin, Antolin Agarwal LLP

*CDTFA's Counsel*

Cara Porter

*CDTFA Attorney*

Crystal Yu

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Issue(s): Plaintiff, an out-of-state distributor of orthopedic implants, contends that it is entitled to a refund of use taxes paid on its shipments of surgical instruments into California for use by hospitals and surgical facilities free of charge. Plaintiff alleges that because it relinquished control over when and how the instruments were used once they were shipped by an out-of-state common carrier, there was no taxable “use” by plaintiff in California and it is entitled to a refund of use taxes paid on these shipments.

Audit/Tax Period: October 1, 2013-December 31, 2016

Amount: \$1,786,063.58

Status: On February 11, 2019, Plaintiff filed a complaint for refund of use taxes paid, and served CDTFA with the complaint on February 28, 2019. CDTFA's response to the complaint is due March 29, 2019. On March 21, 2019, plaintiff stipulated to an extension for CDTFA to file its response to the complaint. CDTFA's new deadline to file a response is April 17, 2019. On April 17, 2019, CDTFA filed its Answer and Affirmative Defenses to Plaintiff's Complaint. On May 15, 2019, CDTFA filed a Motion to Stay Proceedings, on the ground that there is a pending audit of the taxpayer's account for the same period at issue in the taxpayer's complaint that must first be completed. On May 23, 2019, Plaintiff filed an Opposition to CDTFA's Motion to Stay Proceedings. CDTFA's reply brief is due on Friday, May 31, 2019. CDTFA filed its Reply in support of its Motion to Stay Proceedings on May 31, 2019. On June 6, 2019, the court issued a tentative ruling granting CDTFA's motion to stay the case until December 1, 2019, to allow CDTFA to complete the plaintiff's pending audit for the same period as issue in its complaint. The plaintiff did not contest the court's ruling and the tentative ruling is now considered the final order of the court. The court set a further status conference in the matter for November 1, 2019. On November 1, 2019, the court continued the Case Management Conference hearing to January 22, 2020 due to the pending audit.



**Sales and Use Tax**  
LITIGATION ROSTER  
NOVEMBER 2019

**CLOSED CASES**

**Case Name**

BRISBANE, CITY OF  
MAINSTREET ENTERPRISES  
MCCLAIN, MICHAEL  
VERIZON CALIFORNIA, INC.

**Case Number**

A151168  
BC648293  
S241471  
C084551

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