

LITIGATION ROSTER

SPECIAL TAXES

NOVEMBER 2020

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NEW CASES

<u>Case Name</u>	<u>Case Number</u>

CLOSED CASES

<u>Case Name</u>	<u>Case Number</u>

Please refer to the case roster for more detail regarding new and closed cases

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BIG SANDY RANCHERIA ENTERPRISES, a federally-chartered corporation,

v.

**Xavier Bacerra, in his official capacity as Attorney General of the State of California; and
Nicolas Maduros, in his official capacity as Director of the California Department of Tax
and Fee Administration.**

U.S. Court of Appeals, Ninth Circuit: 19-16777

Filed – 07/16/2018

Plaintiffs' Counsel

John M. Peebles, Fredericks Peebles & Morgan LLP

CDTFA's Counsel

CDTFA Attorney

Scott Chavez

Issue(s):

Plaintiff, a tribal corporation, seeks declaratory and injunctive relief in this action against the Attorney General and CDTFA, arguing, among other things, that the application and enforcement of the State's Cigarette and Tobacco Products Licensing Act ([Bus. & Prof. Code, §§ 22970 et seq.](#)) and the Cigarette and Tobacco Products Tax Law ([Rev. & Tax. Code, §§ 30001-30483](#)) against it, is preempted by federal law.

Audit/Tax Period: None

Amount: Unspecified

Status:

On September 17, 2018, CDTFA filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction. On October 8, 2018, plaintiff filed a First Amended Complaint. On October 9, 2018, the District Court issued a minute order denying defendants' motions to dismiss as having been rendered moot in light of plaintiff's filing of a First Amended Complaint, and vacated the hearings set for November 6, 2018. On October 22, 2018, Defendant Maduros filed a Motion to Dismiss Fifth Cause of Action of First Amended Complaint for Lack of Subject Matter Jurisdiction. Defendant Becerra filed a Motion to Dismiss as to the entire First Amended Complaint that same day. A hearing on both motions is scheduled for

December 4, 2018. On October 30, 2018, the court continued the hearings on defendants' motions to dismiss from December 4, 2018, to February 5, 2019. The court also continued the initial scheduling conference set for January 23, 2019, to April 24, 2019. On January 8, 2019, plaintiff filed opposition briefs to CDTFA's Motion to Dismiss the 5th Cause of Action and the AG's Motion to Dismiss the Complaint. Both of these motions are set for hearing on February 5, 2019. On January 24, 2019, and January 25, 2019, the CDTFA and AG filed their respective reply briefs in support of their motions to dismiss. On January 31, 2019, the court continued the hearing on defendants' Motions to Dismiss to March 5, 2019, at the parties request. On its own accord, the District Court moved the hearing on the defendants' motions to dismiss to March 12, 2019. On February 27, 2019, pursuant to the parties' stipulation, the District Court continued the March 12, 2019 hearing on the motions to dismiss to April 16, 2019. The hearing on CDTFA's motion to dismiss the fifth cause of action in Plaintiff's amended complaint and the Attorney General Office's motion to dismiss the amended complaint in its entirety was held on April 16, 2019. The court took the matter under submission. On May 21, 2019, the court granted Plaintiff's request for leave to file supplemental briefing following the hearing on defendants' motions to dismiss. Plaintiff requested the briefing to correct its own misstatement of fact regarding its organizational status and to respond to the Attorney General's assertions made during oral argument on its motion to dismiss. Plaintiff's supplemental brief is due by May 31, 2019. Any response by Defendants shall be due by June 10, 2019. On May 31, 2019, plaintiff filed its Supplemental Brief in Opposition to Defendants' Motions to Dismiss First Amended Complaint. On June 7, 2019, the Attorney General and CDTFA filed a Joint Response to Plaintiff's Supplemental Brief. On June 18, 2019, the Court issued a Minute Order stating that a ruling is not expected on the Defendants' Motions to Dismiss prior to the scheduling conference, and it continued the scheduling conference from July 8, 2019 to September 25, 2019. On August 13, 2019, the District Court granted CDTFA's Motion to Dismiss the fifth cause of action, and the Attorney General's motion to dismiss the case in its entirety, dismissing all actions against both defendants without leave to amend. The court held that plaintiff, a tribal corporation, was subject to the Tax Injunction Act and, therefore, could not sue in federal court to enjoin state taxes. The court also rejected plaintiff's argument that federal common law, tribal sovereignty, and the Indian Trader Statutes (25 U.S.C. §§ 261-264), preempted the application of the State's Complementary Statute ([California Revenue & Taxation Code § 30165.1](#)) to it with respect to its off-reservation distributions of cigarettes and tobacco products to other tribal reservations, holding that such distributions were not immune from state regulation. The court further rejected plaintiff's arguments that it was not subject to the licensing and reporting requirements of the State's Cigarette and Tobacco Products Licensing Act and the Cigarette and Tobacco Products Tax Law, agreeing with the State that the requirements of these sections imposed only a minimal burden upon plaintiff. On September 10, 2019, Plaintiff/Appellant filed an appeal to the United States Court of Appeal for the Ninth Circuit of the Eastern District's Judgment and the Order Granting Defendants' Motions to Dismiss. On

September 11, 2019, the Ninth Circuit issued a Time Scheduling Order. Pursuant to the Order, Appellant's Opening Brief shall be filed by December 19, 2019, and CDTFA's Answering Brief is due by January 21, 2020. Appellant's optional Reply Brief, if filed, shall be filed within 21 days after CDTFA's Answering Brief. On December 10, 2019, the Ninth Circuit granted Plaintiff/Appellant an extension to file its Opening Brief to January 21, 2020. As a result of the extension, CDTFA's Answering Brief will now be due February 20, 2020. On January 21, 2020, Plaintiff/Appellant filed a motion to file an oversized brief along with the proposed Appellant's Opening Brief. CDTFA's Answering Brief is due, absent an extension, by February 20, 2020. On January 28, 2020, the Ninth Circuit Court of Appeals denied Plaintiff/Appellant's motion to file an oversized brief and struck Appellant's Opening Brief. Plaintiff/Appellant has 14 days to file an Opening Brief that does not exceed the word limit. CDTFA's Answering Brief is due within 30 days after service of Appellant's Opening Brief. Plaintiff filed its Opening Brief on February 11, 2020. The Ninth Circuit Court of Appeals granted the Attorney General and CDTFA's request to extend the filing deadline for the Answering Brief to April 13, 2020. CDTFA and the AG filed a joint request for a 60-day extension (to June 15, 2020) to file their Answering Brief with the Ninth Circuit Court of Appeals, which was automatically granted under the Court's Covid-19 order. On June 15, 2020, the Attorney General and CDTFA filed their Appellees' Answering Brief. On September 6, 2020, the Ninth Circuit Court of Appeals set oral argument for November 19, 2020. Although the case is currently scheduled for oral argument, the court may still decide to submit the case on the briefs without argument. On November 19, 2020, the Ninth Circuit Court of Appeals heard oral argument from the parties and took the matter under submission.

GOOD TIMES USA, LLC,

v.

CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION.

San Francisco County Superior Court: CPF-20-517000

Filed – 01/27/2020

Plaintiffs' Counsel

Andrew S. Azarmi, Dentons US LLP

CDTFA's Counsel

Heather Hoesterey

CDTFA Attorney

Scott Chavez

Issue(s):

Plaintiff brings this action for declaratory relief and petition for a writ of mandate against CDTFA, for alleged violations of the Administrative Procedures Act ([Gov. Code, § 11340, et seq.](#)), and deprivation of rights under the United States Constitution (42 U.S.C. § 1983 et seq.). Plaintiff contends that CDTFA's Special Notice L-698 is an unlawful regulation and invalid.

Audit/Tax Period: None

Amount: Unspecified

Status:

On January 29, 2020, CDTFA was served with a Verified Complaint for Declaratory Relief and Petition for Writ of Mandate. On February 14, 2020, the parties stipulated to extend CDTFA's time to respond to the complaint to March 30, 2020. The parties stipulated to extend CDTFA's time to respond to the complaint to April 30, 2020. CDTFA filed its Answer and Affirmative Defenses to the Complaint and Petition for Writ of Mandate on April 30, 2020. CDTFA filed its Answer and Affirmative Defenses to the Complaint and Petition for Writ of Mandate on April 30, 2020. On November 19, 2020 the Request for Dismissal was entered by the Court dismissing the case with prejudice. This case will now be closed.

HOWARD JARVIS TAXPAYERS ASSOCIATION, et al. v. California Department of Forestry and Fire Protection, et al.

Third Appellate District: C086660

Sacramento County Superior Court: 34-2012-00133197-CU-MC-GDS

Filed – 10/04/2012

Plaintiff's Counsel

Trevor A. Grimm, Howard Jarvis Taxpayers Foundation

CDTFA's Counsel

Robert Asperger

CDTFA Attorney

John Waid

Issue(s):

The issue in this case is whether the Fire Prevention Fee enacted by [AB X1 29](#) (Stats 2011, First Ex. Sess. Ch.8) is a tax and, as such, not enacted without receiving the two-thirds vote required by [article XIII A, section 3, of the California Constitution](#).

Audit/Tax Period: None

Amount: Unspecified

Status:

BOE's response was filed on April 26, 2013. At the July 19, 2013 hearing, the Court issued a ruling on the submitted matters: 1) the Court overruled CalFire's demurrer to the first amended complaint for failure to state sufficient facts to allege class action causes for relief; 2) the Court ruled in CalFire's favor that Plaintiffs should have filed a petition for redetermination before filing a claim for refund; and 3) CalFire's Motion to strike certain paragraphs of Plaintiffs' first amended complaint were granted. Plaintiffs filed a second amended complaint on July 29, 2013. BOE's response to Plaintiff's second amended complaint was filed on August 7, 2013. On November 21, 2013, a hearing was held on the Demurrer, and the matter was taken under submission. On December 13, 2013, the Court issued a ruling agreeing with CalFire on CalFire's demurrer to Plaintiffs' second amended complaint. On January 21, 2014, attorneys for Plaintiffs filed opposition to CalFire's Proposed Order on the demurrer and Motion to strike Plaintiffs' second amended complaint. On January 24, 2014, attorneys for Defendant filed notice of order on CalFire's demurrer and Motion to strike regarding Plaintiff's second amended complaint. On January 24, 2014, attorneys for Plaintiffs filed "Class Action" third amended complaint for declaratory relief and refunds. On February 25, 2014, CalFire filed an answer to Plaintiffs' third amended complaint.

On February 28, 2014, BOE filed an answer to Plaintiffs' third amended complaint. The Motion for class certification was heard on August 7, 2015. On August 8, 2015, the Court denied class certification on the declaratory relief cause of action, but granted class certification on the refund claims, limited to those who have paid the fee and exhausted administrative remedies. Plaintiffs are in the process of giving notice to the class members. On January 22, 2016, the Superior Court approved the form of notice of the action to class members. On January 29, 2016, the Court entered an Order approving a proposed form of notice to the members of the certified class in this case. Case is currently dormant. On July 19, 2017, Assembly Bill 398 [AB 398](#) was adopted to add Public Resources [section 4213.05](#), which effective July 1, 2017, suspends the fire prevention fee until January 1, 2031. On September 20, 2017, plaintiff filed a motion for summary judgment. Hearing is set for December 8, 2017. On October 5, 2017, California Department of Tax and Fee Administration (CDTFA) filed a Motion to Dismiss for lack of prosecution. Hearing date is December 8, 2017. On October 31, 2017, the Court entered an order substituting the CDTFA as the party defendant in place of BOE. On December 8, 2017, a hearing was held on CalFire and CDTFA's Motion to Dismiss. On December 11, 2017, the Superior Court granted CalFire's Motion to Dismiss this case due to Plaintiffs' failure to bring this action to trial within five years. The Court signed an Order granting Defendants' CalFire and CDTFA's Motion to Dismiss and the Judgment was filed December 27, 2017. Plaintiffs have indicated that they will appeal. Plaintiff filed an appeal of the trial court judgment in favor of CalFire and CDTFA, in which the court dismissed the action for failure to prosecute within five years. The Court signed an Order granting Defendants' CalFire and CDTFA's Motion to Dismiss and the Judgment was filed December 27, 2017. Plaintiffs have indicated that they will appeal. On March 1, 2018, Plaintiff filed an appeal of the trial court judgment in favor of CalFire and CDTFA, in which the court dismissed the action for failure to prosecute within five years. Appellant's opening brief is due July 11, 2018; and the Respondents' Brief will be due 30 days thereafter. On July 11, 2018, Plaintiffs/Appellants filed their Opening Brief. CDTFA's Respondent's Brief is due on August 20, 2018. On July 24, 2018, Plaintiff stipulated to giving CDTFA up to 60 days to file its Respondent's Brief. The Respondent's Brief is now due October 9, 2018. CalFire filed a Respondent's Brief on October 9, 2018. CDTFA has taken "no position" on the merits of the case, and all the arguments in the Respondent's Brief are made on behalf of CalFire. The parties stipulated to an additional 60 days for Appellant to submit its Reply Brief, which is now due January 7, 2019. The Court of Appeal granted Appellant's request for an extension to February 6, 2019, to submit its Reply Brief. Appellant filed a Reply Brief on February 5, 2019. The case is fully briefed and awaits scheduling of oral argument. The parties waived oral argument. On September 15, 2020, in an unpublished opinion, the Third District Court of Appeal affirmed the trial court's judgment in favor of CalFire and CDTFA, finding that Plaintiff failed to bring the action to trial with the 5-year period required by statute. Plaintiff did not seek review of the Third District Court of Appeal's decision with the California Supreme Court and its deadline to do so has now passed. This case is now over

and will be closed.

PALA BAND OF MISSION INDIANS v. NICOLAS MADUROS, ET AL.

USDC, So. Dist. CA: 20CV1767AJB JLB

Filed – 09/09/2020

Plaintiff's Counsel

Sanford Millar, Millar Law

CDTFA's Counsel

Kara Siegel

CDTFA Attorney

Kiren Chohan

Issue(s):

Plaintiff, a federally recognized sovereign Indian tribe, filed its complaint on September 9, 2020, seeking a declaratory judgment declaring invalid any California statute, regulation, and/or order imposing California state taxes on motor vehicle fuel products that are distributed to, received by, and/or sold by Plaintiff on its Reservation (“transactions at issue”). Plaintiff further seeks injunctive relief restraining CDTFA from imposing and/or collecting motor vehicle fuel taxes (“MVFT”) for the transactions at issue and commanding an accounting and refund to Plaintiff of all MVFT, both direct and indirect, that CDTFA has allegedly collected from Plaintiff for the transactions at issue. Plaintiff seeks a refund of \$2,908,156 (plus prejudgment interest) for its claim for refund filed for the period January 2017 to the third quarter of 2019 (\$738,116 in direct taxes allegedly collected from Plaintiff and \$2,170,040 in indirect taxes allegedly collected from its supplier Supreme Oil) for the transactions at issue. Plaintiff further contends that it is entitled to recover the sum of \$5,297,391 (plus prejudgment interest) and such other and further sums that may be proven at the time of trial, for all MVFT taxes allegedly collected by CDTFA since 2005, both direct and indirect, for the transactions at issue. Plaintiff contends that the Federal Indian Trader statutes (25 U.S.C. §§ 261-264) expressly preempt CDTFA from imposing the taxes at issue.

Audit/Tax Period: None

Amount: Unspecified

Status:

Plaintiff filed the complaint on September 9, 2020. CDTFA accepted Plaintiff's request to waive service of the Complaint on behalf of CDTFA and Director Maduros. CDTFA's answer to the Complaint is due November 9, 2020. CDTFA filed a Motion to Dismiss this action on November 9, 2020. The hearing on this

motion is scheduled for January 7, 2021. On November 25, 2020, Plaintiff filed a First Amended Complaint instead of filing a response to CDTFA's Motion to Dismiss the action. CDTFA's response to the amended complaint is due by December 9, 2020. The parties have agreed to extend the deadline to respond to December 23, 2020, which requires court approval; the parties will be filing a joint motion seeking court approval to extend the deadline to December 23, 2020.

STESHENKO, GREGORY v. California Board of Equalization, et al.

Sacramento County Superior Court: 34-2016-00202671-CU-CR-GDS

Santa Cruz County Superior Court: 16CV007757

Filed – 03/25/2016

Plaintiffs' Counsel

Pro Se

CDTFA's Counsel

Robert Asperger

CDTFA Attorney

Kiren Chohan

Issue(s):

Plaintiff contends that the fire prevention fee Assembly Bill 29 [AB 29](#) is invalid and unconstitutional, and that exempt funds were illegally seized.

Audit/Tax Period: None

Amount: Unspecified

Status:

On June 28, 2016, the BOE filed its Reply to Plaintiff's Opposition to Motion to Transfer Action to Sacramento County Superior Court. At the July 6, 2016 hearing, the Court granted the Motion for Change of Venue to Sacramento County Superior Court. On August 29, 2016, the BOE's Proposed Order for change of venue to Sacramento was submitted to Plaintiff for approval as to form. On September 8, 2016, the DAG sent a signed letter to the Court submitting the Proposed Order granting Motion for change of venue, with attachments. On September 28, 2016, the Court entered an Order, transferring the case to Sacramento County Superior Court. On October 11, 2016, Plaintiff filed a petition for writ of mandate with the Sixth Appellate District. The Santa Cruz Superior Court has transferred the case to Sacramento County Superior Court. Sacramento County Superior Court has scheduled a case management conference for May 4, 2017. The case management statement is due April 19, 2017. On

February 28, 2017, the Court of Appeal denied the petition for writ of mandate and request for stay. On March 21, 2017, Defendants BOE and CalFIRE filed a demurrer and Motion to strike. The hearing on these moving papers is scheduled for April 27, 2017. On April 26, 2017, the Court continued the hearing to June 2, 2017. On April 27, 2017, the Court issued its tentative ruling on the CMC set for May 4, 2017. It requires the parties to choose trial and settlement conference dates before the end of the year. The hearing on BOE's Demurrer has been continued to July 7, 2017. At the July 7, 2017 hearing, the trial court sustained the demurrers of Defendants California Board of Equalization, the California Department of Forestry and Fire Protection, and Andres Lopez as to the second through fourth causes of action of the complaint; and stayed the entire action on the grounds that there is another action pending between the same parties on the same cause of action. On July 19, 2017, Assembly Bill 398 AB 398 was adopted to add Public Resources section 4213.05, which effective July 1, 2017, suspends the fire prevention fee until January 1, 2031. On August 3, 2017, the Court entered an order sustaining the Board's demurrer to the second through fourth causes of action and staying the first cause of action on the grounds that there is another action pending between the same parties (the Howard Jarvis case). There has been no action since then. On December 30, 2017, plaintiff filed a motion to lift the stay on this action. No Hearing date has been set. On January 16, 2018, plaintiff filed a Motion to Lift the stay in this action. The hearing on plaintiff's Motion to Lift the stay in this action is April 18, 2018. On April 8, 2018, plaintiff filed a Reply to his Motion to Lift the Stay of proceedings in this case. On April 18, 2018, the court adopted its Tentative Ruling and denied Plaintiff's Motion to Lift the Stay.

**SWARTZ v. CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION
(CDTFA), ET AL.**

Kern County Superior Court: BCV-20-102242

Filed – 09/28/2020

Plaintiffs' Counsel

Pro Per

CDTFA's Counsel

Anna Barsegyan

CDTFA Attorney

Kiren Chohan

Issue(s):

Plaintiff filed its Complaint for Damages against CDTFA, Director Maduros, in the amount of no less than \$2.2 million, plus interest, costs of suit and such other relief the court may deem proper. Plaintiff alleges that it was an owner in a partnership, Valleywide Distributors, which was a licensed cigarette and tobacco products distributor. Plaintiff alleges that the Defendants seized cigarettes and tobacco products at Plaintiff's business premises in connection with a fraudulent criminal investigation; and, that Defendants destroyed the seized property with no prior notice given to Plaintiff.

Audit/Tax Period: None

Amount: Unspecified

Status:

CDTFA was served on October 23, 2020. CDTFA filed a Motion to Transfer Venue on November 23, 2020; the hearing on this motion is scheduled for January 6, 2021.

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CLOSED CASES

<u>Case Name</u>	<u>Case Number</u>

DISCLAIMER

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