

LITIGATION ROSTER

SALES AND USE TAX

DECEMBER 2019

Sales and Use Tax
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NEW CASES

Case Name

Case Number

CLOSED CASES

Case Name

Case Number

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

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

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;

Court of Appeal, Third Appellate District: C087817

Imperial County Superior Court: ECU09960

Filed – 09/11/17

Plaintiff's Counsel

Pro Se

CDTFA's Counsel

Craig Rust

CDTFA Attorney

Wendy Vierra

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. On December 2, 2019, the Third District Court of Appeal informed the parties that: (1) the court was prepared to render a decision without hearing oral argument, and (2) any party seeking oral argument must submit a request for oral argument by December 12, 2019, or the case will be deemed submitted for decision. Neither Appellant nor the CDTFA requested oral argument. On December 13, 2019 the court deemed the matter submitted for ruling.

**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

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. On December 17, 2019, the court signed an order approving the parties' stipulated briefing schedule for the June 19, 2020 hearing on petitioners' writ petition as follows: (1) Petitioners' moving papers due February 28, 2020; (2) CDTFA's opposition papers due April 24, 2020; (3) Petitioners' reply papers due May 22, 2020; and (4) Administrative record lodged as of May 22, 2020. Pursuant to the parties' stipulation, the court also dismissed all class allegations.

**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

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. On December 23, 2019, CDTFA filed its reply brief in support of its Motion to Dismiss Plaintiff's complaint.

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

Court of Appeal, Third Appellate District: C078064
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

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.

**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

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. On December 6, 2019, CDTFA and Petitioner filed their opening briefs. Petitioner challenges the validity of Regulation 1660, subdivision (c)(1), which provides that "In the case of a lease that is a 'sale' and 'purchase'. . . the applicable tax is a use tax upon the use in this state of the property by the lessee. . . .When the lessee is not subject to use tax (for example, insurance companies), the sales tax applies." This provision of the regulation has been in existence for over 50 years.

**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

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 peremptory 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. On November 26, 2019, this case was reassigned to a new judge and department, and the existing briefing and hearing schedule, including the hearing date for CDTFA's demurrer, was vacated.

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

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.

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

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. On December 10, 2019, the Court of Appeal issued an Alternative Writ with respect to CDTFA's Petition, ordering the Superior Court to either: (a) after hearing the parties' position on the matter, enter an order sustaining CDTFA's demurrer with leave to amend to allege payment of the tax due and a claim of refund; or (b) in the alternative, show cause before the Court of Appeal on March 25, 2020, why the Court of Appeal should not issue a peremptory writ ordering the Superior Court to comply with alternative (a). Under the Alternative Writ, if the Superior Court selects alternative (b), then the opposition (i.e., return) to CDTFA's Petition must be filed on or before January 10, 2020. A reply (i.e., a traverse) to the opposition, if any, is due on or before February 5, 2020. Either the Respondent Superior Court or the real party in interest (Plaintiff) can decide to oppose the Alternative Writ. Plaintiff elected to oppose the writ in the Court of Appeal. At Plaintiff's request, on December 11, 2019, the Court of Appeal granted a 31 day extension, with the new following deadlines: The return (opposition) to the petition is due February 10, 2020. The traverse (reply) is due March 5, 2020. Oral argument is continued to April 23, 2020. On December 13, 2019, the trial court issued an order setting a hearing on January 9, 2020 "to show cause why the Court should not vacate its order of October 29, 2018 and enter a new and different order sustaining

petitioner's demurrer with leave to amend to allege payment of tax due and a claim for refund." The trial court also set a Status Conference for January 9, 2020.

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

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.

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

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.

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

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.

**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

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.

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

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.

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

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.

MOYAL v. CDTFA

Alameda County Superior Court: R919019905

Filed -05/22/2019

Plaintiff's Counsel

CDTFA's Counsel

Heather Hoesterey

CDTFA Attorney

Crystal Yu

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. On December 13, 2019, CDTFA filed a demurrer to the plaintiff's second amended complaint.

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

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.

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

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. On December 12, 2019, the court set a trial date of January 4, 2021, which is currently set for a 4-7 day jury trial, but it will convert automatically to a bench trial if CDTFA prevails on its Motion to Strike Demand for Jury Trial, currently set to be heard on January 23, 2020. The trial readiness hearing is set for December 18, 2020, and the final Mandatory Settlement Conference is set for December 10, 2020.

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

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. On December 5, 2019, CDTFA sent plaintiff a Notice of Entry of Judgment in favor of CDTFA. Plaintiff has until February 4, 2020, to file an appeal of the judgment. On December 5, 2019, CDTFA filed a memorandum of costs seeking reimbursement for its filing and motion fees, and Plaintiff has until December 23, 2019 to contest the memorandum of costs.

**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

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
DECEMBER 2019

CLOSED CASES

Case Name

Case Number

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