LITIGATION ROSTER

SPECIAL TAXES

JANUARY 2021

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NEW CASES

Case Name	**Case Number**

CLOSED CASES

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GOOD TIMES USA, LLC v. CA. DEPT. OF TAX AND FEE ADMIN.	CPF-20-517000
HOWARD JARVIS TAXPAYERS ASSOCIATION V. CA DEPT. OF FORESTRY, ET AL.	C086660

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.

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. Plaintiff served Defendants with an opposition to Defendants' Motion to Transfer Venue to Los Angeles County Superior Court on December 21, 2020. On December 29, 2020, CDTFA filed a reply brief in support of its Motion to Transfer Venue to Los Angeles County Superior Court. On January 6, 2021, the Court took CDTFA's Motion to Transfer Venue from Kern County to Los Angeles County Superior Court under submission. On January 20, 2021, the Trial Court denied CDTFA's Motion to Transfer Venue, concluding that the gravamen of this case is Plaintiff's request for return of seized property and thus sounds in mandamus, as opposed to a claim for refund under Section 30403 of the Revenue and Tax Code as urged by CDTFA. CDTFA's response to the Complaint is due on February 1, 2021.

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DISCLAIMER

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