

LITIGATION ROSTER
SALES AND USE TAX

FEBRUARY 2021

Sales and Use Tax
LITIGATION ROSTER
FEBRUARY 2021

NEW CASES

Case Name

FURSEVICH v. BOARD OF EQUALIZATION, ET AL.

Case Number

20STCV34035

CLOSED CASES

Case Name

CITY OF MONTEREY PARK EL AL. v. BOE
KINTNER I
KINTNER II
LOS BANOS DESIGNATED LOCAL AUTHORITY
MENDOTA DESIGNATED LOCAL AUTHORITY
MERCED DESIGNATED LOCAL AUTHORITY

Case Number

34-2014-80001777
B294400
19STCV12687
34-2012-80001352
34-2012-80001353
34-2012-80001351

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

**Sales and Use Tax
LITIGATION ROSTER
FEBRUARY 2021**

**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 – 11/19/2015

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

Scott Chavez

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 Plaintiffs' writ petition as follows: (1) Plaintiffs' moving papers due February 28, 2020; (2) CDTFA's opposition papers due April 24, 2020; (3) Plaintiffs' 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. On February 19, 2020, pursuant to the parties' stipulation, the trial court continued the hearing and the associated briefing deadlines on the merits of Plaintiff's writ petition: (1) Plaintiffs' opening brief is now due by March 27, 2020; (2) CDTFA's opposition brief is due by May 22, 2020; (3) Plaintiffs' reply brief is due by June 19, 2020; and (4) Administrative record to be lodged by June 19, 2020. The hearing on the merits of Plaintiffs' writ petition is scheduled for July 17, 2020. As a result of the COVID-19 pandemic, the parties agreed to continue the hearing date on the merits of the writ petition from July 17, 2020, to September 4, 2020. The new hearing date has been tentatively scheduled with the court, and the parties will submit a joint stipulation for the court's approval. On May 1, 2020, Plaintiffs filed their Plaintiffs' and Petitioners' Memorandum on the Merits. On May 7, 2020, the court approved the parties' stipulation to continue the hearing date on the merits of the writ petition from July 17, 2020, to September 4, 2020. CDTFA's Opposition Brief and the Administrative Record are due July 2, 2020; and Plaintiffs' Reply Brief is due July 31, 2020. CDTFA filed its opposition brief on the merits on July 2, 2020. On July 31, 2020, Plaintiffs filed their reply. The hearing on the merits of Plaintiffs' writ petition remains scheduled for September 4, 2020. On September 4, 2020, the trial court heard oral argument on the merits of Petitioners' Complaint for Declaratory Relief and Petition for Writ. Following oral argument, the court affirmed its tentative ruling for Petitioners, finding that Regulation 1585, as applied to bundled transactions sold by carrier-operated stores, is invalid and an attempt to tax wireless service. The court, however, ruled in favor of CDTFA on Petitioners' procedural challenges to Regulation 1585, finding that CDTFA did not violate provisions in the Administrative Procedures Act (APA) requiring it to assess the proposed regulation's economic impacts on businesses and individuals, nor did it violate the APA by failing to re-publish the regulation, or hold a new hearing, after it amended the original text. CDTFA will have 60 days to file an appeal from service of the Notice of Entry of Judgment. On November 3, 2020, the trial court entered judgment in favor of Plaintiff. On January 26, 2021, Plaintiffs filed and served their Notice of Entry of Judgment. CDTFA has 60 days to file an appeal. On January 26, 2021, Plaintiffs filed and served their Notice of Entry of Judgment, which was posted by the Court on February 1, 2021. CDTFA's deadline to file an appeal is April 2, 2021.

**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 – 08/26/2019

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. On January 6, 2020, the Court issued a minute order granting CDTFA's Motion to Dismiss this action finding that it did not have jurisdiction over the matter pursuant to the Tax Injunction Act (TIA), which divests the district courts of subject-matter jurisdiction over any action that threatens to interfere with the assessment or collection of state taxes, unless plaintiffs are without a plain, speedy, and efficient remedy in the state courts. Without jurisdiction, the court held that it could not reach the merits of Plaintiff's 42 U.S.C. § 1983 allegations, and there was no need for it to address CDTFA's arguments that the action was barred by the doctrine of comity, the [California Constitution, article XIII section 32](#), the State's sovereign immunity under the Eleventh Amendment of the U.S. Constitution, and the substantive requirements under 42 U.S.C. § 1983. The court dismissed this action on January 6, 2020, and Plaintiff has until February 5, 2020 to file an appeal. On February 5, 2020, Plaintiff filed a timely appeal from the District Court's judgment in favor of CDTFA on its motion to dismiss Plaintiff's complaint. The appeal is before the Ninth Circuit Court of Appeals in federal court. On February 5, 2020, the Ninth Circuit set the following briefing schedule: Byron Appellant's opening brief and excerpts of record are due May 15, 2020, and CDTFA's Answering Brief and excerpts of record are due June 15, 2020. Appellant filed his Opening Brief on May 15, 2020. On May 19, 2020, Appellant filed a second Opening Brief and Excerpts of Record. On June 10, 2020, CDTFA filed a Streamlined Request to Extend Time to File its Answering Brief to July 15, 2020, which was granted by the Ninth Circuit. CDTFA filed its Answering Brief on July 14, 2020. Plaintiff filed his Reply Brief on July 28, 2020. The case is fully briefed and awaits scheduling of oral argument.

CITY OF REDWOOD v. The State of California
Court of Appeal, Third Appellate District: C076431
Sacramento County Superior Court: 34-2012-80001447
Filed – 03/22/2013

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. On October 27, 2020, the court scheduled oral argument on this matter for December 14, 2020. Oral argument was held on December 14, 2020, and the matter was submitted for consideration. In its December 29, 2020 opinion, the Court of Appeal reversed the judgment and remanded the case to the trial court with instructions to vacate its order denying plaintiffs' petitions for writ of mandate and dismissing plaintiffs' complaint for declaratory and injunctive relief and to enter a new order granting plaintiffs' writ petitions consistent with this opinion and granting such other relief as the trial court may deem appropriate.

COLAVITO v. CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION
Riverside County Superior Court (Palm Springs Courthouse): 1904499
Filed – 07/02/2019

Plaintiff's Counsel
Pro Se, Philip Colavito

CDTFA's Counsel
Anna Barsegyan

CDTFA Attorney
Kiren Chohan

Issue(s):

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

Audit/Tax Period: None
Amount: \$10,183.00

Status:

Plaintiff served CDTFA with a complaint on August 6, 2020. CDTFA's response is due September 8, 2020. On September 4, 2020, CDTFA filed a Motion to Transfer Venue of the case to the County of Los Angeles. Plaintiff did not file an opposition to CDTFA's motion, which was due September 24, 2020. CDTFA filed a Reply in Support of CDTFA's Motion to Transfer Venue on September 30, 2020. The hearing on CDTFA's motion is scheduled for October 7, 2020. On October 6, 2020, the court issued a tentative ruling granting CDTFA's motion to transfer venue to the County of Los Angeles. On October 7, 2020, the court adopted its tentative and signed the order transferring the case to the County of Los Angeles. On November 18, 2020, Plaintiff filed an answer to the court's order to show cause for his failure to pay the fee to transfer the case to Los Angeles County Superior Court. On November 19, 2020, the court took the order to show cause hearing off calendar. Plaintiff did not appear at the OSC hearing held on January 19, 2021, and the Court continued the hearing to March 26, 2021. Plaintiff has paid the transfer fee, but also requested a waiver of that fee, which the Court wants to be addressed prior to transferring the case.

CULTIVA LA SALUD, ET AL. v. THE STATE OF CALIFORNIA, ET AL.

Sacramento County Superior Court: 34-2020-80003458

Filed – 08/10/2020

Plaintiff's Counsel

Benjamin Fay, Jarvis, Fay & Gibson

Edward Low, Jarvis, Fay & Gibson

CDTFA's Counsel

Mike Saponznikow

CDTFA Attorney

Kiren Chohan

Issue(s):

Plaintiffs seek to invalidate subdivision (f) of Revenue and Taxation Code section [7284.12](#) (“subdivision (f)”) (which was enacted as part of the Keep Groceries Affordable Act of 2018 (“[AB 1838](#)”). Effective June 28, 2018 and until January 1, 2031, AB 1838 prohibits the imposition, increase, levy and collection, or enforcement by a charter city of any tax, fee, or other assessment (collectively, “tax”) on groceries, except as provided. Furthermore, via the enactment of subdivision (f) at issue herein, CDTFA is required to terminate its contract to administer any sales or use tax ordinance of a charter city under the Bradley–Burns Uniform Local Sales and Use Tax Law if that city imposes any tax on groceries for which a court of competent jurisdiction has determined that: (1) the tax is in conflict with the prohibition set forth in AB 1838 and is not excepted from that prohibition; and, (2) the tax is a valid exercise of a city’s authority under the California Constitution with respect to the municipal affairs of that city. (See [Cal. Const. art XI](#), § 5; see also [RTC § 7200](#), et seq.) Plaintiffs seek a declaration that subdivision (f) is unconstitutional because it violates the California Constitution ([art. I](#), § 3, [art. II](#), § 11, art. XI, §§ 3 and 5, and [art. XIII](#), § 25.5) and an injunction prohibiting Defendants State of California, CDTFA, and CDTFA’s Director, Nicolas Maduros, from implementing subdivision (f). Plaintiffs also seek a writ of mandate directing Defendant Maduros not to implement subdivision (f). Lastly, Plaintiffs request an award of attorney’s fees under Code of [Civil Procedure section 1021.5](#).

Audit/Tax Period: None

Amount: Unspecified

Status:

Defendants were served with the complaint on August 26, 2020, and a responsive pleading is due September 25, 2020. Defendants' response date was extended to

October 26, 2020. The parties agreed to extend Defendants' deadline to respond to the complaint to November 9, 2020. Defendants' deadline to respond to the complaint was extended to November 23, 2020. Defendants' Answer to the Complaint was filed on November 23, 2020.

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 – 10/22/2013

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. The Court of Appeal scheduled oral argument for January 19, 2021. On January 19, 2021, the case was argued and submitted. An opinion is due within 90 days.

EMA DESIGN AUTOMATION, INC. v. CALIFORNIA DEPARTMENT OF TAX & FEE ADMINISTRATION, ET AL.

Los Angeles County Superior Court: 21STCV02632
Filed – 01/22/2021

Plaintiff's Counsel

Paul W. Raymond, Attorney at Law

CDTFA's Counsel

Charles Tsai

CDTFA Attorney

Scott Chavez

Issue(s):

Plaintiff seeks a refund in the total amount of \$248,871, for use taxes and accrued interest it allegedly overpaid for the period January 1, 2011 through December 31, 2013 ("Period at Issue"), plus interest and attorney's fees (payments were allegedly made on May 17, 2009, via a refund offset in the amount of \$16,845.39; on October 20, 2014, in the amount of \$218,891; and on April 1, 2020, in the amount of \$13,134.61). Plaintiff alleges that it is not liable for the \$220,733.02 in use taxes assessed against Plaintiff by CDTFA's notice of determination issued on April 16, 2015, for the Period at Issue because it reasonably relied on the written advice given by CDTFA in a prior audit (for the period April 1, 2003, through March 31, 2006) that Plaintiff's transfer of software (delivered electronically) and a dongle (shipped at no charge), to its customer qualifies as a nontaxable sale of electronically transferred software (a dongle is a security device used to prevent unauthorized reproduction of software and/or to make the software fully functional).

Audit/Tax Period: January 1, 2011 through December 31, 2013

Amount: \$248,871.00

Status:

Plaintiff served CDTFA with its Complaint on January 27, 2021. CDTFA's filing deadline is February 26, 2021. Pursuant to the parties' stipulation, CDTFA's response is now due on March 15, 2021. On February 25, 2021, CDTFA filed its Answer to the Complaint.

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

Court of Appeal, Fourth Appellate District: G056975

San Diego County Superior Court: 37-2018-00065184-CU-WM-CTL

Filed – 06/13/2018

Plaintiff's Counsel

Leighton M. Anderson, Bewley, Lassleben & Miller LLP

Joseph A. Vinatieri, Bewley, Lassleben & Miller LLP

CDTFA's Counsel

Van-Dzung V. Nguyen

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." On January 3, 2020, CDTFA and Petitioner filed their reply briefs on the merits of First American's Verified Petition for Writ of Mandate. In its Opening Brief, Petitioner continues to challenge the validity of a provision in Regulation 1660(c)(1), which imposes sales tax on lessors with respect to their leases of tangible personal property to insurance companies. In its brief, Petitioner also asks the court to find that the Board of Equalization's December 2017 decision granting, in part, its claim for refund, is also binding on its future claims of refund that are currently pending with CDTFA. On January 23, 2020, on its own motion, the court continued the hearing on Petitioner's Petition for Writ of Mandate to January 31, 2020. Subsequently, the court continued the hearing to February 11, 2020. The court continued the hearing on Petitioner's Petition for Writ of Mandate to February 13, 2020. On February 13, 2020, the San Diego County Superior Court granted the petition. Petitioner is required to draft the judgment and a Statement of Decision within one week. CDTFA will have 60 days to file an appeal following service of the notice of entry of judgment. Petitioner lodged its proposed statement of decision, judgment and writ with the court, and served CDTFA on February 21, 2020, by mail. CDTFA's response to the proposed statement of decision, judgment and writ is due by March 12, 2020. On March 12, 2020, CDTFA filed its objections to Petitioner's proposed judgment, writ of mandate and statement of decision. The superior court signed the statement of decision in favor of Petitioner, on March 13, 2020; and the clerk mailed the statement of decision to the parties on March 16, 2020. Petitioner refiled its proposed judgment and writ on March 18, 2020, for the court's consideration. On June 16, 2020, the court filed a Final Statement of Decision granting the petition. The final decision is substantially similar to the earlier decision served on the parties on March 16, 2020, with minor non-substantive edits. On June 18, 2020, Petitioner refiled its proposed judgment and order on writ of mandate for the

court's consideration. On June 25, 2020, CDTFA filed its objections to Petitioner's proposed judgment and writ of mandate. On June 26, 2020, Petitioner filed its replies to CDTFA's objections to the proposed judgment and proposed writ. The court entered judgment in favor of Petitioner on July 2, 2020, and a Notice of Entry of Judgment was entered on July 7, 2020. CDTFA will file a notice of appeal of the judgment, which must be filed by September 8, 2020. CDTFA filed a notice of appeal from the trial court's judgment in favor of Petitioner on August 31, 2020. Petitioner filed a Motion for Award of Attorneys' Fees on September 8, 2020. The hearing on this motion is scheduled for March 12, 2021. CDTFA's opposition to this motion is due March 1, 2021, and a reply is due March 5, 2021. The Reporter's Transcript was filed on November 17, 2020. On December 4, 2020, CDTFA notified the Court of Appeal of the parties' stipulation to extend CDTFA's deadline to file its opening brief to February 26, 2021, and the deadline was extended. On February 8, 2021, CDTFA filed a request with the Court of Appeal to extend the deadline to file its Opening Brief to March 29, 2021, which Petitioner opposed. On February 9, 2021, the Court of Appeal granted CDTFA an extension to file its Opening Brief by March 29, 2021.

FURSEVICH, OKSANA v. BOARD OF EQUALIZATION; BMW OF NORTH AMERICA, LLC

Los Angeles County Superior Court: 20STCV34035

Filed – 01/13/2021

Plaintiff's Counsel

Blake Lindemann, Lindemann Law Firm

Donna Dishbak, Lindemann Law Firm

CDTFA's Counsel

Debbie J. Vorous

CDTFA Attorney

Scott Chavez

Issue(s):

In this putative class action, Plaintiff alleges that Defendant BMW of North America, LLC (“BMW”) violated California’s Unfair Competition Law (Bus. & [Prof Code, §17200](#) et seq.) and [California Sales and Use Tax Regulation § 1660 \(c\)\(1\) \(D\)](#) (erroneously cited in complaint as Revenue and Taxation Code § 1660 (C) (D)) by unlawfully charging sales tax on a lease disposition fee, which is imposed on leased vehicles at the end of a lease term. Plaintiff seeks the following relief: a judicial declaration that Regulation § 1660 precludes any person in California from assessing and/or collecting California sales taxes on lease disposition fees and alternatively, that § 1660 (c)(1)(D) is valid; a temporary restraining order, preliminary injunction, and permanent injunction prohibiting CDTFA from collecting sales taxes on lease disposition fees; and, an order compelling all persons who have unlawfully collected sales taxes from class members to file a tax refund claim. (Although Plaintiff asserts that the tax at issue is a “sales tax” paid by the lessor (BMW), automobile leases are generally subject to use tax, not sales tax. (18 Cal. Code Regs., §1660.))

Audit/Tax Period: None

Amount: Unspecified

Status:

On January 13, 2021, Plaintiff filed an Amendment to Complaint, converting Doe 1 to CDTFA. On February 4, 2021, Plaintiff served CDTFA with the Complaint. On February 23, 2021, the Court continued the Initial Status Conference to April 14, 2021. All actions are stayed until then. The parties are ordered to meet and confer on preparing a joint conference statement.

**GOZUKARA, CATHERINE v. CALIFORNIA DEPARTMENT OF TAX AND FEE
ADMINISTRATION**

San Diego County Superior Court: 37-2020-00038128-CU-MC-CTL

Filed – 10/21/2020

Plaintiff's Counsel

Daniel J. Cooper, Law Offices of Daniel J. Cooper

CDTFA's Counsel

Leanna Costantini

CDTFA Attorney

Scott Chavez

Issue(s):

Plaintiff filed a Complaint for Refund of Sales and Use Taxes (“Complaint”) on October 21, 2020, that was served upon defendant California Department of Tax and Fee Administration (“CDTFA”) via mail on November 10, 2020. Plaintiff contends that CDTFA improperly recorded a Notice of State Tax Lien against her property, which was awarded to plaintiff as her sole and separate property in a 2008 judgment for dissolution of marriage. Further, plaintiff contends that the unpaid sales and use tax liability that resulted in the State Tax Lien was the responsibility of the taxpayer ex-husband, Agop Gozukara, and not the plaintiff, as provided in the 2008 judgment. Finally, plaintiff contends that she failed to receive notice of both CDTFA's sales tax assessment and the subsequent Notice of State Tax Lien.

Plaintiff alleges she submitted a timely claim for refund with CDTFA and has exhausted all of her administrative remedies. Plaintiff is seeking \$141,763.95 in damages plus interest, attorney's fees, and costs.

Audit/Tax Period: None

Amount: \$141,763.95

Status:

CDTFA was served with this Complaint on November 10, 2020, and its response to the Complaint is due December 17, 2020. On December 15, 2020, CDTFA filed its Answer to Plaintiff's Complaint.

**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

Mardiros Dakessian, Dakessian Law, LTD

CDTFA's Counsel

Douglas Beteta

CDTFA Attorney

Scott Chavez

Issue(s):

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

Audit/Tax Period: None

Amount: Unspecified

Status:

Plaintiff filed the complaint on August 6, 2019 and served CDTFA with a copy on August 22, 2019. Plaintiff agreed to an extension for CDTFA and the Director to file their responses to the complaint by November 7, 2019. A stipulation and request for court order setting the new deadline as November 7, 2019, was filed with the court. On August 22, 2019, the court reassigned the case to Judge Barbara Meiers, following plaintiff's preemptory challenge to the former judge assigned to the matter. On August 29, 2019, the court approved CDTFA's stipulated request to extend the response date to plaintiff's complaint to November 7, 2019. On September 24, 2019, Plaintiff served his First Amended Complaint, adding Amazon.com, Inc., and other Amazon affiliates, as Real Parties In Interest. On or about November 12, 2019, the court approved the parties' stipulation to extend the time to respond to the First Amended Complaint to November 27, 2019. On November 27, 2019, CDTFA filed a demurrer to Plaintiff's First Amended Complaint. On November 29, 2019, Real Parties in Interest Amazon.com (and its affiliated entities) also filed a demurrer to the First Amended Complaint, as well as a joinder in CDTFA's demurrer. The hearing on both of the demurrers is scheduled for February 4, 2020. 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. The hearing on CDTFA's demurrer and the Real Parties in Interest's demurrer has been rescheduled for June 16, 2020. Amazon.com filed an Amended Notice of Demurrer and Amended Notice of Joinder on May 22, 2020. Plaintiff Grosz's opposition to the demurrers is due by June 3, 2020, and the Defendants' reply brief will be due by June 9, 2020. On June 3, 2020, the Court issued a notice that the hearing on Defendants' demurrers have been rescheduled to August 5, 2020. The briefing schedule is revised as follows: Plaintiff's Opposition brief due: July 23, 2020; Defendants' Reply briefs due: July 29, 2020. Plaintiff filed its Opposition to Defendants' Demurrers on June 3, 2020. CDTFA filed its reply brief in support of its demurrer on July 28, 2020. On August 5, 2020, at the hearing on CDTFA's demurrer, the judge allowed additional optional briefing on issues raised at the hearing to be filed by August 24, 2020. A new hearing date was not set. On August 24, 2020, CDTFA filed a Supplemental Brief in support of its Demurrer. On October 20, 2020, the court sustained CDTFA's demurrer to the complaint without leave to amend and issued a minute order to that effect. On December 9, 2020, Plaintiff filed an appeal of the court order sustaining CDTFA's demurrer without leave to amend. On December 17, 2020, Plaintiff filed his Notice Designating Record on Appeal. Once the reporter's transcript is filed, Plaintiff will have 40 days to file his opening brief.

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

Brian Hildreth, Bell, McAndrews & Hiltachk, LLP

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. Appellant County of Yuba's Appendix and Opening Brief are due February 19, 2020. Defendant/Appellant County of Yuba filed the Appellant's Opening Brief and Appendix on March 2, 2020. On April 1, 2020, Respondent Howard Jarvis Taxpayers Assn. filed its Respondent's Brief and Request for Judicial Notice. On April 16, 2020, Appellant County of Yuba filed its Opposition to Respondent's Request for Judicial Notice. On April 21, 2020, Appellant County of Yuba filed its Reply Brief and Request for Judicial Notice. On May 1, 2020, Respondents Howard Jarvis Taxpayer Association, et al. filed an Opposition to Appellant County of Yuba's Motion for Judicial Notice. On June 12, 2020, the California State Association of Counties filed an amicus brief in support of Appellant, County of Yuba. On July 7, 2020, Plaintiff and Respondent Howard Jarvis Taxpayers Association et al. filed a response to the Amicus Brief filed by California State Association of Counties.

ISABEL RUBINAS AND IJR CORP. v. CDTFA

USDC, No. Dist. Illinois: 1:21-cv-00096

Filed – 01/07/2021

Plaintiff's Counsel

Aaron Block

CDTFA's Counsel

Gina Tomaselli

CDTFA Attorney

Scott Chavez

Issue(s):

Plaintiff, an online retailer and participant in Amazon's Fulfilled by Amazon (FBA) program, seeks a declaration that CDTFA's imposition of registration and use tax collection requirements on the retail sales of out-of-state third-party merchants is unconstitutional. Plaintiff also seeks an injunction to enjoin CDTFA from continuing such tax administration practices, as well as, damages for CDTFA's alleged violations of the U.S. Constitution, Internet Freedom Act, and attorney's fees and costs under 42 U.S.C. § 1988.

Audit/Tax Period: None

Amount: Unspecified

Status:

This new action was served on CDTFA on January 8, 2021. Plaintiffs filed a Motion for Temporary Restraining Order and Injunctive Relief on January 8, 2021, asking the Court to enjoin CDTFA from levying additional funds from Plaintiffs' bank accounts, an order lifting the existing levy, and the return of \$2,367.56 already levied from Plaintiff IJR Corp.'s bank account. CDTFA filed a reply to the motion on January 11, 2021. The hearing on the motion for a temporary restraining order was held on January 12, 2021. On January 14, 2021, the Court denied the motion as to the request to prevent further levying of Plaintiffs' bank accounts, because CDTFA has represented and confirmed to the Court that it has no immediate plans to apply a further levy on the accounts, and CDTFA also agreed to provide at least 14 days' notice in advance of attempting another levy. The motion was further denied as to the request for the return of the previously levied \$2,367.56. On January 18, 2021, the Court issued a written ruling explaining its January 14, 2021 denial of Plaintiffs' motion for a TRO. In the written ruling, the Court explained that it denied the Temporary Restraining Order because the Illinois federal court lacked subject matter jurisdiction over the action because the Tax Injunction Act prohibits federal courts from enjoining or restraining the collection of any tax under state law where a plain, speedy, and

efficient remedy exists. The judge stated that he would very likely hold the same in response to the pending motion for preliminary injunction and any upcoming motion to dismiss, and invited the parties to discuss entering a dismissal. On January 29, 2021, the parties filed a Joint Status Report as requested by the Court. In the Joint Status Report, Plaintiffs inform the court that they intend to file a supplemental brief in support of their motion for preliminary injunction seeking to enjoin CDTFA from any further collection efforts against Plaintiffs and to return the \$2,367.56 which was levied from Plaintiff IJR Corp.'s bank account. In light of the Court's prior ruling denying Plaintiffs' Temporary Restraining Order seeking similar relief on the ground that the Court lacked jurisdiction, Plaintiffs have agreed that should the Court also deny their motion for preliminary injunction on the ground that it lacks jurisdiction, Plaintiffs will take a dismissal and not require CDTFA to pursue a motion to dismiss. The Court approved the parties' proposed briefing schedule for the motion for preliminary injunction as follows: (1) February 17, 2021: Plaintiffs will file their supplemental brief in support of the motion for preliminary injunction; (2) March 19, 2021: CDTFA files its responsive brief; and (3) March 26, 2021: Plaintiffs may file an optional reply brief. On February 17, 2021, Plaintiffs filed their Supplemental Brief in support of their Motion for Preliminary Injunction.

**ONLINE MERCHANTS GUILD v. NICOLAS MADUROS, DIRECTOR, CALIFORNIA
DEPARTMENT OF TAX & FEE ADMINISTRATION**

USDC, Eastern District of CA: 2:20-cv-01952-MCE-DB

Filed -09/29/2020

Plaintiff's Counsel

Candice L. Fields, Candice Fields Law

CDTFA's Counsel

Gina Tomaselli

CDTFA Attorney

Scott Chavez

Issue(s):

Plaintiff seeks a declaration that CDTFA's requirement that out-of-state third-party merchants selling on Amazon register with CDTFA and collect use taxes on their retail sales made prior to October 1, 2019 (the effective date of the Marketplace Facilitator Act) is unconstitutional. Plaintiff also seeks an injunction to enjoin CDTFA from continuing such tax administration practices as well as damages for CDTFA's alleged violations of the Internet Freedom Act and attorneys' fees and costs under 42 U.S.C. section 1988.

Audit/Tax Period: None

Amount: Unspecified

Status:

CDTFA was served with the Complaint on October 16, 2020. Plaintiff agreed to extend CDTFA's deadline to respond to the Complaint, which is now due December 4, 2020. On November 20, 2020, the trial court approved the parties' joint motion for a scheduling order, setting forth the following deadlines: (1) December 18, 2020: Deadline for CDTFA to file its response to plaintiff's complaint; deadline for plaintiff to file its motion for preliminary injunction; (2) January 29, 2021: Deadline for parties to file opposition briefs; (3) February 26, 2021: Deadline for parties to file reply briefs; and (4) March 25, 2021: Hearing on CDTFA's motion to dismiss and plaintiff's motion for preliminary injunction. On December 18, 2020, CDTFA filed a Motion to Dismiss the action, and Plaintiff filed a Motion for Preliminary Injunction. CDTFA's Motion to Dismiss is scheduled for hearing on March 25, 2021. On December 18, 2020, the judge issued an order vacating the hearing on Plaintiff's Motion for Preliminary Injunction and this matter will be decided based on the briefs submitted. On January 15, 2021, the parties agreed to extend all briefing and hearing deadlines associated with their pending motions by 30 days. On February 1, 2021, the Court

issued a Scheduling Order requiring Plaintiff to refile its Motion for Preliminary Injunction, and CDTFA to refile its Motion to Dismiss, by March 1, 2021.

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 direct, 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. On December 11, 2020, the court ordered Plaintiff to file a Second Amended Complaint (SAC) by December 28, 2020. Defendants have 30 days to file a response to the SAC. Plaintiff filed a SAC on December 22, 2020; and Defendants' response to the SAC is due January 21, 2021. On January 21, 2021, Defendants CDTFA and Director Maduros filed a Motion to Dismiss the Second Amended Complaint. The hearing on this motion is scheduled for April 1, 2021. On February 5, 2021, Plaintiff filed an Opposition to Motion to Dismiss Second Amended Complaint. On February 12, 2021, Defendants filed a Reply Brief supporting their Motion to Dismiss Second Amended Complaint.

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: July 1, 2003 through December 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. On January 3, 2020, Rosenbaum filed an opposition to CDTFA's Motion to Strike Demand for Jury Trial. On January 10, 2020, CDTFA filed its Reply in Support of its Motion to Strike Demand for Jury Trial. On January 21, 2020, the trial court issued a tentative ruling granting CDTFA's Motion to Strike the Demand for a Jury Trial concluding that a jury trial is not required for a tax refund action. Plaintiff did not request oral argument; therefore, the court adopted its tentative ruling as its final order on January 23, 2020. Both parties have propounded discovery and discovery is in process. Plaintiff filed a Motion for Summary Judgment on August 3, 2020. The hearing on this motion is scheduled for October 28, 2020; and CDTFA's Opposition is due October 14, 2020. On September 14, 2020, the parties filed a stipulation for the court's consideration to extend the trial date from January 4, 2021, to June 2021. The court rescheduled the trial for June 21, 2021, and the Mandatory Settlement Conference is scheduled for May 27, 2021. CDTFA filed its Opposition to Plaintiff's Motion for Summary Judgment on October 14, 2020. On October 22, 2020, Plaintiff filed a Reply Brief in support of its Motion for Summary Judgment. On October 27, 2020, the court continued the hearing on Plaintiff's Motion for Summary Judgment to December 3, 2020. The mandatory mediation was rescheduled to December 15, 2020. On December 2, 2020, the court issued a tentative ruling denying Plaintiff's Motion for Summary Judgment. Plaintiff did not request oral argument; thus, the tentative ruling became the court order on December 3, 2020. The parties filed a joint request for dismissal and the case was dismissed on February 19, 2021. This case is now over and will be closed.

STETTNER, ET AL. v. MERCEDES-BENZ FINANCIAL SERVICES USA, ET AL.

Sacramento County Superior Court: 34-2020-00282700

Filed – 08/03/2020

Plaintiff's Counsel

David Markham, The Markham Law Firm

CDTFA's Counsel

Debbie J. Vorous

CDTFA Attorney

Scott Chavez

Issue(s):

Plaintiffs filed its Complaint on August 3, 2020, alleging the Defendant, Mercedes-Benz Financial Services USA, LLC., (“Mercedes-Benz”) violated California's Unfair Competition Law ([Bus. Prof Code §§ 17200, 17203](#)) and Sales and [Use Tax Regulation §1660\(c\)\(1\)](#) by unlawfully charging sales tax on the disposition fee, which is imposed on leased vehicles at the end of a car lease term. CDTFA is a real-party interest in this lawsuit because it collected and continues to collect the sales tax remitted by Defendant Mercedes-Benz to CDTFA.

Plaintiffs seek public injunctive relief requiring the Defendants to conduct an accounting of sales taxes paid and ordering Defendant Mercedes Benz to seek a refund of paid amount from CDTFA with recovered amounts to be placed in a common fund for the benefit of affected California consumers. Plaintiffs also seeks an order requiring Mercedes-Benz to stop collecting sales tax on lease disposition fees.

Audit/Tax Period: None

Amount: Unspecified

Status:

CDTFA was served with the complaint on September 3, 2020. On September 21, 2020, plaintiffs agreed to extend CDTFA's deadline to file its Answer and Affirmative Defenses from October 3, 2020 to October 16, 2020. The deadline to respond was extended to November 16, 2020. On November 11, 2020, plaintiff filed a First Amended Complaint. CDTFA's response is due December 16, 2020. On December 16, 2020, CDTFA filed a Demurrer to the Plaintiff's First Amended Complaint. A hearing is scheduled for April 28, 2021. On January 25, 2021, CDTFA filed its Objection and Opposition to Plaintiffs' Application for Approval Designating Case as Complex. On February 26, 2021, the Court issued a tentative ruling designating the case as “complex.” In its ruling, the Court informed the parties that they could revisit the complex designation, if necessary, after

CDTFA's Demurrer is heard on April 28, 2021. The Court also scheduled a Case Management Conference for May 21, 2021.

**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

Leanna Costantini

CDTFA Attorney

Dana Flanagan-McBeth

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 through 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. On January 21, 2020, the Court continued the Case Management Conference to March 25, 2020. The parties stipulated to a 60-day extension entered into by the court on May 4, 2020, which permits the Plaintiff to file an Amended Complaint with the court by July 6, 2020. The Parties stipulated to a 60-day extension to September 8, 2020, for Plaintiff to file an amended complaint. On September 4, 2020, the Case Management Conference date was vacated and moved to November 3, 2020. On September 14, 2020, the parties agreed to a 60-day extension to December 7, 2020 to allow the plaintiff to file its First Amended Complaint. A Case Management Conference was held on November 3, 2020. A Mandatory Settlement Conference is scheduled for December 10, 2020 (with a Settlement Conference Statement due on December 3, 2020). The deadline for Plaintiff to file an amended complaint was moved to February 1, 2021. A further Case Management Conference was set for March 3, 2021. On December 10, 2020, the parties participated in a Mandatory Settlement Conference.

Sales and Use Tax
LITIGATION ROSTER
FEBRUARY 2021

CLOSED CASES

<u>Case Name</u>	<u>Case Number</u>
CITY OF MONTEREY PARK EL AL. v. BOE	34-2014-80001777
KINTNER I	B294400
KINTNER II	19STCV12687
LOS BANOS DESIGNATED LOCAL AUTHORITY	34-2012-80001352
MENDOTA DESIGNATED LOCAL AUTHORITY	34-2012-80001353
MERCED DESIGNATED LOCAL AUTHORITY	34-2012-80001351

DISCLAIMER

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