State of California
Franchise Tax Board

Legal Division MS A390
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**February 2015 Franchise Tax Board Public Litigation Roster**

All currently active cases and those recently closed are listed on the roster.

A list of new cases that have been added to the roster for the month is also provided, as well as a list of cases that have been closed and will be dropped from the next report.

The Franchise Tax Board posts the Litigation Roster on its Internet site. The Litigation Roster can be found at: http://www.ftb.ca.gov/law/litrstr/index.shtml.

The Litigation Rosters for the last four years may be found on the Internet site.



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**FRANCHISE AND INCOME TAX**
**Closed Cases –February 2015**

| Case Name | Court Number |
| --- | --- |

**FRANCHISE AND INCOME TAX**
**New Cases –February 2015**

| Case Name | Court Number |
| --- | --- |

**FRANCHISE AND INCOME TAX**
**MONTHLY PUBLIC LITIGATION ROSTER**

**February 2015**

**ABERCROMBIE & FITCH & Subs v. Franchise Tax Board** Filed – 10/22/12
Fresno Superior Court Case No. 12CECG03408

*Taxpayer's Counsel*
Amy L. Silverstein, Esq.
Edwin Antolin, Esq.
Silverstein & Pomerantz, LLP

*FTB's Counsel*
Tim Nadar
*FTB's Contact*
Melissa Williams

Issues: 1. Whether FTB improperly discriminates against multistate unity corporate Taxpayers by requiring them to compute their California taxable income by using the combined reporting method as opposed to letting them choose between the combined reporting method or the separate reporting method.

Years: 2000 Amount: $181,591.00 Tax

Status: Summons and Complaint served October 23, 2012. On November 20, 2012, FTB's Answer to Complaint for Refund of Taxes was filed. On December 10, 2012, Plaintiffs served the following Discovery Requests upon FTB: (1) First Set of Demands to FTB for Production, Inspection and Copying of Documents, (2) Form Interrogatories; (3) Plaintiffs' First Set of Special Interrogatories to FTB; (4) Plaintiffs' First Set of Requests for Admission. FTB's Responses to Plaintiffs' Form Interrogatories, Special Interrogatories, Production of Documents and Requests for Admissions were served on February 6, 2013. On February 25, 2013, Case Management Conference occurred. Mandatory Settlement Conference is scheduled for May 14, 2014. Plaintiffs' Responses to First Set of FTB's Special Interrogatories were served June 7, 2013. Plaintiffs' Responses to First Set of FTB's Request for Production, Inspection and Copying of Documents were served June 7, 2013. On January 10, 2014, a Stipulation and Order to Continue Trial to February 9, 2015 was filed. The Trial Readiness Conference date was continued to February 6, 2015. On April 10, 2014, an Order was filed allowing a Joint Stipulation to permit filing of Cross Motions. On April 10, 2014, Declaration of Tim Nadar was filed. On April 10, 2014, a Declaration of Edwin P. Antolin was filed. On April 11, 2014, Plaintiffs filed a Stipulation and Order. On April 18, 2014, Plaintiffs filed a Motion for Summary Judgment. On April 18, 2014, Plaintiffs filed a Request for Judicial Notice. On April 18, 2014, Plaintiffs filed a Separate Statement of Undisputed Material Facts in Support of Motion for Summary Judgment, along with supporting pleadings. On June 12, 2014, a Motion to

continue the date upon which pending Cross-Motions for Summary Judgment will be heard was granted. The Court ordered the hearing date continued from July 2, 2014, to September 17, 2014. A Notice of Entry of Order continuing the hearing date was filed June 17, 2014. On September 3, 2014, Plaintiffs' Opposition to FTB's Motion for Summary Adjudication, together with supporting pleadings, was filed. On September 12, 2014, Plaintiffs' Reply pleadings in support of Plaintiffs' Motion for Summary Adjudication was filed. On September 12, 2014, Plaintiffs also filed an Index of Non-California Authorities cited in Plaintiffs' Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Summary Adjudication. On September 17, 2014, the Court continued the hearing on Cross-Motions for Summary Judgment to January 8, 2015, and thereafter to January 22, 2015. On January 21, 2015, the Court issued a Tentative Ruling staying proceedings pending the Court of Appeal decision in Harley Davidson v. Franchise Tax Board. On January 22, 2015, Counsel for Plaintiff requested the case remain active. **After taking the matter under submission, the Superior Court affirmed its Tentative Ruling and has stayed proceeding pending the Court of Appeal decision in Harley Davidson v. Franchise Tax Board.**

**BAKERSFIELD MALL, LLC v. Franchise Tax Board** Filed – 04/25/07
San Francisco Superior Court Case No. CGC-07-462728
**FTB LLC Tax Refund Cases JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4742**

| *Taxpayer's Counsel* | *FTB's Counsel* |
|---|---|
| Amy L. Silverstein, Esq. | Marguerite Stricklin |
| Edwin Antolin, Esq. | *FTB Contact* |
| Silverstein & Pomerantz, LLP | William C. Hilson, Jr. |

Issues:
1. Whether the LLC fee imposed on an LLC doing business entirely within California by Rev. & Tax. Code §17942 is unconstitutional under the due process, equal protection and commerce clauses of the U.S. Constitution.
2. Whether Rev. Tax. Code §17942 violates Article XIII, section 26 of the California Constitution.
3. Whether Rev. Tax. Code §17942 constitutes an invalid exercise of state police power and is void.

Years: 2000 through 2004 Amount: $56,537.00 Tax

Status: On June 26, 2012, FTB caused a Notice of Related Case to be filed in this action and also with the Fresno County Superior Court and Judicial Council advising that this case was substantially similar to CA-Centerside LLC v. Franchise Tax Board and proposing that the two cases be coordinated. A Hearing on the Motion to Coordinate the two cases was held on January 29, 2013, and the matter was taken under submission. On January 30, 2013, the Petition to Coordinate was granted. Please refer to the status summary for FTB LLC Tax Refund Cases Judicial Council Coordination

Proceeding No. 4742.

**VICKEN & ENNA BERJIKIAN v. Franchise Tax Board** Filed – 06/09/13
Los Angeles County Superior Court Case No. BC514589
United States District Court for the Central District of California Case No. 2:13-CV-06301-DDP
Court of Appeal Second Appellate District Court Case No. B252427

| *Taxpayer's Counsel* | *FTB's Counsel* |
|---|---|
| Freeman Butland, Esq. | Marta Smith |
| Vicken O. Berjikian, Esq. | *FTB Contact* |
| | Suzanne Small |

Issues:
1. Whether the license suspension provisions of California's Top 500 Legislation Violate Equal Protection clauses under the U.S. Constitution/California Constitution.
2. Whether the license suspension provisions of California's Top 500 Legislation Violates Due Process clauses under the U.S. Constitution/California Constitution.
3. Whether Plaintiffs should be removed from the "Top 500 List."

Years: 1990-94, 1999, 2002, 2004, 2008, 2009, 2010

Amount: $None Specified

Status: **The State Court Action:** Summons & Complaint were filed on June 9, 2013. On July 11, 2013, Plaintiffs filed a Motion for Preliminary Injunction through which they sought a court order compelling FTB to remove them from the Top 500 List; to prohibit the Department of Motor Vehicles from suspending their driver's licenses; and to prohibit the Pharmacy Board from suspending Mrs. Berjikian's Pharmacist License. On August 13, 2013, the Opposition to Plaintiffs' Motion for a Preliminary Injunction, together with supporting pleadings, was filed. Plaintiffs' Reply Brief was filed August 15, 2013. On August 22, 2013, the Los Angeles County Superior Court denied Plaintiffs' Request for Injunctive Relief in its entirety. On August 29, 2013, FTB filed a Demurrer to Plaintiffs' Complaint, together with pleadings in support thereof. On September 18, 2013, Plaintiffs' Opposition to Demurrer and Declaration of Vicken O. Berjikian in Support thereof was filed. On September 27, 2013, FTB filed a Motion to Strike the Opposition to Demurrer and Plaintiff Vicken O. Berjikian Declaration, together with its Opposition to Demurrer. FTB's Demurrer to Plaintiffs' Complaint was sustained without leave to amend on October 7, 2013**.** Notice of Appeal was filed November 6, 2013. The Record on Appeal was filed with the Court of Appeal on March 6, 2014. Appellants' Opening Brief was filed April 9, 2014. Respondents' Brief was filed June 20, 2014. Appellants' Reply Brief was filed July 9, 2014. Oral Argument has been scheduled to occur on October 31, 2014. Oral Argument occurred on October 31, 2014 and the matter has been submitted for decision. On

January 12, 2015, the Second Court of Appeal issued an unpublished Opinion. The judgment in favor of FTB was reversed and the matter was remanded for further proceedings. On January 20, 2015, Plaintiffs filed a Notice of Remand and Request for Assignment of a Trial Judge. On January 20, 2015, Plaintiffs also filed Peremptory Challenge to the Judicial Officer. On January 23, 2015, Plaintiffs filed a Request for Assignment of a Trial Judge. On January 27, 2015, FTB filed a Petition for Rehearing requesting the Court of Appeal reconsider its January 12, 2015, Opinion. On January 29, 2015, FTB filed Objections to Plaintiffs' Notice of Remand and Request for Remand and Request for Assignment of Trial Judge and Accompanying Peremptory Challenge to the Judicial Officer. On January 27, 2015, a Petition for Rehearing was filed. On January 30, 2015, Petition for Rehearing was denied.

**The Federal Court Action:** On August 28, 2013, after the Los Angeles County Superior Court denied Plaintiffs' Request for Injunctive Relief, Plaintiffs filed a Complaint, together with an Ex-Parte Application for Injunctive Relief, in the United States District Court for the Central District of California. The content of the Complaint and the Request for Injunctive Relief is substantially similar to the content of the pleadings filed with the Los Angeles County Superior Court. On August 30, 2013, the United States District Court denied in its entirety, Plaintiffs' Request for Injunctive Relief. On September 18, 2013, FTB filed a Motion to Dismiss Plaintiffs' Complaint, together with pleadings in support thereof. On October 3, 2013, the Court issued to Plaintiffs a Notice to Filer of Deficiencies in Electronically Filed Documents. On October 4, 2013, FTB filed a Motion to Strike and Opposition to Defendants' Motion to Dismiss Plaintiffs Complaint for Injunctive and Declaratory Relief together with its Reply to Plaintiffs' Opposition to the Motion to Dismiss. On October 16, 2013, the Hearing on FTB's Motion to Dismiss, which was scheduled to be heard on October 21, 2014, was removed from the calendar and will be decided without Oral Argument. On February 20, 2014, an Order Granting Defendants' Motion to Dismiss in Part and Denying Defendants' Motion in Part was filed. On March 21, 2014, Plaintiffs filed a Motion for Preliminary Injunction, again seeking relief from the consequences of being placed on the Top 500 List. The motion is scheduled to be heard on April 28, 2014. On April 2, 2014, Opposition to Second Motion for Preliminary Injunction was filed. On April 11, 2014, Plaintiffs filed a Reply and Request for Preliminary Injunction. On April 24, 2014, Minutes were filed. Those Minutes stated that the Second Motion for Preliminary Injunction which was scheduled to be heard on April 28, 2014, has been taken off calendar. The hearing is vacated and will be decided without oral argument. On May 8, 2014, a Minute Order was issued stating "Counsel are notified that on the Court's own Motion the Scheduling Conference is continued from May 12, 2014, to June 2, 2014." On June 5, 2014, the Court issued the following scheduling Order: Trial is to commence on February 10, 2015; Final Pre-Trial Conference will occur on February 2, 2015; Discovery shall close on October 10, 2014; Law and Motion shall close on November 10, 2014. On June 19, 2014, the Court issued a Minute Order continuing the hearing on Plaintiffs' Motion for Summary Judgment from July 14, 2014, to July 28, 2014. Defendant's Opposition is to be filed on July 14, 2014. Plaintiffs' Reply is to be filed on July 21, 2014. The Motion for

Summary Judgment is to be heard on July 28, 2014. FTB's Opposition to Plaintiffs' Motion for Summary Judgment, together with various pleadings in support thereof, was filed. On July 18, 2014, Plaintiffs filed their Reply to FTB's Opposition to the Motion for Summary Judgment. On July 24, 2014, the Court issued a Minute Order vacating the July 28, 2014, hearing date, declaring that Motion for Summary Judgment will be determined without Oral Argument. On July 30, 2014, FTB filed its Motion for Summary Judgment along with pleadings in support thereof. On August 11, 2014, an Opposition to Motion for Summary Judgment was filed by Plaintiffs. On August 25, 2014, FTB's Reply to Plaintiffs' Opposition to FTB's Motion for Summary Judgment was filed. On September 2, 2014, the Court issued an Order stating that FTB's Motion for Summary Judgment will also be decided without Oral Argument. On January 23, 2015, FTB filed an Ex Parte Application for Continuance of the Court Scheduled Trial Date, together with Points and Authorities and the Declaration of Anthony Sgherzi in support thereof.

**BUNZL DISTRIBUTION v. Franchise Tax Board** Filed – 12/17/10
San Francisco Superior Court Case No.CGC10506344
Court of Appeal First Appellate District Court Case No. A137887

*Taxpayer's Counsel*
Kimberley M. Reeder
The Law Offices of Kinberley M. Reeder
A Professional Corporation

*FTB's Counsel*
Karen Yiu
*FTB's Contact*
Michael Cornez

Issue:
1. Whether FTB properly included the California factors attributable to certain single-member LLCs when calculating the taxpayer's apportionment percentages.
2. Whether FTB properly included the single-member LLC's in the taxpayer's combined report.
3. Whether the FTB Settlement Bureau conducts itself with reckless disregard for Board published procedures.
4. Whether the policies and/or procedures of the FTB Settlement Bureau constitute improper underground regulations.

Year: 2005

Amount: $1,368,734.00 Tax
$128,562.00 Interest

Status: Summons and Complaint served on FTB December 21, 2010. FTB's Demurrer to the Complaint was heard on March 1, 2011. The Demurrer was sustained in part and overruled in part. The Answer was filed May 11, 2011. On June 14, 2011, the Answer to Cross Complaint was filed by the Cross-Defendant, Bunzl. On December 21, 2012,

a Notice of Entry of Judgment was filed in favor of FTB. On February 12, 2013, a Notice of Appeal was filed by Plaintiff. On February 13, 2013, Appellant's Notice of Designating Record on Appeal was filed. On March 18, 2013, the Record on Appeal was filed. On May 17, 2013, the Application for Admission of Margaret C. Wilson as Counsel Pro Hac Vice was filed together with the Declarations of Margaret C. Wilson and Kimberley M. Reeder in support thereof. On May 22, 2013, Appellant's Opening Brief was filed. On June 6, 2013, a Stipulation to Extend Deadlines for Filing Respondent's Brief and Appellant's Reply Brief was filed. The Application for Extension of Time to File Brief was filed on August 23, 2013. On September 29, 2013, the Attorney General's office filed a Request for Additional 30 Day Extension of Time within which to file Respondent's Opening Brief. The Court of Appeal granted the Application for Extension of Time to file Respondent's Brief**.** Respondent's Brief was filed October 30, 2013. Pursuant to Stipulation, Appellant's Reply Brief is now due January 21, 2014. On January 10, 2014, the Appellant requested and obtained a Thirty-Day Extension of Time to file its Reply Brief. Appellant's Reply Brief was filed February 21, 2014. The case is fully briefed. On March 4, 2014, the Court sent a Notice identifying the Justices assigned to the case. On March 5, 2014, an Application to file an Amicus Brief by the California Taxpayers Association in support of Appellant's Brief was filed. On March 12, 2014, Appellant requested Oral Argument. On March 20, 2014, the Court issued a letter to Appellant directing it to address whether a final judgment from which Bunzl could appeal, existed in this case. Bunzl's letter Brief was filed April 1, 2014. On April 11, 2014, a substitution of attorney's was filed. The firm Reeder Wilson LLP is no longer in existence. Kimberly M. Reeder will continue to represent Bunzl Distribution USA, Inc. ('Bunzl') as the Law Office of Kimberley M. Reeder, A Professional Corporation. Margaret Wilson will no longer represent Bunzl. Thomas M. Peterson will continue to represent Bunzl." (Substitution of Attorney substituting Margaret Wilson out as counsel for Bunzl attached.) On July 10, 2014, FTB's Application and Declaration of Good Cause in support of Extension of Time to File Response to Brief of Amicus Curiae was filed**.** FTB's Answer to Amicus Curiae Brief filed by California Taxpayers Association in Support of Appellant was filed on August 21, 2014. The parties await the scheduling of Oral Argument.

**CA-CENTERSIDE II, LLC v. Franchise Tax Board** Filed - 02/04/10
Fresno Superior Court Case No. 10CECG00434
Court of Appeal Fifth Appellate District
**FTB LLC Tax Refund Cases Judicial Council Coordination Proceeding No. 4742**

| *Taxpayer's Counsel* | *FTB Counsel* |
|---|---|
| Amy L. Silverstein, Esq. | Marguerite Stricklin |
| Edwin Antolin, Esq. | *FTB Contact* |
| Silverstein & Pomerantz, LLP | William C. Hilson, Jr. |

Issues:
1. Whether the LLC fee imposed on an LLC doing business entirely within California by Rev. & Tax. Code §17942 is unconstitutional under the due process, equal protection and commerce clauses of the U.S. Constitution.
2. Whether Rev. & Tax. Code §17942 violates Article XIII, section 26, of the California Constitution.
3. Whether Rev. & Tax. Code §17942 constitutes an invalid exercise of state police power and is void.

Years: 2000 through 2005 Amount: $65,201.00 Tax

Status: On January 30, 2013, FTB's Petition to Coordinate this case with Bakersfield Mall LLC v. Franchise Tax Board was granted. Please refer to the status summary for FTB LLC Tax Refund Cases Judicial Council Coordination Proceeding No. 4742.

**FTB LLC TAX REFUND CASES JUDICIAL COUNCIL COORDINATION PROCEEDING No. 4742**
Court of Appeal First Appellate District A140518 Filed – 01/20/2013

| *Taxpayer's Counsel* | *FTB's Counsel* |
|---|---|
| Amy L. Silverstein, Esq. | Marguerite Stricklin |
| Edwin Antolin, Esq | *FTB Contact* |
| Silverstein & Pomerantz, LLP | William C. Hilson, Jr. |

Issues:
1. Whether the LLC fee imposed on an LLC doing business entirely within California by Rev. & Tax. Code §17942 is unconstitutional under the due process, equal protection and commerce clauses of the U.S. Constitution.
2. Whether Rev. Tax. Code §17942 violates Article XIII, section 26, of the California Constitution.
3. Whether Rev. & Tax. Code §17942 constitutes an invalid exercise of state police Power and is void.
4. Whether the consolidated cases may properly be certified as a class action.

Years: 2000 through 2005 Amount: $65,201.00 Tax

Status: On January 30, 2013, FTB's Petition to Coordinate the cases of Bakersfield Mall LLC v. Franchise Tax Board and CA-Centerside II, LLC v. Franchise Tax Board was granted. On May 1, 2013, a Notice of Joint Motion for Class Action Certification was filed on behalf of Bakersfield Mall LLC and CA-Centerside II, LLC. On May 1, 2013, Plaintiffs' Memorandum of Points and Authorities in Support of Joint Motion for Class Certification was filed together with Declarations of Kathleen M. Courtis, Johanna Roberts, William N. Hebert, Amy L. Silverstein, Edwin P. Antolin, Matthew H. Koritz, Lindsay T. Braunig, and Charles E. Olson, in Support thereof. On May 24, 2013, Defendant FTB's First Set of Special Interrogatories and Demand for Document Production were served upon Plaintiffs. On July 29, 2013, Declaration of Amelia White in Opposition to Plaintiffs' Motion for Class Certification was filed. On July 29, 2013, Declaration of William Hilson in Support of FTB's Opposition to Plaintiffs' Motion for Class Certifications was filed. On July 29, 2013, FTB's Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion for Class Certification was filed. FTB's Request for Judicial Notice in Support of Opposition to Plaintiffs' Motion for Class Certification was filed July 29, 2013. On July 29, 2013, Declaration of Marguerite Stricklin in Support of FTB's Request for Judicial Notice in Support of FTB's Opposition to Plaintiffs' Motion for Class Certification was filed**.** A Case Management Conference was held on August 12, 2013, during which the Court ordered Plaintiffs' Reply to FTB's Opposition to the Motion for Class Action Certification to be filed on September 30, 2013. Plaintiffs Reply was filed on September 30, 2013. The Hearing on the Motion was held on October 7, 2013. On October 8, 2013, a Memorandum Order Denying Plaintiffs' Joint Motion for Class Certification was filed. On October 28, 2013, a Joint Case Management Conference Statement was filed. On December 2, 2013,

Plaintiffs filed their Notice of Appeal regarding the Denial of the Class Certification motion together with their Notice of Designating Record on Appeal.
On December 17, 2013, Clerk's Notice of Filing Notice of Appeal was filed. On January 17, 2014, a Certification Notice was filed stating that the Clerk's and Reporter's Transcripts have been completed and certified for filing with the Court of Appeal. On February 24, 2014, a Corrected Joint Stipulation Extending Time for Filing of Briefs was filed. Appellants' Opening Brief is to be filed on or before April 2, 2014. On March 5, 2014 Appellants asked for an Extension of Time to File the Opening Brief. On March 7, 2014, the extension was granted. Appellants' Opening Brief is now due June 2, 2014. On May 13, 2014, a change of contact information was filed for Amy Silverstein. On May 13, 2014, a Joint Case Management Conference Statement was filed. On May 13, 2014, a Joint Stipulation regarding CCP section 583.330 was filed. On May 19, 2014, a Case Management Conference Order was issued scheduling the next case management conference for January 9, 2015. On June 26, 2014, Appellants' Opening Brief was filed. Respondent's Opening Brief was due August 26, 2014. On August 21, 2014, Respondent requested and obtained an Extension of time within which to file its Opening Brief. Respondent's Brief is now due on September 25, 2014. On September 19, 2014, Respondent asked for and was granted an Extension of Time to file

its Opening Brief. On October 28, 2014, Respondent's Opening Brief was filed**.** On December 17, 2014, Appellants' Reply Brief was filed. The case is now fully briefed.

**COMCON PRODUCTION SERVICES I, INC. v. Franchise Tax Board**
Los Angeles County Superior Court Case No. BC489779
Court of Appeal Second Appellate District Division P B259619 Filed - 8/6/2012

| *Taxpayer's Counsel* | *FTB's Counsel* |
|---|---|
| Carley Roberts, Esq. | Anthony Sgherzi |
| Sutherland, Asbill, Brennan LLP | Stephen Lew |
| | *FTB Contact* |
| | Jeffrey I. Margolis |

Issues: 1. Whether Comcast and QVC were a single unitary business during the years at issue.
2. Whether Comcast's receipt of a Termination Fee at the conclusion of its unsuccessful attempt to merge with Media One constitutes non-business income.

Years: 1998, 1999

Amount: 1998: $2,831,920.30 Tax
1999: $24,866,811.05 Tax

Status: Summons and Verified Complaint filed August 6, 2012. On August 15, 2012, a Case Management Conference was filed by the Clerk. On September 26, 2012, FTB filed an Answer to the Verified Complaint. On November 14, 2012, the Verified Application of Jeffrey A. Friedman to Appear Pro Hac Vice, together with a Declaration and Memorandum of Points and Authorities in Support thereof were filed. On December 10, 2012, a Minute Order was filed continuing the Case Management Conference to December 20, 2012. On December 20, 2012, a Minute Order was issued scheduling Trial for September 17, 2013. The final Status Conference is set for September 11, 2013. On May 1, 2013, Defendant FTB's Notice of Motion and Motion for Summary Adjudication of Second Cause of Action and pleadings in support thereof were filed. On May 14, 2013, Defendant FTB's First Set of Special Interrogatories was served upon Plaintiff. On May 20, 2013, Comcon Production Services I, Inc.'s Notice of Motion and Motion for Summary Adjudication of Second Cause of Action and pleadings in support thereof were filed. On June 10, 2013, Comcon Production Services I, Inc.'s Motion to Continue Hearing Date on FTB's Motion for Summary Adjudication and pleadings in support thereof were filed. On June 18, 2013, Declaration of A. Pilar Mata in Support of Application to Permit Daniel H. Schlueter to Appear Pro Hac Vice was filed. On June 18, 2013, Comcon's Notice of Hearing and Application to Permit Daniel H. Schlueter to Appear Pro Hac Vice was filed. On June 18, 2013, Verified Application of Daniel H. Schlueter to Appear Pro Hac Vice was filed. On June 27, 2013, FTB's Responses and Objections to Plaintiff's First Set of Demands for Requests for Production of Documents was served. On June 28, 2013, FTB's

Memorandum of Points and Authorities in Opposition to Plaintiff's Motion for Protective Order was filed. On June 28, 2013, FTB's Responses to Plaintiff's First Set of Form Interrogatories was served. On June 28, 2013, FTB's Responses and Objections to Plaintiff's First Set of Specially Prepared Interrogatories was served. On June 28, 2013, FTB's Responses to Plaintiff's First Set of Demands for Requests for Production of Documents was served. On June 28, 2013, Declaration of Jeffrey I. Margolis in Support of FTB's Opposition to Plaintiff's Motion for Protective Order was served. On July 3, 2013, FTB's Notice of Motion and Motion for a Protective Order Quashing Deposition Notice; Memorandum of Points and Authorities; Declaration of Stephen Lew was filed. On July 17, 2013, Comcon's First Set of Requests for Admissions was propounded. On July 18, 2013, Comcon's First Set of Supplemental Interrogatories were propounded along with Declaration of A. Pilar Mata for Additional Discovery. Comcon's Second Set of Demands for Production of Documents, was served July 18, 2013. On July 29, 2013, FTB's Response to Plaintiff's Demand for Exchange of Expert Witness Information was filed. On July 29, 2013, Plaintiff's Expert Witness Declaration was filed. On July 31, 2013, Comcon's Reply to FTB's Opposition to Plaintiff's Motion for Summary Adjudication of Second Cause of Action was filed. On July 31, 2013, Plaintiff's Response to Defendant's Separate Statement of Additional Material Undisputed Facts in Opposition to Plaintiff's Motion for Summary Adjudication was filed. On July 31, 2013, Plaintiff's (Proposed) Protective Order-Confidential and Highly Confidential Designations was filed. On August 12, 2013, the Court denied both Motions for Summary Adjudication. FTB's Notice of Taking Depositions of Plaintiff's Experts was filed August 12, 2013. On August 14, 2013, the Confidential Settlement Conference Brief of Defendant FTB was filed. On August 16, 2013, Plaintiff's Supplemental Expert Witness List and Declaration were filed. On August 30, 2013, FTB's Amended Notice of Taking Depositions of Plaintiff's Experts was filed. On August 30, 2013, FTB's Memorandum of Points and Authorities in Further Support of Motion for a Protective Order Quashing Deposition Notice; and the Declaration of Stephen Lew was filed. On September 12, 2013, Plaintiff's Designations of Deposition Transcripts and Discovery Responses as Testimony at Trial were filed. On September 12, 2013, Plaintiff's Trial Brief and FTB's Brief were filed. On September 12, 2013, FTB's Designation of Discovery Materials to be used at Trial was filed. Trial commenced on September 25, 2013. On November 18, 2013, Plaintiff's Request for Judicial Notice was filed. On November 18, 2013, a Minute Order was filed regarding the resumption of Trial on November 14, 2013, and noting that both sides rest on rebuttal. Closing Arguments were replaced by post-trial briefing. Plaintiff's Closing Brief was filed on December 2, 2013. Defendant's Closing Brief was filed on December 13, 2013. Plaintiff's Reply Brief was filed on December 20, 2013, along with additional supporting pleadings. On February 3, 2014, a Notice of Reassignment and Order were filed. The Order stated that effective February 6, 2014, this case, previously assigned to Judge Abraham Khan will be assigned to Judge Mitchell L. Beckhoff. The Order also stated all matters on calendar in this case will remain as scheduled. On March 6, 2014, a Minute Order was issued by the Court, regarding its intended disposition of the case. The Court indicated an intention to rule in favor of ComCon on issues involving the unity between the two corporations and in favor of FTB with respect to the termination fees. On March 28, 2014, a Request for

Additional Time to Lodge Proposed Judgment was filed. On May 1, 2014 a Stipulation and Order to Lodge Competing Judgments was filed by Plaintiff. On May 7, 2014, the Declaration of Jeffrey I. Margolis in Support of Entry of FTB's Proposed Judgment and in Opposition to Comcast's Proposed Judgment was filed. On May 9, 2014, a Memorandum of Points and Authorities in Support of Plaintiff's Proposed Judgment was filed. On May 9, 2014, FTB's Memorandum of Points and Authorities in Support of FTB's Proposed Judgment and in Opposition to Comcast's Proposed Judgment was filed. On May 9, 2014, Appendix of Non-California Case Authorities Cited in FTB's Memorandum of Points and Authorities in Support of Entry of FTB's Proposed Judgment was filed. On June 6, 2014, the Court issued an Order rejecting the Proposed Judgments submitted by both Parties. The Court further ordered that, within thirty days, each side lodge and serve revised Proposed Judgments. On July 11, 2014, FTB's Objections to Plaintiff's Proposed Judgment was filed. On July 14, 2014, Plaintiff's Objections to Defendant's Amended Proposed Judgment was filed. A Notice of Entry of Judgment and Judgment were filed August 22, 2014. Judgment has been entered in favor of FTB with respect to the termination fee/non-business income issue. Judgment has been entered in favor of Comcon on the unitary business issue. On September 8, 2014, a Memorandum of Costs was filed by Plaintiff. On September 19, 2014, FTB filed a Notice of Motion and Motion to Strike and Tax Costs claimed by Plaintiff. On October 20, 2014, FTB filed a Notice of Appeal regarding the unitary business issue. On October 24, 2014, Comcon filed a Notice of Cross Appeal regarding the business/non-business issue and the Trial Court's denial of its refund claim for 1999. On December 5, 2014, a Motion to Vacate Dismissal and for Reinstatement of Appeal, together with Declaration of Stephen Lew in support thereof were filed. On January 2, 2015, the Motion to Vacate Dismissal and Reinstate Appeal was granted. **On February 2, 2015, Comcon and FTB each filed its Reply Memorandum of Points and Authorities in Support of its Motion to Strike and Tax Costs claimed by the other. On February 9, 2015, a Minute Order was issued by the Court indicating that the matter on Cross-Motions to Strike and/or Tax Costs was determined. The Court denied FTB's Motion to Strike and awarded Comcon its costs associated with prosecuting this action.**

**CUTLER, FRANK v. Franchise Tax Board** Filed – 09/15/09
Los Angeles Superior Court Case No. BC421864
Court of Appeal Second Appellate District B233773
Court of Appeal Second Appellate District B248270

*Taxpayer's Counsel*
Marty Dakessian, Esq.
Reed Smith LLP

*FTB's Counsel*
Marta L. Smith
*FTB's Contact*
Ann Hodges

Issues:
1. Whether California's Qualified Small Business Stock Deferral of Tax Provisions violate the Commerce Clause and Due Process Requirements of the United States Constitution.
2. Whether Plaintiff is entitled to a refund of taxes and interest paid to FTB.
3. Whether the Amnesty Penalty violates the Due Process Clause of the United States and California Constitution.
4. Whether Plaintiff is entitled to attorneys' fees and costs under Rev. & Tax Code section 19717 and/or CCP 1021.5.

Year: 1998

Amount: $200,182.00 Tax
$47,600.00 Penalty

Status: On June 8, 2010, Defendant FTB filed a Notice of Entry of Order Approving Stipulation extending the time for parties to file and serve cross-motions for Summary Judgment. Hearing on the cross motions for Summary Judgment occurred on September 8, 2010. On May 2, 2011, an Order was issued granting FTB's Motion for Summary Judgment or in the Alternative Summary Adjudication. On May 3, 2011, the Notice of Entry of Order Denying Plaintiff's Motion for Summary Judgment was filed. On May 3, 2011, the Notice of Entry of Order on FTB's Motion for Summary Judgment or in the Alternative Summary Adjudication was filed. On August 28, 2012, the Court of Appeal issued a published Opinion, finding California's Qualified Small Business Stock Statute to be unconstitutional and remanding the matter to Superior Court for further proceedings. The Court of Appeal Decision became final on September 27, 2012. A Remittitur was issued on October 31, 2012. On November 7, 2012, Plaintiff filed a Peremptory Challenge after Reversal Pursuant to Code of Civil Procedure Section 170.6, seeking to disqualify Judge Stern from presiding over the issue remanded to Superior Court. On November 15, 2012, the Notice of Ruling granting Plaintiff's Peremptory Challenge after Reversal Pursuant to Code of Civil Procedure Section 170.6 was filed. On December 5, 2012, a Memorandum of Costs on Appeal was filed. On December 7, 2012, a Minute Order was issued, which reassigned the case from Honorable Michael L. Stern to the Honorable Elizabeth Allen White. On January 22, 2013, a Case Management Conference Statement was filed by FTB. On January 25, 2013, FTB propounded a set of Interrogatories and a Request for Production of Documents to Plaintiff. On

February 8, 2013, a Motion for Attorney's Fees under the Code of Civil Procedure Section 1021.5 was filed by Plaintiff. On March 15, 2013, FTB's Memorandum of Points and Authorities in Opposition to Plaintiff's Motion for Attorney's Fees was filed. On March 22, 2013, Plaintiff's Reply in Support of Motion for Attorney's Fees and Supplemental Declaration of Mardiros H. Dakessian was filed. On March 29, 2013, the Court issued an Order denying Plaintiff's Motion for Award of Attorney's Fees. On April 3, 2013, Notice of Reassignment from Judge Burrell to Judge Troy L. Nunley was filed. On April 5, 2013, Plaintiff's Case Management Conference Statement was filed. On May 5, 2013, Plaintiff filed a Notice of Appeal with respect to the denial of the Motion for Award of Attorney's Fees. Trial in the Remanded Proceeding is scheduled to occur on November 4, 2013. On October 7, 2013, Plaintiff's Notice of Motion and Motion in Limine to Exclude Certain Evidence was filed. Plaintiff/Appellant's Opening Brief on the Attorney's Fees issue was filed on December 17, 2013. Respondent's Opening Brief was filed March 18, 2014. On April 1, 2014, Appellant filed an Opposition to Request Judicial Notice. On April 2, 2014, a Stipulation of Extension of Time to File Appellant's Reply Brief was filed. The Appellant's Reply Brief is now due on May 7, 2014. On April 4, 2014, the ruling on the Request for Judicial Notice was deferred. On April, 22, 2014, FTB's Reply to Opposition to Request Judicial Notice was filed. On May 22, 2014, Appellant's Reply Brief was filed. The matter is now fully briefed. On June 16, 2014, a letter was sent to Counsel regarding Division Eight's mediation program. On August 26, 2014, the case was argued and submitted for decision. On September 2, 2014, the California Court of Appeal issued an Opinion reversing the trial court's denial of Attorney Fees and remanded the case back to the Superior Court for further proceedings. On October 14, 2014, FTB filed a Petition for Review of the Court of Appeal determination with the California Supreme Court. On October 15, 2014, FTB filed a request with the California Supreme Court seeking to have the Court of Appeal decision depublished. On November 3, 2014, Cutler filed an Answer to the Petition for Review filed by FTB. On November 25, 2014, the Supreme Court denied the Petition for Review. The Court Reporter was directed not to publish the opinion. On December 1, 2014, the California Supreme Court remitted the case back to the Court of Appeal. On January 8, 2015, a Notice of Case Management Conference was filed stating that the Case Management Conference will be held February 19, 2015. On January 9, 2015, Plaintiff's Notice of Motion and Motion for Attorney Fees and Memorandum of Points and Authorities were filed. On January 12, 2015, a Memorandum of Costs on Appeal was filed.

**FIDELITY NATIONAL INFORMATION SERVICES INC. v. Franchise Tax Board**
Sacramento County Superior Court Case No. 34-2013-00148015
Filed – 07/15/13

| *Taxpayer's Counsel* | *FTB's Counsel* |
|---|---|
| Carley A. Roberts, Esq. | Serajul Ali |
| Timothy A. Gustafson, Esq. | *FTB's Contact* |
| Sutherland, Asbill & Brennan LLP | Irina Krasavtseva |

Issues:
1. Whether Plaintiff's Capital Gain realized by Plaintiff from Plaintiff's sale of minority stock interest is allocable non-business income under Rev & Tax Code section 25120.
2. Whether FTB's treatment of capital gain realized by Plaintiff from Plaintiff's sale of minority stock interest as apportionable business income under Rev & Tax Code section 25120 violates the Due Process and Commerce Clauses of the United States Constitution.
3. Assuming FTB properly treated Plaintiff's capital gain realized by sale of a minority stock interest as apportionable business income under Rev. & Tax Code section 25120, does Plaintiff require a sales factor adjustment under the Due Process and Commerce Clauses of the United States Constitution.
4. Whether FTB's imposition of a large corporate understatement penalty pursuant to Rev & Tax Code section 19138 violated the California Constitution as well as Excessive Fines, Due Process, Commerce and Equal Protection Clauses of the United States Constitution.

Year: 2007 Amount: $5,723,702.00 Tax

Status: Summons and Complaint filed July 15, 2013. On August 5, 2013, Notice of Case Management Conference and Order to Appear was filed. On January 21, 2014, a Joint Case Management Statement was filed**.** A Case Management Conference occurred on February 6, 2014. The tentative ruling indicates the Case has been referred to the

presiding Judge/Master Calendar for Trial setting**.** On April 14, 2014, Plaintiff filed a Notice of Motion and Motion to Set Trial Date. On May 2, 2014, an Opposition to Plaintiff's Motion to Set Trial Date was filed by FTB. On May 9, 2014, a Reply to Opposition to Set Trial Date was filed by the Plaintiff. On May 14, 2014, a Tentative Ruling on the Motion to Set Trial was filed. The Tentative Ruling granted Plaintiff's motion to set trial for the fall of 2014. On May 28, 2014, Plaintiff's First Demand for Production of Documents was served. Trial is scheduled to commence on February 2, 2015. A Settlement Conference is scheduled for January 6, 2015. On August 1, 2014, Plaintiff's Response to FTB's First Set of Special Interrogatories was served. On August 1, 2014, Plaintiff's Response to FTB's First Set of Requests for

Production, Inspection and copying of Documents was served. On August 1, 2014, Plaintiff's Response to FTB's First Set of Requests for Admissions and Form Interrogatories General was served. On September 4, 2014, a notice was issued stating the parties would participate in mediation on October 7, 2014. On September 22, 2014, FTB's Responses to Plaintiff's First Set of Requests for Admission were served. On September 22, 2014, FTB's Responses to Plaintiff's Form Interrogatories were served. On September 22, 2014, FTB's Responses to Plaintiff's First Set of Special Interrogatories were served. On September 22, 2014, Plaintiff's Responses to FTB's Second Set of Requests for Admissions and Form Interrogatories were served. On September 22, Plaintiff's Responses to FTB's Second Set of Special Interrogatories were served. On September 29, 2014, Plaintiffs filed a Mediation Brief. On September 29, 2014, FTB filed a Mediation Statement. Settlement Conference is scheduled to occur on January 6, 2015. Trial is scheduled to commence on February 22, 2015. On November 9, 2014, a Notice of Deposition of William P. Foley, II was served. On November 19, 2014, a Notice of Deposition of Person(s) Most Knowledgeable for Plaintiff was served. On December 1, 2014, FTB's Ex Parte Application for a Commission to conduct a deposition outside California, together with pleadings in support thereof, were filed. On December 17, 2014, Plaintiff filed Motion for a Protective Order, together with supporting pleadings, seeking to preclude FTB from conducting the deposition of a person most knowledgeable regarding a designated topic. On December 17, 2014, Plaintiff also filed a motion for a Protective Order, together with supporting pleadings, seeking to preclude FTB from conducting the deposition of a certain William P. Foley II. On December 18, 2014, FTB filed a Motion to Continue the scheduled trial date of February 2, 2015, and to extend the current discovery cut-off date of January 2, 2015. FTB also requested that the Motion be heard on shortened time. FTB's request to have the Motion heard on shortened time was granted. Plaintiff's Opposition to the motion was ordered due, and timely filed, on December 30, 2014. FTB's Reply to the Opposition was due January 6, 2015, and the Motion was scheduled to be heard on January 13, 2015. On December 23, 2014, FTB filed its Opposition to Plaintiff's Motion for Protective Order seeking to preclude FTB from conducting certain depositions. On December 29, 2014, FTB filed its Settlement Conference Statement in connection with the Mandatory Settlement Conference to be held on January 6, 2015. On January 13, 2015, FTB's Motion to Continue the scheduled trial date of February 2, 2015, was granted. A new trial date has not yet been assigned. **On February 10, 2015, a Notice of Hearing was filed scheduling hearing for July 13, 2015.**

**ERNEST J. FRANCESCHI v. John Chiang, et al**
United States District Court Case No. 2:14-CV-01960-CAS (SHX) Filed – 05/01/14
Central District
United States Court of Appeals for the Ninth Circuit 14-56493

*Taxpayer's Counsel*
Ernest J. Franceschi

*FTB's Counsel*
Marta Smith
Leslie Branman Smith
*FTB's Contact*
Suzanne Small

Issues:
1. Whether the license suspension provisions of California's Top 500 Legislation Violate Equal Protection clauses under the U.S. Constitution/California Constitution.
2. Whether the license suspension provisions of California's Top 500 Legislation Violates Due Process clauses under the U.S. Constitution/California Constitution.
3. Whether Plaintiff should be removed from the "Top 500 List."

Year: 1995-2011 Amount: $254,656.83

Status: Summons and Complaint for Declaratory and Injunctive Relief was filed May 1, 2014. On May 13, 2014, a Joint Stipulation for an Extension of Time to Respond to Complaint was filed. FTB has sixty days to respond to the Complaint**.** On May 28, 2014, Plaintiff's Notice of Motion and Motion for Issuance of a Preliminary Injunction; Memorandum of Points and Authorities; Declaration of Ernest J. Franceschi Jr.; and Exhibits were filed. On June 5, 2014, a Joint Stipulation to Continue Hearing on Motion for Issuance of a Preliminary Injunction was filed. On June 16, 2014, a Certification and Notice of Interested Parties was filed. On June 10, 2014, FTB's Opposition to Plaintiff's Motion for Issuance of a Preliminary Injunction was filed. On June 10, 2014, the Declaration of Emilio Lopez in Support of FTB's Opposition to Motion for a Preliminary Injunction was filed. On June 12, 2014, a Notice of Motion to Dismiss and Motion to Dismiss the Complaint for Declaratory and Injunctive Relief was filed. On June 12, 2014, FTB's Request for Judicial Notice in Support of FTB's Motion to Dismiss Plaintiff's Complaint was filed. Plaintiff's Motion for a Preliminary Injunction was scheduled to be heard on July 21, 2014. FTB's Motion to Dismiss is scheduled to be heard on August 4, 2014. On July 7, 2014, Plaintiff's Opposition to FTB's Motion to Dismiss was filed. On July 8, 2014, the Court issued an Order continuing the hearing on Plaintiff's Motion for Preliminary Injunction to August 4, 2014, to be heard simultaneously with FTB's Motion to Dismiss Plaintiff's Complaint for Declaratory and Injunctive Relief. On July 21, 2014, FTB's Reply to Plaintiff's Opposition to FTB's Motion to Dismiss was filed. On August 4, 2014, FTB's Motion to Dismiss was granted. On August 18, 2014, Judgment was entered in favor of FTB. On September 11, 2014, Plaintiff filed a Notice of Appeal with the United States Court of Appeals for the Ninth Circuit. On September 11, 2014, a Time Schedule Order was filed, stating that the transcripts from the United States filed District Court shall be

by the court reporter no later than January 8, 2015. Appellant's Opening Brief is to be served on or before February 17, 2015. Appellees' Answering Brief is to be served no later than March 19, 2015. **On February 11, 2015, a Notice of Appearance of Counsel , Marta Smith was filed. On February 24, 2015, Appellant's Opening Brief was filed in the United States Court of Appeals for the Ninth Circuit. On February 24, 2015, Appellant's Request for Judicial Notice was filed in United States Court of Appeals for the Ninth Circuit.**

**THE GILLETTE COMPANY & SUBSIDIARIES v. Franchise Tax Board**
San Francisco Superior Court Case No. CGC10495911 Filed - 01/11/10
Court of Appeal First District Court Case No. A130803
California Supreme Court Case No. S206587

*Taxpayer's Counsel*
Amy L. Silverstein, Esq.
Edwin Antolin, Esq.
Johanna W. Roberts, Esq.
Silverstein & Pomerantz, LLP

*FTB's Counsel*
Lucy Wang
*FTB's Contact*
Jeffrey I. Margolis

Issues:
1. Whether California's Amendment of Rev.& Tax. Code § 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
2. Whether California's denial of Plaintiff's claim for refund, premised upon the claim that the 1993 amendment to Rev. & Tax. Code § 25128 is precluded by California's participation in the Multistate Tax Compact violates the U.S. Constitution and the California Constitution.

Years: 1997 through 2004 Amount: $4,137,591.00 Tax

Status: On May 27, 2010, a Complex Litigation Case Management Conference was held; the Court ordered the matters consolidated, and the Complex Litigation Hearing, including the Hearing on FTB's Demurrers was continued to October 7, 2010. This case is now consolidated with the actions filed on behalf of Jones Apparel Group, Inc. and Subsidiaries, Kimberly-Clark World Wide, Inc. & Subsidiaries; Procter & Gamble Manufacturing Co. & Affiliates; RB Holdings (USA) Inc. & Subsidiaries; and Sigma-Aldrich Corp. & Subsidiaries, all of which involve the same legal issues. On October 7, 2010, the Complex Litigation Hearing on FTB's Demurrer to Complaint was held. The Court sustained the Demurrers without leave to amend. On October 26, 2010, the Order on the Demurrer was filed. The Notice of Entry of Order was filed on November 2, 2010. On December 2, 2010, A Notice of Appeal/Request for Preparation of Transcript was filed on behalf of Gillette. Briefs were timely submitted by both Consolidated Appellants and FTB. Amicus Curiae briefs were submitted on behalf of both Consolidated Appellants and Franchise Tax Board. Oral Argument occurred on May 8, 2012. On July 24, 2012, the Court of Appeal issued a published Opinion in favor of the taxpayers. On August 8, 2012, the Franchise Tax Board filed a Petition for Rehearing. On August 9, 2012, the Court of Appeal on its own Motion

issued an Order Vacating its Opinion. On October 2, 2012, the Court of Appeal issued a second published Opinion in favor of taxpayer.

On November 13, 2012, a Petition for Review was filed with the California Supreme Court on behalf of FTB. On December 3, 2012, Consolidated Appellants' Answer to Petition for Review was filed. On December 3, 2012, Consolidated Appellants' Objection to Respondent's Request for Judicial Notice was filed. On December 4, 2012, Amicus letters from the States of Texas, Alabama, Alaska, Arkansas, Colorado, Hawaii, Kansas, Michigan, Minnesota, Missouri, New Mexico, South Dakota, Utah, and Washington and the District of Columbia in support of granting review were filed. On December 10, 2012, an Amicus letter of the Multistate Tax Commission in support of Granting Review was filed. On December 11, 2012, an Amicus Curiae Letter in Opposition to Petition for Review was filed. On December 28, 2012, the California Supreme Court extended the time within which it must grant or deny Review to and including February 11, 2013.

On January 16, 2013, the Supreme Court granted the Petition for Review. On April 17, 2013, FTB's Opening Brief on the Merits, together with a Request for Judicial Notice and pleadings in support thereof were filed in the Supreme Court of California. On April 23, 2013, Consolidated Appellants Application for Extension of Time to file its Opening Brief and to file its Opposition to Respondent's Request for Judicial Notice were filed. On April 26, 2013, the Supreme Court of California granted Consolidated Appellants Request for an Extension of Time to file its Opposition. On July 16, 2013, Consolidated Plaintiffs'/Appellants' Answer Brief on the Merits together with a Request for Judicial Notice and pleadings in support thereof were filed with the Supreme Court of California. On July 22, 2013, an Application for Extension of Time to File FTB's Reply Brief was filed. On July 25, 2013, the Court granted FTB's Request for an Extension of Time to file the Reply Brief. The Reply Brief was filed on September 20, 2013. Between October 16, 2013, and November 7, 2013, several Requests for Permission to file Amicus Curiae Briefs were filed with the California Supreme Court, both on behalf of the Consolidated Appellants and FTB. On October 24, 2013, the California Supreme Court granted the Application of Council on State Taxation for permission to file an Amicus Curiae Brief in support of Consolidated Appellants. On October 24, 2013, the California Supreme Court granted the Application of Institution for Professionals in Taxation to file an Amicus Curiae Brief in Support of Consolidated Appellants. On October 25, 2013, the California Supreme Court granted the Application of Texas, Alabama, Alaska, Arkansas, Colorado, Hawaii, Idaho, Kansas, Michigan, Minnesota, Missouri, Montana, Nevada, New Mexico, North Dakota, Oregon, Utah, and Washington and the District of Columbia for permission to file an Amicus Curiae Brief in Support of the California Franchise Tax Board. On November 7, 2013, the California Supreme Court granted the Application of Multistate Tax Commission for permission to file an Amicus Curiae Brief in support of Respondent. On November 19, 2013, the California Supreme Court granted the Application of the Interstate Commission for Juveniles & Association of Compact Administrators of the Interstate Compact on the Placement of Children for permission

to file an Amicus Curiae Brief. On December 16, 2013, the Amicus Curiae Brief of the Multistate Tax Commission in Support of Defendant/Respondent Franchise Tax Board was filed. On January 22, 2014, Plaintiffs'/Appellants' Second Motion for Judicial Notice was filed. On January 22, 2014, the Declaration of Edwin P. Antolin in Support of Plaintiffs'/Appellants', Second Motion for Judicial Notice was filed. On January 22, 2014, Plaintiffs'/Appellants' Consolidated Answer Brief to Amicus Briefs filed by the Multistate Tax Commission and the States of Texas et al. was filed. On January 22, 2014, FTB's Consolidated Reply to the Amicus Briefs filed in support of Plaintiffs'/Appellants' was filed. Two of the seven justices on the California Supreme Court will not be available to hear the case. On March 17, 2014, the Court temporarily appointed the Honorable Gilbert Nares, Fourth Appellate District, and the Honorable William J. Murray, Jr., Third Appellate District, to preside over the case.

**KAMLESHWAR & ANITA GUNSAGAR v. Franchise Tax Board**
San Francisco County Superior Court Case No. CGC-14-539583 Filed – 06/02/14

*Taxpayer's Counsel*
Jeffrey B. Kahn, P.C.
Amy N. Spivey.

*FTB's Counsel*
David Lew
*FTB's Contact*
Suzanne Small

Issues:
1. Whether Plaintiffs are entitled to claimed worthless stock deductions for 2001 and 2003.
2. Whether Plaintiffs have provided reasonable cause for relief from failure to furnish information penalties for 2001 and 2003.
3. Whether Plaintiffs are entitled to exclude gain of $101,405.00 and $556,459.00 for 2001 and 2003 respectively, pursuant to Revenue & Tax Code section 18152.5.
4. Whether Plaintiffs are entitled to defer gain of $72,500.00 and $90,000.00 for 2001 and 2003, respectively, pursuant to Rev. & Tax Code section 18038.5.

5. Whether FTB's addition of $36,253.00 and $42,388.00 for 2001 and 2003 respectively, due to an adjusted gross income itemized deduction limitation was erroneous.

Year: 2001, 2003

Amount: $72,369.00 Tax 2001
$18,092.25 Penalty 2001
$53,370.00 Tax 2003
$13,342.50 Penalty 2003

Status: Summons and Complaint for Refund of Personal Income Taxes was filed on June 2, 2014. On July 2, 2014, Plaintiffs filed a First Amended Complaint. On

July 3, 2014, FTB filed an Answer to the Complaint for Refund of Personal Income Taxes. On July 29, 2014, FTB filed an Answer to the First Amended Complaint. On October 21, 2014, a Case Management Statement was filed. On October 23, 2014, the Court scheduled Trial to commence on May 11, 2015. The Case Management Conference set for November 5, 2014 is now off calendar**.**

**HARLEY DAVIDSON INC. & SUBSIDIARIES v. Franchise Tax Board**
San Diego Superior Court Case No. 37-2011-00100846 Filed – 11/09/11
Court of Appeal Case No. D064241

*Taxpayer's Counsel*
Amy L. Silverstein, Esq.
Edwin Antolin, Esq.
Silverstein & Pomerantz, LLP

*FTB's Counsel*
Leslie Branman Smith
*FTB's Contact*
Melissa Williams

Issues:
1. Whether Plaintiffs should be allowed a claim for refund for 2000-2002 based on assertions that Plaintiffs have been discriminated against by FTB as they were not allowed as a multistate corporation to file separate returns.
2. Whether Plaintiffs are entitled to use the equal-weighted three factor formula to apportion their income.
3. Whether California lacks nexus sufficient to justify taxation of certain Harley Davidson subsidiaries and, if there is nexus, whether the income of these subsidiaries can be attributable to California.

Years: 2000-2002 Amount: $1,851,942.00 Tax

Status: Summons and Complaint filed November 9, 2011. On December 20, 2011, Harley Davidson filed a First Amended Complaint. FTB's Notice of Hearing on Demurrer and related pleadings were filed on January 20, 2012. On February 27, 2012, the Opposition to Demurrer and related pleadings were filed. On March 2, 2012, the Reply to Opposition to Demurrer was filed by FTB. On March 12, 2012, a Minute Order was issued sustaining FTB's Demurrer to the first Two Causes of action without leave to amend; and sustaining FTB's Demurrer to the Third Cause of action with Leave to Amend. On March 21, 2012, a Second Amended Complaint was filed by Harley Davidson. On April 19, 2012, the FTB's Answer to Second Amended Complaint for Refund of Taxes was filed. On June 22, 2012, the Court issued an Order scheduling Trial to commence on February 15, 2013; the Motion for Summary Judgment to be heard on January 11, 2013; and the Trial Readiness Conference to be heard on February 1, 2013. On November 9, 2012, Plaintiffs filed a Motion for Summary Judgment/Summary Adjudication of Issues together with its pleadings in support thereof. On December 21, 2012, FTB filed its Opposition to Plaintiffs' Motion for Summary Judgment/Summary Adjudication. On January 17, 2013, a Minute Order was filed denying Harley-Davidson's Motion for Summary Judgment. Trial occurred on

February 22, 2013. On March 15, 2013, Plaintiffs' Post Trial Brief was filed. On March 27, 2013, Response to Harley-Davidson's Trial Brief was filed. On May 2, 2013, the Trial Court issued its Statement of Decision and Judgment in favor of FTB. On May 23, 2013, Plaintiffs filed a Motion for a New Trial together with a Memorandum of Points and Authorities in Support Thereof. On May 27, 2013, FTB's Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion for a New Trial was filed. The Hearing on the Motion for a New Trial was heard and denied on June 21, 2013. On June 27, 2013, a Notice of Appeal was filed by Harley Davidson. On July 25, 2013, a Civil Case Information Statement was filed by Plaintiffs/Appellants. On August 1, 2013, a Civil Case Information Statement was filed by Plaintiffs. On September 10, 2013, Joint Stipulation Extending Time for Filing of Briefs was filed. On December 26, 2013, Appellant's Opening Brief, and Request for Judicial Notice were filed. On January 14, 2014, the Court issued an Order deferring the ruling on Request for Judicial Notice that was filed December 26, 2013, to be considered concurrently with the Appeal. Respondent's Brief is due to be filed on or before March 26, 2014. On March 19, 2014, Respondent asked for and was granted an extension of time to file the Reply Brief. The Reply Brief is now due on or before April 25, 2014. Respondent's Brief was filed on April 24, 2014. On April 25, 2014, Respondent sent an Oral Argument Waiver Notice. On May 5, 2014, Respondent filed a Request for Oral Argument. On July 15, 2014, Appellant's Reply Brief was filed. The case is fully briefed.

**HYATT, GILBERT P. v. JOHN CHIANG, et al** Filed – 4/04/14
United States District Court Eastern District of California
Case No. 2:14-CV-00849-GEB-DAD

*Taxpayer's Counsel*
Donald J, Kula
Perkins Coie, LLP
Erwin Chemerinsky, Esq.
Malcolm Segal
Segal & Associates, PC

*FTB's Counsel*
James W. Bradshaw
McDonald Carano, Wilson, LLP
Cynthia Larsen
Orrick, Herrington and Sutcliffe, LLP

*FTB's Contact*
Scott DePeel

Issues: 1. Whether the delays in bringing Mr. Hyatt's Appeals of FTB Tax Assessments for tax years 1991 and 1992 to a conclusion constitute violations of Mr. Hyatt's rights to due process and equal protection under the law so as to justify relief in the form of injunctive orders directed at the individual members of the Franchise Tax Board and the State Board of Equalization which would preclude the Franchise Tax Board and the State Board of Equalization from taking any further actions with respect to Mr. Hyatt's appeals of the Franchise Tax Board assessments for 1991 and 1992.

Years: 1991 and 1992 Amount: N/A, Seeks Injunctive Relief

Status: The Complaint in this action was filed on behalf of Mr. Hyatt on April 4, 2014. Service of Process upon the respective individual members of the Franchise Tax Board and the State Board of Equalization was effected in accordance with Rule 4 of the Federal Rules of Civil Procedure. Responsive pleadings are to be filed on behalf of the individual Board members on or before June 20, 2014. On June 9, 2014, the Court approved a Stipulated Proposed Order and Briefing schedule. In accordance with the Stipulation, the Court Ordered that anticipated Motions to Dismiss by individual Defendants were to be filed no later than June 20, 2014. Opposition(s) to the Motions are to be filed no later than July 25, 2014. Replies to the Opposition(s) are to be filed no later than August 25, 2014. A Hearing on Motions to Dismiss is scheduled to occur on September 22, 2014. The Case Management Conference previously scheduled for July 21, 2014, has been continued to October 24, 2014. On June 20, 2014, Motions to Dismiss were filed on behalf of all Defendants. On July 18, 2014, a Stipulation and Proposed Order for Briefing and Hearing schedules regarding the Motions to Dismiss filed on behalf of Defendants and initial Case Management Conference by Plaintiff were submitted. On July 21, 2014, a Stipulation and Order was signed by Judge Burrell ordering Plaintiff to file briefs in opposition to the pending Motions to Dismiss by August 25, 2014. The Judge also ordered that Defendants' Reply Briefs in support of their motions be filed no later than October 3, 2014. The motions are now scheduled for hearing on November 3, 2014. The initial Case Management Conference is rescheduled for January 26, 2015. On August 25, 2014, Plaintiff filed his Oppositions to the Motions to Dismiss, together with pleadings in support thereof. On October 3, 2014, Defendants' Replies to Plaintiff's Opposition to the Motions to Dismiss were filed. On October 28, 2014 the Court issued a Minute Order directing that the Motions to Dismiss were being taken under submission without Oral Argument and that the Hearing scheduled for November 3, 2014, was being taken off calendar. On December 3, 2014, Plaintiff submitted to the Court a post-briefing summary of portions of the September 18, 2014, advanced opinion issued by the Nevada Supreme Court in the case of Hyatt v. Franchise Tax Board. On December 4, 2014, FTB filed an Objection to the post-briefing filing submitted by Plaintiff. On January 8, 2015, a Joint Request was filed to continue Case Management Conference. On January 13, 2015, a Minute Order was issued resetting the pretrial scheduling conference from January 26, 2015, to April 6, 2015. **On February 10, 2015, an Order Granting Defendants' Motions to Dismiss for Lack of Jurisdiction was filed.**

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| **HYATT, GILBERT P. v. Franchise Tax Board** | Filed – 1/06/98 |
| Clark County Nevada District Court Case No. A382999 | |
| Nevada Supreme Court Case No. 47141 | |
| Nevada Supreme Court Case No. 53264 | |
| *Taxpayer's Counsel* | *FTB's Counsel* |
| Thomas L. Steffen & Mark A. Hutchison | James W. Bradshaw |
| Hutchison &Steffen, H Barrow Farr III | McDonald Carano, Wilson, LLP |
| | *FTB's Contact* |
| | Scott DePeel |

Issues: 1. Whether the judgment issued by the (Nevada) Clark County District Court in favor of Gilbert Hyatt against FTB, including the award of $250,000,000 in punitive damages was proper.

Years: N/A

Amount: Approx. $500,000,000
Emotional Distress
Punitive Damages
Prejudgment Interest
Attorney's Fees

Status: **Nevada Supreme Court:** On June 1, 2010, FTB submitted Appellant's Reply Brief and Cross-Respondent's Answering Brief in the Nevada Supreme Court. On June 8, 2010, FTB submitted Appellant's Supplemental Opening Brief Regarding Costs, also in the Nevada Supreme Court. On September 13, 2010, Hyatt filed and served a Supplemental Answering Brief (regarding the award of his costs). FTB filed a Supplemental Reply Brief (regarding Hyatt's costs). On August 24, 2010, FTB filed an Opposition to a motion filed on behalf of Mr. Hyatt which sought leave to file a Sur-Reply to FTB's Brief. On October 4, 2010, after reviewing the Motion and Opposition, Justice Hardesty denied Hyatt's motion and directed the clerk of the court to return, unfiled, the proposed Sur-Reply submitted by Mr. Hyatt on August 13, 2010, and to strike the appendix to the Sur-Reply filed on August 16, 2010. On September 13, 2010, Hyatt filed a Supplemental Answering Brief Regarding Costs. On October 12, 2010, FTB filed a Supplemental Reply Brief regarding Costs. On January 20, 2011, FTB noticed and filed Respondent's embedded Answering and Opening Cross- Appeal Brief, Reply Cross-Appeal Brief, and Supplemental Answering Brief Regarding Costs in electronic form. On February 4, 2011, Hyatt filed a Notice of Submission of Hyatt's Embedded (i) Answering Brief and Opening Cross Appeal Brief; (ii) Reply Brief on

Cross Appeal; and (iii) Answering Brief on Cost Appeal which was filed with the Nevada Supreme Court. Oral Argument was held on May 7, 2012, and on May 14, 2012, the Nevada Supreme Court issued an Order scheduling additional Oral Argument to be heard on June 18, 2012. The additional Oral Argument was presented. On September 18, 2014, the Nevada Supreme Court reversed and dismissed the $250 million punitive damage award based upon principles of comity. The Court reversed and dismissed the $52 million invasion of privacy compensatory damage award based upon state law grounds. The Court upheld the liability determination under the intentional infliction of emotional distress claim, but reversed and remanded for new trial the $85 million emotional distress verdict. The Court upheld the fraud verdict and the resultant $1.08 million compensatory damage award. The Court reversed and remanded the cost and pre-judgment interest awards of $2.5 million. The Court upheld the district court's dismissal of Hyatt's cross-appeal claim for economic damages based upon lack of evidence. On October 6, 2014, both Parties filed Petitions for Rehearing with the Nevada Supreme Court. As directed by the Nevada Supreme Court, on October 22, 2014, both Parties filed Answers to the Petition for Rehearing filed by the other Party. On November 25, 2014, the Nevada Supreme Court issued an Order Denying Both Petitions for Rehearing. On December 15, 2014, a Motion to Stay Remittitur Pending Application to U.S. Supreme Court for a Writ of Certiorari, or to Enlarge Time for Issuance of Remittitur ( Remittitur to otherwise Issue on December 22, 2014), was filed by FTB. On January 13, 2015, the United States Supreme Court granted FTB an extension of time within which to file a Petition for a Writ of Certiorari to and including March 23, 2015.

**JONES APPAREL GROUP, INC. & SUBSIDIARIES v. Franchise Tax Board**
San Francisco Superior Court Case No. CGC-10-499083 Filed - 04/26/10

*Taxpayer's Counsel*
Amy L. Silverstein, Esq.
Edwin Antolin, Esq.
Johanna W. Roberts, Esq
Silverstein & Pomerantz, LLP

*FTB's Counsel*
Jill Bowers
*FTB's Contact*
Jeffrey I. Margolis

Issues:
1. Whether California's Amendment of RTC 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
2. Whether California's denial of Plaintiff's claim for refund, premised upon the claim that the 1993 amendment to RTC 25128 is precluded by California's participation in the Multistate Tax Compact, violates the Constitution of the United States of America and the State of California.

Years: 12/31/01 through 12/31/03 Amount: $755,730.00 Tax

Status: Franchise Tax Board Summons and Complaint served on April 27, 2010. Please see summary for the Gillette Company & Subsidiaries v. Franchise Tax Board. On June 10, 2010, the Court ordered this case consolidated with The Gillette Company &

Subsidiaries v. Franchise Tax Board, San Francisco County Superior Court Case No. CGC-10-495911. Please refer to status summary for The Gillette Company & Subsidiaries v. Franchise Tax Board.

**KIMBERLY-CLARK WORLD WIDE, INC. & SUBSIDIARIES v. Franchise Tax Board**
San Francisco Superior Court Case No. CGC-10-495916 Filed - 01/11/10

*Taxpayer's Counsel*
Amy L. Silverstein, Esq.
Edwin Antolin, Esq.
Johanna W. Roberts, Esq.
Silverstein & Pomerantz, LLP

*FTB's Counsel*
Lucy Wang
*FTB's Contact*
Jeffrey I. Margolis

Issues: 1. Whether California's Amendment of Rev. & Tax. Code § 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
2. Whether California's denial of Plaintiff's claim for refund, premised upon the Claim that the 1993 amendment to Rev. & Tax. Code § 25128 is precluded by California's participation in the Multistate Tax Compact, violates the U.S. Constitution and the California Constitution.

Years: 1993 through 2004 Amount: $14,317,394.00 Tax

Status: On June 10, 2010, the Court ordered this case consolidated with The Gillette Company & Subsidiaries v. Franchise Tax Board, San Francisco County Superior Court Case No.CGC-10-495911. Please refer to status summary for The Gillette Company & Subsidiaries v. Franchise Tax Board.

**MARTIN A. LOGIES v. Franchise Tax Board**
Alameda County Superior Court Case No.RG11603896 Filed - 07/01/11

*Taxpayer's Counsel*
Bradley A. Bening, Esq.
Willoughby, Stuart & Bening

*FTB's Counsel*
Marguerite Stricklin
*FTB's Contact*
Craig Scott

Issues: 1. Whether Plaintiff is entitled to cancellation of the Preparer penalties.
2. Whether Plaintiff is entitled to a refund of the $21,112.50 that he has paid to date.

Years: 1997-2001 Amount: $21,112.50 Penalty

Status: On June 23, 2011, the Summons and Complaint were filed. On August 4, 2011, the Santa Clara County Superior Court approved a Stipulation and Order transferring the

case to Alameda County. On October 13, 2011, an Order was issued transferring the case to Oakland, Alameda County. On November 7, 2011, the case was transferred to Oakland, Alameda County. Notice of Receipt of Transfer was filed on November 8, 2011.

**MEDNAX SERVICES INC. v. Franchise Tax Board** Filed - 05/14/14
San Francisco County Superior Court Case No.CGC-14-539294

*Taxpayer's Counsel*
Andres Vallejo
Peter Kanter
Lisa Ma
Morrison & Foerster, LLP

*FTB's Counsel*
AnneMichelle Burr

*FTB's Contact*
Laurie McElhatton

Issues:
1. Whether FTB's determination that Mednax Services and other entities should have filed combined Income tax reports for the years at issue pursuant to RTC 25102 was proper.
2. Whether FTB's determination that Mednax Services and other entities should have filed combined income tax reports for the years at issue pursuant to RTC 25102, is precluded by RTC section 25105.
3. Whether FTB's determination that Mednax Services and other entities should have filed combined income tax reports for the years at issue pursuant to RTC section 25102 constitutes violations of the equal protection and due process clauses of the constitution of the United States and the State of California.
4. Whether FTB's assessment of a large corporate understatement of tax penalty for tax year 2006 was appropriate.
5. Whether Mednax is entitled to an award of attorneys' fees.

Years: 2004, 2005, 2006

Amount: 2004: $699,406.57
2005:$1,268,211.97
2006: $1,976,040.99

Status: Summons & Complaint for Refund of Personal Income Taxes filed May 14, 2014. Summons & Complaint for Refund of Personal Income Taxes served on FTB on July 11, 2014. Case Management Conference is set for October 15, 2014. On August 7, 2014, FTB's Answer to Verified Complaint for Refund of Corporation Tax was filed. On September 25, 2014, a Case Management Statement was filed. On October 17, 2014, a Notice of Time and Place of Trial was filed. Court has scheduled Trial to commence on October 19, 2015.

**VICTOR & CANDACE OWEN v. Franchise Tax Board** Filed - 06/10/14
San Francisco County Superior Court Case No.CGC-14-539783

*Taxpayer's Counsel*
C. Alex Naegele
C. Alex Naegele a Professional Law Corporation

*FTB's Counsel*
Karen Yiu

*FTB's Contact*
Ann Hodges

Issue: 1. Whether taxpayers are entitled to a tax refund for the years 2007 and 2008 due to their revised treatment of research and development expenses on amended tax returns for 2007 and 2008.

Years: 2007, 2008

Amount: 2007: $25,925.00
2008: $28,871.00

Status: Summons and Complaint served on FTB on June 26, 2014. Case Management Conference is scheduled for November 12, 2014. On August 11, 2014, FTB's Answer to the Complaint was filed. On September 23, 2014, a Stipulation to Stay Action Pending Resolution of Related Federal Matter was filed. On October 16, 2014, an Order Granting FTB's Ex Parte Application for Stay of This Action Pending Resolution of a Related Federal Matter, Pursuant to Parties' Stipulation was filed. On October 17, 2014, Notice of Entry of Order Granting Ex Parte Application for Stay of Action Pending Resolution of a Related Federal Matter was filed. On October 30, 2014, the Case Management Conference scheduled for November 12, 2014, was continued until May 13, 2015.

**THE PROCTER & GAMBLE MANUFACTURING CO. & AFFILIATES v. Franchise Tax Board**
San Francisco Superior Court Case No. CGC-10-495912 Filed - 1/11/10

*Taxpayer's Counsel*
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*FTB's Counsel*
Lucy Wang

*FTB Contact*
Jeffrey I. Margolis

Issues: 1. Whether California's Amendment of Rev. & Tax. Code § 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
2. Whether California's denial of Plaintiff's claim for refund, premised upon the claim that the 1993 amendment to Rev. & Tax. Code § 25128 is precluded by

California's participation in the Multistate Tax Compact, violates the U.S. Constitution and the California Constitution.

Years: 06/30/99 through 06/30/05 Amount: $11,837,747.00 Tax

Status: On June 10, 2010, the Court ordered this case consolidated with The Gillette Company & Subsidiaries v. Franchise Tax Board, San Francisco County Superior Court Case No. CGC-10-495911. Please refer to the status summary for The Gillette Company & Subsidiaries v. Franchise Tax Board.

**RB HOLDINGS (USA) INC. & SUBSIDIRIES v. Franchise Tax Board**
San Francisco Superior Court Case No. CGC-10-496438 Filed - 01/29/10

*Taxpayer's Counsel*
Amy L. Silverstein, Esq.
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Johanna W. Roberts, Esq.
Silverstein & Pomerantz, LLP

*FTB's Counsel*
Lucy Wang
*FTB's Contact*
Jeffrey I. Margolis

Issues: 1. Whether California's Amendment of Rev. & Tax. Code § 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
2. Whether California's denial of Plaintiff's claim for refund, premised upon the Claim that the 1993 amendment to Rev. & Tax. Code § 25128 is precluded by California's participation in the Multistate Tax Compact, violates the U.S. Constitution and the California Constitution.

Years: 2002 through 2004 Amount: $145,240.00 Tax

Status: On June 10, 2010, the Court ordered this case consolidated with The Gillette Company & Subsidiaries v. Franchise Tax Board, San Francisco County Superior Court Case No. CGC-10-495911. Please refer to the status summary for The Gillette Company & Subsidiaries v. Franchise Tax Board.

**SIGMA-ALDRICH, CORP. & SUBSIDIARIES v. Franchise Tax Board**
San Francisco Superior Court Case No. CGC-10-496437 Filed - 01/29/10

*Taxpayer's Counsel*
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*FTB's Counsel*
Lucy Wang
*FTB's Contact*
Jeffrey I. Margolis

Issues: 1. Whether California's Amendment of Rev. & Tax. Code § 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
2. Whether California's denial of Plaintiff's claim for refund, premised upon the Claim that the 1993 amendment to Rev. & Tax. Code § 25128 is precluded by

California's participation in the Multistate Tax Compact, violates the U.S. Constitution and the California Constitution.

Years: 1998 through 2004 Amount: $1,607,168 Tax

Status: On June 10, 2010, the Court ordered this case consolidated with The Gillette Company& Subsidiaries v. Franchise Tax Board, San Francisco County Superior Court Case No. CGC-10-495911. Please refer to the status summary for The Gillette Company Subsidiaries v. Franchise Tax Board.

**SWART ENTERPRISES v. Franchise Tax Board** Filed - 07/09/13
Fresno County Superior Court Case No. 13CECG02171

| *Taxpayer's Counsel* | *FTB's Counsel* |
|---|---|
| Amy L. Silverstein, Esq. | Jane O'Donnell |
| Edwin Antolin, Esq. | *FTB's Contact* |
| Johanna W. Roberts, Esq. | Suzanne Small |
| Silverstein & Pomerantz, LLP | Melissa Williams |

Issues: 1. Whether Plaintiff had sufficient nexus with the State of California during 2009 so as to be subject to the provisions of Revenue and Taxation Code 23153.
2. Whether the provisions of Revenue and Taxation Code section 23153 violate the Constitutions of the United States of America and/or the State of California.
3. Whether Plaintiff's investment activities during 2009 constitute doing business within the State of California.
4. Whether Plaintiff is entitled to an award of Attorneys' Fees.

Years: 2009 Amount: $1,106.71 Tax

Status: Summons and Complaint was filed on July 9, 2013. A Case Management Conference set for November 12, 2013. FTB filed its Answer to Complaint on August 16, 2013**.** A Case Management Conference is scheduled to occur on November 12, 2013. On November 8, 2013, Defendant's First Set of Interrogatories was served on Swart Enterprises. On November 7, 2013, a Case Management Conference was held. Trial is scheduled to commence on March 4, 2015. The Trial Readiness Conference is scheduled to occur on February 27, 2015, and a Mandatory Settlement Conference is scheduled for February 3, 2015. On December 4, 2013, a Stipulation and Order were filed excusing the parties from compliance with the requirement that they participate in Alternative Dispute Resolution prior to Trial. On January 15, 2014, an Order to Show Cause regarding the Alternative Dispute Resolution scheduled for January 16, 2014, was ordered off calendar. On February 18, 2014, Plaintiff's Responses and Objections to the First Set of Requests for Production of Documents by FTB were served. On February 18, 2014, Plaintiff's Responses and Objections to the First Set of

Interrogatories propounded by FTB were served. On April 24, 2014, FTB s Responses to Plaintiff's First Set of Requests propounded by Swart Enterprises were served. On April 24, 2014, FTB's Responses to Plaintiff's First Set of Special Interrogatories propounded by Swart Enterprises were served. Plaintiff's Second Set of Special Interrogatories to Defendant FTB were propounded on May 22, 2014. Plaintiff's First Set of Requests for Admission to FTB were propounded on May 22, 2014. On June 20, 2014, FTB's Notice of Hearing on Motion for Summary Judgment was filed. On June 20, 2014, FTB's Separate Statement of Undisputed facts was filed. On June 20, 2014, FTB's Memorandum of Points and Authorities in Support of Motion for Summary Judgment was filed. The Declaration of Bryan R. Mamuzich in Support of FTB's Motion for Summary Judgment was filed. Plaintiff's Notice of Motion and Motion for Summary Judgment was filed on June 25, 2014. On June 25, 2014, Plaintiff's Request for Judicial Notice, Motion and Memorandum in Support of Motion for Summary Judgment were filed. Plaintiff's Separate Statement of Undisputed Material Facts in Support of Motion for Summary Judgment was filed June 25, 2014. On June 20, 2014, the Declaration of Cliff Swart in Support of Plaintiff's Motion for Summary Judgment was filed. A Hearing on the Cross-Motions is scheduled to occur on September 9, 2014. On August 26, 2014, Plaintiff/Defendant filed its pleadings in Opposition to the Motion for Summary Judgment filed by both Defendant/Plaintiff. On September 4, 2014, FTB filed an Opposition to Plaintiff's Motion for Summary Judgment along with pleadings in support thereof. On September 5, 2014, Plaintiff filed a Supplemental index of Non-California Authorities cited in Plaintiff's Memorandum of Points and Authorities. On September 9, 2014, the Court ordered hearing on the Cross Motions for Summary Judgment to be continued from September 9, 2014 to November 13, 2014. A Case Management Conference to be held on November 13, 2014. On November 4, 2014, a Reply Memorandum of Points and Authorities in Support of Plaintiff's Motion for Summary Judgment was filed. On November 13, 2014, a Tentative Ruling was issued by the Court granting Swart's Motion for Summary Judgment and Denying the Motion for Summary Judgment filed by FTB. On November 14, 2014, the Court affirmed its Tentative Ruling of November 13, 2014. On November 25, 2014, a Notice of Entry of Judgment was filed. On January 16, 2015, a Notice of Appeal to the Fifth District Court of Appeal was filed on behalf of FTB. On January 22, 2015, Plaintiff filed an Ex-Parte Application for Extension of Time within which to file a Motion for Attorney Fees, together with pleadings in support thereof. On January 22, 2015, FTB filed its Opposition to Plaintiff’s Ex-Parte Application to Extend Time to file its Attorney Fees Motion. On January 22, 2015, the Court issued a Minute Order granting Plaintiff's Motion to Extend the Time within which it must file its Motion to recover Attorneys Fee until such time as the pending appeal is resolved. On January 15, 2015, a Notice of Appeal was filed by Plaintiff.