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9 UNITED STATES DISTRICT COURT  
 10 EASTERN DISTRICT OF CALIFORNIA  
 11

12 CIGARETTES CHEAPER!, a California  
 13 corporation, and THE CUSTOMER  
 COMPANY, a California corporation,  
 14  
 15 Petitioners,  
 16  
 17 vs.  
 18 STATE BOARD OF EQUALIZATION, an  
 agency of the State of California, ALTRIA  
 GROUP, INC., a Virginia corporation, PHILIP  
 19 MORRIS, USA, and COSTCO WAREHOUSE  
 CORPORATION, a Washington corporation,  
 20  
 21 Respondents.

Case No. 2:11-CV-00631-JAM-EFB  
**ORDER GRANTING THE CALIFORNIA  
 STATE BOARD OF EQUALIZATION'S  
 MOTION TO DISMISS**  
 Hearing Date: June 15, 2011  
 Time: 9:30 a.m.  
 Courtroom: 6  
 Action Filed: January 18, 2011

22 On June 15, 2011, the Motion to Dismiss pursuant to Federal Rules of Civil Procedure,  
 23 Rules 12(b)(1) and 12(b)(6), brought by the California State Board of Equalization ("SBE") in the  
 24 above-entitled action was heard and considered by the Honorable John A. Mendez in Courtroom  
 25 6 of the above-entitled court. Jane O'Donnell of the Office of the Attorney General of the State  
 26 of California appeared on behalf of moving party, the SBE. William S. Bernheim of Bernheim,  
 27 Gutierrez & McCready appeared on behalf of the Petitioners. Also appearing were Ann Marie  
 28 Mortimer of Hunton & Williams LLP on behalf of respondent/defendant Philip Morris USA, Inc.

1 and Daveed Ari Schwartz of Locke Lord Bissell & Liddell LLP on behalf of  
2 respondent/defendant Costco Wholesale Corporation.

3 The Court having considered the moving and reply papers submitted by the SBE and the  
4 opposition papers submitted by the Petitioners, and having heard the oral argument presented at  
5 the time of the hearing, and good cause appearing,

6 IT IS HEREBY ORDERED AND ADJUDGED:

7 1. That the Motion to Dismiss brought by the SBE is GRANTED on each of the  
8 grounds set forth in the Motion to Dismiss, *to wit*,

9 A. The SBE is immune from suit in federal court under the 11th Amendment of  
10 the United States Constitution;

11 B. The Federal Tax Injunction Act independently bars jurisdiction in federal  
12 court;

13 C. The Court declines jurisdiction under the principle of comity; and

14 D. The claims asserted in Petitioners' lawsuit are barred by the doctrine of *res*  
15 *judicata* based on the Sacramento County Superior Court rulings in Case Nos.  
16 34-2008-80000129-CU-WM-GDS (*Cigarettes Cheaper! v. SBE*) and  
17 34-2009-80000139-CU-WM-GDS (*The Customer Company v. SBE*).

18 2. The Court finds that any amendment would be futile and therefore  
19 denies Petitioners leave to amend.

20 IT IS SO ORDERED.

21 DATED: June 21, 2011

/s/ John A. Mendez  
The Honorable John A. Mendez  
United States District Court Judge

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23  
24 Approved as to Form:

25 Bernheim, Gutierrez & McCready

26  
27 By: \_\_\_\_\_  
William S. Bernheim