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CITY OF SANTA CRUZ and  
14 ELIZABETH CABELL

**EXEMPT FROM FILING FEES  
GOV. CODE § 6103**

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **SACRAMENTO COUNTY**

18 CALIFORNIA GROCERS ASSOCIATION;  
19 CALIFORNIA HISPANIC CHAMBERS OF  
20 COMMERCE; CALIFORNIA ALLIANCE  
OF FAMILY-OWNED BUSINESSES;  
21 CALIFORNIA CHAMBER OF  
COMMERCE; AMERICAN BEVERAGE  
22 ASSOCIATION; and CALIFORNIA  
FUELS AND CONVENIENCE  
23 ALLIANCE,

Petitioners and Plaintiffs,  
v.

25 CITY OF SANTA CRUZ; ELIZABETH  
26 CABELL, in her capacity as City of Santa  
Cruz Finance Director, and DOES 1 through  
20, inclusive,  
27 Respondents and Defendants.

**Case No. 25WM000095**

**ANSWER OF RESPONDENTS AND  
DEFENDANTS CITY OF SANTA CRUZ AND  
ELIZABETH CABELL TO THE VERIFIED  
PETITION FOR WRIT OF MANDATE AND  
COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

Action Filed: March 29, 2025

Assigned for All Purposes to Judge Stephen P.  
Acquisto, Department 36

1 Respondents and Defendants CITY OF SANTA CRUZ (“the City”) and ELIZABETH CABELL  
2 (“the Finance Director”) (collectively “Respondents”) answer the “Verified Petition for Writ of Mandate  
3 and Complaint for Declaratory and Injunctive Relief” (“the Petition”) filed by the Petitioners and  
4 Plaintiffs CALIFORNIA GROCERS ASSOCIATION, CALIFORNIA HISPANIC CHAMBERS OF  
5 COMMERCE, CALIFORNIA ALLIANCE OF FAMILY-OWNED BUSINESSES, CALIFORNIA  
6 CHAMBER OF COMMERCE, AMERICAN BEVERAGE ASSOCIATION, and CALIFORNIA  
7 FUELS AND CONVENIENCE ALLIANCE (“Petitioner” individually or “Petitioners” jointly) as  
8 follows:

9 1. Answering paragraph 1 of the Petition, Respondents deny the material allegations in  
10 paragraph 1 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
11 or deny the truth of the material allegations.

12 2. Answering paragraph 2 of the Petition, Respondents deny the material allegations in  
13 paragraph 2 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
14 or deny the truth of the material allegations.

15 3. Answering paragraph 3 of the Petition, Respondents deny the material allegations in  
16 paragraph 3 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
17 or deny the truth of the material allegations.

18 4. Answering paragraph 4 of the Petition, Respondents deny the material allegations in  
19 paragraph 4 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
20 or deny the truth of the material allegations.

21 5. Answering paragraph 5 of the Petition, Respondents deny the material allegations in  
22 paragraph 5 of the Petition.

23 6. Answering paragraph 6 of the Petition, Respondents admit that Chapter 1.8 of Part 1.7 of  
24 Division 2 of the Revenue and Taxation Code (sections 7284.8 to 7284.16) is titled “the Keep Groceries  
25 Affordable Act of 2018” and that section 7284.9 of Revenue and Taxation Code states:

26 The Legislature finds and declares all of the following:

27 (a) It is the intent of the Legislature to regulate the imposition and collection of  
28 taxes and other charges on groceries comprehensively and to occupy the field to  
the exclusion of local action except as specifically provided in this chapter.

1 (b) That the promotion of uniformity in the taxation of groceries is a matter of  
2 statewide concern and, therefore, is not a municipal affair as that term is used in  
3 Section 5 of Article XI of the California Constitution.

3 Respondents further admit that section 7284.12, subdivision (a), of Revenue and Taxation Code states:

4 Notwithstanding any other law, and except as provided in this section, on or after  
5 the effective date of this chapter, a local agency shall not impose, increase, levy  
6 and collect, or enforce any tax, fee, or other assessment on groceries.

6 Respondents further admit that the term “groceries” for the purposes of the Keep Groceries Affordable  
7 Act of 2018 is defined in Revenue and Taxation Code section 7248.10, which states:

8 (e) (1) “Groceries” means any raw or processed food or beverage including its  
9 packaging, wrapper, or container, or any ingredient thereof, intended for human  
10 consumption, including, but is not limited to, meat, poultry, fish, fruits,  
11 vegetables, grains, bread, milk, cheese and other dairy products, carbonated and  
12 noncarbonated nonalcoholic beverages, kombucha with less than 0.5 percent  
13 alcohol by volume, condiments, spices, cereals, seasonings, leavening agents,  
14 eggs, cocoa, teas, and coffees whether raw or processed, including its packaging,  
15 wrapper, or container.

12 (2) “Groceries” does not include alcoholic beverages, cannabis products,  
13 cigarettes, tobacco products, and electronic cigarettes.

14 Except as expressly admitted, Respondents deny the material allegations in paragraph 6 of the Petition.

15 7. Answering paragraph 7 of the Petition, Respondents admit that on June 25, 2024 the City  
16 Council of the City of Santa Cruz passed Resolution No. NS-30,360 which put a measure, later  
17 identified as “Measure Z,” on the ballot for the November 5, 2024 general election for a proposed tax on  
18 the distribution of sugar-sweetened beverages into the City. Respondents admit that during the June 25,  
19 2024 City Council meeting Councilmember Martine Watkins said:

20 I think Councilmember Brown is the only one who was on the council with me,  
21 although I know some staff was also involved, but in 2018, we were planning to  
22 bring this item to our voters. Unfortunately, what we saw was the industry  
23 basically strong-arming our legislation, our legislators, to pass the Keep Groceries  
24 Affordable Act, which essentially stopped our ability to move forward without  
25 major penalty. And myself and others have been involved in challenging that  
26 penalty provision, and we were successful, thankfully, because we disagree with  
27 the law. And it’s unconstitutional. And one of the things that I love about being in  
28 local government is our ability to design policies for our local community. And  
29 that is part of the U -- the California State Constitution to allow charter cities to  
30 do that, and this undermined our ability to do that, and now with that gone, we are  
31 able to pursue this at this time.

27 Councilmember Watkins further stated:

28 I just want to briefly say I know that there were comments about the state law.  
Well, I’ll just say, as the plaintiff, I believe that’s unconstitutional, and we won in

1 the penalty provision, and we believe we will win again. So that just sort of  
2 summarizes my position on that, and I know that a number of folks have been  
tracking that as well.

3 Assistant City Attorney Cassie Bronson said at the same meeting when asked about anticipated legal  
4 costs:

5 [I]t is true that the court in the *Cultiva La Salud* case, which Councilmember  
6 Watkins addressed earlier, they only addressed the legality of the Keep Grocery  
7 Affordable Act's penalty provision, and that court did not address the threshold  
8 question of whether or not state law preempts charter cities like the City of Santa  
9 Cruz from enacting local taxes on groceries, including sugar-sweetened  
10 beverages. So, in light of that ambiguity, it is anticipated that there could be a  
11 legal action against the City if this matter were to be passed by the voters. With  
12 that said, a number of cases have upheld a charter city's right to tax in a variety of  
13 different circumstances. I can rattle off a number of case names, *Ex Parte Braun*,  
*In Re Galusha*, *City of Los Angeles v. the AEC of Los Angeles*, *Weekes v. City of*  
*Oakland*, *Fisher v. County of Alameda*, and there's a 2019 Supreme Court case  
called *City and County of San Francisco v. Regents of the University of*  
*California*, which sort of summed up and said that the home rule authority  
includes the power to tax for local purposes and that the power to tax is the  
lifeblood of the charter city. So, there is a law that would support the City's  
position. I could not guarantee success in that type of legal action, but it is  
anticipated that there could be a legal action against the City.

14 Except as expressly admitted, Respondents deny the material allegations in paragraph 7 of the Petition.

15 8. Answering paragraph 8 of the Petition, Respondents admit that the Agenda Report by the  
16 City Council Sugar-Sweetened Beverage Ad Hoc Committee, addressing agenda item #41 of the June  
17 25, 2025 City Council Meeting, includes the following statement:

18 The goal of this measure is to improve community health and support investments  
19 that advance community health and wellness in the City of Santa Cruz. Future  
20 proceeds from this general tax would support the City's ability to maintain  
funding for community-based and safety net services.

21 Respondents further admit that page 41.6 of the Agenda Report contains the following paragraph:

22 FISCAL IMPACT: Voter approval of the proposed revenue tax ballot measure  
23 could generate up to \$1.3 million in additional general revenue in the first full  
24 year for the City to support essential investments in community well-being,  
through its vital parks, beaches, opens space, providing recreational, wellness and  
community programs for youth and seniors, and address public safety. The  
25 Finance Department estimated this amount based on the City of Berkeley  
numbers adjusted for population size (we are 55% of Berkeley's population) and  
26 assumed a collection rate of 75% of what Berkeley collected. However, future  
annual tax receipts are likely to decline to a new lower base as businesses and  
27 consumers change purchasing and consumption behavior over time.

28 Respondents admit that the draft ordinance included the following statement:

1 The purpose of this chapter is to impose a general excise tax on the Distribution  
2 of Sugar Sweetened Beverage Products to raise funds for unrestricted general  
3 revenue purposes, including, but not limited to, promoting community health &  
4 wellness, and sustaining vital City services. The excise tax imposed by this  
5 chapter is also expected to lead to decreased consumption of sugary beverages in  
6 the City of Santa Cruz, which is anticipated to have a positive impact on health  
7 and wellness in the City of Santa Cruz, given that sugary drinks are linked to  
8 various health conditions, including type 2 diabetes, adult obesity, childhood  
9 obesity, heart disease, liver disease, and metabolic disorder.

6 Except as expressly admitted, Respondents deny the material allegations in paragraph 8 of the Petition.

7 9. Answering paragraph 9 of the Petition, Respondents admits that Exhibit 11 attached to  
8 the Petition contains copies of pages from the November 5, 2024 general election ballot pamphlet  
9 pertaining to City of Santa Cruz Measure Z “City of Santa Cruz Sugar-Sweetened Beverage Tax.”  
10 Respondents also admit that Measure Z was approved by voters in the November 5, 2024 general  
11 election by a vote of 15,780 for the measure and 14,364 against. Except as expressly admitted,  
12 Petitioners deny the material allegations in paragraph 9 of the Petition.

13 10. Respondents deny the material allegations in paragraph 10 of the Petition.

14 11. Answering paragraph 11 of the Petition, Respondents admit that the City of Santa Cruz is  
15 a charter city. Except as expressly admitted, Petitioners deny the material allegations in paragraph 11 of  
16 the Petition.

17 12. Answering paragraph 12 of the Petition, Respondents deny the material allegations in  
18 paragraph 12 of the Petition.

19 13. Answering paragraph 13 of the Petition, Respondents deny the allegations that  
20 “[m]illions of Californians struggle to afford their groceries” and that “California allocates billions of  
21 dollars annually to make those groceries less expensive” on the grounds that they lack sufficient  
22 knowledge and information to admit or deny the truth of these allegations. Respondents admit that  
23 section 6359 of the Revenue and Taxation Code which relates to the State’s sales and use tax states in  
24 full:

25 (a) There are exempted from the taxes imposed by this part the gross receipts from  
26 the sale of, and the storage, use, or other consumption in this state of, food products  
for human consumption.

27 (b) For the purposes of this section, “food products” includes all of the following:

28 (1) Cereals and cereal products, oleomargarine, meat and meat products, fish  
and fish products, eggs and egg products, vegetables and vegetable products,

1 fruit and fruit products, spices and salt, sugar and sugar products, candy, gum,  
2 confectionery, coffee and coffee substitutes, tea, and cocoa and cocoa  
products.

3 (2) Milk and milk products, milkshakes, malted milks, and any other similar  
4 type beverages that are composed at least in part of milk or a milk product and  
that require the use of milk or a milk product in their preparation.

5 (3) All fruit juices, vegetable juices, and other beverages, whether liquid or  
6 frozen, including bottled water, but excluding spirituous, malt, or vinous  
liquors or carbonated beverages.

7 (c) For purposes of this section, “food products” does not include any of the  
8 following:

9 (1) Medicines, including medicinal cannabis or medicinal cannabis products,  
10 as defined in Division 10 (commencing with Section 26000) of the Business  
and Professions Code, and preparations in liquid, powdered, granular, tablet,  
capsule, lozenge, and pill form sold as dietary supplements or adjuncts.

11 (2) Cannabis, as defined in Section 11018 of the Health and Safety Code, and  
12 cannabis products, as defined in Section 11018.1 of the Health and Safety  
Code.

13 (3) This addition of this subdivision does not constitute a change in, but is  
14 declaratory of, existing law.

15 (d) None of the exemptions in this section apply to any of the following:

16 (1) When the food products are served as meals on or off the premises of the  
retailer.

17 (2) When the food products are furnished, prepared, or served for  
18 consumption at tables, chairs, or counters or from trays, glasses, dishes, or  
other tableware whether provided by the retailer or by a person with whom the  
19 retailer contracts to furnish, prepare, or serve food products to others.

20 (3) When the food products are ordinarily sold for immediate consumption on  
or near a location at which parking facilities are provided primarily for the use  
of patrons in consuming the products purchased at the location, even though  
21 those products are sold on a “take out” or “to go” order and are actually  
packaged or wrapped and taken from the premises of the retailer.

22 (4) When the food products are sold for consumption within a place, the  
23 entrance to which is subject to an admission charge, except for national and  
state parks and monuments, marinas, campgrounds, and recreational vehicle  
24 parks.

25 (5) When the food products are sold through a vending machine.

26 (6) When the food products sold are furnished in a form suitable for  
27 consumption on the seller’s premises, and both of the following apply:

28 (A) Over 80 percent of the seller’s gross receipts are from the sale of  
food products.

1 (B) Over 80 percent of the seller's retail sales of food products are  
2 sales subject to tax pursuant to paragraph (1), (2), (3), or (7).

3 (7) When the food products are sold as hot prepared food products.

4 (e) "Hot prepared food products," for the purposes of paragraph (7) of subdivision  
5 (d), include a combination of hot and cold food items or components where a single  
6 price has been established for the combination and the food products are sold in  
7 combination, such as a hot meal, a hot specialty dish or serving, a hot sandwich, or a  
8 hot pizza, including any cold components or side items. Paragraph (7) of subdivision  
9 (d) does not apply to a sale for a separate price of bakery goods or beverages (other  
10 than bouillon, consommé, or soup), or where the food product is purchased cold or  
11 frozen; "hot prepared food products" means those products, items, or components that  
12 have been prepared for sale in a heated condition and that are sold at any temperature  
13 that is higher than the air temperature of the room or place where they are sold.

14 (f) Notwithstanding paragraph (6) of subdivision (d), if the seller elects to separately  
15 account for sales of food products specified in subdivision (b), then the gross receipts  
16 from the sale of those food products shall be exempt under subdivision (a), provided  
17 that the separate accounting is fully documented in the seller's records. However, if  
18 the seller's records do not reflect the separate accounting of the gross receipts from  
19 sales of nontaxable food products, the seller's election under this subdivision shall be  
20 revoked.

21 Respondents further admit that California Constitution article XIII section 34, added in 1992 by the  
22 initiative measure Proposition 163, provides:

23 Neither the State of California nor any of its political subdivisions shall levy or  
24 collect a sales or use tax on the sale of, or the storage, use or other consumption in  
25 this State of food products for human consumption except as provided by statute  
26 as of the effective date of this section.

27 Except as expressly admitted or expressly denied on the grounds of lack of knowledge and information,  
28 Respondents deny the material allegations in paragraph 13 of the Petition.

29 14. Answering paragraph 14 of the Petition, Respondents deny the material allegations in  
30 paragraph 14 of the Petition.

31 15. Answering paragraph 15 of the Petition, Respondents deny the material allegations in  
32 paragraph 15 of the Petition.

33 16. Answering paragraph 16 of the Petition, Respondents admit that Section 2 of chapter  
34 1265 of Statutes of 1968 states:

35 The legislature finds that the overlapping tax structures of the federal, state and  
36 local governments are seriously hampering the functioning of the State of California. Due  
37 to the high rate of the federal income tax, the state is precluded from making the personal  
38 income tax and bank and corporation taxes its chief sources of revenue, as high state  
taxes, when combined with high federal tax, would make the income and franchise taxes  
prohibitive in this state. Moreover, the state in the past has allowed local governments to

1 make the property tax its chief source of revenue and for the state again to rely on this  
2 source of revenue would cause great consternation among property owners.

3 Therefore, the state must rely on sales and use taxes as its chief source of revenue.

4 In addition, the Legislature is well aware that prior to the enactment of the  
5 Bradley-Burns Uniform Local Sales and Use Tax Law in 1955 the differences in the  
6 amount of sales tax levied among the various communities of the state created a very  
7 difficult situation not only for retailers but also created fiscal problems for the cities and  
8 counties. The retailer was faced with many situations which complicated tax collection,  
9 reporting, auditing and accounting. Because of the differences in taxes between areas, the  
10 retailer was affected competitively. Many areas advertised "no city sales tax if you buy in  
11 this area." This factor distorted what would otherwise have been logical economic  
12 advantages or disadvantages. It is apparent that enactment of the Bradley-Burns Law has  
13 brought about reduced costs to the retailer and has corrected illogical competitive  
14 situations

15 Moreover, the Legislature finds that recent amendments to the state's Sales and  
16 Use Tax Law, which are incorporated into the ordinances of local government operating  
17 under the Bradley-Burns Law, have complicated the administration of sales and use taxes  
18 in such areas as prepayments and the taxing of certain occasional sales and leases. The  
19 increasing complexity of these taxes has made it more and more apparent that a return to  
20 the conflicting systems in existence prior to the adoption of the Bradley-Burns Law  
21 would be disastrous in California today.

22 In the big metropolitan areas where most taxable sales occur, local officials have  
23 shown the most interest in returning to the older system of independent sales and use tax  
24 administration. And it is in these areas that most of the poor and the minority groups are  
25 concentrated, and it is these persons who are least able to pay increased consumer taxes.  
26 In addition, the recent trend of businesses to locate outside of metropolitan areas can only  
27 be accelerated by a system which grants them a competitive advantage by locating in the  
28 suburbs. And the fact should not be overlooked that varying and conflicting sales and tax  
rates will have an adverse effect on the general business climate in California.

Therefore, the Legislature declares that the state, by enactment of the Sales and  
Use Tax Law and the Bradley-Burns Uniform Local Sales and Use Tax Law, has  
preempted this area of taxation.

Except as expressly admitted, Respondents deny the material allegations in paragraph 16 of the Petition.

17. Answering paragraph 17 of the Petition, Respondents deny the material allegations in  
paragraph 17 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
or deny the truth of the material allegations.

18. Answering paragraph 18 of the Petition, Respondents admit that paragraph 18 states that  
"Plaintiffs urge the Court to declare that the Beverage Tax is invalid, issue an injunction prohibiting  
Defendants from implementing or enforcing the Beverage Tax and Measure Z, and issue a writ of  
mandate requiring Defendants to refrain from implementing or enforcing the Beverage Tax and Measure  
Z." Except as expressly admitted, Respondents deny the material allegations in paragraph 18 of the

1 Petition.

2 19. Answering paragraph 19 of the Petition, Respondents deny the material allegations in  
3 paragraph 19 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
4 or deny the truth of the material allegations.

5 20. Answering paragraph 20 of the Petition, Respondents deny the material allegations in  
6 paragraph 20 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
7 or deny the truth of the material allegations.

8 21. Answering paragraph 21 of the Petition, Respondents deny the material allegations in  
9 paragraph 21 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
10 or deny the truth of the material allegations.

11 22. Answering paragraph 22 of the Petition, Respondents deny the material allegations in  
12 paragraph 22 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
13 or deny the truth of the material allegations.

14 23. Answering paragraph 23 of the Petition, Respondents deny the material allegations in  
15 paragraph 23 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
16 or deny the truth of the material allegations.

17 24. Answering paragraph 24 of the Petition, Respondents deny the material allegations in  
18 paragraph 24 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
19 or deny the truth of the material allegations.

20 25. Answering paragraph 25 of the Petition, Respondents admit that the City is a municipal  
21 corporation governed by a charter adopted under sections 3 and 5 of article XI of the California  
22 Constitution. Except as expressly admitted, Respondents deny the material allegations in paragraph 25  
23 of the Petition.

24 26. Answering paragraph 26 of the Petition, Respondents admit that Respondent and  
25 Defendant Elizabeth Cabell is the Director of Finance for the City and that section 3.38.020 of the Santa  
26 Cruz Municipal Code states that “‘Tax administrator’ means the director of finance for the city of Santa  
27 Cruz or a designee of the director of finance.” Respondents further admit that section 3.38.040 of the  
28 Santa Cruz Municipal Code states that “[i]t shall be the duty of the tax administrator to collect and

1 receive all taxes imposed by this chapter, and to keep an accurate record thereof. The tax administrator  
2 is hereby charged with the enforcement of this chapter, except as otherwise provided herein, and may  
3 prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this  
4 chapter.” And Respondents admit that paragraph 26 of the Petition states “Ms. Cabell is sued in her  
5 official capacity only.” Except as expressly admitted, Respondents deny the material allegations in  
6 paragraph 26 of the Petition.

7         27.     Answering paragraph 27 of the Petition, Respondents deny the material allegations in  
8 paragraph 27 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
9 or deny the truth of the material allegations.

10         28.     Answering paragraph 28 of the Petition, Respondents incorporate by reference and  
11 reallege each response to the Petition contained in paragraphs 1 through 27 of this Answer as if that  
12 response were fully set forth in this paragraph.

13         29.     Answering paragraph 29 of the Petition, Respondents admit that California Constitution  
14 article VI, section 10 states that “[t]he ... superior courts... have original jurisdiction in proceedings for  
15 extraordinary relief in the nature of mandamus, certiorari, and prohibition” and that “[s]uperior courts  
16 have original jurisdiction in all other causes.” Except as expressly admitted, Respondents deny the  
17 material allegations in paragraph 29 of the Petition.

18         30.     Answering paragraph 30 of the Petition, Respondents admit that the Petition alleges that  
19 the Affordable Groceries Act of 2018 preempts the Santa Cruz Sugar-Sweetened Beverage Distribution  
20 Tax Ordinance. Respondents further admit that Revenue and Taxation Code section 7284.15 states:

21             (a) A civil action with respect to the application of this chapter to a tax, fee, or  
22             other assessment shall be given preference over all other civil actions before the  
23             court in the matter of setting the same for hearing or trial, and in hearing the same,  
24             to the end that the action shall be speedily heard and determined.

25             (b) Venue for a civil action given preference in subdivision (a) shall be  
26             exclusively in Sacramento County.

27 Except as expressly admitted, Respondents deny the material allegations in paragraph 30 of the Petition.

28         31.     Answering paragraph 31 of the Petition, the Respondents incorporate by reference and  
reallege each response to the Petition contained in paragraphs 1 through 30 of this Answer as if that  
response were fully set forth in this paragraph.

1           32.     Answering paragraph 32 of the Petition, Respondents deny material allegations in  
2 paragraph 32 of the Petition.

3           33.     Answering paragraph 33 of the Petition, Respondents deny the material allegations in  
4 paragraph 33 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
5 or deny the truth of the material allegations.

6           34.     Answering paragraph 34 of the Petition, Respondents deny the material allegations in  
7 paragraph 34 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
8 or deny the truth of the material allegations.

9           35.     Answering paragraph 35 of the Petition, Respondents deny the material allegations in  
10 paragraph 35 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
11 or deny the truth of the material allegations.

12          36.     Answering paragraph 36 of the Petition, Respondents deny the material allegations in  
13 paragraph 36 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
14 or deny the truth of the material allegations.

15          37.     Answering paragraph 37 of the Petition, Respondents deny the material allegations in  
16 paragraph 37 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
17 or deny the truth of the material allegations.

18          38.     Answering paragraph 38 of the Petition, Respondents deny the material allegations in  
19 paragraph 38 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
20 or deny the truth of the material allegations.

21          39.     Answering paragraph 39 of the Petition, Respondents deny the material allegations in  
22 paragraph 39 of the Petition.

23          40.     Answering paragraph 40 of the Petition, Respondents admit that subdivision (a) of  
24 section 6373 of the Revenue and Taxation Code states:

25                 There are exempted from the taxes imposed by this part the gross receipts from  
26                 the sale of, and the storage, use, or other consumption in this state of tangible  
27                 personal property the gross receipts of which are received in the form of CalFresh  
28                 benefits acquired by the purchaser pursuant to the federal Food and Nutrition Act  
                    of 2008 (Chapter 51 (commencing with Section 2011) of Title 7 of the United  
                    States Code), including subsequent amendments thereto.

1 Respondents deny that for almost 50 years California has implemented and administered CalFresh,  
2 under which the State issues billions of dollars of food assistance annually to California residents, and  
3 that in 2023-2024, about 5.3 million Californians received over \$12 billion in benefits under this  
4 program on the grounds that it currently lacks sufficient knowledge and information to admit or deny the  
5 truth of these allegations. Except as expressly admitted, and as expressly denied for lack of sufficient  
6 information or belief, Respondents deny the material allegations in paragraph 40 of the Petition.

7 41. Answering paragraph 41 of the Petition, Respondents deny the material allegations in  
8 paragraph 41 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
9 or deny the truth of the allegations.

10 42. Answering paragraph 42 of the Petition, Respondents deny the material allegations in  
11 paragraph 42 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
12 or deny the truth of the allegations.

13 43. Answering paragraph 43 of the Petition, Respondents admit that Education Code section  
14 49501.5(a)(2)(A) provides:

15 The department shall provide state meal reimbursement to school districts, county  
16 offices of education, and charter schools that participate in, and comply with the  
17 requirements of, the federal School Breakfast Program and National School  
18 Lunch Program, and any applicable state laws and regulations. State meal  
19 reimbursement shall be provided for reduced-price and paid meals served to  
20 pupils, as described in subdivision (b).

21 Respondents further admit that Welfare and Institutions Code section 10203 states in relevant part:

22 (b) To effectuate this transition, effective July 1, 2021, responsibility for the  
23 following programs, responsibilities, services, and systems are hereby transferred  
24 from the State Department of Education and the Superintendent of Public  
25 Instruction to the State Department of Social Services:

26 ...

27 (8) The Child and Adult Care Food Program implemented pursuant to  
28 Section 1766 of Title 42 of the United States Code.

Respondents further admit that Welfare and Institutions Code section 18901.57 provides:

The department, as the lead agency in partnership with the State Department of  
Education, shall maximize participation in the federal Summer Electronic Benefit  
Transfer for Children (Summer EBT) program established pursuant to Section  
1762 of Title 42 of the United States Code.

1 Except as expressly admitted, Respondents deny the material allegations in paragraph 43 of the Petition.

2 44. Answering paragraph 44 of the Petition, Respondents admit that in the Voter Information  
3 Guide for the November 3, 1992 General election, the Analysis by the Legislative Analyst for  
4 Proposition 163 stated that “[s]tate law does not allow the sales tax to be imposed on certain items. The  
5 Tax does not apply, for example, to most food items sold for home consumption.” Except as expressly  
6 admitted, Respondents deny the material allegations in paragraph 44 of the Petition.

7 45. Answering paragraph 45 of the Petition, Respondents admit that in the Voter Information  
8 Guide for the November 3, 1992 General election, the Analysis by the Legislative Analyst for  
9 Proposition 163 stated that “[i]n 1991, however, state law was changed to apply the sales tax to several  
10 food items: candy, 'snack food,' and bottled water.” Respondents further admit that California  
11 Constitution article XIII section 34, added in 1992 by the initiative measure Proposition 163, provides:

12 Neither the State of California nor any of its political subdivisions shall levy or  
13 collect a sales or use tax on the sale of, or the storage, use or other consumption in  
14 this State of food products for human consumption except as provided by statute  
as of the effective date of this section.

15 Except as expressly admitted, Respondents deny the material allegations in paragraph 45 of the Petition.

16 46. Answering paragraph 46 of the Petition, Respondents admit that in the Voter Information  
17 Guide for the November 3, 1992 General election, the Argument for Proposition 163 stated in part:

18 We have a proud tradition in California of not taxing the essentials of life. And  
19 there is nothing more basic than the food and water we consume in order to  
survive.

20 Yet a food tax was passed last year. A sales tax is the most regressive levy that  
21 places the greatest burden on those who can least afford the tax. And an even  
22 worse policy is to place a sales tax on food. This is the first step toward a tax on  
all food products in California.

23 Except as expressly admitted, Respondents deny the material allegations in paragraph 46 of the Petition.

24 47. Answering paragraph 47 of the Petition, Respondents admit that in the Voter Information  
25 Guide for the 1992 General election, the Argument For Proposition 163 stated that “[t]axing food is a  
26 bad idea but arbitrarily and confusingly taxing certain foods is even worse.” Except as expressly  
27 admitted, Respondents deny the material allegations in paragraph 47 of the Petition.

28 48. Answering paragraph 48 of the Petition, Respondents admit that in the Voter Information

1 Guide for the 1992 General election, the Analysis by the Legislative Analyst for Proposition 163  
2 estimated the fiscal effect of Proposition 164 to be:

3 For the current (1992-93) fiscal year, this measure would reduce state government  
4 sales and use tax revenues by about \$210 million. In addition, it would reduce  
local government revenue by approximately \$70 million.

5 In subsequent years, the total revenue losses would be about \$330 million for the  
6 state and approximately \$120 million for local governments.

7 Except as expressly admitted, Respondents deny the material allegations in paragraph 48 of the Petition.

8 49. Answering paragraph 49 of the Petition, Respondents admit that in the 1992 general  
9 election, Proposition 163 passed with 66.62% of the vote and amended the California Constitution to  
10 add section 34 to Article XIII which states:

11 Neither the State of California nor any of its political subdivisions shall levy or  
12 collect a sales or use tax on the sale of, or the storage, use or other consumption in  
13 this State of food products for human consumption except as provided by statute  
as of the effective date of this section.

14 Except as expressly admitted, Respondents deny the material allegations in paragraph 49 of the Petition.

15 50. Answering paragraph 50 of the Petition, Respondents deny the material allegations in  
16 paragraph 50 of the Petition.

17 51. Answering paragraph 51 of the Petition, Respondents deny the material allegations in  
18 paragraph 51 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
19 or deny the truth of the allegations.

20 52. Answering paragraph 52 of the Petition, Respondents deny the material allegations in  
21 paragraph 52 of the Petition on the grounds that they lack sufficient knowledge and information to admit  
22 or deny the truth of the allegations.

23 53. Answering paragraph 53 of the Petition, Respondents admit that in 2011 Assembly Bill  
24 581 added Article 3 (commencing with Section 104660) to Chapter 2 of Part 3 of Division 103 of the  
25 Health and Safety Code which was titled the "California Healthy Food Financing Initiative."  
26 Respondents admit that the California Healthy Food Financing Initiative sunsetted in 2024. Respondents  
27 admit that before sunseting, section 104661, subdivisions (b) and (c), provided:

28 (a) There is hereby created the California Healthy Food Financing Initiative  
Council, within the office of the Treasurer which shall consist of the following

1 members:

- 2 (1) The Treasurer or his or her designee.
- 3 (2) The Secretary of Food and Agriculture or his or her designee.
- 4 (3) The Secretary of California Health and Human Services or his or her designee.
- 5 (4) The Secretary of Labor and Workforce Development or his or her designee.

6 (b) The council shall implement the California Healthy Food Financing Initiative (CHFFI) and shall be chaired by the Treasurer or his or her designee. This initiative is intended to expand access to nutritious foods in underserved, urban, and rural communities and to eliminate food deserts in California.

8 (c) The council shall have all of the following duties:

- 9 (1) Developing financing options using public or private moneys and resources, to support access to healthy foods for all Californians.
- 10 (2) Developing program parameters, including, but not limited to, all of the following:
  - 11 (A) Defining eligible entities for participation.
  - 12 (B) Developing minimum eligibility thresholds for participation.
  - 13 (C) Establishing minimum and maximum levels of financial assistance.
- 14 (3) Partnering with federal, state, or local government agencies, nonprofit organizations, and philanthropic programs to further the purposes of the initiative.
- 15 (4) Reviewing recommendations of the advisory group, established pursuant to Section 104662.
- 16 (5) Providing updates to the Legislature as requested.
- 17
- 18

19 Except as expressly admitted, Respondents deny the material allegations in paragraph 53 of the Petition.

20 54. Answering paragraph 54 of the Petition, Respondents admit that section 104663 of the  
21 Health and Safety Code until it sunsetted in 2024 stated:

22 (a) There is hereby established in the State Treasury the California Healthy Food Financing Initiative Fund, which shall be comprised of federal, state, philanthropic, and private funds for the purpose of expanding access to healthy foods in underserved communities.

23  
24 (b) Moneys in the fund shall be expended upon appropriation by the Legislature, and shall be used, to the extent practicable, to leverage other funding, including, but not limited to, new markets tax credits, federal and foundation grant programs, incentives available to designated enterprise zones, the federal Specialty Crop Block Grant Program, and funding from private sector financial institutions pursuant to the federal Community Reinvestment Act.

25  
26  
27  
28 Except as expressly admitted, Respondents deny the material allegations in paragraph 54 of the Petition.

1 55. Answering paragraph 55 of the Petition, Respondents admit that section 18700 of the  
2 Welfare and Institutions Code, as enacted by Senate Bill 628 in 2023, states in part that “[i]t is hereby  
3 declared to be the established policy of the state that every human being has the right to access sufficient  
4 affordable and healthy food.” Except as expressly admitted, Respondents deny the material allegations  
5 in paragraph 55 of the Petition.

6 56. Answering paragraph 56 of the Petition, Respondents admit that paragraph 11(a) of  
7 section 160 of AB 178 (2022) states:

8 Of the funds appropriated in Schedule (1), \$40,000,000 shall be available for the  
9 targeted age-based expansion of the California Food Assistance Program  
10 regardless of immigration status, pursuant to Section 18930 of the Welfare and  
Institutions Code.

11 Respondents further admit that Section 18930(c)(1) of the Welfare and Institutions Code states:

12 Subject to an appropriation in the annual Budget Act for the express purpose of  
13 this paragraph, an individual 55 years of age or older shall be eligible for the  
program established in subdivision (a) if the individual's immigration status is the  
sole basis for their ineligibility for CalFresh benefits.

14 Except as expressly admitted, Respondents deny the material allegations in paragraph 56 of the Petition.

15 57. Answering paragraph 57 of the Petition, Respondents admit that the California  
16 Legislature is currently considering a bill known as Assembly Bill 446 that would, “subject to certain  
17 exceptions, prohibit a person from engaging in surveillance pricing.” The bill currently defines  
18 “surveillance pricing” as:

19 offering or setting a customized price for a good or service for a specific  
20 consumer or group of consumers, based, in whole or in part, on covered  
information collected through electronic surveillance technology. “Surveillance  
pricing” includes the use of technological methods, systems, or tools, including,  
21 but not limited to, sensors, cameras, device tracking, biometric monitoring, or

22 other forms of observation or data collection, that are capable of gathering  
23 covered information about a consumer’s behavior, characteristics, location, or  
other personal attributes, whether in physical or digital environments.

24 Except as expressly admitted, Respondents deny the material allegations in paragraph 57 of the Petition.

25 58. Answering paragraph 58 of the Petition, Respondents admit that section 6363.9 of the  
26 Revenue and Taxation Code states:

27 On and after January 1, 2020, there are exempted from the taxes imposed by this  
28 part the gross receipts from the sale in this state of, and the storage, use, or other  
consumption in this state of, diapers designed, manufactured, processed,

1 fabricated, or packaged for use by infants, toddlers, and children

2 Respondents further admit that section 6363.10 of the Revenue and Taxation Code states:

3 (a) On and after January 1, 2020, there are exempted from the taxes imposed by  
4 this part the gross receipts from the sale in this state of, and the storage, use, or  
other consumption in this state of, menstrual hygiene products.

5 (b) For purposes of this section, “menstrual hygiene products” shall only include  
6 the following:

7 (1) Tampons.

8 (2) Sanitary napkins primarily designed and labeled for menstrual hygiene  
use.

9 (3) Menstrual sponges.

10 (4) Menstrual cups.

11 Respondents admit that section 12 of Senate Bill 92 of 2019 states, in part, that  
12 “[w]ith respect to Section 6363.9 of the Revenue and Taxation Code, as added by  
this act, the Legislature finds and declares ... [t]he specific goals, purposes, and  
13 objectives of this act are to promote public health by increasing the affordability  
of, and expanding access to, diapers” and that “[w]ith respect to Section 6363.10  
14 of the Revenue and Taxation Code, as added by this act, the Legislature finds and  
declares ... [t]he specific goals, purposes, and objectives of this act are to promote  
15 public health by increasing the affordability of, and expanding access to,  
menstrual hygiene products.”

16 Except as expressly admitted, Respondents deny the material allegations in paragraph 58 of the Petition.

17 59. Answering Paragraph 59, Respondents deny the material allegations in paragraph 59 of  
18 the Petition.

19 60. Answering Paragraph 60, Respondents deny the material allegations in paragraph 60 of  
20 the Petition.

21 61. Answering Paragraph 61, Respondents admit that in footnote 6 of *Century Plaza Hotel*  
22 *Co. v. City of Los Angeles* (1970) 7 Cal.App.3d 616, 624 the court quoted chapter 1265 of Statutes of  
23 1968 which stated in part:

24 [T]he Legislature is well aware that prior to the enactment of the Bradley-Burns  
25 Uniform Local Sales and Use Tax Law in 1955 the differences in the amount of  
sales tax levied among the various communities of the state created a very  
26 difficult situation not only for retailers but also created fiscal problems for the  
cities and counties.

27 Except as expressly admitted, Respondents deny the material allegations in paragraph 61 of the Petition.

28 62. Answering paragraph 62 of the Petition, Respondents admit that in footnote 6 of *Century*

1 *Plaza Hotel Co. v. City of Los Angeles* (1970) 7 Cal.App.3d 616, 624 the court quoted chapter 1265 of  
2 Statutes of 1968 which stated in part:

3 [T]he Legislature is well aware that prior to the enactment of the Bradley-Burns  
4 Uniform Local Sales and Use Tax Law in 1955 the differences in the amount of  
5 sales tax levied among the various communities of the state created a very  
6 difficult situation not only for retailers but also created fiscal problems for the  
7 cities and counties. The retailer was faced with many situations which  
8 complicated tax collection, reporting, auditing and accounting. Because of the  
9 differences in taxes between areas, the retailer was affected competitively. Many  
10 areas advertised 'no city sales tax if you buy in this area.' This factor distorted  
11 what would otherwise have been logical economic advantages or disadvantages.

8 Except as expressly admitted, Respondents deny the material allegations in paragraph 62 of the Petition.

9 63. Answering paragraph 63 of the Petition, Respondents admit that in footnote 6 of *Century*  
10 *Plaza Hotel Co. v. City of Los Angeles* (1970) 7 Cal.App.3d 616, 624 the court quoted chapter 1265 of  
11 Statutes of 1968 which stated in part:

12 In the big metropolitan areas where most taxable sales occur, local officials have  
13 shown the most interest in returning to the older system of independent sales and  
14 use tax administration.

14 ...

15 The increasing complexity of these taxes has made it more and more apparent that  
16 a return to the conflicting systems in existence prior to the adoption of the  
17 Bradley-Burns Law would be disastrous in California today.

16 ...

17 It has come to the attention of the Legislature that one or more cities in the State  
18 of California have enacted, or are considering enacting, sales and use tax  
19 ordinances which would impose taxes at rates in excess of the 1-percent rate  
20 provided by the Bradley-Burns Uniform Local Sales and Use Tax Law.

20 Except as expressly admitted, Respondents deny the material allegations in paragraph 63 of the Petition.

21 64. Answering paragraph 64 of the Petition, Respondents admit that in footnote 6 of *Century*  
22 *Plaza Hotel Co. v. City of Los Angeles* (1970) 7 Cal.App.3d 616, 624 the court quoted chapter 1265 of  
23 Statutes of 1968 which stated in part:

24 In the big metropolitan areas where most taxable sales occur, local officials have  
25 shown the most interest in returning to the older system of independent sales and  
26 use tax administration. And it is in these areas that most of the poor and the  
27 minority groups are concentrated, and it is these persons who are least able to pay  
28 increased consumer taxes. In addition, the recent trend of businesses to locate  
outside of metropolitan areas can only be accelerated by a system which grants  
them a competitive advantage by locating in the suburbs. And the fact should not  
be overlooked that varying and conflicting sales and tax rates will have an adverse  
effect on the general business climate in California.

1 Except as expressly admitted, Respondents deny the material allegations in paragraph 64 of the Petition.

2 65. Answering paragraph 65 of the Petition, Respondents admit that in footnote 6 of *Century*  
3 *Plaza Hotel Co. v. City of Los Angeles* (1970) 7 Cal.App.3d 616, 624, the court quoted chapter 1265 of  
4 Statutes of 1968 which stated in part that “[i]t is essential that statewide uniformity in sales and use taxes  
5 imposed by local taxing jurisdictions be preserved.” Except as expressly admitted, Respondents deny the  
6 material allegations in paragraph 65 of the Petition.

7 66. Answering paragraph 66 of the Petition, Respondents admit that in 2018 the Legislature  
8 adopted the “Keep Groceries Affordable Act” (Rev. & Tax. Code § 7284.8 et seq.). Respondents admit  
9 that Revenue and Taxation Code section 7284.12, subdivisions (a) through (e), state:

10 (a) Notwithstanding any other law, and except as provided in this section, on or  
11 after the effective date of this chapter, a local agency shall not impose, increase,  
12 levy and collect, or enforce any tax, fee, or other assessment on groceries.

13 (b) A local agency may continue to levy and collect, enforce, or reauthorize any  
14 tax, fee, or other assessment on groceries imposed, extended, or increased on or  
15 before January 1, 2018.

16 (c) Any tax, fee, or other assessment on groceries imposed by a local agency after  
17 January 1, 2018, and before the effective date of this section shall become  
18 inoperative as of the effective date of this section and shall cease to be imposed,  
19 levied and collected, and enforced as of that date.

20 (d) This section does not prohibit the imposition, extension, increase, levy and  
21 collection, or enforcement of a tax, fee, or other assessment on groceries if both of  
22 the following apply:

23 (1) The tax, fee, or other assessment is generally applicable to a broad range  
24 of businesses, business activity, or products.

25 (2) The tax, fee, or other assessment does not establish or rely on a  
26 classification related to or involving groceries or a subset of groceries for  
27 purposes of establishing or otherwise resulting in a higher tax rate due to that  
28 classification.

(e) This section does not prohibit or limit any tax levied by a local agency  
pursuant to, or in accordance with, the Bradley-Burns Uniform Local Sales and  
Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and  
Use Tax Law (Part 1.6 (commencing with Section 7251)).

Respondents further admit that section 7284.16 states that “[t]his chapter shall become inoperative on  
January 1, 2031, and shall be repealed as of that date.” Except as expressly admitted, Respondents deny  
the material allegations in paragraph 66 of the Petition.

67. Answering paragraph 67 of the Petition, Respondents admit that section 7284.10 of the

1 Revenue and Taxation Code, which provides definitions for the “Keep Groceries Affordable Act of  
2 2018” states, in part:

3 (f) (1) “Groceries” means any raw or processed food or beverage including its  
4 packaging, wrapper, or container, or any ingredient thereof, intended for human  
5 consumption, including, but is not limited to, meat, poultry, fish, fruits,  
6 vegetables, grains, bread, milk, cheese and other dairy products, carbonated and  
7 noncarbonated nonalcoholic beverages, kombucha with less than 0.5 percent  
8 alcohol by volume, condiments, spices, cereals, seasonings, leavening agents,  
9 eggs, cocoa, teas, and coffees whether raw or processed, including its packaging,  
10 wrapper, or container.

11 (2) “Groceries” does not include alcoholic beverages, cannabis, cannabis  
12 products, cigarettes, tobacco products, and electronic cigarettes.

13 Except as expressly admitted, Respondents deny the material allegations in paragraph 67 of the Petition.

14 68. Answering paragraph 68 of the Petition, Respondents admit that section 7284.10 of the  
15 Revenue and Taxation Code, which provides definitions for the “Keep Groceries Affordable Act of  
16 2018” states, in part:

17 (h) “Tax, fee, or other assessment on groceries” includes, but is not limited to,  
18 sales and use taxes, a gross receipts tax, business and occupation tax, business  
19 license tax, excise tax, privilege tax, surcharge, or any other similar levy, charge,  
20 or exaction of any kind on groceries or the manufacture, supply, distribution, sale,  
21 acquisition, possession, ownership, transfer, transportation, delivery, use, or  
22 consumption thereof.

23 Except as expressly admitted, Respondents deny the material allegations in paragraph 68 of the Petition.

24 69. Answering paragraph 69 of the Petition, Respondents admit that section 7284.9 of the  
25 Revenue and Taxation Code states:

26 The Legislature finds and declares all of the following:

27 (a) It is the intent of the Legislature to regulate the imposition and collection of  
28 taxes and other charges on groceries comprehensively and to occupy the field to  
the exclusion of local action except as specifically provided in this chapter.

(b) That the promotion of uniformity in the taxation of groceries is a matter of  
statewide concern and, therefore, is not a municipal affair as that term is used in  
Section 5 of Article XI of the California Constitution.

Except as expressly admitted, Respondents deny the material allegations in paragraph 69 of the Petition.

70. Answering paragraph 70 of the Petition, Respondents deny the material allegations in  
paragraph 70 of the Petition.

71. Answering paragraph 71 of the Petition, Respondents admit that on June 25, 2024 the

1 City Council of the City of Santa Cruz passed Resolution No. NS-30,360 which put a measure, later  
2 identified as “Measure Z,” on the ballot for the November 5, 2024 general election that would impose an  
3 excise tax on the activity of distributing of sugar-sweetened beverages into the City. Except as expressly  
4 admitted, Respondents deny the material allegations in paragraph 71 of the Petition.

5 72. Answering paragraph 72 of the Petition, Respondents admit that the California  
6 Constitution, article XIII C section 2, subdivision (b), states, in part, that “[n]o local government may  
7 impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and  
8 approved by a majority vote.” Except as expressly admitted, Respondents deny the material allegations  
9 in paragraph 72 of the Petition.

10 73. Answering paragraph 73 of the Petition, Respondents admit that on June 25, 2024, the  
11 City Council of the City of Santa Cruz passed Resolution No. NS-30,360 which put a measure, later  
12 identified as “Measure Z,” on the ballot for the November 5, 2024 general election that would impose an  
13 excise tax on the activity of distributing sugar-sweetened beverages into the City. Respondents admit  
14 that Exhibit 25 to the Petition is a true and correct copy of Resolution No. NS-30,360. Except as  
15 expressly admitted, Respondents deny the material allegations in paragraph 73 of the Petition.

16 74. Answering paragraph 74 of the Petition, Respondents admit that the Agenda Report by  
17 the City Council Sugar-Sweetened Beverage Ad Hoc Committee, addressing agenda item #41 for the  
18 June 25, 2024, City Council Meeting includes the following statement: “The tax is on the distribution of  
19 the beverage/syrup into the City and is accordingly paid by the distributors, not the community or local  
20 retail and restaurants. ¶ However, like other communities have seen, the large beverage distributors will  
21 pass on this cost in the form of higher beverage prices.” Except as expressly admitted, Respondents deny  
22 the material allegations in paragraph 74 of the Petition.

23 75. Answering paragraph 75 of the Petition, Respondents admit that the Agenda Report by  
24 the City Council Sugar-Sweetened Beverage Ad Hoc Committee, addressing agenda item #41 for the  
25 June 25, 2024, City Council Meeting includes the following statement:

26 A new study by researchers at UC Berkeley - including those at UC Berkeley  
27 School of Public Health and the Department of Agricultural and Resource  
28 Economics - and elsewhere - shows that after excise taxes were placed on sugary  
beverages, purchases declined dramatically and steadily across five American  
cities [15]. The Study found that, on average, prices for sugar-sweetened drinks

1 went up by 33.1% and purchases went down by 33%.

2 Except as expressly admitted, Respondents deny the material allegations in paragraph 75 of the Petition.

3 76. Answering paragraph 76 of the Petition, Respondents admit that during the June 25, 2024  
4 City Council meeting Councilmember Sandy Brown stated:

5 I don't see this as a revenue measure. I see this as tax policy to address a public  
6 health crisis. And if that revenue, that figure, goes down over time, then we are --  
7 that's success. So thank you, and I'm very pleased to also be voting yes on the  
8 motion.

8 Except as expressly admitted, Respondents deny the material allegations in paragraph 76 of the Petition.

9 77. Answering paragraph 77 of the Petition, Respondents admit that at the June 25, 2024 City  
10 Council meeting Dr. Catherine Forest – a public health specialist advocating for the tax – stated the  
11 following during public comment:

12 So one of the reasons I brought up the diabetes, gestational diabetes, one is  
13 because it's very recent and immediate. But in long-term studies, looking at taxes,  
14 and how spending taxes on things that improve activity in communities, the data  
15 is solid. The public health data is solid, so if we spend whatever revenues we get -  
16 - and I hope you're right that they do decrease over time, that is a success -- if the  
17 revenue that we have are spent on activities, things that are -- encourage activities  
18 or healthier food consumption, there's plenty of data to support that.

16 During the same meeting Councilmember Sandy Brown said:

17 I don't see this as a revenue measure. I see this as tax policy to address a public  
18 health crisis. And if that revenue, that figure, goes down over time, then we are --  
19 that's success. So thank you, and I'm very pleased to also be voting yes on the  
20 motion.

20 Except as expressly admitted, Respondents deny the material allegations in paragraph 77 of the Petition.

21 78. Answering paragraph 78 of the Petition, Respondents admit that during the June 25, 2024  
22 City Council meeting Mayor Fred Keeley stated:

23 So my sense is this, my colleagues do great work in this, what I call, the public  
24 health space. And I think you do really good work. I think this is a wonderful,  
25 comma, and that's not a verbal erasure. It's wonderful, comma, with our eyes  
26 wide open. Now, we are obviously doing something no city, no county has  
27 desired -- decided to do. We believe if we do this and we prevail, we may be the  
28 pointy end of the spear that allows other jurisdictions to do it if we prevail. It's  
not going to be prevailing because our voters spoke for it. It's we're going to  
court, and if I was the industry, any industry, fighting a little city, I would make it  
a resource mismatch, and I would take it to the trial court, the appellate court, the  
court past that, and the court past that, to see just how far I could go and whether  
this little city's going to blink, because as I understand it, we don't have a league

1 of cities standing behind us.

2 Except as expressly admitted, Respondents deny the material allegations in paragraph 78 of the Petition.

3 79. Answering paragraph 79 of the Petition, Respondents admit that the Agenda Report by  
4 the City Council Sugar-Sweetened Beverage Ad Hoc Committee, addressing agenda item #41 for the  
5 June 25, 2024, City Council Meeting, included the statement that “[t]he Act, prompted by pressure on  
6 California lawmakers from the beverage industry, prevented local agencies from imposing new taxes on  
7 certain grocery items, including SSBs.” Respondents further admit that during the June 25, 2024 City  
8 Council meeting Councilmember Martine Watkins said:

9 I just want to briefly say I know that there were comments about the state law.  
10 Well, I’ll just say, as the plaintiff, I believe that’s unconstitutional, and we won in  
11 the penalty provision, and we believe we will win again. So that just sort of  
12 summarizes my position on that, and I know that a number of folks have been  
13 tracking that as well.

14 Except as expressly admitted, Respondents deny the material allegations in paragraph 79 of the Petition.

15 80. Answering paragraph 80 of the Petition, Respondents admit that during the June 25, 2024  
16 City Council meeting Councilmember Martine Watkins said:

17 I just want to briefly say I know that there were comments about the state law.  
18 Well, I’ll just say, as the plaintiff, I believe that’s unconstitutional, and we won in  
19 the penalty provision, and we believe we will win again. So that just sort of  
20 summarizes my position on that, and I know that a number of folks have been  
21 tracking that as well.

22 Respondents further admit that the same meeting contained the following exchange between Mayor  
23 Keeley and City Attorney Condotti:

24 MAYOR FRED KEELEY: Thank you, thank you, that was very helpful. I  
25 appreciate that. Mr. Condotti, if we are sued on this issue, on this issue, to defend  
26 ourselves, we would use what color dollars to defend ourselves?

27 CITY ATTORNEY ANTHONY CONDOTTI: General fund.

28 MAYOR FRED KEELEY: General fund money, but I suspect I’m in the same  
place everybody else is, which is the industry is not even pretending as if they’re  
not going to sue us over this. They’re very clear. They don’t think there’s a settled  
law at all, and if I also understand it correctly, we are the single city. No city, no  
county in the state of California has adopted his under the current set of rules. Is  
that right?

CITY ATTORNEY ANTHONY CONDOTTI: That’s correct. No public agency  
has enacted one of these types of taxes since the Keep Groceries Affordable Act  
was enacted.

1 Respondents also admit that on June 25, 2024 the City Council of the City of Santa Cruz passed  
2 Resolution No. NS-30,360 which put a measure, later identified as “Measure Z,” on the ballot for the  
3 November 5, 2024 general election for a proposed tax on the distribution of sugar-sweetened beverages  
4 into the City. Except as expressly admitted, Respondents deny the material allegations in paragraph 80  
5 of the Petition.

6 81. Answering paragraph 81 of the Petition, Respondents admit that on June 25, 2024 the  
7 City Council of the City of Santa Cruz passed Resolution No. NS-30,360 which put a measure, later  
8 identified as “Measure Z,” on the ballot for the November 5, 2024 general election for a proposed tax on  
9 the distribution of sugar-sweetened beverages into the City. Respondents further admit Measure Z would  
10 add Chapter 3.38 to the Santa Cruz Municipal Code, and section 3.38.030 of the proposed ordinance  
11 stated: “In addition to any other taxes imposed by the city, the city hereby levies a general tax of two  
12 cents per fluid ounce on the distribution of sugar-sweetened beverage products in the city.” Section  
13 3.38.020 defined “sugar-sweetened beverage” to mean “any nonalcoholic beverage prepared in any form  
14 intended for human consumption to which one or more caloric sweeteners have been added and that  
15 contains forty or more calories per twelve fluid ounces of beverage including, but not limited to, drinks  
16 and beverages commonly referred to as ‘soda,’ ‘pop,’ ‘cola,’ ‘soft drinks,’ ‘sports drinks,’ ‘energy  
17 drinks,’ ‘slushes,’ ‘sweetened ice teas and coffees,’ or any other common names that are derivations  
18 thereof. Except as expressly admitted, Respondents deny the material allegations in paragraph 81 of the  
19 Petition.

20 82. Answering paragraph 82 of the Petition, Respondents admit that section 3.38.030 of the  
21 Santa Cruz Municipal Code states in relevant part:

22 The tax shall be paid upon the first nonexempt distribution of a sugar-sweetened  
23 beverage product in the city. To the extent that there is a chain of distribution  
24 within Santa Cruz involving more than one distributor, the tax shall be levied on  
25 the first distributor subject to the jurisdiction of the city. To the extent the tax is  
26 not paid as set forth above for any reason, it shall be payable on subsequent  
distributions and by subsequent distributors; provided, that the distribution of  
sugar-sweetened beverage products may not be taxed more than once in the chain  
of commerce.

27 Except as expressly admitted, Respondents deny the material allegations in paragraph 82 of the Petition.

28 83. Answering paragraph 83 of the Petition, Respondents admit that section 3.38.020 of the

1 Santa Cruz Municipal Code defines “Tax administrator” to be “the director of finance for the city of  
2 Santa Cruz or a designee of the director of finance.” Respondents further admit that section 3.38.040 of  
3 the Santa Cruz Municipal Code states:

4 It shall be the duty of the tax administrator to collect and receive all taxes  
5 imposed by this chapter, and to keep an accurate record thereof.

6 The tax administrator is hereby charged with the enforcement of this chapter,  
7 except as otherwise provided herein, and may prescribe, adopt, and enforce rules  
8 and regulations relating to the administration and enforcement of this chapter.  
9 Such rules and regulations shall include, but are not limited to:

- 10 1. Clarification regarding the inclusion or exclusion of particular products.
- 11 2. The calculation of tax for concentrates based on manufacturer’s  
12 instructions or industry practice and the designation of caloric sweeteners.
- 13 3. The reexamination and correction of returns and payments, and for  
14 reporting.
- 15 4. Prescribing the methods, frequency, and schedules for the calculation,  
16 collection and payment of the tax.
- 17 5. The manner and form in which a distributor must register with the city,  
18 and report and remit the tax.
- 19 6. How a distributor or a retailer who receives, in the city, sugar-sweetened  
20 beverage product(s) from a distributor must report to the city the name of  
21 that distributor and the volume of sugar-sweetened beverage product(s).
- 22 7. The documentation to be created or maintained by a distributor or a  
23 retailer.
- 24 8. The administrative process and procedures for any person against whom a  
25 determination is made by the tax administrator under this chapter or any  
26 person directly interested in such determination, shall follow to dispute or  
27 otherwise challenge a determination, and the form, manner and time  
28 within which a determination may be disputed or challenged.

Adoption and implementation by the tax administrator of rules and regulations  
authorized by this section shall not constitute a new or increased tax requiring  
approval by the voters of the city.

The tax administrator shall annually verify that the taxes owed under this chapter  
have been properly applied, exempted, collected and remitted.

Except as expressly admitted, Respondents deny the material allegations in paragraph 83 of the Petition.

84. Answering paragraph 84 of the Petition, Respondents admit that section 3.38.100 of the  
Santa Cruz Municipal Code states in relevant part:

Any distributor violating any of the provisions of this chapter shall be guilty of a  
misdemeanor and shall be punishable by a fine of not more than one thousand

1 dollars or by imprisonment in the county jail for a period of not more than six  
2 months or by both fine and imprisonment, as provided in Title 4, in addition to the  
penalties provided for in this chapter or elsewhere in this code.

3 Except as expressly admitted, Respondents deny the material allegations in paragraph 84 of the Petition.

4 85. Answering paragraph 85 of the Petition, Respondents admit that section 3.38.070 of the  
5 Santa Cruz Municipal Code states in relevant part:

6 Any tax under this chapter that has been paid more than once or has been  
7 erroneously or illegally collected or received by the city shall be refunded as  
determined by the tax administrator.

8 Respondents further admit that section 3.38.090 of the Santa Cruz Municipal Code states that “[a]ny  
9 distributor aggrieved by any decision of the tax administrator with respect to the amount of such tax,  
10 interest and penalties, if any, owed under this chapter, may appeal to the city council in accordance with  
11 the provisions of Chapter 1.16.” Except as expressly admitted, Respondents deny the material  
12 allegations in paragraph 85 of the Petition.

13 86. Answering paragraph 86 of the Petition, Respondents admit that section 3.38.015 of the  
14 Santa Cruz Municipal Code provides:

15 There is hereby established a community oversight panel:

16 1. A community oversight panel shall report on the impact of the tax, review  
17 expenditures, and include recommendations on the use of future revenues to  
18 promote community health and wellness and general revenue purposes, as  
consistent with this chapter.

19 2. The community oversight panel shall be comprised of seven members in  
20 total. The parks and recreation commission may select one person to be a part of  
21 the community oversight panel, and the council may select one city  
22 councilmember to be a part of the community oversight panel. The remaining  
23 members shall be recommended by the city manager’s office and ratified by the  
24 city council, and shall, to the greatest extent possible, be comprised of community  
members representing categories that include: healthcare, dental, and/or wellness  
professional(s); representative(s) from the education industry; and  
representative(s) from youth organization(s).

3. The community oversight panel will transmit its annual report and  
recommendations to the city council.

25 Except as expressly admitted, Respondents deny the material allegations in paragraph 86 of the Petition.

26 87. Answering paragraph 87 of the Petition, Respondents admit that on June 25, 2024 the  
27 City Council of the City of Santa Cruz passed Resolution No. NS-30,360 which put a measure, later  
28 identified as “Measure Z,” on the ballot for the November 5, 2024 general election for a proposed tax on

1 the distribution of sugar-sweetened beverages into the City, and the ballot question for the measure  
2 stated:

3 To sustain vital City services such as improving maintaining neighborhood parks/  
4 beaches/ open space, providing safe routes to schools, expanding community  
5 recreational/ youth/ senior programs, addressing crime/ public safety, improving  
6 bike/ pedestrian safety, and help fight diabetes, heart disease, and childhood  
7 obesity, shall City of Santa Cruz's measure levying a two-cents per ounce tax for  
8 general governmental use on the wholesale distribution of sugar-sweetened  
9 beverages (e.g., sodas, energy drinks); generating \$1,300,000 annually, until  
10 ended by voters, be adopted?

11 Except as expressly admitted, Respondents deny the material allegations in paragraph 87 of the Petition.

12 88. Answering paragraph 88 of the Petition, Respondents admit that section 3.38.120 of the  
13 Santa Cruz Municipal Code states:

14 All tax revenue collected and remitted to the city pursuant to this chapter shall be  
15 deposited in the city of Santa Cruz unrestricted general fund and can be spent for  
16 unrestricted general revenue purposes.

17 Except as expressly admitted, Respondents deny the material allegations in paragraph 88 of the Petition.

18 89. Answering paragraph 89 of the Petition, Respondents admit that the Measure Z ballot  
19 question stated that the tax would "generat[e] \$1,300,000 annually." Respondents admit that section  
20 3.38.010 of the Santa Cruz Municipal Code states in relevant part:

21 The excise tax imposed by this chapter is also expected to lead to decreased  
22 consumption of sugary beverages in the City of Santa Cruz, which is anticipated  
23 to have a positive impact on health and wellness in the City of Santa Cruz, given  
24 that sugary drinks are linked to various health conditions, including type 2  
25 diabetes, adult obesity, childhood obesity, heart disease, liver disease, and  
26 metabolic disorder.

27 Respondents further admit that during the June 25, 2024 City Council meeting Councilmember Sandy  
28 Brown said:

29 I don't see this as a revenue measure. I see this as tax policy to address a public  
30 health crisis. And if that revenue, that figure, goes down over time, then we are --  
31 that's success. So thank you, and I'm very pleased to also be voting yes on the  
32 motion.

33 Except as expressly admitted, Respondents deny the material allegations in paragraph 89 of the Petition.

34 90. Answering paragraph 90 of the Petition, Respondents admit that section 2 of the  
35 Ordinance proposed by Measure Z stated:

1 EFFECTIVE DATE. This ordinance relates to the levying and collecting of a  
2 general excise tax and shall take effect immediately if the ordinance is approved  
3 by a simple majority of voters voting on the question at the November 5, 2024  
election. If approved by the voters, collection of the tax shall commence as  
specified in Section 3.38.110.

4 The Respondents further admit that as specified in section 3.38.050 of the Santa Cruz Municipal Code,  
5 the tax itself would become effective on May 1, 2025. Except as expressly admitted, Respondents deny  
6 the material allegations in paragraph 90 of the Petition.

7 91. Answering paragraph 91 of the Petition, Respondents admit that in the November 2024  
8 general election 15,780 Santa Cruz residents voted for the adoption of Measure Z which constituted  
9 52.35% of the total vote. Except as expressly admitted, Respondents deny the material allegations in  
10 paragraph 91 of the Petition.

11 92. Answering paragraph 92 of the Petition, Respondents admit that on December 10, 2024,  
12 the City Council adopted Resolution No. NS-30,416 which confirmed and approved the canvass of the  
13 ballots and returns for the City of Santa Cruz General Election held on November 5, 2024, and declared  
14 that Measure Z passed by a majority vote of the electorate of the City. Except as expressly admitted,  
15 Respondents deny the material allegations in paragraph 92 of the Petition.

16 93. Answering paragraph 93 of the Petition, Respondents admit that section 3.38.050 of the  
17 Santa Cruz Municipal Code states in part:

18 Every person engaged in or about to engage in business as a distributor in the city  
19 shall immediately register with the city in the manner and form determined by the  
20 tax administrator. Persons engaged in such business must be registered no later  
21 than thirty days after the date the tax imposed by this chapter becomes effective  
22 on May 1, 2025, but such privilege of such registration after the date of  
imposition of such tax shall not relieve any person from the obligation or payment  
or collection of tax on and after the date of imposition thereof, regardless of  
registration.

23 Except as expressly admitted, Respondents deny the material allegations in paragraph 93 of the Petition.

24 94. Answering paragraph 94 of the Petition, Respondents admit that the City is a charter city  
25 and is subject to California Constitution Article XI, section 5, which provides in part:

26 (a) It shall be competent in any city charter to provide that the city governed  
27 thereunder may make and enforce all ordinances and regulations in respect to  
28 municipal affairs, subject only to restrictions and limitations provided in their  
several charters and in respect to other matters they shall be subject to general  
laws. City charters adopted pursuant to this Constitution shall supersede any  
existing charter, and with respect to municipal affairs shall supersede all laws

1 inconsistent therewith.

2 Except as expressly admitted, Respondents deny the material allegations in paragraph 94 of the Petition.

3 95. Answering paragraph 95 of the Petition, Respondents admit that section 7 of article XI of  
4 the California Constitution states that “[a] county or city may make and enforce within its limits all  
5 local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”  
6 Respondents further admit that the in *O’Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1076, when  
7 evaluating the power of a charter city to preempt state law, the court stated:

8 The illicit commercial activities—prostitution and trafficking in controlled  
9 substances—that are the focus of the City’s vehicle forfeiture ordinance are  
10 matters of statewide concern that our Legislature has comprehensively addressed  
through various provisions of this state’s Penal and Vehicle Codes, leaving no  
room for further regulation at the local level.

11 Except as expressly admitted, Respondents deny the material allegations in paragraph 95 of the Petition.

12 96. Answering paragraph 96 of the Petition, Respondents admit that Article XI, section 5,  
13 subdivision (a), of the California Constitution states that “[t]It shall be competent in any city charter to  
14 provide that the city governed thereunder may make and enforce all ordinances and regulations in  
15 respect to municipal affairs, subject only to restrictions and limitations provided in their several charters  
16 and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to  
17 this Constitution shall supersede any existing charter, and with respect to municipal affairs shall  
18 supersede all laws inconsistent therewith.” Respondents further admit that the court in *Chevron U.S.A.*  
19 *Inc. v. County of Monterey* (2023) 15 Cal.5th 135, 142, stated:

20 Article XI, section 7 of the California Constitution provides that a “county or city  
21 may make and enforce within its limits all local, police, sanitary, and other  
22 ordinances and regulations not in conflict with general laws.” “If otherwise valid  
23 local legislation conflicts with state law, it is preempted by such law and is void.”  
24 ” (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897 [16  
Cal.Rptr.2d 215, 844 P.2d 534] (*Sherwin-Williams*), quoting *Candid Enterprises,*  
*Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 885 [218  
Cal.Rptr. 303, 705 P.2d 876].)

25 Except as expressly admitted, Respondents deny the material allegations in paragraph 96 of the Petition.

26 97. Answering paragraph 97 of the Petition, Respondents admit that in applying preemption  
27 analysis under Article XI, section 5, of the California Constitution the court in *Johnson v. Bradley*  
28 (1992) 4 Cal.4th 389, 400, stated that “the first step in a reviewing court’s inquiry is to determine

1 whether there is an ‘actual conflict’ between general state law and charter city authority.” Except as  
2 expressly admitted, Respondents deny the material allegations in paragraph 97 of the Petition.

3 98. Answering paragraph 98 of the Petition, Respondents admit that the court in *Chevron*  
4 *U.S.A. Inc. v. County of Monterey* (2023) 15 Cal.5th 135, 142, “identified three ways in which a  
5 preempting conflict may arise: if the local legislation duplicates, contradicts, or enters an area fully  
6 occupied by general law, either expressly or by legislative implication.” (Citations omitted.) Except as  
7 expressly admitted, Respondents deny the material allegations in paragraph 98 of the Petition.

8 99. Answering paragraph 99 of the Petition, Respondents admit that in applying preemption  
9 analysis under Article XI, section 5, of the California Constitution the court in *Johnson v. Bradley*  
10 (1992) 4 Cal.4th 389, 404, stated:

11 Under *CalFed, supra*, 54 Cal.3d 1, 283 Cal.Rptr. 569, 812 P.2d 916, once we  
12 conclude, as above, that “the matter implicates a ‘municipal affair’ and poses a  
13 genuine conflict with state law” (*id.*, at p. 17, 283 Cal.Rptr. 569, 812 P.2d 916),  
14 our inquiry under article XI, section 5, subdivision (a) of the Constitution  
15 proceeds in two discrete steps. First, we focus on whether the conflicting state  
16 law—here, section 85300—qualifies as a matter of “statewide concern.” If the  
17 state statute does not qualify as a matter of statewide concern, the conflicting  
18 charter city measure (or practice) is a “municipal affair” and “ ‘beyond the reach  
19 of legislative enactment.’ ”

20 Except as expressly admitted, Respondents deny the material allegations in paragraph 99 of the Petition.

21 100. Answering paragraph 100 of the Petition, Respondents admit that in applying preemption  
22 analysis under Article XI, section 5, of the California Constitution the court in *Johnson v. Bradley*  
23 (1992) 4 Cal.4th 389, 404, stated:

24 If the state statute qualifies as a statewide concern, we next consider whether it is  
25 both (i) reasonably related to the resolution of that concern, and (ii) “narrowly  
26 tailored” to limit incursion into legitimate municipal interests. If it meets this final  
27 test, “then the conflicting charter city measure ceases to be a ‘municipal affair’  
28 pro tanto and the Legislature is not prohibited by article XI, section 5[  
subdivision] (a), from addressing the statewide dimension by its own tailored  
enactments.”

29 Except as expressly admitted, Respondents deny the material allegations in paragraph 100 of the  
30 Petition.

31 101. Answering paragraph 101 of the Petition, Respondents deny the material allegations in  
32 paragraph 101 of the Petition.

33 102. Answering paragraph 102 of the Petition, Respondents admit that Revenue and Taxation

1 Code section 7284.9, subdivision (a) states:

2 The Legislature finds and declares all of the following:

3 (a) It is the intent of the Legislature to regulate the imposition and collection of  
4 taxes and other charges on groceries comprehensively and to occupy the field to  
the exclusion of local action except as specifically provided in this chapter.

5 Except as expressly admitted, Respondents deny the material allegations in paragraph 102 of the  
6 Petition.

7 103. Answering paragraph 103 of the Petition, Respondents admit that Revenue and Taxation  
8 Code section 7284.9, subdivision (a), states:

9 The Legislature finds and declares all of the following:

10 (a) It is the intent of the Legislature to regulate the imposition and collection of  
11 taxes and other charges on groceries comprehensively and to occupy the field to  
the exclusion of local action except as specifically provided in this chapter.

12 Except as expressly admitted, Respondents deny the material allegations in paragraph 103 of the  
13 Petition.

14 104. Answering paragraph 104 of the Petition, Respondents admit that Revenue and Taxation  
15 Code, section 7284.9, subdivision (b), states:

16 The Legislature finds and declares all of the following:

17 ....

18 (b) That the promotion of uniformity in the taxation of groceries is a matter of  
19 statewide concern and, therefore, is not a municipal affair as that term is used in  
Section 5 of Article XI of the California Constitution.

20 Except as expressly admitted, Respondents deny the material allegations in paragraph 104 of the  
21 Petition.

22 105. Answering paragraph 105 of the Petition, Respondents deny the material allegations in  
23 paragraph 105 of the Petition.

24 106. Answering paragraph 106 of the Petition, Respondents deny the material allegations in  
25 paragraph 106 of the Petition.

26 107. Answering paragraph 107 of the Petition, Respondents admit that in 1968 the Bradley-  
27 Burns Uniform Local Sales and Tax Law was amended to add section 7203.5, which states in part:

28 The State Board of Equalization shall not administer and shall terminate its

1 contract to administer any sales or use tax ordinance of a city, county,  
2 redevelopment agency, or city and county, if such city, county, redevelopment  
3 agency, or city and county imposes a sales or use tax in addition to the sales and  
4 use taxes imposed under an ordinance conforming to the provisions of Sections  
5 7202 and 7203.

6 Except as expressly admitted, Respondents deny the material allegations in paragraph 107 of the  
7 Petition.

8 108. Answering paragraph 108 of the Petition, Respondents admit section 7203.5 of the  
9 Taxation and Revenue Code states:

10 The State Board of Equalization shall not administer and shall terminate its  
11 contract to administer any sales or use tax ordinance of a city, county,  
12 redevelopment agency, or city and county, if such city, county, redevelopment  
13 agency, or city and county imposes a sales or use tax in addition to the sales and  
14 use taxes imposed under an ordinance conforming to the provisions of Sections  
15 7202 and 7203.

16 Except as expressly admitted, Respondents deny the material allegations in paragraph 108 of the  
17 Petition.

18 109. Answering paragraph 109 of the Petition, Respondents admit that in footnote 6 of  
19 *Century Plaza Hotel Co. v. City of Los Angeles* (1970) 7 Cal.App.3d 616, 624, the court quoted chapter  
20 1265 of Statutes of 1968 which declared that “[t]he increasing complexity of these taxes has made it  
21 more and more apparent that a return to the conflicting systems in existence prior to the adoption of the  
22 Bradley-Burns Law would be disastrous in California today.” Except as expressly admitted,  
23 Respondents deny the material allegations in paragraph 109 of the Petition.

24 110. Answering paragraph 110 of the Petition, Respondents admit the court in *Cultiva La*  
25 *Salud v. State of California* (2023) 89 Cal.App.5th 868, 880, considered the history behind the 1968  
26 Bradley-Burns amendment and noted that “[t]he Legislature believed that should these cities return to  
27 this ‘ “older system,” ’ taxpayers who had the least ability to pay would face higher consumer taxes,  
28 businesses would leave these cities, and the ‘ “general business climate in California” ’ would  
deteriorate.” Except as expressly admitted, Respondents deny the material allegations in paragraph 110  
of the Petition.

111. Answering paragraph 111 of the Petition, Respondents admit that Revenue and Taxation  
Code section 7202 states in relevant part that the “sales tax portion of any sales and use tax ordinance

1 adopted under this part shall be imposed for the privilege of selling tangible personal property at retail.”

2 Except as expressly admitted, Respondents deny the material allegations in paragraph 111 of the  
3 Petition.

4 112. Answering paragraph 112 of the Petition, Respondents admit that Revenue and Taxation  
5 Code section 7203 states in relevant part that the “use tax portion of any sales and use tax ordinance  
6 adopted under this part shall impose a complementary tax upon the storage, use or other consumption in  
7 the county of tangible personal property purchased from any retailer for storage, use or other  
8 consumption in the county.” Except as expressly admitted, Respondents deny the material allegations in  
9 paragraph 112 of the Petition.

10 113. Answering paragraph 113 of the Petition, Respondents admit that the Sugar-Sweetened  
11 Beverage Distribution Tax is not a sales or use tax but is rather a tax on the distribution of Sugar-  
12 Sweetened Beverage. Respondents further admit that section 3.38.010 of the Santa Cruz Municipal Code  
13 states:

14 The purpose of this chapter is to impose a general excise tax on the Distribution  
15 of Sugar Sweetened Beverage Products to raise funds for unrestricted general  
16 revenue purposes, including, but not limited to, promoting community health &  
17 wellness, and sustaining vital City services. The excise tax imposed by this  
18 chapter is also expected to lead to decreased consumption of sugary beverages in  
19 the City of Santa Cruz, which is anticipated to have a positive impact on health  
20 and wellness in the City of Santa Cruz, given that sugary drinks are linked to  
21 various health conditions, including type 2 diabetes, adult obesity, childhood  
22 obesity, heart disease, liver disease, and metabolic disorder.

23 Except as expressly admitted, Respondents deny the material allegations in paragraph 113 of the  
24 Petition.

25 114. Answering paragraph 114 of the Petition, Respondents deny the material allegations in  
26 paragraph 114 of the Petition.

27 115. Answering paragraph 115 of the Petition, Respondents deny the material allegations in  
28 paragraph 115 of the Petition.

116. Answering paragraph 116 of the Petition, Respondents deny the material allegations in  
paragraph 116 of the Petition.

117. Answering paragraph 117 of the Petition, Respondents admit that California Constitution  
article XIII, section 34, states:

1 Neither the State of California nor any of its political subdivisions shall levy or  
2 collect a sales or use tax on the sale of, or the storage, use or other consumption in  
3 this State of food products for human consumption except as provided by statute  
as of the effective date of this section.

4 Except as expressly admitted, Respondents deny the material allegations in paragraph 117 of the  
5 Petition.

6 118. Answering paragraph 118 of the Petition, Respondents admit that when section 34 of  
7 Article XIII of the California Constitution was adopted in 1992, Revenue and Taxation Code section  
8 6359 excluded “carbonated beverages” from the definition of “food products” in subdivision (b) of  
9 section 6359 of the Revenue and Taxation Code. Except as expressly admitted, Respondents deny the  
10 material allegations in paragraph 118 of the Petition.

11 119. Answering paragraph 119 of the Petition, Respondents deny the material allegations in  
12 paragraph 119 of the Petition.

13 120. Answering paragraph 120 of the Petition, Respondents deny the material allegations in  
14 paragraph 120 of the Petition.

15 121. Answering paragraph 121 of the Petition, Respondents incorporate by reference and  
16 reallege each response to the Petition contained in paragraphs 1 through 120 of this Answer as if that  
17 response were fully set forth in this paragraph.

18 122. Answering paragraph 122 of the Petition, Respondents admit that California Constitution  
19 article XI section 7 states that “[a] county or city may make and enforce within its limits all local, police,  
20 sanitary, and other ordinances and regulations not in conflict with general laws.” Except as expressly  
21 admitted, Respondents deny the material allegations in paragraph 122 of the Petition.

22 123. Answering paragraph 123 of the Petition, Respondents admit that Chapter 1.8 of Part 1.7  
23 of Division 2 of the Revenue and Taxation Code (sections 7284.8 to 7284.16) is titled as “the Keep  
24 Groceries Affordable Act of 2018” and that section 7284.9 of Revenue and Taxation Code states in part  
25 that “[i]t is the intent of the Legislature to regulate the imposition and collection of taxes and other  
26 charges on groceries comprehensively and to occupy the field to the exclusion of local action except as  
27 specifically provided in this chapter.” Except as expressly admitted, Respondents deny the material  
28 allegations in paragraph 123 of the Petition.

1           124.    Answering paragraph 124 of the Petition, Respondents deny the material allegations in  
2 paragraph 124 of the Petition.

3           125.    Answering paragraph 125 of the Petition, Respondents deny the material allegations in  
4 paragraph 125 of the Petition.

5           126.    Answering paragraph 126 of the Petition, Respondents deny the material allegations in  
6 paragraph 126 of the Petition.

7           127.    Answering paragraph 127 of the Petition, Respondents admit that that section 3.38.100 of  
8 the Santa Cruz Municipal Code states in part:

9           Any distributor violating any of the provisions of this chapter shall be guilty of a  
10          misdemeanor and shall be punishable by a fine of not more than one thousand  
11          dollars or by imprisonment in the county jail for a period of not more than six  
12          months or by both fine and imprisonment, as provided in Title 4, in addition to the  
13          penalties provided for in this chapter or elsewhere in this code.

14          Except as expressly admitted, Respondents deny the material allegations in paragraph 127 of the  
15          Petition.

16           128.    Answering paragraph 128 of the Petition, Respondents deny the material allegations in  
17 paragraph 128 of the Petition.

18           129.    Answering paragraph 129 of the Petition, Respondents deny the material allegations in  
19 paragraph 129 of the Petition.

20           130.    Answering paragraph 130 of the Petition, Respondents incorporate by reference and  
21          reallege each response to the Petition contained in paragraphs 1 through 129 of this Answer as if that  
22          response were fully set forth in this paragraph.

23           131.    Answering paragraph 131 of the Petition, Respondents deny the material allegations in  
24 paragraph 131 of the Petition.

25           132.    Answering paragraph 132 of the Petition, Respondents deny the material allegations in  
26 paragraph 132 of the Petition.

27           133.    Answering paragraph 133 of the Petition, Respondents deny the material allegations in  
28 paragraph 133 of the Petition.

          134.    Answering paragraph 134 of the Petition, Respondents deny the material allegations in  
          paragraph 134 of the Petition.

1           135.    Answering paragraph 135 of the Petition, Respondents admit that section 3.38.100 of the  
2 Santa Cruz Municipal Code states in part:

3           Any distributor violating any of the provisions of this chapter shall be guilty of a  
4 misdemeanor and shall be punishable by a fine of not more than one thousand  
5 dollars or by imprisonment in the county jail for a period of not more than six  
6 months or by both fine and imprisonment, as provided in Title 4, in addition to the  
7 penalties provided for in this chapter or elsewhere in this code.

8           Except as expressly admitted, Respondents deny the material allegations in paragraph 135 of the  
9 Petition.

10           136.    Answering paragraph 136 of the Petition, Respondents deny the material allegations in  
11 paragraph 136 of the Petition.

12           137.    Answering paragraph 137 of the Petition, Respondents deny the material allegations in  
13 paragraph 137 of the Petition.

14           138.    Answering paragraph 138 of the Petition, Respondents incorporate by reference and  
15 reallege each response to the Petition contained in paragraphs 1 through 137 of this Answer as if that  
16 response were fully set forth in this paragraph.

17           139.    Answering paragraph 139 of the Petition, Respondents admit that section 34 of the  
18 California Constitution article XIII states:

19           Neither the State of California nor any of its political subdivisions shall levy or  
20 collect a sales or use tax on the sale of, or the storage, use or other consumption in  
21 this State of food products for human consumption except as provided by statute  
22 as of the effective date of this section.

23           Except as expressly admitted, Respondents deny the material allegations in paragraph 139 of the  
24 Petition.

25           140.    Answering paragraph 140 of the Petition, Respondents deny the material allegations in  
26 paragraph 140 of the Petition.

27           141.    Answering paragraph 141 of the Petition, Respondents deny the material allegations in  
28 paragraph 141 of the Petition.

          142.    Answering paragraph 142 of the Petition, Respondents deny the material allegations in  
paragraph 142 of the Petition.

          143.    Answering paragraph 143 of the Petition, Respondents admit that section 3.38.100 of the

1 Santa Cruz Municipal Code states, in part:

2 Any distributor violating any of the provisions of this chapter shall be guilty of a  
3 misdemeanor and shall be punishable by a fine of not more than one thousand  
4 dollars or by imprisonment in the county jail for a period of not more than six  
months or by both fine and imprisonment, as provided in Title 4, in addition to the  
penalties provided for in this chapter or elsewhere in this code.

5 Except as expressly admitted, Respondents deny the material allegations in paragraph 143 of the  
6 Petition.

7 144. Answering paragraph 144 of the Petition, Respondents deny the material allegations in  
8 paragraph 144 of the Petition.

9 145. Answering paragraph 145 of the Petition, Respondents deny the material allegations in  
10 paragraph 145 of the Petition.

### 11 **AFFIRMATIVE DEFENSES**

12 Respondents allege that Petitioners are barred from recovering anything from Respondents under  
13 the Petition and each cause of action therein, by reason of the following affirmative defenses:

#### 14 **First Affirmative Defense**

15 (Failure to State a Cause of Action)

16 As a first affirmative defense, Respondents allege that the Petition and the causes of action  
17 therein fail to allege facts sufficient to state a cause of action.

#### 18 **Second Affirmative Defense**

19 (Failure to Exhaust Administrative Remedies)

20 As a second affirmative defense, Respondents allege that the Petition, and each cause of action  
21 therein, is barred because Petitioners have not exhausted their administrative remedies under sections  
22 3.38.070 and 3.38.090 of the Santa Cruz Municipal Code.

#### 23 **Third Affirmative Defense**

24 (Lack of Standing Because Not Subject to the Tax)

25 As a third affirmative defense, Respondents allege that the claims of those Petitioners who are  
26 not beverage distributors or who do not have members who are beverage distributors are barred because  
27 those Petitioners are not subject to the City of Santa Cruz Sugar-Sweetened Beverage Distribution Tax  
28 (“the Tax”), are not and will not be paying the Tax, and therefore do not have standing to challenge the

1 Tax.

2 **Fourth Affirmative Defense**

3 (Lack of Standing Because Petitioners Have Not Paid the Tax)

4 As a Fourth affirmative defense, Respondents allege that the Petition, and each cause of action  
5 therein, is barred because none of the Petitioners have paid the Tax and therefore do not have standing to  
6 assert any of the claims alleged in the Petition.

7 **Fifth Affirmative Defense**

8 (Government Claims Act)

9 As a fifth affirmative defense, Respondents allege that Petitioners' claim for a refund is barred  
10 because Petitioners have not submitted a claim for money or damages under Title 1, Division 3.6, Part 3  
11 of the Government Code. (Gov. Code § 945.4.)

12 **Sixth Affirmative Defense**

13 (Available Refund Remedy)

14 As a sixth affirmative defense, Respondents allege that all of Petitioners' requests for equitable  
15 relief (declaratory relief, injunctive relief, and writ of mandate) are barred because Petitioners have an  
16 adequate remedy at law in the form of a claim for a refund. (Cal. Const. art XIII, § 32; *Flying Dutchman*  
17 *Park, Inc. v. City and County of San Francisco* (2001) 93 Cal.App.4th 1129, 1136-37; Santa Cruz  
18 Municipal Code §§ 3.38.070, 3.38.090.)

19 **Seventh Affirmative Defense**

20 (Pay First, Litigate Later Rule)

21 As a Seventh affirmative defense, Respondents allege that the Petition, and each cause of action  
22 therein, is barred because none of the Petitioners or their members have paid the Tax and are therefore  
23 barred from challenging the validity of the Tax until they have paid the Tax and sought a refund. (*Flying*  
24 *Dutchman Park, Inc. v. City and County of San Francisco* (2001) 93 Cal.App.4th 1129, 1132.)

25 **Reservation of Rights**

26 At this early stage in the case, Respondents has insufficient knowledge or information regarding  
27 potential additional, yet unstated, affirmative defenses. Respondents reserve the right to assert  
28 additional affirmative defenses in the event discovery indicates it would be appropriate.

**PRAYER FOR RELIEF**

Respondents pray for relief as follows:

1. Enter judgment for Respondents, denying the relief requested in the Petition and ordering that Petitioners take nothing in this action;
2. That the Court issue an award of costs to Respondents; and
3. That Respondents be granted such other relief that the Court may deem just and proper.

JARVIS FAY LLP

By: 

Dated: July 15, 2025

Benjamin P. Fay

Attorneys for Respondents and Defendants  
CITY OF SANTA CRUZ and ELIZABETH CABELL

1 **DECLARATION OF SERVICE**

2 I, the undersigned, declare as follows:

3 I am a citizen of the United States and employed in the County of Alameda; I am over the age of  
4 eighteen years and not a party to the within entitled action; my business address is Jarvis Fay LLP, 555  
5 12<sup>th</sup> Street, Suite 1630, Oakland, California 94607.

6 On July 15, 2025, I served the within:

7 **ANSWER OF RESPONDENTS AND DEFENDANTS CITY OF SANTA CRUZ AND**  
8 **ELIZABETH CABELLO TO THE VERIFIED PETITION FOR WRIT OF MANDATE**  
**AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

9 on the parties in this action, by placing a true copy thereof in a sealed envelope(s), each envelope  
10 addressed as follows:

11 John T. Ryan  
[jake.ryan@lw.com](mailto:jake.ryan@lw.com)  
12 Daniel P. Brungon  
[daniel.brunton@lw.com](mailto:daniel.brunton@lw.com)  
13 Samantha Seikkula  
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14 Latham & Watkins LLP  
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*ASSOCIATION, and CALIFORNIA FUELS*  
*AND CONVENIENCE ALLIANCE*

23 (X) (By Email) I caused each such document to be emailed the addressee(s) above. I did not receive,  
24 within a reasonable time after the transmission, any electronic message or other indication that  
25 the transmission was unsuccessful.

26 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
27 true and correct. Executed on July 15, 2025, at Oakland, California.

28   
Jennifer Dent