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restaurants sue to get fees reimbursed because of
shutdown



A San Francisco restaurant owner, Johnny Metheny, who organized protests at City Hall against the outdoor dining ban is now suing for a different kind of relief. JOHNNY METHENY

By Alex Barreira

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Three San Francisco restaurants have sued county and state agencies to recoup the costs of liquor licenses, health permits and other fees restaurants have paid since government-mandated business restrictions began last March.

The suit does not dispute the shutdown orders themselves, but it argues that the state and San Francisco County "must return the fees, taxes, and/or charges that it should have never been allowed to collect during the pandemic."

The suit, filed Tuesday in San Francisco Superior Court, also seeks an injunction against county and state bodies levying further permit or license fees.

The Blue Light, Toy Soldier and Tin Cactus — all owned by Johnny Metheny — are named as plaintiffs in the suit, which seeks class-action status. Metheny has organized protests at City Hall demanding health officials reopen outdoor dining to help struggling restaurants.

Los Angeles law firm Kabateck LLP, which specializes in class-action litigation, represents the plaintiffs.

Bay Area restaurants in Alameda, Santa Clara and Contra Costa counties are expected to file similar suits over the next few weeks, as well as in Monterey, Placer, Riverside, San Bernardino Counties, said Brian Kabateck, the plaintiff's lead attorney. Kabateck LLP has already filed similar lawsuits in San Diego, Orange, Sacramento and Los Angeles.

"It's very tough to get a court to overturn a statute or require government to reimburse a tax or fee," said Shanin Specter, a law professor at UC Hastings, in an email. "But where the government imposes a charge for an activity they then forbid, there's a good chance that the court will disallow the charge. As a matter of common sense, such a charge is wrong and where there's a wrong there's usually a remedy."

Kabateck estimated that California restaurants on average pay between \$3,000 and \$10,000 per year in various city and county fees.

"The simple truth here is that you shouldn't have to pay for something you didn't get to use," Kabateck said.

"Some entities have reached out to say they are willing to do the right thing and return these fees, and we're hopeful other counties will follow suit," he added, citing Fresno County as an example.

Defendants in the San Francisco suit include the county at large, the Office of the Treasurer & Tax Collector, the Department of Health and the state's Department of Alcohol Beverage Control.

John Coté, a spokesman for San Francisco's city attorney, pointed to recent fee relief measures proposed by the city, which include dining and entertainment permit renewals in some cases, and added in an email, "These particular businesses who sued chose to take this matter to court, so that is where we will address their lawsuit."

The ABC declined to comment.

The San Francisco lawsuit was filed the same day that Mayor London Breed announced a proposal for a \$62 million grant and low-interest loan program the city hopes to make available to small businesses by the end of February.

It also came on the same day the Board of Supervisors passed legislation to waive \$5 million in fees — including renewals for dining and entertainment permits, business registration fees and payroll taxes for 2020 — for restaurants with under \$750,000 in gross receipts. Businesses that already paid these fees

will receive a refund under the legislation. To date, San Francisco has provided more than \$24 million in grants and loans to struggling businesses.

Kabateck called those moves "laudable" but said the new legislation does not cover all establishments.

The attorney gave notice of the impending lawsuit in October and filed the suit in San Francisco on Tuesday after a mandatory waiting period for litigation involving government bodies.