

LITIGATION ROSTER
SALES AND USE TAX

MARCH 2022

Sales and Use Tax
LITIGATION ROSTER
MARCH 2022

NEW CASES

Case Name

Case Number

CLOSED CASES

Case Name

THERATEST LABORATORIES, INC. v. CDTFA

Case Number

21STCV15852

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

**Sales and Use Tax
LITIGATION ROSTER
MARCH 2022**

**BEKKERMAN, ALINA; BRANDON GRIFFITH; JENNY LEE; and CHARLES LISSER
v. California Department of Tax and Fee Administration, et al.**

Court of Appeal, Third Appellate District: C093763
Sacramento County Superior Court: 34-2015-80002242
Filed – 11/19/2015

Plaintiffs' Counsel

Daniel M. Hattis
Tony J. Tanke, Law Offices of Tony J. Tanke
Jeffrey Burke, Burke Law Group

CDTFA's Counsel

Jennifer Hudson

CDTFA Attorney

Scott Chavez

Issue(s):

Whether [Regulation 1585, subdivisions \(a\)\(4\) and \(b\)\(3\)](#), are invalid and contrary to the Sales and Use Tax Law in that the Regulation imposes sales tax on the "unbundled sales price" of a mobile phone bundled with a service contract rather than the actual price paid by the consumer to the retailer. Whether the Board failed to adequately assess the economic impact of Regulation 1585 and failed to adequately consider less burdensome alternatives.

Audit/Tax Period: None

Amount: Unspecified

Status:

Plaintiff agreed to an extension of time for BOE to respond to January 12, 2016. The BOE filed its Answer on January 12, 2016. On February 8, 2016, Plaintiff served the BOE with a notice of hearing on the merits, which is set for October 21, 2016. Based on the local rules, the parties would then have the following deadlines: Opening Brief Due September 6, 2016; Opposition Brief Due September 26, 2016; and Reply Brief Due October 6, 2016. On February 9, 2016, Plaintiff's counsel served the BOE with Form Interrogatories and Requests for Production of Documents. Response was initially due March 18, 2016, but Plaintiff granted the BOE an extension to April 18, 2016. On March 29, 2016, the parties stipulated to a new briefing schedule. Petitioners' Opening Brief is now due on August 9, 2016, the BOE's Respondent's Brief is due September 12, 2016, and Petitioners' Reply Brief is due October 6, 2016. Plaintiffs granted the BOE

an extension to respond to Plaintiffs' discovery requests to May 2, 2016. BOE served its Responses to Plaintiffs' written discovery requests on May 6, 2016. On February 17, 2017, the Court issued an Order granting Petitioners' request for a continuance of the writ hearing and resetting the briefing schedule. The new dates are as follows: (1) Petitioners' opening memorandum is due August 4, 2017; (2) the BOE's opposition is due September 29, 2017; (3) Petitioners' Reply Brief is due November 23, 2017; and the (4) hearing on the merits of the writ petition is December 8, 2017. On July 25, 2017, Plaintiffs filed a Motion to consolidate this action with its class refund action (Sacramento County Superior Court, Case No. 34-2016-80002287). Hearing on Plaintiffs' Motion to consolidate is set for August 18, 2017. On July 28, 2017, pursuant to the Petitioners' *ex parte* request, the Court vacated its prior Order on February 17, 2017, setting the briefing and hearing dates on the merits. The Court reserved January 12, 2018, as the new hearing date, but did not set any new briefing dates at this time. On August 7, 2017, the State Defendants (CDTFA and State of California) opposed the Motion to consolidate. On August 11, 2017, Plaintiffs filed their Reply Brief in support of their Motion to consolidate. On August 18, 2017, the Court held Oral Argument on the Motion to consolidate. That same date, the Court issued a Minute Order denying Plaintiffs' Motion to consolidate in light of its ruling sustaining the CDTFA's Demurrer to Plaintiffs' class action complaint in Plaintiffs' related Class Action litigation. On August 25, 2017, the presiding justice signed the Order substituting the CDTFA for the Board of Equalization. On February 23, 2018, the Court granted Plaintiffs' motion for leave to file a first amended complaint seeking to add "class allegations, a full scope of remedies arising from the invalidity of [Regulation 1585], and procedural claims under the California Administrative Procedure Act," over CDTFA's objections. On April 20, 2018, the Court approved the parties' stipulation setting a briefing schedule for CDTFA's Motion to Strike portions of Plaintiffs' First Amended Complaint. The stipulation provides as follows: CDTFA's Motion to Strike is due on June 1, 2018; Plaintiffs' Response to CDTFA's Motion to Strike is due July 6, 2018; and CDTFA's Reply Brief is due August 10, 2018. On June 1, 2018, CDTFA filed Motion to Strike Portions of Plaintiff's First Amended Complaint. On June 12, 2018, Plaintiffs took the deposition of John L. Waid. The hearing on CDTFA's Motion to Strike Portions of Plaintiff's First Amended Complaint is scheduled for September 7, 2018. On July 6, 2018, plaintiffs filed an objection to CDTFA's Motion to Strike Portions of the First Amended Complaint. On August 10, 2018, CDTFA filed its reply brief in support of its Motion to Strike Portions of the First Amended Complaint. On September 7, 2018, the trial court affirmed its September 6, 2018, tentative ruling, in which the court granted (in part) CDTFA's Motion to Strike Portions of the First Amended Complaint. On September 20, 2018, CDTFA filed its answer to the First Amended Complaint. On November 18, 2019, Plaintiffs served a Notice of Hearing on the Merits of Writ Petition, setting the hearing date for June 19, 2020. On December 17, 2019, the court signed an order approving the parties' stipulated briefing schedule for the June 19, 2020 hearing on Plaintiffs' writ petition as follows: (1) Plaintiffs' moving papers due February 28, 2020; (2) CDTFA's opposition papers due April 24, 2020; (3) Plaintiffs' reply papers due May 22, 2020; and (4) Administrative record lodged

as of May 22, 2020. Pursuant to the parties' stipulation, the court also dismissed all class allegations. On February 19, 2020, pursuant to the parties' stipulation, the trial court continued the hearing and the associated briefing deadlines on the merits of Plaintiff's writ petition: (1) Plaintiffs' opening brief is now due by March 27, 2020; (2) CDTFA's opposition brief is due by May 22, 2020; (3) Plaintiffs' reply brief is due by June 19, 2020; and (4) Administrative record to be lodged by June 19, 2020. The hearing on the merits of Plaintiffs' writ petition is scheduled for July 17, 2020. As a result of the COVID-19 pandemic, the parties agreed to continue the hearing date on the merits of the writ petition from July 17, 2020, to September 4, 2020. The new hearing date has been tentatively scheduled with the court, and the parties will submit a joint stipulation for the court's approval. On May 1, 2020, Plaintiffs filed their Plaintiffs' and Petitioners' Memorandum on the Merits. On May 7, 2020, the court approved the parties' stipulation to continue the hearing date on the merits of the writ petition from July 17, 2020, to September 4, 2020. CDTFA's Opposition Brief and the Administrative Record are due July 2, 2020; and Plaintiffs' Reply Brief is due July 31, 2020. CDTFA filed its opposition brief on the merits on July 2, 2020. On July 31, 2020, Plaintiffs filed their reply. The hearing on the merits of Plaintiffs' writ petition remains scheduled for September 4, 2020. On September 4, 2020, the trial court heard oral argument on the merits of Petitioners' Complaint for Declaratory Relief and Petition for Writ. Following oral argument, the court affirmed its tentative ruling for Petitioners, finding that Regulation 1585, as applied to bundled transactions sold by carrier-operated stores, is invalid and an attempt to tax wireless service. The court, however, ruled in favor of CDTFA on Petitioners' procedural challenges to Regulation 1585, finding that CDTFA did not violate provisions in the Administrative Procedures Act (APA) requiring it to assess the proposed regulation's economic impacts on businesses and individuals, nor did it violate the APA by failing to re-publish the regulation, or hold a new hearing, after it amended the original text. CDTFA will have 60 days to file an appeal from service of the Notice of Entry of Judgment. On November 3, 2020, the trial court entered judgment in favor of Plaintiff. On January 26, 2021, Plaintiffs filed and served their Notice of Entry of Judgment. CDTFA has 60 days to file an appeal. On January 26, 2021, Plaintiffs filed and served their Notice of Entry of Judgment, which was posted by the Court on February 1, 2021. CDTFA's deadline to file an appeal is April 2, 2021. On March 17, 2021, CDTFA filed its Notice of Appeal with the Court. On April 29, 2021, CDTFA filed a Motion for Stay of Enforcement of the Judgment or, in the Alternative, Modification of Judgment. A hearing is set on the motion for June 4, 2021. On May 20, 2021, Plaintiffs served their opposition to Motion for Stay of Enforcement of Judgment. On May 27, 2021, CDTFA filed its reply brief. On June 4, 2021, the trial court denied CDTFA's Motion to Stay Enforcement of the trial court's October 27, 2020 judgment pending CDTFA's appeal of the judgment on the merits. On July 16, 2021, CDTFA filed its Verified Petition for Writ of Supersedeas with the Court of Appeal to stay the enforcement of the trial court's judgment pending the results of CDTFA's appeal. On August 27, 2021, CDTFA filed a Motion for Leave to File a Reply Brief In Support of Petition for Writ of Supersedeas in the Third District Court of Appeal, along with the proposed brief. On August 30, 2021, Plaintiffs

filed an application for leave to file a response to CDTFA's reply brief. On September 10, 2021, the Court of Appeal granted CDTFA's request for a stay of the judgment pending appeal, and the court denied Plaintiffs' request for an expedited briefing schedule without prejudice to refile their request as a motion. On November 2, 2021, the reporter's transcript was filed. CDTFA's opening appellate brief is due December 13, 2021. On December 1, 2021, the parties filed a stipulation extending CDTFA's deadline to file its opening brief to February 14, 2022. CDTFA requested an additional extension to file its opening brief to March 14, 2022, which was unopposed and granted by the court. On March 8, 2022, the Court of Appeal granted CDTFA's request for a 30-day extension (to April 13, 2022) to file its opening brief.

**STEVEN BRASLAW; YOGINEE BRASLAW v. STATE BOARD OF EQUALIZATION;
CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION; CARLOS
CALDERON; LISA NICKERSON; AND DOES 1 THROUGH 50, INCLUSIVE**

Riverside County Superior Court: CVR12104850

Filed – 10/15/2021

Plaintiffs' Counsel

Pro Per, Steven M. Braslaw

CDTFA's Counsel

Anna Barsegyan

CDTFA Attorney

Andrew Amara

Issue(s):

Plaintiffs filed their Complaint on October 15, 2021, and contend that CDTFA engaged in negligence, bad faith and unfair business practices, conversion, and negligent misrepresentation in the handling of LYM Inc. dba Pizza Time's sales and use tax account. Specifically, Plaintiffs allege CDTFA used arbitrary numbers to come up with an exorbitantly high audit finding, conducted a frivolous audit, coerced Plaintiffs to commit a fraud by advising them to open a new sales and use tax account, seized contested funds before the audit determination was final, conducted a biased administrative appeal, skewed the audit findings in favor of the claim that Plaintiffs were operating the business as individuals, and interfered with Plaintiffs' property by seizing funds intended for personal and other business uses in violation of CDTFA policy.

Plaintiffs allege the initial audit was conducted in November 2012, and that LYM Inc. dba Pizza Time underwent several re-audits that were appealed from 2013 to September 20, 2021. Plaintiffs further allege the CDTFA issued a determination that became final on October 20, 2021, but do not allege that they filed a claim for

refund or that they exhausted their administrative remedies. Plaintiffs seek \$1,000,000.00 in damages, as well as attorney's fees.

Audit/Tax Period: None
Amount: \$1,000,000.00

Status:

Plaintiffs filed their complaint on October 15, 2021, and served the summons and complaint on CDTFA via email on December 3, 2021. Plaintiffs agreed to a two-week extension for the filing of CDTFA's responsive pleading. CDTFA's response is due January 14, 2022. On January 14, 2022, the CDTFA filed a Motion to Transfer the Action from Riverside County Superior Court to Los Angeles County Superior Court. That motion is scheduled to be heard on March 8, 2022. Plaintiffs filed their opposition to CDTFA's Motion to Transfer Action (from Riverside County to Los Angeles County) on January 28, 2022. On March 1, 2022, CDTFA filed a reply brief in support of its Motion to Transfer Venue. On March 7, 2022, the court issued its tentative ruling transferring the case to Los Angeles County Superior Court. Since plaintiffs did not request oral argument, the tentative is now the final ruling of the court.

CITY OF PACIFIC GROVE v. CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, ET AL.

Sacramento County Superior Court: 34-2021-00298710
Filed – 04/14/2021

Plaintiff's Counsel

David C. Laredo, De Lay & Laredo, Attorneys at Law

CDTFA's Counsel

Robert E. Asperger

CDTFA Attorney

Kimberly Willy

Issue(s):

In this Complaint for Declaratory Relief, plaintiff seeks a judicial determination that Measure L, Resolution No. 20-027, Resolution No. 20-040, and Ordinance 21-002 are legally valid and enforceable and that CDTFA therefore has a duty, pursuant to [RTC 7270](#), subdivision (a), to contract with the city to administer a 0.5% increase in the city's district tax. Resolution No. 20-027 and Measure L express an intent to increase the city's 1% local tax to 1.5% beginning on January 1, 2021, and amend Chapter 6.08 of the Pacific Grove Municipal Code (PGMC), which relates only to the city's local tax. After Measure L was passed by a

majority of the voters in the city and was submitted to CDTFA for implementation, CDTFA informed the city that it did not have the authority to enter into a contract with the city to collect a 0.5% increase because the city did not follow the necessary requirements to effect an increase in city's district tax. Measure L actually increased the rate of the city's local tax, which is capped at 1% by law. Plaintiff alleges the court may rectify the drafting errors made by the city in Resolution No. 20-027 and Measure L by interpreting the provisions as an intent to do what the city could lawfully do, not what it was prohibited from doing. When the city was notified that CDTFA would not contract with the city to collect a 0.5% increase, the city passed and adopted Resolution No. 20-040 to repeal and replace Resolution No. 20-027, which it states refers to Chapter 6.08 (local tax) of the PGMC in error, and to effect the city council's intent to increase the city's district tax, instead of its local tax. The city also passed Ordinance 21-002 on January 21, 2021, to amend Chapter 6.07 of the PGMC to provide for an increase of the city's district tax from 1.0% to 1.5%, although the voters of the city approved an unlawful increase to its local tax, not the city's district tax. Resolution No. 20-040 was not submitted to the voters for approval, as required by the district tax law.

Audit/Tax Period: None

Amount: Unspecified

Status:

Plaintiff filed its Complaint against CDTFA on April 14, 2021, and served CDTFA electronically on April 29, 2021. CDTFA's deadline to file its first responsive pleading is May 31, 2021. On April 14, 2021, the court issued the following order: The Court finds good cause to delay the scheduling of the initial Case Management Conference for this case given the COVID-19 pandemic and its impact on court-wide operations. Among the affected operations is the Court's Case Management Program (CMP). The Court's CMP calendars have been and remain suspended until further notice. After the CMP Departments resume operations, the Court will schedule the initial Case Management Conference in this case and issue a Notice of Case Management Conference and Order to Appear. On May 12, 2021, Plaintiff agreed to a 15-day extension for CDTFA to file its response to the Complaint. CDTFA's response is now due on June 16, 2021. On June 16, 2021, CDTFA filed its Answer to the Complaint. On August 26, 2021, Plaintiff filed a Motion for Summary Judgment seeking a judicial determination interpreting the relevant ballot measure to provide for a half percent increase in its district tax. The hearing on Plaintiff's Motion for Summary Judgment is set for November 9, 2021. On October 14, 2021, CDTFA filed and served a Notice of Motion and Motion for Judgment on the Pleadings. The hearing on that motion is scheduled for November 9, 2021, to be heard concurrently with Plaintiff's Motion for Summary Judgment. On October 26, 2021, CDTFA filed and served an opposition to Plaintiff's Motion for Summary Judgment. On November 2, 2021, CDTFA filed and served a reply brief in support of its Motion for Judgment on the Pleadings. On November 9, 2021, following the hearing on the parties' cross-motions, the trial court issued minute

orders granting CDTFA's Motion for Judgment on the Pleadings, without leave to amend, and denying plaintiff's Motion for Summary Judgment. On December 6, 2021, the trial court entered judgment in favor of CDTFA. On December 20, 2021, CDTFA served plaintiff with a notice of entry of judgment. Plaintiff's deadline to appeal is February 25, 2022. An appeal has not been filed and plaintiff's deadline to do so has now passed. This case is now concluded and will be closed.

COLAVITO v. CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

Los Angeles County Superior Court: 21STLC02873

Riverside County Superior Court (Palm Springs Courthouse): 1904499

Filed – 07/02/2019

Plaintiff's Counsel

Pro Se, Philip Colavito

CDTFA's Counsel

Anna Barsegyan

CDTFA Attorney

Kiren Chohan

Issue(s):

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

Audit/Tax Period: None

Amount: \$10,183.00

Status:

Plaintiff served CDTFA with a complaint on August 6, 2020. CDTFA's response is due September 8, 2020. On September 4, 2020, CDTFA filed a Motion to Transfer Venue of the case to the County of Los Angeles. Plaintiff did not file an opposition to CDTFA's motion, which was due September 24, 2020. CDTFA filed a Reply in Support of CDTFA's Motion to Transfer Venue on September 30, 2020. The hearing on CDTFA's motion is scheduled for October 7, 2020. On October 6, 2020, the court issued a tentative ruling granting CDTFA's motion to transfer venue to the County of Los Angeles. On October 7, 2020, the court adopted its tentative and signed the order transferring the case to the County of Los Angeles. On November 18, 2020, Plaintiff filed an answer to the court's order

to show cause for his failure to pay the fee to transfer the case to Los Angeles County Superior Court. On November 19, 2020, the court took the order to show cause hearing off calendar. Plaintiff did not appear at the OSC hearing held on January 19, 2021, and the Court continued the hearing to March 26, 2021. Plaintiff has paid the transfer fee, but also requested a waiver of that fee, which the Court wants to be addressed prior to transferring the case. The trial court approved Plaintiff's request for waiver of the transfer fee and vacated the Order to Show Cause Hearing re: Failure to Pay the Transfer Fee that was scheduled for March 26, 2021. This case will now be transferred to the Los Angeles County Superior Court. On April 29, 2021, CDTFA received notice that this case was transferred to the Los Angeles County Superior Court on April 12, 2021. CDTFA's responsive pleading is due on May 12, 2021. On April 29, 2021, the court clerk set a Trial Setting Conference for May 27, 2021. The parties agreed to extend CDTFA's deadline to file a responsive pleading to June 11, 2021, and filed a stipulation and proposed court order to this effect on May 5, 2021. On May 7, 2021, the court signed the order extending CDTFA's deadline to file a responsive pleading to June 11, 2021, and it continued the trial setting conference from May 27, 2021, to July 2, 2021. On June 8, 2021, CDTFA filed its Answer to the Complaint and a Motion to Reclassify Limited Civil Case to Unlimited Civil Case. The hearing on this Motion is scheduled for October 5, 2021. On July 2, 2021, the court continued the trial setting conference to October 5, 2021. Plaintiff did not file an opposition to CDTFA's Motion to Reclassify the case from a limited civil case to an unlimited civil case, which was due on September 22, 2021. On September 28, 2021, CDTFA filed a reply brief in support of its motion stating that because Plaintiff had not filed an opposition to CDTFA's motion, the court should treat the motion as unopposed. On September 29, 2021, Plaintiff served CDTFA with a Motion for Continuance of the October 5, 2021 trial setting conference and hearing date on CDTFA's Motion to Reclassify the case to an unlimited civil case to November 5, 2021. On October 5, 2021, at the hearing on CDTFA's Motion to Reclassify the case from a limited civil case to an unlimited civil case, the court adopted the tentative ruling and approved reclassification of this case as unlimited. On October 13, 2021, the court issued an order reassigning this case to Department 54, a court of unlimited civil jurisdiction.

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

Court of Appeal. Third Appellate District: C095486

Sacramento County Superior Court: 34-2020-80003458

Filed – 08/10/2020

Plaintiff's Counsel

Benjamin Fay, Jarvis, Fay & Gibson

Edward Low, Jarvis, Fay & Gibson

CDTFA's Counsel

Robert E. Asperger

CDTFA Attorney

Kiren Chohan

Issue(s):

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

Audit/Tax Period: None

Amount: Unspecified

Status:

Defendants were served with the complaint on August 26, 2020, and a responsive pleading is due September 25, 2020. Defendants' response date was extended to October 26, 2020. The parties agreed to extend Defendants' deadline to respond to the complaint to November 9, 2020. Defendants' deadline to respond to the complaint was extended to November 23, 2020. Defendants' Answer to the Complaint was filed on November 23, 2020. On April 21, 2021, the parties submitted a stipulation and proposed order proposing the following briefing schedule and hearing date on the merits of Plaintiffs' petition for writ of mandate: (1) Plaintiffs' opening brief due June 17, 2021; (2) Defendants' opposition brief due July 29, 2021; (3) Plaintiffs' reply brief due August 9, 2021; and (4) Hearing on the merits of Plaintiffs' writ petition on September 3, 2021. Plaintiffs filed an Opening Brief on June 17, 2021. Defendants CDTFA, et al. filed an opposition brief to Plaintiffs' Petition for Writ of Mandate on July 29, 2021. On August 19, 2021, Plaintiffs filed a reply brief in support of their Petition for Writ of Mandate. On September 3, 2021, the court continued the hearing on Plaintiffs' petition to October 1, 2021. On September 30, 2021, the court issued a tentative ruling granting Plaintiffs' Petition for Writ of Mandate. On October 1, 2021, the court's tentative ruling (granting Plaintiffs' Petition for Writ of Mandate) became the final ruling of the court. Plaintiffs' counsel was directed to prepare a proposed order, peremptory writ, and judgment, and submit them to counsel for Respondents for approval as to form in accordance with California Rules of Court, rule ("CRC") 3.1312(a); and thereafter submit them to the court for signature and entry in accordance with CRC 3.1312(b). On November 8, 2021, the trial court entered judgment in favor of plaintiffs. The deadline to appeal the judgment is January 18, 2022. CDTFA filed a notice of appeal of the judgment in favor of plaintiffs on December 20, 2021. CDTFA's opening brief is due April 21, 2022, absent an extension.

**LORENA DIAZ, ON BEHALF OF HERSELF AND THE GENERAL PUBLIC v.
MERCEDES-BENZ FINANCIAL SERVICES USA, LLC, A DELAWARE
CORPORATION; CALIFORNIA DEPARTMENT OF TAX AND FEE
ADMINISTRATION (CDTFA)**

San Diego County Superior Court: 37-2021-00046296-CU-BT-CTL
Filed – 10/29/2021

Plaintiff's Counsel

David Markham, The Markham Law Firm

CDTFA's Counsel

Debbie J. Vorous

CDTFA Attorney

Andrew Amara

Issue(s):

Plaintiff Lorena Diaz filed a putative class action on October 29, 2021, alleging that Defendant Mercedes-Benz Financial Services, USA (“MBFS”) violated California's Unfair Competition Law ([Bus. Prof Code, §§ 17200, 17203](#)) and [Sales and Use Tax Regulation §1660\(c\)\(1\)](#) by unlawfully charging sales tax on the disposition fee, which is imposed on leased vehicles at the end of a car lease term. CDTFA is named as a real-party in interest in this lawsuit because plaintiff alleges that it collected and continues to collect tax remitted by defendant MBFS to CDTFA.

Plaintiff seeks public injunctive relief requiring defendant MBFS to provide an accounting identifying each lease within the last three years where sales tax on the lease end disposition fee was collected and remitted to the defendant CDTFA, and how much was remitted in each instance; an order requiring defendant MBFS to file claims for refund with the defendant CDTFA and to place refund amounts received in a common fund for the benefit of affected California consumers; a judicial declaration that the collection of tax on lease end disposition fees is unlawful under Regulation 1660(c)(1), and an order halting MBFS' further collection and remission of the tax. Plaintiff also seeks a claim for refund for taxes overpaid.

Audit/Tax Period: None

Amount: Unspecified

Status:

CDTFA was served with the complaint on November 2, 2021. On December 17, 2021, CDTFA filed a demurrer to the plaintiff's complaint. Plaintiff's opposition is due March 18, 2022, and a hearing is scheduled for April 1, 2022. On March 18,

2022, plaintiff filed a First Amended Complaint. CDTFA's response is due by April 18, 2022.

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

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

Plaintiff's Counsel

Paul W. Raymond, Attorney at Law

CDTFA's Counsel

Charles Tsai

CDTFA Attorney

Kimberly Willy

Issue(s):

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

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

Amount: \$248,871.00

Status:

Plaintiff served CDTFA with its Complaint on January 27, 2021. CDTFA's filing deadline is February 26, 2021. Pursuant to the parties' stipulation, CDTFA's response is now due on March 15, 2021. On February 25, 2021, CDTFA filed its Answer to the Complaint. A Case Management Conference is scheduled for July 1, 2021. CDTFA's Case Management Conference Statement is due on June 16, 2021. CDTFA filed its Case Management Conference Statement on June 14, 2021. At the July 1, 2021 Case Management Conference, the court set the

following trial-related deadlines: first day of expert exchange on February 25, 2022, the second/supplemental expert exchange on March 11, 2022, the cutoff for law/motion and discovery on April 29, 2022, the trial readiness conference on May 13, 2022, the trial call on May 27, 2022, and the trial on June 6, 2022. Discovery has commenced and is ongoing. CDTFA filed a Motion for Summary Judgment on February 15, 2022. The hearing on this motion is set for May 3, 2022.

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

Court of Appeal, Fourth Appellate District (Division One): D077970; D079025
San Diego County Superior Court: 37-2018-00065184-CU-WM-CTL
Court of Appeal, Fourth Appellate District (Division Three): G056975
Filed – 06/13/2018

Plaintiff's Counsel

Leighton M. Anderson, Bewley, Lassleben & Miller LLP
Joseph A. Vinatieri, Bewley, Lassleben & Miller LLP

CDTFA's Counsel

Van-Dzung V. Nguyen

CDTFA Attorney

Kiren Chohan

Issue(s):

Petitioner, First American Title Insurance Company, argues that it is entitled to a refund of taxes in the amount of \$721,205.53 paid to CDTFA by petitioner because the elected State Board of Equalization (SBE) ordered petitioner's "claim for refund granted in part, denied in part" at SBE's December 12, 2017 hearing on petitioner's claim. Petitioner asserts that on multiple occasions it requested CDTFA to refund the amount awarded by SBE to petitioner. CDTFA filed a petition for rehearing of the SBE's December 12, 2017 decision with the Office of Tax Appeals (OTA) on April 5, 2018, which the OTA acknowledged receipt of on May 14, 2018. Petitioner argues that OTA lacks jurisdiction to reconsider a decision made by the SBE at a meeting. Petitioner asks the court for the following relief: (1) to issue a writ of mandate to compel CDTFA to implement the SBE's December 12, 2017 decision, (2) a hearing on the legal issue of whether [Regulation 1660\(c\)\(1\)](#) is invalid because it violates California Constitution Article XIII, section 28(f) or is in excess of CDTFA's jurisdiction to implement existing provisions of the Revenue and Taxation Code; and (3) a writ to compel CDTFA to vacate its regulation and to adopt a new and different regulation providing that leases of tangible personal property to exempt taxpayers are not subject to tax on

any basis. Petitioner also seeks costs of suit and attorney's fees to the extent provided by law.

Audit/Tax Period: None

Amount: Unspecified

Status:

CDTFA was served with this complaint on June 18, 2018. On June 26, 2018, the Department filed a Motion to Transfer the Action to Los Angeles County Superior Court. On August 3, 2018, Petitioner filed an opposition to CDTFA's Motion to Transfer Venue to Los Angeles County Superior Court. On August 9, 2018, CDTFA filed a reply in support of CDTFA's Motion to Transfer Venue to Los Angeles County Superior Court. On August 15, 2018, the Court issued its tentative ruling staying the action until December 3, 2018. On August 16, 2018, the court rescheduled the hearing on CDTFA's Motion to Transfer Venue to Los Angeles to be heard on October 4, 2018 and asked both parties to submit simultaneous briefs on September 24, 2018. On September 24, 2018, CDTFA and Petitioner each filed supplemental briefs on the issue of proper venue for this action at the court's request. On October 4, 2018, the court transferred venue to San Diego County, but gave petitioner until November 19, 2018 to file a petition for writ with the Court of Appeal challenging its order to transfer venue. On October 26, 2018, the court issued an order transferring this case to San Diego County Superior Court. On November 8, 2018, the Court of Appeal denied Petitioner's Petition for Writ. On December 28, 2018, the San Diego Superior Court issued a Notice of Case Assignment. CDTFA's response to the Petition is due January 28, 2019. On January 28, 2019, CDTFA filed a Demurrer to Petitioner First American Title Insurance Company's Verified Petition for Writ of Mandate ([Civ. Proc. Code, § 1084](#)) and for Other Relief ("Petition") on the grounds that: (1) the Court does not have jurisdiction of Petitioner's tax refund action because Petitioner failed to exhaust its administrative remedies prior to filing the Petition; (2) the Petition fails to state facts sufficient to constitute a cause of action because there is no case or controversy; (3) the Court lacks jurisdiction of Petitioner's request for a writ of mandate to compel a tax refund because Petitioner may only pursue a refund action for sales and use taxes under the statutory procedures set forth in the Revenue and Taxation Code; and (4) the Court lacks jurisdiction of Petitioner's challenge to invalidate California Code of Regulations, title 18, Regulation 1660, subdivision (c) (1) because Petitioner must challenge the validity of the regulation in a tax refund action after exhausting its administrative remedies. The hearing on CDTFA's Demurrer is scheduled for May 3, 2019. On April 22, 2019, Plaintiff filed its Opposition to CDTFA's Demurrer to its Complaint. On April 26, 2019, CDTFA filed its Reply in Support of its Demurrer to the Complaint. The hearing on CDTFA's Demurrer is scheduled for May 3, 2019. The hearing on CDTFA's Demurrer to the Petition was held on May 3, 2019, and the court denied CDTFA's Demurrer. The court ordered CDTFA to submit a brief of no more than 5 pages by July 15, 2019, and to lodge the administrative record with the court by August 2, 2019. A status

conference was scheduled for August 2, 2019. On July 15, 2019, CDTFA and Petitioner each filed a brief regarding whether the administrative record was sufficient to determine the amount of refund applicable to the Board of Equalization's December 12, 2017 decision granting Petitioner's claim for refund, in part, and what additional information, if any, was needed in order to issue a refund consistent with that decision. On August 2, 2019, CDTFA and FAT each filed a separate Administrative Record with the court. At the August 2, 2019 status conference, the court ordered the parties to file a joint administrative record. As requested by the court, CDTFA and Petitioner filed a joint administrative record on August 30, 2019. At the August 30, 2019 case management conference, the trial court set a hearing date for January 24, 2020, to hear Petitioner's challenge to the validity of Regulation 1660, subdivision (c). The parties will file simultaneous Opening Briefs, which are due by December 6, 2019. Reply Briefs are due by January 3, 2020. Petitioner filed an Acknowledgement of Notice of Satisfaction of Order with the court on November 6, 2019, which resolves the Refund Cause of Action in the Petition. Petitioner continues to challenge the validity of Regulation 1660(c)(1) in its Petition. On December 6, 2019, CDTFA and Petitioner filed their opening briefs. Petitioner challenges the validity of Regulation 1660, subdivision (c)(1), which provides that "In the case of a lease that is a 'sale' and 'purchase'. . . the applicable tax is a use tax upon the use in this state of the property by the lessee. . . .When the lessee is not subject to use tax (for example, insurance companies), the sales tax applies." On January 3, 2020, CDTFA and Petitioner filed their reply briefs on the merits of First American's Verified Petition for Writ of Mandate. In its Opening Brief, Petitioner continues to challenge the validity of a provision in Regulation 1660(c)(1), which imposes sales tax on lessors with respect to their leases of tangible personal property to insurance companies. In its brief, Petitioner also asks the court to find that the Board of Equalization's December 2017 decision granting, in part, its claim for refund, is also binding on its future claims of refund that are currently pending with CDTFA. On January 23, 2020, on its own motion, the court continued the hearing on Petitioner's Petition for Writ of Mandate to January 31, 2020. Subsequently, the court continued the hearing to February 11, 2020. The court continued the hearing on Petitioner's Petition for Writ of Mandate to February 13, 2020. On February 13, 2020, the San Diego County Superior Court granted the petition. Petitioner is required to draft the judgment and a Statement of Decision within one week. CDTFA will have 60 days to file an appeal following service of the notice of entry of judgment. Petitioner lodged its proposed statement of decision, judgment and writ with the court, and served CDTFA on February 21, 2020, by mail. CDTFA's response to the proposed statement of decision, judgment and writ is due by March 12, 2020. On March 12, 2020, CDTFA filed its objections to Petitioner's proposed judgment, writ of mandate and statement of decision. The superior court signed the statement of decision in favor of Petitioner, on March 13, 2020; and the clerk mailed the statement of decision to the parties on March 16, 2020. Petitioner refiled its proposed judgment and writ on March 18, 2020, for the court's consideration. On June 16, 2020, the court filed a Final Statement of Decision granting the petition. The final decision is substantially similar to the earlier decision served on the

parties on March 16, 2020, with minor non-substantive edits. On June 18, 2020, Petitioner refiled its proposed judgment and order on writ of mandate for the court's consideration. On June 25, 2020, CDTFA filed its objections to Petitioner's proposed judgment and writ of mandate. On June 26, 2020, Petitioner filed its replies to CDTFA's objections to the proposed judgment and proposed writ. The court entered judgment in favor of Petitioner on July 2, 2020, and a Notice of Entry of Judgment was entered on July 7, 2020. CDTFA will file a notice of appeal of the judgment, which must be filed by September 8, 2020. CDTFA filed a notice of appeal from the trial court's judgment in favor of Petitioner on August 31, 2020. Petitioner filed a Motion for Award of Attorneys' Fees on September 8, 2020. The hearing on this motion is scheduled for March 12, 2021. CDTFA's opposition to this motion is due March 1, 2021, and a reply is due March 5, 2021. The Reporter's Transcript was filed on November 17, 2020. On December 4, 2020, CDTFA notified the Court of Appeal of the parties' stipulation to extend CDTFA's deadline to file its opening brief to February 26, 2021, and the deadline was extended. On February 8, 2021, CDTFA filed a request with the Court of Appeal to extend the deadline to file its Opening Brief to March 29, 2021, which Petitioner opposed. On February 9, 2021, the Court of Appeal granted CDTFA an extension to file its Opening Brief by March 29, 2021. On March 1, 2021, CDTFA filed its Opposition to Petitioner's Motion for Attorneys' Fees and Costs. Petitioner filed its Reply Brief in Support of its Motion for Attorneys' Fees on March 5, 2021. On March 17, 2021, the trial court granted, in part, and denied, in part, Petitioner's Motion for Attorneys' Fees and Costs. On April 13, 2021, CDTFA filed its Appellant's Opening Brief and a Motion for Judicial Notice with the Court of Appeal. On April 23, 2021, Petitioner filed an Opposition to CDTFA's Motion for Judicial Notice. The Court of Appeal issued an Order on April 26, 2021, advising that CDTFA's Motion for Judicial Notice and Petitioner's Opposition will be considered concurrently with the appeal. The parties agreed to extend the deadline for Petitioner to file its Respondent's Brief to June 14, 2021, and filed a stipulation with the Court of Appeal on May 4, 2021. Petitioner filed its Respondent's Brief on June 14, 2021. The parties stipulated to extend CDTFA's deadline to file its reply brief by 30 days; CDTFA's reply will now be due on August 5, 2021. CDTFA's opening brief on its appeal of the trial court order granting attorneys' fees to Petitioner was originally due on August 15, 2021 (Case No. D079025). The parties stipulated to a 30-day extension for CDTFA to file its opening brief, which is now due on September 15, 2021. On August 5, 2021, CDTFA filed its reply brief in support of its appeal of the trial court's judgment in favor of Petitioner, in which the court found that Regulation 1660(c)(1) was invalid (Appeal No. D077970). This appeal is now fully briefed and awaiting scheduling of oral argument. On August 27, 2021, the Court of Appeal stayed the briefing in CDTFA's appeal of the trial court judgment awarding Petitioner attorney's fees (Case No. D079025), until further order of the court. On September 28, 2021, the Court of Appeal scheduled oral argument for November 9, 2021 (Appeal No. D077970). Oral argument was held on November 9, 2021, and the cause was submitted. On November 12, 2021, the Court of Appeal issued an opinion reversing the judgment of the trial court, and upheld the validity of CDTFA Regulation 1660(c)(1). On November 24, 2021, petitioner

filed a Petition for Rehearing. On December 9, 2021, the Court of Appeal issued an order denying petitioner's petition for rehearing and modifying its opinion filed November 12, 2021. There is no change in judgment. On January 12, 2022, the Court of Appeal issued a remittitur in Case No. D077970, which was decided in favor of CDTFA. The Court of Appeal also vacated its stay of briefing in Case No. D079025. The court advised the parties that in light of the disposition in the related appeal in favor of CDTFA, the parties should attempt to reach a negotiated resolution of this appeal. On January 31, 2022, the parties filed a stipulation in CDTFA's appeal (Case No. D079025), to reverse and vacate the lower court order granting attorney's fees to petitioner in light of the Court of Appeal's opinion in favor of CDTFA in the related appeal (Case No. D077970), and to dismiss CDTFA's appeal (Case No. D079025). On February 7, 2022, the Court of Appeal issued an unpublished opinion in Case No. D079025 that reversed the Superior Court order awarding attorney's fees to petitioner and remanded the matter to the Superior Court with directions to enter a new order denying Petitioner's Motion for Attorney's Fees. Pursuant to their stipulation, the parties shall bear their own costs on this appeal, and a remittitur was issued. On March 3, 2022, CDTFA filed a Notice of Lodgment of [Proposed] Judgment and [Proposed] Order Upon Remand, consistent with the Court of Appeal decision in favor of CDTFA. On March 15, 2022, the trial court issued a Judgment on Remand in favor of CDTFA and entered an Order Denying Motion for Award of Attorneys' Fees on Remand. CDTFA served a Notice of the Judgment and Order in favor of CDTFA to petitioner on March 29, 2022, which was then filed in court on March 30, 2022. This case is now over and will be closed.

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

San Diego County Superior Court: 37-2020-00038128-CU-MC-CTL
Filed – 10/21/2020

Plaintiff's Counsel

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

CDTFA's Counsel

Leanna Costantini

CDTFA Attorney

Kimberly Willy

Issue(s):

Plaintiff filed a Complaint for Refund of Sales and Use Taxes (“Complaint”) on October 21, 2020, that was served upon defendant California Department of Tax and Fee Administration (“CDTFA”) via mail on November 10, 2020. Plaintiff contends that CDTFA improperly recorded a Notice of State Tax Lien against

her property, which was awarded to plaintiff as her sole and separate property in a 2008 judgment for dissolution of marriage. Further, plaintiff contends that the unpaid sales and use tax liability that resulted in the State Tax Lien was the responsibility of the taxpayer ex-husband, Agop Gozukara, and not the plaintiff, as provided in the 2008 judgment. Finally, plaintiff contends that she failed to receive notice of both CDTFA's sales tax assessment and the subsequent Notice of State Tax Lien.

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

Audit/Tax Period: None

Amount: \$141,763.95

Status:

CDTFA was served with this Complaint on November 10, 2020, and its response to the Complaint is due December 17, 2020. On December 15, 2020, CDTFA filed its Answer to Plaintiff's Complaint. A Case Management Conference is scheduled for June 25, 2021. CDTFA's Case Management Statement is due on June 10, 2021. At the June 25, 2021 Case Management Conference, the court set the trial date for May 27, 2022, and a trial readiness conference for May 13, 2022. On December 28, 2021, the court issued a Notice of Rescheduled Hearing to reschedule the trial date to May 26, 2022. On January 26, 2022, CDTFA filed a Motion for Summary Judgment, which is scheduled to be heard on April 15, 2022. On February 1, 2022, plaintiff filed a Motion for Summary Judgment, which is scheduled to be heard on April 22, 2022. On March 17, 2022, the parties entered into a stipulation to continue the hearing on CDTFA's Motion for Summary Judgment to April 22, 2022, which is the date set for plaintiff's Motion for Summary Judgment. The parties further stipulated that the response deadlines to CDTFA's Motion for Summary Judgment would be calculated from the original hearing date of April 15, 2022. On March 22, 2022, pursuant to the parties' stipulation, the court ordered CDTFA's Motion for Summary Judgment to be continued to April 22, 2022, and heard on the same date as plaintiff's Motion for Summary Judgment. The court further ordered that the response deadlines to CDTFA's Motion for Summary Judgment would be calculated from the original hearing date of April 15, 2022.

**GROSZ, STANLEY v. CALIFORNIA DEPARTMENT OF TAX AND FEE
ADMINISTRATION, ET AL.**

Court of Appeal. Second Appellate District: B309418

Los Angeles County Superior Court: 19STCV27757

Filed – 08/06/2019

Plaintiff's Counsel

Mardiros Dakessian, Dakessian Law, LTD

CDTFA's Counsel

Douglas Beteta

CDTFA Attorney

Scott Chavez

Issue(s):

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

Audit/Tax Period: None

Amount: Unspecified

Status:

Plaintiff filed the complaint on August 6, 2019 and served CDTFA with a copy on August 22, 2019. Plaintiff agreed to an extension for CDTFA and the Director to file their responses to the complaint by November 7, 2019. A stipulation and request for court order setting the new deadline as November 7, 2019, was filed with the court. On August 22, 2019, the court reassigned the case to Judge Barbara Meiers, following plaintiff's preemptory challenge to the former judge assigned to the matter. On August 29, 2019, the court approved CDTFA's stipulated request to extend the response date to plaintiff's complaint to November 7, 2019. On September 24, 2019, Plaintiff served his First Amended Complaint, adding Amazon.com, Inc., and other Amazon affiliates, as Real Parties In Interest. On or about November 12, 2019, the court approved the parties' stipulation to extend the time to respond to the First Amended Complaint to November 27, 2019. On November 27, 2019, CDTFA filed a demurrer to Plaintiff's First Amended Complaint. On November 29, 2019, Real Parties in Interest Amazon.com (and its affiliated entities) also filed a demurrer to the First Amended Complaint, as well as a joinder in CDTFA's demurrer. The hearing on

both of the demurrers is scheduled for February 4, 2020. On November 26, 2019, this case was reassigned to a new judge and department, and the existing briefing and hearing schedule, including the hearing date for CDTFA's demurrer, was vacated. The hearing on CDTFA's demurrer and the Real Parties in Interest's demurrer has been rescheduled for June 16, 2020. Amazon.com filed an Amended Notice of Demurrer and Amended Notice of Joinder on May 22, 2020. Plaintiff Grosz's opposition to the demurrers is due by June 3, 2020, and the Defendants' reply brief will be due by June 9, 2020. On June 3, 2020, the Court issued a notice that the hearing on Defendants' demurrers have been rescheduled to August 5, 2020. The briefing schedule is revised as follows: Plaintiff's Opposition brief due: July 23, 2020; Defendants' Reply briefs due: July 29, 2020. Plaintiff filed its Opposition to Defendants' Demurrers on June 3, 2020. CDTFA filed its reply brief in support of its demurrer on July 28, 2020. On August 5, 2020, at the hearing on CDTFA's demurrer, the judge allowed additional optional briefing on issues raised at the hearing to be filed by August 24, 2020. A new hearing date was not set. On August 24, 2020, CDTFA filed a Supplemental Brief in support of its Demurrer. On October 20, 2020, the court sustained CDTFA's demurrer to the complaint without leave to amend and issued a minute order to that effect. On December 9, 2020, Plaintiff filed an appeal of the court order sustaining CDTFA's demurrer without leave to amend. On December 17, 2020, Plaintiff filed his Notice Designating Record on Appeal. Once the reporter's transcript is filed, Plaintiff will have 40 days to file his opening brief. On August 13, 2021, the Court of Appeal issued a notice stating that the reporter's transcript has been filed in this case and that Plaintiff/Appellant has 40 days, or until September 22, 2021, to file his opening brief. On August 19, 2021, Plaintiff/Appellants filed a stipulation for extension of time for him to file his opening brief. That brief is now due October 22, 2021. Per court rule, the stipulation became effective on filing. On October 6, 2021, Plaintiff/Appellant filed a stipulation extending the time to file his opening brief to November 22, 2021. On November 22, 2021, plaintiff/appellant filed his appellant's opening brief. The deadline for CDTFA to file its respondent's brief is December 22, 2021. On December 2, 2021, the Court of Appeal granted the parties' stipulated request for a 60-day extension to February 22, 2022, for CDTFA to file its respondent's brief. On February 14, 2022, the Court of Appeal granted CDTFA's request for a thirty-day extension to file its respondent's brief; the brief is now due March 24, 2022. On March 24, 2022, CDTFA filed its respondent's brief. Real Parties in Interest Amazon subsidiaries also filed their respondents' brief and appendix on March 24, 2022. On March 25, 2022, the Court of Appeal granted Plaintiff/Appellant's request for an extension of time to file his reply brief, which is now due May 13, 2022.

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

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

Filed -09/29/2020

Plaintiff's Counsel

Candice L. Fields, Candice Fields Law

CDTFA's Counsel

Gina Tomaselli

CDTFA Attorney

Scott Chavez

Issue(s):

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

Audit/Tax Period: None

Amount: Unspecified

Status:

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

issued a Scheduling Order requiring Plaintiff to refile its Motion for Preliminary Injunction, and CDTFA to refile its Motion to Dismiss, by March 1, 2021. On March 1, 2021, CDTFA refiled its Motion to Dismiss and Plaintiff refiled its Motion for Preliminary Injunction. On April 1, 2021, CDTFA filed its opposition to Plaintiff's Motion for a Preliminary Injunction and Plaintiff filed its opposition to CDTFA's Motion to Dismiss. On April 14, 2021, Plaintiff filed its reply brief in support of its Motion for a Preliminary Injunction and CDTFA filed its reply brief in support of its Motion to Dismiss. The hearing on these motions was initially set for April 22, 2021, but was subsequently vacated by the court. On October 13, 2021, the U.S. District Court for the Eastern District of California granted CDTFA's Motion to Dismiss the complaint, with leave to amend, and dismissed Plaintiff's Motion for a Preliminary Injunction. Plaintiff has 20 days to file an amended complaint. On November 2, 2021, plaintiff's deadline to amend its complaint expired, and the District Court's order became a final judgment on that date. On November 10, 2021, plaintiff filed a notice of appeal from the judgment in favor of CDTFA. On January 25, 2022, the Ninth Circuit Court of Appeals issued an order setting forth the following briefing schedule: (1) Appellant's Opening Brief is due February 25, 2022; (2) CDTFA's Answering Brief is due March 25, 2022; and (3) Appellant's optional Reply Brief is due April 15, 2022. On February 24, 2022, the Ninth Circuit Court of Appeal released the parties from the court's mediation program. Appellant filed its Opening Brief on February 25, 2022. The Ninth Circuit granted CDTFA's request for an extension and CDTFA's Respondent's Brief is now due on April 25, 2022.

ISABEL RUBINAS AND IJR CORP. v. CDTFA

U.S. Court of Appeals, 7th Circuit: 21-2903

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

Filed – 01/07/2021

Plaintiff's Counsel

Aaron Block

CDTFA's Counsel

Gina Tomaselli

CDTFA Attorney

Scott Chavez

Issue(s):

Plaintiff, an online retailer and participant in Amazon's Fulfilled by Amazon (FBA) program, seeks a declaration that CDTFA's imposition of registration and use tax collection requirements on the retail sales of out-of-state third-party merchants is unconstitutional. Plaintiff also seeks an injunction to enjoin CDTFA from continuing such tax administration practices, as well as, damages for

CDTFA's alleged violations of the U.S. Constitution, Internet Freedom Act, and attorney's fees and costs under 42 U.S.C. § 1988.

Audit/Tax Period: None

Amount: Unspecified

Status:

This new action was served on CDTFA on January 8, 2021. Plaintiffs filed a Motion for Temporary Restraining Order and Injunctive Relief on January 8, 2021, asking the Court to enjoin CDTFA from levying additional funds from Plaintiffs' bank accounts, an order lifting the existing levy, and the return of \$2,367.56 already levied from Plaintiff IJR Corp.'s bank account. CDTFA filed a reply to the motion on January 11, 2021. The hearing on the motion for a temporary restraining order was held on January 12, 2021. On January 14, 2021, the Court denied the motion as to the request to prevent further levying of Plaintiffs' bank accounts, because CDTFA has represented and confirmed to the Court that it has no immediate plans to apply a further levy on the accounts, and CDTFA also agreed to provide at least 14 days' notice in advance of attempting another levy. The motion was further denied as to the request for the return of the previously levied \$2,367.56. On January 18, 2021, the Court issued a written ruling explaining its January 14, 2021 denial of Plaintiffs' motion for a TRO. In the written ruling, the Court explained that it denied the Temporary Restraining Order because the Illinois federal court lacked subject matter jurisdiction over the action because the Tax Injunction Act prohibits federal courts from enjoining or restraining the collection of any tax under state law where a plain, speedy, and efficient remedy exists. The judge stated that he would very likely hold the same in response to the pending motion for preliminary injunction and any upcoming motion to dismiss, and invited the parties to discuss entering a dismissal. On January 29, 2021, the parties filed a Joint Status Report as requested by the Court. In the Joint Status Report, Plaintiffs inform the court that they intend to file a supplemental brief in support of their motion for preliminary injunction seeking to enjoin CDTFA from any further collection efforts against Plaintiffs and to return the \$2,367.56 which was levied from Plaintiff IJR Corp.'s bank account. In light of the Court's prior ruling denying Plaintiffs' Temporary Restraining Order seeking similar relief on the ground that the Court lacked jurisdiction, Plaintiffs have agreed that should the Court also deny their motion for preliminary injunction on the ground that it lacks jurisdiction, Plaintiffs will take a dismissal and not require CDTFA to pursue a motion to dismiss. The Court approved the parties' proposed briefing schedule for the motion for preliminary injunction as follows: (1) February 17, 2021: Plaintiffs will file their supplemental brief in support of the motion for preliminary injunction; (2) March 19, 2021: CDTFA files its responsive brief; and (3) March 26, 2021: Plaintiffs may file an optional reply brief. On February 17, 2021, Plaintiffs filed their Supplemental Brief in support of their Motion for Preliminary Injunction. On March 19, 2021, CDTFA filed a supplemental brief with the Court in support of its opposition to Plaintiffs' Motion for Preliminary Injunction. On March 26, 2021, Plaintiffs filed a supplemental reply brief in support of their motion for preliminary injunction.

CDTFA's deadline to file a responsive pleading is suspended until 30 days after a decision is issued on CDTFA's Motion to Dismiss and Plaintiffs' Motion for Preliminary Injunction. On September 16, 2021, the United States District Court for the Northern District of Illinois, Eastern Division, entered a ruling denying Plaintiffs' motion for preliminary injunction, finding that the Tax Injunction Act (28 U.S.C. § 1341), deprived the court of subject matter jurisdiction to hear Plaintiffs' claims. Plaintiffs have until October 18, 2021 to appeal the ruling. On October 15, 2021, Plaintiffs filed a Notice of Appeal to the Seventh Circuit Court of Appeals. On October 19, 2021, the Seventh Circuit Court of Appeals set the following briefing schedule: Plaintiff's opening brief is due November 29, 2021; CDTFA Respondent's brief is due on December 29, 2021. On October 26, 2021, the Seventh Circuit issued two new orders in the appeal: the court ordered CDTFA to participate in a telephonic mediation on November 18, 2021; and it extended the briefing schedule to accommodate the mediation. The new briefing schedule is as follows: The Appellant's opening brief is due December 20, 2021; Respondent's opposition brief is due January 19, 2022; and the Appellant's reply brief is due February 9, 2022. The parties participated in a court-ordered mediation on November 18, 2021. The mediator will be setting a new briefing schedule. Following mediation, the Seventh Circuit Court of Appeals set a new briefing schedule as follows: (1) Appellants' Opening Brief is due on February 11, 2022; (2) CDTFA's Opposition Brief is due on March 14, 2022; and (3) Appellants' optional Reply Brief is due on April 4, 2022. On February 3, 2022, the Seventh Circuit entered an order extending briefing deadlines as follows: (1) Appellants' Opening Brief is due by March 14, 2022; (2) CDTFA's Answering Brief is due by April 13, 2022; and (3) Appellants' optional Reply Brief is due by May 4, 2022. On March 10, 2022, the Court of Appeal issued an order setting a new briefing schedule: Plaintiffs-Appellants' brief due May 13, 2022; Defendants-Respondents' brief due June 17, 2022; and optional reply brief due July 11, 2022.

**MONICA SALAZAR, ON BEHALF OF HERSELF AND THE GENERAL PUBLIC v.
BMW FINANCIAL SERVICES NA, LLC; CALIFORNIA DEPARTMENT OF TAX AND
FEE ADMINISTRATION (CDTFA); AND DOES 1 THROUGH 10, INCLUSIVE**

Sacramento County Superior Court: 34-2022-00314532
Filed – 01/25/2022

Plaintiff's Counsel

David Markham, The Markham Law Firm

CDTFA's Counsel

Debbie J. Vorous

CDTFA Attorney

Andrew Amara

Issue(s):

Plaintiff Monica Salazar filed a putative class action on January 25, 2022, alleging that Defendant BMW Financial Services NA, LLC (“BMW”) violated California's Unfair Competition Law ([Bus. Prof Code §§ 17200, 17203](#)) and Sales and [Use Tax Regulation §1660\(c\)\(1\)\(D\)](#) by unlawfully charging sales tax on the disposition fee, which is imposed on leased vehicles at the end of a car lease term. CDTFA is named as a real-party in interest in this lawsuit because plaintiff alleges that it collected and continues to collect tax remitted by defendant BMW to CDTFA.

Plaintiff seeks public injunctive relief requiring defendant BMW to provide an accounting identifying each lease within the last three years where sales tax on the lease end disposition fee was collected and remitted to the defendant CDTFA, and how much was remitted in each instance; an order requiring defendant BMW to file claims for refund with the defendant CDTFA and to place refund amounts received in a common fund for the benefit of affected California consumers; a judicial declaration that the collection of tax on lease end disposition fees is unlawful under Regulation 1660(c)(1)(D), and an order halting BMW's further collection and remission of the tax. Plaintiff also seeks a claim for refund for taxes overpaid.

Audit/Tax Period: None

Amount: Unspecified

Status:

CDTFA was served with the complaint on February 15, 2022. On March 11, 2022, the trial court issued a Minute Order ruling that this case was not related to Stettner II (Sacramento Superior Court: 34-2021-00305976) and Diaz (San Diego

County Superior Court: 37-2021-00046296-CU-BT-CTL), two other actions challenging the imposition of tax on vehicle turn-in fees. CDTFA was granted an extension to file its response to the complaint to April 1, 2022. On March 30, 2022, plaintiff filed a First Amended Complaint. CDTFA's response to the complaint is due April 29, 2022.

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

Court of Appeal, Third Appellate District: C094345

Sacramento County Superior Court: 34-2020-00282700

Filed – 08/03/2020

Plaintiff's Counsel

David Markham, The Markham Law Firm

CDTFA's Counsel

Debbie J. Vorous

CDTFA Attorney

Andrew Amara

Issue(s):

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

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

Audit/Tax Period: None

Amount: Unspecified

Status:

CDTFA was served with the complaint on September 3, 2020. On September 21, 2020, plaintiffs agreed to extend CDTFA's deadline to file its Answer and Affirmative Defenses from October 3, 2020 to October 16, 2020. The deadline to respond was extended to November 16, 2020. On November 11, 2020, plaintiff filed a First Amended Complaint. CDTFA's response is due December 16, 2020.

On December 16, 2020, CDTFA filed a Demurrer to the Plaintiff's First Amended Complaint. A hearing is scheduled for April 28, 2021. On January 25, 2021, CDTFA filed its Objection and Opposition to Plaintiffs' Application for Approval Designating Case as Complex. On February 26, 2021, the Court issued a tentative ruling designating the case as "complex." In its ruling, the Court informed the parties that they could revisit the complex designation, if necessary, after CDTFA's Demurrer is heard on April 28, 2021. The Court also scheduled a Case Management Conference for May 21, 2021. On April 21, 2021, CDTFA and co-defendant Mercedes Benz filed their reply briefs in support of their respective demurrers. On April 29, 2021, the trial court sustained, without leave to amend, the demurrers to Plaintiffs' complaint filed by CDTFA and Mercedes Benz. The court agreed with CDTFA that Plaintiffs had not exhausted their administrative remedies prior to filing suit, and also did not meet the requirements for relief under *Javor v. State Board of Equalization* (1974) 12 Cal.3d 790, because CDTFA had not made a prior legal determination that Plaintiffs were entitled to a refund. Once judgment is entered, and a notice of the judgment has been served, Plaintiffs will have 60 days to file an appeal. The trial court entered judgment for CDTFA on May 12, 2021. On June 11, 2021, Plaintiffs filed a Notice of Appeal from the trial court's judgment in favor of CDTFA. On August 12, 2021, the Third District Court of Appeal issued an order indicating that the case is not suitable for mediation. Plaintiffs will have 40 days after the reporter's transcript is filed to serve and file their opening brief. CDTFA must serve and file its responsive brief within 30 days after Plaintiffs file their brief. On January 14, 2022, the trial court directed the preparation of the Reporter's Transcript on appeal of this action. The transcript is due February 14, 2022. Appellants' Opening Brief is due 40 days after the transcript is filed in the Court of Appeal. The reporter's transcript on appeal was filed on February 25, 2022. Appellant's Opening Brief is due April 6, 2022; and CDTFA's Respondent's Brief is due May 6, 2022.

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

Sacramento County Superior Court: 34-2021-00305976

Filed – 08/10/2021

Plaintiff's Counsel

David Markham, The Markham Law Firm

CDTFA's Counsel

Debbie J. Vorous

CDTFA Attorney

Andrew Amara

Issue(s):

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

Plaintiffs seek public injunctive relief requiring defendants to conduct an accounting of taxes paid and ordering Mercedes-Benz to seek a refund of the paid amount from CDTFA with recovered amounts to be placed in a common fund for the benefit of affected California consumers. Plaintiffs also seek an order requiring Mercedes-Benz to stop collecting tax on lease disposition fees. (Although Plaintiffs assert that the tax at issue is a "sales tax" paid by the lessor (Mercedes-Benz), automobile leases are generally subject to use tax, not sales tax. (18 Cal. Code Regs., §1660.))

The complaint contains the same underlying substantive allegations as another action brought by plaintiffs (Sacramento County Superior Court Case No. 34-2020-00282700), which is currently pending before the Third District Court of Appeal. The trial court granted judgment in favor of CDTFA in that action on the ground that plaintiffs did not exhaust their administrative remedies. Plaintiffs appealed that judgment and also filed this new action, asserting that they have now exhausted their administrative remedies.

Audit/Tax Period: None

Amount: Unspecified

Status:

CDTFA was served with the complaint on September 20, 2021. On October 22, 2021, the parties filed a stipulation to stay the case pending the resolution of Plaintiffs' appeal in their related case involving the same substantive allegations, which is currently before the Third District Court of Appeal (Case No. C094345). On November 1, 2021, the court signed the parties' proposed order staying this action pending the result in the appeal of Stettner I.

Sales and Use Tax
LITIGATION ROSTER
MARCH 2022

CLOSED CASES

Case Name

THERATEST LABORATORIES, INC. v. CDTFA

Case Number

21STCV15852

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