

LITIGATION ROSTER
SALES AND USE TAX

NOVEMBER 2024

**Sales and Use Tax
LITIGATION ROSTER
NOVEMBER 2024**

NEW CASES

Case Name

B&L DINER'S INC. v. CDTFA
BERI RESTAURANT GROUP INC. v. CDTFA
PASQUAL v. CDTFA

Case Number

24STCV30171
24STCV29960
30-2024-01440620

CLOSED CASES

Case Name

BEKKERMAN, ET AL. v. CA DEPT. OF TAX & FEE
BEKKERMAN, ET AL. v. CA DEPT. OF GENERAL
HA v. CDTFA, ET AL.

Case Number

S284476
34-2022-80003
23STCV12472

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

Sales and Use Tax
LITIGATION ROSTER
NOVEMBER 2024

**AJAY BERI CORPORATION v. CALIFORNIA DEPARTMENT OF TAX AND FEE
ADMINISTRATION**

Los Angeles County Superior Court: 24STCV23578
Filed – 09/12/2024

Plaintiffs' Counsel

David Jones Dunlap, Law Firm of David Dunlap Jones, APLC

CDTFA's Counsel

Laura Robbins

CDTFA Attorney

Andrew Amara

Issue(s):

Plaintiff, an operator of Subway restaurants throughout Southern California, seeks a sales and use tax refund of \$1,956,225.54 for the period of January 1, 2003 - December 31, 2010 (tax period), on the basis that CDTFA erroneously assessed tax, penalties and interest for the tax period. Plaintiff asserts that CDTFA's assessments were contrary to the law, untimely, and barred by a 2016 criminal plea agreement.

Audit/Tax Period: January 1, 2003 - December 31, 2010
Amount: \$1,956,225.54

Status:

CDTFA was personally served with the Complaint on September 18, 2024. CDTFA's response is due October 18, 2024. On October 16, 2024, Plaintiff granted CDTFA an extension to file its response to the Complaint to November 1, 2024. CDTFA filed a Demurrer to the Complaint on November 1, 2024. The hearing on the Demurrer is set for April 8, 2025.

**DEAN ANDAL v. NICOLAS MADUROS, DIRECTOR AND THE CALIFORNIA
DEPARTMENT OF FEE AND TAX ADMINISTRATION**

Sacramento County Superior Court: 24CV017346

Filed – 09/03/2024

Plaintiffs' Counsel

Dean Andal

CDTFA's Counsel

Angela Zugman

CDTFA Attorney

Kimberly Willy

Issue(s):

Plaintiff Dean Andal, former Board Member at the Board of Equalization, filed this action for injunctive and declaratory relief pursuant to Government Code [section 11350](#), asserting that the Department "has adopted an underground regulation that establishes a new 'genuine physical human interaction' test for allocation of the Bradley-Burns sales and use tax," and is used by the Department to determine which local jurisdiction receives local sales tax revenue from a particular sale or purchase that occurs in California. Plaintiff contends that the "genuine physical human interaction" test, contained in a Department guide for retailers, is a rule of general application and represents a change from the Department's statutory and regulatory position and should be adopted through the rulemaking process set forth in the Administrative Procedure Act (APA).

Audit/Tax Period: None

Amount: Unspecified

Status:

Plaintiff filed the action on August 30, 2024, and served the Complaint on CDTFA on September 12, 2024. On September 30, 2024, Plaintiff filed a Verified First Amended Complaint for Declaratory and Injunctive Relief ("Complaint"), and CDTFA accepted service on October 8, 2024. Plaintiff granted CDTFA a 15-day extension to respond to the Complaint; CDTFA's response is due November 22, 2024. On November 22, 2024, CDTFA filed a Demurrer to Plaintiff's First Amended Complaint. The hearing on the Demurrer is set for May 2, 2025. Plaintiff's opposition is due April 21, 2025, and CDTFA's reply brief is due April 25, 2025.

**B&L DINER'S INC. v. CALIFORNIA DEPARTMENT OF TAX AND FEE
ADMINISTRATION**

Los Angeles County Superior Court: 24STCV30171

Filed – 11/15/2024

Plaintiffs' Counsel

David Dunlap Jones, Law Firm of David Dunlap Jones, APLC

CDTFA's Counsel

Laura Robbins

CDTFA Attorney

Andrew Amara

Issue(s):

Plaintiff, a dissolved California Corporation which operated Denny's restaurants in Southern California, seeks a refund of taxes, penalties and interest in the following amounts and periods: 1) \$444,695.29 for the period of Oct. 1, 2005 - Sept. 30, 2008 (1st NOD); 2) \$32,728.62 for the period of Oct. 1, 2008 - Dec. 31 2009 (2nd NOD); 3) \$372,897.98 for the period July 1, 2002 - Sept. 30, 2005 (3rd NOD). Plaintiff contends that CDTFA's assessments were contrary to the law, untimely, and barred by a criminal plea agreement.

Audit/Tax Period: July 1, 2002, through December 31, 2009

Amount: Unspecified

Status:

CDTFA was personally served with the Complaint on November 20, 2024.
CDTFA's response is due December 20, 2024.

**BERI RESTAURANT GROUP INC. v. CALIFORNIA DEPARTMENT OF TAX AND
FEE ADMINISTRATION**

Los Angeles County Superior Court: 24STCV29960

Filed – 11/14/2024

Plaintiffs' Counsel

David Dunlap Jones, Law Firm of David Dunlap Jones, APLC

CDTFA's Counsel

Laura Robbins

CDTFA Attorney

Andrew Amara

Issue(s):

Plaintiff, a dissolved California Corporation which operated Subway restaurants in Southern California, seeks a sale and use tax refund of \$760,261.00 for the period of January 1, 1998 - January 31, 2010. Plaintiff contends that CDTFA's assessment was contrary to the law, untimely, and barred by a criminal plea agreement.

Audit/Tax Period: January 1, 1998, through January 31, 2010

Amount: Unspecified

Status:

CDTFA was personally served with the Complaint on November 20, 2024.
CDTFA's response is due December 20, 2024.

**BODY WISE INTERNATIONAL, LLC v. CALIFORNIA DEPARTMENT OF TAX AND
FEE ADMINISTRATION**

Sacramento County Superior Court: 34-2023-00333398

Filed – 01/20/2023

Plaintiffs' Counsel

Daniel Kohls, Hansen, Kohls, Sommer & Jacob, LLP

Jesse McClellan, McClellan Davis, LLC

CDTFA's Counsel

John Keith

CDTFA Attorney

Scott Chavez

Issue(s):

Plaintiff Body Wise International, LLC, a retailer of weight loss and nutritional supplements, seeks a refund of taxes, interest, and penalties paid in the approximate amount of \$164,552.97, plus interest, for the period covering April 1, 2010, through June 30, 2013. Plaintiff challenges CDTFA's imposition of tax pursuant to [Revenue and Taxation Code section 6901.5](#) based on its determination that Plaintiff collected excess tax reimbursement on its sales to out-of-state customers. Plaintiff asserts that CDTFA has no authority to demand payment of out-of-state taxes which were charged to customers outside California, but not remitted to the destination jurisdictions.

Audit/Tax Period: April 1, 2010, through June 30, 2013

Amount: \$164,552.97

Status:

Plaintiff filed the Complaint for Refund of Taxes on January 20, 2023. On February 2, 2023, Plaintiff served CDTFA with the summons and complaint. On February 27, 2023, CDTFA filed its answer to the complaint. Trial has been set for July 28, 2025.

**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**

Court of Appeal, Second Appellate District: B326614
Riverside County Superior Court: CVR12104850
Los Angeles County Superior Court: 22STCV13393
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 CDFTA 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. On April 29, 2022, CDTFA received a Notice of Incoming Transfer of this case to the Los Angeles County Superior Court. CDTFA's responsive pleading is due May 23, 2022. On May 19, 2022, plaintiffs agreed to extend the deadline to respond to the complaint to May 27, 2022, so that the parties may meet and confer further; then, on May 26, 2022, plaintiffs provided CDTFA another extension until June 3, 2022, to respond to the complaint so that plaintiffs could determine if they would be amending their complaint; finally, on June 1, 2022, the parties executed the stipulation for plaintiffs to amend their complaint and for an extension of time for CDTFA to reply. On June 9, 2022, the parties filed a stipulated agreement in which plaintiffs represented that they intended to file an amended complaint by June 27, 2022, and requested an extension of time for CDTFA to file its response to July 6, 2022, which was approved by the court. Plaintiffs filed an Amended Complaint on July 5, 2022. CDTFA's response is due August 4, 2022. At the July 13, 2022 status conference, plaintiffs did not make an appearance. The court set an Order to Show Cause (OSC) hearing for sanctions due to plaintiffs' failure to appear and for proof of service scheduled for August 10, 2022. CDTFA was ordered to provide notice of the ruling with a copy of the minute order. Following the parties' meet and confer discussions regarding Plaintiffs' First Amended Complaint, plaintiffs agreed to dismiss the individual defendants and the Board of Equalization (BOE) from this action and seek leave from the court to file a Second Amended Complaint to resolve CDTFA's issues with the First Amended Complaint. Plaintiffs also agreed to extend CDTFA's deadline to file a responsive pleading to August 18, 2022. On July 20, 2022, CDTFA served plaintiffs with the Notice of Ruling at Status Conference and Minute Order at Status Conference. On July 25, 2022, plaintiffs filed declarations with the court explaining why sanctions should not be imposed for failing to appear at the status conference. On August 7, 2022, plaintiffs served an Ex Parte Application for Leave to File Second Amended Complaint. On August 8, 2022, plaintiffs filed a Request for Dismissal, releasing the Board of Equalization, Carlos Calderon, Lisa Nickerson, and Yvette Stowers from this action without prejudice. The court entered that dismissal on August 8, 2022. At the August 10, 2022, Order to Show Cause Hearing, the court continued the Case Management Conference to September 20, 2022. Pursuant to the parties' stipulation, the court also ordered that plaintiffs' Proposed Second Amended Complaint be filed by August 10, 2022, and CDTFA will have 30 days to respond. Due to the stipulation, the court took plaintiffs' Ex Parte Application for Leave to File Second Amended Complaint off calendar. On September 9, 2022, CDTFA filed a Demurrer to Plaintiffs' Second Amended Complaint and a Motion to Strike Jury Demand. The hearing on CDTFA's Demurrer is scheduled for

October 20, 2022. On September 22, 2022, CDTFA filed Notices of Joinder for Director Maduros to join CDTFA's Motion to Strike and Demurrer. On October 5, 2022, Plaintiffs filed an opposition to CDTFA's Demurrer to the Second Amended Complaint. On October 13, 2022, CDTFA filed its reply to Plaintiffs' opposition. On October 20, 2022, the court sustained CDTFA's Demurrer without leave to amend. Accordingly, it denied CDTFA's Motion to Strike as moot. CDTFA served a Notice of Entry of Judgment of Dismissal on Plaintiffs on December 9, 2022. Plaintiffs' deadline to appeal the judgment in favor of CDTFA is February 7, 2023. On January 13, 2023, Plaintiffs filed a Notice of Appeal from the trial court's judgment in favor of CDTFA. Pursuant to the Court of Appeal's August 14, 2023, notice that the record on appeal has been filed, Appellant's Opening Brief (AOB) is due September 25, 2023; CDTFA's Respondent's Brief is due 30 days after the AOB is filed. On September 21, 2023, Plaintiffs/Appellants served an Application for Extension of Time to file their Opening Brief. Appellants requested that the deadline be extended to November 27, 2023. On September 25, 2023, the Court of Appeal granted the request. Appellants' Opening Brief is now due on November 27, 2023. On November 27, 2023, the Court of Appeal granted Plaintiffs' request to extend the deadline for the filing of the Appellants' Opening Brief to December 27, 2023. On December 27, 2023, Plaintiffs/Appellants filed and served their Opening Brief with the Court of Appeal. CDTFA's Respondent Brief is due January 26, 2024. On January 17, 2024, CDTFA filed a Stipulation for Extension of Time to File [Respondent's] Brief. CDTFA's Respondent's Brief is now due March 26, 2024. On March 26, 2024, CDTFA filed its Respondent's Brief with the Court of Appeal. On April 15, 2024, Plaintiffs filed their Reply Brief with the Court of Appeal. The case is now fully briefed and awaits scheduling of oral argument. The Court of Appeal scheduled oral argument on July 10, 2024. The Court of Appeal heard oral argument on July 10, 2024, and took the matter under submission. The Second District Court of Appeal requested additional briefing from the parties on this matter; the due date for the supplemental briefing is August 15, 2024. On August 14, 2024, pursuant to the Court of Appeal's request, Plaintiffs filed a Supplemental Letter Brief. CDTFA filed its Supplemental Letter Brief on August 15, 2024. This matter has now been fully briefed and has been submitted. On October 9, 2024, the Second District Court of Appeal issued a decision in favor of CDTFA, affirming the trial court judgment sustaining CDTFA's Demurrer without leave to amend. The Court of Appeal found that Plaintiffs failed to first present their claims to the Department of General Services as required by the Government Claims Act (Gov. Code, § 905.2, subd. (b)(3)).

**BROADWAY 13017 SOUTH INVESTMENTS LLC v. STATE OF CALIFORNIA,
CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION**

Los Angeles County Superior Court: 24CMCV00763

Filed – 05/20/2024

Plaintiffs' Counsel

Omid Shirazi, K&S Law Group, PC

CDTFA's Counsel

Anna Barsegyan

CDTFA Attorney

Kimberly Willy

Issue(s):

Broadway 13017 South Investments LLC (“Plaintiff”), the owner of real property located in Los Angeles, California, brings an action under the Taxpayers' Bill of Rights ([Rev. & Tax. Code, § 7099](#)) and California Code of Civil Procedure [section 526a](#) against the Department and the State of California, seeking a claim for refund for sales and use taxes paid. Plaintiff alleges the Department improperly issued a jeopardy notice of determination to impute the sales and use tax liability of its tenant, and that, as the owner/landlord, it is not responsible for any alleged illegal cannabis sales that occurred on its property. Plaintiff further asserts that Department did not provide it a timely payoff amount, ignored its administrative appeal, failed to conduct a promised audit to determine its tax liability, and acted arbitrarily, capriciously and retaliatory when issuing an additional notice of determination for further taxes due. Plaintiff seeks a refund of \$928,563.92, in tax, interest and penalties paid.

Audit/Tax Period: None

Amount: Unspecified

Status:

On May 20, 2024, Plaintiff filed a Complaint for Refund of State Assessed Sales and Use Tax. CDTFA received Plaintiff's Complaint by mail on July 26, 2024. CDTFA acknowledged receipt of Plaintiff's Complaint on August 5, 2024. CDTFA's responsive pleading is due September 5, 2024. Plaintiff failed to appear at the Case Management Conference set for August 21, 2024. Due to Plaintiff's failure to appear, the court scheduled an Order to Show Cause hearing regarding dismissal for October 21, 2024. On September 13, 2024, CDTFA filed a Motion to Transfer the Action to the Stanley Mosk Courthouse of the Los Angeles County Superior Court. That motion is set to be heard on November 21, 2024. After Plaintiff's Counsel filed a Declaration of Good Cause Against Dismissal on October 11, 2024, the trial court vacated the dismissal hearing scheduled for

October 21, 2024. On November 7, 2024, the court issued an order continuing the hearing on CDTFA's Motion to Transfer Venue to December 19, 2024.

**CITY OF SAN BRUNO, ET AL. v. CALIFORNIA DEPARTMENT OF TAX & FEE
ADMINISTRATION, ET AL.**

San Mateo County Superior Court: 23-CIV-05021

Filed – 10/20/2023

Plaintiff's Counsel

Trisha A. Ortiz, City of San Bruno

CDTFA's Counsel

Robert Willis

CDTFA Attorney

Kimberly Willy

Issue(s):

Petitioners and Plaintiffs City of San Bruno (San Bruno) and Walmart.com USA, LLC (Walmart) (collectively, "Petitioners") filed a Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (Petition) seeking: (1) a declaration and judgment that the reallocation notices issued by CDTFA dated April 17, 2023 (Reallocation Notices), are invalid; and, (2) an injunction restraining CDTFA from taking any action to implement or enforce such reallocations. Petitioners allege that Walmart properly allocated local sales and use taxes to San Bruno because its employees at that location participated in the sales transactions by directly engaging in sales merchandising, pricing and marketing activities for Walmart's online California sales, for the periods July 1, 2020, through December 31, 2022 (for seller's permit No. 100-170099) and January 1, 2021, through December 31, 2022 (for seller's permit No. 237-590656) (collectively, "Periods at Issue"). The sales at issue involve two distinct types of online California sales: (1) Walmart-owned inventory shipped from Walmart fulfillment centers to California customers; and (2) third-party inventory that was never owned or shipped by Walmart and was shipped from unknown locations by third-party sellers to California customers. Petitioners allege that the effect of the Reallocation Notices would be to incorrectly redistribute approximately \$27,528,900 of local tax revenue from San Bruno to various other local California jurisdictions.

Audit/Tax Periods: July 1, 2020 - December 31, 2022 & January 1, 2021 - December 31, 2022
Amount: \$27,528,900.00

Status:

CDTFA was served with the Complaint on October 26, 2023. Plaintiff agreed to extend CDTFA's deadline to file a responsive pleading to December 22, 2023. On December 22, 2023, CDTFA filed a Motion to Transfer Venue. The hearing on the Motion is scheduled for March 18, 2024. Petitioners' opposition to the Motion to Transfer Venue is due March 5, 2024, and CDTFA's reply to any opposition filed is due March 11, 2024. On March 4, 2024, Petitioners filed their opposition to CDTFA's Motion to Transfer Venue. On March 11, 2024, CDTFA filed a reply brief in support of its Motion to Transfer Venue. On March 18, 2024, the trial court denied CDTFA's Motion to Transfer Venue. CDTFA's response to the Complaint is due April 25, 2024. On April 25, 2024, CDTFA filed a Demurrer to Petitioners' Verified Petition and Complaint. The hearing on the Demurrer is set for October 14, 2024. Petitioners' opposition is due October 1, 2024, and CDTFA's reply to any opposition is due October 7, 2024. On October 1, 2024, Petitioners filed an Opposition to CDTFA's Demurrer. CDTFA filed its reply brief in support of its Demurrer on October 7, 2024. On October 14, 2024, the court heard oral argument on CDTFA's Demurrer and, at the conclusion of the hearing, took the matter under submission. On October 15, 2024, the trial court issued an Amended Order sustaining CDTFA's Demurrer to San Bruno's Petition with leave to amend and overruling CDTFA's Demurrer to Walmart's Petition. CDTFA served notice of entry of the Amended Order on October 31, 2024. San Bruno must now file any amended pleading by November 12, 2024. On November 12, 2024, Petitioners filed a First Amended Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief. CDTFA's response is due December 13, 2024.

**LORENA DIAZ 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. On April 18, 2022, CDTFA filed a Demurrer to, and a Motion to Strike, the First Amended Complaint. The parties have agreed to stay the case pending the outcome of an appeal in a related case, *Stettner I*, involving the same underlying legal issue. On June 16, 2022, following the parties' filing of a joint stipulation to stay the case pending the outcome of an appeal in the related case of *Stettner v. Mercedes Benz Financial Services USA, LLC*, Sacramento County Superior Court Case No. 34-2020-00282700, the court vacated the hearing date set on June 24, 2022, for CDTFA's Demurrer and Motion to Strike the Complaint. A new hearing date has not been set. On July 1, 2024, Plaintiff filed her Second Amended Complaint. Pursuant to the Parties' Stipulation and Order regarding Dismissal, CDTFA has until August 15, 2024, to respond. CDTFA filed its answer to the Second Amended Complaint on July 23, 2024. On November 1, 2024, the trial court set the following dates: Last day to file and serve summary judgment motions: June 2, 2025; Trial Readiness Conference: October 17, 2025, and Trial: November 7, 2025.

RON DOSTER v. CDTFA

Sacramento County Superior Court: 24CV010645

Filed – 05/23/2024

Plaintiff's Counsel

Ron Doster, Pro Se

CDTFA's Counsel

Donny Le

CDTFA Attorney

Andrew Amara

Issue(s):

Plaintiff Ron Doster, owner of Chapman's Auto Care LLC, filed a complaint against CDTFA alleging, amongst other things, a violation of the Taxpayers' Bill of Rights. Plaintiff, in connection with a November 2018 audit of his business, contends that CDTFA staff mishandled records, failed to provide timely notice within the statute of limitations, failed to follow standard administrative procedures, improperly levied his personal bank account, issued and used an improper permit number, and other variations on these contentions. Plaintiff claims CDTFA's actions resulted in damages, erroneous tax assessments, and improper collections both against his business and himself, individually, under [Cal. Rev. & Tax. Code § 6829](#).

Audit/Tax Period: None

Amount: Unspecified

Status:

CDTFA was served with the complaint on June 11, 2024. On July 26, 2024, CDTFA filed a Demurrer to Plaintiff's Complaint. The hearing on the Demurrer is scheduled for December 27, 2024. Plaintiff filed a Motion for Preliminary Injunction on August 26, 2024; the hearing on this motion is set for December 10, 2024. CDTFA's opposition to Plaintiff's Motion for Preliminary Injunction was filed on November 21, 2024.

EMERALD SEVEN, LLC, ET AL. v. STATE OF CALIFORNIA, ET AL.

Court of Appeal, Second Appellate District: B336073
Los Angeles County Superior Court: 22NWCV00135
Filed – 02/28/2022

Plaintiff's Counsel

Jeffrey Benice, Benice Law

CDTFA's Counsel

Anna Barsegyan

CDTFA Attorney

Kimberly Willy

Issue(s):

Plaintiff Emerald Seven, LLC, brings an action under the Taxpayers' Bill of Rights ([Rev. & Tax. Code, § 7099](#)) and California Code of Civil Procedure [section 526a](#) against CDTFA and the State of California for declaratory and injunctive relief. Plaintiff seeks a judicial declaration setting aside the CDTFA's determination that it is liable, as the taxpayer, for the sales and use taxes due from the alleged illegal cannabis sales that were conducted on its property during the period of January 1, 2018, through September 30, 2020, and a permanent injunction to set aside the sale of its real property. Plaintiff asserts CDTFA violated its established procedures, the Revenue and Taxation Code, and Plaintiff's due process rights by determining it to be the taxpayer, improperly serving the Notice of Jeopardy Determination, filing a notice of tax lien against Plaintiff's property, denying Plaintiff an administrative appeal, and proposing to sell its property at a sheriff's auction.

Audit/Tax Period: None

Amount: Unspecified

Status:

Plaintiff filed its Verified Complaint for Declaratory and Injunctive Relief on February 28, 2022. CDTFA filed a Demurrer and Motion to Strike Plaintiff's

Complaint on April 13, 2022. The Demurrer and Motion to Strike was scheduled for hearing on December 13, 2022. On November 18, 2022, before the hearing on the Demurrer and Motion to Strike and without leave of court, Plaintiff filed its First Amended Verified Complaint. On December 12, 2022, following Plaintiff's filing an amended complaint, the court vacated as moot the December 13, 2022, hearing date on the Demurrer to the Complaint and Motion to Strike. On December 16, 2022, the court granted CDTFA's Ex Parte Application to Extend the Deadline to Respond to Plaintiff's First Amended Complaint. CDTFA's responsive pleading to the First Amended Complaint is due January 10, 2023. On January 10, 2023, CDTFA filed a Demurrer to Plaintiff's First Amended Complaint and, in the alternative, a Motion to Strike. The hearing on CDTFA's Demurrer and Motion to Strike is scheduled for April 27, 2023. On April 14, 2023, Plaintiff filed an opposition to CDTFA's Demurrer to First Amended Complaint. On April 20, 2023, CDTFA filed a reply to Plaintiff's opposition. On April 27, 2023, following oral argument, the trial court sustained CDTFA's Demurrer to Plaintiff's First Amended Complaint in its entirety, with leave to amend. The court found that Plaintiff's action was barred by article XIII, section 32 of the California Constitution. The court also granted CDTFA's Motion to Strike, without leave to amend, striking Plaintiff's request for punitive damages and civil penalties for Labor Code violations. The court ordered Plaintiff to file and serve its Second Amended Complaint by June 6, 2023. On June 13, 2023, CDTFA filed an Ex Parte Application for Dismissal due to Plaintiff's failure to file a Second Amended Complaint by June 6, 2023. On the evening of June 13, 2023, Plaintiff filed an opposition to CDTFA's Ex Parte Application for Dismissal. Following oral argument on June 14, 2023, the trial court denied CDTFA's Ex Parte Application for Dismissal and extended the due date for the filing of Plaintiff's Second Amended Complaint to June 16, 2023. On June 16, 2023, Emerald Seven, LLC, and Jimmy Duong, the owner and manager of Emerald Seven, LLC, filed a Verified Second Amended Complaint. On June 20, 2023, the court rejected the filing of the Verified Second Amended Complaint on grounds that it was dated November 17, 2022, the same date the First Amended Complaint was filed. On June 20, 2023, Emerald Seven, LLC, and Jimmy Duong, re-filed a Verified Second Amended Complaint. CDTFA's responsive pleading to the Second Amended Complaint is due July 24, 2023. On July 24, 2023, CDTFA filed a Demurrer to Plaintiff's Second Amended Complaint and a Motion to Strike Plaintiff's request for civil penalties. The hearing on the Demurrer and Motion to Strike is set for January 11, 2024, and Plaintiff's opposition is due December 28, 2023. CDTFA's reply to any opposition filed is due January 4, 2024. On December 28, 2023, Plaintiff filed an opposition to CDTFA's Demurrer to the Second Amended Complaint. On January 4, 2024, CDTFA filed a reply in support of the Demurrer to Plaintiff's Second Amended Complaint. The hearing on the Demurrer was held on January 11, 2024, and the matter was submitted. Plaintiff did not appear at the hearing to oppose the Demurrer. On January 11, 2024, the court issued an order granting CDTFA's Demurrer to the Second Amended Complaint without leave to amend. The order further held that CDTFA's Motion to Strike the Second Amended Complaint is moot. On January 22, 2024, the court entered the Judgment of Dismissal, in its entirety, with

prejudice. On January 23, 2024, CDTFA served a Notice of Entry of Judgment of Dismissal. Plaintiff's deadline to file an appeal is March 25, 2024. On March 1, 2024, Plaintiff filed a Notice of Appeal of the superior court's judgment granting CDTFA's Demurrer. Plaintiff's opening appellate brief is due May 21, 2024. On May 21, 2024, the parties filed a stipulation extending Emerald Seven LLC's deadline to file its Appellant's opening brief to June 27, 2024. The Court of Appeal approved an extension for Plaintiff to file its Appellant's Opening Brief to July 18, 2024. On July 19, 2024, the Second District Court of Appeal issued a notice of default to Plaintiff due to its failure to file its Opening Brief. The default provides that Plaintiff must file its opening brief by August 5, 2024. Plaintiff filed its Opening Brief with the Court of Appeal on August 5, 2024. CDTFA's Respondent's Brief is due September 4, 2024. On August 20, 2024, the parties filed a Stipulation extending CDTFA's time to file its Respondent's Brief to November 1, 2024. On October 31, 2024, the Court of Appeal granted CDTFA a 15-day extension to file its Respondent's Brief; CDTFA's brief is now due November 15, 2024. On November 15, 2024, CDTFA filed and served its Respondent's Brief with the Court of Appeal. Petitioner's Reply Brief is due December 5, 2024.

HALIBURTON INTERNATIONAL FOODS, INC. v. CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

Los Angeles County Superior Court: 23STCV06297
Filed – 03/21/2023

Plaintiff's Counsel

Mardiros Dakessian, Dakessian Law, LTD

CDTFA's Counsel

Kara Siegel

CDTFA Attorney

Kiren Chohan

Issue(s):

On January 23, 2009, the State Board of Equalization issued a Notice of Determination to Plaintiff for \$38,722.18 in use tax, plus interest, for the period January 1, 2005, through December 31, 2005 (Period at Issue), for Plaintiff's ex-tax purchases of liquid nitrogen used as a manufacturing aid in its manufacturing process to flash freeze processed food products. Plaintiff asserts that its use of the liquid nitrogen is exempt because it serves to preserve the food products and is converted into nitrogen gas, which remains in the packaged food products until the packages are opened by the consumers. Plaintiff seeks a refund of use tax, plus interest, for the Period at Issue.

Audit/Tax Period: January 1, 2005 - December 31, 2005

Amount: \$38,722.18

Status:

CDTFA was served with this complaint on March 23, 2023. CDTFA's responsive pleading is due April 24, 2023. On April 21, 2023, CDTFA filed its answer to the complaint, and filed a cross complaint for unpaid interest applicable to CDTFA's use tax determination for the period at issue. The court scheduled the trial date for September 16, 2024. On October 24, 2023, the parties filed a stipulation in which the parties agreed that CDTFA would file an amended answer within 15 days after the court enters an order granting CDTFA leave to do so. On November 8, 2023, the court granted the parties' stipulated request for CDTFA to file an amended answer by November 27, 2023. On November 13, 2023, CDTFA filed an amended answer to the complaint. CDTFA filed its Motion for Summary Judgment on May 31, 2024. The hearing on the Motion for Summary Judgment is September 3, 2024. Plaintiff filed its opposition to CDTFA's Motion for Summary Judgment on August 20, 2024. CDTFA filed its reply in support of its Motion for Summary Judgment on August 29, 2024; and its trial brief on August 30, 2024. Trial is scheduled for September 16, 2024. On September 3, 2024, the court denied CDTFA's Motion for Summary Judgment. The trial was held from September 16, 2024, to September 18, 2024. The court ordered post-trial briefing as follows: Plaintiff's opening brief is due November 1, 2024; CDTFA's opening brief is due November 22, 2024; and Plaintiff's reply is due December 6, 2024. On November 1, 2024, Plaintiff filed its closing brief. CDTFA filed its closing trial brief on November 22, 2024.

**HAPPY HARBOR RESTAURANT, INC. v. CALIFORNIA DEPARTMENT OF TAX
AND FEE ADMINISTRATION**

Los Angeles County Superior Court: 23PSCV02623

Filed – 08/25/2023

Plaintiff's Counsel

Jeffrey Wang, WHGC, P.L.C

CDTFA's Counsel

John Keith

CDTFA Attorney

Andrew Amara

Issue(s):

Plaintiff alleges that on or about September 28, 2020, CDTFA illegally and/or erroneously collected the proceeds from the sale of its restaurant, which the buyer had remitted to escrow. Plaintiff asserts that it did not have any outstanding tax obligations and owed no taxes to CDTFA. Plaintiff seeks a refund of the \$1,030,827.48 paid to CDTFA from those escrowed proceeds, as well as its attorney's fees and costs.

Audit/Tax Period: None

Amount: \$1,030,827.48

Status:

Plaintiff filed the Complaint for Refund of Sales and Use Taxes on August 25, 2023; Plaintiff served CDTFA with the Complaint on September 28, 2023. CDTFA filed an unopposed Motion to Transfer Venue on October 13, 2023. The motion is scheduled for hearing on November 9, 2023. On November 9, 2023, the court entered a Minute Order granting CDTFA's Motion to Transfer Venue of this action from the City of Pomona [East District] to the Stanley Mosk Courthouse [Central District, Los Angeles County Superior Court]. On January 12, 2024, CDTFA filed its Demurrer to Plaintiff's Second Cause of Action in this matter. The hearing on this Demurrer is set for May 22, 2024. Plaintiff requested a voluntary dismissal of its second cause of action in response to CDTFA's Demurrer. The clerk entered Plaintiff's dismissal of its second cause of action on May 9, 2024. On May 22, 2024, the court scheduled the trial for February 11, 2025. On June 6, 2024, CDTFA filed its answer to Plaintiff's complaint. CDTFA filed a Motion for Summary Judgment on July 9, 2024. The motion is set for hearing on November 12, 2024. Plaintiff filed its opposition to CDTFA's Motion for Summary Judgment on October 30, 2024. CDTFA's reply is due November 7, 2024. On November 7, 2024, CDTFA filed its reply brief in support of its Motion for Summary Judgment. On November 12, 2024, the trial court granted CDTFA's

Motion for Summary Judgment. On November 26, 2024, Plaintiff filed a Motion for Reconsideration of the trial court's order granting CDTFA's Motion for Summary Judgment. The Motion for Reconsideration is set for hearing on February 10, 2025. CDTFA's opposition is due by January 28, 2025.

**K1 SPEED, INC. v. CALIFORNIA DEPARTMENT OF TAX AND FEE
ADMINISTRATION**

Sacramento County Superior Court: 24CV015968
Filed – 08/12/2024

Plaintiff's Counsel

Carley A. Roberts, Pillsbury Winthrop Shaw Pittman LLP

CDTFA's Counsel

Jennifer Henderson

CDTFA Attorney

Andrew Amara

Issue(s):

Plaintiff, K1 Speed, Inc. ("K1") filed a verified complaint seeking a refund of sales taxes paid, the exact amount to be determined by the court, for the tax period April 1, 2009 to June 30, 2009. K1 alleges its sales of go-kart races are nontaxable sales of amusement services pursuant to Rev. & Tax. Code §§ [6006](#), [6015](#), and [Regulation 1501](#) and the rental of go-carts do not constitute a lease of tangible personal property pursuant to Rev. & Tax. Code § 6006 and [Regulation 1660](#). K1 also alleges even if the rental of go-carts are determined to be leases of tangible personal property, the leases meet the conditions necessary for exclusion under Regulation 1660(e)(1). Finally, Plaintiff contends that CDTFA mischaracterizes K1's sales of annual membership/license fees as includable in gross receipts.

Audit/Tax Period: April 1, 2009, through March 31, 2012

Amount: Unspecified

Status:

CDTFA was served with this Complaint on August 19, 2024. CDTFA's responsive pleading is due September 18, 2024. The court has approved an extension of time for CDTFA to respond to the complaint; CDTFA's new deadline to file its response is November 4, 2024. CDTFA filed its Answer to Plaintiff's Complaint on November 4, 2024.

**MEDTRONIC USA INC., ET AL. v. CALIFORNIA DEPARTMENT OF TAX AND FEE
ADMINISTRATION, ET AL.**

Court of Appeal, First Appellate District: A169290
San Francisco County Superior Court: GCG-22-599205
Filed -04/15/2022

Plaintiff's Counsel

G. Michelle Ferreira, Greenberg Traurig, LLP
Bradley R. Marsh, Greenberg Traurig, LLP
Nathaniel Garrett, Jones Day
Brian D. Hershman, Jones Day

CDTFA's Counsel

Jack Nick

CDTFA Attorney

Kimberly Willy

Issue(s):

On April 15, 2022, Plaintiff filed its Complaint alleging that, for the period of October 1, 2012, through September 30, 2015, CDTFA erroneously and illegally determined its sales of Reveal XT insertable cardiac monitor (ICM) and Reveal/Linq ICM devices were not exempt sales of medicine under Revenue and [Taxation Code section 6369](#) and California Code of Regulations, title 18, section [1591](#). Plaintiff seeks a refund of \$3,329,195.79 in tax, plus interest and costs of suit.

Audit/Tax Period: None

Amount: \$3,329,195.79

Status:

Plaintiff filed its Verified Complaint against CDTFA on April 15, 2022, and served CDTFA electronically on April 20, 2022. CDTFA's deadline to file its first responsive pleading is May 20, 2022. Plaintiff granted CDTFA an extension to June 6, 2022, to file its response to the Complaint. On June 10, 2022, plaintiff filed and served its First Amended Verified Complaint. CDTFA's responsive pleading is due July 11, 2022. On July 11, 2022, CDTFA filed an Answer to Plaintiff's First Amended Verified Complaint for Refund of Sales and Use Taxes Paid. On September 2, 2022, the court issued a notice and order setting the matter for trial on April 3, 2023, and cancelling the September 14, 2022 case management conference. On September 9, 2022, after holding a meet and confer with plaintiff, CDTFA filed a notice of objection to the trial date and requested that the parties appear at the September 14, 2022, case management conference to set a trial later than April 3, 2023. On September 14, 2022, the court vacated the trial date and set a case management conference for December 14, 2022. The

court issued an order setting the trial date for October 30, 2023, and cancelling the December 14, 2022, case management conference. Discovery has commenced and is ongoing. On July 12, 2023, CDTFA filed a Motion for Summary Judgment. The hearing on CDTFA's Motion for Summary Judgment is set for September 29, 2023, and Plaintiff's opposition to that motion is due September 15, 2023. On September 15, 2023, Plaintiff filed an opposition to CDTFA's Motion for Summary Judgment. On September 22, 2023, CDTFA filed a reply to Plaintiff's Opposition. On September 29, 2023, following oral argument, the trial court granted CDTFA's Motion for Summary Judgment. On October 16, 2023, the court entered judgment in favor of CDTFA and against Plaintiff. On October 18, 2023, CDTFA filed and served its notice of entry of judgment. Plaintiff's deadline to file an appeal is December 18, 2023. On December 8, 2023, Plaintiff filed a Notice of Appeal. On January 31, 2024, Medtronic filed a Stipulation for Extension of Time to file its Appellant's Opening Brief with the Court of Appeal. Medtronic's opening brief is now due April 26, 2024. On April 26, 2024, Medtronic filed its Opening Brief with the Court of Appeal. CDTFA's Respondent's Brief is due May 28, 2024. On May 2, 2024, the parties entered into a stipulation extending CDTFA's deadline to file its Respondent's Brief to July 26, 2024. On July 26, 2024, CDTFA filed its Respondent's Brief. Appellant's Reply Brief is due August 15, 2024. On August 5, 2024, the parties filed a stipulation extending Plaintiff's deadline to file its Reply Brief in the Court of Appeal to September 16, 2024. On September 16, 2024, Medtronic filed its Reply Brief.

MMD, INC. v. CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION
Los Angeles County Superior Court: 24STCV20196
Filed –08/09/2024

Plaintiff's Counsel

Faith A. Devine, Attorney at Law

CDTFA's Counsel

Hutchison Meltzer

CDTFA Attorney

Kiren Chohan

Issue(s):

In this action, Plaintiff MMD, Inc. seeks a refund of sales tax in the amount of \$364,980.38, plus statutory interest, for the period January 1, 2010 through December 31, 2012, for its audited understatement of reported taxable sales at its medical cannabis dispensary located in Los Angeles, California.

Audit/Tax Period: January 1, 2010, through December 31, 2012

Amount: \$364,980.38

Status:

Plaintiff filed the Complaint in the Los Angeles County Superior Court on August 9, 2024. On October 10, 2024, CDTFA executed an Acknowledgment of Receipt of Service, accepting service of the Complaint. CDTFA filed its answer to Plaintiff's Complaint on November 12, 2024. The court set the trial date for October 6, 2025.

**OHAD MOSHKOVITZ, ET AL. v. AMERICAN HONDA FINANCE CORPORATION,
ET AL.**

Los Angeles County Superior Court: 22STCV12659

Filed -04/14/2022

Plaintiff's Counsel

David Markham, The Markham Law Firm

CDTFA's Counsel

Andrea Schoor-West

CDTFA Attorney

Andrew Amara

Issue(s):

Plaintiff Ohad Moshkovitz filed a putative class action on or about April 14, 2022, alleging that Defendant American Honda Finance Corporation dba Honda Financial Services ("Honda") 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 Honda to CDTFA.

Plaintiff seeks public injunctive relief requiring that defendant Honda 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 Honda 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); a judicial declaration as to the validity of Regulation 1660(c)(1)(D) in accordance with [Gov. Code section 11350](#); and an order halting Honda'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 on April 18, 2022. On May 5, 2022, the court (Judge David S. Cunningham III) issued an Order deeming this case non-complex. On May 18, 2022, Plaintiff filed his Objection to Non-Complex Designation. The parties have agreed to stay the case pending the outcome of an appeal in a related case,

Stettner I, involving the same underlying legal issue.

**NEWPORT JEWELERS BY GABE ARIK CORP. v. STATE OF CALIFORNIA,
CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION**

Los Angeles County Superior Court: 23STCV22518
Filed -09/18/2023

Plaintiff's Counsel

Steven R. Mather, Mather Anderson

CDTFA's Counsel

Anna Barsegyan

CDTFA Attorney

Scott Chavez

Issue(s):

Petitioner seeks the court's review of the decision issued by the Office of Tax Appeals (OTA) dated June 22, 2023, which denied the taxpayer's refund claim for its sales and use tax liabilities for the period of January 1, 2009, through December 31, 2012 ("Period at Issue"). Petitioner alleges the OTA lacked the authority to reconsider the Board's November 16, 2017, final determination granting the taxpayer's administrative protest and ordering a refund of all amounts paid. Petitioner asserts that OTA erred as a matter of law in granting a rehearing to the Department in violation of the standards set forth in 18 C.C.R. §30820 and all precedents of the Board and OTA. Petitioner seeks a refund of all amounts paid.

Audit/Tax Period: January 1, 2009 - December 31, 2012

Amount: Unspecified

Status:

The Complaint was filed on September 18, 2023; CDTFA has not been properly served to date. On January 23, 2024, CDTFA filed a Motion to Strike. The motion is set for hearing on March 4, 2024. On March 5, 2024, the court granted CDTFA's Motion to Strike portions of the Complaint. At the Case Management Conference held afterwards, the court set trial to start November 24, 2024. On October 10, 2024, the trial court granted CDTFA's Motion for Summary Adjudication as to Plaintiff's first and second causes of action. On October 25, 2024, the trial court continued the trial date from November 4, 2024, to November 18, 2024.

**OLYMPUS AMERICA INC. v. CALIFORNIA DEPARTMENT OF TAX & FEE
ADMINISTRATION**

San Francisco County Superior Court: CGC-23-607195

Filed -06/21/2023

Plaintiff's Counsel

Amy L. Silverstein, Silverstein & Pomerantz LLP

CDTFA's Counsel

Elizabeth Vann

CDTFA Attorney

Kiren Chohan

Issue(s):

Plaintiff, a distributor, retailer, and repairer of endoscopes and other medical devices, seeks a refund of use tax, negligence penalty and interest in the total amount of \$9,758,452.41, plus interest, for the period April 1, 2008, through September 30, 2011, asserting that its use of parts to repair non-California customers' equipment pursuant to optional maintenance contracts at a repair facility located in California, is excluded from use tax under Revenue and Taxation Code section 6009.1. In the alternative, plaintiff contends that it is entitled to relief under section 6596 because it reasonably relied on written advice provided by the Department during three prior audits for the following periods: (1) April 1, 1996, through March 31, 1999; (2) April 1, 1999, through December 31, 2002; and (3) January 1, 2003, to December 31, 2007. Plaintiff also seeks attorneys' fees and costs of suit.

Audit/Tax Period: April 1, 2008 - September 30, 2011

Amount: \$9,758,452.41

Status:

Plaintiff filed a Verified Complaint for Refund of Taxes on June 27, 2023, and served CDTFA with the Complaint on July 3, 2023. CDTFA's response to the Complaint is due August 2, 2023. The parties agreed to extend CDTFA's deadline to respond to the Complaint to September 15, 2023. On September 15, 2023, CDTFA filed its answer to the Complaint. On November 9, 2023, the court issued an order scheduling the trial date for January 13, 2025. On August 5, 2024, the parties filed a joint application asking the court to extend the trial date to July 14, 2025, which was granted by the court on August 6, 2024.

**STAN PASQUAL v. CALIFORNIA DEPARTMENT OF TAX & FEE
ADMINISTRATION**

Orange County Superior Court: 30-2024-01440620-CU-WM-CJC

Filed –11/14/2024

Plaintiff's Counsel

Stan Pasqual, Pro Per

CDTFA's Counsel

Douglas Beteta

CDTFA Attorney

Kiren Chohan

Issue(s):

Petitioner, Stan Pasqual, filed this action challenging a dual determination issued against him for sales tax liabilities for the period January 1, 2014, through December 31, 2017 (Period at Issue), for unreported taxable retail sales at cannabis dispensaries operating in Costa Mesa. Petitioner asserts that he was not the owner of the dispensaries, and that the dispensaries ceased their operations on or about March 2012. As such, petitioner alleges that no sales were made at the dispensaries during the Period at Issue. Petitioner seeks a writ of mandate and declaratory relief to discharge his liabilities for the Period at Issue as well as a court order to stay all collection activities while the litigation is pending.

Audit/Tax Period: January 1, 2014, through December 31, 2017

Amount: Unspecified

Status:

CDTFA was served with the Complaint on November 26, 2024.

**MARC RIEDEL v. CALIFORNIA DEPARTMENT OF TAX AND FEE
ADMINISTRATION**

Placer County Superior Court: SCV0051688

Filed –12/01/2023

Plaintiff's Counsel

Bruce Riedel

CDTFA's Counsel

Lauren Freeman

CDTFA Attorney

Kiren Chohan

Issue(s):

In this tort action, Plaintiff alleges that CDTFA acted negligently and fraudulently in issuing a responsible person determination under Revenue and Taxation Code section 6829 against Plaintiff for the outstanding sales and use tax liability of Ciao Restaurants, LLC. Plaintiff seeks compensatory damages and punitive damages of at least \$125,000.

Audit/Tax Period: None

Amount: Unspecified

Status:

The Complaint was filed on December 1, 2023. CDTFA was served with the Complaint on March 7, 2024. Plaintiff agreed to a 15-day extension for CDTFA to file a response to the Complaint. CDTFA's response is now due April 22, 2024. On April 15, 2024, CDTFA filed a Motion to Transfer Venue to Sacramento County Superior Court. The hearing on this motion is scheduled for May 16, 2024. On May 7, 2024, CDTFA filed a Notice in Lieu of reply in support of its Motion to Transfer Venue, notifying the court that Plaintiff did not file and serve an opposition to CDTFA's Motion to Transfer Venue within the required period. On May 16, 2024, the court granted CDTFA's Motion to Transfer Venue to Sacramento County. On May 20, 2024, CDTFA served a Notice of Ruling of the trial court's decision granting CDTFA's Motion to Transfer Venue. After CDTFA's filing of a Motion to Dismiss due to Plaintiff's failure to pay the court's transfer fees and costs, Plaintiff paid the transfer fees and costs. This case will now be transferred to Sacramento County Superior Court.

**ROMIE ATKINS DBA NATURALLY ORGANIC SLEEP v. CALIFORNIA
DEPARTMENT OF TAX AND FEE ADMINISTRATION**

Sacramento County Superior Court: 34-2022-00320870

Filed – 06/02/2022

Plaintiff's Counsel

Carley A. Roberts, Pillsbury Winthrop Shaw Pittman LLP

CDTFA's Counsel

Kara Siegel

CDTFA Attorney

Andrew Amara

Issue(s):

Romie Atkins dba Naturally Organic Sleep (“Plaintiff”) filed a complaint on May 31, 2022, for a refund of sales tax, interest and penalties paid in the amount of \$43,394.06 (plus an additional \$146.18 interest payment subsequently made). Plaintiff asserts that its sales of prescription mattresses were exempt from California sales tax “pursuant to California Revenue and Taxation Code section [6369](#) and related legal authority.” Plaintiff further alleges that CDTFA staff invalidly convinced it to execute waivers of the statute of limitations periods for issuing notices of determination on multiple occasions (eventually covering the period of January 1, 2013, through September 30, 2013). Finally, Plaintiff alleges CDTFA staff misled it by advising it that sales of prescription mattresses were not subject to sales tax.

Audit/Tax Period: None

Amount: \$43,394.06

Status:

Plaintiff filed this sales and use tax refund action on June 2, 2022, and served CDTFA on June 22, 2022. Plaintiff agreed to a 15-day extension for CDTFA to respond to the complaint. The new deadline is August 2, 2022. CDTFA filed its Answer to the Complaint on August 2, 2022. On March 6, 2023, Plaintiff served CDTFA with the Notice of Trial and Mandatory Settlement Conference Dates; the final Settlement Conference is scheduled for August 12, 2024, and the trial is set for September 17, 2024. On May 31, 2024, the parties filed a Stipulation to move the trial date from September 17, 2024, to November 18, 2024, or thereafter, for court approval. On November 13, 2024, the court dismissed this action with prejudice following the parties' settlement.

**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

Andrea Schoor-West

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. CDTFA's Demurrer to the Complaint was filed on April 29, 2022. The hearing is set for July 12, 2022. On May 9, 2022, the court entered an order staying the case as to BMW until the court rules on CDTFA's Demurrer. The parties have agreed to stay the case pending the outcome of an appeal in a related case, *Stettner I*, involving the same underlying legal issue.

SOUTHWEST JET FUEL CO. v. CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

Court of Appeal, Fifth Appellate District: F087656

Fresno County Superior Court: 22CECG01224

Filed – 04/25/2022

Plaintiff's Counsel

Edwin Antolin, Antolin Agarwal LLP

CDTFA's Counsel

Douglas Beteta

CDTFA Attorney

Kiren Chohan

Issue(s):

On April 25, 2022, Southwest Jet Fuel Co. (Plaintiff) filed its Complaint seeking a refund for the period July 1, 2017, to September 30, 2020 (Period at Issue), of county sales taxes in the amount of \$10,797,689.31, plus interest, CDTFA collected on behalf of the following seven counties: San Bernardino, Los Angeles, Orange, Alameda, Santa Clara, Sacramento, and San Diego, for its sales of jet fuel to Southwest Airlines Co., in alleged violation of Proposition 62 by collecting county sales tax on 100 percent of the gross receipts of its fuel sales rather than 20 percent of its gross receipts. Plaintiff also seeks a judicial declaration that the subject counties imposed an increased tax during the Period at Issue in excess of that allowed by each county and without complying with the requirements of Proposition 62 and/or collected in excess of that which is actually imposed under the county's sales tax ordinance.

Audit/Tax Period: None

Amount: \$10,797,689.31

Status:

Plaintiff filed its complaint on April 25, 2022, and served CDTFA on April 28, 2022. CDTFA's deadline to file a responsive pleading is May 28, 2022. On May 10, 2022, the parties filed a stipulated request to extend CDTFA's deadline to respond to Plaintiff's Complaint to June 30, 2022, which was approved by the court. On June 30, 2022, CDTFA filed a Demurrer for Failure to Join Necessary Parties, namely, the counties whose ordinances are being challenged (specifically, San Bernardino, Los Angeles, Orange, Alameda, Santa Clara, Sacramento, and San Diego counties (the Counties)), and the cities and counties whose revenue is at issue (specifically, Los Angeles, Oakland, San Jose, San Diego, and Ontario (the Cities), and the Counties). The hearing on this Demurrer is scheduled for December 20, 2022. The court continued the case management conference previously set for August 24, 2022, to February 23, 2023. Plaintiff filed a First Amended Complaint on October 3, 2022, adding seven counties (County of San Bernadino, County of Los Angeles, County of Orange, County of Alameda, County of Santa Clara, County of Sacramento, and County of San Diego) as defendants. CDTFA's deadline to respond to the First Amended Complaint is November 4, 2022. On November 4, 2022, CDTFA filed its answer to Plaintiff's First Amended Complaint. On November 10, 2022, Orange County, San Bernardino County and Sacramento County each filed a Demurrer to Plaintiff's First Amended Complaint. The hearing on the demurrers filed by Orange County and Sacramento County is set for March 30, 2023. The hearing on the demurrer filed by San Bernardino County is scheduled for April 4, 2023. On November 18, 2022, County of Santa Clara filed a Demurrer to Plaintiff's First Amended Complaint, with the hearing scheduled for May 3, 2023. On December 6, 2022, Alameda County filed a Demurrer to the First Amended Complaint. The hearing on this demurrer is scheduled for May 18, 2023. Los Angeles County filed a Demurrer to the First Amended Complaint on December 13, 2022. The hearing on this demurrer is scheduled for May 3, 2023. On March 13, 2023, Plaintiff filed requests for dismissals of all named county defendants: Orange County, Sacramento County, San Bernardino County, Santa Clara County, Los Angeles County, Alameda County, and San Diego County. The court dismissed the Counties from the action and all hearings scheduled for demurrers filed by these counties were taken off calendar. On May 23, 2023, Plaintiff filed its Motion for Summary Judgment; the hearing on this motion is August 10, 2023. CDTFA's deadline to file an opposition brief is July 27, 2023. On June 29, 2023, the San Bernardino County Transportation Authority and the City of Ontario filed an ex parte motion to intervene in the case. The court set a hearing on this motion for August 10, 2023, and any opposition to the motion is due July 28, 2023. The court continued the hearing on Plaintiff's Motion for Summary Judgment to September 21, 2023, and CDTFA's opposition to the MSJ is due September 7, 2023. The hearing on CDTFA's Motion for Judgment on the Pleadings is set for August 31, 2023, and CDTFA's MJP is due August 7, 2023. On August 7, 2023, CDTFA filed its Motion for Judgment on the Pleadings. The hearing on this motion is scheduled for August 31, 2023. On August 10, 2023, the court granted the Application by San Bernardino County Transportation Authority and the City of Ontario for Leave to Intervene in the action. On August 18, 2023, Southwest Jet

Fuel filed its opposition to CDTFA's Motion for Judgment on the Pleadings. On August 24, 2023, CDTFA filed its reply brief in support of its Motion for Judgment on the Pleadings. On August 31, 2023, following oral argument, the court denied CDTFA's motion. On September 7, 2023, CDTFA filed its opposition to Southwest Jet Fuel's Motion for Summary Judgment. The hearing on this motion is scheduled for September 21, 2023. On September 20, 2023, the court continued the hearing on Plaintiff's Motion for Summary Judgment to October 26, 2023. On October 25, 2023, the court continued the hearing on Petitioner's Motion for Summary Judgment to December 14, 2023. On December 14, 2023, the trial court granted Plaintiff's Motion for Summary Judgment. Judgment was entered against CDTFA on January 3, 2024; and Notice of Entry of Judgment was served on January 10, 2024. CDTFA's deadline to file an appeal is March 11, 2024. On February 23, 2024, CDTFA filed a Notice of Appeal of the superior court decision in favor of Southwest Jet Fuel. On June 28, 2024, the parties filed a stipulation extending the time for CDTFA to file its opening appellate brief from July 23, 2024, to September 20, 2024. Interveners/ Appellants San Bernardino County Transportation Authority and City of Ontario filed their Appellants' Opening Brief on September 20, 2024. CDTFA filed its Appellant's Opening Brief on October 9, 2024. On October 16, 2024, Plaintiffs- Respondents filed a stipulation with the Court of Appeal to extend their deadline to file their Respondents' Brief to January 7, 2025.

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

Andrea Schoor-West

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. Plaintiffs filed their First Amended Complaint (FAC) on November 8, 2024; CDTFA's response to the FAC is due December 23, 2024.

YOGURT TIME, LLC v. OFFICE OF TAX APPEALS AND CDTFA

San Francisco County Superior Court: CPF-24-518653

Sonoma County Superior Court: 23CV00692

Filed – 09/25/2023

Plaintiff's Counsel

Amin Kazemini, Law Office of Amin Kazemini

CDTFA's Counsel

John Keith

CDTFA Attorney

Kiren Chohan

Issue(s):

Petitioner Yogurt Time, LLC (“Petitioner”) seeks the court's review of an Office of Tax Appeals (OTA) decision, dated January 18, 2023, in favor of the Department, and OTA's subsequent June 27, 2023 decision denying Petitioner's request for a rehearing. Petitioner requests the court to review its appeals before OTA for the periods of January 1, 2008 through March 31, 2011, and July 1, 2011 through June 30, 2014, as to the disallowed claimed exempt food sales and unreported ex-tax purchases of fixed assets subject to use tax as well as its requests for relief of the negligence penalties and interest.

Audit/Tax Period: None

Amount: Unspecified

Status:

CDTFA was served with the Complaint on October 18, 2023. Petitioner agreed to a 15-day extension for CDTFA to file its response to the Petition; CDTFA's deadline to file a responsive pleading is now December 4, 2023. On December 4, 2023, CDTFA and OTA filed an Unopposed Motion to Transfer Venue to San Francisco County Superior Court. CDTFA's Motion to Transfer Venue to the Superior Court of Los Angeles was granted on January 31, 2024. On February 7, 2024, the court issued an order granting CDTFA's and OTA's joint motion to transfer the case from the County of Sonoma to San Francisco County. In the Notice of Filing and Transmittal dated August 5, 2024, the San Francisco County Superior Court acknowledged that this case had been transferred to it by Sonoma County. CDTFA's response to the Complaint is due September 9, 2024. CDTFA filed a Demurrer to the Complaint on September 6, 2024. Plaintiff filed its Opposition to the Demurrer on September 23, 2024. CDTFA filed a Reply in support of its Demurrer on September 30, 2024. The hearing on the Demurrer is scheduled for October 15, 2024. On October 15, 2024, following oral argument,

the trial court sustained CDTFA's Demurrer to Plaintiff's Complaint, without leave to amend, on the ground that Plaintiff failed to exhaust its administrative remedies prior to filing suit. On October 16, 2024, CDTFA filed a Notice of Entry of Order Sustaining Without Leave to Amend CDTFA's Demurrer.

ZOUSMER v. CDTFA, ET AL.

Sacramento County Superior Court: 34-2022-00326173

Filed – 09/02/2022

Plaintiff's Counsel

David Markham, The Markham Law Firm

CDTFA's Counsel

Andrea Schoor-West

CDTFA Attorney

Andrew Amara

Issue(s):

Plaintiff alleges that Mercedes Benz's business practice of charging a “sales tax” on the disposition fee when a leased car is returned at the end of a car-lease term (labeled in the lease contract as the "Vehicle Turn-In Fee"), violates California's [Use Tax Regulation 1660\(c\)\(1\)](#), covering leases of tangible personal property.

Plaintiff seeks a determination of the validity of Regulation 1660(c)(1) pursuant to [Government Code section 11350](#), a judicial declaration that the collection of tax on lease disposition fees is unlawful under Regulation 1660(c)(1)(D), and a judicial declaration determining whether the tax collected on lease disposition fees is a sales tax or a use tax. Plaintiff also seeks a refund on behalf of herself and all other members of the general public who paid the tax.

Audit/Tax Period: None

Amount: Unspecified

Status:

Plaintiff served CDTFA with the Summons and Complaint on October 24, 2022. CDTFA's deadline to file a response, absent an extension, is November 23, 2022. The parties stipulated to stay this matter pending the outcome of the Stettner I appeal, and the court granted the parties' request to stay the case on November 15, 2022.

Sales and Use Tax
LITIGATION ROSTER
NOVEMBER 2024

CLOSED CASES

<u>Case Name</u>	<u>Case Number</u>
BEKKERMAN, ET AL. v. CA DEPT. OF TAX & FEE	S284476
BEKKERMAN, ET AL. v. CA DEPT. OF GENERAL HA v. CDTFA, ET AL.	34-2022-80003 23STCV12472

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