

LITIGATION ROSTER
SALES AND USE TAX

SEPTEMBER 2023

Sales and Use Tax
LITIGATION ROSTER
SEPTEMBER 2023

NEW CASES

Case Name

HAPPY HARBOR RESTAURANT INC. v. CDTFA

Case Number

23PSCV02623

CLOSED CASES

Case Name

Case Number

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

**Sales and Use Tax
LITIGATION ROSTER
SEPTEMBER 2023**

**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 Henderson

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. On April 7, 2022, CDTFA filed a request that the time for filing CDTFA's Appellant's Opening Brief, currently due on April 13, 2022, be extended to May 13, 2022. On April 20, 2022, the Court of Appeal granted CDTFA's request. On May 11, 2022, CDTFA filed its Appellant's Opening Brief. On July 22, 2022, the Court of Appeal granted Plaintiffs/ Respondents' request for an extension of time to file their Respondents' Cross-Appeal Opening/Opposition combo brief to October 10, 2022. CDTFA's Opposition/Reply combo brief is due December 27, 2022. On October 7, 2022, the Court of Appeal granted Plaintiffs' request for an extension to file their Respondents' Cross-Appeal Opening/Opposition combo brief to November 7, 2022. CDTFA's Opposition/Reply combo brief is now due January 23, 2023. On November 2, 2022, the Court of Appeal granted CDTFA's request for an extension of time to file the Appellant's Reply Brief, which is now due November 28, 2022. On November 10, 2022, the Court of Appeal granted Plaintiffs' request for an extension to file their Respondents' Cross-Appeal Opening/Opposition combo brief by November 28, 2022. Plaintiffs filed their Respondents' Cross-Appeal Opening/Opposition combo brief on November 22, 2022. CDTFA's Opposition/Reply combo brief is now due February 6, 2023. On January 5, 2023, the Third District Court of Appeal granted Plaintiffs' request for leave to file a corrected brief. Plaintiffs filed a corrected Cross-Appeal Opening/Opposition combo brief on the same day. CDTFA's deadline to file its combined Cross-Respondent's Opposition/Reply brief is now March 22, 2023. On February 27, 2023, CDTFA filed a request for an extension of time to file its combined Cross-Respondent's Opposition/Reply brief, from March 22, 2023, to May 22, 2023. On March 16, 2023, the Court of Appeal granted CDTFA's request for an extension of time to file its combined Cross-Respondent's Opposition/Reply brief, which is now due on May 22, 2023. The Court of Appeal issued a 15-day letter to CDTFA, notifying CDTFA that it has until June 8, 2023, to file its brief. On June 7, 2023, CDTFA filed its combined Cross-Respondent's Opposition/Reply brief. On August 21, 2023, Plaintiffs/Respondents filed their Cross-Reply Brief. On September 12, 2023, the California Taxpayers Association filed an Amicus Curiae Brief with the Third District Court of Appeal in support of Plaintiffs.

BEKKERMAN, ALINA; BRANDON GRIFFITH; JENNY LEE; AND CHARLES LISSER, ET AL. v. CALIFORNIA DEPARTMENT OF GENERAL SERVICES, ET AL.(II)

Sacramento County Superior Court: 34-2022-80003814
Filed – 06/27/2022

Plaintiffs' Counsel

Daniel M. Hattis, Hattis & Lukacs
Paul Karl Lukacs, Hattis & Lukacs
Tony J. Tanke, Law Offices of Tony J. Tanke

CDTFA's Counsel

Jennifer Henderson

CDTFA Attorney

Scott Chavez

Issue(s):

Plaintiffs served a Second Amended Complaint to their class action lawsuit on June 27, 2022, against CDTFA, the State of California, Department of General Services, and California Government Operations Agency, challenging the State's denial of their administrative government claims for refund of illegal sales tax reimbursement charged to them (and to a class of similarly situated consumers) under [Regulation 1585](#) on purchases of discounted wireless devices bundled with wireless service, and to obtain refunds of those excess sales tax reimbursements paid by Plaintiffs and the class.

Audit/Tax Period: None

Amount: Unspecified

Status:

The Complaint was filed on February 14, 2022, but was not served on CDTFA. The First Amended Complaint (FAC) was filed on March 25, 2022. Plaintiffs filed their Second Amended Complaint on June 27, 2022. Plaintiffs agreed to a 45-day extension of time to respond. CDTFA's response is due September 12, 2022. At the Case Management Conference (CMC) on August 26, 2022, the court continued the CMC to June 16, 2023, to allow plaintiffs time to file a motion to stay the case pending the outcome of CDTFA's appeal in their related action (*Bekkerman v. CDTFA*, Third Dist. Court of Appeal, Case No. C093763). Plaintiffs filed a Motion to Stay the case on September 19, 2022. The State Defendants filed their Opposition to Plaintiffs' Motion to Stay on September 30, 2022. The hearing is scheduled for October 13, 2022. Pursuant to a stipulation between the parties, CDTFA's deadline to file its response to the Second Amended Complaint is due October 17, 2022. The court continued the hearing on

Plaintiffs' Motion to Stay to November 3, 2022. On October 17, 2022, CDTFA filed a Demurrer to Plaintiffs' Second Amended Complaint. Plaintiffs' opposition brief is due January 18, 2023, and the hearing is currently scheduled for January 25, 2023. On November 2, 2022, the trial court granted Plaintiffs' Motion to Stay the case pending the outcome of Plaintiffs' appeal in their related writ action, which is currently pending before the Third District Court of Appeal (Case No. C093763). As a result, the hearing on CDTFA's demurrer will be taken off calendar.

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.

**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
Los Angeles County Superior Court: 22STCV13393
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 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.

CITY OF MORENO VALLEY v. CALIFORNIA DEPARTMENT OF TAX & FEE ADMINISTRATION, A DEPARTMENT OF THE STATE OF CALIFORNIA; NICOLAS MADUROS, DIRECTOR OF THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, IN HIS OFFICIAL CAPACITY ONLY; AND DOES 1-25

Court of Appeal, Third Appellate District: C097747
Sacramento County Superior Court: 34-2022-80003915
Filed – 07/12/2022

Plaintiff's Counsel

Steven Quintanilla, City of Moreno Valley City Attorney

CDTFA's Counsel

Jennifer Henderson

CDTFA Attorney

Kimberly Willy

Issue(s):

In this Verified Petition for Writ of Mandate and Complaint for Declaratory Relief, Plaintiff, City of Moreno Valley (“city”), seeks a judicial declaration that Measure G and Ordinance No. 987, as adopted by the Moreno Valley City Council (“city council”) after the election on March 24, 2022, validly imposes a 1.0% transactions and use tax (“TUT”) in the city. CDTFA informed the city that it could not enter into a contract with the city to administer and collect the 1.0% TUT because the provisions of [Revenue and Taxation Code section 7285.9](#) were not satisfied. Instead of approving a 1.0% TUT, the city council and voters

approved Ordinance 982, which unambiguously provided for an unlawful increase in the city's Bradley-Burns Uniform Local Sales and Use Tax from 1.0% to 2.0%.

Audit/Tax Period: None

Amount: Unspecified

Status:

Plaintiff filed its Verified Petition for Writ of Mandate and Complaint for Declaratory Relief on July 12, 2022, and served CDTFA electronically on July 21, 2022. CDTFA's deadline to file its first responsive pleading is August 22, 2022. On August 22, 2022, CDTFA filed an Answer to the Verified Petition for Writ of Mandate and Complaint for Declaratory Relief. The court set a hearing on the merits of the petition for December 23, 2022. On August 26, 2022, plaintiff filed an Ex Parte Application to Advance the Hearing Date to either October 21, 2022, or October 28, 2022, or at the earliest possible date before December 23, 2022. The court granted plaintiff's request, and rescheduled the hearing for November 10, 2022. On September 16, 2022, plaintiff filed a Motion for Judgment on the Writ of Mandate. The hearing is scheduled for November 10, 2022. On October 17, 2022, CDTFA filed an opposition to the Motion for Judgment on Petition for Writ of Mandate. On October 26, 2022, petitioner filed its reply to CDTFA's opposition brief. On November 10, 2022, the trial court heard oral argument on the city's Motion for Judgment on Petition for Writ of Mandate. On November 28, 2022, the court denied the city's motion. CDTFA will prepare a proposed order and judgment for the court's approval. On December 29, 2022, the court entered an order denying the city's petition for writ of mandate and dismissing the complaint for declaratory relief; judgment was entered in favor of CDTFA that same day. On January 4, 2023, petitioner filed a Notice of Appeal. On or about January 26, 2023, the Third District Court of Appeal notified the parties that the case was not suitable for mediation and all proceedings in the appeal are to recommence as if the Notice of Appeal had been filed on January 26, 2023. On April 27, 2023, Appellant, City of Moreno Valley, filed its opening brief with the Third District Court of Appeal. CDTFA's respondent's brief is due on May 30, 2023. Appellant, City of Moreno Valley, agreed to stipulate to a 35-day extension of time for CDTFA to file its respondent's brief. CDTFA's respondent's brief is now due July 5, 2023. On June 20, 2023, the Court of Appeal granted CDTFA's extension of time to file its respondent's brief. CDTFA's respondent's brief is now due on July 31, 2023. On July 27, 2023, the Court of Appeal granted CDTFA's extension of time to file its respondent's brief. CDTFA's respondent's brief is now due on August 15, 2023. On August 25, 2023, CDTFA filed its respondent's brief.

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. The Court of Appeal granted CDTFA's request for an extension of time to file its opening brief to May 20, 2022. On May 20, 2022, CDTFA filed its Appellants' Opening Brief and Joint Appendix. The parties stipulated to a 30-day extension of time for Plaintiffs-Respondents to file their Respondents' Brief; the new deadline to file is now July 20, 2022. The parties stipulated to extend Plaintiffs-Respondents' time to file their Respondents' Brief an additional 30 days, to August 19, 2022. On August 25, 2022, the Court of Appeal notified Plaintiffs-Respondents of their failure to file their Respondents' Brief, and allowed them until September 9, 2022, to file the brief. Plaintiffs-Respondents filed their Respondents' Brief on September 7, 2022. On September 26, 2022, the parties filed a stipulation to extend CDTFA's deadline to file the Appellant's Reply Brief, which is now due November 4, 2022. On October 21, 2022, the Court of Appeal granted CDTFA an extension to file its optional Reply Brief to November 28, 2022. On November 2, 2022, the Court of Appeal granted CDTFA's request for an extension of time to file the Appellant's Reply Brief, to November 28, 2022. On November 28, 2022, CDTFA filed its Appellants' Reply Brief. On December 2, 2022, several law professors filed a joint application to file an amicus brief in support of Plaintiffs-Respondents. On December 12, 2022, the following additional amicus briefs were submitted for filing: (1) the League of California Cities and California State Association of Counties requested permission to file an amicus brief in support of Plaintiffs-Respondents; (2) the American Heart Association and several other organizations requested permission to file an amicus brief in support of Plaintiffs-Respondents; and (3) the California Chamber

of Commerce and several other organizations requested permission to file an amicus brief in support of CDTFA. On December 28, 2022, the Court of Appeal accepted all four amici briefs and set a deadline of January 30, 2023, for answers to be filed. On January 27, 2023, CDTFA filed a combined response to the briefs of Plaintiffs' amicus curiae with the Court of Appeal. On January 30, 2023, Plaintiffs Respondents filed a response to the amicus brief filed in support of CDTFA by the Chamber of Commerce, et al. Oral argument before the Third District Court of Appeal is scheduled for March 20, 2023. Oral argument was held on March 20, 2023, and the case was submitted. On March 27, 2023, the Court of Appeal issued a published opinion affirming the trial court decision in favor of Plaintiffs/Respondents, finding that the penalty provision of AB 1838, Revenue and Taxation Code section 7284.12, subdivision (f), is unlawful because it improperly uses the threat of penalties to chill charter cities from exercising their constitutional rights. On June 1, 2023, the Court of Appeal issued a remittitur; Plaintiff-Respondents to recover costs on appeal. On June 29, 2023, the trial court approved the parties' stipulation extending the time for Plaintiffs to file a motion for attorneys' fees to July 28, 2023. On July 27, 2023, the parties filed a stipulation extending the deadline for Plaintiffs to file a motion for attorneys' fees to August 11, 2023. On August 10, 2023, the court signed the parties' stipulation and order regarding the settlement of plaintiffs' attorneys' fees.

**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. 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.

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

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.

**HA, JUSTIN v. CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION,
ET AL.**

Los Angeles County Superior Court: 23STCV12472

Filed – 06/01/2023

Plaintiff's Counsel

Pio, Kim, LIMNEXUS LLP

CDTFA's Counsel

Jennifer Henderson

CDTFA Attorney

Andrew Amara

Issue(s):

Plaintiff asserts that he was formerly the president and majority shareholder of Heavenly Couture, Inc. (“Heavenly”). Heavenly accrued unpaid taxes for reporting periods beginning October 1, 2017, totaling \$282,791.23 (“Total Amount”). Heavenly subsequently filed for Chapter 11 bankruptcy protection and, thereafter, sold the business assets and ceased operations through the bankruptcy. Following the termination of Heavenly's operations, closure of the bankruptcy proceeding, and dissolution of the corporation, plaintiff asserts that CDTFA erroneously informed him that he was personally responsible for Heavenly's unpaid liability despite having made no final determination against him pursuant to Revenue and Taxation Code § 6829. Plaintiff claims that as the direct result of CDTFA's false statements and threats, Plaintiff was coerced and forced into involuntarily paying the Total Amount to CDTFA using his own funds and seeks a refund of this amount.

Audit/Tax Period: None

Amount: \$282,791.23

Status:

Plaintiff filed the Complaint for Tax Refund on June 1, 2023, and CDTFA was served with the Complaint on June 19, 2023. CDTFA's deadline to file a response to the Complaint is July 19, 2023. On July 18, 2023, CDTFA filed its Answer to Plaintiff's Unverified Complaint for Tax Refund.

**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 through 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.

**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.

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

San Francisco County Superior Court: GCG-22-599205

Filed -04/15/2022

Plaintiff's Counsel

Jeffrey Vesely, Pillsbury Winthrop Shaw Pittman LLP

CDTFA's Counsel

Karen Yiu

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.

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

Debbie J. Vorous

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.

**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 through 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.

**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.

**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. 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

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 Bernardino, 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.

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

Andrea Schoor

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. On March 24, 2022, the parties filed a stipulation extending the deadline for plaintiffs to file the Appellant's Opening Brief and Appendix to June 3, 2022. On June 3, 2022, Plaintiffs-Appellants filed their Appellants' Opening Brief. On June 16, 2022, the parties filed a stipulated agreement with the Third District Court of Appeal, agreeing to an extension of time for CDTFA to file its Respondent's Brief. The brief is now due September 5, 2022. The Court of Appeal granted Respondent-CDTFA's request for a 30-day extension to file its Respondent's Brief, which is now due October 6, 2022. The court granted the parties' stipulated request for a 30-day extension of time for CDTFA to file its Respondent's Brief. The new due date is November 7, 2022. CDTFA filed its Respondent's Brief on November 4, 2022. On November 11, 2022, the parties filed a stipulation for an extension of time for Plaintiffs to file their Appellants' Reply Brief. Appellants' Reply Brief is now due January 27, 2023. On January 26, 2023, Plaintiffs filed their Appellants'

Reply Brief with the Court of Appeal. This case is fully briefed and awaits scheduling of oral argument. On May 12, 2023, the Court of Appeal notified the parties that the court was prepared to issue a decision without oral argument unless argument was requested by one of the parties. On May 19, 2023, Plaintiff requested oral argument. No date for oral argument has been set by the court at this time. The Court has scheduled oral argument for August 23, 2023; but due to a scheduling conflict, CDTFA will be requesting a continuance of oral argument to a future date. The Court of Appeal initially scheduled oral argument for October 23, 2023; however, argument was subsequently rescheduled for November 17, 2023.

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.

WASATCH COMPANY v. CDTFA

Los Angeles County Superior Court: 22STCV39675

Filed – 12/21/2022

Plaintiff's Counsel

Chad D. Nardiello, Nardiello Turanchik LLP

CDTFA's Counsel

Leanna Costantini

CDTFA Attorney

Andrew Amara

Issue(s):

Plaintiff seeks a refund of sales tax in the amount of \$304,868.63, plus interest, for the quarters ending on June 30, 2020, September 30, 2020, and March 31, 2021, for drop shipment sales of goods to Kaiser Foundation Health Plan, Inc. ("Kaiser"). Plaintiff also seeks attorney's fees and costs.

Plaintiff specifically alleges that the drop shippers, City Trading International and H.P. Hospitality, failed to ship the goods to Kaiser. Accordingly, plaintiff asserts that there were no taxable retail sales to Kaiser because transfer of title or possession of tangible personal property to Kaiser never occurred. Alternatively, plaintiff claims that, even if taxable retail sales occurred, plaintiff refunded or credited the entire payments it received from Kaiser for such sales of undelivered goods, which reduced its gross receipts. Lastly, plaintiff claims that during its bankruptcy proceedings it entered into a settlement with Kaiser permanently releasing its claim against Kaiser for unpaid accounts receivable totaling \$882,736.40 for sales of undelivered goods, rendering such accounts worthless.

Audit/Tax Period: April 1, 2020 to March 31, 2021
Amount: \$304,868.63

Status:

The Summons and Verified Complaint were served on December 28, 2022. On or about February 7, 2023, the court granted the parties' Stipulation to Extend Time for Defendant (CDTFA) to Respond to Complaint. CDTFA's deadline to file its first responsive pleading is March 20, 2023. On March 20, 2023, CDTFA filed its Answer to the Complaint. The court scheduled the trial to begin July 8, 2024. The hearing on CDTFA's Motion for Summary Judgment has been set for June 18, 2024.

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

Debbie J. Vorous

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
SEPTEMBER 2023

CLOSED CASES

Case Name

Case Number

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