

LITIGATION ROSTER
SALES AND USE TAX

DECEMBER 2022

Sales and Use Tax
LITIGATION ROSTER
DECEMBER 2022

NEW CASES

Case Name

EMERALD SEVEN, LLC v. STATE OF CA, ET AL.
WASATCH COMPANY v. CDTFA

Case Number

22NWCV00135
22STCV39675

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
DECEMBER 2022**

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

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

Plaintiffs' Counsel

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

CDTFA's Counsel

Jennifer 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 refiling 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.

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.

**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**

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 Seconded 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.

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
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.

COLAVITO v. CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

Los Angeles County Superior Court: 21STLC02873

Riverside County Superior Court (Palm Springs Courthouse): 1904499

Filed – 07/02/2019

Plaintiff's Counsel

Pro Se

CDTFA's Counsel

Anna Barsegyan

CDTFA Attorney

Kiren Chohan

Issue(s):

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

Audit/Tax Period: None
Amount: \$10,183.00

Status:

Plaintiff served CDTFA with a complaint on August 6, 2020. CDTFA's response is due September 8, 2020. On September 4, 2020, CDTFA filed a Motion to Transfer Venue of the case to the County of Los Angeles. Plaintiff did not file an opposition to CDTFA's motion, which was due September 24, 2020. CDTFA filed a Reply in Support of CDTFA's Motion to Transfer Venue on September 30, 2020. The hearing on CDTFA's motion is scheduled for October 7, 2020. On October 6, 2020, the court issued a tentative ruling granting CDTFA's motion to transfer venue to the County of Los Angeles. On October 7, 2020, the court adopted its tentative and signed the order transferring the case to the County of Los Angeles. On November 18, 2020, Plaintiff filed an answer to the court's order to show cause for his failure to pay the fee to transfer the case to Los Angeles County Superior Court. On November 19, 2020, the court took the order to show cause hearing off calendar. Plaintiff did not appear at the OSC hearing held on January 19, 2021, and the Court continued the hearing to March 26, 2021. Plaintiff has paid the transfer fee, but also requested a waiver of that fee, which the Court wants to be addressed prior to transferring the case. The trial court approved Plaintiff's request for waiver of the transfer fee and vacated the Order to Show Cause Hearing re: Failure to Pay the Transfer Fee that was scheduled for March 26, 2021. This case will now be transferred to the Los Angeles County Superior Court. On April 29, 2021, CDTFA received notice that this case was transferred to the Los Angeles County Superior Court on April 12, 2021. CDTFA's responsive pleading is due on May 12, 2021. On April 29, 2021, the court clerk set a Trial Setting Conference for May 27, 2021. The parties agreed to extend CDTFA's deadline to file a responsive pleading to June 11, 2021, and filed a stipulation and proposed court order to this effect on May 5, 2021. On May 7, 2021, the court signed the order extending CDTFA's deadline to file a responsive pleading to June 11, 2021, and it continued the trial setting conference from May 27, 2021, to July 2, 2021. On June 8, 2021, CDTFA filed its Answer to the Complaint and a Motion to Reclassify Limited Civil Case to Unlimited Civil Case. The hearing on this Motion is scheduled for October 5, 2021. On July 2, 2021, the court continued the trial setting conference to October 5, 2021. Plaintiff did not file an opposition to CDTFA's Motion to Reclassify the case from a limited civil case to an unlimited civil case, which was due on September 22, 2021. On September 28, 2021, CDTFA filed a reply brief in support of its motion stating that because Plaintiff had not filed an opposition to CDTFA's motion, the court should treat the motion as unopposed. On September 29, 2021, Plaintiff served CDTFA with a Motion for Continuance of the October 5, 2021 trial setting conference and hearing date on CDTFA's Motion to Reclassify the case to an unlimited civil case to November 5, 2021. On October 5, 2021, at the hearing on CDTFA's Motion to Reclassify the case from a limited civil case to an unlimited civil case, the court adopted the tentative ruling and approved reclassification of this case as unlimited. On October 13, 2021, the court issued an order reassigning this case to Department 54, a court of unlimited civil

jurisdiction. On July 15, 2022, the court scheduled a two-day bench trial to begin February 27, 2023.

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.

**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.

EXPEDITION INDUSTRIES, INC., ET AL. v. STATE OF CALIFORNIA, ET AL.
Los Angeles County Superior Court: 22NWCV00337
Filed – 05/03/2022

Plaintiff's Counsel

Jeffrey Benice, Benice Law

CDTFA's Counsel

Anna Barsegyan

CDTFA Attorney

Kimberly Willy

Issue(s):

Plaintiff Expedition Industries, Inc. 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 asserts that CDTFA improperly imputed to it the tax liability of its tenant, and that, as the landlord, it is not responsible for any alleged illegal cannabis sales on its property by its tenant or any resulting tax liability arising therefrom. Plaintiff also asserts that it was not afforded due process before the CDTFA proposed to sell its property at a May 11, 2022, sheriff's auction in connection with its tenant's liability. Plaintiff seeks a declaration that it is not responsible for any sales and use tax liability arising out of any of its tenant's alleged illegal cannabis sales on its property. Plaintiff also brings an action to quiet title to the property, declaring it the owner as against CDTFA, and seeks an injunction against any future sale of its property without due process. Plaintiff also seeks attorney's fees.

Audit/Tax Period: None
Amount: Unspecified

Status:

On September 12, 2022, plaintiff filed a First Amended Complaint. On October 12, 2022, CDTFA filed a Demurrer to, and a Motion to Strike, Plaintiff's First Amended Complaint. The hearing is scheduled for January 26, 2023.

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

Court of Appeal, Second Appellate District: B309418
Los Angeles County Superior Court: 19STCV27757
Filed – 08/06/2019

Plaintiff's Counsel

Mardiros Dakessian, Dakessian Law, LTD

CDTFA's Counsel

Douglas Beteta

CDTFA Attorney

Scott Chavez

Issue(s):

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

Audit/Tax Period: None
Amount: Unspecified

Status:

Plaintiff filed the complaint on August 6, 2019 and served CDTFA with a copy on August 22, 2019. Plaintiff agreed to an extension for CDTFA and the Director to file their responses to the complaint by November 7, 2019. A stipulation and request for court order setting the new deadline as November 7, 2019, was filed with the court. On August 22, 2019, the court reassigned the case to Judge Barbara Meiers, following plaintiff's preemptory challenge to the former judge assigned to the matter. On August 29, 2019, the court approved CDTFA's

stipulated request to extend the response date to plaintiff's complaint to November 7, 2019. On September 24, 2019, Plaintiff served his First Amended Complaint, adding Amazon.com, Inc., and other Amazon affiliates, as Real Parties In Interest. On or about November 12, 2019, the court approved the parties' stipulation to extend the time to respond to the First Amended Complaint to November 27, 2019. On November 27, 2019, CDTFA filed a demurrer to Plaintiff's First Amended Complaint. On November 29, 2019, Real Parties in Interest Amazon.com (and its affiliated entities) also filed a demurrer to the First Amended Complaint, as well as a joinder in CDTFA's demurrer. The hearing on both of the demurrers is scheduled for February 4, 2020. On November 26, 2019, this case was reassigned to a new judge and department, and the existing briefing and hearing schedule, including the hearing date for CDTFA's demurrer, was vacated. The hearing on CDTFA's demurrer and the Real Parties in Interest's demurrer has been rescheduled for June 16, 2020. Amazon.com filed an Amended Notice of Demurrer and Amended Notice of Joinder on May 22, 2020. Plaintiff Grosz's opposition to the demurrers is due by June 3, 2020, and the Defendants' reply brief will be due by June 9, 2020. On June 3, 2020, the Court issued a notice that the hearing on Defendants' demurrers have been rescheduled to August 5, 2020. The briefing schedule is revised as follows: Plaintiff's Opposition brief due: July 23, 2020; Defendants' Reply briefs due: July 29, 2020. Plaintiff filed its Opposition to Defendants' Demurrers on June 3, 2020. CDTFA filed its reply brief in support of its demurrer on July 28, 2020. On August 5, 2020, at the hearing on CDTFA's demurrer, the judge allowed additional optional briefing on issues raised at the hearing to be filed by August 24, 2020. A new hearing date was not set. On August 24, 2020, CDTFA filed a Supplemental Brief in support of its Demurrer. On October 20, 2020, the court sustained CDTFA's demurrer to the complaint without leave to amend and issued a minute order to that effect. On December 9, 2020, Plaintiff filed an appeal of the court order sustaining CDTFA's demurrer without leave to amend. On December 17, 2020, Plaintiff filed his Notice Designating Record on Appeal. Once the reporter's transcript is filed, Plaintiff will have 40 days to file his opening brief. On August 13, 2021, the Court of Appeal issued a notice stating that the reporter's transcript has been filed in this case and that Plaintiff/Appellant has 40 days, or until September 22, 2021, to file his opening brief. On August 19, 2021, Plaintiff/Appellants filed a stipulation for extension of time for him to file his opening brief. That brief is now due October 22, 2021. Per court rule, the stipulation became effective on filing. On October 6, 2021, Plaintiff/Appellant filed a stipulation extending the time to file his opening brief to November 22, 2021. On November 22, 2021, plaintiff/appellant filed his appellant's opening brief. The deadline for CDTFA to file its respondent's brief is December 22, 2021. On December 2, 2021, the Court of Appeal granted the parties' stipulated request for a 60-day extension to February 22, 2022, for CDTFA to file its respondent's brief. On February 14, 2022, the Court of Appeal granted CDTFA's request for a thirty-day extension to file its respondent's brief; the brief is now due March 24, 2022. On March 24, 2022, CDTFA filed its respondent's brief. Real Parties in Interest Amazon subsidiaries also filed their respondents' brief and appendix on March 24, 2022. On March 25, 2022, the Court of Appeal granted

Plaintiff/Appellant's request for an extension of time to file his reply brief, which is now due May 13, 2022. On May 5, 2022, the Court of Appeal granted Plaintiff's request for a 30-day extension to file its Reply Brief. Plaintiff's new filing deadline is June 10, 2022. Plaintiff/Appellant Grosz filed his Appellant's Reply Brief on June 10, 2022; the case is now fully briefed. On July 22, 2022, the Court of Appeal scheduled oral argument for August 12, 2022. On July 28, 2022, the Court of Appeal rescheduled oral argument for September 21, 2022, following the parties' stipulated request. On September 14, 2022, the Second District Court of Appeal issued a notice rescheduling oral argument from September 21, 2022, to October 18, 2022. On October 18, 2022, the Court of Appeal heard oral argument and took the matter under submission.

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.

**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.

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

U.S Court of Appeals, Ninth Circuit: 12-16911

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

Filed -09/29/2020

Plaintiff's Counsel

Candice L. Fields, Candice Fields Law

CDTFA's Counsel

Mike Sapoznikow

CDTFA Attorney

Scott Chavez

Issue(s):

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

Audit/Tax Period: None

Amount: Unspecified

Status:

CDTFA was served with the Complaint on October 16, 2020. Plaintiff agreed to extend CDTFA's deadline to respond to the Complaint, which is now due

December 4, 2020. On November 20, 2020, the trial court approved the parties' joint motion for a scheduling order, setting forth the following deadlines: (1) December 18, 2020: Deadline for CDTFA to file its response to plaintiff's complaint; deadline for plaintiff to file its motion for preliminary injunction; (2) January 29, 2021: Deadline for parties to file opposition briefs; (3) February 26, 2021: Deadline for parties to file reply briefs; and (4) March 25, 2021: Hearing on CDTFA's motion to dismiss and plaintiff's motion for preliminary injunction. On December 18, 2020, CDTFA filed a Motion to Dismiss the action, and Plaintiff filed a Motion for Preliminary Injunction. CDTFA's Motion to Dismiss is scheduled for hearing on March 25, 2021. On December 18, 2020, the judge issued an order vacating the hearing on Plaintiff's Motion for Preliminary Injunction and this matter will be decided based on the briefs submitted. On January 15, 2021, the parties agreed to extend all briefing and hearing deadlines associated with their pending motions by 30 days. On February 1, 2021, the Court issued a Scheduling Order requiring Plaintiff to refile its Motion for Preliminary Injunction, and CDTFA to refile its Motion to Dismiss, by March 1, 2021. On March 1, 2021, CDTFA refiled its Motion to Dismiss and Plaintiff refiled its Motion for Preliminary Injunction. On April 1, 2021, CDTFA filed its opposition to Plaintiff's Motion for a Preliminary Injunction and Plaintiff filed its opposition to CDTFA's Motion to Dismiss. On April 14, 2021, Plaintiff filed its reply brief in support of its Motion for a Preliminary Injunction and CDTFA filed its reply brief in support of its Motion to Dismiss. The hearing on these motions was initially set for April 22, 2021, but was subsequently vacated by the court. On October 13, 2021, the U.S. District Court for the Eastern District of California granted CDTFA's Motion to Dismiss the complaint, with leave to amend, and dismissed Plaintiff's Motion for a Preliminary Injunction. Plaintiff has 20 days to file an amended complaint. On November 2, 2021, plaintiff's deadline to amend its complaint expired, and the District Court's order became a final judgment on that date. On November 10, 2021, plaintiff filed a notice of appeal from the judgment in favor of CDTFA. On January 25, 2022, the Ninth Circuit Court of Appeals issued an order setting forth the following briefing schedule: (1) Appellant's Opening Brief is due February 25, 2022; (2) CDTFA's Answering Brief is due March 25, 2022; and (3) Appellant's optional Reply Brief is due April 15, 2022. On February 24, 2022, the Ninth Circuit Court of Appeal released the parties from the court's mediation program. Appellant filed its Opening Brief on February 25, 2022. The Ninth Circuit granted CDTFA's request for an extension and CDTFA's Respondent's Brief is now due on April 25, 2022. On April 20, 2022, the Ninth Circuit Court of Appeal issued an order granting CDTFA's request for an extension of time to file its Respondent's Brief. The brief is due May 25, 2022. Plaintiff's optional reply brief is due within 21 days after service of the answering brief. On May 24, 2022, CDTFA filed its Appellee's Answering Brief. On June 7, 2022, the Ninth Circuit Court of Appeals granted plaintiff's request to extend the deadline to file its Reply Brief to July 14, 2022. On July 8, 2022, plaintiff/appellant filed its Reply Brief. On August 7, 2022, the Ninth Circuit Court of Appeals issued a Notice of Oral Argument for October 20, 2022. On October 20, 2022, the Ninth Circuit Court of Appeals heard oral argument and took the matter under submission. On November 9, 2022, the Ninth Circuit Court of Appeals

affirmed the district court's decision in favor of CDTFA, finding that plaintiff's action was barred by the Tax Injunction Act, 28 U.S.C. § 1341. On November 21, 2022, plaintiff requested and received an extension of time to file a petition for panel rehearing or hearing en banc; the new deadline is December 9, 2022. On December 8, 2022, plaintiff filed a petition for panel rehearing or hearing en banc following the Court of Appeal's decision in favor of CDTFA.

**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.

**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.

SAMELA, INC., ET AL. v. CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, ET AL.

Sacramento County Superior Court: 34-2022-00327295

Filed – 08/25/2022

Plaintiff's Counsel

Betty J. Williams, Law Office of Williams & Associates, P.C.

CDTFA's Counsel

Mike Sapoznikow

CDTFA Attorney

Andrew Amara

Issue(s):

Plaintiff, an Illinois based corporation and a long-time Fulfillment By Amazon ("FBA") merchant, filed a Complaint for Refund of Taxes and Declaratory Relief ("Complaint") against CDTFA and its Director, Nicolas Maduros, on August 25, 2022, seeking a refund of all taxes, penalties and interest paid to the state on its sales through Amazon and a judicial declaration that Amazon, not plaintiff, is the retailer required to collect and pay sales tax to California on these sales. Plaintiff also seeks prejudgment interest on the full amount of taxes, interest, and penalties paid; attorneys' fees and costs as permitted by law; and all other legal or equitable relief as Court deems just and reasonable.

Audit/Tax Period: None

Amount: Unspecified

Status:

Plaintiff served this new action on CDTFA on September 30, 2022. On November 15, 2022, CDTFA filed a Demurrer to Plaintiff's Complaint; the hearing is set for May 2, 2023.

**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 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.

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.

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.

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
DECEMBER 2022

CLOSED CASES

Case Name

Case Number

DISCLAIMER

Every attempt has been made to ensure the information contained herein is valid and accurate at the time of publication. However, the tax laws are complex and subject to change. If there is a conflict between the law and the information found, decisions will be made based on the law.

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