

VIA UPS NEXT DAY DELIVERY

April 19, 2013

Chief Justice Tani Gorre Cantil-Sakauye
and Associate Justices
SUPREME COURT OF CALIFORNIA
350 McAllister Street
San Francisco, California 94102-4797

Re: *Loeffler v. Target Corporation*
No. S173972

Dear Chief Justice Cantil-Sakauye and Associate Justices:

On behalf of Target Corporation, this letter responds to this Court's April 11, 2013 request for supplemental briefs regarding the doctrine of primary jurisdiction.

The doctrine of primary jurisdiction does not apply to this case. As this Court recognized in *Jonathan Neil & Assoc. v. Jones* (2004) 33 Cal.4th 917, 931-932, primary jurisdiction "applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views."

As explained in the briefs already filed in this action, section 32 of article XIII of the California Constitution deprives the courts of jurisdiction over tax issues except as to those matters for which the Legislature expressly creates a judicial remedy. Because the Legislature has not created a judicial a remedy for the claims asserted in this case, there is no claim cognizable in the courts. And because the primary jurisdiction doctrine can apply only where there is *secondary* jurisdiction in the courts (that is, after the regulatory agency has spoken), it is clear that the doctrine does not apply here.

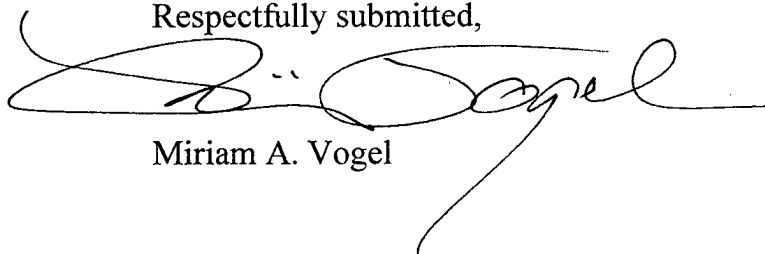
Chief Justice Tani Gorre Cantil-Sakauye
and Associate Justices
SUPREME COURT OF CALIFORNIA
April 19, 2013
Page Two

If this Court disagrees and decides there is or might be a “claim originally cognizable in the courts” for a refund of sales tax reimbursement collected by a retailer and paid over to the State Board of Equalization, that “claim” unquestionably would be within the special competence of the State Board of Equalization. As discussed extensively in Target’s Answer Brief on the Merits and in the State Board of Equalization’s Amicus Brief, the Board — and only the Board — is authorized to determine the propriety of the particular sales tax at issue.

The State Board of Equalization is charged with administering and enforcing the sales tax statutes. (Rev. & Tax. Code, §§ 7051-7060.)¹ Among other things, the Board enacts sales tax regulations (§ 7051), reviews sales tax returns and reports (§§ 6481, 7055), and audits retailers for compliance with the sales tax laws (§ 7054). Given the Legislature’s decision to *not* create alternative procedures for sales tax reimbursement claims, it is difficult to imagine any issue being more squarely within the special competence of an administrative agency.

Should this Court determine that the doctrine of primary jurisdiction could apply to this matter, Target has not waived the issue. Throughout these proceedings — in the trial court, in the Court of Appeal, and in this Court — Target has steadfastly maintained that the Legislature vested all issues concerning sales tax in the State Board of Equalization, and that only the Board is authorized to determine which sales are subject to a sales tax. These arguments preserved Target’s rights vis-à-vis the “primary jurisdiction” doctrine. (*Bussard v. Minimed, Inc.* (2003) 105 Cal.App.4th 798, 806-807,)

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Miriam A. Vogel", written over a horizontal line.

Miriam A. Vogel

cc: Per attached proof of service.

¹ All statutory references are to the Revenue and Taxation Code.

PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 555 West Fifth Street, Los Angeles, California 90013-1024. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on April 19, 2013, I served a copy of:

TARGET CORPORATION'S SUPPLEMENTAL BRIEF REGARDING THE DOCTRINE OF PRIMARY JURISDICTION

- BY U.S. MAIL [Code Civ. Proc sec. 1013(a)]** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 555 West Fifth Street, Los Angeles, California 90013-1024 in accordance with Morrison & Foerster LLP's ordinary business practices.

I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited with the United States Postal Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP with postage thereon fully prepaid for collection and mailing.

- BY OVERNIGHT DELIVERY [Code Civ. Proc sec. 1013(c)]** by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows, for collection by UPS, at 555 West Fifth Street, Los Angeles, California 90013-1024 in accordance with Morrison & Foerster LLP's ordinary business practices.

I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited in a box or other facility regularly maintained by UPS or delivered to an authorized courier or driver authorized by UPS to receive documents on the same date that it (they) is are placed at Morrison & Foerster LLP for collection.

Please see attached Service List.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Los Angeles, California, April 19, 2013.

C. Bibeau



SERVICE LIST

Loeffler. v. Target Corporation
California Supreme Court Case No. S173972

Joseph J. M. Lange
Jeffrey Alan Koncius
Lange & Koncius, LLP
222 North Sepulveda Boulevard
Suite 1560
El Segundo, CA 90245

Attorneys for Plaintiffs and Appellants
Kimberly Loeffler, Azucena Lemus

Leslie A. Bailey
Public Justice, P.C.
555 Twelfth Street, Suite 1620
Oakland, CA 94607

Arthur H Bryant
Trial Lawyers for Public Justice
555 Twelfth Street, Suite 1620
Oakland, CA 94607

UPS overnight delivery

Phillip Jon Eskenazi
Hunton & Williams, LLP
550 W. Hope Street, Suite 2000
Los Angeles, CA 90071

Amicus Curiae
Albertson's, Inc.

Via U.S. mail

J. Bruce Henderson
Attorney at Law
4294 Kendall Street
San Diego, CA 92109

Amicus Curiae
William T. Bagley

Via U.S. mail

Barry Dion Keene
1047 - 56th Street
Sacramento, CA 95819

Amicus Curiae
Barry Dion Keene

Via U.S. mail

John Lee Waid
California State Board of Equalization
450 N Street, MIC: 82
Sacramento, CA 95814

Amicus Curiae
State Board of Equalization

Via U.S. mail

SERVICE LIST

Loeffler. v. Target Corporation
California Supreme Court Case No. S173972

Sharon J. Arkin
The Arkin Law Firm
333 S. Grand Avenue, 25th Floor
Los Angeles, CA 90012

Amicus Curiae
Consumer Attorneys of California

Via U.S. mail

Pamela Pressley
Foundation for Taxpayer
& Consumer Rights
1750 Ocean Park Boulevard, Suite 200
Santa Monica, CA 90405

Amici Curiae
Consumer Watchdog, Foundation for
Taxpayer & Consumer Rights,
National Association of Consumer
Advocates, Public Good

Via U.S. mail

Richard Thomas Williams
Holland & Knight, LLP
633 West Fifth Street, 21st Floor
Los Angeles, CA 90013

Amici Curiae
CVS Caremark Corporation,
CVS Pharmacy, Inc.

Via U.S. mail

Andrew Eugene Paris
Alston & Bird, LLP
333 S. Hope Street, 16th Floor
Los Angeles, CA 90071

Amicus Curiae
DIRECTV, Inc.

Via U.S. mail

Thomas Alistair Segal
The Kick Law Firm, APC
900 Wilshire Boulevard, Suite 230
Los Angeles, CA 90017

Amici Curiae
Avi Feigenblatt, Gregory Fisher and
Michael McClain

Via U.S. mail

Taras Peter Kihiczak
The Kick Law Firm, APC
900 Wilshire Boulevard, Suite 230
Los Angeles, CA 90017

Amicus Curiae
Michael McClain

Via U.S. mail

SERVICE LIST

Loeffler. v. Target Corporation
California Supreme Court Case No. S173972

Albert Douglas Mastroianni
Mastroianni Law Firm
633 West Fifth Street, 28th Floor
Los Angeles, CA 90013

Amicus Curiae
Jason Frisch

Via U.S. mail

Alexandra Robert Gordon
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

Amicus Curiae
Kamala Harris

Joyce E. Hee
Office of the Attorney General
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612

Albert Norman Sheldon
Office of the Attorney General
110 West "A" Street, Suite 1100
San Diego, CA 92101

Via U.S. mail

Frederick W. Kosmo
Wilson Turner Kosmo LLP
550 West "C" Street, Suite 1050
San Diego, CA 92101

Amicus Curiae
PETCO Animal Supplies Stores, Inc.

Theresa Osterman Stevenson
Wilson Turner Kosmo LLP
550 West "C" Street, Suite 1050
San Diego, CA 92101

Via U.S. mail

Judith Esther Posner
Reed Smith, LLP
355 S. Grand Avenue, Suite 2900
Los Angeles, CA 90012

Amicus Curiae
Rite Aid Corporation

Via U.S. mail

SERVICE LIST

Loeffler. v. Target Corporation

California Supreme Court Case No. S173972

Margaret Anne Grignon
Reed Smith, LLP
355 S. Grand Avenue, Suite 2900
Los Angeles, CA 90071

Attorneys for Amicus Curiae
Walgreen Company

Via U.S. mail