

MORRISON | FOERSTER

707 WILSHIRE BOULEVARD
SUITE 6000
LOS ANGELES
CALIFORNIA 90017-3543

MORRISON & FOERSTER LLP
NEW YORK, SAN FRANCISCO,
LOS ANGELES, PALO ALTO,
SACRAMENTO, SAN DIEGO,
DENVER, NORTHERN VIRGINIA,
WASHINGTON, D.C.
TOKYO, LONDON, BRUSSELS,
BEIJING, SHANGHAI, HONG KONG

TELEPHONE: 213.892.5200
FACSIMILE: 213.892.5245
WWW.MOFO.COM

SUPREME COURT COPY

VIA UPS NEXT DAY DELIVERY

WRITER'S DIRECT CONTACT
+(213) 892-5929
MVOGEL@MOFO.COM

January 24, 2014

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

SUPREME COURT
FILED

JAN 27 2014

Frank A. McGuire Clerk

Deputy

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

Dear Chief Justice Cantil-Sakauye and Associate Justices:

In its December 16, 2014 order requesting simultaneous supplemental briefs on the questions about whether Ms. Loeffler's claims might have more traction if Target had failed to remit the amount collected as sales tax reimbursement to the State Board of Equalization, the Court generously included the right to file reply briefs.

There is very little we can say at this point other than a statement of the obvious — it is as though Ms. Loeffler and Target are talking about two different cases.

First, Ms. Loeffler says this case involves “two representations” — one that the sale is subject to sales tax (a determination that must be made by the Board, not the courts), the other that the retailer will remit that amount to the Board. (Loeffler Supp. Brief, p. 1.) Although she never alleged that Target was intentionally disregarding tax exemptions, she suggests now that this may be what we are doing (*id.*, p. 4), and that this is clearly unfair even if Target would not thereby profit. She simply ignores the fact that, until the Board establishes the tax-exempt nature of a particular sale, all of a retailer's gross receipts are presumptively subject to sales tax. (Rev. & Tax. Code, § 6091.) She ignores the fact that Target would rather charge *less* than its competitors, not more. (ABOM 25, fn. 19.)

Chief Justice Tani Gorre Cantil-Sakauye
and Associate Justices
SUPREME COURT OF CALIFORNIA
January 24, 2014
Page Two

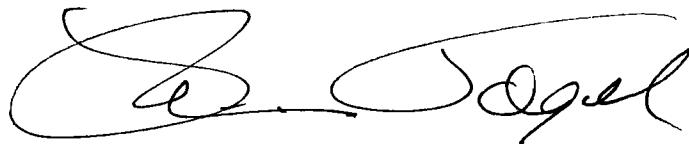
Second, she assumes her own conclusion — that all sales of hot coffee to go are exempt. But that is far from true. As previously explained, the regulations on this subject are not a model of clarity, leaving Target with no choice but to fall back on the presumption of taxability — and the Board has never suggested that Target is acting inappropriately. (ABOM 29-30, fn. 22.)

Third, Ms. Loeffler’s current insistence that her claims can go forward without regard to whether Target profits from its alleged wrongdoing at least tacitly admits Ms. Loeffler’s inability to allege that Target profits from the alleged wrongdoing. (Loeffler Supp. Brief, p. 6, fn. 4 [“But Plaintiffs have never premised their claims against Target on an assumption that Target kept the money”].)

Fourth, Ms. Loeffler’s supplemental brief suggests this entire case is a fishing expedition. Had she first complained to the State Board of Equalization, she could have obtained a determination whether, on the particular facts of interest to her (depending on where in the store the purchase was made and what else was purchased at the same time), Target’s sale of hot coffee “to go” was taxable. But she didn’t do that — she simply sued Target and started off on a wild goose chase, hoping she had selected a retailer who would fit her desired mold. She shot at the wrong retailer.

For all the reasons previously explained in Target’s briefs and in the Court of Appeal’s well reasoned opinion, Target submits that there are two choices — affirm the Court of Appeal in a published opinion, or dismiss review in this case with an order directing republication of the Court of Appeal opinion, saving for another day (and a more appropriate case) any questions this Court may have about whether the rules might be different for a dishonest retailer.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Miriam A. Vogel". The signature is fluid and cursive, with a large initial "M" and "V".

Miriam A. Vogel

cc: Per attached proof of service

PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 707 Wilshire Boulevard, Los Angeles, California 90071-3543. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on January 24, 2014, I served a copy of:

TARGET'S SUPPLEMENTAL REPLY BRIEF

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, 707 Wilshire Boulevard, Suite 6000, Los Angeles, California 90017-3543 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 described above will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster LLP with postage thereon fully prepaid for collection and mailing.

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, January 24, 2014.

C. Bibeau
(typed)

C. Bibeau
(signature)

SERVICE LIST

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

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

Attorneys for Plaintiffs and Appellants
Kimberly Loeffler, et al.

Via U.S. mail

Jeffrey Alan Koncius
Kiesel Law LLP
8648 Wilshire Boulevard
Beverly Hills, CA 90211

Attorneys for Plaintiffs and Appellants
Kimberly Loeffler, et al.

Via U.S. mail

Leslie A. Bailey
Arthur H. Bryant
Public Justice, P.C.
555 12th Street, Suite 1230
Oakland, CA 94607

Attorneys for Plaintiffs and Appellants
Kimberly Loeffler, et al.

Via U.S. mail

Benjamin Israel Siminou
Thorsnes Bartolotta McGuire LLP
2550 Fifth Avenue, 11th Floor
San Diego, CA 92103

Amicus Curiae
Carmen Herr, Heidi Spurgin,
Mark Hegarty, Joseph Thompson

Via U.S. mail

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
Attorney at Law
1047 - 56th Street
Sacramento, CA 95819

Amicus Curiae
Barry Dion Keene

Via U.S. mail

SERVICE LIST

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

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

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
201 Wilshire Boulevard, Suite 350
Santa Monica, CA 90401

Amici Curiae
Avi Feigenblatt, Gregory Fisher and
Michael McClain

Via U.S. mail

SERVICE LIST

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

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

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

Via U.S. mail

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

Amicus Curiae
Kamala Harris

Via U.S. mail

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

Amicus Curiae
Kamala Harris

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.

Via U.S. mail

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

Amicus Curiae
PETCO Animal Supplies Stores, Inc.

Via U.S. mail

SERVICE LIST

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

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

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

Clerk of the Court
California State Court of Appeal
Second Appellate District
Division Three
300 South Spring Street, 2nd Floor
North Tower
Los Angeles, CA 90013-1213

Via U.S. mail

Four copies

Clerk of the Court
Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012

Via U.S. mail

Attn: The Honorable Michael L. Stern