



Retail Detail

California Supreme Court Rules In Favor Of Retailers, Limiting Scope of California UDAP Statutes

By Scott M. Pearson and Daniel Joshua Salinas

California's Consumers Legal Remedies Act and Unfair Competition Law (Business and Professions Code Section 17200) both are notorious for allowing plaintiffs' class action lawyers to bring extortionate lawsuits based on technical statutory violations or conduct that arguably is "unfair." On May 1, 2014, the California Supreme Court weakened those statutes, holding that neither may be used by consumers to challenge sales tax reimbursement charges. *Loeffler v. Target Corp.*, No. S173972, 2014 WL 1714947 (Cal. May 1, 2014).

In *Loeffler*, plaintiffs brought a class action against the defendant retailer seeking to recover sales tax reimbursements they paid for "to go" hot coffee, which they contend is not taxable. Affirming the lower courts' dismissal of the action without leave to amend, the Supreme Court held that consumers have no standing to challenge sales tax reimbursement charges, as it is the retailer, not the consumer, who is the taxpayer; and the Board of Equalization has primary jurisdiction over tax matters. An action by consumers under the CLRA and UCL, the court held, would undermine both the Board's primary jurisdiction and the tax code's safe harbor for reimbursements for sales tax that has been remitted to the state. Consumers may, however, seek injunctive relief ordering retailers to seek reimbursement from the Board of Equalization under *Javor v. State Board of Equalization*, 12 Cal. 3d 790 (1974).

In addition to undermining the increasingly frequent lawsuits premised on erroneous sales tax charges, *Loeffler* may have broader impact because it applied two existing defenses to UCL claims — primary jurisdiction and abstention in matters of complex economic policy — to the CLRA. See, e.g., *Farmers Ins. Exch. v. Superior Court*, 2 Cal. 4th 377, 394 (1992) (primary jurisdiction); *Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1383, 1391 (1991) (abstention). In the wake of Proposition 64, the CLRA has effectively replaced the UCL as the California class action plaintiff's weapon of choice. The application of these defenses to CLRA claims therefore is a welcome development for defendants in consumer class actions.

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