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Stanley E. Grosz

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF LOS ANGELES

18 STANLEY E. GROSZ,
19

20 Plaintiff,

21 v.

22 CALIFORNIA DEPARTMENT OF TAX
AND FEE ADMINISTRATION, a
23 department of the State of California,
NICOLAS MADUROS, in his official
24 capacity only, and DOES 1-50, inclusive,

25 Defendants.
26
27
28

Case No.:

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF
[CCP § 526a]**

INTRODUCTION

1. Plaintiff Stanley E. Grosz (“Plaintiff”) brings this taxpayer action pursuant to California Code of Civil Procedure § 526a to enforce the California Department of Tax and Fee Administration and its Director, Nicolas Maduros (collectively “CDTFA”), to comply with a mandatory duty to collect taxes due to the State of California (“California” or the “State”) from Amazon.com, Inc. and/or its affiliates, including, but not limited to Amazon Services, LLC, Amazon Fulfillment Services, Inc. (“AFS”) and Amazon Payments, Inc. (collectively, “Amazon”).

2. Amazon currently pays to the State, and the CDTFA collects from Amazon, California sales and use tax on Amazon’s sales of its own products in California. However, Amazon has not and does not pay to the State, and the CDTFA has not and does not collect from Amazon, sales and use tax on sales of products supplied by third parties through Amazon’s Fulfillment by Amazon program. Hereinafter, Amazon’s Fulfillment by Amazon program will be referred to as “FBA”; third parties supplying products for sale through FBA will be referred to as “FBA Merchants”; and the sales of products supplied by FBA Merchants through FBA will be referred to as “FBA Sales.”

3. CDTFA’s failure to collect from Amazon sales and use tax on FBA Sales has resulted in a waste of billions of dollars of tax revenue to California.

4. Plaintiff brings this Action to obtain a judgement restraining and preventing this waste by mandating that CDTFA comply with its duty to asses and collect all sales and use tax owed on FBA Sales from Amazon, and declaring that that at all times relevant hereto Amazon is and was a retailer under California law responsible for paying to the State sales and use tax, and as such CDTFA has a mandatory duty to assess and collect such tax from Amazon.

PARTIES

5. Plaintiff is an individual taxpaying resident and citizen of the State of California, County of Fresno, acting individually and in a representative capacity on behalf of

1 other taxpaying residents and citizens of California. Plaintiff brings this action, as specifically
2 alleged below, to compel the performance of public duties that California law specifically
3 mandates. Plaintiff has taxpayer standing to bring this action to enforce the government's duty
4 to collect funds due to the State because he has paid income, sales/use, and property taxes
5 during the past year. Plaintiff does not seek in this action to prevent or enjoin the collection of
6 any tax paid, or payable, to any government entity by FBA Merchants or any other taxpayer.

7 6. Defendant CDTFA is a department of the State of California. It is responsible
8 for the assessment and collection of the California sales and use tax. For decades, the
9 assessment and collection of sales and use tax was the responsibility of the State Board of
10 Equalization ("BOE"). But in 2017, the Legislature removed BOE's authority over these
11 functions and transferred them to the newly created CDTFA.

12 7. Defendant Nicolas Maduros is the Director of the CDTFA.

13 8. The true names and capacities, whether individual, corporate, or otherwise, of
14 Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues such Defendants
15 by fictitious names. Plaintiff will amend this complaint to allege the Doe Defendants' true
16 names and capacities once they are ascertained.

17 9. Plaintiff is informed and believes, and thereon alleges, that each and all of the
18 acts and omissions alleged herein was performed by, or is attributable to, Defendants and
19 DOES 1-50, each acting as the agent for the other, with legal authority to act on the other's
20 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
21 policy of Defendants.

22 **JURISDICTION AND VENUE**

23 10. This Court has jurisdiction over this action pursuant to California Code of Civil
24 Procedure § 410.10.

25 11. California taxpayers have a justiciable interest in money belonging to the state,
26 "whether the money is in the treasury . . . or whether the money is in the hands of a third
27 person but belongs to the state." *Farley v. Cory*, 78 Cal. App. 3d 583, 589 (1978).

12. Plaintiff is not an FBA Merchant and specifically does not seek in this action to prevent or enjoin the collection of any tax paid or payable to any government entity by FBA Merchants or any other taxpayer.

13. Venue is proper in this Court pursuant to California Code of Civil Procedure § 395.

FACTUAL ALLEGATIONS

14. Amazon.com, Inc., owns and operates the FBA.

15. Amazon Services, LLC, owns and operates the website www.amazon.com. Amazon Services contracts with FBA Merchants in order to offer various products supplied by FBA Merchants for sale on www.amazon.com.

16. AFS has subsidiaries throughout the United States that own and operate Amazon's fulfillment centers.

17. Amazon Payments, Inc., is the payment processing entity used by Amazon Services. Amazon Payments, Inc., contracts with various merchant service providers and financial institutions to provide payment-processing services.

18. Amazon Services, LLC, contracts with AFS for fulfillment services. AFS's subsidiaries handle all the storing, packaging, and shipping of property held in AFS's fulfillment centers. AFS also provides advertising for Amazon.com, Inc., and its affiliates on the packaging of deliveries, including deliveries of FBA Merchants' products.

19. Amazon and its affiliates work in concert to provide the FBA service to FBA Merchants supplying products for sale via www.amazon.com in California.

20. For the privilege of selling tangible personal property (“Products”) at retail, California imposes a sales tax on the gross receipts of any retailer. Cal. Rev. & Tax. Code § 6051.

21. California also imposes a use tax on the storage, use, or other consumption in California of Products purchased from a retailer. Cal. Rev. & Tax. Code § 6201.

22. Generally, sales tax applies to retail sales of Products to California customers

1 when title transfers in California, and use tax applies to retail sales of Products to California
2 customers for use in California, when title transfers outside of California. *See* Cal. Rev. &
3 Tax. Code §§ 6051, 6201; Cal. Code Regs., Tit. 18 § 1620.

4 23. FBA Merchants ship their Products to Amazon. Amazon then takes possession
5 and control of the Products, takes customers' orders, and provides all necessary customer
6 services, such as packing, delivery and handling of returns, in exchange for a fee. Amazon
7 handles all aspects of the transaction with the consumer and receives funds from consumers
8 for the Products.

9 24. Under California law, the "retailer" is responsible for paying sales tax on
10 qualifying transactions to the State of California. Cal. Rev. & Tax. Code § 6051.

11 25. The "retailer" is also responsible for collecting use tax on qualifying
12 transactions from purchasers at the time of the sale of Products and remitting it to the State.
13 Cal. Rev. & Tax. Code § 6203.

14 26. Amazon is the "retailer" for sales in California of Products supplied by FBA
15 Merchants because, among other reasons, one or more of the entities comprising Amazon
16 is/are the "retailer(s)," either individually or collectively because they act in concert, under
17 California Revenue and Taxation Code § 6014 and California Code of Regulations, Title 18 §
18 1569. Amazon is also the "retailer" because, among other reasons, one or more of the entities
19 comprising Amazon is/are the "retailer(s)," either individually or collectively because they act
20 in concert, under California Revenue and Taxation Code § 6007 for sales in California of
21 Products supplied by FBA Merchants that are not otherwise engaged in business in California.

22 27. However, Amazon has not and does not pay sales tax or collect and remit use
23 tax to California for sales in California of Products supplied by FBA Merchants.

24 28. Contrary to California law, the CDTFA has not and does not attempt to collect
25 sales and use tax from Amazon for sales of products in California supplied by FBA
26 Merchants.

27 29. Plaintiff brings this Action to obtain a judgement restraining and preventing the
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1 loss of substantial revenue owed to the State by Amazon due to lapsing of the statute of
2 limitations for CDTFA to assess and collect the appropriate amount of sales and use tax from
3 Amazon.

4 **FIRST CAUSE OF ACTION**

5 **(Injunctive Relief)**

6 30. Plaintiff hereby incorporates by reference the allegations contained in each and
7 every paragraph above.

8 31. Amazon is liable for at most eight years, but no less than three years, of past-
9 due taxes, interest, and penalties pursuant to California Revenue and Taxation Code § 6487. It
10 is also responsible for sales and use tax on FBA Sales going forward.

11 32. At all times mentioned herein, the CDTFA had a mandatory duty to collect
12 from Amazon sales and use tax for sales of Products in California supplied by FBA
13 Merchants.

14 33. CDFTA breached its duty by not collecting sales and use tax from Amazon for
15 sales of products in California supplied by FBA Merchants.

16 34. Plaintiff brings this action under California Code of Civil Procedure § 526a to
17 obtain a judgement restraining and preventing waste of tax monies owed to the State by
18 mandating that CDTFA comply with its duty to enforce California's sales and use tax law by
19 requiring Amazon to pay to the State sales and use tax on FBA Sales while those taxes can
20 still be assessed.

21 **SECOND CAUSE OF ACTION**

22 **(Declaratory Relief)**

23 35. Plaintiff incorporates by reference the allegations contained in each and every
24 paragraph above.

25 36. An actual controversy has arisen and exists between Plaintiff and the CDTFA,
26 in that, as set forth above, Plaintiff contends that at all times relevant hereto Amazon is and
27 was a retailer under California law responsible for paying sales and use tax to the State on
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1 FBA Sales, and as such CDTFA has a mandatory duty to assess and collect such tax from
2 Amazon.

3 37. Plaintiff is informed and believes and on that basis alleges that CDTFA
4 disputes the contentions of Plaintiff, as described and alleged hereinabove.

5 38. Plaintiff seeks a judicial determination of the respective rights and duties of
6 CDTFA with respect to whether at all times relevant hereto Amazon is and was a retailer
7 under California law responsible for paying sales and use tax to the State on FBA Sales and as
8 such CDTFA has a mandatory duty to assess and collect such tax from Amazon.

9 **RELIEF REQUESTED**

10 WHEREFORE, Plaintiff prays that this Court grant the following relief:

11 1. Issue a judgment pursuant to Code of Civil Procedure § 526a restraining and
12 preventing waste by mandating that CDTFA comply with its duty to assess and collect all sales
13 and use tax owed on FBA Sales from Amazon;

14 2. Issue a declaratory judgment that at all times relevant hereto Amazon is and
15 was a retailer under California law responsible for paying to the State sales and use tax, and as
16 such CDTFA has a mandatory duty to assess and collect such tax from Amazon;

17 3. Award Plaintiff his attorneys' fees and costs of suit under Code of Civil
18 Procedure § 1021.5 and as otherwise authorized by law; and

19 4. Award Plaintiff such other and further legal and equitable relief as the Court
20 deems just and reasonable.

21 DATED: August 5, 2019

22 DAKESSIAN LAW, LTD.
23 FRANCISSEN RAFELSON SCHICK
24 CAPSTONE LAW, APC

25 

26 By: _____
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28 Ruben Sislyan
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