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*Exempt from Filing Fees Pursuant to  
Government Code § 6103*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO

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12 **Christine N. Grab,**

13 Plaintiff,

14 v.

15  
16 **The California Franchise Tax Board,**

17 Defendant.

Case No. 37-2020-00005100-CL-BT-CTL

**FRANCHISE TAX BOARD'S ANSWER  
TO PLAINTIFF'S COMPLAINT**

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Dept: C67  
Judge: The Honorable Eddie C. Sturgeon  
Trial Date: N/A  
Action Filed: January 29, 2020

Defendant Franchise Tax Board (Defendant) as and for its answer to the unverified complaint for refund (Complaint) filed by Plaintiff Christine N. Grab (Plaintiff) in this proceeding, admits, denies and alleges as follows:

1. The Complaint in the within matter being unverified, this answering Defendant, pursuant to the provisions of section 431.30(d) of the California Code of Civil Procedure, deny, generally and specifically, conjunctively and disjunctively, and in all ways, each and every and all of the allegations made in said unverified Complaint and the whole thereof.

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1 **AFFIRMATIVE DEFENSES**

2 As and for its affirmative defenses to the Complaint, FTB alleges as follows:

3 **FIRST AFFIRMATIVE DEFENSE**

4 (Failure to State a Cause of Action)

5 Plaintiff is barred from recovery on the Complaint because the Complaint fails to allege  
6 facts sufficient to constitute a cause of action against the FTB.

7 **SECOND AFFIRMATIVE DEFENSE**

8 (Prohibited Injunctions)

9 To the extent the relief that Plaintiff seeks would impair and affect the ability of FTB to  
10 collect and assess any tax, that relief is barred by Article XIII, section 32 of the California  
11 Constitution as well as Revenue and Taxation Code section 19381, which prohibit injunctions  
12 against collection and assessment of taxes.

13 **THIRD AFFIRMATIVE DEFENSE**

14 (Standing)

15 Plaintiff lacks standing to the extent that Plaintiff did not pay taxes, interest, or penalties for  
16 which refund is sought in this action.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 (Failure to Exhaust Administrative Remedies)

19 To the extent that the Complaint contains allegations or arguments that are beyond the  
20 allegation or arguments set forth in Plaintiff's claim for refund, Plaintiff has failed to exhaust her  
21 administrative remedies. (Cal Cons. art. XIII, § Rev. & Tax Code § 19322; *Loeffler v. Target* (2014)  
22 58 Cal. 4th 1081, 1128.)

23 **FIFTH AFFIRMATIVE DEFENSE**

24 (Statute of Limitations)

25 Plaintiff is barred from seeking relief for those tax periods for which the applicable statute  
26 of limitations has lapsed. (Rev. & Tax Code, §§ 19306, 19311, 19384.)

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1 **SIXTH AFFIRMATIVE DEFENSE**

2 (Offset)

3 FTB reserves the right to offset any amount that Plaintiff still owes FTB against any refund  
4 that may be awarded to Plaintiff.

5 **SEVENTH AFFIRMATIVE DEFENSE**

6 (Attorneys' Fees)

7 Plaintiff is not entitled to attorneys' fees. Code of Civil Procedure section 1021 provides  
8 that: "Except as attorney's fees are specially provided for by statute, the measure and mode of  
9 compensation of attorneys and counselors at law is left to the agreement, express or implied, of  
10 the parties; but parties to actions or proceedings are entitled to their costs, hereinafter provided."  
11 (Code Civ. Proc., § 1021.)

12 Plaintiff is not entitled to attorneys' fees under Revenue and Taxation Code section 19717  
13 as FTB's position in this case is substantially justified. Furthermore, to the extent that Plaintiff  
14 has failed to exhaust her administrative remedies, she is precluded from recovering attorneys'  
15 fees under Revenue and Taxation Code section 19717.

16 Plaintiff is not entitled to attorneys' fees under Code of Civil Procedure section 1021.5. A  
17 party seeking fees under Code of Civil Procedure section 1021.5 must show that the litigation: (1)  
18 served to vindicate an important public right; (2) conferred a significant tax benefit on the general  
19 public or a large class of persons; and (3) was necessary and imposed a financial burden on  
20 plaintiffs which was set out of proportion to their individual stake in the matter. (*City of Maywood*  
21 *v. Los Angeles Unified School Dist.* (2012) 208 Cal.App. 4th 362, 429.) All of these elements  
22 must be met in order to be entitled to a fee award under the statute. (*Ibid.*) None of the elements  
23 are met in this case.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 (Uncertain)

26 Plaintiff's Complaint fails to set forth facts with reasonable precision and specific  
27 particularity, and therefore fails due to uncertainty.

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1 **NINTH AFFIRMATIVE DEFENSE**

2 (No Liability for Injury)

3 Except as provided by statute, Defendant is not liable for an injury, whether such injury  
4 arises out of an act or omission of the public entity or a public employee or any other person.  
5 (Gov. Code § 815.)

6 **TENTH AFFIRMATIVE DEFENSE**

7 (No Liability for Misrepresentation of Employee)

8 Defendant is not liable for an injury caused by misrepresentation by an employee of the  
9 public entity, whether or not such misrepresentation be negligent or intentional. (Gov. Code  
10 § 818.8.)

11 **ELEVENTH AFFIRMATIVE DEFENSE**

12 (No Liability for Interpretation or Application of Law)

13 Defendant is not liable for an act or omission in the interpretation or application of any law  
14 relating to a tax. (Gov. Code § 860.2.)

15 **TWELFTH AFFIRMATIVE DEFENSE**

16 (Reservation of Right to Assert Additional Defenses)

17 Additional defenses may be discovered in the future. Defendant reserves the right to amend  
18 this Answer, or to file other or additional pleadings, that raise and preserve such additional  
19 defenses.

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21 **WHEREFORE**, the Defendant prays for judgment as follows:

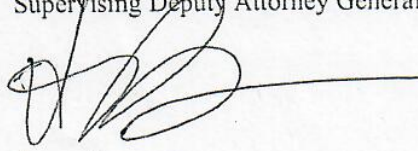
- 22 1. That the Complaint be dismissed with prejudice;  
23 2. That Plaintiff take nothing and be afforded no relief by reason of the Complaint  
24 herein;  
25 3. That judgment be rendered in favor of the Defendant and against the Plaintiff;  
26 4. That the Defendant be awarded its costs of suit incurred therein; and  
27 5. For such other and further relief as the court may deem just and proper.  
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Dated: March 20, 2020

Respectfully Submitted,

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Answer.docx