

Eric W. and Christine Grab

Date: March 28, 2019

State of California Tax Appeals
PO Box 989880
West Sacramento, CA 95798-9880

OTA Case NO. 18011443: Appellants Second Response Brief (ASRB)

General Opening:

Appellants argue that the reason we filed tax years 2011 through 2016 returns late was as a direct result of improprieties committed by the FTB. We spent a great deal of time trying to correct these improprieties, as any prudent business person would do. Due to extraordinary life circumstances, we only had a limited amount of time of work on tax issues; however, despite our hardships, Christine did consistently devote what any businessperson would consider a reasonable amount of time to tax issues. The FTB has argued that Appellants filed tax years 2011 through 2016 returns late due to willful neglect, then redacted and omitted pertinent evidence of the improprieties, along with the efforts that we made to resolve them.

Mr. Yadao has not disputed any of the items in the Appellants' Declaration that was included with Appellant's First Response Brief, which provide some insight into the FTB's improprieties and Appellants effort at resolving them. Unfortunately, it appears that our TAAP attorney did not submit the majority of the evidence that accompanied the Declaration. Even though the court already has the Declaration and a few pieces of evidence, we have enclosed the entire package as Exhibits A through H so that the judge does not have to flip between files. Please note that this documentation was supposed to have been submitted in May 2018, so a few things are now outdated, such as our address.

This brief provides more information on the FTB's improprieties, as well as elaborates on the deceptions in Mr. Yadao's briefs that presented a picture that was quite different from the reality.

Abatement Request Denials Were Retaliatory:

In the notes that the FTB's Disclosure Department provided (Exhibit I-5), on 6-16-17, it says:

"Received call from TP...following up on correspondence sent in 2014 requesting waiver of penalties which included copies of previous letters sent explaining why the delay in filing returns for 2010 and 2011 years...Located correspondence received 09.02.14 which includes the letter dated 08.11.14 plus copies of other previously sent letters. Per review of comments, there was no response to this or any previous correspondence sent... Demand penalties were assessed on 2011, 2013 and 2014 tax years. I explained the demand penalties and she is requesting waiver of these penalties based on reasonable cause. For 2010, her son was born with severe health issues, her in-law's needed assistance and she ended up with

kidney failure. Her husband was traveling all the time for work so not home much to help. Since her 08.11.2014 letter and previous correspondence was addressing waiving penalties for 2010 and 2011 tax years, I requested she provide additional information to review for 2013 and 2014 tax years. Possibly her husband's passport showing his traveling activities. She said he was not always traveling out of the country but also within the united states. She will try to locate hotel receipts, boarding passes for domestic traveling. I will review all information provided for reasonable cause to waive the demand penalties for 2011, 2013 and 2014 tax years."

On 6-19-17 it says: "Per lead [redacted] routing case to other lead [redacted] since his case...is addressed to Board Member Betty Yee's office for review and response." Mr. Calhoun issued the denial letter on 7-10-17 (Exhibit H), before Appellants had a chance to gather and send in the requested documents.

On 1-1-18, Christine contacted the Taxpayer Advocate, Susan Maples, about being turned down for the 2013 and 2014 Abatement Requests before we had applied. Ms. Maples responded on 1-4-18 that the turn down was issued because Christine had sent a complaint letter to GovOps (Exhibit J).

Specific Rebuttals to Respondent's Opening Response Brief (ROB)

1. Page 1, Paragraph 2: "Appellants in their appeal argue that they overpaid any tax and therefore believe the law did not require them to file timely returns or otherwise timely reply to respondents letters by filing those missing returns."

A. The IRS does not require a tax return to be filed if they believe that you are owed a refund. They send letters in the mail that say "If you don't act promptly, you may lose this credit. The Internal Revenue Service sets strict time limits for refunding or transferring credits. You must file a return to claim any refund due you." (Exhibit K)

B. Appellants' were under the impression that California tax law follows the precedent set by the IRS. Therefore, it was not unreasonable to believe that the only reason the FTB was demanding a return was because all five estimated tax payments totaling [REDACTED] were "lost." (see ROB Exhibit N, page 6 of 8, which indicates \$0 collected in estimated tax payments). It was reasonable for Appellants' to conclude that once these "missing" payments were located, that the Demand Requirement would be lifted.

2. Page 2, Paragraph 3: "As a threshold issue, in their reply brief, Appellants argue that they satisfied the requirements of the Demand letters by sending any response, such as letters, instead of filing a return – arguing that the answer to the demand letters need not be in the form of a return and further positing that the Demand purpose is 'simply to elicit a response.' However, this position is clearly not supported by law..."

A. The Notice of Proposed Assessment (ROB Exhibit J-1) says "...unless we receive your tax return or your protest of this proposed assessment... If you believe this notice is incorrect, follow the enclosed protest procedures." Appellants followed the directions on the form. Yet now the FTB argues that "any response" wasn't good enough and that only a tax return was an acceptable response. If a tax return is the only acceptable response, then the NPA form is deliberately misleading.

3. Page 2; Paragraph 4: "...the specific legal issue is whether their failure to file those returns in reply to the Demand Letters is due to reasonable cause and not willful neglect." Appellants believe that in our AFRB we already proved reasonable cause for all years; however, below are rebuttals to some of Mr. Yadao's specific arguments.

Tax Year 2011 Improprieties

As Appellants' have already established, one of the main causes of delay in filing the 2011 returns was that we were trying to find several "lost" estimated tax payments from tax year 2010. We needed to get 2010 corrected and completed before moving on to 2011.

Here is a quote from Appellants 2011 Abatement Request:

"Christine sent in proof numerous times that no additional tax liability was owed for the 2011 tax year. Every single letter was ignored – and we know you got them all because they were sent certified mail and we have delivery conformations or we faxed them in and have fax confirmations. The agents she spoke with on the phone acted as if they never received any correspondence from us at all and continued to harass us mercilessly.

In December 2013, a supervisor named Debbie at 916- [REDACTED] told Christine that it is the FTB's policy to ignore all correspondence – so even though the FTB officially offers the opportunity to dispute that there was an outstanding tax liability – which Christine did – the FTB systemically ignores all such disputes. It seems to us that can't possibly be legal. Thanks to Debbie's sage advice, we now we know we should have ignored the FTB altogether and just focused on getting the taxes done. We are angry that we have been financially and emotionally punished for trying to be "good" and work with the FTB to the best of our ability.

Of course, this mountain of correspondence only represents a fraction of the time and energy wasted by trying to deal with the FTB instead of ignoring you guys. We wish we could send you recordings of every phone call. Pretty much every phone call goes like this: Dial the number on the notice (for example 800-852-2753). The automated phone system from hell routes you places you don't want to go and sometimes even hangs up on you, so then you have to call back and try to navigate the system again. It takes several minutes of navigating before finally getting to the point where you can hold for a customer service representative. The holds are usually for a long time, with wait times sometimes over an hour. Finally a human comes on the line and tells me that even though we had called the phone number listed on the notice, it was the wrong number and we needed to call a different department (for example 800-689-4776 was given to me a couple times, but the "correct" phone number that I would be given often varied). The least the FTB can do is put a correct phone number on a notice when you want someone to call in. Seriously, it is the very least you can do. Even if you don't care about the consumer's time being wasted, why would you want to waste your employees' time and tie up your own phone lines by directing them to the wrong department?

Then we'd call the new number we'd just been given and hear a recorded message say "The phone lines are busy and we can't take your call now" (or something like that) then get hung

up on. We'd try that number again a dozen times before finally getting into the phone system from hell, navigating it, then put on a long hold to wait for a person. Then the person who takes our call "accidentally" disconnects us. We've been disconnected from a full 30% of calls we've made – there is obviously a problem on your end with phone transfers.

...Another example of a mistake made on our account is when we filed our 2010 taxes. We spoke with Debbie (same person mentioned above) in November 2013, shortly after we filed them. Because we had a [REDACTED] refund that was applied to our 2011 return, which was about \$ [REDACTED] more than the FTB claimed we still owed on our 2011 tax liability, Debbie put a hold on all action on our 2011 account. Despite the fact that we had a hold on our account, and despite the fact that we had clearly overpaid, the FTB went ahead and filed a wage garnishment with Eric's employer. Wage garnishments are for when someone owes MORE than your estimate, not LESS!!!! That took several phone calls to clear up, as well. And it was a humiliating situation for Eric to try to deal with at work. Debbie warned that if we didn't get the 2011 taxes filed by February 2014, the garnishment would be reinstated. WHAT?????"

In the ROB, Mr. Yadao supplied few comments from the FTB's records, and all were heavily redacted. Two of the comments were Exhibits F and G. The visible notes say that Christine called in on 2-3-11 regarding a "lost" 2008 estimated tax payment. The comments in Exhibit F indicate that the payment could not be located and that Christine would fax in proof of payment. Per the comments in Exhibit G, this "error" was corrected on 3-16-11, when Christine called in again to follow up. Per Exhibit H, this "error" was not fully corrected until 4-30-11. Mr. Yadao documented that it took at least two phone calls (and as noted above, calling in to the FTB was difficult and time consuming), one trip out to a fax machine (as we did not have one of our own) and two months to correct this one "error."

In Exhibit I-23, we see that Christine also called in on 3-9-11 and was told the payment still could not be located. Mr. Yadao redacted this information on ROB Exhibits F, G and AA.

In the un-redacted versions of G and AA (Exhibits L-3 and L-5), we see that Mr. Yadao redacted five calls/letters from Appellants regarding 2010 issues that we made between 12-9-11 and 3-20-13.

In his ROB, Mr. Yadao wrote on page 4, last paragraph and Page 5:

"When the tax year balance remained unpaid, respondent issued a Final Notice Before Levy on October 8, 2013 advising appellant-husband to pay the balance due no later than October 23, 2013 (Exhibit X). The notice advised Appellants that in the absence of timely payment, respondent would initiate collection action, which could include imposing a collection fee and pursuing wage garnishment."

'Appellants replied in a letter dated November 11, 2013, explaining they were angry respondent had ignored their previous letters and advising respondent they would file suit if their credit was adversely impacted by the levy (Exhibit Y). Appellants letter referenced a copy of their tax year 2010 return reflecting an overpayment, which they argued would cover their tax year 2011 balance. Appellants sent a second letter also dated November 11, 2013 (Exhibit Z) Therein, Appellants reasserted their anger and stated because the tax year

2010 return reflected an overpayment, the 2011 penalty is erroneously applied and should be removed. Appellants included with their letter a copy of the balance due notice for tax year 2010. When Appellants later contacted respondent by telephone on November 12, 2013, respondent advised Appellants that respondent would require time to process Appellants tax year 2010 returns and both accounts were in collection status (Exhibit AA)

ROB Exhibit AA is a heavily redacted comment from 11-12-13. What shows is "...SHE HAS FAX 7 TIMES LTTR IN REG INCOME ABD TODAY SHE FAX COPY OF RTN SHOWS REF ,NO BAL ADV HER NEEDS ALLOW TIME FOR PROCESS, DUE BOTH TP HAVE ARCS ACC, XSFER CALL TO IAG.#/HR"

ROB Exhibit AA notes that Appellants had already made eight trips out to a fax machine. This alone demonstrates that we put a tremendous amount of time and effort into getting these "errors" corrected. Mr. Yadao has also provided no proof that the FTB explained to us why these letters were unsatisfactory responses; in fact, Mr. Yadao does not dispute our claims that all of our letters were simply ignored. This note also confirms that we were told that the 2010 overpayment would be applied to 2011 once the 2010 return was processed. We now know this was erroneous information; it is the FTB's policy to withhold credit elects.

Continuing Mr. Yadao's quote above:

"...when appellant-husband's balance remained unpaid, respondent issued an Earnings Withholding Order for Taxes (EWOT) to appellant-husband's employer on November 26, 2013 (Exhibit DD)."

Mr. Yadao skipped ahead from November 12 to November 26, and omitted the notes from 11-15-13 (Exhibit I-21 and I-22). Christine had called in twice, once at 11:38 am and again at 3:43 pm. The notes for the 3:43 pm call say "Then she said she mailed in the 2010 rt and also faxed it Tues. Fax 916- [REDACTED] lien desk? Placing case hold to allow t/p to get records in order to file the 2011 rt, she stated she will be ready to send by Jan. Mr. t/p ARCS acct is closed." Another note from 11-15-13 says "Hold end date: 2/14/14 Reason: allow time to process 2011 rt"

Continuing the quote above:

"Respondent then issued a letter to Appellants dated December 18, 2013 explaining that they still had not filed their 2011 tax return, their account was in collection status and that no further holds would be placed on their account (Exhibit EE). Appellants replied by letter dated December 19, 2013 again explaining the overpayment from their tax year 2010 was sufficient to pay their tax year 2011 liability (Exhibit FF)."

Mr. Yadao omitted that on 12-6-13, Christine faxed in another copy of the 2010 tax returns showing the overpayment (Exhibit M). Mr. Yadao also omitted a note dated 12-18-13 (Exhibit I-20) which says "SYSTEM: Demo-CHRISTINE N GRAB USER: UAC fax from TP re: 11 yr rtn. Acct has been worked and placed on hold for processing. No actions taken at this time." This note confirms Appellants argument that the FTB regularly gave inaccurate and conflicting information to Appellants, which caused further delays in the filing of the returns. In ROB Exhibit AA, Mr. Yadao redacted the two logs from 12-18-13.

The letter referenced in Exhibit EE was mailed on 12-18-13 from Sacramento to Appellants in San Diego, which typically takes three days. The letter from Christine in Exhibit FF was faxed on 12-19-13 at 12:47 pm (ROB Exhibit FF, page 4). Exhibit FF was a response to the EWOT that had been sent to Eric's employer, not to Exhibit EE, as was implied by Mr. Yadao. As per Exhibit FF page 2, December 19 was when Appellants' first became aware of the EWOT. Prior to that, we believed that our account was on hold per the conversation with Debbie on 11-15-13 (Exhibit A-21 and A-22).

Continuing with Mr. Yadao's quote:

"Therefore, they requested the EWOT be withdrawn. After processing Appellants' tax year 2010 return and recognizing an overpayment to apply to tax year 2011, respondent withdrew the EWOT on December 19, 2013 (Exhibit GG) and placed Appellants account in hold status.'

'Appellants thereafter filed their tax year 2011 return on March 1, 2014...'

Tax Year 2013 Improprieties

In the quote above and also in Footnote 11, Mr. Yadao made it sound like the 2010 overpayment was immediately applied to 2011 once the 2010 tax year return was processed. He implied this ended the wage garnishment and that there were no more issues with 2010 or 2011. That is not the case.

Mr. Yadao omitted that on 12-24-13, a notice was sent to Appellants advising them that their tax returns were revised down (Exhibit I-1) due to two "lost" estimated tax payments, and that the wage garnishment was reinstated.

Here is an excerpt from the FTB comments dated 1-23-14 (Exhibits I-19, 20 and N-6, 7, 8):

3:33 pm Tax Year: 2011 10/11 TY TP SP CHRISTINE GRAB...CALLED W/EWOT IN HAND,BD.STATED EWOT REL. BY PREV SUP CALL.STATED FAXED TO SUP DEBBIE CANCELLED CHECKS THAT WAS NOT APPLIED TO 10 TY. STATED HAVE NOT HEARD BACK. HAD TP PROV SCANNER ID FROM CHECKS LOC PYMNTS IN IDAX \$9K PYMNT...\$3500 PYMT...PYMNTS MISAPPLIED. MEMO SHOWS 10Y EST PYMNTS. \$9K APPLIED TO 02 TY ERRONEOUS RFND \$9047.46,\$3500 PYMT APPLIED \$2716.48 08TY ERRONEOUS \$418.33 RFND,\$783.52 09TY ERRONEOUS RFND.STATED SHOULD HAVE ENOUGH 10TY ETR TO 11TY HAD PYMNTS APPLIED CORR TO SATISFY ASSESED, REQ WAIVER, TP SP REQ 9K APPLY TO CORR 10TY EST PYMNT TO ALLOW CORR ETR TO 11TY. CHANGED INT DATE FOR RFND, CANCELLED, REALLOC PYMNT AS JNT EST PYMNT TO 10TY.DID ETR TO 11TY.GAVE BD 02TY, WALKED TP THRU WEBPAY TO PIF 02TYTI HOLD PLACED...

ROB Exhibit B shows two transfers to Appellants 2011 tax year from 2010. The first was the original amount that the FTB had adjusted the 2010 credit elect down to after processing the return. The other transfer was for \$9,000 – one of the two "lost" payments that were located on 1-23-14. ROB Exhibit H indicates that the \$9,000 "lost" payment was not applied to tax year 2010

until 3-9-14, six weeks after being located. However, ROB Exhibit H conflicts with the attached Exhibit N-2, which indicates that the \$9,000 payment was not applied until 7-16-14, almost six months after being located. Appellants have asked Mr. Yadao for clarification on this accounting discrepancy, as well clarification on some other strange accounting items that we noticed in the FTB's ledgers. His response is due on 4-29-19 (Exhibit O)

The \$3,500 payment was never reapplied to the 2010 tax year. The FTB refused to fully disclose to Appellants exactly how this payment had been applied until February 2018, after Betty Yee's office personally intervened on our behalf (Exhibit E).

The notes from 1-23-14 indicate that we had been led to believe that the \$ [REDACTED] overpayment from 2010 and the recently located \$12,500 in "lost" estimated tax payments would all be immediately applied to the 2011 tax year, and thus no money was due for 2011. We now know that we were misinformed. Even if the "lost" money had been applied to tax year 2010 tax year in a timely manner, per ROB Footnote 21, none of the \$ [REDACTED] in credit elects would have been applied to the 2011 tax year.

Here are two excerpts from the notes on 1-24-14, one day after the FTB assured us that these "lost" payments were located and had been applied to 2011 (Exhibit I-18):

"11:20 am: TP called because: she is upset. TP stated that she has plenty of money to pay this if she wanted. She states that we lost \$ [REDACTED] that was to go to TY 11. ([REDACTED] to spouses account) States that cannot file if we keep harassing her. Advised TP that the hold on her account in until the 2/28/14. Advised her spouse too will need to address his account, that it is not joint until they file."

"1-24-14 at 11:21 am: USER: Issue OTW (order to withhold) to San Diego if TP has not filed by 2/28/14."

Here is an excerpt from Exhibit N-5, a note from 2-3-14: "11TY MR TP CLLD RE FE NPA. ADV TP ACCOUNT ASSIGNED TO ANOTHER UNIT. GV PHONE/HR/XFER TO CART UNIT." This note confirms our claims that the FTB frequently put incorrect phone numbers on notices. As noted in the quote from our Abatement Request above, each of these calls to incorrect phone numbers wasted a tremendous amount of our time.

On 2-27-14, Christine called in to say the tax year 2011 taxes were ready to file. She said she would send them via certified mail and fax a copy. Despite the fact that the 2011 return showed an overpayment, and despite the fact that Christine had already sent in proof multiple times that we had paid [REDACTED] in estimated tax payments for 2011, the FTB still forced Christine to sign up for a provisional payment plan for the 2011 tax year. Christine recalls being told that the EWOT for \$6,478 would be reinstated if she did not enter this plan. Christine recalls it was promised that the 2011 return would be processed before the first payment on the plan became due. No payments were made under this payment plan. (Exhibit I-17 and I-18)

Appellants mailed the 2011 Tax Year Return in on 2-27-14 and have a certified mail confirmation that it was received on 3-6-14. Appellants also faxed a copy on 3-2-14 (ROB Exhibit HH pages 2 and 3). Per the FTB's policy, the \$ [REDACTED] in credit elects should have been taken out of suspense on

2-27-14, the day the Appellants filed their 2011 returns, and backdated to 4-15-12. However, per Exhibit N-2, the \$9,000 was not taken out of suspense until 7-16-14.

In his ROB, Mr. Yadao glossed over the fact that the FTB "lost" both copies the 2011 tax year returns that had been submitted. He omitted the notes from 3-24-14 (Exhibit N-3) "...Advised TP TY11 has not been recv'd as of yet. TP stts he has filed and mailed in rtn. Advsd TP to fax me a copy...Advsd TP to mail in a copy, as well..."

Correcting this "lost return error" required yet another trip out to the post office and a fax machine to re-send more copies of the tax year 2011 returns, as well as multiple time-consuming phone calls with each of the Appellants (Exhibit I-16 and N-3 and ROB Exhibit HH 4 and 5). In the cover letter of that 3-24-14 fax, Christine complained:

"Because the FTB LOST our taxes, I am punished. Today I had to drop everything to find a babysitter (because I can't do this stuff with a screaming toddler), dig out old documents, type this letter, drive to a fax machine, waiting for fax confirmation, etc -- which totals several hours.'

'YOU GUYS WASTE MY TIME LIKE THIS ON A REGULAR BASIS and I have had enough! ...Over the last two years, the FTB has wasted dozens of hours of my time to the extent that the FTB is the direct cause of such late filings of our taxes.'

Christine recalls that the reason this additional fax copy needed to be sent immediately was because the FTB had threatened that the 2011 EWOT for \$6,478 would be reinstated if the fax wasn't sent right then.

But what about the \$3,500 "lost" payment that wasn't put into suspense for 2011? According to Exhibit I-15, on 6-2-14, Christine called in about a balance due for tax years 2008 and 2011. "...and wanted information on TY08 as well. Advsd Mrs. TP again, return filed late on 12/02/10 with a balance due of [REDACTED] Mrs. TP stated she never recv'd a letter for a balance, no was she aware of any balance due for that year. Mrs. TP requested a Tax Comp for TY08 balance and payments. Advsd Mrs. TP I would mail out the information and Mrs. TP agreed to PIF TY11 from TY12."

Appellants now know that the reason that we were suddenly getting notices from a tax year that had been closed for four years was due to the strange accounting adjustments that were taking place with the "lost" \$3,500 estimated tax payment. However, this was not explained to Christine. Christine had no idea why the 08 tax year was suddenly an issue again.

This comment substantiates claims made in our 2011 Abatement Request, in which we complained about consistently being given inaccurate information that caused delays in our ability to file. One example cited in that Abatement Request was that FTB representative Carrey had erroneously told us that we could pay the 2011 late fees, penalties and interest out of the 2012 credit elect. This misinformation ultimately caused another month worth of delays, as Christine had to call in and try to figure out why the payment made via the credit elect did not go through.

According to Exhibit N-2 and N-3, on 6-27-14, another EWOT was issued to Eric's employer for the 2011 tax year, despite the fact that the 2011 tax return had been filed four months earlier, re-sent again three months earlier, and showed an overpayment. Mr. Yadao redacted RR-1, which shows

Christine called into the FTB on 7-14-14, 7-16-14 and 7-23-14 to try to clear up this EWOT "mistake" that was caused by the FTB never applying the \$9,000 "lost" payment (Exhibit L-7).

Tax year 2012 returns were filed on 6-16-14 (Exhibit I-14) with an overpayment of \$ [REDACTED] to be applied as a credit elect to tax year 2013. ROB Exhibit QQ shows NPAs for tax year 2013 were sent out on 8-10-15 and show \$0 in estimated tax payments collected. Christine thought that the [REDACTED] was "lost." She immediately protested the NPAs as instructed on the bottom of the NPA form.

In Footnote 16, Mr. Yadao wrote "Appellants contacted respondent on four dates... and requested additional time to file their [2013] return, which respondent denied (ROB Exhibit RR)." ROB Exhibit RR contains four heavily redacted internal comments pages (see Exhibit L-7 through L-10 for un-redacted versions).

RR-1 is dated 7-23-15 and states "correspondence received... unable to defer." No proof has been provided that this denial was communicated to the Appellants. Appellants believed the request had been ignored, which is affirmed by the quote in Exhibit I-5 "Per review of comments, there was no response to this or any previous correspondence sent."

RR-2 is dated 9-8-15. Mr. Yadao provided the first one: "TP CLLD: WANTED EXTENSION: DEF TI 101925. According to the FTB's Disclosure Department, DEF means defer and TI means Taxpayer Information System (Exhibit P). As this comment stands, it does not support Mr. Yadao's argument that this was a denial of extension.

RR-3 has two notes from 11-3-15. The one Mr. Yadao shows is: "TP also inquired about the estimate transfer from the 12TY and didn't know why she was getting billing notices when she had a payment made... Advised TP payment transfer was done, awaiting return for the payment to be applied." Maybe Christine misunderstood what the representative said to her, but she does not recall anyone explaining the policy of withholding estimated tax payments until late 2016.

Mr. Yadao redacted the second comment from 11-3-15, which says "Hold End Date: 12/02/15 Reason: TO FILE RETURN." This redacted comment contradicts Mr. Yadao's claim that all extension requests had been denied (Exhibits I-12 and L-9).

Mr. Yadao redacted the notes from 12-1-15 on ROB Exhibits RR 2, 3, 4, where Christine called in, complaining that she could not get through to the Collections department to resolve her issues. She was hoping another department could help her. She was told only Collections could help her (Exhibits L-8, L-9, L-10 and I-11).

He redacted the notes from 2-24-16 on ROB Exhibits OO and RR 2, 3, 4, where Christine called in regarding another "lost" payment for \$ [REDACTED]. Getting this corrected involved digging up old documents, traveling to a fax machine, and calling back to confirm the fax had been received and would be processed. The redacted 2-24-16 notes indicate that the representative also had her make a payment via Webpay for the additional interest of \$ [REDACTED] that had accrued. (Exhibits I-10, I-11, L-6, L-8, L-9 and L-11)

Mr. Yadao omitted the notes from 5-17-16, which indicated that the \$ [REDACTED] payment had also been "lost." Getting this corrected involved digging up the old documents, traveling to a fax machine,

calling back to confirm the fax had been received and would be processed, and traveling to the post office to mail a replacement check (Exhibits I-8, I-9 and I-10).

Christine's illness went from Stage 2 to Stage 3 in December 2013, the same month that Appellants found out about the EWOT. By April 2014, Christine's illness caused her cholesterol levels to be so high that the doctor warned her that she could drop dead at any moment from a heart attack or stroke. The doctor advised her to avoid stressful situations. Meanwhile, the FTB was creating massive amounts of stress by perpetually being "unable to locate" [REDACTED] in credit elects, "losing" other payments made, and persistently threatening to reinstate the EWOT.

Tax Year 2014 Improprieties

On page 7, paragraph 2 of the ROB, Mr. Yadao used deceptive wording. "Appellants filed their tax year 2013 returns on August 3, 2016...thus after satisfaction of the demand penalty and interest, Appellants' overpayment in the amount of [REDACTED] was applied to their tax year 2014 account."

The money was not immediately applied to tax year 2014 as Mr. Yadao implied; it was put into suspense. Mr. Yadao disclosed that collection notices were sent out on 8-29-16 and 11-29-16, but omitted that additional collection notices were sent on 9-13-16 and 10-18-16. None of these notices reflected the \$ [REDACTED] in credit elects (Exhibit Q).

Christine called into the FTB in late September or early October in response to the notice dated 9-13-16 (this call was not listed in the FTB's notes, so the exact date is unclear). The agent explained that the reason we were getting collection notices reflecting no money collected in estimated tax payments was because it was the FTB's policy to withhold estimated tax payments. This was the first time this policy had been disclosed to her.

Christine sent letters to legislators on 10-7-16 and 11-14-16, requesting their help to stop the FTB's aggressive collection actions, as well as asking them to put an end to this withholding practice. Mr. Yadao omitted the CC's of the letters that the FTB received (Exhibit D). After the legislators intervened on our behalf, our account was transferred to Executive and Advocate Services. Per Exhibit I-7, on 12-7-16, the credit elect was taken out of suspense, with half applied to Eric's account and the other half to Christine's account. This is when collection action for the tax year 2014 ended. This also explains why ROB Exhibit C shows two transfers from 2013 to 2014 instead of only one.

Appellants filed our tax year 2014 returns on 1-25-17, seven weeks after the collection action finally ended. Once we were no longer wasting time trying to prevent wage garnishments by disputing NPAs that showed many thousands of dollars in estimated tax payments were "missing," we were able to get caught up on the returns relatively quickly.

We believe that any prudent business person would agree that, despite our hardships, we devoted a reasonable amount of time to tax issues. We also believe that any prudent business person would prioritize locating "lost" payments to prevent erroneous wage garnishments over the filing of returns. The myriad of issues that Mr. Yadao omitted/redacted from his ROB were all time consuming for us to resolve, and thus delayed our ability to work on 2010 and subsequent year's tax returns. We find it shocking that Mr. Yadao would claim that we didn't file timely due to "willful neglect."

Exhibit V is the print out of the blog post that Mr. Yadao referenced as proof of “near daily leisure activity of ocean travels.” This post described how difficult it was to replace the muffler in November 2012. There are no references to “leisure travel.”
<https://kosmos.liveflux.net/blog/2013/01/14/choosing-a-new-muffler-and-removing-the-old-one/>

Exhibit W is a print of the second post Mr. Yadao referenced:
<https://kosmos.liveflux.net/blog/2013/04/24/april-2013-update-on-us/>

It begins with:

“We haven’t been able to update the blog lately because life has been hectic for us. Eric has been traveling a lot for work. He has had a trip almost every week this year. Most of the destinations haven’t been too interesting, but last month he did have an eight-day trip to Siberia. When he isn’t on the road, he puts in long days at the office.”

‘Christi and Keith have also been traveling a lot. They have tagged along with Eric on a couple business trips... They have also made five trips to Las Vegas to see Christi’s dad.’

In ROB Exhibit L, Appellants wrote that Christine’s father had stayed with them from August 2012 to December 2012 while [REDACTED]. During that time, it became clear that he had serious health problems. Christine was traveling to Las Vegas to take him to doctor appointments. (Exhibit T).

The last paragraph of the April 2013 post says “Unfortunately, Keith is still a terrible sleeper, waking up several times a night and not napping much... While Christi gets plenty of hours of sleep, the broken sleep leaves her perpetually tired and she thinks a lot slower than she used to.” As was detailed in the Appellant’s First Response Brief, we now know that Christine was already ill with a rare kidney disease, and that fatigue and thinking slow/confusion were two of the symptoms.

The only sentence in the post that referenced “leisure travel” was the mention of one boat trip to Oceanside Harbor, a short ride from San Diego Bay. Appellants had not made a boat trip outside of the Bay in almost a year. One trip outside of the Bay per year hardly qualifies as “near-daily leisure activity of ocean adventures.”

Page 4, paragraph 1: “Respondent also imposed a cost collection recovery fee because Appellants did not pay the final liability flowing from the tax year 2011 filing enforcement action...”

Appellants want to reiterate that the reason a wage garnishment was initiated was because the FTB did not apply the overpayment from tax year 2010 to tax year 2011 right away, as per their policy cited in ROB footnote 21. Appellants believe that this policy violates R&TC 19363, which says that all credit elects are to be applied 4-15-YEAR, regardless of filing date. Mr. Yadao has not argued otherwise. As such, we believe that by withholding the credit elect and thus initiating the collection action, the FTB has improperly assessed this Collection Recovery Fee.

On Page 4, paragraph 6: Mr. Yadao wrote: “Furthermore, Appellants were able to update their blog in May 2015... they continued to use their boat regularly on day trips around San Diego waters, thus it could not be said they were both continuously prevented from replying to the tax year 2013

demand letter.” Exhibit X is the referenced post: <https://kosmos.liveflux.net/blog/2015/05/01/may-2015-update-on-us/>

The sentence that Mr. Yadao referenced regarding boat usage was: “We continue to use Kosmos regularly on day trips around San Diego waters, but due to Eric’s hectic work schedule, we haven’t been able to do many longer trips.” Our “day trip” is a three-hour run once a month, which is critical for maintenance of the vessel. [REDACTED]

[REDACTED]. Just as real estate investments require maintenance and repairs in order to retain value, so do boats. Any prudent business person will do the required maintenance to protect their investments. Boats rot when not used.

Here are some other excerpts from the post that supports our lack of free time:

“We can’t believe that we’ve let more than a year pass since we posted our last update! A couple weeks ago, we took Kosmos on a mini-vacation to Oceanside, California. We took advantage of the down time to write this post. Sadly, we haven’t had a “real” vacation in over 2.5 years, hence the lack of time to write.”

“The last year has certainly been eventful!

- Christi became ill with a rare immuno-disorder that affects kidney function.
- Eric became Chief Technical Officer of a company called Neulion.”

The rest of the post details the severity Christine’s illness and the lack of viable treatment options, as well as Eric’s stressful and hectic work schedule. We do mention that Christine and Keith tagged along on a few of Eric’s business trips. Christine was seriously ill and needed as much help from Eric as possible; the only way Eric could help was if Christine and Keith accompanied him on work trips.

On Page 5, paragraph 7, Mr. Yadao wrote “...although they were caring for an aging parent, nevertheless appellant-husband continued to attend to work...” By the time the 2014 Demand letters were issued in March and April of 2016, we were still caring for two parents, both in their 80s, and a toddler. Christine was extremely ill, seeing doctors almost weekly and incurring large medical bills. Mr. Yadao implied that Eric should have quit his job in order work on the tax returns. Any prudent business person would continue to hold down a job in order to maintain health insurance and pay for medical costs. Had Eric not been able to provide the family with health insurance coverage, nor the financial resources to pay the medical bills not covered by insurance, Christine likely would not have survived.

Personal Hardships

Enclosed is some supplemental documentation of our hardships that was not included in the AFRB.

Exhibit Y is a letter from Christine’s nephrologist confirming the severity of her illness. It also mentions her restricted diet. Christine has an allergy to peppercorn. Even before Christine became ill, she had to cook most of her food from scratch since most packaged foods contain “spices” and most restaurants season everything with pepper. When she became ill, she went on an extremely restricted diet, so she had to cut out the few ready-made foods she used to eat. The new diet

consisted of mostly vegetables, which are time consuming to peel and cut prior to cooking. She could not function unless she slept at least 12 hours a day (ten-hours at night plus a two-hour nap), and she spent a lot of time cooking and washing dishes. The two most basic functions in life, sleeping and eating, consumed most of her time. The extra sleep and strict diet were the two most critical factors in her health improving again.

A kidney's job is to keep the good stuff in and filter the bad stuff out. While Christine's kidneys still filtered properly, she had a giant hole in her kidneys that let all the good stuff run out, leaving her deficient in both protein and nutrients. Every cell of the human body uses protein, and being protein deficient meant nothing in her body worked quite right. Almost every normal life function was notably harder for her than the average person. This was particularly obvious with cognitive function. When she did any kind of paperwork, she needed to check it over at least five times for mistakes. But she also knew that she was prone to mistakes, so she was careful about checking for errors. This meant paperwork processing was slow. She also perpetually had a cold since her immune system was not functioning properly.

Between herself, our son and our two remaining parents, she went to doctor appointments at least twice a week. And she had to physically care for our child and elderly parents. Yet, despite all the challenges, Christine still consistently carved out time every month to deal with tax issues.

Exhibit Z is confirmation that Christine's father was diagnosed with [REDACTED] in July 2016. His [REDACTED] treatments were conducted in San Diego.

Exhibit AA is an updated travel chart with more information on the work trips that Eric was required to take by his employer. As you can see, Eric was not home much to help Christine. In the little time that he was home, he focused on physically caring for our son and our parents so Christine could do things like work on tax issues.

Closing:

Appellants maintain that had the FTB never "lost" the five estimated tax payments made for the tax year 2010, that Appellants would have filed tax year 2011 returns before the October 15, 2012 deadline, and all subsequent returns would have been filed timely.

The fact that the FTB refused to disclose the policies of withholding credit elects and withholding estimated tax payments from married couples is strange. Why would they allow us to believe the payments were "lost" and have us continually send in copies of our tax returns/canceled checks, with the promise that the money would be located and applied? Had they simply disclosed these policies to Christine, Christine would have stopped trying to locate payments and instead focused on filing the tax returns.

We believed both withholding policies violate California tax laws. We believe the credit elect withholding policy violates R&TC 19363. Exhibit F is a legal analysis of the policy of withholding estimated tax payments from married couples that Christine submitted to the 2018 Annual Taxpayer

Bill of Rights Request Meeting¹. In it, she argues that the legal codes that the FTB uses to justify this policy are not valid.

Exhibit BB is a news story from CBS Sacramento, which details another questionable FTB policy of mailing collection notices to invalid addresses. We have enclosed it because CBS's experience was the same as Appellants: CBS was told these erroneously addressed letters were "mistakes." When CBS pushed about why the same mistake happened so often, the FTB said sending collection notices to invalid address was actually a policy required by law. When CBS asked which law, the FTB indicated that maybe it wasn't actually required by law.

The fact that three of our estimated tax payments were applied to years that had been closed with zero balances, then refunded, is suspicious. Likewise, the tremendous difficulty in locating and having these particular payments re-applied was strange. Why did it take six months to apply the "lost" \$9,000 after it had finally been located? Why did it take eight years and intervention from Betty Yee's office to locate the "lost" \$3,500 payment? All of the other types of payments that were "lost," such as Collection Account payments, were located and corrected with significantly less difficulty than those three estimated tax payments. Also, why are the accounting ledgers for the years involving these particular "mistakes" all inaccurate, with missing/incorrect line items? (Exhibit O)

Appellants believe that we should not have to pay any penalties, fees or interest since our filing 2011 and subsequent years was a direct result of the FTB's own "mistakes." In fact, we believe that we should be awarded monetary damages for the unjustified brutal harassment that we endured. 2012 through 2016 were the hardest years of our lives, and the FTB made those years significantly harder via their unfair withholding policies, refusal to disclose these withholding policies, strange accounting "problems," and refusal to rectify their accounting "mistakes." Even after the returns were filed, the FTB continued to create problems for us via improprieties involving the Abatement turndowns, which we believe violate California State Law (Exhibit A-1).

Eric W. Grab

Christine Grab

¹ Christine made eight Requests at the Annual Taxpayer Bill of Rights Meeting. We will provide the complete written submissions upon request. A video of her speech, which is a dramatically shortened version of her written submissions, can be viewed here: https://vimeo.com/311228307?utm_source=email&utm_medium=vimeo-cliptranscode-201504&utm_campaign=29220. The FTB's Formal Resolution can be viewed here: https://www.ftb.ca.gov/aboutFTB/taxpayer_advocate/Taxpayer_Bill_of_Rights_Hearing/2018-Grab-Response.pdf. Please note that the FTB's letter is not signed. Christine requested a signed copy on 3-15-19 (Exhibit CC) and has not received one as of today.