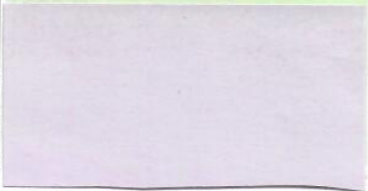


1 Christine N. Grab, pro se



CLERK OF SUPERIOR COURT
SAN DIEGO, CALIFORNIA

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CLERK OF SUPERIOR COURT
SAN DIEGO, CALIFORNIA

5 CHRISTINE N. GRAB, IN PRO PER

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**

11 CHRISTINE N. GRAB

12 Plaintiff,

13 vs.

14 THE CALIFORNIA FRANCHISE TAX BOARD

16 Defendant.

) Case No.: Case #37-2020-00005100-CL-BT-CTL

) **DEMURRER**

) **DATE:** October 30, 2020
) **TIME:** 9:00 am
) **DEPT:** C67

) Judge: The Honorable Eddie C. Sturgeon
) Dept: C67
) Action Filed: January 29, 2020
) Trial Date: March 19, 2021

20 I, Christine N. Grab, Plaintiff, am requesting a Demurrer of the Franchise Tax Board's Answer to
21 Plaintiff's Complaint, dated March 20, 2020, but not filed with the court until May 26, 2020 due to
San Diego County's closure from March 17 – May 25, 2020 for Coronavirus.

22 I am requesting the Demurrer apply to the entire Answer, on the grounds that [CCP 438, 438(c),
23 438 (d):

- 24 • Answer does not state facts sufficient to constitute a defense
- 25 • Answer is uncertain

26 In her response, FTB's attorney, Anna Barsegyan, made many broad statements, but none were
substantiated.

27 In the opening, on page 1, Ms. Barsegyan wrote
28

1 "1. The Complaint in the within matter being unverified, this answering Defendant, pursuant
2 to the provisions of section 431.30(d) of the California Code of Civil Procedure, deny,
3 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."

4 This is the only place in the entire Answer where she denied the allegations that I set forth in my
5 Complaint. My understanding is that, while Defendant was not required to Respond with a line by
6 line verified defense, they were still required to provide an *effective* defense for all claims that the
7 Plaintiff raised. Failure to deny constitutes admission: Any material allegation in the complaint that
is not effectively denied is deemed admitted. [CCP § 431.20(a); see *Hennefer v. Butcher* (1986) 182
CA3d 492, 504, 227 CR 318, 325].

8 Ms. Barsegyan did not address any of the specific allegations that I made in my 27-page Brief.
9 Allegations included FTB repeatedly breaching their duties to accurately and timely apply
10 payments, then improperly imposing late fees, penalties and interest that would not have been
11 imposed had FTB fulfilled their duties. I also alleged that FTB overcharged interest. Ms. Barsegyan
12 did not dispute the validity of any of the 233-pages of evidence that I submitted to the court, nor did
13 she provide any evidence of her own to attempt to refute the arguments that I had made. I do not
believe that one generic sentence constitutes an *effective* defense of so many specific allegations
that were supported with strong evidence, including FTB's own internal records.

14 Instead of addressing my specific complaints, Ms. Barsegyan brought up an assortment of
15 Affirmative Defenses. At no point did she explain how any of these Affirmative Defenses were
16 factual and/or relevant to this litigation. It looks to me like she simply copied/pasted generic
17 arguments from a database. My understanding is that these Affirmative Defenses are considered
18 "new matter" and the Defense bears the burden of proof to substantiate these claims in their
19 pleadings. [*Harris v. City of Santa Monica* (2013) 56 C4th 203, 239, 152 CR3d 392, 418], *Mountain
Air Enterprises, LLC v. Sundowner Towers, LLC* (2017) 3 C5th 744, 755-756, 220 CR3d 650, 659-
20 660 (citing text); *California Academy of Sciences v. County of Fresno* (1987) 192 CA3d 1436,
21 1442, 238 CR 154, 157].

22 While FTB may not be required to provide specific evidence in their Answer, they must
23 provide some basis for how the Affirmations are applicable and/or relevant to this litigation in order for
24 it to be considered a sufficient defense. I believe that the lack of effort to show relevancy of these
25 Affirmative Defenses renders all said Affirmative Defenses inadmissible.

26 Ms. Barsegyan herself confirmed in our telephonic conference that she simply made a list of potential
27 defenses in hopes that she will be able to substantiate some of them during discovery. This admission of
28 having no factual basis for the Affirmative Defenses that she submitted means that her arguments are both
uncertain and insufficient.

All of the Affirmative Defenses Ms. Barsegyan listed are false and/or irrelevant, and as such, should
not be allowed to stand.

On page 2, she made an Affirmative Defense that is verifiably false. She wrote:

"Third Affirmative Defense (standing)

Plaintiff lacks standing to the extent that Plaintiff did not pay taxes, interest, or penalties for
which relief is sought."

1 Ms. Barsegyan provided no evidence to support this statement. However, in FTB's Respondent's
2 Opening Brief that FTB submitted to the Office of Tax Appeals (OTA) (Exhibit 4), on page 1, the
3 FTB listed the amounts that we were charged in penalties, fees and interest for each year in dispute.
4 These dollar amounts are further confirmed by the FTB's internal accounting ledgers (Exhibit 15).

5 Six more of her broad statements could also be interpreted as false. On page 2 and 3, Ms. Barsegyan
6 wrote:

7 "First Affirmative Defense (Failure to State a Cause of Action)
8 Plaintiff is barred from recovery on the Complaint because the Complaint fails to allege
9 facts sufficient to constitute a cause of action against FTB."

10 "Seventh Affirmative Action (Attorney's Fees)
11 Plaintiff is not entitled to attorney's fees under R&TC 19717 as FTB's position in this case
12 is substantially justified."

13 "Eighth Affirmative Defense (Uncertain)
14 Plaintiff's Complaint fails to set forth facts with reasonable precision and specific
15 particularity, and therefore fails due to uncertainty."

16 I believe that my Complaint clearly states the cause of action, states the facts with precision and
17 particularity, and provides sufficient evidence to wholly substantiate these facts. Ms. Barsegyan has
18 given no information as to why she believes the 27-page brief plus 233-pages of evidence are
19 insufficient or uncertain. Ms. Barsegyan has not disputed any of the facts or evidence that I've
20 provided, nor has she provided any facts or evidence of her own regarding the allegations set forth
21 in the case. She has not justified FTB's position in this case.

22 On pages 2 and 3 she wrote:

23 "Fourth Affirmative Defense (Failure to Exhaust Administrative Remedies)
24 To the extent that the Complaint contains allegations or arguments that are beyond the
25 allegation or arguments set forth in Plaintiff's claim for refund, Plaintiff has failed to
26 exhaust her administrative remedies. (Cal Cons. Art XIII, Rev & Tax Code 19322; Loeffler
27 v. Target (2014) 58 Cal. 4th 1081, 1128.)"

28 "Fifth Administrative Defense (Statute of Limitations)
Plaintiff is barred from seeking relief for those tax periods for which the applicable statute of
limitations has lapsed. (Rev. & Tax Code 19306, 19311, 19384.)"

"Seventh Affirmative Action (Attorney's Fees)
Furthermore, to the extent that Plaintiff has failed to exhaust her administrative remedies,
she is precluded from recovering attorneys' fees under Revenue and Taxation Code 19717."

This complaint is a request for refund of penalties, fees and interest FTB charged us, as well as
accrued interest for the duration of time the FTB held unlawfully collected funds, and court costs
(Revenue and Tax Code 21013(a)(1) and (2)). My husband and I have followed the proper
administrative channels as set forth by Revenue and Taxation Codes 19324 (a) and (b) and 19384:
We submitted an Abatement Request to FTB during the correct window of time (Exhibit 38), which

1 was denied. We filed an appeal with the Board of Equalization (BOE)¹ during the correct window
2 of time. FTB never disputed our BOE claim as invalid due to statute of limitations reasons (Exhibit
3 38 and Exhibit 4). After we lost our Appeal, I filed this Trial del Novo Request in Superior Court
4 per statutes A.B. 102 §13, A.B. 131 §14 and Cal. Gov't Code §15677 within the required period of
5 time of 90-days from the issuance of the OTA opinion.

6 While it is true that I am trying to get FTB to change some of their internal policies and procedures
7 that are beyond the scope of this case, those issues are superfluous and have no bearing on this case.

8 Four of Ms. Barsegyan's broad statements are irrelevant. On page 2, she wrote:

9 "Second Affirmative Defense (Prohibited Injunctions)

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

14 Plaintiffs are not seeking an injunction.

15 On page 3, she made another irrelevant statement:

16 "Sixth Affirmative Defense (Offset)

17 FTB reserves the right to offset any amount Plaintiff still owes FTB against any refund that
18 may be awarded to Plaintiff."

19 My husband and I owe no money to FTB.

20 On page 4, she made two more irrelevant statements:

21 Ninth Affirmative Statement (No Liability for Injury)

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

24 Tenth Affirmative Defense (No Liability for Misrepresentation of Employee)

25 Defendant is not liable for an injury caused by misrepresentation by an employee of the
26 public entity, whether or not such misrepresentation be negligent or intentional. (Gov Code
27 818.8)

28 As I stated above, this complaint is a request for refund of penalties, fees and interest FTB charged
us, as well as accrued interest for the duration of time FTB held unlawfully collected funds, and
court costs. While we do believe that we were injured by FTB's breach of duties, we are not seeking
compensation for said injuries in this claim.

WHEREFORE, having fully addressed the Defendant's response, I, the Plaintiff, pray that the judge

¹ In January 2019, tax appeal hearings were transferred from the purview of the Board of Equalization to a newly
created agency, The Office of Tax Appeals. All pending BOE hearings, including ours, were moved to OTA.

1 will grant this Demurrer request, and thereby disregard all Affirmative Defenses listed in
2 Defendant's Response since:

- 3 • Answer does not state facts sufficient to constitute a defense. Defendant failed to meet the
4 requirement of proving legal sufficiency, both in their denial of my allegations and in the new
5 matters they raised.
- 6 • Answer is uncertain. Defendant did not attempt to deny any specific allegations nor explain how new
7 matters are applicable and/or relevant to this litigation. Ms. Barsegyan herself confirmed that she
8 simply listed potential defenses in hopes that she can substantiate some of them during discovery.
- 9 • The lack of *effective* denial in their Response to my specific allegations is legally considered to be a
10 tacit admission of guilt.
- 11 • The Defendants bear the burden of proof on new matters. No facts were provided to substantiate
12 these new matters; **Defendant did not even attempt to explain how these new matters are
13 applicable and/or relevant to this litigation.**
- 14 • As I detailed above, seven of these Affirmative Defenses are false and four are irrelevant. I do not
15 believe that it is proper to submit false and irrelevant pleadings. I pray the judge agrees.

16 Respectfully Submitted,

17 DATED: June 13, 2020

18 

19 Christine N. Grab
20 In Pro Per

Memorandum of Points and Authorities in Support of Demurrer

A party responding to an answer may move for judgment on the pleadings if the answer does not state facts sufficient to constitute a defense to the complaint [CCP 438 (c)]. The ground must appear on the face of the pleading or be subject to judicial notice [CCP 438(d)]. A motion may be made as to the entire answer, or as to one or more of the affirmative defenses set forth in the answer [CCP 438].

Failure to deny constitutes admission: Any material allegation in the complaint that is not effectively denied is deemed admitted. [CCP § 431.20(a); see *Hennefer v. Butcher* (1986) 182 CA3d 492, 504, 227 CR 318, 325].

Affirmative Defenses are considered "new matter" and the Defense bears the burden of proof to substantiate these claims in their pleadings. [*Harris v. City of Santa Monica* (2013) 56 C4th 203, 239, 152 CR3d 392, 418], *Mountain Air Enterprises, LLC v. Sundowner Towers, LLC* (2017) 3 C5th 744, 755-756, 220 CR3d 650, 659-660 (citing text); *California Academy of Sciences v. County of Fresno* (1987) 192 CA3d 1436, 1442, 238 CR 154, 157].

Revenue and Tax Code 21013 (a) (1) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to an appeal before the State Board of Equalization if all of the following conditions are met:

(B) The State Board of Equalization, in its sole discretion, finds that the action taken by the Franchise Tax Board staff was unreasonable.

(2) For purposes of this section:

(b) (1) To determine whether the Franchise Tax Board staff has been unreasonable, the State Board of Equalization shall consider whether the Franchise Tax Board has established that its position in the appeal was substantially justified.

(2) For purposes of paragraph (1), the position of the Franchise Tax Board shall be presumed not to be substantially justified if its staff did not follow its applicable published guidance in the appeal. This presumption may be rebutted.

(3) For purposes of paragraph (2), the term "applicable published guidance" means either of the following:

(A) A regulation, legal ruling, notice, information release, or announcement.

(c) The amount of reimbursed fees and expenses shall be determined by the State Board of Equalization and shall be limited to the following:

(1) Fees and expenses incurred after the date of a notice of proposed deficiency assessment or jeopardy assessment, or a denial of a claim for refund.

Revenue and Taxation Codes 19324:

a. Except as provided in subdivision (b), at the expiration of 90 days from the mailing of the notice, the Franchise Tax Board's action upon the claim is final unless within the 90-day period the taxpayer appeals in writing from the action of the Franchise Tax Board to the board.

b. If within the period set forth in Section 19384 for filing a suit for refund the Franchise Tax Board receives information which it determines clearly establishes that a disallowed claim should have been allowed, in whole or in part, the Franchise Tax Board shall credit the amount of the overpayment against any taxes due from the taxpayer under this part and the balance shall be refunded to the taxpayer.

Revenue and Taxation Code 19384: The action provided by Section 19382 shall be filed within four years from the last date prescribed for filing the return or within one year from the date the tax was paid, or within 90 days after (a) notice of action by the Franchise Tax Board upon any claim for refund, or (b) the determination (including the issuance of a decision, opinion, or dismissal) by the State Board of Equalization on an appeal from the action of the Franchise Tax Board on a claim for refund becomes final pursuant to Section 19334, whichever period expires the later.

A.B. 102 states that "[t]he person filing the appeal may appeal the decision of the tax appeals panel to the superior court in accordance with the law imposing the tax or fee" and that the standard of judicial review to be applied by the court is "review de novo" (A.B. 102 §13). A.B. 131 clarifies this language by providing that "[i]f a person that sought relief from a tax appeals panel disagrees with its decision, the person may bring an action in superior court in accordance with the law imposing the tax or fee for a trial de novo" (A.B. 131 §14; Cal. Gov't Code §15677).