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CLERK SUPERIOR COURT  
SAN DIEGO COUNTY, CA

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

10 Christine N. Grab

11 Plaintiff,

12 vs.

13 The California Franchise Tax Board

14 Defendant(s).  
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) Case No. **37-2020-00005100-CL-BT-CTL**  
) **540.551 Complaint for Refund of Personal**  
) **Income Tax [Rev. & Tax. Code 19382]**  
)  
)

) **DATE: NOV. 13, 2020**  
) **TIME: 10:30 am**  
) **DEPT: 67**  
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1 **I. GENERAL OPENING**

2  
3 On November 5, 2019, the Office of Tax Appeals (OTA) issued an Opinion on an appeal  
4 that we brought to them against the Franchise Tax Board (FTB), in which they ruled in favor of  
5 FTB (Exhibit 1). A.B. 102 states that "[t]he person filing the appeal may appeal the decision of the  
6 tax appeals panel to the superior court in accordance with the law imposing the tax or fee" and that  
7 the standard of judicial review to be applied by the court is "review de novo" (A.B. 102 §13). A.B.  
8 131 clarifies this language by providing that "[i]f a person that sought relief from a tax appeals  
9 panel disagrees with its decision, the person may bring an action in superior court in accordance  
10 with the law imposing the tax or fee for a trial de novo" (A.B. 131 §14; Cal. Gov't Code §15677).

11  
12  
13 I, Christine N. Grab, am exercising my right to commence suit against the Franchise Tax  
14 Board in Superior Court of California for refund of penalties, interest and fees. I certify that my  
15 husband, Eric W. Grab and I were residents of the State of California at all times mentioned herein,  
16 and thus meet the jurisdictional requirement to have the case heard in San Diego Superior Court.

17  
18 I believe that we are due a full refund for two reasons. Firstly, because the Demand Notices  
19 issued to my husband, Eric W. Grab and I for tax years 2010 and 2013 and 2014 were improperly  
20 issued. R&TC 19087 states that the Demand Notices and accompanying Demand Penalties are only  
21 to be issued on accounts with *delinquent* taxes. However, at no point were we delinquent. FTB  
22 improperly withheld and misapplied our estimated tax payments, making our account falsely appear  
23 underfunded. Thus the Demand Notices and accompanying Demand Penalties for 2011, 2013 and  
24 2014 were improperly issued/imposed. Secondly, I believe our late filing was due to reasonable  
25 cause: the delays were a direct result of FTB's aforementioned multiple breaches of duty. As such,  
26 we are requesting a full reimbursement of all penalties and fees paid for tax years 2011, 2013 and  
27 2014:  
28

- 1 • Tax year 2011: FTB imposed a \$ [REDACTED] Demand Penalty plus \$ [REDACTED] interest,  
2 totaling \$ [REDACTED]. They also imposed a cost recovery fee of \$ [REDACTED].
- 3 • Tax year 2013, FTB imposed a Demand Penalty of \$ [REDACTED] plus interest of \$ [REDACTED]  
4 totaling \$ [REDACTED].
- 5 • Tax year 2014, FTB imposed a Demand Penalty of \$ [REDACTED] plus interest of \$ [REDACTED]  
6 totaling \$ [REDACTED].

7  
8 **A. Tax Codes 19133 and 19087**

9 Revenue and Taxation Code 19133 says:

10 (a) In general. Revenue and Taxation Code section 19133 provides that if any taxpayer fails  
11 or refuses to file a return upon notice and demand by the Franchise Tax Board (FTB), **unless the**  
12 **failure is due to reasonable cause and not willful neglect**, the FTB may add a penalty of 25  
13 percent of the amount of tax assessed pursuant to Revenue and Taxation Code section 19087 or of  
14 any deficiency tax assessed by the FTB concerning the assessment for which the return was  
15 required (emphasis added).

16  
17 (b) Imposition of Penalty. For individuals subject to tax under Part 10 (Personal Income  
18 Tax Law), the notice and demand penalty under Revenue and Taxation Code section 19133 will  
19 only be imposed by the FTB if:

20 (1) the taxpayer fails to timely respond to a current Demand for Tax Return in the manner  
21 prescribed, and

22  
23 (2) **the FTB has proposed an assessment of tax under the authority of Revenue and**  
24 **Taxation Code section 19087**, subdivision (a), after the taxpayer failed to timely respond to a  
25 Request for Tax Return or a Demand for Tax Return in the manner prescribed, at any time during  
26 the four-taxable-year period preceding the taxable year for which the current Demand for Tax  
27 Return is issued (emphasis added).

1 CA Rev & Tax Code § 19087 says: (a) If any taxpayer fails to file a return, or files a false or  
2 fraudulent return with intent to evade the tax, for any taxable year, the Franchise Tax Board, at any  
3 time, may require a return or an amended return under penalties of perjury *or* may make an estimate  
4 of the net income, from any available information, and may propose to assess the amount of tax,  
5 interest, and penalties due. **All the provisions of this part relative to delinquent taxes** shall be  
6 applicable to the tax, interest, and penalties computed hereunder (emphasis added).  
7

8 **B. Misapplication of 19133 via Violation of 19087**

9 As we documented in our Office of Tax Appeal (OTA) case, in each year in question, we  
10 had overpaid the estimated taxes as determined by FTB's own estimates prior to the due dates.

11 However, FTB repeatedly unlawfully withheld and misapplied our estimated tax payments, and  
12 thereby breached its duty to accurately and timely apply these payments to our account (Exhibit 2).

13 As such, our account appeared to be underfunded for each of these years. As noted above in  
14 R&TC 19087, Demand Notices and the accompanying Demand Penalties are only applicable  
15 relative to *delinquent* taxes (as assessed by FTB). Since our account appeared to be delinquent,  
16 Demand Notices were issued and a Demand Penalties assessed.  
17

18 However, had FTB not breached its duty to timely and accurately apply our payments, our  
19 account would have shown as paid in full; only a Request for Tax Return would have been issued  
20 and no penalties would have been assessed.

21 In OTA's ruling Opinion on our case (Exhibit 1), on page 4, the judges wrote "Here the  
22 appellants argue that the demand penalties were improperly imposed..." On page 5 they continued  
23 "Appellants also contend they made timely payments... However, the Demand Penalty is computed  
24 without regard to payments and withholding credits."  
25

26 The OTA judges stated that the Demand *Penalties* were properly imposed in conjunction to  
27 the issuance of the Demand Notices. However, the OTA judges failed to offer an opinion on  
28

1 whether the Demand *Notices* were properly issued in the first place. Had the Demand Notices not  
2 been issued, there would have been no Demand Penalties.

3 On page 7 of the OTA Opinion, the judges wrote: “Finally, appellants make numerous  
4 allegations that the reason they filed their tax returns late was ‘a direct result of improprieties  
5 committed by the FTB.’ For example, they allege the FTB lost or misapplied their estimated tax  
6 payments, FTB did not provide information on tax payments held in suspense until a return was  
7 filed, and FTB ‘persistently threaten[ed] to reinstate’ wage garnishment collection activities.  
8 However, appellants’ allegations do not explain why they were prevented from filing returns in  
9 response to the demands. To us, it appears that if they had filed such returns in response to the  
10 demands, that would have been sufficient to avoid imposition of demand penalties, even if  
11 appellants had to claim inaccurate tax payments on the returns and then amend them to claim  
12 accurate payments. Accordingly, appellants are liable for the demand penalties.”

13  
14 Again, I believe that this response does not adequately address the fact that the Demand  
15 Notices would never have been issued in the first place had our account not been underfunded. Our  
16 account was underfunded solely because of FTB’s multiple breaches of duty.

17  
18 In the OTA oral arguments, Christine argued that the Demand Penalties would not have  
19 been imposed had our payments not been unlawfully withheld. FTB did not deny this to be true  
20 (Exhibit 3). Likewise, in their Opinion, the OTA also did not address whether this practice is lawful;  
21 the judges overlooked the issue altogether (Exhibit 1).

22  
23 I believe that by failing to address the issue of improperly issued Demand Notices, the OTA  
24 judges neglected to address the heart of our argument: Is it legal for the Franchise Tax Board to  
25 assess penalties that resulted solely from FTB’s own breach of duties?

1           **C. Willful Neglect**

2           In their Respondent's Opening Brief (ROB) (Exhibit 4, page 1), Issue #1 that they set forth  
3 was that we had to prove that our failure to file timely for tax years 2011 through 2014 were due to  
4 reasonable cause and not due to willful neglect. The standard that is used is "such that an ordinarily  
5 intelligent and prudent business person would have acted similarly under the circumstances."

6           The payment chart (Exhibit 2) shows that between tax years 2008 through 2016, we made  
7 19 payments to FTB. Only 3 of these payments were applied timely, and in one of those three  
8 payments, we were overcharged interest. FTB breached its duty in 90% of payments made. Each of  
9 these payments that were not applied timely were difficult and time consuming to resolve. As the  
10 chart shows, a few of the payments only took a few weeks or months to resolve, but several of the  
11 payments took two, three and four years to locate/resolve. The \$3,500 payment took seven years  
12 and personal intervention from State Controller Betty Yee's office for FTB to fully locate.

13           As we detailed on pages 3 – 10 in our OTA Appellants Second Response Brief (ASRB)  
14 (Exhibit 5), FTB aggressively harassed us with threats of wage garnishments and bank levies for  
15 payments of monies that would not have been due once the "lost" funds were located. FTB's  
16 incessant harassment forced us to prioritize locating the "lost" money over filing the returns.

17           On pages 3 – 10 of our ASRB (Exhibit 5) and on pages 9 – 14 of the OTA oral arguments  
18 (Exhibit 3), we documented that over the 4 ½ year ordeal, Christine spent somewhere between 5  
19 and 40 hours on tax issues every month, and we estimate that she spent about 550 hours of effort  
20 into resolving "lost" payment issues created by FTB's multiple breaches of duty. Using FTB's own  
21 internal records, we documented that FTB repeatedly gave us inaccurate information that caused  
22 further delays, including: allowing us to believe that our unlawfully withheld payments were "lost,"  
23 directing us to spend our time re-sending previous tax returns/canceled checks to prove payments  
24 had been made, refusing to timely locate and properly apply misapplied payments, and aggressively  
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28

1 harassing us for monies that they knew – by their own records – was never owed. We documented  
2 that we made at least 38 phone calls and described how time consuming it was contacting FTB via  
3 telephone. We documented that we sent 33 letters via mail and fax, and that FTB disregarded most  
4 of this correspondence.

5 I believe that any prudent businessperson would also prioritize preventing wage  
6 garnishments and bank levies over filing of the returns. FTB argued that we should have prioritized  
7 the returns over correcting their errors, however, as we documented in our ASRB (Exhibit 5, pages  
8 3- 10), it was the FTB's own coercive and threatening tactics which forced us to prioritize clearing  
9 up the mistakes over filing the returns. We spent as much time as we could on the tax issues created  
10 by FTB's multiple breaches of duty, but due to personal hardships, we did not have an unlimited  
11 amount of time to spend on resolving them. Pages 2, 3, 5 and 6 of our Appellant's First Response  
12 Brief (AFRB) (Exhibit 6) and pages 11 – 14 of our ASRB (Exhibit 5) detail these hardships. I  
13 believe that any prudent business person would agree that even if we didn't have any other personal  
14 hardships, 550 hours is a more than reasonable amount of time to spend on resolving issues that  
15 were created by FTB's breach of duties.  
16  
17

18 On page 1 of the OTA's Opinion, the judges omitted "willful neglect" off of the list of  
19 issues to be addressed, as if FTB had never listed it as an issue in the first place. On page 4 of their  
20 Opinion, they quoted 19133, but omitted section (a) altogether, as if the "not due to willful neglect"  
21 portion of the law did not exist. In the quote above from page 7, the judges wrote: "Finally,  
22 appellants make numerous allegations that the reason they filed their tax returns late was 'a direct  
23 result of improprieties committed by the FTB.' For example, they allege the FTB lost or misapplied  
24 their estimated tax payments, FTB did not provide information on tax payments held in suspense  
25 until a return was filed, and FTB 'persistently threaten[ed] to reinstate' wage garnishment collection  
26  
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1 activities. However, appellants' allegations do not explain why they were prevented from filing  
2 returns in response to the demands.”

3 All of these items were detailed in our ASRB and oral arguments to demonstrate the  
4 tremendous effort we put into resolving our tax issues; I believe that we have proven that our late  
5 filings were indeed due to reasonable cause – delays created by FTB's multiple breaches of duty --  
6 and not willful neglect. I find it unconscionable that the judges would omit this critical issue  
7 altogether in their Opinion.  
8

## 9 II. DISPUTED TAX YEARS AND ISSUES

### 10 A. Tax Year 2011

11 *Issue 1 – Were We Willfully Negligent?*

12 *Issue 2 – Were the Penalties Properly Imposed?*

13 *Issue 3 -- Are We Liable for the Cost Recovery Fee?*

14  
15 As we detailed on page 11 in our ASRB (Exhibit 5), we filed our tax year 2010 returns late  
16 due to difficulty acquiring stock documents from Eric's employer (we needed the records of what  
17 we initially paid for the stock). In their Opinion, on pages 6 and 7, the OTA judges wrote  
18 “However, the fact that tax information is unavailable or difficult to obtain is insufficient to  
19 constitute reasonable cause (*Appeal of Malakoff, supra*). Appellants also do not explain why the  
20 2010 tax information was needed to prepare the 2011 tax return...”  
21

22 The judges seemed to misunderstand the arguments that we set forth for tax year 2011. The  
23 delay in filing tax year 2011 was not a result of the missing 2010 paperwork; we were merely  
24 explaining why we had filed tax year 2010 late.

25 The argument that we made was that we filed tax years 2011 and on late because FTB “lost”  
26 five estimated payments designated for tax year 2010 that totaled [REDACTED] Exhibit 7 is the Notice of  
27 Proposed Assessment form (NPA), which shows a tax liability of [REDACTED], that [REDACTED] in  
28

1 payments had been collected from Eric's employer, and \$0 had been received in other payments and  
2 credits. FTB determined that Eric had underpaid his liability by [REDACTED]. Our payment chart  
3 (Exhibit 2) shows that we had made five additional payments for tax year 2010 that were not  
4 reflected in the NPA. Three of the five payments were for more than [REDACTED], so had even one of the  
5 larger payments been timely applied, our account would not have been underfunded and the NPA  
6 would not have been issued.

### 7 1. Unlawful Withholding of Credit Elect Payments

8 One of the "lost" payments was a [REDACTED] credit elect from tax year 2009 to tax year 2010.  
9 That payment was eventually "located" after we filed our 2010 return on 11-8-13, but then the  
10 credit elect payment of \$16,893 from 2010 that was designated as an estimated tax payment for  
11 2011 "disappeared" (Exhibit 8).

12 A wage garnishment for \$6,478 and the \$170 Collection Recovery Fee was imposed on Eric  
13 on 11-26-2013 (Exhibit 9), despite the fact that on 11-8-13, we had made a payment of \$16,893 for  
14 tax year 2011 -- \$10,415 more than FTB claimed was owed -- via this credit elect. Between  
15 November 8 and 26, we had called in three times and sent in four letters/faxes showing that we had  
16 overpaid the 2011 tax liability (Exhibit 5, pages 4 - 5). We also documented that we were  
17 erroneously told by two different FTB reps that the credit elect would be immediately applied upon  
18 processing the return and that our account had been placed on hold to allow time for processing,  
19 thus the wage garnishment would not be imposed (Exhibit 5, pages 4 - 6).

20 In their OTA Opinion (Exhibit 1), on page 7, the judges wrote regarding the collection cost  
21 recovery fee "Here, the record indicates that FTB issued a Final Notice Before Levy on October 8,  
22 2013, which advised appellant-husband that a collection cost recovery fee may be imposed if FTB  
23 did not receive full payment of liabilities stated in the notice. Appellants do not dispute they  
24 received such notice. In addition, the record does not show they timely paid the liabilities (ie tax,  
25  
26  
27  
28

1 penalties, and interest) in response to that notice. Accordingly, FTB properly imposed the fee, and  
2 there is no basis for abating it.”

3 I believe it is unconscionable that the judges stated “the record does not show they timely  
4 paid the liabilities.” We had provided the judges with proof that our credit elect payment had been  
5 made before the imposition of the garnishment and Collection Recovery Fee. FTB did not dispute  
6 this fact. The reason that the record did not show “timely payment” was because FTB breached their  
7 duty to apply that money to our account. It was not us who failed to pay timely, it was FTB who  
8 failed to apply timely.  
9

10 I believe that imposing a Collection Recovery Fee to collect money that would not have  
11 been due had the payment been applied in accordance with the law is unconscionable. This type of  
12 practice is what you would expect from racketeering scheme, not from a government agency.  
13

14 Our credit elect for 2011 was finally “located” on 12-24-13. However, it had been revised  
15 down to only \$4,393 (Exhibit 10; note that FTB did not issue this notice until 12-30-13). The  
16 remaining \$12,500 was still “lost” (these payments are addressed again below). Despite the fact that  
17 the notice indicated the \$4,393 had been immediately credited to our account, and two different  
18 FTB representatives had explicitly told us that it would be immediately applied upon processing the  
19 return (Exhibit 5, pages 4 – 6), this money also “disappeared.”

20 It wasn’t until autumn of 2016 that we found out that the credit elect payments were never  
21 lost; they were deliberately withheld per FTB’s policy. We believe that this withholding practice  
22 violates Revenue & Tax Code 19363, which stated at the time “that credit elects are to be applied  
23 effective April 15, YEAR, regardless of filing date.”  
24

25 Over the last three years, Christine has asked FTB numerous times for a legal code to justify  
26 this withholding practice. At first FTB refused to provide any legal codes. After Christine involved  
27  
28

1 legislators, FTB cited some invalid tax codes and case law. They have yet to offer any legitimate  
2 codes/case law to justify this practice (Exhibit 11, pages 1- 2 and Exhibit 12, pages 1 – 2)

3 I believe that by withholding credit elect payments in violation of California tax law, FTB  
4 breached their duties to apply payments timely. Note that in the FTB’s briefs (Exhibits 4 and 13),  
5 they redacted/omitted most of the information about the withheld credit elect payments. The little  
6 they did mention was in the footnotes, not in the body of the brief.

7  
8 In FTB’s briefs (Exhibits 4 and 13) and oral arguments (Exhibit 3), FTB never denied that  
9 the practice of withholding payments made via credit elects is unlawful. They simply ignored the  
10 issue. In the OTA oral arguments, Christine argued that the Demand Penalties and Collection Cost  
11 Recovery Fee would not have been imposed had the credit elect payments not been withheld. FTB  
12 did not deny this to be true (Exhibit 3). Likewise, in their Opinion, the OTA judges also did not  
13 address whether this practice is lawful or not; they overlooked the issue altogether (Exhibit 1).

## 14 2. Unlawful Misapplication of Payments Made Via Check

15  
16 Two of the tax year 2010 estimated tax payments made via check were “misapplied”  
17 (Exhibit 14). I put “misapplied” in quotes because there appears to be a pattern to these  
18 “misapplied” payments. The accounting ledgers accompanying these “mistakes” are irregular and  
19 inaccurate, including incorrect dollar amounts, missing line items, and incorrect dates (Exhibit 15,  
20 pages 1, 2, 4, 7, 8, 11, 12, 15, 16). FTB also overcharged interest (Exhibit 16). As such, we believe  
21 these “misapplications” are due to a systemic flaw in FTB’s internal operating system and are not  
22 merely “mistakes.”

23  
24 The \$3,500 payment was broken up in a strange manner and applied to three different  
25 previous tax years, with none of the funds applied to 2010 (Exhibit 17, pages 1 - 2).

26 The \$9,000 payment was applied to Eric’s tax year 2002 (we married in 2003) (Exhibit 12,  
27 pages 7, 8, 11, 12). Eric had filed his tax year 2002 return on April 15, 2003 and had paid the  
28

1 balance in full on that date, so the tax year was zeroed out and closed effective April 15, 2003  
2 (Exhibit 15, page 1). Please note that FTB had also previously “misapplied” an estimated tax  
3 payment for \$ [REDACTED] made in May 2008 and designated for tax year 2008 to tax year 2002 (Exhibit  
4 15, pages 7, 11).

5 On 3-1-19, Christine asked FTB council, Eric Yadao, why the 2008 and 2010 estimated tax  
6 payments were applied to a year in which Eric filed single and was closed with a zero balance,  
7 when the checks were both designated as joint payments for the respective current years (Exhibit  
8 15, pages 6 -7). Mr. Yadao did not to not offer a response regarding the 2008 payment, however, he  
9 stated that the 2010 payment was accidentally applied to a miscellaneous bill (Exhibit 15, pages 11 -  
10 12). FTB’s records indicate that no such miscellaneous bill ever existed – on both line items, the  
11 2002 ledgers say “estimated tax payment” (Exhibit 15, page 1).

12 On 5-24-19, Christine requested clarification on the accounting irregularities in the ledgers  
13 for 2002, 2008, 2010 and 2014 (Exhibit 15, pages 1, 2, 6, 16 – 19). No response was provided.

14 All three of these “misapplied” payments were difficult to locate and resolve. As we detailed  
15 in our ASRB, it took FTB seven years to fully locate the \$3,500 payment. It took them four years to  
16 locate the \$9,000 payment. Once the \$9,000 payment was located, it took FTB another six months  
17 to apply the money to our account (Exhibit 5, pages 4 - 9, Exhibit 15, page 9 and Exhibit 18, page  
18 2). FTB has offered no explanation for why it took them so long to locate and apply the  
19 “misapplied” funds, where the funds had been placed in the interim, nor why the accounting ledgers  
20 are inaccurate. FTB also redacted/omitted most of information about these three misapplied  
21 payments from the records that they submitted to OTA.  
22  
23  
24

25 Even though the \$3,500 and \$9,000 payments were intended for 2010, the fact that they took  
26 so many years to rectify had an adverse impact on our ability to file returns for the successive years.  
27 Instead of working with us to locate and rectify the misapplied monies, FTB aggressively harassed  
28

1 us to send them additional monies that would not be due once the "lost" money was located. This  
2 forced us to prioritize locating the "lost" money over filing the returns.

### 3 3. Unlawful Withholding of Payments Made Via Check By Married Couples

4 The final two payments for tax year 2010 of [REDACTED] and [REDACTED] were withheld as per  
5 FTB's policy of withholding all estimated tax payments made by married couples. FTB justifies this  
6 policy by claiming that it is possible for spouses to file separate returns, and as such, the payment  
7 must be withheld until a return is filed for that year. FTB cites Treas. Reg. § 1.6654-2(e)(5)(ii)(A)  
8 and (B) to justify this practice. However, the law says the opposite of what FTB claims:  
9

10 Treas. Reg. § 1.6654-2- Exceptions to imposition of the addition to the tax in the case of  
11 individuals.

12  
13 (e)Special rule in case of change from joint return or separate return for the preceding taxable  
14 year -

15  
16 (5)Joint payments of estimated tax -

17 (i)In general. A husband and wife may make a joint payment of estimated tax even though  
18 they are not living together. However, a joint payment of estimated tax may not be made if  
19 the husband and wife are separated under a decree of divorce or of separate maintenance. A  
20 joint payment of estimated tax may not be made if the taxpayer's spouse is a nonresident  
21 alien (including a nonresident alien who is a bona fide resident of Puerto Rico or a possession  
22 to which section 931 applies during the entire taxable year), unless an election is in effect for  
23 the taxable year under section 6013(g) or (h) and the regulations. In addition, a  
24 joint payment of estimated tax may not be made if the taxpayer's spouse has a taxable  
25 year different from that of the taxpayer. If a joint payment of estimated tax is made,  
26 the amount estimated as the income tax imposed by chapter 1 of the Internal Revenue Code  
27  
28

1 must be computed on the aggregate estimated taxable income of the spouses (see section  
2 6013(d)(3) and § 1.2-1), whereas, if applicable, the amount estimated as the self-employment  
3 tax imposed by chapter 2 of the Internal Revenue Code must be computed on the separate  
4 estimated self-employment income of each spouse. See sections 1401 and 1402 and §  
5 1.6017-1(b)(1). The liability with respect to the estimated tax, in the case of a joint payment,  
6 shall be joint and several.  
7

8 (ii) Application to separate returns.

9 (A) Although a husband and wife may make a joint payment of estimated tax, they,  
10 nevertheless, can file separate returns. If they make a joint payment of estimated tax and  
11 file separate returns for the same taxable year with respect to which the joint payment was  
12 made, the payment made on account of the estimated tax for that taxable year may be  
13 treated as a payment on account of the tax liability of either the husband or wife for  
14 the taxable year, or may be divided between them in such manner as they may agree.  
15

16 (B) In the event the husband and wife fail to agree to a division of the estimated  
17 tax payment, such payment shall be allocated between them in accordance with the  
18 following rule. The portion of such payment to be allocated to a taxpayer shall be that  
19 portion of the aggregate of all such payments as the amount of tax imposed by chapter 1 of  
20 the Internal Revenue Code shown on the separate return of the taxpayer (plus, if applicable,  
21 the amount of tax imposed by chapter 2 of the Internal Revenue Code shown on the return  
22 of the taxpayer) bears to the sum of the taxes imposed by chapter 1 of the Internal Revenue  
23 Code shown on the separate returns of the taxpayer and the spouse (plus, if applicable, the  
24 sum of the taxes imposed by chapter 2 of the Internal Revenue Code shown on the  
25 separate returns of the taxpayer and the spouse).  
26  
27  
28

1 The tax code clearly says that joint estimated tax payments can be apportioned in any  
2 manner that the spouses agree upon, and provides rules for applying payments in the case of  
3 disagreement. Nowhere does the law indicate that a return must be filed in order to apply monies.  
4 Even in a dispute situation, only a computation is required, and FTB already does its own  
5 computations without taxpayer input (an example of these computations can be seen in the NPAs).  
6 As such, I believe that by not giving the spouses the opportunity to designate how much of the  
7 money is to be applied to each spouse, and instead withholding the payment altogether, FTB is  
8 violating federal law (Exhibit 11, pages 3 - 8).  
9

10 When we complained that FTB "lost" 12 of the 17 payments we made, we did not count  
11 these two payments because each time we called in, FTB told us that they could see the payments  
12 had been made (Exhibit 14, page 1). However, every time a written notice came, it listed no  
13 estimated tax payments as received (Exhibit 7, page 1). This conflicting information confused us,  
14 but since we had verbal confirmation that these two payments had been received, we focused on the  
15 three payments detailed above that appeared to be missing altogether.  
16

17  
18 However, had those two payments – each for more than the [REDACTED] FTB claimed we were  
19 short -- not been unlawfully withheld, our tax year 2010 liability would have appeared to be fully  
20 funded.

#### 21 4. 2010 "Lost" Payments Caused Penalty for 2011 To Be Falsely Imposed

22 As mentioned above, on page 7 of the OTA Opinion, the judges wrote: "Finally, appellants  
23 make numerous allegations that the reason they filed their tax returns late was 'a direct result of  
24 improprieties committed by the FTB.' For example, they allege the FTB lost or misapplied their  
25 estimated tax payments...However, appellants' allegations do not explain why they were prevented  
26 from filing returns in response to the demands." (Exhibit 1)  
27  
28



1 However, had those five payments not been unlawfully withheld and/or misapplied, our tax  
2 year 2010 liability would have accurately reflected that it was paid in full. The NPA would not have  
3 been issued, as it is only issued on *delinquent* accounts. Per R&TC 19133, FTB only imposes a  
4 Demand Fee if someone has already had a NPA issued within the last four tax years. We had not  
5 had a NPA issued for tax years 2006 – 2009. Therefore, had the NPA not been falsely issued for  
6 2010, a Demand Penalty would not have been imposed for 2011. Therefore, the tax year 2011  
7 Demand Penalty was improperly imposed because the tax year 2010 NPA was improperly issued.  
8

9 5. Reasonable Cause For Abatement of Penalties: Personal Hardships

10 As we detail in our AFRB (Exhibit 6) and ASRB (Exhibit 5) the 2010 tax year issues came  
11 to a head in May 2012, less than two months after Christine gave birth to a new baby via C-Section.  
12 Our baby was born with a serious health issue that required him to be transported via ambulance to  
13 Children’s Hospital shortly after delivery. The issue was surgically corrected when he was three  
14 weeks old. Over the course of the 2010/2011 tax ordeal, he grew from a colicky infant that cried all  
15 the time into a healthy and active toddler, despite the fact that he was a terrible sleeper.  
16

17 In addition to our child, we were the primary caregivers for our remaining three sick, elderly  
18 parents, one of whom was on hospice and died in April 2014. FTB gave us no bereavement time. In  
19 fact, this was when the harassment was the most aggressive with the wage garnishment that was  
20 reinstated multiple times due to FTB unlawfully not applying the \$9,000 payment.  
21

22 Eric traveled extensively for work and was rarely home, rendering him unable to help  
23 Christine with caring for our parents and child, and preventing him from working on tax issues  
24 himself. FTB argued that Eric should have quit his job in order to have more time to work on tax  
25 issues. Eric was the sole provider for our family; we believe that any prudent businessperson would  
26 also prioritize continuity of income and health insurance coverage for our family over the filing of  
27 tax returns.  
28

1 In April 2014, Christine was diagnosed with a rare kidney disease called Membranous  
2 Nephropathy. By the time Christine was diagnosed, she was on the verge of kidney failure, with a  
3 93% chance of losing her kidneys within the next few months. The first symptoms of this disease  
4 began in late summer of 2012, shortly after the birth of our son. In retrospect, it appears that  
5 pregnancy/breastfeeding were too much for her body. Symptoms at the time included foamy urine,  
6 fatigue and diminished cognitive function. She was sleeping twelve hours a day and having  
7 difficulty focusing, making it all the harder to find the time and energy to try to correct FTB's  
8 breaches of duty.  
9

10 Unfortunately, our doctor dismissed her complaints for almost two years, telling her it was  
11 normal to not feel good after the birth of a baby. He didn't take her complaints seriously until her  
12 symptoms were so severe that illness was undeniable.

13 Our personal hardships do qualify as reasonable cause for the delays in the filing of our tax  
14 years 2010 and 2011 returns. However, for tax year 2011 penalties and fees, personal hardship is a  
15 superfluous argument. Point II.A.4 makes it clear that the 2011 penalties were improperly imposed  
16 via the false NPA that was issued for 2010. Likewise, Point II.A.4 also make it clear that the  
17 improper withholding of the credit elect payment in violation of R&TC 19363 means the \$170 Cost  
18 Recovery Fee was also improperly imposed. These arguments are strong enough in and of  
19 themselves. As such, I have not included supporting evidence of our personal hardships. However, I  
20 addressed them here to provide background for tax year 2014. I will provide all documentation of  
21 personal hardships for tax years 2010 and 2011 at the judge's request.  
22  
23

#### 24 **B. Tax Year 2013**

25 *Issue 1 – Were We Willfully Negligent?*

26 *Issue 2 -- Were Demand Notices (and thus Accompanying Demand Penalty) Properly Issued?*  
27  
28

1 1. Unlawful Withholding of Credit Elect Payments

2 Our tax year 2012 returns were filed on 6-16-14 with an overpayment of \$ [REDACTED] to be  
3 applied as a credit elect to tax year 2013 (Exhibit 5, page 9, Exhibit 19).

4 FTB's ROB (Exhibit 4), page 6, states that a Demand Notice for tax year 2013 was issued to  
5 Eric on 1-27-15, with a response due date of 3-4-15. On 3-24-15, Christine contacted FTB,  
6 requesting a 120-day deferral. Per footnote 15, Eric's account was deferred until 7-30-15, though  
7 nothing was issued in writing. A Demand Notice was issued for Christine on 4-22-15, with a  
8 response due date of 5-27-15. Christine contacted FTB on 5-11-15, requesting an extension. At this  
9 point, FTB issued a deferral letter giving us both until 7-30-15 to file the 2013 return.  
10

11 We now know that the \$ [REDACTED] was withheld per FTB policy of withholding payments made  
12 via credit elect. We believe that this withholding practice violates Revenue & Tax Code 19363,  
13 which stated at the time "that credit elects are to be applied effective April 15, YEAR, regardless of  
14 filing date."  
15

16 The unlawful withholding of the [REDACTED] made it falsely appear that our account was  
17 underfunded, and thus a Demand Notice was issued. Per R&TC 19087, Demand Notices are only  
18 sent on accounts that appear to be underfunded. Had the payment been applied in accordance with  
19 the law, a Request for Tax Return would have been issued, which does not have a penalty attached.  
20

21 Likewise, NPA's were also falsely issued. Exhibit 20 shows NPAs for tax year 2013 were  
22 sent out to both of us on 8-10-15. It showed that Eric was assessed a \$ [REDACTED] tax liability, with  
23 \$ [REDACTED] collected by his employer and \$0 collected in other payments, leaving a liability of  
24 \$ [REDACTED]. They assessed Christine's liability at \$ [REDACTED], with \$0 collected in payments (she was  
25 not employed, so there were no employer withholdings).

26 At that point in time, we were unaware of the unlawful withholding practices; we thought  
27 that the \$ [REDACTED] was lost. And \$1,000 of the \$3,500 tax year 2010 payment was still unaccounted  
28

1 for (Exhibit 17, page 2). FTB was claiming we had underpaid by \$ [redacted] combined. We believed  
2 that once the "lost" \$ [redacted] was located, we would not have to send them any more payments for  
3 2013. In our ASRB, we detailed the efforts that Christine exerted in trying to locate these "lost"  
4 monies. Instead of working with us, FTB aggressively harassed us to send them additional monies  
5 (Exhibit 5, pages 8 – 10).

6 This time, we succumbed and sent in two additional payments of monies that would not  
7 have been due had the \$ [redacted] been "located." FTB again breached their duty of accurately  
8 applying payments; both of these subsequent payments were also "lost" (Exhibit 21). Yet again,  
9 FTB's aggressive collections actions required us to prioritize locating the "lost" money over filing  
10 the returns (Exhibit 5, pages 9 - 10).

11 I believe that by withholding credit elect payments in violation of California tax law, FTB  
12 breached their duties to apply payments timely. Note that the in FTB's briefs (Exhibits 4 and 13)  
13 and OTA oral arguments (Exhibit 3), FTB never denied that the practice of withholding payments  
14 made via credit elects is unlawful. They simply ignored the issue. In the OTA oral arguments,  
15 Christine argued that the Demand Penalties would not have been imposed had the credit elect  
16 payments not been withheld. FTB did not deny this to be true (Exhibit 3). Likewise, in their ruling,  
17 the OTA judges also did not address whether this practice is lawful or not (Exhibit 1).

## 20 2. Reasonable Cause for Abatement of Penalties: Personal Hardships

21 As we have already documented in Section I.A above, FTB aggressively harassed us for  
22 monies that were never owed for tax year 2011 until July 23, 2014. We have also already stated that  
23 in April 2014, Christine was told she had a 93% chance of losing her kidneys and must immediately  
24 get her disease under control to prevent losing her kidneys and living the rest of her life on dialysis.  
25 There is no effective medical treatment available in western medicine for this disease, so she was on  
26 her own to heal herself. Her health had been rapidly declining ever since December 2013, when she  
27  
28

1 first found out about the wage garnishment, and by July 2014, Christine was so sick that she could  
2 barely function. Every cell in the body utilizes protein, and her protein levels were so low that  
3 nothing in her body was functioning properly. Her nephrologist was amazed that she could get even  
4 out of bed. She also had cholesterol levels that were so high (630 at its peak), that she was at risk of  
5 dropping dead at any moment from a stroke or heart attack.

6           Meanwhile, Eric was still traveling extensively for work and was not home much, we had an  
7 active toddler who was a terrible sleeper, and we were still the primary caregivers for our two  
8 remaining elderly, sick parents. Between Christine, our parents and our son, Christine went to the  
9 doctor at least twice a week.

11           Our personal hardships do qualify as reasonable cause for the delays in the filing of our tax  
12 year 2013 returns. However, for tax year 2013 penalties, personal hardship is a superfluous  
13 argument. Point II.B.1 makes it clear that the 2013 Demand Notices were improperly issued as a  
14 result of the unlawful withholding of our credit elect payment, and as such, the accompanying  
15 Demand Penalty was improperly imposed. This is a strong enough argument in and of itself. As  
16 such, I have not included supporting evidence of our personal hardships. However, I addressed them  
17 here to provide background for tax year 2014. I will provide all documentation of personal  
18 hardships for tax year 2013 at the judge's request.

### 20           **C. Tax Year 2014**

#### 21           *Issue 1 – Were We Willfully Negligent?*

##### 22           1. Extensive Delays Caused by FTB Breaches of Duty

23           As we documented in our ASRB (Exhibit 5, pages 3 – 10), we were aggressively harassed  
24 by FTB for monies that were never due from February 2011 through December 2016. Had FTB  
25 simply disclosed that the majority of payments were deliberately withheld as per FTB policy, and  
26 worked with us to timely locate and reapply the payments that were misapplied, we would have  
27  
28

1 spent our limited amount of time on filing our tax returns. We believe that had the five estimated tax  
2 payments earmarked for 2010 not “disappeared,” we would have filed our 2011 return by the 10-15-  
3 12 extension deadline and would have remained caught up from there on out.

4 Instead, as we also document in our ASRB (Exhibit 5, pages 3 – 10), FTB consistently gave  
5 us erroneous information, leading us to believe that the unlawfully withheld payments were “lost.”  
6 FTB used threats of wage garnishments and bank levies to coerce us into wasting an inordinate  
7 amount of time in trying to locate these “lost” monies rather than work on our tax returns.  
8

9 Our tax year 2014 returns were due by the automatic extension deadline of 10-15-15.  
10 However, at that point in time, we were still trying to square away the “lost” money issues for tax  
11 year 2013. As was already detailed above in section II.B.1, on 8-10-15, NPAs were issued for tax  
12 year 2013 indicating that our credit elect payment of \$ [REDACTED] was “lost.” And the \$1,000 from 2010  
13 was still “lost” as well.

14 We believe that any reasonable business person would prioritize trying to prevent an  
15 erroneous wage garnishment and/or bank levy over filing the tax year 2014 returns.  
16

17 In our ASRB (Exhibit 5, page 9), we listed five attempts made to rectify this lost money  
18 between August and December 2015. One of the comments that FTB redacted from the documents  
19 that they submitted to the OTA court was that on 11-3-15, we were told that our account was put on  
20 hold (Exhibit 22, page 3 and Exhibit 23, page 3). Another comment that was redacted was that  
21 Christine had called in complaining that she was unable to get through to the Collections  
22 Department and asking if another department could help her. She was told only Collections could  
23 help her (Exhibit 22, pages 2 – 4, Exhibit 23, pages 8 – 10 and Exhibit 24, page 11).  
24

25 Instead of working with us to locate the “lost” money, FTB continued to threaten a bank  
26 levy if we did not send them cash immediately. We succumbed to the coercion and sent in a  
27 payment of \$ [REDACTED] (which we thought was payment in full) on 1-19-16. We sent a second  
28

1 payment on 2-24-16 for \$28.20 in additional interest that the FTB claimed had accrued (Exhibit 21).  
2 FTB "lost" both of these payments.

3 A Demand Notice for tax years 2014 was issued to Eric on 3-9-16, requiring that the return  
4 be filed no later than 4-13-16 to prevent a penalty. A Demand Notice was issued to Christine on 4-  
5 26-16, requiring filing the tax year 2014 return no later than 6-1-16 (Exhibit 25).

6 Christine was coerced into prioritizing "locating" the now four lost payments totaling  
7 \$ [REDACTED] over filing the tax return via threats of bank levy. This left her unable to work on the  
8 2013/2014 tax returns. The two "lost" 2013 payments were not fully located and reapplied until  
9 May 2016, after the deadline for Eric's return had already passed (Exhibit 21 and Exhibit 24, pages  
10 9 - 10). The \$ [REDACTED] was still "missing."

12 Once those two payments were finally rectified, we got a temporary reprieve from  
13 harassment from FTB's Collection Department. We filed our tax year 2013 returns on 8-3-16, only  
14 two months after the harassment ended. We had an overpayment in the amount of [REDACTED] that was  
15 designated as a credit elect for 2014 (Exhibit 4, page 7).

17 A NPA for tax year 2014 had been issued to Eric on 5-9-16, indicating that they believe he  
18 had underpaid by [REDACTED]. A NPA had been issued to Christine on July 6, 2016 indicating that they  
19 believed she had underpaid by [REDACTED] (Exhibit 26). We believed that since our estimated tax  
20 payment made via the credit elect was \$ [REDACTED] more than FTB claimed was owed, we had no  
21 further liabilities for tax year 2014.

22 However, on 8-29-16, a Notice of State Income Tax Due was issued to Eric for \$ [REDACTED]  
23 It showed no additional payments had been made since the NPA was issued. On 10-03-16, a Notice  
24 of State Income Tax Due was issued to Christine for [REDACTED] (Exhibit 27). It also showed no  
25 additional payments had been made since the NPA was issued. FTB told us that the \$ [REDACTED] credit  
26  
27  
28

1 elect could not be located. FTB resumed aggressive harassment, demanding that we immediately  
2 send in the full payment of [REDACTED] or else they would file a wage garnishment and/or bank levy.

3 In late September or early October 2016, FTB finally disclosed to us their policy of  
4 withholding estimated tax payments made via credit elects. Christine asked our State Legislators to  
5 intervene on our behalf. As a result of intervention from both Assemblyman Brian Maienschein and  
6 Governor Brown's office, FTB finally took our unlawfully withheld estimated tax payment out of  
7 suspense and applied it to our account (Exhibit 24, pages 7 – 8). Our account was removed from  
8 Collections and the harassment immediately ceased. Once we were no longer wasting an inordinate  
9 amount of time trying to locate "lost" money to end the harassment, we were able to get tax year  
10 2014 filed in only seven weeks.

11  
12 I believe that withholding the \$ [REDACTED] credit elect payment violated R&TC 19363. FTB has  
13 not denied that this withholding practice is unlawful. In their Opinion, the OTA judges also did not  
14 address whether this practice is lawful or not.

15  
16 Had FTB applied all of the payments that we made for tax years 2010 through 2014 in  
17 accordance with the law, we would not have encountered so many delays in our ability to file tax  
18 years 2011 through 2014 timely. As time went on, and FTB made more and more "mistakes," we  
19 got farther behind in our filings. We demonstrated that we quickly filed the 2013 tax year return  
20 after the harassment was paused. We demonstrated that we quickly filed the tax year 2014 return  
21 after the harassment ended.

22  
23 We believe that we would have been able to respond to the 2014 Demand Notices before the  
24 deadlines had we not been harassed for money that was never owed during that window of time.  
25 FTB coerced us into prioritizing preventing a wage garnishment/bank levy over filing the return.  
26 Any reasonable businessperson would choose preventing a garnishment/levy.



1 As such, we believe that we are due a full refund of all penalties and fees for tax year 2014  
2 since it was FTB's breach of duty in losing so many of our payments which created delays in our  
3 ability to file our returns before the Demand Notice deadline.

#### 4 2. Reasonable Cause For Abatement of Penalties: Personal Hardships

5 I believe that we have already proven that we had reasonable cause for filing tax year 2014  
6 late, which was a direct result of FTB's multiple breaches of duty. We have proven that we devoted  
7 what any prudent business person would consider a reasonable amount of time on tax issues, as  
8 documented above, and thus were not willfully negligent.

9  
10 However, we feel that at this point, our personal hardships are also relevant in explaining  
11 why we did not have an unlimited amount of time to work on our 2014 tax returns. Our tax year  
12 2014 returns were due by the automatic extension deadline of 10-15-15. The Demand Notice for tax  
13 years 2014 was issued to Eric on 3-9-16, requiring that the return be filed no later than 4-13-16.  
14 While the deadline for Christine was later, that is irrelevant; the penalties for a married couple are  
15 imposed based on the first deadline issued.

16  
17 Exhibit 28 is Christine's lab work from 9-24-15 and Exhibit 29 is her lab work from 2-29-  
18 16. Page 2 of both show that the amount of proteins in her blood (albumin and total proteins) was  
19 low, and page 3 of both show that the protein was running out in her urine. This proves that  
20 Christine was still ill during this window of time. Exhibit 30 is a printout from Medical News  
21 Today explaining that when albumin (a type of protein) levels are low, the blood may not be able to  
22 transport essential materials effectively. Symptoms are wide-ranging and include: confusion,  
23 dizziness, swelling, fatigue, weakness, and rapid heartbeat. As was mentioned above, there is no  
24 medical treatment for her disease; she was on my own to heal herself. She undertook a strict  
25 protocol of diet and rest, which – as can be seen by the labs provided – did slowly but steadily heal  
26 her. Today, she is still sick, but it is now a mild chronic illness that must be carefully managed.  
27  
28

1 Exhibit 31 is a letter from Christine's nephrologist confirming that he began treating her in  
2 May 2014, and that her illness was severe. It also mentions her restricted diet. Christine has an  
3 allergy to peppercorn. Even before Christine became ill, she had to cook most of her food from  
4 scratch since most packaged foods contain "spices" and most restaurants season everything with  
5 pepper. When she became ill, she went on an extremely restricted diet, so she had to cut out the few  
6 ready-made foods she used to eat. The new diet consisted of mostly vegetables, which are time  
7 consuming to peel and cut prior to cooking. She could not function unless she slept at least twelve  
8 hours a day (ten-hours at night plus a two-hour nap), and she spent a lot of time cooking and  
9 washing dishes. The two most basic functions in life, sleeping and eating, consumed most of her  
10 time. The extra sleep and strict diet were the two most critical factors in her health improving again.

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

23 Exhibit 32 is the travel chart that we submitted with our ASRB showing that Eric traveled  
24 extensively for work and was rarely home. Most of these trips were multi-day. Exhibit 33 is the  
25 accompanying proof for the window of time relevant for tax year 2014. We will provide all proof of  
26 travel on the judge's request. Because he was gone so much, he was unable to help Christine with  
27 caring for our parents and child, and it prevented him from working on tax issues himself. FTB  
28

1 argued that Eric should have quit his job in order to have more time to work on tax issues. Eric was  
2 the sole provider for our family. We believe that any prudent businessperson would prioritize  
3 continuity of income and health insurance coverage for our family over the filing of tax returns –  
4 especially now that Christine was going to the doctor at least twice a month and we were paying  
5 large amounts of money in medical co-pays. If Eric didn't maintain his job and insurance coverage,  
6 which ensured continuity of medical care, Christine likely would have lost her kidneys and been on  
7 dialysis for the rest of her life.

8  
9 Exhibit 34 is a Kaiser After Visit Summary for Sonia Grab, Eric's mother, from an  
10 appointment on 4-28-16. Sonia is legally blind, so Christine drove her to all her doctor  
11 appointments. Page one shows she was 85 at the time, and the purpose of her visit was for her [REDACTED]  
12 [REDACTED] Page 2 lists the other twelve illnesses that she  
13 suffers from, most of them serious. It shows her next Kaiser appointment to be 5-24-16 with her  
14 [REDACTED]

15  
16 Exhibit 35 is an office visit report for Christine's father from his urologist dated 12-6-16. It  
17 states that at the time he was 83 years old, [REDACTED]

18 [REDACTED]  
19 Exhibits 34 and 35 helps support our claims that our parents were in poor health and  
20 physically needed a lot of help from us, including frequent trips to the doctor.

21 Between herself, our son and our two remaining parents, Christine went to doctor  
22 appointments at least twice a week. And she had to physically care for our child and elderly parents.  
23

24 Any one of these personal hardships alone would qualify as a legitimate reasonable cause  
25 for filing the returns late. Given the extent of our personal hardships, combined with the FTB's  
26 multiple breaches of duty, I believe it is commendable that I devoted as much time as I did on  
27  
28

1 resolving the tax issues. As such, we believe we have proven that we were not willfully negligent in  
2 filing the tax year 2014 returns late.

### 3 **III. POSSIBLE COERCION OF JUDGES**

4  
5 In addition to Eric Yadao, the legal council representing FTB at the OTA hearing, at least  
6 four more Franchise Tax Board employees flew down from Sacramento to personally attend our  
7 OTA hearing. Notably, one of the attendees was Jozel Brunett, Chief, Legal Council of FTB  
8 (Exhibit 36).

9 Before the hearing began, the lead judge announced that there was a meeting scheduled  
10 immediately following the hearing. He asked that everyone not attending the meeting to please  
11 leave the room immediately upon completion of our hearing. The judge did not specify what the  
12 meeting was for or who was attending. Please note that the video of the hearing starts with the judge  
13 speaking in mid-sentence; the instructions to leave were edited out of the video:  
14

15 <https://www.youtube.com/watch?v=MjAaHxFPchI&feature=youtu.be>

16 Upon completion of the hearing, Christine left the room as she had been instructed.  
17 Christine did not see Ms. Brunett leave.

18 Christine called OTA on August 22, 2019 to ask why there was a meeting with Ms. Brunett.  
19 OTA claimed that Ms. Brunett did not attend the meeting. However, when Christine made a  
20 California Public Records Request for a list of attendees of the meeting and the minutes, the OTA  
21 declined to provide them (Exhibit 36).

22  
23 Even if Ms. Brunett did not attend the meeting, she certainly had a window of time to speak  
24 with the judges privately after Christine was ordered to leave.

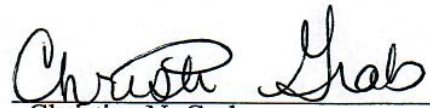
25 Christine also asked OTA how many cases OTA has completed since its inception in  
26 January 2018, and how many of those FTB won. Their response was “The Office of Tax Appeals  
27 (OTA) does not keep statistics regarding the outcome of our cases” (Exhibit 37).  
28

1 **IV. CLOSING**

2 I believe we are entitled to have all of our penalties, fees and interest refunded for the  
3 following reasons:

- 4 • We have proven that our late filing was due to reasonable cause and not willful neglect,  
5 which fulfills the requirements for 19133 (a) to not have a penalty assessed.
- 6 • The FTB repeatedly breached its duty to accurately and timely apply estimated tax  
7 payments.
- 8 • Demand Notices for tax years 2010, 2013 and 2014 were improperly issued as a direct  
9 result of these breaches of duty.
- 10 • Thus, the accompanying Demand Fees for 2011, 2013 and 2014 were improperly  
11 imposed.
- 12 • The cost collection recovery fee was imposed despite the FTB receiving more than  
13 payment in full prior to the imposition of the fee.
- 14 • It is unlawful for the Franchise Tax Board to impose penalties and fees that directly  
15 resulted from the FTB's own breach of duties.
- 16
- 17

18  
19 DATED: January 28, 2020

20   
21 Christine N. Grab  
22 In Pro Per  
23  
24  
25  
26  
27  
28

## Exhibit List

#	Description	Pages
1	Office of Tax Appeal Opinion on case #18011443	10
2	Chart of Payments made from 2010 – 2016	1
3	Oral Arguments for OTA case #18011443	27
4	Respondent's Opening Brief for OTA case #18011443	15
5	Appellant's Second Response Brief for OTA case #18011443	15
6	Appellant's First Response Brief for OTA case #18011443	7
7	Notice of Proposed Assessment Tax Year 2010	1
8.	2010 tax return showing credit elect payment to 2011	1
9	Earnings Withholding Order for Eric for 2011	1
10	Return Information Notice for 2010	1
11	Letter to FTB Board of Directors Dated 4-11-2018	9
12	2019 Annual Taxpayer Bill of Rights Request	12
13	Respondent's Reply Brief OTA case #18011443	7
14	Proof 2 estimated tax payments lost for 2010	3
15	Accounting ledgers/proof ledgers are inaccurate	19
16	Proof FTB overcharged interest	3
17	Letter to State Controller Betty Yee Dated 1-26-2018	3
18	FTB Internal Notes on Eric W. Grab	11
19	2012 tax return showing credit elect payment to 2013	1
20	Notice of Proposed Assessments for 2015	2
21	Proof of two more "lost" payments	4
22	ROB Exhibits RR; FTB Internal Notes	4
23	Un-redacted versions of ROB RR	3
24	FTB Internal Notes of Christine N. Grab	23
25	Demand for Tax Returns for 2014	2

26	Notice of Proposed Assessments for 2016	2
27	Notices of State Income Tax Due	2
28	Lab work for Christine dated 9-25-15	3
29	Lab work for Christine dated 2-29-16	3
30	Print Out from Medical News Today about effects of low protein	5
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32	Chart Showing Eric's work travels	1
33	Proof of travel for Eric	8
34	After Visit Summary for Eric's mother	2
35	Office Visit Report for Christine's father	3
36	OTA's Response to CA Public Records Request dated 11-18-2019	6
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38	Original Request for an Appeal of Abatement Turndown	10