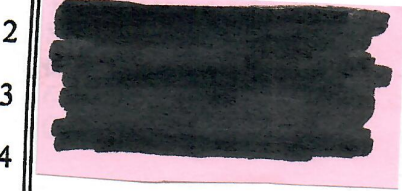


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1 Christine N. Grab



SUPREME COURT  
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Jorge Navarrete Clerk

5 Christine N. Grab, IN PRO PER

Deputy

8 SUPREME COURT OF THE STATE OF CALIFORNIA

10

11

Christine N. Grab

) Case No.:

) ACCUSATION

12

Plaintiff(s),

) DATE:

) TIME:

) DEPT:

13

vs.

14

15

Eric Allen Yadao, License #272776

) Judge:

) Dept:

) Action Filed:

) Trial Date:

16

State Bar Case #19-O-17816

17

Defendant(s).

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1 **General Opening**

2  
3 On May 19, 2019, I filed a complaint with the California State Bar Association against Eric Allen  
4 Yadao, license #272776. It is State Bar Case #19-O-17816.

5 I had filed an appeal against the California Franchise Tax Board (FTB) in the Office of Tax  
6 Appeals (OTA), and Mr. Yadao (who is a FTB employee) was the opposing counsel representing  
7 FTB. In my Bar Complaint, I alleged that Mr. Yadao had (exhibit 1):

- 8
- 9 • Improperly redacted documents submitted to OTA to hide pertinent information from the  
10 judges about FTB's multiple breaches of duty and our efforts to resolve these breaches.
  - 11 • Omitted pertinent information about our efforts to resolve said breaches that was critical in  
12 determining whether we had reasonable cause or were willfully negligent in not filing our  
13 returns timely.
  - 14 • Used deceptive wording and a few "straight up lies" in his briefs to paint a picture for the  
15 judges that did not accurately portray the situation. His argument looked legitimate only  
16 because of the above mentioned redactions/omissions.
- 17

18 Mr. Yadao argued in his two OTA briefs and in the Oral Arguments that we filed our tax returns  
19 late due to willful neglect. When we filed our Bar Complaint in May 2019, my husband and I  
20 believed that Mr. Yadao was trying to make this false argument appear to be true by hiding most of  
21 the proof that we were not willfully negligent. We suspected the credit elect withholding practice  
22 was an unlawful scheme to bring in extra revenue, but hadn't yet pinpointed exactly how it worked.  
23 We also were aware that we had once been overcharged interest.

24  
25 In the fifteen-months that have passed, new evidence has come to light. Thanks to this new  
26 evidence, we now know that FTB's "policies" and "mistakes" that led to them to improperly  
27 imposing penalties, late fees, and interest on me and my husband were neither "policies" nor  
28 "mistakes" at all, but bona fide embezzlement and racketeering schemes.

1 Given this new information, it is my belief that Mr. Yadao's intent was more nefarious than  
2 simply hiding evidence to make a false argument. I believe he improperly redacted evidence,  
3 omitted evidence and made numerous false statements in an effort to hide FTB's unlawful activities.  
4

5 *Revenue and Tax Codes 19133 and 19087*

6  
7 Revenue and Taxation Code 19133 says:

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

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

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

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

26 CA Rev & Tax Code § 19087 says:  
27  
28

1 (a) If any taxpayer fails to file a return, or files a false or fraudulent return with intent  
2 to evade the tax, for any taxable year, the Franchise Tax Board, at any time, may require a  
3 return or an amended return under penalties of perjury *or* may make an estimate of the net  
4 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**  
6 **shall be applicable to the tax, interest, and penalties computed hereunder (emphasis added).**

7  
8 As noted above in R&TC 19087, Demand Notices and the accompanying Demand Penalties  
9 are only applicable relative to *delinquent* taxes (as assessed by FTB). If a taxpayer files late, but  
10 their tax liability is paid in full, no Notice of Proposed Assessment Demand Notices can be issued,  
11 nor Demand Fees imposed.

12 The three racketeering schemes detailed below all involve falsely making a taxpayer's  
13 account appear to be underfunded so that, should the taxpayer file late, a Notice of Proposed  
14 Assessment (NPA) and Demand Notice can be falsely issued, then Demand Penalties, late fees and  
15 interest falsely imposed.  
16

17  
18 ***Embezzlement and Racketeering Scheme #1: Withholding Estimated Tax Payments Made Via  
Credit Elects***

19  
20 As I detailed on pages 8, 17 – 18, and 21 - 22 of my Superior Court Brief (SCB) (exhibit 2  
21 pages 10, 19 – 20, and 23 - 25), between 2010 and 2016, FTB told us that 7 estimated tax payments  
22 made via credit elect were each “lost” (exhibit 3). Rather than FTB locating and applying these  
23 “lost” monies, FTB aggressively harassed us to send in additional monies that would not be due  
24 once the payments were applied to our account, along with penalties, late fees, and interest. FTB  
25 went as far as filing a wage garnishment against us for monies that were never due – *by their own*  
26 *records* – as FTB concedes that it always had records of those payments being made via our tax  
27 returns. As I detailed on pages 4 – 9 in the Appellants Second Response Brief (ASRB)(exhibit 4)  
28

1 that I submitted to OTA, the wage garnishment was withdrawn and re-instated multiple times as the  
2 “lost monies” were located, lost again, found again, lost again...

3 In 2016, FTB told us that those 7 payments made via credit elect were never lost, they had  
4 all been deliberately withheld from our account via FTB’s policy of withholding all estimated tax  
5 payments made via credit elect until that year’s return is filed. In practice that means that once a  
6 taxpayer makes a credit elect payment, instead of applying the money to the taxpayer’s account, the  
7 money is instead placed in the general fund. The money is not moved from the general fund to the  
8 taxpayer’s account until that year’s tax return has been filed.

10 If a taxpayer files their return late, their account falsely appears to be underfunded. A NPA  
11 and Demand Notice are falsely issued, then a Demand Fee falsely imposed.

12 Mr. Yadao confirmed the existence of this practice in his Respondent’s Opening Brief  
13 (ROB) (exhibit 5) that he submitted to OTA. On page 11, in footnote 21, he wrote “However, while  
14 payments are held in suspense and not applied to a tax year until a return is filed reporting a tax  
15 liability, upon receipt of the return, suspense payments are given effect/applied as of the date the  
16 payments were received. Notwithstanding respondent’s accounting procedure of holding payments  
17 in suspense, as set forth...”

19 In my ASRB (exhibit 4) that I submitted to OTA, OTA Oral Arguments (exhibit 6) and  
20 Superior Court Brief (exhibit 2), I argued that this practice violated Revenue & Tax Code (R&TC)  
21 19363, which at the time said “that credit elects are to be applied effective April 15, YEAR,  
22 regardless of filing date.”

---

25 1 During the course of our proceedings, the wording was changed to: “Credits or refunds of overpayments of estimated  
26 tax shall be made by the Franchise Tax Board as provided in this article. Any amount paid as estimated tax for any  
27 taxable year shall be deemed to have been paid on the last day prescribed for filing the return for the taxable year  
28 (determined without regard to any extension of time for filing the return).”

1 Mr. Yadao has not disputed my interpretation of the law. Likewise, Mr. Yadao did not deny  
2 that some of the penalties, fees and interest would not have been imposed had the credit elect  
3 payments been applied in accordance with the law. Failure to deny constitutes admission: Any  
4 material allegation in the complaint that is not effectively denied is deemed admitted. [CCP §  
5 431.20(a); see Hennefer v. Butcher (1986) 182 CA3d 492, 504, 227 CR 318, 325].  
6

7 However, whether or not this policy is lawful or not is moot. I have received two letters  
8 from FTB's own Disclosure Department which confirm that this policy does not -- and never did --  
9 exist (exhibits 7 and 8). As such, there is no justification for the withholding of these 7 payments,  
10 nor the imposition of penalties. This would explain why Mr. Yadao reacted/omitted the majority of  
11 evidence of the payments being withheld from our account (details are in the sections titled  
12 Improperities below).  
13

14 I believe that Mr. Yadao's statement in footnote 21 -- that withholding payments made via  
15 credit elect is an official FTB practice -- qualifies as a false statement.

16 Given the conflicting information that I received -- and that Mr. Yadao certainly saw -- I can  
17 see Mr. Yadao arguing that he wasn't aware of FTB's accurate policies. However, understanding  
18 policy is one of Mr. Yadao's primary job duties, and as such, inaccurately stating FTB policy in an  
19 administrative hearing is a breach of his job duties. Furthermore, it is my belief that the reason Mr.  
20 Yadao put this statement into a footnote is because he was aware that the statement was false and  
21 was trying to downplay it. I believe that if this withholding policy was a legitimate FTB practice, he  
22 would have stated so in the body of his brief.  
23

24 On page 2; paragraph 4 of his ROB (exhibit 5), Mr. Yadao wrote: "...the specific legal issue  
25 is whether their failure to file those returns in reply to the Demand Letters is due to reasonable  
26 cause and not willful neglect." By redacting and omitted evidence that these 7 payments had been  
27  
28

1 unlawfully not applied to our account, along with the evidence of the extraordinary efforts that we  
2 made to rectify FTB's breaches of duty, he hid pertinent information as to why we had reasonable  
3 cause for filing our tax returns late.

4 I believe that unlawfully placing money into a general fund when it had been designated to  
5 be applied to a taxpayer's account qualifies as embezzlement per federal code 18 U.S. Code § 654.

6 Officer or employee of United States converting property of another, which says:

7  
8 Whoever, being an officer or employee of the United States or of any department or agency  
9 thereof, embezzles or wrongfully converts to his own use the money or property of another  
10 which comes into his possession or under his control in the execution of such office or  
11 employment, or under color or claim of authority as such officer or employee, shall be fined  
12 under this title or not more than the value of the money and property thus embezzled or  
13 converted, whichever is greater, or imprisoned not more than ten years, or both; but if the sum  
14 embezzled is \$1,000 or less, he shall be fined under this title or imprisoned not more than one  
15 year, or both.

16  
17 I believe that imposing penalties and fees that would not have been imposed had the payments  
18 been applied in accordance with the law qualifies as racketeering, which is defined as a pattern of  
19 illegal activity carried out as part of an enterprise that is owned or controlled by those who are  
20 engaged in the illegal activity. The definition derives from the federal Racketeer Influenced and  
21 Corruption Organizations Act (RICO), (18 U.S.C.A. § 1961 et seq. [1970]).

22  
23 My understanding is that an otherwise legal organizations that derive some portion of their  
24 income through illicit activities may be subject to the RICO laws. The U.S. Supreme Court, in  
25 *Sedima S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 105 S. Ct. 3275, 87 L. Ed. 2d 346 (1985), upheld the  
26 constitutionality of the RICO Act and made clear that, unless amended by Congress, the RICO  
27 statutes must be interpreted broadly.



1 My understanding is that, for a civil case, I only have to show that via a Preponderance of  
2 Evidence that it is more likely than not that the ongoing criminal enterprise occurred. I believe that  
3 this Brief and accompanying evidence proves that it is likely that FTB is systematically not  
4 applying estimated tax payments in accordance with the law specifically to falsely impose penalties,  
5 which is a pattern of illegal activity that derives revenue for FTB.  
6

7 I believe that when you take all the factors into account -- falsely stating that withholding  
8 credit elect payments was a legitimate FTB practice when it was not, hiding the majority of  
9 evidence about these 7 payments being withheld, and hiding that the fees had been improperly  
10 imposed – it is clear that Mr. Yadao was aware of this embezzlement/racketeering scheme and was  
11 deliberately covering it up.  
12

13 The three OTA judges, Kenny Gast, Linda Cheng, and Joshua Lambert, omitted the issue of the  
14 credit elect withholding practice from their ruling altogether (exhibit 9). This was the heart of my  
15 argument, yet they ignored the issue as if I had not raised it. Mr. Yadao had never denied that the  
16 practice was unlawful in either of his briefs (exhibits 5 and 10) or in the OTA oral arguments  
17 (exhibit 6). Since I had submitted the August 2019 letter from FTB's Disclosure Department  
18 (exhibit 7) as evidence in my OTA case, the judges were aware that this withholding practice was  
19 not official FTB policy.  
20

21 If the credit elect withholding practice was lawful, the judges would have said so in their  
22 Opinion (exhibit 9). Failure to deny constitutes admission: Any material allegation in the complaint  
23 that is not effectively denied is deemed admitted. [CCP § 431.20(a); see Hennefer v. Butcher (1986)  
24 182 CA3d 492, 504, 227 CR 318, 325]. I believe that by not denying my allegations that the credit  
25 elect withholding practice was unlawful, yet nonetheless stating the fees were lawfully imposed, the  
26 three judges have also covered up the embezzlement and racketeering.  
27  
28

1 *Embezzlement and Racketeering Scheme #2: Withholding Estimated Tax Payments Made by*  
2 *Married Couples*

3  
4 On page 14 of my SCB (exhibit 2, page 16), I detailed that FTB confirmed multiple times  
5 that they had received two payments from us, one for [REDACTED] and one for [REDACTED] that had been  
6 designated for tax year 2010. None of the representatives could explain why the payments were not  
7 reflected on any of the written notices that FTB issued, including the Notice of Proposed  
8 Assessment (NPA).

9 The NPA is the precursor to the Demand Notice. As I detailed above in the section titled  
10 Revenue and Tax Codes 19133 and 19087, R&TC 19133(b)(2) states that a Demand Notice cannot  
11 be issued until after a proposed an assessment has been made. This proposed assessment form is  
12 called the NPA. This form only goes out to taxpayers that FTB believes have underpaid their tax  
13 liability for the year.  
14

15 Rather than FTB correcting these two "accounting anomalies," FTB aggressively harassed  
16 us to send in additional monies that would not be due once the payment was applied to our account,  
17 along with penalties, late fees, and interest. Those penalties, late fees, and interest would not have  
18 been imposed had the payments been timely and accurately applied to our account.  
19

20 As I detailed on page 11 of my SCB (exhibit 2, page 13) and on pages 5 – 8 of my ASRB  
21 (exhibit 4), in January 2014, we found out that an estimated tax payment that we had made in the  
22 amount of \$9,000 that was designated for tax year 2010 had been misapplied to tax year 2002 and  
23 refunded. As such, we re-made the payment in January 2104 in the amount of \$9,047.46 because  
24 interest had been added to the amount that had been refunded to us. FTB told us that they would  
25 back-date the payment to reflect the date that the first \$9,000 payment had been received, reverse  
26 the \$47.46 in interest, and then apply the \$9,000 payment to tax year 2011.  
27  
28

1 That \$9,000 payment inexplicably vanished. Rather than FTB locating this "lost" money,  
2 FTB aggressively harassed us to send in additional monies that would not be due once the payment  
3 was applied, along with penalties, late fees, and interest. FTB went as far as filing a wage  
4 garnishment against us for monies that were never due – *by their own records* – as FTB conceded  
5 many times that they could see the payment had been made but could not explain why it had not  
6 been applied to our account. The wage garnishment was lifted and re-instated multiple times as the  
7 "lost" monies were located, lost again, found again, lost again... The \$9,000 payment was not  
8 applied until July 2014.

10 In January 2018, FTB told us that these three payments not being applied to our account  
11 were not mistakes -- it is their policy to withhold all estimated tax payments made by married  
12 couples until that year's tax return is filed<sup>2</sup>. In practice that means that every estimated tax payment  
13 made by a married couple is not immediately applied to their account. Instead, the money is placed  
14 into a general fund. The money is not moved from the general fund to the taxpayer's account until  
15 that year's tax return has been filed.

17 If a taxpayer files their return late, their account falsely appears to be underfunded. A NPA  
18 and Demand Notice are falsely issued, then a Demand Fee falsely imposed.

20 On pages 12 - 14 of my SCB (exhibit 2, pages 14 - 16), I detail why I believe this practice is  
21 unlawful, as it violates Treas. Reg. § 1.6654-2(e)(5)(ii)(A), which states:

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

25 (5)Joint payments of estimated tax -

28 <sup>2</sup> Our tax year 2011 returns were filed on 03-02-2014. No explanation has been provided as to why the payment was not moved from suspense until 07-16-2014 (exhibit 3).

1 (i)In general. A husband and wife may make a joint payment of estimated tax even though  
2 they are not living together. However, a joint payment of estimated tax may not be made if  
3 the husband and wife are separated under a decree of divorce or of separate maintenance. A  
4 joint payment of estimated tax may not be made if the taxpayer's spouse is a nonresident  
5 alien (including a nonresident alien who is a bona fide resident of Puerto Rico or a possession  
6 to which section 931 applies during the entire taxable year), unless an election is in effect for  
7 the taxable year under section 6013(g) or (h) and the regulations. In addition, a  
8 joint payment of estimated tax may not be made if the taxpayer's spouse has a taxable  
9 year different from that of the taxpayer. If a joint payment of estimated tax is made,  
10 the amount estimated as the income tax imposed by chapter 1 of the Internal Revenue Code  
11 must be computed on the aggregate estimated taxable income of the spouses (see section  
12 6013(d)(3) and § 1.2-1), whereas, if applicable, the amount estimated as the self-employment  
13 tax imposed by chapter 2 of the Internal Revenue Code must be computed on the separate  
14 estimated self-employment income of each spouse. See sections 1401 and 1402 and §  
15 1.6017-1(b)(1). The liability with respect to the estimated tax, in the case of a joint payment,  
16 shall be joint and several.  
17  
18

19  
20 (ii)Application to separate returns.

21 (A) Although a husband and wife may make a joint payment of estimated tax, they,  
22 nevertheless, can file separate returns. If they make a joint payment of estimated tax and  
23 file separate returns for the same taxable year with respect to which the joint payment was  
24 made, the payment made on account of the estimated tax for that taxable year may be  
25 treated as a payment on account of the tax liability of either the husband or wife for  
26 the taxable year, or may be divided between them in such manner as they may agree.  
27  
28

1 (B) In the event the husband and wife fail to agree to a division of the estimated  
2 tax payment, such payment shall be allocated between them in accordance with the  
3 following rule. The portion of such payment to be allocated to a taxpayer shall be that  
4 portion of the aggregate of all such payments as the amount of tax imposed by chapter 1 of  
5 the Internal Revenue Code shown on the separate return of the taxpayer (plus, if applicable,  
6 the amount of tax imposed by chapter 2 of the Internal Revenue Code shown on the return  
7 of the taxpayer) bears to the sum of the taxes imposed by chapter 1 of the Internal Revenue  
8 Code shown on the separate returns of the taxpayer and the spouse (plus, if applicable, the  
9 sum of the taxes imposed by chapter 2 of the Internal Revenue Code shown on the  
10 separate returns of the taxpayer and the spouse).

13 This tax code clearly says that joint estimated tax payments can be apportioned in any  
14 manner that the spouses agree upon, and provides rules for applying payments in the case of  
15 disagreement. Nowhere does the law indicate that a return must be filed in order to apply monies.  
16 Even in a dispute situation, only a computation is required, and FTB already does its own  
17 computations without taxpayer input (an example of these computations can be seen in the NPAs).  
18 As such, I believe that by not giving the spouses the opportunity to designate how much of the  
19 money is to be applied to each spouse, and instead withholding the payment altogether, FTB is  
20 violating federal law.

23 However, whether or not this policy is lawful or not is moot. I have received two letters  
24 from FTB's own Disclosure Department which confirm that this policy does not – and never did --  
25 exist (exhibits 7 and 8). It appears that these three payments were withheld in violation of FTB's  
26 own policies and procedures. As such, there is no justification for the withholding of these  
27 payments, nor the imposition of penalties. This would explain why Mr. Yadao never mentioned this  
28

1 practice in his ROB (exhibit 5), and also why he redacted and omitted the majority of evidence  
2 showing these 3 payments had been withheld from our account (detailed below in the sections titled  
3 Improperities). If this withholding practice were lawful, he would have stated so in his brief and  
4 there would have been no need for redactions nor omissions.  
5

6 On page 2; paragraph 4 of his ROB (exhibit 5), he wrote: "...the specific legal issue is  
7 whether their failure to file those returns in reply to the Demand Letters is due to reasonable cause  
8 and not willful neglect." By hiding that these 3 payments had been unlawfully not applied to our  
9 account, and hiding the extraordinary efforts that we made to rectify FTB's breaches of duty, he hid  
10 that we had reasonable cause in filing our tax returns late: FTB's own breaches of duty.  
11

12 As I stated above in the section titled Embezzlement and Racketeering Scheme #1, I believe that  
13 unlawfully placing money into a general fund when it had been designated to be applied to a  
14 taxpayer's account qualifies as embezzlement per federal code 18 U.S. Code § 654. Officer or  
15 employee of United States converting property of another.  
16

17 I believe that imposing fees that would not have been imposed had the payments been  
18 applied in accordance with the law qualifies as racketeering per federal  
19 RICO, 18 U.S.C.A. § 1961 et seq. [1970].  
20

21 I believe that Mr. Yadao's false statements, improper redactions and omissions served to  
22 cover up this embezzlement and racketeering scheme.  
23

### 24 ***Racketeering Scheme #3: Estimated Tax Payments "Misapplied" To A Previous Year***

25

26 When a taxpayer makes an estimated tax payment for the current year, FTB frequently  
27 "misapplies" the payment to a previous tax year. As I detailed on pages 11 – 14 in my SCB (exhibit  
28

1 2, pages 13 -16), my husband and I had this scenario happen to us three different times (exhibit 3,  
2 payments 1, 3 and 5).

3 I have asked FTB's Disclosure Department for records regarding what percentage of  
4 payments are misapplied. They told me FTB does not keep such records. No one at FTB has denied  
5 my allegations that payments are frequently "misapplied," and failure to deny constitutes admission.  
6

7 If the payment is made by a married couple, the payment is applied to a tax year prior the  
8 marriage (see above section titled Embezzlement and Racketeering Scheme #2 for how married  
9 couples are treated differently than single people).

10 A few months later, the taxpayer(s) receive a check in the mail from the State of California,  
11 with no explanation as to why they received this check. Often, the checks are not in the same dollar  
12 amount as the payment that was made, so the taxpayers won't necessarily realize that this is a  
13 refund of an estimated tax payment. The amounts won't necessarily match because sometimes  
14 interest is added (exhibit 3, payment 3 and its replacement payment 8), and sometimes the payment  
15 will be split up over multiple tax years, with multiple checks of varying amounts being issued  
16 (exhibit 3, payment 5).  
17

18 After the taxpayer(s) files their income tax returns for the year that the "misapplied"  
19 payment had been designated, the taxpayer(s) will get a Return Information Notice in the mail  
20 saying that FTB did not receive as much money as the taxpayer(s) claimed they had sent. The letter  
21 demands payments of the missing monies, along with penalties, late fees and interest (see section  
22 titled Improperities in his ROB below for more details). When the taxpayer calls in to FTB, they are  
23 told the payment was never received. The taxpayer has to find the cancelled check, find a fax  
24 machine, and send the proof of payment via fax. The taxpayer is told to call back a week later to  
25 follow up.  
26  
27  
28

1       When the taxpayer follows up, they are told that the check(s) from the State of CA was a  
2 refund of this estimated tax payment. The taxpayer is then told that they are still on the hook for the  
3 late fees, penalties and interest, despite the fact that FTB received the payment on time and the fees  
4 would not have been imposed had FTB fulfilled their duty to timely and accurately apply payments.  
5

6       In the event that a taxpayer files that year's return late, they are sent a NPA that does not  
7 reflect the "misapplied" payment. A Demand Notice is issued and Demand Penalties are imposed.  
8 As explained above, had FTB not breached their duty to accurately and timely apply payments, the  
9 account would have reflected as paid in full and the Demand Notice/Penalties would not have been  
10 issued/imposed.

11       I believe that imposing fees that would not have been imposed had FTB not breached their  
12 duty to accurately and timely apply payments qualifies as the federal crime of Racketeering  
13 RICO 18 U.S.C.A. § 1961 et seq. [1970].

14       As I detail below in the sections titled Improperities, in the documents he submitted to OTA,  
15 Mr. Yadao redacted and omitted the majority of evidence showing that these 3 payments had been  
16 "misapplied." In doing so, he hid from the judges that the penalties for tax years 2011 and on were  
17 improperly imposed -- and thus covered up the racketeering scheme itself.  
18

19       He also hid the extraordinary efforts that we made to clear up these 3 breaches of FTB's  
20 duty to apply payments accurately and timely, which is critical for a judge to know in making a  
21 determination as to whether we had reasonable cause for filing late.  
22

### 23 *Overcharging Interest*

24  
25       In February 2018, as I was auditing my records in preparation for my OTA case, I  
26 discovered that I had been overcharged interest (exhibit 3). I notified FTB about this discovery on  
27 02-07-2014 (exhibit 11, pages 1 - 2). No one at FTB has denied this allegation, including Mr.  
28



1 Yadao. Every time I have brought this issue up, FTB refuses to acknowledge my words. As cited  
2 above, the law says that failure to deny constitutes admission.

3 In the evidence that Mr. Yadao submitted to OTA on 02-14-2018 to support his ROB  
4 (exhibit 5), he redacted two items on his Exhibits D and H (exhibit 12, pages 1 and 4). I had already  
5 seen one of these items on the 2012 accounting ledger that FTB had previously sent me (exhibit 12,  
6 page 2), and I knew it said "FTB Adjustment" for \$8.37. I had previously asked Angela Goff in  
7 FTB's department of Executive and Advocate services about it, and she had said something along  
8 the lines of "Oh, FTB just does that once in a while. It doesn't affect you."

10 The fact that a seemingly innocuous item was redacted raised my suspicion. When I finally  
11 got un-redacted copies of the documents that Mr. Yadao had submitted (exhibit 12, pages 3 and 5), I  
12 saw that FTB's internal ledger labeled that adjustment as "write-off." The only other redaction  
13 made to any of the accounting ledgers was another "write off" in 2002 for twelve cents.

15 In an email dated 5-19-2019, I asked Mr. Yadao why these two adjustments were made, why  
16 they say "adjustment" on the ledgers that they send to taxpayers but "write off" on internal  
17 documents, and why he redacted these items since they do not seem to qualify as "personal"  
18 information. He did not respond my request (exhibit 13, pages 10 - 11).

20 It is my belief that these were additional attempts to overcharge interest. However, we had  
21 paid the bill in full and on time, so the FTB had to retract the additional interest that they'd added to  
22 our account. Mr. Yadao was certainly aware that I had already caught one overcharge by the time he  
23 submitted those documents to OTA. It is my belief that Mr. Yadao improperly redacted these two  
24 adjustments to hide FTB's additional attempts at overcharging interest. Mr. Yadao has never denied  
25 my allegation, and as cited above, failure to deny constitutes admission.

27 \_\_\_\_\_  
28 · The ROB and redacted documents were submitted to OTA on 02-14-2018. The un-redacted copies were provided to me by FTB's Disclosure Department on 12-20-2018 via fax. Mr. Yadao entered these un-redacted documents into the OTA record as Exhibit EEE on 05-06-2019.

1 *The Mechanisms of the Assorted Schemes*

2  
3 In the Abatement Request that I submitted to FTB in 2014 (exhibit 14, pages 6 - 10), I  
4 described how difficult it was to get FTB to resolve their own breaches of duty. As I explained, in  
5 order to rectify FTB's breaches, taxpayers were required to call in at least twice, and often many  
6 times. Taxpayers endured long hold time times for each call, usually over an hour, and sometimes  
7 as long as five-hours (exhibit 15). This makes it difficult for most people to call in on their lunch  
8 breaks.

9  
10 I complained that I was disconnected a full 30% of the times that I called in (exhibit 14,  
11 page 7), usually as the call was being transferred to a representative after the long hold. As FTB's  
12 Taxpayers' Bill of Rights Annual Report to the Legislature 2018 discloses on page 16 (exhibit 16)4,  
13 I was lucky to get through so often: prior to fiscal year 2017/18, FTB's Taxpayer Service Center  
14 (TSC) only answered 58% of inbound calls.

15  
16 As we also complained about in our Abatement Request (exhibit 14, page 7), FTB's policy  
17 was to put the TSC phone number on every piece of correspondence, even if the taxpayer needed to  
18 speak to a specialty department and could not be helped by TSC. It was common that, because of  
19 the long hold times and frequent disconnections, I would spend days trying to get through to TSC --  
20 and when I finally did, I was told to hang up and call a different number altogether. The same thing  
21 happened to the taxpayer in exhibit 15.

22  
23 The hold times and frequency of disconnection were no better at the specialty departments --  
24 in fact, they were often worse. There were many days I would attempt to call in to a specialty  
25 department multiple times throughout the day and get nothing but a busy signal (exhibit 14, page 7).

26  
27  
28 

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This document is 53 pages long, and only one page is relevant to this case. To keep the evidence package from being too big, I have only included the relevant page. The entire document can be found on FTB's website: <https://www.ftb.ca.gov/about-ftb/meetings/board-meetings/2018/december-10/taxpayer-bill-of-rights-annual-Report-2018.html>

1 Taxpayers were told that it was their responsibility to prove the payment had been made, so  
2 the taxpayer had to spend time digging through old records. I am sure there are people who could  
3 not find the necessary proof and thus had no choice but to accept the penalties.

4 The taxpayer was only allowed to send this proof via fax, which is an antiquated technology  
5 that is difficult and expensive for the majority of people to access. Most of us have to make a  
6 special trip to a venue with fax services, such as Staples, and pay an exorbitant \$1.00 per page to  
7 transmit the information. For people who don't have fax venue nearby, or have limited access to  
8 transportation, or have limited funds, it may be impossible to send a fax. This fax-only policy  
9 disproportionately affects those of low socio-economic status – the group that can least afford to  
10 pay false penalties.

11  
12 FTB's fax machine was often busy and it would often take a long time to get the fax to  
13 transmit. I imagine many people would have to give up and leave the venue if they had other  
14 obligations preventing them from being able to stay at the fax venue for prolonged periods of time.

15  
16 Even though I always left the fax venue with a fax confirmation in hand, when I would call  
17 in at least a week later to follow up as instructed by FTB representatives, FTB would frequently tell  
18 me that the fax was never received and I needed to send it again. Meanwhile, the clock was ticking  
19 on the imposition of penalties, fees and interest.

20  
21 Regular mail was not an option, as FTB usually does not respond to correspondence sent via  
22 mail (exhibit 17, page 5, exhibit 14, pages 6 - 7). As FTB's Taxpayers' Bill of Rights Annual  
23 Report to the Legislature 2018 discloses on page 16 (exhibit 16), FTB has a 90-day backlog on  
24 responding to mail, so for most matters, by the time FTB addressed the correspondence, the time  
25 deadline had already expired. And yet this "missed deadline" is considered the taxpayer's fault even  
26 though the correspondence had been sent timely.

1 FTB also frequently gave misinformation. As we described in our Abatement Request  
2 (exhibit 14, pages 8 - 9), there were several times where we did exactly what we were told to do by  
3 FTB, only to find out later that we had done the wrong thing. Our claims are substantiated by FTB's  
4 own internal Notes, which are exhibits 17 and 18. (Exhibits 17 and 18 are frequently referenced in  
5 the sections below titled Improprieties.)  
6

7 These hurdles wasted so much of our time that they created extensive delays in our ability to  
8 spend time working on filing our tax returns, thus causing us to be late on subsequent years returns.  
9 And by us filing subsequent years late, FTB generated more false revenues. This self-perpetuating  
10 false revenue stream encouraged FTB to be dysfunctional. By making it time consuming,  
11 expensive, difficult and frustrating to deal with such a dysfunctional organization, many people  
12 would just give up on getting their improperly imposed penalties, fees and interest refunded.  
13

#### 14 *Questionable Decision by The California Bar Association*

15

16 On 4-13-2020, investigator Lori Wallerstein of the Californian Bar Association (CA Bar)  
17 ruled in favor of Mr. Yadao (exhibit 19). Ms. Wallerstein stated that I had not identified any false  
18 statements made by Mr. Yadao. She stated that Mr. Yadao claimed he did not make any false  
19 statements nor any improper redactions. She stated that OTA had determined that none of the facts  
20 stated in FTB's brief were false or misleading (exhibit 19). She pointed out that I had not made any  
21 allegations of misconduct against Mr. Yadao in my SCB (exhibit 2). She omitted the issue of  
22 improper omissions altogether. She further stated that there was no proof that Mr. Yadao had  
23 intended to hide evidence nor make false statements.  
24

25 I found her letter shocking. Clearly, if FTB had conducted itself lawfully, Mr. Yadao would  
26 have explained both withholding practices in the body of his briefs and shown all of the evidence  
27 without redactions and omissions, explaining that the payments had been lawfully withheld and  
28

1 therefore the fees properly imposed. All of his statements would have been factually accurate.  
2 Instead, Mr. Yadao omitted all mentions of the practice of withholding payments made by married  
3 couples and hid the majority of the evidence showing that those 3 payments had not been applied  
4 timely. He only mentioned the credit elect withholding practice in a footnote, and he hid most of the  
5 evidence that these 7 payments had not been applied timely.  
6

7 As I detail below in the sections titled Improprieties, Mr. Yadao made many verifiably false  
8 statements that only appeared true because of the redactions and omission of pertinent evidence.  
9 Those documents did not redact themselves; the redactions were intentional. I don't see how intent  
10 to hide evidence in order to make false statements could be more evident.

11 On May 11, 2020, I requested a review by CA Bar's Complaint Review Unit (CRU) (exhibit  
12 20). In my request for review, I stated that the reason that I did not specify the allegations against  
13 Mr. Yadao in my SCB (exhibit 2) was because they were irrelevant to that case.  
14

15 Regarding their statement about the OTA judges findings, I pointed out that in my SCB  
16 (exhibit 2, pages 8 - 9), that the heart of Mr. Yadao's argument was that we filed late due to willful  
17 neglect. By exposing all the improper omissions/redactions, I proved to OTA that our late filing was  
18 not due to reasonable cause: FTB's multiple breaches of duty. Instead of ruling in our favor, the  
19 OTA judges removed the issue of reasonable cause vs willful neglect from their ruling altogether.  
20 As I point out on page 6 - 7 of the SCB (exhibit 2, pages 8 - 9)), in their Opinion (exhibit 9), the  
21 judges omitted section (a) of 19133 altogether - the portion addressing that fees were not to be  
22 imposed if taxpayers were not willfully negligent -- as if this portion of the law did not exist.  
23

24 I also pointed out that on pages 3 - 4 of the SCB (exhibit 2, pages 5 - 6), the OTA judges  
25 also did not address the heart of my argument, which was whether it was legal for FTB to  
26 unlawfully withhold/misapply payments, then impose penalties and fees that would not have been  
27 imposed had the payments been applied in compliance with the law.  
28