

1 broad and unintelligible. The FTB further objects to this Request as being vague and ambiguous,
2 particularly when referring to "Exhibit H" as "accounting ledgers". The FTB further objects to this
3 Request to the extent that it fails to identify the requested documents with reasonable particularity.
4 The FTB further objects to this Request to the extent that it seeks documents in the possession,
5 custody or control of the Propounding Party. The FTB further objects to this Request to the extent it
6 seeks documents that are equally available to the Propounding Party. The FTB further objects to
7 this Request on the grounds discovery is ongoing and premature.
8

9 Subject to and without waiving the foregoing objections, the FTB responds as follows: the
10 FTB is unable to locate an "Exhibit H" which references the payments in this Request, and therefore
11 is unable to provide documents responsive to this Request without further clarification.
12

13
14 RESPONSE TO REQUEST NO 5B:

15 The FTB objects to this Request to the extent that it seeks privileged information and
16 documents protected from disclosure by the deliberative process privilege, the attorney-client
17 privilege, the attorney work product doctrine, Government Code section 6254.5 and/or Evidence
18 Code sections 1040 and 1041. The FTB further objects to this Request as being vague and
19 ambiguous, particularly as to what "accounting ledgers" the Request is referring to. The FTB further
20 objects to this Request to the extent that it fails to identify the requested documents with reasonable
21 particularity. The FTB further objects to this Request to the extent that it seeks documents in the
22 possession, custody or control of the Propounding Party. The FTB further objects to this Request to
23 the extent it seeks documents that are equally available to the Propounding Party. The FTB further
24 objects to this Request on the grounds discovery is ongoing and premature.
25

26 Subject to and without waiving the foregoing objections, the FTB responds as follows: the
27 FTB is unsure what "accounting ledgers" the Request is referring to, and therefore is unable to
28 provide documents responsive to this Request without further clarification.

1 *Factual and Legal Reasons for Compelling Further Response and Showing of Good Cause*

2 *Justifying Discovery Sought for Items #5A and 5B:*

3 As stated below in General Objections #1 and 2, the issuance of bills is a standard part of
4 FTB's business practice. If FTB operates in accordance with the Statement of Principles of Tax
5 Administration as they state in their published Principals (see General Objections below), then these
6 bills should be readily accessible in their records.
7

8 If FTB abided by its own published principals of transparency, they would have no objection
9 to providing copies of the bills that they allegedly issued in tax year 2002 (request 5A) and 2009
10 (request 5B). The fact that FTB would claim that producing copies of this bill would fall under the
11 purview of the deliberative process privilege, attorney-client privilege or the attorney work product
12 doctrine, Government Code section 6254.5 and/or Evidence Code sections 1040 and 1041 raises
13 red-flags.
14

15 In their Response for Production of Documents, Ms. Barsegyan claimed that the term
16 "accounting ledger" is unclear and that FTB was unable to identify the 2002 and 2009 documents
17 that I had requested (exhibit 40, pages 12 - 13).

18 In my Meet and Confer Letter, I clarified that I had submitted a copy of the 2002 ledger with
19 my Complaint as Exhibit 15, page 1 (exhibit 42, page 7). I also included a copy of the 2009 ledger
20 that FTB had provided to me showing that \$783.52 was applied to a bill (exhibit 43).
21

22 In their Meet and Confer Response dated 12-07-2020, FTB again stated that they were
23 unable to locate Exhibit H (exhibit 45, page 3). I found it noteworthy that Ms. Barsegyan chose to
24 refer to the document as Exhibit H, not as Exhibit 15, nor as the 2002 accounting ledger. Ms.
25 Barsegyan also stated that she was still unable to identify the 2009 accounting ledger.

26 On 12-09-2020, I emailed Ms. Barsegyan the following (exhibit 46, page 4):
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1 ...Your client actually provided a copy of the 2002 ("Exhibit H") in the information
2 that they sent over on November 3. It was the unidentified item at the top of page FTB 008.
3 A copy is attached.

4 Is your client sure that they do not want to provide copies of the bills, which are line
5 items 4, 5 and 6 on the attached exhibit that FTB itself provided? Is FTB sure they want to
6 claim that they do not understand what a 2009 accounting ledger is, even after I sent them a
7 copy of the ledger?...

8 ...I have re-attached the 2009 accounting ledger, too. The bill that I requested is line
9 item #3, the item just above the highlighted item.

10 On 12-09-2020, Ms. Barsegyan replied:

11 Request No. 5A:

12 With regards to the document you attached showing a summary of your personal
13 income tax for the 2009 tax year, this document does not reflect any payments made
14 on May 15, 2008 for \$1,000, and October 15, 2010 for \$9,000. Therefore, the FTB
15 does not have any documents responsive to Request 5A. Additionally, FTB's
16 responsive document bates stamped as FTB 008 is in response to your Request No.
17 2A, and FTB indicated that in its response to said request.

18 Request No. 5B:

19 Your request for an accounting ledger for tax year 2009 did not indicate which
20 specific document you were referring to. Based on this email, it appears that you are
21 referring to the document you attached showing the summary of your personal
22 income tax for 2009. However, after review of the document you attached, there
23 were no payments made on January 27, 2011. Therefore, we do not have any
24 documents responsive to this request.
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1 Best regards,

2 Anna

3 Again, Ms. Barsegyan did not acknowledge the existence of the 2002 account ledger. She
4 referred to the document as 2A, and said that it was submitted for another purpose, thus implying it
5 was irrelevant for a request specifically about this same 2002 accounting ledger.
6

7 Even though the request for 5A specified the bills listed on the 2002 ledger, Ms. Barsegyan
8 stated that the bills in question could not be found on the 2009 ledger. I find this answer to be
9 unconscionable. It is hard for me to believe that a statement this evasive and deceptive can be legal.

10 Her response to 5B was equally evasive and deceptive. Ms. Barsegyan stated that the 2009
11 ledger showed no payment was made on 01-27, 2011, despite the fact that I had specifically
12 identified that I wanted a copy of the bill listed on line item #3 on this 2009 ledger, to which a
13 payment in the amount of \$783.52 had been applied on 01-31-2011.
14

15
16 **Item #6A of the Demand:**

17
18 Please provide an explanation for why Exhibit H, a 2002 accounting ledger that was
19 submitted to OTA by FTB, inaccurately reflects that the \$1,000 payment that was made on March
20 16, 2011, was refunded to us on April 30, 2011. That payment was never refunded.
21

22 ***FTB Response:***

23 **RESPONSE TO REQUEST NO. 6A:**

24 The FTB objects to this Request because it does not comply with Code of Civil Procedure
25 section 2031.030 to the extent that it is a request other than for the production of documents. The
26 FTB further objects to this Request to the extent that it seeks privileged information and documents
27 protected from disclosure by the deliberative process privilege, the attorney-client privilege, the
28

1 attorney work product doctrine, Government Code section 6254.5 and/or Evidence Code sections 1
2 040 and 1 041. The FTB further objects to this Request to the extent that it is overly broad and
3 unintelligible. The FTB further objects to this Request as being vague and ambiguous, particularly
4 as to the terms "strange accounting", "Exhibit H" and "inaccurately reflects". The FTB further
5 objects to this Request to the extent that it seeks documents in the possession, custody or control of
6 the Propounding Party. The FTB further objects to this Request to the extent it seeks documents that
7 are equally available to the Propounding Party. The FTB further objects to this Request on the
8 grounds discovery is ongoing and premature.
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11 *Factual and Legal Reasons for Compelling Further Response and Showing of Good Cause*
12 *Justifying Discovery Sought for Item 6A:*
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14 Ms. Barsegyan objected to this request on the basis that I did not request a physical
15 document, and that the requests are overly broad and unintelligible. It is my belief that my requests
16 are clear: why does an apparently false line item appear in the 2009 accounting ledger? There are a
17 number of documents that could be produced to provide my requested explanation.

18 If this line item was accurate, FTB would have produced a copy of the refund check as proof
19 that the line item is accurate.
20

21 If listing an item as a refund when the money was applied in a different manner was a
22 legitimate business practice, FTB would have produced their standard operating procedure manuals
23 to document when and why such items are identified as refunded. Failure to produce their manuals
24 indicates to me that this is not a legitimate practice and that FTB has violated its principal of
25 managing their accounts with accuracy and financial integrity.
26

27 It is worth noting that it took FTB seven years and intervention from State Controller Betty
28 Yee's to locate this payment of \$1,000.

1 As discussed below in the General Objections section, maintaining accurate accounting
2 records are a standard part of FTB operations. If FTB abided by its own published principals of
3 managing accounts accurately, following Standard Principals of Tax Administration and operating
4 with transparency, then this accurate accounting data would be readily available and FTB would
5 have no objection to providing the data. The fact that FTB would claim the explaining an apparently
6 false line-item would fall under the purview of deliberative process privilege, attorney-client
7 privilege, the attorney work product doctrine, Government Code section 6254.5 and/or Evidence
8 Code sections 1040 and 1041 raises red-flags.
9

10 Ms. Barsegyan further objected that the request is overly broad, unintelligible, vague and
11 ambiguous, objecting to the words “strange accounting,” “Exhibit H” and “inaccurately reflects.” I
12 never used the words “strange accounting” for this item. “Exhibit H” refers to the 2002 accounting
13 ledger that FTB submitted to OTA, which they labeled as “Exhibit H.” I provided a copy of it with
14 my Complaint as Exhibit 15, page 1, and FTB also produced a copy of it as FTB008 (exhibit 41).
15 “Inaccurately reflects” was a polite way of saying a false line-item, as the payment was never
16 refunded.
17

18 I reserve the right to request an audit regarding this accounting discrepancy.
19
20

21 **General Objections Raised by FTB in Response to Request for Production of Documents**
22 **(exhibit 40)**

23 The following general objections are incorporated by reference into each and every response
24 to each individual Request as though fully set forth therein:
25

- 26 1. Defendant objects to the Requests to the extent any of them seek to impose
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1 obligations greater than or more extensive than those required by the Code of Civil Procedure, the
2 Local Rules of this Court, applicable Orders of this Court, or any stipulation or agreement of the
3 parties.

4 2. Defendant objects to the Requests to the extent any of them call for the provision of
5 information subject to the attorney-client privilege, the attorney work product privilege,
6 investigatory/deliberative process or audit privileges, the official information privilege, or any other
7 applicable privileges or protections. Defendant will not provide such privileged or protected
8 information. The provision herein of any privileged or protected information by Defendant is
9 unintentional and shall not constitute a waiver of any applicable privilege or protection, nor shall
10 the provision of any such information be construed as a waiver of any objection to the admissibility
11 of such information.
12

13 3. Defendant objects to the Requests to the extent any of them fail to describe with
14 reasonable particularity the information sought, or is vague, ambiguous, unintelligible, or
15 incomprehensible.
16

17 4. Defendant objects to the Requests to the extent any of them are overly broad,
18 unduly burdensome, oppressive, unreasonably cumulative, duplicative, or constitutes an abuse of
19 process.
20

21 5. Defendant objects to the Requests to the extent any of them seek information that
22 is irrelevant, inadmissible as evidence, and not reasonably calculated to lead to the discovery of
23 admissible evidence, or to the extent it attempts or purports to seek information pertaining to issues
24 that are beyond the subject matter of this litigation.

25 6. Defendant objects to the Requests to the extent any of them seek information equally or
26 more available to Plaintiff, such as through the public domain, or already in the possession, custody,
27 or control of Plaintiff.
28

1 7. Defendant objects to the Requests to the extent any of them seek information not in
2 Defendant's possession, custody, or control.

3 8. Defendant objects to the Requests to the extent any of them are duplicative of another
4 Request, or of any other discovery requests propounded by Plaintiff, or of information, documents,
5 or disclosures already produced by Defendant or other parties in this action.
6

7 9. Defendant objects to the Requests on the ground Plaintiff has not yet produced any
8 documents in response to Defendant's requests for production of documents, and therefore,
9 Defendant is unable to complete its factual investigation and review of records.

10 10. Defendant objects to the Requests on the grounds that discovery is continuing in this
11 action, so these responses are made in good faith and after diligent inquiry into the facts and
12 information now known to Defendant. However, information that may be responsive to the
13 Requests may not yet have been discovered. Accordingly, without asserting an obligation to do so,
14 and without waiving the objections asserted herein, Defendant reserves the right to amend and/or
15 supplement its responses as and when additional information and/or documents are discovered.
16 Additionally, because Defendant's responses are based upon information and analysis conducted to
17 date, these responses do not preclude Defendant from relying on facts or information discovered or
18 generated pursuant to subsequent investigation and discovery, or that Defendant may later
19 determine to be responsive to any of the Requests.
20
21

22 11. In providing responses and objections to the Requests, Defendant expressly reserves all
23 of its objections to the later use of the responses herein, including but not limited to objections as to
24 the competency, relevance, materiality, and admissibility thereof.

25 12. Defendant objects to any definitions that are inconsistent with normal usage of the
26 English language or are otherwise incomprehensible. Defendant will interpret words according to
27 normal usage of the English language unless Defendant specifically states otherwise.
28

1 13. Defendant reserves the right to supplement, clarify, revise, or correct any or all of the
2 responses and objections herein, and to assert additional objections or privileges, in one or more
3 subsequent supplemental response(s).

4 14. Defendant incorporates by reference every general objection set forth above into each
5 specific response set forth below. A specific response may repeat a general objection for emphasis
6 or some other reason. The failure to include any general objection in any specific response does not
7 waive any general objection to that request. Moreover, Defendant does not waive its right to amend
8 its responses.
9

10
11 *Plaintiff's Response to FTB's General Objections Raised in Response to Request for Production*
12 *of Documents (exhibit 42)*
13

14 On the FTB website, on the page entitled "About Us" [https://www.ftb.ca.gov/about-](https://www.ftb.ca.gov/about-ftb/index.html)
15 [ftb/index.html](https://www.ftb.ca.gov/about-ftb/index.html), FTB states that their principals are to:

- 16
- 17 • Protect taxpayer information and privacy.
 - 18 • Carry out our fiduciary responsibilities to taxpayers by managing their accounts with
19 accuracy and financial integrity.
 - 20 • Operate with transparency to maintain public trust and confidence.
 - 21 • Conduct our business in accordance with the Statement of Principles of Tax Administration,
22 Taxpayers' Bill of Rights, and our organizational values.
23

24 Given FTB's public proclamation, I believe that all of the documents that I have requested are
25 in-line with what FTB themselves states they will provide to taxpayers upon request. As such every
26 request that I have made is reasonable.
27
28

1 *Response to General Objection 1:*

2 Accounting ledgers, payment records, amortization tables, and issuance of bills are a
3 standard part of any tax agency's operations. Since FTB states they conduct their business in
4 accordance with the standard Statement of Principles of Tax Administration, all of these documents
5 should be readily available. None of the documents that I've requested are a greater or more
6 extensive obligation than those required by the Code of Civil Procedure, the Local Rules of this
7 Court, applicable Orders of this Court, or any stipulation or agreement of the parties. Not providing
8 this information is a violation of FTB's publicly stated principal of operating with transparency.
9

10 *Response to General Objection 2:*

11 Accounting ledgers, payment records, amortization tables and bills that were issued on my
12 own account are, per FTB policy, readily provided to the taxpayer if they submit a request for such
13 information. FTB has denied me access to these documents when I have requested them in the past,
14 thus violating their own guidelines and principals. Since these documents are supposed to be freely
15 available, they should not be viewed as something protected by attorney-client privilege, the
16 attorney work product privilege, investigatory/deliberate process or audit privilege, the official
17 information privilege, or any other privilege or protection. Not producing this information is a
18 violation of FTB's publicly stated principal of operating with transparency.
19

20 *Response to General Objection 3:*

21 I believe that all of the information that I requested can be readily identified by FTB. I don't
22 believe any of the requests are vague, ambiguous, unintelligible or incomprehensible.
23

24 *Response to General Objection 4:*

25 All of the information requested are a standard part of FTB operations, and as such, are not
26 overly broad, unduly burdensome, oppressive, unreasonably cumulative, duplicative, or constitute
27 an abuse of process.
28

1 *Response to General Objection 5:*

2 All of the information demanded are relevant for my and my husband's own account. All
3 demanded documents are part of standard FTB operations. Any standard information on my our
4 own account is relevant, admissible as evidence, and are within the subject matter of this litigation,
5 which is about our own account. Not providing this information is a violation of FTB's publicly
6 stated principal of operating with transparency.
7

8 *Response to General Objection 6:*

9 Accounting ledgers, payment records, amortization tables and bills on my own account are,
10 per FTB policy, readily provided to the taxpayer. However, FTB has denied me access to these
11 documents when I have requested them in the past, thus violating their own guidelines and
12 principals.
13

14 To the best of my knowledge, I have submitted to the court every relevant document that
15 was available through the public domain and/or in my possession, custody or control. Although, in
16 preparing this Motion, I did realize that in my Complaint, I'd overlooked the 2009 accounting
17 ledgers that FTB had provided to me. It is attached as Exhibit 43.

18 The documents that I have requested from FTB are additional documentation that I do not
19 possess and cannot access without FTB cooperation.
20

21 *Response to General Objection 7:*

22 Accounting ledgers, payment records, amortization tables and bills are a standard part of
23 FTB operations, and as such, they are within the Defendant's possession, custody and control.

24 *Response to General Objection 8:*

25 This is my first request, therefore, none of these requests can possibly be duplicative of
26 previous requests. As Ms. Barsegyan acknowledged in General Objection #9, FTB has not produced
27 any documentation prior to this. This objection is nonsensical.
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Response to General Objection 9:

Defendant has not requested any documents from me as of yet. This objection is nonsensical.

Response to General Objection 10:

Accounting ledgers, payment records, amortization tables and bills are a standard part of FTB operations, and as such, should be readily available. There should be no need for a “diligent inquiry into facts and information now known to the Defendant.”

Relevance

4. The matters to which further response is sought are relevant to the subject matter involved in the pending action or reasonably calculated to lead to the discovery of admissible evidence and are not privileged or otherwise protected from discovery.

Informal Resolution Attempts

5. Before filing this motion for an order compelling further response, plaintiff attempted to resolve informally the issue of lack of sufficient documents produced by FTB in order to satisfy the Demands by clarifying the specific documents that I wanted produced. Anna Barsegyan, attorney for defendant, the California Franchise Tax Board, and I exchanged numerous emails in our attempts to resolve informally the above-stated issues. A copy of the correspondence between myself and Anna Barsegyan are attached to and made a part of this declaration:

Meet and Confer Request dated 11-30-2020 is exhibit 42. The Meet and Confer request included a 2009 accounting ledger, which is exhibit 43.

Follow up emails dated 12-01-2020 and 12-02-2020 is exhibit 44.

Meet and Confer Response Letter dated 12-07-202 is exhibit 45.

1 Follow up emails dated 12-09-2020 is exhibit 46.

2

3 **Justification for Grounds for Motion**

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5 6. The failure to respond completely and adequately to the demand for documents was without
6 substantial justification in that:

7

- The accounting records that FTB produced are inaccurate, inconsistent and conflicting.

8

- FTB claims that they have no records of one of our payments made, yet their own internal ledgers show the payment to was applied to our account.

9

- FTB made a false statement regarding the dates that our estimated tax payments made via credit elects were applied to our account.

10

- FTB claims that they do not maintain records of the dates that estimated tax payments made via credit elect are received, nor do they maintain records of the date the credit elect payment is applied to the taxpayer's account. It is inconceivable that a taxation agency that purportedly adheres to Standard Principles of Tax Administration would not maintain such records.

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- FTB claims that they do not maintain records of the dates that an estimated tax payment made via check/webpay is applied to the taxpayer's account. It is inconceivable that a taxation agency that purportedly adheres to Standard Principles of Tax Administration would not maintain such records

- Ms. Barsegyan misrepresented the relevance of the location of the estimated tax payments by omitting that per R&TC 19087, the penalties for tax years 2011 and 2013 would not have been imposed had the estimated tax payments been timely applied in their correct location.

- FTB claims to be unable to identify the 2002 accounting ledger for Demand Items #4C, #5A and #6A, and as such, FTB claims that it cannot identify any of the line-items that I requested to be produced. They continue to make this claim despite the fact that they themselves produced this 2002 ledger in response to Demand Item #2A. This is unconscionable.

- Ms. Barsegyan made two deceptive and evasive statements to avoid the production of the bills that FTB allegedly issued for tax years 2002 and 2009.

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- FTB themselves admitted in their Responses to Requests for Production of Documents, in General Objection #6, that per FTB policy, this information is readily provided to taxpayers upon request (exhibit 40, page 3). It is unconscionable that FTB has violated their own policies and procedures by denying my previous requests for this information. It is even more unconscionable that they have denied/evaded my Demand for Documents.

I believe that, taken together, it is apparent that FTB is withholding relevant information. I believe that FTB has violated the law by not producing the requested documents.

At this point in time, I am not requesting sanctions. However, I reserve the right to do so at a future point in time. I also reserve the right to ask for additional discovery on the items that are addressed in this motion, as more issues may arise upon closer analysis of the new documents when compared against documents that I already possess.

Verification

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 12-14-2020

C. Grab [signature]

Christine N. Grab, in pro per

Memorandum of Points and Authorities in Support of Motion to Compel Further Response

CA Revenue & Taxation Code 19363

Credits or refunds of overpayments of estimated tax shall be made by the Franchise Tax Board as provided in this article. Any amount paid as estimated tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return for the taxable year (determined without regard to any extension of time for filing the return)

CA Revenue & Taxation Code 19133

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

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

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

(2) the FTB has proposed an assessment of tax under the authority of Revenue and Taxation Code section 19087, subdivision (a), after the taxpayer failed to timely respond to a Request for Tax Return or a Demand for Tax Return in the manner prescribed, at any time during

the four-taxable-year period preceding the taxable year for which the current Demand for Tax Return is issued (emphasis added).

CA Revenue & Tax Code § 19087:

(a) If any taxpayer fails to file a return, or files a false or fraudulent return with intent to evade the tax, for any taxable year, the Franchise Tax Board, at any time, may require a return or an amended return under penalties of perjury *or* may make an estimate of the net income, from any available information, and may propose to assess the amount of tax, interest, and penalties due.

All the provisions of this part relative to delinquent taxes shall be applicable to the tax, interest, and penalties computed hereunder (emphasis added).

California Rules of Court, Rule 335(c)

(c) Contents of separate statement

A separate statement is a separate document filed and served with the discovery motion that provides all the information necessary to understand each discovery request and all the responses to it that are at issue. The separate statement must be full and complete so that no person is required to review any other document in order to determine the full request and the full response. Material must not be incorporated into the separate statement by reference. The separate statement must include-for each discovery request (e.g., each interrogatory, request for admission, deposition question, or inspection demand) to which a further response, answer, or production is requested-the following:

- (1) The text of the request, interrogatory, question, or inspection demand;
- (2) The text of each response, answer, or objection, and any further responses or answers;

- (3) A statement of the factual and legal reasons for compelling further responses, answers, or production as to each matter in dispute;
- (4) If necessary, the text of all definitions, instructions, and other matters required to understand each discovery request and the responses to it;
- (5) If the response to a particular discovery request is dependent on the response given to another discovery request, or if the reasons a further response to a particular discovery request is deemed necessary are based on the response to some other discovery request, the other request and the response to it must be set forth; and
- (6) If the pleadings, other documents in the file, or other items of discovery are relevant to the motion, the party relying on them must summarize each relevant document.

(Subd (c) amended effective January 1, 2007; previously repealed and adopted effective July 1, 2001.)

Code Civ. Proc § 2031.310

(a) On receipt of a response to a demand for inspection, copying, testing, or sampling, the demanding party may move for an order compelling further response to the demand if the demanding party deems that any of the following apply:

- (1) A statement of compliance with the demand is incomplete.
- (2) A representation of inability to comply is inadequate, incomplete, or evasive.
- (3) An objection in the response is without merit or too general.

(b) A motion under subdivision (a) shall comply with each of the following:

(1) The motion shall set forth specific facts showing good cause justifying the discovery sought by the demand.

(2) The motion shall be accompanied by a meet and confer declaration under Section 2016.040 .

(3) In lieu of a separate statement required under the California Rules of Court, the court may allow the moving party to submit a concise outline of the discovery request and each response in dispute.

(c) Unless notice of this motion is given within 45 days of the service of the verified response, or any supplemental verified response, or on or before any specific later date to which the demanding party and the responding party have agreed in writing, the demanding party waives any right to compel a further response to the demand.

(d) In a motion under subdivision (a) relating to the production of electronically stored information, the party or affected person objecting to or opposing the production, inspection, copying, testing, or sampling of electronically stored information on the basis that the information is from a source that is not reasonably accessible because of the undue burden or expense shall bear the burden of demonstrating that the information is from a source that is not reasonably accessible because of undue burden or expense.

(e) If the party or affected person from whom discovery of electronically stored information is sought establishes that the information is from a source that is not reasonably accessible because of the undue burden or expense, the court may nonetheless order discovery if the demanding party shows good cause, subject to any limitations imposed under subdivision (g).

(f) If the court finds good cause for the production of electronically stored information from a source that is not reasonably accessible, the court may set conditions for the discovery of the electronically stored information, including allocation of the expense of discovery.

(g) The court shall limit the frequency or extent of discovery of electronically stored information, even from a source that is reasonably accessible, if the court determines that any of the following conditions exists:

(1) It is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive.

(2) The discovery sought is unreasonably cumulative or duplicative.

(3) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought.

(4) The likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues.

(h) Except as provided in subdivision (j), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(i) Except as provided in subdivision (j), if a party fails to obey an order compelling further response, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of, or in addition to, that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

(j)(1) Notwithstanding subdivisions (h) and (i), absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

Exhibit List

Exhibit #	Description	Pages
39	Deposition Request (Demand) for Documents	3
40	Response to Requests for Production of Documents	16
41	Documents Set One (1)	33
42	Meet and Confer Letter	10
43	2009 accounting ledger	1
44	Emails between Grab and Barsegyan dated 12/1 and 12/2, 2020	6
45	Meet and Confer Response Letter	4
46	Emails between Grab and Barsegyan dated 12/9/2020	4
47	Notice of Proposed Assessments 2011, 2013 and 2014	5