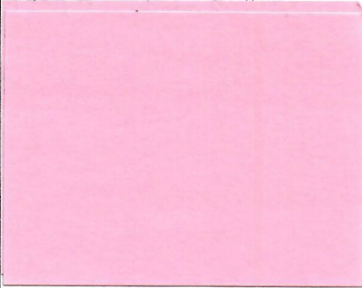


1 Christine Grab



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CENTRAL DIVISION

24 MAY 24 AM 11:00

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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

12 Christine N. Grab

13 Plaintiff

14 vs.

15 The California Franchise Tax Board

16 Defendant

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

13) Declaration of Christine N. Grab in support of
14) Motion For Order Compelling Further Response
15) to Specially Prepared Interrogatories, Set #001

16) **DATE: October 22, 2021**

17) **TIME: 9:00 AM**

18) **LOCATION: 330 BROADWAY, SAN
19) DIEGO**

20) Judge: HONORABLE EDDIE C. STURGEON
21) Dept: C67

22) Action Filed: JANUARY 29, 2020

23) Trial Date: March 04, 2022

24 _____

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1 I, Christine N. Grab, declare:

2 1. I am the Plaintiff.

3 2. I, Christine N. Grab, Plaintiff, served two sets of Specially Prepared Interrogatories on
4 Defendant, The California Franchise Tax Board (FTB) on March 27, 2021. A copy of Plaintiff's
5 Specially Prepared Interrogatories Set #001: Clarification of Policies and Procedures is attached to
6 this Declaration as exhibit 48. A copy of Plaintiff's Specially Prepared Interrogatories Set #002:
7 Accounting Irregularities is attached to this Declaration as exhibit 49.
8

9 3. FTB made and served their responses to both sets of interrogatories via e-mail On May 3, 2021.
10 A copy of Response to Special Interrogatories Set #001 is attached to this Declaration as exhibit 50.
11 A copy of Response set #002 is attached to this Declaration as exhibit 51.

12 This Motion to Compel Further Response only addresses Plaintiff's Specially Prepared
13 Interrogatories Set #001: Clarification of Policies and Procedures. Plaintiff reserves the right to
14 make a separate Motion to Compel Further Response for Plaintiff's Specially Prepared
15 Interrogatories Set #002: Accounting Irregularities prior to the filing deadline of June 17, 2021. I
16 have included the information from Specially Prepared Interrogatories Set #002: Accounting
17 Irregularities because I believe that the evidence of FTB's non-standard accounting practices will
18 help to clarify the need for Your Honor to fully understand FTB's policy and procedures that FTB
19 utilized for establishing these accounting practices.
20
21

22 The Responses provided by the Defendant requires further explanation as follows: As I
23 documented in my Complaint filed in January 2020 and in my Motion to Compel Further Response
24 to Demand for Documents, Set #001 filed in December 2020, over the last 11 years FTB has given
25 me and my husband a lot of conflicting information. I believe that it is impossible for Your Honor
26 to make a proper determination as to whether FTB's policies and procedures comply with the law
27 without understanding what FTB's policies and procedures actually are, as well as which laws these
28

1 policies and procedures are based upon. The purpose of every question in this set of interrogatories
2 was to clarify the truth given the conflicting information. Here are the facts of the case:

- 3 • The Taxpayer Advocate office has stated numerous times that withholding estimated tax payments
4 made via credit elect and estimated tax payments made by married couples is FTB's standard
5 operating procedure (see attached exhibit 48, pages 21 - 22).
- 6 • I have documented in the previously submitted exhibits 2, 8, 9, 15, 18, 19, 24, and 47 that our
7 estimated tax payments were withheld in accordance with the policies and procedures stated by the
8 Taxpayer Advocate. Attached is an updated exhibit 2, intended to replace the one currently in the
9 file. As I was preparing these Interrogatories, I realized that I had missed a payment on the original
10 chart.
- 11 • I have further documented that our estimated tax payments were withheld in accordance with the
12 policies and procedures stated by the Taxpayer Advocate in the attached Specially Prepared
13 Interrogatories Set #002: Accounting Irregularities (exhibit 48, pages 7 - 9) and in the attached
14 Plaintiff Christine N. Grab Requests for Admission, Set #001 (exhibit 52, pages 6, 7, 10, 11)¹
- 15 • As is documented in our Complaint (pages 5, 7 - 10, 17 - 18, 20 - 21), Declaration in Support of
16 Motion to Compel Further Documents, Set #001 pages 3 - 12, and Plaintiff's Specially Prepared
17 Interrogatories, Set #002: Accounting Irregularities (attached exhibit 49, all pages) there are a large
18 number of accounting irregularities involving the payments that have been withheld. Some of the
19 irregularities are so egregious that I believe that they qualify as fraudulent.
- 20 • Between 2011 and 2016, FTB staff in various departments, including Customer Service and the
21 Collections, consistently told us that our payments were lost. None of these staff members disclosed
22 that the payments had been deliberately withheld per the policies and procedures stated by the
23 Taxpayer Advocate (See Complaint, pages 5, 7 - 9, 14, 17 - 18, 20 - 22).
- 24 • FTB only disclosed their policies and procedures of withholding estimated tax payments from the
25 taxpayer's account once we involved our legislators to intervene on our behalf to help locate the
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¹ FTB's Response to Requests for Admission is due on June 1, 2021

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“lost” monies (see Complaint, page 22).

- The Disclosure Department has repeatedly denied that withholding estimated tax payments is official FTB policy or procedure (see attached exhibit 48, pages 23 - 25).
- FTB’s standard operating manuals confirm that Notices of Proposed Assessments are only issued on accounts that have not paid their tax liability for that year in full (attached exhibit 48, pages 18 - 20).
- FTB’s standard operating manuals indicate that the practice of withholding estimated tax payments from the totals collected on the Notice of Proposed Assessment is standard operating practice, however, the pages of the manuals provided do not explain the conditions under which payments are withheld (attached exhibit 48, pages 16 - 17).
- In the OTA case that was the predecessor to this case, FTB employee Eric Yadao acknowledged that it is FTB’s policy and procedure to withhold estimated tax payments made via credit elect (exhibit 4, page 11, footnote 21). Mr. Yadao did not deny that this practice was unlawful.
- In the OTA case, Mr. Yadao omitted and improperly redacted the majority of the evidence which affirmed that our estimated tax payments had not been applied timely. He also made numerous false statements regarding the dates that our payments were applied to our account (see attached exhibit 53).
- In this pending case, FTB has refused to provide documents that would affirm that our payments were withheld in accordance with what the Taxpayer’s Advocate states is FTB policy and procedure (see Motion to Compel Further Response to Demand for Documents, Set #001)
- In this pending court case, FTB has so far refused to acknowledge the existence of the withholding practice, neither to confirm nor deny its existence.
- In this pending case, FTB has refused to acknowledge the full wording of R&TC 19087. Usually, FTB ignores the references that I make to R&TC 19087, but in the few instances that FTB has had to acknowledge the existence of R&TC 19087, FTB has cherry picked words out of context.
- In Defendant’s Response to Plaintiff’s Demand for Documents, Set #001, Ms. Hubbard committed one count of perjury by falsely stating that the dates listed on the accounting ledgers are the actual

1 dates the credit elect payments were applied to our account (see Declaration in Support of Motion to
2 Compel Further Documents, Set #001, page 6 and #3C below).

- 3 • In Defendant's Response to Plaintiff's Demand for Documents, Set #002, Ms. Hubbard committed
4 two more counts of perjury. She stated that for tax years 2011 and 2013, FTB had provided me
5 copies of all documents created as a part of standard operating procedures, and for the documents
6 that were considered privileged, gave me the name and creation date of the privileged document. In
7 my records, I have found one document from each of those years that were not provided/disclosed by
8 FTB. The 2011 document indicates that FTB had breached their duty and the 2013 document is a
9 confirmation that our 2013 estimated tax payments had been received but withheld from our account.
10 It appears Ms. Hubbard withheld pertinent evidence from this case (see attached exhibit 52, pages 7,
11 8, 10, 11 and attached exhibit 54, pages 6 - 7).
- 12 • In Defendant's Response to Plaintiff's Demand for Documents, Set #002, FTB refused to provide
13 any documents created as part of standard operating procedures for tax years 2002, 2008, 2009,
14 2010, 2012 or 2015 (see attached exhibit 54). As I have documented in my Complaint (see pages 14
15 - 18, 20 - 21), Declaration in Support of Motion to Compel Further Documents, Set #001 (see pages
16 3 - 12 and 21, 25 - 26), and Plaintiff's Specially Prepared Interrogatories, Set #002: Accounting
17 Irregularities (exhibit 49, pages 6 - 11), the accounting irregularities involving these other years led
18 to the imposition of the penalties, fees and interest on the years in dispute. It is my belief that FTB
19 has refused to provide the documents regarding these other tax years is because they are trying to
20 hide pertinent evidence.
- 21 • Thanks to Defendant's Requests for Admission #001, it has been proven that FTB violated our
22 taxpayer rights to protest a NPA by misclassifying our Protest as a response to a different notice (see
23 attached exhibit 55, pages 3 - 4).
- 24 • Thanks to Defendant's Requests for Admission #001, it is apparent now that FTB habitually
25 misclassifies notices in order to falsely impose penalties as a part of FTB's standard operating
26 procedure (see attached exhibit 55, pages 2 - 5).
- 27
- 28

- 1 • One the few documents that FTB provided in response to Plaintiff's Demand for Documents, Set
2 #001 was amortization schedules showing how interest was calculated. Per the amortization
3 schedules, it appears that FTB overcharged us interest in four different ways (see attached exhibit 49,
4 pages 14 – 16 and 34 - 37). These documents proved that all interest imposed on us for tax years
5 2011, 2013 and 2014 by FTB was fraudulently imposed as our balance had been paid in full prior to
6 the onset of interest accruing. As such, there was never any balance on which interest could accrue.
7

8
9 **List of Interrogatories:**

10 **SPECIAL INTERROGATORY NO. 3A:** FTB's Disclosure Department sent me the standard
11 operating procedures for processing a Protest to a Notice of Proposed Assessment. There are a
12 series of slides that show the representatives how to prepare the NPAs. One of the slides indicates
13 that the way to determine if the NPA is to be sent if FTB believes there is a liability *still due* after
14 the credits and payments have been applied (attached page 1). Am I interpreting this correctly? If
15 not, please clarify.
16

17 **FTB RESPONSE TO SPECIAL INTERROGATORY NO. 3A:** Defendant objects to this
18 Request as being vague and ambiguous because Plaintiff does not identify the complete set of
19 documents she is referring to with reasonable particularity in order for Defendant to locate them,
20 and Defendant is unable to understand the Request with only the excerpt provided on Page One.
21 The phrase "one of the slides" is also vague and ambiguous because Plaintiff does not identify the
22 slide she is referring to such that Defendant would be able to respond to the Request. Defendant
23 also objects to this Request because each interrogatory may not contain subparts, or a compound,
24 conjunctive, or disjunctive question. Defendant also objects to this Request because each
25 interrogatory must be "full and complete in and of itself", and Responding Party should not need to
26 resort to other materials in order to answer the question. Defendant also objects to this Request as
27 being overbroad as to time and scope. Defendant further objects to this Request because it contains
28

1 a preface or instructions. Defendant also objects to this Request to the extent it seeks information
2 which is not relevant to the subject matter involved in the pending action and is not reasonably
3 calculated to lead to the discovery of admissible evidence. Subject to and without waiving the
4 foregoing objections and general objections, and to the extent it understands this interrogatory,
5 Defendant responds as follows: The document (page 1) provided by Plaintiff does not mention the
6 reasons for the issuance of a Notice of Proposed Assessment. The document speaks for itself.
7 Defendant does not know Plaintiff's interpretation of California law pertaining to Notice of
8 Proposed Assessments, and is not able to respond to this Request. Defendant refers Plaintiff to
9 Revenue and Taxation Code section 19087 concerning Defendant's authority to propose an
10 assessment if a taxpayer fails to file a return. Discovery and investigation is ongoing. Defendant
11 reserves its right to supplement or amend this response.
12

13
14 **Factual and Legal Reasons for Compelling Further Response and Showing Good Cause**

15 **Justifying INTERROGATORY 3A:**

16 This question is straightforward and self-contained: "Is the way to determine if the NPA is
17 to be sent if FTB believes there is a liability *still due* after the credits and payments have been
18 applied?" It is a simple yes or no question, and no other additional information was necessary. The
19 reason for a NPA being issued is irrelevant.
20

21 The heart of my argument for tax years 2011 and 2013 were that FTB repeatedly improperly
22 issued NPAs to my husband and me in violation with the guidelines established by R&TC 19087,
23 which states that "All the provisions of this part relative to **delinquent** taxes shall be applicable to
24 the tax, interest, and penalties computed hereunder..." (emphasis added). I believe it is imperative
25 for Your Honor to fully understand FTB's procedures for issuing NPAs in order to make a
26 determination as to whether the procedures are in line with R&TC 19087 guidelines.
27

28 All of the other objections that FTB made are irrelevant, but I will address them none-the-

1 less. This set of documents came from FTB's Disclosure Department in response to three California
2 Public Records request that I made in December 2020. The Disclosure Department did not send me
3 all pages of the manuals. If Mr. Swank believes that he needs to see the entire set of documents to
4 answer 3A, Mr. Swank should contact the Disclosure Department for the missing pages.
5

6 My interpretation of the slide has no bearing on whether the answer to the question is yes or
7 no. I included the slide to point out why I believe the answer is yes. If the answer is no, Mr. Swank
8 can explain how FTB determines whether a NPA is to be issued or not.

9 **SPECIAL INTERROGATORY NO. 3B:** Do you admit that it is possible to protest a Notice of
10 Proposed Assessment?

11 **FTB RESPONSE TO SPECIAL INTERROGATORY NO. 3B:** Defendant objects to this
12 Request because it is a request for admission which cannot be combined in a single document with
13 any other method of discovery pursuant to Code of Civil Procedure section 2033.060, subdivision
14 (h). Defendant also objects to this Request to the extent it seeks information which is not relevant to
15 the subject matter involved in the pending action and is not reasonably calculated to lead to the
16 discovery of admissible evidence. Subject to and without waiving the foregoing objections and
17 general objections, and to the extent it understands this interrogatory, Defendant responds as
18 follows: Defendant refers Plaintiff to Revenue and Taxation Code section 19041 pertaining to
19 protests against proposed deficiency assessments. Discovery and investigation is ongoing.
20 Defendant reserves its right to supplement or amend this response.
21
22

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

24 **Justifying INTERROGATORY 3B:**

25 I believe that this portion of FTB's response "Defendant responds as follows: Defendant
26 refers Plaintiff to Revenue and Taxation Code section 19041 pertaining to protests against proposed
27 deficiency assessments" could be taken to mean that the answer to question 3B is yes, but the
28

1 statement is muddy and unclear. I believe that further clarification is necessary.

2 **SPECIAL INTERROGATORY NO. 3C:** It appears there are many categories for protesting the
3 amount of income FTB assessed in calculating the tax liability (please see the examples attached as
4 pages 2 - 5); however, it appears there is no category to Protest the amount of money that FTB has
5 collected in payments towards that year's liability. Is it possible for a taxpayer to file a Protest to a
6 NPA on the basis that FTB has underreported the amount of payments FTB has collected?
7

8 **FTB RESPONSE TO SPECIAL INTERROGATORY NO. 3C:** Defendant objects to this
9 Request as being vague and ambiguous as to the words "categories" "collected" and "payments" as
10 Plaintiff does not define them. Defendant also objects to this Request because each question must
11 be full and complete in and of itself under Code of Civil Procedure section 2030.060, subdivision
12 (d). A question is not full and complete if the responding party must refer to other materials to
13 answer the question. Defendant also objects to this Request as overbroad as to time and scope.
14 Defendant further objects to this Request to the extent it seeks information which is not relevant to
15 the subject matter involved in the pending action and is not reasonably calculated to lead to the
16 discovery of admissible evidence. Defendant further objects to this Request because an
17 interrogatory may not contain a preface or instructions. Subject to and without waiving the
18 foregoing objections and general objections, and to the extent it understands this interrogatory,
19 Defendant responds as follows: Under Revenue and Taxation Code section 19041, subdivision (a), a
20 taxpayer may file with the FTB a written protest against the proposed deficiency assessment,
21 specifying in the protest the grounds upon which it is based. In this case, the demand penalties
22 imposed by the FTB, which is at issue, are computed at 25-percent of the total tax liability before
23 any prepayments or credits are applied to reduce the tax liability. Thus, the demand penalties were
24 properly imposed, and any protest on the ground that FTB did not include the prepayments or
25 credits is not supported by legal authority. Additionally, the FTB properly imposed a collection cost
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1 recovery (also at issue in this case) resulting from Plaintiff's failure to make full payment of the
2 liability after issuance of a notice for payment. Once properly imposed, there is no provision in the
3 Revenue and Taxation Code which would excuse FTB from imposing the collection cost recovery
4 fee for any circumstances, including reasonable cause. (Rev. & Tax Code §19254.) Therefore, any
5 protest on the ground that FTB did not include the prepayments or credits is not supported by legal
6 authority. Discovery and investigation is ongoing. Defendant reserves its right to supplement or
7 amend this response.
8

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

10 **Justifying INTERROGATORY 3C:**

11 **Issue 1:** I believe that this sentence "Therefore, any protest on the ground that FTB did not include
12 the prepayments or credits is not supported by legal authority" is an admission that FTB's policies
13 and procedures are that taxpayers *are not allowed* to dispute a NPA on the basis that FTB did not
14 fully credit all of the payments that were paid by the taxpayer or on the taxpayer's behalf. However,
15 the statement is muddy and unclear. I believe that further clarification is necessary.
16

17 **Issue 2:** Instead of giving a direct answer to a simple question, Mr. Swank went on the offensive by
18 making it sound like the penalties and fees imposed on me and my husband were justified. I did not
19 ask about whether or not penalties and fees were properly imposed in my own case. I asked about
20 FTB's general policies and procedures: "Is it possible for a taxpayer to file a Protest to a NPA on
21 the basis that FTB has underreported the amount of payments FTB has collected?" This question
22 required a simple yes or no answer, and is clear and self-contained, with no additional information
23 needed to understand it. All of FTB's other objections are irrelevant. There is no valid reason for
24 FTB to not clarify their answer.
25

26 **Issue 3:** In unnecessarily going on the offensive, Mr. Swank made a false statement. The first false
27 statement is:
28

1 "In this case, the demand penalties imposed by the FTB, which is at issue, are computed at
2 25-percent of the total tax liability before any prepayments or credits are applied to reduce
3 the tax liability. Thus, the demand penalties were properly imposed, and any protest on the
4 ground that FTB did not include the prepayments or credits is not supported by legal
5 authority."
6

7 In the sentences above, Mr. Swank omitted pertinent information and conflated two separate issues
8 as if they are one and the same. Here are the facts: The full wording of R&TC 19133 states that a
9 Demand Penalty is imposed as per the guidelines set forth in R&TC 19087. R&TC 19087 states that
10 a Notice of Proposed Assessment can only be issued if a taxpayer *both files late and has not paid*
11 *their tax liability in full*. A Demand Penalty cannot be imposed on a taxpayer who does not meet the
12 criteria to have a Notice of Proposed Assessment issued.
13

14 Furthermore, how the Demand Penalty is calculated has no correlation with the calculations used to
15 determine whether or not a Notice of Proposed Assessment should be issued.

16 Mr. Swank has made it sound like the calculations used for determining the amount of the Demand
17 Penalty are the same calculations used to determine whether a person still has an outstanding total
18 tax liability for a given year (for the NPA). These calculations are very different.

19 Given the true facts of what the law states regarding criteria for imposing demand penalties
20 and criteria for calculating demand penalties and outstanding total tax liabilities, the second
21 sentence of the statement is completely false: "Thus, the demand penalties were properly imposed,
22 and any protest on the ground that FTB did not include the prepayments or credits is not supported
23 by legal authority."
24

25 Since Mr. Swank's job title is Program Specialist III, Filing Compliance Bureau, I believe it
26 is part of Mr. Swank's job duties to understand FTB's policies and Procedures in regards to how it
27 is determined if an NPA should be issued, as well as how to calculate a Demand Penalty. Since
28

1 there is no doubt that Mr. Swank knew that those three sentences were misleading, deceptive and
2 false at the time that he wrote them, I believe that Mr. Swank has committed the federal crime of
3 perjury.

4 **Issue 4: Mr. Swank made a second false statement:**

5 “Additionally, the FTB properly imposed a collection cost recovery (also at issue in this
6 case) resulting from Plaintiff’s *failure to make full payment of the liability* after issuance of a
7 notice for payment.” (emphasis added for clarity on which part of the statement is false)

8
9 As we have documented in the exhibits 2 and 8, as FTB’s attorney Eric Yadao confirmed in our
10 OTA case that was the predecessor to this case, and as Ms. Hubbard confirmed in her Response to
11 Demand for Documents, set #001, we had paid this liability in full via credit elect.

12 I alleged in my Complaint and Motion to Compel Further Documents that FTB unlawfully
13 withheld this credit elect payment from our account. Ms. Hubbard denied this allegation, stating that
14 the payment had been applied on 04-15-2011 (Declaration in Support of Motion to Compel Further
15 Documents, page 6).

16
17 However, in the OTA case, Mr. Yadao confirmed my allegation in his Respondent’s
18 Opening Brief (exhibit 4, page 11, footnote 21): The FTB properly imposed a collection cost
19 recovery fee because “...payments are held in suspense and not applied to a tax year until a return is
20 filed reporting tax liability...”

21
22 Three different FTB employees have made three conflicting statements -- all under penalty
23 of perjury -- about the same credit elect payment: Ms. Hubbard claimed the payment was made on
24 4-15-2011 and not withheld, Mr. Yadao claimed the payment was made on 11-15-2013 and
25 withheld (exhibit 4, page 5, footnote 11 and page 11, footnote 21), and Mr. Swank denied the
26 payment was made prior to 11-26-2013. All three of these statements were false. The closest to the
27 truth was Mr. Yadao, who misstated the date the credit elect payment was made (the correct date
28

1 was 11-09-2013), but correctly stated that the payment had been received and withheld prior to the
2 imposition of the cost recovery fee. Both Mr. Swank and Ms. Hubbard's statements were
3 completely false.

4 Ms. Hubbard later stated that FTB does not maintain records of the actual dates that
5 payments are applied to the taxpayer's account; FTB only keeps records of effective dates. If Ms.
6 Hubbard's statement is true, then that means that Mr. Swank's statement that we hadn't paid in full
7 prior to the imposition of the collection cost recovery fee was intentional perjury, as - per Ms.
8 Hubbard -- the records Mr. Swank looked at when making that statement said our account had been
9 paid in full on 04-15-2011.

10 I would like to ask Your Honor to keep in mind that this same credit elect payment
11 "vanished" for nine months (from November 2013 to July 2014), and there are multiple accounting
12 irregularities surrounding this payment (see attached exhibit 49, pages 10 - 12). FTB has refused to
13 turn over the documents that would clarify the accounting irregularities surrounding this payment.

14 Whether or not this practice of withholding estimated tax payments, then imposing
15 penalties, fees and interest that would not have been imposed had the payment been timely applied
16 is the heart of my case. The question for Your Honor to decide is: was it lawful for FTB to not
17 timely apply the credit elect payment to our account, then impose a collection cost recovery fee that
18 would not have been imposed had FTB credited the payment timely?
19

20 As I wrote in my Supreme Court Accusation that I filed against FTB employee Eric Yadao
21 (exhibit 53), I believe that unlawfully placing money into a general fund when it had been
22 designated to be applied to a taxpayer's account qualifies as embezzlement per federal code 18 U.S.
23 Code § 654. Officer or employee of United States converting property of another, which says:

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

8 I also believe that imposing penalties and fees that would not have been imposed had the
9 payments been applied in accordance with the law qualifies as racketeering, which is defined as a
10 pattern of illegal activity carried out as part of an enterprise that is owned or controlled by those
11 who are engaged in the illegal activity. The definition derives from the federal Racketeer Influenced
12 and Corruption Organizations Act (RICO), (18 U.S.C.A. § 1961 et seq. [1970]).
13

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

19 My understanding is that, for a civil case, I only have to show that via a Preponderance of
20 Evidence that it is more likely than not that the ongoing criminal enterprise occurred.
21

22 The CA Supreme Court chose not to hear the case and gave no reason why. However, I did
23 receive letter from the CA Auditor's Investigation Unit indicating that they had opened an
24 investigation into FTB based on my Accusation (see attached exhibit 56).

25 So far in this pending case, FTB has consistently refused to acknowledge the existence of
26 these withholding practices, whether to confirm nor deny them. If FTB believed these practices
27 were lawful, Mr. Swank would have responded to this question with a truthful answer. I believe that
28

1 the fact that Mr. Swank perjured himself to evade disclosing that our credit elect payment had been
2 withheld indicates that he is aware that this practice is unlawful. I believe that Mr. Swank has
3 committed one count of colluding to cover up his employer's embezzlement and racketeering
4 schemes.

5
6 **SPECIAL INTERROGATORY NO. 3D:** If the answer to 3C is yes, please explain why this
7 category of Protest does not appear in the NPA standard operating manual pages provided to me by
8 FTB's Disclosure Department.

9 **FTB RESPONSE TO SPECIAL INTERROGATORY NO. 3D:** Defendant objects to this
10 Request as being vague and ambiguous as to "standard operating manual" since Plaintiff does not
11 state with reasonable particularity which manual she is referring Defendant also objects to this
12 Request as being vague and ambiguous as to the word "categories". Defendant also objects to this
13 Request because each question must be full and complete in and of itself under Code of Civil
14 Procedure section 2030.060, subdivision (d). A question is not full and complete if the responding
15 party must refer to other materials to answer the question. Defendant would need to refer to the
16 voluminous documents provided by the Disclosure Department to Plaintiff, and would be unable to
17 locate the manual Plaintiff is referring to with the description provided. Defendant further objects to
18 this Request to the extent it seeks information which is not relevant to the subject matter involved in
19 the pending action and is not reasonably calculated to lead to the discovery of admissible evidence.
20 Subject to and without waiving the foregoing objections and general objections, and to the extent it
21 understands this interrogatory, Defendant responds as follows: Defendant directs Plaintiff to its
22 response in Request No. 3. Discovery and investigation is ongoing. Defendant reserves its right to
23 supplement or amend this response.
24
25

26
27 **Factual and Legal Reasons for Compelling Further Response and Showing Good Cause**
28 **Justifying INTERROGATORY 3D:**

1 Since Mr. Swank's job title is Program Specialist III, Filing Compliance Bureau, I believe it
2 is part of Mr. Swank's job duties to understand FTB's policies and Procedures in regards to whether
3 or not a taxpayer has properly complied in the way they worded their Protest to a NPA. As such,
4 Mr. Swank should be readily able to answer this question as to whether it is possible for a taxpayer
5 to file a Protest to a NPA on the basis that FTB has underreported the amount of payments FTB has
6 collected, and if so, if the guidelines for doing so are included in FTB's standard operating
7 procedure manuals. The objection that it is unduly burdensome for Mr. Swank to take the time to
8 read the manual that instructs him on how to properly do his job is unconscionable.

9
10 This set of documents came from FTB's Disclosure Department in response to three
11 California Public Records request that I made in December 2020. However, the Disclosure
12 Department did not send me all pages of the manuals. If Mr. Swank believes that he needs to see the
13 entire set of documents to answer 3D, Mr. Swank should contact the Disclosure Department for the
14 missing pages.

15
16 **SPECIAL INTERROGATORY NO. 3E.** Is it possible for FTB to void the NPA if FTB
17 determines that they have miscalculated the amount of state income taxes collected?

18 **FTB RESPONSE TO SPECIAL INTERROGATORY NO. 3E:** Defendant objects to this
19 Request as being vague and ambiguous as to the words "void" and "collected". Defendant further
20 objects to this Request to the extent it seeks information which is not relevant to the subject matter
21 involved in the pending action and is not reasonably calculated to lead to the discovery of
22 admissible evidence. Defendant further objects to this Request as being overbroad as to time and
23 scope. Subject to and without waiving the foregoing objections and general objections, and to the
24 extent it understands this interrogatory, Defendant responds as follows: Defendant is unclear of
25 what Plaintiff means by "void" as it is not defined. If "void" means "withdraw", the FTB may
26 withdraw a Notice of Proposed Assessment if it determines it has miscalculated the correct tax due.
27
28

1 Discovery and investigation is ongoing. Defendant reserves its right to supplement or amend this
2 response.

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

4 **Justifying INTERROGATORY 3E:**

5
6 This answer danced around my question, but did not specifically answer what I had asked. I
7 specifically stated "...if FTB determines that they have miscalculated the amount of state income
8 taxes *collected*?" which is not the same as FTB miscalculating the amount of the tax *liability due*.

9 Please provide an answer that is specific to the question that I asked.

10 All of FTB's objections are nonsense: void and collected are basic vocabulary words. Per Merriam-
11 Webster Dictionary, void means: of no legal force or effect, and withdraw means: to take back or
12 away: remove.

13
14 The issue of whether or not the NPA's were properly issued is the heart of my argument for
15 tax years 2011 and 2013, and disclosure of FTB's policies and procedures for how NPAs are issued
16 and executed is pivotal to my case.

17 **SPECIAL INTERROGATORY NO. 3F:**

18 Item 21 in the section regarding dealing with damaged mail (attached page 6) indicates that it is not
19 possible for FTB staff to add credits that have been placed into suspense into to the NPA totals. Is
20 my interpretation of this correct? If not, please clarify.

21 **FTB RESPONSE TO SPECIAL INTERROGATORY NO. 3F:**

22
23 Defendant objects to this Request because each question must be full and complete in and of itself
24 under Code of Civil Procedure section 2030.060, subdivision (d). A question is not full and
25 complete if the responding party must refer to other materials to answer the question. In addition,
26 Plaintiff has only attached an excerpt of the document, and Defendant is unable to understand her
27 question with the excerpt provided. Defendant further objects to this Request to the extent it seeks
28