

1 information which is not relevant to the subject matter involved in the pending action and is not
2 reasonably calculated to lead to the discovery of admissible evidence. Subject to and without
3 waiving the foregoing objections and general objections, and to the extent it understands this
4 interrogatory, Defendant responds as follows: Defendant does not know Plaintiff's interpretation of
5 California law pertaining to Notice of Proposed Assessments, and is unable to respond to this
6 Request. Additionally, the document on page 6 does not state that it relates to damaged mail. The
7 document speaks for itself. Defendant is further unable to respond to this Request without referring
8 to the complete set of documents which Plaintiff has not provided. Discovery and investigation is
9 ongoing. Defendant reserves its right to supplement or amend this response.

11 **Factual and Legal Reasons for Compelling Further Response and Showing Good Cause**
12 **Justifying INTERROGATORY 3F:**

13
14 FTB's objections are nonsense. Whether or not the NPAs were properly issued is the heart of my
15 argument for tax years 2011 and 2013, so the answer to this question is critical. FTB argues that it
16 does not know what my interpretation of California law is; however, I was not asking about
17 California law. I was asking about FTB's standard operating policies and procedures. Whether or
18 not these policies and procedures are in accordance with the law is for Your Honor to determine.
19 Your Honor cannot make this determination unless FTB discloses this information. Refusal to
20 disclose these policies and procedures gives the appearance that FTB knows that its practices are
21 unlawful and is trying to cover up their unlawful activities.

22
23 With a job title of Program Specialist III, Filing Compliance Bureau, I believe it is part of Mr.
24 Swank's job duties to understand FTB's policies and procedures in regards to NPAs. Mr. Swank
25 should be readily able to answer this question as to whether all monies are applied to the NPA as a
26 part of FTB's standard operating procedure. The objection that it is unduly burdensome for Mr.
27 Swank to take the time to read the manual that instructs him on how to properly do his job is
28

1 unconscionable.

2 All of the other objections that FTB made are irrelevant, but I will address them none-the-less. This
3 set of documents came from FTB's Disclosure Department in response to three California Public
4 Records request that I made in December 2020. However, the Disclosure Department did not send
5 me all pages of the manuals. If Mr. Swank believes that he needs to see the entire set of documents
6 to answer 3F, then Mr. Swank should contact the Disclosure Department for the missing pages.
7

8 I will re-phrase the question for more clarity. True or false: when FTB staff are calculating the totals
9 of taxes paid by or on behalf of a particular taxpayer in order to determine whether an NPA is to be
10 issued or not, they are instructed to not include any credits that have been placed into suspense into
11 the totals of taxes received for that taxpayer. This question is full and complete in and of itself.
12

13 **SPECIAL INTERROGATORY NO. 3G:**

14 The attached page 7 indicates that FTB staff is prohibited from crediting additional withholdings
15 that were not accounted for in the NPA; if additional withholdings need to be credited, the
16 taxpayer's account needs to be moved to an Audit Liaison. Will the Account Liaison void the NPA
17 if the additional withholdings are sufficient to bring the liability to zero?

18 **FTB RESPONSE TO SPECIAL INTERROGATORY NO. 3G**

19 Defendant objects to this Request because each question must be full and complete in and of itself
20 under Code of Civil Procedure section 2030.060, subdivision (d). A question is not full and
21 complete if the responding party must refer to other materials to answer the question. In addition,
22 Plaintiff has only attached an excerpt of the complete document, and this Request is so broad,
23 uncertain, and unintelligible that Defendant is unable to understand her question or the nature of the
24 information sought with the excerpt provided. Defendant further objects to this Request as vague
25 and ambiguous with regards to the word "Account Liaison" since Plaintiff does not define it. The
26 document on the page 7 does not refer to an "Account Liaison". Defendant further objects to this
27
28

1 Request as being overbroad as to time and scope. Defendant also objects to this Request to the
2 extent it seeks information which is not relevant to the subject matter involved in the pending action
3 and is not reasonably calculated to lead to the discovery of admissible evidence. Defendant further
4 objects to this Request because an interrogatory may not contain a subparts, a preface or
5 instructions, or contain compound, conjunctive or disjunctive questions. Subject to and without
6 waiving the foregoing objections and general objections, and to the extent it understands this
7 interrogatory, Defendant responds as follows: Plaintiff mischaracterizes the statements in the
8 document, and Defendant is unable to respond to this Request. The document speaks for itself.
9 Discovery and investigation is ongoing. Defendant reserves its right to supplement or amend this
10 response.
11

12
13 **Factual and Legal Reasons for Compelling Further Response and Showing Good Cause**

14 **Justifying INTERROGATORY 3G:**

15 The argument that we made for tax years 2011 and 2013 is that the NPAs for 2010 and 2013 were
16 improperly issued. As such, we believe that it is imperative for Your Honor to fully understand all
17 policies and procedures regarding NPAs, including whether we, as taxpayers, had the right to have
18 the NPAs withdrawn after we proved they had been improperly issued.

19 Since FTB objected to the wording, which were words that came straight from FTB's own internal
20 documents, I will re-phrase the question with more generic wording: If a taxpayer points out to FTB
21 that not all monies paid into FTB by said taxpayer/on taxpayer's behalf had been credited to that
22 taxpayer's account, will FTB withdraw the NPA as a part of their standard operating procedure?
23

24 This question is a simple yes or no question. If FTB is confused about the definitions of these basic
25 accounting vocabulary words, he can refer to Meet and Confer Response 5B, in which I provided a
26 list of definitions as per Merriam-Webster Dictionary.

27
28 Given Mr. Swank's job title of Program Specialist III, Filing Compliance Bureau, I believe it is part

1 of Mr. Swank's job duties to understand FTB's policies and procedures. Mr. Swank should be
2 readily able to answer this question as to whether a NPA will be withdrawn when a taxpayer points
3 out to FTB that not all monies paid into FTB has been credited. The objection that it is unduly
4 burdensome for Mr. Swank to take the time to read the manual that instructs him on how to properly
5 do his job is unconscionable.
6

7 The Disclosure Department did not send me all pages of the manuals. If Mr. Swank believes that he
8 needs to see the entire set of documents to answer 3F, Mr. Swank should contact the Disclosure
9 Department for the missing pages.

10 **SPECIAL INTERROGATORY NO. 3H.** When was the policy of allowing Oral Hearings to
11 Protest Notices of Proposed Assessment implemented?
12

13 **FTB RESPONSE TO SPECIAL INTERROGATORY NO. 3H:** Defendant objects to this
14 Request to the extent it seeks information which is not relevant to the subject matter involved in the
15 pending action and is not reasonably calculated to lead to the discovery of admissible evidence.

16 Subject to and without waiving the foregoing objections and general objections, and to the extent it
17 understands this interrogatory, Defendant responds as follows: Defendant directs Plaintiff to
18 Revenue and Taxation Code section 19044 concerning protest hearings. Discovery and
19 investigation is ongoing. Defendant reserves its right to supplement or amend this response.
20

21 **Factual and Legal Reasons for Compelling Further Response and Showing Good Cause**
22 **Justifying INTERROGATORY 3H:**

23 I was never notified that I had a right to an oral hearing to any of the Protests to the Notices of
24 Proposed Assessments that my husband and I submitted. I discuss this issue more in depth in 4A
25 below, but I believe that not notifying me of this right FTB violated Revenue and Tax Code
26 19044(a), which states:
27

28 "If a protest is filed, the Franchise Tax Board shall reconsider the assessment of the

1 deficiency and, if the taxpayer has so requested in his or her protest, shall grant the taxpayer
2 or his or her authorized representatives an oral hearing.”

3 I believe FTB also violated our California Taxpayer Bill of Rights, which states:

4 “If you disagree with our proposed assessment, you...can submit a protest... with us by the
5 *protest by* date shown on the front of the *Notice of Proposed Assessment*... If we receive
6 your protest letter by the *protest by* date shown on the front of the notice, we review your
7 facts and supporting information. After this review, we may request additional information
8 or, at your request, we may schedule a hearing at one of our offices. At the conclusion of our
9 protest review, we either withdraw, revise, or affirm the proposed assessment.”

10 The fact that FTB refused to give the date of the implementation of this business practice leads me
11 to believe that they are aware that they have violated my and my husband’s rights and are trying to
12 cover up their transgressions. It is a simple question and there is no valid reason to not disclose the
13 answer.

14 **SPECIAL INTERROGATORY NO. 4A:** According to Taxpayer and Advocate Services
15 employee Christopher Calhoun, and FTB Staff attorney Eric Yadao, the protests that I sent in
16 response to the Notice of Proposed Assessment were labeled in your system as “no responses.”
17 Could you please explain FTB’s policies and procedures on when and why responses to NPAs are
18 labeled as “no responses.”

19 **FTB RESPONSE TO SPECIAL INTERROGATORY NO. 4A**

20 Defendant objects to this Request as being vague and ambiguous because she does not identify
21 which protest she is referring to, and when any alleged conversations with an FTB employee
22 occurred. Defendant also objects to this Request to the extent it seeks information which is not
23 relevant to the subject matter involved in the pending action and is not reasonably calculated to lead
24 to the discovery of admissible evidence. Defendant further objects to this Request as being
25
26
27
28

1 overbroad in time and scope. Defendant further objects to this Request because it contains a preface
2 or instructions. Subject to and without waiving the foregoing objections and general objections, and
3 to the extent it understands this interrogatory, Defendant responds as follows: Defendant is unable
4 to respond to this Request because Plaintiff does not describe the communication with the FTB in
5 particular detail (i.e. communication date, tax years involved), and Defendant is unable to respond
6 to this Request with the information provided. Discovery and investigation is ongoing. Defendant
7 reserves its right to supplement or amend this response.
8

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

10 **Justifying INTERROGATORY 4A**

11 FTB has already inadvertently answered this question via Defendant's Requests for Admissions
12 (attached exhibit 55, pages 2 - 5). In the Admissions Request, FTB asked me about three of the
13 Responses that I had sent in on behalf of me and my husband. All three Responses had been
14 misclassified, including the Protest to the NPA that my husband had filed. This NPA
15 misclassification violated Revenue and Taxation Code section 19041, which states:
16

17 Within 60 days after the mailing of each notice of proposed deficiency assessment the
18 taxpayer may file with the Franchise Tax Board a written protest against the proposed
19 deficiency assessment, specifying in the protest the grounds upon which it is based.
20

21 (b) Any protest filed with the Franchise Tax Board on or before the last date specified for
22 filing that protest by the Franchise Tax Board in the notice of proposed deficiency
23 assessment (according to Section 19034) shall be treated as timely filed.

24 This misclassification also violated Revenue and Tax Code 19044(a), which states:

25 If a protest is filed, the Franchise Tax Board shall reconsider the assessment of the
26 deficiency...

27 This misclassification also violated our California Taxpayer Bill of Rights, which state:
28

1 **Your Protest Rights**

2 A *Notice of Proposed Assessment* advises you that we intend to assess additional tax or
3 penalties. To allow you time to review and respond to the notice, we take no further action
4 before the *protest by* date shown on the front of the notice.

5 If you disagree with our proposed assessment, you or your designated representative (with a
6 Power of Attorney (POA) Declaration) can submit a protest online through MyFTB or a
7 written protest can be filed with us by the *protest by* date shown on the front of the *Notice of*
8 *Proposed Assessment*. If you do not submit your protest online, postmarked, or faxed by this
9 date, the assessment will become final and we will bill you for the amount due, including
10 penalties and interest.

11 Filing a protest will not stop the accrual of interest. Due to workload constraints, it may take
12 several months to resolve your protest. We will not charge additional interest if we receive
13 payment in full within 15 days of the accompanying notice date. If you pay the additional
14 tax, penalties, and interest due, or pay the full amount under our tax deposit procedure, you
15 will stop the further accrual of interest without losing your right to contest the disputed
16 amount. If we withdraw or reduce the amounts on our notice, we will pay interest on any
17 overpaid amount as the law allows.

18 **How FTB Handles Your Protest**

19 If we receive your protest letter by the *protest by* date shown on the front of the notice, we
20 review your facts and supporting information. After this review, we may request additional
21 information or, at your request, we may schedule a hearing at one of our offices.

22 At the conclusion of our protest review, we either withdraw, revise, or affirm the proposed
23 assessment. We notify you of the results by sending you a formal *Notice of Action*.

24 Thanks to Defendant's Requests for Admissions, it now appears that the reason that all of our
25

1 Protests were labeled as “no responses” is because FTB habitually misclassifies Responses in order
2 to falsely impose penalties, fees and interest. I believe that the intention of the evasive response
3 FTB provided in Response to 4A was an effort to cover up FTB’s multiple breaches of duty to
4 properly classify Responses, to cover up that FTB imposed penalties that may not have been
5 imposed had FTB not breached its duty to properly classify said Responses, and to hide FTB’s
6 multiple violations of our Taxpayer Rights.
7

8 **SPECIAL INTERROGATORY NO. 5A:** The attached page 8 is a page from FTB’s standard
9 operations manuals entitled Delinquent Penalties. It states “A delinquent penalty is imposed when
10 both of the following apply:” (emphasis added) and indicates both the return is filed late and the
11 total tax liability is underpaid. The document further states “The delinquent penalty is computed on
12 the total tax due less timely payments and credits.” Please define what exactly “timely” means.
13

14 **FTB RESPONSE TO SPECIAL INTERROGATORY NO. 5A:** Defendant objects to this
15 Request because each question must be full and complete in and of itself under Code of Civil
16 Procedure section 2030.060, subdivision (d). A question is not full and complete if the responding
17 party must refer to other materials to answer the question. In addition, Plaintiff has only attached an
18 excerpt of the complete document, and Defendant is unable to understand her question with the
19 excerpt provided. Defendant also objects to this Request to the extent it seeks information which is
20 not relevant to the subject matter involved in the pending action and is not reasonably calculated to
21 lead to the discovery of admissible evidence. Defendant further objects to this Request because it
22 pertains preface or instructions. Subject to and without waiving the foregoing objections and
23 general objections, and to the extent it understands this interrogatory, Defendant responds as
24 follows: Defendant’s imposition of demand penalties, not delinquent penalties, are at issue in this
25 action. For informational purposes, Defendant directs Plaintiff to Revenue and Taxation Code
26 section 19131 concerning delinquent penalties, which is not an issue in this action. Discovery and
27
28

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

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

3 **Justifying INTERROGATORY 5A:**

4 My question was: "Please define what exactly "timely" means." FTB did not acknowledge the
5 question that I asked. They instead focused their objections on other issues, pretending that I had
6 asked a different question altogether. I believe that the fact that FTB changed the subject altogether
7 rather than answer this simple question indicates that FTB hiding information that it is required by
8 law to be disclosed.
9

10
11 Whether or not we paid our estimated tax payments "timely" in accordance with R&TC 19087 is
12 the heart of our dispute. I believe that establishing a clear definition of "timely" will help Your
13 Honor to understand the facts better.
14

15 **SPECIAL INTERROGATORY NO. 5B:** Please provide a complete list of all types of payments
16 and credits made to FTB which are immediately applied to the taxpayer's account by FTB upon
17 receipt.
18

19 **RESPONSE TO SPECIAL INTERROGATORY NO. 5B:** Defendant objects to this Request
20 because each question must be full and complete in and of itself under Code of Civil Procedure
21 section 2030.060, subdivision (d). Defendant also objects to this Request because an interrogatory
22 may not contain compound, conjunctive, or disjunctive questions. Defendant objects to this Request
23 as vague and ambiguous with regards to the word "payments and credits" and "immediately
24 applied" since Plaintiff does not define them.

25 Defendant further objects to this Request as being overbroad as to time and scope. Defendant also
26 objects to this Request to the extent it seeks information which is not relevant to the subject matter
27 involved in the pending action and is not reasonably calculated to lead to the discovery of
28

1 admissible evidence. Subject to and without waiving the foregoing objections and general
2 objections, and to the extent it understands this interrogatory, Defendant responds as follows:
3 Defendant is unable to respond to this Request because Plaintiff has not defined “payments and
4 credits”, and Defendant does not understand what she is referring to. Additionally, the disputed
5 issues in this action are whether the Defendant properly imposed demand penalties and a collection
6 cost recovery fee. Under Revenue and Taxation Code section 19133, a demand penalty is imposed
7 if a taxpayer fails to timely respond to demand notices in the manner required. Demand penalties
8 are imposed as required by law before consideration of any payments or credits. Thus, any
9 payments and/or credits made by Plaintiff are irrelevant in the determination of the imposition of
10 demand penalties under California law. Under Revenue and Taxation Code section 19254,
11 subdivision (a)(1), a collection cost recovery fee is imposed if the FTB does not receive full
12 payment of the liability after it has issued a notice for payment. Plaintiff’s Request is not relevant
13 nor reasonably calculated to lead to the discovery of admissible evidence regarding the imposition
14 of this fee. Discovery and investigation is ongoing. Defendant reserves its right to supplement or
15 amend this response.
16

17
18 **Factual and Legal Reasons for Compelling Further Response and Showing Good Cause**
19 **Justifying INTERROGATORY 5B:**
20

21 **Issue 1:** FTB has misrepresented what the law says by making two deceptive statements and one
22 false statement:

23 “Under Revenue and Taxation Code section 19133, a demand penalty is imposed if a
24 taxpayer fails to timely respond to demand notices in the manner required. Demand
25 penalties are imposed as required by law before consideration of any payments or credits.
26 Thus, any payments and/or credits made by Plaintiff are irrelevant in the determination of
27 the imposition of demand penalties.”
28

1 In the first sentence, Mr. Swank omitted pertinent portions of Revenue and Tax Code 19133. In the
2 second sentence, he conflated two separate issues as if they were one and the same. The third
3 sentence is false, and only appears to be true as a result of the deceptive and misleading statements
4 that preceded it.

5
6 As has already been established, the full wording of R&TC 19133 states that a Demand Penalty is
7 imposed as per the guidelines set forth in R&TC 19087. R&TC 19087 states that a Notice of
8 Proposed Assessment can only be issued if a taxpayer *both files late and has not paid their tax*
9 *liability in full*. A Demand Penalty cannot be imposed on a taxpayer who does not meet the criteria
10 to have a Notice of Proposed Assessment issued.

11 I believe that making it sound like a Demand Penalty is imposed solely if someone files late, but
12 omitting all of the rest of the criteria necessary for the imposition of the Demand Penalty qualifies
13 as lying by omission.
14

15 Furthermore, how the Demand Penalty is calculated has no correlation with the calculations used to
16 determine whether or not a Notice of Proposed Assessment should be issued. Mr. Swank has made
17 it sound like the calculations used for determining the amount of the Demand Penalty are the same
18 calculations used to determine whether a person still has an outstanding total tax liability for a given
19 year (for the NPA). These calculations are very different, and I believe that Mr. Swank conflating
20 the two issues in such a deceptive and misleading manner also qualifies as a false statement.
21

22 Given the true facts detailed above, the last portion of the statement is completely false: "Thus, any
23 payments and/or credits made by Plaintiff are irrelevant in the determination of the imposition of
24 demand penalties."

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

1 is no doubt that Mr. Swank knew that the statement was misleading, deceptive and false at the time
2 that he made it, I believe that Mr. Swank has committed the federal crime of perjury.

3 **Issue 2:** My question was not addressed. My question was: "Please provide a complete list of all
4 types of payments and credits made to FTB which are immediately applied to the taxpayer's
5 account by FTB upon receipt." This is a full and complete question in and of itself. Instead of
6 addressing my question, FTB claimed that it did not understand basic accounting vocabulary words,
7 claimed that my question was irrelevant, and then changed the subject altogether to make it seem
8 like FTB did nothing wrong. In FTB's attempt to make it seem like FTB has done nothing wrong,
9 Mr. Swank committed the federal crime of perjury.

10 FTB claims it does not understand the words "payments and credits" and "immediately applied,"
11 despite the fact that these are basic vocabulary words used daily in FTB standard operations. In
12 Defendant's own General Objection # 7, Defendant wrote: "All words used in the interrogatories
13 will be interpreted according to normal usage of the English language unless this responding party
14 specifically states otherwise in the particular response." Merriam-Webster dictionary defines
15 payments as: the act of paying, credits as: the balance in a person's favor in an account,
16 immediately as: without interval of time, and applied as: put to practical use.

17 The definitions should make the original question clear, but to help FTB with comprehension, I will
18 also re-phrase the question in another way: Give me a complete list of all the ways that a taxpayer
19 can add money towards their tax liability for a given year where the money is not first put into
20 suspense before being applied to the taxpayer's account.

21 I believe this issue is relevant to my case because it appears that several other types of payments
22 may have also been improperly withheld from our account, This issue is addressed more thoroughly
23 in Interrogatories #5C and #10A below.

24 **SPECIAL INTERROGATORY NO 5C:** Please provide a complete list of all types of payments
25
26
27
28

1 and credits made to FTB which are withheld from the taxpayer's account until that year's tax return
2 is filed.

3 **RESPONSE TO SPECIAL INTERROGATORY NO. 5C:** Defendant objects to this Request
4 because each question must be full and complete in and of itself under Code of Civil Procedure
5 section 2030.060, subdivision (d). Defendant also objects to this Request because an interrogatory
6 may not contain compound, conjunctive, or disjunctive questions. Defendant objects to this Request
7 as vague and ambiguous with regards to the word "payments and credits" and "withheld estimated
8 tax payments" since Plaintiff does not define them. Defendant further objects to this Request as
9 being overbroad as to time and scope. Defendant also objects to this Request to the extent it seeks
10 information which is not relevant to the subject matter involved in the pending action and is not
11 reasonably calculated to lead to the discovery of admissible evidence. Subject to and without
12 waiving the foregoing objections and general objections, and to the extent it understands this
13 interrogatory, Defendant responds as follows: Defendant is unable to respond to this Request
14 because Plaintiff has not defined "payments and credits" and "withheld estimated tax payments"
15 and Defendant does not understand what she is referring to. Additionally, the disputed issues in this
16 action are whether the Defendant properly imposed demand penalties and a collection cost recovery
17 fee. Under Revenue and Taxation Code section 19133, a demand penalty is imposed if a taxpayer
18 fails to timely respond to demand notices in the manner required. Demand penalties are imposed as
19 required by law before consideration of any payments or credits. Thus, any payments and/or credits
20 made by Plaintiff are irrelevant in the determination of the imposition of demand penalties under
21 California law. Under Revenue and Taxation Code section 19254, subdivision (a)(1), a collection
22 cost recovery fee is imposed if the FTB does not receive full payment of the liability after it has
23 issued a notice for payment. Plaintiff's Request is not relevant nor reasonably calculated to lead to
24 the discovery of admissible evidence regarding the imposition of this fee. Discovery and
25
26
27
28

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

2 **Factual and Legal Reasons for Compelling Further Response and Showing Good Cause**
3 **Justifying INTERROGATORY 5C:**

4 **Issue 1:** FTB has misrepresented what the law says by making two deceptive statements and one
5 false statement:
6

7 “Under Revenue and Taxation Code section 19133, a demand penalty is imposed if a
8 taxpayer fails to timely respond to demand notices in the manner required. Demand
9 penalties are imposed as required by law before consideration of any payments or credits.
10 Thus, any payments and/or credits made by Plaintiff are irrelevant in the determination of
11 the imposition of demand penalties under California law.”

12 In the first sentence, Mr. Swank omitted pertinent portions of Revenue and Tax Code 19133. In the
13 second sentence, he conflated two separate issues as if they were one and the same. The third
14 sentence is false, and only appears to be true as a result of the deceptive and misleading statements
15 that preceded it.
16

17 As has already been established, the full wording of R&TC 19133 states that a Demand Penalty is
18 imposed as per the guidelines set forth in R&TC 19087. R&TC 19087 states that a Notice of
19 Proposed Assessment can only be issued if a taxpayer *both files late and has not paid their tax*
20 *liability in full*. A Demand Penalty cannot be imposed on a taxpayer who does not meet the criteria
21 to have a Notice of Proposed Assessment issued.
22

23 I believe that making it sound like a Demand Penalty is imposed solely if someone files late, but
24 omitting all of the rest of the criteria necessary for the imposition of the Demand Penalty qualifies
25 as lying by omission.

26 Furthermore, how the Demand Penalty is calculated has no correlation with the calculations used to
27 determine whether or not a Notice of Proposed Assessment should be issued. Mr. Swank has made
28

1 it sound like the calculations used for determining the amount of the Demand Penalty are the same
2 calculations used to determine whether a person still has an outstanding total tax liability for a given
3 year (for the NPA). These calculations are very different, and I believe that Mr. Swank conflating
4 the two issues in such a deceptive and misleading manner also qualifies as a false statement.

5
6 Given the true facts detailed above, the last portion of the statement is completely false: "Thus, any
7 payments and/or credits made by Plaintiff are irrelevant in the determination of the imposition of
8 demand penalties."

9 Since Mr. Swank's job title is Program Specialist III, Filing Compliance Bureau, I believe it is part
10 of Mr. Swank's job duties to understand FTB's policies and Procedures in regards to how it is
11 determined if a NPA should be issued, as well as how to calculate a Demand Penalty. Since there is
12 no doubt that Mr. Swank knew that the statement was misleading, deceptive and false at the time
13 that he made it, I believe that Mr. Swank has committed the federal crime of perjury.

14
15 **Issue 2:** My question was not addressed. I asked "Please provide a complete list of all types of
16 payments and credits made to FTB which are withheld from the taxpayer's account until that year's
17 tax return is filed." Instead of addressing my question, FTB claimed that it did not understand basic
18 accounting vocabulary words, claimed that my question was irrelevant, and then changed the
19 subject altogether to make it seem like FTB did nothing wrong. In FTB's attempt to make it seem
20 like FTB has done nothing wrong, Mr. Swank committed the federal crime of perjury.

21
22 This is the summary of one of the key issues set forth in my Complaint: Is it is lawful to withhold
23 estimated tax payments from a taxpayers account instead of applying it timely, then issue a Notice
24 of Proposed Assessment that would not have been issued if all of the estimated tax payments had
25 been timely applied to the taxpayer's account, then impose Demand Penalties that would not have
26 imposed had the NPA not been falsely issued?

27
28 As I wrote in my CA Supreme Court Accusation that I filed against FTB employee Eric Yadao

1 (attached exhibit 53), I believe that unlawfully placing money into a general fund when it had been
2 designated to be applied to a taxpayer's account qualifies as embezzlement per federal code 18 U.S.
3 Code § 654. Officer or employee of United States converting property of another, which says:

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

12
13
14 So far in this case, FTB has consistently refused to acknowledge the existence of these withholding
15 practices, neither to confirm or deny them. If FTB believed these practices were lawful, Mr. Swank
16 would have responded to this question with the same list that the Taxpayer Advocate's office gave
17 to me (attached exhibit 48, pages 21 - 22), or maybe even an expanded list.

18 I believe that the fact that Mr. Swank has not only evaded a simple question about FTB
19 policy and procedure, but perjured himself in his evasion efforts, indicates that Mr. Swank is aware
20 that this practice is unlawful. I believe that Mr. Swank has committed one count of colluding to
21 cover up his employer's embezzlement scheme.

22
23 As detailed below in Interrogatory 10A, I have reason to believe other types of estimated tax
24 payments are withheld, as well other types of payments.

25 **SPECIAL INTERROGATORY NO 5D:** If an estimated tax payment is made on or before the due
26 date, but is withheld by FTB, is that payment considered timely?

27
28 **FTB RESPONSE TO SPECIAL INTERROGATORY NO. 5D:** Defendant objects to this

1 Request because it is vague and ambiguous as to the words “withheld” and "timely" as Plaintiff
2 does not define them, and also fails to provide what due date she is referring to. Defendant further
3 objects to this Request as being overbroad as to time and scope. Defendant also objects to this
4 Request to the extent it seeks information which is not relevant to the subject matter involved in the
5 pending action and is not reasonably calculated to lead to the discovery of admissible evidence.
6 Subject to and without waiving the foregoing objections and general objections, and to the extent it
7 understands this interrogatory, Defendant responds as follows: Defendant refers Plaintiff to
8 Revenue and Taxation Code section 19363 regarding the effective date of estimated tax payments.
9 Discovery and investigation is ongoing. Defendant reserves its right to supplement or amend this
10 response.
11

12
13 **Factual and Legal Reasons for Compelling Further Response and Showing Good Cause**
14 **Justifying INTERROGATORY 5D**

15 I would like to remind Your Honor that in Interrogatory 5A, I asked FTB to define the word
16 “timely” and FTB refused. Now FTB claims that they cannot answer this question because FTB
17 doesn’t understand what the word “timely” means.
18 I believe it is a reasonable request for FTB to explain how they themselves define the word “timely”
19 for their own standard operating procedures, then answer this question using their own definition.
20 The word “withheld” means: when FTB receives monies from a taxpayer or on behalf of the
21 taxpayer, upon receipt FTB applies these monies to a suspense account instead of applying the
22 monies to the taxpayer’s account.
23 This is a simple policy and procedure question. I see no justification for FTB to not answer it. I find
24 it suspicious that FTB changed the topic by referring me to R&TC 19363. R&TC 19363 only
25 addresses payments made via credit elect, and does not discuss the definition of timely. R&TC
26 19363 does not pertain to FTB’s published policy of withholding all estimated tax payments made
27
28

1 by married couples. As discussed in the Interrogatory 10A below, it also appears that FTB
2 withholds many other types of payments, not only the two types of payments that I identified in my
3 Complaint.

4 The question before Your Honor is whether or not FTB's policies and procedures comply with the
5 laws. The judge will not be able to make such a determination if FTB refuses to disclose these
6 policies and procedures.

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

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

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

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

26 My understanding is that an otherwise legal organizations that derive some portion of their income
27 through illicit activities may be subject to the RICO laws. The U.S. Supreme Court, in Sedima
28