

1 S.P.R.L. v. Imrex Co., 473 U.S. 479, 105 S. Ct. 3275, 87 L. Ed. 2d 346 (1985), upheld the  
2 constitutionality of the RICO Act and made clear that, unless amended by Congress, the RICO  
3 statutes must be interpreted broadly.

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

6 If I am wrong in my belief that these policies and procedures regarding withholding estimated tax  
7 payments and imposing penalties that would not be imposed had the payments been applied timely  
8 are *bona fide* criminal schemes, FTB should just explain why their policies and procedures  
9 surrounding these withheld payments are legitimate. I believe that FTB refusing to provide basic  
10 information about these policies and procedures indicates that I am correct in my belief that this is a  
11 *bona fide* criminal scheme.

12 I believe that by evading this question, Mr. Swank has committed another count of the federal crime  
13 of collusion to cover up embezzlement and racketeering.

14 **SPECIAL INTERROGATORY NO 5E.** If the timely paid but withheld estimated tax payment is  
15 not considered timely, please provide the legal code to justify this policy.

16 **FTB RESPONSE TO SPECIAL INTERROGATORY NO. 5E** Defendant objects to this Request  
17 because it is vague and ambiguous as to the word "withheld" and "timely" as Plaintiff does not  
18 define them. Defendant also objects to this Request because it is vague and ambiguous as to the  
19 phrase "timely paid but withheld estimated tax is not considered timely". Since Defendant does not  
20 understand the phrase, it is unable to respond to the Request. Defendant further objects to this  
21 Request as being overbroad as to time and scope. Defendant also objects to this Request to the  
22 extent it seeks information which is not relevant to the subject matter involved in the pending action  
23 and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and  
24 without waiving the foregoing objections and general objections, and to the extent it understands  
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1 this interrogatory, Defendant responds as follows: Defendant is unable to understand Plaintiff's  
2 Request as stated. Defendant refers Plaintiff to Revenue and Taxation Code section 19363 regarding  
3 effective date of estimated tax payments. Discovery and investigation is ongoing. Defendant  
4 reserves its right to supplement or amend this response.  
5

6 **Factual and Legal Reasons for Compelling Further Response and Showing Good Cause**  
7 **Justifying INTERROGATORY 5E**

8 The purpose of this lawsuit is for Your Honor to determine whether FTB's policies and procedures  
9 are in alignment with the existing state and federal tax laws. Your Honor will be unable to make a  
10 proper determination if FTB refuses to disclose the laws that it utilizes in setting its policies and  
11 procedures. I believe disclosure of the law requested in 5E is vital to this case.  
12

13 FTB's objections are nonsense. I would like to remind FTB that in Interrogatory 5A, I asked FTB to  
14 define the word "timely" and FTB refused. Now FTB claims that they cannot answer this question  
15 because FTB doesn't understand what the word "timely" means. I believe it is a reasonable request  
16 for FTB to explain how they themselves define the word "timely" for their own standard operating  
17 procedures, then answer this question using their own definition. The word "withheld" means: when  
18 FTB receives monies from a taxpayer or on behalf of the taxpayer, upon receipt FTB applies these  
19 monies to a suspense account instead of applying the monies to the taxpayer's account.  
20

21 I find it suspicious that rather than disclosing the law that FTB utilizes to justify this general  
22 policy/procedure, FTB changed the topic by referring me to R&TC 19363. R&TC 19363 only  
23 addresses payments made via credit elect, and does not discuss the definition of timely. R&TC  
24 19363 does not pertain to FTB's published policy of withholding all estimated tax payments made  
25 by married couples. As discussed in Interrogatory 10A below, it also appears that FTB withholds  
26 many other types of payments, not only the two types of payments that I identified in my  
27 Complaint.  
28

1 As already stated above in Interrogatory 5D, I believe that FTB is running a *bona fide*  
2 embezzlement and racketeering scheme by putting timely received payments into suspense instead  
3 of immediately applying the money to the taxpayer's account then charging late fees for "paying  
4 late" in violation of the guidelines of R&TC 19087.

5 FTB can prove me wrong by providing the legal codes that show these business practices are  
6 legitimate. I believe that FTB refusing to provide this basic information indicates that I am correct  
7 in my belief that this is a *bona fide* criminal scheme. I believe that by evading this question, Mr.  
8 Swank has committed another count of the federal crime of collusion to cover up embezzlement and  
9 racketeering.  
10

11 **SPECIAL INTERROGATORY NO 6A.** The attached page 9 is a page from FTB's standard  
12 operations manuals entitled Demand Penalty. It states "a penalty will **not** be imposed if any of the  
13 following are met:... We do not assess the penalty when the return has a zero total tax liability."

14 Could you please clarify whether this means the penalty won't be imposed if there was never any  
15 tax owed for the tax year or whether this means that the penalty won't be imposed if there is no  
16 outstanding balance on that year's tax liability.  
17

18 **FTB RESPONSE TO SPECIAL INTERROGATORY NO. 6A:** Defendant objects to this  
19 Request because each question must be full and complete in and of itself under Code of Civil  
20 Procedure section 2030.060, subdivision (d). A question is not full and complete if the responding  
21 party must refer to other materials to answer the question. In addition, Plaintiff has only attached an  
22 excerpt of the complete document, and Defendant would need to review the complete document to  
23 understand the document and respond to this Request. Subject to and without waiving the foregoing  
24 objections and general objections, and to the extent it understands this interrogatory, Defendant  
25 responds as follows: Under Revenue and Taxation Code section 19133, a demand penalty is  
26 imposed if a taxpayer fails to timely respond to demand notices in the manner required. Demand  
27  
28

1 penalties are imposed as required by law before consideration of any payments or credits. The  
2 demand penalty is computed at 25- percent of the total tax liability before any prepayments or  
3 credits are applied to reduce the tax liability. Thus, any payments and/or credits made by Plaintiff  
4 are irrelevant in the determination of the imposition of demand penalties under California law.  
5

6 **Factual and Legal Reasons for Compelling Further Response and Showing Good Cause**  
7 **Justifying INTERROGATORY 6A:**

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

10 “Under Revenue and Taxation Code section 19133, a demand penalty is imposed if a  
11 taxpayer fails to timely respond to demand notices in the manner required. Demand  
12 penalties are imposed as required by law before consideration of any payments or credits.  
13 The demand penalty is computed at 25- percent of the total tax liability before any  
14 prepayments or credits are applied to reduce the tax liability. Thus, any payments and/or  
15 credits made by Plaintiff are irrelevant in the determination of the imposition of demand  
16 penalties under California law.”  
17

18 In the first sentence, Mr. Swank omitted pertinent portions of Revenue and Tax Code 19133. In the  
19 second and third sentences, he conflated two separate issues as if they were one and the same. The  
20 fourth sentence is false, and only appears to be true as a result of the deceptive and misleading  
21 statements that preceded it.  
22

23 As has already been established, the full wording of R&TC 19133 states that a Demand Penalty is  
24 imposed as per the guidelines set forth in R&TC 19087. R&TC 19087 states that a Notice of  
25 Proposed Assessment can only be issued if a taxpayer *both files late and has not paid their tax*  
26 *liability in full*. A Demand Penalty cannot be imposed on a taxpayer who does not meet the criteria  
27 to have a Notice of Proposed Assessment issued.  
28

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

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

10 Given the true facts detailed above, the last portion of the statement is completely false: "Thus, any  
11 payments and/or credits made by Plaintiff are irrelevant in the determination of the imposition of  
12 demand penalties under California law."

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

18 **Issue 2:** My question was not addressed. I asked "(FTB guidelines state) 'We do not assess the  
19 (Demand) penalty when the return has a zero total tax liability.' Could you please clarify whether  
20 this means the penalty won't be imposed if there was never any tax owed for the tax year or whether  
21 this means that the penalty won't be imposed if there is no outstanding balance on that year's tax  
22 liability."

23 Instead of addressing my question, FTB changed the subject altogether to make it seem like FTB  
24 did nothing wrong. In Mr. Swank's attempt to make it seem like FTB has done nothing wrong, Mr.  
25

1 Swank committed the federal crime of perjury.

2 As already stated above in Interrogatory 5D, I believe that FTB is running a *bona fide*  
3 embezzlement and racketeering scheme by putting timely made payments into suspense instead of  
4 immediately applying the money to the taxpayer's account, then charging late fees for "paying late"  
5 in violation of the guidelines of R&TC 19087.  
6

7 This answer to this Interrogatory 6A will help Your Honor to determine whether the Notices of  
8 Proposed Assessment were properly issued to us or not. It is critical that FTB answer this question.  
9 I believe that the fact that Mr. Swank has not only evaded a simple question about FTB policy and  
10 procedure, but perjured himself in his evasion efforts, indicates that Mr. Swank is aware that FTB's  
11 withholding practices are unlawful. I believe that Mr. Swank has committed another count of the  
12 federal crime of collusion to cover up his employer's embezzlement and racketeering schemes.  
13

14 The Disclosure Department only sent pages that they believed were relevant to the specific  
15 questions that I'd asked. If Mr. Swank believes that he needs to see all pages of the complete  
16 manual in order to answer 6A, he should ask the Disclosure Department for the missing pages.

17 **SPECIAL INTERROGATORY NO 6B:** If neither of the above interpretations of the tax policy is  
18 correct, please clarify the meaning.

19 **FTB RESPONSE TO SPECIAL INTERROGATORY NO. 6B:** Defendant objects to this  
20 Request because it is vague and ambiguous as to the word "tax policy" as Plaintiff does not define  
21 it. Defendant also objects to this Request as being vague and ambiguous because Plaintiff does not  
22 describe what interpretations of tax policy she is referring to and Defendant does know how  
23 Plaintiff is interpreting the tax policy. Defendant also objects to this Request because each question  
24 must be full and complete in and of itself under Code of Civil Procedure section 2030.060,  
25 subdivision (d). A question is not full and complete if the responding party must refer to other  
26 materials to answer the question. Subject to and without waiving the foregoing objections and  
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1 general objections, and to the extent it understands this  
2 interrogatory, Defendant responds as follows: Defendant does know what tax policy Plaintiff is  
3 referring to, and how Plaintiff interprets the tax policy. Therefore, Defendant is unable to respond to  
4 this Request.

5  
6 **Factual and Legal Reasons for Compelling Further Response and Showing Good Cause**

7 **Justifying INTERROGATORY 6B:**

8 I believe that in order to for Your Honor to properly evaluate if these policies and procedures  
9 comply with the laws, it is imperative for FTB to answer this question. Since FTB claimed they did  
10 not understand this question, I will re-phrase it: Please clarify exactly how the computation is made  
11 to determine if there is a tax liability due on a particular tax year in order to determine if a Demand  
12 Penalty is applicable for that year.

13  
14 I believe that Mr. Swank refused to answer this question because he knew that answering it would  
15 confirm his other statements regarding how it is determined if Penalties are to be imposed were  
16 indeed false.

17 **SPECIAL INTERROGATORY NO 7A:** The attached page 10 is the standard operating  
18 procedure manual entitled "Filing Enforcement Fee." It states "we do not assess the penalty when  
19 the return has a zero total tax liability." Could you please clarify whether this means the penalty  
20 won't be imposed if there was never any tax owed for the tax year or whether this means that the  
21 penalty won't be imposed if there is no outstanding balance on that year's tax liability.

22  
23 **FTB RESPONSE TO SPECIAL INTERROGATORY NO. 7A:** Defendant objects to this  
24 Request as violating Code of Civil Procedure section 94, since in a limited case, each party may  
25 serve on each adverse party no more than 35 of any combination of interrogatories, requests for  
26 admission or demands for inspection. Plaintiff has exceeded the allowed limit. Defendant objects to  
27 this Request because each question must be full and complete in and of itself under Code of Civil  
28

1 Procedure section 2030.060, subdivision (d). A question is not full and complete if the responding  
2 party must refer to other materials to answer the question. Defendant further objects to this Request  
3 because an interrogatory may not have a subparts, a preface or instructions, or contain compound,  
4 conjunctive or disjunctive questions.

5  
6 **SPECIAL INTERROGATORY NO 7B:** If neither of the above interpretations of the tax policy is  
7 correct, please clarify the meaning.

8 **RESPONSE TO SPECIAL INTERROGATORY NO. 7B:** Defendant objects to this Request as  
9 violating Code of Civil Procedure section 94, since in a limited case, each party may serve on each  
10 adverse party no more than 35 of any combination of interrogatories, requests for admission or  
11 demands for inspection. Plaintiff has exceeded the allowed limit. Defendant further objects to this  
12 Request because it is vague and ambiguous as to the word “tax policy” as Plaintiff does not define  
13 it. Defendant also objects to this Request as vague and ambiguous because Plaintiff does not define  
14 what interpretation she is referring to, and Defendant does know how Plaintiff is interpreting the tax  
15 policy.  
16

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

18 **Justifying INTERROGATORIES 7A and 7B:**

19 I am humbly requesting Your Honor to make an exception to the limit on the number of questions.

20 The issue at hand is whether FTB’s policies and procedures are in line with state and federal law.

21 Your honor will be unable to make this determination unless FTB’s policies and procedures are  
22 fully disclosed. As such, I believe that the answer to these question are critical for you to make a  
23 proper determination.  
24

25 Given that one of FTB’s published foundational principles is to “Operate with transparency to  
26 maintain public trust and confidence,” it seems to me that FTB should be eager to disclose their  
27 policies and procedures. I believe this information should be readily available online and it should  
28



1 not be necessary for a judge to order them to disclose such basic information.

2 **SPECIAL INTERROGATORY NO. 8:** The Taxpayer Advocate's office has stated multiple  
3 times that the practice of withholding estimated tax payments made by married couples and the  
4 practice of withholding estimated tax payments made via credit elect are both official FTB policy  
5 and procedure (see attached pages 11 - 12). FTB's Disclosure Department denies that either of these  
6 practices currently or have ever existed at FTB (see pages 13 - 15 attached). **SPECIAL**

7 **INTERROGATORY NO. 8A:** Please explain the discrepancy between the information provided  
8 by FTB's Taxpayer's Advocate Office and FTB's Disclosure Department.  
9

10 **FTB RESPONSE TO SPECIAL INTERROGATORY NO. 8A:** Defendant objects to this  
11 Request as violating Code of Civil Procedure section 94, since in a limited case, each party may  
12 serve on each adverse party no more than 35 of any combination of interrogatories, requests for  
13 admission or demands for inspection. Plaintiff has exceeded the allowed limit. Defendant also  
14 objects to this Request as vague and ambiguous because it does not define with reasonable  
15 particularity what discrepancy she is referring to. Defendant objects to this Request because each  
16 question must be full and complete in and of itself under Code of Civil Procedure section 2030.060,  
17 subdivision (d). A question is not full and complete if the responding party must refer to other  
18 materials to answer the question. Defendant further objects to this Request because an interrogatory  
19 may not have any subparts, a preface or instructions, or contain compound, conjunctive or  
20 disjunctive questions. Defendant also objects to this Request to the extent it seeks information  
21 which is not relevant to the subject matter involved in the pending action and is not reasonably  
22 calculated to lead to the discovery of admissible evidence.  
23

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

25 **Justifying INTERROGATORY NO 8A:**

26 As already detailed in the opening section above, FTB's policies and procedures surrounding the  
27  
28

1 withholding practice are unclear because different departments within FTB have provided  
2 conflicting information about these policies and procedures.

3 I am humbly requesting Your Honor to make an exception to the limit on the number of questions.

4 The issue at hand is whether FTB's policies and procedures are in line with state and federal law.

5 Your honor will be unable to make this determination unless FTB's policies and procedures are  
6 fully disclosed – including which information previously provided is correct and which information  
7 is false. As such, I believe that the answer to this question is critical for you to make a proper  
8 determination.

9  
10 Given that one of FTB's published foundational principles is to "Operate with transparency to  
11 maintain public trust and confidence," it seems to me that FTB should be eager to disclose their  
12 policies and procedures. I believe this information should be readily available online and it should  
13 not be necessary for a judge to order them to disclose such basic information.

14  
15 **SPECIAL INTERROGATORY NO. 8B:** Please clearly state FTB's policy/procedure regarding  
16 withholding of credit elect payments.

17  
18 **RESPONSE TO SPECIAL INTERROGATORY NO. 8B:** Defendant objects to this Request as  
19 violating Code of Civil Procedure section 94, since in a limited case, each party may serve on each  
20 adverse party no more than 35 of any combination of interrogatories, requests for admission or  
21 demands for inspection. Plaintiff has exceeded the allowed limit. Defendant objects to this Request  
22 because each question must be full and complete in and of itself under Code of Civil Procedure  
23 section 2030.060, subdivision (d). A question is not full and complete if the responding party must  
24 refer to other materials to answer the question. Defendant further objects to this Request because an  
25 interrogatory may not have subparts, a preface or instructions, or contain compound, conjunctive or  
26 disjunctive questions. Defendant also objects to this Request because it is vague and ambiguous as  
27 to "withholding of credit elect payments" as Plaintiff does not define it. Defendant also objects to  
28

1 this 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.

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

5 **Justifying INTERROGATORY 8B:**

6  
7 Given that the 2011 and 2013 demand penalties, as well as the collection cost recovery fee, would  
8 not have been imposed had our estimated tax payments been applied timely, this information is not  
9 only relevant, it is vital.

10 I am humbly requesting Your Honor to make an exception to the limit on the number of questions.

11 The issue at hand is whether FTB's policies and procedures are in line with state and federal laws.

12 Your honor will be unable to make this determination unless FTB's policies and procedures are  
13 fully disclosed – including which information previously provided is correct and which information  
14 is false. As such, I believe that the answer to this question is critical for you to make a proper  
15 determination.

16  
17 Given that one of FTB's published foundational principles is to "Operate with transparency to  
18 maintain public trust and confidence," it seems to me that FTB should be eager to disclose their  
19 policies and procedures. I believe this information should be readily available online and it should  
20 not be necessary for a judge to order them to disclose such basic information.

21  
22 **SPECIAL INTERROGATORY NO. 8C:** Please clearly state FTB's policy/procedure regarding  
23 withholding estimated tax payments made by married couples.

24 **RESPONSE TO SPECIAL INTERROGATORY NO. 8C:** Defendant objects to this Request as  
25 violating Code of Civil Procedure section 94, since in a limited case, each party may serve on each  
26 adverse party no more than 35 of any combination of interrogatories, requests for admission or  
27 demands for inspection. Plaintiff has exceeded the allowed limit. Defendant objects to this Request  
28

1 because each question must be full and complete in and of itself under Code of Civil Procedure  
2 section 2030.060, subdivision (d). A question is not full and complete if the responding party must  
3 refer to other materials to answer the question. Defendant further objects to this Request because an  
4 interrogatory may not have a subparts, a preface or instructions, or contain compound, conjunctive  
5 or disjunctive questions. Defendant also objects to this Request because it is vague and ambiguous  
6 as to “withholding estimate tax payments” as Plaintiff does not define it. Defendant also objects to  
7 this Request as being overbroad as to time and scope. Defendant also objects to this Request to the  
8 extent seeks information which is not relevant to the subject matter involved in the pending action  
9 and is not reasonably calculated to lead to the discovery of admissible evidence.

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

12 **Justifying INTERROGATORY 8C:**

13 I am humbly requesting Your Honor to make an exception to the limit on the number of questions.  
14 This particular policy/procedure is especially relevant as it is one of the precedential matters that I  
15 am requesting that Your Honor to determine.

17 I believe this policy of withholding all estimated tax payments made by married couples violates  
18 multiple laws. The first issue is the heart of this case: was it legal for FTB to not timely apply  
19 estimated tax payments, then impose Demand Penalties for “paying late” as per R&TC 19087,  
20 when the monies had been received by the due date?

22 The second major issue in this case is: was it lawful for FTB to demand payments of additional  
23 monies for tax liabilities that FTB knew – *by their own records* – that we did not owe? I believe that  
24 FTB utilizes this policy to unlawfully enriched itself. While it is true that the excess tax payments  
25 will be refunded once that year’s tax return is filed, FTB maintains possession of a lot of extra  
26 money in the interim.

27 The third issue is: is this policy a violation of the Equal Protections Clause within the 14<sup>th</sup>  
28

1 Amendment of the US Constitution? According to the Taxpayer Advocate (exhibit 48, pages 21 -  
2 22), if you are single and file late, the FTB will apply the estimated tax payments that were held in  
3 suspense to your account *after* the penalties, fees and interest are falsely imposed, *but before you*  
4 *actually file* that year's tax return. So let's pretend that you are single and you paid \$10,000 in  
5 estimated tax payments that FTB withheld. You file late, and FTB imposes \$2,000 in penalties, fees  
6 and interest for "underpaying." Because you are single, FTB will then apply the \$10,000 in  
7 estimated tax payments to your account and you only have to send in the \$2,000 in penalties, fees  
8 and interest -- and nothing more.

10 However, FTB refuses to apply any estimated tax payments to married people until they *actually*  
11 *file their returns*. So let's pretend you are married and that your joint tax liability is identical to the  
12 single person's in the example above. You and your spouse paid \$10,000 in joint estimated tax  
13 payments that FTB withheld from both of your accounts. You file late, and FTB imposes \$2,000 in  
14 penalties, fees and interest on you for "underpaying" and another \$2,000 on your spouse "for  
15 underpaying." So already, the joint filers have to pay twice as much as the single filers in upfront  
16 penalties as compared to a single person, even though the tax liability is identical. I realize the  
17 penalty amount is later adjusted, but is it lawful to demand double the money upfront?

19 FTB then demands that the married couple send FTB \$14,000 "**RIGHT NOW OR ELSE** we will  
20 garnish your wages and levy your bank account!" (emphasis added to demonstrate the aggressive  
21 and coercive collection tactics that FTB utilizes to force compliance with the unjust demands for  
22 money). So if you are married, you also have to pay the original tax liability of \$10,000 as if FTB  
23 had never received that \$10,000, even though FTB has had that original \$10,000 in their possession  
24 since the day that the money was due.

26 I believe that treating married people in a way that financially penalizes them for being married is a  
27 violation of the Equal Protections Clause of the 14<sup>th</sup> Amendment of the US Constitution, which  
28

1 states that the government has to treat all classes of people the same. Marital status does qualify as a  
2 class, and FTB readily admits that they do not treat the married class the same as they treat the  
3 single class.

4 I believe that the years of unlawful harassment that my husband and I endured from FTB over the  
5 payments of monies that were never owed – *by FTB's own records* – would not have occurred if my  
6 husband and I were cohabitating instead of legally married.  
7

8 Finally, my argument for tax year 2014 is that my husband and I had reasonable cause for filing tax  
9 year 2014 late: FTB's relentless harassment for monies not owed. FTB continually made  
10 excessively time-consuming and overly burdensome demands that we provide them information  
11 regarding payments already made "**RIGHT NOW OR ELSE** we will garnish your wages and levy  
12 your bank account!" Their coercive demands were so time-consuming that it prevented us from  
13 having time to work on the tax returns for tax years 2011 and on.  
14

15 I believe that Your Honor needs to understand exactly what FTB's policies and procedures are in  
16 order to determine if FTB's spate of coercive demands were reasonable and in accordance with the  
17 laws. This is critical information for all three years in dispute.

18 **SPECIAL INTERROGATORY NO. 9.** For tax year 2014, the maximum amount of money that  
19 could legally be collected for SDI was \$1016 (see attached page 16). Both of my husband's  
20 employers collected the maximum amount, so my husband had paid \$2,032 in SDI that year. A  
21 NPA was issued to my husband which did not reflect any SDI overpayments (see attached page  
22 17). **SPECIAL INTERROGATORY NO 9A.** Is withholding SDI overpayments an official FTB  
23 policy or procedure?  
24

25 **RESPONSE TO SPECIAL INTERROGATORY NO. 9A:** Defendant objects to this Request as  
26 violating Code of Civil Procedure section 94, since in a limited case, each party may serve on each  
27 adverse party no more than 35 of any combination of interrogatories, requests for admission or  
28

1 demands for inspection. Plaintiff has exceeded the allowed limit. Defendant objects to this Request  
2 because each question must be full and complete in and of itself under Code of Civil Procedure  
3 section 2030.060, subdivision (d). A question is not full and complete if the responding party must  
4 refer to other materials to answer the question. Defendant also objects to this Request as being  
5 vague and ambiguous as to the word “withholding”. Defendant also objects to this Request because  
6 it is vague and ambiguous as to “SDI overpayments” as Plaintiff does not define it. Defendant  
7 further objects to this Request because an interrogatory may not have a subparts, a preface or  
8 instructions, or contain compound, conjunctive or disjunctive questions. Defendant also objects to  
9 this Request as being overbroad as to time and scope. Defendant also objects to this Request to the  
10 extent it seeks information which is not relevant to the subject matter involved in the pending action  
11 and is not reasonably calculated to lead to the discovery of admissible evidence.  
12  
13

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

15 **Justifying INTERROGATORY 9A:**

16 I am humbly requesting Your Honor to make an exception to the limit on the number of questions.

17 The issue at hand is whether FTB’s policies and procedures are in line with state and federal laws.

18 Your honor will be unable to make this determination unless FTB’s policies and procedures are  
19 fully disclosed. As such, I believe that the answer to this question is critical for you to make a  
20 proper determination.  
21

22 SDI is a CA state tax that is collected by FTB on behalf of the State of CA. Given Mr. Swank’s job  
23 title of Program Specialist III, Filing Compliance Bureau, he is certainly aware of this tax, the limit  
24 on the tax, and the procedures for re-allocating overpayments. As stated in the opening, there is a  
25 limit to how much SDI tax the State of CA is allowed to charge. If any employer sends too much  
26 SDI tax money to FTB on behalf of an employee, FTB credits the extra money – or overpayment –  
27 towards that person’s state income tax liability for that year.  
28

1 I believe that this overpayment should have been reflected on my husband's NPA that was issued  
2 for tax year 2014. I believe FTB's policy regarding whether or not SDI overpayments are withheld  
3 in the same manner that payments made via credit elect and payments made by married couples are  
4 withheld is relevant to this case, as the SDI monies being withheld affected whether or not the 2014  
5 NPA would have been issued.

6  
7 **SPECIAL INTERROGATORY NO. 9B.** If withholding SDI overpayments is an official FTB  
8 policy or procedure, please cite the legal code used to justify this practice.

9 **FTB RESPONSE TO SPECIAL INTERROGATORY NO. 9B** Defendant objects to this Request  
10 as violating Code of Civil Procedure section 94, since in a limited case, each party may serve on  
11 each adverse party no more than 35 of any combination of interrogatories, requests for admission or  
12 demands for inspection. Plaintiff has exceeded the allowed limit. Defendant also objects to this  
13 Request as being vague and ambiguous as to the word "withholding". Defendant also objects to this  
14 Request because it is vague and ambiguous as to "SDI overpayments" as Plaintiff does not define it.  
15 Defendant further objects to this Request because an interrogatory may not have subparts, a preface  
16 or instructions, or contain compound, conjunctive or disjunctive questions. Defendant also objects  
17 to this Request as being overbroad as to time and scope. Defendant also objects to this Request to  
18 the extent it seeks information which is not relevant to the subject matter involved in the pending  
19 action and is not reasonably calculated to lead to the discovery of admissible evidence.

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

23 **Justifying INTERROGATORY 9B:**

24 I am humbly requesting Your Honor to make an exception to the limit on the number of questions.  
25 The issue at hand is whether FTB's policies and procedures are in line with state and federal laws.  
26 Your honor will be unable to make this determination unless FTB's policies and procedures are  
27 fully disclosed. As such, I believe that the answer to this question is critical for you to make a  
28



1 proper determination.

2 Given that one of FTB's published foundational principles is to "Operate with transparency to  
3 maintain public trust and confidence," it seems to me that FTB should be eager to disclose which  
4 laws their policies and procedures are based upon. I believe this information should be readily  
5 available online and it should not be necessary for a judge to order them to disclose such basic  
6 information.  
7

8 **SPECIAL INTERROGATORY NO. 9C:** If withholding SDI overpayments is not an official  
9 policy or procedure, please explain why this overpayment was not reflected on the 2014 NPA that  
10 was issued to my husband.

11 **RESPONSE TO SPECIAL INTERROGATORY NO. 9C:** Defendant objects to this Request as  
12 violating Code of Civil Procedure section 94, since in a limited case, each party may serve on each  
13 adverse party no more than 35 of any combination of interrogatories, requests for admission or  
14 demands for inspection. Plaintiff has exceeded the allowed limit. Defendant objects to this Request  
15 because each question must be full and complete in and of itself under Code of Civil Procedure  
16 section 2030.060, subdivision (d). A question is not full and complete if the responding party must  
17 refer to other materials to answer the question. Defendant also objects to this Request as being  
18 vague and ambiguous as to the word "withholding". Defendant also objects to this Request because  
19 it is vague and ambiguous as to "SDI overpayments" as Plaintiff does not define it. Defendant  
20 further objects to this Request because an interrogatory may not have subparts, a preface or  
21 instructions, or contain compound, conjunctive or disjunctive questions. Defendant also objects to  
22 this Request as being overbroad as to time and scope. Defendant also objects to this Request to the  
23 extent it seeks information which is not relevant to the subject matter involved in the pending action  
24 and is not reasonably calculated to lead to the discovery of admissible evidence.  
25  
26  
27

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

1 **Justifying INTERROGATORY 9C:**

2 I am humbly requesting Your Honor to make an exception to the limit on the number of questions.  
3 The issue at hand is whether FTB's policies and procedures are in line with state and federal laws.  
4 Your honor will be unable to make this determination unless FTB's policies and procedures are  
5 fully disclosed. As such, I believe that the answer to this question is critical for you to make a  
6 proper determination.  
7

8 The SDI payment shows as a credit on FTB's tax year 2014 accounting ledger, and it shows the  
9 money was received from my husband's employer on 04-15-2015. I believe this money should have  
10 appeared on my husband's 2014 NPA (see exhibit 47, page 4 and attached exhibit 49, pages 36 –  
11 37, 52). I believe that an explanation for this apparent accounting irregularity is a reasonable  
12 request.  
13

14 **SPECIAL INTERROGATORY NO. 10A:** Please provide a complete list of every type of  
15 payment that is subject to being withheld/placed in suspense instead of immediately applied to the  
16 taxpayer's account?

17 **RESPONSE TO SPECIAL INTERROGATORY NO. 10A:** Defendant objects to this Request as  
18 violating Code of Civil Procedure section 94, since in a limited case, each party may serve on each  
19 adverse party no more than 35 of any combination of interrogatories, requests for admission or  
20 demands for inspection. Plaintiff has exceeded the allowed limit. Defendant also objects to this  
21 Request as being vague and ambiguous as to the word "withheld". Defendant also objects to this  
22 Request because it is vague and ambiguous as to "immediately applied" as Plaintiff does not define  
23 it. Defendant also objects to this Request as being overbroad as to time and scope. Defendant also  
24 objects to this Request to the extent it seeks information which is not relevant to the subject matter  
25 involved in the pending action and is not reasonably calculated to lead to the discovery of  
26 admissible evidence.  
27  
28