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

11 **Christine N. Grab,**

12 Plaintiff,

13
14 v.

15 **The California Franchise Tax Board,**

16 Defendant.

Case No. 37-2020-00005100-CL-BT-CTL

**DEFENDANT FRANCHISE TAX
BOARD'S NOTICE OF MOTION AND
MOTION FOR SANCTIONS PURSUANT
TO CODE OF CIVIL PROCEDURE
SECTION 128.5; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF ANNA
BARSEGYAN; DECLARATION OF
CHELSEA HUBBARD; DECLARATION
OF KEITH SWANK; DECLARATION
OF GRACE LEBLEU; DECLARATION
OF THI LUONG**

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19
20 Date: March 25, 2022
21 Time: 9:00 a.m.
22 Dept: C67
23 Judge: The Honorable Eddie C.
Sturgeon
Trial Date: March 4, 2022
Action Filed: January 29, 2020

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NOTICE OF MOTION

TO PLAINTIFF CHRISTINE N. GRAB, IN PRO PER:


PLEASE TAKE NOTICE, hereby given, that the Motion for Sanctions Pursuant to Code of Civil Procedure Section 128.5 (the Motion) served and filed herewith by Defendant, Franchise Tax Board of the State of California, has been set for hearing on March 25, 2022 at 9:00 a.m., or as soon thereafter as counsel can be heard in Department C67 of this Court located at 330 West Broadway, San Diego, California 92101.

The Motion will be based upon this Notice of Motion, the attached Memorandum of Points and Authorities, declarations, any exhibits or reply briefs filed by Franchise Tax Board, and any other argument or evidence presented by Franchise Tax Board at the hearing of this matter, if any.

Dated: September 1, 2021

Respectfully submitted,

ROB BONTA
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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Since the commencement of this litigation, Plaintiff Christine N. Grab has improperly filed pleadings and motions unsupported by existing law and facts, and directly threatened Franchise Tax Board (FTB) personnel and counsel in an attempt to gain an improper advantage. Although she filed a refund action alleging that the FTB improperly imposed demand penalties and a collection cost recovery fee for the disputed tax years, she has made baseless allegations of collusion and government corruption and racketeering against the FTB, – all of which are untrue and irrelevant to the issues in this case. Plaintiff’s bad faith conduct continues, and is unlikely to end without court intervention. Accordingly, this Court should grant the FTB’s Motion for Sanctions Pursuant to Code of Civil Procedure Section 128.5 (the Motion) to deter and preclude Plaintiff from continuing her frivolous behavior.

PROCEDURAL AND FACTUAL HISTORY

I. PLAINTIFF’S COMPLAINT.

After the Office of Tax Appeals (OTA) sustained the FTB’s denial of Plaintiff’s claim for refund for the 2011, 2013 and 2014 tax years, she filed a limited action for a complaint for refund of personal income tax against the FTB on January 29, 2020. (ROA #1, Complaint.) Although Plaintiff admits in her complaint that she failed to timely file tax returns for the disputed tax years (*Id.* at pp. 7, 19, 21), she alleges that the FTB improperly assessed demand penalties since she and her husband, Eric Grab, “had overpaid the estimated taxes as determined by the FTB’s own estimates prior to the due dates.” (*Id.* at p. 3, lines 9-10.) Plaintiff further alleges that the demand notices were improperly issued since they had made estimated tax payments. (*Id.* at p. 4.) Plaintiff also alleges that the FTB improperly imposed the 2011 collection cost recovery fee of \$170 because of the “improper withholding of the credit elect payment.” (*Id.* at p. 16, lines 17-19.) On May 26, 2020, the FTB filed its answer, denying all material allegations in Plaintiff’s complaint, and asserting its affirmative defenses. (ROA # 9.)

1 **II. PLAINTIFF’S FRIVOLOUS PLEADINGS AND MOTIONS.**

2 **A. Plaintiff’s Demurrer to FTB’s Answer.**

3 On June 15, 2020, Plaintiff filed a demurrer to the FTB’s answer although her claims were
4 frivolous and unsupported by existing law. (ROA #10, Demurrer.) First, Plaintiff argued that the
5 FTB’s general denial of the allegations in her complaint was insufficient because she did not
6 “believe that the one generic sentence constitutes an *effective* defense.” (*Id.* at p. 2, lines 11-12.)
7 Second, Plaintiff argued that the answer was uncertain (*Id.* at p. 1), although Plaintiff filed a
8 limited action and special demurrers, such as uncertainty, are prohibited in these types of
9 proceedings. (Code Civ. Proc., § 92, subd. (c); *Johnson v. Mead* (1987) 191 Cal.App.3d 156,
10 160.) Third, Plaintiff argued that the FTB’s affirmative defenses were false and/or irrelevant
11 (ROA # 10, Demurrer, p. 2, lines 26-26.) After the demurrer hearing on October 30, 2020, this
12 Court rejected Plaintiff’s arguments, and overruled the demurrer on grounds that (1) special
13 demurrers, such as uncertainty, are not allowed in a limited case; (2) the FTB properly denied all
14 material allegations in the complaint; and (3) the FTB’s affirmative defenses were sufficiently
15 pled. (ROA # 17.)

16 **B. Plaintiff’s Discovery Motions.**

17 Despite this Court’s denial of the demurrer, Plaintiff continued filing unwarranted motions.
18 On December 15, 2020, Plaintiff filed her first motion to compel further responses to demand for
19 documents. (ROA #19.) In opposition to the first motion, the FTB submitted a declaration stating
20 that it had produced all documents responsive to her request since it produced approximately 856
21 pages of documents pursuant to her multiple production requests. (ROA #34, Declaration of
22 Grace LeBleu, ¶ 6.) During the hearing on May 28, 2021, Plaintiff made unsubstantiated and false
23 allegations against the FTB and its counsel, prompting this Court to require a court reporter at all
24 future hearings on this case. Again, this Court rejected Plaintiff’s arguments, and denied
25 Plaintiff’s first motion to compel. (ROA # 41.)

26 On May 24, 2021, Plaintiff filed her second motion to compel further responses to the first
27 set of specially prepared interrogatories (ROA # 37), with a hearing date currently scheduled for
28 October 22, 2021. The second motion to compel accused FTB employee Keith Swank, who

1 signed the verification to the responses, of “perjury” for “falsely stating that the Cost Recovery
2 Fee was imposed on tax year 2011 because we hadn’t paid our liability in full.” (*Id.* at p. 2.) She
3 further alleged that Mr. Swank committed “4 more counts of perjury” for “using deception” to
4 “make it appear that the laws state[] something different than they are”; “using deception” to
5 “make it appear that FTB’s policies and procedures are different than they are”; and (3) making
6 “false statements that only appeared to be true because of the previous deceptive statements.”
7 (*Ibid.*)

8 **III. PLAINTIFF’S FRIVOLOUS ACCUSATIONS AND COMMUNICATIONS.**

9 In addition to filing pleadings and motions without merit, Plaintiff emailed FTB personnel
10 and counsel with unsubstantiated threats and accusations in order to gain an advantage in this
11 litigation. With full knowledge that FTB was represented by counsel, on May 25, 2021, Plaintiff
12 sent two threatening emails to FTB employee, Keith Swank, who had previously signed the
13 verification to FTB’s responses to the first set of specially prepared interrogatories. (Declaration
14 of Keith Swank (Swank Declaration), ¶¶ 3, 4.) She attempted to induce Mr. Swank to amend the
15 responses to her interrogatories by stating that “[i]t is not too late to recant the perjurious
16 statements”, and threatened future incarceration and fines if he didn’t comply with her demands.
17 (*Id.* at ¶ 3.) Less than an hour later, she sent a second email to Mr. Swank, stating that the
18 arguments in her motion to compel “regarding your perjury are even stronger”, that the FTB has a
19 “track record for setting people up as patsies”, and he should “probably consult a lawyer.” (*Id.* at
20 ¶ 4.)

21 Plaintiff emailed another FTB employee, Chelsea Hubbard, accusing her of the same
22 wrongdoing. (Declaration of Chelsea Hubbard (Hubbard Declaration), ¶ 3.) She stated that “it is
23 probably too late” for Ms. Hubbard to “recant [her] perjurious statements” but she should also
24 consult an attorney. (*Ibid.*) She further alleged that Ms. Swank was also “set up as patsies”, that
25 she was “caught in the middle of FTB’s cover-up” and “will face prison.” (*Ibid.*)

26 Plaintiff further affirmed that she was attempting to increase the FTB’s litigation costs in
27 order to gain an advantage in this action. On June 3, 2021, Plaintiff emailed FTB employee, Thi
28 Luong, and stated “[s]ince you said that you are carefully watching the litigation costs, I thought I

1 would share with you my latest Motion to Compel, which will cost FTB thousands of dollars to
2 defend.” (Declaration of Thi Luong (Luong Declaration), ¶ 3.)

3 Plaintiff continued with her harassing and frivolous conduct by submitting multiple Public
4 Record Act (PRA) requests for copies of oaths taken by FTB personnel and their employee
5 numbers. (Declaration of Grace LeBleu (LeBleu Declaration), ¶¶ 3, 4, 5.) She alleged that these
6 requests were part of a “*bona-fide* criminal matter”, and “failure to provide this information will
7 be considered collusion to cover up criminal activities,” and she would “instead file collusion
8 charges against Dennis Haase and Grace LeBleu.” (*Id.* at ¶ 3.)

9 Plaintiff’s unsubstantiated allegations were not only directed at FTB personnel – she wasted
10 limited government resources in an attempt to gain an advantage in this litigation by threatening
11 FTB counsel. She told FTB counsel that she felt “bad for all of the FTB employees who may face
12 20 years in prison for being gullible enough to trust the Legal Department.” (Declaration of Anna
13 Barsegyan (Barsegyan Declaration), ¶ 5.) Moreover, when FTB counsel informed Plaintiff that
14 the FTB would not amend its initial responses to the first set of special interrogatories, Plaintiff
15 replied “[a]s you are very well aware of, Mr. Swank is facing both prison and hefty penalties for
16 his 5 counts of perjury” relating to the FTB’s discovery responses. (*Id.* at ¶ 6.) Plaintiff later sent
17 an email to FTB counsel that day, accusing her of “colluding to set up Mr. Swank and Ms.
18 Hubbard as patsies.” (*Id.* at ¶ 7.) She concluded the email by declaring “I do not know how you
19 live with yourself.” (*Ibid.*) Less than two months later, Plaintiff emailed FTB counsel also
20 requesting a copy of the oath she took for office, and her employee number. (*Id.* at ¶ 8.)

21 ARGUMENT

22 I. SANCTIONS UNDER CODE OF CIVIL PROCEDURE SECTION 128.5.

23 The court may sanction a party for “actions or tactics, made in bad faith” that are frivolous
24 or solely intended to cause unnecessary delay.” (Code Civ. Proc., § 128.5, subd. (a).) A party’s
25 actions are considered frivolous if they are either: (1) “totally and completely without merit”; or
26 (2) for the sole purpose of harassing an opposing party. (Code Civ. Proc., § 128.5, subd. (b)(2);
27 see *Marriage of Flaherty* (1982) 31 Cal.3d 637, 649-650.) Furthermore, “harassing” conduct
28 includes vexatious tactics which, although literally authorized by state or rule, go beyond that

1 which is appropriate under any reasonable standard. (*West Coast Develop. v. Reed* (1992) 2
2 Cal.App.4th 693, 702.) For the purposes of imposing sanctions under Code of Civil Procedure
3 section 128.5, it is also immaterial who ultimately wins or loses the case. (*Magnolia v. Fields*
4 (1987) 191 Cal.App.3d Supp. 1, 6-7.) The purpose of the sanctions is to “deter the repetition of
5 the action or tactic or comparable action by others similarly situated. (Code Civ. Proc., § 128.5,
6 subd. (f)(2).) Sanctions may be both monetary and nonmonetary in nature. (Code of Civ. Proc., §
7 128.5, subd. (a) & (f)(2).)

8 **II. SANCTIONS ARE WARRANTED BECAUSE PLAINTIFF’S PLEADINGS ARE FRIVOLOUS**
9 **AND WHOLLY LACKING IN LEGAL SUPPORT.**

10 **A. California Law On Imposition of Demand Penalties and Collection Cost**
11 **Recovery Fees Do Not Support Plaintiff’s Legal Position.**

12 Plaintiff’s complaint solely deals with the FTB’s denial of her refund claim pertaining to its
13 imposition of demand penalties and a collection cost recovery fee. Ample legal authority supports
14 the FTB’s position and the OTA’s Decision that the FTB properly imposed demand penalties for
15 2011, 2013 and 2014 tax years, and a collection cost recovery fee for the 2011 tax year.

16 Revenue and Taxation Code section 19133¹ provides that if a “taxpayer fails or refuses to
17 furnish any information requested in writing” by the FTB or “fails or refuses to make and file a
18 return” upon demand by the FTB, then the FTB may impose a penalty of 25 percent of the
19 amount of tax determined pursuant to section 19087 or of any deficiency assessed by the FTB
20 concerning the assessment of which the information or return was required, unless the failure is
21 due to reasonable cause and not willful neglect. California Code of Regulations, title 18, section
22 19133, subdivision (b)(1), provides that for individuals, the demand penalty will only be imposed
23 if, among other requirements, “the taxpayer fails to timely respond to a current Demand for Tax
24 Return *in the manner prescribed.*” (Emphasis added.) The demand penalty is computed *without*
25 regard to payments and withholding credits. (*Appeal of Scott* (83-SBE-094) 1983 WL 15480.) It
26 is designed to penalize a taxpayer for failing to respond to a Demand, not for failing to pay the
27 proper tax due. (*Appeal of Hublou* (77-SBE-102) 1977 WL 4093.) To establish reasonable cause,

28 ¹ Unless otherwise provided, all future statutory references will be to the Revenue and
Taxation Code.

1 a taxpayer must show that the failure to respond to a demand occurred despite the exercise of
2 ordinary business care. (*Appeal of Bieneman* (82-SBE-148) 192 WL 11825.) The taxpayer's
3 reason for failing to respond must be such that an ordinarily intelligent and prudent
4 businessperson would have acted similarly under the circumstances. (*Appeal of Malakoff* (83-
5 SBE-140) 1983 WL 15525.)

6 In addition, the FTB shall impose a collection cost recovery pursuant to section 19254,
7 subdivision (a)(1), if a person fails to pay an amount of tax, interest, penalty, or other liability
8 due, and the FTB has mailed a notice for payment that advises that continued failure to pay may
9 result in collection action. The statute does not provide any exception for reasonable cause.
10 (*Appeal of Myers* (2001-SBE-001) 2001 WL 37126924.)

11 Plaintiff is under the impression that any payments or withholding credits made reducing
12 the tax liability will prevent demand penalties from being issued under California law. She is
13 mistaken She has been informed a number of times by the FTB and its counsel that the demand
14 penalty is designed to penalize a taxpayer for failing to respond to a Demand, not for failing to
15 pay the proper tax due, and the demand penalty is computed without regard to payments and
16 withholdings. (See e.g., ROA # 1, Complaint, Exhibits 1 [OTA Decision], 4 [FTB Opening
17 Brief], 13 [FTB Reply Brief]; ROA # 33, FTB's Opposition to Motion to Compel.) She further
18 cannot point to any legal authority to support her interpretation of section 19133, while there is
19 significant legal authority to support the FTB's position that the imposition of demand penalties
20 for the disputed tax years was proper. There is also significant legal authority to support the
21 FTB's imposition of a collection cost recovery fee. Plaintiff has also been informed numerous
22 times that there is no reasonable cause exception for the collection cost recovery fee. (*Ibid.*) The
23 FTB's position on the imposition of demand penalties and the collection cost recovery fee was
24 further affirmed by three Administrative Law Judges in the OTA Decision. As such, FTB's
25 position is reasonable, and Plaintiff's baseless threats and accusations are unwarranted.

26 Instead of litigating the relevant issues in this refund action, Plaintiff has attacked the FTB
27 and its counsel for alleged wrongdoing that simply does not exist. Plaintiff's disagreement with
28 the FTB's position on the imposition of demand penalties or the collection cost recovery fee is

1 not misleading or involves government "corruption" "racketeering" or "collusion." For Plaintiff
2 to suggest otherwise, and to proceed with unsubstantiated accusations in her communications and
3 court filings constitutes frivolous and harassing behavior prohibited by the Code of Civil
4 Procedure.

5 **B. Plaintiff's Actions are Frivolous.**

6 Plaintiff's actions throughout this litigation have been frivolous because they have been
7 without merit, and for the sole purpose of harassing the FTB in order to gain an advantage in this
8 action. Simply because Plaintiff dislikes the FTB's interpretation of California law on the
9 imposition of demand penalties and a collection cost recovery fee (which is a correct
10 interpretation supported by substantial legal authority), Plaintiff has made unsubstantiated and
11 false accusations against FTB personnel and counsel that are unsupported by the facts or the
12 record. With full knowledge that the FTB is represented by counsel, Plaintiff has directly
13 communicated and harassed FTB personnel, accusing them of criminal activity and threatening
14 incarceration in an attempt to persuade the FTB to amend its discovery responses in a way that
15 she deems favorable to her case. (Swank Declaration, ¶¶ 3, 4; Hubbard Declaration, ¶ 3; Lebleu
16 Declaration, ¶¶ 3, 4, 5.) Plaintiff has even admitted to filing motions just to increase FTB's
17 litigation costs. (Luong Declaration, ¶ 3.) Plaintiff has also sent harassing emails to FTB counsel,
18 falsely accusing her of "colluding" to send FTB personnel to prison. (Barsegyan Declaration, ¶¶
19 6, 7.) Plaintiff wants to punish all employees involved in defending the FTB in this action without
20 any factual or legal basis for doing so. (See LeBleu Declaration, ¶¶ 3,4, 5); Barsegyan
21 Declaration, ¶¶ 7, 8.) Without court intervention, Plaintiff will continue with her frivolous,
22 disparaging, and improper conduct.

23 **C. Sanctions Are Warranted for Plaintiff's Bad Faith Actions and to**
24 **Compensate the FTB For Expenses Incurred As A Result.**

25 Plaintiff's bad faith conduct is not appropriate under any reasonable standard, and the Court
26 should impose sanctions. Sanctions are necessary and proper in this case to deter repetition of
27 Plaintiff's actions and tactics in the future. (See Code. Civ. Proc., § 128.5, subd. (f)(2).) The court
28 may grant sanctions upon a party's "entire pattern of conduct over the course of the litigation."

1 (*Andrus v. Estrada* (1995) Cal.App.4th 1030, 1042.) Prior conduct for sanctions which has not
2 been punished can contribute to a later award of sanctions for continuing misconduct. (*Id.* at pp.
3 1042-1043.)

4 This action has been pending for over a year and a half. Since the commencement of this
5 case, Plaintiff has filed a demurrer, and two motions to compel unsupported by the facts or law.
6 This Court has already denied the demurrer and the first motion to compel, while the second
7 motion to compel is scheduled to be heard later this year. Plaintiff has not been discouraged by
8 the Court's orders, and has continued with her bad faith conduct. She has also consistently
9 harassed FTB personnel and counsel by falsely accusing them of criminal activity and threatening
10 incarceration if they do not agree to her demands. Monetary sanctions are necessary to stop
11 Plaintiff from continuing her bad faith conduct. Pursuant to Code of Civil Procedure section
12 128.5, the FTB is not requesting discovery sanctions. However, counsel for FTB has spent
13 approximately 16.75 hours at a rate of \$220 per hour (totaling \$3,685) defending against
14 Plaintiff's baseless demurrer to its answer. (Barsegyan Declaration, ¶ 3.) Counsel for FTB has
15 also spent approximately 16.25 hours at a rate of \$220 per hour (totaling \$3,575) preparing and
16 filing this Motion to stop Plaintiff from continuing her harassing and threatening behavior.
17 (Barsegyan Declaration, ¶¶ 9.) Accordingly, the FTB requests compensation for expenses it has
18 incurred as a result of Plaintiff's bad faith and harassing conduct.

19 Additionally, nonmonetary sanctions – such as an order precluding Plaintiff (1) from
20 advancing baseless allegations of racketeering and collusion, and (2) sending hostile and
21 threatening emails to FTB personnel and counsel – are also necessary to stop Plaintiff's bad faith
22 conduct in this litigation. As such, the FTB requests that this Court grant this Motion in its
23 entirety, and impose the requested sanctions against Plaintiff.

24 CONCLUSION


25 For the reasons set forth above, the FTB requests that the Court grant the Motion in its
26 entirety, and issue an order: (1) awarding monetary sanctions against Plaintiff, to be paid to the
27 FTB; (2) awarding nonmonetary sanctions against Plaintiff precluding her from advancing
28 baseless government corruption, racketeering and collusion claims, and in threatening FTB

1 employees and counsel; and (3) providing any other relief which the Court deems proper in order
2 to deter repetition of the conduct forming the basis of this Motion.

3
4 Dated: September 1, 2021

Respectfully submitted,

5 ROB BONTA
6 Attorney General of California
7 BRIAN D. WESLEY
8 Supervising Deputy Attorney General

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10 ANNA BARSEGYAN
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