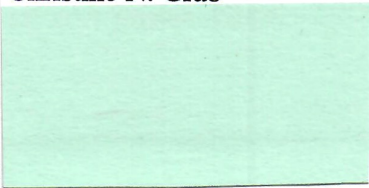


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Christine N. Grab



CHRISTINE N. GRAB, IN PRO PER

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

CHRISTINE N. GRAB

Plaintiff(s),

vs.

THE CALIFORNIA FRANCHISE TAX BOARD

Defendant(s).

) Case No.:
) Case No.: 37-2020-00005100-CL-BT-CTL
) **PLAINTIFF CHRISTINE N. GRAB'S**
) **SEPARATE STATEMENT OF**
) **UNDISPUTED MATERIAL FACTS IN**
) **SUPPORT OF PLAINTIFF'S MOTION**
) **FOR SUMMARY JUDGMENT IN**
) **PLAINTIFF'S FAVOR**
)
) **DATE: MARCH 25, 2022**
) **TIME: 9:00 am**
) **DEPT: C-67**
)
) Judge: The Honorable Eddie C. Sturgeon
) Action Filed: January 29, 2020
) Trial Date: June 3, 2022

Plaintiff's Statemets of Undisputed Facts

Plaintiff Christine N. Grab submits this separate statement of undisputed material facts, together with references to supporting evidence, in support of its Motion for Summary Judgement or in the Alternative for Summary Adjudication against Defendant Franchise Tax Board (FTB)

Issue 1A: NPAs for tax year 2010 were unlawfully issued, thus resulting in the unlawful imposition of demand penalties for tax year 2011

	Plaintiff's Undisputed Material Facts and Supporting Evidence	Defendant's Response
1	Evidence 1: On 01-27-2011, Eric and I made a joint estimated tax payment by check for \$3,500.	
2	The check had both Eric and my names and social security numbers on it. The memo line on the lower left hand corner stated "4 th quarter 2010 estimated."	
3	Evidence 2: On 10-13-2010, Eric and I and made a joint estimated tax payment by check for \$9,000. The check had both Eric and my social security numbers on it. The memo line on the lower left hand corner stated "estimated 2010 taxes."	
4	Evidence 12: On 11-20-2010, I made an estimated tax payment in the amount of \$ [REDACTED]. The check had both my and Eric's names on it. The memo line had my social security number on it. Below the memo line it says "2010 estimated."	
5	Evidence 12: There was a 2010 Estimated Tax for Individuals form 540-ES included with the payment. The form listed the payment to be credited to both me and Eric.	
6	Evidence 14: We made an estimated tax payment for tax year 2010 via credit elect in the amount of \$ [REDACTED] on 11-09-2010.	
7	Evidence 14: We made an estimated tax payment for tax year 2010 via check for \$ [REDACTED] on 04-15-2011.	
8	Evidence 1, 2, 12 and 14, in total, we made five joint estimated payments to tax year 2010 totaling \$ [REDACTED]	

9	Evidence 15: On 05-29-2012, FTB issued a NPA to Eric for tax year 2010. It assessed he had underpaid his tax liability by \$7,779.	
10	Evidence 15: The NPA issued to Eric on 05-29-2012 reflected \$0.00 in payments and credits.	
11	Evidence 7: On 09-10-2012, FTB issued a notice titled Payment Received – No Return on File to Eric stating: “Tax Year 2010” and “We have received an estimated tax payment in the amount of \$[REDACTED] for the account number and tax year shown above.”	
12	Evidence 48: This page out of FTB’s standard operating manuals titled PIT Penalty – Demand Penalty states “It is assessed with a Notice of Proposed Assessment...”	
13	Evidence 48: This page out of FTB’s standard operating manuals titled PIT Penalty – Demand Penalty states “We do not assess the penalty when the return has a zero total tax liability”	
14	Evidences 7, 14 and 15: If the \$[REDACTED] estimated tax payment that FTB received on 04-15-2011 (and confirmed on 09-10-2012 that it had in its possession) had been timely credited to Eric’s account, the NPA would not have been issued.	
15	Evidence 49: The letter from FTB’s Disclosure Department dated 01-05-2021 states “After searching our records, we have determined we do not have any policies regarding putting payments into suspense.”	

Issue 1B: NPAs for 2013 were unlawfully issued, thus resulting in the unlawful imposition of demand penalties

	Plaintiff's Undisputed Material Facts and Supporting Evidence	Defendant's Response
16	Evidence 16: We filed our 2012 tax returns on 06-16-2014. We applied the overpayment of \$[REDACTED] as a credit elect payment to tax year 2013.	
17	Evidence 18: On 08-12-2015, FTB issued a NPA for tax year 2013 to me. It stated that FTB had assessed that I had underpaid my tax liability by \$4,562.00	
18	Evidence 18: The 08-12-2015 NPA issued to me for tax year 2013 to me stated that \$0.00 in payments and credits had been applied.	

19	Evidence 17: On 08-31-2015, FTB issued a notice titled Payment Received – No Return on File for Eric for tax year 2013. It stated “We received an estimated tax payment in the amount of \$ [REDACTED]”	
20	Evidence 48: This page out of FTB’s standard operating manuals titled PIT Penalty – Demand Penalty states “It is assessed with a Notice of Proposed Assessment...”	
21	Evidence 48: This page out of FTB’s standard operating manuals titled PIT Penalty – Demand Penalty states “We do not assess the penalty when the return has a zero total tax liability”	
22	Evidences 16, 17 and 18: If the \$ [REDACTED] estimated tax payment that FTB received on 06-16-2014 (and confirmed on 08-31-2015 that it had in its possession) for tax year 2013 had been credited to my account upon receipt of the funds, the NPA would not have been issued.	
23	On 08-12-2015, FTB issued a NPA for tax year 2013 to Eric. It stated that FTB had assessed that he had underpaid his tax liability by \$3,611.	
24	Evidence 18: The 08-12-2015 NPA issued to Eric for tax year 2013 stated that \$0.00 in payments and credits had been applied.	
25	Evidences 16, 17 and 18: If the \$ [REDACTED] estimated tax payment that FTB received on 06-16-2014 (and confirmed on 08-31-2015 that it had in its possession) had been timely credited to Eric’s account, the NPA would not have been issued.	
26	Evidences 16, 17, 18, 19: If the \$ [REDACTED] estimated tax payment that FTB received on 06-16-2014 (and confirmed on 08-31-2015 that it had in its possession) were to have been split in half, with \$ [REDACTED] applied to each of our accounts, neither NPA would have been issued.	
27	Evidence 17: The Payment Received – No Return on File notice issued on 08-31-2015 for tax year 2013 issued on 08-31-2015 did not state that we had a filing requirement.	
28	Evidence 49: The letter dated 01-05-2021 states “After searching our records, we have determined we do not have any policies regarding putting payments into suspense.”	

Issue 2A: Protest Rights Were Violated for Tax Year 2010

	Plaintiff's Undisputed Material Facts and Supporting Evidence	Defendant's Response
29	Evidence 15: On 06-05-2012, we filed a timely protest to Eric's 2010 NPA, which was issued on 07-08-2013.	
30	Evidence 15: FTB did not initiate the protest protocol for the NPA in response to the timely 06-05-2012 protest letter.	
31	Evidence 5: I timely filed protest in response to the Request for Tax Return for tax year 2010 issued to me on 10-10-2012.	
32	Evidence 5: The protest letter dated 10-10-2012 stated: "We paid taxes based on the full amount of Eric's reported income and paying \$0 for [REDACTED], so we are certain we have overpaid. Seeing as we'd really like our \$[REDACTED] back..."	
33	Evidence 5: FTB did not initiate protest proceedings upon receipt of this timely protest to the Request for Tax Return for tax year 2010.	
34	Evidence 8: On 11-12-2013, I faxed FTB a timely protest to the Notice of State Income Tax Due issued to me on 11-04-2013.	
35	Evidence 8: FTB did not initiate the protest protocol upon receipt of this timely protest letter dated 11-12-2013 to the Notice of State Income Tax Due.	

Issue 2B: Protest Rights and Abatement Request Rights Were Violated for Tax Year 2011

	Plaintiff's Undisputed Material Facts and Supporting Evidence	Defendant's Response
36	Evidence 13: On 07-22-2013, FTB issued a NPA to me for tax year 2011. It stated I had underpaid my tax liability by \$5,581.	
37	Evidence 13: On 07-24-2013, I filed a timely protest to the NPA issued to me for tax year 2011.	
38	Evidence 13: FTB did not initiate the protest protocol in response to my timely 07-24-2013 protest letter to the 2011 NPA.	

39	Evidence 26: On 11-13-2013, FTB sent FTB a Notice of State Income Tax Due to me for tax year 2011, which stated that FTB believed I owed \$7,332.85.	
40	Evidence 27: On 11-25-2013, I faxed FTB a timely filed protest with a copy of the pertinent pages of the 2010 return showing that a joint estimated tax payment of \$16,893 had been made for tax year 2011.	
41	Evidence 27: FTB did not begin the protest protocol in response to the timely 11-25-2013 protest letter.	
42	Evidence 9: In the fax I sent FTB on 01-17-2014, on the bottom half of notice titled Protest Procedure, I wrote: "Hi Debbie, I know you kept saying there was no protest process for the FTB, but this comes in every letter from the FTB. This is why I am so mad all my letters were ignored. Just an FYI."	
43	Evidence 53: On 08-11-2014, I filed an abatement request for a refund of penalties, fees and interest paid for tax year 2011.	
44	Evidence 53: This request was only for tax year 2011.	
45	Evidence 53 and 43: FTB did not issue a denial until 07-10-2017.	
46	Evidence 43: In the denial letter, FTB stated regarding tax year 2011: "We issued a... NPA dated 07.22.2013, which required you to file a protest or tax return by 09.20.2013. We had no record of receiving your timely filed protest or tax return in response to our NPA."	

Issue 2C: Protest Rights and Abatement Request Rights Were Violated for Tax Year 2013

47	Plaintiff's Undisputed Material Facts and Supporting Evidence	Defendant's Response
48	Evidence 16: We filed our 2012 tax returns on 06-16-2014. We applied the overpayment of \$ [REDACTED] as a credit elect payment to tax year 2013.	
49	Evidence 16: FTB issued a Demand for Tax Return for tax year 2013 to Eric with a Response due by date of 03-04-2015.	

50	Evidence 16: On We filed a timely protest to FTB's Demand for Tax Return for tax year 2013. In the response, we wrote "Currently, we have about \$1 [REDACTED] that has rolled over from 2012 to 2013. We are due a HUGE refund from our 2013 taxes."	
51	Evidence 16: We included a copy of the pages of the 2012 return showing the credit elect payment designated for tax year 2013.	
52	Evidence 16: FTB did not implement the protest protocol upon receipt of our timely filed protest.	
53	Evidence 53: On 08-11-2014, I filed an abatement request for a refund of penalties, fees and interest paid for tax year 2011.	
54	Evidence 53: This request was only for tax year 2011.	
55	Evidence 43: On 07-10-2017, FTB issued a denial of my 2013 abatement request, despite the fact that I had not yet filed one. The letter states: "...and Betty T. Yee, Controller for the State of California, asked me to respond to your letters dated 08.11.2014, and 06.02.2017, regarding your 2008, 2010, and 2011 tax years. I will also address your 2013 and 2014 tax years in this letter."	

Issue 2D: Protest Rights and Abatement Request Rights Were Violated for Tax Year 2014

	Plaintiff's Undisputed Material Facts and Supporting Evidence	Defendant's Response
56	Evidence 35: On 03-09-2016, FTB issued a Demand for Tax Return for tax year 2014 dated 03-09-2016 to Eric. The notice stated that he had until 04-13-2016 to respond.	
57	Evidence 35: On 04-12-2016, we filed a timely Protest to the 2014 Demand for Tax Return.	
58	Evidence 35: In the records submitted to the court, FTB falsified the date of protest as 04-17-2016.	
59	Evidence 43: In the abatement request denial letter issued by FTB on 07-10-2017, regarding 2014, it states: "The 2014 tax return was originally due on 04-15-2015... We had no record of receiving your 2014 tax return timely."	

60	Evidence 43: In the abatement request denial letter issued by FTB on 07-10-2017, regarding 2014, FTB omitted that I had the right to protest the filing requirement.	
61	Evidence 43: In the abatement request denial letter issued by FTB on 07-10-2017, regarding 2014, FTB does not deny that they received our timely filed protest to the Demand for Tax Return.	
62	Evidence 38: On 10-03-2016, FTB issued a Notice of State Income Tax Due to me stating they believed that I owed \$4,448.07 for tax year 2014, including penalties and fees.	
63	Evidence 39: On 10-07-2016, FTB received a timely filed protest to the Notice of State Income Tax Due issued to me on 10-03-2016 via fax, which was a copy of a complaint letter that we had sent to Governor Brown, State Senator Marty Block, and Assemblyman Brian Maienschein about FTB demanding payments of money they knew – by their own records – was not owed.	
64	Evidence 39: FTB did not initiate the protest protocol in response to my timely filed protest to the Notice of State Income Tax Due issued to me for tax year 2014 on 10-03-2016.	
65	Evidence 53: On 08-11-2014, I filed an abatement request for a refund of penalties, fees and interest paid for tax year 2011.	
66	Evidence 53: This request was only for tax year 2011.	
67	Evidence 43: On 07-10-2017, FTB issued a denial of my 2014 Abatement request, despite the fact that I had not yet filed one. The letter states: "...and Betty T. Yee, Controller for the State of California, asked me to respond to your letters dated 08.11.2014, and 06.02.2017, regarding your 2008, 2010, and 2011 tax years. I will also address your 2013 and 2014 tax years in this letter."	

Issue 3A: FTB's Accounting Irregularities: Three Payments for 2010 Were Not Credited For 1 – 2 Years

	Plaintiff's Undisputed Material Facts and Supporting Evidence	Defendant's Response
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Plaintiff Christine N. Grab Separate Statement of Undisputed Material Facts In Support of Plaintiff's Motion For Summary Judgment in Plaintiff's Favor

68	Evidence 14: We made an estimated tax payment of \$ [REDACTED] on 04-15-2011 via check.	
69	Evidence 14: On 11-09-2010, we made an estimated tax payment of \$ [REDACTED] via credit elect from our overpayment of tax year 2009.	
70	Evidence 12: On 11-20-2010, I made an estimated tax payment in the amount of \$ [REDACTED]. The check had both my and Eric's names on it. The memo line had my social security number on it. Below the memo line it says "2010 estimated."	
71	Evidence 12: There was a 2010 Estimated Tax for Individuals form 540-ES included with the payment. The form listed the payment to be credited to both me and Eric.	
72	Evidence 15: On 05-29-2012, FTB issued a NPA to Eric for tax year 2010. It assessed he had underpaid his tax liability by \$7,779.	
73	Evidence 15: The 2010 NPA issued to Eric on 05-29-2012 reflected \$0.00 in payments and credits.	
74	Evidence 8: On 11-04-2013, FTB issued a Notice of State Income Tax due to me for 2010 which showed FTB had assessed that I had an estimated a tax liability of \$3,054.	
75	Evidence 8: The Notice of State Income Tax Due stated "The amount due reflects all payments or credits received through 10-29-2013." The payments and adjustments credited was \$0.00.	
76	Evidence 6: On 09-10-2012, FTB issued a notice titled Payment Received – No Return on File to me stating: "Tax Year 2010" and "We have received an estimated tax payment in the amount of \$ [REDACTED] for the account number and tax year shown above."	
77	Evidence 2 and 14: This \$ [REDACTED] encompassed the credit elect payment in the amount of \$ [REDACTED] made on 11-09-2010 and the payment of \$ [REDACTED] made on 11-20-10.	
78	Evidence 7: On 09-10-2012, FTB issued a notice titled Payment Received – No Return on File to Eric stating: "Tax Year 2010" and "We have received an estimated tax payment in the amount of \$ [REDACTED] for the account number and tax year shown above."	
79	Evidence 7 and 14: This \$ [REDACTED] was the payment made on 04-18-2011.	

Issue 3A: FTB's Accounting Irregularities: the first \$9,000 "lost" payment

	Plaintiff's Undisputed Material Facts and Supporting Evidence	Defendant's Response
80	Evidence 2: On 10-13-2010, Eric and I and made a joint estimated tax payment by check for \$9,000. The check had both Eric and my social security numbers on it. The memo line on the lower left hand corner stated "estimated 2010 taxes."	
81	Evidence 11: On 12-30-2013, FTB issued a joint Return Information Notice stating that our tax year 2010 refund amount had been reduced to \$4,393. It reflected that only \$ [REDACTED] in estimated tax payments had been credited to our tax year 2010.	
82	Evidence 9: In response to this Return Information Notice, on 01-17-2014, I sent FTB an 8-page fax. The fax included a one page cover letter, a copy of the front and back of the checks for \$3,500 and \$9,000, the page of our 2010 tax return showing the credit elect payment applied to tax year 2011, proof of [REDACTED] payment, and a copy of the notice titled Protest Procedure that came with every collection notice.	
83	Evidence 9: In the fax dated 01-17-2014, in the cover letter I wrote: "Once these payments are applied, then the tax credit for the 2011 tax year will be revised up to \$ [REDACTED]. This is much, much more than the amount that the FTB estimates we owe for the 2011 tax year, so there should be no more threats of liens and wage garnishments from the FTB anymore."	
84	Evidence 51: In response to the fax dated 01-17-2014, FTB disclosed that the check was applied to Eric's tax year 2002 and refunded on 12-31-2010. \$47.46 in interest was added to the refund check.	

Issue 3A: FTB's Accounting Irregularities: the \$3,500 "lost" payment

Plaintiff's Undisputed Material Facts and Supporting Evidence	Defendant's Response

85	Evidence 1: On 01-27-2011, Eric and I made a joint estimated tax payment by check for \$3,500.	
86	The check had both Eric and my names and social security numbers on it. The memo line on the lower left hand corner stated "4 th quarter 2010 estimated."	
87	Evidence 14: The check was not applied to tax year 2010, as designated.	
88	Evidence 11: On 12-30-2013, FTB issued a joint Return Information Notice stating that our 2010 refund amount had been reduced to \$4,393. It reflected that only \$ [REDACTED] in estimated tax payments had been credited to our tax year 2010.	
89	Evidence 9: In response to this notice , on 01-17-2014, I sent FTB an 8-page fax. The fax included a one page cover letter, a copy of the front and back of the checks for \$3,500 and \$9,000, the page of our 2010 tax return showing the credit elect payment applied to tax year 2011, proof of \$ [REDACTED] payment, and a copy of the notice titled Protest Procedure that came with every collection notice.	
90	Evidence 9: In the fax dated 01-17-2014, in the cover letter I wrote: "Once these payments are applied, then the tax credit for the 2011 tax year will be revised up to \$ [REDACTED]. This is much, much more than the amount that the FTB estimates we owe for the 2011 tax year, so there should be no more threats of liens and wage garnishments from the FTB anymore."	
91	Evidence 2, 3, 4, 47: FTB disclosed to me that \$2,500 of the funds had been applied to tax years 2008 and 2009 and had issued copies of the refund checks for those two years.	
92	Evidence 3: In 2014, FTB issued me a copy of a canceled check for \$783.52 that FTB issued to Eric and I on 02-09-2011. The cover letter is not dated.	
93	Evidence 3: The check for \$783.52 says "Tax Year 2009" and "Tax Refund Account."	
94	Evidence 4: In 2014, FTB issued me a copy of a canceled check for \$418.33 that FTB issued to Eric and I on 03-24-2011. The cover letter is not dated.	
95	Evidence 4: The check for \$418.33 says "Tax Year 2008" and "Tax Refund Account."	

96	Evidence 2, 3, 4, 45 and 47: It was not until 02-15-2018 that FTB disclosed to me where the remaining \$1,000 of that payment had been applied to until 02-15-2018.	
97	Evidence 45: In the letter to Governor Brown dated 02-23-2018, I wrote: "...on January 26, 2018, I had sent a complaint letter to the Board of Directors about two estimated payments made for the 2010 tax year payments had been applied to incorrect years and refunded. In that letter, I mentioned that of the \$3,500 payment that had been "misapplied," \$1,000 of that money was still missing. One of the Board Members contacted the FTB and told them they needed to work with me."	
98	Evidence 45: In the letter to Governor Brown dated 02-23-2018, I also wrote: "...the payment that I mailed in January 2011 was refunded to me on May 29, 2008. Needless to say, that was hard for me to believe."	
99	Evidence 45: In the letter to Governor Brown dated 02-23-2018, I also wrote: "On May 8, 2008, we mailed an estimated tax payment of \$1,000 to the FTB for the 2008 tax year. They applied the money to 2002 and sent us a refund on May 29, 2008 Enclosed is a copy of my check so that you can see that it clearly says "1 st quarter 08" in the notes section (I blocked out my SS# above it)."	
100	Evidence 45: In the letter to Governor Brown dated 02-23-2018, I also wrote: "After we filed our 2008 taxes, we apparently had a balance due of \$ [REDACTED] as of 12-27-10, in part because this "mistake" left our estimated taxes underfunded. Apparently, this money was automatically taken out of 2010's estimated tax payment on 1-31-11 (I guess the extra \$8.36 was additional interest?)."	
101	Evidence 45: In the letter to Governor Brown dated 02-23-2018, I also wrote: "On February 14, 2011, I faxed over a copy of the canceled check and demanded the missing \$1,000 be applied to our account and back dated, and the interest, fees and penalties recalculated accordingly. I guess in order to back date the payment, they had to move the \$1,000 from 2002, leaving 2002 short by \$1,000. Then they had to move the \$1,000 back from 2008 to 2002 in order to zero out 2002. Hence why the accounting looks so bizarre."	

102	Evidence 45: In the letter to Governor Brown dated 02-23-2018, I also wrote: "It looks like the refund of \$418.33 that was mailed to me on 3-17-11 was the difference between the fees and penalties before the \$1,000 was applied versus after the adjustments were made."	
103	Evidence 45: In the letter to Governor Brown dated 02-23-2018, I also wrote: "Why the 2008 excess money didn't revert back to 2010, where it was intended to go in the first place, is a mystery. Also, why any money was applied to the 2009 tax year when it was clearly designated for 2010 is also still a complete mystery."	
104	Evidence 47: This document is FTB's internal notes, which states: 12/15/2018 2:24 pm: ...I located the \$3,500 received 01.31.2011 which on the check requested it to be applied to 4 th quarter for the 2010 tax year. This payment was not posted on 2010 tax year however, split between 2008 and 2009 tax years. \$1,000 overpayment offset from Joint 2008 tax year to SP Eric Grab ssn (redacted) Single 2002 tax year then refunded on 05-29-2008.	

Issue 3A: FTB's Accounting Irregularities: the \$4,393 "lost" payment

	Plaintiff's Undisputed Material Facts and Supporting Evidence	Defendant's Response
105	Evidence 11: On 12-30-2013, FTB issued a joint Return Information Notice stating that our refund of \$4,393 <i>had been</i> applied as a credit elect to tax year 2011.	
106	Evidence 32: On 10-29-2014, FTB issued a notice titled Tax Return Received for tax year 2011, which stated "You will receive a notice reflecting the revised balance due once your tax return is processed."	
107	Evidence 33: The ledger FTB submitted to this court says the tax return was processed on 05-14-2014.	
108	Evidence 29: 05-15-2014, FTB issued a joint Notice of State Income Tax Due for tax year 2011, which stated we had an outstanding balance on our account of \$3,839.63.	

109	Evidence 29: This notice stated that \$ [REDACTED] in payments and adjustments had been applied to our tax year 2011 account.	
110	Evidence 10, 11, 29: This amount of \$ [REDACTED] did not reflect the payment of \$4,393 that FTB had purportedly applied to our account on 12-30-2013.	
111	Evidence 32 and 34: Per the Taxpayer Advocate's office, estimated tax payments made via credit elect are not applied until the taxpayer files a return for that years, so it appears the payment of \$4,393 was not applied prior to 10-29-2014.	

Issue 3A: FTB's Accounting Irregularities: the second \$9,000 "lost" payment

	Plaintiff's Undisputed Material Facts and Supporting Evidence	Defendant's Response
112	Evidence 10 and 51: On 01-23-2014, we made a payment of \$9,047.46 via Webpay (FTB's website). FTB had misapplied the 10-13-2010 payment of \$9,000 to tax year 2002 and improperly issued interest in the amount of \$47.46 as a part of the refund. FTB instructed us to make the \$9,047.46 payment to tax year 2002 to remediate the improperly issued interest.	
113	Evidence 10: We verbally specified that we wanted the \$9,000 moved from tax year 2002 to tax year 2011.	
114	Evidence 52: Per FTB's 2011 accounting ledger, this payment was applied to tax year 2011 on 04-15-2011.	
115	Evidence 29: 05-15-2014, FTB issued a joint Notice of State Income Tax Due for tax year 2011, which stated we had an outstanding balance on our account of \$3,839.63.	
116	Evidence 29: This notice stated that \$ [REDACTED] in payments and adjustments had been applied to our tax year 2011 account.	
117	Evidence 10, 11, 29: This amount of \$ [REDACTED] did not reflect the payment of \$ \$9,000 which had been made on 01-23-2014 via webpay.	

118	Evidence 17: On 08-31-2015, FTB issued a notice to Eric titled Payment Received – No Return on File for tax year 2013 which stated “We have received an estimated tax payment in the amount of \$ [REDACTED] for the account number and tax year shown above.”	
119	Evidence 17: We had only made \$ [REDACTED] in estimated tax payments for tax year 2013. The stated credit of [REDACTED] reflects \$9,000 more than we had paid.	
120	Evidence 10 and 25: Per FTB’s 2013 accounting ledger, the \$9,000 payment was applied to tax year 2013 on 02-04-2014.	
121	Evidence 10 and 25: Per FTB’s accounting ledger, there was a delay of 12 days between our making the payment and FTB applying the funds to tax year 2013.	

Issue 3A: FTB’s Accounting Irregularities: the \$ [REDACTED] “lost” payment

	Plaintiff's Undisputed Material Facts and Supporting Evidence	Defendant's Response
122	Evidence 16: We filed our 2012 tax returns on 06-16-2014. We applied the overpayment of \$ [REDACTED] as a credit elect payment to tax year 2013.	
123	Evidence 17: On 08-31-2015, FTB issued a notice to Eric titled Payment Received – No Return on File for tax year 2013 which stated “We have received an estimated tax payment in the amount of \$ [REDACTED] for the account number and tax year shown above...”	
124	Evidence 20: On 11-09-2015, FTB issued Notice of State Income Tax Due to me for 2013. It stated that I owed \$4,562.00 in taxes and \$2,564.54 in penalties and fees.	
125	Evidence 20: The Notice of State Income Tax Due issued to me on 11-09-2015 stated that \$0.00 in payments and adjustments had been applied to my account.	
126	Evidence 21: On 1-27-2016, FTB issued a Final Notice Before Levy and Lien to me for tax year 2013. It stated that I owed a total of \$7,251.92.	

127	Evidence 21: The Final Notice Before Levy and Lien issued to me for tax year 2013 on 1-27-2016 stated that \$0.00 in payments and adjustments had been applied to my account.	
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Issue 3A: FTB's Accounting Irregularities: the \$7,230 "lost" payment

	Plaintiff's Undisputed Material Facts and Supporting Evidence	Defendant's Response
128	Evidence 22: On 01-19-2016, I made a payment of \$7,230.77 via check for a bill issued for tax year 2013. This payment cleared my bank on 02-10-2016.	
129	Evidence 22: This payment was not credited to my account prior to the issuance of Final Notice Before Levy and Lien for tax year 2013 that was issued to me on 1-27-2016.	
130	Evidence 22: FTB "misapplied" the payment for \$7,230.77 that was made on 01-19-2016.	
131	Evidence 22: On 02-24-2016, I faxed FTB proof that the payment had cleared my bank.	
132	Evidence 23: A joint Notice of Tax Return Change – No Balance was issued on 05-24-2017. It states we made \$[REDACTED] in estimated tax payments for 2013, but we'd only paid \$[REDACTED]	
133	Evidence 17 and 23: This is \$7,259 more than the Payment Received – No Return on File notice dated 08-31-2015 stated we had paid in estimated tax payments for tax year 2013.	
134	Evidence 22, 23 and 24: The payments made in 2016 of 7,230.77 + \$28.20 = \$7,259 were designated to be applied to a State Income Tax Bill for tax year 2013, not as an estimated tax payment.	
135	Evidence 23 and 24: The two payments totaling \$7,259 that were credited per the Notice of Tax Return Change – No Balance for 2013 issued on 05-24-2017 do not appear on the 2013 accounting ledger.	

Issue 3A: FTB's Accounting Irregularities: the \$28.20 "lost" payment

	Plaintiff's Undisputed Material Facts and Supporting Evidence	Defendant's Response
136	Evidence 24: The FTB customer service representative I spoke with on the phone on 02-24-2016 told me \$28.20 was the outstanding balance on my tax year 2013 liability.	
137	Evidence 24: On 02-24-2016, we made a payment via Webpay (FTB's website) of \$28.20.	
138	Evidence 24: On 03-16-2016, FTB issued a Notice of State Income Tax Due to me for tax year 2013. It stated that the \$28.20 payment made on 02-24-2016 had not been applied to my account. When I checked my bank records, the payment had not cleared my bank.	
139	Evidence 42: I repaid the \$28.20 via check on 05-31-2016.	
140	Evidence 23: A Notice of Tax Return Change – No Balance was issued to my husband and I jointly on 05-24-2017. It states we made \$[REDACTED] in estimated tax payments for 2013, but we only paid \$[REDACTED]	
141	Evidence 17 and 23: This is \$7,259 more than the Payment Received – No Return on File notice dated 08-31-2015 stated we had paid in estimated tax payments for tax year 2013.	
142	Evidence 22, 23 and 24: The payments made in 2016 of 7,230.77 + \$28.20 = \$7,259 were designated to be applied to a State Income Tax Bill for tax year 2013, not as an estimated tax payment.	
143	Evidence 23 and 24: The two payments totaling \$7,259 that were credited per the Notice of Tax Return Change – No Balance for 2013 issued on 05-24-2017 do not appear on the 2013 accounting ledger.	

Issue 3A: FTB's Accounting Irregularities: Too Much Money Applied to 2013

	Plaintiff's Undisputed Material Facts and Supporting Evidence	Defendant's Response
144	Evidence 16: We filed our 2012 tax returns on 06-16-2014. We applied the overpayment of \$[REDACTED] as a credit elect payment to tax year 2013.	

145	Evidence 17: On 08-31-2015, FTB issued a notice to Eric titled Payment Received – No Return on File for tax year 2013 which stated “We have received an estimated tax payment in the amount of \$ [REDACTED] for the account number and tax year shown above.”	
146	Evidence 17: We had only made \$ [REDACTED] in estimated tax payments for tax year 2013. The stated credit of \$ [REDACTED] reflects \$9,000 more than we had paid.	
147	Evidence 23: A Notice of Tax Return Change – No Balance was issued to my husband and I jointly on 05-24-2017. It states we made \$ [REDACTED] in estimated tax payments for 2013, but we only paid \$ [REDACTED].	
148	Evidence 17 and 23: This is \$7,259 more than the Payment Received – No Return on File notice dated 08-31-2015 stated we had paid in estimated tax payments for tax year 2013.	
149	Evidence 22, 23 and 24: The payments made in 2016 of 7,230.77 + \$28.20 = \$7,259 were designated to be applied to a State Income Tax Bill for tax year 2013, not as an estimated tax payment.	
150	Evidence 22, 23 and 24: It appears the payments of 7,230.77 + \$28.20 were also withheld from my 2013 account.	
151	Evidence 23: The Other Payments line of the Notice of Tax Return Change – No Balance shows a payment of \$4,479.72, which is a portion of the \$7,230.77 that was made on 01-19-2016.	
152	Evidence 22, 23 and 24: There is an accounting discrepancy of \$4,479.72, as the \$4,479.72 which appears on the line item “Other Payments” is also a portion of the total payments listed in the estimated tax payment line.	

Issue 3A: FTB’s Accounting Irregularities: the \$ [REDACTED] “lost” payment for 2014

	Plaintiff’s Undisputed Material Facts and Supporting Evidence	Defendant’s Response
153	Evidence 36: We filed our 2013 tax return on 08-03-2016. We designated the overpayment of \$ [REDACTED] to be applied to tax year 2014 as an estimated tax payment made via credit elect.	

154	Evidence 37: The Notice of State Income Tax Due issued to Eric for tax year 2014 on 10-03-2016 stated that \$[REDACTED] in payments and adjustments had been applied to his account, which was the amount of money collected on his behalf by his employer.	
155	Evidence 37: The Notice of State Income Tax Due issued to Eric for tax year 2014 on 10-03-2016 did not reflect the [REDACTED] estimated tax payment that FTB received from us on 08-03-2016.	
156	Evidence 38: The Notice of State Income Tax Due issued to me for tax year 2014 on 10-03-2016 stated that \$0.00 in payments and adjustments had been applied to my account.	

Issue 3A: FTB's Accounting Irregularities: 4.5 more "lost" payments for 2014

	Plaintiff's Undisputed Material Facts and Supporting Evidence	Defendant's Response
157	Evidence 41: On 06-08-2017, FTB issued a Notice of State Income Tax Due for tax year 2014 to me.	
158	Evidence 33, 34, 41 and 42: Per FTB's internal records, our tax return had already been processed as married filing joint, so per FTB's stated standard operating procedures, all payments and credits made by both of us should have already been applied to our account.	
159	Evidence 41: The Notice of State Income Tax Due for tax year 2014 issued on 06-08-2017 stated that we had an outstanding tax liability due of \$4,011.49, including penalties and fees.	
160	Evidence 41: The Notice of State Income Tax Due issued to me for tax year 2014 on 10-03-2016 stated that \$[REDACTED] in payments and adjustments had been applied to my account.	
161	Evidence 41 and 42: This amount of \$[REDACTED] was \$[REDACTED] less than the \$[REDACTED] that FTB had confirmed they had received in payments from us.	
162	Evidence 37, 41 and 42: This amount of \$[REDACTED] was \$1,516.75 less than the \$[REDACTED] which was collected by Eric's employer.	

163	Evidence 37, 41 and 42: In the Notice of State Income Tax Due issued to Eric for tax year 2014 on 10-03-2016, FTB had confirmed receipt of the full \$ [REDACTED] which was collected by Eric's employer. No explanation was provided on the form as to why the \$1,516.75 was removed from the total payments applied.	
164	Evidence 41 and 42: This total of \$29,388.25 did not reflect the payment of \$1,016 made via excess SDI credits that had been collected by my husband's employer.	
165	Evidence 41 and 42: This total of \$29,388.25 did not reflect the payment of \$2,751.05 paid on 02-08-2016.	
166	Evidence 41 and 42: This total of \$29,388.25 did not reflect the payment of \$28.20 made on 05-31-2016.	
167	Evidence 36, 41 and 42: This total of \$29,388.25 did not reflect the payment of [REDACTED] made on 08-03-2016 via credit elect (FTB had revised the credit elect total down upon processing the return).	
168	Evidence 42: On 06-12-2017, we made a payment of \$4,011.49 to pay the assessed tax liability in full.	
169	Evidence 42: This payment would not have been due had FTB credited the missing \$ [REDACTED] in payments previously made to them.	

Issue 3B: FTB's Unlawful Harassment for Tax Year 2010

	Plaintiff's Undisputed Material Facts and Supporting Evidence	Defendant's Response
170	Evidence 8: On 11-04-2013, FTB issued a Notice of State Income Tax due to me for 2010 which showed FTB had assessed that I had an estimated a tax liability of \$3,054.	
171	Evidence 8: The Notice of State Income Tax stated "The amount due reflects all payments or credits received through 10-29-2013." The payments and adjustments credited was \$0.00.	
172	Evidence 6: On 09-10-2012, FTB issued a notice titled Payment Received – No Return on File to me stating: "Tax Year 2010" and "We have received an estimated tax payment in the amount of \$ [REDACTED] for the account number and tax year shown above."	