

**SUPERIOR COURT OF CALIFORNIA,**

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - March 24, 2022

EVENT DATE: 03/25/2022

EVENT TIME: 09:00:00 AM

DEPT.: C-67

JUDICIAL OFFICER:Eddie C Sturgeon

CASE NO.: 37-2020-00005100-CL-BT-CTL

CASE TITLE: GRAB VS THE CALIFORNIA FRANCHISE TAX BOARD [IMAGED]

CASE CATEGORY: Civil - Limited

CASE TYPE: Business Tort

EVENT TYPE: Summary Judgment / Summary Adjudication (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment and/or Adjudication, 01/04/2022

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Defendant California Franchise Tax Board's Motion for Summary Judgment and/or Adjudication is **GRANTED**. Defendant's Motion for Sanctions Pursuant to Code of Civil Procedure Section 128.5 is also **GRANTED**. Defendant's Request for Judicial Notice and evidentiary objections are also **GRANTED**.

The court notes that many of Plaintiff's arguments lack clarity and are not adequately supported by citation to applicable legal authority. Plaintiff has also failed to abide by various procedures (e.g., requesting summary judgment in her favor through her opposition papers, requesting sanctions through her opposition papers, and going well over the applicable page limits, among other problems). A litigant, such as Plaintiff, that is "appearing in propria persona, . . . is entitled to the same, *but no greater*, consideration than other litigants and attorneys." (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638 [emphasis added].) The court considers the motions with this principle in mind.

1. Motion for Summary Judgment and/or Adjudication

The moving party bears the initial burden of production to make a prima facie showing that there are no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) A prima facie showing is one that is sufficient to support the position of the party in question; "no more is called for." (*Id.* at 851.) The moving party must show that the undisputed facts, when applied to the issues framed by the pleadings, entitle the moving party to judgment. (*Juge v. County of Sacramento* (1993) 12 Cal.App.4th 59, 66.) Where a defendant seeks summary judgment or adjudication, it must show that the plaintiff cannot establish one or more of the elements of the causes of action or that there is a complete defense to the claims. (*Aguilar, supra*, 25 Cal.4th at 850-51.) The burden then shifts to Plaintiff to establish triable issues of fact. (*Id.* at 849.) Ambiguous evidence or inferences merely showing that the matter is as likely as it is unlikely do not satisfy plaintiff's burden of persuasion. (*Id.* at 850, fn. 27.)

Defendant has met its burden. It has produced admissible evidence that Plaintiff had a filing requirement for the disputed tax years, that FTB properly imposed demand penalties, that Plaintiff cannot and did not establish reasonable cause for abatement on demand penalties, and that the collection cost recovery fee was properly imposed. (See ROA 74.)

Plaintiff has not met her burden in opposition to show that there are triable issues of fact. First, Plaintiff has not properly identified and authenticated the documents submitted in support of her opposition. (Evid. Code, §§ 250, 1401, subd. (a); see *O'Laskey v. Sortino* (1990) 224 Cal.App.3d 241, 273.) Accordingly, it is not admissible evidence, Defendant's objections are sustained, and the evidence may not be considered in ruling on the motion. (*Forest Lawn Memorial-Park Association v. Superior Court of*

Riverside County (2021) 70 Cal.App.5th 1, 9.) Moreover, Code of Civil Procedure section 437c(b)(3) requires that "[e]ach material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion for granting the motion." Plaintiff's separate statement does not attempt to cite any supporting evidence for the facts she claims are disputed. (See Code Civ. Proc., § 437c(b)(3) .) For some of the allegedly disputed facts, no reason as to the dispute is stated at all. Thus, even if the court were to consider Plaintiff's evidence, Plaintiff has not provided adequate direction as to what evidence supports which disputed facts. For the above reasons, Plaintiff has not met her burden in opposition and the motion for summary judgment is granted.

## 2. Motion for Sanctions under Code of Civil Procedure section 128.5

The court may sanction a party for "actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay." (Code Civ. Proc., § 128.5, subd. (a).) A party's actions are considered frivolous if they are either: (1) "totally and completely without merit"; or (2) for the sole purpose of harassing an opposing party. (Code Civ. Proc., § 128.5, subd. (b)(2); see *Marriage of Flaherty* (1982) 31 Cal.3d 637, 649-650.) "[H]arassing" conduct includes vexatious tactics which, although literally authorized by state or rule, go beyond that which is appropriate under any reasonable standard. (*West Coast Develop. v. Reed* (1992) 2 Cal.App.4th 693, 702.) The purpose of the sanctions is to "deter the repetition of the action or tactic or comparable action by others similarly situated." (Code Civ. Proc., § 128.5, subd. (f)(2).) A movant must provide the opposing party with a 21-day safe harbor period "if the alleged action or tactic is the making or opposing of a written motion or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading that can be withdrawn or appropriately corrected[.]" (Code Civ. Proc., § 128.5(f)(1)(B) [emphasis added].)

No safe harbor period is required here because the conduct warranting sanctions has already occurred and cannot be withdrawn or corrected by Plaintiff.

Plaintiff has intentionally sought to increase FTB's litigation costs (ROA 51, Luong Decl., Ex. A ["I thought I would share with you my latest Motion to Compel, which will cost FTB thousands of dollars to defend"]), repeatedly harassed FTB employees as well as counsel with criminal threats (see e.g., ROA 48, Hubbard Decl., Ex. A), filed a Federal Criminal Complaint against FTB employees (ROA 89, LeBleu Decl., Ex A [email from Plaintiff]), and even attempted to file a police report against the FTB (ROA 84, Ex. 64). Moreover, Plaintiff's litigation tactics have gone beyond any reasonable standard in that they have failed to comply with numerous rules and procedures. The court previously refrained from awarding sanctions (ROA 70) but now finds that sanctions are necessary. Plaintiff is ordered to pay FTB monetary sanctions in the amount of \$1,500.