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June 21, 2010

To: 1) Lisa Martini
Franchise Tax Board, 600 W Santa Ana Blvd., Suite 300, Santa Ana, CA 92701,
2) Patrick (no Surname disclosed) employee #073
Glynice (no Surname disclosed),
Angie (no Surname disclosed),
Daniel (no Surname disclosed),
Ceylon (no Surname disclosed),
Franchise Tax Board, PO BOX 2966, Rancho Cordova, CA 95741-2966, and
3) JoAnn (no Surname disclosed), Greg Thomas, Brenda (Hicks) Jordan
State of California Franchise Tax Board, P.O. Box 2952, Sacramento, CA 95812.

NOTICE AND DEMAND

TO THE ABOVE-ADDRESSED PARTIES AND ALL OTHER INTERESTED PARTIES [see foot note¹] PLEASE TAKE NOTICE² OF THE FOLLOWING:

Like many people, I shied away from the complex tax codes. I was misled that everybody owes federal and state income taxes, until I learned about IRS agents, attorneys, CPA's, and paralegals, who discovered that the tax codes were misinterpreted. I used this information to correct the records with the tax agencies, trusting that the "revenue agents"³ would not deceive me".

To my dismay and ever-increasing suspicion, instead of cooperation, I received nonresponsive or evasive "replies". The revenue agents, appear to indeed misapply the codes and exceed their jurisdiction. The cases referenced herein, denounced "compelled taxation", recognized the abolition of slavery, and reinforced the constitutionally ordained limitations of the legislative powers.⁴ I found no constitutional authority empowering legislators to impose⁵ a "fair share duty" upon people's

¹ California Civil Code 2332. As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to others.

² "Knowledge of facts which would naturally lead an honest and prudent person to make inquiry constitutes 'notice' of everything which such inquiry pursued in good faith would disclose." Twitchell v. Nelson, 131 Minn. 375, 155 N.W. 621, 624; German-American Nat. Bank of Lincoln v. Martin, 277 Ill. 629, 115 N.E. 721, 729." (Black's Law Dict., 4th Edition, pg. 1210) (1968)

³ Revenue Agent: Any duly authorized Commonwealth Internal Revenue Agent of the Department of the Treasury of Puerto Rico. 27 USC §250.11 (2005)

⁴ "the people of the several States are absolutely and unconditionally sovereign within their respective territories" The Ohio Life Insurance and Trust Company v. Henry Debolt, Treasurer of Hamilton County, 57 U.S. 416, 16 How. 416, 14 L.Ed. 997 (1853)

⁵ "It is not necessary to challenge the proposition that, as a general rule, the state, having power to deny a privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the state in that respect is not (Page 594) unlimited, and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence." Frost v. Railroad Commission of State of California, 271 U.S. 583, 46 S.Ct. 605, 70 L.Ed. 1101 (1926) [Emphasis added]

fundamental liberty to make a living, or to regulate people's productivity by licensing their economic means, for the purpose of mandatory withholding at their work place. Throughout the years, funds were withheld from me by third parties, and transmitted to the federal and state tax agencies. Said funds were mistaken as related to taxable income. I tried to correct the errors by using the agency forms. The State (FTB) *revenue agents* (hereinafter "Agents") replied at some point that the form "...has been determined to be *frivolous*", and demanded that I file a "valid tax return". (Exhibit x)

*"A claim, or defense, is frivolous if a proponent can present **no rational argument** based upon the evidence or law in support of that claim, or defense". [Black's Law dictionary, 6th Edition, 1991]*
[Emphasis added]

The design of the forms did not allow any opportunity for "**rational argument**". I offered to make all the necessary changes (Exhibit x), if Agents would provide the forms which, according to Agents, would be considered "valid" for correcting records.

Agents dishonored my offer, by providing no responsive answers, no "valid return" forms, no liability statute, and no proof of any alleged claim.⁶ I found Agents' evasive maneuvers to be highly suspect and uncharacteristic of public servants.

Furthermore, Agents undertook a strategy of mailing unsigned Notices and requests for payment,⁷ effectively turning my quest into a struggle to preserve my rights. Agents seem to espouse the broad contention that, being paid for working, represents "taxable income" because "everything that comes in" is "income"⁸ within the definition of "gross income".⁹ Clearly, the Supreme Court disagreed.

Agents ignored my demands for clarification and my offers to meet and settle the issues (Exhibit x), ignored judicial precedent, and continued their extralegal enforcement, under the guise of policy.¹⁰ I believe Agents trespassed on my rights by violating their contract¹¹ to public office,¹² as follows:

⁶ 5 USC §556(d): "Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof."

⁷ Unsigned requests for payment are invalid under California's Statute of Frauds, found at California Civil Code § 1624.

⁸ " ... We must reject ...the broad contention submitted in behalf of the Government that *all receipts, everything that comes in is income* within the proper definition of the term '*gross income*'..." Doyle vs. Mitchell Brothers Co., 247 U.S. 179, 330 (1918)

⁹ California has no independent definition of any of these terms, and the IRC itself does not contain a definition of the general term "income." U.S. v. Ballard, 535 F2d 400, 404 (1940). [Emphasis added] Revenue & Taxation Code §17071 defines "gross income" as defined by §61 of the Internal Revenue Code. R&TC §17072 defines "adjusted gross income" as defined by §62 of the IRC. R&TC §17073 defines "taxable income" as defined by §63 of the IRC.

¹⁰ "Policy never becomes law no matter how well used or well accepted. Policy never gains legal authority by usage." Hall v. State, 933 S.W.2d 363, 326 Ark. 318. [Emphasis added]

¹¹ "I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter."

¹² *63C Am.Jur.2d, Public Officers and Employees, §247* "As expressed otherwise, the powers delegated to a public officer are held in trust for the people and are to be exercised in behalf of the government or of all citizens who may need the intervention of the officer. [1] Furthermore, the view has been expressed that all public officers, within whatever branch and whatever level of government, and whatever be their private vocations, are trustees of the people, and accordingly labor under every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain from a discharge of their trusts. ...[3] and owes a fiduciary duty to the public... [4] It has been said that the fiduciary responsibilities of a public officer cannot be less than those of a private individual. [5] Furthermore, it has been stated that any enterprise undertaken by the public official who tends to

- A. Agents' appear to deceitfully reclassify the "nontaxpayer" into "taxpayer" status (Exhibit X). Revenue laws relate to "taxpayers".¹³ Revenue provisions distinguish between "taxpayer" and "non-taxpayer".¹⁴ The U. S. Senate recognizes the "taxpayer" as a separate person, distinct from the "nontaxpayer" (Exhibit 3). Throughout time, the courts have recognized the natural rights as the foundational principles¹⁵, and also upheld nontaxpayers' rights.¹⁶
- B. Agents ignored the distinction between "taxpayer" and "nontaxpayer", and acted without a judicial review.¹⁷ Such review is part of due process, and is essential to shield people from being injured by administrative presumptions of status.¹⁸ Agents have no judicial authority to determine people's "relinquishment of rights",¹⁹ which must be established "before the appellation of 'taxpayer' is bestowed upon them".²⁰
- C. Agents mailed no certified copies²¹ to inform²² me of any verified²³ proof of liability for a

weaken public confidence and undermine the sense of security for individual rights is against public policy. Fraud in its elementary common law sense of deceit-and this is one of the meanings that fraud bears [483 U.S. 372] in the statute. See United States v. Dial, 757 F.2d 163, 168 (7th Cir1985) includes the deliberate concealment of material information in a setting of fiduciary obligation. A public official is a fiduciary toward the public, ... and if he deliberately conceals material information from them, he is guilty of fraud. McNally v United States 483 U.S. 350 (1987) [Emphasis added]

¹³ "Revenue Laws relate to taxpayers, and not to nontaxpayers." Economy Plumbing and Heating Co. v. US, 470 F. 2d 585 (1972)

¹⁴ "In Long v. Rasmussen, Collector, D.C., 281 F. 236, the court in construing the revenue provision in question, properly, so we think, makes a distinction between suits instituted by taxpayers and non-taxpayers. The former, so it is held, are within the scope of the inhibition, but the latter are not." Tomlinson v. Smith, 128 F.2d 808, 811 (7th Cir., 1942) [Emphasis added]

¹⁵ "Every man has a natural right to the fruits of his own labor... and no other person can rightfully deprive him of those fruits, and appropriate them against his will..." The Antelope, 23 U.S.66; 10 Wheat 66, 6 L.Ed. 268 (1825)

¹⁶ "No procedure is prescribed for nontaxpayers and no attempt is made to annul any of their rights and remedies in due course of law. With them [nontaxpayers] Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws." Economy Plumbing and Heating Co. v. US, 470 F. 2d 585 (1972)[Emphasis added]

¹⁷ 'A determination of the rights of an individual under the existing laws' is an exercise of judicial power...An essential element of judicial power . . . is that it requires "the ascertainment of existing rights." People v. Bird, 300 P. 22, 26-27.

¹⁸ "Due process requires that when governmental agencies that adjudicate or make binding determinations which directly affect legal rights of individuals, they use procedures which have traditionally been associated with judicial process." Amos Treat & Co. v. Securities & Exchange Commission, 306 F. 2d 260 (1962), 113 US App. D.C. 100 [Emphasis added]

¹⁹ There is a presumption against the waiver of constitutional rights, see, e.g., Glasser v. United States, 315 U.S. 60, 70—71, 62 S.Ct. 457, 464—465, 86 L.Ed. 680, and for a waiver to be effective it must be clearly established that there was 'an intentional relinquishment or abandonment of a known right or privilege.' Brookhart v. Janis, 384 U.S. 1, 86 S.Ct. 1245, 16 L.Ed.2d 314 (1966)

²⁰ "A reasonable construction of the taxing statutes does not include vesting any tax official with absolute power of assessment against individuals not specified in the statutes as a person liable for the tax without an opportunity for judicial review of this status before the appellation of 'taxpayer' is bestowed upon them." Botta v. Scanlon, 288 F.2d. 504, 508 (1961) [Emphasis added]

²¹ CERTIFIED COPY. A copy of a document or record, signed and certified as a true copy by the officer to whose custody the original is entrusted. People v. Foster, 27 Misc. 576, 58 N.Y. Supp. 574; Ehrlick v. Mulligan, 104 N.J. Law, 375, 140 A. 463.

²² "The people insist on remaining informed so that they may retain control over the instruments they have created." – California Government Code Section 54950.

²³ Verification. Confirmation of correctness, truth, or authenticity, by affidavit, oath, or deposition. Sheeley v. Justice of Santa Clara, 215 Cal. App. 2d 47, 48. (Black's Law 5th) [Emphasis added]

specific tax.²⁴ Agents reach beyond constitutional boundaries when they act based on personal opinions or popular beliefs,²⁵ which are not *laws, statutes, regulations, or judicial reviews*.

Since slavery was abolished, nowhere in the Constitution²⁶ are *statutory enactments*²⁷ allowed to compel transfers of rights or property, without informed consent.²⁸ The *statutory scheme* offers programs to members who consent to participate by voluntarily entering the jurisdiction of a particular program, for specific *privileges or benefits*.²⁹ Membership to such programs creates *specific excise*³⁰-taxable-liabilities, which become payable through "taxpayer" compliance.³¹

The delegated legislative powers limit taxation to specific means, reasons and circumstances. Agents are not endowed with the power to exert presumptions on **non-participants**, who are not within their authority.³² People have no "general liability" for *excise taxes*,³³ *occupation taxes*,³⁴

²⁴ "Keep in mind the well settled rule that the citizen is exempt from taxation unless the same is imposed in clear and unequivocal language, and that where the construction of a law is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid." Spreckles Sugar Refining Co. v. McClain, 192 US 397 (1904). [Emphasis added]

²⁵ "An unconstitutional act is not law; it confers no rights; it imposes no duties..." Norton v. Shelby County; 118 U.S. 425

²⁶ The organic law is the Constitution of Government, and is altogether written. Other written laws are denominated statutes. The written law of this State is therefore contained in its Constitution and statutes, and in the Constitution and statutes of the United States. [California Code of Civil Procedure, Section 1897] [Emphasis added]

²⁷ "The 6th article of the constitution of the United States declares, that the laws made in pursuance of it, 'shall be the supreme law of the land, anything in the constitution, or laws of any state to the contrary notwithstanding.' By this declaration, the states are prohibited from passing any acts which shall be repugnant to a law of the United States." McCulloch v. Maryland, 17 U. S. 316, 361 (1819).

²⁸ "We know of no case in which a legislative act to transfer the property of A. to B. without his consent has ever been held a constitutional exercise of legislative power in any state in the Union. On the contrary, it has been constantly resisted as inconsistent with just principles by every judicial tribunal in which it has been attempted to be enforced:" Wilkinson v. Leland, 2 Peters 657.

²⁹ "A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting" California Civil Code, Section 1589

³⁰ "Excises are taxes laid upon the manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain occupations and upon corporate privileges...the requirement to pay such taxes involves the exercise of [220 U.S. 107, 152] privileges, and the element of absolute and unavoidable demand is lacking.." Flint v. Stone Tracy Co., 220 U.S. 107. (1911)

³¹ "Our system of taxation is based on voluntary assessment and payment, not upon distraint (force, duress)." United States v. Flora, 362 US 145 (1958) [Emphasis added]

³² In the United States, sovereignty resides in the people who act through the organs established by the Constitution. Chisholm v. Georgia, 2 Dall. 419, 471, 1 L.Ed. 440; Penhallow v. Doane's Administrators, 3 Dall. 54, 93, 1 L.Ed. 507; McCulloch v. Maryland 4 Wheat. 316, 404, 405, 4 L.Ed. 579; Yick Wo v. Hopkins, 118 U.S. 356, 370, 6 S.Ct. 1064, 30 L.Ed. 220. The Congress as the instrumentality of sovereignty is endowed with certain powers to be exerted on behalf of the people in the manner and with the effect the Constitution ordains. The Congress cannot invoke the sovereign power of the people to override their will as thus declared. Perry v. United States, 294 U.S. 330, 353 (1935).

³³ A tax laid upon the happening of an event, as distinguished from its tangible fruits is an indirect (excise) tax. Tyler v. U. S. 281, U.S. 497, 502 (1930);

³⁴ "It was, therefore, an occupation tax, and, being a state tax also, the section authorizing it is in conflict with the Constitution; In the opinion of the Chief Justice he reviewed the decisions of this court in the cases of Washington v. State, Baker v. State, State v. Washmood, and Standard Oil Co. v. Brodie, and the review of these cases was summarized by him as follows: "The effect of these decisions undoubtedly is that the state cannot tax occupations generally, but must find its power to tax outside of this restriction...The power was found in the Baker Case and in the gasoline case in the right to tax the franchise of corporations as a privilege tax and to tax the use of public highways." Sims v. Ahrens, 167 Ark. 557, 271 S.W. 720 (Ark., 1925)

or taxes³⁵ on income,³⁶ which are not the same as the direct taxes on property.³⁷

D. Agents provided no *statutes*³⁸ supporting their assessments and determinations of *deficiency* for the alleged *liabilities* or *penalties*. Also, Agents provided no *implementing regulations*,³⁹ and sent no *certified copies* of any *verified* deficiency which might make me subject to Agents' authority, or might give Agents lawful "reasons" to keep my funds.

Such lawful "reasons" could be:

1) if I entered a contract by which I "owed a duty" to the state,⁴⁰ 2) if I owed a "franchise tax"⁴¹ for a "trade or business",⁴² in the character of a corporation or public officer, which may carry a duty to the state;⁴³ 3) if anything were conferred to me as a franchised,⁴⁴ "special privilege", which does not belong to the people, or citizens of the country, as a matter of "common right",⁴⁵

³⁵ "... the state is without power to impose either an income or occupation tax for state purposes, and the court below was, therefore, correct in holding that act unconstitutional, and that decree is affirmed." Sims v. Ahrens, 167 Ark. 557, 271 S.W. 720 (Ark., 1925)

³⁶ "Income has been taken to mean the same thing as used in the Corporation Excise Tax Act of 1909 (36 Stat.112), in the 16th Amendment, and in the various revenue acts subsequently passed." Bowers v. Kerbaugh-Empire Co., 271 U.S. 170, 174, (1926)
³⁷ [T]he California income tax is not a tax on property. In the matter of appeals of Fred Dauberger, et. al., Page 6. California State Board of Equalization.

³⁸ Tenth Circuit Court of Appeals said in United States v. Community TV, Inc., 327 F.2d 797, at p. 800 (1964): "Without question, a taxing statute must describe with some certainty the transaction, service, or object to be taxed, and in the typical situation it is construed against the Government." Hassett v. Welch, 303 U.S. 303, 58 S.Ct. 559, 82 L.Ed.858

³⁹ "we think it important to note that the Act's civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do nothing, the Act would impose no penalties upon anyone." "... only those who violate these regulations may incur civil or criminal penalties, it is the actual regulation issued by the Secretary and not the broad authorizing language of the statute which is to be tested against the standards of the Fourth Amendment; and that when so tested they are valid." California Bankers v. Shultz, 416 U.S. 21 (1974) [Emphasis added]

⁴⁰ "The individual ... owes no duty to the state . . . since he receives nothing there-from, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the state... He owes nothing to the public so long as he does not trespass upon their rights." Hale v. Henkel, 201 U.S. 43. [Emphasis added]

⁴¹ "Franchise Tax: A tax on the franchise of a corporation, on the right and privilege of carrying on business in the character of a corporation, for the purposes for which it was created and in the conditions which surround it." Justice of Poplar Bluff v. Poplar Bluff Loan and Bldg. Ass'n, Mo.App., 369 S.W. 2d 764, 766.

⁴² "Congress cannot authorize a trade or business within a State in order to Tax it." License Tax Cases, 72 U.S. 462, 18 L.Ed. 497

⁴³ "All subjects over which the sovereign power of a state extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation... The sovereignty of a state extends to everything which exists by its own authority, or is introduced by its permission;". McCulloch v. Maryland, 17 U. S. 316, 429 (1819). [Emphasis added]

⁴⁴ "Franchise: A special privilege conferred by government on individual or corporation, and which does not belong to citizens of country generally of common right." Artesian Water Co. v. State Dept. of Highways and Transp., Del.Super., 330 A 2d 432, 439.

⁴⁵ Judge SMITH then reviews all our previous decisions... whether or not it is within the power of the Legislature, under article 16, § 5, of our Constitution, to tax occupations which are of common right, and correctly announces the doctrine of these cases to be that "the state cannot tax for revenue purposes occupations which are of common right." ... Now, if an income tax is neither a property tax nor a tax on pursuits and occupations that are of common right, then an income tax law, if properly framed, is not inhibited by article 16, § 5, which provides that "all property subject to taxation shall be taxed according to its value" ascertained in a manner to make it "equal and uniform throughout the state." and that "hawkers, peddlers, ferries, exhibitions and privileges" may be taxed in such manner as the Legislature deems proper. Sims v. Ahrens, 167 Ark. 557, 271 S.W. 720 (Ark., 1925) [Emphasis added]

4) if I requested or used state,⁴⁶ or State "benefits";⁴⁷ 5) if I had a "tax liability",⁴⁸ as a condition precedent to demands, or 6) If anything were given to me for which the state, or the State "can ask return".⁴⁹ Without a meaningful meeting of the minds on essential elements,⁵⁰ there can be no enforceable contract.⁵¹

E. Agents ignored my rights,⁵² and issued *garnishment orders* (Exhibit 6), without valid verification of a "debt" or judgment,⁵³ ignored my objections,⁵⁴ and collected (Exhibit 7),⁵⁵ on mere presumptions (Exhibit 8).⁵⁶ All acts were conducted without any counter-testimony to my affidavits, and in disregard of my requests (Exhibits 2,7,8), and my Notices (Exhibits 8,9).

Agents also mailed unsigned penalties (Exhibits 10-15),⁵⁷ mailed unverified notices (Exhibits 16-19), determined taxes (Exhibits 20-24) without jurisdiction,⁵⁸ and without replying to my

⁴⁶ "It is to be noted that the statute differentiates between States of the United States and foreign states by the use of a capital S for the word when applied to a State of the United States." Eisenberg v. Commercial Union Assurance Co., 189 F.Supp. 500 (1960)

⁴⁷ "... railroad benefits, like social security benefits, are not contractual and may be altered or even eliminated at any time." United States Railroad Retirement Board v. Fritz, 449 U.S. 166 (1980); "We must conclude that a person covered by the Act has not such a right in benefit payments... This is not to say, however, that Congress may exercise its power to modify the statutory scheme free of all constitutional restraint." Fleming v. Nestor, 363 U.S. 603 (1960) [Emphasis added]

⁴⁸ "... Tax liability is a condition precedent to the demand. Merely demanding payment, even repeatedly, does not cause liability." Bothke v. Terry, 713 F.2d 1405, 1414 (1983).

⁴⁹ As was said in Wisconsin v. J. C. Penney Co., 311 U.S. 435, 444 (1940), "[t]he simple but controlling question is whether the state has given anything for which it can ask return." Colonial Pipeline Co v Traigle, 421 U.S. 100 (1975) [Emphasis added]

⁵⁰ "Anyone entering into an arrangement with the government takes the risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority, even though the agent himself may be unaware of the limitations upon his authority." Federal Crop Insurance v. Merrill, 332 U.S. 380 (1947).

⁵¹ "There was a total absence of proof of the appellees' assent to the alleged agreement or that its terms and conditions were free from doubt, speculation and conjecture or that there was a sufficient meeting of the minds of the parties to establish an agreement. See Fla. Jur., Contracts, §§ 14, 15, 16 and 27. See Smith's Bakery, Inc. v. Jernigan, supra; Newcomb v. Belton, supra." Hettenbaugh v. Keyes-Ozon-Fincher Ins., Inc., 147 So.2d 328, 329 (Fla. App. 3 Dist., 1962) [Emphasis added]

⁵² "The rights of the individual are not derived from governmental agencies, either municipal, state or federal, or even from the Constitution. They exist inherently in every man, by endowment of the Creator, and are merely reaffirmed in the Constitution, and restricted only to the extent that they have been voluntarily surrendered by the citizenship to the agencies of government. The people's rights are not derived from the government, but the government's authority comes from the people." City of Dallas v. Mitchell, 245 S.W. 944 (Tex. App. - Dallas [5th Dist.], 1922)

⁵³ "...the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, .. and a copy of such verification or judgment..." 15 U.S.C. sec.1692g(b) [Emphasis added]

⁵⁴ "The defendant collected the money, and it is alleged that he still has it. He was notified when he received it that the plaintiff disputed his right. If he had not right, as he had not, to collect the money, his doing so in the name of the state cannot protect him." Erskine v. Van Arsdale, 15 Wall. 75, 21 L. ed. 63. Poindexter v. Greenhow, 114 U. S. 270, 29 L. ed. 185, 5 Sup. Ct. Rep. 903, 962." Atchison, Topeka Santa Fe Railway Company v. Timothy Connor, 223 U.S. 280, 32 S.Ct. 216, 56 L.Ed. 436 (1912)

⁵⁵ Both federal and State taxing agencies are subject to the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. sec.1692g(b) requiring original proof of debt, including any alleged "tax" debt.

⁵⁶ "The power to create presumptions is not a means of escape from constitutional restrictions," Bailey v. Alabama, 219 U.S. 219, 239

⁵⁷ R&TC §19180. (a) In any proceeding involving the issue of whether or not any person is liable for a penalty under Section 19177, 19178, or 19179, the burden of proof with respect to that issue shall be on the Franchise Tax Board.

⁵⁸ "The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings" Hagans v. Lavine, 415 U.S. 528.

requests for clear, specific information (Exhibits 2, 7-9, 25-27).⁵⁹ As if to add insult to injury, after Agents scoffed at my raising Constitutional safeguards (Exhibit #),⁶⁰ they themselves used "general" Constitutional references for "All tax years" (Exhibit #). I suspect such maneuvers are a sneaky attempt to supposedly "legitimize" Agents' trespass on my rights, and to minimize or avoid being held accountable for misuse and abuse of their official immunity.⁶¹

- F. Agents failed to disclose whether they presume that a W-4 Withholding Agreement for the Social Security⁶² contributions creates any obligations to pay "individual or personal income taxes". 26 CFR §301.6109-1(d)(3) instructs Agents that Social Security numbers are not to be used as "taxpayer" identification numbers. Also, "... railroad benefits, like social security benefits, are not contractual and may be altered or even eliminated at any time." United States Railroad Retirement Board v. Fritz, 449 U.S. 166 (1980); According to the equal protection of the law, if the "benefit" is not contractual, then "the payment" is not contractual. See Fourteenth Amendment, Section 1, and Title 42 USC, Section 1981.

Agents' conclusive presumptions⁶³ were annulled by the contrary evidence provided in my sworn affidavits (Exhibits #, #, #). A "determination" may only be made after consideration of all relevant facts, statutes, and applicable regulations.⁶⁴

- G. The FTB disclosure officer confirmed (Exhibit #) that Agents are in fact acting under a claim for federal⁶⁵ income⁶⁶ taxes which are territorial in character, and governed by federal regulations.

⁵⁹ "Persons dealing with the government are charged with knowing government statutes and regulations and they assume the risk that government agents may exceed their authority and provide misinformation" Lavin v. Marsh, 644 F.2d 1378, 9th Cir., (1981)

⁶⁰ "The Constitution was designed to keep government off the backs of the people. The Bill of Rights was added to keep the precincts of belief and expression..." Laird v. Tatum 8212 288, 408 U.S. 1, 92 S.Ct. 2318, 33 L.Ed.2d 154 (1972)

⁶¹ "The doctrine of sovereign immunity, raised by defendants, is inapplicable since plaintiffs contend that the defendants' actions were beyond the scope of their authority or they were acting unconstitutionally". Dugan v. Rank, 372 U.S. 609, 621, 83 S.Ct. 999, 10 L.Ed.2d 15 (1962). Berends v. Butz, 357 F.Supp. 143 (D. Minn., 1973)

⁶² "Social Security is not insurance at all but merely welfare" Helvering v. Davis, 301 U.S. 619, 81 L.Ed. 1307, 57 S.Ct. 904.

⁶³ "A conclusive presumption may be defeated where its application would impair a party's constitutionally-protected liberty or property interests." Vladis v. Kline 412 US 441, 449 (1973); Cleveland Bd. of Ed. v. La Fleur, 414 US 632, 639, 640 (1974)

⁶⁴ See Hughes v. U.S., 953 F.2d 531 (CA9 1992); Portillo v. Comm'r of IRS, 932 F.2d 1128 (CA5 1991); Elise v. Connett, 908 F.2d 521 (CA9 1990); Jensen v. Comm'r of IRS, 835 F.2d 196 (CA9 1987); Scar v. Comm'r of IRS, 814 F.2d 1363 (CA9 1987); Benzvi v. Comm'r of IRS, 787 F.2d 1541 (CA11 1986); Maxfield v. U.S. Postal Service, 752 F.2d 433 (1984); Weimerskirch v. Comm'r of IRS, 596 F.2d 358, 360 (CA9 1979); Carson v. U.S., 560 F.2d 693 (1977); U.S. v. Janis, 428 U.S. 433, 442 (1975); Alexander v. "Americans United" Inc., 416 U.S. 752, 758-770 (1973); Pizzarello v. U.S., 408 F.2d 579 (1969); Terminal Wine, 1 B.T.A. 697, 701-02 (1925); Couzens, 11 B.T.A. 1140, 1159, 1179.

⁶⁵ "For federal tax purposes, federal regulations govern." Lyeth v. Hoey, 305 US 188, 59 S. Ct 155

⁶⁶ " We must reject in this case, as we have rejected in cases arising under the Corporation Excise Tax Act of 1909 (Doyle, Collector, v. Mitchell Brothers Co., 247 U. S. 179, 38 Sup. Ct. 467, 62 L. Ed. —, and Hays, Collector, v. Gauley Mountain Coal Co., 247 U. S. 189, 38 Sup. Ct. 470, 62 L. Ed. —, decided May 20, 1918), the broad contention submitted in behalf of the government that all receipts—everything that comes in—are income within the proper definition of the term 'gross income,' and that the entire proceeds of a conversion of capital assets, in whatever form and under whatever circumstances accomplished, should be treated as gross income. Certainly the term 'income' has no broader meaning in the 1913 act than in that of 1909 (see Stratton's Independence v. Howbert, 231 U. S. 399, 416, 417, 34 Sup. Ct. 136, 58 L. Ed. 285) So. Pacific v. Lowe, 247 U.S. 330, 38 S.Ct. 540, 62 L.Ed. 1142 (1918); "Income within the meaning of the 16th Amendment and the Revenue Act means, gain ... and in such connection gain means profit ." Staples v. U.S., 21 F.Supp. 737,U.S. Dist. Ct. EDPA (1937); "There is a clear distinction between profit and wages or compensation for labor. Compensation for labor cannot be regarded as profit within the meaning of the law." Oliver v. Halstead, 196 Va. 992, 86 S.E.2d 858

The officer's disclosure resonates with the provisions for taxation of federal income as promulgated in the Buck Act and the ACTA jurisdictional⁶⁷ agreement between federal and state agencies (Exhibit #). "... the states are separate sovereigns with respect to the federal government..." **Heath v. Alabama**, 474 U.S. 187.

The **separation of powers doctrine**⁶⁸ requires an agreement before **taxing** the federal **income** of trades, businesses or occupations on federal territory within a state of the Union. Such agreements however, may not trump Constitutional canons: "*The canon of construction which teaches that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States, **Blackmer v. United States**, 284 U.S. at 437, 52 S.Ct. at page 254, 76 L.Ed. 375, is a valid approach whereby unexpressed congressional intent may be ascertained.*" **Foley Bros v. Harbo**, 336 U.S. 281, 69 S.Ct. 575, 93 L.Ed. 680 (1949)

"See also *Gibbons v. Ogden*, 9 Wheat., at 195 ("The enumeration presupposes something not enumerated"). The Constitution mandates this uncertainty by withholding from Congress a plenary police power that would authorize enactment of every type of legislation. See U.S. Const., Art. I, 8. Congress has operated within this framework of legal uncertainty ever since this Court determined that it was the judiciary's duty "to say what the law is." **Marbury v. Madison**, 1 Cranch. 137, 177 (1803) (Marshall, C. J.). Any possible benefit from eliminating this "legal uncertainty" would be at the expense of the Constitution's system of enumerated powers." **U.S. v. Lopez**, 514 U.S.549 (1995)

" **No interference by Congress with the business of citizens transacted within a State is warranted by the Constitution, except such as is strictly incidental to the exercise of powers clearly granted to the legislature.**"..."Thus **limited**, and thus only, it reaches every **subject**, and may be exercised at discretion. **But, it reaches only existing subjects. Congress cannot authorize a trade or business within a State in order to tax it...** "... **the recognition by the acts of Congress of the power and right of the States to tax, control, or regulate any business carried on within its limits, is entirely consistent with an intention on the part of Congress to tax such business for National purposes.**" **License Tax Cases**, 72 U.S. 462 (1866) [Emphasis added]

"Other restrictions are, of course, found in Article I, Sections 2 and 9 requiring **direct taxes to be apportioned according to population**; Section 8 requiring **uniformity**; and Section 9 prohibiting **export duties.**" **Penn Mutual Indemnity Co. v. Commissioner of Internal Revenue**, 277 F.2d 16 (3rd Cir., 1960) [Emphasis added]

(1955); "...It is to be noted that by the language of the Act it is not salaries, wages or compensation for personal services that are to be included in gross income..." **Lucas v. Earl**, 281 U.S. 111 (1930); **Goodrich v. Edwards**, 255 U.S. 527 (1921); "Whatever may constitute income, therefore **must have the essential feature of gain to the recipient**. This was true when the 16th Amendment became effective, it was true at the time of **Eisner v. Macomber**, supra, it was true under **sect. 22(a)** of the **Internal Revenue Code** of 1938, and it is likewise true under **sect. 61(a)** of the **I.R.S. Code** of 1954. If there is not gain, there is not income Congress has taxed **income and not compensation.**" **Conner v. U.S.**, 303 F.Supp. 1187 (1969) [Emphasis added]

⁶⁷ "It is no longer open to question that the general government ... possesses no inherent power in respect of the internal affairs of the states; and emphatically not with regard to legislation." **Carter v. Carter Coal Co.**, 298 U.S. 238, 56 S.Ct. 855 (1936)

⁶⁸ "This constitutionally mandated division of authority was adopted by the framers to ensure protection of our fundamental liberties". **Gregory V. Ashcroft**, 501 US 452, 458 (1991) "just as the separation and independence of the coordinate branches of the federal government serves to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the states and the federal government will reduce the risk of tyranny and abuse from either front." Ibid" **U.S. v. Lopez**, 514 U.S.549 (1995)

Title 18 U.S.C. § 7 specifies that the territorial jurisdiction of the United States extends only outside the boundaries of lands belonging to any of the 50 states, and Title 40 U.S.C. § 255 specifies the legal conditions that must be fulfilled for the United States government to have exclusive or shared jurisdiction within the area of lands belonging to the States of the Union.

Furthermore, Section 7851 of Title 26 USC reveals that the income taxes under Subtitle A were extinguished upon the enactment of the 1954 Code (**details Exhibit #**), and the IRC index lists only the liability of Citizens with income from insular possessions.

Federal administrative office regulations⁶⁹ are exercised under the limited jurisdiction found in Title 4 USC,⁷⁰ (**Exhibit ##**), and may not create liabilities⁷¹ for people,⁷² or the states.⁷³

"..all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people." [10th Amendment]

CALIFORNIA GOVERNMENT CODE, Section 54950 states: *"In enacting this chapter, the Legislature finds and declares that the public commissions, **boards** and councils and the other public agencies in this State⁷⁴ **exist to aid** in the **conduct of** the people's **business** . . ."*

Agents appear to replace *"**exist to aid** in the **conduct of** the people's **business**"*, with *"**exist to conduct people**"*, or *"exist to make demands"*, or *"exist to sanction"*.⁷⁵ Constitutional canons bind

⁶⁹ Administrative agency may not, under guise of its rulemaking power, abridge or enlarge its authority or act beyond powers given it by statute which is source of its power; administrative regulations that alter or amend statute or enlarge or impair its scope are void. San Bernardino Valley Audubon Soc. V. City of Moreno Valley, 51 Cal.Rptr.2d. 897 (1996, Cal.App. 4th Dist)

⁷⁰ In agreement with Article 1 Section 8 Clause 17 in the Constitution, Title 4 USC §72 Public Offices at the seat of Government, states: *"All offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law."* [Emphasis added] [The only expressed exception is found in Title 48 USC §1612(a) Jurisdiction of District Court in the U.S. Virgin Islands, without any reference to the 50 states.]

⁷¹ Administrative agencies may not create a criminal offense or any liability not sanctioned by the law making authority, specifically a liability for a tax or inspection fee. Commissioner of Internal Revenue v. Acker, 361 U.S. 81, 4 L.Ed.2d 121, 80 S.Ct. 144 (1959); Roberts v. Commissioner of Internal Revenue, 116 F.2d 22r, 10 ALR.2d 186 (9Lh c i r . 1949) (. . . regulations "*can add nothing to income as defined by Congress*" citing M. E. Blatt Co. v. United States , 305 U.S. 261 , 279, 59 S.Ct. 186, 190, 83 L.Ed. 1-67 (1938)); Independent Petroleum Corp. v. Fly, 141 F.2d 189, 152 ALR 928 (5t" Cir. 1944)(...the power to make regulations does not extend to making taxpayers of those whom the Act, properly construed, does not tax) Indiana Dept. of State Revenue v. Colpaert Realty Corp., 231 Ind. 463, 109 NE.2d 415 (no power to render taxable a transaction which the statute did not make taxable); Morrison-Knudsen Co. v. State Tax Com., 242 Iowa 33, 44 NW.2d 449, 41 ALR.2d 523 (tax tax).

⁷² *"Neither branch of the legislative department , still less any merely administrative body, established by congress, possesses, or can be invested with, a general power of making inquiry into the private affairs of the citizen. Kilbourn v. Thompson, 103 U.S. 168, 190. We said in Boyd v. U.S., 116 U. S. 616, 630, 6 Sup. Ct. 524, and it cannot be too often repeated, that the principles that embody the essence of constitutional liberty and security forbid all invasions on the part of government and it's employees of the sanctity of a man's home and the privacies of his life. As said by Mr. Justice Field in Re Pacific Ry. Commission, 32 Fed. 241, 250, 'of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves, not merely protection of his person from assault, but exemption of his private affairs, books, and papers from inspection and scrutiny of others. Without the enjoyment of this right, all others would lose half their value.'" Interstate Commerce Commission v. Brimson, 154 U.S. 447, 479 (1894) [Emphasis added]*

⁷³ *"... but for a very long time this court has steadfastly adhered to the doctrine that the taxing power of Congress does not extend to the states or their political subdivisions."* Ashton v. Cameron County Water Improvement District, 298 U.S. 513, 56 S.Ct. 892 (1936)

⁷⁴ California Revenue and Taxation Code Definitions: **Section 6017**: *"In this State" or "in the State" means within the exterior limits of the State of California and includes all territory within these limits owned by or ceded to the United States of America."* **Section 17018**: "State" includes the District of Columbia, and the possessions of the United States.

Government Codes to specific jurisdiction which cannot extend Agents' authority over people "making a living" in occupations of common right. Agents appear to conveniently "presume" or "assume" the existence of a "trade or business", in order to justify their allegations of a liability within Agents' jurisdiction. Clearly, there can be no legal sanction or penalty⁷⁶ issued through unlawful imposition⁷⁷ of Agents' "assumed" jurisdiction. I informed Agents (Exhibit #) that I retain all my rights. The right to contract is a constitutionally protected right and cannot be imposed,⁷⁸ forbidden, hindered, or diminished.⁷⁹ Legislators have no constitutional authority⁸⁰ to enact statutes,⁸¹ or regulations, that could grant Agents an immoral, predatory license, to "generate revenue" by use of complex administrative techniques and evasive replies. Nor can statutes allow wordsmith definitions and regulations to enable Agents to act in ways which could easily be construed as "syndicated crimes",⁸² or to engage in legal violence to dupe people,⁸³ or use "legal strategies" to bring even "taxpayers" in the position to prove a negative⁸⁴ (Exhibit #).

Agents have no authority to demand payments for imaginary, ambiguous "statutory privileges",⁸⁵ or to force people into accepting *privileges, benefits or services*.⁸⁶ No legislation can vote away

⁷⁵ **Title 5 USC §558(b):** "A sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law."

⁷⁶ ". . . the statutory procedures. . . reflect the obvious concern that there be no sanction or penalty imposed upon one because of his exercise of constitutional rights." **Sherar v. Cullen**, 481 F. 2d 945, (1973).

⁷⁷ **The Hobbs Act** defines "extortion" as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 USC §1951(b)(2).

⁷⁸ "The IRC is not positive law, it is special law. It applies to specific persons in the United States who chose to make themselves subject to the requirements of the special laws in the IRC by entering into an employment agreement within the U.S. Government. The law is that income from sources not effectively connected with the conduct of a trade or business within the U.S. Government is not subject to any tax under subtitle 'A' of the IRC." IRS Disclosure Officer.

⁷⁹ "The state cannot diminish rights of the people." **Hurtado v. People of the State of California**, 110 U.S. 516.

⁸⁰ "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." *Miranda v. Arizona*, 384 US 436, 491.

⁸¹ ". A statute does not trump the Constitution." **People v. Ortiz**, 32 Cal.App.4th at p. 292, fn. 2, 38 Cal.Rptr.2d 59.

⁸² "A practice condemned by the Constitution cannot be saved by historical acceptance and present convenience. **U.S. v. Woodley**, 726 F.2d 1328, 1338 (9th Cir. 1984)

⁸³ "When a government agent acts in an unconstitutional manner, the agent becomes personally liable for damages." **Bivens v. Six Unknown Agents**, 403 U.S. 388, 29 L. Ed 2d 619, 91 S.Ct.1999 (1970);

⁸⁴ "...the taxpayer can not be left in the unpardonable position of having to prove a negative" **Elkins v. United States**, 364 U.S. 206, 218 (1960), 80 S.Ct. 1437, 1444, 4L.Ed.2d 1669 (1960); **Flores v. U.S.**, 551 F. 2d 1169, 1175 (9th Cir. 1977) **Portillo v Comm'r**, 932 F. 2d 938, Affirming, reversing and remanding 58 TCM 1386, Dec 46, 373 (M), TC Memo, 1990-68 [91-2 USTC P50, 304]; **Weimerschirch** [79-1 USTC P9359], 596 F. 2d at 361.

⁸⁵ "...the constitutional confrontation clause has been held to prevail over a statutory privilege. (See *People v. Di Maso*, supra, 55 Ill.Dec. 650, 426 N.E.2d at p. 975; *State v. Storlazzi* (Conn.1983) 191 Conn. 453, 464 A.2d 829, 833.) **People v. Reber**, 223 Cal.Rptr. 139, 177 Cal.App.3d 523 (Cal. App. 3 Dist., 1986)

⁸⁶ "... railroad benefits, like social security benefits, are not contractual and may be altered or even eliminated at any time." **United States Railroad Retirement Board v. Fritz**, 449 U.S. 166 (1980); [Emphasis added]

people's rights⁸⁷ and grant administrative authority to entrap, trick, intimidate, or compel people to either purchase, or to provide *services*.⁸⁸ Such acts would be racketeering, or practicing slavery.⁸⁹ With freedom of choice as the guiding principle, it has been held that the "element of voluntariness" is vitiated⁹⁰ . . . under duress brought on by government action, see e.g. *McGucken v. United States*, 407 F.2d 1349, 1351, 187 Ct.Cl. 284 (Ct.Cl), *Perlman v U.S.*, 490 F2d. 933. [Emphasis added]

Each and every year, 2004 through the present, I asked Agents for verified proof behind Agents' allegations, presentments, penalties, determinations or claims. Absent specific answers and verified evidence, I could not make any informed corrections,⁹¹ and I can not assume, presume or guess any liability for Agents' ambiguous and misleading correspondence. Agents' letters lacked certified copies of verified debt, duty, liability, contract, or breach of a contract. Agents made no attempt to prove their jurisdiction,⁹² or show a lawful "reason" for garnishing, or not returning my funds.⁹³

As one of the people,⁹⁴ I am owed answers.⁹⁵ I am not aware of, nor have Agents shown proof of any predicament⁹⁶ that would subject me to comply with a specific statute and regulation related to Agents' administrative authority, procedures, policies, notices, demands, or penalties.⁹⁷

⁸⁷ "One's right to life, liberty and property ... and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." *West Virginia Bd. of Ed. v. Barnett*, 319 US 624, 638 (1943)

⁸⁸ 1) U.S. CONSTITUTION Article XIII. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. 2) CALIFORNIA CONSTITUTION ARTICLE 1 DECLARATION OF RIGHTS SEC. 6. Slavery is prohibited. Involuntary servitude is prohibited except to punish crime.

⁸⁹ "For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself." . . ." This principle of interpretation has been sanctioned by this court in *Henderson v. Mayor of New York*, 92 U. S. 259; *Chy Luny v. Freeman*, 92 U. S. 275; *Ex parte Virginia*, 100 U. S. 339; *Neal v. Delaware*, 103 U.S. 370; and *Soon Hing v. Crowley*, 113 U. S. 703; *S. C. 5 Sup. Ct. Rep. 730.*" *Yick Wo v. Hopkins, Sheriff, etc.*, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220

⁹⁰ **Vitiate.** 1. To impair the quality or value of. 2. To corrupt morally. 3. To Invalidate. (Webster's II Dictionary)

⁹¹ CALIF. CIV. CODE SEC. 3531. The law never requires impossibilities.

⁹² "Jurisdiction is essential to give validity to the determinations of administrative agencies and where jurisdictional requirements are not satisfied, the action of the agency is a nullity..." *Justice Street Improv Co. v. Pearson*, 181 C 640, 185 P.(1962); *O'Neil v. Dept. of Professional & Vocational Standards*, 7 CA2d 393, 46 P2d 234 [Emphasis added]

⁹³ "That the power may be abused, is no ground for denying its existence. It is a limited power, and should be kept within its proper bounds; and, when these are exceeded, a jurisdictional question is presented which is cognizable in courts." *McGrain v. Daugherty*, 273 U.S. 135, 166, 47 S.Ct. 319, 326, 71 L.Ed. 580 (1927), quoting *McDonald v. Keeler*, 99 N.Y. 463, 482, 2 N.E. 615, 626 (1885).

⁹⁴ CALIFORNIA GOVERNMENT CODE §54950: "The people insist on remaining informed so that they may retain control over the instruments they have created." [Emphasis added]

⁹⁵ 5 USC 552a "The purpose of the Act is to provide certain safeguards for an individual against invasion of personal privacy...to permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies."

⁹⁶ "Living under a rule of law entails various suppositions, one of which is that" [all persons] are entitled to be informed as to what the State commands or forbids." *Lanzetta v. New Jersey*, 306 U.S. 451,453. [Emphasis added]

⁹⁷ 5 USC §556(d): "Except as otherwise provided by statute, the proponent of the rule or order has the burden of proof... A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence... A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts." (Emphasis added)

In light of all the exhibits and footnotes herein, Agents appear to operate an apparatus for control and profit, counter to constitutional oath,⁹⁸ Supreme Court rulings, United States Codes, Civil Code, Business and Professions Code, Fair Debt Collection Practices Act, California Government Code.

My letters gave Agents sufficient notice of trespass due to lack of jurisdiction.⁹⁹ Instead of bearing their burden of proof, and disclosing all the elements,¹⁰⁰ Agents rushed to label my efforts as "frivolous", and to "tack on" penalties.

Agents ignored my offers to settle the issues, by mailing nonresponsive replies¹⁰¹ to my inquiries, and by ignoring my demands for verified evidence and cross examination.¹⁰² Agents' garnishments from my work are factual evidence of abuse, due to the lack of liability, jurisdiction, or an order by a court of competent jurisdiction.

Agents appear to willfully misinterpret the statutes¹⁰³ and regulations¹⁰⁴ as a license to engage in predatory administrative "technicalities",¹⁰⁵ instead of providing transparency and forthright answers for timely corrections. The hearings held at the FTB office are recorded proof of Agent's disingenuous statements (Exhibit #) about their authority. The records also show the lack of Agents' cooperation to provide any opportunity for me to cross examine¹⁰⁶ their purported "evidence".¹⁰⁷

⁹⁸ "It is obviously correct that no one acquires a vested or protected right in violation of the Constitution by long use, even when that span of time covers our entire national existence and indeed predates it." Walz v. Tax Commission of New York Justice, 397 U.S. 664 at 678 (1970)

⁹⁹ See F & S Contr. Co. v. Jensen, 337 F.2d 160, 161-162, (10th Cir.1963): "[I]t is now settled that when there is an issue as to the sufficiency of jurisdictional amount, the burden of providing jurisdiction is on the party asserting it. Justice of Lauden, Okla. v. Chapman, 257 F.2d 601 (10th Cir.); McNutt v. General Motors Acceptance Corp., 289 U.S. 178, 56 S.Ct. 780, 80 L.Ed. 1135.

¹⁰⁰ Clark v. Stotts, 127 Cal.App.2d 589[key] "[4] The burden of proving all of the essential elements thereof is upon the person so relying, and if one element is wanting, then the claim must fail. (Yuba River Sand Co. v. Justice of Marysville, 78 Cal.App.2d 421, 429 [177 P.2d 642]; Sheehan v. All Persons, 80 Cal.App. 393, 401 [252 P. 337].) [Emphasis added]

¹⁰¹ "Silence can only be equated with fraud when there is a legal or moral duty to speak, or when an inquiry left unanswered would be intentionally misleading... We cannot condone this shocking conduct...If that is the case we hope our message is clear. This sort of deception will not be tolerated and if this is routine it should be corrected immediately" U.S. v. Tweel, 550 F.2d 297, 299-300 (1977)

¹⁰² "... minimum requirements of due process includes. . . to cross examine any opposing witnesses ..." Jeffries v. Olesen, D.C. Cal 1954, 121 F. Supp 463 [Emphasis added]

¹⁰³ "In the interpretation of the statutes levying taxes, it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations as to embrace matters not specifically pointed out. In the case of doubt, they are construed most strongly against the government, and in favor of the citizen." Gould v Gould, 245 U.S. 151 (1917)

¹⁰⁴ "...power to issue regulations is not power to change the law..." US v. New England Coal and Coke Company 318 F.2d 138. 1963

¹⁰⁵ In adopting its rules and regulations, an administrative agency must act within the Constitution. (Sokol v. Public Utilities Commission (1966) 65 Cal.2d 247, 256, 53 Cal.Rptr. 673, 418 P.2d 265.) Obviously, administrative agencies, like police officers (People v. Cahan (1955) 44 Cal.2d 434, 437, 282 P.2d 905, (former Pen.Code, § 653h 'could' not authorize violations of the Constitution)), must obey the Constitution and may not deprive persons of constitutional rights.

¹⁰⁶ On the other hand, the presentation of evidence by affidavit is common practice at administrative hearings. For agencies under the Administrative Procedures Act (Gov. Code § 11500 et seq.), affidavits may serve as direct evidence if no request to cross-examine is made (Gov. Code, § 11541; see Administrative Agency Practice (Cont.Ed.Bar 1970) § 2.84, pp. 119-120.)... Under this standard, affidavits by persons as to facts within their personal knowledge would qualify as competent evidence provided the opposing party's right to cross-examine is fully protected.(bracketed information added, emphasis added) Windigo Mills v. Unemployment Ins. Appeal Bd. (1979), 92 Cal.App.3d 586, 597-598, 155 Cal.Rptr. 63. [Emphasis added]

I can only reason that Agents are acting in concert, under color of office,¹⁰⁸ in such manner as to entrap me in some administrative scheme,¹⁰⁹ through relentless, unfounded presentments under color of law.¹¹⁰ Agents' notices and proposed assessments reflect a desire to use delay tactics, for the apparent reason of charging interest and unlawfully keeping the fruits of my labor and live at my expense. Such tactics also appear as a convenient way to hide Agents' negligence,¹¹¹ or fraud.¹¹² Due to both - Agents' actions and lack of actions - the administrative process has been exhausted.

"The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect.... They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone - the most comprehensive of rights and the right most valued by civilized men." [Emphasis added]
Olmstead v. United States, 277 U.S. 438, 478 (1928); **Washington v. Harper**, 494 U.S. 210 (1990)

CALIFORNIA CONSTITUTION, ARTICLE 1 DECLARATION OF RIGHTS, SECTION 1. : *All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.*

• **Constitutional Liberty or Freedom.** Such freedom as is enjoyed by the citizens of a *country or state* under the protection of its constitution. *The aggregate of those personal, civil, and political rights of the individual which are guaranteed by the Constitution and secured against invasion by the government or any of its agencies.* [Black's Law Dictionary, 6th Edition, 1991]

*" All subjects over which the sovereign power of a state extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation ... The sovereignty of a state extends to everything which exists by its own authority, or is introduced by its permission;" **McCulloch v. State of Maryland**, 17 U.S. 316, 4 L.Ed. 579, 4 Wheat. 316 (1819)*

¹⁰⁷ "[2] . . . When there is an innocent explanation for a defendant's conduct as well as one that suggests that the defendant was engaged in wrongdoing, the government must produce evidence that would allow a rational jury to conclude beyond a reasonable doubt that the latter explanation is the correct one. **U.S. v. Estrada-Macias**, No.97-10115 (CA9 filed 7/12/2000).

¹⁰⁸ COLOR OF OFFICE: Pretence of official right to do an act, made by one who has no such right. **Kiker v Pinson**, 120 Ga. App. 784, 172, S.E.2d 333,334. An act under color of office is an act of an officer who claims authority to do the act by reason of his office when the office does not confer on him any such authority. **Maryland Cas. Co. v. McCormack**, Ky., 488 S.W. 2d 347, 352.

¹⁰⁹ Title 18, Section §1346. "For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services. [Emphasis added]

¹¹⁰ COLOR OF LAW: The appearance or semblance, without the substance, of legal right. Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with authority of state, is action taken under color of law. **Atkins v. Lanning**, D.C. Okl. 415, F. Supp. 186, 188. [Black's Law Dictionary, 5th Ed. pg. 241, (1979)]

¹¹¹ CALIF. CIV. CODE. SEC. 3543. Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer.

¹¹² FRAUD: An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right; a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury.

INJURIES

Because Agents exceeded their authority, I, Ima Hurt, have suffered the following injuries:

1. Loss of the amounts over-withheld, which Agents have not returned, in the amount of \$700.00, \$7,000.00, \$7,000.00 and \$7000.00 for years 2007 thru 2007 respectively. Subtotal: \$77,000.00
2. Time spent for 7 years to prepare and reply, estimated to be 7,777 hours at \$77/ hr. Subtotal: \$ 777,000.00
3. Legal and paralegal consulting costs; Total \$7,777.00;
4. Anguish, loss of sleep and of physical health. Amount of damages to date \$77,000.
5. Financial hardship,¹¹³ collateral defamation, deterioration of my relationships with my work associates and my family, and interference with my pursuit of happiness.¹¹⁴

DUTY

The duties for Agents are codified in the United States Codes, California Penal Code, Civil Code, Business and Professions Code and California Government Code.

All principals are responsible for Agents' exercise of their duties. Notice to Agents is notice to the principal; notice to the principal is notice to Agents.¹¹⁵

All government Agents are public employees, and are duty bound by contract¹¹⁶ to the oath of office.

Agents have a moral, lawful and legal duty to exercise proper diligence to verify their policies do not infringe upon longstanding principles and constitutionally protected rights.¹¹⁷ Agents may not act

¹¹³ 18 USC Sec. 242. Deprivation of rights under color of law. Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, . . . shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

¹¹⁴ "The constitutional right of men to pursue their "happiness" means the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity, or develop their faculties, so as to give to them their highest enjoyment. Butchers' Union Co. v. Crescent Justice Co., 111 U.S. 746, 4 S.Ct. 652, 28 L.Ed. 585." [Black's Law Dictionary, 5th Edition, pg 645, (1979)]

¹¹⁵ CALIF. CIV. CODE SEC. 2332. "As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other."

¹¹⁶ The constitutional provision . . . makes no distinction in the necessity of the oath as between "public officers and employees." The execution of the oath is essential to the status of *de jure* employment the lack of which precludes the right to compensation for services rendered (cf. Lopez v. Payne, 51Cal.App. 447, 449 [196 P. 919]; Norton v. Lewis, 34 Cal.App. 621, 624 [168 P. 388])." Smith v. County Engineer (1968), 266 Cal.App.2d 645, 653-654; 72 Cal.Rptr. 501. [Emphasis added]

¹¹⁷ "This great principle that the constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective states, and cannot be controlled by them. From this, which may be almost termed an axiom, other propositions are deduced as corollaries... 1st. That a power to create implies a power to preserve: 2d. That a power to destroy, if wielded by a different hand, is hostile to, and incompatible with these powers to create and to preserve: 3d. That where this repugnancy exists, that authority which is supreme must control, not yield to that over which it is supreme." McCulloch v. Maryland, 17 U. S. 316, 426 (1819).

against people¹¹⁸ so as to effectively change their duty into injury.¹¹⁹ All Agents have a duty to know and follow the laws which bind them, and should be held accountable to the highest standards of professional conduct: *"Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration."* (FTB mission statement)

The Codes¹²⁰ disallow harmful acts¹²¹ such as, conspiring to extort, misrepresent, deceive or conceal critical information,¹²² in order to perpetuate error for the purpose of gain.¹²³ Section 1986 of the Civil Code also disallows failure to act in such ways which would prevent injury to anyone.¹²⁴

BREACH OF AUTHORITY, JURISDICTION AND BREACH OF DUTY

I believe Agents are breaching their oath of office, authority, jurisdiction and duty:¹²⁵

1. By dishonoring their burden to prove their claims;¹²⁶
2. By failing to provide the requested information¹²⁷ which was essential for timely correction of errors and elimination of unnecessary administrative harassment;
3. By unjust enrichment from the fruits of my labor, a violation of a constitutionally protected right.
4. By capriciously disregarding my sworn affidavits and my verified evidence, while arbitrarily denying my refunds (Exhibits 28, 29, 30) based on presumptions which hold no legal weight;¹²⁸

¹¹⁸ *"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."* U.S. Constitution, 9th amendment.

¹¹⁹ CALIF. CIV. CODE SEC. 3512. *"One must not change his purpose to the injury of another."*

¹²⁰ *"Although agencies must be "able to change to meet new conditions arising within their sphere of authority," any expansion of agency jurisdiction must come from Congress, and not the agency itself.* 744 F.2d at 1409.

¹²¹ CALIF. CIV. CODE SEC. 3520. *"No one should suffer by the act of another."*

¹²² 18 USC Sec. 241. Conspiracy against rights. *"If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death."*

¹²³ CALIF. CIV. CODE SEC. 3517. *"No one can take advantage of his own wrong."*

¹²⁴ CALIF. CIV. CODE SEC. 3519. *"He who can and does not forbid that which is done on his behalf, is deemed to have bidden it."*

¹²⁵ *"Certain wrongs affect more than a single right and, accordingly, can implicate more than one of the Constitution's commands. Where such multiple violations are alleged, we are not in the habit of identifying as a preliminary matter the claim's 'dominant' character. Rather, we examine each constitutional provision in turn."* Soldal v. Cook County, 506 U.S. 56, 70, 121 L. Ed. 2d 450, 113 S. Ct. 538 (1992)

¹²⁶ 19180. (a) In any proceeding involving the issue of whether or not any person is liable for a penalty under Section 19177, 19178, or 19179, the burden of proof with respect to that issue shall be on the Franchise Tax Board.

¹²⁷ *"The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know..."* CALIFORNIA GOVERNMENT CODE §54950

5. By mailing uncertified, unverified solicitations and unfounded penalties.¹²⁹
6. By assuming jurisdiction, and continuing to act under color of office and color of law;
7. By unlawfully collecting garnishments¹³⁰ and processing unfounded liens and levies;¹³¹
8. By misrepresenting their authority, with full knowledge of the correct facts, such as to induce me to enter into agreements which I would not enter if Agents disclosed all facts.(Exhibit #)

The moral, public and private laws,¹³² have inherent limitations in their authority and cannot be construed as a license for Agents to cause injury. See Bill of Rights, 18 USC §§ 241, 242, 654, 1581; 42 USC §§ 1982, 1983, 1985, 1986, 1994; The 14th Amendment. (Exhibit of all cited)

DAMAGES

Because Agents have demonstrated that Agents have no intention to return my over-withheld sums (Exhibit xs) because Agents have no right of ownership interest over said sums; because Agents reached outside the scope of Agents' lawful authority and acted under color of office and color of law when Agents should **have not so done**; because Agents have harassed, extorted and threatened to keep extorting, now therefore, Agents are liable for the following damages for the injuries suffered by Ima Hurt: special damages of \$100,000.00 and general damages (same as special damages) of \$100,000.00. Total \$200,000.00

DEMAND

1. **Therefore**, I demand that within 21 days from the date of service of this Notice and Demand, Agents provide all the facts and proof as referenced in the above paragraphs **A** thru **G**, or show good cause, if more time is needed. The elements I request¹³³ are prerequisite for proper diligent discharge of Agents' lawful and moral functions under oath and public contract.

¹²⁸ "...it was said 'that wherever a man does an act which in law and in fact is a wrongful act, and such an act as may, as a natural and probable consequence of it, produce injury to another, and which in the particular case does produce such an injury, an action on the case will lie.'" Angle v. Chicago, St. P., M. & Omaha Ry. Co., 151 U.S. 1, 3 (1894).

¹²⁹ "It has been long established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution." Frost & Frost Trucking Co. v. Railroad Comm'n of California, 271 U.S. 583.

¹³⁰ "Where administrative action may result in loss of both property and life, or of all that makes life worth living, any doubt as to the extent of power delegated to administrative officials is to be resolved in citizen's favor, and court must be especially sensitive to the citizen's rights where proceeding is non-judicial." United States v. Minker, 350 U.S.179(1956)

¹³¹ "... the state is without power to impose either an income or occupation tax for state purposes, and the court below was, therefore, correct in holding that act unconstitutional, and that decree is affirmed." Sims v. Ahrens, 167 Ark. 557, 271 S.W. 720 (Ark., 1925)

¹³² "...the authority of legislation in the state government is not unlimited; there are several limitations to their legislative authority. First, from the nature of all government, especially, of republican government, in which the residuary powers of sovereignty, not granted specifically, by inevitable implication, are reserved to the people. Secondly, from the express limitations contained in the state constitutions. And thirdly, from the express prohibitions to the states contained in the United States constitution." McCulloch v. Maryland, 17 U. S. 316, 383 (1819).

¹³³ "It is not the function of our Government to keep the citizen from falling into error; it is the function of the citizen to keep the government from falling into error." American Communications Association v. Douds, 339 U.S. 382, 442, (1950)

2. names 1,2,3,4,5,6 Agents, and each of them, within 60 days of service of this Notice & Demand, in good faith, do their duty and pay the damages suffered by me at their hands; or within 21 days from the service of this Notice and Demand, show cause why said demand should not be enforced in a court of record in California.¹³⁴
3. Agents notify me in writing of the *specific element/s* creating a presumption of "liability", and the "valid" forms and information so that I can make the corrections to erroneous information returns and income statements filed by third parties in regards to me, and avoid exposure to any further harassment by Agents.
4. Agents notify me in writing that the FTB account in regards to me is closed and no deficiency exists for the years 200?, 200?, 200?, 200?, 200? and 200?.
5. No Agents, FTB personnel or anyone acting in concert with them shall engage in any further collection, or any acts of harassment against me.

DEFAULT

If Agents do not answer within the 21 days, any and all un-contradicted¹³⁵ statements, presumptions and enclosures herein (Exhibits **1 thru**), shall become acquiesced as facts in the record,¹³⁶ and Agents' non responsive replies, or collection attempts may be construed as willful.

If Agents fail to satisfy the demand within the allotted time after having been duly served with this notice and demand, then by tacit procuration Ima Hurt, her nominee or her assigns will determine for Agents the facts, their duties, and the damages owed by Agents.

Further, if Agents fail to satisfy the demand, then Ima Hurt may take lawful action in a court of record (in personam and in rem), to defend against Agents and persons acting in concert with Agents who have caused any injuries to Ima Hurt; to secure her substantive rights; and to redeem the aforementioned damages owed to her.

In order to avoid any misunderstanding, all communications shall henceforth be on the record, i.e. in writing and duly served to: Ima Hurt, 12345 Freedom Ln., Justice, California.

¹³⁴ "...where the officer's powers are limited by statute, his actions beyond those limitations are considered individual and not sovereign actions. The officer is not doing the business which the sovereign has empowered him to do or he is doing it in a way which the sovereign has forbidden. His actions are ultra vires his authority and therefore may be made the object of specific relief. It is important to note (Page 690) that in such cases the relief can be granted, without impleading the sovereign, only because of the officer's lack of delegated power. A claim of error in the exercise of that power is therefore not sufficient. (Page 692) The respondent's contention, which the Court of Appeals sustained, was that there exists a third category of cases in which the action of a Government official may be restrained or directed. If, says the respondent, an officer of the Government wrongly takes or holds specific property to which the plaintiff has title then his taking or holding is a tort, and 'illegal' as a matter of general law, whether or not it be within his delegated powers. He may therefore be sued individually to prevent the 'illegal' taking or to recover the property 'illegally' held." **Larson v. Domestic Foreign Commerce Corporation**, 337 U.S. 682, 69 S.Ct. 1457, 93 L.Ed. 1628 (1949) [Emphasis added]

¹³⁵ "...if the evidence is clear, positive, uncontradicted and of such a nature that it cannot rationally be disbelieved the court must instruct that a fact so proved has been established as a matter of law. Blank v. Coffin, 20 Cal.2d 457, 461, 126 P.2d 868." **Roberts v. Del Monte Properties Co.**, 111 Cal.App.2d 69, 243 P.2d 914 (Cal.App. 1 Dist., 1952)

¹³⁶ CALIF. CIV. CODE SEC. 3516. Acquiescence in error takes away the right of objecting to it.

Signature: _____ Date _____

Enclosures: Exhibits 1 thru ?