


SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

FILED
San Francisco County Superior Court

NOV 17 2022

CLERK OF THE COURT

BY: 
Deputy Clerk

AMERICAN CATALOG MAILERS
ASSOCIATION,

Case No. CCG-22-601363

Plaintiff,

**ORDER OVERRULING
DEMURRER**

vs.

FRANCHISE TAX BOARD,
Defendant.

The California Franchise Tax Board's (FTB) demurrer to the American Catalogue Mailers Association's (ACMA) "complaint for declaratory relief" is overruled.

ACMA's complaint alleges that the FTB is attacking a 59-year-old federal law with "underground" state regulations. (Id. at 11:1-3.) That federal statute – Public Law 86-272 – exempts out-of-state companies from state taxes on net income so long as the companies only solicit orders for their goods. (Id. at 3:11-17.) The complaint employs California's broad declaratory relief statutes to seek

declarations that the FTB's "underground" regulations are improper and invalid. (Id. at 11:22-28.)

The FTB demurrer states three grounds, each unavailing.

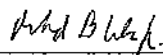
First, the FTB says the "Complaint challenges a tax assessment in the courts without first paying the full amount of the assessment," contrary to California Constitution article XIII section 32. (Dmr. Not. 2:12-16.) However, the complaint nowhere pleads a tax assessment. At most, a "risk of illegal assessment by the FTB" is pled. (Id. at 3:7-8.) Indeed, the complaint "does not seek to enjoin, suspend or restrain the assessment, levy or collection of any tax from any particular taxpayer." (Id. at 2:16-19.)

Second, the FTB demurrer states: "This case is not ripe. There is no actual case or controversy as no tax has been assessed against ACMA or its members." (Dmr. Not. 2:17-18.) Beyond the demurrer's contradiction of its earlier contention that "the Complaint challenges a tax assessment" (id. at 2:14), this case meets the established test for ripeness. It is both "sufficiently concrete to make declaratory relief appropriate" and "withholding of judicial consideration will result in a hardship to the parties." (*Communities for a Better Environment v. State Energy Resources Conservation & Development Com.* (2017) 19 Cal.App.5th 725, 733.)

Third, the FTB demurrer asserts: "Plaintiff ACMA lacks standing to bring this action." (Dmr. Not. 2:19.) To the contrary, an "association has standing to

bring suit on behalf of its members when,” as here: “(a) its members would have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” (*United Farmers Agents Assn., Inc. v. Farmers Group, Inc.* (2019) 32 Cal.App.5th 478, 488.)

Dated: November 17, 2022



Richard B. Ulmer Jr.
Judge of the Superior Court

CGC-22-601363
FRANCHISE TAX BOARD

AMERICAN CATALOG MAILERS ASSOCIATION VS.

I, the undersigned, certify that I am an employee of the Superior Court of California, County Of San Francisco and not a party to the above-entitled cause and that on November 17, 2022 I served the foregoing **Order Overruling Demurrer** on each counsel of record or party appearing in propria persona by causing a copy thereof to be served electronically by email sent to the email addresses indicated below..

Date: November 17, 2022

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