

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.

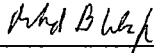
First, the FTB says the "Complaint challenges a tax assessment in the courts without first paying the full amount of the assessment," contrary to California Constitution article XIII section 32. (Dmr. Not. 2:12-16.) However, the complaint nowhere pleads a tax assessment. At most, a "risk of illegal assessment 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

By:  SHIRLEY LE

LAURA E. ROBBINS  
[laura.robbsins@doj.ca.gov](mailto:laura.robbsins@doj.ca.gov)  
DEPUTY ATTORNEY GENERAL  
300 SOUTH SPRING STREET  
SUITE 1702  
LOS ANGELES, CA 90013

NATHANIEL A. BESSEY  
[nbessey@brannlaw.com](mailto:nbessey@brannlaw.com)  
BRANN & ISAACSON  
P.O. BOX 3070  
LEWISTON, MAINE 04243

RICHARD PACHTER  
[richard@pachterlaw.com](mailto:richard@pachterlaw.com)  
LAW OFFICES OF RICHARD PACHTER  
555 UNIVERSITY AVE,  
SUITE 200  
SACRAMENTO, CA 95825