

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
J. BRACAMONTE and J. BRACAMONTE,) OTA NO. 18010932
)
APPELLANT.)
)
_____)

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Monday, December 14, 2020

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
400 R Street, Sacramento, California, 95811,
commencing at 10:12 a.m. and concluding
at 5:45 p.m. on Monday, December 14, 2020,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ RICHARD TAY

Panel Members: ALJ JOHN JOHNSON
ALJ MIKE LE

For the Appellant: J. BRACAMONTE
J. BRACAMONTE
GREGORY S. MARKOW
PHILIP L. JELSMA

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

DESIREE MACEDO
RONALD HOFSDAL

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-18 were received at page 6.)
(Department's Exhibits A-BB were received at page 6.)

OPENING STATEMENT

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1 Sacramento, California; Monday, December 14, 2020

2 10:12 a.m.

3

4 JUDGE TAY: Good morning. We are opening the
5 record in the appeal of Juan and Jacqueline Bracamonte
6 before the Office of Tax Appeals, Case Number 18010932.
7 The official location on the notice of hearing is
8 Sacramento, California, and this hearing is being held
9 electronically.

10 A panel of three judges is hearing this appeal,
11 and we are coequal decision makers. My name is Richard
12 Tay, and I will be acting as the lead judge for the
13 purposes of conducting this hearing. Also on the panel
14 with me here today are Judges John Johnson and Mike Le.

15 Will the parties please introduce themselves for
16 the record, beginning with the Appellant. Please state
17 any title you wish to have as part of the record as well.

18 MR. MARKOW: Thank you, Your Honor. This is Greg
19 Markow on behalf of the Appellants along with my partner,
20 Phil Jelsma. The Appellants are also present. That is
21 Juan Phil Bracamonte and Jacqueline Bracamonte.

22 JUDGE TAY: Thank you.

23 Franchise Tax Board?

24 MR. HOFSDAL: Yes. Good morning. And my name is
25 Ron Hofsdal, H-O-F-S-D-A-L. And with me is one of my

1 attorneys with FTB -- or one of the attorneys here at FTB,
2 Desiree Macedo.

3 JUDGE TAY: This is Judge Tay. Thank you,
4 parties.

5 The issues today are whether Appellants were
6 California residents in 2008; and whether Appellants have
7 shown error in FTB's proposed assessments for the 2008 and
8 2009 tax year.

9 Prior to the hearing we circulated the exhibits
10 submitted by both parties in a file we call the "Hearing
11 Binder". It contains Appellants' Exhibits 1 through 18
12 and Respondent's Exhibits A through BB. There were no
13 objections to admitting exhibits into evidence.

14 Is that right, Appellants?

15 MR. MARKOW: That is correct, Your Honor.

16 JUDGE TAY: And Franchise Tax Board?

17 MR. HOFSDAL: Yes, that is correct.

18 JUDGE TAY: Thank you.

19 The exhibits will now be admitted into the
20 evidence.

21 (Appellant's Exhibits 1-18 were received
22 in evidence by the Administrative Law Judge.)

23 (Department's Exhibits A-BB were received in
24 evidence by the Administrative Law Judge.)

25 We will start with opening statements. Appellant

1 will have 15 minutes. And so I would like to give them
2 the opportunity to start their opening statement now.

3 Appellants, please proceed.

4 MR. MARKOW: Thank, you Your Honor and thank you
5 to all the judges who are hearing this case. We
6 appreciate your attention. And thank you to FTB for its
7 professionalism in this proceeding. We have appreciated
8 working with them throughout this.

9

10 OPENING STATEMENT

11 MR. MARKOW: Just a very brief note.

12 Mr. Bracamonte sometimes is hard of hearing, so we may
13 need to repeat some things for him. I apologize for that,
14 and I hope that the panel and counsel will oblige him in
15 that regard.

16 This is a case about where people live. This is
17 a case about domicile. It is a case where we will see
18 over the next few hours a fair amount of minutiae in terms
19 of evidence regarding when and -- the Bracamontes left
20 California and went to Nevada; what they did when they
21 were in Nevada; when they came back to California. You
22 will see leases. You will see auto registrations. You
23 will see charge cards. But it's the minutiae of where
24 people are and what they do when they move places.

25 What we do know, and I think what everyone agrees

1 to, is that on December 31st, 2007, the Bracamontes were
2 both domiciled in/and residents of California. We also
3 know is that on January 1st, 2009, the Bracamontes were
4 domiciled in/and residence of Nevada. The question is
5 when did that change? At what point in the year 2008 did
6 the move from California to Nevada occur?

7 As the panel I'm sure is aware, the relevant
8 tests, which are set forth in the Bragg case and any
9 number of cases which we cite in our briefs, has to do
10 with domicile and has to do with residence. And there are
11 two separate ways a taxpayer can show that they are not
12 subject to California taxation in a particular year. This
13 case is, you know, presents both of the issues, but it
14 presents domicile in a way that many of the cases don't.

15 Most of the cases seem to assume that domicile
16 hasn't changed and focuses on second part the test, which
17 is residency. But we have some serious domicile issues in
18 this case, and here's why. The California income tax
19 regulations define domicile as the place in which a person
20 has voluntarily fixed the habitation of himself and
21 family, not for a mere special or limited purpose, but
22 with the present intention of making a permanent home.

23 And California courts have similarly described
24 domicile as the concurrence of physical presence in a
25 particular place with the intention to make that place

1 your home. In order to change one's domicile, a person
2 must actually move to a new state and intend to remain
3 there permanently or indefinitely. The person's actions
4 must clearly indicate a current intention to abandon the
5 old domicile and establish a new one. What you're going
6 to see when you take a look at the evidence is that's
7 exactly what happened here.

8 The Bracamontes moved to Nevada and intended to
9 remain there permanently and indefinitely. Now, how do we
10 know that? Well, the proof is that -- let's take a look
11 first at the history of their residency since February of
12 2008. They remain even today residents of Nevada. We
13 know, thus, that their intention was to abandon California
14 in favor of Nevada, and the past 12 years of their Nevada
15 residency prove it.

16 In response, what the FTB really says is, "Well,
17 they didn't spend all of their time in Nevada, and they
18 often returned to California. And that was true then, and
19 it remains true today. But the test for domicile rather
20 than residence doesn't involve counting numbers of days or
21 how often you come back to visit. It turns on the move,
22 which indisputably occurred by the end of February and --
23 that's February 2008 -- and intention to establish a new
24 domicile. And we can infer that very, very strongly by
25 the fact that the Bracamontes never came back. They left,

1 and left California and have lived in Nevada for many,
2 many years now.

3 And so their -- their move into Nevada in
4 February 2008 has been proven by the passage of time that
5 that was their intention to remain in Nevada. To find
6 otherwise you would need to say, well, they rented an
7 apartment in Nevada. They did a whole bunch of stuff to
8 stay in Nevada, but they really didn't mean it. They
9 really meant to stay in California for a while and then by
10 the end of the year, well, they really had moved to
11 Nevada. That doesn't make any sense, and it doesn't fit
12 the domicile test.

13 So I think at the end of this, after you see all
14 the evidence, you're going to find that domicile for the
15 Bracamontes changes at least as of -- excuse me -- end of
16 February 2008. But even if you find that they didn't
17 change their domicile in February of 2008 and it happened
18 at some point in time later in the year, we had to have
19 examine the facts to determine whether the taxpayer was
20 outside the state for what the case is called "temporary
21 or transitory purposes, such that the taxpayer has
22 continued to be treated for tax purposes as a California
23 resident. Or conversely, whether their removal from the
24 state was not temporary or transitory, which they would be
25 treated as non-California residents for tax purposes.

1 When a California domiciliary, a person who is
2 domiciled in California, we in the state, it's
3 particularly relevant to determine whether upon their
4 departure the taxpayer substantially severed his or her
5 California connections and then took steps to establish
6 significant connections with his or her new place of
7 abode, or whether the California connections were
8 maintained in readiness for his or her return. And in our
9 prehearing, Judge Tay asked about the Mazer case, which
10 was a recent case where the taxpayer left a house a wife
11 and a family -- a young family in California to go work in
12 Singapore for a period of time.

13 And the question there and the case turned there
14 on whether they, you know, were ready to return. That
15 kind of fact just doesn't exist here. When you take a
16 look at the evidence what you're going to see is that the
17 Bracamontes left at the end of February. They rented an
18 apartment. They registered to vote. They established the
19 mailing address and started changing the mailing addresses
20 for all their bank accounts and other, you know, sort of
21 important business. They registered to vote. They got
22 driver's licenses. They started to get some medical care,
23 although, they were seeing some doctors in California for
24 the next couple of months as the transition occurred.

25 And, fundamentally, they took all the important

1 steps it took to move from California to Nevada at that
2 time at the end of February. That's not to say they
3 didn't do anything in California thereafter. They
4 certainly did. One of the things about moving to Nevada
5 is it's next door, and it's a pretty easy drive to get
6 from Nevada to California. So unlike if you were moving
7 all the way across the country where it's difficult and
8 timely and costly to return, if you move to Las Vegas,
9 which is what they did, it's pretty easy to hop in a car
10 and come back.

11 The evidence will show that they had children in
12 California. They had estate issues and elderly parents to
13 take care of, and they had some business to wrap up as
14 well. And so what happened was they -- and what the
15 evidence is going to show, and we hope you'll find is that
16 they moved to Nevada, and then they continued to -- and
17 they took the necessary steps -- and the important steps
18 of establishing that Nevada residency. And then over the
19 next few months they cleaned up their -- their California
20 business and terminated it.

21 I think also the Franchise Tax Board puts a lot
22 emphasis on real property ownership. But in this case,
23 it's really sort of unimportant and doesn't really
24 illuminate the issue. In 2008 the Bracamontes at the
25 beginning of the year owned a vacation home in Arizona and

1 a house in Escondido. When they went to Nevada, they
2 weren't quite sure where they wanted to live, so they
3 rented an apartment. And the evidence will show they
4 immediately began looking for real property at that time.

5 They were able to locate it in September and
6 bought a house in September. But they didn't sell their
7 California house until 2017, which is nine years after
8 everyone agrees they moved. So the fact that they
9 maintained a house in California and didn't sell it
10 doesn't inform the idea of where they were domiciles or
11 residents. Because as we know, long after everyone
12 agreed, they were both domiciliaries and residents of
13 Nevada. They still owned the same California house. So
14 the fact that they bought a new house and didn't sell
15 their old house really doesn't illuminate when and where
16 they moved from and when they moved to Nevada.

17 We'll go through the Bragg factors in the case,
18 which are these so-called objective factors that you look
19 at to determine when people have changed their residence.
20 And it's things like a homeowner's property tax exemption,
21 which doesn't apply here. Automobile registrations. And
22 the evidence is going to be that they registered their
23 primary automobiles in Nevada in February of 2008. They
24 had a variety of boats and motorcycles and things that
25 were registered both in Arizona and California. And over

1 the next couple of years, those registrations changed as
2 they became relevant.

3 The driver's license is another Bragg factor, and
4 that occurred in February 2008. They obtained Nevada
5 driver's license. For voter registration, they changed
6 their registration in February. They no longer, after
7 February of 2008 voted in California. They voted in
8 Nevada. The address used in the state of residence on
9 their federal state returns in 2008 was in Nevada.

10 The other Bragg factors for personal and
11 professional associations including the state of the
12 taxpayer's employment, and what the evidence here is going
13 to show is that Phil was technically -- that -- that
14 Jacquelin had retired in 2001, I think. So she wasn't
15 working, and that Phil had been obtaining a W-2 at his
16 company, Jimsair. But, really, he had no job
17 responsibilities. He was just being paid. He owned the
18 company, so that was never a problem. But he was a W-2
19 employee with no day-to-day responsibilities.

20 The children's schools doesn't really matter.
21 Their children were adult and were in 2008. The bank and
22 saving accounts, those -- they start to change those
23 immediately in February of 2008 when they moved to Nevada.
24 Membership and social, religious, and professional
25 organizations changed over time. The Bracamontes as I

1 understand it are not really participants in these things.
2 But to the extent they were, they moved them from
3 California to Nevada as they became relevant.

4 The use of professional services such as doctors,
5 dentists, accountants, and attorneys, and the evidence is
6 just going to show that they started seeing some doctors
7 almost immediately upon their move and then later in the
8 year. They hired attorneys in April in Nevada to change
9 their family trust from a California trust to a Nevada
10 trust. The maintenance and ownership of business
11 interest, and that did change, I think most importantly
12 for this case in mid-2008.

13 There were no professional licenses. There was
14 no ownership of investment real property. These are the
15 other Bragg factors. And we have no affidavits or
16 declarations from third parties regarding their residence,
17 the physical presence and property, including the location
18 approximately sizes and values of resident property, and
19 we touched on that a little bit already. Which is that
20 the Bracamontes were in a position to own multiple homes.

21 And so they bought a new home in Nevada in 2008.
22 They went to go find it. They looked for it, and then
23 they found it in September of 2008. But they had been
24 looking for it earlier and have lived in that home ever
25 since September of 2008, despite owning a home here in

1 California as well.

2 Where the taxpayer and spouse and children
3 reside, again, no minor children, and the Bracamontes were
4 together through all of this. Another difference between
5 this and the Mazer case. The telephone records, the
6 evidence is going to show that they obtained mobile phones
7 with Nevada phone numbers in February of 2008. The
8 origination point of the taxpayer's checking account and
9 credit card transactions, those are going to show a couple
10 of different things that the bank accounts were opened in
11 February of 2008 in Nevada and then shifted over finally,
12 I think, in July of 2008. They eventually closed the one
13 here.

14 And then the credit card transactions will show
15 where they were. And what the evidence is going to show
16 is that they spent a fair amount of time in California for
17 the couple of months after they moved wrapping things up.
18 That diminished over time and that credit card statements
19 pretty much reveal that.

20 And, lastly, the number and days the taxpayers
21 spends in California versus other states. And the
22 evidence is going to show in the year 2008 they spent a
23 little less than half of their time in California versus
24 other states and that tapered off as the year progressed
25 throughout the year as, again, they wrapped up their

1 business in California.

2 So those are the factors you look at. And when
3 you look at the key factors, the most objective factors,
4 you know, they were renting a place, registering to vote,
5 registering their car, getting a driver's license, getting
6 a phone number, getting bank accounts, getting a mailing
7 address, all of that was in February 2008. And everything
8 else happened over the rest of the year. And so I think
9 the weight of the evidence is going to show them.

10 We're going to ask you to find at the end of this
11 case that the Bracamontes moved to California -- excuse
12 me -- moved from California and to Nevada at the end of
13 February of 2008. And so by the 27th or 28th of February
14 they were both domiciled in and residents of the State of
15 Nevada.

16 So thank you for your attention to this, and we
17 look forward to showing you the evidence that shows and
18 proves what I've just told you today. Thank you.

19 JUDGE TAY: This is Judge Tay. Thank you,
20 Mr. Markow, for that.

21 FTB requested 30 minutes for its opening
22 statement, and so I will ask FTB to begin. And you have
23 until about 11:01.

24 MR. HOFSDAL: Thank you. I also promised I'd try
25 to get it closer to 15, and I think I'm there.

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OPENING STATEMENT

MR. HOFSDAL: So anyway, good morning.

Well, this appeal involves two tax years, the 2008 and 2009 tax years. The issue is the same, whether the Appellants were residents of California on July 18, 2008, when they, through a family trust, sold their family business, Jimsair Aviation Services, for just over \$17 million under an installment stock purchase agreement.

All the income at issue for 2008 and 2009 relates to the installment sale. Jimsair, which provided services such as fueling and hangering aircraft at San Diego's international airport, was formed by Mr. Bracamonte's father at about 1902. That's a blueprint.

In this opening statement I hope to put California's policy related to the transition of residence in context with the facts of this case. This will include a discussion of the relevant timeline with a focus on the time leading up to the sale of Jimsair on July 18, 2008. A discussion of the Appellants' physical presence in California which will overwhelmingly reflect that the taxpayers continue to receive the very same benefits and protections that they had received in the many years prior to January 1st, 2008.

And, finally, in this opening statement I will

1 identify the facts and contentions that we agree with.
2 Then during my argument portion, Mr. Macedo will first
3 briefly discuss the penalty, and then I will proceed by
4 discussing the relevant facts and clarifying some of the
5 ambiguous statements made in Appellants' brief and in
6 Mr. Bracamonte's declaration.

7 And, finally, during the argument phase, I hope
8 to discuss the law, including how the recent decision of
9 Mazer applies to these facts and discuss how the code, the
10 regulation, and other published citable cases can guide
11 the decision-making process.

12 The purpose behind California's pursuit of
13 income taxation of residence is to ensure that individuals
14 who are physically present in the state enjoying the
15 benefits and protections of its laws and government
16 contribute to its support, regardless of the source of the
17 taxpayer's income. As pointed in Bragg and many other
18 cases, this purpose underlies all residency decisions.

19 Therefore, the ultimate question is in this
20 residency dispute is, whether these taxpayers received the
21 benefits and protections from California and, in fact, the
22 same benefits and protections they indisputably received
23 for many years prior to January 1, 2008, consistent with
24 other non-transients or whether they, in fact, severed
25 their connections to California to the extent that these

1 benefits in connection they received were either
2 inconsist -- excuse me -- were inconsistent with being
3 inside California for merely a temporary sojourn or simply
4 passing through California on the way to another place.

5 Respondent believes the answer is clear.
6 Appellants continue to receive substantial benefits and
7 protections from California at all relevant times. Here
8 is an example of a benefit and protection received by
9 Appellants during the relevant time. This benefit is
10 fairly atypical. Under a federal lawsuit involving
11 Mr. Bracamonte's former attorney, the issue is whether or
12 not the attorney was entitled to collect unpaid attorney's
13 fees under a verbal contract. Importantly, the period
14 under dispute involve a 2008 taxable year. In fact, the
15 sale of Jimsair was a triggering event.

16 As a defense, the Appellants sought the benefits
17 and protections of California law in asserting
18 California's two-year statute of limitations for verbal
19 contracts. Statute of limitations period in both Mexico
20 and Nevada was for a much longer period. In his motion
21 for summary judgment, which is included as Exhibit B,
22 Mr. Bracamonte argued at pages 8 and 9 and 10 that his
23 attorney's performance was directed from San Diego by a
24 San Diego resident, referring to himself.

25 In other words, Mr. Bracamonte represented to a

1 federal court that during the 2008 tax year his attorney's
2 performance was directed from San Diego by him, a San
3 Diego resident. Based on this and like representations,
4 the court included that although currently a resident of
5 Nevada, Mr. Bracamonte is reported to have been a resident
6 of California at the time the legal services were
7 provided.

8 The court noted as an undisputed material fact
9 that the vast majority of the communications between
10 Mr. Bracamonte and his attorney were via e-mail or hand
11 delivered to Mr. Bracamonte who resided in San Diego at
12 the time. And in so doing, Mr. Bracamonte, based on his
13 representations to the federal court, received such
14 benefits and protections from California law that he was
15 ultimately able to significantly reduce his obligation to
16 his former attorney.

17 The timeline is important here. Prior to
18 January 1, 2008, Appellants were long-term residents of
19 California. Then after a brief stay in Arizona and Mexico
20 in 2009 -- in January, the taxpayers remained in
21 California continuously through February the 25th. Not a
22 single night in Nevada. On the 25th, the Appellants
23 checked into a Henderson, Nevada hotel. And over the next
24 two days arranged to rent an 1,150 square-foot apartment
25 in Henderson, Nevada for \$895 a month.

1 They obtained a PO Box with forwarding services
2 located next to the apartment, obtained a Nevada driver's
3 license using the PO Box, and registered to vote. On or
4 about February 27th, the Appellants checked out of the
5 hotel and soon, thereafter, returned to their California
6 home where they remained. Then on March 15th the
7 Appellants again checked into a Henderson, Nevada hotel,
8 and during the next few days took possession of the
9 apartment. Soon after taking possession of the Nevada
10 apartment, Appellants returned to their California home
11 and remained there for the next 11 days.

12 The cycle of living in their California home for
13 about a few weeks, traveling to either Nevada or Arizona
14 for about two days, plus or minus a day, continued
15 throughout the relevant period. Appellants provided a
16 summary of their whereabouts during the relevant time
17 period. In this account, which is also marked as
18 Exhibit F, pages 4, 5, and 6.

19 I'm not all that technologically savvy, so
20 Desiree is going to help me here.

21 Desiree, could you please put that up?

22 Now, these dates in and out of California and out
23 of Nevada and in and out of Arizona was provided by the
24 Bracamontes based on their recollection at the time. Now,
25 if you take this chart -- if you take their response and

1 you color code them to a calendar, the result is striking.

2 Desiree, can you please --

3 So for the period January 1 to the sale of
4 Jimsair on or about July -- on or about July 18th, 2008 --

5 I just lost my screen here. Hold on one second.

6 On or about July -- on or about in July 17th, all
7 of the area here in red represents their physical present
8 stays in California, while all the areas in green
9 represents their physical presence in Nevada. And the
10 days marked in yellow, that represents their physical
11 presence in Arizona. The blank days are days they're on
12 vacation and -- for January, and that was in Mexico.

13 In total, of the 199 days of the year between
14 January 1, 2008, and July 18th, 2008, the taxpayer spent
15 133 days in California versus only 28 days in Nevada. Of
16 which many days, as we will show, was spent in a hotel.
17 The chart reflects that Appellants' trips to Nevada were
18 relatively short durations. More akin to a mini vacation
19 or a convenient stop while passing between their San Diego
20 home and their Arizona vacation property. On the other
21 hand, the chart reflects significant consecutive presence
22 in California during the relevant period.

23 In reviewing the Appellants' letter brief, there
24 were a few of Appellants' arguments, contentions, and
25 concessions that Respondent agrees with, including that

1 the extensive time a taxpayer spends in a state when
2 compared to the time outside of the state is indicative of
3 residency. That the continued ownership of property and
4 maintenance of the same is indicative of residency, and
5 that the taxpayer maintains a substantial personal
6 residence in California.

7 That the location of family ties is also
8 indicative of residency, and that the taxpayers maintain
9 significant family relationships in California. That the
10 connections like voter registration, mail forwarding,
11 location of banks where investments are held, vehicle
12 registrations, and driver's licenses are less significant
13 because of taxpayer's ability to manipulate these factors.

14 That during the relevant time the Appellants
15 maintained significant business connections with
16 California, and that Appellants business relationships
17 required taxpayer's physical presence in California
18 through July 2008. And finally that the Appellants
19 maintained significant relationships with physicians,
20 attorneys, accountants, and investment advisors in
21 California during the relevant time period. Again, these
22 are some of the arguments, contentions, and concessions
23 made by Appellants in their opening letter brief.

24 That will conclude my opening statement. I think
25 I got it below 15 minutes. And we'll address more of the

1 law and the like after we get the chance to talk to the
2 Bracamontes. Thank you.

3 JUDGE TAY: Thank you, Mr. Hofsdal.

4 Appellants will now have four-and-a-half hours
5 for their presentation. Obviously, we will break in the
6 middle a couple of times, I think. Their presentation
7 will include the examination of witnesses. So before I
8 ask Appellants to begin their presentation, I'd like to
9 swear in both the witnesses.

10 So Mr. Juan and Mrs. Jacqueline Bracamonte, if
11 you could please just raise your right hand, and I'll
12 administer the oath as witnesses.

13

14 JUAN PHILIP BRACAMONTE,

15 produced as a witness, and having been first duly sworn by
16 the Administrative Law Judge, was examined and testified
17 as follows:

18

19

20 JACQUELINE BRACAMONTE,

21 produced as a witness, and having been first duly sworn by
22 the Administrative Law Judge, was examined and testified
23 as follows:

24

25 JUDGE TAY: I see both heads nodding. Their

1 microphone is muted.

2 MR. BRACAMONTE: Yes.

3 MRS. BRACAMONTE: Yes.

4 JUDGE TAY: Thank you. I appreciate that.

5 Okay. Mr. Markow, please feel free to begin
6 whenever you are ready.

7 MR. MARKOW: Thank you, Your Honor. I appreciate
8 that.

9 We're going to proceed with the direct
10 examinations of the witnesses. I presume that the order
11 of business will be to have a direct exam of one witness
12 and the cross of that witness. The direct exam of the
13 second witness and the cross of that witness.

14 JUDGE TAY: This is Judge Tay. Yes, that would
15 be correct.

16 MR. MARKOW: Thank you, Your Honor. So with
17 that, we will ask Phil Bracamonte to testify first. And
18 again I apologize. I may need to repeat some things for
19 Phil, but I would also ask that the witnesses stop muting
20 their microphone, at least for this portion of the
21 hearing, so we can have a conversation.

22 JUDGE TAY: Mr. Markow, I'm sorry to interrupt.
23 Just for clarity's sake, when you refer to Phil
24 Bracamonte, that would be Juan Bracamonte; is that
25 correct?

1 MR. MARKOW: It is. His legal name is Juan, but
2 everyone refers to him as Phil. And so --

3 JUDGE TAY: Okay.

4 MR. MARKOW: I know him as Phil.

5 JUDGE TAY: Thank you for clarifying that.

6 MR. MARKOW: So we've sworn them in, and I will
7 call them now, and we will get going.

8

9 DIRECT EXAMINATION

10 BY MR. MARKOW:

11 Q Phil how old are you?

12 MRS. BRACAMONTE: How old?

13 MR. MARKOW: We started with the first question
14 being a hearing issue, and I apologize again.

15 BY MR. MARKOW:

16 Q Phil could you hear me all right?

17 A Yes, I can hear you. Yes.

18 Q Can you tell us how old you are, please?

19 A What's that? Greg, I'm sorry. Repeat that.

20 Q How old are you, Phil?

21 A 72.

22 Q Are you wearing your hearing aids today, Phil?

23 A Yeah, no. I know. They are -- my hearing has
24 been declining over the last few years.

25 Q All right. We'll be patient and work with that.

1 All right?

2 A Okay.

3 Q Phil, I understand you're a long-time San Diegan.
4 Tell me about your connections with San Diego, briefly?

5 A My parents moved to San Diego when I was four
6 months old and remained there pretty much all my life
7 until we moved in '08. And my father eventually started
8 an aviation business. We started in an airport in Del
9 Mar, California, in 1950. And in 1952 he had an
10 opportunity to relocate to Lindbergh Field, which is known
11 as San Diego International Airport today.

12 Q Phil, let, me slow you down a little bit 'cause
13 we want to find out a little bit about Jimsair and that
14 history too in a minute. But I'm a little -- I want to
15 know about you personally and your ties to San Diego and
16 California. Did you go to college in California?

17 A I did some college in San Diego. I went to San
18 Diego City School and San Diego State for a short period
19 of time. I graduated from Claremont High School. We
20 lived for most of my life in the Bay Park area in San
21 Diego, and I have a couple of brothers and a sister. My
22 parents are deceased.

23 Q And are they in San Diego as well?

24 A My sister is deceased. One brother is in Palm
25 Desert area, Cathedral City. And the other one, I

1 believe, is in San Diego. I don't have a relationship
2 with them.

3 Q And we've heard about a couple of adult children.
4 How many kids do you have?

5 A We -- we have three boys.

6 Q And where do they live.

7 A We have -- our oldest son relocated to Henderson
8 from San Diego two years ago. Our second son lives in
9 Hermosa Beach, California. And our youngest son moved to
10 Las Vegas in around June 2008.

11 Q And in 2008 where did he move from?

12 A Repeat that?

13 Q Where did he move from in June of 2008?

14 A Excuse me. He moved from Chico, California. He
15 finished school in Chico and graduated, then he moved to
16 Las Vegas.

17 Q In 2008 is it fair to say that all three of your
18 children lived in California?

19 A The young -- the middle boy was finishing up his
20 time in the Navy, and I believe he was up in Whidbey
21 Island, Washington.

22 Q In 2008 what was your title at Jimsair?

23 A President.

24 Q Did you also own Jimsair?

25 A Did I what again, please?

1 Q In 2008, at least until July of 2008, did you
2 also own 100 percent of Jimsair?

3 A With my wife, yes.

4 Q How did you get involved with Jimsair?

5 A My father started the business on Lindbergh Field
6 San Diego international airport in 1952. And as the
7 business grew over the years, he gifted -- he restructured
8 the stock in the early 80s, and he gifted the stock to his
9 children. And up until that time I was -- I started at a
10 young age myself, probably going to work at the airport
11 when I was 12, and I obtained a work permit and would go
12 down on weekends to work with my dad for a number of
13 years. And over the years I was able to obtain my ratings
14 for aircraft to power plant, became a license for a
15 private pilot --

16 Q Hey, Phil, let me slow you down a little bit.
17 What kind of business is Jimsair?

18 A How did it start?

19 Q No. What's the business? What does it do?

20 A Oh, it's an aviation business. It started out as
21 repairing aircraft, servicing aircraft, generally aviation
22 aircraft. And over time the services expanded into a
23 flight school, flight training, aircraft rentals,
24 chartering, fuel sales, aircraft sales, and hangering of
25 aircraft, providing parking -- outside parking for

1 aircraft.

2 Q Did there come a -- was there a period of time
3 before 2008 where you basically ran Jimsair's business?

4 A I -- I ran the business up until the time my
5 oldest son joined the business and -- and he ended up
6 marrying a young lady that had worked for us for a number
7 of years and was running the -- working the accounting
8 department. And she eventually became the CFO. So I had
9 this, you know, two kids. I call her -- she's my
10 daughter-in-law, but she's one of the kids.

11 I was very fortunate that they turned out to be
12 pretty good managers. And so I gradually turned over the
13 business to my son and his wife, and they pretty much made
14 all the decisions. My son's wife handled all the
15 financial matters. She signed all the checks. I worked
16 my way out of those responsibilities. So for the last
17 five years of Jimsair's existence, my son John and his
18 wife Gina ran the business.

19 Q And so starting at about -- if I did my math
20 right -- starting in about 2003, John and Gina, your son
21 and daughter-in-law were the people who were doing the
22 day-to-day running of Jimsair?

23 A Yes.

24 Q Starting in 2003 what were your actual
25 responsibilities in terms of Jimsair operations?

1 A The only thing I was -- in 2003 I was focused on
2 was trying to convince the airport authority to extend our
3 lease. We were -- our lease was due to expire on the
4 airport in 2012. And we had made some -- we started some
5 expansion prior to 2003. I -- I need to clarify something
6 about the -- the airport itself. The airport changed
7 government entities in 2003.

8 Prior to 2003, the government entity running the
9 airport was the Port of San Diego. Then in 2003 a
10 regional government body took over the airport, and it
11 became known as the San Diego Airport Authority. We
12 started some expansion prior to 2003 with the
13 understanding that our lease would be extended.
14 After 2003 --

15 Q What was your role in all of that?

16 A That -- my role was the -- I was the key person
17 that was dealing with the authorities and trying to
18 negotiate some extension of the lease.

19 Q Did you have an office in Jimsair while you were
20 doing this?

21 A I had a small office. We had a building that was
22 tucked behind a couple of hangers. And I -- I had a small
23 office away from the operation. It was on a second story
24 floor and did not have windows or anything. It was just
25 no reason for me to -- to be out in the middle of the

1 operation. So I was sort of tucked in the -- a back
2 office building we had behind some hangers.

3 Q And how often would you go to the office to work?

4 A Just out of habit I would go to the office by
5 midtown pretty much every day for a while.

6 Q For how many hours a day would you go in when you
7 were in town?

8 A Oh, it could be half a day. It could be a couple
9 of hours.

10 Q And is that true all the way up until the sale of
11 Jimsair in July of 2008?

12 A Repeat that, please.

13 Q Was that true all the way until July of 2008 of
14 the sale of Jimsair?

15 A No. We were -- like I said, we were -- we were
16 traveling in 2008. The only thing I was trying to resolve
17 is that the issue with the Airport Authority eventually
18 turned into litigation. And then I had been trying to
19 resolve the litigation. I think it was pretty clear to me
20 that we were not going to get a lease extension. And
21 without the extension I stopped construction of our
22 improvements, probably about 2003.

23 Q My question is a little more narrower than that,
24 Phil. Try to understand in 2008, whenever you were in
25 town and whenever that was, how much time did you spend in

1 your office?

2 A I -- I -- not much, unless I was there to try to
3 resolve issues with the Airport Authority. Otherwise no,
4 I was not there much.

5 Q Now, moving away from Jimsair, there came a time
6 where you determined to move out of San Diego; correct?

7 A Yes.

8 Q When was that time that you started to consider a
9 move from San Diego?

10 A Oh, my wife started talking about it in 2007.
11 And being, you know, life-long residents of San Diego, I
12 think we got to the point that we were looking for some
13 new adventures and, you know, a different place to live.
14 And we started to focus on Las Vegas. We had always
15 traveled to Las Vegas. We probably made one or two trips
16 a year and had always enjoyed the city itself. And so we
17 were somewhat familiar with the city, primarily, the strip
18 and a little bit of the surrounding area.

19 Q Phil, let me slow you down a little bit. When
20 did you start to seriously consider Las Vegas as the
21 target for moving out of San Diego?

22 A 2007.

23 Q And why did you start looking at Las Vegas versus
24 any place else in the country?

25 A We wanted to be close to our Arizona home, and we

1 wanted to be close to Southern California. My wife's
2 parents still -- I should say my wife's, you know, my
3 wife's parents were still alive. We had one son in San
4 Diego. We didn't know it at the time, but our middle son
5 was going to relocate from Whidbey Island to Hermosa Beach
6 area. And that's primarily because it was sort of
7 centralized to Southern California and Lake Havasu.

8 Q When you start to focus on Las Vegas as a target
9 for a move in 2007, did you do some preliminary research
10 about moving there?

11 A Yes. Yes, we did.

12 Q What kind of preliminary research did you do?

13 A We, of course, used the internet to start looking
14 at homes in the Las Vegas and Henderson area. And one
15 thing that was happening at the time was a lot of
16 foreclosures in Las Vegas. And the real estate property
17 prices were -- seemed to be dropping substantially which,
18 you know, it got our attention. The weather was
19 acceptable to us in Las Vegas because it's similar to Lake
20 Havasu. So we were accustomed to the winters and the
21 summers. We also started to read about a lot of the
22 speculation going on in Las Vegas, and the opportunities
23 to buy houses that was either fore -- had already been
24 foreclosed or were going to foreclosure.

25 I was already somewhat familiar with the airport

1 itself. And the airport itself was substantially bigger
2 than San Diego, and I was also aware that it also offered
3 more destinations as an airport than we had out of San
4 Diego. A number --

5 Q Stop. Stop. So, Phil, we were discussing sort
6 of the -- sort of the progress of your decision to move.
7 I understand you said in 2007 you decided to leave San
8 Diego, and you started to focus on Las Vegas, that you did
9 some internet research. Did you do anything else in 2007
10 to help facilitate a move from San Diego to Las Vegas?

11 A It was primary all research between articles and
12 the internet.

13 Q And did there come a time before you actually
14 moved, but after you did some of this preliminary
15 research, where you decided this is a go? It's a green
16 light. We're going to do this.

17 A Yes. Yes. December 2007, we decided we're -- we
18 were going to move to Las Vegas. I keep saying Las Vegas
19 but it was actually -- our focus seemed -- initially
20 seemed to be Henderson.

21 Q Henderson is a suburb of Las Vegas; correct?

22 A Well, actually, Henderson is the second largest
23 city in Nevada.

24 Q So having made the decision in December of 2007
25 to leave San Diego and go to Las Vegas, what did you do to

1 effectuate that decision? What did you do to actually
2 make that happen?

3 A Well, we had a setback. My wife's mother became
4 ill in late December 2007. She was admitted to a care
5 facility and -- which sort of delayed us from traveling up
6 to Henderson or doing much. And, unfortunately, it was
7 January -- I think it was January 21st or 23rd where my
8 wife's mother passed away.

9 Q And presumably the arrangements surrounding that
10 and the lead-up to that and the fallout from that
11 postponed your ability to effectuate your move; correct?

12 A Yes.

13 Q Now, there came a time where you were able to
14 actually start to effectuate that move; correct?

15 A Yes.

16 Q When was that?

17 A We -- it was February 24th where we left
18 Escondido.

19 Q And what did you do on February 24th to
20 effectuate the move from San Diego to Nevada?

21 A We drove up to Nevada with the intention of
22 finding an apartment.

23 Q And why did you want an apartment in Nevada?

24 A I think we found it on --

25 Q No. My question is not how did you find it. My

1 question is, why did you want to go rent an apartment in
2 Nevada?

3 A Oh, well, we needed a temporary place to live.
4 We didn't know how long it would take to buy a house. So
5 we thought the best situation for us would be renting an
6 apartment for awhile while we house hunted and found a
7 house.

8 Q And so what did you do to go find that apartment
9 in Nevada at the end of February 2008?

10 A We concentrated on the Green Valley area, which
11 is in Henderson. And there were some major arteries in
12 Henderson, about three major arteries. One was Stephanie.
13 The other one was Green Valley and Paseo Verde. And
14 between those three roads we -- we just basically drove up
15 and down and stopped at apartment complexes taking a look
16 to see what -- what they offered, what the features were,
17 and the rental.

18 Q Can you approximate how many apartments you looked
19 at before you decided on the one?

20 A No more than probably half a dozen.

21 Q And you eventually decided that one was
22 acceptable to you?

23 A Yes.

24 Q What kind of apartment was it?

25 A It was a -- it was on Stephanie and was probably

1 about four or five blocks from Interstate 215. It was a
2 single -- single -- we picked a unit on the first floor.
3 We didn't want to go up any stairs. A lot of these were
4 multiple level apartments. The other attraction is that
5 we have a washer and dryer inside a unit, rather than a
6 common laundry room. Our parking space was near the front
7 door. So it fit the bill.

8 Q I want you to turn if you will, I think that --

9 MR. MARKOW: And if anyone could confirm everyone
10 has the exhibits before them so I can refer to exhibits
11 and people will be able to see them. Is that true? I see
12 some heads nodding, which is good.

13 BY MR. MARKOW:

14 Q So if you could please turn to the tab that's
15 marked as 3?

16 A Yes.

17 Q Can you tell me what this document is that is
18 Exhibit 3?

19 A Yes. This -- it's just a summary. A summary of
20 the -- the rent, what was -- what was -- what was involved
21 in the rent, any prepayments, move in -- looks like move
22 in cost. And toward the top it has the phone numbers for
23 the utility companies. There's about four of them:
24 Nevada Power, Southwest Gas, Cox cable and Embarq.

25 Q If you take a look at the bottom, is that your

1 signature under "Resident Signature"?

2 A Yes. That's my signature.

3 Q And was this sort of a pre-lease document that
4 had been executed to rent that apartment in Nevada?

5 A Yes.

6 Q It notes that you've scheduled move in for 8:00
7 to 4:00 p.m. on March 1st. Do you see that? It's just
8 above the chart.

9 A Oh, yes. Yes, I see it. Yes.

10 Q And then the second page of Exhibit 3 are two
11 sales receipts. Do you see that?

12 A Yes.

13 Q And are these payments that you made for your
14 application fee and your rent?

15 A Yes.

16 Q And then if you turn to the fourth page, there's
17 a document entitled "Rental Agreement". Do you see?

18 A Yes.

19 Q And on the bottom are those the signatures of you
20 and Jacqueline?

21 A Yes.

22 Q And it's -- on the top line it's dated March 1st.
23 Do you see that?

24 A Yes.

25 Q Now, if you go a few more pages in, you'll see

1 another signature page at the very back dated March 6th.

2 Do you see that?

3 A Yes.

4 Q And do you remember when you started moving
5 possessions into that apartment?

6 A It may have been March 6th.

7 Q Did you empty your San Diego house out and move
8 everything into this apartment?

9 A No. No.

10 Q Why not?

11 A Well, first of all, the apartment -- the house in
12 San Diego was bigger than the apartment. So we only took
13 from San Diego what we needed to as far as bedding, a bed,
14 a nightstand, lamps, chairs, a table. We took linens, you
15 know, towels, some dishes with us. It was just -- it was
16 just temporary as far as we were concerned.

17 Q What do you mean by temporary?

18 A Well, we had only planned to remain in the
19 apartment until we found a house.

20 Q And what did you do after you rented the
21 apartment about finding a house?

22 A We -- we decided to -- because of foreclosures
23 were all the rage back then, we started looking at
24 foreclosed homes. And on a regular basis there was a --
25 seems like every weekend there were auctions up here on

1 homes. And we did a little research with the auction
2 site, and we decided to go ahead and try that. And we
3 registered to attend the auction. It required a \$5,000
4 cash deposit to become a bidder. And we tried that route
5 initially. It didn't work for us because the -- there
6 were too many people bidding on these homes.

7 Q Okay. Turn to the tab that's Exhibit 4 that's in
8 front of you. Do you see that?

9 A Yes.

10 Q And you can see it's a printout of some kind;
11 correct?

12 A Yes.

13 Q And on the very bottom right-hand corner it has a
14 date of April 6, 2008. Do you see that?

15 A Yes.

16 Q Is it the date you printed it? Why does that
17 date show up there?

18 A I don't know. That must be a print date, but the
19 auction was in March.

20 Q And are these the confirmation of your attempt to
21 go to that auction and bid on a house?

22 A Yeah. If you -- if you look, we were -- I'm
23 looking at page 2, and it says, "Venue Information".

24 Q I see that.

25 A Yeah. And it looks like that was the date that

1 we had paid for to attend.

2 Q And were you able to purchase a house at that
3 auction?

4 A We -- we made some bids, but we were not
5 successful.

6 Q And so what was the next thing you did to buy a
7 house in the Henderson area?

8 A We just continued -- when we were there, we just
9 continued looking around at homes, and we eventually
10 decided that there were too many -- too many foreclosed
11 homes out there. We -- we ended up retaining a broker.
12 His name was Jim Robertson.

13 Q And were you able, using the services of
14 Mr. Robinson -- Robertson rather, to find a home?

15 A Yes. We made a few offers, and I think it was
16 the fourth offer. It was its fourth house that we made an
17 offer on that we were successful, and that's the house
18 we're in now.

19 Q And you bought that in -- you closed on that in
20 September of 2008?

21 A Yes.

22 Q But you had been looking for it since March of
23 2008?

24 A Yes.

25 Q Now, when you were -- I want to go back to

1 February of 2008 and that end of February time frame when
2 you rented your -- when you rented your apartment. You
3 did a whole number of things that weekend regarding moving
4 to Nevada. Do you remember those things? That's a broad
5 question. We'll get into the specifics in a minute.

6 A Okay.

7 Q Do you remember doing stuff?

8 A Yes. In order -- yeah. We had to do some --
9 before we could rent the apartment, we had to do some
10 things. Like we had to have a local mailing -- a mailbox.
11 So we setup a mailbox. We --

12 Q Well, hang on now for a second. Phil, this is
13 not a memory test. I'm going to run through this stuff
14 with you. I just wanted to overall start to focus you on
15 those things. So hold on for a second. I don't have a
16 question for you quite yet. Okay. So you did just
17 mention obtaining a post office box. Did you go do that?

18 A Yes.

19 Q And have you historically been a user of post
20 office boxes?

21 A Yes.

22 Q And when you lived in San Diego did you use a
23 post office box?

24 A Yes.

25 Q And so you were replicating your mail experience

1 in Nevada from what you had been doing in California?

2 A Yes. Now --

3 Q And --

4 A Now, I'd like to clarify some -- even though
5 we're talking about post office boxes, it was a private
6 mailbox in Henderson.

7 Q So what's the difference in your mind between
8 those two things?

9 A Well, this place was called Outpost, and it's
10 very similar to a UPS store. And when somebody mentions
11 PO Box, I always think of post office. Similar services.
12 Similar services.

13 Q Yeah. And do you remember when you did that?

14 A It was -- it would have been in late February.

15 Q And after obtaining your post office box, did you
16 start to change your mailing address for things in your
17 life from California to Nevada?

18 A Yes.

19 Q What things did you immediately change from
20 California to Nevada upon obtaining your Nevada mailing
21 address?

22 A One would be the -- I lost you there. Hold on.

23 Q Let me repeat the question. All right. Can you
24 hear me now?

25 A Well, I lost the video. Hold on. Do you hear

1 me?

2 Q Yes.

3 A I don't have any video. I don't know where my
4 video went.

5 Q Phil, can you hear us?

6 A Well, yeah, I can hear. But I can't see anyone.
7 I lost the whole video. Let me see what's going on. I'm
8 sorry.

9 JUDGE TAY: Mr. Markow, this is Judge Tay.

10 MR. BRACAMONTE: Yeah. I'm sorry.

11 JUDGE TAY: Not a problem at all, Mr. Bracamonte.

12 This is Judge Tay. Maybe we can take a 5-minute,
13 maybe a 10-minute break right now to give everyone a
14 little bit of breather.

15 And, Mr. Bracamonte, feel free to log off and log
16 back on in those 10 minutes and hopefully your video will
17 be restored at that point.

18 So why don't we all take a 10-minute break.
19 We'll come back at 11:33.

20 (There is a pause in the proceedings.)

21 JUDGE TAY: I believe we're ready to continue and
22 to go back on the record.

23 Mr. Markow, are you prepared to continue?

24 MR. MARKOW: I am, Your Honor.

25 JUDGE TAY: Okay. Franchise Tax Board, are you

1 ready for us to continue also?

2 MR. HOFSDAL: Yes, I am.

3 JUDGE TAY: Great. Mr. Markow, please continue
4 whenever you're ready.

5 MR. MARKOW: Thank you, Your Honor.

6 Phil and Jacqueline, have you fixed your
7 technical issue?

8 MRS. BRACAMONTE: Yes, I believe we have.

9 MR. BRACAMONTE: Yeah.

10 MR. MARKOW: Thank you.

11 JUDGE TAY: This is Judge Tay. I think just for
12 ease for everyone, if Mrs. Jacqueline Bracamonte help in
13 making sure all the questions are heard, then that'll be
14 totally fine with us.

15 MRS. BRACAMONTE: Thank you very much.

16 MR. MARKOW: I'm glad you said that, Your Honor,
17 because I told her not to do that.

18 JUDGE TAY: I think that would help everyone. So
19 that would be totally allowed.

20 MRS. BRACAMONTE: I am his hearing --

21 MR. BRACAMONTE: Yeah.

22 MR. MARKOW: Thank you everybody.

23 BY MR. MARKOW:

24 Q Phil, before we took our break, we were talking
25 about your post office box in Henderson and things that

1 you began to direct mail forward to that box. Remember we
2 were talking about that?

3 A Yes. Yes.

4 Q And the moment I asked that question your video
5 feed had a problem. So let me re-ask approximately the
6 same question which is: After you obtained your post
7 office box at the end of February 2008 in Henderson, what
8 mail did you start directing to that post office box as
9 opposed to your post office box in California?

10 A Well, there were a number of items. It would
11 have been bills, utility bills, insurance policies,
12 mortgage statements, vehicle registrations, stuff like
13 that.

14 Q Did there come a time where you abandoned your
15 California post office box?

16 A Yes.

17 Q I'm going to ask you to turn what's been marked
18 as Exhibit 7. And do you see that Exhibit 7 is a change
19 of address confirmation?

20 A Yes.

21 Q And is this the confirmation that you received
22 from the postal service that your California box was going
23 to no longer be your mailing address, but your new mailing
24 address was going to be in Henderson?

25 A Yes.

1 Q Why did you wait until July 23rd, 2008, to shut
2 down your California mailbox entirely?

3 A We had already, I think, moved most of the mail
4 over. So whatever was -- remained out there, we just had
5 a change of address confirmation.

6 Q Did you register to vote in Nevada at the end of
7 February 2008?

8 A We registered to vote in Nevada at the time we
9 obtained our driver's license. It was one of the -- one
10 of these automatic features where you get a driver's
11 license you register to vote.

12 Q And so you got a Nevada driver's license and
13 registered to vote at the same time at the end of
14 February 2008?

15 A Yes. Sounds right. Yes.

16 Q If you could turn to Exhibit 8, please.

17 A Yes.

18 Q Is Exhibit 8 the confirmation that -- or rather
19 the application that you made to the State of Nevada to
20 register to vote there?

21 A Yes.

22 Q And that's your signature on the first page of
23 Exhibit 8?

24 A Yes, it is.

25 Q And the second page is the same form for

1 Jacqueline?

2 A Yes.

3 Q Did you have a primary vehicle in February of
4 2008?

5 A Yes.

6 Q What kind of car was that?

7 A It was a Chevrolet Avalanche.

8 Q And did Jacqueline have her own car at that time?

9 A She had a company car that was registered to
10 Jimsair.

11 Q So she did not own a car. She was driving a
12 Jimsair leased car, but you owned a car at that time?

13 A Yes.

14 Q And did you register the car that you owned in
15 Nevada at the end of February 2008?

16 A Yes.

17 Q If you turn to Exhibit 9, please, is this a
18 receipt for that or is this a receipt for your driver's
19 license?

20 A This appears to be a driver's license.

21 Q And so it's also from the end of February 2008.
22 These are -- this is a receipt for your driver's license?

23 A Yes. Yes.

24 Q Excuse me for one second. You had several other
25 vehicles that you owned in February of 2008; correct?

1 A Yes.

2 Q And you had a 1995 trailer. Is that a vehicle or
3 is that something you hitch onto a vehicle?

4 A A trailer. It sound like it was a trailer in
5 1995.

6 Q And what is a trailer, for those of us who are
7 less literate in the automotive world?

8 A We -- we had a flatbed trailer -- 18-foot flatbed
9 trailer that we used to haul off-road bikes and buggies
10 out to the desert.

11 Q And in what state was that trailer registered in
12 February of 2008?

13 A I don't -- I don't think we registered that in
14 February. It was registered a little later.

15 Q No. No. Okay. In January of 2008, in what state
16 was the trailer registered?

17 A California.

18 Q And did you eventually shift it out of California
19 to a different state?

20 A Yes. That trailer --

21 Q Actually, you registered that in Arizona?

22 A Yes.

23 Q And did you own a Dodge Ram?

24 A Yes.

25 Q And did you eventually register that in Arizona

1 too?

2 A Yes.

3 Q Why didn't you immediately rush out and register
4 those cars in Arizona in February of 2008?

5 A Why didn't we you say?

6 MRS. BRACAMONTE: Why didn't you register --

7 BY MR. MARKOW:

8 Q Yes. Why didn't you?

9 A Oh, well, I had -- the Ram was, if I remember
10 correctly, the license had expired. So it was just
11 sitting at the house in California in Escondido. The
12 trailer, I didn't want to haul it all the way to Las Vegas
13 just to register it. I took the opportunity -- when we
14 needed to use the trailer, I took some stuff up to
15 Arizona. And while I was there, I registered in Arizona.
16 So that's how the trailer got registered in Arizona.

17 Q So this is one of those things. These vehicles
18 started to get registered as it was convenient for you
19 whenever you were going back and forth to go re-register
20 them?

21 A Yes. It was more a convenience for us as we were
22 either in Nevada or Arizona.

23 Q And an electric cart of some kind?

24 MRS. BRACAMONTE: Yes, an electric cart.

25 MR. BRACAMONTE: Yes. Yes. That was registered

1 in Arizona, the gym cart.

2 BY MR. MARKOW:

3 Q And do you remember when that happened?

4 A I would have to go look at the records.

5 Q And you had three vehicles, at least to me look,
6 looked like they may be either dirt bikes or motorcycles.
7 It's a Yamaha XL 1200, a Yamaha FX Cruiser. Do you know
8 what those are?

9 A Yes. Yeah, dirt bikes.

10 Q And had they been registered in California?

11 A Yeah, they were. Yes.

12 Q And did you eventually register them someplace
13 else?

14 A Eventually, yes. Or we gave them -- I
15 necessarily didn't register them. We just gave them to
16 the kids, and they -- they eventually registered them.

17 Q Take a look at Exhibit 10. This is a document
18 from AT&T. Do you see that?

19 A Yes.

20 Q What is Exhibit 10?

21 A That is a -- looks like a --

22 Q Phil, you're talking, but I can't hear you.

23 MR. MARKOW: Could other people hear?

24 MR. BRACAMONTE: Yeah, it looks like it's an
25 invoice for a cell service in Nevada.

1 MR. MARKOW: Phil, I'm having some trouble, so
2 excuse me.

3 Can someone talk so I can see if I can hear?

4 JUDGE TAY: Mr. Markow, this is Judge Tay. Can
5 you hear us at all?

6 MR. BRACAMONTE: I can hear everyone.

7 MR. MARKOW: Yup, turning it off and on worked
8 fine. Sorry about that.

9 JUDGE TAY: Mr. Markow, you can hear us?

10 MR. MARKOW: I can now hear you, yes.

11 JUDGE TAY: Great. All right. Please proceed
12 whenever you're ready.

13 BY MR. MARKOW:

14 Q We were talking about -- and, again, I apologize.
15 We were talking about Exhibit 10, and I had asked you what
16 that was. And then I -- apparently, everyone else could
17 hear your answer, but I could not. So could you do me a
18 favor and repeat that, please?

19 A Yes. It looks like it's and an agreement -- a
20 service agreement for a cell service with AT&T.

21 Q And was this for -- was this the agreement
22 whereby you obtained a mobile phone with a -- with an area
23 code local to Henderson, Nevada?

24 A Yes.

25 Q And when did you do that?

1 A This here is February 27, 2008.

2 Q And did you obtain a mobile phone on that date
3 with a Nevada phone number?

4 A Yes.

5 Q And did Jacqueline as well?

6 A Yes.

7 Q I'd like you to turn to Exhibit 11, please.

8 MR. MARKOW: Did we just lose Judge Tay?

9 MR. BRACAMONTE: This is opening an account at
10 Wells Fargo.

11 MRS. BRACAMONTE: Wait. We lost the judge.

12 MR. MARKOW: Hang on for one second?

13 MR. BRACAMONTE: Okay.

14 MR. MARKOW: I'm just waiting because I can't see
15 Judge Tay.

16 JUDGE JOHNSON: This is judge Johnson.

17 MR. MARKOW: These are the perils of the zoom
18 hearings. Is it just me?

19 JUDGE JOHNSON: This is Judge Johnson. I think
20 we lost his video for a second. I'm checking with him to
21 get him back.

22 MR. MARKOW: Okay. Thank you, Judge Johnson.
23 These are the perils of the Zoom hearings.

24 JUDGE JOHNSON: This is Judge Johnson again. Not
25 as a quick of a fix as I thought it might be. Let's take

1 a quick five-minute break, and we'll get everybody back
2 again.

3 MR. MARKOW: So that's 11:53, Your Honor?

4 JUDGE TAY: That's correct, yes.

5 MR. MARKOW: Okay. Thank you.

6 (There is a pause in the proceedings.)

7 JUDGE TAY: My apologies for the interruption. I
8 believe we're ready to continue. So please feel free to
9 continue wherever you left off.

10 MR. MARKOW: Okay. Thank you, Your Honor.

11 BY MR. MARKOW:

12 Q I believe we had just finished looking at
13 Exhibit 10, which were the cell phone receipts from the
14 end of February 2008, and I was about to turn to
15 Exhibit 11. So if we can turn to Exhibit 11, please.
16 It's a consumer account application from Wells Fargo. Do
17 you see that, Phil?

18 A Yes, I do.

19 Q What is this?

20 A This is an account. This is an application to
21 open a checking account and a savings account at Wells
22 Fargo.

23 Q What was your reason for opening a consumer
24 account at Wells Fargo February 27th, 2008?

25 A It's for the purpose of establishing a banking

1 relationship in Nevada.

2 Q Did you have accounts in California at the time?

3 A Yes.

4 Q What accounts did you have in California at the
5 time for your banking relationship?

6 A We had a couple of accounts at credit unions and
7 another, I think, was a savings at Wells Fargo.

8 Q And what was your intention regarding continuing
9 to use those California accounts after you opened these
10 Nevada accounts?

11 A Well, eventually, we would phase out the
12 California accounts. That was the -- our intention.

13 Q And did you do so?

14 A Yes.

15 Q Do you remember when you closed your California
16 bank accounts?

17 A Not off the bat, no.

18 Q If you take a look at Exhibit 11, I see that it
19 list your mailing address on Stephanie Street. Is that
20 the post office box you told us about?

21 A Yes.

22 Q Why did you not list your California address on
23 this application?

24 A We --we -- well, as far as we were concerned, we
25 moved to Nevada. So this was our new address.

1 Q Let's turn to Exhibit 12. I had asked earlier
2 about you registering your Avalanche in Nevada. Do you
3 remember that?

4 A Yes.

5 Q And Exhibit 12 is a series of different paperwork
6 regarding your Avalanche; correct?

7 A Yes.

8 Q What is this first page of Exhibit 12?

9 A This looks like an emissions test -- vehicle
10 emissions test for the Avalanche.

11 Q And that's dated on March 6th, 2008?

12 A Yes.

13 Q And was this part of the process of getting that
14 Avalanche registered as a Nevada vehicle?

15 A Yes. In Nevada it is very similar to California.
16 It requires a smog test.

17 Q And if you take a look at the second page, a
18 vehicle inspection certificate also dated March 6th.
19 What's that?

20 A When you -- yes. That's a DMV inspection on the
21 vehicle itself.

22 Q Turn to the third page. What's that?

23 A Insurance -- insurance coverage for the
24 Avalanche.

25 Q And this is from Farmers Insurance Company?

1 A Yes.

2 Q I see in the upper left-hand corner -- first of
3 all, in the upper right-hand corner it's dated March 6th?

4 A What was that again?

5 MRS. BRACAMONTE: It was dated March 6th.

6 MR. BRACAMONTE: Yes, I see that.

7 BY MR. MARKOW:

8 Q And I see it expires on September 6th. Why was
9 it so short?

10 A It's a six-month policy.

11 Q And I see it lists your Henderson, Nevada
12 address. Do you see that?

13 A Yes.

14 Q If you take a look at the -- there's a page --
15 several pages further in of Exhibit 12. It's dated --
16 it's a fax sheet that's dated on the top of the fax of the
17 4th of March 2008 with some handwriting on it. Do you see
18 that?

19 A Yes.

20 Q "Please Remove", do you see that?

21 A Yes, I do see that. I see that.

22 Q Whose handwriting is that?

23 A Looks like it's just some transfer of a policy.

24 I, you know -

25 MRS. BRACAMONTE: Neither one of those.

1 MR. BRACAMONTE: No.

2 MR. MARKOW:

3 Q And if you go to the -- if you go two more pages,
4 there's a State of Nevada Department of Motor Vehicles
5 receipt dated May 19th, 2008. Do you see that?

6 A Yes.

7 Q What is that?

8 A It looks like the date I registered the vehicle.

9 Q Do you remember why it took a couple of months to
10 get the Avalanche registered from the 6th of March, when
11 you started the process, to the middle of May?

12 A Yeah, I don't recall why.

13 Q There's a couple of receipts at the back for
14 Jiffy Lube. Do you see that?

15 A Yes.

16 Q I'll confess that my printout is so illegible I
17 couldn't tell you what these were for. Do you know what
18 these were for?

19 A Oil change.

20 MRS. BRACAMONTE: It's a reference. There's
21 service on the car.

22 MR. BRACAMONTE: Yeah. Service on the Avalanche,
23 oil change.

24 BY MR. MARKOW:

25 Q And where did that service occur?

1 A Looks like there's a Jiffy Lube right there on
2 Stephanie Street. 130 South Stephanie Street in
3 Henderson.

4 Q And when was that? I'm sorry. If you gave an
5 answer, I did not hear. Do you know when that service
6 occurred?

7 A Yes. The vehicle was service at a Jiffy Lube on
8 Stephanie Street in Henderson.

9 MRS. BRACAMONTE: What was the date?

10 MR. BRACAMONTE: Oh, the date. The date is 3/21,
11 March 21st, 2008.

12 MR. MARKOW:

13 Q I'd like you to turn to Exhibit 16, please. Are
14 you with me?

15 A Yeah.

16 Q Exhibit 16, it looks like it's a scheduled
17 appointment for Eye Care Associates. Do you see that?

18 A Yes, I see it.

19 Q What is this?

20 A This is -- I went in for an eye exam. I needed
21 to update my glasses.

22 Q And were you -- and that was in -- what time
23 period was that?

24 A It's Eye Care Associates of Nevada.

25 Q No. When was that, Phil?

1 A When was that. I'm sorry. It looks like April.
2 I don't know why I'm looking at this. It looks like
3 April 4th.

4 Q It's going to be your appointment, correct. But
5 presumably this was at some point before the 4th of April?

6 A Well, I see there's two different dates here. I
7 see -- on the second page, I see March 6th.

8 Q Well, what is the second page of Exhibit 16?

9 A Yeah. It says March 6th.

10 Q No. What is that document?

11 A Request for a consultation with the eye doctor.

12 MRS. BRACAMONTE: It's for glaucoma.

13 MR. BRACAMONTE: Oh, that's the -- yeah. That's
14 the report there, yeah, for the evaluation.

15 BY MR. MARKOW:

16 Q And then the last page of that document is
17 something from Doctor Cynthia Kiernan & Associates on
18 the -- on the -- do you see that?

19 A Yes.

20 Q And it seems to have checked a "Comprehensive
21 Examine of a Refraction". Do you see that?

22 A Okay. Yes.

23 Q And did you have this eye exam and medical work
24 done at the beginning of March 2008 in Nevada?

25 A Yes. Yes. That's the date on the documentation.

1 Q Why didn't you go to California for that work?

2 A Because we wanted to -- as far as we're
3 concerned, we were living in Nevada, and this -- we were
4 ready to start, you know, looking for medical providers.

5 Q And there came a time where you shifted your
6 primary care physician from California to Nevada, did
7 there not?

8 A Yes.

9 Q When was that?

10 A I don't recall the date.

11 Q Was it in the year 2008?

12 A Yes, 2008.

13 Q And did you do it immediately in February of 2008
14 when you rented your apartment or sometime thereafter?

15 A It was after we had our house.

16 Q Why didn't you do it immediately?

17 A We didn't want to -- we didn't want to nail down
18 doctors to that extent until we knew where we were going
19 to live so that we would look for medical providers near
20 the house.

21 Q But, eventually, you did transfer your primary
22 physical care from California to Nevada shortly after you
23 had a permanent house in Nevada?

24 A Yes. We started that process, yes. But now we
25 knew what area we were living in.

1 Q I want to shift topics a little bit. I want to
2 talk about the sale of Jimsair. There came a time where
3 you started a process to sell your Jimsair business;
4 correct?

5 A Yes.

6 Q When did that process begin?

7 A Well, that process began in May 2008.

8 Q What happened in May 2008 that lead to the sale
9 of Jimsair?

10 A I was having a conversation with our fuel
11 supplier, and I had mentioned that I was going to put the
12 business up for sale.

13 Q When did you determine to put the business up for
14 sale?

15 A When I mentioned to my fuel supplier that we -- I
16 was going to put it up for sale, he asked me if he -- he
17 said he knew of this firm in Texas, Landmark Aviation,
18 that was looking to expand, and they had been aggressively
19 expanding. And he asked me for permission to make contact
20 with them.

21 Q Before you had this conversation with your
22 supplier in May of 2008, did you know about Landmark?

23 A Well, I knew of the chain, but I didn't know much
24 about Landmark itself or the management.

25 Q Before May of 2008, had anyone expressed an

1 actual interest in purchasing Jimsair?

2 A No. No. It had been maybe several years prior
3 but nothing recent.

4 Q And so after you talked to this person in May
5 of 2008, how did you hook up with Landmark?

6 A The president of Valley Oil made contact with
7 Landmark and within, I think, a few days, the president of
8 Landmark gave me a call, and a meeting was scheduled in
9 San Diego probably within a week. The management flew
10 out. I think it was the president, vice president, and
11 in-house counsel. They flew out to San Diego, and from
12 there I gave them a tour of the facilities. We talked for
13 a while, and we went to dinner. At that night at dinner I
14 had already put what I thought I wanted for the business,
15 a term sheet. They -- we discussed it, and the following
16 morning they accepted it.

17 Q And so starting in May until July, it took that
18 long to document the deal?

19 A Yes.

20 Q Was the deal finalized on July 18th, 2008?

21 A I believe that was the closing date, yes.

22 Q Where were you living at that time?

23 A Henderson.

24 Q You got -- you received funds from that closing,
25 did you not?

1 A Yes.

2 Q Where were those funds sent?

3 A They were sent to the Wells Fargo account that we
4 had opened.

5 Q The one you opened in February?

6 A Yes.

7 Q In Nevada?

8 A Yes.

9 Q When you went to Nevada at the end of February
10 2008, did you know you were going to be selling your
11 business?

12 A No. No. I had some obstacles that prevented me
13 from selling the business, and it was the litigation with
14 the Airport Authority.

15 Q Now, I want to turn a little bit to your
16 activities after February of 2008, you know, starting in
17 March of 2008 and through sort of the end of the year.
18 Did you return to California during that time?

19 A Yes.

20 Q You saw the chart that counsel for the Franchise
21 Tax Board put up in his opening statement today; correct?

22 A Yes, I saw that.

23 Q And through the days that he has marked as you
24 being in California approximate what you understand to be
25 you're time in California during the time after you move

1 to Nevada?

2 A Repeat that, please.

3 Q Was the chart he showed relatively accurate in
4 terms of the number of days you spent in California after
5 the first of March?

6 A It appears so, yes.

7 Q What were you doing in California for all that
8 time after you moved to Nevada?

9 A Well, we had -- we had a lot of things to wrap up
10 on a personal level and a business level. And my wife
11 Jacquie, one of the things that was important to her, she
12 had to get her father squared away after her mother passed
13 away in January. His health was going down, and she --
14 she needed to help him with doctor appointments,
15 medications. She eventually arranged for him to have
16 Meals on Wheels. My wife wanted to take care of her
17 mother's personal belongings from her father's house.

18 We -- we visited our son in Chico. We wanted to
19 continue visiting our son in San Diego and the grandkids.
20 And I think we did some babysitting so that our oldest son
21 and his wife could travel. I did meet with the Mexican
22 counsel on some litigation that was taking place in
23 Mexico. I also spent time to resolve the litigation with
24 the San Diego Airport Authority.

25 And some of those days in California was packing

1 stuff up that we brought with us as we drove back and
2 forth. So there was a variety of reasons that we -- we
3 went -- we were in California.

4 Q Today do you often visit California?

5 A Today what?

6 MRS. BRACAMONTE: Do we often visit California
7 today.

8 MR. MARKOW: Today.

9 MR. BRACAMONTE: No, no.

10 MR. MARKOW:

11 Q Can you state the date that you consider you
12 moved from California to Nevada?

13 A I consider the date late February when we
14 obtained the apartment and the driver's licenses and
15 registered to vote.

16 MR. BRACAMONTE: All right. Thank you, Phil. I
17 don't have any more questions for you right now, and I'll
18 turn you over to counsel for the FTB, who I'm sure has
19 some questions for you.

20 JUDGE TAY: This is Judge Tay. Yes, I'd like to,
21 if that concludes your examination of Bracamonte, I would
22 like to open it up to Franchise Tax Board to cross-examine
23 Mr. Bracamonte.

24 Mr. Hofsdal, please proceed whenever you're
25 ready.

1 MR. HOFSDAL: Yeah.

2

3 CROSS-EXAMINATION

4 BY MR. HOFSDAL:

5 Q Mr. Bracamonte, can you hear me okay?

6 A Yes, I can.

7 Q Okay. Great. In preparation for meeting us
8 today, did you do anything to refresh your memory?

9 A Well, I have this binder with all the exhibits,
10 and I reviewed a, I guess, a declaration --

11 Q Okay.

12 A -- that I completed in -- it looks like I signed
13 in December 17th.

14 Q Did you discuss any facts with your wife about
15 what happened in 2008?

16 A We went over the -- yes, all the exhibits
17 together.

18 Q All right. Now, you said you had your
19 declaration in front of you; true?

20 A Yes, I have it. Yes.

21 Q Okay. And did you review that prior to speaking
22 with us today?

23 A Yes, I read it. Yes.

24 Q Okay. After you read it and before we start
25 talking about your declaration, is there any -- any

1 changes to that declaration that you would like to make?

2 A I'm just going through it really quick.

3 Q Okay. Yeah. No, no. Take your time. And as we
4 talk about your declaration, if part of our conversation
5 elicits you to maybe think that maybe something is
6 inaccurate, you could go ahead and let us know as well.
7 We just want to make sure that we're all on the same page
8 with all these facts. All right?

9 A Yeah, it looks all to be in order.

10 Q All right. Normally, this is not an issue, but I
11 heard a couple of beeps there in the background. Are you
12 running a concurrent program like Skype or something like
13 that so you can communicate with your attorneys during
14 this testimony?

15 MRS. BRACAMONTE: No.

16 MR. BRACAMONTE: No.

17 MR. HOFSDAL:

18 Q No. Okay. Just making sure. Okay. And today
19 I'm going to ask you some questions related to your
20 declaration and various exhibits that we've already marked
21 as Appellants -- that's you -- the Appellants 1 to 18 and
22 Respondents -- that's us -- the FTB's A to BB. And you've
23 already indicated that you have all the exhibits and the
24 declaration in front of you right now; true?

25 A Yes.

1 Q And just as a suggestion you may want to pull
2 Exhibit F out and your declaration, because we'll be
3 referring to those quite a bit. And your declaration
4 probably more so than -- than --

5 A Okay. F as in Frank; right?

6 Q Right. Okay. Now, the first thing I want you to
7 look at is Exhibit D.

8 MRS. BRACAMONTE: Okay. Yeah. Then you can look
9 at Exhibit D.

10 MR. HOFSDAL: Yeah.

11 MRS. BRACAMONTE: Exhibit D.

12 BY MR. HOFSDAL:

13 Q Specifically, line 3 of Exhibit D. I'll wait for
14 you to get there.

15 A Okay.

16 Q All right. In your California tax return for the
17 2008 tax year, it looks like you've indicated that you
18 became a non-resident on January 1st, 2008. Do you see
19 that?

20 A Yeah, I can see that.

21 Q Now you seem to be indicating and that you
22 believe you became a non-resident sometime towards the end
23 of February; true?

24 A Yes.

25 Q Okay. Is there anything you could recall that

1 changed your opinion as to when you filed your tax return
2 and -- and you giving us that opinion today?

3 MRS. BRACAMONTE: Look at the tax return.

4 MR. BRACAMONTE: No there's nothing. Repeat that
5 question again, please.

6 MR. HOFSDAL:

7 Q Sure. Sure, sure, sure. There's just a
8 discrepancy. There's a discrepancy between the position
9 in --

10 A Yeah, the two --

11 Q -- on your tax return. And you understand when
12 you sign your tax return under penalty of perjury; true?

13 A Yes.

14 Q Okay. And so there seems to be a discrepancy
15 between your position on the return and in fact you took
16 that same position in your opening brief that you became a
17 non-resident on January 1st. And today you seem to be
18 indicating that you became a non-resident sometime at the
19 end of February. And I'm asking you, did anything happen
20 over the course of last year or beyond to make you change
21 your opinion as to when you became a non-resident?

22 A Well, I think the date on the -- that's reflected
23 on Exhibit D was -- looks probably something that was
24 automatically put in by my accountant when he did the tax
25 return.

1 Q Yeah. And I'm going to remind you that in that
2 position that you took and when you filed your original
3 opening brief was that you become a non-resident on
4 January 1st, 2008. And before that brief was filed, did
5 you have a chance to review that brief?

6 MRS. BRACAMONTE: No. I don't think it's -- it
7 would had -- ask him.

8 MR. HOFSDAL:

9 Q I don't think the brief is in exhibit, but I'm
10 just -- I think that the briefs that Respondent filed, and
11 you filed, you know, are not part of the exhibit binder.

12 MR. HOFSDAL: Judge Tay; is that correct?

13 MR. BRACAMONTE: I'm not familiar with --

14 JUDGE TAY: This is Judge Tay. That's correct.
15 The briefs are not part of the exhibits or the hearing
16 binder. So yeah, that's correct.

17 MR. HOFSDAL: Oh, okay.

18 BY MR. HOFSDAL:

19 Q So, Mr. Bracamonte, what I'm representing to you
20 is that there was a representation made in your opening
21 brief that you became a non-resident on January 1st, 2008.
22 And I'm asking you if, before you're attorneys filed that
23 brief, did you have a chance to review that brief?

24 A Okay. Will you please tell me where my opening
25 brief is that I said January?

1 Q Yeah. Yeah, yeah, yeah, yeah. Yeah. It's not
2 part of the record. I'm just asking you in general.

3 A Oh, I'd like to look at the document.

4 Q Yeah, yeah. And you're aware you filed an
5 opening brief; true? In this case?

6 A Okay. I can't recall it right now.

7 Q Okay. Okay. So you don't recall -- and you
8 don't recall as you sit here today that you reviewed any
9 of the briefs prepared by your attorneys; is that what
10 you're saying?

11 A I only went through everything in the exhibit
12 book that was presented to us. And then the affidavit --

13 Q Yeah.

14 A -- my affidavit was a separate download.

15 Q Right. Yeah. And I'm not suggesting you may
16 have reviewed those in anticipation of today's testimony.
17 What I'm asking is, you know, on or about
18 February 26th, 2016, when your attorneys filed that
19 opening brief, did you review that brief prior to your
20 attorneys filing it?

21 A I -- I believe I did.

22 Q Yeah. Okay. And do you recall that, in that
23 brief that you reviewed, that you had indicated that you
24 became a California non-resident on January 1st, 2008?
25 And if you don't have a recollection that's fine. I'm

1 just --

2 A Yeah, yeah. I'd have to look at the document.

3 Q Okay. Fair enough. Okay. As I suggested
4 earlier, for the most part I'm going to go ahead and
5 follow your affidavit in regard to the numbers of the
6 affidavit. But because I think it's such a relevant issue
7 here, one of the first things I want to talk about is your
8 physical presence. And then we'll go ahead, and we'll
9 talk about your declaration. Is that okay?

10 A Sure.

11 Q Okay. In paragraph 19 of your declaration, if
12 you can go ahead and look at paragraph 19?

13 A Yes.

14 Q Okay. And go ahead and -- and did you review the
15 paragraph?

16 MRS. BRACAMONTE: Paragraph 19.

17 MR. BRACAMONTE: Yeah, I see it.

18 MR. HOFSDAL:

19 Q Yeah. Just go ahead and take a look at paragraph
20 19.

21 A I'm -- I'm looking at line. You want me to go to
22 19. I'm sorry.

23 Q It's okay. I'm sorry. It's my fault.

24 A Yes, I see that. We --

25 Q Okay. And the language I want you to focus on is

1 where you say in the first line in, "May 2008, after we
2 had already been living in Nevada for over three months."
3 Do you see that language?

4 A Yes.

5 Q Okay. Now, I want you to look at Exhibit F. I
6 know this is going to get complicated. Look at Exhibit F.

7 A Okay.

8 Q Okay. Isn't it true, based on your declaration,
9 that in the month of January -- and you spent 24 days in
10 California and no days in Nevada? Do you agree with that?

11 A Yes.

12 Q And then in February you say, based on your
13 exhibit at Exhibit F, that you spent 20 days in California
14 and 3 days in Nevada, true? Take your time.

15 A Okay. I see where you're -- yes. Yes, I see
16 here.

17 Q Yeah. So you agree that in the month of February
18 you spent 20 days in California and three days in Nevada;
19 true?

20 A Yes. That's what it indicates.

21 Q Okay. Yeah. And then in March in looking at
22 Exhibit F, and you indicate for the month of March you
23 spent 22 days in California, 7 days in Nevada, and 2 days
24 in Arizona. Is that in accord with your understanding?

25 A Yes.

1 Q Okay. And then in the month of April it
2 indicates you spent 21 days in California -- and we're
3 talking nights. I think you put it in terms of nights,
4 like, when you go to bed or spend the night. But in April
5 you spent 21 nights in California, 6 nights in Nevada, and
6 zero nights in Arizona. Is that basically your
7 understanding, sir?

8 A That's what it says.

9 Q Okay. Then it's my understanding from Exhibit F
10 that you didn't spend any days. Not a single day in the
11 month of May or a single night in the month of May in
12 Nevada; is that -- is that true?

13 A That's what it appears to be. Yes.

14 Q Okay. So in total, up until the month of May,
15 isn't it true that you spent a grand total of 85 days in
16 California and only 16 days in Nevada?

17 A If that's what it adds up to, yes.

18 Q Yeah. And isn't it true that you essentially
19 spent five times as many days in California as you did in
20 Nevada up until May 2008?

21 A Yes. But I believe I went over the reasons why
22 we were in California.

23 Q Yeah. I understand that. I'm just looking at
24 the -- I'm just -- we're just talking about days in
25 California and days out of Nevada at this point.

1 A Okay.

2 Q And now I want you to look at Exhibit 26, and go
3 ahead and read that and let me know when you're -- no.
4 I'm sorry. I'm sorry. My mistake. You're declaration,
5 paragraph 26. I'm sorry.

6 A Yes.

7 Q Okay. And you say in paragraph 26 that you spent
8 a total of 149 days in California during the 2008 tax
9 year; is that --

10 A Yes.

11 Q Okay. And so isn't it true that of those 149
12 days, that 133 of those days were spent in California
13 prior to the sale of Jimsair?

14 A That sounds about right.

15 Q Okay. And during the same time frame, from
16 January 1st to the sale of Jimsair on July 18th, isn't it
17 true, based on your Exhibit F, that you only spent 28 days
18 in Nevada?

19 A From what dates again?

20 Q From January 1st, 2008, through the sale of
21 Jimsair on July 18th. Isn't it true you only spent 28
22 nights in Nevada?

23 A If that's what it adds up to.

24 Q Yeah. Okay. Now, also in paragraph 26 you say
25 that you spent 97 days in Nevada during the 2008 tax year.

1 And do you see that?

2 A Yes.

3 Q Excuse me paragraph 27.

4 A 27. 27. Yes, I see that.

5 Q Okay. Now, go back to Exhibit F. Isn't it true
6 that from September 29th, the date you essentially moved
7 into to that Henderson, Nevada home to December 31st of
8 that tax year -- and this is after you sold Jimsair and
9 started to occupy the Nevada home -- that you spent 63 of
10 those 97 days?

11 A Spent how many again, please?

12 Q 63 of the 97 days you say you spent in Nevada
13 during the 2008 tax year, that 63 of those days were from
14 September 29th to December 31st?

15 A Okay. Within -- well, I'll take you at your word
16 at it. I don't -- I don't remember that.

17 Q You have no reason to dispute what I'm saying
18 based on your Exhibit F; is that true?

19 A Okay. Yes.

20 Q And now I'm going to shift a little bit to just
21 the declaration itself. We'll kind of start at the
22 beginning and work our way forward. And if at any time
23 you need to take a break or you need to get fresh air or
24 water or go to the bathroom or whatever, just let me know
25 and we'll talk to Judge Tay about that. All right?

1 I want to start with paragraph 2. And just to
2 make it easier for all of us, in paragraph 2 in the last
3 line it says, "Jacqueline and I each stopped receiving our
4 salaries from Jimsair on or around February 29th, 2008."

5 Do you see that.

6 A Yes.

7 Q Okay. Now, the question I have is -- I went
8 back, and I traced all of your deposits. It's my
9 understanding that both you and your wife had your W-2
10 earnings from Jimsair direct deposited into California
11 bank accounts; true?

12 A Yes.

13 Q Okay.

14 A Yeah.

15 Q Yeah. Now, I want you to look at Exhibit Z --
16 Exhibit Z. And the second page of the Exhibit Z, do you
17 see about that about three entries down for January 4th it
18 has a direct deposit right there from Jimsair for
19 \$5,575.03. Do you see that, sir?

20 A Yes, I see it.

21 Q Okay. Now, I went through all of your records,
22 and I found four such deposits into your bank account
23 through the end of February. Okay. And if you want to
24 look at them, you can. They're at Exhibit Z-2,
25 Exhibit Z-4 -- if I'm going to fast let me know -- Exhibit

1 Z-10, and Exhibit 14. Okay. When I add up all of your
2 direct deposits through February 29th, I get a total of
3 \$24,513. Do you have any reason to dispute that, sir?

4 A Okay. Yup.

5 Q Okay. Now, I want you to look at Exhibit H?

6 MR. BRACAMONTE: Which one, did he --

7 MRS. BRACAMONTE: H, honey.

8 MR. BRACAMONTE: H. Okay.

9 BY MR. MARKOW:

10 Q Exhibit H is your W-2?

11 A Yes.

12 Q Okay. You see under wages that indicates
13 \$148,150?

14 A Yes.

15 Q Okay. So the question I have for you is kind of
16 a very roundabout way to get there. But the question I
17 have for you is in your declaration -- and you say you
18 stopped receiving a salary at the end of February. If you
19 add up all your direct deposits from Jimsair through
20 February, there's only \$24,513.

21 The question is, when did you receive the other
22 \$123,627? Is it possible, sir, that perhaps you earned
23 W-2 income from Jimsair beyond the February 29th date that
24 you indicated in your declaration?

25 A I did some handwritten notes. For some reason it

1 shows my salary from Jimsair a little over \$67,000 in
2 January and over \$50,000 in February, but I don't -- I
3 don't see anything after that.

4 Q Okay. So the question I ask, is there a
5 possibility that you earned income, W-2 wages, from
6 Jimsair beyond the February 29th, 2008, date?

7 A I don't believe so.

8 Q Okay. And you have no explanation then for the
9 difference between the wages received between January and
10 February of \$24,000 and your W-2 of close to \$150,000?

11 A No, no. I would have to go through all the bank
12 accounts and try to figure -- understand that one.

13 Q Okay.

14 A Yeah.

15 Q And now we'll just go to paragraph 3 and just
16 take a moment and read paragraph 3 there for us. Okay,
17 sir.

18 A Paragraph 3. Yeah. Okay. Read it.

19 Q And now you say there that the time that you
20 didn't anticipate that you would be selling Jimsair, but
21 there was a very real understanding at that time, sir.
22 Isn't it true that your lease with the Airport Authority
23 would soon come to a close?

24 A We were a number of years -- yeah. We still had
25 a few years to go. Yes.

1 Q Right. But it was your understanding, based on
2 the documents that I read, that up until the sale -- and
3 you had a firm belief that -- that those leases would not
4 be extended; is that true?

5 A Yes. It was going to go on for an IFP.

6 Q Right. So you knew -- or you believed in
7 December of 2007 that your days with Jimsair was
8 essentially come to an end whether its sold or whether you
9 lose it in your lease; true?

10 A Something was going to happen. I didn't know
11 what.

12 Q Okay. Now, if you could take a moment and read
13 paragraph 4?

14 A Okay.

15 Q Okay. Now, it's my understanding that you were
16 in Argentina during the month of December 2007; true?

17 A Yeah, we were -- we were on a cruise. That's
18 where the cruise ended up. Yeah.

19 Q Now, were you made of -- were you made aware of
20 your mother-in-law's illness before or after the cruise in
21 December? You can help him. I have no -- we just want to
22 get the right answers.

23 A Sorry. We probably were aware, but yes.

24 Q You were aware of it. Okay. And then it says
25 here that while my wife and I had planned to finalize our

1 move from California to Nevada in July 2008, we did not
2 leave Escondido because we deemed it necessary to remain
3 and care for my mother-in-law? Do you see that in
4 paragraph 4, sir?

5 A Yes.

6 Q Okay. So isn't it true, in addition to going to
7 Argentina for a cruise, that in the month of January --
8 and you can look at Exhibit F -- you also went to Arizona
9 for a couple of days and Mexico for a couple of days? Do
10 you see that, sir?

11 A Hm-hm, yes.

12 Q Okay. And then in the last line it says, "That
13 we remain in California for a few weeks to attend her
14 funeral and to be with my father-in-law," et cetera, et
15 cetera. But isn't it true at the end of January through
16 the first part of February you were in Arizona again?

17 A We were where?

18 Q In Arizona?

19 A I have to look at the dates.

20 Q Yeah. You can look at Exhibit F.

21 A Yes.

22 Q Yes. All right. So just based on what I just
23 told you and we just brought out, is there anything you
24 would like to change with regards to paragraph 4?

25 A Yeah. I need to clarify there were some trips in

1 there.

2 Q Yeah. So it wasn't in necessary to remain in
3 Escondido, I guess, is the point I'm trying to make.
4 Would you agree with that?

5 A What was the point you were trying to make again,
6 please?

7 Q No, no. I mean, I think the point you're trying
8 to make in paragraph 4, and you can correct me if I'm
9 wrong, is that you're essentially trying to tell us that,
10 I would have moved in January but for my mother-in-law's
11 illness. That prevented us from going to Nevada. Is that
12 the intent of paragraph 4, sir?

13 A That's the intent.

14 Q Okay. But the reality is that during this time
15 that you are unable to go Nevada, you were able to go on a
16 cruise to Argentina. You were able to go to Arizona
17 twice, and you were able to go to Mexico. Is that true,
18 sir?

19 A Yes, in which in another document we disclosed
20 all of that.

21 Q Yeah. No, I understand that.

22 A Okay.

23 Q I'm just looking at the intent of your
24 declaration and the facts that support it. That's all.

25 A Yeah.

1 Q Is that all right?

2 A Yeah. Yeah.

3 Q Now, when you were talking earlier, and you were
4 talking about your wife's brother -- and what medical
5 condition does your wife's brother have?

6 A No. I think you misunderstood.

7 Q Oh, okay.

8 A Her father.

9 Q Her father. Okay. Okay. Okay, okay, okay. So
10 there wasn't a brother issue. It was just -- and the
11 only -- and you had talked about when your attorney asked
12 you what were you doing during all these days in Nevada,
13 and you were talking about wrapping up things. And some
14 of those things, I thought you said, had to do with a
15 brother or somebody's brother?

16 A No. That was my father-in-law.

17 Q Okay.

18 A Okay. And at the time he was experiencing COPD.

19 Q Okay.

20 A And maybe that's what you heard.

21 Q Okay. I'm sorry.

22 A Yeah. But she had to -- my wife spent some time
23 with him to set him up with his doctor appointments,
24 medications, pay his bills. And I think she became a
25 signer on all of his accounts. So she could sign -- pay

1 his bills. And she set him up with Meals on Wheels.

2 Q Okay. Did your father-in-law ever move to Nevada
3 with you?

4 A No. He came with my wife on some trips.

5 Q On some trips. Okay. And did your father-in-law
6 suffer from COPD throughout the 2008 tax year?

7 A Did he -- yeah. Yes.

8 Q Yes. Okay.

9 A He wasn't at the point where he was on oxygen
10 yet.

11 Q Okay. Gotcha. And -- and was your wife
12 essentially a guardian ad litem for your father-in-law or
13 a power of attorney?

14 A Yes, she had power of attorney.

15 MRS. BRACAMONTE: No.

16 MR. BRACAMONTE: Oh, her brother -- my wife's
17 brother had the power of attorney.

18 MRS. BRACAMONTE: But I had other
19 responsibilities.

20 MR. BRACAMONTE: My wife had other
21 responsibilities because she was the closest child.

22 BY MR. HOFSDAL:

23 Q Hm-hm. I got you. Now, I want you to go ahead
24 and look at paragraph 6 of your declaration and go ahead
25 and take a moment to go ahead and review that.

1 A Yes.

2 Q Okay. Now, I want you to look -- and you have
3 already taken, like, one -- and look at this exhibit. But
4 if you go ahead and look at Exhibit 3 again, please, sir.
5 Let me know when you're there, sir.

6 A Yeah. I read it. It's paragraph 6?

7 Q Right.

8 A Yeah.

9 Q Yeah. Now, it says there and you had a scheduled
10 appointment for move in from 8:00 to 4:00 on March 1st.
11 Did you schedule that at that apartment when you
12 essentially reserved the apartment back at the end of
13 February?

14 A Let me go back and look at that document.

15 Q Yeah. Take your time.

16 A I see that. Yup.

17 Q Now, when you signed this reservation for this
18 apartment in Henderson, Nevada, did you also arrange for
19 your move in for March 1st, 2008? Do you see where it
20 says, "We have scheduled your move in appointment for 8:00
21 to 4:00 p.m. on March 1st, 2008?"

22 A Yes.

23 Q Okay. Why did you miss that appointment?

24 A We were -- we were in California.

25 Q You were in California. Okay. And do you recall

1 if you were doing anything specifically in California that
2 caused you to miss that reservation?

3 A Yeah. I don't think we were there for that
4 appointment.

5 Q Okay. All right. Now, isn't it true that you
6 actually signed the rental agreement to take possession of
7 that apartment on March 6, 2008?

8 A Yes.

9 Q Okay. And did you receive the keys to that
10 apartment on March 6, 2008?

11 A I think we received the keys prior to that. I
12 thought I saw something where we took the keys.

13 Q Yeah. I see -- and that's why I'm asking. If
14 you go to the 17th page of Exhibit 3, it says, "Gate Card
15 Agreement."

16 A I see some key cards there, yeah.

17 Q Yeah. But you needed a key card to get into the
18 apartment complex; true?

19 A Yeah.

20 Q Okay. And the assumption I'm making, and I just
21 want you to verify is, since you missed your March
22 1st, 2008, appointment, that you more likely than not at
23 least got the gate cards and quite possibly the keys to
24 the apartment on March 6th. Would you agree with that,
25 sir?

1 A Well, the gate card, for some reason, the date
2 that we signed for it is of March 1.

3 Q Yeah. Yeah. And what I'm suggesting to you
4 is -- and what I'm suggesting to you is because these were
5 all done in anticipation of your March 1st appointment, in
6 which you missed; and I think we agreed that you missed.
7 So I'm saying if they basically took this from whatever
8 file you had showed up and had you sign it.

9 So I guess the inference I'm trying to make is,
10 is that you more likely than not didn't receive the keys
11 to the apartment or the keys to actually enter the complex
12 until you signed the lease on March 6, 2008. Would you
13 agree with that?

14 A That's -- that's the day we signed the agreement
15 yes.

16 Q Okay. Now, isn't it true that you took
17 possession of the Nevada abode -- the Nevada apartment
18 approximately eight days after you registered to vote in
19 Nevada and obtained a Nevada driver's license?

20 A Yes. And I think we have indicated that.

21 Q Yeah. No, I'm just -- so this is my
22 understanding of the timeline, is that you check into a
23 hotel about February 5th; true?

24 A 25th.

25 Q Okay. The 25th. Yes, I'm sorry. Yeah.

1 A 25th.

2 Q Yeah. And that you remained in that hotel for a
3 couple of days; true?

4 A Yes, while we're looking around for an apartment
5 and everything else and to get all of our affairs in
6 order.

7 Q And while you're in that apartment, that's when
8 you go the DMV and register to vote and get a driver's
9 license; true?

10 A Yes.

11 Q Yeah. And then you check out of the hotel on the
12 28th, I believe; true? And what day do you check out of
13 the hotel in Nevada? Do you recall?

14 A No.

15 Q Okay. Do you recall what hotel you stayed at in
16 Nevada?

17 A No.

18 Q Now, our records reflect that the apartment was
19 about 1,150 square feet. Is that your recollection?

20 A 1,306 square feet?

21 MRS. BRACAMONTE: 1,100.

22 Q 1,150.

23 A 1,150. Okay. Does it say that in the paperwork?

24 Q I think those are records that we got from, you
25 know, from just doing basic research on the apartment?

1 A Okay. I don't remember what it was. It was a
2 one-bedroom apartment.

3 Q It was a one-bedroom apartment. Okay. That was
4 the next question I was going to ask. And then you rented
5 that for \$895 a month; true?

6 A \$915.

7 Q Well, I thought the rent was \$895, and then you
8 had to pay, like -- like, you pay water or something?

9 A Well, hold on please.

10 JUDGE TAY: This is Judge Tay. Sorry to
11 interrupt. But, Mr. Hofsdal, it's about 1:00 o'clock --

12 MR. HOFSDAL: Okay.

13 JUDGE TAY: -- or actually, it's a little after
14 1:00 o'clock. I'd like to break for lunch --

15 MR. HOFSDAL: Sure.

16 JUDGE TAY: -- soon if -- maybe we can wait for
17 Mr. Bracamonte's answer here, and then after that break
18 for lunch. Is that okay?

19 MR. HOFSDAL: That's perfect.

20 JUDGE TAY: Okay.

21 MR. BRACAMONTE: Yeah, on the first page of the
22 rental agreement \$915 a month, which is \$895 plus another
23 \$20 -- it looks like water -- excuse me -- yeah, water and
24 sewer.

25 MR. HOFSDAL: Okay. Great. All right.

1 JUDGE TAY: Okay. Thank you. Well, we've made
2 it to a little past 1:00 so far. We'll take a 30-minute
3 lunch to come back at, let's say, 1:00 -- 1:30. Okay.
4 We'll return on the call.

5 So we'll go off the record.

6 (A lunch recess was taken.)

7 JUDGE TAY: Thank you. Sorry about that.

8 Mr. Hofsdal, please go ahead.

9 MR. HOFSDAL: Sure.

10 BY MR. HOFSDAL:

11 Q Mr. Bracamonte, can you hear me okay?

12 A Yes, I can.

13 Q Okay. Great. Great. Now, when we left off, we
14 were talking about in your apartment. One of the things
15 that went through all of your credit cards statements and
16 bank statements and the like, and I didn't see any charges
17 or invoices for any moving companies. Did you hire any
18 moving companies to help you move stuff from California to
19 your Nevada apartment?

20 A No, we didn't. We did our own moving.

21 Q Okay. And, basically, everything you took to the
22 Nevada apartment is what you could fit into your Chevy
23 Avalanche; is that true?

24 A Yes.

25 Q If you could look at Exhibit 3-11 page? It's

1 Exhibit 3, page 11.

2 MRS. BRACAMONTE: Exhibit 3, page 11.

3 MR. BRACAMONTE: I have it.

4 BY MR. HOFSDAL:

5 Q Okay. Great. It looks like from Exhibit 3,
6 page 11, that you and your wife were assigned one parking
7 space; is that true? Parking space 5.

8 A I'm looking at page 11. That's a water heater
9 agreement on -- in Exhibit 3.

10 Q Exhibit 3 and that's the Arroyo Grande packet.
11 And I thought it was page -- in the 11th it says,
12 "Automobile Registration."

13 A No. I'm just looking at the page numbers on the
14 bottom. But okay, I see that. It says page 6 on the
15 bottom?

16 Q Yeah. Oh, yeah. It does say page 6 on the
17 bottom. It gets confusing A's, letters, multiple letters.

18 A Okay.

19 Q But for our purposes it's the 11th page of
20 Exhibit 3, and that's the way I'll identify the documents.

21 A Yeah.

22 Q And -- okay. Now, it looks like you were
23 assigned just -- and your wife were assigned just one
24 parking space, parking space Number 225; is that true?

25 A Oh, yeah. I see it.

1 Q Yeah. Is that your understanding?

2 A Yeah. What is the question?

3 Q That you and your wife were just assigned one
4 parking space?

5 A Yeah. If I recall, every apartment has one
6 assigned space, and there's open space parking.

7 Q Okay. And it's my understanding from the lease,
8 that you and your wife were allowed to park up to two
9 vehicles at any one time; is that correct?

10 A Yes. We registered two vehicles.

11 Q Right. Yeah. And looking at that page -- and
12 you registered both the Escalade and the Avalanche. Do
13 you see that?

14 A Yes.

15 Q Okay. And do you recall, when you moved into the
16 apartment on March 6th, did you arrive in the Escalade or
17 did you arrive in the Avalanche?

18 A Well, we probably -- we would have arrived in the
19 Avalanche because we would be carrying stuff with us.

20 Q And then right above the "Car One" description
21 was described as the Escalade. It says, "Registered owner
22 if different from above." Do you see that?

23 A Yeah.

24 Q Okay. And you had identified earlier that at
25 some point, I believe in 2008, that you and your wife had

1 taken over the Jimsair lease on that Escalade; true?

2 A Yes. Correct.

3 Q So when you moved into this apartment, were you
4 the registered owner of the Escalade or was Jimsair the
5 registered owner of the Escalade?

6 A Jimsair.

7 Q And is there a reason why you didn't put Jimsair
8 on that?

9 A The Escalade? Yes. It's a lease.

10 Q Yeah. No. I'm just looking at the automobile
11 with the registration just to see if -- if -- that the
12 registered owner was left blank. That's all. That's the
13 point I'm making. Yes?

14 A Oh, up above?

15 Q Yeah.

16 A Yeah. It didn't seem to be that important.

17 Q Okay. All right.

18 A It's just for an apartment. Yeah.

19 Q Okay. I got you. It's just for the apartment.
20 All right. Was there ever a time when both the Escalade
21 and the Avalanche was in Nevada at the same time?

22 A The Escalade was never registered in Nevada. I
23 don't think it was --

24 MRS. BRACAMONTE: Or the -- was there ever a time
25 they were both -- we had both cars there?

1 MR. BRACAMONTE: Oh, both cars there. Sure. I'm
2 sure. Yes.

3 BY MR. HOFSDAL:

4 Q Yeah. Okay. And how frequently in 2008 did you
5 have both cars in Nevada?

6 A Oh, I wouldn't know that right now, you know.

7 Q Okay. So were there times when both you and your
8 wife drove from San Diego to Las Vegas in separate cars?

9 A Yeah. We probably left separate times or
10 something.

11 Q Okay. Fair enough. Now, did you have any other
12 vehicles in Nevada while you occupied the apartment, other
13 than the Escalade and the Avalanche? Perhaps the motor
14 home?

15 A No. I don't recall bringing any other vehicles
16 up there.

17 Q Just the --

18 A We might have used the Excursion with the trailer
19 or brought stuff up from -- yeah. We bought some
20 furniture down in Lake Havasu for the house here in
21 Henderson, and we kept a storage down there. We may have
22 used the -- we had an Excursion.

23 Q Okay.

24 A We may have used that to bring some of the
25 furniture up.

1 MRS. BRACAMONTE: Not for the apartment.

2 MR. BRACAMONTE: But not for the apartment.

3 BY MR. HOFSDAL:

4 Q Not for the apartment. That's the question I
5 had. Now, I have questions about in your stays in hotels.
6 I looked at the different card transactions, and I noticed
7 that throughout the period -- and you had the lease on the
8 apartment -- you also stayed at hotels in Las Vegas; is
9 that true?

10 A My wife at different times would bring her father
11 up here and get him a hotel.

12 Q Okay. All right. Do you -- while you occupied
13 the apartment, do you ever recall being in the apartment
14 and your wife was not?

15 A Probably the other way around. Yeah, probably
16 the other way around.

17 Q The other way around. Okay. So there were times
18 when your wife was in the apartment in Nevada, and you
19 were not?

20 A She was, yeah. She was in town with her dad.

21 Q Okay. How frequently was your wife in town with
22 her dad and you were not, while you rented the apartment?

23 A I wouldn't -- I wouldn't know that right now.

24 Q Was it more than one time?

25 A Yeah. I don't know how many times.

1 Q Okay. Okay. So you're not able to provide an
2 estimate, but do you believe it was more than once?

3 A No. No. Yeah.

4 Q Okay. All right.

5 A She passed away.

6 MRS. BRACAMONTE: Who passed?

7 MR. BRACAMONTE: He said mother-in-law.

8 MRS. BRACAMONTE: No, no, no. I mean, he said,
9 "You can't provide an estimate of how many times."

10 MR. BRACAMONTE: No. I said no.

11 BY MR. HOFSDAL:

12 Q So just so there's no confusion, I asked if you
13 are able to estimate how many times your spouse and your
14 father-in-law --

15 A Oh, father-in-law.

16 Q -- was in your Nevada apartment and you were not?

17 A Yeah. I wouldn't know.

18 Q You wouldn't know?

19 A Yeah. No recall.

20 Q Now, I want you to look at Exhibit 4. That's the
21 registration for the auction.

22 A Yes.

23 Q Okay. Now, it said that -- it says on the -- I
24 guess the "hello1bracamonte", that you put it there for
25 registering, "You have successfully signed up for a huge

1 two-day Las Vegas area foreclosure auction." So did you
2 attend the auction on both days?

3 A I think we did just one day.

4 Q Just one day. Okay.

5 A Do you recall? Okay. My wife seems to think it
6 was two days.

7 Q Two days. Okay. Yeah. Just so we're clear,
8 is -- your wife overheard the question and confirmed that
9 you attended both days of the auction; is that true?

10 A I don't recall right now, to be frank with you.

11 Q What's that? Okay. And you also said that there
12 was auctions every week or so in Las Vegas, but this is
13 the only auction you attended from the time you occupied
14 the apartment in March through your first offer or even
15 retaining the house broker; is that true?

16 A Yes, that's true.

17 Q Okay. Now, I looked over this document,
18 Exhibit 4, in pretty good detail, and I didn't see any
19 notice on there where you were required to provide a
20 \$5,000 deposit or anything confirming that they actually
21 received a \$5,000 deposit. So my question to you is, were
22 you provided any receipts or any documentation reflecting
23 the payment of and the receipt of \$5,000?

24 A Yes. We -- we took a cashier's check out of
25 Wells Fargo there while we were in Henderson.

1 Q Okay. And then you brought that \$5,000 cashier's
2 check to --

3 A To the auction company here.

4 Q Okay. And the auction company received that
5 \$5,000 check?

6 A Yes.

7 Q How was that \$5,000 dispersed back to you after
8 the auction ended?

9 A I think it was just a reimbursement.

10 Q Okay. So did they give you a check or cash?

11 A Probably had to be a check.

12 Q A check. And do you recall how soon after the
13 close of the auction you received that check back from
14 Wells Fargo?

15 A No, I don't.

16 Q Okay. Was it the same day of the auction? So
17 you recall if it was the same day of the auction?

18 A I don't recall.

19 Q You don't recall?

20 A No.

21 Q Okay. Now, I'd like you to look at Exhibit BB-8.
22 A little Star Wars reference by accident, I guess.

23 MRS. BRACAMONTE: What is the exhibit again?

24 BY MR. HOFSDAL:

25 Q Exhibit BB, page 8.

1 A BB.

2 Q We have it marked there, so it should be easy to
3 find.

4 A Yeah.

5 Q And the account we're looking at here ends in
6 1412, and that's your San Diego-based account; true?

7 A I'm not sure.

8 Q Okay. If you go back to B-1, the same account
9 ending in 1412 has activity dating back to December 2007.
10 Does that refresh your memory at all with whether or not
11 the same account in March was your San Diego-based Wells
12 Fargo account?

13 A I'm looking at -- well, I'm looking for the
14 previous exhibit that shows the Wells Fargo account that
15 we opened. Okay. That account is not one of the ones we
16 opened in Nevada.

17 Q Right. So would you agree with me that the page
18 we're looking at, BB-8, it reflects activity in your San
19 Diego-based account?

20 A Okay.

21 Q And then I'm looking at the entry on March 21st.

22 A Yes.

23 Q A withdrawal of \$5,000?

24 A Yes.

25 Q And that's the withdrawal for the auction,

1 allegedly?

2 A Yes, it appears to be.

3 Q Okay. So does that refresh your memory as to
4 whether or not you had withdrawn that money from San Diego
5 or from a Henderson, Nevada, Wells Fargo?

6 A Well, we withdrew it from this account, the 1412.

7 Q Okay. Okay. Fair enough. Now, I want you to go
8 to -- this is kind of towards the end -- BB-103?

9 A Yes.

10 Q Okay. Now, it's my understanding that this is
11 one of the new accounts you opened up in Las Vegas; true?

12 A Okay. Yes.

13 Q Yes. So it's my understanding that about this
14 time, March 21st, 2008, you're closing your Wells Fargo
15 bank in San Diego, and you're opening up a Wells Fargo
16 bank in Nevada; is that true?

17 A Yes.

18 Q Okay. So now I want you to look at the first
19 entry on that account -- or second entry on that account.
20 I'm sorry -- on BB-103.

21 A Yes.

22 Q And that shows an ATM deposit of \$5,000 on
23 March 22nd. Do you see that?

24 A Hm-hm.

25 Q So you agree with me that's the 5 -- the same

1 \$5,000 you took out of the bank the day before?

2 A Let's see the auction date. Well, it looks like
3 we were at the auction only one day.

4 Q Now, the auction is a two-day event that ends on
5 the 23rd; true?

6 A 22nd or something.

7 Q It ends on the 23rd. It's a two-day auction. It
8 starts on the 22nd. It runs through the 23rd; true?

9 A What exhibit was that again?

10 Q BB-103.

11 A According to this exhibit -- no, no, the auction.
12 Hold on.

13 Q Okay. It's your exhibit. It's Exhibit 4.

14 A Yup. It looks like one of the dates is the
15 March 21st.

16 Q Yeah.

17 A And then the second date is March 22.

18 Q Right.

19 A Okay.

20 Q You took money out of the bank on March 21st from
21 your old account in San Diego. And then you put a \$5000
22 deposit the next day, which happens to be the first day of
23 a two-day auction back in an ATM on 3/22.

24 A Yeah, I recall now what it was. If -- if -- once
25 you register and you bid on a property and you succeed on

1 a property, you had to put an immediate \$5,000 down. So
2 we didn't give money to the auction house. We kept it
3 with us.

4 Q So you didn't get a certified check like you
5 testified to?

6 A Well, now I thought. But now this refreshes my
7 memory where --

8 Q Okay.

9 A -- we had -- every bidder had to place \$5,000
10 down, if you succeeded in bidding for a house at the
11 auction.

12 Q Okay. Okay. Fair enough. Now, on Exhibit 4 I
13 want to pay attention -- I want you to pay attention to
14 the date and the time that the confirming e-mail was sent.
15 Do you see that?

16 A Exhibit 4?

17 Q Yeah. Page 1, the first page of Exhibit 4.

18 A Okay. I don't -- I don't see the -- when the
19 e-mail was sent.

20 Q It says, "On the Date". It's about third of the
21 page down it has the date, and then it shows -- it has a
22 date, a time stamp of 20:30 and 14 seconds. Do you see
23 that, which is 8:30 p.m.?

24 A Yes.

25 Q Okay.

1 A That's right after the date, right? Yeah.

2 Q Yeah. So now it looks like the -- it looks like
3 before you registered for the event you withdrew \$5,000
4 cash from a San Diego-based bank account. Do you agree
5 with that?

6 A That's what it appear to be. Yes.

7 Q So then how did you know you would need a \$5,000
8 deposit before you actually had registered for the event?

9 A It wasn't on the website.

10 Q So there's no possibility then, as far as you
11 recall, that all is what you were merely doing here, is
12 transferring \$5,000 cash --

13 A No.

14 Q -- from the same account in San Diego you were
15 closing, to a Nevada bank account that you were opening
16 up?

17 A No. That wasn't the case.

18 Q All right.

19 A If anyone succeeded in a bid, they were required
20 to put \$5,000 down.

21 Q Right. I also want you to look at Exhibit BB-8
22 again. Let me know when you're there.

23 MRS. BRACAMONTE: D? What is --

24 MR. BRACAMONTE: Which one?

25 MR. HOFSDAL: BB-8.

1 MRS. BRACAMONTE: BB-8. Okay.

2 BY MR. HOFSDAL:

3 Q And the transaction after the withdrawal, it
4 shows that you had a purchase at a JC Penny store on
5 March 22nd -- that would be the day of the auction -- in
6 Lake Havasu City?

7 A Hm-hm.

8 Q So did the auction occur --

9 A Yeah.

10 Q -- the same day?

11 A We attended the auction.

12 Q Okay. Now, I want you to go ahead and look at --
13 and now in looking at your financial records you provided
14 to us, you know, just a summary of it, -- and you could
15 disagree with me if you'd like -- but it looks like on
16 your cards you kind of had some -- some high balances.
17 And there's a couple of penalties for not paying on time,
18 a couple of bounced checks, things like that. You had a,
19 you know, in litigation in Mexico when you were working
20 out a deal with your Mexican attorney in that lower the
21 cost and fees because of the financial pressure you were
22 under because of the litigation, not only in Mexico, but
23 the litigation with the city of San Diego.

24 So my question for you is, is that if you would
25 have prevailed in one of these auctions, what proceeds

1 would you have used to pay for that home? It's my
2 understanding of foreclosure auctions that cash is king.
3 You had to have cash to go ahead and pay that.

4 A Well, we had -- I had two choices. We either
5 finance it. The other thing is that the business had \$2
6 million in cash in the bank.

7 Q Okay.

8 A So, you know, my wife and I as the owner of the
9 business, we had some flexibility.

10 Q Okay. So it was -- so at the time you went to
11 the auctions the possibilities were, as far as purchasing
12 a house, were either A, Jimsair was going to buy the
13 house?

14 A No, no. If A, finance it; B, if needed to, I'd
15 borrow the money from Jimsair.

16 Q So your -- and the question I have though, is my
17 understanding of foreclosure auctions is that cash is
18 king. That when you purchase a foreclosed home, you don't
19 have the option of taking even a day or two days or a week
20 or a month to finance that property. You have to pay cash
21 for that property I believe the same day; isn't it?

22 A No, no. There's actually people there that
23 provide financing at these auctions.

24 Q Okay. And did you make arrangements in advance
25 to go ahead and potentially get the approval to finance

1 one of these homes?

2 A No, because we didn't know what we may have, you
3 know, what we would end up with or even the price range.

4 Q Right. So the bottom line is, at the time you
5 went to this auction, you did not have the liquidity to
6 buy a home; is that true?

7 A Only through the business. Borrow through the
8 business, if you're asking me if we had to pay cash in a
9 short period of time.

10 Q Okay. Fair enough. Now, I want you to go ahead
11 and look at paragraph 8?

12 A Which one?

13 MRS. BRACAMONTE: Paragraph 8 --

14 MR. HOFSDAL: Paragraph 8 of your declaration.

15 MRS. BRACAMONTE: -- of your declaration.

16 MR. BRACAMONTE: Oh, my declaration. Okay. Yes.

17 BY MR. HOFSDAL:

18 Q Okay. Go ahead and read that, and let me know
19 when you're finish with it.

20 A Yes. Okay.

21 Q Okay. Now, we've already concluded, based on
22 Exhibit F, which is a document that you provided, that you
23 didn't spend a night in Nevada in the month of May. So is
24 it more likely than not that you had met with Mr. Robinson
25 in early June of 2008?

1 A You know, right here it says May. We may have
2 met him in April.

3 Q April. Okay.

4 MR. BRACAMONTE: We hadn't met at the auction?

5 MRS. BRACAMONTE: No. When I was out looking at
6 open houses, I met him.

7 MR. BRACAMONTE: Okay. My wife met him when she
8 was out looking at open houses.

9 BY MR. HOFSDAL:

10 Q Great. All right. Now, isn't it true that when
11 you offered the house -- offered to buy the house that
12 you're now in, isn't it true that you purchased that home
13 with the proceeds from the Jimsair sale?

14 A Yes.

15 Q And prior to the sale of Jimsair, the only way
16 you would have been able to pay for a house would have
17 been from getting a loan from Jimsair. Is that what you
18 testified to earlier?

19 A If -- if it required the cash up front, yes.
20 That would have been the simplest for me.

21 Q Okay. Now, just go ahead and look at
22 Exhibit BB-94?

23 A 94?

24 Q Yeah. BB-94?

25 A Yes.

1 Q Okay. Now it looks like this was an account that
2 was opened in August 7th of 2008. Would you agree with
3 that?

4 A Yes.

5 Q So isn't it true that the proceeds from the
6 Jimsair sale, which looks like the tele transfer,
7 transaction VLO, wherever they may have been initially,
8 they eventually wound up in this new Wells Fargo account
9 that was opened up on August 7, 2008; is that true?

10 A I -- I don't know when this account was opened.
11 I don't know when this account was opened.

12 Q It just shows a beginning balance. It's the
13 first statement of that account that --

14 A I see. Yeah. I see, but I don't --

15 Q And it shows a beginning balance on 8/7 of zero
16 dollars?

17 MRS. BRACAMONTE: It's when we transferred down
18 from -- when we transferred.

19 MR. BRACAMONTE: Okay. Oh, okay. Yes. My wife
20 reminded me that they transferred us down to the -- to the
21 main branch on Howard Hughes Parkway.

22 BY MR. HOFSDAL:

23 Q Okay. So -- and the point I'm making is pretty
24 simple. It's just that the Jimsair proceeds eventually
25 wound up in a Las Vegas bank account that was opened on or

1 about August 7 of 2008. Would you agree?

2 A That was the recommendation from the bank on what
3 we told them what was come in and everything else. And
4 because it was a high-dollar amount, they wanted to open a
5 different type of account, and they moved us over to the
6 main branch on Howard Hughes Parkway.

7 Q Okay. Fair enough. And then just below that a
8 couple of pages down, it shows a withdrawal for \$677,494.
9 That's the sale of the home; right? That's the escrow for
10 the purchase of the home?

11 A Yes. Yes.

12 Q Okay. Now, I want you to go and look at page --
13 paragraph 10 of your declaration?

14 A Yes.

15 Q Okay. And paragraph 10, I guess the part I'm
16 referring to and want to talk about now is the part where
17 you say that you never forwarded your Nevada mail to
18 Nevada. Do you see that -- or to California. Do you see
19 that?

20 A Yes, the last -- the last sentence?

21 Q Yeah. You never forwarded your mail to
22 California. Do you still understand that to be true?

23 A Yes. I don't recall any -- ever forwarding mail
24 to California.

25 Q And the reason why I ask is that, you know, as we

1 talked about when we look at your declaration, is you
2 essentially did not spend a single night of the month of
3 May in Nevada. And if you look at your presence in Nevada
4 for the month of April, you know, you're barely there as
5 well.

6 So it just seems kind of strange to me that you
7 would not have your mail forwarded to you when you were
8 essentially gone from Nevada for about a two-month period
9 and were in California. Are you certain that you did not
10 have your -- your Nevada mail forwarded in the months of
11 April and May?

12 A I don't recall doing it.

13 Q You don't recall doing it. All right. And then
14 in paragraph 12 you state that you terminated your PO Box
15 in Escondido on July 23rd, 2008; true?

16 A Yes.

17 Q Okay. And this was approximately a week after
18 you sold Jimsair; true?

19 A Yeah. Yes. More or less.

20 Q Yeah. And if you could just move to Exhibit 7,
21 and that's the change of address confirmation.

22 A Okay. I have it.

23 Q And if you read the first paragraph, it looks
24 like you notified the postal service to start the change
25 of address on July 23rd, 2008. Do you see that?

1 A Yes. But that's only for what -- what hadn't
2 been switched over.

3 Q Yeah. And I guess that's the issue I have
4 with -- I mean, what exactly is switched over that was
5 important if you're spending so much time in California,
6 in fact, virtually two months, and you are not forwarding
7 it to California. Do you understand the dilemma I have?

8 A I hear what you're saying, but we -- you know,
9 there's a lot of -- there's a lot of our correspondences
10 that have the address changes on it.

11 Q Yeah, yeah.

12 MR. MARKOW: I hate to interrupt. And I hate to
13 interrupt. I know we're not using -- the questions are
14 getting pretty argumentative.

15 MR. HOFSDAL: I don't -- I don't think they're
16 getting argumentative at all. I'm just trying to -- it
17 may be compound, but --

18 MR. MARKOW: I'm addressing -- I'm addressing the
19 Judges, and I hope you would do the same.

20 JUDGE TAY: Thank you, Mr. Markow.

21 Mr. Hofsdal, you can continue with your
22 questioning, but if you could just keep it amicable and --
23 please continue.

24 MR. HOFSDAL: Yeah.

25 BY MR. HOFSDAL:

1 Q Now, I want you to look at paragraph 13 from your
2 declaration.

3 A Paragraph 13. Okay. Yes.

4 Q Okay. And do you see in Box 11 where it says, "I
5 swear and affirm?"

6 A See what again?

7 Q In Box Number 11 it says, "I swear or affirm."

8 A Oh, I'm reading -- I'm reading my declaration.

9 Q No. No. The document?

10 A What document do you want me on?

11 Q Okay. First, I want you to read and review your
12 paragraph 13, which is about registering to vote?

13 A Okay. On my declaration, yes.

14 Q And then I want you to go ahead and turn to
15 paragraph -- or Exhibit 8?

16 A Eight. Okay.

17 Q And then in Exhibit 8 if you look, there's
18 numbers corresponding to different elements of the
19 application?

20 A Okay.

21 Q Okay. And there's a paragraph numbered 11. Do
22 you see?

23 A Yes.

24 Q Okay. And do you see one, two -- about three
25 lines down starting at the end it says, "The present

1 address listed herein is my sole legal place of residence,
2 and I claim no other place as my legal residence." Do you
3 see that?

4 A Sure.

5 Q Okay. And then you sign and dated that on
6 February 27, 2008; true?

7 A Yes.

8 Q And the address you identified is the apartment
9 address; true?

10 A The -- yes. The apartment address is on the
11 application here.

12 Q Right. So I understand that when you sign this
13 document you had a future intent to make that a legal
14 place of residence for you. But isn't it true that at the
15 time you signed this document that you did not have
16 possession of an abode as residence is defined in
17 Nevada -- in Nevada?

18 A We -- we had already signed the agreement for the
19 apartment.

20 Q I guess my question is, Mr. Bracamonte, is did
21 you jump the gun by registering to vote before you had a
22 permanent abode in Nevada?

23 A Well, I have one document here signed the 26th at
24 the apartment.

25 Q But you did not possess that apartment on the

1 26th; true?

2 A Well, I didn't know it at that time.

3 Q You didn't know what?

4 A When exactly we were going to take possession of
5 it.

6 Q Well, you knew when you signed the voter
7 registration that you did not possess that property at
8 that time; true?

9 A Well, now I disagree with what you're trying to
10 do here. It's just our real intention was to have an
11 apartment, relocate in Nevada. And if we're off a day or
12 two, I'm not sure I understand what the issue is.

13 Q Well, I guess the issue is whether or not you
14 essentially jumped the gun in one, registering to vote and
15 two, obtaining a driver's license as you have to be a
16 Nevada residence to A, vote, to B, register to vote. And
17 residency in Nevada is defined by possessing a permanent
18 abode, of which you may have had an agreement to possess a
19 future abode. But at the time you signed this document
20 and had your driver's license, do you agree with me that
21 you did not have possession of a permanent abode in
22 Nevada?

23 A There was no voting in Nevada for another five or
24 six months.

25 Q I understand that. I know -- I think the next

1 election was in August?

2 A Okay. I do not agree with what you're trying to
3 do. Even though we -- this was just all automatic at the
4 time we obtained our driver's license. There was no -- no
5 voting that took place in Nevada, I think, for another
6 five or six months. And so I'm not sure I see what the
7 issue is.

8 Q Well, I'll try one more time, and then we'll move
9 on. It's that you affirmed, and you swore that you had a
10 legal place of residence at the time you signed this
11 document on February 27th, 2008. And the reality is you
12 did not, at that time, possess a legal residence in
13 Nevada?

14 A I -- I had something to go show the DMV because
15 the apartment address is on here, and our mailing address
16 is on here. So we had to have some kind of proof to take
17 to the DMV that was satisfactory.

18 Q But I'm talking about what may or may not have
19 satisfied the DMV. I am talking about your affirmation
20 where you swear that you had a legal place of residence in
21 Nevada on February 27th, and you did not?

22 A Whatever documentation we supplied to the DMV
23 showed our mailing address and the apartment, and
24 obviously it was satisfactory.

25 Q So my question now is, why did you feel compelled

1 to get a Nevada driver's license and register to vote in
2 Nevada before you even had possession of an apartment in
3 Nevada?

4 A We couldn't -- I think we mentioned earlier in
5 the questioning, we couldn't get an apartment unless we
6 had a mailing address. And so the -- or we couldn't get a
7 driver's license or register our vehicle unless we had a
8 place -- an address and a place to live. So it was almost
9 like a catch 22. Which do you do first in order to
10 complete the cycle here?

11 I'm telling you that, just looking at this
12 document, we took the apartment agreements with us to the
13 DMV. We took the Outpost mailbox information to the DMV,
14 and it was satisfactory to them. And we obtained our
15 driver's license. We weren't really ready to register the
16 car because that took time. But the documents that we had
17 in our possession that we took to the DMV was satisfactory
18 for this application.

19 Q Okay. I don't think you're asking the question.
20 I understand all that. But my question to you is, what
21 compelled you to apply for a Nevada driver's license
22 before you even had a permanent abode and register to vote
23 in Nevada before you had a permanent abode, when under
24 Nevada law, you had 30 days to obtain a California [sic]
25 driver's license. And as you suggested, the next election

1 in Nevada was not until August of 2008?

2 A We -- we decided to relocate to Henderson. And
3 one of the first thing on the list was driver's licenses,
4 place to live, a mailbox, and then we started changing
5 addresses. We obtained an attorney later on to update our
6 trust with the intention that we would buy a house in
7 Nevada using the trust.

8 So, you know, I -- I don't think there's a
9 checklist that says you have to do this first and this
10 second. We were doing the best we could to complete the
11 cycle, you know, to relocate. And we started with those
12 items: The apartment, the mailbox, our driver's license,
13 voter registration.

14 Q So what I understand from what your telling me,
15 and you can correct me if I am wrong, is that you either
16 had a list or somebody provided a list to you of things
17 you needed to do in order to become a California
18 non-resident; is that true?

19 A Nobody provided a list. It was obvious that,
20 yeah, whatever we had or did in California has to be
21 replicated over in a different state.

22 Q Okay. So -- so in other words, you were kind of
23 akin to following a recipe, right, in order to be deemed a
24 California non-resident, I needed to do X, Y, and Z; is
25 that true?

1 A I lost you there.

2 Q Okay.

3 A I didn't hear you.

4 Q From what I gather from what you had testified to
5 just a couple of minutes ago, you had actually called it a
6 list, a list of things to do. And that was voter
7 registrations, driver's license, hiring an attorney and
8 stuff like that. And I'm just saying -- and I'm
9 suggesting and asking you, did you have a list of things
10 you had to do or things you believed you had to do in
11 order to be deemed or considered a non-resident of
12 California?

13 A Yeah, we probably made a list of things we had to
14 do.

15 Q Right. So, basically, what you were doing at
16 your earliest convenience was you're basically trying to
17 check off as many of the items on that list as you
18 possibly could do; true?

19 A Yes. We had a lot of -- there were a lot of
20 things that we needed to do.

21 Q Okay. Just give me a second here. I lost my
22 place.

23 A Sure.

24 Q It's also my understanding that under Nevada law
25 that they actually have a reciprocity type of agreement,

1 whereby, you have a Nevada driver's license -- oh, excuse
2 me -- whereby, if you have a California driver's license,
3 in lieu of taking a written test and a driving test, alls
4 you have to do is merely turn in your California license
5 in order to obtain a Nevada license; is that true?

6 A I don't know.

7 Q Okay.

8 A We -- we did turn in our driver's license.

9 Q And you didn't have to take a written test or a
10 driver's test or anything; true?

11 A We don't seem to remember that.

12 Q Now, isn't it true that when you moved into your
13 Nevada home in September that you changed voting
14 precincts?

15 A We don't -- I don't -- we don't -- I don't
16 recall.

17 Q Okay. You don't recall if you had to change from
18 the 8th precinct to the 9th one? And do you recall --

19 A You know, we're -- we're five miles from where
20 the apartment used to be. So, you know --

21 Q So you don't -- and you don't recall on or about
22 June 11th of 2009, some nine months after you moved into
23 the Nevada home, that you had to reregister in your new
24 district?

25 A This is in 2009 you say?

1 Q Yeah, in 2009. So what I'm saying is you bought
2 your home in September; right?

3 A No, I don't recall that.

4 Q Okay. So you have no recollection of needing to
5 change precincts, or the like, after you purchased your
6 Henderson home?

7 A Do you mean a change of address?

8 Q No, in order to vote, voter registration.

9 A I don't -- you know, we don't recall it.

10 Q Okay. Fair enough. Now, isn't it true that
11 Nevada residents have to register all of their vehicles
12 that they're operating on Nevada roads at the time they
13 apply for a Nevada driver's license?

14 A I don't know what the law is here.

15 Q Okay. Nevada Revised Statute 482.385, basically,
16 informs the people who are moving from one state into
17 Nevada, that they have either 30 days or the date that
18 they obtained their driver's license to register their
19 vehicles that they're going to operate on Nevada highways.
20 Were you aware of that?

21 A No.

22 Q Now, that statute also compels persons who work
23 at the Department of Motor Vehicles to inform people who
24 apply for a driver's license that this is the law, and
25 this is the requirement under Nevada law?

1 A Okay.

2 Q Do you remember as to whether or not you were put
3 on notice at the time you applied for a driver's license
4 that you also had to register your car in Nevada?

5 A I don't remember anyone putting us on notice.

6 Q Okay. And isn't it true that the only vehicle
7 you registered in Nevada was the Chevy Avalanche, despite
8 driving other vehicles on Nevada freeways and roadways?

9 A Well, I told you the Escalade that my wife drove
10 was registered to Jimsair. The other personal car was the
11 Avalanche that I drove.

12 Q But it's my understanding -- and you could
13 correct me if I am wrong -- that on or about June 8th, you
14 and Mrs. Bracamonte assumed the lease of the Escalade and
15 thus transferred title from Jimsair to you?

16 A That's right.

17 Q Okay. So did you, at any time after that
18 transfer, register that vehicle, which you admitted
19 earlier was on Nevada roadways, in order to comply with
20 Nevada law?

21 A The lease on that vehicle was just a few months
22 away. We weren't going to go reregister it. It was a
23 lease that we were going to turn -- we were going to turn
24 the vehicle back in.

25 Q Yeah. I understand that, but the question is,

1 did you comply with Nevada law, which requires vehicles
2 that is registered in your name and is driven on Nevada
3 roadways, to be registered in Nevada?

4 A The vehicle was not registered in Nevada.

5 Q Okay. And it's my understanding that the Chevy
6 Avalanche was registered in Nevada about three months or
7 so after you obtained your California driver's license;
8 true?

9 A Yes.

10 Q So in theory, your duties as an alleged Nevada
11 resident as it pertains to registering that vehicle, were
12 not complied within a timely basis. Would you agree?

13 MR. MARKOW: That would cause for him to
14 interpret the statute and determine its timeliness under
15 the statute. Your Honors, he can ask when he registered
16 or didn't, but that's a complete legal question.

17 JUDGE TAY: This is Judge Tay. Mr. Hofsdal, I
18 think you can move on to your next question. We
19 understand your point.

20 MR. HOFSDAL: Okay. Thank you.

21 BY MR. HOFSDAL:

22 Q I'll move on to Exhibit 12-7. This is the
23 document that you pertained to earlier.

24 A The 7th one, did you say.

25 Q Yeah, the 7th one.

1 A Okay.

2 Q Okay. And just the language that you were
3 talking about with your attorneys earlier, talking about
4 the -- in the umbrella?

5 A Yes.

6 Q Do you see that?

7 A Okay.

8 Q And do you know who wrote that? I forget -- I
9 don't recall who you said may have written that?

10 A No. That's not my handwriting.

11 Q Okay. Now, the way I understand umbrellas to
12 work, and maybe you have no understanding, but is that you
13 have to have a couple of things. You need to have,
14 essentially, a personal liability policy that's somehow
15 associated with a home. So was your home in San Diego the
16 qualifying property in order to have an umbrella property
17 or an umbrella policy, excuse me.

18 A An umbrella may have been linked to that house.

19 Q And now I want you to look at Exhibit 12, pages
20 11 to 12, and that's the Jiffy Lube?

21 MRS. BRACAMONTE: Jiffy Lube.

22 MR. BRACAMONTE: Which one?

23 MRS. BRACAMONTE: The Jiffy Lube.

24 MR. BRACAMONTE: Oh, the Jiffy Lube. Yeah.

25 BY MR. HOFSDAL:

1 Q I have to find it. Sorry.

2 A Oh, here it is.

3 Q All right. And then the thing I want to point to
4 is the -- is the mileage. It looks like when you had that
5 car serviced, it was serviced at 46,546 miles. Do you see
6 that?

7 A Yes.

8 Q Okay. And if you go back to the inspection of
9 the vehicle, and that occurred about two weeks earlier,
10 right. The mileage on that report was 4,000 -- 44,782,
11 for a difference of about 1,764 miles driven in a two-week
12 span. Is it safe to say that you -- and when you came to
13 Nevada and went back to California that you typically did
14 so in that Avalanche?

15 A On June 13th?

16 Q On March 6, 2008, you had an inspection, and it
17 was 44,782 miles on it.

18 A This is Jiffy Lube?

19 Q Yeah. I'm looking at Exhibit 12 page 11.

20 A I have three Jiffy Lubes here. One is dated
21 March 21.

22 Q Right.

23 A The next one is dated May 19th.

24 Q Right?

25 A And then June 13th.

1 Q Right. Right.

2 A Okay.

3 Q And what I'm doing is I'm just taking us back two
4 weeks to March 6th, 2008, when you had your car inspected.
5 I believe that's --

6 A Oh, for the smog.

7 Q Yes. 12 --

8 A Oh, okay.

9 Q Do you see where the odometer was 44,784?

10 A Yes.

11 Q Okay. And the only thing I'm asking is, is based
12 on the difference in the miles, it looks like in a
13 two-week span you traveled some 1,764 miles; which leads
14 me to believe that when you traveled between California
15 and Nevada, you traveled in that Avalanche; true?

16 A Yeah, most -- most likely. And of course, if I
17 went down to downtown San Diego, I would use the
18 Avalanche.

19 Q Sure. So, basically, and the point I'm trying to
20 make -- and there's also a big mileage in discrepancy on
21 the next one as well in a very short period of time. But
22 the point I'm trying to make is -- and maybe not as clear
23 as I would like to -- is, essentially, that when you were
24 in California, that Avalanche was with you in California;
25 true?

1 A I -- we also used the Avalanche to go to Lake
2 Havasu.

3 Q True. Yeah. So where you were, the Avalanche
4 was?

5 A Generally, yes.

6 Q Okay. So when you were in -- for example, when
7 you were in California for the whole month of May, your
8 Avalanche was in California for the whole month of May as
9 well; true?

10 A Yeah, most likely.

11 Q Okay. Do you recall the Avalanche being in
12 Nevada when neither you nor your wife were in Nevada?

13 A Yeah. I think we took some flights out of there,
14 and we left the car there.

15 Q Okay. And when you took the flights out of
16 Nevada, did you fly to California or other places?

17 A Other places.

18 Q Other places, yeah. So it's pretty much true
19 what I said earlier is that, when you were in California
20 the Chevy Avalanche was with you in California?

21 A Yes.

22 Q Yes. Okay. And then if you can look at page 29
23 of your declaration, if you could read that?

24 A Okay.

25 Q Isn't it true that every vehicle you identified

1 in this paragraph, right, with the exception of the golf
2 cart, changed its registration from California to another
3 place after the sale of Jimsair?

4 A Yes.

5 Q Thank you. Now, I want to go talk about the cell
6 phones a little. If you could go to Exhibit 10, I believe
7 you talked about this a little bit with your attorney.
8 Okay. Now, I see from this AT&T statement that just you
9 received a cell phone. Yet, you testified earlier that
10 both you and your wife had received a cell phone. Is it
11 your understanding that both of you had received a Nevada
12 cell phone on February 26th?

13 A Yeah, we both -- we both did.

14 Q Okay. Because on page 2 it just shows Juan
15 Bracamonte with a number. I don't see anything about
16 Mrs. Bracamonte. So is that on a different agreement
17 that's not part of the record?

18 A It would have been a different agreement. I
19 eventually changed my number. She kept hers, but we got
20 them at the same time.

21 Q Now, isn't it true throughout the 2008 tax
22 year -- it's a whole year -- including the time when you
23 purchased the Henderson, Nevada home, isn't it true you
24 also maintained cell phones in California?

25 A I don't recall that.

1 Q With Verizon Wireless, perhaps?

2 A Might have been a company phone.

3 Q And would company expenses normally be coming out
4 of your personal bank account?

5 A I don't really remember. I don't remember. I
6 don't remember a --

7 Q Okay. Fair enough. Let's go ahead and look
8 at -- I won't go through each month but through the
9 relevant times. If you'll go to document BB-32?

10 MRS. BRACAMONTE: B --

11 MR. HOFSDAL: BB-32.

12 MRS. BRACAMONTE: BB-32.

13 BY MR. HOFSDAL:

14 Q And if you go one, two, three, four transactions
15 up from the bottom.

16 A Yup.

17 Q And then you see probably where the number is,
18 0001. Does that refresh your memory as to whether or not
19 the same time you maintained a cell phone in Nevada you
20 also maintained cell phones in California?

21 MR. BRACAMONTE: I don't recall. Do you?

22 I don't recall keeping it.

23 BY MR. HOFSDAL:

24 Q Okay. And let's try one more. Let's go to
25 BB-58?

1 MRS. BRACAMONTE: 58.

2 BY MR. HOFSDAL:

3 Q Yeah, BB-58. And the reason why I'm pointing
4 this out is that is well after the sale of Jimsair. I
5 just want to -- and if you go, 1, 2, 3, 4, 5, 6, 7, 8, 9,
6 10, 11, 12, 13 from the bottom?

7 A Yeah, I see that.

8 Q Okay.

9 A You see an AT&T right below it?

10 Q Yeah. I'm not disputing that you had a cell
11 phone in Nevada. The point I'm trying to make is that at
12 the same time you had a cell phone in Nevada, you also had
13 a cell phone in California.

14 A Yeah. Well, from the billing it looks that way,
15 but right now I -- we just don't recall that.

16 Q Okay. Fair enough. And just so you know, if you
17 go through the whole year, the charges in each month is
18 about the same. I'm not going through each month but --

19 A Okay.

20 Q And now I want to talk about the trailer a little
21 bit. If you can go to paragraph 18 of your declaration?

22 A You say 18?

23 Q 18, yeah. Paragraph 18.

24 A Okay.

25 Q All right. Now, it's my understanding this

1 trailer was some 28-feet long; is that true?

2 A It was what again?

3 Q 28 feet long?

4 A Yes. Yes.

5 Q Yeah. And eight-and-a-half-feet wide?

6 A Uh, eight -- eight-feet wide yeah.

7 Q Four wheels?

8 A Yes.

9 Q Okay. Now, we talked earlier about the cars that
10 were registered with the apartment or the vehicles, and I
11 don't think that 28-foot truck would fit in one of those
12 parking spaces anyway. So when you purchased that
13 trailer, where did you store it?

14 A Escondido.

15 Q In Escondido?

16 A Yeah.

17 Q Yeah. So you bought the trailer in Nevada and
18 then you drove it to Escondido and kept it in Escondido?

19 A We had some acreage there, so I had some room for
20 it.

21 Q Okay. Right. Now, what vehicle did you use to
22 tow this thing? I mean, the Avalanche seems like what --
23 like, about 7,500-pound capacity or so?

24 A We had two vehicles. The Dodge Ram --

25 Q Okay.

1 A -- and we had an Excursion.

2 Q Excursion. So when you picked up the vehicle in
3 the trailer center in Nevada, and you towed it down to
4 Escondido, did you use the Ram, or did you use the
5 excursion?

6 A Neither one. I had a third party deliver it.

7 Q Third party deliver it. Okay. While it was in
8 Escondido and for other purposes, you mostly used the Ram
9 and the Excursion?

10 A The trailer we normally -- I bought it for a
11 couple of reasons. I figure I was going to need it later
12 on here to Henderson bringing furniture up and everything
13 else, and moving some of this stuff out of Escondido, more
14 on the personal side, boxing up stuff. The other thing we
15 used it for was to tow a motor home.

16 Q And that's what I thought. I thought it was more
17 of a motor home purchase than anything. I know you went
18 to -- kind of my dream is to Utah, Wyoming, and Montana.
19 And I figured you probably towed that trailer behind the
20 motor home?

21 A Yeah.

22 Q Now, did you ever on occasion -- you know, I know
23 you had two Harleys. You bought the one there at Biggs
24 there in San Marcos, and then I believe you had a
25 Sportster too, right?

1 A What?

2 MRS. BRACAMONTE: A Sportster.

3 MR. BRACAMONTE: Oh, Sportster. Yes. The
4 Harleys you're talking about? Yes. Yeah.

5 BY MR. HOFSDAL:

6 Q That was the -- I used to represent Harley
7 Davidson. So I'm trying to think of this delicately.
8 Now, was the Sportster your wife's motorcycle?

9 A No. That was mine.

10 Q It was yours? Okay. I didn't mean to insult
11 you. And the one you bought at Biggs and that was the
12 electra glide, right?

13 A I can't get her near -- I couldn't get her near
14 them.

15 Q So I have to ask you is, is when you went on
16 these trips -- I know you had service of the motorcycles
17 in Montana. Was that trailer used in part to -- to tow
18 those motorcycles around?

19 A No. I had a lift in the back of the motor home.

20 Q Okay.

21 A Hydraulic lifts for bikes.

22 Q Okay. Okay. And that -- is that the motor home
23 that's registered in Arizona?

24 A The motor home was registered in Montana.

25 Q In Montana?

1 A Yeah.

2 Q You own property in Montana?

3 A Is what?

4 Q You own property in Montana?

5 A No.

6 Q No. Now the motor home was registered in
7 Montana, but did you store it at one of those facilities
8 or warehouses you had in Arizona?

9 A We moved the motor home around. We had a spot
10 for it down in Indio. Sometimes we kept it in Arizona.
11 We had an in-door storage.

12 Q Okay. So the motor home was in California and
13 Arizona. Was it ever in Nevada?

14 A No. We don't -- well, up -- starting --

15 Q It's okay if --

16 A -- space here in --

17 Q Okay. All right. Fair enough. Now, I want you
18 to look at Exhibit Z-34?

19 MRS. BRACAMONTE: Z-34. Are you on Z?

20 MR. BRACAMONTE: Z. Okay.

21 BY MR. HOFSDAL:

22 Q Okay if you go 1, 2, 3, 4, 5, 6 and 7 from the
23 bottom?

24 A Okay.

25 Q Okay. There's a charge there for Freeway Trailer

1 Sales in Escondido. And that was about the time you
2 purchased the trailer in Nevada and that you had moved
3 to -- or shipped to Escondido. Were you preparing one of
4 your vehicles the Ram or Excursion to tow that? And that
5 was maybe a ball or something?

6 A Are you talking about the \$38 charge?

7 Q Yeah. The \$38 charge for the -- I don't know if
8 \$38 or it's the \$81 the day behind, to be honest with you.
9 It's hard to read these out. I don't think the dollar
10 amounts other than you had some type of purchase or some
11 type of service at Freeway Trailer Sales in Escondido
12 about the time you purchased -- I'm sorry.

13 A I would go there to buy parts.

14 Q Parts. Okay. So do you recall what part you
15 purchased about that time you bought that trailer? Was it
16 something to tow that trailer?

17 A No. No.

18 Q Okay.

19 JUDGE TAY: This Judge Tay. Mr. Hofsdal, I think
20 we should take a break in about 15 minutes or so. Your
21 cross-examination has been over two hours now. So I'm
22 going to ask you to finish up and just ask the more
23 important questions that you have in the next 15 minutes.
24 And then we're going to bring it back to Mr. Markow to
25 continue his presentation.

1 MR. HOFSDAL: Okay. Fair enough.

2 BY MR. HOFSDAL:

3 Q Now, I want you to look at your declaration at
4 paragraph 20.

5 A Okay.

6 Q All right. And we're talking about the
7 coordination of the Jimsair sale. Do you see that?

8 A Yes.

9 Q Okay. Now, I was kind of curious, based on
10 testimony you've given. And I just want to recap, and you
11 could tell me where I'm right and where I'm wrong. We've
12 already established the fact and that you spent the entire
13 month of May each night in California. You were
14 approached to buy Jimsair in May. So you're in California
15 at the time.

16 And then if you look at Exhibit AA-2, I believe
17 it is, right. It reflects that on June 2nd you -- on
18 June 2nd, and you were in California, right. And then it
19 looks like on June 2nd you jumped in your Avalanche. What
20 is it, a four-and-a-half or five hours drive from
21 Escondido to Henderson? Page A-12. I'm sorry. Four from
22 the top, and there's two deposits into a bank account for
23 \$500 on June the 2nd.

24 A I'm looking at all the dates. Yeah. June 2nd we
25 were in Henderson for three nights.

1 Q Yeah. I understand starting June 2nd you were in
2 Henderson, Nevada, but on the morning of the second? And
3 I'm showing you AA-12, which reflects deposits made into
4 your bank account on June 2nd.

5 A Okay.

6 Q Okay. Do you see that? So it looks like you
7 spend the whole month of May in California. You start
8 negotiating the sale of Jimsair in May. On June 2nd
9 you're -- wake up in the morning, do some banking and some
10 errands in San Diego. Then you drive some four and a half
11 or five hours from Escondido to Henderson, right? And
12 that same day you execute the documents that you refer to
13 on -- in your paragraph 20?

14 A I have to look at the documents to see what was
15 actually signed.

16 Q That's your Exhibit 14. Exhibit 14.

17 A 14. Okay.

18 Q See where it was signed on --

19 A I can see. It looks like it was faxed over.

20 Q Right. So my question to you is that you say --
21 and I'm going to speed up here because I only have a short
22 amount of time here. And you say here at paragraph 20
23 that you coordinated a significant portion of the sale
24 from Nevada. And the two things you do to reference that
25 is this June 2nd document when you basically just arrived

1 in Nevada on that day and --

2 A Okay.

3 Q -- and you signed it. So I think it's safe to
4 say with regards to the June 2nd document, you didn't do,
5 really, any coordinating in Nevada. Would you agree with
6 that?

7 A I had to coordinate to receive it.

8 Q Okay. So that was significant. Okay. I gotcha.
9 And then you were in Nevada for, like, two or three days.
10 You go back home, right. You go back home. And on
11 June 11th -- on June 11th, the other document you
12 reference, which is your number 14 --

13 A I'm going to go back. We were in Montana for
14 some of these documents. Yeah.

15 Q So as far as the document on -- as far as the
16 Exhibit 14, would you agree again that the significant
17 portion that you're referring to was essentially just
18 receiving it and signing it?

19 A I -- I don't think it's all that simple.

20 Q Well, it was all negotiated before you arrived in
21 Nevada, right? You were in Nevada -- I mean, you were in
22 California the morning of June 11th --

23 A The negotiations went --

24 Q -- where the documents were signed.

25 A The negotiations went surprisingly quick with

1 Landmark.

2 Q Yeah. No. I understand that, but your sentence
3 is, "We coordinated a significant portion of the sale from
4 Nevada." You referenced two documents. One signed to
5 support that, one that's signed on 6/2, which is basically
6 the day you arrived after a five-week stay in California,
7 which included the sale of Jimsair. And then the second
8 one after you go back for about five days.

9 You come back after leaving. Waking up in the
10 morning of 6/11 and going back and signing that document
11 on 6/11. So the point I'm making is, isn't it true that
12 the significant portion of the negotiating and
13 coordinating actually took place in California.

14 A Okay. I'm not going to agree with that. I know
15 we were in Montana when some of this stuff took place.

16 Q Okay. Well, would you agree to this?

17 A Not Montana. Yellowstone. Excuse me.
18 Yellowstone.

19 Q Okay. So would you agree with this. You say,
20 "We coordinated a significant portion of the sale from
21 Nevada," that it either occurred in California or
22 Yellowstone?

23 A We signed the paperwork in Nevada.

24 MRS. BRACAMONTE: We signed the paperwork in
25 Nevada. That means we weren't in Yellowstone.

1 MR. BRACAMONTE: Yeah. No. I'm -- I'm not --
2 I'm not going to say that. I don't -- I'm not in
3 agreement with that.

4 BY MR. HOFSDAL:

5 Q Would you agree this? Is that -- is that on the
6 morning of the 2nd and the morning of the 11th --

7 A Okay. So -- so we happened to sign this document
8 the same day we arrived in Nevada.

9 Q Okay. All right. All right. If you go to your
10 paragraph 24?

11 A Okay.

12 Q All right. It says you saw an eye doctor on
13 March 6, 2008; right?

14 A Yes.

15 Q And you attached a -- among other things -- and
16 you attached a prescription for new eyeglasses as part of
17 that exhibit. Do you see that?

18 A Yes.

19 Q Okay. Can you now look at Exhibit BB-31?

20 A Yes.

21 Q Can you go about 1, 2, 3, 4, 5, about 6 entries
22 down?

23 A Yes.

24 Q Okay. And there's a charge for -- or from Lens 4
25 Less Optical from Escondido. Do you see that?

1 A Yes, I do.

2 Q Did you have that prescription filled in
3 Escondido for those glasses?

4 A No. They're probably for my wife.

5 Q Okay. Okay. So while you're seeing an eye
6 doctor in Nevada, your wife at the same time is seeing an
7 eye doctor in Escondido?

8 A No. That was just -- this Lens 4 Less was just a
9 place to buy glasses.

10 MRS. BRACAMONTE: I think they had my
11 prescription, and I think --

12 MR. BRACAMONTE: Oh, she thinks they might have
13 had her prescription.

14 MRS. BRACAMONTE: And they just --

15 MR. BRACAMONTE: Yeah.

16 MRS. BRACAMONTE: -- filled them.

17 BY MR. HOFSDAL:

18 Q Okay. And then if you'll go to Exhibit X-19?

19 MRS. BRACAMONTE: What did you say?

20 MR. BRACAMONTE: Which one again?

21 BY MR. HOFSDAL:

22 Q X-19.

23 A X-19.

24 Q Four up from the bottom?

25 A Okay.

1 Q And there's a charge there for close to \$6,000
2 for hearing aids. Do you see that?

3 A Yes.

4 Q And those hearing aids, they were for you?

5 A Yeah.

6 Q Now -- and my daughter is hearing impaired. She
7 goes to the National Institute of the Deaf. And I know
8 how personal hearing aids are -- molding and all that kind
9 of stuff. Why did you choose to have your new hearing
10 aids purchased in California versus Nevada?

11 A I was going to this guy here for probably at
12 least 15 years, and I was comfortable with him. And
13 sometimes I just drive over there, even after we sold the
14 business and lived here. I would just drive over there
15 just to go to him to buy new hearing aids because I was
16 comfortable with him.

17 Q Sure. Right. And who is servicing your hearing
18 aids now?

19 A A year ago I finally switched over to a doctor
20 here in Henderson.

21 Q Who is Dr. Grant Kingsbury?

22 A Kingsbury?

23 Q Yeah.

24 A He was just a general practitioner, a general
25 physician.

1 Q And -- and he was your doctor?

2 A Yes.

3 Q Okay. And you saw him in 2008?

4 A I may have sure.

5 Q March 13th?

6 A I don't know the date.

7 Q Okay. And then did you go to San Diego podiatry?

8 A Yeah. My wife doesn't think so. I don't think

9 so.

10 Q Okay. There's a -- if you go to Z-34?

11 A What again?

12 MRS. BRACAMONTE: Z-34.

13 MR. BRACAMONTE: Oh, Z-34.

14 JUDGE TAY: This is Judge Tay. Mr. Hofsdal, last
15 question or last couple of questions, please.

16 MR. HOFSDAL: Sure.

17 MR. BRACAMONTE: Okay. I'm on 34.

18 BY MR. HOFSDAL:

19 Q Okay. You see about five entries above the
20 trailer on 512?

21 A What am I looking for?

22 Q San Diego Podiatry Group.

23 A I see that.

24 Q Okay. And does that refresh your memory as to
25 whether you or your wife was taking care of some foot

1 issues back then?

2 A I don't know.

3 Q \$45. I don't know if it's at the top or the
4 bottom. I'm guessing it is.

5 A Yeah. I don't recall what it's for.

6 Q So other than the eye care provider in Henderson,
7 Nevada, is there any other medical provider you or your
8 wife, that you're aware of, visited prior to the sale of
9 Jimsair?

10 A I -- I testified earlier that we did not really
11 locate any doctors here until after we bought the house
12 because we wanted to keep the doctors close by.

13 Q Sure. So then -- yeah. So then it's safe to say
14 that all the medical care that you and your wife required
15 up to the sale of Jimsair, whether it's through
16 Dr. Kingsbury, the hearing aid company, the vision, was
17 all provided for in California; true?

18 A Yes, if you want to characterize it that way.
19 Yes.

20 MR. HOFSDAL: That's all I have, sir. Thank you.

21 JUDGE TAY: Thank you very much, Franchise Tax
22 Board. We're going to take a 15-minute -- oh, sorry.
23 We're going to take a 10-minute break and come back at
24 3:27. And after the break we will allow Mr. Markow to
25 continue with his presentation.

1 (There is a pause in the proceedings.)

2 JUDGE TAY: Let's go on the record now.

3 This is Judge Tay. I'm going to ask my panelists
4 to see if they have any questions for Mr. Bracamonte,
5 since he just finished his witness testimony.

6 And so first I'll ask Judge Johnson.

7 JUDGE JOHNSON: This is Judge Johnson. Thank
8 you, Judge Tay. Good afternoon, Mr. Bracamonte.

9 MR. BRACAMONTE: Hi, how are you?

10 JUDGE JOHNSON: Good. Thank you. Couple of
11 clarifying questions. I think in the background we were
12 talking about cell phones. Mrs. Bracamonte mentioned that
13 it could be some other persons. I don't know if it was a
14 relative or a son or something like that. Just so we know
15 that when we're looking at the statements that they all do
16 pertain to your activities. Did you have another user on
17 your accounts or a son or someone that would be able to
18 make purchases on your accounts? Or was that cell phone,
19 perhaps, for a son?

20 MRS. BRACAMONTE: It might have been Joel's.

21 MR. BRACAMONTE: It could have been our youngest
22 son.

23 JUDGE JOHNSON: Okay. And that was in --

24 MR. BRACAMONTE: It might have been our youngest
25 son.

1 JUDGE JOHNSON: And he was in California; is that
2 right?

3 MR. BRACAMONTE: Was that -- repeat that, please?

4 JUDGE JOHNSON: He was in California during 2008?

5 MR. BRACAMONTE: He lived in -- yes.

6 JUDGE JOHNSON: Okay. Thank you. And then a
7 couple of dates were brought up with regards to deposits
8 being made. I know the June 2nd date was brought up when
9 you signed paperwork in Nevada later that day. Also, the
10 deposit around the two-day auction was also brought up.

11 MR. BRACAMONTE: Yes.

12 JUDGE JOHNSON: And I believe both those days
13 are, kind of, Mondays. I know this one statement actually
14 says, "Night Drop." I think the other one said, "ATM
15 Drop". Would you often make deposits on the weekends
16 using ATMs or other drop boxes?

17 MR. BRACAMONTE: No. The banks are open until
18 about 3:00 o'clock.

19 JUDGE JOHNSON: On, like, Sunday as well?

20 MR. BRACAMONTE: What's that?

21 MRS. BRACAMONTE: Did we ever make ATM deposits,
22 honey.

23 MR. BRACAMONTE: No. No. Not -- with cash? No.

24 JUDGE JOHNSON: Okay. With check as well?

25 MRS. BRACAMONTE: With a check, yes. Probably.

1 MR. BRACAMONTE: We may have done some, yes.

2 JUDGE JOHNSON: Okay. I'm just asking to see
3 if -- some of those days are actually when the bank opens
4 on Monday and deposits the checks for you, even though you
5 may have dropped it off the night before, something like
6 that. It's just to see whether or not it was that morning
7 that you deposited it and then drove to Nevada.

8 MR. BRACAMONTE: Oh, I see. Yes, it's possible.

9 JUDGE JOHNSON: Okay. And one thing -- and
10 forgive me if this is already covered in the briefing, and
11 I might have overlooked it. But I believe the apartment
12 that you had rented was a six-month lease; is that
13 correct.

14 MR. BRACAMONTE: Initially, yes. Then we
15 extended it one month.

16 JUDGE JOHNSON: Okay. And that carried you into
17 when you can move into your new home?

18 MR. BRACAMONTE: We moved to the new home on --
19 we closed on September 22nd, 2008, then we moved into our
20 house. Yes.

21 JUDGE JOHNSON: So you had the apartment all the
22 way through that period?

23 MRS. BRACAMONTE: Yes.

24 MR. BRACAMONTE: Yes.

25 JUDGE JOHNSON: Okay. And I know they asked

1 about a moving company to go to the apartment. You said
2 you didn't have a moving company then. But did you hire a
3 moving company to move into your Nevada home?

4 MR. BRACAMONTE: No. We did it ourselves. We
5 used the trailers and the vehicles we had. We bought a
6 bunch of furniture down in Lake Havasu. We stored it.
7 All of that was brought up here. And I think we may have
8 -- while we were in California, we bought some furniture
9 down there that we stored in the house and we brought up
10 here. And the rest of it we bought locally here in Las
11 Vegas.

12 JUDGE JOHNSON: Okay. That's all. Thank you
13 very much.

14 MR. BRACAMONTE: Okay.

15 JUDGE TAY: Thank you, Judge Johnson.

16 Judge Le, any questions for Mr. Bracamonte?

17 JUDGE LE: Yes, this is Judge Le. I just have
18 one question. I wanted to know if you considered your
19 Nevada rental apartment as your permanent home?

20 MR. BRACAMONTE: What?

21 MRS. BRACAMONTE: Was our apartment our permanent
22 home? Permanent for the time while we --

23 MR. BRACAMONTE: Yes, while we were here.

24 JUDGE LE: Okay. Thank you.

25 MRS. BRACAMONTE: It was permanent until we found

1 our final home. Yes, we considered it.

2 MR. BRACAMONTE: Until we bought a house. Yes.

3 JUDGE LE: Okay. Thank you.

4 JUDGE TAY: Thank you, Judge Le. This is
5 Judge Tay. I don't think we have any further questions
6 from the panel at this time.

7 So I'd like to turn it over to Mr. Markow to
8 continue his presentation, please, whenever you're ready.

9 MR. MARKOW: Thank you Judge Tay. And I'd like
10 to ask Jacqueline some questions. I know she's been doing
11 a little bit of answering during Phil's testimony, and I'm
12 going to try not to plow the same ground that we have with
13 Phil with Jacqueline. So hopefully this will be
14 substantially less lengthy in time. So with that I'd like
15 to ask Jacqueline some questions.

16 MRS. BRACAMONTE: Okay. I'm here.

17 MR. MARKOW: May I proceed?

18 MRS. BRACAMONTE: Yes.

19 MR. MARKOW: I was actually asking the Judges
20 that, but that's okay.

21 JUDGE TAY: Yes, Mr. Markow, please do.

22 MR. MARKOW: Thank you.

23 ///

24 ///

25 ///

1 Q Strangely my wife says that all the time.

2 A Does she?

3 Q In any event -- all right. Terrific. Well, you
4 did mention the house, and I did hear you talk about that.
5 What was your role in the process of -- let's even back up
6 for a second. When you came to Nevada in February, and
7 you looked for apartments, what was your role in that?

8 A Well, looking at a place that would be
9 comfortable for us to be and comfortable while we looked
10 for a house; and a place that had easy access and was
11 roomy enough for us to manage.

12 Q You know, Phil had mentioned something about a
13 list that he felt that either he or you or you both had
14 put together in connection with your move. Did anyone
15 hand you a list and tell you here are things you need to
16 check off to officially move from one state to another
17 state?

18 A Well, you have to know one thing about Phil. He
19 makes lists all the time. To this day he will give me
20 lists. And --

21 Q No. My question is very specific here,
22 Jacqueline. Did anybody ever hand you a list and say,
23 "Here's what you have to do to successfully show that you
24 had moved from California to Nevada?"

25 A No. No.

1 Q However, in the move there are so many details
2 that you have to put a list together; correct?

3 A Yeah, that's our -- that's our strategy.

4 Q And did you and Phil put that list together for
5 everything you needed to accomplish when you were making
6 the move from California to Nevada?

7 A Yeah, we -- we did. We took a look at what we
8 had to do. You know, what was necessary to be done. It's
9 kind of an overwhelming task to move from one state to
10 another after you have lived in one state for a long time.

11 Q When did you put that list together?

12 A I don't remember. We talked about things for a
13 while.

14 Q Now, you go to Nevada at the end of February.
15 You rent an apartment, and there's a flurry of activity;
16 correct?

17 A Yes.

18 Q Why did you do everything that you did that
19 weekend then? Why didn't you wait until you had purchased
20 a house first?

21 A Well, I think Phil talked about that. We wanted
22 to make sure that we found the place that we really wanted
23 in the area we really wanted. And that took time to
24 become a much better acquainted with the area than we
25 were.

1 Q Well, you said you went to a bunch of open houses
2 and were looking at real estate. What did you do in that
3 regard?

4 A I guess I'm not understanding.

5 Q I want to slow you down. I want to slow you
6 down.

7 A Okay.

8 Q You rent the apartment, and it's time to go look
9 for a house; right?

10 A Right.

11 Q What did you do?

12 A What did I do?

13 Q Yeah.

14 A Well, we were looking online. We were reading in
15 the newspapers looking for open houses, lots of different
16 things.

17 Q Okay. Can you approximate how many open houses
18 you went to starting on the 1st of March 2008 to go look
19 for a house?

20 A Gee, I probably looked at seven or eight. And
21 when we were going to the auction, the auction would give
22 you a list of houses to look at that were going up on the
23 auction block. And then I ran around town looking on all
24 MLS houses too.

25 Q Now, eventually, you hired a broker?

1 A Correct. At one of the open houses I met a
2 broker. Yes.

3 Q I think I heard you say that you met that broker
4 at an open house?

5 A Correct.

6 Q And did that broker then take you to other open
7 houses?

8 A He scheduled appointments for Phil and I to look
9 at houses.

10 Q And did you do that?

11 A Yes.

12 Q We heard from the questioning of Phil that you
13 spent a substantial amount of time out of Nevada, either
14 in California or Montana or Arizona, between March and the
15 time you bought the house. Was that about -- was what
16 Phil described in that regard pretty accurate?

17 A I spent more time in Nevada than he did,
18 probably.

19 Q And when you're outside of Nevada, when you
20 couldn't physically go see houses, did you do anything to
21 continue to look for a place to live between March and
22 September?

23 A Well, gee, it's quite a while ago. I think -- I
24 think our realtor would send us some -- some that we --
25 that he thought might work for us. You know, he would

1 send some pictures and stuff like that, I guess. Jim did.
2 I know that he, with the house we bought, he called us and
3 said, "I got a house I think you guys would love," and we
4 weren't in town. We were in Montana.

5 MR. BRACAMONTE: We were in Montana. We never
6 looked at.

7 MR. MARKOW:

8 Q You mean the house that you've lived in for the
9 12 years you bought sight unseen?

10 A Yes.

11 MR. BRACAMONTE: We were -- we were sort of
12 burned out from looking at houses and lot of frustration.

13 MRS. BRACAMONTE: A lot of frustration. A lot
14 of, you know, disappointments too 'cause we made -- we
15 made -- we bid on a few houses.

16 BY MR. MARKOW:

17 Q I think I heard there was some discussion of
18 while you had the apartment that there are somewhere in
19 your charges, charges for hotels in Henderson. Did I hear
20 that correctly?

21 A Yes, there were.

22 MR. BRACAMONTE: Yeah.

23 MRS. BRACAMONTE: There were. I know that I put
24 my dad -- okay.

25 BY MR. MARKOW:

1 Q What was the reason for that?

2 A I -- I would bring my dad to be with me.

3 Q And so did you ever stay in a hotel in Henderson
4 while you had the apartment?

5 A I don't -- I don't believe so. I think most of
6 those charges were for my father.

7 Q And he would also go out with you to look at
8 houses?

9 A Yes.

10 Q Give me one second.

11 A Okay. Okay. Can I retract something I said?

12 Q If it's inaccurate, please do?

13 A Yes. I remember one time that Phil and I stayed
14 in a hotel in -- after the sale of Jimsair. It was a
15 celebratory stay at the Green Valley Hotel.

16 MR. BRACAMONTE: Yeah, that's right. That's
17 right.

18 MRS. BRACAMONTE: So I want to clarify that.

19 BY MR. MARKOW:

20 Q But that was after the Jimsair sale?

21 A Yes.

22 Q Now, speaking of the Jimsair sale, when was the
23 first time you heard about Jimsair being sold?

24 A Well, when Phil told me that Landmark was looking
25 to buy it.

1 Q And when was that?

2 A I can't give you an exact date.

3 Q Was it before or after you had rented an
4 apartment in Nevada?

5 A Oh, well after.

6 Q When if -- and I'm going to make you do it. If I
7 were to make you say on what day did you move from
8 California to Nevada, what day was it?

9 A I would say February 26th Nevada became my home.

10 Q And you've been living in Nevada ever since then?

11 A Yes, and I love it.

12 MR. MARKOW: Well, as I said, I was going to try
13 to be much shorter with this witness, and I am finished.
14 Thank you.

15 JUDGE TAY: Thank you, Mr. Markow, and thank you,
16 Ms. Bracamonte, as well.

17 I'm going to hand it over to Mr. Hofsdal for any
18 questions FTB might have of the witness.

19 Mr. Hofsdal, I believe you're still muted.

20 MR. MARKOW: Ron, you're muted.

21 MR. HOFSDAL: Can you hear me?

22 JUDGE TAY: Yes.

23 MR. HOFSDAL: I think I'll be fairly short as
24 well.

25 ///

1 CROSS-EXAMINATION

2 BY MR. HOFSDAL:

3 Q I'm a little confused about the physical presence
4 of both you and your husband, you know. And you both
5 provided Exhibit F, which reflects, you know, you all's
6 physical presence in Nevada, California, Arizona, and
7 elsewhere. So on the days that are indicated as Nevada
8 days, is it true that some of those days you're in Nevada,
9 but your husband was not?

10 A On the days that are indicating Nevada?

11 Q Yeah.

12 A No. I would say some of the days that he might
13 have been in California I was in Nevada.

14 Q Nevada. No. If you look at Exhibit F, remember
15 you all put together in response to our questions a basic
16 understanding of -- of pages 4, 5 and 6?

17 A Let me see. Again, what are you asking me?

18 Q No. I'm just a little confused because you all
19 compiled, based off your charts, this list of days you
20 were in different places.

21 A I can only tell you this, that are days that --
22 that he probably indicated California, and I might have
23 still been in Nevada.

24 Q So who prepared this calendar?

25 A Who prepared the calendar?

1 MR. BRACAMONTE: Oh, the breakdown? I did.

2 BY MR. HOFSDAL:

3 Q You did. Okay. Now, I want to just take a
4 moment about -- I just want to talk for a moment about the
5 list that your husband that had provided. I mean, and you
6 know how he accumulated the different tasks of things that
7 you all needed to do to make this move?

8 A When I moved from Michigan to California, I had
9 to do all those things, like, change my driver's license,
10 you know, reregister my car, do things like that.

11 Q Yeah.

12 A And I would imagine that together we kind of came
13 up with this strategy that we talked about.

14 Q Okay. And whereabouts did you come from Michigan
15 to California?

16 A Let's see I came in 1969.

17 Q Okay. 1969. Did you come for school?

18 A No. I had -- I graduated from college.

19 Q Great. All right, now I want to talk a little
20 bit about this Verizon thing. I know that one of the
21 judges, you know, asked you questions about it, you know.
22 And, you know, the amounts -- and we can go through each
23 month if you want -- but the month of the charges range
24 from, like, \$139 to \$197 for the whole month of December.
25 I mean, that would indicate to me that there was more than

1 just one user. Before you got your Nevada cell phone, did
2 you ever have a California cell phone?

3 A Yes. Uh-huh.

4 Q And was that services with Verizon?

5 A I do not remember who the service was.

6 MR. BRACAMONTE: I thought it was AT&T, but I
7 don't recall.

8 BY MR. HOFSDAL:

9 Q Okay. All right. Now, as far as the apartment
10 goes, now it's my understanding that you all essentially
11 took what you traveled with and, essentially, appointed
12 you're apartment in those things. I mean, how would you
13 describe the inside of your apartment during the time at
14 issue here?

15 A How would I describe it?

16 Q Yeah. Did you have picture on the wall? Did you
17 have plants? Did you have a headboard? Did you have, you
18 know, and that kind of stuff. I mean, how would you
19 describe the interior of your apartment at this time?

20 A Well, it was comfortable, but it was pretty
21 utilitarian.

22 Q Now, every family, especially, the mom and
23 daughters and the like, and they always have things that
24 they kind of consider to be -- for a lack of a better
25 expression -- kind of, like, near and dear to them. It

1 could be a memento. It could be a vase. It could be a
2 number of things. Did you have any of those near and dear
3 types of possessions in Nevada while you were in the
4 apartment?

5 A Not while I was in the apartment, no. I kept
6 many near and dear things in Havasu.

7 Q Okay. In Havasu. Okay. Now, the near and dear
8 things you did have in Escondido, they remained in
9 Escondido until what time?

10 A Oh, gee. Well, some we took out early and took
11 to Havasu to be transported later to a permanent house
12 here. And some that we could put in safes we put in
13 safes.

14 Q Okay. Fair enough. Now, with regards to the
15 PO Boxes, you know, I voiced a little bit of skepticism.
16 I just want to get clarification on you. You know, you
17 all had the PO Box in Nevada. And then you had these
18 large periods of time and -- and it's my understanding
19 that the PO Box center, the post center, whatever it was
20 called, is essentially across the street from the
21 apartment; is that true?

22 A It was down the street, yes. It wasn't across.

23 Q It was pretty convenient; right?

24 A It was.

25 Q Yeah. And you had the ability to receive mail at

1 your apartment as well; true?

2 A No. I probably never opened the mailbox at the
3 apartment.

4 Q No. Had the ability to and you had a mailbox key
5 and that kind of thing at the apartment; true?

6 A I don't think we ever picked --

7 MR. BRACAMONTE: I don't -- I don't think we ever
8 got a key.

9 MRS. BRACAMONTE: I don't think I ever signed out
10 for a key.

11 BY MR. HOFSDAL:

12 Q Okay. So then do you recall ever doing a change
13 of address in order to have mail that might be important
14 to you forwarded to California during these long periods
15 of time when -- when you all were out of Nevada and in
16 California?

17 A Forwarded to California, no.

18 Q No. Okay. Now, can you think of any document
19 that may have gone to your Nevada address that you would
20 consider to be so important that you would have to see it
21 within a 30 or 40-day period? In other words, was the
22 type of mail that was sent to that PO Box, was that the
23 type of mail that could sit for a period of time?

24 A Most important mail, you know, our bills and
25 what-have-you, we pay -- we had everything taken out of

1 our checking account.

2 MR. BRACAMONTE: Some stuff.

3 MRS. BRACAMONTE: Yeah. Phil took care of most
4 of the bills.

5 BY MR. HOFSDAL:

6 Q So, basically, what I'm trying to get to is,
7 basically, the mail that went to the PO Box was really
8 mail that wasn't significant or all that important because
9 you had direct deposits, and you had the ability to look
10 things up online. It was nothing vital. You weren't
11 expecting like a social security check or something look
12 that needed to be deposited; true?

13 A True. For the most part that's how I remember
14 it.

15 Q Okay. All right. Now, and your husband was
16 talking earlier about -- about the doctors and Medi-Care
17 and medical treatment and stuff like that. And he was
18 under the belief that you all changed your primary care
19 and physician after the purchase of the home in Henderson.
20 Is that fair to say?

21 A That's fair to say.

22 Q Okay. Now, in talking to Phil for quite a while,
23 it seems pretty clear that a lot of things, like, the
24 medical care and different things, you all were just kind
25 of like almost kind of holding back or waiting to have a

1 more permanent address -- for lack of a better thing -- in
2 order to establish things like doctors and the like. Is
3 that fair to say?

4 A Well, yeah. Basically, I guess.

5 Q Now, how far of a drive is it from -- from your
6 home or the apartment in Henderson to Lake Havasu?

7 A About 2 hours and 15 minutes.

8 Q Okay. And it's my understanding that you all own
9 what, two properties in Lake Havasu and two, is it like,
10 storage facilities or something? I mean, I couldn't quite
11 make out from --

12 A We own a 80-foot facility.

13 MR. BRACAMONTE: We had the condo.

14 MRS. BRACAMONTE: And we had the condo.

15 BY MR. HOFSDAL:

16 Q Condo. Right. So it was two homes and two
17 storage facilities or one storage facility?

18 A One storage facility, 80-foot long.

19 Q Right. And they were purchased years before the
20 whole Jimsair thing is my understanding; true?

21 A Yes.

22 MR. MARKOW: You mean the sale?

23 MR. HOFSDAL: Yeah.

24 BY MR. HOFSDAL:

25 Q And you acquired the Lake Havasu property years

1 before the Jimsair sale, probably like --

2 A We bought it in 2003.

3 Q 2003. Yeah. Now, what kind of stuff did you all
4 actually store in this 80-foot warehouse?

5 A Well, sometimes the motor home would go in there.
6 We would have a boat in there.

7 MR. BRACAMONTE: It was 80 feet long, 13 feet
8 wide.

9 BY MR. HOFSDAL:

10 Q And then Jim was also talking about, at times,
11 the motor home. And it's my understanding that you owned
12 two motor homes at the time, but that those were -- I
13 don't know if you stored or at in Indio, California. What
14 exactly property do you own, or how was it that the motor
15 homes found their way to Indio?

16 A Well, we only owned one motor home.

17 Q Okay.

18 MRS. BRACAMONTE: Did we own more than one?

19 MR. BRACAMONTE: For a time we owned the Dynasty,
20 which John took.

21 MRS. BRACAMONTE: Oh, okay. Yeah. I'm sorry.
22 Our son had a motor home that we owned. We had a lot at
23 MCC.

24 BY MR. HOFSDAL:

25 Q And what is MCC? I'm not --

1 A Motor Coach Country Club.

2 Q Oh, okay. So it was my understanding that maybe
3 you had, like, more than one lot during this time. Is
4 that fair to say?

5 A Yes.

6 Q Okay. And that Jimsair also owned a couple of
7 lots besides the ones you did; true?

8 A True.

9 Q And were they all in the same complex -- for lack
10 of a better word. I'm not quite sure how to describe it.

11 A Yes. Yes, they were.

12 Q Yes. Okay. Now, was it just like a mobile home
13 park like you would, you know, like a double-wide type of
14 thing? Or is it more for -- for homes that, you know,
15 like motor homes?

16 A It was for class A motor homes only.

17 Q Okay. So what did you do with the lots that were
18 essentially vacant? Or did you have -- let me back up.
19 You got two motor homes during this time; one, that you
20 attribute or loan to your son. Were both of those at
21 those Indio sites?

22 A Yes.

23 Q Yes.

24 A For different periods of time, yes.

25 Q Yeah. And -- and --

1 A I think my son had his there probably a little
2 more permanently than we had ours there.

3 Q So during the time frame we're looking at here in
4 early to mid-2008, do you recall having that motor home in
5 India -- Indio. Sorry.

6 A We were doing a lot of traveling, so probably it
7 was someplace else. We -- we were traveling. We were
8 doing some traveling during that time. And so --

9 MR. BRACAMONTE: Well, we were at Yellowstone or
10 Montana. Yeah. Yeah.

11 BY MR. HOFSDAL:

12 Q So safe to say, at least until you acquired the
13 home in Henderson -- and I Googled the house. I don't
14 know if you have. It's a beautiful home, but the driveway
15 is not very long. So I don't -- I mean, it's, for the most
16 part, the motor home is either at Lake Havasu or Indio; is
17 that correct?

18 A Probably, yes. Sometimes we would bring it. We
19 would stay at Oasis. We would have it over at Oasis RV
20 Park in Las Vegas.

21 Q All right. So you did have the mobile home in
22 Las Vegas?

23 A Yeah. We had to rent sites if we did that.

24 Q Okay. Yeah, yeah. But you did have the -- it's
25 a Monaco; right? You had a Monaco and a Dynasty?

1 A No. The Monaco was -- wasn't ours. Basically, I
2 considered it our son's.

3 Q Okay. All right. Okay. And then there were
4 times during 2008 when the mobile home was in Nevada?

5 A Oh, very short period, yeah.

6 Q Okay. And you never thought of getting that
7 registered in Nevada; right?

8 A No.

9 Q Now, in going through the records, it looks like
10 there were some accounts that were -- you know, you both
11 had access and you both had used them. But it seems like,
12 you know, some were directed for your use, and some was
13 more directed for your husband's use. Would that be a
14 correct characterization?

15 MR. BRACAMONTE: What was the question.

16 MRS. BRACAMONTE: Are the accounts more directed
17 for my use and more directed for your use.

18 MR. MARKOW: I didn't understand your question.
19 So maybe they don't either.

20 BY MR. HOFSDAL:

21 Q Okay. It's my understanding -- at least early on
22 in 2008 -- that there was some checking accounts or bank
23 accounts which I might attribute more to you and others
24 that I might attribute more to your husband. For example,
25 the First Future Bank account or the bank account you had

1 with First Future, you know, I kind of in my mind I kind
2 of attribute it more to you because that's -- and that's
3 where it seemed like your retirement income and the like
4 was in deposits.

5 A No. We both used it.

6 Q You both used it. Okay. Now, there was a -- in
7 that account there was a Jeep Cherokee you all had
8 financed. Whose car was that Jeep Cherokee?

9 MR. BRACAMONTE: That was a tow vehicle that
10 pulled our motor home.

11 MRS. BRACAMONTE: It was ours.

12 MR. BRACAMONTE: It was ours.

13 BY MR. HOFSDAL:

14 Q Yeah. Okay. So in 2008 when you were traveling
15 around or traveling about and you were in your motor home
16 and you didn't have the Harleys and you didn't have the
17 trailer, I guess, and you were towing that jeep; is that
18 correct?

19 A Yes.

20 Q Okay. And it's my understanding that, you know,
21 as soon as you sold Jimsair you basically paid that
22 balance off and basically all the balances on all the
23 accounts you all had. Is that your understanding?

24 MRS. BRACAMONTE: You'd have to answer that.

25 MR. BRACAMONTE: Yes.

1 BY MR. HOFSDAL:

2 Q Yeah. Okay. Now, it's my understanding
3 you're -- I see you get the -- you're a retired teacher?

4 A Yes. I was a retired administrator.

5 Q Okay. And what year did you retire?

6 A 2001. September 2001.

7 Q Great. All right. I'm just going through my
8 note here. That might be all I have here.

9 So when you sold Jimsair and you had talked
10 about, you know, you and your husband had stayed at the
11 Green Valley ranch to celebrate the sale of that property.
12 Now, did you travel from California and check into the
13 hotel?

14 A No. We were -- no. We were in Nevada. We were
15 in Nevada.

16 MR. BRACAMONTE: Yeah, we were in Nevada.

17 MRS. BRACAMONTE: We were in the apartment. We
18 just decided we wanted to go to a hotel.

19 BY MR. HOFSDAL:

20 Q Hotel. Okay. Now, on those two documents -- and
21 this will be the last thing I'll be talking about. In
22 those documents that you all had executed on June 2nd and
23 June 11th. You know, I believe it's -- it's exhibits --
24 what is it? Exhibits 14. And I'm looking at the -- I'm
25 looking at the first page of Exhibit 14 now. Do you see

1 that?

2 A Yes.

3 Q Okay. Now, we talked earlier with your husband
4 about, you know, where you both were or, you know, up --
5 leading up to the execution of these documents. And do
6 you recall signing these documents, either one?

7 A Do I recall signing them?

8 Q Yeah. I mean, do you have --

9 A Well, it's my signature, but I don't recall it.
10 No.

11 Q You don't recall. Yeah. Now, it's kind of
12 curious for a number of reasons. One, is at least -- I'm
13 looking at the first one now that was executed on 6/2.
14 Just looking at the witness statement and the notary, now,
15 you know, I'm a little bit familiar with, like,
16 requirements and what a notary has to do or not to do and
17 that kind of thing.

18 And, you know, basically, when you're looking at
19 a language that's required on a notarized document that
20 says, "State of Nevada County of Clark, this instrument
21 was acknowledged before me on a date by so and so and so
22 and so," right. But here we just have "witnessed" and the
23 stamp. So what exactly is she witnessing here? And
24 that's my --

25 A I can't tell you. I'm sorry. I don't know.

1 Q Yeah.

2 A She's witnessing our signature. That's all I can
3 say.

4 Q And the other thing is -- it's curious because,
5 you know, it looks like this document is calling on you
6 and your husband to sign this document and have it
7 witnessed. But Mr. Baccarro [sic] has no such
8 requirement. Do you have any understanding as to why your
9 signature had to be witnessed and his did not?

10 A Well --

11 MR. BRACAMONTE: He probably would have signed
12 one of these but a separate --

13 MRS. BRACAMONTE: Separate one of those
14 documents.

15 MR. BRACAMONTE: Yes.

16 BY MR. HOFSDAL:

17 Q And then if you look at the top of this document
18 there's a fax stamp, right. And what this typically means
19 is that this is, you know, a fax, and that came from Luce
20 Forward, which is, from my understanding, was your law
21 firm who was representing you at the time. And it's only
22 pages -- two pages long. And I'm assuming the first page
23 is -- is the cover page. Most law firms always have a
24 cover page. And the second page is just this -- is just
25 this signature page. So is it your understanding that

1 your law firm in San Diego simply faxed you a signature
2 page for you to execute?

3 A Well, I.

4 MR. BRACAMONTE: Yea, we probably already had the
5 main documents. So it was just the signature pages.

6 BY MR. HOFSDAL:

7 Q Okay. So the question is, you know, if you
8 already had the underlying documents and you just had to
9 sign the signature pages, why didn't you just sign the
10 document, you know, like when you picked up -- when you
11 picked it up from your law firm where they have the
12 notaries and all that kind of thing?

13 MRS. BRACAMONTE: We got the documents.

14 MR. BRACAMONTE: Yeah. I can't tell you right
15 now. But, obviously, they were not in our possession when
16 we signed this.

17 MR. HOFSDAL: Okay.

18 MRS. BRACAMONTE: I wonder if they faxed or
19 overnighted them to us or --

20 MR. BRACAMONTE: I don't know either.

21 BY MR. HOFSDAL:

22 Q So do you know what document this was attached
23 to? Because the only thing --

24 MR. BRACAMONTE: Probably the purchase agreement.

25 BY MR. HOFSDAL:

1 Q Purchase agreement. Okay. So it was a lengthy
2 document; true?

3 MR. BRACAMONTE: What's that.

4 MR. HOFSDAL: It was a lengthy document that was
5 attached to this?

6 MRS. BRACAMONTE: A lengthy document.

7 MR. BRACAMONTE: Well, this is part a lengthy
8 document these signature pages, yes.

9 MR. HOFSDAL: Okay. All right. So do you have
10 any understanding why you were just -- and do you have any
11 memory of reviewing, picking up this document to review it
12 before you received this two-page fax to sign.

13 MR. BRACAMONTE: I -- I don't recall, you know,
14 the -- what was it? You know, what transpired at the
15 time, why just these -- these signature pages. Obviously,
16 this is part -- all part of the main document.

17 MR. HOFSDAL: Yeah. It's just curious. I'm not
18 being argumentive or anything. But, you know, we've
19 established that, you know, through the morning of
20 June 2nd you were in California. You drive to Nevada.
21 You sign a signature page, and you don't have the
22 underlying document. It's just curious.

23 MR. BRACAMONTE: Well, the only thing I could say
24 is that maybe the final document wasn't ready, and we had
25 already left town and just the signature pages were sent

1 over and returned.

2 MR. HOFSDAL: And then on the next page -- it's
3 just two more documents that we're going over. It's kind
4 of the same -- it's kind of the same thing with regards to
5 the witness and, you know, like what's he witnessing. I
6 mean, do you have any indication of who this guy even is?
7 He's not even a notary or anything. Is he a friend or --

8 MR. BRACAMONTE: I don't -- I don't know who it
9 is. Probably at the -- wherever this was faxed to, we
10 probably used the notary or -- that was on duty.

11 MR. HOFSDAL: Yeah. And I guess that's my next
12 question. You know, unlike the document before that has
13 the fax indicator on the top, this document does not have
14 that. And I was wondering, do you recall getting this
15 faxed, or is this something you may have picked up at your
16 attorney's office and brought to Nevada in order to sign?

17 MR. BRACAMONTE: Yeah. This is not Nevada's.
18 The first -- the first document has a Nevada stamp. And
19 the second document, of course, there's no stamp. But --

20 MRS. BRACAMONTE: It was signed in Henderson,
21 Nevada.

22 MR. HOFSDAL: Signed in Henderson, Nevada.

23 MR. BRACAMONTE: Oh, it probably went to the out
24 box --

25 MRS. BRACAMONTE: Outpost.

1 MR. BRACAMONTE: Outpost mailbox where we had out
2 mail.

3 MR. HOFSDAL: Yeah. And do you ever recall, with
4 regards to executing any of these documents relating to
5 the sale of Jimsair, that you received anything more than
6 perhaps a cover page and the lines to sign?

7 MRS. BRACAMONTE: We probably received -- we
8 received a lot of documentation.

9 MR. BRACAMONTE: Yeah. I know we signed some up
10 when we were up in Yellowstone. Yeah. I don't remember
11 which document it was.

12 MR. HOFSDAL: Yeah. I don't mean to confuse you.
13 I'm just talking about when you got this page to sign via
14 fax in Henderson at the post boxes, was it just this page
15 and perhaps a cover page? Or did the fax include 39 or
16 40-page document?

17 MR. BRACAMONTE: Well, I'm just -- I don't
18 remember how many pages. But this, you know, just looking
19 at the top of it looks like just two pages on the first
20 one. The second one -- again, I don't know about the
21 second one.

22 MR. HOFSDAL:

23 Q Now, if you flip to the next page or the next
24 exhibit, like, 15, 2, and 3. Now, in Mr. Bracamonte's
25 declaration -- and I believe in one of the briefs -- there

1 was an indication that the family trust was modified
2 sometime in late June or early in July. Do you have any
3 recollection or memory of the trust being amended prior to
4 the sale of Jimsair?

5 MR. BRACAMONTE: Yes. That's one of the first
6 things we did when we arrived here in Nevada. An attorney
7 was recommended to us, a trust attorney. And we took her
8 trust agreement to him and -- to find out what we needed
9 to do to amend it.

10 MRS. BRACAMONTE: Because we know we were going
11 to look for a house, and we wanted to place it in a trust.

12 MR. HOFSDAL: Sure. Yeah. I kind of -- so is
13 the purpose of amending the trust to purchase the house
14 and put the house in the trust?

15 MR. BRACAMONTE: Yes.

16 MR. HOFSDAL: Yeah. And the reason why I ask is
17 that the dates -- and there's no documentation to support
18 when the trust was actually amended. But when you look at
19 this signature page here, Exhibit 15-2, it has a date of
20 July 18th, which is the sale of the Jimsair. Do you see
21 that?

22 MR. BRACAMONTE: Yeah. The signature page?

23 MR. HOFSDAL: Yeah. You see the signature page
24 there? And you see where it has the date of July 18th?

25 MR. BRACAMONTE: Yes.

1 MR. HOFSDAL: Okay. And when you look -- you
2 know, you and your wife are -- both of you are signing it,
3 but you're not signing it on behalf of the amended trust.
4 You're signing it on behalf of the -- the California.

5 MR. BRACAMONTE: The date in the trust did not
6 change. All they did is put an addendum section in the
7 back of the trust.

8 MR. HOFSDAL: Right. But typically when a trust
9 is amended, it's referring to, you know, trust date blah,
10 blah, blah, as amended on so-and-so. So I'm asking is, is
11 there any possibility that the trust was amended after
12 July 18th?

13 MR. BRACAMONTE: No.

14 MR. HOFSDAL: And this is the other possibility.
15 Is there any possibility that you signed this document and
16 then somebody later put the date in?

17 MR. BRACAMONTE: Put the date?

18 MR. HOFSDAL: Yeah. In other words, you
19 pre-signed it; maybe signed it before the -- before the
20 trust was amended. And then when you needed to execute
21 it, somebody other than you or your wife put 18 in that
22 slot.

23 MR. BRACAMONTE: We -- this date has always been
24 used on the trust, even after it was amended. You know, I
25 can't tell you why, but the same date is still on the

1 cover of the trust.

2 MR. HOFSDAL: So that's not my question. And my
3 question is, is it a possibility that perhaps you may have
4 pre-signed these documents or this document, and somebody
5 later inserted that July 18th in it?

6 MRS. BRACAMONTE: No.

7 MR. BRACAMONTE: July 18 is the closing date.

8 MR. HOFSDAL: Yeah. I know. I know. But I
9 certainly understand that. But is it possible that this
10 document may have been executed by you and your wife prior
11 to 18th, and then on the 18th somebody put the 18th in
12 there?

13 MR. BRACAMONTE: Well, it looks like this guy
14 that the -- the president of Landmark might have put the
15 date there.

16 MR. HOFSDAL: Yeah. Because the curious thing
17 is, is that the 18 on both the one signed by you and the
18 one signed by the president, it looks like it is the same
19 18. That's why I'm just asking.

20 MR. BRACAMONTE: Well, they look a little
21 different. Yeah.

22 BY MR. HOFSDAL:

23 Q Now, Mrs. Bracamonte, what was your understanding
24 of the dispute between Jimsair and the Airport Authority?

25 MR. BRACAMONTE: Well, the dispute was about --

1 MR. HOFSDAL: No. I'm sorry, sir. I was asking
2 your wife.

3 MR. MARKOW: Phil, you don't get to answer every
4 question.

5 MR. BRACAMONTE: Well, my only understanding was
6 that it was over the lease. And that's my understanding
7 right or wrong.

8 BY MR. HOFSDAL:

9 Q Okay. And what was your understanding of when
10 that lease was going to expire?

11 A Gee, I think it was four-and-a-half years left on
12 the lease when we moved to Nevada.

13 Q I'm looking for one more document here as we're
14 talking. Just give me one second. I think we're wrapping
15 up here. So as I'm looking, isn't it true that both you
16 and your husband voted in California in February 2008?

17 A I don't remember that. I don't remember. I'm
18 sorry. I don't remember.

19 Q Okay. As we're closing out here, let's just take
20 a quick look if I could find it. If you'll go to
21 Exhibit N?

22 A Exhibit N.

23 Q The first line, presidential primary on
24 February 5th, 2008?

25 A 2005 is the presidential primary.

1 Q I believe yours is the second one.

2 A Oh.

3 Q Do you have any memory of that California
4 election in February 2008?

5 A No. I'm sorry. I don't have any memory of that.

6 Q In that exhibit I showed you, does that refresh
7 your memory in any way?

8 A Well, I can see the exhibit. It doesn't
9 necessarily -- I still have no recollection of it.

10 MR. HOFSDAL: That's all I have, ma'am. Thank
11 you very much.

12 MRS. BRACAMONTE: Thank you.

13 JUDGE TAY: Thank you, Mr. Hofsdal. And thank
14 you, again, Ms. Bracamonte.

15 I just want to turn to my panelist to see if they
16 have any questions for the witness. So first to
17 Judge Johnson.

18 JUDGE JOHNSON: Judge Johnson. No questions.
19 Thank you.

20 JUDGE TAY: Thank you, Judge Johnson.

21 Judge Le, any questions?

22 JUDGE LE: This is Judge Le. No questions.

23 JUDGE TAY: Thank you. This is Judge Tay.

24 Thank you very much, Ms. Bracamonte.

25 I'm going to turn it back to Mr. Markow to finish

1 up his presentation. If he needs any more time to do
2 that, just a reminder, Mr. Markow, you do have 30 minutes
3 after FTB's presentation to make a rebuttal and a closing
4 statement.

5 MR. MARKOW: Well, Your Honor --

6 JUDGE TAY: And so --

7 MR. MARKOW: I'm sorry.

8 JUDGE TAY: Go ahead.

9 MR. MARKOW: Your Honor, it would seem to me that
10 the way we would prefer to proceed at this time is my --
11 what is left for me is a discussion of an application of
12 what we have just heard from the witnesses and seen in the
13 documents to the relevant law. I would characterize that
14 portion of my presentation as the close. And so I don't
15 have a presentation and then a closing.

16 I have got one more piece to do, which is to
17 discuss this and then the legal standards and how the
18 facts we just learned apply to them. So I don't know
19 whether you want to go into closings now or how you want
20 to proceed in that.

21 JUDGE TAY: Thank you. This is Judge Tay. Thank
22 you for clarifying that, Mr. Markow. In that case, I'm
23 going to turn it over to FTB to make their presentation.
24 And then, Mr. Markow, I will give you time at the end for
25 all the things you would like to include in your closing

1 as well as any rebuttal to what Franchise Tax Board
2 presented.

3 MR. MARKOW: Sounds good.

4 JUDGE TAY: Okay. Mr. Hofsdal, I turn it over to
5 you. I'd like to limit you a little bit to an hour and a
6 half.

7 MR. HOFSDAL: I don't think I'll be anywhere near
8 that. So I think we're in good shape.

9 JUDGE TAY: I appreciate that. So I would turn
10 it over to you.

11 MR. HOFSDAL: I was going to keep it to -- so
12 yeah.

13 JUDGE TAY: Please, before you go into it, I
14 think for our court reporter's sake I will -- I might
15 interrupt you in the middle of it to request a five-minute
16 break for her. But please proceed whenever you're ready.

17 MR. HOFSDAL: I mean, I would suggest then
18 that -- I don't know. I don't think I'll be a half hour,
19 and Mr. Markow said that he doesn't think he'll -- you
20 know, he has a half hour. So it might be good time
21 instead of stopping in the middle that we go ahead and
22 just take a break now. I think we, you know, we'll be
23 able to finish well within an hour. Does that sound fair?

24 MR. MARKOW: I -- my closing would be if I were
25 to -- it's somewhere between 15 and 20 minutes.

1 JUDGE TAY: Okay. Why don't we take a
2 five-minute break now. Come back at 4:35. Please, just
3 as a friendly reminder, to turn off your camera and mute
4 your mic. We will reconvene at 4:35.

5 (There is a pause in the proceedings.)

6 JUDGE TAY: I'd like to go back on the record
7 now, and I will turn it over to Franchise Tax Board to
8 make their presentation.

9 Franchise Tax Board, whenever you're ready.

10 MR. HOFSDAL: Great. Thanks. As I suggested in
11 my opening statement, we're going to start the argument
12 section here with Ms. Macedo talking about the penalty,
13 and then I'll talk about the residency law.

14 Desiree.

15

16 CLOSING STATEMENT

17 MS. MACEDO: Good afternoon.

18 This panel should affirm Respondent's
19 determination as to the delinquent filing penalty because
20 Respondent properly impose the penalty under California
21 law for the 2009 taxable year. The Appellants have not
22 established grounds to abate the penalty.

23 Pursuant to Revenue & Taxation Code Section
24 19131, a delinquent filing penalty is imposed if the
25 taxpayer does not file a tax return by the due date of the

1 return, unless the taxpayer demonstrates its failure to
2 timely file is a result of reasonable cause and not
3 willful neglect. This penalty is mandatory, and
4 Respondent does not have discretion in its application.

5 In the present appeal, Respondent properly impose
6 a delinquent filing penalty because Appellants never filed
7 a 2009 income tax return, although, they received income
8 attributable to California during the 2009 taxable year.
9 Appellants do not dispute the delinquent filing penalty in
10 either of their briefs. Rather, Appellants allege the
11 penalty should be abated due to reasonable cause.
12 Appellants bear the burden of proving existence of
13 reasonable cause in order to support the abatement.

14 In order to show reasonable cause, the taxpayer
15 must show the failure to file return occurred despite the
16 exercise of ordinary business care and prudence.
17 Appellants assert that the delinquent filing penalty
18 should be abated because they relied upon the advice of
19 their tax preparer. To prove that a taxpayer relied upon
20 professional advice, the taxpayer must establish by a
21 preponderance of the evidence the following three
22 elements:

23 One, the adviser was a competent professional who
24 had sufficient expertise to justify reliance.

25 Two, the taxpayer provided necessary and accurate

1 information to the adviser.

2 And three, the taxpayer actually relied in good
3 faith on the tax professional's judgment.

4 Appellants have not provided any evidence to
5 establish that one, they relied on the advice of a
6 competent tax professional who had sufficient expertise in
7 California residency law to justify reliance; two,
8 Appellants arrived all necessary and accurate information
9 to the tax professional; and three, Appellants actually
10 relied in good faith on their tax professional's judgment.

11 Since Appellants have not provided credible and
12 competent evidence to support their claim of reasonable
13 cause, the penalties cannot be abated based on the
14 relevant case law, facts, and evidence in the record.
15 Respondent respectfully request you sustain its position.

16 Thank you.

17 And I'll defer to Hofsdal for our residency
18 argument.

19 MR. HOFSDAL: Thank you, Desiree.

20 JUDGE TAY: Thank you. I apologize.

21 Mr. Hofsdal, before you continue, might I ask all those
22 participants who are not speaking, if you would please
23 mute your mics. We would appreciate it. Thank you very
24 much.

25 Sorry, Mr. Hofsdal. Please go ahead.

1 MR. HOFSDAL: Sure. Absolutely.

2 Under California Revenue & Tax Code Section
3 17014(a), a California resident includes one, every
4 individual was in the state for other than a temporary or
5 transitory purpose; and two, every individual domiciled in
6 the state who is outside of the state for a temporary or
7 transitory purpose. Thus, the determination of the
8 Appellants residency is essentially a two-part test that
9 starts with determining Appellants' domicile and concludes
10 with weighing factors to determine whether the Appellant
11 was inside or outside of California, depending on their
12 domicile for a temporary or transitory purpose.

13 At the prehearing conference, the parties were
14 asked to apply the recent Office of Tax Appeal decision in
15 Mazer to the facts here. As I stated above, Respondent
16 agrees that the first inquiry is domicile. As defined in
17 Whittell v Franchise Tax Board, a change in domicile
18 requires both physical presence in a particular locality
19 and an intent to make it the individual's one permanent
20 abode. In other words, in determining whether a taxpayer
21 changed his or both domicile, both intent in physical
22 presence must simultaneously occur.

23 And significantly, as pointed out in Mazer, a
24 taxpayer's own actions must support a change of domicile.
25 Unsubstantiated statements will not suffice. It's best

1 summed up in the Appeal of Tarola as cited by the
2 Appellants in their briefs. The Appellant's intention
3 must be marked by objective facts demonstrating that the
4 nominal residence has actually become the essential point
5 of his interest and attachment. And I think that's the
6 key here, the central point of its interest and
7 attachment.

8 Here it is clear. Appellants' actions reflect
9 that they maintained their California domicile well up
10 until late September 2008 when they purchased their Nevada
11 home. First, they seldom were in Nevada as compared to
12 their presence in California. And second, as demonstrated
13 in Mr. Bracamonte's declaration in the taxpayers' briefs,
14 the Appellants' presence in California was not only by
15 choice -- some 89 days they say -- but to be with family,
16 including birthdays, grandparent duties, or business
17 related and either related to the ongoing lawsuits or the
18 operation of Jimsair.

19 Intent aside, taxpayers clearly did not
20 demonstrate the requisite amount of physical presence
21 consistent with the change of domicile prior to
22 September 2008. The days the Appellants were physically
23 present in California far exceeded the amount of days the
24 Appellants were in Nevada. And the length of continuous
25 presence in California, in two cases up to 18 days, is

1 consistent with a California home and domicile.

2 On the other hand, Appellants continuous days in
3 Nevada, which averaged about two days per stay, and for
4 some periods they were outside of Nevada for more than a
5 month, reflects at best, nothing more than a transient
6 presence in Nevada. And during the Appellants' presence
7 in Nevada and California during the fourth quarter of 2008
8 to the to the first three-quarters is quite revealing.

9 Desiree, can you please insert the color chart
10 that we --

11 Again, this is the color chart based on the
12 Bracamontes' physical presence from their own recollection
13 as reflected in Exhibit B. Again, red represents their
14 presence in California, and green represents their
15 presence in Nevada.

16 Desiree, can you now insert the fourth quarter
17 chart?

18 MS. MACEDO: I'm sorry I don't know why it's
19 not -- it is one document, and it's not letting me. It's
20 only showing the first page.

21 MR. HOFSDAL: Do you see it? Or are you able to
22 get or not? We can -- here we go.

23 (Wherein a chart is displayed onscreen.)

24 Now, this is the Bracamontes' physical presence
25 starting in September 29, 2008, after -- after they sold

1 Jimsair, and after -- just a couple of days after they
2 purchased their Nevada home. In this quarter, the green
3 represents, like it did before, their presence in Nevada,
4 and the red represents their presence in California.

5 MR. HOFSDAL: And then Desiree can you do the
6 whole year?

7 And here's the physical presence chart for the
8 whole year. As you can see, there's a clear line of
9 demarcation. The Appellants' physical presence in Nevada
10 for the fourth quarter more aptly reflects the physical
11 presence contemplated by the cases, including Mazer,
12 Whittell, and Tarola changed domicile. Respondent also
13 agrees with Mazer that the analysis then shifts to whether
14 the taxpayer was either in California for a temporary or
15 transitory purpose or outside of California for a
16 temporary or transitory purpose.

17 As stated in Mazer, one of the key questions
18 under either A-1 or A-2, is whether the taxpayer's purpose
19 in entering or leaving California is temporary or
20 transitory in character. Respondent also agrees with
21 Mazer that the contacts and connections a taxpayer
22 maintains in California and other states are important
23 considerations in order to determine whether the
24 Appellants received the benefits and protections of
25 California in accord with other non-transitory

1 inhabitants. And here the connections reflect the
2 Appellants did, in fact, receive benefits and protections
3 in accord with other non-transitory inhabitants.

4 Specifically in this case, we talked ad nauseam
5 about the physical presence, the charts, are very telling.
6 As soon as Jimsair is sold, as soon as they take
7 possession of that home, the physical presence shifts.
8 What was red is now green and vice versa. And this you
9 have to remember, during this time as
10 Mr. and Mrs. Bracamonte testified, Mrs. Bracamonte's
11 father was still suffering from COPD. They still had
12 family.

13 They still have the two ongoing lawsuits -- or
14 excuse me. The one ongoing lawsuit with the Mexican
15 matter that the Bracamontes make much of to be a factor as
16 to why they're in California. But in this fourth quarter,
17 those things are still going on, and their physical
18 presence dramatically shifts.

19 Respondent also -- physical presence -- the
20 location and the size and the value of the taxpayers'
21 residential property. In reading the briefs, the one
22 concept that keeps coming over and over and over again
23 is -- or what appears is, is kind of this confusion as to
24 what the key date is. The key date here is July 18th
25 where the Bracamontes physically -- or were the

1 Bracamontes residents of California on this date when they
2 sold Jimsair. When we're evaluating the property that the
3 Bracamontes owned in California, which includes a
4 beautiful home, multiple lots for mobile homes, and the
5 like. You compare that to a one-bedroom
6 utilitarian-decorated apartment in Nevada. It's clear.

7 And while we don't disagree that the Bracamontes
8 subsequently purchased a home in Nevada with the proceeds
9 from the sale of Jimsair, the bottom line is that home was
10 acquired after the relevant time and period. Therefore,
11 when we're evaluating this factor, it's clear that it
12 favors California, the state wherein the taxpayer
13 maintains or owns business interest. Appellant husband is
14 president of Jimsair, and Appellant wife remained active
15 in the operations of the business. In fact, both husband
16 and wife received W-2's, which reflect wages earned while
17 employed by Jimsair.

18 As we pointed out before, Mr. Bracamonte's W-2
19 reflects income of \$148,000. And as we were able to
20 demonstrate, he was paid roughly, you know, 6 or \$7,000
21 twice a month up until the June period. The obvious
22 explanation is that he continued to receive those payments
23 similar throughout his ownership in the business.

24 Further, when you look at the closing of the
25 documents, the closing of the documents specifically

1 required both Mr. And Mrs. Bracamonte to resign from
2 Jimsair. And as he pointed out where the Bracamontes
3 attempt to make much of the fact that they stop collecting
4 wages, as I demonstrated, I think, I hope, it's clear that
5 Mr. Bracamonte continued to earn the wages well past that
6 date.

7 Further, when you look at Mr. Bracamonte's
8 declaration, the declaration reflects he's still very
9 active with Jimsair. First, he was communicating with
10 vendors, including the Jimsair fuel suppliers well after
11 February 28th. He was communicating with his vendors into
12 May. He was negotiating the sale throughout the phase.
13 So he was still active in the business through the sale of
14 the business.

15 You know, although, Mr. Bracamonte was a boy when
16 his father founded Jimsair in 1950 or '52, his business
17 interest lasted a significant period of time with Jimsair,
18 some 58 years. Because of that reason, because of his
19 long history with Jimsair, that favor -- or that factor
20 clearly favors California as well. It was clear. You
21 know, oftentimes I think, you know, we don't look at the
22 end of the period. We're just looking at, okay, this is a
23 six-month period. But the reality is July 18th marked the
24 end of a 58-year relationship that Mr. Bracamonte had with
25 Jimsair.

1 The origination point of the taxpayers' checking
2 and credit card transaction; the taxpayers utilized their
3 bank cards, credit cards, and the like in place where they
4 were physically present. As the Appellants used their
5 bank cards on more days in California than Nevada during
6 the relevant time period, this factor favors California
7 their residency as well. And also, it's important, you
8 know, to note that, you know, the credit card
9 transactions, with exception of a day here or day there,
10 clearly supports Mr. and Mrs. Bracamonte's own account of
11 the days they were in California and the days that they
12 were in Nevada and the days that they were in Arizona.

13 DMV records. Appellants each applied for a
14 Nevada driver's license on February 27th, 2008. In doing
15 so, they used the postal service address as their mailing
16 address. While February 27th, 2008, is somewhat
17 noteworthy because the Appellants received their Nevada
18 driver's license on this date. It's somewhat more telling
19 that the Appellants did not receive or did not take
20 possession of a permanent abode in Nevada until eight days
21 after they both registered to vote and got their driver's
22 license.

23 There's cases, you can take judicial notice of
24 them. One is Presson v Presson 38 Nev. 203. There's the
25 Nevada Revised Statute 10.155, 483.141, 483.245. All

1 those spells one thing. The prerequisite to filing and
2 obtaining a driver's license is being a resident and
3 residency requires having possession of a permanent abode.

4 Nevada offers reciprocity. This is found in
5 Nevada Revised Statute 483.2452. This means that if a
6 person has a driver's license from a state like
7 California, all they have to do is forfeit their
8 California driver's license at the time application, and
9 they could avoid the testing that would otherwise apply.
10 Appellants merely took advantage of this reciprocity
11 program, and neither took a written test or a driver's
12 test.

13 Further, at the time the Appellants obtained a
14 Nevada driver's license, they did not register any of
15 their numerous vehicles in Nevada at this time, which was
16 required under Nevada law. And the statute requiring
17 Nevada residents to register when they get their driver's
18 license is NRS 482.385 Section 3. And as we've talked
19 about in various aspects of talking with Mr. Bracamonte
20 and Mrs. Bracamonte, they had the Chevy Avalanche in
21 Nevada. They had the Cadillac Escalade in Nevada. And
22 this was after -- after they took possession of it from
23 Jimsair.

24 Mrs. Bracamonte had testified that one of the
25 mobile homes was at the Oasis Mobile Home Park in Nevada.

1 Mr. Bracamonte talked about the Excursion being in Nevada.
2 But none of these vehicles -- none of these vehicles were
3 registered concurrently with the Bracamontes obtaining
4 their driver's license as required under Nevada law.

5 Excluding vehicles they registered in Nevada, it
6 does not appear that Appellants -- excluding vehicles
7 registered in Arizona, it does not appear that Appellants
8 registered any vehicles in Nevada prior to the date of the
9 sale of Jimsair, except for the 2006 Chevy Avalanche,
10 which was registered some three months after they obtained
11 their California driver's license. In fact, the Avalanche
12 with the California license plate number and the Cadillac
13 with the California license plate number were both
14 identified on the Nevada apartment lease, dated
15 March 6, 2008.

16 On the other hand, valid automobile registrations
17 in California were held on at least three vehicles,
18 including the 2003 Jeep Grand Cherokee, which was one of
19 their tow vehicles, the 1998 Dodge Ram, which was smogged
20 in California on June 2008. And, although, there was some
21 testimony that perhaps this vehicle was not in operation,
22 there was also testimony that that Dodge Ram was, in fact,
23 used to tow the 28-foot trailer that the Bracamontes
24 purchased in Nevada, only to have a third party deliver to
25 Escondido for his use at that property.

1 And, of course, the 2007 Escalade, which was
2 their newest, shiniest, and most luxurious of all of their
3 automobiles, which had a registration that was valid from
4 June 2008 to August 2009. Then at least 10 toys,
5 including boats, RVs, trailers, a dirt bike, a Harley
6 Davidson, which was purchased in June 2008, but at least
7 for a year after the purchase, was operated with a
8 Nevada -- or was operated with a California registration.
9 They were all registered in California at all relevant
10 times.

11 As mentioned by the Appellants in their letter
12 briefs, this factor can easily be manipulated. Little to
13 no weight should be given to the fact that they obtained a
14 Nevada driver's license because Appellants prematurely
15 applied for a driver's license and failed to comply with
16 the more burdensome requirements, such as registering to
17 vote, which as we know from the record, included two
18 inspections -- or a smog check an inspection and then the
19 registration of the vehicle.

20 In total the process from the time Mr. Bracamonte
21 started the process of registering his -- his Avalanche to
22 completing that process was 10 weeks. So either it was
23 burdensome, or the fact is, is that it was inconvenient
24 because the Bracamontes couldn't complete it any earlier
25 because they were, in fact, as Exhibit F reflects, because

1 they were in California. On the other hand, Appellants
2 continued to register the vast majority of their vehicles
3 in California during the relevant period. As such, this
4 factor favors California as their residency.

5 Voter registration. Appellants registered to
6 vote in Nevada on February 27th, 2008. Several days
7 before they had the right to occupy the apartment in
8 Nevada. As we talked about earlier under the DMV
9 sections, Nevada law is fairly specific. In order to
10 register to vote, one needs to possess a then current
11 permanent abode not a future permanent abode. Both used
12 the mailbox services. When they registered to vote, they
13 both used the mailbox service address, 205 North Stephanie
14 Street as their mailing address.

15 Both Appellant husband and Appellant wife voted
16 in Nevada for the first time on August 12, 2008.
17 Interestingly, despite alleging that they became
18 California nonresidents on January 1st, 2008. At least in
19 their tax return and their first brief, it's clear from
20 the record that the taxpayers both voted in San Diego
21 County on February 5th, 2008. Again, as suggested by
22 Appellants in their opening brief, little weight should be
23 given to this factor because it's quite easy to
24 manipulate.

25 In fact, this and the driver's license situation

1 above is exactly the situation that the court in Whittell,
2 at page 288, warns us about. That the fact that someone
3 votes or obtains a driver's license in many situations
4 simply reflects laxity on state officials to determine if
5 the applicant is truly qualified. And that's the warning
6 from Whittell at page 288. This being said, little weight
7 should be given to the fact that the Appellants registered
8 to vote in Nevada because Appellants registered to vote
9 prior to occupying a Nevada home. They used a post
10 service -- a postal service as their mailing address.

11 The location of the taxpayers' banks and savings
12 account: The Appellants did open a bank account in
13 Nevada. However, they continued to maintain their
14 California accounts as well. And, in fact, the primary
15 account where Jimsair's proceeds were ultimately settled
16 and where the taxpayer pulled the funds to pay their
17 Henderson home was not opened by the Appellants until
18 August 7, 2008; well after the sale of Jimsair. As such,
19 this factor is probably best viewed as best neutral.

20 When viewed in the totality, the connections
21 gathered by Appellants during the time period at issue are
22 best described as connections made in anticipation of a
23 future move to Nevada. A move anticipated after the sale
24 of Jimsair. The case of Noble v Franchise Tax Board
25 generally stands for the proposition that while a taxpayer

1 may intend to move outside of California, if he continues
2 to receive the benefits and protections of California, the
3 taxpayer maintains -- or remains a California resident and
4 must contribute to its support.

5 In other words, the facts must demonstrate that
6 Appellants' residence in California, for purposes of the
7 California income tax had ended. As stated in Noble, an
8 individual may intend to move from California some point
9 in the future does not make that person a domiciliary or
10 resident of a place outside of California. Significantly,
11 the Noble court hold that no matter what the Nobles'
12 intention for the future were, as of the time income was
13 earned, they had not relinquished either their residence
14 in California or their California domicile.

15 Mr. Bracamonte, when he was testifying, said
16 something I wrote down, and I think that's key to applying
17 the facts here to -- to Noble. And I'm going to call that
18 a "Noble wrap up". He said -- when asked on direct
19 examination, he said -- he was asked, you know, "Why did
20 you spend so much time in California during this period of
21 time?"

22 And he said, "We had to wrap things up. We had
23 issues with Mrs. Bracamonte's father. We had issues with
24 Jimsair. We had ongoing lawsuits. We just had too many
25 things to wrap up in too short a time," which is

1 essentially what happened in Noble. And for that reason
2 Noble is very much a case that's on point.

3 In the Whittle case the issue is whether
4 Californians had given up their California residency when
5 they moved their domicile to Nevada. In applying
6 Section (a)(1) of the statute in relying mostly on the
7 Whittell's retention of their California connections,
8 especially their significant physical presence in
9 California, their California business interest and their
10 California home, the court found that the Whittells remain
11 California residence despite maintaining connections with
12 Nevada.

13 And this is a key point because as it's generally
14 known, a person can be a resident of more than one state.
15 And the fact that Mr. And Mrs. Bracamonte having a
16 checklist that Mr. Bracamonte formulated as to
17 establishing residency in Nevada, that's secondary to
18 whether or not they continued to keep their residency in
19 Nevada. A person can have one domicile. They can have
20 multiple residents across multiple states.

21 And I think that's a clear point I want to make
22 because while they're trying to do a lot to establish
23 residency in Nevada, the fact of the matter is, like the
24 Whittells in the Whittell case, they continued --
25 continued with their strong California connections,

1 including business, home, and the big one here, physical
2 presence, which we all agree, I think, is somewhat
3 overwhelming.

4 Like the Whittle case, Mazer places emphasis on
5 significant connections, like, physical presence and home.
6 Not only was Appellants' California home frequently
7 occupied by Appellants, on the few days it was not
8 occupied by them, it was always available for their use.
9 Further, Appellants' physical presence is consistent with
10 California residency. Other connections as described
11 above were maintained at all the relevant times.

12 Guidance is also available in the regulation.
13 For example, Example 2 in the regulation closely resembles
14 the situation here during the relevant times, and the
15 result should be the same. And the length of time that
16 Mr. Bracamonte was associated with Jimsair, some 55 years,
17 and the length of the time that the lawsuits were taking
18 place in Mexico, which I believe was more than 10 years,
19 and the long ongoing dispute with the Airport Authority,
20 clearly reflect a purpose of being in California for a
21 long and indefinite period.

22 At the time of the sale of Jimsair, the
23 Appellants were residents of California. They maintained
24 significant California connections. Their physical
25 presence was overwhelming in California. They represented

1 to a federal court they were residents of California in
2 order to apply the California statute of limitations. And
3 this, I think, should be seriously considered. This a
4 pretty atypical connection, but Mr. Bracamonte through his
5 attorneys as I mentioned earlier, represented to the court
6 that he was a resident of San Diego during the relevant
7 time.

8 Appellants were clearly receiving the benefits
9 and protections of California and, thus, are subject to
10 the California personal income tax on all income earned
11 during the relevant time period.

12 Thank you.

13 JUDGE TAY: This is Judge Tay. Thank you,
14 Franchise Tax Board, for that presentation. I'm going to
15 open it up for to my panelist to see if they have any
16 clarifying questions for Franchise Tax Board.

17 First, Judge Johnson, any clarifying questions
18 for the Respondent?

19 JUDGE JOHNSON: Thank you, Judge Tay. This is
20 Judge Johnson. A clarifying question for Mr. Hofsdal. I
21 don't know if it's in your briefing, but is there a
22 certain date that FTB concede there was a change in
23 domicile?

24 MR. HOFSDAL: Yes. I believe that they assert
25 that there was a change of domicile on September 29th.

1 When we put up the colored charts, that's actually the
2 first green day of the month of September. And I think
3 it's pretty clear when you look at the taxpayer's physical
4 presence during that time period by all that green, that
5 that's the type of physical presence that the decisions
6 with Whittell and the like con --

7 JUDGE JOHNSON: Okay.

8 MR. HOFSDAL: Yeah.

9 JUDGE JOHNSON: All right. Thank you. And then
10 actually for Ms. Macedo or either of you, for the 2008 tax
11 year Appellant did file a 540NR. For the 2009 year they
12 did not file a return. Do you know when Appellants were
13 first contacted regarding the 2008 or 2009 tax year? I
14 know there was a request for documents in December of
15 2011. I'm just curious and maybe it's an easier question,
16 do you know if they received anything prior to the due
17 date for the 2009 return?

18 MS. MACEDO: I'm not sure if that's in the
19 record. I don't know.

20 Mr. Hofsdal?

21 MR. HOFSDAL: I'm not aware of that date, but
22 we're more than able to find out for you when they were
23 first contacted and get back to you if you wish.

24 JUDGE JOHNSON: That's not a problem. I was just
25 wondering if you knew offhand. So we'll go with what's in

1 the record. That's fine. Thank you. That's all.

2 JUDGE TAY: Thank you, Judge Johnson.

3 Judge Le, any questions for Franchise Tax Board?

4 JUDGE LE: This is Judge Le. I have no
5 questions.

6 JUDGE TAY: Okay. Thank you, Judge Le. This is
7 Judge Tay.

8 I have no questions for Franchise Tax Board at
9 this time. I'd like to turn it over for Mr. Markow for
10 his final presentation and his rebuttal and his closing
11 statement.

12

13 CLOSING STATEMENT

14 MR. MARKOW: Thank you, Your Honor. And thanks
15 to the panel and counsel for a smooth and professional
16 hearing today. I appreciate it, and we appreciate
17 everyone's attention and professionalism.

18 As we started this case, we started this case
19 saying that the case presents an issue of when domicile
20 and residents changes. Obviously, that's what we're
21 talking about. I had said in opening that it was sometime
22 between December 31st, 2007, and December 31st, 2008. We
23 now know it's sometime between February 27th, 2008, and
24 September 29th, 2008. And those are sort of our load
25 starts for the position of accordance here.

1 Domicile -- and counsel for the FTB ably
2 summarized the state of the law regarding domicile and
3 residency. I'm not going to repeat what he said. It's in
4 our briefs, and I believe he accurately summarized it.
5 But the conclusions are very different from the evidence.
6 We make very different conclusions than the FTB does. The
7 regulations -- and this is regulations sections 17014,
8 counsel for FTB's cited subdivision A, I'm going to
9 subdivision C, defining the idea of domicile.

10 And the use is perhaps older language, but it
11 says -- and this is a quote, "The place in which a man has
12 voluntarily fixed the habitation of himself and family not
13 for a mere special or limited purposes, but with a present
14 intention of making a permanent home."

15 Now, one of those things I don't want to get
16 confused about in this proceeding is whether the apartment
17 versus real property was a permanent home or not. The
18 issue here is whether the State of Nevada was a permanent
19 home, or California was a permanent home. And the
20 relative and permanence of the first place that the
21 Bracamontes lived in Nevada is completely irrelevant to
22 that. The question that we're trying to answer here is in
23 which state did they intend to make and made a permanent
24 home, and when was that.

25 The Franchise Tax Board appears to assume that

1 the ownership of real property makes that the case. It
2 does not. What makes that the case is the concurrence of
3 physical presence in a particular place with the intention
4 to make that your home. And this is another fine
5 distinction, and we'll get into the number days a little
6 bit later in my discussion. But this particular analysis
7 is not a day's analysis. It's literally, have you gone
8 there, have you moved there, and do you intend to stay
9 there for domicile not residence.

10 And I think all the evidence that we heard today
11 shows that. It shows there's been no contradictory
12 evidence that on the -- at the end of 2007, the
13 Bracamontes determined they were going to leave California
14 and move to Henderson, Nevada. There's no contradictory
15 evidence that says that in February they implemented that
16 plan. They went and rented a place. They didn't just
17 rent a place. They had a plan for moving. The testimony
18 was that they had created a list, as one would when faced
19 with all of the myriad of details when you move a house.
20 And they created this list, and they were working on how
21 are we going to move from California to Nevada.

22 And on February 25th, 26th, and 27th of 2008,
23 they began to implement that list with vigor. The
24 evidence was that they just not rented an apartment, but
25 they went and did a whole bunch of things that people do

1 when they move. Now, the FTB insinuated but never said,
2 oh, they must have gotten this list from an accountant or
3 a lawyer. But the evidence was -- and I asked them pretty
4 specifically, did you do that, and they said no. They're
5 not lawyers. They're not going to check legal tests.
6 They have their own list that they made of what it takes
7 to move, and they went about implementing that in February
8 of 2008.

9 So when with you add up all of the things that
10 they did between February 2008 and the sale of Jimsair,
11 the list is pretty substantial. They rented an apartment.
12 They obtained driver's licenses. They had signed a deal
13 with the landlord, but they couldn't get in for two more
14 days. And the State somehow seems to believe that that
15 means that the obtaining of the driver's licenses is
16 somehow tainted. It isn't. They not only got it, it was
17 never invalidated. This is not a case involving Nevada
18 driver's license law or Nevada election law.

19 This is a case involving the things they did to
20 move to Nevada. So they got their driver's licenses.
21 They got their main vehicle, the Avalanche, registered.
22 They didn't own their other car until June. So they
23 didn't register it then. They registered to vote. They
24 opened up bank accounts. And these bank accounts turned
25 into their -- turned into their substantial bank accounts.

1 What we heard was they opened these bank accounts in
2 Henderson. And later on having opened a bank account in
3 Henderson and having the Jimsair money come into that bank
4 account, Wells Fargo says, whoa, that's the wrong kind of
5 account for that kind of money. We need to move you to a
6 different account.

7 So when the Franchise Tax Board says, oh, it was
8 a brand-new account for Jimsair money, that's technically
9 true, but it's completely misleading. They had a Nevada
10 account and they simply moved from one Nevada account to
11 another Nevada account. So they had Nevada bank accounts
12 in February of 2008. They changed their address. They
13 obtained, as they did in California where they had post
14 office box, is they obtained a new post office box and
15 started to change all of the important addresses that they
16 had to go to Nevada and not California.

17 They dealt with their car insurance and changed
18 it over when they reregistered their cars. To a certain
19 degree but not a lot, they had some medical appointments.
20 They got cell phones. All of these things are the things
21 people do when they actually move. And what's interesting
22 is, is the FTB is kind of turning it on its head and
23 saying, oh, these things. These are super easy. We
24 shouldn't be looking at these things because they are
25 easily fraudulent. You can falsify these.

1 It's kind of turning reality on its head. We're
2 dammed if we do, and we're dammed if we don't under that
3 theory. Under that theory, if we hadn't done it, they
4 would say, look, they didn't get all those things. If we
5 did it, they would say, look, they got all those things.
6 It's a total fake. It -- it doesn't work that way. It's,
7 you know, you can't have that both ways. And the reality
8 is those are the key things, the core things that people
9 do when they change places where they live, and they were
10 done at the end of February.

11 Which is not to say that the Bracamontes drew a
12 line in the sand, and it was a perfect move. Everything
13 happened then, and nothing happened thereafter. Life is
14 messier than that, and this move was messier than that.
15 They still had things they needed to do to effectuate the
16 move. But the question is when did it really happen? Is
17 it when the last thing happens? Or is it when the they
18 have evidence of their intention, as the law requires, to
19 actually move and stay indefinitely. And I will submit to
20 this panel that happened when they did all of the things
21 one does to move.

22 Now, what's really interesting here -- and this
23 is an important distinction with the Mazer case. The
24 Mazer case was interesting because the issue there was the
25 guy heads for Singapore, spends a year and a half there,

1 and then comes back. He didn't even stay in Singapore.
2 And so the question was, was he really there indefinitely?
3 Was he -- was he really there without the understanding
4 that he was coming back, or did he plan on coming back?
5 Or even if he didn't plan on it, he knew it wasn't
6 probable.

7 And what that court basically held was, yeah, he
8 left. But when he came back it was pretty clear that was
9 not a permanent move, and we are going to say that he's a
10 resident of California. The Bracamontes are really,
11 really different than that. And this is an important
12 distinction. They left, and they never came back. They
13 left, and they've been in Nevada for 12 years. So to
14 believe the argument of the Franchise Tax Board, you'd
15 have to believe that they had rented that apartment, but
16 they never really intended to move to Nevada yet.

17 You would have to believe that they did all of
18 those things, but their intention was not to move. And we
19 know that's not true because of their behavior for the
20 last 12 years. What the Bracamontes did at the end of
21 February was to indicate their current intention to
22 abandon the old domicile and establish a new one. And
23 that's the test. That's the Chapman v Superior Court case
24 if you want it, but there are a number of different cases.

25 Their intention to abandon their old domicile and

1 establish a new one, what else could their activities at
2 the end of February be but a clear indication of their
3 intention to go to Nevada. You can't interpret it any
4 other way. It was nothing else. It wasn't a vacation.
5 It wasn't a maybe this will work out, and we'll go back.
6 There's been no evidence of that. This was the first step
7 in the move and a whole bunch of other steps too. These
8 were the first 20 steps in the move. And so what the
9 Bracamontes did at the end of February was to establish
10 their evidence. You can see it. It's objective evidence
11 of their current intention to abandon California and move
12 to Nevada.

13 Now, the Franchise Tax Board, as it should,
14 discuss a number of those Bragg factors, which are also
15 set forth in Mazer and lots of other cases; which is what
16 we sort of look at to say, let's assume they are domiciled
17 in California, and let's look at residency. But as we
18 just discussed, we're not assuming they are domiciled in
19 California. We believe the evidence shows their domicile
20 actually changed on approximately the 27th of February to
21 Nevada.

22 But even if they are domiciled in California,
23 they are not in California. They cannot be subject to
24 California taxation, you know. And I really appreciate
25 the chart that the Franchise Tax Board put together for

1 the year with red the danger color showing they were in
2 California with green in Nevada. But I'd like to
3 actually -- and then what they said was that clearly shows
4 is that they moved in September. Actually, if you look at
5 it, it clearly shows that they moved in June if you draw
6 that line.

7 And can we see that chart? Could you put that
8 chart back up for us? You did a good job. Thank you for
9 doing it. And if you could show the whole year, I would
10 appreciate it. I know that was a challenge last time.

11 (Wherein a chart was displayed onscreen.)

12 MR. MARKOW: Thank you so much, Counsel. I
13 really appreciate it.

14 So if you take a look at this, it shows a whole
15 lot of California at the beginning of the year. But then
16 at about mid to end of June, California really goes by the
17 wayside; and we've got a lot of neither California or
18 Nevada starting at the end of June, a little bit of
19 California, a fair amount of not Nevada and a lot of
20 Nevada.

21 So, you know, counsel for the FTB said this chart
22 really illustrative and then if the move happened in
23 September. Well, it really isn't. I think if you were to
24 take a look at this and say where does the -- if you were
25 to do a -- sort of a regression analysis of where these

1 data points lay, you'd see that the line goes through
2 about the end of June. You know, the heavy weight of it
3 is at the beginning of the year, and there's very little
4 after -- after, say, June 25th. There's just a handful of
5 days in California, and the rest either Nevada, elsewhere,
6 or elsewhere.

7 So thank you, Counsel. I really appreciate it.
8 You could take it down now. I appreciate it.

9 So, you know, it's really interesting they are
10 sort of counting the days. Now, it's our contention that
11 the moved happened on the 27th of February. But if you go
12 with that chart, the move happened in June. Either way,
13 the Jimsair transaction was after the move and not before.
14 And you know what else has been really important here, and
15 I think we should lay this out very clearly.

16 There is no evidence that this move was spurred
17 by the Jimsair transaction or the promise of the Jimsair
18 transaction. There has been insinuation that that must be
19 the case. But every piece of evidence that we've seen is
20 that that transaction was not even known to the
21 Bracamontes until May, long after they rented the
22 apartment, registered to vote, registered their cars, got
23 their driver's licenses, opened bank accounts, got a post
24 office box. All that stuff happened months before they
25 knew the sale was going to happen.

1 This isn't a situation where they say, oh, we're
2 doing a transaction. Let's get out of Dodge. This is a
3 situation where they said, "Let's move." They did, and
4 then lightning struck. It happened to be in their favor,
5 but it was an absolute moment of serendipity when the
6 Jimsair transaction, the sale to Landmark happened
7 starting in early May. But I want to be clear about that
8 because the FTB does insinuate that this had to have been
9 some sort of setup. But there's absolutely no evidence in
10 that.

11 So anyway, I was about to start marching through
12 the Bragg factors and applying what we heard today to
13 those factors. Now, at the beginning I sort of promised
14 you what the evidence was going to show, and I think it's
15 come in pretty much what we promised. And I'm -- I'm
16 using the Bragg factors as they are organized in the Mazer
17 case. Because the Mazer case separates the Bragg factors
18 into three general areas.

19 Last of the areas, but the one that the FTB
20 focused most on is physical presence and property in
21 California. And the first factor there is the location
22 and approximate sizes and values of residential real
23 property. And what the Franchise Tax Board in essence
24 argues is, while they owned property in California, but
25 they only rented property Nevada. So we know they are

1 really California residents because they only have this
2 rental in Nevada. That's not the test.

3 First of all, they held that California property
4 for years, literally, more than a decade after the
5 Franchise Tax Board admits that the move to Henderson
6 occurred. The move to Henderson occurred on the 29th of
7 September 2008. According to Franchise Tax Board, that
8 property was not sold until 2017. And so if that property
9 was important, they would never have left California
10 because they owned it for a very long time. But that's
11 not the case with this situation it.

12 This is a situation where the Bracamontes did
13 what a reasonable person would do. They rented an
14 apartment to try to figure out where they're going to buy
15 a house in Nevada. The Franchise Tax Board also
16 insinuated, you couldn't afford that. You're faking it.
17 You weren't really looking for a house. But what the
18 evidence was -- and I want to be clear about what Phil
19 Bracamonte said was -- he owns all of Jimsair, and he
20 could cause Jimsair, which had millions of dollars in the
21 point, to lend him the money to buy whatever house he
22 wanted in Nevada.

23 So he was ready willing and able to buy real
24 property in Nevada the moment they rented that house.
25 What you also heard was they were actively searching for a

1 house to buy. They were going to open houses. They were
2 going to auctions. They hired a realtor. They were doing
3 what people do when they are looking for a permanent home
4 as opposed to the outpost when you move someplace.

5 The next point is where the spouse and children
6 reside. And, again, what we heard was all of the
7 Bracamontes' children are adult children. Although they
8 do live in California, the Bracamontes visit them and
9 their grandchildren. What the test in Bragg is really
10 referring to are school-age children and where do they go
11 to school and -- and, you know, dependent children. They
12 may not be school-aged children.

13 And where the taxpayer's spouse resides. And
14 what we heard was that predominantly, Jacqueline and Phil
15 live in the same place. Although, Jacqueline did testify
16 that there were occasions when she would be in Nevada when
17 Phil was in California when she would be looking for real
18 property to own during this important period between
19 February and September of 2008.

20 The next factor in Bragg are the telephone
21 records, and we don't really have records of calls or the
22 origins of calls in this case. But what we do have is
23 that the Bracamontes obtained cell phones on the 27th of
24 the February in Nevada with Nevada phone numbers. It is
25 possible that they also maintained California cell phones

1 for the next few months. They couldn't remember, and the
2 bills do show payments to Verizon. So we can probably
3 assume they were running two sets of phones at that time.
4 I don't know how that comes out. It seems to be a wash.
5 You've got phones in both places.

6 The origin point of the taxpayer's checking
7 account and credit card transactions, which are actually
8 two different questions. Because where the checking
9 account is, is different than where you are making your
10 charges. Where you're making your charges is where you
11 are. And, in fact, in essence, it overlaps with your
12 physical presence. It usually does. Maybe there are
13 online charges that are irrelevant to that.

14 Here what we saw, and we talked about this
15 moments ago, was that bank accounts were immediately
16 opened by the Bracamontes in Nevada, and they became their
17 primary bank accounts. And, eventually, the California
18 bank accounts were closed, and they were closed shortly
19 before the Jimsair transaction. The credit card
20 transactions goes into the number of days. And we talked
21 a little bit about the number of days.

22 You know, again, the Franchise Tax Board would
23 have you believe that people move and basically never go
24 back. Certainly that does happen, but it does not always
25 happen. And it certainly does not always happen when you

1 live a four- or five-hour drive away from where you've
2 moved from, and you still have kids there and a sick
3 father there. So what they would say is, well, when you
4 have kids and a sick father and you come back and visit
5 them, you haven't really left.

6 And that's not -- that just doesn't comport with
7 the way people behave. And it doesn't comport with the
8 test here, the domicile test about intention and actual
9 emotion and the reason for the visits. And what we can
10 see is, is the diminishing visits over time, which is
11 utterly consistent with wrapping up loose ends in a move.

12 If the Franchise Tax Board's arguments were to be
13 accepted, you could not wrap up those loose ends. Those
14 loose ends would tie you to where you came from until you
15 wrapped them up. And that's just not -- you might never
16 leave. Sometimes those loose ends takes years to wrap up.
17 Here they just took a few months. But the tests don't
18 talk about that. And when you take a look at all of the
19 days and what they were doing -- and I think counsel for
20 the FTB accurately summarized what the testimony was.

21 They were taking care of sick relatives. They
22 were going to graduations. They were closing up their
23 house and residence. And they were taking care of
24 wrapping up some business issues, and then they did that.
25 And then they were gone. But most of the stuff had

1 already happened in Nevada. And really the number of days
2 is FTB's best case here. FTB -- everything else kind of
3 factors hard against them. But if you look at the number
4 of days and you think, well, that's a lot of days. I'm
5 worried about that.

6 But the Bracamontes have a very good explanation
7 for that. That was them wrapping them things up. It
8 didn't mean that the locust of the -- the sort of the
9 weight of the move hadn't happened. It had happened, and
10 they were just wrapping things up, and that diminished
11 quickly over time. That's the first set of factors in the
12 Bragg Mazer formulation.

13 The next is employment. And what was interesting
14 was the bank records that FTB's counsel showed. Well,
15 first of all, let's talk about employment. What Phil
16 testified to was he had an office in an outbuilding with
17 no windows. And went in a little bit whenever he was in
18 town, but that he had no responsibilities. And that was
19 from 2003 to 2008. Then on February 28th or 29th he got
20 his last paycheck. And the financial records that the FTB
21 put in showed that. There were no more payments after
22 that.

23 The W-2 shows more payments, but we don't know
24 about that. The Bracamontes couldn't remember it, and
25 it's not in the bank records. So for all we know it was

1 something that came out of the transaction. We don't know
2 what that is. But what we do know is there is no record
3 of payments after the 29th of the February, and Phil
4 testified he didn't do anything after the 29th of
5 February.

6 So his employment ended at the time they went to
7 Henderson and they rented that apartment and did all of
8 those things. The children's school is not relevant here.
9 Although, it's part of the Bragg test. We talked about
10 bank and savings accounts. We haven't talked anything
11 about social, religious, and professional organizations.
12 And I don't know how that cuts, but I don't think they had
13 them here, and I don't think they have them here. So, you
14 know, it's neither one.

15 The use of professional services, such as
16 doctors, dentists, accountants, and attorneys, well, what
17 did we hear? We heard that they did hire an attorney to
18 do an important thing actually, to change their trust from
19 a California trust to a Nevada trust. If you're not
20 moving, you don't do something like that. And they hired
21 that attorney in May. They talked about how they started
22 to use medical professionals, but that process took time.

23 And indeed, what Phil said was until last year he
24 was coming here to deal with his hearing aids. And,
25 again, that long tale of a move, it doesn't mean he didn't

1 move, you know, before he stopped going to hearing aid
2 doctor here. It means it takes a while to transition
3 things, sometimes as much as 12 years, apparently.

4 The next is maintenance and ownership of business
5 interest. And, fairly, that completely favors California
6 because he owned Jimsair. And that was his business
7 interest. But what we talked about was his actual -- you
8 know, how active was he and how passive was he? But he
9 was an owner, and that was here. He doesn't have
10 professional licenses. He doesn't own investment real
11 property. So those were -- those were non-factors. And
12 we didn't have any half testimony or evidence from third
13 parties. Those remaining factors are not present here and
14 favored over.

15 Lastly, there are the registrations and filings
16 with states or other agencies. We talked about those.
17 Those heavily favored the Bracamontes' February residency
18 and domicile in Nevada. It's automobile registration,
19 which we've talked about. Although, I want to touch on
20 something there. I think I have already, about the
21 Avalanche and the leased car. The other cars weren't
22 their main cars, and they either kept them in California
23 or moved them to Arizona. I don't think they ever
24 registered them in Nevada.

25 And further, the sort of insinuations that when

1 Nevada requires that you register vehicles, it's not
2 really applicable. It requires that you register vehicles
3 in Nevada. Those are -- and you're using in Nevada, not
4 that you're using elsewhere. All these, sort of, what I
5 think counsel for the FTB properly called toys, are
6 registered elsewhere because they're not being used in
7 Nevada in any significant way.

8 Driver's license we've talked about. Voter
9 registration and participation, I thought it was really
10 interesting. You know, a vote in California in early
11 February is -- is completely irrelevant to whether you
12 moved later in February. It's just, okay, they voted in
13 California on February 5th. It doesn't mean that they
14 didn't change their domicile and changed their residency
15 on February 27th. And indeed, that was their last one in
16 California, and all the subsequent votes were in Nevada.

17 And then there are -- is the address used and
18 state of residence claimed on tax returns. And pre-2008
19 that was in California, and post 2008 that was in Nevada.
20 So when you tally up these factors and you sort of look at
21 from a holistic perspective, what really happened here?
22 What we can see is they were determined to move. They
23 took the steps the move. They showed their intention to
24 move. They showed their intention to change their
25 domicile, and they did almost all of that at the end

1 February. Everything else was a clean-up. And so when
2 you put all those together, I think the evidence is pretty
3 overwhelming that the domicile changed, and the residence
4 changed on February 27.

5 I want to briefly touch on the penalty because
6 the penalty only is -- it falls out of the residency
7 issue. If you find that the domicile and residency
8 changed before -- before July -- excuse me -- indeed
9 before July 18th, 2008, then they properly didn't file a
10 to 2009 tax return. If you find that it happened after
11 and the Jimsair transaction, in essence, part of
12 California 2008, then they should have filed 2009 and did
13 not. And it stands or falls on the outcome of the
14 residency determination.

15 So at the end of this, we're going to ask you to
16 apply the Bragg case, apply the Mazer case, apply all the
17 cases the FTB told you about and find that the domicile
18 and residency of the Bracamontes was fixed in Nevada on
19 the 27th of February 2008.

20 Thank you.

21 JUDGE TAY: Mr. Markow, thank you very much.

22 I'd like to turn to my panelists at this point to
23 open it for any questions they might have for either
24 party. So I'm going to first ask Judge Johnson if he has
25 any questions for the parties.

1 JUDGE JOHNSON: This is Judge Johnson. No
2 questions. Thank you.

3 JUDGE TAY: Thank you, Judge Johnson.

4 And Judge Le, any questions for the parties?

5 JUDGE LE: Just one quick question. The calendar
6 that was showed, that's not part of any exhibits; right?

7 MR. HOFSDAL: No, no. It's not an exhibit.
8 It's -- the calendar itself, if you go to Exhibit F, pages
9 4 to 6, that's just a representation of the days that
10 Mr. and Mrs. Bracamonte represented that they were in the
11 various locations. So if you're curious about what was
12 going on in this month or this month, all you have to do
13 is go to Exhibit F, pages 4 to 6, and you'll get the
14 Bracamontes' account of days.

15 JUDGE LE: Okay. Thank you. No further
16 questions.

17 JUDGE TAY: Thank you, Judge Le.

18 I just have one question for Mr. Markow. Can you
19 respond to Franchise Tax Board's contention that a
20 taxpayer can be a resident of two states or more than one
21 state?

22 MR. MARKOW: As I understand -- thank you,
23 Judge Tay. I understand that to be a correct statement of
24 the law. I understand that you have one domicile but can
25 have any number of residents. I'm sure Phil Jelsma will

1 jump in and tell me if I'm wrong.

2 MR. JELSMA: I would never do that. So I think
3 that's correct.

4 MR. MARKOW: Strangely you do it all the time,
5 but thank you. So I understood that's FTB's statement was
6 an accurate statement.

7 JUDGE TAY: Okay. All right. I think we do not
8 have any further questions. I want to thank both parties
9 for their presentations. And I want to especially thank
10 the Bracamontes for appearing and sitting through the
11 hearing and presenting their story as well.

12 The record in this appeal is now closed, and the
13 appeal will be submitted for decision. We will endeavor
14 to send you our written decision no later than 100 days
15 from today.

16 This hearing is now adjourned, and I just want to
17 wish everyone a safe and happy holiday.

18 (Proceedings adjourned at 5:45 p.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 8th day of January, 2021.

ERNALYN M. ALONZO
HEARING REPORTER