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APPEARANCES:

Panel Lead: ALJ JOSHUA LAMBERT

Panel Members: ALJ RAY TAY
ALJ DANIEL CHO

For the Appellant: SUSAN GYOR
D. FUSI
Y. KIM

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

DESIREE MACEDO
DAVID HUNTER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-3 were received at page 6.)

(Department's Exhibits A-P were received at page 6.)

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Cerritos, California; Wednesday, June 15, 2022

9:34 a.m.

JUDGE LAMBERT: We're now on the record in the Office of Tax Appeals oral hearing for the Appeal of Dennis Fusi, Case Number 20035916. The date is June 15th, 2022, and the time is 9:34 a.m.

My name is Josh Lambert and I'm the lead Administrative Law Judge for purposes of conducting this hearing. My co-panelists today are Richard Tay and Daniel Cho.

I'd like to have everyone introduce themselves for the record.

FTB, can you please introduce yourselves.

MS. MACEDO: My name is Desiree Macedo, and I'm here with David Hunter.

JUDGE LAMBERT: Thank you.

And Appellant and representative, can you please introduce yourselves.

MS. GYOR: Good morning. I'm Ms. Susan Gyor, the power of attorney for Mr. Fusi.

MR. FUSI: Dennis Fusi.

MS. GYOR: He's the taxpayer.

JUDGE LAMBERT: Thanks. And Ms. Kim is here.

MS. GYOR: Ms. Kim is here as well, yes.

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JUDGE LAMBERT: Okay. Thank you.

The issues in this appeal are whether Appellant has shown error in FTB's disallowance of his reported theft loss and whether the accuracy-related penalty should be abated. FTB provides Exhibits A through P. Appellant provides Exhibits 1 through 3. There are no objections and that evidence is now in the record.

(Appellant's Exhibits 1-3 were received in evidence by the Administrative Law Judge.)
(Department's Exhibits A-P were received in evidence by the Administrative Law Judge.)

Ms. Gyor, this will be the opportunity to present your case. First, I'll swear in the witnesses so that they can testify during the presentation, if that's okay.

Mr. Fusi, can you please raise your right hand.

DENNIS FUSI,

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

JUDGE LAMBERT: Thank you.

And, Ms. Kim, did you want to also come up to the table and please raise your right hand.

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Y. KIM,

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

JUDGE LAMBERT: And Ms. Gyor you can proceed with your presentation, and you can have 30 minutes, so thank you.

PRESENTATION

MS. GYOR: Hi. Good morning.

We're here today because we are looking for a fresh look at our case, and we feel that very early on there was a bias that was adopted against Mr. Fusi. I'm not exactly sure what that was based on, but in one of the initial phone calls with Mr. Byers, who conducted the audit, he had stated he had Googled that people frequently overstate the value of jewelry to commit some kind of a scheme. And he seemed to just apply that to my client with no actual reason other than it was something he had found on the internet.

And once he knew the documentation that we had, he claimed that he would be unable to take any type of oral testimony because that would be self-serving, and that the only testimony or documentation that would prove

1 to be able to substantiate his claim was documentation
2 that he already knew Mr. Fusi could not produce. So we
3 were sort of stuck.

4 And in our exhibits we, have shown that Mr. Fusi
5 has -- he's never been audited by the Franchise Tax Board.
6 So there's no reason to believe that he has ever done
7 anything that he should not do on his returns. However,
8 he has been audited multiple times by the IRS, personally
9 and his business. And two of those audits were very
10 extensive field audits that lasted many months. And in
11 all cases, those audits resulted in a "no change". The
12 returns were not changed at all. They were kept as filed.

13 And so that shows that Mr. Fusi is the type of
14 person that normally -- and as he should -- always retains
15 the type of documentation that's needed for expected items
16 on a tax return. This, however, was a once in a lifetime
17 event. I mean, most people are never robbed at gun point.
18 Ms. Kim was the one who was actually robbed. Mr. Fusi was
19 not home at the time. But this is something that people
20 don't plan for. They don't want it to happen. Obviously,
21 Mr. Fusi wishes this never happened, but it did happen.

22 And so to claim that because he does not have the
23 same documentation that one would be expected to keep for
24 a business-type event, you know, W-2's or home mortgage
25 interest statements, those types of things, to say that

1 he's somehow, you know, deficient or scheming in some way
2 to try to claim some sort of deduction that he's not
3 entitled to. I don't believe that that's fair at all.
4 This is not a business event.

5 This is a personal loss, and we have a police
6 report. So we have the jeweler that Mr. Fusi bought
7 multiple items from over the years. These were very
8 expensive and unique items. You know, this is not buying
9 groceries at the grocery store. So these are the types of
10 things that someone would remember. You know, if you have
11 someone who is buying something from you over many years,
12 and those items are very unique and very expensive, you
13 are going to remember that -- that particular client.
14 It's not something like oh, well. Gosh, I don't remember
15 because I sell 100 of those a year.

16 So we just feel that when you take everything
17 take into account and not just look piecemeal at
18 individual facts, he's been treated very unfairly, and the
19 law has not been applied in a manner that is consistent
20 with the statement of Principles of Tax Administration.
21 You know, we're supposed to be looking for the true
22 meaning of the statutory provisions and that adopting a
23 strength construction in the belief that we are protecting
24 the revenue for the Franchise Tax Board.

25 So we're really here because we want to have the

1 law applied to us in a fair and unbiased manner. We've
2 presented very sound legal arguments at every step of the
3 way in our case, and those arguments have never been
4 refuted, instead just new arguments are presented. Sort
5 of, in my mind I'm not really relevant because they're not
6 addressing anything that we're claiming. You know, legal
7 arguments are present saying, well, you're not allowed to
8 deduct a loss that's not yours. We wholeheartedly agree
9 with that, and we wouldn't do that.

10 You're not allowed to deduct a loss if you have
11 absolutely no substantiation of any kind. We
12 wholeheartedly agree with that. We don't have perfect
13 substantiation, but everything that we do have we
14 presented right from the very beginning and then worked
15 very hard to get anything additional that we could have
16 under the circumstances, which proved very difficult. The
17 jewelry was purchased many, many years ago. It's not even
18 necessarily reasonable that people would keep receipts for
19 that long.

20 So we just -- we just want a fresh look, an
21 unbiased look, and we would like to at least have someone
22 tell us why legal arguments aren't evidence because we've
23 never received a response to those arguments.

24 JUDGE LAMBERT: And if you want to proceed with
25 any witness testimony, you can do so at this time.

1 MS. GYOR: So one of the things that was alleged
2 multiple times, including Ms. Macedo's response to us, was
3 basically that this was a scheme purported by Mr. Fusi to
4 take a loss that was not his. If we look at page 8, which
5 I believe is PDF page 27 for you, Ms. Macedo states that,
6 "Ms. Kim would have nothing to claim, nothing to gain by
7 reporting this substantial theft loss because she already
8 had a loss for 2013. Mr. Fusi, however, would have the
9 world to gain by reporting this loss on his return."

10 So she's stating the reason why the loss was
11 claimed on Mr. Fusi's return is not because it was his
12 loss. It's a scheme that Ms. Kim and Mr. Fusi decided
13 amongst themselves. I can't use this loss, but you can.
14 So you go ahead and take it on your tax return. And she's
15 saying that's why he's claiming female jewelry is his,
16 kept in a box in his bedroom, even though he claims
17 Ms. Kim slept in a different room in the opposite end of
18 the house.

19 So, Mr. Fusi, I would just like you to state
20 again for the record -- and Ms. Macedo incorrectly states
21 that he has made these claims under penalty of perjury.
22 The filed tax return has a signed statement "Under Penalty
23 of Perjury," and he did also provide to Ms. Beck who did
24 our protest, a statement under penalty of perjury that
25 this jewelry was his.

1 I have zero knowledge about tax law. I'm a trial
2 attorney for Workers' Comp and Personal Injury. I've
3 never done taxes. I've had my taxes done my whole life,
4 and I know nothing about them. And I want them to be done
5 right, you know. I've been audited so many times through
6 the years and never has there been a change. I spent 31
7 years as a state employee, and I just can't believe that
8 the State would treat me like this.

9 I feel discriminated against, and anything I say,
10 everything they asked for, I try to provide, and then they
11 say it's not good enough. Well, why did you ask for it?
12 If you knew it wasn't going to be sufficient, why did you
13 want this under penalty of perjury? Why did you want that
14 under penalty of perjury?

15 That's all I have to say. I'm kind of
16 frustrated. I'm sorry.

17 MS. GYOR: Ms. Kim could you please state as
18 well, make a statement about the jewelry? Can you please
19 make a statement about the jewelry that was stolen and
20 that the jewelry -- who did the jewelry belong too?

21

22 WITNESS TESTIMONY

23 MS. KIM: Like he say, I spend a lot of money
24 without permission from him when I was married. He
25 didn't -- he told me not to do business, but I did it the

1 restaurant business in Las Vegas. The reason is because I
2 had to go every weekend to Vegas for the restaurant, and
3 then I went to the gambling, involved, and I become more
4 and more gambling. So I took all his money.

5 I mean, which is our money but still it his money
6 because he's the one mostly working to make the money. So
7 I took all the money, spent all the money. So he got --
8 when he find out he got so, so upset that we file a
9 divorce, and I give up everything. Nothing I kept it. So
10 everything is belong to him. So I signed it when we
11 divorced, which is the jewelry also. It belong -- I gave
12 it to him so he can have it.

13 And when the robbery came when he wasn't home and
14 two guys came in with gun, me and my daughter and my niece
15 was in the house. They put gun into my head and they
16 asking me all the money and all, whatever expensive stuff.
17 So jewelry box was there, so I just give it to them trying
18 to save for our life. And that was happening. Yes.

19 MS. GYOR: Thank you. And I know you've already
20 familiarized yourself with everything that's been,
21 submitted, so I don't want to delve into that. And,
22 obviously, you guys will have your own questions. But I
23 would just like to also speak to Mr. Fusi's frustration
24 and my own, just certain word choices that were -- that
25 were put in the Franchise Tax Board's writings. You know,

1 they often, when they're referring to anything that
2 Mr. Fusi was saying, they use words like purportedly and
3 allegedly. And they are consistently questioning his
4 character, and there's really no call for that at all.

5 And, you know, we know we all have our biases.
6 We're all human, but we have to be able to put that aside
7 and look at the whole picture, look at the facts. What is
8 a fair way to apply this tax law instead of just saying,
9 "Oh, this looks like a slam dunk. He doesn't have perfect
10 documentation. We will get the tax and the penalties and
11 interest, and we will put it on his permanent record that
12 he has committed tax fraud." That's not fair, and that's
13 not right.

14 So, you know, that's why we're here today. And I
15 think, you know, obviously we haven't used our 30 minutes,
16 but I think we've said what we've come to say. So we'll
17 just leaving it to the Franchise Tax Board and you to ask
18 any follow up questions. Thank you.

19 JUDGE LAMBERT: Thank you very much, and thanks
20 to Ms. Kim and Mr. Fusi for testifying.

21 At this time I'll ask FTB, Ms. Macedo, do you
22 have any questions. We previously stated you could have
23 20 minutes. Did you want to proceed with any questions at
24 this time, if Ms. Kim and Mr. Fusi will be okay with that.

25 Does that sound good Mr. Fusi and Ms. Kim?

1 Okay. You can proceed, FTB. Thanks.

2 MS. MACEDO: We have just one question for
3 Ms. Kim. I've reviewed the settlement agreement and the
4 ownership of the jewelry was not mentioned in the
5 agreement. And the police report stated that you were
6 wearing two pieces of the jewelry on the night of the
7 robbery, white gold four-carat diamond wedding ring and a
8 Rolex watch. When did you -- why did you not return the
9 jewelry to Appellant after your divorce?

10 MS. KIM: And right away he keep the jewelry. It
11 used to be same jewelry box. And, of course, I want to
12 look nice. So just when I go out, I just use it and then
13 put it back. That was the same day I was --

14 MS. GYOR: Does that answer your question?

15 MS. MACEDO: That answers my question. Thank
16 you.

17 MR. FUSI: It was never with my permission or
18 knowledge.

19 JUDGE LAMBERT: Okay. Thank you, Ms. Macedo.

20 I'm going to turn to my panel and ask if they
21 have any questions.

22 Judge Tay, any questions?

23 JUDGE TAY: No questions. Thank you.

24 JUDGE LAMBERT: Judge Cho, did you have any
25 questions?

1 JUDGE CHO: Yeah, just a couple of quick
2 follow-up questions.

3 So, Mr. Fusi, I just wanted to make sure I
4 understand your testimony today. So you're saying that --
5 well, let me back up. Who was the original owner of the
6 jewelry? Was it Ms. Kim or yourself while you were
7 married?

8 MR. FUSI: I bought it all. A few pieces were
9 from a prior marriage that ended. And most of it I bought
10 in '99 through 2004 or something in that regard from
11 Avanti Jewelers, which is a jewelry show that came to Las
12 Vegas once or twice a year. And they knew what I liked,
13 and they would call me and say, "Come over to Vegas. We
14 think we have a piece that you might want to buy for your
15 wife." And I would drive over to Vegas and secretly buy
16 it and give it to her as an anniversary gift or whatever.

17 But when I found out that a couple of million
18 dollars were missing, I --

19 JUDGE CHO: I'm sorry to interrupt you, Mr. Fusi.
20 Would you mind speaking into your mic when you're giving
21 the -- it just helps us all to hear.

22 MR. FUSI: I'm sorry.

23 JUDGE CHO: No worries. Thank you.

24 MR. FUSI: When I found in 2012 a few million
25 dollars were missing, I got a divorce and said, "If you

1 give me all the jewelry and all the money you have, I
2 won't cause any problems. You just give me the divorce,
3 and that will be it."

4 And so she gave me everything. It wasn't in the
5 settlement because it had happened the year before the --
6 the divorce was final. And it wasn't mentioned because we
7 already exchanged what we believe to be -- what we agreed
8 was an accurate and adequate settlement. It was basically
9 everything that she had.

10 JUDGE CHO: Okay. Thank you. When you went to
11 the trade shows to buy the jewelry, did you get any
12 documentation regarding the quality of the jewelry, or did
13 you just get the jewelry itself? For example --

14 MR. FUSI: Well, I knew the person from the
15 jeweler. I had known him for years, and he would attest
16 to the quality of the jewelry and would have a certificate
17 of authentication or whatever it's called -- I don't
18 know -- and would tell me it is what it is. I can't tell
19 a diamond from zirconia. I -- I have to rely on people I
20 trust.

21 JUDGE CHO: So did you maintain or keep those
22 certificates that I'm assuming he gave to you with the
23 purchase of the jewelry?

24 MR. FUSI: I don't know that if he ever gave me
25 the certificates or he -- he kept them. I assumed that he

1 gave them to me. But we moved a couple of times, and it's
2 been so many years. And if I would have kept them, I
3 would have kept them in my office, and my secretary goes
4 through everything, and after eight years all we keep is
5 one year longer than the law requires. She goes through
6 everything because we have bins and bins and bins of legal
7 documents that we throw away. And she may have thrown
8 them away. She has no recollection.

9 She's been with me for almost 30 years, and she
10 has no recollection of if she threw those out or they were
11 lost or -- we moved offices a couple of times.
12 Possibly -- all it is is I don't have their certificates.
13 I had pictures of each piece. They were on Ms. Kim's
14 phone. But when they came into the house, they took every
15 telephone -- according to Ms. Kim. I wasn't there. They
16 took every phone in the house so the police couldn't be
17 called, I guess.

18 So when they ran out the door, Ms. Kim told me
19 that she went from door to door to door in the
20 neighborhood at 2:00 o'clock in the morning trying to get
21 somebody to answer the door so that she could get a
22 telephone to call the police. And after she did that, she
23 called me about 2:30. Nothing I could do then.

24 JUDGE CHO: Okay. Thank you. And I guess just
25 one question. So regarding the divorce settlement or

1 divorce decree, there's a lot of stuff that was mentioned
2 in here. For example, you talk about 6 months. You're
3 paying her \$600 per month. So it seemed very specific as
4 to division of assets. And I just wanted to know -- and I
5 know you've already stated it once, but I just want to see
6 if you can give any further clarification as to why the
7 jewelry was not included in this divorce decree.

8 MR. FUSI: No. It's because we already had
9 reached an agreement on it. Disposition had transferred
10 ownership. She had given it to me. I had put it in a box
11 in my room. She didn't -- she hasn't been in my room
12 since 2012. We haven't slept together. We haven't been
13 together. I let her -- when she comes over from Las
14 Vegas, I let her stay in the maid's quarters because I no
15 longer have a maid. I'm 79 years old, and I spend most of
16 my time at home and a little bit of time at the office,
17 and I allow her to stay in the maid's quarters.

18 I don't think I've even been in that room in the
19 last five years. I don't go in there. I don't know what
20 she has in there or what. The maid used to live there,
21 and I no longer have one.

22 JUDGE CHO: Okay. Thank you.

23 I think Ms. Kim wanted to --

24 MS. KIM: Yeah. About the jewelry, of course, I
25 let -- even I made a big mistake, but I let him keep it.

1 But when he find out he get so mad. He say, "Give it to
2 me everything," you know. So I had to give it to him
3 everything. Of course he wants it right now. And then
4 when the divorce paper in that time, I wanted to keep it,
5 but later on he found out more and more what I did, and he
6 get so upset. And he asked me -- he wants everything, so
7 I just give it to him. That's what happening.

8 JUDGE CHO: All right. Thank you.

9 And just a last quick follow-up question. So
10 when she gave it to you prior to the divorce, did you
11 enter into any kind of agreement or some kind of written
12 document that said, you know, that Ms. Kim is now giving
13 the jewelry ownership back to you or to you?

14 MR. FUSI: No, because we didn't want to document
15 that she had taken a few million dollars and basically
16 absconded with it. And I didn't want that documented. It
17 was a significant embarrassment to me that my wife had
18 done that and basically took my retirement away from me
19 and --

20 JUDGE CHO: Okay. Thank you for your testimony
21 and for the clarification. Those are all the questions
22 that I had.

23 JUDGE LAMBERT: I think Judge Tay has a question.

24 JUDGE TAY: Yes, thank you.

25 For Appellant, the Franchise Tax Board's

1 Exhibit B to their opening brief has a letter from a
2 Mr. Paul Chan. And that would be -- is that an accurate
3 list of the jewelry that was stolen?

4 MR. FUSI: May I comment while she's looking?

5 JUDGE TAY: Please.

6 MR. FUSI: It wouldn't be because I discovered
7 maybe a year later that my diamond wedding ring was in
8 there, and she didn't know it when they took the box.
9 It's a custom-made diamond wedding ring that I think I
10 paid \$20,000 for. And there might have been another Rolex
11 watch in there. I'm not sure. She wouldn't know. I
12 don't know that she's ever looked in the box.

13 But I think that the burglars knew what they were
14 after because we tracked them down through the cell phones
15 that they took, and we traced them to an apartment
16 building and went to the police and told the police. And
17 the police says, "There's 200 units in that apartment.
18 I'm not going door-to-door and try and find out who stole
19 the jewelry."

20 Since the police have taken the report, they seem
21 to have no interest in -- but we kept looking for a year,
22 and they kept using the phones and -- or had the phones
23 turned on. They never used them. And through one of the
24 location the cell tower was, we were able to trace it
25 through the phone company to an apartment building. It

1 was in Hollywood, I think.

2 JUDGE TAY: Anything else?

3 MS. GYOR: Yes. Like he said, there would have
4 been a couple of items that would have been missing, and I
5 believe on the police report as well. Yeah. But that's
6 what we have. You know, we provided what we had.

7 JUDGE TAY: Okay. And between the list on --
8 from Mr. Chan's letter and on the police report, would you
9 be able to distinguish which items were purchased in the
10 first marriage as opposed to the marriage of Ms. Kim?

11 MS. GYOR: Oh, yes, of course. Because the
12 jewelry purchased from --

13 It was Avanti, correct?

14 Yeah. He would remember that. And the -- and
15 unfortunately the original spouse, she's passed away. So
16 we can't have any testimony from her. So --

17 JUDGE TAY: Is it in the record which items were
18 purchased in the -- I guess prior to the marriage of
19 Ms. Kim?

20 MS. GYOR: I'm not sure.

21 MR. FUSI: Almost every piece was. I have known
22 them and their jewelry -- I met them at a jewelry show,
23 and I've known. And they would call me, "Hey, come to Las
24 Vegas," and I'd drive over, since 1995.

25 MS. GYOR: I think he was asking -- I believe he

1 was asking is there a way to tell from a list of the items
2 that were purchased before you knew Ms. Kim, correct?

3 JUDGE TAY: That's correct.

4 MR. FUSI: I could probably go back over the list
5 and try and remember.

6 MS. GYOR: There are, from the documentation that
7 was provided, the appraisals. Those do list the items
8 that were purchased from Mr. -- is it Chon? Chan?
9 Mr. Chan, Avanti, the jeweler.

10 MR. FUSI: A Chinese gentleman. I just remember
11 his name was Paul. I don't remember his last name.

12 JUDGE TAY: Okay. No further questions. Thank
13 you.

14 JUDGE LAMBERT: Okay. Thanks.

15 Also, a couple of questions. I had a couple of
16 questions, I believe. I think this was discussed in the
17 brief, but was there insurance on the jewelry at all? And
18 if there was or wasn't -- or why wouldn't there be
19 insurance on the jewels?

20 MR. FUSI: I erroneously thought there was. At
21 one time I had told my insurance broker I want full
22 coverage on everything, including the jewelry, and he said
23 he had it. So when this occurrence occurred, I told
24 myself, "Well, don't worry. We have insurance, and I'll
25 get all my money back." So I called the insurance company

1 and asked them how do I file a claim.

2 And they said, "Mr. Fusi, that part of the policy
3 was canceled many years ago."

4 And I said, "Didn't somebody bother to tell me?"

5 And I went to try and find the broker that I
6 bought the insurance from, but he disappeared. I don't
7 know if he's alive or dead. He's not selling insurance
8 for that company anymore, and I can't locate him. Did he
9 change it? Did he do -- but I'm over insured. Like auto
10 insurance, I carry a \$2 million policy. Accident
11 insurance, I carry a \$1 million policy with a \$1 million
12 rider. I cover everything conceivable because my view
13 point is my dad always used to say, "What can go wrong
14 will."

15 Well, of all the things that could go wrong, I
16 never anticipated -- I've never been robbed in my life. I
17 really haven't been robbed this time because I wasn't
18 there. And I'm probably fortunate because I probably
19 would have been killed because nobody is coming into my
20 house with a gun and putting it to my family's head or my
21 head. They're going to have a fight, and they probably
22 shoot me.

23 But I would rather be shot than have someone come
24 in and take things from me like that. It's just I'm a
25 country boy. I grew up on a farm where you take care of

1 yourself, and you take care of your family. And if
2 somebody gives you trouble, you stand up to them.

3 MS. GYOR: The insurance issue was one that was
4 also raised by Ms. Beck, and we reviewed, essentially,
5 what Mr. Fusi stated to her as well. And instead of it
6 being sort of a, "Darn it. That would have been great if
7 we could get ahold of the broker," or something. It just
8 seemed to further prove to her, "Ah-ha," you know. So it
9 was a bit frustrating.

10 JUDGE LAMBERT: Okay. Thanks. Just one more
11 question, I believe. Did the appraisal given by the
12 jeweler; it was done after the robbery? So I know he
13 worked for the previous jeweler/seller, but what did the
14 appraiser rely upon? It was stated there were pictures,
15 but, you know, it seems like the pictures you can't really
16 tell. You know, when they do appraisals, they take a
17 little tiny lens they look right into because two diamonds
18 that look the same from a distance could have totally
19 different values. And you don't know what type it is, the
20 cuts, you know, all kinds of factors like that. So what
21 was relied upon? And then how can we know that this is a,
22 you know, reliable appraisal given that the jeweler didn't
23 even get to examine the jewels?

24 MR. FUSI: Well, what you have is his statements.
25 He remembers every piece that I bought. He has it in a

1 book, but he says, "I don't have the prices and the
2 details and receipts because after so many years we throw
3 those away too." But he says, "I remember every piece
4 that you ever bought from me. By the way you haven't
5 bought anything from me in 10 years." It's true. I
6 thought that --

7 MS. KIM: Can I say one thing? Because he
8 remembers most of them items except for the diamond ring.
9 He had that ring was from his previous marriage. So I
10 don't like it the design, so he reset the stone, the
11 design. He design. That's what he remembers. The
12 diamond ring he didn't buy it from him. It was from his
13 ex-marriage. So he told me that. So probably that's what
14 he remember. So --

15 MR. FUSI: She would know better than I did about
16 it because I just made her anniversary gifts and birthday
17 gifts and --

18 MS. KIM: Also about the pictures, most my items
19 in my phone. I took the pictures, but the robbery took my
20 phone and the computer iPad. So I don't have any.

21 JUDGE CHO: I'm sorry. Ms. Kim, would you mind
22 speaking a little closer to the mic. Thank you.

23 MS. KIM: Oh, yes. The pictures are -- because
24 when most picture items under my phone, but the robbery
25 took my phone. So I don't have it too many pictures.

1 Luckily, I have some of the real pictures in my house
2 because I took the picture. That's why it shows a very
3 small little tiny pieces.

4 JUDGE LAMBERT: Was it the ring that was
5 appraised for, like, \$200,000? That was the one you are
6 saying is from the previous ex?

7 MS. KIM: That one, is yes. That's what he told
8 me.

9 MR. FUSI: I had bought my previous wife a very
10 expensive ring.

11 MS. GYOR: Could I just make a statement?

12 JUDGE LAMBERT: Yes.

13 MS. GYOR: I understand where your -- the line of
14 thinking, and it's reasonable of course. But when you
15 take a look at the whole picture, I think we have shown
16 that we have provided more than nothing. We wanted
17 something, you know. Can you provide us with something?
18 And, again, would this be a reasonable thing to do if we
19 were talking about a very common item purchased very
20 frequently that's of low value to say, do you remember the
21 specific dozen roses that was purchased? That's
22 unreasonable. But when we're talking rare pieces --

23 In some cases, these are one-of-a-kind pieces,
24 correct.

25 MR. FUSI: What's that?

1 MS. GYOR: These are one-of-a-kind? Some of
2 these pieces --

3 MR. FUSI: Yes. They're all custom made.

4 MS. GYOR: They are all custom-made pieces.
5 It's -- it's very reasonable to say that a seller in this
6 line of business would remember repeated clients buying
7 things year after year. So it isn't unreasonable that the
8 seller would remember Mr. Fusi, would remember the pieces,
9 have some knowledge of what they were valued. You put
10 that together with Mr. Fusi's income, the pictures we were
11 able to provide, we'll, you're right. They weren't what
12 we would want in an ideal situation.

13 It shows that he is the type of person who could
14 afford very easily, the type of a person who goes out and
15 have events. They dress very well. They like to look
16 very nice. And so it isn't unreasonable that he's the
17 kind of person that would purchase that kind of jewelry
18 because he had the means to do so. So, again, when we
19 look at all things put together, I feel that it's
20 unreasonable to say that we have not met any burden of
21 proof.

22 MR. FUSI: At the show that I would go to, he
23 would show me the piece and then show me the potential
24 settings that I could put it into and what the price would
25 be. And then I would choose the piece and the setting,

1 and then he would put them together. Put this and then
2 put that and change this from a pendant to a ring or --

3 JUDGE LAMBERT: Thank you.

4 We're thinking we could take a 10-minute break.
5 And based on the previous questions, maybe Mr. Fusi could
6 look at the list of jewelry and see if you could tell us
7 which ones, specifically, were the newer ones purchased
8 versus the older ones. Would that be possible to review
9 the list to see?

10 MR. FUSI: I can review it with Ms. Kim.

11 JUDGE LAMBERT: Okay.

12 MR. FUSI: Remember, I didn't wear -- other than
13 my diamond wedding ring, that is not even listed, I never
14 wore this jewelry ever. So I'm -- once I gave it to her
15 five years later, she --

16 JUDGE LAMBERT: Okay. Ms. Kim could review it as
17 well. We just want, you know, have it on the record if
18 the, you know, it could be -- we could be told what you
19 believe are the jewels that were purchased for the
20 previous ex-wife versus the ones purchased after the
21 marriage of -- for Ms. Kim.

22 MS. GYOR: Yes. Is that something that possibly
23 the Franchise Tax Board could provide? I did not bring a
24 copy of the list with me as it turns out.

25 MS. MACEDO: Yes. I have the Exhibit B as well

1 as the police report.

2 JUDGE LAMBERT: Okay. And Exhibit B is --
3 Ms. Gyor do you have Exhibit B with you, or do you have
4 that?

5 MS. GYOR: That's Ms. Macedo -- in
6 Ms. Macedo's --

7 JUDGE LAMBERT: Yeah --

8 MS. GYOR: Yes.

9 JUDGE LAMBERT: -- from their opening brief.

10 MS. GYOR: Yeah. If we're able to look at her
11 copy, that would be great.

12 JUDGE LAMBERT: Okay. Mr. Fusi, do you have that
13 list in Exhibit B with you? It's that Avanti Jewelry. I
14 think it's the -- is that the first page -- one of the
15 pages that list the jewelry that was with that -- I think
16 FTB might have a spare copy. Thanks.

17 MR. FUSI: The police report -- I wasn't there.
18 I never made the police report. I didn't see the police
19 report for three weeks after the incident happened. And I
20 had told her the amounts you have on the police report are
21 totally wrong. And she said, "Well, the police made me
22 estimate. I don't -- you never told me how much you paid
23 for it. So I just gave the police a number because they
24 wanted to establish it's over a certain amount."

25 So it's grand larceny, or felony, or burglary

1 based on the amount how serious it was, I guess. But I
2 never ever discussed with her how much I paid for a piece.
3 Ever.

4 MS. GYOR: Is your question for him to review the
5 two lists and determine which is the most accurate?

6 JUDGE LAMBERT: Yeah. Well, just review the list
7 and determine which ones specifically, if you can, were
8 purchased for the previous ex-wife that -- versus the
9 newer jewelry for Ms. Kim during their marriage. And we
10 can make copies of those exhibits, or maybe I think FTB is
11 letting you borrow it. But would that be okay? And we
12 can take, like, a 10-minute break and see if you can --
13 see what you think after reviewing it.

14 MS. GYOR: Sure.

15 JUDGE LAMBERT: And, FTB, does that sound okay?

16 MS. MACEDO: Yes.

17 JUDGE LAMBERT: Okay. Thanks.

18 We're going to take a 10-minute break. Come back
19 at around, like, 10:30 or so at 10:30. And we're going to
20 go off the record. Thanks.

21 (There is a pause in the proceedings.)

22 JUDGE LAMBERT: Okay. We're back on the record.

23 Previously we asked Appellant if they could look
24 at the jewelry list and see if they can determine which
25 ones from the previous marriage versus the one after.

1 Ms. Gyor, could you -- you just want to go into
2 that, please.

3 MS. GYOR: Yes. So on Exhibit B the Avanti list.
4 The first item, platinum engagement ring, and then fourth
5 from the bottom, men's diamond ring, those are the items
6 from the first marriage. And the diamond ring is not
7 present on the Exhibit A, the police report.

8 JUDGE LAMBERT: But the diamond ring was stolen
9 also?

10 MS. GYOR: Hm-hm. Hm-hm.

11 JUDGE LAMBERT: Okay. Thank you very much.

12 MS. GYOR: Was there one other question about
13 what were the first items purchased for the second
14 marriage?

15 JUDGE LAMBERT: With the rest of the --

16 MS. GYOR: Did one of you ask that question at
17 one point?

18 JUDGE LAMBERT: Are the rest of the --

19 MS. GYOR: The rest of them are from the second
20 marriage. Yes.

21 JUDGE LAMBERT: Okay. Thank you.

22 And that's -- Mr. Fusi and Ms. Kim, that's what
23 you determined?

24 Maybe if you could get closer to your mic,
25 please. That --

1 stolen property when it was criminally appropriated as a
2 matter of law. In the present case, Appellant has failed
3 to provide any proof of ownership of the jewelry,
4 including purchase receipts, a certificate of
5 authenticity, which Mr. Fusi has testified, was at one
6 point in his position or insurance documents. Here is
7 where the analysis should end.

8 Appellant argues that the jewelry was, in fact,
9 his possession. However, this is inconsistent with the
10 record. In fact, all of the evidence Appellant provided
11 shows that Ms. Kim was the owner of the jewelry. First,
12 the post-nuptial agreement states that all property
13 acquired by Ms. Kim after the commencement of the marriage
14 by gift shall remain the sole, separate, personal estate
15 and property of Ms. Kim.

16 Further, the divorce decree Appellant signed
17 states the parties separately owned properties in their
18 own name. Therefore, although the post-nuptial agreement
19 in the divorce decree do not specifically outline who this
20 jewelry belonged to, per the post-nuptial agreement and
21 the divorce decree, the jewelry would continue to be
22 Ms. Kim's separate property after the divorce. And this
23 is consistent with community property gift loss as well.

24 Second, it is undisputed that the jewelry was
25 purchased for Ms. Kim and that she wore the jewelry during

1 her marriage and after her divorce, which is shown by the
2 photographs provided by Appellant and the police report
3 and Ms. Kim's testimony, which stated that Ms. Kim was
4 wearing at least two articles of jewelry on the night of
5 the robbery.

6 Third, the police report provided by Appellant
7 clearly indicates that Ms. Kim was the owner of the stolen
8 items and lists her property that was stolen. It is
9 important to note that Ms. Kim, not Appellant, as the
10 owner of the jewelry would be the one entitled to claim
11 the theft loss. Also, since Appellant was no longer
12 married to Ms. Kim, Ms. Kim cannot assign the tax loss
13 realized by the theft of the jewelry to Appellant. Also
14 please note that there are several other audit issues that
15 are fatal to Appellant's reporting position.

16 The law provides that a theft loss deduction is a
17 lesser of the taxpayer's adjusted basis in the property or
18 the fair market value of the property. Here, Appellant
19 failed to provide records regarding his alleged purchase
20 of the jewelry. Therefore, there's no evidence of
21 ownership or alleged basis in the property that was
22 stolen.

23 Also, the examiner consulted by Appellant had
24 absolutely no evidence of the specific grade or quality of
25 the jewelry in question. He didn't even physically

1 examine the jewelry. The purported appraisals were
2 performed after the robbery when the jewelry was long
3 gone, and he didn't bother to provide his qualifications.
4 Thus, a competent appraisal was not performed, and there
5 is no evidence of fair market value. The bottom line is
6 because Appellant cannot prove his ownership of the
7 jewelry or establish the fair market value in said jewelry
8 that he did not own, he is not entitled to this deduction.

9 The second issue on appeal is whether Appellant
10 has established he is entitled to relief from the
11 accuracy-related penalty. The law provides for an
12 accuracy-related penalty of 20 percent, which is imposed
13 when taxpayers understate their taxable income by more
14 than 10 percent or \$5,000. The Tax Court has held that
15 the government's assessment of this penalty is proper when
16 it meets its burden of proof by showing that the
17 understatement is substantial.

18 In this case, the accuracy-related penalty was
19 mechanically applied, since the numbers were met for the
20 taxable year at issue. Further, Appellant has failed to
21 provide any legal basis to abate the accuracy-related
22 penalty. As such, Respondent's action should be
23 sustained.

24 Thank you for your time, and I'm happy to answer
25 any questions the panel may have.

1 JUDGE LAMBERT: Thank you.

2 Judge Tay, do you have any questions?

3 JUDGE TAY: I think one question for Franchise
4 Tax Board. With regard to the value of the purported loss
5 property, I realize that ownership is still a separate
6 issue. However, with respect to the value, how might the
7 Cohan Rule apply to this situation?

8 MS. MACEDO: So the Cohan Rule was an entertainer
9 who the Court found to have had entertainment -- or travel
10 and meal expenses. Therefore, the Court allowed the Tax
11 Court to determine a reasonable basis. In this time now,
12 Cohan wouldn't actually been able to meet the
13 substantiation requirements or expense and travel
14 deductions. The same here, Appellant substantiation
15 requirements is a competent appraisal, Appellant has not
16 provided a competent appraisal. Therefore, the Cohan Rule
17 does not apply.

18 JUDGE TAY: Okay. No further question. Thank
19 you.

20 JUDGE LAMBERT: Judge Cho, do you have any
21 questions?

22 JUDGE CHO: I don't have any questions at this
23 time. Thank you.

24 JUDGE LAMBERT: I have no questions at this time
25 either. So thank you, Ms. Macedo.

1 And, Ms. Gyor, do you want to now make your
2 closing remarks? And we gave you 15 minutes. Thanks.

3 MR. FUSI: Wait. Your Honor, may I make a
4 statement --

5 JUDGE LAMBERT: Sure.

6 MR. FUSI: -- in response to Franchise Tax's
7 allegations?

8

9

WITNESS TESTIMONY

10 MR. FUSI: Franchise Tax says there's no valid
11 appraisal. Well, the man who made the jewelry constructed
12 it, put it together, bought it, said here is my estimate
13 of my recollection of what Mr. Fusi paid for. Other than
14 a receipt, to me that's significant evidence. And to say
15 there is no evidence is just false. Absence a receipt,
16 the man who built it has said here is what my best
17 recollection of what Mr. Fusi paid for. I know the
18 quality. I know the setting it was put in. I know
19 everything about it. It's listed in my inventory of
20 product number 1, 2, 3, 4, 5, 6, 7, and he provides a
21 value.

22 Again, other than the receipts, that's the best
23 evidence that you could have, in my view. Also, there is
24 an allegation that there's no evidence that the property
25 was ever transferred to me. Well, what their alleging is

1 our testimony is not evidence. Testimonial evidence is
2 considered a prime source of evidence in a court of law.
3 Ms. Kim and I have testified to the existence, the value,
4 the circumstances as to how it was obtained, how it was
5 lost, and the how we received value. That's evidence.
6 And to say we have no evidence is just plain false.

7 I'm sorry. I'm getting emotional again. Go
8 ahead.

9
10 CLOSING STATEMENT

11 MS. GYOR: Agreed. And this is sort of the way
12 we've been treated from the beginning because we did not
13 have perfect evidence that we would have loved to have at
14 well because it would have stopped the audit right in its
15 tracks. But because we don't have perfect evidence, the
16 evidence that we do have is meaningless. And not only is
17 it meaningless, it further proves that he is a tax cheat.
18 That's essentially the way that we've been treated from
19 the very beginning.

20 And even the case law and tax code section cited
21 by the Franchise Tax Board from Mr. Byers to Ms. Beck to
22 Ms. Macedo, they really don't provide any substantiation
23 for their side of the case. I mean -- and I know you have
24 read this, but I would just bring, again, to the forefront
25 of your mind the Fredric and Jean Glesea -- if that's the

1 correct pronunciation -- taxpayers who provided absolutely
2 nothing to defend their position for taking a loss. And
3 what did the Franchise Tax Board do? Did they treat Mr.
4 Glesea like Mr. Fusi and say, "Well, you don't have
5 anything to prove your basis, so you get nothing."

6 No. They came to a reasonable conclusion. They
7 gave him something. And, you know, whatever methods they
8 used to determine that, that was specific to that case.
9 But as Mr. Fusi said, "We have not provided nothing."
10 We've never held back any of the evidence that we had from
11 the very beginning. And when it became clear that that
12 evidence was deemed useless, we scrambled to find whatever
13 we could, you know.

14 It's unfortunate the photos were stolen. It's
15 unfortunate that he moved many times and didn't have the
16 documentation. It doesn't mean that he's not able --
17 there's no way for him to prove anything. And it
18 certainly doesn't mean that he is lying or has come up
19 with some scam. As Ms. Macedo, you know, says, "He had
20 the world to gain by taking this loss." Well, a \$50,000
21 loss is not the world to someone making \$500,000 a year.

22 So it's just -- the attitude that has been put
23 forth from the State has been one of bias from the very
24 beginning. It's not fair. We would like the law to be
25 applied fairly to us. We would like someone to actually

1 explain why the case law that Mr. Byers' cited, and that
2 we refuted, why are our arguments invalid or wrong. No
3 one has ever done that. They just keep throwing out new
4 cases saying, "Well, you didn't do this. You didn't do
5 that."

6 We feel we did. And I also feel that the
7 evidence that we've put forth, the multiple audits that
8 Mr. Fusi has had, all resulting in no change. That shows
9 at a very minimum that he should not be somebody who
10 should be slapped with this accuracy penalty like he's
11 some flagrant person who just on a whim decided to put
12 this huge loss on his return that he was not entitled to.

13 It's without merit, it's easy to do it because
14 it's the state, and we're just the lowly taxpayer. But
15 it's not fair, and we would like the law to be applied to
16 us as it has been in the past to other taxpayers who have
17 not had perfect documentation. We would like the law to
18 be applied fairly to us as well.

19 So thank you.

20

21 WITNESS TESTIMONY

22 MR. FUSI: May I make another statement? When
23 Ms. Gyor remembered, that's when I turned it in. I said
24 there will probably be a discussion about the value. And
25 I can see myself having a problem with the value. I'm

1 willing to negotiate. If they have a problem with the
2 value, if they think it's wrong and they can provide
3 evidence that it's wrong, I'm willing to negotiate that.
4 But nobody -- nobody is going to call me a liar. Nobody
5 is going to say that I falsified documents. Nobody is
6 going to say that I made statements under penalty of
7 perjury. That wasn't true.

8 That goes to ethical violations of the State Bar,
9 and I am not going to be accused of that. And if it is
10 contingent, if there's -- I don't know if there's another
11 court above this or not. I have no idea. I know nothing
12 about taxes. But if there's something higher, and you're
13 going to continue to say I'm a liar, we're going there.

14 You want to say, uh, your valuation is a little
15 high and we're going to cut it back, I'm willing to
16 negotiate that. That's fair because I didn't keep the
17 receipts or lost the receipts or whatever. They're not in
18 my possession anymore. And so to me that would be a
19 legitimate concern. But everything else that I've been
20 accused of is frankly BS, and I'm not going to stand for
21 it.

22 Thank you. I'm sorry for wasting your time.

23 JUDGE LAMBERT: Thank you, Mr. Fusi. I
24 appreciate it.

25 At this time I'm going to ask if my co-panelists

1 have any final questions of either party.

2 Judge Tay, do you have any questions?

3 JUDGE TAY: Just one question for Appellant with
4 regard to the -- I guess, the testimony was that Ms. Kim
5 returned the jewelry that was given to her just before
6 their divorce. How does the post-nuptial agreement kind
7 of effect that return of jewelry? Specifically -- excuse
8 me -- looking at provisions like -- I don't know if you
9 have the post-nuptial agreement in front of you? You're
10 not. Okay. It's Exhibit C to Franchise Tax Board's
11 opening brief. It says, "Dispositions of property in 7A,
12 notwithstanding any other provision in agreement, either
13 party may, by appropriate written instrument only,
14 transfer, convey, divide, or bequeath any property to the
15 other or nominate," so on and so forth.

16 And then in Section 11 it says that, "Any
17 separate property to be transmuted must be in writing."

18 So can you just speak to how the post-nuptial
19 agreement effects that testimony?

20 MS. GYOR: Could you say the beginning of the
21 question again, please?

22 JUDGE TAY: Sure. The testimony was that Ms. Kim
23 returned the jewelry, and so gave ownership of the jewelry
24 back to Mr. Fusi.

25 MR. FUSI: It wasn't that she returned it. She

1 used the jewelry to pay off a few million dollars that had
2 disappeared from my retirement account, and all she had
3 was the jewelry. So I said give it to me before the
4 divorce. We made the arrangement, and so we don't have to
5 bring this debt up in the divorce proceedings, and I took
6 possession of it. She moved to the maid's quarters, and
7 then we filed for a divorce.

8 She lives part-time in Las Vegas. She still
9 does. She's a resident of Nevada, not California. She
10 spends most of her time, as through our marriage, in
11 Nevada. Maybe she spends the whole time we've been
12 married three or four days a week here and the rest of the
13 time in Nevada. There was a time when she was spending
14 four or five days in Nevada.

15 MS. GYOR: So you're saying that the jewelry --
16 this transfer happened before the divorce; correct?

17 MR. FUSI: Yes.

18 MS. GYOR: Does that answer your question,
19 Judge Tay?

20 JUDGE TAY: Well, my question was how the
21 post-nuptial agreement might affect that transfer, but I
22 appreciate the clarification that Mr. Fusi gave.

23 MR. FUSI: The pre-nuptial agreement was done, I
24 think, a year after we were married.

25 MS. GYOR: Post. He's talking about.

1 JUDGE TAY: Post-nuptial agreement, yeah.

2 MR. FUSI: The post-nuptial agreement because
3 after which we were married, she started getting letters
4 from billing companies that said her ex-husband owed
5 money, and she cosigned. And when I asked her how much
6 has your ex-husband done, she said, "I don't know."

7 I said, "Well, could it be cars?"

8 And she said, "Yes."

9 And I said, "We're going down to talk to an
10 attorney and do a post-nuptial agreement because I'm going
11 to be liable for the debts of your ex-husband."

12 Until that time, a post-nuptial agreement never
13 even crossed my mind, but I called an attorney after all
14 these bills started coming in from collection companies
15 that her ex-husband had run up huge amounts of bills, and
16 she had cosigned for him. And I said I'm not paying for
17 your ex-husband's expenses.

18 Did I answer your question?

19 MS. GYOR: So are you saying that this was more
20 to protect yourselves from her former husband?

21 MR. FUSI: The post-nuptial agreement? Yeah,
22 that's all it was for. There wouldn't be one if that
23 hadn't happened.

24 MS. GYOR: Does that satisfy you, Mr. Tay --
25 Judge Tay?

1 JUDGE TAY: Understood. Thank you. No further
2 questions.

3 JUDGE LAMBERT: Okay. Thanks. I think it was
4 also that the post-nuptial agreement made specific
5 statements about gifts that were made to -- from Mr. Fusi
6 to Ms. Kim, like, should remain separate property after
7 the marriage, and I think he was asking how that affects
8 the fact that there's nothing in writing in terms of
9 Ms. Kim giving back the jewelry to Mr. Fusi, and whether
10 this agreement should hold more weight and, you know,
11 supersede anything else that happened. And I think
12 Mr. Fusi kind of discussed that the reasons. Perhaps it
13 wasn't in writing, but are we supposed to follow the
14 post-nuptial agreement even if it states something to that
15 effect?

16 MR. FUSI: We intentionally didn't put it in
17 writing. Is it correct to call you Your Honor?

18 JUDGE LAMBERT: You can just call me --

19 MR. FUSI: That's what I'm used to calling the
20 head of --

21 JUDGE LAMBERT: You don't need to say Your Honor.

22 MR. FUSI: It's -- it is what it is, I guess is
23 all I can say. We intentionally -- I intentionally
24 because I was humiliated. Think about it. You come home
25 one day and a couple of million dollars out of your

1 retirement account is gone, and your wife tells you, "I've
2 gambled it all away." First clue I had. I knew nothing
3 about it. It about knocked me on the floor. And so I
4 took about two weeks to think about. I said one, give me
5 the jewelry and I will forget the \$2 million. Okay?

6 MS. KIM: He got mad. He was upset. He said,
7 "Just give me everything," and I just gave it.

8 JUDGE LAMBERT: Ms. Kim, what was that? Could
9 you --

10 MS. KIM: Well, he was upset. He said, "Give it
11 to me everything," and then I just gave it to him.

12 MR. FUSI: And then I said, "I need a divorce. I
13 can't trust you anymore, and move out of my room and move
14 to the maid's quarters if you want to live here because I
15 can't look at you as my wife anymore."

16 JUDGE LAMBERT: Okay.

17 MR. FUSI: You don't know how humiliating for me.
18 I would assume it would be for you to learn that --

19 MS. KIM: Don't make me embarrassing anymore,
20 please. Oh, my god.

21 JUDGE LAMBERT: Ms. Kim, if you speak it would be
22 helpful if you could come to the microphone and we could
23 hear you better.

24 MS. KIM: I just say don't make me embarrassing
25 too much.

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JUDGE LAMBERT: Okay. Thank you.

Judge Cho, did you have any questions?

JUDGE CHO: I don't have any more questions.

Thank you very much.

JUDGE LAMBERT: Okay. Thanks.

If there's nothing further, I'm going to conclude the hearing, and I want to thank both parties for appearing today and Mr. Fusi and Ms. Kim for testifying.

In 100 days we'll issue a written opinion.

Thank you. The record is now closed.

(Proceedings adjourned at 10:54 a.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 24th day of June, 2022.

ERNALYN M. ALONZO
HEARING REPORTER