

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
D. BECKWITH,) OTA NO. 20056187
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, April 26, 2022

and

Wednesday, April 27, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:14 p.m. and concluding at 5:30 on Tuesday,
April 26, 2022, and commencing again at 9:30 a.m.
and concluding at 11:58 a.m. on Wednesday
April 27, 2022, reported by Ernalyn M. Alonzo,
Hearing Reporter, in and for the State of
California.

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APPEARANCES:

Panel Lead: ALJ SARA HOSEY

Panel Members: ALJ JOSHUA LAMBERT
ALJ SHERIENE RIDENOUR

For the Appellant: ROBERT S. HORWITZ
PHILLIP BEHRENDT
D. BECKWITH
B. WALKER
C. CONN

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 1-3 were previously received at the prehearing conference.)

(Department's Exhibits A-B were previously received at the prehearing conference.)

(Department's Exhibits W-AC were received at page 6.)

(Joint Exhibits J-19A and J-19B were received at page 6)

OPENING STATEMENT

	<u>PAGE</u>
By Mr. Horwitz	8
By Mr. Hofsdal	16

APPELLANT'S WITNESSES:

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Mr. Beckwith	22	51	88	
Mr. Conn	94	107	124	128
Mr. Walker	134	148	164	

PRESENTATION

	<u>PAGE</u>
By Mr. Horwitz	168
By Ms. Macedo	183

CLOSING STATEMENT

	<u>PAGE</u>
By Mr. Horwitz	205, 215
By Ms. Macedo	208

1
2
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California; Tuesday, April 26, 2022

1:14 p.m.

JUDGE HOSEY: Let's go on the record.

This is the Appeal of David Beckwith, Case Number 20056187. Today is April 26th. It's 1:14 p.m. This hearing is being held virtually via Webex with the consent of the parties.

I am lead Administrative Law Judge Sarah Hosey, and with me today is Judge Sheriene Ridenour and Judge Josh Lambert.

Can I have the parties please state your names for the record, starting with Appellant.

MR. BECKWITH: David Beckwith.

JUDGE HOSEY: Thank you, Mr. Beckwith.

Go ahead, Mr. Horwitz.

MR. HORWITZ: Robert Horwitz appearing for Mr. Beckwith.

MR. BEHRENDT: Phillip Behrendt appearing for Mr. Beckwith.

JUDGE HOSEY: Can I have Respondent FTB make their appearances.

MR. HOFSDAL: Ron Hofsdal for the Franchise Tax Board.

MS. MACEDO: Desiree Macedo with the Franchise

1 Tax Board.

2 JUDGE HOSEY: Thank you.

3 The issue to be decided in this appeal is whether
4 Mr. Beckwith was a California domiciliary and/or resident
5 on December 19th, 2012, when he exchanged his shares in
6 Eco-Energy Holdings, Inc.

7 We premarked Exhibits 1 through 3 for Appellant
8 and A through B for Respondent FTB at the prehearing
9 conference held on April 5th, 2022. They were admitted
10 into the record per the prehearing conference minutes and
11 orders issued on April 7th, 2022. We have new exhibits to
12 enter into evidence today. Franchise Tax Board submitted
13 Exhibits W through AC. We are entering Exhibits W through
14 AC. We are entering -- Exhibits W through AC are admitted
15 into evidence, into the record.

16 (Department's Exhibits W-AC were received in
17 evidence by the Administrative Law Judge.)

18 We also have a joint statement of facts signed by
19 both parties, along with Joint Exhibits J-1 through J-20.
20 We noted that Exhibit J-19 has been split into two
21 exhibits, J-19A and J-19B. We're now admitting these as
22 evidence into the record.

23 (Joint Exhibits J-19A - J-19B were received
24 in evidence by the Administrative Law Judge.)

25 I want to remind -- before we call our first

1 witness, I want to encourage the witnesses to testify in a
2 narrative form for efficiency. The question and answer
3 can be very time consuming, and I want them to be focused
4 and relevant, keeping in mind the Panel has reviewed the
5 briefing exhibits and the joint statement of facts.

6 All right. Mr. Beckwith, are you ready for your
7 testimony? I'm going to swear you in first.

8 MR. BECKWITH: Yes, Your Honor.

9 MR. HORWITZ: Your Honor?

10 JUDGE HOSEY: Yes, Mr. Horwitz.

11 MR. HOFSDAL: Are we going to have opening
12 statements first?

13 JUDGE HOSEY: I'm sorry.

14 MR. HORWITZ: Are we going to have opening
15 statements first?

16 JUDGE HOSEY: Oh, yeah.

17 MR. HORWITZ: Also, Your Honor, I had one
18 question. On the conference minutes and orders, it list
19 after testimony two-and-a-half hours each, presentation
20 30 minutes each, and then closing. And from my
21 understanding, based on the OTA's booklet on evidentiary
22 hearings, the presentation is submitting documents and
23 calling witnesses. And I was wondering if the
24 presentation was something other than that, or if it was
25 something different.

1 JUDGE HOSEY: No. That's your legal argument.
2 So whatever -- using whatever facts and documents and
3 testimony that you're presenting, that's your time to
4 provide the legal argument and connect it for us. Does
5 that answer your question?

6 MR. HORWITZ: Yes. Because then there was --
7 after that, it was closing remarks 10 minutes each with
8 rebuttal. Is that different than closing?

9 JUDGE HOSEY: It doesn't have to be. You can use
10 it however you like.

11 MR. HORWITZ: Okay. Thank you, Your Honor.

12 JUDGE HOSEY: You're welcome.

13 All right. Was there another question before we
14 were going to do opening statements? Seeing none,
15 Mr. Horwitz, will you please begin your opening statements
16 please.

17 MR. HORWITZ: Thank you, Your Honor.

18

19 OPENING STATEMENT

20 MR. HORWITZ: May it please the Panel,
21 Mr. Hofsdal, Ms. Macedo, the case involves whether David
22 Beckwith was a resident of California on December 19th,
23 2012.

24 By way of background, Mr. Beckwith was born in
25 California. And in, 1990 approximately, he married Erika

1 Machado who had a young daughter Kailee. In 1997 his
2 brother Larry had founded a company in Nashville,
3 Tennessee -- I mean, in Franklin, Tennessee, which is a
4 suburb of Nashville, called Eco-Energy.

5 At that time Eco-Energy was engaged in the
6 business of buying ethanol from manufacturers and selling
7 the ethanol to oil companies. And in 1997 Mr. Beckwith
8 joined his brother's company, and he and his brother at
9 that time were the only people working for Eco-Energy.
10 During 1997 to 2008, Eco-Energy began to grow and grew
11 substantially. And Mr. Beckwith's duties also started to
12 grow substantial. Initially, he was a salesperson for
13 Eco-Energy, and his brother had given him the title
14 "President of Operations".

15 In March 2007, Mr. Beckwith and his wife through
16 Beckwith -- through Beckwith Family Trust purchased a home
17 in 810 South Juanita in Redondo Beach California. But
18 after that, their marriage started to slide downhill and
19 they separated in 2007. They were divorced, and
20 Mr. Beckwith got the South Juanita property as part of the
21 marriage settlement. Now, by that time, he had been
22 working approximately nine years for Eco-Energy. And as
23 it grew his brother wanted him to move to Nashville -- to
24 Franklin to work at the business full time because of the
25 needs and demands of the business.

1 In April 2008, Mr. Beckwith bought a property at
2 1089 Vaughn Crest Drive in Franklin, Tennessee. It was
3 over nine-thousand square foot home on approximately one
4 acre of land, which was rather sizable for a single man.
5 But he bought that home because it was next door to his
6 brother Larry's home, and Larry was married and had two
7 sons and a daughter. Also, David's -- Mr. Beckwith's wife
8 and mother -- I mean, mother and sister resided in
9 Franklin, Tennessee, and that was also the headquarters of
10 Eco-Energy. So in approximately May of 2008 Mr. Beckwith
11 moved to Tennessee, became a domiciliary and resident of
12 Tennessee. While in Tennessee, he joined the Citizens's
13 Club in Nashville and also attended Cross Point Church
14 which he attended on a regular basis.

15 Now, then in 2011 things began to change. First,
16 in late 2011, his brother Larry and his wife divorced.
17 Secondly, in late 2011, Mr. Beckwith and his brother began
18 discussing the possibility of selling Eco-Energy. They
19 initially consulted with Wells Fargo Bank, which indicated
20 to them that the company -- that it would be difficult to
21 sell the company. In April of 2012, Eco-Energy engaged
22 Piper Jaffrey to advise and assist with respect to selling
23 Eco-Energy.

24 Also, in March of 2012, due to the fact that his
25 brother had divorced and moved out of the home next to

1 him, Mr. Beckwith decided to put his home on Vaughn Crest
2 Drive up for sale and began looking for a condominium -- a
3 smaller residence -- a condominium in Nashville in the
4 Gulch area to move to. It was about this time that
5 Mr. Beckwith became involved with a young woman who lived
6 in Los Angeles named Lauren Fray.

7 He dated Ms. Fray in -- I believe he started
8 seeing her in February or March of 2012. He had -- and
9 they became, you know, very -- they became close. He
10 started courting her in March or April 2012 through an
11 acquaintance of Ms. Fray. Mr. Beckwith was informed about
12 a property located at 6136 West Fifth Street in
13 Los Angeles that could be acquired in a short sale for a
14 low market price. Mr. Beckwith began negotiations, and by
15 mid-April of 2012, he had come to general terms with the
16 owner of the property, a gentleman named Wyatt Earp.

17 And on or about April 20th, a law firm
18 Mr. Beckwith engaged, began working on the sale documents
19 for the sale, and the property was sold and escrow closed
20 on July 2012. Because the property needed renovations and
21 remodeling, Mr. Beckwith hired a contractor Hi Crest and
22 other contractors to work on the property with the start
23 date of July 30th, 2012, and an end date of five months,
24 which would have been the end of December 2012.

25 At this point in time, Mr. Beckwith viewed the

1 property as an invest that, if he upgraded and renovated
2 and remolded, could be sold at a profit. And when he
3 was -- in September of 2012, Ms. Fray had a small
4 apartment. In September of 2012 the property -- the
5 West Fifth Street property was renovated enough so that
6 there was room. So Ms. Fray moved into the place, into
7 the West Fifth Street property. When Mr. Beckwith was
8 visiting her, he would stay with her. In California he
9 would stay with her at the Fifth Street property.

10 But he was there for the purpose of courting her
11 and not for the purpose of residing in California. He was
12 still involved with Eco-Energy, which was his employer,
13 which was the source of his income. And he, at that point
14 in time, had no intention of moving to California or
15 becoming a California resident. During this period of
16 time, Mr. Beckwith continued to look for a condominium
17 that was suitable in Nashville. He also was having
18 discussions in -- about form -- setting up a
19 Brewpub/Restaurant in Nashville, which would take a lot of
20 time and energy on his part. And he was involved in that
21 venture with his brother and with Benjamin Walker and Dean
22 Sheremt who was a celebrity chief.

23 They looked at properties for -- to lease to set
24 up a brewpub in the fall of 2012. At the same time,
25 Mr. Beckwith had put his home up on the market, but he

1 could not get any offers for the price he put it up with.
2 So he offered it for sale at his purchase price, and he
3 finally found a buyer. And the property was sold, and
4 escrow closed on October 31st, 2012. The cost of all the
5 furniture in there and in the home, because he had a 9,600
6 square-foot home or over 9,000 square foot home on Vaughn
7 Crest Drive, and he was looking for a smaller condominium,
8 he decided to put the furniture and furnishings up for
9 sale.

10 So in late -- in September or October of 2012, he
11 met with Michael Taylor of Michael Taylor Estate and
12 Moving Sales Company to take the furniture from the Vaughn
13 Crest home and move it out and ultimately put it up for
14 sale, which they did. And on October 17th, Mr. Beckwith
15 vacated the premise. He basically -- his residence at
16 that point in time became his mother's home at 437 King
17 Arthur Drive in Franklin, Tennessee. He had his bank
18 statements for his Bank of America accounts sent to that
19 address. He had his credit cards sent to that address.
20 He had his driver's license -- his Tennessee driver's
21 license with -- changed to show it was his address.

22 His pay stubs from Eco-Energy reflected that
23 address and it was his intention at that point in time to
24 remain in Tennessee. And unless and until the Eco-Energy
25 was sold, to remain a resident and live in Tennessee. On

1 or about November 1 or in late October or November of
2 2012, Eco-Energy Holdings entered into an agreement with
3 Copersucar, which is a Brazilian alternate fuel company.

4 For the sale of the business to Copersucar, that
5 required a lengthy detail due diligence provision and the
6 due diligence -- at which time after the due diligence was
7 completed, the company was closed. However, as in all
8 transactions involving the sale of a large corporation,
9 there was always the possibility that the sale will fall
10 through. And up until the time that sale closed,
11 Mr. Beckwith had no intention at that point in time of
12 becoming a resident of California. During this time he
13 spent time in California and in other places in November
14 and December.

15 And on November -- December 18, 2012,
16 Mr. Beckwith came to Tennessee for the closing of the
17 sale, which occurred on November 19th. But as anyone
18 knows who is involved whether it's with a real estate
19 transaction or a business transaction, like the saying
20 goes, it isn't over until it's over. The sale closed on
21 November 19th, and it was not until that time that
22 Mr. Beckwith, after the sale closed, that Mr. Beckwith
23 decided that he would move to California. He was in
24 Tennessee for the 18th, 19th, 20th, and 21st.

25 He then went to California on the 22nd. And then

1 on the 24th, he and Ms. Fray went to Las Vegas for a few
2 days and then they went on vacation. And Mr. Beckwith
3 came back to California on January 3rd and then became a
4 permanent resident of California. And after which he then
5 bought investment property in California in 2013. He
6 leased a property in Los Angeles and opened up a
7 restaurant in Los Angeles, but his intent was to remain a
8 resident of Tennessee and not become a -- and not move
9 from Tennessee until the sale of Eco-Energy was completed,
10 and he no longer had --

11 JUDGE HOSEY: Mr. Horwitz, you have two minutes
12 remaining.

13 MR. HORWITZ: I know that, Your Honors. Thank
14 you.

15 And so after the court hears all the testimony
16 and examines all the exhibits, we believe that the Panel
17 will come to the conclusion that Mr. Beckwith remained a
18 resident of Tennessee on November 19th, 2012, and did not
19 become a resident of California until afterwards.

20 Thank you, Your Honor.

21 JUDGE HOSEY: Sorry for the interruption. I just
22 want to make sure you got everything you wanted to do
23 within the 15 minutes. Thank you.

24 All right. Mr. Hofsdal are you ready with your
25 opening?

1 MR. HOFSDAL: Yes, I am.

2 JUDGE HOSEY: Please begin.

3

4 OPENING STATEMENT

5 MR. HOFSDAL: Good afternoon. As I said earlier
6 my name is Ron Hofsdal. I represent the Franchise Tax
7 Board. And with me and will be speaking a little bit
8 later is Desiree Macedo. This is my opening statement.

9 Mr. Beckworth [sic] agrees that he was a
10 California resident through May 16th, 2008, when he
11 relocated to Tennessee to work for Eco-Energy. At that
12 time, Mr. Beckworth owned a significant stake in the
13 company. Mr. Beckworth also agrees that soon after he
14 sold his Eco-Energy stock he returned to California. What
15 is at issue is whether Mr. Beckworth was a California
16 resident on December 19th, 2012, the day he sold the
17 stock, and some two weeks prior to which Mr. Beckworth
18 agrees that he became a California resident.

19 The vast majority of residency cases we see at
20 the FTB and as likely seen here at the Office of Tax
21 Appeals involve facts very similar to ours. Prior to the
22 sale of a capital asset, the taxpayer begins to acquire
23 connections in a new state, while at the time he arguably
24 severs his or her connections in the old state. But,
25 ultimately, residency, whether it's severed, acquired, or

1 both at the time of the sale is determined evaluating the
2 connections that the taxpayer had with each state.

3 Here Tennessee and California at the time the
4 asset sold. Cases, including the recent decision in Mazer
5 and Bracamonte essentially put a taxpayer's connections
6 into three silos: Connections acquired, connections
7 severed, and connections maintained. Also, not all
8 factors are given the same weight. Mazer, Bracamonte, and
9 like cases give significantly more weight to factors such
10 as physical presence and family abode.

11 While Ms. Macedo will be talking about this in
12 greater detail either later today or tomorrow, it's
13 worthwhile to note now that it is undisputed that
14 Mr. Beckworth both acquired and occupied a new home in
15 California a few months before the sale; and that
16 Mr. Beckworth had entered into a committed relationship in
17 California with Ms. Fray and had actually become engaged
18 and were fiances prior to the sale; that Mr. Beckworth had
19 relocated his fiancée to this new California home before
20 the sale.

21 And other than trips to Mexico, Arizona, and Las
22 Vegas, where Mr. Beckworth stayed in a hotel, Mr.
23 Beckworth lived exclusively in his new California home.
24 And sharing it with his fiancée essentially made it his
25 family abode. It's also worthwhile to note, as reflected

1 in Joint Exhibit 16-J, which is at page 2767, that
2 starting in May 2012 and each subsequent month,
3 Mr. Beckworth spent exceedingly more time in California
4 than Tennessee. And what this exhibit makes abundantly
5 clear, is that the connections related to physical
6 presence favored California as early as May 2012. And, in
7 fact, from the middle of April 2012 through December 31st,
8 Mr. Beckworth spent a grand total of about 34 business
9 days in Tennessee and the remaining primarily in
10 California.

11 It's also undisputed that Mr. Beckworth severed
12 his most significant Tennessee connections prior to the
13 Eco-Energy sale. He stopped working for Eco-Energy in
14 Tennessee. He sold his Tennessee home. He arranged for
15 an estate sale company to sell his personal items located
16 in Tennessee. His vehicle, the one whose lease was not
17 soon to expire, was shipped to California, and
18 Mr. Beckwith returned his firearm to a Tennessee gun shop.
19 All this happened well before the sale of Eco-Energy.

20 By November 1st, 2012, it was clear that
21 Mr. Beckwith had little in Tennessee at the ready for an
22 alleged return. And consistent with having nothing at the
23 ready, except for being in Tennessee to close the
24 Tennessee sale, Mr. Beckwith had not, during the relevant
25 time, returned to Tennessee. The only connections that

1 Mr. Beckwith maintained were holdovers for when he was
2 clearly a resident of California, his 2008 California
3 abode and providing support to his stepdaughter.

4 What makes this case different than the typical
5 case we see is that in this matter Mr. Beckwith moved to
6 California, while most controversies involving taxpayers
7 moving from California. But regardless if a person is
8 arguably moving to California or from California, the law
9 and analysis, including the evaluation of the benefits and
10 protections received by Mr. Beckwith during the relevant
11 time, as well as the weighing of connections that
12 Mr. Beckwith acquired, severed, and maintained during the
13 relevant time is essentially the same.

14 Over the next two days we'll be hearing from
15 three witnesses -- I guess two witnesses now, not
16 including Mr. Beckwith. The testimony of these witnesses
17 serves only one purpose, to shift the focus from what
18 connections Mr. Beckwith had acquired and severed and
19 maintained, to a discussion of what Mr. Beckwith could
20 have done and would have done had an unlikely intervening
21 event occurred. That being said, the focus of this
22 controversy is properly placed with what Mr. Beckwith did.
23 And any attempt by Mr. Beckwith to shift this focus must
24 be met with skepticism.

25 This being said, the issue before us is not

1 whether Mr. Beckwith was a resident of Tennessee under
2 Tennessee law, but whether Mr. Beckwith was a resident of
3 California under California law. Mr. Beckwith will be
4 deemed a California resident if it is determined that he
5 was inside California for other than a temporary or
6 transitory purpose regardless of his state of domicile.

7 And the facts, as Ms. Macedo will discuss later,
8 will reflect that Mr. Beckwith began reconnecting with
9 California as early as April 2012, such that by
10 November 1st, 2012, if not earlier, Mr. Beckwith had
11 ramped up his California connections and severed his
12 Tennessee connections to the point that it was very clear
13 that under California law he was a California resident.
14 The transition described in the Noble case was complete.

15 And Mr. Beckwith remained a California resident
16 at least through the 2020 tax year, if not beyond. And,
17 in fact, he opened restaurants in Ojai, California. In
18 fact, the first restaurant was well underway in early
19 2013. This is well documented from canceled checks.
20 Significantly, deciding whether a taxpayer's presence is
21 for a temporary or transitory purpose involves the
22 analysis of what Mr. Beckwith did, not what Mr. Beckwith
23 could have, would have, and arguably should have done.

24 Mr. Beckwith will also be deemed a resident if as
25 a California domiciliary he was outside of California for

1 a temporary or transitory purpose. Acquiring a new
2 domicile requires the coexisting of physical presence and
3 intent. Importantly, an intent is evaluated through what
4 Mr. Beckwith did, his actions. Not by Mr. Beckwith's
5 stated intentions, or for that matter, what witnesses may
6 imply could have happened.

7 And here, as Ms. Macedo will discuss later,
8 Mr. Beckwith's intent as seen through his conduct leads to
9 only one result, that he was a resident of California on
10 December 19, 2012. Later Ms. Macedo will present the law,
11 the facts, and interplay of the facts to the law after we
12 meet the witnesses and Appellants presents their case.

13 Thank you.

14 JUDGE HOSEY: Thank you, Mr. Hofsdal.

15 We're going to go ahead and call the first
16 witness.

17 Mr. Horwitz, you're calling Mr. Beckwith first?

18 MR. HORWITZ: Yes, Your Honor.

19 JUDGE HOSEY: Okay. Mr. Beckwith, I'm going to
20 swear you in before you begin your testimony.

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

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JUDGE HOSEY: Okay. Go ahead and begin. Thank
you.

MR. BECKWITH: Thank you.

DIRECT EXAMINATION

BY MR. HORWITZ:

Q Mr. Beckwith?

A Yes.

Q What's your current occupation?

A I'm a real estate investor, and I do investments.

Q And could you tell us a little bit about your
background, your education, and what your occupation was
prior to becoming involved with Eco-Energy?

A I went to -- I finished high school. I went to
two years of college. Then I joined my father in his
family carpet business. And my brother and myself, we
expanded the business to a wholesale business where we
manufactured carpeting and imported rugs and carpets from
Europe. And then I joined my brother's company in 1997
and became a minority shareholder in his company. There
were two shareholders, myself and my brother.

Q And where was your father's carpet company
located?

A It was on Pico Boulevard in West Los Angeles.

1 Q Now in about 1990 you got married?

2 A Correct.

3 Q And who were you married to?

4 A Erika Machado.

5 Q And did she have any children?

6 A Yes. Kailee Machado.

7 Q Okay. And when did the marriage to Ms. Machado
8 end?

9 A I believe it was 2007 -- late 2006 or 2007. I
10 can't remember.

11 Q And at that point, prior to your separation and
12 divorce, did you and Ms. Machado purchase the property in
13 Redondo Beach at 810 South Juanita?

14 A Yes.

15 JUDGE HOSEY: Sorry, gentlemen. Let me interrupt
16 you. We're having a hard time hearing you both with the
17 echo. Let's take a break for five minutes and see if we
18 can get somebody, whether it's Mr. Beckwith or Mr. Horwitz
19 on the phone, but stay online until we can get this
20 resolved.

21 So can I have everyone just mute and/or turn off
22 your video if you want to take a break really quick just
23 for five minutes.

24 (There is a pause in the proceedings.)

25 JUDGE HOSEY: So we are now back on the record.

1 Mr. Horwitz, can you please begin your testimony
2 with Mr. Beckwith. Thank you.

3 MR. HORWITZ: Okay. So I start at the beginning,
4 Your Honor.

5 JUDGE HOSEY: Oh, no. I'm hearing some feedback.

6 MR. HORWITZ: David, do you have the volume up on
7 your computer?

8 MR. BECKWITH: Yeah. My volume is completely
9 off.

10 JUDGE HOSEY: Let's go ahead and have Mr. Horwitz
11 start.

12 And then, Mr. Horwitz, can you mute yourself as
13 soon as you ask a question and see if that will work.

14 MR. HORWITZ: Okay Your Honor.

15 BY MR. HORWITZ:

16 Q Mr. Beckwith, could you tell us something about
17 your background, including your education and work before
18 you started with Eco-Energy?

19 A Yes. I -- everything I'm saying is going
20 terribly. Can you --

21 JUDGE HOSEY: Mr. Beckwith, I'm sorry. Can you
22 try hitting the F4 key, F4on your computer.

23 MR. BECKWITH: Computer F4? Computer command F4?

24 JUDGE HOSEY: Oh, never mind. I'm sorry. I'm
25 getting some messages from our team. It says that there

1 were two bubbles, but I think he closed one. So let's try
2 this again. Can you hear any feedback when I'm talking
3 right now?

4 MR. BECKWITH: Yes. I don't hear any echo as I
5 speak.

6 JUDGE HOSEY: Okay. I think we just had an extra
7 bubble up. I think we are good. Sorry. So sorry. Let's
8 start over again.

9 Mr. Horwitz, let's start from the beginning. I'm
10 restarting the timer as well.

11 BY MR. HORWITZ:

12 Q Mr. Beckwith, could you tell us something about
13 your background, education, and where you worked before
14 you start at Eco-Energy?

15 A Yes. I graduated high school, at Beverly Hills
16 high school, and then I attended San Diego State for two
17 years. And I worked in the -- after I left school, I
18 worked in my family business, a carpet business called
19 Barry Carpet my dad owned, in West Los Angeles on Pico and
20 Sepulveda.

21 Did we lose Mr. Horwitz?

22 MR. BEHRENDT: No. He's muted.

23 MR. HORWITZ: No. I'm muted. It keeps on --
24 finally. I hit unmute, and it muted again as soon as I
25 started talking. Sorry, Your Honor.

1 BY MR. HORWITZ:

2 Q In approximately 1990 you married Erika Machado?

3 A Yes, Erika Machado.

4 Q And did she have any children?

5 A Yes. Kailee Machado.

6 Q And approximately how old was Kailee when you got
7 married?

8 A When I first met her, she was about five months
9 old. And when we married, I believe she was about a year
10 and a half.

11 Q And in March of 2006, you and Ms. Machado
12 purchased a home in Redondo Beach on South Juanita?

13 A Yes.

14 Q And what happened to your marriage after you
15 purchased the home?

16 A We separated and got a divorce in late 2006,
17 early 2007. I don't know the exact date.

18 Q And could you tell us something about the
19 property settlement --

20 A Yes.

21 Q -- of your divorce?

22 A She got the house in Manhattan Beach, and I got
23 the house on 810 South Juanita property. So --

24 Q And were you also required to pay alimony,
25 spousal support?

1 A Yes.

2 Q And what were the arrangements for spousal
3 support?

4 A I was paying spousal support for 10 years.

5 Q Now, then you went to work for Eco-Energy in
6 1997?

7 A Yes.

8 Q Could you tell us something about Eco-Energy, its
9 founding, what its business was when you joined it?

10 A Yes. It was mandated that California blended
11 10 percent ethanol into fuel. And my brother started the
12 company with an ex-college roommate, and he was the buffer
13 zone between the farmer and the major oil companies. So
14 he would source the ethanol for them to blend, and then it
15 spread to other states. And after five years in the
16 business, my brother in 1997 split with his partner and
17 brought me in as the second person at his company.

18 Q And that company was Eco-Energy?

19 A Yes, sir.

20 Q And did Eco-Energy manufacture ethanol or just
21 act as a middleman?

22 A We acted as the middleman. We did the marketing,
23 logistics, transportation, storage. And, you know, for
24 the ethanol plants, we did off-take agreements with the
25 ethanol plants. Everything they manufactured we bought

1 and sold.

2 Q And so you were -- Eco-Energy in effect the
3 exclusive buyer from its -- the manufacturers it did
4 business with?

5 A Yes.

6 Q And when you started working at Eco-Energy, what
7 were your duties?

8 A My brother had 20 accounts, and he wasn't doing a
9 lot of business with 10 of them. So he offered me to
10 service 10 of the accounts, and I built up the business
11 considerably on those 10 accounts, and our business
12 started growing. We started adding people and so forth.
13 But I was mainly a salesman when I first started with the
14 company.

15 Q And in time did your duties change?

16 A Yes. We started expanding, and my brother
17 appointed me president of operations, and I went from
18 there.

19 Q When you first began at Eco-Energy, what was the
20 gross sales?

21 A I believe we were doing about \$250 million in
22 business when we first -- when I first started.

23 Q And in 2008 you moved to Tennessee?

24 A Yes.

25 Q And what was your reason for moving to Tennessee?

1 A Business was growing, and I was just -- my
2 brother asked me to move there because I needed to be
3 present to basically run the company, the operations side
4 of the company.

5 Q What was involved in running the operations side?

6 A You know, I still -- I still maintained key major
7 accounts, but I had salesmen who worked under me and
8 reported to me, marketing people. And, you know, just met
9 on a daily basis from an eye-level perspective with my
10 brother and ran the physical side of the business. My
11 brother did more of the accounting, you know, money side
12 of the business.

13 Q And when you moved to Tennessee you purchased a
14 home on Vaughn Crest Drive?

15 A Correct.

16 Q Could you describe the home, what it was like,
17 how big of a lot it was?

18 A It was on an acre lot. It was 9,200-square foot
19 approximately. Way too big for one person.

20 Q Why did you purchase a home that size as a single
21 person?

22 A There was one house between my brother and myself
23 and my nieces and nephews -- my niece and nephews.

24 Q So you moved there to be close to your brother
25 and his family?

1 A Yes.

2 Q Okay. Now, besides your brother, your nieces,
3 and nephews, did you have any other relatives living in
4 Franklin at that time?

5 A My mother and my sister.

6 Q And what type of neighborhood was the Vaughn
7 Crest Drive property in?

8 A There was an affluent private-gated community.

9 Q Now, besides Eco-Energy, were you and your
10 brother -- were you involved in any other businesses in
11 Tennessee?

12 A Yes. In late 2011, 2012 I was involved with
13 Vocal Mischief Records which was a record company. I did
14 some work with Pirtle Products, which was a products
15 company. And I did SPRY Capital with my brother and Chad
16 Martin that nothing really -- nothing really arose out of
17 that. We just tried to do investments, but nothing really
18 came through to fruition.

19 Q Okay. Now, then let's -- I want to first focus
20 your attention on 2012. In 2012 -- February of 2012 were
21 you in Los Angeles?

22 A Yes.

23 Q And why did you go to Los Angeles in February?

24 A My brother and I were invited to the Grammy
25 Awards and the Music Cares, which is a charity event as

1 well the night before the Grammy Awards.

2 THE STENOGRAPHER: I'm sorry. What kind of
3 charity event?

4 MR. BECKWITH: Pardon me?

5 THE STENOGRAPHER: What was the name of the
6 charity event?

7 MR. BECKWITH: Music Cares.

8 THE STENOGRAPHER: Thank you.

9 MR. BECKWITH: Thank you.

10 BY MR. HORWITZ:

11 Q Now, did you invite anyone to go with you to
12 Music Cares?

13 A Yes. Lauren Fray.

14 Q And how did you know Lauren Fray?

15 A We met in Nashville a few months prior, through a
16 mutual friend named Melissa.

17 Q And after meeting -- after going out to Music --
18 was this the first time you had gone out with Ms. Fray, to
19 Music Cares?

20 A Yeah. We actually went as friends.

21 Q And after this, did you begin dating Ms. Fray?

22 A Yes, I did.

23 Q And it was a long-distance relationship?

24 A Correct.

25 Q Okay. Did she come out to see -- to Nashville

1 while you were dating?

2 A Yes. I believe a few times. I don't remember
3 exactly.

4 Q And did you also go on vacations with her?

5 A Yes, I did.

6 Q Now, I want to turn to the west Fifth Street
7 property?

8 A Yes.

9 Q Okay. And before that, during this time, you
10 were still working at Eco-Energy?

11 A Yes.

12 Q And how did it come -- how did the Fifth Street
13 property come to your attention as a potential purchase?

14 A When I would visit California, I would stay at
15 Ms. Fray's apartment, and it wasn't in the best
16 neighborhood. It was in the -- it was her friend who was
17 a Realtor, said she had a really good deal, a short sale
18 on a property located off Fifth Street.

19 Q And when you bought it -- when you -- why did you
20 become interested in the West Fifth Street property?

21 A You know, I thought I it would buy it for a place
22 to stay when I came into town. And Lauren could stay
23 there instead of her apartment so she would be safe and
24 have a nice place to say.

25 Q Did you view it as a place that would become your

1 principal resident?

2 A Not yet. No.

3 Q Okay. And who is the seller of the property?

4 A His name was Wyatt Earp.

5 Q And what was -- could you describe the condition
6 of the property when you purchased it?

7 A It needed renovations.

8 Q And you entered into a contract with Mr. Earp to
9 purchase the property?

10 A Correct.

11 Q Who was Koorennny and Teitelbaum?

12 A Elliott Teitelbaum was a friend of mine, and he's
13 an attorney -- a real estate attorney. And he was hired
14 to do the agreement, I believe.

15 Q Now then, besides -- and so during -- did you --
16 when did the escrow close on the purchase of the West
17 Fifth Street property?

18 A I believe in July. I don't know the exact date.

19 Q And did you hire -- you said the property needed
20 some work when you acquired it?

21 A Correct.

22 Q How extensive was the work that needed to be
23 done?

24 A It was pretty extensive. All three baths were
25 remolded. The kitchen remolded. The hardwood floors were

1 refinished. It was painted. The garage was turned into a
2 pool house. It was pretty extensive.

3 Q And who was the contractor you hired?

4 A It was Mr. Abrami with Hi Crest Construction.

5 Q And could you turn to exhibit book binder
6 page 2764?

7 A I can't. You can tell what it is. I don't have
8 another computer. It's the only one I have.

9 Q Okay. It is the Hi Crest -- the invoice from Hi
10 Crest dated July 2nd, 2012?

11 A Yes.

12 Q And it says at the bottom that the work start
13 date 7/30/2012 and time of completion, the contractor
14 should complete the project within five months from the
15 start date?

16 A Correct.

17 Q Was that approximately when the project began the
18 work?

19 A Yes.

20 Q And five months would put it at the end of
21 December. Is that approximately when the project was
22 completed?

23 A I believe everything was finished -- completed
24 was more towards the end of January 2013. The main thing
25 that we were waiting for was a special-order window from a

1 place called Nana Windows. So I believe, to the best of
2 my memory, it was mid to late January 2013 when the
3 project was complete.

4 Q Okay. And were permits pulled for the project?

5 A I don't believe so because he said there was no
6 square footage that was added. It was all cosmetic work,
7 and I don't believe he did pull permits.

8 Q By he, you mean Mr. Abrami?

9 A Mr. Abrami and Mr. Winters who was an architect
10 friend of mine who helped with the project as well.

11 Q Now then, when did you and your brother begin
12 discussing the possible sale of Eco-Energy.

13 A I believe it was late 2011.

14 Q And could you tell us about those discussions?

15 A Yeah. We were afraid that mandates were going
16 to -- government mandates were going to change and that,
17 you know, that they weren't going to be mandated to blend
18 up ethanol with gasoline. And it was just time. The
19 business was getting very hard. We just thought it was a
20 good time to sell.

21 Q And did you do any investigation at that time
22 about the salability [sic] of the company?

23 A Yes. We hired Wells Fargo. We were interviewing
24 them, and they came and went through our books and said
25 that the business was not sellable at the time when we

1 first were going to sell the business.

2 Q And this would have been at the end of 2012?

3 A No. This would have been at the end of 2011.

4 Q Okay. Sorry. And approximately at this time, at
5 the end of 2011, is when your brother divorced his wife?

6 A Yes, I believe so. Yes.

7 Q Now then, in April of 2012 Eco-Energy engaged
8 Piper Jaffrey?

9 A Correct.

10 Q And what was the reason for engaging Piper
11 Jaffrey?

12 A It was to sell the company.

13 Q And what -- were you involved in the attempts to
14 sell the company?

15 A From a high level -- I was more of an operations
16 guy as I said, but my brother and I talked on a regular
17 basis. And my brother and I replaced ourselves with
18 another CEO and CFO so we wouldn't have to work for the
19 company if it did, in fact, sell.

20 Q What do you mean that you wouldn't have to work
21 for the company if it sold?

22 A If it sold, we wouldn't have to be present and
23 work for the new company. So we did replace ourselves,
24 but we were definitely -- you know, talked on a regular
25 basis from a high-level perspective, still ran the

1 company.

2 Q So by the spring of 2012 you no longer were an
3 officer of Eco-Energy?

4 A I was no longer president of operations, no.

5 Q What was your position with the company?

6 A I just stayed and sat on the board with my
7 brother at high-level meetings and it would -- you know,
8 we would talk about the sale of the company and what was
9 going on throughout, you know, on a daily basis with the
10 company.

11 Q In March of 2012, you put the Vaughn Crest
12 property up for sale?

13 A Yes.

14 Q And why did you do that?

15 A Several reasons. My brother sold his house next
16 door, and it was just too big and depressing for one
17 person. It was just -- I just didn't want to be there
18 anymore.

19 Q And at that point when did you start looking for
20 another place?

21 A Yes. My Realtor John Lott took me to look at
22 high-rise condominiums in the Gulch area of downtown
23 Nashville, and I started looking for a high-rise
24 condominium to live in.

25 Q And what's the Gulch?

1 A It's like a hip part of Nashville. It's near
2 downtown where it's, you know, it's not as suburban.

3 Q Okay. And why were you looking for a place in
4 Nashville?

5 A Why was I look for a place in Nashville?

6 Q Correct?

7 A Because I was going to remain in Nashville, until
8 the business sold, as my primary resident. And I wanted
9 to scale down from that big house.

10 Q At this point in time, in the spring of 2012,
11 were you also investigating other possible business
12 ventures in Nashville.

13 A Yes. I was looking to open up a German beerhouse
14 with celebrity chief Dean Sheremt and Benjamin Walker and
15 my brother. We were looking to open up a brewhouse.

16 Q And what was your involvement in that?

17 A I was going to launch it with Dean. I was going
18 to be the business side of launching it.

19 Q And what were Ben Walker and your brother going
20 to do?

21 A They were going to be more passive partners and
22 invest financially.

23 Q And did you take any debts -- oh, go ahead and
24 continue?

25 A Pardon me?

1 Q Go ahead and continue.

2 A I was going to be the partner that was more
3 actually involved with the concept in setting up the, you
4 know, the brewhouse and dealing with contractors,
5 construction, and so forth.

6 Q And what steps were taken towards getting the
7 brewhouse on board?

8 A We looked at several places with John Lott again.
9 And then Benji knew this guy named Jim Caden who owned the
10 most successful restaurant chain, on M Street. And they
11 had a building they were willing to rent us right next to
12 their Virago, which was their biggest restaurant. And we
13 went and saw that and came very close to renting it but
14 just could not come to terms.

15 Q Okay. Do you know approximately when this was?

16 A I believe it was the colder months. I believe it
17 was something near October, I believe. I don't remember
18 exactly, but I believe it was around there.

19 Q Okay. Could you -- do you have access to the
20 exhibit binder?

21 A I do not. I only have one computer, and I'm on
22 it with you guys.

23 Q Okay. The page 2767, which is the calendar
24 showing where you were in 2012, shows that you were in
25 Tennessee from October 9th through the 18th. Would that

1 be the time frame when you looked at that property that
2 Mr. Caden had?

3 A I don't really recall. I don't recall when it
4 was exactly.

5 Q Okay. What happened with the property that you
6 looked at that Mr. Caden had for lease?

7 A As I said, we could not come to terms. He was
8 too high on the price and wanted too much. We also
9 looked --

10 Q And did you look at any other properties?

11 A Yeah. We looked at a couple of other places to
12 buy and toured different places, but nothing came to
13 fruition. I continued to talk to Dean throughout the
14 year, even as early as, you know, early 2013, you know,
15 about doing something but nothing every came to fruition.

16 Q Okay. And now then in October 2012 you sold the
17 Vaughn Crest Drive property?

18 A Correct.

19 Q And what was the market like for the property
20 during the 2012?

21 A From what I member, everything was starting to
22 really decline, and there wasn't much demand.

23 Q And what did you sell it for?

24 A I believe what I bought it for, \$1.7 million. I
25 didn't make a profit.

1 Q And when did you move out of the Vaughn Crest
2 property?

3 A I believe it was mid-October 2012 because Michael
4 Taylor from Taylor Estates Sales had to get all of the
5 furniture out of there.

6 Q And why did he have to get all the furniture out
7 of there?

8 A Because they were going to close escrow.

9 Q And at this point in time, were you still looking
10 for a condominium in Nashville?

11 A I believe so at that time all through 2012, but
12 more towards the mid to second and third quarter. I don't
13 believe I did it in the fourth quarter.

14 Q Would you have looked for a condominium in
15 October when you were in Nashville for approximately 10
16 days?

17 A Possibly yes. I don't know for sure. I can't
18 say for sure.

19 Q Now then, in late October you went to
20 Los Angeles, is that correct, of 2012?

21 A Yes.

22 Q And why did you go back to Los Angeles? Why did
23 you go to Los Angeles?

24 A My timing could be off, but I believe I was
25 getting engaged to Lauren at the time.

1 Q Had you asked her to marry you at that time?

2 A I went ring shopping with her, and we bought a
3 ring, and I believe I did. To the best of my memory, I
4 believe I did. And then we went to Las Vegas, and I
5 reproposed in front of her parents. That's the best to my
6 memory. I believe that's what happened.

7 Q Okay. Now then, what was going on with the sale
8 of Eco -- efforts to sell Eco-Energy at that point in
9 time?

10 A I believe we engaged in a deal with Copersucar
11 in -- let's see. It was -- I believe it was November of
12 2012.

13 Q The agreement, which is an exhibit, is dated
14 effective as of November 1, 2012. Would that have been
15 approximately the date that you signed the agreement?

16 A Yes.

17 Q And at the date it was signed, was it a done
18 deal?

19 A Not at the -- no, it wasn't.

20 Q And why is that?

21 A Well, a lot of these deals don't go through and,
22 especially, this particular deal because it was a
23 foreign -- they were a company from a foreign country.
24 And, you know, it's a very complex deal and, you know,
25 they had a data room setup and went through our books for

1 weeks. And they had a lot of hurdles to cross before it
2 was a done deal.

3 Q Now at that point in time, had you made a
4 decision of whether to move to California?

5 A I did not. At that point I was wait --

6 Q I mean at the time --

7 A Pardon me?

8 Q Go ahead.

9 A I did not at that time. I was waiting to see
10 what happened with the company and the sale.

11 Q Now then, besides when you moved out of --
12 vacated the premise at Vaughn Crest in mid-October 2012,
13 did you have your mail forwarded?

14 A Yes, I did.

15 Q And where did you have it forwarded to?

16 A To my mom's house at 237 King Arthur Circle.

17 Q And did you have the -- your bank statements, the
18 address for those to be sent, changed?

19 A Correct.

20 Q And where did you have those sent to?

21 A 237 King Arthur Circle as well.

22 Q And did you have the address for your credit card
23 statements changed?

24 A Yes. Same address. My mom's house.

25 Q Did you have your -- at that point in time in

1 2012, what state did you have your driver's license?

2 A That would be Tennessee.

3 Q And did you change the address on your driver's
4 license to 437 King Arthur?

5 A It's 237 King Arthur Circle, but I don't remember
6 exactly to be honest. I don't recall.

7 Q Does the Tennessee DMV record show that your
8 address was 237 King Arthur? Would that indicate that you
9 changed the address when you moved?

10 A Yes.

11 Q And did you spend time at your mother's house
12 after you vacated the premise?

13 A I spent a little time at my mother's house and my
14 brother's house when I was in Nashville -- any time I was
15 in Nashville.

16 Q Now, during November and December 2012, you spent
17 time outside of California?

18 A Yes.

19 Q And where did you go when you were outside of
20 California?

21 A I believe Mexico, Arizona, Las Vegas, Nashville.
22 I went to Mexico a few times. I'm not -- I don't quite
23 remember.

24 Q Okay. Now, let's go back a little bit towards
25 your relationship with Ms. Fray. You helped her out

1 financially in 2012?

2 A Yes.

3 Q And in September 2012 she moved into the West
4 Fifth Street property?

5 A Yes.

6 Q And what was the condition of the property at
7 that time?

8 A It was getting better. It got better and better
9 as construction came along.

10 Q And were all the rooms completed at that point in
11 time?

12 A I don't believe so. I don't remember exactly
13 what stage of the process it was in September. Just given
14 the fact that, you know, there was a lot -- a lot of
15 construction being done, I would think that it wasn't
16 completed, you know. Still -- it was still somewhat of a
17 construction zone. Some rooms came before others.

18 Q Now then, you had two cars in 2012?

19 A Yes.

20 Q And what were they?

21 A I had a Prius and a Jaguar.

22 Q And where were they registered in 2012?

23 A In Tennessee.

24 Q And you shipped the Prius to California in
25 mid-20 -- August of 2012?

1 A Yes.

2 Q Why did you do that?

3 A So I had a car when I was in town, and Lauren
4 used it as well.

5 Q And the Jaguar remained in Tennessee?

6 A Correct.

7 Q Why did that remain in Tennessee?

8 A It was a nicer car, and that's where my primary
9 residence was.

10 Q Now, were you involved at all in the due
11 diligence process for the sale of Eco-Energy?

12 A Very little. I wasn't a financial guy.

13 Q Who was --

14 A Oh, go ahead.

15 Q Okay. No. You finish.

16 A I wasn't much involved with the actual sale of
17 the company. It wasn't my strength, and I wasn't a
18 financial guy, and I've never been involved in the deals
19 before -- prior.

20 Q Okay. Who are the people who were doing the due
21 diligence for the sale on the Eco-Energy side?

22 A Oh, on the Eco-Energy it was -- well, there was
23 Chad Martin, our CEO, Gwaine Ton, our CFO, my brother
24 Larry, and then the head of every department, like Chaz
25 Tom was the head of storage and logistics. We had an

1 accounting head, Dave Johnson. Risk management person,
2 Mike Rote. The head of all departments, I believe, were
3 interviewed as well from the process. And I would talk to
4 my brother almost on a daily basis, and he kept me abreast
5 of what was going on.

6 Q Okay. What else was your involvement in the
7 company at this time while the due diligence was being
8 done?

9 A Well, we ran the company from a Mac with 30,000
10 macro view, like we were on with the board of directors
11 and discussed what was going on with the company on almost
12 a daily basis.

13 Q Now, at the time the due diligence was going on,
14 had you moved to California?

15 A No.

16 Q And prior to the closing of the sale, had you
17 moved to California?

18 A No.

19 Q And when did you decide to move to California?

20 A After the closing of the business to start --
21 like he said in the opening arguments, like a real estate
22 deal, a lot of them don't go through. And until it was a
23 done deal -- it was not a done deal until it was a done
24 deal. So then --

25 Q Go ahead. Finish.

1 A As I said, until it was a done deal, it wasn't a
2 done deal that I decided once it closed.

3 Q And the deal closed on the 19th of December?

4 A Correct. Correct.

5 Q You came to Nashville before that? The day
6 before that?

7 A Yes.

8 Q At that time -- and what was the reason for you
9 coming to Nashville?

10 A For the closing of the business.

11 Q So at that time, did you know that the business
12 was going to close for sure?

13 A Not until it closed for sure.

14 Q And after -- and that was on December 19th?

15 A Correct.

16 Q And prior to that time, did you discuss with any
17 of your friends your moving to California before
18 December 19th?

19 A I don't believe so. I don't remember if I
20 discussed -- if I told people I was moving there or not.

21 Q Well, at that point in time had you -- prior to
22 the 19th, had you decided to move to California?

23 A I did not decide to move to California until the
24 business closed.

25 Q Now based on the calendar, which is exhibit

1 binder page 2767, it shows that you were in Nashville
2 December 18th through the 21st, in California the 22nd,
3 23rd, and part of the 24th. What happened after -- what
4 did you do when you we want to California after the close?

5 A To the best of my memory, I believe I picked
6 Lauren up from the 22nd and we went to Las Vegas for
7 Christmas, and then we went on to Mexico. I returned to
8 California January 3rd. That's the best of my knowledge.

9 Q And when did you take up residence in California?

10 A Well, January 3rd is when I stayed permanently.
11 But I mean a bare minimum it would have been the 22nd of
12 December, and the max was in January 3rd.

13 Q And after you came back -- came to California on
14 January 3rd, did you take any steps to establish
15 residency?

16 A Yes. I got a driver's license. I started
17 investing in California. I got -- I got three apartment
18 buildings in 2013. I opened a restaurant in 2013. I
19 started planting roots with business, if that's what
20 you're asking.

21 Q Yes. Now then, in 2012 did you belong to any
22 clubs or social organizations in Nashville?

23 A I belonged to Citizen Nightclub, and I belonged
24 to Cross Point Church. And I also went to --

25 Q And --

1 A I also went to another church called the
2 Brentwood Baptist every -- on Tuesday nights as well.

3 Q And when you were in L.A. in 2012, did you belong
4 or join any churches?

5 A I did not, not until 2013, late 2013.

6 Q And did you join any social clubs in L.A. in
7 2012?

8 A I did not.

9 Q Now then, the --
10 I'm having trouble with my mouse.
11 When did you -- what happened with your
12 relationship with Ms. Fry [sic]?

13 A Ms. Fray?

14 Q Yeah, Ms. Fray.

15 A We ended up breaking up. I think it was March or
16 April of 2013.

17 Q And had the business not closed, did you have any
18 discussions with your brother Larry about what would
19 happen if the sale of Eco-Energy did not close?

20 A Yeah. He told me he would -- he told me he would
21 have signed an affidavit, but it was too late. When I
22 talked to him, he said that he would have made sure I had
23 to remain in Nashville if the company did not sell.

24 Q And okay. So if the company -- your moving to
25 California was contingent on the sale of the company

1 closing then?

2 A Correct.

3 MR. HORWITZ: Okay. I have nothing further -- or
4 wait. Could I have one second, Your Honor?

5 Okay. I have nothing further.

6 JUDGE HOSEY: Since we had a break, let's keep
7 moving forward if that is working for everybody.

8 Mr. Hofsdal, would you like to start
9 cross-examination?

10 MR. HOFSDAL: I would. Thank you.

11 JUDGE HOSEY: Okay.

12

13 CROSS-EXAMINATION

14 BY MR. HOFSDAL:

15 Q All right. Mr. Beckwith, first I want to
16 apologize by calling you several times Mr. Beckworth
17 during my opening presentation. For some reason I have
18 worth and with in my head. So I want to apologize for
19 that. It's not a slight, and not meant to be a slight.

20 A No problem at all.

21 Q Okay. I appreciate that. I just want to talk
22 about a couple of things first that came up during your
23 discussion with Mr. Horwitz, and then I have specific
24 questions for you.

25 A Yes.

1 Q During the opening presentation, and you had
2 testified as well that -- and you described Dean Sheremt
3 as a celebrity chief. I understand he's a celebrity chef
4 now, but we're talking about in 2012. What was your
5 understanding of Mr. Sheremt's background and
6 qualifications in 2012?

7 A He was somewhat famous because he was married to
8 LeAnn Rimes. I don't know if you know who that is, but
9 she's a well-known country singer. And from what I
10 understand, he was known as a celebrity chef in 2012.
11 That's my understanding, at least he told me he was.

12 Q Yeah. And, you know, because when you -- I --
13 and, you know, Mr. Sheremt was going to join us, and
14 apparently, he's no longer a witness. But when you look
15 up his page on LinkedIn, you know, he had only graduated
16 from culinary school in 2010 after a six-month program,
17 and he was essentially a line chef at first, you know,
18 Nobu and then line chef at Georges --

19 A Jean Georges.

20 Q Yeah. Yeah. No. I mean, you know, I have a
21 culinary background, and I know you do as well. I mean, a
22 line chef is not the executive chef. It's not the sous
23 chef. It's -- it's somewhere down the line. So I'm just
24 trying to get to -- I know that he's a celebrity chef now,
25 but that came with time. And I know he was -- had been a

1 celebrity because he was -- he was married to LeAnn Rimes.
2 But what qualified him, in your opinion, in 2011 and 2012
3 to operate a restaurant or help you with this restaurant?

4 A Yeah. He was very well-known in Nashville. He
5 was very well-known, very popular. And, you know, with
6 restaurants like a Jean Georges and Nobu, the top leading
7 restaurants, I felt he was very qualified to do a
8 German -- you know, it was a German beerhouse. If you saw
9 his menu -- I don't know. Did we -- did we -- I don't
10 know if you saw his menu that he came up with for us, but
11 it was stuff like sausages and schnitzels. It wasn't
12 anything that was -- it wasn't anything like prime, you
13 know. It was very, you know, it was -- it was a
14 brewhouse. I just thought that he was more than
15 qualified, and he was very popular.

16 Q So it was your understanding at the time that he
17 was going to give up his fine dining experience at both
18 Nobu and Jean Georges to go to Nashville to make schnitzel
19 and fry sausage?

20 A He actually -- he lived in Nashville along with
21 LeAnn and so forth. But, you know, when I was talking to
22 him, yeah. I mean, own your own concept and own your own
23 restaurant and be part owner and so forth, yes. And the
24 only reason we didn't have him testify is because the fact
25 is that we only had time for two witnesses.

1 Q Fair enough. Now, you also talked about, you
2 know, spending time in your mother's house and your
3 brother's house in the fourth quarter of 2012. If you can
4 go back to the exhibit at the physical presence at
5 page 2767. During those four days you were in Nashville,
6 you obviously spent three nights there. I mean, did you
7 spend those nights at your brother's house or your mom's
8 house?

9 A I don't recall. I really don't. I believe it
10 was my brother's house, but I don't recall. It's 10 years
11 ago. I just don't recall.

12 Q Okay. And then you also talked about -- and I
13 read the declaration from your broker. What's his name?

14 A Ken Walker.

15 Q Ken Walker. And he had said that you and him had
16 looked at a property that Mr. Lott had set up for you in a
17 building called Terizzo or Terrazzo. Are you familiar
18 with that?

19 A Terrazzo. Yes.

20 Q Yeah. And do you recall the -- the unit number
21 you looked at?

22 A Not even close. No.

23 Q How about the floor?

24 A I don't remember, but I think it was somewhere on
25 the sixth floor or so, I believe. It wasn't really high,

1 and it wasn't on the very bottom, but I believe it was
2 somewhere on the sixth-floor range.

3 Q Great. And it's my understanding that the units
4 have one or two stories. Was the one you looked at, was
5 it a one-story or a two-story?

6 A The one I was looking at was one story with tall
7 ceilings.

8 Q Okay. And it was my understanding also that that
9 unit was for sale for a million dollars; right?

10 A I don't know. I don't know how you would know
11 that. I have no idea. I don't remember.

12 Q Okay. Fair enough. And you had talked about --
13 and I didn't get the name of it, but you were talking
14 about an investment you were doing with both Chad Martin
15 and your brother. What kind of investment were you
16 looking to do?

17 A It was called Spry Capital Management, and it was
18 as I told Robert. It never went anywhere. We were just
19 looking at side investments in the renewable fuels
20 business.

21 Q I gotcha. Your voice is starting to -- am I the
22 only one that's hearing the echo again or --

23 JUDGE HOSEY: Lynne are you doing okay?
24 Ms. Alonzo, are you doing okay?

25 THE STENOGRAPHER: It's getting echoey again on

1 my end.

2 MS. HOSEY: Yeah. A few -- it's getting a little
3 echoey at some parts and then other parts are fine. So I
4 just want to make sure our stenographer was able to
5 transcribe everything. Let's -- are we all muted?
6 Everybody looks muted to me.

7 Sorry. Mr. Beckwith. Can you just try to
8 enunciate as much as you can and see if that helps a
9 little bit.

10 MR. BECKWITH: Yes, I will. I apologize.

11 JUDGE HOSEY: No you're doing great. Thank you
12 so much.

13 Go ahead, Mr. Hofsdal.

14 MR. HOFSDAL: Sure.

15 BY MR. HOFSDAL:

16 Q And you were talking about the fact that you and
17 your brother had discussed selling -- is it Eco-Energy or
18 Echo-Energy?

19 A Eco.

20 Q Eco. Eco. Thanks. So -- and you had said that
21 you and your brother were discussing selling Eco-Energy at
22 the end of 2011; true?

23 A Correct.

24 Q All right. And also at the end of 2011, that was
25 going to be expiration of ethanol tariffs; right?

1 A I don't believe so. I mean, it was a
2 possibility. It never happened that I'm aware of.

3 Q Fair enough. Now in your mom's place on 237 King
4 Arthur Circle, how far away was that from your former
5 residence?

6 A Approximately three miles, I'm guessing.

7 Q Okay.

8 A It was right down the street from the office less
9 than a mile.

10 Q Now, you said that sometime around April that you
11 and your brother had basically stepped down from your
12 positions and other people were appointed; true?

13 A It was sometime in the beginning of 2012 from the
14 best of my memory.

15 Q Okay. And who stepped into your position? Who
16 became the president of the company?

17 A You know, we appointed a CEO. That was Chad
18 Martin, and then we appointed a CFO. That was Gwayne Ton.

19 Q Gotcha. And both Chad and Mr. Ton, they
20 basically assumed your brother's and yourself's positions;
21 true?

22 A That would be true, yes. And the -- yes.

23 Q All right. Now, I'm going to go into my
24 questions that I have here. I just want to get a little
25 bit of clarification. So when Mr. Horwitz talked earlier,

1 he had talked about that Eco-Energy was, I guess, almost
2 founded in Tennessee. But it was my understanding in that
3 it was actually a California company at first; is that
4 true?

5 A Correct. When my brother lived in California.

6 Q Great. And when did Eco-Energy move from
7 California to Tennessee?

8 A Oh, boy. This is a guess. My brother moved the
9 company, I believe, in 1994 is my guess.

10 Q Okay.

11 A Maybe you have record of it.

12 Q Okay. And then I think you've already said this,
13 but prior to December 19, 2012, when you sold the
14 property, Eco-Energy was primarily owned by you and your
15 brother; true?

16 A Correct.

17 Q All right. And what percentage, approximately,
18 did you have and your brother in -- at the time of sale?

19 A I believe it was somewhere around 18 percent or
20 17 percent, and my brother had the rest.

21 Q Had the rest. And then when did you start
22 your -- in your ownership position? Was it from the onset
23 of the company or was that given to you later on in the
24 process?

25 A My brother gave me an opportunity to buy owner

1 shares after a few years of working there, from the best
2 of my memory. I don't know the exact timing.

3 Q Great. So you bought your ownership shares from
4 your brother?

5 A Correct. I don't remember the amount, but it was
6 a good price. He gave me a good deal.

7 Q Okay. Good for him. And then as you said
8 earlier about May 16, 2008, you joined your brother in
9 Eco-Energy in Tennessee; true?

10 A That's when I moved to Nashville, correct.

11 Q Yeah. And the record also reflects that you had
12 bought your home on Vaughn Crest about a month before you
13 actually were coming to Tennessee; is that accurate?

14 A That's -- that's possible. I don't remember
15 exactly, but that is possible.

16 Q All right. And you have access to the exhibits?

17 A I do not. Can you tell me what they are?

18 Q Yeah. I'll try to talk you through it and then
19 we'll see how far we can go. Okay?

20 A Thank you.

21 Q And I'll have an exhibit and the number for other
22 people to look, and I'll try to narrate it for you if it's
23 okay?

24 A Thank you.

25 Q I'm looking at Exhibit Number 967. And what 956

1 is basically your Bank of America statement. And it
2 basically shows that basically every other week or
3 by-weekly you had income direct deposited into your
4 account from Eco-Energy. Is that your understanding?

5 A That sounds correct.

6 Q Okay. You never received a hard check, and it
7 was deposited in the bank. The money was automatically
8 transferred in; true?

9 A I believe it was direct deposited. I don't
10 remember. For some reason I remember deposit stubs, but I
11 could be wrong. But I believe it was direct deposit.

12 Q Okay. And I'm just going to -- you know, I've
13 looked at all the records. And for the record, if you
14 look at 959 and 965, this is Exhibit in Number 968, 972,
15 979, 985, 992, 998, 1004, 1010, 1015. They all reflect
16 that you basically got paid every other week.

17 A Okay. Yes.

18 Q Okay. So my question is if you stopped working
19 for Eco-Energy as president in early 2012, what were you
20 getting paid for?

21 A I was still running the company from a
22 30,000-foot macro view with my brother, and I talked to
23 employees all the time as well. And I was, you know, I
24 was doing it from my board member perspective, and we
25 were -- we were still very much involved in the company.

1 I just wasn't on a day-to-day like, you know, operations
2 person.

3 Q Right. And, you know, with the echo it's a
4 little difficult, but you're talking about a 360 micro
5 view. Is that what you're describing?

6 A 30,000 macro view, which was, you know, a bigger
7 pic -- the bigger picture stuff. Not so -- it's not the
8 way that we're going on everything, but we had -- we
9 strategized all the time and planned all the time, my
10 brother and myself.

11 Q Right. So when you were planning and
12 strategizing, and you were doing that in California on
13 this 3,000-micro view; true?

14 A I was doing it from whenever I was. That's
15 correct.

16 Q And it also looks like, you know -- and this is
17 where we might be having an issue with exhibits. You
18 know, I want you to look at Exhibit 1006, and Exhibit 1006
19 is basically transactions you made as far as paying your
20 bills. And it looks like, from that bill, on November 1st
21 and November 6th and November 14th, you basically sat down
22 at a computer, you accessed all of your credit card
23 accounts and loan accounts and things like that, and then
24 you just paid for those bills over the internet. Is that
25 your understanding of how you paid your bills throughout

1 2012?

2 A I usually used Bank of America online to pay my
3 bills from wherever I was. That's true.

4 Q Okay. So it shows that the bulk of your bills
5 for like the month of November was paid on November 1st,
6 November 6th, and November 14th. And if you look at
7 Exhibit 26 -- 2767 you were in California on those days.
8 So the question I have for you -- and this is where we
9 might be having a little bit of trouble with the exhibits
10 and what we should be doing from this point forward. I
11 mean, although you were getting your credit card
12 statements and your mortgage statements and stuff like
13 that sent to your mother's house, the reality is you were
14 just picking up your computer, going to Bank of America
15 Pay and paying those bills wherever you were, whether it's
16 in California or elsewhere; true?

17 A Yeah. As I stated, it's an app where you can pay
18 from wherever you are, correct.

19 Q Right. Right.

20 A That's true.

21 Q Yeah. So, you know, and like in the old days,
22 you know, I'm about your age, we had just gotten out of
23 college, and you would get a bill, and you would have to
24 like clip the bottom of it, and you would have to mail a
25 check in. And in those days, it was very important to

1 have the mail delivered to you. But in today's world --
2 and it looks like you took advantage of it -- is you
3 really didn't need a bill sent to a particular place
4 because you were doing all that online; true?

5 A That would be correct.

6 Q And then are you able to look at the -- or you
7 have a copy of Exhibit 26 or 2767?

8 A I don't have any copies of anything. I wasn't
9 told that I had to this. I only have this one computer.

10 Q I'm going to see if I can do a share screen with
11 you because we have it up. I mean, maybe we'll be
12 successful, and maybe we won't.

13 JUDGE HOSEY: Mr. Beckwith you should have an
14 email from Nia Vaughan with the exhibits. She just
15 emailed them to you recently just this morning. If you
16 want to check your emails, you're able to check your
17 emails. Otherwise they can attempt to share.

18 MR. BECKWITH: I'm on with you guys, and I'm on
19 my computer where I'm looking at you guys. I don't know
20 how I can check my emails. I don't have another computer.
21 I can try a laptop that hasn't been working.

22 MR. HOFSDAL: We can see if we can pop this up,
23 and you then -- you can look at us and look at this thing
24 at the same time. This will be the only time I'll do this
25 to you, I think.

1 MR. BECKWITH: Thank you very much. Thank you.

2 MR. HOFSDAL: Can you do this, Desiree?

3 While we're working on that, I'll just move down
4 a little bit further for the sake of time.

5 BY MR. HOFSDAL:

6 Q We had talked earlier. In fact, there was a
7 discussion. Here we go. And do you see that?

8 A Yes, I do. Perfect.

9 Q Perfect. Great. And do you see like starting in
10 mid-April 16th or so that there's a lot of red from April
11 on down to December?

12 A Yes, I do.

13 Q Okay. Now, you would agree since the red
14 represents time in California and the blue represents time
15 in Tennessee that starting on April 16th or so that you're
16 dramatically spending more time in California than you are
17 in Tennessee for each one of those months; true?

18 A I see that. Yes.

19 Q We had talked earlier about, you know, before we
20 had started, we were talking about whether or not we're
21 going to allow the documents in to be admitted. And one
22 of them was a document from your attorney who you had
23 testified to and helped you with the sale of the West
24 Fifth Street property. And that was a documented in
25 Number 902.

1 A Yeah.

2 Q Isn't it true at the same time, you know, and
3 during this time frame you were also receiving mail at the
4 West Fifth address?

5 A Well, I believe you just sent -- that's where --
6 that was the property he was working on. I don't
7 remember, but I believe that's where he would send the
8 bill because that was the property he was working on. I
9 don't believe he had any --

10 Q I gotcha. Okay. Because if you look at the
11 prior bill, it's Bill Number 900. It shows a Tennessee
12 address. So the attorney from one month to another
13 switched addresses from a Tennessee address to a
14 California address. So that was just a change on their
15 part. So would you agree with me now knowing that this
16 person -- and this attorney had first sent mail to the
17 Tennessee address that you were receiving mail at West
18 Fifth?

19 A Yes, I would believe that, but maybe -- maybe I
20 was in California when he sent the second bill. I don't
21 know. I don't remember to be honest with you.

22 Q I gotcha. And then I'm going to reference some
23 numbers. I'll try to talk you through it. Exhibit Number
24 140 is your W-2 for the 2012 tax year, and that's the W-2
25 from Eco-Energy. And that actually shows your Vaughn

1 Crest address. So not only were you getting mail at your
2 mom's address and the West Fifth address, you were also
3 getting mail at your prior address; true?

4 A That's possible. Maybe they just didn't change
5 the address. So yeah, that's possible.

6 Q Now, I want you to look at -- well, I would have
7 you look at. I'll talk you through it, and we'll see how
8 far we can get -- Document 189.

9 A Can I go back one second?

10 Q Sure.

11 A Is that all right?

12 Q Sure.

13 A I believe those were sent from an outside source,
14 a bookkeeping source, and they probably didn't get my
15 change of address. So I think my pay stubs and so forth
16 went to my mom's house from Eco-Energy, but I could be
17 wrong. That's the only explanation I can think of.

18 Q Okay. Fair enough. Now, a document in Number
19 189 is a tax form. It's Form 540 NRCA, right. Now you
20 just described to us that you were performing services for
21 Eco-Energy in California via this 3,000-micro view. And
22 if you look in this form it shows absolutely no California
23 wages earned for the 2012 tax year. Was that a mistake?

24 A I don't believe so. I don't -- I'm not sure
25 exactly what you're talking about.

1 Q I mean, if you worked in California, if you're
2 performing work for California -- for Eco-Energy while you
3 were in California via this 3,000-micro view, and then you
4 would have an earning source to call California; true?

5 A So if I'm visiting California and call my brother
6 to discuss business, then I'm liable for taxes? I'm not
7 sure how that works to be honest with you.

8 Q Yeah. I mean, is that your understanding of the
9 tax law?

10 A I don't know. I really don't know. I mean, if
11 I'm visiting California and I call my brother to discuss
12 our business, I didn't know I have to pay taxes in
13 California for income I worked on for my national company.

14 Q Right. I know you're visiting, and I don't mean
15 to get argumentative as far as visiting, but you also
16 admitted since April 16th through December 31st that you
17 spent significantly more time in California than you did
18 in Tennessee; true?

19 A Well, the calendar shows that. The red on the
20 calendar shows that. So yeah.

21 Q And you talked about that. I mean, I don't want
22 to put the words in your mouth, and you can clarify it for
23 me. I thought you testified that you were essentially in
24 contact with your brother everyday regarding work at
25 Eco-Energy; is that true?

1 A Most days. Correct. But when I seek tax advise
2 my accountant said that as long as I stayed outside of
3 California over 50 percent of the time, that's what --
4 then I'd still be okay and still become a visitor. That's
5 the tax advise that I received.

6 Q Okay. Fair enough.

7 A I don't know if that's good or bad.

8 Q Now, that's where it's going to get a little
9 tricky because I want to talk about a couple of checks,
10 and I appreciate the Panel's patience with me as we go
11 through all of these things. We definitely want to get
12 through you today if we can. The first thing I want to
13 look at is -- let me back up a little bit. You also had
14 an account with a bank in Nashville; right? And that was
15 called the Fifth Third Bank?

16 A Yes. I saw that document, and I do not remember
17 what that account was for, but I think it was
18 automatically taken out my mortgage. And I don't know why
19 it was sent to the Fifth Street address. So I tell you
20 right now. I have no idea of it. I tried to figure that
21 out. I don't.

22 Q Yeah. I mean, it looks like -- and I don't want
23 to put words in your mouth and maybe this will jog your
24 memory. It looks like you, basically in the beginning of
25 the year, would dump all of your mortgage payments for the

1 year in this account, and then your mortgage would be
2 debited out each month. Does that sound like a plausible
3 explanation?

4 A It looked like it to me as well, yes.

5 Q Yeah. All right. And -- and going through all
6 the bank records, and you would agree with me that your
7 Bank of America account was pretty much your primary
8 account; true?

9 A Correct.

10 Q Okay. Great. Now, the check -- the first one I
11 want to talk about -- and I think you mentioned this guy's
12 name. I just want the clarification -- is a check to a
13 gentleman Bryan Winters. Can you tell me something about
14 Bryan Winters?

15 A Bryan was an architect friend of mine, and he did
16 help with design and architecture in the Fifth Street
17 address and also my restaurant. He did the restaurant
18 Stamp Proper Foods.

19 Q Great and the check I'm looking, which is the
20 first one in the sequence, is check number 1057. It says
21 you gave him a loan for \$3,000? I mean, do you recall
22 giving him a loan?

23 A Oh, that was just as a friend. He was a friend
24 of mine also, and he couldn't pay his mortgage or rent or
25 something like that. And I did give him a loan.

1 Q Okay. Great. And one of the things I wanted to
2 point out is, if you look at that check, it shows you are
3 a member of Bank of America since, like, 1981; true?

4 A That's true.

5 Q Okay. You basically sign on to that account when
6 you're a resident of California; true?

7 A Originally I signed up in California, correct.
8 1991 is when I opened it.

9 Q Right. And the branch identified with the check
10 is Redondo Beach. Does that sound about right?

11 A Originally, I opened up -- that's possible.
12 That's where I originally got married to the first half --
13 been my first marriage of 16 or 17 years.

14 Q I got you. And -- and you had said that you had
15 put your home in Nashville up for sale starting like in
16 March 2012; is that correct?

17 A I don't remember the exact date to be perfectly
18 honest, but that sounds correct.

19 Q Now, if you're able to get into the exhibits,
20 Exhibit Number 170, which show your closing statement for
21 the home, and the settlement agent is Windmill Title LLC.
22 Does that sound familiar? Were they the escrow company on
23 that project?

24 A I don't remember that at all. The only -- the
25 only person I remember was my Realtor John Lott. I don't

1 remember the title or escrow company at all.

2 Q And then this is where it's going to get a little
3 tricky, and I keep apologizing for saying this. There's
4 two checks I want to talk to you about. And one is check
5 number 1060, and that's to a company called Homeland
6 Title, LLC. And that was for \$238,000 or so. And that
7 was a check written -- excuse me. It was a check paid to
8 the order of Bank of America, and on the -- for the
9 purpose, it said, "Homeland Title, LLC," and \$238,913.76.
10 And that was written on January 18th, 2012.

11 And it's my understanding that Homeland Title is
12 a title company there in Franklin, Tennessee. Did that
13 have anything to do with you starting the process of
14 winding down and starting that sale project of your home
15 in Nashville.

16 A I don't believe so. Have no idea what that check
17 would have been for. I really do not. \$238,000 to a
18 title company?

19 Q No. It's to Bank of America and then in the
20 title and what you describe and what it's for, it says,
21 "Homeland Title, LLC." And that's a Franklin,
22 Tennessee-based title company?

23 A And so what was the date on that check?

24 Q January 18, 2012.

25 A Wow. I have no idea what that was for. I didn't

1 buy -- I don't remember buying any other property in
2 Tennessee.

3 Q Then there's another check 1067, and that's to
4 Windmill Title. And Windmill Title is the title company
5 that we just talked about that closed your home, that's
6 for \$45,000. Would that have something to do with you
7 closing your home on Vaughn Crest?

8 A Oh, maybe -- maybe I paid down my loan. Is that
9 possible?

10 Q It could be, yeah. I mean -- yeah.

11 A Only thing I can think of because I had the money
12 to do so and paid down my loan. That's the only thing I
13 can think of honestly.

14 Q Okay.

15 A That's the only possibility.

16 Q Fair enough. And then a check number -- and if
17 you need more details on these checks as I describe them,
18 let me know. I know it's kind of awkward for you. I'm
19 trying to question you on checks that you can't see but --

20 A I -- I'm trying my best. This was 10 years ago.
21 I'm trying my best to remember.

22 Q Yeah. And Document 1071, there's a check to
23 Lauren Fray for \$1,562, and in the subject category it
24 says, "11-Months Health Care." Do you recall writing a
25 check for her health care?

1 A Did I what?

2 Q Do you recall writing a check to pay for
3 Ms. Fray's health care?

4 A It's a very good possibility. I don't think she
5 had health insurance, and I think I paid for a year
6 upfront for her health. I believe I did.

7 Q All right. And then starting on May 3rd, 2012,
8 it looks like you started to assume full payment of the
9 rent on the Grace Avenue apartment. Does that sound about
10 right?

11 A Correct. Yes.

12 Q Yeah. So for May, June, and July you paid
13 \$1,700, which represents, like, 100 percent of the rent
14 for that property; true?

15 A I would agree that I did that. Yes.

16 Q Yeah. Now, if you go to check number 1097 -- or
17 excuse me -- Document Number 1097 there's a check to a
18 gentleman named Harold Kaufler. And I believe he was the
19 landlord of that Grace Avenue property; true?

20 A Yes. He was the owner. Yes.

21 Q He was the owner. And the August 1st check has
22 an amount for just 2 weeks, \$850. Do you recall --

23 A Yeah.

24 Q -- writing a check for the month of August for
25 just half a month?

1 A I think. And I could be wrong because I think we
2 needed a little bit more time before she moved into the
3 Fifth Street property, and we extended it a couple of
4 weeks instead of a full whole month.

5 Q I gotcha.

6 A I believe that's it.

7 Q Right. So sometime -- and you would agree with
8 me that in sometime in June or July you gave Mr. Kaufler
9 notice that the apartment on Grace Street would be
10 vacated; true?

11 A Well, it wasn't my lease. I mean, I had nothing
12 to do with it. I was just paying the bill for Lauren. So
13 I would assume that could be true. Yes.

14 Q And the reason why you gave notice of the Grace
15 Avenue apartment in June or July is because you believe,
16 at the time, that by August the West Fifth Street property
17 would be ready to move into; true?

18 MR. HORWITZ: Objection, Your Honor.
19 Mr. Beckwith said he was not the lessee, so he wouldn't
20 have been the one giving the notice.

21 JUDGE HOSEY: Can we re-ask the question,
22 Mr. Hofsdal? Just clarify a little bit, please.

23 BY MR. HOFSDAL:

24 Q Was it your understanding in June or July of 2012
25 that the Grace Street or Grace Avenue apartment would be

1 vacated by August 1st, 2012?

2 A I don't remember. I don't remember. I really
3 don't remember.

4 Q Okay. Now, it's your check, and it's your
5 signature on the check, and the check is for \$850 on
6 August 1st. And you had just testified that the reason
7 why there's a check for \$850 is because she needed
8 additional time to stay in the apartment; true?

9 A Yeah.

10 Q Yeah. And the reason why you needed additional
11 time is because West Fifth wasn't ready by that date, and
12 you had planned it to be ready by that date; true?

13 A I would use the word livable. I wouldn't use
14 ready, but that's -- that sounds reasonable.

15 Q An then it's also my understanding, if you look
16 at check number or Document Number 1103, is you actually
17 wrote another check to Mr. Kaufler for \$850 because the
18 apartment wasn't -- or West Fifth Street wasn't ready for
19 occupancy by August 15th and you needed an additional two
20 weeks, true, on top of that?

21 A That would make sense.

22 Q Okay.

23 A That would make sense.

24 Q Now, you had looked at in a document a little bit
25 earlier that talked about -- it was documented in Number

1 160, I believe. And 160 is the bill for the invoice for
2 the work that Hi Crest was going to perform on the West
3 Fifth address. And the invoice amount is \$47,800. Does
4 that sound familiar?

5 A Yes.

6 Q Okay. Now, if you go back to Document Number
7 1099, that's a check to Hi Crest Construction. The check
8 is dated August 7th, 2012. Okay. And it says, "Fifth
9 payment. \$40,000 so far." Okay. "\$40,000 so far," and do
10 you recall making notes like that to document the progress
11 of the West Fifth unit?

12 A I don't recall.

13 Q And then if you look at check number or Document
14 Number 1105, there's a check dated August 25th to Hi Crest
15 Construction for \$8,000. All right. So combined --

16 A So -- oh, go ahead.

17 Q So combined, if you combine those two checks, the
18 amount paid to Hi Crest Construction through
19 August 25th, 2012, pretty much matched the amount of money
20 on the invoice at 160. So would you agree with me that as
21 far as the work that's reflected on that invoice, right,
22 that that work was completed by August 25th, 2012?

23 A I don't remember. There were progress payments
24 and there were additional checks and additional invoices
25 after that \$47,000 for additional work?

1 Q And there's definitely additional work. I mean,
2 I know I see checks for planter boxes and some
3 miscellaneous things, but I'm just talking about that
4 invoice. The invoice is \$47,800. Through August 25th you
5 paid approximately \$48,000. So my question to you
6 regarding that invoice is, isn't it true that by
7 August 25th, 2012, that the work that Hi Crest was going
8 to perform as reflected in that invoice was completed?

9 A I don't know. I really don't remember. I just
10 know there was additional work that went on through
11 January 2013, and that's when the job was finished. I
12 mean, it would be absolutely impossible for him to finish
13 all that work, three kitchens [sic], a bathroom, and stuff
14 like that in a two-month period.

15 Q Yeah. But you're not disputing. I mean, from
16 September through January, when you were in California,
17 and we looked at all the red, you were in that West Fifth
18 Street home; true?

19 A Correct. When I visited, I stayed there.
20 Correct. And it got better and better and better as time
21 went on and much more livable. Pretty much when --

22 Q I gotcha. And maybe this check will help your
23 memory a little bit. On August 29th -- this is documented
24 in Number 1110 -- there's a check for \$440 made payable to
25 Merry Maids. And do you recall hiring Merry Maids to

1 perhaps come in and clean that West Fifth apartment?

2 A I do not.

3 Q There's a -- if you go to Document Number 1121 --
4 I know you can't, but for those of us who are trying to do
5 our best, there's a check made to Erika Machado for \$283,
6 and it says, "To reimburse car registration." Do you know
7 what that was for?

8 A Maybe I was going to pay for Kailee's car
9 registration, and she laid out the money, and I repaid
10 her. That's the only thing I can think of.

11 Q Okay. And when you go through your Bank of
12 America statements, each month there's a debit for a
13 payment for a Volkswagen. Whose Volkswagen is that?

14 A That's was for Kailee.

15 Q That's hers?

16 A That was Kailee's.

17 Q Right. So was that vehicle in your name, and you
18 let her use it, or was that strictly in her name, and you
19 had co-signed on the loan?

20 A I didn't co-sign on anything. I believe her
21 mother co-signed. I was just paying the payment for it to
22 help her out.

23 Q Okay. Now, after the sale there was a bunch of
24 items that were up for consignment. I mean, when was the
25 majority of that estate sale completed? Do you have an

1 idea?

2 A So this was a confusing item, but I know this
3 pretty well. I do remember. So the exclusive
4 neighborhood I lived in did not allow estate sales. So
5 Michael the estate sales guy had to take all the items out
6 of there and filter them into different sales around. And
7 I think they started in mid-December and ended in late
8 January. So -- but he did pick up the furniture in
9 mid-October.

10 Q And it's also my understanding -- I looked at a
11 check -- it's Document Number 1135 to your brother Larry
12 Beckwith. Did he sneak a couple of his items into your
13 estate sale?

14 A That's correct.

15 Q And you cut that check for him on December 24,
16 which means at least his items sold before that; right?

17 A I don't remember when those items sold, but when
18 they did, I gave him the money. I gave him the money for
19 that.

20 Q I gotcha. Now, when it comes to the beer garden
21 in Nashville, did you ever hire an attorney to form some
22 type of business entity before that?

23 A I never got that far.

24 Q How about a bank account? Did you open up a bank
25 account that you can dedicate to that project?

1 A Never got that far.

2 Q Did you hire a person to do a logo or design
3 things?

4 A Not that I remember.

5 Q All right.

6 A We worked on the menu, and I don't know if Robert
7 gave a copy of that, but there's a copy of the menu and
8 the concept. And we discussed a lot about looking for a
9 location, but that's as far as it got.

10 Q All right. If you go to Document Number 1136 --
11 I'll describe it to you. But if you go to Document Number
12 1136, there's a check and it's made payable to One West
13 Bank. One West Bank. And the date on that check is
14 January 3rd, 2013. January 3rd, 2013, which happens to be
15 the day, and you can see you became a California resident,
16 and also the day you came back from Mexico; true?

17 A Correct.

18 Q All right. Isn't the purpose of this check to
19 open up a bank account for your restaurant project?

20 A I don't believe so. I don't remember to be
21 honest with you. I think I got a -- you mean, the
22 restaurant project in Los Angeles?

23 Q Yes, the restaurant project in Los Angeles. The
24 One West Bank account?

25 A It wasn't planned. It wasn't even planned by

1 them, I don't believe. Yeah. I mean, I started talking
2 about that. I believe to the best of my memory, I didn't
3 even start talking about that. I believe we started
4 construction in late April of 2013. But I don't remember
5 what that was for that bank account.

6 Q Hold on one second. In your restaurant project,
7 what bank did you use for your banking purposes for that
8 project?

9 A There was a bank attached to the restaurant. It
10 was Chase Bank. It was in the same building there. There
11 were three buildings next to each other, our restaurant,
12 Chase Bank, and a place -- and another restaurant. It was
13 in the old grounds business. And I remember there being a
14 bank right next door. That's all I remember.

15 Q Right.

16 A I don't know what that other account is.

17 Q Right. So when did you open up that restaurant?

18 A To the best of my memory, opened up -- it was
19 sometime in 2014. I believe first quarter 2014. It' took
20 a long time to get it going with permits and the build
21 out. It was a full build out. It was basically a
22 basement that was turned into a restaurant.

23 Q I got you. Now, if you go to Check Number 1905,
24 that's a check written to -- it's dated -- excuse me.
25 It's Document 1147. It is a check dated April 6, 2013.

1 It's for a gentleman named Albert Silvestra who is Albert
2 Silvestra?

3 A Albert Silvestra was like a consultant and chef
4 that was just helping me with the concept. And he decided
5 to take a job out in New Orleans at another restaurant and
6 not proceed with me. But he did have a lot of experience
7 in the restaurant business.

8 Q Right. And that's a check for a deposit for
9 menu, et cetera.

10 A Correct. He was working on a concept of menu.

11 Q Great. And then there's a check. It's
12 documented in Number 1162, and it's a check to Elkins Kalt
13 Weintraub. And aren't they the company or the law firm
14 that helped you establish the LLC that your restaurant
15 became?

16 A Correct.

17 Q And it's my understanding that at first, when you
18 opened up your LLC, it was HDS 2013 LLC. Does that sound
19 about right?

20 A No, that wasn't. That was a property I was
21 looking at purchasing for investment. That wasn't
22 anything. That was a property -- maybe I -- it's possible
23 I didn't use that name and I changed the LLC and changed
24 the name. That's possible. I don't remember.

25 Q Okay. Because when you go to the California

1 Secretary of State's website it shows a change. It says
2 that the HDS 2013 was formed in March 2013. Then there
3 was a name change to SOM Properties?

4 A Yeah. That was a building I bought, an
5 investment of an apartment building I bought.

6 Q Okay. Gotcha. So neither HDS or HMO [sic] have
7 anything to do with your restaurant?

8 A No. It's 4500 Los Feliz Boulevard, and the LLC
9 was the restaurant.

10 Q I gotcha. And then who is Jill Canella?

11 A Oh, she was working on the logo and design for a
12 logo for the restaurant.

13 Q Right.

14 A She was a graphics designer.

15 Q And approximately what time frame did you engage
16 Ms. Canella to help you with the logo and the design?

17 A I have no idea. I really don't.

18 Q If you go to Check Number 1167, it shows checks
19 made payable to her starting in May 6, 2013. Does that
20 sound about right?

21 A It does. Yeah. She probably worked on the logo
22 in May of 2013.

23 Q And then check number 1163 is checks made out to
24 Bryan Winters for just restaurant. I mean, was he
25 involved in the restaurant process in early 2013?

1 A He was the architect.

2 Q So I guess the point I'm making is soon after
3 January and you have multiple expenses, documented
4 expenses reflecting work in progress on what became -- is
5 it Stamp Market or a Stamp --

6 A Stamp Proper Foods.

7 Q Stamp Proper Foods. But I don't see anything
8 similar to that expense-wise in 2012 related to any
9 projects in Nashville. So would you agree with me that at
10 least by early 2013 that your Stamp Proper Foods project
11 was further along than any restaurant project in Nashville
12 was at any time in 2012?

13 A Well, I didn't have anything to do with
14 Eco-Energy anymore. I had a lot more time on my hands to
15 concentrate and focus.

16 Q I gotcha. At page number 2774 there -- 2774 is
17 essentially the agreement that Copersucar and Eco-Energy
18 engaged in on November 1st, and there's a reference to a
19 non-disclosure agreement. And if you look at 2774 it says
20 that in April -- April 2012 that both Copersucar and
21 Eco-Energy entered into a non-disclosure agreement. Do
22 you recall that?

23 A I do not.

24 Q Okay. So if Copersucar and Eco-Energy engaged in
25 this type of agreement, wouldn't you agree with me that

1 the due process regarding the sale actually started in
2 April?

3 A I don't believe so, no.

4 Q And it's also my understanding that soon after
5 November 1st, 2012, that both Eco-Energy and Copersucar
6 sent out press releases announcing the deal that was
7 struck between the two parties. Does that sound familiar?

8 A That's possible, but I don't remember that at
9 all.

10 Q Okay. Just give me a minute here. I just want
11 to go over my notes, but that maybe --

12 A Thank you.

13 Q -- everything. Bear with me a moment.

14 A Thank you.

15 Q I think this is the last question I have. Do you
16 recall the name of the restaurant that actually occupied
17 the space that you looked at in the Gulch area of
18 Nashville?

19 A It wasn't -- there was no occupying yet. It
20 ended up being an Italian place, but we didn't take it.
21 They opened an Italian place under M street, but I don't
22 remember.

23 Q Okay. And do you know the name of the Italian
24 place?

25 A I don't. Benji Walker, he's one of the

1 witnesses. You could ask him because he's part of M
2 Street, so you can ask him.

3 Q He's part of M. Street?

4 A Yes. He owns a part of it.

5 Q All right. That's all I have. Thank you.
6 Again, I apologize for mispronouncing your name.

7 A That's okay.

8 Q All right.

9 A I've probably been called worse than that.

10 JUDGE HOSEY: I'm going to check in with my
11 Panel, and then we're going to take a break because I
12 think we all need a little bit of a break.

13 So let's start with Judge Ridenour. Do you have
14 any questions for Mr. Beckwith?

15 JUDGE RIDENOUR: This is Judge Ridenour, and I
16 don't have any questions. Thank you very much.

17 JUDGE HOSEY: Thank you.

18 Judge Lambert, do you have any questions for
19 Mr. Beckwith?

20 JUDGE HOSEY: This is Judge Lambert. I don't
21 have any questions at this time. Thanks.

22 MR. BECKWITH: Thank you.

23 JUDGE HOSEY: Okay. Thank you, Mr. Beckwith.

24 We're going to take a 15-minute break. Remember,
25 please do not exit the session here. Just mute your

1 microphone and stop your video. And then we'll be back in
2 15 minutes, which should be around 4:15.

3 Yes, Mr. Horwitz.

4 MR. HORWITZ: Your Honor, will I get an
5 opportunity to redirect?

6 JUDGE HOSEY: Yes. But I'm assuming -- it's
7 already been over an hour and a half so I want to take a
8 break.

9 MR. HORWITZ: Okay.

10 MR. BECKWITH: Okay. If I charge my phone, would
11 I ruin my connection? Do you know?

12 JUDGE HOSEY: Sorry?

13 MR. BECKWITH: If I charge my phone, would I ruin
14 my connection in any way?

15 JUDGE HOSEY: I don't think so. No.

16 MR. BECKWITH: Okay. Thank you.

17 JUDGE HOSEY: Okay. So let's meet back.

18 And then, Mr. Horwitz, just to know -- it's 4:00
19 o'clock or 4:15. Did you plan on calling your next
20 witness, Mr. Conn? Mr. Horwitz, can you hear me? Did you
21 already mute?

22 MR. HORWITZ: Oh, I had sent him an email when
23 Mr. Hofsdal said that he would probably go until almost
24 6:00 o'clock with cross-examination of Mr. Beckwith, that
25 I had sent him emails about Mr. Conn and Mr. Walker about

1 whether they would be available tomorrow. Mr. Walker
2 replied that he would be, and would be available at 9:30.
3 I'll contact Mr. Conn to see if he'd be available at
4 4:30 --

5 JUDGE HOSEY: That would be great. Yeah. Let's
6 do that.

7 MR. HORWITZ: -- as it was planned.

8 JUDGE HOSEY: Yes. Mr. Conn at 4:30 or
9 thereabouts. Okay. Great. All right. We'll see you in
10 15 minutes. Thank you everybody.

11 (There is a pause in the proceedings.)

12 JUDGE HOSEY: Let's go back on the record.

13 All right. We're back on the record for the
14 Beckwith hearing.

15 Mr. Horwitz, would you like to begin redirect?

16 MR. HORWITZ: Yes. Thank you, Your Honor.

17 JUDGE HOSEY: You have -- you're welcome. You
18 have 44 minutes. You've used 44 minutes of the time thus
19 far, just to remind you.

20

21 REDIRECT EXAMINATION

22 BY MR. HORWITZ:

23 Q Okay. Mr. Beckwith, on direct examination
24 Mr. Hofsdal asked you about the fact about the -- the fact
25 that you were making online bill payments as reflected by

1 your bank statements. Do you recall that? I can't -- are
2 you muted or --

3 A Robert, can you hear me? Okay. Now, I think you
4 hear me. Can you hear me now?

5 Q Yes.

6 A Okay. Sorry about that.

7 Q Do you recall Mr. Hofsdal asking about the fact
8 that, as shown on your bank statements, you were able to
9 make payments online?

10 A Yes, I do.

11 Q And the bank statements that he referred to for
12 November was addressed to you at the King Arthur Circle
13 address. It was November 2012. Why were you having your
14 bank statements and credit card statements sent to the
15 King Arthur Circle address?

16 A Because that was still my primary resident.

17 Q Mr. Hofsdal referred you to page 2767, which was
18 the color calendar for 2012 and pointed out that between
19 mid-April -- from mid-April on, that you spent more time
20 in California than in Tennessee. Do you recall that?

21 A I recall him showing me the calendar, yes.

22 Q And why were you in California on those days?

23 A I was visiting.

24 Q Okay. And was it your intention when you were
25 visiting in California to stay there permanently?

1 A Not at that point, no.

2 Q And was it your intention -- when you were
3 visiting in California did you intend to return to
4 Tennessee?

5 A Yes.

6 Q Mr. Hofsdal also asked you about checks to Hi
7 Crest through August of 2012. Do you recall that?

8 A Yes, I do.

9 Q Document 1130 in the exhibit binder is a check
10 dated November 7th, 2012, to Certa Pro Painters for
11 \$2,250, and the memo line reads, "Additional deposit
12 balance equal \$2,250." What was Certa Pro Painters?

13 A They were the person who painted the house on
14 Fifth Street, Certa Pro Painters.

15 Q And 1131 is a check dated November 15th, 2012, to
16 Hi Crest Construction for \$1,250, and the memo line says,
17 "One-half deposit." What was that check for?

18 A I don't remember, but I would assume for work
19 around the house on Fifth Street, but I don't remember in
20 detail.

21 Q Was Hi Crest in November 2012 doing any work for
22 you besides Fifth Street?

23 A Not -- no. They did do the restaurant, but that
24 didn't start until, you know, somewhere near mid-2013.

25 Q Okay. Document exhibit binder page 1132 is a

1 check to Rubick Abrami. Who is Rubick Abrami?

2 A He's the owner of Hi Crest Construction.

3 Q And that check is dated November 27th, 2012, and
4 is in the amount of \$1,250. What would you have written a
5 check to Mr. Abrami in November 27, 2012, for?

6 A Work on Fifth Street as well. That was probably
7 the second half.

8 Q What was LF4500 Los Feliz LLC?

9 A That was the LLC restaurant Stamp Proper Foods
10 that I opened.

11 Q And when did you locate the property that had
12 the -- that the restaurant opened at?

13 A I'm just guessing. I would think somewhere in
14 approximately April of 2013.

15 Q Now then, Mr. -- now, you had mentioned on direct
16 examination that Mr. Sheremt had prepared a menu for the
17 restaurant the brewpub?

18 A Yeah.

19 Q Now then, Mr. Hofsdal referred you to
20 Document 1140 -- 1147, I believe, which was a check to
21 Albert Silvestra for a deposit for a menu dated
22 April 6, 2013. Would that indicate that it's not uncommon
23 to have someone develop a restaurant for -- a menu for a
24 concept restaurant?

25 A That would be correct.

1 Q Okay. Now he, Mr. Hofsdal, also asked you about
2 a check in May 2012 to Ms. Fray for insurance. Do you
3 recall that?

4 A I don't recall specifically, but I would assume
5 that was what the check was for -- for insurance -- for
6 her insurance.

7 Q Okay. Document 1153 is a check dated
8 April 13, 2013, made payable to Ms. Fray in the amount of
9 \$10,000, and it says, "Gift". And then 1156 is a second
10 check dated April 17, 2013, to Ms. Fray for \$4,000. Memo
11 line reads, "For additional gift." \$10,000 plus \$4,000,
12 what were those checks for?

13 A We were engaged and we broke up, and I was
14 supporting her. So it was to get her life started without
15 me; first and last month's for apartment, furniture and
16 bed, and so forth. It was just to get her life started.
17 It was just to get her life started without me.

18 MR. HORWITZ: Okay. I have nothing further.

19 JUDGE HOSEY: Thank you, Mr. Horwitz and
20 Mr. Beckwith.

21 Mr. Hofsdal, did you plan on recross, or are we
22 finished with Mr. Beckwith today? I'm sorry we can't hear
23 you, Mr. Hofsdal.

24 MR. HOFSDAL: I'm sorry. I'm finished with
25 Mr. Beckwith. Thank you.

1 JUDGE HOSEY: Thank you. Thank you,
2 Mr. Beckwith. Thank you for your patience.

3 THE WITNESS: Thank you. That was tough. I'm
4 exhausted.

5 JUDGE HOSEY: We appreciate all the time you've
6 given us today.

7 MR. BECKWITH: Well, I appreciate you guys.
8 Thank you so much.

9 JUDGE HOSEY: Mr. Horwitz, did you plan on
10 calling Mr. Chad Conn as your second witness?

11 MR. HORWITZ: Yes. I guess, like I said, he sent
12 me an email that he's already on.

13 JUDGE HOSEY: Okay. Mr. Conn, can you hear us?
14 This is Judge Hosey.

15 MR. CONN: Yes, I can hear you. I've got my
16 camera on now. Hopefully, you can see me as well.

17 JUDGE HOSEY: Yes, I can see you. Can you see
18 all of us?

19 MR. CONN: I can, yes.

20 JUDGE HOSEY: Okay. Mr. Horwitz, is planning on
21 asking you some questions, and then Mr. Hofsdal, I
22 believe, will be doing your cross-examination. And then
23 the Judges, Judge Ridenour, Judge Lambert, and I may have
24 questions for you thereafter.

25 MR. CONN: Okay. Sounds good.

1 JUDGE HOSEY: All right. Mr. Horwitz, I have you
2 at 52 used so far.

3 Oh, Mr. Conn, I'm going to swear you in before
4 you begin. I was just going to let Mr. Horwitz know his
5 time.

6 MR. CONN: Okay.

7 JUDGE HOSEY: Can please raise your right hand.

8
9 C. CONN,
10 produced as a witness, and having been first duly sworn by
11 the Administrative Law Judge, was examined and testified
12 as follows:

13

14 JUDGE HOSEY: Thank you.

15 Mr. Horwitz, you may begin when you're ready.

16

17 DIRECT EXAMINATION

18 BY MR. HORWITZ:

19 Q Okay. Mr. Conn, what's your occupation?

20 A Well, I work for Eco-Energy. I do -- I'm both
21 the corporate counsel as well as vice president of
22 distribution.

23 Q And when did you graduate law school?

24 A May of 1999.

25 Q And when did you join Eco-Energy?

1 A May of 2007.

2 Q And what did you do between law school and
3 Eco-Energy?

4 A I was in the Air Force Judge Advocate Corps for
5 eight years.

6 Q Okay. Now, you mentioned that you are general
7 counsel to Eco-Energy and also, if I understand, head of
8 logistics?

9 A Yes. That's correct. I'm in charge. I have had
10 a couple of different roles. I've been there now for
11 15 years. But today I'm head of the asset develop group.

12 Q Okay. Now, I want to direct your attention to
13 2012. You were working at Eco-Energy at that time?

14 A Yes, I was.

15 Q And did you -- where were your offices located?

16 A Our offices were located at 500 Cool Springs
17 Boulevard, Franklin, Tennessee.

18 Q And did you have an office at the Eco-Energy
19 headquarters?

20 A Yes, I did.

21 Q And did Mr. David Beckwith also have an office at
22 Eco-Energy?

23 A Yes, he did.

24 Q And where was his office in relation to yours?

25 A My office was in the -- kind of the center of

1 the, I guess, the floor. We took up the entire fifth
2 floor where the trading -- I guess where the trading area
3 is. It was one of the offices that was how -- with all of
4 the individuals doing logistics as well as the biofuels
5 traders.

6 Q And where was your office in relation to David
7 Beckwith's office?

8 A So David's office was located on, kind of, the
9 other side of the floor. There was an executive wing that
10 was accessible. I mean it was the same -- you came up the
11 same elevator, but you went a different direction, and it
12 was kind of a separate part of the -- a separate part of
13 the floor that you, you know, you can access it. It was
14 open, but it was in an area, you know, I wouldn't be able
15 to see from my office, if that helps.

16 Q Okay. Did you regularly go into that section?

17 A Oh, I did. Absolutely. It's where the chief
18 executive officer, the chief financial officer, and then
19 both Beckwith brothers, David and Larry, had an office
20 there.

21 Q Okay. Did you interact much with either David or
22 Larry in 2012?

23 A In 2012 David and Larry were both -- they, you
24 know, were owners of the company. They were in a kind of
25 advisory capacity at that time, so when I would see them

1 periodically when they came in or when we were planning a
2 big meeting. But on a day-to-day not as much in 2012.

3 Q Okay. Now then, in 2012 Eco-Energy entered into
4 negotiations with Copersucar?

5 A That's correct. It was a bigger process that
6 involved, I mean, a lot of individuals at that time. But
7 Copersucar was the company that ended up, I mean, coming
8 into specific negotiations with, if that helps. I mean,
9 we had a private equity -- oh, I'm sorry. We had an
10 investment banker kind of lead us through the process.

11 Q And that was Piper Jaffrey?

12 A That's correct.

13 Q What is Copersucar. What type of company is it?

14 A Copersucar is a Brazilian cooperative. It's
15 owned by 30 mills in Brazil. They are the 100 percent
16 owner of Eco-Energy today. And we are kind of -- we are
17 their North American owner.

18 Q And 2012 when Eco-Energy entered into
19 negotiations with Copersucar, what was Copersucar's line
20 of business?

21 A They're sugar as well as ethanol. They have a
22 lot of businesses throughout the world but primarily sugar
23 and ethanol.

24 Q And at the time they entered into negotiation --
25 Copersucar entered into negotiations with Eco-Energy, did

1 Copersucar have an American division?

2 A No, they do not.

3 Q Were you personally involved with part of the
4 team that negotiated the agreement between Copersucar and
5 Eco-Energy?

6 A I was not part of the negotiation team, but I was
7 part of the due diligence team.

8 Q And what were your duties as part of the due
9 diligence team?

10 A It was -- some was collection of contracts. You
11 know, many of the deliverables that we had was not only
12 operational contracts but also any pending legal matters
13 were things that we needed to, you know, turn over,
14 explain to them the status of. Also, again, I was -- I
15 was the head of the development -- terminal development
16 program even at that time, although, we only had one
17 asset.

18 But we had hopes to build a lot of assets, and I
19 was part of the team that would discuss that with them as
20 well as I did several site visits with members of
21 Copersucar to where we would like to build terminals in
22 the future.

23 Q Okay. And did you -- who else was part of the
24 due diligence team at Copersucar -- at Eco-Energy?

25 A So Chad Martin was the CEO at the time. He was

1 extremely involved in the process, so was Gwaine Ton. And
2 Gwaine Ton was the chief financial officer as well as the
3 chief operating officer. He was my boss at the time.
4 They were the main individuals, but then there were
5 several of us at the vice president level that were part
6 of the, whether it be collection of documents or, you
7 know, the things that were necessary in order to prepare
8 to close.

9 We were also involved in the process leading up
10 to that when it was -- I mean, again, it was a big
11 process. So there were, you know, people in and out of
12 the office throughout the summer and fall as several
13 different companies considered whether they were going to
14 purchase Eco-Energy.

15 Q And there was an agreement entered into between
16 Eco-Energy Holdings, its shareholders, and Copersucar,
17 effective as of November 1, 2012. Do you recall that
18 agreement?

19 A I do.

20 Q And when was that agreement signed? Do you know?

21 A It was in late October, I believe, is when it was
22 executed, 2012 October -- late October 2012.

23 Q Now then, what were -- now then, do you have
24 access to the exhibit binder? I think I sent you the link
25 yesterday?

1 A I do.

2 Q Could you turn to page 78 of the exhibit binder?

3 A I can. Just give me a second.

4 Q Okay.

5 A It's taking a little bit. Sorry. I tried to
6 download it earlier, but it was a pretty large file.

7 Okay. I'm looking at page 78.

8 Q It's Article 10, Section 10.1, conditions --
9 closing conditions to buyer. Do you know what Section 1
10 deals with -- Section 10.1?

11 A Sorry. It's having -- I'm having a hard time
12 seeing it. I'm unfortunately having to use my phone
13 because I'm on the computer, and I'm traveling right now.
14 But I believe if, correct me if I am wrong, that was
15 the -- where we had a list of deliverables, an order we
16 had to meet before closing.

17 Q And were any of these deliverables met prior to
18 the signing of the agreement?

19 A Not to my knowledge. I mean, that was part of
20 the process is that we had to -- these -- I mean, there
21 could have been some that were in process, but it was
22 ultimately -- it was ultimately up to us between the time
23 of execution and signing the document to ensure that all
24 of these were done in a -- that was satisfactory to
25 Copersucar per the agreement.

1 Q Okay. I'll represent to you that 10.1-A states
2 that, "Taken as a whole, all representations and
3 warranties set forth in Article 6 and 7 shall be true and
4 correct, and all material respects at and as of the
5 effective date and at and as of the closing."

6 And do you recall what had to be done with
7 respect to ensuring that all of the representations and
8 warranties, and I believe Article 6 are representations
9 and warranties of the shareholders of Eco-Energy, and that
10 is at page -- let's see. My computer screen is jumping
11 like crazy. Sorry. Okay. The representations and
12 warranties of the shareholders, Article 6, is at page 46
13 through the beginning of page 48. And the Article 7,
14 representations and warranties regarding holdings and its
15 subsidiaries are at Article -- begins at page 48 and goes
16 through page 67.

17 So do you recall what specifically -- were you
18 involve in ensuring that any of the articles and
19 warranties were true and correct?

20 A I was not involved in that. I was involved in
21 part of the process of us having to get certain things in
22 order to either execute the document or close the
23 document. Specifically, the thing that I remember that we
24 were the most interested in is getting our Alliance
25 Plants, the plants that we market for. They had clauses

1 within their contract that allowed them to exit the
2 marketing agreements, if we had a change in ownership of
3 more than 51 percent.

4 And so we had to get permission from each and
5 every one of our plants that they agree to not exercise
6 that option upon the sale. That was the -- that was one
7 of the biggest deliverables that I know that we -- that we
8 were all involved in one way or the another.

9 Q How many Alliance Plants were there at the time
10 of the sale to Copersucar?

11 A I don't know the exact number. I would say it
12 was between 6 and 10.

13 Q And how long was the process to obtain the
14 consents from the Alliance Plants?

15 A The process started in the fall, even before I
16 think this document was signed, and it was when -- I can't
17 tell you. There's probably -- you know, whenever the
18 consents -- they would have been written consents that
19 would have provided from each plant, and I don't know the
20 exact dates of when those were all completed.

21 Q And how long did the due diligence process take?

22 A Well, what I consider the due -- honestly, we
23 started the due diligence process in probably early summer
24 of 2012 because we were being advised by Piper Jaffrey
25 that there were going to be certain things that were going

1 to be required because, obviously, much of these things
2 made for the -- you know, got to the value of the company.

3 So we started the process early on, you know,
4 everything from real estate documents to contracts to
5 permission from the Alliance Plants were obtained starting
6 in summer and, you know, all the way up until -- you know,
7 my involvement was all the way up until the fall.

8 Q Okay. And how long did the due diligence
9 processes with respect to the closing? The closing was on
10 December 19, 2012. How long do due diligence process go
11 up -- when was it completed with respect to the closing?

12 A So I wouldn't have an exact date of when that
13 would be. I mean, it was always explained to us that
14 there was an exit clause within the contract that they did
15 not have to close if anything changed up until the date of
16 closing. So we were obtaining those documents. We were
17 also, you know, ensuring that nothing changed once this
18 document was executed until it closed. Because, again,
19 while I wasn't involved in all the specifics of the
20 agreement, it was always explained to us that there was
21 the ability to exit if anything materially changed prior
22 to close.

23 Q Okay. And does that have any effect on the
24 operations of Eco-Energy?

25 A What do you -- can you explain that again?

1 Q Well, could -- what, specifically, was Eco-Energy
2 prohibited from doing until after the agreement was
3 entered into?

4 A It would be contained in the document. I
5 don't -- I mean, it's been a number of years since I was
6 involved in this. But it was my understanding that it was
7 really just supposed to be business as usual, and anything
8 material that would occur between execution and close
9 could potentially, if it rose to a level of materiality,
10 would be a cause for Copersucar not to close.

11 So, I mean, anything operationally, I mean, if
12 something was to happen, you know, catastrophically with
13 regard to the operations, it may be if an Alliance Plant
14 was to decide not to give us that authority, or was to
15 decide to withdrawal their earlier consent, it would be a
16 cause that would potentially allow Copersucar not to
17 close.

18 Q Okay. Now at the time that Eco-Energy entered
19 into the agreement with Copersucar, did it have any
20 terminals?

21 A We did. We had one terminal located in Denton,
22 North Carolina at the time. We also had options on
23 property located in Cartersville, Georgia.

24 Q And were -- at the time that the deal was entered
25 into with Copersucar, was Eco-Energy in the process of

1 acquiring the property in Georgia?

2 A We had an option on the property. So, yes, we
3 were in the process of that purchase, but we did not
4 actually purchase the property until after the sale. It
5 was in early 2013.

6 Q And why was the property not purchased until
7 after the sale?

8 A To be honest, I'm not entirely sure why it is
9 that we didn't. I think that it was a lot of the, you
10 know, a lot of the justification for the sale was our
11 terminal development plans, and they existed further than
12 just the one in Cartersville, Georgia. And that was, you
13 know, that was kind of the genesis of the process to begin
14 with, that we were wanting to grow the asset division. It
15 was going to be a lot of money over multiple years, and we
16 needed or wanted a partner that was going to help fund
17 that program.

18 Q Okay. If any representations or warranties of
19 holding were not true and correct and any material in
20 regard, could Copersucar have terminated the agreement?

21 A Yes, that was my understanding.

22 Q And if a material representation or warranty was
23 not met -- oh, if any condition -- was Eco-Energy -- were
24 there any conditions placed on Eco-Energy as part of the
25 deal that it had to meet?

1 A Yes. I mean, within the document there were
2 certain requirements that we had to meet before closing.
3 Not only was it operational in nature, but it was -- yeah,
4 it's in the document. I mean, there was a list of things
5 that we needed to do as any transaction of this size would
6 require.

7 Q And as of the completion of due diligence, was
8 closing of the deal a certainty?

9 A It certainly was not my understanding that that
10 was the case. It was my understanding that if -- well, it
11 was my understanding that there was money that was put
12 into escrow by Copersucar. And they would lose the escrow
13 money if they did not close, unless it was something
14 material. And if it was material, they had the ability
15 not to close and get their escrow money back.

16 Q So that until closing, the deal was not final?
17 It was not a certainty?

18 A That -- that is my understanding.

19 Q Okay. Now then, did Copersucar's acquisition of
20 Eco-Energy require the approval of any government
21 entities?

22 A It did not in United States. I'm not positive if
23 Brazil had any hoops that they had to jump through.

24 Q Were you present at the closing?

25 A I was not present. I think that the actual

1 closing was done in a law firm in Nashville Baker
2 Donelson. He was part of the -- I think that there was a
3 dinner afterwards that I was present for but not at the
4 actual signature.

5 MR. HORWITZ: Okay. I have nothing further.

6 JUDGE HOSEY: Mr. Hofsdal, do you have any
7 cross-examination?

8 MR. HOFSDAL: Yes, I do.

9

10 CROSS-EXAMINATION

11 BY MR. HOFSDAL:

12 Q Mr. Conn, can you hear me okay?

13 A Yes, sir.

14 Q Great. Can you tell me -- and it's just for
15 clarification. I know it was two hats. But what were the
16 two positions you had for Eco-Energy in 2012?

17 A Well, see I was hired as the director of legal
18 and business affairs. And, again, it was a small company,
19 so especially in 2007, so you wore a couple of different
20 hats. Once I was hired, I started to get involved in the
21 operations. And by 2012 my title was vice president of
22 operations, and it included some corporate counsel duties.

23 Q Now, when you participated in the closing of this
24 deal, did you do so as vice president of operations, or
25 you had more of a legal role in looking at the documents

1 and making sure that everybody was in compliance?

2 A No. For this transaction I was almost strictly
3 as the vice president of operations to include the
4 terminal development program that we were about to start.

5 Q Great. Now, if you had to identify all of the
6 people who were more knowledgeable about this transaction
7 than yourself, I mean, how high would that list be? How
8 many people would be on it? You mentioned Larry Beckwith.
9 You mentioned Chad Martin, a gentleman named -- is it
10 Gwaine Ton?

11 A Gwaine Ton. Yes, that is correct.

12 Q A gentleman named Hickman, I'm not sure what his
13 first name is. I saw that name somewhere around. A guy
14 named Pennington. Is there anybody else who have more
15 knowledge on this transaction than the people I just named
16 and yourself?

17 A We were -- as you see, we were using Baker
18 Donelson as our outside counsel at the time. And the lead
19 attorney that was helping us through this process was
20 Tonya Grindon.

21 Q Okay. Gotcha. And as far as your role in the
22 closure of this deal, it seems like it was somewhat
23 limited. Would you agree?

24 A I was involved in the process, you know. I mean,
25 I guess it almost absorbed all of our lives for about six

1 months. But I was definitely involved in the due
2 diligence, the collection of operational documents, some
3 legal with regard to, you know, pending matters that we
4 had. We had nothing of significance. But, yes, as far as
5 the signing and negotiations, that would have been others.

6 Q In with regards to the role you had, did you have
7 any issue in getting the documents that Copersucar wanted,
8 or doing the deals with the different terminals or
9 whatever, you know. I mean, did you have any hang ups
10 that prevented you from fulfilling your obligation and
11 your role in this closure?

12 A No. There was nothing that I was specifically
13 tasked with that we were not able to obtain. Again, it
14 was a lot primarily around the land as well as the
15 operating terminal. And I was involved with the documents
16 with regards to the Alliance Plants, but more on the
17 periphery because I am -- that would have been the vice
18 president of Alliance relations, who was John Bowman. He
19 would have been involved as well.

20 Q Great. Great. So for the most part, if you had
21 to put a -- and we know that they signed this contract on
22 or about November 1st, true, of 2012?

23 A Yes, I -- I saw that date. I believe it was just
24 a few days before that. But, again, I remember it being
25 late October.

1 Q So with regards to the stuff that you had to do
2 in order to get this deal closed, how close to that
3 November 1st date were you complete with all the tasks
4 that you had to complete?

5 A I believe that I was able to collect everything
6 that I needed to satisfy my portion with regard to real
7 estate. I can't speak to whether we had all of the plant
8 documents or not at that time. If not, it was in process.

9 Q Okay. So by the November 1st you're element or
10 your part of due process was already complete?

11 A To the best of my knowledge it was.

12 Q Great. And are you aware of any other entities
13 or groups that had portions of this due process? Are you
14 aware of anybody having any hang ups or issues with
15 regards to not having their portion of due process done by
16 November 1st?

17 A I can't speak for the exact dates when we
18 obtained all of the marketing agreements, but there were a
19 few -- I mean, it took a little bit of negotiations with
20 some of our plants. As you can imagine, we represent a
21 lot of plants located in the Midwest, United States. And
22 Brazil was thought of at that time as kind of the
23 competitor. So we were getting, you know, plants in the
24 Midwest to agree to have a Brazilian company market their
25 products. So that was something that took time and

1 energy.

2 Q So this was kind of a big deal, though. I mean,
3 this was making Copersucar the largest ethanol producer or
4 ethanol distributor in the world, wasn't it?

5 A That was certainly -- if not the biggest,
6 certainly close.

7 Q Yeah. And there was a lot of desire on both
8 sides, the Copersucar side and on Eco-Energy's side to get
9 this deal done; true?

10 A Certainly on our side. I could be assuming with
11 regard to them, but it's a pretty safe assumption that
12 they wanted this done.

13 Q Yeah. Now, if you can get into your documents --
14 if you can get into document number 2774?

15 A Can you -- what page is that?

16 Q 2774.

17 A Oh, okay. Sorry. I'm having a hard time getting
18 there.

19 Q Yeah. No problem. Maybe I'll just -- we've
20 problems with exhibits. I'll read it to you. If you
21 understand the section I'm talking about, great. If not,
22 you can pull it up and look at it. But it talks about a
23 confidentiality agreement, and this is actually in the
24 document we've been talking about, the membership interest
25 purchase agreement. And it talks about a confidentiality

1 agreement. It says -- you know, it's in the definition
2 section. And it says, "Confidentiality agreement means
3 the mutual non-disclosure agreement dated as of
4 April 5th, 2012, between Copersucar SA and Eco-Energy."

5 A Okay. So just to clarify, so we had a
6 relationship with Copersucar from a purchase and sale side
7 as well. I don't know if that confidentiality agreement
8 is with regard to this deal or if it was with regard to
9 the purchase and sale of product. We typically -- well,
10 I'm sure we would have had one for this deal, but at the
11 same time we would have done it for the purchase and sale
12 as well.

13 Q Great. So and there was a relationship between
14 Copersucar and Eco-Energy prior to November 1st,
15 obviously, and even before, apparently, April 5, 2012;
16 true?

17 A Yes, we did sell Copersucar product. We would
18 typically take it to Texas City, Texas, and they would buy
19 it from us. And, again, I do believe that started in the
20 spring and summer. And that led to the relationship that
21 ultimately resulted in the sale.

22 Q Right. So you agree with me that you weren't two
23 strangers at this particular point. By November 1st, your
24 two entities or two entities that knew each other fairly
25 well; true?

1 A We had definitely got to know each other. I
2 don't know if I was involved with Copersucar in April, but
3 early fall -- late summer, early fall, I was involved with
4 them, and even doing side business.

5 Q Great. Now, in talking to Mr. Beckwith earlier,
6 I had asked him about, like, the expiration of ethanol,
7 the tariffs, in the end of 2012. Do you know anything
8 about that?

9 A Well, yes, I'm certainly aware of that. Yes.

10 Q Okay. So did tariffs expire at the end of 2011?

11 A Yes. That is correct.

12 Q That is correct. All right. And it's my
13 understanding that because of that expiring tariffs that
14 this particular deal was thought of, at least by
15 Copersucar, as being highly desirable because they no
16 longer had that tariff burden; is that true?

17 A Without a doubt that, you know, prior to that,
18 Brazilian ethanol had a very difficult time making it into
19 the United States, with the lifting of the tariffs that
20 changed things significantly.

21 Q All right. And the lifting of the tariffs was
22 the end of 2011; true?

23 A That's correct.

24 Q And did the lifting of the tariffs, did that have
25 anything to do with both Larry and David Beckwith deciding

1 this might be the time to sell the company?

2 A I don't know. I don't know if that's correct. I
3 just know that we embarked on -- we actually started
4 talking about the process a few years before, and Gwaine
5 Ton was specifically hired as chief financial officer to
6 kind of get us into a salable fashion.

7 Q I gotcha. So a couple years before the
8 expiration of the tariffs, Eco-Energy was kind of putting
9 themselves in position to be a desirable target. Is that
10 a safe bet?

11 A We certainly started to think about that because
12 we wanted to branch into distribution of product and
13 actually have fixed assets. And that was going to require
14 significant amounts of capital.

15 Q I gotcha. Now, it's my understanding that both
16 Larry Beckwith and David Beckwith resigned from their
17 active day-to-day participation of the company sometime in
18 early 2012; is that correct?

19 A I don't know when their resignations occurred.
20 They were involved in the company during that time period,
21 but, you know, day-to-day -- day-to-day definitely they
22 would have been not there by 2012.

23 Q Okay.

24 A But we would have meetings, I mean, on-site,
25 which they would be present for. But, again, I can't

1 remember the dates.

2 Q Great. And Mr. Beckwith had testified earlier
3 that he had a lot of meetings while he was in California
4 over, like, internet or some type of streaming platform.
5 Do you recall any meetings with Mr. Beckwith?

6 A Well, actually, when I started with the company,
7 company David lived in California and subsequently moved
8 to Tennessee. And so there were -- there were times that
9 I remember during that time period that he was -- we did a
10 lot of conference calls. And then once he moved to
11 Tennessee, I don't honestly remember us doing that in that
12 fashion.

13 Q I mean after he and Larry resigned. Do you
14 recall having any meetings with David after the
15 resignation?

16 A I don't remember offhand. But, again, it was not
17 abnormal for people to be calling in from different
18 locations, whether they were traveling for work or whether
19 they were on vacation. That was a pretty normal thing to
20 happen.

21 Q Now, and do you know from the -- do you have an
22 idea -- let me just backtrack a little bit. I'm trying to
23 avoid showing you a document, but I can't. If you could
24 try to pull up 2767, document 2767, and I'll keep my
25 fingers crossed. I've been keeping my fingers crossed all

1 day here, but I'll see if you could pull it up.

2 A I wish you would ask for document number 3. I
3 can get to that.

4 Q There you go.

5 A Sorry. I'm scrolling as fast as I can.

6 Q Yeah. No, no. I know it's hard. There might be
7 a search button on the bottom, and that's --

8 A I tried that. It doesn't seem to be working.

9 Q I'll describe the document, and we've all seen it
10 today.

11 A Yes.

12 Q It's basically a physical presence chart that
13 kind of shows Mr. Beckwith's physical presence for 2012.
14 And starting with about April 16th or so, there's a
15 dramatic shift from physical presence from Tennessee to
16 California. And I just wanted to see if that, kind of,
17 refreshes in your memory at all as to when, you know,
18 Mr. Beckwith may have resigned?

19 A I'm unable to get to the document right now.

20 Q Okay.

21 A But I can safely say that I would have a hard
22 time recalling exactly what he was doing day-to-day during
23 2012. I mean, I remember seeing him. I remember -- you
24 know, there were times that I would see him in and around
25 the office, but -- and then on call, but I couldn't speak

1 for --

2 Q And do you know if that was before or after he
3 resigned. That's what I'm trying to get to is just --

4 A I really don't. I don't remember the resignation
5 date. I remember when they stepped back.

6 Q Right. Now getting back to the deal here a
7 little bit. Isn't it true that within a few days of
8 entering into this membership purchase agreement on
9 November 1st, that both Copersucar and Eco-Energy had
10 press releases announcing this deal?

11 A I don't remember -- I don't -- I do not know the
12 dates that we press released it. But, yes, we did press
13 release it soon after the deal was executed.

14 Q Okay. Now, would it have been embarrassing for
15 both Eco-Energy and Copersucar to have these press
16 releases and the deal, kind of, like fall through? I
17 mean, you would agree with that one; right?

18 A Yes, it would have been. I know that we like to
19 press release stuff at Eco-Energy, you know, one, to kind
20 of just send a message out to the market. But there's no
21 doubt there would -- it would have taken some back
22 peddling on our part. I can't speak for Coper.

23 Q Right. And also starting, you know, early
24 November 2, this transaction was being reported by a lot
25 of the industry magazines and financial companies; true?

1 A Yes. There were -- I do believe it hit some of
2 the wires.

3 Q So you would agree with me that by
4 November 1st, 2021, that this deal was more likely than
5 not, going to be completed; true?

6 A In 2012?

7 Q Yeah. November 1st, 2012, when the agreement was
8 signed, you agree with me that it was more likely than not
9 that the deal between Copersucar and Eco-Energy would have
10 been finalized?

11 A It certainly was from our perspective. I mean,
12 it was something that we knew that we had to -- we knew we
13 had a time period between executing and close that we
14 had -- nothing was to go wrong, and were to make no sudden
15 movement, I suppose you would say. But, yes, it was our
16 opinion that we were marching towards that date when it
17 would be closed.

18 Q Right. Was there any -- did you have any doubt
19 that the deal would not finalize on -- at the end of
20 December?

21 A Well, for my perspective, as certain key
22 employees, I was going to be given a compensation based
23 upon the close. So as someone that never counts my
24 chickens before they hatch, I certainly was very eager for
25 it to close.

1 Q Okay. I gotcha. Now, when you look at the
2 agreement -- and it's page 2818. I know you can't get to
3 it -- but it actually calls for the deal to be finalized
4 by December 27th, 2012. Do you recall that the deal was
5 actually supposed to close -- actually, about eight days
6 before it actually did?

7 A Did it -- you said it was supposed to close in
8 December 27th?

9 Q December 27th. And when you look at page 2018,
10 it talks about the deal. It says the deal should be
11 finalized. You know, the two parties agree that, hey, we
12 have this deal. It needs to be finalized by -- and the
13 date they put in there is December 27th, 2012. Do you
14 recall that at all?

15 A What I remember is that we were doing everything
16 we could to make sure that it was closed and really
17 pressing Copersucar to make sure it was done before the
18 end of the year.

19 Q Great. And did the deal actually close sooner
20 than people had anticipated closing?

21 A I do know that it closed -- I think they
22 mentioned the date. It was the 18th or 19th of December.
23 So I'm assuming that was, you know, the transfer of funds
24 that were, you know, when they were able to be completed.

25 Q Right. And then Mr. Horwitz had talked about

1 this section earlier. I know you didn't pull it up, but
2 it's like Section 10.1 and 10.2, and it's at Exhibit 28.
3 But, I mean, isn't it -- I mean, you know, just to
4 summarize that. Would you agree with me that the closing
5 was pretty much dependent -- at this point on
6 November 1st, the closing was pretty much dependent on
7 each side doing what they said they were supposed to do?

8 A Yes, that's correct.

9 Q And you're not taking the position at all that at
10 any time between November 1st and December 19th that
11 either Copersucar or Eco-Energy failed to perform as they
12 agreed; right?

13 A No, not to my knowledge.

14 Q And it also says that the closing is somewhat
15 dependent on the parties' representations and warranties
16 being true. Is that your understanding?

17 A Yes. Absolutely.

18 Q And did you have any reason to believe -- or do
19 you have any reason to believe at the time that either
20 side, Eco-Energy or Copersucar, made a material or
21 misrepresentation?

22 A No.

23 Q And closing is also dependent on there being no
24 judgments, orders, or decrees, and it's my understanding
25 that there wasn't any to impact this transaction; true?

1 A There was not.

2 Q Other than what we just talked about and
3 summarized, is there anything else that closing was
4 dependent on other than those few things?

5 A Not from my side. I just, you know, again I
6 don't want to speak to the intricacies of the documents
7 just because, again, I wasn't the one negotiating it. But
8 the --

9 Q Yeah. Yeah. I mean, the bottom line is -- and
10 what I'm getting the feel from your testimony is, is on
11 November 1st this deal was a pretty darn good deal. And
12 it was going to get closed because both parties wanted to
13 do so and had incentive to do so. Would you agree with
14 that?

15 A I know we at Eco-Energy wanted it done. I
16 personally wanted it done, but I can't speak for
17 Copersucar. I know that they had the ability to exit, but
18 there were certain requirements for them to do so.

19 Q Yeah. And I think that's one of the sections in
20 the contract is that in order to exit, that one party
21 would basically have to -- and this is Section 28 -- or
22 page 2830. It talks about that in order to back out, and
23 that the other party wouldn't have to have a prior
24 material breach, and that the other party would have a
25 30-day cure notice in order to rectify or remedy any

1 defect. Is that your understanding of the agreement?

2 A That is my understanding. I do believe that --
3 again, we couldn't force them to close, but they would
4 have lost their escrow money.

5 Q Yeah. I understand that. So -- and it's also my
6 understanding, I mean, that neither Eco-Energy or
7 Copersucar invoked that 30-day cure; right. Nobody
8 noticed each other of a breach and invoked that 30-day
9 cure period; true?

10 A No. There was no notice given.

11 Q I'm going over my notes real quick. I appreciate
12 your time and your candor.

13 A No problem at all.

14 Q I went to school in Nashville. So I --

15 A Oh, where at? Vanderbilt?

16 Q Vanderbilt. Yeah, I did.

17 A Way to go. I got my business degree there. So
18 I'm --

19 Q Yeah. Great. Yeah. I was there when they
20 actually -- the first year they opened up the business
21 school.

22 A Oh, great.

23 Q '82 I think it was.

24 A Well, it's a beautiful campus.

25 Q It is. Did -- you know, as a perk of employment,

1 did Eco-Energy provide any types of club memberships or
2 anything like that to its senior officers?

3 A Club memberships?

4 Q Yeah. Yeah. Like, you know, a lot of times, you
5 know, when you're a president or CEO of a company, you
6 know, with that you might get a membership to a country
7 club or something along those lines. Did Eco-Energy offer
8 anything like that to its executives?

9 A Not that I'm aware of. I believe that we got --
10 I mean, they provided us, you know, the ability, I think
11 money, to join a health club, but that was for all
12 employees.

13 Q I hear you. I'm almost finished. And you talked
14 about a -- and there was a signing of the agreement, and
15 then there was like a -- it was at a law firm in downtown
16 Nashville. And then afterwards there was a dinner. Was
17 that event -- was that celebration on or about
18 November 1st, when the agreement was signed? Or was that
19 when everything closed on December 19th?

20 A I do know that we had a -- there was a dinner in
21 downtown Nashville. But for the life of me, I don't
22 remember if it was after close or if it was after the
23 signing of the agreement. Copersucar was there. There
24 was also a -- I do remember, though, that there was a --
25 there was an event. There were two events. I just -- I

1 don't know if Copersucar was at the -- the one in
2 December. I don't remember.

3 Q Fair enough. That's all I have. I don't know
4 what hotel you're at, but it's beautiful. I hope you're
5 in the sun.

6 A I'm in the Kansas City Airport Marriott.

7 Q Oh, there you go.

8 A Yeah.

9 JUDGE HOSEY: Thank you, Mr. Hofsdal and
10 Mr. Conn.

11 MR. CONN: Thank you.

12 JUDGE HOSEY: Mr. Horwitz, did you plan on
13 redirect or are you finished with Mr. Conn for today.

14 Mr. Horwitz? Mr. Horwitz? Can you hear us,
15 Mr. Horwitz?

16 MR. HORWITZ: Hello. I have just a few questions
17 for Mr. Conn.

18

19 REDIRECT EXAMINATION

20 BY MR. HORWITZ:

21 Q Okay. You've talked about -- Mr. Hofsdal when he
22 was questioning you -- you talked about the Alliance
23 Plants, and there were concerns whether or not that some
24 of the Alliance Plants may be hesitant about signing on
25 because Copersucar was a country that was from their

1 biggest competitor country, Brazil?

2 A That's correct. So we discussed earlier when the
3 tariffs were lifted Brazilian ethanol came in, and the
4 price of ethanol was impacted by that. So there was a
5 little hurt feelings in the industry from the producers at
6 that time with regard to Brazil entering the U.S. market.
7 And -- so certainly that was something that we were
8 concerned with, and some of our plants were concerned as
9 well.

10 Q And if any of the Alliance Plants refused to sign
11 on, would that have impacted the closing of this deal?

12 A I don't -- I mean, that would have ultimately up
13 to Copersucar. They would have had to provide notice that
14 rose to a level of materiality. But it was something that
15 we were concerned with.

16 Q Okay. And that was something that was outside of
17 your control, was it not?

18 A Yes, it was.

19 Q And was outside of Copersucar's control; correct?

20 A Yes, that's correct.

21 Q Now then, at page 79 in Section 10.1-C, it says
22 that since the latest -- that one of the conditions of
23 closing was that, since the latest balance sheet, no
24 material adverse effect shall have occurred. Were
25 material adverse effects outside of the control of

1 Eco-Energy?

2 A Well, can you rephrase that? I don't quite
3 understand.

4 Q Okay. The Section 10.1-C of the agreement, which
5 is at page 79, that since the date of the latest balance
6 sheet -- referring to Eco-Energy's balance sheet -- no
7 material adverse effect shall have occurred.

8 A Right. I don't know if the plant contracts would
9 have been on our balance sheet. I'm not -- I'm not sure
10 about that.

11 Q But were material adverse effects to the balance
12 sheets something that was with -- totally in Eco-Energy's
13 control?

14 A No. Certainly -- I mean, no. That --that -- no.
15 There could have been things that happen any business that
16 would have been outside of our control that would have
17 impacted the balance sheet.

18 Q And another condition on the same page 10.1 G
19 says there must not have been any material adverse effects
20 since the effective date. And that's one of Eco-Energy's
21 conditions for closing that it must fulfill. And, again,
22 the material adverse effect to the company would be
23 something that was beyond the company's control; correct?

24 A Well, certainly. There could have been things
25 that occurred that would be material adverse that would

1 have been within our control as well as outside of our
2 control. The way I interpreted that was anything, you
3 know, significant that happens. I mean, we move a lot of
4 product. We had assets in the ground. So anything that
5 happened during that time period could have resulted in
6 this, you know, deal being altered.

7 Q Now, you mention that the company had a terminal
8 in North Carolina at the time the deal was entered into?

9 A At the time -- we had one operating terminal at
10 the time of the deal. And, again, the dates are not -- I
11 also believe that we owned a gasoline terminal in
12 Charlotte at the same time. We sold that pretty quickly
13 into the relationship with Copersucar, but during the time
14 of -- that we're talking about, I believe that we had an
15 ethanol terminal in Denton, North Carolina and a gasoline
16 terminal in Charlotte, North Carolina.

17 Q And was ethanol stored at the ethanol terminal?

18 A Yes, sir.

19 Q And was gasoline stored at the Charlotte
20 terminal?

21 A At that time I believe that we did have gasoline
22 at the Charlotte terminal. That terminal was only up for
23 a little while. We refurbished it. You know, I cannot
24 speak with 100 percent certainty if it had gasoline during
25 this time period, but I can with the ethanol in Denton.

Q If between November 1st and the closing date there had been a major fire at the terminal that caused substantial damage to the surrounding areas, would that have been a material adverse effect?

A It was my understanding that that would be.

MR. HORWITZ: Okay. I have nothing further.

JUDGE HOSEY: Mr. Hofsdal, do you plan on any redirect.

MR. HOFSDAL: Yeah. I'll be rather quick.

RECROSS-EXAMINATION

BY MR. HOFSDAL:

Q Now, it's my understanding from what you talked about before, is that all of the issues regarding the Alliance companies was pretty much resolved by November 1st; isn't that true?

A Again, there should be some written documents of when they actually provided their written consent. Because per the Alliance agreements there would have needed to be written consent. I can't speak if that was before or shortly thereafter.

Q Yeah. But it was --

A We were definitely talking to them about it.

Q Right. But it was well resolved before
December 19th; true?

1 A Yes, it was.

2 Q And isn't it true that ethanol is a commodity?

3 A Yes, it is.

4 Q And it's traded as commodity?

5 A Yes, it is.

6 Q And it's traded by commodity contracts?

7 A Yes, it is.

8 Q Right. So for the most part, since it is a
9 commodity and it is dealt with by a commodity contract,
10 the income you would have had that would have affected the
11 balance sheet from November 1st through December 19th
12 would have been immaterial because you've already had all
13 the contracts to deliver during that time; true?

14 A That's true with the sale. The terminals operate
15 differently, though.

16 Q Yeah. Yeah. But for the most part because of
17 the fact it is a commodity and you do deal with commodity
18 contracts that are -- were they six months out? A year
19 out? How far out into the commodity the contracts go?

20 A So we deal with physical product as opposed -- I
21 mean, we do paper as well. But the physical can be
22 everything from -- it's very rare to have a year-long
23 contract, and sometimes we do sell products on the spot.
24 So it's that day.

25 Q Yeah. But for the most part the people in your

1 accounting department, based on the commodity contracts,
2 knew what the balance sheet would be probably two or three
3 months out, true, at least?

4 A I think that would be -- that may be over
5 simplified. I believe that there's a lot of product that
6 we buy and sell on the spot basis. And, again, I'm sure
7 you have the balance sheet, but I assume the Denton, North
8 Carolina terminal would be on there as well. So that was
9 a fixed asset that -- and not trying to just -- but with
10 regard to -- I mean, again, because it was my business I
11 had maybe more intimate in it. We certainly -- the
12 balance sheet at that time was not only retained earnings,
13 future contracts, but also the asset.

14 Q The asset. Right. So as a percentage, what
15 would you say the percentage of contracts versus spot
16 market is as far as sales go, at least in October -- in
17 November, December 2012?

18 A So I would say that at least 90 percent of our
19 contracts of our agreements are contracts, you know, for
20 either a one-month strip, three-month strip, or six-month
21 strip. But, yeah, they're not -- they're typically either
22 one or three months. Quarterly is typically how it's
23 done.

24 Q I'll say this again. Thank you very much for
25 your time. And I hope you have a pleasant evening?

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A All right. Thank you, all.

JUDGE HOSEY: I'm going to see if my Panel members have any questions before you leave. Oh, did we lose Mr. Conn?

Judge Ridenour, did you have any questions for Mr. Conn?

JUDGE RIDENOUR: This is Judge Ridenour. Thankfully I did not have any questions for the gentleman.

JUDGE HOSEY: Let me check with Judge Lambert.

Judge Lambert, did you have any questions for Mr. Conn?

JUDGE LAMBERT: This is Judge Lambert. No, I did not. Thanks.

JUDGE HOSEY: Okay. We'll let Mr. Conn go.

Okay. We have -- let's see. It's 5:30.

Mr. Horwitz, did we have Mr. Walker on standby; right?

MR. HORWITZ: We had --

MR. CONN: I don't mean to interrupt, but as I was signing off you asked if -- I was pressing the button and you asked if anyone had questions for me. So I thought I would join again.

JUDGE HOSEY: I really appreciate. No. I checked in with the other judges, and we didn't have any questions

1 for you so we didn't want to bother you any longer. But I
2 appreciate you checking back in with us.

3 MR. CONN: All right. I'll sign off for good
4 this time. Thank you.

5 JUDGE HOSEY: Have a great afternoon.

6 MR. CONN: Take care.

7 MR. HOFSDAL: Thanks.

8 JUDGE HOSEY: Mr. Horwitz, this is Judge Hosey
9 again. Did we have Mr. Walker on standby, or is he
10 planning on joining us tomorrow?

11 MR. HORWITZ: He was intending to join us
12 tomorrow at 9:30.

13 JUDGE RIDENOUR: Judge Hosey, I think you're on
14 mute.

15 JUDGE HOSEY: Can you hear me now? Okay.

16 Mr. Walker, was that the last witness you're
17 planning on calling, Mr. Horwitz?

18 MR. HORWITZ: Yes, it is.

19 JUDGE HOSEY: Okay. And then, Mr. Hofsdal, did
20 you plan on calling any witnesses tomorrow morning?

21 MR. HOFSDAL: No. I think the testimony we've
22 had from both Mr. Beckwith and Mr. Conn were, you know, as
23 far as we're concerned, we don't need any rebuttal
24 witnesses. So we're -- I think we're well on schedule to
25 finish by 12:00 tomorrow.

1 JUDGE HOSEY: Okay. That was what I was
2 concluding as well. I think we'll have plenty of time to
3 have Mr. Walker and then our arguments and closing
4 statements tomorrow morning. Let me make sure.

5 Does anybody have any questions before -- oh, I'm
6 being reminded that you need to check your email this
7 evening for a new link for tomorrow morning. This will be
8 a different link for us all to sign on to begin again. Do
9 I have any questions before we break for this evening, and
10 then we'll start again at 9:30 tomorrow morning. Any
11 questions?

12 MR. HORWITZ: No, Your Honor.

13 JUDGE HOSEY: Okay. Thank you.

14 I will see you all then tomorrow morning at 9:30.
15 Check your email for a new link.

16 (Proceedings adjourned at 5:30).

17 (CONTINUATION OF HEARING FROM PREVIOUS DAY)

18 JUDGE HOSEY: We're now back on the record. This
19 is a continuation for the hearing of David Beckwith.

20 Mr. Horwitz, go ahead and we'll call Mr. Walker.

21 Mr. Walker, can you raise your right hand,
22 please.

23 MR. WALKER: Yes.

24 JUDGE HOSEY: We're going to swear you in for
25 your testimony.

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BEN WALKER,

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

JUDGE HOSEY: Thank you.

Mr. Horwitz, you can begin.

DIRECT EXAMINATION

BY MR. HORWITZ:

Q Mr. Walker what's your occupation?

A I'm a financial advisor.

Q And for whom do you work?

A UBS.

Q How long have you been at UBS?

A Since 2008.

Q And could you tell us about your educational
background and work prior to UBS beginning with college?

A I have a college degree and a masters degree in
business, MBS. And I started with Merrill Lynch in 2005,
which was the year I graduated from graduate school.

Q Okay. And do you know David Beckwith?

A Yes.

Q And how long have you known him for?

A I believe since around 2010.

1 Q And what's the nature of your relationship with
2 Mr. Beckwith?

3 A We met through mutual friends and have been --
4 have had a strong friendship since we met.

5 Q And Mr. Beckwith has accounts at UBS; is that
6 correct?

7 A Yes.

8 Q And are you his financial adviser at UBS?

9 A Yes.

10 Q And I want to direct your attention to 2012.
11 Were you in contact with David?

12 A In 2012, yes.

13 Q And how frequently were you in contact?

14 A I'd say weekly, if not, typically several times a
15 week.

16 Q And was this in person or phone or email, or how
17 did you normally communicate with David?

18 A Phone and in person.

19 Q And you presently reside in Nashville; is that
20 correct?

21 A Yes.

22 Q And did you and David have friends in common when
23 he was living in Tennessee?

24 A Yes.

25 Q Now, in approximately March of 2012, Mr. Beckwith

1 put his home on Vaughn Crest Drive in Franklin, Tennessee
2 on the market. Do you know why he did that?

3 A From my conversations, number one, he lived in
4 the suburbs in the same neighborhood as his brother and
5 his brother's family, who David is very close to his
6 brother. His brother was going through a divorce, and so
7 it -- living in the suburbs no longer had the value to
8 David as it once had. And particularly since he was
9 living alone, I think he felt, you know, he was -- it
10 wasn't social enough for him to live in the suburbs once
11 his brother was going to move because of his brother's
12 divorce.

13 Q And after he put his place on Vaughn Crest Drive
14 on the market, did he look for another residence to buy in
15 the Nashville area?

16 A He did. I lived -- I lived alone at the time, so
17 I was living in high-rise condos in downtown Nashville and
18 had for years. So I had a perspective around what each
19 different building was like, and David would ask kind of
20 my opinion on how my experience has been where I lived and
21 what I knew about buildings.

22 Q And do you know for how long -- were you -- did
23 you ever accompany him when he looked for a new condo and
24 a new home in Nashville?

25 A I did. I specifically remember going to a

1 building called Terrazzo, which is in the Gulch area of
2 Nashville. I'd lived in the building next to it, and I
3 went with him to look at a unit.

4 Q Do you recall when this was?

5 A No, not exactly. No.

6 Q Okay. Did David look for a place, a condo in
7 Nashville throughout 2012? Was he on the lookout for a
8 place in Nashville prior to the sale of Eco-Energy?

9 A Yeah. So I know we -- my understanding or my
10 memory is, you know, we didn't start looking at these
11 condos until he made his mind to move out of the suburbs,
12 you know, sell his house. So I believe that would be in
13 2012 just from the timeline you've given.

14 Q And I know you can't access the computer, but I
15 was referencing page 2767 of the exhibit binder, which is
16 what you were sent the link to that you cannot access.
17 And that shows that in -- from October 9th through the
18 18th, David was in Tennessee. Do you recall if he looked
19 for a place in that time frame?

20 A I don't recall.

21 Q Okay. Were you aware in 2012 that David was
22 dating a woman in Los Angeles?

23 A Yes.

24 Q And how did you learn that?

25 A We were -- David and I were really good friends,

1 so he shared a lot with me, and so he verbally told me.
2 And I actually had met her in person in Nashville with
3 him, is my memory.

4 Q And were you aware in approximately early
5 November 2012 that David became engaged to Ms. Fray?

6 A Yes. David definitely informed me of his
7 engagement shortly after the day he became engaged.

8 Q And what was your reaction?

9 A I was happy for him. If he was happy, I was
10 happy.

11 Q Were you aware that David purchased a house in
12 Los Angeles in July of 2012?

13 A Yes, I remember. I don't know at what point he
14 told me that he had bought a house. I remember talking
15 about a house that he was looking to buy and, you know --
16 so yes.

17 Q And what was your understanding of why David
18 purchased the house in Los Angeles?

19 A David -- David has always had an affinity for
20 real estate. He's creative and, you know, he's always had
21 the ability to buy stuff, improve it, and add value to it.
22 So I think he saw some of that was a good deal, and some
23 of that he could make improvements to and create value.
24 So I don't think he knew exactly what he was going to do
25 with it other than fix it up and have it worth more than

1 what he had in it.

2 Q Now then are you -- you're aware that in 2012
3 beginning at approximately late -- mid to late April,
4 David was frequently in California?

5 A I can't specifically remember when he went and
6 didn't go. So I can't really give much context to that.
7 But, yeah, I mean I knew he was traveling at certain
8 points.

9 Q Did you know he was visiting Ms. Fray in
10 California frequently in 2012?

11 A Yes. I can't remember specifically, other than I
12 know David and I talked frequently. So, yes, I -- if he
13 was there, he would tell me.

14 Q Okay. Fair enough. Now then, in 2012 were you
15 involved in discussions with David about opening a beer
16 garden restaurant in Nashville?

17 A Yes. I -- I can't remember, I guess, exactly the
18 date. But yes, we were absolutely looking and kind of
19 doing due diligence on the concept, the beer garden
20 concept for Nashville that we thought could be a good
21 business to add.

22 Q And what was your role to be if this business
23 came to fruition?

24 A I was a limited partner in another restaurant
25 group in Nashville. So I had -- you know, while I wasn't

1 part of operations, I had some experience as a limited
2 investor. And so in this venture that I was looking at
3 with David, I would have been basically just a limited
4 investor that could add some -- possibly some context to
5 the -- to kind of the numbers and the ratios of what it
6 takes to have a concept that's profitable.

7 Q And what was your -- David's role to be if the
8 restaurant concept got off the ground?

9 A David would have been -- David would have been
10 running -- kind of getting the actual concept nailed down,
11 you know, the build out and the culture, I guess, of the
12 restaurant and, you know, starting out running the
13 restaurant. He would be the operating partner, was my
14 understanding.

15 Q Who else was involved in the beer garden
16 restaurant project, and what were their roles?

17 A Dean Sheremt -- if I'm saying that right -- he
18 was going to be -- my memory is he was going to be the,
19 kind of, the chef in charge of the culinary. David's
20 brother Larry had been part of the discussion and would
21 have been a, you know, a financial partner.

22 Q And --

23 A That's all it was.

24 Q Okay. Okay. Were you going to say something
25 else, Mr. Walker?

1 A No, no.

2 Q Okay. Were any steps taken to go beyond the
3 concept phrase -- phase?

4 A We went and looked at spaces for lease, also in
5 the Gulch area that were close to where the restaurant
6 that I was already a limited partner in. So -- and,
7 again, I had been living in that area. So, you know, I
8 had some context or color around the spaces. But, yes, we
9 went and looked at several space that were available for
10 lease for a restaurant.

11 Q And was there any space in particular you recall
12 looking at?

13 A We went to one in the Gulch where -- I don't have
14 the address, but there's a restaurant there now called
15 Moto. We actually looked at that space before it was
16 eventually leased to another group, actually to a group
17 that I was an investor in. That's one. Then there was a
18 second space kind of on the backside of the Gulch. Now
19 that's, you know, part of retail and a vibrant area today.
20 Those are the spaces I remember visiting.

21 Q Do you remember approximately when this was that
22 you were looking at these locations?

23 A I don't. I remember it was cold. I remember it
24 was cold in the building, like, you know, need a jacket
25 cold not --not -- I remember it was chilly outside.

1 Q Was David with you when you went to look at the
2 restaurant location?

3 A Yes.

4 Q Now, as I mentioned earlier 2767, is October
5 often chilly in Nashville?

6 A Yes, it can be.

7 THE STENOGRAPHER: Sorry. Can you repeat your
8 answer, please. Mr. Walker, can you repeat the last part
9 of your last answer. I need you both not to talk over
10 each other.

11 MR. WALKER: Yes. October can be a chilly month
12 in Nashville particularly in the second half of October.

13 BY MR. HORWITZ:

14 Q I'm referring to exhibit binder page 2767, which
15 again is the calendar of Mr. Beckwith's physical presence.
16 It shows that he was in Nashville between October 9th and
17 October 18th. Would it have been in that time frame that
18 you went with him to view Mr. Caden's property?

19 A Potentially. I don't remember the date.

20 Q And what happened with the effort to lease
21 Mr. Caden's space?

22 A Well, we were -- you know, it was a rather large
23 space so, you know, and at the time -- and it's -- it was
24 an area that was very popular. So it was a -- it was a
25 pretty significant financial commitment to sign a lease

1 and, you know, could we take this -- could we utilize the
2 space? Was it the right footprint for what he needed?
3 Ultimately there were other people looking at it, and it
4 was leased. It was -- we didn't get the lease. We didn't
5 make an offer on the lease. But we were running numbers
6 on it and trying to decide if it was going to be a fit for
7 what we wanted to do and make sure we had arms around the
8 significance of it all.

9 Q And did you -- what happened? You said there was
10 another space in the Gulch that you looked at?

11 A We looked at another space. It wasn't as -- at
12 the time didn't get as much foot traffic as the first
13 space, and the rent would have been less. But, you know,
14 I remember talking about, you know, is it a good enough
15 space from a visibility standpoint.

16 Q Okay. And what happened with that space?

17 A We ultimately didn't take it. I mean, it's been
18 now -- yeah, somebody else signed a lease on it at some
19 point. It's a pretty vibrant area today.

20 Q Did the discussions between you and David
21 continue about the possibility of opening up a restaurant
22 beer garden in Nashville throughout 2012?

23 A I can't remember the exact timeline, but I know
24 Dean came into town. I believe we all went to dinner to
25 talk about, you know, how we would make this work,

1 obviously, with Dean not living in Nashville at the time.
2 Is everybody committed? And really just brainstorming
3 over, you know, how much money would it take to do this
4 right, and how much time it would take to do this right,
5 and are we ready to commit that.

6 Q Okay. Now you're aware that on November 1 there
7 was a membership interest purchase agreement entered into
8 between Eco-Energy Holdings and Copersucar effective
9 November 1, 2012?

10 A Yes. David shared with me. You know, I wasn't
11 part of the transaction, so I didn't know. You know, I
12 wasn't privy to any of the details other than David as a
13 friend just sharing with me that there was -- yeah, there
14 was a contract with potential for a transaction.

15 Q And were you and David still discussing the
16 potential for a beer garden restaurant after the agreement
17 was entered into with Copersucar?

18 A I can't remember exactly all the dates, but I do
19 know that, you know, a potential -- so I don't know. No.
20 But, you know, obviously if there was a transaction there
21 would be more liquid cash to do a restaurant. So -- but I
22 can't remember exactly when all -- when, you know, the
23 dates of all the discussions were, to be specific.

24 Q Okay. At the time the transaction was entered
25 into, do you know if David was still interested in buying

1 a condominium in Nashville?

2 A Yes. I mean, my memory was, you know, the
3 transaction kind of again, you know, would give him more
4 liquid cash to, you know, buy real estate. So, yeah. If
5 anything, that made it for favorable.

6 Q Okay. Now then, between the time the agreement
7 with Copersucar was signed and prior to the time that it
8 closed in December 2012, did you ever have any discussions
9 with David about where he intended to live?

10 A No, not that I remember. You know, I -- no. I
11 mean, I kind of just assumed that he would be living in
12 Nashville but no. I mean, not that I remember
13 specifically.

14 Q How close were you with David at this time?

15 A We -- I would -- very good friends.

16 Q And if he intended to move from -- to another
17 city, would he have told you?

18 A Yes.

19 Q And now the deal closed for -- now then the deal
20 with Copersucar, to your understanding, was it a certain
21 thing that would definitely close?

22 A No. I mean, obviously, again, I wasn't privy to
23 the deal. But just from my conversation with David, you
24 know, any deal has always got the risk of breaking. And
25 particularly this one I remember him saying because it was

1 kind of a cross-border fire, if you will, that, you know,
2 there was even more, kind of, concern that something would
3 come up last minute that would break the deal.

4 Q The deal closed on December 19, 2012. When did
5 you first learn that David was moving to Los Angeles? Was
6 it before the deal closed or after?

7 A I can't remember specifically the date he told me
8 he was moving, but what I do remember is being surprised
9 at how quickly he was moving after he told me. You know,
10 basically like as a friend I -- you know, I'm not going to
11 get a lot of time to say goodbye and spend time with him
12 before he left. So I don't remember the date, but I do
13 remember he left without -- you know, pretty soon after he
14 told me.

15 Q Again, page 2767 in the exhibit binder, the
16 physical presence calendar shows that David was last in
17 Nashville on December 18th through December 21st, and the
18 deal closed on December 19th. Would it have been in that
19 time frame that he told you for the first time that he was
20 moving to Los Angeles?

21 A I don't remember when he told me.

22 Q Would it have been before he left -- during --
23 just before he left Nashville permanently?

24 A I'm sorry. Can you say that again.

25 MR. HOFSDAL: I'm going to object. Asked and

1 answered. I know what he's trying to get for an answer,
2 but he's asked the same question four or five times now.
3 I think, you know, he's already expressed his opinion. He
4 doesn't remember the date. I think we can move on.

5 MR. HORWITZ: Well, I'm trying to refresh his
6 recollection by referencing to the date when Mr. Beckwith
7 was last in Nashville based on the physical presence
8 calendar.

9 MR. HOFSDAL: But I don't believe he testified
10 that he was told in person and that he was leaving either.
11 So I think it lacks a little bit of foundation. But if
12 you want to ask one more question and move on, fine. I
13 don't have a problem but, you know, I know you're trying
14 to get to an answer, but he has stated numerous times he
15 doesn't know. He doesn't recall.

16 JUDGE HOSEY: All right. Mr. Horwitz, let's ask
17 one more time as best you can, and we'll move on from
18 there.

19 BY MR. HORWITZ:

20 Q Okay. When Mr. David Beckwith told you, was he
21 in Nashville at that time?

22 A When he told me that he was moving?

23 Q Yes.

24 A Was he -- I -- I don't remember if it was in
25 person or on the phone or where he was.

1 Q Okay. So you wouldn't recall if he was in
2 Nashville between December 18th and 21st whether he told
3 you during that time frame or before that date or
4 subsequent?

5 MR. HOFSDAL: I'm going to object again. We gave
6 him another chance to clarify the question. He's already
7 asked and answered the question numerous times. You know,
8 I don't mean to interpret or anything, but I think he's
9 made his position clear on when he was told.

10 JUDGE HOSEY: All right. Mr. Horwitz, let's move
11 forward. I think we have what we need.

12 MR. HORWITZ: My computer -- oh, okay. I have
13 nothing further.

14 JUDGE HOSEY: Thank you, Mr. Horwitz, and
15 Mr. Walker.

16 Mr. Hofsdal, do you have questions for
17 Mr. Walker?

18 MR. HOFSDAL: Yes, I do.

19 JUDGE HOSEY: All right. Go ahead and begin.
20 Thank you.

21

22 CROSS-EXAMINATION

23 BY MR. HOFSDAL:

24 Q Hi, Mr. Walker. My name is Ron Hofsdal. I'm an
25 attorney for the Franchise Tax Board. I just got a couple

1 of questions for you and get some clarifications on dates
2 and thing like that, and then we'll let you get back to
3 your business. I appreciate you meeting with us this
4 morning at 9:30. I know it got a little complicated
5 yesterday, and I appreciate you making yourself available
6 for us this morning.

7 A Sure.

8 Q Back in 2019 you prepared a declaration for
9 Mr. Beckworth in this case; true?

10 A I don't know. I don't know. By declaration what
11 do you mean?

12 Q Did you prepare a written statement at the
13 request of Mr. Beckwith or one of his attorneys or
14 representatives?

15 A I believe so, yes. That's my memory.

16 Q Right. And when was the last time you reviewed
17 that document?

18 A Not since I -- not since I wrote it.

19 Q On paragraph 6 you tried to put things into
20 context. And one of the things you say in putting, you
21 know, some kind of date context in all this is that his
22 brother was getting a divorce in 2012. And then you were
23 kind of relating all the events around that divorce of
24 2012. And do you recall writing anything like that or
25 saying anything about that?

1 A No. I don't recall what I wrote.

2 Q Okay. Because, you know, the point I want to
3 make is that by December 2011 Mr. Beckworth's brother was
4 already divorced. And I was just asking if perhaps your
5 recollection -- you know, you went back 7 or 8 years then,
6 and you're going back like 10 years now. Whether or not
7 you know the concept of year 2011, 2012, 2013, I mean, is
8 it crystal clear or is it somewhat fuzzy as to what years
9 these things may or may not have occurred?

10 A Regarding when his brother's divorce was?

11 Q No. Just in regarding the events we just talked
12 about, things like the restaurant and looking at the
13 condominium and things like that. I mean, how certain are
14 you that these events happened in 2012 as opposed to -- as
15 opposed to another year in light of the fact, at least in
16 your declaration, you were off by Mr. Beckwith's brother's
17 divorce by a year?

18 A Well, most --

19 MR. HORWITZ: Objection. Your Honor, objection.
20 Misstates the evidence. And if you look at Exhibit 2,
21 which is pages 16 to 23, an agreed order permitting a
22 verified amended complaint in the lawsuit between
23 Mr. Beckwith's brother and his former wife. It is stated
24 that the divorce was on November 29th, 2019. So saying
25 that he was divorced in 2012 is not necessarily -- is not

1 a year off.

2 MR. HOFSDAL: I'm talking before Mr. Beckwith's
3 brother, Larry Beckwith.

4 MR. HORWITZ: I know. But I'm saying it's
5 Larry's Beckwith's divorce was on November 29, 2012 --
6 2011.

7 MR. HOFSDAL: Exactly.

8 MR. HORWITZ: And that is not the 2012. 2012 is
9 not necessarily one year later. It could only be a few
10 months later.

11 JUDGE HOSEY: Mr. Horwitz, I see what you're
12 saying, but let Mr. Hofsdal ask his question and then
13 Mr. Walker can state what he knows.

14 BY MR. HOFSDAL:

15 Q I'm going to -- can you pull up his declaration
16 please, so everybody can see what we're looking at.

17 JUDGE HOSEY: Do you have his declaration in a
18 file?

19 MR. HOFSDAL: We don't but, you know, it's just
20 to refresh his memory and for possible impeachment
21 purposes. And we're not going to have it admitted in as a
22 file but for purposes of refreshing his memory, although,
23 I'm going to essentially have to read it to him. We're
24 going to, you know, present it for that limited purpose
25 only.

1 JUDGE HOSEY: Yeah, you can use it for the
2 limited purpose but, again, let's not --

3 MR. HOFSDAL: No. No. No.

4 JUDGE HOSEY: Ask him if he remembers or not and
5 then we'll move on from there.

6 MR. HOFSDAL: Yeah. I agree 100 percent.

7 BY MR. HOFSDAL:

8 Q So if you scroll down to paragraph 6, and I know
9 you can't do it, so I'll read it for you. And if I read
10 it incorrectly, I'm sure that Mr. Horwitz will object.
11 Excuse me it's -- yeah, paragraph 6. It says, "As a
12 single man in the suburbs David was bored. In 2012 his
13 brother Larry was getting a divorce."

14 Okay. Now I want to focus on 2012. His brother
15 Larry was getting a divorce. And I want to ask you, since
16 Larry was getting a divorce in 2011 and had that divorce
17 finalized, as Mr. Horwitz said earlier, in November 2011,
18 is it possible that your recollection of all the events
19 around 2011 and 2012 are possibly off by a year because of
20 the fact that, you know, our memories change and our
21 memories fade?

22 A Really, what -- all -- I guess the point I was
23 making was his brother's divorce kind of started this
24 chain of events of him wanting to move from the suburbs
25 and possibly looking at moving into the city.

1 Q I gotcha. So --

2 A I don't know. You know, at the time I wrote
3 that, I mean -- I still, you know, I don't know exactly
4 when his brother's divorce officially settled. You know,
5 so I guess I was going from my best recollection which I
6 wasn't, you know, privy to the exact details, obviously.
7 I wasn't a part of it.

8 Q All right. So we essentially agree that Larry
9 Beckwith's divorce was kind of a driving force or inertia
10 to get these projects moving; true?

11 MR. HORWITZ: Objection. When you say
12 projects --

13 MR. WALKER: Which projects?

14 MR. HORWITZ: Oh --

15 JUDGE HOSEY: Counsel, can you clarify your
16 question, please.

17 MR. HOFSDAL: Sure. Sure.

18 BY MR. HOFSDAL:

19 Q If I understand what you're saying, and you can
20 correct me, you're saying that one of the driving forces
21 behind Mr. Beckwith wanting to move out of the suburbs and
22 start this restaurant in the hip area of Nashville was his
23 brother's divorce, true?

24 A What I'm saying is his brother's divorce is what
25 started him selling his house in the suburbs.

1 Q Okay. I gotcha. All right. Now, when you
2 Google -- and you talked about that a restaurant named
3 Moto had taken that space that you and Mr. Beckwith were
4 looking at?

5 A Hm-hm.

6 Q Is that true?

7 A Yes.

8 Q And the correct name of that restaurant is Moto
9 Cucina and Enoteca; right?

10 A Yes.

11 Q Now, when you Google M Street and Mr. Caden, and
12 you come across a newspaper article from the Nashville
13 Business Journal and that article is dated May 25th --
14 May 25th, 2012. Okay. And in that article Mr. Caden and
15 Chris Heinemann -- and who is Chris Heinemann?

16 A He's the operating partner of Moto on M Street.

17 Q So in an article dated May 25, 2012, they're
18 talking about adding an Italian restaurant and a Mexican
19 eatery to their investment on McGavock Street. And I'm
20 guessing McGavock Street means -- it's part of the M
21 Street partnership?

22 A Yeah.

23 Q Right. So, you know, in light of that -- and I
24 can share this article with you to see if it refreshes it
25 in your memory. In fact, maybe should.

1 You want to pull it up, Desiree.

2 In light of this article dated May 25th, 2012,
3 where Mr. Heinemann and Mr. Caden have indicated that
4 they're going to make an investment in an Italian
5 restaurant tentatively named Enoteca, does that refresh
6 your memory at all as to when you and Mr. Beckwith may
7 have toured that property?

8 A No, I don't know.

9 Q Okay.

10 A I don't know when -- you know, as I said
11 originally, I don't know when exactly we toured it other
12 than I remember it being cold.

13 Q Yeah. But it could have also been, you know,
14 cold as in January, February, March, and April when
15 Mr. Beckwith was physically present in Tennessee; true?

16 A It could be -- I mean, other than it being a cold
17 month, it could be -- yeah. I don't know. I don't know
18 the date that we toured it.

19 Q Right. It could have been as early as
20 January 2012; true?

21 A I don't know. I don't remember the date we
22 toured it.

23 Q Okay. All right. But I'm just saying I know you
24 don't remember the date it. I'm just saying it could have
25 been. It could have been the month of January, the month

1 of February, the month of March; true?

2 A I -- I -- I don't remember when we toured it. I
3 really -- I don't know. I mean, I guess it could be at
4 any time. Again, I don't know when we toured it.

5 Q Okay. Fair enough. Now, just looking at this
6 article, I'll just read it for just to refresh your memory
7 a little bit here again. See if I can scroll it down a
8 little bit. I'm having a hard time scrolling it down, but
9 it shows an article dated May 25th, 2012. And it talks --
10 it says about three paragraphs down that, "M Street's
11 investors say restaurateur Chris Heinemann has a knack
12 for being able to design and deliver a sexy sophisticated
13 dining experience that resonates with a certain type of
14 urban private professionals, and they're betting he can
15 continue executing as they begin working on launching two
16 more restaurants, an Italian with the tentative name
17 Enoteca," and we know that's part of the Moto name, "and a
18 Mexican eatery tentatively named Saint Anejo." Was Saint
19 Anejo ever developed?

20 A Yes.

21 Q "And an event hall on McGavock Street."

22 A Yes.

23 Q So, you know, based on that information, do you
24 agree with me that you would have had to have toured that
25 property with Mr. Beckwith prior to May 25th, 2012, the

1 date of that article?

2 A I -- I really don't know when we toured it. I
3 just don't know.

4 Q Okay. Fair enough. Now, you also said you had
5 toured a unit, a condo, at the Terrazzo. Is that -- do
6 you recall that?

7 A Yeah.

8 Q Now when you toured the Terrazzo property, did
9 you do that before or after -- before or after you toured
10 the possible site for the restaurant?

11 A I don't remember.

12 Q Okay. Was it essentially in the same time frame?

13 A I don't remember. I mean, the only thing I
14 really remember it was all around, you know -- it was all
15 after David knew he was moving out of the suburbs that we
16 went to go look in the Terrazzo.

17 Q Okay. And it's your memory that he decided to
18 move out of the suburbs coincided with Mr. Beckwith's
19 brother's divorce; true?

20 A Yes. My memory was the divorce was the catalyst
21 for him to move. Yeah, because the reason he was in that
22 neighborhood was to be around Larry and his family and his
23 children, and that all kind of, you know, blew up in the
24 divorce.

25 Q Yeah. So since the divorce was finalized in

1 November of 2012 and it was ongoing probably throughout
2 the year, then you would agree with me that you possibly
3 could have been looking at the Terrazzo unit and this
4 restaurant any time essentially in the end of 2011 as
5 well; true?

6 A I -- I don't remember when we looked at it.

7 Q Okay. But it could have been 2011? That's what
8 I'm just trying to get to.

9 MR. HORWITZ: Objection. He's already answered
10 that he doesn't know exactly when.

11 MR. HOFSDAL: He says he doesn't know exactly
12 when. I'm just asking him, could you have looked at the
13 Terrazzo property and the restaurant property in 2011.

14 JUDGE HOSEY: Go ahead and answer, Mr. Walker.

15 MR. WALKER: I don't know. I really don't know.
16 I don't mean to be difficult. I don't know. It's hard --
17 I don't know when we looked at it so it's hard for me to
18 tell you the time frame of when we looked at it, other
19 than it was after the divorce. The only thing I remember
20 in relation to it all was that the divorce was, you know,
21 that was the catalyst that started all this.

22 BY MR. HOFSDAL:

23 Q Okay. And you may have testified to this. I
24 don't recall. Mr. Beckwith at no time that you're aware
25 of ever made an offer on any property in Nashville, other

1 than the home he bought in 2008; is that true?

2 A To my memory I don't know of any offer, to my
3 memory. But yeah.

4 Q I want to talk a little bit about the chef you
5 had talked to. Do you recall when Mr. Sheremt came down
6 to Nashville and you all sat around the table and
7 discussed it in this possible plan?

8 A No, I don't remember the date.

9 Q Okay. So it could have been in 2011 or 2012;
10 true?

11 A I mean, it could have. I don't remember. I -- I
12 don't know when the date was. I mean, it was around the
13 time we were talking about, obviously, doing our due
14 diligence on the concept, but I don't know the date.

15 Q And what was your understanding of Mr. Sheremt's
16 skill set at the time you all were discussing this
17 venture?

18 A It all kind of came through David that he was a
19 really good chef. And I think Dean was -- to my
20 recollection from dinner, Dean was kind of looking for a
21 change to maybe get out of New York. I believe he was
22 living in New York City and, you know, the thought of
23 moving to Nashville I think excited him. And I think
24 there was a concept maybe in New York that where he was --
25 you know, that he thought was successful, so you know

1 another beer garden. So basically David told me that
2 Dean -- he thought Dean would be a good chef for the
3 concept.

4 Q And when you sat around and was talking to
5 Mr. Sheremt, and did he discuss with you any of his
6 education and his work experience?

7 A Not that I remember.

8 Q It's my understanding that Mr. Sheremt got
9 married to a New York-based fashion photographer in 2011
10 or 2012. Did the subject of his new marriage come up at
11 all in regards to moving to Nashville?

12 A I can't remember. I just don't remember. It's
13 been a while, obviously.

14 Q Yeah --

15 A I -- I -- well, I do know part of it -- I do know
16 part of this was -- I do remember talking, like, hey, if
17 we're going to do this you have to move here. And, you
18 know, you've got to move here and, you know, particularly
19 be willing to live here to be in the concept full time.
20 So that was -- that was it. We wouldn't do that unless he
21 was willing to move here. But as far as, like, was he
22 married or not, I don't remember.

23 Q And did he say he was willing to move?

24 A I can't remember, you know, the actual
25 like takeaway, but I mean he was there. I mean, I think

1 we were talking about it. We were talking about. Are
2 you -- we were all trying to figure out are we willing to
3 make this commitment either financially or time wise. And
4 I can't remember, you know, I don't know if I got a final
5 answer or not.

6 Q And so as you recall -- and you don't recall if
7 Mr. Sheremt would even commit to this project; true?

8 A Say it again.

9 Q I said at no time did Mr. Sheremt express to you
10 his intent to commit to this project in Nashville; is that
11 true?

12 A Well, no. We never signed a lease. There was no
13 firm commitment. I mean, really what I remember is he
14 was -- you know, had taken the time to come to Nashville
15 and do his due diligence. And we were all really trying
16 to, you know, really quantify the magnitude of time and in
17 his example would be time and other's would be money.

18 Q Okay. And, I mean, what was your understanding
19 as far as the financial commitment in this? Was
20 Mr. Sheremt going to put up some money as well?

21 A I don't -- we really didn't get that -- I mean, I
22 don't know. I don't think we got that far as to how much
23 he would need to put up first. You know his is more
24 around could you put the commitment in to be the -- to run
25 the culinary.

1 Q I gotcha. And for the most part, I mean, other
2 than coming up with some -- a couple of concepts, I mean,
3 you all didn't open up a bank account; true?

4 A Correct. I don't remember. I don't think -- to
5 my knowledge, we didn't open up, you know, any business
6 entity or bank account, to my knowledge.

7 Q And did you hire --

8 A I didn't --

9 Q And did you hire anybody or pay anybody a salary
10 to do anything?

11 A Not from my knowledge.

12 Q And you said that you were going to be a partner
13 in this venture; is that true?

14 A Yes. I was looking at being a limited partner
15 and making a financial commitment.

16 Q Right. Now you also said at the same time you
17 were partnered with M Street; true?

18 A Yes.

19 Q Did your agreement with M Street allow you to
20 open up a competing restaurant next door to their own
21 ventures?

22 A I was a limited partner, but I was -- you know,
23 so I would have gone back and checked. I don't know. I
24 would have found out. My thought was likely not, but I
25 would have to firm that up before cutting a check.

1 Q I got you. In other words, the restaurant
2 project hadn't gotten to the stage where you even made any
3 inquiries to see whether or not you could participate in
4 that venture; is that true?

5 A There were others partners. There were other
6 limited partners in my M Street venture that were involved
7 in other restaurants. So my assumption was that it's
8 highly unlikely as a limited partner that I would be
9 restricted. So it wasn't a priority for me to do that.
10 But no, I had not checked, kind of, the prescription
11 documents that I signed that that would be an issue yet.

12 Q I may be about finished. I'm just going through
13 a couple of more things here quick. I do have to ask on a
14 side note. When I was living in Nashville, I used to go
15 to this little chicken place called Princess Hot Chick
16 Shack. Does that still exist?

17 A I believe so, yes.

18 Q Yeah. This will be a couple of more questions.
19 What was your understanding at this time of Mr. Beckwith's
20 skill set when it came to operating a restaurant?

21 A David's skill set?

22 Q Yeah.

23 A Yeah. That he would bring a lot value to the
24 build out of the concept, you know, designing the floor
25 plan and the bar. And he would add value on managing a

1 restaurant, you know, basically the operations, so you
2 know, build out and operations. He's creative.

3 Q Yeah. So did he have any experience at all in
4 front of the house or back of the house of a restaurant?

5 A I can't remember. So I don't know.

6 Q That's all I have for you. Thanks for your time?

7 A Thank you.

8 JUDGE HOSEY: Thank you, Mr. Walker.

9 Mr. Horwitz, did you have any other questions for
10 Mr. Walker?

11 MR. HORWITZ: Yes, and I would request that --
12 okay.

13

14 REDIRECT EXAMINATION

15 BY MR. HORWITZ:

16 Q Mr. Walker, in 2019 you prepared and signed a
17 declaration on behalf of Mr. Beckwith; is that correct?

18 A Yes, I believe so.

19 Q And at that time was your recollection as to
20 dates clearer than it is now three years later?

21 A It's probably the same. I mean, it's been a long
22 time in either example.

23 Q And your declaration in paragraphs 8 and 9 you
24 talk about David's interest in opening a beer garden style
25 restaurant in the Gulch and inspecting a property that you

1 were interested in that was owned by Jim Caden. And then
2 in paragraph 10 you state these events happened in the
3 fall/early winter of 2012. When you made that statement,
4 would your recollection have been better than it was now?

5 A Possibly. I mean, you know, it's been an extra
6 two years but -- or three years now, I guess. At the
7 time --

8 Q Would you have signed the declaration?

9 A The declaration was the best to my memory at the
10 time and obviously today, to the best of my memory today.

11 MR. HORWITZ: Okay. I have nothing further.

12 JUDGE HOSEY: Okay. Thank you, Mr. Horwitz.

13 Mr. Hofsdal, did you have any questions --
14 limited questions?

15 MR. HOFSDAL: No. Thank you.

16 JUDGE HOSEY: Mr. Walker, before you go I'm going
17 to see if my Panel members have any questions for you.

18 Judge Ridenour, do you have any questions for
19 Mr. Walker?

20 JUDGE RIDENOUR: Excuse me. This is
21 Judge Ridenour. I do not have any questions at this time.
22 Thank you very much.

23 JUDGE HOSEY: Okay. Judge Lambert, do you have
24 any questions for Mr. Walker?

25 JUDGE LAMBERT: This is Judge Lambert. I don't

1 have any questions at this time. Thanks.

2 JUDGE HOSEY: Okay. Thank you, Mr. Walker. I
3 think we are finished with your testimony for today.

4 MR. WALKER: Okay. Thank you.

5 JUDGE HOSEY: Thank you. We appreciate your
6 time.

7 MR. WALKER: All right. Thank you. Goodbye.

8 JUDGE HOSEY: Goodbye.

9 Mr. Horwitz, did you have any other witnesses you
10 plan to call?

11 MR. HORWITZ: No, Your Honor.

12 JUDGE HOSEY: Okay. Mr. Hofsdal, were you
13 planning on calling any witnesses?

14 MR. HOFSDAL: No. I think we're ready to move to
15 our arguments section.

16 JUDGE HOSEY: Okay. Mr. Horwitz, are you ready
17 to begin your legal argument for us.

18 MR. HOFSDAL: I believe --

19 MR. HORWITZ: Can we --

20 JUDGE HOSEY: Oh, I'm sorry. You're talking over
21 each other.

22 MR. HOFSDAL: I'm sorry.

23 JUDGE HOSEY: Mr. Hofsdal, did you have a
24 question?

25 MR. HOFSDAL: He was going to ask exactly what I

1 was going to ask, if we can take a short break for a
2 couple of minutes. I think that's what Mr. Horwitz was
3 going to ask.

4 MR. HORWITZ: That's what I was going to ask.
5 You read ahead my mind, Ron.

6 JUDGE HOSEY: Does five minutes work for both of
7 you?

8 MR. HOFSDAL: Yes.

9 MR. HORWITZ: Yes.

10 JUDGE HOSEY: Okay. We'll break for five minutes
11 and return at 10:30. Please do not exit this session,
12 just mute your audio, and you can stop your video as well.

13 (There is a pause in the proceedings.)

14 JUDGE HOSEY: We are back on the record.

15 Mr. Horwitz, are you ready for your legal
16 argument? Mr. Horwitz, can you hear me? This is
17 Judge Hosey.

18 MR. HORWITZ: Yes, Your Honor. I have -- like I
19 explained yesterday, I have split -- two screens, and I
20 have trouble moving the mouse from one screen to the
21 other. So that's why I was somewhat delayed.

22 JUDGE HOSEY: No problem. Are you prepared for
23 your argument?

24 MR. HORWITZ: Yes, I am, Your Honor.

25 JUDGE HOSEY: Okay. You have 30 minutes. Please

1 begin.

2 MR. HORWITZ: Okay. Thank you, Your Honor.

3

4 PRESENTATION

5 MR. HORWITZ: May it please the Panel,
6 Mr. Hofsdal, Ms. Machado, Mr. Beckwith, Mr. Behrendt.

7 The issue here today as set out in the conference
8 minutes and orders is whether Mr. Beckwith was a resident
9 of California on December 19th, 2009, when his interest in
10 Eco-Energy holding was sold. The issue of whether someone
11 is a resident of California is determined by the facts and
12 circumstances of the individual case.

13 Now, yesterday Mr. Hofsdal referenced the fact
14 that this case in some ways is unusual. Normally, when
15 you have a residency case involving someone who sells an
16 asset and realizes a large amount of income from the sale,
17 they are someone who was living in California who claims
18 they moved out of state before the sale. In this case,
19 Mr. Beckwith was domiciled in Tennessee, and the issue was
20 whether he became a resident of California prior to the
21 date of the sale on December 19th.

22 A person in their -- California Law
23 Section 17014(a) of the Revenue & Taxation Code states
24 that a resident includes anyone who is domiciled -- every
25 individual who is in California for other than a temporary

1 or a transitory purpose and every individual who is
2 domiciled in California who is outside of the state for a
3 temporary or transitory purpose. And further, an
4 individual who was a resident of this state continues to
5 be a resident even though temporarily absent from
6 California.

7 A nonresident under 7015 is anyone who is not a
8 resident of California. California taxes residents on all
9 of their taxable income regardless of the source or where
10 it is derived from -- what jurisdiction it is derived
11 from. Nonresidents are only taxable on income that is
12 sourced to California. Now then, this case a domicile is
13 the place where an individual has his true fixed permanent
14 home and principal establishment and to which place he has
15 whenever he is absent with the intention of returning.

16 Now, the evidence in this case, much of it is
17 undisputed. Mr. Beckwith was an officer of -- president
18 of operations and a director of Eco-Energy Holdings. In
19 2011 he and his brother discussed and explored putting
20 Eco-Energy Holdings on the market but were told by Wells
21 Fargo Bank that the company was not sellable.

22 In April they engaged Piper Jaffrey, and
23 Mr. Beckwith and his brother resigned their positions as
24 officers of the company but remained as directors
25 overseeing the company's operations. And two individuals,

1 Chad Martin was made chief executive officer, and Gwaine
2 Ton was made chief operating officer and chief financial
3 officer of the company. And attempts to locate a buyer
4 commenced and, ultimately, an agreement was reached with
5 Copersucar, NA.

6 Now in February of -- now Mr. Beckwith in the
7 spring -- late winter, early spring of 2012 again dating a
8 young woman who lived in Los Angeles, Lauren Fray. And
9 beginning in April -- mid-April he began seeing --
10 visiting Ms. Fray in Los Angeles and spending substantial
11 amount of time visiting her in California. In the week of
12 April 16th, he entered into an agreement to acquire
13 property on West Fifth Street in Los Angeles in a short
14 sale. That deal closed in July 2012.

15 Mr. Beckwith retained contractors to -- a
16 contractor, Hi Crest Contracting to begin remodeling and
17 renovating the property. And that began at the end of
18 July -- July 30th, 2012. It was estimated to be completed
19 by the end of -- in five months, which would have been the
20 end of December 2012. Mr. Beckwith testified that the
21 work done was not completed until sometime in January.
22 And I believe he said that glass doors on a pool house was
23 installed at that time, which completed the work.

24 Besides Hi Crest, he also engaged other
25 contractors, Certa Pro Painters and Nano Walls, to assist

1 in renovation and remodeling of the property. Now,
2 although, Mr. Beckwith was in California substantial
3 periods of time during the summer and fall of 2012, each
4 time he was in California it was for the temporary and
5 transitory purpose of courting Ms. Fray. And due to his
6 2018 percent, approximately, ownership interest in
7 Eco-Energy and his involvement in the company, he could
8 not leave Tennessee until, in fact, Eco-Energy was sold
9 and the deal to sell the property -- the company closed.

10 Now, Mr. Beckwith in approximately March 2012 put
11 his home that he owned in Franklin, Tennessee at 1089
12 Vaughn Crest Drive on the market for sale. And he said
13 the impetus of this was the fact that his brother Larry
14 had divorced and that the reason he had bought the home
15 was that it was close to his brother Larry, and it was far
16 bigger than he, as a single man, needed. It was
17 approximately 9,200 square feet on a one-acre lot. So he
18 began putting it on sale and began looking for a new place
19 to buy in the Gulch district of Nashville, a condominium.

20 And shortly after this is approximately the time,
21 about a month or so after this, is when he started coming
22 to California regularly to visit with Ms. Fray. Also, it
23 took a long time initially. Mr. Beckwith ultimately sold
24 the property in the end of October 2012 and he -- because
25 of the market conditions, the amount he got the sale price

1 is what he had purchased the property for four and a half
2 years earlier. So the market was not very good at that
3 time in Franklin, and he took the best offer he got.

4 At that point prior to the sale closing, he
5 vacated the premises because he had engaged Michael Taylor
6 Moving Estate -- Estate and Moving Sales Company to take
7 the property -- his furnishings out of the home on Vaughn
8 Street and ultimately to put it up for consignment, and
9 that sale occurred in December of -- or the sales began in
10 December of 2012.

11 Now then, at the time he moved out of the home
12 in -- out of his home in Nashville, Mr. Beckwith did not
13 intend to stop being a resident of Tennessee. He kept his
14 cars registered in Tennessee; his driver's license
15 remained in Tennessee; and he changed the address on his
16 driver's license from the -- to his mother's address,
17 which is what he considered to be his residence after he
18 left -- vacated the Vaughn Street property, and that is
19 pages 923 and 924 of the exhibit binder. It is the state
20 of Tennessee Department of Safety and Home Security
21 driver's license which shows the address on page 924 for
22 Mr. Beckwith as shown on the King Street Circle address
23 where he, which he considered his residence.

24 Now then, besides changing the address on his
25 driver's license to the King Street address, he had his

1 mail forwarded to the King Street address. He also had
2 his statements for his principal bank accounts at Bank of
3 America. And his credit cards with Citibank and American
4 Express changed to the King Street address. And the pages
5 of -- from the exhibit binder showing the addresses to
6 which the Bank of America account 6454 were sent are pages
7 929, 931, 933, 935, 937, 939, 941, 943, 946, and 947. And
8 those show that the statements for periods ending on or
9 before October 17th were sent to the Vaughn Crest address,
10 and those for periods ending -- statements for periods
11 ending after that were sent to the King Arthur address.

12 Bank of America statements for account ending in
13 442, those were -- the only statements in the record are
14 those issued after October 17th, 2012, and those are at
15 pages 951 and 953. And they show the King Arthur address.
16 His main Bank of America account was account 2045, 2046,
17 and statements showing his address are at binder pages
18 955, 958, 961, 964, 967, 971, 978, 984, 991, 997, 1034,
19 1009, and 1014. The statement for periods ending on or
20 before October 17, 2012, show the Vaughn Crest address.

21 The statements for the periods ending prior to
22 January 3rd, 2013, show the King Arthur address. And the
23 statements for the ending after -- on or after
24 January 3rd, show the West Fifth Street address.

25 Similarly, the Amex card and the Mastercard show that

1 prior to statements for periods ending prior to
2 October 17th were sent to the Vaughn Street address. For
3 statements ending between -- after October 17th but before
4 January 3rd, 2013, were sent to the King Arthur address.
5 And statements for the West Fifth Street property after
6 January 3rd, 2013, were sent to the West Fifth -- I mean,
7 West Fifth address in Los Angeles. And I may have
8 misspoke. Statements for October 17th, 2012, through
9 January 13rd, 2013, were sent to King Arthur address.

10 And if the Panel wants, I can refer them to the
11 exhibit binder page numbers.

12 Your Honor, would you want me to give the page
13 numbers?

14 JUDGE HOSEY: No, Mr. Horwitz. That's okay. We
15 have them. Thank you.

16 MR. HORWITZ: Okay. Now then, Mr. Beckwith
17 besides having his driver's license changed to the King
18 Arthur address, having his mail forwarded to that address,
19 and having his statements for his bank accounts and his
20 credit cards sent to that address, still considered
21 himself and remained and intended to stay in Tennessee.
22 And this is because if the sale did not go through, that
23 he would have to remain -- the sale of Eco-Energy -- he
24 would have to remain in Tennessee. And as he stated, his
25 brother told him that if the sale didn't come through, he

1 would have required David to remain in Tennessee.

2 Now then, there were -- we discussed yesterday
3 through Mr. Conn the provisions of the agreement between
4 Copersucar and Eco-Energy, the membership interest
5 purchase agreement. And Article 10 states that there are
6 various conditions and warranties that each party was
7 obligated to fulfill for the property -- for the deal to
8 close. This due diligence process continued through the
9 time that the deal closed. Now, Mr. Conn said that he --
10 when I had asked him if the deal required any approval by
11 a government entity, I believe he responded in the
12 negative to his knowledge.

13 But if you look at page 2867 of the exhibit
14 binder, which is the Eco-Energy actions by the board
15 effective as of November 1, 2012, on page 2848, it states
16 that -- in the middle of the page it states that in
17 connection with the sale and under the Hart-Scott-Rodino
18 Act, the corporation, which is Eco-Energy, is required to
19 file a Notification and Report Form for Certain Merges and
20 Acquisitions with each of the Federal Trade Commission and
21 U.S. Department of Justice. And it also states that the
22 board would file a -- a report with the Committee on
23 Foreign Investments in the United States concerning the
24 sale, and this was to get approved to ensure that the
25 sales would not result in the -- to get approval by the

1 government of the sales.

2 And these were things that were outside of the
3 control of Eco-Energy and Copersucar. Now, Mr. Conn
4 stated and testified that, you know, basically both
5 parties wanted the deal to go through and did what they
6 could to ensure that the deal would go through. And in
7 all cases, we assume that when parties enter into a
8 transaction like this that they anticipate and desire for
9 the deal to go through and will act in good faith and will
10 try to act in a way to make the deal go through, but not
11 all deals go through. Oftentimes even major deals end up
12 not being consummated.

13 And Mr. Conn testified that there were -- and
14 about adverse event -- materially adverse effects, which
15 could result in the deal being squashed, and that was in
16 Article 10 of the agreement. And 10-C Absent of Changes,
17 states that since the date of the latest balance sheet, no
18 material adverse effect shall have occurred. And D states
19 that there must not have been any material adverse effect
20 since the effective date, which would have been
21 November -- between November 1 and the date the deal was
22 closed. There could be no material adverse effects.

23 And if Mr. Conn stated that if there had been a
24 fire at the terminal -- the gas terminal or the ethanol
25 terminal that Eco-Energy owned that this would have a

1 material adverse effect. And those types of fires do
2 occur and they are unpredictable. And so if a fire
3 occurred shortly before it was closed, it could have had a
4 materially adverse effect and Copersucar could have
5 withdrawn from the contract.

6 There are other adverse effects that could have
7 resulted in Copersucar withdrawing from the contract. One
8 would be -- Mr. Conn testified about the Alliance Plants,
9 which were the manufactures of the ethanol, which was the
10 product that Eco-Energy sold to major -- to oil companies.
11 If there had been a fire or a flood at their facilities, a
12 major fire or flood which destroyed their facilities, that
13 would have reduced the amount of ethanol that Eco-Energy
14 could have purchased, and that would have been a material
15 adverse effect.

16 Similarly, if one of the Alliance Plants had
17 financial reverses or ended up being forced into
18 bankruptcy or receivership prior to the closing, that
19 could have been a material adverse effect which would have
20 caused Copersucar to either postpone closing or to cancel
21 the agreement.

22 Similarly, Mr. Hofsdal yesterday questioned
23 Mr. Conn about the fact that Eco-Energy -- when we were
24 discussing the material changes to the latest balance
25 sheet, the fact that Eco-Energy sold much of its product

1 under contracts that were entered into 1 to 3 months
2 before delivery and possibly up to 6 months before
3 delivery. And Mr. Conn testified that, to his
4 recollection, approximately 10 percent -- approximately
5 90 percent of the contracts were for the 1 to 3 and
6 occasionally 6-month term, and the rest would have spot
7 contract.

8 And we all are aware from the recent events that
9 have occurred in Ukraine and the effects of those events,
10 prices of gas, oil, and other hydrocarbon products can
11 spike up or possibly down. And these are material adverse
12 effects that could effect the balance sheet. Similarly,
13 contracts require both parties not only being willing to
14 perform but being able to perform. And while Eco-Energy
15 had the product, it would obviously ship the product to
16 its customer.

17 If a major customer went into bankruptcy or
18 receivership or had severe financial reversals, it may be
19 unable to perform under the contract and to take delivery
20 of the ethanol, and this would be a materially adverse
21 effect. And we all, I believe -- at least I am old enough
22 to remember the collapse of Enron Energy, which up until
23 the summer of 2001 just before it collapsed, was one of
24 the major corporations in the United States, held up as an
25 icon, and it collapsed and was unable to fulfill its

1 contracts. It went into bankruptcy and ended up with the
2 prosecution of two of the principals of the company.

3 So there were many materially adverse events that
4 could occur if -- that could have affected the deal over
5 which neither Copersucar nor Eco-Energy had any control.
6 And these events, in the possibility of adverse events,
7 including the cost -- it was a cross-border deal in which
8 an American company was being purchased by a Brazilian
9 company. These were things that made closing uncertain
10 until the deal actually closed.

11 Like they say, it ain't over until it's over. It
12 ain't over until the fat lady sings. Well, until the deal
13 actually closed and the money hit the bank, it was not a
14 certainty that the deal would close. And because it
15 wasn't a certainty, Mr. Beckwith had not -- still intended
16 to remain a resident of Tennessee, and that his visits to
17 California would be only temporary to visit with Ms. Fray
18 and then return to Tennessee. And if the deal had fallen
19 through, he would not have been able to -- he would had to
20 have stayed in Tennessee and remain a resident of
21 Tennessee.

22 Now then, what happened after the deal closed?
23 Mr. Beckwith -- the deal closed on December 19th. Based
24 on the calendar page 2767 of the exhibit binder, the 17th,
25 18th, 19th, and 20th, and 21st of December, Mr. Beckwith

1 was in Tennessee. He then was in California the 22nd, the
2 23rd, and part of the 24th, as he testified, to pick up
3 Ms. Fray. And then from the 25th until January 3rd, he
4 was out of California initially in Las Vegas and then on
5 vacation. And so if you look at when he went to Tennessee
6 he did not return to California.

7 He was in Tennessee with the intention of
8 residing -- of remaining there if the deal fell through
9 prior -- did not go through and did not actually close,
10 and that when -- and so he was not a resident of
11 California at that time. He was still a resident of
12 Tennessee. And, interestingly, he was in Tennessee from
13 that period to the end of December. He was in Tennessee
14 four days, two and a half in California. And the
15 remainder of the month, I believe, approximately nine days
16 outside of California and outside of Tennessee.

17 What happened after Mr. Beckwith came to
18 California from vacation on January 3rd? Shortly after
19 that, he had his vehicles registered in California. He
20 had his Prius. He traded -- he turned in -- he had the
21 Jaguar turned into the dealership. He got a driver's
22 license in California. He executed -- he registered to
23 vote in California. He also began investing in reel
24 property in California. He purchased several pieces of
25 investment property in California. Also, he began looking

1 for a place to become a restaurant.

2 And, although, Mr. Hofsdal asked him whether it
3 was soon after he moved to California -- after January 3rd
4 that he found the restaurant property. In fact, as
5 Mr. Beckwith testified it wasn't until the end of April
6 that he began leasing a property. And, although,
7 Mr. Beckwith was shown a check to a Mr. Silvestra showing
8 that -- which showed a payment for \$1,000 for a menu, he
9 had also gotten a menu for the -- from Mr. Sheremt for the
10 potential concept of a beer garden that never came to
11 fruition. So just getting someone doing a menu doesn't
12 mean a concept of a restaurant would close. But it does
13 show it was not soon after.

14 It was several months, three or four months after
15 he came to California and established residency here that
16 Mr. Beckwith began leasing the property that became a
17 restaurant and that opened as a restaurant, The Stamp I
18 believe, in early 2014. Now then --

19 JUDGE HOSEY: Two minutes, Mr. Horwitz.

20 MR. HORWITZ: How much?

21 JUDGE HOSEY: You have two minutes.

22 MR. HORWITZ: Two?

23 JUDGE HOSEY: Yes, two.

24 MR. HORWITZ: Or 10?

25 JUDGE HOSEY: Two as in one, two.

1 MR. HORWITZ: Oh my God. Okay. Okay, Your
2 Honor. I'll be quick.

3 In Klemp, the court dealt with a person who had
4 originally -- who is domiciled in Illinois. They had
5 originally had homes in Illinois. They had an apartment
6 that he leased in Illinois. They built a place in Rancho
7 Mirage, California. They stopped leasing property in
8 Illinois. They would stay in an apartment hotel when they
9 were in California, and the FTB -- I mean, when they were
10 in Illinois. And they spent most of the year,
11 substantially more days in California than Illinois in the
12 period at issue.

13 In holding that they were not residents of
14 California, the court noted that they, you know, the fact
15 that they did not have a fixed and permanent place of
16 abode did not mean that they were no longer -- that they
17 had become residents of California, that their business
18 interests were in Illinois, like Mr. Beckwith's business
19 interest was with Eco-Energy in Tennessee, that they had a
20 driver's license from Illinois, that they had their cars
21 registered in Illinois, and that they had other contacts
22 in Illinois, which meant they were still domiciled and
23 residents of Illinois.

24 Similarly, the Corbett case the court held that
25 the -- even though the taxpayers were in California --

1 more at their home in California more than their home in
2 Illinois, that they remained residents of Illinois and
3 were never residents of California.

4 And I believe -- are my two minutes up?

5 JUDGE HOSEY: Yes. But you have an opportunity
6 for another closing statement after Mr. Hofsdal's
7 presentation and then time for questions. So you'll have
8 another 15 minutes in a little bit.

9 MR. HORWITZ: Okay. Thank you, Your Honor.

10 JUDGE HOSEY: You're welcome.

11 Mr. Hofsdal or Ms. Machado, whoever is planning
12 on presenting, you may begin when ready.

13

14 PRESENTATION

15 MS. MACEDO: Good morning. May it please the
16 Panel, my name is Desiree Macedo. I'll be presenting on
17 behalf of the Franchise Tax Board.

18 The purpose behind California's personal income
19 taxation of residents is to ensure that individuals who
20 are physically present in the state enjoying the benefits
21 and protections of its laws and government contribute to a
22 support regardless of the source of a taxpayer's income.
23 As pointed out in Bragg and many other cases, this purpose
24 underlies all residency decisions. Further, analyzing the
25 taxpayer's connections within and without California is

1 ultimately designed to determine not only what benefits or
2 protections the taxpayer receive from California, but
3 whether the benefits and protections are consistent with
4 California residency.

5 California's residency analysis starts with the
6 statute. Under California Revenue & Taxation Code
7 Section 17014(a), a California resident includes: One,
8 every individual who is in the state for other than a
9 temporary or transitory purpose; and two, every individual
10 domiciled in the state who is outside of the state for a
11 temporary or transitory purpose.

12 Thus, the determination of an Appellant's
13 residency is essentially a two-part test that starts with
14 determining Appellant's domicile, and concludes the
15 weighing factors to determine whether Appellant was either
16 inside California for other than a temporary or transitory
17 purpose, whether Appellant was outside of California for a
18 temporary or transitory purpose.

19 If it is determined that Appellant was domiciled
20 outside of California, he could only be deemed a
21 California resident under A-1. However, if it is
22 determined that Appellant was domiciled in California, he
23 could be deemed a California resident under both under A-1
24 and A-2. In the present case it is clear. Appellant was
25 both a California resident under both A-1 and A-2 as of

1 November 1st. 2012. Therefore, pursuant to 17014(c),
2 Appellant when temporarily absent from California would
3 continue to be a California resident.

4 I will first discuss the domicile analysis. As
5 defined in Whittell v Franchise Tax Board, domicile is a
6 place in where a person has the most settled and permanent
7 connections, and the place to which an individual intends
8 to return to whenever absent. In other words, in
9 determining Appellant changed his domicile two things are
10 dispensable. First, residence in the new locality and
11 second, the intention to remain there. Furthermore, as
12 pointed out in Mazer, Appellant's own actions must be a
13 change of domicile. Unsubstantiated statements will not
14 suffice. Moreover, as stated in the non-precedential
15 decision in the Appeal of Grant, little evidentiary weight
16 should be given to testimony given by friends and family.

17 In the present case, Appellant's actions reflect
18 he was a California domiciliary before the sale of
19 Eco-Energy Holdings. The most significant of these
20 actions include the fact that he was continuously present
21 in California during which time he courted his fiancée;
22 the fact that he purchased a California abode on
23 July 11th, 2012, as well as the subsequent cosmetic
24 improvements and maintenance of this California abode; the
25 fact that he shipped a 2011 Toyota Prius to his California

1 abode on August 7th, 2012; the fact he went engagement
2 ring shopping with Ms. Fray on October 29th, 2012, and
3 reproposed with her family in attendance soon thereafter;
4 the fact that he continuously owned and maintained his
5 California rental property; and the fact that he
6 continuously provided financial and emotional support to
7 his ex-wife, his step daughter, and later his fiancée.

8 These actions combined with the fact that
9 Appellant sold his Tennessee abode, he sold his Tennessee
10 personal property to a consignment shop, and he returned
11 his firearm to a Tennessee gun shop by October 31st, 2012,
12 demonstrates a clear intent to remain permanently and
13 indefinitely in California and, thus, become a California
14 domiciliary by at least November 1st, 2012. Furthermore,
15 Appellant's physical presence in California was consistent
16 with that of a California domiciliary. The days Appellant
17 was physically present in California during the period at
18 issue far exceeded the amount of days Appellant was in
19 Tennessee.

20 On the other hand, Appellant's stay in Tennessee
21 for a four-day period, including two travel days in which
22 Appellant stayed with family, or as he testified yesterday
23 his brother specifically, reflects at best nothing more
24 than a transient presence. Moreover, the calendar
25 reflects that when Appellant was on vacation he left from

1 and returned to his home in California. As such,
2 Appellant's physical presence in California during the
3 period at issue more aptly reflects the physical presence
4 contemplated by Whittell, Mazer, and Bracamonte.

5 Again, the question for the sake of argument is
6 not whether Appellant became a California domiciliary but
7 when. It is undisputed that Appellant was domiciled in
8 California starting no later than January 3rd, 2013, some
9 15 days after the sale of Eco-Energy Holdings. But if
10 Appellant did in fact change his domicile to Tennessee in
11 2008, Appellant's actions, including his physical presence
12 in California clearly reflects that Appellant was
13 domiciled in California some two months earlier and no
14 later than November 1st, 2012.

15 As stated in Mazer, the analysis then shifts to
16 whether Appellant was either inside California for other
17 than a temporary or transitory purpose, or outside of
18 California for a temporary or transitory purpose. The key
19 question under either A-1 or A-2 is whether Appellant's
20 purpose in either entering or leaving California is
21 temporary or transitory in nature.

22 The regulation provides guidance in this regard.
23 The connections that a taxpayer maintains with the state
24 when compared to other states are important indications of
25 whether a person's entrance to or absence from California

1 is temporary or transitory. Thus, connections are an
2 objective indication of whether the benefits and
3 protections that the taxpayer has received from the State
4 of California are consistent with other non-transitory
5 inhabitants.

6 Some 19 years ago the Board of Equalization
7 decided Bragg. As part of its analysis, the Board listed
8 approximately 19 factors that were helpful to the Board in
9 evaluating a taxpayer's connections in prior cases. In
10 fact, very few of the connections identified in Bragg are
11 actually discussed, if, Bragg. With that being said, the
12 factors are non-exhaustive and serve merely as a guide.
13 The weight given to any particular factor depends upon the
14 totality of the circumstances.

15 However, as stated in Bracamonte, the physical
16 presence factor is given greater significance than mental
17 intent and the formalities that tie one to a particular
18 state. Further, as stated in the Appeal of Tyrus Cobb, a
19 mere formalism, such as the change in registration or a
20 statement that Appellant intended to be a resident of
21 another state, does not ordinarily settle the issue.

22 The Bragg factors were recently separated into
23 three categories by the Office of Tax Appeals: First,
24 physical presence and property; second, personal and
25 professional associations, which generally describe one's

1 habits of life; and third, registration and filings with
2 the state or other agency, which generally reflects the
3 mere formalisms described in Cobb. Here, the connections
4 Appellant acquired in California, severed in Tennessee,
5 and maintained in both states reflect that Appellant did,
6 in fact, receive benefits and protections in accord with
7 other California residents.

8 I will now discuss the 12 most relevant factors
9 in this case in accordance with the Mazer groupings. The
10 first category I will discuss is the physical presence and
11 property category. I will first discuss the physical
12 presence factor. As stated in Bracamonte Appellant's
13 physical presence is given significant weight when
14 analyzing the formalities that tie Appellant to one
15 particular state.

16 When you color code the physical presence
17 calendar, the calendar is striking. The red reflects the
18 days Appellant admits of being physically present in
19 California. The blue reflects the days Appellant admits
20 to being physically present in Tennessee, and the yellow
21 reflects days Appellant admits to being physically present
22 in another location.

23 Appellant increased his physical presence in
24 California from an average of 4 days a month to 12 days
25 starting in April of 2012. This is about the time he

1 started his relationship with Ms. Fray. Appellant
2 terminated his employment with Eco-Energy, and after
3 Copersucar and Eco-Energy Holdings entered into a
4 confidentiality agreement. Then in May of 2012
5 Appellant's physical presence in California dramatically
6 increased. This coincided with the fact that Appellant
7 not only started paying Ms. Fray's medical premiums for
8 the year but assumed responsibility for paying all of the
9 rent associated with Grace Avenue.

10 Appellant was physically present in California
11 for 24 days in May, 23 days in June, 27 days in July,
12 23 days in August, 19 days in September, and 16 days in
13 October. Conversely, Appellant was physically present in
14 Tennessee for 6 days in May, 6 days in June, 4 days in
15 July, 8 days in August, 7 days in September, and 10 days
16 in October. Significantly, starting in May 2012
17 Appellant's continuous presence in California could be
18 measured in weeks, while his continuous presence in
19 Tennessee could be measured in days.

20 In fact, the longest day in Tennessee was for a
21 10-day period, from October 9th, 2012 through October 18,
22 2012, presumably to arrange for the consignment sale and
23 prepare for the Tennessee abode for sale. Then in
24 November, Appellant was physically present in California
25 for 17 days, Tennessee for zero days, and elsewhere for

1 13. In December, Appellant was physically present in
2 California for 13 days, Tennessee for 4 days, and
3 elsewhere for 14.

4 When you look at Appellant's physical presence
5 prior to November 1st and after December 19th, the fact
6 that he took a vacation in November and December is mostly
7 unremarkable because by November 1st, 2012, he was already
8 well-settled in his new California abode. The chart
9 reflects significant consecutive presence in California,
10 starting as early as of April of 2012.

11 On the other hand, the chart reflects a reduction
12 of presence in Tennessee throughout the entire 2012
13 taxable year. Moreover, Appellant's four-day trip to
14 Tennessee during the period of December 18th, 2012,
15 through December 31st, 2012, was for the sole purpose of
16 completing the sale. Thus, this factor clearly favors
17 California residency.

18 The second factor I will discuss is the home
19 factor. On July 11th, 2012, Appellant purchased West
20 Fifth Street in Los Angeles, thus, acquiring a significant
21 connection to California. Further, prior to
22 November 1st, 2012, Appellant had completed cosmetic
23 renovations to his new home, which included updating the
24 bathrooms and the kitchen. Then on October 31st, 2012,
25 Appellant severed a significant connection to Tennessee

1 when he sold his Tennessee abode. As of November 1st,
2 2012, Appellant's only permanent abode was located in
3 California, an abode to which his fiancée had moved into
4 after vacating Grace Avenue on or about
5 September 1st, 2012. As such this factor also favors
6 California residency.

7 I will now move on to the personal and
8 professional associations category. The third factor I
9 will discuss is a familial relationship factor. The
10 string of familial abode cases, including the Appeal of
11 Charles P. Varn, the Appeal of W. J. Sasser and Mazer is
12 clear that when -- that when family members are dependent
13 on taxpayer for both a financial support and their
14 well-being, then the taxpayer receives the benefits and
15 protections of knowing that his or her familial abode were
16 protected by the laws and government of the state. A
17 factor which the Board of Equalization and most recently
18 the Office of Tax Appeals have found persuasive of
19 California residency.

20 During the 2012 taxable year, Appellant continued
21 to maintain significant relationships in both Tennessee
22 and California. Members of Appellant's extended family,
23 including his mother and brother, lived in Tennessee.
24 However, it does not appear that Appellant provided any
25 financial support to these members. On the other hand,

1 Appellant continued to support Ms. Fray and Ms. Machado
2 who resided in California during the period at issue.

3 Not only did Appellant financially support
4 Ms. Fray by paying her rent for medical expenses and other
5 personal expenses, by September 1st, 2012, Appellant
6 shared a California familial abode with Ms. Fray. And by
7 October 29th, 2012, Appellant intended to marry Ms. Fray
8 evidenced by the fact that he went engagement ring
9 shopping with Ms. Fray on October 29th. As such, this
10 factor also favors California residency.

11 The fourth factor I will discuss is the
12 employment factor. From 1997 until 2008 Appellant served
13 as a sales representative for Eco-Energy Holdings while
14 living in California. On or about May 16th, 2008,
15 Appellant joined his brother in Tennessee as president of
16 operations. According to Appellant's testimony yesterday,
17 Appellant terminated his employment with Eco-Energy
18 Holdings and was replaced in April of 2012, although, he
19 alleges he remained on the board.

20 Moreover, Appellant concedes that he performed
21 these services in California when he was physically
22 present in California. Thus, this factor also favors
23 California residency.

24 The fifth factor I will discuss is the rental
25 property factor. During the 2012 taxable year, Appellant

1 continued to maintain and rent out his previous California
2 abode. As such, this fact also favors California
3 residency.

4 The sixth factor I will discuss is the religious
5 affiliation factor. Appellant indicated that he attended
6 Cross Point Church in Tennessee during the 2012 taxable
7 year. Cross Point Church only hold services on Sundays.
8 And during the period at issue, Appellant was not
9 physically present in Tennessee on a Sunday. As such, it
10 appears Appellant had severed his connection with Cross
11 Point Church prior to November 1st, 2012.

12 On the other hand, Appellant was physically
13 present in California on six Sundays from
14 October 28, 2012, to December 23rd, 2012. Thus, Appellant
15 was inclined to attend church services, those services
16 would have taken place in California. As such, this
17 factor either slightly favors California residency or
18 remains neutral in determining California residency.

19 The seventh factor I will discuss is the
20 membership factor. Appellant claims to have been a member
21 of the Citizen Club of Nashville, Tennessee. However,
22 Appellant was only present in Tennessee for four days
23 after November 1st, 2012. As such, it appears Appellant
24 would not have had a significant presence at the club
25 during the period at issue. Therefore, this factor

1 remains neutral in determining California residency.

2 The eighth factor I will discuss is the
3 professional service factor. After November 1, 2012,
4 Appellant maintained professional services in both
5 Tennessee and California. Thus, this factor remains
6 neutral in determining California residency.

7 The ninth factor I will discuss is the business
8 interest factor. Although Appellant continued to maintain
9 his associations with some of his businesses located in
10 Tennessee during the 2012 taxable year, Appellant claims
11 he was not required to be physically present in Tennessee
12 to perform his duties, which is consistent with his
13 minimum presence in Tennessee during the period at issue.
14 Thus, factor also remains neutral in determining
15 California residency.

16 Lastly, I will discuss the registration and
17 filings category. The tenth factor I will discuss is the
18 gun license factor. Appellant claims he held a Tennessee
19 handgun permit during the 2012 taxable year. Although
20 Appellant was unable to locate the license, he provided a
21 receipt from a gun shop in Tennessee indicating that he
22 sold a weapon to them on October 17th, 2012. The fact
23 that Appellant held a Tennessee license for the 2012
24 taxable year is mostly irrelevant since he no longer owned
25 the weapon triggering the need for the license. However,

1 it is relevant that he sold his weapon on October 17th,
2 2012, which is consistent with Respondent's findings that
3 Appellant severed his ties with Tennessee on November 1st,
4 2012. Hence, this factor also favors California
5 residency.

6 The eleventh factor I will discuss is the vehicle
7 registration factor. On August 7th, 2012, Appellant
8 shipped his Prius to his West Fifth Street abode, which
9 was registered in California on January 18th, 2013.
10 Although Appellant did not take the necessary
11 administrative steps to register his vehicle in
12 California, as of August 7, 2012, Appellant received
13 benefits and protection of California by having a reliable
14 method of transportation available to him when he was
15 physically present in California. Although this factor
16 given a little weight, it slightly favors California
17 residency.

18 The last factor I will discuss is the driver's
19 license factor. On January 18th, 2012 -- or 2013,
20 two months after Respondent determined the Appellant to be
21 a California resident, Appellant also obtained a
22 California driver's license. When Appellant moved to
23 Tennessee on or about May 16th, 2008, it took him two
24 months to comply with Tennessee law regarding driver's
25 license and registering vehicles. Therefore, it's not

1 extraordinary that Appellant followed the same loose
2 guidelines when he moved to California. Therefore, this
3 factor is neutral in determining California residency.

4 When viewed in its totality, it's clear.
5 Regardless of his domicile, Appellant was a California
6 resident under either prong as of November 1st, 2012, if
7 not earlier. As stated in this briefing, this case is
8 quite different from Klemp for a myriad of reasons. We
9 have distinguished Klemp from this case in about 15
10 different ways. For brevity I will discuss the top five
11 ways that this case is different from Klemp but would --
12 welcome any questions the Panel may have.

13 Here it is a question of timing. Whether
14 Mr. Beckwith as a California resident on
15 December 19th, 2012, the date he sold Eco-Energy or
16 several weeks later and, specifically, on
17 January 3rd, 2013, as he claims. The issue in Klemp was
18 not about timing, rather, whether Illinois domiciliaries
19 were or over the course of six years, merely, seasonal
20 visitors to California.

21 The only connection that the Klemps maintained
22 with California was a desire to spend the winter months in
23 California and a home to serve that purpose, while
24 Appellant owned a rental property in a familial abode
25 where he and his fiancée lived permanently. Appellant

1 also supported his stepdaughter, a California resident.

2 Third, in Klemp, over the tax year, the taxpayer
3 spent as much if not more of each year physically present
4 in other place than California. Here since April 2012,
5 Appellant spent significantly more time in California than
6 anywhere else.

7 Fourth, in Klemp all parties agree that they
8 remain domiciled in Illinois. In this case, domicile is
9 not only disputed, but Appellant's actions both before,
10 during and after the time at issue, reflects an intention
11 to make California his permanent home. In five, before
12 leaving California to work for Eco-Energy in Tennessee,
13 Appellant had a long history in California, which included
14 being both a domiciliary and a resident. And during the
15 time at issue, Appellant maintained many of these
16 connections.

17 And when Appellant substantially reentered
18 California some four years after, at least by
19 November 1st, 2012, he remained a -- then Appellant
20 substantially reentered California some four years later,
21 and he remained a California resident through at least
22 2012, if not beyond. Seasons are not measured by decades.
23 In fact, Appellant was physically present in California
24 during all four of the seasons, spring, summer, fall, and
25 winter of 2012.

1 Moreover, if the facts of this case were reversed
2 and the issue was whether Appellant moved out of
3 California on December 19th, 2012, then the facts of this
4 case would be similar to the non-precedential decision in
5 the Appeal of A. Khan. In Khan Appellant was found to be
6 a California nonresident because he had severed all
7 significant connections to California and only retained
8 connections under the registration and filing category in
9 the state, which is given less weight than the connections
10 under the other two categories.

11 Similarly, Appellant in the present case not only
12 retained connections under the registration and filing
13 category in Tennessee after November 1st, 2012 --
14 although, Kahn was not a precedential decision, Khan
15 reiterates that connections under the registration in
16 filing category alone are insufficient connections to
17 prove residency.

18 To conclude, Appellant was a California resident
19 when he redeemed 234,000 of Eco-Energy Holdings prior to
20 the sale on December 19th, 2012. Appellant obtained
21 significant connections, including an overwhelming
22 physical presence in California. Further, by
23 December 19th, 2012, Appellant had severed all significant
24 connections to Tennessee. Appellant was clearly receiving
25 benefits and protections of California and, thus, is

1 subject to the personal income tax -- to the California
2 personal income tax on all income earned during the
3 relevant time period.

4 Thank you. I can answer any questions the Panel
5 has at this time.

6 JUDGE HOSEY: Thank you, Ms. Macedo.

7 I am going to go to questions from my Panel and
8 myself first before we go into statements by the parties.
9 I'm going to start with Judge Ridenour.

10 Do you have any questions for the parties?

11 JUDGE RIDENOUR: Hello. This is Judge Ridenour.
12 Actually, I do. So it's been indicated that you were told
13 to stay in Tennessee if the sale of the company did not go
14 through; is this correct?

15 MR. BECKWITH: That's correct.

16 JUDGE RIDENOUR: And do you have any
17 documentation substantiating that?

18 MR. BECKWITH: You know, my brother was willing
19 to sign an affidavit, but Mr. Horwitz said it was too late
20 to submit that. And yesterday I saw that, you know, the
21 defense did submit more documentation. So I guess I could
22 have done that, but I was told it was too late to do that.
23 But my brother was willing to sign an affidavit.

24 JUDGE RIDENOUR: So my other question is, why
25 would your presence be necessary if it does appear that

1 your presence was not in Tennessee since mid-April, and
2 this company had not been sold yet?

3 MR. BECKWITH: If the company did not sell, then
4 we would have to come up with a new plan. We'd have to
5 come up with a new person to, you know, sell the company.
6 And we didn't know, you know, if we were going to continue
7 running the company or sell it, or you know. We probably
8 were going to resell it, but he said my presence was
9 definitely necessary.

10 JUDGE RIDENOUR: And when --

11 MR. BECKWITH: And I was one of the board of
12 directors as well. I apologize for interrupting.

13 JUDGE RIDENOUR: That's okay. And when were you
14 notified that your presence would be necessary if this
15 sale did not go through?

16 MR. BECKWITH: That was -- I recently talked to
17 my brother about that. So, you know, I thought it -- it
18 was an assumption but, you know, I was going to have to
19 maintain being a resident of Tennessee if the company did
20 not sell.

21 JUDGE RIDENOUR: So with this assumption in mind,
22 what was the reasoning for purchasing the West Fifth
23 Street in California.

24 MR. BECKWITH: The reason for purchasing was for
25 a place to stay when I was in town, and I didn't want to

1 stay, as I said in my testimony, I didn't want to stay at
2 Lauren's apartment. And I was pursuing a relationship
3 with her and a place for her, but the main reason was
4 investment -- a good investment, and a place to stay when
5 I came to visit.

6 JUDGE RIDENOUR: Thank you. And did you and
7 Ms. Fray talk about where your living arrangements would
8 be as a couple at any point?

9 MR. BECKWITH: She was under -- she was very well
10 aware that I could spend limited time in California. She
11 was aware of that. And, yeah, that's -- that's it. But,
12 you know, as far as -- I'm not sure what the question was.

13 JUDGE RIDENOUR: I guess my question would be
14 that it appears that you may have been staying in
15 Tennessee, yet she was living in California for the
16 duration of your engagement and courtship, and if there
17 was any discussion about her possibly moving to Tennessee
18 and what she felt about that?

19 MR. BECKWITH: We had no discussion about her
20 moving to Tennessee. We didn't have a discussion because
21 until the business was known whether it was going to sell
22 or not, but the discussion did not have to come up because
23 the business did sell.

24 JUDGE RIDENOUR: Okay. Let me look over my notes
25 real quick, please. During this courtship before the

1 engagement, was there a reason why it appears Ms. Fray --
2 the majority of the courtship was done in California as
3 opposed to Tennessee?

4 MR. BECKWITH: No particular reason. She was a
5 working actress, so she was tied here for her career and
6 so forth. I believe that would be the main reason.

7 JUDGE RIDENOUR: Those are all my questions.
8 Thank you very much, Mr. Beckwith.

9 JUDGE HOSEY: Judge Lambert, do you have any
10 questions for the parties?

11 JUDGE LAMBERT: Hi. This is Judge Lambert.
12 Yeah, I just had one question for FTB, that if we're
13 focusing on the deal if the deal, like, hypothetically
14 didn't go through and Mr. Beckwith, you know, didn't move
15 to California, would FTB still argue that he became a
16 resident of California at the same time in November?
17 Because I see that FTB is arguing that he had a house in
18 California and sold his Nashville home in November. So if
19 the deal had not gone through, actually, as they state,
20 what would FTB say about his residency change?

21 MS. MACEDO: Yes. You can be a resident of more
22 than one state. And by November 1st, 2012, Appellant had
23 severed all of those connections with Tennessee. Even if
24 the business -- I mean, it's a very big hypothetical. The
25 facts do not show it. He had retained benefits and

1 protections of the State of California such that he would
2 be a resident.

3 So the question is not whether or not he would
4 have been a resident of Tennessee, the question is whether
5 he would have been a resident of California. And by
6 November 1st, 2012, he had retained the benefits and
7 protections of that of a California resident.

8 JUDGE LAMBERT: Okay. Thank you. That's all the
9 questions I have.

10 JUDGE HOSEY: Thank you, Ms. Macedo and
11 Judge Lambert.

12 This is Judge Hosey. I have a question for
13 Ms. Macedo too or the Franchise Tax Board. My
14 understanding -- or maybe I need some clarification -- is
15 that the burden of proof is on the party asserting a
16 change in domicile; is that right?

17 MS. MACEDO: Yes. The burden of proof changes
18 for domicile. However, for residency the burden of proof
19 reverts back to the taxpayer. So it just depends on
20 who -- for domicile who is asserting the change.

21 JUDGE HOSEY: Okay. Thank you. Sorry. I needed
22 the clarification on that. Okay. That was my only
23 question.

24 Mr. Horwitz, did you have a closing statement you
25 wanted to make?

1 MR. HORWITZ: Yes, very briefly, Your Honor.

2 JUDGE HOSEY: Go ahead.

3

4 CLOSING STATEMENT

5 MR. HORWITZ: First a couple of points.

6 Ms. Macedo said that Mr. Beckwith was supporting his
7 former wife and his step daughter who were in California.
8 Mr. Beckwith was paying spousal support to his wife
9 pursuant to the dissolution of their marriage and under
10 the decree, and that would not be, in my mind, sufficient
11 to make someone a resident to California that they're
12 paying spousal support to someone living in California.

13 Therefore, I would like to refer to page 1063 of
14 the exhibit binder, which is a check Mr. Beckwith wrote to
15 Ms. Machado in February 2012 showing that it's the 6th of
16 10 payments. He was obligated to make 10 payments to
17 Ms. Machado, and that was just because he was paying his
18 former spouse support or settlement pursuant to a
19 settlement agreement does not make him a resident.

20 Second, she stated that he was supporting Kailee
21 Machado. Page 110 -- 109 of the exhibit binder shows the
22 total amount that Mr. Beckwith paid to help Kailee
23 Machado. He gave her \$6,000, four months' rent, plus
24 \$1,000 towards her wedding, \$200 -- and then he gave her
25 \$2,000 as a Christmas gift. And these do not constitute

1 in my mind actively supporting someone. And the amounts
2 given to her were relatively minimal.

3 Third, as Your Honor pointed out under Mazer and
4 other cases, the burden of proving a change of domicile is
5 on the person who is asserting that there has been a
6 change in domicile. And for the domicile to change, there
7 must be an actual change of residence to the new locality,
8 plus an intent to remain there. And as Mr. Beckwith has
9 testified, it was not his intent to remain in California.
10 He was visiting, courting, and seeing Ms. Fray, and his
11 intent was to return to Tennessee. And so the FTB has
12 failed to meet its burden of proving that there was a
13 change of domicile.

14 Secondly, you know, although the Klemp case dealt
15 with -- and the Corbett case dealt with people who were
16 visiting California for as, quote, "Seasonal visitors,"
17 end quote, the result is that the court looked at whether
18 their stay was temporary and transitory and held that
19 since the stays were temporary and transitory, that the
20 taxpayers were not residents of California.

21 And in the Klemp case, which involved a period of
22 six years and several of those years the Klemps were in
23 California 186 days compared to 21 days in Illinois,
24 159 days compared to 33 days in Illinois, and 171 days in
25 California compared to 25 days in Illinois. So, you know,

1 the fact that Mr. Beckwith from mid-March on was in
2 California more than he was in Tennessee is not sufficient
3 to establish residence. And as Mr. Beckwith has testified
4 that if the deal did not go through, he would have had to
5 remain in Tennessee. And the deal was not a sure thing.
6 It was not certain that the deal would close until it
7 actually closed.

8 And I think that about wraps it up for me, Your
9 Honor.

10 But basically in summation we believe that FTB
11 has failed to show that there was a change of domicile.
12 And, in fact, there was no question here. The issue
13 presented to the Court was just whether he was a resident.
14 There was no claim that he had changed his domicile and no
15 argument by the FTB that the domicile was changed to
16 California. It's basically been their argument that he
17 was a resident of California because of the time he spent
18 here.

19 And I believe the evidence shows that he was here
20 for transitory and temporary purposes, and that he
21 intended to go back to and did periodically go back to
22 Tennessee and intended that if the deal did not go
23 through, he would not move permanently to California and
24 become a resident.

25 Thank you, Your Honors.

1 JUDGE HOSEY: Thank you, Mr. Horwitz.

2 Ms. Macedo and Mr. Hofsdal, do you have any
3 closing statements you would like to make before
4 Mr. Horwitz gets a final?

5 MR. HOFSDAL: Yes, I did.

6 JUDGE HOSEY: All right. Go ahead.

7

8 CLOSING STATEMENT

9 MR. HOFSDAL: A couple of things I want to
10 clarify first. You know, Kailee also received and
11 Mr. Beckworth or Mr. Beckwith testified that he was paying
12 for her monthly car payment on that Volkswagen, and he was
13 also paying for car registration and things like that. So
14 the list of benefits that Kailee had received from
15 Mr. Beckwith far exceeded what Mr. Horwitz represented.

16 And the second thing is -- and I'm sorry. I
17 didn't ask him the question, but it appears that
18 Mr. Beckwith just found out recently that he would have
19 been asked to remain in Tennessee had the deal not closed,
20 as opposed to having a sense as the deal was going through
21 that would be the case. I thought that was very
22 enlightening at the last moment, but I just wanted to
23 clarify those two things.

24 Anyway, what did Mr. Beckwith do prior to the
25 sale of Eco-Energy? He first assumed the obligation of

1 the Grace Street apartment, and then he bought a house in
2 California, the West Fifth Street apartment. He sold his
3 house in Tennessee. Starting in May 2012, he spent
4 significantly more time in California than he spent in
5 Tennessee. He sold his personal items in Tennessee. He
6 returned his firearm to a Tennessee gun shop. He bought
7 personal items in California. He shipped the one car
8 without an expiring lease to California. And when not on
9 vacation, he lived first in the apartment he paid for, and
10 then his California abode with his fiancée. And all the
11 departures and returns from the vacations all started and
12 ended in California.

13 Further, he stopped providing services to
14 Eco-Energy and to Eco-Energy in Tennessee, and he didn't
15 reenter Tennessee except to close the Eco-Energy sale. Of
16 all the documents, two are probably the most telling. The
17 one we just talked about briefly, and that's
18 document number 160, and that's the 540 NRCA.

19 You know, not only did he not include any income
20 on that form, but if you look at the part that says the
21 days you spent in California, he put "NA". He didn't
22 answer. It's consistent with what's reflected in probably
23 the second most significant document, and that's 2767.
24 Last night when we went to bed it was like "Queens
25 Gambit". I saw the physical presence sheet on the bed.

1 But the physical presence sheet that everybody admits to
2 and conceded to be truthful is very telling.

3 I want to talk a little bit about the testimony
4 that happened over the last few days. You know, we got
5 from, you know, in regard to Grace Street, we found out
6 that from April 16 to April 30th, Appellant lived in Grace
7 Street for 12 days, 24 days in May, 23 days in June, 27 in
8 July, 22 in August. And, significantly, he paid
9 100 percent of the rent for May, June, July, and August.
10 He essentially went from his last night at Grace Street to
11 his first night at West Fifth Street in consecutive days.
12 This is not both in physical presence and payments of
13 expenses the evidence of a guest.

14 With regards to West Fifth, you know, Appellant's
15 argument is somewhat perplexing to me because it's
16 undisputed that from September 1st through December 19th
17 that that West Fifth Street home was Appellant's home
18 while in California. It was also the place Appellant left
19 and returned to when he went to California. Though
20 arguably not perfect, it's clear that the work was
21 substantially completed by September 1st. Payments at the
22 end of August matched the invoice. And as the Appellant
23 conceded, no permits were required as the work was
24 cosmetic.

25 The fact that he put a glass door on his pool

1 house in January does not tell us much about the condition
2 of the home for occupancy starting in September.

3 Mr. Beckwith owned Fifth Street. He occupied Fifth
4 Street. He paid the bills at Fifth Street. And after his
5 relationship with Ms. Fray fractured, it was Ms. Fray who
6 left, and Appellant paid her \$14,000 to settle into a new
7 apartment. She was the guest at West Fifth Street.

8 I want to talk a little bit about the Eco-Energy
9 Copersucar deal and what Mr. Conn said yesterday. I can't
10 emphasis enough that Mr. Conn was Appellant's witness,
11 right. And much of what Mr. Horwitz argued earlier
12 contradicts with what Mr. Conn said. What Mr. Conn said
13 very clearly is that absent a catastrophic event, like a
14 fire, which still may not change things, the deal was
15 essentially a done deal by November 1st.

16 He said the due diligence in the project started
17 in early summer, and was substantially, if not completely
18 finished about November 1st, 2012. Even with the Alliance
19 companies. I asked him on redirect or recross
20 specifically that question, and he said that the Alliance
21 companies and the agreements with them were either
22 completed before or soon after in November 1st. Mr. Conn
23 also stated that Eco-Energy had a preexisting relationship
24 with Copersucar and knew each other's business well --
25 very well before November 1st.

1 In fact, Mr. Conn -- an I think this is very
2 telling. He testified that soon after November 1st both
3 Copersucar and Eco-Energy sent out press releases
4 announcing the deals. Right. Companies like this do not
5 send press releases unless it's essentially a done deal.
6 In fact, Mr. Conn even said, "This would be very, very
7 embarrassing to both companies if for whatever reason the
8 deal fell through." Based on the press releases, the news
9 was picked up by journals and magazines and reported, you
10 know, appropriately.

11 And then while Mr. Beckwith denied the existing
12 of the fact that the ethanol tariff had essentially
13 expired, Mr. Conn stated that it had not and was one of
14 the key factors behind the deal from Copersucar's
15 perspective. Mr. Conn also knowledge that both Larry and
16 David Beckworth -- Beckwith reassigned their positions in
17 early 2012, and that David was no longer involved in the
18 day-to-day decision makings.

19 Importantly -- and this is very important. Both
20 Mr. Beckwith and his brother were replaced, right. They
21 were replaced by other employees. Other employees were
22 hired to take their role in that company. Mr. Conn also
23 stated that both parties were eager to get the deal done.
24 They cooperated, and they worked to have it finalized. In
25 fact, the deal, as Mr. Conn admitted, finalized some eight

1 days before they had hoped. He said that neither
2 Copersucar or Eco-Energy provided any false or
3 misrepresentations, and neither party invoked any notice
4 of the procedure.

5 In the end, he confirmed and said it was
6 essentially a done deal on November 1st. Mr. Walker, you
7 know, today, you know, he's a friend of Mr. Beckwith, and
8 I think we have to keep that in mind, but he was confused.
9 Maybe it happened in 2011. Maybe it happened in 2012.
10 The one thing he did know is that it was tied to
11 Mr. Beckwith's brother's divorce. And we know from the
12 record that divorce finalized in November 2012. In his
13 declaration he said it finalized in 2012. And that might
14 be why everything is kind of off by a year.

15 But it was very clear that he couldn't provide
16 any persuasive testimony one way or other whether or not
17 the events happened in 2011 or 2012. But we do know that
18 by May 2012 another entity took that property and was
19 converting it over to another restaurant. We also know
20 that the talks about the restaurant project had not
21 progressed to the point where they had gotten any
22 commitments from anyone when they asked about it.

23 In fact, Mr. Walker himself did not inquire
24 whether or not he was even allowed to enter this
25 partnership based on his partnership with M Street. You

1 know, when we look at the Nashville properties, you know,
2 we have, you know, Mr. Beckwith admitted that when it came
3 to looking at properties, that occurred in the second or
4 third quarter was -- excuse me -- was -- he was looking at
5 the properties in the second or third quarter of 2012 was
6 his testimony. And when Mr. Horwitz tried to get him back
7 to thinking about October, he said, no. I'm pretty sure
8 it was second or third quarter of 2012. So that's really
9 outside of our time frame.

10 With regards to the mother's house. You know, he
11 didn't spend a night in his mother's house. When asked
12 where he stayed when he returned to Tennessee, he said he
13 stayed at his brother's house. He may have received his
14 bills at his mother's house, we know from his testimony
15 that those bills were paid from his computer in
16 California. And it's also important to note that the mail
17 is also received at West Fifth and at his prior residence.

18 And just one last thing when we're talking about
19 the support payments paid to his ex-wife, that is just,
20 you know, a connection. It's not a major factor or
21 anything, but it is a connection he had with California.
22 These are the facts, and these facts are consistent with
23 the finding that Mr. Beckworth [sic] was both a California
24 resident and California domicile during the relevant time.

25 In December 19, 2012, Mr. Beckworth was inside

1 California for other than a temporary or transitory
2 purpose. He entered California well before the Eco-Energy
3 sale and never looked back. Mr. Beckworth is a California
4 resident under California & Revenue Tax Code Section
5 17014(a)(1). Likewise, Mr. Beckworth was also domiciled
6 in California, and either outside of California for a few
7 days in order to close the sale of Eco-Energy or on
8 vacation in either Las Vegas, Arizona, or Mexico.
9 Accordingly, Mr. Beckwith, when absent from California was
10 absent for a temporary purpose. Likewise, Mr. Beckworth
11 is a California resident under California Revenue & Tax
12 Code Section 17014(a)(2) as well.

13 I thank you for your time. I know it's been a
14 long day. And I don't know if there's any additional
15 questions, but I would be happy to, you know, to answer
16 anything that you all may have.

17 JUDGE HOSEY: Thank you, Mr. Hofsdal.

18 Mr. Horwitz, you have five minutes for a final
19 statement. You can begin when you're ready.

20 MR. HORWITZ: Okay. I just want to clarify some
21 points. Thank you, Your Honor. Is my mic on? Can you
22 hear me?

23 JUDGE HOSEY: Yes, we can hear you. Thank you.

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11 And that the -- there were certain events that
12 could have occurred outside of Eco-Energy and Copersucar's
13 reach, which could have been a material adverse effect,
14 and he agreed with me that a fire at a gasoline terminal
15 or the ethanol terminal in North Carolina could have been
16 a material adverse effect.

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1 And its closing was not a certainty until it closed.

2 And I have nothing further, if the Panel has any
3 questions.

4 JUDGE HOSEY: Okay. Thank you, Mr. Horwitz.

5 I'll just double check really quick.

6 Judge Ridenour, do you have any questions before
7 we close?

8 JUDGE RIDENOUR: This is Judge Ridenour, and I do
9 not have any questions, but I do want to thank everybody
10 for their time today and yesterday.

11 JUDGE HOSEY: Thank you.

12 Judge Lambert, do you have any questions?

13 JUDGE LAMBERT: This is Judge Lambert. I have no
14 further questions. And then, yeah. I also want to thank
15 everyone and for the witnesses giving their testimony.
16 Thank you.

17 JUDGE HOSEY: Thank you. All right. We have the
18 testimony, and we have your arguments. We are ready to
19 submit the case. The record is now closed.

20 This concludes the hearing, and the Judges will
21 meet to decide the case based on everything that was
22 presented. We will aim to send both parties our written
23 decision no later than 100 days from today.

24 The next hearing will be this afternoon at
25 1:00 p.m. I, again, want to thank everybody for their

1 time and patience. I know this was a long and complicated
2 hearing and everybody did a really good job.

3 I hope everyone has a wonderful afternoon.
4 Thanks again.

5 (Proceedings adjourned at 11:58 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 2nd day of June, 2022.

ERNALYN M. ALONZO
HEARING REPORTER