

BEFORE THE STATE OF CALIFORNIA  
OFFICE OF TAX APPEALS  
COUNTY OF SACRAMENTO  
MICHAEL GEARY, ADMINISTRATIVE LAW JUDGE

In the Matter of the Claim )  
for Reimbursement of: )  
 )  
SHARON MITCHELL, )  
 ) Case No. 21017158  
Claimant. )  
\_\_\_\_\_ )

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS  
Sacramento, California  
Tuesday, October 18, 2022

Reported by:

Maria Esquivel-Parkinson  
CSR No. 10621, RPR

Job No.:  
38957 OTA(C)

BEFORE THE STATE OF CALIFORNIA  
OFFICE OF TAX APPEALS  
COUNTY OF SACRAMENTO  
MICHAEL GEARY, ADMINISTRATIVE LAW JUDGE

In the Matter of the Claim )  
for Reimbursement of: )  
SHARON MITCHELL, ) Case No. 21017158  
Claimant. )  
\_\_\_\_\_)

TRANSCRIPT OF PROCEEDINGS, taken at  
400 R Street, Sacramento, California,  
commencing at 3:13 p.m. on Tuesday,  
October 18, 2022, reported by  
Maria Esquivel-Parkinson, CSR No. 10621,  
RPR, a Certified Shorthand Reporter in  
and for the State of California.

1 APPEARANCES:

2  
3 PANEL MEMBERS:

4 ALJ MICHAEL GEARY

5 ALJ CHERYL AKIN

6 ALJ SARA HOSEY

7  
8 FOR THE CLAIMANT:

9 CHRISTINA WEED, ESQ.

10 DIANA LOPEZ

11  
12 FOR THE FTB:

13 MARGUERITE E. MOSNIER, TAX COUNSEL

14 CAROLYN S. KUDUK, TAX COUNSEL

I N D E X

E X H I B I T S

(Claimant's Exhibits 1-4 were received at page 8)

	PAGE
Proceedings	5
Opening Statement by Ms. Mosnier	11
Opening Statement by Ms. Weed	21
Rebuttal Statement by Ms. Mosnier	26
Closing Argument by Ms. Weed	29

1           SACRAMENTO, CALIFORNIA, TUESDAY, OCTOBER 18, 2022

2                               3:13 P.M.

3  
4           ADMINISTRATIVE LAW JUDGE GEARY:   Let's go on  
5 the record, please.  I'm going to repeat myself a little  
6 bit.  Good afternoon, everyone.  This is the hearing in  
7 the claim of Sharon Mitchell, Office of Tax Appeals  
8 Case No. 21017158.  Today is October 18th, 2022, and the  
9 time is 3:13 p.m.

10           Will the parties please identify themselves by  
11 stating their names and who they represent beginning  
12 with Claimant.

13           MS. WEED:  Good afternoon.  My name is  
14 Christina Weed, C-h-r-i-s-t-i-n-a, Weed, W-e-e-d.  I'm  
15 here with attorney Diana Lopez, D-i-a-n-a L-o-p-e-z, and  
16 we represent the taxpayer Sharon Mitchell, S-h-a-r-o-n  
17 M-i-t-c-h-e-l-l.

18           ADMINISTRATIVE LAW JUDGE GEARY:  I see  
19 Ms. Mitchell is also with you today.

20           Would the FTB please identify the  
21 representatives.

22           MS. MOSNIER:  Good afternoon.  Marguerite  
23 Mosnier for Franchise Tax Board.

24           MS. KUDUK:  Carolyn Kuduk for Franchise Tax  
25 Board.

1 ADMINISTRATIVE LAW JUDGE GEARY: Thank you.

2 It's my understanding that Claimant is going to  
3 be testifying today; is that correct, Ms. Weed?

4 MS. WEED: Initially I wanted to call  
5 Ms. Mitchell, but I no longer need to call her as a  
6 witness today.

7 ADMINISTRATIVE LAW JUDGE GEARY: All right.  
8 Thank you. And does FTB plan to call any witnesses?

9 MS. MOSNIER: No.

10 ADMINISTRATIVE LAW JUDGE GEARY: Thank you.  
11 The exhibits have been marked for identification in this  
12 appeal, and they consist of Claimant's exhibits marked 1  
13 through 4. Claimant did not submit an evidence package  
14 as directed in the prehearing conference orders, so OTA  
15 included in the hearing binder all of the documents that  
16 Claimant submitted with briefs apparent support of the  
17 claim.

18 FTB has not submitted any proposed evidence  
19 and, in fact, indicated that it was not submitting any  
20 documentary evidence.

21 OTA has incorporated all proposed exhibits into  
22 an electronic hearing binder, which the panel has and  
23 which should be in the possession of the parties.

24 Ms. Weed, have you confirmed that the exhibits  
25 incorporated into the hearing binder constitute all of

1 the documentary evidence that Claimant wishes to offer?

2 MS. WEED: Yes, your Honor.

3 ADMINISTRATIVE LAW JUDGE GEARY: It is all of  
4 the evidence?

5 MS. WEED: I believe so. I -- we had uploaded  
6 quite a few documents to the portal. I'm not clear on  
7 what exactly was admitted versus not admitted. I  
8 thought it all was.

9 ADMINISTRATIVE LAW JUDGE GEARY: No. I  
10 think you're probably referring to the exhibits and  
11 indexes from the underlying appeal --

12 MS. WEED: Yes.

13 ADMINISTRATIVE LAW JUDGE GEARY: -- which I'll  
14 discuss in a minute. It was never my intention to admit  
15 those exhibits into evidence in this -- in this claim  
16 procedure. That -- that record stands on its own. I  
17 think I indicated earlier on that I expect and  
18 anticipate that the parties might want to refer to that  
19 record. They're free to do that. It was never my  
20 intent to offer those documents into evidence in this  
21 proceeding, which is why we just collected the documents  
22 that you had submitted in support of the claim with your  
23 briefs and made those part of the binder.

24 MS. WEED: Okay. Understood. Then, yes, with  
25 respect to the exhibits for this hearing, I believe it's

1 just the four exhibits.

2 ADMINISTRATIVE LAW JUDGE GEARY: All right.  
3 Thank you.

4 Does FTB have any objection to the admission of  
5 Claimant's Exhibits 1 through 4?

6 MS. MOSNIER: I have one question. Are those  
7 all -- exhibits all attached to the initial claim for  
8 reimbursement?

9 ADMINISTRATIVE LAW JUDGE GEARY: I can't answer  
10 that question. Perhaps Ms. Weed can answer it.

11 MS. WEED: Yes. These ones are the ones  
12 attached to the initial claim.

13 MS. MOSNIER: No objection.

14 ADMINISTRATIVE LAW JUDGE GEARY: Thank you.  
15 Then those exhibits are all admitted, 1 through 4.

16 (Claimant's Exhibits 1 through 4 admitted.)

17 ADMINISTRATIVE LAW JUDGE GEARY: This hearing  
18 is a bit different than most hearings that we have at  
19 OTA in that it's not a taxpayer's appeal from an adverse  
20 decision by a tax agency. Here the Claimant invokes  
21 OTA's original jurisdiction to determine whether  
22 Claimant is entitled to reimbursement for fees and  
23 expenses related to an appeal that OTA decided in  
24 Claimant's favor years ago.

25 We may refer to this earlier matter as the



1 underlying appeal. In essence, Claimant asserts that  
2 FBT -- FTB took positions in the underlying appeal that  
3 were not substantially justified.

4 The first issue that OTA will address is  
5 whether Claimant is entitled to reimbursement from FTB  
6 for fees and expenses related to the underlying appeal  
7 pursuant to Revenue and Taxation Code Section 21013 and  
8 California Code of Regulations Title 18, Section 30702.  
9 If OTA decides the issue -- that issue in Claimant's  
10 favor, the panel will determine the amount of  
11 reimbursement to which Claimant is entitled.

12 Ms. Weed, do you agree with the issues as I  
13 have stated them?

14 MS. WEED: Yes, your Honor.

15 ADMINISTRATIVE LAW JUDGE GEARY: And,  
16 Ms. Mosnier, do you agree with the issues as I have  
17 stated them?

18 MS. MOSNIER: Yes.

19 ADMINISTRATIVE LAW JUDGE GEARY: Thank you.  
20 The parties also discussed and agreed at the prehearing  
21 conference that FTB has the burden of proving the  
22 positions that -- that the positions it took in the  
23 underlying appeal were substantially justified. And  
24 Claimant will have the burden and has the burden of  
25 proving the amount of reimbursement to which Claimant is

1     entitled, if any.

2             We discussed time estimates during the  
3     prehearing conference and it was agreed that the hearing  
4     would last about one hour and 15 minutes. We also  
5     agreed that FTB would present its argument first in this  
6     case and will have up to 30 minutes for its opening  
7     argument. Claimant will then have up to 30 minutes for  
8     its argument now that it is no longer offering testimony  
9     from Ms. Mitchell.

10            And, finally, FTB will have up to five minutes,  
11     approximately, for a rebuttal argument. And I think I  
12     indicated in my prehearing conference orders that to the  
13     extent FTB raises in its rebuttal or its final closing  
14     new or different arguments challenging the amount of  
15     reimbursement claimed, Appellant can then request some  
16     additional time to address those new arguments. I  
17     encourage the representatives to please keep track of  
18     your time. I will also try to keep track of it, but  
19     it's best that you also do that.

20            Any questions before we begin, Ms. Weed?

21            MS. WEED: No.

22            ADMINISTRATIVE LAW JUDGE GEARY: Questions,  
23     Ms. Mosnier?

24            MS. MOSNIER: Can we reserve any time we do not  
25     use from our initial 30-minute presentation to extend

1 the rebuttal period if necessary?

2 ADMINISTRATIVE LAW JUDGE GEARY: Yes.

3 MS. MOSNIER: Thank you.

4 ADMINISTRATIVE LAW JUDGE GEARY: Just let me  
5 know that that's what you want to do and I'll make a  
6 note of it.

7 All right. Ms. Mosnier, you can begin when  
8 you're ready.

9 MS. MOSNIER: Thank you.

10 To the court reporter, can you hear me okay?

11 THE COURT REPORTER: Yes. Thank you.

12  
13 OPENING STATEMENT

14 BY MS. MOSNIER, FTB Counsel:

15 Good afternoon. Marguerite Mosnier and Carolyn  
16 Kuduk for Franchise Tax Board.

17 The Claimant's request for reimbursement of  
18 attorney's fees and costs fails because the Franchise  
19 Tax Board applied longstanding relevant case law  
20 including a precedential Board of Equalization decision  
21 to the facts of Con-Med's 2007 sales transaction and  
22 determined that Claimant had not completed a Section  
23 1031 transaction and, therefore, could not defer gain  
24 recognition. FTB's position was, therefore,  
25 substantially justified, and the Claimant is not

1 entitled to reimbursement of attorney fees.

2 If, however, the OTA determines that the  
3 Franchise Tax Board's position was not substantially  
4 justified, the amount of fees and costs reimbursement  
5 sought is not reasonable and a lesser amount would be  
6 warranted.

7 I'd like to review the relevant facts of the  
8 underlying appeal and the law the Franchise Tax Board  
9 applied to those facts.

10 Con-Med is a partnership or was a partnership  
11 in which the Claimant was a minority partner. The  
12 partnership owned/developed commercial property and in  
13 2007 entered into a contract to sell that property. The  
14 concept of a 1031 exchange was not mentioned in the  
15 initial offer, any counteroffers, or in the sales  
16 contract -- purchase and sales contract that was signed.

17 Many months later, just a couple weeks before  
18 escrow closed, the partnership signed a redemption  
19 agreement pursuant to which the partnership was  
20 authorized to redeem the Claimant's minority partnership  
21 interest, and in exchange for that interest, the  
22 partnership would deed her a direct ownership interest  
23 in the same percentage ownership as she had in the  
24 partnership. One day before escrow closed, the Claimant  
25 recorded the tenant in common or TIC deed it had

1 received from the partnership and the following day she  
2 deeded the property, her interest in the property, to  
3 the purchaser.

4 She subsequently when -- on her 2007 return  
5 reported gained deferral pursuant to Section 1031. The  
6 Franchise Tax Board determined that she had not  
7 satisfied the requirements of 1031 and proposed  
8 additional tax of just over \$60,000.

9 The law for Section 1031 transactions is clear.  
10 A taxpayer wishing to avail itself of the deferral of in  
11 recognition must meet three requirements. They are  
12 known informally as the exchange requirement, the  
13 holding requirement, and the like kind requirement.

14 The exchange requirement is what is at issue  
15 here, and that requirement is that the same taxpayer who  
16 sells the relinquished property must be the taxpayer  
17 that purchases the replacement property. And the  
18 Franchise Tax Board's focus on this requirement reflects  
19 the dictates of the tax court's opinion in Bolker vs.  
20 Commissioner, of the opinion in Chase vs. Commissioner,  
21 and in Board of Equalization's decision in Appeal of  
22 Brookfield Manor that the first inquiry in a 1031  
23 exchange is whether the taxpayer has met the exchange  
24 requirement.

25 So with that in mind, let's turn to the concept

1 of substantial justification. It is not defined in  
2 Section 21013 and it is not defined in any precedential  
3 case law. However, there is a similar statute in the  
4 Revenue and Taxation Code Section 19717, which  
5 authorizes reimbursement of attorney fees and costs in  
6 the context of litigation. And there is case law that  
7 has interpreted substantial justification in the context  
8 of that statute. And so we look to that for guidance.

9           It has -- substantial justification has been  
10 defined alternately as FTB is substantially justified  
11 when its position is justified to a degree that would  
12 satisfy a reasonable person or as a position that has a  
13 reasonable basis in law and fact.

14           It has also been described that if reasonable  
15 minds may differ, then the Franchise Tax Board is  
16 substantially justified. And so long as the position is  
17 one that a reasonable -- a reasonable person could think  
18 is correct, it maybe substantially justified even in the  
19 face of conflicting evidence. Those are all California  
20 Appellate Court cases.

21           So in the context of this -- in the context of  
22 this appeal, we'll start with the standard that if  
23 reasonable minds may differ, then the position is  
24 substantially justified. In the underlying appeal, the  
25 Office of Tax Appeals' opinion was a split opinion. The

1 minority opinion adopted FTB's analysis and conclusion.

2         So when we think of the Office of Tax Appeals  
3 and the administrative law judges, these are more than  
4 just even mere reasonable minds. These are tax expert  
5 minds. And we know that because the OTA tells us so on  
6 the home page of its website, "Tax disputes involving  
7 personal income taxes are decided by a three-member  
8 panel of administrative law judges, each of whom is an  
9 expert in tax law."

10         So if differing mere reasonable minds  
11 establishes substantial justification, it is certain  
12 that differing opinions by tax expert minds means that  
13 FTB's position, which was adopted by Judge Rosas in the  
14 minority, was substantially justified under the  
15 definition that the reasonable minds differ definition  
16 from Lennane vs. Franchise Tax Board and Fujitsu  
17 Holdings vs. Franchise Tax Board.

18         When you consider another definition for  
19 substantial justification, which is that it was  
20 justified to a degree that would satisfy a reasonable  
21 person which is the definition enunciated in the  
22 McDonnell Douglas vs. Franchise Tax Board decision.

23         As we've discussed, the Franchise Tax Board's  
24 position satisfied Judge Rosas in the underlying appeal,  
25 and we could consider him both a reasonable person as

1 well as a tax expert.

2 And on those facts, FTB's position in the  
3 underlying appeal was substantially justified under the  
4 McDonnell Douglas, justified to the degree that would  
5 satisfy a reasonable person standard.

6 And independent of those two definitions, the  
7 Franchise Tax Board's position was substantially  
8 justified because it had a reasonable basis in law and  
9 fact. FTB applied law relevant to the exchange  
10 requirement and considered three cases particularly  
11 important to support its position.

12 Beginning with the US Supreme Court decision  
13 Commissioner vs. Court Holding, which held, among other  
14 things, that the substance rather than the form of a  
15 transaction dictates the tax treatment of the  
16 transaction.

17 Now, that case did not involve Section 1031  
18 transaction, but the doctrine is applicable to Section  
19 1031 cases. We know that from the tax court decision in  
20 Bolker from Chase vs. Commissioner, and from the Appeal  
21 of Brookfield Manor.

22 Now, the detailed facts of each of those cases  
23 are set out in FTB's -- in FTB's statement. And what's  
24 probably more important here, just to give a general  
25 description of the facts, the common facts to all three



1 of those, in all three an entity owned property and  
2 negotiated the sale of the property and shortly before  
3 escrow closed some or all of the interest in the  
4 property was transferred to some or all of the entity  
5 owners, and they, along with the entity if the entity  
6 still owned any interest in the property, completed the  
7 sale. And in all those cases the Courts and the Board  
8 of Equalization said that it was the entity and not any  
9 owner of the entity that bore the tax consequences of  
10 the transaction.

11 Since Franchise Tax Board applied relevant law  
12 to determining whether the Claimant had met the exchange  
13 requirement, its position was substantially justified  
14 under the definition set out in the McDonnell Douglas  
15 decision.

16 Apart from a substance-over-form and  
17 true-seller analysis that you need for the exchange  
18 requirement if you're looking at it at the sale end of  
19 the exchange, the Franchise Tax Board also properly  
20 applied the assignment of income theory, which is set  
21 out in Salvatore vs. Commissioner to conclude that all  
22 sale proceeds should be attributed to Con-Med.

23 Here, again, the relevant law was applied to  
24 the facts of the transaction and FTB's position on this  
25 theory was substantially justified under the McDonnell

1 Douglas, the Fujitsu, and the Lennane cases. And  
2 although a substantive justification analysis considers  
3 the law at the time of FTB's actions, it's important to  
4 note that not only were FTB's legal analysis and  
5 position correct during the underlying appeal, the  
6 Office of Tax Appeal's 2021 precedential opinion, Appeal  
7 of Kwon affirms the Court Holding, Chase and Brookfield  
8 Manor are the relevant case law when analyzing the  
9 exchange requirement.

10 It's equally important to note that the Office  
11 of Tax Appeals rejected consideration of the Magneson  
12 Maloney Ninth Circuit Bolker opinion and Appeal of  
13 Rago -- R-a-g-o, for our stenographer -- Rago  
14 Development, because, as the OTA noted in Footnote 20 of  
15 that opinion, those cases addressed the holding  
16 requirement and not the exchange requirement.

17 So we see from -- by looking first to Court  
18 Holding, and then through to Chase and Brookfield Manor  
19 and Salvatore that the Franchise Tax Board applied the  
20 law that was relevant to a determination whether the  
21 Claimant had met the exchange requirement. Franchise  
22 Tax Board's actions were substantially justified under  
23 the very alternate definitions of substantial  
24 justification.

25 And a final note on the issue of substantial

1 justification. A determination by the OTA that the  
2 Franchise Tax Board's position was substantially  
3 justified is not inconsistent with the determination  
4 that the majority opinion in the underlying appeal was  
5 correct. The two are not mutually exclusive because  
6 they address and rest on independent legal issues.

7           Turning to the reasonableness of the requested  
8 fees, FTB believes it was substantially justified in its  
9 actions and that no attorney fees should be awarded.  
10 And FTB makes this argument in the event only that the  
11 Office of Tax Appeals determines that FTB's position was  
12 not substantially justified.

13           Section 21013 limits reimbursement to  
14 reasonable fees. That term is not defined in 21013, so  
15 we look again to Section 19717 and we get guidance from  
16 that statute. That statute sets out an hourly cap rate  
17 of \$125 with adjustments for inflation for any award of  
18 attorney fees. In fact, it requires a showing of a,  
19 quote, special factor to authorize reimbursement at a  
20 rate that exceeds the \$125 per hour. A special factor  
21 is, quote, distinctive knowledge or special expertise  
22 needed for the specific litigation.

23           And we have to remember that reimbursement  
24 under either Section 19717 or 21013 will always be for  
25 representation in a tax dispute and the representative

1 will presumably be a tax expert or someone with tax  
2 experience. So there's a fair inference there that the  
3 legislature intended that a \$125 per hour cap was  
4 appropriate for reimbursement except in extraordinary  
5 cases where a special factor is shown.

6           There is an issue in this case whether  
7 reimbursement above the \$125 per hour cap would be  
8 warranted in this case, and FTB rests on the more  
9 detailed arguments and discussion that's set out in its  
10 brief on that point.

11           And, finally, FTB notes that the proposed  
12 assessment was just over \$60,000. And the notice of  
13 proposed assessment, you can find it at Exhibit B --  
14 bravo -- to the Claimant's opening brief in the  
15 underlying appeal. And the notice of action which  
16 affirms that same amount is Exhibit A to that same  
17 brief.

18           So the proposed additional tax was just over  
19 \$60,000, yet the Claimant asserts that she paid more  
20 than \$115,000 to her counsel for representation. FTB  
21 requests that any award of fees and costs be capped at  
22 the amount of the proposed additional tax. Thank you.

23           ADMINISTRATIVE LAW JUDGE GEARY: Thank you,  
24 Ms. Mosnier. I have basically 16 -- 16 to 17 minutes  
25 used.

1 MS. MOSNIER: That's it.

2 ADMINISTRATIVE LAW JUDGE GEARY: Ms. Weed, who  
3 is going to be giving the Claimant's argument? You?

4 MS. WEED: I will.

5 ADMINISTRATIVE LAW JUDGE GEARY: All right.  
6 You can proceed when you're ready.

7 MS. WEED: Okay. Just one moment, your Honor.  
8

9 OPENING STATEMENT

10 BY MS. WEED, Counsel for the Taxpayer:

11 So in Taxpayer Mitchell's motion for fees, the  
12 facts in the underlying case are not susceptible of  
13 dispute. The notice of proposed assessment in this case  
14 was issued in 2012. The tax year in issue was 2007.  
15 There has been, give or take, ten years of briefing.  
16 There's transcripts from the hearing.

17 The opinion and the underlying hearing made 23  
18 findings of facts. There was no split decision in this  
19 case. There was a majority opinion that governs the  
20 outcome. The law has been properly decided in this  
21 case. The FTB's petition for rehearing was summarily  
22 denied. FTB now wants to litigate clearly established  
23 facts and take a third bite at the apple with respect to  
24 its erroneous legal arguments in the underlying case.  
25 None of the FTB's attempts to relitigate this case

1     should be given any further consideration.

2             The only issue remaining is whether the  
3     taxpayer is entitled to attorney's fees, costs, and  
4     ultimately put in a position to make her whole. The  
5     taxpayer is entitled to reasonable fees and costs  
6     pursuant to Revenue and Taxation Code 19717. In order  
7     to be -- in order to recover these fees, Taxpayer  
8     Mitchell needs to be the prevailing party with respect  
9     to either the issue or the amount.

10            In this case, Taxpayer Mitchell prevailed with  
11    respect to every issue and amount in the case. The FTB  
12    is not substantially justified as it has no reasonable  
13    basis in law or fact for its position in the underlying  
14    case. There is no basis because the FTB failed to  
15    follow controlling public guidance.

16            The taxpayer's counsel disagrees that there is  
17    no authority with respect to what substantial  
18    justification is. Revenue and Taxation Code Section  
19    19717 indicates there is a presumption that the FTB is  
20    not substantially justified to the extent it failed to  
21    follow controlling public guidance.

22            In this case, the underlying opinion indicated  
23    that the Ninth Circuit cases *Magneson* and *Bolker* are  
24    controlling. All of the other cases that were cited by  
25    the Franchise Tax Board were deemed to be wholly

1 inapplicable or from a lesser court than the Ninth  
2 Circuit.

3         The FTB cannot claim to rely on a dissent  
4 issued at the time of the opinion in this case to  
5 justify over ten years of erroneous application of the  
6 law to the detriment and prejudice of the taxpayer. As  
7 cited in the Taxpayer's opening brief, there is strong  
8 policy against giving the FTB free rein to pursue issues  
9 that are not substantially justified.

10         The Fujitsu case cited in the Taxpayer's brief  
11 indicates that this is a very strong policy. If the FTB  
12 chooses to pursue frivolous claims and incorrectly  
13 applies the laws of this state, which is one of its  
14 primary tasks, they will continue to pursue frivolous  
15 claims if they are fairly certain that the taxpayer will  
16 never be able to recover their fees.

17         In this case, Taxpayer Mitchell's time and  
18 resources were wholly wasted. The underlying amount in  
19 this case is, you know, approximately 60,000, a little  
20 bit more. But to that end, the FTB had numerous chances  
21 to review the law, over 10 years of chances to review  
22 the law, the facts, and to possibly work out some sort  
23 of resolution outside of the Office of Tax Appeals.

24         In addition, the FTB in this case waited almost  
25 one year to object to the instant motion. Why did they

1 need to wait an entire year to respond to Taxpayer  
2 Mitchell's motion for fees? Are they waiting for  
3 additional case law?

4 Case law sought whether or not obtained is not  
5 relevant to whether the Franchise Tax Board was  
6 substantially justified in its application of the law --  
7 its erroneous application of the law to Taxpayer  
8 Mitchell.

9 The FTB's entitled actions to pursue frivolous  
10 claims against taxpayers because they can rely on a  
11 taxpayer to rarely pursue a case to the end because of  
12 the individual taxpayer's limits to resources is wrong.  
13 It is abusive of this state's tax system, the laws of  
14 this state, the individual taxpayer in this case, and  
15 taxpayers generally. The taxpayer is the one who  
16 suffers.

17 Taxpayer Mitchell is 62 years old. She lost  
18 pretty much all of her 50s to this case. This case has  
19 helped taxpayers that I have assisted since this case  
20 was decided in which the FTB dismissed their claim. The  
21 FTB's assertion that they think the law in Mitchell is,  
22 therefore, wholly misrepresentative.

23 Taxpayer Mitchell's case has helped the public  
24 at large to understand the laws despite the FTB's  
25 numerous misapplications of the law over time. The



1 extraordinary fees in this case that taxpayer requests  
2 are based on the fact that there are complicated issues  
3 in this matter, often too complicated for a lay taxpayer  
4 to handle on their own. If the FTB is able to rely on a  
5 taxpayer's recovery of legal fees at a lower rate, it is  
6 further incentive for the FTB to act frivolously in its  
7 positions.

8           Once again, the taxpayers suffer because they  
9 don't get compensated for their actual fees incurred  
10 when they prevail. In this instance, Sharon Mitchell  
11 prevailed on everything.

12           Finally, the standard under Wertin v FTB  
13 Cal.App.2d December 21st, 1998 indicates that the  
14 respondent is required -- if the respondent fails to  
15 provide evidence to rebut the taxpayer's counsel's claim  
16 for fees, the only evidence that this court has to rely  
17 on is the taxpayer's pleadings and declarations.

18           I reserve any additional time for possible  
19 rebuttal.

20           ADMINISTRATIVE LAW JUDGE GEARY: Thank you,  
21 Ms. Weed. I have that you used about eight -- eight  
22 minutes for your presentation.

23           Ms. Mosnier, you may proceed when you are  
24 ready.

25           MS. MOSNIER: Thank you.

1 REBUTTAL STATEMENT

2 BY MS. MOSNIER, Tax Counsel:

3 At the prehearing conference, the parties  
4 agreed and the minutes and orders reflect that Claimant  
5 agreed to forego reliance on Revenue and Taxation Code  
6 Section 19717. That is the only section we've heard the  
7 Claimant speak of today. To the extent that there are  
8 analyses and subdivisions of 19717, they were not  
9 otherwise addressed by FTB as being analogous to 21013  
10 and, therefore, relevant in the consideration of  
11 substantially justified in reasonableness of fees. The  
12 OTA should disregard any other provisions of 19717.

13 And I'd like to circle back to the concept of  
14 the exchange requirement because that is the issue that  
15 the Franchise Tax Board identified by the time of the  
16 hearing as the one it would focus on. And in the  
17 discussion section of the majority opinion, the OTA  
18 notes that the Franchise Tax Board is asserting that the  
19 Claimant did not meet the exchange requirement and it  
20 was, therefore, appropriate and necessary for the  
21 Franchise Tax Board to determine the law that is  
22 relevant to analyze the exchange requirement. And that  
23 is Commissioner vs. Court Holding, Chase vs.  
24 Commissioner, and a precedential Board of Equalization  
25 opinion, Appeal of Brookfield Manor, that FTB was

1 required to consider and apply precisely because it was  
2 a precedential Board of Equalization decision.

3 And so for those reasons, the Claimant's  
4 discussion of FTB's incorrect analysis and application  
5 of the law should not be given any weight. Thank you.

6 ADMINISTRATIVE LAW JUDGE GEARY: Thank you,  
7 Ms. Mosnier.

8 Ms. Weed, both in my prehearing conference  
9 minutes and orders and at the beginning of this hearing  
10 I indicated that you could apply for additional time to  
11 argue in the event FTB made new arguments concerning the  
12 amount of the claim. I didn't hear any argument about  
13 the amount of the claim. Are you applying for  
14 additional time to offer further argument?

15 MS. WEED: I'm not sure I understand, your  
16 Honor.

17 ADMINISTRATIVE LAW JUDGE GEARY: In my  
18 prehearing conference minutes and orders we talked about  
19 how much time would be allowed for argument. I realize  
20 you said that you wanted to reserve time, and I would  
21 have allowed you to reserve time to the extent you  
22 needed to rebut arguments made by FTB concerning the  
23 amount that your client is claiming in reimbursement,  
24 but I did not hear FTB make any such arguments in its  
25 rebuttal. So if you are applying for additional time to

1 offer further argument, I'd like to know what areas you  
2 intend to offer argument on.

3 MS. WEED: With respect to the code section  
4 cited by -- or FTB's counsel, as I sit here today, my  
5 position would not be that 19717 does not apply. It's  
6 part of the Revenue and Taxation Code. Given that, I  
7 believe the analysis under Code Section 21013 would be  
8 the same with respect to the prevailing party and  
9 substantial justification of the FTB.

10 ADMINISTRATIVE LAW JUDGE GEARY: Are you  
11 applying for additional time to provide further argument  
12 or not? I'm not clear.

13 MS. WEED: With respect to the fee amount?

14 ADMINISTRATIVE LAW JUDGE GEARY: With respect  
15 to anything. If you're applying for -- if you're asking  
16 for additional time for argument, tell me how much time  
17 you think you need, and I think you just described what  
18 you intend to argue. How much time do you need to argue  
19 that?

20 MS. WEED: Less than five minutes.

21 ADMINISTRATIVE LAW JUDGE GEARY: All right.  
22 I'm going to allow it.

23 MS. WEED: Okay.

24 ADMINISTRATIVE LAW JUDGE GEARY: You may  
25 proceed.

1 CLOSING ARGUMENT

2 BY MS. WEED, Counsel for the Taxpayer:

3 With respect to Revenue and Taxation Code  
4 Section 19717, Taxpayer's counsel believes that this is  
5 still applicable to the motion for fees. In addition to  
6 Revenue and Taxation Code Section 21013, as I sit here  
7 today I do not think it's appropriate to not include a  
8 California Revenue and Taxation Code section. However,  
9 if it is deemed that that is not applicable in this  
10 place, Taxpayer's counsel would renew her arguments with  
11 respect to the prevailing party and whether or not the  
12 FTB was substantially justified based on the same  
13 analysis.

14 ADMINISTRATIVE LAW JUDGE GEARY: Are you -- are  
15 you finished with your final argument?

16 MS. WEED: Yes, that's all. Thank you.

17 ADMINISTRATIVE LAW JUDGE GEARY: That's all  
18 right. Thank you.

19 Ms. Weed, does your client submit the matter?

20 MS. WEED: We submit.

21 ADMINISTRATIVE LAW JUDGE GEARY: And FTB, do  
22 you submit the matter?

23 MS. MOSNIER: Yes.

24 ADMINISTRATIVE LAW JUDGE GEARY: All right.  
25 This case is submitted on October 18th, 2022, at

1 3:53 p.m. The record in this matter is now closed and  
2 this hearing is concluded. Thank you, everyone, for  
3 participating. In the coming weeks, the panel will meet  
4 to consider the matter, and OTA will send a written  
5 opinion within 100 days of today's date. This is the  
6 final hearing for OTA today, and the streaming can stop  
7 and we can go off the record. Thank you, everybody.

8 (Proceedings concluded at 3:55 p.m.)  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA     )  
                                      ) ss.  
COUNTY OF SACRAMENTO    )

I, MARIA ESQUIVEL-PARKINSON, do hereby certify  
that I am a Certified Shorthand Reporter, and that at  
the times and places shown I recorded verbatim in  
shorthand writing all the proceedings in the following  
described action completely and correctly to the best of  
my ability:

LOCATION: OFFICE OF TAX APPEALS  
          400 R STREET  
          Sacramento, CA 95811

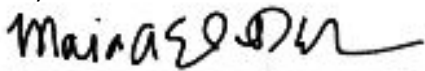
CASE:       In the Matter of the Appeal of:  
             Sharon Mitchell

DATE:       Tuesday, October 18, 2022

I further certify that my said shorthand notes  
have been transcribed into typewriting, and that the  
foregoing 30 pages constitute an accurate and complete  
transcript of all my shorthand writing for the dates and  
matter specified.

I further certify that I have complied with CCP  
237(a)(2) in that all personal juror identifying  
information has been redacted if applicable.

IN WITNESS WHEREOF, I have subscribed this  
certificate at Sacramento, California on this 4th day of  
November, 2022.

  
\_\_\_\_\_  
Maria Esquivel-Parkinson  
CSR No. 10621, RPR

<hr/>	<b>21013</b> 9:7 14:2 19:13,14,24 26:9 28:7 29:6	<b>action</b> 20:15	<b>allowed</b> 27:19,21
<b>\$</b>	<b>21017158</b> 2:9 5:8	<b>actions</b> 18:3,22 19:9 24:9	<b>alternate</b> 18:23
<b>\$115,000</b> 20:20	<b>21st</b> 25:13	<b>actual</b> 25:9	<b>alternately</b> 14:10
<b>\$125</b> 19:17,20 20:3,7	<b>23</b> 21:17	<b>addition</b> 23:24 29:5	<b>amount</b> 9:10,25 10:14 12:4,5 20:16,22 22:9,11 23:18 27:12,13,23 28:13
<b>\$60,000</b> 13:8 20:12,19	<b>26</b> 4:14	<b>additional</b> 10:16 13:8 20:18,22 24:3 25:18 27:10, 14,25 28:11,16	<b>analogous</b> 26:9
<hr/>	<b>29</b> 4:15	<b>address</b> 9:4 10:16 19:6	<b>analyses</b> 26:8
<b>1</b>	<hr/>	<b>addressed</b> 18:15 26:9	<b>analysis</b> 15:1 17:17 18:2,4 27:4 28:7 29:13
<b>1</b> 6:12 8:5,15,16	<b>3</b>	<b>adjustments</b> 19:17	<b>analyze</b> 26:22
<b>1-4</b> 4:4	<b>30</b> 10:6,7	<b>administrative</b> 2:4 5:4,18 6:1,7, 10 7:3,9,13 8:2,9, 14,17 9:15,19 10:22 11:2,4 15:3, 8 20:23 21:2,5 25:20 27:6,17 28:10,14,21,24 29:14,17,21,24	<b>analyzing</b> 18:8
<b>10</b> 23:21	<b>30-minute</b> 10:25	<b>admission</b> 8:4	<b>anticipate</b> 7:18
<b>100</b> 30:5	<b>30702</b> 9:8	<b>admit</b> 7:14	<b>apparent</b> 6:16
<b>1031</b> 11:23 12:14 13:5,7,9,22 16:17, 19	<b>3:13</b> 2:17 5:2,9	<b>admitted</b> 7:7 8:15,16	<b>appeal</b> 6:12 7:11 8:19,23 9:1,2,6,23 12:8 13:21 14:22, 24 15:24 16:3,20 18:5,6,12 19:4 20:15 26:25
<b>10621</b> 2:19	<b>3:53</b> 30:1	<b>adopted</b> 15:1,13	<b>Appeal's</b> 18:6
<b>11</b> 4:12	<b>3:55</b> 30:8	<b>adverse</b> 8:19	<b>Appeals</b> 2:2 5:7 15:2 18:11 19:11 23:23
<b>15</b> 10:4	<hr/>	<b>affirms</b> 18:7 20:16	<b>Appeals'</b> 14:25
<b>16</b> 20:24	<b>4</b>	<b>afternoon</b> 5:6,13, 22 11:15	<b>APPEARANCES</b> 3:1
<b>17</b> 20:24	<b>4</b> 6:13 8:5,15,16	<b>agency</b> 8:20	<b>Appellant</b> 10:15
<b>18</b> 2:18 5:1 9:8	<b>400</b> 2:16	<b>agree</b> 9:12,16	<b>Appellate</b> 14:20
<b>18th</b> 5:8 29:25	<hr/>	<b>agreed</b> 9:20 10:3, 5 26:4,5	<b>apple</b> 21:23
<b>19717</b> 14:4 19:15, 24 22:6,19 26:6,8, 12 28:5 29:4	<b>5</b>	<b>agreement</b> 12:19	<b>applicable</b> 16:18 29:5,9
<b>1998</b> 25:13	<b>5</b> 4:11	<b>AKIN</b> 3:5	<b>application</b> 23:5 24:6,7 27:4
<hr/>	<b>50s</b> 24:18	<b>ALJ</b> 3:4,5,6	<b>applied</b> 11:19 12:9 16:9 17:11, 20,23 18:19
<b>2</b>	<hr/>		<b>applies</b> 23:13
<b>20</b> 18:14	<b>6</b>		
<b>2007</b> 11:21 12:13 13:4 21:14	<b>60,000</b> 23:19		
<b>2012</b> 21:14	<b>62</b> 24:17		
<b>2021</b> 18:6	<hr/>		
<b>2022</b> 2:18 5:1,8 29:25	<b>8</b>		
<b>21</b> 4:13	<b>8</b> 4:4		
	<hr/>		
	<b>A</b>		
	<b>abusive</b> 24:13		
	<b>act</b> 25:6		



**apply** 27:1,10  
28:5

**applying** 27:13,  
25 28:11,15

**approximately**  
10:11 23:19

**areas** 28:1

**argue** 27:11 28:18

**argument** 4:15  
10:5,7,8,11 19:10  
21:3 27:12,14,19  
28:1,2,11,16 29:1,  
15

**arguments**  
10:14,16 20:9  
21:24 27:11,22,24  
29:10

**asserting** 26:18

**assertion** 24:21

**asserts** 9:1 20:19

**assessment**  
20:12,13 21:13

**assignment**  
17:20

**assisted** 24:19

**attached** 8:7,12

**attempts** 21:25

**attorney** 5:15  
12:1 14:5 19:9,18

**attorney's** 11:18  
22:3

**attributed** 17:22

**authority** 22:17

**authorize** 19:19

**authorized** 12:20

**authorizes** 14:5

**avail** 13:10

**award** 19:17  
20:21

**awarded** 19:9

---

**B**

---

**back** 26:13

**based** 25:2 29:12

**basically** 20:24

**basis** 14:13 16:8  
22:13,14

**begin** 10:20 11:7

**beginning** 5:11  
16:12 27:9

**believes** 19:8  
29:4

**binder** 6:15,22,25  
7:23

**bit** 5:6 8:18 23:20

**bite** 21:23

**Board** 5:23,25  
11:16,19,20 12:8  
13:6,21 14:15  
15:16,17,22 17:7,  
11,19 18:19 22:25  
24:5 26:15,18,21,  
24 27:2

**Board's** 12:3  
13:18 15:23 16:7  
18:22 19:2

**Bolker** 13:19  
16:20 18:12 22:23

**bore** 17:9

**bravo** 20:14

**briefing** 21:15

**briefs** 6:16 7:23

**Brookfield** 13:22  
16:21 18:7,18  
26:25

**burden** 9:21,24

---

**C**

---

**C-H-R-I-S-T-I-N-**  
**A** 5:14

**Cal.app.2d** 25:13

**California** 2:1,16,  
21 5:1 9:8 14:19  
29:8

**call** 6:4,5,8

**cap** 19:16 20:3,7

**capped** 20:21

**Carolyn** 3:14 5:24  
11:15

**case** 2:9 5:8 10:6  
11:19 14:3,6  
16:17 18:8 20:6,8  
21:12,13,19,21,  
24,25 22:10,11,  
14,22 23:4,10,17,  
19,24 24:3,4,11,  
14,18,19,23 25:1  
29:25

**cases** 14:20  
16:10,19,22 17:7  
18:1,15 20:5  
22:23,24

**Certified** 2:20

**challenging**  
10:14

**chances** 23:20,21

**Chase** 13:20  
16:20 18:7,18  
26:23

**CHERYL** 3:5

**chooses** 23:12

**Christina** 3:9  
5:14

**circle** 26:13

**Circuit** 18:12  
22:23 23:2

**cited** 22:24 23:7,  
10 28:4

**claim** 2:7 5:7 6:17  
7:15,22 8:7,12  
23:3 24:20 25:15  
27:12,13

**Claimant** 2:9 3:8

5:12 6:2,13,16 7:1  
8:20,22 9:1,5,11,  
24,25 10:7 11:22,  
25 12:11,24 17:12  
18:21 20:19 26:4,  
7,19

**claimant's** 4:4  
6:12 8:5,16,24 9:9  
11:17 12:20 20:14  
21:3 27:3

**claimed** 10:15

**claiming** 27:23

**claims** 23:12,15  
24:10

**clear** 7:6 13:9  
28:12

**client** 27:23 29:19

**closed** 12:18,24  
17:3 30:1

**closing** 4:15  
10:13 29:1

**code** 9:7,8 14:4  
22:6,18 26:5 28:3,  
6,7 29:3,6,8

**collected** 7:21

**commencing**  
2:17

**commercial**  
12:12

**Commissioner**  
13:20 16:13,20  
17:21 26:23,24

**common** 12:25  
16:25

**compensated**  
25:9

**completed** 11:22  
17:6

**complicated**  
25:2,3

**Con-med** 12:10  
17:22

**Con-med's** 11:21

**concept** 12:14  
13:25 26:13  
**conclude** 17:21  
**concluded** 30:2,8  
**conclusion** 15:1  
**conference** 6:14  
9:21 10:3,12 26:3  
27:8,18  
**confirmed** 6:24  
**conflicting** 14:19  
**consequences**  
17:9  
**consideration**  
18:11 22:1 26:10  
**considered**  
16:10  
**considers** 18:2  
**consist** 6:12  
**constitute** 6:25  
**context** 14:6,7,21  
**continue** 23:14  
**contract** 12:13,16  
**controlling**  
22:15,21,24  
**correct** 6:3 14:18  
18:5 19:5  
**costs** 11:18 12:4  
14:5 20:21 22:3,5  
**counsel** 3:13,14  
11:14 20:20 21:10  
22:16 26:2 28:4  
29:2,4,10  
**counsel's** 25:15  
**counteroffers**  
12:15  
**COUNTY** 2:3  
**couple** 12:17  
**court** 11:10,11  
14:20 16:12,13,19  
18:7,17 23:1  
25:16 26:23

**court's** 13:19  
**Courts** 17:7  
**CSR** 2:19  

---

**D**

---

**D-I-A-N-A** 5:15  
**date** 30:5  
**day** 12:24 13:1  
**days** 30:5  
**December** 25:13  
**decided** 8:23 15:7  
21:20 24:20  
**decides** 9:9  
**decision** 8:20  
11:20 13:21 15:22  
16:12,19 17:15  
21:18 27:2  
**declarations**  
25:17  
**deed** 12:22,25  
**deeded** 13:2  
**deemed** 22:25  
29:9  
**defer** 11:23  
**deferral** 13:5,10  
**defined** 14:1,2,10  
19:14  
**definition** 15:15,  
18,21 17:14  
**definitions** 16:6  
18:23  
**degree** 14:11  
15:20 16:4  
**denied** 21:22  
**description**  
16:25  
**detailed** 16:22  
20:9  
**determination**

18:20 19:1,3  
**determine** 8:21  
9:10 26:21  
**determined**  
11:22 13:6  
**determines** 12:2  
19:11  
**determining**  
17:12  
**detriment** 23:6  
**Development**  
18:14  
**Diana** 3:10 5:15  
**dictates** 13:19  
16:15  
**differ** 14:15,23  
15:15  
**differing** 15:10,12  
**direct** 12:22  
**directed** 6:14  
**disagrees** 22:16  
**discuss** 7:14  
**discussed** 9:20  
10:2 15:23  
**discussion** 20:9  
26:17 27:4  
**dismissed** 24:20  
**dispute** 19:25  
21:13  
**disputes** 15:6  
**disregard** 26:12  
**dissent** 23:3  
**distinctive** 19:21  
**doctrine** 16:18  
**documentary**  
6:20 7:1  
**documents** 6:15  
7:6,20,21  
**Douglas** 15:22  
16:4 17:14 18:1

---

**E**

---

**earlier** 7:17 8:25  
**electronic** 6:22  
**encourage** 10:17  
**end** 17:18 23:20  
24:11  
**entered** 12:13  
**entire** 24:1  
**entitled** 8:22 9:5,  
11 10:1 12:1 22:3,  
5 24:9  
**entity** 17:1,4,5,8,9  
**enunciated** 15:21  
**Equalization**  
11:20 17:8 26:24  
27:2  
**Equalization's**  
13:21  
**equally** 18:10  
**erroneous** 21:24  
23:5 24:7  
**escrow** 12:18,24  
17:3  
**ESQ** 3:9  
**Esquivel-**  
**parkinson** 2:19  
**essence** 9:1  
**established**  
21:22  
**establishes**  
15:11  
**estimates** 10:2  
**event** 19:10 27:11  
**evidence** 6:13,18,  
20 7:1,4,15,20  
14:19 25:15,16  
**exceeds** 19:20  
**exchange** 12:14,  
21 13:12,14,23

16:9 17:12,17,19  
18:9,16,21 26:14,  
19,22

**exclusive** 19:5

**Exhibit** 20:13,16

**exhibits** 4:4 6:11,  
12,21,24 7:10,15,  
25 8:1,5,7,15,16

**expect** 7:17

**expenses** 8:23  
9:6

**experience** 20:2

**expert** 15:4,9,12  
16:1 20:1

**expertise** 19:21

**extend** 10:25

**extent** 10:13  
22:20 26:7 27:21

**extraordinary**  
20:4 25:1

---

## F

---

**face** 14:19

**fact** 6:19 14:13  
16:9 19:18 22:13  
25:2

**factor** 19:19,20  
20:5

**facts** 11:21 12:7,9  
16:2,22,25 17:24  
21:12,18,23 23:22

**failed** 22:14,20

**fails** 11:18 25:14

**fair** 20:2

**fairly** 23:15

**favor** 8:24 9:10

**FBT** 9:2

**fee** 28:13

**fees** 8:22 9:6  
11:18 12:1,4 14:5

19:8,9,14,18  
20:21 21:11 22:3,  
5,7 23:16 24:2  
25:1,5,9,16 26:11  
29:5

**final** 10:13 18:25  
29:15 30:6

**finally** 10:10  
20:11 25:12

**find** 20:13

**findings** 21:18

**finished** 29:15

**focus** 13:18 26:16

**follow** 22:15,21

**Footnote** 18:14

**forego** 26:5

**form** 16:14

**Franchise** 5:23,  
24 11:16,18 12:3,  
8 13:6,18 14:15  
15:16,17,22,23  
16:7 17:11,19  
18:19,21 19:2  
22:25 24:5 26:15,  
18,21

**free** 7:19 23:8

**frivolous** 23:12,  
14 24:9

**frivolously** 25:6

**FTB** 3:12 5:20 6:8,  
18 8:4 9:2,5,21  
10:5,10,13 11:14  
14:10 16:9 19:8,  
10 20:8,11,20  
21:22 22:11,14,19  
23:3,8,11,20,24  
24:20 25:4,6,12  
26:9,25 27:11,22,  
24 28:9 29:12,21

**FTB's** 11:24 15:1,  
13 16:2,23 17:24  
18:3,4 19:11  
21:21,25 24:9,21,  
24 27:4 28:4

**Fujitsu** 15:16 18:1  
23:10

---

## G

---

**gain** 11:23

**gained** 13:5

**GEARY** 2:4 3:4  
5:4,18 6:1,7,10  
7:3,9,13 8:2,9,14,  
17 9:15,19 10:22  
11:2,4 20:23 21:2,  
5 25:20 27:6,17  
28:10,14,21,24  
29:14,17,21,24

**general** 16:24

**generally** 24:15

**give** 16:24 21:15

**giving** 21:3 23:8

**Good** 5:6,13,22  
11:15

**governs** 21:19

**guidance** 14:8  
19:15 22:15,21

---

## H

---

**handle** 25:4

**hear** 11:10 27:12,  
24

**heard** 26:6

**hearing** 5:6 6:15,  
22,25 7:25 8:17  
10:3 21:16,17  
26:16 27:9 30:2,6

**hearings** 8:18

**held** 16:13

**helped** 24:19,23

**holding** 13:13  
16:13 18:7,15,18  
26:23

**Holdings** 15:17

**home** 15:6

**Honor** 7:2 9:14  
21:7 27:16

**HOSEY** 3:6

**hour** 10:4 19:20  
20:3,7

**hourly** 19:16

---

## I

---

**identification**  
6:11

**identified** 26:15

**identify** 5:10,20

**important** 16:11,  
24 18:3,10

**inapplicable** 23:1

**incentive** 25:6

**include** 29:7

**included** 6:15

**including** 11:20

**income** 15:7  
17:20

**inconsistent**  
19:3

**incorporated**  
6:21,25

**incorrect** 27:4

**incorrectly** 23:12

**incurred** 25:9

**independent**  
16:6 19:6

**indexes** 7:11

**individual** 24:12,  
14

**inference** 20:2

**inflation** 19:17

**informally** 13:12

**initial** 8:7,12

10:25 12:15  
**Initially** 6:4  
**inquiry** 13:22  
**instance** 25:10  
**instant** 23:25  
**intend** 28:2,18  
**intended** 20:3  
**intent** 7:20  
**intention** 7:14  
**interest** 12:21,22  
 13:2 17:3,6  
**interpreted** 14:7  
**invokes** 8:20  
**involve** 16:17  
**involving** 15:6  
**issue** 9:4,9 13:14  
 18:25 20:6 21:14  
 22:2,9,11 26:14  
**issued** 21:14 23:4  
**issues** 9:12,16  
 19:6 23:8 25:2

---

**J**


---

**Judge** 2:4 5:4,18  
 6:1,7,10 7:3,9,13  
 8:2,9,14,17 9:15,  
 19 10:22 11:2,4  
 15:13,24 20:23  
 21:2,5 25:20 27:6,  
 17 28:10,14,21,24  
 29:14,17,21,24  
**judges** 15:3,8  
**jurisdiction** 8:21  
**justification**  
 14:1,7,9 15:11,19  
 18:2,24 19:1  
 22:18 28:9  
**justified** 9:3,23  
 11:25 12:4 14:10,  
 11,16,18,24  
 15:14,20 16:3,4,8

17:13,25 18:22  
 19:3,8,12 22:12,  
 20 23:9 24:6  
 26:11 29:12

**justify** 23:5

---

**K**


---

**kind** 13:13  
**knowledge** 19:21  
**Kuduk** 3:14 5:24  
 11:16  
**Kwon** 18:7

---

**L**


---

**L-O-P-E-Z** 5:15  
**large** 24:24  
**law** 2:4 5:4,18 6:1,  
 7,10 7:3,9,13 8:2,  
 9,14,17 9:15,19  
 10:22 11:2,4,19  
 12:8 13:9 14:3,6,  
 13 15:3,8,9 16:8,9  
 17:11,23 18:3,8,  
 20 20:23 21:2,5,  
 20 22:13 23:6,21,  
 22 24:3,4,6,7,21,  
 25 25:20 26:21  
 27:5,6,17 28:10,  
 14,21,24 29:14,  
 17,21,24  
**laws** 23:13 24:13,  
 24  
**lay** 25:3  
**legal** 18:4 19:6  
 21:24 25:5  
**legislature** 20:3  
**Lennane** 15:16  
 18:1  
**lesser** 12:5 23:1  
**limits** 19:13 24:12  
**litigate** 21:22

**litigation** 14:6  
 19:22

**long** 14:16

**longer** 6:5 10:8

**longstanding**  
 11:19

**Lopez** 3:10 5:15

**lost** 24:17

**lower** 25:5

---

**M**


---

**M-I-T-C-H-E-L-L**  
 5:17

**made** 7:23 21:17  
 27:11,22

**Magneson** 18:11  
 22:23

**majority** 19:4  
 21:19 26:17

**make** 11:5 22:4  
 27:24

**makes** 19:10

**Maloney** 18:12

**Manor** 13:22  
 16:21 18:8,18  
 26:25

**Marguerite** 3:13  
 5:22 11:15

**Maria** 2:19

**marked** 6:11,12

**matter** 2:7 8:25  
 25:3 29:19,22  
 30:1,4

**Mcdonnell** 15:22  
 16:4 17:14,25

**means** 15:12

**meet** 13:11 26:19  
 30:3

**MEMBERS** 3:3

**mentioned** 12:14

**mere** 15:4,10

**met** 13:23 17:12  
 18:21

**MICHAEL** 2:4 3:4

**mind** 13:25

**minds** 14:15,23  
 15:4,5,10,12,15

**minority** 12:11,20  
 15:1,14

**minute** 7:14

**minutes** 10:4,6,7,  
 10 20:24 25:22  
 26:4 27:9,18  
 28:20

**misapplications**  
 24:25

**misrepresentativ  
 e** 24:22

**Mitchell** 2:8 5:7,  
 16,19 6:5 10:9  
 22:8,10 24:8,17,  
 21 25:10

**Mitchell's** 21:11  
 23:17 24:2,23

**moment** 21:7

**months** 12:17

**Mosnier** 3:13  
 4:12,14 5:22,23  
 6:9 8:6,13 9:16,18  
 10:23,24 11:3,7,9,  
 14,15 20:24 21:1  
 25:23,25 26:2  
 27:7 29:23

**motion** 21:11  
 23:25 24:2 29:5

**mutually** 19:5

---

**N**


---

**names** 5:11

**needed** 19:22  
 27:22

**negotiated** 17:2  
**Ninth** 18:12 22:23  
23:1  
**note** 11:6 18:4,10,  
25  
**noted** 18:14  
**notes** 20:11 26:18  
**notice** 20:12,15  
21:13  
**numerous** 23:20  
24:25

---

**O**

---

**object** 23:25  
**objection** 8:4,13  
**obtained** 24:4  
**October** 2:18 5:1,  
8 29:25  
**offer** 7:1,20 12:15  
27:14 28:1,2  
**offering** 10:8  
**Office** 2:2 5:7  
14:25 15:2 18:6,  
10 19:11 23:23  
**opening** 4:12,13  
10:6 11:13 20:14  
21:9 23:7  
**opinion** 13:19,20  
14:25 15:1 18:6,  
12,15 19:4 21:17,  
19 22:22 23:4  
26:17,25 30:5  
**opinions** 15:12  
**order** 22:6,7  
**orders** 6:14 10:12  
26:4 27:9,18  
**original** 8:21  
**OTA** 6:14,21 8:19,  
23 9:4,9 12:2 15:5  
18:14 19:1 26:12,  
17 30:4,6

**OTA's** 8:21  
**outcome** 21:20  
**owned** 17:1,6  
**owned/  
developed** 12:12  
**owner** 17:9  
**owners** 17:5  
**ownership** 12:22,  
23

---

**P**

---

**p.m.** 2:17 5:2,9  
30:1,8  
**package** 6:13  
**paid** 20:19  
**panel** 3:3 6:22  
9:10 15:8 30:3  
**part** 7:23 28:6  
**participating**  
30:3  
**parties** 5:10 6:23  
7:18 9:20 26:3  
**partner** 12:11  
**partnership**  
12:10,12,18,19,  
20,22,24 13:1  
**party** 22:8 28:8  
29:11  
**percentage**  
12:23  
**period** 11:1  
**person** 14:12,17  
15:21,25 16:5  
**personal** 15:7  
**petition** 21:21  
**place** 29:10  
**plan** 6:8  
**pleadings** 25:17

**point** 20:10  
**policy** 23:8,11  
**portal** 7:6  
**position** 11:24  
12:3 14:11,12,16,  
23 15:13,24 16:2,  
7,11 17:13,24  
18:5 19:2,11 22:4,  
13 28:5  
**positions** 9:2,22  
25:7  
**possession** 6:23  
**possibly** 23:22  
**precedential**  
11:20 14:2 18:6  
26:24 27:2  
**precisely** 27:1  
**prehearing** 6:14  
9:20 10:3,12 26:3  
27:8,18  
**prejudice** 23:6  
**present** 10:5  
**presentation**  
10:25 25:22  
**presumption**  
22:19  
**pretty** 24:18  
**prevail** 25:10  
**prevailed** 22:10  
25:11  
**prevailing** 22:8  
28:8 29:11  
**primary** 23:14  
**procedure** 7:16  
**proceed** 21:6  
25:23 28:25  
**proceeding** 7:21  
**proceedings**  
2:15 4:11 30:8  
**proceeds** 17:22

**properly** 17:19  
21:20  
**property** 12:12,13  
13:2,16,17 17:1,2,  
4,6  
**proposed** 6:18,21  
13:7 20:11,13,18,  
22 21:13  
**provide** 25:15  
28:11  
**proving** 9:21,25  
**provisions** 26:12  
**public** 22:15,21  
24:23  
**purchase** 12:16  
**purchaser** 13:3  
**purchases** 13:17  
**pursuant** 9:7  
12:19 13:5 22:6  
**pursue** 23:8,12,  
14 24:9,11  
**put** 22:4

---

**Q**

---

**question** 8:6,10  
**questions** 10:20,  
22  
**quote** 19:19,21

---

**R**

---

**R-A-G-O** 18:13  
**Rago** 18:13  
**raises** 10:13  
**rarely** 24:11  
**rate** 19:16,20 25:5  
**ready** 11:8 21:6  
25:24  
**realize** 27:19

<b>reasonable</b> 12:5 14:12,13,14,17,23 15:4,10,15,20,25 16:5,8 19:14 22:5, 12	23 18:8,20 24:5 26:10,22	25:18 27:20,21	<b>sell</b> 12:13
<b>reasonableness</b> 19:7 26:11	<b>reliance</b> 26:5	<b>resolution</b> 23:23	<b>sells</b> 13:16
<b>reasons</b> 27:3	<b>relinquished</b> 13:16	<b>resources</b> 23:18 24:12	<b>send</b> 30:4
<b>rebut</b> 25:15 27:22	<b>relitigate</b> 21:25	<b>respect</b> 7:25 21:23 22:8,11,17 28:3,8,13,14 29:3, 11	<b>set</b> 16:23 17:14,20 20:9
<b>rebuttal</b> 4:14 10:11,13 11:1 25:19 26:1 27:25	<b>rely</b> 23:3 24:10 25:4,16	<b>respond</b> 24:1	<b>sets</b> 19:16
<b>received</b> 4:4 13:1	<b>remaining</b> 22:2	<b>respondent</b> 25:14	<b>Sharon</b> 2:8 5:7,16 25:10
<b>recognition</b> 11:24 13:11	<b>remember</b> 19:23	<b>rest</b> 19:6	<b>Shorthand</b> 2:20
<b>record</b> 5:5 7:16, 19 30:1,7	<b>renew</b> 29:10	<b>rests</b> 20:8	<b>shortly</b> 17:2
<b>recorded</b> 12:25	<b>repeat</b> 5:5	<b>return</b> 13:4	<b>showing</b> 19:18
<b>recover</b> 22:7 23:16	<b>replacement</b> 13:17	<b>Revenue</b> 9:7 14:4 22:6,18 26:5 28:6 29:3,6,8	<b>shown</b> 20:5
<b>recovery</b> 25:5	<b>reported</b> 2:18 13:5	<b>review</b> 12:7 23:21	<b>signed</b> 12:16,18
<b>redeem</b> 12:20	<b>reporter</b> 2:20 11:10,11	<b>Rosas</b> 15:13,24	<b>similar</b> 14:3
<b>redemption</b> 12:18	<b>represent</b> 5:11,16	<b>RPR</b> 2:20	<b>sit</b> 28:4 29:6
<b>refer</b> 7:18 8:25	<b>representation</b> 19:25 20:20	<hr/> <b>S</b> <hr/>	<b>sort</b> 23:22
<b>referring</b> 7:10	<b>representative</b> 19:25	<b>S-H-A-R-O-N</b> 5:16	<b>sought</b> 12:5 24:4
<b>reflect</b> 26:4	<b>representatives</b> 5:21 10:17	<b>Sacramento</b> 2:3, 16 5:1	<b>speak</b> 26:7
<b>reflects</b> 13:18	<b>request</b> 10:15 11:17	<b>sale</b> 17:2,7,18,22	<b>special</b> 19:19,20, 21 20:5
<b>Regulations</b> 9:8	<b>requested</b> 19:7	<b>sales</b> 11:21 12:15, 16	<b>specific</b> 19:22
<b>rehearing</b> 21:21	<b>requests</b> 20:21 25:1	<b>Salvatore</b> 17:21 18:19	<b>split</b> 14:25 21:18
<b>reimbursement</b> 2:7 8:8,22 9:5,11, 25 10:15 11:17 12:1,4 14:5 19:13, 19,23 20:4,7 27:23	<b>required</b> 25:14 27:1	<b>SARA</b> 3:6	<b>standard</b> 14:22 16:5 25:12
<b>rein</b> 23:8	<b>requirement</b> 13:12,13,14,15, 18,24 16:10 17:13,18 18:9,16, 21 26:14,19,22	<b>satisfied</b> 13:7 15:24	<b>stands</b> 7:16
<b>rejected</b> 18:11	<b>requirements</b> 13:7,11	<b>satisfy</b> 14:12 15:20 16:5	<b>start</b> 14:22
<b>related</b> 8:23 9:6	<b>requires</b> 19:18	<b>section</b> 9:7,8 11:22 13:5,9 14:2, 4 16:17,18 19:13, 15,24 22:18 26:6, 17 28:3,7 29:4,6,8	<b>state</b> 2:1,21 23:13 24:14
<b>relevant</b> 11:19 12:7 16:9 17:11,	<b>reserve</b> 10:24		<b>state's</b> 24:13
			<b>stated</b> 9:13,17
			<b>statement</b> 4:12, 13,14 11:13 16:23 21:9 26:1
			<b>stating</b> 5:11
			<b>statute</b> 14:3,8 19:16
			<b>stenographer</b> 18:13

**stop** 30:6  
**streaming** 30:6  
**Street** 2:16  
**strong** 23:7,11  
**subdivisions**  
  26:8  
**submit** 6:13  
  29:19,20,22  
**submitted** 6:16,  
  18 7:22 29:25  
**submitting** 6:19  
**subsequently**  
  13:4  
**substance** 16:14  
**substance-over-**  
**form** 17:16  
**substantial** 14:1,  
  7,9 15:11,19  
  18:23,25 22:17  
  28:9  
**substantially**  
  9:3,23 11:25 12:3  
  14:10,16,18,24  
  15:14 16:3,7  
  17:13,25 18:22  
  19:2,8,12 22:12,  
  20 23:9 24:6  
  26:11 29:12  
**substantive** 18:2  
**suffer** 25:8  
**suffers** 24:16  
**summarily** 21:21  
**support** 6:16 7:22  
  16:11  
**Supreme** 16:12  
**susceptible**  
  21:12  
**system** 24:13

---

**T**

---

**talked** 27:18

**tasks** 23:14  
**tax** 2:2 3:13,14  
  5:7,23,24 8:20  
  11:16,19 12:3,8  
  13:6,8,18,19  
  14:15,25 15:2,4,6,  
  9,12,16,17,22,23  
  16:1,7,15,19 17:9,  
  11,19 18:6,11,19,  
  22 19:2,11,25  
  20:1,18,22 21:14  
  22:25 23:23 24:5,  
  13 26:2,15,18,21  
**Taxation** 9:7 14:4  
  22:6,18 26:5 28:6  
  29:3,6,8  
**taxes** 15:7  
**taxpayer** 5:16  
  13:10,15,16,23  
  21:10,11 22:3,5,7,  
  10 23:6,15,17  
  24:1,7,11,14,15,  
  17,23 25:1,3 29:2  
**taxpayer's** 8:19  
  22:16 23:7,10  
  24:12 25:5,15,17  
  29:4,10  
**taxpayers** 24:10,  
  15,19 25:8  
**tells** 15:5  
**ten** 21:15 23:5  
**tenant** 12:25  
**term** 19:14  
**testifying** 6:3  
**testimony** 10:8  
**theory** 17:20,25  
**things** 16:14  
**thought** 7:8  
**three-member**  
  15:7  
**TIC** 12:25  
**time** 5:9 10:2,16,  
  18,24 18:3 23:4,  
  17 24:25 25:18

26:15 27:10,14,  
  19,20,21,25  
  28:11,16,18  
**Title** 9:8  
**today** 5:8,19 6:3,6  
  26:7 28:4 29:7  
  30:6  
**today's** 30:5  
**track** 10:17,18  
**transaction**  
  11:21,23 16:15,  
  16,18 17:10,24  
**transactions**  
  13:9  
**TRANSCRIPT**  
  2:15  
**transcripts** 21:16  
**transferred** 17:4  
**treatment** 16:15  
**true-seller** 17:17  
**Tuesday** 2:17 5:1  
**turn** 13:25  
**Turning** 19:7

---

**U**

---

**ultimately** 22:4  
**underlying** 7:11  
  9:1,2,6,23 12:8  
  14:24 15:24 16:3  
  18:5 19:4 20:15  
  21:12,17,24  
  22:13,22 23:18  
**understand**  
  24:24 27:15  
**understanding**  
  6:2  
**Understood** 7:24  
**uploaded** 7:5

---

**V**

---

**versus** 7:7

---

**W**

---

**W-E-E-D** 5:14  
**wait** 24:1  
**waited** 23:24  
**waiting** 24:2  
**wanted** 6:4 27:20  
**warranted** 12:6  
  20:8  
**wasted** 23:18  
**website** 15:6  
**Weed** 3:9 4:13,15  
  5:13,14 6:3,4,24  
  7:2,5,12,24 8:10,  
  11 9:12,14 10:20,  
  21 21:2,4,7,10  
  25:21 27:8,15  
  28:3,13,20,23  
  29:2,16,19,20  
**weeks** 12:17 30:3  
**weight** 27:5  
**Wertin** 25:12  
**wholly** 22:25  
  23:18 24:22  
**wishes** 7:1  
**wishing** 13:10  
**witnesses** 6:8  
**work** 23:22  
**written** 30:4  
**wrong** 24:12

---

**Y**

---

**year** 21:14 23:25  
  24:1  
**years** 8:24 21:15

23:5,21 24:17