

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF:)

JANUS CAPITAL GROUP, INC.
& SUBSIDIARIES,

Appellant.

OTA NO. 20096605

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Wednesday, April 19, 2023

Reported by:

ANGEL LOVE
CSR No. 13845

Job No. :
41355 OTA

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF:

JANUS CAPITAL GROUP, INC.
& SUBSIDIARIES,

Appellant.

)
)
) OTA NO. 20096605
)
)

TRANSCRIPT OF PROCEEDINGS, taken at
400 R Street, Sacramento, California,
commencing at 9:10 a.m. and concluding
at 12:06 p.m. on Wednesday, April 19, 2023,
reported by ANGEL LOVE, CSR No. 13845, a
Certified Shorthand Reporter in and for
the State of California.

1 APPEARANCES:

2
3 Panel Lead:

HON. SARA HOSEY

4
5 Panel Members:

HON. SHERIENE RIDENOUR
HON. OVSEP AKOPCHIKYAN

6
7 For the Appellant:

PAUL MELNICZAK
YONI FIX

8
9
10 For the Respondent:

AMANDA SMITH
Tax Counsel

11
12 MARGUERITE MOSNIER
Tax Counsel

13
14 DELINDA TAMAGNI
Hearing Representative

I N D E X

E X H I B I T S

(Appellant's Exhibits 1-6 were received at page 7)

(Appellant's Exhibit 8 was received at page 7)

(Respondent's Exhibits A-I were received at page 7)

(Respondent's Exhibit J was received at page 7)

P R E S E N T A T I O N

PAGE

ISSUE 1

By Mr. Fix	8
By Ms. Smith	22
By Ms. Mosnier	23
By Mr. Fix	33

ISSUE 2

By Mr. Melniczak	40
By Ms. Smith	57
By Mr. Melniczak	69

ISSUE 3

By Mr. Melniczak	91
By Ms. Smith	100
By Mr. Melniczak	105
By Ms. Smith	108
By Mr. Melniczak	110

1 Sacramento, California; Wednesday, April 19, 2023

2 9:10 a.m.

3
4 JUDGE HOSEY: We're now on the record in the
5 Appeal of Janus Capital Group, Inc. and Subsidiaries.
6 OTA Case Number 20096605. Today is April 19, 2023, and
7 it is 9:10 a.m. We're in Sacramento, California.

8 I am the lead Administrative Law Judge, Sara
9 Hosey. And with me today are Judge Sheriene Ridenour and
10 Judge Ovsep Akopchikyan.

11 Can I have the parties identify themselves for
12 the record, starting with Appellants.

13 MR. MELNICZAK: Good morning. Paul Melniczak,
14 from Reed Smith. Here for the Appellant.

15 MR. FIX: Yoni Fix, from Reed Smith, for the
16 Appellant.

17 JUDGE HOSEY: And Respondents.

18 MS. SMITH: Amanda Smith, for Respondent.

19 MS. MOSNIER: Marguerite Mosnier.

20 MS. TAMAGNI: Delinda Tamagni.

21 JUDGE RIDENOUR: Appellants, pretty much you
22 have to have the mic so close to your mouth, otherwise we
23 can't hear you.

24 MR. FIX: It's really uncomfortable.

25 JUDGE RIDENOUR: Yes, it is, as you can tell.

1 But if you'd just make sure to do that, that would be
2 great.

3 JUDGE HOSEY: Thank you.

4 The issues on appeal today are, one, does the
5 Office of Tax Appeals have jurisdiction to declare a
6 regulation invalid.

7 Two, if the answer to Issue 1 is affirmative,
8 has Appellant established that Regulation
9 Section 25137-14 is invalid because it was not
10 promulgated in 2007, in accordance with the
11 Administrative Procedures Act or became inoperative when
12 Section 25136 was amended by California voters in 2012,
13 to provide that sales from services are in the state to
14 the extent the purchaser of the service received the
15 benefit of the service in the state.

16 And three, is Regulation Section 25137-14 the
17 standard apportionment rule for assigning Appellant's
18 service receipts.

19 As for exhibits, we marked Exhibits 1 through 6
20 for Appellant, and A through I for Respondent, the
21 Franchise Tax Board, at the prehearing conference.
22 Exhibits 1 through 6 and A through I were presented and
23 discussed.

24 Appellants, do we have any objections to the
25 exhibits?

1 MR. FIX: No.

2 JUDGE HOSEY: Respondent, any objections to the
3 exhibits?

4 MS. SMITH: No.

5 JUDGE HOSEY: Having no objections, Exhibits A
6 through I, and 1 through 6, are now admitted as evidence
7 into the record.

8 (Appellant's Exhibits 1-6 admitted.)

9 (Respondent's Exhibits A-I admitted.)

10 JUDGE HOSEY: We have new exhibits today. We
11 have Exhibit 8, from the Appellants, which were redacted
12 in the post conference orders submitted last week.

13 Do we have any objections from the Franchise Tax
14 Board?

15 MS. SMITH: No.

16 JUDGE HOSEY: Thank you. Exhibit 8 is now
17 admitted into the record.

18 (Appellant's Exhibit 8 admitted.)

19 JUDGE HOSEY: We also have Exhibit J, from the
20 Franchise Tax Board.

21 Do we have any objections from Appellant?

22 MR. FIX: No.

23 JUDGE HOSEY: Thank you. Exhibit J is now
24 admitted as evidence into the record.

25 (Respondent's Exhibit J admitted.)

1 JUDGE HOSEY: All right. This is the open
2 session portion of our hearing today. We'll go ahead and
3 start with arguments from Appellants on Issue 1.

4 Are we ready to begin presentation?

5 MR. FIX: Yes.

6 JUDGE HOSEY: Okay. You have 90 minutes, I
7 believe. So go ahead when you're ready.

8 MR. FIX: Thank you.

9 Good morning, Honorable Judges.

10 Can you hear me okay?

11 JUDGE HOSEY: Yes.

12 MR. FIX: Okay. Great.

13 So as part of the argument today, we'll discuss
14 really three different parts of this case. The first
15 part, which I will address, deals with OTA's jurisdiction
16 to invalidate certain regulations.

17 Part two will be whether the FTB's special
18 apportionment Regulation 25137-14 is invalid for a couple
19 of independent reasons that my colleague, Mr. Melniczak,
20 will address.

21 And then finally, part three will be finally how
22 to properly source Appellant's service receipts from
23 providing investment services to its clients under
24 California Revenue Tax Code 25136.

25 To start, I think it makes sense to kind of

1 begin at the beginning of the OTA, and kind of give some
2 historical background before getting kind of to the crux
3 of the case, with respect to jurisdiction.

4 So, as you know, the OTA's powers are derived
5 from its enabling legislation, Assembly Bill Number 102
6 and 131, which transferred to the OTA the various duties,
7 powers, responsibilities of the State Board of
8 Equalization, necessary or appropriate to conduct appeal
9 hearings.

10 So not surprisingly in the OTA regulations, on
11 the books, in Section 30104, that defines the OTA
12 jurisdiction, it's similar to the prior section that
13 governed the Board of Equalization's jurisdiction, which
14 was Regulation Section 5412. And that regulation, before
15 its repeal, had defined the jurisdiction of the BOE.

16 It's important to understand the chronological
17 history of the BOE's regulatory language and subsequent
18 case law, as well as administrative decisions by the BOE,
19 to understand what is the OTA's jurisdiction today.

20 Importantly, the regulation that governed the
21 BOE's powers, which were transferred to the OTA,
22 discussed that -- whatever limitations applied. And
23 those limitations were that the OTA -- is that the BOE --
24 sorry -- was limited by essentially Article 3,
25 Section 3.5, of the California Constitution, that

1 essentially said that an administrative agency or board
2 cannot invalidate a statute on the basis that it is
3 unconstitutional under the California or federal
4 constitution.

5 Other than that, the BOE and, today, the OTA, by
6 succeeding to those powers, has the authority to
7 invalidate, we believe, regulations. And there's also
8 obviously the argument that the OTA could invalidate
9 anything that is not on the basis of constitutionality,
10 but I think this case today is much simpler because we're
11 not going to be asking you to invalidate a statute today.

12 Instead, we're going to be focusing on a
13 regulation, and I will explain why what we're asking
14 today, and the OTA's jurisdiction to rule in this case
15 today, is within the BOE's jurisdiction, as well as
16 within the OTA's precedential decisions on point.

17 So let me start with some of the arguments that
18 might come up today by the FTB, which involve who has
19 jurisdiction to invalidate a regulation. And I expect,
20 based on their briefs, they will say that the sole
21 jurisdiction to invalidate regulations is vested in the
22 OAL by the courts, and they'll cite to Government
23 Code 11350, and I will explain why that code section
24 doesn't stem from that.

25 In fact, that's an issue that has been looked at

1 by the courts and specifically address the fact that
2 Government Code 11350 doesn't stand for the proposition
3 that only the OAL and only the courts can invalidate
4 regulations. Rather, it stands for the fact that the
5 legislator intended to provide taxpayers with an
6 opportunity to ask for declaratory relief by the courts
7 to rule that a certain regulation is invalid.

8 The intention behind that was never to take away
9 other remedies that are available by law to taxpayers.

10 Specifically, if you look to -- there's a
11 California appeals case that deals specifically with this
12 issue with -- with Government Code 11350, which
13 specifically said that -- and I'll -- the name of the
14 case is Stoneham V. Rushen.

15 It's a Court of Appeals case from the -- 1984,
16 that specifically said the purpose of Government
17 Code 11350, which provides for independent declaratory
18 relief to challenge validity of regulations, so only
19 talking about declaratory relief action is available, but
20 was not with intention to limit available remedies
21 available by law, such as providing -- taking that action
22 in controversy.

23 Instead, it was an alternative option for
24 taxpayers who did not want to enter into conflicting
25 actions in court, meaning being assessed or in refund,

1 but rather wanted to get declaratory relief directly from
2 the Court, instead of going to the OAL or filing a refund
3 or protest.

4 That same holding was held in -- by the
5 California Supreme Court, in Chas L. Harney, Inc.
6 V. Contractors State License Board, in 1952, which said
7 that, by the enactment of the section, the legislator
8 must have intended to permit persons affected by such a
9 regulation to test its validity without having to enter
10 into contracts with third persons in violation of the
11 terms or subject themselves to prosecution or
12 disciplinary proceedings.

13 So again, both the California Supreme Court and
14 the Court of Appeal in California said, Government
15 Code 11350 was not put on the books by the legislator to
16 limit or to give the OAL sole jurisdiction or to the
17 Court sole jurisdiction. Rather, it's pretty clear from
18 the text of that section that it's only with respect to
19 judicial declaration as to validity of regulation.

20 We're talking about declaratory relief. You
21 still have the ability to bring other actions in court to
22 invalidate a regulation such as in a conflicting action
23 controversy, such as the case today.

24 JUDGE RIDENOUR: May I interrupt, please? Can
25 you slow down just a little bit, please.

1 MR. FIX: Of course.

2 JUDGE RIDENOUR: Thank you so much.

3 MR. FIX: No problem.

4 So that takes care of Section 11350, which the
5 FTB relies on to -- for this improper allocation of sole
6 jurisdiction to the OAL to the courts. That's not the
7 case.

8 Secondly, as was interpreted by the Board of
9 Equalization in its regulations, the California
10 Constitution Article 3, Section 3.5, specifically says
11 that the statute -- that agencies cannot invalidate --
12 cannot refuse to enforce a statute or refuse to enforce a
13 statute on the basis of it being unconstitutional.
14 That's all it says. It doesn't say anything else, and
15 the plain meaning of the statute is to enforce or declare
16 a statute on the basis of unconstitutionality.

17 So if a taxpayer brings any other action to
18 invalidate a statute, they could do that.

19 Thankfully, this case is much simpler than that
20 because this case does not involve a statute. It
21 involves a regulation. And the important part here and
22 consistent with the OTA's own precedent, which is the
23 Talavera case, the precedential case in which the OTA
24 said that the OTA did not have jurisdiction to declare a
25 quasi-legislative regulation invalid because it had the

1 force and effect of the statute.

2 So I'll stop there, and I'll point to -- on the
3 easel, which hopefully provides for a clear
4 representation of two types of regulations that --
5 categories that the California Supreme Court has
6 identified. One are quasi-legislative regulations, and
7 the other one are interpretive regulations.

8 The distinction between the two is that, if you
9 have a quasi-legislative regulation, it has the force and
10 effect and dignity of a statute.

11 So if you fall into the bucket of having a
12 quasi-legislative regulation, then you obviously have to
13 look to Article 3, Section 3.5, of the California
14 Constitution and see whether or not the taxpayer is
15 bringing an action to invalidate that specific
16 legislative regulation on constitutional grounds.

17 But if you are in the interpretative regulation
18 bucket, it's not treated as a statute. Instead, it is
19 simply treated as is a regulation that would -- with
20 lesser deference. Obviously there's some deference to
21 it, but the level -- the standard of review is much lower
22 than it would be if it was quasi-legislation.

23 And the important piece here is: What's a
24 distinction between the two? How do you figure out
25 which is -- which regulation you have at issue?

1 And the Talavera case cites kind of the main
2 case on point, which is the Yamaha case, which was then
3 preceded by the Western States case. And in those cases,
4 they summarize California precedent on point, where they
5 say the distinction between the two is that -- in both
6 cases you have delegation of power to -- to the
7 administrative agency to pass the rules and regulations.

8 The difference is one is a delegation of power
9 which is to "fill in the gaps." That's important
10 language. All of these cases talk about fill in the
11 gaps. Fill in the details that the statute doesn't
12 otherwise have. What that means is, and the courts have
13 talked about this is, fill in the gaps so that it would
14 be possible to enforce some legal standard under the
15 statute.

16 Meaning, without the regulation filling in the
17 gap, it would be difficult for citizens, taxpayers, to
18 understand what the standard -- what is an enforceable
19 standard? Without the existence of that
20 quasi-legislative regulation, there would be no
21 enforceable standard to apply.

22 On the other hand, if you have a delegation of
23 power to pass rules and regulations to an administrative
24 agency, but is not to fill in the gap, but rather it is
25 to interpret the meaning and effect of an existing

1 statute, that has an enforceable statute, an existing
2 enforceable legal standard.

3 So that the distinction is: One statute does
4 not have a legal enforceable standard on its own. There
5 is some gaps in there that need to be filled.

6 And the other one is: There is a legal
7 enforceable standard, and the interpretative power that's
8 being delegated is simply telling the agency, you have
9 expertise in this, please interpret how to apply the
10 enforceable legal standard at issue to the facts of the
11 citizen or taxpayer in that case.

12 Now, the important part here is what are we
13 dealing with? Talavera, which is your precedential
14 decision on point, as well as cases that followed, all
15 talk about this distinction of: If you have a
16 quasi-legislative regulation as the dignity of law and
17 the OTA does not have the power to invalidate a statute,
18 a quasi-regulation.

19 Nowhere in the decisions, and correctly they
20 don't, say that the OTA does not have the power to
21 invalidate an interpretative regulation.

22 So the question that's important here, which is
23 the crux of this Issue 1, is: What do we have at issue
24 in this case? Do we have a quasi-legislation regulation,
25 or do we have an interpretative one?

1 And I think it's pretty easy to see what it is,
2 by applying that standard on the presentation there to
3 our case.

4 The difference is that, in our case and
5 Appellant's case, there is an existing enforceable
6 standard. California Revenue Tax Code 25136 provides for
7 the standard, which is you source service receipts to the
8 location that the purchaser received the benefit.

9 To take that a step further, that specific
10 California Revenue Tax Code 25136 says that the FTB shall
11 pass rules and regulations to enforce this statute. They
12 have. Regulation 25136-2 elaborates further on that.

13 So when you look at that, you have an
14 enforceable legal standard. The legal standard is you
15 source service receipts to the location the purchaser
16 received the benefit. There is no question here.
17 Whatever question that they were around, what that
18 standard is, 25136-2 addressed that.

19 So when the FTB passes 25137-14, you have to ask
20 two questions:

21 One, is there a delegation of power anywhere in
22 the statute?

23 And, two, is this a delegation to fill in gaps
24 because there is no existing enforceable standard, or is
25 it simply to interpret it?

1 And the statute -- the statutory delegation of
2 power in this case that the FTB will point to, and I
3 agree with, is the general delegation of power, which is
4 in California Revenue Tax Code 19503. That simply
5 says -- it's the general kind of broad language.

6 It says that FTB shall prescribe rules and
7 regulation to enforce parts X, Y, and Z, including
8 Chapter 11, which includes the apportionment at issue,
9 Section 25136 and Section 25137, Cal Revenue Tax Code
10 25137, that addresses alternative apportionment.

11 So we have a delegation of power. That is not
12 something that tells us whether it's a quasi or
13 interpretative regulation yet.

14 The next question is, what does Dash 14 say?
15 Dash 14 says, you will source your receipts to the
16 location of the shareholders. Okay. If you take that
17 enforceable legal standard away, do you have a legal
18 enforceable standard in place?

19 If the answer is no, then you have
20 quasi-legislative. If the answer is yes, you take Dash
21 14 off the books and you have an enforceable legal
22 standard, that means that it is an interpretative
23 regulation power being delegated to the FTB.

24 And that answer is it's the latter, because when
25 you take away Dash 14, the enforceable legal standard is

1 in California Revenue Tax Code 25136, and the dash 2
2 regulation.

3 So what does that mean?

4 That means that we have not a quasi-legislative
5 regulation that has the dignity of law. Instead, what we
6 have is an interpretative regulation that is not a
7 statute in the OTA under the fact that it succeeded to
8 the powers of the BOE, and is only limited by California
9 constitution. Article 3, Section 3.5 has the authority
10 to review and invalidate an interpretative regulation.
11 Okay.

12 Importantly, this decision, free to rule this
13 way, is not asking you to change your precedent. This is
14 consistent with Talavera, and the nonprecedential
15 decisions that have applied to Talavera. It's simply
16 saying, if it is not quasi-legislative, then it is not a
17 statute, which therefore the OTA has jurisdiction to rule
18 on and to decide whether it's invalid.

19 And parts two and three of today, the discussion
20 will go around whether or not it is invalid or not and
21 the important part here is that the delegation of power
22 to pass regulation in the general section of California
23 Revenue Tax Code 19503 cannot be relied on, and there is
24 no precedent on point that will say that when there is a
25 general grant of authority to pass rules and regs to an

1 administrative agency, to enforce its mandate, that that
2 means that every regulation that they pass is
3 quasi-legislative.

4 That would be a ridiculous outcome and, frankly,
5 has been addressed by the California Supreme Court in
6 Western States where it said that would make the
7 distinction between interpretative and quasi-legislative
8 regulation, one, without a difference, which makes no
9 sense.

10 In fact, it has to be a situation where you have
11 a delegation of power to fill in gaps where there is no
12 enforceable legal standard, which is not the case here.

13 I would like to address also, obviously, the
14 BOE. I think everyone in the room is aware of the BOE's
15 use of its power to invalidate regulations when they're
16 interpreting the -- the ability for the BOE, when it was
17 still reviewing appeals to invalidate regulations.

18 And one of those decision is Save Mart. And the
19 FTB will tell you that that is not good law because the
20 BOE did not look to whether or not it had jurisdiction to
21 invalidate a regulation. And I think that's a little
22 misleading.

23 If you read the Save Mart case, Save Mart case,
24 the FTB specifically brought up Yamaha, the California
25 Supreme Court that discusses a distinction between

1 interpretative and quasi-legislative regulations, and
2 brought that and briefed it to the BOE, but also
3 admitted, conceded, that the regulation at issue was
4 interpretative.

5 In that case, the BOE found that the regulation
6 went beyond the statute and invalidated it.

7 So, to me, Save Mart is still good law and
8 actually is consistent with Talavera. Talavera involved
9 a quasi-legislative delegation of power, a
10 quasi-legislative regulation where there was -- there was
11 a gap in the statute as to the bad debt deduction and how
12 and when and to what amount you need to be able to deduct
13 that, and specifically in the statute it asked for that
14 FTB to fill that in, that gap -- and they did in the
15 quasi-legislative regulation and to the contrary, if you
16 look at Save Mart, you have an interpretative regulation.

17 When that is the case the BOE, and now the OTA,
18 has jurisdiction to invalidate it because it's not a
19 statute under law.

20 And I think with that, I would like to just make
21 sure that I reserve whatever time is left for rebuttal of
22 this part one. Thank you.

23 JUDGE HOSEY: Thank you, Mr. Fix. You have
24 about 20 minutes remaining, so we'll hold on to that
25 temporarily. Thank you.

1 Moving to the Franchise Tax Board. Are you
2 ready for your presentation on Issue 1?

3 MS. SMITH: Yes, we are. I want to say good
4 morning. I'm -- again, I'm Amanda Smith. I'm the tax
5 counsel three with the Franchise Tax Board. And with me
6 today are Ms. Marguerite Mosnier, an attorney five, and
7 Delinda Tamagni, ACC of the Multi State Tax Bureau, with
8 the Franchise Tax Board.

9 And at heart, this is really a straightforward
10 case where we are applying settled law to undisputed
11 facts. The Appellant in this case is a mutual fund
12 service provider required to apportion its income to
13 determine its California tax liability.

14 California law is clear that Regulation
15 25137-14, which I will sometimes refer to as Dash 14, is
16 standard apportionment for mutual funds service providers
17 like Appellant to a portion their income.

18 That's actually how Appellant filed its -- its
19 taxes for the years at issue in this case. However,
20 later it did file a claim for refund, stating that Dash
21 14 is no -- or, is not, excuse me, standard
22 apportionment. But as we go through our presentation
23 today, we will demonstrate that Dash 14 continues to be
24 standard apportionment and must be applied to apportion
25 the Appellant's income.

1 The first issue we're going to address is
2 jurisdiction because Appellant argues that the OTA has a
3 jurisdiction to -- or, that it should invalidate
4 Regulation 25137-14 entirely. And it's Respondent's
5 position that the OTA will act as such jurisdiction.

6 To go into this matter further, I am going to
7 hand over the microphone to my colleague, Ms. Mosnier.

8 MS. MOSNIER: Thank you, and good morning.

9 Before I start, I would like to thank first
10 Mr. Melniczak and his team for their willingness to work
11 so quickly with Franchise Tax Board after the
12 prehearing conference minutes and orders were issued to
13 work with us to get a joint updated statement of the
14 issues and single suit.

15 And I thank you, Judge Hosey, for your quick
16 consideration and issuance of that post confirmation
17 order. It really, I think, helped both parties probably
18 prepare for the hearing today.

19 So turning to Issue Number 1.

20 The Office of Tax Appeals does not have
21 jurisdiction to invalidate a regulation. The law is
22 clear that only a court has that power. The OTA is a
23 tribunal with limited jurisdiction, and as it noted in
24 its 2019 precedential opinion, the Appeal of Liljestrands
25 Irrevocable Trust.

1 The OTA's jurisdiction is limited by statute,
2 and it cited approvingly to the Board of Equalizations'
3 1995 decision in Appeal of Schillace that held that an
4 agency cannot act in excess of the jurisdictional
5 limitations conferred upon it.

6 In general, the OTA's rules for tax appeals
7 conferred jurisdiction over appeals from proposed
8 assessments, claim denials, interest and penalty
9 abatement questions and spouse determinations, taxpayer
10 bill of rights, reimbursement claims and the like.

11 There is nothing in Regulation Section 30103
12 that states that the -- or hints even, that the OTA has
13 the power to invalidate a regulation. And that's correct
14 because the legislature designated the state court as the
15 sole forum to determine the validity of a regulation.

16 It did so when it enacted the Administrative
17 Procedures Act, which governs the adoption, amendment,
18 repeal, and is relevant to this appeal, challenges to an
19 existing regulation. And it's found -- the APA is found
20 in Chapter 3.5 of the Government Code, Sections 11340
21 through 11361.

22 The legislature designated a single state
23 agency, the Office of Administrative Law, or OAL, to
24 oversee state agency and departments compliance with the
25 Administrative Procedures Act when it promulgated

1 regulations.

2 And in addition to setting out the statutory
3 requirements for adoption, amendment, and appeal of
4 regulations, the APA also sets out the statutory remedy
5 to challenge the validity of a regulation.

6 And as Appellant noted, it's found in Government
7 Code Section 11350, and it states:

8 "Any interested person may obtain
9 a judicial declaration as to the validity
10 of any regulation or order of repeal by
11 bringing an action for declaratory relief
12 in the Superior Court in accordance with
13 the Code of Civil Procedure."

14 And that is the only remedy the APA sets out to
15 challenge the validity of a regulation. And that section
16 cannot be read to include other state agencies.

17 First, the phrase, "action for declaratory
18 relief in Superior Court," is unambiguous.

19 Second, the legislature knew how to provide
20 review and determination authority to a state agency
21 because it did so in Article 6 of the APA, which
22 addresses the review of a proposed regulation. Those are
23 Sections 11349 through 11349.6. And the legislature did
24 so in Article 7, review of existing regulations,
25 conferred power to the office administrative -- of

1 administrative law, to take action when it believed that
2 a regulation does not meet the requirements of
3 Section 11349.1. And it empowered the OAL to act when it
4 is notified that statutory authority for an existing
5 regulation has been repealed or when a regulation becomes
6 ineffective or inoperative by its own terms.

7 The OT -- the OAL has power to act under those
8 circumstances to require the promulgating agency to show
9 cause why the regulation in question should not be
10 repealed.

11 But it's important to the note that even this
12 grant of authority to the Office of Administrative Law
13 does not invest sole decision-making power in the OAL,
14 which must notify both the legislature and the governors,
15 so both the legislative and executive branches of the
16 state government, of its proposed decision and vests the
17 governor with the power to override OAL's determinations.

18 In fact, 11349.9 vests the governor's office
19 with the right to review adverse OAL determinations
20 repealing a regulation.

21 So we see here the legislature's intent not to
22 allow even the one state agency it has authorized to
23 ensure compliance with the Administrative Procedures Act
24 to make a unilateral, unappealable, determination as to
25 the validity of the regulation. But that is precisely

1 with the Appellant here today is asking the OTA to do.

2 Further, the OTA recognizes the limits of its
3 authority in this area and that it does not have the
4 power to invalidate a regulation.

5 And before I go further in this, I would say
6 that I would emphasize that, as the OTA said in the
7 Liljestrand Appeal opinion, its jurisdiction is limited
8 by its enabling legislation. So that is to say, in other
9 words, that it is not established by whatever authority
10 its predecessor, the Board of Equalization, had.

11 That entity had jurisdiction that was limited by
12 its enabling legislation, which was the California
13 constitution. This agency, the OTA, is limited by a
14 different set of authorities.

15 So the OTA understands the limits of its power
16 to act in this area. It did so, as you have heard, in
17 Appeal of Talavera in 2020. The OTA correctly concluded
18 that the sales and use tax regulation at issue was a
19 quasi-legislative regulation and had the force and effect
20 of a statute and, therefore, it could not be invalidated
21 by the OTA because of Government Code Section 11350,
22 Subdivision (b), which limits the right to invalidate a
23 regulation to the courts, and it is clear from Government
24 Code Section 15672 that the OTA is not a court.

25 Additionally, since issuing the Talavera

1 opinion, the OTA has issued franchise and income tax
2 opinions that reached the same conclusion. It has no
3 authority to invalidate a franchise and income tax
4 regulation.

5 In its opinion in Appeal of Hajikhani and
6 Shepard, a 2021 opinion, the issue was the interpretation
7 of Regulation Section 19 -- excuse me, 19133, regarding
8 imposition of the demand penalty. In that case, the OTA
9 found the regulation was quasi-legislative under a Yamaha
10 corporation analysis, because FTB has a legislative grant
11 of authority to promulgate regulations for Revenue and
12 Taxation Code Section 19503, and that the regulation,
13 therefore, has the force and effect of a statute, and the
14 majority sustained FTB's interpretation of that
15 regulation.

16 The dissent in that opinion had argued a
17 specific case, I think it was the Cook case, as evidence
18 that the regulation should be disregarded. And the
19 majority countered that argument by noting that the case
20 in question had to do with the determination of the
21 validity of a regulation. And OTA noted that that was
22 not the issue in the case.

23 It was not regarding the validity of a
24 regulation. It was regarding the interpretation of a
25 regulation. And that, perhaps, is an outcome

1 determinative distinction, and I'll address it a little
2 more in detail later on.

3 After the Hajikhani opinion, the OTA, in 2022,
4 issued the opinion in Appeal of Faries and in the OTA's
5 consideration whether a statute Revenue Tax Code
6 Section 17952, or a personal income tax regulation,
7 Section 17951-4, controlled determination of California
8 source income.

9 The OTA noted again that that regulation was
10 quasi-legislative because it was promulgated under the
11 authority both in Revenue and Taxation Code
12 Section 17954, and Section 19503, and, therefore, the OTA
13 agreed with the parties' assertion that the OTA did not
14 have authority to invalidate that regulation, citing both
15 to Government Code Section 11350 and to the Talavera
16 opinion. It's on Page 11 of that opinion.

17 And next came the opinion in Bed Bath and
18 Beyond. Also issued in 2022. That was an appeal from a
19 denial. FTB's denial of a refund claim based on the
20 addition of gross receipts from treasury functions and
21 vendor allowances to the sales factor denominator.

22 OTA found that per Sections 19503, and 25137,
23 the very statute related to regulation at issue here
24 today, the OTA found under 25137, FTB had promulgated
25 special apportionment regulations to address situations

1 where application of the Uniform Division of Income for
2 Tax Purposes Act, or the acronym UDITPA, would not fairly
3 reflect the extent of a taxpayers business activity in a
4 state.

5 OTA rejected the Appellant's argument that the
6 regulation, in that case it was Regulation 25137,
7 Subdivision (c)(1)(D), contradicted case law, the
8 Microsoft decision, regarding treasury receipts in the
9 sales factor, and it rejected, also, the Appellant's
10 concerns regarding the validity of the regulation, and it
11 did so by explaining that the OTA lacked authority to
12 invalidate FTB's regulations with cites, again, to
13 Government Code Section 11350 and to Talavera.

14 And to lay this issue to rest, the OTA has
15 proposed two amendments to its current Regulation
16 Section 30104.

17 First proposal is to add subdivision (D) to
18 state outright that it lacks jurisdiction to determine
19 the validity of a regulation. And secondly, to add
20 subdivision (I) to state that the Office of Tax Appeals
21 may not issue declaratory relief, which is what a
22 determination of validity or invalidity of a regulation
23 is.

24 Further, Appellant's reliance on the Board of
25 Equalizations Save Mart decision, its 2002 opinion, and

1 on Whitcomb Hotel versus California Employment
2 Commission, to confer authority on OTA to invalidate a
3 regulation, are misplaced.

4 The Whitcomb Hotel decision addressed an
5 administrative rule, not a regulation, promulgated in
6 conformity with the APA, and in any event, in that
7 decision, there was no issue and no resolution of an
8 issue whether the -- whether the employment commission
9 had authority to invalidate a regulation. It just didn't
10 address the power of a state agency to invalidate a
11 regulation.

12 Save Mart, likewise, is no help to the
13 Appellant. It too did not consider or rule on the
14 agency's or, in that case, the board's authority to
15 invalidate a regulation.

16 I don't know -- Appellant's counsel referred to
17 what was in briefing. That is not, as I've been able to
18 determine, a public record, so I note not only that the
19 opinion does not raise the issue of the power of the
20 Board of Equalization to invalidate a regulation, there
21 is no discussion of that issue, and there is no
22 determination of that issue.

23 That opinion, like the Hajikhani opinion by the
24 OTA, addressed simply the interpretation of a regulation.
25 And that is where probably Yamaha is the most -- is the

1 most important. But even Yamaha, while providing
2 guidance on factors to consider when determining --
3 determining whether a regulation is interpretive or
4 quasi-legislative for purposes of determining the scope
5 of deference to the agency's interpretation.

6 Even Yamaha does not address an agency's power
7 to invalidate a regulation because the issue in that case
8 was the interpretation, not the validity. Not even of a
9 regulation. In that case what was at issue were what
10 were referred to as "annotations." They were business
11 tax law guide -- guidelines that were opinions on summary
12 opinions.

13 So we see that the legislature has a specific
14 statutory scheme to challenge a regulation's validity, and
15 we see that the OTA has recognized that it cannot act on
16 that issue. And therefore, the OTA should, consistent
17 with Government Code Section 11350, consistent with its
18 opinions in Talavera, Hajikhani, Faries and Bed Bath and
19 Beyond, and consistent with the proposed regulatory
20 amendments to Regulation Section 30104.

21 It should hold that it lacks jurisdiction in
22 this appeal to determine the validity of a regulation,
23 including Regulation Section 25137-14.

24 However, in the event that the OTA determines
25 that it does have that authority, Ms. Smith will now

1 address the specific challenges the Appellants have
2 raised -- oh, I suppose, she will turn to that, but I
3 believe we will be going back first to the Appellant for
4 argument on that issue, and then she will take over from
5 there.

6 That concludes my presentation, and I didn't
7 know if you -- I'm happy to address questions now or
8 whether you're reserving questions for later. Thank you.

9 JUDGE HOSEY: Thank you, Ms. Mosnier. I think
10 we're going to go back -- before we have questions from
11 the panel to see if Appellants would like to respond.

12 Okay. Go ahead, Mr. Fix.

13 MR. FIX: Thank you. I thought the FTB made --
14 Respondent made a really good presentation, making my
15 argument for me frankly. And I'll address her -- her
16 arguments in order.

17 Starting with 11350. The FTB's taking too far
18 its interpretation of Government Code 11350. With all
19 due respect to Respondent, FTB, the courts have already
20 looked at what the legislator's intent was with respect
21 to Government Code 11350. That was addressed, as I
22 mentioned, during my opening statements in two cases in
23 California; one, the Court of Appeal decision and the
24 other one by the California Supreme Court, the Stoneham
25 V. Rushen, case from 1984 -- Stoneham is S-T-O-N-E-H-A-M,

1 V. Rushen, R-U-S-H-E-N -- in which it specifically said
2 that the purpose of Government Code 11350 was to provide
3 for independent declaratory relief. Respondent even read
4 that -- those exact words off the statute.

5 They specifically say, this is to provide
6 declaratory relief. Nowhere does it say that the OAL has
7 sole authority. Nowhere does it say that that is the
8 sole remedy available to taxpayers. And in the Stoneham
9 decision, it specifically said that, yes, this code
10 provides for declaratory relief action that you can bring
11 in court without having to go through the OAL's path to
12 declaratory relief.

13 That regulation should be invalidated because
14 the legislature wanted to provide and not limit available
15 remedies to challenging a regulation by -- without having
16 to bring a case of controversy where there's conflicting
17 actions.

18 That was also addressed by the California
19 Supreme Court in the Chas L. Harney Inc., V. Contractors'
20 State License Board case, 1952 case, where they
21 specifically said, by enacting this section, the
22 legislature must have intended to permit persons affected
23 by such a regulation to test its validity without having
24 to enter into contracts with third persons or subject
25 themselves to prosecution or disciplinary proceedings.

1 Between those two cases, the California courts
2 have said, it's clear that this is simply providing for a
3 declaratory relief path. This does not mean that you
4 are -- that precluded from bringing other legal remedies,
5 such as legal actions for damages, which are available
6 under the law.

7 And there is case law that you are allowed to
8 bring actions to administrative boards to invalidate
9 regulations. Those cases both at the California court
10 level and at the BOE. And frankly, it's consistent with
11 Talavera.

12 Second, I'd like to address the second point
13 about the Talavera case and the Hajikhani case. And
14 maybe -- I'll address it in order.

15 Talavera is the only precedential case on point,
16 and I mention that not because I think the Hajikhani case
17 is -- goes against the correct interpretation. I think
18 it actually supports our case.

19 Talavera specifically says, which is the only
20 precedential case here by the OTA, it says if you have a
21 quasi-legislative regulation, it has the dignity of
22 statutes. Okay. And the OTA does not have authority to
23 invalidate a statute.

24 If it's an interpretative regulation, you do
25 have that; right? That authority to review and

1 invalidate a regulation.

2 Now, as I mentioned in the Talavera case, the
3 standard applies. You have delegation of power to fill
4 in gaps in the statute. The -- that was done by the
5 CDTFA and, therefore, was found to be within the scope of
6 the statute and a quasi-regulation. Therefore, it could
7 not be invalidated.

8 But beyond that, it's important to note that the
9 OTA in its decision said, notwithstanding the fact that
10 we can not invalidate a regulation, we, the OTA, are
11 authorized under the Government Code to determine and
12 interpret the application of state and local taxes.

13 And they went further and said, even though it's
14 quasi-legislative, looking at it we think it's within the
15 scope of the statute and consistent, and therefore not
16 invalid.

17 So even in quasi-legislative cases, the OTA can
18 still look and determine whether or not a regulation is
19 invalid. It just can't invalidate it if it's quasi-
20 legislative, but thankfully in our case, that's not the
21 case. It's an interpretative regulation.

22 Now the Hajikhani case, I'm glad that the FTB
23 raised that case because it's just another example
24 where the -- it's consistent with the standard that we
25 articulated, which is quasi-legislative versus an

1 interpretative. Okay.

2 So the Hajikhani case, similar to Talavera,
3 involved -- specifically it was the demand penalty. So
4 by statute, and the FTB -- the statute said the FTB may,
5 and I'm paraphrasing, may apply a penalty for -- for
6 demand -- to the taxpayer, doesn't respond to demands for
7 information like returns, but didn't provide for an
8 enforceable standard --

9 JUDGE RIDENOUR: Excuse me really quick. The
10 stenographer gave me a look. Can you please slow down?

11 MR. FIX: Okay. The important part is that if
12 you apply -- Hajikhani is within -- under the standard
13 articulated in Yamaha, which was then repeated in
14 Talavera, the statute and the regulation at issue was a
15 quasi-legislative. Why is that?

16 Because when you look to the statute, it did not
17 have an enforceable standard. It was unclear what it
18 meant where a taxpayer did not comply with an information
19 request and when the FTB may apply a demand penalty.

20 So without a regulation in place, there's a gap
21 and there is no enforceable standard. Therefore, the
22 regulation and the delegation of power, in that
23 situation, is a delegation of quasi-legislative power.
24 Okay.

25 So consistent with that, Hajikhani, even though

1 not precedential is consistent with Talavera, which is
2 that OTA does not have jurisdiction to invalidate a
3 quasi-legislative jurisdiction.

4 Next point was the -- the proposed amendments.

5 Frankly, the proposed amendments, one, have not
6 been adopted and, two, I think is improper to even
7 mention given the fact that by -- under the Government
8 Code there is a potential here for prejudice, given the
9 fact that the -- the passing of regulation is within the
10 purview of the director, and the director of the OTA, by
11 statute, is not allowed to interfere with the decision-
12 making of the OTA.

13 And so I don't think that that -- those
14 initiatives by the director to pass regulation should
15 impact the decision as to whether the current regulation
16 on the books, which says that the OTA has the
17 jurisdiction to -- the only thing that it says is that
18 you cannot invalidate a regulation or statute based on
19 the constitutional grounds.

20 Our case does not involve constitutional
21 grounds. And two, it's consistent with Yamaha and
22 Talavera, in the fact that it doesn't involve a quasi-
23 legislative regulation.

24 And I think -- finally, I think the Faries case
25 that she mentioned, the parties conceded that it was --

1 that the OTA didn't have jurisdiction, since you were
2 conceding it was quasi-legislative. So it wasn't even an
3 issue. So to me that case is just consistent with
4 Talavera and other cases like Hajikhani, who simply are
5 applying the Talavera threshold.

6 So with that, I'll conclude and see if you have
7 any questions.

8 JUDGE HOSEY: Thank you, Mr. Fix.

9 I will go ahead and move to my panel to see if
10 we have any questions on Issue 1.

11 I will ask Judge Ridenour. Any questions?

12 JUDGE RIDENOUR: No questions at this time.

13 Thank you.

14 JUDGE HOSEY: Okay. Thank you.

15 Judge Akopchikyan?

16 JUDGE AKOPCHIKYAN: I'll wait until after
17 Issue 2 to ask questions.

18 JUDGE HOSEY: Okay. Thank you.

19 I did want to mention that the panel is aware of
20 the pending regulations that may apply to this case, but
21 as discussed in the minutes and orders, we're moving
22 forward with arguments, and we understand that's not --
23 have not been adopted and we're working with what we have
24 here.

25 So moving to Issue 2. We are still in open

1 session. We have Appellants --

2 Mr. Melniczak, are you presenting on Issue 2?

3 MR. MELNICZAK: Yes.

4 JUDGE HOSEY: Okay. Again, when you're ready.

5 Thank you.

6 MR. MELNICZAK: Great, thank you.

7 JUDGE HOSEY: Oh, and you have 45 minutes.

8 MR. MELNICZAK: Thank you.

9 JUDGE HOSEY: Okay. Go ahead.

10 MR. MELNICZAK: I'd like to start the second
11 part of the open session, Issue 2, by just giving a
12 little overview of the three different ways that receipts
13 for asset managers can be sourced, because -- across
14 states --

15 JUDGE RIDENOUR: I'm going to interrupt. Sorry
16 for all my interruptions to both parties, but I don't
17 think the stenographer can hear you. So if you can
18 please move the microphone closer to you, I would
19 appreciate that.

20 MR. MELNICZAK: Sure. Is that a bit better?

21 Thank you. I'll start from the top.

22 I just want to start by giving an overview of
23 how receipts for mutual funds service providers, like
24 Janus, are sourced. There's really three different
25 methods, three different ways in which they can be

1 sourced. The states across the country are split among
2 these three different methods and these three different
3 methods will come -- I'll refer to them often.

4 So just to give an overview, the first method I
5 want to cover is the cost of performance method, where
6 receipts are essentially sourced based on the location
7 where the activities are performed. That's the method
8 that California had in its statute prior to enduring the
9 first portion of when 25137-14 was promulgated.

10 That's the cost performance method.

11 The second method is the shareholder sourcing
12 method, and that's the method that the FTB promulgated
13 under the Dash 14 regulations.

14 And finally, the third different approach to
15 source and receipts is market sourcing. That's what
16 California, by voter initiative, switched to in 2013,
17 when they changed Statute 25136, and said that receipts
18 are sourced to the location where the purchaser receives
19 the benefit of the service.

20 So that's market sourcing, the third approach.

21 Now, like I mentioned, Dash 14 was promulgated
22 under the prior version of Statute 25136, which was
23 sourcing our receipts, mutual fund and otherwise, based
24 on the cost of performance method. And again, taxpayers
25 there had to look to where the -- where the services were

1 actually performed.

2 Also at that time, prior to 2013, the statute
3 had a property and a payroll factor. So it was
4 three-factor apportionment.

5 Now, while the cost performance rule wasn't in
6 effect back in 2007, the FTBA had promulgated the Dash 14
7 regulation because they believed that cost of performance
8 method did not fairly represent the -- the extent of
9 activities in the state for mutual funds service
10 provider. They felt it was distortive.

11 Now, the FTB didn't dispute the fact that Dash
12 14 conflicted with the statute. In fact, they
13 acknowledge it did conflict with the statute, and they
14 said the only way to -- it was clear that the only way
15 that Dash 14 read it could be promulgated was under the
16 FTB's authority under Section 25137.

17 Now, if the FTB wants to promulgate a reg under
18 25137, it needs to do two things.

19 One, as the language in the statute for 25137
20 indicates, the party invoking 25137 must show that the
21 allocation and apportionment provisions in the statute
22 don't fairly reflect the taxpayer's business activity.

23 And secondly, the FTB must comply with the
24 requirements of the Administrative Procedures Act, or the
25 APA.

1 So I want to talk about the APA first.

2 Now, as you saw in our briefs and our prehearing
3 statement, we've argued that Dash 14 was invalid, both
4 when it was initially promulgated, back in 2007, and
5 during the switch to market sourcing in 2013.

6 Now, the reason it was invalid back when it was
7 initially promulgated, in '07, is because the FTB didn't
8 comply with the requirements of the APA.

9 It's important to note the -- the purpose of the
10 APA. The purpose of the APA is to have transparency and
11 to encourage meaningful public communication in the
12 adoption of regulations.

13 The APA was also meant to address the
14 legislature's concern that complying with too many
15 regulations was becoming burdensome for taxpayers. And
16 now as we've argued in our brief, the FTB failed one of
17 the most important aspects of the APA, which is to
18 provide an adequate economic and fiscal impact statement.

19 And one of the purposes of that Economic Impact
20 Statement is to notify taxpayers of the cost of complying
21 with the regulation. This is an important step. And in
22 the FTB's impact statement, they simply noted that the
23 cost of complying with the regulation would be zero
24 dollars.

25 Not one single dollar of cost, they estimated,

1 it would cost for taxpayers to switch from the cost
2 performance method, which is where the services are
3 performed, to a shareholder sourcing method.

4 Under shareholder sourcing, a mutual fund
5 service provider would have to look at each of its --
6 each of its customers. And a large asset manager, like
7 Janus, may have --

8 JUDGE HOSEY: Okay. Can you slow down a little
9 bit?

10 MR. MELNICZAK: My apologies.

11 JUDGE HOSEY: Thank you so much. We really
12 appreciate it.

13 MR. MELNICZAK: Now, for a large asset manager,
14 like Janus, the cost of switching to a shareholder
15 sourcing approach is significant because Janus, and other
16 large asset managers, have hundreds if not thousands
17 of -- of customers located around the country, and they
18 would have to go to each individual customer, and not
19 know where the customer is located, they would have to
20 know where that customer's shareholder is located. And
21 for each individual customer --

22 JUDGE HOSEY: Okay. Sorry. Can you slow down a
23 little bit more?

24 MR. MELNICZAK: Yes.

25 JUDGE HOSEY: Okay. Thank you.

1 MR. MELNICZAK: So the difficulty in the
2 compliance for -- for an asset manager like Janus is they
3 would have to look to each of its hundreds if not
4 thousands of customers and identify where each of their
5 shareholders are. And to the extent any of them are
6 located in California, they would have to determine the
7 portion of receipts they received from their customer
8 that should be attributed to that -- attributable to that
9 shareholder.

10 That even means if -- for example, if a mutual
11 fund service provider had a pension fund in Arkansas,
12 which has pensioners throughout the country, they have to
13 find where each individual pensioner is located and find
14 out if any of them are located in California, what
15 portion of receipts should be attributable to that.

16 That's a pretty burdensome process, and the FTB
17 knew it would be a burdensome process because they
18 received comments to that effect. They received comments
19 from taxpayers in the community noting that this would be
20 burdensome and perhaps a census method would be an easier
21 way to comply with the regulation.

22 They received comments noting that there are
23 certain types of asset manager receipts, which are
24 received through financial intermediaries, sometimes
25 called omnibus accounts, and for these the asset manager

1 is one additional level removed from the shareholder. So
2 it's even more difficult to identify where the
3 shareholder is.

4 Commenters also mentioned the fact that
5 sometimes asset managers provide asset managing services
6 on a subadvisor basis, meaning these advisory services
7 are performed for another asset manager, and again,
8 they're one additional level removed from the
9 shareholder.

10 So it makes it really hard to track where the
11 shareholders are. So even though the FTBA received those
12 comments, they essentially ignored them, and in the
13 impact statement they simply stated that the total cost
14 of complying would be zero dollars. And it just doesn't
15 show adequate respect for the process to say that, after
16 all those comments and all those burdens, the cost of
17 complying would be zero dollars.

18 A second problem with the impact statement is
19 the fact that the FTB reported the tax effect on
20 taxpayers in net terms, rather than gross terms.

21 Now, the purpose of this portion of the impact
22 statement, under the APA rules, is to show the potential
23 of an adverse economic impact on California businesses.

24 So it is the FTB's responsibility to articulate
25 the economic effect on all mutual fund service providers

1 who would be subject to an increase of tax under the Dash
2 14 regulation, but the FTB simply reported the tax effect
3 on a net basis, which ended up being relatively small.
4 If you look at the -- if you look at the impact
5 statement, that the net effect was only \$10 million, but
6 the problem with that is it disguised the fact that there
7 were very big winners and losers under the regulation.

8 To be clear, there was one cohort of taxpayers
9 who would pay a lot more tax under the regulation, and
10 there's another cohort of taxpayers who would pay --

11 (Reporter clarification)

12 MR. MELNICZAK: A cohort, a group of tax --
13 there would be one group of taxpayers.

14 (Reporter clarification)

15 MR. MELNICZAK: I'm sorry. C-O-H-O-R-T.

16 My apologies.

17 As a result of the regulation, there would be
18 two different groups of taxpayers. There would be one
19 group of taxpayers who would pay more tax as a result of
20 the regulatory change, and there would be another group
21 of taxpayers who would pay less tax.

22 So the fact that the tax effect was only
23 referred on net terms disguises this change. For
24 example, the group of taxpayers who would be paying more
25 tax could perhaps be paying \$100 million per year in

1 additional tax, whereas the other group of taxpayers who
2 are paying less tax, they could end up seeing a \$90
3 million tax reduction.

4 So it's easy to look at that and compare the
5 \$100 million with the \$90 million, and say well, the net
6 effect is only \$10 million. It looks relatively small.
7 But again, the purpose is to show the adverse --
8 potential adverse economic impact on certain taxpayers,
9 and by merely reporting it on net -- on a net basis, it
10 disguised the effect of that big tax increase for -- for
11 the group of taxpayers who would be paying, in my
12 example, \$100 million of additional tax.

13 And the FTB had to put those -- those taxpayers
14 who were paying more tax, the FTB had a duty to put them
15 on notice that they would be seeing a large increase so
16 that they would have an opportunity to respond to the
17 comment period. And the FTB simply didn't do that in its
18 impact statement.

19 And the California Supreme Court has
20 acknowledged the importance of the impact statement.
21 There's a case called Western States, which we cited in
22 our brief, in which the supreme court invalidated a Board
23 of Equalization regulation because its Economic Impact
24 Statement was opaque and unreasonable. And in that
25 decision, the Court acknowledged that there was a heavy

1 burden on the agency, but that an opaque calculation just
2 doesn't cut it. The taxpayer has to be put on notice.
3 The taxpayers who are paying more tax must be put on
4 notice.

5 So that's our first argument that, back when the
6 statute was promulgated in 2007, the FTB didn't comply
7 with the APA.

8 Our second argument is that, even if the APA --
9 the FTB did comply with the APA, back in 2007, the
10 regulation is invalid now, because when the statute was
11 changed, in 2013, to provide for market sourcing, the FTB
12 did not make a finding of distortion relative to that new
13 market sourcing statute.

14 Now, under the Microsoft case, in order to prove
15 distortion, the burden is on the party who is seeking to
16 invoke Section 25137. So initially promulgating a
17 regulation, the burden there would be on the FTB to show
18 whether there is adequate distortion sufficient to invoke
19 its 25137 regulatory powers.

20 So the FTB must prove, by clear and convincing
21 evidence, that the standard formula is not a fair
22 approximation and that its proposed alternative is
23 reasonable.

24 Now, to the FTB's credit, they did make an
25 effort to show distortion back in 2007, as I mentioned,

1 under the cost performance rule. And if you look through
2 the regulatory file, there were three reasons in
3 particular why the FTB, and many commenters, found the
4 cost performance rule to be distortive, and I have listed
5 some of them on this chart right here.

6 I'm going to turn to the next page on our chart
7 here because I do want to highlight the three different
8 reasons that the FTB found the cost performance rule to
9 be distortive.

10 JUDGE HOSEY: I think we're losing your mic a
11 little bit too. Just make sure it -- yeah, when you turn
12 your head, sometimes it doesn't catch.

13 MR. MELNICZAK: Thank you.

14 So as you can see here from the chart, we
15 highlighted the three different ways in which the FTB had
16 found the cost performance rule to be distortive.

17 The first problem with the cost performance rule
18 is that it resulted in most or all receipts going to one
19 single state. That's because under the cost performance
20 rule, you simply look to where the services are
21 performed, and for many asset managers, most or all of
22 that activity occurs in a single state.

23 So for many commenters in the draft regulation,
24 as you may have seen, many of them are California based
25 and they perform most or all of their services in

1 California, and they said this results in all of -- all
2 of our receipts going to one state.

3 Meanwhile, you have out-of-state mutual fund
4 service providers who perform their services in other
5 states. They would have a zero factor, whereas these
6 California companies would have a 100 percent factor.
7 Many commenters found this to be distortive.

8 The second problem with the cost performance
9 rule is that it didn't adequately reflect market as the
10 founders of UDITPA had intended. For example, it was
11 noted in the reg file that the founders of UDITPA, such
12 as William Pierce, who is frequently cited, they had
13 viewed the purpose of the sales factor as to be given
14 weight to the marketplace.

15 And in defining what the term "marketplace"
16 means, there's frequently a particular focus given on the
17 contribution of the customer.

18 And again, cost performance doesn't do this.
19 Cost performance gives no regard to where the customer
20 is. It merely looks to where the services are performed.

21 And the third problem with the cost performance
22 rule is that it was merely duplicative of the property
23 and payroll factors.

24 Again, prior to 2013, California had
25 three-factor apportionment, and because cost performance

1 merely looks to where the services are performed,
2 naturally, of course, that coincides with where
3 taxpayers' offices and where their payroll are. So in
4 many cases, cost performance would merely duplicate that.

5 And again, this was what -- contrary to what the
6 sales factor was intended to do. The sales factor was
7 intended to give balance to the other factors, not merely
8 duplicate it.

9 So again, all these concerns were relevant to
10 the general statute that was effect in 2007, which is
11 source receipts based on cost performance, and which also
12 had a property and a payroll factor.

13 And again, to the FBA's credit, they did make an
14 effort to show distortion back in 2007.

15 However, none of that matters today, because in
16 2013, when Section 25136 was amended to provide for
17 market sourcing, the FTB did not make a similar showing
18 of distortion.

19 Another change, that happened in 2013, is
20 California eliminated the property and payroll factors
21 and switched to single factor sales apportionment.

22 So if you look at the -- the thing about
23 distortion that we mentioned earlier under the cost
24 performance rule, the FTB did not evaluate whether that
25 distortion continued to exist under the new market

1 sourcing rules. The FTB simply included in its update of
2 its market sourcing regs, in 2013, that the Dash 14
3 rules apply.

4 And again, the sole reason the FTB even had the
5 authority to promulgate the Dash 14 regulation is because
6 it found distortion under the statute. So it's clear
7 they have to find distortion under this statute, as well.

8 And if the FTB were to conduct this distortion
9 analysis under the new market sourcing statute, the same
10 showing of distortion couldn't be made because none of
11 these three factors that were present, back in 2007, are
12 present under the market sourcing statute.

13 Again, the first problem with COP is that it
14 resulted in all receipts going to a single state. That's
15 not the case under market sourcing. The taxpayer here,
16 Janus Capital Group, has taxpayers all across the
17 country, including a significant number in California,
18 and we'll talk about that during the closed session.

19 So there's not simply an issue that under the
20 new approach all receipts will go to one state, rather
21 under market sourcing, you look to where the purchaser
22 receives the benefit, and again, Janus has purchasers all
23 over the country.

24 Again, the second objection with cost
25 performance is that it didn't reflect market. Well,

1 market sourcing does reflect market now. Again, market
2 sourcing looks to where the purchasers are and Janus's
3 market, which is its purchasers, are located all across
4 the country.

5 And finally, the third objection, which is that
6 the cost performance rule was duplicative of property and
7 payroll, that's no longer a problem, because first of
8 all, there is no longer a property and payroll factor.
9 It's single factor.

10 And secondly, market sourcing is not duplicative
11 of property and payroll because, again, it looks to where
12 the purchasers are. It doesn't look to where the
13 services are performed.

14 So essentially the entire basis on which the FTB
15 concluded there was distortion under the old cost
16 performance rule doesn't exist under the new market
17 sourcing statute.

18 So not only could the FTB not find distortion
19 under the new market sourcing rules, the FTB didn't even
20 make an effort to show distortion under the new market
21 sourcing rules. There was no analysis, during the 2013
22 switch to market sourcing, like there was in 2007, under
23 the cost performance rule.

24 Now, when the statute changes, the FTB doesn't
25 get to keep its old ruling. If you look at the language

1 of 25137, the statute, it says that the FTB may oppose an
2 alternate method if the allocation and apportionment
3 provisions of this act do not fairly represent a
4 taxpayer's activity.

5 It doesn't refer to some prior act in the past.
6 It refers to apportionment of this act.

7 So the FTB needs to do this analysis to show
8 distortion any time a new statute is passed or if it's
9 changed in a meaningful way that alters the prior
10 distortion analysis.

11 Otherwise, if the FTB were not required to do
12 this, a regulation would essentially be grandfathered
13 into existence whenever it was promulgated. And that
14 would mean that California's voters, or the legislature,
15 could never change the law unless the FTB agreed to it.

16 So under the FTB's position, if Dash 14 were to
17 survive the statutory change from cost performance to
18 market without any further showing of distortion, that
19 would mean that California's legislature, or the voters,
20 could never change the law.

21 Now, if the FTB does have the view that market
22 sourcing is distortive, and -- the FTB may seek to invoke
23 its 25137 powers in the future to try to establish that
24 the current market sourcing statute is distortive and
25 perhaps seek an alternate method like the Dash 14 method,

1 but the FTB would need to actually prove distortion.

2 If you look at the Fluor case and the Amarr
3 case, it's clear that the party seeking to invoke
4 Section 25137 would have the power of showing distortion.

5 And here, the FTB would have the burden of
6 showing that 25136 is distortive and that -- they would
7 have the burden of advocating for a new method. They
8 can't simply rely on a prior finding of distortion that's
9 not applicable today.

10 Thus, the FTB hasn't shown that the market
11 sourcing rule is distortive and hasn't met its burden
12 under 25137. Therefore, Dash 14 is invalid.

13 And I'd like to reserve any remaining time for
14 rebuttal.

15 JUDGE HOSEY: Okay. Thank you, Mr. Melniczak.

16 I'm just going to check in with our reporter.

17 Would you like to take a break before we --
18 okay.

19 We're going to take a 10-minute break before we
20 come back and have the Franchise Tax Board presentation
21 on the same Issue 2. That will be 10:35. Thank you.

22 (A break was taken)

23 JUDGE HOSEY: Thank you. We are back on the
24 record for Janus Capital Group Inc., and Subsidiaries.
25 We are resuming with Issue 2, moving to Respondent,

1 Franchise Tax Board.

2 Ms. Smith, are you making a presentation?

3 MS. SMITH: Yes.

4 JUDGE HOSEY: Okay. Please begin when you're
5 ready. Thank you.

6 MS. SMITH: Thank you.

7 As my colleague stated earlier, it's
8 Respondent's position that the OTA does not have
9 jurisdiction to invalidate a regulation.

10 Nevertheless, if your office does determine it
11 has jurisdiction to invalidate a regulation, it should
12 not invalidate Regulation 25137-14 because Appellant
13 failed to show that Dash 14 should be invalidated.

14 Appellant failed to show that the APA was not
15 complied with during its promulgation and failed to show
16 that it is not standard apportionment for Appellant after
17 California's change to market-based sourcing in 2012.

18 We'll go through both of these arguments one-by-
19 one. First, the APA.

20 Appellant hasn't met its burden to demonstrate
21 that the APA wasn't complied with, and it can't because
22 the APA was complied with. Government Code
23 Section 11343.6 provides that, once a regulation is filed
24 with a Secretary of State, it's presumed that the APA was
25 complied with.

1 And this makes sense because in order to file at
2 the Secretary of State, the regulation has to go through
3 multiple reviews by state agencies. The Department of
4 Finance being one, and the Office of Administrative Law
5 being the other.

6 So here we know that Dash 14 was filed with the
7 Secretary of State. We submitted Exhibit J, which is the
8 Rule Making File for that regulation. It's Form 400.
9 And you can see in the top right corner, there's a stamp
10 from the Secretary of State.

11 So we know that, again, the APA is presumed to
12 be complied with.

13 So Appellant really begins in a difficult
14 position when it states that, nevertheless, despite this
15 filing, despite the review by multiple state agencies
16 that, nevertheless, the Economic Impact Statement, which
17 is part of the APA requirements, was insufficient.

18 And it's unable to meet its burden to
19 demonstrate that the APA was not complied with.

20 To understand the role of the Economic Impact
21 Statement in the APA, it's really helpful to actually
22 understand the purpose of the APA itself.

23 Now, the California Supreme Court has stated in
24 Western States Patrolling Association versus Board of
25 Equalization that the purpose of the APA is to provide

1 meaningful public participation in the development of
2 agency regulations and to provide a record for effective
3 judicial review.

4 It does this in two ways.

5 First, it provides basic minimum procedural
6 requirements, which allow interested parties to provide
7 statements and arguments regarding the regulation. And
8 also calls on the agency to review all the -- relevant
9 matter, excuse me, presented to it.

10 Two, it also provides that any interested party
11 may obtain, in Superior Court, a judicial declaration as
12 to the validity of any regulation.

13 So essentially the function of the APA really is
14 meaningful public participation in the development of
15 regulations and for the ability for interested parties to
16 obtain a judicial declaration as to their validity in
17 Superior Court.

18 So circling back to -- circling back to the
19 Economic Impact Statement. What's its role in this?

20 Well, it does form part of the requirements of
21 the administrative record. So we're talking about that
22 record for effective judicial review, but also it
23 provides a basis for meaningful public participation in
24 the development of the regulation.

25 We know that the Economic Impact Statement is

1 intended to be an initial determination, so an initial
2 determination, that the regulation will not have a
3 significant adverse economic impact on business, and
4 specifically, California enterprises.

5 Statutorily, it requires that agencies
6 promulgating regs consider certain issues. There's a
7 list of them. Effect on creation or elimination of jobs
8 in California, impact on housing costs, et cetera.

9 And actually there's a form, a government Form
10 399, which was developed to ensure that agencies, like
11 the Franchise Tax Board, when it is promulgating
12 regulations, to address each of these statutory
13 requirements.

14 What more do we know about the Economic Impact
15 Statement?

16 Well, we know it may not be exhaustive or
17 conclusive, and the agency need not assess or declare all
18 adverse economic impact anticipated.

19 In fact, failure to comply with every procedural
20 facet of the APA does not automatically invalidate a
21 regulation.

22 A court may declare the regulation invalid only
23 for substantial failure to comply with the act.

24 Substantial compliance in regards to this means,
25 where there is compliance as to all matters of substance,

1 then technical deviations are not to be given the stature
2 of noncompliance. Substance prevails over form.

3 Now, here, FTB has done all that was required by
4 the APA and more. First, you can take a look at the Form
5 399, which is statutorily required inquiries are included
6 on that form, 399. And FTB filled out that form
7 completely and supported it with statements and
8 testimony.

9 And you can find that at Exhibit 3 of the Rule
10 Making File, and the Rule Making File itself was
11 helpfully provided as Appellant's Exhibit 4.

12 And in its testimony, Franchise Tax Board's
13 testimony supporting its determinations, it made a few
14 important notes.

15 The first was the inherently limited reach of
16 the regulation. It affected only how mutual funds
17 service providers apportion income.

18 Secondly, and importantly, Regulation Dash 14
19 was a codification of FTB's then current policy. So Dash
20 14 was a codification of how many in-state taxpayers,
21 California taxpayers and businesses, mutual fund service
22 providers were already filing.

23 And you can see this on Statement 3 of the
24 Economic Impact Statement, as well as the initial
25 Statement of Reasons that FTB filed.

1 Now, many in-state taxpayers were already filing
2 this way because these taxpayers filed variance requests
3 with the Franchise Tax Board, under Section 25137. And
4 the method adopted eventually, by Dash 14, applied the
5 method already used in those various requests.

6 So thus, based on this testimony, in the
7 Economic Impact Statement, the impact was expected to be
8 minimal or nonexistent overall in-state, and the
9 implementation of the reg, of course, were not expected
10 to affect housing or health, safety of California workers
11 because its inherent -- inherently, excuse me, limited
12 nature, but also it wasn't particularly expected to
13 affect competitive or California businesses because many
14 of those businesses were already impacted due to the
15 approved variance requests applying the Dash 14 method.

16 So you can see that under the Form 399, that FTB
17 filled -- fulfilled the four corners of the APA scheme,
18 but in addition, if you look at the Rule Making File, you
19 can see that it's replete with evidence, additional
20 evidence, showing that Respondent diligently assessed the
21 economic impact of this regulation.

22 Some highlights of the record demonstrate this.

23 There is a letter from FTB's executive officer
24 providing the method that FTB used to determine the tax
25 impact upon taxpayers. FTB generated an in-depth

1 economic study to gauge that impact. It took a random
2 stratified sample of corporate taxpayers, screened that
3 sample to include only those taxpayers that appeared to
4 be in the mutual funds service provider industry, then
5 went to the actual tax returns, looked at them to ensure
6 that these taxpayers were in the mutual fund service
7 provider industry, and then it compared their As Filed
8 apportionment percentages to what that apportionment
9 percentage would be under the new regulation.

10 And not only did it engage in this in-depth
11 economic study, but then there was a lot of informed
12 discussion and consideration amongst interested parties
13 in the Franchise Tax Board regarding this study.

14 There was a third party, for instance.

15 An economic analyst named Mr. Romero, and he was
16 sponsored by four mutual fund service providers to
17 conduct a study. And his results were quote, "quite
18 close," to the FTB's results. Where FTB came up with a
19 \$10 million impact, Mr. Romero, his study concluded that
20 there would be a \$12.6 million impact.

21 And, of course, he did concede that, because FTB
22 source data was actual taxpayers, that that would be the
23 better basis for a study.

24 So again, not only was there an economic study
25 conducted, but in-depth discussion and consideration

1 amongst interested parties and the Franchise Tax Board.

2 Further, Respondent went beyond this initial
3 study and provided, actually, a supplemental economic
4 analysis.

5 Respondent carefully studied a third economic
6 analysis provided by an interested party and it noted, in
7 detail, why the competing analysis was flawed.

8 So you can see that there was a lot of informed
9 discussion on the economic impact of this regulation.

10 Now, specifically, Appellant mentions compliant
11 costs, and states incorrectly that FTB ignored or did not
12 consider compliance costs when it promulgated Regulation
13 Dash 14.

14 First, FTB provided testimony in its Economic
15 Impact Statement and its initial statement of reasons
16 that the regulation was an implementation of then current
17 policy. So an initial determination -- an initial
18 determination on the impact -- as to the impact of this
19 regulation, logically, wouldn't anticipate much in the
20 way of compliance costs.

21 Also, the record further addresses compliance
22 costs. Although taxpayers stated that interested parties
23 mentioned that the draft language would be very
24 burdensome because they'd have to locate shareholders,
25 which may provide difficult.

1 Instead of ignoring that, as Appellant states,
2 instead they modified the language of the regulation.

3 If you look at Subsection (b)(1)(A)(1), for
4 instance, it provides that if the taxpayer doesn't know
5 that location, then a mutual service fund provider may
6 use any reasonable basis to determine the proper location
7 of assignment.

8 That was specifically addressed in the Rule
9 Making File, and that perceived compliance burden was
10 much eliminated, essentially, by this added layer of
11 extreme flexibility.

12 Furthermore, although the taxpayer states that
13 the \$10 million tax increase is -- because it was
14 proposed at -- or, explained that it was a net figure,
15 and therefore that the regulation should fail the APA
16 requirements, the fact is that FTB did actually put
17 taxpayers on notice. It did say, in Statement 3 of its
18 Economic Impact Statement, the testimony does provide
19 that \$10 million number but also notes that some
20 taxpayers would see an increase in their sales factor
21 while other taxpayers would see a decrease in their sales
22 factor.

23 So the idea is that, when taxpayers are reading
24 this initial statement, they understood that the \$10
25 million was presented at net and that some taxpayers

1 would see an increase in their tax liability and some
2 would see a decrease in their tax liability.

3 So as you can see, Respondent's compliance with
4 the APA, particularly in regards to the Economic Impact
5 Statement, is beyond question. But even if your office
6 decides that some portion of the record did not meet APA
7 requirements, you know, despite the fact that they were
8 completed and approved Forms 399 and 400, you know,
9 despite the economic study described and the supplemental
10 economic study engaged in and despite the in-depth
11 discussion amongst interested parties and the FTB
12 regarding the regulations economic impact --

13 JUDGE RIDENOUR: Excuse me. Can you slow down
14 just a tad, please? Especially when you read. I'm the
15 same. So I understand.

16 MS. SMITH: Yes. No problem. I apologize.

17 So even if your office does decide that some
18 portion of the record did not meet APA requirements,
19 remember that failure to comply with every facet, a
20 procedural facet of the APA, does not automatically
21 invalidate a regulation.

22 The Court may declare the regulation invalid
23 only for a substantial failure to comply with the act.

24 Here, not only was the black letter law of the
25 APA followed, but FTB fulfilled the spirit of the APA,

1 which was to create meaningful participation by
2 interested parties in the regulations development and to
3 create a robust administrative record in cases of
4 judicial review.

5 So Dash 14 should not be invalidated because it
6 did, in fact, meet the APA's requirements.

7 Appellant also makes an additional argument.

8 Although Appellant argues that Regulation Dash
9 14 does not apply after 2012, because the generic rule
10 for assigning services at Section 25136 changed with the
11 passage of Proposition 39 in 2012, the OTA's own recent
12 precedential decision demonstrates that this is not true.

13 Your office, in the end of 2021, released the
14 precedential decision Appeal of Amarr. And that case
15 states that, when the FTB passes a special regulation
16 under Section 25137, its rules are standard
17 apportionment for those taxpayers whose circumstances
18 match those that are in the regulation itself.

19 Your office decided this nine years after
20 market-based sourcing was passed, and the decision
21 addressed the year 2013, when market-based rules were in
22 effect.

23 So we already know what the law is post the
24 implementation of market-based sourcing rules because
25 your office has told us that special regulations continue

1 to be standard apportionment when the circumstances
2 described in the special rule fit the taxpayer's
3 particular situation.

4 Now, here, Regulation Dash 14 controls because
5 it is uncontested that the circumstances match
6 Appellant's situation. An Appellant must apply
7 Section -- or, excuse me, Regulation 25137-14, as it did
8 in its original returns for the years at issue.

9 Now, if Appellant wishes to pursue the argument,
10 it has the Government Code to look to, to provide a
11 remedy, as noted by my colleague.

12 Appellant says California could never change the
13 law if -- if we continue to apply Dash 14, despite the
14 change in Regulation -- or, Statue 25136, but that is not
15 true and we know that because there is a remedy, at
16 11349.8, in the Government Code.

17 It provides that, if any statute is changed,
18 such that the statutory authority for a regulation has
19 been repealed or becomes unaffected -- ineffective,
20 Appellant's remedy is to notify the AOL (sic).

21 The AOL (sic) will review, ask the agency that
22 promulgated the regulation questions to defend its
23 position. It will make a determination, but then the
24 state legislature and the governor's office have a final
25 say on whether OAL's decision stands.

1 So, in short, Dash 14 still applies, despite the
2 fact that we are now operating in market-based sourcing
3 years.

4 And furthermore, if Appellant wishes to continue
5 to pursue the argument that it does not because 25136,
6 that section changed, its remedy is with the Office of
7 Administrative Law and the Governor's office.

8 This on concludes our presentation on
9 jurisdiction, and -- well, it was earlier, and the
10 regulation's validity.

11 Thank you.

12 JUDGE HOSEY: Thank you for your presentation,
13 Ms. Smith.

14 I'm going to go ahead and go back to Appellants.

15 Would you like to respond to the Franchise Tax
16 Board's presentation?

17 MR. MELNICZAK: Yes, please.

18 JUDGE HOSEY: Go ahead when you're ready.

19 MR. MELNICZAK: I'd like to address the comments
20 regarding the APA first, and then I have a comment
21 regarding the switch to market sourcing in 2013.

22 First, regarding the validity of Dash 14, with
23 respect to the APA.

24 As the FTB correctly notes, the purpose of the
25 APA was meaningful public participation. But

1 participation is not meaningful if comments are simply
2 ignored.

3 As we noted, there were many comments about the
4 burdensome requirements. There were some comments
5 that -- requesting that a census approach be used or that
6 a different approach be used for receipts through
7 financial intermediaries.

8 Now, the FTB just rejected those comments and
9 the FTB did not incorporate them in the final regulation.

10 It's also not -- the public participation is not
11 meaningful if it's opaque or if it's not clear to
12 taxpayers what the burden is.

13 And with respect to the net cost, merely
14 reporting the cost to taxpayers on a net basis, again, is
15 opaque because, as the FTB noted, there was a separate
16 report done by Mr. Romero, but that report was not
17 reported on the impact statement, and that report again
18 only reported the receipts on a net basis.

19 And to be clear, our dispute is not about the
20 distinction between the \$10 million on the impact
21 statement and the \$12 million in Mr. Romero's analysis.

22 If that were the case, surely it would be tough
23 to overcome the FTB's argument that they are in
24 substantial compliance with the APA. The dispute is
25 between the \$10 million on a net basis and, in my example

1 earlier, between the winners and losers, that potential
2 \$100 million cost that would be borne by the taxpayers
3 who were made worse off by the regulation.

4 And by disguising that amount and only putting
5 that amount on the net basis, it doesn't invite
6 meaningful public participation, as the APA is required
7 to do, because it doesn't make taxpayers fully aware of
8 that and make them fully available for comment.

9 (Reporter clarification)

10 MR. MELNICZAK: It doesn't give taxpayers the
11 opportunity to be put on notice that the regulation
12 affects them by only reporting the tax effect on a net
13 basis because you'd have taxpayers who, again, might have
14 a \$100 million tax burden but they see that the net
15 effect is only \$10.

16 Again, that disguises it, and it doesn't
17 encourage that participation, if they don't know the full
18 effect borne by taxpayers.

19 JUDGE RIDENOUR: Excuse me. Are you having
20 trouble hearing?

21 MR. MELNICZAK: My apologies.

22 JUDGE RIDENOUR: So just again, mic close.

23 Thank you.

24 MR. MELNICZAK: I also wanted to address the
25 comment made regarding the Amarr case, and the extent to

1 which the burden is on the FTB versus a taxpayer when
2 invoking Section 25137.

3 Now, when the statute changes, the burden is on
4 the FTB. It's clear that, again, if a valid regulation
5 is in effect, Amarr does state that a taxpayer seeking to
6 deviate from that regulation, that taxpayer is the one
7 invoking Section 25137, and that taxpayer is the one
8 required to show distortion. But that's only if there is
9 a valid regulation in effect.

10 So in this case, if Janus Capital Group were to
11 bring a claim for periods prior to 2013 and argue against
12 the validity of Dash 14, they would -- they would have
13 the burden of showing distortion because they would be
14 the ones invoking Section 25137.

15 But if there is no valid regulation in effect,
16 the FTB would be the party who needs to show distortion
17 because they would be the ones who are deviating from the
18 statutory provision, which in this case is the market
19 sourcing statute under Section 25136.

20 The FTB can't simply rely on its prior showing
21 of distortion because 25137 requires -- again, requires a
22 showing that the allocation and apportionment provisions
23 of this act don't fairly represent a taxpayer's business
24 activity, not a prior act in the future.

25 And simply put, the current statute is not

1 distortive. The FTB has not made any attempt to show
2 it's distortive. Therefore, it does not have any valid
3 powers, under Section 25137, to promulgate or enforce a
4 regulation that conflicts with the statute.

5 And again, otherwise, if they do not have that
6 power, that existing -- taxpayers would not have a remedy
7 through this office to pursue a claim for refund because
8 the FTB would -- would simply say that its existing
9 regulation is still in effect.

10 I don't have any other comments.

11 JUDGE HOSEY: Thank you, Mr. Melniczak. I'm
12 going to move to the panel to see if there's questions on
13 either Issue 1 or 2.

14 Moving to Judge Ridenour. Any questions?

15 JUDGE RIDENOUR: No questions. Thank you.

16 JUDGE HOSEY: Thank you.

17 Judge Akopchikyan?

18 JUDGE AKOPCHIKYAN: Yes, I have a few questions.
19 I'll start with Issue 1.

20 It's a question, I guess, for both parties, but
21 we'll start with Appellant.

22 Do you think the analysis for Issue 1 is the
23 same for situations where, on one hand, OTA is asked to
24 declare a regulation invalid on the basis that the tax
25 agency did not follow the requirements of the

1 administrative procedure act, which would require an OTA
2 panel to understand and apply the APA, and on the other
3 hand, situations where OTA is asked to declare a
4 regulation invalid on the basis that it conflicts with
5 the tax statute or that requirements of a tax statute
6 were not followed, such as showing distortion, which
7 involves tax law?

8 Start with Appellant, please.

9 MR. FIX: Sure. Thank you.

10 I think the answer is yes. The analysis as to
11 both of those scenarios involve interpretation of whether
12 or not a regulation is valid. The regulation at hand is
13 the tax, although it needs to be interpreted whether it's
14 valid or not.

15 The analysis as to whether or not the OTA has
16 jurisdiction to invalidate that regulation, under both
17 scenarios, is governed by Yamaha and Western States, in
18 the sense that you need to first make a determination as
19 to whether or not this is a quasi-legislative regulation
20 or an interpretative one. And so under both scenarios,
21 you would end up with it being an interpretative because
22 the FTB did not have delegation of quasi-legislative
23 powers because there is an underlying enforceable legal
24 standard under 25136, which states how to source service
25 receipts to the benefit location to the purchaser.

1 Both allow the OTA to look into the underlying
2 requirements as to whether or not a regulation is valid,
3 so I do not think that there is anything that would
4 preclude the OTA from reviewing it as long as you've
5 determined, according to Talavera, that you have an
6 interpretative regulation at hand.

7 JUDGE AKOPCHIKYAN: Thank you.

8 MS. MOSNIER: And probably not surprisingly, you
9 would hear from the Franchise Tax Board that the answer
10 to your question, Judge Akopchikyan, is no, that it does
11 not matter whether a challenge would be to compliance
12 with the Administrative Procedures Act when clearly the
13 Office of Tax Appeals, which is staffed with tax experts,
14 would be asked to interpret the Administrative Procedures
15 Act, which is not typically within the body of tax law
16 knowledge and certainly not housed even in the Revenue
17 Taxation Code.

18 But also, even if it has to do with determining
19 that a regulation is invalid, say, as applied, there is
20 no distinction in the Administrative Procedures Act that
21 would allow a determination of invalidity for either --
22 on either basis.

23 We go back to the Liljestrang case where the OTA
24 stated clearly that its jurisdiction is limited to its
25 enabling legislation. The Government Code sections

1 authorizing the existence and subject matter areas to be
2 addressed by the Office of Tax Appeals do not provide for
3 the issuance of declaratory relief, nor do they provide
4 for determinations regarding the validity or invalidity
5 of a regulation. And so I think that, obviously, that
6 the increase stops there.

7 And I would note that, with respect to a
8 distinction under Yamaha, between a interpretative and
9 quasi-legislative regulation, those distinctions are
10 important for the Auer, A-U-E-R, deference standard when
11 interpreting a regulation. Because that's what Yamaha
12 was about. It was about interpreting a regulation, and
13 that's not what we are here about today.

14 We are here about the OTA's authority to
15 invalidate a regulation, which is an unrelated issue, and
16 Yamaha, in that context, is not particularly relevant,
17 perhaps not relevant at all.

18 And I would note on -- also, with respect to the
19 distinction between interpretative or quasi-legislative,
20 classification of a regulation, that in, for example, the
21 Hajikhani opinion, the OTA did not separate -- did not
22 qualify its lack of jurisdiction to determine the
23 validity of a regulation.

24 It said, on Page 18, that "Such a federal
25 standard under the validity of a federal regulation is

1 inapplicable here," it's discussing some -- previously
2 some federal cases, "as we are only addressing the
3 interpretation of a California regulation."

4 "OTA does not have the jurisdiction to determine
5 the validity of a California regulation," not a
6 California interpretative regulation, not a California
7 quasi-legislative regulation.

8 Simply, "does not have authority to invalidate a
9 California regulation."

10 You will find the same language on Page 6 of the
11 Bed, Bath and Beyond opinion.

12 MR. FIX: May I please respond?

13 JUDGE AKOPCHIKYAN: You may.

14 MR. FIX: Thank you.

15 First, I'd like to address that I'm not
16 disagreeing with Respondent as to the ability to provide
17 declaratory relief. 11 -- Government Code 11350 says, if
18 you would like declaratory relief, you need to go to the
19 OAL or to the Court.

20 We agree on that. The problem is that is not
21 the only remedy available to taxpayers. Rather, you
22 could also bring action to invalidate a regulation as to
23 applied to specific taxpayers, and that is clear by the
24 cases that I cited before.

25 Second, I think it's a little misleading to say

1 that Hajikhani, which is, one, not precedential, but
2 again, consistent with the standard that we articulated
3 that is in Yamaha, which is very relevant, and which is
4 the main source of authority that's cited in Talavera and
5 Hajikhani, which is the regulation at issue, and the
6 analysis in Hajikhani discusses the fact that regulation
7 that was at issue in that case, 19133, was not an
8 interpretative because it -- because it does not merely
9 interpret the relevant statute, citing Western State's
10 case, as well as the Yamaha.

11 Instead, it is more than that. And to the
12 language that we put on the board, it is -- it is not
13 merely interpreting because it adopts language that fills
14 the gap to create new language, new legal standard, as to
15 when the FTB may add the demand penalty.

16 And in Hajikhani you cite the GMRI, Inc., versus
17 California Department of Tax and Fee Administration, 2018
18 California Appellate case. That specifically discussed
19 this statute and specifically articulated and repeated
20 the standard that was set in Yamaha and in Western States
21 as to the distinction between the two regulations.

22 So again, the Hajikhani case is consistent with
23 what Appellant is arguing in the sense that the
24 regulation at issue and the analysis that OTA took was,
25 do we have an interpretative regulation or a quasi-

1 legislative one? And if it is quasi-legislative, which
2 it was in this case, the OTA, because it is receiving
3 dignity of a statute, according to Yamaha, Western
4 States, GMRI, cannot be invalidated by the OTA.

5 If you are outside of that category and it's
6 interpretative, like in this case, then the OTA does have
7 jurisdiction.

8 And specifically, as I mentioned, the -- there
9 is no gap to be filled with respect to how to source
10 service receipts. It's clearly articulated in
11 Section 25136 and in Regulation 25136-2.

12 According to Yamaha, Western States, GMRI, if
13 you remove the regulation at issue, are you left with an
14 enforceable legal standard?

15 The answer is yes.

16 The fact that the FTB cites to Section --
17 Revenue Tax Code 19503, as essentially a blank -- blank
18 check, that the FTB can just pass regulations whenever
19 they want, is contrary to case law and, frankly,
20 constitutionally concerning from a separation of powers.

21 And that was specifically addressed in the GMRI
22 case that said that an administrative agent, an
23 administrative agency cannot disguise new law in the form
24 of rules and regulations. Rather, it has to be within
25 the statute.

1 And the power that was provided by 19503 is a
2 general one, general mandate that is provided to any
3 administrative agency in California. If you interpret
4 that to mean that you can just pass any regulation you
5 want, then there -- then the distinction that the
6 California Supreme Court articulated in Yamaha, which
7 says there are two types of regulation, is a distinction
8 without a difference, which was addressed in -- that
9 concern was addressed in Western States by one of the
10 justices.

11 So what you're left with is that you need to
12 look to this specific case, and Section 19503, on its
13 own, does not answer your question, which bucket you fall
14 into. You then need to look to whether there is a gap,
15 and there isn't.

16 And beyond that, the -- the statute that's cited
17 together with 19503, Section 25137, is a limited power
18 that, as my colleague, Mr. Melniczak, mentioned can only
19 be invoked if there is distortion under the apportionment
20 rules under the act.

21 So the FTB cannot use Section 19503 as a blank
22 check to assert what the legislature has been delegated,
23 which is to pass statutes. Not every regulation is a
24 statute. And they admitted that, in Save Mart, when they
25 conceded that the regulation at issue was interpretative,

1 even though it relied on the same delegation of power,
2 Statute 19503, that they are relying on today for the
3 position that it is somehow quasi-legislative.

4 So that's it. Thank you.

5 JUDGE AKOPCHIKYAN: Thank you.

6 MS. MOSNIER: May I respond?

7 JUDGE AKOPCHIKYAN: You may.

8 MS. SMITH: Thank you.

9 One thing I think we have to keep in mind is
10 that, if the OTA were to draw a dividing line between
11 authority to invalidate a regulation, quote, "as
12 applied," in an individual case or, for example, in toto
13 for a lack of compliance with the APA, we have to
14 consider -- we have to tease this out a bit and consider
15 what remedy rests for the Franchise Tax Board.

16 If the OTA erred in its determination, for
17 example, that a regulation were interpretative as opposed
18 to quasi-judicial -- or, excuse me, quasi-legislative and
19 therefore determined that it wasn't entitled to the -- to
20 the respect as a statute which can be invalidated, of
21 course, only by the legislature or by the courts through
22 a determination of validity.

23 So in the big picture, that is a very important
24 factor and consideration. When you determine the scope
25 of the lack of authority to act, remember here, we are

1 not looking for existing authority in finding a carve-
2 out. We don't presume authority and find a carve-out.
3 You actually have to find authority to act under either
4 scenario and none exists.

5 And I know that the Appellant has spoken about
6 court case law. There were two other cases Appellant
7 mentioned during its general jurisdiction argument that I
8 had not been able to locate in the briefing, but I did
9 over the short break. And if I could, I would like to
10 respond to those because we didn't have an opportunity
11 before today to, and we weren't aware of them and didn't
12 have an opportunity to prepare.

13 The first is with respect to the Stoneham versus
14 Rushen case, at 137 Cal.App.3d 729. It's a 1984 case.
15 And an inmate signed a writ of mandate preventing the
16 Department of Corrections from implementing certain
17 emergency administrative regulations about classification
18 of inmates for housing purposes.

19 The trial court granted the writ and
20 subsequently a preliminary judgment in favor of the
21 petitioner, in favor of the inmates.

22 And on appeal, that -- the determination that
23 those -- the guidance that had not been implemented and
24 adopted in compliance with the APA was, in fact,
25 essentially an underground regulation, and the judgment,

1 putting implementation of that emergency system of
2 classification on hold pending compliance with the APA,
3 was affirmed.

4 There was no issue regarding the ability of a
5 state agency to invalidate a regulation in that case.

6 Neither was there in the other case Appellants
7 discussed, Chas Harney Incorporated versus the State
8 Licensing Contractor's Board, a 1952 decision, which is
9 found at 238 P.2d 637. The only issue in that appeal was
10 whether the complaint was sufficient to state a cause of
11 action.

12 It was styled as a declaratory relief action,
13 and the appellate court sustained the trial court's
14 granting the defendant's motion for judgment on the
15 pleadings, and affirmed that there no -- no decisional
16 controversy.

17 Again, there was no issue regarding the ability
18 or power of any state agency to invalidate a regulation
19 in that case either. Thank you.

20 MR. FIX: I would like to respond to that.

21 JUDGE HOSEY: I was just going to ask, would
22 Appellants like to respond to that?

23 MR. FIX: Yes.

24 I think -- yeah, I think it's interesting that
25 the FTB is trying to murky the water with respect to

1 precedent. The fact that the facts at issue in those two
2 cases are different from the one here does not mean that
3 it is not good case law and holding with respect to -- in
4 both cases, the California Supreme Court and the
5 California Court of Appeal looked to the intent behind
6 Section 11350.

7 And that is the question here; right?

8 Because the FTB is arguing that section --
9 Government Code 11350 is the universe of types of
10 remedies they can take other than going to the OAL to
11 invalidate it. They're saying, taxpayer, you don't like
12 this regulation, either you go to the OAL, or you go
13 straight to Superior Court and you ask for declaratory
14 judgment.

15 And in both these cases, the Court specifically
16 addressed the legislative history and intent of
17 Government Code 11350, for the -- standing for the
18 position that the intent was not, by enacting this
19 section, to preclude or limit the available remedies to
20 taxpayers, including bringing controversy that would
21 invalidate a regulation.

22 Thank you.

23 JUDGE HOSEY: Okay. Thank you.

24 Were there any other questions you had,
25 Judge Akopchikyan?

1 JUDGE AKOPCHIKYAN: I had a few more questions.

2 JUDGE HOSEY: Okay. Go ahead.

3 JUDGE AKOPCHIKYAN: I have a question for
4 Franchise Tax Board.

5 What do you think the OTA should do if a
6 panel -- we get an appeal, hypothetical, and a panel
7 decides that there's a statute directly on point and
8 points to a certain outcome and then there is an
9 interpretative regulation that point to a different
10 outcome and that is the basis for the Franchise Tax Board
11 assessment?

12 The panel thinks -- is the panel allowed to
13 follow the statute and apply the statute in that case?

14 MS. MOSNIER: I hesitate to offer an opinion on
15 a hypothetical, principally because I just don't have the
16 opportunity to percolate it, let it percolate through
17 and -- and think about it. But I think at the end of the
18 day, the OTA always has to come back to the limits of its
19 jurisdiction. And there will be -- and there have
20 been opinions for various reasons having nothing to do
21 with the Administrative Procedures Act or regulation,
22 where the OTA has held that it does not have jurisdiction
23 to act.

24 And so I just -- I am uncomfortable opining one
25 way or the other except to know that it --

1 JUDGE AKOPCHIKYAN: I understand.

2 MS. MOSNIER: It's something worth considering
3 in another setting.

4 JUDGE AKOPCHIKYAN: Okay. Thank you.

5 I have a question for Appellant. I just want to
6 clarify on Issue 2.

7 Throughout the briefing, the term "conflict" is
8 used for the Dash 14 regulation and Section 25136 of the
9 statute. But in the oral presentation today, it seems
10 like the basis for asking that we declare the regulation
11 invalid is really two separate issues.

12 One is the APA procedurally defective under the
13 APA, and the second one is that a distortion study wasn't
14 done after California switched to market-based sourcing.

15 So just to clarify, is there -- is Appellant's
16 position that the regulation doesn't enlarge or otherwise
17 alter the scope of the statute, like conflict is not
18 being used in that context?

19 MR. MELNICZAK: Yes.

20 So in the second argument, which is -- that we
21 made today, which is that the regulation -- whether or
22 not it was valid in 2007, the question whether it is
23 valid when the statute changed to -- to market sourcing
24 in 2013, yes, there is a conflict between the regulation
25 and the statute.

1 The statute provides for market sourcing,
2 looking to the purchasers, and the regulation looks
3 through those purchasers to where the shareholders are
4 located.

5 So there is a conflict, just as there was a
6 conflict in 2007, when the regulation conflicted with the
7 cost performance rule. The fact that there's a conflict
8 is significant because the only instance in which the FTB
9 can issue a regulation that conflicts with the statute is
10 by using its 25137 powers. And 25137 requires the FTB
11 show distortion in order to promulgate a regulation that
12 deviates from the statute.

13 And again, to clarify, they did not make a
14 showing of distortion under the new statute in 2013.

15 MR. FIX: Can I add one more thing?

16 In addition to that, the statute -- the
17 regulation, 25137-14, not only conflicts with 25136, as
18 my colleague, Mr. Melniczak, mentioned, it also conflicts
19 with California Revenue Tax Code 25137.

20 25137 says that the FTB may use an alternative
21 apportionment only if there is distortion under the
22 current apportionment under the act. Under this hard set
23 of facts, Dash 14, during market years, as Mr. Melniczak
24 presented, there is no distortion. So not only is Dash
25 14 in conflict with 25136, it's also in conflict with

1 25137.

2 Thank you.

3 JUDGE AKOPCHIKYAN: Thank you.

4 So how would Appellant respond to the following
5 argument, that the Dash 14 regulation is not in conflict
6 with 25136 because they're both based on the principles
7 of market-based sourcing?

8 So, for example, 25136-2 regulation has
9 cascading rules for sourcing sale of services to
10 businesses. I think the second cascading rule allows for
11 reasonable approximation.

12 Is using a shareholder's domicile, is that a
13 reasonable approximation method or not? And if it is, is
14 that truly a direct conflict?

15 MR. MELNICZAK: It's not a reasonable
16 approximation.

17 And I do want to note at the outset that, first,
18 that argument is not before the OTA because, in fact, the
19 FTA -- the FTB has explicitly acknowledged that there is
20 a conflict between Section 25136 and the Dash 14
21 regulations.

22 You can take a look in their initial brief. I
23 believe it's on Page 7. They acknowledge our argument
24 that the statute, Section 25136, is different than the
25 regulation. They acknowledge that the regulation

1 deviates from that statute, but they note that
2 Section 25137 expressly authorizes deviation from the
3 statute.

4 If the FTB were to -- were to reverse course and
5 no longer claim there's a conflict and claim as, Your
6 Honor, as you noted, make the argument that Dash 14 is
7 consistent with market sourcing, that's not true because
8 they each look to different locations.

9 Market sourcing looks to where a purchaser
10 receives the benefit. And shareholder sourcing looks
11 through the purchaser -- to where the purchaser
12 shareholder receives the benefit.

13 And I know you mentioned the cascading waterfall
14 test in the regulation for looking to where the purchaser
15 receives the benefit, but each case where that test has
16 been applied, it's always been a question where the
17 purchaser receives the benefit, not where the purchaser
18 shareholders are.

19 There have been multiple examples, both in case
20 law and in the FTB's regulation, where services have been
21 provided to a corporation. It's true that in some
22 instances, if the corporation has acted in a
23 subcontractor role, perhaps they've looked through the
24 corporation to where the corporation's customers are, in
25 this case the customer's customers are, but that's not

1 the case here.

2 There's no subcontracting of activity. Janus's
3 customers, which are regulated investment companies and
4 pension funds, they are the purchasers. They're the
5 in-use purchasers. They don't have customers of their
6 own. And in no instance has the FTB -- has FTB or the
7 OTA looked to where a corporation received the benefit
8 and have they looked to a corporation shareholders.

9 Thank you.

10 JUDGE AKOPCHIKYAN. Thank you. No additional
11 questions at this time.

12 JUDGE HOSEY: Okay.

13 So we've gone over Issue 1 and 2. This
14 concludes the open session portion of this appeal. We're
15 going to take a quick five-minute break before resuming
16 with the closed session. Thank you.

17 (A break was taken)

18 JUDGE HOSEY: Okay.

19 We are back on the record for Janus Capital
20 Group, Inc., and Subsidiaries. This is now the closed
21 session. I don't believe we have anybody from the public
22 here.

23 So it's been marked for the recording, and we
24 are discussing Issue 3, which was laid out in the minutes
25 and orders issued April 4, 2023.

1 We're going to start with Appellants' argument,
2 and we have, I believe, 45 minutes set for this portion.

3 Okay. Go ahead when you're ready. Thank you.

4 MR. MELNICZAK: Issue 3 is the issue of whether
5 Regulation 25137-14 is the standard apportionment rule
6 for assigning Appellant's service receipts.

7 Dash 14 is not the standard apportionment rule
8 because it's invalid.

9 As we discussed earlier, the FTB didn't meet the
10 requirements of Section 25137 when Section 25136 was
11 amended to market sourcing in 2013.

12 The FTB never showed that the market sourcing
13 rules were distorted.

14 Now, it's true under the Fluor case and under
15 the Amarr case that, if Dash 14 is valid, both when it
16 was initially promulgated in 2007 and when the statute
17 switched to market sourcing, if Dash 14 is valid, the
18 burden is on the taxpayer to show why the Dash 14
19 regulations don't fairly represent the extent of business
20 activity within the state.

21 But if there is no special apportionment rule,
22 such as Dash 14, the standard UDITPA formula must be
23 applied unless the party seeking to deviate from it can
24 show distortion.

25 So in short, if Dash 14 is valid, we agree the

1 burden is on Janus to deviate from an otherwise valid
2 regulation. But if Dash 14 is invalid, the burden is on
3 the FTB to deviate from the market-sourcing statute.

4 Because Dash 14 is invalid, Janus must default
5 to the general rule for sourcing services under 25136,
6 and if the FTB wants to deviate from that, it has the
7 burden of proof.

8 Now, looking at that statutory rule for 25136,
9 which applies here, again, you look to where the
10 purchaser receives the benefit of the service. And
11 there's a focus on the purchaser there. And we had
12 provided an affidavit, which was labeled Exhibit 8, which
13 I provided some context regarding who Janus's purchasers
14 are and where they receive the benefit of the service.

15 As we noted, Janus's purchases are the parties
16 that it contracts with. So those include regulated
17 investment companies, or RICs, but they also include
18 pension funds, employee benefit plans, and retirement
19 associations. Those are the purchasers of Janus's
20 services.

21 The shareholders of those purchasers, or in the
22 case of a pension fund, for example, the pensioners, they
23 are not customers of Janus. They are not purchasers of
24 Janus's services.

25 And in each case, it's the purchasers that

1 contract with Janus. It's not the shareholders that
2 contract with Janus.

3 And we provided some contracts in our exhibits
4 which support this.

5 For example, Exhibit 5 -- Exhibit 5 to our
6 prehearing statement is a contract that we provided,
7 which is between Janus and the Cement Masons Pension
8 Trust Fund.

9 And if you look at that contract, it describes,
10 on Page 1, the investment advisors services -- services
11 performed by Janus, and also states at the top, it's
12 clear that the parties to the contract are Janus and the
13 Cement Masons Pension Trust Fund. There's no mention of
14 the shareholders anywhere in the contract.

15 That contract also describes the fees that Janus
16 received for its services. And if you were to look at
17 the -- the very last page of that contract, there's a
18 note that describes the fees provided by the Cement
19 Masons, and it says that Janus's fee, the advisory fee,
20 is billed directly to the Cement Masons.

21 It's not billed to any shareholders. And it's
22 the responsibility of the Cement Masons, not the
23 shareholders or the pensioners, to pay that fee within
24 30 days of the invoice.

25 The contract also makes clear that the decision

1 to hire Janus to provide its management services, as
2 well as any decision to end the business relationship, so
3 both hiring and firing, can only be done by Janus's
4 purchasers.

5 Like the Cement Masons here. If you look on
6 Page 1, in the Recital section, Recital A states that the
7 Cement Masons have the authority to appoint an investment
8 advisor. The shareholders don't have that authority.

9 And in Recital B, it states that it's the Cement
10 Masons, not the shareholders, which are employing Janus.

11 So it's clear from this contract that the
12 purchaser is the fund, in this case the Cement Masons
13 Pension Trust. And the Cement Masons receive the benefit
14 of Janus's services in their home State of California.

15 California is the location of the Cement Masons
16 on Janus's books and records, and the FTB is not alleging
17 a different location for any of Janus's purchasers.

18 The Cement Masons have no customers of their
19 own, and they are an in-use customer.

20 Now, to address the question of how asset
21 management receipts are sourced under Section 25136,
22 which is the question received from the earlier section,
23 I do want to note that there's only one other state court
24 that has considered the question of how to source
25 receipts from asset management services under a

1 market-sourcing statute, and that's the Lutheran
2 Brotherhood case out of Minnesota.

3 That's a case we cited in our briefs. Minnesota
4 had a market sourcing rule for services that was very
5 similar to California's. They look to the states where
6 the purchaser -- essentially, where the benefit was
7 received. In Lutheran, the court held that the
8 purchasers of investment services were the actual
9 investment companies themselves, the companies that were
10 contracting with the asset management service provider.

11 They specifically held it was not the investors
12 of those companies who were the customers. And Lutheran
13 also held that the funds themselves, the purchasers, they
14 received the benefit of the services at their place of
15 domicile. They didn't look through to where those fund
16 shareholders were located.

17 And the result in Lutheran is consistent with
18 the rules in many other states throughout the country.

19 As you may have seen from the Dash 14 regulatory
20 file, some commenters noted that there had been, you
21 know, a handful of states, perhaps a dozen or so, that
22 had enacted a shareholder sourcing rule. That was back
23 in 2007. And that number since then has remained
24 relatively constant. However, by far, the much more
25 common position is a market purchase approach, which

1 looks to where the purchaser receives the benefit of the
2 service.

3 In fact, since 2007, there's been about 20
4 additional states that have switched to market sourcing
5 for services. Most of those switches have come from a
6 cost performance market.

7 So the trend among states is clearly towards
8 market sourcing, and there are more states that follow a
9 market-sourcing approach than a shareholder-sourcing
10 approach.

11 Now, the FTB hasn't at any point in its briefing
12 alleged that, if the benefit received rule does apply,
13 the benefit is received at any location other than where
14 the purchaser is located. It hasn't alleged that under
15 25136 that the benefit is received at the shareholder
16 location.

17 In fact, as I mentioned before, when that came
18 up in briefing, the FTB acknowledged the conflict and
19 said that 25137 expressly authorized deviation from the
20 statute.

21 So both sides agree that 25136 should split from
22 Dash 14. If, in fact, the reg is invalid, then the only
23 possible interpretation is the source to the actual
24 purchaser's location.

25 Now, we had attached an exhibit to our

1 prehearing statement, which is Exhibit 2, which is a
2 schedule, based on Janus's business records, which
3 provides a break out of receipts from each of Janus's
4 purchasers.

5 I want to quickly walk through the four columns
6 that are on that exhibit. And right now I'm just looking
7 at the first page of the exhibit, which is a list of
8 Janus's customers in 2013.

9 That first column, the Customer column, just
10 provides the names of purchasers from which Janus earned
11 receipts that were included either on its As Filed or As
12 Corrected sales factor numerator.

13 The second column, State of Domicile, provides
14 the domicile of each purchaser based on the mailing
15 address that Janus maintains on its books and records.

16 The third column, which is labeled California
17 Sales As Filed column, that's essentially -- that's how
18 Janus computed its receipts on its As Filed return. So
19 that's following the Dash 14 approach, in which case they
20 source their receipts based on the location of the
21 underlying shareholders.

22 And the fourth column is what we have proposed
23 in the refund claim before us today, which is labeled
24 California Sales As Corrected. That's the market
25 sourcing column. That column represents the portion of

1 receipts from each of Janus's purchasers that are located
2 in California.

3 Essentially, if the purchaser was located in
4 California, we included that number in the As Corrected
5 column.

6 For example, you can -- you can take a look at
7 each of the purchasers on this list that are located in
8 California, and there are several.

9 For example, take a look at -- four lines down,
10 there's a purchaser called California Ironworkers Field
11 Pension Trust, and you can see if you look to the far
12 right, Janus earned about \$305,000 of receipts from the
13 Ironworkers Field Pension Trust. That's a purchaser
14 that's clearly located in California.

15 And you can take a look at other names down the
16 list. There's California Teacher's Association. There's
17 California Winery Workers. The same goes for them.

18 Now, many of these purchasers no doubt have --
19 have pensioners or shareholders of their own that are
20 located all throughout the country. It may be that one
21 of the former California winery workers, pensioners, has
22 moved to another state.

23 Janus is not proposing to exclude those amounts
24 from the sales factor enumerator. Rather, the California
25 winery workers or the California Ironworkers Field

1 Pension Trust are both purchasers of Janus. Janus would
2 source every dollar of receipts from those purchasers to
3 California, regardless of where the ultimate shareholders
4 or pensioners are located.

5 Now, you can see at the top, you can see a
6 comparison between the two methods. The third column,
7 which is the Dash 14 method, shows California sales As
8 Filed as at the very top of \$61 million.

9 That's the amount that was included in Janus's
10 As Filed sales factor enumerator. But applying the
11 California sales As Corrected method, the market sourcing
12 method results in a revised sales factor enumerator of
13 about \$16 million. And that's shown under the -- on the
14 far right column.

15 So we want to make clear that, unlike under the
16 old cost performance rule, here under the benefit
17 received test, fourth column there, the \$16 million
18 column, it's not an all or nothing test like it was under
19 the cost performance rule.

20 Had we included a column here showing the cost
21 performance method, perhaps it would have shown a zero
22 because Janus does not provide -- does not perform many
23 of its services in California. And no doubt the FTB may
24 find that distortive to have zero receipts from
25 California because it doesn't reflect California's market

1 place.

2 But we're not proposing that method. We're
3 proposing merely to follow the statute, which provides a
4 market sourcing rule, which has a focus on where the
5 purchaser is located. And that's what that fourth column
6 of \$16 million represents.

7 Thank you.

8 JUDGE HOSEY: Thank you, Mr. Melniczak, for your
9 presentation.

10 Now we're going to move to the Franchise Tax
11 Board for your presentation on Issue 3.

12 MS. SMITH: Thank you.

13 JUDGE HOSEY: Go ahead when you're ready.

14 Thank you.

15 MS. SMITH: All right.

16 So we're now at what I consider the central
17 issue of this case, and that is the sourcing argument.

18 And in this case, we are applying settled law to
19 uncontested facts, as I mentioned earlier. Appellant is
20 a mutual fund service provider required to apportion its
21 income to California to satisfy its California tax
22 liability, and California law is clear that Regulation
23 Dash 14 provides a standard of apportionment method for
24 mutual fund service providers.

25 Dash 14 is how Appellant originally filed in

1 2013 through '16 and how it should have filed.

2 Earlier I mentioned the case Appeal of Amarr.
3 And I want to quote from it directly right now. And you
4 remember that this was decided by your office at the end
5 of 2021, and it regards a special regulation under
6 Section 25137, as in effect during market-based sourcing
7 years.

8 The quote is:

9 "FTB has promulgated special
10 apportionment regulations under Revenue
11 and Taxation Code Section 25137. If a
12 relevant special formula is specifically
13 provided for in the Revenue and Taxation
14 Code Section 25137 regulations, and the
15 conditions and circumstances delineated
16 in such regulations are satisfied, the
17 method of apportionment proscribed in
18 those regulations shall be the standard
19 by which the parties are to compute the
20 taxpayers' apportionment formula."

21 "In other words, once found to be
22 applicable to the particular situation,
23 the Revenue and Taxation Code Section
24 25137 regulation will control."

25 And this was actually adopting a previous --

1 reasoning in a previous case by the State Board of
2 Equalization, Appeal of Fluor, which itself was a long-
3 standing precedent. So this has been the law of the land
4 for about, I believe, 28 years now.

5 So Franchise Tax Board is applying, you know,
6 nothing new. The rules are not unexpected. Regulation
7 Dash 14 is a special regulation under Section 25137, and
8 it's uncontested that the conditions and circumstances in
9 Dash 14 apply to Appellant.

10 Now, Appellant speaks a lot about Dash 14
11 conflicting with Section 25136, such that it should not
12 be applied. But Regulation 25137-14 was promulgated
13 under Revenue and Taxation Code 25137.

14 That statutory section provides that, when
15 generic apportionment rules, like 25136, do not fairly
16 reflect a taxpayers' activities in state, FTB can require
17 the taxpayer to use any other method to fairly reflect
18 its activities.

19 The California legislature, when it was passing
20 25137 in the 1960s, specifically allowed deviation from
21 the generic assignment rules, like Section 25136.

22 So Section 25137 was designed to provide
23 alternate rules. That's its explicit purpose.

24 As a specific application of 25137, Dash 14
25 fulfills the purpose of its governing statute, imposes no

1 issue of statutory conflict with 25136.

2 Furthermore, the taxpayer discusses that Dash 2,
3 meaning regulation 25136-2, provides standard
4 apportionment, which it doesn't, and we know that from
5 Appeal of Amarr.

6 However, I did want to point out that there is
7 nothing regarding the standard of benefit of the service,
8 which requires assignment to the physical location of a
9 purchaser.

10 Taxpayer mentioned -- excuse me. Appellant
11 mentioned that there are examples of some contracting
12 situations where a customer's customer was the location
13 of assignment. But there is no inherent limiting
14 location where a benefit can be found, and in some
15 examples, that location is not where the physical
16 location of a customer is, and not just in subcontracting
17 situations.

18 Furthermore, the Appellant has said nothing
19 regarding why the location itself of the purchaser of
20 these funds is where the benefit is received. And in
21 doing so, it actually falls into the same trap as the
22 Lutheran court did. In the Lutheran case, which
23 Appellant mentioned --

24 First of all, I want to note that the law there
25 is different from the law here in California. It talks

1 about where the benefit of a service is consumed. So
2 first off, there's a different standard that the Court
3 was applying in that case.

4 Secondly, Lutheran, just as Appellant here has
5 done at court, did no analysis as to where the funds
6 consumed the benefit of the service. It assumed a
7 physical location and it didn't actually run through any
8 analysis whatsoever on why that physical location was the
9 location where it received a benefit.

10 So in short, you know, at the end of the day,
11 this case is really quite simple. Its Appellant is a
12 mutual funds service provider, and it's required to apply
13 Regulation Dash 14 to assign its sales to the state.

14 Although Appellant has argued that Dash 14 is
15 invalid, in applying its apportionment rules -- to avoid
16 applying its apportionment rules, the OTA lacks
17 jurisdiction to invalidate Respondent's duly passed
18 regulation.

19 Furthermore, even if your office determines that
20 it does have jurisdiction to invalidate a regulation,
21 Appellant hasn't met its burden of demonstrating that the
22 FTB didn't comply with the Administrative Procedures Act
23 when promulgating the regulation.

24 And furthermore, it has not shown that the
25 change to 25136, brought about in Proposition 39, in

1 2012, changed the validity of the regulation.

2 So then even if your office determines it has
3 jurisdiction to consider the validity of Dash 14, at the
4 end of the day, Dash 14 applies, and FTB's position
5 should be sustained.

6 Thank you.

7 JUDGE HOSEY: Thank you, Ms. Smith.

8 Would the Appellant like to reply?

9 MR. MELNICZAK: Yes, please.

10 JUDGE HOSEY: Go ahead.

11 MR. MELNICZAK: I'd like to address the language
12 that was referenced from the Amarr case, which also
13 involved a 25137 regulation, and which noted that,
14 generally speaking, the regulation is the standard.

15 The issue with that, as applied to this case, is
16 that it begs the question whether the regulation is valid
17 in the first instance.

18 If -- again, if this appeal involved years prior
19 to market sourcing, prior to 2013, Amarr certainly holds
20 and is true that we would -- we would, in fact, have a
21 valid regulation, and Janus would be seeking to deviate
22 from it, and we would very well have the requirement of
23 showing distortion. That's only if the regulation is
24 invalid.

25 As we mentioned in the prior section, the

1 regulation is not invalid because a regulation that
2 conflicts with the statute can only be done under 25137,
3 and 25137 requires that the apportionment provisions of
4 the act in place at the time do not reflect a taxpayer's
5 business activity.

6 Again, that simply begs the question as to
7 whether or not Dash 14 is valid in the first place.
8 Certainly if it is valid, we don't get to the question
9 of -- of whether market sourcing applies because we would
10 have the burden of showing distortion, and we have not,
11 today, made an argument that Dash 14 is distortive. We
12 would argue that it simply is not valid.

13 Another distinction with the Amarr case is that,
14 while it did involve a 25137 regulation, it involved the
15 25137 regulation which excluded certain substantial and
16 occasional sales of tangible personal property from the
17 sales factor.

18 Now, the reason that the FTB wanted to exclude
19 those sales is because in certain instances, it was found
20 that, you know, including a large, you know, one-off sale
21 of property, for example, could distort a taxpayer's sales
22 factor because it doesn't fairly reflect that taxpayer's
23 business.

24 So the FTB found that was distortive in certain
25 cases, but there's nothing about the switch from cost

1 performance to market sourcing, in 2013, that alters that
2 distortion analysis. So there is no reason at all to
3 believe that the substantial and occasional sale
4 exclusion, that was at issue in Amarr, should no longer
5 apply aftermarket sourcing.

6 First off, substantial occasional sale refers
7 to sales of tangible personal property. And the change
8 at issue here, from cost performance to market, affects
9 sales of services.

10 And secondly, the analysis that the FTB
11 undertook to include that substantial and occasional
12 sales should be excluded, meaning they don't fairly
13 represent a business, there's nothing about that that
14 changed after they switched to market sourcing, unlike
15 the three factors we mentioned earlier, which is that
16 cost performance went up for services, went all to one
17 state, it didn't reflect market, it didn't reflect
18 property and payroll.

19 Those are three big factors that the FTB relied
20 on to show distortion under the cost of performance rule,
21 and those factors no longer exist under market sourcing.

22 However, all the factors for substantial and
23 occasional sales, all of the factors for their exclusion
24 from the factor remain before and after the law changed.

25 So there's no reason to apply a different rule.

1 In Amarr, there was no reason to apply a different rule
2 post 2013 rather than pre 2013.

3 And finally, I want to address the question of
4 whether the purchaser must always receive the benefit
5 where it is located.

6 In our case, our purchasers have only one
7 location of their own. They have no customers of their
8 own. So there is no -- no customer to look through, and
9 it -- it has never been found appropriate to look to
10 where a customer's shareholders are.

11 For example, if legal services were provided to
12 a corporation, say Microsoft, you might look to where
13 Microsoft is located. You might look to their offices.
14 You might even look to where Microsoft customers are, but
15 you would never look to where Microsoft's individual
16 shareholders are, and that's what FTB would be seeking to
17 do in -- by equivocating a shareholder sourcing rule with
18 a market sourcing rule, which looks to where the
19 purchasers receive the benefit.

20 Thank you.

21 MS. SMITH: May I respond?

22 JUDGE HOSEY: Thank you.

23 Go ahead, Ms. Smith.

24 MS. SMITH: Thank you.

25 I wanted to specifically address the Regulation

1 C -- 25137(c)(1)(A), which is the regulation at issue in
2 Amarr.

3 First, I do want to point out that it does
4 actually apply to intangibles. One of the examples
5 actually in that regulation discusses stock. So there is
6 no limit, first off, regarding sales of intangibles.

7 But secondly, it is incorrect to state that the
8 reason for passing (c)(1)(A) did not have to do with cost
9 of performance assignment methodology. (c)(1)(A), what
10 it does is it takes out of the sales factor large
11 infrequent, so substantial and occasional, sales of
12 property that's used in a business or it could be a
13 factor a year, as they said in the example sales of
14 stock.

15 And this was promulgated under COP years. And
16 one of the reasons that it was promulgated was because
17 there would be an over emphasis, like taxpayer argues in
18 its -- in its case here, that there would be an over
19 emphasis assigning that sale to the location of property
20 and payroll. So essentially duplicating the property and
21 payroll factors for a sale.

22 So the remedy for this, under 25137, was to take
23 it out of the sales factor to -- so as to not duplicate
24 the -- by using cost performance, the locations of
25 property and payroll.

1 So I would say that actually Amarr, its ruling
2 is particular on point, because when your office looked
3 at that case, it was dealing with a regulation that was
4 passed during the COP years. And one of the basis --
5 basis for the promulgation was because COP over
6 emphasized the property and payroll locations of that --
7 of the taxpayer.

8 So furthermore, I think that if we are going
9 to -- so essentially if OTA -- OTA was -- trying to say
10 how to phrase this.

11 Essentially the same background occurred for
12 (c)(1)(A) as it does for this case, and so we already
13 know that despite, you know, the basis of COP, the
14 background of the COP as being one of the bases for the
15 (c)(1)(A), nevertheless, OTA affirmed that nevertheless,
16 this is standard apportionment if the circumstances and
17 situations apply to the taxpayer. And the same thing is
18 happening here with Dash 14.

19 Thank you.

20 JUDGE HOSEY: Thank you.

21 Appellant, would you like to respond before we
22 move to questions from the panel?

23 MR. MELNICZAK: Yes, please.

24 JUDGE HOSEY: Okay. Go ahead.

25 MR. MELNICZAK: I just want to highlight that we

1 do acknowledge that 25137(c)(1)(A), which was at issue in
2 Amarr, does apply to intangibles, as well. But in this
3 case, we are not talking about intangibles. We are
4 talking about services. So we do have a direct conflict
5 between Dash 14, which applies to mutual fund service
6 receipts, and 25136, the statute which also applies to
7 services.

8 Now, the other key fact about 25137(c)(1)(A) is
9 that the distortion there was focused on the incidental
10 nature of a sale. As the FTB mentioned, there could be a
11 one-off sale of property or a factory or stock, which
12 could be intangible, that could be distortive of a
13 taxpayers' factor.

14 And I just want -- and I just wanted to repeat
15 that that -- that same distortion, the fact that a
16 one-off sale could have a, you know, a huge or distortive
17 effect on a sales factor, that remains present both under
18 the cost performance rule for services and the market
19 rule for services because, again, the switch to market
20 only affected services, not tangible personal property or
21 intangibles.

22 Thank you.

23 JUDGE HOSEY: Okay. Thank you. I'm going to
24 move to questions from the panel.

25 I'm going to start with Judge Ridenour.

1 Any questions?

2 JUDGE RIDENOUR: No questions. Thank you.

3 JUDGE HOSEY: Thank you.

4 Move to Judge Akopchikyan.

5 Any questions?

6 JUDGE AKOPCHIKYAN: I don't think I have any
7 questions. I'm going to confirm. I'll let you know.

8 JUDGE HOSEY: Okay. I think without any
9 questions, we are ready to submit the case and conclude
10 the hearing. The evidence has been admitted into the
11 record, and we have the arguments and your briefs, as
12 well as the oral arguments presented today.

13 We now have a complete record from which to base
14 our decision and are ready to submit the case. The
15 record is now closed. This concludes the hearing for
16 this appeal. The parties should expect a written opinion
17 within 100 days from today.

18 With that, we are now off the record, and the
19 hearings are concluded for today.

20 Thank you, everybody.

21 I appreciate your time today.

22 (Proceedings concluded at 12:06 p.m.)
23
24
25

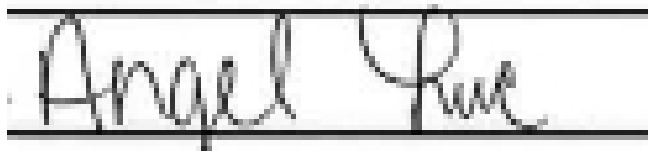
REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

I, Angel Love, a Certified Shorthand Reporter of
The State of California, do hereby certify that I am a
disinterested person herein; that I reported the
foregoing hearing to the best of my ability in shorthand
writing; that I thereafter caused my shorthand writing to
be transcribed into typewriting.

I further certify that I am not of counsel or
attorney for any of the parties to said hearing, or in
any way interested in the outcome of the said hearing.

IN WITNESS WHEREOF, I have subscribed this
certificate at Sacramento, California, on this 10th day
of May 2023.

A handwritten signature in cursive script, reading "Angel Love", is written over two horizontal lines.

ANGEL LOVE, CSR NO. 13845

<hr/>	105 4:21	16 101:1	2019 23:24
\$	108 4:22	17951-4 29:7	2020 27:17
\$10 47:5 48:6 63:19 65:13,19,24 70:20,25 71:15	10:35 56:21	17952 29:6	2021 28:6 67:13 101:5
\$100 47:25 48:5, 12 71:2,14	11 18:8 29:16 77:17	17954 29:12	2022 29:3,18
\$12 70:21	110 4:22	18 76:24	2023 2:18 5:1,6 90:25
\$12.6 63:20	11340 24:20	19 2:18 5:1,6 28:7	22 4:13
\$16 99:13,17 100:6	11343.6 57:23	19133 28:7 78:7	23 4:14
\$305,000 98:12	11349 25:23	19503 18:4 19:23 28:12 29:12,22 79:17 80:1,12,17, 21 81:2	238 83:9
\$61 99:8	11349.1 26:3	1952 12:6 34:20 83:8	25136 6:12 8:24 17:6,10 18:9 19:1 41:17,22 52:16 56:6 67:10 68:14 69:5 72:19 74:24 79:11 86:8 87:17, 25 88:6,20,24 91:10 92:5,8 94:21 96:15,21 102:11,15,21 103:1 104:25 111:6
\$90 48:2,5	11349.6 25:23	1960s 102:20	25136-2 17:12,18 79:11 88:8 103:3
<hr/>	11349.8 68:16	1984 11:15 33:25 82:14	25137 18:9,10 29:22,24 30:6 42:16,18,19,20 49:16,19 55:1,23 56:4,12 62:3 67:16 72:2,7,14, 21 73:3 80:17 87:10,19,20 88:1 89:2 91:10 96:19 101:6,11,14,24 102:7,13,20,22,24 105:13 106:2,3, 14,15 109:22
(11349.9 26:18	1995 24:3	25137(c)(1)(a) 109:1 111:1,8
(b) 27:22	11350 10:23 11:2, 12,17 12:15 13:4 25:7 27:21 29:15 30:13 32:17 33:17,18,21 34:2 77:17 84:6,9,17	<hr/>	25137-14 6:9,16 8:18 17:19 22:15 23:4 32:23 41:9 57:12 68:7 87:17 91:5 102:12
(b)(1)(a)(1) 65:3	11361 24:21	2	28 102:4
(c)(1)(a) 109:8,9 110:12,15	12:06 2:18 112:22	2 4:16 19:1 39:17, 25 40:2,11 56:21, 25 73:13 86:6 90:13 97:1 103:2	
(c)(1)(d) 30:7	131 9:6	20 21:24 96:3	
(D) 30:17	137 82:14	2002 30:25	
(I) 30:20	13845 2:19	2007 6:10 42:6 43:4 49:6,9,25 52:10,14 53:11 54:22 86:22 87:6 91:16 95:23 96:3	
<hr/>	14 18:14,15,21,25 22:15,21,23 41:13,21 42:6,12, 15 43:3 47:2 53:2, 5 55:16,25 56:12 57:13 58:6 61:18, 20 62:4,15 64:13 67:5,9 68:4,13 69:1,22 72:12 86:8 87:23,25 88:5,20 89:6 91:7, 15,17,18,22,25 92:2,4 95:19 96:22 97:19 99:7 100:23,25 102:7, 9,10,24 104:13,14 105:3,4 106:7,11 110:18 111:5	20096605 2:6 5:6	
0	15672 27:24	2012 6:12 57:17 67:9,11 105:1	
07 43:7		2013 41:16 42:2 43:5 49:11 51:24 52:16,19 53:2 54:21 67:21 69:21 72:11 86:24 87:14 91:11 97:8 101:1 105:19 107:1 108:2	
<hr/>		2018 78:17	
1			
1 4:12 6:7,19,22 7:6 8:3 16:23 22:2 23:19 39:10 73:13,19,22 90:13 93:10 94:6			
1-6 4:4 7:8			
10-minute 56:19			
100 4:21 51:6 112:17			
102 9:5			

<hr/> 3 <hr/>	729 82:14	acted 89:22	adequately 51:9
3 4:19 9:24 13:10 14:13 19:9 61:9, 23 65:17 90:24 91:4 100:11	<hr/> 8 <hr/>	action 11:19,21 12:22 13:17 14:15 25:11,17 26:1 34:10 77:22 83:11,12	Administration 78:17
3.5 9:25 13:10 14:13 19:9 24:20	8 4:5,13 7:11,16,18 92:12	actions 11:25 12:21 34:17 35:5, 8	administrative 5:8 6:11 9:18 10:1 15:7,23 20:1 24:16,23,25 25:25 26:1,12,23 31:5 35:8 42:24 58:4 59:21 67:3 69:7 74:1 75:12,14,20 79:22,23 80:3 82:17 85:21 104:22
30 93:24	<hr/> 9 <hr/>	activity 30:3 42:22 50:22 55:4 72:24 90:2 91:20 106:5	admitted 7:6,8,9, 17,18,24,25 21:3 80:24 112:10
30103 24:11	90 8:6	activities 41:7 42:9 102:16,18	adopted 38:6 39:23 62:4 82:24
30104 9:11 30:16 32:20	91 4:20	actual 63:5,22 95:8 96:23	adopting 101:25
33 4:14	9:10 2:17 5:2,7	add 30:17,19 78:15 87:15	adoption 24:17 25:3 43:12
39 67:11 104:25	<hr/> A <hr/>	added 65:10	adopts 78:13
399 60:10 61:5,6 62:16 66:8	A-I 4:6 7:9	addition 25:2 29:20 62:18 87:16	adverse 26:19 46:23 48:7,8 60:3, 18
<hr/> 4 <hr/>	A-U-E-R 76:10	Additional 27:25	advisor 94:8
4 61:11 90:25	a.m. 2:17 5:2,7	address 8:15,20 11:1 20:13 23:1 29:1,25 31:10 32:6 33:1,7,15 35:12,14 43:13 60:12 69:19 71:24 77:15 94:20 97:15 105:11 108:3,25	advisors 93:10
40 4:17	abatement 24:9	additional 46:1,8 48:1,12 62:19 67:7 90:10 96:4	advisory 46:6 93:19
400 2:16 58:8 66:8	ability 12:21 20:16 59:15 77:16 83:4,17	Addressed 17:18 20:5 31:4,24 33:21 34:18 65:8 67:21 76:2 79:21 80:8,9 84:16	advocating 56:7
45 40:7 91:2	ACC 22:7	addresses 18:10 25:22 64:21	affect 62:10,13
<hr/> 5 <hr/>	accordance 6:10 25:12	addressing 77:2	affected 12:8 34:22 61:16 111:20
5 93:5	accounts 45:25	adequate 43:18 46:15 49:18	affects 71:12 107:8
5412 9:14	acknowledge 42:13 88:23,25 111:1		affidavit 92:12
57 4:17	acknowledged 48:20,25 88:19 96:18		affirmative 6:7
<hr/> 6 <hr/>	acronym 30:2		affirmed 83:3,15 110:15
6 6:19,22 7:6 25:21 77:10	act 6:11 23:5 24:4, 17,25 26:3,7,23 27:16 30:2 32:15 42:24 55:3,5,6 60:23 66:23 72:23,24 74:1 75:12,15,20 80:20 81:25 82:3 85:21, 23 87:22 104:22 106:4		aftermarket 107:5
637 83:9			
69 4:18			
<hr/> 7 <hr/>			
7 4:4,5,6,7 25:24 88:23			

- agencies** 13:11
25:16 58:3,15
60:5,10
- agency** 10:1 15:7,
24 16:8 20:1 24:4,
23,24 25:20 26:8,
22 27:13 31:10
49:1 59:2,8 60:17
68:21 73:25 79:23
80:3 83:5,18
- agency's** 31:14
32:5,6
- agent** 79:22
- agree** 18:3 77:20
91:25 96:21
- agreed** 29:13
55:15
- ahead** 8:2,7 33:12
39:9 40:9 69:14,
18 85:2 91:3
100:13 105:10
108:23 110:24
- Akopchikyan** 3:5
5:10 39:15,16
73:17,18 75:7,10
77:13 81:5,7
84:25 85:1,3 86:1,
4 88:3 90:10
112:4,6
- alleged** 96:12,14
- alleging** 94:16
- allocation** 13:5
42:21 55:2 72:22
- allowances**
29:21
- allowed** 35:7
38:11 85:12
102:20
- alter** 86:17
- alternate** 55:2,25
102:23
- alternative** 11:23
18:10 49:22 87:20
- alters** 55:9 107:1
- Amanda** 3:10
5:18 22:4
- Amarr** 56:2 67:14
71:25 72:5 91:15
101:2 103:5
105:12,19 106:13
107:4 108:1 109:2
110:1 111:2
- amended** 6:12
52:16 91:11
- amendment**
24:17 25:3
- amendments**
30:15 32:20 38:4,
5
- amount** 21:12
71:4,5 99:9
- amounts** 98:23
- analysis** 28:10
53:9 54:21 55:7,
10 64:4,6,7 70:21
73:22 74:10,15
78:6,24 104:5,8
107:2,10
- analyst** 63:15
- ANGEL** 2:19
- annotations**
32:10
- anticipate** 64:19
- anticipated** 60:18
- AOL** 68:20,21
- APA** 24:19 25:4,
14,21 31:6 42:25
43:1,8,10,13,17
46:22 49:7,8,9
57:14,19,21,22,24
58:11,17,19,21,
22,25 59:13 60:20
61:4 62:17 65:15
66:4,6,18,20,25
69:20,23,25 70:24
71:6 74:2 81:13
82:24 83:2 86:12,
13
- APA's** 67:6
- apologies** 44:10
47:16 71:21
- apologize** 66:16
- appeal** 2:5 5:5 6:4
9:8 12:14 23:24
24:3,18 25:3 27:7,
17 28:5 29:4,18
32:22 33:23 67:14
82:22 83:9 84:5
85:6 90:14 101:2
102:2 103:5
105:18 112:16
- appeals** 2:1 6:5
11:11,15 20:17
23:20 24:6,7
30:20 75:13 76:2
- APPEARANCES**
3:1
- appeared** 63:3
- Appellant** 2:7 3:7
5:14,16 6:8,20
7:21 22:11,17,18
23:2 25:6 27:1
31:13 33:3 57:12,
14,16,20 58:13
64:10 65:1 67:7,8
68:6,9,12 69:4
73:21 74:8 78:23
82:5,6 86:5 88:4
100:19,25 102:9,
10 103:10,18,23
104:4,11,14,21
105:8 110:21
- appellant's** 4:4,5
6:17 7:8,18 8:22
17:5 22:25 30:5,9,
24 31:16 61:11
68:6,20 86:15
91:6
- Appellants** 5:12,
21 6:24 7:11 8:3
33:1,11 40:1
69:14 83:6,22
- Appellants'** 91:1
- appellate** 78:18
83:13
- applicable** 56:9
101:22
- application** 30:1
36:12 102:24
- applied** 9:22
19:15 22:24 62:4
75:19 77:23 81:12
89:16 91:23
102:12 105:15
- applies** 36:3 69:1
92:9 105:4 106:9
111:5,6
- apply** 15:21 16:9
37:5,12,19 39:20
53:3 67:9 68:6,13
74:2 85:13 96:12
102:9 104:12
107:5,25 108:1
109:4 110:17
111:2
- applying** 17:2
22:10 39:5 62:15
99:10 100:18
102:5 104:3,15,16
- appoint** 94:7
- apportion** 22:12,
24 61:17 100:20
- apportionment**
6:17 8:18 18:8,10
22:16,22,24 29:25
42:4,21 51:25
52:21 55:2,6
57:16 63:8 67:17
68:1 72:22 80:19
87:21,22 91:5,7,
21 100:23 101:10,
17,20 102:15
103:4 104:15,16
106:3 110:16
- approach** 41:14,
20 44:15 53:20
70:5,6 95:25 96:9,
10 97:19
- approved** 62:15
66:8
- approvingly** 24:2
- approximation**
49:22 88:11,13,16

April 2:18 5:1,6
90:25

area 27:3,16

areas 76:1

argue 72:11
106:12

argued 28:16
43:3,16 104:14

argues 23:2 67:8
109:17

arguing 78:23
84:8

argument 8:13
10:8 28:19 30:5
33:4,15 49:5,8
67:7 68:9 69:5
70:23 82:7 86:20
88:5,18,23 89:6
91:1 100:17
106:11

arguments 8:3
10:17 33:16 39:22
57:18 59:7
112:11,12

Arkansas 45:11

Article 9:24 13:10
14:13 19:9 25:21,
24

articulate 46:24

articulated 36:25
37:13 78:2,19
79:10 80:6

aspects 43:17

Assembly 9:5

assert 80:22

assertion 29:13

assess 60:17

assessed 11:25
62:20

assessment
85:11

assessments
24:8

asset 40:13 44:6,
13,16 45:2,23,25
46:5,7 50:21
94:20,25 95:10

assign 104:13

assigning 6:17
67:10 91:6 109:19

assignment 65:7
102:21 103:8,13
109:9

Association
58:24 98:16

associations
92:19

assumed 104:6

attached 96:25

attempt 73:1

attorney 22:6

attributable 45:8,
15

attributed 45:8

Auer 76:10

authorities 27:14

authority 10:6
19:9,25 25:20
26:4,12 27:3,9
28:3,11 29:11,14
30:11 31:2,9,14
32:25 34:7 35:22,
25 42:16 53:5
68:18 76:14 77:8
78:4 81:11,25
82:1,2,3 94:7,8

authorized 26:22
36:11 96:19

authorizes 89:2

authorizing 76:1

automatically
60:20 66:20

avoid 104:15

aware 20:14
39:19 71:7 82:11

B

back 33:3,10 42:6
43:4,6 49:5,9,25
52:14 53:11
56:20,23 59:18
69:14 75:23 85:18
90:19 95:22

background 9:2
110:11,14

bad 21:11

balance 52:7

base 112:13

based 10:20
29:19 38:18 41:6,
23 50:24 52:11
62:6 88:6 97:2,14,
20

bases 110:14

basic 59:5

basis 10:2,9
13:13,16 46:6
47:3 48:9 54:14
59:23 63:23 65:6
70:14,18,25 71:5,
13 73:24 74:4
75:22 85:10 86:10
110:4,5,13

Bath 29:17 32:18
77:11

Bed 29:17 32:18
77:11

begin 8:4 9:1 57:4

beginning 9:1

begins 58:13

begs 105:16
106:6

believed 26:1
42:7

benefit 6:15 17:8,
16 41:19 53:22
74:25 89:10,12,
15,17 90:7 92:10,
14,18 94:13 95:6,

14 96:1,12,13,15
99:16 103:7,14,20
104:1,6,9 108:4,
19

big 47:7 48:10
81:23 107:19

bill 9:5 24:10

billed 93:20,21

bit 12:25 40:20
44:9,23 50:11
81:14

black 66:24

blank 79:17 80:21

board 6:21 7:14,
20 9:7,13 10:1
12:6 13:8 22:1,5,8
23:11 24:2 27:10
30:24 31:20 34:20
48:22 56:20 57:1
58:24 60:11 62:3
63:13 64:1 75:9
78:12 81:15 83:8
85:4,10 100:11
102:1,5

board's 31:14
61:12 69:16

boards 35:8

body 75:15

BOE 9:15,18,23
10:5 19:8 20:14,
16,20 21:2,5,17
35:10

BOE's 9:17,21
10:15 20:14

books 9:11 12:15
18:21 38:16 94:16
97:15

borne 71:2,18

branches 26:15

break 56:17,19,22
82:9 90:15,17
97:3

briefed 21:2

briefing 31:17
82:8 86:7 96:11,
18
briefs 10:20 43:2
95:3 112:11
bring 12:21 34:10,
16 35:8 72:11
77:22
bringing 14:15
25:11 35:4 84:20
brings 13:17
broad 18:5
Brotherhood
95:2
brought 20:24
21:2 104:25
bucket 14:11,18
80:13
burden 49:1,15,
17 56:5,7,11
57:20 58:18 65:9
70:12 71:14 72:1,
3,13 91:18 92:1,2,
7 104:21 106:10
burdens 46:16
burdensome
43:15 45:16,17,20
64:24 70:4
Bureau 22:7
business 30:3
32:10 42:22 60:3
72:23 91:19 94:2
97:2 106:5,23
107:13 109:12
businesses
46:23 61:21
62:13,14 88:10

C

C-O-H-O-R-T
47:15
Cal 18:9
Cal.app.3d 82:14

calculation 49:1
California 2:2,16,
21 5:1,7 6:12 8:24
9:25 10:3 11:11
12:5,13,14 13:9
14:5,13 15:4 17:6,
10 18:4 19:1,8,22
20:5,24 22:13,14
27:12 29:7 31:1
33:23,24 34:18
35:1,9 41:8,16
45:6,14 46:23
48:19 50:24 51:1,
6,24 52:20 53:17
58:23 60:4,8
61:21 62:10,13
68:12 77:3,5,6,9
78:17,18 80:3,6
84:4,5 86:14
87:19 94:14,15
97:16,24 98:2,4,8,
10,14,16,17,21,
24,25 99:3,7,11,
23,25 100:21,22
102:19 103:25
California's
55:14,19 57:17
95:5 99:25
called 45:25
48:21 98:10
calls 59:8
Capital 2:6 5:5
53:16 56:24 72:10
90:19
care 13:4
carefully 64:5
carve- 82:1
carve-out 82:2
cascading 88:9,
10 89:13
case 5:6 8:14 9:3,
18 10:10,14
11:11,14,15 12:23
13:7,19,20,23
15:1,2,3 16:11,24
17:3,4,5 18:2
20:12,23 21:5,17

22:10,11,19 28:8,
17,19,22 30:6,7
31:14 32:7,9
33:25 34:16,20
35:7,13,15,16,18,
20 36:2,20,21,22,
23 37:2 38:20,24
39:3,20 48:21
49:14 53:15 56:2,
3 67:14 70:22
71:25 72:10,18
75:23 78:7,10,18,
22 79:2,6,19,22
80:12 81:12 82:6,
14 83:5,6,19 84:3
85:13 89:15,19,25
90:1 91:14,15
92:22,25 94:12
95:2,3 97:19
100:17,18 101:2
102:1 103:22
104:3,11 105:12,
15 106:13 108:6
109:18 110:3,12
111:3 112:9,14
cases 15:3,6,10
16:14 33:22 35:1,
9 36:17 39:4 52:4
67:3 77:2,24 82:6
84:2,4,15 106:25
catch 50:12
categories 14:5
category 79:5
CDTFA 36:5
Cement 93:7,13,
18,20,22 94:5,7,9,
12,13,15,18
census 45:20
70:5
central 100:16
Certified 2:20
cetera 60:8
challenge 11:18
25:5,15 32:14
75:11
challenges 24:18
33:1

challenging
34:15
change 19:13
47:20,23 52:19
55:15,17,20 57:17
68:12,14 104:25
107:7
changed 41:17
49:11 55:9 67:10
68:17 69:6 86:23
105:1 107:14,24
Chapter 18:8
24:20
chart 50:5,6,14
Chas 12:5 34:19
83:7
check 56:16
79:18 80:22
chronological
9:16
circling 59:18
circumstances
26:8 67:17 68:1,5
101:15 102:8
110:16
cite 10:22 78:16
cited 24:2 48:21
51:12 77:24 78:4
80:16 95:3
cites 15:1 30:12
79:16
citing 29:14 78:9
citizen 16:11
citizens 15:17
Civil 25:13
claim 22:20 24:8
29:19 72:11 73:7
89:5 97:23
claims 24:10
clarification
47:11,14 71:9
clarify 86:6,15
87:13

classification 76:20 82:17 83:2	commenters 46:4 50:3,23 51:7 95:20	computed 97:18	conflicts 73:4 74:4 87:9,17,18 106:2
clear 12:17 14:3 22:14 23:22 27:23 35:2 42:14 47:8 49:20 53:6 56:3 70:11,19 72:4 77:23 93:12,25 94:11 99:15 100:22	comments 45:18, 22 46:12,16 69:19 70:1,3,4,8 73:10	concede 63:21	conformity 31:6
clients 8:23	commission 31:2,8	conceded 21:3 38:25 80:25	consideration 23:16 29:5 63:12, 25 81:24
close 5:22 63:18 71:22	common 95:25	conceding 39:2	considered 94:24
closed 53:18 90:16,20 112:15	communication 43:11	concern 43:14 80:9	consistent 13:22 19:14 21:8 32:16, 17,19 35:10 36:15,24 37:25 38:1,21 39:3 78:2, 22 89:7 95:17
closer 40:18	community 45:19	concerns 30:10 52:9	constant 95:24
code 8:24 10:23 11:2,12,17 12:15 17:6,10 18:4,9 19:1,23 24:20 25:7,13 27:21,24 28:12 29:5,11,15 30:13 32:17 33:18,21 34:2,9 36:11 38:8 57:22 68:10,16 75:17,25 77:17 79:17 84:9, 17 87:19 101:11, 14,23 102:13	companies 51:6 90:3 92:17 95:9, 12	concludes 33:6 69:8 90:14 112:15	constitution 9:25 10:4 13:10 14:14 19:9 27:13
codification 61:19,20	compare 48:4	concluding 2:17	constitutional 14:16 38:19,20
cohort 47:8,10,12	compared 63:7	conclusion 28:2	constitutionality 10:9
coincides 52:2	comparison 99:6	conclusive 60:17	constitutionally 79:20
colleague 8:19 23:7 57:7 68:11 80:18 87:18	competing 64:7	conditions 101:15 102:8	consumed 104:1, 6
column 97:9,13, 16,17,22,25 98:5 99:6,14,17,18,20 100:5	competitive 62:13	conduct 9:8 53:8 63:17	context 76:16 86:18 92:13
columns 97:5	complaint 83:10	conducted 63:25	continue 67:25 68:13 69:4
commencing 2:17	complete 112:13	confer 31:2	continued 52:25
comment 48:17 69:20 71:8,25	completed 66:8	conference 6:21 7:12 23:12	continues 22:23
	completely 61:7	conferred 24:5,7 25:25	contract 93:1,2,6, 9,12,14,15,17,25 94:11
	compliance 24:24 26:23 45:2 60:24,25 64:12, 20,21 65:9 66:3 70:24 75:11 81:13 82:24 83:2	confirm 112:7	contracting 95:10 103:11
	compliant 64:10	confirmation 23:16	Contractor's 83:8
	complied 57:15, 21,22,25 58:12,19	conflict 42:13 86:7,17,24 87:5,6, 7,25 88:5,14,20 89:5 96:18 103:1 111:4	Contractors 12:6
	comply 37:18 42:23 43:8 45:21 49:6,9 60:19,23 66:19,23 104:22	conflicted 42:12 87:6	Contractors' 34:19
	complying 43:14, 20,23 46:14,17	conflicting 11:24 12:22 34:16 102:11	
	compute 101:19		

- contracts** 12:10
34:24 92:16 93:3
- contradicted**
30:7
- contrary** 21:15
52:5 79:19
- contribution**
51:17
- control** 101:24
- controlled** 29:7
- controls** 68:4
- controversy**
11:22 12:23 34:16
83:16 84:20
- convincing** 49:20
- Cook** 28:17
- COP** 53:13 109:15
110:4,5,13,14
- corner** 58:9
- corners** 62:17
- corporate** 63:2
- corporation**
28:10 89:21,22,24
90:7,8 108:12
- corporation's**
89:24
- correct** 24:13
35:17
- Corrected** 97:12,
24 98:4 99:11
- Corrections**
82:16
- correctly** 16:19
27:17 69:24
- cost** 41:5,10,24
42:5,7 43:20,23,
25 44:1,14 46:13,
16 50:1,4,8,16,17,
19 51:8,18,19,21,
25 52:4,11,23
53:24 54:6,15,23
55:17 70:13,14
71:2 87:7 96:6
- 99:16,19,20
106:25 107:8,16,
20 109:8,24
111:18
- costs** 60:8 64:11,
12,20,22
- counsel** 3:10,12
22:5 31:16
- countered** 28:19
- country** 41:1
44:17 45:12
53:17,23 54:4
95:18 98:20
- couple** 8:18
- court** 11:15,25
12:2,5,13,14,17,
21 14:5 20:5,25
23:22 24:14
25:12,18 27:24
33:23,24 34:11,19
35:9 48:19,22,25
58:23 59:11,17
60:22 66:22 77:19
80:6 82:6,19
83:13 84:4,5,13,
15 94:23 95:7
103:22 104:2,5
- court's** 83:13
- courts** 10:22 11:1,
3,6 13:6 15:12
27:23 33:19 35:1
81:21
- cover** 41:5
- create** 67:1,3
78:14
- creation** 60:7
- credit** 49:24 52:13
- crux** 9:2 16:23
- CSR** 2:19
- current** 30:15
38:15 55:24 61:19
64:16 72:25 87:22
- customer** 44:18,
19,21 45:7 51:17,
19 94:19 97:9
- 103:12,16 108:8
- customer's**
44:20 89:25
103:12 108:10
- customers** 44:6,
17 45:4 89:24,25
90:3,5 92:23
94:18 95:12 97:8
108:7,14
- cut** 49:2
-
- D**
-
- damages** 35:5
- dash** 18:14,15,20,
25 19:1 22:15,20,
23 41:13,21 42:6,
11,15 43:3 47:1
53:2,5 55:16,25
56:12 57:13 58:6
61:18,19 62:4,15
64:13 67:5,8 68:4,
13 69:1,22 72:12
86:8 87:23,24
88:5,20 89:6 91:7,
15,17,18,22,25
92:2,4 95:19
96:22 97:19 99:7
100:23,25 102:7,
9,10,24 103:2
104:13,14 105:3,4
106:7,11 110:18
111:5
- data** 63:22
- day** 85:18 104:10
105:4
- days** 93:24 112:17
- dealing** 16:13
110:3
- deals** 8:15 11:11
- debt** 21:11
- decide** 19:18
66:17
- decided** 67:19
101:4
- decides** 66:6 85:7
- decision** 16:14
19:12 20:18 24:3
26:16 30:8,25
31:4,7 33:23 34:9
36:9 38:15 48:25
67:12,14,20 68:25
83:8 93:25 94:2
112:14
- decision-** 38:11
- decision-making**
26:13
- decisional** 83:15
- decisions** 9:18
10:16 16:19 19:15
- declaration**
12:19 25:9 59:11,
16
- declaratory** 11:6,
17,19 12:1,20
25:11,17 30:21
34:3,6,10,12 35:3
76:3 77:17,18
83:12 84:13
- declare** 6:5 13:15,
24 60:17,22 66:22
73:24 74:3 86:10
- decrease** 65:21
66:2
- deduct** 21:12
- deduction** 21:11
- default** 92:4
- defective** 86:12
- defend** 68:22
- defendant's**
83:14
- deference** 14:20
32:5 76:10
- defined** 9:15
- defines** 9:11
- defining** 51:15
- delegated** 16:8
18:23 80:22

delegation 15:6, 8:22 17:21,23 18:1,3,11 19:21 20:11 21:9 36:3 37:22,23 74:22 81:1	determinations 24:9 26:17,19 61:13 76:4	director 38:10,14	87:11,14,21,24 91:24 105:23 106:10 107:2,20 111:9,15
Delinda 3:13 5:20 22:7	determinative 29:1	disagreeing 77:16	distortive 42:10 50:4,9,16 51:7 55:22,24 56:6,11 73:1,2 99:24 106:11,24 111:12, 16
delineated 101:15	determine 22:13 24:15 30:18 31:18 32:22 36:11,18 45:6 57:10 62:24 65:6 76:22 77:4 81:24	discuss 8:13	dividing 81:10
demand 28:8 37:3,6,19 78:15	determined 75:5 81:19	discussed 6:23 9:22 39:21 78:18 83:7 91:9	Division 30:1
demands 37:6	determines 32:24 104:19 105:2	discusses 20:25 78:6 103:2 109:5	dollar 43:25 99:2
demonstrate 22:23 57:20 58:19 62:22	determining 32:2,3,4 75:18	discussing 77:1 90:24	dollars 43:24 46:14,17
demonstrates 67:12	developed 60:10	discussion 19:19 31:21 63:12,25 64:9 66:11	domicile 88:12 95:15 97:13,14
demonstrating 104:21	development 59:1,14,24 67:2	disguise 79:23	doubt 98:18 99:23
denial 29:19	deviate 72:6 91:23 92:1,3,6 105:21	disguised 47:6 48:10	dozen 95:21
denials 24:8	deviates 87:12 89:1	disguises 47:23 71:16	draft 50:23 64:23
denominator 29:21	deviating 72:17	disguising 71:4	draw 81:10
Department 58:3 78:17 82:16	deviation 89:2 96:19 102:20	dispute 42:11 70:19,24	due 33:19 62:14
departments 24:24	deviations 61:1	disregarded 28:18	duly 104:17
derived 9:4	difference 15:8 17:4 20:8 80:8	dissent 28:16	duplicate 52:4,8 109:23
describes 93:9, 15,18	difficult 15:17 46:2 58:13 64:25	distinction 14:8, 24 15:5 16:3,15 20:7,25 29:1 70:20 75:20 76:8, 19 78:21 80:5,7 106:13	duplicating 109:20
designated 24:14,22	difficulty 45:1	distinctions 76:9	duplicative 51:22 54:6,10
designed 102:22	dignity 14:10 16:16 19:5 35:21 79:3	distort 106:21	duties 9:6
detail 29:2 64:7	diligently 62:20	distorted 91:13	duty 48:14
details 15:11	direct 88:14 111:4	distortion 49:12, 15,18,25 52:14, 18,23,25 53:6,7,8, 10 54:15,18,20 55:8,10,18 56:1,4, 8 72:8,13,16,21 74:6 80:19 86:13	
determination 25:20 26:24 28:20 29:7 30:22 31:22 60:1,2 64:17,18 68:23 74:18 75:21 81:16,22 82:22	directly 12:1 85:7 93:20 101:3		

E

earlier 52:23 57:7
69:9 71:1 91:9
94:22 100:19
101:2 107:15
earned 97:10
98:12
easel 14:3

easier 45:20	enactment 12:7	erred 81:16	exist 52:25 54:16 107:21
easy 17:1 48:4	encourage 43:11 71:17	essentially 9:24 10:1 41:6 46:12 54:14 55:12 59:13 65:10 79:17 82:25 95:6 97:17 98:3 109:20 110:9,11	existence 15:19 55:13 76:1
economic 43:18, 19 46:23,25 48:8, 23 58:16,20 59:19,25 60:3,14, 18 61:24 62:7,21 63:1,11,15,24 64:3,5,9,14 65:18 66:4,9,10,12	end 48:2 67:13 74:21 85:17 94:2 101:4 104:10 105:4	establish 55:23	existing 15:25 16:1 17:5,24 24:19 25:24 26:4 73:6,8 82:1
effect 14:1,10 15:25 27:19 28:13 42:6 45:18 46:19, 25 47:2,5,22 48:6, 10 52:10 60:7 67:22 71:12,15,18 72:5,9,15 73:9 101:6 111:17	ended 47:3	established 6:8 27:9	exists 82:4
effective 59:2,22	enduring 41:8	estimated 43:25	expect 10:19 112:16
effort 49:25 52:14 54:20	enforce 13:12,15 15:14 17:11 18:7 20:1 73:3	evaluate 52:24	expected 62:7,9, 12
elaborates 17:12	enforceable 15:18,21 16:1,2,4, 7,10 17:5,14,24 18:17,18,21,25 20:12 37:8,17,21 74:23 79:14	event 31:6 32:24	expertise 16:9
eliminated 52:20 65:10	engage 63:10	eventually 62:4	experts 75:13
elimination 60:7	engaged 66:10	evidence 7:6,24 28:17 49:21 62:19,20 112:10	explain 10:13,23
emergency 82:17 83:1	enlarge 86:16	exact 34:4	explained 65:14
emphasis 109:17,19	ensure 26:23 60:10 63:5	examples 89:19 103:11,15 109:4	explaining 30:11
emphasize 27:6	enter 11:24 12:9 34:24	excess 24:4	explicit 102:23
emphasized 110:6	enterprises 60:4	exclude 98:23 106:18	explicitly 88:19
employee 92:18	entire 54:14	excluded 106:15 107:12	expressly 89:2 96:19
employing 94:10	entitled 81:19	exclusion 107:4, 23	extent 6:14 30:3 42:8 45:5 71:25 91:19
employment 31:1,8	entity 27:11	excuse 22:21 28:7 37:9 59:9 62:11 66:13 68:7 71:19 81:18 103:10	extreme 65:11
empowered 26:3	enumerator 98:24 99:10,12	executive 26:15 62:23	
enabling 9:5 27:8,12 75:25	Equalization 9:8 13:9 27:10 31:20 48:23 58:25 102:2	exhaustive 60:16	
enacted 24:16 95:22	Equalization's 9:13	exhibit 4:5,7 7:11, 16,18,19,23,25 58:7 61:9,11 92:12 93:5 96:25 97:1,6,7	
enacting 34:21 84:18	Equalizations 30:25	exhibits 4:4,6 6:19,22,25 7:3,5, 8,9,10 93:3	
	Equalizations' 24:2		
	equivocating 108:17		

F

facet 60:20 66:19,
20

fact 10:25 11:1,4
19:7 20:10 26:18
36:9 38:7,9,22
42:11,12 46:4,19
47:6,22 60:19
65:16 66:7 67:6
69:2 78:6 79:16
82:24 84:1 87:7
88:18 96:3,17,22
105:20 111:8,15

factor 29:21 30:9
42:3 51:5,6,13
52:6,12,21 54:8,9

- 65:20,22 81:24
97:12 98:24
99:10,12 106:17,
22 107:24 109:10,
13,23 111:13,17
- factors** 32:2
51:23 52:7,20
53:11 107:15,19,
21,22,23 109:21
- factory** 111:11
- facts** 16:10 22:11
84:1 87:23 100:19
- fail** 65:15
- failed** 43:16
57:13,14,15
- failure** 60:19,23
66:19,23
- fair** 49:21
- fairly** 30:2 42:8,22
55:3 72:23 91:19
102:15,17 106:22
107:12
- fall** 14:11 80:13
- falls** 103:21
- Faries** 29:4 32:18
38:24
- favor** 82:20,21
- FBA's** 52:13
- federal** 10:3
76:24,25 77:2
- fee** 78:17 93:19,23
- fees** 93:15,18
- felt** 42:10
- Field** 98:10,13,25
- figure** 14:24 65:14
- file** 22:20 50:2
51:11 58:1,8
61:10 62:18 65:9
95:20
- filed** 22:18 57:23
58:6 61:25 62:2
63:7 97:11,17,18
- 99:8,10 100:25
101:1
- filing** 12:2 58:15
61:22 62:1
- fill** 15:9,10,11,13,
24 17:23 20:11
21:14 36:3
- filled** 16:5 61:6
62:17 79:9
- filling** 15:16
- fills** 78:13
- final** 68:24 70:9
- finally** 8:21 38:24
41:14 54:5 108:3
- Finance** 58:4
- financial** 45:24
70:7
- find** 45:13 53:7
54:18 61:9 77:10
82:2,3 99:24
- finding** 49:12
56:8 82:1
- firing** 94:3
- fiscal** 43:18
- fit** 68:2
- five-minute**
90:15
- Fix** 3:8 4:13,14
5:15,24 7:1,22
8:5,8,12 13:1,3
21:23 33:12,13
37:11 39:8 74:9
77:12,14 83:20,23
87:15
- flawed** 64:7
- flexibility** 65:11
- Fluor** 56:2 91:14
102:2
- focus** 51:16 92:11
100:4
- focused** 111:9
- focusing** 10:12
- follow** 73:25
85:13 96:8 100:3
- force** 14:1,9 27:19
28:13
- form** 58:8 59:20
60:9 61:2,4,6
62:16 79:23
- Forms** 66:8
- formula** 49:21
91:22 101:12,20
- forum** 24:15
- forward** 39:22
- found** 21:5 24:19
25:6 28:9 29:22,
24 36:5 50:3,8,16
51:7 53:6 83:9
101:21 103:14
106:19,24 108:9
- founders** 51:10,
11
- fourth** 97:22
99:17 100:5
- franchise** 6:21
7:13,20 22:1,5,8
23:11 28:1,3
56:20 57:1 60:11
61:12 62:3 63:13
64:1 69:15 75:9
81:15 85:4,10
100:10 102:5
- frankly** 20:4 33:15
35:10 38:5 79:19
- free** 19:12
- frequently** 51:12,
16
- FTA** 88:19
- FTB** 10:18 13:5
17:10,19 18:2,6,
23 20:19,24 21:14
28:10 29:24
33:13,19 36:22
37:4,19 41:12
42:11,17,23 43:7,
16 45:16 46:19
- 47:2 48:13,14,17
49:6,9,11,17,20
50:3,8,15 52:17,
24 53:1,4,8 54:14,
18,19,24 55:1,7,
11,15,21,22 56:1,
5,10 61:3,6,25
62:16,24,25
63:18,21 64:11,14
65:16 66:11,25
67:15 69:24 70:8,
9,15 72:1,4,16,20
73:1,8 74:22
78:15 79:16,18
80:21 83:25 84:8
87:8,10,20 88:19
89:4 90:6 91:9,12
92:3,6 94:16
96:11,18 99:23
101:9 102:16
104:22 106:18,24
107:10,19 108:16
111:10
- FTB's** 8:17 28:14
29:19 30:12 33:17
42:16 43:22 46:24
49:24 55:16 61:19
62:23 63:18 70:23
89:20 105:4
- FTBA** 42:6 46:11
- fulfilled** 62:17
66:25
- fulfills** 102:25
- full** 71:17
- fully** 71:7,8
- function** 59:13
- functions** 29:20
- fund** 22:11 41:23
44:4 45:11 46:25
51:3 61:21 63:6,
16 65:5 92:22
93:8,13 94:12
95:15 100:20,24
111:5
- funds** 22:16 40:23
42:9 61:16 63:4
90:4 92:18 95:13
103:20 104:5,12

future 55:23
72:24

G

gap 15:17,24
21:11,14 37:20
78:14 79:9 80:14

gaps 15:9,11,13
16:5 17:23 20:11
36:4

gauge 63:1

gave 37:10

general 18:3,5
19:22,25 24:6
52:10 80:2 82:7
92:5

generally 105:14

generated 62:25

generic 67:9
102:15,21

give 9:1 12:16
41:4 52:7 71:10

giving 40:11,22

glad 36:22

GMRI 78:16 79:4,
12,21

good 5:13 8:9
20:19 21:7 22:3
23:8 33:14 84:3

governed 9:13,20
74:17

governing
102:25

government
10:22 11:2,12,16
12:14 24:20 25:6
26:16 27:21,23
29:15 30:13 32:17
33:18,21 34:2
36:11 38:7 57:22
60:9 68:10,16
75:25 77:17 84:9,
17

governor 26:17

governor's 26:18
68:24 69:7

governors 26:14

governs 24:17

grandfathered
55:12

grant 19:25 26:12
28:10

granted 82:19

granting 83:14

great 6:2 8:12
40:6

gross 29:20 46:20

grounds 14:16
38:19,21

group 2:6 5:5
47:12,13,19,20,24
48:1,11 53:16
56:24 72:10 90:20

groups 47:18

guess 73:20

guidance 32:2
82:23

guide 32:11

guidelines 32:11

H

Hajikhani 28:5
29:3 31:23 32:18
35:13,16 36:22
37:2,12,25 39:4
76:21 78:1,5,6,16,
22

hand 15:22 23:7
73:23 74:3,12
75:6

handful 95:21

happened 52:19

happening
110:18

happy 33:7

hard 46:10 87:22

Harney 12:5
34:19 83:7

head 50:12

health 62:10

hear 5:23 8:10
40:17 75:9

heard 27:16

hearing 3:13 8:2
23:18 71:20
112:10,15

hearings 9:9
112:19

heart 22:9

heavy 48:25

held 12:4 24:3
85:22 95:7,11,13

helped 23:17

helpful 58:21

helpfully 61:11

hesitate 85:14

highlight 50:7
110:25

highlighted
50:15

highlights 62:22

hints 24:12

hire 94:1

hiring 94:3

historical 9:2

history 9:17
84:16

hold 21:24 32:21
83:2

holding 12:4 84:3

holds 105:19

home 94:14

HON 3:3,5

Honor 89:6

Honorable 8:9

Hosey 3:3 5:4,9,
17 6:3 7:2,5,10,
16,19,23 8:1,6,11
21:23 23:15 33:9
39:8,14,18 40:4,7,
9 44:8,11,22,25
50:10 56:15,23
57:4 69:12,18
73:11,16 83:21
84:23 85:2 90:12,
18 100:8,13
105:7,10 108:22
110:20,24 111:23
112:3,8

Hotel 31:1,4

housed 75:16

housing 60:8
62:10 82:18

huge 111:16

hundreds 44:16
45:3

hypothetical
85:6,15

I

idea 65:23

identified 14:6

identify 5:11 45:4
46:2

ignoring 65:1

impact 38:15
43:18,19,22
46:13,18,21,23
47:4 48:8,18,20,
23 58:16,20
59:19,25 60:3,8,
14,18 61:24 62:7,
21,25 63:1,19,20
64:9,15,18 65:18
66:4,12 70:17,20

impacted 62:14

implementation
62:9 64:16 67:24
83:1

implemented
82:23

implementing
82:16

importance
48:20

important 9:16
13:21 14:23 15:9
16:12,22 19:21
26:11 32:1 36:8
37:11 43:9,17,21
61:14 76:10 81:23

importantly 9:20
19:12 61:18

imposes 102:25

imposition 28:8

improper 13:5
38:6

in-depth 62:25
63:10,25 66:10

in-state 61:20
62:1,8

in-use 90:5 94:19

inapplicable 77:1

incidental 111:9

include 25:16
63:3 92:16,17
107:11

included 53:1
61:5 97:11 98:4
99:9,20

includes 18:8

including 18:7
32:23 53:17 84:20
106:20

income 22:12,17,
25 28:1,3 29:6,8
30:1 61:17 100:21

incorporate 70:9

Incorporated
83:7

incorrect 109:7

incorrectly 64:11

increase 47:1
48:10,15 65:13,20
66:1 76:6

independent
8:19 11:17 34:3

individual 44:18,
21 45:13 81:12
108:15

industry 63:4,7

ineffective 26:6
68:19

information 37:7,
18

informed 63:11
64:8

infrequent
109:11

inherent 62:11
103:13

inherently 61:15
62:11

initial 60:1 61:24
64:2,15,17 65:24
88:22

initially 43:4,7
49:16 91:16

initiative 41:16

initiatives 38:14

inmate 82:15

inmates 82:18,21

inoperative 6:11
26:6

inquiries 61:5

instance 63:14
65:4 87:8 90:6
105:17

instances 89:22
106:19

insufficient
58:17

intangible 111:12

intangibles
109:4,6 111:2,3,
21

intended 11:5
12:8 34:22 51:10
52:6,7 60:1

intent 26:21 33:20
84:5,16,18

intention 11:8,20

interest 24:8

interested 25:8
59:6,10,15 63:12
64:1,6,22 66:11
67:2

interesting 83:24

interfere 38:11

intermediaries
45:24 70:7

interpret 15:25
16:9 17:25 36:12
75:14 78:9 80:3

interpretation
28:6,14,24 31:24
32:5,8 33:18
35:17 74:11 77:3
96:23

interpretative
14:17 16:7,21,25
18:13,22 19:6,10
20:7 21:1,4,16
35:24 36:21 37:1
74:20,21 75:6
76:8,19 77:6 78:8,
25 79:6 80:25
81:17 85:9

interpreted 13:8
74:13

interpreting
20:16 76:11,12
78:13

interpretive 14:7
32:3

interrupt 12:24
40:15

interruptions
40:16

invalid 6:6,9 8:18
11:7 13:25 19:18,
20 36:16,19 43:3,
6 49:10 56:12
60:22 66:22 73:24
74:4 75:19 86:11
91:8 92:2,4 96:22
104:15 105:24
106:1

invalidate 8:16
10:2,7,8,11,19,21
11:3 12:22 13:11,
18 14:15 16:17,21
19:10 20:15,17,21
21:18 23:3,21
24:13 27:4,22
28:3 29:14 30:12
31:2,9,10,15,20
32:7 35:8,23 36:1,
10,19 38:2,18
57:9,11,12 60:20
66:21 74:16 76:15
77:8,22 81:11
83:5,18 84:11,21
104:17,20

invalidated 21:6
27:20 34:13 36:7
48:22 57:13 67:5
79:4 81:20

invalidity 30:22
75:21 76:4

invest 26:13

investment 8:23
90:3 92:17 93:10
94:7 95:8,9

investors 95:11

invite 71:5

invoice 93:24

invoke 49:16,18
55:22 56:3

invoked 80:19

invoking 42:20

72:2,7,14
involve 10:18
13:20 38:20,22
74:11 106:14

involved 21:8
37:3 105:13,18
106:14

involves 13:21
74:7

Ironworkers
98:10,13,25

Irrevocable
23:25

issuance 23:16
76:3

issue 4:12,16,19
6:7 8:3 10:25
11:12 14:25
16:10,23 18:8
21:3 22:2,19 23:1,
19 27:18 28:6,22
29:23 30:14,21
31:7,8,19,21,22
32:7,9,16 33:4
37:14 39:3,10,17,
25 40:2,11 53:19
56:21,25 68:8
73:13,19,22 76:15
78:5,7,24 79:13
80:25 83:4,9,17
84:1 86:6 87:9
90:13,24 91:4
100:11,17 103:1
105:15 107:4,8
109:1 111:1

issued 23:12 28:1
29:4,18 90:25

issues 6:4 23:14
60:6 86:11

issuing 27:25

J

Janus 2:6 5:5
40:24 44:7,14,15
45:2 53:16,22
56:24 72:10 90:19

92:1,4,23 93:1,2,
7,11,12,15 94:1,
10 97:10,15,18
98:12,23 99:1,22
105:21

Janus's 54:2 90:2
92:13,15,19,24
93:19 94:3,14,16,
17 97:2,3,8 98:1
99:9

jobs 60:7

joint 23:13

Judge 5:4,8,9,10,
17,21,25 6:3 7:2,
5,10,16,19,23 8:1,
6,11 12:24 13:2
21:23 23:15 33:9
37:9 39:8,11,12,
14,15,16,18 40:4,
7,9,15 44:8,11,22,
25 50:10 56:15,23
57:4 66:13 69:12,
18 71:19,22
73:11,14,15,16,
17,18 75:7,10
77:13 81:5,7
83:21 84:23,25
85:1,2,3 86:1,4
88:3 90:10,12,18
100:8,13 105:7,10
108:22 110:20,24
111:23,25 112:2,
3,4,6,8

Judges 8:9

judgment 82:20,
25 83:14 84:14

judicial 12:19
25:9 59:3,11,16,
22 67:4

jurisdiction 6:5
8:15 9:3,12,13,15,
19 10:14,15,19,21
12:16,17 13:6,24
19:17 20:20 21:18
23:2,3,5,21,23
24:1,7 27:7,11
30:18 32:21 38:2,
3,17 39:1 57:9,11
69:9 74:16 75:24

76:22 77:4 79:7
82:7 85:19,22
104:17,20 105:3

jurisdictional
24:4

justices 80:10

K

key 111:8

kind 8:25 9:1,2
15:1 18:5

knew 25:19 45:17

knowledge 75:16

L

labeled 92:12
97:16,23

lack 76:22 81:13,
25

lacked 30:11

lacks 30:18 32:21
104:16

laid 90:24

land 102:3

language 9:17
15:10 18:5 42:19
54:25 64:23 65:2
77:10 78:12,13,14
105:11

large 44:6,13,16
48:15 106:20
109:10

law 5:8 9:18 11:9,
21 16:16 19:5
20:19 21:7,19
22:10,14 23:21
24:23 26:1,12
30:7 32:11 35:6,7
55:15,20 58:4
66:24 67:23 68:13
69:7 74:7 75:15
79:19,23 82:6
84:3 89:20

100:18,22 102:3
103:24,25 107:24

lay 30:14

layer 65:10

lead 3:3 5:8

left 21:21 79:13
80:11

legal 15:14 16:2,4,
6,10 17:14 18:17,
21,25 20:12 35:4,
5 74:23 78:14
79:14 108:11

legislation 9:5
27:8,12 75:25

legislative 14:16
26:15 28:10 36:20
38:23 79:1 84:16

legislator 11:5
12:7,15

legislator's 33:20

legislature 24:14,
22 25:19,23 26:14
32:13 34:14,22
55:14,19 68:24
80:22 81:21
102:19

legislature's
26:21 43:14

lesser 14:20

letter 62:23 66:24

level 14:21 35:10
46:1,8

liability 22:13
66:1,2 100:22

License 12:6
34:20

Licensing 83:8

likewise 31:12

Liljestrand 23:24
27:7 75:23

limit 11:20 12:16
34:14 84:19 109:6

limitations 9:22,
23 24:5
limited 9:24 19:8
23:23 24:1 27:7,
11,13 61:15 62:11
75:24 80:17
limiting 103:13
limits 27:2,15,22
85:18
lines 98:9
list 60:7 97:7 98:7,
16
listed 50:4
local 36:12
locate 64:24 82:8
located 44:17,19,
20 45:6,13,14
54:3 87:4 95:16
96:14 98:1,3,7,14,
20 99:4 100:5
108:5,13
location 17:8,15
18:16 41:6,18
65:5,6 74:25
94:15,17 96:13,
16,24 97:20
103:8,12,14,15,
16,19 104:7,8,9
108:7 109:19
locations 89:8
109:24 110:6
logically 64:19
long 75:4
long- 102:2
longer 54:7,8 89:5
107:4,21
looked 10:25
33:20 63:5 84:5
89:23 90:7,8
110:2
losers 47:7 71:1
losing 50:10
lot 47:9 63:11 64:8

102:10
LOVE 2:19
lower 14:21
Lutheran 95:1,7,
12,17 103:22
104:4

M

made 33:13,14
53:10 61:13 71:3,
25 73:1 86:21
106:11
mailing 97:14
main 15:1 78:4
maintains 97:15
majority 28:14,19
make 6:1 20:6
21:20 26:24
49:12,24 50:11
52:13,17 54:20
68:23 71:7,8
74:18 87:13 89:6
99:15
makes 8:25 20:8
46:10 58:1 67:7
93:25
making 33:14
38:12 57:2 58:8
61:10 62:18 65:9
management
94:1,21,25 95:10
manager 44:6,13
45:2,23,25 46:7
managers 40:13
44:16 46:5 50:21
managing 46:5
mandate 20:1
80:2 82:15
Marguerite 3:11
5:19 22:6
marked 6:19
90:23

market 41:15,20
43:5 49:11,13
51:9 52:17,25
53:2,9,12,15,21,
25 54:1,3,10,16,
19,20,22 55:18,
21,24 56:10 69:21
72:18 86:23 87:1,
23 89:7,9 91:11,
12,17 95:4,25
96:4,6,8 97:24
99:11,25 100:4
105:19 106:9
107:1,8,14,17,21
108:18 111:18,19
market-based
57:17 67:20,21,24
69:2 86:14 88:7
101:6
market-sourcing
92:3 95:1 96:9
marketplace
51:14,15
Mart 20:18,23
21:7,16 30:25
31:12 80:24
Masons 93:7,13,
19,20,22 94:5,7,
10,12,13,15,18
match 67:18 68:5
matter 2:5 23:6
59:9 75:11 76:1
matters 52:15
60:25
meaning 11:25
13:15 15:16,25
46:6 103:3 107:12
meaningful
43:11 55:9 59:1,
14,23 67:1 69:25
70:1,11 71:6
means 15:12
18:22 19:4 20:2
45:10 51:16 60:24
meant 37:18
43:13

meet 26:2 58:18
66:6,18 67:6 91:9
Melniczak 3:7
4:17,18,20,21,22
5:13 8:19 23:10
40:2,3,6,8,10,20
44:10,13,24 45:1
47:12,15 50:13
56:15 69:17,19
71:10,21,24 73:11
80:18 86:19
87:18,23 88:15
91:4 100:8 105:9,
11 110:23,25
Members 3:5
mention 35:16
38:7 39:19 93:13
mentioned 33:22
36:2 38:25 41:21
46:4 49:25 52:23
64:23 79:8 80:18
82:7 87:18 89:13
96:17 100:19
101:2 103:10,11,
23 105:25 107:15
111:10
mentions 64:10
met 56:11 57:20
104:21
method 41:4,5,7,
10,11,12,24 42:8
44:2,3 45:20 55:2,
25 56:7 62:4,5,15,
24 88:13 99:7,11,
12,21 100:2,23
101:17 102:17
methodology
109:9
methods 40:25
41:2,3 99:6
mic 5:22 50:10
71:22
microphone 23:7
40:18
Microsoft 30:8
49:14 108:12,13,
14

Microsoft's

108:15

million 47:5,25
48:3,5,6,12 63:19,
20 65:13,19,25
70:20,21,25 71:2,
14 99:8,13,17
100:6

mind 81:9

minimal 62:8

minimum 59:5

Minnesota 95:2,3

minutes 8:6
21:24 23:12 39:21
40:7 90:24 91:2

misleading 20:22
77:25

misplaced 31:3

modified 65:2

morning 5:13 8:9
22:4 23:8

Mosnier 3:11
4:14 5:19 22:6
23:7,8 33:9 75:8
81:6 85:14 86:2

motion 83:14

mouth 5:22

move 39:9 40:18
73:12 100:10
110:22 111:24
112:4

moved 98:22

moving 22:1
39:21,25 56:25
73:14

Multi 22:7

multiple 58:3,15
89:19

murky 83:25

mutual 22:11,16
40:23 41:23 42:9
44:4 45:10 46:25
51:3 61:16,21

63:4,6,16 65:5
100:20,24 104:12
111:5

N

named 63:15

names 97:10
98:15

naturally 52:2

nature 62:12
111:10

net 46:20 47:3,5,
23 48:5,9 65:14,
25 70:13,14,18,25
71:5,12,14

noncompliance
61:2

nonexistent 62:8

nonprecedential
19:14

note 26:11 31:18
36:8 43:9 76:7,18
88:17 89:1 93:18
94:23 103:24

noted 23:23 25:6
28:21 29:9 43:22
51:11 64:6 68:11
70:3,15 89:6
92:15 95:20
105:13

notes 61:14 65:19
69:24

notice 48:15 49:2,
4 65:17 71:11

notified 26:4

notify 26:14 43:20
68:20

noting 28:19
45:19,22

notwithstanding
36:9

number 5:6 9:5
23:19 53:17 65:19

95:23 98:4

numerator 97:12

O

OAL 10:22 11:3
12:2,16 13:6
24:23 26:3,7,13,
19 34:6 77:19
84:10,12

OAL's 26:17
34:11 68:25

objection 53:24
54:5

objections 6:24
7:2,5,13,21

obtain 25:8 59:11,
16

occasional
106:16 107:3,6,
11,23 109:11

occurred 110:11

occurs 50:22

offer 85:14

office 2:1 6:5
23:20 24:23 25:25
26:12,18 30:20
57:10 58:4 66:5,
17 67:13,19,25
68:24 69:6,7 73:7
75:13 76:2 101:4
104:19 105:2
110:2

officer 62:23

offices 52:3
108:13

omnibus 45:25

one-by- 57:18

one-off 106:20
111:11,16

opaque 48:24
49:1 70:11,15

open 8:1 39:25
40:11 90:14

opening 33:22

operating 69:2

opining 85:24

opinion 23:24
27:7 28:1,5,6,16
29:3,4,16,17
30:25 31:19,23
76:21 77:11 85:14
112:16

opinions 28:2
32:11,12,18 85:20

opportunity 11:6
48:16 71:11
82:10,12 85:16

oppose 55:1

opposed 81:17

option 11:23

oral 86:9 112:12

order 23:17 25:10
33:16 35:14 49:14
58:1 87:11

orders 7:12 23:12
39:21 90:25

original 68:8

originally 100:25

OT 26:7

OTA 2:6 5:6 9:1,6,
10,11,21,23 10:5,
8 13:23,24 16:17,
20 19:7,17 21:17
23:2,5,22 24:12
27:1,2,6,13,15,17,
21,24 28:1,8,21
29:3,9,12,13,22,
24 30:5,11,14
31:2,24 32:15,16,
24 35:20,22 36:9,
10,17 38:2,10,12,
16 39:1 57:8
73:23 74:1,3,15
75:1,4,23 76:21
77:4 78:24 79:2,4,
6 81:10,16 85:5,
18,22 88:18 90:7
104:16 110:9,15

OTA's 8:15 9:4,19
10:14,16 13:22
24:1,6 29:4 67:11
76:14

out-of-state 51:3

outcome 20:4
28:25 85:8,10

outright 30:18

outset 88:17

overcome 70:23

override 26:17

oversee 24:24

overview 40:12,
22 41:4

Ovsep 3:5 5:10

P

P.2d 83:9

p.m. 2:18 112:22

panel 3:3,5 33:11
39:9,19 73:12
74:2 85:6,12
110:22 111:24

paraphrasing
37:5

part 8:13,15,17,21
13:21 16:12 19:21
21:22 37:11 40:11
58:17 59:20

participation
59:1,14,23 67:1
69:25 70:1,10
71:6,17

parties 5:11 23:17
38:25 40:16 59:6,
15 63:12 64:1,22
66:11 67:2 73:20
92:15 93:12
101:19 112:16

parties' 29:13

parts 8:14 18:7
19:19

party 42:20 49:15
56:3 59:10 63:14
64:6 72:16 91:23

pass 15:7,23
17:11 19:22,25
20:2 38:14 79:18
80:4,23

passage 67:11

passed 55:8
67:20 104:17
110:4

passes 17:19
67:15

passing 38:9
102:19 109:8

past 55:5

path 34:11 35:3

Patrolling 58:24

Paul 3:7 5:13

pay 47:9,10,19,21
93:23

paying 47:24,25
48:2,11,14 49:3

payroll 42:3 51:23
52:3,12,20 54:7,8,
11 107:18 109:20,
21,25 110:6

penalty 24:8 28:8
37:3,5,19 78:15

pending 39:20
83:2

pension 45:11
90:4 92:18,22
93:7,13 94:13
98:11,13 99:1

pensioner 45:13

pensioners
45:12 92:22 93:23
98:19,21 99:4

perceived 65:9

percent 51:6

percentage 63:9

percentages
63:8

percolate 85:16

perform 50:25
51:4 99:22

performance
41:5,10,24 42:5,7
44:2 50:1,4,8,16,
17,19 51:8,18,19,
21,25 52:4,11,24
53:25 54:6,16,23
55:17 87:7 96:6
99:16,19,21
107:1,8,16,20
109:9,24 111:18

performed 41:7
42:1 44:3 46:7
50:21 51:20 52:1
54:13 93:11

period 48:17

periods 72:11

permit 12:8 34:22

person 25:8

personal 29:6
106:16 107:7
111:20

persons 12:8,10
34:22,24

petitioner 82:21

phrase 25:17
110:10

physical 103:8,15
104:7,8

picture 81:23

piece 14:23

Pierce 51:12

place 18:18 37:20
95:14 100:1
106:4,7

plain 13:15

plans 92:18

pleadings 83:15

point 10:16 14:2
15:2,4 16:14 18:2
19:24 35:12,15
38:4 85:7,9 96:11
103:6 109:3 110:2

points 85:8

policy 61:19
64:17

portion 8:2 22:17
41:9 45:7,15
46:21 66:6,18
90:14 91:2 97:25

position 23:5
55:16 57:8 58:14
68:23 81:3 84:18
86:16 95:25 105:4

post 7:12 23:16
67:23 108:2

potential 38:8
46:22 48:8 71:1

power 15:6,8,23
16:7,17,20 17:21
18:2,3,11,23
19:21 20:11,15
21:9 23:22 24:13
25:25 26:7,13,17
27:4,15 31:10,19
32:6 36:3 37:22,
23 56:4 73:6 80:1,
17 81:1 83:18

powers 9:4,7,21
10:6 19:8 49:19
55:23 73:3 74:23
79:20 87:10

pre 108:2

preceded 15:3

precedent 13:22
15:4 19:13,24
84:1 102:3

precedential
10:16 13:23 16:13
23:24 35:15,20
38:1 67:12,14
78:1

precisely 26:25

preclude 75:4 84:19	problem 13:3 46:18 47:6 50:17 51:8,21 53:13 54:7 66:16 77:20	proposed 24:7 25:22 26:16 30:15 32:19 38:4,5 49:22 65:14 97:22	purchase 95:25
precluded 35:4			purchaser 6:14 17:8,15 41:18 53:21 74:25 89:9, 11,14,17 92:10,11 94:12 95:6 96:1, 14 97:14 98:3,10, 13 100:5 103:9,19 108:4
predecessor 27:10	procedural 59:5 60:19 66:20	proposing 98:23 100:2,3	purchaser's 96:24
prehearing 6:21 23:12 43:2 93:6 97:1	procedurally 86:12	proposition 11:2 67:11 104:25	purchasers 53:22 54:2,3,12 87:2,3 90:4,5 92:13,19,21,23,25 94:4,17 95:8,13 97:4,10 98:1,7,18 99:1,2 108:6,19
prejudice 38:8	procedure 25:13 74:1	proscribed 101:17	purchases 92:15
preliminary 82:20	Procedures 6:11 24:17,25 26:23 42:24 75:12,14,20 85:21 104:22	prosecution 12:11 34:25	purpose 11:16 34:2 43:9,10 46:21 48:7 51:13 58:22,25 69:24 102:23,25
prepare 23:18 82:12		protest 12:3	purposes 30:2 32:4 43:19 82:18
prescribe 18:6	proceedings 2:15 12:12 34:25 112:22	prove 49:14,20 56:1	pursue 68:9 69:5 73:7
present 53:11,12 111:17	process 45:16,17 46:15	provide 6:13 11:5 25:19 34:2,5,14 37:7 43:18 46:5 49:11 52:16 58:25 59:2,6 64:25 65:18 68:10 76:2, 3 77:16 94:1 99:22 102:22	purview 38:10
presentation 4:10 8:4 17:2 22:2,22 33:6,14 56:20 57:2 69:8, 12,16 86:9 100:9, 11	promulgate 28:11 42:17 53:5 73:3 87:11	provided 61:11 64:3,6,14 80:1,2 89:21 92:12,13 93:3,6,18 101:13 108:11	put 12:15 48:13,14 49:2,3 65:16 71:11 72:25 78:12
presented 6:22 59:9 65:25 87:24 112:12	promulgated 6:10 24:25 29:10, 24 31:5 41:9,12, 21 42:6,15 43:4,7 49:6 55:13 64:12 68:22 91:16 101:9 102:12 109:15,16	provider 22:12 42:10 44:5 45:11 63:4,7 65:5 95:10 100:20 104:12	putting 71:4 83:1
presenting 40:2	promulgating 26:8 49:16 60:6, 11 104:23	providers 22:16 40:23 46:25 51:4 61:17,22 63:16 100:24	<hr/> Q <hr/>
presume 82:2	promulgation 57:15 110:5	providing 8:23 11:21 32:1 35:2 62:24	qualify 76:22
presumed 57:24 58:11	proof 92:7	provision 72:18	quasi 18:12
pretty 5:21 12:17 17:1 45:16	proper 65:6	provisions 42:21 55:3 72:22 106:3	quasi- 36:19 38:22 78:25
prevails 61:2	properly 8:22	public 31:18 43:11 59:1,14,23 69:25 70:10 71:6 90:21	quasi-judicial 81:18
preventing 82:15	property 42:3 51:22 52:12,20 54:6,8,11 106:16, 21 107:7,18 109:12,19,20,25 110:6 111:11,20		quasi-legislation 14:22 16:24
previous 101:25 102:1	proposal 30:17		
previously 77:1			
principally 85:15			
principles 88:6			
prior 9:12 41:8,22 42:2 51:24 55:5,9 56:8 72:11,20,24 105:18,19,25			

quasi-legislative

13:25 14:6,9,12
15:20 16:16 18:20
19:4,16 20:3,7
21:1,9,10,15
27:19 28:9 29:10
32:4 35:21 36:14,
17,25 37:15,23
38:3 39:2 74:19,
22 76:9,19 77:7
79:1 81:3,18

quasi-regulation

16:18 36:6

question 16:22

17:16,17 18:14
26:9 28:20 66:5
73:20 75:10 80:13
84:7 85:3 86:5,22
89:16 94:20,22,24
105:16 106:6,8
108:3

questions 17:20

24:9 33:7,8,10
39:7,10,11,12,17
68:22 73:12,14,
15,18 84:24 85:1
90:11 110:22
111:24 112:1,2,5,
7,9

quick 23:15 37:9

90:15

quickly 23:11

97:5

quote 63:17 81:11

101:3,8

R

R-U-S-H-E-N

34:1

raise 31:19

raised 33:2 36:23

random 63:1

reach 61:15

reached 28:2

read 20:23 25:16

34:3 42:15 66:14

reading 65:23

ready 8:4,7 22:2

40:4 57:5 69:18
91:3 100:13
112:9,14

reason 43:6 53:4

106:18 107:2,25
108:1 109:8

reasonable 49:23

65:6 88:11,13,15

reasoning 102:1

reasons 8:19

50:2,8 61:25
64:15 85:20
109:16

rebuttal 21:21

56:14

receipts 6:18

8:22 17:7,15
18:15 29:20 30:8
40:12,23 41:6,15,
17,23 45:7,15,23
50:18 51:2 52:11
53:14,20 70:6,18
74:25 79:10 91:6
94:21,25 97:3,11,
18,20 98:1,12
99:2,24 111:6

receive 92:14

94:13 108:4,19

received 4:4,5,6,7

6:14 17:8,16 45:7,
18,22,24 46:11
90:7 93:16 94:22
95:7,14 96:12,13,
15 99:17 103:20
104:9

receives 41:18

53:22 89:10,12,
15,17 92:10 96:1

receiving 79:2

recent 67:11

Recital 94:6,9

recognized 32:15

recognizes 27:2

record 5:4,12 7:7,

17,24 31:18 56:24
59:2,21,22 62:22
64:21 66:6,18
67:3 90:19
112:11,13,15,18

recording 90:23

records 94:16

97:2,15

redacted 7:11

reduction 48:3

Reed 5:14,15

refer 22:15 41:3

55:5

referenced

105:12

referred 31:16

32:10 47:23

refers 55:6 107:6

reflect 30:3 42:22

51:9 53:25 54:1
99:25 102:16,17
106:4,22 107:17

refund 11:25 12:2

22:20 29:19 73:7
97:23

refuse 13:12

reg 42:17 51:11

62:9 96:22

regard 51:19

regs 19:25 53:2

60:6

regulated 90:3

92:16

regulation 6:6,8,

16 8:18 9:14,20
10:13,19 11:7
12:9,19,22 13:21,
25 14:9,12,16,17,
19,25 15:16,20
16:16,21,24 17:12
18:7,13,23 19:2,5,
6,10,22 20:2,8,21

21:3,5,10,15,16

22:14 23:4,21

24:11,13,15,19

25:5,10,15,22

26:2,5,9,20,25

27:4,18,19,23

28:4,7,9,12,15,18,

21,24,25 29:6,9,

14,23 30:6,10,15,

19,22 31:3,5,9,11,

15,20,24 32:3,7,9,

20,22,23 34:13,

15,23 35:21,24

36:1,10,18,21

37:14,20,22 38:9,

14,15,18,23 42:7

43:21,23 45:21

47:2,7,9,17 48:23

49:10,17 50:23

53:5 55:12 57:9,

11,12,23 58:2,8

59:7,12,24 60:2,

21,22 61:16,18

62:21 63:9 64:9,

12,16,19 65:2,15

66:21,22 67:8,15,

18 68:4,7,14,18,

22 70:9 71:3,11

72:4,6,9,15 73:4,

9,24 74:4,12,16,

19 75:2,6,19 76:5,

9,11,12,15,20,23,

25 77:3,5,6,7,9,22

78:5,6,24,25

79:11,13 80:4,7,

23,25 81:11,17

82:25 83:5,18

84:12,21 85:9,21

86:8,10,16,21,24

87:2,6,9,11,17

88:5,8,25 89:14,

20 91:5 92:2

100:22 101:5,24

102:6,7,12 103:3

104:13,18,20,23

105:1,13,14,16,

21,23 106:1,14,15

108:25 109:1,5

110:3

regulation's

32:14 69:10

regulations 8:16

9:10 10:7,21 11:4,
18 13:9 14:4,6,7
15:7,23 17:11
20:15,17 21:1
25:1,4,24 28:11
29:25 30:12 35:9
39:20 41:13
43:12,15 59:2,15
60:12 66:12 67:2,
25 78:21 79:18,24
82:17 88:21 91:19
101:10,14,16,18
regulatory 9:17
32:19 47:20 49:19
50:2 95:19
reimbursement
24:10
rejected 30:5,9
70:8
related 29:23
relationship 94:2
relative 49:12
released 67:13
relevant 24:18
52:9 59:8 76:16,
17 78:3,9 101:12
reliance 30:24
relied 19:23 81:1
107:19
relief 11:6,18,19
12:1,20 25:11,18
30:21 34:3,6,10,
12 35:3 76:3
77:17,18 83:12
relies 13:5
rely 56:8 72:20
relying 81:2
remain 107:24
remained 95:23
remaining 21:24
56:13
remains 111:17
remedies 11:9,20
34:15 35:4 84:10,
19
remedy 25:4,14
34:8 68:11,15,20
69:6 73:6 77:21
81:15 109:22
remember 66:19
81:25 101:4
remove 79:13
removed 46:1,8
repeal 9:15 24:18
25:10
repealed 26:5,10
68:19
repealing 26:20
repeat 111:14
repeated 37:13
78:19
replete 62:19
reply 105:8
report 70:16,17
reported 2:19
46:19 47:2 70:17,
18
reporter 2:20
47:11,14 56:16
71:9
reporting 48:9
70:14 71:12
represent 42:8
55:3 72:23 91:19
107:13
representation
14:4
Representative
3:13
represents 97:25
100:6
request 37:19
requesting 70:5
requests 62:2,5,
15
require 26:8 74:1
102:16
required 22:12
55:11 61:3,5 71:6
72:8 100:20
104:12
requirement
105:22
requirements
25:3 26:2 42:24
43:8 58:17 59:6,
20 60:13 65:16
66:7,18 67:6 70:4
73:25 74:5 75:2
91:10
requires 60:5
72:21 87:10 103:8
106:3
reserve 21:21
56:13
reserving 33:8
resolution 31:7
respect 9:3 12:18
33:19,20 46:15
69:23 70:13 76:7,
18 79:9 81:20
82:13 83:25 84:3
respond 33:11
37:6 48:16 69:15
77:12 81:6 82:10
83:20,22 88:4
108:21 110:21
Respondent 3:10
5:18 6:20 7:2
33:14,19 34:3
56:25 62:20 64:2,
5 77:16
respondent's
4:6,7 7:9,25 23:4
57:8 66:3 104:17
Respondents
5:17
responsibilities
9:7
responsibility
46:24 93:22
rest 30:14
rests 81:15
result 47:17,19
95:17
resulted 50:18
53:14
results 51:1
63:17,18 99:12
resuming 56:25
90:15
retirement 92:18
return 97:18
returns 37:7 63:5
68:8
Revenue 8:24
17:6,10 18:4,9
19:1,23 28:11
29:5,11 75:16
79:17 87:19
101:10,13,23
102:13
reverse 89:4
review 14:21
19:10 25:20,22,24
26:19 35:25 58:15
59:3,8,22 67:4
68:21
reviewing 20:17
75:4
reviews 58:3
revised 99:12
RICS 92:17
Ridenour 3:5 5:9,
21,25 12:24 13:2
37:9 39:11,12
40:15 66:13
71:19,22 73:14,15
111:25 112:2
ridiculous 20:4
rights 24:10
robust 67:3
role 58:20 59:19
89:23

Romero 63:15,19
70:16

Romero's 70:21

room 20:14

rule 6:17 10:14
11:7 19:12,17
31:5,13 42:5 50:1,
4,8,16,17,20 51:9,
22 52:24 54:6,16,
23 56:11 58:8
61:9,10 62:18
65:8 67:9 68:2
87:7 88:10 91:5,7,
21 92:5,8 95:4,22
96:12 99:16,19
100:4 107:20,25
108:1,17,18
111:18,19

rules 15:7,23
17:11 18:6 19:25
24:6 46:22 53:1,3
54:19,21 67:16,
21,24 79:24 80:20
88:9 91:13 95:18
102:6,15,21,23
104:15,16

ruling 54:25 110:1

run 104:7

Rushen 11:14
33:25 34:1 82:14

S

S-T-O-N-E-H-A-M
33:25

Sacramento 2:16
5:1,7

safety 62:10

sale 88:9 106:20
107:3,6 109:19,21
111:10,11,16

sales 6:13 27:18
29:21 30:9 51:13
52:6,21 65:20,21
97:12,17,24 98:24
99:7,10,11,12
104:13 106:16,17,

19,21 107:7,9,12,
23 109:6,10,11,
13,23 111:17

sample 63:2,3

Sara 3:3 5:8

satisfied 101:16

satisfy 100:21

Save 20:18,23
21:7,16 30:25
31:12 80:24

scenario 82:4

scenarios 74:11,
17,20

schedule 97:2

scheme 32:14
62:17

Schillace 24:3

scope 32:4 36:5,
15 81:24 86:17

screened 63:2

Secretary 57:24
58:2,7,10

section 6:9,12,16
9:11,12,14,25
10:23 12:7,18
13:4,10 14:13
18:9 19:9,22
24:11 25:7,15
26:3 27:21,24
28:7,12 29:6,7,12,
15 30:13,16
32:17,20,23 34:21
42:16 49:16 52:16
56:4 57:23 62:3
67:10,16 68:7
69:6 72:2,7,14,19
73:3 79:11,16
80:12,17,21 84:6,
8,19 86:8 88:20,
24 89:2 91:10
94:6,21,22 101:6,
11,14,23 102:7,
11,14,21,22
105:25
sections 24:20

25:23 29:22 75:25

seek 55:22,25

seeking 49:15
56:3 72:5 91:23
105:21 108:16

sense 8:25 20:9
58:1 74:18 78:23

separate 70:15
76:21 86:11

separation 79:20

service 6:14,15,
18 8:22 17:7,15
22:12,16 40:23
41:19 42:9 44:5
45:11 46:25 51:4
61:17,21 63:4,6,
16 65:5 74:24
79:10 91:6 92:10,
14 95:10 96:2
100:20,24 103:7
104:1,6,12 111:5

services 6:13
8:23 41:25 44:2
46:5,6 50:20,25
51:4,20 52:1
54:13 67:10 88:9
89:20 92:5,20,24
93:10,16 94:1,14,
25 95:4,8,14 96:5
99:23 107:9,16
108:11 111:4,7,
18,19,20

session 8:2 40:1,
11 53:18 90:14,
16,21

set 27:14 78:20
87:22 91:2

sets 25:4,14

setting 25:2 86:3

settled 22:10
100:18

shareholder
41:11 44:3,4,14,
20 45:9 46:1,3,9
89:10,12 95:22
96:15 108:17

shareholder's
88:12

**shareholder-
sourcing** 96:9

shareholders
18:16 45:5 46:11
64:24 87:3 89:18
90:8 92:21 93:1,
14,21,23 94:8,10
95:16 97:21 98:19
99:3 108:10,16

Shepard 28:6

Sheriene 3:5 5:9

short 69:1 82:9
91:25 104:10

Shorthand 2:20

show 26:8 42:20
46:15,22 48:7
49:17,25 52:14
54:20 55:7 57:13,
14,15 72:8,16
73:1 87:11 91:18,
24 107:20

showed 91:12

showing 52:17
53:10 55:18 56:4,
6 62:20 72:13,20,
22 74:6 87:14
99:20 105:23
106:10

shown 56:10
99:13,21 104:24

shows 99:7

sic 68:20,21

sides 96:21

signed 82:15

significant 44:15
53:17 60:3 87:8

similar 9:12 37:2
52:17 95:5

simple 104:11

simpler 10:10
13:19

- simply** 14:19 16:8
17:25 18:4 19:15
31:24 35:2 39:4
43:22 46:13 47:2
48:17 50:20 53:1,
19 56:8 70:1
72:20,25 73:8
77:8 106:6,12
- single** 23:14
24:22 43:25
50:19,22 52:21
53:14 54:9
- situation** 20:10
37:23 68:3,6
101:22
- situations** 29:25
73:23 74:3
103:12,17 110:17
- slow** 12:25 37:10
44:8,22 66:13
- small** 47:3 48:6
- Smith** 3:10 4:13,
17,21,22 5:14,15,
18 7:4,15 22:3,4
32:25 57:2,3,6
66:16 69:13 81:8
100:12,15 105:7
108:21,23,24
- sole** 10:20 12:16,
17 13:5 24:15
26:13 34:7,8 53:4
- source** 8:22 17:7,
15 18:15 29:8
41:15 52:11 63:22
74:24 78:4 79:9
94:24 96:23 97:20
99:2
- sourced** 40:13,24
41:1,6,18 94:21
- sourcing** 41:11,
15,20,23 43:5
44:3,4,15 49:11,
13 52:17 53:1,2,9,
12,15,21 54:1,2,
10,17,19,21,22
55:22,24 56:11
57:17 67:20,24
69:2,21 72:19
- 86:14,23 87:1
88:7,9 89:7,9,10
91:11,12,17 92:5
95:4,22 96:4,8
97:25 99:11
100:4,17 101:6
105:19 106:9
107:1,5,14,21
108:17,18
- speaking** 105:14
- speaks** 102:10
- special** 8:17
29:25 67:15,25
68:2 91:21 101:5,
9,12 102:7
- specific** 14:15
17:9 28:17 32:13
33:1 77:23 80:12
102:24
- specifically** 11:1,
10,11,13,16 13:10
20:24 21:13 34:1,
5,9,21 35:19 37:3
60:4 64:10 65:8
78:18,19 79:8,21
84:15 95:11
101:12 102:20
108:25
- spirit** 66:25
- split** 41:1 96:21
- spoken** 82:5
- sponsored** 63:16
- spouse** 24:9
- staffed** 75:13
- stamp** 58:9
- stand** 11:2
- standard** 6:17
14:21 15:14,18,
19,21 16:2,4,7,10
17:2,6,7,14,18,24
18:17,18,22,25
20:12 22:16,21,24
36:3,24 37:8,12,
17,21 49:21 57:16
67:16 68:1 74:24
76:10,25 78:2,14,
20 79:14 91:5,7,
22 100:23 101:18
103:3,7 104:2
105:14 110:16
- standing** 84:17
102:3
- stands** 11:4 68:25
- start** 8:3,25 10:17
23:9 40:10,21,22
73:19,21 74:8
91:1 111:25
- starting** 5:12
33:17
- state** 2:2,21 6:13,
15 9:7 12:6 22:7
24:14,22,24
25:16,20 26:16,22
30:4,18,20 31:10
34:20 36:12 42:9
50:19,22 51:2
53:14,20 57:24
58:2,3,7,10,15
68:24 72:5 83:5,7,
10,18 91:20
94:14,23 97:13
98:22 102:1,16
104:13 107:17
109:7
- State's** 78:9
- stated** 46:13 57:7
58:23 64:22 75:24
- statement** 23:13
43:3,18,20,22
46:13,18,22 47:5
48:18,20,24
58:16,21 59:19,25
60:15 61:23,24,25
62:7 64:15 65:17,
18,24 66:5 70:17,
21 93:6 97:1
- statements** 33:22
59:7 61:7
- states** 15:3 20:6
24:12 25:7 40:14
41:1 48:21 51:5
58:14,24 64:11
65:1,12 67:15
74:17,24 78:20
- 79:4,12 80:9
93:11 94:6,9 95:5,
18,21 96:4,7,8
- stating** 22:20
- Statue** 68:14
- stature** 61:1
- statute** 10:2,11
13:11,12,13,15,
16,18,20 14:1,10,
18 15:11,15 16:1,
3,17 17:11,22
18:1 19:7,17 21:6,
11,13,19 24:1
27:20 28:13 29:5,
23 34:4 35:23
36:4,6,15 37:4,14,
16 38:11,18 41:8,
17,22 42:2,12,13,
19,21 49:6,10,13
52:10 53:6,7,9,12
54:17,24 55:1,8,
24 68:17 72:3,19,
25 73:4 74:5 78:9,
19 79:3,25 80:16,
24 81:2,20 85:7,
13 86:9,17,23,25
87:1,9,12,14,16
88:24 89:1,3
91:16 92:3 95:1
96:20 100:3
102:25 106:2
111:6
- statutes** 35:22
80:23
- statutorily** 60:5
61:5
- statutory** 18:1
25:2,4 26:4 32:14
55:17 60:12 68:18
72:18 92:8 102:14
103:1
- stem** 10:24
- stenographer**
37:10 40:17
- step** 17:9 43:21
- stock** 109:5,14
111:11

Stoneham 11:14
33:24,25 34:8
82:13

stop 14:2

stops 76:6

straight 84:13

straightforward
22:9

stratified 63:2

Street 2:16

studied 64:5

study 63:1,11,13,
17,19,23,24 64:3
66:9,10 86:13

styled 83:12

subadvisor 46:6

subcontracting
90:2 103:16

subcontractor
89:23

subdivision
27:22 30:7,17,20

subject 12:11
34:24 47:1 76:1

submit 112:9,14

submitted 7:12
58:7

Subsection 65:3

subsequent 9:17

subsequently
82:20

Subsidiaries 2:6
5:5 56:24 90:20

substance 60:25
61:2

substantial
60:23,24 66:23
70:24 106:15
107:3,6,11,22
109:11

succeeded 19:7

succeeding 10:6

sufficient 49:18
83:10

suit 23:14

summarize 15:4

summary 32:11

Superior 25:12,
18 59:11,17 84:13

supplemental
64:3 66:9

support 93:4

supported 61:7

supporting 61:13

supports 35:18

suppose 33:2

supreme 12:5,13
14:5 20:5,25
33:24 34:19
48:19,22 58:23
80:6 84:4

surely 70:22

surprisingly 9:10
75:8

survive 55:17

sustained 28:14
83:13 105:5

switch 43:5 44:1
54:22 69:21
106:25 111:19

switched 41:16
52:21 86:14 91:17
96:4 107:14

switches 96:5

switching 44:14

system 83:1

T

tad 66:14

takes 13:4 109:10

taking 11:21
33:17

Talavera 13:23
15:1 16:13 19:14,
15 21:8 27:17,25
29:15 30:13 32:18
35:11,13,15,19
36:2 37:2,14 38:1,
22 39:4,5 75:5
78:4

talk 15:10 16:15
43:1 53:18

talked 15:13

talking 11:19
12:20 59:21
111:3,4

talks 103:25

Tamagni 3:13
5:20 22:7

tangible 106:16
107:7 111:20

tax 2:1 3:10,12
6:5,21 7:13,20
8:24 17:6,10 18:4,
9 19:1,23 22:1,4,
5,7,8,13 23:11,20
24:6 27:18 28:1,3
29:5,6 30:2,20
32:11 46:19 47:1,
2,9,12,19,21,22,
25 48:1,2,3,10,12,
14 49:3 56:20
57:1 60:11 61:12
62:3,24 63:5,13
64:1 65:13 66:1,2
69:15 71:12,14
73:24 74:5,7,13
75:9,13,15 76:2
78:17 79:17 81:15
85:4,10 87:19
100:10,21 102:5

Taxation 28:12
29:11 75:17
101:11,13,23
102:13

taxes 22:19 36:12

taxpayer 13:17

14:14 16:11 24:9
37:6,18 49:2
53:15 65:4,12
72:1,5,6,7 84:11
91:18 102:17
103:2,10 109:17
110:7,17

taxpayer's 42:22
55:4 68:2 72:23
106:4,21,22

taxpayers 11:5,9,
24 15:17 30:3
34:8 41:24 43:15,
20 44:1 45:19
46:20 47:8,10,13,
18,19,21,24 48:1,
8,11,13 49:3
53:16 61:20,21
62:1,2,25 63:2,3,
6,22 64:22 65:17,
20,21,23,25 67:17
70:12,14 71:2,7,
10,13,18 73:6
77:21,23 84:20

taxpayers' 52:3
101:20 102:16
111:13

Teacher's 98:16

team 23:10

tease 81:14

technical 61:1

telling 16:8

tells 18:12

temporarily
21:25

term 51:15 86:7

terms 12:11 26:6
46:20 47:23

test 12:9 34:23
89:14,15 99:17,18

testimony 61:8,
12,13 62:6 64:14
65:18

text 12:18

thankfully 13:19
36:20
thing 38:17 52:22
81:9 87:15 110:17
things 42:18
thinks 85:12
thought 33:13
thousands 44:16
45:4
three-factor 42:4
51:25
threshold 39:5
time 21:21 39:12
42:2 55:8 56:13
90:11 106:4
112:21
today 5:6,9 6:4
7:10 8:2,13 9:19
10:5,10,11,14,15,
18 12:23 19:19
22:6,23 23:18
27:1 29:24 52:15
56:9 76:13 81:2
82:11 86:9,21
97:23 106:11
112:12,17,19,21
told 67:25
top 40:21 58:9
93:11 99:5,8
total 46:13
toto 81:12
tough 70:22
track 46:10
TRANSCRIPT
2:15
transferred 9:6,
21
transparency
43:10
trap 103:21
treasury 29:20
30:8

treated 14:18,19
trend 96:7
trial 82:19 83:13
tribunal 23:23
trouble 71:20
true 67:12 68:15
89:7,21 91:14
105:20
Trust 23:25 93:8,
13 94:13 98:11,13
99:1
turn 33:2 50:6,11
turning 23:19
types 14:4 45:23
80:7 84:9
typically 75:15

U

UDITPA 30:2
51:10,11 91:22
ultimate 99:3
unable 58:18
unaffected 68:19
unambiguous
25:18
unappealable
26:24
unclear 37:17
uncomfortable
5:24 85:24
unconstitutional
10:3 13:13
unconstitutionali
ty 13:16
uncontested
68:5 100:19 102:8
underground
82:25
underlying 74:23
75:1 97:21

understand 9:16,
19 15:18 39:22
58:20,22 66:15
74:2 86:1
understands
27:15
understood
65:24
undertook
107:11
undisputed
22:10
unexpected
102:6
Uniform 30:1
unilateral 26:24
universe 84:9
unlike 99:15
107:14
unreasonable
48:24
unrelated 76:15
update 53:1
updated 23:13

V

valid 72:4,9,15
73:2 74:12,14
75:2 86:22,23
91:15,17,25 92:1
105:16,21 106:7,
8,12
validity 11:18
12:9,19 24:15
25:5,9,15 26:25
28:21,23 30:10,
19,22 32:8,14,22
34:23 59:12,16
69:10,22 72:12
76:4,23,25 77:5
81:22 105:1,3
variance 62:2,15
vendor 29:21

version 41:22
versus 31:1 36:25
58:24 72:1 78:16
82:13 83:7
vested 10:21
vests 26:16,18
view 55:21
viewed 51:13
violation 12:10
voter 41:16
voters 6:12 55:14,
19

W

wait 39:16
walk 97:5
wanted 12:1
34:14 71:24
106:18 108:25
111:14
water 83:25
waterfall 89:13
ways 40:12,25
50:15 59:4
Wednesday 2:18
5:1
week 7:12
weight 51:14
Western 15:3
20:6 48:21 58:24
74:17 78:9,20
79:3,12 80:9
whatsoever
104:8
Whitcomb 31:1,4
William 51:12
willingness
23:10
winery 98:17,21,
25

winners 47:7 71:1

wishes 68:9 69:4

words 27:9 34:4
101:21

work 23:10,13

workers 62:10
98:17,21,25

working 39:23

worse 71:3

worth 86:2

writ 82:15,19

written 112:16

Y

Yamaha 15:2
20:24 28:9 31:25
32:1,6 37:13
38:21 74:17 76:8,
11,16 78:3,10,20
79:3,12 80:6

year 47:25 67:21
109:13

years 22:19 67:19
68:8 69:3 87:23
101:7 102:4
105:18 109:15
110:4

Yoni 3:8 5:15