

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
J. RICE and F. RICE,) OTA NO. 230312734
)
)
 APPELLANTS.)
)
)
 _____)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, April 16, 2025

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
J. RICE and F. RICE,) OTA NO. 230312734
)
APPELLANTS.)
)
_____)

Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:57 p.m. and concluding at 4:08 p.m. on
Wednesday, April 16, 2025, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

Panel Lead: ALJ SHERIENE ANNE RIDENOUR

Panel Members: ALJ JOSH LAMBERT
ALJ TERESA A. STANLEY

For the Appellants: F. RICE
ANDRE HELMS
C. BASTARACHE
M. CHRISTOPHER
C. WHITE

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

DAVID HUNTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

E X H I B I T S

(Appellants' Exhibits 1-5 were received into evidence at page 7.)

(Appellants' Exhibits 6-7 were received into evidence at page 36.)

(Department's Exhibits A-H were received into evidence at page 7.)

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

	<u>PAGE</u>
By Mr. Helms	11
By Mr. Hunter	57

<u>APPELLANT'S WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
F. Rice	11			
C. Bastarache	16			
M. Christopher	20			
C. White	39	47		

CLOSING STATEMENT

	<u>PAGE</u>
By Mr. Rice	78
By Mr. White	79

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

California; Wednesday, April 16, 2025

1:57 p.m.

JUDGE RIDENOUR: We are opening the record in the Office of Tax Appeals oral hearing for the Appeal of Jane and Frank Rice, OTA Case No. 230312734. Today's date is April 16th, 2025, and the time is 1:57 p.m. This hearing is being conducted virtually with the agreement of the parties.

Today's hearing is heard by a three-person panel. My name is Sheriene Ridenour, I am the lead judge. My co-panelists are Judge Lambert and Judge Stanley. The panel will meet after the hearing and produce a written decision as equal participants. While I'll be conducting the hearing, any panel member may ask questions or otherwise participate to ensure that we have all the information needed to decide this appeal.

For the record, will the parties please state your name and who they represent, starting with representative for Appellants.

MR. HELMS: Andre Helms, representing Frank and Jane Rice.

MR. HUNTER: David Hunter, H-u-n-t-e-r, Ms. Alonzo. I'm here representing Respondent Franchise Tax Board. Thank you.

1 JUDGE RIDENOUR: Thank you.

2 Mr. Helms, just to clarify, is Mr. Rice
3 considering himself a representative as well?

4 MR. HELMS: Yes. Yes. Mr. Rice is sitting here
5 next to me and -- yes.

6 JUDGE RIDENOUR: All right. For the record,
7 Frank Rice is also a representative. Thank you.

8 Before we continue, I wanted update the record to
9 reflect that by memorandum, dated April 3rd, 2025, FTB
10 stated that the \$28,383 in claimed capital improvements
11 allowed by the FTB was previously not included in the
12 revised calculation of Appellants' tax basis indicated in
13 FTB's June 4th, 2021, letter. Based on the memo, I asked
14 FTB if my understanding of the updated adjusted basis per
15 audit of \$1,991,241 is correct, which by email dated,
16 April 16th, 2025, Mr. Hunter confirms.

17 Thank you, Mr. Hunter.

18 MR. HUNTER: Thank you, Judge.

19 JUDGE RIDENOUR: Now, as stated in Minutes and
20 Orders, dated March 26th, 2025, there's one issue in this
21 appeal: Whether Appellants have established entitlement
22 to additional basis in real property located in La Jolla,
23 California.

24 The exhibits are listed in an exhibit log, which
25 has been distributed to the parties. During the

1 prehearing conference, FTB raised no objections to
2 Appellants' Exhibits 1 through 5, and they were admitted
3 into evidence.

4 (Appellants' Exhibits 1-5 were received
5 into evidence by the Administrative Law Judge.)

6 JUDGE RIDENOUR: During the prehearing
7 conference, Appellants raised no objections to FTB's
8 Exhibits A through H, and they were admitted into
9 evidence.

10 (Department's Exhibits A-H were received
11 into evidence by the Administrative Law
12 Judge.)

13 JUDGE RIDENOUR: Since the prehearing conference,
14 FTB submitted Exhibit 1 [sic].

15 Appellants, do you have any objections to
16 FTB's -- I mean, Exhibit I. Apologies.

17 Appellants, do you have any objections to FTB's
18 Exhibit I?

19 Mr. Helms?

20 MR. HELMS: No, we do not have any objection to
21 that.

22 JUDGE RIDENOUR: Thank you.

23 FTB's Exhibit I is hereby admitted into evidence.

24 JUDGE RIDENOUR: As for witnesses, FTB previously
25 indicated it will not call any witnesses. Appellants

1 indicated they will be calling the following witnesses to
2 testify under oath or affirmation: Frank Rice, Connie
3 Bastarache, Mark Christopher, and Christian White. FTB
4 has raised no objections to this list of witnesses. As
5 such, each witness will be sworn in before Appellants'
6 presentation. There are no other witnesses today.

7 As a reminder to the parties, during our
8 prehearing conference, we decided Appellants will have
9 60 minutes to make their presentation, including
10 presenting witness testimony, followed by FTB who will
11 have 30 minutes. Then Appellants will have 5 minutes to
12 provide closing remarks, should they choose. Each party
13 is encouraged to monitor their own time.

14 Does anybody have any questions before we move on
15 to presentations?

16 Mr. Helms?

17 MR. HELMS: Frank -- Frank Rice has a question.

18 JUDGE RIDENOUR: Okay. Mr. Rice.

19 MR. RICE: Judge, good morning -- good afternoon.

20 JUDGE RIDENOUR: Good afternoon.

21 MR. RICE: The question was something that I took
22 up with Mr. Rios, and that was the -- your agreement that
23 witnesses, particularly Mrs. Bastarache, would, after she
24 gives her testimony and takes any questions you may have,
25 whether she can be excused. She is testifying on a very

1 narrow topic.

2 JUDGE RIDENOUR: Yes, that should be sufficient.
3 I will double check with the panel after her testimony,
4 but I see no reason as to why she could not leave the
5 hearing at that point. If you could repeat the first
6 sentence? You spoke to Mr. -- who was it?

7 MR. RICE: Mr. Rios.

8 JUDGE RIDENOUR: Okay. Thank you. And who --
9 okay. Thank you.

10 MR. RICE: Sure.

11 JUDGE RIDENOUR: All right. Yes. Andy Rios.
12 Got it. Thank you.

13 All right. So before we proceed, I will need all
14 four witnesses to please raise their right hand.

15 Mr. Helms, where is Ms. Bastarache?

16 MR. RICE: On the phone.

17 MR. HELMS: I believe she was only able to phone
18 in.

19 JUDGE RIDENOUR: Okay.

20 MR. HELMS: And I don't think she has video
21 capability.

22 JUDGE RIDENOUR: Okay. Just wanted to make sure.
23 Thank you very much.

24 MR. HELMS: You're welcome.

25 JUDGE RIDENOUR: All right. Please, each of

1 you -- I need to place each of you under oath so that we
2 can consider your statements as testimony, and you will
3 each remain under oath until the close of the hearing.

4 Please raise your right hand.

5

6 F. RICE,

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

10

11 M. CHRISTOPHER,

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

15

16 C. WHITE,

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

20

21 JUDGE RIDENOUR: Collective yes. Thank you very
22 much.

23 Ms. Bastarache, please remember to hit star six
24 to unmute whenever you are ready to speak.

25 Okay. The time now is 2:03.

1 When you're ready, Mr. Helms, please begin your
2 presentation. As a friendly reminder, you do have 60
3 minutes.

4 MR. HELMS: Yes. Thank you, Judge.

5

6 PRESENTATION

7 MR. HELMS: My -- my presentation will be -- will
8 consist of speaking to the witnesses, actually. I believe
9 the appeal topic here is, as you mentioned, the evaluation
10 of the home is the only issue, and the disagreement as to
11 the method of the evaluation is the only issue that we're
12 here to address. So yes, I'll begin by speaking to Frank
13 about the home.

14

15 DIRECT EXAMINATION

16 BY MR. HELMS:

17 Q So, yeah. So, Frank Rice, why do you know the
18 cost of the house so well? Can you talk to that?

19 A Yeah. I'll talk to it, but first, I too would
20 like to say good afternoon to the judges, the
21 stenographer, Mr. Hunter, and any others whose names I may
22 have forgotten. Good afternoon to you all.

23 The question why -- why I know the cost of the
24 house so well. Two years -- two full years were spent on
25 the design of the house, and another two years were spent

1 on actual construction of the house. There was quite a
2 large team of two architects and special -- a number of
3 specialists in other fields. But during the entire four
4 years, my wife and I, particularly myself, were involved
5 in a rather detailed and daily basis on the complicated
6 design and the long complicated construction of the house.

7 So the reason I know the cost so well is because
8 I know all the other aspects of the house very well too.
9 It was just simply that it was like a fourth child to us.
10 It took lots of our time and attention.

11 Q All right. And I understand you think the cost
12 reported on the tax return was actually low or --

13 A Yes. After the -- after the tax return was
14 completed, we discovered within probably a month or so
15 that one cost file had not been included in our
16 calculations of the cost. And that is because there was a
17 separate contract for the foundation of the house. And
18 when Mr. Christopher speaks, he will speak to the
19 foundation of the house and its rather complicated nature.

20 And we just simply made a mistake. We had one
21 other file in which most all the other cost records were
22 kept and inadvertently overlooked. That cost of the
23 foundation, which by itself was actually approximately
24 \$110,000. So this is the very specific reason that I -- I
25 know that the number that we originally put on the return

1 was significantly low.

2 Q All right. And what do you think the central
3 issues of this case?

4 A Well, just to repeat, I think, what you said, and
5 I'll be very quick. The central issue from our view has
6 always been the cost basis of the house. To -- in order
7 to determine the costs, as you know we hired and actually
8 paid significantly to get a company, Keystone, that we
9 researched and found was one of the very best in the
10 country in cost estimating, and not in appraisals. And
11 that's a distinction that maybe Mr. White will make when
12 he -- when he speaks.

13 But there's a distinction between companies that
14 do appraisals and companies that actually do construction
15 cost estimating, and people often get that mixed up. So
16 that is the central issue. What was the cost? What was
17 the best way to -- to take current cost, which is what we
18 had to do, and discount them back to the year of
19 construction. And that is the process that Mr. White will
20 talk more about.

21 Q All right. Is there anything else you would look
22 to say?

23 A I -- I will just conclude by making three simple
24 points that we are going to try to make today during this
25 hearing. The first one is that there was sadly a flood

1 which destroyed the cost records, and Mrs. Bastarache
2 will -- will address that issue.

3 The second issue -- main issue is the unique
4 design of the house. And Mr. Christopher, with the use of
5 Exhibit 5 photographs, will talk to you about some of
6 those features of the house.

7 And then finally, the third major point, which
8 Mr. White will address, is that the uniqueness of -- and
9 complicatedness of the design made it clear to us that
10 there had to be a very careful process for estimating the
11 cost. We found what we think is the best way, and we
12 believe very strongly that the software chosen by the
13 state was fundamentally inappropriate for this house. And
14 again, Mr. White will testify in more detail about that.

15 And then if I could just conclude by making very
16 quickly two general statements. First, my wife and I have
17 been proud citizens of the State of California for some
18 time, since we moved from New York in 1978. We are proud
19 residents. We have been very conservative and accurate in
20 completing our tax returns.

21 Secondly, it has never been our intention over
22 these past six years to be antagonistic with the State.
23 As you know and you can see today, there's no lawyer on
24 our side. We have never engaged a lawyer to represent us.
25 We also acknowledge that although we believe the State

1 made a very fundamental error in choosing the software, we
2 want to commend everyone involved for being sincere and
3 professional. We have absolutely no criticism of the
4 process, the arguments brought by all the different people
5 who we have worked with over the -- the past six years.
6 Our only disagreement, as I said, is the use of an
7 inappropriate software; which, in spite of the State's
8 best efforts, simply provides very inaccurate cost
9 results.

10 MR. HELMS: Thank you.

11 Then I have some questions for Mrs. Bastarache.

12 Mrs. Bastarache, if you're --

13 JUDGE RIDENOUR: Mr. Helms, real quick before you
14 do that, I'm going to actually swear her in since she was
15 muted at the time.

16 Mrs. Bastarache, can you please hit star six to
17 unmute.

18 MRS. BASTARACHE: Okay.

19 JUDGE RIDENOUR: Are you there? I'm sorry.

20 MRS. BASTARACHE: Yes. Can you hear me?

21 JUDGE RIDENOUR: Okay. Yes, I can. Thank you.

22 Please raise your right hand behind this telephone.

23 ///

24 ///

25 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C. BASTARACHE,

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

JUDGE RIDENOUR: Thank you.

Mr. Helms, you may continue.

MR. HELMS: Thank you very much. Thank you.

DIRECT EXAMINATION

BY MR. HELMS:

Q Hi, Mrs. Bastarache. Good afternoon.

A Hello.

Q Yeah. Thank you for joining us. Just had a couple of questions for you. Why were the cost records of the home stored in the basement. Could you tell us about that?

A Yes. When we bought the house, the Rices were just -- we were so fortunate that they left us all these designs and construction of the house and paperwork, and it was on the -- downstairs in our basement. And it was all piled up on the work bench down there with some other items that they left for us. And my husband, when we were moving in and we got settled, he took all the paperwork and design and construction papers and put them in a big

1 storage box and just put it under our work bench down
2 there in the basement.

3 And the cost records were included in that.
4 Everything was included, all the paperwork. We just kept
5 it in that place where they left it. And there was a
6 flood in October of 2017. A San Diego water pipe adjacent
7 to the house burst and the basement flooded. Because the
8 house is the lowest point in this area, and the basement,
9 obviously, the lowest of the house. So the cost record
10 and most of the other files for the house were in the
11 basement, and they were destroyed.

12 Q I understand. Did you have insurance?

13 A Oh, yes. We had insurance, and we were
14 reimbursed on a claim file. But we were told that the
15 files were not insurable because they were irreplaceable.

16 MR. HELMS: Okay. Thank you. I don't have any
17 further questions for you, Mrs. Bastarache. Thank you.

18 MRS. BASTARACHE: Thank you very much.

19 JUDGE RIDENOUR: Okay. Mrs. Bastarache, please
20 hold on. I know you would like to get going. So first, I
21 would like to ask Mr. Hunter if he has any questions for
22 you.

23 MRS. BASTARACHE: Sure.

24 MR. HUNTER: No, Judge. No questions for this
25 witness.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE RIDENOUR: Perfect. Thank you.

Judge Lambert, do you have any questions?

JUDGE LAMBERT: I don't have any questions.

Thanks.

JUDGE RIDENOUR: Judge Stanley, do you have any questions for this witness?

JUDGE STANLEY: Just one.

Ms. Bastarache, if you said --

MRS. BASTARACHE: Yes.

JUDGE STANLEY: -- the date of the flood, I missed it. Can you please give me the date of the flood?

MRS. BASTARACHE: October 1st, 2017.

JUDGE STANLEY: Thank you.

JUDGE RIDENOUR: Judge Stanley, are you done?

JUDGE STANLEY: Yes.

JUDGE RIDENOUR: I have a couple of questions real quick for you please, Mrs. Bastarache. I noticed in the appliance list, they included the washer and dryer. Can you confirm whether or not that you received the washer and dryer when you bought the house?

MRS. BASTARACHE: Yes.

JUDGE RIDENOUR: You did receive a washer and dryer when you bought the house?

MRS. BASTARACHE: Yes.

JUDGE RIDENOUR: Okay. Perfect. Thank you. And

1 also, it says -- the record says you kept the papers in
2 case of repair and any other questions regarding the
3 design of material used in the construction of the home.
4 Since the 2017 flood, what have you used to answer such
5 questions, should you do any repair?

6 MRS. BASTARACHE: I call -- we call Jane or
7 Frank, and they can give us some information.

8 JUDGE RIDENOUR: Okay. Perfect. Thank you.

9 MRS. BASTARACHE: Thank you.

10 JUDGE RIDENOUR: That was all the questions I
11 have for you, Mr. Bastarache.

12 Unless, Mr. Helms, you had anything clarifying
13 you would like to ask her before she leaves this hearing?

14 MR. HELMS: No.

15 JUDGE RIDENOUR: Okay. Thank you,
16 Ms. Bastarache. Have a lovely day.

17 MRS. BASTARACHE: Thank you very much.
18 Appreciate it. Bye-bye.

19 JUDGE RIDENOUR: Bye.

20 Mr. Helms, you may proceed.

21 MR. HELMS: Thank you. I'd like to talk to
22 Mr. Mark Christopher next.

23 MR. CHRISTOPHER: Present.

24 ///

25 ///

1 DIRECT EXAMINATION

2 BY MR. HELMS:

3 Q Hello, Mark?

4 A Hello.

5 Q In general, can you tell us what makes the house
6 so different and more expensive than even most custom
7 homes?

8 A May I share my screen?

9 Q Yes.

10 A Okay.

11 JUDGE RIDENOUR: Please hold on. Before you
12 share any screen material, please note that this is being
13 live streamed to the public. As such, please be aware
14 that any confidential information or any information at
15 all, will, in fact, be immediately available to the
16 public. Having said that, Mr. Rice, since you are his
17 client, are you okay with this?

18 MR. RICE: Yes.

19 JUDGE RIDENOUR: I will allow it, unless I think
20 it is counterproductive. I'm sorry. Did you say yes?

21 MR. RICE: Yes, I said yes.

22 JUDGE RIDENOUR: Okay. Thank you very much.
23 Just making sure. Thank you.

24 Go ahead, Mr. Christopher.

25 MR. RICE: Very well.

1 BY MR. CHRISTOPHER:

2 Q All right. I'm sharing my screen, and you should
3 be seeing a title, "Rice Residence Exceptional Quality and
4 Uncommon Characteristics." The photo in the middle is
5 kind of interesting because that's a cardboard and wooden
6 model that was made during the design process and
7 remarkably identical to the house as it was built, digital
8 scenes and some photographs.

9 And to answer your question, I think -- well,
10 Frank alluded to a part of it already, which is that this
11 house is by coastal. It's on the -- on the West Coast,
12 but it was designed by an East Coast architect. He -- he
13 did the full design of it. And also with a great deal of
14 liberty to make it as complex as he chose because I was
15 the other architect involved in the West Coast here in San
16 Diego. And my job was to -- was to faithfully follow his
17 design to craft the drawings from which the house could be
18 built, which is kind of an unusual position, you know, as
19 an architect. It's wonderful when you don't have to get
20 to all the detail of how something is going to be built.
21 You can indulge yourself in whatever complexity you wish.

22 This photograph kind of demonstrates that. There
23 are five different roofs up there. The walls are
24 thickened in various places. There -- there are quite a
25 few exterior corners, all of which have to be delineated,

1 you know, and ultimately constructed. So it's a -- and
2 the other interesting thing is that faithful to a
3 problematic requirement, William Ron, who I think did a
4 superb job, used entire property. He absolutely maximized
5 it. Built out every square inch of it, which is wonderful
6 when it comes to providing the most accommodating home,
7 but a real challenge for the contractor because there's
8 nowhere to go.

9 I mean, the contractor had only the street to
10 work from because the only access was from the street
11 itself. You cannot access the property from the side to
12 the left because there's a home there; the side to the
13 right because it's a cliff, and the side behind it because
14 it's a cliff too. So it was -- you know, it was a superb
15 design to the degree that really optimized the property.
16 I'm really calling this thing two challenges. One, that
17 of staging I mentioned, but the other is the -- the soil
18 of this property was -- is what soil engineers call
19 incompetent. Which means it's not suitable to carry the
20 weight of the house without undue settling. And I will
21 get into more of that a little later because as Frank
22 suggested that it's a critical component of this design.

23 The other thing, I just want to put it into
24 context. We're using fairly loose terms about, you know,
25 what's exceptional and what's excellent. And there's been

1 a suggestion about the -- the State using software that
2 may not have been well patterned to complement the
3 complexity or the quality of this house. So I just have
4 this brief rundown of, you know, what is the range of
5 house complexity and quality?

6 Well, it starts at the bottom with a tract house.
7 As we move up towards higher levels of quality and
8 complexity, we get to a builder house. That is one that a
9 builder might -- might design as the individual. And then
10 a builder or architect designed custom home of a known
11 style that is of Spanish. It's French. It's craftsman,
12 whatever. It's something that is well known and routinely
13 executed. Next level up I would characterize as an
14 architect design house. It's a custom home, and it's a
15 unique creation. We went past that, I think, a couple of
16 more steps. This house, the next step up I would consider
17 to be an architect designed custom home as a unique
18 creation, but it has luxury features, and it has excellent
19 materials. But I think we topped out at this last level.
20 And, of course, there are levels beyond this.

21 But this is the level I think that this house
22 achieves, which it's -- are clearly an architect design
23 home; actually, two architects, and it's a unique
24 creation. It has luxury features and materials. And it's
25 of, what I would call, exceptional quality in -- and it's

1 on a challenging hillside lot, which, as I alluded to
2 already, is an important characteristic of, you know, what
3 might have drove the cost of this house.

4 And, you know, as seen from this photograph as
5 part of the exhibits, you see -- you've been given
6 already. This house, you know, it certainly qualifies as
7 a -- as a tier six exceptional and -- and, I think, quite
8 exceeding what might be called an excellent quality. And
9 you can see that it is perched on the hillside. Here,
10 from the front of the house, one of the characteristics of
11 defining the cost of a building, of course, is the type of
12 materials because that's -- it's like the skin on our
13 bodies. It's our largest organ.

14 Well, the largest organ on this house is its
15 skin. And its skin, while it may look fairly common --
16 certainly in San Diego stucco is common, but this is not a
17 common stucco. This is a burnished stucco. It -- it
18 would be called a Santa Barbara finish. But it even goes
19 beyond the Santa Barbara because it's -- it's very uniform
20 in color. But the important thing about it is that while
21 this stucco is being applied this -- the laborers and the
22 workers who are applying it have to stand there with a
23 steel trowel and rub it and rub it and rub it and rub it.
24 And that brings the matrix of the cement out to the
25 surface as it pushes the -- the aggregate of the -- of the

1 sand and the light back into it making kind of a polished
2 finish of it. So it's -- it's very time consuming.

3 And other characteristics that you see from this
4 is that it has quite a few windows that. Let me turn down
5 this bulb just like that. It has lots of windows, not so
6 much on this side because the view is on the other side.
7 But even as much as there are windows on this side,
8 they're very special. They're -- they're -- they would be
9 called a punched opening. You know, it's as if we took a
10 paper punch and punched a hole through the wall. But
11 moreover, they're recessed back in, which can only be done
12 by making a wall very thick which gives it a historical
13 character of -- of permanence and substance. But also, at
14 some expense because that's -- that's double the framing.
15 Wherever the walls are thick, it actually takes two walls
16 separated by an air space on the window set back deep into
17 it.

18 The other thing that's important about how
19 complex this is, is that Bill Ron, you know, have the
20 luxury of -- of indulging himself in all kinds of
21 complexity. Like I love this -- this stair stepping of
22 windows on the front because it alludes to the stairway
23 that's actually behind that wall. But relative to cost, I
24 mean, that's -- that's one, two, three, four, five, six
25 layers, each of which has its own roof, its own flashing,

1 its own framing; and each of the windows set into a
2 deepened wall. Certainly not necessary and certainly not
3 common, but did contribute to the cost. There's also a
4 cantilevered canopy over the front door that requires some
5 special framing to cause it to be -- when I say
6 cantilevered, we think of a diving board that sort of
7 sticks out from the -- the surface of the house itself.

8 And here, now seen from below, the house really
9 is -- it does absolutely fill the property. No place for
10 work itself for on the property itself. But, oh, if you
11 look at the abundance of windows, which was suitable and
12 appropriate to do because one of the greatest attributes
13 of this property is its view. It's -- you'll see it later
14 in a little video that this house is really perched on a
15 cliff, on a cliff's edge. So all of these was abundance
16 of honorary of glass and windows is very pricey.

17 You know, I'm not here to speak of what the
18 actual cost of this would be. I can just tell you I've
19 done hundreds of homes. And if this house were to be --
20 if a client came to me today and said, Mark, what's this
21 going to cost? I'd say, well, it's over \$4 million,
22 probably approaching \$5, and about \$150,000 of that, maybe
23 \$200 of that would be just what contractors call the
24 "window package," lots and lots of glass.

25 Another, I think, important character, I think of

1 this house is that although it doesn't show up, I imagine
2 in the standard basic house when it's estimated, this has
3 not just a -- a lap pool for swimming, but it has a spa.
4 And this is what makes it really weird -- we'll see this
5 at the end. That pool and spa had to be supported on
6 concrete caissons. And we'll get into the detail of that
7 later. But there are eight caissons that were necessary
8 to hold up a pool. Another 21 caisson hold up the house.
9 We'll get to that too.

10 And that -- there's the pool. You see a little
11 yellow on the lower right-hand corner. That's the pool.
12 And as we get inside, some interesting and unique things
13 about this is that it has that curved stair that kind of
14 parallels the stair stepping of the outside of the house
15 we saw earlier. But notice that the floors are stone.
16 And then --

17 Q Mark. Mark, can I pause you for a moment. I
18 think we might be cutting out a little bit. Is -- can --
19 I don't mean to interrupt. I apologize.

20 A Well, thanks for letting me know. I'll -- I'll
21 raise my voice a bit, and that may help.

22 MR. RICE: Get closer.

23 MR. CHRISTOPHER: Okay. So is there -- so, yeah.

24 You'll see as we go through these photographs
25 that you really won't see any flooring that isn't stone.

1 There may be some in remote places like the basement. But
2 the house is, you know, characterized by enriched
3 materials. There's stone cladding on the -- the wainscot
4 height of these columns but stone flooring pretty much
5 throughout, the curved stone. It also has a special
6 curved stainless steel handrail and guardrail here in more
7 detail. All that is hand fabricated and -- and
8 hand-fitted together. Not -- not common, even in an
9 excellent house.

10 You've never seen this trick before. Notice how
11 up here in the top where it's yellow now, that's a
12 structural glass bridge held on -- on steel beams. That
13 glass is an inch thick, and it's not just bad. It's
14 etched on the bottom just for privacy, looking up through
15 that glass. And that same etched glass is used in other
16 places. So it becomes part of a design part of that
17 bridge. You'll see it in some windows later, you know,
18 that one.

19 Now, we move to the kitchen. The kitchen -- I
20 won't say it's unusual or unique to have granite counter
21 tops. Even builder homes have granite counter tops now,
22 but these were done in a time before that was commonplace.
23 This was imported for this project. Now, you can go any
24 stone supplier anywhere in Miramar and find abundant
25 stone. The other thing unusual about this stone is that

1 it's installed to the -- to the extent possible in single
2 sheets without any -- any joints in. And this is a large
3 island. Normally it would have a joint down the middle of
4 it going right through the sink. This doesn't. That
5 would be unacceptable for this level of quality.

6 Also, you'll see that there's a lot of treatments
7 of ceilings where this one is a -- kind of a cathedral
8 ceiling. But who has that over their kitchen? Usually,
9 it's over the living room. And, again, lots of windows.
10 This also has state-of-the-art appliances. If we were to
11 get into that in detail, you'll see, like, the stove is
12 the best made with lots of burners. The refrigerator is
13 a -- are Wolf Sub-Zero. They're all, you know, best in
14 class appliances and fixtures.

15 I've moved to the bathroom. The bathroom has a
16 unique expression here of this glass block. It's sort of
17 a retro look back to the 60s. But it's used here because
18 you get a lot of light but complete privacy. That wall is
19 up against the neighbor. It's within four feet of the
20 property line. But when you do that, you still need a
21 mirror and a medicine cabinet. So those got suspended in
22 front of the glass block. And well now you need light
23 during the night, so there are little spotlights that
24 shine on your face as you're shaving or fixing your
25 makeup. Also, the countertop here is not stone. That's

1 something called all cindercrete it's a specially cast
2 stone that's -- that's made from, really, a very finely
3 ground concrete, Portland cement. And the cabinet beneath
4 it is actually a polished metal. Again, not your average
5 bear.

6 And then we get to the living room. This living
7 room has a very special treatment of plaster, which is a
8 Venetian plaster. It has some historical significance.
9 But again, when you come down to cost, that means that
10 somebody had to pigment that plaster and, like the
11 exterior of the house, had to stand there with a trowel
12 and rub it and rub it and rub it until it became polished
13 as -- as it set up. You also see there's specialty
14 lighting that's kind of uncommon in most homes. And now
15 we're back to the entry. I -- I promised that I'd show
16 you more of the -- the etched glass. This is the front
17 door in the side light, and the same punched opening
18 windows as seen from the inside and the thickened walls.

19 Q Mark, I'll stop you for one more second.

20 A Go ahead.

21 Q Sorry?

22 A Please, go ahead.

23 Q Hang on. This end the video may not be updating.
24 I just wanted to make sure everyone else --

25 MR. RICE: We still have room picture.

1 JUDGE RIDENOUR: Mr. Helms, we do see, at least
2 on my end, a picture of six windows and etched glass. So
3 everything seems to be correct on our end.

4 MR. RICE: All right.

5 JUDGE RIDENOUR: Thank you for confirming.

6 MR. CHRISTOPHER: Thank you. Oops, now it timed
7 out. Let me get it back on. All right. Okay.

8 Yeah. That didn't have to be six windows. That
9 could have been one big window, but the architect, you
10 know, just wanted to express it in this particular manner,
11 and so he did. And we followed faithfully. This house,
12 you know, I think from -- from bottom to top is unusual.
13 Here's the bottom. I mentioned I would show you
14 graphically how the -- what the caissons are and where
15 they were. Those orange dots all represent a caisson that
16 are 24-inch diameter. And they go from as shallow as
17 8 feet in depth, but they go down as far as 24 feet.

18 Now, these are really made by a big rig. A big
19 oil drilling rig comes out to the site, sets up, and
20 drills a round hole into the ground. Steel workers
21 assemble a cage, we call it, of 7 to 8 inch thick bars, 8
22 of them in a row; and then wrap that every -- every 12
23 inches with a half-inch thick steel bar that forms a cage.
24 That gets lifted with a crane and dropped down into the
25 hole, and then it gets filled with concrete. Well, that's

1 not enough.

2 Now you just have 29 things that -- that are
3 stiff. They're not that much -- they're not that useful.
4 They'll punch through the bottom of the house if -- until
5 you connect all of those with what's called a grade beam.
6 So the yellow represents 24-inch wide, 24-inch deep
7 foundations or footings that connect those 29 caissons
8 into a mat or which the house is built.

9 Now, please compare that to what a basic house
10 would be. Now, a basic house would have a four to
11 six-inch thick slab of concrete with what we call welded
12 wire mesh, or kind of a thick mesh in that. And it's --
13 the only footings would be around the perimeter, and they
14 would be done just thickening the edge of that slab. So
15 night and day difference between the cost of -- of doing
16 this. And interesting that we were able -- actually able
17 to make these caissons shallower by -- by digging down and
18 creating a basement first.

19 We heard about the basement where those records
20 were during the flood. And you'll see in this section in
21 a moment how that worked out. There's the -- the pool
22 with its eight caissons. And I'm going to jump to the top
23 now. Here's the roof. The roof is no simple roof. It's
24 actually five different roofs. This gray one first, and
25 this gray one second. Those are actually a material

1 called tern, t-e-r-n. That's a pretty exotic material.
2 It's -- it's kind of known for being on European
3 cathedrals, and it's known for being on the roof of the
4 White House. But it's a special alloy that's lived
5 centuries, and, you know, really found its home here in a
6 permanent way.

7 The other interesting roofs are these brown ones.
8 That's one, two, three, four, five roofs of itself. And
9 this -- this one the -- isn't -- they're both pyramid
10 roofs with a lot of stair steps in them. Took a lot to
11 fabricate those, and then they're all linked together with
12 a flat roof. So not your average bear and roof. This is
13 what we call a section cut through it. And I don't mean
14 to overwhelm you guys with technology, but -- because I
15 appreciate that we're-- we're a little strange in that we
16 practice in a way that's not -- not very commonplace. But
17 we draw these drawings, and these are all drawn by hand.
18 I do everything in the computer now, but this was before
19 1990. I owned a computer, but I couldn't do this. So now
20 we would, then we didn't.

21 And you can see with this drawing that there's
22 a -- it's -- it's like -- think of it as the house is a
23 loaf of bread and you took a big knife and cut through it
24 and threw away the heel. You'd be looking at the end of
25 the bread. So this is looking at the guts of the house

1 from the side. You know, you can see that's it's, you
2 know, lots of stair stepping.

3 It has an area here that you'll see in yellow
4 which is technically subterranean. It's -- it's regarded
5 as a basement because it meets the building code's
6 definition of basement. But then because of that, with
7 anything below it is a subbasement. And then next to that
8 is a crawl space. That space, when you read the
9 definition of basic cost, it's not included in basic cost.
10 But again, I'm not -- I'm not going to testify as to what
11 is or isn't in the estimate. I just know by definition
12 what is there considered additional areas. But look at
13 how much of the house that -- that means. Same thing.
14 This is the loaf of bread cut the other direction. Same
15 thing with a below grade basement area, and they are
16 subterranean and some crawl space.

17 So that's -- I don't know that's a pretty good
18 feature list. There are other things that this kind of
19 home usually includes, like a smart home with lighting
20 controls that are unusual and central vacuums. There are,
21 you know, a lot of things when you're doing a house on
22 this level that just aren't considered common or ordinary
23 or even excellent. They're actually exceptional.

24 And there's one more thing that I'd be happy to
25 show, but it -- it may jump. I may have to start a new

1 window. Are you guys seeing Villa Bassano?

2 JUDGE RIDENOUR: Yes.

3 MR. CHRISTOPHER: This will help you get a good
4 idea of what the site is actually like, definitely a hill
5 top. And all that street is where the water flowed that
6 flooded the basement.

7 (A digital file is played.)

8 MR. HELMS: Judge, I apologize. We're having
9 some internet issue, I think. I can't -- we can't hear or
10 anything else, and I'm trying to join by phone.

11 JUDGE RIDENOUR: Okay. Mr. Christopher, can you
12 please pause the video.

13 And we will go off the record, Ms. Alonzo, while
14 we figure out technical difficulties.

15 (There is a pause in the proceedings.)

16 JUDGE RIDENOUR: Okay. Ms. Alonzo, we're going
17 back on the record.

18 Mr. Christopher, please continue the video
19 presentation.

20 MR. CHRISTOPHER: Of course. There's only
21 30 seconds left.

22 (A digital file is played.)

23 MR. CHRISTOPHER: There you have it.

24 JUDGE RIDENOUR: Thank you.

25 MR. HELMS: Thank you, Mr. Christopher.

1 JUDGE RIDENOUR: Real quick before we proceed.
2 Mr. Helms, I was unaware we would have a visual
3 presentation. As such, I am going to propose that we have
4 the PowerPoint be provided to both FTB and OTA post
5 hearing as Exhibit 6. And the video --
6 Mr. Christopher, can you please stop sharing your
7 screen?
8 MR. CHRISTOPHER: Of course.
9 JUDGE RIDENOUR: Thank you.
10 MR. CHRISTOPHER: I just have to figure out how.
11 JUDGE RIDENOUR: Oh, okay.
12 MR. CHRISTOPHER: There we go.
13 JUDGE RIDENOUR: Thank you. Thank you very much.
14 -- and the video presentation as Exhibit 7,
15 unless Mr. Hunter objects.
16 Mr. Hunter?
17 MR. HUNTER: No objections, Judge.
18 JUDGE RIDENOUR: Okay. Thank you.
19 They will be admitted as Exhibits 6 and 7 into
20 the record.
21 (Appellant's Exhibits 6-7 were received
22 into evidence by the Administrative Law Judge.)
23 And Mr. Helms, if you could please have
24 Mr. Christopher give you a copy of that and submit it to
25 OTA after the hearing.

1 MR. HELMS: Yes, we will do that, Judge. Thank
2 you.

3 JUDGE RIDENOUR: Thank you.

4 Mr. Christopher, was that the end of your
5 presentation?

6 MR. CHRISTOPHER: Yes. Happy to answer any
7 questions.

8 JUDGE RIDENOUR: Okay. Well first, I have to say
9 that was -- you did design an absolutely beautiful home.

10 Mr. Hunter, do you have any questions for
11 Mr. Christopher?

12 MR. HUNTER: No, Judge. I do not have any
13 questions for this witness. Thank you.

14 JUDGE RIDENOUR: Judge Lambert, do you have any
15 questions?

16 JUDGE LAMBERT: This is Judge Lambert. Just one
17 question.

18 I was wondering, Mr. Christopher, just based on
19 your experience, would, you know, the cost of materials or
20 labor be generally more expensive in La Jolla or
21 California; you know, in La Jolla more than other places
22 in California, and California more than other places in
23 the United States you would think?

24 MR. CHRISTOPHER: Yeah. It's not at the top of
25 the market. There are places north of here, closer to Los

1 Angles, where the cost of building a house today is -- is
2 between \$1,000 and \$1,200 a square foot. In San Diego, I
3 usually quote between \$500 and \$800 a square foot for, you
4 know, a good-quality custom home. This house, because of
5 its extraordinary conditions of the site, is probably, you
6 know, tickling the edge of that \$1,000 a square foot.
7 But, you know, that's -- those are the standards that I
8 use. We have a cost expert on the -- on the team who has
9 analyzed the cost in great detail. That is way more
10 available than my, you know, cost per square foot
11 analysis.

12 JUDGE LAMBERT: Okay. Thank you.

13 MR. CHRISTOPHER: Of course.

14 JUDGE RIDENOUR: Thank you.

15 Judge Stanley, do you have any questions?

16 JUDGE STANLEY: I don't have any questions for
17 Mr. Christopher. Thank you.

18 JUDGE RIDENOUR: At this time, I don't have any
19 questions for you either, Mr. Christopher.

20 So, Mr. Helms, will you please proceed.

21 MR. HELMS: Yes. Thank you.

22 Thank you, Mr. Christopher.

23 Next will be Mr. Christian White.

24 ///

25 ///

1 A So yes. And what the Segregated Estimator -- it
2 is an actual software that gets into the component-based
3 estimating. We reached out to CoreLogic to discuss it,
4 and CoreLogic basically gave us an understanding that the
5 only tool they have to utilize for custom components for
6 the variables within this home is the Segregated
7 Estimator. The Swift Estimator, in-of-itself, doesn't
8 have the ability to adjust and to add in the value of a
9 lot of these custom luxury components. Anybody, even in
10 their best efforts, could not get the detail in the Swift
11 Estimator, the standard square foot estimator, needed in
12 order to capture the replacement cost value of this house.

13 And then I want to go into a little more in here
14 a little bit the lengthy detail that we went into to
15 prepare the cost estimate and to try to get the actual
16 replacement cost to include the detail in the home.

17 Q I'm sorry. I was muted. Yes. Yes, could you
18 please get into that for us as the --

19 A Yes. As far the -- so I'll -- I'll roll into
20 the --

21 Q Yeah?

22 A -- CoreLogic Swift Estimator first as not being
23 the accurate software. The Swift Estimator is a square
24 foot estimator. It's a generalized estimator. It's based
25 on quality, such as Mr. Christopher alluded to, which is

1 kind of the good, better, best kind of method with
2 excellent being the top grade. The Swift Estimator
3 doesn't have the flexibility to adjust and to take into
4 consideration some of the, again, complexities and
5 uniqueness that are in this home.

6 I had several conversations with CoreLogic back
7 in 2022 when we really -- originally went through this
8 exercise of trying to redevelop a replacement cost for the
9 home. CoreLogic back then, and even had conversation most
10 recently last week with them just to confirm our -- our
11 opinion and how we took the cost approach. And they
12 confirmed that the Swift Estimator is not the tool they
13 recommend for luxury custom homes. They recommend the
14 Segregated Estimator. And they recommend the Segregated
15 Estimator to be able to adjust the actual unique complex
16 features within the house.

17 The Swift Estimator of the top end in the
18 category of excellent, even CoreLogic recommends, and in
19 their material, they acknowledge the excellent category
20 doesn't capture custom luxury high-end properties. It's a
21 generalized for excellent features in your kind of
22 standard-grade building. The Segregated Estimator, on the
23 other hand, is kind of designed to go outside of that
24 square foot realm, and go into the components of the home.

25 Mr. Christopher hit on some of the components,

1 such as foundation, windows, doors, and allow us to get
2 into the cost components of each and adjust the
3 replacement cost based off the features in the design of
4 its home. So we utilized the Segregated Estimator. We're
5 unable to get the Swift Estimator to come anywhere close
6 to the accurate scope and cost that was originally allowed
7 for.

8 Q Thank you. Yes. Frank wants -- wants me to ask
9 you why -- why can even the most professional and
10 well-intentioned use of the Swift Estimator excellence not
11 accurately estimate the cost of the home. If you could
12 point out some specific details in -- specific details in
13 this home?

14 A For sure. For sure. And so to that, the Swift
15 Estimator doesn't have the ability to add a lot of the
16 custom features. Again, it's a square foot generalized
17 estimator. It's -- it's an off-the-shelf tool for most
18 daily use. But when you get into specific things that
19 Mr. Christopher alluded to, such as the challenging
20 foundation and the caisson grade piers and beam foundation
21 that had to be built for this home, the site restrictions
22 around this home when you get into the complex multiple
23 floor levels that are not typical in your typical
24 construction, the handcrafted roof, the specific
25 materials, the European quarried cut marble; things that,

1 even today, are easier to obtain back then were harder to
2 obtain.

3 When you get into Venetian plaster and -- and not
4 to repeat again everything that Mr. Christopher
5 acknowledged. But when you get into specific plaster,
6 whether it's the exterior finish or the Venetian plaster
7 on the interior, the labor alone, the trades alone, it
8 cost that much more from the quality of labor in order to
9 be able to actually perform these types of finishes. So
10 these are the things that standard square foot estimators
11 don't capture, and aren't able to actually capture. So
12 yeah. That -- that was part of the reason the square foot
13 estimator is unable to get and generate a real replacement
14 cost for it.

15 And if you'll allow me real quick just to kind of
16 hit on Mr. Rice's question earlier about appraisals versus
17 replacement cost in this. The Swift Estimator is
18 definitely a tool designed for appraisal evaluation, as
19 opposed to real construction cost estimating and
20 generating an actual construction pricing. It's more a
21 tool used for appraisals. With that, the Segregated
22 Estimator is a very similar tool. It still allows for the
23 components. It's an appraisal tool that allows appraisers
24 to generalize replacement cost.

25 In order to actually get a better replacement

1 cost, you have to actually get and add in the details of
2 the home. When you use just a standard off-the-shelf
3 appraisal tools without adding for the glass bridge and
4 thing of that nature, you're not able to actually get the
5 full construction cost needed to build such a property.

6 Q Thank you. Hold on. Frank -- Frank had a
7 question for you, Christian.

8 A Yes.

9 MR. RICE: Can you please tell the group about
10 the second software you used that is even more suitable
11 for such a house?

12 MR. WHITE: I can. I'll do that, and then if I
13 can follow with kind of some of the actual methods we used
14 to give the first estimate using the segregated estimate,
15 I'll do that as well. And the reason I'll do that is
16 because we used both as a comparative. We didn't just
17 take one as our only answer.

18 But first, how we started the project, is we
19 estimate. And in our consultant work, we do a lot of
20 estimating in a program called Xactimate to generate
21 replacement cost numbers. Xactimate is a program that's
22 designed to allow us to build in a little more of the
23 actual custom features. It allows us to generate a little
24 more of an accurate number, not just a square foot or a
25 good, better, best. We can build in actual custom

1 components and generate that estimate.

2 So we did an initial estimate in Xactimate to
3 come up with our replacement cost or construction cost
4 would be for the home. And then we took that -- and when
5 we started to actually get into the Segregated Estimator
6 and build out the components within the Segregated
7 Estimator, we started using our original position. But
8 then we had to end up recognizing to add the components
9 and the quality, we went with Bradford Fox Builders --
10 which that estimate has been supplied to the Court -- the
11 Bradford Fox Builder's estimates to help us support the
12 cost adjustments in each of the components to understand
13 where the actual value was in the foundation, and try to
14 cost out the actual foundation cost.

15 When we got to the exterior finishes as well,
16 trying to capture the actual value of the custom
17 components, we had to utilize other methods. Again, a lot
18 of that went to the Bradford Fox Builders estimate to
19 determine what would be the actual cost to get a
20 subcontractor to install that glass bridge. So we did
21 utilize a couple of different methods.

22 At the end of the exercise, we found that our
23 take with the Xactimate software, along with the approach
24 from the Segregated Estimator, gave us very similar
25 results. So we ended up with a pretty good comparable

1 with the estimates being relatively similar in total cost
2 at the end. I would even think might be a little
3 conservative for the custom features of the home, but it
4 was -- it was a good cost exercise that we felt was at
5 least that, if not more.

6 So -- and then if I can throw in one kind of
7 final thought with the cost approach. One of the main
8 reasons that we felt the cost approach with the Swift
9 Estimator was not correct and utilizing the Segregated
10 Estimator was a -- several calls with CoreLogic just
11 discussing it, and how would they approach this project.
12 And we followed their guidance on how to tackle and
13 approach the project.

14 Secondly, in all of their materials -- and if I
15 can quote just the material from the cost guide -- they
16 reference that, "High value or luxury residences or
17 residents, is of an individual design with many varied
18 interior appointments. As such, it would be best costed
19 by the segregated method where the pricing levels of each
20 component can be considered in detail and further
21 refined."

22 So we had to utilize that and kind of refine each
23 component of this house in order to come up with our final
24 evaluation.

25 MR. HELMS: Thank you very much. And I -- yes.

1 Thank you. I don't have any more questions for you.

2 JUDGE RIDENOUR: Okay. Before we continue,
3 Mr. Hunter, did you have any questions for Mr. White?

4 MR. HUNTER: Yes, Judge. I do.

5

6 CROSS-EXAMINATION

7 BY MR. HUNTER:

8 Q Good afternoon, Mr. White.

9 A Good afternoon, Mr. Hunter.

10 Q I'm trying to recall the language you just used.
11 So give me a second.

12 A Surely.

13 Q Well, I'll just take it from the top. This will
14 be brief. I heard you say that in 2022 you had a
15 discussion with a representative from CoreLogic who
16 indicated that the Swift Estimator program was
17 inappropriate to estimate construction cost in this case;
18 is that correct?

19 A The -- yes. But it was 2020 is what I indicated.
20 And specifically, it was indicated that it was
21 inappropriate for custom luxury high-end residences, which
22 this home is a custom luxury high-end residence. They do
23 support their product. They stand behind it, but they
24 don't support and stand behind the fact that it's capable
25 of estimating the detail of this home.

1 Q Okay. 2020?

2 A Yes, sir.

3 Q A rep from CoreLogic informed you that the Swift
4 Estimator program was not appropriate to estimate
5 construction cost for this home; is that correct?

6 A Yes, sir.

7 Q Who was the rep?

8 A Tom Streich. And to the rep of this home, I have
9 to say, it was specific to custom and luxury homes. He
10 didn't view this home. So I can't say --

11 Q Streich is the name? Streich?

12 A Streich. Hold on. I can spell it for you.
13 S-t-r-e-i-c-h.

14 Q This was over the phone or --

15 A This was --

16 Q -- email or what?

17 A Over the phone.

18 Q Okay. No email?

19 A No, sir.

20 Q No letter?

21 A No, sir.

22 Q And you also indicated that you said just last
23 week you wanted to confirm with the representative from
24 CoreLogic that the Swift Estimator program was
25 inappropriate to estimate construction cost for this

1 particular home; is that correct?

2 A Yes, sir. I called him back to run through our
3 process and verify and spoke with Mr. Streich again.

4 Q Mr. Streich again. No email?

5 A No, sir.

6 Q No letter?

7 A No, sir.

8 Q And then finally the last thing you said -- I'm
9 sorry. I don't want to misspoke, but you said that there
10 was guidance from CoreLogic that said for this particular
11 property the Segregator program must be used?

12 A The guidance from CoreLogic in their cost guide,
13 they state that -- and I'll quote it again, if you want me
14 to -- that high-end luxury residence is of individual
15 design with many varied interior appointments. As such,
16 it would be costed by the segregated method where the
17 pricing levels of each component can be considered in
18 detail and further refined. There are several within
19 CoreLogic's material and guidance that they --

20 Q Well, right. So this for the cost guide?

21 A This is from the cost guide.

22 Q Sorry. From the cost guide for which category?

23 A This is from the cost guide for the residential
24 home evaluation within CoreLogic.

25 Q Okay. I got it. I believe I understand.

1 A Yes, sir.

2 MR. HUNTER: Thank you for accommodating me.
3 That will complete my questioning, Judge.

4 JUDGE RIDENOUR: Thank you.

5 Judge Lambert, do you have any questions for
6 Mr. White?

7 JUDGE LAMBERT: Hi. This is Judge Lambert.
8 Yeah. I was wondering, Mr. White, there was like -- just
9 reading what FTB had said in their briefs, you know,
10 talking about the -- using the Historical Cost Index
11 versus the inflation factor. So the inflation factor is
12 more like a general national level adjustment, whereas the
13 Historical Cost Index is more localized to a specific
14 area. And I think the Appellants used the inflation
15 factor. So I was wondering if you could comment about
16 that or know about that.

17 MR. WHITE: When we prepared our original report,
18 we did use the Consumer Price Index inflation factor to
19 backwards adjust the pricing from -- when we created the
20 estimate, originally it was a 2020 pricing. So we had to
21 back-in into the 1993 numbers, and that's the factor we
22 utilized.

23 JUDGE LAMBERT: And what do you --

24 MR. WHITE: It was the -- I'm sorry.

25 JUDGE LAMBERT: Okay. Yeah, I was wondering if

1 you had like any response to, like, you know, that the
2 Historical Cost Index is, you know, more accurate because
3 the inflation factor is just a general adjustment for the
4 entire U.S. versus a specific area for a specific labor
5 material cost?

6 MR. WHITE: To that, you know, I -- I can't argue
7 and disagree specifically. We took a generalized approach
8 to backing in into 1993 numbers by using the cost
9 inflator -- or cost calculator. So I don't have really
10 any response to which is the better or be able to more
11 accurately give you specifics as to why each would be
12 used.

13 JUDGE LAMBERT: Okay. All right. Thank you.

14 JUDGE RIDENOUR: Okay. Before we proceed, I'm
15 going to ask Judge Stanley if she had any questions. But,
16 Mr. White, please remember to wait until the Judges have
17 finished with their question, just so that we don't have
18 two people talking over each other for Ms. Alonzo, please.
19 Okay. Thank you.

20 Judge Stanley, do you have any questions?

21 JUDGE STANLEY: I just had one as a follow up.

22 But Mr. Hunter already asked you about if you had
23 anything in writing documenting -- sorry. Whether you had
24 anything in writing regarding your phone conversations
25 with CoreLogic, and you said no. But when you were

1 talking about cost guide, it sounded like you were reading
2 something. Is that something that was put into evidence
3 in this case?

4 MR. WHITE: The cost guide, I don't know that the
5 specific cost guide was put into evidence. I can
6 definitely make it available.

7 JUDGE STANLEY: Well, I think that might be
8 helpful. We'll see how Judge Ridenour wants to proceed
9 following the hearing. Thank you.

10 MR. WHITE: No problem. And apologies for
11 talking over.

12 JUDGE RIDENOUR: It's okay, Mr. White. It's a
13 little bit different when it's virtual. Before I ask my
14 questions of you --

15 Mr. Helms, I was actually going to ask you if you
16 could provide the cost estimate that he was reading
17 verbatim from. So please include that in the information
18 you'll give us post hearing.

19 And, FTB, you will be given opportunity to
20 respond to everything post hearing. Okay.

21 Mr. White, I do have a couple of questions. So
22 yes, you were speaking of using 2020 cost when you were
23 adding things up. And so one of my questions was, for
24 example, on Exhibit 5, page 36, polished chrome bath
25 accessories consisting of towel bars, paper holder -- I'm

1 guessing robe hooks -- I think that was a misspelling --
2 the six sets at \$247 per set, labor at \$92, for a total of
3 about 2K for the bath accessories; how did you arrive at
4 those amounts to figure out then extrapolate it back to
5 1993? But how did you get those amounts for 2020?

6 MR. WHITE: Sure. So how we came up with
7 components of each was we utilized the Bradford cost
8 estimate. And the reason we utilized it, we had the
9 original Bradford cost estimate but wasn't broken out per
10 component. So we asked Bradford Fox Builders to give us a
11 full component based estimate, which is what we utilized.
12 So we took all of their component in construction cost and
13 then took and put it into the component sections in the
14 segregated estimator. So most of the pricing was
15 supported by the estimate from Bradford Fox.

16 JUDGE RIDENOUR: And speaking of Bradford Fox,
17 that was going to be my follow-up question. It seems --
18 so you did manually enter information from the Fox report
19 into this report to get the Keystone report. However,
20 then I would like you to provide your response as to
21 Ms. Davis' declaration wherein she says on Exhibit H,
22 page 4, number 14, that, "By using the program in this
23 way, it did not allow the program to calculate the
24 historical costs, which are embedded in the program."
25 Therefore, she did not consider the report a valid

1 comparable report.

2 "In order to compare reports, the proper criteria
3 would need to be entered into the program to allow the
4 program to independently determine the proper estimate."

5 MR. WHITE: So to that specifically, that is the
6 reason that we used the Cost Index to back the pricing
7 because we used 2020 pricing to validate our costs. So
8 she's correct in the fact the program wouldn't give 1993
9 pricing utilizing it this way. So we had to use the 2020
10 pricing and then retroact that back to 1993.

11 JUDGE RIDENOUR: Thank you, Mr. White. I
12 appreciate that. I do not have anymore questions for you
13 at this time.

14 Mr. Helms, did you want to proceed with your
15 presentation? You have about 10 minutes left, according
16 to my calculations.

17 MR. HELMS: Yeah. I believe this actually will
18 conclude our presentation.

19 JUDGE RIDENOUR: Okay. Before we continue
20 though, I wanted to make sure, since Mr. Rice is also
21 sworn in as witness, Mr. Hunter, did you have any
22 questions for Mr. Rice as a witness?

23 MR. HUNTER: Thank you, Judge. No, I do not.

24 JUDGE RIDENOUR: Okay. Judge Lambert, do you
25 have any questions for Mr. Rice?

1 JUDGE LAMBERT: No questions.

2 JUDGE RIDENOUR: Thank you.

3 Judge Stanley?

4 JUDGE STANLEY: No, I don't have any questions
5 for Mr. Rice. Thank you.

6 JUDGE RIDENOUR: Thank you.

7 I do have a couple of questions for you real
8 quick, Mr. Rice. Going back to 1993, did you take out a
9 mortgage? How did you pay for the funds that you used for
10 the construction cost?

11 MR. RICE: I don't want to misspeak. So I will
12 give you my best recollection and confirm it afterwards.
13 And if there's any difference, we will submit it along
14 with the other items that you've asked for.

15 JUDGE RIDENOUR: I would appreciate that. Like I
16 said, I will be keeping this open post hearing. And if it
17 is by a mortgage, please, if you can give us some mortgage
18 statements to give us information as to that, or bank
19 note, et cetera.

20 Also, after Mr. Christopher's presentation --
21 which was again great. Thank you so much. I will have to
22 admit, when I was visualizing a basement flood, I was not
23 thinking of an actual basement like when I lived in the
24 Midwest. Because California usually does not have
25 basements because of earthquakes. So I was not

1 envisioning it as something that would maybe would have
2 insurance claims to such a degree for the buyers. And if
3 available, in the post hearing, I would like it if you
4 could provide the insurance claims for the flood to give
5 us an idea as to the quality, according to the insurance
6 claims of the items in the basement as it seems it is a
7 very unique nature of the house.

8 MR. RICE: Yeah. I mean, we don't have those
9 records, of course.

10 JUDGE RIDENOUR: Oh, I understand.

11 MR. RICE: I'll certainly ask the Bastaraches.

12 JUDGE RIDENOUR: Okay.

13 MR. RICE: I can't speak, obviously, for them
14 make as to whether they'll make them available to us.

15 JUDGE RIDENOUR: And I understand that. I
16 understand this is a third party. I would have asked her,
17 Mrs. Bastarache, when she was a witness. I did not think
18 of it until after Mr. Christopher's presentation. And I
19 apologize for interrupting you.

20 MR. RICE: No problem.

21 JUDGE RIDENOUR: Okay. Having said that,
22 Mr. Helms, I just want to confirm. You are complete with
23 your presentation at this moment?

24 MR. HELMS: That is correct, Judge.

25 JUDGE RIDENOUR: Okay. Thank you.

1 Now, briefly, some law here. Keep in mind that
2 exclusions from gross income are construed narrowly
3 against the taxpayer, in the case as Polone,
4 P-o-l-o-n-e -- we delivered the citation previously.
5 Also, the taxpayer bears the burden of showing that he or
6 she falls squarely within the requirements for the
7 exclusion from reported gain, as in the case as Forste,
8 F-o-r-s-t-e, citation previously provided.

9 Here, Appellants explain that their adjusted tax
10 basis of \$2.9 million was comprised of \$495,000 in lot
11 cost. This was accepted. Appellants submitted \$31,000 in
12 capital improvement cost after the residence was built. A
13 little over \$28,000 of this amount for capital
14 contributions was accepted. Appellants provided support
15 to show that they incurred \$197,000 in closing cost. This
16 was accepted. What remains is Appellants' claimed amount
17 of construction cost of \$2.175 -- I'm sorry -- well
18 \$2.1 million. Sorry. At audit Respondent requested
19 invoices, receipts, credit card statements, bank
20 statements, construction contracts with paid amounts, or
21 any other similar documentation which showed the
22 expenditures. Appellants could not provide this
23 documentation to support what they actually spent on
24 construction cost in 1993. Appellants explained that they
25 did not retain these records but instead, left these

1 documents with the purchasers of the home, and a flood in
2 the basement destroyed the records.

3 Here's where the Cohan rule comes into play.
4 Under Cohan, if a taxpayer with inadequate records shows
5 that improvements were, in fact, made to the property but
6 cannot substantiate the exact amount he or she paid for
7 these improvements, in certain circumstances, the cost of
8 improvements may be estimated to determine adjusted tax
9 basis. The Cohan Court held that the trier of fact may
10 make a reasonable estimate of the deduction bearing
11 heavily against the taxpayer whose inexactitude is of his
12 or her own making. Again, the only reason that we're here
13 today is Appellants fail to retain the records to support
14 their construction cost.

15 Appellants reported an adjusted tax basis of
16 \$2.9 million on their return. However, they had not
17 described what objective evidence or contemporaneous
18 documents were reviewed to support their construction cost
19 figure of \$2.1 million of that \$2.9 million. They have
20 not shown what records were reviewed to arrive at this
21 reporting position when they filed their return or any
22 efforts to recreate these contemporaneous documents. And
23 we had testimony earlier today that the flood occurred
24 October 1st, 2017, which is right around the time to file
25 a return, if filed an extension for 2016.

1 Instead, on audit, what Appellants did was to
2 retain Bradford Fox Builders -- Bradford -- to provide a
3 report that detailed construction costs as of December of
4 2019. Bradford estimated that this construction cost was
5 \$3.5 million in 2019, then calculated a reverse inflation
6 adjustment using United States Bureau of Labor Statistics
7 Cost Price Index figures to arrive at a cost of
8 \$2.1 million to construct this home in 1993. Appellants
9 later provided another valuation report prepared by
10 Keystone Experts + Engineers or Keystone. This Keystone
11 report utilized another Bradford report, this time
12 prepared in 2020, which calculated construction cost at
13 \$4.2 million. Again, after adjusting back for inflation,
14 the Keystone report calculated construction cost at \$2.3
15 million in 1993. Respondent did not accept either of
16 these estimates.

17 The goal here is to support actual construction
18 costs as of 1993 when the home was built. If we had
19 invoices, canceled checks, anything that evidences the
20 costs that were incurred and paid, like any other
21 deduction, then we would have that number. Instead, what
22 Appellants provided were replacement value construction
23 cost as of 2019 or 2020 when the Bradford and Keystone
24 estimate reports were prepared. We did not -- strike
25 that.

1 Respondent did not accept these estimates because
2 numerous factors come into play over time, and they could
3 be geographical that affect the cost of labor and
4 materials over the long term. The fact is Appellants did
5 not pay 2019 prices or 2020 prices for materials and
6 construction. They paid 1993 prices for materials and
7 construction, and Respondent respectfully submits that
8 these are two different things. So what Respondent did,
9 because the construction cost records were unavailable,
10 was to utilize the Marshall & Swift, Swift Estimator
11 program by CoreLogic software.

12 Marshall & Swift is the industry standard and is
13 used for residential and commercial property costing data
14 purposes. When creating a cost estimate, the user has
15 three choices: Residential, commercial, or segregated.
16 And as we're dealing with a residence, Respondent selected
17 the residential category. And seeing how we're dealing
18 with a custom home built on a hillside with the view of a
19 beach in La Jolla, with high quality materials and
20 fixtures, Respondent entered the selection single
21 dash-family residence excellent quality.

22 As shown by Respondent's Exhibit I, the Swift
23 Estimator information sheet, excellent quality is defined
24 as homes that are individually designed and are
25 characterized by the high quality of workmanship,

1 finishes, and appointments with considerable attention to
2 detail. Respondent's Valuation Team indicated that the
3 Swift Estimator program provides a better representation
4 of the true cost incurred in 1993 when the residence was
5 constructed, because the Swift Estimator program
6 automatically applies the applicable cost to the year
7 selected with confirmed cost examples, in this case 1993.
8 In other words, Respondent reviewed the home's square
9 footage, high-end construction, use of excellent materials
10 and location, use of a moderate foundation and hillside
11 adjustment, and a seismic adjustment to compensate for the
12 additional building requirements, and entered this
13 information to arrive at costs as of 1993.

14 Respondent did not use an inflation adjustment.
15 By selecting the year, the Swift Estimator program adjust
16 materials and labors -- materials and labor to the date
17 selected, such as 1993. There is no need to cost back or
18 use reverse inflation. This also avoids additional
19 influences of a contractor's work flow which can influence
20 an estimate, such as too much work, too little work,
21 supply shortages, labor shortages, the high-end location,
22 the prospect for future work, et cetera.

23 What Respondent did was look at, just point
24 blank, how much did comparable high-end appliances
25 actually cost in 1993? What were labor material cost in

1 1993? What were the cost of permits, plans, and
2 engineering reports in 1993? How much was typically spent
3 on Worker's Compensation and other regulatory costs in
4 1993? And that's your number. Please note that
5 Respondent's Valuation Team provided increased allowances
6 for the location, exclusivity, and excellent quality of
7 Appellants' La Jolla property. And this was not simply
8 good or conventional construction, like a higher-end tract
9 home.

10 As shown in the report detail provided by
11 Respondent's Valuation Team, special consideration was
12 given to numerous items, including the foundation, the
13 floor structure, the floor cover, exterior walls, interior
14 finishes and fixtures, the custom lap pool, the high-end
15 appliances, the two-story fireplace, the decks, the wine
16 cellar, the integrated sound system, the large windows and
17 sky lights, et cetera. And notably, while Appellants
18 provided architectural plans, the landscaping plans,
19 engineering structural sheets, and pool detail drawings,
20 they did not provide evidence of the construction cost
21 they actually occurred -- they actually incurred back in
22 1993.

23 And if I can stop here, with the testimony that
24 we had today, Mr. Christopher indicated two or three times
25 that he was not here to provide the exact cost, but just

1 to provide information on the excellent materials that
2 were used in the home. And I must say that Respondent
3 initially had a Swift Estimator report that allowed
4 \$885,000 for construction cost in 1993. After these
5 reports were received, which detailed these custom
6 structural elements and which showed the caissons -- if
7 I'm saying that correctly -- the pylons, Respondent
8 increased its construction cost estimate to \$1.2 million.

9 So these components, these high-end fixtures,
10 these qualities were reviewed and ample basis was given
11 therefore. So in the end, Respondent allowed \$1.2 million
12 in construction cost as of 1993, which resulted in a
13 capital gain of \$877,000 and additional tax of \$96,000.
14 And due to the request for additional information from the
15 lead judge, Respondent has allowed an additional \$28,000
16 in capital contributions as a line item, and this
17 calculation will be performed. The adjustment will be
18 made at the end of this hearing.

19 Please note that the OTA has accepted tax basis
20 estimates computed using the Swift Estimator program under
21 these circumstances in the past. While not precedential,
22 the OTA previously accepted a Swift Estimator cost
23 estimate in the matter of Botsford, B-o-t-s-f-o-r-d, an
24 OTA case citation previously provided. In that case, the
25 OTA accepted Respondent's assertion that the Swift

1 Estimator program is reliable and an accepted tool to
2 estimate cost for residential buildings -- high-end
3 buildings. And Respondent used the Swift Estimator
4 program to provide additional tax basis. And also,
5 recently, in the matter of Seddiqui --

6 And, Ms. Alonzo, forgive me. That is
7 S-e-d-d-i-q-u-i.

8 -- another OTA case, Appellants also did not have
9 records of their construction cost, and Respondent used
10 the Swift Estimator program to estimate the cost for
11 various improvements. As in this case, the evidence
12 presented by Appellants demonstrated that there, were in
13 fact, extensive construction and improvement cost.
14 However, Appellants were not allowed additional basis
15 beyond the amount estimated by Respondent because
16 Appellants failed to provide invoices, receipts, credit
17 card statements, bank statements, complete contracts with
18 cost figures, or any other similar documentation which
19 show expenditures in excess of what Respondent calculated
20 using the Swift Estimator program.

21 So just to address Appellants' arguments on
22 appeal; from what we see, there are two arguments.
23 Appellants allege that Respondent is wrong in its approach
24 using the Swift Estimator program, and looking to
25 historical costs instead of using 2019 or 2020 bid

1 figures, and using a reverse inflation adjustment. Again,
2 we're talking about a home constructed in 1993, and
3 Appellants are looking to construction cost estimates from
4 2019 and 2020. That's more than 26 years later. While
5 the focus here is what Appellants actually paid to
6 construct the property. Appellants would have this panel
7 believe that they spent \$2.1 million to build this house
8 exclusive of the amount they paid for the lot; \$2.1
9 million dollars in 1993.

10 Appellants' estimate is retroactive, general, and
11 assumes too much. Appellants used a reverse inflation
12 figure that doesn't take into account other factors, such
13 as issues with the supply of construction materials,
14 increases in local, state, and federal sales tax on
15 material and labor costs. It doesn't take into account
16 increased architect fees, engineer fees, plan check and
17 building permit fees. It doesn't take into account
18 increased contractors' overhead and profit, including job
19 supervision, increased regulation relating to Workers'
20 Compensation costs, fire and liability insurance,
21 unemployment insurance, and increased equipment cost.
22 Respondent's construction cost estimate is based on 1993
23 cost figures. It's generous. It's more accurate, and
24 it's more than reliable.

25 Appellants' second argument is that Respondent

1 should allow additional tax basis, given that this is a
2 custom-built home. Appellants even state that CoreLogic
3 company representatives recommended to them that they
4 should use the Segregated Estimator program for estimating
5 the cost of custom homes, such as this one. As explained
6 in the declaration submitted by a member of Respondent's
7 Valuation Team, Respondent's Exhibit H, this property was
8 given an excellent quality rating. Again, this means the
9 home was individually designed and characterized by the
10 high quality of workmanship, finishes, and appointments.
11 That's a custom home. There's nothing in the Swift
12 Estimator program information sheet guidelines I submitted
13 as Exhibit I, that state that the Swift Segregated
14 Estimator program must be utilized to estimate the cost of
15 this home. The CoreLogic company has never indicated to
16 Respondent that this is the case.

17 Appellants have the burden to prove their tax
18 basis. They lost their records. Respondent properly used
19 Swift Estimator program and arrived at its construction
20 cost estimate of \$1.2 million as of 1993, the year the
21 home was built, based on confirmed cost figures; and this
22 estimate is generous and more reliable. Appellants'
23 construction cost estimate is retroactive and assumes too
24 much. Given this record, Respondent's action should be
25 sustained.

1 Thank you.

2 JUDGE RIDENOUR: Thank you, Mr. Hunter.

3 Judge Lambert, do you have any questions for
4 Mr. Hunter?

5 JUDGE LAMBERT: Hi. This is Judge Lambert.
6 Yeah. I had a couple of questions.

7 Just in the FTB's brief, it says that although
8 FTB did not have access to the Segregated Estimator at the
9 time, I was wondering if using the word "at the time"
10 means that FTB has access to it now or after?

11 MR. HUNTER: Thank you, Judge Lambert. FTB does
12 not have access now, and did not have access back when the
13 audit was performed. However, FTB's estimate is
14 appropriate in this case using the Swift Estimator
15 program.

16 If I could address something that you brought up
17 in terms of the -- using a modern day building cost and
18 costing back for inflation, adjusting backwards instead of
19 going forward, if I could?

20 JUDGE LAMBERT: Sure.

21 MR. HUNTER: Okay. So I hate to do this, but I'm
22 going to bring up the topic of the cost of eggs. I looked
23 at this yesterday. And in 1993, a dozen grade A size
24 large eggs cost \$0.91. That's a confirmed cost. Over the
25 years the U.S. Bureau of Labor Statistics has tracked it,

1 and the cost of eggs has gone up 4.24 percent -- i still
2 have the figure -- which means that today you should be
3 able to buy a dozen eggs for \$3 -- \$3.44 today, if we're
4 using the general inflation figure. But we all know it
5 doesn't cost that much today. Special circumstances
6 interrupted the supply chain and drove up the cost well
7 beyond the general inflation percentage provided by this
8 Consumer Price Index inflation factor.

9 And shoppers in some parts of the country, like
10 California, are paying more than double the average price
11 or worse. Here in California, the average price for a
12 dozen eggs, grade A size large, was \$8.97, not \$3.44,
13 which is the nationwide cost. And this is just an example
14 of how certain things are not covered by average inflation
15 percentages. There are things that happen over time, like
16 a tariff or embargo, like the cost of lumber, increased
17 regulatory expenses when you have workers, concrete cost;
18 which in the construction industry doesn't really track
19 with the general inflation numbers, even when it comes to
20 labors and materials, but we know. We can confirm that
21 1993 the cost of a dozen eggs, size large grade A, was
22 \$0.91.

23 In the absence of records, this program plugs
24 into the cost. And we submit that that is a must -- much
25 better estimate, and that is the estimate that we base our

1 assessment on.

2 JUDGE LAMBERT: Thanks. That's helpful. I was
3 also wondering, in the brief it stated that the FTB's
4 Valuation Team indicated that, based on their experience,
5 the estimated value using the Segregated Estimator would
6 not provide a major difference in value, typically. But
7 it seems like in this case there's like a bigger
8 difference, and is it because -- are you saying it's
9 because the Appellant did not account for certain things
10 that you mentioned, like inflation -- you just used
11 inflation -- or didn't account for the insurance, fire? I
12 think you were talking -- gave a list of different things.
13 So is that what you're saying is accounting for the large
14 difference between the valuations -- I mean, the cost
15 determinations?

16 MR. HUNTER: Yes. Well, there is a comment.
17 First, we used the Swift Estimator program, and our figure
18 is \$1.2 million. And then if we use the same program --
19 strike that.

20 If we use another program, it was speculated that
21 if you use the Segregated program but typed in certain
22 numbers, then if you did reverse back -- or cost back and
23 use reverse inflation, that the figure would close to the
24 number that we arrived at. I did see that comment.
25 However, we are not using a number such as that. We're

1 not using a perhaps. We stand on the construction cost
2 estimate that was presented on the second cost sheet to
3 the declaration of our Valuation Team member as Exhibit H.

4 JUDGE LAMBERT: Okay. So you're stating that if
5 the -- if you use the inflation the value would be the
6 same as Appellants, or the value would be -- is that what
7 you stated?

8 MR. HUNTER: No. What I'm saying -- I'm not
9 using inflation. I'm going to back to cost, and this
10 program plugged in this cost. What I'm saying is that to
11 use cost figures from a time period that's 20 years
12 subsequent, and then using reverse inflation is not the
13 way to go because the world can change so much in
14 26 years.

15 JUDGE LAMBERT: Right. Yeah. No. I understand
16 that. I was trying to clarify what you said earlier about
17 some kind of comment that if FTB had used the Swift
18 system, but then you used inflation -- reverse inflation,
19 there would be some kind of difference.

20 MR. HUNTER: Yes. I -- I asked about that, and
21 there was a comment that the number would be close to
22 FTB's Swift Estimator program estimate. It shouldn't be
23 that far off. But because the Segregator program allows
24 you to plug in certain things and not other things, it's
25 more apt to -- to be skewed. And there was another

1 question earlier from the panel which said, hey, in 2019
2 or 2020, where did you get those figures, right? So
3 you're using a number from a later point in time. Why not
4 use the number that's confirmed when the house was built.
5 I think that's -- I'll just circle back and -- and end it
6 there.

7 JUDGE LAMBERT: Okay. Thanks. That was helpful.
8 That's all the questions.

9 MR. HUNTER: Thank you, Judge Lambert.

10 JUDGE RIDENOUR: Thank you.

11 Judge Stanley, do you have any questions for
12 Mr. Hunter?

13 JUDGE STANLEY: This is Judge Stanley. I did,
14 but I believe I understand the Franchise Tax Board's
15 position better now.

16 You're not saying that the Bradford Fox Builder's
17 software is incorrect, just that they applied it
18 incorrectly?

19 MR. HUNTER: Well, we have software made by
20 CoreLogic, and we have the Swift Estimator software. But
21 there's -- I'll call it three buckets; three doors you can
22 open. One is residential, which is what we used. One is
23 commercial, which doesn't apply here. And there is a
24 segregator option which allows you to manually add things
25 in. What we did is we used residential high-end

1 construction designed by an architect on a hillside in La
2 Jolla. Lots of allowances for the unique nature of this
3 property, not a tract home in a high-end subdivision.

4 That is the door that we chose and, like, looked
5 at. If you review Exhibit I, there's nothing in
6 Exhibit I, which is the information sheet for using
7 residential high quality or exceptional excellent quality,
8 which says, if you have a super custom home, then you must
9 use the Segregator program. There is a line there that
10 says, if you have a home with super high-end materials
11 approaching 20,000 square feet, like a mansion, then you
12 consult a -- a manual that goes along with the residential
13 cost bucket; that door that we chose. Nothing in that
14 information sheet says you have to use a segregated
15 program. Nothing. There's testimony today that -- where
16 a witness said they were told that, but we weren't told
17 that.

18 JUDGE STANLEY: Okay. I get that part.
19 Franchise Tax Board elected not to segregate, even though
20 the Appellants are claiming that in CoreLogic, as applied
21 to this particular residence, it should have been the
22 CoreLogic Segregator program, and that they used a
23 different segregator program. But so it -- if there -- if
24 you use a Segregator program instead of a -- just
25 residential high quality program, what would account for

1 the huge differences? Or do you know if anything would?
2 Is it just the inflation factor that's the difference
3 here?

4 MR. HUNTER: To answer your question, generally
5 yes. Things cost more today than they did 26 years ago
6 and not on a straight scale. There are different events,
7 different circumstances that will increase some items
8 versus the other -- versus the others. And the better way
9 to approach this is say, okay, taxpayer, how much did you
10 pay? The mortgage, the checks, the invoices, that's what
11 you paid. If you can't have that, then you say how much
12 did things cost back then, and then you review the
13 plans -- engineering plans, pool plans and plug it into
14 the program with the allowance for high-end finishes and
15 fixtures and arrive at the number.

16 That's more accurate than using someone who
17 compiles replacement cost figures for insurance companies,
18 and they say, how much would it cost to build this house
19 today; and then use a general inflation percentage and
20 then cost back. That -- that's simply our position. I
21 can't state it any -- I can't answer that.

22 Thank you, Judge Stanley.

23 JUDGE STANLEY: Okay. And just one final
24 question. Did you just tell Judge Lambert that the
25 Franchise Tax Board did not have access to the Segregator

1 program, or did I misunderstand it?

2 MR. HUNTER: That is correct. From what I'm
3 told, it's separate subscription, and it was not needed in
4 this case.

5 JUDGE STANLEY: Okay. Thank you.

6 MR. HUNTER: Thank you, Judge Stanley.

7 JUDGE RIDENOUR: Thank you, Judge Stanley.

8 Mr. Hunter, I have a quick couple of questions.
9 According to the declaration given by Ms. Davis, she
10 indicated that she selected the highest available option
11 of exceptional quality in excellent condition, which meant
12 that she arrived at the 1993 cost estimate, then
13 multiplied by a factor of 1.14 for the local area, and
14 also provided more value due to the construction.

15 And so my question is, Mr. White, during his
16 testimony was differentiating excellent to custom luxury,
17 and I was hoping for the FTB's response to as there is a
18 difference. And if excellent is all that the Swift
19 Estimator can go up to, are there situations where luxury
20 goes above and beyond -- custom luxury goes above and
21 beyond excellent?

22 MR. HUNTER: Well, Judge, to answer that, I don't
23 want to speculate. But that term, excellent materials,
24 and our Valuation Team also gave credence for exceptional
25 quality. But during the testimony today, in the chart

1 there was a sixth category that I've never seen before,
2 that they described as excellent materials, exceptional
3 quality on a challenging hillside lot and also designed by
4 an architect. But as I said, in this case, Ms. Davis
5 indicated that she reviewed the building plans and
6 property descriptions and gave even more value, exactly,
7 for the seismic construction. So that deals with
8 challenging hillside lot. If the plans called out the
9 excellent materials, that was considered.

10 So everything that that was reviewed, everything
11 that's been described here was examined and was allotted
12 tax basis. So I -- I haven't seen this additional
13 category where, during the graphic, the arrow went off the
14 chart to this last final description. But from what I
15 see, Respondent has met the description in providing the
16 construction cost estimate that it has.

17 JUDGE RIDENOUR: Okay. Thank you very much.
18 Ms. Davis also indicated -- or that's Exhibit B, page 7.
19 Okay. And you mentioned this as well that the following
20 items are not included in the cost calculation, which
21 included the developer's overhead and profit were not
22 included. Does that include labor that was not included?
23 Because I noticed that the Keystone report included labor
24 when it would figure out the amount per unit of different
25 items. However, it does not appear that FTB included

1 labor, and so could you clarify, for the record, whether
2 FTB included labor. And if not, why not?

3 MR. HUNTER: Well, it's my understanding that
4 labor materials are included. This estimate encompasses
5 everything.

6 JUDGE RIDENOUR: Okay. I just wanted to clarify
7 that the Swift Estimator, according to the FTB, includes
8 labor.

9 MR. HUNTER: Yes, ma'am. Yes, Judge.

10 JUDGE RIDENOUR: Thank you very much. I don't
11 have anymore questions at this time.

12 Mr. Helms, you do have the ability to provide any
13 closing remarks, ask anything else of the witnesses,
14 respond to anything that has been discussed since your
15 last presentation. I know we said you would have five
16 minutes. However, due to the fact that you didn't use
17 full time last earlier, I will give you 10 minutes, should
18 you decide to use all that.

19 As well, I would also like to thank
20 Mr. Christopher and Mr. White for remaining with this
21 panel during this time.

22 Mr. Helms, would you like to present closing
23 remarks?

24 MR. HELMS: I think -- I think Mr. Frank Rice may
25 want to give a closing remark. Yeah.

1 CLOSING STATEMENT

2 MR. RICE: I think that our expert witness,
3 Christian White, should respond, primarily because these
4 are questions related to his expertise almost exclusively.
5 I will say that, very quickly, I don't see how we could
6 possibly be blamed for failing to retain records. I
7 understand that that's in the law, but I hope we've made
8 it clear that we -- it wasn't, certainly, no failure on
9 our part.

10 Secondly, to criticize the process by which
11 numbers are converted to an earlier date as a fundamental
12 error that doesn't allow for many different factors, I
13 think, is a specious argument. The Consumer Price Index,
14 yes, is a general measure, but it -- it is acceptably used
15 in construction, in appraisals, in every realm of
16 economics; and it covers the balance of all factors.
17 The -- I would also say that using the price of eggs as an
18 example of anything is a bit absurd in as we all know,
19 it's a rare exception to pricing and to inflation. It is
20 a most extreme, and, in my view, irrelevant example.

21 And then finally, before asking Mr. White to
22 speak, I just would call your attention to what he said
23 earlier about having used a second, not CoreLogic, but a
24 second software called Xactimate to confirm the results
25 that he obtained in using the segregated process. So with

1 those four general comments, I think it makes sense for
2 Mr. White to respond as he can to Mr. Hunter's comments.

3 JUDGE RIDENOUR: Okay. Mr. White, please
4 remember you remain under oath, and you have about eight
5 minutes, give or take. Thank you.

6 MR. WHITE: Thank you, Judge.

7 Just a couple of quick comments I'll make with
8 the approach and the -- to kind of speak to the initial
9 State's presentation with the Swift Estimator. It's a
10 simple generalized square foot estimator. It takes a base
11 price for location, geography, so forth. To Mr. Hunter's
12 remarks, it takes some consideration; where it is in the
13 area as well. And then you make adjustments based off
14 known items.

15 The whole fundamental argument with the excellent
16 quality is that even the State -- not the State, excuse
17 me -- even CoreLogic acknowledges in its materials, which
18 Mr. Hunter referenced, residence of excellent quality are
19 usually individually designed and characterize the high
20 quality of workmanship, finishes, and appointments are
21 considerable, attention to detail. Although, residences
22 at this quality of level are inclusive of high quality
23 material and workmanship and some unique in their design,
24 these costs do not represent the highest costs in
25 residential construction.

1 With that being said, the next is the excellent
2 quality does not include the extremely expensive homes,
3 but is a very gracious residence, usually designed
4 individually with good detail and workmanship. Special
5 attention is given to both quality and quantity of
6 exterior and interior ornamentation.

7 So building the basis off the excellent quality
8 starts from a bad position. The Segregated Estimator --
9 and again, I did not have any writing through my
10 conversation with CoreLogic on how to work through their
11 system. They advised the Segregated Estimator was better
12 used for component-based construction to allow -- to add
13 in adjust detail as needed for different pieces, such as a
14 complex foundation and things of that nature. Part of
15 that conversation, we did find that even CoreLogic has a
16 high-end pricing guide that is not in the residential
17 guide but is in the commercial guide; that they have the
18 ability to adjust the Swift Estimator based off their
19 high-end pricing guide, which I can provide that
20 Section 12 comes out of their commercial pricing
21 estimator. And if you only have access to the residential
22 estimator, you don't have the cost guide that includes the
23 high-end property cost.

24 So when we realized that that's the reason that
25 we took a separate cost approach which -- and how we do --

1 to Mr. Hunter's comment, we do a lot of this for
2 insurance-related work. We do a lot of this for the
3 purpose of determining real replacement cost value. So we
4 took two methods that we utilize, one of which is the
5 estimator software, Xactimate, that we utilized. Another
6 was using the Bradford cost builders components and
7 applying that to adjust the segregated valuation and the
8 component, so we used two different approaches. And at
9 the time, admittedly, we used 2020 pricing when we went
10 through the exercise of developing this.

11 So feeling that was our better ability to support
12 a product, that with the Swift Estimator not being the
13 correct product, at the time not having the section 12 of
14 the commercial guide, we didn't feel utilizing the Swift
15 Estimator was going to come anywhere close to what we
16 needed to do to represent the true construction cost. So
17 we took two separate cost approach to develop. Both cost
18 approaches came to a comparative number, and felt that
19 those were real reasonable. We did use a backwards
20 inflation to come up with the 1993 pricing, though.

21 JUDGE RIDENOUR: Thank you. Because you are a
22 sworn witness, I will let Mr. Hunter have a moment to ask
23 any clarifying questions, should he choose to.

24 Mr. Hunter, do want to ask Mr. White anymore
25 questions?

1 MR. HUNTER: Hunter here. No, Judge, I do not.
2 Thank you.

3 JUDGE RIDENOUR: Okay. Judge Lambert, do you
4 have any questions for Mr. White as a witness?

5 JUDGE LAMBERT: This is Judge Lambert. I just
6 had one question.

7 If we were looking at the cost of a house, like
8 during the present day and like the same house, if
9 hypothetically using the Swift Estimator versus the
10 segregated cost; one, the results would be different? Is
11 you're saying two, because the segregated is a better
12 method? Does that mean that the cost input are higher
13 because it's a, you know, more expensive house? Is that
14 the difference?

15 MR. WHITE: To use the -- apologies if I started
16 speaking too quick there. But to -- to use the Segregated
17 Estimator, it changes it from a simple square footage to a
18 generalized estimator which says, okay, your base price
19 per square foot is this. And then we'll do some
20 multipliers and give consideration for components
21 throughout. The Segregated Estimator takes each
22 component, such as foundation, interior finishes, exterior
23 finishes and allows you to adjust those.

24 But when you're in the high-end luxury custom
25 unique one-of-a-kind finishes, we're not talking about

1 off-the-shelf. Even Xactimate has some limitation in some
2 of the custom ability to estimate a hand-crafted glass
3 bridge, a railing that was bent on-site. Those are things
4 that even the off-the-shelf software programs all struggle
5 with. So that's why we went to the construction company,
6 to Bradford Fox Builders, and got some of those pricing
7 directly from -- from that.

8 In order to be able to utilize those prices, we
9 had to utilize a consistent pricing methodology throughout
10 our approach. So that's why we couldn't jump back with
11 1993 and some current, and utilize there and some from
12 2020. So we utilized the 2020 because we felt consistent
13 in the pricing approach with the custom materials that
14 went into this home; again, such as the foundation and
15 things of that nature.

16 JUDGE LAMBERT: Okay. Thanks. So basically if
17 you went through everything and the FTB used a multiplier
18 of 1.14, so overall, like, you're stating going over
19 everything, you also determined that the general cost
20 would be higher than what FTB was making an adjustment for
21 because it's the luxury home?

22 MR. WHITE: I would tell you that the -- per the
23 pricing guide, the general base cost from excellent to
24 high-end is double and above. It goes from a 148 base to
25 a 265, up to a 667 base. Those -- and -- and I'm trying

1 to get overly complicated. But those numbers are the
2 basis that the -- the square foot estimators use. Even
3 with that, CoreLogic still said the Segregated Estimator
4 was the better approach to provide the detail. And so the
5 base the State uses -- sorry to get off track.

6 The base the State used for excellent grade was
7 not sufficient in order to -- even from a starting point.
8 And then if you start to take into consideration the
9 add-ons for custom things, such as the bridge, such as the
10 European cut granite marble, the tool doesn't even -- even
11 giving consideration, won't give proper consideration for
12 the luxury materials and things of that nature.

13 JUDGE LAMBERT: Okay. Thank you. I appreciate
14 it.

15 JUDGE RIDENOUR: Judge Stanley, do you have any
16 questions for Mr. White?

17 JUDGE STANLEY: Just one. This is Judge Stanley
18 speaking.

19 So are you saying that you used the same
20 methodology for the two ways that you calculated the cost
21 with two different programs? You costed them at 2020
22 prices, and then used a negative inflation factor?

23 MR. WHITE: Yes, ma'am. Yes, Judge. Sorry.

24 JUDGE STANLEY: Okay. Thanks for clarifying.

25 JUDGE RIDENOUR: Thank you.

1 I have one question for you as well, Mr. White.

2 So if I understand what you just described with
3 this testimony is that the Swift Estimator had a high-end
4 option, but it was for commercial properties only; is that
5 correct?

6 MR. WHITE: The Swift Residential Estimator, to
7 the State's position of creating the estimate, they used
8 the highest that's available in the residential square
9 foot Swift tool. That's -- it's the excellent grade.
10 When you get into the Segregated Estimator as well, you
11 get the ability to use the different price guides. But
12 there's the -- to Mr. Hunter's reference, there's a
13 residential guide; there's the commercial guide, and then
14 the Segregated Estimator. So the residential guide, using
15 the excellent as a starting point, doesn't have access to
16 commercial. Segregated, you still even have to have
17 access to the commercial price data base in order to get
18 the high-end value calculator, the base price adjustment
19 even.

20 And when we were in 2022 doing this exercise, we
21 didn't have access to it. I didn't even think to check on
22 the high-end price database back then, and got it from
23 CoreLogic last week -- at the end of last week when they
24 provided it to me to say that there is this price guide.
25 And part of what I did quote, and what I said I would

1 produce for exhibit, was from that high-end price guide.
2 So that section I quoted is a section within that
3 commercial that explains the differences in luxury, and
4 the reason that they recommend utilizing that as opposed
5 to the excellent grading.

6 JUDGE RIDENOUR: Okay. Thank you. So the
7 high-end information for commercial estimates, you didn't
8 have it at the time, so you didn't run a high-end. I
9 understand commercial versus residential. I understand
10 that. I'm just trying to now differentiate between
11 high-end and excellent. You didn't have any information
12 to generate a high-end estimate with the information based
13 on the residential, even at the time, because you didn't
14 get the information until last week?

15 MR. WHITE: So when we were talking to CoreLogic
16 in 2020 and they recommended the Segregated Estimator, we
17 applied it, again, not hitting the pricing adjustments for
18 the components. We utilized the -- the Bradford Fox to
19 make our adjustments. That was the -- the support to
20 provide our adjustments. When we went through this again
21 and just verified everything -- and -- and honestly, the
22 reason that prompted the call is the State's additional
23 disclosure that was produced. That's the document that I
24 noticed where it said, "Exceptional homes, a cost guide
25 for high value and unique residences. This handbook can

1 be purchased by calling our customer service department."

2 So I didn't know it existed until the State
3 provided that document. That's when I called CoreLogic
4 again, and he advised, yes, we're using the right
5 approach; and then they provided this cost guide. But we
6 didn't go through the -- jump through the exercise of
7 trying to apply it at the end of last week to come up with
8 another price valuation. But it -- it points to the fact
9 that the excellent category was not sufficient for luxury
10 or custom home.

11 JUDGE RIDENOUR: Okay. Excuse me. Thank you.
12 So you don't have a price evaluation based on high-end?

13 MR. WHITE: I do not.

14 JUDGE RIDENOUR: Okay. Thank you.

15 Mr. Helms, did you want finish up your rebuttal
16 before we conclude?

17 MR. RICE: Sure.

18 MR. HELMS: Yes. Frank --

19 MR. RICE: This is --

20 MR. HELMS: Frank Rice will.

21 MR. RICE: -- Frank Rice.

22 JUDGE RIDENOUR: Wait. Hold on. Please, one at
23 a time. Thank you.

24 MR. RICE: This is Frank Rice. I'd just like to
25 make one final statement, if I can, please.

1 With all due respect, it is my opinion that today
2 the State is making the same basic mistake it has made
3 throughout. Even with great professionals, such as the
4 State has, if a -- if a decision is made to use the wrong
5 software, even with the best intentions and the most
6 careful exercise of the software, it cannot possibly give
7 an accurate result. And this is the situation.

8 As I said starting out, I've lived with the
9 design and construction of the house for four years. With
10 all due respect to Mr. Hunter's suggestion that it
11 couldn't possibly have cost what it cost in 1993, I sit
12 here and reconfirm what I said earlier. That is the fact.

13 Thank you all for -- for your patience and your
14 attention.

15 JUDGE RIDENOUR: Thank you, Mr. Rice.

16 Before we conclude, I'm going to ask my
17 co-panelists if they have any questions for either party
18 or any of the witnesses.

19 Judge Lambert, do you have any questions
20 remaining?

21 JUDGE LAMBERT: This is Judge Lambert. Yeah,
22 just one.

23 I was wondering from Mr. Hunter, for this house,
24 like looking at it, it has lots of, like, custom things, I
25 guess. Would you like -- is this like what FTB, when it

1 was doing the valuation, consider to be like luxurious or
2 beyond excellent? Or did they just follow excellent
3 because that's what the Swift Estimator says? Or is there
4 a determination that this house is actually more than
5 standard or not?

6 MR. HUNTER: It is completely more than standard.
7 The Valuation Team assigned excellent quality to this
8 home. And, for instance the windows; the first estimator,
9 using this program, was over \$800,000. After the plan
10 check, the window allotment went from \$16 per square foot
11 to \$32 per square foot because this is a Miami Vice
12 looking house. And -- and I don't believe it's fair to
13 consider it a program where you type in the location, and
14 give a little allotment for this, and then type in the
15 square footage, and then that's your number. As you can
16 tell by the detailed support to Exhibit K, that numerous
17 line items were consulted and improved allotments were
18 given.

19 So I -- I think the rub here and, like, painted,
20 excellent quality does not include -- and I'm quoting from
21 Exhibit I, which I believe is being referred to.

22 "Excellent quality does not include the extremely
23 expensive homes, but is a very gracious residence, usually
24 designed individually with good detail and workmanship.

25 So here special attention is given to both the quality and

1 the quantity of exterior and interior ornamentation.
2 Better quality floor and wall coverings may be found."

3 So I believe, and our Valuation Team believes,
4 that this category covers it. And the only thing that's
5 here, when using this door, this residential option,
6 single family residence excellent quality, if cost aren't
7 needed for truly high value or luxury type homes up to
8 double the cost of this quality -- it's arguable because
9 we don't know how much was spent here -- and up to as
10 large as 20,000 square feet. This home was -- and forgive
11 me, Mr. Rice, if I'm off -- 5,500 or 5,600 square feet.
12 If the home is -- it meets those two criteria, then you
13 refer to exceptional homes, a cost guide for high value
14 and unique residences.

15 And when I asked, I was told that this cost guide
16 is a bound item that you would have to purchase from the
17 CoreLogic company that goes to -- to this particular --
18 for residential, under the residential bucket. So I -- I
19 think here that now we're getting to a point where things
20 could be subjective. And I appreciate the testimony from
21 Mr. Christopher. This is a wonderful -- this is a
22 brilliant home. It's a beautiful home.

23 But this is a tax case, and the question is how
24 much was spent back in 1993. We don't have the records.
25 We don't have any contemporaneous evidence, which was

1 reconstructed before the taxpayers took their reporting
2 position. So Respondent did the best it could and
3 provided a reasonable estimate of the costs that were
4 incurred back in 1993.

5 JUDGE LAMBERT: Thank you.

6 JUDGE RIDENOUR: Judge Stanley, do you have
7 anymore questions?

8 JUDGE STANLEY: Yes. And I'm sorry, but I'm
9 going back to Mrs. Bastarache's testimony.

10 Mr. Rice, if you left the records behind in the
11 home's basement, how did you make the \$2.9 million basis
12 estimate without using those records when you filed your
13 tax return?

14 MR. RICE: Well, we -- we would have used any
15 information that was in those files. We would have
16 borrowed it and used it and returned it.

17 JUDGE STANLEY: Okay. So to clarify, you would
18 have used those records and then give them back to the
19 Bastaraches?

20 MR. RICE: Correct.

21 JUDGE STANLEY: So they were available during tax
22 preparation but not available during the audit; correct?

23 MR. RICE: Well, they were available. Definitely
24 they were available until the time of the flood. I don't
25 recall exactly the details of the tax preparation, but

1 I -- I know that they were used. Whether --

2 Do you remember? Did we file actually before?

3 MR. HELMS: Yeah. The return was filed in summer
4 of 2017.

5 MR. RICE: Yeah. So it was filed before the
6 flood. Yeah. So yes. Yes. To repeat and to clarify,
7 make it very straightforward, whatever records were needed
8 to complete the tax return were borrowed from the files
9 that we had left with the Bastaraches and then returned.

10 JUDGE STANLEY: Okay. Thank you.

11 JUDGE RIDENOUR: Thank you.

12 I do not have any outstanding questions. I will
13 like to thank everybody for your patience and explaining
14 very intricate and difficult information. On behalf of
15 the panel, we greatly appreciate this information. And
16 with that saying, I do want to thank everyone for
17 participating in today's hearing. I will be concluding
18 it.

19 As discussed earlier, I'll be keeping the record
20 open. The record will be held open to allow additional
21 briefing and information. I will send out an order later
22 describing information and additional documentation we
23 discussed during today's hearing, and I will give a
24 deadline for the information. And FTB will then after be
25 given an opportunity to respond. Now, the record will be

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

open. And once it is closed, we will have 100 days to issue our opinion.

Today's hearing in the Appeal of Jane and Frank Rice is now closed.

This concludes the hearing calendar for today. Hearings will resume tomorrow morning.

Thank you everybody and have a lovely rest of your day.

(Proceedings adjourned at 4:08 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 28th day of April, 2025.

ERNALYN M. ALONZO
HEARING REPORTER