

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)	
)	
T. FISHER and C. HICKLAND,)	OTA NO. 21088422
)	21088423
APPELLANT.)	
)	
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TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Thursday, October 16, 2025

VOLUME II

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings,
taken at 12900 Park Plaza Drive, Suite 300,
Cerritos, California, 90703, commencing at
9:27 a.m. and concluding at 1:48 p.m. on
Thursday, October 16, 2025, reported by
Ernaly M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ KEITH T. LONG

Panel Members: HEARING OFFICER ERICA PARKER
ALJ KENNY J. GAST

For the Appellant: T. FISHER
C. HICKLAND
LYDIA TURANCHIK

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

RON HOFSDAL
ELLEN SWAIN

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1 Cerritos, California; Thursday, October 16, 2025

2 9:27 a.m.

3 (CONTINUATION OF PROCEEDINGS)

4
5 JUDGE LONG: We're reopening the hearing for the
6 Appeal of Fisher and Hickland.

7 Today's date is October 16th, 2025, and we are
8 going to open the record now. For the new faces, we are
9 joined again by our hearing reporter Ms. Alonzo.

10 Ms. Alonzo is preparing the transcript for this hearing,
11 which will be available on our Office of Tax Appeals
12 website. Please open the record now.

13 To pick up where we left off, I believe this
14 morning we're going to start with Ms. Hickland's
15 testimony. Is that correct?

16 MS. TURANCHIK: That is correct.

17 JUDGE LONG: Thank you.

18 Ms. Hickland, if you could just raise your right
19 hand.

20
21 C. HICKLAND,
22 produced as a witness, and having been first duly sworn by
23 the Administrative Law Judge, was examined, and testified
24 as follows:

25 ///

1 JUDGE LONG: Thank you. You may lower your hand.
2 All right. You may begin with your testimony when you're
3 ready.

4 MS. TURANCHIK: Thank you, Judge Long.

5
6 DIRECT EXAMINATION

7 BY MS. TURANCHIK:

8 Q Ms. Hickland, could you state your full name for
9 the record the record and spell it, please?

10 A Yes. Catherine, C-a-t-h-e-r-i-n-e, Hickland,
11 H-i-c-k-l-a-n-d.

12 Q And Catherine, can you just briefly describe for
13 us your work history? We know, obviously, we can see a
14 beautiful soap opera star. Can you sort of walk through
15 very briefly your work past?

16 A Yes. I was an actress for 39 years. I started
17 in the 70s, and I spent 39 years on television and on the
18 Broadway stage. I did Les Mis on Broadway and other
19 things. And -but I spent the bulk of my time of those 39
20 years in -- on television in soap operas and leading roles
21 for -- I did soaps for 39 years, and everything else I did
22 in addition to that.

23 Q And what other items would you say you've done in
24 addition to that?

25 A Well, if you're talking about present day, I'm a

1 hypnotist, and I'm a mentalist. That's what I do now.
2 And so I spent my whole life on stage and on television.
3 And then when I thought about retiring, I knew I
4 couldn't -- I'm not the type of personality to do nothing.
5 I don't do nothing well. That's what I say. And so I had
6 always wanted to help -- to find a way to help people. So
7 originally I went back to school while I was on "One Life
8 to Live," which where I was for the last 12 years of my
9 career. And I got my certification to become a
10 hypnotherapist. And one of my professors at that time
11 said, you know, why -- why don't you take this to stage
12 because you spent your whole life in front of cameras and
13 on a stage. And, you know, I thought oh, my gosh, that
14 seemed a little daunting.

15 I had terrible stage fright. I didn't know that
16 until I started doing live theater. And so I -- I really
17 was flipped out about thinking about getting on a stage on
18 by myself, no script. So I started to do standup on
19 weekends just to get used to being alone on a stage. And
20 then I ended up doing a show called "Pieces" off Broadway,
21 which is a monologue show, and that's where I really had
22 to workout my stage fright and things like that. And then
23 I started to work on my show with -- I moved to Las Vegas
24 because I could for the first time, you know, live
25 anywhere I want, and that's where I wanted to be.

1 Q Do you also do any writing, Catherine?

2 A Yes. I've written two books. I have the first
3 one, "The 30-day Heartbreak Cure," and the second one is
4 "Cat and Fern's Excellent God Adventure." That's a daily
5 inspiration for 365 days a year of heaven on Earth.

6 Q And do you describe yourself as an inspirational
7 writer?

8 A Absolutely.

9 Q Can you also -- another thing I want to get into
10 just, again, very briefly is your personal history and
11 your marriages?

12 A Oh, here we go. I'm having a Vietnam flashback
13 already. Okay. Go ahead.

14 Q Can you just explain who you've been married to
15 previously? Sort of what the genesis was, the
16 relationship, and then the reason for the end?

17 A Right. Well, I think -- I was married to David
18 Hasselhoff for a couple of years. Everybody knows now
19 that he has a terrible drinking problem. That was a big
20 secret then. And I just couldn't do it. And then so I
21 left that marriage and moved to Italy for a couple of
22 years 'cause it was pretty rough when you're in a -- in a
23 public marriage and it goes -- I mean, your marriage is
24 private, but the public knows about it. And we were kind
25 of like the super couple of the 80s back then. And then

1 you leave, and it just gets rough, you know.

2 So you have to -- so I -- I was a broken-winged
3 bird on the side of the road. I moved to Italy to make a
4 movie, and stayed for two years, and came back and felt
5 like pretty empowered. You know, you have to learn
6 another language. You have to learn other people's ways.
7 You have to learn to stand up for yourself. There's no
8 such thing as a line in Italy. You have to fight your way
9 to the -- so I grew up there pretty much. And then when I
10 came home to the United States, I went right back to what
11 I know, you know, which is acting. And I'm also a
12 speaker, an author. You know, I have a lot of sides.

13 Q Would you say your prior marriages impacted your
14 feelings about relationships moving forward in what you
15 were looking for?

16 A Yes. Especially though I didn't -- you know, in
17 as much as my first marriage ended due to the fact that I
18 was in a -- it was the three of us, you know. It was me,
19 him, and the bottle, right, basically. And so I couldn't
20 do that. I thought I would be -- I'd go down. So I got
21 married again some years later to a wonderful person. I
22 still think he's a wonderful person. His name is Michael
23 Knight, and he was on "All My Children." I was on One
24 "Life to Live." And he was sober when I married him. And
25 at some point fell off the wagon.

1 I can't blame them. It's me that, as you say,
2 pulls the trigger. I -- I agreed to be in a relationship.
3 So I -- I started to think to myself because he and I
4 parted amicably very much so. I started to look at myself
5 and my part, and because it's a pattern. If something
6 happens once, it's just happening. And if it happens
7 twice, you know, it started to become a pattern. You
8 know, you're just doing it, and then it becomes a pattern.
9 And I thought, okay, I married two people that have
10 alcohol issues, and I'm the common denominator.

11 I need to look at my choices. After 17 years of
12 marriage to Michael, I decided to take a year-and-a-half
13 off of dating completely because I was changing my entire
14 world. I gave up acting. I was starting a new career. I
15 was going to move to a new place. I'd never been able to
16 move anywhere I wanted to. I always had to be where the
17 work was. And so, for the first time in my life, I got to
18 choose where I wanted to live and where I wanted to be.

19 Q So let's talk about that for just a second. Can
20 you explain to the panel sort of the genesis of your move
21 to Las Vegas and how that came about?

22 A Yes. You know, New York when I lived there was
23 an credible place. It was in its heyday of its time. I
24 mean, it was fantastic, but it moves really fast, and it
25 hums really loud under your feet. So I remember thinking

1 I don't want to do this anymore, and I don't want to live
2 here anymore. I'm getting older, and this is too much
3 energy under my feet.

4 I want to go somewhere where I want to be, build
5 a home. Because I've been, you know, going around, you
6 know, since my childhood. I was always here, here, here,
7 here. And as -- as a profession, you know, I knew I was
8 going to be traveling a lot if I was going to pursue
9 become what I wanted to be, which was, at that time, the
10 best known stage hypnotist in the world. You know, a
11 female not male because there's so few of us. And so I
12 knew I needed to be somewhere where it would be easy for
13 me to get in and out of because I fly all the time.
14 And -- and in New York I was always missing planes because
15 of snow and this, and this, and this, and it cost more to
16 get to the airport than the actual flight.

17 So all this went into my thinking about where I
18 wanted to be; easy access to an airport, lots of nonstop
19 flights. But more than anything, I wanted to become part
20 of a community where it is the great -- the entertainment
21 capital of the world. And so I needed to be there. I did
22 not want to live anywhere else. I never even considered
23 anywhere else. And so that's where I decided to put down
24 my roots.

25 Q And can you explain how that came to be,

1 vis-à-vis your first meeting with Henry?

2 A Right. Well, Henry was my pastor in the 80s at
3 the church that Todd and he started called the "Hiding
4 Place." So when I went I -- I was on a book signing tour,
5 and it was like 30 cities. At the end of it, the last
6 city was Las Vegas. Henry lived in Las Vegas. I -- we --
7 he found me on Facebook and said, oh, my gosh. I see
8 you're coming to Las Vegas. I would love to see you. I
9 hadn't seen him in many, many years -- decades, actually.
10 And so I did try to call him when I was in Las Vegas for a
11 personal appearance some couple of years -- like, eight
12 years before that.

13 And I called the hotel, and he wasn't there. He
14 was out of town. He answered the phone. I didn't know
15 him, of course, and I was very nervous 'cause I -- I used
16 to see him at church, and I had a little crush on him.
17 I'm not going to lie. And -- and, you know, but it was
18 40-something years prior. I was married at the time. He
19 was married at the time. It wasn't like something where,
20 I have such a crush on him. I'm going to meet him now,
21 you know. No. No. It was just all wrong, right.

22 So when -- so when Henry came to see me at the
23 Barnes & Nobles where I was signing books, he wanted me
24 to -- to know if after the signing I could come back to
25 his house and meet his wife, bup, bup, bup. I said yes.

1 And so I went to his house after that. And when I walked
2 in the house -- you have to understand. I lived in
3 New York City for years and years and years where you live
4 in an apartment and -- and they cost as much as the houses
5 that we're looking at out here; and I'd -- I'd never seen
6 such a grand house.

7 So when I walked in, I said I love this house.
8 He said, oh. And I'm thinking to myself, how do you get
9 one of these, right. 'Cause I didn't know yet where I was
10 going to live. I knew where I wanted to live. So he said
11 well, there's lots of them for sale right here in this --
12 and it was a guard-gated community, and I was single girl
13 and planned to stay that way actually. Because this is
14 before he came back into my life. And so there I was on
15 the phone the next day with the real estate agent saying
16 show me houses.

17 It was -- I'm not terribly impulsive. So that
18 was unusual for me. But I was just so curious about what
19 I could get and for how much. And when I went to see this
20 house that I bought, it was overwhelming to know that I
21 could actually buy that house outright. I mean, in my
22 mind that was credible to me that I'd be able to sell an
23 apartment and buy this beautiful home, right. And that's
24 what I -- so that's what I did. I put -- it was a short
25 sale, so I had to wait. But, you know, I put the money

1 down, and I -- I was just -- I wanted that house.

2 Q So you bought the house. Can we now jump to when
3 you met Todd? When -- actually, when you spoke to Todd
4 for the first time, do you recall those circumstances and
5 your sort of reconnection through Henry?

6 A Right. Well, Henry was -- is very technical.
7 He's technically savvy. And my knew show that I was going
8 to do with the hypnosis show -- it was called "It's All In
9 Your Mind." And, you know, it had -- I utilized video and
10 pictures and things like that. And so Henry, I told him
11 what I was doing, and he said, I'll work on that with you.
12 I can do that. And I was so happy because, you know, here
13 I was in a new place where I didn't know anybody, really,
14 that did that sort of thing. So it was almost like God
15 just dropped that into my lap; somebody I know, somebody I
16 trust. It was a really great thing.

17 So then that's what we did. We started working
18 on the show together. Sometimes we didn't start until
19 11:00 o'clock at night because we both had a lot of
20 commitments during the day. And then one night, around
21 midnight when we're working in his studio, the phone rang,
22 and he answered it. And he answered a few questions or
23 talked for a few minutes, and apparently one of the
24 questions Todd had asked -- 'cause it was he on the
25 phone -- and he said, what are you doing?

1 And Henry said, "Oh, I'm working with Catherine
2 Hickland. Do you remember her from the "Hiding Place"
3 days?" And he was sort of. I mean, I know the name but
4 not really. And so that kind of -- he got off the phone
5 with him, and I said, was that Todd Fisher? And he said
6 yes. And I said, oh, I had the worse crush on him in the
7 80s or the best, you know, the best of the worse, you
8 know. Anyway, I hadn't dated in a year-and-a-half. That
9 was absolutely -- you know, up to this point. And so to
10 meet somebody that was interesting to me would be a little
11 bit of scary because I decided for those year-and-a-half
12 of no dating -- because I needed to figure out what I was
13 doing, my pattern.

14 Because, you know, that -- that seemed to be my
15 sticking point, is that I have a pattern. What is it so I
16 can move forward if I ever, ever meet anybody again, which
17 I didn't really care if I did or not, that I would be more
18 emotionally intelligent to make good decisions.

19 Q And, Catherine, just put a timestamp on that.
20 When was that first phone call, roughly, if you recall,
21 when you were preparing for your hypnosis show with Henry?

22 A 2009, I would think. Early 2009, maybe. No.
23 No. Mid-2009 because then Henry and I went to New York
24 City to ended my show. We put my show up. And so -- so
25 it was kind of mid to later, I think. Yeah.

1 Q And then do you recall the first time you met
2 Todd in person?

3 A Yes. So Todd started to write me on Facebook.
4 He started to write -- he -- I remember he looked me up on
5 Facebook 'cause Henry had said my name. So -- and my bio
6 was, you know, mostly about who I am, but I talked a lot
7 about my Christian faith because that's important to me
8 that -- that, you know. And he, I think, saw that and was
9 like, oh, you know. So it was -- he -- he started to
10 write -- make comments on my Facebook page. Oh, you know,
11 I had dogs. And so, you know, he was saying, oh, you
12 know, I know what it's like trying to travel and you have
13 dogs, and you need to get somebody to look after them and
14 that sort of thing. And I thought, he's flirting with me.
15 That's what I thought because he's starting to, you know,
16 make these comments on random things.

17 Then he writes me on the back end. Then we start
18 talking. We talk, and we talk. And then we -- and then
19 he said let's graduate to a phone call. We did that. I
20 hate talking on the phone. Oh, I really do. I can't
21 stand talking on the phone. So I was like, oh, no phone
22 call. So he said let's talk on the phone. So we started
23 talking on the phone for hours at a time, which for me was
24 unusual.

25 Then he said I want to meet you. And I asked him

1 to make a full disclosure, and I would make one too you
2 know, and all the things you think that I'm going to
3 really like about you. And I want you to write down all
4 the things that you think I'm not going to like, and I'll
5 do the same thing. And, you know, at 52 or whatever how
6 old I was, I -- you don't have time to waste. You don't
7 have time to waste at -- at 20, you have time to waste.
8 At 30, you're starting to think real seriously about life.
9 At 40, you start thinking I better figure myself out. And
10 at 50, you have no time to waste, if you have reached any
11 kind of emotional intelligence.

12 So you kind of just put it out there, you know.
13 I didn't want to -- I didn't want to waste time if this
14 isn't going to be anything 'cause I hadn't dated in a year
15 and a half. And I was happy with that, but he wore me
16 down, and he did. He wore me down. He -- 'cause I said I
17 don't know if I'm ready to meet -- meet you. And I had my
18 foot in a boot because I had sprained my foot, and I -- I
19 didn't want to meet anybody unless I could wear a nice
20 outfit. Do you know what I mean? It was just being a
21 girl, right. So he said he was coming to Vegas to see
22 Henry, and that I could come over there and say hello or
23 not.

24 So he pushed my hand on that one. And I, of
25 course, went over there to say hi. And oh, that moment

1 was like and still is boom. I -- I did -- all the things
2 I had written about, I mean, in my books, especially the
3 "30 Day Heartbreak Cure," because I consider myself a
4 relationship expert because that was my -- that's what I
5 do mostly of when I do any kind of hypnosis therapy. It's
6 with people who are going through a rough breakup.

7 Anyway, he gave me his -- he gave me his full
8 disclosure. I gave him mine. He sang a song in my ear,
9 and that was it. I -- I -- all the things I had said
10 beware of to girls, like love bombing, you know, moving
11 too fast, I mean, we moved at warp speed; and it was
12 shocking to me. But I felt okay with it because I could
13 talk to Henry who knew him better than anybody. And he
14 could talk to Henry that knew me very well. So it wasn't
15 like a -- a blind thing. I just really trusted that my
16 decision-making at that moment was going to be all right.

17 Q Can you talk about the decision-making, vis-à-vis
18 the decision to remain in Las Vegas and not go back to
19 California?

20 A Well, I -- I did -- one of the things I had
21 realized about myself in this journey to know myself and
22 what my patterns are about relationships and how I got
23 them -- could you just ask me that again so I give you the
24 answer that I want to give you.

25 Q Can you just sort of explain and describe the

1 decision-making that went into the decision to stay in
2 Vegas as opposed to somewhere else?

3 A Yes. So one of the things that showed up in my
4 pattern of -- in relationships was that I would twist
5 myself into knots for -- for a man. Meaning, you know,
6 like if someone said, oh, you know, I'd -- when he's lived
7 in California, I immediately said this is a problem
8 because one of the things I don't want to do ever again is
9 twist myself into knots to accommodate somebody else's
10 plans, dreams. I had my own. I had been, you know,
11 married for 17 years. Dating was like a scary monster
12 under the bed when you're five, and I just took that out
13 of the equation for myself by going on the sabbatical.

14 I -- when I met him, right away I knew that this
15 full disclosure thing I was asking for and that I was
16 giving would be complete and total transparency because of
17 having no time to waste, and it didn't matter to me one
18 way or the other. You know, like, I would -- I was good
19 by myself. But I also just -- if -- if someone said what
20 do you think of love first sight, I would have said you
21 have to be really careful with that.

22 I loved my second husband very much, but I've
23 never known what this kind of peace feels like, you know,
24 within a loving relationship. Everything always seemed a
25 little bit chaotic. And so --

1 Q At the beginning you made it clear to Todd you --
2 you were going to stay --

3 A Oh, oh, absolutely. Because, you know, I said
4 I -- I'd tell you this is the -- you know, it's not that
5 far away. It's a 6 or 7-hour drive. It's a 45-minute
6 flight, but I don't have time to be -- this is where I
7 want to be. I bought the house of my dreams. I'm -- I'm
8 building a life here, and I'm -- I'm not a girl that can
9 be somewhere where there's not people.

10 I -- I know myself well enough. And I would have
11 before said, okay. You know what I mean? Like I just
12 would. But I really knew that if I gave up one more thing
13 of myself for somebody else, that would be the end of me.
14 I really did. And so I absolutely made that clear that I
15 am a Las Vegas girl.

16 Q And can you then discuss the transition as Todd
17 is moving in with you and what happens with your housing
18 situation in Las Vegas during this first year and a half?

19 A Well, you know, when he -- he -- this is going to
20 sound really bad, but here we go. And we're streaming,
21 O-M-G. Here we go. So I -- he -- he moved into my house,
22 right. Like, he didn't -- for 12 days after I met him, he
23 came home with me and did not leave. Well, his motorhome
24 was there, and -- and we got written up for that, of
25 course. And -- and his mother couldn't get ahold of him

1 because we were just very busy falling in love.

2 And so he -- when -- and when he left, I mean,
3 I -- I wept. I -- this is not me. You know, I'm not like
4 that, and I knew that I was either in really big trouble
5 or in one of the most beautiful things that could ever
6 happen to a girl's life. And so -- but I did not cave in
7 any way. I did not want to be in the Central Coast of
8 California on a ranch with no people around me. I'd --
9 I'd lose it. I -- I'm not that girl. I love people.

10 Q So, at some point in time, it became clear that
11 your -- your home that you love was not going to work for
12 the two of you?

13 A Okay. So he -- like he had stated before, we got
14 written up by the HOA. I adopted two dogs in the middle
15 of the night because they were going to be put down.
16 Somebody called me and said can you step in and go get
17 them; and I did. And oh, I didn't know they were two pit
18 bulls. So anyway I brought them home to keep them from
19 being euthanized. So those were kind of my guys.

20 And when he came in there, you know, he -- he
21 said I don't know -- what would you think if you -- you
22 sell this house, and we buy a house together? And I
23 thought oh, my gosh. You know, I've only just bought this
24 house like, you know -- what? -- a year ago or -- yeah, a
25 year before. And the economy was terrible, so I was

1 worried about all that. But I did consider it, and then
2 I -- we decided absolutely.

3 Because if we were -- 'cause my house was a
4 compound too. But if I sold that, and then we bought
5 something else that works for us, I could have animals.
6 You know, my dogs would have a yard. 'Cause this -- this
7 was a big deal. I didn't -- I suddenly had dogs, you
8 know, and I wanted to make sure that they had what they
9 needed. So I put the house up for sale, and we got a
10 great buyer, but they wanted the house in 30 days --
11 30-day escrow. I'm talking about a 6,000 square-foot
12 house full of furniture. And so I had to put everything
13 in storage. I said, okay, I'll do it because they met the
14 price. And I thought, okay, this is great.

15 And since it was -- the economy was the way it
16 was, I didn't think it was going to be hard to find
17 another house. I really didn't. And it wasn't if you
18 were looking for small houses, but we were looking for
19 something big. So everything I owned was in storage. And
20 I was thinking, okay, we had to start looking for houses,
21 start looking for houses, and we did. We put offers on a
22 couple of houses. They went -- they fell through. It
23 wasn't as easy as I thought it was going to be.

24 But I need -- I had -- I didn't -- I rented a
25 house because I needed somewhere to be in 30 days. So I

1 had to rent a house because I hadn't found one yet, and
2 that was my home. And so, you know, I would just take a
3 few things out of storage because it was a small house.
4 I -- not small by any -- 3,000 square feet, but it was not
5 going to house all my furniture. And I had hopes that I
6 was going to be able to find another house together.

7 Q And what was the reason for the rental instead of
8 just moving -- you had a house available to you in
9 California that could have stored all of the property?

10 A I could have saved a lot of money because I had
11 like three storage units for all my furniture. Because
12 that is my home, and that is where my -- I -- I didn't
13 even consider living anywhere else. I mean, that -- that
14 was my --

15 Q Including the ranch?

16 A No. No. It's a really nice place to visit. It
17 was a beautiful place but not my -- not for my life and
18 what I was doing. I could not imagine being in the middle
19 of nowhere without people. And I thought, if I go out
20 there I'm not going to accomplish my dreams of what I want
21 to do. Because it's just -- you got to be where the
22 action is when you want to -- when you have a goal.

23 Q So let's talk about that for a second because one
24 of the things that Franchise Tax Board has pointed to
25 fairly regularly throughout their briefing is your blog

1 posts. And you sometimes reference the ranch, which --
2 and/or the compound, which I just want to also make clear
3 here. When you're referring to those, you could be
4 referring to either Montana or Creston --

5 A Right.

6 Q -- is that correct?

7 A Well, I could refer to my Airbnb. I do over 100
8 shows a year on the road and have for many years. I
9 perform well over 100 shows. I'm on the road a lot. When
10 I'm on the road, I've had this nomadish lifestyle for
11 15 years. It was not hard for me because I didn't grow up
12 in a "Leave It to Beaver" house with all the parents
13 underneath the roof. I don't get attached to things. I
14 get attached to people. And so for me, you know, I -- I
15 just wanted to, for the first, time settle down where I
16 wanted to be and not where I was dictated to be by my
17 career. And I really wanted to be there.

18 Though, if you said why, I don't know. It was,
19 you know, I work a lot, especially, as a mentalist with my
20 intuition. And, you know, it was just this is where
21 you're supposed to be. This is where you're supposed to
22 be. This is what kept coming through me.

23 Q And can we again look at, with regard to these
24 blog posts, you describe yourself as an inspirational
25 writer?

1 A Yes.

2 Q You've said to me previously, miserableness does
3 not inspire.

4 A Well, you know, here's the thing. It's true.

5 Q Can you just sort of discuss that context in --in
6 sort of with respect to these blog posts?

7 A Right. So when I would go to visit the ranch,
8 you know, at first it was like oh, I woke up by a cow
9 mooing. It was, you know, really great. But it, you
10 know, life on the farm is not laid back as John Denver
11 would try to have you believe at all. I felt it to be
12 stressful, and I just didn't feel good there. I -- I just
13 can't explain the absolute bottomless pit of feeling that
14 I had, you know, when I was there.

15 Q Can we discuss one relatively painful part of
16 this, which is Todd's stepchildren?

17 A Yeah.

18 Q How would you describe their relationship with
19 them?

20 A Well, their mother had passed away, and I, you
21 know, was very cognizant of that and very compassionate
22 toward that. But they were kind of just wild, too wild
23 for me. I felt like they were too old to still be living
24 at home, and they weren't contributing anything. And I
25 thought this is really bad for everybody. I'm not going

1 to stay in a place where somebody's grown children are,
2 and they're wild. They -- they didn't have any
3 boundaries, you know, it seemed like to me, and certainly
4 not with me and no respect.

5 And I've never been anywhere where I wasn't
6 respected. So I felt it very strongly. And I remember
7 thinking okay, so this is yet another reason I couldn't do
8 this. There's just a lot of things that are showing me.
9 And so then I said, "I'm sorry, but this isn't my dream."
10 Those are the words I used. This isn't my dream, and I
11 didn't realize just how seriously he would take that.
12 Because he turns out that he is very much supportive of --
13 of not only my dream but other people's dreams. And he
14 did not fight me on it. Nothing.

15 He said, "I get it."

16 Q What did you understand to be the plans for the
17 ranch once you and Todd got together and got married?

18 A Well, I think, you know, he was more than ready
19 also to leave. Because you have a whole life there with
20 somebody, and he -- you know, Todd is the kind of guy who
21 I wish for every woman to meet because he -- you know, if
22 you have something you want to do, he'll move heaven and
23 earth to make that happen for you and with you. And I'd
24 never known anybody like that before. So I -- I realized
25 that I -- you know, what a great person with a huge heart

1 that he is, and I felt a little bad about being adamant
2 about not wanting to live where he had considered home.

3 But we hadn't discussed that a whole lot. But
4 when I said this isn't my dream, and I just can't do it,
5 and he said that's okay. Because his time there had also
6 come up, and I didn't realize that. But he didn't really
7 have a reason to be there anymore because that was his
8 wife's dream. And again, this is the way Todd is, you
9 know. So that wasn't his dream.

10 Q So let me point to -- I want to raise a couple of
11 specific points.

12 JUDGE LONG: Ms. Turanchik, just before you go
13 on, I want to make sure we're staying on track with
14 respect to time. So I just want to let you know we've
15 been going for about half an hour. I wanted to make sure
16 you leave time for your other witnesses as well. Thank
17 you.

18 MS. TURANCHIK: How much time, Judge Long, does
19 that gives us in total remaining?

20 JUDGE LONG: So we set aside four hours for
21 direct testimony. Mr. Fisher went for an hour yesterday.
22 You're a half hour in this morning, so that leave you with
23 two-and-a-half hours.

24 MS. TURANCHIK: We're in great shape. Thank you.

25 Todd, I'm going to ask for your assistance with

1 something here. I'd like -- I'm sorry.

2 BY MS. TURANCHIK:

3 Q Okay. Now, Catherine, one of the issues that the
4 FTB has risen is your love -- the FTB -- brought up is
5 your love of animals.

6 A Yes.

7 Q And that's where those animals resided?

8 A Yes.

9 Q So we've got a brief presentation that we're
10 going to walk through here to. Just explain where these
11 animals were over the years. Because one of the issues in
12 your blog posts is they're from years after our years in
13 issue here. So let's focus in on sort of where these
14 animals were as we run through this. And if you could
15 just tell us on these slides sort of -- first what is this
16 first picture?

17 A That is our home where we currently live.

18 Q And that is the home that was purchased in 2011
19 and closed on in 2012?

20 A Yes.

21 MS. TURANCHIK: Okay. Todd, could you go to the
22 next slide?

23 BY MS. TURANCHIK:

24 Q And who and where is this?

25 A That is Nugget my rooster and --and oh, that's

1 his wife Football, yeah, next to him with his hen.

2 Q Now, one of the allegations that the FTB raises
3 is that Nugget, this somehow connects you to California,
4 is that Nugget was actually delivered to you in
5 California.

6 A Yes.

7 Q Can you explain that?

8 A I was performing at a state fair in Texas. There
9 was a magician there who was performing as well. He had
10 this rooster in his act. The rooster was stuffed into a
11 box that had no bottom, and then he would make the rooster
12 appear. And I was mortified, so I said, "I have to have
13 that rooster."

14 And he said, "Well, it's my rooster."

15 I said, "No, I know." I said, "Can I just hold
16 him?"

17 And he put him in my arms the rooster kissed me,
18 and -- you know, and -- and he said, "Oh my God. I've
19 never seen my bird to that."

20 I said, "By the time this over, I'm going to make
21 you an offer to buy that rooster, and I'm not going to be
22 doing any negotiating. It's just the price I give you."

23 And he said, "You better make it a good one. I
24 have a ten-year old at home" -- buh, buh, buh.

25 I said okay. So I made him an offer two weeks

1 later when we were done, and he accepted it. But I
2 couldn't take the rooster with me because poultry can't
3 fly, even under the plane. So he lived in Virginia. The
4 rooster went home with him in Virginia. And I had to have
5 all kinds of -- jump through a million hoops to get the
6 rooster to me. I was visiting the ranch, and the rooster
7 was delivered to me at the ranch. He was driven across
8 the country by, like, a pet courier.

9 Q And was that courier also delivering other pets
10 in the area?

11 A Well, that's why I had the rooster dropped off to
12 me there because he was delivering about six or eight
13 animals. And so it was it was going to be a lot less for
14 me to have him do it there than it was anywhere else.

15 Q Okay. And where was this picture taken?

16 A That is in Las Vegas.

17 Q And do you know approximately what year?

18 A Gosh, I don't remember what I had breakfast. So
19 just let me think about this. I --

20 Q It's okay, Cat, if you don't remember?

21 A Yeah, 2012, I think. Yeah, because I'm looking
22 at -- because Football had died, and so I'm just kind of
23 like deducing, but it looks like 2012.

24 MS. TURANCHIK: Next slide, please. Thanks,
25 Todd.

1 BY MS. TURANCHIK:

2 Q And this guy?

3 A I have a lot, so let me just -- that's my second
4 Nugget. I have two roosters. White rooster is Nugget --
5 Nugget 2.0.

6 MR. FISHER: How about this one?

7 MS. HICKLAND: Oh, that picture. Okay. That
8 looks like Chicken Hawk, I think. Because she -- I have
9 three that look exactly alike, but I'm pretty sure that's
10 who that is. And that is in Las Vegas because I'm looking
11 at the furniture.

12 MS. TURANCHIK: Okay. Todd, could you go to the
13 next one, please?

14 MS. HICKLAND: That's my boy. That's Nugget.

15 BY MS. TURANCHIK:

16 Q Also in Vegas?

17 A Also in Vegas. Just passed away two weeks ago.
18 Had a good life. Yeah, that is in Vegas because of my
19 chicken coops, and I can see the cedar behind it.

20 Q So the point here, and the point to these
21 pictures --

22 A Yeah.

23 MS. TURANCHIK: And, Todd, you can run through a
24 couple.

25 ///

1 BY MS. TURANCHIK:

2 Q -- is you did maintain many, many of these
3 animals in Las Vegas?

4 A That's the goose I found. I found that goose in
5 a hayfield in Creston, and it had been left behind. I
6 didn't know. I thought it was a duck, you know, 'cause
7 I'm like Green Acres. I don't know everything there is to
8 know about farm animals. I do now. Anyway, he went home
9 with me to Vegas, and his name is Buddy Boo. And it
10 turned out the bigger he got, the more I could realize --
11 and see he's by the swimming pool in Vegas there -- that
12 he was a Canadian goose.

13 He had a broken wing, so I knew that he would be
14 my goose for his life. He learned how to swim there. He
15 learned how to be there. It's not easy to raise a goose
16 in a house, but I love him. And so you just do whatever
17 it is, you know. I'm glad I took him home. That's --
18 that's Teddy, and that's in Las Vegas. Teddy used to
19 watch TV with me in the bed. So, yeah.

20 MS. TURANCHIK: Next one, Todd.

21 MS. HICKLAND: Who else would have me but Todd
22 Fisher. I didn't know anything about chickens before I
23 met Todd. So it was a really wonderful thing too. That
24 is Chicky, and that's in Montana. And Archie, our African
25 Gray is underneath him in the cage there. That's Nugget

1 at the front door in Las Vegas, and that's Nugget and
2 Dwight and -- is that Football? Oh, my gosh. Yeah. So
3 that would have been 2012. That's my emu and me. That's
4 in Las Vegas. And I would say that that's around the same
5 time frame, 2012.

6 BY MS. TURANCHIK:

7 Q So, again, emphasizing the point here that these
8 are -- I will call them exotic pets that were with you in
9 Las Vegas, that were not at the ranch in Creston as
10 inferred by the FTB?

11 A Correct. They're all rescues. So people would
12 bring them to me, and I'd say okay. They can stay. I
13 mean, it's expensive, but I love animals, and those are my
14 babies.

15 Q And then, Catherine, again just to close this
16 out, let me just focus on this. This is actually a video
17 that we're not going to play, and it said we're not going
18 to play.

19 A Okay.

20 Q But this is a picture of you and your
21 mother-in-law in Las Vegas --

22 A Yeah.

23 Q -- and this is Buddy Boo; correct?

24 A Yes.

25 Q And do you remember the circumstances of this

1 video?

2 A Yup. We were there, and I hadn't found a name
3 for Buddy Boo yet. And Debbie loved being a part of my
4 social media because we did fun things, and it was new to
5 her, and we were very close. And she said, "Why don't we
6 have a contest with your people on social media to name
7 the goose?" And that's what we did.

8 Q And just to then sort of close out this issue
9 with Debbie here, other allegations have been made by the
10 Franchise Tax Board that during the years in issue --
11 being, remember, 2011 and 2012 -- Debbie was residing,
12 living with Carrie in Los Angeles. What would was -- what
13 would your response be to that?

14 A Debbie, like me, is a very much a nomad as well.
15 She worked -- that's one of the reasons I think we got so
16 close is that we both have big lives on the road, and as a
17 woman that's tough, you know. And so you don't meet that
18 many other female entertainers. So we really bonded over
19 that very quickly. She wanted to be with us, but she
20 didn't want to feel like she was underfoot. So she had --
21 so we offered to build her a separate quarter, you know,
22 on there. And it's in the background. You can see it in
23 the background. That's her quarters that we built for
24 her, even though I didn't mind her being in the house at
25 all. But she was like really adamant about not being

1 underfoot.

2 So we built that for her and that's where we
3 loved being. So between the road and being with us, I'd
4 say that, no, she was not in California all the time. But
5 here's the other thing. She -- well, you know, she -- she
6 just -- it wasn't until later, you know, that she and
7 Carrie were getting to be more close again.

8 Q And you -- and you've seen Bright Lights, you --
9 the representations made in Bright Lights about Debbie
10 spending more time there and being just up the hill from
11 Carrie. Those were true statements, but they're true
12 statements in 2014 and '15?

13 A That's correct, yeah. The daunting hill, yes.
14 It was very much later on.

15 MS. TURANCHIK: I have no further questions.

16 MS. HICKLAND: Okay.

17 MS. TURANCHIK: Thank you, Catherine.

18 MS. HICKLAND: Thank you so much.

19 JUDGE LONG: Thank you.

20 I'm going to give Franchise Tax Board a chance,
21 but I do want to ask a couple of questions first regarding
22 just the blog post specifically.

23 MS. HICKLAND: Okay.

24 JUDGE LONG: I understand from the briefing that
25 the contention is that the blog post, as well as

1 Ms. Reynold's book, are overstatements or celebrity
2 gossip. And I also understand that the representations
3 here today are that you wanted to live in Las Vegas and
4 always did. But I do want to make clear with respect
5 to -- because on Exhibit L, page 80, you do very
6 specifically -- and I'm going to quote you here, "Because
7 Todd lives in California and we are married, I am not in
8 Las Vegas as much as I'd like to be."

9 Are we intended to accept that as hyperbolic with
10 respect to your inspirational writing or --

11 MS. HICKLAND: Well, first of all, I was on the
12 road for several months a year. Every year I am. And so
13 I am not -- that's time I'm not in California. That's
14 time I'm not in Las Vegas, you know. I'm on the road. I
15 take what I call poetic license in my writing because I am
16 an inspirational writer. It's not going to inspire
17 anybody if I say that I don't like where I am, you know.
18 I mean, like it's just not inspiring. So I consider home
19 to be so many places. Because when I'm on the road and
20 I'm going home to a hotel, I say to Todd, "Let me call you
21 when I get home."

22 You know, that's just for me -- I never really
23 felt like I had a home until I moved to Las Vegas because
24 I was going somewhere I didn't really necessarily want to
25 live but had to go because that's where the work was.

1 When I started writing books and things like that, I
2 didn't feel I was being disingenuous by saying, you know,
3 I'm home. Home for me is an Airbnb. It's an RV. It's a
4 tour bus. It's a hotel. For me, that word is not what
5 most people, I think, would consider home to be, but I
6 don't have a conventional life.

7 And I'm -- I'm also a relationship writer. So,
8 you know, I -- I felt that at that time I was writing
9 that, that that was the right thing to say, rather than
10 get into the minutia of how -- how much or how little time
11 we spend somewhere. I didn't -- it -- I didn't mean
12 anything by it is what I'm saying. It's just poetic
13 license to make the story flow.

14 JUDGE LONG: Okay. Thank you. I just wanted to
15 make sure that I understood.

16 MS. HICKLAND: Okay.

17 JUDGE LONG: Okay. Then, Franchise Tax Board, if
18 you have any questions for Ms. Hickland?

19 MR. HOFSDAL: We do not have any questions.

20 JUDGE LONG: Okay. Thank you.

21 I just want to ask, do my co-panelists have any
22 questions?

23 Judge Gast?

24 JUDGE GAST: I do not have any questions. Thank
25 you.

1 MS. HICKLAND: Thank you.

2 JUDGE LONG: Hearing Officer Parker?

3 HEARING OFFICER PARKER: I have no questions
4 either.

5 JUDGE LONG: Okay. Thank you.

6 Then we are ready to move on to your next
7 witness. Who will that be?

8 MS. TURANCHIK: Yes, of course. We're going to
9 call David De Salvo.

10 JUDGE LONG: All right. Mr. De Salvo, if you
11 could come forward. And while we're getting set up,
12 because the three new witness weren't here at the
13 beginning of the hearing, I just want to remind everybody
14 that this hearing is being live streamed. So anything
15 that is said or shown in the hearing room can be seen
16 online.

17 Mr. De Salvo, can you please raise your right
18 hand.

19

20 D. DE SALVO,

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

24

25 JUDGE LONG: Thank you.

1 You may begin.

2

3 DIRECT EXAMINATION

4 BY MS. TURANCHIK:

5 Q Good morning. Can you please spell your first
6 and last name for the record?

7 A David, D-a-v-i-d, De Salvo, D-e space S-a-l-v-o.

8 Q And David, can you just tell us what your current
9 profession is?

10 A I'm a CPA, business manager, tax preparer.

11 Q And can you just provide us with a little bit of
12 your educational background?

13 A I went to Lehigh University. I got a B.S. in
14 business management.

15 Q Anything further?

16 A No. I'm a CPA.

17 Q Okay. Can you briefly just describe your work
18 history over the last 40 years or so?

19 A Out of college I went to Press Waterhouse, which
20 I don't even know what their name is now, in New York. I
21 got a CPA in New York. I transferred from San Francisco.
22 I got a CPA in California and eventually ended up here
23 working for a large business management firm, and then
24 went out on my own with my partner.

25 Q Do you recall when you went out on your own?

1 A 1989. And Debbie was one of the reasons because
2 I had Carrie Fisher as a client, and she recommended me to
3 Debbie because Debbie was going to go out on the road for
4 the "Unsinkable Molly Brown."

5 Q Do you recall when your relationship with Carrie
6 started? Was she the first Fisher that you worked with?

7 A No. No. At -- at the large business management
8 firm, Kaufman Eisenberg, she was one of the clients.

9 Q And do you recall approximately when that was
10 when Carrie recommended you to Debbie?

11 A 1989.

12 Q It was that year. Okay. And can you identify
13 when you first started working with Todd?

14 A Well, I -- I started working for Debbie, I
15 inherited Todd.

16 Q And was that that same 1989 timeframe?

17 A Pretty much, yeah.

18 Q Okay. And so you did work for the -- for Debbie
19 Reynolds, for Carrie Fisher and for Todd Fisher; is that
20 correct?

21 A Not for Carrie after that.

22 Q Not after that. Okay. Was there a time when
23 your offices were actually in DR Studios?

24 A Yeah. We started out that way. It just turned
25 out that way. We were -- we were looking for a place

1 to -- to have our studio -- our offices, and the studio
2 had open space; which Todd didn't like that I had moved
3 into. And so yeah, we just got -- it was convenient.

4 Q Now, as you're well aware as Todd's CPA, one of
5 the primary issues here is the memorabilia and the
6 taxation of this memorabilia to Todd as an individual.
7 Through your years with the family, what's your
8 understanding of where that memorabilia was stored, both
9 the museum and the personal?

10 A Well, my office -- well, my bookkeeping office --
11 we had a couple of spaces -- was actually next to where a
12 large storage closet was. And it wasn't -- it was large,
13 but it wasn't that large. And so over the years, you
14 know, that's where a lot of -- a lot of stuff was. We
15 also had some furniture that we actually used. But, you
16 know, Debbie also had some of the really high-value items
17 that she kept with herself.

18 Q Do you --

19 A What and where, I don't know.

20 Q Do you recall, specifically, the bankruptcy of
21 the hotel occurred in the mid-1990s?

22 A Right.

23 Q At that point in time, an inventory started being
24 maintained of the memorabilia. Do you recall seeing that
25 inventory or seeing the computer systems on which that was

1 maintained?

2 A During that time, no; because the hotel had
3 opened and, you know, a lot of the stuff was moved around
4 a lot. And so where anything was, I don't know.

5 Q Okay. I'm going to switch over a little bit to
6 some of the personal stuff. When Christi passed away,
7 what did you understand Todd's intentions, with respect to
8 the ranch, to be?

9 A Not much. He disappeared on me.

10 Q And sitting her today, do you know why?

11 A No. I -- I assumed in retrospect it was probably
12 because of Christi's passing away. But I -- I always had
13 a hard time finding him. Barbara Strong was his
14 bookkeeper, secretary, you know, everything to him in
15 Creston. And so she was the one I dealt with. And a lot
16 of time when he wasn't around, when I talked to her.

17 Q This residency issue has come up previously for
18 Todd before hasn't it, in terms of California asserting he
19 was a resident when maybe he wasn't?

20 A When was that? I don't know.

21 Q The early -- in the 1990s.

22 A The 1990s. In the hotel days?

23 Q Let me rephrase. It may help refresh your
24 recollection --

25 A It never got very far.

1 Q -- and also your involvement. Did there come a
2 time where Todd transitioned his residency to Las Vegas?

3 A Yeah. Well, when Debbie opened the hotel, he was
4 very, very much involved.

5 Q And do you specifically recall reviewing the
6 facts and circumstances around his move --

7 A Of course.

8 Q -- and agreeing that he was a non-resident of
9 California?

10 A Of course. Every -- you know, every tax year
11 we'd have a discussion about what he was doing, where he
12 was staying 'cause I knew he was moving back and forth. I
13 knew the -- well, and I was at the hotel a lot, and he was
14 there, and so we discussed it. And I don't remember the
15 years, but we moved him to -- his residency to Nevada.
16 And then later on when everything, you know, blew up
17 and -- and shut down, he -- we moved him back to
18 California.

19 Q And just to emphasis that point, you actually --
20 you reached, based on facts and circumstances, the
21 decision that he was, in fact, a Nevada resident, and then
22 that he had to return to California based on his facts and
23 circumstances --

24 A Right.

25 Q -- is that correct? So for the years in issue,

1 which are now, just a reminder, 2010 and 2012 -- and
2 David, I have to say, I appreciate your being here today.
3 I know what it's October 16, after one of the most
4 difficult tax seasons for L.A. County in history with the
5 fire. So thank you for taking the time to be here. You
6 prepared Todd's 540NRs for 2010, 2011, and 2012; correct?

7 A Right.

8 Q And you performed your due diligence in preparing
9 those returns in terms of determining Todd's residency
10 status; correct?

11 A Right. Well, I started having to contact him in
12 Las Vegas. He moved there.

13 Q So based on those facts and circumstances as you
14 knew them, did you believe that Todd satisfied the
15 requirements to be a non-resident of California --

16 A Yeah.

17 Q -- for 2010 --

18 A Yeah.

19 Q -- 2011, and 2012?

20 A Yes.

21 Q There was some discussion yesterday regarding the
22 head of household status that was claimed on Todd's tax
23 returns. That would have been your decision to file as
24 head of household; right? Todd wouldn't have known to
25 tell you to do that?

1 A Well, it's one of those things where I asked him
2 if he had -- you know, if he wanted to declare any
3 independents. He did, and we went over the, you know, the
4 rules for head of household. You know, we want to get the
5 best deal we can, right.

6 Q Right?

7 A Right.

8 Q So you -- you filed him as head of household
9 understanding that his dependents lived on the ranch in
10 Creston while Todd --

11 A I didn't -- I didn't actually know where they
12 lived.

13 Q -- lived in Vegas.

14 THE HEARING REPORTER: I need you to please wait
15 until she finishes her question before answering.

16 MR. De Salvo: Okay.

17 MS. TURANCHIK: We didn't tell him that.

18 BY MS. TURANCHIK:

19 Q So you filed his HOH status and understanding
20 that he was residing in Las Vegas; correct?

21 A Right.

22 MS. TURANCHIK: Okay. At this point, I'm going
23 to reserve additional time with Mr. De Salvo until after
24 the Franchise Tax Board has performed their examination.

25 Thank you, David.

1 MR. De Salvo: Okay.

2 JUDGE LONG: Franchise Tax Board, do you have any
3 questions for Mr. De Salvo?

4 MS. SWAIN: Yes. Yes, Judge Long. Is it fine if
5 I sit here, or would you prefer if I go to the panel?

6 JUDGE LONG: No. However you're comfortable.

7 MS. SWAIN: Okay. Excuse me -- at the podium.

8

9 CROSS EXAMINATION

10 BY MS. SWAIN:

11 Q Mr. De Salvo, my name is Ellen Swain. I'm an
12 attorney at the Franchise Tax Board, and I really
13 appreciate you being here.

14 A I can't see you.

15 Q Oh, I can move to the podium? I'll move to the
16 podium. That's better?

17 So I wanted to also express my appreciation for
18 you being here. Tomorrow -- yesterday was probably your
19 hardest -- hardest day.

20 A There is always people -- there's always
21 something, you know.

22 Q Yeah. Yeah. Well, thank you very much, and
23 thank you for coming here. And as -- as I mentioned, my
24 name is Ellen Swain. I'm from the Franchise Tax Board,
25 and I'm just going to ask you some questions about the

1 reporting positions and about how the capital gain was
2 reflected on the 2011 and 2012 tax years. Before I get
3 there, as -- as you had just testified that you were close
4 with the family -- the Fisher family and Debbie Reynolds.

5 A Close? I don't know about that. You know, they
6 had their own lives. I had mine.

7 Q But you shared business offices? Your office was
8 at the studio.

9 A Yeah. But, you know, nobody was there. I mean,
10 it was a dance studio.

11 Q Right.

12 A And so, you know, Debbie would be there a day
13 maybe every couple of months, and Todd never.

14 Q Okay. Fair enough. Thank you so much. So my
15 first question is for the 2011 tax year, just from our
16 starting point, you took the filing position that
17 Mr. Fisher was a non-resident that year.

18 A I took it in 2010.

19 Q Okay. But we're just here today about 2011.
20 Yeah?

21 A And so as far as I -- you know, as far as I
22 determined, he continued to be a Nevada resident.

23 Q Okay. And so that brought you into the
24 California Form 540 non-resident Form 2011?

25 A Right.

1 Q And -- and I have a copy if you'd like to see it
2 as well, if that would be helpful to you.

3 A Okay.

4 Q Okay. And so what I'm focusing on, on the 540NR
5 is column line number 13, which is --

6 MR. FISHER: Which year?

7 MS. SWAIN: 2011.

8 MR. FISHER: Okay. Do you know which one this
9 is? Page number?

10 MS. SWAIN: I can -- I can bring it over.

11 May I approach?

12 MR. FISHER: I have a copy. I got -- I got it.

13 MR. De Salvo: That's the 1040.

14 MR. FISHER: Okay. She's got it. Here you go.

15 MR. De Salvo: What line?

16 BY MS. SWAIN:

17 Q Line number 13.

18 A Okay. Capital gain. All right. Yup.

19 Q And so what's the amount of capital gain that was
20 reported in Column A, the federal amount?

21 A \$5,992,795 million.

22 Q And do you recall what that reflected?

23 A That was the sale of -- in -- at the auction, and
24 that was his portion of it after deductions.

25 Q And do you recall what you had said was the

1 amount that -- the significant piece that was included in
2 this?

3 A We -- it was classified as rental property.

4 Q And were there any -- any specific dresses? Any
5 specific items that you were considering as rental
6 property?

7 A No. No. Todd prepared a schedule -- a very
8 detailed schedule of all the sales. Now, you know, some
9 of them in had to be 4797, and some had to be -- I'm
10 forgetting now. But we divided it up and -- and it flowed
11 through the federal returns.

12 Q And by taking this position, you said how much of
13 it was California source gain?

14 A None.

15 Q So that was your -- so that's why that Column E
16 13 is blanked out?

17 A Well, D is -- which -- which column are you
18 talking about?

19 Q You can talk about Column D, if you want to talk
20 about that first. That's fine.

21 A No. So E is -- is zero. Yeah.

22 Q So that -- that -- so what you believe is there
23 is no California source income for the 2011 tax --

24 A Because he was a Nevada resident. Yeah.

25 Q Because he was a resident. But if he's a

1 non-resident, you were saying there was no California
2 source income for 2011?

3 A Not capital gain. No.

4 Q Right. Which would have been California source
5 income if it had been located in California?

6 A What had been located.

7 Q The property.

8 A Todd is located in -- in --

9 Q No. No. Not Mr. Fisher. I'm not talking about
10 his residence?

11 A Well, it's -- it's his tax return.

12 Q Right. But if he's located in Nevada, then the
13 question is, how much of his income is California source
14 income.

15 A None from -- no -- no capital gains in this -- in
16 this case. It was that one sale.

17 Q Just the one sale. So you took the position that
18 none of the property was located in California in 20 --

19 A For the sale it was.

20 Q For the sale it was located?

21 A Yeah. It was there in -- it was in Beverly
22 Hills.

23 Q It was in Beverly Hills. And it was in Creston
24 before that?

25 A I don't know.

1 Q And there was a warehouse in Creston?

2 A There was a warehouse in Creston.

3 Was there a warehouse in Creston at that time?

4 Okay.

5 MR. FISHER: Yeah.

6 BY MS. SWAIN:

7 Q So property that would have been located in
8 California would have a California source?

9 A I don't think so. Not -- not just because it --
10 it was there at some time. I don't think so.

11 Q But it was there at the time of the auction?

12 A Well, yeah. It had to be.

13 Q Okay. Thank you. And then in 2012 it was the
14 same filing position. If you have the 2012 return, if
15 not, I can provide you a copy.

16 A Well, it looks the same with different numbers,
17 right. Side one of -- okay.

18 Q So on the 20 -- that's the 2012 Form CA --
19 Non-Resident CA. Again, let's go back down to line number
20 13. How much capital gain was reflected on the federal
21 return? And that's under Column A.

22 A \$582,180.

23 Q And then how much was sourced to California in
24 Column E?

25 A None.

1 Q So again, in -- in the filing position, the
2 reporting position on this return is that there was no
3 California source income?

4 A For capital gain.

5 Q For capital gain, right. We'll go back to that
6 in a moment. So there's no California source income for
7 capital gain. So of the money that would have been earned
8 from the 2011 December auction -- because that's what
9 brought us into 2012 -- there was no capital gain. I'm
10 sorry to belabor this.

11 A Yeah, 20 -- both years, yeah, 2011 and 2012.

12 Q And the 2012 gain would have been from that
13 December auction?

14 A You know what, I don't remember. It's cash
15 basis. So yeah, it's probably -- I mean, I'm assuming
16 it's money that flowed through after the 2011-calendar
17 year.

18 Q Because you had written a letter to Mr. Fisher in
19 2014 that said -- that explained that process that within
20 30 days payment would be coming from the auction house?

21 A I don't remember that at all.

22 MR. FISHER: Me neither.

23 BY MS. SWAIN:

24 Q Okay. Would it refresh your recollection if I
25 show you your letter that you wrote?

1 A Maybe.

2 MS. SWAIN: Okay. May I approach?

3 JUDGE LONG: Go ahead.

4 MS. TURANCHIK: What exhibit is that, Ellen?

5 MS. SWAIN: It was the response in the De Salvo

6 papers.

7 MS. TURANCHIK: David, may I see?

8 MR. De Salvo: Okay. Okay. I guess that sort of

9 says the same thing that I just said right before that on

10 cash basis. Some money flowed in afterward.

11 BY MS. SWAIN:

12 Q That the payments from the December auction would

13 be received through the trust in -- in the following year?

14 A Right.

15 Q In 2012?

16 A Yes.

17 Q Thank you so much. And going back to your -- you

18 did mention that there was some California source income

19 that was reported in 2012. And I can draw your attention

20 to --

21 A Let me look at the schedule here.

22 Q I can draw your attention to line 7. And in

23 Column A, it says wages --

24 A You're right.

25 Q -- federal amount of \$74,200. And of that

1 \$15,400 --

2 A That's W-2 wages, so that would have been how
3 they were paid to him.

4 Q So that's not gain from the sale?

5 A No. That's W-2 wages. That I remember.

6 Q Okay. And then your position was that \$15,400
7 was California source income? That's what that far column
8 says.

9 A That's -- that's the way that it was reported
10 on -- on the W-2 that he was issued.

11 Q Okay.

12 A It -- it -- I vaguely remember that they had
13 continued to pay him as a California person for his work
14 in California. I guess it was for his work. But no, he
15 would have -- it had to be changed, and it was that year.

16 Q Thank you. Thank you. And I want to move on
17 to -- we did have some questions yesterday about the
18 Form 4797, which is on the federal return for the 2011 tax
19 year.

20 A I had some questions?

21 Q No. No. There were questions that came up --

22 A Okay.

23 Q -- when you weren't -- when you were finishing
24 your tax season, but when we were here. So I wanted to
25 just transition into that topic. And I have a copy for

1 you as well.

2 MR. FISHER: We have it, 48.

3 MS. SWAIN: 4797.

4 MR. FISHER: Yup.

5 MR. DE SALVO: It should be in here.

6 JUDGE LONG: Ms. Swain, this is for 2011?

7 MS. SWAIN: Yes. Sorry. Thank you, Judge.

8 JUDGE LONG: Thank you.

9 BY MS. SWAIN:

10 Q It's Exhibit O, page 11.

11 A This is --

12 Q I have an extra.

13 MR. FISHER: Well, he wanted to make sure we're
14 on the same page.

15 MS. SWAIN: Oh, yeah. Absolutely. I wish there
16 was an easier way to manage papers at a podium, but I
17 appreciate your patience.

18 BY MS. SWAIN:

19 Q So when we look at that form, could you please
20 explain what the Form 4797 is used for?

21 A These are business properties that's -- that's
22 sold for capital gain or loss there.

23 Q And so on this -- on page -- on page 11, the
24 exhibit is Exhibit O, page 11. It was also your De Salvo
25 Exhibit No. 1 that was provided in the responses to the

1 declaration.

2 A Page 11. I'm not --

3 Q It's -- it would say page 2 up in the upper
4 right-hand corner of the return.

5 A Page 2?

6 Q Yeah. So I was just adding the reference for
7 the -- for the record. Yeah. Yeah. I was just doing
8 that for record purposes. So the way the schedule is
9 written, is the museum equipment is listed as Property A
10 and it says that it was owned by -- owned for 11 years.
11 That's what A says at the top -- the top line; is that
12 correct?

13 A Yeah. It's Column C, you mean.

14 Q On the 4797, page 2?

15 A Okay. Column B and D -- B and C, I mean.

16 Q I'm looking at the very top where it says --

17 A Read the date.

18 Q It says "museum equipment" and it has the capital
19 gain, the years --

20 MS. TURANCHIK: It's different than --

21 THE HEARING REPORTER: I'm getting everybody
22 talking at the same time here. I need everyone to talk
23 one at a time.

24 JUDGE LONG: Hi. Sorry. We just want to make
25 sure that the record stays clear. So if everyone could

1 just stick to talking one at a time.

2 BY MS. SWAIN:

3 Q How would you describe the acquisition date of
4 this property?

5 A I'm looking at the screen here, which -- this
6 must be your transcript, the one you handed me.

7 Q I can -- I can hand you --

8 A So anyway, the acquisition date is June 30th,
9 of '00.

10 MS. TURANCHIK: David, and let me clarify for
11 court reporter and for the panel. He's actually looking
12 on the computer screen at Exhibit O, page 11. I don't
13 know what Ellen actually handed to him.

14 MR. FISHER: It's not the same.

15 MR. DE SALVO: Yeah. This is your transcript,
16 FTB's transcript.

17 BY MS. SWAIN:

18 Q We have multiple copies because I know it showed
19 up in a few place.

20 A I know it shows the dates, but it doesn't.

21 Q Yeah. Well, that -- that is on me. So I am
22 sorry, Mr. De Salvo.

23 A Okay. So on Column A -- I mean, on line A,
24 Column B, I put June 30th, '00.

25 Q Okay. And then the --

1 A June 30th is my shorthand for various. The
2 computer software wouldn't -- doesn't accept various in
3 this case.

4 JUDGE LONG: I'm sorry to interrupt. We're in a
5 little bit of uncharted territory with respect to this
6 exhibit. Can you please show me both of the things that
7 you're looking at. Just someone safe bring it up. I'll
8 take a quick peek.

9 THE HEARING REPORTER: Do you want this on the
10 record, or off the record?

11 JUDGE LONG: Let's close the record for two
12 minutes.

13 (There was a pause in the proceedings.)

14 JUDGE LONG: All right. So let's reopen the
15 record.

16 To be clear, the numbers on the computer image
17 and the paper image that were handed to Mr. De Salvo are
18 the same. They appear to be a different font. So we're
19 going to work from the exhibit in the record, which is the
20 one that is on the screen. Ms. Swain has the same copy as
21 well as what appears to be on the screen, as do I.

22 And you may continue.

23 MS. SWAIN: Thank you, Judge.

24 BY MS. SWAIN:

25 Q So the museum equipment, you're saying, was

1 acquired at a various date because you weren't certain of
2 the date. That's your --

3 A I was because Todd had given me the schedules.

4 Q Right.

5 A But I put -- I put those in approximate, but also
6 the -- you know, it shows long term capital gain.

7 Q Right. So it's approximate, like you said?

8 A Various.

9 Q And then -- and then it was the most important
10 thing really is -- and then we can certainly move on -- is
11 the fact that it was sold in 2011 on June 11th?

12 A I knew exactly when it was sold.

13 Q Yeah. And that museum equipment is then what
14 shows up in Property A on the left-hand column?

15 A Yeah. Property A is -- is line A above it, yeah.
16 Right.

17 Q And that would have been \$119,750, which was then
18 the basis was deducted of \$73,000, which brought it down
19 to gain of \$46,337?

20 A Right.

21 Q Do you recall what that property was?

22 A It was equipment -- actually, display --

23 JUDGE LONG: Mr. De Salvo, I'm going to have to
24 ask you to speak into the microphone.

25 MR. DE SALVO: Oh, okay. I was never on.

1 MR. FISHER: Yeah.

2 MR. DE SALVO: That was actually display
3 equipment, cases and stands and, you know, risers, and
4 things like that.

5 BY MS. SWAIN:

6 Q And where were those used?

7 A Well, Todd had them. They were used in the -- in
8 the hotel. And then probably for this auction, but I
9 don't know exactly when.

10 Q And they're not reflected as California source
11 income --

12 A No.

13 Q -- as being located in California at the time of
14 sale?

15 A For the auction they were.

16 Q Okay. But they're not reported on the return?

17 A No.

18 Q But they were in California for the sale?

19 A Right.

20 Q Because they were used in the sale?

21 A Well, some of them, you know. Well, actually,
22 they were the ones that sold. So, you know, all of them.

23 Q Okay. Thank you. And then moving to the next
24 column, Column B property is \$4,184,800?

25 A Right.

1 Q And the amount of gain once the basis was taken
2 out is \$3,000,776 --

3 A Yeah. Yes. Yes.

4 Q -- and \$303 -- \$76,348, and that was for the
5 Ascot dress?

6 A Say that again.

7 Q That was for the Ascot dress?

8 A No. That was for collectibles that were sold at
9 the auction. Now, maybe the Ascot dress was in there, but
10 I don't remember.

11 Q And you're calling this museum rental property?

12 A Right.

13 Q And could you describe what that would mean?

14 A Well, Todd was renting these items out.

15 Q He was renting \$3.7 million?

16 A From time to time. They were available for
17 rental.

18 Q Okay. And so they were property of the museum?

19 A The museum, no. The -- the whole point is that
20 this was Todd's property.

21 Q But don't you call it up above "Museum Rental
22 Property?"

23 A Right. Because it's for -- it's for museum --
24 museum use, or it's just a general description of what it
25 was. You, know, sometimes museums like the Academy Museum

1 will actually rent items that they don't own if they want
2 them for a special purpose. And so this is what, you
3 know, these collectables would be rented by who knows;
4 with restaurants or casinos or whatever. And so that's --
5 that was the business that Todd was trying to do, but he,
6 you know, then went ahead and sold them.

7 Q And that is line 19B?

8 A 19 -- say that again.

9 Q That is line 19B?

10 A I don't see a 19.

11 Q Back up to the -- up at the top.

12 A Oh, yeah. 19A, okay. 19B is the acquisition
13 date.

14 Q Yep. So 19B says it's museum rental property,
15 and that's saying that all the Property B was museum
16 rental property?

17 A Okay. Well, there's Column B and Line B. So
18 you're talking about 19A, column B. All right. I mean
19 Line B. 19A, Line B is museum rental property. That's
20 what -- yeah. That was the description I put on this.

21 Q Correct. And then so you -- in the response to
22 your declaration when we had finally had follow-up
23 questions, you wrote that the primary asset owned for
24 Todd -- owned by Todd for this action was item 506, Audrey
25 Hepburn's Ascot dress from "My Fair Lady," which sold for

1 \$3.7 million, and was included in Todd's income on
2 schedule D, Form 4797, line 19B?

3 A I don't recall any of that. I mean, I barely
4 recall the Ascot dress. It -- it was just Todd had put
5 together a spreadsheet of all the items and what the basis
6 and acquisition date -- and I don't know if the
7 acquisition date was on there -- and -- and the sale
8 price. So if the Ascot dress is on that list, I guess --
9 I don't know. I don't remember.

10 Q Okay. And that was from your -- is from
11 Exhibit O, page 7.

12 A Exhibit O. Is that one of these? Is this
13 Exhibit O? All right. First time I'm seeing this. I
14 don't recognize this page.

15 Q This was your response?

16 A My response?

17 Q Hm-hm.

18 JUDGE LONG: Mr. De Salvo, if you go to the next
19 page, at the very least, what appears to be your signature
20 is on there. Just so you're aware.

21 MR. DE SALVO: I -- I don't remember this at all.
22 What date -- when was this done? Yeah, but what's the
23 document? Oh, so -- oh, so these are my responses to
24 Todd's attorney's questions. All right. So we're back at
25 Exhibit O, page 7. All right. So what's your question?

1 BY MS. SWAIN:

2 Q What I said was correct, that your position in
3 that letter was that 19B on Form 4797 schedule D reflected
4 primarily lot 506, the Ascot dress, which was sold for
5 \$3.7 million?

6 A Okay. It's at the bottom of the page. Please
7 note that the -- well, that's what this says, yes. Looks
8 like I signed it. So I don't remember specifically about
9 the Ascot dress or any -- that it was sold for that amount
10 or anything. All right.

11 MS. SWAIN: Okay. Thank you. I have no further
12 questions.

13 MR. DE SALVO: Okay.

14 JUDGE LONG: Thank you.

15 We're going to take a break in just a few
16 minutes, but I want to make sure that my co-panelists, if
17 they have any questions for Mr. De Salvo.

18 Hearing Officer Parker, do you have any
19 questions?

20 HEARING OFFICER PARKER: I do have a few
21 questions.

22 MR. DE SALVO: Okay.

23 HEARING OFFICER PARKER: Yesterday, when you
24 weren't present, Mr. Fisher did credit you with being the
25 one to identify that in the late 90s when he returned to

1 California, that it was important to change his resident
2 back to California. And he started filing his California
3 return at that time.

4 MR. DE SALVO: Right, because he had moved. You
5 know, the hotel was toast. It was, you know, not
6 operational. Yeah.

7 HEARING OFFICER PARKER: Yes. And then again,
8 today when you were discussing the change of the residency
9 again in 2010, you testified that you looked at the facts
10 and the circumstances to determine that it was important
11 to change his residency again. What specific facts and
12 circumstances did you take into consideration in helping
13 determine that he would now file a non-resident return?

14 MR. DE SALVO: I'm -- well, my statement I
15 believe was that every year I go -- you know, especially
16 for someone like Todd. You know, our -- our office and
17 the work I've been doing for the last 40 years has been
18 entertainment. And so I have -- I've always dealt with
19 people that moved back to New York, you know, California,
20 like that. So every year I would, for someone I knew that
21 was moving around, I would review with them what they did,
22 and where they were living; and, you know, whether their
23 residency should be then. So I'm sure I did, because
24 otherwise I wouldn't have -- you know, I wouldn't have
25 changed it, you know, without the review. I know it's

1 just a verbal thing.

2 HEARING OFFICER PARKER: Thank you. So you were
3 relying on the conversation you had with Mr. Fisher?

4 MR. DE SALVO: Well, and the fact that he had
5 moved. Yeah. I knew that.

6 HEARING OFFICER PARKER: Okay. And along the
7 same lines, when you filled out the number of days that
8 Appellant spent in California, was that also based on a
9 conversation you would have had with the Appellant?

10 MR. DE SALVO: It would have been if -- you know,
11 I don't remember filling that form out specifically, no.

12 HEARING OFFICER PARKER: I understand.

13 MR. DE SALVO: So if I filled the form out, you
14 know, it would have been.

15 HEARING OFFICER PARKER: Yeah. I don't know what
16 I filed on my tax return last year, so I understand. We
17 don't expect you to remember everything. But in general,
18 it would be based on a conversation you had with the
19 Appellant?

20 MR. DE SALVO: Yes.

21 HEARING OFFICER PARKER: Do you have forms that
22 you have your clients fill out every year; a questionnaire
23 like to update any of their statuses for the year?

24 MR. DE SALVO: No.

25 HEARING OFFICER PARKER: Okay. Thank you. Those

1 are my questions.

2 JUDGE LONG: Thank you.

3 Judge Gast, do you have any questions?

4 JUDGE GAST: This is Judge Gast. I don't have
5 any questions at this time. Thank you.

6 JUDGE LONG: Thank you.

7 And I just have one question. And I'm looking
8 at, for your reference, Exhibit E, page 79, which is the
9 CA 540NR for the 2012 tax year.

10 MR. DE SALVO: Exhibit E you said? What exhibit
11 again?

12 JUDGE LONG: Exhibit E, page 79.

13 MR. DE SALVO: Oh, okay. Yes.

14 JUDGE LONG: And I just want to clarify. So on
15 that year, you did identify both Mr. Fisher and
16 Ms. Hickland as domiciled in California with a residency
17 in Nevada for Mr. Fisher for 2012. Is there an
18 explanation for labeling the domicile as in California
19 during that year?

20 MR. DE SALVO: Say that again? I'm sorry.

21 JUDGE LONG: Okay. Do you have an explanation
22 for labeling their domicile as California for the 2012 tax
23 year? It's on line 1 of the 1-A of the 540NR.

24 MR. DE SALVO: Oh -- oh, yeah. This came up
25 before. Yeah, that was an error.

1 JUDGE LONG: Okay. Thank you. I have no further
2 questions.

3 We have two more witnesses to go, and so I think
4 now is an appropriate time to take a break. We can resume
5 at 11:10. Please close the record for the next
6 15 minutes.

7 (There is a pause in the proceedings.)

8 JUDGE LONG: Ms. Turanchik, who is the next
9 witness?

10 MS. TURANCHIK: Thank you, Judge Long. Henry
11 Cutrona.

12 JUDGE LONG: Thank you. My apologies. I just
13 want to clarify. Did you want to do redirect for Mr. De
14 Salvo?

15 MS. TURANCHIK: No. Thank you, Judge.

16 JUDGE LONG: Okay. Mr. Cutrona, can you please
17 raise your right hand.

18

19 H. CUTRONA,

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

23

24 JUDGE LONG: Thank you.

25 ///

DIRECT EXAMINATION

BY MS. TURANCHIK:

Q Good morning, Mr. Cutrona.

A Good morning.

Q Could you please just spell your name for the record?

A Henry Cutrona, H-e-n-r-y C-u-t-r-o-n-a.

Q And let me just thank you for driving out from Las Vegas this morning to be here. We really do appreciate it.

A With all the traffic, thank you very much.

Q Yeah. Among other things. Can you just briefly describe your educational background?

A Sure. I went to Orange Coast College, and I majored in music and psychology. Prior to that, I went to Glendale College. And then later on past Orange Coast, I went to Fuller Theological Seminary.

Q And, Mr. Cutrona, did you ever serve in the military?

A Yes. I served in the Navy in 1968 during the Vietnam War. And I was a dental technician taking care of the pilots' teeth. So that was -- that was my service.

Q And once you left the Navy, what did you do?

A I'm sorry. What's that?

Q Once you left the Navy, what did do you?

1 A I went back to California where I lived, and I
2 actually moved down to Orange Coast. That's when I went
3 to Orange Coast College and started a band. And this was
4 all during the Jesus movement, and I became -- right in
5 the middle of the whole entire thing, my band became part
6 of the whole thing. That band at the time was called
7 General Face. And then from there, we played with other
8 bands like Love Song. And a couple of guys that are Love
9 Song and myself, we started another band called Noah, and
10 we traveled all around Europe.

11 In fact, we -- we played at the 1972 Olympics
12 where the Israeli athletes were hostages and ended up in
13 Israel living in Israel for a year. And then I came back
14 after that, back to California, put another band together,
15 another revision of General Face. This was all during the
16 same period. And, actually, it took about two-and-a-half
17 years to do that.

18 And was that -- am I answering the question.

19 Q You are. You are. Let me -- let me jump ahead a
20 little bit. Did there become a time when you became
21 ordained as a minister?

22 A What's that?

23 Q Did there become a time when you became ordained
24 as a minister?

25 A Yes. Yes. That happened in -- after I came

1 back, you know, I was with another band. There was a very
2 important thing I should probably say before that, which
3 was I was playing with Debbie Boone. And we had played
4 Vegas and the East Coast, Jersey and stuff like that and
5 ended up in Lake Tahoe. And when I was in Lake Tahoe,
6 Debbie had brought her entourage with her, her friends and
7 stuff like that; and one of them happened to be Todd. And
8 I met Todd backstage that day. We were playing with Paul
9 Williams at the time.

10 On the way back on the airplane, getting on the
11 airplane, Todd is sitting there by himself. I had already
12 seen him backstage. I sat down next to him, reintroduced
13 myself to him. Now, this is in 1975, I think. And he
14 looks at me, and we started talking. He goes, "You know,
15 there's going to be a time when we're not going to be
16 using tapes anymore." Because at the time there were
17 like -- there were 8 tracks and cassette tapes.

18 And I said, "What are you even talking about?"

19 He goes, "No. No. No. No more tapes anymore.
20 It's just gonna be on a magnetic device." This was way
21 before. These were things that were invented.

22 And I went, I'm gonna work with this guy. And I
23 was really thrilled, and we never stopped working together
24 from that all the way until right now. So --

25 Q So let me just confirm. Did there come a time

1 where you became ordained --

2 A I'm sorry. Yes.

3 Q -- as a minister? Kind of jump back to that
4 story.

5 A Yes. I'm sorry. And then right after that
6 happened, we worked together, actually, on -- he had a --
7 a recording truck called "Smoke," and we did a lot of
8 recording. But, basically, he was -- he was doing a lot
9 of production. He was, like, producing different shows
10 and stuff like that. And I got involved with a church in
11 Glendale. And through that church in Glendale, I was
12 ordained.

13 Q So as has been apparent already from your first
14 story, that you and Todd are incredibly close, and that
15 has come out in testimony over the last day and a half.
16 Do you have any reason to lie for Todd sitting here today?

17 A Do I have any what?

18 Q Any reason to lie for Todd sitting her today?

19 A Lie for Todd?

20 Q Lie for Todd?

21 A There's nothing to lie about.

22 Q Once you and Todd met -- and I know this is going
23 to be difficult to separate out the work and the personal
24 because you guys have had a very long-term relationship.
25 But can you sort of discuss some of the first work things

1 that you did together?

2 A Sure. I think the -- he had a house on
3 Cederbrook in Beverly Hills. And I remember the very
4 first time I went over there, he -- he had carved out a
5 little area underneath the house and made that his
6 recording studio, and I met a couple of the people he was
7 working with. And I believe the first thing we ever did
8 together was in the recording truck up in Oxnard, and I
9 believe it was with Terry Reed. And that was the first
10 thing we had ever done together. And from then, we kept
11 moving on to other little projects.

12 Q Was that your first experience working with sound
13 engineering?

14 A No. No. I had done -- I had done that 'cause I
15 was majoring in music at Orange Coast College. And so I
16 had -- I had a little recording studio, and I was
17 recording by myself. But I was enhanced by the whole
18 thing because he brought it up on a more of a professional
19 level.

20 Q But you were an expert in your own right in sound
21 engineering?

22 A Well, I wouldn't say that. I mean, that's a
23 strong word in this business.

24 Q Don't be bashful.

25 A Yeah.

1 Q Can you talk about -- I'm gonna try -- I'm gonna
2 try and put some time frames on this just so we can make
3 sure your testimony keeps moving. 1994, do you recall
4 what happened specifically in that year around the
5 Northridge earthquake?

6 A 1994 was the big earthquake in -- in Reseda. And
7 that was the year that Todd called me, and he said, "What
8 are you doing?"

9 And I was pastoring a church called "The Hiding
10 Place" for -- since 1980. Both of us -- because what had
11 happened -- can I back up a little bit?

12 Q Of course.

13 A Okay. So 1980 comes along, we started a church.
14 There's was -- it was basically a bible study with 20
15 people, but it grew and grew and grew, and Todd showed up
16 at the house. It was somebody's house. And people
17 couldn't even get in through the front door anymore, and
18 he said this is ridiculous. My mom's got a studio. Let's
19 go over to the studio, so we did. And the studio, if you
20 don't know what it looked like, but it had many rooms,
21 maybe ten rooms, and they were different sizes for dancers
22 and for people to rehearse.

23 And we started out in a fairly small one, but it
24 kept growing and more people and more people. And
25 finally, we ended up in the biggest studio that was in

1 there, and we couldn't fit anymore people in it. And we
2 ended up at the Wilshire Theater. But let me say one
3 other thing too. In the meantime, he started this show
4 called "Night Light." And Night Light was a very big
5 productional thing, and we gathered a lot of people. By
6 that time, there was maybe 6 or 700 people now at the
7 church. And we gathered a lot people and did a lot of
8 production with that.

9 In the meantime, Todd had been ordained, and we
10 basically combined our talents together and -- and made
11 this church go in the right direction. Neither of us
12 liked the religion side of the church. We were very
13 against these big mega-churches that were forming, and
14 people didn't know what they were doing. And all they
15 cared about were buildings and money and money and money
16 and money; and we didn't really care about the money. We
17 wanted people to authentically follow Jesus. Our faith
18 was very strong in that area, and the -- and the
19 musicianship, because of the -- the awareness of our
20 personal musicianship, we wouldn't let people get up in
21 front of the church. They just couldn't learn how to play
22 guitar last week and get up and play.

23 We actually -- there's a scripture in the bible
24 that talked about King David only bringing these excellent
25 musicians in front of everybody to worship God. So we had

1 likes of one of the guys in the Eagles, Bernie Ledon. We
2 had one of the guys in Blood Sweat and -- yeah, Blood
3 Sweat and Tears. He was in the thing. One of the guys in
4 Ambrosia, the drummer in Ambrosia.

5 And we had -- I'm not throwing names around. I
6 just wanted to show you that this church was more focused
7 on -- on being -- being authentic and -- and following the
8 scriptures as it was to like, let's -- let's get
9 everybody's money here, and grab all this money and do
10 that with it. So that's what we did, and Todd was an
11 incredibly important part of the whole entire thing.
12 So --

13 JUDGE LONG: Excuse me. If we could just -- I
14 want to make sure we're staying focused. If you could
15 just connect this somehow to the -- what's in question
16 here with respect to the residency --

17 MR. CUTRONA: So I was getting off track.

18 JUDGE LONG: -- and the materials.

19 BY MS. TURANCHIK:

20 Q Can we get back to --

21 A Thank you.

22 Q -- back to my question on 1994 and what happened
23 in that year?

24 A So '94, yes. He called me up and said, "What are
25 you doing now?"

1 And I said, "Nothing," because I was taking a
2 sabbatical from the church.

3 And he said, "Well, my mom just bought a hotel in
4 Las Vegas. Come and help me -- would you come and help me
5 run the hotel?"

6 And I went, "I have no idea how to run a casino
7 in Las Vegas."

8 He said, "Yeah. You're right, but you do know
9 how to deal with people and handle people, and there's
10 going to be a lot of people here."

11 So I went to Las Vegas, and there were -- he made
12 me the general manager. And basically, the general
13 manager was the guy that went around to each one of the
14 departments and made sure everything was running
15 correctly. And so I was doing that for a while. And then
16 the whole concept of a museum was -- was being built
17 inside this casino. And I didn't know anything about
18 editing at the time, but I did know a lot about technical
19 stuff. So he asked me if I could do that or if I wanted
20 to do that, and I said sure. So there was an editing
21 room, and I sit -- sat in the editing room every day.

22 And basically for your understanding, what it
23 was, was I had to go inside of movies, like, let's say,
24 "Singing in the Rain." I'd have to go inside of "Singing
25 in the Rain," and I'd have to look at our costumes that we

1 had over here. And there was a couple of costumes from
2 Debbie on -- in that, and I had to put the clip of her
3 dancing in that costume with our costume and put them
4 together. Because the -- the museum that we were building
5 had revolving stages on it, so it was very well put
6 together. And you would see it.

7 The curtains would open up, and you would see
8 costumes, but on the right-hand side and left-hand side
9 you'd see more costumes, and then there would be a screen
10 on top. So you'd look at the screen, and then you'd look
11 at the costume and you'd go, oh, those are the costumes
12 that were -- that they were playing. So that was my main
13 job at the casino.

14 Q So there -- obviously, we are aware there came a
15 time where that hotel casino had to file for bankruptcy.
16 What happened, if you know, to the memorabilia at that
17 point?

18 A After -- after the -- it went in several
19 different places as far as I know. I didn't -- I wasn't
20 privy to the whole thing. But some of the high-end pieces
21 were at Debbie's condo. Some of them were in Creston.
22 Some of them were at DR Studios, which is Debbie Reynold's
23 studio. And pretty much that's where all the three
24 places. I think Carrie took some things, but I didn't
25 understand -- I didn't know what she'd take. And -- but

1 that was about it.

2 Q But, at that point, you were aware that there was
3 a specific attempt to separate out the memorabilia?

4 A Well, yeah. That's what people -- that's what
5 they had. Yeah.

6 Q Now, this museum has closed. What happens next
7 in terms of trying to find a new museum and trying to find
8 a new home?

9 A Right. I think the first place that came up that
10 was big was Hollywood and Highland. And without boring
11 everybody, Debbie pitched the whole idea. They loved it.
12 Everybody wanted it, and thought for sure this is going to
13 happen. It belonged here, and it fell through. Then the
14 second one that came up that was big was Pigeon Forge
15 where Todd had spent many conversations and then went out
16 there, I believe, with Cat for awhile. And he had
17 designed this beautiful thing, and that one didn't work
18 either.

19 Q Now, during this time frame, were you still
20 involved with helping them to catalog and do these video
21 clips that you were speaking of involved and any of that
22 kind of work?

23 A Yes. Yeah.

24 Q Now, let me ask you something very specific. We
25 were just discussing Todd and Cat's trip to Tennessee,

1 and -- and, very, you know, probably on multiple
2 occasions. Did there come a time where you specifically
3 were holding assets of Todd's while they were traveling?

4 A Yeah. The Ascot dress because I was watching
5 their house on Greystone -- was kind of a wide open --
6 very unsecure place. So the Ascot dress came to our
7 house, which was around the corner from their house, and
8 we just watched it for awhile, and then it left.

9 Q And in terms of some of the other high-end family
10 pieces -- and I am talking specifically about the Subway
11 dress because it's become representative for the family.
12 Do you know where that dress was maintained and why?

13 A Yeah. It was maintained at Debbie's condo. And
14 why it was there, probably because Debbie, at that time,
15 was on the road 48 weeks out of the year, and then she was
16 doing movies and TV appearances. It's a lot of stuff. I
17 mean, she was always in demand. And she -- I believe she
18 left it there because that was probably the most secure
19 place you could leave something like that. And there
20 were -- I think there were some other Marilyn dresses
21 besides the Subway dress there.

22 Q And why do you say it was the most secured place?

23 A Probably the main reason is I went there one
24 time, and it was like Fort Knox. You can't even get into
25 the place. You -- you drive in, and they question you

1 immediately when you bring the car in. And that was the
2 begin -- that was the easy part. Then you walked into the
3 lobby, there was a security guard on each side where the
4 elevators went up. And you had to go to the front desk
5 and talk to them about who you were and why you were here.
6 You had to give the -- the name of the person that was --
7 you were going to see. You had to get by the security
8 guards to get to the elevators to go up. So it was pretty
9 button down. And I -- I think if I had the opportunity,
10 that's where I would stick my stuff too because you're not
11 gonna get through these people, you know.

12 Q Now, let me bring us up to the year of -- the
13 year prior and the year of the auction. Did you have any
14 involvement with Todd in preparing the memorabilia for
15 auction?

16 A To the point of still separating clips, taking
17 pictures -- 'cause he had put together a beautiful
18 brochure about the whole thing. So I was still doing
19 basically the same thing. Only instead of doing it for a
20 museum, now I'm doing it for the auction.

21 Q And were you aware of the family memorabilia
22 being brought into California specifically for that
23 auction?

24 A Not really. I wasn't really privy to the whole
25 thing. No.

1 Q Did you spend time in Creston at all working on
2 the preparation for the auction, or do the video, sort of,
3 editing elsewhere?

4 A Yeah. I was -- I spent a lot of time in Creston
5 in different parts of the -- of the years. It was like
6 years that were -- I was up there. And -- and when that
7 happened, yes, I went up there and -- and worked on the
8 museum -- on the auction.

9 Q Okay. I wanna circle to the personal side now
10 and talk about -- first, were you familiar with Todd's
11 first wife Christi?

12 A Yes, very much.

13 Q And why was that?

14 A Well, she came to the church, and I first met
15 Christi at the church.

16 Q And was there a specific reason why you continued
17 a relationship with Christi aside from Todd?

18 A No. Just she was just one of the people that
19 came to the church.

20 Q Okay. Let me take a step back then. Did there
21 come a time where you became sober adviser for many, many
22 people?

23 A Supervisor?

24 Q Sober adviser. AA. A mentor.

25 A Oh, I guess -- I guess that's the way they looked

1 at it, sure. Because when you're pastor, you're
2 constantly counseling people and helping them as much as
3 you possibly can.

4 Q And did there come a time where you were
5 counseling Christi with some of her alcohol issues?

6 A A little bit, yes.

7 Q And were you aware -- you were obviously then
8 aware that alcohol was an issue for Christi?

9 A Yes. But I didn't know to the degree of how deep
10 it went.

11 Q And how would you describe Todd's relationship
12 with the ranch towards the end of his relationship with
13 Christi and then after her death?

14 A And after her death?

15 Q Yes.

16 A Probably the same way that I saw him before he
17 got the ranch, which was, why are you buying a ranch up in
18 Northern California? Because all I ever knew Todd as was
19 a producer. He produced movies. He was a recording
20 engineer. These are the things he did. He built things.
21 He built, you know, studios and stuff like that. And so
22 from him doing that to all of a sudden going, hey, let's
23 put on a straw hat over here and go farming. It was like,
24 it just didn't make sense to me before it happened. And
25 then it didn't make sense to me after it happened.

1 Because my big question is, you know, as sad as
2 it was to lose Christi, you know, what are you going to do
3 now? You know, are you going to come back -- come back to
4 us, you know. And "us" was the -- was all the people that
5 he had left, you know. So I didn't know. I didn't know
6 why. I just knew he wasn't a farmer. He wasn't a rancher
7 or a farmer. He was an engineer. He was a producer.

8 Q What did you believe what happened with the ranch
9 after Christi's death?

10 A What I think was going to happen to it? I
11 probably would call him. I don't know. Whenever I talked
12 to him I'd go, "So are you going to sell the ranch?" It
13 was a lot of, like, are you going to sell the ranch and
14 stuff, you know. Because that's what I thought he wanted
15 to go in that direction.

16 Q And when you use the phrase "come home to us,"
17 were you talking in Vegas?

18 A Yeah. At the time, I was. Yeah.

19 Q So let's talk about -- 'cause we've already heard
20 Todd and Catherine's version of their reintroduction. I'd
21 like to hear your version of it because you were so
22 central to that moments. Can you describe, first seeing
23 Catherine again after -- after many years, and then the
24 reintroduction between Todd and Catherine?

25 A Oh, well, what had happened was I was on Facebook

1 one day, and I think I saw her picture. And I was, like,
2 Catherine Hickland. My gosh, I haven't seen her for
3 years. And somehow we connected. I can't remember. I
4 think we wrote each other, you know, little texts on
5 Face -- Facebook or something like that. And she said,
6 "I'm" -- "what" -- "what are you doing?"

7 I said, "I live in Vegas."

8 She went, "Vegas. What are you doing in Vegas?"

9 I told her what I was doing in Vegas, and she
10 said, "I just was" -- "I just left that place. I just
11 went to a book signing."

12 I went, "Where?"

13 And it was Barnes & Noble, I believe, which was
14 very close to our house. And I said -- and she said, "I'm
15 coming back to do another one."

16 I went, "Great."

17 So she -- she came back, and she said, "Will you
18 meet with me there? Bobby is going to be there with me."

19 Bobby is her brother.

20 So I said, "Sure."

21 So we went -- I went to the signing, and we
22 were -- we were just going to have some coffee afterwards,
23 but she ended up signing so many autographs that we didn't
24 time to go. So I said, "Why don't you come to my house.
25 My wife would love to meet you."

1 So they came to my house. And when they came to
2 my house, she -- she kind of looked around and went, "Oh,
3 my gosh. This is a beautiful community and a beautiful
4 house. I mean, are there any other houses like this for
5 sale?"

6 And I went, "As a matter of fact there are,"
7 'cause it was the low part of the -- the real estate
8 business.

9 And so she went back to New York and then came
10 back. And this is fuzzy, but I think what happened is
11 she -- when she came back the second time, she stayed at
12 the Trump Towers for a while. And I went over and saw
13 her. I think my wife and I went over and saw her, and I
14 said, "What are you doing here?"

15 And she was like, "Well, I'm staying here, and I
16 want to move here."

17 And I said, "Well, why don't you just move in
18 with us for a while?"

19 So she did. So she came and stayed at our house
20 for a couple of months. And that parlayed into her end up
21 buying the Greystone Spencer house, and then we started
22 working together. Yeah.

23 MR. FISHER: That's the picture.

24 MR. CUTRONA: Yeah. Yeah. Then -- then we
25 started working together. And she had told me, she said,

1 "I'm working on a" -- "I'm working on a hypnotic show that
2 I want to put together in New York. Will you help me with
3 that?"

4 And I went, "Sure."

5 So -- so she came to my house. I have a
6 recording studio down there, and we started working on
7 that. And, at the same time that was happening, Debbie
8 had called me and she wanted me to help her work on a
9 Christmas show that year. And so I'm dealing with Debbie,
10 and I'm also dealing with Cat, who is sitting next to me.
11 And one day, while we were working, the phone rings, and
12 it was Todd. She didn't know that. And he's asking me
13 what's going on with Debbie's show. He was interested, of
14 course. He was involved with the Christmas show too.

15 And I started to explain to him what was going on
16 with the show and hung up. No. He asked me, "Who you" --
17 "what else are you doing?"

18 And I said, "I'm working with Catherine
19 Hickland."

20 And he said, "Catherine Hickland?"

21 I said, "Yeah. Do you remember her?"

22 And he said, "Yeah, from the 'Hiding Place'."

23 And I went, "Yeah."

24 So he's looking up Catherine -- Cat's Facebook
25 page or whatever, her -- her website. And he sees her,

1 and he goes, "Wow. She's very pretty, isn't she?"

2 And I went, "Yeah. She's very pretty."

3 And that was about it, and he hung up. And that
4 was that. And she gets -- I get off the phone, and she
5 says, "Who was that?"

6 And I said, "Todd Fisher."

7 She goes, "Todd Fisher from -- from the Hiding
8 Place? Debbie Reynold's son?"

9 And I went, "Yeah."

10 And so she was going, "Oh, wow," you know.

11 And so things started like connecting, and I had
12 no idea what was going on. I mean, this is kind of a
13 weird story. Because when you're involved with somebody
14 that you have no idea what's going to happen, you just
15 watch this thing because you don't have any -- you don't
16 have any control over it at all. And so the next thing I
17 knew is we weren't working together for, like, maybe a
18 week, and Cat comes back in the -- into the studio to work
19 with me. And she's on the phone whispering in the
20 background. I'm working on her hypnotic show or
21 something, and she gets off the phone.

22 I said, "Who was that?"

23 And she goes, "That was Todd."

24 And I went, "Oh, okay. So now you -- so you and
25 Todd are talking all the time together."

1 And she said, "Yeah," you know.

2 And this sparkle and everything started
3 happening. I went okay, whatever. And then the next
4 thing that happened as I believe she either hurt her --
5 I'm trying to remember these significant things. I think
6 she either hurt her foot or her ankle or something like
7 that. Her foot was in a boot. She had a -- I think she
8 had a crutch. And while all that was happening, Todd
9 wanted to come down and see her, and she didn't want that
10 that to happen, and I understood it. And, you know,
11 'cause of, you know, of what she looked like. He didn't
12 care.

13 And so he just said, "Well, I want to come down
14 to see you."

15 She went, "Well, I'm kind of uncomfortable with
16 that."

17 And he went, "Well, I'm just going to call up
18 Henry and -- and come down and see him," because he knew
19 that she lived around the corner anyway. So he did that.
20 He comes out. The van drives up in front of my house or
21 the motorhome -- excuse me. Drives up in front of the
22 house, and we're -- I hopped into the motorhome and found
23 out she was going to come over.

24 So in the back of the motorhome is a -- a camera,
25 and I live on a cul-de-sac. So there's only -- there's

1 only one way to get into the street. And he -- and I had
2 known Todd almost 50 years by then. And he was like --
3 I'd never seen him do this before, but he was like a
4 little nervous kid that was like in -- in this -- and
5 we've all gone through this, everybody in this room --
6 just giddy kind of love thing that was like churning up
7 inside of him. And I could see it. I was like, I'd never
8 seen this before.

9 And we were playing guitars. And every time a
10 car would come up -- we'd see it on a screen in front of
11 us -- he would go, "Is that her? Is that her?"

12 "No. That's not her," 'cause I knew what her car
13 looked like.

14 "Is that her?"

15 "No. That's her either."

16 "What about that? Is that her?"

17 "Nope. That's not her."

18 Finally, her car drives up and pulls up in front
19 of the motorhome. She gets out, limps -- limping out,
20 and -- and he gets out of the motorhome. And I watch this
21 thing that -- that had started in my studio with a phone
22 call. I watch this thing mature right in front of me, and
23 they'd never seen each other. They'd just been talking on
24 the phone. And he gets out of the motorhome, and she goes
25 up to the front of the motorhome where the stairs are, and

1 they give each other a gigantic hug and big kiss. And I
2 went, "Wow. That is just" --

3 And if you don't mind me just saying this one
4 thing, I just want to back up a little bit. After Christi
5 died, when you have a -- a close best friend, when -- when
6 that best friend loses a significant other like that, you
7 automatically -- if you love your best friend like that,
8 you care for the person and you go, "You gonna be okay?
9 Okay, you know."

10 And so I had gone to the house after Christi died
11 after the ceremony that we had for her and everything. I
12 remember sitting in a -- in a jacuzzi with him and just
13 looking at him and going, "Are you going to be okay with
14 this whole thing?"

15 And he was like very quiet. It's not like Todd,
16 as you know. He's just very quiet and -- and -- and
17 docile. And I even think he was crying a little bit, and
18 I'd never seen him cry. And so I left that -- this --the
19 ranch that day with this -- knowing that Todd had this
20 real empty, empty thing inside of him. And I was like,
21 God, I was hoping -- and people -- some of his best
22 friends were also talking to me. Did you talk to Todd?
23 Whatever. How's he doing? All that to say that there was
24 this cavity, this empty thing inside of his system.

25 And so back to the motorhome. So when he got out

1 of the motorhome that day and hugged Cat, I -- I saw
2 something. I saw this almost like a completion of -- of
3 that empty feeling. Just it -- it was filled. It was
4 filled back up, and I was like so happy for him at that
5 moment. And, you know, I just let it be. I didn't
6 interrupt anything. And I said, "Come on. Let's go into
7 the house and get some food."

8 So they walked into my house, and sat down at the
9 table. We had some spaghetti that night. Neither of them
10 liked the tomatoes, and they found out at the table I
11 don't like tomatoes. I don't like tomatoes either. And I
12 thought that was think kind of cute. They went down into
13 my theater, and they sat there for -- I don't know --
14 maybe an hour or so with Todd's dog Yippi. And then they
15 got up and left and said goodbye. Todd hopped into the
16 motorhome. She hopped into her car and went over to
17 the -- the Grey Spencer house, which was around the corner
18 from us. And that was it.

19 Todd -- I think Todd stayed there for like a few
20 months. The only thing that happened after that that was
21 significant is the HOA there will not allow you to have a
22 motorhome parked in your driveway for more than, I think,
23 two days. Get it out. So he had to get the motorhome --
24 which was really annoying to him -- and bring it down to a
25 place called The Oasis, which is on that street, Blue

1 Diamond. And that was it. And then they stayed -- do you
2 want me keep going?

3 Q Can you just let me, for a panel, put a -- can
4 you put a timestamp on roughly when that first meal
5 occurred, of them getting out of the motorhome and having
6 dinner with you and your wife?

7 A 2000 -- well, I think we did the show -- if I'm
8 correct, I think we did the -- the New York show 2000 --
9 August of 2009. So it was around that same time era.
10 Okay. And then he stayed there at the -- at -- at Cat's
11 house for an awhile. And then -- and then I think he
12 said, you know, like, "Hey, nice place, but we -- I got to
13 get something bigger."

14 And they moved to a -- to a smaller house. And I
15 can't remember the name of the street. It started with a
16 "D," Dorshet [sic] or something. I can't remember the
17 name of that street. But they moved into there for about
18 a year as they were -- yeah.

19 MR. FISHER: There it is.

20 MR. CUTRONA: As they were planning and looking
21 for a bigger house. The house -- the house is -- in our
22 community, there's a small version, which was the Dorshet
23 [sic] house. Then there was a larger version, which was
24 the Grey Spencer house. And -- but Todd needed something
25 bigger than that. He was used to the ranch and big. And

1 so they kept looking and looking and looking and finally
2 found the Joe Rae compound.

3 BY MS. TURANCHIK:

4 Q At that point in time, was there any doubt in
5 your mind that Todd was moving permanently to Las Vegas?

6 A No. None at all.

7 Q There have been some questions raised about
8 Debbie Reynolds and -- Debbie Reynolds and her physical
9 location during these years in issue and then after. What
10 can you tell us about where Debbie sort of was physically
11 located during these 2011, 2012 years, if you remember? I
12 know it's a long time ago.

13 A Well, from what I remember is Debbie was all
14 around. She was always moving. She was always
15 entertaining and going from venues to the next. And also,
16 she was doing movies at that time. She was also doing a
17 lot of TV appearances at that time. And so she was always
18 on the -- on the road. That's all I remember about
19 Debbie. Always on the road and never -- if she landed,
20 she might land in -- in her house in Burbank or North
21 Hollywood. Sometimes she would be out with Todd in Vegas
22 at that time and just keep moving around, moving around.

23 And -- and I didn't really see -- excuse me. I
24 didn't really see her settle down and be happy and solid
25 again until they bought the Joe Rae house, and they built

1 a -- a beautiful little -- I don't -- living place. It's
2 just -- it was outstanding. And that's where she stayed.
3 She loved that place 'cause she loved -- from what I
4 remembered about Debbie all the time, she always loved
5 being around people. She didn't like being alone. She --
6 she liked, you know, the commune thing, you know. And
7 so --

8 MS. TURANCHIK: Henry, I think I am done with
9 questions for you. I will see if we require any redirect.
10 Thank you.

11 MR. CUTRONA: You're welcome.

12

13 CROSS EXAMINATION

14 BY MS. SWAIN:

15 Q Good morning, Mr. Cutrona.

16 A Hi.

17 Q My name is Ellen Swain. I represent the
18 Franchise Tax Board. I just have a couple of questions.
19 I just wanted to make sure that you -- I understood
20 your -- your testimony, that you assisted with preparation
21 for the auction?

22 A Well, in a sense of getting pictures, taking
23 pictures out of movies and getting those pictures and
24 having them put into a -- some sort of a presentation for
25 the people that were going to the auction and looking at

1 it and turning pages and going, oh, look at this item and
2 that item. That was about all I did.

3 Q So you helped with the catalog?

4 A Yes, the pictures of the catalog.

5 Q And you were in Creston when you were helping
6 with the catalog?

7 A Both places.

8 Q And you understood that the full collection was
9 in Creston to prepare for the catalog -- to prepare for
10 the auction?

11 A I don't know where the -- at that time, I don't
12 know where the full -- where all of the costumes were
13 'cause they were around. I just know that they were
14 scattered a little bit.

15 Q And that -- and that everything that was sold was
16 in Creston prior to the auction to prepare it for the
17 auction?

18 A I don't know -- I don't know if they all came
19 from Creston. I know Debbie had the Subway dress, and
20 I -- which I went up and saw. So she had some high-end
21 items in her place in her condo in Vegas, and -- but I
22 don't know. And there was other things that were in her
23 studio in Burbank. So I don't know if they brought stuff
24 down from there. She brought stuff over there. People
25 were always picking things up and bringing them to other

1 places. So I can't sit here and say they were all in
2 Creston, and they all came down from Creston. I don't
3 know that.

4 Q Right. And it sounds like their -- that you
5 weren't really involved with inventorying items and
6 knowing where everything would be?

7 A No.

8 Q That wasn't your thing?

9 A No.

10 Q You were -- you were an electronics person?

11 A I was what?

12 Q You were and electronics person?

13 A Well, yeah. But if he said, hey, you know, we're
14 getting ready for this and that and that. We need to,
15 like, get some pictures together for the catalog over
16 here. Can you help me? Sure. And sometimes I would do
17 that in my studio in Vegas, and sometimes I would go up to
18 the ranch.

19 Q Right. So you weren't somebody who worked with
20 clothing?

21 A Clothing?

22 Q Costumes?

23 A No.

24 MS. SWAIN: Okay. Thank you so much.

25 JUDGE LONG: Ms. Turanchik, did you want to

1 redirect your witness?

2 MS. TURANCHIK: No. Thank you.

3 JUDGE LONG: Thank you.

4 Hearing Officer Parker, do you have any
5 questions?

6 HEARING OFFICER PARKER: I have no questions.
7 Thank you.

8 JUDGE LONG: Thank you.

9 Judge Gast, do you have any questions?

10 JUDGE GAST: No questions.

11 JUDGE LONG: I also have no questions.

12 I want to make sure that we are all aware of the
13 time. We are running a little short. We want to make
14 sure we have time as well for cross-examination and also
15 for Franchise Tax Board to make its presentation. So if
16 we can make sure that we're staying focused for the next
17 witness as to, like, the relevant years on appeal, that
18 would be helpful.

19 And if you could please call your next witness,
20 that would be great.

21 Before we do that, can you state your name for
22 the record?

23 MR. WALECKI: Yes. My name is Fred, F-r-e-d, or
24 Fredric, F-r-e-d-r-i-c, Walecki, W-a-l-e-c-k-i.

25 JUDGE LONG: Thank you. And, Mr. Walecki, now if

1 you could raise your right hand.

2

3 F. WALECKI,

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

7

8 JUDGE LONG: Thank you.

9 MS. TURANCHIK: Fred, because this is being
10 transcribed, if you could speak directly into the
11 microphone so she could hear you, that would be great.
12 And even if you could look at her when responding, instead
13 of me, it might make it a little easier for her to take
14 down your words. Okay. Fred, let's --

15 MR. WALECKI: Are saying that I have a speech
16 impediment?

17 MR. FISHER: Yes.

18 BY MS. TURANCHIK:

19 Q Would you like to explain to the panel what --
20 what happened, why you have this -- this speech
21 impediment?

22 A Well, it's kind of a long story, but smoking
23 didn't help. I stayed with my house in Malibu in a big
24 fire. And after that, I started speaking like Bill
25 Clinton after the election, you know, the very low horse

1 voice. And it got more and more progressive. And around
2 2000, I -- it was -- it was hard to understand me. It
3 was -- it went from sounding like Marlon Brando in the
4 movie about the mafia and all that, to really having a
5 hard time talking.

6 So I've been going to Mayo Clinic for every three
7 months for two years. And finally they said, you know,
8 you're going to have to have a full laryngectomy. And I
9 had a two-year old and six-year old, and I was offered
10 chemotherapy and radiation and all these alternatives.
11 And I kept remembering Mayo saying you need a full
12 laryngectomy, and that was the safest thing to do is just
13 to remove that all.

14 It was a hideous operation, and it was the kind
15 of thing where they -- they cut down here and then cut
16 down here and bring your head back like a Pez machine, and
17 they remove everything. And anyway, my six-year old is
18 alive and well, and he's now 30 -- 31. And my daughter is
19 no longer two-years old. And she is working for the
20 Atlantic Magazine.

21 Q Thank you, Fred.

22 A Her life is good.

23 Q Let's jump up a bit. Can you just explain
24 briefly your family's history in music and relationship to
25 Westwood Music?

1 A Absolutely. I grew up as a music store brat, you
2 know. In other words, you know, I would learn an
3 instrument until I got bored and then learn another
4 instrument. Anyway, when I was -- when I graduated from
5 high school, my dad started to become ill. And I went to
6 city college for a short time just because that's what I
7 was supposed to do. I didn't -- I never thought about
8 taking over the music store. But it was a full-line music
9 store just south of the UCLA. It was the place that, you
10 know, musicians went. My father sold rare violins and
11 harps.

12 When all us kids were born, Harpo Marx gave us
13 each -- gave our mother one year diaper service. You
14 know, they -- my dad was very involved with the Symphony
15 Musicians and so on and so forth. And when he died, I was
16 at the -- almost 20, and I couldn't sell rare violins, and
17 I couldn't sell harps. And I decided, since it was a folk
18 music place next door to the music store -- I had
19 befriended a lot of the folk musicians. I went to high
20 school with Bonnie Raitt. I went to high school with
21 Steve Conn, Johnny Mercer's kid, Jeff Mercer.

22 And, you know, the idea of being around the music
23 business where I was comfortable with -- and so later on
24 when I started to meet people that were just starting out
25 like Jackson Brown, we became very close. That is around

1 the time that I met Todd Fisher through Jerry Beckley from
2 America. And I got a call from Beckley and he said, "Hey
3 have you heard about this guy Todd Fisher?"

4 I said, "Yeah. I have. He's buying a lot of
5 good microphones."

6 And he said, "Yeah. He's got a soundtrack and
7 they're having kind of like a party."

8 I went, "Well, let's go to the party."

9 And sure enough it was gorgeous, you know -- you
10 know, the soundtrack. It was all top drawer. You know he
11 had Spectrosonics board that sounded fabulous but
12 periodically caught fire, and the beautiful microphone
13 array, and he was good at what he did.

14 Q So then let me stop you here because I don't want
15 to run out of time on this. Did there come a time where
16 you started work with Todd with the museum -- with the old
17 museum in Vegas?

18 A Oh, yeah. I mean, I worked with Todd on almost
19 every project that he had, one way or another, putting in
20 the sound system at the Navel Weapons Center. I mean, so
21 when the -- when the Debbie Reynolds -- when Debbie showed
22 up, I mean, it was remarkable. She was such a remarkable
23 person. You know, she showed up on the correct day for
24 this auction, but everybody else got the day wrong. So
25 she bought the hotel, the Battle Wheel, as I remember. It

1 was -- it was a coup.

2 And, of course, Todd was always the -- the one
3 person that Debbie and Carrie could count on for
4 everything no matter what. Now, he could do anything; I
5 mean literally anything. He worked at -- to help me at
6 my -- what I was selling, high quality audio gear as the
7 warranty station for a very well-known recording equipment
8 company. Anyway, we supplied everything for the Debbie
9 Reynolds hotel. I mean, anything audio we did it. If I
10 didn't have a franchise for it Todd would do his Todd
11 thing, and he would get it. Todd had the ability to talk
12 to a lot of people, you know.

13 Case in point, one day he decided he wanted to
14 talk to the captain of the Atomic Aircraft Carrier
15 Enterprise. So Todd starts at the first place, and he
16 ends up on the bridge with the captain of the Enterprise.
17 So Todd could get me all these franchises that, if I had a
18 difficult time, he would get them. And we had a fabulous
19 time. I loved that hotel, man.

20 Q And, unfortunately, we know that the hotel did
21 come to an end. Did you then move on to work with Todd on
22 the Pigeon Forge museum in Tennessee?

23 A I did go to Pigeon Forge. I -- I actually
24 brought my family there, and we looked at all the
25 different designs, et cetera, et cetera. And I had a

1 claim to the place. I was going to have a music store
2 across from the museum, and all this was going to be
3 great. And then, of course, that was a the time where all
4 the banks went upside down.

5 Q On that note, can you explain your understanding
6 of sort of what happened with the finances between -- or
7 behind the museum in Pigeon Forge?

8 A Well, I mean, everything came to a screeching
9 halt. The idea of having the museum there was no longer
10 possible. So --

11 Q What do you think the impact was on Debbie and on
12 Todd personally when that blew up, when that dream ended?

13 A Well, it -- it was really shocking because that
14 would have been the ultimate place. I mean, you know,
15 it's where Dollywood was, and they have millions of people
16 that go to this weird little town, Pigeon Forge. I mean,
17 it's unbelievable. I mean, you -- you just can't -- there
18 is -- there are so many hardware and machinery stores
19 because the husbands go to the hardware and machinery
20 stores and gun shops. And the women go to see the shows.
21 I mean, it is a strange place, but it would have been
22 fantastic.

23 Q Can you --

24 A I was excited, man. I was ready to bail, and
25 just go to Pigeon Forge.

1 Q Can you explain your personal relationship with
2 the Fisher/Reynolds family? How close were you?

3 A I thought I was pretty doggone close. I loved
4 Debbie and Debbie loved me, and I got the biggest kick out
5 of Carrie. Man, she was the smartest woman I had ever
6 met. She was unbelievable. I mean, she just -- I mean,
7 was such a brain. And, you know, the family was really
8 close.

9 Q And can you talk a little bit -- I actually
10 messed up your testimony and Henry's earlier. Can you
11 talk a little bit about Todd's first wife Christi and your
12 relationship with her?

13 A I loved Christi. Todd loved Christi. And sober
14 Christi was amazingly wonderful. I mean, she -- you know,
15 she was definitely a horse woman. And, you know, like,
16 but she was a periodic alcoholic.

17 Q And can you explain why that was relevant
18 particularly for you?

19 A Well, it was relevant for me because all my
20 friends were -- were either getting into horrible trouble
21 in '79, or they were dying like Little George, Little Feat
22 died. Gram Parsons who was a close friend, he died. And
23 i had a number of things happen in my life.

24 Q Fred, I'm sorry. Can you just say those two
25 names again.

1 A Oh, Gram Parsons. Yeah. He -- he was well known
2 for that time where the body was stolen after he died and
3 taken out to Joshua Tree and burned. You know, that was
4 quite the story. But anyway, and Lowell George, you know,
5 leader of Little Feat, great song writer, great guy, and
6 he died. And I was walking down the ramp to the -- to the
7 Forum, and Graham Nash was walking up with his then
8 girlfriend, soon to be his wife, Susan. And he looks at
9 me, and he goes, "Fred, how is your health?"

10 And few weeks later, you know, Linda Ronstadt
11 said, "You know, Fred, you should takeover my beach house
12 while I'm on the road. You've been turning -- you've been
13 burning the candle at both ends. You need to just cool
14 down."

15 And the Graham Nash thing and then Linda's thing,
16 I went, I got to go out. So I stayed at Linda's house
17 without leaving for 10 days. It was in Malibu Colony. I
18 couldn't afford the taxes on the place, you know. And we
19 had a -- you know, there was a guy that would make a
20 fab -- would make all new fireplaces in the house every
21 day. There was a woman that would water the plants every
22 day. I had nothing to do. I just would get sober. So I
23 quit in '79.

24 So all along my relationship with a lot of the
25 rockers were trying to prove that there's life after

1 sobriety, and that it's okay to drink things that don't
2 catch fire, you know.

3 Q I've heard you described as the guru AA sponsor.
4 Can you sort of describe then how that sort of colored
5 your relationship with Christi in her last years?

6 A Well, I was very abrupt, you know, in most
7 people's eyes when I talk about the person doesn't have an
8 alcohol problem, you know. They quit drinking and they
9 still have problems. So I was very upfront with her.
10 And, you know, we would go through these things together,
11 you know. And I would talk to her, and she would, you
12 know, gonna go to meetings, and she did. She would go to
13 meetings, but she was the real McCoy.

14 There are certain people, you know, I would say
15 60, maybe 70 percent of the people that I've worked with
16 are just party Vikings. They're not its real McCoy where,
17 you know, she would get four bottles of vanilla extract
18 and drink that. Or she would buy the big bottle of mouth
19 wash and drink that. And that was really hard on her
20 liver and body. I mean, I would -- I would see her, you
21 know, her eyes were puffy and her face puffy, you know.
22 Otherwise sober she was beautiful and great and, you know.

23 Q Can you describe how that impacted, from your
24 perspective, Todd's relationship with Christi?

25 A Well, it was one of those things where he would

1 love her through these things, you know. And, you know,
2 he -- he had a lot of experience with people that -- you
3 know, like with -- you know, Carrie was no stranger to
4 taking in-town, out-of-town vacation using whatever
5 vehicle it took, whether it was pills or -- you know, she
6 was -- she definitely was an alcoholic, I mean. So, you
7 know, he was used to dealing with kind of that mentality,
8 which kind of made it happen, you now, made it possible
9 where he just didn't throw up his arms and go I'm over,
10 you know. He would -- he stayed with her until the end
11 and with -- you know, I mean, it was -- he loved her, I
12 mean.

13 Q So it was a very difficult end. How would you
14 describe Todd's feelings about the ranch once Christi
15 passed away?

16 A Well, I've got to say that, you know, she would
17 do her horses, but Todd would do Todd stuff. In other
18 words, he buys this -- and I went with Todd when he first
19 looked at the house, and it was a ginger-bready [sic]
20 little house later to be totally redone by Todd. So she
21 would be doing the horses, and he would be doing this
22 complex heating and cooling system that was, you know,
23 outrageous with pipes everywhere and -- that he did.

24 The one thing about Todd is, you know, he was --
25 he would wake up in the morning and work all day, and

1 that's when -- when he met Cat. Well, I loved it because
2 she was the same way. I mean, you have two workaholics.
3 And he was used to that actress mentality. I mean, she
4 was a very -- you know, Cat was a well-known soap opera
5 star, you know. And -- and he was very comfy with
6 actresses.

7 Q So, Fred, let me ask you on that note. Prior to
8 meeting Cat, after Christi has died, were you worried
9 about Todd and his relationship status and those kinds of
10 issues?

11 A We -- we -- everybody was trying to get him fixed
12 up with somebody, you know. I tried. I had this great
13 ex-girlfriend that I was, you know, hoping that he
14 would -- actually, it was when he met Cat, it was like
15 that was -- that was it for my ex-girlfriend.

16 Q Can you now describe sort of when you became
17 aware of Cat and Todd's life and the impact on Todd?

18 A Well, I had talked to Todd and he had, you know,
19 talked about this girl that he had met through Henry, and
20 they had just talked over the phone at that time. But he
21 was enthusiastic and I was enthusiastic, like, yes. Good.
22 We've got somebody for Todd, you know. And, you know,
23 he -- I think I called Henry and said, "So Henry, what's
24 going on," you know. But the two were --

25 Q Fred, can I stop you for just one second. Your

1 phone is flashing a light. Can we just put that down on
2 the --

3 MR. FISHER: I got it.

4 BY MS. TURANCHIK:

5 Q Thank you. I'm sorry. Continue Cat and Todd.

6 A Yeah. So anyway, I kept kind of track of that,
7 and the next thing I know is he moved his motorhome over
8 to Henry's to meet Cat. And after that, it was just like
9 it's all over, man. He was out of -- he was out of
10 Creston like a rat up a pipe.

11 Q Why do you think -- with some of this background
12 we've been talking about, why do you think they had such a
13 powerful connection that was so immediate?

14 A Well, look at the things they had in common.
15 They both had -- they both had been married previously to
16 people with alcohol problems. She -- he grew up, you
17 know, in a -- in a family with actors and singers. And,
18 you know, they -- they have a different sort of life.
19 Like for instance, my sister is an concert artist, and we
20 think nothing about, you know, her going to Europe. It's
21 like I know. She's going to Europe, and it's like no big
22 deal. It's just one of those things where they go
23 periodically, and that's part of life.

24 It's not, you know -- and so he meets this woman.
25 I think that we had tried to set him up with a couple of

1 people with the mother of that -- that the -- the
2 Griswolds. That didn't work. There were -- there were
3 other things that didn't work. But anyway, I -- when they
4 met, everything was just too much the way it's supposed to
5 be. I mean, when Cat -- when I heard what Cat was saying
6 about she and Debbie bonded, I mean, of course.

7 Now, I mean -- I mean, this is my own opinion.
8 If you can find somebody -- like if a girl can find
9 somebody who's very much like her father, they're going --
10 it's gonna be good. And all of a sudden here is this
11 very, very nice lady who is absolutely on the road to -- I
12 mean, he -- his mother was the Unsinkable Molly Brown; the
13 things that she went through in life with different men
14 that she was married to, et cetera. And, you know, he --
15 I mean, here comes Cat, and she's beautiful. She's an
16 actress. More importantly, she spends her whole day
17 working from morning until 9:00. She doesn't -- she
18 doesn't sunbathe. She's, you know, in her -- in her
19 business doing something. And Todd is one of those people
20 that is exactly the same way.

21 Q Fred, let me ask you a final question here. When
22 Catherine and Todd met, where did you believe Todd desired
23 to live at that point?

24 A Oh, well obviously he was Las Vegas having just
25 the time of his life, really.

1 Q Did you see him much in California following
2 that?

3 A No. There was no seeing Todd. I'm sorry. You
4 had to -- you had to drive five-and-a-half hours if you
5 got to go see your friend. Yeah.

6 MS. TURANCHIK: Thank you, Fred. I appreciate
7 it.

8 MR. CUTRONA: Oh, by the way, do we take a lunch
9 break? I feel like a member of the Donner party.

10 MR. FISHER: Sure. Sure.

11 MS. TURANCHIK: Do you need a -- do you need a
12 quick break for your voice?

13 MR. CUTRONA: No. No. I'm okay. I've been in
14 far more dangerous situations than this.

15 JUDGE LONG: Looks like Franchise Tax Board is
16 signaling that they don't have questions?

17 MS. SWAIN: We do not have any questions. Thank
18 you.

19 JUDGE LONG: Okay. Hearing Officer Parker, do
20 you have any questions?

21 HEARING OFFICER PARKER: I have no questions.
22 Thank you.

23 JUDGE LONG: Judge Gast?

24 JUDGE GAST: No questions. Thank you.

25 JUDGE LONG: I also have no questions.

1 Franchise Tax Board will be making their
2 presentation next. I've been asked by one of my
3 colleagues to take a break so that the presentation be set
4 up. So we're going to take 10, and we will resume at
5 12:25.

6 (There is a pause in the proceedings.)

7 JUDGE LONG: Is everyone ready to continue?
8 Okay.

9 Ready.

10 THE HEARING REPORTER: Ready, Judge.

11 JUDGE LONG: All right. Ms. Swain, you may begin
12 when you're ready. You have 45 minutes.

13 MS. SWAIN: Thank you, Judge.

14

15 PRESENTATION

16 MS. SWAIN: My name is Ellen Swain, as I've said,
17 and from the Franchise Tax Board. And I'm going to just
18 address the sourcing issues. But before I start that, I
19 just wanted to express my appreciation to our really
20 amazing stenographer, Ms. Alonzo. The only time we heard
21 from you was when we were literally talking on top of each
22 other, and thank you for your professionalism. I know
23 this is a hard job.

24 And I -- I think the other piece too is that the
25 fact that I've been in litigation for a good portion of my

1 career, and I started young. And one of the things that I
2 have the greatest appreciation for is when somebody will
3 push their position. And they will say I don't agree with
4 you, and they will stand up to that, and they will
5 continue to stand up to that. And they will bring that
6 claim, and they will provide the information. And they
7 will -- will go while that process unfolds, which is not
8 easy for anyone. And then you come to the day of dispute,
9 and I just --

10 The utmost respect to you, sir, because that is
11 not an easy process.

12 MR. FISHER: And I for you.

13 MS. SWAIN: It takes courage and indominabation
14 [sic] -- and your indomitable spirit. Or unsinkable, I
15 suppose would be on theme for today, but our respect to
16 that.

17 Because, really, what this case is about -- what
18 the sourcing case comes down to is it's a burden of proof
19 case. This is really -- the reason we're here is because
20 through all of -- excuse me -- through all of that work,
21 and through all of that effort that came through, all the
22 questions we've asked. We've come to a dispute. We've
23 just fundamentally hit the place where we say we don't
24 agree. And Mr. Fisher doesn't have to capitulate to what
25 the FTB says. He doesn't.

1 He has every right to come here and say, "No, I
2 don't agree with you, and I want to put my case before
3 three judges."

4 Because this is a tax case, the burden of proof
5 sits on the Appellant's square shoulders. They need to
6 prove that FTB was operating with error when we issued the
7 assessments. It's their burden. That's not my choice.
8 That's not anyone's choice in this room. It's what the
9 law says, and that's the stance that they have to come in;
10 and that's the heart of the sourcing case. We
11 respectfully disagree. We respectfully do not believe
12 they've met that burden of proof, and that's really --
13 that's all that this case is about.

14 And so much of this case and this testimony, it's
15 not relatable. It's a different -- it's a -- it's a very
16 special unique world. And it's about the sales of items
17 that are unique and valuable and have a very special place
18 in our cultural lexicon. But when we look at the
19 qualities of the tangible personal property, we get to the
20 heart of the sourcing case. The tangible personal
21 property can deteriorate if it's not properly cared for,
22 and it can be stolen if it's not watched out for.

23 So really, the question in this case is where do
24 you put those things? Where do you store things like
25 that? Especially when they're cherished, and they want to

1 be saved for preserved for the sake of posterity. So it
2 just comes down to where were they -- where were they
3 placed? Where were they put? And that's the burden that
4 the Appellants have to meet to show you and to prove.

5 So we submit that the Appellants haven't met this
6 burden, and we submit that the items were located in
7 California; which is the finding under 17951-3. In the
8 event that the panel is to find that Mr. Fisher, and then
9 when he was married to Ms. Hickland in the 2012 tax year
10 was not a resident of the State of California; that he's a
11 non-resident, then we trigger the sourcing analysis if
12 he's a non-resident. The test is very simple. It's where
13 are these items located.

14 And what we know is that there is no case law
15 that interprets the word "location" in that statute.
16 There's no dispute about the fact that where is the
17 property located is the test. That's 17951-3, and that
18 applies to the sale of tangible personal property.
19 There's no dispute that it's tangible personal property.
20 There's no dispute that it was sold. There's no dispute
21 that the gain occurred from two auctions held in 2011, one
22 in June and one in December. There's no dispute that the
23 income from the December auction was likely reflected in
24 2012 because he's a cash-basis taxpayer, and that's when
25 he gets the tax money. We don't have any disputes about

1 those things.

2 Our whole dispute is about where were these item
3 were located. And so what does that mean? If we don't
4 have a case law determining -- we look at the plain
5 language, right -- what is located -- where it is located.
6 It's a very -- it's a -- it's a word that has a
7 physicality to it. You're in the borders. It's somewhere
8 within the borders of California. If you were to find,
9 for instance, it was located in Nevada, you would find
10 that it's not California source income when sold. But you
11 don't look to New York case law to determine what standard
12 is. You just don't, and the auditor said that from the
13 jump. It's a state sourcing question. State law applies.

14 But one of the things we can look at is that we
15 do have some interesting case law by analogy in the
16 multistate context. And that is the case of the Appeal of
17 Gibson Wine Company, which was obviously a very old case.
18 It was from the 1958. I believe it was in 1946 tax year,
19 but it involved an out-of-state company as a partnership.
20 And they took ownership of wine, and the wine was being
21 held in warehouses in California. And part of that
22 process was it was -- it was being cured. It wasn't
23 being -- it wasn't -- it wasn't in bottles you're ready to
24 buy. It was -- it was in its process of becoming, you
25 know, drinkable, salable wine. And what the Board of

1 Equalization found in that case, is they found that that's
2 California property. And that's California property for
3 the purposes of the property payroll and sales factor,
4 which is the free -- the three factor apportionment that
5 was used at that time. And they said yeah.

6 And the Appellant said no, no, no. It shouldn't
7 be California property. It's not in California because
8 its ultimate designation is going to be someplace else.
9 And that was not disputed by -- by the Franchise Tax Board
10 at that time. They said you're right. It's going to
11 be -- that's fine if it's moved someplace else. But
12 that's not the question. The question is it was located
13 that year. And that's a helpful case. Again, it's not on
14 point, but it's helpful by analogy to talk about how
15 located been -- locating something that is movable, which
16 is what we have here too. How do you -- how do you pin
17 that thing down, right. And that was a helpful case for
18 that -- for that reason. And that's 56 State Board of
19 Equalization 006.

20 And we also know from -- from Mr. Fisher's
21 declaration, that those items were all of the family
22 items, which were apparently some of the highest ticket
23 item. The special items we've talked about; the Marilyn
24 Monroe dress was worn in the Seven Year Itch, the Subway
25 dress and the Ascot dress. We'll talk a moment about

1 those again. Those items were all in California in 2010
2 and 2011. And the auction -- the first auction occurs in
3 June 2011. There's a special facility in Creston that had
4 both the storage facility, but it also had all, you know,
5 elaborate studio and photography equipment that was used
6 to prepare these -- these items for -- for the auction.

7 So we know it was located. FTB's position is
8 that's sufficient. That's sufficient, but we cannot go
9 back in time. And we can also say that we know that this
10 warehouse was built in 1998. We know that was 13 years
11 before the auction. And we also know that as of 2009
12 there were more than -- in 2009 dollars, which we're
13 predating the sale. And -- and has as the testimony
14 that's been brought here today is that the sale prices
15 surprised the Fishers and Debbie Reynolds. They were
16 surprised in a very pleasant way. So we know these are
17 conservative estimates; \$10.5 million worth of assets.
18 \$10.5 million of costumes were stored in Creston. And the
19 reason we know that is because that's what the affidavit
20 said in the bankruptcy proceedings; the Chapter 11
21 proceedings that were filed in June of 2009.

22 So we know, as of that date, 100 percent of that
23 list, 32-page list of costumes and items related to movie
24 memorabilia were located in Creston, California. And it
25 was described in that document, which is Exhibit G as

1 10,000 square feet of climate controlled storage
2 especially designed for that purpose. And that's where
3 FTB's position comes from. Our position is that these
4 items were all kept in the place that was designed to keep
5 them. Could there be other places? Could they could be
6 moved around? That doesn't dispute the fact that they
7 were located. And it doesn't dispute the fact that they
8 were located as of 2010 and 2011.

9 So if we look at some of these -- this again,
10 this is the Subway dress. We all know the Subway dress,
11 or many people do. It's a very popular -- popular image.
12 And this is the Ascot dress. The Subway dress sold for
13 \$4.5 million. The Ascot dress sold for \$3.7 million. You
14 can also see the bonnet that would be with that. These
15 are photographs from 2009 on the right in Exhibit D of
16 Mr. Fisher holding the Julie Reynolds dress and guitar
17 from the Sound of Music; and this is in the Creston
18 warehouse.

19 And here is a brief tour. I'll have to give you
20 some sound for that.

21 JUDGE LONG: Actually, Ms. Swain, I believe we've
22 all watched. Based on the lengths, can we just skip
23 forward and --

24 MS. SWAIN: Sure.

25 JUDGE LONG: -- talk about it.

1 MS. SWAIN: Sure. Absolutely. Okay. So thank
2 you for watching that.

3 So this -- what this shows is this shows -- and I
4 will turn that off. This shows Mr. Fisher in the
5 warehouse, and it shows the specialty. It shows the
6 special -- the fact that these items had a special room.
7 This is the sewing room and that they were stored with
8 special acid-free paper, that there were people that were
9 handling them while wearing white gloves, and they are put
10 in acid-free boxes. So there is a second reason. The
11 reason for preserving them in the place where you can
12 preserve them isn't just to prevent theft. It's to
13 prevent the deterioration of the fabrics. Which as the
14 testimony has come out is that the ultimate driving force
15 for -- for Debbie Reynolds in those years in particular as
16 it went and -- and through all they did was -- was to
17 maintain these for posterity purposes. But all the things
18 you do to maintain them for posterity purposes also
19 maintains them for resale purposes. It just happens to be
20 that those two things are united. So it keeps them in the
21 safest place is to have them and have the ability to have
22 them in that place.

23 And the next piece that we talk about, we see --
24 we saw that the Subway dress was in the auction -- was in
25 the -- in Creston. And we also in this film clip, which

1 you have seen, we see that there was secure storage
2 within. And what I mean by that is there was literally a
3 safe inside with a combination safe to open up, and that's
4 where the two pairs of ruby slippers were stored. And
5 that's what that film clip as you know -- as you know,
6 shows. And so when we know those items are there, and we
7 know that there's been so much care and attention into
8 putting a place where you can have items preserved, not
9 stolen. Obviously, the ruby slippers under lock --
10 literally under lock and key.

11 And when you think about an item like the ruby
12 slippers, they're so valuable. They're old. They're
13 fragile, and they're so widespread. Everybody knows them.
14 All you have to say is "click your heals," and people know
15 what that reference means. And what that means for the
16 purpose of tangible personal property and tax law is that
17 when you have something that's worth that much money, and
18 there's only a limited supply, you're going to want to be
19 careful about where you put it.

20 Especially, if when it's something that small and
21 if you can stick it put in your backpack and conceal it
22 and walk away. And that's really where the assessment
23 comes from, is this idea that the preciousness drove their
24 location. Their location was the place in Creston because
25 the place in Creston was where they were both seen -- many

1 of these items seen, but they also could be preserved.
2 They could be preserved.

3 We also know -- the final point I'll transition
4 into is that there was concern about who would bear the
5 risk of loss. And that's interesting too because there
6 was -- the only information we have about an insurance
7 policy on these item is in the bankruptcy documents
8 themselves. There's an unsecured creditor, who is
9 Mr. Steven Fetterman, and his debt that was owed him in
10 those documents in Exhibit G, was approximately \$34,000.
11 We know that there was an insurance policy unpaid balance.
12 The unpaid balance was \$34,000 to ensure these costumes.
13 And it's not, "Well, we'll buy you another pair of ruby
14 slippers." It's like, "We have to compensate you for that
15 loss because this is a special and unique piece of
16 valuable personal property." We don't have any other
17 insurance records. That's where the items were insured to
18 be kept, or that's where items were insured to be kept.

19 Might they have, at some point, been in a Las
20 Vegas condo? Perhaps. Might they have been seen there?
21 We've had testimony about them being seen there, about
22 Debbie Reynolds being there and wanting them to be seen
23 there. That is not inconsistent with what we're saying.
24 That is not inconsistent with what we're saying. Could
25 they have been brought there at some point, at some time?

1 Sure. But that is not what we are is the overarching view
2 of where tangible -- where is this tangible personal
3 property was located.

4 And again, we certainly know it was all located
5 in 2010 to 2011, and that is sufficient to find that the
6 items were located in California. They created California
7 source income at the time of sale, and that brings us back
8 to the returns. And that's my final point. On the
9 returns, nothing was sourced to the State of California.
10 Not one dollar of gain was sourced to the State of
11 California. And interestingly, we've had testimony that,
12 in fact, that Column A on Form 4797 was rental property --
13 excuse me -- was -- was display property that was used to
14 display the items in California. And that gain is not
15 reflected on the returns.

16 At a minimum, that gain was -- the testimony is
17 that gain, that would be California source gain. And I
18 think what's telling is I think that here might have been
19 at the time, perhaps by the accountant who testified that
20 he didn't source the income because Mr. Fisher was not
21 living in California. Well, that's not -- that's not the
22 test. The test is, when you're a non-resident, you still
23 have to pay income tax on items that are California
24 sources income.

25 And the last point on tax is, when these item

1 were all sold at auction -- and again, a record-breaking
2 auction, record breaking prices, \$4.5 million, \$3.7
3 million, 3,000 items sold. So much income sales tax was
4 imposed. The catalog shows us that the buyers had to pay
5 sales tax -- California sales tax on every item, unless
6 they were exempt. There are no instructions about what
7 could have qualified as an exception.

8 FTB, our final position is that the assessment
9 must be disproven, and we don't believe that that it's our
10 position that the Appellants haven't carried this burden.
11 It's a significant burden, and they haven't carried this
12 burden, and that the items were located in California, and
13 their sale is California source income.

14 Thank you.

15 Forgive me. I forgot to mention that we're going
16 to talk about residency. Mr. Hofsdal pointed that out.

17 MR. HOFSDAL: If you can move the podium? I hurt
18 my knee and I can't stand up.

19 MS. SWAIN: Okay.

20 MR. HOFSDAL: As Ms. Swain said, I'll be
21 discussing the residency analysis, which will include a
22 discussion of the relevant law and interplay of the law to
23 the facts before us. But as a preliminary matter, the
24 years at issue here are 2011 and 2012 and, specifically,
25 the period between January 1st, 2011, and January

1 20th, 2012.

2 It's undisputed that Mr. Fisher was a California
3 resident prior to January 13th, 2010. And while
4 Respondent determined that Mr. Fisher was a California
5 resident during the entire 2010 taxable year, Respondent
6 did not make an adjustment to that year because that
7 change did not affect Mr. Fisher's tax liability for that
8 year. Therefore, while the facts of the 2010 are relevant
9 to the residency analysis, the 2010 tax year is not on
10 appeal.

11 What is disputed, however, is Mr. Fisher's
12 residency at the time he and his family sold various
13 pieces of Hollywood memorabilia at the Paley Center in
14 Beverly Hills, California, on two dates: June 12th, 2011,
15 and December 3rd, 2011. It's Appellants' position that
16 Mr. Fisher became a non-resident on/or about
17 January 13th, 2010, a few weeks before he allegedly moved
18 into Ms. Hickland's Las Vegas home. It's Respondent's
19 position that Appellant continued to retain significant
20 connections to California throughout the period at issue,
21 and those connections outweigh his connections to Nevada
22 during the same time period. As such, it's Respondent's
23 position that Mr. Fisher continued to be a California
24 resident through at least January 20th, 2012. That being
25 said, the ultimate question on appeal is -- is whether the

1 taxpayer met his burden to show that he not only acquired
2 substantially new connections in Nevada, but that he
3 severed his long-standing connections with California.

4 I'll now discuss the relevant law to this appeal.
5 The purpose behind California's taxation of residence is
6 to ensure that individuals who are physically present in
7 the state and enjoying the benefits and protections of its
8 laws and government contribute to its support. This
9 purpose underlies all residency decisions. Analyzing a
10 taxpayer's connections, both within and without
11 California, helps one to determine whether a taxpayer
12 received the benefits and protections consistent with
13 California residency. Also, it's well settled that a
14 person could be a resident of more than one state or
15 taxing jurisdiction at the same time.

16 Determining California residency starts with the
17 statute. Under Revenue & Code sec -- excuse me. Under
18 Revenue & Taxation Code section 17014(a), a California
19 resident includes both individuals inside California,
20 regardless of domicile, for other than a temporary or
21 transitory purpose, and individuals domiciled in
22 California who are outside of California for a temporary
23 or transitory purpose. Thus, the determination of
24 Mr. Fisher's residency is essentially a two-part test that
25 starts with determining Mr. Fisher's domicile and

1 concludes with weighing factors to determine whether
2 Mr. Fisher was either inside California for other than
3 temporary transitory purpose, or outside of California for
4 a temporary or transitory purpose.

5 JUDGE LONG: Mr. Hofsdal.

6 MR. HOFSDAL: Yes.

7 JUDGE LONG: Can you take it back, like, 10
8 percent slower?

9 MR. HOFSDAL: Yes.

10 JUDGE LONG: Thank you.

11 MR. HOFSDAL: If it's determined that Mr. Fisher
12 was domiciled outside of the California, he can only be
13 deemed a California resident under subsection (a)(1). If
14 it's determined that Mr. Fisher was domiciled in
15 California, he could be deemed a California resident under
16 both subsections (a)(1) and (a)(2). Here, under these
17 facts, it's clear that Mr. Fisher qualifies as a
18 California resident under both subsections.

19 I'll first summarize the domicile analysis. In
20 determining whether Mr. Fisher changed his domicile two
21 things are indispensable: First, residence in the new
22 locality; and second, the intention to remain there.
23 Furthermore, as pointed out in the recent Appeal of Mazer,
24 Mr. Fisher's actions must support a change of domicile.
25 Unsubstantiated statements do not suffice. Further, if

1 there's doubt on the question of domicile, then domicile
2 must be found to have not changed.

3 While Appellants mostly argue intent and solely
4 through those unsubstantiated statements, Appellants
5 essentially concede in their reply brief, specifically, at
6 page 7, lines 18 to 19, and in their self-prepared
7 physical presence calendars that Mr. Fisher's physical
8 presence in Nevada was insignificant as compared to his
9 physical presence in California in both 2010 and 2011.
10 Rather, it appears that Appellants' argument seems to be
11 that but for all of his California connections, he would
12 have been inside of Nevada. But consistent with the
13 Appeal of Tran and Medina, which admittedly is none
14 precedential, and Noble v. Franchise Tax Board in move-out
15 cases, excuses made attempting to explain the reasons for
16 not leaving California are not persuasive.

17 Further, Mr. Fisher filed as head of household
18 for the 2011 and the -- or excuse me -- for the 2010 and
19 2011 taxable years. And, in so doing, conceded that the
20 California ranch was his familial abode, a factor weighed
21 heavily in evaluating a change in domicile. As such, the
22 two prongs that demonstrated a change of domicile are not
23 met here. Therefore, Mr. Fisher remained a domicile in
24 California throughout the years at issue.

25 As stated in the Appeal of Mazer, the analysis

1 then shifts to whether Mr. Fisher's purpose in either
2 entering or leaving California is temporary or transitory
3 in nature. The residency regulation provides guidance in
4 this regard. The connections that a taxpayer remains with
5 the state when compared with the other state are important
6 indications of whether a person's entrance to or absence
7 from California is temporary or transitory. In the Appeal
8 of the Bragg, the Board of Equalization provided a list of
9 nonexclusive factors that were helpful in evaluating a
10 taxpayer's connections in prior appeals.

11 In the Appeal of Mazer, the factors discussed in
12 Bragg were separated into three categories: Physical
13 presence and property; personal and professional
14 associations; and registration and filings. As stated in
15 the Appeal of Bracamonte, the physical presence factor is
16 given greater weight than mental intent in the formalities
17 that tie one to a particular state. Further, as stated in
18 the Appeal of Cobb, a mere formalism, such as a change in
19 registration or a statement that Mr. Fisher intended to be
20 a resident of another state does not ordinarily settle the
21 issue.

22 Appellant's relevant connections to both
23 California and Nevada will now be discussed in the
24 appropriate Mazer groupings. In the first Mazer category,
25 I will discuss physical presence and property, starting

1 with the physical presence factor. On Mr. Fisher's 2010
2 Schedule CA, Mr. Fisher reported that he was physically
3 present in California for only 13 days during the 2010
4 taxable year. During the audit examination, Mr. Fisher
5 provided self-reported calendars that showed he was in
6 California for 156 days and in Nevada for 115 days during
7 the 2010 taxable years. On the other hand, Respondent's
8 calendars, based on both Mr. Fisher's financial records
9 and his calendars, reflected Mr. Fisher was in California
10 for 177 days and in Nevada for 91 days.

11 Moving to 2011, on Mr. Fisher's 2011 Schedule CA
12 540NR, he reported that he was physically present in
13 California for 75 days. During the audit examination,
14 Mr. Fisher provided self-reported calendars reflecting
15 that he was in California for 151 days and in Nevada for
16 39 days during the 2011 taxable year. In other words,
17 during the 2011 tax year and under Mr. Fisher's own
18 accounting, for every day spend in Nevada, Mr. Fisher
19 spent four days in California.

20 On the other hand, Respondent's corresponding
21 calendar, which like for 2011 was based on both the
22 financial transaction and Mr. Fisher's unsupported
23 calendars, reflect that Mr. Fisher was physically present
24 in California for 246 days and Nevada for 48 days during
25 the 2011 taxable year. In other words, for every day

1 spent in Nevada, Mr. Fisher was physically present in
2 California for 5 days.

3 One point I just want to make with regards
4 Mr. Fisher's calendars that he prepared, there's been a
5 little discussion on -- on the difference between the
6 ranch in Creston and the property in Montana. But if you
7 look at his calendars, Exhibit I, he clearly delineates
8 his Montana days from his Creston days. Montana days are
9 referred to as Montana. And for the 2010 tax year, he was
10 in Montana for 10 days. Same as 2011. He was in Montana
11 for 211 days. But more significant than that is his
12 presence in physical -- his presence on his physical
13 presence calendar is delineated as ranch when it comes to
14 the Creston days. So going through the calendars, you can
15 clearly delineate what they meant or what the Appellants
16 meant by ranch and what they meant by Montana.

17 In addition, the calendars are very, very
18 thorough when it come to the days he spent preparing for
19 the auction, notwithstanding the days he was in California
20 for other purposes. But regardless of which calendars you
21 use, if you use Mr. Fisher's calendars or -- or the
22 calendars prepared by FTB, Mr. Fisher's physical presence
23 in California significantly exceeded his presence in
24 Nevada.

25 Further, in the recent decision in the Appeal of

1 Peters, also non-precedential -- is on point. On page 7
2 of the Peters decision, the panel found that in order to
3 show errors in Respondent's calendars, one must provide
4 proof of being outside of California during these disputed
5 days. And, importantly, unsupported assertions are
6 insufficient to satisfy a taxpayer's burden of proof. And
7 like the taxpayers in the Appeal of Tran, Mr. Fisher
8 continued to be inside of California for a significant
9 period overseeing his dependents, overseeing Creston ranch
10 activities and museum activities, and to be with family.
11 This demonstrates that Mr. Fisher was inside California
12 for other than a temporary transitory purpose.

13 In addition, as came out in yesterday's
14 testimony, it's noteworthy that all of Mr. Fisher's income
15 for both the 2010, 2000 -- excuse me. All of Mr. Fisher's
16 W-2 wage income for both 2010 and 2011 were sourced to
17 California. Therefore, the physical presence factor,
18 which is generally given significant weight, clearly
19 favors California.

20 I'll now discuss the property factor. When an
21 analyzing the nature of Mr. Fisher's property, it's clear
22 that Mr. Fisher continued to have a significant connection
23 to its California abode. Mr. Fisher has owned the Creston
24 ranch since the 1990s. Significantly on this property
25 Mr. Fisher constructed many, if not all, of the buildings,

1 including a 10,000 square foot climate controlled custom
2 warehouse to store his and his family's collection of
3 Hollywood memorabilia.

4 Moreover, based on Mr. Fisher's head of household
5 filing during the years at issue, the Creston ranch was
6 Mr. Fisher's familial abode, as the ranch was also the
7 home to both Brandon and Eugene; the two people that
8 formed the basis of Mr. Fisher's household filing in 2010
9 and 2011. It's also noteworthy that Mr. Fisher also
10 claimed Eugene as a dependent in the 2012 tax year. And
11 as stated in testimony yesterday, it's undisputed that
12 both Brandon and Eugene were residing at the Creston
13 ranch.

14 Since Brandon and Eugene were not Mr. Fisher's
15 minor children, Mr. Fisher would have had to live with
16 them for at least one half of the taxable year to qualify
17 for head of household status. For both the 2010 and 2011
18 tax years, Mr. Fisher indicated on Form FTB 4803E that
19 Brandon and Eugene lived with him for the entire year,
20 which could only be true if Mr. Fisher was outside of
21 California for a temporary or transitory purpose.
22 Conversely, in Nevada, Mr. Fisher asserts that he had
23 access to Grey Spencer Drive starting on January 24th,
24 2010.

25 While Grey Spencer Drive was owned by

1 Ms. Hickland, it appears that her home was permanent as to
2 Mr. Fisher because as Mr. Fisher testified, it did not
3 meet their joint needs at that time. Ms. Hickland soon
4 listed and eventually sold that property. Then after
5 Ms. Hickland sold Grey Spencer Drive towards the end of
6 July of 2011, Mr. Appellant -- excuse me -- Appellants
7 moved into a permanent rental located on Dornoch Castle
8 Street while they looked for a home to fit their needs.
9 It was only after their second auction on/or about
10 January 20th, 2012, that Mr. Fisher had access to a
11 permanent abode in Nevada when Appellants purchases a home
12 located a home on Jo Rae Avenue in Las Vegas.

13 As the Creston ranch was the only permanent
14 familial abode that Mr. Fisher had during the period at
15 issue, this factor, which should be given moderate weight,
16 favors California the residency. In total, this Mazer
17 category also favors California the residency.

18 Now, I'll discuss the second Mazer category,
19 personal and professional associations. In this category,
20 I'll discuss the familial abode factor and the
21 professional license factor. I'll first discuss the
22 familial abode factor. During the 2011 taxable year, as
23 mentioned above, Mr. Fisher filed head of household status
24 claiming both Brandon and Eugene as his dependents for the
25 2011 taxable year. Under the Appeal of Varn, benefits

1 received by one's dependents are de facto benefits
2 received by the taxpayer. Therefore, by claiming Brandon
3 and Eugene as dependents on his tax return, Mr. Fisher
4 received benefits and protections from the State of
5 California as well.

6 Moreover, Ms. Hickland's blogs, which speak for
7 themselves as to where they took place and what the intent
8 was, reflect Mr. Fisher's permit presence at the Creston
9 ranch and that she would frequently join him there.
10 Additionally, when Appellants decided to get married, they
11 held their wedding ceremony at Debbie Reynolds and Carrie
12 Fisher's family compound in Beverly Hills, California.
13 Therefore, this factor favors California residency.

14 I'll now discuss the professional license factor.
15 Mr. Fisher was issued a California contractors license on
16 September 12th, 1988, which remained current through at
17 least September 30th, 2022. And I believe Mr. Fisher
18 testified yesterday or today that that license is still in
19 effect. During the time period at issue, it does not
20 appear that Mr. Fisher had a comparable contractors
21 license with the State of Nevada. While Appellants argue
22 that Mr. Fisher has not worked any projects since the
23 polar project -- since the solar project in 1988, Fisher
24 Electric reported gross receipts of \$51,863 in 2010, and
25 \$9,543 in 2011 for consulting work.

1 Further, Mr. Fisher argues that it was favorable
2 for him to retain his California license so that he can
3 get reciprocity in other states like Nevada. That ability
4 to get reciprocity is a benefit conferred by California.
5 Since Mr. Fisher held a contractor's license during the
6 period -- a California contractor's license during the
7 period at issue and the license provided a benefit to him,
8 like reciprocity in other states, this factor favors
9 California. Therefore, the second Mazer category,
10 personal and professional associations clearly favors
11 California residency.

12 Now, moving to the third and last category,
13 registrations and filings. In this category, I'll be
14 discussing lawsuits, driver's licenses, personal
15 transportation, and statutory -- and Secretary of State
16 filings. I'll first discuss the lawsuit factor. On
17 June 12th, 2009, on behalf of the Hollywood Motion Picture
18 Museum, Mr. Fisher filed Chapter 11 bankruptcy in
19 California. It appears throughout the pendency of this
20 bankruptcy of litigation that Mr. Fisher represented that
21 both he and the artifacts were in Creston, California.
22 Appellants confirm this at page 14, lines 14 to 17 of the
23 reply brief.

24 It does not appear that Mr. Fisher changed his
25 address with the bankruptcy court during the pendency of

1 this matter. Based on the representations Mr. Fisher made
2 during the bankruptcy court filing, this lawsuit factor,
3 which should be given slight weight, honestly, favors
4 California the residency.

5 I'll next discuss the driver's license factor.
6 Mr. Fisher claims that he applied for a Nevada driver's
7 license on July 2nd, 2011, after the first auction and
8 about one-and-a-half years after Mr. Fisher claims that he
9 moved to Nevada. For reasons not quite understood, it
10 appears that license was not issued until
11 January 27th, 2012, within few days of Appellants
12 purchasing the Joe Rae abode. Regardless, during the
13 entire period at issue, Mr. Fisher's right to operate a
14 vehicle on roadways was a benefit provided to him by the
15 State of California. Since Mr. Fisher received his Nevada
16 driver's license after the period at issue, and his rights
17 to operate a motor vehicle during the period at issue was
18 provided by the State of California, this factor also
19 favors California as the residency.

20 I'll now move to the vehicle registration factor.
21 Mr. Fisher owned multiple cars in California and Nevada.
22 While Mr. Fisher registered vehicles in Nevada after the
23 first auction, the only two vehicles purchased during the
24 period at issue were purchased in California, with one of
25 the vehicles being re-registered in Nevada after the

1 receipts from the first auction were received. Therefore,
2 this factor, which should be given slight weight,
3 honestly, slightly favors California the residency.

4 The last factor I'll discuss is Secretary of
5 State filings. During the period at issue, Mr. Fisher
6 registered and re-registered businesses in California. On
7 March 5th, 2010, two months after Mr. Fisher allegedly
8 moved from California to Nevada, Ain't Down Productions --
9 his mother's company -- registered with the California
10 Secretary of State. In the Statement of Information filed
11 with the California Secretary of State, for both the
12 Hollywood Motion Picture and Television Museum and his
13 mother's company, Ain't Down Productions, Mr. Fisher
14 identified himself, not only as an officer, but provided a
15 California contact address.

16 Additionally, on May 18th, 2012, two years after
17 Mr. Fisher alleges to have moved out of California,
18 Freedom Farms Productions was registered with the
19 California Secretary of State Office. That entity address
20 is listed as 4124 North Ryan Road in Creston, California.
21 So to summarize Secretary of State filings, Mr. Fisher
22 continue to register businesses with California Secretary
23 of State after January of 2010. For these reasons the
24 factor related to the Secretary of State filings favors
25 California residency as well. As the overwhelming

1 majority of factors in the registrations and filings
2 category favors California residency, this third Mazer
3 category favors California residency as well.

4 To conclude the residency portion of our
5 presentation and to summarize the residency argument,
6 during the period at issue, Mr. Fisher continue to remain
7 domiciled in California and was absent, if at all, for
8 temporary or transitory purposes. Moreover, for the
9 periods at issue, Mr. Fisher was physically present inside
10 California for other than a temporary or transitory
11 purpose. Thus, under either residency test, Mr. Fisher
12 received the benefits and protections from the State of
13 California consistent with being a California resident,
14 regardless of any connections he may have established
15 outside of the state during the same period.

16 And now both Ms. Swain and I can answer any
17 questions you may have. Thank you.

18 JUDGE LONG: Thank you. I do have a question,
19 and I'm looking at Appellants' Exhibit 17. This deals
20 with the residency issue --

21 MR. HOFSDAL: Sure.

22 JUDGE LONG: -- for 2012. And it says,
23 specifically, "After final review of the case at the next
24 level and based on information available, we determined
25 that Mr. Fisher became a non-resident on 1/20/12, the

1 recorded closing date of the purchase of his Las Vegas,
2 Nevada, residence." It does go on to say that, "The tax
3 is the same because of the sourcing issue." What is FTB's
4 current position with respect to this letter that was
5 issued?

6 MR. HOFSDAL: As Appellants pointed out in their
7 reply brief, I believe in one of the -- in one of the
8 footnotes, 2012 was not audited for residency. And it's
9 my understanding, in having conversations, what I believe
10 happened and like I said, is that the auditor, who was new
11 at the time; when she determined that he was a resident
12 for 2011, to the sourcing of that 2000 and property was
13 applying, essentially, the same standard that you would in
14 an installment sale. So when she assessed for 2012, she
15 was essentially assessing under that theory. Since the
16 auction took place in 2010, if the proceeds, as reflected
17 in the tax return, were reflected in 2012 that that income
18 was properly included.

19 That's not the status of the law. And I think
20 what happened was she was told. So after the auditor had
21 filed the -- the determination the letter with the stuff,
22 and after going back and forth the closing of the letter,
23 and when it came time to closeout 2012, she mailed that
24 letter out in order to close it. But there was no audit
25 done at that year. It is, I think, unusual to -- to base

1 their residency on when a person buys a home. I think
2 it's a standard that, you know, when it comes into the
3 residency, you know, the rules that apply inside to
4 California apply to the people outside of California, if
5 you're moving in or you're moving out.

6 So I think it would be a dangerous standard to
7 have purchase of a home being that -- that standard. With
8 that being said, that's where that date came from as
9 that's what she attached to. But I think when we looked
10 at the testimony yesterday when the OTA asked for proof of
11 when that payment was actually received, they attached and
12 provided Exhibit 30. And I think one of the things that
13 was clear after the testimony yesterday -- at least I hope
14 so -- was that the dates and what happened during that
15 time period may not be through.

16 Mr. Fisher did testify that he was the person who
17 received the money from the auction house. And then he
18 was the one that distributed it to other people, including
19 that January the 20th payment to First Bank, I believe it
20 was. And then when he was asked about that ETF transfer
21 or charge for a wire transfer on January 3rd, he also said
22 that it's possible that's when he received the money
23 from -- from the auction house as well.

24 But regardless, the best evidence for when that
25 money received is not Exhibit 30, as I tried to point out

1 yesterday. The best evidences would have been the actual
2 bank statements of when -- of when he received that --
3 that income. So it's -- it's FTB's position that
4 Exhibit 30, in light of what could have been produced and
5 in light of the testimony yesterday, does not meet their
6 burden of when that income was actually received.

7 JUDGE LONG: Ms. Swain.

8 MS. SWAIN: May I just clarify one item on the
9 sourcing position? Just to clarify the sourcing position
10 in the audit report, it's spelled out on page 82 of the
11 audit report, which states specifically that it was not --
12 it's not sourced as an installment sale. It was sourced
13 based on the location of the property, and the standard of
14 17951-3 was used. It's not -- it wasn't a question of an
15 installment sale, which would have been if you --

16 JUDGE LONG: Ms. Swain, could you use the
17 microphone?

18 MS. SWAIN: Just to clarify, an installment sale
19 would have been if you're -- there is a rule that says if
20 you're a resident at the time an item is sold, that you
21 would then retain that residency status in the future for
22 installment payments. We did not -- that is -- that is
23 not what happened in this case at audit. Just to clarify
24 what did happen at audit was a determination the -- it's
25 consistent with what I've argued that 17951-3 was applied

1 to say that the property was located in California, and
2 that was for both of the two tax years.

3 JUDGE LONG: Okay. Thank you. But I also want
4 to clarify with respect to the residency issue in that
5 letter. Is FTB's position currently that Mr. Fisher was a
6 resident and domiciled in California in 2012 despite that
7 letter; is that correct?

8 MR. HOFSDAL: It's FTB's position that he was
9 domiciled and a resident of California, at least through
10 January 2012.

11 JUDGE LONG: Okay. Thank you.

12 MR. HOFSDAL: Yeah.

13 JUDGE LONG: Hearing Officer Parker, do you have
14 any questions?

15 HEARING OFFICER PARKER: No. I think that
16 handled it. Thank you.

17 JUDGE LONG: Judge Gast, do you have any
18 questions?

19 JUDGE GAST: Yeah. I just want to clarify with
20 FTB. Ms. Swain, you mentioned installment sale, but that
21 rule, if I remember, applies to intangible property, not
22 TPP; correct?

23 MS. SWAIN: There's no question --

24 JUDGE GAST: There is no installment sale? Okay.

25 MS. SWAIN: No. There's not installment. That

1 was just a misstatement.

2 JUDGE GAST: Okay. Okay.

3 MS. SWAIN: I just wanted to make sure we struck
4 that from the record. Yes, you're exactly right. It's
5 17952 Regulation.

6 JUDGE GAST: Okay. And we're not --

7 MS. SWAIN: Absolutely does not apply.

8 JUDGE GAST: Okay. Thank you. And we're not
9 in -- I think you mentioned this, but just to be extra
10 clear, we're not in 17951-4 for a trade or business.
11 We're not saying this is a trade or business, the sale of
12 the memorabilia. We're just saying it's a sale of TPP,
13 tangible personal property; correct?

14 MS. SWAIN: Yes. Thank -- thank you, Judge.
15 That is -- that is the reporting position that was taken,
16 and that is how it was audited. We treated it as his
17 personal property -- that this was his personal property
18 versus TPP of a business. It's an interesting point
19 because that was, in fact, what seemed a bit confusing in
20 the reporting position at the federal level by having what
21 appear to have been, as Mr. De Salvo testified, the Ascot
22 dress was -- was reflected as business property when, in
23 fact, the position is really that it was personal
24 property.

25 JUDGE GAST: Okay. And then -- oh, sorry. Go

1 ahead.

2 MR. HOFSDAL: I was going to say, and just to
3 clarify, when -- when I was talking about installment
4 sale, I wasn't saying that the auditor felt it was an
5 installment sale. I was just saying as far as how -- how
6 that kind of flew into -- flowed into 2012. I -- it's my
7 understanding that's kind of what -- what she was thinking
8 is that even though it was paid in a later month. But --
9 anyway I don't want to confuse that anymore.

10 JUDGE GAST: Okay. And then my last question is
11 again, with sourcing. There's been a lot of disagreement
12 about where this tangible personal property was located,
13 but it's FTB's position that that doesn't matter because
14 all of it was here at the time of the auction when it was
15 sold, when the income was realized?

16 MS. SWAIN: It was -- it was when the income was
17 realized. It was in the year leading up to the year to at
18 least a year plus time. And there are instances when it
19 was certainly there beforehand, and from the times that we
20 have in 2005, 2009 that were in the slide shows, the times
21 that we have. The fact that we know that the exhibit
22 was created -- excuse me -- the space created in 1998. We
23 know that these other times that this was the -- the
24 obvious place or was the place to keep these items.

25 And so we look at that, and we say we can make

1 the logical assumption that that's where these items were.
2 So there's sort of two basis. So there's one that's
3 saying we have a logical assumption that we made, but we
4 also have this concrete evidence that it was within the
5 state from 2010 through 2011. And we know that that is
6 sufficient by itself to create a location -- property
7 located in California.

8 JUDGE GAST: Okay. And the 2012 income, your
9 position is it doesn't matter when it's recognized, using
10 tax terms. It's when it was researched.

11 MS. SWAIN: Right. Because --

12 JUDGE GAST: Okay.

13 MS. SWAIN: -- it's -- because really -- I mean,
14 once the recognition doesn't matter so much because it's
15 really where is it located. You know, where is the
16 location at that moment of sale. That's really what the
17 law says.

18 JUDGE GAST: Okay. Thank you.

19 MS. SWAIN: And, obviously, if he was -- if it
20 was structured as a business, it would have -- if it had
21 been sourced as business income, whether it was a sole
22 proprietorship or however, then we would have had that
23 income in the 2011 tax year more than likely, right.
24 Because if it's a business, they could be an accrual
25 taxpayer. So that's really just a tax timing question

1 from 2011 to 2012.

2 And I think what does make it confusing at
3 first -- at first look, is how do you wrap your mind
4 around it, you know. What -- it's the exact same test for
5 everything that happened in 2011. That's what drove the
6 result.

7 JUDGE GAST: Okay. Thank you. And, actually, I
8 do have one more question. I'll be quick here. Again,
9 with the sourcing, there's some documentation, I think, in
10 the record about trust and income coming from a trust, but
11 we're not concerned about that. Is that right? We all
12 agree that whether it's a trust or non-resident, you know,
13 actually receiving the income, it's flowing through to a
14 non-resident; or the trust is, you know, the rules around
15 that don't matter. I know that's complicated, but we're
16 in dash three and just leave it at that.

17 MS. SWAIN: Yeah. No. I understand where you're
18 going with that question.

19 JUDGE GAST: Okay.

20 MS. SWAIN: I appreciate it. I think it's two
21 parts. One is, yes, we do view it the same as a
22 non-resident. We're not suggesting that there's a
23 resident trust under these circumstances. We're saying
24 it's non-resident. I think one of the things that's a
25 little complicated is that we have Mr. De Salvo's letter

1 from 2014 that talks about \$2 million of income from trust
2 that appears to have not fully been reported on that
3 return. So there's sort of a question mark.

4 But, ultimately, every question comes back to --
5 to what I think you're asking, which is what is the
6 sourcing test? And the sourcing is, you know, where was
7 that income earned essentially, or what test do we use
8 which? And the test that we use is 17951-3, which is that
9 location test, regardless of whether it's a trust or
10 whether it's an individual.

11 JUDGE GAST: No other questions. Thank you.

12 JUDGE LONG: Thank you.

13 Ms. Turanchik, we are ready for your closing
14 presentation. So you have 10 minutes, and you may begin
15 when ready.

16 MS. TURANCHIK: Thank you, Judge Long. I will
17 take the 10 minutes. We also have a little bit of
18 testimonial time. I'm going to let Mr. Fisher make a
19 closing statement as well for the panel once I've
20 completed sort of my thoughts here.

21

22 CLOSING STATEMENT

23 MS. TURANCHIK: I'm going to start with residency
24 first just because that's where FTB just finished off, and
25 that also sort of where their -- their argument hasn't

1 changed much from their briefing. I mean, I could have
2 pretty much picked up their brief and dropped it into
3 Mr. Hofsdal's statement there and not had to shift very
4 much. So I'm not sure they actually listened to all of
5 the testimony that came out about Mr. Fisher's intent,
6 Mr. Fisher's action, those that were around him who
7 witnessed this move and the shift for Todd into Las Vegas.

8 To address sort of the FTB's primary points here,
9 first focusing on domicile. They point to sort of three
10 major areas here. One, which they do seem to have
11 conceded based on the declaration of Mr. De Salvo, was the
12 error on the 2012 return that you've noted that indicated
13 that he was, in fact, domiciled in California. That was
14 an error. It was -- I'll call it a scrivener's error for
15 lack of a better description. It was something that
16 Mr. De Salvo's office got wrong, and they've acknowledged
17 they got wrong.

18 The other issue, which is obviously a big
19 sticking point for Appellants in this case, and we
20 acknowledge it, is the physical presence in California in
21 2011. 2010 we have a lot of debate on. Obviously it's
22 got no relevance here specifically because it's not at
23 issue. But there's also some real issues in terms of
24 allocation of time to California based on Todd's time at
25 the ranch, versus Todd's time in Mammoth in vacation or

1 visiting Carrie in L.A.

2 None of that has to do with where he lives. That
3 has to do with where he's going on vacation. But for
4 2011, we have obviously conceded in this case that Todd
5 did have a significant physical presence, but only because
6 of the auction. And we call that auction the temporary
7 transitory purpose that he was in the State of California.

8 The other thing they point to is the maintenance
9 of the farm in Creston. I think you've heard a lot of
10 testimony as to where that farm fell in terms of Todd's
11 desire to be in a specific location, but also the fact
12 that Creston was a functioning farm. And it was a space
13 where his mother specifically wanted maintained in the
14 family so that the remaining memorabilia and the family
15 could be moved up there. So Creston is its own issue. It
16 was not his familial abode. Once he met Catherine and
17 moved to Las Vegas, he was absolutely done with Creston in
18 terms of his life, his home, and where he wanted to be
19 permanently.

20 The third issue they point to in terms of
21 domicile was the registration of Ain't Down Productions,
22 which was his mother's touring company. And as Todd has
23 stated previously in declaration, he wasn't even aware
24 that his name was on Ain't Down Productions until she died
25 in 2016. So to use that as some kind of hammer or

1 evidence that Todd's intent was to remain in California,
2 it is simply incorrect.

3 Vis-à-vis, the residence -- I'll call them the
4 Bragg factors just for ease of reference and recognize
5 they've been split up in later cases, and they've been
6 more categorized, but they still are, at their core, the
7 same and admittedly outdated. I think even Mr. Hofsdal
8 acknowledge that many of the factors that go into the
9 Bragg analysis are now outdated. Again, physical presence
10 in California, we've discussed that. The comparison of
11 the properties between California and Nevada, they seem to
12 be saying that because Creston was the ranch, Creston was
13 a beautiful ranch, and because Todd was bouncing from
14 Catherine's home to a rental home to ultimately their
15 permanent abode somehow lessens the intents and the act of
16 moving to Las Vegas.

17 Would they take the same position if someone came
18 into California and simply rented a property? Does that
19 not mean that they physically moved into the state just
20 because it's a rental and not a purchase? I'm quite sure
21 the FTB would not take that position. So this -- this
22 idea of comparing property -- you've heard the discussion
23 about the reasons for the move. You've heard the
24 discussion. Rather than renting that house in the middle
25 between Cat's house and the purchase, they could have

1 simply moved back to Creston and moved Cat's stuff back to
2 Creston if they truly intended to be in California. The
3 rental actually establishes significant points in our the
4 favor because it identifies and establishes they wanted to
5 be in Las Vegas, and they went through some very difficult
6 hoops to -- to make that happen.

7 We also -- there's been a lot of discussion on
8 Catherine's blog on that front and vis-à-vis the farm in
9 Creston. I think she's explained it very well. I think
10 it's important to hear her testimony, see her say it, and
11 understand where she was coming from as an inspirational
12 writer. It was also clear from the testimony around Todd
13 and Catherine that they had no intention to moving to that
14 house in Creston. It was just not a viable possibility
15 for the two of them, given where their life was at that
16 moment.

17 The next category pointed to by the FTB are the
18 personal professional connections maintained in
19 California. This predominantly focused on the notion --
20 the incorrect notion that Debbie somehow did not live in
21 Vegas when she was at home, which we admit was not
22 particularly frequent because she was on the road. But
23 once she came home during these years in issue, she came
24 home to Vegas.

25 Bright Lights, Life with Carrie, that was two to

1 three years after these years in issue; and it was when
2 Debbie was slowing down. She was getting sick. She was
3 no longer on the road as much, and she was desperately
4 trying to spend more time with a daughter that she had
5 been estranged from for a large portion of her life. And
6 so I think we're missing apples and oranges in some ways
7 by taking Bright Lights as evidence of where Debbie was
8 during the 2011, 2012 time frame.

9 They also point to the registrations and
10 licenses. And again, we've addressed all of this
11 previously. The museum was a California nonprofit that
12 was formed in the 1970s in California. When the
13 bankruptcy was filed in 2009, HMPM was still a California
14 nonprofit, and Todd was a resident of California in 2009.
15 We have admitted that. So the filing of the bankruptcy is
16 not evidence in Todd's intent to stay in California in
17 2010 moving forward. Todd had to come back. Once the
18 bankruptcy was filed, Todd was forced to come back into
19 the Central District of California and deal with the
20 bankruptcy and its filings in California.

21 Again, we've discussed this. I've said it, this
22 issue with the driver's license. You know, we've all
23 waited to do things that should be done sooner. When I
24 moved from Massachusetts to Virginia, I didn't get a
25 driver's license for three years because mine hadn't

1 expired. When I moved from Virginia to California, I
2 didn't get a driver's license for a year and a half. So,
3 you know, these are not the highest priority items that
4 can be pointed to when somebody is making these moves.

5 The other issue is the new vehicle registration.
6 It is true there were vehicles registered at both places.
7 Why? Because Creston Freedom Farms was still an operating
8 ranch. It still had vehicles on property that had to be
9 used. The two vehicles that Todd purchased during the
10 years in issue we've discussed. One of them, Todd
11 actually purchased, yes, in California because he had a
12 relationship with the dealer. But he took that car and
13 immediately went back to Vegas. The only car that ended
14 up being registered in California was a car that was
15 delivered late to Toyota. Barbara Strong, his bookkeeper
16 at Creston, had to be the one who picked it up, and she
17 registered it in California and took it to the ranch. And
18 it wasn't until later that Todd took that car from the
19 ranch to Nevada. But it also doesn't speak to Todd's
20 intent to be in California in any way, shape, or form.

21 Finally, these California SOS filings, I just
22 mentioned HMPM registered in '72 never changed. It was a
23 California museum until filing for bankruptcy in 2009.
24 Ain't Down Productions, we've also discussed. That was
25 Debbie's touring company. Todd's name was put on it. He

1 didn't even know until after Debbie passed away. Freedom
2 Farms, the farm was, in fact, registered in 2012 when Todd
3 was advised by counsel that you're not there anymore.
4 You've got to register this thing and protect it as an
5 entity. So that's why that 2012 was filed. And,
6 interestingly, in all of the discussions about Secretary
7 of State filings, they don't mention the 15 companies that
8 Todd has registered in Nevada over the years. They just
9 focus on these older -- you know, sort of the convenient
10 aspects there.

11 Our bottom line is Todd has established that he
12 ceased being a California resident in 2010 and became a
13 resident of Nevada. His life changed forever, and he
14 moved to Nevada with zero intention to come back. Only
15 reason for his presence in California was the auction. So
16 let's turn to the auction and the sourcing argument.

17 You know, again, it sounds to me, based on what
18 we've heard and what I just heard from the FTB, the
19 sourcing issue comes down to sort of a basic question.
20 And that is, how long did the memorabilia need to be in
21 California to constitute its location for sale? Our
22 position is that the memory -- is that, bluntly, we think
23 they're wrong. There is no evidence in the record that
24 the primary assets of Todd's that were sold at auction
25 came into California prior to auction for any purpose

1 other than the auction.

2 They were brought in in 2011 for purposes of the
3 sale in 2011. They were not brought in 2010. They
4 weren't brought in 2009. They were brought to Creston for
5 cataloging, for photographing, and then for movement down
6 to Beverly Hills for the auction. Because we do agree on
7 some level sort of what -- what does California have to
8 have in order to tax something? It has to have a
9 California source. And there were a couple of points that
10 were made here that I just want to kind of comment on very
11 quickly. One is -- well, actually, let me -- let me point
12 to a couple of items that they said first.

13 You've heard explanation as to when these items
14 were brought into California. I -- I think Mr. Fisher was
15 fairly clear, and I think it was substantiated in some
16 part by the other witnesses that there were certain
17 assets -- the Ascot dress being the primary one for
18 Todd -- that were maintained by the family in the family's
19 control. They did not live in Creston. And Ms. Swain
20 spent a significant amount of time talking about saving
21 the memorabilia, protecting the memorabilia. Just because
22 these assets were in Vegas with the family doesn't mean
23 they weren't being protected. You've seen testimony.
24 You've seen declarations.

25 When Debbie took the Subway dress out of her

1 home, she always had white gloves on. Always. That dress
2 was never touched in Vegas without those white gloves. So
3 to say that these assets -- and by the way, the Subway
4 dress -- let's remember Ms. Swain said a backpack. The
5 way that Subway dress was stored, initially it was hung,
6 and they realize that was doing some drag and some damage
7 on the dress. And ultimately it was boxed in fancy
8 acid -- whatever the description is -- paper so that it
9 was being correctly preserved. The same was true with the
10 Ascot dress.

11 So for them to say without -- I think without
12 support in the record that these items were moved into
13 California and earlier than purposes of the auction, I
14 think is just incorrect. And I think the use of Antiques
15 Roadshow kind of sums up where this misunderstanding is.
16 Antiques Roadshow, which Todd testified to, was a show
17 where they reached out to Todd and said, "Hey, we want to
18 highlight this collection. Can we see this? Can we see
19 this?"

20 Todd physically brought with him from Vegas to
21 Creston the Subway dress and the ruby slippers, and they
22 were presented -- as you saw on the show -- as if they
23 were there, but they were not, in fact, there. Todd
24 physically brought those with him, just as he physically
25 brought the Subway dress to Japan. That's why we included

1 that picture in our presentation. They did not live in
2 Creston. They were brought to these locations for
3 purposes of these presentations.

4 Oh, and another interesting thing I find
5 interesting here is that Ms. Swain, when Mr. De Salvo was
6 testifying, really tried to get him to acknowledge that
7 the -- even without the residency issue, that this
8 memorabilia should have been sourced to California. Even
9 as a non-resident, the position of the FTB is it was
10 located there for a sale. Well, you heard Mr. De Salvo
11 clearly say is he did not believe that the movement of the
12 memorabilia to California for sale was sufficient to
13 render it a California source income. That is why, even
14 though Todd was a non-resident, he still looked at the
15 sourcing issue. It's been noted on the tax returns. He
16 still allocated income California source income. He
17 understands the rules. But when pressed by Ms. Swain, he
18 pressed back and said, "It's not California sourced
19 because it was only there for sale."

20 And that testimony sums up our position on
21 sourcing. The memorabilia was in California for the sole
22 temporary transitory purpose of sale. And that means it
23 cannot be considered California source income. And we --
24 you know, we've -- we've made this argument in briefing.
25 There is a temporal element to this. If FTB's position is

1 that the location of California for one day is sufficient,
2 you have just blown up the California auction industry.
3 And that -- that cannot be the intended result of that --
4 of that reg dash three.

5 So our position remains we have established that
6 that memorabilia didn't come into California but for
7 purposes of this sale and therefore, is only here for
8 temporary transitory purpose and should not be considered
9 California source income.

10 So with that, I'm going to turn it over to Todd
11 for any closing brief remarks.

12 MR. FISHER: Well, this is my first time in a
13 hearing like this. I have read many things that the
14 Franchise Tax Board has written. But hearing it like this
15 would make me think that I'm still a California resident
16 by their standards. Everything I've heard, you could make
17 a good argument that I am now still a California resident.
18 The absurdity of what I listen to over there is not only
19 old news, but it's crystal clear that they have deaf ears
20 when it comes to live testimony from real people about
21 real things. And also, it was crystal clear to me
22 yesterday when I was shown the calendar that is in
23 question, that the calendar is not only incorrect, but it
24 was altered and not the calendar that I generated.

25 So I would have to contest the calendar -- I

1 certainly would contest the calculations that were made by
2 the FTB. I reviewed these. The first time I saw that
3 calendar was yesterday. I know the FTB also generated its
4 own calendar, but I would contest, at this point, both
5 calendars I'd say they are not correct. The days that
6 David De Salvo chose to put on the tax returns were based
7 on discussions, as I said, with him, and we believe those
8 dates to be somewhat accurate at that time. Later in
9 review, we did make a more detail calendar.

10 But what I'm seeing attached here with all -- and
11 the -- and these huge numbers of 150 days in -- in 2011, I
12 believe it was. Whatever. I can't recall exactly the day
13 he said. I would contest it heavily at this point.
14 Clearly our intent, going back to the -- let's just say
15 the mission of my mother going back 50 years was to build
16 a Hollywood museum. The collection, for the most part,
17 had been moved -- big chunks of it -- to Tennessee, and
18 didn't back here until it was called back for this
19 auction. And I was with Cat. The collection was still
20 there in 2010 when we were -- I -- probably by May, we're
21 maybe in Tennessee in May of '10. That collection is
22 still sitting in Tennessee.

23 It began to move back after that, after the
24 bankruptcy court date. So you'd have to look at the
25 bankruptcy court date to determine, let's just say, the

1 call to gather the collection back to the ranch for the
2 purpose of preparing for an auction. So whatever -- I
3 don't know that date off the top of my head. But that
4 date was the date where we're like, okay, everything needs
5 to be moved here for these purposes.

6 That is not the time frame that's being discussed
7 over here. I mean, they're way outside these dates. I
8 mean, like, the notion that -- that we're saying that this
9 collection was all at the ranch, or what was the purpose
10 of the ranch? Well, I have to tell you the purpose.
11 There's no way to prove a purpose of why you built a
12 building. I told it in my testimony. Purpose of the
13 ranch warehouse was to store the museum, HMPM, Hollywood
14 Motion Picture and Television Museum's assets. They were
15 going to lease the space from me. We would also
16 additionally store things there that we didn't want to
17 handle ourselves personally. So there are at different
18 time was a mixture of things. My mother had retained, as
19 I've testified earlier, very close control of the higher
20 value assets.

21 I also heard, brought up a moment ago, a question
22 of insurance. Well, to put things in perspective, Steve
23 Fetterman worked for a company called Art Facts. We only
24 carried a \$2 million policy on this entire collection. So
25 there seems to be some mit -- some discussion about what

1 was this thing worth and what --

2 JUDGE LONG: Mr. Fisher.

3 MR. FISHER: Yes, sir.

4 JUDGE LONG: We need to wrap up.

5 MR. FISHER: I hear you. Well, I mean -- but
6 I -- well, I mean, is it okay just to -- I mean, just
7 to -- you tell me.

8 JUDGE LONG: Respectfully --

9 MR. FISHER: Yes, please.

10 JUDGE LONG: We heard from you for 90 minutes
11 yesterday.

12 MR. FISHER: I understand.

13 JUDGE LONG: We've heard several hours of witness
14 testimony.

15 MR. FISHER: Well, those are new facts, right?

16 JUDGE LONG: Well --

17 MR. FISHER: To me, they were new.

18 MS. TURANCHIK: I do feel like FTB raised some --
19 some new items here that he's entitled to respond to.

20 JUDGE LONG: I understand. We were allotted
21 10 minutes for the closing period. The issues addressed
22 by Franchise Tax Board were addressed at length in the
23 briefing as you pointed out. We have approximately --

24 MR. FISHER: Sure.

25 JUDGE LONG: I'm going to give you two more

1 minutes --

2 MR. FISHER: Okay.

3 JUDGE LONG: -- and then we're going to close
4 this hearing.

5 MR. FISHER: Don't we have a light that can go
6 on? Well, in closing, I'm just suggesting that the
7 Franchise Tax Board has no way of knowing the intent of
8 why we do the things we do. I barely knew why my mother
9 did the things she do. It took me decades to understand
10 what she was up to. The collection was stored the way it
11 stored at her behest. The building was built at her
12 behest. A lot of the things that happened were her at --
13 done at her behest.

14 My life changed when my wife died. We discussed
15 that at great lengths. I don't know how much more pointed
16 we can be about the fact that the ranch was done. It was
17 over. Everybody knows it except these people because it
18 suits them to have a different point of view. So my point
19 to just -- I -- I made notes here. I won't do them all to
20 you, but I do -- I do think it was absurd to bring up this
21 valuation issue. I have contested since the early days
22 the collection was worth \$30 million. When we filed with
23 the bankruptcy court they wanted more official -- that was
24 my opinion.

25 At the sale when the bankruptcy was filed, a \$10

1 million valuation was played based on best estimate at
2 that time. We had \$2 million in insurance. I don't know
3 how any of that means of really anything. It sold for
4 \$30 million in the end as I predicted. So the valuation
5 is one thing, but this stuff did not come back. A lot of
6 this stuff was not in California. It just barely made it
7 in time to get prepared for the auction. So the idea that
8 somehow it was all there just because the museum had a
9 nice building. It's true. It did, but we had a nice
10 building in Tennessee too that -- for storage purposes.
11 So it's kind of a moot point in my point of view.

12 I think the last thing I would say is, what is --
13 you know, what is the outcome of all of this for me? Why
14 am I not living at the ranch right now if you believe
15 everything that they're saying. They're saying my intent
16 was everything they've said. I'm not going to say it all
17 again. If my intent was to be in the California and
18 that's what I wanted to do, guess where I'd be? In
19 California. I'm not the kind of person, as you've
20 probably have learned by now, to get shifted around real
21 easily. A woman can do it, but I also happen to be a
22 lover of Las Vegas.

23 So where I live now and how I live now and the
24 journey that it took to get to where I am now is very
25 relevant, since they like to talk about Debbie's, you

1 know, relationship with Carrie and that part of the
2 journey even though it's way after the tax period. I just
3 say where I live now and what I do now hasn't changed
4 since 2010 in January, not one inch.

5 JUDGE LONG: Thank you.

6 And then before we do close the hearing today,
7 yesterday there was a discussion about the cataloging of
8 the location of each of the items and submitting that as a
9 document after the hearing. And my understanding was that
10 the parties are going to meet and discuss how that should
11 be done, if it is going to be done. Was something worked
12 out?

13 MS. TURANCHIK: I think we discussed it, and I
14 think the concern is that there's not necessarily evidence
15 in the record on each specific lot item. And I think what
16 our thought was that perhaps if we need -- if this became
17 an issue. In other words, if we really had to drill down
18 into the sourcing piece of this, that we could simply do
19 a -- a statement; supplement the record with a statement.
20 No more testimony. No more, you know, putting people on
21 the stand. Just keep -- reopen the record to introduce a
22 log, basically, to show what our position is vis-à-vis
23 each specific item.

24 JUDGE LONG: Okay. Would 30 days be enough time
25 to prepare that?

1 MS. TURANCHIK: Oh, absolutely. Absolutely.

2 JUDGE LONG: Okay. So I'm going to ask for that.
3 Today is the 16th, which means that it would be due by
4 November 15th. We're going to hold the record open until
5 November 15th to receive -- actually, we're going to hold
6 it beyond that. We're going to hold the record open.
7 This document will be due on November 15th. FTB will be
8 given an additional 30 days to respond to the catalog
9 information or catalog of information, I suppose.

10 And otherwise, today's hearing is coming to a
11 close.

12 I'd like to thank everyone for coming in today.

13 Mr. Fisher, all of the witnesses, Ms. Hickland,
14 thank you for telling your story.

15 The panel will meet and decide your case later,
16 and we will send a written opinion of the decision within
17 100 days of the record being closed.

18 Today's hearing in the Appeal of Fisher and
19 Hickland is now adjourned, and this concludes today's
20 hearings.

21 Thank you.

22 (Proceedings concluded at 1:48 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 12th day
of December, 2025.

ERNALYN M. ALONZO
HEARING REPORTER