BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,	)	
	)	
G. SAFADY,	)	OTA NO. 220610532
	)	
APPELLANT.	)	
	)	
________________________________	)	

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Tuesday, April 21, 2026

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at 400 R Street, Sacramento, California, 95811, commencing at 9:00 and concluding at 11:50 a.m. on Tuesday, April 21, 2026, reported by Ernalyn M. Alonzo, Hearing Reporter, in and for the State of California.

APPEARANCES:

Panel Lead:	ALJ KEITH T. LONG
Panel Members:	ALJ JOSH LAMBERT ALJ JOHN O. JOHNSON
For the Appellant:	G. SAFADY FRANCIS MOHAN
For the Respondent:	STATE OF CALIFORNIA FRANCHISE TAX BOARD DESIREE MACEDO RON HOFSDAL

I N D E X

E X H I B I T S

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Sacramento, California; Tuesday, April 21, 2026
9:00 a.m.

JUDGE LONG: We're opening the record in the Appeal of Safady, OTA Case No. 220610532. This matter is being held before the Office of Tax Appeals. Today's date is April 21, 2026, and the time is approximately 9:00 a.m. This hearing is being convened in Sacramento, California.

Today's hearing is being heard by a three-member panel. My name is Keith Long, and I will be the lead Administrative Law Judge. Judge Josh Lambert and Judge John Johnson are the other members of this tax appeal panel. All three panel members will meet after the hearing and produce a written decision as equal participants. Although the lead judge conducts the hearing, any judge on this panel may ask questions or otherwise participate to ensure that we have all the information needed to decide this appeal.

The Office of Tax Appeals is not a Tax Court. It is an independent appeals body. The panel does not engage in ex parte communications with either party. OTA will issue an opinion based on the parties' arguments, the admitted evidence, and the relevant law. For the record, will the parties please state their names and who they represent, starting with the representatives for FTB.

MS. MACEDO: My name is Desiree Macedo representing Franchise Tax Board.

JUDGE LONG: Can you be a little closer to the microphone when you talk?

MS. MACEDO: My name is Desiree Macedo representing Franchise Tax Board.

JUDGE LONG: Thank you.

MR. HOFSDAL: And my name is Ron Hofsdal. I also represent the Franchise Tax Board.

JUDGE LONG: Thank you.

And for Appellant.

MR. MOHAN: I'm Frank Mohan representing Gary Safady.

JUDGE LONG: We'll need you a little closer as well.

MR. MOHAN: I'm Frank Mohan representing Gary Safady.

JUDGE LONG: Thank you.

MR. SAFADY: And I'm Gary Safady.

JUDGE LONG: The microphone has got to go on. There's a button to push to turn the microphone on.

MR. SAFADY: I'm Gary Safady.

JUDGE LONG: A little harder. You'll see a green light.

MR. SAFADY: Hi. Gary Safady.

JUDGE LONG: Good. And good distance too on that one.

MR. SAFADY: Yeah.

JUDGE LONG: All right. Well, the issues to be heard today are whether Appellant was a resident of California during the period January 1, 2012, through May 18, 2012.

At the prehearing conference, Appellant indicated that he would like to give testimony. As a reminder, witness testimony is not required. However, testimony given under oath may be considered as evidence, whereas, any other presentation is considered only as argument. Additionally, witnesses are subject to cross-examination.

Mr. Safady, can you please confirm whether you'll be testifying today.

MR. SAFADY: Yes, I'm testifying.

JUDGE LONG: Thank you. And if you could just raise your right hand.

G. SAFADY,

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

JUDGE LONG: Thank you.

Moving forward with exhibits. Appellant previously submitted Exhibits 1 through 7, which were discussed at the prehearing conference. Thereafter, Appellant submitted an updated exhibit list identifying Exhibits 1 through 17. They include:

One, FTB Notice of Action;

Two, Affidavit of Jeffrey D. Kabot;

Three, Affidavit of Selwyn Gerber;

Four, Statement of Scott Perdett;

Five, Affidavit of Salvatore Solano;

Six, Affidavit of Eleanor Safady;

Seven, Statement of Jose Carlos Mata;

Eight, Schedule of Credit Card Charges in Las Vegas;

Nine, List of Companies Owned - 2012;

Ten, List of Non-California Professionals Used - 2012;

Eleven, Response by Jeffrey Kabot to Request for Information;

Twelve, Reorganization Agreement dated August 30th, 2012;

Thirteen, Veer Tower Lease dated 12/2/2011 with layout;

Fourteen, State Home Insurance -- State Farm Home Insurance - Veer Towers dated 12/7/2011;

Fifteen, Non-Binding Letter of Intent dated 6/14/2011;

Sixteen, Interim Agreement dated February 13, 2012, Mezzcap;

And then Seventeen, Mezzcap and Venable Billings with graph.

Does FTB have any objections to these exhibits?

MS. MACEDO: No objections.

JUDGE LONG: Thank you.

And then before the prehearing conference, FTB provided an exhibit index identifying Exhibits A through K. There were no objections to these exhibits at the prehearing conference, and so they are admitted.

(Department's Exhibits A-K were received into evidence by the Administrative Law Judge.)

JUDGE LONG: Thereafter, FTB provided Exhibits L through P. They are:

Exhibit L, Respondent's request for information to Mr. Mata;

M, Mr. Mata's response to Respondent's request for information;

N, Respondent's request for information to Mr. Solano;

O, Mr. Solano's response to Respondent's request for information; and, P, Respondent's request for information to Mrs. Safady.

Does Appellant have any objections to Exhibit L through P?

MR. MOHAN: I do not.

JUDGE LONG: Thank you.

All right. We are ready to begin with the presentations. Appellant requested 90 minutes for the presentation and testimony, and you may begin when ready.

MR. MOHAN: Thank you. Maybe that's better.

PRESENTATION

MR. MOHAN: As we're all aware, this matter is in regards to a determination of whether my client Gary Safady was a resident of California for the calendar year 2012. It's been our position from the get-go that Mr. Safady moved from California, which he has been a long-time resident and -- and had done a significant amount of development in, and to the Las Vegas area, in particular Veer Towers in December of 2011. The only reason -- or one of the only reasons he came back was because he was involved in significant litigation with his long-term partner and cousin, Mr. Paul Orfalea.

When you're trying to analyze a residency case, there are a ton of different rulings getting to each specific point. The particular problem in this case is Mr. Safady's life is not ordinary. It's not average. His particular situation wasn't an easy show to the Franchise Tax Board, and that it wasn't a husband wife, two kids, and a dog packing up the U-Haul van and moving to a different city. At that point in time in his life, he was recently divorced, had a significant litigation matter going on in California, and then recently broken up with his girlfriend, which at that point in time, he wanted to leave the state; and he did, in fact, did leave the state.

When you look at Revenue & Taxation Code 17014 in regards to residency, it's if you're in California for other than a temporary or transitory period. And in this case, the transitory period was probably from the last week of January all the way through the -- maybe the third week of August. At that time and during that period, he didn't maintain a residence in California. The Franchise Tax Board points out in their briefs that he owned a property through one of the his companies, and he owned another property through one of his companies, and he could stay at his parents' house, and he could stay at his brother's house, and he could stay all over the place. It could have been a Holiday Inn for all I care. The fact of the matter was, it wasn't his home. They were properties. And we'll go through each one of the properties to explain why they weren't his residence.

Going on to the regulations, under Code of Regulations 17014(b), whether or not the purpose which an individual is in the state will be considered temporary or transitory in character will depend to a large extent about the facts and circumstances of each particular case. It can be stated generally, however, that if an individual simply passes through the state on his way to another state or is here for a brief rest or vacation or to complete a particular transaction or perform a particular contract or fulfill a particular engagement, which will require his presence in the state, but for a short period of time, he is in the state for temporary or transitory purposes.

And as you probably all know, you know, one of the leading cases is the Bragg factors, which talk about different factors to consider in trying to determine who is a resident, who is not. The difficulty with the Bragg factors is they don't really fit his life perfectly. For instance, the first one in regards to whether -- or where the location of his residential real property is. The kind of -- the ironic part of this particular case is the only single family residence that he actually owned was in Huntsville, Alabama. He didn't own one in California. He didn't own one in Las Vegas. He owned a single-family residence in -- in Alabama, and no one alleges that was his real home. And that was there when he ended up going to Huntsville.

He did have some other properties, 2703 Nicholas Canyon. That was a single -- well, it was a very large single-family residence, 8,200 square feet. But by the time we got to 2011, that was no longer around. It did serve as his residence at one time, but not during the period at issue. 9800 Wanda Park was also another smaller house. It was actually smaller than alleged in the petitions, but that was remodeled to an office complex. They had put in a whole set of cubicles, 20, if I recall. Mr. Safady can clarify that one when he speaks. And they brought in two T1 lines to house the office staff. They were still around at that period of time. Wasn't quite a place to -- to have a residence, especially when you had people going in and out of there for business purposes; that being his employees.

He did have his parents' house to stay at when he wanted to. But, you know, a 50-year old laying on the couch at your parents' house really wasn't what I would consider a residence. It's a place to stay while he's there. It's not a place he returned to. So really, he -- he didn't have any real residential ties to California at all and clearly, didn't have a home; a place he intended to go back to.

The other - the other issue with the property in -- on Wanda Park is that was -- at the time, it was being leased by O&S Holdings. It was a company that he owned half of. The litigation dispute I referenced earlier with his cousin, who was also a half owner of O&S Holdings, he refused to allow him to even be there for personal purposes. He didn't want to spend one dime, or have Gary benefit from one ounce from staying in that property.

The other factors, for instance, you know, where your spouse and kids are. Well, in this situation he's divorced. And from -- well, throughout this whole period of time up until today, Gary's ex -- Mr. Safady's ex-wife and kids still remain in California, even though he has a -- it's a little unclear in regards to what the time period is because throughout all of the audit we've been talking about, the government -- or the Franchise Tax Board conceding the fact that when he bought a place in Florida, he was no longer a California resident, which is really kind of isn't true. Because even though he bought it, the original purchase of that property was for investment purposes. He thought he was getting a very good deal. And, in fact, he probably didn't move out of

California or move his stuff from Vegas until October of that year.

So, when you look at the factor of wife and kids and where the kids go to school, nothing has really changed. You know, January of 2010 they were still in California. December of 2011, they're still in California. March of 2012, they're still in California. May 19th, August 21st, December 31st, they're still in California. Nothing has changed. So, it's very difficult to use that argument that you have to be here because you have kids. There is an allegation in the pleadings some place that talks about the fact that he was under a court order to have his kids every other week.

Well, that's all well and good, but that's not what he and the ex-wife had agreed to. She understood he was going through a difficult time with this litigation, and therefore, they had other arrangements. He could see them when he could. He talked to them on the phone. They did travel to Vegas a couple of times to meet with him to have a fun time. But that wasn't a fun time of his life that he wanted to share with his kids. And they also agreed as a couple to leave the kids in -- in California to maintain their current school situation, to maintain their social lives, their friends, and not disrupt them, which they absolutely have the right to do.

Back in 2011 and 2012, phone records, you know, Mr. Safady basically operated off a cell phone. So, tracking where he was, it wasn't a landline where you could see where his long-distance phone calls were. It was on his person wherever he happened to be. Since he didn't have a primary residence in California, he never claimed a home owner's exemption. There's nothing to claim. He doesn't own one to claim one on.

With respect to the number of days in California -- I guess to give you a little background, when this audit took place originally, the auditor tried to put together a calendar based on his credit card. On the first, I think, probably two runs of that analysis, the auditor had done a very good job trying to figure out what a housing expense was, and what a meal expense was, and what a entertain expense was, and kind of categorized them in an effort to determine where he was during that year. The problem with that is the actual credit card had, not only Mr. Safady's name on it, it also had his assistant Carlos. It has his assistant Shannon. It had his kids on there. And I believe there is one in there that his parents' had used. So, when they did the original analysis, which since been overcome, they marked all these different restaurants or places of business and came up with 200 and -- I don't know -- it was 240 days in

California.

Once it was narrowed down, I think currently it's probably 120 days, but I don't even know if that's correct. And Mr. Safady will tell you that. The hard part in doing that is 15 years later we're sitting here trying to analyze where he was during the year. So, in hindsight, it would have been nice that Mr. Safady had, you know, 8:00 o'clock to 10:00 o'clock I was in Santa Monica. From 10:00 to -- to noon, I was in Century City, and then I went home, I had dinner. No one does that. I doubt you guys do that. You'll have appointments on your calendar. You'll have hearings in your calendar. There's probably not an entry in your calendar going, going home to wife and kids to have dinner. So, it's difficult to ascertain.

The other problem with the calendar is that it had appointments to where we know he was in California, but we also know when he was in Nevada. And Nevada was a little different because a lot of the -- particularly at that time in -- in Las Vegas, you know, after the downturn, Las Vegas was hit hard. So, they were hard up for bodies to be in Las Vegas. He got a good deal on the Veer Tower. Most of the stuff in Vegas you can go to a buffet for four dollars. You know, they were -- they were trying to get people back to Las Vegas. They had a very difficult time doing that. So, when you analyze where he's at, we have credit charges that we know are in Las Vegas, and we know he is the only one that would have incurred those.

The cost in California, we don't know that he was the only one that incurred them. For instance, Carlos may have -- his assistant -- may have taken the kids out to dinner. We know there's a charge in California. We don't know if it's Carlos. We don't know if it's Mr. Safady. We don't know if it's his parents. We just know there was a charge in California. So, it's very unclear from this calendar. Although, I think the most recent revision is probably as close as we'll get using a calendar, using the credit cards to determine where he's at.

The other issue is the fact that if he's there during the day, there were many times that he drove home. You know, whether he went for a day trip or if he went for three days and drove home, I'm not sure really how you count that because he would have gone back to his place in Las Vegas, you know, what he believed to be his home to rest and -- and get away from the Los Angeles hustle he's had for the last 30 years. So, do you count that as a California day, or is that a Nevada day? I think it would be a Nevada day in that he's returning to his abode, you know, the place he wants to return to, his home; the place where his stuff is.

There were other indications that were brought up in regards to where he was at. For instance, the Statement of Information filed with the Secretary of State, a ministerial act that's probably done by somebody else. And back in those days when they started the online process, you would pull up a California company and most people would just check the "Same As Last Year" box; which says Mr. Safady resides in Los Angeles. Probably the same thing happened in Texas and Louisiana and in Florida where all of his other projects were.

The other issue in regards to these factors is where -- where most of his real estate investments are.

JUDGE LONG: I'm sorry. Can you repeat that contention with respect to the "Same As Last Year" box for me?

MR. MOHAN: The statement of information is filed every year or every other year with the Secretary of the State for California LLCs, corporations, and such. When the filing is due, when their original online version came on, you would click on your company. And then if you wanted to, you could change the manager of a company, or you can change the agent for service or process. Most people, Mr. Safady included or his firm or companies, I should say, would normally just check the "Same As Last

Year" box.

JUDGE LONG: Okay. I understand. Thank you.

MR. MOHAN: So, it's a ministerial act, but it's been brought up to support the fact that he's -- intends to stay in California. But I think the same thing would have happened for the Huntsville properties because that's where the office was. It doesn't mean he was in Alabama. It doesn't mean he's living in Alabama. That's just where he'd be served as an agent for service of process.

And, along those same lines, one of the factors discusses the fact that where his -- most of this investments are. And yes, he had California investments. He had California projects, but most of his net worth and projects were out of the state, that being in Texas and Louisiana, Huntsville, Alabama. So, if you'd compare them, he has more things -- way more things out of the state, based on value and numbers, than he did in California. There's other minuscule ones, like, where did he register to vote? Where did he have his driver's license. Yeah, he got a new driver's license in Nevada, and he registered to vote in Nevada.

There's also a list in -- I believe it's Exhibit 10 -- Appellant's Exhibit 10 that talks about his professionals, and where they're from. You know, he had litigation going on all over the place, and that was a common occurrence in his industry, you know, landlord/tenant disputes. You have construction disputes. You have lending disputes. There was all kinds of other litigation going on at this time, but he need didn't need to be in New York. He didn't need to be in Texas. He didn't need to be in Alabama.

This one was specifically something that he had to do because he was the only one that had the knowledge and the ability to put together where things were. You know, if you're talking about a 30-year partnership of 50 entities, and he wanted to see malls permit for concrete or construction bill for concrete, there was nobody there back in those days to even understand where the project was; whether it was still retained by the two partners, or if it was disposed of or dissolved. There was nobody there for that. He was the only one that could do it. It would have been great if they could have taken this -- you know, I don't know how many boxes -- a 10 by 20 storage unit, 8 feet high; if they could have taken all of those boxes and shipped them to Las Vegas. But all the attorneys and all the subpoenas and summons for all these records and inquiries were all Los Angeles, so it was much more cost effective to have Mr. Safady come into Los Angeles to try to figure these out and find them for all these different professionals; whether it's the accountants, the consultants, the attorneys.

No one even knew where to start. And that's both from the allegations that were made against him for mismanagement and then misappropriation, as well as trying to work out the final settlement details of this massive conglomeration. At one point in time, it was just -- I would assume just south of a billion dollars in value of assets. When 2008 hit and the economy tanked, that was a big hit to this industry. It was a big hit to him financially and personally. And then to come around two years later and be attacked for doing something wrong made it personal.

And Mr. Safady will testify that, when he moved, he moved. He rented a three-bedroom place. He didn't rent a studio. He rented a three-bedroom place so that he'd have a place for his kids. He bought furniture. He had nothing to move, other than stuff in his car, you know, clothes and -- and clothes, personal belongings. But he had it all setup for them, and they, in fact, did visit. It was fairly easy on the bank state -- or on the credit card statements that we -- that I mentioned earlier, to figure out when he's flying back and forth to Las Vegas.

But, you know, if it's a three, three-and-a-half hour drive from where Mr. Safady was in Los Angeles, by the time he drives to the airport, gets there an hour early for TSA, checks in, hops on a plane for 45 minutes, gets out of the airport, finds a cab; it's just as easy to drive sometimes. And he could do it at his convenience, not based on the airline's schedule. He doesn't need to make a 7:05 flight to get there at 8:10. He just hops in a car and leaves. And many times, his assistant drove him after a long day. He didn't trust himself driving, you know, three-and-a-half hours after work and twelve hours looking at boxes, which was good.

So, considering, you know, the Bragg test and the actual law and regulations, to me, the query here is where did he go back to? You know, we've acknowledged that he had stayed at his parents' house during that period of time. He crashed at Wanda Park. He stayed with his brother. If he had that many places to stay, he's not going back to one place that is his home. He's just getting his job done and going home. For those reasons, I believe Mr. Safady was a non-resident for all of 2012.

JUDGE LONG: Thank you. And you can just go straight into your witness testimony.

MR. MOHAN: Okay. Can -- can both stay on?

JUDGE LONG: Both can stay on, right?

MR. SAFADY: Would it be possible I use the bathroom really quick?

JUDGE LONG: Sure. Let's take 10 minutes to --

MR. SAFADY: Yeah. Couple of minutes, yeah, just to use the restroom.

JUDGE LONG: We'll take a 10-minute break. Everyone, please come back at 9:45. Thanks.

MR. SAFADY: Thank you.

And we're going off the record now.

(There is a pause in the proceedings.)

JUDGE LONG: All right. We're reopening the record in the Appeal of Safady.

We are going to begin with witness testimony from Mr. Safady, and you may begin when ready. Thank you.

MR. MOHAN: Thank you.

DIRECT EXAMINATION

BY MR. MOHAN:

Q Mr. Safady, if you could, could you explain what you do for a living and, particularly, up and through for 2012?

A Yeah. Sure. I was the managing partner and the founder of O&S Holdings, which was a development company and management company of assets throughout the United States.

Q What type of projects would you have. And then kind of maybe start with how you started and where you ended up?

A   Sure. Yeah. So, I -- I started -- I had just gotten married in 1993, and I didn't have any money. I probably had $5,000 in my name, and I lived with my grandmother the first three years of our marriage. And I started off as a real estate broker, and I made -- was starting to make some money. And then in our third year we were having a baby. Instead of buying a house, I bought a small piece of land and -- with my cousin, and we built a 5,000 square-foot commercial retail building. And then we did another building. So, 5 went to 10, 10 went to 20 to 30,000 square-feet.

Then over a series of -- through 2008, we built 4 to 5 million square feet throughout the United States. And so I was just always super entrepreneurial. I -- I pretty much -- my cousin was a silent partner, and I pretty much built it up to zero to almost 6 to 800 employees throughout the United States.

Q   And was your cousin also a partner from day one, or did he come on after your first or second project?

A   No. From -- from day one. We were very close.

Q   Were you very close before this business relationship started?

A   Pardon me?

Q   Were you very close before the business relationship started?

A Yeah. We had a good personal relationship. He was my dad's first cousin.

Q And then let's kind of move forward. You had, you know, significant properties all the way up through 2008. And you were married in '93?

A 1993, correct.

Q And any kids?

A Three children.

Q At some point in time, your marriage started to become on a rocky path?

A Yes, around 2006 or so, 2007.

Q Were -- were things still good in the business?

A Pardon me?

Q In 2006 and '07 when you were having marital difficulties, was -- was the business still doing well?

A Yes. We were still doing well in business.

Q When did the business start to fall apart?

A Well, I think the -- there's two key dates. In 2000 -- at the end of '07, my -- the mother of my children and I went through a mediation to separate and to get a divorce. And in March, I think it was of 2008, I signed the divorce basically with little resistance. We just -- you know, for the sake of our children, I pretty much gave her everything she wanted, and I just wanted to move forward. And three months thereafter, I was blindsided when the entire economy -- the global crash of 2008. And it was like being hit by a brick wall. Everything changed in my life.

Q The -- the problems with respect to the economy hitting you, was that tenant problems? Bank problem? What kind of problems did it -- did it force you to take charge of?

A I mean, it was -- it was a big challenge. I got a divorce. I bought her out of all that properties. I didn't have the cash to do it, so I took back notes from her. We had tenants over the series of the middle of '08 through 2010. We had loans coming due, tenants renegotiating, tenants going to bankruptcy. We had a particular loan in Huntsville, which was a -- say, a $200 million construction loan led by Wells Fargo and eight banks. Six of the eight went into receivership. So, it was a very, very challenging time.

And then my -- then my partner started to turn on me, and basically in 2010, filed a lawsuit against me. And it was basically trying to takeover my interest.

Q What part of 2010?

A I would say some time -- it was so long ago, but mid-2010, I guess, early 2010.

Q And was -- he was trying to takeover your interest. Was that something you discussed, or was just, litigation, or how did it start?

A It started with, obviously, conversations. And I -- I just remember one day he said -- he phoned me up and said, "I'm going to humble you." And he was -- I -- I knew his style from years of watching him grow his business, and he -- he kind of manage by intimidation. And he was coming after me, and he had the liquidity. He knew I owed my ex-wife money -- a significant amount of money. He called her and tried to get her to go after me legally me as well. He threatened also when she didn't, says could take her house. He called my dad, his first cousin, who is -- who, you know, was getting older in year and would harass him. It was just -- I knew he was coming after me, and I knew this was all I had left. So, I had to -- you know, I had no other choice but to fight and figure out how to fight.

Q And in 2010, you signed an interim agreement, I think it was called?

A No. That was when went through a mediation. That was in June of 2011.

Q So was there any agreements reached in 2000 -- or 2010?

A I don't believe so. I know we went through some hearings, and he tried to get me removed as manager of the company, and I prevailed in both cases. Then he fired his law firm and hired a really big -- I think it was Munger Tolles -- to go after me. And, at that point when he brought the new lawyers on who took a bird's-eye view of the case, they said to him, "You better settle with Gary," and that's when we went through mediation.

I'm -- I don't have a -- I'm not big with conflict, and I was always willing to talk to him and work out a settlement. And in hindsight, where we ended up on the matter is exactly where we should have. And we didn't have to go through this. But for him, it was -- it was very personal, and it was an opportunity for him to, I would say, put his thumb on me. So, it was a -- it was a very difficult period.

Q So the interim agreement was reached in June of 2011. Was that fairly detailed, or a final agreement, or what was the purpose of that agreement?

A I mean, it was really the first step. A very, very high level of moving forward with a proposed path for settlement. I didn't think it would be done because there's a lot of multitude of issues, and I know how -- I know how he was. And then we had a subsequent mediation in December of 2011. And from that June to December, the attorneys were going back and forth. And I feel we were about 95 percent with what I thought were all the issues being completed leading into that December mediation.

In fact, I even said, "Why are we even having this," because it was up in the Bay Area. And -- and they're like, "No, we need to go."

I guess they also want to try to, you know, have a lunch together and all that. So, we had that mediation.

Q And the mediation was successful? There was an agreement at that date in regards to however you're going to reorganize or split up?

A Yes. So, it was, obviously, not the totality of it, but it was substantially there where I felt good enough about it. I actually felt good about it, really, in November, because most of, like, these big issues I thought were -- were resolved then.

Q Okay. Let's -- let me take you back in 2010 and I guess through most of '11. You were -- were you primarily living in Los Angeles? That would have been after your divorce but before most of this litigation.

A Yes.

Q In 2011, where were you living?

A Pardon me?

Q In 2011?

A 2011 I was -- well, I had a -- had a bed there at Wanda. But mostly I was staying at that point with my -- my girlfriend at her house because I had -- I was trying to raise capital any way I could. And our O&S Holdings office, we were buying a building in Beverly Hills that we fell out of -- we -- we did not close on the property and foregoed. We had a million dollar deposit that we lost. And at that point in 2010, we had all these people in the office and -- and still like, quite a few people from in the LA office, like 20, 25 people.

And so, I said, "Just take over Wanda, and I'll pay -- charge you $10,000 a month in rent." So, we ended up gutting. We had about 25 work stations. Brought in two T1 lines, which was significant back then because AT&T was like, why do you need two, you know, T1 lines? But it was to communicate with the other out-of-state properties, et cetera. And -- and it ran all of our network servers and stuff. So -- so, we went ahead and did that. Then for me, it got really overburdensome having all those people there. And then when Paul found out that he was paying rent there -- he knew about that, but he didn't know that I was staying there. He just blew a lid and said, "I'm not, you know, paying for your fucking residential property, you know, for you to stay."

And so I -- I basically left. I converted the -- you know, it was a small place, like 2,000 square feet, and so I took the upstairs. I just made a conference room out of it. So, it was -- it was -- it was where -- we always had people there in and out. So, it was -- it was a place -- I saw that as a place for me to make money, and I ended up leasing it because I was just trying to make -- rent out whatever I could.

Q The Nichols Canyon property, in 2011, did you stay there?

A No. Never.

Q The -- the income from the rents, that income would have gone to O&S?

A No. That was directly to my entities that owned the property, 9712, that entity. And then the -- whenever I leased Nichols Canyon, they would go into the Nichols Canyon bank. They're separate bank accounts.

Q Okay. Continuing on. After the June interim agreement, did your relationship with your girlfriend continue on through 2011?

A No. It -- it ended around, I would say right around October 2011.

Q At what point -- you know, you have your divorce. You have the beef with your cousin, your partner. You have your girlfriend leaving. At what point did you decide that you wanted out of L.A.?

A I mean, I was always -- I was always contemplating it, and I would say right around -- I really started thinking seriously about it when we signed the

June 2011. And then around October 2011, you know, I -- I wanted to leave. It was a bad ending with my personal relationship, and I just -- I -- I wanted to move on with life. And just like the straw that broke the camel's back, I just -- I wanted to leave. And I want -- everything -- everything that was happening to me my whole life, it just felt like the walls were closing in on me, and I just needed to go hang my hat somewhere else.

Q When did you consider Las Vegas as a potential place?

A I started thinking -- or I started to search around October, November. And in December, I signed a lease in Las Vegas Veer Towers.

Q What was your thought process in regards to why you picked Las Vegas and not some other place?

A I had history there. I built a center there. I had a very good personal friend of mine that we shared the same interest, and he had children like me. And -- and he was doing infrastructure projects in Africa, and I've always been fascinated about that and wanted to do that. And plus, the gentleman that owned -- that owned -- I knew the owner of the MGM, and I know they were in serious trouble with their project that I subsequently was living in.

So, I thought there was some real opportunities there for me to move there. And also, I could be even close to my kids, when I need to see them, to go back. But that was really a place that I moved to start a new life and to really have some peace and quiet in my life.

Q Did that provide you peace and quiet?

A Well, to be honest, my first few nights there at my apartment, my blinds weren't on. And since I was living on the strip, it felt like I was having an epileptic seizure with all the lights of the strip. So, it was pretty -- it was -- that was not too peaceful until they put those blinds in, but I enjoyed it. I -- it was just like self contained. I didn't have to go anywhere. I had the gym. I had the food downstairs. It was familiar to me, and I had some friends there too. So, it was -- it was nice. What I didn't have was the pressures of -- I mean, I hate to say this, but my family and the children, the work. I didn't have that there.

Q So you signed a lease. Did you have a bunch of furniture to move from Los Angeles?

A Excuse me?

Q Did you have a bunch of furniture to move from Los Angeles once -- once you leased the apartment?

A I mean, yeah, I had -- I mean, I had several friends. I mean, from all around the world actually, you know. My friend Brent would come. My friend Steve

Kritikos [sic] who is my former tenant in Vegas who lived in New Hampshire. My friend Daniella from Europe came. My friend Natalia from Europe came to visit me. My friend Jonathan Keyes [sic] from Israel came to visit me. So, I had several friends throughout the period of time there that would come. My buddy Judd from New York came. So, I always had -- and in being in Las Vegas, there's always somebody coming in for a convention or to have fun, et cetera. So, I always had people in and out.

Q I mentioned earlier about your calendar. Would -- would that be things that you would put in your calendar?

A No, I didn't -- by that time, I never really used that calendar so much, and I'll tell you why, because it was on the network in my system. And, at that point, I was -- my cousin and all his lawyers had access to everything in our server. So everything that I put in there, they would have access to. So, it was an Orfalea network, and I didn't want, you know, people know what I'm doing.

Q If you didn't have the possibility of everybody seeing it, would it have been likely that you would have kept a better calendar?

A No, probably not.

Q So you -- you're in the Veer Tower in Las Vegas and your lease is from December 2nd, or something like that, and you had a full-year lease. Did you have to move any household furnishings, couches, TV's?

A I -- I bought all brand new furniture. You know, when I got divorced, I literally just left with my clothes. She got everything.

Q And did you -- did you have things? I assume you had something to move from Los Angeles to the Veer Tower, even if it wasn't furniture or TV. You had personal effects. Would those -- would you have moved those, or is that just something you threw in a car and took off with?

A It was just stuff in the car and took off with. There was really -- you know, Nichols Canyon, all that home was staged. I was trying to sell it, or I was leasing it. And I was just trying to rent that. And Wanda, by that point, it was basically all office space.

Q Do you remember -- again, this is 15 years ago. But do you remember how long after signing the lease you physically moved to Nevada?

A I mean, a few days, a couple days.

Q And was the furniture already there when you got there, or did you have to get there and figure out what goes in there, or --

A I would say like, maybe probably 90 percent. You know, quite a bit was there.

Q And so you were in Nevada. And again, I'm referring to the calendar, which I acknowledge is not perfect, but you were in Nevada for most of December?

A I believe so.

Q And then January when you had the mediation that you said was Oakland?

A Yes.

Q December? And everybody was happy, shaking hands, and agreeable?

A Yes, and we had a lunch. They brought in food, and they sat next to us. Like, he was I -- he and I were very close. I mean, we used to travel with our kids together every summer, you know, and take trips together. So, it was -- it was pretty heavy to have -- you know, the way he turned on me and, you know, what happened. It was just completely unfortunate.

Q So as -- as time goes on, does he cease in -- in trying to make the split harder on you or -- or not?

A No. After we signed it, we had our first board -- like, board meeting, and they brought in -- I want to say it was FTB. I know it's the same acronym as you guys, but it was a third-party that had the third -- the tie-break vote. And they were like the administrator and ran everything. And our very first call, it was, you know, typical fashion. He had to rip someone apart, and I was the guinea pig. And he was trying to get me to be thrown out of the company, replaced as manager. And mind you, there's nobody else that immediate around there that could have taken over and dealt with the multitude of issues that I was dealing with -- or we were dealing with as a company.

And, fortunately, my -- when my lawyers said, "Well, you'd have to pay him as part of the agreement, $5 million to remove him as manager," and I maintain my equity.

And I said, "Sure. You want to. Let's do it." And then he didn't want to pay it. Instead, he next -- the immediately following that, he -- their lawyers wrote an allegation because I was owed development fees close to $50 million that I never took. I helped the business grow, and I deferred my -- my -- my development fees. I never took a salary. I only got development fees. And so, he filed to our attorneys they wanted a complete audit. They said I was embezzling money, and I was overstating all my development fees. Well, now there's -- and then they said if -- if we find out for cause, then they have a right to terminate me, and they have the right -- I think there's a penalty against my equity and stuff like that.

So, he basically dragged me back down that path, and then the attorneys -- I had -- I had -- it wasn't just 35 entities. I know we see all these agreements. There's 35 entities, and they say there's only two-and-a-half million in legal fees. That was my half. The total legal fees on this was over $5 million over this period of time of, I would say, 8 to 12 months. Majority of it, I believe, was between August through -- or January through August. Because the issue is this, the December -- you think it's much -- it's okay, you're done. You're going to move forward.

What happened was, when they peeled back and realized there's over 35 entities that we own, all separate LLCs, all separate books, he's now going through a divorce at this time, and his wife's attorneys -- now, we have my attorneys, his attorneys, they're attorneys. Now, we're going through the long-form agreement. And I gotta tell you, it was probably 8 to 12 inches high of paper, and they were going to do with all the -- all the -- all the tax lawyers and tax accountants. And then October of 2011 the -- the accountant that he and I both used, and also were the company accountants, resigned from me and sided with my partner, because I had a waiver when I brought them on. And they both went up against me. And my accountant -- I had to hire a new accountant, and my lawyers recommended an attorney that's in the office building next to his, and that's when I brought on Gerber & Associates.

So, when -- when we were doing the long-form agreement, it was extremely onerous and extremely complicated. And just like looking at this case on paper, this is not a black and white case because there' was -- there was just a multitude of issues. There were intercompany agreements, personal loans that he would sign for because he had more money. I would hold back to them. And his interest, in my belief, was to drain me all my -- all my cash and all my equity. And then, at that point, we had to get -- there was about 35 entities and boxes in the L.A. office and my attorneys in the conference room.

And then there was another 15 entities that were -- I'm going to say old entities or properties that we developed and sold off in the Santa Monica storage. So, I had to bring all that back. I -- I -- I put it in the office in L.A. And the rest of the stuff was in Century City. And then they would ask me questions, literally. Oh, in 1993, you know, did you pay this contractor this? Show me where that invoice is. Show me the canceled check against it to make sure it all lined up. And that went on for 60 to 90 days.

Meanwhile, they were still moving forward with the agreement, and it was -- I mean, it was a -- you know, what could I say? It was a tough time of -- of my life that I had no choice but to fight and -- because the last thing that I had to give, you know, really from my children and to payoff my ex-wife.

Q During the same period of time, I think we discussed you had other litigation going, whether landlord tenant, banking, or --

A No, I had -- I had probably eight law firms in five states, and we had a major case with AIG happening in New York, happening in Alabama and in California on the construction defect claim. I had a litigation in McKinney, Texas, where -- I had a law firm there. We were doing a workout with the city and contractors. I had -- we had our -- Louisiana had issues. Louisiana was a -- you know, was a -- I think at that time as well. But I just had a multitude of issues. We had, you know, slip and fall claims. We had a lot of issues.

Q Did any of the other litigations require your presence, or is that something you would handle by phone or the attorneys just handle it and tell you how it's came out? What -- what was the need for you to be involved in all these other, besides your cousin's litigation?

A No. That was more -- like, a construction defect litigation was pretty cut and clear. There's all the experts and all that that you needed on that. I would be involved but not -- they didn't need me that much. They would call me if they really need me or need something like that. This one was much different because they couldn't figure out in tying all these entities together and how they relate to one another. And, in fact, I noticed in briefs they said, oh, the new form in 2012 -- I think it was on the state side -- all these entities in Alabama, well, those have been formed since 2004.

But then they got to figure out, well, why do you have 8 entities? Well, one of them was an HOA that we did to own the lakes that we built -- that I built. And each component of the project had its own LLC, and it was almost a two-million square-foot mixed use town center. So, you know -- and then we had development agreements with cities, and we had it in Joliet, Illinois. We had a major issue -- issue there, and that was going to be a 3-million square-foot mixed use town center that we had a huge development agreement that I negotiated with the city. And that was going to be my best project. And, you know, the sailing -- all ship sails in high tides. That thing would have been, by far -- we were 75 percent pre-leased. We haven't broke ground. It was done. And then you just don't know in life what happens, and I -- we just got blindsided.

And, you know, we bought that land for 40, and we end up selling it, you know, in 2013 or '14 for like $8 million. So, we just had, you know -- and I didn't have the power because the two overruled me because it was worth a lot more, but he didn't care. It wasn't so much how much they got, it was how little I got throughout that whole process. And so, you know, it was -- it's life, you know. And I'm still standing today. So, I'm -- I'm pleased with it, but, you know, it wasn't clearly the happy ending that -- that you brag about or write home about, you know. And so it was tough times.

Q When exactly was the board meeting where Paul came back at you with all these allegations of mismanagement and fraud and --

A I -- I think that all in -- immediately following the -- in January -- after January's -- so, the middle of January, I guess. So --

Q So, all the other litigations were really, they needed your input, but they didn't need your presence. So mid-January or whenever it was in January, these allegations of fraud or mismanagement or misappropriation, those were personal to you?

A Absolutely.

Q And there was no else there that could have figured out where Seat No. 552 A is and --

A I wish -- I wish none of that happened. I wish I could just gone on in peace and live my life in Nevada and stayed at my home and be quiet. A part of my -- a part of myself died during 2008 to 2012, even my connection with my kids, everybody. It was just -- it was a tough time in my life.

Q When it was first brought up and -- and these allegations were made against you, in addition to being available, which I assume that a lot of the workout or the rollup or whatever they did to get you guys to separate; I would assume a lot of that would have been something you could have handled by phone?

A I am sorry. Could you repeat that question?

Q In regards to the -- you know, to me, from what you've said, is two different tasks. You have the defense of responsibility to justify what you did as a manager, you know, over this 30-year period on the 500 projects. But in addition to that, someone needed help in determining what these entities were for purposes of trying to roll them up and to sever the two of you. The stuff that was severing the two of you, could that stuff have been done not in L.A., or was it just a convenience that you happen to be in L.A. for these accusations that you also help with the other part?

A I mean, I felt -- I mean, it was almost imperative I had to be there, and I had to go because I didn't have the files. They were at my attorney's office. I had some from the previous, but you're talking about unwinding 30 years nearly anywhere from 600 to a billion, whatever you want to call the evaluation. You're talking I'm spending between 2 and $500,000 a month in taxes, legal, financial. I'm there for a reason, and I couldn't wait to leave and go back home.

Q So, when -- when you decided you had to come back, which I've -- again, correct me if I'm wrong, but I think were leaning towards like, the last week in January, maybe even in February, from these allegations; at that point in time, how long did you -- did you anticipate how long you would be in the California?

A No, I didn't know. I would go with the pretense, I'm gonna go there for a couple 2 or 3 days and come back at the most.

Q Do you -- based on the allegations made, were you realistic in thinking that you would just go and find these, you know, 20 receipts or 5 million receipts, or whatever it was and be done?

A Yeah. In part, yes. But also, in part, there would always be questions. And there would be like, what's this entity? What's that entity? And I had to go to the conference room at the lawyer's office where they had all their files. And that's where the other side had unfettered access to it as well. And then we brought the files from Santa Monica to the office, which I would do, which are the older files, which were not part of the rollup because they were entities that would already have been sold off.

Q Was there anybody on their side submitting -- maybe the accountant that sided with Paul or went on Paul's side, was there anybody else that figure this out on their side?

A No. Because like I said, Paul didn't step one time in our office, and we had offices in Santa Monica prior to all this, during up until 2008. Never -- probably -- I don't think he ever stepped in the office one day.

Q Was there anybody on their side that could call you on something they found? You know --

A Yeah. His -- his wife's brother was extremely asking a lot of questions.

Q Would he have -- was he just asking questions, or did he have knowledge that could back up?

A He didn't have knowledge, and he had zero real estate experience, other than a hired gun to ask questions and try to poke and just make things difficult.

Q So in -- I'll say end of January, beginning of February, you thought you'd be there for a couple of days and then handle this and then be back home in Las Vegas?

A Correct.

Q And obviously, that wasn't the case. And again, I don't even know if you really know how often you were in -- in California or in Vegas for that matter because the calendar. But, you know, does 120 days seem reasonable?

A I mean, it's -- it seems pretty reasonable, I guess. I mean, that's -- you're talking about nearly a billion-dollar settlement and only being there didn't -- it seems like I should have been there more to -- regarding this matter. But I just wanted to leave. I just -- it's -- in all due respect, I -- I loved California, but coming back here just -- you know, I haven't been back to California since probably almost a year now this last -- you know, since the last time I was here. It's just like almost like a PTSD. It was such a heaviness for me to come back to California.

My -- my amazing memories -- I grew up in Stockton, California. And my parents never had a lot of money and -- and -- but their wealth was in their family. And so, I just -- I loved my growing up. I tell my kids, "I wish you had my childhood, you know. You got a lot more things than I ever got."

And I -- I -- what motivated me to go out and work as hard as I did was I wanted to give my children and those I love in my family everything I never had. And so I just -- I just worked hard. But back then from when -- when after the divorce and the 2008 collapse hit, it just felt like I had a -- I'd wake up with a target, a red dot on my head every morning.

Q Let's talk about your move to Vegas. Okay. You have a three-bedroom apartment. You're on the strip. It's fully furnished. Your intention was to have kids there. What was your social life like in Las Vegas? Did -- did you go out much? Did you just crawl into a ball and --

A I mean, at that point, it was my -- my mood was still, you know, pretty somber, and I didn't have the liquidity that I once had, and I owed my wife a bunch of ex -- my ex-wife a bunch of money, but I mean, I would -- I would -- the casinos. I would have access to shows to go to. So, I would see the, you know, the shows at the casinos, and I would see my friends, but I kept to myself quite a bit. I'd go to the gym upstairs. I just -- it was a tough time for me. So, I enjoyed just being alone and left alone in the kind of out of sight, out of mind.

Q You had mentioned, I think, in conversation you had with Mr. Hofsdal that you severed your ties with your church in Los Angeles?

A That's correct.

Q And what was that -- what's the name of that church?

A I mean, there was -- there was really two. There was the St. Nicholas and Our Lady of Lebanon, and I was on the board of finance for that one. And St. Nicholas was my -- my grandfather was an Orthodox priest. And the baptism area there was dedicated after my grandfather. And so I was a member there for -- our whole family were for many life. And, you know, it was just, you know, leaving it was just departure from everything and cutting everything off from my life.

I mean, it wasn't easy, you know. The hardest thing was saying goodbye to my kids, you know, and seeing the -- the tears in their eyes, you know. But I was never abandoned. You know, I was always a good dad. I was always there for them. I would call them and talk to them on FaceTime, and I'd be there as much as I could, but I was -- a part of me was lost at that point. A part of me was just -- I had -- I was tone deaf with respect to any kind of personal relationship in my life.

Q So you mentioned you told your kids. Did you tell the rest of your family? Did you tell your friends. At what point in time did that happen?

A I would say right around November. You know, I first told my kids and then my parents. And, of course, my mom got extremely worried and, you know, my dad understood. He was, you know, more of a rock and -- but they knew. You know, everybody sees you up there. They don't see the struggle that you did to get there, and then try to maintain it, and then have everything just come crashing down. So, it was a -- it was an extremely humbling and kind of deafening experience.

Q When you got to Vegas, did you -- let me back up. You said you got -- you resigned from the church. I assume that wasn't an issue with the church. It was just an issue with being in the church in LA?

A Yeah, exactly. I --

Q Did you return to the church in Las Vegas?

A I -- I -- well, I went to -- I join, whatever, St. Paul the Apostle.

Q How involved were you with that church as compared to how you were involved in Los Angeles?

A I wasn't that. I would just go there, you know, to do -- I would go there to do something unselfish, you know, where I could have been easier in bed or working out. I just went there and just to pray and kind of do something unselfish.

Q And, again, we've -- we've hit your calendar, and a lot of your personal stuff wouldn't have been on the calendar in the first place. But you mentioned you had friends come between December of '11 and, I guess, when finally left in October or November of '12. How many visits did you get? Did you get a day visit? Did you get an overnight visit?

A Well, if they come, they would come for overnight, multiple nights.

Q And how many visits did you have?

A I mean --

Q How many different people?

A -- from what I can remember, I can remember at least eight or nine guest that came and stayed there and spent the night, et cetera.

Q All friends? Business associates? Who were they?

A Ninety-nine point nine percent friends.

Q And your kids visited?

A My kids visited; not as much as I liked, but they came. And they always had -- you know, that's why I had the full three bedrooms.

Q Did -- do you remember how many times the kids came in that year period?

A I don't. They came a couple -- two or three times probably. Not that much because they had school, and my ex -- and their mother was super strict with school and studies.

Q And then your friends, were they Los Angeles friends? Were they around the world? Were they --

A All over; from Europe to U.S., to a few from LA.

Q And would they stay for a couple of days? A week? Passing through?

A No, they would stay for -- they would stay for multiple nights.

Q And we can't hold you to it, but if you had to guess how many days you had friends stay at your place, do you have a guess?

A I mean, at least 30 nights because they're all --

Q About 30?

A Yeah. I mean, my -- they don't travel -- like, my buddy Jonathan from Israel didn't come and -- and -- for only two or three days. You know what I mean? So, anywhere from two to five night.

Q Can you -- would you have any idea or recollection what time of year they would come or --

A No. It's just various times. I -- it's too long ago.

Q You have memories of what you did with any of them that stand out?

A Yeah. I mean, we -- we would go out. We'd go downstairs. We would gamble, you know. I mean, nothing big. I didn't like -- I -- I realize in gambling, I hated losing more than I liked winning. So, I'd just try to go down there and -- and do things. We'd see shows. There would be, let's say, bars downstairs. We'd go. We would just hang out. We'd walk the strip.

Q So, you don't know what time of year, but you have a recollection that it was the Veer Tower because that's the only place you had in Vegas?

A Yes. Correct.

Q Okay. I think we've hit this before. But to reiterate, do you have any recollection of how many times you would have had to travel back to Los Angeles?

A I don't. Anything I said would just be a wild guess --

Q Would --

A -- you know.

Q Would you normally fly? Would you normally drive?

A I would do both.

Q And --

A I prefer driving 'cause I just -- I don't know if they had TSA back then, but the lines in Vegas -- they only do Southwest -- it's -- I mean, they were a nightmare.

Q So probably quicker just to drive in the first place?

A Yeah.

Q Would you always drive yourself or did Carlos drive you back and forth at times?

A Both. Carlos would do it too. You know I would just -- it was a good time to think when you're on the road.

Q Was it an opportunity to get work done, or was it just basically a good place to take a nap?

A It was a good place just to see nothing.

Q Okay. When you came to Los Angeles for these -- to defend yourself on these accusations, what was your social life there?

A Pretty nonexistent. I -- I mean, it was embarrassing to be sued by your own cousin then being accused of these things. So, it was -- and, at that point, my father was in poor health. I just -- there was -- did I go out? I probably did. Do I recall how many times, or was I having a good time? Probably not.

Q If it wasn't for the litigation -- I know your father took a fall at Nordstroms, which is set forth in the petition, I think at the end of 2011. If it -- if it wasn't for the litigation, would you have spent as much time with your folks?

A Probably not as much time.

Q So, were you -- you visited your folks because you were there for litigation, as opposed to going there solely to reconnect or visit your folks?

A Yeah. You know, there was key points during my dad at post-fall, and then they gave him a blood transfusion. And I remember him at the house, and they said he was a hypochondriac because he just got out the hospital for two days. And I'm like, no. I had to call them, like, no, he can't -- he can't get up. He can't even physically keep his body up. And apparently, they didn't tie something off, and he was draining blood inside of his body. It was a nightmare.

So, it was a hard time because I watched my dad go from 225 pounds down to about 145 pounds, and his -- his heart was producing too much protein. It was eating himself from the inside out. And by the time he passed away, like a year later, he was -- you know, we were feeding him his medicine as a baby with aspirin, and couldn't even barely swallow it.

But you -- you -- you alluded to something earlier about this litigation, and I think everybody agrees on one thing. When this litigation was over, I never returned back to California. And had it not for this litigation, we wouldn't be here today. And had it not been for a sale that took place in back Alabama, we would not be here today.

Q That --that sale was one of your projects?

A That's correct, Huntsville. That was only the retail portion only.

Q And that sold in May?

A Yeah. May of 2012.

Q And was that under contract for a very long period of time?

A Pardon me?

Q Was that under contract to be sold for a very long period of time?

A No. I -- I don't remember how long. It was probably a 90 or 120 day escrow. They were buying the retail portion of the Huntsville project.

Q So it wasn't under contract when you actually left California in December of '11?

A Not -- not that I recall. And we weren't actively -- it wasn't actively listed or anything for sale. They -- they approached us, the buyer who was a REIT, and they had to -- I think they had to close. They were in exchange or something. So, we sold it.

Q So, going onto 2012, you're going back and forth to Vegas, always returning to Vegas. Did you have any stuff in -- you know, we talked about the potential of having Wanda Park or your parents' house or your brother's house. Did you keep stuff there? You know, your stuff or --

A No.

Q -- you're just going around with a suitcase and some clothes?

A I just had a, like, a roll -- roller bag.

Q When this eventually came to resolve in August, how -- much earlier than the actual execution date did you think that things were going to be resolved?

A I mean, can you repeat that?

Q So, in -- if you signed the agreement in August of 2012, the reorganization agreement, how much earlier than that did you think -- at what point in time, do you think prior to that, it would be a done deal or very, very close?

A I would say almost a month before.

Q And the rest through the next 30 days was just attorneys typing --

A Yeah. Yeah. The attorneys doing and all that. I mean, it was -- and even after we -- we signed everything, when we would do our phone calls, he would -- my cousin would still act up, and he would just be yelling to be yelling. You know what I mean? So, it was just -- it was sad.

Q It wasn't done until it was done?

A Yeah. But it was -- he couldn't -- at that point, everything was resolved.

Q And then once it was resolved, then was there a big signing party?

A No.

Q Everybody just signed their own copies and --

A I think we all signed separately and -- and I signed my signature pages, I think, in Santa Barbara, if I'm not mistaken. We all went out there, but there was no cumbia moment at that point, like the 2011 mediation.

Q And then shortly after that you went back to Las Vegas?

A Yeah, I returned home.

Q Do you remember if you ever came back to Los Angeles the rest of 2012?

A I don't recall. I may have to come see my dad, but I just don't recall if I came back or not. It's too long ago.

Q And it wasn't on your calendar?

A No.

Q Do you remember what you were driving in 2012?

A I think I had a Range Rover.

Q And that was exclusively yours?

A Yes.

Q Did you own other cars?

A Huh?
Q Did you own other cars?
A I don't -- I don't -- I don't think so. I think I sold them all by then.
Q Would Carlos have had a car?
A Carlos had his own car, yeah.
Q Would that have been in your name? Or do you know if it's in his name?
A No. I mean, as I subsequently remember from the documents, I signed the lease for him because he couldn't qualify.
Q And you -- you never registered any cars in Nevada?
A Pardon -- pardon me?
Q You never registered any cars in Nevada?
A No.
Q That wasn't important to you?
A It wasn't the -- on the top of my list. Believe me.
Q Do you recall when -- excuse me. Did you recall when you eventually moved to Florida?
A I mean, I think September or October. I think October 2012.
Q Did you buy the Florida property as a your intention to move into it?

A No. I mean, I knew the building very well. I'd stayed there before several times. And I bought it because I got a great deal on it. And quite frankly, I never saw the inside of it, only on the internet, you know, or from the broker. But I knew I was getting a good deal on it, and I bought it. And I ended up, I think, moving in on, like I said, September or October.

And I remember when I moved in, I was like, wait, I thought it was that unit across the way, 'cause this one has blacked out windows. And I knew I had a great deal on it. It was like, no, I want that one. So, I ended up moving in there. And then I ended up going to sell it, and I think I -- no, I think I did sell it, like, six months later, and I made almost an $800,000 profit on it. And I rolled it into the other unit that I bought across the way, which I really wanted.

Q For a similar price?

A It was more money, but I used the -- the profit to buy it.

Q I guess my last question; in determining when and how long you returned to Los Angeles for this litigation, was there any fact -- I, mean, did somebody tell you to come? Did you get a complaint saying you, you know, you did this wrong, this wrong, and this wrong? What spurred both you coming to Los Angeles to go through these boxes or to help the attorneys or accountants, and what triggered you to come back to Nevada?

A What triggered me to what?

Q To return to Nevada?

A I mean, I came there specifically from the attorney's request or the accountant's request or under having Gerber understand. I was there for those reasons. And I went back to Nevada because that's my home, and I couldn't wait to get back and out of L.A.

Q But did -- did Gerber call and say, "Hey, I have no idea what the hell this thing is," or --

A I mean --

Q -- what spurred it?

A To be honest, to be fair, none of these guys new how complicated -- even if I tried to get a bank loan, they don't understand I have to sit down and literally go through my whole life. I'm not a 9:00 to 5:00 job. I never -- I was self-taught. I -- during college, I worked fortitudously [sic] about the labor in the Labor's Union. I woke up before 4:00 a.m. I worked hard all my life. And I didn't have the -- a -- a normal job. I had to -- I eat what I killed. That was it.

And so, I'm super entrepreneurial, and that was the genesis of my career. And lot of people, it's hard for them to grasp it to get their hands around it, but that's who I was as a human. Even like today, I'm unemployable. I have to still go out and hustle every day and figure out new businesses and go work wherever that may be. And that was no difference in -- during my career. In 2009, I had-- someone told me -- and it wasn't about money. It was about passion, and -- and I loved what I did.

And in 2009, someone told me a story about the children -- a true story about the children in Africa. It was a movie. And I was like, oh my God, we have to make this, and -- and we made that movie in 2009. And it was a heart-felt movie. A true story about the children in Uganda and Sudan called "Machine Gun Preacher." And subsequently to that, I ended up in 2013, I was on a trip in 2012. I went to Africa, and I ended up opening an office in Liberia, Africa. And I ended up helping them under the Obama Administration get power Africa to light up that city. And so it was -- it was almost like a calling, but I had a passion to do that, you know. And I was doing business there.

And so, I didn't have a set defined job where people can just look at and say, oh, yeah, I understand it. It was pretty complicated. O & S was ran the same way. And even my cousin, he was a brilliant man and -- he is a brilliant man. He's still alive. But he was super entrepreneurial. And we had a bowling alley in operations, and we -- we did it for Santa Barbara, and remodeled the whole thing for the community. So, you know, it was tasked on me to do that and figure out the operations and -- let's buy this center, Gary, and do it.

So, it was a lot of questions asked. Why did you do this asset? Well, why is this, you know, this asset? Why do you have a loan back on this one, on this Louisiana one -- a personal? So, you know, when it comes to a -- I want to say a family business, there's a lot of moving parts that are not typical. If it was, let's say, yourself and me being partners where it was much more of a defined relationship, this wasn't that. There was a lot of -- of things that went on.

And I will say this. It's -- it's 90, 100 days in June or so, whatever. They realized that there wasn't $1 that was taken from the company. There wasn't one development fee that I did not -- that was not owed even though I subsequently, to settle this thing, I waived all those fees, and -- and I prevailed on that. And so me -- for me, it would have been great to get all that money, back but I wanted to clear my name because it was -- it was a huge allegation against me personal. And, you know, it was tough times, man. I wish -- I wish I'd never gone through it. I wish I would have just rode off on my little horse in 2011 and never had to return.

MR. MOHAN: I'm good.

JUDGE LONG: Thank you. And thank you for your testimony. I know it was a difficult time for you, and I'm sorry for your father's loss.

We're going to take a 10-minute break before we continue with cross-examination. And then my co-panelists and I will probably have some questions as well.

So if everyone could come back at 10:50. We're going to close the record now.

(There is a pause in the proceedings.)

JUDGE LONG: We're going to reopen the record in the Appeal of Safady.

Franchise Tax Board, you requested 30 minutes for cross-examination.

MS. MACEDO: We do not have any questions at this time. Thank you.

JUDGE LONG: Okay. Thank you.

Well, then at this time, I'm going ask my co-panelists if they have any questions.

Judge Lambert, do you have any questions?

JUDGE LAMBERT: I have no questions at this time.

JUDGE LONG: Judge Johnson, do you have any questions?

JUDGE JOHNSON: If Mr. Safady would be around for the rest of hearing, I might save questions for later, if that works?

You'll be around for the rest of the hearing; correct?

MR. SAFADY: Yeah. I'm -- I'm here, yes.

JUDGE JOHNSON: Okay. I'll save my questions for later then. Thank you.

MR. SAFADY: Thank you.

JUDGE LONG: Well, I do have a few questions. So, I think probably for Mr. Safady and Mr. Mohan. First, I wanted to clarify. So, my understanding is that the Nichols Canyon Road property was rented periodically. And in the briefing, the earliest indication is May 29th, which is after, at this point, the issue that FTB is asserting residency changed. Was the property just vacant between January 1st and that May 29th date?

MR. SAFADY: It was -- it was available for photo shoots. It was available for --- for rent, and it was listed for sale. So, after 2010, I basically -- I can't remember more than one or two times ever going back there. For me, looking at was just -- while it may be an asset to some, it was a liability for others. And I just -- I -- I was trying to sell that. I -- I bought it with the intent to fix it up and sell it. And it took me almost five to seven years to sell it. And I finally sold it, I think, in 2014, but I leased it. I did -- there was a GQ photo shoot there. There was an Eric Robertson movie filmed there. There were several tenants on and off there. So, it was always available for -- for generating income only.

JUDGE LONG: Thank you. And then with respect to the Wanda Park Drive property, I know that that was converted onto a workspace. When was that converted?

MR. SAFADY: It was converted at the end of 2010, I believe it is.

JUDGE LONG: And that was then used by O&S; is that correct?

MR. SAFADY: No. It was owned by 9712 Oak Pass Road LLC. And O&S had signed the lease in 2010, probably early 2010 I want to say. And then during 2010 we had to convert it because when we didn't buy the property where all the office was, we had -- we needed a place to go, and I had that space available. And we gutted it all and put in -- like I said, it was about 20 workstations. We had Cat 5 cable going to every single work station, because back then, you know, it wasn't so much wireless. And then we had two T1 lines from AT&T installed to -- and operate all the servers and stuff.

JUDGE LONG: And the LLC that owns the property, was that your LLC?

MR. SAFADY: That was my LLC, sir. Yes.

JUDGE LONG: Okay. And then you had mentioned in your testimony that your cousin did not want to pay rent for the Wanda Property while you were living there, and so, you moved out. Did that happen in 2010?

MR. SAFADY: That was probably in -- in -- I don't remember the specific date; end of '10, beginning of '11, right around there. And so that's when I moved into -- I stayed at my girlfriend's.

JUDGE LONG: Okay. And then I want to cover -- I have a question about the briefing. So, it's probably more appropriate for Mr. Mohan.

So, the December 14th, '22, reply brief, it states that Appellant agrees to roughly 106 days in California and then asserts that he spent 111 days in Las Vegas. There's a credit card schedule which is now identified as Appellant Exhibit 8. And that covers -- that schedule shows 21 days worth of charges in Las Vegas. Is there -- first -- two questions. First, is there -- the source documentation that was provided with that schedule that corroborates those days; is that correct? Because I know you provided some city --

MR. MOHAN: Yes. I'm sorry.

JUDGE LONG: Thank you. And then the other question I have is, is there evidence -- similar evidence supporting the remaining days in the -- that are asserted here because obviously it's --

MR. MOHAN: Evidence for California days is your question?

JUDGE LONG: No, for Las Vegas. Because you assert in your brief 111 days in Las Vegas, and then that schedule only shows charges for only 21 days. So, I'm wondering how we make up the difference. If you look at Exhibit 8, you can see.

MR. MOHAN: Yeah. I'm -- I'm looking at -- I get the 20 days. I -- this -- this calendar, as I tried to explain in the opening, encompassed all of the detail that's attached at Exhibit A. And as you'll -- as you'll look, the credit cards -- I'm on page 3, I think -- at the bottom, Gary Safady, Jose Mata, which is Carlos, and then Shannon Melick was his assistant. On the original exhibit FTB schedule that was prepared by the auditor, they included all of these charges as if they were being personally incurred by Mr. Safady. When we went through, I don't think I can distinguish, I don't think he can distinguish, or the Franchise Tax Board all of the charges that would have been California.

The only thing we know is that we found 20 that are definitely his, because no else would have been in Nevada. But based on that, we went back and tried to figure out from airline records and, you know, other things in his life trying to narrow down the actual number of days, which would have increased the Nevada days. And we get back to that same problem with the calendar in that if he is there on a Tuesday and leaves and gets there at 8:00 at night in Las Vegas, is that a California or a Nevada?

So, at that point, we kind of threw our hands up because his California, really, if you look at the original calendar that was provided the accountant in the audit, the original calendar, most of those dates are phone meetings or -- or something else that really doesn't tie to California. So, I don't know of a specific date of being in California or of specific date of being in Nevada is actually ascertainable 15 years later.

JUDGE LONG: Okay.

MR. MOHAN: So what we've done is just taken what was started with and kind of narrowed it down where we can exclude, you know, days that we knew we weren't in California.

JUDGE LONG: Gotcha. So, those dates, that schedule then is intended to contradict the calendar dates showing --

MR. MOHAN: Correct.

JUDGE LONG: -- previously. Okay. And then -- so then regarding the calendar, I'm looking at now

Franchise Tax Board's Exhibit H. That was provided by Mr. Safady's accountant then?

MR. MOHAN: That's my understanding.

JUDGE LONG: Okay.

MR. MOHAN: And -- and I -- I think the actual -- let me look at it. The original calendar of -- of days was provided originally by FTB because the calendar that the accountant provided was more of a -- a printout, a screenshot of days from whatever program they were using at that time. I don't know what that program was, but which would just have date of appointments, and you can't read the whole descriptive part. So, I think at that point in time, the auditor was a little bit frustrated, went back to try to figure out the charges, and went through bank statements and credit cards to try to ascertain where he was.

JUDGE LONG: Okay. I understand. But I'm looking at the calendar right now, and if you could look at, for example, February 2012. I understand the contention that you couldn't read the appointments, and so that's where the auditor sort of made asserted deviations based on credit card charges. But here it shows, you know, just a long bar for Beverly Hills from the second until the 12th, and then again from the 14th to the 29th. So, are we saying then that that's inaccurate, or are we going -- or is -- Mr. Safady, were you driving back and forth for all of those days or --

MR. MOHAN: At the end of the day, I don't know that it matters because if he was -- just forsake of argument, if he was there from January 1st till August 14th, I still think it fits under the temporary and transitory. He was there for a purpose, for a function, for a job. That's why we kind of got off of the calendar, other than we -- it was more important to me to show that he actually had Nevada as his residence. That's where he went back each time he was gone.

So, whether it was 50 days or 110 days, I don't think it makes much of a difference in the analysis. The point is, he clearly did not have a residence or someplace to live that he went back to in California. And that's probably since the -- the split up with his girlfriend, and he was no longer living with her. He didn't really -- there's no California residence. He didn't own one. He didn't rent one. He couldn't live in one. And obviously living in his mother's -- at his parents' house is not his home. So, I --- I get your question. I don't know if I have a good answer for it because we can't -- we can't be that specific. Do I object to the number of days? No. But I don't think the number of days were actually that much.

JUDGE LONG: Okay. And then --

MR. MOHAN: We even tried to go back to the -- the -- the billings from Gerber, and Kabot and Venable to try to figure out, you know, how many meetings he would have had. But most of their time, if not all their time, is just what they actually physically done.

JUDGE LONG: Okay. Thank you. I don't have any additional questions. Oh, actually, I do. With regard to the credit card schedule, those statements all went to an address in California that I don't recognize. That was a business address? What address was that?

MR. SAFADY: That was -- that was the new accountant that I brought on. So, in October, I think of 2011, the HCVT was accountant for myself, my partner Paul, and -- yeah, it's Gerber's -- and -- and the company. And when they terminated me as their client and they sided with my partner Paul, I had to bring an accountant. And part of his services was bookkeeping and stuff like that. So he was doing check writing, everything. They offered that service. And so, all my statements went to them. Everywhere went to -- that's the Gerber & Associates their -- their office address.

JUDGE LONG: Okay. Thank you. That clears that up. I have no additional questions.

I think we are ready to move forward with

Franchise Tax Board's presentation.

Franchise Tax Board, you requested 30 minutes, and you may begin when ready.

PRESENTATION

MS. MACEDO: Good morning. My name is Desiree Macedo. Joining me today is Ron Hofsdal. Together we represent Respondent the Franchise Tax Board in this matter.

Respondent's presentation will begin with the discussion of residency in general, continue with the discussion of domicile and the meaning of temporary or transitory, and conclude with a discussion of Appellant's connections with both California and --

JUDGE LONG: Ms. Macedo, I'm sorry to talk over you, but can you slow down, like half speed.

MS. MACEDO: Yes. -- California and Nevada. This matter is essentially a timing issue. It is undisputed that Appellant was a California resident prior to November 2nd, 2011. On May 18th, 2012, O&S holdings LLC and entity owned in substantial part by Appellant sold a shopping center located in Huntsville, Alabama. What is disputed is Appellant's residency status from January 1st, 2012, through May 18th, 2012, the date of the sale. It is Appellant's position that he became a Nevada domiciliary and a California non-resident on November 2nd, 2011, and remained so for about 10 months, January 2011. Conversely, it is Respondent's position that Appellant did not become a California nonresident until at least August 2012 when he relocated located to Florida.

The purpose behind California's taxation of residence is to ensure that individuals who are physically present in the state and enjoying benefits and protections of its laws and government contribute to its support regardless of the source of the taxpayer's income. As pointed out in all precedential OTA residency decisions, including the Appeal of L. Mazer and M. Mazer, the Appeal of J. Bracamonte and J. Bracamonte, the Appeal of D. Beckwith, and the Appeal of B. Housman and B. Pena, the question of whether taxpayers continued to avail themselves to the benefits and protections of California underlies all residency decisions.

Determining residency starts with the statute. A California resident includes: One, individuals inside California for other than a temporary or transitory purpose, regardless of the taxpayer's domicile. This prong will be referred to as A-1 throughout the remainder of Respondent's presentation; and two, individuals domiciled in California who are outside for a temporary or transitory purpose. This prong will be referred to as A-2 throughout the remainder of Respondent's presentation. A California nonresident is defined as every individual, other than a resident. And a part-year resident is a resident who, during the same taxable year, is a resident of the state during a portion of the taxable year, and a nonresident of the state during a portion of the taxable year.

Pursuant to Revenue & Taxation Code section 17014(c), and individual who is a resident of this state continues to be a resident, even though temporarily absent from the state. Therefore, the determination of Appellant's residency is essentially a two-part test. It starts with determining Appellant's domicile and concludes with weighing factors to determine whether Appellant was either inside of California for other than a temporary or transitory purpose, or whether Appellant was outside of California for a temporary or transitory purpose. Analyzing a taxpayer's connections within and without California is ultimately designed to determine whether the benefits and protections are consistent with California residency.

Moreover, it is well settled law that a person can be a resident of more than one state or tax jurisdiction at the same time. Precedential OTA cases, including the Appeal of Mazer and the Appeal of Bracamonte essentially put a taxpayer's connections into three silos: One, connections acquired; two, connections severed; and three, connections maintained. In most situations, when a taxpayer claims to have changed his residency from California to another state, the question on appeal is whether taxpayer has met his burden to show that he not only acquired substantial connections in his new state of claimed residency, but that he severed his longstanding connections with California.

If it is determined that Appellant was domiciled outside of California, he could be deemed a resident only under A-1. If it is determined that Appellant was domiciled inside of California, he could be deemed a California resident under A-1, A-2, and/or C. Typically, individuals who are domiciled inside of California do not dispute they are residents under A-1, because that means they are California domiciliaries who are inside of the state for other than a temporary or transitory purpose. However, excluding California's domiciliaries from the definition of A-1 would mean that California does not have a basis to tax California domiciliaries who do not leave the state during the taxable year; and that would be inconsistent with public policy reasons for taxing individuals. Therefore, in the present state -- in the present case, it is clear Appellant was a California resident under A-1, A-2, and C.

I will now discuss the domicile analysis as stated in the Appeal of Beckwith. In order to change his domicile, Appellant must have an actual physical presence in the new locality and the intention to remain there. As stated in the Appeal of Mazer, Appellant's own actions must support a change of domicile. Unsubstantiated statements will not suffice. Further, if there's doubt, then Appellant's original domicile remains.

During the period at issue, Appellant continues to have actual physical presence inside of California, pursuant to Appellant's own contemporaneous physical presence calendar, which is in the record as Exhibit H. During the period of January 1st, 2012, to May 18th, 2012, Appellant spent approximately 69 days or 50 percent of his time in California, and only 16 days or 12 percent of his time in Nevada. Contrary to Appellant's assertions during its period at issue, Appellant had access to multiple California-based abodes, including the properties he owned either directly or indirectly through his entities, and his parents' familial abode where he and his children regularly stayed.

Importantly, while Appellant claims that his ex-wife received the California-based abode as part of their settlement agreement, Appellant undisputedly remained California domiciliary for three years after the dissolution of their marriage; and agrees that prior to the period at issue, he resided in one of the California-based abodes that was also available for his use during the period at issue. As such, Appellant had actual physical presence in California.

Furthermore, during the period at issue, Appellant's own actions demonstrate that Appellant intended to remain domiciled in California. Importantly, Appellant's familial abode remained in California. Appellant's three minor children, whom he financially supported, two of which he claimed as dependents on his tax returns, continued to reside inside of California. Additionally, Appellant claims that he acted as a caregiver for his ailing parents who resided inside of California. Importantly, the fact that Appellant filed a California resident income tax return for the 2011 taxable year and reported he was a domiciliary and resident of Florida on the Schedule CA for the 2012 taxable year demonstrates that Appellant did not have intention to change his domicile to Nevada during that taxable year.

In addition, during the period at issue, Appellant continued to own and remain actively involved in his California-based businesses and properties. He continued to register vehicles in California. A majority of his professional services took place in California, and most, if not all, of Appellant's legal and professional correspondents was directed to a California address. Therefore, during the period at issue, Appellant's own actions demonstrate an intention to remain domiciled inside of California.

It appears that Appellant argues that but, for all of his California connections, he would have relocated to Nevada. However, recent OTA case law, including the non-precedential decisions in the appeal of Q. Tran and R. Medina, as well as the Appeal of R. Peters, demonstrates that Appellant's argument is not persuasive. As such, the two prongs needed to demonstrate a change of domicile action and intention are not meant -- met in the present case. Therefore, Appellant remained a California domiciliary through at least May 18th, 2012. As stated in the Appeal of Mazer, the analysis then shifts to whether Appellant was either inside of California for other than a temporary or transitory purpose or outside of California for a temporary or transitory purpose. The key question under A-1 or A-2 is whether Appellant's purpose in either entering or leaving California is temporary or transitory in nature.

The residency regulation provides guidance in this regard. The connections that a taxpayer maintains with this state when compared with other states are important indications of whether a person's entrance to or absence from California is temporary or transitory in nature. Such connections are an objective indication of whether the benefits and protections that the taxpayer has received from the State of California are inconsistent with that of other non-transitory inhabitants. In the Appeal of Stephen Bragg, the Board of Equalization provided a list of non-exclusive factors that were helpful in evaluating a taxpayer's connections in prior appeals.

In the OTA decision in the Appeal of Mazer, the factors discussed in Bragg were separated into three categories: One, physical presence and property; two, personal and professional associations; and three, registration and filings. As stated in the Appeal of, Bracamonte, the physical presence factor is giving greater significance than mental intent and formalities that tie one to a particular state. Further, as stated in the Appeal of Tyrus Cobb, a mere formalism, such as a change in registration or a statement that Appellant intended to be a resident of another state does not ordinarily settle the issue.

Appellant's relevant connections to both California and Nevada will now be discussed in the appropriate Mazer groupings. I will first discuss the physical presence and property category. The OTA has given this category the most amount of weight in determining a taxpayer's connections to California. In this category, I'll be discussing the physical presence and property factors, starting with the physical presence factor.

Based on Appellant's own physical presence calendar, which was provided during the audit examination during the period of January 1st, 2012, through May 18th, 2012, Appellant spent approximately 69 days or 50 percent of his time in California and 16 days or 12 percent of his time in Nevada. Significantly, Appellant's time in California averaged 10 days at a time. The longest continuous stay was a period of 28 days during the month of February. Conversely, Appellant was only physically present in Nevada for 16 days during the entire period at issue. The longest continuous stay was the seven-day period from January 10th, 2012, to January 16th, 2012, after which time Appellant was inside of Nevada from 1 to 3 days at a time.

Therefore, it appears that the purpose of Appellant's sporadic visits to Nevada was for vacation with friends and for business purposes to oversee the Mall Ring Circle project, which was experiencing financial hardship, which, according to Appellant, he abandoned by the middle of 2012. As such, pursuant to A-2, Appellant's presence inside of California prior to the sale was clearly for a temporary or transitory purpose. Additionally, if this case was to be reviewed under A-1, Appellant's presence inside of California was for other than a temporary or transitory purpose.

Appellant's reasons for being inside of California prior to the sale was to comply with a family court visitation order to financially and emotionally assist his dependent children, his ailing parents, and his other financially dependent relatives to finalize his ongoing business lawsuits and to conduct ongoing business, including meetings for Safady Entertainment, business meetings with new investors, site visits for his various California-based properties, meetings with architects for new projects, and meetings with potential buyers on his California-based properties. Appellant argues on appeal that his significant physical presence inside California during the period at issue was temporary or transitory in nature, as he was merely inside of California to finalize the terms of the reorganization agreement.

However, it appears that Appellant was not actually required to be inside of California as often as he suggests in order to assist with these negotiations.

In fact, when Mr. Gerber was asked if he agreed with the statement that he made in his declaration from that -- from the third quarter of 2011 to December 31st, 2012, every day that Appellant was physically present inside of California, someone from Gerber and Company met with Appellant in person. Mr. Gerber responded that that statement was inaccurate.

Moreover, when Mr. Kabot was asked if he had any specific memory of meeting with Appellant on a date other than May 8th, 2012, or May 10th, 2012, Mr. Kabot replied, "No." Further, Mr. Kabot agreed that more often than not, when he communicated with Appellant, it was over the phone, email, and text. As such, it appears that Appellant's presence inside of California was to maintain his long -standing California connections, rather than to compete -- complete a particular transaction. Clearly, Appellant had a significant physical presence inside of California from January 1st, 2012, to May 18th, 2012, and an insignificant physical presence inside of Nevada. Therefore, regardless of which prong is applied, the physical presence factor, which is given significant weight, clearly favors California residency.

I will now discuss the property factor which also favors California residency. Appellant's own physical presence calendar clearly demonstrates that, during the period at issue, he primarily resided inside of California. Appellant claims to have lived in a three-bedroom rental property at the Veer Towers in Las Vegas, Nevada from December of 2011 until his move to Florida in August of 2012.

However, during the period at issue, Appellant owned, either directly or indirectly, various multi -- various and/or -- either or indirectly through his various entities, multiple California-based abodes where, on page 19 of Appellant's opening brief, Appellant claims he resided for approximately 30 days during the 2012 taxable year. As stated in Appellant's opening brief, pages 10, 11, and 19, Appellant had access to his parents' abode where he primarily stayed during the period at issue. Moreover, as Appellant stated on page 11 of Appellant's opening brief, Appellant concedes that during the period at issue when Appellant had custody of his children, it was at one of the California abodes, primarily his parents' house.

When comparing Appellant's California and Nevada-based abodes, it's abundantly clear that Appellant had a greater connection to the California-based abodes. Therefore, the property factor, which is given significant weight, also clearly favors California residency. When viewed as a whole, the physical presence and property factors favor California residency.

I will now move to the second category, the personal and professional associations category. The OTA has given this category the second most amount of weight in determining a taxpayer's connections to California. In this category, I will be discussing the familial abode factor, professional services factor, business associations factor, membership factor, and bank account factor. The first factor I will discuss is the familial abode factor, which favors California residency.

During the period at issue, Appellant's familial abode was located inside of California. As stated on pages 5 and 6 of Appellant's opening brief, due to Appellant's financial success, he is considered the patriarch of his family and was the first point of contact when his family members needed help in an emergency. Appellant's parents, his three brothers and their children leaned on him regularly, not only for financial assistance but also for emotional support. In fact, Appellant asserts he was one of the primary caregivers of his father when his father was ill, often staying at his parents' house.

Additionally, Appellant asserts that he paid for the purchase and remodel of his parents' home. Appellant lent one of his brothers money to help him pay for his mortgage and his nephew's tuition. Then when his other brother became unemployed, Appellant gave him a job at O&S Holdings where he worked until its dissolution. Appellant also gave his mother and another brother a monthly stipend, plus financial assistance as needed.

In addition, Appellant claimed his 7-year-old son and 17-year-old daughter as dependents. It is uncontested that Appellant's children remained in California during the period at issue, and that Appellant and Ms. Safady agreed it would be in the best interest of their children to continue their education, as a French emerging school was located inside of California. This makes sense, considering Appellant was rarely inside of Nevada. Given that Appellant's legal dependents resided in California, Appellant received benefits and protections from the State of California. Therefore, the familial abode factor, which is also given significant weight, favors California residency.

Additionally, based on the pending litigation in California, Appellant's legal counsel, accountants, and financial advisors were all based out of California. Appellant also continued to retain his California-based psychologist for therapy sessions. As such, Appellant continue to receive benefits and protections from the State of California in regards to his professional services. Therefore, this factor should also be -- which should be given little weight, also favors California residency. During the period at issue, Appellant possessed at least a 50 percent interest in approximately 35 entities, many of which were doing business inside of California. Therefore, the business associations factor also should be given California -- which should also be given little weight, favors California residency.

Additionally, as stated in Respondent's briefing, the membership factor should be considered neutral in determining California residency, as Appellant was not physically present in Nevada to attend church on a frequent basis. And the bank account factor slightly favors with California nonresidency, since Appellant did not the Nevada-based Wells Fargo checking account. And all those statements were, in fact, mailed to a California CPA firm. Therefore, when reviewed as a whole, the personal and professional associations category favors California residency.

The last category I will discuss is the registrations and filing category. The OTA has given this the least amount of weight in determining a taxpayer's connections to California. In this category, I'll be discussing the Secretary of State filings factor, vehicle registration factor, voter registration factor, and driver's license factor. The Secretary of State filings factor favored California residency, as Appellant continued to remain the agent for service of process for five of his businesses that were registered in California.

Additionally, the vehicle registration factor also favors California residency, as Appellant registered two vehicles with the State of California and zero with the State of Nevada. The voter registration factor should be considered neutral in determining California residency, as Appellant did not exercise his right to vote in Nevada during the 2012 taxable year. And the driver's license factor is neutral in determining California non-residency since Appellant stated on page 20 -- 22 of Appellant's opening brief that he claimed he rarely drove in Nevada, since he stayed on the Las Vegas strip. Therefore, the state where Appellant received benefits and protections, in regards to his driver's license, was actually the State of California. When reviewed as a whole, the registration and filings category slightly favors California residency. Therefore, all three of the Mazer groupings, physical presence and property, personal and professional association, and registration and filings favor California residency.

In summary, during the period at issue, Appellant continued to remain domiciled inside of California and was absent, if at all, for a temporary or transitory purpose. Additionally, Appellant was physically present inside of the state for other than a temporary or transitory purpose. As such, during the period at issue, Appellant received benefits and protections consistent with California residency from the State of California, regardless of any connection he may have made to Nevada. Therefore, Respondent's determination should be upheld.

Thank you. That concludes my presentation. I'd be happy to answer any questions the panel has at this time.

JUDGE LONG: Thank you.

Judge Lambert, do you have any questions?

JUDGE LAMBERT: This is Judge Lambert. Yeah, I just -- after hearing FTB, I just had another question for Appellant Mr. Safady.

I was wondering if you could clarify something. Maybe you explained already, but there's a move to Vegas and then a move to Florida. And just there was a couple of differences, like, you rented in Vegas and then purchased in Florida. And you were staying kind of closer to your family after the move to Vegas, but Florida it seemed like you were further from your family and father, and you spent less days in California. So, you know, assuming you meant -- always meant to sever your connections to California upon leaving for Vegas, there -- can you clarify the differences -- why there was differences in terms of being away from your family, days in California, and the rental versus purchase. And I know there was that ending of the legal dispute in August of 2012, and maybe that was a part of it, but maybe you could clarify those differences?

MR. SAFADY: So -- so just help me understand the questions. You're really -- why did I move to Florida? Was that really it?

JUDGE LAMBERT: Why did you purchase in Florida but not purchase in Vegas?

MR. SAFADY: Okay. Sure.

JUDGE LAMBERT: And you talked about being closer to your family, but in Florida you're further away.

MR. SAFADY: Yeah. Yes, sir. So, in 2011 when I rented the place, my liquidity was rock bottom. And in July of 2012, I think it was, when I went on a trip overseas, I saw some business opportunities. When I signed the August 2012 agreement, I got released to me -- I think it was $2 million. With that, I had liquidity to buy something, and I bought the property in Florida, you know. And so, I ended up leaving in, I think it was October 2011 to Florida. My ties with my whole family, really didn't -- other than going to see my dad when I felt it was necessary or to stay there overnight, I didn't still see my kids that much when I was in LA.

It was just they were in school, and I had an agreement with my ex-wife that I'm going through a lot. Just -- she's a great mom, and I have 100 percent trust, or my assistant Carlos would take them around, take them to lunch, pick them up from school, but would always return back to their home. And then after my trip in California, I'd return home back to Las Vegas. So, the short answer is I had no -- I had no liquidity to buy a place in Vegas.

JUDGE LAMBERT: Thank you. And also, just to clarify for the legal dispute in California, that was something that required you to be in person, and it couldn't be something just done long distance?

MR. SAFADY: No, absolutely. There was a conference room, you know, that there was 35 entities, say maybe 100 or 200 boxes in there that I had to go through. So, even after the attorneys, after all that legal work and everything that was done, they still got it wrong. I was supposed to get X. I got X minus 50 percent, and I got all the gains. I got zero cash, and I got all the tax liabilities when that sold, especially Huntsville. I got zero cash from that deal. And so even after 2012, you know, it was like another thing just hit me. Like, I was thinking I was -- I was done.

And moving to Florida in October is when I started to do business overseas, and it's a lot closer to from Florida to get there, than from, you know -- I had to search to make -- try to find money -- where to make money. And so that was -- I saw Vegas. The opportunities were just -- Vegas was hit extremely hard, and I didn't see any opportunities there in business which I hoped for. I saw it overseas, and that's when in 2013 I -- at the end of '12 or '13, I opened up an office in Liberia, Africa. So I ended up packing up and moving to Florida after that; after, you know, my home in Vegas.

JUDGE LAMBERT: Okay. Thank you. I appreciate it. That's all I have.

MR. SAFADY: You're welcome.

JUDGE LONG: Judge Johnson, do you have any questions?

JUDGE JOHNSON: Not at this time. Thank you.

JUDGE LONG: I had one question for Franchise Tax Board. So, with respect to the revised date for changing residency, does that effect the calculation of the tax?

MS. MACEDO: It does not. The primary issue on appeal is the sale of the Huntsville, Alabama, purchase and sale -- or sale. Therefore, we reduce the issue to primarily limit to the sale date. However, we don't disagree that Appellant -- or we don't change our position of when Appellant became a California nonresident, just that the primary issue on appeal is the date of the sale.

JUDGE LONG: Okay. Thank you. Before we close, I'd like to give Appellant the opportunity to make their closing statements, but I also wanted to offer a five-minute break if you would like to discuss before you make your closing statement.

MR. MOHAN: That will be fine.

JUDGE LONG: Okay. Then we will go off the record, and we'll reconvene at 11:40.

(There is a pause in the proceedings.)

JUDGE LONG: We're reopening the record in the Appeal of Safady.

Mr. Mohan, you asked for 10 minutes to make your closing statement, and you may begin when ready.

MR. MOHAN: Thank you. I'll keep it short.

CLOSING STATEMENT

MR. MOHAN: As I said in my opening, there are a ton of cases out there trying to ascertain where somebody really lives.

Closer?

JUDGE LONG: Better. Thank you.

MR. MOHAN: -- where somebody really lives. I think it's very clear, both from the record and from Mr. Safady's testimony. He didn't have a place. He had a place to stay. He didn't have a place to live in Los Angeles. He testified that if it wasn't for this litigation he would have been back a couple of times, probably to see his father when he first fell and to help him along; and then when he had a -- later a health problem. All the other litigations that we're talking about he could have handled by phone; or at least minimal visits, whether it's Huntsville, Alabama or -- or Texas or Juliet, Illinois.

That stuff didn't need his presence to go through and sort out these many years of relationship with his cousin. And it got even more personal and required even more of his time when he made the allegations that he misappropriated funds. There was nobody else there to do it. There wasn't somebody in the office during the first 20 years that does that. He did it. He wrote the checks. He stamped the -- the invoice to it. He put it in the file. He had to find it. It would have been nice if they could have moved all these boxes from the storage facility in -- in Santa Monica, or wherever the other one was to Vegas so he can go through them. Then he could just answer the questions. But because the attorneys had them in Los Angeles, either we're moving, you know, 15 sets of attorneys to Las Vegas to go through these boxes, and pay him for them, or Mr. Safady makes the move.

I've gone through most of the factors to refute the Board's statement. One thing I wanted to point out, this concept of getting protection from the state or the benefit of protection from the state, even as a non-resident he's still paying tax in California. He's got, you know, four or five properties that generate income, and then he paid tax when they sold. So it isn't like he's skirting the benefits and burdens of being a citizen. He is paying the taxes as a nonresident. That doesn't change.

The only reason this case is here is because it's a -- a money grab for the -- the big sale in May. And it's just -- and I said in my opening, it's curious to me that January of 2012 wife and kids are in Los Angeles. In May they're in Los Angeles. In August they're in Los Angeles. In December they're in Los Angeles. That didn't change. So I don't understand why it's a factor. And the fact that the Board is -- at one -- at one point in time, I think that's what the original -- on the original NPA, at that point in time, they conceded after August he's no longer a resident because he's in Florida.

And again, I don't think that's true. He bought an investment property in Florida, which I think

Judge Lambert was getting at. His original intent was to be in Las Angeles -- or in Las Vegas so that he was close to his kids in case that was -- but he wasn't in a position, whether it's financially or mentally, to have the kids every other week, and they agreed. His ex-wife agreed that that didn't happen. They may have visited, like said, a couple of times in Las Vegas. But he had it set up as a home so if his kids did come, he would have it. Otherwise, he could have gotten a little one-bedroom studio for probably a third of the price. Especially back then when Las Vegas was really hurting.

The other notion of all of his stuff being in California, that also is not true. The office moved to Huntsville, Alabama. There were still people in Los Angeles, and there was project in California, but his most valuable projects were in Huntsville or even the development project in Juliet, Illinois. You know, that could have been a $700 million deal if the city had came through like they had promised originally. But when that fell apart, that project wasn't as worthwhile, but that was where he wanted to spend his time and his effort to make more money. He didn't need to be in Illinois. He didn't need to be in Huntsville. And if he did, it would be a for a day or two.

This particular litigation required him to be there when he didn't want to. He was in a dark spot. He got divorced. Half of -- probably 30 percent of his net worth went down when the economy crashed, and whatever was left was fought -- fought for by his partner. Every time he turned around, he was making some kind of allegation against him that he had to go defend.

At the very end towards June and July, the only thing he really helped with, which was critical, was the fact that all of these entities that -- I haven't gone through all the transactions, but it sounds to me like they were rolling up all the entities in effort to divide them in two, instead of having 50 percent of each project. They would just divide them and trying to do it tax free. But no one knew the entities, not even his partner. You know, he was the money guy. He -- he would know where a project was. Might have driven by it, but hasn't been in the office. Never wrote a check. He was the manager.

So for those reasons, I think it's fairly clear that there is no other home during 2012 than Las Vegas. He didn't have any of those -- the two properties, Wanda Park or Nichols Canyon. Those weren't a home. If he stayed there a night, it's not a home. It's no different than a hotel express room. He's not expecting to stay there. He didn't hang pictures. He didn't buy a week's worth of food. Same thing with his folks, you know, whether he stayed at his folk's house or his brother's house. You know, he could have pitched a tent in the middle of a parking lot in Los Angeles. His intention was not to stay in Los Angeles. He wanted out, and he moved out.

And if he's trying to do it as a facade, you know, he could have rented an apartment and never showed up. He never bought furniture. I mean, he didn't like -- during that period of time, he had a bunch of money to spend. He was doing it to set up his own home. Period.

Thank you very much for your time.

JUDGE LONG: Thank you.

And I just want to check-in with my co-panelists.

Judge Lambert, do you have any final questions?

JUDGE LAMBERT: I have no final question.

JUDGE LONG: Thank you.

Judge Johnson, do you have any additional questions?

JUDGE JOHNSON: No. Thank you for your testimony and your time today.

JUDGE LONG: Yes. I want to say thank you again for coming, and I hope you have safe travels home.

We are ready to conclude this hearing. This case is submitted on Tuesday, April 21st, 2026.

The record is now closed.

I want to thank everyone for coming in today.

The judges will meet and decide your case later on, and we'll send a written opinion of our decision within 100 days.

Today's hearing in the Appeal of Safady is now adjourned.

(Proceedings concluded at 11:50 a.m.)

HEARING REPORTER'S CERTIFICATE

I, Ernalyn 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 14th day of May, 2025.

____
ERNALYN M. ALONZO
HEARING REPORTER