

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 53264

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA

Appellant/Cross-Respondent

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Elizabeth A. Brown
Clerk of Supreme Court

v.

GILBERT P. HYATT

Respondent/Cross-Appellant

APPEAL FROM JUDGMENT – EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY
HONORABLE JESSIE WALSH, DISTRICT JUDGE

APPELLANT’S REQUEST FOR JUDICIAL NOTICE

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I. INTRODUCTION

Pursuant to NRAP 27 and NRS 47.150, appellant Franchise Tax Board of the State of California (“FTB”) respectfully moves the Court to take judicial notice of certain publicly available documents filed by respondent Gilbert Hyatt (“Hyatt”) in his ongoing California administrative appeal against FTB to the California State Board of Equalization (“BOE”).¹ Among other filings, Hyatt submitted separate documents entitled “Concluding Summary” for the 1991 and 1992 tax years and “Second Additional Briefing” for the 1991 and 1992 tax years. FTB attaches those documents (with only one of the multiple attachments, Attachment 1 to the 1992 Second Additional Briefing), plus a November 4, 2016 letter from Hyatt’s counsel with an errata table, numbered RJN 001-275 (“Hyatt’s BOE Documents”), Exhibits 1-6 attached hereto.²

In Hyatt’s BOE Documents, Hyatt repeatedly argues that the Nevada jury’s fraud and IIED verdicts in his favor, as affirmed by this Court in *Franchise Tax*

¹ This request is supported by the documents of which FTB seeks judicial notice, attached as Exhibits 1-6 hereto and the Declaration of Scott W. DePeel, attached as Exhibit 7 hereto.

² On September 28, 2016, Hyatt’s counsel filed a Second Additional Briefing (1991), a Second Additional Briefing (1992), a Concluding Summary (1991), and a Concluding Summary (1992), with attachments, documentation and new evidence, in Hyatt’s pending BOE appeals. He then filed an errata table on November 4, 2016. Hyatt’s filings with the BOE are voluminous. Because FTB only references Attachment 1 to Hyatt’s recent BOE filing, that is the only attachment of which it currently seeks judicial notice. For the Court’s ease of reference, FTB has added yellow highlighting to Hyatt’s statements relevant to this request for judicial notice.

Bd. of Calif. v. Hyatt (“2014 Opinion”), 130 Nev. Adv. Op. 71, 335 P.3d 125, 147 (2014), “conclusively determined” California tax liabilities in Hyatt’s favor. RJN 053, 089 and 221. Based on the jury’s findings, Hyatt argues, the BOE should reduce FTB’s tax determinations and abate accrued interest. RJN 037. Hyatt repeatedly cites to the 2014 Opinion, describes the findings made by this Court and references evidence presented at trial. RJN 092, 094. Hyatt uses the 2014 Opinion in an attempt to prove that “FTB committed fraud in connection with the audits and protests” and “intentionally inflicted emotional distress against” Hyatt. RJN 221-222.

Notwithstanding these and other similar statements, in his Supplemental Answering Brief before this Court, Hyatt disingenuously contends that his Nevada tort case and his California administrative appeal are “two different trains traveling on separate tracks.” (Suppl. AB 7). The documents filed by Hyatt in his administrative appeal demonstrate the exact opposite: Hyatt tried his tax case to the Nevada jury and now parades the Nevada jury verdict in his BOE administrative appeal to establish that he has no tax liability.

By misrepresenting to the Court that his tort case and tax case are distinct, Hyatt inaccurately portrays his litigation tactics and highlights the perils of this Court’s sister state hostility. Consequently, FTB asks the Court to take judicial notice of certain Hyatt filings in the BOE proceedings, which are publicly filed

documents and not subject to any reasonable dispute as to their accuracy. Indeed, they are Hyatt’s own words. These documents indisputably show that Hyatt’s tort case is not a train headed down a separate track from his administrative appeal. Instead, this Court’s affirmance of the fraud and IIED verdicts are the locomotives driving Hyatt’s administrative appeal.

II. FACTUAL BACKGROUND

In its Supplemental Opening Brief, FTB argues that by affirming the fraud and IIED verdicts against FTB, the Court engaged in the same sister-state hostility the Supreme Court deemed unconstitutional in *Hyatt II*. Specifically, FTB contends that the Court discriminated against California by (1) allowing Hyatt to pursue this tort action before exhausting his administrative remedies in California; (2) failing to apply to FTB the same immunity and deference the Court has accorded the Nevada Department of Taxation; and (3) enforcing *Falline*’s prohibition on IIED claims against public entities in a disparate manner. FTB argues that these examples of sister-state hostility directly violated the Supreme Court’s mandates in *Franchise Tax Bd. of Calif. v. Hyatt* (“*Hyatt I*”), 538 U.S. 488 (2003) and *Franchise Tax Bd. of Calif. v. Hyatt* (“*Hyatt II*”), 538 U.S. 488, 499 (2003).

Hyatt responded by arguing that the Nevada courts have kept his tort case “strictly separate” from his California administrative appeal, and thus these

doctrines do not apply. (Suppl. AB 7). In Hyatt's words, his tort case did not "stop or interfere with the California administrative process" because the "two matters have always been and remain two different trains traveling on separate tracks." (Suppl. AB 7).

Hyatt's filings in the California administrative appeal demonstrate otherwise. Hyatt states a Nevada jury has "conclusively determined that FTB committed fraud, intentionally inflicted emotional distress and acted in bad faith³ in the audits and protests of Mr. Hyatt." RJN053:2-13, RJN089:23-090:3, RJN221. Hyatt asks the BOE to abate interest that FTB has assessed on his outstanding tax liabilities because the "Nevada Supreme Court [found] that FTB committed fraud and intentional infliction of emotional distress in part because of [FTB's] delays" while investigating Hyatt. RJN037. Hyatt also argues that FTB's actions to defend Hyatt's California administrative appeal are an extension of the same alleged "bad faith acts" for which the "Nevada jury found that FTB engaged in gross misconduct and fraud, including bad faith acts, referring to Mr. Hyatt in derogatory terms, and much more." RJN 018:15-17. Hyatt references the Nevada tort case to disparage FTB's audit activities and persuade the BOE that Hyatt's tax liability has already been decided against FTB.

³ Hyatt continues to argue that a Nevada jury found bad faith notwithstanding his repeated statements to the district court that "this is not a bad faith case." *See* 51 AA 12502 (79), 12507 (99)(100), 12511 (110-111).

III. Legal Argument

A. Standard for Taking Judicial Notice

A court must take judicial notice “if requested by a party and supplied with the necessary information.” NRS 47.150(2); *Mack v. Est. of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009). Facts that are subject to judicial notice “are facts in issue or facts from which they may be inferred.” NRS 47.130(1). To be judicially noticed, a fact must be “[g]enerally known” or “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” NRS 47.130(2); *see Mack*, 125 Nev. at 91, 206 P.3d at 106; *see also Sheriff, Clark County v. Kravetz*, 96 Nev. 919, 919, 620 P.2d 868, 869 (1980) (“[F]act, not reasonably open to dispute, should be judicially noticed.”).

Though generally the Court does not take judicial notice of court records in different cases, it has routinely recognized an exception for the public records “of other state court and administrative proceedings when a valid reason presented itself.” *Mack*, 125 Nev. at 91, 206 P.3d at 106 (2009). Parties successfully invoke this exception when “the closeness of the relationship between the two cases” justifies taking judicial notice of documents filed in the other case. *Id.* Additionally, the Court has judicially noticed public records of Nevada’s agencies when a litigant takes a position contrary to that established by the public records. *See Jory v. Bennight*, 91 Nev. 763, 766, 542 P.2d 1400, 1402-03 (1975) (judicially

noticing the Nevada Real Estate Division's public record showing that appellant changed his status from real estate agent to that of a corporate officer, a position contrary to his argument before the trial court).

In California, when a taxpayer appeals FTB's determination of tax liability, the taxpayer waives any right to confidentiality regarding documents he or she files with the BOE. *See* 18 California Code of Regulations § 5573(a) ("The filing of an appeal . . . constitutes a waiver of the appellant's right to confidentiality with regard to all of the information provided to the Board by the appellant or the Franchise Tax Board, including, but not limited to, information contained in a hearing summary prepared under section 5444."). Consistent with this waiver, all documents the taxpayer files with the BOE are matters of public record and subject to appropriate disclosure. *See* 18 California Code of Regulations § 5572(a) ("Documents to which a waiver described in section 5573 applies are also disclosable public records.").

B. As Public Records, the Court Can Judicially Notice Hyatt's BOE Filings for the Fact that Hyatt Used the Nevada Litigation to Advance His California Administrative Appeal.

Pursuant to Sections 5572 and 5573 of the California Code of Regulations, there is no doubt that Hyatt's BOE Documents are public records under California law. Hyatt appealed to the BOE to review FTB's determination of tax liability

against him, and in doing so, waived any right to confidentiality in the Summaries or Additional Briefs and related attachments. *See generally id.*

Although Hyatt now claims that this Nevada tort case is entirely distinct from his California administrative appeal, Hyatt's BOE Documents show the exact opposite. By liberally referencing this Court's affirmance of the Nevada jury verdict, Hyatt demonstrates the dangers of sister-state hostility exhibited in the 2014 Opinion. Hyatt's BOE Documents show that Hyatt is disingenuous in his misrepresentations to this Court and is attempting to circumvent California's administrative process using the Nevada jury verdict and 2014 Opinion. Thus, based on *Mack* and *Jory*, judicial notice of Hyatt's BOE Documents is necessary and warranted.

IV. CONCLUSION

Based on the foregoing, FTB respectfully asks the Court to take judicial notice of documents attached as Exhibits 1-6, numbered RJN 001-275.

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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 2nd_day of December, 2016.

McDONALD CARANO WILSON LLP

By: /s/

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of McDonald Carano Wilson LLP and on the 2nd day of December, 2016, I certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Peter Bernhard
Mark Hutchinson
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Clark Len Snelson

I further certify that on this date I served a copy, postage prepaid, by U.S.

Mail to:

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/s/ Pamela Miller
An employee of McDonald Carano Wilson, LLP

INDEX TO EXHIBITS TO
APPELLANT'S REQUEST FOR JUDICIAL NOTICE

<u>Exhibit No.</u>	<u>Document</u>	<u>Date</u>	<u>Page Nos.</u>
1	Appellant's Concluding Summary (1991) (highlighted)	09/28/16 errata filed 11/4/2016	RJN001 – RJN039
2	Appellant's Concluding Summary (1992) (highlighted)	09/28/16 errata filed 11/4/2016	RJN040 – RJN074
3	Appellant's Second Additional Briefing 1991 (highlighted)	09/28/16 errata filed 11/4/2016	RJN075 – RJN147
4	Appellant's Second Additional Briefing (1992) (highlighted)	09/28/16 errata filed 11/4/2016	RJN148 – RJN218
5	Attachment 1, Appellant's Second Additional Briefing (1992) (highlighted)	09/28/16 errata filed 11/4/2016	RJN219 – RJN260
6	Antolin letter to Richmond with errata table	11/4/2016	RJN261 – RJN275
7	Declaration of Scott DePeel	12/02/16	

EXHIBIT 1

EXHIBIT 1

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23 BEFORE THE STATE BOARD OF
24 EQUALIZATION
25 OF THE STATE OF CALIFORNIA

26 In the Matter of the Appeals of

27 GILBERT P. HYATT
28

Case Nos. 435770 & 446509

APPELLANT'S CONCLUDING SUMMARY (1991)

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3	1991 AOB	1991 Appellant's Opening Brief,
4	1992 AOB	1992 Appellant's Opening Brief,
5	1991 ARB	1991 Appellant's Reply Brief,
6	1992 ARB	1992 Appellant's Reply Brief,
7	1991 ASB	1991 Appellant's Supplemental Brief,
8	1992 ASB	1992 Appellant's Supplemental Brief,
9	AAB	Appellant's Additional Brief,
10	1991 ASAB	1991 Appellant's Second Additional Brief,
11	1992 ASAB	1992 Appellant's Second Additional Brief,
12	1991 ROB	1991 Respondent's Opening Brief,
13	1992 ROB	1992 Respondent's Opening Brief,
14	1991 RRB	1991 Respondent's Reply Brief,
15	1992 RRB	1992 Respondent's Reply Brief,
16	RAB	Respondent's Additional Brief,
17	1991 RSAB	1991 Respondent's Second Additional Brief,
18	1992 RSAB	1992 Respondent's Second Additional Brief,
19	Disputed period	FTB's name for the period in dispute, September 26, 1991 to April 2, 1992
20	CDE	FTB's name for Contemporaneous Documentary Evidence
21	Rebuttal to FTB Att. A/F	
22		Rebuttal and Objection to FTB Calendar, Attachment A (Revised),
23		and Attachment F
24	Rebuttal to FTB Att. E	
25		Rebuttal and Objection to FTB Attachment E
26	Attachment A-R	FTB Attachment A (Revised)
27	Jennifer Circle house	
28		7841 Jennifer Circle, La Palma house
	La Palma house	7841 Jennifer Circle, La Palma house

1 NPA FTB's Audit Notice Of Proposed Assessment

2 NOA FTB's Protest Notice Of Action

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1 **1.2 TABLE OF AUTHORITIES.**

2 **CASES**

3 *Achiro v. Commissioner,*
4 77 T.C. 881 (1981)

5 *Falese v. Commissioner,*
6 58 T.C. 895 (1972)

7 *Fitch v. Comm'r,*
8 T.C. Memo 2012-358, P25 (T.C. 2012)

9 *Fox v. Erickson,*
10 99 C.A.2d 740, 742 (1950)

11 *Hale v. Comm'r,*
12 T.C. Memo 2010-229 (T.C. 2010)

13 *Franchise Tax Bd. of Cal. v. Hyatt,*
14 335 P.3d 125, 144-145, 148-149 (Nev. 2014)

15 *Jones v. Commissioner,*
16 259 F.2d 300 (5th Cir. 1958)

17 *In re Jost,*
18 117 Cal.App.2d 379, 383 (1953)

19 *Mansell v. Board of Administration,*
20 30 Cal. App. 4th 539, 545 (1994)

21 *Marchica v. State Board of Equalization,*
22 107 Cal.App.2d 501, 509 (1951)

23 *Mattel v. Gilbert Hyatt,*
24 1979 U.S. Dist. LEXIS 8812 (December 6, 1979)

25 *Padgett Coventry Price v. Commissioner of Internal Revenue Service,*
26 T.C. Memo 2004-103

27 *Powell v. Granquist,*
28 252 F.2d 56 (9th Cir. 1958)

Professional Services v. Commissioner,
79 T.C. 888, 930 (1982)

Rowlee v. Commissioner,
80 T.C. 1111, 1123 (1983)84

Stoltzfus v. United States,
398 F.2d 1002, 1004 (3d Cir. 1968)

Title Ins. Co. of Minnesota v. State Bd. of Equalization
4 Cal.4th 715 (1992)

1 **Statutes**

2 Tit.18, Cal. Rev. & Tax. Code

3 § 17014(a)

4 § 17951-4(a).

5 § 17951-4(c)

6 § 17952

7 § 17952(a)

8 § 17952(c)

9 § 19033

10 § 19034

11 § 19044

12 § 19045

13 § 19057

14 § 19036

15 Revenue and Taxation Code sections 12421 through 12435

16 **STATE BD. OF EQUALIZATION DECISIONS**

17 *Appeal of Robert F. and Helen R. Adickes,*

18 St. Bd. of Equaliz., 1990 Cal. Tax LEXIS 24, 90-SBE 012 (Nov. 27, 1990)

19 *Appeal of Eli A. and Virginia W. Allen,*

20 Cal. St. Bd. of Equal., Jan. 7, 1975)

21 *Appeal of Armstrong,*

22 St. Bd. of Equaliz. 1985 Cal. Tax LEXIS 2 December 3, 1985

23 *Appeal of Stephen D. Bragg,*

24 2003-SBE-002 (May 28, 2003)

25 *Appeal of Castillo,*

26 No. 90A-0227-ES, St. Bd. of Equaliz. 1992 Cal. Tax LEXIS 28;

27 92-SBE-020 July 30, 1992

28 *Appeals of Robert E. Wesley and Jerry J. Couchman,*

29 2005-SBE-002, (2005) Cal. Tax LEXIS 358,

30 *Appeal of Duncan*

31 1993 Cal. Tax LEXIS 147, 3-4 (1993)

32 *Appeal of Robert V. Erilane,*

33 Cal. St. Bd. of Equal., Nov. 12, 1974

34 *Appeal of Lasher,*

35 St. Bd. of Equaliz. 2005 Cal. Tax. Lexis 22 (Case No. 260933) (Jan. 25. 2005)

36 *Appeal of David G. and Helen Mendelsohn,*

37 85-SBE-141, Nov. 6, 1985

38 *Appeal of Sierra Pacific Industries,*

39 Cal. St. Bd. of Equal., Jan. 5, 1994, 94-SBE-0024

Appeal of Hubbard D. & Cleo M. Wickman,
81-SBE-014, Feb. 2, 1981

Other Authorities

Law Review Commission Comments for Evid. Code § 600

Uniform Division of Income for Tax Purposes Act,
Sections 25120 to 25139

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2 **1.3.1 Updated Testimonial Topics Table And Exhibits Summarizing The Eyewitness Testimonial Subject**
3 **Matters And The Reinforcement Of Testimony Between Eyewitnesses (E.G., 72-Witnesses Testified**
4 **About Mr. Hyatt's Move Away In 1991) Under Oath Or Penalty Of Perjury.**

5 **1.3.2 Updated Chronological Statements Of Facts (The "Chronologies"), A Chronology Of Mr. Hyatt's**
6 **Overwhelming Eyewitness And Documentary Evidence.**

7 Updated 1991 Pre-Disputed Period Chronological Statements Of Facts.

8 Updated 1991 Disputed Period Chronological Statements Of Facts.

9 Updated 1992 Disputed Period Chronological Statements Of Facts.

10 Updated 1992 Post-Disputed Period Chronological Statements Of Facts.

11 **1.3.3 The More Than 220 Affidavits And Declarations Sworn To Or Signed Under Penalty Of Perjury By**
12 **More Than 150 Eyewitnesses In Support Of Mr. Hyatt's Facts.**

13 Updated Index of Affidavits.

14 Affidavits and Declarations with Exhibits filed with the AOBs.

15 Affidavits and Declarations with Exhibits filed with the ARBs.

16 Affidavits and Declarations with Exhibits filed with the ASBs.

17 Post-Briefing Evidence (post-ASBs Affidavits and Declarations with Exhibits).

18 Mr. Hyatt's Contemporaneous Documentary Evidence (CDE) Affidavits Describing And
19 Authenticating Thousands of Pages of Documentary Evidence.

20 Mr. Hyatt's 2012 Disputed Period CDE Affidavit.

21 Mr. Hyatt's 2016 Supplemental Disputed Period CDE Affidavit.

22 Mr. Hyatt's 2016 Post-Disputed Period CDE Affidavit.

23 Sourcing Affidavits With Exhibits.

24 **1.3.4 "Testimonial Responses" Tables And Excerpts Regarding Eyewitnesses' Overwhelming Testimony To**
25 **Identify And Correct FTB's False Arguments And False Facts.**

26 Testimonial Responses To FTB's 1991 ROB

27 Testimonial Responses To FTB's 1992 ROB

28 Testimonial Responses To FTB's 1991 RRB

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1.3.6 Witness Deposition Tables Providing Examples Of More Than 20 Depositions That FTB Took Of Mr. Hyatt's Eyewitnesses And Philips Licensing Attorneys That Support Mr. Hyatt's Appeals.

1.3.7 Tables Of False Statements Made In The FTB Audit File And Rebutted Under Oath Or Penalty Of Perjury By Eyewitnesses.

1.3.8 Tables Of False Statements Made Under Penalty Of Perjury By FTB Private Investigators And Rebutted Under Oath Or Penalty Of Perjury By Eyewitnesses.

1.3.9 Objection And Rebuttal To FTB's Calendar And Attachments A (Revised) And F ("Rebuttal To FTB Att. A/F").

/02/06B1 Introduction to Rebuttal To FTB Att. A/F

/02/06B2 September 1991 Rebuttal To FTB Att. A/F

/02/06B3 October 1991 Rebuttal To FTB Att. A/F

/02/06B4 November 1991 Rebuttal To FTB Att. A/F

/02/06B5 December 1991 Rebuttal To FTB Att. A/F

/02/06B6 January 1992 Rebuttal To FTB Att. A/F

/02/06B7 February 1992 Rebuttal To FTB Att. A/F

/02/06B8 March 1992 Rebuttal To FTB Att. A/F

/02/06B9 April 1992 Rebuttal To FTB Att. A/F

1.3.10 Objection And Rebuttal To FTB's Attachment E ("Rebuttal To FTB Att. E").

1.3.11 Tables Of Misrepresentations In FTB's ROBs And RRBs.

1.3.12 Tables Of Mr. Hyatt's Presence Based Upon Direct Testimonial and Documentary Evidence

ASAB Exhibit 02

ASAB Exhibit 03

CDE Affidavit Exhibit CDE-ST002

CDE Affidavit Exhibit CDE- ST003

1 **1.4 INTRODUCTION TO MR. HYATT'S 1991 CONCLUDING SUMMARY.**

2 Mr. Hyatt decided to move to Las Vegas in 1990, he prepared for his move for over nine (9) months, including
3 preparing to sell his California house, and he moved on September 26, 1991.¹

4 The year 1990 was a difficult year for Mr. Hyatt. He had lost his mother a short while before, his oldest son was
5 murdered in March 1990, he was being harassed by three estranged relatives (his ex-wife, his daughter who was close to his
6 ex-wife, and his brother). The aerospace industry, where he earned his living as a consultant, was in a depression as a result of
7 the demise of the former Soviet Union. He needed a major change in his life.

8 Sheldon Adelson in 1990 offered Mr. Hyatt the change that he needed. He invited Mr. Hyatt to speak at the Comdex
9 trade show in Las Vegas in mid-November 1990 and he offered Mr. Hyatt a job if he moved to Las Vegas. In November 1990
10 when he was present at the Comdex trade show, Mr. Hyatt explored Las Vegas and decided to move to Las Vegas. He
11 returned to California and prepared to move to Las Vegas and in about nine months, on September 26, 1991, he permanently
12 moved to Las Vegas. In preparation for his move, he visited Las Vegas several times during 1991 to shop for an apartment
13 and for a house. He fixed up his California house, he gave away, stored, threw away, and packed up his possessions in
14 preparation for the sale of the house and he sold the house on October 1, 1991, shortly after he moved. He stayed in a Las
15 Vegas hotel for several weeks, he leased a Las Vegas apartment for six months, and he purchased a Las Vegas house where he
16 still resides today.²

17 In December 1990, shortly after his decision to move, Mr. Hyatt engaged Mahr Leonard to license his patents but
18 Mahr Leonard failed to get any licenses. In July 1991 Mr. Hyatt licensed Philips with exclusive authority to sublicense his
19 patents. Philips told him that it could take years of patent litigation before his patents were licensed and thus Philips agreed to
20 pay Mr. Hyatt a minimum annual license fee for up to 10 years to sustain him until Philips could license his patents. Mr.
21 Hyatt's finances were very uncertain at the time he moved to Las Vegas and sold his California house.

22 Mr. Hyatt did not know that the Philips Licensing Program would be a rapid success, Mahr Leonard's attempts to
23 license his patents had failed and Philips told him that it could take years before Philips could license the patents.³

24 Well into October 1991, the Mahr Leonard negotiations with Fujitsu and Oki were continuing and changes were
25 being made to the patent agreements in mid-October 1991.⁴ However, Philips unexpectedly started to license his patents.
26 This permitted Mr. Hyatt to concentrate more of his time on his research and development and building his life in Las Vegas.⁵

27 ¹ Hyatt's 2001 Affidavit ¶¶ 2-8, 16-25, 29-31; Hyatt's 2008 Affidavit ¶¶ 2-11; Hyatt's 2010 Affidavit Sections 1.2,
28 1.2.1, 1.2.2, 1.2.3; 1991 AOB, pp. 2-3.

29 ² Updated Testimonial Topics, Exs. T001, T002, T003, T004, T005, T116, T117, T007, T006, T102, T118, T119,
T123, T124, T127, T008, T009, T018, T021, T128, *et seq.*

³ Hyatt's 2001 Affidavit ¶¶ 9-15; Hyatt's 2008 Affidavit ¶¶ 47-49.

1 There are many eyewitnesses to the above events:⁶

2 26-witnesses testified about Mr. Hyatt's decision to move to Las Vegas,

3 32-witnesses testified about Mr. Hyatt's preparations to move to Las Vegas in 1991,

4 21-witnesses testified that Mr. Hyatt lived alone at his former Jennifer Circle house before he moved to Las Vegas in 1991,

5 17-witnesses testified about Mr. Hyatt's former Jennifer Circle house having little furniture and/or having packed boxes before he moved to Las Vegas in 1991,

6 14-witnesses testified about Mr. Hyatt's former Jennifer Circle house being nearly empty of furniture and furnishings before he moved to Las Vegas in 1991,

7 15-witnesses testified about Mr. Hyatt's possessions being carted off for storage or being given away, or disposed of, or donated to charity,

8 3-witnesses testified that they helped Mr. Hyatt move his belongings to storage prior to his move to Las Vegas in 1991,

9 4-witnesses testified that they helped Mr. Hyatt pack his belongings for his move to Las Vegas in 1991,

10 72-witnesses testified about Mr. Hyatt's move away in 1991,

11 28-witnesses testified about Mr. Hyatt's move away in September 1991,

12 22-Jennifer Circle neighbors testified about Mr. Hyatt moving away in 1991.

13 Mr. Hyatt moved to Las Vegas on September 26, 1991, and sold his only California house five days later on October 1, 1991. During the disputed period (September 26, 1991, to April 2, 1992) Mr. Hyatt had 125 full days in Nevada as a resident, zero full days in California as a resident, and 37 days partly in Nevada as a resident and partly in California for temporary or transitory purposes.⁷ All of the 1991 and 1992 disputed licensing payments Mr. Hyatt received came from Philips licensing his Nevada situs patents through the Philips Licensing Program. He had no "California source income".

17 Mr. Hyatt has produced overwhelming *eyewitness and documentary* evidence in support of his appeals. Mr. Hyatt filed more than 220 declarations and affidavits from more than 150 witnesses from many walks of life⁸ in support of his

24 ⁴ FTB_Philips 0002478-0002509, FTB_Philips 0005640-0005671.

25 ⁵ Hyatt's 2012 CDE Affidavit, his 2016 Supp. CDE Affidavit, and his 2016 Post-DP CDE Affidavit ("Mr. Hyatt's CDE Affidavits"). See also the Updated 1991 Pre-Disputed Period Chronological Statement Of Facts, the Updated 1991 Disputed Period Chronological Statement Of Facts, the Updated 1992 Disputed Period Chronological Statement Of Facts, and the Updated 1992 Post-Disputed Period Chronological Statement Of Facts (the "Chron").

26 ⁶ Updated Testimonial Topics, Exs. T001, T002, T115, T003, T004, T005, T116, T117, T007, T006, and T102, respectively.

27 ⁷ Day by day analysis in Rebuttal to FTB Att. A/F, Section I. A. Mr. Hyatt also had 9 full days in a California hospital for cancer surgery, February 12-20, 1992. Mr. Hyatt was admitted to the California hospital on February 11 for cancer surgery, was discharged from the California hospital on February 21, and returned to his Las Vegas apartment that same day.

28 ⁸ See Updated Testimonial Topics Table.

1 position in these appeals and he filed thousands of pages of very relevant contemporaneous documentary evidence ("CDE").⁹
2 This *overwhelming eyewitness and documentary evidence* establishes that (1) Mr. Hyatt moved away from the Jennifer Circle
3 house in 1991, (2) he moved to Las Vegas and became a Nevada resident on September 26, 1991, (3) he sold his California
4 house on October 1, 1991, and had no other abode in California, (4) his occasional presence in California was for temporary or
5 transitory purposes, and (5) he did not receive California source income during the disputed period or thereafter.¹⁰

6 The **Bragg factors** confirm that Mr. Hyatt's closest connections were with Nevada *infra*. Not one of the *Bragg*
7 factors shows a close or substantial connection to California.

28 ⁹ Affidavit of Gilbert P. Hyatt Regarding Contemporaneous Documentary Evidence (CDE), July 24, 2012 ("Hyatt's
29 2012 CDE Aff."); Supplemental Disputed Period CDE Affidavit of Gilbert P. Hyatt, September 6, 2016 ("Hyatt's 2016 Supp.
CDE Aff."); Post-Disputed Period CDE Affidavit of Gilbert P. Hyatt, September 8, 2016 ("Hyatt's 2016 Post-DP CDE Aff.").

¹⁰ 1991 AOB, pp. 15-38, 63-86; 1992 AOB, pp. 16-35; 1991 ARB pp. 21-68; 1992 ARB pp. 2-26, 27-81; 1992 ASB,
pp. 41-52, 53-99.

Figure 1
Jennifer Circle Neighborhood

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<http://showmystreet.com/>

8/18/2015

Neighbor Family Last Name	Number of Declarants	Jennifer Circle Address	Comments
Kim	4	7831	Husband, wife, & two children testified
Amador	4	7861	Mother & three children testified
Redmond	2	7842	Husband & wife testified
Rohrig	2	7802	Husband & wife testified
Neuner	3	7851	Husband, wife, & son testified Divorced, wife remarried as Ruth
Wilson	2	7832	Husband & wife testified
Washle	2	7811	Husband & wife testified
Zuzak	1	7862	Husband testified, wife deceased
Fritzsche	1	7821	Wife testified, husband deceased
Smith	1	7812	Husband testified
Fisher	1	7852	Husband testified, wife deceased

Figure 2. La Palma Neighbors Table

A total of twenty two Jennifer Circle neighbors testified about Mr. Hyatt moving away in 1991 and *23-witnesses testified* that they did not ever again see Mr. Hyatt at Jennifer Circle after he moved away in 1991.¹¹ As shown by the photograph of Jennifer Circle immediately below, Jennifer Circle is a short, compact cul-de-sac with only 16 houses.

Seven of these 22 eyewitness neighbors (members of the Kim family and the Neuner family) lived right next door to Mr. Hyatt. They all knew Mr. Hyatt and they all testified -- that *Mr. Hyatt moved away from Jennifer Circle in 1991*. Indeed, Mr. Neuner expressly testified that he saw Mr. Hyatt leave for Las Vegas in his old brown Toyota pulling a trailer.¹² Twenty three eyewitnesses also testified that *Mr. Hyatt was not seen again at Jennifer Circle after he moved away in 1991*. This *eyewitness testimony* corroborates Mr. Hyatt's testimony that he moved away from the Jennifer Circle house and was not present at the Jennifer Circle house during the disputed period or thereafter.

The testimony of Mr. Hyatt's former Jennifer Circle neighbors alone defeats the FTB's residency case and sourcing case. FTB bases both the residency and sourcing cases upon the same false premise – that Mr. Hyatt lived, worked and operated a California licensing business at the Jennifer Circle house. However, the testimony of Mr. Hyatt's *22 neighbors* and dozens of other eyewitnesses proves that Mr. Hyatt moved away in 1991 and was not present at the Jennifer Circle house before late 1992. Mr. Hyatt's absence from the Jennifer Circle neighborhood disproves FTB's premise for its entire residency and sourcing cases. FTB's claim that it can infer from an address on a correspondence that Mr. Hyatt was physically present at the Jennifer Circle house must be rejected when eyewitnesses with personal knowledge establish that Mr. Hyatt's moved away from the Jennifer Circle house and did not return. Because Mr. Hyatt was not at the Jennifer Circle house, he could not and he did not live, work, or operate a California licensing business at the Jennifer Circle house.

¹¹ Updated Testimonial Topics, Exs. T102 and T127, respectively.

¹² Affidavit of Richard Neuner, January 2, 2010, ¶ 7.

1 The testimony of Mr. Hyatt's neighbors is just one part of his overwhelming documentary and testimonial evidence.
2 *Seventy-two eyewitnesses*¹³ testified about Mr. Hyatt's move away in 1991, *28 eyewitnesses testified* about Mr. Hyatt's move
3 away in September 1991, and *15 eyewitnesses testified* that an Asian woman (or Ms. Jeng) moved into the Jennifer Circle
4 house after Mr. Hyatt moved away in 1991.¹⁴ In addition, *32-witnesses testified* about Mr. Hyatt's preparations to move to Las
5 Vegas in 1991, *17-witnesses testified* about Mr. Hyatt's former Jennifer Circle house having little furniture and/or having
6 packed boxes before he moved to Las Vegas in 1991, *15-witnesses testified* about Mr. Hyatt's possessions being carted off for
7 storage or being given away, or disposed of, or donated to charity, and *3-witnesses testified* that they helped Mr. Hyatt move
8 his belongings to storage prior to his move to Las Vegas in 1991.¹⁵

9 Similarly, *dozens of additional witnesses* testified to Mr. Hyatt's presence in Las Vegas, visiting him and telephoning
10 him at his Las Vegas apartment, worshiping with him at their Las Vegas synagogue, house hunting with him in Las Vegas,
11 and much more.¹⁶ *Thirty-seven-witnesses testified* about Mr. Hyatt's stay at a Las Vegas hotel when he first moved to Las
12 Vegas in 1991, *28-witnesses testified* about being informed in October 1991 that Mr. Hyatt had moved into his Las Vegas
13 apartment, *39-witnesses testified* about telephoning Mr. Hyatt at his Las Vegas apartment, and *20-witnesses testified* about
14 Mr. Hyatt's move into his Las Vegas house in April 1992.¹⁷

15 Mr. Hyatt sold the Jennifer Circle house on October 1, 1991. After signing and delivering a Grant Deed to the
16 purchaser and after receiving a down payment from the purchaser, he moved his remaining belongings out of the Jennifer
17 Circle house and returned to Las Vegas.¹⁸ The lead FTB auditor determined "[Mr. Hyatt] sold [his] La Palma house on
18 10/1/91".¹⁹ FTB has never even alleged or produced any evidence that Mr. Hyatt had any abode outside of Las Vegas
19 thereafter other than the Jennifer Circle house. A total of 16 witnesses testified about the sale of Mr. Hyatt's California house
20 in October 1991 and two former Orange County Assessors testified that the documentation for the sale of Mr. Hyatt's
21 California house satisfied the requirements of the Orange County Assessor's Office for sale of a house in 1991.²⁰ Thus,
22 *overwhelming eyewitness and documentary evidence* confirms that Mr. Hyatt sold his Las Palma house five days after
23 moving to Las Vegas.

24 ¹³ Including the testimony of the 22 neighbors.

25 ¹⁴ Updated Testimonial Topics, Exs. T007, T006, and T120, respectively.

26 ¹⁵ Updated Testimonial Topics, Exs. T002, T003, T005, and T116, respectively.

27 ¹⁶ See, e.g., Updated Testimonial Topics, Exs. T008, T009, T018, T019, T041, T042, and T044.

28 ¹⁷ Updated Testimonial Topics, Exs. T008, T128, T019, and T049, respectively.

29 ¹⁸ Affidavit of Gilbert P. Hyatt, May 18, 2001, ¶ 24; Affidavit of Gilbert P. Hyatt, December 4, 2008, ¶ 35.

¹⁹ FTB's 1991 Narrative Report, p. 4, CCC 00967 ("Statistics (size, cost, etc.) comparing the taxpayer's La Palma home to his Las Vegas home will not be weighed in the determination, as the taxpayer sold the La Palma house on 10/1/91 before he purchased the house in Las Vegas during April of 1992.") (Emphasis in original.)

²⁰ Updated Testimonial Topics, Exs. T124 and, T123. A former employee of the Orange County Assessor's Office also confirmed the adequacy of the sales documents.

1 Mr. Hyatt's closest connections were with Nevada after September 26, 1991. He stayed at a hotel for a few weeks,
2 he leased an apartment for six months, he looked for and purchased a beautiful Las Vegas house, he opened Las Vegas bank
3 accounts and Las Vegas situs investment accounts, he joined a Las Vegas synagogue, he obtained a Nevada driver's license
4 and voter registration, he insured his cars, his apartment, and his house through a Las Vegas insurance agent, he hired Nevada
5 professionals, and he did hundreds of other things that established his permanent residence in Las Vegas.²¹ Mr. Hyatt
6 provided numerous written changes of address to persons, entities, and the U.S. Postal Service, he informed more than 100
7 persons of his move to Las Vegas, and he provided his Las Vegas contact information to his family, friends, neighbors,
8 licensing associates, service providers, and many others. He even worked with the Governor of Nevada to bring international
9 businesses to Nevada.²² He continues to reside in Las Vegas today, a quarter of a century later. Even FTB agrees Mr. Hyatt
10 became a Nevada resident, but FTB disputes when that occurred. FTB's 1992 Notice of Proposed Assessments holds that he
11 became a Nevada resident and domiciliary on April 3, 1992.²³

12 FTB has no credible evidence to support the critical issue for its entire case – whether Mr. Hyatt lived and worked at
13 the Jennifer Circle house after September 26, 1991. FTB resorts to fabricating fantastic stories, mischaracterizing and
14 misquoting documents, relying on an address on correspondence as “proof” of Mr. Hyatt's location, calling Mr. Hyatt's
15 witnesses perjurers, drawing illogical inferences, and disregarding overwhelming evidence produced by Mr. Hyatt. A Nevada
16 jury found that FTB engaged in gross misconduct and fraud, including bad faith acts, referring to Mr. Hyatt in derogatory
17 terms, and much more. FTB's bad faith continues in these appeals.

18 As one example of FTB's bad faith, FTB's auditor made a \$24 million income overstatement error in the 1992 audit.
19 Even though Mr. Hyatt produced significant evidence in 1997 that established FTB's \$24 million income error, FTB assessed
20 tax on its \$24 million income error, it assessed a fraud penalty on this amount, and it attempted to extort a settlement from Mr.
21 Hyatt with it. FTB refused to correct the FTB \$24 million income error or even consider Mr. Hyatt's evidence demonstrating
22 the error until your Board required FTB to provide its evidence in an additional briefing. Then, thanks to your Board, FTB
23 finally admitted to its \$24 million income error.²⁴ However, FTB refuses to reduce the assessment to correct its \$24 million
24 error; instead, FTB still continues to assess tens of millions of dollars in taxes, penalties, and interest on its \$24 million error
25 even though the income is not taxable by California (1992 Concluding Summary, Section 1.6; 1991 ASAB, Section 1.7.2).

26
27
28 ²¹ Hyatt's 2012 CDE Aff.; Hyatt's 2016 Supp. CDE Aff.; Hyatt's 2016 Post-DP CDE Aff.

29 ²² Hyatt's 2016 Post-DP CDE Aff., ¶¶ 168, 174-179.

²³ FTB's 1992 Notice of Proposed Assessment (H 02248-02250).

²⁴ Mr. Hyatt's AAB, pp. 2-5.

1 The overwhelming evidence demonstrates that Mr. Hyatt moved to Las Vegas, sold his only California house and had
2 no California sourced income.

3 **1.5 MR. HYATT'S EVIDENCE IS SO EXTENSIVE THAT IT IS VIRTUALLY IMMEASURABLE.**

4 Examples of Mr. Hyatt's evidence is described below.

5 Mr. Hyatt produced more than 220 affidavits and declarations signed under oath or penalty of perjury by more than
6 150 eyewitnesses with 2,000 citations to actual testimony (many with excerpts) and summarized in more than 150 Testimonial
7 Topics (e.g., 72-witnesses testified about Mr. Hyatt moving away in 1991)²⁵ each linked to the actual testimony for the
8 convenience of your Board.

9 Mr. Hyatt produced more than 10,000 pages of exhibits to the more than 220 affidavits and declarations that support
10 the witnesses' testimony but that has been completely disregarded by FTB in its false inferences and speculations and its
11 attacks on the witnesses. FTB challenged the integrity of dozens of eyewitnesses without considering the enormous amount of
12 documentary support relied on by the witnesses and disregarding the large number of eyewitness testimony supporting each
13 witness. (1991 ASAB Sections 1.8.6, 1.8.6.1 to 1.8.6.5).

14 FTB took formal depositions of more than 20 witnesses and did not use that evidence to support its cases. However,
15 Mr. Hyatt created 27 deposition tables with an enormous number of significant excerpts from the transcripts (more than 800
16 excerpts) to support his appeals (1991 ASAB Section 1.8.6.5).

17 Mr. Hyatt produced more than 15 Philips document tables of having excerpts and citations from more than 5,000
18 pages of Philips documents (some duplicates) supporting Mr. Hyatt's appeals. (1991 ASAB, Section 1.7.1). This is in
19 addition to the more than one thousand pages of agreements in Philips documents that support Mr. Hyatt's appeals.

20 Mr. Hyatt produced more than 15,000 pages of licensing documents to FTB about a decade before FTB subpoenaed
21 the so-called Philips documents²⁶ and Mr. Hyatt produced sourcing affidavits from three eyewitnesses to the Philips Licensing
22 Program each with more than 1,500 of these licensing documents attached as exhibits, authenticated, and explained under
23 oath.²⁷

24 FTB produced its Attachment A (Revised) to support its calendar, but this document contains *more than 2,000 false*
25 *statements* that are identified, explained, and corrected with eyewitness and documentary evidence (1991 ASAB Section
26 1.8.4; 1991 ARB, Section III, pp. 15-16).

27
28 ²⁵ Updated Testimonial Topics, Ex. T007.

²⁶ Hyatt's 2012 CDE Aff., ¶ 5.

²⁷ Affidavit of Algy Tamoshunas, August 4, 2010; Affidavit of Gregory L. Roth, August 9, 2010; Affidavit of Gilbert
29 P. Hyatt, August 15, 2010.

FTB made \$24 million in now admitted income error in its NPAs and NOAs which devastate the 1992 assessments. (1991 ASAB Sections 1.7.2, 1.8.5.4.4, 1.8.5.4.5, 1.9.10; 1992 ASAB, Section 1.7.5).

Mr. Hyatt provided numerous written changes of address to people, entities, and the U.S. Postal Service.²⁸ He informed more than 100 people that he had moved to Las Vegas and he provided his Las Vegas contact information to his family, friends, neighbors, Philips, Mahr Leonard, service providers and many others. (1992 ASAB Sections 1.5.6, 1.5.6.1 to 1.5.6.3).

Mr. Hyatt produced thousands of pages of contemporaneous documentary evidence (CDE) with authentication and descriptions of the relevance in his three CDE Affidavits.²⁹

1.6 MR. HYATT WAS A NEVADA RESIDENT COMMENCING ON SEPTEMBER 26, 1991.

Mr. Hyatt was a Nevada resident and domiciliary commencing on September 26, 1991, and continuing through 1992³⁰ to the present. Mr. Hyatt fully met the statutory requirements for Nevada residency on September 26, 1991 – he was not domiciled in California and he was only in California for temporary or transitory purposes.³¹

The presumption of California residency under Rev & Tax, Section 17016 does not apply to Mr. Hyatt; FTB bears the burden of proof on its new presumption of California residency argument and the presumption has been thoroughly rebutted.³²

Overwhelming eyewitness and documentary evidence supports Mr. Hyatt's change to Nevada domicile and Nevada residency (1992 ASAB Section 1.5).

The *direct eyewitness testimony* is so compelling that it should be taken as dispositive of Mr. Hyatt's move to Las Vegas (Lynetta Ruth, Mr. Hyatt's former Jennifer Circle neighbor, testified that near the end of September 1991, Mr. Hyatt said goodbye and pulled a trailer load of possessions with his old brown car to Las Vegas).³³ Even more compelling is the fact that this was testimony from one of FTB's many depositions of Mr. Hyatt's witnesses (1991 ASAB Section 1.8.6.5).

²⁸ Hyatt's 2012 CDE Aff., ¶¶ 17, 34; Hyatt's 2016 Supp. CDE Aff., ¶¶ 143, 144, 159.

²⁹ See the Tables of Contents in Hyatt's 2012 CDE Aff.; Hyatt's 2016 Supp. CDE Aff.; Hyatt's 2016 Post-DP CDE Aff.

³⁰ 1991 AOB, Section II, pp. 11-55; 1991 ARB, Section II, pp. 21-73; 1991 AOB, Section II.A, pp. 11-14; 1992 ASB, Section I, p. 1.

³¹ 1991 AOB, Section II, p. 11; 1991 AOB, Section II.B, p. 15; 1992 ASAB, Section 1.5.5. Updated Testimonial Topics, Exs. T007, T006, T102, T114, T119, T127, T008, T009, T018, T021, T128, T019, T022-T025, T135, T136, T040, T138, T140-T143, T045, T044, T046, T047, and T049.

³² 1991 ARB, Section II.C, pp. 68-73.

³³ Deposition Table 15, Witness Testimony Regarding Mr. Hyatt's Move to Las Vegas.

1 Mr. Hyatt's contacts with Nevada fully satisfy the *Bragg* factors and the close connections test. Not one *Bragg* factor
2 favors a California connection.³⁴

3 **1.6.1 The *Bragg* Factors Overwhelmingly Establish Mr. Hyatt's Nevada Residency And Domicile.**

4 The *Bragg* factors overwhelmingly establish Mr. Hyatt's Nevada residency during the disputed period and
5 thereafter.³⁵ Not one *Bragg* factor favors a California connection.³⁶

6 The *Bragg* factors show that Mr. Hyatt's closest connections during the disputed period were clearly in Nevada. Mr.
7 Hyatt moved to Las Vegas on September 26, 1991. He then began settling and residing in Las Vegas and conducted all his
8 personal and professional activities from Las Vegas.³⁷

9 Under the identifiable purpose test, Mr. Hyatt was a Nevada resident for all of the 1991 disputed period.³⁸ Mr. Hyatt
10 moved to Las Vegas on September 26, 1991, intending to permanently live in Las Vegas and start a new life in Las Vegas. He
11 has resided in Las Vegas for the past 25 years. Among the more significant events during the disputed period, Mr. Hyatt sold
12 his only California residence five days after he moved, purchased is Las Vegas Tara house on April 3, 1992, terminated his
13 California homeowner's property tax exemption, moved his telephone to his Las Vegas apartment, filed his tax returns from
14 Las Vegas, opened four bank accounts in Las Vegas, had most checking account and credit card transactions in Las Vegas,
15 attended worship services in Las Vegas, registered his 1977 Toyota in Las Vegas after it passed a smog check, bought a new
16 Toyota in Las Vegas, surrendered his California driver's license and obtained a Nevada driver's license, registered to vote in
17 Nevada and used many Nevada professionals.³⁹

18 **1.6.1.1 Mr. Hyatt did not own any residential real property in California, he sold his California house and**
19 **he shopped for and purchased residential property in Nevada.**

20 Mr. Hyatt did not own any residential real property in California after he sold his California house on October 1,
21 1991. He shopped for a Nevada house throughout the disputed period, he made purchase offers on ten Las Vegas houses,
22 escrow opened on his Las Vegas Tara home on March 16, 1992, and escrow closed on this home and he moved in on April 3,
23 1992.⁴⁰ Mr. Hyatt shopped for his Las Vegas house in-person.⁴¹

24 ³⁴ 1991 AOB, Section II.C, pp. 15-38; see rebuttal to FTB's false statements at 1991 ARB, Section II.A, pp. 21- 68.

25 ³⁵ 1991 AOB, pp. 15-38; 1992 AOB, pp. 16-35; 1991 ARB, pp. 21-68; 1992 ARB, pp. 4-26; 1992 ASB, pp. 42-52;
26 *Appeal of Stephen Bragg*, 2003-SBE-002 (May 28, 2003) (setting forth a non-exhaustive list of objective factors helpful in the
determination with which state an individual maintains his closest connections).

27 ³⁶ 1991 AOB, Section II.C, pp. 15-38; see rebuttal to FTB's false statements at 1991 ARB, Section II.A, pp. 21- 68.

28 ³⁷ 1991 AOB, Section II.C.20, p. 38; see rebuttal to FTB's false statements at 1991 ARB, Section II.A.20, pp. 67-68.

29 ³⁸ 1991 AOB, Section II.D, p. 39; see rebuttal to FTB's false statements at 1991 ARB, Section II.B, p. 68.

³⁹ 1991 AOB, Section II.C, pp. 15-38; see rebuttal to FTB's false statements at 1991 ARB, Section II.A, pp. 21- 68.

⁴⁰ 1991 AOB, Section II.C.1, pp. 17-21, 55; 1992 ARB, Section II.B.1, pp. 4-13; Hyatt's 2012 CDE Aff., ¶¶ 7-11, 45-
51; Hyatt's 2016 Supp. CDE Aff., ¶¶ 7-8, 63-74. Hyatt's 2001 Affidavit, ¶ 6; See Mr. Hyatt's response to FTB's false
statements regarding this *Bragg* factor, 1992 ASB, Section I.E.1, p. 42. Updated Testimonial Topics, Exs. T045, T141, T044,

1 The audit file states that “Mr. Hyatt sold his Jennifer Circle house on October 1, 1991”. On October 1, 1991, he
2 signed and delivered a grant deed to the purchaser. On June 10, 1993, he properly notarized the grand deed with an
3 acknowledgement of his prior signature.⁴² Mr. Hyatt had no California abode after October 1, 1991. Former Orange County
4 elected assessors Bradley Jacobs and Webster Guillory confirmed the validity of the sale and FTB has offered no evidence Mr.
5 Hyatt’s former La Palma house was not sold on October 1, 1991 (1992 ASAB, Section 1.5.1).

6 Mr. Hyatt took a note from the purchaser of his former La Palma house, he received a \$15,000 down payment,
7 monthly payments for six years, and a balloon payment to pay off the loan in full in six years.⁴³

8 Mr. Hyatt initially resided in a Las Vegas hotel, leased and resided in a Las Vegas apartment, purchased and moved
9 into Las Vegas Tara home on April 3, 1992. He has resided there to the present. Each time he moved he gave his friends and
10 family his new Las Vegas contact information.⁴⁴


11 Mr. Hyatt made a significant effort to locate and purchase a Las Vegas house. Starting before September 26, 1991,
12 when he moved to Las Vegas, Mr. Hyatt personally walked through many Las Vegas houses and made many purchase
13 offers.⁴⁵

14 FTB in bad faith disregarded the eyewitness testimony of Mr. McGuire, Mr. Shoemaker and Mr. Hyatt about house
15 hunting in Las Vegas and fabricated a story about shopping for houses by telephone. However, Mr. Hyatt did his extensive La
16 Vegas house shopping in person.⁴⁶

17 **1.6.1.2 Mr. Hyatt did not live with his family, his children were grown, he was divorced, he terminated**
18 **his California homeowner’s property tax exemption, he was not employed, he did not have**
business interests, he did not use professional licenses, and he had no investment real property.

19 Mr. Hyatt lived alone, he did not have a spouse, he had long been divorced, and his children were adults that did not
20 live with him;⁴⁷ thus he was free to move to Las Vegas without any family commitments.

21
22 T046, T047. See also Updated Testimonial Topics, Exs. T049, T050, T051, T052, T053, T054, T055, T056, T143, T144,
23 T145, T146.

24  ⁴¹ 1992 ARB, Section II.B.1.c, pp. 10-13. See also Hyatt's 2012 CDE Aff., ¶¶ 45-51.

⁴² See, e.g., Hyatt’s 2008 Affidavit, ¶¶ 26-39; Hyatt’s August 15, 2010, Affidavit Section 1.3.

⁴³ Hyatt’s 2012 CDE Aff., ¶¶ 35-36; Hyatt's 2016 Supp. CDE Aff., ¶ 91.

25 ⁴⁴ 1991 ARB, Section II.A.1, d, pp. 29-33; 1992 ARB, Section II.B.1.b, d, pp. 6-10. See Hyatt's 2012 CDE Aff., ¶¶
26 13, 20-25. Hyatt’s 2008 Affidavit, ¶¶ 12-21, 81; Hyatt’s August 15, 2010, Affidavit Sections 1.4, 1.19.2, 1.19.3. See also
27 Hyatt's 2016 Post-DP CDE Aff., ¶¶ 58-134. Updated Testimonial Topics, Exs. T018, T021, T128, T019, T095, T096, T129,
T026, T022, T023, T024, T025, T100, T057. See also testimony about FTB’s incorrect statements regarding Wagon Trails
Apartments, Updated Testimonial Topics, Exs. T020, T089, T130, T027, T087, T088, T028, T029, T131, T132, T133.
Hyatt’s 2008 Affidavit ¶¶ 12-21, 81; Hyatt’s 2010 Affidavit Sections 1.4, 1.19.2, 1.19.3

28 ⁴⁵ Hyatt’s August 15, 2010 Affidavit, Sections 1.8-1.9.

29 ⁴⁶ Hyatt’s August 15, 2010 Affidavit, Section 1.9; Mr. McGuire’s March 31, 2012, Affidavit ¶¶ 4-6, 19, 38-39, 48-59,
69-82, 95-111; Affidavit of Walter Shoemaker, December 8, 2009, ¶¶ 52-61.

⁴⁷ 1991 AOB, Section II.C.2, p. 21; see rebuttal to FTB’s false statements at 1991 ARB, Section II.A.2, pp. 33-34.

1 Mr. Hyatt terminated his California homeowner's property tax exemption on his former California residence because
2 he sold it on October 1, 1991.⁴⁸

3 Mr. Hyatt was not employed, did not have business interests, and did not use professional licenses during the
4 disputed period.⁴⁹

5 Mr. Hyatt had no investment real property during the disputed period.⁵⁰

6 **1.6.1.3 Mr. Hyatt's only telephone was located in his Las Vegas apartment and he used a Las Vegas**
7 **service provider.**

8 Mr. Hyatt's only telephone was located in his Las Vegas apartment and his account was with the Centel telephone
9 company in Las Vegas. Therefore, all of Mr. Hyatt's calls originated from Las Vegas.⁵¹ Many eyewitnesses testified about
10 the telephone in Mr. Hyatt's Las Vegas apartment and telephone calls with Mr. Hyatt.⁵²

11 **1.6.1.4 Mr. Hyatt spent all of his time during the disputed period in Nevada except for short temporary**
12 **and transitory trips to other states.**

13 Mr. Hyatt spent all of his time during the disputed period in Nevada except for short temporary and transitory trips to
14 other states. He always intended to and did return to Nevada after each trip. He was only present in California for temporary
15 and transitory purposes (e.g., a stay in a hospital for cancer surgery) and they do not count as California residency days.⁵³
16 After October 1, 1991, Mr. Hyatt stayed at motels, not at his former La Palma house, when he visited California.⁵⁴

17 Mr. Hyatt's calendar (1992 ASAB) is supported by eyewitness and documentary evidence and confirms his
18 overwhelming presence in Las Vegas. Mr. Hyatt had 166 full and part days in Las Vegas as a resident out of 190 days in the
19 disputed period. Mr. Hyatt's evidence based calendar demonstrates his overwhelming presence in Nevada. (1992 ASAB,
20 Section 1.5.8).

21 ⁴⁸ 1991 AOB, Section II.C.4, pp. 21-22; Hyatt's 2016 Supp. CDE Aff., ¶ 7; Declaration of Bradley Jacobs, November
22 2, 2012, ¶¶ 12-17; Declaration of Webster Guillory, October 8, 2015, ¶¶ 22-25; see rebuttal to FTB's false statements at 1991
23 ARB, Section II.A.4, p. 34. See Mr. Hyatt's response to FTB's false statements regarding this Bragg factor, 1992 ASB,
Section I.E.2, p. 42.

24 ⁴⁹ 1991 AOB, Section II.C.15, pp. 36-37; see rebuttal to FTB's false statements at 1991 ARB, Section II.A.15, p. 57.
See Mr. Hyatt's response to FTB's false statements regarding these Bragg factors, 1992 ASB, Section I.E.13 to I.E.15, p. 50.

25 ⁵⁰ 1991 AOB, Section II.C.18, p. 37; see rebuttal to FTB's false statements at 1991 ARB, Section II.A.18, pp. 57- 58.
See Mr. Hyatt's response to FTB's false statements regarding this Bragg factor, 1992 ASB, Section I.E.16, pp. 50-51.

26 ⁵¹ 1991 AOB, Section II.C.5, p. 22; 1992 ASAB, Section 1.5.6.2; Hyatt's 2012 CDE Aff., ¶ 24; see rebuttal to FTB's
false statements at 1991 ARB, Section II.A.5, pp. 34-36. See also Mr. Hyatt's response to FTB's false statements regarding this
Bragg factor, 1992 ASB, Section I.E.3, pp. 43-44.

27 ⁵² Updated Testimonial Topics, Exs. T019, T095, T096, T129, T026.

28 ⁵³ 1991 AOB, Section II.C.6, pp. 22-23; 1992 ARB, Section II.B.6, pp. 13-18; 1992 ASAB, Section 1.5.5; see
rebuttal to FTB's false statements at 1991 ARB, Section II.A.6, pp. 36-42. See Mr. Hyatt's response to FTB's false statements
29 regarding this Bragg factor, 1992 ASB, Section I.E.4, p. 44; Rebuttal to FTB Att. A/F, Section I. A., September 26, 1991 to
April 2, 1992; Hyatt's 2016 Supp. CDE Aff., ¶¶ 9-48, 153-243.

⁵⁴ Hyatt's 2010 Affidavit, Sections 1.11-1.12.

1 Mr. Hyatt's limited presence in California during the disputed period was only for temporary or transitory purposes.
2 Mr. Hyatt has demonstrated that on the 46 days he was partly in Nevada and partly in California or in California his trips to
3 California were for a temporary or transitory purpose. He had only 9 full days in California during which he was in a
4 California hospital recovering from cancer surgery. (1992 ASAB, Section 1.5.5; Table in ASAB, Exhibit 04).

5 October 1991 was an active month for Mr. Hyatt regarding his Las Vegas residency.⁵⁵

6 **1.6.1.5 Mr. Hyatt filed his 1991 California tax return as a part year resident from Las Vegas and he filed**
7 **all subsequent tax returns from Las Vegas.**

8 Mr. Hyatt filed his 1991 California tax return as a part year resident, he filed his 1991 California and federal tax
9 returns with his Las Vegas address thereon, and he filed his 1991 tax returns from Las Vegas. Mr. Hyatt filed tax returns for
10 all subsequent years with his Las Vegas address thereon and he filed them from Las Vegas.⁵⁶

11 **1.6.1.6 Mr. Hyatt had only Nevada bank accounts and Nevada situs investment accounts during the**
12 **disputed period.**

13 Mr. Hyatt had only Nevada bank accounts and Nevada situs investment accounts during the disputed period. Mr.
14 Hyatt opened a checking account at his Las Vegas bank on October 25, 1991, he opened several other Las Vegas bank
15 accounts shortly thereafter, and he opened many investment accounts using his Nevada address shortly thereafter.⁵⁷

16 FTB disregards or misrepresents Mr. Hyatt's documentary evidence of his three Las Vegas bank accounts and his
17 many Nevada situs investment accounts (1992 ASAB, Section 1.5.4).

18 **1.6.1.7 The origination point of Mr. Hyatt's checking account transactions and credit card transactions**
19 **was Las Vegas.**

20 The origination point of Mr. Hyatt's checking account transactions and credit card transactions was Las Vegas. He
21 opened new Las Vegas checking accounts and he entered changes of address to his Las Vegas address with his national credit
22 account companies.⁵⁸ He signed more than 80 checks in Las Vegas with his Las Vegas address printed thereon and with his
23

24 ⁵⁵ See, e.g., Hyatt's 2008 Affidavit, ¶¶ 40-46; Hyatt's August 15, 2010, Affidavit Section 1.3, 1.4, 1.5, 1.18.

25 ⁵⁶ 1991 AOB, Section II.C.7, pp. 24-25; 1992 ARB, Section II.B.7, p. 18; Hyatt's 2012 CDE Aff., ¶ 51; Hyatt's 2016
26 Supp. CDE Aff., ¶¶ 81, 88-94; Hyatt's 2016 Post-DP CDE Aff., ¶¶ 313-315; see rebuttal to FTB's false statements at 1991
27 ARB, Section II.B.7, p. 46. See Mr. Hyatt's response to FTB's false statements regarding this Bragg factor, 1992 ASB,
28 Section I.E.5, pp. 44-45.

29 ⁵⁷ 1991 AOB, Section II.C.8, pp. 25-27; 1992 ARB, Section II.B.8, pp. 18-19; Hyatt's 2012 CDE Aff., ¶¶ 60 to 74;
Hyatt's 2016 Post-DP CDE Aff., ¶¶ 396 to 406, 409 to 455; see rebuttal to FTB's false statements at 1991 ARB,
Section II.A.8, pp. 42-46. See Mr. Hyatt's response to FTB's false statements regarding this Bragg factor, 1992 ASB,
Section I.E.6, p. 46.

⁵⁸ 1991 AOB, Section II.C.9, pp. 27-31; Hyatt's 2012 CDE Aff., ¶¶ 34, 64-65; Hyatt's 2016 Supp. CDE Aff., ¶¶ 27,
159; Hyatt's 2016 Post-DP CDE Aff., ¶¶ 144, 395-404. See Mr. Hyatt's response to FTB's false statements regarding this
Bragg factor, 1992 ASB, Section I.E.7, p. 46.

1 banks' Las Vegas addresses printed thereon during the disputed period.⁵⁹ Virtually all of these transactions took place in Las
2 Vegas.⁶⁰

3 **1.6.1.8 Mr. Hyatt's social, religious, and professional memberships and activities during the disputed**
4 **period and thereafter were and are in Las Vegas.**

5 Mr. Hyatt's social, religious, and professional memberships and activities during the disputed period and thereafter
6 were and are in Las Vegas. Mr. Hyatt joined and regularly attended worship services at a Las Vegas synagogue. He joined
7 the Las Vegas Personal Computer Users Group and was associated with the Office of the Nevada Governor, Nevada
8 Development Authority and Clark County School District. His memberships in social, religious, and professional
9 organizations during the disputed period and thereafter were and are in states other than California.⁶¹


10 Mr. Hyatt was active in religious activities in Las Vegas during the disputed period.⁶²

11 Mr. Hyatt used more than 100 non-California professionals. FTB disregards Mr. Hyatt's documentary evidence that
12 he used more than 100 non-California professionals and FTB falsely alleges that Philips' California professionals are Hyatt's
13 professionals (1992 ASAB, Section 1.5.3).

14 **1.6.1.9 Mr. Hyatt registered his automobiles in Nevada, he had a Nevada driver's license, and he**
15 **registered to vote and did vote in Nevada.**

16 Mr. Hyatt registered his automobiles in Nevada. He had a Nevada driver's license and he registered to vote and did
17 vote in Nevada. Mr. Hyatt purchased and registered his new automobile in Nevada and he insured his two automobiles and
18 his home with his Las Vegas insurance agent whom he has used for over 25 years.⁶³

19 Mr. Hyatt's 1977 Toyota was located in Las Vegas during the disputed period and thereafter.⁶⁴

20
21  ⁵⁹ 1991 AOB, Section II.C.8, pp. 27-31; 1992 ARB, Section II.B.9, pp. 19-20; Hyatt's 2016 Supp. CDE Aff., ¶¶ 153
22 to 243; Hyatt's 2016 Post-DP CDE Aff., ¶¶ 546 to 949; Hyatt's 2016 Post-DP CDE Aff., ¶ 403 and Exhibit CDE-T006
attached thereto; see rebuttal to FTB's false statements at 1991 ARB, Section II.A.9, pp. 46-47.

23 ⁶⁰ Hyatt's 2016 Supp. CDE Aff., ¶¶ 153 to 243, Exhibits CDE-ST002 and ST003; Hyatt's 2016 Post-DP CDE Aff.,
24 ¶¶ 546 to 949 and Exhibit CDE-T006 attached thereto; ASAB Exhibits 02 and 03.

25 ⁶¹ 1991 AOB, Section II.C.10, pp. 31-32; 1992 ARB, Section II.B.10, pp. 20-21; Hyatt's 2012 CDE Aff., ¶ 18; Hyatt's
26 2016 Supp. CDE Aff., ¶¶ 9-17, 104-106; Hyatt's 2016 Post-DP CDE Aff., ¶¶ 167-172; see rebuttal to FTB's false statements at
27 1991 ARB, Section II.A.10, pp. 48-50. See Mr. Hyatt's response to FTB's false statements regarding this Bragg factor, 1992
28 ASB, Section I.E.8, pp. 46-47.

29 ⁶² Updated Testimonial Topics, Exs. T040, T138, T139, T041, T042, T043, T140, T134 (17-witnesses testified about
Mr. Hyatt's religious activities in Las Vegas.).

⁶³ 1991 AOB, Section II.C.11, pp. 32-33, 55; 1992 ARB, Section II.B.11, pp. 21-22; Hyatt's 2012 CDE Aff., ¶¶ 26-
29; Hyatt's 2016 Supp. CDE Aff., ¶ 84; Hyatt's 2016 Post-DP CDE Aff., ¶¶ 24, 226-228, 306-307; Updated Testimonial
Topics, Exs. T034, T035, T030, T031, T032, T134, T033. See rebuttal to FTB's false statements at 1991 ARB,
Section II.A.11, pp. 50-53; 1992 AOB, Section II.C.11, p. 28. See Mr. Hyatt's response to FTB's false statements regarding
these Bragg factors, 1992 ASB, Sections I.E.9 to I.E.11, pp. 48-49. Updated Testimonial Topics, Exs. T030, T031, T032,
T134, T033, T034, T035.

⁶⁴ Hyatt's 2010 Affidavit, Section 1.19.4. Updated Testimonial Topics, Exs. T030, T031, T032, T134.

1 **1.6.1.10 Mr. Hyatt had relationships with many Nevada professionals, he had relationships with more than**
2 **40 non-California professionals, and he used only a few California professionals.**

3 Mr. Hyatt had relationships with many Nevada professionals including doctors, dentists, accountants, and attorneys,
4 he had relationships with many non-California professionals, and he used few California professionals. He used the services
5 of more than 40 *non*-California professionals during the disputed period, and he continued to use these services thereafter.⁶⁵

6 **1.6.2 FTB's Protest Findings Do Not Detract From The Conclusion That Mr. Hyatt Became A Nevada**
7 **Resident In September 1991.**⁶⁶

8 Mr. Hyatt sold the La Palma house on October 1, 1991.⁶⁷

9 Mr. Hyatt properly filed a homeowner's exemption termination.⁶⁸

10 Mr. Hyatt resided at the Continental Hotel for about 3 weeks while he was looking for and leasing a Las Vegas
11 apartment.⁶⁹

12 Mr. Hyatt leased and resided at Wagon Trails Apartments through April 3, 1992.⁷⁰

13 Mr. Hyatt registered to vote in November 1991 and voted in person in Nevada in September and November 1992.⁷¹

14 Mr. Hyatt engaged in extensive house hunting in Las Vegas during the disputed period.⁷²

15 **1.7 MR. HYATT NOTIFIED MANY PERSONS AND ENTITIES OF HIS MOVE TO AND LOCATION IN LAS**
16 **VEGAS AND HE RECEIVED VIRTUALLY ALL OF HIS MAIL IN LAS VEGAS DURING THE**
17 **DISPUTED PERIOD AND THEREAFTER.**⁷³

18 Mr. Hyatt's notification of more than 100 persons and entities of his move to Las Vegas and his location in Las
19 Vegas is significant evidence of his intent to move, his actual move, and his intent to remain in Las Vegas indefinitely.

20 Mr. Hyatt gave numerous changes of address to his Las Vegas location shortly after he moved to Las Vegas. Mr.
21 Hyatt told many of his family and friends that he was going to move and 72-witnesses testified about Mr. Hyatt moving away
22 in 1991. He informed more than 20 professionals he had moved and gave them his Nevada contact information. He gave
23 changes of address to Philips and Mahr Leonard. (1992 ASAB Section 1.5.6.1).

24 ⁶⁵ 1991 AOB, Section II.C.14, pp. 33-36; 1992 AOB, Section II.C.14, pp. 29-32; Hyatt's 2012 CDE Aff., ¶¶ 52-58;
25 Hyatt's 2016 Supp. CDE Aff., ¶¶ 75-87; 146-166; 1992 ASAB, Section 1.5.3; see rebuttal to FTB's false statements at 1991
26 ARB, Section II.A.14, pp. 53-57. See Mr. Hyatt's response to FTB's false statements regarding this Bragg factor, 1992 ASB,
27 Section I.E.12, p. 50. Updated Testimonial Topics, Ex. T048 (24-witnesses testified about Mr. Hyatt using Las Vegas
28 professionals (a lawyer, Realtors, a home inspector, escrow agents, computer professionals, conference professionals, leasing
29 agents, or other professionals) during the disputed period).

30 ⁶⁶ 1991 AOB, Section II.E, pp. 39-55.

31 ⁶⁷ 1991 AOB, Section II.E.3.a, pp. 41-47.

32 ⁶⁸ 1991 AOB, Section II.E.3.b, pp. 47-48.

33 ⁶⁹ 1991 AOB, Section II.E.3.c, pp. 48-54.

34 ⁷⁰ 1991 AOB, Section II.E.3.e, p. 54.

35 ⁷¹ 1991 AOB, Section II.E.3.e, p. 55.

36 ⁷² 1991 AOB, Section II.E.3.e, p. 55.

37 ⁷³ 1992 ASAB Section 1.5.6.

1 Immediately after Mr. Hyatt moved into his Las Vegas apartment on October 21, 1991, he notified many people and
2 entities of his change of address and gave them his Las Vegas contact information. For example, 28-witnesses testified about
3 being informed Mr. Hyatt had moved into his Las Vegas apartment and 27-witnesses testified about telephoning Mr. Hyatt at
4 his Las Vegas apartment. (1992 ASAB Section 1.5.6.2).

5 Mr. Hyatt gave Philips a change of address to Las Vegas in October 1991 and the preambles of the Sony and NEC
6 agreements stated that Mr. Hyatt was a resident of Las Vegas.⁷⁴

7 The U.S. Postal Service forwarded Philips and Mahr Leonard mis-addressed correspondence and much other
8 correspondence to Mr. Hyatt's Las Vegas address because of his change of address. On October 21, 1991, Mr. Hyatt
9 submitted a changes of address from his La Palma house and Cypress P.O. Box to his Las Vegas address. (1992 ASAB
10 Section 1.5.6.3).

11 Mr. Hyatt received virtually all of his mail in Las Vegas during the disputed period and thereafter. Mr. Hyatt
12 received his Las Vegas bank statements and statements for his new investment accounts in Las Vegas. Mr. Hyatt gave Philips
13 and Mahr Leonard a change of address to Las Vegas in October 1991. (1992 ASAB Section 1.5.7).

14 **1.8 FTB'S RESIDENCY AND SOURCING CASES ARE BOTH BASED ON INDISPUTEDLY**
15 **MIS-ADDRESSED DOCUMENTS AND ON FTB'S DISREGARD OR MISREPRESENTATION OF MR.**
16 **HYATT'S OVERWHELMING EYEWITNESS AND DOCUMENTARY EVIDENCE.**

17 FTB's residency and sourcing cases must fall together because they are built on the same similar bad faith
18 rationale - relying on indisputably mis-addressed documents to falsely establish presence of Mr. Hyatt. Even worse, FTB
19 disregards or misrepresents Mr. Hyatt's overwhelming eyewitness and documentary evidence of his Las Vegas presence (1992
ASAB, Sections 1.5.1 to 1.5.8; 1.7.4).

20 FTB in bad faith misrepresents or disregards overwhelming eyewitness testimony and documentary evidence of Mr.
21 Hyatt's Las Vegas presence. The correspondence sent by Philips to Mr. Hyatt's former California addresses and fax numbers
22 is undisputed mis-addressed correspondence. Mr. Hyatt informed Philips and Mahr Leonard in early October 1991 that he had
23 moved to Las Vegas and later in October 1991 Mr. Hyatt gave Philips and Mahr Leonard changes of address to his Las Vegas
24 locations. Mr. Hyatt gave Philips further notice by marking up a November 5, 1991, draft supplemental agreement with
25 Philips by inserting his Las Vegas apartment address.⁷⁵ Mr. Tamoshunas testified that he was given a change of address and
26 that the subsequent sending of correspondence to Mr. Hyatt's former California addresses was inadvertent error by Philips
27 personnel. The eyewitness testimony is clear, Philips and Mahr Leonard inadvertently mailed and faxed documents to Mr.
28

29 ⁷⁴ Hyatt's 2008 Affidavit, ¶¶ 53-59.

⁷⁵ HL 00095A.

1 Hyatt's former California addresses and fax number after he provided them with his new Las Vegas address. Mr. Hyatt
2 provided eyewitness testimony of his presence in Las Vegas on many of the days that FTB falsely alleges that he was in
3 California based on false inferences from undisputedly mis-addressed correspondence. (1991 ASAB Section 1.8.1).

4 FTB in bad faith disregards or misrepresents Mr. Hyatt's overwhelming eyewitness and documentary evidence
5 demonstrating a lack of California source income; the testimony of key licensing eyewitnesses; thousands of pages of relevant
6 documentary evidence, and extensive evidence that he was not present at the Jennifer Circle house from which FTB alleges he
7 operated a worldwide licensing program that would have competed with the Philips Licensing Program. (1991 ASAB
8 Section 1.8.3).

9 Mr. Hyatt's eyewitness and documentary evidence rebutting FTB's bad faith calendar, Attachment A-R, and
10 Attachment E are summarized in Tabular form (1991 ASAB Section 1.8.2).

11 ASAB Exhibits 1 and 2 provide links to overwhelming testimonial and documentary evidence that illustrates the true
12 facts. ASAB Exhibit 1 is a copy of FTB's calendar and ASAB Exhibit 2 is a table summarizing Mr. Hyatt's presence for each
13 day during the disputed period that is linked day by day to Mr. Hyatt's Rebuttal to FTB Att. A/F. (1991 ASAB Section 1.8.4).

14 FTB's attempt to establish Mr. Hyatt's presence based on false inferences and speculation is in bad faith. A
15 document containing an incorrect address does not establish Mr. Hyatt's location on a given day and is certainly not evidence
16 of residency. Mr. Hyatt produced eyewitness and documentary evidence that establishes his presence in Las Vegas on many
17 of the disputed days. (1991 ASAB Section 1.8.7).

18 FTB's calendar is based on false illogical inferences and speculation and is not credible. Instead of evidence of
19 actual presence FTB bases its calendars on incorrect inferences drawn from mis-addressed correspondence as summarized in
20 Exhibits CDE-ST002 and -ST003. (1992 ASAB Section 1.5.9).

21 FTB disregarded Mr. Hyatt's eyewitness and documentary evidence of Nevada presence and falsely alleged
22 California presence based on incorrect inferences drawn from mis-addressed correspondence. FTB's calendars identify 61
23 "inferred" days in California when in fact testimonial and documentary evidence confirms that Mr. Hyatt spent the entire day
24 in Nevada. FTB's so called inference days and the true facts are summarized in ASAB Exhibit 2 (1992 ASAB
25 Section 1.5.10.1).

26 FTB in bad faith disregards Mr. Hyatt's documentary evidence of Nevada presence and then falsely alleges
27 California presence because there is allegedly no documentation. FTB has "inferred" California presence because of an
28 alleged lack of documentation when the extensive documentation confirms Mr. Hyatt's presence in Nevada. Days on which
29

1 FTB incorrectly infers California presence based an alleged absence of documentation are summarized in ASAB Exhibit 3.
2 (1992 ASAB Section1.5.10.2).

3 FTB falsely alleges California presence because of logical inferences when a good faith analysis shows that logical
4 inferences place Mr. Hyatt in Nevada. Given that Mr. Hyatt sold his Las Palma house, moved to Las Vegas, resided in a Las
5 Vegas Hotel and then a Las Vegas apartment, any inference must lead to a Las Vegas presence. Mr. Hyatt moved his
6 computer, fax machine, active files and telephone to Las Vegas. Dozens of witnesses have testified that he left the Jennifer
7 Circle neighborhood in 1991 and was living in Las Vegas thereafter. (1992 ASAB Section 1.5.10.3).

8 FTB's Calendar and Attachment A-R are based in large part on false allegations of "inferred" California presence and
9 must be disregarded. FTB "inferred" California presence on 61 days when Mr. Hyatt has eyewitness and documentary
10 evidence he was present in Nevada. FTB often uses double incorrect inferences. It incorrectly infers Mr. Hyatt's presence in
11 California based on an address on mis-addressed correspondence and then further infers his presence on a difference day based
12 on the first incorrect inference. (1992 ASAB Section 1.5.10.4). Mr. Hyatt's Rebuttal to FTB Att. A/F, Section I. A. provides
13 actual evidence of Mr. Hyatt's location on a day by day basis.

14 FTB's Calendar and Attachment A-R are based in large part on false allegations of "established" California presence
15 and must be disregarded. FTB's allegations of "established" are actually incorrect inferences that must be disregarded in view
16 of Mr. Hyatt's eyewitness and documentary evidence that Mr. Hyatt was actually present in Nevada. FTB falsely refers to Mr.
17 Hyatt's presence in California as "established" based on an inference drawn from a mis-addressed correspondence even when
18 eyewitness and documentary evidence places Mr. Hyatt in Nevada. (1992 ASAB Section 1.5.10.5).

19 There was no attraction to Jennifer Circle and no reason for Mr. Hyatt to live or work there after he moved to Las
20 Vegas. It is absurd to suggest that Mr. Hyatt would establish Nevada residency but operate a home business in California, 270
21 miles away. (1992 ASAB Section 1.5.11).

22 **1.9 FTB MAKES THOUSANDS OF FALSE STATEMENTS IN ITS RSABS, CALENDAR, ATTACHMENT A-**
23 **R, AND ATTACHMENT F.**

24 FTB's bad faith acts are further illustrated with the six false statement tables and with the seven Testimonial
25 Response tables. (Sections 1.3.4, 1.3.7, 1.3.8) These tables excerpt or cite to thousands of eyewitnesses statements made
26 under oath or penalty of perjury that rebut the multitude of false FTB statements made in its briefings and attachments.

27 FTB's case is based on many false statements, examples of which are rebutted by Mr. Hyatt's eyewitness testimony
28 and his contemporaneous documentation.⁷⁶

29

⁷⁶ Hyatt's 2012 Supp. Aff., ¶¶ 2 to 45; Hyatt's August 15, 2010 Affidavit, Sections 1.10-1.11, 1.13-1.14, 1.17-1.20.

1 **1.9.1 FTB’s Calendar, Attachment A-R, And Attachment F Should Be Disregarded Because They Are**
2 **Based Upon Thousands Of False Representations And Disregard Overwhelming Eyewitness And**
3 **Documentary Evidence.**

4 FTB makes thousands of false statements in its RSABs, calendar, Attachment A-R, and attachment F. FTB relies on
5 false inferences and misrepresentations. (1991 ASAB Section 1.8.4; Sections 1.9.2, 1.8 herein).

6 FTB misrepresents the PSB&C invoices, which FTB misrepresentation is established by *eyewitness and*
7 *documentary evidence*. (1991 ASAB Section 1.8.4.9).

8 The Philips documents establish that FTB’s calendar and Attachment A-R lack credibility and should be disregarded.
9 FTB’s calendar and Attachment A-R have over 2,000 false statements based upon false inferences and speculation and
10 mischaracterization of documents. FTB has disregarded the substantial testimony of Mr. Tamoshunas, Mr. Roth and Mr.
11 Hyatt explaining the 15,000 pages of licensing documents Mr. Hyatt produced during the protest. (1992 ASAB
12 Section 1.4.1.4).

13 **1.9.2 FTB’s Residency And Sourcing Cases Are Both Based On The Bad Faith Premise That Undisputed**
14 **Mis-Addressed Correspondence Establishes That Mr. Hyatt Was Present To Receive It At The Jennifer**
15 **Circle House.**

16 FTB falsely claims that Mr. Hyatt was present at the La Palma house based upon inferences, speculation, and
17 misrepresentation of the evidence while disregarding or misrepresenting Mr. Hyatt’s overwhelming eyewitness and
18 documentary evidence of his actual location. FTB has no credible evidence placing Mr. Hyatt at his former La Palma house
19 during the disputed period after October 1, 1991.⁷⁷ In contrast to FTB’s inferences and speculation, Mr. Hyatt’s presence in
20 Las Vegas is demonstrated by eyewitness and documentary evidence. (1991 ASAB Section 1.8.4.1).

21 The correspondence sent by Philips to Mr. Hyatt’s former California addresses and fax numbers is undisputed
22 mis-addressed correspondence. Mr. Hyatt informed Philips and Mahr Leonard in early October 1991 that he had moved to
23 Las Vegas and later in October 1991 Mr. Hyatt gave Philips and Mahr Leonard changes of address to his Las Vegas locations.
24 The eyewitness testimony is clear. Philips and Mahr Leonard inadvertently mailed and faxed documents to Mr. Hyatt’s
25 former California addresses and fax number after he provided them with his new Las Vegas address. (1991 ASAB
26 Section 1.8.1).

27 FTB falsely claims that Philips documents, which were undisputedly mis-addressed to Mr. Hyatt’s former California
28 addresses or former fax number, “establish” his presence at the Jennifer Circle House. Mr. Hyatt’s overwhelming eyewitness
29 and documentary evidence demonstrates that he was not at the Jennifer Circle House. (1991 ASAB Section 1.8.4.2).

⁷⁷ Hyatt’s 2010 Affidavit, Sections 1.11-1.12, 1.19.1.

1 FTB falsely claims that Philips documents that were undisputedly mis-addressed to Mr. Hyatt's former California
2 addresses or fax number even establish his presence on a specific date (1991 ASAB Section 1.8.4.3). They do not.

3 Undisputed mis-addressed Philips documents FedExed to the Jennifer Circle house do not establish that Mr. Hyatt
4 was present at the Jennifer Circle house. Mr. Hyatt's name typed in a "Signed" location on a FedEx Summary does not
5 established that he signed it. The name of a Philips secretary working in New York was also typed in a "Signed" location on a
6 FedEx Summary for a package delivered to Mr. Hyatt's former La Palma house.⁷⁸ FTB has not produced any copies of
7 delivery receipts that were signed by Mr. Hyatt because there were none. Eyewitness testimony confirms that FedEx drivers
8 left packages at the Jennifer Circle house after Mr. Hyatt had moved away. Mr. Hyatt had inadvertently neglected to cancel
9 his years old authorization for FedEx drivers to leave packages without a signature. (1991 ASAB Section 1.8.4.4).

10 Mr. Hyatt sent his faxes from and received his faxes at his Las Vegas apartment where his only fax machine was
11 located during the disputed period.⁷⁹ Overwhelming eyewitness testimony confirms that Mr. Hyatt's fax machine was located
12 at his Las Vegas apartment during the disputed period. Thus, a fax sent by Mr. Hyatt is evidence of Mr. Hyatt's presence at
13 his Las Vegas apartment. (1991 ASAB Section 1.8.4.5). Mr. Hyatt did not send faxes from the La Palma House after October
14 1, 1991, as FTB falsely claims (1991 ASAB Section 1.8.4.6).

15 FTB makes hundreds of false allegations about an alleged Jennifer Circle home/business, FTB misrepresents
16 evidence to make its case, and FTB disregards overwhelming eyewitness and documentary evidence that Mr. Hyatt did not
17 have a "home/business" or a licensing business. In its attempt to create a Hyatt California licensing business that did not exist
18 FTB goes so far as to mischaracterize the deposition testimony of Helene Schlindwein as referring to Mr. Hyatt's
19 "home/business". She made no such statement and there was no California licensing business. (1991 ASAB Section 1.8.4.7).

20 Mis-addressed Philips correspondence inadvertently sent to Mr. Hyatt's former California addresses or fax number
21 does not establish that Mr. Hyatt was present at the former house. Undisputed testimonial evidence establishes that those
22 documents were mis-addressed. (1992 ASAB Section 1.4.1.1).

23 Philips documents containing a legacy P.O. Box return address do not establish that they were faxed from the
24 Jennifer Circle house or that Mr. Hyatt was present at the Jennifer Circle house. Extensive eyewitness evidence places Mr.
25 Hyatt's only fax machine in his Las Vegas apartment during the disputed period.⁸⁰ A fax received by or sent by Mr. Hyatt
26 during the disputed period and thereafter is evidence of Mr. Hyatt's presence in Las Vegas where his fax machine was located.
27 (1992 ASAB Section 1.4.1.2).

28 ⁷⁸ FTB_Philips 0005188.

29 ⁷⁹ Hyatt's 2010 Affidavit, Sections 1.16, 1.20; Rebuttal to FTB Att. A/F, Section I. B., October 27, 1991.

⁸⁰ Hyatt's 2010 Affidavit, Sections 1.16, 1.20; Rebuttal to FTB Att. A/F, Section I. B., October 27, 1991.

1
2 **1.9.2.1 The licensing executives testimony is devastating to FTB's Jennifer Circle presence falsehood.**

3 The correspondence sent by Philips to Mr. Hyatt's former California addresses and fax numbers is undisputed
4 mis-addressed correspondence. A mis-addressed document does not establish actual presence at the location of the address
5 (1991 ASAB Sections 1.8.1, 1.8.4.2 to 1.8.4.4; 1992 ASAB, Sections 1.4.1.1 and 1.5.6.3).⁸¹ Mr. Hyatt gave Philips a change
6 of address in October 1991. Mr. Tamoshunas, the lead licensing attorney at Philips, testified he was given this change of
7 address and testified that the subsequent sending of correspondence addressed to Mr. Hyatt's former California addresses was
8 inadvertent error by Philips personnel.⁸² FTB has not rebutted Mr. Tamoshunas' testimony regarding this mis-addressed
9 correspondence. Thus, ***Mr. Tamoshunas' testimony is undisputed.***

10 Mr. Hyatt informed Philips and Mahr Leonard in early October 1991 that he had moved to Las Vegas and later in
11 October 1991 Mr. Hyatt gave Philips and Mahr Leonard changes of address to his Las Vegas locations. The eyewitness
12 testimony is clear. Philips and Mahr Leonard inadvertently mailed and faxed documents to Mr. Hyatt's former California
13 addresses and fax number after he provided them with his new Las Vegas address.⁸³ However, FTB disregarded or
14 misrepresented this evidence in bad faith – the Philips correspondence was mis-addressed to the California addresses.
15 Furthermore, Mr. Hyatt provided eyewitness and documentary evidence that he was in Las Vegas when FTB falsely inferred
16 that he was in California based upon false inferences drawn from the mis-addressed correspondence (1991 ASAB Sections
17 1.8.1, 1.8.4.2 to 1.8.4.4; 1992 ASAB, Sections 1.4.1.1, 1.5.6.3).⁸⁴

18 **1.10 MR. HYATT DID NOT HAVE CALIFORNIA SOURCE INCOME**

19 **1.10.1 The License Payments Received By Mr. Hyatt Were Not California Source Income.**

20 The license payments received by Mr. Hyatt was not California source income.⁸⁵

21 The burden of proof is upon FTB on both of its new sourcing arguments, but FTB did not and can not carry its burden
22 and thus the sourcing assessments should be reversed.⁸⁶

23 _____
24 ⁸¹ FTB's bad faith acts against Mr. Hyatt are further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB, Section 1.5; ASAB Attachment 1; and in Section V of the Second Supplemental Motion To Strike.

25 ⁸² Affidavit of Algy Tamoshunas, August 4, 2010, ¶ 25 ("Mr. Hyatt gave Philips a change of address from California
26 to Las Vegas in the latter part of October 1991 and I understood that he moved to Las Vegas before the latter part of October
27 1991. Any mailings from Philips' personnel to Mr. Hyatt at his former California addresses as of October 1991 and thereafter
28 were inadvertent errors by Philips' support personnel."); A. Tamoshunas Deposition Transcript, 10/27/2011, at 648:19-649:16
(affirming his affidavit testimony), 548:10-18 (testifying that Mr. Hyatt notified Mr. Tamoshunas that correspondence was
29 mistakenly sent to his former California addresses and asking that correspondence be sent to his Las Vegas address.)

28 ⁸³ Affidavit of Algy Tamoshunas, August 4, 2010; Affidavit of David Leonard, May 2, 2012; Affidavit of Gregory L.
Roth, August 9, 2010; Declaration of Vicki Weart, May 21, 2012 ¶¶ 5-6; Affidavit of Gilbert P. Hyatt, August 15, 2010.

29 ⁸⁴ Hyatt's 2016 Supp. CDE Aff., ¶¶ 153-243, CDE Exhibits CDE-ST002 and ST003; ASAB Exhibits 02 and 03.

⁸⁵ 1991 AOB, Section IV, pp. 63-86; 1991 ARB, Section IV, p. 99; 1992 ARB, Section V, pp. 27-67.

⁸⁶ 1991 AOB, Section IV.B, pp. 65-67; 1992 ARB, Section V.B, pp. 30-34; 1992 ARB, Section V.F, p. 81.

1 FTB's Embry audit task force in 1995 determined that FTB did not have a sourcing case against Mr. Hyatt.⁸⁷

2 Philips created and managed the Philips Licensing Program. Mr. Hyatt did not have a California licensing business
3 and none of the license payments from Philips sublicensing Mr. Hyatt's patents went to a California business.⁸⁸

4 FTB's "The La Palma, California home was Mr. Hyatt's business office" theory and "Commercial Exploitation"
5 business situs theory fail as a matter of law and for lack of evidence.⁸⁹

6 FTB's sourcing arguments were rejected by FTB at audit in 1995 (the Embry audit task force) (1991 ASAB,
7 Section 1.8.5.1, 1.9.3).⁹⁰ FTB's Embry audit task force in 1995 determined that there was explicit doubt about FTB's 1991
8 residency case against Mr. Hyatt and that FTB did not have a 1992 residency case against Mr. Hyatt.⁹¹

9 All of the disputed 1991 and 1992 payments came from licensing Mr. Hyatt's Nevada situs patents and are thus not
10 taxable by California. The disputed income came from the ordinary course of licensing Mr. Hyatt's *Nevada situs patents* and
11 is therefore not taxable by California (1992 ASAB Section 1.7.1.1).

12 Mr. Hyatt did not have California source income under regulation 17951-4 because he did not engage in a patent
13 licensing business in California or anyplace else. Under Rev. & Tax § 17952, the mere licensing of Mr. Hyatt's own patents
14 does not create California source income. (1992 ASAB Section 1.7.1.2).

15 Mr. Hyatt did not have California source income under Section 17952 because his patents did not have a California
16 business situs. The patents were not "employed as capital in this State" and the "possession and control" of Mr. Hyatt's
17 patents have never been localized with a California business so that their substantial use and value attach to and become an
18 asset of the business. After the July 1991 Agreement Mr. Hyatt no longer possessed the substantial use and value of his own
19 patents, Philips was the only entity that had the substantial use and value of Mr. Hyatt's patents. (1992 ASAB
20 Section 1.7.1.3).

21 Tracing license payments to Mr. Hyatt confirms that he did not have California source income. The license payments
22 from licensing Mr. Hyatt's patents were transferred to Mr. Hyatt's Nevada situs investment accounts, not to a California
23 business. Mr. Hyatt did not receive compensation for his assistance to the Philips Licensing Program and no California
24 business received income from the licensing of Mr. Hyatt's patents. (1992 ASAB Section 1.7.1.4).

27 ⁸⁷ Hyatt's 2014 Supp. Aff., Section 2.6.10.

28 ⁸⁸ Hyatt's 2008 Affidavit, ¶¶ 47-52, 60, 63; Hyatt's 2010 Affidavit, Section 1.15; Hyatt's 2014 Supp. Aff.
Section 2.5, 2.5.1-2.5.14.

29 ⁸⁹ 1991 AOB, Section IV.C, pp. 67- 75 and 1991 AOB, Section IV.D, pp. 75- 81, respectively.

⁹⁰ 1991 AOB, Section IV.E, pp. 82-86.

⁹¹ Hyatt's 2014 Supp. Aff., Section 2.6.10.

1 Mr. Hyatt did not have an ownership interest in the Philips licensing program as FTB incorrectly implies. Mr.
2 Tamoshunas testified that “Philips by itself and through its attorneys created and managed the Licensing Program.”
3 (1992 ASAB Section 1.7.1.5).

4 The evidence that Mr. Hyatt did not have a licensing business is clear and overwhelming and is not overcome by
5 FTB’s unsupported conclusions and inferences. Philips had the *exclusive* licensing authority to license Mr. Hyatt’s licensable
6 patents (1992 ASAB Section 1.7.2); “Philips by itself and through its attorneys created and managed the Licensing Program”
7 (1992 ASAB Section 1.7.1.5); and the license payments from licensing Mr. Hyatt’s patents were transferred to Mr. Hyatt’s
8 Nevada situs investment accounts (1992 ASAB Section 1.7.1.4).

9 There could not be and there was no Hyatt licensing business because a Hyatt licensing business would have been in
10 breach of the July 1991 Philips Agreement and in violation of Mr. Hyatt’s representations and warranties to Philips
11 (1992 ASAB Section 1.7.3).

12 FTB’s sourcing case must fall with its residency case. FTB’s sourcing and residency cases *both* rely on the false
13 premise that Mr. Hyatt lived and worked at the Jennifer Circle house. (1992 ASAB Section 1.7.4).

14 FTB’s bad faith attempt to continue to tax Mr. Hyatt for FTB’s \$24 million error must fail. The license payments
15 were received after the disputed period and the licenses had no involvement with California. (1992 ASAB Section 1.7.5).

16 Mr. Hyatt would not and did not breach the July 1991 Philips agreement by negotiating with prospective licensees or
17 by operating a licensing business, as falsely contended by FTB. Philips had *exclusive* licensing authority and Mahr Leonard
18 had *exclusive* negotiating rights. Mr. Hyatt did not have any licensing rights or negotiating rights as FTB falsely contends, he
19 did not have the rights to license his own patents. (1992 ASAB Section 1.7.3).

20 Philips wanted Mr. Hyatt to sign several patent agreements because of Philips’ *cross licensing relationships*. Mr.
21 Hyatt wanted to be cooperative with Philips so he agreed to sign patent agreements for Philips.⁹² (1991 ASAB Section 1.7.7).

22 Philips and Mahr Leonard promised to correct Mr. Hyatt’s address in the preamble of the patent agreements and after
23 several of Mr. Hyatt’s complaints they did correct it.⁹³ In December 1991, Philips and Mahr Leonard put Mr. Hyatt’s Las
24 Vegas apartment address on the Sony and NEC Patent Agreements. (1991 ASAB Section 1.7.8).

25 Mr. Hyatt had very limited involvement in the Philips Licensing Program.⁹⁴ (1991 ASAB Section 1.7.9).

26 Mr. Hyatt did not operate a California business giving rise to source income under Rev. & Tax Code Section 17951
27 and Regulation 17951-4C.⁹⁵

28 ⁹² See, e.g., Hyatt’s 2001 Affidavit, ¶ 13.

29 ⁹³ Hyatt’s 2001 Affidavit, ¶¶ 13-14.

⁹⁴ Hyatt’s 2001 Affidavit, ¶ 12.

FTB failed to respond to Mr. Hyatt's AOB arguments on the lack of a Jennifer Circle/La Palma business office.⁹⁶

FTB's "California business" Jennifer Circle sourcing argument continues to fail for lack of evidence.⁹⁷

Mr. Hyatt did not have a "patent application and licensing business" in California.⁹⁸

Mr. Hyatt's former consulting business and DNC are irrelevant to FTB's "California business" argument.⁹⁹

FTB's claim that Mr. Hyatt used "California independent contractors" does not establish a California business.¹⁰⁰

Mr. Hyatt did not play a "role" in any "California business," nor did Mr. Hyatt "control" the "business income" at issue.¹⁰¹

"Mr. Hyatt's relevant tax information" does not establish a California business.¹⁰²

Mr. Hyatt's temporary presence in California post April 1992.¹⁰³

FTB's Section 17951 and Regulation 17951-4 Sourcing Argument Fails as a Matter of Law.¹⁰⁴

FTB's Rev. & Tax. Code Section 17952 and Regulation 17952 theories of business situs are without merit and fail as a matter of law.¹⁰⁵ FTB's "patent portfolio" argument is without merit.¹⁰⁶ What remains of FTB's so-called "Commercial Exploitation" argument is without merit.¹⁰⁷

FTB's new "Philips" sourcing argument is without merit.¹⁰⁸

Conclusion Regarding Sourcing Arguments: Sourcing was rejected at audit, only to be resurrected by FTB in its Determination Letter in November 2007 at the conclusion of the protests. Yet, prior to the 2007 Determination Letter, FTB had never advanced any sourcing arguments as the basis for any proposed deficiency assessments. Sourcing is truly a new argument, upon which FTB bears the burden. FTB has not and cannot meet that burden.¹⁰⁹

1.10.2 **FTB's Sourcing Assessments Were Not Properly Raised In The NPAs Or NOAs.**

FTB in bad faith never audited or protested the sourcing cases, thereby unlawfully depriving Mr. Hyatt of his statutory rights to audits and protests and to proper notice on the NPAs and NOAs (1991 ASAB Section 1.7.10).

FTB's sourcing assessments must be reversed Mr. Hyatt did not have California source income in 1991 or 1992 (1992 ASAB Section 1.7).

⁹⁵ 1992 ARB, Section V.C, pp. 34-35.

⁹⁶ 1992 ARB, Section V.C.2, pp. 36-37.

⁹⁷ 1992 ARB, Section V.C.3, pp. 37-44.

⁹⁸ 1992 ARB, Section V.C.4, pp. 44-46.

⁹⁹ 1992 ARB, Section V.C.5, p. 46.

¹⁰⁰ 1992 ARB, Section V.C.6, pp. 46-53.

¹⁰¹ 1992 ARB, Section V.C.7, pp. 54-62.

¹⁰² 1992 ARB, Section V.C.8, pp. 62-66.

¹⁰³ 1992 ARB, Section V.C.9, pp. 66-67.

¹⁰⁴ 1992 ARB, Section V.C.10, pp. 67-73.

¹⁰⁵ 1992 ARB, Section V.D, p. 73.

¹⁰⁶ 1992 ARB, Section V.D.1, pp. 73-77.

¹⁰⁷ 1992 ARB, Section V.D.2, pp. 77-79.

¹⁰⁸ 1992 ARB, Section V.E, pp. 79-81.

¹⁰⁹ 1992 ARB, Section V.F, p. 81.

1 FTB's sourcing assessments must be reversed for the additional reason that they were not properly raised in the NPAs
2 or NOAs (1991 ASAB Section 1.8.5). FTB has the burden of proof on the sourcing issue (1992 ASAB Section 1.7.1)¹¹⁰ but it
3 has failed to prove sourcing.

4 FTB refused to address the sourcing issue and the \$24 million FTB error issue during the audits and protests,
5 significantly changing its theory for the sourcing assessments during these appeals, and severely prejudicing Mr. Hyatt.
6 During the audit, FTB secretly examined the sourcing issue with a special task force, which held that FTB did not have a
7 sourcing case. FTB removed the final task force report from the audit file. FTB finally acknowledged that it made a \$24
8 million error, FTB partially corrected that error by withdrawing its decades long holding that these \$24 million licensing
9 payments were received on January 15, 1992, and admitted that these \$24 million licensing payments were not received until
10 well after the disputed period. However, FTB let stand in the 1992 disputed period taxes, interest and penalties on its \$24
11 million error (it was in the NPA as disputed income residency income) even though there no licensing income in the 1992
12 disputed period to support these assessments on FTB's \$24 million error. (1991 ASAB Section 1.8.5.1)

13 FTB is barred from raising the sourcing assessments because it has not properly raised the issues (1991 ASAB
14 Section 1.8.5.2).

15 FTB is barred from raising the sourcing issues because they were not raised in the NPA. Current California law and
16 the Rules for Tax Appeals do not permit FTB to introduce new issues during an appeal before your Board. FTB did not
17 comply with California law by setting forth sourcing as a reason for its assessments in its 1991 and 1992 NPAs. FTB is thus
18 barred from asserting its sourcing assessments (1991 ASAB Section 1.8.5.2.1).

19 FTB is barred from assessing income after April 2, 1992, because it has not issued an NPA for that period.
20 Furthermore, Mr. Hyatt had no California source income after April 2, 1992 (1991 ASAB, Section 1.8.5.2.2).

21 Placing the sourcing assessments for the first time in the NOAs does not satisfy the statutory procedure for issuing an
22 assessment. FTB's 10 year plus delay has significantly prejudiced Mr. Hyatt. (1991 ASAB Section 1.8.5.3). Furthermore,
23 FTB's 1991 and 1992 NOAs assert sourcing based only on a California business situs for Mr. Hyatt's patents, not on the
24 different theory of income from a California business (1992 ASAB Section 1.7.1.1).

25 Principles of justice and fairness bar FTB from raising the sourcing issues after audit and issuance of the NPAs and
26 NOAs (1991 ASAB Section 1.8.5.4).

27 Neither the NPAs nor the NOAs support a sourcing assessment. FTB's sourcing assessments are unlawful, unfair,
28 and unjust. The NOAs and NPAs do not give Mr. Hyatt the required notice of FTB's sourcing assessments. Neither the NPAs

29

¹¹⁰ 1992 ARB, Section V.F, p. 81.

nor the NOAs give Mr. Hyatt notice of the reasons and factual basis for asserting the sourcing assessments. FTB's determinations that Mr. Hyatt is a Nevada resident for sourcing and a California resident for residency are inconsistent allegations, not alternative determinations and do not comply with California law (1991 ASAB Sections 1.8.5.4.1, 1.8.5.4.2; 1992 ASAB Section 1.7.1.1).

FTB cannot raise a new California-based *license business theory* at this time because the issue was not raised in the NPAs or NOAs. FTB's *new* sourcing theories are highly prejudicial to Mr. Hyatt. (1991 ASAB Section 1.8.5.4.3; 1992 ASAB Section 1.7.1.1).

FTB cannot sustain a fraud penalty on its \$24 million error because the payments were received during a significantly different time period than the original assessment and were not audited, protested, or raised in the NPAs or NOAs (1991 ASAB Section 1.8.5.4.5).

FTB has not met its burden of proving that Mr. Hyatt had California source income in 1991 or in 1992.¹¹¹ FTB is prohibited from raising the sourcing issue because it did not raise the issue in its 1991 and 1992 NPAs.

1.11 FTB'S PROPOSED IMPOSITION OF AN AMNESTY PENALTY IS IN ERROR.

FTB's proposed imposition of an amnesty penalty under section 19777.5 is in error.¹¹²

1.12 INTEREST SHOULD BE ABATED FOR THE ADDITIONAL REASON THAT THE NEVADA SUPREME COURT FOUND THAT FTB COMMITTED FRAUD AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS IN PART BECAUSE OF ITS DELAYS.

Mr. Hyatt is entitled to interest abatement for FTB's delays. The Nevada Supreme Court (NSC) found that FTB committed fraud and intentional infliction of emotional distress in part because of its delays. (1992 ASAB Section 1.8).

Interest abatement is appropriate under section 19104.¹¹³ There have been many unreasonable delays attributable to ministerial and managerial acts performed by FTB staff during the processing of the protest.¹¹⁴ FTB's unreasonable delays occurred after FTB contacted Mr. Hyatt in writing.¹¹⁵ The delays are not significantly attributable to Mr. Hyatt.¹¹⁶ FTB's delays are numerous and successive.¹¹⁷ Several examples are listed below.

¹¹¹ 1992 ARB, Section V.F, p. 81.

¹¹² 1991 AOB, Section V, pp. 86-87.

¹¹³ 1991 AOB, Section VI, pp. 87-94; 1992 ARB, Section VII, p. 82.

¹¹⁴ 1991 AOB, Section VI.A, pp. 88-93; 1992 AOB, Section VII.A, p. 68; 1992 ARB, Section VII.C, p. 82; 1992 ASB, Section I.C, pp. 37-38.

¹¹⁵ 1992 ARB, Section VII.D, p. 95; 1991 AOB, Section VI.B, p. 93.

¹¹⁶ 1992 ARB, Section VII.E, pp. 95-99; 1991 AOB, Section VI.C, p. 93.

¹¹⁷ 1992 ARB, Section VII.F, pp. 99-100; 1991 AOB, Section VI.D, pp. 93-94.

FTB intentionally placed a "hold" on Mr. Hyatt's protest, constituting an unreasonable delay based on ministerial and managerial acts.¹¹⁸

FTB has lost, destroyed, or withheld numerous documents from audit files, constituting unreasonable error or delay based on a managerial act.¹¹⁹

FTB delayed the protest by assigning the protest officer to other cases and failing to reassign Mr. Hyatt's case to another protest officer, constituting an unreasonable delay due to a managerial or ministerial act.¹²⁰

FTB failed to expeditiously issue the 1992 NPA, constituting an unreasonable delay due to a ministerial act.¹²¹

FTB's \$24 million income error in calculating the 1992 NPA constitutes an unreasonable error caused by a ministerial act.¹²²

1.13 INCORPORATION BY REFERENCE.

Mr. Hyatt hereby incorporates by reference the following sections from the 1992 Concluding Summary.

1.5 The Bragg Factors Overwhelmingly Establish Mr. Hyatt's Nevada Residency And Domicile.

1.6 FTB's \$24 Million Fraud On Mr. Hyatt.

1.7 FTB Fails To Carry Its Burdens; Its Initial Burden, Its Sourcing Burden And Its Fraud Burden.

1.8 FTB Must Not Be Allowed To Violate The Established Law And Regulations For Conducting Audits.

1.9 FTB's Fraudulent Fraud Penalties.

1.10 The Philips Documents Significantly Support Mr. Hyatt's Residency And Sourcing Appeals.

1.11 FTB's Bad Faith Attacks On Eyewitness Testimony Based On FTBs Unsupported Speculation Of The Meaning Of Documentation.

1.12 Responses To Representative False Statements In FTB's ROB's And RRB's.

1.14 CONCLUSION

Mr. Hyatt moved to Nevada and became a California nonresident on September 26, 1991. Mr. Hyatt sold his California house, resided in a Las Vegas hotel for a few weeks, resided in his Las Vegas leased apartment for about five months, and then resided in his Las Vegas Tara home for the last 25 years. Mr. Hyatt had no California source income during the disputed period or thereafter. The situs of Mr. Hyatt's patents followed Mr. Hyatt to Nevada and no California business had the substantial use and value of Mr. Hyatt's patents. Mr. Hyatt did not have a California licensing business and FTB's NPAs and NOAs did not give Mr. Hyatt notice of taxation based on a California business. FTB has not established by clear

¹¹⁸ 1992 ARB, Section VII.C.1, pp. 83-89.

¹¹⁹ 1992 ARB, Section VII.C.2, pp. 89-90.

¹²⁰ 1992 ARB, Section VII.C.3, pp. 90-92.

¹²¹ 1992 ARB, Section VII.C.4, pp. 92-93.

¹²² 1992 ARB, Section VII.C.5, pp. 93-95.

1 and convincing evidence that Mr. Hyatt intended to defraud FTB. Any interest assessments should be abated because they
2 resulted from the intentional delay of FTB.

3 FTB's bad faith calendar, Attachment A-R, and Attachment E should be disregarded because of the thousands of
4 false statements and the disregard or misrepresentation of Mr. Hyatt's overwhelming eyewitness and documentary evidence.
5 (1991 ASAB Section 1.8).

6 Dated: September ²⁸, 2016

7 Respectfully submitted,

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EXHIBIT 2

EXHIBIT 2

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15 BEFORE THE STATE BOARD OF
16 EQUALIZATION
OF THE STATE OF CALIFORNIA

Case Nos. 435770 & 446509

17 In the Matter of the Appeals of
18

19 GILBERT P. HYATT

20
21 **APPELLANT'S CONCLUDING SUMMARY (1992)**
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1.11.1	Mr. Hyatt Has Provided More Than 220 Sworn Affidavits And Declarations Signed By More Than 150 Witnesses That All Support Mr. Hyatt's Facts.	13
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1.11.5	The Testimony Of Mr. Hyatt's Eyewitnesses Is True And Correct.	18
1.12	RESPONSES TO REPRESENTATIVE FALSE STATEMENTS IN FTB'S ROBS AND RRBS.	19
1.12.1	FTB's Physical Presence Arguments In Its RRBs Are Without Merit.	19
1.12.2	FTB's Sourcing Arguments In Its RRBs Are Without Merit.	20
1.13	INCORPORATION BY REFERENCE	24
1.14	CONCLUSION	24

1.1 TABLE OF ABBREVIATIONS AND DEFINITIONS.

1991 AOB	1991 Appellant's Opening Brief,
1992 AOB	1992 Appellant's Opening Brief,
1991 ARB	1991 Appellant's Reply Brief,
1992 ARB	1992 Appellant's Reply Brief,
1991 ASB	1991 Appellant's Supplemental Brief,
1992 ASB	1992 Appellant's Supplemental Brief,
AAB	Appellant's Additional Brief,
1991 ASAB	1991 Appellant's Second Additional Brief,
1992 ASAB	1992 Appellant's Second Additional Brief,
1991 ROB	1991 Respondent's Opening Brief,
1992 ROB	1992 Respondent's Opening Brief,
1991 RRB	1991 Respondent's Reply Brief,
1992 RRB	1992 Respondent's Reply Brief,
RAB	Respondent's Additional Brief,
1991 RSAB	1991 Respondent's Second Additional Brief,
1992 RSAB	1992 Respondent's Second Additional Brief,
Disputed period	FTB's name for the period in dispute, September 26, 1991 to April 2, 1992
CDE	FTB's name for Contemporaneous Documentary Evidence
Rebuttal to FTB Att. A/F	Rebuttal and Objection to FTB Calendar, Attachment A (Revised), and Attachment F
Rebuttal to FTB Att. E	Rebuttal and Objection to FTB Attachment E
Attachment A-R	FTB Attachment A (Revised)
Jennifer Circle house	7841 Jennifer Circle, La Palma house
La Palma house	7841 Jennifer Circle, La Palma house

1 NPA FTB's Audit Notice Of Proposed Assessment

2 NOA FTB's Protest Notice Of Action

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1 **1.2 TABLE OF AUTHORITIES.**

2 **CASES**

3 *Achiro v. Commissioner,*
4 77 T.C. 881 (1981)

5 *Falese v. Commissioner,*
6 58 T.C. 895 (1972)

7 *Fitch v. Comm'r,*
8 T.C. Memo 2012-358, P25 (T.C. 2012)

9 *Fox v. Erickson,*
10 99 C.A.2d 740, 742 (1950)

11 *Hale v. Comm'r,*
12 T.C. Memo 2010-229 (T.C. 2010)

13 *Franchise Tax Bd. of Cal. v. Hyatt,*
14 335 P.3d 125, 144-145, 148-149 (Nev. 2014)

15 *Jones v. Commissioner,*
16 259 F.2d 300 (5th Cir. 1958)

17 *In re Jost,*
18 117 Cal.App.2d 379, 383 (1953)

19 *Mansell v. Board of Administration,*
20 30 Cal. App. 4th 539, 545 (1994)

21 *Marchica v. State Board of Equalization,*
22 107 Cal.App.2d 501, 509 (1951)

23 *Mattel v. Gilbert Hyatt,*
24 1979 U.S. Dist. LEXIS 8812 (December 6, 1979)

25 *Padgett Coventry Price v. Commissioner of Internal Revenue Service,*
26 T.C. Memo 2004-103

27 *Powell v. Granquist,*
28 252 F.2d 56 (9th Cir. 1958)

Professional Services v. Commissioner,
79 T.C. 888, 930 (1982)

Rowlee v. Commissioner,
80 T.C. 1111, 1123 (1983)84

Stoltzfus v. United States,
398 F.2d 1002, 1004 (3d Cir. 1968)

Title Ins. Co. of Minnesota v. State Bd. of Equalization
4 Cal.4th 715 (1992)

1 **Statutes**

2 Tit.18, Cal. Rev. & Tax. Code

3 § 17014(a)

4 § 17951-4(a).

5 § 17951-4(c)

6 § 17952

7 § 17952(a)

8 § 17952(c)

9 § 19033

10 § 19034

11 § 19044

12 § 19045

13 § 19057

14 § 19036

15 Revenue and Taxation Code sections 12421 through 12435

16 **STATE BD. OF EQUALIZATION DECISIONS**

17 *Appeal of Robert F. and Helen R. Adickes,*

18 St. Bd. of Equaliz., 1990 Cal. Tax LEXIS 24, 90-SBE 012 (Nov. 27, 1990)

19 *Appeal of Eli A. and Virginia W. Allen,*

20 Cal. St. Bd. of Equal., Jan. 7, 1975)

21 *Appeal of Armstrong,*

22 St. Bd. of Equaliz. 1985 Cal. Tax LEXIS 2 December 3, 1985

23 *Appeal of Stephen D. Bragg,*

24 2003-SBE-002 (May 28, 2003)

25 *Appeal of Castillo,*

26 No. 90A-0227-ES, St. Bd. of Equaliz. 1992 Cal. Tax LEXIS 28;

27 92-SBE-020 July 30, 1992

28 *Appeals of Robert E. Wesley and Jerry J. Couchman,*

29 2005-SBE-002, (2005) Cal. Tax LEXIS 358,

30 *Appeal of Duncan*

31 1993 Cal. Tax LEXIS 147, 3-4 (1993)

32 *Appeal of Robert V. Erilane,*

33 Cal. St. Bd. of Equal., Nov. 12, 1974

34 *Appeal of Lasher,*

35 St. Bd. of Equaliz. 2005 Cal. Tax. Lexis 22 (Case No. 260933) (Jan. 25. 2005)

36 *Appeal of David G. and Helen Mendelsohn,*

37 85-SBE-141, Nov. 6, 1985

38 *Appeal of Sierra Pacific Industries,*

39 Cal. St. Bd. of Equal., Jan. 5, 1994, 94-SBE-0024

1 *Appeal of Hubbard D. & Cleo M. Wickman,*
2 81-SBE-014, Feb. 2, 1981

3 **Other Authorities**

4 Law Review Commission Comments for Evid. Code § 600

5 Uniform Division of Income for Tax Purposes Act,
6 Sections 25120 to 25139

1.3 TABLE OF CITATIONS AND LINKS TO EXAMPLES OF MR. HYATT'S EVIDENCE.

1.3.1 Updated Testimonial Topics Table And Exhibits Summarizing The Eyewitness Testimonial Subject Matters And The Reinforcement Of Testimony Between Eyewitnesses (E.G., 72-Witnesses Testified About Mr. Hyatt's Move Away In 1991) Under Oath Or Penalty Of Perjury.

1.3.2 Updated Chronological Statements Of Facts (The "Chronologies"), A Chronology Of Mr. Hyatt's Overwhelming Eyewitness And Documentary Evidence.

Updated 1991 Pre-Disputed Period Chronological Statements Of Facts.

Updated 1991 Disputed Period Chronological Statements Of Facts.

Updated 1992 Disputed Period Chronological Statements Of Facts.

Updated 1992 Post-Disputed Period Chronological Statements Of Facts.

1.3.3 The More Than 220 Affidavits And Declarations Sworn To Or Signed Under Penalty Of Perjury By More Than 150 Eyewitnesses In Support Of Mr. Hyatt's Facts.

Updated Index of Affidavits.

Affidavits and Declarations with Exhibits filed with the AOBs.

Affidavits and Declarations with Exhibits filed with the ARBs.

Affidavits and Declarations with Exhibits filed with the ASBs.

Post-Briefing Evidence (post-ASBs Affidavits and Declarations with Exhibits).

Mr. Hyatt's Contemporaneous Documentary Evidence (CDE) Affidavits Describing And Authenticating Thousands of Pages of Documentary Evidence.

Mr. Hyatt's 2012 Disputed Period CDE Affidavit.

Mr. Hyatt's 2016 Supplemental Disputed Period CDE Affidavit.

Mr. Hyatt's 2016 Post-Disputed Period CDE Affidavit.

Sourcing Affidavits With Exhibits.

1.3.4 "Testimonial Responses" Tables And Excerpts Regarding Eyewitnesses' Overwhelming Testimony To Identify And Correct FTB's False Arguments And False Facts.

Testimonial Responses To FTB's 1991 ROB

Testimonial Responses To FTB's 1992 ROB

Testimonial Responses To FTB's 1991 RRB

Testimonial Responses To FTB's 1992 RRB

Testimonial Responses To FTB's 1991 Attachment A

Testimonial Responses To FTB's 1992 Attachment A

Testimonial Responses To FTB's Attachment D

1.3.5 Philips Document Tables Providing Examples Of More Than 5,000 Pages Of Philips Documents That Support Mr. Hyatt's Cases.

1.3.6 Witness Deposition Tables Providing Examples Of More Than 20 Depositions That FTB Took Of Mr. Hyatt's Eyewitnesses And Philips Licensing Attorneys That Support Mr. Hyatt's Appeals.

1.3.7 Tables Of False Statements Made In The FTB Audit File And Rebutted Under Oath Or Penalty Of Perjury By Eyewitnesses.

1.3.8 Tables Of False Statements Made Under Penalty Of Perjury By FTB Private Investigators And Rebutted Under Oath Or Penalty Of Perjury By Eyewitnesses.

1.3.9 Objection And Rebuttal To FTB's Calendar And Attachments A (Revised) And F ("Rebuttal To FTB Att. A/F").

/02/06B1 Introduction to Rebuttal To FTB Att. A/F

/02/06B2 September 1991 Rebuttal To FTB Att. A/F

/02/06B3 October 1991 Rebuttal To FTB Att. A/F

/02/06B4 November 1991 Rebuttal To FTB Att. A/F

/02/06B5 December 1991 Rebuttal To FTB Att. A/F

/02/06B6 January 1992 Rebuttal To FTB Att. A/F

/02/06B7 February 1992 Rebuttal To FTB Att. A/F

/02/06B8 March 1992 Rebuttal To FTB Att. A/F

/02/06B9 April 1992 Rebuttal To FTB Att. A/F

1.3.10 Objection And Rebuttal To FTB's Attachment E ("Rebuttal To FTB Att. E").

1.3.11 Tables Of Misrepresentations In FTB's ROBs And RRBs.

1.3.12 Tables Of Mr. Hyatt's Presence Based Upon Direct Testimonial and Documentary Evidence

ASAB Exhibit 02

ASAB Exhibit 03

CDE Affidavit Exhibit CDE-ST002

CDE Affidavit Exhibit CDE- ST003

1 **1.4 INTRODUCTION TO MR. HYATT'S 1992 CONCLUDING SUMMARY.**

2 Mr. Hyatt hereby incorporates by reference Section 1.4, the Introduction, from Appellant's 1991 Concluding
3 Summary.

4
5 **1.5 THE BRAGG FACTORS OVERWHELMINGLY ESTABLISH MR. HYATT'S NEVADA RESIDENCY AND**
6 **DOMICILE.**

7 The *Bragg* factors overwhelmingly establish Mr. Hyatt's Nevada residency during the disputed period and
8 thereafter.¹ Not one *Bragg* factor favors a California connection.²

9 The summary of the *Bragg* factors is incorporated by reference from Sections 1.6.1, 1.6.1.1 to 1.6.1.10 of Appellant's
10 1991 Concluding Summary.

11 **1.6 FTB'S \$24 MILLION FRAUD ON MR. HYATT.**

12 FTB refused to correct or even to substantively respond to Mr. Hyatt's evidence about its \$24 million error,³
13 persisting in the tens of millions of dollars of taxes, interest, and penalties until your Board required it to respond in its RAB.⁴
14 But even then, after admitting to its \$24 million error, FTB in bad faith still misrepresents the license payments to your Board⁵
15 and still persists in the tens of millions of dollars of taxes, interest, and penalties that it fraudulently assessed (Section 1.9.1,
16 1991 ASAB Sections 1.7.2, 1.7.5, 1.8.5.1, 1.8.5.4 1, 1.8.5.4.4, 1.8.5.4.5, 1.9.10; 1992 ASAB Section 1.7.5). Neither the 1992
17 NPA nor the 1992 NOA correct the FTB \$24 million income error.⁶

18 FTB fraud penalties are made in bad faith, FTB currently maintains its fraud penalty on its \$24 million error.⁷ FTB
19 has now been forced to admit that the license payments comprising the \$24 million error were not received until well after the
20 1992 disputed period. Nevertheless, FTB still holds to its tens of millions of dollars of NPA residency assessments (including
21 penalty and interest). FTB did not reduce the NPA assessments for the 1992 disputed period by the FTB's \$24 million error.
22 (1991 ASAB Section 1.7.2).

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25 ¹ 1991 AOB, pp. 15-38; 1992 AOB, pp. 16-35; 1991 ARB, pp. 21-68; 1992 ARB, pp. 4-26; 1992 ASB, pp. 42-52;
26 *Appeal of Stephen Bragg*, 2003-SBE-002 (May 28, 2003) (setting forth a non-exhaustive list of objective factors helpful in the
determination with which state an individual maintains his closest connections).

27 ² 1991 AOB, Section II.C, pp. 15-38; see rebuttal to FTB's false statements at 1991 ARB, Section II.A, pp. 21- 68.

28 ³ See, e.g., Hyatt's 2008 Affidavit, ¶¶ 65-68; Hyatt's 2013 Affidavit, Sections 2-5; Hyatt's 2014 Supp. Aff.,
29 Sections 2.2-2.4, 2.5.11-2.5.13.

⁴ AAB, p. 1; AAB, Section I, pp. 2-5.

⁵ AAB, Section II, pp. 5-9.

⁶ 1992 AOB, Section III, pp. 52-56; 1992 ARB, Section III, p. 27.

⁷ 1991 ASAB, Sections 1.7.2, 1.8.5.4.4, 1.8.5.4.5.5, 1.8.10; 1992 ASAB, Section 1.7.5.

1 In its 1992 RSAB, FTB makes a nonspecific allegation that Mr. Hyatt's 1991 and 1992 income is "sourced" to
2 California through the end of 1992 without even mentioning the \$24 million error,⁸ and without auditing or addressing the
3 relevant facts of this post-disputed period income. This post-disputed period has not been audited or protested by FTB.

4 FTB knew for more than 16 years about the \$24 million error and made no attempts to correct it.⁹ It would be
5 unlawful for FTB to maintain the 1992 assessments that include the \$24 million income error.¹⁰ FTB has agreed that the \$24
6 million residency assessment was not correct because the license payments were not received during the 1992 disputed period.
7 Therefore, the 1992 NPA was not properly computed and should not have included the \$24 million payments. FTB has no
8 authority to increase the amount that was improperly computed in 1997. California law does not allow FTB to now change the
9 basis for the \$24 million assessment because FTB was required to set forth the reasons for any proposed deficiency assessment
10 and the computation thereof in the NPA. The NPA must be based on a determination that is not "arbitrary or without
11 foundation". (AAB, III.B, pp. 12-16).

12 FTB fails to carry its "initial burden" of establishing "reasonable and rational" assessments. FTB's assessments were
13 imposed in bad faith (FTB's \$24 million error), FTB's gross misconduct and extreme bad faith treatment of Mr. Hyatt, FTB's
14 calendar and Attachment A-R are made in bad faith (more than 2,000 false statements), and there was no 1992 audit.¹¹
15 (1991 ASAB Section 1.5.1). FTB had an abusive policy of using the fraud penalty as leverage to coerce individuals into
16 improper settlements, FTB cannot meet the clear and convincing standard (1991 ASAB Section 1.5.3).

17 Mr. Hyatt has carried his burden of proof in proving FTB's assessment is wrong, while FTB has failed to carry any of
18 its burdens of proof.¹² (1991 ASAB Sections 1.5., 1.5.1 to 1.5.3).

19 Inclusion of the auditor's \$24 million income error is barred by equitable principles.¹³ Equitable estoppel bars FTB
20 from assessing tax on the \$24 million error under a sourcing theory.¹⁴ The equitable doctrine of laches bars FTB from
21 assessing tax on the \$24 million error under a sourcing theory.¹⁵

22 The Philips documents detail FTB's bad faith \$24 million income error. Although FTB has now acknowledged that
23 the \$24 in license payments were received after the 1992 disputed period when Mr. Hyatt is recognized by FTB to be a
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26 ⁸ 1992 RSAB, p. 29:21-24.

27 ⁹ AAB, Section III.A, pp. 9-12.

28 ¹⁰ AAB, Section III.B, pp. 12-16.

29 ¹¹ 1992 ARB, Section I.; 1992 AOB, Section II.C.9, Section II.E.; 1992 ARB, Section II.A.,

¹² 1991 ARB, Section I, pp. 16, 17-21.

¹³ AAB, Section III.C, pp. 17-21.

¹⁴ AAB, Section III.C.1, pp. 17-19.

¹⁵ AAB, Section III.C.2, pp. 19-21.

1 Nevada resident, FTB still holds to its NPA residency assessment of its \$24 million error plus penalties and interest.
2 (1991 ASAB Section 1.7.2).

3 Your Board should disregard FTB's attempts to advance its sourcing arguments in the RAB.¹⁶ FTB was requested by
4 your Board to "provide briefing that is narrowly focused on the factual issues" outlined in three items. However, FTB used
5 the additional briefing to explain income related to its new sourcing argument after April 2, 1992. Long after the 1992 NPA
6 and NOA were issued, FTB cannot create a new "source" theory that had previously been rejected for payments received
7 outside the audit period. To attempt to read the 1992 NPA to capture income that is outside the 1992 disputed period would be
8 to render the 1992 NPA unlawful under Sections 19033 and 19034. Further, the fraud penalties were imposed as part of the
9 NPAs, which were based solely on the residency issue. Thus, FTB cannot argue that the fraud penalty should remain under
10 the new sourcing theory. (AAB, Section IV., pp. 12-16).

11 FTB does not now contend that its \$24 million error is taxable in the post-disputed period and FTB has not provided
12 evidence that its \$24 million error is taxable in the post-disputed period (1991 ASAB Sections 1.8.5.4.4, 1.8.5.4.5), but FTB
13 has not withdrawn the tens of millions of dollars in taxes, interest, and penalties that were assessed on its \$24 million income
14 error that it now admits was not received until the post-disputed period. Thus, your Board should correct FTB's oversight and
15 withdraw *the remnant taxes, interest, and penalties* that were falsely assessed on its \$24 million error which are no longer
16 relevant in view of FTB's admission that the \$24 million error payments were not received on January 15, 1992, on which the
17 audit and protest were based.

18 **1.7 FTB FAILS TO CARRY ITS BURDENS; ITS INITIAL BURDEN, ITS SOURCING BURDEN AND ITS**
19 **FRAUD BURDEN.**

20 FTB fails to carry its burdens; its initial burden, its sourcing burden and its fraud burden (1991 ASAB Sections 1.5,
21 1.5.1, 1.5.2, 1.5.3).¹⁷

22 FTB fails to carry its "initial burden" of establishing "reasonable and rational" assessments for the additional reasons
23 that FTB's assessments were imposed in bad faith (e.g., FTB's \$24 million error), FTB's gross misconduct and extreme bad
24 faith treatment of Mr. Hyatt, FTB's calendar and Attachment A-R are made in bad faith (more than 2,000 false statements),
25 and there was no 1992 audit. (1991 ASAB Section 1.5.1).

26 Both residency assessments (1991 and 1992) must be overturned because FTB did not carry its "initial burden [] to
27 show why its assessment[s] [are] reasonable and rational."¹⁸ Both residency assessments were imposed in bad faith by a rogue



28 ¹⁶ AAB, Section IV.A, pp. 21-24.

29 ¹⁷ 1991 AOB, Section I, pp. 4-11; 1991 ARB, Section I.A, pp. 16-17.

¹⁸ *Appeal of Wesley et al*, 2005-SBE-02, Nov. 15, 2005.

1 auditor and supported by other FTB personnel who were intent on issuing assessments against Mr. Hyatt and imposing
2 enormous fraud penalties to coerce an unjustified settlement.¹⁹ It has been conclusively determined that FTB committed
3 fraud, intentionally inflicted emotional distress, and acted in bad faith in its audits and protests of Mr. Hyatt.²⁰ The record in
4 these appeals establishes that FTB committed grievous torts against Mr. Hyatt and that Mr. Hyatt suffered “extreme treatment
5 from FTB,”²¹ discussed in detail in ASAB Attachment 1. See also 1991 ASAB Section 1.5.1.

6 For example, FTB in bad faith overstated the 1992 NPA income by \$24 million and now attempts to continue with its
7 outrageous assessment of taxes, interest, and penalties on income that is not taxable by California. (1991 ASAB Sections
8 1.7.2, 1.8.4.4, 1.8.4.5, 1.9.10; 1992 ASAB, Section 1.7.5).²² In light of FTB’s gross misconduct and extreme bad faith
9 treatment of Mr. Hyatt during the audits and protests, there can be no presumption that FTB’s assessments were correct.
10 Given its actions, FTB should have, but did not, produce affirmative evidence to satisfy its initial burden of showing the two
11 assessments were reasonable and rational. Specifically, FTB had to establish that the assessments were not tainted by its gross
12 misconduct. FTB has not done so. Nowhere in its briefing has FTB addressed the fraud, intentional infliction of emotional
13 distress, and bad faith found by the Nevada jury; nor has it addressed the numerous additional acts of misconduct detailed in
14 Appellant’s 1991 and 1992 Opening Briefs. Accordingly, your Board must find that FTB has not met its initial burden and
15 that the assessments are invalid as not reasonable or rational. (1991 ASAB Section 1.5.1).

16 FTB fails to carry its burden of establishing that Mr. Hyatt had California source income. FTB’s sourcing
17 assessments are not in the NPAs or NOAs, were not audited or protested, and FTB has the burden but has not carried that
18 burden on the facts or the law. (1991 ASAB Section 1.5.2).

19 No assessment was made by FTB beyond April 2, 1992, and with no assessment there can be no appeal of an
20 assessment. The 1992 NOA alleges that Mr. Hyatt was a California resident through April 2, 1992, and as such, taxable on
21 income from all sources through that date. No tax has been assessed beyond April 2, 1992. Thus, beyond April 2, 1992,
22 *sourcing is not an alternative theory*. It is a completely new assessment for 1992 that is not made in either the 1992 NPA or
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25 ¹⁹ 1991 AOB, pp. 4-11; 1992 AOB, pp. 4-12; Updated Testimonial Topics, Exs. T180 and T181; Declaration of
Thomas Rodrigue, February 11, 2015, ¶¶ 5, 9, 11, 12; Declaration of Diane Truly, February 13, 2015, ¶¶ 8, 25; Declaration of
Candace Les, February 9, 2015, ¶¶ 19, 20, 23.

26 ²⁰ *Franchise Tax Bd. of Cal. v. Hyatt*, 335 P.3d 125 (Nev. 2014); ASAB Exhibit 11, Clark County District Court
27 Judgment Order dated September 5, 2008 and ASAB Exhibit 10, Clark County District Court Special Verdict Form dated
August 6, 2008. ASAB Attachment 1; Section V of the Second Supplemental Motion To Strike. See also 1991 ASAB,
Sections 1.5.1, 1.8, and 1.9.

28 ²¹ *Franchise Tax Bd. of Cal. v. Hyatt*, 335 P.3d 125, 149 (Nev. 2014). FTB’s bad faith acts against Mr. Hyatt are
29 further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB, Section 1.5; ASAB Attachment 1; and in Section V of
the Second Supplemental Motion To Strike.

²² AAB. See also 1992 AOB, pp. 52-56; 1992 ARB, pp. 93-95.

1 1992 NOA from which this appeal was taken. Your Board must reverse the assessments that have not been made by FTB and
2 are not found in the NPA and NOA. (1992 AAB, Section II.B, pp. 56-58).

3 FTB has never assessed a fraud penalty on the sourcing assessments of Mr. Hyatt. (1991 ASAB Section 1.9.1).

4 FTB fails to carry its burden on the fraud penalties. FTB fraud penalties are made in bad faith, FTB maintains its
5 fraud penalty on its \$24 million error, FTB had an abusive policy of using the fraud penalty as leverage to coerce individuals
6 into improper settlements, many senior FTB audit persons did not believe in the residency or fraud assessments, FTB cannot
7 meet the clear and convincing standard. (1991 ASAB Section 1.5.3).

8 FTB's 1992 fraud penalty is arbitrary for the addition reason that ***FTB improperly based the 1992 fraud penalty on***
9 ***1991 facts.*** (1991 ASAB Sections 1.5.3, 1.8.5.4.2, 1.9.7).

10 **1.8 FTB MUST NOT BE ALLOWED TO VIOLATE THE ESTABLISHED LAW AND REGULATIONS FOR**
11 **CONDUCTING AUDITS.**

12 FTB must not be allowed to violate the established law and regulations for conducting audits, assessing taxes, and
13 appealing tax assessments as it is attempting to do. FTB's audits of Mr. Hyatt have lasted over 20 years and have continued
14 into 2016, FTB has intentionally delayed the administrative process into 2016. Most of the current assessments are not in the
15 NPAs or NOAs, have not been audited or protested, are in large part based on an admitted \$24 million FTB error, are tainted
16 by FTB's abusive policy of using the fraud penalty to coerce individuals into improper settlements, and were sprung on Mr.
17 Hyatt during these appeals. (1991 ASAB Section 1.6).

18 **1.9 FTB'S FRAUDULENT FRAUD PENALTIES.**

19 **1.9.1 FTB Used Fraud Penalties And Other Methods To Coerce Settlements.**²³

20 The FTB fraud penalties were assessed in bad faith.²⁴ The fraud penalties are based on 10 trumped up factors that
21 are based on false inferences, speculation and false statements that ignore Mr. Hyatt's eyewitness testimony and documentary
22 evidence. Some of FTB's false statements are rebutted by Mr. Hyatt in his affidavits.²⁵ FTB has the burden to prove fraud by
23 clear and convincing evidence but each of its factors has been rebutted as to the facts and the law. (1991 ASAB Sections 1.9
24 to 1.9.10). Further, the FTB audit file misrepresents its document requests to support its fraudulent fraud penalty.²⁶

25 FTB fails to carry its burden on the fraud penalties. FTB fraud penalties are made in bad faith, FTB maintains its
26 fraud penalty on its \$24 million error,²⁷ FTB had an abusive policy of using the fraud penalty as leverage to coerce individuals

27 ²³ 1992 RSAB, pp. 24:18-25:3. 1991 ARB, Section III.B, pp. 76-96.

28 ²⁴ Hyatt's 2008 Affidavit, ¶¶ 69-80; Hyatt's 2014 Supp. Aff. Sections 2.6.4, 2.6.5, 2.6.8, 2.6.9. 1991 ARB,
Section III, pp. 14-15; Hyatt's 2016 Supp. CDE Aff., ¶¶ 107-123.

29 ²⁵ Hyatt's 2012 Supp. Aff. ¶¶ 2 to 45; Hyatt's August 15, 2010 Affidavit Sections 1.10-1.11, 1.13-1.14, 1.17-1.20.

²⁶ Hyatt's 2014 Supp. Aff., Section 2.6.8.

²⁷ 1991 ASAB, Sections 1.7.2, 1.8.5.4.4, 1.8.5.4.5.5, 1.8.10; 1992 ASAB, Section 1.7.5.

1 into improper settlements and FTB cannot meet the clear and convincing standard (1991 ASAB Section 1.5.3). FTB's taxes
2 and penalties on its \$24 million error, in addition to the abusive fraud penalties, were assessed by FTB to coerce a settlement.
3 FTB still maintains the taxes and penalties on its \$24 million error after your Board ordered an additional briefing that forced
4 FTB to admit to the \$24 million error. (1991 ASAB, Section 1.5.3, AAB, Section IV., pp. 12-16).

5 FTB must not be allowed to violate the established law and regulations for conducting audits, assessing taxes, and
6 appealing tax assessments as it is attempting to do here. FTB's audits of Mr. Hyatt have lasted over 20 years into 2016,²⁸ and
7 FTB has intentionally delayed the administrative process into 2016 (1992 ASAB, Section 1.8). Most of the current
8 assessments are not in the NPAs or NOAs, have not been audited or protested, are in large part based on an admitted \$24
9 million FTB error that FTB has admitted to but has still not corrected. The fraud assessments are tainted by FTB's abusive
10 policy of using the fraud penalty to coerce individuals into improper settlements even though the FTB audit reviewers were not
11 convinced of fraud. The fraud assessments were not subject to audit or protest but were sprung on Mr. Hyatt during these
12 appeals. (1991 ASAB Section 1.6).

13 FTB's 1992 fraud penalty is particularly arbitrary because FTB improperly based the 1992 fraud penalty on 1991
14 facts and because FTB did not audit for 1992 (1991 ASAB, Sections 1.8.4.10, 1.9.7). There was no taxpayer fraud, Mr. Hyatt
15 sold his California house, he packed up, said goodbye, and drove away, and he continues to live in Las Vegas.²⁹

16 FTB in bad faith mischaracterizes Mr. Hyatt's desire for privacy as fraudulent intent (e.g., FTB characterizes the
17 purchase of his Las Vegas Tara home in a trust as fraudulently concealing assets despite the fact that the home was disclosed
18 in his tax return and in the audit file).³⁰ FTB has no right to dictate how home purchasers take title to their homes.

19 FTB issued the fraud penalties in bad faith. A significant basis for issuing fraud penalties puts the blame on Mr.
20 Hyatt for FTB's failure to gather evidence. A fraud penalty was assessed for 1992 even though there was no separate audit for
21 1992. FTB accuses Mr. Hyatt of concealing documents disclosed in his 1991 part year tax return. FTB rubber stamped the
22 1992 fraud audit to coerce a settlement by Mr. Hyatt.³¹

23 1.9.2 **FTB Has Failed To Carry Its Burden Of Proving Fraud.**

24 The burden of proof is upon FTB to show fraud by clear and convincing evidence but FTB has not met its burden to
25 prove fraud.³² (1991 ASAB Sections 1.5.1, 1.5.3). Overwhelming documentary and testimonial evidence establishes that Mr.

26 ²⁸ In these appeals, FTB has engaged in endless audits that have lasted over 20 years and are continuing even now;
27 e.g., FTB conducted its most recent deposition less than six months ago in April 2016 (Deposition of Charles Cameron, April
28 7, 2016).

29 ²⁹ See, e.g., Hyatt's 2012 CDE Aff., ¶¶ 7-51; Hyatt's 2016 Supp. CDE Aff., ¶¶ 7-74.

³⁰ 1991 ARB, Section III, pp. 14-15; Hyatt's 2016 Supp. CDE Aff., ¶¶ 114-116.

³¹ See, e.g., Hyatt's 2008 Affidavit, ¶¶ 69-80; Hyatt's 2014 Supp. Aff. Sections 2.6.4, 2.6.9.

³² 1991 AOB, Section III.B, pp. 57-62.

Hyatt moved to Las Vegas and that he believed that he was a Nevada resident and he was a Nevada resident (1992 ASAB, Sections 1.5.1 to 1.5.8). FTB did not and cannot produce clear and convincing evidence of intent to defraud. (1991 ASAB Section 1.9.4).

Your Board should make note that FTB has never assessed a fraud penalty on the sourcing assessments. (1991 ASAB Section 1.9.1).

The accuracy related fraud penalty for 1991 was improperly imposed and should be removed,³³ and the failure to file fraud penalty for 1992 was improperly imposed and should be removed.³⁴ The 1991 fraud penalty and 1992 fraud penalty are significantly different fraud penalties.

Mr. Hyatt had a reasonable cause and good faith belief that he satisfied the legal requirements for Nevada residency for the 1991 disputed period and all of 1992,³⁵ he did satisfy the requirements and he is still a resident of Nevada now 25 years later.

FTB did not respond in its ROBs to Mr. Hyatt's February 2, 2001 protest supplement on FTB fraud allegations.³⁶ FTB imposed the 1992 fraud penalty as an afterthought to a quick audit and the penalty was not even initially suggested by Auditor Cox. As of June 2008, Ms. Cox did not know who made the determination to assess a 1992 fraud penalty. Carol Ford stated "[w]e determined the 1992 fraud penalty should be assessed for 1992, since the facts and circumstances were the same as 1991." The material for the 1992 fraud penalty was taken from the 1991 fraud penalty write-up. There is nothing in the record showing any independent grounds for imposing the fraud penalty for 1992. FTB has not met its burden of proving the 1992 fraud penalty by clear and convincing evidence.³⁷

FTB's burden to prove fraud by clear and convincing evidence is undisputed. However, FTB failed to prove that Mr. Hyatt had "the specific intent to evade a tax believed to be owing." Mr. Hyatt believed that he did not owe any tax to California after he filed his 1991 California tax return. In addition, Mr. Hyatt did not have the intent to evade any taxes, and particularly, a tax that he did not owe to California.³⁸

FTB's argument that Mr. Hyatt was a nonresident for the purpose of sourcing precludes proof by clear and convincing evidence that Mr. Hyatt was a California resident (1991 ASAB Section 1.9.3).

The FTB fraud penalties were assessed in bad faith (1991 ASAB Section 1.9).

³³ 1991 AOB, Section III, pp. 56-63; 1991 ARB, Section III, pp. 73-76.

³⁴ 1992 AOB, Section IV, pp. 56-65.

³⁵ Hyatt's 2008 Affidavit, ¶¶ 69-80; Hyatt's 2014 Supp. Aff. Sections 2.6.4.6, 2.6.5.

³⁶ 1992 AOB, Section IV.D, pp. 63-65.

³⁷ 1992 AOB, Section IV.D, pp. 63-65.

³⁸ 1991 ARB, Section III.C, pp. 96-99.

1 This case is not about taxpayer fraud, it is a case of FTB fraud. The fraud assessments are based upon a litany of
2 facts distorted by FTB to create fraud assessments when it is FTB that has committed fraud. (1991 ASAB, Section 1.9.1).

3 The simple fact that the FTB audit reviewers were not convinced of fraud should be dispositive of the fraud penalties.
4 The fact that FTB audit reviewers, Ms. Ford and Ms. Marshall-Morgan, disagreed with assessment of the fraud penalty
5 precludes a finding that FTB has provided clear and convincing evidence of fraud. (1991 ASAB, Section 1.9.2).

6 The simple fact that FTB does not have confidence in its assessments against Mr. Hyatt is critical; all of FTB's
7 experts on its audit task force, including the lead auditor, were doubtful about FTB's residency cases and FTB made a
8 sourcing assessment that is inconsistent with its residency assessment. (1991 ASAB, Section 1.9.3).

9 FTB has disregarded Mr. Hyatt's eyewitness testimony regarding the 10 factors of fraud. (Hyatt's 2014 Supp. Aff.,
10 Sections 2.6.4.1 to 2.6.4.15).

11 FTB has not satisfied its overall burden to establish that the fraud penalties apply with the required clear and
12 convincing evidence. FTB has not shown by clear and convincing evidence that Mr. Hyatt intended to evade taxes known to
13 be owing. Overwhelming eyewitness and documentary evidence establishes that Mr. Hyatt moved to Las Vegas, that he
14 believed he was a Nevada resident and that he was a Nevada resident, that he registered to vote in Nevada and that he carried
15 out many other Nevada activities,³⁹ FTB cannot produce clear and convincing evidence of intent to defraud. (1991 ASAB
16 Section 1.9.4).

17 FTB first asserted its bad faith fraud penalties with a whole litany of false fraud factors in the audit determination
18 letter that were patently absurd and have subsequently been dropped by FTB. The initial assertions of fraud have been
19 abandoned by FTB. (1991 ASAB Section 1.9.5).

20 The fraud penalties must be reversed for the additional reason that FTB failed to follow the statutory requirements for
21 assessing the fraud penalties; e.g., FTB failed to set forth the reasons for assessing the fraud penalty in the NPA as required by
22 California law. The 1991 and 1992 NPAs both recite only the fraud penalty statute with a statement that the penalty is 75% of
23 the underpayment. They do not recite the reasons for assessing the fraud penalty as required by Section 19034. Furthermore,
24 FTB no longer relies on most of the fraud factors cited by the auditors in their determination. For example, Mr. Hyatt did not
25 conceal assets. He disclosed his Las Vegas Tara Avenue home and his Nevada situs Franklin Fund investment account in his
26 California 1991 part year tax return. (1991 ASAB Section 1.9.6)

27
28 ³⁹ Hyatt's 2012 CDE Aff., Hyatt's 2016 Supp. CDE Aff., Hyatt's 2016 Post-DP CDE Aff.; Updated Testimonial
29 Topics Exs. T008, T009, T018, T021, T128, T019, T095, T096, T129, T030, T031, T032, T134, T034, T035, T135, T097,
T136, T040, T138, T139, T041, T042, T043, T140, T045, T141, T044, T046, T047, T147, T048, T103, T160, and T161.
Hyatt's 2008 Affidavit, ¶¶ 12-21, 81; Hyatt's August 15, 2010, Affidavit, Sections 1.5-1.7.

1 FTB has not satisfied its initial burden to establish the fraud penalties are not arbitrary. FTB assess the 1992 fraud
2 penalty based on 1991 facts even though the facts for 1992 are completely different. Proof of fraud in one year will not
3 establish fraud for another year. FTB has not proven that the 1991 and 1992 fraud penalty assessments were not tainted by
4 FTB's highly improper policy of imposing fraud penalties to coerce settlements. (1991 ASAB Section 1.9.7).

5 FTB failed to establish by clear and convincing evidence that any alleged underpayment is due to fraud by Mr. Hyatt.
6 Mr. Hyatt did not believe he owed California taxes and FTB has not established that he believed otherwise. (1991 ASAB
7 Section 1.9.8).

8 FTB's factors of fraud and FTB's attacks on other witnesses are disingenuous and disregard the facts, the law, and
9 the seriousness of the fraud issue. FTB provides only generalized argument instead of clear and convincing evidence. The
10 *Appeal of Adickes* is not relevant. Mr. Hyatt actually moved to Nevada. There is no issue of fabricated documents and Mr.
11 Hyatt's three CDE affidavits authenticate and explain thousands of documents. The testimony of 150 eyewitnesses that is
12 reinforced over and over again by similar testimony of other eyewitnesses cannot be overcome by FTB's false inferences and
13 speculation. (1991 ASAB, Section 1.9.9).

14 The 1992 fraud penalties are a continuing bad faith act by FTB. FTB has removed the \$24 million payments caused
15 by FTB's income error from the disputed period but FTB left the fraud penalties in place. FTB should have dropped the
16 associated fraud penalty when it acknowledged the \$24 million was not received during the disputed period (1991 ASAB
17 Section 1.9.10).

18 1.9.3 **The Ten Factors Cited By FTB Do Not Establish Fraud.**⁴⁰

19 Because Mr. Hyatt is charged with fraud, he must be heard. Your Board is requested to review his testimony under
20 oath about the ten factors in Hyatt's 2014 Supp. Aff., Sections 2.6.4.1 to 2.6.4.15 and his more detailed discussion in ASAB
21 Attachment 2. Furthermore, your Board is requested to review FTB's bad faith acts regarding the fraud penalty that is further
22 testified to under oath in Hyatt's 2014 Supp. Aff., Sections 2.6.1 to 2.6.3 and 2.6.5 to 2.6.10.

23 First factor: Reliance on the identical alleged "physical presence" residency findings does not support a fraud
24 penalty.⁴¹ Mr. Hyatt's overwhelming presence was in Las Vegas not in California as falsely alleged by FTB (1992 ASAB,
25 Sections 1.5, 1.5.1 to 1.5.8). A total of 72-witnesses testified about Mr. Hyatt moving away in 1991. (ASAB Attachment 2,
26 Section 2; Hyatt's 2014 Supp. Aff., Section 2.6.4.6). Out of 190 days in the disputed period, Mr. Hyatt had 125 full days in
27 Nevada, 37 days partly in Nevada and partly in California (each time for a temporary or transitory purpose) and 9 full days in
28

29 ⁴⁰ 1992 RSAB, pp. 24:18-25:3. 1991 ARB, Section III.B, pp. 76-96.

⁴¹ 1991 ARB, Section III.B.1, pp. 76-77.

1 a California hospital as he recovered from cancer surgery.⁴² (1992 ASAB Section 1.5.8). This overwhelming physical
2 presence in Nevada establishes that Mr. Hyatt did in fact move to Nevada and overrides any FTB inference that he did not
3 have a good faith belief that he had moved to Nevada.

4 Exhibits CDE-ST002 and CDE-ST003⁴³ are tables summarizing Mr. Hyatt's presence for many days in the disputed
5 period with citations to Mr. Hyatt's eyewitness and documentary evidence that rebuts FTB's false inferences. See also the
6 Testimonial Topics table.⁴⁴


7 Second factor: The sale of Mr. Hyatt's former California house on October 1, 1991 was a bona fide sale, not a sham
8 as falsely alleged by FTB (Section 1.6.1.1 in Appellant's 1991 Concluding Summary).⁴⁵ For example, two former elected
9 Orange County assessors, Bradley Jacobs and Webster Guillory, have confirmed that the sale of Mr. Hyatt's former La Palma
10 house on October 1, 1991, was a bona fide sale. (1992 ASAB, Section 1.5.1; ASAB Attachment 2, Section 3; Hyatt's 2014
11 Supp. Aff., Section 2.6.4.7). Furthermore, dozens of witnesses stated that Mr. Hyatt sold the Jennifer Circle house and moved
12 away: 16-witnesses testified about the sale of Mr. Hyatt's California house in October 1991, 4-witnesses testified that Ms.
13 Jeng paid the deposit or Mr. Hyatt received the deposit on the purchase of the Jennifer Circle house, 26-witnesses testified
14 about Mr. Hyatt's decision to move to Las Vegas, 32-witnesses testified about Mr. Hyatt's preparation to move to Las Vegas
15 in 1991, 72-witnesses testified about Mr. Hyatt moving away in 1991, 28-witnesses testified about Mr. Hyatt moving away in
16 September 1991, 22-Jennifer Circle neighbors testified about Mr. Hyatt moving away in 1991, 15-witnesses testified that an
17 Asian woman (or Ms. Jeng) moved into the Jennifer Circle house after Mr. Hyatt moved away in 1991, 16-witnesses testified
18 that an Asian woman (or Ms. Jeng) lived alone at the Jennifer Circle house, and 23-witnesses testified that they did not ever
19 again see Mr. Hyatt at Jennifer Circle after he moved away in 1991.⁴⁶

20 Third factor: Mr. Hyatt did not suppress evidence of his stay at the Continental Hotel as falsely alleged by FTB.⁴⁷
21 Because he was part of a van tour the Continental Hotel did not register van tour guests and made no record of Mr. Hyatt's
22 stay at the hotel. Continental Hotel President Ira Levy, Director of Operations Michael C. Fox and other former hotel
23 employees all testified that tour guests did not register at the Continental Hotel in late 1991 and thus the hotel did not maintain
24

25

⁴² Rebuttal to FTB Att. A/F, Section I. A., day by day analysis.

26 ⁴³ Exhibits attached to Hyatt's 2016 Supp. CDE Aff.

27  ⁴⁴ Testimonial Topics, Ex. T008, T009, T018, T021, T128, T019, T095, T096, T129, T026, T022, T023, T024, T025,
28 T100, T057, T030, T135, T097, T146, T040, T138, T139, T041, T042, T043, T140, T045, T041, T044, T046, T047, T147,
29 and T048.

⁴⁵ 1991 ARB, Section III.B.2, pp. 77-83.

⁴⁶ Updated Testimonial Topics, Exs. T124, T125, T001, T002, T007, T006, T102, T120, T121, and T127,
respectively.

⁴⁷ 1991 ARB, Section III.B.3, pp. 83-86.

1 records of tour guests. There were no records of Mr. Hyatt's stay at the Continental Hotel to suppress. (ASAB Attachment 2,
2 Section 4; Hyatt's 2014 Supp. Aff., Section 2.6.4.8; Rebuttal to FTB Att. A/F, Section I. F., September 29, 1991).

3 Fourth factor: Mr. Hyatt did not "conceal/destroy" DNC Corporate records as falsely alleged by FTB.⁴⁸ DNC was
4 known to all three auditors who worked on Mr. Hyatt's 1991 and 1992 audits and DNC was secretly audited by FTB. (ASAB
5 Attachment 2, Section 5; Hyatt's 2014 Supp. Aff., Section 2.6.4.9; Rebuttal to FTB Att. A/F, Section I. C., August 9, 1991).

6 Fifth factor: Mr. Hyatt and his representatives cooperated during audit and protest and did not fail to cooperate as
7 falsely alleged by FTB.⁴⁹ All three auditors as well as three protest hearing officers all concurred that Mr. Hyatt cooperated at
8 audit. (ASAB Attachment 2, Section 6; Hyatt's 2014 Supp. Aff., Section 2.6.4.10).

9 Sixth factor: Mr. Hyatt produced extensive records to support his 1991 tax return and did not produce inadequate
10 records as falsely alleged by FTB. However, FTB in bad faith disregarded much of the records that Mr. Hyatt produced
11 during the audit and then assessed a fraud penalty in large part because it claimed that records that were in the audit file were
12 not produced.⁵⁰ Mr. Hyatt kept adequate records of his moving expenses because he moved himself by pulling a trailer to Las
13 Vegas and thus had no records of moving expenses. (ASAB Attachment 2, Section 7; Hyatt's 2014 Supp. Aff.,
14 Section 2.6.4.11).

15 Seventh factor: Mr. Hyatt did not abuse corporate form as falsely alleged by FTB.⁵¹ Neither Mr. Hyatt nor DNC
16 deducted personal expenses as business expenses and FTB's false statements to that effect do not constitute clear and
17 convincing evidence of fraud. (ASAB Attachment 2, Section 8; Hyatt's 2014 Supp. Aff., Section 2.6.4.12).

18 Eighth factor: The California income Mr. Hyatt received in 1991 was properly reported on his 1991 part-year tax
19 return and Mr. Hyatt did not fail to report income as falsely alleged by FTB.⁵² Mr. Hyatt properly reported the \$200,000 and
20 \$400,000 payments he received from Pioneer and Philips during 1991 on his 1991 part year tax return. (ASAB Attachment 2,
21 Section 9; Hyatt's 2014 Supp. Aff., Section 2.6.4.13).

22 Ninth factor: Mr. Hyatt provided truthful and accurate statements to the government and does not have a propensity
23 to make false statements to government as falsely alleged by FTB.⁵³ Mr. Hyatt properly registered to vote in Nevada and Mr.
24 Zuzak has refuted Mr. Dameron's false hearsay statement that Mr. Zuzak told him Mr. Hyatt was on Jennifer Circle in
25 October 1991. (ASAB Attachment 2, Section 10; Hyatt's 2014 Supp. Aff., Section 2.6.4.14).

26
27 ⁴⁸ 1991 ARB, Section III.B.4, pp. 86-87.

28 ⁴⁹ 1991 ARB, Section III.B.5, pp. 87-89.

29 ⁵⁰ 1991 ARB, Section III.B.6, pp. 89-90.

⁵¹ 1991 ARB, Section III.B.7, pp. 91-93.

⁵² 1991 ARB, Section III.B.8, pp. 93-94. Hyatt's 2008 Affidavit, ¶¶ 61-62.

⁵³ 1991 ARB, Section III.B.9, pp. 94-96.

1 Tenth factor: Mr. Hyatt did not solicit false testimony as falsely alleged by FTB. Mr. Hyatt's witnesses did not offer
2 false testimony. (ASAB Attachment 2, Section 11; Hyatt's 2014 Supp. Aff., Section 2.6.4.15). FTB offered no evidence that
3 Mr. Hyatt was even present at any witness interviews.

4 **1.10 THE PHILIPS DOCUMENTS SIGNIFICANTLY SUPPORT MR. HYATT'S RESIDENCY AND**
5 **SOURCING APPEALS.**

6 The Philips documents significantly support Mr. Hyatt's residency and sourcing appeals; e.g., the Philips documents
7 confirm that Philips alone created, managed, and financed the Philips Licensing Program, that Philips used its worldwide
8 licensing team to license Mr. Hyatt's patents under the Philips Licensing Program, and that the Philips documents contain Mr.
9 Hyatt's Las Vegas contact information (1991 ASAB Section 1.7, ASAB Philips document tables (Ex. 1-15)).

10 The Philips documents significantly support Mr. Hyatt's appeals, illustrated by 15 tables of excerpts from and cites to
11 more than 5,000 pages of Philips documents, which were disregarded by FTB (1991 ASAB Section 1.7.1).

12 The Philips documents detail FTB's bad faith \$24 million income error (1991 ASAB Section 1.7.2).

13 The Philips documents confirm that Philips created, managed, and operated the Philips licensing program as testified
14 to by highly credible eyewitnesses (1991 ASAB Section 1.7.3).

15 The Philips documents confirm that Mr. Hyatt had only limited involvement in the large worldwide Philips licensing
16 program (1991 ASAB Section 1.7.9).

17 FTB's overbroad Philips subpoenas forced Mr. Hyatt to obtain New York court orders and temporary restraining
18 orders to protect his confidential information and to avoid an overbroad production (1991 ASAB Section 1.7.4).

19 "Philips by itself and through its attorneys created and managed the Licensing Program," "Philips managed the
20 licensing program from its offices in New York and the Netherlands," Mr. Hyatt did not have the rights to license his own
21 patents (1991 ASAB Section 1.7.3).

22 The Philips documents refute FTB's claim that Mr. Hyatt operated a licensing business at the Jennifer Circle house.
23 Mr. Hyatt was contractually prohibited from operating a licensing business. (1992 ASAB Sections 1.4.1.3, 1.7.3).

24 FTB attempts to misrepresent to your Board that Mr. Hyatt had a California licensing business by quoting statements
25 Mr. Hyatt made in a radio interview with Mike Malone in May 1991.⁵⁴ During the interview Mr. Hyatt indicated that his
26 people had been approached by a group of companies and were negotiating with them. (Malone Transcript, p. 2). At this time
27 Mahr Leonard had exclusive rights to negotiate with four companies pursuant to a First Amendment (GLR 04064) to the
28 December 18, 1990, Mahr Leonard Agreement.⁵⁵ Mahr Leonard was doing the negotiating. In addition, the July 1991 Philips
29 Agreement (FTB_Philips 0000596-0000635) was proceeding. Under the July 1991 Philips Agreement, Philips had the

54 KTEH San Jose Public Television, May 20, 1991 (FTB Exhibit P, Tab 27); FTB Attachment A-R, pp. 12-13.

55 Mahr Leonard Representation Agreement, December 18, 1990, GLR 094055-04062.

responsibility to sublicense Mr. Hyatt's patents. Mr. Hyatt did not personally negotiate sublicenses that were signed under the Phillips Licensing Program.

As another example of FTB's misrepresentations, in its Attachment A-R, p. 13, FTB falsely accuses Mr. Hyatt of misstating his former employment during the Malone interview. According to FTB, Mr. Hyatt described his former employment at Teledyne as "research scientist" while Barry Lee stated Mr. Hyatt worked in marketing. However, both statements were correct. Mr. Hyatt testified that his job title at Teledyne was "research scientist" and that he was an engineer in the Advanced Systems Division which was under the marketing department.⁵⁶ Thus the statements of Mr. Hyatt and Mr. Lee were both correct.

1.11 FTB'S BAD FAITH ATTACKS ON EYEWITNESS TESTIMONY BASED ON FTB'S UNSUPPORTED SPECULATION OF THE MEANING OF DOCUMENTATION.

Mr. Hyatt and his eyewitnesses testified under oath or penalty of perjury. However, FTB attacks this *direct eyewitness testimony* based upon fabricated stories and incorrect speculation about various documents. FTB's speculation should be disregarded in view of this *eyewitness testimony* (Sections 1.11.4, 1.11.5).

1.11.1 Mr. Hyatt Has Provided More Than 220 Sworn Affidavits And Declarations Signed By More Than 150 Witnesses That All Support Mr. Hyatt's Facts.

More than 150 witnesses signed more than 220 sworn affidavits or declarations under oath or penalty of perjury that all support Mr. Hyatt's facts.⁵⁷ See Updated Index of Affidavits and Updated Testimonial Topics table, Sections 1.3.1 and 1.3.3. Many witnesses testified about Mr. Hyatt's decision to move to Las Vegas, about his preparation to move to Las Vegas, that he permanently moved away from his former residence in La Palma, California in September 1991, that he sold his La Palma house in October 1991, that he moved into his Las Vegas Tara home in April 1992, and that he permanently resided in Las Vegas, Nevada.⁵⁸

1.11.2 FTB's Attacks On Eyewitness Testimony Are Made In Bad Faith.⁵⁹

FTB's attempt to discredit the testimony of more than 100 witnesses by using false inferences and speculation must be rejected. Mr. Hyatt's eyewitness and documentary evidence confirms that the testimony of the eyewitnesses was correct

⁵⁶ Affidavit of Gilbert P. Hyatt, August 15, 2010, § 1.18, p. 75, Annex XI, Ex. 13.

⁵⁷ 1991 AOB, Section II.C.19, pp. 37-38; see rebuttal to FTB's false statements at 1991 ARB, Section II.A.19, pp. 58-67. See Mr. Hyatt's response to FTB's false statements regarding this *Bragg* factor, 1992 ASB, Section I.E.17, pp. 51-52; 1991 ASAB, Section 1.8.6.

⁵⁸ Updated Testimonial Topics, Exs. T001, T002, T003, T005, T006, T007, T124, T018, T128, and T049. See also Updated Testimonial Topics, Exs. T008, T009, T021, T019, T095, T096, T129, T026, T022, T023, T024, T025, T100, T057, T030, T135, T097, T146, T040, T138, T139, T041, T042, T043, T140, T045, T041, T044, T046, T047, T147, and T048.

⁵⁹ 1991 ASAB Section 1.8.6.

1 and FTB was wrong. No inference about Mr. Hyatt's location can be drawn from *mis-addressed documents* (1991 ASAB,
2 Section 1.8.6.1).

3 FTB makes hundreds of false allegations about eyewitness testimony based on FTB's bad faith acts and false
4 inferences. FTB disregards or misrepresents overwhelming eyewitness testimony and documentation that disprove its false
5 inferences and that is reinforced by numerous eyewitnesses. (1991 ASAB, Section 1.8.6.2).

6 FTB's attacks on the true and correct statements in Mr. Hyatt's affidavits are based on FTB's bad faith acts and false
7 inferences. FTB disregards or misrepresents overwhelming eyewitness testimony and documentation that disprove its false
8 inferences and that is reinforced by numerous eyewitnesses. (1991 ASAB, Section 1.8.6.3).

9 FTB's attacks on credible third party eyewitnesses must be disregarded for the additional reason that the eyewitness
10 statements do not stand alone. Eyewitness statements are reinforced by consistent testimony from dozens of other
11 eyewitnesses: 72-witnesses testified about Mr. Hyatt moving away in 1991. (1991 ASAB, Section 1.8.6.4).

12 FTB took numerous depositions of the Hyatt witnesses and Philips witnesses but FTB did not brief the deposition
13 testimony because the testimony supported Mr. Hyatt (1991 ASAB, Section 1.8.6.5).

14 **1.11.3 FTB's Attack On The Credibility Of Witness Testimony Provided In Support Of Mr. Hyatt Are** 15 **Baseless.**⁶⁰

16 FTB's arguments about witness credibility are unsupported.⁶¹ Who "penned" the sworn statements does not
17 determine credibility of a sworn statement.⁶² FTB's "scripted" allegations are meaningless.⁶³ Asking a witness to submit
18 testimony in the form of an affidavit or declaration has no bearing on the credibility of such testimony.⁶⁴ Refreshing a
19 witness' memory is entirely proper and has no bearing on the credibility of the affidavits or declarations.⁶⁵ Extra-statutory
20 compensation does not undermine the credibility of affidavits or declarations.⁶⁶ Mr. Hyatt's relationships with witnesses do
21 not undermine the credibility of the affidavits or declarations.⁶⁷

22 FTB's specific "objections" to the affidavits provided in support of Mr. Hyatt are without merit. Affidavits are an
23 approved form of presenting evidence to your Board.⁶⁸

25 ⁶⁰ 1991 ASB, Section III, pp. 15-99.

26 ⁶¹ 1991 ASB, Section VI, pp. 98-99; 1991 ASB, Section III.A, pp. 16-25.

27 ⁶² 1991 ASB, Section III.A.1, pp. 17-20.

28 ⁶³ 1991 ASB, Section III.A.2, pp. 20-21.

29 ⁶⁴ 1991 ASB, Section III.A.3, pp. 21-22.

⁶⁵ 1991 ASB, Section III.A.4, p. 23.

⁶⁶ 1991 ASB, Section III.A.5, pp. 23-24.

⁶⁷ 1991 ASB, Section III.A.6, p. 24.

⁶⁸ 1991 ASB, Section III.B, pp. 25-98.

1 Mr. Hyatt's eyewitnesses testified that FTB private investigators provided false testimony about them (1991 ASAB
2 Section 1.8.4.8). The declarations by FTB's private investigators should be afforded no weight in these appeals.⁶⁹

3 Dozens of eyewitnesses made over one thousand statements under oath or penalty of perjury identifying and
4 correcting false statements that FTB made about them or about events that they had witnessed. This overwhelming testimony
5 is provided in six tables of Testimonial Responses (Testimonial Responses to FTB's statements made in its 1991 ROB, 1992
6 ROB, 1991 RRB, 1992 RRB, 1991 Attachment A and 1992 Attachment A) (See Section 1.3.4). This overwhelming testimony
7 is further provided in six tables of FTB false responses (two tables of false statements made in the FTB audit file, two tables of
8 false statements made by FTB private investigator Jake Dameron, and two tables of false statements made by FTB private
9 investigator William Savage) (See Sections 1.3.7, 1.3.8).

10 FTB's misrepresentations and false statements are further illustrated with its treatment of Thomas McGuire, Mr.
11 Hyatt's Las Vegas real estate agent and Mr. Hyatt's house hunting activities with Mr. McGuire in Las Vegas.

12 FTB has made many false statements concerning Mr. McGuire. At FTB Attachment A-R, p. 70, FTB fabricates a
13 ridiculous story that handwritten notes that Mr. Hyatt made while walking through houses (relative to purchasing) with Mr.
14 McGuire on December 11, 1991, (H 013694), were made during a telephone conversation. Mr. Hyatt's handwritten notes
15 comment on several different Las Vegas houses that Mr. Hyatt and Mr. McGuire walked through on December 11, 1991.
16 They have both provided their eyewitness testimony that they personally walked through on December 11, 1991. Mary
17 Stratton, owner of the Tara house which Mr. Hyatt bought on April 3, 199, also confirmed that she and her husband gave Mr.
18 Hyatt and Mr. McGuire a tour of the Tara house and grounds on December 11, 1991.⁷⁰

19 At FTB Attachment A-R, p. 70, FTB falsely states that Mr. Hyatt frequently deals with Mr. McGuire by facsimile
20 and telephone from his Jennifer Circle "home/business". The eyewitness testimony of Mr. McGuire and Mr. Hyatt confirms
21 that Mr. McGuire dealt with Mr. Hyatt in person and not by telephone.⁷¹ Furthermore, Mr. Hyatt did not have a
22 "home/business" at his former La Palma house. He left the La Palma house when he sold it on October 1, 1991, and he
23 returned for a visit late 1992.⁷² Mr. McGuire stated in a December 16, 1991, purchase offer for the Las Vegas Tara house that
24 he "has counceled [sic] buyer [Mr. Hyatt] on many propertys" (P 05649-5650).

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26
27 ⁶⁹ 1991 ASB, Section I, pp. 6-12.

28 ⁷⁰ Affidavit of Thomas McGuire, March 31, 2012, ¶¶ 48, 50; Hyatt's August 15, 2010, Aff., § 1.9; Affidavit of Mary
Trotter Stratton, June 21, 2010, ¶ 27; Rebuttal to FTB Att. A/F, Section I. C., December 11, 1991.

29 ⁷¹ Affidavit of Thomas McGuire, March 31, 2012, ¶¶ 6, 54, 58, 69-73; Hyatt's August 15, 2010, Aff., § 1.9; Rebuttal
to FTB Att. A/F, Section I. D., December 11, 1991.

⁷² Hyatt's August 15, 2010, Aff., § 1.19.1.

1 At FTB Attachment A-R, p. 70, FTB falsely states that Mr. Hyatt and Mr. McGuire did not meet personally until
2 about a month before the April 1992 closing on the Las Vegas Tara Avenue home. This statement is belied by the Hyatt notes
3 (H 013694) and related eyewitness testimony of Mr. McGuire, Mr. Hyatt, and Ms. Stratton as discussed above, which show
4 that Mr. McGuire had been showing Mr. Hyatt houses in Las Vegas in December 11, 1991. Mr. McGuire further testified that
5 he met Mr. Hyatt one or two months prior to the December 16, 1991, purchase offer on the Las Vegas Tara house (P05649-
6 5650), not one or two months prior to the April 1992 closing on the Tara Avenue house.⁷³

7 FTB falsely states that Mr. McGuire stated he represented the Strattons and “recalled it was Grace Jeng who was
8 house hunting and he did not meet Mr. Hyatt until about a month before the offer on the Tara house was accepted.”⁷⁴ Mr.
9 McGuire categorically denies he represented the Strattons and states that he personally showed houses to Mr. Hyatt and does
10 not remember taking Mr. Hyatt and Ms. Jeng house hunting together.⁷⁵

11 FTB sent Mr. McGuire a proposed declaration for his signature that contained many false statements. Mr. McGuire
12 marked up the proposed declaration by crossing out and marking many of the false statements.⁷⁶ Mr. McGuire states that the
13 proposed declaration was drafted without his knowledge, misrepresents what he told Mr. Savage and Ms. Lundvall, is not
14 correct, and he did not sign it.⁷⁷ The declaration misstates what Mr. McGuire purportedly told Ms. Lundvall in a telephone
15 conversation. He crossed out many of the statements in the proposed declaration and refused to sign it.⁷⁸ Mr. Savage also
16 made false statements in a Memorandum of Interview dated August 9, 2009, that mischaracterized a telephone conversation
17 with Mr. McGuire.⁷⁹

18 **1.11.4 FTB Continues It’s Bad Faith Attacks On Mr. Hyatt Questioning The True And Correct**
19 **Statements In His Affidavits.**

20 FTB continues it’s bad faith attacks on Mr. Hyatt by questioning the true and correct statements in his affidavits.
21 FTB’s inferences and speculation cannot overcome Mr. Hyatt’s eyewitness testimony provided under oath in his affidavits.
22 (ASAB Attachment 3).

23 Mr. Hyatt was not present at his former La Palma house between October 1, 1991, when he sold the house, and late
24 1992 as falsely contended by FTB (1991 ASAB, Sections 1.8.4.1 to 1.8.4.7). A total of 72-witnesses testified about Mr. Hyatt
25 moving away in 1991. (ASAB Attachment 3, Section 2).

26 ⁷³ Affidavit of Thomas McGuire, March 31, 2012, ¶¶ 6, 8-9, 58, 69-73; Rebuttal to FTB Att. A/F, Section I. E.,
27 December 11, 1991.

28 ⁷⁴ FTB 1991 Reply Brief, pp. 10:23-11:3.

29 ⁷⁵ Affidavit of Thomas McGuire, March 31, 2012, ¶¶ 4-6.

⁷⁶ Exhibit 1 to Mr. McGuire’s 2012 Affidavit, March 31, 2012, Annex XXV, Ex. 55.


⁷⁷ Affidavit of Thomas McGuire, March 31, 2012, ¶¶ 7-9, 15-47, Annex XXV, Ex. 55.

⁷⁸ Affidavit of Thomas McGuire, March 31, 2012, ¶¶ 16-42, Annex XXV, Ex. 55.

⁷⁹ Affidavit of Thomas McGuire, March 31, 2012, ¶¶ 43-47, Annex XXV, Ex. 55.

1 Mr. Hyatt did not send faxes from his former La Palma house after October 1, 1991, as falsely contended by FTB.
2 Mr. Hyatt's only fax machine was located in Las Vegas. (1991 ASAB, Sections 1.8.4.5, 1.8.4.6; ASAB Attachment 3,
3 Section 3; Mr. Hyatt's August 15, 2010 Affidavit, Sections 1.16, 1.20; Rebuttal to FTB Att. A/F, Section I. B., October 27,
4 1991).

5 Mr. Hyatt did not attend the meetings at Mr. Roth's office on September 24, 1991, as falsely contended by FTB. Mr.
6 McHenry, Mr. Roth and Mr. Hyatt all confirm that that Mr. Hyatt did not attend the meetings at Mr. Roth's office. (ASAB
7 Attachment 3, Section 4; Rebuttal to FTB Att. A/F, Section I. A., September 24, 1991).

8  Mr. Hyatt returned from the East Coast to Las Vegas on October 21, 1991 (1991 ASAB, Section 1.5.6.2), not October
9 23, 1991, as falsely contended by FTB. Mr. Hyatt signed a Security Acknowledgment and Release in Las Vegas that was
10 witnessed by Ms. Kopp and opened a Las Vegas P.O. Box on October 21, 1991, after returning to Las Vegas from New York.
11 (ASAB Attachment 3, Section 5; Rebuttal to FTB Att. A/F, Section I. A., October 21, 1991).

12 Mr. Hyatt did not remain in New York on October 22-23, 1991, as falsely contended by FTB. (ASAB Attachment 3,
13 Section 6; Rebuttal to FTB Att. A/F, Section I. A., October 21, 1991).

14 Mr. Hyatt did not negotiate with Hitachi and did not negotiate any patent agreements during the disputed period as
15 falsely contended by FTB. Mr. Hyatt would have breached the July 1991 Philips Agreement if he had negotiated with Hitachi
16 or negotiated any patent agreement. (1992 ASAB, Section 1.7.3; ASAB Attachment 3, Section 7; Rebuttal to FTB Att. A/F,
17 Section I. C., November 30, 1991).

18 Mr. Hyatt resided in the Continental Hotel from September 26, 1991, and then resided in the Wagon Trails
19 apartments from October 21, 1991. A total of 37-witnesses testified about Mr. Hyatt's stay at a Las Vegas hotel and
20 15-witnesses testified about visiting Mr. Hyatt at his Las Vegas apartment. (ASAB Attachment 3, Section 8).

21 Mr. Hyatt did not have an expectation that potential licensees would sign license agreements. Matsushita and Fujitsu
22 had not tendered current offers by September 25, 1991, as falsely contended by FTB. (ASAB Attachment 3, Section 9).

23 Mr. Hyatt had no discretion over distribution of the license payments from Fujitsu, Matsushita and Oki. Mr. Hyatt
24 promptly distributed the license payments as required by the [First] Supplemental Agreement. (ASAB Attachment 3,
25 Section 10).

26 Mr. Hyatt was in Las Vegas on November 7, 1991, when he wrote the drafts to distribute the Fujitsu license payment
27 to Philips and Mahr Leonard. Testimony by Messrs. Connell, Moreno, Salzer and Hyatt all place Mr. Hyatt in Las Vegas on
28 November 7, 1991. (ASAB Attachment 3, Section 11).

29 Mr. Hyatt did not send a "markup" draft letter to Philips on November 22, 1991. (ASAB Attachment 3 Section 12).

Philips drafted and approved the February 3, 1992, letter to Toshiba. (ASAB Attachment 3, Section 13).

On February 27, 1992, Mr. Hyatt was in Las Vegas, not in California as alleged by FTB. A mis-addressed FedEx delivery does not mean Mr. Hyatt was in California. (1991 ASAB, Section 1.8.4.4; ASAB Attachment 3, Section 14; Rebuttal to FTB Att. A/F, Section I. A., February 27, 1992).

Mr. Hyatt drove from Las Vegas to California On March 30, 1992, and returned to Las Vegas on March 31, 1992, contrary to what is alleged by FTB. Mr. Hyatt met with Mr. Hudson for an inspection of the Las Vegas Tara house on March 31, 1991. (ASAB Attachment 3, Section 15; Rebuttal to FTB Att. A/F, Section I. A., March 31, 1992).

1.11.5 The Testimony Of Mr. Hyatt's Eyewitnesses Is True And Correct.

Mr. Roth accurately testified that Mr. Hyatt did not meet with Mr. McHenry, Mr. Rudestam, Mr. Tamoshunas, Mr. Haken, Mr. Mahr or Mr. Leonard at Mr. Roth's office on September 24, 1991. (ASAB Attachment 4, Section 2; Rebuttal to FTB Att. A/F, Section I. A., September 24, 1991).

Mr. Roth accurately testified that Mr. Hyatt did not negotiate with Hitachi. Mr. Hyatt's only meetings with Hitachi were a 45 minute "get acquainted" meeting on December 16, 1991, and a meeting in Texas on May 26, 1992. Mr. Hyatt did not negotiate with Hitachi at these meetings or at any other time. (1992 ASAB, Section 1.7.3; ASAB Attachment 4, Section 3).

Mr. Roth accurately testified that he met with Mr. Hyatt on March 31, 1992, but Mr. Hyatt did not negotiate with Hitachi on March 31, 1992 or May 26, 1992. (1992 ASAB, Section 1.7.3; ASAB Attachment 4, Section 4).

Mr. Roth accurately testified that Mr. Hyatt did not attend the dinner show with Hitachi on January 28, 1992. (ASAB Attachment 4, Section 5).

Mr. Roth accurately testified that the licensing correspondence was primarily between Philips, Mahr Leonard, PSB&C and the licensees and Mr. Hyatt was outside the mainstream of the licensing correspondence as shown by the licensing correspondence set forth in Exhibit 67.to Mr. Roth's Sourcing Affidavit (1991 ASAB, Section 1.7.1 and Exhibits 9-11; ASAB Attachment 4, Section 6).

Mr. Hyatt's family members accurately testified that Mr. Hyatt was in Las Vegas on October 21, 1991. (1992 ASAB, Section 1.5.6.2). (ASAB Attachment 4, Section 7).

FTB seeks to deceive your Board by implying Mr. Rudestam testified about photographs from a non-existing portrait photoshoot on October 6, 1991, when he did not. (ASAB Attachment 4, Section 8)

FTB seeks to deceive your Board by implying Mr. McHenry testified about "all" photographs when he only denied involvement with specific photographs. (ASAB Attachment 4, Section 9).

1 XCS witnesses testified accurately and no false testimony was solicited. XCS witnesses Maldonado and Tran
2 submitted accurate affidavits. (ASAB Attachment 4, Section 10).

3 Dr. Peloquin testified accurately and no false testimony was solicited. Dr. Peloquin accurately testified that three
4 handwritten dates on a letter produced by established fraud perpetrator Sheila Cox were of unknown authorship and not
5 official information from his office. (ASAB Attachment 4, Section 11).

6 **1.12 RESPONSES TO REPRESENTATIVE FALSE STATEMENTS IN FTB'S ROB's AND RRB's.**

7 **1.12.1 FTB's Physical Presence Arguments In Its RRBs Are Without Merit.**

8 FTB's physical presence arguments in its RRBs are without merit.⁸⁰ Mr. Hyatt responded to FTB's incorrect
9 statements regarding (a) his relevancy argument and his knowledge of future income;⁸¹ (b) 'direct evidence', xerographic
10 copy services (XCS) invoices, and his 1977 Toyota;⁸² (c) his credit card charges that are not made by him;⁸³ (d) 'direct
11 evidence' and medical visits;⁸⁴ (e) 'direct evidence,' credit card charges, and his checking account;⁸⁵ (f) his statement that
12 FTB provides no evidence to support its assertion;⁸⁶ (g) "arguments that FTB's residency evidence is 'not credible'";⁸⁷ (h)
13 contemporaneous documents; missing contemporaneous documents; and his affidavit evidence;⁸⁸ (i) contemporaneous
14 documents vs. the Continental Hotel Casino issue;⁸⁹ (j) the allegations that someone else rented the Wagon Trails Apartment
15 for him and FTB's destruction of evidence;⁹⁰ (k) his claims that FTB forged documents;⁹¹ (l) his personal credit cards
16 allegedly in use in California by someone else;⁹² (m) XCS copier maintenance invoices and La Palma, California press
17 releases;⁹³ (n) FTB's allegation of his intentionally bad memory;⁹⁴ (o) missing telephone records;⁹⁵ and (p) references to
18 known erroneous evidentiary support.⁹⁶

21 ⁸⁰ 1992 ASB, Section I.A, pp. 1-24.

22 ⁸¹ 1992 ASB, Section I.A.1, p. 2.

23 ⁸² 1992 ASB, Section I.A.2, pp. 2-3.

24 ⁸³ 1992 ASB, Section I.A.3, pp. 3-4.

25 ⁸⁴ 1992 ASB, Section I.A.4, pp. 4-5.

26 ⁸⁵ 1992 ASB, Section I.A.5, p. 5.

27 ⁸⁶ 1992 ASB, Section I.A.6, pp. 5-6.

28 ⁸⁷ 1992 ASB, Section I.A.7, p. 6.

29 ⁸⁸ 1992 ASB, Section I.A.8, pp. 6-7.

⁸⁹ 1992 ASB, Section I.A.9, pp. 7-13.

⁹⁰ 1992 ASB, Section I.A.10, pp. 13-17.

⁹¹ 1992 ASB, Section I.A.11, pp. 17-18.

⁹² 1992 ASB, Section I.A.12, pp. 18-19.

⁹³ 1992 ASB, Section I.A.13, pp. 19-21.

⁹⁴ 1992 ASB, Section I.A.15, p. 21.

⁹⁵ 1992 ASB, Section I.A.16, pp. 22-23.

⁹⁶ 1992 ASB, Section I.A.17, p. 24.

1 The two fraud penalties were improperly imposed and must be removed.⁹⁷ Mr. Hyatt responded to FTB's false
2 statements regarding (a) the alleged overwhelming physical presence in California;⁹⁸ (b) the alleged sham sale of his
3 California house;⁹⁹ (c) the alleged suppression of evidence (Continental Hotel Casino);¹⁰⁰ (d) the alleged concealment and
4 destruction of checks and account records;¹⁰¹ (e) the alleged failure to cooperate at audit and protest;¹⁰² (f) the alleged
5 inadequate records to support his tax return;¹⁰³ (g) the alleged abuse of corporate form;¹⁰⁴ (h) the alleged failure to report
6 income;¹⁰⁵ (i) his alleged propensity to make false statements to government;¹⁰⁶ and (j) the alleged solicitation of false
7 testimony.¹⁰⁷

8 FTB's other miscellaneous arguments are unpersuasive.¹⁰⁸ Mr. Hyatt responded to FTB's incorrect statements
9 regarding (a) "the accusations and misstatements in Mr. Hyatt's introduction";¹⁰⁹ (b) "misrepresentations concerning the
10 protest process";¹¹⁰ (c) alleged delay by Mr. Hyatt;¹¹¹ (d) when source of income was raised;¹¹² (e) misrepresentation of
11 Board rule 5523.6;¹¹³ and (f) R&TC Section 17016, the presumption of full year California residency.¹¹⁴

12 1.12.2 **FTB's Sourcing Arguments In Its RRBs Are Without Merit.**

13 FTB's sourcing arguments fail because the license payments received by Mr. Hyatt did not have a California
14 source.¹¹⁵

15 Sourcing applies only to nonresidents of California so FTB must concede Mr. Hyatt is a resident of Nevada for its
16 sourcing argument. Mr. Hyatt did not have a California business. FTB has never argued the first sourcing position, that Mr.
17 Hyatt's patents were employed as capital within California. Furthermore FTB cannot establish that possession and control of
18 the patents has been localized in connection with a business so that their "substantial use and value" attach to and become an
19

20 ⁹⁷ 1992 ASB, Section I.B, pp. 24-37.

21 ⁹⁸ 1992 ASB, Section I.B.1, pp. 25-26.

22 ⁹⁹ 1992 ASB, Section I.B.2, pp. 26-27.

23 ¹⁰⁰ 1992 ASB, Section I.B.3, pp. 27-28.

24 ¹⁰¹ 1992 ASB, Section I.B.4, pp. 28-31.

25 ¹⁰² 1992 ASB, Section I.B.5, pp. 31-32.

26 ¹⁰³ 1992 ASB, Section I.B.6, pp. 32-33.

27 ¹⁰⁴ 1992 ASB, Section I.B.7, pp. 33-35.

28 ¹⁰⁵ 1992 ASB, Section I.B.8, pp. 35-36.

29 ¹⁰⁶ 1992 ASB, Section I.B.9, pp. 36-37.

¹⁰⁷ 1992 ASB, Section I.B.10, p. 37.

¹⁰⁸ 1992 ASB, Section I.D, pp. 38-41.

¹⁰⁹ 1992 ASB, Section I.D.1, pp. 39.

¹¹⁰ 1992 ASB, Section I.D.2, p. 39.

¹¹¹ 1992 ASB, Section I.D.3, p. 40.

¹¹² 1992 ASB, Section I.D.4, p. 40.

¹¹³ 1992 ASB, Section I.D.6, p. 41.

¹¹⁴ 1992 ASB, Section I.D.7, p. 41.

¹¹⁵ 1992 ASB, Section II, pp. 53-99

1 asset of the business in California. After the July 1991 Philips Agreement granted Philips exclusive licensing rights not
2 “substantial use and value” remained to be transferred to a California business.¹¹⁶

3 Sourcing – at best – is only before your Board for the period September 26, 1991 through April 2, 1992 because there
4 has never been an assessment made against Mr. Hyatt regarding the post-disputed period.¹¹⁷

5 All of the evidence in the record shows FTB cannot meet its burden of proof to show that Mr. Hyatt had California
6 source income during the disputed period or thereafter.¹¹⁸

7 The Philips Licensing Program Agreements show that Mr. Hyatt did not have California source income.¹¹⁹
8 Specifically, the July 1991 Philips Agreement¹²⁰ did not put Mr. Hyatt in control of the Philips Licensing Program.¹²¹ Philips
9 by itself created and managed the Philips Licensing Program. (Affidavit of Algy Tamoshunas, August 4, 2010, ¶ 10, Annex
10 XII.) The July 1991 Philips Agreement also did not create an agency relationship between Philips and Mr. Hyatt. Philips was
11 obligated to license Mr. Hyatt’s patents, not to act as his agent.¹²² Further, neither the July 1991 Philips Agreement nor any
12 other Philips documents support the existence of a “Jennifer Circle, La Palma, California home business”.¹²³ FTB incorrectly
13 contends Ms. Jeng worked out of the Jennifer Circle location”¹²⁴ and that ““Ms. Jeng is paid for services performed on behalf
14 of Mr. Hyatt”.¹²⁵ FTB also incorrectly contends that Mr. Hyatt left office equipment at the 7481 Jennifer Circle property and
15 used them during the disputed period.¹²⁶

16 The July 1991 Philips Agreement confirms that Philips had the exclusive authority to license Mr. Hyatt’s patents to
17 Toshiba and Omron.¹²⁷ The fact that Philips Licensing Program correspondence was misdirected to Mr. Hyatt’s former
18 California addresses after he moved to Las Vegas does not establish he was in control of the Philips Licensing Program.¹²⁸
19 Further, neither the IRS audit nor the Philips/Hyatt termination agreement undermine the fact that Philips was in control of the
20 Philips Licensing Program under the July 1991 Philips Agreement.¹²⁹

23 ¹¹⁶ 1992 ASB, Section II.A, pp. 53-56.

24 ¹¹⁷ 1992 ASB, Section II.B, pp. 56-58.

25 ¹¹⁸ 1992 ASB, Section II.C, pp. 58-91.

26 ¹¹⁹ 1992 ASB, Section II.C.1, pp. 58-80.

27 ¹²⁰ 1992 ASB, Section II.C.1.a, pp. 58-76.

28 ¹²¹ 1992 ASB, Section II.C.1.a.i, pp. 59-64.

29 ¹²² 1992 ASB, Section II.C.1.a.ii, pp. 65-66.

¹²³ 1992 ASB, Section II.C.1.a.iii, pp. 67-72.

¹²⁴ 1992 ASB, Section II.C.1.a.iii.(a), pp. 68-70.

¹²⁵ 1992 ASB, Section II.C.1.a.iii.(b), pp. 70-71.

¹²⁶ 1992 ASB, Section II.C.1.a.iii.(c), pp. 71-72.

¹²⁷ 1992 ASB, Section II.C.1.a.iv, pp. 72-73.

¹²⁸ 1992 ASB, Section II.C.1.a.v, p. 73.

¹²⁹ 1992 ASB, Section II.C.1.a.vi, pp. 74-75.

FTB's claims regarding DNC in its RRB is without merit. Mr. Hyatt has never contended that DNC participated in the Philips Licensing Program.¹³⁰

- September 1991 Mahr Leonard Agreement and the [First], Second and Third Supplemental Agreements with Philips.¹³¹
 - The exclusive negotiating rights Mahr Leonard received through the September 1991 Mahr Leonard Agreement came from Philips, not Mr. Hyatt.¹³²
 - The September 1991 Mahr Leonard Agreement and Philips Supplemental Agreements establish Mr. Hyatt signed the seven patent agreements at Philips' request and pursuant to the three supplemental agreements.¹³³
 - Nothing in the September 1991 Mahr Leonard Agreement or Philips Supplemental Agreements undermine the fact that PSB&C and Mahr Leonard negotiated with Hitachi, not Mr. Hyatt.¹³⁴
- Other miscellaneous contemporaneous licensing documents – the June 5, 1991 Pioneer Option Agreement.¹³⁵
- The testimony cited in support of the Philips Licensing Program cannot be discredited.¹³⁶

- General allegations.¹³⁷

Each of the witnesses testifying about the Philips Licensing Program has personal firsthand knowledge of the Philips Licensing Program.¹³⁸

The Philips Licensing Program affidavits do not violate the parole evidence rule.¹³⁹

- Specific witness allegations – Algy Tamoshunas.¹⁴⁰
- Specific witness allegations – Gregory L. Roth, R. Danny Huntington and Gilbert P. Hyatt.¹⁴¹
 - FTB's claims regarding the attorney-client relationship between Mr. Hyatt and Mr. Roth.¹⁴² Mr. Roth represented Philips, not Mr. Hyatt after July 1991 with respect to the *Hyatt v. Boone* interference and the Philips Licensing Program. (Rebuttal to FTB Att. A/F, Section I. B., November 1, 1991).
 - Philips was the real party in interest with regard to the *Hyatt v. Boone* interference.¹⁴³
 - FTB's specific claims regarding "R. Danny Huntington's" sourcing affidavit.¹⁴⁴

¹³⁰ 1992 ASB, Section II.C.1.a.vii, pp. 75-76.

¹³¹ 1992 ASB, Section II.C.1.b, pp. 76-80.

¹³² 1992 ASB, Section II.C.1.b.i, pp. 76-77.

¹³³ 1992 ASB, Section II.C.1.b.ii, pp. 77-79.

¹³⁴ 1992 ASB, Section II.C.1.b.iii, pp. 79-80.

¹³⁵ 1992 ASB, Section II.C.1.c, p. 80.

¹³⁶ 1992 ASB, Section II.C.2, pp. 80-91.

¹³⁷ 1992 ASB, Section II.C.2.a, pp. 81-83.

¹³⁸ 1992 ASB, Section II.C.2.a.i, pp. 81-82.

¹³⁹ 1992 ASB, Section II.C.2.a.ii, pp. 82-83.

¹⁴⁰ 1992 ASB, Section II.C.2.b, pp. 83-85.

¹⁴¹ 1992 ASB, Section II.C.2.c, pp. 85-91.

¹⁴² 1992 ASB, Section II.C.2.c.i, p. 86.

¹⁴³ 1992 ASB, Section II.C.2.c.ii, pp. 86-90.

¹⁴⁴ 1992 ASB, Section II.C.2.c.iii, pp. 90-91.

- FTB's sourcing legal theories continue to fail.¹⁴⁵
 - The relevant legal inquiry is not whether Mr. Hyatt had business activities in California prior to moving to Las Vegas in September 1991.¹⁴⁶
 - Any business expense deductions were for Mr. Hyatt's work as an inventor and any related activities would have been performed at Mr. Hyatt's home in Las Vegas.¹⁴⁷
 - FTB's arguments continue to fail as a matter of law under rev. & tax. Code section 17952 and regulation 17952.¹⁴⁸
 - Income tax cases are to be decided year by year on their own merits and facts, contrary to FTB's assertions.¹⁴⁹
- FTB's even newer sourcing arguments fail.¹⁵⁰
 - There were no "\$33.5 million in guaranteed payments".¹⁵¹ Under Section 4.6 the minimum annual payments were a condition precedent "[i]n order to retain the sublicensing rights". There was no guaranteed payment. (July 1991 Philips Agreement, Section 4.6).
 - There was no "\$3 million in guaranteed payments".¹⁵² Under Section 3.1 the annual payments were simply an obligation of Philips, "Philips shall make payments to Hyatt". There was no guarantee. (July 1991 Philips Agreement, Section 3.1).

¹⁴⁵ 1992 ASB, Section II.D, pp. 91-97.

¹⁴⁶ 1992 ASB, Section II.D.1, pp. 91-92.

¹⁴⁷ 1992 ASB, Section II.D.2, p. 93.

¹⁴⁸ 1992 ASB, Section II.D.3, pp. 94-96.

¹⁴⁹ 1992 ASB, Section II.D.4, pp. 96-97.

¹⁵⁰ 1992 ASB, Section II.E, pp. 97-99.

¹⁵¹ 1992 ASB, Section II.E.1, pp. 97-99.

¹⁵² 1992 ASB, Section II.E.2, p. 99.

1.13 INCORPORATION BY REFERENCE

Mr. Hyatt hereby incorporates by reference the following sections from the 1991 Concluding Summary.

Section 1.5 Mr. Hyatt's Evidence Is So Extensive That It Is Virtually Immeasurable.

Section 1.6 Mr. Hyatt Was A Nevada Resident Commencing On September 26, 1991.

Section 1.7 Mr. Hyatt Notified Many Persons And Entities Of His Move To And Location In Las Vegas And He Received Virtually All Of His Mail In Las Vegas During The Disputed Period And Thereafter.

Section 1.8 FTB's Residency And Sourcing Cases Are Both Based On Indisputedly Mis-Addressed Documents And On FTB's Disregard Or Misrepresentation Of Mr. Hyatt's Overwhelming Eyewitness And Documentary Evidence.

Section 1.9 FTB Makes Thousands Of False Statements In Its RSABs, Calendar, Attachment A-R, And Attachment F.

Section 1.10 Mr. Hyatt Did Not Have California Source Income.

Section 1.11 FTB's Proposed Imposition Of An Amnesty Penalty Is In Error.

Section 1.12 Interest Should Be Abated For The Additional Reason That The Nevada Supreme Court Found That FTB Committed Fraud And Intentional Infliction Of Emotional Distress In Part Because Of Its Delays.

1.14 CONCLUSION

Mr. Hyatt moved to Nevada and became a California nonresident on September 26, 1991. Mr. Hyatt sold his California house, resided in a Las Vegas hotel for a few weeks, resided in his Las Vegas leased apartment for about five months, and then resided in his Las Vegas Tara home for the last 25 years. Mr. Hyatt had no California source income during the disputed period or thereafter. The situs of Mr. Hyatt's patents followed Mr. Hyatt to Nevada and no California business had the substantial use and value of Mr. Hyatt's patents. Mr. Hyatt did not have a California licensing business and FTB's NPAs and NOAs did not give Mr. Hyatt notice of taxation based on a California business. FTB has not established by clear and convincing evidence that Mr. Hyatt intended to defraud FTB. Any interest assessments should be abated because they resulted from the intentional delay of FTB.

FTB's bad faith calendar, Attachment A-R, and Attachment E should be disregarded because of the thousands of false statements and the disregard or misrepresentation of Mr. Hyatt's overwhelming eyewitness and documentary evidence. (1991 ASAB Section 1.8).

1 Dated: September, ²⁸2016

Respectfully submitted,

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EXHIBIT 3

EXHIBIT 3

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23 BEFORE THE STATE BOARD OF
24 EQUALIZATION
25 OF THE STATE OF CALIFORNIA

26 In the Matter of the Appeals of

27 GILBERT P. HYATT
28

Case Nos. 435770 & 446509

APPELLANT'S SECOND ADDITIONAL BRIEFING (1991)

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1.1 TABLE OF ABBREVIATIONS AND DEFINITIONS.

1991 AOB	1991 Appellant's Opening Brief,
1992 AOB	1992 Appellant's Opening Brief,
1991 ARB	1991 Appellant's Reply Brief,
1992 ARB	1992 Appellant's Reply Brief,
1991 ASB	1991 Appellant's Supplemental Brief,
1992 ASB	1992 Appellant's Supplemental Brief,
AAB	Appellant's Additional Brief,
1991 ASAB	1991 Appellant's Second Additional Brief,
1992 ASAB	1992 Appellant's Second Additional Brief,
1991 ROB	1991 Respondent's Opening Brief,
1992 ROB	1992 Respondent's Opening Brief,
1991 RRB	1991 Respondent's Reply Brief,
1992 RRB	1992 Respondent's Reply Brief,
RAB	Respondent's Additional Brief,
1991 RSAB	1991 Respondent's Second Additional Brief,
1992 RSAB	1992 Respondent's Second Additional Brief,
Disputed period	FTB's name for the period in dispute, September 26, 1991 to April 2, 1992
CDE	FTB's name for Contemporaneous Documentary Evidence
Rebuttal to FTB Att. A/F	Rebuttal and Objection to FTB Calendar, Attachment A (Revised), and Attachment F
Rebuttal to FTB Att. E	Rebuttal and Objection to FTB Attachment E
Attachment A-R	FTB Attachment A (Revised)
Jennifer Circle house	7841 Jennifer Circle, La Palma house
La Palma house	7841 Jennifer Circle, La Palma house

1 NPA FTB's Audit Notice Of Proposed Assessment

2 NOA FTB's Protest Notice Of Action

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1 **1.2 TABLE OF AUTHORITIES.**

2 **CASES**

3 *Achiro v. Commissioner,*
4 77 T.C. 881 (1981)

5 *Falese v. Commissioner,*
6 58 T.C. 895 (1972)

7 *Fitch v. Comm'r,*
8 T.C. Memo 2012-358, P25 (T.C. 2012)

9 *Fox v. Erickson,*
10 99 C.A.2d 740, 742 (1950)

11 *Hale v. Comm'r,*
12 T.C. Memo 2010-229 (T.C. 2010)

13 *Franchise Tax Bd. of Cal. v. Hyatt,*
14 335 P.3d 125, 144-145, 148-149 (Nev. 2014)

15 *Jones v. Commissioner,*
16 259 F.2d 300 (5th Cir. 1958)

17 *In re Jost,*
18 117 Cal.App.2d 379, 383 (1953)

19 *Mansell v. Board of Administration,*
20 30 Cal. App. 4th 539, 545 (1994)

21 *Marchica v. State Board of Equalization,*
22 107 Cal.App.2d 501, 509 (1951)

23 *Mattel v. Gilbert Hyatt,*
24 1979 U.S. Dist. LEXIS 8812 (December 6, 1979)

25 *Padgett Coventry Price v. Commissioner of Internal Revenue Service,*
26 T.C. Memo 2004-103

27 *Powell v. Granquist,*
28 252 F.2d 56 (9th Cir. 1958)

Professional Services v. Commissioner,
79 T.C. 888, 930 (1982)

Rowlee v. Commissioner,
80 T.C. 1111, 1123 (1983)84

Stoltzfus v. United States,
398 F.2d 1002, 1004 (3d Cir. 1968)

Title Ins. Co. of Minnesota v. State Bd. of Equalization
4 Cal.4th 715 (1992)

1 **Statutes**

2 Tit.18, Cal. Rev. & Tax. Code

3 § 17014(a)

4 § 17951-4(a).

5 § 17951-4(c)

6 § 17952

7 § 17952(a)

8 § 17952(c)

9 § 19033

10 § 19034

11 § 19044

12 § 19045

13 § 19057

14 § 19036

15 Revenue and Taxation Code sections 12421 through 12435

16 **STATE BD. OF EQUALIZATION DECISIONS**

17 *Appeal of Robert F. and Helen R. Adickes,*

18 St. Bd. of Equaliz., 1990 Cal. Tax LEXIS 24, 90-SBE 012 (Nov. 27, 1990)

19 *Appeal of Eli A. and Virginia W. Allen,*

20 Cal. St. Bd. of Equal., Jan. 7, 1975)

21 *Appeal of Armstrong,*

22 St. Bd. of Equaliz. 1985 Cal. Tax LEXIS 2 December 3, 1985

23 *Appeal of Stephen D. Bragg,*

24 2003-SBE-002 (May 28, 2003)

25 *Appeal of Castillo,*

26 No. 90A-0227-ES, St. Bd. of Equaliz. 1992 Cal. Tax LEXIS 28;

27 92-SBE-020 July 30, 1992

28 *Appeals of Robert E. Wesley and Jerry J. Couchman,*

29 2005-SBE-002, (2005) Cal. Tax LEXIS 358,

30 *Appeal of Duncan*

31 1993 Cal. Tax LEXIS 147, 3-4 (1993)

32 *Appeal of Robert V. Erilane,*

33 Cal. St. Bd. of Equal., Nov. 12, 1974

34 *Appeal of Lasher,*

35 St. Bd. of Equaliz. 2005 Cal. Tax. Lexis 22 (Case No. 260933) (Jan. 25. 2005)

36 *Appeal of David G. and Helen Mendelsohn,*

37 85-SBE-141, Nov. 6, 1985

38 *Appeal of Sierra Pacific Industries,*

39 Cal. St. Bd. of Equal., Jan. 5, 1994, 94-SBE-0024

1 *Appeal of Hubbard D. & Cleo M. Wickman,*
2 81-SBE-014, Feb. 2, 1981

3 **Other Authorities**

4 Law Review Commission Comments for Evid. Code § 600

5 Uniform Division of Income for Tax Purposes Act,
6 Sections 25120 to 25139

1.3 TABLE OF CITATIONS AND LINKS TO EXAMPLES OF MR. HYATT'S EVIDENCE.

1.3.1 Updated Testimonial Topics Table And Exhibits Summarizing The Eyewitness Testimonial Subject Matters And The Reinforcement Of Testimony Between Eyewitnesses (E.G., 72-Witnesses Testified About Mr. Hyatt's Move Away In 1991) Under Oath Or Penalty Of Perjury.

1.3.2 Updated Chronological Statements Of Facts (The "Chronologies"), A Chronology Of Mr. Hyatt's Overwhelming Eyewitness And Documentary Evidence.

Updated 1991 Pre-Disputed Period Chronological Statements Of Facts.

Updated 1991 Disputed Period Chronological Statements Of Facts.

Updated 1992 Disputed Period Chronological Statements Of Facts.

Updated 1992 Post-Disputed Period Chronological Statements Of Facts.

1.3.3 The More Than 220 Affidavits And Declarations Sworn To Or Signed Under Penalty Of Perjury By More Than 150 Eyewitnesses In Support Of Mr. Hyatt's Facts.

Updated Index of Affidavits.

Affidavits and Declarations with Exhibits filed with the AOBs.

Affidavits and Declarations with Exhibits filed with the ARBs.

Affidavits and Declarations with Exhibits filed with the ASBs.

Post-Briefing Evidence (Affidavits and Declarations with Exhibits).

Mr. Hyatt's Contemporaneous Documentary Evidence (CDE) Affidavits Describing And Authenticating Thousands of Pages of Documentary Evidence.

Mr. Hyatt's 2012 Disputed Period CDE Affidavit.

Mr. Hyatt's 2016 Supplemental Disputed Period CDE Affidavit.

Mr. Hyatt's 2016 Post-Disputed Period CDE Affidavit.

Sourcing Affidavits With Exhibits.

1.3.4 "Testimonial Responses" Tables And Excerpts Regarding Eyewitnesses' Overwhelming Testimony To Identify And Correct FTB's False Arguments And False Facts.

Testimonial Responses To FTB's 1991 ROB

Testimonial Responses To FTB's 1992 ROB

Testimonial Responses To FTB's 1991 RRB

Testimonial Responses To FTB's 1992 RRB

Testimonial Responses To FTB's 1991 Attachment A

Testimonial Responses To FTB's 1992 Attachment A

1.3.5 Philips Document Tables Providing Examples Of More Than 5,000 Pages Of Philips Documents That Support Mr. Hyatt's Cases.

1.3.6 Witness Deposition Tables Providing Examples Of More Than 20 Depositions That FTB Took Of Mr. Hyatt's Eyewitnesses And Philips Licensing Attorneys That Support Mr. Hyatt's Appeals.

1.3.7 Tables Of False Statements Made In The FTB Audit File And Rebutted Under Oath Or Penalty Of Perjury By Eyewitnesses.

1.3.8 Tables Of False Statements Made Under Penalty Of Perjury By FTB Private Investigators And Rebutted Under Oath Or Penalty Of Perjury By Eyewitnesses.

1.3.9 Objection And Rebuttal To FTB's Calendar And Attachments A (Revised) And F ("Rebuttal To FTB Att. A/F").

/02/06B1 Introduction to Rebuttal To FTB Att. A/F

/02/06B2 September 1991 Rebuttal To FTB Att. A/F

/02/06B3 October 1991 Rebuttal To FTB Att. A/F

/02/06B4 November 1991 Rebuttal To FTB Att. A/F

/02/06B5 December 1991 Rebuttal To FTB Att. A/F

/02/06B6 January 1992 Rebuttal To FTB Att. A/F

/02/06B7 February 1992 Rebuttal To FTB Att. A/F

/02/06B8 March 1992 Rebuttal To FTB Att. A/F

/02/06B9 April 1992 Rebuttal To FTB Att. A/F

1.3.10 Objection And Rebuttal To FTB's Attachment E ("Rebuttal To FTB Att. E").

1.3.11 Tables Of Misrepresentations In FTB's ROBs And RRBs.

1.3.12 Tables Of Mr. Hyatt's Presence Based Upon Direct Testimonial and Documentary Evidence

ASAB Exhibit 02

ASAB Exhibit 03

CDE Affidavit Exhibit CDE-ST002

CDE Affidavit Exhibit CDE- ST003

1 **1.4 INTRODUCTION.**

2 Mr. Hyatt moved to Las Vegas on September 26, 1991, and sold his only California house five days later on October
3 1, 1991.¹ Upon moving to Las Vegas Mr. Hyatt stayed at a Las Vegas hotel for a short time, moved into his Las Vegas
4 apartment on October 21, 1991, and moved into his 5,400 square foot Las Vegas Tara home on April 3, 1992.² After he
5 moved, Mr. Hyatt's overwhelming physical presence was in Nevada. During the 190 day disputed period (September 26,
6 1991, to April 2, 1992) Mr. Hyatt had 125 full days in Nevada as a resident, zero full days in California as a resident, and 37
7 days partly in Nevada as a resident and partly in California for temporary or transitory purposes.³ All of the 1991 and 1992
8 disputed licensing payments Mr. Hyatt received came from Philips sublicensing his Nevada situs patents through the Philips
9 Licensing Program wire transferred into his Nevada situs investment accounts. He had no California source income.

10 Mr. Hyatt has produced overwhelming *eyewitness and documentary* evidence in support of his appeals. Mr. Hyatt
11 filed more than 220 declarations and affidavits from more than 150 witnesses from many walks of life⁴ in support of his
12 position in these appeals and he filed thousands of pages of very relevant contemporaneous documentary evidence ("CDE").⁵
13 This eyewitness and documentary evidence establishes (1) that Mr. Hyatt moved away from the Jennifer Circle house in 1991,
14 (2) that he moved to Las Vegas and became a Nevada resident on September 26, 1991, (3) that he sold his California house on
15 October 1, 1991, and had no other abode in California, (4) that his occasional presence in California was for temporary or
16 transitory purposes, and (5) that he did not receive California source income during the disputed period or thereafter.⁶ The
17 *Bragg* factors overwhelming confirm that his closest connections were with Nevada. None of the *Bragg* factors shows a close
18 or substantial connection to California.⁷

19 A total of 72 eyewitnesses testified about Mr. Hyatt moving away in 1991, 28 eyewitnesses testified about Mr. Hyatt
20 moving away in September 1991, and 15 eyewitnesses testified that an Asian woman (or Ms. Jeng) moved into the Jennifer
21 Circle house after Mr. Hyatt moved away in 1991.⁸ A total of **22 *Jennifer Circle neighbors*** testified about Mr. Hyatt moving
22

23 ¹ Affidavit of Gilbert P. Hyatt Regarding Contemporaneous Documentary Evidence (CDE), July 24, 2012 ("Hyatt's
24 2012 CDE Aff."), ¶¶ 7-11; Supplemental Disputed Period CDE Affidavit of Gilbert P. Hyatt, September 6, 2016 ("Hyatt's
25 2016 Supp. CDE Aff."), ¶¶ 7-8; Rebuttal to FTB Att. A/F, Section I. A., September 26, 1991, and Section I. A., October 1,
26 1991.

27 ² Rebuttal to FTB Att. A/F, Section I. A., October 21, 1991, and Section I. A., April 3, 1992.

28 ³ Day by day analysis in Rebuttal to FTB Att. A/F, Section I. A. Mr. Hyatt also had 9 full days in a California
29 hospital for cancer surgery, February 12-20, 1992. Mr. Hyatt was admitted to the California hospital on February 11 for
 cancer surgery, was discharged from the California hospital on February 21, and returned to his Las Vegas apartment that
 same day.

⁴ See Updated Testimonial Topics Table.

⁵ Hyatt's 2012 CDE Aff.; Hyatt's 2016 Supp. CDE Aff.; Hyatt's 2016 Post-DP CDE Aff.

⁶ 1991 AOB, pp. 15-38, 63-86; 1992 AOB, pp. 16-35; 1991 ARB pp. 21-68; 1992 ARB pp. 2-26, 27-81; 1992 ASB,
 pp. 41-52, 53-99.

⁷ 1991 Concluding Summary Brief.

⁸ Updated Testimonial Topics, Exs. T007, T006, and T120, respectively.

1 away in 1991 and 23 witnesses testified that they did not ever again see Mr. Hyatt at Jennifer Circle after he moved away in
2 1991.⁹ In addition, 32 witnesses testified about Mr. Hyatt's preparations to move to Las Vegas in 1991, 17 witnesses testified
3 about Mr. Hyatt's former Jennifer Circle house having little furniture and/or having packed boxes before he moved to Las
4 Vegas in 1991, 15 witnesses testified about Mr. Hyatt's possessions being carted off for storage, given away, disposed of or
5 donated to charity, and 3-witnesses testified that they helped Mr. Hyatt move his belongings to storage before he moved to Las
6 Vegas in 1991.¹⁰

7 Dozens of additional witnesses testified to Mr. Hyatt's presence in Las Vegas, visiting him and telephoning him at his
8 Las Vegas apartment, worshiping with him at their Las Vegas synagogue, house hunting with him in Las Vegas, and much
9 more.¹¹ A total of 37 witnesses testified about Mr. Hyatt's stay at a Las Vegas hotel when he first moved to Las Vegas in
10 1991, 28 witnesses testified about being informed in October 1991 that Mr. Hyatt had moved into his Las Vegas apartment, 39
11 witnesses testified about telephoning Mr. Hyatt at his Las Vegas apartment, and 20 witnesses testified about Mr. Hyatt's move
12 into his Las Vegas house in April 1992.¹² Mr. Hyatt provided numerous written changes of address to people, entities, and the
13 U.S. Postal Service.¹³ He informed more than 100 people that he had moved to Las Vegas and he provided his Las Vegas
14 contact information to his family, friends, neighbors, Philips, Mahr Leonard, service providers and many others. He even
15 worked with the Governor of Nevada to bring international businesses to Nevada.¹⁴ There can be no doubt that Mr. Hyatt
16 permanently moved to Las Vegas on September 26, 1991, and had no California source income thereafter.

17 The Introduction to the 1991 Concluding Summary is very relevant hereto and is incorporated herein by reference.

18 **1.5 FTB FAILS TO CARRY ITS BURDENS.**

19 **1.5.1 FTB Fails To Carry Its "Initial Burden" Of Establishing "Reasonable And Rational" Assessments.**

20 Both residency assessments (1991 and 1992) must be overturned because FTB did not carry its "initial burden [] to
21 show why its assessment[s] [are] reasonable and rational."¹⁵ Both residency assessments were imposed in bad faith by a rogue
22 auditor and supported by other FTB personnel who were intent on issuing assessments against Mr. Hyatt and imposing
23 enormous fraud penalties to coerce an unjustified settlement.¹⁶ It has been conclusively determined that FTB committed

25 ⁹ Updated Testimonial Topics, Exs. T102 and T127, respectively.

26 ¹⁰ Updated Testimonial Topics, Exs. T002, T003, T005, and T116, respectively.

27 ¹¹ See, e.g., Updated Testimonial Topics, Exs. T008, T009, T018, T019, T041, T042, and T044.

28 ¹² Updated Testimonial Topics, Exs. T008, T128, T019, and T049, respectively.

29 ¹³ Hyatt's 2012 CDE Aff., ¶¶ 17, 34; Hyatt's 2016 Supp. CDE Aff., ¶¶ 143, 144, 159.

¹⁴ Hyatt's 2016 Post-DP CDE Aff., ¶¶ 168, 174-179.

¹⁵ *Appeal of Wesley et al*, 2005-SBE-02, Nov. 15, 2005.

¹⁶ 1991 AOB, pp. 4-11; 1992 AOB, pp. 4-12; Updated Testimonial Topics, Exs. T180 and T181; Declaration of Thomas Rodrigue, February 11, 2015, ¶¶ 5, 9, 11, 12; Declaration of Diane Truly, February 13, 2015, ¶¶ 8, 25; Declaration of Candace Les, February 9, 2015, ¶¶ 19, 20, 23.

1 fraud, intentionally inflicted emotional distress, and acted in bad faith in its audits and protests of Mr. Hyatt.¹⁷ The record in
2 these appeals establishes that FTB committed grievous torts against Mr. Hyatt and that Mr. Hyatt suffered “extreme treatment
3 from FTB.”¹⁸ discussed in detail in ASAB Attachment 1. See also 1992 ASAB, Section 1.5.

4 For example, FTB in bad faith overstated the 1992 NPA income by \$24 million and now attempts to continue with its
5 outrageous assessment of taxes, interest, and penalties on income that is not taxable by California. (Sections 1.7.2, 1.8.5.4.4,
6 1.8.5.4.5, 1.9.10; 1992 ASAB, Section 1.7.5).¹⁹ In light of FTB’s gross misconduct and extreme bad faith treatment of Mr.
7 Hyatt during the audits and protests, there can be no presumption that FTB’s assessments were correct. Given its actions, FTB
8 must be required to produce affirmative evidence to satisfy its initial burden of showing the two assessments were reasonable
9 and rational. Specifically, FTB had to establish that assessments were not tainted by its gross misconduct. FTB has not done
10 so. Nowhere in its briefing has it addressed the fraud, intentional infliction of emotional distress, and bad faith found by the
11 Nevada jury; nor has it addressed the numerous additional acts of misconduct detailed in Appellant’s 1991 and 1992 Opening
12 Briefs. Accordingly, your Board must find that FTB has not met its initial burden and that the assessments are invalid as not
13 reasonable or rational.

14 For other examples, FTB’s calendar and Attachment A-R, FTB’s primary residency arguments, are made in bad faith
15 (Sections 1.8.2, 1.8.4) and disregard or misrepresent *overwhelming eyewitness and documentary evidence* of Mr. Hyatt’s
16 presence in Nevada; e.g., see ASAB Exhibit 2. Exhibit 2 is a table summarizing Mr. Hyatt’s presence for each day in the
17 disputed period. Exhibit 2 is linked day by day to the rebuttal for each day in Mr. Hyatt’s Rebuttal to FTB Att. A/F. Exhibits
18 CDE-ST002 and CDE-ST003²⁰ are tables summarizing Mr. Hyatt’s presence for many days during the disputed period and
19 Mr. Hyatt’s eyewitness and documentary evidence that rebuts FTB’s false inferences. See also the Testimonial Topics table.²¹

20 Both sourcing assessments (1991 and 1992) must be overturned because FTB has failed to meet its burden of proof
21 and for the additional reasons discussed in Section 1.5.2.


22 Both fraud assessments (1991 and 1992) must be overturned because FTB has failed to meet its burden of proof by
23 clear and convincing evidence and for the additional reasons discussed in Section 1.5.3.

24
25 ¹⁷ *Franchise Tax Bd. of Cal. v. Hyatt*, 335 P.3d 125 (Nev. 2014); ASAB Exhibit 11, Clark County District Court
Judgment Order dated September 5, 2008 and ASAB Exhibit 10, Clark County District Court Special Verdict Form dated
August 6, 2008.

26 ¹⁸ *Franchise Tax Bd. of Cal. v. Hyatt*, 335 P.3d 125, 149 (Nev. 2014). FTB’s bad faith acts against Mr. Hyatt are
27 further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB, Section 1.5; ASAB Attachment 1; and in Section V of
the Second Supplemental Motion To Strike.

28 ¹⁹ AAB. See also 1992 AOB, pp. 52-56; 1992 ARB, pp. 93-95.

29 ²⁰ Exhibits attached to Hyatt’s 2016 Supp. CDE Aff.

 ²¹ Testimonial Topics, Ex. T008, T009, T018, T021, T128, T019, T095, T096, T129, T026, T022, T023, T024, T025,
T100, T057, T030, T135, T097, T146, T040, T138, T139, T041, T042, T043, T140, T045, T041, T044, T046, T047, T147,
and T048.

1 The 1992 assessments must be overturned for the additional reason that there was no 1992 audit (1992 AOB, § I,
2 pp. 4-6; 1992 ARB, § II, pp. 2-3, Section 1.8.4.10).

3 **1.5.2 FTB Fails To Carry Its Burden Of Establishing That Mr. Hyatt Had California Source Income.**

4 Both sourcing assessments (1991 and 1992) must be overturned for the reasons discussed in Section 1.5.1 and for the
5 additional reasons set forth below.

6 The sourcing issue has not been audited by FTB and thus Mr. Hyatt was denied his right to protest the sourcing issue
7 (Section 1.8.5.4.2). Thus, FTB has no record on which to base a sourcing assessment. The sourcing assessments in the NOAs
8 are based on unsupported conclusory statements without a record to rely on. It is unlawful for FTB to make major
9 assessments at the end of the FTB administrative process without an audit or protest record to rely on (Section 1.8.5.4.2).
10 Your Board must not condone issuing tax assessments without adequate notice and without an adequate FTB record.

11 The California source income assessments for 1991 and 1992 are new assessments asserted for the first time by FTB
12 after the protest. FTB did not include these new sourcing assessments in the NPAs and did not set forth reasons in the NPAs,
13 as required by California law.²² Accordingly, FTB may not raise new assessments without formally complying with the
14 statutory requirements for issuing a proposed assessment notice.²³

15 Furthermore, FTB has not satisfied its burden of establishing that Mr. Hyatt had income from California sources in
16 the disputed period or thereafter.²⁴ FTB cannot meet its burden because overwhelming eyewitness and documentary evidence
17 establishes that Mr. Hyatt did not derive any income from California sources during the disputed period or thereafter (Sections
18 1.7, 1.8.5; 1992 ASAB, Sections 1.6, 1.7, 1.7.1, 1.7.1.1 to 1.7.1.5, 1.7.2, 1.7.3, 1.7.4).

19 Furthermore, in these appeals, FTB cannot satisfy its burden on the sourcing issue when it is also asserting residency
20 at the same time. To carry its burden on the sourcing issue, FTB must affirmatively establish *that Mr. Hyatt was not a*
21 *California resident*, and FTB has made no attempt to do so. To the contrary, FTB has made every effort, many of which are
22 in bad faith, to try to establish that Mr. Hyatt was a California resident. Accordingly, FTB has not satisfied its burden on the
23 sourcing issue, and therefore the sourcing issue must be dismissed.

25 ²² Rev. & Tax. Code § 19033, § 19034; see *Title Ins. Co. of Minn. v. St. Bd. of Equal.*, 4 Cal.4th 715 (1992)
26 (providing that a “set off,” *i.e.*, an assessment applied against refund, must be “formally pursued under Revenue and Taxation
27 Code . . .”).

28 ²³ Despite the procedures for FTB to issue an NPA, this Board has stated that it may decide issues raised by FTB for
29 the first time in an appeal or after the NPA is issued. See, *e.g. Appeal of David G. and Helen Mendelsohn*, 85-SBE-141, Nov.
6, 1985; *Appeal of Sierra Pacific Industries*, 94-SBE-002, Jan. 5, 1994; *Appeal of Duncan, supra*. However, these Board
decisions are in direct conflict with the carefully reasoned decision of the California Supreme Court in *Title Ins.*, and therefore
Title Ins. must control.

²⁴ 1991 AOB, Section IV.B., pp. 65-67.

1 **1.5.3 FTB Fails To Carry Its Burden On The Fraud Penalties.**

2 Both fraud assessments (1991 and 1992) must be overturned for the reasons discussed in Section 1.5.1 and for the
3 additional reasons set forth below and in Sections 1.9, 1.9.1 to 1.9.10.

4 The fraud penalties in these cases apply only to the residency assessments, *there has never been a fraud penalty*
5 *assessed for the sourcing issue against Mr. Hyatt.*

6 The 1992 fraud penalties are a continuing bad faith act by FTB.²⁵ This is because FTB has acknowledged in its RAB
7 that it made a \$24 million income error in its 1992 assessments, but it failed to reduce the tax, interest, and penalties for the
8 1992 disputed period by its \$24 million income error (Section 1.9.10). The FTB's 1991 and 1992 fraud penalty assessments
9 are also tainted by FTB's abusive policy of using the fraud penalty as leverage in residency cases to coerce individuals into
10 improper settlements.²⁶ See also Sections 1.9, 1.9.1 to 1.9.10.

11 FTB has the burden to establish that the fraud penalty applies by clear and convincing evidence.²⁷ First, FTB has not
12 carried its initial burden to show the fraud penalty assessments attributable to the residency issue was not arbitrary. Rev. &
13 Tax. Code § 19033 ("In no case shall the determination of the deficiency be arbitrary or without foundation."). In this case,
14 the 1991 and the 1992 fraud penalty assessments were tainted by FTB's highly improper policy of using the fraud penalty as
15 leverage in residency cases to coerce individuals into improper settlements. The 1992 fraud penalty is further arbitrary
16 because *FTB improperly based the 1992 fraud penalty on 1991 facts* (Section 1.8.4.10). FTB has not addressed these points
17 in its briefing. Furthermore, FTB cannot meet the clear and convincing standard (Section 1.9.4). Indeed, the record in these
18 appeals establishes just the opposite – that Mr. Hyatt did not underpay any California taxes. Accordingly, because FTB has
19 not shown that the fraud penalty assessments were reasonable and rational and not tainted by FTB's extreme misconduct, the
20 fraud penalties must be dismissed.

21 Furthermore, FTB cannot meet its burden because overwhelming evidence establishes that Mr. Hyatt did not commit
22 fraud (Sections 1.9, 1.9.1 to 1.9.10). Mr. Hyatt was overwhelming present in Las Vegas during the disputed period.²⁸

23
24
25 ²⁵ *Franchise Tax Bd. of Cal. v. Hyatt*, 335 P.3d 125, 149 (Nev. 2014). FTB's bad faith acts against Mr. Hyatt are
further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB, Section 1.5; ASAB Attachment 1; and in Section V of
the Second Supplemental Motion To Strike.

26 ²⁶ See 1991 ARB at 75 fn 455-456, citing Ex.44, *Hyatt v. FTB*, Partial Transcript of Trial Proceedings, Testimony of
Candace Les, 4/24/08, pp. 46-49; 113-115; Ex. 45, *Hyatt v. FTB*, Partial Transcript of Trial Proceedings, Testimony of Carol
Ford, 7/8/08, p. 84; Declaration of Thomas Rodrigue, Feb. 11, 2015, ¶¶ 21-26; Declaration of Diane Truly, Feb. 13, 2015, ¶¶
5, 23-25; Declaration of Candace Les, Feb.9, 2015, ¶ 32.

27 ²⁷ 1991 AOB, Section III.B., pp. 57-58.

28 ²⁸ Testimonial Topics, Ex. T008, T009, T018, T021, T128, T019, T095, T096, T129, T026, T022, T023, T024, T025,
T100, T057, T030, T135, T097, T146, T040, T138, T139, T041, T042, T043, T140, T045, T041, T044, T046, T047, T147,
and T048.

1 In sum, the 1991 and 1992 fraud penalties should be reversed because FTB has not carried its burden in these
2 appeals.

3 **1.6 FTB VIOLATES THE STATUTES AND REGULATIONS FOR CONDUCTING AUDITS, ASSESSING**
4 **TAXES, AND APPEALING TAX ASSESSMENTS.**

5 In these appeals FTB flaunts the statutory procedures for conducting audits, assessing taxes, and appealing tax
6 assessments, as well as your Board's clear rules for hearing taxpayer appeals. In these appeals, FTB has engaged in endless
7 audits that have lasted over 20 years and are continuing even now; e.g., FTB conducted its most recent deposition less than six
8 months ago in April 2016²⁹ and FTB subpoenaed the Philips documents just four years ago, after all formal briefing was
9 completed, thereby necessitating the current Second Additional Briefing.

10 FTB now asserts new theories in its 2013 additional briefing for its assessments and penalties that were not included
11 in its NPAs or NOAs³⁰ – over 20 years after the 1992 tax year ended (Section 1.8.5.1). In both the 1991 and 1992 NOAs, FTB
12 cited the 2007 Protest Determination Letter where the alternative sourcing basis was discussed. However, the 1991 and 1992
13 NOAs fail to provide any reasons for the sourcing based deficiency assessment as required by California law.³¹ They merely
14 recite an ultimate conclusion that Mr. Hyatt's patents had a business situs in California. They do not give any reason for that
15 conclusion, they do not allege that the assessments are based on any California licensing business and they do not allege that
16 Mr. Hyatt's "income" was derived from sources within California. The NOAs only allege that Mr. Hyatt's "intellectual
17 property" was derived from sources within California.³² There is no assertion that Mr. Hyatt's "income" was derived from
18 sources in California as would be the case with a California licensing business. Thus FTB did not give proper notice in the
19 NOAs that it alleges there was a California licensing business.

20 The "intellectual property" (the patents) have a "situs" that follows the residence of the owner³³ which FTB admits
21 for the sourcing issue is Nevada. To establish a "business situs" in California separate from the Nevada situs of the patents,

22 ²⁹ Deposition of Charles Cameron, April 7, 2016.

23 ³⁰ Notice of Proposed Assessment (NPA). Notice of Action (NOA). After being ordered by your Board to admit to
24 its \$24 million error in assessing license payments from Philips, FTB now maintains the disputed period residency
assessments and accompanying fraud penalties on post-disputed period licensing income with no established basis in the
NPAs or NOAs.

25 ³¹ Rev. & Tax. Code § 19033 (providing for the issuance of an NPA when FTB determines a tax deficiency on audit);
§ 19034 (providing that in each NPA FTB "shall set forth the reasons for the proposed deficiency assessment and the
computation thereof").

26 ³² The FTB Notices of Action for 1991 and 1992, December 26, 2007, both state: "Consistent therewith and
27 predicated upon all of the facts and evidence that we have developed as a result of your contest of the assessment, the
assessment is further alternatively sustained on the basis that **your intellectual property**, from which your income was
28 generated, had a business situs in California for the entire taxable year and **was therefore derived from sources within**
California" (emphasis added).

29 ³³ California law provides "income of nonresidents from stocks, bonds, notes, or *other intangible personal property* is
not income from sources within this state unless the property has acquired a business situs in this state. . . ." Rev. & Tax §
17952 (emphasis added).

1 FTB must allege and prove that “possession and control” of the patents has been localized in a California business so that the
2 “substantial use and value” attach to and become an asset of the business.³⁴ FTB has provided neither the required notice of
3 such allegations in the NPAs and NOAs nor the required proof. Further, the sourcing issue has not been audited by FTB and
4 thus Mr. Hyatt was denied his right to protest the sourcing issue (Section 1.8.5.4.2). FTB has no record on which to base a
5 sourcing assessment. The sourcing assessments in the NOAs are based on unsupported conclusory statements without a
6 record to rely on. It is unlawful for FTB to make major assessments at the end of the FTB administrative process without an
7 audit or protest record to rely on (Section 1.8.5.4.2). Your Board must not affirm tax assessments made without adequate
8 notice and without an adequate record.

9 Assertion of the 1992 fraud penalties is a continuing bad faith act by FTB. This is because FTB has acknowledged in
10 its RAB that it made a \$24 million income error in its 1992 assessments, but it failed to reduce the tax, interest, and penalties
11 for the 1992 disputed period by its \$24 million income error (Section 1.9.10). In addition, the FTB’s 1991 and 1992 fraud
12 penalty assessments are tainted by FTB’s abusive policy of using the fraud penalty as leverage in residency cases to coerce
13 individuals into improper settlements.³⁵ See also Sections 1.9, 1.9.1 to 1.9.10. See Section 1.5.3.

14 FTB disregards California law regarding the NPAs and NOAs (Section 1.8.5). FTB’s actions fly in the face of the
15 statutory procedure for issuing assessments. FTB has delayed these proceedings by many years and has prejudiced Mr. Hyatt
16 by forcing him to rebut these many new issues after evidence is no longer available (e.g., witnesses have died and multitudes
17 of documents have been destroyed), thus severely prejudicing Mr. Hyatt and forcing him to incur substantial additional
18 expenses during these appeals.

19 FTB has significantly prejudiced Mr. Hyatt by violating the statutory assessment procedures³⁶ by depriving Mr. Hyatt
20 of a *bona fide* audit and protest consideration of the sourcing issues.

21 FTB did not audit the sourcing issues during the audits and did not determine a deficiency. Rev. & Tax.
22 Code § 19032.

23 FTB did not audit the post-disputed period to determine a deficiency. Rev. & Tax. Code § 19032. FTB now
24 admits that the license payments on which the FTB \$24 million error are based were received well after the
disputed period, during the second half of 1992.

25 ³⁴ Cal. Code Regs., tit. 18, § 17952(c).

26 ³⁵ See 1991 ARB at 75 fn 455-456, citing Ex.44, *Hyatt v. FTB*, Partial Transcript of Trial Proceedings, Testimony of
Candace Les, 4/24/08, pp. 46-49; 113-115; Ex. 45, *Hyatt v. FTB*, Partial Transcript of Trial Proceedings, Testimony of Carol
Ford, 7/8/08, p. 84; Declaration of Thomas Rodrigue, Feb. 11, 2015, ¶¶ 21-26; Declaration of Diane Truly, Feb. 13, 2015, ¶¶
27 5, 23-25; Declaration of Candace Les, Feb.9, 2015, ¶ 32.

28 ³⁶ Rev. & Tax. Code § 19032 (requiring FTB to examine and determine the correct amount of tax in an audit); Rev. &
29 Tax. Code § 19033 (requiring FTB to set forth its determination in an NPA); Rev. & Tax. Code § 19034 (requiring FTB to
“set forth the reasons for the proposed deficiency assessment and the computation thereof” in the NPA); Rev. & Tax. Code
§ 19044 (after a taxpayer files a protest to the NPA, requiring FTB to “reconsider the assessment of the deficiency,” not issue a
new assessment) (emphasis added).

1 FTB did not determine the correct amount of taxes in the 1992 audit. FTB now admits that the 1992 audit
2 and NPA contain a \$24 million error. Rev. & Tax. Code § 19032.

3 FTB did not correct its erroneous 1992 assessments. FTB persists in its assessments on its \$24 million error.
4 Rev. & Tax. Code § 19044.

5 FTB did not determine that the fraud penalties were proven by clear and convincing evidence; e.g., the two
6 audit reviewers questioned whether the fraud penalties were appropriate. Rev. & Tax. Code § 19032; Rev.
7 & Tax. Code § 19036.

8 FTB did not set forth in the NPA the post-disputed period assessments. Rev. & Tax. Code § 19033.

9 FTB did not set forth in the NPA the sourcing assessments. Rev. & Tax. Code § 19033.

10 FTB did not set forth in the NPA the reasons for or computation of the sourcing assessments. Rev. & Tax.
11 Code § 19034.

12 FTB did not set forth in the NPA the reasons for or computation of the post-disputed period assessments.
13 Rev. & Tax. Code § 19034.

14 FTB did not provide an NPA upon which to protest the sourcing assessments. Rev. & Tax. Code §§ 19041,
15 19044.

16 FTB did not provide an NPA upon which to protest the post-disputed period assessments. Rev. & Tax. Code
17 §§ 19041, 19044.

18 FTB did not reconsider “the assessment” during the protests; instead, FTB asserted new sourcing
19 assessments. Rev. & Tax. Code § 19044.

20 FTB’s NOAs are FTB’s final actions on Mr. Hyatt’s protests. Rev. & Tax. Code § 19045. FTB lacked
21 authority to raise a new sourcing theory (a California licensing business) during these appeals.

22 If FTB’s abusive tactics are not stopped by your Board, FTB will turn your Board’s appeal process into a forum for it
23 to develop a whole new case with continued investigations and discovery, new theories of taxation, and new assessments
24 (Section 1.8.5.1). FTB will be free to disregard the statutory procedures for NPAs and NOAs enacted by the Legislature (Rev.
25 & Tax. Code §§ 19033 and 19034) and spring a complete new case on a taxpayer at any time; and FTB will be able to file
26 brief after brief with your Board as it continues to subpoena new evidence without limit.

27 Your Board must put a stop to FTB’s illegal and abusive post-NPA determinations, discovery, new theories of
28 taxation, new assessments, and disregard for the regulations and restore the rule of law in California’s tax administration
29 process.

1 **1.7 THE PHILIPS DOCUMENTS SIGNIFICANTLY SUPPORT MR. HYATT'S RESIDENCY AND**
2 **SOURCING APPEALS.** The Philips documents are very helpful to Mr. Hyatt's case and do not support FTB's case.

3 FTB's claims regarding the Philips documents are based upon its misrepresentations of the evidence, outright false statements,
4 and total disregard of Mr. Hyatt's overwhelming *eyewitness and documentary evidence*. Sections 1.7, 1.7.1 to 1.7.10, 1.8,
5 1.8.1 to 1.8.7; 1992 ASAB, Sections, 1.4, 1.4.1, 1.4.1.1 to 1.4.1.4, 1.5.1 to 1.5.11, 1.6, 1.6.1, 1.6.2, 1.7, 1.7.1 to 1.7.5.

6 The Philips documents relate to many subjects. First and foremost, they show Philips' extraordinary efforts to create
7 and manage the Philips Licensing Program and the small role of Mr. Hyatt in supporting Philips' efforts. The Philips
8 documents include, for example, Philips correspondence related to the Philips Licensing Program, invoices received and paid
9 by Philips, documents related to Philips' financial responsibilities, multitudes of draft and final licensing agreements, and
10 documents showing the many Philips Licensing Program activities.

11 **1.7.1 The Philips Documents Significantly Support Mr. Hyatt's Appeals, Illustrated By 15 Tables Of**
12 **Excerpts From And Citation To More Than 5,000 Pages Of Philips Documents, Which Were**
13 **Disregarded By FTB.**

14 Mr. Hyatt's 15 tables have excerpts of Philips documents and cites to more than 5,000 pages of Philips documents
15 (some duplicates) that illustrate the significant support the Philips documents give to Mr. Hyatt's appeals, illustrate Philips'
16 control and operation of the Philips Licensing Program, and illustrate many of Mr. Hyatt's facts in these appeals. A list of the
subject matter contained in these Philips documents is provided in 1992 ASAB, Section 1.6.3.³⁷

17 To put this into perspective, FTB produced more than 8,000 pages of unauthenticated alleged Philips documents,
18 which include *Mr. Hyatt's more than 5,000 pages of Philips documents* (some duplicates) that support his cases and include
19 several thousand pages of documents that are neutral such as drafts of agreements.

20 **1.7.2 The Philips Documents Detail FTB's Bad Faith \$24 Million Income Error.**

21 The Philips documents establish that FTB in bad faith overstated the 1992 NPA income by \$24 million³⁸ and now
22 attempts to continue with its outrageous assessment of taxes, interest, and penalties on income that is not taxable by California
23 (Sections 1.8.5.4.4, 1.8.5.4.5, 1.9.10, 1992 ASAB, Section 1.7.5).³⁹ Mr. Hyatt argued these outrageous facts in his AAB.
24 However, FTB did not address the AAB in the FTB RSABs, thus the positions developed in the AAB are undisputed.⁴⁰

25 ³⁷ See the Philips Document Tables, Exhibits 1 to 15.

26 ³⁸ Sanyo (FTB_Philips 0003514, 0003502, 0003483, 0003468 – 0003469), Nippon Columbia (FTB_Philips 0001448,
27 0001430, 0001428, 0001415), Omron (FTB_Philips 0003355, 0003334), Kenwood (FTB_Philips 0002016- 0002017,
0002001 – 0002003, 0001990 – 0001993, 0001997 – 0001998, 0001967, 0001963, 0001962).

28 ³⁹ AAB. See also 1992 AOB, pp. 52-56; 1992 ARB, pp. 93-95.

29 ⁴⁰ FTB knew for more than 16 years about the \$24 million error and made no attempts to correct it, AAB, § III.A,
pp. 9-12; It is unlawful for FTB to now increase the now-corrected 1992 NPA to include an additional \$24 million of income,
AAB, § III.B, pp. 12-16; Inclusion of the auditor's \$24 million income error is barred by equitable principles, AAB, § III.C,
pp. 17-21; Equitable estoppel bars FTB from assessing tax on the \$24 million error under a sourcing theory, AAB, § III.C.1,

1 Originally, FTB included \$24 million of Mr. Hyatt's disputed licensing payments in the NPA on the ground they were
2 received between January 1, 1992, and April 2, 1992 (the 1992 disputed period) while Mr. Hyatt was allegedly a California
3 resident. However, these payments were received from Philips during the second half of 1992 and well after the disputed
4 period. For years FTB illegally persisted in assessing taxes on these license payments and falsely contended that these license
5 payments were received by Mr. Hyatt on January 15, 1992, despite Mr. Hyatt's indisputable evidence to the contrary. After
6 your Board's staff ordered FTB to file a brief explaining its position that Mr. Hyatt received such income during the 1992
7 disputed period, FTB was forced to admit that the \$24 million in license payments (from Sanyo, Omron, Kenwood and
8 Nippon Columbia) were not received until well after the disputed period.⁴¹ Although FTB finally acknowledged that Mr.
9 Hyatt did not receive the \$24 million license payments until well after the disputed period, amazingly FTB did not reduce the
10 NPA assessments for the disputed period by the FTB's \$24 million error. Essentially, the record now stands that FTB
11 reluctantly corrected its \$24 million error *in form but not in substance*. It still holds to its NPA residency assessment of its
12 \$24 million error plus penalties and interest as if FTB did not make this \$24 million error at all. FTB in bad faith is attempting
13 to make your Board's milestone Additional Briefing into a hollow gesture. Essentially, as the record now stands, the disputed
14 income for the 1992 disputed period is \$26,981,988 but FTB has unlawfully assessed taxes, interest, and penalties on a total of
15 \$51,595,186 in disputed income. Mr. Hyatt has explained this in his AAB but FTB has not responded thereto in its RSABs
16 and *thus Mr. Hyatt's position is undisputed*.

17 Your Board must not allow FTB to perpetrate this fraud on Mr. Hyatt and to disregard your Board's order. The taxes,
18 interest, and penalties on the FTB's \$24 million error must be reversed.

19 **1.7.3 The Philips Documents Confirm That Philips Created, Managed, And Operated The Philips Licensing**
20 **Program As Testified To By Highly Credible Licensing Eyewitnesses.**

21 The Philips documents confirm that Philips created, managed, and operated the Philips Licensing Program (Section
22 1.7.1), corroborate the declarations and affidavits of Mr. Tamoshunas, Mr. Leonard, Mr. Roth, and Mr. Hyatt, which explain
23 that Mr. Hyatt did not engage in a licensing business (1992 ASAB, Section 1.7.3), and confirm that Philips had the *exclusive*
24 licensing authority to license Mr. Hyatt's licensable patents (Section 1.7.5). See Mr. Tamoshunas' testimony *infra*.
25 Specifically, the Philips documents confirm that Philips created, managed, and financed the Philips licensing program; Philips
26 oversaw and managed the collection of the licensing income; Philips distributed or arranged to have distributed all of the
27 licensing income; Philips put its worldwide licensing organization to work to license the Hyatt patents; Philips managed and

28 pp. 17-19; and the equitable doctrine of laches bars FTB from assessing tax on the \$24 million error under a sourcing theory,
29 AAB, § III.C.2, pp. 19-21.

⁴¹ RAB, pp. 25, 27-29.

1 operated the Philips Licensing Program; Philips formally authorized and directed Mahr Leonard, PSB&C, and Mr. Hyatt to
2 assist its licensing program; and much more.⁴² Moreover, ***Mr. Hyatt produced more than fifteen thousand pages of licensing***
3 ***documents to FTB*** during the protests and produced affidavits or declarations sworn to by eyewitnesses Mr. Tamoshunas, Mr.
4 Leonard, Mr. Roth, and Mr. Hyatt explaining the Philips Licensing Program and providing context for the Philips documents.
5 FTB disregarded this testimony on the merits and only discusses Mr. Hyatt's and Mr. Roth's testimony in the context of
6 attempting to discredit them.

7 The Philips documents establish that Philips made arrangements to take control of licensing of the patents even
8 before the July 1991 Philips Agreement was signed: "We confirm that Consumer Electronics desires to proceed with the
9 arrangement with Mr. Gilbert Hyatt We also further confirm that . . . Consumer Electronics shall bear the costs of the
10 program for Sublicensing the Hyatt patents, including litigation expenses incurred and payments to be made by Philips to
11 Hyatt under the proposed agreement."⁴³

12 The Philips documents overwhelmingly support the testimony of Mr. Tamoshunas who managed the Philips
13 Licensing Program that generated these documents and the licensing income at Philips. The following are examples of Mr.
14 Tamoshunas' testimony (many are direct quotations) which are reinforced by the Philips documents (Section 1.7.1).⁴⁴

- 15 • Mr. Tamoshunas, a Philips Vice President, was a registered patent attorney with extensive experience in patent
licensing and litigation.
- 16 • "Philips had the responsibility to license the 'licensable patents' under Sections 4.1 and 4.3 of the July 1991
Philips Agreement."
- 17 • Philips took on significant responsibility and financial exposure up to \$36.5 million.
- 18 • "Philips by itself and through its attorneys created and managed the Licensing Program."
- 19 • "Philips managed the licensing program from its offices in New York and the Netherlands."
- 20 • "Philips used its worldwide licensing organization to license the 'licensable patents.'"
- 21 • "Licensing professionals from Philips in New York and in the Netherlands made numerous trips to Japan and to
other Asian countries to negotiate license agreements."
- 22 • "Philips formed a team of licensing professionals to license the 'licensable patents.'"
- 23 • "Philips negotiated with other prospective licensees and obtained four additional patent agreements in 1992."
- 24 • "Philips selected the patent claims that were to be presented to the prospective licensees."
- 25 • "While Philips obtained assistance from Mahr Leonard, Mr. Hyatt and others during the course of the Licensing
Program, Philips managed the Licensing Program."
- 26 • "All of the licensing income from the Seven Patent Agreements was received by the client trust account
maintained by PSB&C for the benefit of Philips at Union Bank."

27
28 ⁴² See the 15 tables of Philips documents in Folder 12 titled "Philips Tables".

29 ⁴³ Letter from Huijser (Philips The Netherlands) to Tamoshunas (Philips Tarrytown) dated June 25, 1991.
FTB_Philips 0005027.

⁴⁴ Affidavit of Algy Tamoshunas, August 4, 2010, ¶¶ 2, 11, 10, 10, 11, 11, 14, 13, 13, 12, 28, 18, 23, 13, respectively.



- “Philips accounted for all of the licensing income and for all expenses charged to the Licensing Program with “quarterly reports” to Mr. Hyatt in accordance with Section 4.9 of the July 1991 Philip Agreement.”
- “To the best of my knowledge Mr. Hyatt did not conduct any licensing business after signing the July 1991 Philips Agreement with regard to the Eleven 1991-1992 Patent Agreements.”
- “To the best of my knowledge, Mr. Hyatt did not negotiate the Eleven 1991-1992 Patent Agreements.”

1.7.4 FTB’s Overbroad Philips Subpoenas Forced Mr. Hyatt To Obtain New York Court Orders And Temporary Restraining Orders To Protect His Confidential Information And To Avoid An Overbroad Production.

Mr. Hyatt was compelled to seek New York court orders to protect his confidential information, to avoid being overburdened by FTB’s unduly broad subpoenas, and to avoid an overbroad production by Philips. Mr. Hyatt was successful in limiting the overbroad FTB subpoenas and to limit the overbroad production by Philips. During the New York court proceedings, the court severely criticized FTB regarding its subpoenas and issued two temporary restraining orders and court orders regarding the Philips documents, including documents irrelevant to these proceedings because they were outside the relevant time frame or did not set forth relevant information. In addition, FTB has spent almost two years to generate three rounds of DVDs containing its RSABs to falsely attempt to comply with the court orders, and some dispute still exists. Mr. Hyatt did not know the full scope of the material that would be in the FTB’s RSABs that he had to deal with until about April 21, 2016, just five (5) months ago, when your Board’s staff burdened itself with redacting FTB’s RSABs to comply with the court order.

FTB continues its discovery into the appeal process without leave to do so by your Board, with FTB taking a deposition of a witness on April 7, 2016, just five (5) months ago.⁴⁵

By continuing its discovery for years into this appeal process, FTB has caused additional years of delay, but it has also reinforced Mr. Hyatt’s case with the Philips documents and it has greatly aided your Board’s resolution of a very significant issue with the first Additional Briefing in which FTB confirmed that it overstated the 1992 NPA by \$24 million (Section 1.7.2; RAB).

1.7.5 Philips Had *Exclusive* Licensing Authority To License Mr. Hyatt's Licensable Patents.

Philips had the *exclusive* licensing authority to license Mr. Hyatt's licensable patents.⁴⁶ Thus, Mr. Hyatt could not take any action with respect to his licensable patents without authorization from Philips. Philips drafted three supplemental

⁴⁵ Deposition of Charles Cameron, April 7, 2016.

⁴⁶ See the letter to Omron dated August 4, 1992, HL 02021, FTB_Philips 0003335 – 0003336; the letter to Toshiba dated February 3, 1992, FTB_Philips 0002663, 0002782; the letter to Asahi, HL 00307; the letter to Seiko, HL 00308; Sections 4.1 and 6.1 of the July 1991 Philips Agreement, H 01378, H 01388-01389; and the 2010 Tamoshunas Affidavit, ¶ 5; the 2010 Roth Sourcing Affidavit, §§ 4.2.1.8, 5.1.4.

1 agreements that granted Mr. Hyatt the rights to sign patent agreements with seven specific licensees after approval by
2 Philips.⁴⁷

3 Furthermore, Philips granted Mahr Leonard *exclusive negotiating rights* with certain prospective licensees.⁴⁸ Philips
4 also authorized Mahr Leonard and Mr. Roth to negotiate with Hitachi.⁴⁹ Mr. Hyatt was not authorized to negotiate with
5 prospective licensees and Mr. Hyatt did not negotiate with prospective licensees. With Mahr Leonard having *exclusive*
6 *negotiating rights* it is absurd to think that Mahr Leonard would permit an inventor to get in the way of the professionals.

7 With two world class licensing organizations, Philips and Mahr Leonard, putting significant licensing efforts into
8 licensing the patents, it is absurd to think that Philips would permit an inventor to get in the way of its professional licensing
9 activities.

10 **1.7.6 Mr. Hyatt Would Not And Did Not Breach The July 1991 Philips Agreement By Negotiating With**
11 **Prospective Licensees Or By Operating A Licensing Business, As Falsely Contended By FTB.**

12 This issue is explained in 1992 ASAB, Section 1.7.3.

13 **1.7.7 The Philips Documents Support Mr. Hyatt's Understanding That Philips Wanted Mr. Hyatt To Sign**
14 **Several Patent Agreements Because Of Philips' Cross Licensing Relationships.**

15 In early October 1991, Mr. Tamoshunas asked Mr. Hyatt to sign some of the patent agreements that were being
16 negotiated by Mahr Leonard. Mr. Hyatt was reluctant to take on this responsibility because of a perception that he had about it
17 causing liability. Mr. Tamoshunas told Mr. Hyatt that Philips would indemnify him and hold him harmless for such liability.
18 Mr. Hyatt wanted to be cooperative with Philips and he thought that the indemnification and hold harmless provisions in
19 Philips' authorization would protect him so he agreed to sign patent agreements for Philips.⁵⁰

20 Mr. Hyatt understood that certain prospective licensees (e.g., Hitachi) were interested in taking licenses for his
21 patents but that they did not want to work directly with Philips because of other relationships that they had with Philips.⁵¹

22 Mr. Hyatt found out that Philips had cross licenses with some of the prospective licensees and that Philips might have
23 to waive its licensing payments if a cross license was invoked by a cross licensee.⁵² Thus, Mr. Hyatt understands that Philips'

24
25
26 ⁴⁷ The [First] Supplemental Agreement, FTB_Philips 0000666-0000673; the Second Supplemental Agreement,
FTB_Philips 0000674-677 and the Third Supplemental Agreement, FTB_Philips 0000679-0000682.

27 ⁴⁸ September 1991 Mahr Leonard Agreement, FTB_Philips 0000145-0000151.

28 ⁴⁹ Letter from Philips to Mahr Leonard dated January 17, 1992, GLR 00940.

29 ⁵⁰ Hyatt's 2016 Supp. Aff., ¶ 135.

⁵¹ Hyatt's 2016 Supp. Aff., ¶ 136.

⁵² Fax dated February 10, 1992, from Haken to Beckers and Tamoshunas, FTB_Philips 0006278; fax dated February
17, 1992, from Haken to Kulkarni, FTB_Philips 0006274 – 0006276; and fax dated February 11, 1992, from Beckers to
Haken, FTB_Philips 0006277.

1 cross licenses were a reason Philips wanted Mr. Hyatt to sign the patent agreements even though Philips had exclusive
2 authority to license his computer patents.⁵³

3 **1.7.8 Philips And Mahr Leonard Promised To Correct Mr. Hyatt's Address In The Preamble Of The**
4 **Patent Agreements And After Several Of His Complaints They Did Correct It, As The Philips**
5 **Documents Confirm.**

6 In early October 1991, shortly after moving to Las Vegas, Mr. Hyatt telephoned Philips and Mahr Leonard and told
7 them that he had moved to Las Vegas. Shortly after leasing his Las Vegas apartment on October 8, 1991, Mr. Hyatt
8 telephoned Philips and Mahr Leonard and gave them the address of his Las Vegas apartment. Mahr Leonard did in fact put
9 his Las Vegas apartment address in the preambles of the Sony and NEC Patent Licenses ("Gilbert P. Hyatt, an individual
10 having his residence at 3225 South Pecos Road, Apt. 237, Las Vegas, Nevada 89121").⁵⁴

11 Mr. Hyatt received four patent agreements (Fujitsu, Oki, Sharp, Matsushita) for his signature⁵⁵ that had his Cerritos
12 P. O. Box address, not his Las Vegas apartment address, in the preambles of the patent agreements. He telephoned Mr.
13 Tamoshunas and Mr. Leonard on several occasions and complained that the patent agreements recited an old address. Mr.
14 Tamoshunas and Mr. Leonard told Mr. Hyatt that the address in the preamble did not matter because the correct
15 correspondence address was in the patent agreements. Mr. Hyatt was told that this address would be corrected on subsequent
16 patent agreements. Mr. Hyatt signed the patent agreements as requested by Philips⁵⁶ and forwarded them to Mahr Leonard as
17 directed.

18 Mr. Hyatt then received the Sony and NEC Patent Agreements and noticed that the preamble stated his correct Las
19 Vegas address and also correctly identified the address as his Las Vegas residence. Mr. Hyatt signed the Sony and NEC draft
20 patent agreements as requested by Philips⁵⁷ while present in Las Vegas and Mr. Hyatt sent them to Mahr Leonard as directed.

21 **1.7.9 The Philips Documents Confirm That Mr. Hyatt Had Very Limited Involvement In The Large**
22 **Worldwide Philips Licensing Program.**

23 Philips had the *exclusive* licensing authority to license Mr. Hyatt's licensable patents (Section 1.7.5). Mahr Leonard
24 had exclusive negotiation rights regarding license agreements and Mahr Leonard exclusively negotiated with seven companies
25 and obtained six license agreements (Section 1.7.5, 1992 ASAB, Section 1.7.3). Philips with its exclusive licensing

26 ⁵³ Hyatt's 2016 Supp. Aff., ¶ 137.

27 ⁵⁴ Hyatt's 2016 Supp. Aff., ¶ 138. See Sony Patent Agreement, p. 1, FTB_Philips 0000531; NEC Patent Agreement,
28 p. 1, FTB_Philips 0000545.

29 ⁵⁵ Mr. Hyatt signed several patent agreements at the request of Philips and to be cooperative with Philips. Hyatt's
2016 Supp. Aff., ¶¶ 135-137.

⁵⁶ Mr. Hyatt signed several patent agreements at the request of Philips and to be cooperative with Philips. Hyatt's
2016 Supp. Aff., ¶¶ 135-137.

⁵⁷ Mr. Hyatt signed several patent agreements at the request of Philips and to be cooperative with Philips. Hyatt's
2016 Supp. Aff., ¶¶ 135-137.

1 authorization, negotiated with many other companies without any coordination with Mr. Hyatt, as was its right under the July
2 1991 Philips Agreement. Mr. Hyatt had no authority to negotiate with prospective licensees or to have a licensing business as
3 alleged by FTB.

4 For example, the Philips documents establish that Philips was pursuing many companies *without Mr. Hyatt's*
5 *knowledge or assistance* (Mr. Hyatt was not included on letters, faxes, or memoranda), which was Philips' right under the
6 July 1991 Philips Agreement. Philips was planning a significant trip to several Asian countries at least as early as January
7 1992.⁵⁸ Philips was pursuing Acer, ADI, Alps, Cal-Comp, Chuan Hup, Clarion, Daewoo, Dennon, Fuji Photo, Goldstar, Great
8 Electric, Honda, Hyundai, Kenwood, Kyocera, Microtec, Minolta, Mitac, Motor, Nikon, Nintendo, Nippon Columbia,
9 Olympus, Omron, Onkyo, Samsung, Sanyo, Seiko, Toshiba, Wearne Bros., and Yamaha. In fact, Philips prepared for a
10 January 1992 licensing trip to Asia with a list of 19 of these companies.⁵⁹

11 Mr. Hyatt had no part in this plan. Mr. Hyatt had very limited involvement in the large worldwide Philips Licensing
12 Program.

13 **1.7.10 FTB Acted In Bad Faith By Depriving Mr. Hyatt Of His Statutory Rights To Audits And Protests On**
14 **The Sourcing Assessment Before Receiving A Final Agency Action.**

15 FTB acted in bad faith in assessing the sourcing assessments. California law requires that, at the conclusion of the
16 audit, FTB "set forth the reasons for the proposed deficiency assessment" in an NPA; and that it allow the taxpayer to protest
17 any proposed assessment.⁶⁰ However, FTB's current sourcing issue is not in the NPAs, NOAs, audits, or protests and is thus a
18 violation of California law.

19 In 1995, during the 1991 audit, FTB's senior and most knowledgeable personnel on sourcing issues reviewed Mr.
20 Hyatt's audit and determined not to pursue the sourcing issue.⁶¹ However, years later during the protests, FTB reversed course
21 and decided to pursue sourcing assessments. Mr. Hyatt first found out about this substantial new issue in writing through
22 FTB's November 2007 protest determination letter after delaying 10 years in the protests.⁶² During the protests FTB's counsel
23 indicated that sourcing would be an issue but assured Mr. Hyatt's representative that he would have "ample time" during the
24 protest to respond to the sourcing issue.⁶³ FTB reneged on this promise. FTB gave Mr. Hyatt only 30 days to provide a

25 ⁵⁸ FTB_Philips 0000273-0000275, 0006800, 0006827, 0001038, 0001455, 0002033, 0000271, 0001037, 0002658,
26 0003377, 0003589, 0001453-1454, 0002031-2032.

27 ⁵⁹ FTB_Philips 0000273-0000275.

28 ⁶⁰ Rev. & Tax. Code §§ 19034, 19034, 19044.

29 ⁶¹ Ex. 69, Memorandum of M. Embry to FTB auditors, 8/24/95; 1991 AOB pp. 83-85 (a full discussion of FTB's
decision.

⁶² FTB Protest Determination Letter, 11/7/2007, pp. 30-49.

⁶³ Letter from C. Cinnamon to E. Coffill, 6/7/05 ("Please be assured that you will have ample time to review and
respond to our position letter prior to the issuance of notices of action on the protested notices of proposed assessments for
taxable years 1991 and 1992.).

complete response to the Protest Determination Letter and refused to grant Mr. Hyatt's request for a reasonable extension of time to allow consideration of the substantial new issue in his protests.⁶⁴ FTB's sourcing assessments are a bad faith attempt to ram through the unlawful sourcing assessments and deny Mr. Hyatt's statutory right to respond to the assessments during the audit and in a protest hearing. Your Board should reject FTB's unlawful sourcing assessments because they were issued in bad faith and outside the statutory assessment procedures.

1.8 FTB'S CONTINUING BAD FAITH ACTS.

1.8.1 FTB In Bad Faith Misrepresents Or Disregards Overwhelming Eyewitness Testimony And Documentary Evidence Of Mr. Hyatt's Las Vegas Presence.

The correspondence sent by Philips to Mr. Hyatt's former California addresses and fax numbers is undisputed mis-addressed correspondence (Sections 1.8.4.2 to 1.8.4.4; 1992 ASAB, Sections 1.4.1.1 and 1.5.6.3).⁶⁵ Mr. Hyatt gave Philips a change of address in October 1991. Mr. Tamoshunas, the lead licensing attorney at Philips, testified he was given this change of address and testified that the subsequent sending of correspondence addressed to Mr. Hyatt's former California addresses was inadvertent error by Philips personnel.⁶⁶ FTB has not rebutted Mr. Tamoshunas' testimony regarding this mis-addressed correspondence. Thus, *Mr. Tamoshunas' testimony is undisputed.*

Mr. Hyatt informed Philips and Mahr Leonard in early October 1991 that he had moved to Las Vegas and later in October 1991 Mr. Hyatt gave Philips and Mahr Leonard changes of address to his Las Vegas locations. The eyewitness testimony is clear. Philips and Mahr Leonard inadvertently mailed and faxed documents to Mr. Hyatt's former California addresses and fax number after he provided them with his new Las Vegas address.⁶⁷ However, FTB disregarded or misrepresented this evidence in bad faith – the Philips correspondence was mis-addressed to the California addresses. Furthermore, Mr. Hyatt provided eyewitness and documentary evidence that he was in Las Vegas when FTB falsely inferred that he was in California based upon false inferences drawn from the mis-addressed correspondence (Sections 1.8.4.2 to 1.8.4.4; 1992 ASAB, Sections 1.4.1.1, 1.5.6.3).⁶⁸

⁶⁴ FTB Protest Determination Letter, 11/7/2007, p. 49; FTB Letter from G. McLaughlin to E. Coffill, 11/26/07, p. 2.

⁶⁵ FTB's bad faith acts against Mr. Hyatt are further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB, Section 1.5; ASAB Attachment 1; and in Section V of the Second Supplemental Motion To Strike.

⁶⁶ Affidavit of Algy Tamoshunas, August 4, 2010, ¶ 25 ("Mr. Hyatt gave Philips a change of address from California to Las Vegas in the latter part of October 1991 and I understood that he moved to Las Vegas before the latter part of October 1991. Any mailings from Philips' personnel to Mr. Hyatt at his former California addresses as of October 1991 and thereafter were inadvertent errors by Philips' support personnel."); A. Tamoshunas Deposition Transcript, 10/27/2011, at 648:19-649:16 (affirming his affidavit testimony), 548:10-18 (testifying that Mr. Hyatt notified Mr. Tamoshunas that correspondence was mistakenly sent to his former California addresses and asking that correspondence be sent to his Las Vegas address.)

⁶⁷ Affidavit of Algy Tamoshunas, August 4, 2010, ¶ 25; Affidavit of David Leonard, May 2, 2012, ¶ 26; Affidavit of Gregory L. Roth, August 9, 2010, § 4.6.1; Declaration of Vicki Weart, May 21, 2012 ¶¶ 5-6; Affidavit of Gilbert P. Hyatt, August 15, 2010, § 4.6.1.

⁶⁸ Mr. Hyatt's 2016 Supp. CDE Aff., ¶¶ 153-243, CDE Exhibits CDE-ST002 and ST003; ASAB Exhibits 2 and 3.

1 Further, Mr. Hyatt provided eyewitness testimony of his presence in Las Vegas on many of the days⁶⁹ that FTB
2 falsely alleges that he was in California (Sections 1.8.4.2 to 1.8.4.4). FTB falsely attacks the credibility of Mr. Hyatt and his
3 eyewitnesses based upon FTB's false inferences despite the eyewitness and documentary evidence that supports their
4 testimony (Sections 1.8.6, 1.8.6.1 to 1.8.6.4; 1992 ASAB, Section 1.4.1.1). The eyewitness testimony is summarized in the
5 Updated Testimonial Topics Table in subject matter form (72 eyewitnesses testified about Mr. Hyatt moving away in 1991)
6 and excerpted in the exhibits thereto (Section 1.3.1). Furthermore, FTB disregards the enormous amount of reinforcement
7 from similar eyewitness testimony (Section 1.8.6.4).

8 Mr. Hyatt has provided documentary evidence of his presence in Las Vegas on many of the days that FTB falsely
9 alleges that he was in California based on false inferences from undisputedly mis-addressed correspondence (Sections 1.8.4.2
10 to 1.8.4.4). Mr. Hyatt's hundreds of pages of CDE affidavits provide detailed testimonial evidence authenticating and
11 describing thousands of pages of very relevant documentary evidence.⁷⁰ The overwhelming documentary evidence is
12 summarized in several tables,⁷¹ linked to the actual documents, and authenticated and described in CDE affidavits.⁷² The
13 following excerpt from Mr. Hyatt's affidavit is one of many hundreds of testimonial statements about actual documents.

14 FTB falsely states that I was in California on March 7, 1992, that my presence in California was
15 "inferred", and that my presence in California was supported by "logical inference" (FTB's
16 Attachment A (Revised), p. 110, March 7, 1992). However, on March 7, 1992, I was present in
17 Las Vegas all day, I was not present in California that day. I signed a check while present at my
18 Las Vegas apartment that day, as was my practice (see ¶ 27 herein), drawn on my Las Vegas
19 checking account to pay MBNA. This check had my Las Vegas address and my bank's Las Vegas
20 address imprinted thereon. A copy of check number 193 payable to MBNA is located in
21 Exhibit CDE-T003 (H 00643) to my 2016 Post-Disputed Period CDE Affidavit. On March 7,
22 1992, I also sent Eugene Cowan of Riordan and McKinzie a FedEx package from Las Vegas with
23 a Las Vegas return address. A copy of a FedEx receipt for the FedEx package is located in
24 Exhibit CDE-T006 (H 015977) to my 2016 Post-Disputed Period CDE Affidavit.

25 Hyatt's 2016 Supp. CDE Aff., ¶ 222.

26 Mr. Hyatt has provided eyewitness and documentary evidence of his presence in Las Vegas on many of the days that
27 FTB falsely alleges that he was in California based on false inferences from undisputedly mis-addressed correspondence. This
28 evidence includes eyewitness testimony and documentary evidence and numerous tables excerpting and summarizing the
29 evidence for the convenience of your Board.⁷³

69 Updated Testimonial Topics, Exs. T007, T006, T102, T114, T119, T127, T008, T009, T018, T021, T128, T019, T022-T025, T135, T136, T040, T138, T140-T143, T045, T044, T046, T047, and T049.

70 Hyatt's 2012 CDE Aff. and the exhibits therein; Hyatt's 2016 Supp. CDE Aff. and the exhibits therein; Hyatt's 2016 Post-DP CDE Aff. and the exhibits therein.

71 See e.g., Table of Mr. Hyatt's 1991-1992 Documents Having His Nevada Contact Information, Nevada Mail Table, Nevada Checks Table, Hyatt's 2016 Post-DP CDE Aff., Exhibits CDE-T006, CDE-T005, and CDE-T003, respectively. See also Sections 1.3.1, 1.3.5, 1.3.7, 1.3.8, 1.3.9, 1.3.10, 1.3.11, 1.3.12, and 1.3.13. →

72 Hyatt's 2016 Supp. CDE Aff. and the exhibits therein; Hyatt's 2016 Post-DP CDE Aff. and the exhibits therein.

73 See Sections 1.3.1, 1.3.5, 1.3.7, 1.3.8, 1.3.9, 1.3.10, 1.3.11, 1.3.12, and 1.3.13. →

1 **1.8.1.1 FTB In Bad Faith Disregards Mr. Hyatt's Overwhelming Contemporaneous Documentary**
2 **Evidence (CDE) And Then Disingenuously Builds Its Case On An Alleged Lack Of CDE.**

3 FTB makes many bad faith statements⁷⁴ misrepresenting that Mr. Hyatt had little if any CDE⁷⁵ when in fact Mr.
4 Hyatt has an overwhelming amount of CDE. For example, with no citation to any such statement FTB disingenuously states
5 "Recall that Mr. Hyatt explains the complete absence of documentary evidence reflecting any Nevada activity during this
6 period"⁷⁶ However, Mr. Hyatt produced thousands of pages of CDE reflecting extensive Nevada activity during the
7 disputed period,⁷⁷ including obtaining a Nevada driver's license and voters registration, extensive house hunting in Las Vegas,
8 obtaining Nevada insurance, purchasing a house in Las Vegas, purchasing a new car in Las Vegas, opening bank accounts,
9 signing hundreds of checks while present in Las Vegas and making numerous credit card transactions in Las Vegas.⁷⁸ FTB
10 has demonstrated extreme bad faith by ignoring the contemporaneous documents that evidence these activities. FTB's
11 arguments and inferences cannot be trusted.

12 See also Sections 1.8.1, 1.8.2, 1.8.3, 1992 ASAB, Sections 1.5.3, 1.5.4, 1.5.8, 1.5.10, 1.5.10.1 to 1.5.10.5.

13 **1.8.2 Mr. Hyatt's Eyewitness And Documentary Evidence In Rebuttal To FTB's Calendar, Attachment**
14 **A-R, And Attachment E Are Summarized In Tabular Form.**

15 Various tables summarizing Mr. Hyatt's rebuttal to FTB's calendar, Attachment A-R and Attachment E are provided
16 for the convenience of your Board. In its RSABs and related attachments FTB in bad faith relies in large part on false
17 inferences ("inferred") and misrepresentations (inferences misrepresented as "established") (1992 ASAB, Sections 1.5.10,
18 1.5.10.1 to 1.5.10.5) as well as attacks on third party witnesses and on Mr. Hyatt (Sections 1.8.6, 1.8.6.1 to 1.8.6.5)⁷⁹ to falsely
19 claim that Mr. Hyatt was present in California on many days during the disputed period when he was not.

20 ASAB Exhibit 1 is a copy of FTB's calendar and ASAB Exhibit 2 is a table summarizing Mr. Hyatt's presence for
21 each day of the disputed period, each of which are linked to the rebuttal for each day in the Rebuttal to FTB Att. A/F.

22 ASAB Exhibit 3 is a table summarizing the many false FTB statements alleging California presence because there is
23 no documentation when in fact Mr. Hyatt has produced documentation and other evidence confirming that he was present in
24 Nevada on those days (1992 ASAB, Section 1.5.10.2).

25 ⁷⁴ FTB's bad faith acts against Mr. Hyatt are further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB,
Section 1.5; ASAB Attachment I; and in Section V of the Second Supplemental Motion To Strike.

26 ⁷⁵ Hyatt's 2012 CDE Aff., ¶¶ 3-5.

27 ⁷⁶ FTB 1991 Reply Brief, p. 12:1-3 (emphasis added). See also Mr. Hyatt's 2012 CDE Affidavit, Section titled
"Overview Regarding The FTB's Misrepresentation Of My Tens Of Thousands Of Page Of "Contemporaneous Documentary
Evidence", ¶¶ 3 to 5.

28 ⁷⁷ Hyatt's 2012 CDE Aff.; Hyatt's 2016 Supp. CDE Aff.; and Hyatt's 2016 Post-DP CDE Aff.

29 ⁷⁸ Mr. Hyatt produced this CDE to FTB more than a decade ago and he filed the initial Disputed Period CDE affidavit
in 2012, but FTB still persists in its false positions regarding his documents in its RSABs.

⁷⁹ See also Mr. Hyatt's 2016 Supp. CDE Aff., ¶¶ 153-243, CDE Exhibits CDE-ST002 and ST003; ASAB Exhibits 2
and 3.

ASAB Exhibit 4 is a table analyzing Mr. Hyatt's temporary or transitory presence in California and other states when in fact FTB has failed to provide a temporary or transitory analysis (1992 ASAB, Section 1.5.5).

ASAB Exhibit 5 and ASAB Exhibit 8 are tables summarizing FTB's disingenuous attacks on third party witnesses in its Attachment E and ASAB Exhibit 6 and ASAB Exhibit 9 are tables summarizing FTB's disingenuous attacks on Mr. Hyatt in its Attachment E. Each table links to significant evidence that establishes that the witness statements are correct.

Exhibits CDE-ST002 and CDE-ST003⁸⁰ are tables summarizing FTB's false inferences ("inferred") and misrepresentations (inferences misrepresented as "established") and they cite and link to Mr. Hyatt's eyewitness and documentary evidence that establishes that FTB is wrong.

Exhibit CDE-ST004⁸¹ is a table summarizing Mr. Hyatt's more than 100 non-California professionals that were disclosed to FTB and that FTB disregarded.

1.8.3 FTB In Bad Faith Disregards Or Misrepresents Mr. Hyatt's Overwhelming Eyewitness And Documentary Evidence Demonstrating There Was NO California Source Income.

FTB bases its sourcing case on its bad faith allegations of Mr. Hyatt's alleged presence and licensing business at the former Jennifer Circle house.⁸² Mr. Hyatt has clearly established that he was not present at the Jennifer Circle house during the disputed period and thereafter (1992 ASAB, Sections 1.5.1, 1.5.2, 1.5.5, 1.5.8)⁸³ and that he did not have a licensing business (Sections 1.7.3, 1.7.5, 1.7.9, 1992 ASAB, Section 1.7.3).

Mr. Hyatt has produced overwhelming eyewitness and documentary evidence that has been disregarded or misrepresented by FTB that demonstrates Mr. Hyatt did not have sourcing income. For example, this evidence includes the testimony of the key licensing eyewitnesses;⁸⁴ the testimony of more than 150 third party witnesses,⁸⁵ thousands of pages of documentary evidence.⁸⁶ This evidence demonstrates that Mr. Hyatt was not present at the Jennifer Circle house from which FTB alleges he operated a worldwide licensing program which would have competed with the Philips Licensing Program.

⁸⁰ Exhibits attached to Hyatt's 2016 Supp. CDE Aff.

⁸¹ Exhibit attached to Hyatt's 2016 Supp. CDE Aff.

⁸² FTB's bad faith acts against Mr. Hyatt are further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB, Section 1.5; ASAB Attachment 1; and in Section V of the Second Supplemental Motion To Strike.

⁸³ See also Mr. Hyatt's 2016 Supp. CDE Aff., ¶¶ 153-243, CDE Exhibits CDE-ST002 and ST003; ASAB Exhibits 2 and 3.

⁸⁴ Affidavit of Algy Tamoshunas, August 4, 2010; Affidavit of David Leonard, May 2, 2012; Affidavit of Gregory Roth, August 9, 2010.

⁸⁵ Updated Testimonial Topics, Exs. T007, T006, T102, T114, T119, T127, T008, T009, T018, T021, T128, T019, T022-T025, T135, T136, T040, T138, T140-T143, T045, T044, T046, T047, and T049.

⁸⁶ See the exhibits attached to Mr. Hyatt's 2010 Sourcing Affidavit, his 2012 CDE Aff., his 2016 Supp. CDE Aff., and his 2016 Post-DP CDE Aff.

1 **1.8.4 FTB Makes Thousands Of False Statements In Its RSABs, Calendar, Attachment A-R, And**
2 **Attachment F.**

3 FTB's RSABs, calendar, and attachments are rife with false statements about the evidence.⁸⁷ The Rebuttal to FTB
4 Att. A/F establishes that FTB has made over two thousand false statements misrepresenting evidence and falsely arguing to
5 your Board that its inferences and speculations support its assessments while disregarding or misrepresenting Mr. Hyatt's
6 extensive eyewitness testimony and undisputed documentary evidence (Sections 1.7, 1.7.1 to 1.7.9, 1.8, 1.8.1 to 1.8.7; 1992
7 ASAB, Sections 1.4, 1.4.1, 1.4.1.1 to 1.4.1.4, 1.5.1 to 1.5.11, 1.6, 1.6.1, 1.6.2, 1.7, 1.7.1 to 1.7.5).⁸⁸ Your Board can easily
8 find and review the more than 2,000 false FTB statements by searching for the word "false" in Mr. Hyatt's Rebuttal to FTB
9 Att. A/F.

10 FTB's calendar and Attachment A-R are made in bad faith (Section 1.8.2); e.g., see ASAB Exhibits 1 and 2. ASAB
11 Exhibit 1 is a copy of FTB's calendar and ASAB Exhibit 2 is a table summarizing Mr. Hyatt's presence for each day in the
12 disputed period, FTB's calendar and the ASAB Exhibit 2 table are linked to the rebuttal for each day in Mr. Hyatt's Rebuttal
13 to FTB Att. A/F.

14 **1.8.4.1 FTB Falsely Claims That Mr. Hyatt Was Present At The La Palma House Based On**
15 **Inferences, Speculation, And Misrepresentation Of The Evidence While Disregarding Or**
16 **Misrepresenting Mr. Hyatt's Eyewitness And Documentary Evidence Of His Actual Location.**

17 FTB falsely claims Mr. Hyatt's presence in California during the disputed period based upon inferences ("inferred")
18 and a litany of speculative reasons.⁸⁹ FTB does not have any credible evidence of Mr. Hyatt's presence at the La Palma house
19 during the disputed period. However, Mr. Hyatt has eyewitness and undisputed documentary evidence of his presence in Las
20 Vegas (Sections 1.8.1, 1992 ASAB, Section 1.5.8).⁹⁰

21 FTB relies in large part on assertions of "inferred" days based upon self-serving statements and pure speculation
22 without any credible evidence (Sections 1.8.1, 1.8.4.2 to 1.8.4.4; 1992 ASAB, Sections 1.4.1.1, 1.5.6.3). FTB also relies in
23 large part on assertions of so called "established" days based in large part on undisputed mis-addressed documents (e.g., mail,
24 FedExs, and faxes) that do not indicate Mr. Hyatt's location (1992 ASAB, Section, 1.5.10.5). In contrast, Mr. Hyatt's presence
25 in Las Vegas is established by eyewitness and documentary evidence (Sections 1.8.1, 1992 ASAB, Section 1.5.8).

26 ⁸⁷ FTB's bad faith acts against Mr. Hyatt are further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB,
27 Section 1.5; ASAB Attachment 1; and in Section V of the Second Supplemental Motion To Strike.

28 ⁸⁸ See also Mr. Hyatt's 2016 Supp. CDE Aff., ¶¶ 153-243, CDE Exhibits CDE-ST002 and ST003; ASAB Exhibits 2
29 and 3.

⁸⁹ FTB's bad faith acts against Mr. Hyatt are further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB,
 Section 1.5; ASAB Attachment 1; and in Section V of the Second Supplemental Motion To Strike.

⁹⁰ Updated Testimonial Topics, Exs. T007, T006, T102, T114, T119, T127, T008, T009, T018, T021, T128, T019,
 T022-T025, T135, T136, T040, T138, T140-T143, T045, T044, T046, T047, and T049. Mr. Hyatt's 2016 Supp. CDE Aff.,
 ¶¶ 153-243, CDE Exhibits CDE-ST002 and ST003; ASAB Exhibits 2 and 3.

1 **1.8.4.2 FTB Falsely Claims That Philips Documents, Which Were Undisputedly Mis-Addressed To**
2 **Mr. Hyatt's Former California Addresses Or Former Fax Number, "Establish" His Presence**
3 **At The Jennifer Circle House.**

4 A cornerstone of FTB's calendar and Attachment A-R is to repeatedly claim that Philips documents, which were
5 *undisputedly mis-addressed* to the former California addresses or fax number, "establish" Mr. Hyatt's presence at the Jennifer
6 Circle house. However, Philips acknowledged that it had inadvertently mailed or faxed documents to the former California
7 addresses or fax number after Mr. Hyatt provided Philips with his new Las Vegas address.⁹¹ These Philips documents are
8 undisputedly mis-addressed (Sections 1.8.1, 1.8.4.1 to 1.8.4.4; 1992 ASAB, Sections 1.4.1.1, 1.5.6.3). Mr. Hyatt also gave
9 numerous other changes of address (1992 ASAB, Sections 1.5.6, 1.5.6.1 to 1.5.6.3, 1.5.7). An incorrect address or a fax
10 number on a document does not establish Mr. Hyatt's physical presence at that address, particularly when there is eyewitness
11 and documentary evidence of his extensive presence in Las Vegas during the disputed period.⁹²

12 A mis-addressed document is not evidence of the physical location of the addressee. Nevertheless, FTB repeatedly
13 argues that Mr. Hyatt's presence was "established" by this undisputedly mis-addressed Philips correspondence. See Sections
14 1.8.4, 1.8.4.1 to 1.8.4.4, 1.8.7 for a discussion of FTB's false statements about the Philips documents.

15 **1.8.4.3 FTB Falsely Claims That Philips Documents, Which Were Undisputedly Mis-addressed To**
16 **Mr. Hyatt's Former California Addresses Or Fax Number, Establish His Presence On A**
17 **Specific Date.**

18 As discussed in Section 1.8.4.2, a cornerstone of FTB's calendar is to repeatedly claim that Philips documents
19 mis-addressed to Mr. Hyatt's former California addresses or fax number not only "establish" Mr. Hyatt's presence at the
20 Jennifer Circle house, but also establish his presence *on a specific date*. Undisputed eyewitness evidence establishes that
21 Philips inadvertently mailed or faxed documents to Mr. Hyatt's former California addresses or fax number after he provided
22 them with his Las Vegas address (Sections 1.8.1, 1.8.4.1 to 1.8.4.4; 1992 ASAB, Sections 1.4.1.1, 1.5.6.3).⁹³ However, an
23 address or a fax number on a document does not establish physical presence of the addressee at that address and it certainly
24 does not establish physical presence on a specific date as FTB alleges. A mis-addressed document is only evidence that the
25 document was mis-addressed. It is not evidence of the date of receipt and it is not evidence that the addressee was present on
26 the day of delivery. Nevertheless, FTB repeatedly argues that Mr. Hyatt's presence on a particular date was established by
27 undisputedly mis-addressed correspondence.

28 ⁹¹ Affidavit of Algy Tamoshunas, August 4, 2010, ¶ 25; Affidavit of David Leonard, May 2, 2012, ¶ 26; Declaration
29 of Vicki Weart, May 21, 2012 ¶¶ 5-6.

⁹² Mr. Hyatt's 2016 Supp. CDE Aff., ¶¶ 153-243, CDE Exhibits CDE-ST002 and ST003; ASAB Exhibits 2 and 3;
 Rebuttal to FTB Att. A/F, Section I. A., days by day.

⁹³ Affidavit of Algy Tamoshunas, August 4, 2010, ¶ 25; Affidavit of David Leonard, May 2, 2012, ¶ 26; Declaration
 of Vicki Weart, May 21, 2012 ¶¶ 5-6.

1 **1.8.4.4 Undisputed Mis-Addressed Philips Documents FedExed To The Jennifer Circle House Do**
2 **Not Establish That Mr. Hyatt Was Present At The Jennifer Circle House, He Was Not.**

3 FTB's falsely claims that undisputed mis-addressed documents FedExed to the Jennifer Circle house establish Mr.
4 Hyatt's presence at the house; they do not (Sections 1.8.1, 1.8.4.1 to 1.8.4.4; 1992 ASAB, Sections 1.4.1.1, 1.5.6.3).⁹⁴ Mr.
5 Hyatt was not at the Jennifer Circle house after he sold it on October 1, 1991, (1992 ASAB, Section 1.5.1). FedEx provides an
6 address-to-address delivery service, it does not provide a delivery service to a specific person.⁹⁵ FedEx drivers would leave a
7 package with anyone at the destination address or with a neighbor. It is undisputed that Mr. Hyatt gave Philips a change of
8 address in October 1991 and it is undisputed that Philips personnel mis-addressed documents to Mr. Hyatt's former California
9 addresses (1992 ASAB, Section 1.4.1.1). Furthermore, eyewitness and documentary evidence establishes that Mr. Hyatt was
10 in Las Vegas when most mis-addressed deliveries were made (1992 ASAB, Sections 1.4, 1.5.8).⁹⁶

11 Some FedEx documents had Mr. Hyatt's name in the "Signed" location but that does not mean that the named person
12 actually received and signed for the FedEx package. As one example the name "Elise Smith" appears in the "Signed" location
13 of the FedEx Sender Activity Summary for a FedEx package delivered on April 1, 1992.⁹⁷ Ms. Smith was Mr. Tamoshunas'
14 secretary at Philips in New York. Clearly, Ms. Smith was not present at the Jennifer Circle house to receive this FedEx
15 package. She was living and working in New York. Similarly, FTB is wrong when it represents that Mr. Hyatt was physically
16 present at the Jennifer Circle house on days that FedEx delivered mis-addressed packages. A name typed in the "Signed"
17 location of a FedEx Sender Activity Summary does not mean that the person actually signed for the FedEx package. FTB has
18 not produced any copies of delivery receipts that were actually signed by Mr. Hyatt because there were none.

19 This April 1, 1992, example is particularly compelling because FTB knows that Mr. Hyatt was physically present in
20 Las Vegas on April 1, 1992.⁹⁸ On April 1, 1992, Mr. Hyatt received a telephone call from Mr. Cowan at his Las Vegas
21 apartment, received a telephone call from Ms. Stratton at his Las Vegas apartment, made a purchase at McFrugal's in Las
22 Vegas, made two purchases at a Las Vegas Albertson's grocery store, purchased a meal at a Las Vegas restaurant, and spent
23 the night in his Las Vegas apartment.

24
25
26 ⁹⁴ Updated Testimonial Topics, Exs. T007, T006, T102, T114, T119, T127, T008, T009, T018, T021, T128, T019,
T022-T025, T135, T136, T040, T138, T140-T143, T045, T044, T046, T047, and T049. Mr. Hyatt's 2016 Supp. CDE Aff.,
¶¶ 153-243, CDE Exhibits CDE-ST002 and ST003; ASAB Exhibits 2 and 3.

27 ⁹⁵ Affidavit of Steve Foster, February 17, 2015, ¶¶ 5-12.

28 ⁹⁶ See Rebuttal to FTB Att. A/F, Section I. A., for delivery dates. See also Updated Testimonial Topics T008, T009,
T018, T021, T128, T019, T095, T096, T129, T026, T022, T023, T024, T025, T100, T057, T030, T135, T097, T146, T040,
T138, T139, T041, T042, T043, T140, T045, T041, T044, T046, T047, T147, and T048.

29 ⁹⁷ FTB_Philips 0005188.

⁹⁸ Rebuttal to FTB Att. A/F, Section I. A., April 1, 1992; Hyatt's 2016 Supp. CDE Aff., ¶ 242.

1 In another example, Mr. Hyatt was in Las Vegas walking through a house at 2735 South Miller Lane in Las Vegas
2 with real estate agent Ron Stephenson and spent the night in his Las Vegas apartment on December 21, 1991,⁹⁹ but FTB
3 nevertheless falsely alleges that Mr. Hyatt's presence in California is "established" because a FedEx package was delivered to
4 Mr. Hyatt's former La Palma house.¹⁰⁰ A house offer prepared by Mr. Stephenson on December 21, 1991 confirms that Mr.
5 Hyatt walked through the South Miller Lane house on that date.¹⁰¹ FTB itself also acknowledged that Mr. Stephenson
6 prepared a house offer on the South Miller Lane house for Mr. Hyatt on December 21, 1991.¹⁰² It is thus clear that Mr. Hyatt
7 was in Las Vegas on December 21, 1991.

8 Even though Mr. Hyatt was present in Las Vegas on December 21, 1991, FTB alleges "Hyatt's presence established,
9 California".¹⁰³ FTB alleges that Mr. Hyatt received the FedEx delivery. However, FTB has produced no signature. What
10 FTB produced is another unsigned FedEx Sender Activity Summary with the typed word "Elise Smith", FTB_Philips
11 0005180, that was inadvertently mis-addressed to Mr. Hyatt's former California address.¹⁰⁴ Elise Smith was Mr.
12 Tamoshunas' secretary in New York, she was not at the Jennifer Circle house. FTB mischaracterizes this unsigned FedEx
13 Sender Activity Summary. FTB's "established" representation is actually an illogical inference that, because a package
14 addressed to Mr. Hyatt was dropped off at his former La Palma house, he was physically present there to receive it on the date
15 of delivery. This is false. Mr. Hyatt was present in Las Vegas on that day and delivery of a FedEx package does not establish
16 presence of the addressee, particularly when the FedEx package is mis-addressed.

17 A FedEx Sender Activity Summary does not establish physical presence. Mr. Hyatt's former next door neighbor,
18 Richard Neuner, testified that both before and after September 1991, which is when Mr. Hyatt moved to Las Vegas, Mr.
19 Neuner saw FedEx drivers leave packages behind the gate to the backyard of Mr. Hyatt's former La Palma house.¹⁰⁵ Mr.
20 Hyatt filed an authorization for FedEx drivers to leave packages without a signature which he inadvertently did not cancel
21 when he moved to Las Vegas.¹⁰⁶ Steve Foster, a senior paralegal at FedEx Corporation who is familiar with FedEx
22 procedures in 1991 and 1992 testified that FedEx did not provide a person-to-person service, it provided only a door-to-door
23 service and that the typed name in the "signed" block of a FedEx package does not mean that person actually provided a
24
25

26 ⁹⁹ Rebuttal to FTB Att. A/F, Section I. A., December 21, 1991.

27 ¹⁰⁰ FTB Attachment A-R, p. 77.

28 ¹⁰¹ Rebuttal to FTB Att. A/F, Section I. A., December 21, 1991.

29 ¹⁰² FTB Attachment A-R, p. 77.

¹⁰³ FTB Attachment A-R, p. 60.

¹⁰⁴ Affidavit of Algy Tamoshunas, August 4, 2010, ¶ 25.

¹⁰⁵ Declaration of Richard Neuner, May 28, 2015, ¶¶ 3-4.

¹⁰⁶ Hyatt's 2016 Supp. Aff., ¶ 98.

signature or that the package was actually delivered to that person.¹⁰⁷ A detailed discussion of FedEx deliveries is provided in the Rebuttal to FTB Att. A/F, Section II.D., July 12, 1991.

FedEx Sender Activity Summaries do not establish that Mr. Hyatt was at the Jennifer Circle house to receive deliveries. They only mean that FedEx packages were left at the Jennifer Circle house.

1.8.4.5 Mr. Hyatt Sent His Faxes From And Received His Faxes At His Las Vegas Apartment Where His Only Fax Machine Was Located.

Mr. Hyatt sent his faxes from and received his faxes at his Las Vegas apartment where his only fax machine was located during the disputed period. Overwhelming eyewitness testimony confirmed that Mr. Hyatt's fax machine was located at his Las Vegas apartment during the disputed period: *19 witnesses testified* about a fax machine in Mr. Hyatt's Las Vegas apartment; *11 witnesses testified* about seeing a fax machine in Mr. Hyatt's Las Vegas apartment; *12 witnesses testified* about sending faxes to or receiving faxes from Mr. Hyatt's Las Vegas apartment.¹⁰⁸

Thus, *a fax sent by Mr. Hyatt during the disputed period is evidence of Mr. Hyatt's presence at his Las Vegas apartment.*¹⁰⁹

1.8.4.6 Mr. Hyatt Did Not Send Faxes From the La Palma House after October 1, 1991, As FTB Falsely Claims.

Mr. Hyatt did not send any faxes from or receive any faxes at the La Palma house after October 1, 1991, which is the date that Mr. Hyatt sold the house. As of October 1, 1991, Mr. Hyatt's only fax machine was located in Las Vegas (Section 1.8.4.5). However, FTB falsely states that Mr. Hyatt sent 13 faxes from the La Palma house after October 1, 1991, in its Attachment A-R, p. 36 and in its 1991 RSAB, pp. 16-17.¹¹⁰ Each of these documents is discussed in Mr. Hyatt's 2016 Supp. Aff., ¶¶ 101-115. Not one of these faxes was sent from the La Palma house.

Mr. Hyatt established by overwhelming eyewitness evidence that he moved his fax machine, computer and active files to Las Vegas and that he faxed his documents from his Las Vegas apartment, not from his former California house: 14 witnesses testified about Mr. Hyatt's former Jennifer Circle house being nearly empty of furniture and furnishings before he moved to Las Vegas in 1991; 19 witnesses testified about a fax machine in Mr. Hyatt's Las Vegas apartment; 11 witnesses

¹⁰⁷ Affidavit of Steve Foster, February 17, 2015, ¶¶ 5-12. Further demonstration that a typed name on a FedEx document cannot be relied on to establish personal presence is provided at Rebuttal to FTB Att. A/F, Section I. B., November 22, 1991.

¹⁰⁸ Updated Testimonial Topics, Exs. T025, T100, and T057, respectively; see also Hyatt's 2016 Post-DP CDE Aff., ¶ 295; Updated Testimonial Topics, Ex. T004.

¹⁰⁹ Hyatt's 2016 Post-DP CDE Aff., ¶¶ 295-304; Section 1.8.4.6; Rebuttal to FTB Att. A/F, Section I. B., October 27, 1991.

¹¹⁰ FTB's bad faith acts against Mr. Hyatt are further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB, Section 1.5; ASAB Attachment 1; and in Section V of the Second Supplemental Motion To Strike.

1 testified about seeing a fax machine in Mr. Hyatt's Las Vegas apartment; and 12 witnesses testified about sending faxes to or
2 receiving faxes from Mr. Hyatt's Las Vegas apartment.¹¹¹

3 Mr. Hyatt sent his faxes from and received his faxes at his Las Vegas apartment where his only fax machine was
4 located during the disputed period (Section 1.8.4.5).

5 FTB falsely claims Mr. Hyatt faxed 13 documents from the La Palma house on twelve dates, but it only refers to its
6 calendar.¹¹² The calendar links to faxes that contain Mr. Hyatt's Cerritos P.O. Box return address. Nothing in these faxes
7 establishes Mr. Hyatt's former La Palma house as the source of the faxes and nothing in these faxes establishes his presence at
8 the La Palma house. In fact, FTB fails to mention that Mr. Hyatt has testified that, after he moved to Las Vegas, he continued
9 to use legacy templates stored on his computer that had the Cerritos P.O. Box return address even though he was sending faxes
10 from his fax machine in Las Vegas.¹¹³ This testimony explains why some faxes contained his old California address and
11 supports Mr. Hyatt's earlier statement that he did not send faxes from the La Palma house after October 1, 1991.

12 A fax document which the FTB brief links to under the date of March 28, 1992,¹¹⁴ is an example of a form with no
13 date and no signature. After Mr. Hyatt moved to Las Vegas he continued to use preprinted fax cover sheets that had the
14 Cerritos P.O. Box return address even though he was sending the faxes from his fax machine in Las Vegas.¹¹⁵

15 FTB did not link either its Attachment A-R, p. 36 or its 1991 RSAB, pp. 16-17 to 13 fax documents and the ones that
16 it did link either were not faxed at all, or were faxed by Mr. Hyatt from his Las Vegas apartment where his fax machine was
17 located, or were faxed by Mr. Hyatt's girlfriend from her home, or were received at an unknown location and apparently re-
18 faxed.¹¹⁶

19 When Mr. Hyatt was initially in Las Vegas, he used old fax cover pages and old templates that he had stored on his
20 computer that had his old Cerritos P.O. Box return address. Thus, the P. O. Box return address on the documents does not
21 indicate where he faxed these documents from. However, Mr. Hyatt testified that the documents he faxed were faxed from his
22 Las Vegas apartment with his fax machine that was located at his Las Vegas apartment (Section 1.8.4.5).¹¹⁷

23 Mr. Hyatt testified that he has examined each of the 12 (not 13) documents linked in FTB's calendar and they do not
24 show that they were faxed from a California location. None of these documents contain a fax header or any other information
25

26 ¹¹¹ Updated Testimonial Topics, Exs. T004, T025, T100, and T057, respectively; Rebuttal to FTB Att. A/F, Section
27 I. B., October 27, 1991.

28 ¹¹² 1991 RSAB p. 17:13-14.

29 ¹¹³ Affidavit of Gilbert P. Hyatt, August 9, 2010, § 5.1.2, p.182; Hyatt's 2016 Supp. Aff., ¶ 94.

¹¹⁴ 1991 RSAB, p. 17:13; March 28, 1992, FTB_Philips 0001844.

¹¹⁵ Hyatt's 2016 Supp. Aff., ¶¶ 114, 64.

¹¹⁶ Hyatt's 2016 Supp. Aff., ¶¶ 101-115.

¹¹⁷ Hyatt's 2016 Supp. Aff., ¶ 101.

1 indicating that they were faxed from a California fax number and Mr. Hyatt testified that he did not fax any of these
2 documents from the La Palma house.¹¹⁸

3 Mr. Hyatt testified that the documents linked to the above dates listed by FTB do not show that a fax was sent from a
4 California fax machine. He testified that he used letter templates which contained the Cerritos P.O. Box address and his
5 former California fax number for a period of time after he moved to Las Vegas. He testified that he did not immediately
6 update the letter and fax templates after he moved to Las Vegas and that he did not mail or fax correspondence from his
7 former La Palma house after he sold the former La Palma house on October 1, 1991. Mr. Hyatt testified that he did not fax
8 any of these documents from the La Palma house and he testified that he was not present at the La Palma house on the dates of
9 these documents or at any other time between October 1, 1991, and late 1992 when he returned for a visit.¹¹⁹ Mr. Hyatt
10 testified that his fax machine, computer, and active files were located in his Las Vegas apartment as of October 21, 1991.¹²⁰

11 **1.8.4.7 FTB Makes Hundreds Of False Allegations About An Alleged Jennifer Circle Home/Business.**

12 FTB's false mantra of a Jennifer Circle "home/business" is used throughout its Attachment A-R, Attachment E, and
13 its RSABs. FTB made up the false mantra – Jennifer Circle "home/business" –and FTB repeats "home/business" over 300
14 times in its RSABs and attachments as if repetition would make it true, but it is still false. To the contrary, *overwhelming*
15 *eyewitness and documentary evidence* has established that Mr. Hyatt did not have a "home/business" (1992 ASAB, Sections,
16 1.5.1, 1.5.5). FTB has gone so far as to falsify the evidence in its attempt to place a "home/business" at the Jennifer Circle
17 house.

18 In one of many examples of *FTB mischaracterizing evidence*, FTB falsely claims that Helene Schlindwein
19 "testified" in her "deposition" about working at Mr. Hyatt's "home/business":

20 "Schlindwein testified ... when she no longer worked at Hyatt's 7841 Jennifer Circle *home/business* (see
21 deposition of Helene Schlindwein pages 00081 through 00083)".¹²¹

22 However, *Ms. Schlindwein did not even mention a "home/business" in her deposition or anywhere else.*¹²² This FTB
23 statement about Ms. Schlindwein is another one of thousands of FTB falsehoods. FTB's hundreds of references to a
24 "home/business" do not establish that Mr. Hyatt was present at his Jennifer Circle house or that he had any business, let alone
25 a California licensing business. Making a false statement hundreds of times does not make it true.¹²³

26 ¹¹⁸ Hyatt's 2016 Supp. Aff., ¶ 113.

27 ¹¹⁹ Hyatt's 2016 Supp. Aff., ¶ 114.

28 ¹²⁰ Hyatt's 2016 Supp. Aff., ¶ 115.

29 ¹²¹ FTB Attachment A-R, August 31, 1991, p. 23, Footnote 38 (emphasis added).

¹²² Deposition of Helene Schlindwein pages 00081 through 00083.

¹²³ FTB's bad faith acts against Mr. Hyatt are further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB, Section 1.5; ASAB Attachment 1; and in Section V of the Second Supplemental Motion To Strike.

1 FTB uses this “home/business” mantra in the context of a licensing business for its sourcing case. However, there
2 was no licensing business or else Mr. Hyatt would have been in breach of the July 1991 Philips Agreement and would have
3 jeopardized the very lucrative Philips relationship (1992 ASAB, Sections 1.7.1.2, 1.7.1.3, 1.7.3). Philips had the *exclusive*
4 licensing authority to license Mr. Hyatt's licensable patents (Section 1.7.5). Mr. Hyatt did not have a licensing business and
5 did not have a home/business.

6 **1.8.4.8 Dozens Of Eyewitnesses Testified That FTB Private Investigators Provided False Testimony**
7 **About Them.**

8 FTB relies heavily on declarations by its private investigators (“FTB PIs”). However, dozens of witnesses testified
9 under penalty of perjury that the FTB PIs either falsely stated that the witnesses were interviewed when they were not
10 interviewed or falsely stated what the witnesses said in their interviews.¹²⁴

11 FTB’s private investigators, Mr. Savage and Mr. Dameron, provided several long declarations with extensive false
12 testimony about people they purportedly interviewed. However, this FTB PI testimony is vigorously disputed by the actual
13 testimony of the people that were purportedly interviewed. Twelve witnesses testified that they had not been interviewed
14 about Mr. Hyatt in response to FTB’s misrepresentations about their alleged statements about Mr. Hyatt.¹²⁵ In addition, 18
15 witnesses testified that FTB investigators did not ask questions or show photographs that FTB investigators incorrectly
16 testified that they had done, 15 witnesses testified that FTB investigator Mr. Savage misrepresented in his declaration the
17 answers to his questions that he had received from them, 14 witnesses testified that they did not make statements to FTB
18 investigator Mr. Savage that Mr. Savage testified that the witnesses had made, 18 witnesses testified about FTB investigator
19 declarations misrepresenting their statements; and 31 witnesses testified that they did not make statements to FTB
20 investigators that the FTB stated that the witnesses had made.¹²⁶

21 This overwhelming and mutually supportive testimony conclusively establishes that Mr. Savage and Mr. Dameron
22 signed false declarations under penalty of perjury. Mr. Savage responded by calling one of the witnesses a liar and accused
23 others of providing false information in their declarations or affidavits.¹²⁷ Mr. Dameron testified that he did not have any
24 memory of the interviews he conducted with the witnesses,¹²⁸ yet he signed long declarations under penalty of perjury about
25 what the witnesses alleged told him. See the Motion to Strike FTB Investigators' Declarations.

26 ¹²⁴ Motion To Strike FTB Investigators' Declarations; Table of False Declaration Statements Made By Jake Dameron;
27 Supplemental Table of False Declaration Statements Made By Jake Dameron; Table of False Declaration Statements Made By
William; Supplemental Table of False Declaration Statements Made By William Savage.

28 ¹²⁵ Updated Testimonial Topics, Ex. T073.

29 ¹²⁶ Updated Testimonial Topics, Exs. T075, T076, T081, T077, and T080, respectively.

¹²⁷ For example, FTB PI William Savage, in Declaration of William Savage, November 20, 2012, p.1, accused Clara
Kopp of lying and Frank Amador and Ira Levy of providing false information.

¹²⁸ Declaration of Jake Dameron, January 31, 2013, p. 42.

1 In view of the above, your Board should strike the testimony of the FTB PIs and should give full credibility to the
2 testimony of Mr. Hyatt's witnesses.

3 **1.8.4.9 Eyewitness And Documentary Evidence Establish That FTB Misrepresents the PSB&C**
4 **Invoices.**

5 FTB misrepresents the PSB&C invoices to falsely attempt to show that Mr. Hyatt had a patent licensing business,
6 which he did not have. For example, referring to a Philips Quarterly Report listing PSB&C invoices to Philips for the *Hyatt v.*
7 *Boone* interference, FTB falsely claims that Mr. Roth billed Mr. Hyatt for, among other things, "patent licensing activity"
8 ("Showing a significant amount of work performed, patent attorney Greg Roth bills Hyatt's [sic] for patent licensing activity
9 and Boone (Texas Instruments) interference expenses and fees").¹²⁹ This is false. The PSB&C invoices are listed under the
10 heading "TI Interference", not "patent licensing activity," *the "TI Interference" was a Patent Office proceeding; it was not a*
11 *licensing activity*. Furthermore, PSB&C billed Philips, not Mr. Hyatt. PSB&C represented Philips with respect to the Philips
12 Licensing Program and the *Hyatt v Boone* interference after July 1991¹³⁰ and PSB&C billed Philips.¹³¹ Philips paid PSB&C
13 for these five invoices.¹³² Philips was responsible for managing and operating the Philips Licensing program including paying
14 all expenses for the licensing program.

15 This is another example of FTB misrepresenting the evidence in its attempt to falsely involve Mr. Hyatt in the Philips
16 Licensing Program and to falsely argue that Mr. Roth was working for Mr. Hyatt on the Philips Licensing Program.

17 **1.8.4.10 FTB In Bad Faith Deprived Mr. Hyatt Of A Full, Fair, And Lawful 1992 Audit.**

18 FTB did not conduct a true audit for the 1992 tax year, which further evidences FTB's bad faith to deprive Mr. Hyatt
19 of his right to a full, fair, and lawful audit (1992 AOB, § I, pp. 4-6; 1992 ARB, § II, pp. 2-3; Sections 1.5, 1.5.1 to 1.5.3).¹³³
20 Because FTB failed to conduct a true audit for the 1992 tax year, FTB did not carry its initial burden, its sourcing burden, or
21 its fraud penalty burden for 1992. Thus, for this reason alone, the 1992 assessments should be reversed.

22 Furthermore, it is now undisputed that FTB made a \$24 million income error in its 1992 assessments and refused to
23 acknowledge it until your Board ordered an Additional Briefing directed thereto. However, despite recently acknowledging
24

25 ¹²⁹ FTB Attachment A-R, August 31, 1991, p. 23, Footnote 38; referring to an excerpted page from the November 27,
26 1991, Philips Quarterly Report, FTB_Philips 0004740-0004741 (EC 01384).

27 ¹³⁰ PSB&C's new client form filled out for Philips and dated August 30, 1991 (GLR 02073); Affidavit of Gregory L.
28 Roth, August 9, 2010, p. 17.

29 ¹³¹ Five PSB&C invoices to Philips for the *Hyatt v. Boone* interference dated: (1) May 31, 1991, FTB_Philips
0006692-0006699; (2) June 30, 1991, FTB_Philips 0006673-0006683; (3) July 31, 1991, FTB_Philips 0006662-0006667; (4)
August 31, 1991, FTB_Philips 0006639; and (5) September 30, 1991, FTB_Philips 0006630.

¹³² Philips quarterly report, November 27, 1991, FTB_Philips 0004740-0004741 (EC 01384).

¹³³ FTB's bad faith acts against Mr. Hyatt are further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB,
Section 1.5; ASAB Attachment 1; and in Section V of the Second Supplemental Motion To Strike.

1 that it made a \$24 million income error in its RAB, FTB still has not corrected its 1992 assessments to correct for the error.
2 Thus, for this additional reason, the 1992 assessments should be reversed.

3 FTB also failed to meet its initial burden of establishing “reasonable and rational” assessments and its burden for
4 establishing the sourcing assessments (Sections 1.5.1, 1.5.2). Even though residency is an intensely factual issue, the full
5 extent of FTB’s 1992 residency audit was a single letter requesting information about the timing of income received for
6 1992.¹³⁴ Mr. Hyatt’s representative provided the requested financial information by letter dated February 7, 1996.¹³⁵ Then,
7 without any further inquiry and less than two months later, the auditor issued a 17-page tentative determination letter, which in
8 large part recycled facts from the 1991 audit, even though the residency facts were significantly different in each year.¹³⁶
9 Amazingly, auditor Cox declared “Mr. Hyatt has not shown that his ties to Nevada outweighed his tied [sic] to California prior
10 to April 3, 1992”¹³⁷ when, in fact, she never asked Mr. Hyatt to provide any information regarding his 1992 residency during
11 the so called “audit.” Plainly the auditor had predetermined to assess Mr. Hyatt an enormous amount for 1992 (including the
12 now infamous \$24 million error (Sections 1.7.2, 1.8.5.4.4, 1.8.5.4.5, 1.9.10, 1992 ASAB, Section 1.7.5). The “audit” letter
13 was merely a formality.

14 FTB also acted in bad faith in imposing the 1992 fraud penalty (Sections 1.9, 1.9.1 to 1.9.10). Auditor Cox did not
15 assess the fraud penalty in her residency audit. However, FTB manager Mr. Steve Illia “determined the fraudulent failure to
16 file penalty should be applied to the 1992 year.”¹³⁸ Mr. Illia “determined” to impose the fraud penalty *before* any audit of the
17 fraud penalty had been conducted and then another auditor, Jeff McKenney, was assigned to write up a narrative purportedly
18 supporting a fraud penalty against Mr. Hyatt for the 1992 tax year.¹³⁹ Mr. McKenney did not conduct an audit. He simply
19 reviewed the 1991 fraud penalty write-up and the audit file as the basis for the fraud penalty for the 1992 tax year.¹⁴⁰ FTB
20 reviewer for the 1992 audit, Rhonda Marshall, expressly concluded that the fraud penalty should not be imposed for 1992
21 (Section 1.9.2).¹⁴¹ FTB “determined” to impose the 1992 fraud penalty without an audit on the fraud penalty issue in addition
22 to FTB’s failure to perform a proper audit on the 1992 residency issue. The subsequent write up of the 1992 fraud penalty was
23 a complete sham to justify the pre-determined fraud penalty.

24 ¹³⁴ FTB letter, January 19, 1996 (FTB-100567).

25 ¹³⁵ Cowan letter, February 7, 1996 (FTB 100568-100569).

26 ¹³⁶ FTB letter, April 1, 1996 (FTB 100598-100614).

27 ¹³⁷ FTB letter, April 1, 1996, p. 16 (FTB 100613).

28 ¹³⁸ RAB, p. 13.

29 ¹³⁹ Exhibits to Supplemental Brief Tables (Ex. 8, Partial Transcript, Depo. of Penny Bauche, 7/29/04, pp. 599-600;
see also Ex. 9, Partial Transcript, Depo. of Jeffrey McKenney, 8/9/04, pp. 314:1-5, 317:10-21, and 321:15-19).

¹⁴⁰ *See* Exhibits to Supplemental Brief Tables (Ex. 10, Partial Transcript, Depo. of Jeffrey McKenney, 7/1/99, p.
8:14-20).

¹⁴¹ FTB Memorandum (Aug. 12, 1997) (FTB 19023A-19024A) (“Rhonda [Marshall-Morgan] has reviewed the case
and disagrees with issuing the-fraud penalty [for the 1992 year].”

1 The predetermined residency audit for 1992 is another example of the extreme FTB bad faith and misconduct that
2 Mr. Hyatt has had to endure for the past 20 years. FTB's 1992 proposed assessment of over \$14 million in taxes, interest and
3 fraud penalty is based on no actual audit – FTB's residency assessment and fraud penalty were predetermined at the outset.
4 Moreover, FTB in bad faith refused to correct the clear overstatement of the payments to Mr. Hyatt by \$24 million despite
5 being informed of the error during the audit until your Board ordered the first Additional Briefing to resolve this issue. Thus,
6 because Mr. Hyatt was deprived of a full, fair, and lawful 1992 audit and because of FTB's failure to meet its burdens
7 (Sections 1.5.1, 1.8.4.10, 1992 AOB, § I, pp. 4-6; 1992 ARB, § II, pp. 2-3), your Board should reverse the 1992 assessments in
8 their entirety.

9 **1.8.5 FTB's Sourcing Assessments Must Be Reversed For The Additional Reason That They Were Not**
10 **Properly Raised In The NPAs Or NOAs.**

11 **1.8.5.1 FTB Did Not Raise The Sourcing Issue During The Audits, But Raised It For The First Time**
12 **At The End Of The Protests And Then Made a Major Change In Its Position On Sourcing**
13 **During These Appeals.**

14 FTB is barred from asserting that Mr. Hyatt is taxable as a nonresident on California source income because the
15 Notices of Proposed Assessment ("NPAs") did not state sourcing as a reason for the assessments. FTB's internal documents
16 relating to the FTB's Embry task force, including the auditor, which was convened to evaluate a sourcing assessment during
17 the audit, show that the task force determined that FTB did not have a sourcing case.¹⁴² FTB's sourcing theory was not
18 included in the 1991 and 1992 NPAs and Mr. Hyatt therefore did not have the required notice to permit him to protest a
19 sourcing assessment.

20 In addition, FTB improperly placed the burden of "auditing" the sourcing issue on your Board because FTB raised
21 the issue at the end of the protests and refused to give Mr. Hyatt a meaningful opportunity to provide a response to the newly
22 raised issue. After delaying Mr. Hyatt's protests for over a decade FTB raised the sourcing issue for the first time in its 50-
23 page protest determination letter¹⁴³ but FTB denied Mr. Hyatt a proper response."¹⁴⁴ Mr. Hyatt requested an opportunity to
24 have a full response¹⁴⁵ but FTB refused Mr. Hyatt's response.¹⁴⁶ Bedrock principles of due process require FTB to provide
25 Mr. Hyatt formal *notice* of assessments asserted against him; he cannot be required to guess as to the grounds for a proposed
26 assessment and then prepare a response. Furthermore, FTB told Mr. Hyatt he would have "the opportunity to address the

27 ¹⁴² Memorandum from M. Embry to FTB auditors, 8/21/95, attached to cover Memorandum from M. Embry, 8/24/95
28 (FTB 100288-100292).

29 ¹⁴³ FTB protest determination letter, pp. 30-49.

¹⁴⁴ FTB protest determination letter, pp. 49-50.

¹⁴⁵ Letter from Eric Coffill to FTB, Nov. 20, 2007.

¹⁴⁶ Letter from George McLaughlin, Nov. 26, 2007.

1 source of income and the other issues in detail” on appeal to your Board¹⁴⁷ thereby placing the burden on your Board to do
2 what FTB was required to do during Mr. Hyatt’s audits and protests. On December 26, 2007, without responding to Mr.
3 Hyatt’s submission, FTB issued the NOAs for each year. Thus, because FTB sprung the sourcing issue on Mr. Hyatt at the
4 end of the protest and refused to allow time to provide a meaningful response, FTB necessitated that Mr. Hyatt develop his
5 response to the sourcing issue during these appeals. FTB’s tactics have placed an enormous burden on your Board. The
6 sourcing issue is being presented for the first time before your Board, thus your Board is tasked with essentially “auditing” the
7 sourcing issue, and there has been no earlier opportunity for narrowing of issues or clarification of errors. In addition, FTB
8 compounded the burden on your Board by significantly changing its theory for the sourcing assessments while these appeals
9 have been pending (Section 1.8.5.4.3). This has resulted in voluminous additional briefing and delays in these appeals and
10 prejudice to Mr. Hyatt.

11 FTB’s denial of Mr. Hyatt’s legal rights, shifting legal theories, and shifting assessments are directly contrary to the
12 statutory assessment scheme enacted by the Legislature, which requires FTB to issue an NPA when it determines a
13 deficiency,¹⁴⁸ and requires that the NPA “shall set forth *the reasons* for the proposed deficiency assessment and the
14 computation thereof.”¹⁴⁹ These statutes give a taxpayer an opportunity to protest the assessments (unlawfully denied to Mr.
15 Hyatt) and do not permit FTB to change its reasons for an assessment after it has issued an NPA to the taxpayer as FTB has
16 done here. FTB cannot deviate from the reason given in its NPAs after a taxpayer has prepared a defense to the NPAs,
17 presented his defense in a protest hearing and appealed the matter to your Board. Thus, because the sourcing issue was not
18 raised in the NPAs and Mr. Hyatt was denied his rights, your Board should reject the sourcing assessments.

19 Your Board also should reject FTB’s sourcing assessment because of its extreme delay in raising the issues.
20 Allowing a tax agency to raise new assessment issues after great delay violates principles of fair play and justice. In *Achiro v.*
21 *Commissioner*, 77 T.C. 881 (1981), which your Board cited in *Appeal of David G. and Helen Mendelsohn*, 85-SBE-141, Nov.
22 6, 1985, the Tax Court declared: “if respondent raises [a new issue] at such a late date that the principles of fair play and
23 justice would be abrogated by permitting him to rely on [the new issue], then he will not be allowed to rely on [the new issue]
24 at all.”¹⁵⁰

25 Further, the sourcing arguments raised in FTB’s NOAs was limited to a claim that Mr. Hyatt’s patents had a business
26 situs in California.¹⁵¹ After Mr. Hyatt filed his appeals and his 1991 and 1992 opening briefs, FTB discarded this claim and

27 ¹⁴⁷ Letter from George McLaughlin, Nov. 26, 2007.

28 ¹⁴⁸ Rev. & Tax. Code § 19033.

29 ¹⁴⁹ Rev. & Tax. Code § 19034 (emphasis added).

¹⁵⁰ *Achiro*, *supra* at 24-25.

¹⁵¹ FTB’s 1991 Notice of Action (FTB 28804-28806); FTB’s 1992 Notice of Action (FTB 28811-28813).

1 raised a new and completely different sourcing issue in these appeals –that Mr. Hyatt operated a California-based licensing
2 business.¹⁵² FTB did not raise this new sourcing issue in the audits, NPAs, or NOAs. Therefore, FTB must be barred from
3 raising this issue here.¹⁵³

4 After Mr. Hyatt filed his AOBs, ARBs, and ASBs in these appeals, and after FTB filed its ROB and RRB in these
5 appeals, FTB raised another completely new tax issue regarding its \$24 million error in its first additional briefing (Sections
6 1.7.2, 1.8.5.4.4, 1.8.5.4.5, 1.9.10, 1992 ASAB, Section 1.7.5). FTB acknowledged that it made a \$24 million error. FTB
7 partially corrected that error by withdrawing its decades long holding that this income was received on January 15, 1992, and
8 admitted that the income was not received until after the disputed period, but FTB let stand in the 1992 disputed period the
9 taxes, interest and penalties on its \$24 million error. FTB did not raise this new issue in the audit, NPAs, NOAs, ROB, or
10 RRBs. Indeed, FTB only raised this new issue of taxation of income that does not exist in the relevant time period after FTB
11 acknowledged it overstated the 1992 NPA by \$24 million.¹⁵⁴ Therefore, FTB must be barred from raising this issue here.¹⁵⁵
12 This may be the most absurd residency assessment ever heard by your Board, i.e., FTB assessed taxes under *a residency*
13 *statute* for a time period when the income *had not been received* or even contemplated; Mr. Hyatt received the \$24 million in
14 license payments at issue during the second half of 1992 when there was no question as to Mr. Hyatt's Nevada residency. It is
15 undisputed that Mr. Hyatt was a Las Vegas resident during the second half of 1992 when he received the \$24 million in
16 license payments, a fact that FTB acknowledged in its RAB.

17 Allowing FTB to violate the mandatory statutory scheme for assessing taxes enacted by the Legislature will open the
18 door for widespread abuse of taxpayers and increased burdens on your Board. Instead of doing careful and complete audits
19 that narrow the issues for protests and appeals to your Board, FTB is attempting to get away with incomplete or sloppy audits
20 because it believes that it is no longer bound by its audit determinations and NPAs. As these appeals illustrate, FTB will be
21 free to conduct never-ending audits resulting in great expense to taxpayers and great delay in the protests and appeals. FTB
22 will be able to withhold evidence and its assessment theories until the taxpayer files an appeal with your Board. Then, while
23 the appeal is pending, FTB will spring new evidence and assessment theories to blindside taxpayers decades after the relevant
24 time period. These abusive tactics are contrary to the tax administration procedures enacted by the Legislature¹⁵⁶ and grossly

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27 ¹⁵² 1992 RSAB, p. 22:9-12.

28 ¹⁵³ See *Achiro, supra*.

29 ¹⁵⁴ RAB, pp. 28-29 and fn. 152.

¹⁵⁵ See *Achiro, supra*.

¹⁵⁶ Rev. & Tax. Code §§ 19033 and 19034.

1 unfair. Moreover, FTB's tactics completely eviscerate the statute of limitations imposed by the Legislature, which generally
2 requires that FTB issue an NPA containing a statement of reasons for the assessment within four years of the tax year.¹⁵⁷

3 FTB's tactics also will greatly prejudice taxpayers and overburden your Board. In these appeals FTB's bad faith and
4 underhanded tactics greatly prejudiced Mr. Hyatt – he has had to gather new evidence and prepare new briefs to rebut FTB's
5 new sourcing claims at great expense and in addition there has been an enormous loss of evidence due to the long delay in
6 these appeals. Witnesses have become unavailable and a large number of documents have been lost or destroyed because of
7 the FTB delay. FTB's tactics also place enormous burdens on your Board because factual and legal issues are evolving during
8 the appeal and there has been no opportunity for the taxpayer and FTB to narrow the issues through a normal audit and protest.
9 Instead of an initial determination at audit, here all issues have to be briefed by the parties and presented to your Board for
10 initial determination. The tax appeal procedures were never intended to have your Board preside over the audit, protest and
11 appeal all at the same time. Thus, FTB's new and evolving sourcing assessments must be reversed.

12 Accordingly, FTB's sourcing issue should be rejected entirely.¹⁵⁸

13 **1.8.5.2 FTB Is Barred From Raising The Sourcing Assessments Because FTB Has Not Properly**
14 **Raised The Issues.**

15 **1.8.5.2.1 FTB is barred from raising the sourcing issues because they were not raised in the**
16 **NPA.**

17 FTB is barred from raising the sourcing issue in these appeals. The statutory assessment scheme enacted by the
18 Legislature prescribes clear, mandatory requirements for FTB to issue an assessment. If FTB determines a tax deficiency, it
19 must mail an NPA to the taxpayer,¹⁵⁹ and the NPA “shall set forth *the reasons* for the proposed deficiency assessment and the
20 computation thereof.”¹⁶⁰ In these appeals, FTB did not state sourcing as a reason for the proposed assessments in the 1991 and
21 1992 NPAs,¹⁶¹ FTB is barred from raising the theory now in these appeals.

22 We recognize that your Board stated in *Appeal of David G. and Helen Mendelsohn*, 85-SBE-141, Nov. 6, 1985, that
23 it may decide issues raised by FTB after issuance of an NPA. However, the analysis in *Mendelsohn* does not reflect current
24 California law. First, *Mendelsohn* is in direct conflict with the California Supreme Court's decision in *Title Ins. Co. of Minn.*

25 ¹⁵⁷ Rev. & Tax. Code § 19057.

26 ¹⁵⁸ During the pending appeals, the California-based business sourcing theory apparently has morphed into FTB's
27 *only* sourcing theory as declared in FTB's 1992 RSAB, where FTB now argues that Mr. Hyatt “operated a California
28 business.” 1992 RSAB p. 22:9-12. Accordingly, FTB should be barred from raising any sourcing theory for the additional
29 reason that the sole theory it is advancing was raised too late in these proceedings, in its RSBs in 2014.

¹⁵⁹ Rev. & Tax. Code § 19033 (“it *shall* mail notice to the taxpayer of the deficiency proposed to be assessed”) (emphasis added).

¹⁶⁰ Rev. & Tax. Code § 19034 (emphasis added).

¹⁶¹ FTB's 1991 Notice of Proposed Assessment (H 08759-08762); 1992 Notice of Proposed Assessment (H 02248-02250)

1 v. *St. Bd. of Equal.*, 4 Cal.4th 715 (1992), which declared that tax assessments may only be issued in accordance with the
2 statutory procedures enacted by the Legislature.¹⁶² Thus, a tax assessment not issued in accordance with the statutory
3 assessment procedure could not be raised as an offset to a refund claim.¹⁶³ In this case, as noted, the sourcing theory has never
4 been raised by FTB in an NPA. In addition, *Mendelsohn* is not applicable because it relied on federal law that differs from
5 current California law.¹⁶⁴ The federal tax cases cited in *Mendelsohn* cited an express U.S. Tax Court rule that provided for the
6 shifting of the burden of proof to the IRS on new issues raised by the IRS during a trial.¹⁶⁵ However, current California law
7 and the Rules for Tax Appeals do not permit FTB to introduce new issues during an appeal before your Board. Accordingly,
8 because *Mendelsohn* does not reflect current California law, it should not be followed.

9 **1.8.5.2.2 FTB is barred from assessing any income after April 2, 1992, because it has not**
10 **issued an NPA for that post-disputed period.**

11 FTB is barred from assessing income received after April 2, 1992, (the post-disputed period) because the 1992 NPA
12 proposed an assessment only through April 2, 1992.¹⁶⁶ See Section 1.8.5.2.1. Thus, FTB cannot assess income received after
13 April 2, 1992. Yet, that is exactly what FTB is attempting to do regarding its \$24 million income error, assessing taxes on
14 income received after April 2, 1992. Sections 1.7.2, 1.8.5.4.4, 1.8.5.4.5, 1.9.10, 1992 ASAB, Section 1.7.5. This
15 notwithstanding the fact that FTB did not audit this post-disputed period, FTB did not develop a “reasonable and rational”
16 basis for the assessments for this post-disputed period, and Mr. Hyatt’s facts of no California source income during this
17 post-disputed period are overwhelming (e.g., that the payments originated in Japan, were paid to Philips in New York, and
18 were wire transferred to Mr. Hyatt’s Nevada situs investment accounts without touching California) (Sections 1.5.1, 1992
19 ASAB, Section 1.7.5).

20 **1.8.5.3 Making The Sourcing Assessments For The First Time In The NOAs Violates The Statutory**
21 **Procedure For Issuing An Assessment And Significantly Prejudices Mr. Hyatt.**

22 FTB’s invalid sourcing argument is not saved by FTB’s NOAs. California’s statutory scheme for assessing taxes
23 does not allow for FTB to introduce new assessments into an NOA. Under California law, FTB must first set forth a proposed

24 ¹⁶² *Title Ins. supra*, (“By claiming that the title insurers should not receive a refund because they should have paid
25 taxes on the total premiums paid by their insureds to the title companies, the Board is essentially assessing a deficiency against
26 the title insurers. However, the Board is charging such a deficiency without following the above mentioned statutorily
27 required administrative procedures. Just as the taxpayer is limited to the claims it may assert in the superior court to those
28 pursued in the administrative proceedings, the Board should be limited in its assertion of setoffs in the superior court action to
29 those deficiency assessments formally pursued under Revenue and Taxation Code sections 12421 through 12435: “ ‘Men must
turn square corners when they deal with the Government,’ it is hard to see why the government should not be held to a like
standard of rectangular rectitude when dealing with its citizens.”).

¹⁶³ *Title Ins. supra*.

¹⁶⁴ *Mendelsohn, supra* citing *Achiro v. Commissioner*, 77 T.C. 881 (1981), and *Falese v. Commissioner*, 58 T.C. 895
(1972).

¹⁶⁵ See Tax Court Rule 142.

¹⁶⁶ 1992 NPA p. 2 (“We consider you to be a resident of this state through April 2, 1992 and, as such, you are taxable
on income from all sources *through that date.*”) (emphasis added).

1 assessment in an NPA.¹⁶⁷ The taxpayer then has the opportunity to review the NPA and decide whether to file a protest. “If a
2 protest is filed, the Franchise Tax Board shall *reconsider the assessment* of the deficiency. . . .”¹⁶⁸ After FTB’s
3 reconsideration of the assessment, FTB’s action on the protest must be set forth in an NOA.¹⁶⁹ Thus, under this statutory
4 scheme, when it receives a protest, FTB may only “reconsider the assessment” that was issued in the NPA. Accordingly, the
5 sourcing issue must be rejected as unlawfully raised for the first time in the NOAs.

6 Furthermore, the NOAs only raise the issue that the patents have a “business situs” in California. Thus, FTB must
7 prove that the patents have a California “business situs” in California in view of the fact that the situs of the patents based on
8 ownership is Nevada because the sourcing statute applies only to nonresidents. The NOAs do not provide notice of FTB’s
9 new “California licensing business” theory.

10 In addition, by waiting to raise the sourcing issue for the first time in the NOAs in 2007, FTB significantly prejudiced
11 Mr. Hyatt. FTB waited *11 years* after the 1991 NPA and *10 years* after the 1992 NPA before notifying Mr. Hyatt that
12 sourcing was an issue. FTB’s decade delay in raising this complex factual and legal issue was (and still is) extremely
13 prejudicial to Mr. Hyatt because witnesses’ memories have faded, important witnesses have passed away (e.g., Philips director
14 Mr. Hamersma), and enormous amounts of very relevant documents have been lost (e.g., almost all of the Mahr Leonard
15 documents were destroyed).¹⁷⁰ Mr. Hyatt has been further prejudiced because he spent considerable resources preparing to
16 rebut only a residency assessment. If FTB had raised the issue in a timely manner in the NPAs as required by Section 19034,
17 Mr. Hyatt could have efficiently prepared both the residency and sourcing cases at the same time.

18 Accordingly, your Board also should reject the sourcing issue on the ground it results in great prejudice to Mr. Hyatt
19 and violates his right to timely notice of the legal reasons for the tax assessments.

20 **1.8.5.4 Principles Of Justice And Fairness Bar FTB From Raising New Sourcing Issues Without An**
21 **Audit And After Issuance of the NPAs And NOAs.**

22 **1.8.5.4.1 The NPAs do not support the sourcing assessments and the sourcing assessments**
23 **have not been audited or protested.**

24 Your Board should reject FTB’s new sourcing issues because they are untimely, unlawful, unfair, and unjust. The
25 sourcing issues were first raised more than a decade after issuance of the NPAs. In *Achiro, supra*, the Tax Court declared “if
26 respondent raises [a new issue] at such a late date that the principles of fair play and justice would be abrogated by permitting
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28 ¹⁶⁷ Rev. & Tax. Code § 19033.

¹⁶⁸ Rev. & Tax. Code § 19044 (emphasis added).

29 ¹⁶⁹ Rev. & Tax. Code § 19045 (“The Franchise Tax Board’s action upon the protest, whether in whole or in part, is
final upon the expiration of 30 days from the date when it mails notice of its action to the taxpayer . . .”).

¹⁷⁰ Declaration of Mr. Leonard, June 8, 2015, ¶ 3.

1 him to rely on [the new issue], then he will not be allowed to rely on [the new issue] at all.”¹⁷¹ FTB’s sourcing issues were not
2 audited, were not in the NPAs, and thus were not protested. Mr. Hyatt was not given his statutory required notice.

3 Thus, FTB’s new sourcing issues are asserted in violation of California law and must be rejected.

4 **1.8.5.4.2 The NOAs do not support the sourcing assessments.**

5 FTB’s sourcing assessments are unlawful, unfair, and unjust (Section 1.8.5.4.1). The NPAs and NOAs do not give
6 Mr. Hyatt the required notice of FTB’s sourcing theories and are insufficient as a matter of law to support FTB’s sourcing
7 assessments. The sourcing issue has not been audited or included in the NPAs and thus Mr. Hyatt was denied his statutory
8 right to protest the sourcing issue. The sourcing assessments in the NOAs are based on unsupported conclusory statements
9 without a taxpayer rebuttal. It is unlawful for FTB to make major assessments at the end of the FTB administrative process
10 without the taxpayer having a chance to respond in the audit and protest (Sections 1.5.1, 0, 1.6).¹⁷² Your Board must not
11 condone issuing tax assessments without adequate notice and without an adequate record as required by law.

12 The NPAs do not provide Mr. Hyatt the required notice of sourcing issues and the NOAs do not provide Mr. Hyatt
13 the required notice of FTB’s brand new alleged California licensing business issue or even a California business issue. The
14 NOAs allege an assessment based on residency and then purport to issue an “alternative” assessment based on “a business
15 situs in California” of Mr. Hyatt’s “intellectual property.” The sourcing issue has not been audited by FTB and Mr. Hyatt has
16 been denied his right to protest the sourcing issue. Thus there is no legitimate record that FTB can rely on to support
17 underlying facts of FTB’s conclusory statement that the intellectual property had “a business situs in California”. In effect,
18 FTB has created an arbitrary and secretive “star chamber” type proceeding -- making up false self serving rulings without the
19 victim having an opportunity to rebut them.

20 FTB fails to identify any factual basis for its sourcing issue and cannot rely on its 2007 Protest Determination Letter
21 to support an alleged notice of the sourcing issue in the NOAs.¹⁷³ The letter is mentioned in the third paragraph of the NOA’s
22 in connection with sustaining the NPAs. However, the NPAs deal only with residency issues and do not relate to any sourcing
23 issue. The NOA’s do not mention the 2007 Protest Determination Letter in connection with the sourcing issue. When
24 addressing the new sourcing issue the NOA’s state that the assessment is “predicated upon all of the facts and evidence that
25 we have developed” but identify no “facts or evidence” and do not mention the 2007 Protest Determination Letter. A
26

27
28 ¹⁷¹ *Achiro, supra* at 24-25.

29 ¹⁷² Rev. & Tax. Code § 19044 (after a taxpayer files a protest to the NPA, requiring FTB to “reconsider *the*
assessment of the deficiency,” not issue a new assessment) (emphasis added).

¹⁷³ Letter dated November 1, 2007, from George McLaughlin to Morrison & Foerster.

1 generalized statement that an assessment is based on “all of the facts and evidence” does not give Mr. Hyatt adequate notice of
2 the basis for the assessment or what “facts and evidence” are being relied upon by FTB.

3 FTB apparently recognizes its statutory requirement to make “consistent” determinations which are not “arbitrary or
4 without foundation”.¹⁷⁴ The NOAs falsely assert that the sourcing assessment is “consistent” with and “alternative” to the
5 residency assessment. However, the business situs assessment in the NOAs is neither “consistent” with nor an “alternative” to
6 the residency assessment because the two assessments are mutually exclusive. For the § 17952 “business situs” exception to
7 apply Mr. Hyatt must be a nonresident of California, i.e., a resident of Nevada, and the patents must have a “business situs” in
8 California while the law of intangibles requires the situs of the patents to follow Mr. Hyatt’s Nevada residency. However,
9 since the NOAs state that we “consider you to be a resident of this state through April 2, 1992”, FTB cannot inconsistently
10 determine Mr. Hyatt to be a resident of both California and Nevada at the same time. The sourcing determination is an
11 unlawful, inconsistent determination, not an alternative determination, and it cannot provide the basis for an assessment. By
12 making an inconsistent sourcing determination, FTB has failed to comply with the requirements of Rev. & Tax. Code §§
13 19033 and 19034 that FTB make a “determination” that is neither “arbitrary” nor “without foundation”.

14 Furthermore, the NOAs do not give notice of the California licensing business issue that FTB appears to now rely on
15 for its sourcing theory. The NOAs contend that Mr. Hyatt’s “**intellectual property**” “was therefore derived from sources
16 within California”. A business situs of intellectual property within the state is a completely different concept from operating a
17 California licensing business within the state. The allegation in the NOAs that the “intellectual property” had a business situs
18 in California does not provide notice of an alleged California licensing business within the state. Furthermore, Mr. Hyatt
19 could not have operated a California licensing business in California or anyplace else because Mr. Hyatt did not have the right
20 to license his own patents according to the July 1991 Philips Agreement -- Mr. Hyatt’s Section 8.1 representations and
21 warranties in the July 1991 Philips Agreement “that he has not made and will not make any commitments to others
22 inconsistent with or in derogation of the rights and licenses granted to PHILIPS”.¹⁷⁵ Philips had the *exclusive* licensing
23 authority to license Mr. Hyatt’s licensable patents (Section 1.7.5).¹⁷⁶

24 Further, FTB’s NOAs have not satisfied the statutory requirements for taxation by demonstrating that the patents had a
25 “business situs within the state” by showing that Mr. Hyatt’s patents were employed as capital within the state or that the

26 ¹⁷⁴ Rev. & Tax. Code § 19033 (FTB “shall determine the correct amount of the tax”); Rev. & Tax. Code § 19034 (“In
27 no case shall the determination of the deficiency be arbitrary or without foundation”).

28 ¹⁷⁵ Affidavit of Algy Tamoshunas, August 4, 2010, ¶ 10.

29 ¹⁷⁶ See the letter to Omron dated August 4, 1992, HL 02021, FTB_Philips 0003335 – 0003336; the letter to Toshiba
dated February 3, 1992, FTB_Philips 0002663, 0002782; the letter to Asahi, HL 00307; the letter to Seiko, HL 00308;
Sections 4.1 and 6.1 of the July 1991 Philips Agreement, H 01378, H 01388-01389; and the 2010 Tamoshunas Affidavit, ¶ 5;
the 2010 Roth Sourcing Affidavit, §§ 4.2.1.8, 5.1.4.

1 “possession and control of the patents has been localized in connection with a business” “so that its substantial use and value”
2 has “become an asset of the business”. Cal. Code Regs., tit. 18, §17952(c). FTB has not even attempted to show that while
3 the patent had a Nevada situs they were localized in connection with a business within California such that “the substantial use
4 and value” of the patents became “an asset of the business”. Furthermore, FTB cannot make such a showing because the July
5 1991 Philips Agreement transferred the “substantial use and value” of the patents to Philips.

6 **1.8.5.4.3 FTB cannot raise a new license business theory in these appeals because the issue**
7 **was not raised in the NPAs or NOAs.**

8 It is unfair and unjust to allow FTB to raise any sourcing issues at all in these appeals (Sections 1.8.5.4.1, 1.8.5.4.2).
9 This unfairness and injustice is compounded by FTB’s new sourcing theory that Mr. Hyatt operated a licensing business in
10 California. This new sourcing theory is particularly egregious because Philips had the *exclusive* licensing authority to license
11 Mr. Hyatt's licensable patents (Section 1.7.5)¹⁷⁷ and Mr. Hyatt had signed away the right to license his own patents (1992
12 ASAB, Section 1.7.3).

13 FTB did not raise this licensing business sourcing issue in any notice. FTB first asserted that Mr. Hyatt operated a
14 California based licensing business in its 1991 ROB, p. 17, in 2009 – 18 years after the first year at issue, 16 years after the
15 commencement of the audit, 2 years after FTB first asserted sourcing based on the patents having a California business situs,
16 and almost one year after Mr. Hyatt filed his opening briefs in these appeals.

17 It is unfair and unjust, prejudicial to Mr. Hyatt, and contrary to California law for FTB to notify Mr. Hyatt in the
18 NOAs that the sourcing issue is based solely on the business situs of his patents and then, after Mr. Hyatt filed two opening
19 briefs addressing this claim, to raise a completely different sourcing theory in its 1991 ROB in 2009.

20 Notwithstanding the above, the facts establish that Mr. Hyatt did not have a licensing business in California or
21 anyplace else (Sections 1.8.4.7, 1992 ASAB, Section 1.7.3). See also 1992 ASAB, Sections 1.4.1.3, 1.7.1.2, 1.7.1.3, 1.7.2.

22 **1.8.5.4.4 FTB cannot tax the \$24 million received after the disputed period because**
23 **payments received during the post-disputed period were not audited, protested, or**
24 **raised in the NPAs or NOAs.**

25 FTB in bad faith made a 1992 residency assessment on \$24 million in license payments that were allegedly received
26 on January 15, 1992, but now acknowledges that it was received in the second half of 1992,¹⁷⁸ long after the April 3, 1992,
27 date that FTB acknowledged Mr. Hyatt’s Nevada residency. After many years of bad faith refusals to correct the \$24 million

28 ¹⁷⁷ See the letter to Omron dated August 4, 1992, HL 02021, FTB_Philips 0003335 – 0003336; the letter to Toshiba
29 dated February 3, 1992, FTB_Philips 0002663, 0002782; the letter to Asahi, HL 00307; the letter to Seiko, HL 00308;
Sections 4.1 and 6.1 of the July 1991 Philips Agreement, H 01378, H 01388-01389; and the 2010 Tamoshunas Affidavit, ¶ 5;
the 2010 Roth Sourcing Affidavit, §§ 4.2.1.8, 5.1.4.

¹⁷⁸ RAB, pp. 25, 27-28.

1 FTB error despite multiple requests to do so (Sections 1.7.2, 1.8.5.4.4, 1.8.5.4.5, 1.9.10, 1992 ASAB, Section 1.7.5), FTB
2 finally acknowledged its error but continues its bad faith and blatant animosity toward Mr. Hyatt by refusing to correct its
3 erroneous assessments on its \$24 million error. FTB has failed to remove this residency assessment from its audit
4 determinations and 1992 NPA.

5 FTB now makes a nonspecific allegation that Mr. Hyatt's 1991 and 1992 income is "sourced" to California through
6 the end of 1992 without even mentioning the \$24 million error,¹⁷⁹ and without auditing or addressing the relevant facts of this
7 post-disputed period income. The absurdity of FTB's position is shown by its very broad and general claim (Mr. Hyatt's 1991
8 and 1992 income is "sourced" to California) because this general statement includes many types of income; e.g., Mr. Hyatt's
9 interest income from his Las Vegas bank account and his investment income from his mutual fund accounts that are Nevada
10 situs investment accounts. FTB cannot be permitted such absurd overreaching. FTB cannot be permitted to maintain tens of
11 millions of dollars of assessments just because the income was received in 1992. Among other things, FTB cannot carry its
12 initial burden of establishing a "reasonable and rational" basis for its assessments (Section 1.5.1), and FTB cannot carry its
13 sourcing burden (Section 1.5.2) with such a position – e.g., this post-disputed period income was not audited and was not
14 addressed in the 1992 NPA.

15 FTB has not conducted a proper audit of the second half of 1992, has not made an assessment of the \$24 million in
16 license payments based on the second half of 1992, and has not included the \$24 million second half license payments in
17 either the NPAs or the NOAs. FTB has failed to respond to Appellants assertions that FTB cannot now assess the \$24 million
18 error¹⁸⁰ and legal and equitable principles now **preclude assessment** of the \$24 million in license payments that occurred in the
19 second half of 1992. See also Sections 1.7.2, 1.8.5.4.4, 1.8.5.4.5, 1.9.10, 1992 ASAB, Section, 1.7.5.

20 FTB implies that it can tax **all** of Mr. Hyatt's income received in 1992 regardless of other consideration and without
21 an audit or even a factual showing that the income is taxable by California. FTB cannot tax income that was not received –
22 the taxation of license payments, interest, and penalties assessed as being received in January 1992 when the license payments
23 were not received for many months thereafter is not sensible. FTB cannot assess taxes on January 1992 license payments that
24 FTB now acknowledges were not received until the second half of 1992, a time period in which FTB has acknowledged Mr.
25 Hyatt to be a Nevada resident. FTB has never made an assessment based on receipt of the \$24 million in license payments
26 during the second half of 1992. FTB has not audited and does not even contend that it audited the post-disputed period and
27 FTB has not addressed the post-disputed period in its NPAs. Further, the facts that FTB relied on during the disputed period
28

29 ¹⁷⁹ 1992 RSAB, p. 29:21-24.

¹⁸⁰ AAB. See also 1992 AOB, pp. 52-56; 1992 ARB, pp. 93-95.

1 are to a very large extent not applicable (if at all) to the post-disputed period. By any measure it would be unfair and unjust to
2 allow FTB to wait 20 years to assess this \$24 million in license payments on a completely new ground, yet FTB remains silent
3 on correction of this \$24 million assessment, holding Mr. Hyatt in bondage for the tens of millions of dollars in taxes, interest,
4 and penalties that it fraudulently assessed as January 15, 1992, income.

5 FTB was first informed of its \$24 million error in 1997 (and repeatedly thereafter). FTB refused to acknowledge its
6 error until 2013 when your Board ordered an additional briefing to resolve this issue. However, instead of removing the \$24
7 million from the 1992 residency assessment after admitting that \$24 million was not received by Mr. Hyatt on January 15,
8 1992, FTB has arbitrarily and capriciously maintained these assessments.

9 The unfairness and injustice arising from FTB's \$24 million income error would be compounded if a fraud penalty
10 were to be imposed on FTB's \$24 million error. Because FTB has conceded that the \$24 million in license payments was not
11 received while Mr. Hyatt was a California resident, no fraud penalty can be assessed on the FTB's \$24 million error. The
12 taxes, interest, and penalties on the ghost \$24 million January 15, 1992, license payments remain assessed for no reason at all
13 other than the obvious one, FTB wants Mr. Hyatt's money at any cost. FTB's delay and refusal to remove the tax, interest,
14 and penalty assessments on FTB's \$24 million error is unlawful and in bad faith and must be rejected by your Board.

15 **1.8.5.4.5 FTB cannot sustain a fraud penalty on its \$24 million error because the payments**
16 **were received during a significantly different time period than the original**
assessment and were not audited, protested, or raised in the NPAs or NOAs.

17 FTB cannot sustain the fraud assessment based on its \$24 million error after your Board caught it in one of its bad
18 faith acts of maintaining the unlawful assessment long after the error was explained to FTB (Sections 1.7.2, 1.8.5.4.4,
19 1.8.5.4.5, 1.9.10, 1992 ASAB, Section, 1.7.5). ¹⁸¹ It is now undisputed that the \$24 million in license payments was not
20 received until *well after the disputed period* at a time when FTB agrees that Mr. Hyatt was a Nevada resident.

21 FTB cannot carry its burden of proof for the fraud penalties on its \$24 million income error by *clear and convincing*
22 *evidence* (Sections 1.5.3, 1.9.4). FTB's continued assertion of a fraud assessment demonstrates FTB's continuing bad faith
23 conduct (Sections 1.7.2, 1.8.5.4.4, 1.8.5.4.5, 1.9.10, 1992 ASAB, Section 1.7.5). FTB has never attempted to audit or protest
24 or even brief assessing a fraud penalty for the post-disputed period. Any FTB representation to your Board that it has clear
25 and convincing evidence of fraud for the post-disputed period would be made in bad faith.

26
27 ¹⁸¹ FTB knew for more than 16 years about the \$24 million error and made no attempts to correct it, AAB, § III.A,
28 pp. 9-12; It is unlawful for FTB to now increase the now-corrected 1992 NPA to include an additional \$24 million of income,
29 AAB, § III.B, pp. 12-16; Inclusion of the auditor's \$24 million income error is barred by equitable principles, AAB, § III.C,
pp. 17-21; Equitable estoppel bars FTB from assessing tax on the \$24 million error under a sourcing theory, AAB, § III.C.1,
pp. 17-19; and The equitable doctrine of laches bars FTB from assessing tax on the \$24 million error under a sourcing theory,
AAB, § III.C.2, pp. 19-21.

1 The unfairness and injustice arising from FTB's \$24 million income error would be compounded if a fraud penalty
2 were to be imposed on FTB's \$24 million error. Because FTB has conceded that the \$24 million in license payments was not
3 received while Mr. Hyatt was a California resident, no fraud penalty can be assessed on the FTB's \$24 million error.

4 Your Board should not decide an issue of fraud for income that has never been audited, protested, or briefed by FTB.
5 This fact pattern by itself illustrates that there is no clear and convincing evidence of fraud, just FTB's continuing bad faith
6 attempts to get Mr. Hyatt at all costs.

7 It is the height of bad faith for FTB to assess a California residency-related fraud penalty based on residency-related
8 allegations on income that it now admits was received when he was undisputedly a Nevada resident.

9 Your Board should reject any assessment of a fraud penalty on the \$24 million FTB error in license payments that
10 were received in the last half of 1992 and after the date of FTB's acknowledged Nevada residency. It would be unjust and
11 unfair to assess fraud based upon a residency assessment when FTB acknowledges Mr. Hyatt was a Nevada resident at the
12 time the license payments were received.

13 **1.8.6 FTB's Attacks On Eyewitness Testimony Are Made In Bad Faith.**

14 **1.8.6.1 FTB's Attempt To Discredit The Testimony Of More Than 100 Witnesses By Using False**
15 **Inferences And Speculation Must Be Rejected.**

16 FTB's attempt to discredit the testimony of more than 100 witnesses in its 1992 RSAB and in its Attachment E (and
17 its sister-Attachment D) by using false inferences, speculation, and misrepresentations must be rejected. ASAB Exhibit 5
18 provides numerous examples where FTB attempts to discredit the testimony of eyewitnesses when the eyewitness and
19 documentary evidence confirm that the testimony of the eyewitness was correct and FTB was wrong (Section 1.8.6.2). Mr.
20 Hyatt has an enormous amount of eyewitness testimony and documentary evidence that establishes his presence in Las Vegas
21 (Sections 1.8.1, 1992 ASAB, Section 1.5.8) and defeats FTB's mantra of falsely inferring California presence from
22 mis-addressed correspondence (Sections 1.8.1, 1.8.4.2 to 1.8.4.4; 1992 ASAB, Sections 1.4.1.1, 1.5.6.3).

23 Throughout its briefings FTB argues that Philips documents containing Mr. Hyatt's former California addresses or
24 fax number establish Mr. Hyatt's presence at his former Jennifer Circle house and fail to recognize eyewitness testimony to
25 the contrary. FTB produces no credible witness or other evidence that places Mr. Hyatt at his former Jennifer Circle house on
26 the date of a document or at any other time after he sold the Jennifer Circle house on October 1, 1991, until he returned for a
27 visit more than a year later. Instead, FTB's attorneys, who have no personal knowledge of any relevant fact, falsely infer that
28 a California address or a California fax number on a piece of correspondence places Mr. Hyatt at the Jennifer Circle house.
29 No inference about Mr. Hyatt's location can be drawn from mis-addressed documents (Sections 1.8.1, 1.8.4.2 to 1.8.4.4; 1992

ASAB, Section, 1.4.1.1, 1.5.6.3). FTB's briefings and attachments contain more than 2,000 other examples of FTB's misrepresentations, mischaracterizations, speculation and outright fabrications.¹⁸²

In contrast to FTB's arguments that are based on false inferences and speculation, Mr. Hyatt has numerous eyewitnesses who were actually present at the events that they are testifying about and have personal knowledge of such events. These eyewitnesses have testified under oath or penalty of perjury based on their personal knowledge of events that they witnessed and their testimony is corroborated by the testimony of many other witnesses and by thousands of pages of contemporaneous documentary evidence.

FTB's inferences are made in bad faith (Section 1.8.2); e.g., see ASAB Exhibits 1 and 2. ASAB Exhibit 1 is a copy of FTB's calendar and ASAB Exhibit 2 is a table summarizing Mr. Hyatt's presence for each day in the disputed period, FTB's calendar and the ASAB Exhibit 2 table are linked day by day to the rebuttal for each day in Mr. Hyatt's Rebuttal to FTB Att. A/F.

FTB has raised no credible argument for disregarding such eyewitness testimonial evidence.¹⁸³

1.8.6.2 FTB Makes Hundreds Of False Allegations About Eyewitness Testimony Based On FTB's Bad Faith Acts And False Inferences.

FTB questions the credibility of Mr. Hyatt's eyewitnesses (primarily through its Attachment E), but it is FTB's own credibility that is questionable.¹⁸⁴ In contrast to FTB's private investigators who falsely report what other witnesses supposedly told them, Mr. Hyatt provides the actual eyewitness testimony. Mr. Hyatt's witnesses have testified based on their personal knowledge. Conversely, FTB admits that its arguments are in large part only inferences (Section 1.8.4.1). Even when FTB argues that a fact is "established," it is actually making an illogical inference of Mr. Hyatt's location based on an address from *mis-addressed correspondence* (Sections 1.8.1, 1.8.4.2 to 1.8.4.4; 1992 ASAB, Sections 1.4.1.1, 1.5.6.3).¹⁸⁵ In contrast Mr. Hyatt provides overwhelming eyewitness testimony and documentation (Section 1.8.1; 1992 ASAB, Section 1.5.8) that is reinforced by numerous eyewitnesses (Section 1.8.6.4). FTB disregards enormous amounts of Mr. Hyatt's contemporaneous documentation and the testimony of many eyewitnesses that reinforce each other – demonstrating that Mr. Hyatt was in Las Vegas for the large majority of the disputed period and that FTB's inferences are not correct.

¹⁸² Rebuttal to FTB Att. A/F.

¹⁸³ See the rebuttal to FTB's false allegations against Mr. Hyatt's eyewitnesses in the Rebuttal to FTB's Attachment E.

¹⁸⁴ FTB's bad faith acts against Mr. Hyatt are further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB, Section 1.5; ASAB Attachment 1; and in Section V of the Second Supplemental Motion To Strike.

¹⁸⁵ See for example, FTB Attachment A-R, p. 60, November 23, 1991. FTB falsely states "presence established, California" based on an inference from a mis-addressed FedEx delivery. FTB falsely alleges "Hyatt signs for a FedEx delivery". There is no Hyatt signature and two eyewitnesses, Ms. Stratton and Mr. Eyler, place Mr. Hyatt in Las Vegas, Rebuttal to FTB Att. A/F, Section I. A., November 23, 1991.

1 ASAB Exhibit 5 provides numerous examples where FTB attempts to discredit the testimony of eyewitnesses when
2 the eyewitness and documentary evidence confirms that the testimony of the eyewitnesses was correct and FTB is wrong. In
3 particular, ASAB Exhibit 5 provides 16 examples where FTB falsely claims on the basis of incorrect inferences that Mr. Hyatt
4 was in California while eyewitnesses testifying from personal knowledge place Mr. Hyatt in Las Vegas. The table cites to and
5 links to eyewitness and documentary evidence that confirms the witnesses were correct and that FTB was wrong – Mr. Hyatt
6 was present in Las Vegas on those particular days.

7 ASAB Exhibit 8 provides several examples where FTB falsely claims that the eyewitnesses were wrong in testifying
8 that Mr. Hyatt was present in Las Vegas on particular days when FTB itself admits that Mr. Hyatt was present in Las Vegas on
9 those particular days. ASAB Exhibit 8 cites to and links eyewitness and documentary evidence that confirms the witnesses
10 were correct and that FTB was wrong -- Mr. Hyatt was present in Las Vegas on those particular days.

11 FTB's Attachment E disregards Mr. Hyatt's eyewitness and documentary evidence and instead relies on false
12 inferences and speculation to discredit the witnesses. A complete rebuttal to FTB's false claims attacking the testimony of Mr.
13 Hyatt and the eyewitnesses in FTB's Attachment E is set forth in Mr. Hyatt's Rebuttal to FTB's Attachment E.

14 FTB refers to the declarations and affidavits of the eyewitnesses as being "solicited" or being "scripted" as if there
15 was something improper about these terms. There is nothing improper about asking a witness to give true and accurate
16 testimony and there is nothing improper about the formatting of a declaration or affidavit. FTB implies that "scripted"
17 testimony is something to be abhorred. Presumably "scripted" just means the testimony is in a written format, but a written
18 format is the proper way to present testimony in this proceeding.

19 FTB also refers to the declarations and affidavits of the eyewitnesses as being "solicited" and FTB often "accuses"
20 Mr. Hyatt of personally soliciting the testimony even though it has no evidence whatsoever to support its assertion that Mr.
21 Hyatt personally solicited any testimony. Regardless of who makes the request, there is nothing wrong with asking a witness
22 to provide testimony. How else is a witness to know that his or her testimony would be helpful?

23 FTB's Attachment E (and its predecessor-Attachment D) disregards the fact that many of the witnesses had their own
24 attorney who assisted them with the drafting of their affidavits and declarations. A total of 27 witnesses testified about
25 working with their attorneys to draft affidavits/declarations in response to FTB's criticism of their affidavits/declarations being
26 "scripted"; 30 witnesses testified about FTB briefs misrepresenting the facts regarding the preparation of the witnesses'
27 affidavits/declarations; 21 witnesses testified about the FTB misrepresenting the witnesses' deposition testimony; and 26
28 witnesses testified that the FTB misrepresented the witnesses' affidavits, declarations, testimony, or responses.¹⁸⁶

29 ¹⁸⁶ Updated Testimonial Topics, Exs. T067, T068, T084, and T148, respectively.

1 FTB has taken more than 20 depositions in this proceeding and all of the witnesses have stood by their written
2 testimony (Section 1.8.6.5). The eyewitnesses testified in deposition that their written testimony is true and correct. FTB's
3 attempt to discredit Mr. Hyatt's eyewitnesses has failed and FTB's Attachment E should be disregarded because it is not
4 credible.

5 **1.8.6.3 FTB's Attacks On The True And Correct Statements In Mr. Hyatt's Affidavits Are Based On**
6 **FTB's Bad Faith Acts And False Inferences.**

7 FTB questions the credibility of Mr. Hyatt's affidavit testimony (primarily in its 1992 RSAB and in its Attachment
8 E), but it is FTB that is not credible.¹⁸⁷ Mr. Hyatt's testimony is under oath, it is based on his personal knowledge, and it is
9 supported by direct eyewitness testimony and documentary evidence. FTB admits that its arguments are in large part only
10 inferences while Mr. Hyatt provides eyewitness testimony and documentary evidence (Sections 1.8.1, 1992 ASAB, Section
11 1.5.8). FTB's false inference based arguments and Mr. Hyatt's eyewitness and documentary evidence are compared in tabular
12 form in ASAB Exhibit 6 and ASAB Exhibit 9.

13 ASAB Exhibit 6 provides numerous examples when Mr. Hyatt's eyewitness and documentary evidence confirms that
14 he was correct about his presence in Las Vegas and that FTB was wrong. The table of Exhibit 6 provides 19 examples where
15 FTB argues on the basis of false inferences that Mr. Hyatt was wrong when he testified that he was present in Las Vegas on
16 particular days. However, the table cites and links to eyewitness and documentary evidence that confirms that Mr. Hyatt was
17 correct and that FTB was wrong – Mr. Hyatt was present in Las Vegas on those particular days.

18 ASAB Exhibit 9 provides several examples where FTB falsely claims that Mr. Hyatt was wrong in testifying that he
19 was present in Las Vegas on particular days when FTB itself admits that Mr. Hyatt was present in Las Vegas on those
20 particular days. Exhibit 9 also provides cites and links to eyewitness and documentary evidence that confirms that Mr. Hyatt
21 was present in Las Vegas on those particular days.

22 A more detailed rebuttal to FTB's false claims about the testimony of Mr. Hyatt and his witnesses in FTB's
23 Attachment E is set forth in Mr. Hyatt's Rebuttal to Attachment E. FTB's attempt to discredit Mr. Hyatt has failed. FTB's
24 Attachment E is not credible and should be disregarded.

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26
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29 ¹⁸⁷ FTB's bad faith acts against Mr. Hyatt are further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB,
Section 1.5; ASAB Attachment 1; and in Section V of the Second Supplemental Motion To Strike.

1 **1.8.6.4 FTB's Attacks On Credible Third Party Eyewitnesses Must Be Disregarded for The**
2 **Additional Reason That The Eyewitness Statements Do Not Stand Alone; Eyewitness**
3 **Statements Are Reinforced By Consistent Testimony From Dozens Of Other Eyewitnesses**
4 **And By More than 10,000 Pages Of Exhibits To The Declarations.**

5 More than 150 eyewitnesses testified in these appeals and their testimony is reinforced by the testimony of many
6 other eyewitnesses, in some cases dozens of other witnesses (e.g., 72 witnesses testified about Mr. Hyatt moving away in
7 1991)¹⁸⁸ and by significant documentary evidence.¹⁸⁹ However, FTB attacks these credible eyewitnesses individually while
8 disregarding the fact that their testimony is reinforced by the testimony of other eyewitnesses and by documentary evidence.
9 Further, the testimony of the eyewitnesses is supported by more than 10,000 pages of exhibits to their declarations and
10 affidavits. FTB has never addressed the fact that the eyewitnesses are supported by many other eyewitnesses and by attached
11 exhibits. For these two reasons alone FTB's attacks on the witnesses should be disregarded and the testimony of Mr. Hyatt's
12 witnesses should be given full credibility.

13 For example, FTB criticizes the personal knowledge based affidavits and declarations of many eyewitnesses based on
14 false inferences. FTB infers from addresses on correspondence that Mr. Hyatt was present in California even when multiple
15 eyewitnesses testify that they personally met with or talked to Mr. Hyatt in Las Vegas that day. However, multiple
16 corroborating eyewitness and documentary evidence establishes that FTB's inferences are wrong and that these eyewitnesses
17 are correct, Mr. Hyatt was present in Las Vegas on those days.¹⁹⁰

18 The fact that so many witnesses testified to similar facts is very compelling. The fact that FTB is rebutting so much
19 consistent testimony and criticizing so many eyewitnesses should make your Board very suspicious of FTB. FTB is out to get
20 Mr. Hyatt at any cost (Section 1.8), even if it destroys its own credibility before your Board. FTB's attacks on these
21 eyewitnesses in its briefs and particularly in its attachments should be rejected.

22 A total of 22 of the eyewitnesses were Mr. Hyatt's close neighbors on Jennifer Circle (1991 Concluding Summary)
23 that testified about Mr. Hyatt moving away in 1991, 28-witnesses testified about Mr. Hyatt moving away in September 1991,
24 and 72-witnesses testified about Mr. Hyatt moving away in 1991.¹⁹¹ However, FTB disregards the confirmation resulting
25 from the same testimony by multiple eyewitness and attacks the eyewitnesses individually based on alleged inferences rather

26 ¹⁸⁸ Updated Testimonial Topics, Ex. T007.

27 ¹⁸⁹ Hyatt's 2012 CDE Aff.; Hyatt's 2016 Supp. CDE Aff.; Hyatt's Calendar, 1992 ASAB; Table of FTB's False
28 California "Established" Days, Hyatt's 2016 Supp. CDE Aff., Exhibit CDE-ST002; Table of FTB's False California "Inferred"
29 Days, Hyatt's 2016 Supp. CDE Aff., Exhibit CDE-ST003; and the more than 5,000 pages of witness exhibits attached to the
witnesses' declarations and affidavits.

¹⁹⁰ Hyatt's 2016 Supp. CDE Aff., ¶¶ 153-243; Hyatt's Calendar, 1992 ASAB; Table of FTB's False California
"Established" Days, Hyatt's 2016 Supp. CDE Aff., Exhibit CDE-ST002; and Table of FTB's False California "Inferred" Days,
Hyatt's 2016 Supp. CDE Aff., Exhibit CDE-ST003; Updated Testimonial Topics Table; Rebuttal to FTB Att. A/F, Section
I. A., September 26, 1991 to April 2, 1992.

¹⁹¹ Updated Testimonial Topics, Exs. T102, T006, and T007, respectively.

1 than actual evidence. After reading the testimony of the 22 neighbors the only possible conclusion is that Mr. Hyatt moved
2 away from the Jennifer Circle neighborhood in 1991 and did not return during the disputed period. These 72 eyewitnesses are
3 third party witnesses, many of whom do not know each other, and none of them have an interest in these appeals. It is clear
4 that Mr. Hyatt moved away from Jennifer Circle in September 1991 and did not return.

5 **1.8.6.5 FTB Took More Than 20 Depositions Of Mr. Hyatt's Witnesses And Philips Witnesses Which**
6 **Are So Supportive Of Mr. Hyatt That FTB Ignored Them In It's Briefs.**

7 FTB took more than 20 depositions of Mr. Hyatt's witnesses and Philips' witnesses. These depositions are very
8 supportive of Mr. Hyatt's facts and demonstrated that the statements that witnesses had made in their affidavits and
9 declarations were true and correct. Twenty-seven tables having more than 800 testimonial excerpts that are very supportive of
10 Mr. Hyatt's facts are listed and briefly described in ASAB Exhibit 17 (Index of Deposition Excerpts Tables). The tables listed
11 in this Index are linked to the tables having the described subject matter. The witnesses and depositions are listed in ASAB
12 Exhibit 7.

13 The deposition testimony is very compelling. A few of the many hundreds of examples excerpted in the deposition
14 tables are provided below.

15 Lynetta Ruth, Mr. Hyatt's former Jennifer Circle neighbor, testified that near the end of September 1991,
16 Mr. Hyatt said goodbye and pulled a trailer load of possessions with his old brown car to Las Vegas.¹⁹²

17 Ms. Ruth also testified to seeing Mr. Hyatt remove boxes and his belongings from his Jennifer Circle house
18 and garage in preparation for moving.¹⁹³

19 Dr. Henry Huey testified to helping Mr. Hyatt pack boxes in preparation for moving and that the packed
20 boxes were gone when he visited the Jennifer Circle house about a month after Mr. Hyatt moved.¹⁹⁴

21 Dr. Huey, Rebbetzin Hecht, Mr. Robert Kazmaier, Mr. Gregory Panos, Ms. Mary Stratton, and Mr. Trent
22 Eyler testified that they visited Mr. Hyatt at his Las Vegas apartment.¹⁹⁵

23 In view of the above and the more than 800 other excerpts in the 27 deposition tables, it is no surprise that FTB did
24 not use the deposition testimony in its briefs.

25 **1.8.7 FTB's Attempts To Establish Mr. Hyatt's Presence Based On False Inferences And Speculation Is In**
26 **Bad Faith.**

27 FTB's attempt to establish Mr. Hyatt's presence on a specific date based on mis-addressed Philips documents
28 (Section 1.8.4.3).¹⁹⁶ Philips and Mahr Leonard witnesses testified that, as of October 1991, documents sent to Mr. Hyatt's
29

¹⁹² Deposition Table 3, Witness Testimony Regarding Mr. Hyatt's Move to Las Vegas.

¹⁹³ Deposition Table 2, Witness Testimony Regarding Seeing Packed Boxes At The La Palma House Prior to Mr.
Hyatt's Move.

¹⁹⁴ Deposition Table 2, Witness Testimony Regarding Seeing Packed Boxes At The La Palma House Prior to Mr.
Hyatt's Move.

¹⁹⁵ Deposition Table 7, Witness Testimony Regarding Mr. Hyatt's Las Vegas Apartment.

1 former California addresses or fax number were not correctly addressed.¹⁹⁷ Mr. Hyatt has an enormous amount of eyewitness
2 and documentary evidence that establishes his presence in Las Vegas on many of the disputed days (Sections 1.8.1, 1992
3 ASAB Section 1.5.8).¹⁹⁸

4 FTB's argument fails for the additional reason that a document containing Mr. Hyatt's former California address or
5 former fax number shows, at most, what the sender believed to be Mr. Hyatt's address or fax number. It does not establish
6 Mr. Hyatt's actual physical presence on any day as FTB falsely infers, nor does it show whether or not the alleged presence
7 was for temporary or transitory purposes.

8 For example, FTB's bad faith inferences are addressed in Section 1.8.2; e.g., see ASAB Exhibits 1 and 2. ASAB
9 Exhibit 1 is a copy of FTB's calendar and ASAB Exhibit 2 is a table summarizing Mr. Hyatt's presence for each day in the
10 disputed period, FTB's calendar and the ASAB Exhibit 2 table are linked day by day to the rebuttal for each day in Mr.
11 Hyatt's Rebuttal to FTB Att. A/F. Your Board should reject FTB's attempt to establish Mr. Hyatt's presence based on FTB's
12 disingenuous reading of the Philips documents.

13 **1.9 FTB'S BAD FAITH FRAUD ASSESSMENTS CONTINUE IN ITS RSABS.**

14 **1.9.1 This Case Is Not Taxpayer Fraud, It Is A Case Of FTB Fraud.**

15 The fraud assessments are based upon a litany of facts distorted by FTB to create a fraud assessment when in fact it is
16 FTB who is guilty of fraud (Sections 1.5.1, 1.5.3, ASAB Attachment 1).¹⁹⁹ FTB trumped up ten factors to continue its bad
17 faith fraudulent conduct against Mr. Hyatt.²⁰⁰ However, these ten factors are at best no more than inferences and speculation
18 and at worst false statements misrepresenting the facts. Mr. Hyatt's eyewitness testimony under oath explains and rebuts these
19 ten factors. FTB's false inferences and speculation cannot stand against Mr. Hyatt's eyewitness testimony. For this reason
20 alone, the fraud penalties should be reversed.

21 FTB's failure to prove the fraud penalty by the required clear and convincing evidence is established by Mr. Hyatt's
22 prior briefings; 1991 AOB, pp. 56-63; 1992 AOB, pp. 56-65; 1991 ARB, pp. 73-99; 1992 ARB, pp. 24-37; and his current
23 briefings.

25 ¹⁹⁶ FTB's bad faith acts against Mr. Hyatt are further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB,
26 Section 1.5; ASAB Attachment 1; and in Section V of the Second Supplemental Motion To Strike.

27 ¹⁹⁷ Affidavit of Algy Tamoshunas, August 4, 2010, ¶ 25; Affidavit of David Leonard, May 2, 2012, ¶ 26; Declaration
28 of Vicki Weart, May 21, 2012, ¶¶ 5-6.

29 ¹⁹⁸ Testimonial Topics, Ex. T008, T009, T018, T021, T128, T019, T095, T096, T129, T026, T022, T023, T024,
T025, T100, T057, T030, T135, T097, T146, T040, T138, T139, T041, T042, T043, T140, T045, T041, T044, T046, T047,
T147, and T048.

¹⁹⁹ FTB's bad faith acts against Mr. Hyatt are further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB,
Section 1.5; ASAB Attachment 1; and in Section V of the Second Supplemental Motion To Strike.

²⁰⁰ ASAB Attachment 2, "The Ten Factors Fabricated by FTB Do Not Establish Fraud."

Each of FTB's fraud assertions has been rebutted as to both the facts and the law by this prior briefing, by Mr. Hyatt's Rebuttal to FTB Att. A/F, on a day by day basis, by Mr. Hyatt's Rebuttal to FTB Attachment E, by the 1991 ASAB and 1992 ASAB, and by Mr. Hyatt's 2014 Supplemental Affidavit, §§ 2.6, 2.6.1 to 2.6.10 and his testimony on FTB's ten fraud factors at §§ 2.6.4.6 to 2.6.4.15.

FTB, not Mr. Hyatt, has the burden in regard to the fraud penalties and must establish both a tax deficiency and fraud with clear and convincing evidence. FTB has failed to carry its burden on both counts (Sections 1.5.3, 1.9.2 to 1.9.10).

Mr. Hyatt has testified in his own behalf regarding each of the ten factors. Thus, FTB's inferences and speculations regarding the ten factors are rebutted by eyewitness testimony and documentary evidence.²⁰¹ Mr. Hyatt provided thousands of pages of contemporaneous documentary evidence (CDE) authenticated and explained by his eyewitness testimony in his three CDE affidavits.²⁰² Furthermore, FTB cannot be believed because it extensively misrepresents the evidence (Sections 1.7.2, 1.8, 1.9.2 to 1.9.10; 1992 ASAB, Section, 1.4).

FTB's own audit reviewers determined that the fraud penalties should not be assessed, its own senior staff specialists and the auditor determined that FTB's residency case was doubtful, and FTB has taken the position that Mr. Hyatt was a non-resident of California with California source income (Sections 1.9.2, 1.9.3). Having concluded that Mr. Hyatt was a resident of Nevada for its sourcing argument, FTB cannot meet the burden of clear and convincing evidence for a residency based fraud assessment. FTB has failed to follow the statutory procedures for assessing the penalties (Sections 1.9.6). FTB has not satisfied its overall burden to establish with clear and convincing evidence that Mr. Hyatt underpaid California taxes, that any such underpayment was due to fraud, and that the assessments are not arbitrary (Sections 1.9.4, 1.9.7, 1.9.8). FTB in bad faith assessed taxes on \$24 million in the 1992 residency audit and has admitted to its error, but has not corrected the tax assessments or the fraud penalty assessments.

FTB has not assessed a fraud penalty based on sourcing.

1.9.2 The Simple Fact That The Two FTB Audit Reviewers Were Not Convinced Of Fraud Should Be Dispositive Of The Fraud Penalties.

The 1991 and 1992 fraud penalties cannot stand when FTB's own audit reviewers determined that the fraud penalties should not be assessed. This fact alone should be dispositive of the fraud penalties. FTB has the burden to establish by clear and convincing evidence that the fraud penalties apply. Clear and convincing evidence means evidence that is "sufficiently strong to command the unhesitating assent of every reasonable mind."²⁰³ It is impossible for FTB to satisfy this high burden

²⁰¹ Hyatt's 2014 Supplemental Affidavit, §§ 2.6.4, 2.6.4.1 to 2.6.4.15. See also Hyatt's 2014 Supplemental Affidavit, §§ 2.6, 2.6.1 to 2.6.10. See also ASAB Attachment 2.

²⁰² Hyatt's 2012 CDE Aff.; Hyatt's 2016 Supp. CDE Aff.; and Hyatt's 2016 Post-DP CDE Aff.

²⁰³ *Appeal of Robert F. and Helen R. Adickes*, 90-8BE-012, Nov. 27, 1990.

1 when both FTB audit reviewers, the 1991 and the 1992 audit reviewers, concluded that the fraud penalty should not be
2 imposed.

3 For the 1991 fraud penalty, the audit reviewer Carol Ford expressly questioned the fraud penalty:

4 We are assessing the FRAUD penalty - although I'm not sure it is warranted.

5 ...

6 I believe the tp may have left CA in 12/91.²⁰⁴

7 By questioning whether the fraud penalty was “warranted,” Ms. Ford expressed substantial doubt about imposing the
8 1991 fraud penalty. That is undisputed proof that the 1991 fraud penalty was not supported by clear and convincing evidence.
9 Moreover, Ms. Ford’s belief that Mr. Hyatt became a nonresident in December 1991 also completely undermines the fraud
10 penalty for both 1991 and 1992. A residency disagreement over a narrow period of a few months is no more than a small
11 factual disagreement, it is not clear and convincing evidence of fraud.

12 Audit reviewer Rhonda Marshall-Morgan, disagreed with imposing the 1992 fraud penalty:

13 Rhonda [Marshall-Morgan] has reviewed the case and disagrees with issuing the fraud penalty. She doesn’t
14 think the penalty should be issued for failure to file a return where the taxpayer feels he was essentially a
15 nonresident.²⁰⁵

16 Ms. Marshall-Morgan’s statement is proof of the absence of clear and convincing evidence of fraud.

17 The evidence that the two FTB auditors relied on clearly was *not* “sufficiently strong to command the unhesitating
18 assent of every reasonable mind” within the FTB audit review staff, much less among “every reasonable mind.” The two
19 reviewers clearly had reasonable minds but did not unhesitatingly assent to the assessment of the fraud penalty. This dissent
20 within the FTB itself clearly establishes there was no “clear and convincing evidence” of fraud as there was no “unhesitating
21 assent of every reasonable mind.”²⁰⁶ Thus, for this reason alone, the 1991 and 1992 fraud penalties cannot stand.

22 In addition, FTB has disregarded or misrepresented Mr. Hyatt’s overwhelming evidence that he moved to Nevada,
23 that he believed he was a Nevada resident, and that he believed he did not underpay any California taxes. FTB fraud penalty
24 arguments completely disregard dispositive evidence that establishes no clear and convincing evidence of fraud and instead
25 focus on trumped up “factors” of fraud that, in fact, also do not evidence fraud.

26 Indeed, in light of the determinations by the FTB audit reviewers, the penalties should never have been assessed in
27 the first place. This evidence shows a serious failure within FTB’s audit group – it ignored internal dissent that required a
28 decision not to impose the fraud penalties and it failed to apply fraud penalties in accordance with California law. It is truly
29 astonishing that in these appeals FTB fails to address this dispositive evidence of its own audit reviewers expressly dissenting

²⁰⁴ 1991 audit review notes (FTB 104118).

²⁰⁵ FTB Memorandum (Aug. 12, 1997) (FTB 19023A-19024A).

²⁰⁶ *Appeal of Robert F. and Helen R. Adickes*, 90-8BE-012, Nov. 27, 1990.

1 against the fraud penalties. These fraud penalties are even more egregious because FTB removed the documents that recited
2 the reviewers' comments from the audit files and did not produced them to Mr. Hyatt with the audit files. He learned of this
3 dissent through court ordered discovery in the Nevada litigation. FTB's withholding of evidence that destroys the fraud
4 penalties can only be viewed as a continuation of FTB's bad faith that has plagued Mr. Hyatt's audits from the start.

5 Furthermore, FTB has ignored Mr. Hyatt's testimony disputing its 10 factors of fraud.²⁰⁷ FTB has also ignored Mr.
6 Hyatt's testimony regarding his good faith belief that he satisfied the legal requirements for Nevada residency, that the FTB's
7 1991 audit determination letter falsely accused him of fraud and other fraud issues.²⁰⁸ Your Board is requested to give special
8 consideration to the testimony of Mr. Hyatt²⁰⁹ regarding this very serious fraud issue and to the fact that FTB has disregarded
9 all of Mr. Hyatt's substantial evidence countering the fraud penalties.

10 In view of the above, the 1991 and 1992 fraud penalties cannot stand.

11 **1.9.3 The Simple Fact That FTB Does Not Have Confidence In Its Assessments Against Mr. Hyatt Is**
12 **Critical; All Of FTB's Experts On Its Audit Task Force, Including The Lead Auditor, Were Doubtful**
13 **About FTB's Residency Cases And FTB Made A Sourcing Assessment That Is Inconsistent With Its**
14 **Residency Assessment.**

15 The 1991 and 1992 fraud penalties cannot stand when FTB's own senior staff specialists and the auditor determined
16 that FTB's residency case was doubtful. This fact alone should be dispositive of the fraud penalties.

17 The lack of clear and convincing evidence of the residency case against Mr. Hyatt is demonstrated by the fact that
18 FTB's own audit staff expressly doubted whether Mr. Hyatt was a California resident for the disputed period. An FTB task
19 force headed by Monica Embry and including senior FTB specialists and the lead auditor, Sheila Cox, prepared a memo dated
20 August 21, 1995, that held:

21 "[A] decision had not been made at the time of the meeting [June 1995, two years into the audit and shortly
22 before Cox began drafting the August 2, 1995, Determination Letter] as to whether *there was enough*
23 *substantiation* to sustain a position the TP [Mr. Hyatt] was a California resident for all of 1991. There does
24 not appear to be any means of making the TP a resident for 1992 or later."²¹⁰

25 Thus, because the FTB lead auditor and FTB's senior specialists were doubtful about FTB's residency case against Mr. Hyatt,
26 FTB cannot credibly argue that its position that Mr. Hyatt was a California resident is "unequivocal," "leaving no substantial
27 doubt," and "sufficiently strong to command the unhesitating assent of every reasonable mind."²¹¹ Thus, FTB's fraud

28 ²⁰⁷ Hyatt's 2014 Supplemental Affidavit, ¶¶ 275-418.

29 ²⁰⁸ Hyatt's 2014 Supplemental Affidavit, ¶¶ 419-424.

²⁰⁹ Hyatt's 2014 Supplemental Affidavit, §§ 2.6.4, 2.6.4.1 to 2.6.4.15. See also ASAB Attachment 2.

²¹⁰ 1991 AOB, Ex. 69, Memorandum from M. Embry to FTB auditors, 8/21/95, attached to cover Memorandum from
M. Embry, 8/24/95, p. 1.

²¹¹ *Appeal of Adickes*, St. Bd. of Equaliz., 1990 Cal. Tax LEXIS 24, 90-SBE 012 (Nov. 27, 1990) (emphasis added),
quoting *In re Jost*, 117 Cal.App.2d 379, 383 (1953).

1 assessments on the residency audit must fall. It is important to note that FTB has never assessed a fraud penalty against Mr.
2 Hyatt based on sourcing.

3 To be clear, FTB's Determination Letter labeling Mr. Hyatt a fraud and claiming he was a California resident for all
4 of 1991 was issued on August 2, 1995, and less than one month later, the Embry memo (with Ms. Cox on the Embry task force
5 and a recipient of the Embry memo) stated, without any objections, no decision had been made on whether there was "enough
6 substantiation to sustain a position the TP was a California resident for all of 1991."²¹²

7 FTB further demonstrates its doubt about its residency assessment by taking the position that Mr. Hyatt was a non-
8 resident with California source income.²¹³ This is confirmation that even FTB does not have confidence in its residency case.
9 Thus, FTB cannot have clear and convincing evidence of California residency, which by itself defeats the fraud penalties
10 (Section 1.9.4). FTB cannot credibly argue that its position that Mr. Hyatt was a California resident is "unequivocal," "leaving
11 no substantial doubt," and "sufficiently strong to command the unhesitating assent of every reasonable mind"²¹⁴ when FTB
12 itself asserts just the opposite in an inconsistent assessment on sourcing, *i.e.*, that Mr. Hyatt was a non-resident.

13 **1.9.4 FTB Has Not Satisfied Its Burden To Establish That The Fraud Penalties Are Supported With Clear**
14 **And Convincing Evidence.**

15 The fraud penalties should be dismissed for the additional reason that FTB has not satisfied its overall burden to
16 establish that the fraud penalties apply. FTB must prove, by clear and convincing evidence, that Mr. Hyatt underpaid
17 California taxes and that any such underpayment was due to fraud. FTB has not met its burden on either point. On the tax
18 issue, FTB has not established by clear and convincing evidence that Mr. Hyatt underpaid California taxes. Indeed, the record
19 in these appeals establishes just the opposite -- that Mr. Hyatt did not underpay any California taxes. Moreover, even FTB
20 takes the position that Mr. Hyatt was a non-resident of California (with source income). Further, Mr. Hyatt has provided
21 overwhelming eyewitness evidence and documentary evidence of his Las Vegas residency and domicile (1992 ASAB,
22 → Sections 1.4, 1.5.1, 1.5.2, 1.5.3, 1.5.5, 1.5.8). Thus, there cannot be clear and convincing evidence that Mr. Hyatt was a
23 resident of California during the disputed period and beyond. A thorough discussion of Mr. Hyatt's rebuttal to FTB's fraud
24 penalties is provided in 1991 AOB pp. 56-63; 1992 AOB pp. 56-65; 1991 ARB pp. 73-96; 1992 ARB p. 27; 1992 ASB pp. 24-
25 38. See also Sections 1.9.1, 1.9.3.

26
27
28 ²¹² 1991 AOB, Ex. 69, Memorandum from M. Embry to FTB auditors, 8/21/95, attached to cover Memorandum from
M. Embry, 8/24/95, p. 1.

29 ²¹³ 1991 ROB, p. 93:11-12.

²¹⁴ *Appeal of Adickes*, St. Bd. of Equaliz., 1990 Cal. Tax LEXIS 24, 90-SBE 012 (Nov. 27, 1990) (emphasis added),
quoting *In re Jost*, 117 Cal.App.2d 379, 383 (1953).

1 The record in these appeals eliminates any possibility of “clear and convincing evidence” of fraudulent intent.
2 Overwhelming documentary and testimonial evidence establishes that (1) Mr. Hyatt did, in fact, move to Las Vegas; (2) he
3 believed he was a Nevada resident (evidence shows he notified family, friends, colleagues, and various business of his new
4 Las Vegas address; he registered to vote in Nevada; he registered his cars in Nevada and obtained a Nevada driver’s license;
5 he joined a Las Vegas synagogue; he opened bank accounts in Las Vegas; he filed changes of address with the US Postal
6 Service for his former Jennifer Circle address and his Cypress P.O. Box); (3) he believed he did not underpay any California
7 taxes (he filed in California as a part-year resident for 1991); and (4) he is still living in Las Vegas now 25 years later.²¹⁵


8 Mr. Hyatt’s eyewitness testimony is so compelling that it should be taken as dispositive of the fraud issues (e.g.;
9 Lynetta Ruth, Mr. Hyatt’s former Jennifer Circle neighbor, testified that near the end of September 1991, Mr. Hyatt said
10 goodbye and pulled a trailer load of possessions with his old brown car to Las Vegas).²¹⁶ And this is only one of more than
11 800 supportive excerpts in 27 excerpt tables of testimony from FTB’s more than 20 depositions of Mr. Hyatt’s witnesses
12 (Section 1.8.6.5). Further, it is reinforced by the testimony of many other witnesses.²¹⁷

13 Furthermore, Mr. Hyatt made numerous changes of address, notified over 100 persons he was moving, and received
14 virtually all of his mail in Las Vegas during the disputed period (1992 ASAB, Sections 1.5.6, 1.5.6.1 to 1.5.6.3, 1.5.7). There
15 can be no question that Mr. Hyatt intended to move, that he intended to reside in Las Vegas, that he did reside in Las Vegas
16 and that he continues to reside in Las Vegas to this day.

17 Further, in making its fraud penalty argument FTB ignored Mr. Hyatt’s overwhelming evidence that he moved to
18 Nevada, that he made only a few visits to California during the disputed period, each time for a temporary or transitory
19 purpose, that he reasonably believed he was a Nevada resident, and that he reasonably believed he did not underpay any
20 California taxes, which by itself is a full defense to the fraud penalties.

21 Furthermore, Mr. Hyatt under oath has fully rebutted each alleged fraud factor cited by FTB.²¹⁸ Therefore, for this
22 additional reason FTB cannot establish clear and convincing evidence of fraud.

23 The 1992 fraud penalty must be overturned for the additional reason there was no 1992 audit (1992 AOB, § I, pp. 4-
24 6; 1992 ARB, § II, pp. 2-3; Section 1.8.4.10). The 1992 fraud penalties are a continuing bad faith act by FTB. FTB has
25 acknowledged in its RAB that it made a \$24 million income error in its 1992 assessments, but it failed to reduce the tax,
26 interest, and penalties for the 1992 disputed period by its \$24 million income error (Section 1.9.10). In addition, the FTB’s
27

28  ²¹⁵ Hyatt’s 2014 Supplemental Affidavit, ¶¶ 419-518. Hyatt’s 2012 CDE Aff.; Hyatt’s 2016 Supp. CDE Aff.

²¹⁶ Deposition Table 15, Witness Testimony Regarding Mr. Hyatt’s Move to Las Vegas.

29 ²¹⁷ Updated Testimonial Topics, Exs. T007, T006, T102, T114, T119, T127, T008, T018, T021, T128, T019, T022-T025, T135, T136, T040, T138, T140-T143, T045, T044, T046, T047, and T049.

²¹⁸ Hyatt’s 2014 Supplemental Affidavit, ¶¶ 275-418. See also ASAB Attachment 2.

1 1991 and 1992 fraud penalty assessments are tainted by FTB's abusive policy of using the fraud penalty as leverage in
2 residency cases to coerce individuals into improper settlements.²¹⁹

3 The fraud penalties should be reversed because FTB has not carried its burden in these appeals and because there was
4 no fraud. Mr. Hyatt moved to Las Vegas on September 26, 1991, and has resided in Las Vegas ever since.

5 **1.9.5 FTB's Bad Faith Fraud Penalties Began In The Audit Determination Letter With A Whole Litany Of**
6 **Utterly False Fraud Factors That Were Patently Absurd And Have Subsequently Been Dropped By**
7 **FTB.**

8 FTB first asserted its bad faith fraud penalties with a whole litany of false fraud factors in the audit determination
9 letter that were patently absurd and have subsequently been dropped by FTB.²²⁰ For example, the factors included alleged
10 concealment of assets, but these assets were disclosed in the audit file and in Mr. Hyatt's 1991 part year tax return at the time
11 of the fraud penalty assessment. FTB's bad faith fraud penalties are testified to by Mr. Hyatt in his Supplemental Disputed
period CDE Affidavit, ¶¶ 46-64 under the title of the main section:

12 FTB Attempted To Shift The Blame To Me And Assessed A Fraud Penalty In Part For An Alleged Failure To
13 Produce Documentation Which Was Either Never Requested Or Which Was Produced And Is Included In The
Audit File

14 **1.9.6 FTB Failed To Follow The Statutory Requirements For Assessing The Fraud Penalties.**

15 The fraud penalties should be reversed for the additional reason that FTB failed to follow the statutory procedures for
16 assessing the penalties. FTB must state the reasons for its assessments of tax and penalties in the NPA – the NPA “shall set
17 forth *the reasons* for the proposed deficiency assessment and the computation thereof.”²²¹ Thus, in addition to the argument
18 above that the fraud penalties are not supported by credible evidence much less the required clear and convincing evidence
19 (Sections 1.9.1 to 1.9.4), the fraud penalties should be dismissed because they were not properly assessed. A fraud assessment
20 is a very serious issue for a taxpayer and thus it is particularly important for FTB to satisfy all of the legal and factual
21 requirements and not play fast and loose with a taxpayer's reputation.

22 The fraud penalties were not properly assessed in accordance with Section 19034 because the NPAs did not “set forth
23 the reasons” as required to assess fraud penalties.²²² Both the 1991 and 1992 NPAs recite only the fraud penalty statute with a

24 ²¹⁹ See ARB (1991) at 75 fn 455-456, citing Ex.44, *Hyatt v. FTB*, Partial Transcript of Trial Proceedings, Testimony
25 of Candace Les, 4/24/08, pp. 46-49; 113-115; Ex. 45, *Hyatt v. FTB*, Partial Transcript of Trial Proceedings, Testimony of
26 Carol Ford, 7/8/08, p. 84; Declaration of Thomas Rodrigue, Feb. 11, 2015, ¶¶ 21-26; Declaration of Diane Truly, Feb. 13,
2015, ¶¶ 5, 23-25; Declaration of Candace Les, Feb.9, 2015, ¶ 32. See also ASAB Attachment 1.

27 ²²⁰ FTB's bad faith acts against Mr. Hyatt are further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB,
Section 1.5; ASAB Attachment 1; and in Section V of the Second Supplemental Motion To Strike.

28 ²²¹ Rev. & Tax. Code § 19034 (emphasis added). Penalties must be assessed in the same manner as a tax deficiency.
29 Rev. & Tax. Code § 19036 (“Notwithstanding any provision to the contrary, any interest, penalty or addition to tax, imposed
under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part may be assessed and
collected in the same manner as if it were a deficiency.”).

²²² Rev. & Tax. Code § 19034.

1 statement that the penalty is 75% of the underpayment.²²³ Nowhere on the NPAs did FTB “set forth the reasons” as required
2 to assess fraud penalties. Merely citing the statute number and the amount of the penalty is not a statement of the “reasons”
3 required for the penalty. Accordingly, the fraud penalties must be rejected because they were not properly assessed in
4 accordance with the Section 19034.²²⁴

5 In the alternative, FTB’s fraud penalties must be rejected because FTB no longer relies on most of the fraud factors
6 cited by the auditors in their audit determination. Mr. Hyatt’s Supplemental Affidavit Regarding FTB’s \$24 Million Income
7 Error, ¶¶ 268-274, establishes that the original fraud factors cited by the auditor were incorrect. For example, the auditor’s
8 claim that Mr. Hyatt concealed assets was wrong. Mr. Hyatt disclosed those assets (the Franklin investment account and his
9 Las Vegas house) in his California 1991 part-year tax return and he also produced extensive documentation on these assets to
10 the auditor and that documentation is in the audit file. Furthermore, Mr. Hyatt did not have a Las Vegas house until the post
11 disputed period in 1992 so this factor could not apply to a 1991 fraud allegation or to residency in 1992 which is limited to the
12 disputed period. Given that Mr. Hyatt established the fraud factors cited by the auditors lacked merit, it is no surprise that
13 these fraud factors have been withdrawn by FTB in its RSABs. Thus, in addition to the fact that the 1991 and 1992 NPAs do
14 not state the reasons for the fraud penalties, the fraud penalty assessments must be rejected because FTB has continuously
15 changed its arguments for the fraud penalty assessments.

16 Section 19034 necessitates that the NPAs expressly state the specific reasons that are the basis for the assessment so
17 that the taxpayer can rebut the specific reasons in the protest and appeal. By abandoning the original fraud factors cited by the
18 auditors (but not set forth in the NPAs) FTB violated the purpose of Section 19034 and now FTB impliedly admits the original
19 grounds for the fraud penalties were wrong by abandoning these original fraud factors. That admission should be the end of
20 the fraud issue, but in this case FTB clings to the penalties and improperly advances new arguments and new fraud factors for
21 the penalties. This is a clear admission that the FTB does not have clear and convincing evidence of fraud but is searching for
22 reasons. Furthermore, there is no statutory authority that allows FTB to change the reasons for an assessment after the NPA is
23 issued and FTB’s attempt to do so must be rejected.

25 ²²³ 1991 NPA (H 08759-008762); 1992 NPA (H02248-02250).

26 ²²⁴ See *Title Ins. Co. of Minn. v. St. Bd. of Equal.*, 4 Cal.4th 715 (1992) (declaring that assessments must be issued in
27 accordance with the Legislatively enacted statutory procedures: “By claiming that the title insurers should not receive a refund
28 because they should have paid taxes on the total premiums paid by their insureds to the title companies, the Board is
29 essentially assessing a deficiency against the title insurers. However, the Board is charging such a deficiency without
following the above mentioned statutorily required administrative procedures. Just as the taxpayer is limited to the claims it
may assert in the superior court to those pursued in the administrative proceedings, the Board should be limited in its assertion
of setoffs in the superior court action to those deficiency assessments formally pursued under Revenue and Taxation Code
sections 12421 through 12435: “ ‘Men must turn square corners when they deal with the Government,’ it is hard to see why
the government should not be held to a like standard of rectangular rectitude when dealing with its citizens.”).

Furthermore, FTB's changing fraud penalty analysis is unfair and greatly prejudices Mr. Hyatt. Each time Mr. Hyatt has successfully rebutted the FTB's fraud penalty claims FTB changed the grounds. FTB has done this during the protests and during these appeals so that FTB's arguments are constantly changing. This reveals the fraud penalty assessments for what they really are – false assessments in search of a viable theory. FTB's bad faith and underhanded tactics greatly prejudiced Mr. Hyatt. He has had to gather new evidence and prepare new arguments while in appeal before your Board to rebut FTB's new fraud claims at great expense, enormous loss of evidence (e.g., documents have been lost and witnesses have died), and delay in these appeals. FTB's tactics also place enormous burdens on your Board because factual and legal issues are evolving during the appeal and there has been no opportunity for the taxpayer and FTB to narrow the issues through a normal audit and protest. Instead, all new issues have to be briefed by the parties and considered by your Board.

For the additional reasons that FTB has not properly assessed the fraud penalty in accordance with the requirements of Section 19034, the fraud penalties must be rejected.

1.9.7 FTB Has Not Satisfied Its Initial Burden To Establish That The Fraud Penalties Are Not Arbitrary.

The fraud penalties are arbitrary.²²⁵ Rev. & Tax. Code § 19033 (“In no case shall the determination of the deficiency be arbitrary or without foundation.”). See for example, the fraud penalty assessed on FTB's bad faith \$24 million error (Section 1.9.10).

The 1992 fraud penalty is arbitrary for the additional reason that FTB admitted “[w]e determined the 1992 fraud penalty should be assessed for 1992, since the facts and circumstances were the same as 1991.”²²⁶ In fact, there was no audit for 1992 (Section 1.8.4.10) much less an audit for fraud penalties. Your Board has consistently “held that proof of fraud in one year will not sustain the taxing authority's burden of proving fraud in another year.”²²⁷ In this case, the facts in 1991 are significantly different from the facts in 1992.²²⁸ In light of the foregoing evidence and admission, Mr. Hyatt has established a *prima facie* case that FTB's fraud penalty assessments were arbitrary.

The 1991 and 1992 fraud penalties are arbitrary for the additional reason that FTB has not carried its initial burden to prove that the 1991 and 1992 fraud penalty assessments were not tainted by FTB's highly improper policy of imposing fraud penalties to coerce settlements (they were so tainted) (Section 1.5.3). Your Board should thus rule the fraud penalty assessments are arbitrary and should be reversed.

²²⁵ Issues are raised when they have merit, and are never raised arbitrarily.

²²⁶ FTB Audit Review Comments by Carol S. Ford, dated 8/4/97 (FTB 104119).

²²⁷ *Appeal of Castillo*, 1992 Cal. Tax LEXIS 28, 92-SBE-020, 92-SBE-020 (1992).

²²⁸ Hyatt's 2014 Supplemental Affidavit, ¶¶ 262-267.

FTB also has not established by clear and convincing evidence that any alleged underpayment was due to fraud.²²⁹ Clear and convincing evidence means the “unhesitating assent of every reasonable mind.”²³⁰ In these appeals, undisputed evidence establishes that two FTB audit reviewers (Carol Ford and Rhonda Marshall) had substantial doubt about imposing the fraud penalties, with one reviewer (Ms. Marshall) expressly concluding that the fraud penalty should not be imposed for 1992 (Section 1.9.1)²³¹ and FTB’s task force of FTB specialists and the auditor had substantial doubt about FTB’s residency case upon which the fraud penalties are based (Sections 1.9.2, 1.9.3).

This doubt clearly establishes there was no “clear and convincing evidence” of fraud because there was no “unhesitating assent of every reasonable mind.”²³² The two reviewers clearly had reasonable minds but did not unhesitatingly assent to the assessment of the fraud penalty. This alone should be dispositive of the 1991 and 1992 fraud penalties.

1.9.8 FTB Failed To Establish By Clear And Convincing Evidence That Any Alleged Underpayment Is Due To Fraud.

Because FTB failed to establish a tax underpayment by clear and convincing evidence, your Board need not reach the second prong of the fraud penalty analysis. FTB also has not established that any alleged underpayment was due to fraud.

First, FTB must establish by clear and convincing evidence that Mr. Hyatt believed he owed California tax as a resident.²³³ However, the overwhelming evidence shows that Mr. Hyatt absolutely does not believe he was a California resident during the disputed period and he has corroborated his position with substantial and unrebutted documentary evidence and third party testimony.²³⁴ In addition, Mr. Hyatt clearly had reasonable cause and a good faith belief that he was a Nevada resident as of September 26, 1991, because he relied on the advice of an experienced tax attorney.²³⁵

Further, FTB’s shifting fraud analysis destroys any claim that there is clear and convincing evidence of fraud because FTB cannot agree on the facts allegedly indicating fraud. Over the past 23 years FTB has shifted its arguments regarding the fraud penalties. In the audit, FTB cited 70 alleged facts in support of the fraud penalties but in FTB’s most recent 1992

²²⁹ *Appeal of Wickman*, St. Bd. of Equaliz. 1981 Cal. Tax LEXIS 170 February 2, 1981 (“Mere failure to report income received is not sufficient proof of fraud.”).

²³⁰ *Appeal of Robert F. and Helen R. Adickes*, 90-8BE-012, Nov. 27, 1990.

²³¹ Carol Ford 1991 audit review notes (FTB 104118) (“We are assessing the FRAUD penalty - although I'm not sure it is warranted.”); FTB Memorandum (Aug. 12, 1997) (FTB 19023A-19024A) (“Rhonda [Marshall-Morgan] has reviewed the case and disagrees with issuing the-fraud penalty [for the 1992 year].”)

²³² *Appeal of Robert F. and Helen R. Adickes*, 90-8BE-012, Nov. 27, 1990.

²³³ “The clear and convincing standard applies not merely to whether an underpayment is attributable to fraud, but also to whether an underpayment exists.” *Plotkin v. Comm’r*, T.C. Memo 2011-260 (T.C. 2011); *May v. Comm’r*, 137 T.C. 147, 151 (T.C. 2011) (“Respondent has the burden of proving fraud by clear and convincing evidence. . . . To satisfy the burden of proof, respondent must show by clear and convincing evidence: (1) An underpayment of tax exists for each year; and (2) [the taxpayer] intended to evade taxes known to be owing by conduct intended to conceal, mislead, or otherwise prevent the collection of taxes.”).

²³⁴ See the contemporaneous documentary evidence attached as exhibits in the Hyatt's 2012 CDE Aff.; Hyatt's 2016 Supp. CDE Aff.; and Hyatt's 2016 Post-DP CDE Aff; see also

²³⁵ Updated Testimonial Topics, Exs. T007, T006, T102, T114, T119, T127, T008, T009, T018, T021, T128, T019, T022-T025, T135, T136, T040, T138, T140-T143, T045, T044, T046, T047, and T049.

1 RSAB, FTB cited many completely new alleged facts. There can be no clear and convincing evidence of fraud when FTB's
2 own auditors, protest hearing officers and attorneys cannot agree what facts support imposition of a fraud penalty.

3 The fraud penalties imposed by FTB for 1991 and 1992 should therefore be abated.

4 **1.9.9 FTB's Factors Of Fraud And FTB's Attacks On Other Witnesses Are Disingenuous And Disregard**
5 **The Facts, The Law, And The Seriousness Of The Fraud Issue.**

6 FTB's factors of fraud (FTB 1992 RSAB, pp. 24-29) are disingenuous (ASAB Attachment 2). FTB's attacks on Mr.
7 Hyatt and on other eyewitnesses are in bad faith and disregard the facts (Sections 1.8; 1992 ASAB, Section 1.4), the law
8 (Sections 1.5.1, 1.5.3, 1.9.6), and the seriousness of the fraud issue. FTB's use of fraud assessments to coerce taxpayers
9 (Sections 1.5.1, 1.5.3) by over assessment (Section 1.9.10) and falsifying or misrepresenting the evidence (Sections 1.5.3,
10 1.7.10, 1.8; 1992 ASAB, Section 1.4) is unconscionable.

11 FTB addresses only four fraud factors in RSABs, factors 1, 2, 5, and 10. However, FTB fails to address these factors
12 in the manner that a fraud penalty requires. FTB provides only generalized argument instead of clear and convincing
13 evidence. FTB does not address factors 3, 4, 6, 7, 8, and 9. FTB cites to its attacks on Mr. Hyatt and on other witnesses, but
14 these attacks are disingenuous and far from clear and convincing evidence. Mr. Hyatt provides a detailed rebuttal to FTB's
15 short unsupported arguments in ASAB Attachments 2, 3, and 4 and Mr. Hyatt provides extensive eyewitness testimony under
16 oath in his 2014 Supplemental Affidavit, § 2.6.4, pp. 141-205.

17 FTB refers to its Attachment E and to other attacks that it made on Mr. Hyatt and other eyewitnesses. FTB's fraud
18 factors are rebutted below and rebutted in more detail in ASAB Attachment 2; FTB's attacks on Mr. Hyatt's sworn eyewitness
19 statements are rebutted in ASAB Attachment 3; FTB's attacks on other eyewitnesses are rebutted in ASAB Attachment 4; and
20 FTB's attacks in FTB Attachment E on numerous other eyewitnesses are rebutted in Mr. Hyatt's Rebuttal to Attachment E
21 (attached hereto).

22 FTB in very large part relies on unsupported conclusory statements and mentions a morass of false inferences and
23 speculation masquerading as facts (Section 1.8; 1992 ASAB, Section 1.4). FTB disregards Mr. Hyatt's overwhelming
24 testimonial and documentary evidence (Sections 1.8.1, 1.8.2, 1.8.3, 1992 ASAB, Section 1.4). ➡

25 FTB discusses the Appeal of Adickes as if it is relevant here; it is not. Mr. Hyatt moved to Nevada (1992 ASAB,
➡ 26 Sections 1.4, 1.5.1 to 1.5.8). There is no issue of fabricated documents and Mr. Hyatt's three CDE affidavits authenticate and
27 explain thousands of documents under oath. FTB misrepresents the issue. There is no issue of a fabricated document here.
28 FTB attempts to discredit Mr. Hyatt and more than 150 eyewitnesses with false inferences and speculation. Mr. Hyatt
29 provides eyewitness testimony that is reinforced over and over again by multiple consistent witness testimony (Sections 1.8.6,

1 1.8.6.1 to 1.8.6.5) that overcomes the false inferences and speculation of FTB that is not supported by credible witness
2 testimony.

3 Factor 1: FTB in bad faith disregards Mr. Hyatt's overwhelming testimonial and documentary evidence of Nevada
4 presence and instead relies on false inferences and speculation (Sections 1.8.4, 1.8.6; 1992 ASAB, Sections 1.4, 1.4.1, 1.5.5).

5 Factor 2: FTB in bad faith disregards Mr. Hyatt's overwhelming testimonial and documentary evidence of the sale of
6 his former California house and relies on false inferences and speculation (1992 ASAB, Section 1.5.1). Mr. Hyatt was not
7 present at the La Palma house after he sold it on October 1, 1991, during the disputed period (Sections 1.7.8, 1.8.1, 1.8.4,
8 1.8.6; 1992 ASAB, Section 1.4) as FTB falsely alleges. Mr. Hyatt did not have a patent licensing business (Section 1.8.4.7;
9 1992 ASAB, Sections 1.4.1.3, 1.7.1.2, 1.7.2, 1.7.3) as FTB falsely alleges.

10 Factor 5: FTB disingenuously attempts to mislead your Board by stating that "microprocessor chip"
11 contracts/agreements meant the same as supplemental agreements when it requested documents. It did not. There were no
12 "microprocessor chip" contracts/agreements. None of the supplemental agreements mentioned a "microprocessor chip". FTB
13 falsely states that Mr. Hyatt did not provide any supplemental agreements. However, the auditor did not request any
14 supplemental agreements. FTB withholds the true story of the issue about producing Attachment A to the July 1991 Philips
15 Agreement. Mr. Hyatt did produce an Attachment A to that Agreement, the only Attachment A that he had in his possession.

16 Factor 10: FTB lists excerpts, events, and conclusory statements but does not explain why they are evidence of fraud.
17 FTB refers to other arguments but these too do not explain why they are evidence of fraud. For example, FTB alleges that
18 "Hyatt did not show Peloquin certain documents." However, Dr. Peloquin selected the exhibits that he wanted to use to
19 document his declaration and, without testimony from Dr. Peloquin, FTB does not know what documents Dr. Peloquin saw.
20 Furthermore, Mr. Hyatt could not show Dr. Peloquin anything, Mr. Hyatt did not meet with Dr. Peloquin.

21 **1.9.10 The 1992 Fraud Penalties Are A Continuing Bad Faith Act By FTB Because FTB Acknowledged That**
22 **It Made a \$24 Million Income Error In Its 1992 Assessments But Failed To Reduce The Tax, Interest,**
23 **And Penalties That Are Based On The \$24 Million Income Error.**

24 FTB is effectively carrying a fraud penalty on \$24 million in a residency assessment on income that was not received
25 during the disputed period. FTB falsely assessed taxes on \$24 million in a 1992 residency audit for the disputed period when
26 residency was in dispute (see the 1992 NPA) and Mr. Hyatt protested these erroneous assessments (Sections 1.7.2, 1.8.5.4.4,
27 1.8.5.4.5, 1.9.10, 1992 ASAB, Section 1.7.5).²³⁶ Then, FTB admitted that it had made an error and that the income had not
28 been received until well after the disputed period and well after FTB's acknowledged Nevada residency. But FTB left the
29

²³⁶ AAB. See also 1992 AOB, pp. 52-56; 1992 ARB, pp. 93-95.

1 fraud penalty in place on a residency assessment during the disputed period (according to the NPA) while removing the \$24
2 million income that was assessed in error.

3 When FTB acknowledged its \$24 million error, FTB should have removed the residency and fraud assessments
4 relative to its \$24 million error because these assessments were based upon the residency audit and residency assessment
5 reflected in the NPA *for the 1992 disputed period*. FTB's 1992 NPA contained no other ground for assessing the \$24 million.
6 FTB cannot change the 1992 assessment²³⁷ and FTB has not attempted to do so. However, the taxes and penalties on FTB's
7 \$24 million error based on the disputed period residency assessment, now with the \$24 million income removed from that
8 period, still stands and should be removed.

9 Once FTB took final action on Mr. Hyatt's 1992 protest and Mr. Hyatt appealed to your Board, FTB surrendered
10 legal jurisdiction to change or otherwise act on the NPAs and NOAs.²³⁸ Accordingly, Mr. Hyatt is entitled to a final
11 administrative determination by your Board on FTB's final action despite whatever second thoughts that FTB may have about
12 taxing its \$24 million income error.

13 **1.10 CONCLUSION**

14 Mr. Hyatt moved to Nevada and became a California nonresident on September 26, 1991. Mr. Hyatt sold his
15 California house, resided in a Las Vegas hotel for a few weeks, resided in his Las Vegas leased apartment for about five
16 months, and then resided in his Las Vegas Tara home for the last 25 years. Mr. Hyatt had no California source income during
17 the disputed period or thereafter. The situs of Mr. Hyatt's patents followed Mr. Hyatt to Nevada and no California business
18 had the substantial use and value of Mr. Hyatt's patents. Mr. Hyatt did not have a California licensing business and FTB's
19 NPAs and NOAs did not give Mr. Hyatt notice of taxation based on a California business. FTB has not established by clear
20 and convincing evidence that Mr. Hyatt intended to defraud FTB. Any interest assessments should be abated because they
21 resulted from the intentional delay of FTB.

22 FTB's bad faith calendar, Attachment A-R, and Attachment E should be disregarded because of the thousands of
23 false statements and FTB's disregard or misrepresentation of Mr. Hyatt's overwhelming eyewitness and documentary
24 evidence. (1991 ASAB § 1.8).

25
26 ²³⁷ See *Title Ins. Co. v. State Bd. of Equalization*, 4 Cal. 4th 715 (1992) (declaring that just as a taxpayer is limited to
27 the claims it may assert in the superior court to those pursued in the administrative proceedings, a state tax agency is also
28 limited in its claims to those deficiency assessments formally pursued under Revenue and Taxation Code).

29 ²³⁸ Section 5522.8(a) of the Rules for Tax Appeal provides that once an appeal is filed, the appeal can only be
dismissed if (1) the taxpayer requests dismissal, (2) FTB concedes the entire amount in dispute, or (3) the parties submit a
stipulation in which all parties agree to dismissal. Thus, FTB cannot alter a pending appeal, except to concede the disputed
amounts.

1 Dated: September ²⁸, 2016

Respectfully submitted,

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EXHIBIT 4

EXHIBIT 4

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23 BEFORE THE STATE BOARD OF
24 EQUALIZATION
25 OF THE STATE OF CALIFORNIA

26 In the Matter of the Appeals of

27 GILBERT P. HYATT
28

Case Nos. 435770 & 446509

APPELLANT'S SECOND ADDITIONAL BRIEFING (1992)

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2 **1.1 TABLE OF ABBREVIATIONS AND DEFINITIONS.**

3	1991 AOB	1991 Appellant's Opening Brief,
4	1992 AOB	1992 Appellant's Opening Brief,
5	1991 ARB	1991 Appellant's Reply Brief,
6	1992 ARB	1992 Appellant's Reply Brief,
7	1991 ASB	1991 Appellant's Supplemental Brief,
8	1992 ASB	1992 Appellant's Supplemental Brief,
9	AAB	Appellant's Additional Brief,
10	1991 ASAB	1991 Appellant's Second Additional Brief,
11	1992 ASAB	1992 Appellant's Second Additional Brief,
12	1991 ROB	1991 Respondent's Opening Brief,
13	1992 ROB	1992 Respondent's Opening Brief,
14	1991 RRB	1991 Respondent's Reply Brief,
15	1992 RRB	1992 Respondent's Reply Brief,
16	RAB	Respondent's Additional Brief,
17	1991 RSAB	1991 Respondent's Second Additional Brief,
18	1992 RSAB	1992 Respondent's Second Additional Brief,
19	Disputed period	FTB's name for the period in dispute, September 26, 1991 to April 2, 1992
20	CDE	FTB's name for Contemporaneous Documentary Evidence
21	Rebuttal to FTB Att. A/F	
22		Rebuttal and Objection to FTB Calendar, Attachment A (Revised),
23		and Attachment F
24	Rebuttal to FTB Att. E	
25		Rebuttal and Objection to FTB Attachment E
26	Attachment A-R	FTB Attachment A (Revised)
27	Jennifer Circle house	7841 Jennifer Circle, La Palma house
28	La Palma house	7841 Jennifer Circle, La Palma house

1 NPA FTB's Audit Notice Of Proposed Assessment

2 NOA FTB's Protest Notice Of Action

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2 **1.2 TABLE OF AUTHORITIES**

3 **CASES**

4 *Achiro v. Commissioner,*
5 77 T.C. 881 (1981)

6 *Falese v. Commissioner,*
58 T.C. 895 (1972)

7 *Fitch v. Comm'r,*
8 T.C. Memo 2012-358, P25 (T.C. 2012)

9 *Fox v. Erickson,*
99 C.A.2d 740, 742 (1950)

10 *Hale v. Comm'r,*
11 T.C. Memo 2010-229 (T.C. 2010)

12 *Franchise Tax Bd. of Cal. v. Hyatt,*
335 P.3d 125, 144-145, 148-149 (Nev. 2014)

13 *Jones v. Commissioner,*
14 259 F.2d 300 (5th Cir. 1958)

15 *In re Jost,*
117 Cal.App.2d 379, 383 (1953)

16 *Mansell v. Board of Administration,*
17 30 Cal. App. 4th 539, 545 (1994)

18 *Marchica v. State Board of Equalization,*
107 Cal.App.2d 501, 509 (1951)

19 *Mattel v. Gilbert Hyatt,*
20 1979 U.S. Dist. LEXIS 8812 (December 6, 1979)

21 *Padgett Coventry Price v. Commissioner of Internal Revenue Service,*
T.C. Memo 2004-103

22 *Powell v. Granquist,*
23 252 F.2d 56 (9th Cir. 1958)

24 *Professional Services v. Commissioner,*
79 T.C. 888, 930 (1982)

25 *Rowlee v. Commissioner,*
26 80 T.C. 1111, 1123 (1983)84

27 *Stoltzfus v. United States,*
398 F.2d 1002, 1004 (3d Cir. 1968)

1 *Title Ins. Co. of Minnesota v. State Bd. of Equalization*
4 Cal.4th 715 (1992)

2 **Statutes**

3 Tit.18, Cal. Rev. & Tax. Code

4 § 17014(a)

5 § 17951-4(a).

6 § 17951-4(c)

7 § 17952

8 § 17952(a)

9 § 17952(c)

10 § 19033

11 § 19034

12 § 19044

13 § 19045

14 § 19057

15 § 19036

16 Revenue and Taxation Code sections 12421 through 12435

17 **STATE BD. OF EQUALIZATION DECISIONS**

18 *Appeal of Robert F. and Helen R. Adickes,*
St. Bd. of Equaliz., 1990 Cal. Tax LEXIS 24, 90-SBE 012 (Nov. 27, 1990)

19 *Appeal of Eli A. and Virginia W. Allen,*
Cal. St. Bd. of Equal., Jan. 7, 1975)

20 *Appeal of Armstrong,*
St. Bd. of Equaliz. 1985 Cal. Tax LEXIS 2 December 3, 1985

21 *Appeal of Stephen D. Bragg,*
2003-SBE-002 (May 28, 2003)

22 *Appeal of Castillo,*
No. 90A-0227-ES, St. Bd. of Equaliz. 1992 Cal. Tax LEXIS 28;
92-SBE-020 July 30, 1992

23 *Appeals of Robert E. Wesley and Jerry J. Couchman,*
2005-SBE-002, (2005) Cal. Tax LEXIS 358,

24 *Appeal of Duncan*
1993 Cal. Tax LEXIS 147, 3-4 (1993)

25 *Appeal of Robert V. Erilane,*
Cal. St. Bd. of Equal., Nov. 12, 1974

26 *Appeal of Lasher,*
St. Bd. of Equaliz. 2005 Cal. Tax. Lexis 22 (Case No. 260933) (Jan. 25. 2005)

27 *Appeal of David G. and Helen Mendelsohn,*
85-SBE-141, Nov. 6, 1985

1 *Appeal of Sierra Pacific Industries,*
2 Cal. St. Bd. of Equal., Jan. 5, 1994, 94-SBE-0024

3 *Appeal of Hubbard D. & Cleo M. Wickman,*
4 81-SBE-014, Feb. 2, 1981

4 **Other Authorities**

5 Law Review Commission Comments for Evid. Code § 600

6 Uniform Division of Income for Tax Purposes Act,
7 Sections 25120 to 25139

1
2 **1.3 TABLE OF CITATIONS AND LINKS TO EXAMPLES OF MR. HYATT’S EVIDENCE.**

3 **1.3.1 Updated Testimonial Topics Table And Exhibits Summarizing The Eyewitness Testimonial Subject**
4 **Matters And The Reinforcement Of Testimony Between Eyewitnesses (E.G., 72-Witnesses Testified**
5 **About Mr. Hyatt’s Move Away In 1991) Under Oath Or Penalty Of Perjury.**

6 **1.3.2 Updated Chronological Statements Of Facts (The “Chronologies”), A Chronology Of Mr. Hyatt’s**
7 **Overwhelming Eyewitness And Documentary Evidence.**

8 Updated 1991 Pre-Disputed Period Chronological Statements Of Facts.

9 Updated 1991 Disputed Period Chronological Statements Of Facts.

10 Updated 1992 Disputed Period Chronological Statements Of Facts.

11 Updated 1992 Post-Disputed Period Chronological Statements Of Facts.

12 **1.3.3 The More Than 220 Affidavits And Declarations Sworn To Or Signed Under Penalty Of Perjury By**
13 **More Than 150 Eyewitnesses In Support Of Mr. Hyatt’s Facts.**

14 Updated Index of Affidavits.

15 Affidavits and Declarations with Exhibits filed with the AOBs.

16 Affidavits and Declarations with Exhibits filed with the ARBs.

17 Affidavits and Declarations with Exhibits filed with the ASBs.

18 Post-Briefing Evidence (post-ASBs Affidavits and Declarations with Exhibits).

19 Mr. Hyatt’s Contemporaneous Documentary Evidence (CDE) Affidavits Describing And
20 Authenticating Thousands of Pages of Documentary Evidence.

21 Mr. Hyatt’s 2012 Disputed Period CDE Affidavit.

22 Mr. Hyatt’s 2016 Supplemental Disputed Period CDE Affidavit.

23 Mr. Hyatt’s 2016 Post-Disputed Period CDE Affidavit.

24 Sourcing Affidavits With Exhibits.

25 **1.3.4 “Testimonial Responses” Tables And Excerpts Regarding Eyewitnesses’ Overwhelming Testimony To**
26 **Identify And Correct FTB’s False Arguments And False Facts.**

27 Testimonial Responses To FTB’s 1991 ROB

28 Testimonial Responses To FTB’s 1992 ROB

Testimonial Responses To FTB’s 1991 RRB

Testimonial Responses To FTB’s 1992 RRB

Testimonial Responses To FTB's 1991 Attachment A

Testimonial Responses To FTB's 1992 Attachment A

Testimonial Responses To FTB's Attachment D

1.3.5 Philips Document Tables Providing Examples Of More Than 5,000 Pages Of Philips Documents That Support Mr. Hyatt's Cases.

1.3.6 Witness Deposition Tables Providing Examples Of More Than 20 Depositions That FTB Took Of Mr. Hyatt's Eyewitnesses And Philips Licensing Attorneys That Support Mr. Hyatt's Appeals.

1.3.7 Tables Of False Statements Made In The FTB Audit File And Rebutted Under Oath Or Penalty Of Perjury By Eyewitnesses.

1.3.8 Tables Of False Statements Made Under Penalty Of Perjury By FTB Private Investigators And Rebutted Under Oath Or Penalty Of Perjury By Eyewitnesses.

1.3.9 Objection And Rebuttal To FTB's Calendar And Attachments A (Revised) And F ("Rebuttal To FTB Att. A/F").

/02/06B1 Introduction to Rebuttal To FTB Att. A/F

/02/06B2 September 1991 Rebuttal To FTB Att. A/F

/02/06B3 October 1991 Rebuttal To FTB Att. A/F

/02/06B4 November 1991 Rebuttal To FTB Att. A/F

/02/06B5 December 1991 Rebuttal To FTB Att. A/F

/02/06B6 January 1992 Rebuttal To FTB Att. A/F

/02/06B7 February 1992 Rebuttal To FTB Att. A/F

/02/06B8 March 1992 Rebuttal To FTB Att. A/F

/02/06B9 April 1992 Rebuttal To FTB Att. A/F

1.3.10 Objection And Rebuttal To FTB's Attachment E ("Rebuttal To FTB Att. E").

1.3.11 Tables Of Misrepresentations In FTB's ROBs And RRBs.

1.3.12 Tables Of Mr. Hyatt's Presence Based Upon Direct Testimonial and Documentary Evidence

ASAB Exhibit 02

ASAB Exhibit 03

CDE Affidavit Exhibit CDE-ST002

CDE Affidavit Exhibit CDE- ST003

1 **1.4 FTB USED FALSE INFERENCES TO MISLEAD YOUR BOARD.**

2 **1.4.1 Philips Documents Highlight How FTB Has Misrepresented The Evidence And Concealed**
3 **Evidence That Undermines FTB Arguments.**

4 The Philips documents illustrate FTB's disingenuous arguments and disregard of highly relevant evidence to mislead
5 your Board. See Sections 1.4.1.1, 1.4.1.2, 1.4.1.3, 1.4.1.4. Exhibits CDE-ST002 and CDE-ST003¹ are tables summarizing
6 Mr. Hyatt's Nevada presence for many days during the disputed period where Mr. Hyatt's eyewitness and documentary
7 evidence rebuts FTB's false inferences and speculation. See also the Testimonial Topics table.²

8 **1.4.1.1 Mis-addressed Philips Correspondence Inadvertently Sent To Mr. Hyatt's Former California**
9 **Addresses Or Fax Number Does Not Establish That Mr. Hyatt Was Present At His Former House.**

10 FTB's false inference that the Philips documents addressed to Mr. Hyatt's former California addresses or fax number
11 establish his presence at his former Jennifer Circle house is rebutted with highly credible *undisputed eyewitness evidence* (the
12 testimony of the lead Philips attorney, Mr. Tamoshunas)³ which establishes that those documents were misaddressed (Section
13 1.5.6.3; 1991 ASAB, Sections 1.8.1, 1.8.4.1 to 1.8.4.4). Mr. Hyatt's overwhelming eyewitness evidence and documentary
14 evidence establishes his Las Vegas presence (Section 1.5.8).⁴ A more detailed discussion of FTB's false claim of California
15 presence is set forth in 1991 ASAB, Sections 1.8.4.1 to 1.8.4.4.

16 FTB draws incorrect inferences from Philips correspondence that was undisputedly misaddressed to Mr. Hyatt's
17 former California addresses or fax number. These documents are not evidence that Mr. Hyatt was present in California;
18 rather, they are evidence that FTB disregarded Mr. Tamoshunas' affidavit and that FTB drew incorrect inferences from the
19 Philips documents in the face of *contrary direct evidence*.

20 **1.4.1.2 Philips Documents Containing A Legacy P.O. Box Return Address Does Not Establish That They**
21 **Were Faxed From The Jennifer Circle House Or That Mr. Hyatt Was Present At The Jennifer**
22 **Circle House.**

23 FTB's claim that faxed documents with a Cerritos P.O. Box return address create an inference of presence at the
24 Jennifer Circle house is not correct. After Mr. Hyatt sold the Jennifer Circle house on October 1, 1991, he did not return to the

25 ¹ Exhibits attached to Hyatt's 2016 Supp. CDE Aff. See also ¶¶ 153 to 243 in Hyatt's 2016 Supp. CDE Aff. and
26 ¶¶ 546 to 949 in Hyatt's 2016 Post-DP CDE Aff.

27 ² Testimonial Topics, Ex. T008, T009, T018, T021, T128, T019, T095, T096, T129, T026, T022, T023, T024, T025,
28 T100, T057, T030, T135, T097, T146, T040, T138, T139, T041, T042, T043, T140, T045, T041, T044, T046, T047, T147,
29 and T048.

30 ³ Affidavit of Algy Tamoshunas, August 4, 2010, ¶ 25 ("Mr. Hyatt gave Philips a change of address from California
31 to Las Vegas in the latter part of October 1991 and I understood that he moved to Las Vegas before the latter part of October
32 1991. Any mailings from Philips' personnel to Mr. Hyatt at his former California addresses as of October 1991 and thereafter
33 were inadvertent errors by Philips' support personnel."); A. Tamoshunas Deposition Transcript, 10/27/2011, at 648:19-649:16
34 (affirming his affidavit testimony), 548:10-18 (testifying that Mr. Hyatt notified Mr. Tamoshunas that correspondence was
35 mistakenly sent to his former California addresses and asking that correspondence be sent to his Las Vegas address.)

36 ⁴ Hyatt's 2016 Supp. CDE Aff., Exhibits CDE-ST002 and CDE-ST003, ¶¶ 153 to 243; Hyatt's 2016 Post-DP CDE
37 Aff, ¶¶ 546 to 949.

1 neighborhood until late 1992. However, after Mr. Hyatt moved he generated faxes from an old fax template that had a
2 Cerritos P.O. Box return address (1991 ASAB, Sections 1.8.4.5, 1.8.4.6). The Cerritos P. O. Box return address was a legacy
3 address and does not establish presence anywhere. Nevertheless, FTB makes the illogical inference that the legacy use of the
4 old Cerritos fax template means Mr. Hyatt was at his former La Palma house. Mr. Hyatt did not send any faxes from his
5 former La Palma house after he sold the house on October 1, 1991 (1991 ASAB, Sections 1.8.4.5, 1.8.4.6).

6 When Mr. Hyatt moved to Las Vegas he moved his computer and his fax machine with him (1991 ASAB, Section
7 1.8.4.5).⁵ The computer had a fax template thereon with a legacy return address to a Cerritos P. O. Box. Mr. Hyatt continued
8 to use this legacy fax template after he moved to Las Vegas. None of the faxes cited to by FTB were faxed from the Jennifer
9 Circle house (1991 ASAB, Section 1.8.4.6). Mr. Hyatt was in Las Vegas during most of the disputed period and thereafter.⁶

10 FTB falsely claims that template faxes with legacy return addresses to a P. O. Box that was located in Cerritos
11 establish physical presence at the Jennifer Circle house which was located in La Palma. FTB's argument fails because it does
12 not follow that a person would be at the location on an out-of-date, legacy fax form, particularly a P.O. Box located in another
13 city.

14 FTB's argument also fails because extensive eyewitness evidence places Mr. Hyatt's only fax machine in his Las
15 Vegas apartment during the disputed period (1991 ASAB, Sections 1.8.4.5, 1.8.4.6.). A fax received by or sent by Mr. Hyatt
16 during the disputed period and thereafter is evidence of Mr. Hyatt's presence in Las Vegas where his fax machine was located.

17 **1.4.1.3 Philips Documents Refute FTB's Claim That Mr. Hyatt Operated A Licensing Business At The**
18 **Jennifer Circle House.**

19 The Philips documents refute FTB's claim that Mr. Hyatt operated a licensing business at the Jennifer Circle house.
20 FTB's arguments are based on cherry-picked documents, on disregarding many Philips documents, on disregarding or
21 misrepresenting the testimony of eyewitnesses who managed and worked on the Philips Licensing Program (*e.g.*, Mr.
22 Tamoshunas, Mr. Roth, Mr. Hyatt, Mr. Leonard, and Ms. Weart), and on disregarding other eyewitness and contemporaneous
23 documentary evidence that overwhelmingly establish that Mr. Hyatt did not have a California licensing business, that Philips
24 managed and operated the Philips Licensing Program, and that Mr. Hyatt was in Las Vegas during most of the disputed period
25 and thereafter.⁷ Many of the Philips documents that FTB disregarded are discussed and excerpted in the Philips Document
26 Tables (1991 ASAB, Section 1.7.1). Furthermore, Mr. Hyatt was contractually prohibited from operating a licensing business

27 ⁵ Rebuttal to FTB Att. A/F, Section I. B., October 27, 1991. Mr. Hyatt's 2010 Affidavit, §§ 1.16, 1.20.

28 ⁶ Hyatt's 2016 Supp. CDE Aff., Exhibits CDE-ST002 and CDE-ST003, ¶¶ 153 to 243; Hyatt's 2016 Post-DP CDE
29 Aff, ¶¶ 546 to 949.

⁷ Hyatt's 2016 Supp. CDE Aff., Exhibits CDE-ST002 and CDE-ST003, ¶¶ 153 to 243; Hyatt's 2016 Post-DP CDE
Aff, ¶¶ 546 to 949.

(Section 1.7.3). In fact, Philips had the *exclusive* licensing authority to license Mr. Hyatt's licensable patents (1991 ASAB, Section 1.7.5).

1.4.1.4 Philips Documents Establish That FTB's Calendar And Attachment A-R Lack Credibility And Should Be Disregarded.

The Philips documents do not support FTB's calendar or Attachment A-R. Before FTB had the Philips documents, FTB argued California days based on false inferences or speculation. Now that FTB has the Philips documents, FTB continues to argue California days based on false inferences and speculation (Sections 1.5.10.1 to 1.5.10.5) based on Philips' undisputed misaddressed documents (1991 ASAB, Sections 1.8.4.1 to 1.8.4.4), and based on documents that FTB alleges were faxed from the Jennifer Circle house but were faxed from Las Vegas (1991 ASAB, Sections 1.8.4.5, 1.8.4.6).

FTB's calendar and Attachment A-R have over 2,000 false statements based upon false inferences and speculation and mischaracterization of documents (1991 ASAB, Section 1.8.4).⁸ Mr. Hyatt was in Las Vegas during most of the disputed period and thereafter.⁹

Mr. Hyatt had previously produced more than 15,000 pages of licensing documents during the protests and eyewitnesses Mr. Tamoshunas, Mr. Leonard, Mr. Roth, and Mr. Hyatt had previously explained these documents with detailed affidavits or declarations.¹⁰ The FTB disregarded the substance of this testimony and instead misrepresented many of the same documents produced by Philips.

FTB's calendar and Attachment A-R should be disregarded because FTB misrepresented the Philips documents and other documents. FTB also disregarded the testimony of eyewitnesses who testified in detail to the Philips Licensing Program and the licensing documents, and misrepresented the evidence.

1.5 OVERWHELMING EYEWITNESS AND DOCUMENTARY EVIDENCE SUPPORTS MR. HYATT'S CHANGE TO NEVADA DOMICILE AND NEVADA RESIDENCY.

1.5.1 The Audit File And Significant Direct Evidence Confirms Mr. Hyatt Sold the La Palma House On October 1, 1991 And He Had No California Abode Thereafter.

The FTB auditor determined "[Mr. Hyatt] sold the La Palma house on 10/1/91",¹¹ and he had no other California abode. This alone should justify reversing the residency and sourcing assessments.

⁸ Rebuttal to FTB Att. A/F. ASAB Exhibit 1 and Exhibit 2.

⁹ Hyatt's 2016 Supp. CDE Aff., Exhibits CDE-ST002 and CDE-ST003, ¶¶ 153 to 243; Hyatt's 2016 Post-CDE Aff, ¶¶ 546 to 949.

¹⁰ Affidavit of Algy Tamoshunas, August 4, 2010; Affidavit of David Leonard, May 2, 2012; Affidavit of Gregory L. Roth, August 9, 2010; Affidavit of Gilbert P. Hyatt, August 15, 2010. →

¹¹ FTB's 1991 Narrative Report, p. 4, CCC 00967 ("Statistics (size, cost, etc.) comparing the taxpayer's La Palma home to his Las Vegas home will not be weighed in the determination, as the taxpayer sold the La Palma house on 10/1/91 before he purchased the house in Las Vegas during April of 1992.") (Emphasis in original.)

1 FTB relies on inferences and speculation while Mr. Hyatt has significant eyewitness and documentary evidence to
2 establish the legal sale of the house (discussed below). FTB has no evidence that the Jennifer Circle house was not sold so it
3 argues instead presence at the house. First, there is a significant difference between sale of a property and presence at the
4 property (the fact that Mr. Hyatt did visit the property about a year after he sold it does not detract from the fact that he sold
5 the house). Second, Mr. Hyatt has provided overwhelming eyewitness and documentary evidence confirming the sale of the
6 house.

7 FTB confuses the sale of the Jennifer Circle house with its multitudes of false arguments about presence at the house.
8 ***Presence at a former house is not a reason to undo a legally valid sale***, this notwithstanding Mr. Hyatt's overwhelming
9 evidence that he was not present at the Jennifer Circle house after he sold it on October 1, 1991, until more than a year later
10 (Sections 1.4.1.1 to 1.4.1.4, 1.5.8, 1.5.10, 1.5.10.1 to 1.5.10.5, 1.5.11).

11 Mr. Hyatt sold the house on October 1, 1991, for \$175,000, and had a small gain. Mr. Hyatt signed and delivered the
12 grant deed on October 1, 1991. He received a down payment of \$15,000 and he took a note for \$160,000. He received full
13 payment on the loan and he timely terminated his homeowners tax exemption.¹² In addition, he reported a gain on the sale of
14 the house and interest on the installment note on his 1991 federal and California income tax returns.¹³ Consistent with the sale
15 of the house, the purchaser (Ms. Jeng) paid the down payment for the purchase of the house, made monthly installment
16 payments, paid off the loan with a balloon payment as provided in the note, paid property taxes on the house in 1992 and each
17 year thereafter, and paid for utilities for the house. From October 1, 1991 to the present, Ms. Jeng has been the owner of the
18 La Palma house.

19 Mr. Hyatt's sale of the Jennifer Circle, La Palma house is also confirmed by the testimony of dozens of witnesses
20 who stated that Mr. Hyatt sold the Jennifer Circle house and moved away: 16 witnesses testified about the sale of Mr. Hyatt's
21 California house in October 1991, 4 witnesses testified that Ms. Jeng paid the deposit or Mr. Hyatt received the deposit on the
22 purchase of the Jennifer Circle house, 26 witnesses testified about Mr. Hyatt's decision to move to Las Vegas, 32 witnesses
23 testified about Mr. Hyatt's preparation to move to Las Vegas in 1991, 72 witnesses testified about Mr. Hyatt moving away in
24 1991, 28 witnesses testified about Mr. Hyatt moving away in September 1991, 22 Jennifer Circle neighbors testified about Mr.
25 Hyatt moving away in 1991, 15-witnesses testified that an Asian woman (or Ms. Jeng) moved into the Jennifer Circle house
26 after Mr. Hyatt moved away in 1991, 16 witnesses testified that an Asian woman (or Ms. Jeng) lived alone at the Jennifer
27

28 ¹² Hyatt's 2012 CDE Aff., ¶¶ 7-10 and Exhibits CDE-G1, CDE-G2, CDE-G3, and CDE-G4 attached therein; Hyatt's
29 2016 Supp. CDE Aff., ¶ 7 and Exhibit CDE-S001 attached therein.

¹³ Hyatt's 2012 CDE Aff., ¶ 11 and Exhibit CDE-G35 attached therein.

1 Circle house, 23 witnesses testified that they did not ever again see Mr. Hyatt at Jennifer Circle after he moved away in
2 1991.¹⁴

3 Mr. Hyatt's sale of the Jennifer Circle house is established by documentation (e.g.; a grant deed, a note and full
4 payment on the note) that is authenticated and explained by testimony under oath.¹⁵

5 Mr. Hyatt's sale of the Jennifer Circle house is also confirmed by the declarations of Bradley L. Jacobs and Webster
6 J. Guillory. They are both former elected Orange County Assessors with vast experience with real estate transactions. Mr.
7 Jacobs served as the Orange County Assessor, an elected office, for about 23 years from about December 1975 through his
8 retirement in about January 1999. Mr. Guillory served as the Orange County Assessor for about 15 years from January 1999
9 through 2014. Mr. Guillory was employed by the Orange County Assessor office for more than 38 years. Mr. Jacobs and Mr.
10 Guillory each determined that Mr. Hyatt's sale of the Jennifer Circle house was a bona fide sale.¹⁶ These two witnesses served
11 a combined 38 years as the Orange County Assessors and the Jennifer Circle house is located in Orange County. They each
12 analyzed the house sale documents in detail and confirmed that, as far as the tax assessors were concerned, Mr. Hyatt sold the
13 Jennifer Circle house to Ms. Jeng on October 1, 1991.¹⁷ Mr. Jacobs' and Mr. Guillory's declarations each contains all of the
14 house sale documents as exhibits and contains their thorough analysis of the documents. There can be no question that Mr.
15 Hyatt's sale of the Jennifer Circle house on October 1, 1991, was legal.

16 Despite all this evidence FTB alleges that the sale of the Jennifer Circle house was not a real sale and cites it as a
17 fraud factor. But FTB's allegations are based upon false inferences and speculation that cannot overcome Mr. Hyatt's
18 eyewitness and documentary evidence that he sold the house in 1991, that he moved away in 1991, and that he was not seen at
19 Jennifer Circle until late 1992.

20 As FTB has done with other issues, it has shifted the grounds as Mr. Hyatt has rebutted each FTB argument. FTB's
21 initial and most adamant argument for not recognizing the sale of the Jennifer Circle house was its assertion that Mr. Hyatt
22 was living with Ms. Jeng, the purchaser of the Jennifer Circle house.¹⁸ FTB later abandoned this position as it has become
23 silent on this issue since it learned through testimony and documentation that Mr. Hyatt had, instead, a very close, intimate,
24

25 ¹⁴ Updated Testimonial Topics, Exs. T124, T125, T001, T002, T007, T006, T102, T120, T121, and T127,
26 respectively.

27 ¹⁵ Hyatt's 2012 CDE Aff., ¶¶ 7-11 and Exhibits CDE-G1, CDE-G2, CDE-G3, CDE-G4 and CDE-G35 attached
therein; Hyatt's 2016 Supp. CDE Aff., ¶ 7 and Exhibit CDE-S001 attached therein.

28 ¹⁶ Declaration of Webster J. Guillory, October 8, 2015, ¶¶ 9-12; Declaration of Bradley Jacobs, November 2, 2012, ¶¶
5-7.

29 ¹⁷ Declaration of Webster J. Guillory, October 8, 2015, ¶¶ 9-12; Declaration of Bradley Jacobs, November 2, 2012, ¶¶
5-7.

¹⁸ FTB 1991 Narrative Report, p. 41 (CCC 01004).

1 long time relationship with Caroline Cosgrove, his girlfriend of many years.¹⁹ Twenty-five witnesses testified that Caroline
2 Cosgrove was Mr. Hyatt's girlfriend.²⁰

3 FTB now contends (in discussing the fraud penalties) that the Philips documents "prove, beyond any reasonable
4 doubt, that Hyatt was present at 7841 Jennifer Circle after October 1, 199[1]."²¹ However, presence at the house (which is
5 strongly disputed (1991 ASAB, Sections 1.8.4.1 to 1.8.4.4) cannot nullify a legally binding sale of the house and FTB does not
6 claim the Philips documents show that the Jennifer Circle house was not sold. This is no surprise. FTB does not cite to a
7 single Philips document that even addresses the sale of the house or indicates that Philips knew about the sale of the house. It
8 is a blatant misrepresentation for FTB to allege that Philips documents have any bearing on the sale of the house. With this
9 final argument FTB has in essence dropped the sham sale argument by substituting an argument of presence at the house.
10 Your Board should review Mr. Hyatt's rebuttal to FTB's false arguments about presence at the house. (See 1991 ASAB,
11 Sections 1.8.4.1 to 1.8.4.4.)

12 FTB's claim that Mr. Hyatt was present at the Jennifer Circle house during the disputed period is rebutted in 1991
13 ASAB, Sections 1.8.4.1 to 1.8.4.4, which establishes that correspondence from Philips (sent after Mr. Hyatt provided notice of
14 his new Las Vegas address) does not show Mr. Hyatt's presence. Undisputed testimony establishes that such correspondence
15 was sent to the wrong address (Sections 1.4.1.1, 1.5.6.3; 1991 ASAB, Sections 1.8.4.1 to 1.8.4.4) and eyewitness and
16 documentary evidence establishes Mr. Hyatt's presence in Las Vegas (Sections 1.1, 1.5.1 to 1.5.5, 1.5.8). FTB has no credible
17 evidence of Mr. Hyatt's actual presence at the Jennifer Circle house between October 1, 1991, and late 1992. Mr. Hyatt was
18 not at that house at that time. See Section 1.5.8; 1991 ASAB, Sections 1.8.4.1 to 1.8.4.4.

19 Mr. Hyatt's *overwhelming eyewitness and documentary evidence* establishes that he legally sold the Jennifer Circle
20 house on October 1, 1991, and he is entitled to a determination of that fact. Your Board should reject FTB's claim that an
21 alleged presence at a house can nullify a legal, bona fide sale. It cannot.

22 The evidence establishes that Mr. Hyatt moved to Las Vegas on September 26, 1991, resided at the Continental Hotel
23 until he moved into his Las Vegas apartment on October 21, 1991, and sold his only California house on October 1, 1991.
24 FTB has alleged no California abode except the La Palma house, but after he sold the La Palma house Mr. Hyatt had no
25 California abode and FTB has no basis for asserting California residency. Even FTB, in its sourcing argument, claims Mr.
26 Hyatt was a California *non-resident*. Since FTB's residency argument and sourcing argument both require Mr. Hyatt to be
27 living and working at the La Palma house (while a resident of Nevada for sourcing) (Section 1.7.4), the sale of the La Palma

28 ¹⁹ 1991 ROB, pp. 13-14.

29 ²⁰ Updated Testimonial Topics, Ex. T064.

²¹ 1992 RSAB p. 25.

1 house and the absence of any credible evidence actually placing Mr. Hyatt at the La Palma house thereafter destroy both the
2 residency and sourcing arguments of FTB.

3 A determination that Mr. Hyatt sold the La Palma house and leased a Las Vegas apartment (as the facts clearly
4 establish) justifies reversing the residency and sourcing assessments. Mr. Hyatt did not have an abode in California after he
5 sold his former La Palma house and the absence of a California abode precludes a finding of California residency. FTB
6 admits to Mr. Hyatt's Nevada residency for sourcing and uses essentially the same facts to allege both residency and
7 sourcing -- the sourcing assessments fall with the residency assessments (Section 1.7.4).

8 **1.5.2 The Bragg Factors Overwhelmingly Establish Mr. Hyatt's Nevada Residency and Domicile.**

9 The *Bragg* factors overwhelmingly establish Mr. Hyatt's Nevada residency during the disputed period and
10 thereafter.²² Not one Bragg factor favors a California connection.²³ See the section titled "Introduction To Mr. Hyatt's 1991
11 Concluding Summary" in the 1991 Concluding Summary.

12 **1.5.3 FTB Disregards Mr. Hyatt's Undisputed Documentary Evidence Of More Than 100 Non-**
13 **California Professionals And FTB Falsely Alleges That Philips' California Professionals Are**
14 **Hyatt's Professionals.**

15 FTB in bad faith misrepresents to your Board that Mr. Roth and Mr. Rudestam are Mr. Hyatt's California
16 professionals²⁴ in its desperate attempt to establish that Mr. Hyatt is a California resident or that he has a California business.

17 ²⁵ Even worse, FTB disregards Mr. Hyatt's undisputed documentary evidence of his non-California professionals to promote
18 its false facts. This is particularly important because the location of the taxpayer's professionals is a *Bragg* factor, all of which
19 favor Mr. Hyatt.²⁶

20 Philips (not Mr. Hyatt) retained both Mr. Roth through his law firm PSB&C for the Philips licensing program and
21 *Hyatt v. Boone* interference.²⁷ Mr. Rudestam and McHenry & Associates were retained by Philips for the Philips Licensing
22 Program.²⁸ Invoices for Mr. Roth's and Mr. Rudestam's time were submitted to Philips, and Philips paid these invoices.²⁹
23 Mr. Roth and Mr. Rudestam were Philips' professionals with respect to the Philips Licensing Program.

24 ²² 1991 AOB, pp. 15-38; 1992 AOB, pp. 16-35; 1991 ARB, pp. 21-68; 1992 ARB, pp. 4-26; 1992 ASB, pp. 42-52;
25 *Appeal of Stephen Bragg*, 2003-SBE-002 (May 28, 2003) (setting forth a non-exhaustive list of objective factors helpful in the
determination with which state an individual maintains his closest connections).

26 ²³ 1991 AOB, § II.C, pp. 15-38; see rebuttal to FTB's false statements at 1991 ARB, § II.A, pp. 21- 68.

²⁴ 1991 RSAB, p. 27; 1992 RSAB, p. 5.

27 ²⁵ FTB's bad faith acts against Mr. Hyatt are further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB,
Section 1.5; ASAB Attachment 1, and in Section V of the Second Supplemental Motion To Strike.

28 ²⁶ 1991 Concluding Summary, section titled "The Bragg Factors Overwhelmingly Establish Mr. Hyatt's Nevada
Residency And Domicile"; 1991 AOB, pp. 15-38; 1992 AOB, pp. 16-35; 1991 ARB, pp. 21-68; 1992 ARB, pp. 4-26; 1992
29 ASB, pp. 42-52.

²⁷ Affidavit of Gregory L. Roth, August 9, 2010, p. 17.

²⁸ Declaration of Charles McHenry, October 13, 2014, ¶¶ 27, 73.

1 Mr. Hyatt produced documentary evidence that he had 40 non-California professionals during the audits³⁰ and
2 documentary evidence that he had more than 100 non-California professionals during the protests.³¹ FTB did not even
3 interview Mr. Hyatt's non-California professionals during the audits and protests much less challenge them. Thus, they are
4 undisputed. These non-California professionals include Mr. Hyatt's two Las Vegas rabbis, his Las Vegas CPA, his Las Vegas
5 real estate agents, his Las Vegas escrow officers, his Las Vegas banker, his Las Vegas insurance agent, his Las Vegas home
6 security expert, and many more. These non-California professionals are described in detail in Mr. Hyatt's 2016 Supplemental
7 Disputed Period CDE Affidavit at ¶¶ 75-87 and are summarized in the Table of Mr. Hyatt's Non-California Professionals.³²

8 For example, Mr. Hyatt testified:

9 I had relationships with more than 100 Nevada and other non-California professionals from Las
10 Vegas during the disputed period and thereafter and my representatives notified FTB of these professionals.
11 See the excerpts from my 1992 Supplemental Protest Letter in Exhibit CDE-P037 to my 2016 Post-Disputed
12 Period CDE Affidavit and the excerpts from my 1991 Supplemental Protest Letter in Exhibit CDE-P038 to
13 my 2016 Post-Disputed Period CDE Affidavit. These more than 100 non-California professionals include
14 real estate, legal, banking, accounting, intellectual property, medical and religious professionals. However,
15 FTB disregarded these non-California professionals, there is no record that the Protest Hearing Officer
16 interviewed or otherwise obtained information from even one of these professionals. In fact, the Protest
17 Hearing Officer totally ignored this information and my significant number of non-California professionals.
18 Then, when I obtained affidavits and declarations from some of these professionals, FTB complained about
19 these affidavits and declarations.

20 Hyatt's 2016 Supp. CDE Aff., ¶ 75.

21 Thus, Mr. Roth and Mr. Rudestam were Philips' professionals, not Mr. Hyatt's professionals, and FTB is
22 disingenuous in citing to them and ignoring Mr. Hyatt's over 100 non-California professionals.

23 **1.5.4 FTB Disregards Or Misrepresents Mr. Hyatt's Documentary Evidence Of His Three Las Vegas 24 Bank Accounts And His Many Nevada Situs Investment Accounts.**

25 FTB falsely represents to your Board that Mr. Hyatt was present at and working from his former La Palma house
26 during the disputed period³³ in its desperate attempt to try to establish that Mr. Hyatt was a California resident or that he had a
27 California business. Even worse, FTB disregards or misrepresents Mr. Hyatt's significant non-California bank accounts and
28 investment accounts to promote its false allegations. This is particularly important because the location of the taxpayer's bank
29 and savings accounts is one of the *Bragg* factors, all of which favor Mr. Hyatt.³⁴

26 ²⁹ See; e.g., the PSB&C February 29, 1992 invoice (FTB_Philips 0006582) including Mr. Roth's time charges and
27 the McHenry Associates October 31, 1991 invoice (FTB_Philips 0007470-0007471) including Mr. Rudestam's time charges.

28 ³⁰ Hyatt's 2012 CDE Aff., ¶ 56 and Exhibit CDE-G23 attached therein.

29 ³¹ Hyatt's 2012 CDE Aff., ¶ 56 and Exhibit CDE-G24 attached therein; Hyatt's 2016 Post-DP CDE Aff., Exhibits
CDE-P037 and CDE-P038 attached therein.

³² Exhibit CDE-ST004 attached to the Hyatt's 2016 Supp. CDE Aff.

³³ 1991 RSAB, p. 3.

³⁴ 1991 AOB, pp. 25-27; 1992 AOB, pp. 25-26; 1991 ARB, pp. 42-46; 1992 ARB, pp. 18-19; 1992 ASB, pp. 46.

1 Mr. Hyatt produced documentary evidence that he had Las Vegas bank accounts and Las Vegas situs investment
2 accounts.³⁵ Mr. Hyatt opened a checking account with a Las Vegas bank immediately after he moved into his Las Vegas
3 apartment, he opened a second checking account and a savings account with Las Vegas banks a couple of months later, and he
4 opened numerous investment accounts with Nevada situs financial institutions during the disputed period. These bank
5 accounts and investment accounts are described in detail in Mr. Hyatt's 2012 Disputed Period CDE Affidavit at ¶¶ 64-74 and
6 Mr. Hyatt's 2016 Post-Disputed Period CDE Affidavit at ¶¶ 409-459.

7 FTB is disingenuous in disregarding or misrepresenting Mr. Hyatt's many Nevada bank accounts and investment
8 accounts.

9 **1.5.5 Mr. Hyatt's Limited Presence In California Was Only For Temporary Or Transitory Purposes.**

10 Mr. Hyatt has produced overwhelming evidence that he was a domiciliary and resident of Nevada during the disputed
11 period and that his occasional presence in California after he moved was only for temporary and transitory purposes. A
12 detailed discussion of each of Mr. Hyatt's California visits on a day by day basis is set forth in his calendar and the Rebuttal to
13 FTB Att. A/F. A cumulative summary is provided by tables at the beginning of each day in the Rebuttal to FTB Att. A/F. The
14 temporary and transitory purposes for Mr. Hyatt's trips outside of Nevada are summarized in a table, ASAB Exhibit 4.

15 The evidence confirms that, out of 190 days in the 1991 and 1992 disputed periods, Mr. Hyatt was present in
16 California for only 46 days or part days with each of those days being for *a specific temporary or transitory purpose*. For
17 example, Mr. Hyatt was in a California hospital for 9 days and two part days in February 1992 recovering from cancer
18 surgery, he travelled from his home in Nevada to California to enter the hospital and he travelled from the hospital in
19 California to his home in Nevada when he was released from the hospital. See Mr. Hyatt's calendar and his Rebuttal to FTB
20 Att. A/F. Except for the nine days he was hospitalized Mr. Hyatt had no full days in California during the disputed period.
21 Mr. Hyatt confirmed that his occasional California trips were temporary or transitory: "I made trips from Las Vegas, but I
22 always intended to return and I always did return to my Las Vegas residence where I was living at the time; either my hotel,
23 my apartment, or my Tara Avenue house."³⁶

24 FTB has not established that Mr. Hyatt's presence in California was for other than temporary or transitory purposes.
25 In lieu of actual evidence of physical presence, FTB draws incorrect inferences from faxes, mail, and FedEx shipments that
26 were undisputedly mis-addressed to Mr. Hyatt's former California addresses or fax number to attempt to equate this

28 ³⁵ Hyatt's 2012 CDE Aff., ¶¶ 64-74 and Exhibits CDE-F5, CDE-F6, CDE-F7, CDE-F9, CDE-F10, CDE-F11,
29 CDE-F13, CDE-F14, CDE-F15, CDE-F17, CDE-F18, CDE-F19 attached therein; Hyatt's 2016 Post-DP CDE Aff., ¶¶ 409-459
and the exhibits attached therein.

³⁶ Affidavit of Gilbert P. Hyatt, August 15, 2010, § 1.11. See also Mr. Hyatt's 2016 Supplemental Affidavit, ¶ 144.

1 mis-addressed correspondence to California presence (Sections 1.4.1.1, 1.5.6.3; 1991 ASAB, Sections 1.8.4.1 to 1.8.4.4). FTB
2 avoids the issue of temporary or transitory purposes. FTB allegations fail on several levels. Misaddressed correspondence is
3 not evidence of California presence. For the times that there was a California presence FTB did not perform a temporary or
4 transitory analysis as to the reason for the presence (*e.g.*, a court hearing or a stay in a hospital is presence but is not related to
5 residency).³⁷ FTB has no objective evidence of Mr. Hyatt's California presence other than for a temporary or transitory
6 purpose. In particular, FTB has no eyewitness testimony that Mr. Hyatt's occasional presence in California was for other than
7 a temporary or transitory purpose and FTB has not provided the temporary or transitory analysis required by California law.
8 FTB makes inferences, assumptions, and unsupported conclusions about Mr. Hyatt receiving correspondence related to the
9 Philips Licensing Program. However, this correspondence was sent to an address that has many changes of address filed with
10 the U.S. Postal Service, provided to Philips and Mahr Leonard, and to many others. The many changes of address and the
11 many notifications that Mr. Hyatt moved to Las Vegas are discussed in Sections 1.5.6, 1.5.6.1 to 1.5.6.3, 1.5.7. In contrast,
12 Mr. Hyatt has established that each of his visits to California was for a temporary or transitory purpose. The purpose for each
13 of Mr. Hyatt's visits is summarized in ASAB Exhibit 4. In addition, FTB has not even attempted to make a *prima facie*
14 showing that Mr. Hyatt's presence in California was for other than a non-temporary or transitory purpose. Mr. Hyatt's visits
15 to California were all for temporary or transitory purposes (*e.g.*, a required presence in a court hearing on his mother's estate).
16 Mr. Hyatt confirmed that the California trips were for temporary or transitory purposes: "I made trips from Las Vegas, but I
17 always intended to return and I always did return to my Las Vegas residence where I was living at the time; either my hotel,
18 my apartment, or my Tara Avenue house."³⁸

19 Mr. Hyatt has fully complied with the residency statute and fully addressed the temporary or transitory purposes of
20 his occasional presence in California during the disputed period.³⁹ FTB's disregard of the residency statute⁴⁰ and FTB's
21 failure to adequately address the temporary or transitory purposes of Mr. Hyatt's occasional presence in California is sufficient
22 reason by itself for your Board to decide these appeals against FTB.

23
24
25
26
27 ³⁷ See Rev. & Tax. Code § 17014(a) (providing that presence alone is not determinative of residency; the purpose for
a person's presence ***must be analyzed*** to determine residency).

28 ³⁸ Affidavit of Gilbert P. Hyatt, August 15, 2010, § 1.11.

29 ³⁹ See Exhibit 4 attached hereto; Hyatt's 2012 CDE Aff.; and Hyatt's 2016 Supp. CDE Aff.

⁴⁰ See Rev. & Tax. Code § 17014(a) (providing that presence alone is not determinative of residency; the purpose for
a person's presence must be analyzed to determine residency).

1 **1.5.6 Mr. Hyatt Notified Many People And Entities That He Moved To Las Vegas And Gave Them His**
2 **Las Vegas Contact Information, Which Is Strong Evidence That He Moved To And Intended To**
3 **Remain In Las Vegas Indefinitely.**

4 **1.5.6.1 Mr. Hyatt Gave Numerous Changes Of Address To His Las Vegas Location And He Gave**
5 **Numerous People His Las Vegas Contact Information Shortly After He Moved To Las Vegas.**

6 As clear evidence of his change of domicile and residency, Mr. Hyatt provided notice of his new Las Vegas location
7 to family, friends, and colleagues. Mr. Hyatt was very open about his move to Las Vegas and his Las Vegas contact
8 information with those who had a need to know. *This is important evidence that Mr. Hyatt intended to move, that he did*
9 *move, and that he intended to remain in Las Vegas indefinitely.* He provided numerous changes of address and informed
10 numerous people that he had moved to Las Vegas. He provided his Las Vegas contact information to his family, friends,
11 neighbors, Philips, Mahr Leonard, service providers and many others.⁴¹ This notification of Nevada contact information is
12 further described by Mr. Hyatt in his 2016 Supplemental Disputed Period CDE Affidavit, ¶¶ 143-144, 159.

13 Prior to moving to Las Vegas, Mr. Hyatt told his family, friends and neighbors that he was moving to Las Vegas.
14 After moving to Las Vegas he established contacts with and interacted with people in and from Las Vegas. Many witnesses
15 have testified about Mr. Hyatt moving to and living in Las Vegas: 72 witnesses testified about Mr. Hyatt moving away in
16 1991, 22 Jennifer Circle neighbors testified about Mr. Hyatt moving away in 1991, 26 witnesses testified about Mr. Hyatt's
17 decision to move to Las Vegas, 32 witnesses testified about Mr. Hyatt's preparations to move to Las Vegas in 1991, 17
18 witnesses testified about Mr. Hyatt's former Jennifer Circle house having little furniture and/or having packed boxes before he
19 moved to Las Vegas in 1991, 15 witnesses testified about Mr. Hyatt's possessions being carted off for storage or being given
20 away, or disposed of, or donated to charity, 3 witnesses testified that they helped Mr. Hyatt move his belongings to storage
21 prior to his move to Las Vegas in 1991, 16 witnesses testified about the sale of Mr. Hyatt's California house in October 1991,
22 37 witnesses testified about Mr. Hyatt's stay at a Las Vegas hotel in 1991, 20 witnesses testified about telephoning Mr. Hyatt
23 at a Las Vegas hotel in September or October 1991, 28 witnesses testified about being informed in October 1991 that Mr.
24 Hyatt had moved into his Las Vegas apartment, 2 witnesses testified about staying overnight at Mr. Hyatt's Las Vegas
25 apartment, 15 witnesses testified about visiting Mr. Hyatt at his Las Vegas apartment, 39 witnesses testified about telephoning
26 Mr. Hyatt at his Las Vegas apartment, 17 witnesses testified about Mr. Hyatt's religious activities in Las Vegas, 41 witnesses

27
28 ⁴¹ Hyatt's 2012 CDE Aff., ¶ 34 and Exhibit CDE-G21 attached thereto; 16 witnesses testified about Mr. Hyatt's
29 changes of address to Las Vegas addresses and 5 witnesses testified that Mr. Hyatt provided notice of his change of address to
 his Las Vegas addresses in October 1991 to Philips and to Mahr Leonard, Updated Testimonial Topics, Exs. T103 and T160.
 See also Hyatt's Chronologies.

1 testified about Mr. Hyatt house hunting in Las Vegas, 21 witnesses testified about furniture and furnishings in Mr. Hyatt's Las
2 Vegas apartment, and 20 witnesses testified about Mr. Hyatt moving into his Las Vegas house in April 1992.⁴²

3 Immediately after he moved into his Las Vegas apartment on October 21, 1991, Mr. Hyatt notified many people and
4 entities of his change of address and his Las Vegas contact information (Section 1.5.6.2).

5 On October 21, 1991, the day Mr. Hyatt moved into his Las Vegas apartment, he submitted changes of address to the
6 U.S. Post Office in Las Vegas to have his mail that was addressed to his former Jennifer Circle house address and to his
7 former Cypress P. O. Box address forwarded to his new Las Vegas address.⁴³

8 Soon after moving into his Las Vegas apartment, Mr. Hyatt also sent formal written changes of address letters to
9 about 30 organizations and people. The changes of address to the following nine organizations are all that have survived the
10 passage of time: IEEE Group Insurance, United Mileage Plus, Nevada Power Company, US Air Frequent Travelers Program,
11 American Airlines, MBNA America, Chase Bank, California Federal Bank FSB, and The Bank of New York.⁴⁴

12 Furthermore, Mr. Hyatt informed more than 20 of his more than 100 professionals (Section 1.5.3) that he moved to
13 Las Vegas and he provided them with his Las Vegas contact information.⁴⁵ These non-California professionals are described
14 in detail in Mr. Hyatt's 2016 Supplemental Disputed Period CDE Affidavit at ¶¶ 75-87 and are summarized in the Table of
15 Mr. Hyatt's Non-California Professionals.⁴⁶ This is in addition to informing more than 100 family, friends, neighbors,
16 licensing associates, service providers, and many others in California and Nevada that he intended to move or that he had
17 moved to Las Vegas.

18 The U.S. Postal Service forwarded Philips and Mahr Leonard misaddressed U.S. mail to Mr. Hyatt's Las Vegas
19 address because of his changes of address (Section 1.5.6.3).

20 Mr. Hyatt also gave changes of address to Philips and Mahr Leonard in October 1991.⁴⁷ Mr. Tamoshunas, the lead
21 licensing attorney at Philips, testified "Mr. Hyatt gave Philips a change of address from California to Las Vegas in the latter
22 part of October 1991 and I understood that he moved to Las Vegas before the latter part of October 1991. Any mailings from
23

24 ⁴² Updated Testimonial Topics, Exs. T007, T102, T001, T002, T003, T005, T116, T124, T008, T009, T128, T021,
25 T018, T019, T040, T045, T022, and T049, respectively. See also Testimonial Topics, Ex. T128, T095, T096, T129, T026,
26 T023, T024, T025, T100, T057, T030, T135, T097, T146, T040, T138, T139, T041, T042, T043, T140, T045, T041, T044,
T046, T047, T147, and T048.

⁴³ Hyatt's 2012 CDE Aff., ¶ 34 and Exhibit CDE-G21 attached therein.

27 ⁴⁴ Copies of the nine formal change of address notification letters are attached to Mr. Hyatt's Disputed Period CDE
28 Affidavit, ¶ 34 and Exhibit CDE-G21.

⁴⁵ Hyatt's 2016 Supp. Aff., ¶ 154.

⁴⁶ Exhibit CDE-ST004 attached to the Hyatt's 2016 Supp. CDE Aff.

29 ⁴⁷ Affidavit of Algy Tamoshunas, August 4, 2010, ¶ 25; Affidavit of David Leonard, May 2, 2012, ¶ 26; Declaration
of Vicki Weart, May 21, 2012 ¶¶ 5-6.

Philips' personnel to Mr. Hyatt at his former California addresses as of October 1991 and thereafter were inadvertent errors by Philips' support personnel."⁴⁸

On October 25, 1991, shortly after moving into his Las Vegas apartment on October 21, 1991, Mr. Hyatt opened a new checking account at a Las Vegas bank near his Las Vegas apartment. He obtained checks with his Las Vegas contact information printed thereon and he proceeded to pay his personal expenses with hundreds of checks he wrote while present in Las Vegas that had his Las Vegas contact information printed thereon.⁴⁹

Mr. Hyatt put his Las Vegas contact information on many of documents; e.g., his Nevada drivers' license application, on his Nevada voter's registration application, on his Affidavit of Nevada Domicile as executor for his mother's estate, on his Las Vegas renter's insurance application, on his Las Vegas auto insurance application, on his Las Vegas synagogue membership application, on his home purchase offers and his escrow papers, and much more.⁵⁰

It was no secret to those around him that Mr. Hyatt moved to Las Vegas: 72 witnesses testified about Mr. Hyatt moving away in 1991, 28 witnesses testified about Mr. Hyatt moving away in September 1991, 22 Jennifer Circle neighbors testified about Mr. Hyatt moving away in 1991, and 23 witnesses testified that they did not ever again see Mr. Hyatt at Jennifer Circle after he moved away in 1991.⁵¹ Mr. Hyatt went to great lengths to notify his family, friends, colleagues, service providers, and others that he had moved and provided them with his Las Vegas contact information. There can be no question that Mr. Hyatt intended to remain in Las Vegas indefinitely.

1.5.6.2 Immediately After Mr. Hyatt Moved Into His Las Vegas Apartment On October 21, 1991, He Notified Many People And Entities Of His Change Of Address And Las Vegas Contact Information.

As clear evidence of his change of domicile and residency, immediately after moving into his Las Vegas apartment, Mr. Hyatt provided notice of his new Las Vegas address to family, friends, and colleagues and he provided formal written notice of his new address to nine organizations that he used and the U.S. Post Office (Section 1.5.6.1). For example, 28 witnesses testified about being informed in October 1991 that Mr. Hyatt had moved into his Las Vegas apartment, ***27 witnesses testified*** about telephoning Mr. Hyatt at his Las Vegas apartment or receiving telephone calls from Mr. Hyatt from his Vegas apartment in October 1991, and 27 witnesses testified about Mr. Hyatt giving them the telephone number of

⁴⁸ Affidavit of Algy Tamoshunas, August 4, 2010, ¶ 25; Affidavit of David Leonard, May 2, 2012, ¶ 26; Declaration of Vicki Weart, May 21, 2012 ¶¶ 5-6.

⁴⁹ Hyatt's 2012 CDE Aff., ¶ 64 and Exhibit CDE-F5 attached therein.

⁵⁰ Hyatt's 2012 CDE Aff., ¶ 28 and Exhibit CDE-G18 attached therein; ¶ 29 and Exhibit CDE-G19 attached therein; ¶ 13 and Exhibit CDE-G5 attached therein; ¶ 26 and Exhibit CDE-G16 attached therein; ¶ 27 and Exhibit CDE-G17 attached therein; ¶ 18 and Affidavit of Gilbert P. Hyatt, December 5, 2008, Exhibit 7 (P07288-07290); and ¶ 39 and Exhibit CDE-G34 attached therein, respectively.

⁵¹ Updated Testimonial Topics, Exs. T007, T006, T102, and T127, respectively.

1 his Las Vegas apartment in October 1991.⁵² *This is important evidence that Mr. Hyatt intended to reside in his apartment,*
2 *that he did reside in his apartment, and that he intended to remain in his apartment for a period of time until he purchased*
3 *a Las Vegas house.*

4 On October 21, 1991, the day Mr. Hyatt moved into his Las Vegas apartment, he submitted changes of address to the
5 U.S. Post Office in Las Vegas to have his mail that was addressed to his former Jennifer Circle house address and to his
6 former Cypress P. O. Box address forwarded to his new Las Vegas address.⁵³

7 **1.5.6.3 The U.S. Postal Service Forwarded Philips And Mahr Leonard Misaddressed U.S. Mail And**
8 **Much Other Correspondence To Mr. Hyatt's Las Vegas Address Because Of His Change Of**
9 **Address.**

10 U.S. Mail that Philips and Mahr Leonard misaddressed to California (Sections 1.4.1.1, 1.5.6.3;) was forwarded to Mr.
11 Hyatt's Las Vegas address and received by Mr. Hyatt in Las Vegas (Section 1.5.7). Mr. Hyatt submitted changes of address to
12 the U.S. Post Office in Las Vegas on October 21, 1991, the date that Mr. Hyatt moved into his Las Vegas apartment, to have
13 his mail that was addressed to his former Jennifer Circle house address and to his former Cypress P. O. Box address forwarded
14 to his new Las Vegas address.⁵⁴ Mr. Hyatt started keeping the forwarded mail after his Las Vegas CPA, Mr. Kern, advised
15 him to do so in March 1992.⁵⁵ See copies of the forwarded envelopes with the U.S. Postal Service forwarding notations in
16 Exhibit CDE-P009 attached to Mr. Hyatt's 2016 Post Disputed Period CDE Affidavit.

17 Accordingly, even U.S. mail sent to Mr. Hyatt's former California house or Cypress P.O. Box was not delivered in
18 California – Mr. Hyatt received all of this U.S. mail in Las Vegas.

19 **1.5.7 Mr. Hyatt Received Virtually All of His Mail In Las Vegas During The Disputed Period And**
20 **Thereafter.**

21 Mr. Hyatt received virtually all of his U.S. mail at his Las Vegas mailing address during the disputed period and
22 thereafter. On October 21, 1991, immediately upon moving into his Las Vegas apartment, Mr. Hyatt submitted changes of
23 address to the U.S. Postal Service⁵⁶ directing that his mail addressed to his former Jennifer Circle address and his Cypress P.O.
24 Box be forwarded to his new Las Vegas mailing address.⁵⁷ Mr. Hyatt also proceeded to use his new Las Vegas mailing
25 address for his Las Vegas connections (e.g., his new Las Vegas checking account). Beginning soon after October 21, 1991,

26 ⁵² Updated Testimonial Topics, Ex. T128, T095, and T096, respectively.

27 ⁵³ Hyatt's 2012 CDE Aff., ¶ 34 and Exhibit CDE-G21 attached therein.

28 ⁵⁴ Hyatt's 2012 CDE Aff., ¶ 34 and Exhibit CDE-G21 attached therein.

29 ⁵⁵ Hyatt's 2016 Post-DP CDE Aff., ¶ 283.

⁵⁶ Hyatt's 2012 CDE Aff., ¶ 17 and Exhibit CDE-G9 attached therein.

⁵⁷ See the envelopes with the U.P. Postal Service forwarding information; Hyatt's 2016 CDE Aff. ¶ 71 and Exhibit CDE-P009 attached therein.

1 Mr. Hyatt received all of his important mail (*e.g.*, bank statements and investment account statements) and virtually all other
2 U.S. mail at his mailing address in Las Vegas.⁵⁸

3 In addition, Mr. Hyatt gave Philips and Mahr Leonard changes of address to his Las Vegas apartment address in
4 October 1991⁵⁹ so that important mail from Philips and Mahr Leonard would be sent to his Las Vegas address. Philips and
5 Mahr Leonard personnel stated that they inadvertently used Mr. Hyatt's former California address on some correspondence.⁶⁰
6 However, U.S. mail misaddressed to Mr. Hyatt's former Jennifer Circle address or Cypress P.O. Box was forwarded to Mr.
7 Hyatt's Las Vegas address. Mr. Hyatt also sent written notification of his new Las Vegas address to various businesses and
8 other entities⁶¹ immediately after moving into his Las Vegas apartment (Sections 1.5.6.1, 1.5.6.2). Mr. Hyatt also used his Las
9 Vegas addresses directly for other very important mail such as bank checking account statements shortly after moving to Las
10 Vegas (Sections 1.5.6, 1.5.6.1 to 1.5.6.3, 1.5.7).

11 FTB falsely claims without any support that Mr. Hyatt received only his "least important mail"⁶² in Las Vegas. This
12 claim is demonstrably false because Mr. Hyatt arranged for virtually all of his mail to be delivered to his Las Vegas mailing
13 address during the disputed period, including his most important mail (Sections 1.5.6, 1.5.6.1 to 1.5.6.3, 1.5.7).⁶³

14 Because of Mr. Hyatt's request for mail forwarding and because Mr. Hyatt expressly advised third parties of his new
15 Las Vegas mailing address, Mr. Hyatt received virtually all of his U.S. mail at his Las Vegas mailing address beginning in
16 October 1991, including very important personal mail, such as financial statements from his investment accounts involving
17 tens of millions of dollars of investments.⁶⁴

18 **1.5.8 Mr. Hyatt's Calendar Is Supported By Eyewitness And Documentary Evidence And Confirms**
19 **His Overwhelming Presence In Las Vegas.**

20 Mr. Hyatt's updated calendar is supported by documentary and testimonial evidence, shows that Mr. Hyatt was
21 present in Las Vegas for 166 full and part days as a permanent resident and present in California for only temporary or
22

23 ⁵⁸ Mr. Hyatt picked up mail delivered at the Jennifer Circle house between September 26 and October 1, 1991,
24 because he traveled to California during this period to pack up, clean the Jennifer Circle house, sign documents for the sale of
the house, and attend a probate court hearing. Mail delivered at his former California addresses between October 2, 1991, and
October 21, 1991, was provided to Mr. Hyatt by the purchaser of the Jennifer Circle house.

25 ⁵⁹ Affidavit of Algy Tamoshunas, August 4, 2010, ¶ 25; Affidavit of David Leonard, May 2, 2012, ¶ 26; Declaration
of Vicki Weart, May 21, 2012 ¶¶ 5-6.

26 ⁶⁰ Affidavit of Algy Tamoshunas, August 4, 2010, ¶ 25; Affidavit of David Leonard, May 2, 2012, ¶ 26; Declaration
of Vicki Weart, May 21, 2012 ¶¶ 5-6.

27 ⁶¹ Hyatt's 2012 CDE Aff., ¶ 34 and Exhibit CDE-G21 attached therein.

28 ⁶² 1991 ROB, p. 80:17 (*emphasis added*).

29 ⁶³ FTB's bad faith acts against Mr. Hyatt are discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB, Section
1.5; ASAB Attachment 1, and in Section V of the Second Supplemental Motion To Strike.

⁶⁴ See Table of Mr. Hyatt's 1991-1992 Documents Having His Nevada Contact Information and Nevada Mail Table,
Hyatt's 2016 Post-DP CDE Aff., Exhibits CDE-T006 and CDE-T005, respectively.

transitory purposes during the 190 days of the disputed period (Section 1.5.5).⁶⁵ Mr. Hyatt provides this updated calendar below in rebuttal to FTB's calendar in its 1991 RSAB, pp. 5-12.

Mr. Hyatt's location for each and every day in the disputed period is summarized in his calendar, is detailed in the Rebuttal to FTB Att. A/F on a day by day basis, and is totaled in the table on the following page *infra* (1991 ASAB, Section 1.8.2). ASAB Exhibit 2 is a table summarizing Mr. Hyatt's presence for each day in the disputed period and is linked day by day to the rebuttal for each day in Mr. Hyatt's Rebuttal to FTB Att. A/F and ASAB Exhibit 4 is a table summarizing Mr. Hyatt's reasons for his occasional temporary and transitory presence in California and in other states.

Mr. Hyatt did not have a single day in California for the purpose of residency during the disputed period. Details of Mr. Hyatt's location are provided in the calendar and in the Rebuttal to FTB Att. A/F attached hereto for each particular day. Section 1.5.5 describes the temporary or transitory purposes for Mr. Hyatt's presence in California.

This table *infra* illustrates that Mr. Hyatt's only residency time in California during the disputed period is a part day on the day that he moved to Las Vegas (September 26, 1991). He had some part days in Nevada and California and some full days in California while he was hospitalized for cancer surgery, but the time in California was for temporary or transitory purposes (e.g., a required court hearing or time in a hospital) and does not count for a day of California residency. Part days in Nevada and California usually represent travel from Mr. Hyatt's home in Las Vegas to California for a particular purpose and return that same day to Las Vegas. For days outside of Nevada, Mr. Hyatt always intended to return and always did return to Nevada after the short trips.

CUMULATIVE DAYS OF MR. HYATT'S PRESENCE DURING THE 190 DAY DISPUTED PERIOD	
1. Full day in Nevada—Resident	125
2. Part day in Nevada—Resident Part day in California—Temporary or Transitory Purpose	37
3. Full day in California—Temporary or Transitory Purpose	9
4. Full day in California—Resident	0
5. Part day in Nevada—Resident Part day in 3d State—Temporary or Transitory Purpose	3
6. Full day in 3d State—Temporary or Transitory Purpose	15
7. Part day in Nevada—Resident Part day in California—Resident	1

In contrast, FTB's new calendar in its 1991 RSAB is based on false inferences, mischaracterization of documents and speculation about Mr. Hyatt's location (e.g., misaddressed mail, misrepresenting where faxes were sent from, and just plain

⁶⁵ Testimonial Topics, Exs. T008, T009, T018, T021, T128, T019, T095, T096, T129, T026, T022, T023, T024, T025, T100, T057, T030, T135, T097, T146, T040, T138, T139, T041, T042, T043, T140, T045, T041, T044, T046, T047, T147, and T048. See also Hyatt's Chronologies.

1 false inferences and speculation) (1991 ASAB, Sections 1.8.4.1 to 1.8.4.4). FTB disregarded Mr. Hyatt's eyewitness and
2 documentary evidence when it compiled its calendar (Sections 1.1, 1.5.1, 1.5.2, 1.5.8; 1991 ASAB, Sections 1.8.1, 1.8.4.1 to
3 1.8.4.4).⁶⁶ FTB's assertions of California presence are based on fabricated stories, illogical inferences (Sections 1.5.9, 1.5.10,
4 1.5.10.1 to 1.5.10.5) and speculation. For example, FTB relies on boilerplate fax cover sheets with blank dates that use a
5 Cerritos P.O. Box as a return address and misaddressed correspondence sent to Mr. Hyatt's former California addresses or fax
6 number. This correspondence does not establish Mr. Hyatt's presence at his former Jennifer Circle house (1991 ASAB,
7 Sections 1.8.4.1 to 1.8.4.4). Your Board should disregard FTB's calendar and Attachment A-R as being based upon thousands
8 of false statements (Sections 1.5.9, 1.5.10, 1.5.10.1 to 1.5.10.5).

29 ⁶⁶ Hyatt's 2016 Supp. CDE Aff., Exhibits CDE-ST002 and CDE-ST003, ¶¶ 153 to 243; Hyatt's 2016 Post-CDE Aff, ¶¶ 546 to 949.

September 1991						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
				<u>CA, NV established</u> CA: visited Dr. Hamer Faxed Roth Drove to LV with trailer CA→LV <u>[Overnight in NV hotel]</u>	<u>NV, CA temp/transit, NV established</u> LV→CA→LV round trip <u>NV evidence:</u> Cosgrove called <u>[Overnight in NV hotel]</u>	<u>NV established</u> <u>NV evidence:</u> Cosgrove called <u>[Overnight in NV hotel]</u>
29	30					
<u>NV established</u> <u>NV evidence:</u> Cosgrove called; Called McCaffrey <u>[Overnight in NV hotel]</u>	<u>NV established, CA temp/transit</u> LV→CA Traveled to CA for court hearing Met McCaffrey & Bailey <u>[Overnight in CA house]</u>					

October 1991						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
		CA temp/transit, NV established CA: court hearing Met with McCaffrey & Bailey Sold CA house CA→LV Returned to LV. <u>NV evidence:</u> Cosgrove called <u>[Overnight in NV hotel]</u>	NV established <u>NV evidence:</u> Called McCaffrey; McCaffrey & Cosgrove called <u>[Overnight in NV hotel]</u>	NV established <u>NV evidence:</u> Met Hechts; Cosgrove & McHenry called <u>[Overnight in NV hotel]</u>	NV established <u>NV evidence:</u> Met with Hechts & Levoff & Howard; Temple Beth Am service; Cosgrove called <u>[Overnight in NV hotel]</u>	NV established <u>NV evidence:</u> Cosgrove called <u>[Overnight in NV hotel]</u>
6	7	8	9	10	11	12
NV established <u>NV evidence:</u> Hiked Red Rock with Howard; Cosgrove called <u>[Overnight in NV hotel]</u>	NV established <u>NV evidence:</u> Cosgrove called <u>[Overnight in NV hotel]</u>	NV established <u>NV evidence:</u> Leased LV apt., Paid cash deposit; Cosgrove called <u>[Overnight in NV hotel]</u>	NV established <u>NV evidence:</u> Cosgrove called <u>[Overnight in NV hotel]</u>	NV established <u>NV evidence:</u> Howard & Cosgrove called <u>[Overnight in NV hotel]</u>	NV established, CA temp/transit <u>NV evidence:</u> Faxed & called McCaffrey; McCaffrey called LV→CA CA: Cosgrove's birthday <u>[Overnight at Cosgrove's house]</u>	CA temp/transit, NV established CA→LV <u>NV evidence:</u> Met with Howard; Cosgrove called <u>[Overnight in NV hotel]</u>
13	14	15	16	17	18	19
NV established <u>NV evidence:</u> Signed apt. rental agreement; Cosgrove called <u>[Overnight in NV hotel]</u>	NV established, VA temp/transit <u>NV evidence:</u> Mailed property tax; Paid LV apt. pro-rated rent Left on trip from LV <u>[Overnight in VA hotel]</u>	VA temp/transit (undisputed) VA <u>[Overnight in VA hotel]</u>	VA temp/transit (undisputed) VA: met with Thompson & Turner & Huntington <u>[Overnight in VA hotel]</u>	VA temp/transit, TX temp/transit (undisputed) VA→TX <u>[Overnight in TX hotel]</u>	TX temp/transit (undisputed) TX: Met with Mahr & Leonard & Roth <u>[Overnight in TX hotel]</u>	TX temp/transit, NY temp/transit TX→NY NY: Met with Philips personnel <u>[Overnight in NY hotel]</u>
20	21	22	23	24	25	26
NY temp/transit (undisputed) NY: Traveled to NJ family reunion NY→NV: Flew to LV early AM flight <u>[Overnight in NY hotel]</u>	NY temp/transit, NV established NY→LV flight <u>NV evidence:</u> Signed apt. doc; Rented PO box; Change of addr.; NV Power; Centel; Called friends/colleagues; Comdex <u>[Overnight in NV apt.]</u>	NV established <u>NV evidence:</u> Comdex; Met with Panos; Called Eyler <u>[Overnight in NV apt.]</u>	NV, CA temp/transit, NV established LV→CA→LV round trip <u>NV evidence:</u> Comdex; Bought gas; Called Cosgrove & Hollingsworth; Eyler called; Panos visited apartment <u>[Overnight in NV apt.]</u>	NV established <u>NV evidence:</u> Comdex; Met with Eyler; Called McHenry & Rudestam <u>[Overnight in NV apt.]</u>	NV established (undisputed) <u>NV evidence:</u> Comdex; Met with Hechts & Howard; Opened LV checking acct.; Temple Beth Am service <u>[Overnight in NV apt.]</u>	NV, CA temp/transit, NV established LV→CA→LV round trip <u>NV evidence:</u> Met with Howard <u>[Overnight in NV apt.]</u>
27	28	29	30	31		
NV established <u>NV evidence:</u> Wrote and faxed letter to Tamoshunas <u>[Overnight in NV apt.]</u>	NV established <u>NV evidence:</u> Called Durocher; Cowan & Kazmaier called; Met with Strattons; Exchanged rent check; Signed Sharp agreement in LV; Signed check <u>[Overnight in NV apt.]</u>	NV established <u>NV evidence:</u> Cowan & Kazmaier called <u>[Overnight in NV apt.]</u>	NV established <u>NV evidence:</u> Kazmaier called <u>[Overnight in NV apt.]</u>	NV established <u>[Overnight in NV apt.]</u>		

November 1991

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
					<u>NV established</u> NV evidence: Paid Centel & NV Power; Changes of address; Kazmaier & Connell called; Met with Howard; Temple Beth Am service	<u>NV established</u> NV evidence: Kazmaier (house guest); Connell called
					<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>
3	4	5	6	7	8	9
<u>NV established</u> NV evidence: Kazmaier (house guest); McHenry & Connell called	<u>NV established</u> NV evidence: Kazmaier (house guest); Hammer & Jeng visited apartment; Dinner with Kazmaier; Signed draft Matsushita agreement & XCS invoice in LV; etc.	<u>NV established</u> NV evidence: Kazmaier (house guest); Hiked with Kazmaier; McCaffrey & Connell called	<u>NV established</u> NV evidence: Kazmaier (house guest); McHenry & Rudestam & Connell called	<u>NV established</u> NV evidence: Moreno & Connell & Salzer called; Paid local NV newspaper bill	<u>NV established</u> NV evidence: Met with Howard and Rabbi Akselrad; met with LV realtor; Connell called; Congregation Ner Tamid service	<u>NV, CA temp/transit, NV established</u> LV→CA→LV round trip NV evidence: Connell called
<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>
10	11	12	13	14	15	16
<u>NV established</u> NV evidence: Howard & Connell called	<u>NV established</u> NV evidence: McCaffrey & Connell called	<u>NV established</u> NV evidence: Connell called; Prepared letter to Tamoshunas	<u>NV, CA temp/transit, NV established</u> LV→CA→LV round trip NV evidence: McCaffrey & Connell called; Faxed letter to Tamoshunas	<u>NV established</u> NV evidence: Bank deposit in LV	<u>NV established</u> NV evidence: Met with Staley & Eyler & Howard; McHenry & Cowan called; Shopped at Indoor Swap Meet, dinner with Howard; Joined Congregation Ner Tamid	<u>NV established</u> NV evidence: Shopped at Indoor Swap Meet with Howard
<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>
17	18	19	20	21	22	23
<u>NV established</u> NV evidence: Met with Strattons	<u>NV established, CA temp/transit, NY temp/transit</u> LV→NY Trip to NY with Roth via LAX	<u>NY temp/transit (undisputed)</u> NY	<u>NY temp/transit, CA temp/transit, NV established</u> NY→LV: return via LAX	<u>NV, CA temp/transit, NV established</u> LV→CA→LV round trip NV evidence: Met with Strattons; Lunch with Howard	<u>NV established</u> NV evidence: Opened bank account in LV; Met with Howard & Eyler & Staley & Strattons; Shopped at Indoor Swap Meet; Congregation Ner Tamid service; etc.	<u>NV established</u> NV evidence: Car shopping with Eyler; met with Strattons; McCaffrey faxed court order
<u>[Overnight in NV apt.]</u>	<u>[Overnight in NY hotel]</u>	<u>[Overnight in NY hotel]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>
24	25	26	27	28	29	30
<u>NV established</u> NV evidence: Faxed letter to Tamoshunas and Haken; wrote letters to Tamoshunas and Haken and Mahr and Leonard	<u>NV established</u> NV evidence: Met with Hammer; McCaffrey called	<u>NV, CA temp/transit, NV established</u> LV→CA→LV round trip	<u>NV established</u> NV evidence: NV DMV, got driver's license & voter reg. & signed affidavit of residency; Paid apt. rent in person; Dan Hyatt visit, Paid Centel bill	<u>NV established</u> NV evidence: Bought gas; shopped at Von's; Kazmaier called; Thanksgiving dinner with Dan Hyatt	<u>NV, CA temp/transit, NV established</u> LV→CA→LV round trip NV evidence: Met with Huddleston & Howards; Lunch with Eyler and Dan Hyatt; Temple Beth Am service; etc.	<u>NV established</u> NV evidence: Hiked Red Rock with Dan Hyatt & Howard & his son; Kazmaier & Rudestam called
<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>

December 1991						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
<u>NV established</u> NV evidence: Kazmaier (house guest); letter to Jeng on loan payments	<u>NV established (undisputed)</u> NV evidence: Met with Huddleston; rented a car; Rudestam & Salzer called; Kazmaier (house guest); Signed check; Sent FedEx package	<u>NV established</u> NV evidence: Kazmaier (house guest)	<u>NV established</u> NV evidence: Met with Strattons; Howard & Kazmaier called; Dinner with Howard	<u>NV established</u> NV evidence: Met with Huddleston; Cowan & Kazmaier called	<u>NV established</u> NV evidence: Met with Shoemaker & Howard; walked through a house in LV; Cowan & Lee & Kazmaier called; Congregation Ner Tamid service	<u>NV established</u> NV evidence: Met with Howard; Shopped at Indoor Swap Meet; Lee called; Signed check
<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>
8	9	10	11	12	13	14
<u>NV established</u> NV evidence: Lee (house guest); Met with Shoemaker; Walked through two houses in LV	<u>NV established (undisputed)</u> NV evidence: Lee (house guest); met with Strattons & Shoemaker; Rudestam & Cowan called; fax from Rudestam; walked through two houses in LV	<u>NV established</u> NV evidence: Lee (house guest); signed NEC & Sony agreements (LV addresses); met McGuire & Shoemaker; had meal with Stephenson; walked through houses in LV; etc.	<u>NV established</u> NV evidence: Met with McGuire & Shoemaker & Strattons; Lee called; walked through houses in LV; Signed check	<u>NV established</u> NV evidence: Opened bank account; met with Stephenson & Shoemaker & Huddleston; bought insurance; McCaffrey & Lee called; made offers on LV houses	<u>NV established</u> NV evidence: Bought gas; shopped at K-Mart; met with Shoemaker & JoAnn Frank & Howard; McCaffrey & Lee called; Congregation Ner Tamid service; etc.	<u>NV established</u> NV evidence: Shopped at Indoor Swap Meet with Howard; Met with McGuire & Strattons
<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>
15	16	17	18	19	20	21
<u>NV established</u> NV evidence: Met with JoAnn Frank; Signed check	<u>NV established, CA temp/transit</u> NV evidence: Met with McGuire; Made home offers; Japanese tax application (LV address); McCaffrey called, faxed; rented car; etc LV→CA	<u>CA temp/transit NV established</u> CA→LV CA: court hearing NV evidence: Rudestam & McCaffrey called	<u>NV established</u> NV evidence: Car shopping with Eyley; met with JoAnn Frank; Lunch with Howard; McCaffrey called; Signed checks	<u>NV established</u> NV evidence: Met with Huddleston; exchanged offers on Tara; FedEx from MLMC; McCaffrey called	<u>NV established</u> NV evidence: Met with JoAnn Frank; paid off first trust deed; McCaffrey & Cowan & Rudestam called	<u>NV established</u> NV evidence: Met with Stephenson; walked through a house in LV; shopped at Indoor Swap Meet with Howard
<u>[Overnight in NV apt.]</u>	<u>[Overnight in CA.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>
22	23	24	25	26	27	28
<u>NV established</u> NV evidence: Made home offer; paid NV Power, paid apt. rent in person; Signed checks	<u>NV established</u> NV evidence: Met with JoAnn Frank & Strattons; Howard called; received counter offer on a house	<u>NV established</u> NV evidence: Met with JoAnn Frank; lunch with Howard; Rudestam called	<u>NV established</u> NV evidence: Visited Howards	<u>NV established</u> NV evidence: signed and submitted Benham Group account application (LV address)	<u>NV established</u> NV evidence: Received counter offer on a house	<u>NV established</u> NV evidence: Signed check
<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>
29	30	31				
<u>NV established</u>	<u>NV established</u> NV evidence: Car shopping with Eyley; met with JoAnn Frank; Cowan called; Signed check	<u>NV established</u> NV evidence: Watched fireworks with Howard; Connell & Rudestam called; McCaffrey faxed				
<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>				

January 1992						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 <u>NV established</u>	2 <u>NV established</u> NV evidence: McCaffrey & Hollingsworth called	3 <u>NV established</u> NV evidence: McCaffrey called and faxed; Signed check	4 <u>NV established</u> NV evidence: Made house counter offer
			<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>
5 <u>NV established</u> NV evidence: Met with Shoemaker; McCaffrey called and faxed; Signed checks <u>[Overnight in NV apt.]</u>	6 <u>NV established,</u> <u>CA temp/transit</u> NV evidence: Met with Shoemaker; got counter offer on a house; walked through a house in LV; Signed check LV→CA, CA: Signed court document <u>[Overnight in CA]</u>	7 <u>CA temp/transit,</u> <u>NV established</u> Returned to LV NV evidence: Met with Shoemaker & JoAnn Frank; made offer on a house; Panos visited; applied for investment account with LV address <u>[Overnight in NV apt.]</u>	8 <u>NV established,</u> <u>NY temp/transit</u> NV evidence: Shoemaker called; made counter offer; Signed check LV→NY Left on trip to NY from LV <u>[Overnight in NY hotel]</u>	9 <u>NY temp/transit</u> <u>(undisputed)</u> NY <u>[Overnight in NY hotel]</u>	10 <u>NY temp/transit</u> <u>(undisputed)</u> NY <u>[Overnight in NY hotel]</u>	11 <u>NY temp/transit,</u> <u>VA temp/transit</u> <u>(undisputed)</u> NY→VA <u>[Overnight in VA hotel]</u>
12 <u>VA temp/transit</u> <u>(undisputed)</u> VA <u>[Overnight in VA hotel]</u>	13 <u>VA temp/transit</u> <u>(undisputed)</u> VA <u>[Overnight in VA hotel]</u>	14 <u>VA temp/transit</u> <u>(undisputed)</u> VA NV evidence: Philips sent letter to Las Vegas <u>[Overnight in VA hotel]</u>	15 <u>VA temp/transit</u> <u>(undisputed)</u> VA <u>[Overnight in VA hotel]</u>	16 <u>VA temp/transit</u> <u>(undisputed)</u> VA <u>[Overnight in VA hotel]</u>	17 <u>VA temp/transit,</u> <u>NV established</u> VA→LV Returned to LV <u>[Overnight in NV apt.]</u>	18 <u>NV established</u> NV evidence: Met with Howard & Huddleston; Howard called; paid Centel; Signed checks <u>[Overnight in NV apt.]</u>
19 <u>NV established</u> <u>[Overnight in NV apt.]</u>	20 <u>NV, CA</u> <u>temp/transit, NV</u> <u>established</u> LV→CA→LV: round trip CA: Signed court documents; NV evidence: Called Shoemaker; Lee faxed; Signed check <u>[Overnight in NV apt.]</u>	21 <u>NV established</u> NV evidence: Conference in LV; met with Shoemaker; first trust deed reconveyed; applied for investment account with LV address <u>[Overnight in NV apt.]</u>	22 <u>NV established</u> NV evidence: Conference in LV; met with Shoemaker; walked through a house in LV; made house offer; called UNLV Dean; Signed check <u>[Overnight in NV apt.]</u>	23 <u>NV, CA</u> <u>temp/transit, NV</u> <u>established</u> NV evidence: Conference in LV; met with Shoemaker; made house offer LV→CA→LV: round trip CA: Los Alamitos Medical Center visit <u>[Overnight in NV apt.]</u>	24 <u>NV established</u> NV evidence: Met with Howard & JoAnn Frank; received counter offer; Shoemaker called; Congregation Ner Tamid service <u>[Overnight in NV apt.]</u>	25 <u>NV, CA</u> <u>temp/transit, NV</u> <u>established</u> LV→CA→LV round trip NV evidence: Met with Shoemaker & Strattons; shopped at Indoor Swap Meet with Howard <u>[Overnight in NV apt.]</u>
26 <u>NV established</u> <u>(undisputed)</u> NV evidence: Faxed letter to Tamoshunas and Haken; Superbowl party at Schulman's LV house <u>[Overnight in NV apt.]</u>	27 <u>NV established</u> NV evidence: Opened savings account; Howard called; Received fax from Circle Realty <u>[Overnight in NV apt.]</u>	28 <u>NV, CA</u> <u>temp/transit, NV</u> <u>established</u> LV→CA CA: Met with McCaffrey; Court hearing CA→LV NV evidence: Dinner w/ Howard <u>[Overnight in NV apt.]</u>	29 <u>NV established</u> NV evidence: Paid apt. rent in person; Car shopping with Eyler; Signed check <u>[Overnight in NV apt.]</u>	30 <u>NV established</u> <u>[Overnight in NV apt.]</u>	31 <u>NV established</u> NV evidence: Met with Howard; Hammer called, faxed; Temple Beth Am service; Signed check <u>[Overnight in NV apt.]</u>	

February 1992

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
						<u>NV established</u> NV evidence: Shopped at Indoor Swap Meet with Howard; Signed Checks <

March 1992

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
<u>NV established</u> NV evidence: Met with Shoemaker; walked through a house in LV; purchased 1992 Guide to Casino Vacations in LV; Signed checks	<u>NV established</u> NV evidence: Met with Shoemaker; made house offer; signed investment account application (LV address)	<u>NV established</u> NV evidence: Met with JoAnn Frank; got house counter offer; lunch with Howard; Shoemaker called; Signed checks	<u>NV established (undisputed)</u> NV evidence: Met with Hudson & Shoemaker; deposited check in LV bank account; thank you letter from Wagon Trails	<u>NV established</u> NV evidence: Met with Shoemaker; walked through a house in LV; Kazmaier called; Sent FedEx package	<u>NV established (undisputed)</u> NV evidence: Kazmaier (house guest); met with Shoemaker & Huddleston & Howard; made house offer; Cowan called; Congregation Ner Tamid service, etc.	<u>NV established</u> NV evidence: Kazmaier (house guest); met with Shoemaker & JoAnn Frank; FedEx to Cowan; shopped at Indoor Swap Meet with Howard; Signed check
<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>
8	9	10	11	12	13	14
<u>NV established, CA temp/transit</u> LV→CA Stayed at CA motel	<u>CA temp/transit, NV established</u> CA: Keynote speaker at conference; met with McCaffrey & Panos CA→LV NV evidence: Dinner with Howard	<u>NV established</u> NV evidence: Met with Shoemaker & Strattons; Cowan called; called Eyler	<u>NV established</u> NV evidence: Car shopping with Eyler; Cowan called	<u>NV established</u> NV evidence: Met with Shoemaker & McGuire; signed Tara counter offer	<u>NV established</u> NV evidence: Got Tara counter offer; met with Strattons & JoAnn Frank & Howard; Congregation Ner Tamid service	<u>NV established</u> NV evidence: Shopped at Indoor Swap Meet with Howard; met with Shoemaker; signed Tara counter offer; Strattons accepted offer
<u>[Overnight in CA motel]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>
15	16	17	18	19	20	21
<u>NV established</u> NV evidence: Met with Shoemaker; made house offer	<u>NV established, CA temp/transit</u> NV evidence: Met with Huddleston; lunch with Strattons; opened Tara escrow; Cowan called LV→CA CA: Hosted Russian scientists	<u>CA temp/transit, NV established</u> CA→LV NV evidence: Met with McGuire & Strattons; got sample house warranty; dinner with Howard	<u>NV established</u> NV evidence: Met with Kern; notarized document in LV; LV restaurant meals	<u>NV established (undisputed)</u> NV evidence: Bought gas; met with Huddleston & JoAnn Frank & Strattons & Hudson; bought new Toyota; Signed check	<u>NV established</u> NV evidence: Met with Huddleston & JoAnn Frank & Howard; called Eyler; registered new car; incurred credit card charge for car rental; Congregation Ner Tamid service	<u>NV established</u> NV evidence: Shopped at Indoor Swap Meet with Howard; met with Strattons
<u>[Overnight in NV apt.]</u>	<u>[Overnight in CA motel]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>
22	23	24	25	26	27	28
<u>NV established</u> NV evidence: Paid apt. rent in person; written 30 day notice to end lease; met with Huddleston; paid insurance premium in LV; Signed checks	<u>NV established</u> NV evidence: Eyler visited; met with JoAnn Frank & Strattons; Cowan & McCaffrey called; Cowan faxed	<u>NV established, CA temp/transit</u> NV evidence: Met with Strattons LV→CA CA: Met with Philips personnel; stayed in CA motel	<u>CA temp/transit, NV established</u> CA →LV NV evidence: Met with JoAnn Frank & McGuire & Hudson & Stratton; submitted IRA application (LV address); Cowan called; faxed to Hammer	<u>NV established</u> NV evidence: Met with McGuire; Cowan & Howard & Ron Salzer called; lunch with Howard	<u>NV established</u> NV evidence: Met with Strattons & McGuire & Howard; Glassman & McCaffrey called; faxed to Tamoshunas & Haken; Congregation Ner Tamid service	<u>NV established</u> NV evidence: Faxed to Tamoshunas & Haken; Received FedEx from Cowan
<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in CA motel]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>	<u>[Overnight in NV apt.]</u>
29	30	31				
<u>NV established</u> NV evidence: Shopped at Indoor Swap Meet with Howard	<u>NV established, CA temp/transit</u> NV evidence: Bank deposit in LV; met with JoAnn Frank & Strattons & McGuire; Glassman called; signed checks LV→CA CA: Stayed at motel	<u>CA temp/transit, NV established</u> CA →LV NV evidence: Met with Huddleston & JoAnn Frank & Hudson & Stratton; bought insurance; Cowan called; letters to NV and CA CPAs, etc.				
<u>[Overnight in NV apt.]</u>	<u>[Overnight in CA motel]</u>	<u>[Overnight in NV apt.]</u>				

April 1992						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
			<u>NV established</u> NV evidence: Set up Tara water & trash accounts; shopped at McFrugal's, Albertson's; lunch with Howard; Mary Stratton & Cowan called <u>[Overnight in NV apt.]</u>	<u>NV established</u> NV evidence: Shopped in LV; met with Strattons & McGuire; paid for Tara repairs; notarized document in LV; Signed checks <u>[Overnight in NV apt.]</u>	<u>NV established (undisputed)</u> NV evidence: Tara escrow closed; shopped in LV; moved into Tara; Lee and Jeng visited; Lee (Tara house guest); met with Howard, LV dinner; etc. <u>[Overnight in NV house]</u>	
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

1
2 **1.5.9 FTB's Calendar And Attachment A-R Are Based On Thousands Of False And Illogical Inferences**
3 **And Speculation And Is Not Credible.**

4 FTB's calendar⁶⁷ is not correct and cannot be trusted because, in very large part, it is based on illogical inferences,
5 misrepresentations of the evidence, fabricated stories and speculation from FTB's misrepresentation of the Philips documents
6 while FTB disregards or misrepresents Mr. Hyatt's eyewitness and documentary evidence (Sections 1.5.10, 1.5.10.1 to
7 1.5.10.5).⁶⁸

8 For example, FTB's calendar disregards Mr. Hyatt's presence in Las Vegas when he signed checks at his Las Vegas
9 apartment⁶⁹ and at his Las Vegas Tara home.⁷⁰ The checks and Mr. Hyatt's CDE affidavits provide eyewitness and
10 documentary evidence of 80 days in Las Vegas in rebuttal to FTB's inferences and speculations.⁷¹ The checks have the
11 contact information of Mr. Hyatt's Las Vegas bank printed thereon and all but a few counter checks have Mr. Hyatt's Las
12 Vegas contact information printed thereon. All of the checks have Mr. Hyatt's signature on them. FTB has had copies of
13 these checks for more than a decade. Mr. Hyatt's CDE affidavits have his sworn testimony as an eyewitness explaining the
14 purpose of each check, his location when he signed each check and provide authentication for each check.⁷²

15 As another example, FTB's calendar falsely represents that a misaddressed Philips document containing Mr. Hyatt's
16 former California address or fax number means that Mr. Hyatt was present at the Jennifer Circle house on the date of the
17 document. However, the undisputed evidence destroys that assumption because Philips acknowledged that Mr. Hyatt notified
18 it in October 1991 that he moved to Las Vegas and he provided his new Las Vegas address. Mr. Tamoshunas testified that
19 Philips personnel inadvertently sent documents to Mr. Hyatt's old address after receiving the change of address to Mr. Hyatt's
20 new address.⁷³ By disregarding eyewitness evidence that explains the Philips documents FTB misrepresents the Philips
21 documents and offers a false story to your Board (Section 1.5.6.3; 1991 ASAB, Sections 1.8.4.1 to 1.8.4.4). Furthermore,
22 Mahr Leonard administrative assistant, Ms. Weart, testified that Mr. Hyatt had given Mahr Leonard a change of address to Las
23 Vegas in mid-October 1991 and Mahr Leonard partner, David Leonard, also confirmed that Mr. Hyatt gave Mahr Leonard a

24
25
26 ⁶⁷ 1991 RSAB, pp. 5-12. ASAB Exhibit 1 provides a link for each day in the disputed period from FTB's calendar to
Mr. Hyatt's Rebuttal to FTB Att. A/F.

27 ⁶⁸ Hyatt's 2016 Supp. CDE Aff., Exhibits CDE-ST002 and CDE-ST003, ¶¶ 153 to 243; Hyatt's 2016 Post-CDE Aff,
¶¶ 546 to 949.

28 ⁶⁹ Hyatt's 2016 Supp. CDE Aff., ¶¶ 152-243.

⁷⁰ Hyatt's 2016 Post-DP CDE Aff., ¶¶ 545-949.

29 ⁷¹ Hyatt's 2016 Supp. CDE Aff., Exhibits CDE-ST002 and CDE-ST003.

⁷² Hyatt's 2016 Supp. CDE Aff., ¶¶ 152-243; Hyatt's 2016 Post-DP CDE Aff., ¶¶ 545-949.

⁷³ Affidavit of Algy Tamoshunas, August 4, 2010, ¶ 25.

1 change of address from California to Las Vegas.⁷⁴ This corroborating evidence contradicts FTB's fabrication that an address
2 on correspondence means that the addressee was present at the address when the correspondence was sent.

3 As another example, FTB argues that a legacy Cerritos P.O. Box return address on a template fax is evidence that Mr.
4 Hyatt was present at his former La Palma house, which he sold on October 1, 1991. However, FTB does not explain how a
5 Cerritos P.O. Box return address establishes presence at all, much less presence at a different location in a different city on a
6 particular day (Section 1.4.1.2).


7 Other examples of FTB's calendar, Attachment A-R and residency arguments being made in bad faith are discussed
8 in 1991 ASAB, Sections 1.8.2, 1.8.4 and ASAB Exhibits 1 and 2. Exhibit 1 is a copy of FTB's calendar and Exhibit 2 is a
9 table summarizing Mr. Hyatt's presence for each day in the disputed period. FTB's calendar and the Exhibit 2 table are linked
10 day by day to the rebuttal for each day in Mr. Hyatt's Rebuttal to FTB Att. A/F. When your Board reviews a day in FTB's
11 calendar or a day in FTB's Attachment A-R, your Board can also see the actual evidence of Mr. Hyatt's location for that day
12 in Mr. Hyatt's calendar and in his Rebuttal to FTB Att. A/F. This is easily done by clicking on this link to Mr. Hyatt's ASAB
13 Exhibit 1 or ASAB Exhibit 2 here, then clicking on the day therein. This will access that day in Mr. Hyatt's Rebuttal to FTB
14 Att. A/F which will provide the evidence of Mr. Hyatt's location as opposed to the illogical inferences, misrepresentations,
15 fabricated stories, and speculation in FTB's calendar.

16 FTB's calendar also disregards the fact that Mr. Hyatt submitted changes of address to the U.S. Postal Service on
17 October 21, 1991, to have his mail forwarded from his former Cypress, California P.O. Box and from his former California
18 house to his new Las Vegas address. Clearly, mail addressed to a California address that the U.S. Post Office forwards to a
19 Nevada address is not evidence of California presence.⁷⁵ Sections 1.5.6, 1.5.6.1 to 1.5.6.3, 1.5.7 discuss many changes of
20 address and notifications that Mr. Hyatt provided to friends and associates.

21 Based in large part on its misrepresentation of the Philips documents, FTB alleges 169 days of California presence
22 when an actual evidence based analysis establishes that there were only 37 part days of California presence plus 9 full days of
23 hospitalization for cancer surgery during the disputed period and Mr. Hyatt's presence in California on these days was for a
24 temporary or transitory purpose (except for the one day that Mr. Hyatt moved to Las Vegas).⁷⁶ In contrast to FTB's
25 "inference" based calendar Mr. Hyatt's calendar is fully supported by extensive documentation⁷⁷ and by eyewitness testimony
26

27 ⁷⁴ Declaration of Vicki Weart, May 21, 2012, ¶¶ 5-6; Declaration of David Leonard, May 2, 2012, ¶ 26.

28 ⁷⁵ Section 1.5.7. Hyatt's 2012 CDE Aff., ¶ 34 and Exhibit CDE-G21 attached therein.

29 ⁷⁶ 1991 RSAB, p. 5; Rebuttal to FTB Att. A/F, Section I. A., September 26, 1991 - April 2, 1992. 

⁷⁷ See the testimonial and documentary evidence linked to each day in Mr. Hyatt's calendar, 1991 ASAB; see also the contemporaneous documentary evidence attached as exhibits in the Hyatt's 2012 CDE Aff.; Hyatt's 2016 Supp. CDE Aff.; and Hyatt's 2016 Post-DP CDE Aff.

1 of people who saw or talked to Mr. Hyatt on a given day. Dozens of eyewitnesses testified that Mr. Hyatt moved to Las Vegas
2 in 1991,⁷⁸ that they met with Mr. Hyatt in Nevada, or that they spoke to Mr. Hyatt at his Las Vegas telephone number.⁷⁹

3 FTB has a long history of bad faith actions and in particular attempting to mislead your Board (1991 ASAB Sections
4 1.5, 1.8, 1.9). Furthermore, dozens of eyewitnesses made thousands of statements under oath or penalty of perjury identifying
5 and correcting multitudes of false statements that FTB made about them or about events that they had witnessed. This
6 overwhelming testimony is provided in six tables of Testimonial Responses (Testimonial Responses to FTB's statements
7 made in its 1991 ROB, 1992 ROB, 1991 RRB, 1992 RRB, 1991 Attachment A and 1992 Attachment A). This overwhelming
8 testimony is further provided in six tables of FTB false responses (two tables of false statements made in the FTB audit file,
9 two tables of false statements made by FTB private investigator Jake Dameron, and two tables of false statements made by
10 FTB private investigator William Savage). Thus, your Board cannot believe FTB.

11 Mr. Hyatt's Rebuttal to FTB Att. A/F provides a thorough analysis of each day during the disputed period supported
12 by overwhelming testimonial and documentary evidence, not illogical "inferences" as relied on by FTB. In view of the above,
13 FTB's calendar and Attachment A-R should be disregarded.

14 **1.5.10 FTB's Calendar And Attachments Must Be Rejected Because They Are Based In Large Part On**
15 **False Inferences And False Statements Of California Presence While Disregarding Mr. Hyatt's**
Overwhelming Eyewitness And Documentary Evidence That Places Him In Las Vegas.

16 FTB's calendar and Attachment A-R, which provide FTB's primary residency arguments, are made in bad faith
17 because they ignore evidence of Mr. Hyatt's actual location while drawing incorrect inferences from addresses on
18 correspondence (1991 ASAB, Section 1.8.2, 1.8.4; ASAB Exhibits 1 and 2).⁸⁰ Exhibit 1 is a copy of FTB's calendar and
19 Exhibit 2 is a table summarizing Mr. Hyatt's presence for each day in the disputed period. FTB's calendar and the Exhibit 2
20 table are linked day by day to the rebuttal for each day in Mr. Hyatt's Rebuttal to FTB Att. A/F.

24 ⁷⁸ 72 witnesses testified about Mr. Hyatt moving away in 1991, 28 witnesses testified about Mr. Hyatt moving away
25 in September 1991, 22 Jennifer Circle neighbors testified about Mr. Hyatt moving away in 1991, 23 witnesses testified that
26 Mr. Hyatt moved away within about a year of press or media attention that occurred during the middle of 1990, and 23
27 witnesses testified that they did not ever again see Mr. Hyatt at Jennifer Circle after he moved away in 1991 (Updated
28 Testimonial Topics, Exs. T007, T006, T102, T119, and T127, respectively). See also T008, T009, T018, T021, T128, T095,
29 T096, T129, T026, T022, T023, T024, T025, T100, T057, T030, T135, T097, T146, T040, T138, T139, T041, T042, T043,
T140, T045, T041, T044, T046, T047 and T048.

⁷⁹ 37 witnesses testified about Mr. Hyatt's stay at a Las Vegas hotel in 1991, 15 witnesses testified about visiting Mr.
Hyatt at his Las Vegas apartment, 28 witnesses testified about being informed in October 1991 that Mr. Hyatt had moved into
his Las Vegas apartment, and 39 witnesses testified about telephoning Mr. Hyatt at his Las Vegas apartment (Updated
Testimonial Topics, Exs. T008, T018, T128, and T019, respectively).

⁸⁰ FTB's bad faith acts against Mr. Hyatt are further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB, Section
1.5; ASAB Attachment 1, and in Section V of the Second Supplemental Motion To Strike.

1 Exhibits CDE-ST002 and CDE-ST003⁸¹ are tables summarizing FTB's false inferences ("inferred") and
2 misrepresentations (inferences misrepresented as "established") and they cite and link to Mr. Hyatt's eyewitness and
3 documentary evidence that establishes that FTB's inferences are wrong.⁸²

4 FTB's more than 20 depositions are very supportive of and corroborate Mr. Hyatt's evidence. Relevant excerpts that
5 corroborate the testimony of Mr. Hyatt's witness is located in the 27 deposition tables (1991 ASAB, Section 1.8.6.5).

6 **1.5.10.1 FTB Disregarded Mr. Hyatt's Eyewitness And Documentary Evidence Of Nevada Presence And**
7 **Falsely Alleged California Presence Based On False Inferences.**

8 Mr. Hyatt has provided eyewitness and documentary evidence establishing his Nevada presence.⁸³ However, FTB
9 disregarded Mr. Hyatt's evidence and based its calendar and attachments in large part on false inferences and false
10 "established" statements which are in effect another form of false inferences (Sections 1.5.10.2 to 1.5.10.5).

11 FTB's conclusions in its calendar and attachments are based in large part on "inferred" days while ignoring
12 eyewitness and documentary evidence that Mr. Hyatt was actually in Nevada.⁸⁴ "Under the Evidence Code, an inference is
13 not itself evidence; it is the result of reasoning from evidence."⁸⁵ However, FTB disregards Mr. Hyatt's overwhelming
14 eyewitness and documentary evidence that Mr. Hyatt was in Las Vegas for the whole day on each of 61 inferred days during
15 the disputed period and asserts California presence for these 61 days based on unsupportable illogical inferences.⁸⁶

16 FTB's calendar and attachments falsely infer that Mr. Hyatt had 61 days in California when in fact he spent these
17 entire days in Nevada. FTB also infers two days in California when the evidence shows that Mr. Hyatt was partly in Nevada
18 and partly in California on each of the two days.⁸⁷ These days and the facts related thereto are summarized in Table of FTB's
19 False Inferences attached as ASAB Exhibit 2. The unreliability of the FTB briefing is demonstrated by FTB's use of so-called
20 "inferred" and "established" days in the face of contrary eyewitness and documentary evidence and also the absence of
21 reasonable logic to support the FTB's asserted inferences.

22
23 ⁸¹ Exhibits attached to Hyatt's 2016 Supp. CDE Aff.

24 ⁸² See also Hyatt's 2016 Supp. CDE Aff., ¶¶ 153 to 243; Hyatt's 2016 Post-CDE Aff, ¶¶ 546 to 949.

25 ⁸³ Hyatt's 2012 CDE Aff.; Hyatt's 2016 Supp. CDE Aff., Exhibits CDE-ST002 and CDE-ST003, ¶¶ 153 to 243;
26 Hyatt's 2016 Post-DP CDE Aff., ¶¶ 546 to 949; Rebuttal to FTB Att. A/F, Section I. A., September 26, 1991 to April 2, 1992.
27 See also Testimonial Topics, Ex. T008, T009, T018, T021, T128, T019, T095, T096, T129, T026, T022, T023, T024, T025,
28 T100, T057, T030, T135, T097, T146, T040, T138, T139, T041, T042, T043, T140, T045, T041, T044, T046, T047 and T048.
29 See also Hyatt's Chronologies.

30 ⁸⁴ Mr. Hyatt's calendar, 1991 ASAB; Rebuttal to FTB Att. A/F, Section I. A., September 26, 1991 to April 2, 1992.
31 FTB's bad faith acts against Mr. Hyatt are further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB, Section 1.5;
32 ASAB Attachment 1, and in Section V of the Second Supplemental Motion To Strike.

33 ⁸⁵ Law Review Commission Comments for Evid. Code § 600 ("(b) An inference is a deduction of fact that may
34 logically and reasonably be drawn from another fact or group of facts found or otherwise established in the action.").

35 ⁸⁶ ASAB Exhibit 2.

36 ⁸⁷ Rebuttal to FTB Att. A/F, Section I. A., November 21, 1991, and March 25, 1992.

1 Mr. Hyatt's eyewitness and documentary evidence, including his CDE affidavits establishes that he was actually in
2 Nevada on the 61 days that FTB infers he was present in California. Two examples will serve to illustrate the absence of FTB
3 credibility.

4 On December 11, 1991, Mr. Hyatt was unquestionably in Las Vegas. As part of his efforts to purchase a Las Vegas
5 house, Mr. Hyatt walked through houses with two different real estate agents on this day and made hand written notes as he
6 walked through multiple houses with Mr. McGuire.⁸⁸ Mr. Hyatt also received a telephone call from Mr. Lee and signed check
7 number 115 payable to Chase, while present in his Las Vegas apartment.⁸⁹

8 In its Attachment A-R, p. 70, FTB acknowledges and links to the handwritten notes that Mr. Hyatt personally made
9 while walking through several houses with Mr. McGuire on December 11, 1991. FTB then disingenuously suggests (with no
10 evidence whatsoever) that the handwritten notes could have been made during a telephone conversation. However, Mr.
11 McGuire, Mr. Hyatt, and Mary Stratton (who owned the Las Vegas house that Mr. Hyatt purchased), testified that Mr. Hyatt
12 actually walked through houses in Las Vegas on December 11, 1991, and made the handwritten notes as he did so.⁹⁰

13 FTB made these false statements completely ignoring *the direct evidence of Mr. Hyatt's presence in Las Vegas on*
14 *December 11, 1991*. FTB asserted an illogical "inference" that Mr. Hyatt was in California on December 11, 1991, even
15 though Mr. Hyatt had documentary and testimonial evidence (e.g.; he made notes while personally walking through Las Vegas
16 houses he was looking at to purchase and he had testimony of witnesses related thereto). Even though Mr. Hyatt was in Las
17 Vegas on every day from December 10, 1991, through December 13, 1991,⁹¹ FTB inferred that because Mr. Hyatt was in
18 California on December 10, 1991 (Mr. Hyatt was actually in Las Vegas on December 10, 1991) and because Mr. Hyatt was in
19 California three days later on December 13, 1991 (Mr. Hyatt was actually in Las Vegas December 13, 1991), Mr. Hyatt must
20 have been in California on December 11, 1991. Following its typical pattern, FTB thus ignored the *direct evidence* of Mr.
21 Hyatt's actual physical presence in Nevada and created an illogical inference based on a false location of his presence two
22 days later.

23 Mr. Hyatt's presence in Las Vegas on December 11, 1991, is further supported by his testimony and documents.

24 FTB falsely states that I was in California on December 11, 1991, that my presence in California
25 was "inferred", and that my presence in California was supported by "logical inference" (FTB's
26 Attachment A (Revised), p. 70, December 11, 1991). However, on December 11, 1991, I was
27 present in Las Vegas all day, I was not present in California that day. I met with my Las Vegas
real estate agent, Mr. McGuire and walked through multiple Las Vegas houses that day and
personally made hand written notes as I walked through those houses, including the Las Vegas

28 ⁸⁸ H 013694

29 ⁸⁹ Rebuttal to FTB Att. A/F, Section I. A., December 11, 1991.

⁹⁰ Affidavit of Thomas McGuire, March 31, 2012, ¶¶ 48, 50; Affidavit of Gilbert P. Hyatt, August 15, 2010, § 1.9;
Affidavit of Mary Trotter Stratton, June 21, 2010, ¶ 27; Rebuttal to FTB Att. A/F, Section I. A., December 11, 1991.

⁹¹ Rebuttal to FTB Att. A/F, Section I. A., December 10-13, 1991.

1 Tara home that I purchased. A copy of my handwritten notes is attached hereto in
2 Exhibit CDE-S017 (H 013694). On December 11, 1991, I also signed checks while present at my
3 Las Vegas apartment, as was my practice (see ¶ 27 herein), drawn on my Las Vegas checking
4 account to pay Chase Visa, MBNA and MCI. These checks had my Las Vegas address and my
5 bank's Las Vegas address imprinted thereon. Copies of checks 114 to Chase, 115 to MBNA and
6 117 to MCI are located in Exhibit CDE-T003 (H 00665) to my 2016 Post-Disputed Period CDE
7 Affidavit.

8 Hyatt's 2016 Supp. CDE Aff., ¶ 174.

9 As a second example, FTB infers Mr. Hyatt's presence in California and then Nevada on April 2, 1992, the day
10 before he closed escrow on, and moved into, his Las Vegas Tara home. However, Mr. Hyatt was in Las Vegas on April 1,
11 1992, and remained in Las Vegas on April 2, 1992.⁹² FTB cites to multiple documents and activities that demonstrate Mr.
12 Hyatt's presence in Nevada on this day, including *an appearance before a Las Vegas notary*. Nevertheless, with absolutely
13 no mention of a California contact, FTB falsely contends that Mr. Hyatt's presence in California is "inferred" on April 2,
14 1992. See also Mr. Hyatt's documentary evidence and testimony thereto in his 2016 Supplemental Disputed Period CDE
15 Affidavit, ¶ 243. This is just one more of the thousands of examples of FTB fabricated stories and unsupported allegations
16 that FTB has made throughout its briefing.

17 FTB's calendar and attachments must be rejected because they blatantly ignore Mr. Hyatt's eyewitness and
18 documentary evidence showing Mr. Hyatt's presence in Las Vegas while FTB relies on thousands of false statements and
19 illogical inferences rather than evidence.

20 **1.5.10.2 FTB In Bad Faith Disregards Mr. Hyatt's Documentary Evidence Of Nevada Presence And Then**
21 **Falsely Alleges California Presence Because There Is No Documentation.**

22 Mr. Hyatt provided an enormous amount of eyewitness and documentary evidence of his Nevada presence.⁹³
23 However, FTB has disregarded this evidence and based its calendar on the illogical contention, among others, that California
24 presence was inferred because Mr. Hyatt had no documentary evidence. Aside from the fact that FTB disregarded existing
25 evidence, an absence of documentary evidence does not create an inference of California presence, particularly when
26 overwhelming evidence has established that Mr. Hyatt moved to Las Vegas (Section 1.5.10.3). FTB disregarded Mr. Hyatt's
27 documentary evidence and in bad faith inferred California presence because there is no documentary evidence.⁹⁴ FTB is out
28 to get Mr. Hyatt at any cost (1991 ASAB, Section 1.8), even if it destroys its own credibility before your Board.

29 ⁹² Rebuttal to FTB Att. A/F, Section I. A. See also Hyatt's 2016 Supp. CDE Aff., Exhibits CDE-ST002 and CDE-
ST003, ¶¶ 153 to 243; Hyatt's 2016 Post-CDE Aff., ¶¶ 546 to 949.

⁹³ See Hyatt's 2012 CDE Aff.; Hyatt's 2016 Supp. CDE Aff.; Hyatt's 2016 Post-DP CDE Aff.; Rebuttal to FTB Att.
A/F, Section I. A., September 26, 1991 to April 2, 1992.

⁹⁴ FTB's bad faith acts against Mr. Hyatt are further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB,
Section 1.5; ASAB Attachment 1, and in Section V of the Second Supplemental Motion To Strike.

1 For example, FTB has falsely inferred California presence based on allegedly “no documentation” for 34 days of its
2 calendar when there is clear documentation of Nevada presence. See the Table of FTB's False Statements of "No
3 Documentation" and the evidence cited to and linked to therein (ASAB Exhibit 3). However, this is only the tip of the
4 iceberg. FTB has falsely “inferred” or “established” California presence on more than 130 other days (a total of more than
5 164 days) while disregarding Mr. Hyatt’s eyewitness and documentary evidence related thereto (ASAB Exhibit 2). See also
6 Sections 1.5.1, 1.5.2, 1.5.8.

7 FTB’s calendar and Attachment A-R must be rejected because they blatantly disregard eyewitness and documentary
8 evidence showing Mr. Hyatt’s presence in Las Vegas. Further, because FTB cannot be believed and because Mr. Hyatt’s day
9 count is based on actual evidence rather than on FTB’s illogical inferences, Mr. Hyatt’s day count should be accepted as
10 correct and FTB’s day count should be rejected as false.

11 **1.5.10.3 FTB Falsely Alleges California Presence Based On Alleged Logical Inferences When A Good**
12 **Faith Analysis Shows That Logical Inferences Place Mr. Hyatt In Nevada.**

13 Mr. Hyatt provided overwhelming eyewitness and documentary evidence of his Nevada residency and domicile
14 (Section 1.5.8; 1991 ASAB, Section 1.8.1, 1.8.2).⁹⁵ However FTB disregards this compelling evidence and bases its calendar
15 and attachments in large part on illogical inferences of California presence. Mr. Hyatt moved to Las Vegas, sold his
16 California house, resided in a Las Vegas hotel for a few weeks, resided in his Las Vegas leased apartment for about five
17 months, and then resided in his Las Vegas Tara home for the last 25 years. Sections 1.5.1, 1.5.2; 1991 ASAB, Section 1.4.
18 Thus, any inference must lead to Las Vegas presence where Mr. Hyatt moved to and resided, not to California presence where
19 he sold his former house and moved away.

20 For example, FTB falsely states for 52 days during the disputed period that “Mr. Hyatt has provided no
21 documentation to show he is elsewhere than California” or words to that effect and then makes an incorrect illogical inference
22 that he was in California.⁹⁶ However, FTB disregards Mr. Hyatt’s evidence of Las Vegas presence and then with no evidence
23 of its own, alleges a “logical” inference” of presence in California even though Mr. Hyatt sold his former La Palma house on
24 October 1, 1991, and had no other abode in California.

25 Mr. Hyatt moved to Las Vegas on September 26, 1991, sold his only California house on October 1, 1991, and leased
26 a Las Vegas apartment on October 8, 1991, for six months,⁹⁷ thus making Las Vegas the only place where he had an abode.

27 ⁹⁵ Hyatt's 2012 CDE Aff. and the exhibits attached therein; Hyatt's 2016 Supp. CDE Aff., ¶¶ 153 to 243, and the
28 exhibits attached therein; Hyatt's 2016 Post-DP CDE Aff., ¶¶ 546 to 949, and the exhibits attached therein; Updated
29 Testimonial Topics, Exs. T007, T006, T102, T114, T119, T127, T008, T009, T018, T021, T128, T019, T022-T025, T135,
T136, T040, T138, T140-T143, T045, T044, T046, T047, and T049. See also Hyatt’s Chronologies.

⁹⁶ ASAB Exhibit 2.

⁹⁷ Rebuttal to FTB Att. A/F, Section I. A., September 26, 1991, October 1, 8, 1991.

1 Thus, any lack of evidence should result in a strong inference that Mr. Hyatt was present in Las Vegas. Mr. Hyatt moved his
2 computer, fax machine, active files and telephone to Las Vegas.⁹⁸ Dozens of eyewitnesses have testified that Mr. Hyatt left
3 his former Jennifer Circle neighborhood in 1991, that he was present in Las Vegas thereafter, and that he was living in his Las
4 Vegas apartment.⁹⁹ Thus, any “logical” inference” must place Mr. Hyatt in his Las Vegas apartment during the disputed
5 period.

6 Because FTB cannot be believed, and because Mr. Hyatt’s day count is based on actual evidence while FTB relies on
7 illogical inferences, Mr. Hyatt’s day count must be accepted as correct and FTB’s day count should be rejected as not correct.

8 **1.5.10.4 FTB’s Calendar And Attachment A-R Are Based In Large Part On False Allegations Of**
9 **“Inferred” California Presence And Must Be Disregarded.**

10 Mr. Hyatt provided eyewitness and documentary evidence of his Nevada presence.¹⁰⁰ However, FTB disregarded
11 Mr. Hyatt’s evidence and based its calendar and Attachment A-R in large part on false inferences, often referred to by FTB as
12 “inferred”. Such inferences are not credible particularly in view of Mr. Hyatt’s eyewitness and documentary evidence of his
13 actual Nevada presence. Thus, FTB’s calendar and Attachment A-R should be disregarded by your Board.¹⁰¹

14 FTB falsely labels 61 of its disputed days “inferred” California presence when Mr. Hyatt was actually in Las Vegas.
15 In doing so FTB disregards Mr. Hyatt’s actual evidence. For example, Mr. Hyatt has provided eyewitness documentary
16 evidence of Nevada presence on those days.¹⁰² Thus, Mr. Hyatt’s calendar days in Nevada must be accepted as true and
17 correct and FTB’s calendar days in California must be rejected as false.

18 Further, to be inferred, evidence must be inferred from true facts. Drawing one false inference from other false
19 inferences should be disregarded by your Board. For example, FTB relies on correspondence sent to the Jennifer Circle house
20 to “infer” Mr. Hyatt’s physical presence at that location on a particular day. However, this correspondence was misaddressed
21 to Mr. Hyatt’s former La Palma house after he filed a change of address to Las Vegas with the U.S. Postal Service and gave
22

23
24 ⁹⁸ Rebuttal to FTB Att. A/F, Section I. B., October 27, 1991, Section I. F., October 28, 1991.

25 ⁹⁹ 72-witnesses testified about Mr. Hyatt’s move away in 1991, 22-Jennifer Circle neighbors testified about Mr. Hyatt
26 moving away in 1991, 37-witnesses testified about Mr. Hyatt’s stay at a Las Vegas hotel in 1991, 28-witnesses testified about
27 being informed in October 1991 that Mr. Hyatt had moved into his Las Vegas apartment, 18-witnesses testified about Mr.
Hyatt’s Toyota or brown car being in Las Vegas during the disputed period, and 15-witnesses testified about visiting Mr. Hyatt
at his Las Vegas apartment (Updated Testimonial Topics, Exs. T007, T102, T008, T128, T030, and T018, respectively). See
also Testimonial Topics, Ex. T009, T021, T019, T095, T096, T129, T026, T022, T023, T024, T025, T100, T057, T135, T097,
T146, T040, T138, T139, T041, T042, T043, T140, T045, T041, T044, T046, T047 and T048.

28 ¹⁰⁰ Sections 1.5.1 to 1.5.8; Hyatt’s 2016 Supp. CDE Aff., ¶¶ 153-243, Exhibit CDE-ST002 and Exhibit CDE-ST003;
Hyatt’s 2016 Post-DP CDE Aff., ¶¶ 546-949. See also Hyatt’s Chronologies.

29 ¹⁰¹ FTB’s bad faith acts against Mr. Hyatt are further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB,
Section 1.5; ASAB Attachment 1, and in Section V of the Second Supplemental Motion To Strike.

¹⁰² Hyatt’s 2016 Supp. CDE Aff., Exhibit CDE-ST003.

1 changes of address to Philips and Mahr Leonard (Sections 1.5.6, 1.5.6.1 to 1.5.6.3, 1.5.7). No inference of physical presence
2 can be drawn from such misaddressed correspondence.

3 FTB turns common sense on its ear by first making false inferences and then drawing a second false inference from
4 its first false inferences. For example, FTB draws inferences that Mr. Hyatt was present in California on November 15, 1991,
5 and November 17, 1991, but these are false inferences based upon undisputed misaddressed correspondence and while FTB
6 disregards Mr. Hyatt's eyewitness evidence and his documentary evidence of Nevada presence on those days (eyewitness
7 testimony and documentation establish that Mr. Hyatt was in Las Vegas on November 15, 1991;¹⁰³ Section 1.5.6.3; 1991
8 ASAB, Sections 1.8.1, 1.8.4.1 to 1.8.4.4). Then FTB falsely infers that Mr. Hyatt was present in California on November 16,
9 1991, based upon the false inferences of California presence on November 15, 1991, and November 17, 1991. The FTB
10 calendars and Attachment A-R are based on unreliable and illogical inferences and should be disregarded by your Board.

11 **1.5.10.5 FTB's Calendar And Attachment A-R Are Based In Large Part On False Allegations Of So Called**
12 **"Established" California Presence And Should Be Disregarded.**

13 Mr. Hyatt provided eyewitness and documentary evidence of his Nevada presence.¹⁰⁴ However, FTB disregarded
14 Mr. Hyatt's evidence and based its calendar and Attachment A-R in large part on false inferences that are often referred to as
15 "established". Such inferences are not credible particularly in view of Mr. Hyatt's eyewitness and documentary evidence of
16 his Nevada presence.¹⁰⁵ Thus, FTB's calendar and Attachment A-R should be disregarded by your Board.

17 FTB alleges that California presence is "established" even though FTB has no evidence of California presence. FTB
18 instead relies on illogical inferences such as falsely inferring that a California address on a misaddressed correspondence
19 means Mr. Hyatt was at the Jennifer Circle house on a given day associated with the misaddressed correspondence.¹⁰⁶
20 Meanwhile, FTB ignores eyewitness testimony and documentary evidence placing Mr. Hyatt in Nevada on the given day
21 (Section 1.5.8). Alternatively, FTB falsely alleges it has "established" that Mr. Hyatt spent an entire day in California when
22 he had a part day in Nevada and a part day in California. Very compelling examples confirm that days of delivery of FedEx
23 packages cannot and do not establish physical presence (1991 ASAB, Section 1.8.4.4). For example, FTB relies on
24 correspondence sent to the Jennifer Circle house as "established" physical presence of the addressee at that location on a

25

¹⁰³ Exhibit CDE-ST003, Hyatt's 2016 Supp. CDE Aff.

26 ¹⁰⁴ Sections 1.5.1 to 1.5.8; Hyatt's 2016 Supp. CDE Aff., Exhibit CDE-ST002 and Exhibit CDE-ST003; ¶¶ 153-243;
27 Hyatt's 2016 Post-DP CDE Aff., ¶¶ 546-949. See also Testimonial Topics, Ex. T008, T009, T018, T021, T128, T019, T095,
T096, T129, T026, T022, T023, T024, T025, T100, T057, T030, T135, T097, T146, T040, T138, T139, T041, T042, T043,
T140, T045, T041, T044, T046, T047 and T048.

28 ¹⁰⁵ FTB's bad faith acts against Mr. Hyatt are further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB,
Section 1.5; ASAB Attachment 1, and in Section V of the Second Supplemental Motion To Strike.

29 ¹⁰⁶ See Sections 1.5.10.1 to 1.5.10.5 regarding FTB's reliance on mis-addressed correspondence to establish physical
presence on a particular day.

1 particular day. However, this correspondence is undisputed misaddressed correspondence, sent to an address for which
2 changes of address were filed with the U.S. Postal Service and changes of address were given to Philips and Mahr Leonard
3 (Sections 1.5.6, 1.5.6.1 to 1.5.6.3, 1.5.7). Sending correspondence to a wrong address is not even a basis for an inference of
4 presence, let alone “established” presence.

5 FTB’s false “established” allegations are illustrated by a compelling example. Mr. Hyatt has produced eyewitness
6 and documentary evidence of Nevada presence for November 7, 1991, which is disregarded by FTB. On November 7, 1991,
7 Mr. Hyatt received telephone calls from Will Connell, Danny Moreno, and Ronald Salzer at his Las Vegas apartment, wrote
8 two letters using his Las Vegas computer, signed check number 102 payable to Las Vegas Sun while present in his Las Vegas
9 apartment, and spent the night in his Las Vegas apartment.¹⁰⁷ However, FTB falsely alleges that Mr. Hyatt’s presence in
10 California is “established”. Mr. Hyatt wrote a letter dated November 7, 1991, to Philips¹⁰⁸ and another letter dated November
11 7, 1991, to Mahr Leonard¹⁰⁹ using his Las Vegas computer. These letters confirm Mr. Hyatt’s presence in Las Vegas because
12 it has been established by overwhelming eyewitness testimony that Mr. Hyatt’s computer was moved to Las Vegas.¹¹⁰ Mr.
13 Hyatt also paid his newspaper bill and signed check number 102 payable to Las Vegas Sun while present in his Las Vegas
14 apartment.¹¹¹ Mr. Hyatt’s presence in Las Vegas on November 7, 1991, is also supported by the eyewitness testimony of
15 Ronald Salzer, Danny Moreno and Will Connell, who called Mr. Hyatt at his Las Vegas apartment.¹¹² There should be no
16 question that this was not a California “established” day. Mr. Hyatt was in Las Vegas on November 7, 1991.

17 The only facts established by FTB’s many false assertions of “established” California presence are that (a) FTB made
18 dozens of bad faith representations that California presence is “established” and (b) FTB has disregarded Mr. Hyatt’s
19 eyewitness evidence and documentary evidence establishing Nevada presence for those days (Section 1.5.8).

20 **1.5.11 There Was No Attraction To Jennifer Circle And No Reason For Mr. Hyatt To Live Or Work**
21 **There After He Moved To Las Vegas.**

22 FTB’s residency and sourcing positions inconsistently require that Mr. Hyatt reside at the Jennifer Circle house
23 (residency) or reside in Las Vegas and work at the Jennifer Circle house (sourcing). FTB contends that Mr. Hyatt remained
24 closely connected to the Jennifer Circle house. This contention is a complete fallacy. First, Mr. Hyatt absolutely did not live
25 at the Jennifer Circle house during the disputed period or thereafter and overwhelming eyewitness and documentary evidence

26 ¹⁰⁷ Rebuttal to FTB Att. A/F, Section I. A., November 7, 1991.

27 ¹⁰⁸ FTB_Philips 0004853.

28 ¹⁰⁹ FTB_Philips 0004857.

29 ¹¹⁰ Rebuttal to FTB Att. A/F, Section I. B., October 27, 1991.

¹¹¹ Hyatt’s 2016 Supp. CDE Aff., ¶ 161.

¹¹² Affidavit of Ronald Salzer, September 11, 2011, ¶ 18; Affidavit of Danny Moreno, January 26, 2010, ¶ 11;
 Affidavit of Will Connell, July 10, 2012, ¶ 38.

1 establishes that Mr. Hyatt sold the Jennifer Circle house on October 1, 1991 (Section 1.5.1). Second, overwhelming
2 eyewitness and documentary evidence also establishes that Mr. Hyatt did not have California source income from working in
3 California. He lived in Las Vegas¹¹³ and did not engage in any business activities in California or elsewhere.

4 It is absurd to suggest that Mr. Hyatt would move to Nevada, but operate a “home” business 270 miles away in
5 California. FTB contends that Mr. Hyatt personally and actively operated a California licensing business at the Jennifer Circle
6 house, not that he was merely an owner of an entity operating in California. Mr. Hyatt did not need the Jennifer Circle house
7 to continue his personal patent activities. He had no family ties; his children were grown and he was long divorced. He was
8 completely mobile and could live anywhere because the equipment he needed for his personal patent activities (a computer
9 and fax machine) was also mobile and he easily moved these items to his Las Vegas apartment.¹¹⁴


10 As a Nevada resident, Mr. Hyatt had no need to use the Jennifer Circle house for any purpose because anything he
11 could do there, he could do much more conveniently at his home in Las Vegas. FTB’s residency and sourcing positions are
12 not supported by the evidence or by common sense.

13 **1.6 THE PHILIPS DOCUMENTS ESTABLISH THAT MR. HYATT HAD VERY LITTLE INVOLVEMENT IN**
14 **THE PHILIPS LICENSING PROGRAM DURING THE 1992 DISPUTED AND POST-DISPUTED PERIODS.**

15 **1.6.1 Mr. Hyatt Provided Very Little Assistance to the Philips Licensing Program During The 1992**
16 **Disputed Period.**

17 Mr. Hyatt had some meetings, correspondence and telephone calls, but provided very little assistance to the Philips
18 Licensing Program during the 1992 disputed period. The September 1991 Mahr Leonard Agreement had expired. Philips was
19 continuing to manage and operate the Philips Licensing Program (1991 ASAB, Sections 1.7.3, 1.7.9). Mr. Hyatt entered
20 escrow on his Las Vegas house and was preparing to move in and start landscaping. No patent agreements were executed
21 during the 1992 disputed period.

22 On January 14, 1992, Philips notified Mr. Hyatt of the distribution of his license payments due under the July 1991
23 Philips Agreement attributable to the Sharp, NEC and Sony license payments which Philips had received during 1991.¹¹⁵
24 Philips distributed Mr. Hyatt’s license payments to four of Mr. Hyatt’s Nevada situs investment accounts.¹¹⁶ Mr. Hyatt
25 received notice of these payments on his fax machine in his Las Vegas apartment addressed to his Las Vegas apartment.¹¹⁷

26  ¹¹³ Testimonial Topics, Ex. T008, T009, T018, T021, T128, T019, T095, T096, T129, T026, T022, T023, T024,
T025, T100, T057, T030, T135, T097, T146, T040, T138, T139, T041, T042, T043, T140, T045, T041, T044, T046, T047,
T147, and T048.

27 ¹¹⁴ Indeed, 12-witnesses testified about a computer in Mr. Hyatt’s Las Vegas apartment, 19-witnesses testified about a
28 fax machine in Mr. Hyatt’s Las Vegas apartment, and 22-Jennifer Circle neighbors testified about Mr. Hyatt moving away in
1991. Updated Testimonial Topics, Exs. T024, T025, and T102, respectively.

29 ¹¹⁵ FTB_Philips 0005414.

¹¹⁶ FTB_Philips 0007410-0007413.

¹¹⁷ FTB_Philips 0005414.

1 Oki made the first of three license payments to the PSB&C client trust account maintained for the benefit of Philips
2 on January 31, 1992.¹¹⁸ At the direction of Philips, this payment was then transferred to Mr. Hyatt's Nevada situs investment
3 account¹¹⁹ and, at the request of Philips, Mr. Hyatt distributed the Oki license payment to Philips and Mahr Leonard by writing
4 two drafts, one to Philips and one to Mahr Leonard with no compensation for doing so.¹²⁰

5 Sharp made its license payment for the Sharp PCT Patent Agreement to the PSB&C client trust account maintained
6 for the benefit of Philips on January 24, 1992.¹²¹ PSB&C distributed the Mahr Leonard payment¹²² and transferred the
7 balance of the Sharp PCT license payment to Philips.¹²³ On February 10, 1992, Philips distributed the Sharp PCT license
8 payment to Mr. Hyatt's Las Vegas situs investment accounts.¹²⁴

9 FTB has no legitimate basis for taxing license payments that Mr. Hyatt received under the July 1991 Philips
10 Agreement during the 1992 disputed period. At the request of Philips, Mr. Hyatt gave minimal assistance to the Philips
11 Licensing Program but received no compensation for doing so. He only received license payments Philips distributed to him
12 through the Philips Licensing Program under the July 1991 Philips Agreement.

13 **1.6.2 Mr. Hyatt Provided Very Little Assistance To The Philips Licensing Program During The 1992**
14 **Post-Disputed Period.**

15 FTB cannot tax the license payments received by Mr. Hyatt *after* the disputed period. The second Oki payment was
16 received into the PSB&C client trust account maintained for the benefit of Philips on November 13, 1992.¹²⁵ At the request of
17 Philips the Oki license payment was distributed to Philips, Mahr Leonard and Mr. Hyatt's Nevada situs Janus Group Mutual
18 Fund on November 17, 1992.¹²⁶

19 Hitachi made a first license payment to the PSB&C client trust account maintained for the benefit of Philips on
20 September 4, 1992.¹²⁷ At the request of Philips the first Hitachi license payment was distributed from the PSB&C client trust
21 account maintained for the benefit of Philips to Philips, Mahr Leonard and Mr. Hyatt's Scudder and Fidelity Nevada situs
22 investment accounts on September 4, 1992.¹²⁸ The second Hitachi license payment was received into the PSB&C client trust

24 ¹¹⁸ GLR 03838.

25 ¹¹⁹ GLR 03839.

26 ¹²⁰ On February 4, 1992, Mr. Hyatt distributed the Philips share of the first Oki license payment (GLR 03822-03824)
as well as the Mahr Leonard share of the first Oki license payment (GLR 03821, H 018048).

27 ¹²¹ GLR 03844.

28 ¹²² GLR 03841

29 ¹²³ GLR 03842, 03844.

¹²⁴ FTB_Philips 0004715.

¹²⁵ Letter dated November 17, 1992, from Mr. Roth to Mr. Nakajima of Oki, GLR 03811.

¹²⁶ GLR 03812.

¹²⁷ Letter dated September 8, 1992, from Mr. Roth to Mr. Akaki of Hitachi, GLR 00807.

¹²⁸ GLR 00810-00811.

1 account maintained for the benefit of Philips on December 28, 1992.¹²⁹ At the request of Philips the second Hitachi license
2 payment was distributed on December 28, 1992, from the PSB&C trust account maintained for the benefit of Philips to
3 Philips, Mahr Leonard and Mr. Hyatt's Janus Group and Benham Nevada situs investment accounts.¹³⁰

4 Philips licensed four companies (Sanyo, Omron, Kenwood and Nippon Columbia) pursuant to the July 1991 Philips
5 Agreement during the 1992 post-disputed period. Philips negotiated and signed the four patent agreements and distributed
6 license payments to Mr. Hyatt's Nevada situs investment accounts without contact with California. Mr. Hyatt's only
7 meaningful connection with these license agreements was to receive the license payments from Philips into his Nevada situs
8 investment accounts while he was undisputedly a resident of Nevada, *i.e.*, after April 3, 1992. The Philips licensing activities
9 had no relevant connection with California. The license payments from Philips to Mr. Hyatt based on these four licenses had
10 no connection whatsoever to a California business and were not included in an NPA by FTB. FTB has no basis for taxing
11 these four license payments (Section 1.7.5).

12 Aside from the FTB's failure to properly include the post-disputed period license payments from these four
13 companies in the 1992 NPA, FTB's contention that the license payments distributed by Philips and paid to Mr. Hyatt went to a
14 California business is also factually wrong. Philips by itself negotiated the Patent Agreements with these four companies. Mr.
15 Tamoshunas and Mr. Haken, who were located in New York, signed these four Patent Agreements on behalf of Philips.
16 Neither Mr. Hyatt nor any California entity signed these four Patent Agreements.¹³¹ Each of the four Patent Agreements
17 identifies Mr. Hyatt as having an address in Las Vegas. All four Patent Agreements required the license payment to be wire
18 transferred to a Philips' account at Bank of New York. Mr. Hyatt's license payments from the four Patent Agreements were
19 distributed by Philips to Nevada situs investment accounts owned by Mr. Hyatt.¹³²

20 There is no legal or factual basis for taxation of these post-disputed period license payments by California.

21 **1.6.3 The Philips Documents Illustrate Many Of Mr. Hyatt's Facts In These Appeals.**

22 Mr. Hyatt's 15 tables have excerpts of Philips documents and cites to more than 5,000 pages of Philips documents
23 (some duplicates) that illustrate the significant support the Philips documents give to Mr. Hyatt's appeals, illustrate Philips'

24
25

¹²⁹ Letter dated December 28, 1992, from Mr. Roth to Mr. Akaki of Hitachi, GLR 03674.

26 ¹³⁰ FTB_Philips 0000984, GLR 03702-03703, 03705.

27 ¹³¹ Copies of the four Patent Agreements were produced to FTB by Mr. Hyatt's representatives and are attached to
Mr. Hyatt's 2010 Sourcing Affidavit: (1) Omron, Exhibit 26, H 018844-018853; (2) Nippon Columbia, Exhibit 27, H
019093-019102; (3) Kenwood, Exhibit 28, H 019083-019092; and (4) Sanyo, Exhibit 24, H 018813-018822.

28 ¹³² The license payments from the four 1992 Post-Disputed Period Patent Agreements was distributed and transferred
29 by Philips to Mr. Hyatt's Nevada situs investment accounts: (1) Omron, Benham, FTB_Philips 0004589-0004591 (2) Nippon
Columbia, Fidelity, FTB_Philips 0000979-0000980 (3) Kenwood, Fidelity, FTB_Philips 0000979-0000980 (4) Sanyo,
Benham, Federated and Fidelity, FTB_Philips 0004634-0003638. ➡

control and operation of the Philips Licensing Program, and illustrate many of Mr. Hyatt's facts in these appeals (1991 ASAB Section 1.7.1).

- Exhibit 1 - Philips Used Its Worldwide Licensing Team To License Mr. Hyatt's Patents
- Exhibit 2 - Philips And MLMC Traveled Worldwide To License Mr. Hyatt's Patents
- Exhibit 3 - Philips Was Responsible For All Expenses Of Licensing Mr. Hyatt's Patents
- Exhibit 4 - Philips Controlled The Licensing Income
- Exhibit 5 - Philips Managed The Accounting And Finances Regarding The Philips Licensing Program
- Exhibit 6 - Philips Alone Was Responsible For Generating The Quarterly Financial Reports For The Philips Licensing Program
- Exhibit 7 - Licensing Documents Signed Only By Philips Or Drafted By MLMC Or Philips For Hyatt's Signature
- Exhibit 8 - Philips Had Possession Of The Original Signed Agreements
- Exhibit 9 - Philips Communications With Others
- Exhibit 10 - Examples Of Philips' Unilateral Actions/Decisions On The Licensing Program
- Exhibit 11 - Philips Communications That Are Not Addressed Or CCed To Mr. Hyatt Or Sent By Mr. Hyatt
- Exhibit 12 - Use Of "Draft" And "Proposed" Terminology In The Philips Licensing Program
- Exhibit 13 - Examples Of Philips' Faulty Fax Related Recordkeeping
- Exhibit 14 - Post-Disputed Period Fax Transmission Reports Re Las Vegas
- Exhibit 15 - Post-Disputed Period Correspondence And Documents

Index of Philips Document Tables.

Mr. Hyatt's 15 tables of Philips documents are described in 1991 ASAB, Section 1.7.1. FTB produced more than 8,000 pages of unauthenticated alleged Philips documents, which include *Mr. Hyatt's more than 5,000 pages of Philips documents* (some duplicates) that support his cases.

A list of the subject matter contained in these Philips documents is provided below.¹³³

- The Philips documents contain Mr. Hyatt's Las Vegas contact information.
- The Philips documents confirm that license agreements signed by Mr. Hyatt were at the request of Philips, were authorized by Philips, and were draft agreements.
- The Philips documents confirm that Philips was responsible for all expenses of the Philips Licensing Program.
- The Philips documents confirm that Philips alone created and managed the Philips Licensing Program.
- The Philips documents confirm that Philips licensing attorneys travelled worldwide to license Mr. Hyatt's patents under the Philips Licensing Program.
- The Philips documents confirm that Philips used its worldwide licensing team to license Mr. Hyatt's patents under the Philips Licensing Program.
- The Philips documents confirm that Philips made unilateral actions and decisions on the Philips Licensing Program without involvement by Mr. Hyatt.

¹³³ See the Philips Document Tables, Exhibits 1 to 15.

- The Philips documents confirm that Philips did not address to or copy (cc) Mr. Hyatt on many communications of the Philips Licensing Program.
- The Philips documents confirm that documents were signed only by Philips or were drafted by Mahr Leonard or Philips for Mr. Hyatt's signature and that Philips authorized and requested Mr. Hyatt to sign the documents.
- Philips communications with others demonstrate Philips control and management of the Philips Licensing Program.
- The Philips documents confirm that Philips managed the accounting, finances, and expenses for the Philips Licensing Program.
- The Philips documents confirm that Philips kept possession of the signed patent agreements.
- The Philips documents confirm that Philips alone was responsible for generating the quarterly financial reports for the Philips Licensing Program.
- The Philips documents confirm that Philips's fax recordkeeping was faulty.

1.7 MR. HYATT DID NOT HAVE CALIFORNIA SOURCE INCOME IN 1991 OR 1992.

1.7.1 FTB Has Not Met Its Burden Of Proving That Mr. Hyatt Had California Source Income In 1991 Or In 1992.

FTB is prohibited by the Rev. & Tax. Code from asserting the sourcing issue for failure to raise the issue in its 1991 and 1992 NPAs as discussed in Section 5 in Appellant's initial Motion to Strike, which is re-filed with this brief. Furthermore, FTB has not met its burden of proof in establishing that Mr. Hyatt had California source income.¹³⁴ FTB must prove each element of the sourcing claim and failure to establish any element means that FTB has not established that Mr. Hyatt had California source income. In addition to FTB being legally barred from raising the issue and failing to meet its burden of proof, the evidence establishes that Mr. Hyatt did not have California source income in the 1991 and 1992 disputed periods or thereafter.

The 1992 assessments must be overturned for the additional reason there was no 1992 audit (1992 AOB, § I, pp. 4-6; 1992 ARB, § II, pp. 2-3).

In addition, there are five factual roadblocks that prevent FTB from assessing Mr. Hyatt as a nonresident with California source income:

- All of the disputed 1991 and 1992 payments came from the licensing of Mr. Hyatt's patents, which had a taxable situs in Nevada. The general rule is that intangible property is situated at the residence of its owner, which in this case was Nevada. FTB must admit that Mr. Hyatt was a Nevada resident for purposes of its sourcing argument.
- No California business licensed Mr. Hyatt's patents.
- No California business had the "substantial use and value" of the Hyatt patents; under Sections 4.1 and 4.3 of the July 1991 Philips Agreement,¹³⁵ Philips had the "substantial use and value", including an exclusive license as to the computer patents.

¹³⁴ *Appeal of David G. and Helen Mendelsohn*, 85-SBE-141, Nov. 6, 1985.

¹³⁵ FTB_Philips 0000595-0000635.

- Follow the Money: Mr. Hyatt's disputed license payments were transferred to personal investment accounts having a Nevada situs, the residence attributable to Mr. Hyatt under the sourcing statutes; no payment was made to any Hyatt California business.
- Mr. Hyatt did not own any part of the Philips Licensing Program.

Each point is discussed in turn below (Sections 1.7.1.1, 1.7.1.2, 1.7.1.3, 1.7.1.4, 1.7.1.5).

1.7.1.1 All Of The Disputed 1991 And 1992 Payments Came From Philips Licensing Mr. Hyatt's Nevada-Situs Patents And Are Thus Not Taxable By California.

Because patents are intangible personal property, disputed license payments are sourced to the state of the residence of the owner of the intangible asset, which for Mr. Hyatt was Nevada as of September 26, 1991. California law provides "income of nonresidents from stocks, bonds, notes, or *other intangible personal property* is not income from sources within this state unless the property has acquired a business situs in this state. . . ." ¹³⁶

Thus, when Mr. Hyatt moved to Las Vegas the situs of his patents moved with him and the disputed license payments, all of which came from licensing his patents, are not taxable by California. FTB has not established that Mr. Hyatt received any of the disputed license payments except through the ordinary licensing of his Nevada situs patents through the Philips Licensing Program. The disputed license payments are therefore not taxable in California under Rev. & Tax § 17952.

FTB attempts to avoid the general rule that a nonresident's income derived from intangible property is sourced to the nonresident's state of residence by raising various sourcing arguments. However, even FTB itself cannot agree on a sourcing theory. FTB's 1991 NOA and 1992 NOA asserted that Mr. Hyatt had California source income based on his patents having a California business situs: "The assessment is further and alternatively sustained on the basis that **your intellectual property**, from which your income was generated, had a business situs in California for the entire taxable year and was therefore derived from sources within California." ¹³⁷ Thus, at the conclusion of the protest, not even FTB's protest hearing officer believed Mr. Hyatt had California source income because he operated a licensing business in the state. The assessment was based on the "intellectual property", *i.e.*, the patents, having a business situs in California, ***not from Mr. Hyatt operating a licensing business in California.*** However, during these pending appeals FTB presented no evidence that Mr. Hyatt's patents had a business situs in California, but instead argued that Mr. Hyatt had a California based licensing business. In FTB's most recent brief (1992 RSAB) FTB's *only* sourcing argument is based on a California based licensing business: "FTB's earlier briefing addresses why, under California law, Hyatt's income for 1991 and 1992 has a California source for income taxation independent of FTB's residency determination. The answer: *Hyatt operated a California business in 1991 and 1992 and, therefore, the income generated is taxable under R&TC § 17951.*" ¹³⁸ FTB cannot issue an NPA and then later raise legal



¹³⁶ Rev. & Tax § 17952 (emphasis added).

¹³⁷ FTB's 1991 NOA (FTB 28804-28806); FTB's 1992 NOA (FTB 28811-28813).

¹³⁸ 1992 RSAB, p. 22:9-12 (emphasis added).

1 theory after legal theory in the hope that one will eventually stick. That is directly contrary to the statutory assessment scheme
2 enacted by the Legislature, which requires FTB to issue an NPA when it determines a deficiency¹³⁹ and requires that the NPA
3 “shall set forth the reasons for the proposed deficiency assessment and the computation thereof.”¹⁴⁰ These statutes do not
4 permit FTB to change its reasons for an assessment. Accordingly, not only should your Board reject FTB’s entire sourcing
5 claim in both years, at a minimum it should reject FTB’s late attempt to raise the “California business” sourcing theory. The
6 FTB’s “California business” theory is a completely different concept from the theory of the patents having a “California
7 business situs” that was included in the NOAs. Mr. Hyatt was not given notice of the “California business theory” in either
8 the NPAs or the NOAs.

9 FTB’s new sourcing theories – (1) that the licensing income was derived from a trade or business operating within
10 California under Regulation 17951-4, and (2) that Mr. Hyatt’s patents had a business situs located in California under Section
11 17952 -- must fail. As discussed below, FTB has not established that Mr. Hyatt operated a business licensing patents within
12 California or that his patents had a California business situs.

13 **1.7.1.2 Mr. Hyatt Did Not Have California Source Income Under Regulation 17951-4 Because He Did Not**
14 **Engage In A Patent Licensing Business In California Or Anyplace Else.**

15 Mr. Hyatt did not engage in a business of licensing his patents in California or any other location. Thus the
16 California regulations which provide that a nonresident is taxable on income derived from “a business trade or profession” that
17 is conducted within the state does not apply.¹⁴¹ Under Rev. & Tax § 17952, the mere licensing of Mr. Hyatt’s own patents
18 does not create California source income. To make the license payment taxable in California, FTB must establish that while
19 Mr. Hyatt was residing in Nevada he was conducting a California business for the purpose of licensing his patents. The FTB
20 has not and cannot establish such a California licensing business ever existed. Philips had the *exclusive* licensing authority to
21 license Mr. Hyatt's licensable patents (1991 ASAB, Section 1.7.5).¹⁴² Mr. Hyatt was not a professional negotiator, he was not
22 skilled in licensing, and professional negotiators and licensing executives were operating Philips’ Licensing Program and
23 negotiating with the prospective licensees to license Mr. Hyatt’s patents. It is absurd to suggest that Mr. Hyatt negotiated with
24 prospective licensees or operated a licensing business in competition with Philips, which would be in breach of the Philips
25 Agreement. See Section 1.7.3; 1991 ASAB, Section 1.8.4.7. See also Sections 1.4.1.3, 1.7.1.3, 1.7.2, 1.7.3.

26

¹³⁹ Rev. & Tax. Code § 19033.

27 ¹⁴⁰ Rev. & Tax. Code § 19034.

28 ¹⁴¹ Cal. Code Reg. tit.18, § 17951-4(a).

29 ¹⁴² See the letter to Omron dated August 4, 1992, HL 02021, FTB_Philips 0003335 – 0003336; the letter to Toshiba dated February 3, 1992, FTB_Philips 0002663, 0002782; the letter to Asahi, HL 00307; the letter to Seiko, HL 00308; Sections 4.1 and 6.1 of the July 1991 Philips Agreement, H 01378, H 01388-01389; and the 2010 Tamoshunas Affidavit, ¶ 5; the 2010 Roth Sourcing Affidavit, §§ 4.2.1.8, 5.1.4.

1 Mr. Hyatt granted Philips the exclusive rights and responsibility to license his computer patents. The license
2 payments at issue came from the licensing of Mr. Hyatt's patents by Philips, not from any "business, trade or profession" of
3 Mr. Hyatt in California. Philips had the exclusive right to license those patents. All of the license payments at issue resulted
4 from the normal course of sublicensing by Philips. Mr. Hyatt's disputed license payments were income received in Nevada,
5 which was the situs of the patents under California law.

6 The signing of patent agreements with seven companies by Mr. Hyatt does not establish that Mr. Hyatt had a patent
7 licensing business. Mr. Hyatt signed the agreements under an express grant of authority from Philips and only after the
8 agreements were approved by Philips¹⁴³ (1991 ASAB, Section 1.7.7). Mr. Hyatt received no compensation for signing the
9 patent agreements. He received only the license payments provided by the July 1991 Philips Agreement. The patent licensing
10 agreements were signed under a grant of authority from Philips, who had the exclusive right to sublicense the computer
11 patents. In addition, the patent agreements Mr. Hyatt signed in 1991 were negotiated by Mahr Leonard under an exclusive
12 grant of authority from Philips¹⁴⁴ and the patent agreement Mr. Hyatt signed in 1992 was negotiated by Mr. Roth and Mahr
13 Leonard as authorized by a letter from Philips dated January 17, 1992.¹⁴⁵

14 As further evidence that the Philips Licensing Program was not a California business, all of the sublicensees were
15 headquartered in Japan and Philips was headquartered in New York and the Netherlands. No sublicense was signed in
16 California. All of the 1991 licenses were negotiated by Mahr Leonard, a Texas partnership, under a delegation of authority by
17 Philips.¹⁴⁶ Similarly, the 1992 Hitachi license was negotiated by Mr. Roth and Mahr Leonard at the request of Philips and
18 under a grant of authority from Philips.¹⁴⁷ The four remaining 1992 licenses were negotiated solely by Philips and were
19 signed by Philips executives. In sum, the licenses were not part of any "business trade or profession carried on within" the
20 State of California. Thus, the overwhelming evidence establishes there was no California licensing business operated by Mr.
21 Hyatt. As stated above, it is absurd to suggest that Mr. Hyatt negotiated with prospective licensees or operated a licensing
22 business in competition with Philips and in breach of the July 1991 Philips Agreement (Section 1.7.3).

23 FTB's California licensing business argument is flawed for the additional reason that FTB claims that 100 percent of
24 the license payments in dispute are sourced to California. That can only be true if the alleged "business" operated wholly
25

26 ¹⁴³ Philips authorized Mr. Hyatt to sign Patent Agreements with seven companies through the [First] Supplemental
27 Agreement (FTB_Philips 0000666-0000673), the Second Supplemental Agreement (FTB_Philips 0000675-0000677), and the
28 Third Supplemental Agreement (FTB_Philips 0000679-0000682).

29 ¹⁴⁴ FTB_Philips 0000145-0000151.

¹⁴⁵ GLR 00940.

¹⁴⁶ FTB_Philips 0000145-0000151.

¹⁴⁷ GLR 00940.

1 within California, which FTB has never argued or established despite it having the burden on the sourcing issue.¹⁴⁸ However,
2 the Philips Licensing Program was a worldwide operation. It was wholly owned and managed by Philips, which was based in
3 New York and The Netherlands. Philips granted Mahr Leonard, a Texas partnership, the exclusive right to negotiate with
4 seven companies; and all of the sublicensees were headquartered in Japan. FTB itself noted that Mr. Hyatt attended meetings
5 with Philips and Mahr Leonard outside California and FTB has acknowledge that Mr. Hyatt was a resident of Nevada for
6 purposes of its sourcing theory. Accordingly, for this additional reason, even under FTB's sourcing theory, California cannot
7 tax 100 percent of the alleged licensing business because FTB has not established that the alleged licensing business operated
8 wholly within California.¹⁴⁹ However, that is exactly what FTB is doing in violation of Cal. Code Reg. tit. 18, § 17951-4,
9 unlawfully attempting to tax 100 percent of an alleged licensing business. Mr. Hyatt did not have California source income
10 under Regulation 17951-4, and FTB has not met and cannot meet its burden of proving otherwise.

11 **1.7.1.3 Mr. Hyatt Did Not Have California Source Income Under Section 17952 Because His Patents Did**
12 **Not Have A California Business Situs.**

13 Mr. Hyatt's patents did not acquire a business situs in California. Under the sourcing statute, Mr. Hyatt must be a
14 resident of Nevada, and as his intellectual property his patents also had a situs in Nevada. Thus, for the § 17952 "business
15 situs" exception to apply, Mr. Hyatt's patents must have acquired a business situs in California separate from Mr. Hyatt's
16 residence in Nevada. FTB ignores this requirement that the "patents" must have acquired a "business situs" in California
17 separate from Mr. Hyatt's residence in Nevada likely. Thus, it is undisputed that the "patents" have not acquired a "business
18 situs" in California.

19 The Regulations further define the statutory requirement that the patents must have a "business situs" in California
20 for the license payments to be taxable:

21 (a) Income of nonresidents from rentals or royalties for the use of or for the privilege of using in
22 this State, patents . . . is taxable, if such intangible property has a business situs in this state within
the meaning of (c) below.¹⁵⁰

23 Subsection (c) of Regulation 17952 defines what is meant by "business situs" in California.

24 (c) Intangible personal property has a business situs in this State if it is employed as capital in this
25 State or the possession and control of the property has been localized in connection with a
26 business, trade or profession in this State **so that its substantial use and value attach to and**
27 **become an asset of the business**, trade or profession in this State. For example, if a nonresident
pledges stocks, bonds or other intangible personal property in California as security for the
payment of indebtedness, taxes, etc., incurred in connection with a business in this State, the
property has a business situs here. Again, if a nonresident maintains a branch office here and a
bank account on which the agent in charge of the branch office may draw for the payment of

28 ¹⁴⁸ Cal. Code Reg. tit. 18, § 17951-4(a).

29 ¹⁴⁹ Cal. Code Reg. tit. 18, § 17951-4(c) ("The amount of such business income derived from sources within this state
shall be determined in accordance with the provisions of the apportionment rules of the Uniform Division of Income for Tax
Purposes Act, Sections 25120 to 25139, inclusive, Revenue and Taxation Code, and the regulations thereunder . . .").

¹⁵⁰ Cal. Code Reg. tit. 18, § 17952(a).

1 expenses in connection with the activities in this State, the bank account has a business situs
2 here.¹⁵¹

3 Under this regulation, Mr. Hyatt's patents plainly did not acquire a business situs in California. First, the patents
4 were not "employed as capital in this State." The patents were never pledged to a California business to secure a loan and
5 FTB has never asserted that they were.

6 Second, the "possession and control" of Mr. Hyatt's patents have never been localized with a California business;
7 indeed, Mr. Hyatt did not even have "possession and control" over his own patents after he entered into the July 1991 Philips
8 Agreement. Pursuant to Sections 4.1 and 4.3 of that agreement Mr. Hyatt granted to U.S. Philips Corporation, a Delaware
9 corporation headquartered in New York, the "possession and control" of his patents. Further, Philips had the *exclusive*
10 licensing authority to license Mr. Hyatt's licensable patents (1991 ASAB, Section 1.7.5). As a result, Mr. Hyatt's alleged
11 presence in California could not have created a business situs in California for the patents, and he could not have transferred
12 "possession and control" to any California business. In addition, Mr. Hyatt was not present at the La Palma house between
13 October 1, 1991, and late 1992.¹⁵² After September 26, 1991, Mr. Hyatt resided in Nevada, he was not present in California
14 except for visits for temporary and transitory purposes (Section 1.5.5) and he was not present at his former Jennifer Circle
15 house from October 1, 1991 to late 1992 (Sections 1.5.1, 1.5.8); 72-witnesses testified about Mr. Hyatt moving away in 1991,
16 28-witnesses testified about Mr. Hyatt moving away in September 1991, and 22-Jennifer Circle neighbors testified about Mr.
17 Hyatt moving away in 1991.¹⁵³ Thus, Mr. Hyatt did not transfer "possession and control" of his patents to any California
18 business at any time.


19 Third, the patents have never "been localized in connection with a business, trade or profession in this State so that
20 their **substantial use and value** attach to and become an asset of the business, trade or profession in this State."¹⁵⁴ After the
21 July 1991 Philips Agreement, Mr. Hyatt no longer possessed the substantial use and value of his own patents and FTB has
22 never identified a contract or other mechanism transferring the substantial use and value of Mr. Hyatt's patents to any entity
23 other than Philips.

24 Fourth, FTB contends that Philips documents, which were misaddressed to Mr. Hyatt's former California addresses
25 or fax number, evidence a business at his former Jennifer Circle house. However, undisputed evidence establishes that those
26 documents were inadvertently sent to the wrong address or fax number after Mr. Hyatt provided a change of address (Sections

27 ¹⁵¹ Cal. Code Reg. tit. 18, § 17952(c) (emphasis added).

28 ¹⁵² In late 1992, Mr. Hyatt went to his former La Palma house to pick up Grace Jeng for a meeting with the head of
the Russian Space Agency, Uri Koptev. This was the first time Mr. Hyatt had been to his former La Palma house since he
sold it to Grace Jeng on October 1, 1991. See Affidavit of Gilbert P. Hyatt, August 15, 2010, p. 120.

29 ¹⁵³ See Updated Testimonial Topics, Exs. T007, T006, and T102, respectively,

 ¹⁵⁴ Cal. Code Reg. tit.18 §17952(a) (emphasis added).

1 1.5.6, 1.5.6.1 to 1.5.6.3, 1.5.7; 1991 ASAB, Sections 1.8.1, 1.8.4.1 to 1.8.4.4).¹⁵⁵ Furthermore, the documents do not establish
2 a Hyatt licensing business. To the extent the documents relate to licensing, they show that Mr. Hyatt was merely providing
3 assistance to the Philips Licensing Program without being compensated for doing so (Section 1.7.1.2). In short, neither
4 misaddressed correspondence nor Mr. Hyatt's use of a legacy Cerritos P.O. Box return address on correspondence establishes
5 a California business. This is particularly so because it has been established by eyewitness testimony and contemporaneous
6 documents that Mr. Hyatt was predominantly in Nevada on the dates of correspondence using these addresses (Sections 1.5.8,
7 1.4.1.1, 1.4.1.2). Therefore, for this additional reason, the Philips documents do not show that the patents were localized in
8 connection with a California trade or business.

9 Fifth, Mr. Hyatt's alleged presence in California is not sufficient to establish California sourcing. FTB must show the
10 "patents" have a business situs in California. California only taxes "intellectual property having a taxable or business situs in
11 this State."¹⁵⁶ FTB has identified no contract or other document localizing the possession and control of the patent in a
12 business in California so that the substantial use and value attach to and become an asset of the business.

13 Finally, FTB's sourcing argument must be rejected because FTB also must establish that Mr. Hyatt was a
14 nonresident. FTB cannot simply *assume* that Mr. Hyatt was a nonresident for purposes of the sourcing issue because FTB has
15 the burden of proof. To prevail, FTB must *establish* that Mr. Hyatt was a Nevada resident. Its failure to do so – in fact it has
16 argued at length just the opposite, that Mr. Hyatt was a California resident – dooms FTB's sourcing argument. While Mr.
17 Hyatt has clearly established that he was and remains a resident of Nevada, FTB's continuing argument that he was a resident
18 of California defeats the FTB assertion of California sourcing income under Rev. & Tax § 17952, which requires California
19 nonresidency.

20 FTB has not established that Mr. Hyatt was a nonresident or that he had California source income and FTB has not
21 established that Mr. Hyatt any rights to have a licensing business in view of the July 1991 Philips Agreement and his
22 representations and warranties to Philips (Section 1.7.3). Thus, the sourcing assessments must be reversed.

23 **1.7.1.4 Tracing License Payments To Mr. Hyatt Confirms He Did Not Have California Source Income.**

24 The license payments from the seven patent agreements Mr. Hyatt signed (at the request of Philips and after approval
25 by Philips) were first transferred by the licensees to the PSB&C client trust account maintained for the benefit of Philips. The
26 license payments for the first three licenses (Fujitsu, Oki and Matsushita) were then transferred from the PSB&C client trust

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28 ¹⁵⁵ Affidavit of Algy Tamoshunas, August 4, 2010, ¶ 25; Affidavit of David Leonard, May 2, 2012, ¶ 26; Declaration
of Vicki Weart, May 21, 2012 ¶¶ 5-6.

29 ¹⁵⁶ Cal. Code Reg. tit. 18 § 17952; Rev. & Tax. Code § 17952 ("income of **nonresidents** from . . . intangible personal
property is not income from sources within this state unless the property has acquired a business situs in this state") (emphasis
added).

1 account maintained for the benefit of Philips to one of Mr. Hyatt's Nevada situs investment accounts for distribution by Mr.
2 Hyatt.¹⁵⁷ Mr. Hyatt signed these first three Patent Agreements and distributed the license payments pursuant to a delegation of
3 authority by Philips under the [First] Supplemental Agreement because he had relinquished to Philips his right to license his
4 own patents.¹⁵⁸ Although Mr. Hyatt received these initial license payments, he had absolutely no discretion in distribution of
5 the funds to Philips and Mahr Leonard and he was required by Philips to promptly to do so. The distribution of the three
6 license payments was a minor task that Mr. Hyatt assisted Philips with; it was accomplished by writing eight drafts, five to
7 Philips and three to Mahr Leonard.¹⁵⁹ Mr. Hyatt's role was simply as an intermediary to disburse the funds for Philips.
8 Indeed, the July 1991 Philips Agreement did not anticipate that Mr. Hyatt would receive the license payments from the
9 licensees and after these three initial licenses Mr. Hyatt did not distribute any additional license payments for Philips.

10 In any event, the transfer of funds to Mr. Hyatt's Nevada investment accounts is not a California connection. Under
11 California law Mr. Hyatt's investment accounts are intangible property having a situs that follows the owner,¹⁶⁰ which situs
12 must be Nevada under the California sourcing statute because the sourcing statute applies only to California nonresidents.¹⁶¹
13 The license payments from these initial three licensees thus passed from a client trust account maintained by PSB&C for the
14 benefit of Philips to Hyatt's investment accounts having a Nevada situs. Thus, no California business received any taxable
15 income from these first three licenses. Moreover, Mr. Hyatt received no extra compensation for assisting Philips by signing
16 the Patent Agreements and distributing some of the license payments and Mr. Hyatt did not assist Philips as part of any
17 California business.

18 As with the first three Patent Agreements, the next three agreements (Sharp, NEC and Sony) were signed by Mr.
19 Hyatt at the request of Philips,¹⁶² who granted authority for Mr. Hyatt to sign through the Second Supplemental Agreement.¹⁶³
20 Except for the Mahr Leonard commissions,¹⁶⁴ the Philips license payments from these three Patent Agreements were
21 transferred from the PSB&C client trust account maintained for the benefit of Philips directly to Philips according to the July
22 1991 Philips Agreement¹⁶⁵ and Mr. Hyatt's disputed license payments were distributed to Mr. Hyatt by Philips on January 14,

24 ¹⁵⁷ The license payments were transferred to Mr. Hyatt's investment accounts: Fujitsu, Franklin Funds (October 31,
25 1991), GLR 03668-03669; Oki, Benham Group Account (January 31, 1992), GLR 03837-03839; Matsushita, Franklin Funds
(November 15, 1991), GLR 03786-03788.

26 ¹⁵⁸ First Supplemental Agreement, FTB_Philips 0000666-0000673.

27 ¹⁵⁹ FTB_Philips 0000616, 0000067, 0004856, 0004858 and H 018048.

28 ¹⁶⁰ 1992 ARB, pp. 18-19.

29 ¹⁶¹ 1992 ARB, pp. 29, 35; 1992 ASB, pp. 94-97.

¹⁶² Affidavit of Algy Tamoshunas, August 4, 2010, ¶ 17.

¹⁶³ FTB_Philips 0000675-0000677.

¹⁶⁴ Letter dated December 18, 1991, from Mr. Haken to Mr. Roth, FTB_Philips 0000523, authorizing payment of the
Mahr Leonard commissions from the client trust account maintained by PSB&C for the benefit of Philips.

¹⁶⁵ FTB_Philips 0000595-0000635.

1 1992, not in 1991, to several of Mr. Hyatt's investment accounts having a Nevada situs as designated by Mr. Hyatt.¹⁶⁶ As with
2 the first three Patent Agreements, no California licensing business received any taxable income from these second three Patent
3 Agreements. The Philips license payments to Mr. Hyatt went directly from Philips to Mr. Hyatt personally and were paid
4 pursuant to the July 1991 Philips Agreement.¹⁶⁷ Mr. Haken's letter to Mr. Hyatt providing notice of the transfers referenced
5 "PATENT AGREEMENT PAYMENTS" and expressly stated the payments were authorized "in accordance with our
6 Agreement."¹⁶⁸

7 The Hitachi license payments were distributed by PSB&C as authorized by Philips in Section 4 of the Third
8 Supplemental Agreement.¹⁶⁹ The license payments to Mr. Hyatt based on the Hitachi license payments were transferred from
9 the PSB&C client trust account maintained for the benefit of Philips to Mr. Hyatt's Nevada situs investment accounts.¹⁷⁰
10 Philips also negotiated, signed and distributed the license payments from four Patent Agreements in the second half of 1992
11 (Sanyo, Omron, Nippon Columbia and Kenwood) to Mr. Hyatt's Nevada situs investment accounts maintained by Mr.
12 Hyatt.¹⁷¹

13 Thus, the disputed license payments to Mr. Hyatt from every single one of the patent sublicenses signed in 1991 and
14 1992 were transferred from a Philips controlled account to Mr. Hyatt's Nevada situs personal investment accounts. There was
15 no transfer of funds to any entity that might be termed a California business. There was therefore no taxable income to any
16 California business that could be attributable to Mr. Hyatt. The disputed license payments to Mr. Hyatt from all of the 1991
17 and 1992 licenses resulted from the sublicensing of Mr. Hyatt's patents through the Philips Licensing Program as a result of
18 the right of Philips to sublicense Mr. Hyatt's patents under Sections 4.1 and 4.3 of the July 1991 Philips Agreement. The situs
19 of the disputed license payments to Mr. Hyatt was the situs of the Hyatt patents, which was Nevada where Mr. Hyatt resided.

20 ¹⁶⁶ Letter dated January 14, 1992, from Mr. Haken to Mr. Hyatt, FTB_Philips 0005414, FTB_Philips 0006151,
21 FTB_Philips 0006152 (State Street), FTB_Philips 0006155 (Janus Group), FTB_Philips 0006158 (Fidelity Group),
22 FTB_Philips 0006161 (JP Morgan). PSB&C was authorized to distribute the Mahr Leonard share in a letter dated December
18, 1991, from Mr. Haken to PSB&C, GLR 02453.

23 ¹⁶⁷ FTB_Philips 0000595-0000635.

24 ¹⁶⁸ FTB_Philips 0006323.

25 ¹⁶⁹ FTB_Philips 0000679-0000682.

26 ¹⁷⁰ Letter from Mr. Hyatt to PSB&C dated September 2, 1992, GLR 00814; letter from Mr. Brueggemann of PSB&C
27 to Union Bank dated September 4, 1992, GLR 00810-00811. Letters from Mr. Brueggemann of PSB&C to Union Bank, GLR
03702-03704.

28 ¹⁷¹ The Philips license payment to Mr. Hyatt derived from the Sanyo Patent Agreement was distributed by Philips on
29 July 31, 1992, to Mr. Hyatt's Benham Group, Federated Funds and Fidelity Funds investment accounts, letter dated July 31,
1992, from Philips to Mr. Hyatt, FTB_Philips 0004633-0004638.

The Philips license payment to Mr. Hyatt derived from the Omron Patent Agreement was distributed by Philips on
October 1, 1992, to Mr. Hyatt's BNF Capital Preservation investment account, letter dated October 1, 1992, from Philips to
Mr. Hyatt, H 018065-018066.

The Philips license payment to Mr. Hyatt derived from the Nippon Columbia and Kenwood Patent Agreements was
distributed by Philips on December 29, 1992, to Mr. Hyatt's Fidelity Group investment account, letter dated December 29,
1992, from Anthony Hermann to Philips, FTB_Philips 0007361; Letter dated December 29, 1992, from Mr. Haken to Mr.
Hyatt, FTB_Philips 0007362-0007363.

1 **1.7.1.5 Mr. Hyatt Did Not Have An Ownership Interest In the Philips Licensing Program As FTB**
2 **Incorrectly Implies.**

3 Mr. Hyatt did not have an ownership interest in the Philips Licensing Program and FTB has not provided any
4 evidence of such an ownership interest. The July 1991 Philips Agreement was a licensing agreement. It did not create a joint
5 “Hyatt/Philips patent licensing business.” The undisputed testimony of Mr. Tamoshunas states that the “July 1991 Philips
6 Agreement did not create either a joint venture or partnership with Mr. Hyatt” and that “Philips by itself and through its
7 attorneys created and managed the Licensing Program”.¹⁷²

8 FTB attempts to avoid the undisputed evidence that Mr. Hyatt and Philips did not engage in any business together by
9 repeatedly referring to Mr. Hyatt’s “JC/CA home/business”¹⁷³ and “Hyatt/Philips patent licensing business that began in
10 1991.”¹⁷⁴ Merely saying something over and over does make it so. FTB has provided no evidence of a “Hyatt/Philips patent
11 licensing business,” and there was no such business.

12 **1.7.2 The Evidence That Mr. Hyatt Did Not Have A Licensing Business Is Not Overcome By FTB’s**
13 **Unsupported Conclusions And Inferences.**

14 The July 1991 Philips Agreement itself and the corroborating testimony of the licensing executives establish that
15 Philips, not Mr. Hyatt, created, financed, and operated the Philips Licensing Program.¹⁷⁵ There was never an intent to create a
16 joint business and in fact, there was no joint business.¹⁷⁶ Philips simply licensed Mr. Hyatt’s patents. Philips had the
17 *exclusive* licensing authority to license Mr. Hyatt’s licensable patents (1991 ASAB, Section 1.7.5). Mr. Hyatt did not have a
18 licensing business. See Section 1.7.3. See also Sections 1.4.1.3, 1.7.1.2, 1.7.1.3. FTB however attempts to draw unsupported
19 conclusions while relying on inferences and speculation.

20 The July 1991 Philips Agreement¹⁷⁷ set forth the foundation for the Philips Licensing Program. The July 1991
21 Philips Agreement includes the following provisions:

- 22 • Philips was granted the rights to license all LICENSABLE PATENTS and the exclusive rights to license
23 computer patents;¹⁷⁸
- 24 • Philips assumed the “responsibility” to license the patents;¹⁷⁹
- 25 • Philips incurred obligations up to \$36 million as a condition for retaining its rights to license Mr. Hyatt’s
26 patents;¹⁸⁰
- 27 • Philips was required to account for income and expenses and provide quarterly financial reports to Mr. Hyatt;¹⁸¹

28 ¹⁷² Affidavit of Algy Tamoshunas, August 4, 2010, ¶¶ 7, 10.

29 ¹⁷³ E.g., “his JC/CA home/business”, 1991 RSAB, p. 16:5.

¹⁷⁴ 1991 RSAB, p. 1:19.

¹⁷⁵ Affidavit of Algy Tamoshunas, August 4, 2010, ¶ 10.

¹⁷⁶ Affidavit of Algy Tamoshunas, August 4, 2010, ¶¶ 6, 7.

¹⁷⁷ FTB_Philips 0000595-0000635.

¹⁷⁸ Section 4.1, FTB_Philips 0000608.

¹⁷⁹ Section 4.3, FTB_Philips 0000510.

¹⁸⁰ Sections 3.1 and 4.6, FTB_Philips 0000603, 0000611-0000612.

¹⁸¹ Section 4.9, FTB_Philips 0000614.

- Philips was required to enforce and to defend the patents;¹⁸²
- Philips was required to distribute NET PROCEEDS one-half to Philips and one-half to Hyatt.¹⁸³

FTB has not established essential facts necessary for it to meet its burden of proving a taxable California licensing business. FTB has not proven: (a) that the license payments at issue came from other than the ordinary licensing of Mr. Hyatt's patents through the Philips Licensing Program; (b) that some California business (unidentified) had the substantial use and value of Mr. Hyatt's patents; (c) that the license payments went to a California business; (d) that Mr. Hyatt had an ownership interest in the Philips Licensing Program as it licensed Mr. Hyatt's patents; and (e) that Mr. Hyatt or any taxable California entity received compensation for the assistance Mr. Hyatt provided the Philips Licensing Program. However, it is necessary for FTB to show these things to carry its sourcing burden. Thus, the sourcing assessments must be reversed.

Instead of attempting to demonstrate that a California licensing business rather than Philips had the substantial use and value of Mr. Hyatt's patents and attempting to demonstrate the other factors needed to establish California tax liability, FTB merely lists 50 short phrases with no explanation or evidentiary support as its "evidence" of a California licensing business.¹⁸⁴ The lack of any explanation or any cited evidence demonstrates this is frivolous argument.¹⁸⁵ These 50 phrases do not address the statutory requirement – that a California licensing business rather than Philips had the "possession and control" and "substantial use and value" of Mr. Hyatt's patents. FTB cannot meet its burden on the sourcing issue by merely listing phrases without citation to evidence or any explanation.¹⁸⁶

Furthermore, the phrases cited by FTB fail to establish any Hyatt California licensing business and they fail to establish that the alleged business was compensated or even sought compensation for any activity associated with even a single one of these 50 phrases. FTB in bad faith lists 50 irrelevant alleged events without explanation of even one of them. A list of 50 frivolous facts *prima facie* does not establish a licensing business, it establishes that FTB's position is frivolous and that FTB does not carry its sourcing burden (Sections 1.7.1, 1.7.1.1 to 1.7.1.5; 1991 ASAB, Section 1.5.2). Thus, for this reason alone the sourcing assessments should be reversed. For example:

- **1. Patent licensing strategy and planning meetings:** FTB does not explain how a Philips licensing strategy and planning meeting creates a Hyatt California business. FTB does not identify any meeting, the location of any meeting, or even contend Mr. Hyatt was present.

¹⁸² Section 5.3, FTB_Philips 0000616.

¹⁸³ Section 4.5, FTB_Philips 0000610.

¹⁸⁴ 1991 RSAB, p. 13:8-21.

¹⁸⁵ See *Appeals of Robert E. Wesley and Jerry J. Couchman*, 2005-SBE-002, 2005 Cal. Tax LEXIS 358, 2005-SBE-002 (2005) (imposing frivolous appeal penalty on taxpayers, in part, because they "fail[ed] to produce any substantial evidence to meet their respective burdens").

¹⁸⁶ 1991 RSAB, p. 13:8-21.

- **6. publicity photography:** FTB does not explain how Philips' publicity photographs of an inventor creates a licensing business for the inventor; they do not.

FTB fails to explain or provide evidence of any of the listed phrases. A list of alleged facts unsupported by evidence does not establish that Mr. Hyatt had a California licensing business. FTB has the burden of proof on the sourcing issue (Sections 1.7.1, 1.7.1.1 to 1.7.1.5; 1991 ASAB, Section 1.5.2) but has not provided any credible evidence that Mr. Hyatt had a California licensing business. FTB has also failed to show how such an alleged business obtained the substantial use and value of Mr. Hyatt's patents (Section 1.7.1.3), how there was any substantial use and value left for any alleged Hyatt licensing business after the exclusive grant of rights to Philips by the July 1991 Philips Agreement (1991 ASAB, Section 1.7.5), where any taxable income was paid to the alleged Hyatt California licensing business as compensation for any of the listed 50 phrases, or how the non-existing compensation went into any account that was taxable by California.

1.7.3 There Could Not Be And There Was No Hyatt Licensing Business Or Licensing Negotiations Because A Hyatt Licensing Business Or Licensing Negotiations Would Have Been In Breach Of The July 1991 Philips Agreement And In Violation Of Mr. Hyatt's Representations And Warranties To Philips.

Philips had the exclusive licensing authority to license Mr. Hyatt's licensable patents (1991 ASAB, Section 1.7.5).¹⁸⁷ Philips granted to *Mahr Leonard exclusive negotiation rights* for all six of the 1991 patent licenses. Mr. Hyatt was not authorized to negotiate with prospective licensees or to operate a licensing business and if he had done so, he would have breached Section 8.1 of the July 1991 Philips Agreement.¹⁸⁸ See Sections 1.7.1.2, 1.4.1.3, 1.7.2.

The July 1991 Philips Agreement granted Philips the rights to license Mr. Hyatt's licensable patents. Mr. Hyatt did not have the rights to license his own patents and did not license his patents to others except through grants of authority from Philips through the three supplemental agreements (1991 ASAB, Section 1.7.5).

Nevertheless, FTB falsely accuses Mr. Hyatt of negotiating with prospective licensees and FTB falsely accuses him of operating a licensing business. However, FTB has not even contended that Philips authorized Mr. Hyatt to negotiate with any prospective licensee or to operate a licensing business and he did not do so. Mr. Tamoshunas testified, "To the best of my knowledge, Mr. Hyatt did not negotiate the Eleven 1991-1992 Patent Agreements."¹⁸⁹ Moreover, FTB's argument is truly absurd. With professional negotiators from Philips and Mahr Leonard licensing his patents, Mr. Hyatt would not and did not

¹⁸⁷ See the letter to Omron dated August 4, 1992, HL 02021, FTB_Philips 0003335 – 0003336; the letter to Toshiba dated February 3, 1992, FTB_Philips 0002663, 0002782; the letter to Asahi, HL 00307; the letter to Seiko, HL 00308; Sections 4.1 and 6.1 of the July 1991 Philips Agreement, H 01378, H 01388-01389; and the 2010 Tamoshunas Affidavit, ¶ 5; the 2010 Roth Sourcing Affidavit, §§ 4.2.1.8, 5.1.4.

¹⁸⁸ July 1991 Philips Agreement, FTB_Philips 0000595-0000635.

¹⁸⁹ Affidavit of Algy Tamoshunas, August 4, 2010, ¶13.

1 breach Section 8.1 of the July 1991 Philips Agreement by negotiating with prospective licensees or by engaging in a
2 California licensing business.

3 Philips was a large world class multinational multidiscipline company with international relationships with other
4 world class companies. Philips created and managed the Philips Licensing Program and used its enormous licensing
5 experience to license Mr. Hyatt's patents.¹⁹⁰ Philips "took on significant responsibility with significant financial exposure"
6 and relied on Mr. Hyatt's Section 8.1 representations and warranties in the July 1991 Philips Agreement "that he has not made
7 and will not make any commitments to others inconsistent with or in derogation of the rights and licenses granted to
8 PHILIPS".¹⁹¹ As further explained by Mr. Tamoshunas,

9 Philips had the responsibility to license the "licensable patents" under Sections 4.1 and 4.3 of the July 1991
10 Philips Agreement. Philips used its worldwide licensing organization to license the "licensable patents" and
Philips managed the licensing from its offices in New York and in the Netherlands.¹⁹²

11 If Mr. Hyatt had been conducting a licensing business as asserted by FTB, he would have been in breach of the July
12 1991 Philips Agreement and in breach of the trust relied upon by Philip that he would not do anything "in derogation of the
13 rights and licenses granted to PHILIPS". See Sections 1.7.3, 1.7.1.2 1991 ASAB, Section 1.8.4.7. See also Sections 1.4.1.3,
14 1.7.1.3, 1.7.2. With Philips and Mahr Leonard applying their world class licensing expertise to the licensing of his patents,¹⁹³
15 it would be absurd for an inventor to jeopardize his relationship with Philips by engaging in his own licensing business in
16 breach of the July 1991 Philips Agreement as alleged by FTB. Mr. Hyatt signed patent agreements with only seven licensees
17 and in each case he did so at the express request of Philips subject to approval of the patent agreement by Philips as set forth in
18 the three supplemental agreements¹⁹⁴ (1991 ASAB, Section 1.7.7).

19 Furthermore, Philips would have certainly complained about Mr. Hyatt interfering with the Philips Licensing
20 Program if Mr. Hyatt had been operating a licensing business or negotiating with prospective licensees and Mahr Leonard
21 would have complained about Mr. Hyatt interfering with it exclusive negotiating rights if Mr. Hyatt had been negotiating with
22 prospective licensees. No such complaint exists. In addition, FTB has never shown where its alleged California licensing
23 business received any income, let alone taxable California income. All of the licensing payments that Mr. Hyatt received as a
24 result of Philips' sublicensing were received from Philips in the ordinary course of licensing Mr. Hyatt's Nevada situs patents
25 were deposited into his Nevada situs investment accounts.

26
27 ¹⁹⁰ Affidavit of Algy Tamoshunas, August 4, 2010, ¶ 10.

28 ¹⁹¹ Affidavit of Algy Tamoshunas, August 4, 2010, ¶ 10.

29 ¹⁹² Affidavit of Algy Tamoshunas, August 4, 2010, ¶ 11.

¹⁹³ See Index of Philips Documents Tables, Exhibit 1, Philips Used Its Worldwide Licensing Team To License Mr.
Hyatt's Patents; Exhibit 2, Philips And MLMC Traveled Worldwide To License Mr. Hyatt's Patents.

¹⁹⁴ (1) FTB_Philips 000666-000673; (2) FTB_Philips 000675-682; and (3) FTB_Philips 000679-000682.

1 Eyewitness testimony confirms that Mr. Hyatt was in Las Vegas, not at Jennifer Circle during the disputed period.¹⁹⁵

2 A total of 72 eyewitnesses testified that Mr. Hyatt moved away from Jennifer Circle in 1991.¹⁹⁶ However, FTB in
3 bad faith misrepresents this eyewitness evidence (1991 ASAB, Sections 1.8.4, 1.8.4.1 to 1.8.4.4) and falsely alleges that Mr.
4 Hyatt operated a licensing business at Jennifer Circle in 1991 and thereafter based only on inferences and speculation. A total
5 of 22-neighbors from the small Jennifer Circle cul-de-sac testified that Mr. Hyatt moved away from Jennifer Circle in 1991
6 (1991 ASAB, Section 1.4).¹⁹⁷

7 FTB has not shown why Mr. Hyatt would breach Section 8.1 of the July 1991 Philips Agreement and jeopardize his
8 relationship with Philips by operating a California licensing business.¹⁹⁸ Mr. Hyatt did not have a licensing business in
9 violation of the July 1991 Philips Agreement at the former Jennifer Circle house or anyplace else.

10 **1.7.4 FTB's Sourcing Case Must Fall With Its Residency Case.**

11 FTB's sourcing case must fall with its residency case. FTB's residency and sourcing positions rely on the same
12 essential premise – that Mr. Hyatt lived and worked at the Jennifer Circle house during the disputed period. For residency,
13 FTB argues that Mr. Hyatt did not move to Las Vegas and that he resided at the Jennifer Circle house. For sourcing, FTB
14 argues that Mr. Hyatt was not a California resident but that he operated a business from the Jennifer Circle house. FTB has
15 the burden of proof on the sourcing issue,¹⁹⁹ but FTB has not explained how Mr. Hyatt could have been a Nevada resident
16 (FTB conceded that he was a Nevada resident during the disputed period and thereafter for sourcing) and operate a licensing
17 business at the Jennifer Circle house. Further, FTB has not explained how or why Mr. Hyatt would operate a licensing
18 business in breach of the July 1991 Philips Agreement (Section 1.7.3). FTB has not argued that Mr. Hyatt commuted back
19 and forth between Las Vegas and La Palma, which would not have been feasible given the 540 mile round trip. Nor has FTB
20 explained why Mr. Hyatt, after moving to Las Vegas and establishing residency in Nevada, would operate an alleged "home"
21 business 270 miles away from his new home in Las Vegas in breach of the July 1991 Philips Agreement. Nor has FTB
22 provided any evidence of income derived from any activities allegedly performed at the Jennifer Circle house. FTB provides a
23 list of 50 phrases that it relies on to establish a licensing business,²⁰⁰ but it has not established that a single one of these 50
24 phrases generated any taxable income (Section 1.7.2). FTB's sourcing position is premised on Mr. Hyatt living and working
25

26 ¹⁹⁵ Updated Testimonial Topics, Exs. T007, T006, T102, T114, T119, T127, T008, T009, T018, T021, T128, T019,
27 T022-T025, T135, T136, T040, T138, T140-T143, T045, T044, T046, T047, and T049. Mr. Hyatt's 2016 Supp. CDE Aff.,
28 ¶¶ 153-243, CDE Exhibits CDE-ST002 and ST003; ASAB Exhibits 2 and 3.

29 ¹⁹⁶ Updated Testimonial Topics, Ex. T007.

¹⁹⁷ Updated Testimonial Topics, Ex. T102.

¹⁹⁸ FTB's bad faith acts against Mr. Hyatt are discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB, Section 1.5; ASAB Attachment 1, and in Section V of the Second Supplemental Motion To Strike.

¹⁹⁹ 1991 AOB, pp. 65:1-67:11; 1992 AOB, p. 66:1-6.

²⁰⁰ 1991 RSAB, p. 13.

1 at the Jennifer Circle house, which is contradictory to FTB's concession that he was a Nevada resident for sourcing.
2 Furthermore, FTB has failed to provide credible evidence of Mr. Hyatt's presence at the Jennifer Circle house after October 1,
3 1991²⁰¹ and FTB has failed to produce any evidence of income generating activities at the Jennifer Circle house. Yet, it is
4 FTB's burden to prove its absurd theory.

5 Accordingly, in addition to the overwhelming evidence establishing that Mr. Hyatt was not a California resident after
6 September 26, 1991, (Section 1.5), there is no evidence that he resided at the Jennifer Circle house or operated a business at
7 that house because FTB conceded that he was a Nevada resident for sourcing. In short, because FTB's sourcing position is
8 essentially the same as, and relies on the same facts and arguments as, its residency position, FTB's sourcing position must fall
9 with its residency position.

10 **1.7.5 FTB In Bad Faith Maintains The Tax On FTB's \$24 Million Error.**

11 FTB in bad faith assessed taxes, penalties, and interest on Mr. Hyatt by falsely stating in the 1992 audit determination
12 that \$24 million in license payments were received on January 15, 1992, thereby placing them within the disputed period and
13 subject to its residency assessments. FTB finally admitted the \$24 million in license payments were not received until well
14 after the disputed period (1991 ASAB, Sections 1.7.2, 1.8.5.4.4, 1.8.5.4.5) but has refused to reduce the taxes, interest, and
15 penalties assessments accordingly. FTB now in bad faith attempts to extend the assessment period past the "disputed period"
16 until the end of 1992.²⁰²

17 FTB cannot tax Mr. Hyatt on the \$24 million because, *inter al.*, (a) the licenses had no involvement whatsoever with
18 California and therefore they could not and did not generate California source income, and (b) the license payments were
19 received after the disputed period and have no basis in the 1992 NPA which is expressly limited to the disputed period.

20 Philips licensed four companies in mid-1992 and late 1992²⁰³ (well after the disputed period) that had no relevant
21 connection whatsoever with California and only minor involvement with Mr. Hyatt.

- 22 1. The licensing and financial transactions were between Philips in New York and four companies in
Japan.²⁰⁴
- 23 2. These Philips licensing activities had no relevant connection with California.²⁰⁵
- 24 3. These license payments to Mr. Hyatt had no connection whatsoever with any California business.²⁰⁶

25 ²⁰¹ Section 1.5.

26 ²⁰² FTB's bad faith acts against Mr. Hyatt are further discussed in 1991 ASAB, Sections 1.5.1, 1.8, 1.9; 1992 ASAB,
Section 1.5; ASAB Attachment 1, and in Section V of the Second Supplemental Motion To Strike.

27 ²⁰³ Sanyo, Omron, Kenwood and Nippon Columbia.

28 ²⁰⁴ See the four Patent Agreements attached to Mr. Hyatt's 2010 Sourcing Affidavit: (1) Omron, Exhibit 26, H
018844-018853; (2) Nippon Columbia, Exhibit 27, H 019093-019102; (3) Kenwood, Exhibit 28, H 019083-019092; and (4)
Sanyo, Exhibit 24, H 018813-018822.

29 ²⁰⁵ See the four Patent Agreements attached to Mr. Hyatt's 2010 Sourcing Affidavit: (1) Omron, Exhibit 26, H
018844-018853; (2) Nippon Columbia, Exhibit 27, H 019093-019102; (3) Kenwood, Exhibit 28, H 019083-019092; and (4)
Sanyo, Exhibit 24, H 018813-018822.

- 1 4. Mr. Hyatt's primary connection with these licenses was the payment by Philips of license payments to
2 his Nevada situs investment accounts in the second half of 1992 when he is acknowledged by FTB to be
3 a resident of Nevada.²⁰⁷
4 5. The 1992 post-disputed period was not included in the 1992 NPA.²⁰⁸

5 FTB did not address any of the above five issues and thus these five statements must be determined to be true and
6 correct. These statements are true and correct and thus the post-disputed period assessments must be reversed.

7 FTB argued in bad faith during its audits, protests, and appeals that the income was received on January 15, 1992,
8 and thus assessed the license payments on the basis of residency during the disputed period. Then, when FTB was required by
9 your Board to finally admit that these license payments to Mr. Hyatt were received well after the disputed period, FTB
10 essentially went silent on its \$24 million error. Thus, in addition to FTB's maintaining its bad faith \$24 million error
11 throughout the protests and appeals, it has not corrected its tax assessments for its now admitted error. Nor has FTB
12 developed a sourcing or residency position based on the facts that it finally admitted to in its first Additional Briefing. Thus
13 Mr. Hyatt stated facts and arguments regarding FTB's \$24 million error are undisputed and the assessments based on FTB's
14 \$24 million error must be reversed.

15 Although FTB has acknowledged that the \$24 million in license payments was received in the last half of 1992, long
16 after the disputed period, FTB has failed to withdraw the tax and fraud assessments based on the \$24 million error. This is a
17 continuation of the fraudulent tactics and absence of fairness that FTB has exercised in its attempt to "get" Mr. Hyatt at all
18 costs.

19 As stated in fact number 5 above, the license payments to Mr. Hyatt for these four licenses cannot be assessed and
20 taxed as California source income because it was not included in FTB's 1992 NPA. California law mandates that an FTB
21 proposed assessment must be set forth in a notice of proposed deficiency²⁰⁹ and that each notice shall set forth the reasons for
22 the proposed assessment.²¹⁰ The 1992 NPA asserted only *residency* assessments for income received during the disputed
23

24 ²⁰⁶ The license payments to Mr. Hyatt from the four 1992 Post-Disputed Period Patent Agreements were transferred
25 by Philips to Mr. Hyatt's Nevada situs investment accounts: (1) Omron, Benham, FTB_Philips 0004589-0004591 (2) Nippon
26 Columbia, Fidelity, FTB_Philips 0000979-0000980 (3) Kenwood, Fidelity, FTB_Philips 0000979-0000980 (4) Sanyo,
27 Benham, Federated and Fidelity, FTB_Philips 0004634-0003638. →

28 ²⁰⁷ The license payments to Mr. Hyatt from the four 1992 Post-Disputed Period Patent Agreements were transferred
29 by Philips to Mr. Hyatt's Nevada situs investment accounts: (1) Omron, Benham, FTB_Philips 0004589-0004591 (2) Nippon
30 Columbia, Fidelity, FTB_Philips 0000979-0000980 (3) Kenwood, Fidelity, FTB_Philips 0000979-0000980 (4) Sanyo,
31 Benham, Federated and Fidelity, FTB_Philips 0004634-0003638. →

32 ²⁰⁸ FTB's 1992 Notice of Proposed Assessment (H 02248-02250).

33 ²⁰⁹ Rev. & Tax. Code § 19033.

34 ²¹⁰ Rev. & Tax. Code § 19034.

1 period which ended April 2, 1992. FTB's failure to comply with this statutory assessment procedure bars it from asserting a
2 deficiency for income received *after* the disputed period.²¹¹

3 Aside from the FTB's failure to include the license payments from these four companies in the 1992 NPA, FTB did
4 not argue and did not present any evidence that these license payments to Mr. Hyatt went to a California business. FTB
5 cannot establish payment to a California business because the license payments were wire transferred from licensees in Japan
6 to Philips in New York and then from Philips to Mr. Hyatt's personal Nevada situs investment accounts. The facts established
7 by the licensing documents produced by Mr. Hyatt to FTB in 2004 and by the Philips documents in 2011 demonstrate the
8 following.

- 9 1. Philips by itself negotiated the Patent Agreements with these four companies.²¹²
- 10 2. Philips licensing attorneys, Mr. Tamoshunas and Mr. Haken, who were employed by Philips in New
11 York, signed these four Patent Agreements on behalf of Philips.²¹³
- 12 3. Neither Mr. Hyatt nor any California entity signed these four Patent Agreements.²¹⁴
- 13 4. Each of the four Patent Agreements identifies Mr. Hyatt as having an address in Las Vegas, not in
14 California.²¹⁵
- 15 5. All four Patent Agreements required the license payment to be wire transferred from the Japanese
16 companies to a Philips' account at Bank of New York.²¹⁶
- 17 6. These license payments to Mr. Hyatt were wire transferred by Philips to Nevada situs investment
18 accounts owned by Mr. Hyatt.²¹⁷

19 There is no legal or factual basis for taxation of these license payments by California.

20 ²¹¹ See *Title Ins. Co. of Minn. v. St. Bd. of Equal.*, 4 Cal.4th 715 (1992) (providing that this Board could not reduce a
21 refund claim by a "set off," i.e., a new assessment, because the Board had not followed the strict statutory procedures for
22 issuing an assessment – "Just as the taxpayer is limited to the claims it may assert in the superior court to those pursued in the
23 administrative proceedings, the Board should be limited in its assertion of setoffs in the superior court action to those
24 deficiency assessments formally pursued under Revenue and Taxation Code . . ."). Despite the procedures outlined above for
25 FTB to issue an NPA, this Board has stated that it may decide issues raised by FTB for the first time in an appeal or after the
26 NPA is issued. See, e.g. *Appeal of David G. and Helen Mendelsohn*, 85-SBE-141, Nov. 6, 1985; *Appeal of Sierra Pacific
27 Industries*, 94-SBE-002, Jan. 5, 1994; *Appeal of Duncan*, *supra*. However, these Board decisions are in direct conflict with
28 the carefully reasoned decision of the California Supreme Court in *Title Ins.*, and therefore *Title Ins.* must control.

29 ²¹² Affidavit of Gilbert P. Hyatt, August 9, 2010, § 4.2.6.8, p.102.

²¹³ See the four Patent Agreements attached to Mr. Hyatt's 2010 Sourcing Affidavit: (1) Omron, Exhibit 26, H
018844-018853; (2) Nippon Columbia, Exhibit 27, H 019093-019102; (3) Kenwood, Exhibit 28, H 019083-019092; and (4)
Sanyo, Exhibit 24, H 018813-018822.

²¹⁴ See the four Patent Agreements attached to Mr. Hyatt's 2010 Sourcing Affidavit: (1) Omron, Exhibit 26, H
018844-018853; (2) Nippon Columbia, Exhibit 27, H 019093-019102; (3) Kenwood, Exhibit 28, H 019083-019092; and (4)
Sanyo, Exhibit 24, H 018813-018822.

²¹⁵ See the first page of the four Patent Agreements attached to Mr. Hyatt's 2010 Sourcing Affidavit: (1) Omron,
Exhibit 26, H 018844; (2) Nippon Columbia, Exhibit 27, H 019093; (3) Kenwood, Exhibit 28, H 019083; and (4) Sanyo,
Exhibit 24, H 018813.

²¹⁶ See Section 3.2 of the four Patent Agreements attached to Mr. Hyatt's 2010 Sourcing Affidavit: (1) Omron,
Exhibit 26, H 018846-018847; (2) Nippon Columbia, Exhibit 27, H 019095; (3) Kenwood, Exhibit 28, H 019085; and (4)
Sanyo, Exhibit 24, H 018815.

²¹⁷ The license payments to Mr. Hyatt from the four 1992 Post-Disputed Period Patent Agreements were transferred
by Philips to Mr. Hyatt's Nevada situs investment accounts: (1) Omron, Benham, FTB_Philips 0004589-0004591 (2) Nippon
Columbia, Fidelity, FTB_Philips 0000979-0000980 (3) Kenwood, Fidelity, FTB_Philips 0000979-0000980 (4) Sanyo,
Benham, Federated and Fidelity, FTB_Philips 0004634-0003638. ➡

1 **1.8 MR. HYATT IS ENTITLED TO INTEREST ABATEMENT, AMONG OTHER THINGS, FOR FTB'S BAD**
2 **FAITH DELAYS THROUGHOUT THE ADMINISTRATIVE PROCESS.**

3 The Nevada Supreme Court (NSC) found that FTB committed fraud and intentional infliction of emotional distress in
4 part because of its delays.²¹⁸ Because of FTB's fraudulent delaying tactics all interest should be abated as arbitrary.²¹⁹

5 However, if your Board will not abate all interest, it should at a minimum abate pursuant to Rev. & Tax. Code Section 19104.

6 Interest abatement is required for the additional reason of FTB's extraordinary 11-year delay in processing the two
7 protests. In upholding the Nevada jury finding that FTB personnel committed fraud in Mr. Hyatt's audits and protests, the
8 Nevada Supreme Court expressly highlighted FTB's extreme delay in processing Mr. Hyatt's two protests.²²⁰ Accordingly,
9 pursuant to Section 19104, Mr. Hyatt is entitled to interest abatement for 1991 and 1992 because the delay was caused by FTB
10 personnel performing a ministerial or managerial act, the delay occurred after FTB contacted Mr. Hyatt, and the delay was not
11 in any way attributable to the taxpayer.²²¹ A complete discussion of the interest abatement issue is set forth in prior briefing
12 and will not be repeated here.²²²

13 Interest abatement is required for the additional reason that FTB continues to delay into 2016. For example, FTB
14 continues to take discovery into 2016 (FTB took the deposition of Charles Cameron on April 7, 2016) and FTB caused long
15 delays in your Board's appeals by generating the Philips subpoenas in 2011 which were not resolved until April 2016 when
16 your Board had to burden itself to redact prohibited information from FTB's RSABs.²²³

17 Here, we briefly summarize FTB's misconduct that resulted in the extreme delays in Mr. Hyatt's protests. First, FTB
18 expressly admitted that its personnel intentionally placed a "hold" on Mr. Hyatt's protest *for over seven years* after the protest
19 hearing had been completed for no valid reason.²²⁴ Second, FTB lost, destroyed, or withheld numerous documents from the
20 audit that would have sped up the protest process immeasurably as multiple FTB protest officers complained in internal
21 writings that they worked without the entire audit file. Because of FTB's incomplete and sloppy audit file, one protest officer
22 undertook a "Herculean effort" to compile a mere "semblance of the complete audit file."²²⁵ Third, FTB unreasonably held

23 ²¹⁸ *Franchise Tax Bd. of Cal. v. Hyatt*, 335 P.3d 125, 144-145, 148-149 (Nev. 2014), aff'd in part and rev'd in part on
24 other issues 136 S. Ct. 1277 (2016). See also ASAB Attachment 1 and Section 1991 ASAB, Section 1.5.1.

25 ²¹⁹ Rev. & Tax. Code § 19033 ("In no case shall the determination of the deficiency be arbitrary or without
26 foundation."). See 1991 ASAB, Section 1.5.1 and ASAB Attachment 1.

27 ²²⁰ *Franchise Tax Bd. of Cal. v. Hyatt*, 335 P.3d 125, 145 (Nev. 2014), aff'd in part and rev'd in part on other issues
28 136 S. Ct. 1277 (2016) ("Furthermore, Hyatt showed that FTB took 11 years to resolve Hyatt's protests of the two audits.
29 Hyatt alleged that this delay resulted in \$8,000 in interest per day accruing against him for the outstanding taxes owed to
California.").

²²¹ 1991 AOB, pp. 87-88; 1992 AOB, pp., 67-68.

²²² 1991 AOB, pp. 87-94; 1992 AOB, pp., 67-74; 1991 ARB, p. 100; 1992 ARB, pp.82-100; 1992 ASB, p. 100.

²²³ ASAB Exhibit 18, Letter dated April 21, 2016.

²²⁴ 1991 AOB, pp. 88-90; 1992 AOB, pp. 68-70; 1992 ARB, pp. 83-89; Note, Mr. Hyatt's pending Nevada tort
litigation was not a valid basis for putting a 7-year hold on Mr. Hyatt's protests. That court proceeding was completely
separate from Mr. Hyatt's tax protests.

²²⁵ 1991 AOB, pp. 90-92; 1992 AOB, pp., 70-72; 1992 ARB, pp. 89-90.

1 Mr. Hyatt's protests for over six months before assigning the initial protest officer.²²⁶ Fourth, FTB overburdened the initial
2 protest officer with other cases and unreasonably delayed in re-assigning the case to another protest officer.²²⁷ Fifth, for the
3 1992 tax year the \$24 million error caused unreasonable delay as FTB refused to correct a simple ministerial error despite a
4 complete explanation of the error with evidence provided by Mr. Hyatt's representatives and repeated requests to make the
5 correction.²²⁸ This necessitated your Board's first additional briefing to correct FTB's \$24 million error.²²⁹ Nevertheless,
6 even after confirming that it made this \$24 million error, FTB still persists in not only the taxes on its \$24 million error but
7 also in the fraud penalty on its \$24 million error. **Sixth, the record in these appeals establishes that FTB committed grievous**
8 **torts against Mr. Hyatt and that Mr. Hyatt suffered "extreme treatment from FTB."**²³⁰ This extreme treatment is discussed in
9 detail in ASAB Attachment 1, and in Section V of the Second Supplemental Motion To Strike (1991 ASAB, Sections 1.5.1, 1.
10 8, and 1.9).

11 Furthermore, FTB has caused many additional years of unnecessary delay before your Board. FTB subpoenaed
12 Philips in 2006, over a decade after the commencement of the 1991 tax year audit, but then cancelled the subpoenas. FTB
13 then delayed five years, until the formal briefing in these appeals was near completion, to issue new, overbroad subpoenas for
14 the Phillips documents.²³¹ Mr. Hyatt was compelled to protect his privacy rights and successfully litigated the overbroad and
15 improper subpoenas and obtained New York court orders blocking the disclosure of protected Philips documents.²³² In
16 addition, even after FTB obtained Philips documents and was ordered not to disclose protected documents, FTB violated the
17 court orders with its 2014 RSABs, requiring Mr. Hyatt to go back to the New York court to request enforcement of its
18 orders.²³³ Mr. Hyatt obtained a temporary restraining order that forced FTB to refile its RSABs to comply with the New York
19 court's orders.²³⁴ The many years of delay in these appeals related to the Philips subpoenas and the Second Additional
20 Briefings thus are due solely to FTB's intentional actions.

21 These intentional acts by the FTB occurred well after Mr. Hyatt had first been contacted by FTB (June 17, 1993) and
22 were in no way attributable to Mr. Hyatt.²³⁵ Further, FTB's contention that the managerial acts provision of Section 19104

23 ²²⁶ 1991 AOB, pp. 92; 1992 AOB, pp., 72; 1992 ARB, pp. 90-92.

24 ²²⁷ 1991 AOB, pp. 92; 1992 AOB, pp., 72; 1992 ARB, pp. 92-93.

25 ²²⁸ 1992 AOB, pp., 72; 1992 ARB, pp. 93-95.

26 ²²⁹ RAB, p. 1.

27 ²³⁰ **Franchise Tax Bd. of Cal. v. Hyatt, 335 P.3d 125, 149 (Nev. 2014)**

28 ²³¹ ASAB Exhibit 14, 2011 Subpoena to Jack Haken; ASAB Exhibit 15, 2011 Subpoena to Algy Tamoshunas; ASAB
29 Exhibit 16, 2011 Subpoena to Custodian of Records, U.S. Philips Corporation.

²³² See October 7, 2013 and March 13, 2014 Orders, Supreme Court of the State of New York, County of
Westchester.

²³³ ASAB Exhibit 12, Mr. Hyatt's Motion for an Order of Civil Contempt and Injunctive Relief dated March 11, 2015
filed with Supreme Court of the State of New York, County of Westchester.

²³⁴ ASAB Exhibit 13, Temporary Restraining Order of Supreme Court of the State of New York, Appellate Division.

²³⁵ 1992 ARB, pp. 95-99.

1 does not apply to tax years before 1998 should be rejected. FTB delays included both ministerial acts and managerial acts,
2 and the managerial acts issue took place, in large part, after 1998.

3 The 1992 interest must be abated for the additional reason there was no 1992 audit (1992 AOB, § I, pp. 4-6; 1992
4 ARB, § II, pp. 2-3).

5 Accordingly, interest abatement is proper in this case.²³⁶

6 **1.9 CONCLUSION.**

7 Mr. Hyatt moved to Nevada and became a California nonresident on September 26, 1991. Mr. Hyatt sold his
8 California house, resided in a Las Vegas hotel for a few weeks, resided in his Las Vegas leased apartment for about five
9 months, and then resided in his Las Vegas Tara home for the last 25 years. Mr. Hyatt had no California source income during
10 the disputed period or thereafter. The situs of Mr. Hyatt's patents followed Mr. Hyatt to Nevada and no California business
11 had the substantial use and value of Mr. Hyatt's patents. Mr. Hyatt did not have a California licensing business and FTB's
12 NPAs and NOAs did not give Mr. Hyatt notice of taxation based on a California business. FTB has not established by clear
13 and convincing evidence that Mr. Hyatt intended to defraud FTB. All interest assessments should be abated because they
14 resulted from the bad faith intentional delays of FTB.

15 FTB's bad faith calendar, Attachment A-R, and Attachment E should be disregarded because of the thousands of
16 false statements and FTB's disregard or misrepresentation of Mr. Hyatt's overwhelming eyewitness and documentary
17 evidence.

18
19 Dated: September 28, 2016

Respectfully submitted,

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27
28
29 ²³⁶ 1992 ASB, pp. 37-38.

EXHIBIT 5

EXHIBIT 5

ATTACHMENT 1

APPELLANT'S SECOND ADDITIONAL BRIEFING

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FTB'S BAD FAITH AND EXTREME MISCONDUCT DIRECT TOWARD MR. HYATT

Throughout the administrative process, including these two appeals, Franchise Tax Board ("FTB") has engaged in bad faith and extreme misconduct directed at Mr. Hyatt. In short, FTB has abused its power.

I. FTB Committed Fraud, Intentionally Inflicted Emotional Distress, And Acted With Bad Faith In Its Dealings With Mr. Hyatt

It has been conclusively determined that FTB committed fraud, intentionally inflicted emotional distress, and acted in bad faith in its dealings with Mr. Hyatt. *Franchise Tax Bd. v. Hyatt*, 335 P.3d 125, 144-149 (Nev. 2014).

A. FTB Fraud Against Mr. Hyatt

FTB committed fraud against Mr. Hyatt. The Nevada Supreme Court upheld the Nevada jury findings that FTB committed fraud in connection with his audits and protests. The jury found that FTB made specific representations to Mr. Hyatt that it intended Mr. Hyatt to rely upon, but which FTB did not intend to fully meet.

- First, the Nevada Supreme Court upheld the findings of fraud based on the FTB false representation to Mr. Hyatt that FTB would protect his confidential information. FTB failed to do so. FTB's auditor intentionally disclosed Mr. Hyatt's personal information -- his social security number, his home address, and the fact that he was under audit by FTB -- to numerous people and entities. FTB also sent letters to several doctors with the same last name, based on its belief that one of those doctors provided Hyatt treatment, but without first determining which doctor actually treated Hyatt before sending the correspondence.
- Second, the Nevada Supreme Court upheld the findings of fraud based on FTB's failure to resolve the protests of the two audits for 11 years, resulting in \$8,000 in interest per day.
- Third, the Nevada Supreme Court upheld the findings of fraud based on the determination that FTB's auditor, Sheila Cox, made disparaging comments about Mr. Hyatt and his religion.
- Fourth, the Nevada Supreme Court upheld the findings of fraud based on the finding that FTB's auditor was intent on imposing an assessment against Mr. Hyatt.
- Fifth, the Nevada Supreme Court upheld the findings of fraud based on the finding that FTB promoted a culture in which tax assessments were the end goal whenever an audit was undertaken.

Franchise Tax Bd. v. Hyatt, 335 P.3d 125, 144-145 (Nev. 2014).

B. FTB Intentionally Inflicted Emotional Distress Against Mr. Hyatt

FTB intentionally inflicted emotional distress against Mr. Hyatt. The Nevada Supreme Court upheld the Nevada jury findings that FTB intentionally inflicted emotional distress against Mr. Hyatt.

- First, the Nevada Supreme Court upheld the finding of intentional infliction of emotional distress by noting that Mr. Hyatt “suffered extreme treatment from FTB.”
- Second, the Nevada Supreme Court upheld the finding of intentional infliction of emotional distress on the ground FTB disclosed personal information that it promised to keep confidential.
- Third, the Nevada Supreme Court upheld the finding of intentional infliction of emotional distress on the ground FTB delayed resolution of Hyatt's protests for 11 years, resulting in a daily interest charge of \$8,000.
- Fourth, the Nevada Supreme Court upheld the finding of intentional infliction of emotional distress on the ground that the FTB auditor who conducted the majority of his two audits made disparaging remarks about Mr. Hyatt and his religion.
- Fifth, the Nevada Supreme Court upheld the finding of intentional infliction of emotional distress on the ground FTB’s auditor was determined to impose tax assessments against him.
- Sixth, the Nevada Supreme Court upheld the finding of intentional infliction of emotional distress on the ground that FTB fostered an environment in which the imposition of tax assessments was the objective whenever an audit was undertaken.

Id. at 148-149.

C. FTB Acted In Bad Faith With Respect To Mr. Hyatt

FTB acted in bad faith in its dealings with Mr. Hyatt. The Nevada Supreme Court affirmed the jury’s finding that FTB’s audit was tainted by outright bigotry. Ms. Sheila Cox, FTB’s lead auditor in both of Mr. Hyatt’s audits, declared to another auditor: “I am going to get that Jew bastard.” Appellant's 1991 Opening Brief, Ex. 2, *Hyatt v. Franchise Tax Bd.*, Dist. Ct. of Clark Cty., Nevada, Case No. A382999, Partial Transcript of Trial Proceedings, Testimony of Candace Les, 4/23/08, p. 165. The Nevada Supreme Court expressly noted that the FTB “auditor who conducted the majority of [Mr. Hyatt’s] two audits made disparaging remarks about Hyatt and his religion, *was determined to impose tax assessments against him.*” *Hyatt, supra* at 148.

II. FTB Reneged On Its Statutory Obligation To Conduct A Fair Examination Of Mr. Hyatt's 1991 And 1992 Tax Years Because The Auditor Was Intent On "Getting" Mr. Hyatt.

A. FTB's Personnel Had An Improper Intent To "Get" Mr. Hyatt

FTB reneged on its statutory obligation to fairly examine Mr. Hyatt's 1991 and 1992 tax years because its auditor was determined to "get" Mr. Hyatt by issuing as large an assessment as possible. FTB auditor Sheila Cox had an irrational intent to "get" Mr. Hyatt. She declared to a fellow auditor: "I am going to get that Jew Bastard."¹ The Nevada Supreme Court affirmed Ms. Cox's outrageous statement in affirming the Nevada jury finding that "Cox essentially was intent on imposing an assessment against Hyatt, and that FTB promoted a culture in which tax assessments were the end goal whenever an audit was undertaken."² Thus, Ms. Cox's audits of Mr. Hyatt were never about determining the correct California tax liability.

Three additional affidavits signed by two former senior managers at FTB and a former residency auditor confirms FTB's improper conduct directed toward Mr. Hyatt. Diane Truly was a 22-year high level employee of FTB. Thomas Rodrigue was a 34-year high level employee of FTB. Candace Les was a senior residency auditor of FTB. These three former FTB employees provided powerful declarations providing yet more evidence that Mr. Hyatt has been the target of long-standing FTB animus and outright fraud.

- The primary FTB auditor (Sheila Cox) was bent on advancing her career by issuing an enormous assessment against Mr. Hyatt, whether meritorious or not. (Declaration of Candace Les, Feb. 9, 2015, ¶¶ 19, 27-28, 47; Declaration of Thomas Rodrigue, Feb. 11, 2015, ¶¶ 5-6; Declaration of Diane Truly, Feb. 13, 2015, ¶ 16.)
- Ms. Cox's racial prejudice toward Jews improperly influenced Mr. Hyatt's audits. In addition, FTB's audit group maintained a culture that tolerated racial prejudice and allowed such prejudice to unfairly affect taxpayer audits. (Declaration of Candace Les, Feb. 9, 2015, ¶¶ 63, 68, 71; Declaration of Thomas Rodrigue, Feb. 11, 2015, ¶¶ 28-32.)

¹ Appellant's 1991 Opening Brief, Ex. 2, *Hyatt v. Franchise Tax Bd.*, Dist. Ct. of Clark Cty., Nevada, Case No. A382999, Partial Transcript of Trial Proceedings, Testimony of Candace Les, 4/23/08, p. 165.

² *Franchise Tax Bd. v. Hyatt*, 335 P.3d at 145.

- Ms. Cox and others within FTB’s audit residency group had an irrational obsession “to get” Mr. Hyatt by imposing a very large assessment. (Declaration of Candace Les, Feb. 9, 2015, ¶¶ 18, 28, 49-51, 58.)
- FTB committed fraud against Mr. Hyatt through Ms. Cox’s improper assessment of fraud penalties against Mr. Hyatt to increase the dollar value of the assessments and coerce a settlement from Mr. Hyatt. FTB adopted an audit policy to aggressively assess fraud penalties even when not warranted and not justified by the facts. In Mr. Hyatt’s case, the fraud penalty was assessed even though three FTB employees including both, the 1991 audit reviewer and 1992 audit reviewer, questioned the validity of the fraud penalty. (Declaration of Candace Les, Feb. 9, 2015, ¶¶ 27-28, 32; Declaration of Thomas Rodrigue, Feb. 11, 2015, ¶¶ 8-13; Declaration of Diane Truly, Feb. 13, 2015 ¶¶ 16, 23-25.)
- Ms. Cox understood that Mr. Hyatt was sensitive about his privacy and, because of that, she adopted a tactic of “bombarding” Mr. Hyatt and third parties with formal demands for information, called "pocket subpoenas", to attempt to force Mr. Hyatt to settle. (Declaration of Candace Les, Feb. 8, 2015, ¶¶ 57, 59.)
- Ms. Cox falsely testified about her audit of Mr. Hyatt and continually changed her testimony as documentation proved that her testimony was false. (Declaration of Candace Les, Feb. 9, 2015, ¶¶ 5-18.) The Nevada Supreme Court singled out Ms. Cox for special criticism because of her intent to "get" Mr. Hyatt and her racial prejudice toward Mr. Hyatt. (*Franchise Tax Bd. v. Hyatt*, 335 P.3d 125, 144-145, 148-149 (Nev. 2014).)
- A budget crisis and reorganization in California coinciding with the audit of Mr. Hyatt increased the pressure on FTB personnel to increase assessments. (Declaration of Diane Truly, Feb. 13, 2015, ¶¶ 9-13.)
- FTB improperly used cost benefit ratio standards for audits. (Declaration of Candace Les, Feb. 9, 2015, ¶¶ 19-21; Declaration of Thomas Rodrigue, Feb. 11, 2015, ¶¶ 6-7; Declaration of Diane Truly, Feb. 13, 2015, ¶¶ 17-22.) This is contrary to Rev. & Tax. Code § 21008.
- FTB improperly used the fraud penalty, even when not warranted by the facts, to significantly increase CBR and to coerce taxpayers into settlement. (Declaration of

Candace Les, Feb. 9, 2015, ¶¶ 28-39; Declaration of Thomas Rodrigue, Feb. 11, 2015, ¶¶ 20-27.)

- Racism was common among FTB auditors. (Declaration of Candace Les, Feb. 9, 2013, ¶¶ 63-72; Declaration of Thomas Rodrigue, Feb. 11, 2015, ¶¶ 28-32.)

Mr. Hyatt requests your Board to review the affidavits signed by Ms. Les, Ms. Truly, and Mr. Rodrigue to fully understand what FTB has been doing to Mr. Hyatt (and likely to other taxpayers), and to understand that FTB's most recent filing, the *fourth* DVD, is a continuation of FTB's bad faith actions directed at Mr. Hyatt. In short, throughout its dealings with Mr. Hyatt FTB has violated California law and flaunted Mr. Hyatt's statutory and constitutional rights as a taxpayer and, in these appeals before your Board, FTB has continued similar bad faith conduct aimed at getting Mr. Hyatt at all costs.

B. FTB's Failure To Conduct A True Audit For 1991 Evidences FTB's Bad Faith

FTB's 1991 audit was clearly tainted by FTB auditor Cox's expressed intent "to get" Mr. Hyatt. Her bias made it impossible for her to do an objective audit and her audit confirms this fact. A cornerstone of her audit is interviews with three secret witnesses, who she knew were highly biased against Mr. Hyatt: Mr. Hyatt's ex-wife, brother, and daughter. Each of these persons were estranged from Mr. Hyatt well before the years at issue and therefore had no actual knowledge of Mr. Hyatt's affairs before and after he moved to Nevada. However, Ms. Cox relied on these interviews for her 1991 audit.

In addition, Ms. Cox refused to disclose the statements submitted by those witnesses to Mr. Hyatt, and she did not bother to ask Mr. Hyatt for an interview, much less consider, evidence supporting Mr. Hyatt's change of residence. She apparently believed that because of the nature of the issue (residency) and the dollars at stake, she could do a slipshod audit, slap on fraud penalties, and extort a quick settlement because Mr. Hyatt would want to avoid any adverse publicity.

C. FTB's Failure To Conduct A True Audit For 1992 Is Evidence Of FTB's Bad Faith

FTB's failure to conduct a true audit for the 1992 tax year further evidences FTB's bad faith. The full extent of FTB's 1992 audit was a single letter requesting information about the timing of income received for 1992. (Hyatt Affidavit Regarding \$24 Million Error, ¶ 2; *see also*

id. at Ex. 2.) Less than two months after Mr. Hyatt's representative responded to that letter, by letter dated April 1, 1996, FTB's auditor (Ms. Cox) issued her first audit determination letter, proposing an assessment solely based on residency, but not proposing the fraud penalty. (*Id.* at Ex. 10.) The entire residency discussion set forth in the auditor's determination letter consisted of four conclusory sentences with no residency analysis, multiple factual errors and multiple spelling errors:

Mr. Hyatt has not shown that his ties to Nevada outweighed his tied [sic] to California prior to April 3, 1992.

Mr. Hyatt maintained his long standing connections with California and continued deriving substantial benefits and protections from the State of California for his personal properties and his family. As such, he should contribute to the support of this State. Therefore, as [sic] assessment should be issued for tax year 1992 taxing all income sourced within this state, with the change in domicile and residency effective on or after April 3, 1991.

(*Id.* at Ex. 10.)

Amazingly, Ms. Cox criticized Mr. Hyatt for not showing that his ties to Nevada outweighed his ties to California when, in fact, she never once asked Mr. Hyatt to make such a showing or provide any evidence on such points. These four sentences contain no references to facts or analysis. Yet, this was the full basis for the auditor's "determination." Thereafter, Ms. Cox then issued a second audit determination letter (also without the fraud penalty). In her third audit determination letter, the auditor imposed the fraud penalty, without any additional audit work. All of those audit determination letters were based on the single request for information asking for information about timing of income and did not contain any additional meaningful discussion of facts or analysis. In other words, FTB's 1992 proposed assessment of over \$14 million in taxes, interest and fraud penalty is based on no actual audit.

In fact, FTB's auditor was so sloppy in the 1992 "audit" that she overstated Mr. Hyatt's income by an amazing \$24 million. Mr. Hyatt's representatives immediately informed FTB of the \$24 million error, but FTB refused to back down from its error. In fact, FTB refused to acknowledge the error until your Board's staff demanded that FTB explain the basis for its 1992 assessment. (See discussion below.)

FTB's cursory and sloppy audit for 1992 is another example of the extreme FTB bad faith and misconduct that Mr. Hyatt has had to endure for the past 20-plus years. Although FTB's own audit manual expressly states that "[r]esidency examinations are *very fact intensive*,"

FTB Residency & Sourcing Technical Manual ¶ 4410, p. 8 (emphasis added), FTB's auditor did not ask a single question about Mr. Hyatt's connections with Nevada and California the during 1992 residency audit.

Plainly, the audit letter was just a formality so FTB could issue its preplanned Notice of Proposed Assessment for 1992 with fraud penalties to attempt to extort a settlement from Mr. Hyatt. The only explanation for Ms. Cox's audit determination on essentially no factual record is that she had pre-determined that she was going to assess as large a tax liability as possible based on residency. The entire 1992 audit was a sham perpetrated by FTB to extort a settlement from Mr. Hyatt. It is not based on any factual findings of Mr. Hyatt's connections with Nevada or California, and it is not based on a good faith audit.

Another example of FTB's bad faith in the 1992 audit is how FTB assessed the fraud penalty for 1992. FTB expressly admitted that after Ms. Cox completed the 1992 audit, Mr. Steve Illia, while reviewing the tax audit but without any evidence on fraud issues, simply "determined the fraudulent failure to file penalty should be applied to the 1992 year."³ To be clear, Mr. Illia "determined" to impose the fraud penalty *before* any audit of the fraud penalty had been conducted. He did not know what the facts were for 1992 that related to any alleged fraud, but he had "determined" the fraud penalty should be imposed. Later, no actual audit for the fraud penalty was done. Instead, another auditor, Jeff McKenney, was recruited by FTB management to write up a narrative purportedly supporting a fraud penalty against Mr. Hyatt for the 1992 tax year.⁴ Mr. McKenney did not make the determination that Mr. Hyatt remained a California resident during the 1992 disputed period. He simply reviewed Ms. Cox's 1991 fraud penalty write-up and the audit file as the basis for the fraud penalty for the 1992 tax year.⁵ In sum, FTB itself confirms that it "determined" to impose the 1992 fraud penalty without an audit on the fraud penalty issue. The subsequent write up of the 1992 fraud penalty was a complete sham to justify Mr. Illia's pre-determined fraud penalty.

³ FTB's RAB at 13.

⁴ Annex XXXIII, Exhibits to Supplemental Brief Tables (Ex. 8, Partial Transcript, Depo. of Penny Bauche, 7/29/04, pp. 599-600; *see also* Ex. 9, Partial Transcript, Depo. of Jeffrey McKenney, 8/9/04, pp. 314:1-5, 317:10-21, and 321:15-19).

⁵ *See* Annex XXXIII, Exhibits to Supplemental Brief Tables (Ex. 10, Partial Transcript, Depo. of Jeffrey McKenney, 7/1/99, p. 8:14-20).

D. FTB's "\$24 Million Error" Is Another Example Of FTB's Complete Lack Of Credibility And Bad Faith

Ms. Cox overstated Mr. Hyatt's 1992 income by an astonishing \$24 million – this is now referred to as the "\$24 million error." By letter dated April 10, 1997, FTB auditor Cox first stated that she had computed an understatement of income of \$48.8 million. On July 17, 1997, within three months, Mr. Hyatt's attorney notified Ms. Cox that her computation was overstated by \$24 million because she had computed Mr. Hyatt's income received from Philips for all of 1992, instead of from January 1, 1992 through April 2, 1992. (Annex V, H BATES Documents (Letter from E. Cowan to FTB dated 7/17/97 (H 02257-02259).) Ms. Cox refused to correct her mistake. This error was compounded by the fact that at protest and during these appeals, FTB continued to refuse to acknowledge any error.

Over the next 16 years, Mr. Hyatt repeatedly requested that FTB correct this straightforward error, but FTB steadfastly refused to admit any error. Finally, in 2013, your Board's staff recognized the error and directed FTB to explain its auditor's computation in an Additional Brief. It was only at that time that FTB conceded, as it had to, that Mr. Hyatt had properly calculated the amount of licensing income he had received during the period January 1, 1992 to April 2, 1992. And even then, FTB staff did not even have the integrity to simply state that its auditor had made an error and overstated the assessment by \$24 million. (Appellant's Additional Brief, 4/10/13, Section I, "FTB *Finally* Admits It Made A \$24 Million Dollar Error.") Instead, FTB blames Mr. Hyatt for FTB's own error. (FTB's RAB, pp. 4-5.) Even more astonishing, FTB continues to claim it can tax the \$24 million (which was received by Mr. Hyatt after FTB concedes he became a Nevada resident).

Although FTB now concedes the \$24 million error, FTB's refusal to admit this error until your Board staff demanded an explanation from FTB is very strong evidence of FTB's continued misconduct. It is plainly misconduct to continue to pursue a tax assessment that FTB admits is in error. An error of such magnitude is notable and troubling in any case. However, in this case, the \$24 million error reveals FTB's true intent was never to assess the correct tax due, because FTB refused to acknowledge error much less correct it until Board staff expressly directed FTB to document the \$24 million adjustment. The \$24 million error confirms FTB's true intent was (and still is) to assess as large an amount as possible, even if plainly incorrect. This is truly outrageous and indefensible conduct by FTB.

To be clear, the \$24 million error cannot be reasonably viewed as a simple arithmetic error. In 1997, Mr. Hyatt's representative (Eugene Cowan) explained in detail that the proposed assessment was overstated by \$24 million. However, FTB refused to make any changes. An honest tax agency focused on assessing the correct tax liability would have engaged with Mr. Hyatt and his representatives to resolve the issue. If FTB did not understand its error, it had 16 years to ask for clarification. Instead, FTB dug in on the issue, forcing Mr. Hyatt to brief the issue numerous times in the audit, protest and these Appeals. FTB's refusal to correct the \$24 million error evidences not only the sloppy nature of FTB's original audit, but also FTB's determination to "get" Mr. Hyatt, even if that meant allowing a \$24 million erroneous assessment to be issued.

What is equally outrageous is had Board staff not pressed FTB to state and document its position on the \$24 million error, FTB would have allowed it to remain in the 1992 Appeal as a contested issue all the way through the Board hearing. Indeed, even *after* it has admitted its error, FTB still continues to represent to your Board that the tax on such amount is in dispute. How can FTB pursue an assessment for over \$24 million for almost 20 years, and then when someone other than Mr. Hyatt demands that FTB document its position, it simply drops the issue as if it were a minor arithmetic error? The only answer is that FTB has never focused on the correct tax liability – it is only focused on "getting" Mr. Hyatt, even if that means fraudulently arguing for a \$24 million assessment to your Board. There is really no other explanation for the \$24 million error and FTB's refusal to even discuss it for nearly 20 years. Allowing an error of this magnitude to continue even though FTB knew it was incorrect (and to impose fraud penalties on top of the erroneous assessment) is absolutely fraud on Mr. Hyatt and your Board.

E. FTB's Delay In Raising The Sourcing Issue Further Reflects Bad Faith And Prejudices Mr. Hyatt

FTB's extreme delay in raising the sourcing issue severely prejudiced Mr. Hyatt. In 2007, FTB for the first time formally asserted that Mr. Hyatt had underpaid California tax because he was a nonresident with California source income. FTB waited 11 years after the end of the audits, and 16 years after the earlier year at issue, to raise this completely new substantive issue.

FTB's extreme delay prejudiced Mr. Hyatt because by the time FTB raised the issue documentary evidence and witnesses had been lost. For example, by that time, Mahr Leonard,

through its normal document disposal process, had disposed of all relevant files. If FTB had acted promptly, Mr. Hyatt could have asked Mahr Leonard to preserve documents relevant to sourcing. Instead, by hiding the ball during the 11-year protest, FTB knowingly prejudiced Mr. Hyatt's ability to defend against the sourcing issue.

III. FTB Trumped Up The Fraud Penalties To Coerce A Quick Settlement

FTB's bad faith and misconduct is also evidenced by the trumped up fraud penalties to coerce Mr. Hyatt into a quick settlement. Mr. Hyatt did not commit fraud and FTB did not make an objective determination that Mr. Hyatt committed fraud in either year. Nonetheless, FTB asserted fraud penalties in these appeals to extort a quick settlement from Mr. Hyatt.

A. FTB's Policy To Use Fraud Penalties To Coerce Improper Settlements

In Appellant's 1991 Reply Brief at pages 74-75, Mr. Hyatt explained that FTB improperly used fraud penalties to coerce taxpayers into settlements. According to the testimony of Candace Les and Carol Ford cited therein, FTB trained auditors to use penalties as bargaining chips to induce taxpayers to agree to an audit or to settle an audit.⁶ FTB has not denied that this was its policy at the time Mr. Hyatt was under audit. Nor could it.

As set forth below, additional testimony confirms the full scope of FTB's wrongful use of penalties to extort taxpayer settlements.

1. Thomas Rodrigue Testified That FTB Had A Policy Of Using Fraud Penalties To Coerce Settlements

Mr. Thomas Rodrigue worked at FTB for 35 years as an auditor, reviewer, assistant administrator, and a district manager from 1965 through 1988. From 1988 until his retirement in 2000, Mr. Rodrigue worked in FTB's legal department. Through his declaration, Mr. Rodrigue has testified that FTB abused its authority by assessing fraud penalties in residency cases to force settlements and to improperly inflate auditor cost benefit ratios ("CBR"), *i.e.*, the amount of an audit assessment compared with the cost of doing the audit:

"In the mid-1990s, FTB managers began insisting that its auditors assess more penalties. In 1995, Ms. Jovanovich got the attention of FTB management on her suggestion to assess the fraud penalty in the majority

⁶ ARB (1991) at 75 fn 455-456, citing Ex.44, *Hyatt v. FTB*, Partial Transcript of Trial Proceedings, Testimony of Candace Les, 4/24/08, pp. 46-49; 113-115; Ex. 45, *Hyatt v. FTB*, Partial Transcript of Trial Proceedings, Testimony of Carol Ford, 7/8/08, p. 84.

of residency cases regardless of whether the fraud penalties were warranted by the facts in the case.” (Declaration of Thomas Rodrigue, February 11, 2015, ¶ 21.)

“auditors were taught that the fraud penalty was a way to significantly increase CBR and a way to get taxpayers to settle whether the assessments were warranted or not.” (Rodrigue Declaration, February 11, 2015, ¶ 22.)

“Ms. Jovanovich told me that it did not matter if the fraud penalty was supportable because it was only leverage to get the taxpayers to settle . . .” (Rodrigue Declaration, February 11, 2015, ¶ 23.)

“[T]he assessment of the fraud penalty in the majority of residency cases was an attempt to penalize taxpayers who had moved out of California, to coerce settlement and to increase the CBR of the Residency Bureau.” (Rodrigue Declaration, February 11, 2015, ¶ 24.)

“[In 1993,] an FTB auditor, Larry Moy, taught a class for auditors on the use of penalties to increase assessments and to motivate taxpayers under audit to settle their audits. He handed out training manuals which had a leering skull-and-crossbones on the cover to illustrate his theme – assess penalties to increase assessments and to motivate taxpayers to settle audits.” (Rodrigue Declaration, February 11, 2015, ¶ 25.)

“Doug Dick, a high level FTB manager, taught auditors on the use of penalties to motivate taxpayers under audit to settle their audits. The objective of his training sessions was to convince auditors to assess penalties, even though the facts did not warrant the assessment of penalties, in order to increase assessments and to help settle cases.” (Rodrigue Declaration, February 11, 2015, ¶ 26.)

2. Diane Truly Testified That FTB Had A Policy Of Using Fraud Penalties To Coerce Settlements

Diane Truly served as a senior FTB audit manager through 1995. Ms. Truly testified that an undue emphasis on CBR caused FTB to improperly assess taxes and penalties:

“The emphasis on CBR following the mid-1995 reorganization led to the atmosphere where 100% of audits were expected to be “change” audits, where CBR was expected to increase and where penalties were a tool to force settlement rather than a punishment for fraudulent behavior.” (Declaration of Diane Truly, February 13, 2015, ¶ 5.)

“The FTB misused penalties by assessing penalties to increase CBR and to coerce taxpayers into settling unfair assessments. The fraud penalties were the most abusive of the improper assessments as they labeled taxpayers as tax cheats. Fraud penalties were rarely assessed prior to 1995 and assessment of fraud penalties rarely survived audit, protest and appeal because the FTB has the burden to support fraud penalties with clear and convincing evidence, which was a very heavy burden of proof. However, fraud penalties had the effect of pushing taxpayers into settling unfair

assessments and thus might never be tested with appeals.” (Truly Declaration, February 13, 2015, ¶ 23.)

“I reviewed an email from James Smith, a FTB manager titled "Fraud Penalty" dated October 5, 1995, to a group that included FTB upper management (Carlos Zamarripa and Winston Mah), that was forwarded by FTB manager Brad LaCour to audit supervisors, and that was forwarded to an audit supervisor. Mr. Smith's email stated that the fraud penalty "affects audit policy." A copy of Mr. Smith's email is attached hereto in Exhibit 5. Mr. Smith worked for me in the 1980s and into the 1990s until I retired in 1995. I would not have permitted Mr. Smith to distribute such an email when he worked for me because it was abusive to taxpayers. It proposed the fraud penalty in the majority of residency audits without even knowing the facts of these residency much less having clear and convincing evidence of fraud.” (Truly Declaration, February 13, 2015, ¶ 24.)

“Larry Moy wrote a training manual on penalties with a skull-and-crossbones on the cover. A copy of the Moy training manual is attached hereto in Exhibit 6. The manual explained use of the fraud penalty but failed to explain that the FTB had the burden to prove fraud and that fraud had to be proven by clear and convincing evidence. Instead, auditors were taught that the fraud penalty was a way to significantly increase CBR and a way to get taxpayers to settle whether the assessments were warranted or not without much effort. In 1993 Larry Moy worked for me because I was the Director of the FTB District Office Bureau. If I had known about his 1993 skull-and-crossbones training manual on penalties I would have put an end to this emphasis on assessment of unwarranted penalties, but I did not know about it at that time.” (Truly Declaration, February 13, 2015, ¶ 25.)

B. FTB Imposed Fraud Penalties Against Mr. Hyatt To Coerce A Settlement

FTB assessed the fraud penalties against Mr. Hyatt to improperly coerce him into a quick settlement. FTB had such a policy in place during Mr. Hyatt’s audits, and as set forth below, FTB applied that policy with full force against Mr. Hyatt even though it did not determine by clear and convincing evidence that Mr. Hyatt had underpaid taxes and did not determine by clear and convincing evidence that there was any fraud.

1. FTB Did Not Impose The Fraud Penalty For A Proper Purpose Because Even FTB’s Own Audit Reviewers Doubted That There Was Clear And Convincing Evidence Of Fraud

The fraud penalty requires an extremely high showing by FTB. FTB must establish (1) that there is an underpayment of tax by clear and convincing evidence, and (2) that such

underpayment was due to fraud by clear and convincing evidence. The clear and convincing evidence standard requires that the disputed facts must be “‘explicit and unequivocal,’ leaving ‘no substantial doubt,’ and ‘sufficiently strong to command the unhesitating assent of *every reasonable mind.*’”⁷

First, within FTB there was not (and still is not) agreement that there is clear and convincing evidence of fraud regarding residency. We know this because FTB itself has asserted that Mr. Hyatt is taxable on California source income, an argument that can only be made if Mr. Hyatt did in fact move from California and become a nonresident. If there is clear and convincing evidence of residence, then the sourcing issue lacks merit and should not have been raised. On the other hand, if the sourcing issue has merit, then there cannot be clear and convincing evidence of residence. In short, how can there be clear and convincing evidence of fraud on the residency issue when, at the same time, FTB is claiming that Mr. Hyatt was a nonresident and taxable on California source income? FTB provides no answer to this critical inconsistency in its assessments and briefing. The real answer is that FTB made no attempt to make a correct tax determination; rather, its staff decided early on to assess as high an amount as possible (with fraud penalties) to coerce an improper settlement, even if the grounds for the assessment were legally inconsistent. That is clear evidence of extreme misconduct.

In addition, FTB's own staff openly questioned whether there was any basis to tax Mr. Hyatt at all, let alone whether there was evidence to sustain fraud penalties.

On June 6, 1995, two years into the residency audit, FTB convened a meeting of senior FTB personnel and Sheila Cox, the lead auditor, to discuss whether Mr. Hyatt could be assessed as a nonresident with California source income. AOB (1991) Ex. 69. In a memo summarizing the meeting, Ms. Embry stated:

[A] decision had not been made at the time of the meeting as to whether there was enough substantiation to sustain a position the TP was a California resident for all of 1991. There does not appear to be any means of making the TP a resident for 1992 or later.

AOB (1991) Ex. 69.

The clear import of FTB's meeting as reflected in Ms. Embry's memo was that FTB was searching for an alternative audit theory against Mr. Hyatt because of *weakness* of the residency

⁷ *Appeal of Adickes*, St. Bd. of Equaliz., 1990 Cal. Tax LEXIS 24, 90-SBE 012 (Nov. 27, 1990) (emphasis added), quoting *In re Jost*, 117 Cal.App.2d 379, 383 (1953).

case. If there had been clear and convincing evidence of residency, there would have been no need to convene a meeting of senior FTB personnel, two years into the residency audit, to weigh raising a completely new sourcing theory, one that is based on finding Mr. Hyatt was a nonresident.

FTB's lead residency reviewer for the 1991 audit, Carol Ford, confirmed the doubts about the residency audit and the fraud penalty. She questioned whether the FTB had a residency case against Mr. Hyatt, let alone sufficient evidence to assess a fraud penalty against Mr. Hyatt. In her Review Comments, she stated: "this is really a tough case" and "[w]e are assessing the FRAUD penalty - although I'm not sure it is warranted." Ms. Ford particularly questioned the auditor's almost complete reliance on three un-sworn "affidavits," from Mr. Hyatt's estranged relatives, two of whom admittedly had no personal knowledge of Mr. Hyatt's residency and all three of whom had been estranged and therefore had little if any relevant knowledge and an axe to grind against Mr. Hyatt. Ms. Ford correctly saw that a residency audit based on such limited and biased witnesses is highly suspect. *See* Carol Ford's review comments at 1991 AOB, Ex. 10, Review Comments, 4/18/96 (FTB 104118).

For the 1992 audit, Rhonda Marshall, a senior FTB auditor, also explicitly disagreed with the assessment of a fraud penalty. At a meeting in which Mr. Hyatt's 1992 audit was discussed Ms. Marshall expressly stated that she did not believe the fraud penalty should be imposed:

Rhonda has reviewed the case and disagrees with issuing the-fraud penalty. She doesn't think the penalty should be issued for failure to file a return where the taxpayer feels he was essentially a nonresident. Fraud penalty was imposed in the prior. Has anything changed in the subsequent year?

AOB (1992) at 65 fn 344 (citing Ex. 57, FTB Memorandum dated 8/12/97, p. 2).

In sum, it is undisputed that senior FTB personnel expressly disputed the imposition of fraud penalties against Mr. Hyatt for both 1991 and 1992.

2. FTB Imposed The Fraud Penalty Against Mr. Hyatt To Coerce A Settlement

A fraud penalty can only be imposed if there is clear and convincing evidence of fraud. The clear and convincing evidence standard requires that the disputed facts must be "explicit

and unequivocal,’ leaving ‘no substantial doubt,’ and ‘sufficiently strong to command the unhesitating assent of *every reasonable mind*.’”⁸

In this case, the undisputed evidence establishes that there was open dissent within FTB regarding imposition of the fraud penalties against Mr. Hyatt. Carol Ford and Rhonda Marshall, two senior FTB audit reviewers, expressly stated that they did not believe the fraud penalty should be imposed. FTB’s own fraud analysis was equivocal, it left substantial doubt among senior FTB staff, and it did not command the unhesitating assent of every reasonable mind. In short, FTB’s auditors did not establish by clear and convincing evidence that there was fraud.

The open dissent of senior FTB staff should have foreclosed imposition of the fraud penalties for lack of clear and convincing evidence, but that is not what happened. Despite strong sentiment that the fraud penalties should not be imposed, FTB pressed forward with the fraud penalties. The only explanation for FTB’s decision to pursue the fraud penalties is that FTB wanted to improperly use the penalties to coerce Mr. Hyatt into a settlement.

This conclusion is confirmed by Candace Les, a former FTB auditor who worked closely with Sheila Cox (FTB’s primary auditor) and who actually reviewed Mr. Hyatt’s audit. Ms. Les testified that Ms. Cox “assess[ed] [fraud] penalties against Mr. Hyatt to increase her CBR and to motivate Mr. Hyatt to settle his assessments when he gets into protest.” (Declaration of Candace Les, February 9, 2015, ¶ 28.) Ms. Les also testified that after reviewing the audit work papers she concluded that fraud penalties should not be assessed against Mr. Hyatt and that the reviewers assigned to Mr. Hyatt’s audits shared her conclusion:

After reading Ms. Cox’s workpapers, I told her that she should not assess fraud penalties against Mr. Hyatt in order to get him to settle his case, fraud penalties were not warranted based upon the facts of his case. Apparently I was not alone. The reviewers on his audits, Rhonda Marshall and Carol Ford, did not believe that the fraud penalties were warranted. See the Ford Review Notes regarding the 1991 tax year audit (“We are assessing the FRAUD penalty – although I’m not sure it is warranted”), attached hereto as Exhibit 4, and see the Legal/Residency Meeting minutes regarding the 1992 tax year audit (“Rhonda [Marshall] has reviewed the case and disagrees with issuing the fraud penalty”), attached hereto in Exhibit 5. (Les Declaration, February 9, 2015, ¶ 32.)

⁸ *Appeal of Adickes*, St. Bd. of Equaliz., 1990 Cal. Tax LEXIS 24, 90-SBE 012 (Nov. 27, 1990) (emphasis added), quoting *In re Jost*, 117 Cal.App.2d 379, 383 (1953).

In addition, after reviewing the audit file, Diane Truly, another former FTB auditor, confirmed that Mr. Hyatt's audit was an extreme example of FTB over-assessment to increase CBR, which is not supported by the facts in the case:

Since I left FTB employment in July 1995 I have learned that the most extreme example of outrageous over-assessments to increase CBR is in the audits of Mr. Hyatt. I was concerned about the audits of Mr. Hyatt so I used my skill and experience to review his audits in depth. Mr. Hyatt's audits are extreme examples of creating unsupportable assessments to get outrageous CBRs even though the assessments are not supportable on their face. This is the type of situation that I would have worked to prevent as the Director of the FTB District Office Bureau and as the chairperson of the FTB Mission and Values Team. For example, a common CBR in the mid-1990s was \$800 per hour, but the 1992 tax year audit in the Hyatt case yielded over \$100,000 per hour. (Truly Declaration, February 9, 2015, ¶ 16.)

In this case, the undisputed evidence shows that FTB abused its power against Mr. Hyatt by imposing unwarranted fraud penalties in the hope they would force Mr. Hyatt into a settlement of the tax assessments. Three former FTB employees (Mr. Rodrigue, Ms. Truly, and Ms. Les), two of whom served in senior management positions, have stepped forward to expose FTB's abusive and illegal audit tactics. FTB's auditor trumped up an assessment and fraud penalties to advance her career within FTB by creating an unprecedented CBR and to "get" Mr. Hyatt.

In addition, on September 18, 2014, the Nevada Supreme Court confirmed that FTB acted with the utmost bad faith, including upholding the Nevada jury's finding that FTB "was determined to impose tax assessments against him, and that FTB fostered an environment in which the imposition of tax assessments was the objective whenever an audit was undertaken." *Franchise Tax Bd. v. Hyatt*, 335 P.3d 125, 148 (Nev. 2014). The Nevada Supreme Court further concluded that "[Mr.] Hyatt suffered extreme treatment from FTB." *Id.* FTB committed fraud, it intentionally inflicted emotional distress, and it acted with racial animus toward Mr. Hyatt.

In sum, FTB has engaged in outrageous conduct for a tax agency – a jury determined that FTB engaged in extreme misconduct, its own staff have confirmed FTB's misuse of fraud penalties against taxpayers to coerce settlements and increase CBR, and its own staff have confirmed the fraud penalties should not have been imposed against Mr. Hyatt.

All Californians are undeniably harmed by FTB's corrupt activities. The harm done is intangible, but very real: the undermining of public confidence and the loss of respect for FTB as

a public institution harms all of us. FTB has betrayed the public trust, and the only way to regain that trust is to declare in unmistakable terms that FTB has acted improperly and to strike down the fraud penalties as well as the tainted assessments in these appeals.

IV. FTB's Misconduct In These Appeals

A. FTB Has Repeatedly Misrepresented The Evidence To Inflict Harm On Mr. Hyatt

As the California Supreme Court explained in a case involving prosecutorial misconduct, "mischaracterizing the evidence is misconduct." *People v. Hill*, 17 Cal. 4th 800, 823 (1998), citing *People v. Avena*, 13 Cal. 4th 394, 420 (1996), *People v. Lucas*, 12 Cal. 4th 415, 472 (1995). A prosecutor's "vigorous" presentation of facts favorable to his or her side "does not excuse either deliberate or mistaken misstatements of fact." *People v. Purvis*, 60 Cal. 2d 323, 343 (1963).

It is equally true that FTB's misstatements of evidence constitute serious misconduct. Although FTB and Mr. Hyatt are adverse in this proceeding and it can be expected that FTB will advocate for its position, FTB's conduct in these appeals is far outside the bounds of ethical advocacy. FTB has acted in bad faith in its effort to "get" Mr. Hyatt by misrepresenting the evidence in these appeals.

In FTB's briefing, FTB misstates what the evidence says. In addition, FTB intentionally misleads your Board by ignoring contrary evidence that cuts against its "story." There are literally thousands of misrepresentations.

1. FTB Falsely Stated The Philips Documents "Established" Mr. Hyatt's Presence In California

FTB falsely claims that the Philips documents verify Mr. Hyatt's presence at his former California home. (1991 RSAB at 3.) That claim is a cornerstone of its day count/calendar and its assertion that Mr. Hyatt continued to live and work at the La Palma house. According to FTB, the Philips documents allegedly show Mr. Hyatt's presence in California because correspondence or other documents contain Mr. Hyatt's former California address or fax number. FTB's claim about Mr. Hyatt's location is merely an *inference* based on Philips documents that contain Mr. Hyatt's former California address or fax number.

However, FTB's argument reveals how far FTB will to "get" Mr. Hyatt. FTB has in its possession undisputed testimony that completely refutes any inference of Mr. Hyatt's presence that FTB draws from Philips documents addressed to Mr. Hyatt's former California address. A Philips vice president (Mr. Algy Tamoshunas) and an office manager at Mahr Leonard (Ms. Vicki Weart) stated under oath that Mr. Hyatt notified Philips and Mahr Leonard of his new address shortly after he moved to Las Vegas in October 1991 and that Philips and Mahr Leonard staff inadvertently continued to use Mr. Hyatt's old contact information on some correspondence to Mr. Hyatt. (Tamoshunas Affidavit, August 4, 2010, ¶ 25; Weart Declaration, May 21, 2012 ¶ 5.) In addition, FTB deposed Mr. Tamoshunas. Even after he was subject to cross examination by FTB's attorneys, Mr. Tamoshunas confirmed that Mr. Hyatt notified Philips of his new Las Vegas address in October 1991, that he understood that Mr. Hyatt had moved to Las Vegas prior to such notification, and that all correspondence and faxes sent by Philips to Mr. Hyatt's former California address or fax number were "inadvertent errors by Philips' support personnel." (Tamoshunas Deposition Transcript, Oct. 27, 2011, at 648:19-649:16.)

Despite having Mr. Tamoshunas' declaration and taking Mr. Tamoshunas' deposition, FTB argues to your Board that the Philips documents "verify" Mr. Hyatt's presence in California because of the address or fax number on the document. (1991 RSAB at 3.) FTB fails to mention Mr. Tamoshunas' testimony in its RSABs and attachments. Similarly, FTB also had Ms. Weart's declaration. FTB did not mention her declaration in its RSABs and it briefly addresses Ms. Weart's testimony in FTB Attachment E at page 109, but only argued that her memory must have been faulty. Her memory was not faulty; it was consistent with Mr. Tamoshunas' testimony.

Similarly, the California P.O. Box address and telephone number on Mr. Hyatt's correspondence during the period after he moved to Las Vegas are also not evidence of Mr. Hyatt's presence in California. After Mr. Hyatt moved to Las Vegas he continued to use his old letter and fax templates containing the Cerritos P.O. Box and the old telephone number. Mr. Hyatt simply did not update his correspondence templates immediately after he moved.

Critically, Mr. Hyatt did not pay for the Cerritos P.O. Box after he moved to Las Vegas. Ms. Jeng paid for the Cerritos P.O. Box after Mr. Hyatt moved. (Hyatt Affidavit, Aug. 15, 2010, at 102:4-5.) By letter dated February 2, 1992, Mr. Hyatt wrote the Post Master at the Cerritos, California post office asking that Barry Lee and Grace Jeng be added to the P.O. Box account so

they could receive mail through the P.O. Box. Even FTB acknowledged that Ms. Jeng's water bill for her La Palma home was addressed to the Cerritos P.O. Box. (FTB's 1991 Opening Brief at 59.)

Ms. Jeng also confirmed that she paid the rent on the Cerritos P.O. Box:

At the same time that I purchased the La Palma house from Mr. Hyatt on October 1, 1991, he gave me the keys to the Cerritos post office box (P.O. Box 3357) and I accessed this post office box and I paid for the rental on the post office box when the rent was due. See my check to the "USPS" dated April 7, 1992 for payment of the rental fee (the USPS wrote "Box holder" in the "For ___" location on the check) attached hereto as Exhibit 3.

Affidavit of Grace Jeng, December 4, 2008, ¶ 22, Annex VII, Ex. 22.

FTB also falsely claims that legal invoices issued by Mr. Roth's firm to Philips and by Mr. Cowan show Mr. Hyatt's presence in California. However, analysis of the actual documents reveals FTB plainly misstates what the invoices say and attempts to mislead your Board. For example, in support of its inference that Mr. Hyatt was in California on October 29, 1991, FTB cites to two law firm invoices: (1) Mr. Roth's invoice contains three entries for October 29, 1991 (FTB_Philips 0006617), and (2) Mr. Cowan's invoice contains two time entries for October 29, 1991 (EC 07809). *See* FTB Calendar at 1991 RSAB at 6. However, these invoices do not in any way indicate Mr. Hyatt's presence in California or in any other location. These invoices simply refer to "discussions" and "telephone conferences" with Mr. Hyatt and others. FTB offers no explanation how a telephone call by a person (Mr. Roth or Mr. Cowan) in California to Mr. Hyatt infers that Mr. Hyatt was in California. Mr. Hyatt was in fact in Las Vegas. Rebuttal to FTB Att. A/F, Section I. A., October 29, 1991. To be clear, there is absolutely nothing on the face of these invoices that shows Mr. Hyatt was present in California, yet FTB uses them to "infer" California presence by linking to them to their new calendar and arguing California presence in Attachment A (Revised). This is just one of countless examples of FTB mischaracterizing the evidence and attempting to mislead your Board as to the record in these appeals.

In sum, FTB's inference that Mr. Hyatt was in California because certain Philips documents erroneously contained his former California address or fax number is refuted by clear, undisputed evidence showing that Philips and Mahr Leonard used the wrong address for a time after Mr. Hyatt moved to Las Vegas or that Mr. Hyatt simply did not update his correspondence

templates immediately after he moved. FTB's inference is therefore incorrect. Yet, FTB attempts to mislead your Board by misstating the evidence. When all of the evidence is considered together, it is clear that Mr. Hyatt moved to Las Vegas, but documents were inadvertently sent to his former address and Mr. Hyatt continued to use templates with his old address.

2. FTB Mischaracterized Testimony To Mislead Your Board

FTB cites to selective statements from David Stratton's deposition testimony to mislead your Board. David Stratton unilaterally contacted FTB about concerns he had regarding Mr. Hyatt's relationship with his parents and brother. (D. Stratton Deposition Transcript 13:17-25 (FTB Ex. KK).) However, during Mr. Stratton's deposition by FTB's attorney, Mr. Stratton expressly admitted that his initial concerns about Mr. Hyatt were based on incorrect assumptions that he fabricated, and that his concerns were unfounded. (D. Stratton Deposition Transcript 37:22 (FTB Ex. KK).)

a. Mr. Stratton's Actual Testimony

Q: Then you say, "I now see that he [Mr. Hyatt] has been literally purchasing testimonies through a façade of philanthropy." What's the basis for that statement?

A: That's an assumption. That was probably – probably out of line. There was no facts there. And learning what I have learned, I believe it's been 11 months or so since then, that's – that's probably inaccurate.

(D. Stratton Deposition Transcript 37:22-38:1 (FTB Ex. KK).)

Later, David Stratton again reiterated his mistaken assumptions:

Q: Now, just following up on some information that you had given there, just to be clear, you may had some concerns about manipulation early on, but that was based on those assumptions that you already talked about that led the e-mails and the meeting [with FTB] right?

A: Right.

Q: After having personal discussion then with your parents and with Brian [David Stratton's brother], you don't have those same assumptions any longer?

A: Right.

(D. Stratton Deposition Transcript 71:21-72:6 (FTB Ex. KK).)

b. FTB's Mischaracterization Of Mr. Stratton's Testimony

In FTB Attachment E, however, FTB misstated David Stratton's deposition testimony to mislead your Board. FTB wrote: "Mary's son [David Stratton] thought Mr. Hyatt had an ulterior motive in reacquainting himself with the Stratton family. His parents were financially vulnerable during this time." (FTB Attachment E, p. 166.) Later in Attachment E, FTB stated: "David Stratton's genuine concern for his parents resulted in him sending unsolicited emails to FTB's Public Affairs office and FTB attorney Robert Dunn then meeting with attorney Bradshaw and investigator Savage in Las Vegas on June 2, 2010." (FTB Attachment E, p. 167.)

However, FTB **failed to acknowledge** David Stratton's express deposition testimony (see above) admitting that his concerns regarding Mr. Hyatt were not based on any facts, but were instead based on mistaken assumptions. FTB's tactic of only citing documents or statements that support its story, even when directly contrary evidence exists, is an intentional attempt to mislead your Board and create a false record in these appeals.

David Stratton's stated concerns expressed to the FTB were, in essence, just hunches. He had not spoken to his parents or brother prior to expressing those concerns. After speaking to his family members regarding his concerns, he determined that his concerns had no basis in actual fact. Nonetheless, FTB's Attachment E selectively cites David Stratton's hunches/concerns (**not facts**) to mislead this Board. As he testified in his deposition, David Stratton determined that all of his concerns were unwarranted. This Board should reject FTB's attempt to present untrue statements as actual facts and conclude that FTB cannot be trusted.

c. Mr. Neuner's Testimony

Another example of FTB's misstatement of evidence and bad faith is that it cites to **uncorrected** deposition transcripts without noting the corrections made by the witness. Under California law, witnesses are permitted to review their deposition transcripts and are allowed to make any necessary corrections. FTB apparently believes it is proper to cite to your Board the uncorrected deposition transcripts when it knows that the transcripts have been corrected. For example, FTB contends that Mr. Neuner's ability to recollect facts related to Mr. Hyatt was faulty. (FTB Attachment E, pp. 128-129.) Specifically, FTB claims that Mr. Neuner stated in his deposition that he had lunch with Mr. Hyatt in 1992 at the Treasure Island Hotel and Casino, and FTB argues that statement is not true because the Treasure Island Hotel and Casino was not

open in 1992. (FTB Attachment E, pp. 128-129.) However, Mr. Neuner corrected his deposition transcript to the correct date of 1999, but FTB, in an attempt to mislead your Board, did not disclose the correction. (FTB Ex. JJ, Tab 60: 12/14/10 Neuner Depo. Transcript 103:18-104:3.)

This is another plain example of FTB's attempt to mislead this Board and create a false record.

d. William Savage's Misrepresented The Statements Made By Stephanie Gines

Stephanie Gines, an employee of Minnesota Title during 1991 and 1992, stated in her affidavit that FTB's paid investigator William Savage and FTB misrepresented what she told Mr. Savage during a brief telephone interview. (Gines Affidavit, March 28, 2012, ¶¶ 8-12.) FTB intentionally misrepresented that Mr. Savage had interviewed Ms. Gines in person, that he offered to show a picture of Mr. Hyatt to her (which could only happen if the two were meeting in person), and that he asked Ms. Gines if she would sign a written declaration. (FTB Attachment E, p. 217.) These were all false statements.

In fact, Ms. Gines only briefly spoke to Mr. Savage when he called her without advance notice in 2011 and out of the blue asked questions about Mr. Hyatt's escrow, which was 20 years earlier; and he did not provide any background information to refresh her memory. (Gines Affidavit, March 28, 2012, ¶ 8.) Ms. Gines testified that she stated to Mr. Savage that she simply did not recall meeting Mr. Hyatt, but FTB twisted her response into a falsely emphatic statement that Ms. Gines "could never recall having met him in person." (Gines Affidavit, March 28, 2012, ¶ 8.) In addition, Ms. Gines testified that Mr. Savage did not offer to show her a picture of Mr. Hyatt, nor could he because the interview was by phone, not person to person. Ms. Gines also testified that she did not tell Mr. Savage that he "needn't bother" showing her a picture. (Gines Affidavit, March 28, 2012, ¶ 9.) Ms. Gines testified that neither FTB nor Mr. Savage ever asked her to sign a declaration.

Ms. Gines only stated to Mr. Savage that she could not recall meeting Mr. Hyatt, which is understandable because Mr. Savage had called her without any advance notice and just posed the question without any opportunity for Ms. Savage to refresh her memory. (Gines Affidavit, March 28, 2012, ¶¶ 9, 11.) Thus, all that Ms. Gines' statement to Mr. Savage establishes is at the time of her brief telephone call with Mr. Savage, she could not recall meeting Mr. Hyatt in person 20 years earlier although she spoke with him the telephone on numerous occasions during the 1992 escrow. In fact, as Ms. Frank testified, Ms. Frank introduced Mr. Hyatt to Ms. Gines

on one occasion, and it was a brief introduction when Ms. Gines happened to drop by Ms. Frank's office while Mr. Hyatt was meeting with Ms. Frank. (Frank Affidavit, March 21, 2012, ¶ 19.) It is not surprising at all that Ms. Gines would not recall such a brief introduction to Mr. Hyatt 20 years later. (Frank Affidavit, March 21, 2012, ¶ 19.) However, Mr. Savage and FTB completely intentionally misrepresented the testimony of Ms. Gines.

B. FTB Fabricated False Evidence

FTB has fabricated false evidence and presented such false evidence to your Board.

1. FTB's Investigators Fabricated Testimony

The most glaring examples of FTB's fabrication of false evidence are the declarations signed by FTB paid investigators William Savage and Jake Dameron. (Savage Decl., May 27, 2009; Savage Decl., May 24, 2011; Savage Decl., May 28, 2011; Savage Decl., Nov. 20, 2012; Savage Decl., Mar. 24, 14; Dameron Decl., March 19, 2011; Dameron Decl., Jan. 31, 2013; Dameron Decl., Feb. 6, 2013; Dameron Decl., May 2, 2013.) Neither FTB investigator had any firsthand knowledge of any relevant facts. Instead, the investigators claim to have spoken to Mr. Hyatt's witnesses and then, in lieu of obtaining declarations from the witnesses themselves, FTB's investigators submitted their own declarations that allegedly restate what the witness said.

The witnesses have testified under oath that they did not actually make the statements attributed to them by FTB's investigators. Twelve witnesses testified that they were not interviewed about Mr. Hyatt in response to FTB's misrepresentations about their alleged statements about Mr. Hyatt, 18 witnesses testified that FTB investigators did not ask questions or show photographs that FTB investigators incorrectly testified they had done, 15 witnesses testified that FTB investigator Mr. Savage misrepresented in his declaration the answers to his questions that he had received from them, 14 witnesses testified that they did not make statements to FTB investigator Mr. Savage and that Mr. Savage testified that the witness had made, 18 witnesses testified about FTB investigator declarations misrepresenting their statements, and 31 witnesses testified that they did not make statements to FTB investigators that the FTB stated that the witness had made. (Updated Testimonial Topics, Exs. T073, T075, T076, T081, T077, T080.)

Plainly, a witness' direct testimony under oath must prevail over FTB's investigator declarations. In addition, seven witnesses discussed in the Savage declaration and Dameron

declaration were deposed and subject to cross examination under oath. Those witnesses were: Lynnetta Ruth, Richard Neuner, Mary Trotter Stratton, Brian Stratton, Blanche Garnica, Melvin Hecht, and Michelina Hecht. Amazingly, FTB's investigators even claim their own hearsay declarations must prevail over these witnesses' highly credible eyewitness testimony. Your Board should reject the FTB investigator declarations as non-credible claims that have been refuted by the actual testimony of witnesses with personal knowledge and who, in many cases, have been subject to cross examination by FTB.

In addition, FTB provides no credible explanation for why the investigators failed to obtain signed declarations from the witnesses they interviewed or allegedly interviewed. Mr. Savage's response is simply that the 18 witnesses discussed in his 2012 declaration were all liars. (Savage Decl., Nov. 20, 2012.) Each of the 18 witnesses are disinterested third parties with no stake in the outcome of these appeals. They have no motive to provide anything but their honest testimony. There is no reason why one of them, let alone all 18 of them would commit perjury and risk criminal prosecution. It is far-fetched to argue that all of these witnesses committed perjury. It is even more far-fetched when Mr. Savage is the one making the claim that they were not truthful. As discussed in the declarations of Mary Savage (Mary Savage Decl., May 15, 2015 ¶¶ 4-9) and Martha Mims (Martha Mims Declaration, June 10, 2015 ¶ 4), Mr. Savage has a long history of dishonesty and fraud. He was fired from multiple jobs for dishonesty and filed a false tax return. His history of dishonesty and fraud destroys his credibility as a witness. A more complete description of Mr. Savage's fraud and dishonesty is set forth in Table of William Savage's Fraud and Dishonesty, and Savage False Statements Table, and Supplemental Savage False Statements Table.

In addition, Mr. Savage is not a disinterested party. He has been retained by FTB's Nevada counsel, and as a private investigator; he was paid to produce evidence for his client. Finally, if Mr. Savage had actually interviewed each witness and they had made the statements attributed to them, Mr. Savage provides no explanation why (except for one witness) the witnesses did not agree to sign a declaration themselves. Mr. Savage's failure to explain why he did not obtain signed declarations is extremely damaging to his credibility when the same witnesses are available and they have submitted signed declarations directly contradicting Mr. Savage's declaration. Thus, Mr. Savage's declaration is not reliable. It plainly cannot replace the actual signed declarations submitted by the witnesses with personal knowledge.

FTB's other paid investigator, Mr. Dameron, admits he did not even try to obtain signed declarations. Mr. Dameron stated that he spoke to witnesses "for the primary purpose of determining witnesses who should have their depositions taken, additional pre-trial investigation to be conducted and identified areas where an expert witness could have been required." (Dameron Decl., Jan. 31, 2013, at 2:9-12.) Thus, by Mr. Dameron's own admission, the 1999 alleged interviews were just informal conversations to determine whether an individual could be a witness or to obtain background information. Indeed, Mr. Dameron's 2013 declaration acknowledges as much: "[The witness declarations filed by Mr. Hyatt] appear to have involved more research and lengthier interviews of witnesses than the *shorter interviews I conducted, which was about ten years or more prior to the subsequent interviews of the same witnesses.*" (Dameron Decl., Jan. 31, 2013, at 2:16-19.) There is no indication that Mr. Dameron told witnesses their statements would be used as formal testimony. The witnesses were not given an opportunity to refresh their recollections. Compared with the witnesses' actual declarations, Mr. Dameron's reports on alleged informal conversations with witnesses are not reliable and trustworthy. A summary of false statements made by Mr. Dameron is set forth in Dameron False Statements Table and Supplemental Dameron False Statements Table.

In short, FTB's investigator declarations are highly unreliable.

2. FTB Fabricated Evidence To Attempt To Impeach Witnesses

FTB fabricated evidence in an attempt to impeach one of Mr. Hyatt's witnesses, Mr. Thomas McGuire.

First, Mr. McGuire is an exceedingly credible witness because he has been interviewed by both FTB and Mr. Hyatt's representatives, and he has his own attorney to counsel him. Mr. McGuire is a Las Vegas real estate agent who assisted Mr. Hyatt with the purchase of his Tara Avenue home. (McGuire Affidavit, March 31, 2012.) The thrust of FTB's attempt to discredit Mr. McGuire's testimony is that his statements provided in his declaration signed under oath are inconsistent with alleged earlier statements he made to FTB's outside counsel, FTB personnel, and FTB's paid investigator during telephone calls. (FTB Attachment E, pp. 217-231.) As proof of the alleged inconsistent statements, FTB points to notes allegedly taken during the telephone conversations. However, none of the alleged conversations were recorded, none of the alleged statements were taken under oath, and none of the alleged notes were taken by official reporters sworn to record the true statements of the witness. Nor is there any evidence that FTB's

representatives told Mr. McGuire his statements would be used as testimony. In short, there is no foundation for the alleged witness statements reflected in FTB's notes of conversations with Mr. McGuire. The inherent problem with FTB's telephone notes is that there is no record of the questions asked, no indication that Mr. McGuire heard the questions clearly, and no indication that FTB's notes are accurate. The most credible evidence of Mr. McGuire's testimony is his direct testimony provided under oath.

Moreover, when FTB presented Mr. McGuire an opportunity to review notes of his alleged statements, he made it very clear to FTB that the statements were not accurate and needed to be corrected. Instead of making the necessary corrections, FTB refused to make any corrections. FTB then proceeds to attempt to impeach Mr. McGuire's sworn statements from his 2012 Affidavit with the unsworn and rejected telephone notes taken by FTB and by FTB's paid investigator.

FTB's tactic to attempt to impeach Mr. McGuire must be rejected because FTB has no credible evidence to rely on. In effect, FTB's personnel had telephone conversations with Mr. McGuire, FTB's personnel made notes of the telephone conversations with Mr. McGuire, FTB personnel then prepared a draft declaration based on what Mr. McGuire purportedly said, and Mr. McGuire reviewed the declaration and told FTB it had many errors. These events do not make FTB's draft declaration or telephone notes credible – it renders them inaccurate writings that have been rejected by the witness with personal knowledge, Mr. McGuire.

Mr. McGuire stated in his signed declaration that he dealt with Mr. Hyatt in Las Vegas, and that he did not recall dealing with Mr. Hyatt at any location in California. (McGuire Affidavit, March 31, 2012, ¶ 69.) FTB claims that these statements are not true by pointing to alleged faxes from Mr. McGuire's office to Mr. Hyatt at his Las Vegas apartment. (FTB Attachment E, pp. 226-228.) The alleged faxes are listed in Mr. McGuire's 2012 Affidavit at paragraphs 76-77. None of the alleged faxes indicate on their face that they were sent to the La Palma house, and in fact, Mr. McGuire testified that he does not recall ever sending or receiving a fax from the La Palma house. He received faxes from Mr. Hyatt's apartment and sent faxes to Mr. Hyatt's 702 area code apartment fax number. (McGuire Affidavit, March 31, 2012, ¶¶ 71-72, 76-77.) Mr. McGuire testified that none of the purchase and counter-offer documents for the Tara Avenue house had California contact information. (McGuire Affidavit, March 31, 2012, ¶ 77, Ex. 8 and 9.) Apparently, FTB just fabricated its story Mr. McGuire sent faxes to the La

Palma house because that would fit better with its fabricated story that Mr. Hyatt was in La Palma. However, even in Attachment E, FTB offers no explanation why it believes those faxes were sent to the La Palma house. (FTB Attachment E, pp. 226-228.) Rather, FTB just cites to its calendars. However, the calendars do not show that Mr. McGuire sent faxes to the La Palma house.

FTB's attempt to impeach Mr. McGuire's Affidavit must be rejected because FTB relies on fabricated evidence that is not credible. Virtually all of the "evidence" cited by FTB are alleged statements made by Mr. McGuire which he expressly rejected when FTB asked him to sign a declaration containing those inaccurate statements. Mr. McGuire's Affidavit is credible and should be accepted in full.

3. FTB Filed An Unsigned Declaration As Testimony

Incredibly, FTB attempted to slip into the record an unsigned declaration as evidence. In Respondent's Opening Brief 1991, FTB cited to an *unsigned, draft declaration* prepared by one of its paid investigators for Mr. Thomas McGuire. 1991 ROB, p. 60, fn 181. As noted, Mr. McGuire reviewed this document and refused to sign it because it was not accurate. (McGuire Affidavit, March 31, 2012, ¶ 9.) This document absolutely is *not* evidence. Yet, FTB cites to it and tries to explain away the reason for it not being signed by blaming Mr. Hyatt. It is not Mr. Hyatt's fault that Mr. McGuire refused to sign a false affidavit prepared by FTB's paid investigator, Mr. William Savage. (See 1991 ARB at p. 16.)

* * *

For your Board's convenience, Mr. Hyatt has catalogued each instance of FTB's misrepresentations of evidence in a series of tables. "11_Table_of_Savage_Statements" in the 02 folder of Hyatt's folder structure -- "Table Of False Declaration Statements Made by William Savage"; "11A_Supplemental_Table_of_Savage_False_Statements" in the 02 folder of Hyatt's folder structure -- "Supplemental Table Of False Declaration Statements Made by William Savage"; "11_Table_of_Dameron_Statements" in the 02 folder of Hyatt's folder structure -- "Table Of False Declaration Statements Made by Jake Dameron"; "11A_Supplemental_Table_of_Dameron_False_Statements" in the 02 folder of Hyatt's folder structure -- "Supplemental Table Of False Declaration Statements Made by Jake Dameron"; "11_Table_of_Audit File_Statements" in the 02 folder of Hyatt's folder structure -- "Table Of

False Statements Made In The FTB Audit File";

"11A_Supplemental_Table_of_Audit_File_False_Statements" in the 02 folder of Hyatt's folder structure -- "Supplemental Table Of False Statements Made In The FTB Audit File"; and Mr. Hyatt's Samples of FTB Misrepresentations, Unreasonable Inferences and Unsupported Assertions, Appellant's 1991 Reply Brief, Ex. 22.⁹

FTB's misstatements of evidence is serious misconduct. It is evidence of bad faith and it demonstrates FTB's lack of credibility. As illustrated in the comprehensive tables of FTB's misrepresentations, there are thousands of examples of FTB's bad faith and misrepresentation of the evidence. Only one conclusion can be drawn from the examples above and Mr. Hyatt's extensive misrepresentation tables – FTB will stop at nothing to “get” Mr. Hyatt, even if that means distorting the evidence and misstating the record. By engaging in such conduct, FTB loses all credibility.

C. FTB Engaged In Extreme Misconduct By Using Its Paid Investigators And Attorneys To Intimidate And Harass Witnesses And To Fabricate False Testimony

FTB used its paid investigators and attorneys to intimidate and harass witnesses and to fabricate false testimony. These investigators and attorneys used threats, intimidation and coercion to try to drum up evidence against Mr. Hyatt.

Under California law, a private investigator may not obtain evidence through deceit and fraud, and if an investigator is found to have engaged in such misconduct, the evidence cannot be considered. As the California Supreme Court declared, “an administrative agency must reject evidence inconsistent with the dignity of its proceedings and the fair administration of justice.” *Patty v. Board of Medical Examiners*, 9 Cal. 3d 356, 364-365 (1973), citing *Redner v. Workmen's Comp. Appeals Bd.* 5 Cal.3d 83 (1971). In *Patty*, the Supreme Court held that an administrative agency cannot itself engage in improper conduct (in that case, entrapment) when investigating an individual.

Although the defense of entrapment may find application in other administrative proceedings, it is particularly important when, as here, a single agency combines both investigative and adjudicative powers. If such an agency rejects entrapment as a defense, it in effect authorizes its investigators to entrap, and encourages a shift of resources from the

⁹ See also Mr. Hyatt's Rebuttal to FTB Att. A/F, and Mr. Hyatt's Rebuttal to FTB Attachment E for a complete discussion of FTB's misrepresentation of the evidence.

detection of illegal acts to the promotion of such acts. Public confidence in the administration of justice by such an agency cannot be sustained when that same agency in performing its investigative role employs methods contrary to "'sound public policy' and 'good morals.'" (People v. Benford (1959) supra, 53 Cal.2d 1, 9.)

Patty, supra at 365.

Likewise, in *Redner*, the Supreme Court held that an insurer could not benefit from evidence obtained by a private investigator's misconduct. The Court declared that such misconduct is counter to clear public policy:

The [workers compensation] appeals board is not "bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions" of the workmen's compensation laws. (Italics added.) (Lab. Code, § 5708.) As this court observed in *French v. Rishell* (1953) 40 Cal.2d 477, 481 [254 P.2d 26], the board "from its early days, has" been "allowed to receive hearsay evidence and to proceed informally. . . ." (See *Bland v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 324, 330 [90 Cal.Rptr. 431, 475 P.2d 663].) Evidence obtained by fraud and deceit in violation of the rights of the applicant, however, is not "best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions" of the workmen's compensation laws. The high purposes of the compensation law should not be perverted by resort to evidence perfidiously procured. We therefore conclude that the board may not rely upon evidence obtained, as in the present case, by deceitful inducement of an applicant to engage in activities which he would not otherwise have undertaken.

Redner, supra at 94-95.

As discussed below, FTB's investigators and attorneys fraudulently created evidence. Such evidence must be rejected.

1. FTB Paid Investigators Intimidated Witnesses

FTB investigator William Savage intimidated Michael Fox, former Director of Operations at the Continental Hotel. Mr. Fox testified under oath that Mr. Savage **intimidated and threatened** him to obtain a statement. (Fox Affidavit, March 6, 2012, ¶¶ 8-14.) Mr. Fox stated that Mr. Savage misrepresented that he was connected with the IRS, that Mr. Savage was investigating Mr. Fox for unpaid tax liabilities, that Mr. Savage stalked Mr. Fox and his sister by repeatedly calling them to obtain a statement from Mr. Fox, that Mr. Savage intimidated Mr. Fox, that Mr. Fox only agreed to provide a statement to get Mr. Savage to stop aggressively

harassing him, and that Mr. Savage demanded a statement confirming that Mr. Hyatt could not have stayed at the Continental Hotel. (Fox Affidavit, March 6, 2012, ¶¶ 8-14.)

In particular, Mr. Fox testified:

Mr. Savage told me that Mr. Hyatt could not possibly have stayed at the Continental like he said that he did. Mr. Savage sent me a packet of papers from the Michelina Hecht transcript. He told me that this transcript was the crux of the whole case. He asked me to write a letter telling him reasons why Mr. Hyatt could not have stayed at the Continental. I was very concerned that Mr. Savage would get the FTB and the IRS to audit me because I owed the IRS some money. Mr. Savage was very pushy and aggressive about asking for the letter. I was very intimidated by his aggressiveness. Thus, I agreed to do what he asked me to do. He dictated over the telephone the statements that he wanted me to make about Mr. Hyatt in the letter and I wrote them down. I then wrote the letter dated February 19, 2011 and emailed a copy and mailed a signed copy to him. The only thing that I did not do that he asked me to do is to sign the letter under penalty of perjury because I did not believe the statements that Mr. Savage pushed me into writing.

(Fox Affidavit, March 6, 2012, ¶ 10.)

Mr. Savage's strong-arm tactics to intimidate Mr. Fox and coerce a written statement is appalling. However, what is most disconcerting is FTB's reaction after Mr. Hyatt filed Mr. Fox's declaration. It has been over three years since FTB was made aware of Mr. Savage's misconduct. FTB has **condoned** Mr. Savage's extreme misconduct by continuing to rely on Mr. Savage's declarations and has permitted Mr. Savage to file a new declaration calling over twenty of Mr. Hyatt's witnesses liars when it is absolutely apparent that it is Mr. Savage who is the liar. Threatening a witness and falsifying evidence are extremely serious issues, yet FTB just ignored the issues and continued its single-minded plan to "get" Mr. Hyatt at any cost, even if that cost is using illegal strong arm tactics.

In fact, FTB fully embraced Mr. Savage and his tactics because FTB filed with its RSABs an amazing declaration signed by Mr. Savage, in which Mr. Savage (and FTB) accused the victim, Mr. Fox, of "childish, name-calling & kindergarten-like comments regarding his perceived impressions of me. . . ." (Savage Decl., Nov. 20, 2012, FTB Ex. JJ, Tab 1 p. 2.)

FTB is the tax agency charged with administering all of California's income taxes. Incredibly, its only response to these serious charges was to accuse the victim (Mr. Fox) of making "baseless ad hominem attacks concerning Mr. Savage." (FTB Attachment E, p. 150.) How does FTB **know** Mr. Fox's statements are "baseless?" FTB has no way of knowing Mr.

Fox's statements are baseless because it did not independently investigate Mr. Fox's very serious claims against its own private investigator. As noted, FTB did **not** conduct any investigation into Mr. Fox's statements of harassment and intimidation. Instead, FTB went on the attack. FTB claimed that Mr. Fox's fear of a trumped up tax audit was unreasonable because he was an Iowa resident. (FTB Attachment E p. 150 fn 879.) However, FTB's claim is disingenuous. Mr. Fox stated that he had IRS tax issues and that Mr. Savage led him to believe he was with the IRS and could make the IRS audit Mr. Fox. (Fox Affidavit, March 6, 2012, ¶ 2.)

In addition, rather than conduct an investigation, FTB simply stands by its paid investigator, stating that Mr. Savage "refutes such claims and stands by every statement made under in his previous declaration including receipt of Mr. Fox's February 19, 2011 unsolicited letter." (FTB Attachment E, p. 151.) The arrogance and disregard for any sense of its public role as a state tax agency that FTB demonstrates in connection with Mr. Fox and Mr. Savage is extremely troubling. To be clear, FTB's agent is accused of intimidation, harassment, and extortion of a witness. FTB cannot dismiss the claim so easily.

Similarly, David Stratton testified during his deposition that he was interviewed by FTB investigator Savage and FTB outside counsel James Bradshaw. He stated that during the interview that he felt Mr. Savage and Mr. Bradshaw wanted him to cooperate with FTB and that if he did not cooperate with FTB, there would be "some consequence" that would flow from that. (David Stratton Deposition Transcript pp. 55 (FTB Ex. KK p. 531) (discussing threats made by Mr. Savage).

Q: After the meeting with the Franchise Tax Board with Mr. Bradshaw and Mr. Savage, did you feel a level of intimidation coming out of that meeting?

A: Yes, more from Mr. Savage. . . .

Id. at p. 63 (FTB Ex. KK. p. 533.)

Furthermore, both FTB paid investigators William Savage and Jake Dameron indicated they had government connections to intimidate witnesses. Mr. Savage told Mr. and Mrs. Chambers that he was associated with the Nevada Gaming Control Board. (Declaration of Jack Chamber, January 9, 2012, ¶ 15; Declaration of Pam Chambers, January 9, 2012, ¶ 15; *see also* Declaration of Ira Levy, May 9, 2012, ¶ 5, Annex XXV, Ex. 47.) Mr. Dameron told Mr. and Mrs. Zuzak that if they did not tell him everything he wanted to know, he would have them

audited. (Supplemental Affidavit of Robert V. Zuzak, April 4, 2012, ¶ 7, Annex XXV, Ex. 94; Affidavit of Delsie Zuzak, April 4, 2012, ¶ 4, Annex XXV, Ex. 93.)

The bottom line is that a number of witnesses have come forward and stated under oath that FTB's paid investigators intimidated them and engaged in misconduct and FTB's only response is to argue the witnesses are lying. That is truly outrageous conduct by FTB.

2. FTB Paid Investigator Savage's Prior History Of Fraud And Deceit Destroys His Credibility, And His Testimony Must Be Rejected

FTB investigator Savage has a long history of fraud, deceit, and intimidation, and he has engaged in the same type of misconduct in these appeals. His testimony cannot be trusted and should be rejected. "Deceit, fraud, cheating or stealing are universally regarded as conduct which reflects adversely on a man's honesty and integrity." *People v. Muldrow*, 202 Cal. App. 3d 636, 644 (1988)) (internal quotations omitted).

That FTB is relying heavily on Mr. Savage's fabricated testimony implicates FTB directly in Mr. Savage's fraud, deceit and intimidation.

➡ A total of 15 witnesses have filed affidavits under penalty of perjury stating that Mr. Savage misstated their statements or fabricated statements. Testimonial Topic Table, Ex. T076, T081. The direct testimony of these witnesses is overwhelming evidence of Mr. Savage's dishonesty. A complete list of Mr. Savage's false statements is set forth at "11_Table_of_Savage_Statements" in the 02 folder of Hyatt's folder structure -- "Table Of False Declaration Statements Made by William Savage"; and "11A_Supplemental_Table_of_Savage_False_Statements" in the 02 folder of Hyatt's folder structure -- "Supplemental Table Of False Declaration Statements Made by William Savage."

Mr. Savage's only response is to accuse Mr. Hyatt's witnesses of lying. FTB's Exhibit JJ, Tab 52, 11/20/12 Declaration of William L. Savage. It is beyond credible to argue that unrelated witnesses with no stake in the outcome of these appeals would all agree to make false statements as Mr. Savage contends. There is simply no motive for these witnesses to do that. However, there is enormous motive for Mr. Savage to fabricate testimony.

First, he is being paid to generate evidence for FTB. To be clear, Mr. Savage is being paid by FTB or FTB's agents, and he is providing affidavit in these appeals supporting FTB. That presents a huge conflict of interest and risk of bias.

Second, Mr. Savage has a long history of fraud and deceit. Mr. Savage's former wife, Mary Gomez (formerly known as Mary Savage) and former step-daughter, Martha Mims, have submitted declarations under oath that recounts Mr. Savage's history of fraud and deceit. In Ms. Gomez's declaration she states:

- “Bill Savage was dishonest in his tax filings. This issue came to light in our divorce proceeding. Bill Savage amended his IRS tax returns to show some \$95,000 in previously unreported income over a period of 1995 to 1999. The judge in the divorce proceeding made a finding of fact that Bill Savage committed tax fraud. The judge's words referencing Bill Savage were: "In either event, his acts were sufficiently intentional and fraudulent to warrant this Court finding that actual harm and injustice would be done to Plaintiff were she required to bear this additional tax burden." *Mary Savage v. William Savage*, Decision After Trial, In the Family Division in the Second Judicial District Court for the State of Nevada In and For The County of Washoe (July 17, 2001).” (Mary Gomez Declaration, September 25, 2015 ¶ 6.)
- “Bill Savage lost his job with the Nevada Gaming Commission because of his dishonesty. From 1977 until December 30, 1980, Bill Savage was employed by the Nevada Gaming Commission, a Nevada government job. From about 1965 to 1980 I was employed by United Airlines. About 1980, Bill Savage and I lost our jobs about the same time because of Bill Savage's "submittal of false and fraudulent travel claims", Letter dated December 22, 1980, to Bill Savage from Ray H. Koon, Chief of Investigations of the Nevada Gaming Commission. A copy of the December 22, 1980, Koon letter is attached hereto in Exhibit 3. Bill Savage lost his job with the Nevada Gaming Commission and I lost my job with United Airlines. Bill Savage told me in early 1981 that he had resigned from the Nevada Gaming Commission as an alternative to being potentially fired for committing fraud.” (Mary Gomez Declaration, September 25, 2015 at ¶ 10.)
- “In 1980, I learned from Bill Savage that he was under investigation for fraud because he had charged the Nevada Gaming Commission for airline tickets although he had actually travelled for nearly free as my spouse because I was employed by United Airlines. He had purchased airline tickets, billed the Nevada Gaming Commission for the purchased tickets, gotten a refund on those tickets and then travelled for nearly free as my spouse because I was employed by United Airlines. Bill Savage's fraud was described in a letter dated December 22, 1980, to Bill Savage from Ray H. Koon, Chief of Investigations of the Nevada Gaming Commission.
...

The letter continues to list three additional instances of fraud by Bill Savage in which he travelled nearly for free as my spouse and then billed the Nevada Gaming Commission for the airfare. I did not participate in

this scheme by Bill Savage to defraud the Nevada Gaming Commission. Nevertheless, I was fired by United Airlines because of his fraud. I gave Bill Savage access to my passes as a United Airlines employee but I did not always know when he used them and I did not know that he fraudulently charged the Gaming Commission for airline travel when he flew on a United Airlines pass. Mr. Koon's letter offers Bill Savage a chance to meet on December 30, 1980, to respond to the charges. Bill Savage resigned on December 30, 1980." (Mary Gomez Declaration, September 25, 2015 at ¶ 11.)

- Bill Savage lost his job with the Nevada State Industrial Insurance System (the "SIIS") because of his dishonesty. In 1982, after resigning from the Nevada Gaming Commission, Bill Savage was employed by the SIIS from September 1982 through January 3, 1983. In an SIIS Interoffice Memorandum dated 21 December 1982, from Jo Gray to Bill Savage, Bill Savage was terminated effective Monday, January 3, 1982 [sic: 1983]. A copy of the Gray Interoffice Memorandum is attached hereto in Exhibit 4. About 1982, when Bill Savage lost his job with the SIIS he was "moonlighting" in his private investigator business. I later learned he was fired from the SIIS for using the SIIS computers to get confidential information about persons that he was investigating for his private investigator business. I knew that this was particularly serious because the SIIS records were very confidential. (Mary Gomez Declaration, September 25, 2015 at ¶ 12.)

In addition, Ms. Mims, Mr. Savage's former step-daughter, testified that Mr. Savage used her to improperly obtain credit reports on individuals for his private investigation business. (Martha Mims Declaration, June 10, 2015 ¶ 4.) A more complete description of Mr. Savage's fraud and dishonesty is set forth in Table of William Savage's Fraud and Dishonesty.

The foregoing direct testimony shines a bright light on Mr. Savage's character and, more specifically, his propensity for dishonest behavior. He lacks professional integrity and cannot be trusted to present honest testimony in these appeals. Yet, FTB relies heavily on Mr. Savage and has the gall to claim that Mr. Hyatt and his witnesses are all liars based, in very large part, on the testimony of a discredited and dishonest investigator.

Third, Mr. Savage admitted to paying cash for witness testimony as part of his private investigator business.

"Bill Savage would use cash to pay witnesses and informants as part of his private investigation practice. See the Deposition of William Savage in *Savage v. Savage*, April 12, 2001, pp. 77:8 to 84. An excerpt of the testimony of Bill Savage is attached hereto in Exhibit 5. Bill explained to me that he would bill the clients for these cash expenditures and he would be paid by his clients 'no questions asked.' Bill Savage testified that he

used cash to pay informants and that he did not keep any records of his use of cash ("when you buy information from sources, you don't keep records and you don't receive receipts" (pages 77:11-78:2, 79:3-6, 82:17-83:5))."

Mary Gomez Declaration, September 25, 2015, ¶ 14.

Even FTB's Nevada attorney admitted to paying Mr. Savage to reimburse him for paying cash for witness testimony.

Pat Lundvall testified that she and her firm reimbursed Bill Savage's use of cash to pay for "information from non-public sources." See the court video recording in *Savage v. Savage*, April 18, 2001. A transcribed excerpt of Pat Lundvall's testimony follows"

Mary Gomez Declaration, September 25, 2015, ¶ 15.

Fourth, Mr. Savage has a long history of working with FTB's Nevada counsel, in particular FTB's lead counsel Pat Lundvall. He has a strong motive to keep his regular client happy.

Bill Savage was a business acquaintance and social friend of Pat Lundvall. They would dine together socially and exchange gifts that included flowers and stuffed animals.

Mary Gomez Declaration, September 25, 2015, ¶ 16.

Finally, Mr. Savage is prone to violence, including spousal abuse and domestic violence. This is directly relevant to the reasonableness of the many witnesses who have testified that they felt intimidated and threatened by Mr. Savage.

Bill Savage had a violent temper, particularly when he was under the influence of alcohol. He committed spousal abuse and domestic violence against my two daughters Martha Mims and Mary Ann Mims, my son Mark and me.

Mary Gomez Declaration, September 25, 2015, ¶ 7.

Mr. Savage's past history of fraud and deceit and violence destroys his credibility and fully corroborates witness testimony that he mischaracterized their statements and they felt intimidated by Mr. Savage. He is a completely discredited witness. When witnesses step forward, with nothing to gain, and testify under oath that Mr. Savage misrepresented their statements, their testimony must be accepted over Mr. Savage's self-serving statements to the contrary. In sum, Mr. Savage's testimony should be given absolutely no weight.

That FTB offers Mr. Savage as a witness in these appeals raises very serious questions about FTB's credibility and integrity as well.

FTB reliance on declarations signed by its paid investigators is completely discredited. The investigators were nothing more than henchmen hired to intimidate witnesses and fabricate testimony. Any evidence touched by these investigators cannot be trusted and in any event, the most credible evidence of what a particular witness said is his or her actual affidavit, signed under penalty of perjury. Any claims of what these witnesses said, as stated by FTB's paid investigators, cannot be trusted.

3. FTB Attorney Pat Lundvall Also Intimidated And Harassed One Of Mr. Hyatt's Witnesses

FTB attorney Pat Lundvall contacted Mr. Walter Shoemaker by telephone on two occasions, in 2006 and in 2009. Each time that she called, Mr. Shoemaker was undergoing a health crisis. (Affidavit of Walter Shoemaker, December 8, 2009, ¶ 5, Annex XI, Ex. 22.) In 2006, he was recovering from a near fatal car accident, and in 2009, he had just been diagnosed as potentially having cancer and told he might require surgery. (*Id.* at ¶¶ 8, 10.) It was during these crises that Ms. Lundvall contacted Mr. Shoemaker and attempted to interview him about facts related to Mr. Hyatt. (*Id.* at ¶ 4.) On each occasion, Mr. Shoemaker notified Ms. Lundvall of his condition and made it clear that he did not wish to be bothered by her. Nonetheless, Ms. Lundvall pressed for information, and not wanting to be impolite, Mr. Shoemaker spoke to her despite his being under stress.

Ms. Lundvall's tactics of pressing a physically frail witness for information and presenting those alleged statements to your Board is outrageous. Critically, FTB did not ask Mr. Shoemaker to review a draft declaration or other document recounting his telephone calls with Ms. Lundvall. (*Id.* at ¶ 7.) If FTB had done so, Mr. Shoemaker would have asked his personal counsel to assist to ensure the facts are accurate. Instead, FTB attempts to pass off statements he denies making as credible and accurate. For example, Mr. Shoemaker states that he knew Mr. Hyatt was living in Las Vegas at his apartment but he occasionally picked up Grace Jeng and only Grace Jeng at the Las Vegas airport¹⁰ while Ms. Lundvall falsely states Mr. Shoemaker said he picked up Mr. Hyatt at the Las Vegas airport.¹¹

¹⁰ Affidavit of Walter Shoemaker, December 8, 2009, ¶ 9, Annex XI, Ex. 22.

¹¹ Affidavit of Pat Lundvall, ¶ 4, August 28, 2009, Exhibit 1 to Affidavit of Walter Shoemaker, December 8, 2009, Annex XI, Ex. 22.

D. FTB Acted In Bad Faith By Intentionally Filing Documents That A New York Court Had Prohibited From Disclosure

FTB's lack of diligence and disregard for Mr. Hyatt's rights are also demonstrated by its repeated attempts to sneak prohibited materials into its filings. It has attempted to defend such action by intentionally misstating the scope of the New York court orders to your Board by first contending that the court's order does not apply to the Philips documents already filed. FTB's contention was frivolous, and it abandoned the position.

In its fourth DVD containing its latest submission, because FTB has described and made arguments from documents that were prohibited from disclosure by the New York court orders and FTB has not removed or asked your Board to remove the unlawful disclosure, FTB has intentionally implicated your Board in its violation of the New York court orders. FTB's redactions and deletions are admissions that those FTB documents and arguments contain prohibited material.¹² Thus, after four successive filings of DVDs and five attempts to argue prohibited materials, FTB's submission before your Board still contains materials that was prohibited from disclosure by the New York court orders.

E. FTB Improperly Used An Overbroad Subpoena

FTB issuance of overbroad subpoenas to Philips and to two in-house Philips attorneys evidences bad faith. Mr. Hyatt was forced to litigate in New York court over the scope of the FTB's overbroad subpoenas, incurring unnecessary legal fees and delays in these proceedings. The New York court agreed with Mr. Hyatt that the subpoenas were overbroad and issued an order restricting the scope of FTB's subpoenas. *See Hyatt v State of Cal. Franchise Tax Bd.*, 105 A.D.3d 186, 962 N.Y.S.2d 282, 2013 N.Y. App. Div. LEXIS 1509 (N.Y. App. Div. 2d Dep't 2013) (affirming lower court's restrictions on the scope of FTB's subpoenas).

F. FTB Ignored Your Board's Orders Regarding Briefing Procedures

As set forth in Appellant's Motion to Strike, FTB in bad faith has not adhered to your Board staffs orders and directions regarding the filing of briefs in Mr. Hyatt's two appeals. See Appellant's Motion to Strike, originally filed on September 11, 2014 and refiled concurrently with Appellant's ASABs, ("Motion to Strike").

¹² See March 17, 2015, Letter from Robert Dunn to Grant Thompson, p. 2.

First, FTB improperly combined its briefing for both appeal years in violation of the directions set forth in your Board's letter dated June 13, 2014, which directed the parties to file additional briefs "one for each appeal," and to file a brief "for each appeal." See Motion to Strike, pp. 2-8.

Second, FTB's 1991 RSAB and 1992 RSAB ignored the 60-page limit for each brief, which your Board's staff set in a letter dated June 13, 2014. FTB circumvented this page limit by including additional arguments in addition to its two RSABs in tables and attachments. These additional documents contain substantial additional arguments and therefore constitute briefing. RTA 5511(g) (defining a "brief" as "a written document that contains an argument supporting a parties [sic] position . . ."). See Motion to Strike, pp. 9-16. Therefore, FTB's Attachment A, Attachment E and Attachment F constitute improper briefing filed by FTB. In addition, FTB bypassed the page limit on briefing by adding mini-arguments on the face of numerous Philips documents. FTB in bad faith has completely circumvented the page limits set by your Board's staff and thereby imposed an enormous burden on Mr. Hyatt to respond to all of FTB's briefing arguments.

Third, FTB has improperly used its RSAB filing to re-brief its entire case in violation of your Board's rules for tax appeals. See Motion to Strike, pp. 16-22. These appeals were filed in January 2008. FTB filed its Opening Briefs on September 15, 2009, and its Reply Briefs on June 30, 2011. At that point, briefing should have been completed. However, at what should have been the end of briefing, FTB issued the Philips subpoena, 14 years after the end of the audit and 3 years after these appeals were filed. FTB could have requested these documents at any time. It has never explained why it waited so long to subpoena the documents. Then, based on the newly acquired Philips documents, FTB re-briefed its entire case. Thus, FTB's actions contributed to the substantial delays and resulted in new rounds of briefing. FTB's actions have also greatly prejudiced Mr. Hyatt because FTB's long delays have resulted in lost evidence that would have been available had FTB acted more promptly.

FTB's filing also prejudices Mr. Hyatt's Due Process rights. FTB's RSABs are based, in part, on documents that it could have requested at the time of the audit, 20 years ago, but delayed for almost two decades before doing so. In addition, Mr. Hyatt's Due Process rights are prejudiced because FTB for the first time produces and relies on non-Philips documents that it has had in its possession for years but did not produce or rely on until these RSABs – one

example is an unsigned and undated interview memo prepared by one of FTB's investigators, Ms. Boggs, in 2009. Ms. Boggs is now deceased and can no longer explain her unsigned and undated interview memo. Mr. Hyatt's Due Process rights are also prejudiced because he must respond to new FTB arguments made almost 25 years after the years at issue when many witnesses and much evidence is no longer be available. Had these FTB documents and arguments been presented in a timely manner, the rebuttal evidence could have been preserved. FTB's tactics severely prejudice Mr. Hyatt's Due Process rights and his rights under your Board's Rules for Tax Appeals. Allowing the filing of FTB's RSABs will make your Board complicit in FTB's continued fraud, intentional infliction of emotional distress, and violation of due process rights.

FTB's misconduct in its briefing also prejudices Mr. Hyatt because he has been forced to expend enormous resources to prepare a full response to FTB's RSABs and related documents. Because FTB essentially re-briefed its entire case and put into the record thousands of new documents, Mr. Hyatt has been forced to respond in kind, long after he had already expended enormous resources to file the regular briefs in his appeals.

For these additional reasons, FTB's misconduct has prejudiced Mr. Hyatt and evidences bad faith by FTB in these proceedings.

* * *

FTB cannot be trusted because it has engaged in serious misconduct against Mr. Hyatt, including fraud, intentional infliction of emotional distress, bad faith, witness intimidation, offering false testimony, and misstating the evidence.

V. Conclusion

FTB has engaged in extreme misconduct directed at Mr. Hyatt. A Nevada jury found FTB liable to Mr. Hyatt for fraud, intentional infliction of emotional distress and bad faith. In addition, as set forth above, FTB has continued to engaged in misconduct by misrepresenting the evidence and creating false evidence. There is no basis for the tax assessments when the government has engaged in such outrageous misconduct. Given all of these improper acts, FTB should have withdrawn its assessments. At a minimum, FTB's extreme misconduct destroys FTB's credibility. FTB's misconduct also invalidates the assessments because they are not based on a determination of the correct tax; rather, they are arbitrary assessments aimed at extorting money from Mr. Hyatt. Accordingly, your Board is empowered to and should reverse FTB's assessments.

EXHIBIT 6

EXHIBIT 6

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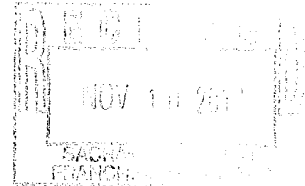
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Re: Appeal of Gilbert P. Hyatt
Case ID No. 435770
Tax Year 1991
Appellant's Second Additional Brief

Appeal of Gilbert P. Hyatt
Case ID No. 446509
Tax Year 1992
Appellant's Supplemental Brief

Dear Ms. Richmond:

Please find enclosed eight copies of Appellant's DVD containing Appellant's linked Second Additional Brief (1991), Appellant's linked Second Additional Brief (1992), Appellant's linked Concluding Summary (1991), and Appellant's linked Concluding Summary (1992), with supporting documentation and evidence, in the above two appeals. Each DVD contains the same material.

Please replace the DVD and the files and folders thereon that were filed on September 28, 2016, with the DVD transmitted herewith and the files and folders thereon.

The folders and files on the DVD attached hereto are the same folders and files that are on the DVD filed on September 28, 2016, with the addition that an Errata Table has been added to the DVD and the Folder Structure on the DVD has Acrobat links added thereto and has Acrobat "sticky notes" added thereto for inserting the errata corrections.

RJN261

ANTOLIN
L A W G R O U P

Joann Richmond
November 4, 2016
Page 2 of 2

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Edwin P. Antolin". The signature is fluid and cursive, with the first name "Edwin" and last name "Antolin" clearly distinguishable.

Edwin P. Antolin

Enclosures (8 DVDs)

cc: Bill Hilson, FTB counsel (one DVD by Priority Mail)

RJN262

ERRATA TABLE

FOR APPELLANT’S SECOND ADDITIONAL BRIEFING DOCUMENTS

APPELLANT’S DOCUMENT	PAGE: LINE(S)	DESCRIPTION OF CHANGE
1991 Concluding Summary	p. viii:13	Changed "Virginia W. Allen" to -- Virginia W. Allec --.
1991 Concluding Summary	p. 3:28	Changed "September 8, 2016" to -- September 6, 2016 --.
1991 Concluding Summary	p. 5:13	Changed "immediately below" to -- immediately above --.
1991 Concluding Summary	p. 8:29	Changed "August 15, 2010" to -- August 9, 2010 --.
1991 Concluding Summary	p. 9:29	Changed "Deposition Table 15" to -- Deposition Table 3 --.
1991 Concluding Summary	p. 11:23	Changed "pp. 10-13" to -- pp. 7.10 --.
1991 Concluding Summary	p. 13:25	Changed "Section II.B.7, p. 46" to -- Section II.A.7, p. 42 --.
1991 Concluding Summary	p. 14:21	Changed "Section II.C.8, pp. 27-31" to -- Section II.C.8, pp. 25-27 --.
1991 Concluding Summary	p. 15:28	Changed "Section II.E.3.e, p. 55" to -- Section II.E.3.f, p. 55 --.
1991 Concluding Summary	p. 15:29	Changed "Section II.E.3.e, p. 55" to -- Section II.E.3.g, p. 55 --.
1991 Concluding Summary	p. 16:4	Changed "in his Las Vegas apartment" to -- in his Las Vegas apartment or receiving telephone calls from Mr. Hyatt from his Las Vegas apartment in October 1991 --.
1992 Concluding Summary	p. viii:13	Changed "Virginia W. Allen" to -- Virginia W. Allec --.
1992 Concluding Summary	p. 1:29	Changed "1.8.10" to -- 1.9.10 --.
1992 Concluding Summary	p. 3:10	Changed "pp. 12-16" to -- pp. 21-24 --.
1992 Concluding Summary	p. 3:28	Changed "Section IV.A" to -- Section IV --.
1992 Concluding Summary	p. 5:2	Changed "1992 AAB" to -- 1992 ASB --.
1992 Concluding Summary	p. 5:29	Changed "1.8.10" to -- 1.9.10 --.
1992 Concluding Summary	p. 10:26	Changed "Testimonial Topics" to -- Updated Testimonial Topics --.
1992 Concluding Summary	p. 12:29	Changed "094055" to -- 04055 --.
1992 Concluding Summary	p. 15:17	Changed "199" to -- 1992 --.
1992 Concluding Summary	p. 17:8	Changed "October 21, 1991 (1991 ASAB, Section 1.5.6.2)" to -- October 21, 1991 --.
1991 ASAB	p. x:13	Changed "Virginia W. Allen" to -- Virginia W. Allec --.
1991 ASAB	p. 3:28	Changed "Testimonial Topics" to -- Updated Testimonial Topics --.

1991 ASAB	p. 5:28	Changed "Testimonial Topics" to -- Updated Testimonial Topics --.
1991 ASAB	p. 11:29	Changed "18, 23, 13, respectively" to -- 18, 23, 24, 13, respectively --.
1991 ASAB	p. 17:28	Changed "1.3.10, 1.3.11, 1.3.12, and 1.3.13" to -- 1.3.10, 1.3.11, and 1.3.12 --.
1991 ASAB	p. 17:29	Changed "1.3.10, 1.3.11, 1.3.12, and 1.3.13" to -- 1.3.10, 1.3.11, and 1.3.12 --.
1991 ASAB	p. 36:10	Changed "Sections 1.5.1, 0, 1.6" to -- Sections 1.5.1, 1.5.2, 1.6 --.
1991 ASAB	p. 51:22	Changed "Sections 1.4" to -- Sections 1.5 --.
1991 ASAB	p. 52:28	Changed "Deposition Table 15" to -- Deposition Table 3 --.
1991 ASAB	p. 56:28	Changed "see also" to -- see also Updated Testimonial Topics, Exs. T007, T006, T102, T114, T119, T127, T008, T009, T018, T021, T128, T019, T022-T025, T135, T136, T040, T138, T140-T143, T045, T044, T046, T047, and T049 --.
1991 ASAB	p. 56:29	Changed "Updated Testimonial Topics, Exs. T007, T006, T102, T114, T119, T127, T008, T009, T018, T021, T128, T019, T022-T025, T135, T136, T040, T138, T140-T143, T045, T044, T046, T047, and T049" to -- Hyatt's 1991 Protest Supplement Letter, May 31, 2001, pp. 184-187. --.
1991 ASAB	p. 57:23	Changed "Section 1.4" to -- Section 1.5 --.
1991 ASAB	p. 57:25	Changed "Sections 1.4" to -- Sections 1.5 --.
1991 ASAB	p. 58:14	Changed "Attachment A" to -- Exhibit A --.
1991 ASAB	p. 58:15	Changed "Attachment A" to -- Exhibit A --.
1992 ASAB	p. ix:15	Changed "Virginia W. Allen" to -- Virginia W. Allec --.
1992 ASAB	p. 1:6	Changed "Testimonial Topics" to -- Updated Testimonial Topics --.
1992 ASAB	p. 1:25	Changed "Testimonial Topics" to -- Updated Testimonial Topics --.
1992 ASAB	p. 3:28	Changed "August 15, 2010" to -- August 9, 2010 --.
1992 ASAB	p. 6:16	Changed "Sections 1.1" to -- Sections 1.5 --.
1992 ASAB	p. 12:25	Changed "Testimonial Topics" to -- Updated Testimonial Topics --.
1992 ASAB	p. 14:29	Changed "U.P." to -- U.S. --.
1992 ASAB	p. 14:29	Changed "2016 CDE Aff." to -- 2016 Post-DP CDE Aff. --.
1992 ASAB	p. 16:4-5	Changed "on the following page <i>infra</i> (1991 ASAB, Section 1.8.2)" to -- <i>infra</i> --.
1992 ASAB	p. 16:28	Changed "Testimonial Topics" to -- Updated Testimonial Topics --.
1992 ASAB	p. 17:2	Changed "Sections 1.1" to -- Sections 1.5 --.
1992 ASAB	p. 19 (October 1, 1991)	Changed "Met with McCaffrey & Bailey" to -- Met with McCaffrey --.
1992 ASAB	p. 27:28	Changed "1991 ASAB" to -- 1992 ASAB --.
1992 ASAB	p. 29:25	Changed "Testimonial Topics" to -- Updated Testimonial Topics --.
1992 ASAB	p. 29:27	Changed "1991 ASAB" to -- 1992 ASAB --.
1992 ASAB	p. 31:27	Changed "Rebuttal to FTB Att. A/F, Section I. A. See also Hyatt's 2016 Supp. CDE Aff., Exhibits CDE-ST002 and CDEST003, ¶¶ 153 to 243; Hyatt's 2016 Post-CDE Aff, ¶¶ 546 to 949." to -- Rebuttal to FTB Att. A/F, Section I.A., April 1, 1992 and April 2, 1992. --.
1992 ASAB	p. 33:26	Changed "Testimonial Topics" to -- Updated Testimonial Topics --.
1992 ASAB	p. 34:26	Changed "Testimonial Topics" to -- Updated Testimonial Topics --.
1992 ASAB	p. 36:25	Changed "Testimonial Topics" to -- Updated Testimonial Topics --.
1992 ASAB	p. 38:29	Changed "FTB_Philips 0004634-0003638" to -- FTB_Philips 0004633-0004638 --.
1992 ASAB	p. 41:13	Changed "Rev. & Tax § 17952" to -- Rev. & Tax Code § 17952 --.
1992 ASAB	p. 41:28	Changed "Rev. & Tax § 17952" to -- Rev. & Tax Code § 17952 --.
1992 ASAB	p. 42:16	Changed "Rev. & Tax § 17952" to -- Rev. & Tax Code § 17952 --.
1992 ASAB	p. 45:29	Changed "§17952(a)" to -- §17952(c) --.

1992 ASAB	p. 46:18	Changed "Rev. & Tax § 17952" to -- Rev. & Tax Code § 17952 --.
1992 ASAB	p. 46:21	Changed "Mr. Hyatt any rights to have a licensing business" to -- Mr. Hyatt has a licensing business --.
1992 ASAB	p. 49:28	Changed "FTB_Philips 0000510" to -- FTB_Philips 0000610 --.
1992 ASAB	p. 52:29	Changed "FTB_Philips 0000675-000682" to -- FTB_Philips 0000675-0000677 --.
1992 ASAB	p. 55:26	Changed "FTB_Philips 0004634-0003638" to -- FTB_Philips 0004633-0004638 --.
1992 ASAB	p. 55:28	Changed "FTB_Philips 0004634-0003638" to -- FTB_Philips 0004633-0004638 --.
1992 ASAB	p. 56:29	Changed "FTB_Philips 0004634-0003638" to -- FTB_Philips 0004633-0004638 --.
Rebuttal to FTB Att. A/F (September 1991)	p. 35	Changed "off" to -- of--.
Rebuttal to FTB Att. A/F (September 1991)	p. 36	Changed "off" to -- of--.
Rebuttal to FTB Att. A/F (September 1991)	p. 37	Changed "off" to -- of--.
Rebuttal to FTB Att. A/F (September 1991)	p. 37	Changed "that "Grace Jeng acquired control of the Jennifer Circle house from Gil Hyatt,"" to -- that Grace Jeng acquired control of the Jennifer Circle house from Gil Hyatt, --.
Rebuttal to FTB Att. A/F (September 1991)	p. 43	Changed "0001112-0001116" to -- 0001112.--.
Rebuttal to FTB Att. A/F (September 1991)	p. 61	Changed "P530 and 539-540" to -- P00530 and P00539-P00540--.
Rebuttal to FTB Att. A/F (September 1991)	p.74	Changed "[number not legible]" to -- 0005203 --.
Rebuttal to FTB Att. A/F (September 1991)	p. 81	Changed "5(c)" to -- 5.3(c)--.
Rebuttal to FTB Att. A/F (September 1991)	p. 82	Changed "[illegible number]" to -- 0005203 --.
Rebuttal to FTB Att. A/F (September 1991)	p. 84	Changed "[illegible number]" to -- 0005203 --.
Rebuttal to FTB Att. A/F (September 1991)	p. 86	Changed "[illegible number]" to -- 0005203 --.
Rebuttal to FTB Att. A/F (September 1991)	p. 89	Changed "[illegible number]" to -- 0005203 --.
Rebuttal to FTB Att. A/F (September 1991)	p. 90	Changed "[illegible number]" to -- 0005203 --.
Rebuttal to FTB Att. A/F (September 1991)	p. 114	Changed "F 05053-05176" to -- FTB 05053-FTB 05176 --.
Rebuttal to FTB Att. A/F (September 1991)	p. 115	Changed "See Rebuttal to FTB Attachment A (Revised), Section II.E., August 29, 1991, below." to -- See Section II.E., August 29, 1991, below. --.
Rebuttal to FTB Att. A/F (September 1991)	p. 118	Changed "F 05053-05176" to -- FTB 05053-FTB 05176 --.
Rebuttal to FTB Att. A/F (September 1991)	p. 121	Changed "See Rebuttal to FTB Attachment A (Revised), Section II.E., August 29, 1991, below." to -- See Section II.E., August 29, 1991, below. --.
Rebuttal to FTB Att. A/F (September 1991)	p. 122	Changed "See Rebuttal to FTB Attachment A (Revised), Section II.E., August 29, 1991, below." to -- See Section II.E., August 29, 1991, below. --.
Rebuttal to FTB Att. A/F (September 1991)	p. 124	Changed "See Rebuttal to FTB Attachment A (Revised), Section II.E., August 29, 1991, below." to -- See Section II.E., August 29, 1991, below. --.

Rebuttal to FTB Att. A/F (September 1991)	p. 125	Changed "F 05053-05176" to -- FTB 05053-FTB 05176 --.
Rebuttal to FTB Att. A/F (September 1991)	p. 127	Changed "F 05053-05176" to -- FTB 05053-FTB 05176 --.
Rebuttal to FTB Att. A/F (September 1991)	p. 127	Changed "See Rebuttal to FTB Attachment A (Revised), Section II.E., August 29, 1991, below." to -- See Section II.E., August 29, 1991, below. --.
Rebuttal to FTB Att. A/F (September 1991)	p. 132	Changed "5488-5489" to -- FTB_Philips 0005488-0005489 --.
Rebuttal to FTB Att. A/F (September 1991)	p. 138	Changed "0005534" to -- 0005535 --.
Rebuttal to FTB Att. A/F (September 1991)	p. 146	Changed "See Rebuttal to FTB Attachment A (Revised), Section II.E., August 29, 1991, below." to -- See Section II.E., August 29, 1991, below. --.
Rebuttal to FTB Att. A/F (September 1991)	p. 147	Changed "See Rebuttal to FTB Attachment A (Revised), Section II.E., August 29, 1991, below." to -- See Section II.E., August 29, 1991, below. --.
Rebuttal to FTB Att. A/F (September 1991)	p. 164	Changed "See Rebuttal to FTB Attachment A (Revised), Section II.E., August 29, 1991, below." to -- See Section II.E., August 29, 1991, below. --.
Rebuttal to FTB Att. A/F (September 1991)	p. 165	Changed "FTB_Philips 0001296-0001298" to -- FTB_Philips 0001296-0001297 --.
Rebuttal to FTB Att. A/F (September 1991)	p. 169	Changed "See Rebuttal to FTB Attachment A (Revised), Section II.E., August 29, 1991, below." to -- See Section II.E., August 29, 1991, below. --.
Rebuttal to FTB Att. A/F (September 1991)	p.173	Changed "F 05053-05176" to -- FTB 05053-FTB 05176 --.
Rebuttal to FTB Att. A/F (September 1991)	p. 173	Changed "See Rebuttal to FTB Attachment A (Revised), Section II.E., August 29, 1991, below." to -- See Section II.E., August 29, 1991, above. --.
Rebuttal to FTB Att. A/F (September 1991)	p. 176	Changed "F 05053-05176" to -- FTB 05053-FTB 05176 --.
Rebuttal to FTB Att. A/F (September 1991)	p. 176	Changed "See Rebuttal to FTB Attachment A (Revised), Section II.E., August 29, 1991, above." to -- See Section II.E., August 29, 1991, above. --.
Rebuttal to FTB Att. A/F (September 1991)	p. 178	Changed "See Rebuttal to FTB Attachment A (Revised), Section II.E., August 29, 1991, above." to -- See Section II.E., August 29, 1991, above. --.
Rebuttal to FTB Att. A/F (September 1991)	p. 179	Changed "See Rebuttal to FTB Attachment A (Revised), Section II.E., August 29, 1991, above." to -- See Section II.E., August 29, 1991, above. --.
Rebuttal to FTB Att. A/F (September 1991)	p. 182	Changed "See Rebuttal to FTB Attachment A (Revised), Section II.E., August 29, 1991, above." to -- See Section II.E., August 29, 1991, above. --.
Rebuttal to FTB Att. A/F (September 1991)	p. 205	Changed "[Not legible]" to -- 0001297 --.
Rebuttal to FTB Att. A/F (September 1991)	p. 206	Changed "[Not legible]" to -- 0001297 --.
Rebuttal to FTB Att. A/F (September 1991)	p. 209	Changed "See Rebuttal to FTB Attachment A (Revised), Section II.E., August 29, 1991, above." to -- See Section II.E., August 29, 1991, above. --.
Rebuttal to FTB Att. A/F (September 1991)	p. 225	Changed "FTB_Philips 0000145-0000151 (FTB_Philips 0002553-0002556)" to -- FTB_Philips 0000145-0000151. --.
Rebuttal to FTB Att. A/F (September 1991)	p. 228	Changed "See Rebuttal to FTB Attachment A (Revised), Section II.E., August 29, 1991, above." to -- See Section II.E., August 29, 1991,

		above. --.
Rebuttal to FTB Att. A/F (September 1991)	p. 228	Changed "F 05053-05176" to -- FTB 05053-FTB 05176 --.
Rebuttal to FTB Att. A/F (September 1991)	p. 246	Changed "¶¶ 3," to -- ¶¶ 8, --.
Rebuttal to FTB Att. A/F (September 1991)	p. 249	Changed "F 05053-05176" to -- FTB 05053-FTB 05176 --.
Rebuttal to FTB Att. A/F (September 1991)	p. 249	Changed "See Rebuttal to FTB Attachment A (Revised), Section II.E., August 29, 1991, above." to -- See Section II.E., August 29, 1991, above. --.
Rebuttal to FTB Att. A/F (September 1991)	p. 259	Changed "See Rebuttal to FTB Attachment A (Revised), Section II.E., August 29, 1991, above." to -- See Section II.E., August 29, 1991, above. --.
Rebuttal to FTB Att. A/F (September 1991)	p. 261	Changed "See Rebuttal to FTB Attachment A (Revised), Section II.E., August 29, 1991, above." to -- See Section II.E., August 29, 1991, above. --.
Rebuttal to FTB Att. A/F (September 1991)	p. 263	Changed "See Rebuttal to FTB Attachment A (Revised), Section II.E., August 29, 1991, above." to -- See Section II.E., August 29, 1991, above. --.
Rebuttal to FTB Att. A/F (September 1991)	p. 264	Changed "F 05053-05176" to -- FTB 05053-FTB 05176 --.
Rebuttal to FTB Att. A/F (September 1991)	p. 350	Changed "document 126" to -- document FTB_Philips 0000126 --.
Rebuttal to FTB Att. A/F (October 1991)	p. 72	Changed "November 12" to -- November 16 --.
Rebuttal to FTB Att. A/F (October 1991)	p. 87	Excerpts of Mr. Cameron's deposition transcript and the related exhibits cited herein will be provided upon request.
Rebuttal to FTB Att. A/F (October 1991)	p. 88	Changed "November 12" to -- November 16 --.
Rebuttal to FTB Att. A/F (October 1991)	p. 101	Changed "¶ 5" to --¶ 6 --.
Rebuttal to FTB Att. A/F (October 1991)	p. 105	Changed "¶ 3" to --¶ 4 --.
Rebuttal to FTB Att. A/F (October 1991)	p. 105	Changed "1:14-15" to -- 1:13-15 --.
Rebuttal to FTB Att. A/F (October 1991)	p. 114	Changed "November 12" to -- November 16 --.
Rebuttal to FTB Att. A/F (October 1991)	p. 144	Changed "(A 00536-00537536-537)" to -- (A00536-00537) --.
Rebuttal to FTB Att. A/F (October 1991)	p.182	Changed "H 021076" to -- H 021026 --.
Rebuttal to FTB Att. A/F (October 1991)	p. 243	Changed "1144" to -- 144 --.
Rebuttal to FTB Att. A/F (October 1991)	p. 306	Changed "EC 01493" to -- EC 01473 --.
Rebuttal to FTB Att. A/F (October 1991)	p. 314	Changed "a telephone call from Neil Ms. Cosgrove" to -- a telephone call from Ms. Cosgrove --.
Rebuttal to FTB Att. A/F (October 1991)	p. 364	Changed "0000596" to -- 0000595 --.
Rebuttal to FTB Att. A/F (October 1991)	p. 366	Changed "0000596" to -- 0000595 --.
Rebuttal to FTB Att. A/F (October 1991)	p. 500	Changed "¶ 23" to -- ¶ 130 --.
Rebuttal to FTB Att.	p. 578	Changed "00095-00010" to -- 00095-00101 --.

A/F (October 1991)		
Rebuttal to FTB Att. A/F (November 1991)	p. 11	Changed "FTB_Philips 0000595-0000635595-635" to -- FTB_Philips 0000595-0000635 --.
Rebuttal to FTB Att. A/F (November 1991)	p. 102	Changed "¶ 28" to -- ¶ 38--.
Rebuttal to FTB Att. A/F (November 1991)	p. 129	Changed "document 1110" to -- document H 01110 --.
Rebuttal to FTB Att. A/F (November 1991)	p. 170	Changed "Section I" to -- Section 1 --.
Rebuttal to FTB Att. A/F (November 1991)	p. 181	Changed "12100" to -- 12098 --.
Rebuttal to FTB Att. A/F (November 1991)	p. 187	Changed "12100" to -- 12098 --.
Rebuttal to FTB Att. A/F (November 1991)	p.279	Changed "GLR 02682" to -- GLR 02582--.
Rebuttal to FTB Att. A/F (November 1991)	p.285	Changed "GLR 02682" to -- GLR 02582--.
Rebuttal to FTB Att. A/F (November 1991)	p.290	Changed "GLR 02682" to -- GLR 02582--.
Rebuttal to FTB Att. A/F (November 1991)	p.293	Changed "GLR 02682" to -- GLR 02582--.
Rebuttal to FTB Att. A/F (November 1991)	p. 562	Changed "¶¶ 11-12" to -- ¶¶ 12-13--.
Rebuttal to FTB Att. A/F (November 1991)	p. 564	Changed "December 26, 2007, 1991 protest determination letter and the 1992 Notice of Action." to -- November 1, 2007 Protest Determination Letter and December 26, 2007, 1992 Notice of Action.--.
Rebuttal to FTB Att. A/F (December 1991)	p. 87	Changed "217:103" to -- 217:1-3 --.
Rebuttal to FTB Att. A/F (December 1991)	p. 125	Changed "Section I.A., December 10, 1991, below." to -- Section I.A., December 10, 1991, above. --.
Rebuttal to FTB Att. A/F (December 1991)	p. 127	Changed "GLR 03778, 03779" to -- FTB_Philips 0004934, FTB_Philips 0004731 --.
Rebuttal to FTB Att. A/F (December 1991)	p. 132	Changed "Section I.A., December 10, 1991, below." to -- Section I.A., December 10, 1991, above. --.
Rebuttal to FTB Att. A/F (December 1991)	p. 137	Changed "Section I.A., December 10, 1991, below." to -- Section I.A., December 10, 1991, above. --.
Rebuttal to FTB Att. A/F (December 1991)	p. 141	Changed "Section I.A., December 10, 1991, below." to -- Section I.A., December 10, 1991, above. --.
Rebuttal to FTB Att. A/F (December 1991)	p. 150	Changed "Section I.A., December 10, 1991, below." to -- Section I.A., December 10, 1991, above. --.
Rebuttal to FTB Att. A/F (December 1991)	p. 164	Changed "Section I.A., December 10, 1991, below." to -- Section I.A., December 10, 1991, above. --.
Rebuttal to FTB Att. A/F (December 1991)	p. 296	Changed "GLR 03779" to -- FTB_Philips 0004731 --.
Rebuttal to FTB Att. A/F (December 1991)	p. 296	Changed "GLR 03778" to -- FTB_Philips 0004934 --.
Rebuttal to FTB Att. A/F (December 1991)	p. 297	Changed "GLR 03779" to -- FTB_Philips 0004731 --.
Rebuttal to FTB Att. A/F (December 1991)	p. 297	Changed "GLR 03778" to -- FTB_Philips 0004934 --.
Rebuttal to FTB Att. A/F (December 1991)	p. 298	Changed "GLR 03779" to -- FTB_Philips 0004731 --.

Rebuttal to FTB Att. A/F (December 1991)	p. 298	Changed "GLR 03778" to -- FTB_Philips 0004934 --.
Rebuttal to FTB Att. A/F (December 1991)	p. 300	Changed "GLR 03779" to -- FTB_Philips 0004731 --.
Rebuttal to FTB Att. A/F (December 1991)	p. 300	Changed "GLR 03778" to -- FTB_Philips 0004934 --.
Rebuttal to FTB Att. A/F (December 1991)	p. 390	Changed "595-o635" to -- FTB_Philips 0000595-0000635 --.
Rebuttal to FTB Att. A/F (December 1991)	p. 409	Changed "GLR 03778" to -- FTB_Philips 0004934 --.
Rebuttal to FTB Att. A/F (December 1991)	p. 418	Changed "GLR 03778" to -- FTB_Philips 0004934 --.
Rebuttal to FTB Att. A/F (January 1992)	p. 20	Changed "¶¶ 53-54" to -- ¶ 54--.
Rebuttal to FTB Att. A/F (January 1992)	p. 170	Changed "¶ 134¶." to -- ¶ 134.--.
Rebuttal to FTB Att. A/F (January 1992)	p. 174	Changed "¶ 134¶." to -- ¶ 134.--.
Rebuttal to FTB Att. A/F (January 1992)	p. 193	Changed both "H 02603" to -- H 02693 --.
Rebuttal to FTB Att. A/F (January 1992)	p. 253	Changed "EC 01493" to -- EC 01473 --.
Rebuttal to FTB Att. A/F (January 1992)	p. 255	Changed "EC 01493" to -- EC 01473 --.
Rebuttal to FTB Att. A/F (January 1992)	p. 260	Changed "EC 01493" to -- EC 01473 --.
Rebuttal to FTB Att. A/F (January 1992)	p. 264	Changed "EC 01493" to -- EC 01473 --.
Rebuttal to FTB Att. A/F (January 1992)	p. 267	Changed "EC 01493" to -- EC 01473 --.
Rebuttal to FTB Att. A/F (January 1992)	p. 281	Changed "EC 01493" to -- EC 01473 --.
Rebuttal to FTB Att. A/F (January 1992)	p. 302	Changed "EC 01493" to -- EC 01473 --.
Rebuttal to FTB Att. A/F (January 1992)	p. 324	Changed "H 012353" to -- H 013253 --.
Rebuttal to FTB Att. A/F (January 1992)	p. 324	Remove both "HL 015650".
Rebuttal to FTB Att. A/F (January 1992)	p. 325	Remove "H 012069".
Rebuttal to FTB Att. A/F (January 1992)	p. 336	Remove both "HL 015650".
Rebuttal to FTB Att. A/F (January 1992)	p. 337	Remove "H 012069".
Rebuttal to FTB Att. A/F (January 1992)	p. 425	Changed "EC 01493" to -- EC 01473 --.
Rebuttal to FTB Att. A/F (January 1992)	p. 437	Changed "EC 01493" to -- EC 01473 --.
Rebuttal to FTB Att. A/F (February 1992)	p. 24	Changed "19992" to -- 1992 --.
Rebuttal to FTB Att. A/F (February 1992)	p. 54	Changed "October 3, 1992" to -- February 3, 1992 --.
Rebuttal to FTB Att.	p. 104	Changed "pp. 1113-115" to -- pp. 113-115 --.

A/F (February 1992)		
Rebuttal to FTB Att. A/F (February 1992)	p. 115	Changed "pp. 1115-117" to -- pp. 115-117 --.
Rebuttal to FTB Att. A/F (February 1992)	p. 166	Changed "FTB CCC 00815" to -- CCC 00815 --.
Rebuttal to FTB Att. A/F (February 1992)	p. 319	Changed "Section 1.A." to -- Section I.A. --.
Rebuttal to FTB Att. A/F (March 1992)	p. 32	Changed "August 20, 1995" to -- August 20, 2009 --.
Rebuttal to FTB Att. A/F (March 1992)	p. 42	Changed "Section I. D., July 12" to -- Section II. D., July 12 --.
Rebuttal to FTB Att. A/F (March 1992)	p. 71	Changed "EC 01493" to -- EC 01473 --.
Rebuttal to FTB Att. A/F (March 1992)	p. 74	Changed "EC 01493" to -- EC 01473 --.
Rebuttal to FTB Att. A/F (March 1992)	p. 76	Changed "EC 01493" to -- EC 01473 --.
Rebuttal to FTB Att. A/F (March 1992)	p. 140	Changed "and 32, document P00768, 00777, 00779, where" to -- and 32, where --.
Rebuttal to FTB Att. A/F (March 1992)	p. 147	Changed "and 32, document P00768, 00777, 00779, where" to -- and 32, where --.
Rebuttal to FTB Att. A/F (March 1992)	p. 262	Changed "Section I. D., July 12" to -- Section II. D., July 12 --.
Rebuttal to FTB Att. A/F (March 1992)	p. 263	Remove "In his 2015 Affidavit Mr. Foster stated:".
Rebuttal to FTB Att. A/F (April 1992)	p. 103	Changed "EC 01493" to -- EC 01473 --.
Rebuttal to FTB Att. A/F (April 1992)	p. 110	Changed "EC 01493" to -- EC 01473 --.
Rebuttal to FTB Att. A/F (April 1992)	p. 368	Changed "documents Philips" to -- documents FTB_Philips --.
Rebuttal to FTB Att. A/F (April 1992)	p. 427	Changed "0003278" to -- 0003279 --.
Rebuttal to FTB Attachment E	p. 16	Insert "Supplemental Declaration of Ramona Amador, October 22, 2015, ¶¶ 5-8."
Rebuttal to FTB Attachment E	p. 26	Changed "2014" to -- 2015 --.
Rebuttal to FTB Attachment E	p. 46	Changed "FTB Attachment A (Revised)" to -- FTB Att. A/F --.
Rebuttal to FTB Attachment E	p. 71	Changed "2014" to -- 2015 --.
Rebuttal to FTB Attachment E	p. 82	Changed "February 21, 1991" to -- February 21, 1992 --.
Rebuttal to FTB Attachment E	p. 104	Changed "Rebuttal to FTB Attachment A (Revised) and Attachment F" to -- Rebuttal to FTB Att. A/F --.
Rebuttal to FTB Attachment E	p. 109	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 114	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 117	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 120	Changed "Section I.F." to -- Section I.B. --.

Rebuttal to FTB Attachment E	p. 123	Changed "2014" to -- 2015 --.
Rebuttal to FTB Attachment E	p. 126	Changed "2014" to -- 2015 --.
Rebuttal to FTB Attachment E	p. 129	Changed "I.F." to -- I.B. --.
Rebuttal to FTB Attachment E	p. 130	Changed "2014" to -- 2015 --.
Rebuttal to FTB Attachment E	p. 144	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 145	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 146	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 151	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 153	Changed "GLR 06206" to -- GLR 05206 --.
Rebuttal to FTB Attachment E	p. 156	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 156	Changed "Section I.A." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 159	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 161	Changed "2014" to -- 2015 --.
Rebuttal to FTB Attachment E	p. 164	Changed "2014" to -- 2015 --.
Rebuttal to FTB Attachment E	p. 168	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 178	Changed "0002336-0002402" to -- 0002386-0002403 --.
Rebuttal to FTB Attachment E	p. 194	Changed "FTB_Philips 0002336-0002402" to -- FTB_Philips 0002386-0002403 --.
Rebuttal to FTB Attachment E	p. 220	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 226	Changed "A/F. Rebuttal to Attachment A (Revised)," to -- A/F, --.
Rebuttal to FTB Attachment E	p. 227	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 228	Changed "Section I.A., March 28, 1992. Rebuttal to Attachment A, March 28, 1992." to -- Section I.A., March 28, 1992. --.
Rebuttal to FTB Attachment E	p. 238	Changed "rebuttal to Attachment A (Revised)" to -- Rebuttal to FTB Att. A/F --.
Rebuttal to FTB Attachment E	p. 246	Changed "II.KK.40, below" to -- II.KK.40, above --.
Rebuttal to FTB Attachment E	p. 246	Changed "See Sections II.I.9, above and II.KK.40, below" to -- See Sections II.I.9 and II.KK.40, above --.
Rebuttal to FTB Attachment E	p. 249	Changed "Annex XXV, 92. [these affidavits]" to -- Annex XXV, 92. --.
Rebuttal to FTB Attachment E	p. 251	Changed "Rebuttal to FTB Attachment A (Revised)Sections I.A." to -- Rebuttal to FTB Att. A/F, Sections I.A. --.
Rebuttal to FTB Attachment E	p. 255	Changed "Rebuttal to FTB Attachment A (Revised) and Attachment F" to -- Rebuttal to FTB Att. A/F --.
Rebuttal to FTB	p. 256	Changed "Hyatt Rebuttal of FTB Attachment A (Revised) and

Attachment E		Attachment F" to -- Rebuttal to FTB Att. A/F --.
Rebuttal to FTB Attachment E	p. 258	Changed "Hyatt Rebuttal of FTB Attachment A (Revised)" to -- Rebuttal to FTB Att. A/F --.
Rebuttal to FTB Attachment E	p. 286	Changed "FTB A/F" to -- FTB Att. A/F --.
Rebuttal to FTB Attachment E	p. 311	Changed "document 6635" to -- FTB_Philips 0006635 --.
Rebuttal to FTB Attachment E	p. 330	Changed "document 6557" to -- FTB_Philips 0006557 --.
Rebuttal to FTB Attachment E	p. 357	Changed "Ms. Fritzche did not submit an affidavit in support of Mr. Hyatt's appeals. According to FTB, Attachment E is to address affidavits submitted in support of Mr. Hyatt" to -- Ms. Fritzche submitted a declaration in support of Mr. Hyatt's appeals. --.
Rebuttal to FTB Attachment E	p. 359	Changed "I.A.2.A" to -- I.A.2 --.
Rebuttal to FTB Attachment E	p. 372	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 373	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 374	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 378	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 379	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 380	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 386	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 387	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 387	Changed "0000005442" to -- 0005442 --.
Rebuttal to FTB Attachment E	p. 388	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 395	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 396	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 397	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 398	Changed "see also Annex XXXII, Tab 1, Table of False Declaration of Statements Made by William Savage and Section I.A. above." to -- see also Annex XXXII, Tab 1, Table of False Declaration Statements Made by William Savage; Supplemental Table of False Declaration Statements Made by William Savage; Table of William Savage's Fraud and Dishonesty; and Section I.A. above. --.
Rebuttal to FTB Attachment E	p. 401	Changed "A total of 18 former La Palma neighbors testified, under oath or penalty of perjury, about Mr. Hyatt moving away in 1991. See Annex XXXI, Tab 1A, Testimonial Topics (by subject matter) p.1 T102" to -- Twenty two Jennifer Circle neighbors testified about Mr. Hyatt moving away in 1991. See Updated Testimonial Topics, Ex. T102 --.
Rebuttal to FTB Attachment E	p. 404	Changed "Section I.F." to -- Section I.B. --.

Rebuttal to FTB Attachment E	p. 405	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 406	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 411	Changed "Annex XXXII, Tab 1, Table of False Declaration of Statements Made by William Savage." to -- Annex XXXII, Tab 1, Table of False Declaration Statements Made by William Savage; Supplemental Table of False Declaration Statements Made by William Savage; and Table of William Savage's Fraud and Dishonesty. --.
Rebuttal to FTB Attachment E	p. 420	Changed "Tab 1, Table of False Declaration of Statements Made by William Savage." to -- Tab 1, Table of False Declaration Statements Made by William Savage; Supplemental Table of False Declaration Statements Made by William Savage; and Table of William Savage's Fraud and Dishonesty. --.
Rebuttal to FTB Attachment E	p. 422	Changed "Annex XXXII, Tab 1, Table of False Declaration of Statements Made by William Savage." to -- Annex XXXII, Tab 1, Table of False Declaration Statements Made by William Savage; Supplemental Table of False Declaration Statements Made by William Savage; and Table of William Savage's Fraud and Dishonesty. --.
Rebuttal to FTB Attachment E	p. 427	Changed "Table of False Declaration of Statements Made by William Savage." to -- Table of False Declaration Statements Made by William Savage; Supplemental Table of False Declaration Statements Made by William Savage; and Table of William Savage's Fraud and Dishonesty. --.
Rebuttal to FTB Attachment E	p. 428	Changed "False Declaration of Statements Made by William Savage." to -- False Declaration Statements Made by William Savage; Supplemental Table of False Declaration Statements Made by William Savage; and Table of William Savage's Fraud and Dishonesty. --.
Rebuttal to FTB Attachment E	p. 431	Changed "Table of False Declaration of Statements Made by William Savage." to -- Table of False Declaration Statements Made by William Savage; Supplemental Table of False Declaration Statements Made by William Savage; and Table of William Savage's Fraud and Dishonesty. --.
Rebuttal to FTB Attachment E	p. 437	Changed "2014" to -- 2015 --.
Rebuttal to FTB Attachment E	p. 459	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 463	Changed "pp. 7-8, Exhibit A" to -- pp. 7-8. --.
Rebuttal to FTB Attachment E	p. 464	Changed "See id., Exhibit B" to -- See id. --.
Rebuttal to FTB Attachment E	p. 474	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 477	Changed "2014" to -- 2015 --.
Rebuttal to FTB Attachment E	p. 477	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 483	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 493	Changed "¶ 2" to -- ¶ 12 --.
Rebuttal to FTB Attachment E	p. 500	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 557	Changed "Section I.F." to -- Section I.B. --.

Rebuttal to FTB Attachment E	p. 563	Changed "Table of False Declaration of Statements Made by William Savage and Section I.A. above." to -- Table of False Declaration Statements Made by William Savage; Supplemental Table of False Declaration Statements Made by William Savage; and Table of William Savage's Fraud and Dishonesty; and Section I.A. above. --.
Rebuttal to FTB Attachment E	p. 569	Changed "Table of False Statements Made by William Savage." to -- Table of False Declaration Statements Made by William Savage; Supplemental Table of False Declaration Statements Made by William Savage; and Table of William Savage's Fraud and Dishonesty.--.
Rebuttal to FTB Attachment E	p. 582	Changed "Section I.F." to -- Section I.B. --.
Rebuttal to FTB Attachment E	p. 583	Changed "2015" to -- 2016 --.
Rebuttal to FTB Attachment E	p. 590	Changed "Table of False Declaration of Statements Made by William Savage." to -- Table of False Declaration Statements Made by William Savage; Supplemental Table of False Declaration Statements Made by William Savage; and Table of William Savage's Fraud and Dishonesty. --.
ASAB Attachment 1	p. 6	Changed "Feb. 8, 2015" to -- Feb. 9, 2015 --.
ASAB Attachment 1	p. 26	Changed "Mary Savage (Mary Savage Decl., May 15, 2015 ¶¶ 4-9)" to -- Mary Gomez (Mary Gomez Declaration, September 25, 2015 ¶¶ 4-9) --.
ASAB Attachment 1	p. 34	Changed " Testimonial Topic Table" to --Updated Testimonial Topics Table --.
ASAB Attachment 2	p. 7	Changed "1.5.6.7" to -- 1.5.7 --.
ASAB Attachment 2	p. 10	Changed "September 24, 1992" to -- September 24, 1991 --.
ASAB Attachment 2	p. 11	Changed "May 6, 2012" to -- May 4, 2012 --.
ASAB Attachment 2	p. 21	Changed "November 22, 2008" to -- November 11, 2008 --.
ASAB Attachment 2	p. 24	Changed "June 2013" to -- May 2014 --.
ASAB Attachment 2	p. 24	Changed "June 2013" to -- May 2014 --.
ASAB Attachment 2	p. 37	Changed "Affidavit" to -- Declaration --.
ASAB Attachment 2	p. 37	Changed "Affidavit" to -- Declaration --.
ASAB Attachment 2	p. 41	Changed "Mr. Tran's affidavit" to -- Mr. Tran's Declaration --.
ASAB Attachment 2	p. 41	Changed "Tran Affidavit" to -- Tran's Declaration --.
ASAB Attachment 2	p. 41	Changed "Mr. Tran's affidavit" to -- Mr. Tran's Declaration --.
ASAB Attachment 3	p. 10	Changed "1992 SAB, Section 1.2." to -- 1992 ASAB, Section 1.3. --.
ASAB Attachment 3	p. 11	Changed "August 15, 2010, pp. 70, 170" to -- August 9, 2010, Section 4.2.5.5 --.
ASAB Attachment 4	p. 4	Changed "Mr. Hyatt's 1991 ASAB" to -- Mr. Hyatt's ASAB Attachment 3 --.
ASAB Attachment 4	p. 5	Changed "Mr. Hyatt's 1991 ASAB" to -- Mr. Hyatt's Rebuttal to FTB Att. E --.
ASAB Attachment 4	p. 6	Changed "Mr. Hyatt's 1991 RSAB" to -- Mr. Hyatt's Rebuttal to FTB Att. E --.
ASAB Attachment 4	p. 6	Changed "1991 ASAB" to -- Mr. Hyatt's ASAB Attachment 3 --.
ASAB Exhibit 2	p. 11, row 190	Changed "04/01/92" to -- 04/02/92 --.

ASAB Exhibit 6	p. 2, row 17	Changed "pp. 166" to -- pp. 167 --.
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EXHIBIT 7

EXHIBIT 7

DECLARATION OF SCOTT W. DePEEL

I, Scott W. DePeel do hereby swear under penalty of perjury that the assertions of this declaration are true and correct.

1. I am over the age of eighteen (18) years. I have personal knowledge of the facts stated within this declaration. If called as a witness, I would be competent to testify to these facts.

2. I am Tax Counsel IV for the Franchise Tax Board of the State of California ("FTB"), Appellant in the above-titled matter. In my position with FTB, I have personal knowledge of the documents filed by Respondent Gilbert Hyatt in his ongoing appeals to the California Board of Equalization ("BOE"), Case Nos. 435770 and 446509.

3. This declaration is offered in support of FTB's Request for Judicial Notice (the "Request"), which FTB is filing in Nevada Supreme Court Case No. 53264 to support its Supplemental Reply Brief Following Mandate From The Supreme Court Of The United States for the reasons stated therein.

4. Attached as Exhibits 1 through 5 to the Request are true and correct copies of documents that Hyatt filed in Case Nos. 435770 and 446509 on November 4, 2016. These documents are: "Appellant's Concluding Summary (1991)"; "Appellant's Concluding Summary (1992)"; "Appellant's Second Additional Briefing (1991)"; "Appellant's Second Additional Briefing (1992)";

and “Attachment 1 Appellant’s Second Additional Briefing” (referred to herein as “Hyatt’s BOE Documents”).

5. The record in Case Nos. 435770 and 446509 is voluminous. There are other attachments to Hyatt’s filings, but FTB does not currently ask the Court to take judicial notice of those documents.

6. Because Hyatt filed the documents in his BOE appeal, they are matters of public record in California. FTB accordingly provided them to its Nevada counsel in the above-titled matter to support FTB’s Supplemental Reply Brief.

6. Additionally, in his BOE appeals, Hyatt has asserted approximately 2,000 instances of alleged “bad faith” conduct by FTB related to the California administrative appeal process.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED: December 2, 2016.

/s/ 
SCOTT W. DEPEEL