April 4, 2025

Mr. Shane Hofeling
Chief Counsel
State of California
Franchise Tax Board
9646 Butterfield Way
Sacramento, CA 95827

RE: Reply to the Franchise Tax Board Staff's Opening Brief
Jack in the Box Inc. & Subsidiaries
CCN: 0631563
Tax Years Ended: 09/2014 – 09/2020

Dear Mr. Hofeling,

Jack in the Box Inc. & Subsidiaries ("JIB" or "Taxpayer") hereby replies to the Franchise Tax Board Staff's ("FTB Staff") opening brief regarding Taxpayer's alternative apportionment petition to the Franchise Tax Board ("FTB") pursuant to California Revenue & Taxation Code ("CRTC") section 25137.

If you have any questions or wish to discuss further, please do not hesitate to contact me at (916) 601-9707 or jon.a.sperring@pwc.com.

Sincerely,

Jon A. Sperring
Principal, SALT Consulting
PwC US Tax LLP

Enclosure: JIB's Reply Brief and accompanying exhibits

cc: Mr. Tim Lindell, Jack in the Box
Mr. Jung Pyun, Jack in the Box
Ms. Selvi Stanislaus, FTB
Mr. William Gardner, FTB
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I. INTRODUCTION

Jack in the Box, Inc. and Subsidiaries ("Taxpayer" or "JIB") operates a 2,200 multi-state restaurant system.[1] Only 40 percent of these restaurants are in California. Despite this, California's standard apportionment formula taxes 60 percent of Taxpayer's income primarily due to 109 company-owned restaurants in California.[2]

The mismatch between JIB's business activity and the income apportioned to California is caused by the standard formula disproportionately weighting the small number of company-owned restaurants located in California. However, the much larger number of franchised restaurants that are predominantly located outside of California drive the large majority of JIB's profits. The result is an unfair reflection of Taxpayer's business activity and an overstatement of California tax.

The Franchise Tax Board Staff's ("FTB Staff") claim is that the burger sales at franchised restaurants are not "Taxpayer's activity" and cannot be represented in Taxpayer's apportionment formula.[3] The FTB Staff argues that franchise burger sales belong to the owner of the franchised restaurant and only Taxpayer's receipts can be fairly represented in the apportionment formula.[4] The argument in the FTB Staff brief ("Staff Brief") is demonstrably false and is contrary to multiple Franchise Tax Board ("FTB") mandated apportionment methods. Taxpayer will respond to the FTB Staff's arguments and clarify some factual inaccuracies.

[1] All Jack in the Box restaurants offer a wide variety of food items developed by JIB. For simplicity, Taxpayer will refer to its food item sales as "burger sales."
[2] Figures are for fiscal year end ("FYE") 2019. See Information Document Request ("IDR") Response 009-010 dated November 16, 2022.
[3] See FTB, Staff Brief, pgs. 1-19.
[4] See *id.*

II. DISCUSSION

A. Multiple authorities, including regulations promulgated by the FTB, employ the use of third-party activity to fairly represent a taxpayer's activity in the apportionment formula.

The Staff Brief states:

> Under California law, Taxpayer cannot include an unrelated third-party's gross receipts in its own apportionment formula just as it does not include the income generated by that third-party.[5]

This argument, in various forms, makes up the first 19 pages of the Staff Brief.[6]

Taxpayer is not arguing that the franchisee restaurant sales are included by law in the standard California apportionment formula. If that were the case, Taxpayer would not need to petition the FTB for alternative apportionment relief. Rather, Taxpayer contends that the standard formula does not fairly represent Taxpayer's activities in the state, where only 40 percent of its 2,200 systemwide locations are in California, but 60 percent of Taxpayer's income is taxed by the state.[7]

The Staff Brief asserts that California Revenue & Taxation Code ("CRTC") section 25137 does not allow consideration of third-party activity in the determination of fair apportionment as such:

> The relevant consideration under Section 25137 is whether the extent of a **taxpayer's** business activities in the state is unfairly reflected in the standard apportionment formula. In other words, Section 25137 does not contemplate the consideration of unrelated third-party business activities in determining whether a **taxpayer's** standard apportionment formula is distortive.[8]

The FTB Staff's argument is inarguably false. CRTC section 25137 directly contradicts the FTB Staff's argument:

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[5] *Id.* at pgs. 2-3.
[6] See *id.* at pgs. 1-19.
[7] Figures are for FYE 2019. See IDR Response 009-010 dated November 16, 2022.
[8] FTB, Staff Brief, pgs. 10-11 (emphasis in the original).

> [T]he taxpayer may petition for or the Franchise Tax Board may require, in respect to all or any part of the taxpayer's business activity, if reasonable: . . . (d) ***The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income***.[9]

The controlling statute, regulations, and case law in no way limit the use of third-party activity to effectuate fair apportionment.[10] Not only is the use of third-party activity not limited by the applicable authorities, but several of the FTB's regulations and publications — written by the FTB Staff and approved by this Board — have used third-party activity to fairly measure a taxpayer's business activities.[11]

According to the Supreme Court in *Container v. Franchise Tax Board*, the appropriate question is how we fairly measure the business activities of a taxpayer so that the "factor or factors used in the apportionment formula . . . actually reflect a reasonable sense of how income is generated."[12] This inquiry ensures there is a fair relationship "between the particular sources of income that are included in the apportionable tax base and the factors that are used to apportion such income."[13] Below, Taxpayer will detail several examples where third-party activities are used in the apportionment formula.

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[9] Cal. Rev. & Tax. Code § 25137.

[10] See *supra* Part II.A.i-iv and accompanying citations.

[11] For independent contractors example, see Cal. Code of Regs. § 25136(c); *Lancaster Colony Corp. v. Limbach* (1988) 37 Ohio St. 3d 198. For sourcing examples, see Cal. Code of Regs. § 25136-2. For government property and natural resource examples, see *McDonnell Douglas Corp. v. Franchise Tax Bd.* (1968) 69 Cal.2d 506; *Appeal of Proctor & Gamble*, 89-SBE-028; Cal. Code of Regs. §§ 25129, 25130, 25137(b)(1)(B)-(C). For partnership receipts example, see Cal. Code of Regs. § 25137-1. For freight forwarders example, see FTB, Multistate Audit Technique Manual § 7770.

[12] *Container Corp. of Am. v. Franchise Tax Bd.* (1983) 463 U.S. 159, 169.

[13] Hellerstein, State Taxation (3rd ed. 2021) Allocation and Apportionment of Corporate Net Income Under State Law, § 9.15, pg. 836.

i. <u>The FTB's apportionment sourcing regulations repeatedly use third-party activity to apportion taxpayers' income.</u>

Independent contractors were used for decades to apportion a taxpayer's service income under California Code of Regulations ("CCR") section 25136.[14] For example, if a taxpayer runs a service company and utilizes an independent contractor in California, the activities of such third-party independent contractor were used to determine the portion of a taxpayer's service income taxed by the state. The independent contractor's business activity drives the service income of the taxpayer. Since the income must have a fair relationship with the formula used to apportion that income, the independent contractor's activity should be represented in the apportionment formula to fairly reflect the taxpayer's business activity.

Furthermore, other FTB sourcing regulations provide numerous examples of apportioning a taxpayer's income to the location of a third-party's activity. In CCR section 25137-3, the FTB requires the sourcing of payroll and franchisee fees to the location of the franchisees.[15] CCR section 25136-2 routinely uses third-party activity to source income, as well. For example, the receipt of dividends is sourced using the property and payroll of the dividend payor.[16] Income from the licensing of intangibles is also sourced to the location of the store or factory where the third-party licensee uses the intangibles.[17] Recently, the FTB Staff issued guidance requiring taxpayers to source

[14] CCR section 25136 was California's main sourcing regulation for decades, applicable to three and four factor years. The regulation is currently applicable to special industries.
[15] Cal. Code of Regs. § 25137-3.
[16] *Id.* § 26136-2(d)(1)(A)(1).
[17] *Id.* §§ 26136-2(d)(1)(D) & (d)(2)(D).

business-to-business services based on the location of the customer's third-party customers in Legal Ruling 2022-01.[18]

ii. The property of others, including government property and natural resources, is used to determine a taxpayer's apportionment.

CCR sections 25129, 25130, and 25137(b)(1)(B)-(C) all use property owned by other unrelated, third parties in a taxpayer's apportionment formula if that property is used in a taxpayer's business (even if it's not rented by the taxpayer).[19]

For example, if a taxpayer uses property owned by others for the purpose of extracting natural resources such as timber, oil, gas, or hard minerals, the fair rental rate for that property[20] is included in the taxpayer's apportionment formula, even if no rent was paid.[21] The extraction of those natural resources allows the taxpayer to earn business income, and thus, the property used in production of that income should be represented in the apportionment formula.[22]

iii. Partners include partnership activity in the apportionment formula.

Pursuant to CCR section 25137-1, a taxpayer that is a partner in a partnership does not merely include the distributions it receives from the partnership or its share of partnership profits in its sales factor. Instead, under the FTB's regulation, the partner includes its share of the partnership's underlying sales receipts in the taxpayer's apportionment formula based on pro rata ownership.[23] Accordingly, even if a taxpayer

[18] In Legal Ruling 2022-01, the FTB gives the example of a Pharmacy Benefit Manager ("PBM") that manages drug benefits programs for health plans. The health plans provide pharmaceutical drugs to their plan members. Legal Ruling 2022-01 suggests that the PBM's income from the health plans should be sourced to the location of the unrelated, third-party members of the health plans.
[19] Cal. Code of Regs. §§ 25129, 25130, 25137(b)(1)(B)-(C).
[20] Multiplied by eight. *Id.* § 25130.
[21] Rental rate is based on consideration paid for sharing current or future production or extraction of the timber, oil, gas or hard minerals from such property, and any other consideration paid to enter the property. *Id.* § 25137(b)(1)(B)-(C).
[22] See generally *McDonnell Douglas Corp. v. FTB* (1968) 69 Cal.2d 506, *Appeal of Proctor & Gamble*, 89-SBE-028.
[23] If the partner and the partnership are engaged in integrated business activities. Cal. Code of Regs. § 25137-1.

owns 20 percent of a partnership that is a third-party, 20 percent of that partnership's business activity, i.e., sales receipts (and property and payroll, if applicable) are represented in the taxpayer's apportionment formula.[24] Again, the rationale is simple, the activities of the partnership are relevant in apportioning the partner's overall income and must be reflected in the formula.

iv. Freight forwarders use mileage driven by third parties to fairly reflect business activities in the apportionment formula.

Feight forwarders are companies that organize and coordinate the shipment of goods on behalf of third parties, acting as an intermediary between shippers and carriers. Freight forwarders handle logistics, documentation, and customs clearance to ensure goods reach their destination efficiently, and they receive fees for their services. They do not typically own or operate the trucks that take the goods from point A to point B. Nonetheless, according to the FTB Staff's Audit Manual, the income of freight forwarders is a function of the mileage traveled by the shippers and common carriers that carry the goods.[25]

Even though the common carriers and shippers that drive the freight are unrelated third parties, the third-party business activities (i.e., miles driven) can still be represented in the freight forwarder's apportionment formula, per the FTB Audit Manual. That is, the FTB acknowledges that including third-party activities may be an appropriate adjustment to the standard apportionment formula given that ignoring these third-party activities would not fairly reflect the underlying activities that generate the freight forwarder's income. The carriers' and shippers' activities are necessary for

[24] *Id.*
[25] FTB, Multistate Audit Technique Manual § 7770.

the freight forwarders to earn income subject to apportionment in California. Thus, that activity should be represented in the apportionment formula according to the FTB Staff.

v. <u>The Staff Brief's primary argument is fundamentally flawed and contrary to California apportionment rules for multiple industries.</u>

The Staff Brief's argument that third-party activity cannot measure of a taxpayer's activity[26] is based on a fundamental misunderstanding of alternative apportionment. When there is a mismatch between the income being taxed and the formula used to apportion that income, alternative apportionment is an inquiry into how to fairly measure a taxpayer's activity in the apportionment formula.[27] The statute, the FTB's own regulations, the FTB Staff's Audit Manual, and the case law demonstrate that the measure can be anything that "effectuates an equitable allocation and apportionment of the taxpayer's income,"[28] including the activity of third parties.

Here, only 40 percent of Jack in the Box restaurants are in California, but the standard formula is attributing over 60 percent of Taxpayer's income to California.[29] Approximately 90 percent of Taxpayer's systemwide restaurant sales were from franchised restaurants.[30] Yet, franchise activity only accounts for approximately 50 percent of the standard apportionment formula.[31] Despite the fact that franchised restaurants account for over 79 percent of JIB's total net operating income[32] (four times

[26] See FTB, Staff Brief, pgs. 1-19.
[27] *Container Corp. of Am. v. Franchise Tax Bd.* (1983) 463 U.S. 159, 169; Hellerstein, State Taxation (3rd ed. 2021) Allocation and Apportionment of Corporate Net Income Under State Law, § 9.15, pg. 836.
[28] Cal. Rev. & Tax. Code § 25137(d).
[29] Figures are for FYE 2019. See IDR Response 009-010 dated November 16, 2022.
[30] Jack in the Box, 2019 10K Annual Report, pg. 30.
[31] Franchise Activity include gross rent revenue and gross royalties. There are other franchise fees that were not included, like marketing fees which the FTB does not allow in the apportionment factor.
[32] Total franchise revenues of $613M – Total franchise costs of $289M = $223M. Franchise costs inclusive of depreciation on company-operated locations. Total company-owned revenues of $336M – Total company-owned costs of $277M = $58M. Company-owned costs inclusive of depreciation on company-operated locations and marketing costs. $223M (Franchise Operating Profit) + $58M (Company-owned Operating Profit) = $281M. Lastly, $223M / $281M = ~79%.

the income from company-owned restaurants),[33] franchised restaurant gross receipts are not fully or fairly reflected in the formula.

In this case, there is an obvious mismatch between the income subject to tax and the formula apportioning that income. CRTC section 25137 requires a remedy by "any . . . method to effectuate an equitable allocation and apportionment of the taxpayer's income."[34]

B. *Taxpayer's business activity, revenue, and profit is directly measured on franchise restaurant sales.*

The Staff Brief also asserts that the activities that drive franchising revenue and company-owned revenue are not the same:

> Taxpayer's business activities which generated income from its company operated restaurants were the sales of food and beverages (i.e., burger sales). In contrast, Taxpayer's business activities which generated income from its franchisee-operated restaurants (i.e. rent, royalties, and franchise fees) were its leasing of real property and licensing of its Marks and the System. Taxpayer's two different revenue streams and the corresponding business activities that generated that revenue are clearly ***<u>not the same</u>***.[35]

The Staff Brief argues that the activities that generate the two revenue streams are different. This is contrary to the FTB staff's observations at audit and ignores the fact that rent, royalties, and franchise fees are all measured by a percentage of franchise burger sales. The underlying activity that directly impacts revenue from franchisees is burger sales,[36] which is why the franchise burger sales are tracked in JIB's point-of-sale system and reported in Taxpayer's financial statements.[37] This was acknowledged by

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[33] $223M is nearly four times $58M. See footnote 35.
[34] Cal. Rev. & Tax. Code § 25137(d).
[35] FTB, Staff Brief, pg. 11.
[36] The Staff Brief even mentions several times that the underlying operational activities of both franchise restaurants and company-owned restaurants are both burger sales: "[Taxpayer] erroneously compares the third-party franchisee's operational activities (i.e. burger sales) with Taxpayer's operational activities (i.e. burger sales). *Id.* at pg. 15.
[37] Jack in the Box, 2019 10K Annual Report, pg. 30.

the FTB Staff during the audit when they found that the Taxpayer's two revenue streams (franchising and company-owned operations) were so similar they could not be distinguished:

> JIB as the franchisor established the franchises operating business, business systems, and grants the franchisees the right to establish their own franchise location. The franchisees could not exist without the franchisor and its brand equity . . . [B]oth revenue streams [either franchised or company-owned] **were derived from the same restaurant activity**, and the brand equity that JIB had created in the past 60 years.[38]

This in stark contrast to the Staff Brief which states, "the third-party franchisee activities of 'burger sales' are not the activities of Taxpayer and, therefore, the third-party franchisee activities neither generate income for Taxpayer nor directly contribute to Taxpayer's profits for tax purposes."[39]

It is the FTB Staff Brief that is incorrect. The franchise burger sales are the ***principal*** driver of Taxpayer's income and profit, which is why it is reported to investors in Taxpayer's financial statements. JIB's Annual Report states, "[w]e believe franchised and system restaurant sales information is useful to investors as they have a ***direct effect on the Company's profitability***."[40] Franchising income, based on a percentage of those franchise burger sales, makes up nearly 80 percent of JIB's operating income. The income is so important to JIB that it is automatically debited from the franchisees' bank accounts weekly or monthly.[41] JIB even owns a security interest in the franchisee bank accounts.[42]

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[38] See Preliminary Staff Recommendations, pg. 13 for TYE 2014 – 2017 & pgs. 17-18 for TYE 2018 – 2020 (emphasis added).
[39] FTB, Staff Brief, pgs. 13-14.
[40] Jack in the Box, 2019 10K Annual Report, pg. 30.
[41] Franchise Disclosure Document, March 2022, Exhibit H-1, pgs. 17-18.
[42] *Id.*

Despite the FTB Staff's attempt to minimize Taxpayer's extensive involvement[43] in franchisee activity as mere "leasing and licensing,"[44] the fact remains that the underlying activity that measures the income and profitability of franchise leasing and licensing is franchise burger sales.

i. The Staff Brief incorrectly states that only 14 percent of franchise rental payments are measured on gross receipts of the franchised restaurants.

The Staff Brief states, "approximately 14 percent of Taxpayer's leases provided for contingent rental payments between 1 percent and 12 percent of the restaurant's gross sales once certain thresholds were met."[45] For this proposition, the Staff Brief cites the 2020 Jack in the Box Annual Report.

However, the FTB Staff misread and miscited JIB's Annual Report. For both company-owned or franchised restaurants, JIB sometimes owns the underlying property where the restaurant sits, and sometimes JIB leases the property. The portion of the 2020 JIB Annual Report that the Staff Brief cited references ***JIB's leases with third-party landlords (JIB as lessee)***, not franchisee leases or subleases with JIB (JIB as lessor). The Annual Report explains that of the properties that JIB leases from third-party landlords, 14 percent of JIB's lease payments are based on a gross percentage of restaurant sales.[46] The rest are fixed payment leases.

JIB acts as the lessor for nearly 90 percent of the franchisees,[47] and 95 percent of those leases are based on a percentage of gross sales.[48]

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[43] The branding, décor, menu, food, ingredients, equipment, fixtures, supplies, software, training, and even the employee uniforms are the same and controlled by JIB.

[44] FTB, Staff Brief, pg. 15.

[45] *Id.* at pg. 5.

[46] Jack in the Box, 2020 10K Annual Report, pg. 22.

[47] *Id.*

[48] Only ~90 franchisee leases were not based on a percentage of gross sales.

C. Taxpayer's unfair apportionment is not due to a business decision to "refranchise."

The Staff Brief's secondary argument is that JIB chose to own more company-owned restaurants in California and franchise more restaurants in other states.[49] Therefore, according to the FTB Staff, the outcome of the apportionment formula is a direct reflection of Taxpayer's business decisions.[50] The Staff Brief reasons that before 2018, "Taxpayer's standard apportionment formula was roughly equal to the ratio of restaurant locations within and without California," and the change after 2018 was due to a "refranchising strategy."[51]

The FTB Staff is factually mistaken. While Taxpayer has sold (i.e., refranchised) company-owned restaurants over the years at issue, the refranchising did not take place predominately in 2018. Therefore, the "refranchising" did not dramatically affect the apportionment formula in 2018.

The reason Taxpayer's apportionment changed in 2018 is due to the sale of the Qdoba restaurant chain.[52] Qdoba was primarily located outside of California (only 7 out of 751 restaurants were in California in 2018).[53] When JIB sold Qdoba in 2018, JIB's California apportionment rose drastically.

When only examining Jack in the Box branded restaurants, there is no large change in apportionment in the years at issue. Thus, the Jack in the Box branded restaurants have NOT had a California "apportionment formula . . . roughly equal to the ratio of [its] restaurant locations within and without California," as stated by the Staff

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[49] See FTB, Staff Brief, pgs. 19-23.
[50] See *id.*
[51] *Id.* at pgs. 21-22.
[52] Jack in the Box, 2018 10K Annual Report, pg. 2.
[53] Exhibit 1 – Qdoba Franchise Disclosure Document, February 2019, Item 20, pgs. 50, 52, & 56.

Brief.[54] Because JIB began in California and grew its brand by opening company-owned restaurants in the state, the standard apportionment formula has NOT fairly reflected its activities in the state over the years at issue. In other words, “refranchising” is not the reason for the steep increase in California apportionment in 2018, and that “business decision” is not the reason for the standard formula’s unfair reflection of Taxpayer’s business in the state.

Even if it were the case that “refranchising” caused the drastic increase in Taxpayer’s California apportionment, the FTB Staff is essentially arguing that the standard formula should treat two similarly situated taxpayers differently. That is, taxpayers that keep and operate California locations should be punished relative to taxpayers that franchise all their California restaurants or originated out of state, even if they have the same number of locations in California. JIB retained its California restaurants because JIB’s headquarters are in California. JIB’s competition (even if they have more locations in California) does not have this problem because they relocated their headquarters outside of California and franchised their California locations. Additionally, if the standard apportionment formula is unfair as applied to Taxpayer, it does not matter why. While it is true that business decisions often have an impact, directly or indirectly, on a taxpayer’s apportionment factors, the law does not state that unfair apportionment is somehow justified by such business decisions.[55] Rather, if the party seeking relief proves by clear and convincing evidence that the standard formula

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[54] FTB, Staff Brief, pg. 22. Taxpayer has never argued that alternative apportionment should be applied to any other brands Taxpayer has owned (e.g., Qdoba). As stated in Taxpayer’s Opening Brief, the issue in this case is a specific problem that relates to Jack in the Box restaurants, and Taxpayer’s remedy calculations reflect alternative apportionment only being applied to Jack in the Box restaurants.

[55] If this were the case, it begs the question of when alternative apportionment would ever be allowed as it is likely that business decisions at some level drive every apportionment consequence.

does not fairly reflect their business activities, the burden is met, and reasonable relief is required.

D. Taxpayer's inclusion of franchise activity in the proposed remedy is permissible[56] and reasonable.

The FTB Staff argues that Taxpayer's proposed restaurant count remedy is not reasonable because the count includes restaurants that are not operated by Taxpayer.[57] As extensively explained above, the FTB Staff is incorrect regarding the law on inclusion of third-party activity in the apportionment formula. Moreover, the FTB Staff's argument is nonsensical for two additional reasons.

First, JIB materially contributes to the success of its franchisee restaurant operations by providing tradenames and trademarks, a proven blueprint of successful restaurant operating practices, national advertising, and the underlying real estate used by the franchisees. However, regardless of whether FTB staff consider the Taxpayer to be "operating" the restaurant, every restaurant, whether company owned or franchised, contributes to JIB's income.

Second, the FTB Staff states that the restaurant count remedy "excludes franchisor activities."[58] This is plainly false. A restaurant count remedy includes all Jack in the Box restaurants, including company-owned and franchised restaurants, the latter of which are the primary drivers of JIB's profits. The FTB Staff fails to explain how inclusion of franchised restaurants in a restaurant count remedy excludes Taxpayer's franchisor activities.

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[56] Not only permissible by required by FTB regulations in some cases.
[57] FTB, Staff Brief, pgs. 23-24. The Staff Brief also states that Taxpayer has not provided supporting documentation to substantiate its secondary proposed alternative remedy. Franchisee sales in California and everywhere are attached as Exhibit 2.
[58] FTB, Staff Brief, pg. 23.

JIB restaurants are the driver of its business activity in and outside California. Taxpayer's restaurant count remedy is reasonable because it apportions income in relation to JIB's actual business activity in the State, as required by the Supreme Court in *Container*.

III. Conclusion

The Staff Brief rests its entire case on the erroneous claim that franchise activity cannot represent Taxpayer's business activity.[59] As shown above, the FTB Staff's claims are contrary to its own regulations and published guidance. The Staff Brief also claims that JIB's increase in apportionment was due to its decision to "refranchise."[60] This claim was also incorrect.

Only 40 percent of Jack in the Box restaurants are in California, but California taxes 60 percent of Taxpayer's income.[61] Over 2,100 restaurants are franchised[62] and account for 90 percent of JIB's systemwide sales,[63] and nearly 80 percent of JIB's total net operating income.[64] Yet, franchise activity only accounts for approximately 50 percent of the standard apportionment formula. Conversely, 137 company-owned restaurants have nearly the same amount of receipts in the standard formula as the other 2,100 restaurants.

An apportionment formula is required to "actually reflect a reasonable sense of how income is generated."[65] Further, when an activity that is not fully reflected in the apportionment formula produces "a substantial portion" of a taxpayer's income, the

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[59] See *id.* at pgs. 1-19.
[60] See *id.* at pgs. 19-23.
[61] Figures are for FYE 2019. See IDR Response 009-010 dated November 16, 2022.
[62] Figures are for FYE 2019. *Id.*
[63] Jack in the Box, 2019 10K Annual Report, pg. 30.
[64] $223M (Franchise Operating Profit) + $58M (Company-owned Operating Profit) = $281M. $223M / $281M = ~79% or nearly 80%.
[65] *Container Corp. of Am. v. Franchise Tax Bd.* (1983) 463 U.S. 159, 169.

exaggeration can produce an unfair representation of California business activity.[66] Franchised restaurant activity is the principal driver of Taxpayer's income, but that activity is not fully or fairly reflected in the apportionment formula. Thus, Taxpayer has shown by clear and convincing evidence that the apportionment formula is not fairly reflective of its business activities and how its income is generated in the state. Taxpayer has further shown that its proposed alternatives are reasonable because they restore the relationship between JIB income and the formula used to apportion that income.

[66] *Microsoft Corp. v. Franchise Tax Bd.* (2006) 39 Cal.4th 750, 771.

Exhibit 1

ITEM 20
OUTLETS AND FRANCHISEE INFORMATION

Table 1
System-Wide Outlet Summary
For Fiscal Years 2016 to 2018

Outlet Type	Year	Outlets at the Start of the Year	Outlets at the End of the Year	Net Change
Franchised Outlets	2016	339	332	-7
	2017	332	341	+9
	2018	341	362	+21
Company-Owned	2016	322	367	+45
	2017	367	385	+18
	2018	385	389	+4
Total Outlets	**2016**	**661**	**699**	**+38**
	2017	**699**	**726**	**+27**
	2018	**726**	**751**	**+25**

Table 3
Status of Franchised Outlets
For Fiscal Years 2016 to 2018

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of the Year
Alaska	2016	4	0	0	0	0	0	4
	2017	4	0	0	0	0	0	4
	2018	4	0	0	0	0	0	4
Arizona	2016	6	0	0	0	0	3	3
	2017	3	2	0	0	0	0	5
	2018	5	0	0	0	0	0	5
Arkansas	2016	3	0	0	0	0	0	3
	2017	3	0	0	0	0	1	2
	2018	2	0	0	0	0	0	2
California	2016	3	0	0	0	0	0	3
	2017	3	0	0	0	0	0	3
	2018	3	0	0	0	0	0	3
Colorado	2016	20	1	0	0	14	0	7
	2017	7	0	0	0	0	0	7
	2018	7	1	0	0	0	0	8
Connecticut	2016	0	1	0	0	0	0	1
	2017	1	1	0	0	0	0	2
	2018	2	0	0	0	0	0	2
DC	2016	3	0	0	0	0	0	3
	2017	3	0	0	0	0	0	3
	2018	3	0	0	0	0	0	3
Delaware	2016	1	0	0	0	0	0	1
	2017	1	0	0	0	0	0	1
	2018	1	0	0	0	0	0	1
Florida	2016	9	1	0	0	0	0	10
	2017	10	1	0	0	0	1	10
	2018	10	0	1	0	0	0	9
Georgia	2016	5	0	0	0	0	0	5
	2017	5	1	0	0	0	0	6
	2018	6	2	0	0	0	0	8

State	Year	Outlets at Start of Year	Outlets Opened	Termin-ations	Non-Renewals	Reacquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of the Year
Wyoming	2017	6	0	0	0	0	0	6
	2018	6	0	0	0	0	0	6
Manitoba, Canada	2016	2	1	0	0	0	0	3
	2017	3	0	0	0	0	0	3
	2018	3	1	0	0	0	0	4
Ontario, Canada	2016	2	0	0	0	0	0	2
	2017	2	0	0	0	0	0	2
	2018	2	2	0	0	0	0	4
Totals	**2016**	**339**	**18**	**0**	**0**	**14**	**11**	**332**
	2017	**332**	**19**	**0**	**0**	**0**	**10**	**341**
	2018	**341**	**26**	**5**	**0**	**0**	**0**	**362**

Table 4
Status of Company-Owned Outlets
For Fiscal Years 2016 to 2018

State	Year	Outlets at Start of Year	Outlets Opened	Reacquired from Franchisees	Outlets Closed	Outlets Sold to Franchisees	Outlets at End of Year
California	2016	4	0	0	0	0	4
	2017	4	1	0	1	0	4
	2018	4	0	0	0	0	4
Colorado	2016	57	3	14	0	0	74
	2017	74	3	0	1	0	76
	2018	76	0	0	1	0	75
Connecticut	2016	4	1	0	0	0	5
	2017	5	0	0	0	0	5
	2018	5	0	0	3	0	2
Delaware	2016	0	2	0	0	0	2
	2017	2	2	0	0	0	4
	2018	4	0	0	0	0	4
Idaho	2016	3	0	0	0	0	3
	2017	3	0	0	0	0	3
	2018	3	0	0	0	0	3

Exhibit 2

Exhibit 2
Jack in the Box Franchise Restaurant Sales
FYE 2015 - 2020*

	FYE 2015	FYE 2016	FYE 2017	FYE 2018	FYE 2019	FYE 2020
California Sales	1,097,631,462	1,167,844,227	1,222,035,023	1,376,945,026	1,489,509,353	1,572,235,579
Total Everywhere Sales	2,613,016,497	2,723,965,230	2,753,295,312	3,018,066,738	3,167,920,070	3,323,744,740

* FYE 2014 can be retrieved upon request.