

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
THERATEST LABORATORIES, INC.,) OTA NO. 19044588
)
APPELLANT.)
)
_____)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, July 21, 2020

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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

APPEARANCES:

Panel Lead: ALJ MICHAEL GEARY

Panel Members: ALJ NGUYEN DANG
ALJ DANIEL CHO

For the Appellant: PAUL WILLIAM RAYMOND
MARIUS TEODORESCU
ELAINE MINALTOSKI

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE ADMINISTRATION
By: CHAD BACCHUS
SCOTT CLAREMON
JASON PARKER

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

I N D E X

E X H I B I T S

(Appellant's Exhibits 1 and 2 were received at page 10.)

(Department's Exhibits A-H were received at page 10.)

<u>APPELLANT'S</u> <u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Marius Teodorescu	13			
Elaine Minaltoski	30			

CLOSING STATEMENT

	<u>PAGE</u>
By Mr. Bacchus	35
By Mr. Raymond	45

1 Cerritos, California; Tuesday, July 21, 2020

2 1:04 p.m.

3

4 JUDGE GEARY: Let's begin. Good afternoon.

5 My name is Michael Geary, and I'm lead

6 administrative judge in this appeal of Theratest, Inc.

7 Today is July 21st, 2020, and it's approximately 1:04 p.m.

8 I am joined on this virtual dais by my co-panelists,

9 Judges Cho and Dang, both of whom share with me equal

10 responsibility for deciding the issues presented in this

11 appeal.

12 The parties will please state their appearances

13 for the record, beginning Appellant.

14 MR. RAYMOND: Paul Raymond, attorney for the

15 Appellant.

16 Marius, you speak.

17 MR. TEODORESCU: Marius Teodorescu.

18 MR. RAYMOND: Elaine?

19 MS. MINALTOSKI: Elaine Minaltoski, General for

20 Theratest Labs.

21 JUDGE GEARY: Thank you.

22 And the Department.

23 MR. BACCHUS: Chad Bacchus.

24 JUDGE GEARY: There are others; correct?

25 MR. CLAREMON: Scott Claremon with CDTFA. Sorry

1 about that.

2 MR. PARKER: And Jason Parker with CDTFA as well.

3 JUDGE GEARY: Thank you everybody.

4 So for the benefit of the shorthand reporter --
5 can we confirm the spelling of Mr. Teodorescu's names,
6 first and last, and Ms. Minaltoski's last name.

7 MR. RAYMOND: Let me handle that, Your Honor.
8 It's Paul Raymond. The last name for Marius Teodorescu is
9 T as in Tom, E as in Eddie, O as in ocean, D as in David,
10 O as in Ocean, R as in Robert, E as in Eddie, S as in Sam,
11 C as in Charlie, U as in union.

12 And for Elaine Minaltoski, the spelling is M like
13 in Mary, I like in Ida, N like in Nora, A like in Adam, L
14 like in Larry, T as in Tom, O as in Ocean, S as in Sam, K
15 as in king, and I as in Ida.

16 JUDGE GEARY: Thank you. This is Judge Geary.

17 It's my understanding that the issue in this
18 appeal is whether Appellant had the duty to collect use
19 tax from its California customers during the liability
20 period and to remit that.

21 MR. RAYMOND: This is Mr. Raymond. I'm losing
22 the connection. I'm not too sure what happened.

23 MS. MINALTOSKI: I have lost connection as well.

24 MR. RAYMOND: Yeah. We just got locked out.

25 JUDGE DANG: This is Judge Dang speaking. We

1 lost Judge Geary. If we could just go off the record for
2 a moment and take a brief recess to allow Judge Geary to
3 reconnect.

4 (There was a pause in the proceedings.)

5 JUDGE GEARY: All right. So once again I
6 identify the issue in this appeal. It is whether
7 Appellant had a duty to collect use tax from its
8 California customers during the liability period and to
9 remit that tax to Respondent; the liability period being
10 July 1st, 2010, through March 31st, 2014.

11 Mr. Raymond, did I accurately identify the issue?

12 MR. RAYMOND: Yes, Your Honor.

13 JUDGE GEARY: And Mr. Bacchus?

14 MR. BACCHUS: Yes, Your Honor.

15 JUDGE GEARY: Thank you.

16 The parties have submitted their proposed
17 evidence. Appellant offered -- offers exhibits which have
18 been marked 1 and 2 for identification. And Respondent
19 offered 8 exhibits which have been marked A through H for
20 identification. Neither party has filed written
21 objections to the evidence offered by the opposing party.

22 But, nevertheless, it appears to me, at least,
23 that some of the documents offered by the parties are more
24 in the nature of written arguments than evidence of facts.
25 Those documents, about which I have some concern, have

1 been marked -- are Appellant's Exhibits 1 and 2. One is a
2 copy of Appellant's petition for redetermination that was
3 filed with the agency to begin the appeals process. And
4 included with that exhibit is some facts, cover documents,
5 a copy of the Notice of Determination, and a copy of the
6 power of attorney with the exception of the Notice of
7 Determination, which also have been offered by the
8 Department as its Exhibit B.

9 It seems to me that these documents are not
10 really evidence of disputed facts, and I'm not inclined to
11 admit those. Appellant's Exhibit 2 is entitled -- let's
12 see. I believe it's entitled supporting statement, and it
13 is essentially a written statement of Appellant's
14 arguments in support of this appeal. I have concern
15 about -- the same concern about two of the documents that
16 have been offered by Respondent. That would be Exhibit A,
17 which is a copy of the appeals decision, and Exhibit H,
18 which are excerpts from the rule making file for
19 Regulation 1684.

20 I communicated with the parties. OTA
21 communicated with the parties by e-mail. I let them know
22 about my concerns. I let them know that I would entertain
23 argument or if they disagreed with my intention to not to
24 admit these documents as exhibits. But I also assured
25 them, as I assure them now, that these -- the documents,

1 the content of these documents will be considered by the
2 panel as argument.

3 Let me ask you, Mr. Raymond, first. Do you wish
4 to be heard on whether these documents should be admitted
5 as evidentiary exhibits, or are you satisfied that the
6 panel will take them into consideration as argument as to
7 your Exhibits 1 and 2.

8 MR. RAYMOND: I'm 50-50 Your Honor. The reason
9 is that in prior cases, it seems to me that the petition
10 has been admitted as a document in evidence. I recognize
11 that it is argument. I also recognize that it's subject
12 to evidentiary foundation, meaning facts. I am
13 comfortable with the fact that the panel will -- and
14 yourself, of course -- will consider the points raised in
15 argument. But it's just the first time for me that we
16 haven't seen it come into evidence. That's all.

17 JUDGE GEARY: All right. Mr. Bacchus, do you
18 wish to be heard regarding Respondent's Exhibits A and H?

19 MR. BACCHUS: I do. So for Exhibit A, the
20 Appeals Bureau's decision and recommendation, it includes
21 a summary of verbal testimony that Appellant gave at the
22 appeals conference that -- regarding the lease of the
23 equipment. So we are relying on the summary of
24 Appellant's verbal statements in our argument today. As
25 for Exhibit H, it just includes -- I included the language

1 regulation 1684 at different points in time just to
2 emphasis the fact that the language hasn't changed since
3 its inception as -- just to counter an argument by
4 Appellant.

5 JUDGE GEARY: So regarding the statements made by
6 a party representatives -- and I assume you mean at the
7 appeals conference that was held by the agency -- you're
8 offering the author's statements about what the party's
9 representative said as evidence of what they said.

10 MR. BACCHUS: Correct.

11 JUDGE GEARY: All right. While I remain
12 skeptical about the evidentiary value of the evidence, I'm
13 not so committed to the position I stated in my e-mail
14 that I'm not willing to entertain your arguments to admit
15 those. I'll just admit all the documents. But be
16 forewarned that in my view, the documents have little
17 evidentiary value and are primarily arguments.

18 So I'm going to admit and will admit now all the
19 exhibits of Respondent's A through H and the Appellant's 1
20 and 2.

21 (Department's Exhibits A-H were received in
22 evidence by the Administrative Law Judge.)

23 (Appellant's Exhibits 1 & 2 were received
24 in evidence by the administrative Law Judge.)

25 Mr. Raymond, you previously indicated you

1 intended to call one or more witnesses. Is it your intent
2 to call both Mr. Teodorescu and Ms. Minaltoski as
3 witnesses today?

4 I could not hear that. Is your mic muted?

5 MR. RAYMOND: I'm sorry. I remembered the
6 instructions when you said mute the mic when you're not
7 talking. The answer is yes. I'm going to call just two
8 witnesses, Your Honor.

9 JUDGE GEARY: Okay. And Mr. Bacchus, do you have
10 any live witnesses today?

11 MR. BACCHUS: I do not.

12 JUDGE GEARY: All right. Who do you wish to call
13 first as a witness, Mr. Raymond?

14 MR. RAYMOND: It will be Marius Teodorescu.

15 JUDGE GEARY: When we had our prehearing
16 conference a few weeks ago, we talked about the
17 possibility of having opening statements, which I would
18 have limited to summaries of the testimony. But it's my
19 understanding, from statements made by Mr. Raymond during
20 that prehearing conference, that he expects the testimony
21 of both witnesses, including possible cross-examination,
22 to last no more than a half hour.

23 Are you still comfortable with that estimate,
24 Mr. Raymond?

25 MR. RAYMOND: Yes, Your Honor.

1 JUDGE GEARY: In view of the fact that the
2 testimony is going to be relatively short, Mr. Raymond,
3 can we dispense with an opening statement and go directly
4 to the testimony?

5 MR. RAYMOND: Absolutely.

6 JUDGE GEARY: Thank you. In that case, did you
7 say Mr. Teodorescu would be your first witness?

8 MR. RAYMOND: Yes, sir.

9 JUDGE GEARY: Mr. Teodorescu, let's see if I
10 can -- I don't see you displayed on my screen right now.
11 I'm assuming you can hear, Mr. Teodorescu?

12 MR. TEODORESCU: Yeah.

13 JUDGE GEARY: All right. I'm going to ask you to
14 please raise your right hand. Now I can see you.

15

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

20

21 JUDGE GEARY: Thank you.

22 Mr. Raymond, you may begin your examination of
23 the witness.

24 MR. RAYMOND: Thank you judge.

25 ///

1 DIRECT EXAMINATION

2 BY MR. RAYMOND:

3 Q I'm going to call you Marius, because I butcher
4 your last name, if that's permissible, Marius?

5 A That's fine.

6 Q All right. And I shouldn't do that because
7 obviously it at various times you've written a check to
8 me, it's not nice when the person writing the check to you
9 doesn't pronounce the name correctly.

10 So I'm going to focus your attention and my
11 questions to the time period of the audited tax periods.
12 Okay?

13 A Yes.

14 Q And the audited tax periods are July 1, 2010,
15 through March 31, 2014. Okay?

16 A Yes.

17 Q Let's take you back in time to -- Theratest
18 started in 1988; correct?

19 A Yes.

20 Q Okay. And during the time that you were at
21 Theratest -- I'm going to look at now the audited time
22 period of July 2010 through March of 2014 -- what was your
23 title at Theratest?

24 A I was president and CEO.

25 Q Okay. And could you give us a brief description

1 of what Theratest does? And recognize that the website I
2 put into our argument, Exhibit 1 and 2, and I think the
3 panel has seen it as well as the Department. So just a
4 brief description of what the operation of Theratest does?

5 A Theratest is a manufacturer and distributor of
6 diagnostic products for rheumatic diseases. And one of
7 its markets is presented by physician office laboratories
8 where we provided leasing equipment for the operation of
9 the laboratory. And also, we provided training of how to
10 use the equipment. It usually takes one to four days,
11 depending on the level of knowledge. And then sell
12 diagnostic kits to the laboratory.

13 Q Okay. So let's break that down and talk a little
14 bit about that. Describe for us how a typical lease
15 agreement would work mechanically. And I'm talking about
16 specifically California. I'm talking about specifically
17 the audited tax period. How would that work?

18 A The contact with the physician office is made at
19 national conventions. And, subsequently, we discuss
20 the -- at the time of the conventions would be the
21 physician to have a desire to have a laboratory setup or
22 buy reagent, to buy or lease equipment, and then agreement
23 is set up. The agreement many times are set up right
24 there at the convention. So it was made in very simple
25 language.

1 And after that, the representative of Theratest
2 would go to that location and train a technician of how to
3 use the equipment. And after that, once a year or once
4 every six months, depending on the complexity, somebody
5 would go there for a couple of hours to see that the
6 equipment is functioning properly.

7 Q Okay. Let me -- let me break it down a little
8 bit so we're all catching up to what you said. Thank you
9 for your description. The first thing is how you get
10 business, how Theratest gets business. And you said that
11 this is a convention. Is this like a trade show that
12 you're talking about where Theratest displays their
13 products as an exhibitor. Is that a fair statement of
14 what happens?

15 A Yes. We setup a booth where we bring the
16 information there, and the sales representative would be
17 there. And that's where the discussion takes place with
18 the physician.

19 Q Let's talk about where these trade shows or
20 conventions are held. Where are they held?

21 A All over the country. Most of the time most --
22 probably the most frequent was Atlanta or Washington or
23 Philadelphia, maybe Chicago. I don't think that during
24 that period there was any in California, but I think -- I
25 think last year or the year before it was in California.

1 Q Okay.

2 A So it could be but not -- I don't remember during
3 that time none of them was in California.

4 Q All right. All right. So if I understand your
5 testimony thus far, conventions or trade shows are held
6 throughout the United States; correct?

7 A All over the country, yes.

8 Q And that your present recollection is that you
9 don't recall any in California during the audited tax
10 periods; is that correct?

11 A I don't believe, yes. I don't recall any in
12 California at this time.

13 Q Okay. All right. So I assume that there's a
14 lease agreement that's entered into between the testing
15 center, the doctors, the physician groups, et cetera, with
16 Theratest; is that correct?

17 A Yes.

18 Q And that allows for what you said earlier,
19 Marius, about installation. So my understanding is -- I'm
20 sorry to go on a little but let me just drag into this
21 next thought -- is that representatives from Theratest
22 handle with the install -- I'm sorry -- handle the
23 installation at the facilities of the doctors or the labs
24 or things of that nature; correct?

25 A Yes. It depends also during that time, probably

1 that's -- both the large instruments and small instruments
2 were installed with the help of Theratest personnel --

3 Q So --

4 A Directly from Theratest there, and they were
5 basically set up and turned on.

6 Q So not in every case of any leased equipment did
7 Theratest actually provide employees through the
8 installation?

9 A I think that at -- I think at that time, if my
10 memory is correct, some of the -- yup. It's most likely
11 yes. Most likely yes. I don't remember the details, but
12 most likely there was somebody from Theratest who would go
13 after the instrument was delivered to make sure that it is
14 properly installed.

15 Q Okay. And my understanding is that's part of the
16 agreement with the doctors and the --

17 A Yes.

18 Q Okay. So -- so let's focus on what those
19 individuals are. They are folks that are based in -- I
20 believe you're in Lombard, Illinois?

21 A Yeah.

22 Q They work out of your office in Lombard,
23 Illinois; is that right?

24 A All in there. Yes.

25 Q And they come to California. They do the

1 installation. Let's talk about how many days that
2 installation takes. Is there an average number of days it
3 takes?

4 A Maybe the average would be three days. It also
5 depends --

6 Q Okay.

7 A It probable could be done in a very short period
8 of time. The reason there were sometimes taking three or
9 four days is because sometimes they have to work around
10 the schedule of the technician availability there. So --

11 Q And they would leave --

12 A -- it wouldn't take more than a day or two, but
13 they have to wait around sometimes.

14 Q They would leave. These installers, these
15 employees of Theratest --

16 A Oh, yeah. They'll come back home.

17 Q -- would come back home to Illinois?

18 A Yeah.

19 Q They wouldn't --

20 A Always.

21 Q They wouldn't stay in California?

22 A No.

23 Q They're not based in California?

24 A No.

25 Q And forgot to ask the question, which is the

1 \$64,000 question, during the audited tax periods,
2 Theratest didn't have any buildings or offices --

3 A No.

4 Q -- or anything of that nature -- let me finish
5 the question before you respond -- or anything of that
6 nature at all; isn't that correct?

7 A No. Only in -- in Lombard.

8 Q So I am correct that they only had an office
9 location in Lombard, Illinois; is that correct?

10 A Yes.

11 Q Okay. So now we have an audit -- I'm sorry -- we
12 have a limited contact of our installers. They go back to
13 Lombard, Illinois, but under the agreements they still
14 provide customer support, they being Theratest; correct?

15 A Yes. Most of it was done by remote.

16 Q Well, it's done on the phone or remote. Is it
17 done ever in person?

18 A In person it would be extremely unusual. The
19 only situation that it would happen, it would be if
20 something happened with the technician and a new
21 technician needed to be hired. In other words --

22 Q Okay.

23 A -- which is very, very rarely.

24 Q Okay. Let's -- let's leave the business of
25 Theratest for a moment and talk about something else that

1 you and I talked about, which is the seller's permit
2 situation and the application. Now, yesterday I sent you
3 and Elaine the binder -- they call it a binder --

4 A Yeah.

5 Q -- with all the different exhibits. Do you have
6 that in front of you on the computer?

7 A I --

8 Q Is it easy for you to get to or is that going to
9 boot you out?

10 A It would mess up what I'm trying to do here.

11 Q All right.

12 A And it was not easy to print. So --

13 Q Did you print it out?

14 A No. It was way too big.

15 Q All right. So for the record, I'm going to be
16 referring to Exhibit C, which is a -- bear with me,
17 reporter, if you wouldn't mind -- a four-page document.
18 The first page is the actual application for seller's
19 permit. You recall seeing this document, do you not,
20 Marius?

21 A I couldn't say that I recall. If I signed it, it
22 means I saw it.

23 Q Okay. But we talked about this the other day;
24 right?

25 A Yes. Yes.

1 Q Okay. So you know which document I'm referring
2 to?

3 A I know. The seller's permit, yes.

4 Q You're -- you're -- and I'm getting to the point
5 of your name is on the document. You signed it; right?

6 A Yes.

7 Q Okay. And on the second page of that document
8 there's a young lady by the name of Maureen Stapleton.

9 A Yes.

10 Q No relation to the famous movie star or starlet.
11 And Maureen has a story to tell about how this document
12 came in existence and how you ended up signing it along
13 with the others. So now my question to you is, can you
14 please tell the judges the story about what happened when
15 Maureen approached you guys? What happened? Tell the
16 story.

17 A Basically, she told us that I have to sign a
18 document to sell product in -- in California, and that
19 otherwise we don't -- if we don't sign the document, we
20 cannot sell anymore.

21 Q Why did she say that? Was there anything that
22 told her that she had to do this?

23 A She received some information from clients that
24 obligated her to give me the document and to sign it.

25 Q Did she also receive some information from the

1 Board of Equalization -- the State Board of Equalization?

2 A Yes. I think that was the document about, yes.

3 Q So the contact --

4 A Well, that's what I remember. Honestly, I don't
5 remember exactly, but you're right. I was looking at
6 that -- at those documents, and some of them might have
7 been from the Board of Equalization that I can recall.

8 Q And was it one of the -- can you tell us if there
9 was anything about, you know, if you don't sign, you're
10 going to get audited or something like that?

11 A Yes. Yes. That's what I remember.

12 Q Tell us -- tell us --

13 A Basically --

14 Q -- in your own words?

15 A Yeah. That we're going to have -- and, actually,
16 I was actually surprised because it sounded to me very
17 farfetched that somebody from California would audit us in
18 Illinois. So I -- it just sounded to me, like, really? I
19 couldn't believe it. But it said that we will be audited
20 if we don't sign the document if we don't submit that
21 obligation.

22 Q So you signed the document; correct?

23 A Yes. Yes.

24 Q As well as the other people that are listed at
25 Theratest; correct?

1 A Yes.

2 Q And in the section on page 1 of Exhibit C under
3 what -- I'm sorry, my eyes are bad -- what items will you
4 sell? There's an asterisk next to it. I believe it's
5 your asterisk. It lists automated pipetting machines,
6 microplate readers and washers. Do you recall that, sir?

7 A Yes, yes.

8 Q And those are --

9 A Actually, it started from initially when this
10 information came through because we sold the -- we -- we
11 send the parts, the replacement parts for one of the
12 instruments.

13 Q So you're -- what you're telling me is that those
14 aren't the actual testing kits?

15 A No.

16 Q Correct?

17 A No.

18 Q Those are completely different products?

19 A Yeah.

20 Q Those aren't the reagents; right?

21 A No. The reagents are sold separately.

22 Q And the reagents are part of the testing kits
23 that you provide the California folks or businesses;
24 right?

25 A Yes.

1 Q Okay. Can you briefly describe to the lay folks
2 that are listening to this, what a reagent is?

3 A A reagent are chemicals that are mixed together
4 with the patient blood in order to make a diagnose test.
5 And they are in small little bottles, and they are all
6 calculated in a way that after the reactions take place,
7 they generate color. It's entered into a computer, and
8 data is calculated and converted into a diagnostic test.

9 Q Wonderful. Thank you, Mr. Marius.

10 MR. RAYMOND: At this time, Your Honor,
11 Judge Geary, I have nothing further.

12 I can't hear you, Judge.

13 JUDGE GEARY: Excuse me. All right. There we
14 go. Thank you, Mr. Raymond.

15 Mr. Bacchus, do you have any questions for the
16 witness?

17 MR. BACCHUS: We have no questions.

18 JUDGE GEARY: All right. Let me ask --

19 MR. CLAREMON: I do have -- hold on. I -- sorry.
20 This is Mr. Claremon. I do have one question for the
21 witness.

22 JUDGE GEARY: Go ahead, Mr. Claremon.

23 MR. CLAREMON: I know that as part of the
24 agreements in addition to installation and maintenance of
25 the equipment, it also mentioned training of the employees

1 of your customers. How often would those trainings take
2 place?

3 THE WITNESS: One time. And -- one time only at
4 the time of installation. And if the technician, for
5 example, for some reason was leaving, let's say three or
6 four years later, then a new technician would be trained.

7 MR. CLAREMON: For each customer there was
8 training and installation?

9 THE WITNESS: Training and installation with the
10 initial setup of the instrument, yes.

11 MR. CLAREMON: Okay. Thank you. That was my
12 only question.

13 JUDGE GEARY: All right. Thank you.

14 Let me ask my co-panelists. Judge Cho, do you
15 have any questions?

16 JUDGE CHO: This is Judge Cho. I have no
17 questions. Thank you.

18 JUDGE GEARY: Judge Dang, do you have any
19 questions.

20 JUDGE DANG: This is Judge Dang. I just have one
21 question for the witness.

22 Mr. Teodorescu, during the 2010 through 2014 tax
23 years, do you happen to know if Theratest ever filed any
24 California income returns?

25 THE WITNESS: I would have no recollection. It

1 could have been, but I honestly don't remember.

2 JUDGE DANG: Thank you. I have no further
3 questions.

4 JUDGE GEARY: Mr. Teodorescu, I have a couple of
5 questions. This is Judge Geary speaking. Am I correct
6 that the contracts -- did you happen to look at the three
7 exemplar contracts that were part of the Respondent's
8 exhibits in that binder?

9 THE WITNESS: I know the contract, yes. I know
10 the contract.

11 JUDGE GEARY: And are those fair examples of the
12 types of contracts that Theratest used during the audit
13 period?

14 THE WITNESS: Yes.

15 JUDGE GEARY: Am I correct also that Theratest
16 retained ownership of all the equipment that was placed in
17 the doctor's or lab offices pursuant to those particular
18 contracts?

19 THE WITNESS: It -- you know, this was a lease
20 agreement, and some lease agreement we retain ownership.
21 In others, there was an option to buy for a dollar at the
22 end of four or five years, for example. It's, basically,
23 the instrument was amortized in the price of agreement.
24 And at the end, they would buy the instrument for a
25 dollar.

1 Most people opted not to do that because this way
2 they don't want to have the trouble. They don't want the
3 instrument anymore. What would they do with it? So most
4 of them opted to just lease the instrument and buy the
5 reagent and pay the lease.

6 JUDGE GEARY: Thank you. And during the
7 liability period, did Theratest sell test kits or other
8 consumables that related to those test kits to California
9 customers who owned their own equipment that could process
10 those test kits?

11 THE WITNESS: The only reason that we provide the
12 equipment is because they didn't have one. But for people
13 who had the equipment -- and this was all over the country
14 not just California. If they have their own equipment, we
15 actually give them a discount because they already have
16 the equipment.

17 JUDGE GEARY: The contracts that are exhibits
18 refer to installation. They refer to training, and they
19 also refer to maintenance. Can you give us an idea of
20 what type of maintenance would be required on the
21 equipment that you placed in customer's offices?

22 THE WITNESS: For the big instruments, those are
23 the only ones that required -- the robotic instruments
24 required maintenance. And that means depending on the
25 size of the instrument, once a year or twice a year,

1 somebody would go there for a couple of hours and
2 basically tune them and replace parts that were broken, or
3 they are obsolete or there were something wrong with them.
4 So, basically, make sure that the functionality continues.

5 JUDGE GEARY: The contracts that are in evidence
6 refer to five-year terms. Was that a typical term for an
7 initial contract?

8 THE WITNESS: Yes. Because also there was the
9 term then that the ownership could also be transferred to
10 the client if they decided to take that kind of option.
11 Like, a lease was an option to buy at the end of that
12 period.

13 JUDGE GEARY: I mentioned consumables a few
14 minutes ago, and I noted that one of the invoices that is
15 part of the exhibit -- an exhibit offered by Respondent
16 and admitted, they refer to something -- they appear to
17 refer to something other than testing kits; a pipette
18 tips, for example. Would those be consumables that
19 Theratest also sold?

20 THE WITNESS: Yes. We were, actually, reselling
21 them from the manufacturer. The manufacturer of the
22 instrument would sell us the pipette tips, and we resell
23 them, essentially, at cost to the client. So they -- the
24 machines can constantly consume pipette tips. So we had
25 to make sure we provide them. They could also buy them --

1 sometimes they were buying them from other sources because
2 they were available also from other sources.

3 JUDGE GEARY: Okay. Thank you, Mr. Teodorescu.
4 Those are the only questions that I have.

5 Mr. Raymond, I should throw it back to you in
6 case you have some follow-up.

7 MR. RAYMOND: I really don't have any redirect,
8 Your Honor. I think we're ready to move onto the next
9 witness.

10 JUDGE GEARY: Mr. Bacchus, do you have any
11 follow-up?

12 MR. BACCHUS: I do not.

13 JUDGE GEARY: All right. Co-panelists any
14 follow-up?

15 JUDGE DANG: This is Judge Dang. I have no
16 further questions.

17 JUDGE CHO: This is Judge Cho. Same here.

18 JUDGE GEARY: All right. Thank you.

19 Mr. Raymond, would you like me to administrator
20 an oath or affirmation to Ms. Minaltoski so you can
21 examine her?

22 MR. RAYMOND: Yes, sir.

23 JUDGE GEARY: All right. Ms. Minaltoski, would
24 you raise your right hand please.

25 ///

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

ELAINE MINALTOSKI,

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

JUDGE GEARY: Thank you. Mr. Raymond, you may proceed.

DIRECT EXAMINATION

BY MR. RAYMOND:

Q Elaine, how are you today?

A I'm good. How are you, Paul?

Q I'm good. I love to see those wonderful pictures on the left corner of my screen. It's got to be your gorgeous granddaughter?

A It is.

Q Wonderful. We're going to be very brief, Elaine, because Marius covered mostly everything. Let's just start in the beginning. You started in November 2010 at Theratest?

A Correct.

Q And you've rose through the ranks, as they say, to the position of general manager; is that correct?

A Yes.

Q Okay. So one of the things that I asked you to

1 do was to research the amount of business that Theratest
2 derived from California and other states during the
3 audited periods. Remember we talked about that?

4 A Yes.

5 Q And you did complete your task, I take it?

6 A I did.

7 Q Good. Tell us what percentage of business
8 Theratest derived from California during the audited
9 periods?

10 A During the audited period it was 16 percent.

11 Q And were there -- sorry?

12 A 16 percent during the audited period.

13 Q Was that considered at that point, since you were
14 there, to be kind of a small -- very small part of the
15 business?

16 A It's a portion of the business. We do business
17 in 30 states.

18 Q Who would be the biggest, if you know offhand?

19 A Texas.

20 Q Okay. And -- all right. Well, let's talk about
21 another subject that came up. I believe it came up either
22 during the audit or appeals, and that was closing out the
23 permit. Do you remember that discussion?

24 A Yes.

25 Q And so the argument was made that Theratest

1 should have, quote, "Closed out the permit if they are,"
2 quote, "No longer doing business in California and,
3 therefore, not subject to use tax." Do you remember that
4 discussion?

5 A Yes.

6 Q So what did you do to try and close out the
7 permit? Tell the panel, tell the world out there
8 listening on YouTube what you did.

9 A Well, at that point, through the State Board of
10 Equalization we tried to close the permit, and they told
11 us "no" because it was during an audit.

12 Q Did they tell you you can't close a permit while
13 you're still in business doing an audit?

14 A Correct.

15 MR. RAYMOND: All right. I've got nothing
16 further of this witness, Your Honor.

17 JUDGE GEARY: Thank you. This is Judge Geary.
18 Thank you, Mr. Raymond.

19 Mr. Bacchus do you have any questions?

20 MR. BACCHUS: I do not.

21 JUDGE GEARY: Mr. Claremon, I'll ask you. Do you
22 have any questions of this witness?

23 MR. CLAREMON: Sorry. I do. Yes. I do. I just
24 want to clarify on one thing. When you say that that
25 statement was made to you, that it couldn't be closed out

1 during the audit, do you mean that -- when did that
2 conversation take place? Was that during the liability
3 period in question or was that after the liability period?

4 THE WITNESS: Well, it was during. We kept
5 getting an extension on the original audits because my
6 predecessor, Maureen Stapleton, who was the one that
7 filled out the original application, at that point had
8 left the company. And I had a lot going on and I was
9 learning a new position and so on and so forth. So audit
10 period kept getting extended and extended, until at one
11 point it I think it was at three-and-a-half years, for one
12 reason or another.

13 MR. CLAREMON: Okay. So do you know about
14 when -- did you have an estimate as to when that statement
15 was made to you?

16 THE WITNESS: It would have been at the beginning
17 of the audit when they first came in.

18 MR. CLAREMON: Okay. Thank you.

19 JUDGE GEARY: All right. I'm assuming you're
20 done.

21 Let me ask Judge Cho if he has any questions.

22 JUDGE CHO: This is Judge Cho. I have no
23 questions. Thank you.

24 JUDGE GEARY: Judge Dang, do you have any
25 questions of this witness?

1 JUDGE DANG: This is Judge Dang. I do not have
2 any questions. Thank you.

3 JUDGE GEARY: Thank you.

4 Mr. Raymond, this, I take it, concludes your
5 witness testimony for the hearing?

6 MR. RAYMOND: Yes, Your Honor.

7 JUDGE GEARY: All right. Then we are ready to
8 proceed with the argument portion as discussed in the
9 prehearing conference. We typically allow the Appellant
10 15 minutes for an initial argument. The Department will
11 be allowed 15 minutes for its argument, and then the
12 Appellant will be allowed an additional 5 minutes or so in
13 rebuttal if he chooses to use that time.

14 So you can begin your initial closing when you're
15 ready, Mr. Raymond.

16 MR. RAYMOND: Your Honor, if I may, I suggest
17 rather than me doing that, I will just loop my arguments
18 at the end. We'll let Respondent -- we'll let the
19 Department go first, state their position, and I'll be
20 able to state our position with any rebuttal at that
21 point.

22 JUDGE GEARY: That's acceptable to me.
23 Mr. Bacchus, are you ready to give Department's closing?

24 MR. BACCHUS: Yes, I am.

25 JUDGE GEARY: You may proceed.

1 contract, or it was titled "Rental Contract" and the other
2 two were titled "Equipment Agreement". So those are found
3 in Exhibit D. Appellant's agreements do not include a
4 specific charge for the equipment but the agreements do
5 state that Appellant retained ownership of the agreement
6 and that the equipment was to be returned at the end of
7 the agreement.

8 As Appellant stated at the appeals conference,
9 which was summarized in Exhibit A, the Appeals Bureau
10 decision and recommendation, the charge for the equipment
11 is built into the price of the test kits. For example,
12 Appellant stated that it might charge \$4 for a test kit to
13 a customer that is also using Appellant's equipment, but
14 would only charge \$2 for the same test kits to a customer
15 that was not using Appellant's equipment.

16 The agreements also state that Appellant will
17 provide indefinite routine and necessary maintenance on
18 all equipment and will provide the initial training of
19 laboratory personnel and on-site laboratory setup. And as
20 Mr. Marius testified to, the maintenance could be once or
21 twice a year.

22 And then for every piece of equipment Theratest
23 had an employee in California for the initial setup and
24 the initial training. And then if the technician in
25 California -- one of the customers, if that technician

1 changed and they needed additional training, they would
2 send out another individual to train.

3 Pursuant to Revenue and Taxation Code Section
4 6051, sales tax applies to retailer's retail sale of
5 tangible personal property in California. Section 6210
6 states that where sales tax does not apply, use tax
7 applies to the use of that property purchase from a
8 retailer for use in this state.

9 Section 6203 states that use tax is imposed on
10 purchaser, but a retailer engaged in business in this
11 state must collect use tax from its purchaser and remit
12 that tax to the Department. The use tax, a retailer is
13 required to collect and remit to the Department, is a debt
14 retailer owes to the Department.

15 Appellant's sales of test kits to California
16 customers occurred outside of California. Therefore, they
17 were subject to use tax, which is imposed on the
18 California customers. However, Appellant was a retailer
19 engaged in business in California at the time of the sales
20 and was, therefor, obligated to collect the use tax from
21 the California customers and remit it to the Department.

22 Section 6203 and Regulation 1684 define a
23 retailer engaged in business in California and includes
24 any retailer having a representative, agent, salesperson,
25 canvasser, independent contractor, or solicitor operating

1 in this state under the authority of the retailer for the
2 purpose of selling, delivering, installing, assembling, or
3 the taking orders for any tangible personal property. It
4 also includes any retailer deriving rentals from a lease
5 of tangible personal property situated in this state.

6 Appellant's employees were physically present in
7 the state to setup and install the equipment and provide
8 training on how to operate the equipment. Again,
9 Mr. Marius testified to this fact today. Appellant's
10 employees' presence in California is directly related to
11 its sales of products to California customers, and enables
12 it to maintain or expand the market for its products in
13 this state.

14 By installing and setting up the equipment and
15 training the customer on how to properly use the
16 equipment, Appellant was facilitating the sale of its test
17 kits, which are essential to the test equipment. Thus,
18 Appellant had employees under its authority engaged in
19 installation and selling activities in this state.
20 Additionally, there's no dispute that Appellant's leases
21 of testing equipment -- or that it was leasing testing
22 equipment. Those -- it appears that those leases were
23 continuing sales and purchases subject to use tax measured
24 by rentals payable.

25 Section 6006.3 and Regulation 1660 define a lease

1 as contract where for consideration a person secures
2 temporary use and control of tangible personal property.
3 Here Appellant granted temporary use and control of the
4 testing equipment as evidenced by the equipment agreements
5 and by Mr. Marius' testimony.

6 Moreover, the excess charge on the test kits for
7 customers using Appellant's equipment consider --
8 constitutes consideration for the use of that equipment.
9 Therefore, Appellant leased its equipment to California
10 customers and, accordingly, Appellant derived rentals from
11 a lease of tangible property situated in this state.

12 Each of these facts independently make Appellant
13 a retailer engaged in business in this state. As such,
14 Appellant was required to collect use tax from its
15 California customers and remit that tax to the Department
16 pursuant to Section 6203(c)(2) and (c)(3). While the
17 foregoing is dispositive in this case, Regulation 1684(e)
18 states that retailers who are not engaged in business in
19 this state may voluntarily apply for a Certificate of
20 Registration for Use Tax.

21 Holders of such certificates are required to
22 collect tax from purchasers and pay the tax to the
23 Department in the same manner as retailers who are
24 otherwise engaged in business in this state. Because
25 Appellant held a certificate of use registration use tax,

1 it was obligated to collect tax from its customers and pay
2 the tax to the Department. Appellant argues that it did
3 not.

4 In Appellant's exhibits it argues that it did not
5 voluntarily register for the Certificate of Registration
6 for Use Tax. Ms. Elaine's testimony today was going
7 towards that fact and also Mr. Marius' testimony about why
8 they initially registered or filled out an application for
9 seller's permit. But we don't -- and the Department
10 doesn't dispute that it goes, and it contacts out-of-state
11 retailers and tries to get them to come into compliance
12 with the sale and use tax law.

13 But Appellant's contentions that its employee
14 registered for a permit without the knowledge of her
15 superiors ignores the fact that application for seller's
16 permit is signed by Appellant's president and two of its
17 vice presidents. Mr. Marius testified as to what
18 Ms. Stapleton told him that the Department told her. And
19 we'll just point out that that constitutes two levels of
20 hearsay. And it's hard to -- for us to really grasp how
21 much evidentiary value that holds what -- basically, what
22 the Department told Ms. Stapleton when they contacted her
23 for -- to apply for a permit.

24 Moreover, Appellant's actions, after being
25 notified that it was registered to collect use tax,

1 suggest that it chose to continue being registered to
2 collect use tax to reap the benefit of a shorter statute
3 of limitations should the Appellant be audited by the
4 Department. Accordingly, even if Appellant was not a
5 retailer engaged in business in this state, which we have
6 already discussed they were, it would still have been
7 required to collect the use tax because it voluntarily
8 held a Certificate of Registration for Use Tax, pursuant
9 to Regulation 1684(e).

10 Based on the foregoing, Appellant was required to
11 collect and remit California use tax owed by its customers
12 on their leases of equipment and purchases of test kits
13 during the liability period.

14 I will now address some contentions that were
15 made in Appellant's opening brief. I'm not sure if these
16 are still part of Appellant's contentions, but because he
17 deferred, I will go through them anyway. As to
18 Appellant's argument that Section 6203 and Regulation 1684
19 did not become effective until after the audit period
20 began, we note that the applicable portions of Section
21 6203 and Regulation 1684 had been in effect for many
22 decades, including in the two versions of 6203 operative
23 during the audit period.

24 In 1969, Ruling 74 was readopted as Regulation
25 1684(b), including the language regarding out-of-state

1 retailers voluntarily applying for a Certificate of
2 Registration for Use Tax. That language has continuously
3 been included in Regulation 1684 since that time,
4 including the versions operative during the audit period
5 adopted on May 31st, 2001 and May 30th, 2012. Exhibit H
6 includes language of Regulation 1684 or the proposed
7 language in 1969 and also, I believe, in 1985 when some
8 minor changes were made to the Regulation.

9 Also in its opening brief Appellant discusses the
10 United States Supreme opinion in the case of South Dakota
11 versus Wayfair. Appellant states that, "The Wayfair
12 opinion is not per -- well, not per se relevant unless and
13 until California adopts a statute similar to the one in
14 South Dakota," close quote.

15 We agree and we state that the Wayfair opinion is
16 not relevant at all to this case. The Wayfair opinion is
17 not retroactive and was issued well after the liability
18 period. And the Wayfair opinion only expands on a state's
19 ability to impose collection obligations on out-of-state
20 retailers. It does not limit that ability at all.

21 Accordingly, even if applied, Wayfair has no
22 effect on a state imposing use tax collection obligation
23 on a retailer that, as is the case here, leased property
24 in California and had representatives engaged in selling
25 and installing activities in California while voluntarily

1 holding a Certification of Registration For Use Tax.

2 Appellant also argues that its presence in
3 California was so slight that it does not rise to the
4 level of substantial nexus. To support its position,
5 Appellant cites to four cases from other states: The
6 first, is *In re InterCard, Inc.*; the second, *Department of*
7 *Revenue versus Share International*; the third, *SFA Folio*
8 *Collection, Inc. versus Tracy*; and the fourth,
9 *Bloomington versus Department of Revenue*.

10 Initially we note that Appellant's physical
11 contacts in this state exceed the contacts described in
12 those out of state or cases. More importantly, the *in re*
13 appeal of *InterCard* and *Share International* are based on
14 substantial presence standard that has been specifically
15 rejected by California court in *Borders Online, LLC versus*
16 *State Board of Equalization*. In fact the *Borders* court
17 cite to *in re* appeal of *InterCard* and *Share International*
18 in rejecting substantial presence as the appropriate test
19 for the realities of 21st Century marketing and
20 technology.

21 As such, these case do not provide any authority
22 in determining whether a retailer is engaged in business
23 in California. In California to establish a substantial
24 nexus, a retailer must only have more than the slightest
25 physical presence in this state. Appellant's continual

1 and purposeful contacts in this state clearly exceed that
2 standard and all three of the independent basis for its
3 obligation, which were selling -- employees selling and
4 installing the presence of lease property in this state
5 and holding a Certificate of Registration for Use Tax.
6 All three are well within the limits of the State's
7 authority under the commerce laws.

8 Thank you.

9 JUDGE GEARY: Thank you, Mr. Bacchus. Let me ask
10 my co-panelists if they have any questions of you.

11 Judge Cho, any questions?

12 JUDGE CHO: This is Cho. I have no questions.

13 Thank you.

14 JUDGE GEARY: Judge Dang, do you have any
15 questions?

16 JUDGE DANG: This is Judge Dang. I have no
17 questions. Thank you.

18 JUDGE GEARY: Thank you.

19 Mr. Raymond, are you ready to give your argument?

20 MR. RAYMOND: Yes, Your Honor.

21 JUDGE GEARY: You may proceed.

22 MR. RAYMOND: Thank you. Thank you. I heard the
23 phone ring or somebody's phone, so I paused.

24 ///

25 ///

1 CLOSING STATEMENT

2 MR. RAYMOND: It's clear there are two basic
3 fundamental issue in this case. The first is the validity
4 of the so-called seller's permit. The second is whether
5 in global sense, as Your Honor, Judge Geary, has pointed
6 out at the initial opening of our hearing today, our
7 client -- my client I should say, Theratest was engaged in
8 business in California.

9 I'm going to look at the seller's permit first
10 because I think there may have been a misstatement by
11 Mr. Bacchus when he said that Elaine or Ms. Minaltoski's
12 testimony was talking about the permit. We actually only
13 heard one person testify about that today, and that was
14 Marius who described the circumstances. I was encouraged
15 by Mr. Bacchus's argument when he said that there is,
16 quote, "No dispute," close quote, that we do go out and
17 try and get folks to sign up and pay their fair share of
18 either sales and/or use taxes.

19 This has long been part of the government,
20 meaning the State Board of Equalization's outreach
21 program. And there are many offices of the State Board of
22 Equalization. By the way, I'm using that interchangeably
23 with the California Department of Tax and Fee
24 Administration. But they've always been doing that. And
25 that is something I think from my experience standpoint,

1 Your Honor, and others who perhaps have had some
2 experience in the area have seen that.

3 So the question really becomes twofold with
4 respect to the permit. Was it a voluntary undertaking?
5 Or even if it was a voluntary undertaking, were the items
6 on the permit that were listed for, quote, "Sale," close
7 quote? The actual items that were leased with respect to
8 the use tax. I think Marius was very clear when he said
9 that, you know, somebody brought it to their attention and
10 that it was a member of the State Board of Equalization.
11 I think he was equally very clear that he felt that this
12 was something that was not voluntary.

13 In my petition -- I'm sorry. It's either
14 Exhibit 1 or 2, I pointed out -- and I didn't ask Marius
15 this question. But I pointed out that hindsight is always
16 20/20. Meaning, should they at Theratest sought legal
17 counsel at the time to get an opinion? Should they have,
18 you know, researched the matter a little bit more
19 independently? Should they have done whatever it is they
20 were supposed to do to exercise some due diligence? And
21 again, hindsight is always 20/20. And we look back and
22 say could have, should have, would have, and it really
23 don't solve much of the issue.

24 So turning to the other issue in the case, and
25 I'm not going belabor you with the arguments of

1 voluntariness, et cetera. They're contained in Exhibits 1
2 and 2. But turning to the other issue, I think you all
3 felt that what I was trying to drive at today, which was
4 the limited context; the limited amount of contact there
5 was here in California. That's our theme.

6 From Elaine's testimony of 15 -- I'm sorry --
7 16 percent of the business being here in California during
8 the audited periods, Texas being their biggest state, to
9 the testimony of Marius who said, look, we had
10 conventions, trade shows. We attended nationally
11 throughout the United States. We had limited contact in
12 California. In fact, I think he said he didn't recall if
13 there was one. There may have been one. To be perfectly
14 blunt, I don't think anybody really recalls something that
15 occurred some 10 years ago perhaps.

16 So the question is, okay, we've got these rental
17 agreement. Your Honor referred to them as contracts. I
18 saw rental agreements. I didn't see contracts. Do these
19 rental agreements provide for any kind of contact? Sure
20 they do. They say that the individuals at Theratest have
21 to schlep, have to go to the installation site and provide
22 the training. That was a question, Your Honor, Judge
23 Geary, you asked. And it came out as well, about the
24 potential of some kind of maintenance.

25 But they didn't stay in California. They didn't

1 establish an office in California. They didn't come to
2 California with a view of a conquering market. It was a
3 limited contact. It was a contact that basically said
4 we're here. We install. We'll give you support. I
5 believe Mr. Marius said on the larger machines, meaning
6 the big machines, whatever those are, there was some type
7 of maintenance that may have to take place. And I don't
8 have my notes in front of me, but I recall him saying
9 maybe once or twice that may have occurred.

10 So without a sales force here, without a brick
11 and mortar here, without something that establishes some
12 kind of nexus, I have a really hard time looking at the
13 case and saying gosh, these are folks that were
14 substantially here in California. They, you know, they
15 set up en masse mailings. They did things that other
16 clients -- I'm sorry -- other taxpayers have done. And
17 for me, it's a struggle to understand how a company like
18 Theratest based in Lombard could be subject to the long
19 arm of the California taxing authorities.

20 I remember -- I looked at my argument, and I
21 looked and saw the discussion about the Commerce Clause
22 test. And I still see -- it was in the last page of the
23 supporting statement of the appeal. I still see the
24 reference to the Complete Auto Transit versus Brady cite
25 that says, "Despite Wayfair," it says, "Does the tax apply

1 to an activity with a substantial nexus with the taxing
2 state."

3 And I submit to Your Honors as a panel, that's a
4 troubling question for you. It should be. It is for me.
5 Is it enough to say that we have a rental agreement? You
6 came out, Theratest, you installed. You may have
7 maintained. Is that sufficient enough or is that sporadic
8 enough? And while Mr. Bacchus' comment about the nature
9 of those cases that may have been rejected by California,
10 I still think it's a different context. You have to look
11 at it from a constitutional context and see what's fair --
12 what's fundamentally fair here with respect to this
13 company.

14 They were actively involved in marketing, as I
15 alluded to a moment ago, coming to California and trying
16 to get and penetrate this market hard. I would say to you
17 I wouldn't be here before you today, and I would have told
18 the clients to pay the bloody tax and be done with it.
19 And we're over it. But I don't see that. What I sense
20 here is very sporadic contact. So with that being said, I
21 feel that there is really no nexus. I feel that there is
22 really no basis upon which they should be reporting either
23 sales or use tax.

24 A couple of other little things I want to
25 clarify -- and I may be just misreading things as I get

1 older -- but what I saw was in the regulation an
2 amendment, and regulation 1684 amended certain things. My
3 point was that any of those amendments don't apply to the
4 entire audit period. Why? Because the audit period
5 was -- sorry -- the amendments took place after the fact.
6 So if one was to look at and judge the case and say, well,
7 according to regulation 1684, the following is what
8 Theratest should have done.

9 I'm simply stating that anything that was amended
10 from the standpoint of September, I believe it was in
11 2012 -- it's in my argument -- it was really not something
12 that these amendments will be operative September
13 15, 2012. So you can't constitutionally say Theratest
14 should have known about something that didn't exist until
15 a later period of time.

16 So in conclusion, I would ask the panel to please
17 judicially look at our arguments that were listed in 1 and
18 2 -- Exhibits 1 and 2. I would ask you to please consider
19 the limited contacts that were made. I would ask you to
20 please consider the fact that the -- that the seller's
21 permit wasn't really voluntarily done. And I would ask
22 you to consider the fact that even if it was done, it
23 applies to different items and not reagents as Mr. Marius
24 talked about.

25 So with that, I am done unless the panel have any

1 questions for me.

2 JUDGE GEARY: Thank you, Mr. Raymond. This is
3 Judge Geary.

4 Judge Cho, do you have any questions?

5 JUDGE CHO: This is Judge Cho. I have no
6 questions. Thank you.

7 JUDGE GEARY: Thank you.

8 Judge Dang, do you have any questions?

9 JUDGE DANG: This is Judge Dang. I have no
10 questions. Thank you.

11 JUDGE GEARY: Thank you. This basically
12 concludes the hearing. The matter is now submitted. The
13 record is closed. The panel will deliberate and issue its
14 decision in due course usually within 100 days.

15 Thank you all for participating today. We
16 appreciate it.

17 (Proceedings adjourned at 2:14 p.m.)

18

19

20

21

22

23

24

25

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

HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 4th day of August, 2020.

ERNALYN M. ALONZO
HEARING REPORTER