

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
J. BELCHER,) OTA NO. 19105326
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) APPELLANT.
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TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Tuesday, December 15, 2020

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
400 R Street, Sacramento, California, 91401,
commencing at 1:01 p.m. and concluding
at 2:12 p.m., on Tuesday, December 15, 2020,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ ALBERTO ROSAS

Panel Members: ALJ AMANDA VASSIGH
ALJ ELLIOTT SCOTT EWING

For the Appellant: NIKKI L. MCLAUGHLIN

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PHILLIP KLEEM
NANCY PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-42 were previously received into evidence at the prehearing conference.)

(Department's Exhibits A-S were previously received into evidence at the prehearing conference.)

(Department's Exhibits T and V were received into evidence at page 13.)

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1 Sacramento, California; Tuesday, December 15, 2020

2 1:01 p.m.

3

4 JUDGE ROSAS: Good afternoon. We are on the
5 record in the appeal of J. Belcher, OTA Case Number
6 19105326. The date is December 15, 2020, and the time is
7 approximately 1:01 p.m. This hearing was duly noticed to
8 take place in Sacramento, California. However, due to
9 ongoing concerns regarding Covid-19 and with the agreement
10 of all the parties, we are holding this hearing remotely
11 using video conferencing.

12 I do want to take a moment to thank the parties
13 and the representatives for agreeing to hold today's
14 hearing virtually. The panel of Administrative Law Judges
15 includes Amanda Vassigh, Elliot Scott Ewing, and myself,
16 Alberto Rosas. Although I may be the lead Administrative
17 Law Judge for the purposes of conducting this hearing,
18 please note that the three of us, this Panel, we are all
19 equal decision makers and equal participants.

20 I'm going to ask each of you to please identify
21 yourself for the record. And we will start from everyone
22 from Appellant's side.

23 MS. MCLAUGHLIN: This is Nikki McLaughlin,
24 Appellant's representative.

25 MS. HE: Mengjun He for TAAP.

1 MS. BELCHER: Judy Belcher.

2 JUDGE ROSAS: This is Judge Rosas. Thank you
3 very much.

4 And now for FTB's representatives.

5 MR. KLEEM: This is Phillip Kleem for Respondent
6 Franchise Tax Board.

7 MS. PARKER: This is Nancy Parker for Respondent
8 Franchise Tax Board.

9 JUDGE ROSAS: This is Judge Rosas. Thank you
10 very much.

11 As I mentioned earlier this hearing is being
12 recorded. We have a stenographer. So once again, please
13 remember before speaking, the first thing you should do is
14 state your name. Remember to speak slowly, speak clearly,
15 and speak one at a time.

16 Before we discuss exhibits, I do want to say
17 something about virtual hearings and the visual optics on
18 the screen. Now, eye contact is extremely important for
19 me. If we were holding this hearing in person, there
20 would be no doubt that I'm looking at you, maintaining eye
21 contact, and listening to what you have to say. However,
22 in this Covid-19 world, as we've made the move to video
23 conferencing and virtual hearings, maintaining eye contact
24 is more difficult. And because of the optics inherent in
25 this virtual world, it may sometimes seem that I am not

1 looking at you or that I'm distracted, but that's not the
2 case.

3 The Office of Tax Appeals OTA describe itself as
4 open, transparent, and accountable. It is in this
5 interest of being open and transparent that I want to
6 disclose to you what I'm doing on my end so that you may
7 better understand why I may not always maintain eye
8 contact, or why I may come across as distracted. For
9 starters I have three screens going on right now. On one
10 monitor I have the electronic exhibit binder, a courtesy
11 copy of which was e-mailed to all the parties.

12 I have the electronic case file on one of these
13 monitors, and from time to time I may be looking through
14 this electronic file. I have the Cisco Webex program up
15 here on one of these monitors. I also have a Skype
16 instant messenger app where I can communicate with my
17 Co-Panelists, with tech support, or with the management
18 and staff members who work behind the scenes to make these
19 virtual hearings possible.

20 From time to time you may see me looking down as
21 I take notes. I may not be looking at you, but I am
22 listening to you. And from time to time you may see me
23 typing regardless of how that might look onscreen, I
24 assure you I'm not replying to any e-mails. Rather, I
25 am -- maybe I'm doing a word search of the electronic

1 exhibit binder so that I can find an exhibit you're
2 referring to. Or maybe I'm sending an instant message to
3 one of my Co-Panelists or tech support or other members
4 working behind the scenes. And on that note, I do want to
5 thank the OTA staff and the team members who do work
6 behind the scenes to make these virtual hearings possible.

7 Before we continue, I want to ask whether there's
8 anything either one of my Co-Panelists would like to add.

9 Judge Vassigh?

10 JUDGE VASSIGH: Good afternoon. I would just
11 like to add much the same as what Judge Rosas said. I use
12 corrective progressive lenses. So I might sometimes be
13 looking down and I might be typing or looking at the
14 exhibits on my screen, but I'm with you on paying
15 attention. I'm here.

16 JUDGE ROSAS: This is Judge Rosas. Thank you,
17 Judge Vassigh.

18 Judge Ewing, anything you would like to add
19 before we continue?

20 JUDGE EWING: This is Judge Ewing. No, I don't
21 have anything to add, Judge Rosas.

22 JUDGE ROSAS: This is Judge Rosas. Thank you
23 very much.

24 I'd like to move on to discuss the prehearing
25 conference that we held on November 18th, 2020. That

1 prehearing conference resulted in the issuance of six
2 orders. I just want to go over the first four of those
3 orders, which are most relevant to today's hearing.

4 The first order, Appellant's Exhibits 1
5 through 42 inclusive were admitted into evidence without
6 objection.

7 Number Two, Respondent's Exhibits A, alpha
8 through S, Sarah, inclusive, were admitted into evidence
9 without objection.

10 Number Three, only one witness shall testify in
11 today's hearing, and that is the Appellant, Ms. Belcher.

12 And Number Four, the parties agreed to comply
13 with specific hearing time limits that were discussed
14 during the prehearing conference.

15 Ladies and gentlemen, I do realize that there
16 were some additional exhibits submitted, which we will
17 discuss momentarily. But before doing so, I just have one
18 question for the representatives. Is this an accurate
19 summary of the prehearing conference orders?

20 And I'll begin with Ms. McLaughlin.

21 MS. MCLAUGHLIN: Yes, Judge Rosas. It is.

22 JUDGE ROSAS: This is Judge Rosas. Mr. Kleem?

23 MS. Parker: Its look he's having some tech --
24 I'm sorry. This is Nancy Parker. It looks like Mr. Kleem
25 has dropped out of the hearing. I don't see his box.

1 JUDGE ROSAS: This is Judge Rosas. Thank you,
2 Ms. Parker. We will wait momentarily. I don't know if
3 you have a manner of contacting him, but we will hold on
4 and wait to see if he's able to reconnect.

5 Ms. Alonzo, we're going to go off the record
6 while we wait.

7 (There is a pause in the proceedings.)

8 JUDGE ROSAS: Mr. Kleem, before you were
9 speaking, I was -- I summarized four of the six orders
10 from the prehearing conference. Were you able to hear
11 those? My question was whether those were an accurate
12 summary of the prehearing conference orders.

13 MR. KLEEM: Phillip Kleem. Yes, from my
14 understanding, those appear accurate. Although, I will
15 confirm that Nancy Parker stood in for me at the
16 prehearing conference, but I have reviewed the minute
17 order and the order from that.

18 JUDGE ROSAS: In that case, Ms. Parker, the
19 orders that I just summarized, were those an accurate
20 summary of orders issued during the prehearing conference?
21 Ms. Parker, I think you're on mute.

22 MS. PARKER: This is Nancy Parker. Yes, that is
23 an accurate rendition of the order.

24 JUDGE ROSAS: Okay. Thank you very much.

25 Moving on, I did want to discuss the additional

1 exhibits. So after the November 18th prehearing
2 conference, Respondent submitted three additional
3 exhibits. On December 1st Respondent submitted Exhibits
4 T, tango, and U, uniform. Let me take a step back. I'm
5 sorry.

6 Ms. Alonzo, we're obviously back on the record.
7 My apologies. Did you need me to repeat anything? Okay.
8 Thank you very much. And my sincere apologies,
9 Ms. Alonzo.

10 We are on the record.

11 And the -- subsequent to that on December 4th,
12 Respondent submitted Exhibit V, Victor.

13 Ms. McLaughlin, do you have any objections to the
14 admission of these exhibits into evidence?

15 MS. MCLAUGHLIN: Your Honor, I have an objection
16 to Respondent's Exhibit U for relevance. The tax year at
17 issue is 2017 where the Appellant did not file by the
18 October 2018 extension.

19 JUDGE ROSAS: So just to confirm, no objections,
20 Ms. McLaughlin, regarding Exhibit T, tango, or V, Victor;
21 is that correct?

22 MS. MCLAUGHLIN: This is Nikki McLaughlin, no
23 objections.

24 JUDGE ROSAS: Okay. Mr. Kleem, do you want to
25 respond to Ms. McLaughlin's objection to Exhibit U,

1 uniform?

2 MR. KLEEM: Yes, Your Honor. Thank you. This is
3 Phillip Kleem for Franchise Tax Board. In regard to
4 Exhibit U, uniform, Your Honor, and its relevance, this
5 is -- their argument rest on the idea that Ms. Belcher was
6 incapable of preparing and timely filing a tax return
7 during -- while she was suffering from her illness of
8 major depressive disorder.

9 This Exhibit U, her 2016 tax return, shows that
10 she was -- which was filed after she began treatment -- 11
11 months after she began treatment for her major depressive
12 disorder, shows that she was capable of timely filing and
13 self-preparing this tax return. Therefore, it is relevant
14 to her ability to timely file and prepare her 2017 tax
15 return.

16 JUDGE ROSAS: Ms. McLaughlin, would you like to
17 respond?

18 MS. MCLAUGHLIN: I would. This is Nikki
19 McLaughlin. In response to Exhibit U as in uniform, it is
20 comprised of two different returns, the State 540 as well
21 as the IRS 1040. And there is no date whatsoever, a wet
22 or electronic signature of the Appellant on that exhibit.
23 There is, however, for the State.

24 JUDGE ROSAS: In regard to -- Ms. McLaughlin, I'm
25 going to sustain your objection to Exhibit U, uniform, on

1 the basis of relevance. So Exhibit U, uniform, will not
2 be admitted.

3 In regard to Exhibit T, tango, and Exhibit V,
4 Victor, both of those exhibits shall be admitted into
5 evidence without objection.

6 (Department's Exhibits T and V were received
7 in evidence by the Administrative Law Judge.)

8 I'm going to move onto discussing the issue
9 statements. The parties agree that there are two issues
10 on appeal, but the parties disagree on what those two
11 issues are. The parties disagree on the specific language
12 of those two issues, which is fine. As I mentioned during
13 the prehearing conference, parties can agree to disagree.
14 In fact that is why we're here because there was a
15 disagreement.

16 Appellant identified the following as the two
17 issues on appeal:

18 Number One, whether Respondent should weigh the
19 delinquent filing penalties and abate the interest accrued
20 on Appellant's 2017 tax return.

21 And Number Two, whether Appellant's knee surgery
22 and subsequent diagnosis of major depressive disorder are
23 illnesses that constitute reasonable cause for failure to
24 timely -- sorry -- for failure to file a timely 2017 tax
25 return.

1 Respondent identified the following as the two
2 issues on appeal:

3 Number One, has Appellant established reasonable
4 cause to support abatement of the delinquent filing
5 penalty that the Respondent imposed for the 2017 tax year.

6 And Number Two, has Appellant established a basis
7 for waiver of interest for the 2017 tax year.

8 Although, the parties disagree on how the two
9 issues should be worded, please note that eventually it
10 will be up to this Panel as we deliberate to determine how
11 best to word and describe the two issues on appeal.

12 Ms. McLaughlin, do you have any questions before
13 we move onto witness testimony?

14 MS. MCLAUGHLIN: No, Your Honor, no questions.
15 Thank you.

16 JUDGE ROSAS: This is Judge Rosas. Mr. Kleem, do
17 you have any questions before we move on?

18 MR. KLEEM: Phillip Kleem, Your Honor, for
19 Franchise Tax Board. No questions at this time.

20 JUDGE ROSAS: This is Judge Rosas. We're going
21 to proceed with witness testimony. Ms. Belcher, whenever
22 you're ready, if you can please raise your right hand.

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JUDITH A. BELCHER,

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

JUDGE ROSAS: Thank you very much. Ma'am, can you please state your name for the record.

MS. BELCHER: Judith A. Belcher.

JUDGE ROSAS: This is Judge Rosas.

Ms. McLaughlin, whenever you're ready, you can proceed with witness testimony in any of the three manners that we discussed.

MS. MCLAUGHLIN: This is Nikki McLaughlin for Appellant. Thank you, Your Honors. We will be giving testimony in a question and answer format.

DIRECT EXAMINATION

BY MS. MCLAUGHLIN:

Q Good afternoon, Judy.

A Hi Nikki.

Q In your March 2019 letter to the FTB and a similar-worded letter to the IRS requesting relief, you stated major depressive disorder as your reasonable cause as a result from your December 2016 total knee replacement surgery. Can you describe the circumstances surrounding

1 your surgery and the following months for us?

2 A Yes. My surgery was in December 2016. I was in
3 bed for three months after that, pretty much in bed with
4 severe pain. And for another three months until about
5 June, I -- I was still in pain and was still recovering.
6 I had physical therapy for first three months, and I was
7 on heavy pain medication: Fentanyl, Dilaudid, Narcan, and
8 Demerol.

9 I come from -- I had what my doctor said was a
10 slow recovery. I had expected my recovery to be a month
11 or two, but it ended up being six months. I came from a
12 large close-knit, somewhat-dysfunctional family that I was
13 estranged from. And during that six months, my brother
14 and my sister only came to visit me two or three times in
15 six months, and it was a revelation for me.

16 I -- I realize how isolated and alone I was, and
17 I had always expected my family to be there for me. And
18 for the fact that they weren't threw me into a, really
19 sort of, a revelation about myself. I always thought that
20 everybody liked me and loved me, and they would always be
21 there for me. And when they weren't, it really was a --
22 threw me into quite a dark experience that I had never
23 really never experienced before.

24 So I sought out a therapist in spring April 2017,
25 Dr. Maggie, who I saw for about a year; about 30 sessions

1 during the next year. And she and I only talked about my
2 family, which tended to make me more depressed than I
3 was -- than I already was because my relationship with
4 them is what made me depressed. And we just talked about
5 them all the time, and I was feeling worse. It was making
6 me feel worse.

7 And into 2017 thinking I could simplify my life a
8 little bit, because I was not being able to handle a lot
9 of stuff, I decided to sell one of my properties that I
10 had for 40 years. I had never sold a property in 40
11 years, and that's -- the tenants and the pain, the
12 depression and everything was making me unable to really
13 function in a really good way.

14 Q Thank you, Judy. This is Nikki McLaughlin for
15 Appellant. In your declaration you indicated you required
16 help for daily activities while isolated and bedridden.
17 Who helped you during the recovery?

18 A I had a housekeeper named Margarita Tomas who
19 helped me with keeping things really clean because the
20 doctors had said they were worried about infection. So
21 she came and cleaned and bought groceries and prepared
22 meals for me. And then later when I was feeling better
23 but unstable, she would go with me to the grocery store.
24 And I would pick out things and she would carry them and
25 put them in the basket because I couldn't.

1 Q Were you using any kind of assistance in your
2 mobility or moving around?

3 A Well, I had a walker for quite a while. I can't
4 remember exactly how long I had it, but I had a walker.

5 Q Thank you. This is Nikki McLaughlin.

6 A And then I had a cane.

7 Q I'm sorry. Could you repeat that, Judy? I
8 didn't hear you.

9 A And then I had a cane.

10 Q Okay. Thank you. If you had never really
11 experienced this dark place or it was unfamiliar, did you
12 label it depression yourself?

13 A No. You know, I really -- no. I didn't label it
14 that. I didn't know I had depression until I got
15 diagnosed with it. I just knew I was in a really
16 depressed and, sort of, a really scary dark place, and I
17 was unable to really function in a normal way. Simple
18 things like brushing my teeth, taking a shower, getting
19 dressed in the morning, taking my vitamins, and sometimes
20 eating breakfast were not only neglected, but sometimes
21 completely overlooked all day long.

22 And during several days a week or many days, um,
23 the whole revelation about who I was in the world was just
24 shocking. I'm still being treated by my therapist that I
25 have now for depression -- for major depression, and I'm

1 on antidepressant medications. The therapist that I had,
2 Dr. Maggie, I mentioned that we only talked about my
3 family and it just made me feel worse. So then as she
4 suggested, I reached out to Kaiser.

5 Q Okay. Thank you, Judy. This is Nikki McLaughlin
6 for Appellant. When did you first seek out Kaiser for
7 psychiatric assistance?

8 A I called Kaiser in the spring of 2018. I don't
9 actually remember the date because they didn't call me
10 back, and I had called them several times and it was hard
11 to sort of, focus on it. I -- at Kaiser it was really
12 disorganized. They -- it was a very frustrating process,
13 and they referred me to different departments and then
14 didn't call me back and the voicemail.

15 Finally, they assigned me to a depression class.
16 And when I went -- and then they kept switching me back
17 and forth to different departments. And when I went, my
18 name wasn't on the list, and they said I had to wait
19 another month. And then Kaiser referred me to an outside
20 provider, Magellan. And that was another series of people
21 not calling back. And Magellan then gave me -- sent me a
22 list of outside therapists to call.

23 So out of 30, I called them and almost all of
24 them either didn't call me back. Or when they did call me
25 back, it was just to say that they didn't have time to see

1 me. And then finally June or July is when I was assessed
2 for Kaiser benefits. And then in September 2018 Magellan,
3 the outside provider, sent me the name of Dr. Gaiser who I
4 seen now. And I had stopped seeing Dr. Maggie in the
5 spring of 2018.

6 His therapy was really different than Dr.
7 Maggie's. He never -- we don't even talk about my family.
8 If I start talking about them, he veers the conversation
9 away to something that's more positive and -- like my
10 graduated studies. And we actually talk about my graduate
11 studies quite a bit because it's a very positive thing in
12 my life. And then I was being in a -- into a REACH class.

13 So he -- he help me and the REACH class, they
14 helped me to shift my negative thoughts into positive
15 thoughts. I didn't know that you can actually do that.
16 And you can actually help yourself get out of a dark
17 spiral, and that's what I learned to work on then and what
18 I'm still working on now.

19 So I started graduate school in fall of 2018, and
20 it was an opportunity to have my mind on something really
21 uplifting and positive and get away from the spin in my
22 head and also social interactions. More than anything
23 it's a distraction from negative thoughts. And if anybody
24 has ever been isolated by themselves and you just think of
25 negative things, which what it was. So --

1 Q Thank you. I think with Covid we could all
2 probably relate to some degree of isolation. As you
3 stated in your declaration, you lost all your documents on
4 your computer in April 2018, and there was an extension.
5 What did you try to do to file your taxes on time?

6 A The 2017 taxes or 2018? 2017 you're talking
7 about?

8 Q Right.

9 A Mostly -- let's see. I don't remember all the
10 dates exactly, but I do remember just putting it out of my
11 mind because my head -- my computer -- I had spilled a
12 Coke on my computer, and I had lost a lot of data which
13 was required to do my taxes. And I would have had to
14 manually input a lot of data, and the idea of doing that
15 just was overwhelming.

16 And so mostly I -- I -- in and out I just put it
17 out of my mind. After meeting with Dr. Gaiser, I started
18 to feel -- Dr. Gaiser and my cognitive therapy, my
19 depression class, was helping me face the daily little
20 task that you're supposed to do and daily life. And the
21 CPA told me that -- sort of indicated how much money I was
22 going to be owing, and that there would be penalty and
23 interest. But I -- it comes to the point about how I
24 mentioned I've been in business for more than -- about
25 35 years.

1 It was a business I started and doing sales of
2 over a million dollars of my artwork. And in business you
3 have to do all the things. You have to do everything.
4 You have to meet all the due dates. You have to pay all
5 the bills, otherwise you're not going to be in business.
6 And the reason I mentioned it was in comparison to what
7 happened to me in 2017 and 2018 where I was just putting
8 things out of my mind, not thinking about them, not doing
9 things that I should be doing, or daily tasks or -- or
10 that has to do with my taxes.

11 I just put it out of my mind and that -- in
12 comparison to how functioning I was before, it's a pretty
13 stark -- so --

14 Q Can you -- sorry to interrupt. May I ask just
15 who Ryan is?

16 A A CPA I found to help with my taxes.

17 Q When did you seek him out?

18 A I saw him in the fall of 2018. That's also the
19 time I started my depression class and also around the
20 time I started with Dr. Gaiser.

21 Q Okay. And that would have been around the time
22 that your extension was due?

23 A Yeah.

24 Q Okay. Thank you. This is Nikki McLaughlin for
25 Appellant. In March 2019 you filed state taxes, and you

1 paid the overdue taxes. You paid the penalties and
2 interest in full by the Respondent's or the FTB's
3 deadlines. Did you pay all the taxes and penalties and
4 interest in full for the IRS as well?

5 A I -- I believe I did. I paid in -- what was
6 that -- in February, \$110,000. And, obviously, it's from
7 the sale of the house. And then a few months later in
8 April, I paid the IRS \$6,471.99.

9 Q I see. Okay. Perfect. And were there any
10 issues or anything like that with payments?

11 A Well, yeah, there was. I did an internet -- what
12 do you call it -- internet payment, and I entered it into
13 the wrong account. And so when the IRS went to get the
14 \$110,00 it wasn't there. But they were pretty kind about
15 it when I explained it was there, but it was in a separate
16 account; same bank, just a different account. And they
17 were pretty kind about it, and I resubmitted it.

18 Q Thank you. What was the total that you paid for
19 the IRS? I'm curious.

20 A Well, it would have \$116,471.

21 Q That's a pretty high amount.

22 A It was. Yeah.

23 Q Thank you. When -- in March 2019 when you sought
24 relief, you indicated to me when we spoke that you started
25 reading about ways to get the FTB and IRS to abate; is

1 that correct?

2 A Yeah.

3 Q Can you describe that process to me a little bit?

4 A As you and I tried to recreate it, I submitted
5 some letters to this FTB. Is this -- is this correct?
6 Yeah. Is this the right -- yeah. I submitted letters to
7 the FTB dated March 28th and October 2019, October 6th,
8 along with FTB Form-2917, Reasonable Cause and Individual
9 Fiduciary Claim For Refund, and a letter to the IRS on
10 March 28th, 2019, requesting reasonable cause abatement
11 along with IRS Form-843.

12 I was really surprised and happy when the IRS
13 decided not to send-- not to penalize me, send the
14 interest and penalties back to me. I didn't -- I didn't
15 expect them to take it to start with. I didn't realize
16 how high the penalty amounts were going to -- I -- I
17 wasn't just thinking about it. It just didn't even dawn
18 on me that there would be large amounts of money taken as
19 penalty. I sort of was aware I had to pay capital gains,
20 all that, but I -- the penalties I did -- I was just
21 wasn't thinking about it and -- but I was really happy
22 about the IRS.

23 It seemed so simple and easy, you know. They
24 just sent all the penalties back -- all the money for the
25 penalty back, and they said that was for reasonable cause.

1 I didn't know about the first-time abatement until they
2 mentioned it.

3 Q And so they --

4 JUDGE ROSAS: Ms. McLaughlin?

5 MS. MCLAUGHLIN: Oh, yes. Go ahead.

6 JUDGE ROSAS: My apologies for the interruptions.
7 This is Judge Rosas. Ms. McLaughlin, we had estimated 15
8 minutes for Ms. Belcher's testimony. We are at that
9 15-minute mark. Fortunately, we do not have hearings
10 following ours. However, I'm going to ask you if you
11 could please start trying to wrap up your direct exam.
12 Thank you.

13 MS. MCLAUGHLIN: Thank you. This is Nikki
14 McLaughlin. Your Honor, that was our final question.

15 Judy is there anything you would like to go ahead
16 and add to what you were saying there?

17 MS. BELCHER: No. I think that's -- that's all.
18 Yeah. I guess some other issues are going to come up
19 later then, I guess.

20 MS. MCLAUGHLIN: Okay. Thank you, Judy. I
21 appreciate it.

22 MS. BELCHER: Yeah.

23 JUDGE ROSAS: This is Judge Rosas. Mr. Kleem,
24 any questions for Ms. Belcher?

25 MS. BELCHER: Actually, you know, I did think of

1 one thing. I wanted to -- now, I've forgotten. Anyway
2 it's okay. I'm sorry. I forgot what I said.

3 JUDGE ROSAS: This is Judge Rosas. Ms. Belcher,
4 at a certain point the panel will ask you any questions,
5 and I'll definitely get back to you and see if you
6 remember the point you wanted to make.

7 MS. BELCHER: Okay. Thank you.

8 JUDGE ROSAS: For the time being, I'm going to
9 turn it over to FTB. Mr. Kleem, do you have any questions
10 for Ms. Belcher?

11 MR. KLEEM: Your Honor, I was wondering if I
12 could have permission to attempt to lay the foundation for
13 the Exhibit U, since the primary objection seemed to have
14 been that the -- what stamp was not -- or there was no
15 date stamp on there that would put it in the appropriate
16 period.

17 JUDGE ROSAS: Mr. Kleem, I appreciate the
18 efforts. I already made the ruling. The ruling stands.
19 That exhibit is not coming into evidence based on the
20 relevancy objection, but thank you for your point.

21 MR. KLEEM: All right. In that case I have no,
22 questions, Your Honor.

23 JUDGE ROSAS: Okay. At this point I'm going to
24 turn it over to my Co-Panelists to see if either of them
25 have any questions for Ms. Belcher. Judge Vassigh?

1 JUDGE VASSIGH: Hello. This is Judge Vassigh. I
2 do not have any questions for Ms. Belcher. Thank you.

3 JUDGE ROSAS: This is Judge Rosas. Thank you,
4 Judge Vassigh.

5 Judge Ewing, do you have any questions for
6 Ms. Belcher?

7 MS. BELCHER: We can't hear you.

8 JUDGE ROSAS: Judge Ewing, you appear to be on
9 mute.

10 JUDGE EWING: I'm sorry.

11 JUDGE ROSAS: There you go.

12 JUDGE EWING: Sorry. Yes. No. This is
13 Judge Ewing. I do not have any questions for Ms. Belcher
14 but certainly thank her for her testimony today, and I
15 really appreciate the thoughtful detail.

16 JUDGE ROSAS: This is Judge Rosas. Thank you,
17 Judge Ewing.

18 Ms. Belcher, I just have maybe a couple of
19 questions. During your testimony you mentioned a few
20 dates. You talked about the surgery, December 2017. You
21 talked about getting therapy April 2017.

22 MS. BELCHER: The surgery was December '16.

23 JUDGE ROSAS: I'm sorry. December 2016? But in
24 terms of dates, Ms. Belcher, I want -- I'm hoping you can
25 focus on these particular six-month period. Now, your

1 2017 tax return was due on April 15, 2018. There's an
2 automatic six-month extension, and your return would have
3 been considered timely so long as it was filed by
4 October 15, 2018. So that's a six-month period. I want
5 you to focus on that six-month period.

6 And I want to -- I want to understand what
7 happened, and why you weren't able to file your tax return
8 during those six months. I want to understand the events
9 from your perspective. So if you could, if you could
10 please walk us through, in chronological order if
11 possible, and explain how your health issues prevented you
12 from filing your return during that six-month period,
13 April 15 to October 15, 2018.

14 MS. BELCHER: Yeah, sure. I had just been in
15 therapy with Dr. Maggie for about nine months and was
16 not -- I was not in that dark place that I was in earlier
17 right after my surgery and for six or nine months after
18 that. But I was still struggling just trying to function,
19 you know; just to brush my teeth and just do the stuff,
20 you know, life.

21 And so during that period I was depressed, and
22 the thing is in depression you go in and out. Sometimes
23 you're just fine. You could do that, and something makes
24 you feel good and then all of a sudden you wake up and
25 you're just back in some really deep black hole. And

1 during that period I was going in and out. I was not
2 happy, and I was actually feeling -- what I found out
3 later I was going on a spiral.

4 My family relationship is what made me depressed.
5 And all we did was talk about my family in that therapy.
6 So it was like not giving me any hope. I mean, there was
7 nothing to think about or be positive about. So I was not
8 getting better during that period. But it is interesting
9 because it was right around September or October is when I
10 started seeing Dr. Gaiser, and I got into the REACH
11 cognitive therapy class. And they started teaching me how
12 to focus on -- and I don't know if anybody read the
13 paperwork, but every time we had a session, I wrote out
14 the paperwork, and I had goals for the next time.

15 Like, next week I'm going to spend 15 minutes on
16 my paperwork, you know. All during that time, I knew I
17 had to do -- or I wasn't thinking about, but when I did, I
18 went back, and I knew there was this data that got burnt.
19 And when I spilled the Coke on my computer, I knew that
20 there was this big task that seemed huge. It just seemed
21 huge, the task of entering the data so I could file my
22 taxes.

23 And in that REACH class, you know, every week I
24 could -- you know, I have something like, you know, I'm
25 going to walk for 15 minutes today. I'm going to work --

1 I'm going to do my paperwork for 15 minutes each day. I
2 mean, we had these little tiny goals that broke it down so
3 that everything was overwhelming that I couldn't think
4 about, I could break it down into little bits and starting
5 to address them.

6 And I -- I was really amazed. This is not
7 something I knew about. And I was thinking I'm certainly
8 a smart person, but I didn't really realize you can -- you
9 know, you don't have to take -- you know, you can change
10 your thoughts. And so that's what -- I was going in and
11 out and up and down during that period. But I was coming
12 out of not -- feeling worse about my family, and that
13 depression could not leave because of that.

14 And going seeing Dr. Gaiser, who is also a
15 professor at USF, and he's really good about talking about
16 my graduate work which really makes me happy and gives me
17 hope and uplifts me. And because I didn't know he was --
18 I didn't know he was a professor, but it ended up that
19 he -- also he's a professor of psychology as well. So
20 talking about my graduate studies -- sorry -- makes me
21 feel much better. I feel really good when I start talking
22 about how to do a paper and how to break a paper down.

23 Anyway, so right into that, that's where I
24 started all that treatment that was helping, me cognitive
25 therapy type of treatment. See Dr. Gaiser doesn't even

1 mention -- we don't talk -- he doesn't -- he's treating me
2 for depression, but we don't, you know, we don't get into
3 the root causes of why my family is the way it is and all
4 that kind of stuff.

5 So that's sort of what happened -- what was going
6 on. And so I would say that's the idea that I couldn't
7 remember, was that depression is up and down, you know.
8 It's up and down. It's not, like, linear. Oh, I'm better
9 now. I could live today. So now I'm much better, and I'm
10 going to be better for the next three weeks or three
11 months or three years.

12 JUDGE ROSAS: This is Judge Rosas. Thank you,
13 Ms. Belcher. I'm glad you were able to, while providing
14 your response, that you were able to make the point you
15 wanted to make earlier. Thank you very much. I do not
16 have any further questions for you, Ms. Belcher.

17 At this point I'm going to turn it over to your
18 representative, Ms. McLaughlin, who has up to 20 minutes
19 for her presentation.

20 MS. MCLAUGHLIN: This is Nikki McLaughlin for
21 Appellant. Thank you, Judge Rosas and Your Honors. I do
22 speak quickly, so I apologize in advance. I will try to
23 slow it down. However, my statement will be about
24 20 minutes. So I'll refrain referencing any exhibits
25 until the end or until need be.

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PRESENTATION

MS. MCLAUGHLIN: As attested to, Appellant had reasonable cause because she suffered from MDD since at least October 2018, a direct result from a major surgery that Appellant underwent in December 2016, after which the Appellant was on a cocktail of prescribed narcotics for the first half of 2017.

Both the federal court and the BOE have recognized depression as reasonable cause to abate penalties. Further, the California legislature has recognized and declared MDD as a severe mental illness as enumerated in the California Health and Safety Code.

Finally, the IRS abated Appellant's failure to file penalties for reasonable cause using Code 062, a penalty reason code, that is reserved for reasonable cause as distinguished from relief codes that are used for IRS errors, administrative waivers, including first time abatement and statutory exceptions.

Appellant's failure to file in a timely manner was a direct result of two consecutive medical conditions; her total knee replacement surgery in 2016 that caused her MDD due to the isolation from her family. Appellant is a 74-year-old retiree who lives singly and off of her passive investment and rental income. Appellant continues to suffer from MDD as she's testified and evidenced also

1 by her medical records.

2 The delay in Appellant's MDD diagnoses was a
3 result of four KP -- I'm just going to refer to Kaiser as
4 KP -- internal administrative processes. Failures for
5 which KP was fined \$4 million in 2013 by the Department of
6 Mental Health care or DMHC, pursuant to the California
7 Mental Health Parity Act of 1999. Kaiser has acknowledged
8 these deficiencies, however, these deficiencies continue
9 to persist as recently as 2019.

10 In addition, because of the very nature of this
11 disease, MDD is not an acute illness like the common cold
12 or the flue, where a person goes in and gets diagnosed on
13 first physician's visit. There are several criteria that
14 must be met for a doctor to diagnose MDD, such that a
15 patient must suffer from a depressed mood and/or loss of
16 interest or leisure or pleasure in life activities that
17 persist for at least two weeks and have at least five of
18 the following nine symptoms that cause significant
19 impairment in social or occupational or other important
20 areas of functioning in everyday day life. And this is
21 the clinical definition of major depressive disorder.

22 Those symptoms include:

23 One, depressed mood indicated by subjective
24 report or observations by others.

25 Two, loss of interest or pleasure in almost all

1 activities indicated by subjective report or observation
2 by others.

3 Three, significant, that is five percent in a
4 month -- more than five percent in a month unintentional
5 weight loss or gain or decrease or increase in appetite.

6 Four, insomnia or hyper insomnia.

7 Five, psychomotor changes, such as agitation or
8 retardation severe enough to -- to prevent the -- the
9 interactions with others.

10 Six, tiredness, fatigue, or low energy, or
11 decreased efficiency in which routine tasks are completed.

12 Seven, a sense of worthlessness or excessive,
13 inappropriate or delusional guilt, not merely
14 self-reproach or guilt about being sick.

15 Eight, an impaired ability to think, concentrate,
16 or make decisions as indicated by subjective report or
17 observation of others.

18 And finally Nine, recurrent thoughts of death.
19 Not just fear of dying but also suicidal ideation or
20 suicide attempts.

21 Further, studies have found with mobility issues
22 the onset of MDD could take as long as 89 days in some
23 cases to diagnose.

24 For the Appellant, she was bedridden from
25 mid-December of 2016 to approximately March 2017. From

1 March 2017 to approximately June 2017, she continued to
2 have limited mobility. During the course of her recovery,
3 she was in pain and was heavily medicated with at least
4 three different narcotics and one opioid antagonist to
5 prevent overdose or respiratory depression.

6 Those included Fentanyl, which is a narcotic,
7 Dilaudid, which is also a narcotic, Demerol, the third
8 narcotic, and Narcan, which is the opioid antagonists.
9 After being confined to her bed and while continuing with
10 her physical recovery, Appellant sought out a therapist,
11 Dr. Maggie, to address her feelings of isolation. In the
12 exhibits, Dr. Maggie is referred to as Dr. Hochfelder. It
13 can be reasonably deduced then that the Appellant suffered
14 from MDD since at least October 2018 by the very clinical
15 definition of the illness when an official diagnose was
16 given in November '18.

17 As to the California legislature, the Respondent
18 maintains Appellant has not established she was
19 continuously incapable of timely filing her return, and
20 that Appellant has not made a showing of credible
21 competent, and relevant information, which specifically
22 addresses the period leading up to April 15th, 2018 and
23 ending in October 15th, 2018, as per their opening brief.

24 The California Health and Safety Code
25 Section 1374.72 or the Mental Health Parity Act of 1999,

1 list MDD as one of the nine severe mental illnesses that
2 are covered by the Act. The Act requires mental health
3 care providers to provide timely access to mental health
4 services.

5 The 2020 Amendment to the Act, expands the
6 definition of mental illnesses to include those illnesses
7 recognized under the Diagnostic and Statistical Manual of
8 Mental Disorders -- which is the clinical definition I
9 just gave you -- or those listed under Diagnostic
10 Classification of the World Health Organization's internal
11 classification of diseases, which is also included in the
12 exhibits. The legislature's intent in passing the Act was
13 to require coverage of all diagnosis in medically and
14 necessary treatment of severe mental illnesses.

15 In the Appellant's case, Kaiser Permanente was
16 fined \$4 million in 2013 for failure to provide timely
17 access to its mental health patients; failures it has
18 stipulated to. These failures, as I've mentioned, still
19 exist and are currently being monitored. As she
20 testified, the Appellant tried unsuccessfully from
21 approximately March 2018 through August 2018 to seek
22 mental health care from Kaiser other than the therapy that
23 she was using -- getting from Dr. Maggie.

24 She was unable to get a full assessment that
25 permitted her access to Kaiser's mental health services

1 until the fall of 2018. It was at this time that the
2 Appellant began seeing Dr. Gaiser once she was approved
3 for those psychiatric services and was enrolled into
4 REACH, which is the cognitive group therapy that is
5 actually only offered to patients suffering from MDD,
6 which is also listed in the exhibits. She attended REACH
7 through at least March 2019. Thus, Appellant has provided
8 credible, competent, and relevant information with regards
9 to her illness as evidenced by her medical records and
10 letters of diagnoses.

11 As the case authority, the federal tax court and
12 the BOE both recognized depressions as reasonable cause to
13 abate penalties. In *Kees v. Commissioner*, decided in
14 1999, the BOE held that the taxpayer was not liable for
15 accuracy related penalties because the taxpayer had a
16 long-term disability where he suffered from MDD and
17 chronic pain. The Board reasoned that the taxpayer's
18 mental and physical condition were relevant in deciding
19 whether the taxpayer acted with reasonable cause.

20 In this case the taxpayer fell and slipped on
21 some ice in his driveway and suffered a concussion that
22 put him out of work for two months. After the two months
23 the taxpayer returned to work only to begin suffering from
24 seizures and progressively worse headaches. He then went
25 on to Social Security Disability. And there the

1 administrative judge found that the taxpayer was under a
2 disability within the meaning of the SSA or the Social
3 Security Act because he had chronic headaches,
4 hypertension, major depressive disorder, seizure disorder,
5 and sleep apnea.

6 In John Michael Hayes, decided in 1967, the tax
7 court found reasonable cause for failure to file timely
8 when the taxpayer suffered a mental and physical collapse.
9 The taxpayer here, as distinguished from the Appellant,
10 was not diagnosed with MDD. Rather, he collapsed from
11 physical and mental exhaustion arising from his work and
12 was confined to a wheelchair as a result. The taxpayer
13 also maintained that his records -- his tax records were
14 at home in the -- on the East Coast.

15 In the manner of the Appeal of Halaburka, decided
16 by the BOE in 1985 and cited too in the Respondent's
17 opening brief, the BOE found the Appellants did not have
18 reasonable cause where they contended:

19 One, they were waiting for receipts to be used in
20 their return.

21 Two, their newborn son was seriously ill for the
22 first year of his life and Appellants were physically and
23 emotionally unable to file a return.

24 Three, they never received the demand letter
25 dated November 26th, 1979. So they assumed they did not

1 need to file a return.

2 And finally, the BOE distinguished the present
3 case by citing to John Michael Hayes where reasonable
4 cause did exist because that Appellant, again, suffered a
5 mental and physical collapse, all within five or six
6 months of his wife having suffered a ruptured appendix,
7 and his children had pneumonia during this time.

8 For Ms. Belcher here, her failure to file timely
9 is not based on the externalities affecting a third
10 person. Appellant herself suffers from a debilitating
11 mental illness acutely accentuated by immobility and a
12 slow recovery resulting from her total knee replacement.
13 Hence, she has reasonable cause due to the immobility and
14 MDD she suffers from -- or suffered from and continues to
15 suffer from.

16 As to the IRM interpretation, in it's opening
17 brief, Respondent cites to Transaction and Penalty Codes
18 of 161, 290, Reason Code 62, and Penalty Reason Code 20,
19 and concludes both penalties and interest were abated for
20 good filing history or for the first abatement relief,
21 which I recall FTA offered by the IRS. Appellant's
22 failure to file penalties were actually abated for
23 reasonable cause because the IRS distinguishes between
24 penalties incurred for failure to file timely from the
25 interest that accrues on those penalties.

1 In order to explain this, I would have to take a
2 different approach than what we are accustomed in the law,
3 presenting the conclusion and then breaking down the
4 element from there. Unfortunately, the Internal Revenue
5 Manual is circular, as we know just like the Internal
6 Revenue Code is. Explaining the differences associated
7 with the transaction codes entails a lot of back and forth
8 with the exhibits, all of which are numbered 26 through 30
9 in the Appellant's exhibits.

10 So as simply as possible, the take aways are
11 these. First, the IRS recognizes failure to file, failure
12 to pay, and failure to deposit penalties among others.
13 The penalties at issue here are the failure to file and
14 failure to pay, and whether Code 271 combined with 062 and
15 020 applies to failure to pay penalties.

16 Failure to pay is a penalty that is assessed as
17 soon as the return is due and remains unfiled or is filed
18 late. It is assigned codes TC-160 or 161. Abatement of
19 this penalty is assigned TC 166 or 167. Failure to pay
20 penalties include interest assessed on the failure to file
21 penalty. It is assigned codes TC-270 or 276. Abatement
22 of this penalty is assigned TC-271. You can reference
23 those in Exhibits 30 and Exhibits -- uh, 29 if you would
24 like.

25 Second, all codes are exclusive to their

1 respective description or function. Code 062 is reserved
2 for reasonable cause. Code 65 is reserved for first-time
3 abatement where reasonable cause does not exist.

4 Third, a finding of first time abatement or FTB
5 eligibility does not preclude a finding of reasonable
6 cause for other penalties. Here the Appellant's failure
7 to file penalty is over \$25,000 as seen in her individual
8 master file.

9 Fourth, the program used to adjust the penalties
10 for first time abatement assesses first-time abatement
11 first before it assesses any others because it is required
12 of them to assess penalty in the following order: IRS
13 error; statutory exception; administrative wavers;
14 including FTB; and, lastly, reasonable cause.

15 Finally, the system, again, is program to use
16 Codes 062 and 020 for abatement of failure to pay
17 penalties represented by TC-271, which you will find,
18 again, in the Appellant's IMF, in an amount just over
19 \$6,000.

20 So we have the failure to file penalties of over
21 \$25,000, and we have the failure to pay in over \$6,000.
22 Codes 062 and 20 are not codes used to abate failure to
23 file penalties as represented by TC-166, again, here
24 represented in the amount of \$25,000.

25 And that is -- that is my argument. Thank you,

1 Your Honors.

2 JUDGE ROSAS: Thank you, Ms. McLaughlin. This is
3 Judge Rosas. Thank you very much. At this point, I'm
4 going to turn it over to my Co-Panelists to see if any of
5 them have any clarifying questions for you based on your
6 argument.

7 Judge Vassigh?

8 JUDGE VASSIGH: This is Judge Vassigh. I don't
9 have a question right now, but I might later. Thank you.

10 JUDGE ROSAS: This is Judge Rosas. Thank you,
11 Judge Vassigh.

12 Judge Ewing, do you have any clarifying questions
13 at this time?

14 JUDGE EWING: This is Judge Ewing. I do not have
15 any questions at this point.

16 JUDGE ROSAS: This is Judge Rosas. Thank you,
17 Judge Ewing.

18 At this moment I also do not have any clarifying
19 questions for Ms. McLaughlin.

20 I'm going to turn it over to the Franchise Tax
21 Board for their presentation. You are allotted up to
22 15 minutes, Mr. Kleem. You may begin whenever you're
23 begin.

24 MR. KLEEM: This is Phillip Kleem. Can everybody
25 hear me okay? Excellent.

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PRESENTATION

MR. KLEEM: Good afternoon. My name is Phillip Kleem, and I represent Respondent Franchise Tax Board. At this point, there's basically one issue, and it's whether or not Ms. Belcher has established reasonable cause to abate the delinquent filing penalty due to her major depressive disorder.

We don't dispute Ms. Belcher's diagnoses or suffering or the fact that she suffers from major depressive disorder as a result of her 2016 knee surgery and the isolation we spoke of -- she spoke of. But simply -- simply being diagnosed with an illness is -- is not enough. The law requires that the illness must be of duration and severity such that she was prevented from filing her return or paying her taxes in a timely manner.

And if we look at Ms. Belcher's actions and indeed some of her own statements regarding that period, we can see that her illness was not of a duration and severity that would have prevented her from filing that tax return. There are numerous examples of her conducting her own business. She was able to -- she was able to conduct and oversee the sale of one of her real properties.

If you review the exhibits, she was able to maintain and -- maintain and receive income from two of

1 her rental properties. She was able to manage her
2 personal finances. If you review the credit card and bank
3 statements that she submitted, it shows that she was not
4 only making -- ensuring that all her bills were paid, such
5 as mortgage and party taxes and utilities, you can see
6 that fairly large amounts of money are being transferred
7 in between accounts and going into investment accounts
8 too. So money is being -- she's capable of moving her
9 money around. She was capable to enroll and participate
10 in college courses. And she managed her vacation home in
11 Tahoe as well.

12 So it's -- it's not simply just a matter --
13 again, it's not matter of whether or not she had major
14 depressive disorder. I have no doubt in my mind that she
15 did. The question is, is whether that prevented -- was of
16 such severity and duration that prevented her from filing
17 her tax return. Just based on her own activities and her
18 statement earlier that, you know, it was not a linear --
19 she said it wasn't a linear disease.

20 She said that there are good days. There are
21 bad. She said that there are days where she felt fine,
22 and there are days where she, you know, didn't -- couldn't
23 get out of bed. And so it wasn't this -- this linear
24 progression. And there were clearly days that -- as
25 evidenced, again, by the business that she conducted that

1 she would have been capable of timely filing her 2017 tax
2 return.

3 I'd just like to quickly address this recently
4 made argument that I don't think it was briefed regarding
5 the -- the codes in the IMF, the reason codes. She says
6 that the 062 is the Reasonable Cause Code. And since 062
7 was used for the federal penalty abatement that the IRS
8 must have abated for reasonable cause. And this is just
9 not the case. If you can -- if you refer to Exhibit U,
10 Section 9, this is an IRM -- this is the -- excuse me.

11 This is the IRM Procedural Update. And if you
12 look at Section 9 it specifically states that 062 in
13 combination with 020 is used for first-time abatement and
14 not reasonable cause. So -- and -- and this makes sense
15 because there wasn't reasonable cause because she was able
16 to conduct numerous other business activities; so
17 including, you know, again, including the selling of real
18 estate property, the management of rental properties,
19 enrolling in college, conducting her personal finances.

20 So, you know, at the end of the day here, we're
21 not denying that Ms. Belcher had major depressive
22 disorder. It just didn't prevent her from filing her 2017
23 tax return.

24 Thank you.

25 JUDGE ROSAS: This is Judge Rosas. Thank you,

1 Mr. Kleem.

2 I'll turn it over to my esteemed colleagues.

3 Judge Vassigh, do you have any questions for Mr. Kleem?

4 JUDGE VASSIGH: This is Judge Vassigh. No, I do
5 not. Thank you.

6 JUDGE ROSAS: This is Judge Rosas. Judge Ewing,
7 what about you?

8 JUDGE EWING: This is Judge Ewing. I do not, but
9 I do thank the Franchise Tax Board for the very clear
10 presentation that they gave us. Thank you for that help.

11 JUDGE ROSAS: This is Judge Rosas. At this point
12 I'm going to turn it back to Ms. McLaughlin.

13 Ms. McLaughlin, if you wish, you now have a brief
14 opportunity, up to five minutes, to address anything you
15 just heard by making a closing presentation.

16 MS. MCLAUGHLIN: Thank you, Your Honor. This is
17 Nikki McLaughlin for Appellant. I do just have a few
18 notes.

19

20 CLOSING STATEMENT

21 MS. MCLAUGHLIN: I'd like to first note that MDD
22 is not a chronic and linear disease. As we've already
23 seen, it's in and out, up and down. It's not something
24 that you go into a doctor, get diagnosed with the flu or
25 the cold and a week later you're cured. That's just not

1 how this disease works.

2 Secondly, the Appellant is not in business. I
3 need to make very clear that she is a retiree. Her income
4 is all passive. As to the two rental properties, if you
5 look at her bank statements, you will see that in 2017 her
6 rental income was only \$8,000. And that's because one of
7 her properties was an Airbnb. It was not a consistent
8 source of income, if you will.

9 As to the Bill Pays and paying, you know, all her
10 bills, we all know we can set that up via electronic Bill
11 Pay. You set it up. You walk away. You don't ever have
12 to worry about it. Maybe if you want to check for
13 discrepancies, you can. So that, I don't really see how
14 that's not issue.

15 Finally, as to the amount of money that she's
16 moving around, I don't think with the money -- or the
17 amount of money is at issue. She paid everything in full.
18 That's the \$116,000 to the IRS, and that was over \$30,000
19 to the FTB. So, luckily, she was able to pay that off
20 with all her investments.

21 Finally, as to the reasonable cause assistant, as
22 I said it is programmed to use Codes 062 and 020 to negate
23 any transaction or interest that is accrued under
24 Code 271. And that is distinguished from failing to file
25 with Code 160, 161. And you can see that in her IMF by

1 the amounts. The failure to file was in the amount of
2 \$25,000. And the 271 that Respondent responds to is the
3 interest in the amount of \$6,000.

4 That is all. Thank you, Your Honors.

5 JUDGE ROSAS: This is Judge Rosas. Thank you,
6 Ms. McLaughlin.

7 At this point I'm going to turn it over to the
8 Panel to see if they have any questions of either side.
9 Judge Vassigh?

10 JUDGE VASSIGH: I do have a question for
11 Ms. Belcher or her representative. I'm wondering,
12 Ms. Belcher, did you have auto payments setup for your
13 other bills during that six-month period that Judge Rosas
14 had outlined for you earlier? I can't hear you. You're
15 not mute. You're still on mute.

16 MS. BELCHER: Okay.

17 JUDGE VASSIGH: There you go.

18 MS. BELCHER: I did have all my bills on Bill
19 Pay. And, actually, some of my bills I just put in pay,
20 like, \$100 on Bill Pay every month. I don't even look at
21 the bill, like the PG&E or the water bill. They are just
22 automatic, and so sometimes I pay more. And so some of my
23 bills have credits because I pay the same amount.

24 JUDGE VASSIGH: Okay.

25 MS. BELCHER: Yeah, I do. They're all -- they're

1 all on Bill Pay.

2 JUDGE VASSIGH: My next question to you,
3 Ms. Belcher, is the Airbnb. I'm not familiar with how
4 much that required -- how much involvement that required
5 on your part during that time period, that six months.

6 MS. BELCHER: It doesn't require a lot. It's --
7 it's actually -- unless something come up, there's
8 something to repair or something. But it doesn't require
9 a lot. And the guest actually -- it was very uplifting
10 because the guest are really, really nice. And so --
11 maybe so for the better.

12 JUDGE VASSIGH: Okay. Good. Thank you. I do
13 not have any further questions.

14 JUDGE ROSAS: This is Judge Rosas. Thank you,
15 Judge Vassigh.

16 Judge Ewing, any questions?

17 JUDGE EWING: I don't have any questions, but I
18 would just want to say thank you to Ms. McLaughlin for
19 doing a good job with the case for the Taxpayer Assistance
20 Program and for the -- for the Appellant. It's very, very
21 welcome. Thank you.

22 MS. MCLAUGHLIN: Thank you, Your Honor.

23 JUDGE ROSAS: This is Judge Rosas. Thank you,
24 Judge Ewing.

25 Ms. McLaughlin, I had asked Ms. Belcher a similar

1 question after her direct examination, but I'll ask it of
2 you. Focusing on the six-month period between April 15th
3 to October 15th of 2018, Ms. McLaughlin, may you please
4 summarize the main facts, events, or occurrences that you
5 believe, in your opinion, establish reasonable cause to
6 abate this late filing penalty.

7 MS. MCLAUGHLIN: Absolutely. During this time,
8 April 15th, is around the time that Judy realized her
9 therapy sessions with Dr. Maggie were not going well. So
10 she went ahead and started engaging Kaiser in attempting
11 to get their psychological services.

12 As we've -- as I have already indicated, Kaiser
13 is well aware of their deficiencies, and so she was
14 getting the run around as she declared. And it wasn't
15 until around, I would say the fall, August or so, that
16 she -- she started, if I recall, starting to see
17 Dr. Gaiser where he did diagnose her as well as Kaiser
18 with having MDD. And it wasn't until November 1st that
19 she was given an official diagnosis by Kaiser.

20 However, again, with the depression, it's -- it
21 has to persist for at least two weeks. That's just one
22 episode. And in order to be categorized as suffering from
23 MDD, you have to have a minimum of two episodes. So by
24 definition that's at least one month in advance. So we
25 can deduce that at a minimum she was suffering from major

1 depression in October.

2 JUDGE ROSAS: This is Judge Rosas. Thank you,
3 Ms. McLaughlin.

4 To the Franchise Tax Board, Mr. Kleem, is there
5 anything else that you would like to add?

6 MR. KLEEM: This is Phillip Kleem. Not at this
7 time, Your Honor. Thank you.

8 JUDGE ROSAS: Mr. Kleem, I just want to clarify.
9 We're going to wrap this up, so it's now or never, sir.
10 I'm getting the thumb up from Mr. Kleem. All right.

11 Let the record reflect we're getting the thumbs
12 up from Mr. Kleem.

13 Ms. Belcher, I see you're raising your hand
14 there, ma'am. Yes.

15 MS. BELCHER: Yeah, I've learned that from Zoom.
16 Yeah. You know when I sold my Claremont house in 2017,
17 which was I guess July or August was when I was just
18 coming, you know, in the throes of all that. I had a
19 really, really nice Realtor, who was just terrific. She
20 basically did everything, and she handled it all, you
21 know. I got the check and signed the things.

22 But first of all, she was really, really nice.
23 And then second of all, she handled all the stuff that had
24 to be done. She knew about my surgery and all that.

25 JUDGE ROSAS: This is Judge Rosas, thank you,

1 Ms. Belcher.

2 We're getting to wrap this up. I have just one
3 final question for Ms. McLaughlin. Or Ms. McLaughlin, if
4 you wish you can also refer the question to Ms. Belcher,
5 but I will ask it of you, Ms. McLaughlin. You represent
6 the Appellant. The Appellant has the burden of proof. So
7 I do want to give your side the last word.

8 Now neither of you need to repeat yourself. But
9 my question is, other than what you've already told us
10 here today, and other than the exhibits that have already
11 been admitted into evidence, is there anything else that
12 you think this Panel needs to know in order to make a
13 well-informed decision?

14 MS. MCLAUGHLIN: This Nikki McLaughlin for the
15 Appellant, and it really is just to appeal to, I suppose,
16 the empathy, and that is mental health issues have a lot
17 stigma and mystery around them. And that is why, in my
18 opinion, the California legislature need their amendments
19 to defer to the medical community to define what that is.
20 Because, unfortunately, we're trying to apply a legal
21 objective standard of reasonable cause to a disease that
22 is subjective in its affect.

23 And that's really all I have to say. Thank you,
24 Your Honors.

25 JUDGE ROSAS: This is Judge Rosas. Thank you

1 very much, Ms. McLaughlin.

2 Ladies and gentlemen, that concludes the hearing
3 in the appeal of J. Belcher. The record is now closed,
4 and the matter is submitted as of today,
5 December 15, 2020. The written decision will go out no
6 later than 100 days from today.

7 I want to take a moment to thank both parties, to
8 all the representatives. I want to thank the OTA team
9 members behind the scenes. I'd like to thank my
10 Co-Panelists. And lastly, I would like to take the
11 opportunity to wish all of a happy holiday season. Please
12 stay safe, stay healthy.

13 This hearing is now adjourned. Thank you.

14 (Proceedings adjourned at 2:12 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 19th day of January, 2021.

ERNALYN M. ALONZO
HEARING REPORTER