

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

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
POLANI FINANCIALS & INVESTMENT) OTA NO. 19085140
CORP.,)
APPELLANT.)
_____)

Transcript of Virtual Proceedings, taken at
855 M Street, Suite 960, Fresno, California,
91401, commencing at 2:30 p.m. and concluding
at 3:35 p.m., on Tuesday, January 26, 2021,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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 JOSHUA ALDRICH

Panel Members: ALJ TERESA STANLEY
ALJ ANDREA LONG

For the Appellant: MO POLANI

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE ADMINISTRATION

JARRETT NOBLE
MONICA SILVA
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 1-17 were received at page 9.)
(Department's Exhibits A-E were received at page 10.)

P R E S E N T A T I O N

	<u>P A G E</u>
By Mr. Polani	9
By Mr. Noble	29

C L O S I N G S T A T E M E N T

	<u>P A G E</u>
By Mr. Polani	38

1 Fresno, California; Tuesday, January 26, 2021

2 2:30 p.m.

3

4 JUDGE ALDRICH: So this is Judge Aldrich. We're
5 opening the record in the appeal of Polani Financials &
6 Investment Corp., before the Office of Tax Appeals,
7 Case Number 19085140. This hearing is being convened
8 electronically on January 26, 2021, at approximately
9 2:30 p.m. The hearing is noticed for Fresno, California.

10 As a quick point of clarification, we are the
11 Office of Tax Appeals. We're a separate agency from the
12 California Department of Tax and Fee Administration, the
13 Franchise Tax Board, and the Board of Equalization.

14 Today's hearing is being heard by a panel of
15 three Administrative Law Judges. I'm the lead
16 Administrative Law Judge for purposes of conducting the
17 hearing. I'm joined by Judges Teresa Stanley and Andrea
18 Long. While I am the lead for purposes of conducting the
19 hearing, we three will deliberate and decide the issues
20 presented. Each of us will have an equal vote in those
21 deliberations.

22 I believe Mr. Polani is representing Appellant.
23 Beginning with Appellant's representative, please state
24 and spell your name.

25 So, Mr. Polani, if you can unmute?

1 MR. POLANI: Good evening, Your Honors, and all
2 the Panel here. My name is Mo Polani, and I'm
3 representing myself.

4 JUDGE ALDRICH: And Mr. Polani, what title did
5 you hold with Polani Financials & Investment Corp?

6 MR. POLANI: As a CEO.

7 JUDGE ALDRICH: Thank you. And could you just
8 briefly spell your name for the stenographer?

9 MR. POLANI: Sure. M-O, last name Polani,
10 P-O-L-A-N-I.

11 JUDGE ALDRICH: Thank you very much.

12 We're going to switch over to the Department.
13 CDTFA representatives please state and spell your name,
14 beginning with Mr. Noble.

15 MR. NOBLE: Hello. My name is Jarrett Noble
16 appearing for CDTFA. My name is spelled J-A-R-R-E-T-T
17 N-O-B-L-E.

18 MS. SILVA: Good afternoon. I'm Monica Silva.
19 My name is spelled M-O-N-I-C-A, last name, S-I-L-V-A.

20 MR. PARKER: And I'm Jason Parker, J- A-S-O-N
21 P-A-R-K-E-R.

22 JUDGE ALDRICH: Thank you.

23 I believe that's everybody. This is
24 Judge Aldrich again. To go over the issues, the issues to
25 be decided are as follows: Whether any reduction to the

1 amount of unreported taxable sales computed in the reaudit
2 is warranted and whether Appellant was negligent.

3 Mr. Polani, is that your understanding of the
4 issues?

5 MR. POLANI: Correct, sir.

6 JUDGE ALDRICH: And, Department, is that your
7 understanding of the issues?

8 MR. NOBLE: Yes, Judge Aldrich. Thank you.

9 JUDGE ALDRICH: Okay. So I'm going to address
10 exhibits. So CDTFA submitted an exhibit index and
11 identified Exhibits A through E.

12 The Exhibit A is Appeals Bureau Decision; B,
13 Notice of Determination; C, Billing and Refund Notice; D,
14 Audit Work Papers For the Period of August 1st, 2013
15 Through March 31st, 2016; and Exhibit E, reaudit work
16 papers.

17 Appellant submitted approximately 17 exhibits.
18 Exhibit 1, Introduction and Facts Explanation Letter by Mo
19 Polani; 2, Proof of Business from 2012 to 2018 Regarding
20 Clover; 3, Proof of Business from Groupon, Uber, EZ Cater
21 Beyond; 4, Proof of Overpaid Taxes; 5, faxed a copy of
22 complaint LANA@BOE; 6, Proof of 7 Houses that were sold to
23 run our business; 7, Proof of Groupon Vouchers With
24 Customer Details; 8, Proof of Taxes Paid From 2012 to
25 2018; 9, Photographic Proof of All the Details Submitted

1 in the Big Box to the BOE; 10, Photographic Proof of
2 Spoilage; 11, Photographic Proof of Vandalism; 12,
3 Photographic Proof of Theft At Our Restaurant; Exhibit 13,
4 Photographic Proof of Cups Lying in the Backyard of My
5 Wife's House (Mr. Polani's wife); 14, Photographic Proof
6 of Losses on All The Equipment; 15, BOE withdrawal from
7 our escrow; 16, Lawsuit Proofs For Not Paying the Vendors;
8 17, Loans Taken From Friends to Run the Restaurant.

9 And so during the prehearing conference, the
10 parties had no objections to those proposed exhibits. But
11 I believe that the Department hadn't reviewed the exhibits
12 that the Appellant had submitted. So I gave a -- on
13 January 6th, 2021, I issued minutes and orders indicating
14 that the deadline for submitting additional documentation
15 was January 11th. And Mr. Polani submitted additional
16 exhibits of approximately 60 pages prior to the deadline.

17 So, Mr. Polani, are these documents new exhibits,
18 or are they intended to fill the place holders that were
19 in the exhibit binder that we hyperlinked?

20 Sorry, Mr. Polani, you're muted, if you could
21 unmute.

22 MR. POLANI: Yeah. I'm sorry. I'm not good at
23 computer, but --

24 JUDGE ALDRICH: No problem.

25 MR. POLANI: -- yeah. It's intended to fill up

1 the -- to show that the proof that I have paid all those
2 things, you know.

3 JUDGE ALDRICH: Okay. So you're saying that the
4 place holders that we marked in the hyperlink, the
5 60 pages should correspond to one of those two
6 placeholders?

7 MR. POLANI: Correct, sir.

8 JUDGE ALDRICH: Okay. And Department, this
9 question is to you. Do you have any objection to the
10 admission to the proposed exhibits?

11 MR. NOBLE: No, sir. No objection.

12 JUDGE ALDRICH: And, Mr. Polani, just to confirm,
13 do you have any objection to the admission of the
14 Department's proposed exhibits?

15 MR. POLANI: At this moment no, sir, Your Honor.

16 JUDGE ALDRICH: Sorry. What do you mean by this
17 moment? Are you --

18 MR. POLANI: I don't have any objection.

19 JUDGE ALDRICH: Okay. Thank you for clarifying.

20 So hearing no objections the proposed exhibits
21 for both the Department and the Appellant are now admitted
22 into evidence.

23 (Appellant's Exhibits 1-17 were received
24 in evidence by the Administrative Law Judge.)

25 ///

1 (Department's Exhibits A-E were received in
2 evidence by the Administrative Law Judge.)

3 Just to give an idea of how this hearing is going
4 to proceed, we plan for the hearing to proceed as follow:
5 Mr. Polani is going to be giving an opening statement,
6 which we estimated at 40 minutes. Then approximately 10
7 minutes for questions. Next, the Department will present
8 a combined opening and closing for approximately
9 15 minutes. And Appellant will have -- or Appellant's
10 representative will have 5 to 10 minutes to close or
11 rebut. And please note that the panel may ask questions
12 of either party.

13 Mr. Polani, during our prehearing conference, you
14 indicated that you would be providing testimony under oath
15 for your opening statement. So before we proceed with
16 your testimony could -- we need to swear you in. Could
17 you raise your right hand? Thank you.

18

19

MO POLANI,

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

23

24 JUDGE ALDRICH: Thank you. So please proceed
25 when you're ready.

1 they ask I paid, come back happy. And one -- in
2 December 2016 or 2015, early '16, that was when Mr. Paul
3 was there, and he basically put Aroma's taxes into
4 Shalimar, and Shalimar's taxes into Aroma. So it
5 basically raised a red flag in both -- in both my
6 businesses, you know. My Aroma was doing on an average of
7 around 9 to \$10,000 a month, whereas, Shalimar was doing
8 somewhere from 52 to 70,000 on the train so when we
9 basically put both.

10 So now Aroma is doing extremely well where
11 Shalimar is not doing very well. So it raised a red flag,
12 and that's how the audit came into being. So when the
13 audit came in our place, they were basically, like,
14 literally coming and sitting in our restaurant, for
15 honest, together from morning to evening. And those days
16 we were not doing Aroma so well. So instead of
17 9:00 o'clock, I used to basically close the restaurant by
18 6:00 o'clock.

19 So what happened was this auditor who came down,
20 she thought that A, because the auditor has come. We want
21 to push her out and lock the door. And she basically
22 stood -- basically sat in her car in front of our
23 restaurant just to observe us. Maybe we may open after
24 she leaving, you know. Bit to be very frank, sir, I've
25 never lied in my life. I'm almost 60 years old. Raised

1 two wonderful kids. Both are in medicine.

2 But the thing is, like, the bottom line about
3 this, like, she never trusted me in the first place. And
4 then she basically came out the next day and she said,
5 like, "Hey," almost the next day, and she said, "We are
6 going to audit you. Show me the receipts and everything."
7 So what I would do those days I had it, because I was also
8 new to the business, I gave her everything. But I had
9 provided everything.

10 Then she went behind me, and she basically went
11 down to vendors to find out whatever I buy. And I
12 literally gave her all the lists from where I buy stuff.
13 So in one of the places she said that, "Mo, you had
14 bought, like, almost 10,000 cups. So each cup you're
15 selling for \$5, so it's \$50,000. So what the total you
16 had made in your Aroma Coffee and Snacks, the taxes are
17 right."

18 I said, "No. This is basically a mismatch." And
19 to be very frank, yes, I bought 10,000 cups. This is the
20 invoice. This way I gave you the address. And I said,
21 like, I pay only taxes on those which are sold and not the
22 inventory. I bought this so I can get a cheaper price,
23 you know. So it so happen that those days my Aroma Coffee
24 and Snacks business generally run on students.

25 Like, you know, like there's a small school. It

1 is known as Independent High School. They -- those
2 students come down. So a lot of student during summer,
3 they don't even have, literally, money to get water, you
4 know. They cannot buy a bottle of water. So we generally
5 give -- put ice and give water in that cup. Same cups
6 were used for what you call Arizona Tea. 99 cents is what
7 we used to charge them. And also like a smoothy like, you
8 know, is \$1.99.

9 And the biggest thing we sold, it was Vietnamese
10 drink known as Chea. And that was, like, \$3.99, but
11 nothing we sold was for \$5. So I said, like, it doesn't
12 make sense. And to be very frank, all I have it. You can
13 come and check my store. We have it, and we have not used
14 it. And then, like, you know, like, I want to bring up to
15 your attention. In one of the places, like, you know,
16 they basically said that, "Oh, you -- you basically" --
17 one moment, sir, I have to -- "you" -- "you basically are
18 paying" -- yeah. "You" -- "you are" -- "we will charge
19 you for \$8,000," -- you know, I have a proof to show that
20 -- "because you have not paid for \$8,000."

21 And I said, "No. I can't, sir. As far as I know
22 I go down to your office. I pay every time." And this
23 was -- this was somewhere in the -- one moment, sir. I'll
24 give the exact -- this was somewhere in June 16th that it
25 happened. But in December -- in December 16th, the amount

1 from \$8,500 became, like, \$9,200. And then, like, in
2 June 17th the amount became \$4,000. So -- so the amount
3 keep on fluctuating.

4 And -- and somewhere in the month of
5 September '01, it became \$13,000. So this is her card, so
6 \$13,000. And -- and somewhere in November 17th and '07,
7 it became \$87,000. So it kept on inflating and going up,
8 you know. I said, "Hey, we don't do that type of business
9 here, like, you know, and you have -- just check it."

10 So then she said, like, oh, Polani Financial also
11 has other restaurant. I said yes. So they came down to
12 our Shalimar, you know. And believe it or not, sir, like,
13 you know, in my restaurant before I could take over, the
14 previous owner were only selling cash, and they were
15 pocketing all the money. But from the time I took over, I
16 started using credit card. A lot of people were really
17 happy when they basically to know that I'm using credit
18 card.

19 And believe or not, like, even though the
20 inspectors gave it, like, two Hispanic inspectors, two
21 Indian inspectors, and two Caucasian inspectors, they were
22 coming on a regular basis to sit in one corner and
23 observe. And every receipt I click it, and whenever I'm
24 at the counter -- generally, I'm not. My managers were
25 there. So I used to take and show them, "Hey, this is the

1 receipt. This is the receipt."

2 They said, "You don't have to show everything.
3 At the end of the day we will calculate. And they were
4 also astonished. They said, "Hey, this restaurant was
5 doing so much business. What happened"?

6 And I said? Maybe I'm a different owner. They
7 don't like me." And especially in our Halal community,
8 you know. Like, I'm from India, whereas, this restaurant
9 is a Pakistani restaurant, which we took over. It's known
10 as Shalimar Sunnyvale. And all the Shalimars belong to
11 one person, where this one belongs to me. I just bought
12 it. So they know that, oh, the Hindus they don't make
13 Halal food. Our restaurant started depleting.

14 And moreover, there were a lot of mutawas, the,
15 basically, priest. Let's put it that way. Priest for the
16 mosque, they basically started telling that, hey this guy
17 is a Hindu. He doesn't serve Halal food. Don't go there.
18 So our restaurants went depleting. Now, having said that,
19 when these people started investigating us in this, I had
20 exposed them everything, every bit of it.

21 Sir, I'm the only owner, I can assure you, who
22 give the password and the user name to the auditor. And I
23 said, "You can -- you can take this. You can check
24 anything. I have not frauded [sic] on anything." This is
25 all what happened. They said, "Oh, there is a

1 difference." I said yes. Those days, like, I used to
2 sell tickets in our restaurant, and I already told this to
3 the auditor. I said, "Hey, whenever we sell tickets, we
4 sell them when people come down to buy food. They buy
5 tickets too."

6 Whenever they come to buy tickets -- we used to
7 do, like, Bollywood events, and that's also included. And
8 these are the exact amount. And I was very transparent
9 with them, you know. Absolutely nothing hidden. Every
10 document I gave it to them, whatever document they ask.
11 And in spite, like, giving them a password user, I said,
12 "Here is the Clover you can check it on." And then I
13 basically, I also gave them bank statements, you know. I
14 was very transparent. But still, I don't know for what
15 reason, these people couldn't believe in me.

16 But having said that, as we proceeded ahead, we
17 had a lot of calamities in our restaurant. Our business
18 was not good, and we had already signed the lease. We --
19 we are not able to pay the lease. And even if you check
20 my escrow document, which I sent it, the land -- the
21 landlady, she has already withdrawn \$142,000 because I was
22 not able to pay for a few months, you know. And plus,
23 finally, she took over. And Board of Equalization took
24 over, like, \$172,000.

25 Believe it or not, sir, both the restaurants I

1 sold -- Aroma Coffee and Snacks, in -- in this document I
2 put it, like, \$130,000, but actually I sold it for
3 \$110,000. In Aroma Coffee and Snacks, I bought only got
4 \$6,000 back. But in Shalimar I've not got one penny. And
5 because even the reason I'm selling this restaurant is
6 because I have so much of liabilities, lawsuits,
7 liabilities, employee salaries, you know, like, the rents,
8 you know, the taxes, the EDDA. And I have to pay them,
9 you know, because all this time that I was in
10 pharmaceutical, we were exactly paying everything on a
11 W-2. Everything so systematically. No issues at all.

12 But with business as such, I was like, basically,
13 like stammering, like, you know. Then I had to literally
14 put my towel down, and we sold this restaurant in August
15 of 2018. And I presume that once I get that money I can
16 reset to all these people, you know, including the
17 lawyers' fees and all. Before that I had, like, two
18 lawyers, three lawyers to be very frank when I was working
19 to basically deal with this. And one of the lawyers
20 basically spoke to Board of Equalization people, the
21 second one also, the third also.

22 But right now I'm fighting alone. I don't have
23 money to even afford a reasonable good lawyer. Any lawyer
24 you go is more than \$300, \$400 per hour, you know, and I
25 cannot afford it at this moment. And for almost, like,

1 two years, sir, even though I'm disabled, believe or not,
2 sir, you can check my records. You guys have so much
3 power. You can check everything about me. You can check,
4 sir, even though I'm disabled, I have not claimed one
5 penny from EDDA or employment. Nothing of the sort. I
6 was relying on my wife because I always feel that that
7 money somebody could use it, you know.

8 And believe or not, I've never misused the system
9 or abused the system. There are so many people who do
10 that. In fact -- in spite, sir, you won't believe. When
11 I was selling this restaurant, there were so many cash
12 offers for me, you know. I can name those restaurant
13 owners and their CPAs if you want. They came down and
14 they said, "Mo, you're a fool. You're selling through
15 escrow."

16 I said, "No. I want to basically do the right
17 thing." Sir, I was getting \$350,000 cash, sir. They
18 said, "Mo, all you have to do is give this -- take this
19 money, leave the restaurant. We'll take care of it." And
20 those CPA said, "Hey, I can help you how to, basically,
21 manipulate the numbers." You know, sir, my conscious --
22 I'm a true man, and I'm a good son. Believe it or not, I
23 said no. Even though I'm getting \$25,000 less, I will go
24 with \$325,000 and let me do the escrow thing, you know.

25 Sir, if at all I had to cheat the system or cheat

1 BOE or cheat the tax, sir, you won't believe I could have
2 done this a long time before when I sold Aroma. Aroma
3 also, I sold through escrow. This also through escrow,
4 sir. Here I have never cheated. Sometimes I feel, sir,
5 these people have basically, like, done, like, an
6 extortion on me and took away all my money. And because
7 of this you won't believe my wife, she's an RN, and I had
8 to literally beg and borrow from her.

9 I can -- I can show you so many proofs. I have
10 so many proofs to show that I have literally paid. Hey, I
11 know this month is a little slow. Next month we can do
12 business. We can grow the business and I'll -- I'll
13 basically compensate you. Sir, at many times my wife has
14 paid the rent, sir, because we're not doing good. And now
15 I don't even get the money we just sold for it, you know.
16 That's where it hurts my feelings, you know. And that's
17 why I said no matter what happens, I'm going tell the
18 court the truth and let the court decide, you know. If
19 they want to punish me, let them punish me. I don't care.

20 But, you know -- but honesty is the best policy,
21 sir. I've -- I've been taught in my whole life, and
22 that's what exactly I teach my kids too, you know. And
23 then we came to this country in 1994. I always told my
24 kids, like, you know, you have to be an asset to the
25 country and not a liability, sir. Believe or not, sir, I

1 never cheated anyone in my life. I have never betrayed my
2 taxes. I have paid my fair share of taxes, and I do
3 everything reasonable, sir.

4 Even -- even when we give free food in the --
5 in -- in our restaurant, we have free tea and all, I
6 told -- I told this auditor everything. Hey, we basically
7 give free food to all the sometimes. We give free tea
8 too, but still they prepunch it. So the problem started
9 when our business was depleting. We said, "What is our
10 other alternative?" So we said, "Groupon. Let's go with
11 the Groupon."

12 Groupon at least brings business because we
13 didn't have that much money to basically do marketing
14 because our names were tarnished saying that we don't do
15 Halal food. So moving ahead, sir, like, you know, we
16 opened up a Groupon, sir. So we were doing Groupon
17 earlier, but in 2015, '16, '17, I did exclusive with
18 Groupon, sir.

19 So what happens in Groupon? Suppose somebody
20 buys a Groupon in their website and said that, okay, in
21 Shalimar Sunnyvale we get \$60 worth of food for \$24. And
22 they basically pay \$24 to Groupon. And they bring with
23 the coupon and say that, "Hey, Mo, I bought \$60 worth of
24 food." So what we do is, sir, it's a -- it's really
25 because I'm so honest I think I'm stuck here.

1 So whenever the client orders, we basically do
2 everything in right.

3 Say, for example, they have ordered, like,
4 chicken tikka masala, rice, goat rice, all these things.
5 And at the end if the bill comes to \$63 or \$62, sir, we
6 only take \$2 from them. But we punch for \$62. So that
7 ticket, unless we punched it, we cannot remove the ticket.
8 So we punch the ticket and give it to the kitchen to get
9 it. But legally speaking, sir, I got only \$2 on my
10 counter and not \$62, correct? This is part one. So
11 legally I have to pay taxes on those \$2 in my counter, but
12 Groupon has taken the \$24, correct?

13 Now, out of the \$24, like, you know, I don't get
14 everything. Groupon takes a bit of it, and I get \$18. So
15 basically I get \$18 from Groupon and \$2 from the client.
16 So legally speaking, sir, I have to pay from my
17 understanding. I may be wrong. But from my understanding
18 I have to pay on \$20 -- the tax on \$20. But -- but we
19 have only rang up for \$62. So that's an inflation here,
20 and I explained this very cleanly. I went down to their
21 office. They call me three times. I went down to their
22 office, and I explained everything. But still they took
23 away all my money, sir.

24 And believe it or not, sir, that's one. The
25 tickets are one. I've been very transparent. I said,

1 "Hey, you -- you guys are so smart, you know. If I buy
2 \$10 worth of grocery, I can sell maximum \$25 at \$30 worth
3 of it, one-third of it. See my grocery thing. See my
4 meeting. See my everything. I have given you all the
5 details. Why can't you crosscheck from behind and, like,
6 how you checked with the cups? But no, they did not
7 listen, and there was an audit.

8 And because we had to close this restaurant and
9 come out of it, I had to owe so many people. Sir, I have
10 attached so many things, so many people I have to owe.
11 Sir, I'm not able to basically pay them, and I do have so
12 many cases, sir. One by one I'm trying to solve this.
13 Some, remarkably, some I basically I took money from my
14 wife. And because of that's what happened, sir, when
15 money comes in your home, happiness is there, sir. If
16 money does not come, so there's always that rift going on
17 between a wife and the kids and me and everything.

18 And, basically, I -- sometimes I curse myself.
19 Why the hell I left my nice pharmaceutical job and went
20 down to this. But then it becomes a division, sir. Then
21 you have a heated argument at home, the whole house. And
22 there's so much of escalate -- cascading effect we have,
23 sir. So this is where I'm standing here, sir. I have
24 sent all the proof. I have enough proof to show who I am,
25 what I am, and including the Clover.

1 I have given you the bank statements. I have
2 given -- I have given everything, including the taxes what
3 I have filed, sir. I'm not like any where, and I've sworn
4 under oath. This is what I want to plead, sir.

5 If you have any questions, please, sir, I'm there
6 to answer any questions.

7 JUDGE ALDRICH: Okay. Does that conclude your
8 opening statement then?

9 MR. POLANI: Yes, sir.

10 JUDGE ALDRICH: Okay. I'm going to refer to my
11 panel to see if they have any questions for you.

12 Judge Stanley, do you have any questions for the
13 Appellant?

14 JUDGE STANLEY: This is Judge Stanley. I do have
15 a couple, but did you want to see if CDTFA has any before
16 I ask mine?

17 JUDGE ALDRICH: Sure.

18 JUDGE STANLEY: Or do you want me to just go
19 first?

20 JUDGE ALDRICH: I will defer to the Department
21 first.

22 Department, would you like to ask any questions
23 of the Appellant?

24 MR. NOBLE: No, sir. We have no questions for
25 the Appellant. Thank you.

1 JUDGE ALDRICH: Okay. Back to you,
2 Judge Stanley.

3 JUDGE STANLEY: Okay. Thank you. This is
4 Judge Stanley.

5 MR. POLANI: Nice to meet you.

6 JUDGE STANLEY: Mr. Polani, I've got a couple of
7 things, and I'm trying to figure out how your evidence and
8 testimony fits in to what CDTFA did to reach the amount of
9 unreported taxable sales that they came to. So it look to
10 me like they used your own point of sale records to
11 determine the latest amount. How does the distraction of
12 cups and giving away free cups and other things like that,
13 how does that relate to what is found in your POS records?

14 MR. POLANI: Yeah. The cups was for Aroma Coffee
15 and Snacks because the auditor, when she came, she said
16 "Mo. You owe \$50,000 more." And that's where I just gave
17 her explanation saying that our -- you can check the cups
18 and check the things. We are paid exactly. But the
19 balance of cups are all there in -- in the storage. And
20 right now it's been in my wife's backyard, and that's also
21 send enough proofs of that. And there is more than
22 almost, like, 3,000 cups still down there. So that's
23 totally different.

24 The second question is about Shalimar is, like, I
25 gave my password and my user ID to check that. I said,

1 "Take this." And in fact, like, not one, there were,
2 like, three or four people who checked the POS in detail.
3 And they said, "Mo, there is a discrepancy in between
4 both -- both the things." I said, "Yes."

5 So this amount, which is balance, I paid what
6 I -- for -- for the Shalimar, for the food, I've already
7 paid the taxes. But the other thing is for the tickets
8 because we used to do Bollywood. And I used to basically
9 sell tickets in the restaurant, you know, because most of
10 the restaurant -- Indian restaurant they do that. And
11 that is for ticket sale. And for ticket sale and all, I
12 have already sent that amount to that owner of the
13 sponsor. I have all the reference. You can always
14 crosscheck them, and then you could make a decision.

15 So that's my answer.

16 JUDGE STANLEY: Okay. Thank you, Mr. Polani. It
17 sounds like you're talking to the amounts that went into
18 the first audit, but I have a couple of additional
19 questions. You did provide some Groupon printouts. Does
20 that show the money that you actually received from the
21 Groupon sales?

22 MR. POLANI: One minute.

23 JUDGE ALDRICH: And this is Judge Stanley again.
24 I mean, after Groupon takes its own fees out of there, do
25 those reports show that you received them?

1 MR. POLANI: Yeah. Correct. That's what I
2 basically receive from Groupon. That's a statement,
3 correct.

4 JUDGE STANLEY: Okay. And you testified that
5 there's -- that your staff had to ring up all the sales so
6 that the kitchen could get the order, whether it was a
7 Groupon sale or not. And I'm wondering if there's
8 anywhere in your point of sale records where you denote
9 that. Is there any kind of key code or anything in your
10 records that would show that there was a Groupon sale?

11 MR. POLANI: Yes, ma'am. I didn't have a key
12 code because as I said, initially I'm not that great
13 mathematician or computer. I'm not computer literate, but
14 this is what I have, ma'am. These are all the documents.
15 These are all the Groupon documents. These are all I have
16 preserve, whatever I could get it, ma'am. And I had
17 already sent all these things to Board of Equalization.
18 It came back. I sent the whole big box to them, and they
19 saw it and they basically sent all this.

20 These are all the Groupon coupons. You can --
21 and they have them -- I have their numbers, phone number
22 and email address too. And every one of this has the
23 phone numbers, their emails and everything. So this is
24 one proof I have, ma'am. All this. I also did what -- so
25 these are all the -- ma'am, these are all the people's

1 name, their email address, everybody who got a Groupon
2 from us and who used a Groupon on it.

3 So every time we basically ring that, they have
4 the name, and they have the email. They have to write it
5 so that we kept a record, including their phone numbers
6 and everything, ma'am. So this is one. We also have a
7 second book like this. We have the receipts already
8 attached. These are all the receipts attached, every
9 receipt. This is --

10 JUDGE STANLEY: Mr. Polani. Mr. Polani, I don't
11 mean to cut you off, but we have some samples of those
12 kinds of evidence in our record. But my question is how
13 you think that CDTFA would be able to tie a certain point
14 of sale record to a Groupon sale? Is there any way at
15 all? You said you didn't key in a special code for that.
16 So, really, there's no way to tie those invoices you're
17 showing us back to the point of sale records; right?

18 MR. POLANI: Ma'am, yes. But these -- these are
19 all from Groupons only. These are all the documents I
20 have. These all Groupon documents only. They had -- this
21 is from their website, ma'am. It's all these are from
22 their website, not my thing. So this is what to look, and
23 I've kept it for a couple of years just to basically show
24 it to the court, you know.

25 So these are the all the documents I have. And

1 like -- like suppose if Groupon had paid me, say for
2 example, \$1,000. So basically I would have entered like
3 \$5,000 in -- in the system. So that is basically I get --
4 probably like \$20. Not \$20. Basically, I would get
5 somewhere around \$80.

6 JUDGE STANLEY: Okay. Thank you, Mr. Polani.

7 Judge Aldrich, I have no further questions.

8 MR. POLANI: And if you want, ma'am, like, I can
9 send this all on your way. Once again on your way, ma'am.
10 I've got all these documents.

11 JUDGE ALDRICH: Judge Long, do you have any
12 questions for Mr. Polani?

13 JUDGE LONG: This is Judge Long. I have no
14 questions at this time.

15 JUDGE ALDRICH: Thank you.

16 This is Judge Aldrich. I think we're going to
17 move over to the Department's combined statement.

18 And then, Mr. Polani, you will have an
19 opportunity to rebut.

20 But for now, the Department, are you ready to
21 proceed with your combined opening and closing statement?

22 MR. NOBLE: Yes, sir.

23 JUDGE ALDRICH: Go ahead when ready.

24

25

PRESENTATION

1 MR. NOBLE: In this appeal, there is no dispute
2 that Appellant operated a restaurant in Sunnyvale,
3 California, that was discontinued upon the sale of the
4 business in October of 2018. During the audit period,
5 Appellant reported taxable sales of \$1,470,190.

6 Initially upon audit, Appellant only provided
7 credit card deposit information from 1099-K reports for
8 July of 2013 through December of 2014. The Department
9 examined these records and calculated underreported
10 taxable sales of \$518,494. After the audit, Appellant
11 provided point of sale data from its operating system,
12 which showed Appellant's recorded taxable sales and the
13 amount of payments Appellant received in different credit
14 cards, checks, and cash -- recorded cash payments for the
15 third quarter of 2015 through the first quarter of 2017.

16 Appellant had implemented this system midway
17 through the third quarter of 2015. Because this
18 information was not complete, the Department used the
19 remaining quarters to calculate an error rate of
20 51.9 percent by dividing the amounts Appellant reported on
21 its returns by the taxable sales it recorded in the point
22 of sale records. This examination resulted in a
23 deficiency measure of \$784,419.

24 However, after further examining the information
25 and in preparation for this hearing, the Department notes

1 that Appellant's reported taxable sales for the second
2 quarter of 2016, the third quarter of 2016, and the first
3 quarter of 2017 were materially lower than the sales
4 Appellant reported on its returns during the periods at
5 issue. When factoring in these quarters, the
6 corresponding error rate was not representative of
7 Appellant's sales for the quarters at issue.

8 Accordingly, the Department conducted a reaudit
9 using the point of sale data for the fourth quarter of
10 2015 and the first quarter of 2016 only, resulting in a
11 reduced error rate of 40.09 percent and a deficiency
12 measure of \$605,909, which represented a reduction of
13 \$178,510. Under the sales and use tax law sales tax is
14 imposed on a retailer's retail sales of tangible personal
15 property the state measured by the retailer's gross
16 receipts, unless the sale is exempt or excluded from
17 taxation.

18 All of a retailer's gross receipts are presumed
19 subject to tax, unless the retailer can prove otherwise.
20 When a taxpayer challenges a determination, the Department
21 has the initial burden to explain the basis of the
22 deficiency. Where that explanation is reasonable, the
23 burden of proof shifts to the taxpayer to establish that
24 the asserted deficiency is not valid. The taxpayer must
25 establish by documentation or other evidence that the

1 circumstances it asserts are more likely than not correct.

2 In the present appeal, the Department used
3 Appellant's point of sale data to calculate the deficiency
4 measure. The point of sale data represents taxable sales
5 Appellant recorded in its system and shows actual payments
6 that Appellant received from various credit card companies
7 as well as payments by check recorded cash sales. The
8 Department then calculated a percentage of error from this
9 data and applied it to all quarters in the liability
10 period.

11 Because this data represents the actual amount of
12 sales Appellant recorded during the quarters provided, the
13 information represents the best available evidence of
14 Appellant's taxable sales during the liability period.
15 And, thus, the determination is reasonable. Accordingly,
16 the burden shifts to Appellant to establish that the
17 measure determined upon audit is overstated.

18 With respect to the evidence provided by
19 Appellant, the evidence of payments by Groupon does not
20 establish that Appellant entered the full retail value of
21 the meal into its point of sale system rather than the
22 discounted value of the coupons as alleged by Appellant,
23 or that it subsequently did not collect the amounts
24 recorded in its sales system from its customers.
25 Appellant has not provided daily cash receipts or other

1 documentation establishing that this was the case.
2 Therefore, Appellant has failed to establish that the
3 point of sale data is inaccurate based on this contention.

4 With respect to Appellant's assertions that it
5 recorded charges for events that represent admission fees
6 rather than taxable sales of food products in its point of
7 sale system, we note that Appellant has not provided any
8 documentation that it held special events in its location
9 and particular events where charges for admission would
10 not be subject to tax. Furthermore, Appellant has not
11 provided any documentation that it recorded sales using
12 its point of sale system for events that were held offsite
13 or by other people.

14 With respect to the federal income tax
15 information provided by Appellant, the amounts provide --
16 reported on the returns do not establish that adjustments
17 are warranted to the measure because there's no way to
18 determine from the e-file information alone whether the
19 amounts were accurately reported. Furthermore, as
20 previously noted, the point of sale data shows sales
21 Appellant recorded as taxable and, thus, represents more
22 accurate information.

23 Accordingly, the partial federal income
24 information provided by Appellant is not established that
25 adjustments are warranted. With respect to Appellant's

1 assertion that employees incorrectly rang in food items,
2 the cash register receipts he provided images of is part
3 of his submissions from a prior system in 2014. And those
4 register receipts were not used to calculate the measure
5 at issue. There is no documentation that the point of
6 sale system allowed employees to manually enter amounts or
7 that any amounts recorded in the system were due to key-in
8 errors.

9 Lastly, to the extent that Appellant asserts that
10 there was spoilage and/or theft of food, the point of sale
11 data represents sales that were entered into the system.
12 Spoilage and theft would not be entered into the system as
13 taxable sales. And, thus, no adjustments are warranted
14 based on these assertions.

15 As for the negligence penalty, under the sales
16 and use tax law, taxpayers are required to maintain and
17 make available for examination all records necessary to
18 determine the correct tax liability and all records
19 necessary for proper completion of the sales and use tax
20 returns. Negligence is generally defined as a failure to
21 exercise the care that a reasonably prudent person would
22 exercise under similar circumstances. The negligence
23 penalty is applicable where a taxpayer is found to be
24 negligent in keeping records or where a taxpayer is found
25 to be negligent in preparing returns or both.

1 Generally, a negligence penalty should not be
2 recommended when a taxpayer has not been previously
3 audited. But there are circumstances where a penalty in a
4 first audit is appropriate. For example, the negligence
5 penalty should be upheld in a first audit if the
6 understatement cannot be attributed to a bonafide and
7 reasonable belief that the bookkeeping and reporting
8 practices were compliant with the requirements of the
9 sales and use tax law.

10 Here we note that Appellant's records were
11 inadequate for sales and use tax purpose. For example,
12 upon audit Appellant only provided partial credit card
13 sales reports, partial vendor purchase information, and a
14 cash register z-tape for one day, June 3rd, 2016. In
15 addition, after the audit period, Appellant was only able
16 to provide partial point of sale data, such as sales
17 summaries rather than detailed daily cash register
18 reports. The incomplete records Appellant provided for
19 the audit is evidence of negligence.

20 Furthermore, the evidence in this appeal shows
21 that Appellant underreported its taxable sales by
22 approximately 40 percent. Appellant's failure to report
23 40 percent of its taxable sales is itself compelling
24 evidence of negligence.

25 Lastly, while this was the restaurant's first

1 audit, the corporation's president operated other business
2 that held seller's permits with the Department that were
3 previously audited. Accordingly, Appellant, through it's
4 president, knew that it needed to go -- to accurately
5 report its taxable sales and maintain sufficient records
6 of those sales. Therefore, the significant
7 understatement, the lack of records, and Appellant's
8 president's knowledge of the requirements of the sales and
9 use tax law establish that Appellant was negligent and
10 that the understatement of taxable sales cannot be
11 attributed to a bonafide and reasonable belief that it was
12 compliant with the sales and use tax law.

13 Accordingly, the imposition of the negligence
14 penalty is appropriate in this case. For all of the
15 aforementioned reasons, the measure established upon audit
16 is based upon Appellant's own recorded taxable sales.
17 This documentation represents the best available evidence,
18 and the method used to calculate the deficiency was thus
19 reasonable. Appellant has not provided any documentation
20 establishing that the amounts it reported on its returns
21 was accurate, or that the measure established by the audit
22 is overstated. Therefore, this appeal should be denied.

23 Thank you.

24 JUDGE ALDRICH: Thank you, Department.

25 Judge Stanley, did you have any questions for the

1 Department?

2 JUDGE STANLEY: This is Judge Stanley. I do not
3 at this time. Thank you.

4 JUDGE ALDRICH: Thank you.

5 And Judge Long, do you have any questions for the
6 Department?

7 JUDGE LONG: This is Judge Long. I have no
8 questions.

9 JUDGE ALDRICH: Okay. I have just a
10 clarification question for Mr. Polani, if you could go
11 ahead and unmute yourself.

12 MR. POLANI: Sure.

13 JUDGE ALDRICH: Thank you. So when you were
14 talking about the tickets, so were you referring to the
15 Shalimar or Aroma location regarding the ticket sales?

16 MR. POLANI: Preferably Shalimar, sir, because by
17 then we had already closed Aroma, sir.

18 JUDGE ALDRICH: Okay. And for the Bollywood
19 events, are those on-site or off-site events?

20 MR. POLANI: So those are --

21 JUDGE ALDRICH: At the location of the restaurant
22 or not at the location of the restaurant?

23 MR. POLANI: No, not at the location of the
24 restaurant. They generally do it in SAP center and/or
25 Oracle and all those things.

1 JUDGE ALDRICH: That's who --

2 MR. POLANI: They sell -- they sell -- the
3 sponsor comes and use the tickets for maybe like 100,000
4 or 50,000, and then we have to sell it and give it to them
5 back. So, generally, like what happened, they advertise.
6 That way we will also get an advertisement, you know, free
7 advertisement. So they say the tickets are available in
8 so-and-so restaurant. Go down. So when they come to buy
9 ticket there are chances of them buying the food. So that
10 was basically mutual benefit, like, you know, to help them
11 in the Bollywood.

12 And may I answer Mr. Noble's question, sir?

13 JUDGE ALDRICH: I don't know that Mr. Noble posed
14 a question, but it would be a great time to transition to
15 your rebuttal. So I'm going to give you an opportunity to
16 make a final statement, rebut what the Department said, or
17 answer any of the questions that the judges may have had.
18 So proceed when you're ready.

19 MR. POLANI: Sure, sir. Thank you so much for
20 giving me this opportunity, sir. Thank you very much,
21 sir.

22

23 CLOSING STATEMENT

24 MR. POLANI: Mr. Noble said that we had made
25 almost, like, \$1.4 million sale. But, sir, this is a true

1 Clover statement of 2017 and 2018, sir. With all this
2 attached and --

3 JUDGE ALDRICH: Mr. Polani -- Mr. Polani. Sorry
4 to interrupt you. But when you're showing stuff on the --
5 exhibits or documents or what-have-you on the screen, are
6 those already in the exhibits, or is that something
7 separate and apart?

8 MR. POLANI: No, sir. They're already there,
9 proof of business from Clover Corporation that is on
10 exhibit.

11 JUDGE ALDRICH: Okay. Sorry. I just wanted to
12 clarify that is something we have to reference other than
13 on screen. Okay.

14 MR. POLANI: So your -- Mr. Noble said that I --
15 like we did, like, \$1.4 million. Sir, I had this
16 restaurant. I opened this -- rather, I took over this
17 restaurant in late August and closed it -- selling in
18 August of 2018. Actually, to be very frank, we signed the
19 lease on March, April, and then we closed it by July,
20 August.

21 Having said that, sir, in all these years, if he
22 could show me one year that we did 1.4, sir, I'll be a
23 slave to all you guys. You ask me anything, I'll do it.
24 But we had never had that sale. In 2018, sir, we had a
25 sale of -- this is a graph including tax, tips, and all.

1 It's \$288,000. I have all these receipts attached. Plus,
2 like also, like, sir, in -- one moment -- in 2017 I had,
3 like, \$537,319, sir. We never in our life we had
4 \$1.1 million sale. Anything above 1 million we never had
5 the sale.

6 And I can assure you. They can reinvestigate
7 this. But the thing is, like, I can basically tell that
8 we never had anything of million dollar sale. Sir, if I
9 had a million dollars sale, sir, I would never have closed
10 down the restaurant. I would not have taken a loan. I
11 have taken a loan from doctor friends. I'll give their
12 name reference. You can cross check with them. The Court
13 can crosscheck with them and ask, you know. And,
14 basically, we had to basically pledge our house. Like,
15 this house where my wife stays in that house.

16 So we had to literally take an equity at 11
17 percent, sir. Who'd take -- who'd go -- with the right
18 sense of mind, who would take a loan and then pay them?
19 Because we are committed to them because we -- we respect
20 to our word, sir. When we give our word, we keep it up,
21 you know. And I -- I acknowledge for some moment, like,
22 yes, I was -- I didn't have those evidence, like, you
23 know, like, to say I do not give everything to the
24 auditors who came. But I give them the keys to and the
25 password to the Clover. They have everything. Clover is

1 and encyclopedia of everything.

2 And I've given them every bit of the information.
3 And as I received that, sir, after closing my restaurant
4 also, I personally went down to Board of Equalization,
5 dropped a big box -- I think one of the pictures, you have
6 it -- to Board of Equalization. I said, "These are all
7 the documents I have. Check whatever you want. Take
8 whatever you want. And anytime you need any help, call
9 me. I'll be there to explain."

10 So more than this, what can I do? I know. I
11 understand. One person running two restaurants, it's
12 impossible, sir. And in those days, there's so many
13 people coming down for payments, right. I had -- you can
14 crosscheck my record, sir. I had, like, three labor
15 lawsuits saying that we did not pay them. It was hard for
16 us to pay the employees. How can we have \$1.1 million
17 business and not pay my employees, sir? You can
18 crosscheck with any of my employees, sir.

19 They will always speak good about me even though
20 one or two people made lawsuits against me. But gave them
21 that money, too, in the court. And we went down to Board
22 of Equalization, the same office, same area. We paid
23 them, you know. So we have never betrayed anyone, sir, in
24 our life. Never. Ever. Because tomorrow when my kids
25 walk in the street they'll say, "Hey, these kids belong to

1 Mo Polani, and they can walk with their heads up," sir.
2 We have never cheated anybody, frauded anybody, and we've
3 been paying taxes sincerely.

4 And as the gentleman said we had an incomplete
5 record, sir, 90 percent of the record whatever we have it
6 at. I don't have a great CPA. I can offer it. So
7 whether I could do it, I did it, sir. The bottom line is,
8 sir, if Noble could tell me, "Hey, Mo, you did business
9 from 2012 to 2018 so many million dollars," give me a
10 figure, sir. Then I will give you my figure what I
11 calculated. And take the taxes because Board of
12 Equalization took away \$172,000 of my hard-earned money,
13 you know.

14 My kids' fees depend on it, sir. Believe it or
15 not. My mortgage depend on it. We -- we are back on the
16 mortgage, sir. Believe or not, we have not paid the taxes
17 on that -- on this one here. I have this document. It
18 show we have not paid taxes, sir. We were delinquent in
19 paying taxes first time in our life because we didn't have
20 money. Sir, if at all we have so much money for this,
21 sir, I would not be sitting in front of you, sir. I would
22 have hired a good lawyer, and I'll say, "Lawyer you take
23 care of it. Let me relax, sir."

24 To prepare this find this -- all this document,
25 sir, you won't even believe where are all things I search.

1 I've been searching for days and months to get this,
2 because I don't know where I've kept it. And fortunately,
3 I have all the documents at least, and courage enough to
4 at least plead -- plead in front of you guys, you know.
5 Sorry I'm not great in that English, but I want to
6 basically make my statement. Like, this is all I have,
7 and this is the evidence, you know. And I leave it up to
8 the Court, like, you know.

9 No where he can show us that we had done
10 one-million dollar business. No where. And if at all he
11 does it, I'll do anything for that, sir. Anything.
12 Anything, you know. I'll go all the way to help BOE,
13 Board of Equalization, sir. But I -- 2017 I had \$537,000,
14 sir. The best months -- the best years were 2016 and
15 2017. That's the time I was supplying to Levi's Stadium,
16 sir. And also, I have a tax there. Sir, in one year we
17 supplied \$65,000 worth of dollars, and the other year we
18 supplied \$75,000. And I don't have pay taxes on them
19 because it's a reseller.

20 Levi's Stadium sells that. So we don't have it.
21 So I think I have some documents to show you, and also
22 I've attached it. So believe it or not, we did not even
23 charge them a penny. The thing is -- I want to show you
24 something with -- so here --

25 JUDGE ALDRICH: So while you're looking for that,

1 I just wanted to interject. You mentioned a couple of
2 times that we could verify things like loans to friends or
3 what not.

4 MR. POLANI: Yeah.

5 JUDGE ALDRICH: Well, we don't have the ability
6 to do independent research. Anything -- any argument you
7 want to make is fine, but evidence needs to be submitted
8 -- or needed to have been submitted to us. So, you know,
9 I understand that, you know, your relationship with the
10 Department versus our relationship is different. I just
11 need you to understand that when we write our opinion and
12 whatever decision we make, we base it off of the evidence
13 in the record.

14 So evidence can be testimony but -- and it can
15 also be documents that show proof of -- that certain
16 transactions happened or didn't happen, right. So those
17 are the things we're going to be relying upon to form our
18 opinion. But we're not going to be reaching out to
19 businesses or individuals for additional information. Is
20 that clear?

21 MR. POLANI: Okay. Sorry, sir. I was under
22 impression that you can always crosscheck whatever I say.
23 That's what I was thinking about it, sir.

24 JUDGE ALDRICH: No problem.

25 MR. POLANI: So this was Levi's Stadium, sir. We

1 didn't even charge them taxes, and we don't charge them
2 any taxes, sir. Like believe it or --

3 JUDGE ALDRICH: And --

4 MR. POLANI: So the thing I can -- I can send
5 this on your way. That's not a problem. But, you know,
6 like, we did that and -- but I send that 1099 thing, like,
7 saying, hey, I did this so much for them. I also give
8 them a contract copy which I had between me and them, you
9 know. So this was a clear evidence, you know. And that
10 amount, I don't have to charge the taxes for that amount.
11 They will charge. That's what my understanding is too,
12 sir. And I did not charge them a tax. So I don't have to
13 pay that.

14 So that amount feature in my POS, Clover system,
15 you know. So this -- this is a true, true story, sir,
16 like, you know. And I have evidence --

17 JUDGE ALDRICH: So --

18 MR. POLANI: -- where I have taken --

19 JUDGE ALDRICH: If I could interrupt one moment.
20 The Levi's Stadium document that you referenced and put up
21 on the screen, is that also in the -- the evidence, is
22 that in the exhibit packet that you sent to us?

23 MR. POLANI: Yeah. Yeah. In 1088, yeah, I have
24 that. Yes.

25 JUDGE ALDRICH: You have that, but do we have

1 that?

2 MR. POLANI: I think I send it to you guys.
3 Like, let me check. Sir, I don't see where I sent it to
4 you guys -- over pay taxes. Sir, I had sent it to you
5 guys like, a Groupon, Uber, EZ Cater, Beyond Menu, but I
6 don't have -- I did not send you the Levi's Stadium thing,
7 sir. I thought it was a totally different entity. But I
8 do not send it to you, sir, but I do have a proof here.
9 They send us a 1099 statement, and I have -- for both the
10 years I have, sir. And I can -- I can -- like here --

11 JUDGE ALDRICH: Okay. So I mean, what are you
12 asking for us to do? Are you -- do you want to submit
13 those documents?

14 MR. POLANI: I -- I can -- I can send it.

15 JUDGE ALDRICH: Because I've given you a couple
16 of deadlines to submit evidence, and you have submitted
17 some evidence. But are you saying you inadvertently
18 excluded the Levi's Stadium?

19 MR. POLANI: Sir, I thought I had already sent a
20 1099 -- something like this -- in the statement. So I
21 thought it's already there. But this is for Wells Fargo.
22 This is for my Clover thing. I have that here, sir, right
23 here. I have that. Where do I have it here? But I have
24 it, sir. I can -- I can send it to you. So many
25 documents I got here. I'm confused.

1 JUDGE ALDRICH: So --

2 MR. POLANI: I do have it, sir. Yeah, I got it.
3 So this is the volume I had it. I listed it. So this was
4 for \$75,000. This is a \$75,000 thing. They have it here.
5 If you can see? So -- so all this documents I have, sir,
6 from EZ Cater. I have from Fooda. I have from Beyond
7 Menu. I have from Uber. I have -- so all these things
8 here. And Groupon, we have.

9 So here we don't have to basically pay taxes to
10 Levi's Stadium, sir. So I did not charge them, but
11 it's -- it's in my Clover, you know. If you -- Board of
12 Equalization has all the records. You can see that amount
13 in my Clover. Because every transaction I have,
14 generally, entered into the Clover system, sir.

15 JUDGE ALDRICH: So before you continue putting
16 document back up on the screen --

17 MR. POLANI: Yes, sir.

18 JUDGE ALDRICH: -- I just wanted to remind you
19 that we are broadcasting live.

20 MR. POLANI: Oh, I'm sorry.

21 JUDGE ALDRICH: So you may not want to share some
22 of that information as it may have --

23 MR. POLANI: I'm sorry, sir.

24 JUDGE ALDRICH: Well, it's your information, but
25 I just need you to be aware that you might not want that

1 shared. The important thing for us is, do we have the
2 things that you think we need to make our determination?
3 And if we don't, are you asking for us to do anything?
4 Are you asking us to receive additional information, or is
5 what we have enough?

6 MR. POLANI: I would like to send additional
7 information, sir, because I thought that if I submit
8 something the Court will -- this is my first case like
9 this -- the Court will basically go back to those people
10 and recheck it, you know, whether I'm telling the truth or
11 not. That's why I was thinking, like, you know.

12 And whatever documents I had it that in September
13 I send it to your way. But this, what do you call -- the
14 Levi's Stadium thing, I did not send it. I forgot that.
15 It's my mistake, sir. I sincerely apologize for that, but
16 I do have a proof to show you that we had supplied for
17 Levi's Stadium, sir.

18 JUDGE ALDRICH: So, give me -- put your thoughts
19 on hold for a moment.

20 So, Department, would you have an objection to
21 allowing Mr. Polani to submit documents pertaining to the
22 Levi's Stadium sales?

23 MR. NOBLE: I don't think we have a specific
24 objection to him submitting further documentation, only to
25 note that we would need evidence that this was entered

1 into the Clover system. They would need to be from the
2 audit period. The brief one that he flashed on the screen
3 was from 2017, which is outside of the audit period.

4 And we would need documentation that these were
5 actually sales for resale, as in they were being sold and
6 then resold by Levi's Stadium, as opposed to being sold by
7 Appellant at the stadium.

8 JUDGE ALDRICH: So Mr. Polani, just so you
9 understand, I'm going to -- even though I had previously
10 given you two different deadlines to submit evidence, I'm
11 going to, you know, extend the favor to you to allow you
12 to submit additional evidence but --

13 MR. POLANI: Thank you, sir.

14 JUDGE ALDRICH: -- the scope is going to be
15 narrow, right. So the scope is going to be limited to
16 those sales that you're saying were resold by Levi's
17 Stadium. And it's going to be limited to those -- to
18 the --

19 (There was a pause in the proceedings.)

20 JUDGE ALDRICH: So, Mr. Polani, regarding those
21 Levi's Stadium sales, you understand that it's limited in
22 scope. It's limited in time; so just the audit period,
23 right. And how long do you think you need to submit
24 those -- that evidence?

25 MR. POLANI: So today is Tuesday; correct? So

1 by -- when is the evening I can submit it, sir? But
2 Thursday morning it'll be in your office, sir.

3 JUDGE ALDRICH: So by tomorrow morning?

4 MR. POLANI: Thursday.

5 JUDGE ALDRICH: Thursday?

6 MR. POLANI: Yeah.

7 JUDGE ALDRICH: So I'm going to give you a week.

8 MR. POLANI: Okay. Thank you, sir.

9 JUDGE ALDRICH: Because -- but just so long as
10 you understand the interest does continue to accrue should
11 we find that you are liable for the outstanding amount.
12 And so the record will remain open until February 2nd to
13 give you an opportunity to submit the evidence. I'm going
14 to give CDTFA an opportunity to respond to that evidence.
15 They'll also have a week to respond. So the 2nd is your
16 deadline. CDTFA's deadline is the 9th. So the case will
17 officially close by the close of business on February 9th.
18 Okay.

19 MR. POLANI: Thank you, sir. Okay.

20 JUDGE ALDRICH: All right. So just to kind of
21 backtrack, I wanted to make sure you got to say everything
22 that you wanted to say within the constraints of our time.
23 But if would like to take this moment to finish up your
24 rebuttal, please do so.

25 MR. POLANI: So as you asked me about the loan

1 documents, I have loan documents too. I send it too. As
2 I said, so we have taken a loan on this house. I pulled
3 the equity to basically fulfill all the other expenses and
4 lawsuits to solve this. I have it, sir. I have other
5 things, lawsuits I have. I'll send it all the way. I
6 think I've already send it enough on that, but I can send
7 you more, like, you know. So whatever the extras I have,
8 which I did not.

9 I'll basically crosscheck today -- tonight, you
10 know, like, because my -- my daughter she's got a Covid.
11 So, unfortunately, I'm not able to access the computer
12 online. So I'm not good at computer, but -- but I can
13 definitely tonight or tomorrow morning, I can see what
14 documents I've sent, what documents I have to send, and
15 I'll send it to you ASAP, sir. I promise you that.

16 JUDGE ALDRICH: So that sounds like you're asking
17 to send something other than the other Levi's documents.

18 MR. POLANI: I believe you wanted to see the loan
19 document; correct? You said that I --

20 JUDGE ALDRICH: No. Let's just keep it focused
21 to the Levi's Stadium sales, and --

22 MR. POLANI: Okay, sir.

23 JUDGE ALDRICH: -- the corresponding Clover
24 documents. Okay?

25 MR. POLANI: Okay. Okay. Fine, sir.

1 JUDGE ALDRICH: So we have your evidence and
2 argument in the record. Is there anything else you want
3 to tell us before I submit this case for decision?

4 MR. POLANI: Sir, as far as I know, sir, I have
5 not cheated or betrayed anyone. Probably, maybe it's the
6 practical error from my side. I'm not good at math, or
7 maybe I do not follow the deadline, but to the best of my
8 knowledge, as I already sworn in, I don't -- I have never
9 lied in my life. At the same time, sir, like, you know,
10 whatever I've done, honestly, I have served people food.
11 Honestly, I have charged them. Honestly, I paid my taxes,
12 sir.

13 I never ever, even a penny where I basically
14 didn't -- I know so many restaurant owners who did that,
15 but we -- I was sincere. My wife was sincere. My -- both
16 the kids were are raised sincerely, sir. You can see them
17 probably when we have one-to-one in the future. But to my
18 best of my knowledge, I have done justice to myself, you
19 know. Because as I mentioned already in my documents
20 saying that you can lie to anybody on this Earth. You can
21 lie to a parent, brother, sister, but you cannot lie to
22 your own conscience, sir. I don't want to lie to my
23 conscience, and I have never done anything wrong, sir.

24 These couple of documents, you need it. I'll
25 send it on your way. And I leave every decision to you,

1 sir. I know you will always make a fair decision, and I
2 will get a fair trial. I would like to thank you for
3 that, sir. And thank you so much for giving me one more
4 extra week to make this happen, sir.

5 And I thank the BOE as well as both Parker as
6 well as Noble and Silva. Thank you so much for at least
7 listening to my grievances and my story, sir. But in no
8 way in my wildest dream I'll ever think of frauding or
9 cheating the tax people, our taxes, sir. We have never
10 done in our life. We won't do it. We never teach our
11 kids to say, we -- we always teach the right thing to do
12 it, sir. So this -- and I want to basically say thank you
13 once again, sir.

14 JUDGE ALDRICH: Well, thank you both for your
15 time and for being flexible with the hearing format. I
16 believe we're ready to submit the case. The record is now
17 closed -- well, it's being held open until the 9th of
18 February, excuse me.

19 The Judges will meet and decide the case based on
20 the evidence and the arguments presented today. And we
21 will send both parties our written decision no later than
22 the 100 days from the 9th.

23 Hearing calendar is finished for today. We will
24 resume with hearings tomorrow approximately 10:00 a.m.
25 Thank you all.

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

(Proceedings adjourned at 3:35 P.M.)

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 22nd day of February, 2021.

ERNALYN M. ALONZO
HEARING REPORTER