

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
MMD, INC.,) OTA NO. 18011828
)
)
) APPELLANT.
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TRANSCRIPT OF VIRTUAL PROCEEDINGS

State of California

Wednesday, May 26, 2021

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Virtual Proceedings,
taken in the State of California, commencing
at 10:00 a.m. and concluding at 11:32 a.m., on
Wednesday, May 26, 2021, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ JOSHUA ALDRICH

Panel Members: ALJ SHERIENE RIDENOUR
ALJ MIKE LE

For the Appellant: FAITH DEVINE
ALEXANDRA BALUKA

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

RANDY SUAZO
CHAD BACCHUS
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-12 were received at page 10.)
(Department's Exhibits A-I were received at page 10.)

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

	<u>PAGE</u>
By Ms. Devine	12
By Mr. Suazo	27

W I T N E S S T E S T I M O N Y

	<u>PAGE</u>
By Ms. Baluka	42

R E B U T T A L S T A T E M E N T

	<u>PAGE</u>
By Ms. Devine	41

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2
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California; Wednesday, May 26, 2021

10:00 a.m.

JUDGE ALDRICH: This is Judge Aldrich. We're opening the record in the Appeal of MMD, Inc., before the Office of Tax Appeals, Case Number 18011828. This hearing is being convened electronically on May 26, 2021 at approximately 10:00 a.m.

The hearing is noticed for a virtual hearing. As a quick point of clarification, we're the Office of Tax Appeals. We are a separate agency from the California Department of Tax and Fee Administration, the Franchise Tax Board, and the Board of Equalization.

Today's hearing is being heard about a panel of three Administrative Law Judges. I'm the lead Administrative Law Judge for purposes of conducting the hearing. I'm joined by Judges Sheriene Ridenour and Mike Le. While I am lead for purposes of conducting this hearing, we three will deliberate and decide the issues presented. Each of us will have an equal vote in those deliberations.

My understanding is that for Appellant, Attorney Faith Devine, is appearing together with Alexandra Sasha Baluka, CPA.

Is that correct, Appellant's counsel?

1 MS. DEVINE: Yes, that's correct.

2 JUDGE ALDRICH: And my understanding is that for
3 the California Department of Tax and Fee Administration,
4 Hearing Representative Randy Suazo is appearing together
5 with Tax Counsel IV Chad Bacchus, and Chief of
6 Headquarters Operations, Jason Parker.

7 Is that correct, Department?

8 THE STENOGRAPHER: Judge Aldrich, can I interrupt
9 for a second?

10 JUDGE ALDRICH: Yeah.

11 THE STENOGRAPHER: I'm having trouble my mic and
12 speaker all of a sudden. Let me try to fix it because I
13 cannot hear anything right now.

14 JUDGE ALDRICH: Okay. We'll go off the record
15 briefly to accommodate the technical issue.

16 (There is a pause in the proceedings.)

17 JUDGE ALDRICH: So we're going to go back onto
18 the record. I just asked the Department to confirm who is
19 appearing on their behalf. I indicated that the Hearing
20 Representative, Randy Suazo, is appearing together with
21 Tax Counsel IV, Chad Bacchus, and Chief of Headquarters
22 Operations, Jason Parker.

23 Is this correct, Department?

24 MR. SUAZO: This is Randy Suazo. Yes, that's
25 correct.

1 JUDGE ALDRICH: Thank you.

2 This is Judge Aldrich again. The issue to be
3 decided is whether adjustments are warranted to the
4 audited taxable measure.

5 Is this correct, Appellant's counsel?

6 MS. DEVINE: Yes, that's correct.

7 JUDGE ALDRICH: And Department?

8 MR. SUAZO: This is Randy Suazo. Yes, that's our
9 understanding.

10 JUDGE ALDRICH: Thank you.

11 Next we'll discuss exhibits. So CDTFA submitted
12 an exhibit index identifying Exhibits A through I.

13 Exhibit A is Appeals Bureau's Supplemental
14 Decision.

15 Exhibit B is Appeals Bureau's Decision and
16 Recommendation.

17 Exhibit C is a Petition for Redetermination.

18 Exhibit D is a Notice of Determination.

19 Exhibit E is Reaudit Work Papers and Related
20 Forms.

21 Exhibit F, Original Audit Work Papers and Related
22 Forms.

23 Exhibit G, Department's Response to Opening
24 Brief.

25 Exhibit H, Department's Additional Brief.

1 Exhibit I, Statewide Compliance and Outreach
2 Program Lead.

3 Appellant submitted an Exhibit Index identifying
4 Exhibits 1 through 12.

5 Exhibit 1 is Report of Field Audit for 2013
6 through 2016.

7 Exhibit 2 is Appellant's General Ledger for 2010,
8 Together with Supporting Bank Records.

9 Exhibit 3 is Appellant's General Leger for 2011,
10 Together with Supporting Bank Records.

11 Exhibit 4 is Appellant's General Ledger for 2012,
12 Together With Supporting Bank Records.

13 Exhibit 5 is the affidavit of Valentina Albert.

14 Exhibit 6 is the affidavit of Uriel Valenzuela.

15 Exhibit 7, Copies of Sales Tickets Not used to
16 Record Sales.

17 Exhibit 8, Federal Tax Return for 2010.

18 Exhibit 9, Federal Tax Return for 2011.

19 Exhibit 10, Federal Tax Return for 2012.

20 Exhibit 11, Decision and Recommendation Dated
21 November 17, 2016.

22 Exhibit 12 is CDTFA's response to Appellant's
23 Opening Brief.

24 So during the prehearing conference on
25 May 5th, 2021, the parties had no objections to admitting

1 the exhibits identified in the respective exhibit indexes.
2 On May 6th, 2021, the minutes and orders I indicated a
3 deadline of May 11th, 2021, for last day to submit
4 additional exhibits. I'd like to confirm that neither
5 party has submitted additional exhibits since the May 5th,
6 2021, prehearing conference.

7 Is this correct, Appellant's counsel?

8 MS. DEVINE: That's correct, Your Honor. And I
9 only just want to add one thing. I think in the
10 prehearing conference we had no objection to exhibits, but
11 we, you know, reserve the right to object to the accuracy
12 in the records.

13 JUDGE ALDRICH: Understood.

14 And the Department, is that an accurate
15 represent -- or did you have additional exhibits since the
16 May 6th, minutes and orders issued?

17 MR. SUAZO: This is Randy Suazo. We have no
18 further exhibits, Your Honor.

19 JUDGE ALDRICH: Okay. And so Appellant's
20 counsel, do you have any objections to the admission of
21 the proposed exhibits? You indicated that --

22 MS. DEVINE: I can't hear you. Did you -- you
23 kind of stopped in your sentence.

24 JUDGE ALDRICH: Oh, sorry. So I was asking, now
25 at the hearing, did you have any objections to the

1 admission of the proposed exhibits from the Department?

2 MS. DEVINE: We don't have objections to the
3 proposed exhibits, but we obviously have disputes over the
4 accuracy --

5 JUDGE ALDRICH: I understand.

6 MS. DEVINE: -- of the evidence. Okay.

7 JUDGE ALDRICH: And, Department, do you have any
8 objections to Appellant's proposed exhibits?

9 MR. SUAZO: This is Randy Suazo. We don't have
10 any objections.

11 JUDGE ALDRICH: So the proposed exhibits are now
12 admitted into evidence.

13 (Appellant's Exhibits 1-12 were received
14 in evidence by the Administrative Law Judge.)

15 (Department's Exhibits A-I were received in
16 evidence by the Administrative Law Judge.)

17 So for -- as far as the hearing format. We plan
18 for the hearing to proceed as follows: Appellant's
19 opening statements, which we estimated at 60 minutes.
20 During that time Appellant's witness will provide
21 testimony under oath. Next, the Department will present a
22 combined opening and closing for approximately 20 minutes.
23 And Appellant will then have 5 to 10 minutes to close or
24 rebut. Please note that the Department may ask questions
25 of the witness, and also the panel may ask questions of

1 either party or the witness.

2 Appellant's counsel, you may begin with either
3 your opening presentation or witness testimony. With
4 respect to the witness testimony, the witness may testify
5 in the narrative or through questioning. Before we
6 proceed, I'd like to swear in Ms. Baluka.

7 Could you raise your right hand.

8 I'm sorry. If you could unmute your microphone
9 I'm sorry if you could unmute your microphone and provide
10 your answer.

11

12 A. BALUKA,

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

16

17 JUDGE ALDRICH: Great. Thank you very much.

18 Appellant's counsel, if you're ready to begin,
19 please proceed.

20 MS. DEVINE: Thank you, Judge. I think I'm going
21 to start with the opening presentation, and then I will
22 then, hopefully, try to reduce the 60 minutes we thought
23 we needed. And then if necessary, then I will ask
24 Ms. Baluka to testify. So what I wanted to do is I sort
25 of want to start with just giving a background on my

1 client, the Appellant.

2

3

PRESENTATION

4 MS. DEVINE: As you know they are a -- they were
5 a medical marijuana dispensary at the time of this audit,
6 the 2010, 2012 audit, and they were audited 2010 to 2012.
7 They were audited again in 2013 to 2016, and they were
8 audited from 2016 to 2018. The last two audits were
9 clean. The Department accepted its returns and the
10 reported sales as completely adequate.

11 They are a company that complies with the law.
12 They have been compliant. There's no issues with any tax
13 issues, other than what happened in 2012 to 2000 -- or
14 2010 to 2012, which is the current audit that's in dispute
15 here. So I just want to give that background for purposes
16 before I start.

17 So what I want to get into is what we can all
18 agree on. Because from my perspective, there's a lot that
19 the Department has admitted to here that we can use to
20 come up with a number that's far less than what the
21 Department has come up with in their appeal. And, you
22 know, they started this audit coming up with a figure of
23 \$4 million in unreported sales for 2010 to 2012. Then
24 they reduced it down to \$2.3 million or 2.2 -- roughly 2.2
25 million.

1 But, I mean, our position is, based upon the
2 admissions and statements of the Department, that these
3 sales should be far less than what they've come up with.
4 And where I start is we all agree on the reasonableness
5 standard here. Like, underlying this whole dispute is
6 that the numbers that the Department has come up with have
7 to be reasonable. Whether the burden is on the Department
8 or the Appellant, because they're shifting burdens, really
9 is not a significant issue here. Because I believe that
10 the evidence shows, you know, based upon the Department's
11 own admissions, that the sales figures that they've come
12 up with in this audit are completely unreasonable. And
13 this is how I get there.

14 I use their statement, and the first statement is
15 from the -- and I'm trying to reference -- like, it's our
16 Exhibit 1, which is the 2013 to 2016 audit. And I'm
17 referencing page 33 because I looked at the PDF document,
18 and if everybody is looking, you know, on their computer,
19 it would be page 33 of our whole compilation of exhibits.
20 And this is the quote from the auditor that did this 2013
21 audit. And he says, "The books and records are adequate
22 for sales and use tax purposes."

23 Admission from the California Department -- or at
24 that time it was the Board of Equalization. That's the
25 admission that they believe that the 2013 records of MMD,

1 my client, are adequate. Okay. So that's the first
2 statement. We all agree on that because that's their own
3 statement. So then we get to what really is the
4 underlying issue here is, which is that the Department
5 concluded that my client's sales records from 2010 to 2012
6 were inadequate, and that the only method of proof that
7 they could use was the observation test.

8 Now, we do have some issues with the observation
9 test, which, you know, I'll get into later. But if you
10 take what they say, which is that we had to conduct an
11 observation in June of 2013 and estimate what the sales
12 were of MMD in 2013, or at least the first or second
13 quarter of 2013, that they have to extrapolate and come up
14 with a figure as to what the sales were in 2013, and then
15 use that as their benchmark to go back and figure out what
16 the sales should have been in 2010 and 2012.

17 And so, you know, I'm looking at their admission
18 here, and -- and I'm going to page 642, which is part of
19 the compilation of exhibits and it's the reply -- it's the
20 opening brief. The Department's opening brief where they
21 basically talk about the fact that they had to go to 2013
22 and use 2013 sales figures in order to come with the 2010
23 to 2012 reported sales; how they came up with that.

24 So they claim that because the Appellant's
25 reported sales in 2013 were roughly \$68,000 per quarter,

1 which is almost like identical or similar to what the
2 sales were in 2010 to 2012, that that's a justification
3 for using the 2013 year.

4 It's that the observation test that they used,
5 comes up with sales figures that are far higher. Like,
6 they came up with \$4 million in sales but, yet, they have
7 already admitted that the Appellant's books and records
8 for 2013 were adequate. So why don't they use Appellant's
9 book and records of sales for the 2013 year to come up
10 with this estimated number? I mean, it -- it really --
11 their own admission is inconsistent, and it shows just how
12 unreasonable this observation test was and the numbers
13 that it came up with.

14 Because they're presuming that the Appellant's
15 books and records for 2013 were not adequate in order to
16 come up with this number. But, yet, you know, they've
17 already admitted -- a different auditor already admitted
18 that the sales records were adequate. So if you're going
19 to use 2013 as a basis to come up with what they believe
20 are the sales for 2010 to 2012, they have to use what they
21 have already admitted is adequate, which is the
22 Appellant's 2013 records.

23 And they admit that the Appellant's 2013 records
24 show \$68,000 per quarter. So based upon that, that we
25 believe that the proper adjustment here should be at the

1 very most \$68,000 per quarter. And if you go back and
2 multiple that by four quarters, that's \$272,000 for the
3 year. And so 272,000 times three is about \$816,000. So
4 that's what we believe if you rely on Department's own
5 admissions that the Appellant's records are adequate for
6 2013, that -- and that's what it should be, \$816,000.

7 But they have come up with \$4 million, and then
8 it was brought down to 2.2. But we think it needs to come
9 back to \$816,000, which would be consistent with their own
10 admissions. Okay. So that -- that pretty much is the
11 heart of, you know, our argument on reasonableness here.
12 And we've been trying for quite sometime to explain this,
13 and it's been very, very difficult. And we're hoping that
14 it's becoming clear as we move on.

15 But, I mean, even -- so that's just -- we get
16 there with their own admissions. Like, that's what we
17 agree on. Okay. We don't necessarily agree with their
18 position that, number one, the sales records for 2010 and
19 2012 were inadequate. And, you know, the reason why we
20 take issue with it is because the Department seems to rely
21 on the fact that because sales tickets were missing during
22 those years because they didn't have a point of sale
23 system at the time.

24 It was early on in the Appellant's business. So
25 they used, like, hand -- you know, sales invoices and

1 sales tickets. So they're saying that because those sales
2 tickets are missing, we had absolutely no choice but to
3 use this indirect method of proof, which is this
4 observation test that came up with this huge number, which
5 is inconsistent with what the records in 2013 show.

6 And so the Appellant, during the audit process,
7 explained the missing tickets. Okay. They explained and
8 showed that a lot of the tickets were used to make notes,
9 record inventory. And we provided that evidence, which is
10 marked -- it's in our exhibits, and I'm referring to
11 page -- it starts at page 524 and goes to 552. That's in
12 our PDF, the compilation that OTA prepared.

13 And so if you look at all those tickets, you will
14 see all of those tickets show there's a notation. Like,
15 there's one notation that says, "Subway \$14". Well,
16 obviously, they went to Subway to get sandwiches, and they
17 wrote down \$14. There's inventory. It shows -- like,
18 it'll have, like, tickets and notations on there that say,
19 "Inventory." So the Appellant explained and showed why
20 there's missing sales tickets, and it's not, you know,
21 it's not something that's uncommon.

22 Like, you know, I know that when I have a legal
23 pad and I'm in the middle of something and someone calls
24 me, I'll write something down on the pad and then I'll
25 take out the paper. I mean, it's not -- it's a legitimate

1 explanation. And in addition to that too, there were two
2 affidavits of employees, and we've included those on page
3 520 -- starting at page 522, where the employees explained
4 and declared, under their penalty of perjury, that these
5 tickets were used for non-sales purposes.

6 Well, you know, with all that evidence, the
7 Department just rejected it, you know. And I'm not -- I'm
8 not understanding why that was rejected because they don't
9 explain other than they just simply say, we don't believe
10 you. Well, there's no evidence contrary to that. Like,
11 so, you know, in the absence of any issue on credibility
12 of the employees and credibility of the documents, they
13 have to accept the evidence that was presented, which is
14 that their sales tickets during January, which is the same
15 year that they -- or the same month that they did the
16 spreadsheet that tried to show that there's all these
17 inadequate records, we show exactly that there are records
18 there which explain why, you know, some of the sales
19 tickets used for non-sales purposes. And it's all in
20 there.

21 It's not -- we've got both testimony and
22 documentary evidence to back it up. And so, I mean, the
23 fact that they -- the Department concluded that the
24 records were inadequate, based upon the sales missing --
25 sales invoice, I believe, is unfair to the Appellant.

1 Especially, given, you know, all of their admissions that
2 I have just previously explained.

3 And the second thing is that, you know, we
4 produced all the bank records and an analysis of the
5 deposits into the accounts and all the backup, and that's
6 in -- we start -- it's like in -- page like -- it starts
7 at page 526 -- oh, wait -- page 40 and on to 268. And so
8 that's all -- and I don't want to get into all that
9 because, obviously, it's a lot of tedious documentation.
10 But we provided the backup to show that there were plenty
11 of cash deposits into the accounts over those three years.
12 And one of the statements of the CDTFA is they rejected
13 the bank deposit analysis because they said that the
14 Appellant has a cash business.

15 Well, yeah. The Appellant does accept cash, but
16 you can see in all those bank records that there are cash
17 deposits into that account. So, you know, they -- again,
18 they just simply said we don't believe you, even though
19 there's actual documentary evidence which backs up what
20 the Appellant was trying to explain during the audit
21 process. And so I think that where that leaves us with is
22 this observation test that was conducted.

23 It has a lot of problems with it, and it wasn't
24 done pursuant to what the Audit Manual requires, which is
25 typically, if you have a business such as a liquor store,

1 a restaurant, something, like, comparable to a medical
2 marijuana dispensary, ordinarily, you would -- you would
3 observe the business for three days in a row and all day
4 long. And so you would look and see, and you would get an
5 accurate analysis of what the customers were and what the
6 sales volumes are.

7 But here, they only -- they only observed for one
8 hour on three separate days, which is really not adequate.
9 I mean, it doesn't give the accurate picture and the
10 accurate estimate of what the actual sales were. And if
11 you look -- and I'm looking at page 614 in our PDF, which
12 is the Department's own -- they have their little
13 spreadsheet, you know, of how they did the -- how they did
14 the observation test. And you can see that some -- on one
15 day there's zero. Another day there's nine. Another day
16 four, so you -- and this is only for one hour. So you
17 can't really get an accurate picture of what the
18 Appellant's sales were by such a limited amount of
19 observation.

20 That was always the position of the Appellant
21 throughout the entire audit process, which is this
22 observation test, just doesn't get you where you need to
23 go. And I think really, like, the absolute proof of that
24 is the fact that the Department did an audit of 2013,
25 determined that the records were adequate, and they --

1 and -- and the reported sales were \$68,000. So how -- I
2 mean, it's just their own admission show just how -- how
3 unreliable this observation test was, and how unreasonable
4 the number that they came up with is.

5 So I think that, you know, given that, I think,
6 you know, our position is we have two solutions of where
7 you get to the correct number that's more reasonable, and
8 that is based upon the Department's own records. And the
9 first is -- and I'm looking at page 612, which is what the
10 Department reports as the reported sales and -- of the
11 Appellant. So the Appellant has reported sales for the
12 3 years 2010 to 2012 of \$770,164, right? And then
13 earlier, you know, as I explained, the Department's own
14 records, you know, they claim that the Appellant's records
15 in 2013 are adequate.

16 It's \$68,000 per quarter. So at \$272,000 a year
17 times 3, you get to \$816,000. And so the difference is
18 \$816,000 minus the \$777,000, you come up with the \$38,835
19 is the difference. And so that's really -- and, you know,
20 we don't necessarily agree with this, but I'm trying to
21 use the Department's own records to come up with this
22 figure, and if they had -- if they want to use 2013 as
23 their benchmark year, they have to follow their own
24 admission, which is that the Appellant's records are
25 adequate for that year.

1 So all you need to do is look at Appellant's
2 reported sales. You come up with this number. That's
3 \$38,835. We also had an alternative, which come up with a
4 little bit more, but it's in our brief. And, you know, we
5 don't agree with that either, but there's a difference.
6 Based upon the Department's bank deposit analysis, if you
7 take the bank statements and then you subtract that and
8 you take the difference between the bank deposits and the
9 bank statements, you come up with the \$95,000 which is,
10 you know, the difference, which is then -- which is in our
11 brief.

12 We don't agree with. We don't agree with the
13 Department's bank deposit analysis. But if you take their
14 own admission and you take their analysis of the bank
15 deposits, the difference is \$95,000. So either way,
16 that's the solution. That's the more reasonable number
17 that we come up with. And, you know, I think that when
18 you're looking at this from a reasonableness standard, I
19 don't -- you know, whether the burden shifts to the
20 Appellant or it's on the Department, I mean, at this
21 point, nobody in the Department ever reconciled their 2013
22 estimates of what the sales were with what the Appellant's
23 actual records were.

24 They never explained why they didn't rely on the
25 Appellant's records to come up with these 2013 sales

1 figures. And they just presume that the sales -- that the
2 records were inadequate. But they never really talked
3 about it. And so at this point, you know, I -- I think
4 the fact that they didn't conduct this analysis and
5 explain why they found the sales records were adequate,
6 but yet they use this estimated approximation based on the
7 observation test. Like, that shows that their numbers
8 really aren't reasonable.

9 But even if you find that they were reasonable in
10 documenting everything, I believe that everything that
11 I've just said really shows, like, from the Appellant's
12 standpoint, that we've met our burden of showing that this
13 \$2.5 million figure is highly unreasonable. And with
14 that, I think at this point I will defer and -- and close
15 my opening remarks, defer to the Department to respond.
16 And then I would like to reserve the right to be able to
17 call Ms. Baluka to address any of the issues that are
18 raised in the Department's response.

19 JUDGE ALDRICH: So before we address that, I was
20 wondering if any of my fellow panel members had questions
21 for Appellant's counsel.

22 So Judge Ridenour, do you have any questions for
23 Appellant's counsel?

24 JUDGE RIDENOUR: This is Judge Ridenour. I don't
25 have any questions at this time. Thank you very much.

1 JUDGE ALDRICH: And Judge Le.

2 JUDGE LE: This is Judge Le. I have no questions
3 at this time.

4 JUDGE ALDRICH: I did have a question for
5 Appellant's counsel. So the Department raised the
6 argument that the 2013 through 2016 audit period is
7 dissimilar from the audit period at issue, partly based
8 off the fact the locations changed. Did the location
9 change at some time in 2013? Or when did that happen, I
10 guess? If it happened.

11 MS. DEVINE: I'm going to defer to Ms. Baluka on
12 that, but definitely not in 2013. But I would like
13 Ms. Baluka to answer that question.

14 MS. BALUKA: This is Alexandra Baluka. I believe
15 that location changed earlier than 2013. I can -- I can
16 verify the exact date, but I believe that it was a bit
17 before. I can tell you.

18 JUDGE ALDRICH: Okay. Take your time.

19 MS. BALUKA: Just one moment, please. I believe
20 it was at the end of the day of 2012, but I would have
21 to -- I would have to find the exact date in my records
22 because, I mean, I don't have it in front of me. I can
23 research it further in my files.

24 JUDGE ALDRICH: Okay. We can go back to that.

25 MS. BALUKA: Okay.

1 JUDGE ALDRICH: And as far as Appellant's
2 counsel's request to call the witness after the
3 Department's opening and closing presentation, that's
4 fine. Did you have anything else to add, Appellant's
5 counsel, before we move over to the Department?

6 MS. DEVINE: No, I just want to -- the purpose of
7 waiting until afterwards is that I'm trying to be
8 cognizant of everybody's time, and I don't want to waste
9 people's time unless it's necessary testimony. So that --
10 that's the reason why.

11 MS. BALUKA: I would like to add something, if
12 possible?

13 JUDGE ALDRICH: Sure. Please proceed.

14 MS. BALUKA: On page 1612, where there is a
15 spread sheet analyzing the sales tax reported by sales tax
16 return versus the sales per bank statements, I believe
17 that there is an arrow where the Department reported sales
18 per sales tax return as \$236,382, however, I believe it
19 was \$286,737.

20 JUDGE ALDRICH: So just for clarification
21 purposes, could you refer to the specific column on that
22 page again. I'm seeing a July 19th, 2019, date on the
23 document, and then there's a comparison of sales
24 table 2010, 2011, and 2012. And there are four columns to
25 the right of the year.

1 MS. BALUKA: Yes.

2 JUDGE ALDRICH: Which one were you referring to
3 again?

4 MS. BALUKA: Reported sales per SUTR.

5 JUDGE ALDRICH: Okay. Thank you.

6 MS. BALUKA: So that basically produced a greater
7 difference between what's -- and this is, I believe,
8 something prepared by the Department. So this -- this
9 table shows the difference between bank records and what
10 was reported. But I believe what's presented in their
11 report of sales column by the Department is not what was
12 reported, actually.

13 JUDGE ALDRICH: Okay. So do you have the
14 alternative figure?

15 MS. BALUKA: Yes, I do. Let me tell it. I
16 apologize. I'll just move the camera to my file. For
17 2000 -- for 2011 it's \$286,737, and for 2010, it's
18 actually \$268,506. And 2012 agrees to what was presented
19 here. So there is actually a large difference for 2011.

20 JUDGE ALDRICH: This is Judge Aldrich. Thank
21 you.

22 And just to remind everyone please state your
23 name before they speak. I know that I've not been the
24 best at that at this hearing, but it really helps out to
25 keep the record clear.

1 that's 14 hours a day, beginning November 1st, 2011,
2 through December 31st, 2012, the end of the audit period.

3 Records provided during the audit include,
4 federal income returns for 2010, bank statements and
5 incomplete pre-numbered handwritten sales receipts.
6 During the appeals process Appellant provided federal
7 income tax returns for 2011 and 2012, and general ledgers
8 for 2010, 2011, and 2012. Vendor purchases were not
9 provided.

10 During the audit period Appellant did not use a
11 POS system. Appellant tracked sales using pre-numbered
12 sales receipt books. For each sale Appellant handwrote
13 the sale information onto the prenumbered sales receipts.
14 The typical information included on sales receipts were:
15 Initial or first name of the employee making the sale at
16 the top of each receipt; date of the sale; item
17 description of the product sold; quantity of item sold;
18 dollar amount sold per product; and total sales amounts.

19 Customers' names were not included on the sales
20 receipts. Appellant tallied and entered each sales
21 receipt in an Excel daily summary schedule. These daily
22 summary schedules were used to total monthly and quarterly
23 amounts and prepare the sales and use tax returns. The
24 Department examined the provided sales receipts and
25 calculated an average sales price of \$24.60, Exhibit B,

1 page 44, per transaction, which the Department determined
2 to be a relatively low dollar amount in comparison to the
3 industry average sales price of \$50 per transaction.

4 The Department also noted that the Appellant's
5 average menu price for an eighth of an ounce of marijuana
6 is \$50. The Department's examination of sales receipts
7 reveal that rarely did the sales invoice show a purchase
8 of an eighth of an ounce, which is considered the standard
9 purchase amount for this industry. Additionally, as much
10 as 50 percent of the sales receipts were missing. The
11 Department was not persuaded by the Appellant's
12 explanation that the missing sales receipts were used as
13 scratch paper.

14 The Department reasoned that the Appellant's
15 manager would typically rely on the completeness of the
16 sales receipts to ensure that employees were properly
17 handling sales. For these reasons, the Department
18 determined that the sales receipts were not reliable for
19 calculating total sales or the average sales per customer.

20 Analysis of the reported sales show the daily
21 sales average \$766. That's \$827,519 for the total audit
22 period. This was adjusted upwards as there was a
23 correction for one of the quarters in 2011. So this is
24 already including that -- divided by 1,080 days. The
25 hourly average sale was \$75 for both 2010 and 2011. When

1 compared to the industry average of \$50 per transaction,
2 \$75 computes to one-and-a-half sales per hour. In 2012
3 the average-hourly sales was only \$53 an hour or one sale
4 per hour.

5 Even though the business was open four hours
6 longer in 2012, the yearly reported sales to the
7 Department was \$4,000 less than in 2010. The Department
8 was unable to calculate a markup, since there was no
9 vendor-purchase records provided and no cost of goods sold
10 recorded on the income tax returns or general ledgers.
11 The Department also noted inconsistencies in the records.
12 For example, Appellant also sold marijuana accessories.
13 However, there were no purchases recorded for these items.

14 Appellant also recorded some purchases of
15 marijuana under "Sales Receipts", Exhibit E, pages 93
16 through 106, but no record of purchases are listed on the
17 financial records. Appellant stated that its patients
18 donated marijuana inventory to the Appellant in exchange
19 for different strains of marijuana; Exhibit B page 36.
20 However, the Department's review showed no evidence of
21 this. Moreover, the trading of one strand of marijuana
22 for another would be considered a bartered transaction,
23 and the Appellant would be responsible for the sales tax
24 on those transactions at fair market price.

25 A bank deposit analysis approach to determine

1 sales was abandoned because Appellant did not accept
2 credit cards and sales were either in cash or barter, at
3 least per the Appellant's statements. It is common for
4 cannabis dispensaries to pay for goods and services,
5 including wages and inventory, in cash. Therefore, it is
6 presumed that the business did not deposit all sales into
7 the bank deposits, and that the bank deposits do not
8 represent all sales made by the business.

9 The Department's review of Appellant's reported
10 sales show the sales to be consistent each year.
11 Appellant reported sales of \$272,000 in 2010, \$286,000 in
12 2011, and \$268,000 in 2012; Exhibit E, page 86. The
13 Department noted that it expected reported sale to
14 increase as Appellant extended its hours beginning
15 November 2011 from 10 hours to 14 hours. In addition, the
16 Department's analysis of the federal income tax returns
17 for the 3 years, Appellant's Exhibits 8, 9, 10 show wages
18 declining from \$42,729 in 2010 to \$37,676 in 2011, and
19 \$30,547 in 2012, despite hours of operation increasing
20 from 3,390 hours a year to 4,746, which is an increase of
21 1,356 hours for a 40 percent increase.

22 It is unreasonable for employees who work more
23 hours, yet, receive less pay. The recorded wages are also
24 quite low when converted to hourly wages. Dispensaries
25 usually have, at a minimum, two to four employee staff in

1 the facility at all times as a double-custody control
2 system is important to ensure that employee theft is not
3 occurring and for employee safety.

4 When the hours of the business is open per year
5 are multiplied by the number of employees needed to staff
6 the facility and compared to the recorded federal income
7 tax return wages, hourly wages show that the dispensary
8 paid only, for 2010 \$4.20 an hour. For 2011, the
9 dispensary only paid \$3.47 an hour. And for 2012, the
10 dispensary only paid \$2.15 an hour.

11 Review of the general ledgers, Appellant's
12 Exhibits 2, 3, and 4, for the audit period, disclose that
13 in 2011 and 2012 only two employees, plus the 100 percent
14 shareholder of the corporation, were paid through the
15 payroll checks. And the amounts were not significant
16 enough to make a living wage. Review of the sales
17 receipts provided for January 2011 show that up to 10
18 employees handled sales. This is on Appellant's opening
19 brief dated September 7, 2019, Exhibit K, resubmitted by
20 the Appellant on November 21st, 2019. This would indicate
21 that not all employees were paid through the payroll
22 process. They were not paid through the bank account
23 provided.

24 Appellant's records provided fail to account for
25 purchases and accurate wage expenses. If purchases were

1 imputed to reflect the 100 percent industry standard
2 markup, and wages suggested to reflect their true cost,
3 Appellant would have shown huge financial losses for all
4 three years. Members of the Statewide Compliance Outreach
5 Program, known as SCOP, conducted a field inspection of
6 the business prior to the commencement of the audit and
7 issued an audit referral memo; Exhibit I, pages 205 to
8 212.

9 The initial visit by the SCOP investigator
10 occurred on May 25th, 2011, inside of the audit period.
11 The investigator entered the store and observed three
12 customers within 15 minutes he was inside. Two formal
13 observation tests, each an hour long, were conducted by
14 the SCOP and outside the store. The first, on Monday
15 October 1st, 2012, and the second on Thursday
16 October 4th, 2012. The first observation test recorded no
17 customers entering the store. A second observation test
18 recorded 7 customers entering the store.

19 Based on the SCOP units memorandum, the
20 Department determined that the amount of unreported sales
21 was substantial. Due to the lack of records provided, the
22 inconsistencies found in the records and SCOP's
23 observation tests, the Department decided to perform more
24 observation tests to determine audit test. Each
25 observation test was an hour long and conducted outside of

1 the business. The auditor counted each customer entering
2 the premises.

3 The tests occurred on Wednesday June 5th, Friday
4 June 7th, and Wednesday, again, June 12th. The Department
5 counted nine customers on June 5th, four on June 7th, and
6 five on June 12th. All five observation tests, three
7 observation tests from the audit and two from the SCOP
8 unit were combined, and the average hourly customer count
9 was determined to be five per hour; Exhibit B, pages 87
10 and 88. The average of the five customers per hour was
11 multiplied by the number of hours the business open for
12 the year. Allowances were made for one customer entering
13 the store and not make a purchase per day, and for the
14 store being closed for five holidays.

15 The Department looked at the 45 different strains
16 of marijuana that the Appellant listed on its menu for an
17 eighth of an ounce and calculated an average selling price
18 of \$50.33 per eighth of an ounce; Exhibit E, page 89. The
19 average price was applied to the number of customers for
20 the year, and yearly sales amounts were determined.
21 Yearly audited sales amounts were converted to quarterly
22 and monthly amounts as well.

23 The review of the Appellant's reported sales show
24 the sales to be consistent each year. Therefore, the
25 Department applied the audited yearly sales evenly per

1 quarter and compared them to reported sale. The
2 comparison disclosed a difference of \$2,250,196, which the
3 Department determined were additional taxable sales.

4 The Department also stated that during the
5 observation test the auditors were unaware that the
6 location had an additional customer entrance at the back
7 door. The Department did not include the number of
8 customers entering through the second entrance in its
9 computations of average number of customers per hour.
10 Therefore, the results of the test are considered quite
11 favorable to the Appellant as the customer count is low
12 due to the omission and no further reduction of persons
13 entering but no buying was made; Exhibit A, page 10 and
14 page 28.

15 Based on the foregoing, the audit findings are
16 reasonable and represent the most accurate estimate of the
17 Appellant's sales based on the evidence and documents
18 provided. Appellant has argued that five one-hour
19 observation tests are not a large enough sampling frame to
20 draw a conclusion. Appellant has also argued that the
21 outside observation test was not accurate as it counts
22 almost every person entering the premises to be a
23 customer.

24 The outside observation tests were limited to
25 one-hour increments due to health and safety concerns of

1 an auditor sitting in a car -- excuse me -- in a car
2 observing for a prolonged period of time under a hot sun
3 in the summer, and safety concerns of an auditor sitting
4 in the car in the evening to observe subjected to a higher
5 risk of crime; Exhibit A, page 9.

6 During the appeals hearing, the Department did
7 offer to expand the test. It was not opposed to
8 conducting the conversation test from inside the
9 Appellant's facility for the entire three days; Exhibit A,
10 page 23. Appellant stated that it was opposed to
11 expansion of the observation test; Exhibit B, page 43. If
12 the Appellant had agreed to further observation tests from
13 inside the facility, the Department could have gathered
14 information in dispute, such as average selling price,
15 percentage of the individuals entering but not buying,
16 number of bartered transactions occurring, et cetera.

17 Appellant has not shown that the audit liability
18 is overstated. Accordingly, the Department request the
19 appeal be denied. In addition, the North La Brea -- from
20 our notes or from our understanding, the North La Brea
21 location was closed a year after the audit period ended in
22 December of 2013. They received a letter from the
23 landlord to vacate the premises earlier.

24 The fourth quarter 2013 period, which is the only
25 period that was under audit in the post audit, reflects a

1 winding down, was only for \$47,800, is how much they
2 reported, well less than the other periods. This is due
3 to a reflection of a winding down of the business
4 operations at the La Brea location. Sales for the quarter
5 are dramatically lower than the quarters prior to it. The
6 normal purchasing pattern of cost of goods sold would have
7 stopped occurring and only items on hand would have been
8 sold, as the Appellant would have been attempting to rid
9 itself of the inventory.

10 Therefore, selection and variety of merchandise
11 would be limited or no longer available, and customers
12 would go to other dispensaries to purchase their products.
13 In essence, the fourth quarter of 2013 does not represent
14 what occurred during the audit period from
15 January 1st, 2010, through December 31st, 2012.

16 This concludes my presentation. I'm available to
17 answer any questions you may have. I'm sorry.

18 JUDGE ALDRICH: Okay. So, Judge Ridenour, do you
19 have any questions for the Department?

20 JUDGE RIDENOUR: This is Judge Ridenour. I do
21 not. Thank you very much.

22 JUDGE ALDRICH: And Judge Le?

23 JUDGE LE: This is Judge Le. I think I do have a
24 question. Give me just one moment to look at my notes.

25 JUDGE RIDENOUR: This is Judge Ridenour. While

1 he's looking at his notes, Mr. Suazo, are you okay?

2 MR. SUAZO: Yeah. I'm just getting a drink of
3 water.

4 JUDGE RIDENOUR: Okay. Take your time.

5 MR. SUAZO: Thanks.

6 JUDGE RIDENOUR: It's okay.

7 MR. SUAZO: It was a long presentation.

8 JUDGE LE: This is Judge Le. I do have one
9 question. And you might have addressed it towards the
10 end, but you were cutting off for me just a little.
11 Appellant mentioned that -- Appellant had an argument that
12 the books and records were noted as adequate for 2013, but
13 the Department used observation in 2013 instead books and
14 records of 2013. Can you address that, Respondent?

15 MR. SUAZO: The post audit or the following audit
16 did a block sample in 2016 and '17, which is -- excuse me.
17 Allergies too -- which they had a POS system. Their sales
18 blossomed in the latter periods when they moved to a third
19 location on, I believe, it was -- the third location, I
20 believe, is in Cahuenga Boulevard. So all we needed is a
21 block test.

22 On the prior audit was a block test. It was
23 concentrating on the latter period when they had a
24 different system implemented. Back in our audit all they
25 were doing -- they had no POS system, no register. All

1 they had were pre-numbered sales receipts. And, again,
2 half of those pre-numbered sales receipts were missing.

3 Also in the latter periods they did have
4 purchases, I believe. In our period, no purchases were
5 ever listed. And if you would -- again, if you would
6 include the purchases, along with what the true wages
7 would have been, they would have had massive losses for
8 all three years, which would not reasonable for a company
9 of -- for this company. They would have been stripped of
10 their cash flow. They wouldn't be able to borrow. Being
11 that it's a dispensary, it would not be difficult to get a
12 bank loan.

13 So there's other, you know, criteria -- or not
14 criteria. There's other factors that play into the
15 following audit. Again, you know, basically the block
16 test in the latter half -- in the latter portion when they
17 were in the third location, and they were booming.

18 MR. PARKER: This is Jason Parker. I'd like to
19 add something also. The Appellant's attorney did claim
20 that the books and records for 2013 were adequate, based
21 on the comments in the subsequent audit. However, the
22 subsequent audit was only started in the fourth quarter of
23 2013. So it didn't cover the entire year of 2013. The
24 observation test that we conducted was in the second
25 quarter of 2013, well before the subsequent audit.

1 JUDGE LE: Thank you. I have no further
2 questions.

3 JUDGE ALDRICH: Okay. At this time I'd like to
4 go back to Appellant's counsel.

5 Would you like to have witness testimony now
6 or --

7 MS. DEVINE: Yes. I think I would like to first
8 just respond to some of the statements that were made by
9 Mr. Suazo. First of all, there was a very long -- well
10 not long, but a lot of talk about payroll and wages, and I
11 have never seen any of that in any of the papers that were
12 submitted in this appeal; nor any of the documentation in
13 terms of the payroll records don't match up or the
14 employees were paid a certain way or the shareholders.
15 Like, I've never seen it anywhere.

16 And so I'm going to ask -- after I'm done with
17 this, I'm going to ask Ms. Baluka to -- if she can respond
18 to it. Otherwise if the -- if, you know, Your Honors are
19 going to consider that testimony as evidence, then we
20 would want the opportunity to address it and respond with
21 documentation. Because, you know, from what I'm seeing
22 here, there's a lot of speculation, a lot of extrapolation
23 about what could have happened, how things could have
24 happened, you know.

25 And there's really not any back-up documentation

1 for anything. And so, you know, I'm a little bit
2 concerned about that, that we haven't addressed or had the
3 opportunity to respond to that. And then the other --

4 JUDGE ALDRICH: This is Judge Aldrich. Just as a
5 point of clarification, the Department is not giving
6 testimony, only Ms. Baluka is. Department is providing
7 argument. And so we would have to be able to find
8 something in the record to support that argument, just to
9 clarify. Okay.

10 MS. DEVINE: I appreciate that. That makes --
11 that solves that issue.

12

13 REBUTTAL STATEMENT

14 MS. DEVINE: And then now with respect to the
15 discussion over the 2013 year, Mr. Parker is incorrect.
16 Because if those -- the records of that audit actually
17 date back and start with the second quarter of 2013. So,
18 you know, I don't know. It seems like the Department
19 keeps wanting to back away from what is a very, very clear
20 admission on their part, which is that the sales records
21 were adequate in the 2013 to 2016 audit. They accepted
22 the reported sales tax for that year.

23 Number two, as justification for using the 2013
24 year, they refer to the fact that the sales -- the
25 reported quarterly sales were \$68,000 in 2013, and that it

1 was consistent or close to what the reported sales were in
2 2012 -- or 2010 to 2012. So, you know, I don't see where
3 they have adequately explained why they didn't rely on the
4 books and the records of the company for 2013.

5 And, you know, now they're trying to claim that,
6 oh, well they didn't -- it only -- they only looked at
7 records from 2017. Well, the underlying audit report
8 doesn't say that. It says that it's reviewed those years,
9 and it's concluded that the books and records were
10 adequate. So, I mean, that -- it seems like they keep
11 changing their testimony every time we make a good point,
12 which is that the observation test that they did in 2013
13 is just not reliable.

14 And, you know, the other argument that they make
15 is somehow because they changed the location. Well, I
16 don't know how that makes a difference because they
17 conducted the observation at the new location. And so I'm
18 not -- and they came up with their sales figures based on
19 the new location. So I don't know how that changes
20 anything.

21 Anyways, with that I think I just want to now
22 defer to Ms. Baluka to address some of the issues that
23 were raised by the Department and answer some of the --
24 some of the concerns that they addressed.

25 So Ms. Baluka.

1 MS. BALUKA: Sure.

2

3 WITNESS TESTIMONY

4 MS. BALUKA: This is Alexandra Baluka.

5 Regarding wages that -- in early days that you
6 can't compare the business of cannabis dispensary to
7 current day cannabis dispensary. In early days, which is
8 actually 2010, '11, and '12, the owners were working
9 inside the business assisting however or whoever the
10 employees were at that time. So that would explain the
11 low payroll because the owner was himself participating
12 largely in store operation, the managing the store
13 operations.

14 Additionally, the -- in regarding the purchases,
15 it was -- it was setup by California law requirements that
16 marijuana dispensaries supposed to be a collective -- a
17 nonprofit collective. So this dispensary operated exactly
18 that way where the different strains of cannabis were
19 traded between patients and where patients were provided a
20 care-giving services and various meetings because medical
21 marijuana was used for cancer patients. It was used for
22 AIDS patients. Therefore, those patients who needed those
23 type of services that were provided at the store were glad
24 to volunteer and assist at the store. Therefore, it's --
25 this help was burden of hiring and, you know, actually

1 paying employees.

2 In addition, Mr. Suazo mentioned about the bank
3 loans. Well, under federal law medical marijuana
4 dispensary is illegal. There is no bank loans, and that
5 the -- until the federal government makes the business a
6 legal business under the federal law, they will not be
7 able to bank with the federal banks. So they have
8 always -- they will always have a banking issue. Until
9 then, they will not be able to receive loan in terms of
10 just like a normal business where they could go with a
11 federal ensured bank and apply for a credit line. So
12 that's also an issue for that.

13 In terms of operating in cash, only right now
14 they are able to bank with credit unions, and they are
15 able to accept the credit cards. Because only right now
16 those credit unions started providing credit card
17 processing services. The operating in cash was the only
18 way of operation because credit card processing companies
19 would not process credit cards for this type of business,
20 as it's illegal under federal law.

21 So this is why -- this is basically an
22 explanation of some of the issues and points that were
23 brought.

24 JUDGE ALDRICH: This is Judge Aldrich. Thank
25 you, Ms. Baluka. I did have some follow up questions, if

1 you're prepared for that. So you had mentioned that there
2 were trades of strains. I was just wondering, what was
3 the documentation process for that? Was there any
4 documentation process? Can you speak to that?

5 MS. BALUKA: Yes. Yes. There was definitely a
6 list of, you know, each dispensary normally has a list of
7 patients and there is a database that has the, you know,
8 each individual patient's information, prescription from
9 the doctor, as well as the traded strains; what was
10 traded, who it was traded to. So there was obviously a
11 record of that.

12 JUDGE ALDRICH: Okay. And then --

13 MS. BALUKA: Basically, a record of that.

14 JUDGE ALDRICH: So I guess in the exhibits, what
15 could I look for to see that was documented or how that
16 was documented?

17 MS. BALUKA: We never were requested by anyone to
18 provide this documentation until --

19 JUDGE ALDRICH: Okay.

20 MS. BALUKA: -- until even during the appeals.
21 During the audit process, there were never a request for
22 that.

23 JUDGE ALDRICH: Okay.

24 MS. BALUKA: So this is the first time it's being
25 requested.

1 JUDGE ALDRICH: And then so the Department made
2 some arguments regarding what the average sale price was.
3 Do you happen to know what the average -- from your
4 perspective, what the average sale price was?

5 MS. BALUKA: Yes. Let me just go back to -- I
6 believe it was 24 -- \$24.60.

7 JUDGE ALDRICH: Okay.

8 MS. BALUKA: I mean, we can say it's between \$24
9 and \$25 on the average.

10 JUDGE ALDRICH: And then how long have you been
11 working with the Appellant? Were you working with the
12 Appellant during the audit period, or was this something
13 after the fact? Just trying to understand what your
14 personal knowledge of that situation is.

15 MS. BALUKA: I was working -- I was representing
16 the Appellant during the audit, and --

17 JUDGE ALDRICH: Okay.

18 MS. BALUKA: -- I was representing the Appellant
19 during the appeals process.

20 JUDGE ALDRICH: Great. And then I guess -- so
21 Appellant's counsel mentioned there's been three audits of
22 Appellant.

23 MS. BALUKA: Yeah.

24 JUDGE ALDRICH: And I was just wondering. Has
25 recordkeeping requirements changed? Did you work with the

1 Appellant to change any of the recordkeeping? If you
2 could talk about --

3 MS. BALUKA: What exactly are you referring to?
4 Are you referring to using the POS system?

5 JUDGE ALDRICH: Well, yeah. I don't know. Did
6 they switch it to a POS system at some point?

7 MS. BALUKA: Yes. They --

8 JUDGE ALDRICH: Okay.

9 MS. BALUKA: -- they started using the POS system,
10 and they obviously, you know -- as the business started
11 growing, and it became pretty clear that, you know, they
12 are constantly being audited and the records need to be
13 clear and presented to government agencies, they
14 significantly improved their practices in terms of
15 recordkeeping. And usage of POS system is one of that. I
16 mean, there are, obviously, other improvement. But you
17 can't compare what it is currently to what it used to be
18 back in 2012.

19 JUDGE ALDRICH: Thank you. I understand. And
20 then I was -- so I was reviewing in the exhibits there's
21 some banking documents, so the support documents that
22 Appellant's counsel provided. At the moment I'm looking
23 at page 53, and it looks like there's some sort of ADP
24 payroll fees. I'll give you a second to get there.

25 MS. BALUKA: Page 53?

1 JUDGE ALDRICH: Yeah.

2 MS. BALUKA: Okay.

3 JUDGE ALDRICH: So the -- the December 23rd entry
4 is a ADP fee or a payroll fee. The January 15th is a
5 payroll fee. How are the -- I guess my question is how
6 are the employees being paid? Were they all being paid
7 through ADP?

8 MS. BALUKA: Yes. I believe that a lot of
9 payroll went through ADP. They also had security on-site
10 that was paid through the security company. And, I mean,
11 you will see the expense for the security. So those --
12 the security was not part of the payroll because it was
13 handled --

14 JUDGE ALDRICH: A separate agency.

15 MS. BALUKA: Right. Separate --

16 JUDGE ALDRICH: Subcontractor.

17 MS. BALUKA: Right. But payroll was handled by
18 ADP.

19 JUDGE ALDRICH: Okay. Thank you.

20 So, Appellant's counsel, do you have anything
21 else you would like to add, a rebuttal, or further address
22 any of the questions that the Judges had?

23 MS. DEVINE: I have nothing further at this time.
24 Thank you.

25 JUDGE ALDRICH: Okay. And my fellow Judges,

1 Judge Ridenour, did you have any questions for either
2 Appellant's counsel or Ms. Baluka?

3 JUDGE RIDENOUR: This is Judge Ridenour.
4 Actually, I do have a few questions, if you don't mind.

5 JUDGE ALDRICH: Okay. Yeah.

6 JUDGE RIDENOUR: Real quick, Ms. Baluka. So for
7 your \$24 average sale, I was wondering if you had any
8 evidence substantiate the average sales of \$24, in
9 addition to what's already provided?

10 MS. BALUKA: Well, the \$24 sale is based on the
11 actual records of the store that were analyzed for the
12 entire audit period, you know. And, basically, that's how
13 we determined that this is the average sales price.

14 JUDGE RIDENOUR: Okay.

15 MS. BALUKA: It's not based on some, you know,
16 since industry average that, by the way, didn't change
17 until this day. I just -- I just represented another
18 store in the audit and, as a matter of fact, the industry
19 average currently decreased to \$45. So, I mean, for over
20 eight years this figure, you know, stayed the same for
21 whatever reason. So my point is that I can't -- I do not
22 know why that is accurate and how it was determined, the
23 \$50 figure.

24 JUDGE RIDENOUR: Okay. No I -- thank you. I was
25 just wondering if you had any additional documentation for

1 your dispensaries. Also on page 630 of your brief with
2 regards to the decision, it mentioned that your
3 dispensaries advertised that sales prices of \$400, in the
4 video, of larger quantities of marijuana and has gave free
5 bong. Did, by any chance, do you have records of giving
6 out free bong for said large purchases?

7 MS. BALUKA: I would have to contact probably my
8 client. Because once again the, you know, this never was
9 previously asked of us. So we never, you know, researched
10 or had to answer this question. So I'm sure that they
11 should have a record of that.

12 JUDGE RIDENOUR: Okay. No follow-up document is
13 necessary. I did have a follow up to your statement
14 regarding to page 612. Let me get back to that. So just
15 to clarify to your testimony earlier, you were saying that
16 the amounts on this Excel graph are incorrect for certain
17 sales and use tax returns. Was that -- was I
18 understanding you correctly?

19 MS. BALUKA: Yes. The amounts presented in this
20 graph, 4-S, that show total sales and use figures are --
21 do not agree to sales and use tax returns. They do not
22 agree with what was actually reported. And Mr. Suazo,
23 actually, in his presentation reported different figures
24 that are consistent with my records. So this graph is
25 misleading.

1 JUDGE RIDENOUR: So if I understand you
2 correctly, you're saying that the amounts here are not the
3 amounts that you self-assessed?

4 MS. BALUKA: That's correct, for the sales and
5 use tax figure.

6 JUDGE RIDENOUR: So if you could provide a copy
7 of your file sales and use tax return -- I'm just trying
8 to understand this, so bear with me. If you were to
9 provide your sales and use tax returns for those tax
10 years, they would not add up to those amounts that are in
11 the Excel sheets?

12 MS. BALUKA: That's right.

13 JUDGE RIDENOUR: Okay. Thank you. Those are all
14 my questions.

15 JUDGE ALDRICH: And, Judge Le, did you have any
16 questions?

17 JUDGE LE: No questions for Appellant, but I do
18 have one question for Respondent. I'm sure if this is the
19 right time to ask now, or there's another opportunity?

20 JUDGE ALDRICH: Go ahead.

21 JUDGE LE: Okay. So for Respondent, Appellant
22 discussed the average sales price of \$24, and I know
23 Respondent mentioned that it might have been \$50. Can
24 Respondent sort of explain the source of Respondent's \$50
25 amount?

1 MR. SUAZO: This is Randy Suazo. The \$50 amount
2 is the industry average. Most people buy an eighth of an
3 ounce at the minimum or on average, and \$50 is the average
4 of an eighth. And if you look at their menu items, which
5 is on -- in one of the Exhibits. Let me go back to look
6 for it real quick. Their eighth of an ounce, when they
7 went through all 45 menu items, was \$50.33. So exactly
8 the -- or pretty close to exactly what industry average
9 would be.

10 JUDGE LE: Okay. And do you have --

11 MR. SUAZO: I'm trying to look for the exhibit.

12 JUDGE ALDRICH: Is it in Exhibit I? This goes --

13 MR. SUAZO: It's not on Exhibit I. It's in the
14 audit itself.

15 MS. BALUKA: May I ask a question? This is
16 Alexandra Baluka.

17 JUDGE ALDRICH: Yeah. Just if you could hold off
18 for one --

19 MS. BALUKA: Okay.

20 MR. PARKER: Mr. Aldrich, I found the exhibit.
21 It is on Exhibit E, page 89. It's schedule R1-12A-2.

22 MR. SUAZO: They basically took down all the
23 menu -- all 45 menu items. The price of an eighth of an
24 ounce comes out to \$53.33, which is what we would expect.

25 JUDGE LE: Okay. And how does the Department

1 know that an eighth of an ounce is the standard amount or
2 average?

3 MR. SUAZO: When we've done other audits at this
4 time period, that's what it came out to be in this area.

5 JUDGE LE: Okay. So the Department looked at
6 other audits for other taxpayers and did some kind of
7 analysis or system, I imagine, to come up with the amount?

8 MR. SUAZO: There's also, I believe, in
9 Exhibit A, page 30. There's a reference to an exhibit in
10 there that says the average California purchase is \$70.
11 So the \$50 is well below the \$70. So it's also in their
12 favor.

13 JUDGE LE: Okay. Thank you. No further
14 questions.

15 MR. SUAZO: And then concerning one of the other
16 questions about the difference in the -- how much they
17 reported, I believe, for the first quarter of 2000 --
18 first quarter of 2011. They initially had it on their
19 transcripts as \$18,982 but the audit cleared it up. And
20 if you go to the -- hold on one sec. I could tell you
21 what the schedule number is, but I'm looking on Excel.
22 I'll go back to the -- it's Exhibit E.

23 I'm trying to get to it pretty quick. Exhibit E,
24 page 86. It's highlighted in yellow. They corrected it
25 to show \$69,337. I believe this is what she was talking

1 about earlier how it was incorrect, but they corrected it
2 later. So when the billing was assessed, it included
3 the -- it was already addressed for the \$69,000.

4 JUDGE ALDRICH: Does that conclude your response,
5 Department?

6 MR. SUAZO: Well, for both responses, yes.

7 JUDGE ALDRICH: For those questions?

8 MR. SUAZO: Yeah.

9 JUDGE ALDRICH: Okay.

10 And, Judge Le, did you have anything further?

11 JUDGE LE: This is Judge Le. No further
12 questions. Thank you.

13 JUDGE ALDRICH: Thank you.

14 This is Judge Aldrich. Ms. Baluka, I believe you
15 had a question --

16 MS. BALUKA: Yeah.

17 JUDGE ALDRICH: -- or something you would like to
18 add?

19 MS. BALUKA: Yes. Yes, Your Honor. Mr. Suazo
20 referred to menu item that the -- he -- not he, but the
21 Department determined the average sales price based on the
22 menu item. Well, the menu items that we provided for the
23 store support the average price of \$24.60.

24 And I'm not sure what menus are you referring to,
25 Mr. Suazo.

1 JUDGE ALDRICH: So you've indicated that the menu
2 you're referring to sets forth the \$24 approximate amount.
3 What menu are you referring to in the exhibits? If you
4 could direct my attention, that would be helpful.

5 MS. BALUKA: Are you asking me, Your Honor, or
6 Mr. Suazo?

7 JUDGE ALDRICH: I'm asking you, yes.

8 MS. BALUKA: During the appeals process, we had
9 provided menus that -- menus for the store that would list
10 the various items sold and their, you know, prices,
11 respected prices. So those menus supported the records of
12 my client that the average sales price is \$24.60.
13 Mr. Suazo is referring right now to some menus that
14 support the \$50 average.

15 So my question is which -- which documents are
16 you referring to, Mr. Suazo? Because we never provided
17 any menus that would -- would support \$50 average.

18 JUDGE ALDRICH: So just to -- I understand you
19 have a question for the Department, and we can clear that
20 up in a bit. But in the exhibits that we have in front of
21 us, so Exhibit 1 through 12 from the Appellant or
22 Exhibit A through I, what is the menu that you're
23 referring to that corroborates the \$24 average sales
24 amount?

25 MS. BALUKA: I do not believe that menu is in the

1 current exhibits. However, in our -- I mean, what was
2 previously provided to the appeals. I mean, that's my
3 question because I do not see any exhibit that would
4 support the \$50 average price on the menu.

5 JUDGE ALDRICH: Okay. I guess I have a follow-up
6 question for the Department. What was the source for the
7 menu that had an average of 50-some odd dollars? Was that
8 the auditor at the Appellant's business, or how did that
9 come to be?

10 MR. SUAZO: If you look at Exhibit E, page 89,
11 the auditor listed down the different varieties of names
12 and the price of eighth. So the first one starts at King
13 Louie, \$35. Then you have Obi-Wan, \$60, Storm Troopers,
14 \$50, on down to Lemon Diesel at the end. It's \$50. The
15 total is \$2,265 divided by the 45 items listed comes out
16 to \$50.33.

17 So, basically, it was what the auditor saw on the
18 screens because these people had monitors that had the
19 listings of the prices running all the time. And it's
20 what he saw or what she saw. And, basically, transcribed
21 them down, got the price for an eighth. With the 45
22 divided to get the \$50.33, which is what we would expect
23 for that price because the mark ups would determine the
24 price. Otherwise, if you have something extremely high,
25 they would go elsewhere.

1 JUDGE ALDRICH: Thank you. And Appellant's
2 counsel or Appellant's representative, did you have
3 anything else to add before we submit the case?

4 MS. DEVINE: The only thing I'm not -- I -- I'm
5 not following this documentation for the \$50. So I would
6 request that we have the opportunity to submit what
7 Ms. Baluka is referring to as the \$24 support, just to
8 clarify the record. Because I'm not --

9 JUDGE ALDRICH: Okay.

10 MS. DEVINE: The way he is explaining it, I
11 can't -- I'm not seeing it in the page numbers that he's
12 referencing.

13 JUDGE ALDRICH: Okay. And how long would you
14 need to be able to produce that document or documents?

15 MS. DEVINE: We could probably produce it, like,
16 tomorrow; I mean, like, later this afternoon.

17 JUDGE ALDRICH: Okay. And, Department, do you
18 have any objections to the Appellant submitting those
19 documents?

20 MR. SUAZO: No, Your Honor. The only thing is
21 the prices were on the screen. So I don't know how they
22 would have -- how they would be able to go back in time to
23 2012 and 2013 to get it at this point but okay.

24 JUDGE ALDRICH: Okay. So and then what I have
25 envisioned is that I'll give Appellant a week to produce

1 those menus, and then the following week -- by the
2 following week, the Department may respond, limited to
3 those menus. So is that understood? Does that work or
4 does the Department need some -- how is the timeline, I
5 guess?

6 MR. SUAZO: If we can have an additional two
7 weeks after we -- after you receive it just in case?

8 JUDGE ALDRICH: Okay.

9 MR. SUAZO: This is Randy Suazo.

10 JUDGE ALDRICH: I'll give Appellant two weeks to
11 produce those documents, those menus. And then I'll give
12 the Department two weeks to respond, but their response is
13 limited to those documents. Okay. And then the record
14 will close at the close of business. Let me see. So
15 today is 26th, a Wednesday. Two weeks from today is the
16 9th of June. The Department would have until close of
17 business on June 23rd to respond, and then the record
18 would close as of that date.

19 Does that work, or do we need to make
20 adjustments?

21 Appellant's counsel, does that work for you?

22 MS. DEVINE: Yes, that works.

23 JUDGE ALDRICH: And Department, is that okay?

24 MR. SUAZO: This is Randy Suazo. That's fine.

25 JUDGE ALDRICH: All right. And I believe

1 Judge Ridenour had an additional question.

2 JUDGE RIDENOUR: Actually, I did. Thank you very
3 much. Well, since we're keeping the record open, I would
4 like Ms. Baluka to please look into how many free bongs
5 during the liability period were given out.

6 And CDTFA, if you could please give us a
7 transcript of some sort to verify the information on the
8 SUTRs that were filed during the liability period as well.
9 I would greatly appreciate it. Thank you.

10 MR. SUAZO: Excuse me. This is Randy Suazo. Do
11 mean just for that one quarter, or do you mean for the
12 entire audit period?

13 JUDGE RIDENOUR: The one she was disputing.

14 JUDGE ALDRICH: So that's 2010 and 2011, I
15 believe --

16 JUDGE RIDENOUR: Yes.

17 JUDGE ALDRICH: -- that were disputed on that
18 page.

19 JUDGE RIDENOUR: Yes. So I believe she was 2010
20 and 2011.

21 Is that correct, Ms. Baluka? This is
22 Judge Ridenour. Ms. Baluka, which ones were you
23 disputing?

24 MS. BALUKA: Yes. Yes. I was disputing 2011 and
25 2010. The biggest difference was in 2011.

1 JUDGE RIDENOUR: Okay. This is Judge Ridenour.
2 Out of abundance of caution, CDTFA, please give us for
3 2010 as well as 2011. Thank you.

4 MR. SUAZO: Okay.

5 JUDGE ALDRICH: Okay. So is there anything else
6 Appellant's counsel would like to address before I submit
7 the case?

8 MS. DEVINE: Nothing further. Thank you.

9 JUDGE ALDRICH: Okay. Thank you everyone for
10 your time and for being flexible with the hearing format.
11 We're ready to submit the case. The record will be closed
12 in approximately a month from now.

13 Let me confirm the date. So I believe I said
14 June 23rd, close of business the record will be closed at
15 that time. And from that time, the Judges will meet and
16 decide based on the evidence and the arguments presented
17 today, and we will send both parties our written decision
18 no later than 100 days from June 23rd.

19 The hearing calendar is now finished for the day,
20 and thank you everyone again.

21 (Proceedings adjourned at 11:32 a.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 21st day of June, 2021.

ERNALYN M. ALONZO
HEARING REPORTER