

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
L. KLEIN and J. KLEIN,) OTA NO. 19034436
)
APPELLANT.)
)
_____)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, March 23, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:30 a.m. and concluding at 10:36 a.m. on
Wednesday, March 23, 2022, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ TERESA STANLEY

Panel Members: ALJ CHERYL AKIN
ALJ SHERIENE RIDENOUR

For the Appellant: MCKENNA CLARK
JACOB HADE
MENGJUN HE

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
JOEL SMITH

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-68 were received at page 8.)
(Department's Exhibits A-I were received at page 8.)

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L. Klein	9	20		

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California; Wednesday, March 23, 2022

9:30 a.m.

JUDGE STANLEY: We're going on the record in the Appeal of Klein, Case Number 19034436. The date is March 23rd, 2022, and the time is getting close to 9:30 a.m. This is a virtual hearing that was scheduled with the agreement of the parties.

I am Judge Teresa Stanley, and my panel for this appeal is Judge Cheryl Akin and Judge Sheriene Ridenour. And even though I'm conducting the hearing, the panel of judges will jointly deliberate and jointly come up with an opinion.

I'm going to ask that now we're on the record that you identify yourselves one more time, and I'm going to start with Appellant and Appellant's representatives.

MR. HADE: Go morning, Your Honors. May it please the Court, my name is Jacob Hade. And I, along with my co-counsel, McKenna Clark, are appearing on behalf of the Appellant Mr. Klein.

JUDGE STANLEY: This is Judge Stanley, and I note that Mr. Klein is also present. And, Mr. Hade, are you or Ms. Clark going to be taking the lead not this appeal?

MR. HADE: Your Honor, we are splitting up the duties. Ms. Clark will be handling the witness

1 examination, and then I will be handling the argument.
2 And we would actually like to waive our opening statement.
3 We are going to handle everything in our closing
4 statement.

5 JUDGE STANLEY: Okay. All righty. Then I'll ask
6 the Franchise Tax Board participants to please identify
7 themselves.

8 MR. SMITH: Good morning. My name is Joel Smith.
9 I represent the Franchise Tax Board. I'm the only person
10 that will be on the call from FTB.

11 JUDGE STANLEY: Thank you, Mr. Smith. I noticed
12 that there was only one face showing after I asked you to
13 identify yourselves.

14 This is Judge Stanley speaking again. All right.
15 Let's move to -- well, first of all, I do want to, for the
16 benefit of the public, note on the record that the Office
17 of Tax Appeals is independent of the Franchise Tax Board
18 and any other tax agency. The Office of Tax Appeals is
19 not a court but is an independent appeals agency that's
20 staffed with its own tax experts.

21 The only evidence that we have is what's been
22 submitted into our record, and we'll go over those
23 exhibits in a minute. The issues that we confirmed at the
24 prehearing conference are whether Appellants have
25 established error in FTB's proposed assessment of

1 additional tax, which is based on adjustments made by the
2 IRS; and as framed by Appellant's, the sub-issues, whether
3 Appellants carried on a trade or business called Klein
4 Rocks during 2014, which would entitle them to certain
5 deductions.

6 Issue Number Two is -- Issue Number Two is
7 uncertain, unless it was confirmed in the letter that we
8 received yesterday.

9 Mr. Hade, do Appellants still dispute the
10 disallowances for the Green Earth Trading Company
11 expenses.

12 MR. HADE: I do not believe that is in dispute
13 any longer.

14 JUDGE STANLEY: Okay. Ms. Clark also nodded yes.
15 So I'm going to remove that issue.

16 And then the third one is whether Appellants have
17 established error in FTB's disallowance of certain rental
18 property expenses. And I note that there are exhibits
19 with respect to that.

20 So are those the two issues, Mr. Hade and
21 Ms. Clark?

22 MR. HADE: Yes, Your Honor.

23 JUDGE STANLEY: Okay. And, Mr. Smith, do you
24 agree?

25 MR. SMITH: Joel Smith. Yes, I agree.

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JUDGE STANLEY: Thank you.

This is Judge Stanley. For exhibits, we received an exhibit index that confirmed plaintiff's -- sorry -- Appellants; Exhibits 1 through 68 and that other documents that are in our record are duplicates of 1 through 68. There were no objections to those at the prehearing conference.

And I assume that's still correct, Mr. Smith, no objections?

MR. SMITH: Joel Smith. Correct. There are no objections.

JUDGE STANLEY: Okay. This is Judge Stanley. For FTB's exhibits, we have Exhibits A through I that was not disputed. There was no objection at the prehearing conference. Exhibit J, which is a 2014 IRS account transcript, was received after the prehearing conference.

Mr. Hade, does Appellant object to Exhibit J?

MR. HADE: No objections, Your Honor.

JUDGE STANLEY: Okay. So Exhibits A through J will be admitted with no objection, and Appellants' Exhibits 1 through 68 will be admitted with no objection.

(Appellants' Exhibits 1-68 were received in evidence by the Administrative Law Judge.)

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

1 We had time for an opening statement, but I'm
2 going to go ahead and allow Appellants to present their
3 case.

4 Will you be starting with witness testimony,
5 Ms. Clark?

6 MS. CLARK: McKenna Clark. Yes, we'll be
7 starting with witness testimony.

8 JUDGE STANLEY: Okay. And that will be
9 Mr. Klein; correct?

10 MS. CLARK: Yes. Correct.

11 JUDGE STANLEY: Okay. This is Judge Stanley.
12 Mr. Klein, I'm going to ask you to raise your right hand.

13

14 L. KLEIN,
15 produced as a witness, and having been first duly sworn by
16 the Administrative Law Judge, was examined and testified
17 as follows:

18

19 JUDGE STANLEY: Thank you.

20 You may proceed, Ms. Clark.

21

22 DIRECT EXAMINATION

23 BY MS. CLARK:

24 Q Mr. Klein, would you please share the nature of
25 Klein Rocks as a business?

1 A The nature of the business were to harvest and
2 sell moss rocks and boulders from the size of 10 pounds up
3 to --

4 THE HEARING REPORTER: Excuse me. Mr. Klein, you
5 are a little bit muffled. Could you get a little bit
6 closer to your microphone, please?

7 MR. KLEIN: Yes. Is that better?

8 THE HEARING REPORTER: A little bit. Yes. Thank
9 you.

10 MR. KLEIN: The nature of the business was to
11 harvest and sell rocks and boulders from the size of 10
12 pounds up to 10,000 pounds to the public.

13 BY MS. CLARK:

14 Q And what was your intention in starting Klein
15 Rocks as a business?

16 A To make money, number one. And number two, it
17 was started in 2013, and at that time we were in a severe
18 drought as Governor Brown issued a statement. So, yeah.
19 That's it.

20 JUDGE STANLEY: This is Judge Stanley speaking.
21 I'm still having a little trouble hearing you, Mr. Klein.

22 MR. KLEIN: Is that better? I should probably
23 get more closer. Okay. Maybe I can turn --

24 JUDGE STANLEY: Yeah. And maybe if you raise
25 your voice a little bit too that will help.

1 THE WITNESS: Yeah. Let me raise my voice.
2 Okay. Is that better? I'm not yelling at anybody. I
3 just want you to hear me. Okay.

4 MS. CLARK: Thank you, Mr. Klein.

5 MR. KLEIN: Everybody hear me now.

6 THE HEARING REPORTER: Can I have you repeat your
7 last answer, please?

8 MR. KLEIN: What was the question again?

9 BY MS. CLARK:

10 Q What was your intention in starting Klein Rocks
11 as a business?

12 A Well, in 2013 Governor Brown issued a severe
13 drought statement. As you know rocks and boulders require
14 no water for landscaping, and my purpose was to harvest
15 rocks and boulders that were on top of the ground
16 initially and sell them to the public.

17 Q Thank you, Mr. Klein. And can you please
18 describe the rock boulder excavation process for us?

19 A The process, I had to hire contractors for the
20 excavation process. When you're talking about boulders
21 about half the size of a Volkswagen, it's very difficult
22 to move other than with heavy equipment. So I hired
23 contractors to move the boulders and to deliver them to
24 the public.

25 Q And what do the boulders look like?

1 A They look like moss rock. They're very
2 beautiful. They're used quite often in dry landscaping
3 purposes. And they require no water, which is good for
4 the severe drought condition. They look like -- oh, how
5 do you describe? I know Exhibit Number 56 that has
6 pictures of the rocks and boulders that were at present
7 when I initially started the business. If you want to
8 reference Exhibit 56, there's a picture of them.

9 Q Thank you, Mr. Klein. Did you need any permits
10 to operate Klein Rocks?

11 A Yes. El Dorado County requires a permit for any
12 kind of heavy equipment excavation work in excess of
13 10,000 square feet. And, yes, I had to acquire a permit
14 for excavation and also asbestos mitigation permits
15 because El Dorado County is known for asbestos found in
16 serpentine.

17 Q And did you have any other business in tax year
18 2014?

19 A I did not, no. That was my only business. I
20 worked there five days a week, and at least 40 hours per
21 week. And, honestly, it's the hardest work I've ever
22 done.

23 Q Were you generating any income elsewhere?

24 A No. My wife was working, and she also had some
25 businesses. But she was working and also running new

1 businesses, but that was my only business.

2 Q So as seen in Exhibit 56 you advertised the rock
3 sales on Craigslist. When did you start advertising your
4 rocks on Craigslist?

5 A I started advertising probably October, November
6 of 2013. And that was the only way I could get customers
7 to my property to purchase product. It's not like you can
8 put a sign up and people drive up and buy rocks. It's a
9 very difficult thing to sell. And that's how I did my
10 advertising, mainly through Craigslist because there was
11 no cost to it. And, actually, I got good response. After
12 we completed the reinitiation of -- you know how on
13 Craigslist it expires after five days, I believe? We
14 reinitiated it about every three to four days to stay
15 up-front on the top of the list for Craigslist.

16 Q And when did you stop advertising the rocks?

17 A I stopped advertising in 2015. I was actually --
18 yes, I stopped in 2015.

19 Q What were your efforts for investing into your
20 property?

21 A What were my efforts? Financial -- steep
22 financial investments. With time, I would probably say at
23 least 40 hours a week. Like I said, 5 days a week,
24 sometimes 7 days of week, depending on when the customer
25 wanted a delivery of rocks and boulders.

1 Q And more, specifically, why did Klein Rocks
2 discontinue its efforts in investing into the property
3 after October 2014?

4 A Okay. After October 2014, there is a winter. I
5 guess I could say you have to prepare for the winter in an
6 amount of time. And the property was within eyesight --
7 within a quarter mile of Folsom Lake. Folsom Lake is
8 considered a drinking water supply for Sacramento County.
9 Therefore, the restrictions are very strict for
10 sedimentation -- sediment to run into Folsom Lake.

11 They do regular checks to see if properties are
12 delivering sediment into Folsom Lake. I had to put up, I
13 guess, the fencing mitigation -- fencing mitigation, straw
14 bales, which is if you've ever looked on the side of the
15 freeway you see those bales of straw that keep the dirt in
16 place for the erosion purposes. So it's quite involved as
17 far as sediment mitigation.

18 JUDGE STANLEY: This is Judge Stanley. Can you
19 continue to yell, Mr. Klein.

20 MR. KLEIN: Yes.

21 JUDGE STANLEY: You tend to taper off a little
22 bit. I'm sorry to interrupt.

23 THE WITNESS: Okay. Okay.

24 BY MS. CLARK:

25 Q In other words, due to the weather it's difficult

1 to continue in the -- investing into the property, into
2 the business?

3 A Yes. Because of the weather, we had an uncommon
4 winter season, especially, being so close to Folsom Lake,
5 it's very, very strict as far as that sediment running
6 into Folsom.

7 Q And, Mr. Klein, when did you first buy the
8 property?

9 A I bought it late 2007. I believe it was December
10 of 2007. I don't know the exact date, but I believe late
11 2007, December.

12 Q What were your intentions when you first
13 purchased the property?

14 A Our intentions were to make money as an
15 investment. And I saw that as an opportunity to harvest
16 the natural resources that were present and make money on
17 those resources.

18 Q Mr. Klein, did you go to the property daily?

19 A I went there daily once we started the excavation
20 for boulder sales and by appointment for customers that I
21 had to acquire new product continually. So I was there
22 pretty much on a daily basis.

23 Q And how far is the property from your primary
24 residence?

25 A It's about five miles. It's just down the

1 street.

2 Q When you sold the property, did you sell the
3 property for a profit?

4 A Yes, I did. Uh-huh.

5 Q And how much for profit?

6 A We profited approximately \$40,000 on the sale of
7 the property.

8 Q Did you inquire at all about building a
9 residential structure on the property?

10 A No. We did not because the fees for El Dorado
11 County are very high, and we didn't see that as something
12 we could do financially.

13 Q For Exhibits 1 through 10, what were those
14 expenses for?

15 A I'm looking at my sheets here. They were for
16 attorneys and professional services that were hired,
17 because the first contractor I hired did damage to the
18 property. So that was for attorneys and professional
19 services to determine the damage of the property by the
20 first contractor.

21 Q And why did you hire a second contractor for the
22 property?

23 A To repair the damages by the first contractor.

24 Q And why did you have to hire an attorney?

25 A Because he was -- the first contractor did not

1 cooperate and the problems that I had with them just -- so
2 I had to go to an attorney to speak to them. In fact, I
3 did eventually go to the Contractor State License Bureau.

4 Q Mr. Klein, for Exhibits 11 through 17 what were
5 those expenses for?

6 A Exhibits 11 through 17, that was to repair the
7 damages for the -- that was to hire the second contractor
8 to repair the damages that the first contractor had done.

9 Q And for Exhibits 18 through 40, those exhibits
10 were capital improvements included to show Schedule D as
11 cash basis; correct?

12 A That's correct.

13 Q What is Exhibit 41?

14 A Exhibit 41 is an escrow document. Merci
15 Di Paolo, she was a neighbor of the property, and she saw
16 what we were doing there as far as excavation and sale of
17 rocks and boulders and product. And she was interested in
18 buying the property. And that is the escrow papers of her
19 purchase of the property. She was a next-door neighbor
20 right next door.

21 Q And, Mr. Klein, why did you sell the property?

22 A We sold the property because she made us an offer
23 that we can't refuse. We made some money on the property,
24 which initially that was the whole purpose of purchasing
25 the property was to make money on an investment.

1 Q Did you hire a Realtor at all?

2 A No. A Realtor was not necessary. This was a
3 buyer-seller handshake agreement, which eventually became
4 a contract. And we used the title company to process that
5 escrow.

6 Q And, Mr. Klein, what are Exhibits 42 through 47?

7 A 42 through 47 are the business license for Klein
8 Rocks, meals, and purchase of bulk water distribution to
9 reduce asbestos mitigation, which is a concern in El
10 Dorado County. You have to constantly keep the dirt moist
11 or wet so dust mit -- so asbestos dust does not go into
12 the air.

13 Q The Klein Rocks business plan as seen in
14 Exhibit 55, did you develop that plan?

15 A Yes, I did. I developed that plan.

16 Q When did you develop that business plan?

17 A Late 2015.

18 Q Mr. Klein, do you have any sort of degree in
19 business or accounting?

20 A No, I don't.

21 Q Would you please explain Exhibits 57 through 62?

22 A Those exhibits are customers -- the actual
23 customer sales as a product of rocks and boulders.

24 Q And, Mr. Klein, when did your neighbor first
25 approach you regarding the sale of the property?

1 A She approached us in approximately August,
2 September of 2015.

3 Q And finally, Mr. Klein, the IRS determined that
4 the expenses at question were not Schedule C expenses.
5 Why didn't you contest this decision?

6 A I'd never been audited before, and I was unaware
7 that you could contest it.

8 Q Thank you, Mr. Klein. I have no further
9 questions.

10 A Let me elaborate on that. I was never disallowed
11 an entire business by the IRS, so I didn't know I could
12 contest it.

13 Q Thank you, Mr. Klein.

14 A Thanks.

15 THE HEARING REPORTER: Judge Stanley, you're
16 muted.

17 JUDGE STANLEY: Yeah. I flipped my microphone in
18 the wrong direction. This is Judge Stanley speaking.

19 Mr. Smith, does Franchise Tax Board have any
20 questions of the witness?

21 MR. SMITH: Joel Smith. Yes, I have some
22 questions.

23 ///

24 ///

25 ///

1 are all related to the operation of Klein Rocks?

2 A That's correct. Once we ran out of inventory
3 that were easily accessible on top of the ground, we had
4 to go further up into the property and excavate chaparral
5 bush, which is eight feet high, in order to acquire more
6 product for sale. And right in the middle of a chaparral
7 bush, there could be a bolder that's worth thousands of
8 dollars. And we had to also develop an access way to get
9 there with the heavy equipment. The drain was quite
10 steep. And the only way to acquire new product for sale
11 was to establish a path to the product.

12 Q You testified that you were at the site five days
13 a week, more than 40 hours a week, for a portion of 2014?

14 A Yes, that's correct.

15 Q When was the last time you sold product to a
16 customer in 2014?

17 A I believe it was June or July of 2014.

18 Q Okay. So what was happening between -- for the
19 last half of 2014 if no items were sold?

20 A I ran out of easy product for sale. And the
21 contractors that I hired had other jobs they had to go on.
22 And when you're talking about a 10,000-pound boulder, you
23 need heavy equipment to harvest that. When they went off
24 to other jobs, I didn't have heavy equipment in order to
25 move the product.

1 Q So when you had heavy equipment -- or excuse me.
2 When you did not have access to heavy equipment for the
3 last half of the year, what were you doing all that time
4 when you were on the property for more than 40 hours a
5 week?

6 A I was out there clearing brush and chaparral.
7 That's something I can do without heavy equipment. I
8 would describe it as landscaping, clearing.

9 Q As far as the grading permit, the excavation
10 permits, did you have to have a business to obtain those
11 permits?

12 A No, I did not. No.

13 Q And when did you get your business permit from
14 the county for Klein Rocks?

15 A It was February of 2015.

16 Q And then you -- at one point you discussed
17 obtaining legal counsel for damages. Can you -- what were
18 the damages?

19 A Improper compacting of dirt fills, which in El
20 Dorado County it has to pass a certain threshold as far as
21 compaction. With the compaction that was done by the
22 first contractor was substandard, so it had to be
23 completely rebuilt and redone. You're talking about very
24 hilly terrain with valleys and peaks that need compaction.
25 So when you fill in dirt into a valley it has to be

1 properly compacted, otherwise it could be a problem.

2 Q Okay. The final area of questions relates to the
3 IRS. They just issued an assessment? They didn't --
4 there was no documentation request or anything of the
5 sort?

6 A I submitted documentation, but the person I spoke
7 to at the IRS was completely unaware -- I would say
8 unaware of the business that we we're trying to run. He
9 thought we were mining rocks and boulders. We were not
10 mining them. We were picking boulders and rocks that were
11 on top of the ground, so there was no mining involved.
12 And he wanted to see proof of mining permits in order to
13 justify the business, which we did not have.

14 Q So you were able to communicate with the IRS and
15 dispute their assessment?

16 A Yes. I disputed it to a point where they made a
17 final determination.

18 Q Okay. No further questions. Thank you.

19 A Hm-hm. You're welcome.

20 JUDGE STANLEY: Thank you.

21 Judge Ridenour, do you have any questions of the
22 witness?

23 JUDGE RIDENOUR: I do. Thank you. This is
24 Judge Ridenour. Mr. Klein, I see you have a business
25 license from El Dorado County. I was wondering when you

1 sold your boulders and the rocks, who were your end users?
2 What were the type of customers you would sell to?

3 MR. KLEIN: Customers that were landscaping their
4 homes with dry -- dry escape is what I call them, but they
5 were minimum watering landscaping type situations.

6 JUDGE RIDENOUR: So these were end users? They
7 would use the rocks themselves?

8 MR. KLEIN: Yes, they were, and we would deliver
9 them to the property through the contractors that I had
10 hired.

11 JUDGE RIDENOUR: So then I have a follow-up
12 question. Did you or your business have a seller's
13 permit?

14 MR. KLEIN: No, we did not.

15 JUDGE RIDENOUR: Is there a reason why you did
16 not obtain one?

17 MR. KLEIN: No. There's no reason. I really
18 can't recall my thought process on that at that time.

19 JUDGE RIDENOUR: Okay. I have no further
20 questions. Thank you.

21 JUDGE STANLEY: This is Judge Stanley.
22 Judge Akin, do you have questions for the witnesses?

23 JUDGE AKIN: Judge Akin speaking. I do have just
24 one question. I'm wondering on average, approximately how
25 many customers or, you know, separate sales transactions

1 you would have in any given week?

2 MR. KLEIN: Probably once a week for rocks.
3 Yeah, once a week.

4 JUDGE AKIN: Thank you. I don't have any
5 additional questions.

6 JUDGE STANLEY: This is Judge Stanley. I have a
7 couple of questions. Mr. Klein, you keep saying you took
8 rocks off the top of the ground. What is all the
9 excavation then if you're just removing them from the top
10 of the ground?

11 MR. KLEIN: Picking up the -- well, the
12 excavation would be picking up the boulders, putting them
13 into a dump truck, delivering it to the customer. And
14 then along with heavy equipment once again, taking the
15 boulders out of the dump truck and placing them where the
16 customers would like them.

17 JUDGE STANLEY: Okay. This is Judge Stanley
18 again. Do you have any prior experience with a similar
19 business?

20 MR. KLEIN: No, I don't. No.

21 JUDGE STANLEY: This Judge Stanley. I was
22 wondering whether you and you're co-Appellant, Ms. Klein,
23 used the property for any -- for any other purpose other
24 than Klein Rocks?

25 MR. KLEIN: We did not. There was no utilities

1 on the property. There was no structures on the property.
2 The property was raw land as if you were to drive out into
3 the country and see unimproved property.

4 JUDGE STANLEY: And this is Judge Stanley. One
5 last question. Can you describe your accounting system
6 for the business as opposed to your personal accounting?

7 MR. KLEIN: Accounting system, sales, and
8 deductions. I'm pretty simple in that I'm not a trained
9 expert. I'm not an accountant. When we made a sale, we
10 counted that as income, and then we had a deduction that
11 was pertaining to the business. That would be a
12 deduction.

13 JUDGE STANLEY: This Judge Stanley. Thank you,
14 Mr. Klein. I was wondering, for example, whether you had
15 a separate business account or any separate accounting
16 method ways to account for business versus personal income
17 and expenses.

18 MR. KLEIN: No.

19 JUDGE STANLEY: This is Judge Stanley. Thank
20 you.

21 Ms. Clark, do you have any follow-up questions
22 for your witness?

23 MS. CLARK: This is McKenna Clark. I do not.
24 Thank you.

25 JUDGE STANLEY: This is Judge Stanley. Then we

1 are ready to move to FTB's -- well, let me just ask you
2 one follow-up question, Ms. Clark. Have you presented
3 everything that you wish the panel to know?

4 MS. CLARK: This is McKenna Clark. We still have
5 an oral argument to present by Mr. Hade.

6 JUDGE STANLEY: Okay. But the facts are all in
7 evidence now as you wish them to be; correct?

8 MS. CLARK: Yes. That's correct.

9 JUDGE STANLEY: Okay. This is Judge Stanley.
10 It's time for us to hear Franchise Tax Board's
11 presentation. Mr. Smith, you may proceed.

12 MR. SMITH: Joel Smith. It's my understanding
13 that Appellants were going to make their opening argument;
14 is that correct?

15 JUDGE STANLEY: No. This is Judge Stanley. The
16 way that we had set it up was that Appellant was going to
17 present their case, and then Respondent presents its case,
18 and then we have closing argument so that they can
19 incorporate what the FTB said. Is there a reason to
20 switch that up, Mr. Smith?

21 MR. SMITH: Joel Smith. My understanding was
22 their opening argument was the witness testimony and their
23 legal argument together. I mean, I can make my argument.
24 That's fine.

25 JUDGE STANLEY: Okay. This is Judge Stanley.

1 I'm going to go ahead and let Mr. Hade do his closing
2 argument, and then we'll have FTB's presentation. And
3 then we'll give Mr. Hade an opportunity to reply to that,
4 if there's anything that he needs to do after that.

5 So, Mr. Hade, you may proceed.

6

7

PRESENTATION

8 MR. HADE: Thank you, Judge. I'm sorry for any
9 format changes. So yes, my name is Jacob Hade, and
10 appearing on behalf Mr. Klein.

11 So there really is one main issue on appeal that
12 I'll be addressing in depth, and that is whether Mr. Klein
13 carried on the trade or business, Klein Rocks, in 2014 and
14 has, therefore, met his burden to establish error in FTB's
15 assessment.

16 So I'll start by briefly explaining the legal
17 framework around IRC 162(a) deduction and, specifically,
18 what qualifies as a trade or business. Then I will
19 summarize the facts in this present case, and then I'll
20 explain why the evidence does support that this was a bona
21 fide business and not a mere hobby.

22 So the phrase trade or business is not directly
23 defined in the IRC, Internal Revenue Code. However, it
24 has been defined in case law as well as in guidance from
25 the IRS. So if we look at IRS' memo Roberts versus

1 Commissioner from 2012, they explain that Section 162(a)
2 authorizes a deduction for all of the ordinary and
3 necessary expenses paid or incurred during the taxable
4 year in carrying on the trade or business.

5 So a trade or business expense is considered
6 ordinary if it is customary within a particular business.
7 An expense is necessary if it is appropriate and helpful
8 for the development of the business. By contrast,
9 personal living or family expenses are non-deductible. So
10 just to reiterate, expenses must be both customary within
11 this particular business and appropriate and helpful for
12 the development of this business.

13 Furthermore, almost any activity can be a trade
14 or a business if it is pursued for income, and there does
15 not necessarily have to be profit. So the U.S. Court of
16 Federal Claims said in a case that to be engaged in a
17 trade or business, the taxpayer must be involved in the
18 activity of continuity and regularity, and that the
19 taxpayer's primary purpose for engaging in the activity
20 must be either for income or profit. So income is
21 sufficient. It does not have to be profit. And then I
22 really like this language that --

23 JUDGE STANLEY: Mr. Hade, I'm sorry to interrupt.
24 This is Judge Stanley. Our stenographer is having trouble
25 keeping up with you. You're talking fast.

1 MR. HADE: Oh, I'm so sorry.

2 JUDGE STANLEY: Slow down a little bit, please.
3 Thank you.

4 MR. HADE: Thank you, Judge Stanley.

5 So that court used language, which I really like
6 though. And they said that a sporadic activity, a hobby,
7 or an amusement diversion does not qualify. So we're kind
8 of looking at is this business -- or Klein Rocks, was it a
9 business or a hobby? Those are the kind of two options
10 we're looking at here. So almost any activity can be
11 considered a trade or business.

12 In Commissioner versus Groetzinger, the U.S.
13 Supreme Court said that even gambling can be considered a
14 trade or business if it is pursued full time in good faith
15 with regularity and for the production of income. So
16 regarding profitability, the Supreme Court ruled in
17 Portland Golf Club versus Commissioner that an activity
18 may be a trade or business even if the taxpayer intends to
19 show losses on their income tax forms under permissible
20 accounting method. So, again, profit is not necessary to
21 claim these deductions.

22 Another important factor that I would like to add
23 is that under California law and supported by Supreme
24 Court jurisprudence, carrying on any trade or business
25 means holding oneself out to others as engaged in the

1 selling of goods or services. And we will see this when
2 we look at an OTA case in just a moment. And then
3 generally this inquiry is highly factual and must be done
4 by a case-by-case basis.

5 I'm now going to give -- kind of summarize again
6 the factual background to elucidate why this Court should
7 vacate FTB's decision below, and rule that Mr. Klein was
8 indeed operating a trade or business in 2014 and that it
9 was, therefore, proper for him to exempt his business
10 expenses from his taxable income.

11 So in 2017 -- sorry -- 2007, Mr. Klein bought
12 this property and held onto it with the intention of
13 making a profit. In late 2013 during the worse drought in
14 California's history, Mr. Klein saw an opportunity and
15 started a business selling large rocks and boulders from
16 his property as a drought resistant alternative to
17 installing grass lawns. He anticipated a ready market for
18 these materials for decorative landscaping purposes due to
19 the drought. And he worked at this business for at least
20 five days a week and did not have any other form of
21 employment. There was no residential property or any
22 structure on the land, and Mr. Klein never lived or stayed
23 at this address.

24 Mr. Klein first advertised his goods on
25 Craigslist in 2013 and kept adds up until June of 2015

1 when his neighbor expressed interest in purchasing the
2 land. Klein Rocks made one sale in 2013 as we see in
3 Exhibit 57. The bulk of Klein Rock sales were in 2014.
4 There were five different sales, all of which took place
5 within six months of each other. The total was for a
6 little over \$2,500. And you can see the receipts in
7 Exhibits 58 to 62. This worked out to be about 15,000
8 pound of materials that were sold. This is also evidenced
9 in the receipts.

10 So after the large kind of exposed accessible
11 boulders were sold, Mr. Klein had to make adjustments to
12 the property, which had a steep incline and was completely
13 covered in brush, so that he could access the additional
14 materials. Throughout 2014 and '15, Mr. Klein spends over
15 \$100,000 making various improvements to the property and
16 the business. The primary projects were building a
17 driveway and clearing the way for rock removal. This
18 included permits, materials and equipment to build a
19 driveway and remove brush. There were also expenditures
20 for a lawsuit against one of his contractors, meals, and
21 some other items.

22 So as we saw in Mr. Klein's testimony, he was not
23 permitted to operate this business between the months of
24 October and March. So we saw that the last rock sale was
25 in late June. Unfortunately, there were not any sales for

1 a few months, and by October they were forbidden from
2 continuing this until March of that next year. Mr. Klein
3 did obtain a business license in 2015 with the intent of
4 continuing his business.

5 However, after being approached by his neighbor
6 with an offer to buy the property, they did sell it in
7 2015 and did not continue to operate Klein Rocks though
8 Mr. Klein had already obtained county excavation permits
9 and asbestos mitigation permits to complete the necessary
10 work. And then Exhibits 18 through 40 as well as 45
11 through 54 show expenses that were actually more in line
12 with the benefits to the property, which were added to the
13 Kleins' basis on his 2015 taxes. So those are not
14 directly at issue here, but they are useful to show that
15 Mr. Klein knew the difference between expenses that were
16 for improvements to the property and expenses which
17 where -- sorry -- were for the benefit of his business.

18 And then I also did want to mention on the
19 Kleins' tax return they did have another Schedule C
20 business called Green Earth Trading during that year,
21 which they just did not dedicate much time to -- or
22 Mr. Klein did not. So the amount of work and resources
23 that Mr. Klein put into this business is apparent. He
24 advertised for his business online. And in that
25 advertisement -- it's Exhibit 56 -- we can see that

1 Mr. Klein offered a variety of different rocks and
2 boulders.

3 They had unique qualities that made them
4 esthetically pleasing. And the add does indicate he had a
5 wide variety of inventory from 10 pounds to 10,000 pounds.
6 There's a pricing scheme mentioned in the add. And then I
7 think the add itself is, you know, evidence that he was
8 marketing, that there was some sort of marketing scheme
9 going on.

10 So the evidence shows that the deductions made by
11 Mr. Klein were, in fact, paid or incurred in carrying on
12 the trade or business of Klein Rocks. All deducted plans,
13 permits, and excavation on the property were for the
14 purpose of making additional rocks accessible.

15 Furthermore, no expenses were deducted for personal living
16 or family expenses. They were all directly related to
17 work on the property. Mr. Klein is entitled to the
18 deductions because he has substantiated the expenditures
19 with credible evidence and established that they are
20 deductible under 162 and not prohibited under 262, which
21 is the code about family or personal expenditures.

22 So I now want to turn our attention to an appeal
23 that was before the OTA already, the Appeal of Nicholas
24 from 2019. And this shows, you know, a case where there
25 absolutely was not a business. So I think it's helpful to

1 look at this in contrast to the present acts. So in the
2 Appeal of Nicholas, the Appellants' claim that they were
3 renting out a separately constructed guest house on their
4 property in 2006 and 2007. According to their tax return,
5 the business as well as their personal residence was
6 located on a single parcel of land about 35 miles outside
7 of Santa Barbara.

8 So there is Unit A of the parcel was the
9 residence of the Appellants, and Unit B was the guesthouse
10 and the supposed location of their Schedule C rental
11 business. So those Appellants reported absolutely no
12 gross receipts from either of their Schedule C -- from
13 their Schedule C business on their tax returns. They
14 submitted several utility and purchase receipts reflecting
15 activity on the property, but there wasn't any evidence
16 that the guesthouse was held out for rent.

17 So there was no advertisements, no rent receipts,
18 no rental applications or rental agreement. So there were
19 no receipts at all or anything showing there was a
20 business activity going on. So that is clearly different
21 from the case at hand. We do have many receipts. There
22 were sales, et cetera.

23 So that case points to another decision Wolfgram
24 versus Commissioner, which they call instructive. And in
25 that case, the taxpayer claims that they were carrying out

1 a trade or business when they set up -- or they said it
2 was setting up operating a bed and breakfast in 2004. So
3 the taxpayer bought a piece of land in Michigan Bluff,
4 California, and began construction of a home on the
5 property while constructing this home, which eventually
6 became the taxpayer's residence.

7 The taxpayer's husband lived in the rented mobile
8 home parked on the property. That taxpayer deducted
9 various expenses in connection with the construction of
10 the home as a business expense, but the Wolfgrams never
11 had a customer, no evidence of any sales efforts that
12 could have led to customers. And that court said that the
13 construction and sale of a single bed and breakfast inn
14 does not constitute continuous and regular activity. It
15 was a one-time job. Thus, they were not carrying on a
16 trade or business.

17 So we see this kind of term one-time job to which
18 would suggest something is not a proper trade or business,
19 and that is the case with the Kleins. So there are many
20 facts which distinguish the case at hand from the cases I
21 just spoke about, Nicholas and Wolfgram. So unlike the
22 Appellants in Nicholas and Wolfgram, Mr. Klein did in fact
23 have customers during the year at issue. Klein Rocks did
24 make six sales. Five of them were in 2014, and they were
25 not all at one time. They took place with regularity and

1 continuity.

2 So besides the November 15th, 2013, receipt we
3 see January 3rd, March 23rd, April 13th, June 9th, and
4 June 24th, 2014. So the above discussed expenses and the
5 declaration of Mr. Klein show that he was actively
6 involved in the improvements of the property for the
7 purpose of furthering Klein Rocks. While the other cases
8 do not contemplate a business license in deciding whether
9 the Appellant carried out a trade or business, it should
10 be noted again that Mr. Klein did obtain a business
11 license in February of 2015, which shows he intended to
12 continue the business.

13 So there are some other facts which distinguish
14 this case. While the courts in Nicholas and Wolfgram
15 noted that the Appellants had not attempted to fined
16 customers, Klein Rocks was promoted through public
17 Craigslist advertisements. While the Appellants in
18 Wolfgram and Nicholas lived in houses or other quarters on
19 the property during and after construction, the property
20 at issue here contains no house. And the above-mentioned
21 improvements were made while Mr. Klein was living
22 elsewhere. Klein Rocks was a bona fide business while the
23 claimed business in Nicholas and Wolfgram was not.

24 So while this evidence should show that Mr. Klein
25 was operating a trade or business, and that the relevant

1 expenses should be allowed in his Schedule C, if the Court
2 does not agree, the Court should consider allowing
3 Mr. Klein to add the relevant expenses to his Schedule E
4 under the Safe Harbor Provision or in the alternate, he
5 should be allowed to add the expenses to the basis of the
6 property sale, which took place in 2015.

7 So as shown above, Mr. Klein did carry on the
8 business Klein Rocks in 2014. Mr. Klein dedicated the
9 majority of his time to the business, advertised the
10 business, made regular rock sales, incurred numerous
11 expenses that are customary in this line of work to make
12 the property suitable for further rock sales, and
13 constructed an access road to sell the rocks. The above
14 discussed laws, in fact, show that Mr. Klein is entitled
15 to claimed deductions with the exception of the TSD
16 Engineering check, which took place on December 3rd of
17 2014.

18 So accepting that check, these deductions include
19 \$15,710 in legal and professional fees, \$36,075 in
20 vehicles, maintenance, and equipment cost, about \$80 in
21 meals, and \$937.28 in property taxes. So if this Court is
22 not convinced that Mr. Klein was operating a bona fide
23 trade or business, we ask the Court to consider allowing
24 the appropriate deductions to be shifted to a Schedule E
25 under the Safe Harbor Provision found at 26 CFR Section

1 1.263(a). And then in the alternative and in the name of
2 efficiency and fairness, if the Court does not accept that
3 either, Mr. Klein should be entitled to add all other
4 above-described costs to the basis of his property sale,
5 which took place in 2015.

6 So briefly conclude, this Court is charged with
7 determining whether Klein Rocks was a hobby or whether it
8 was a bona fide business. And if we think about the
9 everyday meaning or the dictionary definition of the word
10 hobby, it deems apparent that this was not a hobby. The
11 dictionary and common definition of the word hobby
12 includes ideas of doing something for fun or pleasure or
13 recreation. So acquiring permits, hiring construction
14 workers, hiring lawyers when the contractors did not do
15 their job, you know, excavating, moving, and selling large
16 boulders does not sound like a relaxing, pleasurable
17 pursuit to me that is readily identifiable as a hobby.

18 Mr. Klein has met his burden to show Respondent's
19 determination was in error. Mr. Klein has provided
20 sufficient evidence to prove that he carried out a trade
21 or business, Klein Rocks, during the year 2014. Mr. Klein
22 claimed expense deductions related to that business, and
23 they should be allowed. Any non-deducted property-related
24 costs should be included as adjustments to the 2015
25 property sale.

1 Klein Rocks was a legitimate small business
2 venture that Mr. Klein dedicated most of his time to,
3 which held himself out as a seller of goods and which, in
4 fact, did sell thousands of pounds and thousands of
5 dollars' worth of landscaping materials. The evidence
6 shows that Mr. Klein was engaged in a business, and he
7 properly deducted expenses related to this business. For
8 these reasons, the Court should reverse the decision below
9 and rule that the \$4,581 deficiency proposed by the FTB
10 was made in error.

11 Thank you for your time, Your Honors.

12 JUDGE STANLEY: This is Judge Stanley. Thank
13 you, Mr. Hade.

14 Mr. Smith, you can proceed.

15 MR. SMITH: Thank you, Judge Stanley.

16

17 PRESENTATION

18 MR. SMITH: This is Joel Smith for the FTB. Good
19 morning.

20 The primary issue in this appeal is whether
21 Appellants have met their burden to establish error in the
22 FTB's assessment, which is based on changes made by the
23 IRS for the 2014 tax year. Appellants' primary contention
24 is that they operated Klein Rocks as a business in 2014.
25 As I will discuss and the briefing shows, Appellants have

1 not shown error in the FTB's assessment.

2 Briefly, the relevant facts are that Appellants
3 filed a timely 2014 state tax return. At a later date,
4 they were subject to a federal audit which resulted in
5 additional tax at the federal level. Appellants did not
6 report these changes to FTB as required under California
7 law. However, the IRS did report these changes to the
8 FTB. So the FTB followed the IRS changes as allowed under
9 California law and issued the assessment at issue in this
10 appeal, which is FTB Exhibit C.

11 The Appellants did a great job of going through
12 the legal points of what is a trade or business. It is
13 well settled that an FTB assessment based on a federal
14 audit is presumptively correct, and the taxpayer bears the
15 burden of proving the FTB's assessment is erroneous.
16 Absent credible competent and relevant evidence showing
17 the FTB's assessment is in error, the assessment must be
18 upheld.

19 So to start, as shown by FTB Exhibit, the IRS has
20 not made any adjustments to its changes that gave rise to
21 the FTB's assessment. The issue is not whether or not
22 this was a trade or business or a hobby. The word hobby
23 has not been a part of this appeal at all or the IRS'
24 determination. It's whether or not there was a trade or
25 business or these expenses were capital improvements to

1 the property.

2 Under Revenue & Taxation Code Section 17201,
3 California conforms to the Internal Revenue Code Section
4 162 requirement that taxpayers can deduct ordinary and
5 necessary business expenses incurred in carrying out a
6 trade or business. Under the United States Supreme Court
7 decision in Commissioner v. Groetzinger, Appellants must
8 show that they carried on a trade or business for profit
9 in 2014 and were involved in the activity with continuity
10 and regularity. Further, under Wolfgram v. Commissioner,
11 Appellants need to show they entered into the activity
12 with the actual and honest objective of making a profit.

13 Here, Appellants have provided documentation to
14 show they incurred expenses for capital improvements to
15 their property, not to operate a business for profit. FTB
16 Exhibit D, page 4, shows Appellants did not obtain a
17 business permit for Klein Rocks until 2015, a time period
18 Appellants state in their response to the OTA's minutes
19 and orders, is not relevant to today's appeal. Further,
20 Appellants only claimed Klein Rocks as a Schedule C
21 business on their 2014 tax return and sold the subject
22 property where the capital improvements were made in 2015.

23 Appellants have provided numerous receipts but
24 did not provide official business or financial records to
25 indicate they operated a business with the actual and

1 honest objective of making a profit. For example,
2 Appellants knew how to operate a Schedule C business, as
3 they had another business which has been mentioned today.
4 FTB's Exhibit D, page 52, shows a check that was written
5 from that Schedule C business's bank account for grading
6 permits to El Dorado County presumably for the real
7 property at issue today.

8 So we also note in Exhibit D, which provides a
9 lot of -- FTB's Exhibit D, there are a number of receipts,
10 bills, invoices. None of them are to a business Klein
11 Rocks. They're all to the taxpayer in their individual
12 names. Appellants' documentation does not show error in
13 the FTB's assessment or the IRS' conclusion in its audit
14 report that Appellants incurred expenses for capital
15 improvements, not in the operation of a business. The IRS
16 audit report can be found at FTB Exhibit F, pages 5
17 through 13.

18 The IRS audit report makes no mention of not
19 understanding the type of business that Appellants were
20 arguing they ran. There's no mention of California's
21 drought and/or their belief as to whether or not
22 California was experiencing a drought. The IRS appears to
23 have looked at the documentation provided, which I presume
24 is the same information provided during this appeal, and
25 came to the conclusion that Appellants' expenses were

1 related to capital improvements.

2 In conclusion, in light of the evidence in
3 California law, Appellants have not met their burden to
4 establish error in FTB's assessment. Appellants have not
5 provided credible, competent, or relevant evidence to
6 establish that FTB erred in following the IRS'
7 adjustments. In fact, the documentation provided supports
8 the IRS' conclusion that Appellants incurred expenses for
9 capital improvements to the property. Therefore, the FTB
10 requests you sustain its position.

11 I can answer any questions the panel has. Thank
12 you.

13 JUDGE STANLEY: Thank you, Mr. Smith.

14 Judge Ridenour, do you have any questions for the
15 Franchise Tax Board?

16 JUDGE RIDENOUR: This is Judge Ridenour. I do
17 not. Thank you very much.

18 JUDGE STANLEY: This is Judge Stanley.
19 Judge Akin, do you have any questions?

20 JUDGE AKIN: Judge Akin speaking. I do have one
21 question. I'm wondering if Mr. Smith can address
22 Appellants' argument that in the alternative these
23 expenses should be allowed on Schedule E instead of
24 Schedule C?

25 MR. SMITH: As capital improvements to the real

1 property, these expenses would be appropriate in the year
2 as an increase of basis for the property. So it would be
3 on the 2015 tax year, I believe. And it's not -- I don't
4 think it's reported on the schedule scheduled.

5 JUDGE AKIN: That answers my question. Thank
6 you.

7 JUDGE STANLEY: This is Judge Stanley. So,
8 Mr. Smith, just to follow up on that. The deductions if
9 they were -- I mean, the increase in basis, if they did
10 that, would not affect the 2014 tax year that's at issue
11 here; correct?

12 MR. SMITH: Joel Smith. Yes, that is the FTB's
13 position. I mean, 2015 is a different tax year as noted
14 in one of FTB's additional briefs. There may be a statute
15 of limitations concerns associated with 2015. Just to
16 circle back to Judge Akin's question, the sale of the
17 property was reported on the Schedule D as a long-term
18 capital gain. And that's FTB's Exhibit H.

19 JUDGE STANLEY: This is Judge Stanley. Thank
20 you.

21 Before I have the final reply by Appellant, I did
22 have one question that I forgot to ask the witness. I'm
23 just wondering, Mr. Klein, if you intended to sell rocks
24 continuing into 2015 and got your business license in
25 2015, why are there no sales between the winter, when you

1 say you have to control sediment, and October, when the
2 business sold? Why are there no sales in that period?

3 Mr. Klein, this is Judge Stanley. You're muted.

4 MR. KLEIN: Can you hear me now? Okay. Yes,
5 March of 2015 I was -- I was contacting contractors to
6 arrange for harvesting and sales of boulders, and they had
7 already been scheduled out for the next three to
8 four months. And then by the time they were available,
9 that's when Ms. Di Paolo made the offer on the property,
10 and we accepted it. So their schedule was already booked
11 for a period of time of three to four months out when I
12 attempted to contract them.

13 JUDGE STANLEY: This is Judge Stanley. Thank
14 you, Mr. Klein.

15 Mr. Hade, will you be doing the reply or
16 Ms. Clark? Mr. Hade? Do you wish to have a reply?
17 Mr. Hade, can you hear me?

18 It doesn't look like he can.

19 Ms. Clark, can you hear me?

20 MS. CLARK: Yes, I can hear you. I believe
21 Mr. Hade's Webex froze.

22 JUDGE STANLEY: Okay. We'll take a five-minute
23 recess so that we can get him reconnected.

24 (There is a pause in the proceedings.)

25 JUDGE STANLEY: This is Judge Stanley. Mr. Hade,

1 I understand you wish to make a reply?

2 MR. HADE: Yes.

3 JUDGE STANLEY: So you may proceed.

4 MR. HADE: Thank you, Judge Stanley. This is
5 Jacob. I apologize for my tech issues.

6

7

CLOSING STATEMENT

8 MR. HADE: So I just wanted to briefly respond to
9 a few things to what the Respondent has said. So the FTB
10 said that the taxpayer bears the burden to show the error,
11 and they must show competent and credible evidence. The
12 Appellant has met this burden. The evidence and testimony
13 suggest that this is a bona fide trade or business, and
14 this just needs to be shown by a preponderance of the
15 evidence, not beyond a reasonable doubt.

16 JUDGE STANLEY: This is Judge Stanley. I'm
17 sorry. I keep interrupting you, Mr. Hade. I forgot to
18 say that we are back on the record. So that will be
19 retroactive to when you started your statement, so you can
20 pick up where I interrupted. Thank you.

21 MR. HADE: Sure. So Mr. Klein, unfortunately,
22 cannot show that the IRS changed its decision -- sorry --
23 because he was not aware of the process to appeal an IRS
24 decision. So he should not be punished just because he
25 does not have sophisticated legal or business knowledge.

1 I'd also like to point out that the word hobby is
2 mentioned specifically in Supreme Court jurisprudence that
3 defines 162, as well as in presidential California Court
4 of Appeals decision. So it is not directly defined in the
5 code, but the phrase trade and business is just not
6 defined in the code. So we have to look at definitions
7 from case law.

8 FTB points out many times that there was not
9 profit here, but this is only one element in considering
10 whether or not there was a trade or business. It's a
11 highly factual inquiry and must be done on a case-by-case
12 basis, and we must look at other factors we've discussed.

13 So in conclusion, it seems like both common sense
14 and law suggest that the Kleins were, in fact, running a
15 business. Whether or not this business was successful is
16 not at issue here.

17 Thank you, Your Honors.

18 JUDGE STANLEY: Thank you, Mr. Hade.

19 This is Judge Stanley. Judge Ridenour, do you
20 have any follow-up question?

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

23 JUDGE STANLEY: This is Judge Stanley.
24 Judge Akin, do you have any questions?

25 JUDGE AKIN: Judge Akin speaking. I do not.

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Thank you.

JUDGE STANLEY: And this is Judge Stanley. I want to thank everybody for their participation and presentations here today. This concludes the hearing.

The judges will meet and decide the appeal based on the documents and testimony that were presented. The record is now closed in this matter, and we will issue a written opinion no later than 100 days after today.

We are going to recess this hearing, and we'll reconvene for the next hearing at 11:00 a.m.

Thank you all. Have a nice rest of your day.

(Proceedings adjourned at 10:36 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 5th day of April, 2022.

ERNALYN M. ALONZO
HEARING REPORTER