



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

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
MINCAFE COFFEE CORPORATION, ) OTA NO. 18053153  
 )  
 )  
 APPELLANT. )  
 )  
 \_\_\_\_\_ )

Transcript of Proceedings, taken  
at 12900 Park Plaza Drive, Suite 300,  
California 90703, commencing at 1:01 p.m.  
and concluding at 3:21 p.m. on Tuesday,  
April 12, 2022, reported by Ernalyn M. Alonzo,  
Hearing Reporter, in and for the State of  
California.

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

APPEARANCES:

Panel Lead: ALJ MICHAEL GEARY

Panel Members: ALJ DANIEL CHO  
ALJ RICHARD TAY

For the Appellant: AKSEL BAGHERI  
EDWIN MINASSIAN

For the Respondent: STATE OF CALIFORNIA  
DEPARTMENT OF TAX AND  
FEE ADMINISTRATION  
  
RANDY SUAZO  
NALAN SAMARAWICKREMA  
CHAD BACCHUS

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

I N D E X

E X H I B I T S

(Appellant's Exhibits 1-12 were received at page 9.)

(Department's Exhibits A-K were received at page 9.)

OPENING STATEMENT

PAGE

By Mr. Bagheri 11

WITNESS TESTIMONY

PAGE

Mr. Manassian 13

PRESENTATION

PAGE

By Mr. Bagheri 44

By Mr. Suazo 52

CLOSING STATEMENT

PAGE

By Mr. Bagheri 65

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

California; Tuesday, April 12, 2022

1:01 p.m.

JUDGE GEARY: Let's go on the record.

Welcome, again, to the Office of Tax Appeals hearing in the Appeal of Mincafe Coffee Corporation, Office of Tax Appeals or OTA Case Number 19095248 [sic]. Today is Tuesday, April 12th, 2022, and it is approximately 1:01 p.m. This hearing is being held in Cerritos, California.

Today's hearing is being heard by a panel of Administrative Law Judges. My name is Michael Geary. I will take the lead in conducting today's hearing, and I'm joined on the panel by Judges Daniel Cho and Richard Tay. After the hearing, the three of us will be -- will sit down to discuss the arguments and the evidence. Each of us will have an equal voice in those discussions, and at least two of us must agree on the issue or issues presented. Any of us on this panel may ask questions today or otherwise participate in today's hearing to ensure that we have all the information needed to correctly decide the appeal.

Now let's have the parties identify themselves by stating their names and who they represent, beginning with the Appellant, please.

1 MR. BAGHERI: My name is Aksel Bagheri,  
2 representative for Appellant Mincafe.

3 JUDGE GEARY: Mr. Bagheri, may I ask you, is the  
4 green light on your microphone?

5 MR. BAGHERI: Yeah, it's on.

6 JUDGE GEARY: Would you pull the microphone much  
7 closer to you, as close as you can get it without -- even  
8 closer than that, if you can do it, because it's not --  
9 it's not broadcasting your voice very well. Try it now.

10 MR. BAGHERI: Does this sound better?

11 JUDGE GEARY: It doesn't sound like it's on to  
12 me. Is the green light lit?

13 MR. BAGHERI: No. Now it's lit. Sorry.

14 JUDGE GEARY: Much better. Okay. Thank you.

15 MR. BAGHERI: I thought it was lit.

16 JUDGE GEARY: That's all right.

17 Ms. Alonzo, did you get his identification?  
18 Thank you.

19 And who is with you today, Mr. Bagheri?

20 MR. BAGHERI: I have only one witness today, and  
21 that's Edwin Minassian.

22 JUDGE GEARY: Thank you.

23 Welcome, Mr. Minassian.

24 And for CDTFA, the agency, who is appearing?

25 MR. SUAZO: Randy Suazo, Hearing Representative,

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

CDTFA.

MR. BACCHUS: Chad Bacchus with the CDTFA Legal Division.

MR. SAMARAWICKREMA: Nalan Samarawickrema, Hearing Representative for the Department.

JUDGE GEARY: Thank you.

And, Mr. Suazo, you'll be presenting for the Department? Thank you.

MR. SUAZO: That's correct.

JUDGE GEARY: So it's now my understanding there will be one witness testifying today for the Appellant, and no witnesses, I take it, for CDTFA.

Is that right, Mr. Suazo?

MR. SUAZO: That's correct.

JUDGE GEARY: Thank you.

Let's talk about the exhibits. The exhibits marked thus far for identification in this appeal consist of Appellant's exhibits marked 1 through 12 for identification, and Respondent's Exhibits A through K for identification. All exhibits have been previously disclosed and discussed. The parties provided copies to each other and to OTA, and OTA staff incorporated all proposed exhibits into an electronic hearing binding. The parties should have received notification on how they could download that binder. I hope that the parties both

1 did that.

2 Mr. Bagheri, have you confirmed that the  
3 Appellant's exhibits incorporated into that binder are  
4 complete and as legible as the ones that you submitted?

5 MR. BAGHERI: Yes, they are.

6 JUDGE GEARY: Thank you.

7 And, Mr. Suazo, have you made -- confirmed it for  
8 the Department?

9 MR. SUAZO: Yes, sir.

10 JUDGE GEARY: Thank you.

11 Neither party has raised any objections to the  
12 proposed exhibits or indicated that there are any problems  
13 with the binder or the proposed exhibits as appear in the  
14 binder.

15 Mr. Suazo, can I ask you, if I am correct, that  
16 you -- the Department that is -- has no objection to the  
17 admission of Appellant's Exhibits 1 through 12?

18 MR. SUAZO: We have no objections.

19 JUDGE GEARY: And, Mr. Bagheri, can you confirm  
20 that Appellant has no objections to the admission of  
21 Respondent's Exhibits A through K.

22 MR. BAGHERI: We have no objections.

23 JUDGE GEARY: Thank you.

24 All of those exhibits are now admitted.

25 ///



1 (Appellant's Exhibits 1-12 were received  
2 in evidence by the Administrative Law Judge.)  
3 (Department's Exhibits A-K were received in  
4 evidence by the Administrative Law Judge.)  
5 There are two issues to be decided in this  
6 appeal. One is has Appellant shown that further  
7 adjustments to the audited understatement of reported  
8 taxable sales are warranted; and two, does clear and  
9 convincing evidence establish that the understatement was  
10 the result of fraud.

11 Mr. Bagheri, do you agree that those are the  
12 issues you are asking this tribunal to address?

13 MR. BAGHERI: That's correct.

14 JUDGE GEARY: Thank you.

15 And, Mr. Suazo, can you confirm also?

16 MR. SUAZO: Yes, that's correct.

17 JUDGE GEARY: Thank you.

18 Maybe my mask is too thick.

19 All right. We talked about timing just briefly.  
20 I believe, Mr. Bagheri, you estimated you have about  
21 20 minutes of questions for your witness. Does that still  
22 hold true?

23 MR. BAGHERI: I think it may go a little longer.

24 JUDGE GEARY: Okay. 30 minutes maybe?

25 MR. BAGHERI: Yes.

1           JUDGE GEARY: All right. We agree that after the  
2 presentation of testimony, Mr. Bagheri, the Appellant  
3 would have 15 minutes to present the Appellant's first  
4 argument followed by CDTFA's Respondent's opportunity to  
5 present its only argument, also about 15 minutes. And,  
6 finally, the Appellant would have an opportunity for a  
7 brief, approximately five-minute, rebuttal if you choose  
8 to take that, Mr. Bagheri.

9           You're not required to. And since you have a  
10 live witness, I typically allow, when there are live  
11 witnesses, the party calling that witness to give a very  
12 brief opening statement. I think I can safely represent  
13 for my panel that we don't think it's necessary, but if  
14 you think it's necessary to give a very brief summary of  
15 what that testimony is going to be, you can do that. That  
16 would be the only purpose for the opening statement before  
17 he testifies, if you choose to do that.

18           What we'll do is we -- if you choose to do that,  
19 I'll let you give that opening statement. I will  
20 administer an oath or affirmation to your client -- to  
21 your witness. He will testify under direct examination by  
22 you.

23           I will allow the Respondent to ask questions.  
24 The judges may ask questions of the witness. When you're  
25 through with that witness, we'll start with our arguments.

1 And when we conclude, the matter will be submitted. I'll  
2 close the record. And within 100, day, usually from that  
3 time, we'll issue a written opinion.

4 Any questions, Mr. Bagheri, as to how this  
5 hearing is going to proceed?

6 MR. BAGHERI: No, I don't.

7 JUDGE GEARY: Mr. Suazo, any questions?

8 MR. SUAZO: No questions.

9 JUDGE GEARY: All right. Let me ask you,  
10 Mr. Bagheri, do you want to give a brief opportunity, or  
11 would you like to get right to the testimony?

12 MR. BAGHERI: I would like to take the  
13 opportunity to give a very brief opening.

14 JUDGE GEARY: All right. You may do so right  
15 now.

16

17 OPENING STATEMENT

18 MR. BAGHERI: Okay. I hope everyone is doing  
19 well. I want to take the opportunity to give an opening  
20 statement because I want to emphasize the importance of  
21 today's hearing for Appellant. Our opening brief and  
22 reply brief do not contain all of the arguments we hope to  
23 present today. So I hope that this panel will remember to  
24 refer back to the transcript of this hearing when deciding  
25 this case.

1           The Respondent has relied on two indirect methods  
2 of proof to estimate Appellant's gross receipts from  
3 April 1st, 2007, through September 30, 2010, which is a  
4 three-and-a-half-year period. Respondent has assessed the  
5 fraud penalty. This audit was then taken and used to  
6 assess tax against Appellant for periods  
7 October 1st, 2010, through December 31st, 2013, and then a  
8 third assessment from January 1st, 2014, through  
9 March 31st, 2017, using same error ratios. On top of  
10 that, Respondent assessed a fraud penalty on each and  
11 every one of those assessments.

12           As of the Statement of Account dated November  
13 10th, 2021, Appellant owed \$911,755 because of this audit.  
14 However, today we're going to demonstrate that this audit  
15 is fraught with errors and assumptions. The effect of  
16 those errors are magnified and become even more  
17 devastating because the errors are used to project two  
18 more assessments. Respondent used the markup method and a  
19 bank deposit method for coming up with gross taxable  
20 sales.

21           Today I want to call the witness to help the  
22 panel understand the inner workings of his business, which  
23 was essentially a bar with music, and most of -- all the  
24 gross receipts are sales of drinks at a bar. And I'd like  
25 to call him to the stand now.

1 JUDGE GEARY: All right. Mr. Bagheri, thank you.  
2 So you have concluded your opening statement. Your  
3 witness will be allowed to testify from right there. We  
4 don't call the witnesses to the stand while we're meeting  
5 in this hearing room.

6 If I could ask your witness to please stand and  
7 raise your right hand, I need to administer an oath or  
8 affirmation. You might have to bend down a little bit to  
9 be heard when you respond to my administration of an oath  
10 or affirmation. Are you ready? Raise your right hand,  
11 please.

12  
13 EDWIN MINASSIAN,  
14 produced as a witness, and having been first duly sworn by  
15 the Administrative Law Judge, was examined and testified  
16 as follows:

17  
18 JUDGE GEARY: Thank you. You may sit.

19 And, Mr. Bagheri, you may begin.

20  
21 DIRECT EXAMINATION

22 BY MR. BAGHERI:

23 Q Okay. Edwin, can I please direct your attention  
24 to Respondent's Exhibit F, page 42 of 134, which is 263 on  
25 the PDF?

1           A    Okay.

2           Q    Here we see a cocktail shelf test.  It's sort of  
3           the heart and soul of the markup method because it looks  
4           at the cost of your inventory, the cost of your goods  
5           sold, and marks it up to the price that you sold drinks  
6           for.  So looking at this cocktail shelf test --

7                    And if I can have also the panel refer to it.

8                    In Column U we have a regular to happy hour sales  
9           ratio.  The regular sales occur at 80 percent of the time,  
10          and the happy hour sales occur at 20 percent of the time.  
11          Respondent -- and that column refers to worksheet 12-D-2.  
12          So if we can real quickly turn to that worksheet, which is  
13          on page 274 of the pdf.  That's page 53 out of 134.  Let  
14          me know when you're there, Edwin.

15          A    I'm here.

16                   JUDGE GEARY:  Excuse me.  Mr. Bagheri, is that  
17          page 274 on the binder?

18                   MR. BAGHERI:  No.  On the binder -- I'm sorry.  
19          That would be Exhibit F, page 53 out of 134, and for the  
20          pdf.

21                   JUDGE GEARY:  That's page 274?

22                   MR. BAGHERI:  Yeah.  Should I be referring by the  
23          pdf page number or the exhibit and page number?

24                   JUDGE GEARY:  To tell you the truth, the way this  
25          is put together, it will be easier for the three judges up

1 here if you could give us the binder's page number, which  
2 you're referring to as the pdf; correct?

3 MR. BAGHERI: Okay. Got it.

4 JUDGE GEARY: Because when you mentioned 274, I  
5 went to it, and it's percentage of sale by operation  
6 period. That's the one you wanted?

7 MR. BAGHERI: Yes, that's correct.

8 JUDGE GEARY: So if you refer to that page, we'll  
9 be able to get to it quickly.

10 MR. BAGHERI: Okay.

11 JUDGE GEARY: And the Respondent should also be  
12 able to. They have the same book.

13 MR. BAGHERI: Yes.

14 BY MR. BAGHERI:

15 Q Okay. So as you could see on Column F, you know,  
16 those percentages we just saw on the cocktail shelf test  
17 are the same percentages here, 20.53 percent and  
18 79.47 percent. And you can see how the auditor derived  
19 those figures. She looked at the sales of liquor at happy  
20 hour and the sales of liquor during regular times and came  
21 up with those ratios.

22 Edwin, the definition of happy hour drinks which,  
23 you know, the audit alludes to many times is that it's a 2  
24 for 1 special; is that right?

25 A That's correct.

1 Q Okay. So if we're looking at the price that  
2 customers paid for inventory, by definition two time the  
3 inventory would be moving during happy hour; correct?

4 A That's correct.

5 Q So in other words, if I could give a simple  
6 example, if I were to sell 10 beers total, let's say I  
7 sold 5 beers at \$2 a beer, I would get \$10 from the sales.  
8 And I sold 5 beers at \$1 a beer, I would get \$5 from the  
9 sales?

10 A Correct.

11 Q However, half of my inventory was sold during  
12 happy hour, and half of my inventory sold during regular  
13 time; is that correct?

14 A That's correct.

15 Q So if the auditor used these percentages to  
16 assume based on the revenue that came in during those  
17 times, assuming that 20 percent of the inventory moved at  
18 happy hour, would that be an error?

19 A Of course.

20 Q Okay. So one would have to assume that -- would  
21 have to multiple happy hour sale by two, as in our beer  
22 example, to come up with a correct amount of inventory  
23 that was sold during happy hour and regular?

24 A Compared to regular, that's correct.

25 Q Okay. So now if we can go back to the Exhibit F,



1 page 42. I'm sorry. That's 263 of the pdf. We see that  
2 the regular and happy hour sales ratios are used to come  
3 up with weighted markups. And depending on, for example,  
4 the regular weighted markup in Column V, we have a  
5 937 percent markup. And on Column V for the happy hour,  
6 we have a 117 percent markup.

7 So presumably if -- and then we come up with a  
8 total weighted markup at the very bottom of Column V. So  
9 if more of the inventory was being moved during happy  
10 hour, that would affect the total weighted markup down  
11 there; correct?

12 A That's correct.

13 Q Okay. That's one thing I want to point out. And  
14 I believe this error also occurs -- I'm sure it also  
15 occurs for the regular liquor sales, the beer sales, and  
16 the wine sales for each and every shelf test. You had a  
17 chance to look through these exhibits before. Did you  
18 notice those errors as well?

19 A Yes.

20 Q Okay. Now, bear with me. I now want to talk  
21 about gin for a while. So looking at this same shelf  
22 test, if we could go to the very next page, which we have  
23 the average selling price of cocktails per book. If you  
24 look at Column F you can see that all of these sales are  
25 average based on their selling price, and the auditor came

1 up with \$10.46 as the average selling price.

2 A Correct.

3 Q Okay. We can flip back to the shelf test.

4 That's right there on Column P, \$10.46 for the selling  
5 price. Now going back again to the very next page, the  
6 average selling price of cocktails per book, and this is  
7 where I need to talk about gin, if you could bear with me.  
8 Looking at the list which one of these cocktails, which  
9 one of these cocktails has gin in them?

10 And before I say that, I want to sort of preface  
11 with your experience with operating bars and understanding  
12 the bar business. Can you sort of give me a brief history  
13 of that, please?

14 A About my experience?

15 Q Yes.

16 A Being either a silent partner or a silent  
17 operator or operator of a bar restaurant business for the  
18 past 20 years, I'm not a bartender, but I know about the  
19 concept and the business itself, and mostly most of the  
20 time have operators or managers running the actual  
21 business on the floor. Regarding the drink mix here as  
22 far as the --

23 Q Yes. Going back to the question of which ones --

24 A Yes.

25 Q -- have gin in them?

1           A    None of them have gin as far as the main  
2           ingredient of the drink.  Long Island iced tea has maybe  
3           half an ounce of gin and Long Beach iced tea.  That would  
4           be the only two.

5           Q    Okay.  So Long Island and Long Beach iced tea.  
6           However, we also have -- if you look at the top rows, we  
7           have super and specialty drinks.  What were those?

8           A    Those would be part of our menu that we had.  At  
9           the time we had a drink menu that we did custom or our own  
10          recipes of the drinks, either with the fresh juice or  
11          premium alcohol or something of that sort.  That's what we  
12          call, you know, specialty.

13          Q    So it's your own recipes.  Is that --

14          A    Our own recipes with high end or higher than well  
15          regular alcohol.

16          Q    Okay.  Now if we can quickly flip to what you  
17          just referred to your menu, which would be -- I'm sorry.  
18          I don't have the pdf number for this, so Exhibit 4.  You  
19          know what, I have the pdf number.  It's the very last page  
20          of Exhibit F of Respondent's Exhibit F.  If we could all  
21          go to the -- it's a screen shot of a menu for Liv Lounge,  
22          and it's the very last page of Respondent's Exhibit F.

23                JUDGE GEARY:  That's page 355, I believe, in the  
24          binder.

25                MR. BAGHERI:  Okay.  Sounds good.  I'm sorry.  I

1 might not have the pdf number for every exhibit.

2 BY MR. BAGHERI:

3 Q So here, is this what you were talking about,  
4 which are specialty and super drinks, your own recipes and  
5 your specialty drinks?

6 A Yes. Premium vodka and premium rum, yes.  
7 Uh-huh.

8 Q So I see here. It says, "Live mojito, a  
9 delicious blend of premium rum. Liv Fake-jito, a tasty  
10 mojito made with premium vodka skit. Skittles, tastes  
11 just like it sounds. Made with grape vodka." Do any of  
12 these drinks use gin in them?

13 A No.

14 Q Okay. So if we can please flip back to the  
15 average selling price of cocktails per book. We have  
16 pretty much about --

17 JUDGE GEARY: What's the page number again for  
18 that?

19 MR. BAGHERI: 274 of the pdf.

20 JUDGE GEARY: Thank you.

21 MR. BAGHERI: 264 of the pdf. 264.

22 BY MR. BAGHERI:

23 Q So we're back here where you identified only two  
24 of these drinks have rum in them. And you said --

25 A Gin.

1 Q -- they're part wine, right?

2 A Gin.

3 Q So the Long Island iced tea and the Long Beach  
4 iced tea are part gin. They have other liquors in them as  
5 well?

6 A Yes.

7 Q What other liquors?

8 A They have vodka, tequila, rum, and gin.

9 Q Vodka, tequila --

10 A Rum and gin.

11 Q -- rum and gin. Okay. So now going back to the  
12 shelf test -- and this is finally coming to a head here.  
13 If we look at the description on Column D of all the  
14 different liquors here that are marked up, if I could  
15 refer you to row one.

16 JUDGE GEARY: Page number, please.

17 MR. BAGHERI: This is the cocktail shelf test,  
18 pdf 263.

19 JUDGE GEARY: Thank you.

20 BY MR. BAGHERI:

21 Q Okay. So looking at the descriptions in  
22 Column D, just want to go through and see all the gin  
23 that's supposedly being sold at your bar here, and go  
24 through it all. If we could look at Row 2, we have rum --  
25 I'm sorry -- Row 3, gin, Potter's, and that's a liter.

1 And there's four units purchased on Column H. And then we  
2 have Row 6, 4 purchased. And, finally, we have Row 15  
3 with 3 purchased there. And if you see the total quantity  
4 purchased, there's 51 here.

5 So if you add the 4, the 4, and the 3, you have  
6 11 out of 51 bottles of gin being sold. That's  
7 21.5 percent of the total inventory being sold. Does that  
8 sound right to you. Is that how much gin is going into  
9 your cocktails?

10 A No.

11 Q Okay. The same exercise with rum here. If we  
12 look at all the rum being sold here, Row 2 has 4 quantity.  
13 Row 8 has 6, and Row 17 has 6. So you have 16 out of  
14 51 bottles of rum being sold. Does that sound right to  
15 you as well?

16 A No. Rum and gin, I would say they are the least  
17 selling products.

18 Q Even in cocktails?

19 A Even in cocktails when it's mixed up, yeah.

20 Q And when you're looking at the ingredients of  
21 your drinks on the very next page, gin and rum seldom  
22 occur in the recipes?

23 A That's correct.

24 Q I mean, anyone can look up the recipes in the  
25 next page. These are common drinks; is that correct?

1           A    Correct.

2           Q    These are not specialty drinks?

3           A    No. No.

4           Q    And so the auditor has a combined -- I just  
5 mentioned -- 21.5 percent gin and 31.4 rum being sold in  
6 your cocktails. And by the way, every last one of those  
7 is well drinks. We're talking about well gin and well  
8 rum. Can you explain what well is?

9           A    Well is the least expensive, and it's used in the  
10 well, which is right in front of the bartender. So it  
11 would be the least expensive bottle of either rum and  
12 vodka or whatever.

13          Q    Okay. And we can see the effect of that very low  
14 cost. For example, if we look at Row 3 with the gin  
15 Potter liter being bought for \$5.93 per liter, according  
16 to Garvey Wholesale Beverage's invoices, it results in a  
17 1,867 percent markup because it's so cheap. I asked you  
18 before if gin and rum are -- are they common ingredients  
19 in drinks --

20          A    No.

21          Q    -- from your understanding? And when patrons  
22 come in, they're sort of -- even based on the very next  
23 page, there's a detailed list of the items sold. There  
24 was 103 items sold, and this is coming from your POS data;  
25 is that correct? The average selling price of cocktails

1 per book?

2 A Yes.

3 Q And this is POS data from 2011?

4 A Where's the day. Okay. Uh-huh.

5 Q Okay. So if you have Long Island iced tea and  
6 Long Beach iced tea being the only two drinks that use  
7 gin, that would make up 11 out of 103 items sold. And  
8 those, like you stated, are one-third part gin. So that  
9 would mean that all of these items sold contain only 3.55  
10 percent gin in them; is that correct? We're talking about  
11 11 out of 103 bottles or drinks sold and them being  
12 one-third part gin?

13 A Correct.

14 Q Okay. We have 3.55 percent gin being sold, but  
15 the markup shelf test has 21.5 percent gin being sold.  
16 And that's because there are four invoices being used  
17 here. 11-- 110, 126, 292011 and 2232011. Those are just  
18 trips to your vendors; right? Those are specific  
19 invoices?

20 A That's correct.

21 Q Okay. And why were these invoices given to the  
22 CDTFA?

23 A I think -- well, I don't know, but they're not in  
24 the same audit period. That's for sure. And this could  
25 have been for the following audit for the next period. Or



1 these are the invoices that they received from Garvey  
2 themselves.

3 Q When you're looking at the descriptions in  
4 Column D, does this look representative of what sells at  
5 your bar? We're looking here sort of, for example, what's  
6 the most popular vodka that's sold?

7 A Absolute, Grey Goose, Smirnoff, and none of them  
8 are here. Or, I mean, there's no whiskey in here.  
9 There's no Jack Daniels. There's no Jameson. This is  
10 almost like if you -- if you see pasta on the receipt and  
11 you think for the next three years somebody is going to  
12 eat pasta. This is --

13 Q So explain to me why this -- these particular  
14 invoices have these items in them? What happened?

15 A This is --

16 Q Why weren't you buying your other premium liquors  
17 at the time that you went to Garvey's?

18 A This is right after -- let's see what is it --  
19 January. So it's probably right after New Year's.  
20 Wholesalers suppliers provide deals sometimes, so we buy  
21 and stock up. January, February is the slowest time of  
22 the year. So it all depends on what we ran out of, and we  
23 try to, you know, replenish our inventory. So a couple of  
24 invoices is not going to show what we did for the next  
25 three years.

1           And, specifically, when anyone goes out of town  
2 to a hotel, to a resort bar, they know the most selling  
3 40 percent of the bar is supplied or equipped with vodka  
4 or whiskey of some sort, and this doesn't reflect any of  
5 that. These two, three invoices don't reflect that.

6           Q    Okay. Let me bring up another point here. We  
7 also have markups of peach schnapps online. That's  
8 line 9 -- Row 9. I'm sorry. We have Dek Apple Pucker.  
9 On Row 12 we have melon liqueur, Potters liter on 13, and  
10 then the last three rows consist of melon liqueur, Dek  
11 Apple Pucker, and peach schnapps Potters. Do those  
12 ingredients or liqueurs -- those are all liqueurs; right?

13           A    They're liqueurs. They're used for flavor or for  
14 making a drink. They're not a drink by themselves.  
15 They're not like a vodka or whiskey or any kind of --  
16 they're just a --

17           Q    Can you give a customer a drink that's based, for  
18 example, on Dek Apple Pucker and just that without it  
19 having any liquor in it? And let's say you put some mixer  
20 in it like cranberry juice or something else, can you do  
21 that?

22           A    No. You probably -- the drink that come to mind  
23 would be an apple martini that would have maybe a quarter  
24 of an ounce or maybe even less of that mixed with vodka to  
25 give flavor to an apple martini. You cannot drink an

1 Apple Pucker by itself. It's just --

2 Q Okay. Here the auditor has taken a pour size of  
3 2.43 of Deks Apple Pucker and marked it up to a drink that  
4 cost \$10.46. Does that sound right to you? Is that  
5 possible at a bar?

6 A It's not impossible. That's like saying if you  
7 do a Jack and Coke you charge for the coke or you charge  
8 for the ice. We mix this with a drink. We don't charge  
9 for it separately.

10 Q You don't charge for the liquor separately?

11 A No. We don't charge for the Apple Pucker or the  
12 melon liqueur separately. It's part of a recipe of a  
13 drink.

14 Q Okay. But it does go into the cost of the drink,  
15 and it would be mixed with liquor?

16 A That's correct.

17 Q Okay. And so looking at the drink types on  
18 Column I, we look here and we look at the quantity  
19 purchased, and we only have two bottles of premium liquor  
20 being used in cocktails. Only two. The rest is almost  
21 exclusively well, and we have two bottles of call liquor  
22 being used. So the totality of everything that goes into  
23 your cocktails, this ratio would be a 47 to 51 percent --  
24 47 to 51 bottle ratio of well liquor used at your bar,  
25 which amounts to a 92 percent ratio of well liquor being

1 sold at your bar in the cocktails. Does that sound right  
2 to you? Does it sound like your bar sells 92 percent well  
3 drinks in all of your cocktails?

4 A No. I don't think it's accurate for any bar.

5 Q When patrons come and they ask for cocktails, do  
6 they -- I mean, are there savvy ones that know what's  
7 going in their drink?

8 A Most, yes.

9 Q Do they sometimes ask for premium liquors and  
10 maybe call liquors instead of well?

11 A Of course, yes.

12 Q And you provide it, of course. So going back to  
13 the liqueurs also that are marked up. If we count the  
14 quantity of liqueurs here that are marked up, we have 10  
15 out of 51 bottles of just liqueur bottles being marked up  
16 to a \$10.46 drink. That would consist of 19.6 percent of  
17 the total inventory here. So now between the gin well,  
18 the rum well, and the liquors, 72.5 percent of your drinks  
19 have either only gin well in them, only gin, rum -- I'm  
20 sorry -- gin well in them, only rum well in them, or only  
21 a liqueur in them that are being marked up. Does that  
22 sound right to you?

23 A No, not at all.

24 Q Okay. Now, if we could actually go to the  
25 invoices themselves. Give me one moment to find that.

1 Okay. First if we could go to the audited cost of goods  
2 sold on pdf 158, which is Exhibit E, page 28 out of 108.

3 JUDGE GEARY: Did you say 158, Mr. Bagheri?  
4 Because I'm not -- I'm on 158. It's not what you  
5 described.

6 MR. BAGHERI: I'm sorry. It's Exhibit E, page 28  
7 out of 108. I apologize if my numbers are off. I'm sorry  
8 that's not what I was hoping to find. If you can give me  
9 a moment. Okay. This would be on page 138 of the pdf.  
10 138 of the pdf, it's called "Audited Sales of Alcoholic  
11 Drinks."

12 BY MR. BAGHERI:

13 Q So there's a test period from May 1st, 2009 --  
14 and let me know once you're there.

15 A Which one is it on the --

16 Q If you could see it here, test period 5/01/09 to  
17 12/31/09 consist of \$99,499 of goods sold. And that would  
18 be over a -- and I'm sure if that's correct on this page.  
19 But at least on this page it says that May, June, July,  
20 August, September, October, November, December an  
21 eight-month period there's \$99,499 of cogs sold for  
22 liquor.

23 JUDGE GEARY: Mr. Bagheri, can I interrupt you  
24 for a second?

25 MR. BAGHERI: Yes.

1 JUDGE GEARY: The document that I'm looking at,  
2 which is the one you directed me to, Audited Sales of  
3 Alcoholic Drinks, it says in this -- the text says, "Test  
4 period 5/01/09 to 12/31/09." However, there's a comment  
5 that is attached. It should be on yours too --

6 MR. BAGHERI: Yes.

7 JUDGE GEARY: -- when you put your cursor over  
8 it.

9 MR. BAGHERI: It should read --

10 JUDGE GEARY: There's an L. Renatti, who is a  
11 former supervising auditor, I believe, at CDTFA writes,  
12 "Should read 5/01/09 to 9/30/10," and refers you to one of  
13 the Schedules R112B-2. You have that?

14 MR. BAGHERI: Yes.

15 JUDGE GEARY: Okay.

16 MR. BAGHERI: I see that. And I thought that was  
17 wrong. It looked wrong to me. I thought the test period  
18 was a 17-month test period. So yeah. Over a 17-month  
19 period, \$99,499 of liquor was bought, which includes  
20 liquor and liqueurs. Over a 17-month period that would  
21 average \$5,852 per month of liquor and liqueur bought and  
22 sold.

23 If we can now refer to the Geary invoices that  
24 this entire shelf test is based on. I'm sorry. That's  
25 your name, Judge. Garvey. Garvey is what I meant to say,

1 the Garvey invoices.

2 The actual invoices are on page 282 of the pdf.  
3 And when we add up the cost of all four of these invoices  
4 that are being used to be projected over a  
5 three-and-a-half-year period, we're coming up with only  
6 \$1,800 and change of inventory as a sample of what's sold  
7 at your bar. Just in these two months of January and  
8 February these invoices don't have many premiere or  
9 premium drinks in them.

10 Would you say that when you go and buy premium  
11 liquor, how does that work, if you can describe that a  
12 little bit to me.

13 A As far as cost-wise or --

14 Q No. Is there a certain time that you may go and  
15 stock up on a lot of premium liquor?

16 A Well, yes. Sometimes vendors or suppliers have  
17 specials. They encourage us to buy an extra case or, you  
18 know, to be part of a package deal that they have that we  
19 can use for getting discounts. Sometimes, I mean, there's  
20 multiple ways of them trying to sell during the year.  
21 Sometimes, for example, right before Cinco de Mayo they  
22 have specials running for tequila, so it depends. After  
23 New Year's most of the time we go through a lot of  
24 inventory so you come back knowing that January and  
25 February are slower months, you probably buy less because

1 you know it's not going to move as much compared to, like,  
2 summertime.

3 But there is constantly from different brands,  
4 different vendors, different wholesalers different kind of  
5 product that are on specials either by the case or by the  
6 bottle. And that's throughout the year.

7 Q So you think maybe there could be a trip to a  
8 wholesaler where you buy a whole lot of premium liquor of  
9 a certain brand on a particular day when they're running a  
10 promotion?

11 A And if they're not running a promotion, just  
12 because we need it or ran out of something, oh, yes. In  
13 both cases, yes.

14 Q Or, again, one more time. Are these invoices  
15 indicative of what moves at your bar throughout the year?  
16 Is it a fair statement to say that 72.5 percent of your  
17 cocktails contain only gin well, rum well, or just the  
18 liqueur that's mixed with no other alcohol?

19 A No, not at all. I mean, you can see the menu.  
20 It already has the premium liquor on there, and the  
21 liqueurs don't sell by themselves. Nobody -- any -- you  
22 can Google. You can look up any other business that's  
23 online, nobody sets a shot of Apple Pucker or triple sec  
24 or peach schnapps by itself. That doesn't move that way.

25 Q Okay. And really quickly, if we can now refer to



1 the liquor shelf test. And I'll almost be done here. The  
2 liquor shelf test would be on page 262 of the pdf. 262.  
3 So here, again, we have Garvey invoices being used as a  
4 markup for the cost being used for the cost portion of the  
5 shelf test. And we have, again, the sales price using  
6 2011 POS data. So the auditor is using four invoices from  
7 2011 to -- for cost, and then the POS data tells you  
8 what's actually sold. When you're looking at the  
9 description in Column D, what kind of drink is missing  
10 here?

11 A There's a bunch missing. Vodka is missing.  
12 Whiskey is missing.

13 Q No. There's some whiskey there. We see Jack  
14 Daniels.

15 A Oh, yeah. You can.

16 Q But you just said vodka is missing; right?

17 A Yeah. There're different kinds of common, more  
18 popular like jack Daniels. Jameson is missing, for  
19 example. But vodka, for example, I mean it has four or  
20 five common vodkas, from Grey Goose, Ketel One, Tito's,  
21 Absolut, Smirnoff, and --

22 Q Do people take shots of vodka as well?

23 A Yes.

24 Q Okay. So there's no vodka here in this  
25 description -- any type of vodka here. Is it fair to say

1 that you didn't sell any vodka over a  
2 three-and-a-half-year period as straight shots?

3 A No. That's impossible.

4 Q Okay. I'm getting a little more detailed here.  
5 And I think this is the most important part of this that I  
6 want to get into is now looking at the POS data and if --  
7 I'm going to refer back to this straight liquor shelf test  
8 and then to the POS data that's in Exhibit 6 and --  
9 Appellant's Exhibit 6. When we're looking at the POS  
10 data -- let me know when you get there.

11 A Okay.

12 Q Okay. This breaks down from a period of March  
13 1st to March 15th percentages of the amount of well  
14 liquor, call liquor, and premium liquor that was sold. If  
15 we look at only menu items 1, 2, 3 ignoring specialty  
16 cocktails and cocktail after that, so we're only looking  
17 at the straight shots that are being sold. We see that  
18 there's a total of well being sold at 6 percent of the  
19 total inventory being sold, call liquor at 9 percent, I'm  
20 rounding up, and premium liquor at 18 percent. So that's  
21 a combined 33 percent of the inventory being sold is shots  
22 of straight alcohol.

23 Now, referring back to the shelf test -- and  
24 remember the numbers 6, 9, and 18. If I could very  
25 quickly just read into the record that 6 out of 33 would

1 equal 18 percent well. 9 out of 33 would constitute  
2 27 percent call, and 18 out of 33 would constitute  
3 55 percent premium liquor sold.

4 Now, when we're going back to the straight liquor  
5 shelf test, which is page 262 of the pdf, again, we see  
6 that drink types that are being sold here, whether it's  
7 well, premium or call. If we look at the quantity and  
8 compare to the drink type, we have on Row 2, 3 quantities  
9 of well. And then if you look down from the next well,  
10 there's 3 quantities well. And going down to the last row  
11 there's 4 quantities well. So here you have 10 out of  
12 34 bottles being sold that are well drinks. 10 out of  
13 34 bottles being sold that are well drinks, that comes out  
14 to a percentage of 29.4 percent out of the liquor being  
15 sold that's well.

16 If we look at premium liquor, we have 6 bottles  
17 out of 34 bottles being sold, which constitute  
18 17.6 percent. And then call, there's 19 out of 34 bottles  
19 being sold at 55.9 percent of this shelf test. Referring  
20 back to the POS data, that does not correspond with the  
21 POS data at all where we had 18 percent of the liquor  
22 being sold as well and 50 -- and 55 percent of the liquor  
23 being sold as premium; correct?

24 A Correct.

25 Q Okay. So, again, looking at these markups on

1 Row T, any time a well drink is being marked up because  
2 it's so cheap results in a higher markup of, you know,  
3 1,375 percent here. And another example at the cocktails  
4 was 1,800 and change for the gin that was sold in  
5 cocktails. So by using well liters in the cost of goods  
6 sold it's causing really high markups. By using liqueurs  
7 in the cost of goods sold, they can't even be sold as  
8 stand-alone drink. It's causing high markups; correct?

9 A That's correct.

10 Q Okay. And let's also now look at the pour of the  
11 cocktails. On the very next page is, again, the cocktail  
12 shelf test, 2.43 percent -- 2.43-ounce pour. Based on the  
13 bar fact sheet, what is the size of your cocktail cup?  
14 How much is filled in a cocktail?

15 A As far as alcohol goes?

16 Q As far as cocktails go, what's the size of the --  
17 maybe we could refer back to the bar sheet?

18 JUDGE GEARY: Mr. Bagheri?

19 MR. BAGHERI: Yes.

20 JUDGE GEARY: Can you give us an estimate of how  
21 much longer for this witness?

22 MR. BAGHERI: About 10 minutes.

23 JUDGE GEARY: Okay.

24 MR. BAGHERI: I'm almost done with markup method,  
25 and then I'm going to move on to bank deposits.

1 BY MR. BAGHERI:

2 Q Okay. So if a pour size has 2.43 ounces of cost  
3 of goods sold that you're selling, how big is the cocktail  
4 itself?

5 A About -- depending on what it is, it could go  
6 anywhere from 8 to 12 ounces.

7 Q Okay. Well, the bar fact sheet says your  
8 cocktails are 14 ounces?

9 A Correct.

10 Q So wouldn't there be another 9. -- or another  
11 11.5 ounces of something in the cocktail?

12 A Correct. Juices, soda, coke.

13 Q And perhaps liqueurs as well?

14 A Liqueurs, correct.

15 Q Okay. So a lot of these cocktails are mixing  
16 liquor and alcohol together. So there will be a pour of  
17 both liquor -- liqueur and liquor?

18 A Correct.

19 Q Okay. Now, the auditor does take out mixtures  
20 such as cranberry, orange juice, and other things that  
21 fill up the rest of that cup out of the equation because  
22 it's not marked up at all. It's taken out of the markup  
23 cost, but the liquor and the liqueur is marked up. So it  
24 wouldn't just be -- each cocktail wouldn't just contain  
25 liquor. It would contain liquor and liqueur; correct?

1           A    That's correct.

2           Q    Okay.  And then I guess that concludes my  
3 testimony about -- my questions about the markup method.  
4 I just want to quickly move on to the bank deposits  
5 analyses, and that's on page 157 of the pdf.

6                    Here we see bank deposit analyses.  And if you go  
7 to the very last page of it, there's a total of  
8 \$1.6 million of total sales related deposits, \$1.6 and  
9 change.  Did you get there?

10           JUDGE GEARY:  Mr. Bagheri, is it the last page of  
11 that exhibit that you're talking about?

12           MR. BAGHERI:  No.  It would be page 47 of 108 of  
13 Exhibit E.

14 BY MR. BAGHERI:

15           Q    Are you there yet?

16           A    What's the page number again?

17           Q    I'm sorry.  It's 47 of 108.

18           A    Okay.

19           Q    Okay.  So this is the Respondent's bank.  I call  
20 it a bank deposit analyses.  It looks at all of the bank  
21 deposits.  It backs out transfers, at least the one we can  
22 confirm for the bank statements that are actually provided  
23 and supported with the bank deposits analyses.  When  
24 looking at this, the electronic credit debit card  
25 deposits, would that also include a tip that's deposited?

1           A    Yes, of course.

2           Q    Okay.  So when you sell a drink and someone uses  
3 their card, they add a tip to it, and the tips are also  
4 deposited as electronic deposits when they come from your  
5 merchant account; correct?

6           A    That's correct.

7           Q    Okay.  And if you can look at account ending in  
8 3277, which is contained in the record, this account --  
9 I'm sorry.  It's account number 4724 on the bank deposit  
10 analyses.  That's a brokerage account; correct?

11          A    That's a brokerage account.  That's, I think, my  
12 personal account.

13          Q    Personal brokerage account.  Did you deposit any  
14 sales into that account?

15          A    No.

16          Q    Did you deposit any sales into account ending  
17 3543?

18          A    No.

19          Q    Did you deposit any accounts -- any sales into  
20 account ending 3527?

21          A    No.

22          Q    So those are more personal accounts that are not  
23 used for business, whatsoever.  And account ending 3277,  
24 did you deposit any sales into those accounts?

25          A    No.  They don't belong to that business.

1 Q Okay. You did earn other income as well;  
2 correct?

3 A Correct.

4 Q Can you explain what other income you had?

5 A Income properties or rental income, you call it.  
6 I had another cell phone -- retail cell phone business in  
7 those years.

8 Q Okay. And if we could really quickly just look  
9 at the bank statements themselves, which are Appellant's  
10 Exhibit 9, pages 1 through 50. Let's, for example, go to  
11 the August account. And I want you to look through and  
12 look at these constant overdraft fees being incurred  
13 throughout this entire 50-page exhibit. You know, almost  
14 on every page there might be an overdraft fee or multiple  
15 overdraft fees. You were incurring a lot of overdraft  
16 fees in your banks; correct?

17 A Seems like it, yes.

18 Q I counted, and in August you had \$600 of  
19 overdraft fees just in August. Does that sound right to  
20 you?

21 A I didn't add it up, but I guess. Yeah.

22 Q So the Respondent's markup method assumes that  
23 there are there's other cash earned that is not deposited  
24 into bank accounts. So, again, the Respondent's markup  
25 method assumes that there's cash earned that's never



1 deposited into bank accounts. Because in almost every  
2 quarter, the markup method exceeds the bank deposits. If  
3 you had cash sitting around, do you think you would  
4 deposit it to avoid these overdraft fees?

5 A Obviously. But, I mean, as far as I know and  
6 what I have looked up online, cash to credit card ratio  
7 for restaurant bar is about 80 to 20 or thereabouts, 78 to  
8 22, something like that. I don't know where they can see  
9 that there's more cash coming from. I just don't  
10 understand that part.

11 Q Yeah. So --

12 A There's no way.

13 Q So I think what you're getting at is if we add  
14 all of the electronic deposits into these -- of these  
15 accounts, you have about a million dollars of electronic  
16 deposits?

17 A Right.

18 Q Okay. And so you're saying there's almost only  
19 so much more cash you would have earned at a bar --

20 A Correct.

21 Q -- to deposit?

22 A Correct. Right.

23 Q I mean, my first point was that if there was  
24 additional cash sitting around, you would have deposited  
25 it to avoid --

1           A    Bouncing checks and incurring fees, yes.

2           MR. BAGHERI:   Okay.  I guess for now that might  
3   conclude --

4           JUDGE GEARY:   Why don't we do this, Mr. Bagheri.  
5   I think our stenographer might need a brief break.  Let's  
6   take a 10 minute -- have a 10-minute recess, and you can  
7   regroup.  And when we come back, I'll make sure that you  
8   had an opportunity if you think of another one or two  
9   questions.  Okay?

10          MR. BAGHERI:   That sounds good to me.

11          JUDGE GEARY:   All right.  Let's do that then.  
12   We'll take a 10-minute break.  I got 2:05.  We'll come  
13   back at 2:15.

14                       (There was a pause in the proceedings.)

15          JUDGE GEARY:   Let's go back on the record.

16          Mr. Bagheri, have you had an opportunity to  
17   consider whether you had any other questions?

18          MR. BAGHERI:   Yes, just a few questions.  Not  
19   long.  It shouldn't take more than two minutes.

20          JUDGE GEARY:   Proceed.

21   BY MR. BAGHERI:

22           Q    Okay.  Edwin, when you gave Respondent the bank  
23   statements that are in the bank deposit analyses, you gave  
24   them every last statement in there; correct?

25           A    Yes.  I was asked to order the bank statements

1 directly from the bank and not to open the envelope, just  
2 to drop it off with a sealed envelope directly from the  
3 bank. And that's what I did.

4 Q Who told you to do that?

5 A Larry. I don't know his last name. I think  
6 McConnell or Dorano [sic]. Something like that.

7 Q So if it was a sealed envelope ordered directly  
8 from the bank that you had to drop off, you couldn't, of  
9 course, make copies of it or keep any; correct?

10 A Correct.

11 Q So you gave them a sealed envelope of all of  
12 these bank statements?

13 A It was pretty thick, maybe two or three inches  
14 thick. Yeah.

15 Q Some are from different banks. Was there more  
16 than one sealed envelope?

17 A For the time period that they asked for, it was  
18 all from the same bank.

19 MR. BAGHERI: Okay. That concludes my  
20 questioning.

21 JUDGE GEARY: Thank you, Mr. Bagheri.

22 Does Respondent have any questions for the  
23 witness?

24 MR. SUAZO: No questions.

25 JUDGE GEARY: And let me ask my co-panelists.

1 Judge Cho, do you have any questions for the witness?

2 JUDGE CHO: I don't have any questions at this  
3 time. Thank you.

4 JUDGE GEARY: Judge Tay, do you have any  
5 questions for the witness?

6 JUDGE TAY: No questions.

7 JUDGE GEARY: All right. Thank you.

8 I have no questions for the witness either.

9 This concludes the testimonial part of the  
10 presentation. So the documents have been admitted, the  
11 witness' testimony is in evidence, and we're ready to move  
12 to the argument phase.

13 As I indicated earlier, Mr. Bagheri, you'll have  
14 15 minutes for your opening argument, your first argument.  
15 The Department will follow with its only argument, another  
16 15 minutes, approximately. And you'll have your chance  
17 for rebuttal following, perhaps five minutes or so if you  
18 choose to use it. Mr. Bagheri, you can begin with your  
19 argument when you are ready.

20

21 PRESENTATION

22 MR. BAGHERI: Thank you.

23 So starting with regular versus happy hour ratio  
24 that's used throughout all of these shelf tests, that's  
25 the very first error that the auditor makes. It's a

1 mathematical error. There's no disputing it. And then  
2 what happens is she goes on to use only \$1,800 of  
3 inventory that's bought at a specific time that happens to  
4 be the cheapest well liquor and, specifically, 21 percent  
5 well gin, and 31 percent well rum, and 19.6 percent  
6 liqueurs to mark up just the cheapest alcohol possible,  
7 but she uses a sales price that comes from POS data.

8 The POS data tells what was actually sold, not  
9 the four Garvey wholesale beverage invoices. They do not  
10 correlate, whatsoever. Why not look at the POS data?  
11 During the audit could have gone and done a real shelf  
12 test. She could have gone to the bar and look at the bar  
13 and seen what was being sold. She could have asked for  
14 the invoices herself. And, in fact, it seems like there  
15 might be other invoices that were present at some point or  
16 other because how else would they have gotten the amount  
17 of cost of goods sold during their test period.

18 When you look at those worksheets, they refer  
19 to -- something P/INV. I'm not sure if there were  
20 invoices there, but why not use those? Why not use a  
21 more -- you know, this bar was not in Spain or Jamaica.  
22 You don't have 21.5 percent of well gin being sold at any  
23 bar in L.A. And when you're looking at what the cocktails  
24 call for, they don't contain that much gin. And  
25 everything else about it, about the shelf test, including

1 the fact that 92 percent of all of the inventory markup is  
2 well liquor.

3 The fact that only 2.43 ounces of the 14-ounce  
4 cocktail glass is accounted for. And the fact that  
5 recipes call for liquor and liqueur being mixed together.  
6 If you look at Respondent's exhibit where he -- exhibit --  
7 Respondent's Exhibit 11, Respondent tried to give them  
8 receipts of recipes of what goes into the cocktails, but  
9 they were completely ignored. And it was said that  
10 they're self-serving. Well, isn't taking the cheapest  
11 possible alcohol and marking it up to a \$10.46 sale price  
12 that you get from POS data, isn't that self-serving for  
13 the Respondent?

14 It's just the markup method is just riddled with  
15 errors that we brought up today, and it can't be relied  
16 on. And the biggest test on that is the other indirect  
17 method of proof. The bank deposits analyses tells us that  
18 there are no more -- there's no other cash to be deposited  
19 because he's constantly incurring overdraft fees. So if  
20 the markup method was right, it would assume that there  
21 was other cash floating around that could have been  
22 deposited, but there isn't. When the taxpayer is behaving  
23 in a certain way, they're not thinking, hey, maybe one day  
24 I'll get audited and let me not deposit my cash when --  
25 and incur these overdraft fees instead.

1           Because when there are overdraft fees, you would  
2 have to assume that the Appellant knows about the bank  
3 deposits analyses method of coming up with gross receipts  
4 and assume that he would have been okay incurring all of  
5 these overdraft fees because he didn't want to deposit  
6 cash, because maybe one day he would get audited. So it  
7 just doesn't make sense. There's just too many errors.  
8 The markup method needs to be thrown out, and perhaps the  
9 ceiling is the bank deposits analyses. But the bank  
10 deposits analyses has to back out the tax that's  
11 collected. It has to back out the tips that are  
12 collected.

13           There are four accounts that if you look at the  
14 accounts contained in the record have nothing to do with  
15 business. It's a brokerage account. And if there are  
16 deposits there, they may be coming from one of his other  
17 businesses. Just it's obvious that there are no business  
18 deposits in those four accounts that are also included in  
19 the bank deposit analyses. And then last but not least,  
20 where are the statements?

21           The Respondent wants to base something that could  
22 shackle the taxpayer with debt for the rest of his life,  
23 and I hope that this panel will be a gatekeeper to that.  
24 Because the only other remedy is to fully pay this tax and  
25 try to go to a court, which is very difficult for a

1 taxpayer to do. So in looking at this, these errors are  
2 amplified. And they may be even worse because they're  
3 used in subsequent audits, and they are used to assert a  
4 fraud penalty as well.

5           These are indirect methods that are assumptions.  
6 They are riddled with -- and I know indirect methods are  
7 looked at as valid ways to come up with gross receipts,  
8 but only when they are reasonable. And here, they're not  
9 because there are too many errors. There's no way that  
10 75 percent of cocktails sold include rum, gin, rum -- well  
11 gin, well rum, and liqueurs. Vodka is one of the most  
12 popular drinks. Anyone that's been to a bar would know  
13 that vodka is one of the most common drinks in a mixed  
14 drink.

15           And we don't have our expert here today, but I  
16 just hope that this panel will look at this more closely  
17 because the consequences are dire for the taxpayer if the  
18 audit numbers stay. And as far as the bank deposits  
19 analyses goes, again, you know, I don't understand how the  
20 Appellant testified that he gave the bank statements to  
21 CDTFA in a sealed envelope. Taxpayers are expected to  
22 keep books and records all the time. We're always hearing  
23 you don't have adequate books and records.

24           Well, we gave bank statements to the CDTFA, but  
25 they don't have adequate books and records. They don't



1 have those bank statements in the record. Where are they?  
2 When the bank statements are not in the record, me as a  
3 representative, I can't look for -- to make sure that all  
4 transfers between accounts were backed out. I can't look  
5 for checks that are deposited. Because if checks were  
6 deposited, nobody is paying for drinks with a check at a  
7 bar. I can't look for cash withdrawals or checks to cash  
8 that are redeposited. A bar might have a till that they  
9 have to get change and redeposit cash.

10 I can't look for obvious nontaxable deposits like  
11 refunds, loans, capital contributions. The statements are  
12 not in there. How could you have a bank deposits analyses  
13 and no statements? We would have to assume that the  
14 auditor was flawless, but we've already seen that she's  
15 flawed when it comes to the markup method.

16 And at this point, I think that's our argument  
17 here today is that we hope the panel can review more of  
18 this transcript because we missed a lot of these arguments  
19 in our opening brief and reply brief because due to time  
20 constraints, we had to get them in. You have to petition  
21 after a certain period of time, and you don't get a more  
22 thorough review of the audit until, you know, sometimes  
23 until the hearing comes along.

24 So I thank this panel for their time and  
25 consideration, and we hope that justice will prevail here.

1           JUDGE GEARY: Thank you, Mr. Bagheri. I wanted  
2 to ask you a couple of questions. We've listened to your  
3 arguments, and I'm wondering if, for example, the argument  
4 that you made at the outset of your presentation  
5 concerning what you refer to as the mathematical error,  
6 failing to consider how inventory was actually moved for  
7 happy hour sales, two-for-one. Did you do any  
8 calculations based on what you conclude would be the  
9 correct way to work with the data that the auditor had?

10           MR. BAGHERI: Yes. It would be fair to take the  
11 purchases during happy hour that she used, but you have to  
12 multiple that by two before you do the same ratio that she  
13 does. I haven't done that myself in preparation for this  
14 hearing, but it seems to be a pretty easy thing to try to  
15 remedy. But I don't think that's just the only problem.  
16 There's -- I think the biggest --

17           JUDGE GEARY: I'm not saying -- let me just --  
18 I'm not saying that's the only problem. That's just the  
19 only -- that's just one of the few things I have a  
20 question about.

21           MR. BAGHERI: Yes.

22           JUDGE GEARY: The second thing I want to ask you  
23 about is this reference to missing statements. Are you  
24 saying that you delivered -- or your client delivered bank  
25 statements to Respondent, and Respondent failed to return

1       those bank statements to your client? I'm asking you,  
2       Mr. Bagheri, because you just made the statement. Is that  
3       what you're claiming?

4               MR. BAGHERI: That's what we're claiming is that  
5       they were delivered in a sealed envelope. When I, myself,  
6       as a representative asked for them back, they weren't in  
7       the record. They weren't emailed to me. They weren't  
8       produced throughout the entire time that I've  
9       representing, and I've asked for them.

10              JUDGE GEARY: And you've had discussions with  
11       Respondent concerning those statements?

12              MR. BAGHERI: That's correct.

13              JUDGE GEARY: And what did Respondent report to  
14       you about those statements?

15              MR. BAGHERI: I was sent an email by Randy Suazo  
16       saying that these are the only statements in the record.

17              JUDGE GEARY: Okay.

18              MR. BAGHERI: I wasn't told anything like they're  
19       lost or anything. Maybe I was told that they were  
20       transcribed.

21              JUDGE GEARY: Didn't we have a conversation,  
22       about what you thought were documents that you needed but  
23       didn't have, at our prehearing conference?

24              MR. BAGHERI: That's correct. Later on I find  
25       out from Appellant that they were delivered in a sealed

1 envelope, and that he couldn't have made copies of them.

2 JUDGE GEARY: All right. Thank you. Those are  
3 all the questions I have for you. You will have a chance  
4 to respond to the Respondent's argument, so just hang in  
5 there for a bit.

6 Mr. Suazo, are you ready for the Respondent's  
7 sole argument?

8 MR. SUAZO: Yes, sir.

9 JUDGE GEARY: You may proceed.

10

11

PRESENTATION

12

13

14

15

16

17

18

19

20

21

MR. SUAZO: The Department performed an audit for  
the period from April 1st, 2007, through September 30th,  
2010. The nature of the Appellant's business changed  
within the audit period. Prior to 2009, the Appellant  
operated mainly as a restaurant. After a remodel in first  
quarter of 2009, the Appellant's business became a pub and  
lounge. The pub and lounge was open from 9:00 p.m. to  
2:00 a.m. Wednesday through Saturday. The business  
offered live music and DJs three nights a week. No cover  
or door charge was in effect.

22

23

24

25

Total sales of \$438,000 was reported for the  
audit period. No exemptions were claimed, therefore, all  
sales reported were taxable. Sales totaled \$309,000 for  
the seven quarters prior to the remodel. That's from

1 second quarter of '07 to the fourth quarter of '08. These  
2 seven quarters averaged \$44,000 a quarter.

3 No sales were record for first quarter of 2009,  
4 as the remodeled occurred. Total sales of \$109,000 were  
5 reported for the six quarters after the remodel and  
6 averaged just \$22,000 per quarter. That's from second  
7 quarter of '09 through third quarter 2010. The average  
8 reported quarterly sales of \$22,000 compute only \$423 a  
9 day, based on the bar being open only four days a week;  
10 Exhibit F, page 18.

11 Appellant did not provide accounting records,  
12 such as federal income tax returns, income statements,  
13 general ledgers, sales journals, point of sale daily sales  
14 reports, sales guest checks, purchase journals, or  
15 purchase invoices. The Appellant claimed that they could  
16 not obtain financial and source documents from the prior  
17 accountant. Appellant also claims the computer system  
18 they maintained in house crashed and all accounting  
19 information stored on the system was un-retrievable.

20 The only records provided for the time frame  
21 within the audit period were monthly bank statements and  
22 monthly sales worksheets from period May 2009 to  
23 December 2009; Exhibit F, pages 126 through 133. The  
24 Appellant provided records for periods outside of the  
25 audit period, which included purchase invoices for January

1 and February of 2011. Based on the limited records  
2 available, the Department computed audited taxable measure  
3 using an indirect methodology based on both the markup of  
4 cost of goods sold and excess bank deposits.

5 The markup method was used -- uses an audited  
6 markup of cost and purchase amounts to estimate taxable  
7 measure. Due to the lack of summary purchase records or  
8 substantive cost of goods sold information, the Department  
9 surveyed the Appellant's vendors. Four vendors responded  
10 and provided sales to the Appellant for a portion of the  
11 audit period, May 1st, 2009 through September 30th, 2010;  
12 Exhibit E pages 38 to 43. The Department totaled the  
13 amounts from the four responding vendors and established  
14 audited purchases of \$165,000 for the period from May 1st,  
15 2009, through October 31st, 2010; Exhibit E page 38.

16 It is important to note that the Appellant may  
17 have purchased from more than four vendors and that the  
18 audited purchase amount is likely understated. As an  
19 example, Garvey Wholesale Beverage, which is clearly shown  
20 to be a vendor of the Appellant, Exhibit F, pages 61 to  
21 64, was not included in the audited purchase amounts. In  
22 addition, only two beer vendors responded, yet, there are  
23 more than two beer distributors in the Pasadena area.

24 There is also missing purchases from Gallo, which  
25 would be the wine distributor as well as some other

1 alcohol. The Department reduced the audited purchases by  
2 making allowances for pilferage at 2 percent, breakage  
3 1 percent, self-consumption at 6 percent, and the 10  
4 percent reduction for water and mixers, which could be  
5 included in the purchase amounts; Exhibit E, page 334.

6 The net purchase amount of \$140,000 was  
7 considered by the Department as the audited cost of goods  
8 sold for beer, wine, and liquor for the 17-month period.  
9 Audited alcohol beverage cost of goods sold for the second  
10 quarter of 2009 through third quarter 2010 is greater than  
11 the total amount of the reported sales by \$10,000. This  
12 means that the Appellant's reported markup of cost was a  
13 negative 7.51 percent, not including food purchases, which  
14 is unreasonable.

15 The purchase segregation was performed using the  
16 January and February 2011 purchases provided by the  
17 Appellant. The purchases were segregated into the  
18 following categories: Bottled beer, draft beer, liquor,  
19 wine, and mixes. The weighted percentages for each  
20 category were computed; Exhibit F, page 55. Shelf tests  
21 were conducted on the aforementioned categories using the  
22 January and February 2011 purchase invoices. Sales prices  
23 per Appellant's menu and/or sales records were used in the  
24 calculations. All shelf test amounts included adjustments  
25 and waiting for happy hour two-for-one pricing.

1           The Department determined the percentage of sales  
2           at happy hour versus regular hours by using the  
3           Appellant's recorded sales amounts for the period of  
4           May 1st, 2011 through June 15th, 2011; Exhibit F, pages 53  
5           and 54. Liquor items were adjusted for happy hour and  
6           regular pricing, cocktail and non-cocktail pour sizes, and  
7           a 12 percent spillage allowance. The derived markups for  
8           straight-liquor drinks and cocktail drinks were weighted  
9           for Appellant's sales segregation percentages to arrive at  
10          an audited markup of 676 percent; Exhibit F, pages 40 to  
11          42, and Exhibit E, pages 34 and 35.

12           Beer markups were adjusted for regular and happy  
13          hour pricing. A 1 percent breakage allowance for bottled  
14          beers and spillage of 10 percent on the draft beers.  
15          Derived markups for bottled and draft beer were weighted  
16          per Appellant's sales segregation percentages to arrive at  
17          an audited markup of 262.25 percent; Exhibit E, page 46 --  
18          excuse me -- Exhibit F, page 46, and Exhibit E, pages 36  
19          and 37. Wine markups were adjusted for happy hour and  
20          regular pricing along with a 6 percent allowance for  
21          spillage and computed at 124.75 percent markup; Exhibit F,  
22          page 39.

23           The Department then applied the weighted markup  
24          factors for liquor beer and wine to establish audited cost  
25          of goods sold for each category -- to establish sales for



1 each category. The sales were combined to arrive at  
2 alcohol beverage sales for the audit for the period from  
3 May 1st, 2009, through September 30th, 2010, of \$912,000.  
4 The Department was unable to test -- to form -- excuse me.  
5 The Department was unable to perform tests to compute  
6 audited food and non-alcoholic beverage sales as the  
7 Department was unable to verify or estimate purchases of  
8 these items.

9 The Department's sale segregation for the first  
10 15 days of March 2011 revealed that food and nonalcoholic  
11 beverage sales accounted for over 19 percent of revenue,  
12 which the Department considered material. Therefore, the  
13 Department divided the audited alcohol sales by the  
14 computed segregation percentage for alcohol beverage of  
15 80.66 percent to compute audited total taxable sales of  
16 alcohol, food, and nonalcoholic beverages. The result  
17 established sales of \$1,131,000 when compared to reported  
18 sales of just \$129,000, a difference of \$1 million was  
19 noted; Exhibit E, page 24.

20 The Department also performed a bank deposit  
21 analysis for all bank deposits that were transcribed from  
22 the audit period. Total provided bank deposits were more  
23 than \$1.6 million. When compared to Appellant's reported  
24 sale to the Department, including sale tax for the audit  
25 period of \$477,000, the difference of \$1,170,000 was

1       noted; Exhibit E, pages 44 to 48.

2               The Department made the presumption that all bank  
3       deposit amounts included sales tax. An adjustment was  
4       made to the bank deposits using prevailing tax rate for  
5       each quarter. The net deposits were compared to reported  
6       taxable measure to arrive at audited unreported taxable  
7       measure for the audit period over \$1 million; Exhibit E,  
8       page 26. This unreported amount did not include cash  
9       payouts, which is common in the bar and restaurant  
10      inventory.

11              The Department's markup of cost analyses and the  
12      bank deposit analyses both indicated a material  
13      understatement of taxable measure. For the period from  
14      second quarter 2009 through third quarter 2010, the audit  
15      findings are based on actual differences for the bank  
16      deposit analysis, plus the amount of taxable sales  
17      established by the markup method in excess of the bank  
18      deposit amounts; Exhibit D, page 8. The markup difference  
19      would be considered the cash payouts that should have been  
20      added to the bank deposits.

21              A percentage of error was calculated and used to  
22      compute the additional sales for earlier periods in the  
23      audit period, basically when they were a restaurant from  
24      second quarter 2007 through first quarter 2009. These  
25      estimated amounts were added to the actual basis excess

1 bank deposits to compute the understated taxable measure  
2 for the period of second quarter 2007 through first  
3 quarter 2009. The addition sales in this period would be  
4 in essence, cash payouts added to bank deposits.

5 The audit findings are reasonable and results in  
6 an average daily sale of \$1,876. This amount is much more  
7 reasonable than the Appellant's reported amount of only  
8 \$540 per day throughout the entire audit period. For  
9 comparison the Department offers Exhibit I, which shows  
10 the credit card sales for the year 2011. Presuming the  
11 Appellant was open four days per week, the 1099-K amounts  
12 show -- for 2011 show average daily credit card sales of  
13 over \$2,835. And once cash sales are added, the average  
14 amount would be much higher. The audited sales of  
15 \$1,131,000 for the period from second quarter 2009 through  
16 third quarter 2010 averages \$352. So there's not that  
17 much of a difference, plus when you add in cash it would  
18 be even greater.

19 The year 2011 credit card sale amounts occurred  
20 mere months after the close of the audit period and are  
21 indicative of the Appellant's actual sales. The evidence  
22 confirms that the Department's audit findings are more  
23 than reasonable. The Appellant has not presented any  
24 substantive evidence to support changes to any of the  
25 audit calculations. The Department used accepted audit

1 methods which include Appellant's limited records,  
2 third-party verification purchases, and calculations which  
3 provide the Appellant with generous pour sizes, standard  
4 allowances, and adjustments without any documentary  
5 evidence.

6 Therefore, the Department has met its initial  
7 burden to prove that the audited results are reasonable.  
8 To the extent that the Appellant challenges the accuracy  
9 or methodology of the audit results, those challenges  
10 failed as the Appellant has not provided any documentation  
11 to support its claims. The Office of Tax Appeals'  
12 precedential decision in AMG Care Collective correctly  
13 illustrates that the burden a taxpayer faces when  
14 challenging a determined tax liability. Respondent has a  
15 minimal initial burden of showing that its determination  
16 is reasonable and rational.

17 If Respondent carries that burden, the burden of  
18 proof shifts to the taxpayer to show that a result  
19 differing from the Respondent's determination is  
20 warranted. Unsupported assertions are not sufficient to  
21 satisfy a taxpayer's burden of proof. To satisfy the  
22 burden of proof, a taxpayer must prove one, the tax  
23 assessment is incorrect and two, the proper amount of the  
24 tax.

25 Here, while the Department has provided evidence

1 that the audit results are reasonable, Appellant has  
2 failed to provide any specific proof that the audit  
3 results are incorrect and has further failed to provide  
4 evidence as to the proper amount of tax due. As such,  
5 Appellant has failed to meet its burden and the Appellant  
6 recommends no adjustment to the audit findings.

7           Regarding the 25 percent penalty for evasion, the  
8 penalty should apply as supported by Department's  
9 memorandum dated December 1st, 2011, Exhibit F, 4 to 7,  
10 copies of permit information, Exhibit G and Exhibit H, and  
11 Department's Schedule R2-12A, Exhibit D, page 5. The  
12 Appellant charged and collected sales tax reimbursement  
13 from their customers. However, the Appellant consistently  
14 and systematically failed to report a material portion of  
15 its sale throughout the audit period with an understated  
16 error ratio of over 320 percent. This large error ratio  
17 is evidence of fraud.

18           Mr. Edwin Minassian, the owner and president of  
19 the corporation, during the audit period had knowledge of  
20 his responsibility for sales tax and has been operating  
21 this business since September 2001. Additionally,  
22 Mr. Minassian was an owner, officer, or partner of at  
23 least six other businesses as noted on Exhibit F, page 5  
24 and Exhibit H, which include another restaurant and  
25 another bar and lounge.

1           Each time Mr. Minassian opened one of the seven  
2 seller's permits issued, copies of pertinent regulations,  
3 tax pamphlets, and other relevant information was  
4 furnished by the Department to provide information to the  
5 Appellant regarding the application of tax to  
6 transactions, the responsibility and requirement to  
7 actively report and pay taxes, recordkeeping requirements,  
8 and information regarding where to obtain additional  
9 guidance; Exhibit G and H.

10           Given Mr. Minassian's extensive experience, we  
11 find that the Appellant, through Mr. Minassian, knew the  
12 requirements of law and their obligation to properly  
13 report its tax liabilities. But instead, the Appellant  
14 willfully disregarded the law and its obligation for its  
15 own benefit. This is evidence of fraud. The Appellant  
16 failed to exercise due care in keeping records as he  
17 provided basic -- as he failed to provide basic accounting  
18 records to support reported amounts.

19           A simple review of the Appellant's bank  
20 statements shows bank deposits far exceeded the amount of  
21 reported sales with an unexplained difference of over  
22 \$1 million. The Appellant knew what its bank deposits  
23 were. And since the Appellant reported all its sales  
24 taxable for the audit period, the Appellant knew or should  
25 have known that it substantially underreported its taxable

1 sales. This, again, is evidence of fraud.

2 As the Department's evidence shows, the Appellant  
3 consistently and systematically failed to report a  
4 material portion of taxable sales to Department throughout  
5 the audit period which led to substantial understatement  
6 error ratio of 328 -- of over 328 percent. The  
7 understated amounts cannot be explained as a simple  
8 mistake or lack of attention. Instead, evidence shows  
9 that there is clear and convincing evidence that Appellant  
10 is an experienced businessperson; Appellant had knowledge  
11 taxes were due; Appellant willfully attempted to evade the  
12 taxes collected; and the Appellant initially failed or  
13 intentionally failed to provide records and report all tax  
14 amounts due. Accordingly, the 25 percent penalty for  
15 evasion should remain.

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

18 JUDGE GEARY: Thank you, Mr. Suazo.

19 Before I move to -- back to Mr. Bagheri for his  
20 final closing, I wanted to ask you about Respondent's  
21 reply, if any, to the specific argument made by  
22 Mr. Bagheri regarding the use of the happy hour pricing.  
23 Did the auditor make a mathematical error as alleged by  
24 Appellant?

25 MR. SUAZO: I could look at it later on and tell

1       you more. But I would tell you that based on the more  
2       detailed form, which is Exhibit F, pages 50 to 52, if you  
3       happen to be there?

4               JUDGE GEARY: Go ahead and finish your thought.

5               MR. SUAZO: Well, if you look at it, there's no  
6       two-for-one pricing. There's only special pricing of \$3  
7       for domestic beer and \$4 for higher-end beer or premium  
8       beer. There's no two-for-one pricing in there at all. As  
9       a matter of fact, those don't even add up to what is in  
10      the other worksheet that's for a six-week period. This  
11      seems to be more of a POS report. The other one seems to  
12      be more of a worksheet.

13              MR. BACCHUS: And I'll just clarify. Mr. Suazo  
14      referenced Exhibit F.

15              MR. SUAZO: I'm sorry.

16              MR. BACCHUS: I believe he was referencing  
17      Exhibit 6, Appellant's Exhibit 6.

18              JUDGE GEARY: So it's not F he was referring to?

19              MR. BACCHUS: Correct.

20              JUDGE GEARY: Appellant's Exhibit 6?

21              MR. SUAZO: No. It's also Exhibit F.

22              JUDGE GEARY: Yeah, it looks like the same --

23              MR. SUAZO: Yeah, it's the same thing.

24              JUDGE GEARY: Yeah.

25              MR. SUAZO: But if you look at it, there's no



1 two-for-one price in that -- in the more detailed printout  
2 or POS report. Again, there's only the -- it looks like  
3 there's only sales for \$3 on a beer and \$4 on a premium  
4 beer.

5 JUDGE GEARY: Thank you, Mr. Suazo. That's  
6 really the only question I had for you. Let me ask my  
7 co-panelists.

8 Judge Cho, do you have a question for -- or any  
9 questions for Respondent?

10 JUDGE CHO: No. I didn't have any questions  
11 either. That was the only one I was going to ask as well.

12 JUDGE GEARY: Okay. Judge Tay, do you have any  
13 questions for Respondent?

14 JUDGE TAY: None for Respondent. Thank you.

15 JUDGE GEARY: Thank you.

16 Mr. Bagheri, are you ready to give your final  
17 closing argument?

18 MR. BAGHERI: Yes, I am.

19 JUDGE GEARY: You may proceed.

20

21 CLOSING STATEMENT

22 MR. BAGHERI: Okay. So Respondent in their  
23 closing argument just mentioned the 1099Ks from 2011 and  
24 '12 as additional evidence that suggest that the  
25 underreporting corresponds to their analyses for the

1 markup method and the bank deposits analyses. So the bank  
2 deposits analyses itself has all electronic deposits that  
3 would have come from merchants. If anything, that is just  
4 as good as a 1099K because all of the electronic deposits  
5 are there.

6 We would ask the panel to keep the record open.  
7 We have asked for 1099Ks for the subject periods that we  
8 believe will help Appellant. But even if they're not  
9 available, when we're looking at electronic deposits for  
10 the whole bank deposits analyses, there was close to about  
11 a million dollars electronic deposits that would likely  
12 correspond to a 1099K for that period. But if  
13 Respondent's numbers are correct, that would mean that  
14 half the total sales would have come from cash because you  
15 have to back out from the electronic deposits tax  
16 collected and tips collected, and then you would have to  
17 markup for cash.

18 Also in response to their fraud determination,  
19 the fraud determination was first made by memorandum at  
20 the very first audit. And then there was a reaudit that  
21 reduced gross receipts, and then a second reaudit that  
22 reduced gross receipts. And after each reaudit, there was  
23 no fraud investigator that re-looked at the fraud  
24 assessment. Because if the original fraud assessment was  
25 concluded based on an error ratio, that error ratio was

1 reduced after the first and second reaudit. If the panel  
2 also reduces any assessments here, then it would also have  
3 to relook at the fraud assessment because the main  
4 argument that Respondent makes is that the fraud is  
5 warranted because of the amounts of error that's there.

6 And then going back to the markup method, again,  
7 we understand -- the Respondent's argument is that there's  
8 limited information, that there's only four invoices from  
9 Garvey's liquor that had to be used for the markup method.  
10 But when you look at the POS data, it just does not  
11 correspond in any way in percentages of well versus call  
12 versus premium liquor that was sold. It doesn't  
13 correspond to the POS data when it comes to the types of  
14 liquor that was sold. Again, those Garvey invoices just  
15 have the well drinks in them. There's no way that 72  
16 percent of cocktails just have well drinks in them.  
17 There's no way that 72.5 percent of cocktails have well  
18 gin, well rum, and liqueurs in them.

19 The Respondent says that we haven't presented any  
20 evidence, but what we're doing here is pointing out the  
21 flaws that's prevalent in the evidence in the record. The  
22 evidence is here. It's in the record, and the evidence  
23 speaks to us. For example, the bank statements themselves  
24 with the overdraft fees, that's evidence. It's in here.  
25 The POS data, that's evidence. It's in here, even though

1 the POS data is from 2011.

2 Respondent just relied on these Garvey invoices  
3 coming up with, in some cases, markups of 1,800 percent  
4 and more. Respondent at the time of the audit when they  
5 saw that it doesn't correlate and it doesn't correspond,  
6 we believe that the disconnect here is that the auditor  
7 just doesn't understand the bar business. For example,  
8 she's marking up liqueurs as stand-alone drinks when they  
9 can't be marked up. If someone with more experience was  
10 looking at it, they would think the Garvey invoices are  
11 not indicative of the cost of goods and would have either  
12 looked for more evidence.

13 For example, they could have gone to the vendors  
14 and asked for invoices. They went to the vendors and  
15 asked for the amount of sales. Why couldn't they ask for  
16 invoices? Now I know taxpayer is supposed to keep books  
17 and records but, you know, we don't live in a perfect  
18 world. When you're running a mom-and-pop operation, you  
19 don't always have the best books and records, but that  
20 doesn't give the government carte blanche to come in and  
21 devise this markup method that's riddled with flaws.

22 And that concludes my response.

23 JUDGE GEARY: Thank you, Mr. Bagheri. Let me --  
24 let's explore this request to keep the record open. You  
25 said you wanted to keep it open to request 1099Ks for the

1       audit period. Is that what you're referring to?

2               MR. BAGHERI: That's correct. And they have  
3 already been requested with a special form that -- if I  
4 can say, we called in twice to the IRS requesting 1099Ks  
5 for the audit period, and we were told that we have to use  
6 a special form. It starts with a 4 and ends with a T.  
7 So --

8               JUDGE GEARY: That's fine. You don't have to  
9 give me the form name.

10              MR. BAGHERI: So -- so we did submit that and are  
11 now waiting for a response.

12              JUDGE GEARY: And when did you submit it?

13              MR. BAGHERI: We requested them over the phone.  
14 They said that's not possible, and then we didn't know we  
15 had to use a special POA that gives additional  
16 authorization to request -- to sign on Appellant's behalf.  
17 So then we had to revise a POA. So in short, we requested  
18 them this morning.

19              JUDGE GEARY: And do you -- have you been  
20 provided with any feedback by the IRS regarding how long  
21 it takes to respond to such requests when completed?

22              MR. BAGHERI: No, I did not ask because the form  
23 is just filled out and it has a fax number to fax it to.  
24 That fax number was not working, so we had to mail it. We  
25 tried several times to fax it to the fax number on the

1 form.

2 JUDGE GEARY: So for what period of time are you  
3 requesting that the record be kept open for potential  
4 receipt of these 1099-Ks?

5 MR. BAGHERI: I believe maybe a month or two  
6 would be adequate, especially, now when service centers  
7 are slower and we had to mail in the request rather  
8 than -- the fax was not being received. I can show  
9 evidence of that.

10 JUDGE GEARY: All right. Mr. Suazo, do you have  
11 any objection or comment to the request to keep the record  
12 open to allow Appellants an opportunity to hopefully  
13 obtain the 1099Ks for the audit period?

14 MR. SUAZO: We just have a comment. Basically,  
15 we did some research on this and, apparently, based on  
16 Housing Economic Recovery Act of 2008 is when they  
17 started -- when something of a 1099K information was being  
18 looked at and, apparently, according to our sources, this  
19 requirement took effect in 2011. The 1099K was first  
20 issued in 2012 is what we're coming up with. If he's able  
21 to get it for 2010, it would not have been mandatory at  
22 that point.

23 JUDGE GEARY: All right.

24 MR. SUAZO: Because, again, it starts in 2000.  
25 It starts for payments for 2011, but it doesn't get issued

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

until 2012.

JUDGE GEARY: So you're saying the IRS was not providing or receiving 1099Ks during the audit period --

MR. SUAZO: Based on our information.

JUDGE GEARY: -- from the merchant service providers?

MR. SUAZO: Based on our research on the internet.

JUDGE GEARY: All right. And, Mr. Bagheri, have you received any feedback whatsoever from the IRS that questions whether the 1099Ks would be available for the audit period?

MR. BAGHERI: Well, yes. They looked for it when we called in, and they said they couldn't find them or see them and that maybe request it using the special form would help. Now that Respondent brings that to light, that might be true that they might not all be available and weren't mandatory at the time for merchants. But regardless, the bank accounts do have electronic deposits in them that would have all come from credit card sales.

JUDGE GEARY: Have you, Mr. Bagheri, requested copies of the bank statements that you made reference to earlier that you indicate you have not had access to?

MR. BAGHERI: Well, Appellant requested them, paid for them, and provided them to Respondent. But

1 subsequently no because we would be helping prove their  
2 case perhaps. When they're trying to rely on a bank  
3 deposit analyses and maybe they lost the bank accounts,  
4 you know, it doesn't seem okay for us to have to do that  
5 exercise again when it's been done before and provided to  
6 them.

7 JUDGE GEARY: I'm not -- don't get me wrong. I'm  
8 not suggesting that you request them. I just want to  
9 clarify that --

10 MR. BAGHERI: No, I have not.

11 JUDGE GEARY: -- that what you want the record  
12 kept open for only is this opportunity. Perhaps, and  
13 opportunity to obtain 1099s for the audit period; is that  
14 correct?

15 MR. BAGHERI: Yes, that's correct.

16 JUDGE GEARY: All right. Why don't we do this.  
17 I'm fine with the keeping the record open. I'm sure my  
18 colleagues agree. We will keep the record open. I think  
19 the way we should do this is keep it open. I will issue  
20 an order following our hearing today. My inclination is  
21 to keep it open for 30 days initially, but we will leave  
22 some provision. I'll leave some provision in the order  
23 that will allow you an opportunity to update OTA regarding  
24 the status of your request.

25 And there could be a potential for us to extend



1 that, leave the record open for a bit longer. Obviously,  
2 I'm not going to request anything from the Department  
3 until we find out what you're able to receive. And my  
4 order may also address this question of the happy hour  
5 pricing that we talked about and that Mr. Suazo indicated  
6 that he might be able to provide some additional thoughts  
7 on it but couldn't do it here today.

8 So my order may also indicate that the parties  
9 will be allowed to provide some additional data on that or  
10 argument or evidence on that issue too. So that is going  
11 to be the order. Your request is granted. We will keep  
12 the record open. We'll keep it open for 30 days  
13 initially. It will be for the purpose of you obtaining  
14 the 1099Ks, or at least exhausting those efforts, and  
15 perhaps providing them to OTA as evidence, and also,  
16 potentially, for the purpose of allowing the Respondent to  
17 provide additional argument or evidence concerning your  
18 argument made today about the happy hour pricing.  
19 Understood?

20 MR. BAGHERI: Yes.

21 JUDGE GEARY: Mr. Suazo, do you understand?

22 MR. SUAZO: Yes, sir.

23 JUDGE GEARY: Great. Thank you.

24 Then that is going to conclude this hearing  
25 today.

1           Oh, yes. Of course. I'm sorry. Judge Cho has a  
2 question. Go ahead, Judge Cho.

3           JUDGE CHO: Question for Appellant. I understand  
4 your position that you gave the bank statements to the  
5 Department, and you haven't received them back. Do you  
6 have access to those bank statements? Are you able to get  
7 them at this point in time?

8           MR. BAGHERI: Can I ask Appellant?

9           JUDGE CHO: Sure.

10          MR. BAGHERI: For the audit periods 2007  
11 through -- Appellant is saying they may not have it  
12 anymore but we can try.

13          JUDGE CHO: The reason I'm asking is that I  
14 understand you're saying you haven't gotten them back and  
15 the Department hasn't provided them back to you, and that  
16 you wish you could take a look at them, but these are your  
17 bank statements that came from you to begin with. I don't  
18 see why you couldn't have just requested it earlier to  
19 say, all right, let me double check the Department's work.

20          Because you're asserting that the Department made  
21 mistakes, and you're saying you have been handcuffed  
22 because you haven't been given access to these documents,  
23 but they were originally requested by you and from you.  
24 And if you believe that the Department has misrepresented  
25 somehow that these bank statements aren't all taxable

1 sales, wouldn't it be your burden to show that to us by  
2 bringing us the bank statements yourself since you have a  
3 copy of it?

4 MR. BAGHERI: I was wondering if the initial  
5 burden to back up, you know, just entries put into an  
6 Excel sheet would be on the Department to include those  
7 bank records in the record here in this binder because,  
8 you know, just like the Department, the taxpayer can put  
9 any numbers on a tax return. The Department could have  
10 also put any numbers on Excel sheets without having the  
11 bank statements to back them up. Is there really a bank  
12 deposit analyses?

13 But again, you know, at the time when Appellant  
14 got representation to request bank statements, it may have  
15 been too late to get them. So if the Department lost  
16 them, then Appellant is sort of banking on the fact that  
17 they cannot substantiate the bank deposit analyses.

18 JUDGE CHO: I see. So it's your position that  
19 the Department hasn't even met their initial burden of  
20 proof because they didn't provide the supporting  
21 documentation; is that correct?

22 MR. BAGHERI: I think, yes, that's more of my  
23 argument. And in doing so doesn't allow Appellant or the  
24 panel to look for things like, you know, transfers that  
25 may have not been backed out or checks that were deposited

1 because you can't buy -- you don't buy liquor at a bar  
2 with a check or cash withdrawals that could have been  
3 redeposited because there are some cash -- checks to cash  
4 in the small sample that we have. And we have a very  
5 small sample of the total bank statements. I think I  
6 counted more than 70 months of bank statements, but there  
7 was only 11 in the record. But every one of those bank  
8 statements were given to Respondent.

9 JUDGE CHO: Okay. Thank you.

10 Quick question for the Department in that case.  
11 When the Department received bank statements such as this,  
12 and it looks like the information was transcribed into a  
13 schedule, what does the Department normally do with the  
14 original documentation that it gets?

15 MR. SUAZO: They would just give it back to the  
16 Appellant. They may have done it at their location and  
17 transcribed it there and just given it back. Or it could  
18 have just been emailed to them, and then they would just  
19 transcribe it and that would be it. So -- but there's no  
20 record of us actually receiving and signing for these  
21 things. We have no receipt of records for it.

22 And there are examples of bank statements,  
23 though, in the exhibits. And I'm trying to get to it now  
24 because I think there's a full year in there that was  
25 included in the exhibits. Well, actually, taxpayer has

1       some in his exhibits too starting on 5 of 2000 -- starting  
2       in 5 of 2009 through, I believe, December of 2009. So  
3       what we had we gave them -- we did provide in the  
4       exhibits. He has that in his own exhibits. So,  
5       obviously, he got it from us. Because when I emailed him  
6       what we had, I gave him everything we had.

7               JUDGE CHO: And it does look like there are some  
8       bank statements in Respondent's Exhibit F as part of the  
9       audit?

10              MR. SUAZO: Yes.

11              JUDGE CHO: Exhibit F, pages 94 through -- well  
12       starting on 94 and going on for a little bit.

13              MR. SUAZO: It's the same exhibits that he -- he  
14       basically used the exhibits I gave him to put in his  
15       exhibits.

16              JUDGE CHO: Okay.

17              MR. SUAZO: So, basically, he did get bank  
18       statements from us. Not all of them, that's true. But  
19       then I think if you look at the comments in the 414Z, the  
20       Assignment Activity Report, it states that, you know,  
21       initially we did not get all of the bank deposits and had  
22       to go back there again to transcribe the amounts.

23              JUDGE CHO: Okay. Those are the only questions I  
24       have.

25              MR. BAGHERI: If I really could quickly respond

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

to that?

JUDGE GEARY: Not just yet.

MR. BAGHERI: Okay.

JUDGE GEARY: Bear with me for a second.

Mr. Suazo, you referred to the 414Z. Is that in one of the Respondent's exhibits? I just wanted to make sure.

MR. SUAZO: The 414Z would be in our exhibits.

JUDGE GEARY: It is one of your exhibits?

MR. SUAZO: Yeah.

JUDGE GEARY: All right.

MR. SUAZO: Oh, yeah. There's a 414Z for the first reaudit and a 414Z for the original audit. And I'm not if I -- I think I include --

JUDGE GEARY: So it's just part of the --

MR. SUAZO: It's part of the audit. Yes, it's part of the exhibit package.

JUDGE GEARY: All right. Thank you.

Just bear with me with one more minute, Mr. Bagheri, because I believe Judge Tay has a question. All right. Then, Mr. Bagheri, Judge Tay would like you to go ahead and say whatever you need to say. If he has a question when you're through, he'll ask it then.

JUDGE GEARY: Mr. Bagheri go ahead.

MR. BAGHERI: Yes. So Respondent is saying that

1 perhaps some of the statements were transcribed and given  
2 back to Appellant. Why would there be only some of the  
3 statements given back to the Appellant? Like he said, we  
4 included the same bank statements that they included in  
5 our exhibits. So that's all we got back. That's all the  
6 Appellant would have received back from Respondent.

7 JUDGE GEARY: Okay. Judge Tay, do you still have  
8 a question?

9 JUDGE TAY: Yes. One quick question for  
10 Appellant. In your reply brief you include a section  
11 called "Conclusion and Request for Settlement Amount." Is  
12 it your position that this is the amount or the method we  
13 should use to compute unreported taxable sales? Or are  
14 you, at this point, revising your position in that regard?

15 MR. BAGHERI: I think I'm revising my position in  
16 that regard because I didn't -- in my reply brief we  
17 weren't as familiar with this report as we are now at this  
18 hearing. So some of the things we propose in the reply  
19 brief may not be as accurate or supported by evidence  
20 that's in the record that we pointed out today. So I  
21 would say yes, we're revising our position from that reply  
22 brief. Although, that could also be a method as well.  
23 I'd have to go back and look at it again.

24 JUDGE TAY: Okay. Thank you. One second.

25 JUDGE GEARY: Thank you, Judge Tay.

1           Thank you. I think we've concluded with our  
2 discussion for now. The parties aren't indicating  
3 otherwise. So the order that I will be issuing soon after  
4 this hearing -- I have to get back to my office to take  
5 care of it -- will be that the record in this hearing is  
6 being held open for a period of at least 30 days. It will  
7 be 30 days initially, and it will have a provision for  
8 extending that. The purpose of keeping the record open is  
9 to allow -- specifically to allow Appellant an opportunity  
10 to exhaust, within reason, the potential for obtaining  
11 copies of 1099Ks for the audit period.

12           And it will indicate that Mr. Bagheri and  
13 Appellant should keep OTA apprised of any relevant  
14 developments as far as timing, so we know how much time is  
15 necessary. And also if you're told early on in 10 days  
16 that the IRS simply doesn't have those records, you will  
17 let us know so that we can take appropriate action. The  
18 order will also indicate that Respondent will have an  
19 opportunity during the same period of time to look at this  
20 issue of the happy hour pricing and whether it -- what its  
21 thoughts are regarding whether the auditor may have made  
22 miscalculations in the audit.

23           And Judge Tay now brings up a question that might  
24 also be appropriate for additional briefing following  
25 today regarding whether the Appellant has -- is able to



1 provide more specific argument regarding exactly how a  
2 more accurate liability can be calculated. And if that is  
3 something that Appellant is interested in doing -- and  
4 Appellant's representative is nodding his head right  
5 now -- we will allow some additional briefing on that.

6 And typically how this will work is if within  
7 30 days or some reasonable extension thereof, Mr. Bagheri  
8 learns he is able to get these 1099Ks, he will file an  
9 initial brief containing whatever additional evidence he  
10 has and containing any additional arguments that Appellant  
11 has regarding how a more accurate liability should be  
12 calculated, how we the Judges should calculate the  
13 liability.

14 And then after that brief is received, we  
15 typically allow a reasonable period of time, probably  
16 30 days, for Respondent to respond to the additional  
17 information supplied by Appellant, and also perhaps to  
18 provide additional information regarding the pricing on  
19 the happy hour issue, which we talked about briefly.  
20 Usually it will be left at that. If there is a need for  
21 reply by Appellant, Appellant can make a request. I can't  
22 guarantee I'll grant any additional briefing after that.

23 Everybody understood the direction we're heading?

24 All right. Then I want to thank you all for  
25 participating. The hearing was longer than we all

1 expected, but that does happen. Today's hearing in this  
2 matter, the Appeal of Mincafe Coffee Corporation is  
3 concluded for now, but the record is remaining open.

4 For the benefit of people who might be watching  
5 this live stream, this concludes our hearings -- OTA's  
6 hearings for today. Thank you all for coming. I hope you  
7 all have a safe drive home or flight home, whatever you  
8 are going to do. Thank you.

9 (Proceedings adjourned at 3:21 p.m.)

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 5th day of May, 2022.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER