

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF: )  
 )  
B. COHEN, ) OTA NO. 18063324  
 )  
 )  
 ) APPELLANT.  
 )  
 )  
\_\_\_\_\_ )

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Wednesday, July 20, 2022

Reported by:

SARAH M. TUMAN, RPR  
Hearing Reporter

Job No.:  
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APPEARANCES :

Panel Lead: ALJ ANDREW KWEE

Panel Members: ALJ JOSH LAMBERT  
ALJ KEITH LONG

For the Appellant: B. COHEN

For the Respondent: STATE OF CALIFORNIA  
DEPARTMENT OF TAX AND FEE  
ADMINISTRATION  
  
COURTNEY DANIELS  
SCOTT CLAREMON  
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-30 were received at page 8)

(Department's Exhibits A-H were received at page 8)

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1 Sacramento, California; Wednesday, July 20, 2022

2 3:15 p.m.

3  
4 JUDGE KWEE: Okay. So we are going on the record  
5 now.

6 So we're opening the record in the Appeal of  
7 Barry Allen Cohen. This matter is being conducted before  
8 the Office of Tax Appeals, and the OTA Case Number is  
9 18063324. Today's date is Wednesday, July 20th, and it's  
10 approximately 3:15 p.m. And the time is -- and this  
11 hearing is being conducted in Sacramento, California. And  
12 it's also being livestreamed on our YouTube channel.

13 Today's hearing is being heard by a panel of  
14 three Administrative Law Judges. My name is Andrew Kwee,  
15 and to my right is Josh Lambert and to my left is Keith  
16 Long. The three of us are the judges who will be hearing  
17 this case today. All three of us will meet as equal  
18 participants after today's hearing and produce a written  
19 result.

20 Although I will be conducting the hearing, all of  
21 the judges on this panel will be participating as equal  
22 participants. And any judge on this panel may interrupt  
23 at any time to ask questions or ensure that we otherwise  
24 have everything that we need to decide this appeal.

25 For the record, I'd ask that CDTFA and the

1 representatives for CDTFA please state your names.

2 MS. DANIELS: I'm Courtney Daniels.

3 MR. CLAREMON: I'm Scott Claremon, and we also  
4 have Jason Parker with us.

5 JUDGE KWEE: Okay. Thank you.

6 And I'll turn to Appellant. Would you please  
7 state your name for the record?

8 MR. COHEN: Barry Cohen.

9 JUDGE KWEE: Okay. Thank you.

10 So as a preliminary matter, we have received --  
11 my understanding is that there are 27 new documents,  
12 numbered Exhibits 1 through 30, and I believe that they  
13 were -- eight numbers that were skipped. So it would be,  
14 like, 1, 4, 5, and then five unmarked documents. That's  
15 why we have 27 documents although these are numbered 1  
16 through 30; is that -- is that correct?

17 MR. COHEN: That's correct. Because when I did  
18 it first time, they said it was going to take too long,  
19 and I wouldn't get through the day. So I picked out the  
20 ones I didn't want to take the time with.

21 JUDGE KWEE: Okay. Perfect. I understand. That  
22 makes sense. I appreciate -- I appreciate that.

23 I would ask, CDTFA, have you had a chance to --  
24 do you know if these documents are documents that you have  
25 reviewed? Or will you need additional time to review

1 these documents because they were just submitted today?

2 MS. DANIELS: We were able to review the  
3 documents right before the hearing.

4 JUDGE KWEE: Okay. So you don't require that the  
5 record be held open to provide a response based on the any  
6 of the documentation that is here?

7 MS. DANIELS: No, we do not.

8 JUDGE KWEE: Okay. Great. And thank you.

9 Do you have any objections to the taxpayer's  
10 exhibits listed on the index?

11 MS. DANIELS: No objections.

12 JUDGE KWEE: Okay. Great. Thank you.

13 For Appellant -- or, I guess, actually, for  
14 CDTFA. We just did Appellant.

15 I believe that for you, we have Exhibits A  
16 through H. And there was one new exhibit that you added.  
17 So previously, it was A through G, but then you added the  
18 decision, and that was the extra exhibit. Are there any  
19 additional exhibits that you have?

20 MS. DANIELS: No additional.

21 JUDGE KWEE: Okay.

22 And for Appellant, I did previously rule on your  
23 objection to Exhibit D, which is now Exhibit E, because  
24 they added the decision. Do you have any other objections  
25 that weren't previously raised to the admission of CDTFA's

1 documents?

2 MR. COHEN: I didn't understand all that, but I  
3 don't have any objection to anything.

4 JUDGE KWEE: Okay. Great.

5 So then I will admit CDTFA's Exhibits A through H  
6 and your Exhibits 1 through 30 -- or the documents listed  
7 on your index which are listed 1 through 30, including  
8 several unnumbered documents listed by title. And they're  
9 all admitted as evidence.

10 (Appellant's Exhibit Nos. 1-30 were received in  
11 evidence by the Administrative Law Judge.)

12 (Department's Exhibit Nos. A-H were received in  
13 evidence by the Administrative Law Judge.)

14 JUDGE KWEE: And what I was saying was that I  
15 think, last year, you had raised a concern about an  
16 Exhibit D, and I previously addressed that. So I was just  
17 asking if there were any additional concerns. But since  
18 you don't have any additional concerns, I think we're good  
19 there.

20 MR. COHEN: I can't say I have any objections  
21 because I don't know what they're going to say.

22 JUDGE KWEE: Oh, okay. So, yeah. After they  
23 have their presentation, you'll have an opportunity to --  
24 to make any -- raise any concerns about that.

25 Okay. So with that said, I -- we have one



1 witness today. CDTFA does not have any witnesses, and the  
2 issue that we will be hearing today in this appeal is  
3 whether Appellant, Mr. Cohen, is personally liable for the  
4 unpaid taxes of G&B Seafoods, Inc., doing business as  
5 Village Fish Market.

6 There was one update following the second  
7 prehearing conference, and that is the second and third  
8 quarters of 2013 are no longer at issue in this Appeal  
9 because the liabilities have been satisfied by a different  
10 person. But that doesn't change Appellant's dispute of  
11 the remaining liabilities.

12 MS. DANIELS: Sorry. Excuse me, Judge Kwee. The  
13 third quarter is no longer at issue, but the first and  
14 second still are.

15 JUDGE KWEE: Oh. The second quarter is still --  
16 I'm sorry.

17 MS. DANIELS: Yes.

18 JUDGE KWEE: Okay. So the second quarter -- the  
19 second quarter is at issue; the third quarter is not at  
20 issue.

21 MS. DANIELS: Correct.

22 JUDGE KWEE: And you did submit a supplemental  
23 sheet listing what the liabilities were. I apologize for  
24 that.

25 MS. DANIELS: Okay.

1 JUDGE KWEE: Okay.

2 So with that said, are there any questions before  
3 we proceed with the opening presentations?

4 MR. COHEN: I'm ready to talk.

5 JUDGE KWEE: Okay.

6 So I just have to swear you in, and then you'll  
7 have 60 minutes to discuss your case.

8 So would you please raise your hand?

9  
10 BARRY COHEN,  
11 called as a witness on behalf of the Appellant, having  
12 first been duly sworn by the Administrative Law Judge, was  
13 examined and testified as follows:

14  
15 MR. COHEN: I do.

16 JUDGE KWEE: Okay. Thank you. Then you will  
17 have 60 minutes. You may begin.

18 MR. COHEN: Thank you.

19  
20 PRESENTATION

21  
22 MR. COHEN: Well, the first thing I'd like to  
23 bring up is my Exhibit 1, which was the letter from Gerald  
24 Cigliano to Mr. Sang (sic). And it starts out, "Per your  
25 request --"

1           JUDGE KWEE: Mr. Cohen, I'm sorry to stop you.  
2 I'm getting feedback from the team that your mic may not  
3 be on, or they are unable to hear you. Is it possible  
4 that you double check that the green light is -- is on?  
5 And that you possibly bring the mic a little closer to  
6 you?

7           MR. COHEN: Well, the cord is -- I'll try and get  
8 it up more. Is this better?

9           JUDGE KWEE: That is. That is. It looked like  
10 it wasn't on. Thank you.

11          MR. COHEN: Got the other green light on.

12          Okay. So I want to start with Exhibit 1, which  
13 is a letter from Gerald Cigliano to Mr. Sang (sic), who worked  
14 for -- I don't know their letters, again, but State Board  
15 of Equalization.

16          I never met Mr. Sang (sic); so I never got to talk to  
17 him. But this letter says, "To Mr. Sang (sic), per your  
18 request, this will confirm that Barry Cohen was the  
19 president, director, and 50 percent shareholder of G&B Sea  
20 Foods Inc. for the entire period that business was  
21 operating, which was January 7, 2013, through  
22 September 12, 2013."

23          One thing that I'm saying about that is I don't  
24 know what a "director" is. I'm going to continue.

25          So here's what he says, "Mr. Cohen was

1 responsible -- Mr. Cohen was responsible for the  
2 day-to-day operation of the business --"

3 Not true. We, in a court, picked out which --  
4 which jobs we would have -- that's the top one here --  
5 Gerald would be responsible for all the bookkeeping,  
6 taxes, all the -- all the paperwork. I was responsible  
7 for the restaurant, making sure the food was good, the  
8 fish was fresh, and then I would make sure people enjoyed  
9 the bar. We had a small wine bar.

10 So I wasn't -- I wasn't responsible for the  
11 day-to-day operation; we both were. We were 50 percent  
12 partners. And it doesn't -- and -- and he's trying to lay  
13 the whole thing on me.

14 So then he said, "-- and was kept fully informed  
15 of our financial situation by me on a regular basis. All  
16 of the tax returns filed by G&B Seafoods, Inc., like all  
17 financial matters, were discussed with Barry Cohen. He  
18 was aware of all the sales taxes."

19 Now, I got to jump a little bit ahead. But I  
20 put -- when -- when things slowed down a little, we  
21 were -- we were going to put in extra money into the  
22 company. And I put in \$235,000, and Gerald put in zero  
23 dollars.

24 So this is the question I have: If -- if he's  
25 saying that he told me everything about the taxes --

1 because that's what I think this whole thing's about,  
2 who's responsible for the taxes -- Gerald did not inform  
3 me of anything.

4 In fact, I can make a good analogy to show you.  
5 If -- if you gave me \$240,000, and I didn't pay the taxes,  
6 and that was my job, do you think I would keep you  
7 informed every day? Because that doesn't make any sense.  
8 He's not going to tell me anything if he doesn't do it.  
9 Because he doesn't want to get the backlash from me of not  
10 paying the taxes.

11 He also worked for his uncle for 20 years. And  
12 he -- he writes in this -- in this letter, "Prior to this  
13 venture, I had operated a successful business --" it was  
14 his Uncle's business "-- for over 20 years and always paid  
15 our obligations, including any taxes owed."

16 So he's telling you that he knows he's supposed  
17 to pay the taxes. But with me, he didn't pay the taxes.  
18 The first -- I'm -- I'm getting ahead -- I want to keep  
19 going on this letter.

20 "Not long thereafter, I told Mr. Cohen we were  
21 going to have to close because our food and labor costs  
22 were out of control." That's not the truth, either.  
23 Because -- and I gave an exhibit that's from our  
24 accountant that said, "Hey, guys, is anybody going to give  
25 us how much is in inventory so we can figure the taxes?"

1 Not -- I mean not the taxes, but the food cost -- because  
2 you can't do food cost without inventory. So that was  
3 another untruth.

4 He said, on May 30th, that we owed approximately  
5 \$20,000 in sales tax. And over my objection, he made a  
6 \$10,000 payment towards the May 30, 2013, liability. But  
7 what he didn't say was he also got a -- an extension. He  
8 got a one-month extension to make the payment. But the  
9 rest of it is -- I didn't know he made a \$10,000 payment  
10 on our \$20,000 loan. And I didn't know he had a \$20,000  
11 owe -- I mean, owed -- until this got to be an issue. So  
12 in other words, he did not tell the truth about his  
13 May 30th payment.

14 Now, I wrote up how much I gave Gerald in extra  
15 money to pay because he's -- he said if we don't get -- if  
16 we don't put more money in the business, we're not going  
17 to make it. And he was the bookkeeper; so I believed him.

18 And I wrote -- here's what I did. I'm just  
19 trying to find it.

20 Okay. This is my timetable that I wrote up:  
21 January, we opened up. February, we're in full operation  
22 and people seem to really like it. Gerald asked Barry,  
23 what happens if he pays the State Board of Equalization  
24 later -- late. And I say to Gerald, which is not in your  
25 full text -- I said, "We will have to pay a fine and

1 interest. But you have to pay the State Board of  
2 Equalization."

3 Gerald, number one, is an attorney. And he just  
4 got finished saying that he, for 20 years -- he paid the  
5 State Board of Equalization. Now, he's -- now, he's  
6 saying a whole different story -- what happens if I'm  
7 late? -- and I told him, "But it must be paid."

8 Then, to the best of my current knowledge, Gerald  
9 asked for and received an SBA one-month extension, which I  
10 believe that he was given. Because they told me that they  
11 gave him a -- a 30-day extension.

12 Gerald was responsible for all the taxes. He  
13 filled out the -- the -- how much it was. He gave a  
14 personal -- it's in the back of one of these pages. I  
15 don't know if you saw that -- he filled out how much he  
16 owed, and he determined who got paid. He paid because he  
17 wrote the checks.

18 Now, I wrote some that were like an emergency  
19 check if a driver came and needed a COD or something. I'd  
20 write that check. And I wrote a couple of people their  
21 checks that didn't get them for payday. I did that, but  
22 Gerald -- all the purveyors. I didn't -- I didn't  
23 write -- just, maybe, one. I'd get live lobsters.

24 Okay. So I want to try to get to the -- my  
25 point. And I'm -- I'm stressing a little because -- okay.

1 Here we go -- because I'm pressed for time.

2 Okay. Now, this is May that he's telling us that  
3 he -- we owe \$20,000, and he paid ten. But he didn't tell  
4 me that. He just asked me what happens if you paid it  
5 late.

6 Now, on March 17, 2013, I personally loaned G&B  
7 Seafoods a \$25,000 loan. March -- April -- April 2013, I  
8 personally loaned G&B Seafoods another \$25,000 loan  
9 because he was telling me he wanted a -- keep up with  
10 everything.

11 May 13th -- now, this is the month where Gerald  
12 said he gave a \$10,000 deposit, or partial payment, on a  
13 \$20,000 loan. On May 23rd, I gave G&B \$20,000. On  
14 May 13th, I gave G&B \$20,000. May 23rd, I gave him  
15 \$20,000. This is above and beyond our intake of capital  
16 from sales. I lent him the money -- lent the company the  
17 money.

18 So now, I wrote, "Wow, in the last three months,  
19 I gave Gerald \$90,000 extra." And he says he has to sneak  
20 to pay \$10,000 to SBOE -- I got the word right that  
21 time -- now, watch this and see how easily he can pay back  
22 the \$10,000, what else was owed.

23 June 2013 -- June 27th, I personally lent G&B  
24 Seafoods \$50,000. Gerald paid in taxes for that month  
25 \$48.83. If -- if we were doing that, somebody would get



1 shot here. I mean it's -- it's crazy. You can't give a  
2 guy that much money to pay the bills, and then he pays  
3 \$48.

4 July -- July, he says he needs more money. July,  
5 I gave him -- well, not him. I gave it to him, but it was  
6 for a company loan -- \$50,000 check. So now, we're up to  
7 \$190,000 extra that I put in. He could have used some of  
8 that money to pay back May, June, and we're in July.

9 July 11th of 2013, I lend G&B Seafoods, through  
10 Gerald, another \$40,000. And I have all the bank records  
11 to show that he deposited the money. He spent it the way  
12 he saw fit. I had -- had I didn't do anything like that.

13 All I did is I had to take care of the  
14 restaurant. I was there early in the morning before  
15 Gerald showed up. I left late at night because we had to  
16 clean up before -- and Gerald was long gone. The only  
17 time I even saw Gerald is if he'd come out for lunch. And  
18 I'm telling -- like you asked, I'm telling you the truth.

19 So I want to get back to this -- this one. This  
20 is back to Exhibit 1, Gerald's letter. In early June --  
21 you heard the numbers that I gave you already and --  
22 because I told you about the food and the food cost. It  
23 was not -- you couldn't get it yet.

24 But now, in June, he's telling me that we need to  
25 put more money into the business. He means I need to put

1 more money into the business. And -- and he told me that  
2 he -- when I asked him, "Are you going to catch up with me  
3 with dollars I just put in?"

4 He said, "No. I'm getting out. I'm quitting."

5 So I went and looked for another partner because  
6 I -- I was -- I've done the restaurant business for a lot  
7 of years. And I was tired of working that hard all the  
8 time.

9 So I found another guy, and his last name  
10 happened to be Cohen too, but not related. And he said,  
11 "I'll put in \$500,000. We'll buy Gerald out."

12 Gerald didn't want to get out. He wanted to get  
13 out if we guaranteed everything to him, even though --  
14 we'd pay all the bills, even what he was behind -- we'd  
15 pay all the bills, but he wanted liability something --  
16 whatever you call it. I'll come to the name.

17 JUDGE KWEE: Mr. -- Mr. Cohen, I'm wondering,  
18 because we're running a little short on time, if I could  
19 just help you focus your argument a little.

20 You know, we're not looking, here, to determine  
21 if, you know, Gerald was -- was more willful or more  
22 responsible than you. We only have -- have you here  
23 before us today.

24 MR. COHEN: Okay. I got it.

25 JUDGE KWEE: And, you know, we're looking,

1 really, whether you --

2 MR. COHEN: Right.

3 JUDGE KWEE: -- willfully failed to pay the  
4 taxes, or if you were responsible for failing to pay the  
5 taxes. So I just--

6 MR. COHEN: My point is I had no knowledge that  
7 the taxes weren't being paid. And that's the point -- is  
8 that if I don't know that the taxes aren't being paid, I'm  
9 not supposed to be responsible for them. That's my  
10 understanding of what the law said. He never told me,  
11 ever, that he was behind in all this. That's what I  
12 read -- that first part. I'm sorry I took so long.

13 Exhibit 6 is going to show all the checks and  
14 stuff that I put in through him to -- to our account.

15 Now, Gerald hires an attorney. And his attorney  
16 says that he wants to make a deal with the same guy. I  
17 forgot his name, now.

18 Anyhow, he -- he told him he would pay -- him and  
19 Gerald would pay half of what was owed in taxes. And the  
20 guy said, "I can't do that because we have to do a dual  
21 system. There's two of you, and I have to find out all  
22 the information."

23 So -- he didn't do it with him at that moment.  
24 But I don't know if he didn't do it. Because when you get  
25 to the dual, rebuttal, dual, and rebuttal of it -- request

1 for the dual -- I read this very carefully. I have to  
2 read some of this.

3 Okay. This is what Mr. Sang (sic) said. He said,  
4 "Who --" I'm going to just -- I'm not going to be able to  
5 do this -- "who managed and directed the business  
6 operations? Responsible party, Barry Allen Cohen."

7 Then he asked who would know the -- the paperwork  
8 of, you know, the book work, and they put me. They put  
9 me. The same thing -- that I would be the party to come  
10 to for the book work. Gerald never once told me he was  
11 behind on taxes. And that's the "crutch" of this whole  
12 thing.

13 But I tried to give him as much money as I could  
14 so we wouldn't have any problems. He's -- he said that --  
15 he says that he told me all the time. But it only makes  
16 sense if I -- if you gave me a lot of money, and I didn't  
17 pay; I'm not going to be saying I didn't pay -- I didn't  
18 pay. You'd say, then, what are you doing with it?

19 Now, this one -- this gets me upset with State  
20 Board of Equalization. Because they never treated me  
21 fair.

22 They said that we got to take this right date,  
23 3/3/16. 3/3/16, Mr. Sang (sic) wrote, "Incoming call from  
24 Barry Cohen verified Sailview Lane, Westlake Village --" was  
25 my post office -- "and Barry stated that Gerald Cigliano is

1 the one that should be liable for this, not me."

2 And he told me, at -- Mr. Sang (sic) told me, at  
3 that time, that you are going to be "reliable" for the taxes  
4 -- me.

5 And I didn't -- I didn't appreciate -- not only  
6 did he do it on March 3rd of '16, but this -- this request  
7 for the dual came out March 9th of '16. So he was telling  
8 me before he even did the dual, that I'm going to owe the  
9 money. So that doesn't seem that can even be. How  
10 would -- what evidence did he have, if anything, to say  
11 that before we decide you're -- you're going to be the  
12 responsible party? That's on the dual thing.

13 Another thing on the -- on this dual thing that  
14 really ticked me off is because nobody tells anybody what,  
15 really, is going on. Also, that one that called up  
16 was saying I'm responsible for the day-to-day operation;  
17 and I'm not. I'm responsible for the restaurant and bar,  
18 and he's responsible for all the paperwork. And he's an  
19 attorney.

20 So Gerald's letter was 3/31/16, and I'm accused  
21 of -- that I'm going to be owing the money -- what'd I  
22 say? 3/3? 3/6? Something like that? -- and Henry Sang  
23 (sic) signed this paper 3/9 -- the request for three --  
24 for the dual was signed by -- Gerald wrote the letter on  
25 3/31 that -- that Mr. Sang (sic) requested.

1           The 3/9/16 request for the dual -- they used  
2 Gerald's letter in there -- in the dual. And if you check  
3 it out, you're going to see, it says, "Letter received on  
4 3/16 by Gerald Cigliano states that all matters, including  
5 the sales tax returns and sales tax liabilities, were  
6 discussed with Barry Cohen."

7           How does -- how did they do this? The -- the  
8 times don't fit.

9           Then there's one more thing about the dual that  
10 really ticks me off -- is Gary Dewlo. He was our  
11 bookkeeper under Gerald. And you know what he wrote?  
12 Gerald was the one that handled the sales tax. Gerald  
13 handled it. Gerald sent it -- Gary did one time. He did  
14 it to help Gerald. He filled out the taxes that were due.

15           And on the back of these papers -- which I'm all  
16 "gablungered" (phonetic) here, now -- here's all the  
17 past-due notices that Gerald received. He had his own  
18 mailbox. I got none of it. I was never informed that  
19 there was past due notices. But they put in this -- in  
20 the dual, they didn't mention that Gary Dewlo said he --  
21 that Gerald is the one that did the taxes. He didn't put  
22 that in. He didn't put it in any place. The only one  
23 that said it was Gary. Because Gary was telling the  
24 truth.

25           And he got -- he got -- Donald Elterman -- Donald

1 Elterman worked for us. He was a bartender; he calls  
2 himself a "bar manager" in this. He got caught stealing.  
3 I caught him stealing, and he -- he -- -- I forgot what  
4 you call it when you harass women. There's a -- legal  
5 term for it. He harassed the -- a waitress at night when  
6 he was alone with her at the end of the night, and I fired  
7 him because you can't do that to women. You can't -- you  
8 can't take them alone and tell them all this stuff is  
9 going to happen if they don't do what you tell them.

10 And he -- and I caught him stealing. And I told  
11 this to the guy from State Board of Equalization, who was  
12 my guy, the one that was trying to get me. He never let  
13 me write a letter. He just told me that he was getting  
14 all these people as witnesses.

15 I said, "You can't use Donald Elterman." I had  
16 to have an attorney stop him from the things he was  
17 putting on the internet. He -- and if you look at the  
18 papers where -- where he signs -- he says, "These guys are  
19 crooks. Don't trust them."

20 But my attorney had to write -- he -- it's right  
21 here. He wrote -- here's the version -- cease and desist  
22 letter that he can't put this on the internet anymore --  
23 that we're crooks and stuff like this. But he was mad at  
24 me because I fired him for stealing and for harassing one  
25 of our waitresses.

1           And you know what? They used him as a witness.  
2           And I told them, "Don't use him as a witness. It's not  
3           fair. He hates me. He's biased."

4           Here's one from State Board of Equalization.  
5           This is really good. State Board of Equalization  
6           writes -- of course, they're -- "CDTFA has no evidence to  
7           establish when Mr. Cohen had knowledge of the unpaid  
8           three-quarter '13 sales tax."

9           They have never -- they never called me, they  
10          never wrote me a letter, nothing. After this was all  
11          over, I received one letter from them that they wanted to  
12          help me -- "help me" -- it's in quotes -- they wanted to  
13          help me reduce it because they were going to do some kind  
14          of thing, and so that letter came to my house. So I knew  
15          they had my -- my address. But they never sent me any in  
16          the -- anything that says the taxes aren't being paid.

17          How -- how are you making me responsible? You  
18          don't even tell me that I'm behind or we're behind or  
19          anything.

20          I asked Mr. Chen, who was my guy against me. He  
21          was representing State Board of Equalization. I wrote to  
22          him, and I said -- because I didn't have Gerald's letter.  
23          I didn't have anything -- I wrote to Mr. Chen, "Why wasn't  
24          I sent the alleged evidence against me?"

25          I called him on that. And you know what he told



1 me? He called me back. I sent him -- I sent him paper,  
2 but he didn't send me back paper. He called me and said,  
3 "Just do like you're doing. You'll be fine."

4 This is -- this is our State Board of  
5 Equalization. I don't know how him and how the guy I told  
6 you with the other one, the dual guy, and the one that  
7 wrote told Gerald to write a letter. And he told Gerald  
8 what to write in the letter, Henry Sang (sic) -- how can he  
9 accuse me of -- of being -- not paying taxes before there  
10 was any evidence?

11 And that's right in the dual. You look in there,  
12 and you'll see my name. He -- he -- he screwed up. He  
13 screwed himself. Because when you lie, you wind up  
14 screwing yourself up. He wrote to me. He said I -- he  
15 told me that I'm going to be responsible before this dual  
16 ever came out, before any evidence showed up, before  
17 Gerald's letter came in this.

18 And Gerald's letter had no business being in  
19 this, either. Because you know what? Who -- who fact  
20 checked Gerald's letter about me always being told  
21 everything?

22 I'm getting carried away. I'm getting emotional.  
23 I'm sorry. I don't mean to be this way. I'm just so  
24 frustrated with this whole thing. It was so unfair, and I  
25 have to drive all the way up here to do this. And I get

1 short-timed, and I'm -- and I'm beside myself.

2 And then you want to know -- I'll tell you the  
3 biggest kicker. Gerald wound up -- I sold him -- I wanted  
4 to get rid of him. I just -- I wanted out. I paid him a  
5 dollar. I said -- I -- no, I charged him a dollar -- "You  
6 pay me a dollar, and it's yours."

7 And what do they do? They used that against me  
8 and said, "Oh, that proves you knew that all this money  
9 was owed."

10 That's not what it was. I just wanted out of it  
11 with him. And what did he do? He -- I -- when I made a  
12 paper with an attorney that if I break it up with him for  
13 a dollar, he has to bankrupt the company. He can't just  
14 take it from me.

15 He did that. He went -- he went through  
16 bankruptcy. And what did he do? He went to the landlord,  
17 and he talked to the landlord -- into giving him the  
18 lease. He got rid of me, he got the lease, he got -- and  
19 you'll see on this last Exhibit -- "Looks like Gerald got  
20 his way," says the salesman that works for his company --  
21 for his family's business -- is a friend of mine. Because  
22 him and I worked together at American Fish, Tommy.

23 And I asked him again last night, "Are you sure  
24 that restaurant was Gerald's?"

25 And he said, "Yes. He bought fish from me. He

1 bought stuff from me."

2 And not only -- not only that, but I also looked  
3 in -- see, because I didn't know. Tommy told me first.  
4 That's his name, Tommy. "Hey. Do you know Gerald took  
5 over your restaurant?"

6 I said, "No."

7 He said, "Yes."

8 I went and looked on -- what do you call this  
9 thing? I wish I didn't get so stressed out -- where they  
10 give you stars if you're a good restaurant? Anybody help  
11 me a little? If you're looking for something that's --

12 MS. DANIELS: I believe he's referring to "Yelp."

13 MR. COHEN: Yelp. I went on Yelp, and I looked  
14 this up. And here's what -- here's what I found:

15 This is -- that he renamed it. He did it  
16 farm-to-table. Calabasas Farms is a five. Located in the  
17 Summit at Calabasas. That's where we were. That's where  
18 I opened up the Village Fish Market and Restaurant. It's  
19 a five -- they say it's a five located at the Summit off  
20 of Calabasas at Lost Hills Avenue.

21 Considering owner -- "owner" -- Gerald  
22 Cigliano's, history with Santa Monica Seafood, which is  
23 terrible because they -- they bought him out -- their own  
24 family. But this shows -- right there -- when somebody --  
25 when I saw that, I went to that restaurant myself, and I

1 knocked on -- I went in and knocked on the door. I talked  
2 to the manager. I said, "I want to talk to the manager."  
3 And I asked him, "Who owns this restaurant?"

4 And he told me Gerald Cigliano. The guy that did  
5 all this -- he kicked me out, not even -- not fairly, and  
6 he took over. And I called Tommy yesterday -- this is  
7 all -- I swear, this is all true. I can show you my  
8 phone -- I called Tommy. "Tommy, are you sure that was  
9 Gerald's restaurant?"

10 He said, "Barry, I sold him the stuff."

11 I said, "Okay. Thank you."

12 Because I got that -- I got -- I went there  
13 myself. I walked into the restaurant. It was all redone.  
14 That's probably where the tax money went. It was all  
15 redone. And who's the owner? Gerald Cigliano.

16 And that's why I'm frustrated. Because I wish I  
17 could go through all of this with you. Because there's so  
18 much more in these papers. You will see that. If you  
19 look at the back of some of them -- some of them have a  
20 back to it -- it shows when Gerald paid -- no -- when he  
21 made the slip for what taxes he figured we owed them, for  
22 the people, you know -- the sales we did. He would sign  
23 it, "Gerald Cigliano, owner." He put in -- he put in how  
24 much the taxes should be, and he does -- he did all this  
25 stuff, shows it right on there, and I get the blame for

1 everything.

2 I never had anybody in -- in the State Board of  
3 Equalization ask me to write a letter. They were against  
4 me because -- and this is -- and this is speculation --  
5 because I think that Gerald and his attorney made a deal  
6 with the State Board of Equalization. And that's why they  
7 became so hard on me -- because they couldn't go against  
8 Gerald. And, I said, it's speculation. But it sure  
9 smells like it to me.

10 Why does he tell Gerald what to write on the  
11 letter? And how did that letter get into the -- into the  
12 dual before the dual was made? I mean, he -- the  
13 timelines don't fit. They didn't get the letter, and it's  
14 in there. I was accused -- that I'm going to be paying  
15 the taxes before the dual was made.

16 Look. Look in the papers. I can't lie about the  
17 papers. It's all there. Everybody has a copy. Just look  
18 in the dual. And you will see on the dual, also -- on the  
19 dual, where they talked to people. Of course, they  
20 have the guy I told you that I fired -- I forgot his name  
21 already. I'm going crazy. The guy I fired for  
22 stealing -- he was a witness. They put him on the dual.  
23 He -- he -- he put -- I don't know. I'm just getting --  
24 I'm getting carried away here.

25 But it's all there. It's here. That's why I

1 went through so much trouble writing all of this.

2 I had to pay -- you know, the money I put into  
3 that company? -- I had one big asset in my life -- was my  
4 commercial fishing boat, and I put up to get -- I got  
5 \$20,000 from the guy that I fished for -- that I helped  
6 him. He gave me \$20,000, but I had to pay him back.

7 And I had to pay him back. I had to sell the  
8 boat. And he -- he also -- he was -- he owned American  
9 Fish. American Fish is where -- the second time I met  
10 Gerald. He was the general manager. And they asked me --  
11 me -- American Fish asked me if I would help them because  
12 they have a quality problem. And I went there and worked  
13 for them, and I got acquainted, again, with Gerald.

14 Because I saw him as his uncle's charity when it  
15 was his Uncle's place. And when I got acquainted with  
16 Gerald, we talked about doing something like this, going  
17 together on it. Gerald got fired from his job -- he  
18 doesn't say that. No place in here -- it's not in here,  
19 except that I wrote it.

20 Gerald got fired, and he's an attorney. And  
21 he's -- he's done books for 20 years for his uncle paying  
22 State Board of Equalization taxes. And he doesn't know  
23 what he's supposed to do?

24 I'm the one that said I'm going to do all the  
25 work. I'll -- I'll -- I'll do all the physical work.

1 I'll do -- I'm going to clean up, I'll do -- I'll do  
2 everything. I took care of the cooks; I took care of  
3 everything. All you have to do is keep all the paperwork  
4 straight, do what's right.

5 And I don't have any more to say.

6 JUDGE KWEE: Okay. Thank you, Mr. Cohen.

7 I did have a couple of questions, clarifications,  
8 to ask you.

9 MR. COHEN: Sure.

10 JUDGE KWEE: I believe the gist of your  
11 testimony, as far as the taxes are concerned, was that the  
12 notices were being mailed to a mailbox that was managed by  
13 Gerald and not you; so --

14 MR. COHEN: Only Gerald's mailbox.

15 JUDGE KWEE: Okay. So when -- when exactly did  
16 you become aware that the taxes were not being paid to  
17 the --

18 MR. COHEN: When did I be --

19 JUDGE KWEE: When did you first become aware  
20 that -- that he wasn't paying the taxes -- that the taxes  
21 for the business weren't being paid to the --

22 MR. COHEN: When the State Board of Equalization  
23 started suing me, or whatever you call it.

24 JUDGE KWEE: Was that --

25 MR. COHEN: No. I was there. If you -- I'll say

1 this. My name is not in the State Board of Equalization,  
2 except for -- for what they did. Because I didn't fill  
3 out any tax forms. I didn't pay taxes. I didn't do  
4 anything. They just sent me one time to the correct  
5 address, where I lived. So they had my address. But they  
6 never sent me anything.

7 And how do you -- I don't know -- it's just,  
8 ethically, not right to hold somebody responsible for  
9 something and not tell them what's happening.

10 Gerald had a box in Westlake Village.

11 JUDGE KWEE: Okay. And as far as the bank  
12 account, then, that was used to pay the --

13 MR. COHEN: No. This was to receive mail.

14 JUDGE KWEE: Oh, yes. I understand that. I have  
15 a new question.

16 MR. COHEN: Oh.

17 JUDGE KWEE: So who had access to the bank  
18 account that was used to pay the bills and the sales tax  
19 from -- from the fish market?

20 MR. COHEN: 90 percent Gerald. I told you,  
21 sometimes an emergency would come up, and I would have to  
22 take care of it if Gerald was not there.

23 Another thing, you know, Gerald left -- you don't  
24 know, but I'm telling you -- he left. And we had an  
25 agreement when we set this company up that we might have a



1 difference. And we had a neutral party, an attorney.  
2 And -- and Gerald said he wanted his friend, who was a  
3 good guy. And I said, "Okay. If you say he's a good guy,  
4 I'll go along with it."

5 And so when all this stuff started getting bad,  
6 Gerald walked out, went home, and never came back. I  
7 didn't have -- I didn't have the key to the -- I didn't  
8 have anything. I couldn't get in any of the -- the safe  
9 deposit box, nothing. And I called up my attorney, and I  
10 said, "Will you please talk to Joel?" -- that's what --  
11 our attorney was Joel -- I said, "Talk to Joel," and told  
12 him, "Gerald went home. He won't come back to work. He  
13 won't even talk to me."

14 And he -- Joel went to Gerald's house and said,  
15 "Gerald --" in fact, my attorney said it first -- he had a  
16 fiduciary duty to come to work. He was a -- he was an  
17 officer in the corporation. He can't just not come back.  
18 And so when Joel went and talked to Gerald, he said,  
19 "Gerald you're hurting the company. You're hurting  
20 yourself. Go back to work."

21 And Gerald said -- I swear to god -- "I'll think  
22 about it."

23 JUDGE KWEE: Okay. So as far as when you -- you  
24 did become aware, then -- that was not until during or  
25 after the 3rd quarter of '13 -- 2013? When Gerald left

1 and you got a letter to your -- to your residence with the  
2 unpaid notice?

3 MR. COHEN: No. When I got -- when I knew that  
4 we were past due?

5 JUDGE KWEE: Yes.

6 MR. COHEN: Even the State Board of Equalization  
7 didn't know that they were past due. They sent a guy  
8 out -- the one I mentioned that was my guy -- he's the one  
9 that said that you're past due.

10 And then -- so he told me I'm past due. He goes,  
11 "Well, you're not past due on May." But they said we  
12 were. But he didn't even know. But he should. I mean,  
13 he's the one that should have known everything.

14 But I did not find out ever, ever, ever, that we  
15 were past due on anything until it hit the fan. I didn't  
16 know. I was in the dark.

17 I -- I learned my lesson. I will never trust  
18 anybody that way again, ever.

19 JUDGE KWEE: Okay. And just a reminder  
20 they're -- I'm getting feedback that they can't hear you  
21 on the livestream. So if -- when you speak, if you could  
22 bring the mic a little closer to you?

23 MR. COHEN: They can't what?

24 JUDGE KWEE: They can't hear what you're saying  
25 on the livestream. So just a reminder to --

1 MR. COHEN: Oh. I'm sorry.

2 JUDGE KWEE: -- the microphone.

3 But I'm going to turn to the co-panelists.

4 Judge Lambert, do you have any questions at this  
5 time?

6 JUDGE LAMBERT: I don't have any questions at  
7 this time. Thanks.

8 JUDGE KWEE: Okay.

9 And Judge Long, did you have any questions?

10 JUDGE LONG: Yes, I do. Whoa. Too close.  
11 Sorry.

12 First, to follow-up on your last answer, when the  
13 BOE visited, was that before you found someone to buy out  
14 Mr. Cigliano?

15 MR. COHEN: Yes, I did.

16 JUDGE LONG: Okay.

17 MR. COHEN: But Gerald wouldn't sell then. He  
18 put -- he didn't -- we -- we offered to pay everything,  
19 give him -- first, we wanted to give him a thousand  
20 dollars. But then, when I saw how much we were going to  
21 be paying out, then I made it \$500, and I wrote a letter  
22 to my attorney. Draw that up -- that we'll pay him \$500.

23 But Gerald wanted a warranty. Like, an -- I  
24 don't know the right word for it -- that if anything ever  
25 happens -- I'm not saying it right -- there's a technical

1 term for it. It's in here. It says that if -- if  
2 something happens, he has no responsibility for it. He  
3 wanted that.

4 And I said, no, I'm not going to give you any  
5 more. I gave you -- first of all, you tell me we're going  
6 broke and -- and things are bad. And then you want more  
7 money? I said, I'm not going to do it. You know what?  
8 So -- that's when I said, "You know what, Gerald? I'll  
9 take a dollar and call it square."

10 Because I was done with him. I couldn't trust  
11 him anymore. I read this letter. I freaked out. They  
12 didn't send me this letter. You know that? I had to ask  
13 the -- there's a place up in -- by where they are that you  
14 can call in and say you need help and they -- they said,  
15 "What help do you need?"

16 And I said, "I keep hearing about this letter.  
17 What -- what letter is that? What letter is there?"

18 And they said, "I can send you -- you're entitled  
19 to get all the information that Gerald has."

20 And I said, "Well, you see, my guy didn't tell me  
21 that."

22 And they sent me that letter. And when I got  
23 that letter, it was -- the whole letter is a lie. The  
24 whole thing is a lie. He said in -- in the letter -- you  
25 read it. It says I only gave him enough money to pay for

1 payroll. Then the next line he said I only gave him  
2 enough money to pay for the bills I wanted to pay.

3 Well which was it? I didn't get to pay the guy  
4 that I said lent me \$200,000 when I put my boat up. He  
5 was one of our suppliers. And he said, "Barry, I'll do it  
6 with you, but you're going to sign me a note."

7 And I said, "Okay."

8 And we owed him \$70,000. And you know what? If  
9 I was picking out what people I wanted to pay, he would  
10 have been right after the State Board of Equalization.  
11 Get him paid down because that was -- I was liable for it.  
12 I was responsible for it.

13 So bottom line, I had to sell my boat, and I had  
14 to pay him \$70,000. Because I'm not going to break my  
15 word on a friend. He did it to help me.

16 JUDGE LONG: I think that answers my question.

17 I did have another question about -- in  
18 March 2013, when you talked to Mr. Cigliano about the  
19 taxes -- when he said -- when he asked what would happen  
20 if the taxes were paid late, and you told him he had to  
21 pay the tax.

22 MR. COHEN: You would have to -- yeah. He would  
23 have to pay a tax. If you're late -- if you're late --  
24 because this happened to me. I had restaurants for  
25 50 years.

1 JUDGE LONG: Hold on. I -- I want to finish my  
2 question.

3 MR. COHEN: Okay.

4 JUDGE LONG: Was there a follow-up conversation  
5 after you lent him -- lent the business money to pay the  
6 tax? Was there a follow-up question -- question  
7 conversation to ensure the tax has been paid?

8 MR. COHEN: No. Because I trusted him at that  
9 time to pay. I mean, I -- I gave him plenty of money to  
10 pay everything. I never -- he's an attorney. He, you  
11 know, what kind of guy could he be? He was my partner. I  
12 trusted him. I did not follow-up.

13 I didn't say, "Give me a note for loaning the  
14 money." It's on our books, though. But I just -- all I  
15 did was, I said, "You need the money? I want to keep  
16 going. I want -- just, like, it's going to be good.  
17 We're going to do good. It's going to be a good  
18 restaurant."

19 But he had no stomach for it.

20 JUDGE LONG: Okay. Thank you.

21 And I don't have anymore questions.

22 JUDGE KWEE: Okay. Then I will turn it over to  
23 CDTFA.

24 I'm sorry. And I forgot to ask. Since there is  
25 testimony today, did CDTFA have any questions for the

1 Appellant?

2 MS. DANIELS: No questions at this time. Thank  
3 you.

4 JUDGE KWEE: Okay.

5 Then I will turn it over to you for your opening  
6 presentation. And you have -- I'm sorry -- you have  
7 20 minutes.

8 Thank you.

9

10 PRESENTATION

11

12 MS. DANIELS: Good afternoon.

13 The sole issue in this case is whether Appellant  
14 is personally liable for the unpaid liabilities of G&B  
15 Seafoods, Inc., hereinafter referred to as "the business,"  
16 pursuant to Revenue and Tax Code 6829.

17 The unpaid liabilities of the business originate  
18 from self-assessed returns. The return for the first  
19 quarter of 2013 was timely filed on May 30, 2013, with  
20 reported tax due in the amount of \$20,640. As you heard  
21 testimony today, \$10,000 of the liability was timely paid  
22 resulting in an unpaid tax balance of \$10,640 for the  
23 first quarter.

24 The self-assessed return for 2013 was filed late  
25 on August 1, 2013, and it reported \$27,646 in tax due for

1 that period. Only \$48.83 was paid, resulting in an unpaid  
2 tax balance of \$27,597.17. The liability amount includes  
3 a late payment penalty for \$1,064 for the first quarter  
4 and a late payment penalty for \$2,764.60 for the second  
5 quarter.

6 As previously explained to Appellant and the  
7 Office of Tax Appeals, the liability amount has been  
8 reduced by payments made by Appellant's previous business  
9 partner. So the remaining liability is equal to \$3,400.56  
10 for the first quarter of 2013 and \$14,538.67 for the  
11 second quarter of 2013. Thus resulting in a total  
12 liability amount of \$17,939.23.

13 At the outset, I'd like to address an issue  
14 regarding the dates on the dual memo that Appellant  
15 identified. The original memo was drafted with a date of  
16 March 9, 2016, but the final review letter was signed and  
17 actually finalized by the reviewer on April 22, 2016. And  
18 you can see that at Page 8 of Exhibit E. So although the  
19 original date was not ever revised, during that timeframe,  
20 we received Mr. Cigliano's letter, and so it was included  
21 in the finalized dual memo.

22 Under Section 6829, any person who has control or  
23 supervision of a corporation or -- or was under a duty to  
24 act for a corporation in complying with any requirement of  
25 the Sales of Use Tax Law is personally liable for that



1 corporation's unpaid tax, interest, and penalties if the  
2 person willfully failed to pay, or caused to be paid, any  
3 taxes due from the corporation.

4 Four elements must be met for personal liability  
5 detach under 6829: First, the corporation must have been  
6 terminated; second, the corporation must have collected  
7 sales tax reimbursement; third, the person must have been  
8 responsible for the payment of the sales and use tax; and  
9 fourth, the person's failure to pay must have been  
10 willful.

11 As to the first requirement here, termination,  
12 Appellant conceded during the appeals conference that the  
13 business did terminate after the liability period at  
14 issue. And that's Exhibit A, page 4. On February 26,  
15 2014, Appellant's business partner called and faxed a  
16 letter to CDTFA's staff on that day to give notice that  
17 the business had been terminated as of September 12, 2013.  
18 You can see that at Exhibit E-1, page 2.

19 As a consequence -- sorry. Excuse me -- Exhibit  
20 E-1. Yes, page 2 -- as a consequence, the business's  
21 seller permit was closed with an effective closeout date  
22 of September 12, 2013.

23 As to the second requirement, it is undisputed  
24 that the business collected sales tax from its customers,  
25 which was confirmed by Appellant during the appeals

1 conference. And that's Exhibit A, page 4. And that's  
2 further corroborated by "BOA" Form 1508, signed by  
3 Appellant's business partner that sales were -- sales tax  
4 was collected; also, statements made by Appellant during  
5 telephone interview, which is recorded at Exhibit E-6; and  
6 records of statements made by the business's former legal  
7 representative, Barry Guterman. That's Exhibit E-4.

8 This brings us to our next requirement. Personal  
9 liability can only be imposed on a responsible person, and  
10 that's Revenue and Taxation Code Section 6829 Subdivision  
11 (b). A "responsible person" means any person having  
12 control or supervision of, or who was charged with the  
13 responsibility for, the filing of returns or the payment  
14 of tax or had a duty to act for the corporation in  
15 complying with any provision of the Sales and Use Tax Law.  
16 And that's Regulation Title 18, 1702.5 Subdivision (b)(1).

17 More than one person can be found responsible  
18 with respect to any tax quarter at issue, and liability  
19 can be imposed on each person. That is (c) In re Leal.  
20 That's Bankruptcy Appellate Panel Ninth Circuit 2007,  
21 available at 366 BR 77. "A person shall be liable only  
22 for taxes that became due during the periods he or she had  
23 control, supervision, responsibility, or duty to act for  
24 the corporation, plus interest and penalties on those  
25 taxes."

1 California Corporations Code Section 312  
2 Subdivision (a) provides that a president of a  
3 corporation, quote, "is the general manager and chief  
4 executive officer of the corporation, unless otherwise  
5 provided in the articles or bylaws," end quote.

6 A general manager is presumed to have broad,  
7 implied, and actual authority to do all acts customarily  
8 connected with the business, including ensuring its  
9 compliance with sales and tax matters, even if that  
10 responsibility is delegated to others. See Commercial  
11 Securities Company v Modesto Drug Company 1919, available  
12 at 43 Cal.App. 162 at page 173.

13 We have provided numerous exhibits evidencing  
14 that the Appellant was the president of the business. For  
15 example, Appellant was listed as the incorporator on the  
16 business's articles of incorporation, which he signed on  
17 April 7, 2011. And he continued to be listed as president  
18 on the Secretary of State Annual Filings. He was also  
19 listed as a director on those papers. And that's -- C,  
20 Exhibit E-23.

21 Appellant was also listed as the business's  
22 president on the ABC license -- that's Exhibit E-22 -- as  
23 well as numerous other -- numerous other applications and  
24 bank loans including, but not limited to, the business's  
25 seller permit, that's Exhibit E-10; the business's Cisco

1 application, Exhibit E-11; the business's Southern  
2 California Gas Company Collection Notice, Exhibit E-13;  
3 the business's Commercial Security Agreement for Coast  
4 National Bank, that's Exhibit E-14; and his application  
5 for C-WIN at Exhibit 19 -- E-19.

6 So in addition to acting as president, Appellant  
7 was also clearly involved in the day-to-day operations of  
8 the business. Phone interviews with Chef Ogawa, at  
9 Exhibit E-9, and Mr. Elterman, at Exhibit E-5, both  
10 confirmed that Appellant was responsible for the  
11 day-to-day management of the business and business  
12 operations.

13 In fact, you heard, here, that Appellant said he  
14 got there very early and stayed very late every day. In  
15 fact, this was corroborated by Barry Guterman, the  
16 business's legal representative, who stated that Appellant  
17 and his business partner were in charge of running the  
18 business together. That's Exhibit E-4.

19 And Appellant stated that both he and his  
20 business partner agreed that any major decisions regarding  
21 the business would need to be discussed together. And  
22 that's Appellant's February 4, 2018, email at Exhibit F,  
23 page 31.

24 Appellant's statement is consistent with a  
25 statement made by Appellant's former business partner who

1 said that he kept Appellant fully informed on a regular  
2 basis on all financial matters and sales tax returns.  
3 That's Exhibit E-20.

4 Appellant's involvement in the business's  
5 financial matters is also evidenced by the fact that he  
6 was involved in writing and signing employee paychecks,  
7 which is evidenced by Exhibits E-5 and E-9, and paying  
8 vendors, which he also testified to today, but is also  
9 available at Exhibits E-11 and E-19.

10 Based on the foregoing, it is clear that  
11 Appellant was a responsible person for the business under  
12 the Sales and Use Tax Law. Appellant appears to argue  
13 that he is not, in fact, responsible because he had an  
14 agreement with his business partner to divide duties  
15 with -- regarding to operating the business and that  
16 Appellant was not responsible for the financial matters of  
17 the business -- specifically, the Sales and Use Tax  
18 matters.

19 Regardless of Appellant's assertions, an  
20 agreement to share or delegate duties with regard to the  
21 running of a business does not equate to an agreement to  
22 absolve Appellant from the legal responsibilities that are  
23 inherent in his position as president. And there is no  
24 written evidence pertaining to an agreement between him  
25 and his former business partner.

1           To the contrary, as already discussed, the  
2 evidence indicates that Appellant was involved in the  
3 day-to-day operations, discussed the running of the  
4 business with his partner on a daily basis, and retained  
5 responsibility over the major decisions of the  
6 corporation. As such, regardless of any agreement between  
7 Appellant and his business partner as to who managed  
8 different aspects of the business, as president, Appellant  
9 retained responsibility over the business's sales and use  
10 tax matters.

11           Lastly, the evidence establishes that Appellant's  
12 failure to pay the business's tax liabilities was willful.  
13 Per Regulation 1702.5 Subdivision (b)(2), "willfulness"  
14 means a voluntary, conscious, and intentional course of  
15 action, but it does not require bad purpose or motive.

16           A responsible person willfully fails to pay the  
17 taxes if the Department can establish that the responsible  
18 person had actual knowledge of the taxes were due but not  
19 being paid, authority to pay the taxes, or to cause them  
20 to be paid, and when the taxes became due and the  
21 responsible person had actual knowledge of the taxes were  
22 due, and had the ability to pay the tax but chose not to.  
23 We'll address each in turn:

24           Knowledge -- knowledge means the person knew the  
25 taxes were not being paid on or after the date the taxes

1 became due. Here, the tax liability originates from the  
2 self-assessed returns for first and second quarters of  
3 2013.

4 As stated, Appellant and his business partner  
5 were both involved in the day-to-day operations of the  
6 business and were both physically present at the business  
7 on a daily basis. And you can see the Exhibit 4; as well  
8 as Ogawa's statement, Exhibit 9; and Mr. Elderman's  
9 statement, Exhibit 5, evidencing that.

10 In the March 31, 2006, letter to the Board of  
11 Equalization, Appellant's business partner stated that he  
12 kept Appellant, quote, "fully informed on regular  
13 business," end quote; and stated, quote, that "All the of  
14 the sales tax returns filed by G&B Seafoods, Inc., like  
15 all financial matters, were discussed with Barry Cohen.  
16 He was aware of all tax liabilities," end quote. That's  
17 Exhibit E-20.

18 In light of just this evidence of Appellant's  
19 daily activities and contact with the business partner, it  
20 seems highly unlikely that Appellant remained unaware of  
21 the tax liabilities after they accrued. In fact,  
22 Appellant invested an additional \$230,500 into the  
23 business between March and July of 2013, specifically  
24 trying to pay the business's debts, indicating that he was  
25 aware of the business's debts, which, at the time, would

1 have included the first -- first 2013 quarter sales and  
2 use tax liability. And that's Exhibits -- Appellant's  
3 Exhibit 1-C and 6 show a timeline for those payments and  
4 the amounts.

5 Appellant's August 1, 2013, email states that he  
6 decreased his offer to purchase his business partner's  
7 shares due to the payroll and sales tax liabilities that  
8 Appellant would have to assume. That's Exhibit G. So his  
9 knowledge, at this time, is corroborated by subsequent  
10 emails. Also, that one's dated November 8, 2017, in which  
11 he stated that he knew by late-July or August 2017 that  
12 taxes were owed. That's Exhibit H.

13 So based on the foregoing, it's established by a  
14 preponderance of the evidence that Appellant knew about  
15 the tax liabilities of the business as they became due  
16 and, at the latest, clearly knew about the first-quarter  
17 liability at the time he was making the payments towards  
18 that 230- -- \$230,500. And that he also knew about both  
19 the first quarter and the second quarter liabilities on or  
20 before August 1st, 2013.

21 As to the second element, authority, a  
22 responsible person must have authority to pay the taxes or  
23 cause them to be paid on the date the taxes became due and  
24 when the responsible person had actual knowledge the taxes  
25 were due but not paid. We have already established that,



1 as president of the business, Appellant had authority over  
2 the business in its day-to-day operations. In fact,  
3 Appellant admitted during the appeals conference that he  
4 had the authority to cause the business to make payments,  
5 including tax payments. And that's at Exhibit A, page 12.

6 As previously stated, he also admitted to having  
7 check-signing authority, which is recorded in an ACMS  
8 interview from March 3, 2016, Exhibit E-16. This  
9 admission is corroborated by additional evidence  
10 including, but not limited to, BOE 1508 Form, which was  
11 signed by Appellant; Exhibit E-6, the BOA -- BOE 1509 Form  
12 signed by his former bookkeeper, Gary Dewlo; a  
13 telephone interview conducted with Chef Ogawa  
14 (phonetic), which is Exhibit E-9; and business checks that  
15 were signed by Appellant on behalf of the business, which  
16 are Exhibits E-11 and E-19.

17 Appellant has not provided any evidence to  
18 contradict that he had the authority to sign checks and  
19 make payments on behalf of the business. As such, he had  
20 the requisite authority.

21 As to the final requirement for willfulness, the  
22 responsible person must have had the ability to pay the  
23 taxes but chose not to do so at the time the responsible  
24 person had actual knowledge the taxes were due. Appellant  
25 had sufficient funds available to pay the taxes when they

1 became due.

2 In 2013, Appellant's business reported total  
3 sales of \$396,648 for the second quarter and \$342,083  
4 dollars for the portion of the third quarter before the  
5 business closed on September 12th. And that's Exhibits --  
6 Exhibit E-17, pages 1 and 8.

7 Moreover, Appellant made numerous deposits  
8 throughout the first and second quarters, which is  
9 evidenced by his Exhibit 6. The business paid wages in  
10 the amount of \$307,413 for the second quarter and \$267,270  
11 for the portion -- portion of the third quarter before the  
12 business closed. That's Exhibit E-16.

13 Additionally, during the second and third  
14 quarters of 2013, there is evidence of payments made by  
15 the business to Southern California Gas Company, that's  
16 Exhibit 13; Southern California Edison, Exhibit 15; and  
17 Prospect Enterprises, Inc., Exhibit 18, totaling a little  
18 over \$47,000. Thus there's ample evidence to support that  
19 Appellant had the ability to pay \$36,237 of sales tax,  
20 which was collected from its customers on and after the  
21 dates that they became due.

22 Based on the foregoing, Appellant willfully  
23 failed to pay, or cause the payment of, the business's  
24 sales tax liabilities for the liability period and is,  
25 thus, personally liable as a responsibility for the

1 business's sales tax liabilities for the liability period.

2 In conclusion, the evidence shows that Appellant  
3 is liable pursuant to Section 6829 of the Revenue and Tax  
4 Code because, one, the business terminated its business in  
5 2013; two, the business collected sales tax reimbursement  
6 from its customers; three, Appellant was responsible for  
7 the business's payment of sales and use tax; and four,  
8 Appellant's failure to pay was willful.

9 Therefore, we ask this panel to affirm the  
10 decision in this matter.

11 Thank you.

12 JUDGE KWEE: Yes. Thank you.

13 This is Judge Kwee.

14 And I -- I did have a question, specifically,  
15 about the "willfulness" aspect. And in hearing his  
16 testimony today that, you know, he didn't become aware of  
17 the sales taxes weren't being paid until this all blew up,  
18 which from my understanding, was sometime around July and  
19 August of 2013. And I believe that is corroborated by  
20 some of the Exhibits -- that timeframe, anyway.

21 For example, Exhibit 19 is when he wrote that he  
22 changed his offer to \$50,000 to purchase, you know, the  
23 business due to new knowledge. And he highlighted the  
24 word "new knowledge" in the email, you know, which  
25 indicated that, you know, he didn't -- it was sometime by

1 August 1, 2013, he knew. But it was around that  
2 timeframe. And then there was also his, I believe,  
3 Exhibit 1. And that was the email from -- or a letter  
4 from Gerald mentioning that the \$100,000 buyout was on  
5 July 14, 2013.

6 So that -- it does seem to corroborate, that he  
7 didn't learn about the unpaid taxes -- at least, that  
8 there is documentation to corroborate that he didn't -- he  
9 didn't learn about the taxes not being paid until sometime  
10 between July 4, 2013, when there was the initial \$100,000  
11 offer, and August 1st, 2013, when that \$100,000 was  
12 reduced to \$50,000 due to new knowledge of the sales  
13 taxes.

14 And -- and I guess what I'm getting at here is,  
15 you know, the quarters at issue, you know, is the first  
16 quarter, 2013, and second quarter, 2013. So, you know,  
17 he -- he didn't, potentially, learn about -- I guess there  
18 is some evidence indicating that he didn't learn about the  
19 taxes, you know, until definitely after the first quarter  
20 became due and until after the end of the second quarter.  
21 But, you know, prior to the actual due date for the  
22 payment of the second quarter.

23 But if all those -- money had been gone by -- by  
24 then -- and it does indicate that the money was gone  
25 because he was loaning his personal funds. Like, he had

1 that list of payments that he was putting money -- his  
2 personal money into the account -- I mean, like, does he  
3 still have ability to -- you know, the -- still have  
4 the -- the willfulness aspect -- the ability to pay if  
5 there was no funds left by the time he discovered that  
6 sometime between July 4th and August 1st -- that  
7 Mr. Gerald wasn't paying the taxes?

8           Sorry. That's a long question, but I think you  
9 get the gist of it.

10           MR. COHEN: I have a question, if you don't mind.

11           JUDGE KWEE: I'd like to hear CDTFA respond to my  
12 question, first, and then I'll turn it over to you.

13           MR. COHEN: Sure.

14           JUDGE KWEE: You'll -- You'll have an opportunity  
15 for a rebuttal.

16           MR. COHEN: They waited for me. It's only fair.

17           JUDGE KWEE: Okay.

18           MS. DANIELS: So we're not clear, I mean, that  
19 there was not knowledge prior to the end of July. But we  
20 certainly do know that there was knowledge end of July,  
21 beginning of August. And the payments that we referenced  
22 were after that time. So there was still an ability to  
23 pay, even if knowledge had not been -- had not occurred  
24 until that time.

25           MR. CLAREMON: Yeah. Yeah. Excuse me.

1 I would add that, again, the -- as Ms. Daniels  
2 stated, the sales tax return for the third quarter, which  
3 would have been through September 12, which would have  
4 been -- which means half of that quarter that it was in  
5 operation was after August 1st -- or more than half, like,  
6 42 days.

7 The sales tax return showed \$342,000 in total  
8 sales for that quarter. So even if you were to assume  
9 that a proportionate share was -- of those sales were made  
10 after August 1st, it -- it shows a significant amount of  
11 money that would have been able to pay the liability. And  
12 I think you could say the same for the wages that were  
13 shown to be paid for that quarter.

14 JUDGE KWEE: Okay. Thank you.

15 And before I return it to -- back to Mr. Cohen,  
16 did either co-panelist have questions for CDTFA?

17 I'll start with Judge Lambert.

18 JUDGE LAMBERT: I don't have any questions.

19 Thanks.

20 JUDGE KWEE: Okay.

21 And Judge Long, did you have any questions for  
22 CDTFA?

23 JUDGE LONG: No questions. Thank you.

24 JUDGE KWEE: Okay.

25 Then, Mr. Cohen, I'll turn it back to you.

1 MR. COHEN: Thank you.

2 JUDGE KWEE: Sure.

3

4 CLOSING ARGUMENT

5

6 MR. COHEN: Okay. Number one is -- I don't know  
7 her name -- but I think she got something a little  
8 confused when she said that I knew the taxes were not  
9 being paid as of August. Was -- was that what she said?

10 I didn't know when the -- I didn't know the taxes  
11 were paid, ever. What -- what she's talking about -- and  
12 this is what the State Board of Equalization did too -- I  
13 told them that I -- when I looked in the office, when I  
14 was going to make a valid offer to this guy to come in --  
15 I looked at what moneys were owed -- not -- not State  
16 Board of Equalization, not payroll, but our short-term  
17 liabilities.

18 And when I looked at that paper, it included  
19 those two. But that was definitely not a -- a way to say  
20 that I knew that we didn't pay the taxes. That was  
21 just -- and they asked me for the paper, and I said it  
22 was -- it was just one on the desk.

23 I looked up short-term liabilities, and it showed  
24 them there. It didn't say what's due, what's not due,  
25 it -- it just said this is the total amount. And that's

1 why I wrote to the attorney and said, "If we're going to  
2 have to pay all this money, then I don't want to give him  
3 a hundred thousand. We'll give him \$500,000."

4 So it was -- it was not clear, ever, that I knew,  
5 ever, if the taxes were being paid. I always thought they  
6 were being paid because I gave him the money to do it. I  
7 didn't think they were not being paid. And I didn't have  
8 any knowledge, at all, about that. I swear to god. I did  
9 not know.

10 The way he was talking, he just needed this money  
11 to keep, like, operating expenses. Okay. And I wanted it  
12 to be successful. He wanted -- he wanted to get out. A  
13 lot of times he wanted to get out. In fact, at the end,  
14 he did. He got out, and he got everything.

15 But I did not -- I had no idea. He was an  
16 attorney. He paid the court. He wrote in his own letter.  
17 He said, "For 20 years, I paid all the taxes." Why would  
18 I think that he wasn't paying it when I'm giving him this  
19 money he asked for?

20 JUDGE KWEE: Okay. Mr. Cohen, first, what you  
21 might want to address -- what we were talking about is  
22 your Exhibit 19. And it's titled, "Email I Sent to My  
23 Attorney." And then what we were talking about -- my  
24 question had to do with -- it was the email that "Fishman  
25 Cohen" sent to "S-C-A-M-H-I."



1           And item -- it says, "Here's the offer I made."  
2 And item -- item one -- the second item one says, "Changed  
3 to \$50,000 due to new knowledge of payroll and sales taxes  
4 that Sasha and I will assume."

5           I guess, I -- when I was reading that, I thought  
6 that was referring to you having new knowledge that the  
7 sales taxes were not being paid. And perhaps you would  
8 like to clarify if that if that was not the case.

9           MR. COHEN: No. I knew they had to be paid.

10          JUDGE KWEE: Okay.

11          MR. COHEN: I didn't -- I didn't get your first  
12 question. I -- you wanted me to look up -- I got my  
13 papers all over the place. What Exhibit? 19?

14          JUDGE KWEE: Yes. This is your -- your  
15 Exhibit 19, and it's titled, "Email I Sent to My  
16 Attorney."

17          MR. COHEN: Oh.

18          JUDGE KWEE: And then that's where that word,  
19 "new knowledge," came. And so that -- we were just  
20 quoting that, and that was what my question was about --  
21 was what new knowledge you were referring to about -- and  
22 it said the sales taxes. So I thought that was in  
23 reference --

24          MR. COHEN: It didn't -- it didn't -- it never  
25 entered my mind.

1           If you remember in the beginning, when I said  
2 this, when Gerald asked, "What happens if I pay it late?"

3           And I said, "You're going to have to pay -- we're  
4 going to have to pay interest and -- interest and a fine  
5 or late fee, but you have to pay the taxes."

6           So I didn't think for one second that he wouldn't  
7 pay the taxes. Because, like I said to you, and I -- if I  
8 gave you money and said, "Here, we need the money to keep  
9 the business going," you're not going to tell me that  
10 you're behind and didn't pay. You're going to say we need  
11 it, but you're not going to say, "I didn't pay the taxes."

12           He's an attorney. He did this for 20 years for  
13 his uncle. He paid the taxes. He's the one that sends  
14 the slip to the State Board of Equalization. It's on the  
15 back of some of these, where he signs it "Gerald, owner."

16           And -- and the one thing we did talk about is  
17 that we didn't say -- we didn't make anything formal with  
18 who was going to do what. It was written on that paper.  
19 Remember when that lady came in and said, "Here's, like,  
20 an extra paper"; and I said, "I'll take it. It's not that  
21 important"?

22           Because what it was is Gerald sued me. And --  
23 and they're -- both attorneys said that both of us had the  
24 responsibility. If Gerald was not going to pay taxes, any  
25 major decision, he had to notify me. And if I did

1 anything that -- that went against him, I had to give  
2 him --

3 We didn't have equal only partnership. It had  
4 stipulation that if it was something that was important,  
5 you had to tell the other guy. And I considered not  
6 paying taxes number one important.

7 I've done it for 50 years. I've paid taxes.

8 JUDGE KWEE: Okay. Thank you.

9 So I guess, CDTFA has five minutes for their  
10 closing.

11 And so that would mean you would have two minutes  
12 left, if you -- if there's anything further that you want  
13 to say before I turn it over to CDTFA, and then we  
14 conclude today.

15 MR. COHEN: I didn't know what one we were  
16 talking about.

17 Gerald wound up with the business anyhow.

18 I -- okay. I'll say this -- and I'm not being  
19 facetious because I know they're both attorneys, and  
20 you're Judges -- I read that law because I was  
21 curious when -- when I was getting questioned from the  
22 State Board of Equalization.

23 They had a hound dog on me, but Gerald got the  
24 right letters. I didn't get that opportunity. I read  
25 that law, and it said that one of the -- one thing you had

1 to do is have the knowledge that it wasn't being paid. Am  
2 I not right?

3 JUDGE KWEE: If -- yes. The question we're  
4 addressing and we're looking at in this appeal is when you  
5 acquired the knowledge. And your presentation was -- your  
6 position was that you didn't know. And we understand.

7 MR. COHEN: Well -- and that's where  
8 communication comes in. Because I didn't have time to  
9 explain everything as we went through these papers.  
10 Because I could explain right from the beginning that what  
11 I looked at was short-term bills that we had -- short-term  
12 that had to be paid. And it included the State Board of  
13 Equalization, and the payroll was twice that.

14 It had -- it's -- I have it in paper. But I  
15 didn't get called on anything. It was -- I didn't have  
16 knowledge that it was due. I knew it was owed, but I  
17 didn't know it was due. I mean you can owe somebody, but  
18 if they don't say, "Oh, you know, time's up. You've got  
19 to pay" --

20 It's like when we -- when Gerald sent in those  
21 slips to the State Board of Equalization, he put on there  
22 how much money he thought we had in sales tax. I never  
23 saw those, ever. But if you look on there, you're going  
24 to see Gerald did. He got notices. He got noticed. He  
25 didn't tell me he got notices.



1           If you look at Exhibit H, page 3, these questions  
2 were posed to Appellant. And under number 3, it says,  
3 "I'm requesting a statement as to when did you learn about  
4 the taxes being due as referenced in the August 1, 2013,  
5 email."

6           And Appellant's response is, quote, "It must have  
7 been late July or August 1, 2013, but I would have only  
8 known taxes were owed, not if they were due or part due."

9           So there's knowledge of them being owed. And if  
10 you know that something is owed -- and you can't just put  
11 your head in the sand and then not look at the due date.

12           So it's clear there was knowledge at that time.

13           Thank you.

14           JUDGE KWEE: Okay. Thank you.

15           With that said, I'll turn it over to the  
16 panelists.

17           Judge Lambert, do you have anything before we  
18 conclude today.

19           JUDGE LAMBERT: I have no questions. Thank you.

20           JUDGE KWEE: And, Judge Long, do you have any  
21 questions before we conclude today?

22           JUDGE LONG: No questions. Thank you.

23           JUDGE KWEE: Then we are ready to conclude this  
24 record. The record -- so the record is closed, and this  
25 case is submitted on Wednesday July 20th, 2022.

1           This concludes our oral hearings calendar for  
2 today. After today, the Judges we will meet and discuss  
3 the case and we will send out a written opinion of our  
4 decision within a hundred days.

5           And thank you.

6           And the next cases won't resume until next week  
7 and those are virtual cases.

8           MS. DANIELS: Thank you.

9           MR. CLAREMON: Thank you.

10          MR. COHEN: Thank you.

11          (Proceedings concluded at 4:58 p.m.)  
12  
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1 REPORTER'S CERTIFICATION

2  
3 I, the undersigned, a Registered  
4 Professional Reporter of the State of California, do  
5 hereby certify:

6 That the foregoing proceedings were taken before  
7 me at the time and place herein set forth; that any  
8 witnesses in the foregoing proceedings, prior to  
9 testifying, were duly sworn; that a record of the  
10 proceedings was made by me using machine shorthand, which  
11 was thereafter transcribed under my direction; that the  
12 foregoing transcript is a true record of the testimony  
13 given.

14 Further, that if the foregoing pertains to the  
15 original transcript of a deposition in a federal case,  
16 before completion of the proceedings, review of the  
17 transcript  was  was not requested.

18 I further certify I am neither financially  
19 interested in the action nor a relative or employee of any  
20 attorney or party to this action.

21 IN WITNESS WHEREOF, I have this date subscribed  
22 my name.

*Sarah Tuman*

23 Dated: August 17, 2022  
24  
25



<hr/> <b>\$</b> <hr/>	57:3	46:13	<b>26</b> 41:14
<b>\$1,064</b> 40:3	<b>\$500</b> 35:21,22	<b>173</b> 43:12	<b>27</b> 6:11,15
<b>\$10,000</b> 14:6,9 16:12,20,22 39:21	<b>\$500,000</b> 18:11 56:3	<b>18</b> 42:16 50:17	<b>27th</b> 16:23
<b>\$10,640</b> 39:22	<b>\$70,000</b> 37:8,14	<b>18063324</b> 2:6 5:9	<hr/> <b>3</b> <hr/>
<b>\$100,000</b> 52:4,10, 11	<b>\$90,000</b> 16:19	<b>19</b> 44:5 51:21 56:22 57:13,15	<b>3</b> 49:8 62:1,2
<b>\$14,538.67</b> 40:10	<hr/> <b>(</b> <hr/>	<b>1919</b> 43:11	<b>3/16</b> 22:4
<b>\$17,939.23</b> 40:12	<b>(a)</b> 43:2	<b>1st</b> 48:20 52:11 53:6 54:5,10 61:21	<b>3/3</b> 21:22
<b>\$190,000</b> 17:7	<b>(b)</b> 42:11	<hr/> <b>2</b> <hr/>	<b>3/3/16</b> 20:23
<b>\$2,764.60</b> 40:4	<b>(b)(1)</b> 42:16	<b>2</b> 41:18,20	<b>3/31</b> 21:25
<b>\$20,000</b> 14:5,10 16:3,13,14,15 30:5,6	<b>(b)(2)</b> 46:13	<b>20</b> 2:18 5:1 13:11, 14 15:4 30:21 39:7 56:17 58:12	<b>3/31/16</b> 21:20
<b>\$20,640</b> 39:20	<b>(c)</b> 42:19	<hr/> <b>2</b> <hr/>	<b>3/6</b> 21:22
<b>\$200,000</b> 37:4	<hr/> <b>1</b> <hr/>	<b>2006</b> 47:10	<b>3/9</b> 21:23
<b>\$230,500</b> 47:22 48:18	<b>1</b> 6:12,14,15 8:6,7 10:23 11:12 17:20 39:25 48:5 50:6 52:1,3 62:4,7	<b>2011</b> 43:17	<b>3/9/16</b> 22:1
<b>\$235,000</b> 12:22	<b>1-30</b> 4:4 8:10	<b>2013</b> 9:8 11:21,22 14:6 16:6,7,23 17:9 33:25 37:18 39:19,24,25 40:10,11 41:17,22 47:3,23 48:1,5,20 50:2,14 51:5,19 52:1,5,10,11,16 62:4,7	<b>30</b> 6:12,16 8:6,7 14:6 39:19
<b>\$240,000</b> 13:5	<b>1-C</b> 48:3	<b>2014</b> 41:15	<b>30-day</b> 15:11
<b>\$25,000</b> 16:7,8	<b>10</b> 4:12	<b>2016</b> 40:16,17 49:8	<b>30th</b> 14:4,13
<b>\$267,270</b> 50:10	<b>11th</b> 17:9	<b>2017</b> 48:10,11 61:25	<b>31</b> 44:23 47:10
<b>\$27,597.17</b> 40:2	<b>12</b> 11:22 41:17,22 49:5 54:3	<b>2018</b> 44:22	<b>312</b> 43:1
<b>\$27,646</b> 39:25	<b>12th</b> 50:5	<b>2022</b> 2:18 5:1 62:25	<b>366</b> 42:21
<b>\$3,400.56</b> 40:9	<b>13</b> 24:8 33:25 50:16	<b>20th</b> 5:9 62:25	<b>39</b> 4:13
<b>\$307,413</b> 50:10	<b>13th</b> 16:11,14	<b>22</b> 40:17	<b>3:15</b> 2:17 5:2,10
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