

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF:)
)
SOUL LOUNGE, LLC,) OTA NO. 19075065
)
)
) APPELLANT.)
)
_____)

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Wednesday, August 24, 2022

Reported by:

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37125 OTA

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APPEARANCES :

Panel Lead: ALJ ANDREA LONG

Panel Members: ALJ ANDREW KWEE
ALJ JOSHUA ALDRICH

For the Appellant: BASIL BOUTRIS
J. PERKINS

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND FEE
ADMINISTRATION
JASON PARKER
CHRISTOPHER BROOKS
RANDY SUAZO

1 I N D E X

2
3 E X H I B I T S

4 (Appellant's Exhibits A-AD were received at page 8)

5 (Department's Exhibits A-G were received at page 9)

6
7
8 O P E N I N G S T A T E M E N T

9 PAGE
10 By MR. BOUTRIS 10

11
12 P R E S E N T A T I O N

13 PAGE
14 By MR. BOUTRIS 17
15 By MR. PARKER 76

16
17 APPELLANT'S
18 WITNESSES: DIRECT CROSS REDIRECT RECROSS
19 JASON PERKINS 20

20
21 C L O S I N G A R G U M E N T

22 PAGE
23 By MR. BOUTRIS 92
24
25

1 Sacramento, California; Wednesday, August 24, 2022

2 9:30 a.m.

3
4 JUDGE LONG: Good morning. I'm Andrea Long, the
5 lead ALJ for this appeal. We are here today for the
6 Appeal of Soul Lounge, OTA Case Number 19075065. Today is
7 Wednesday, August 22nd -- I'm sorry -- 24, 2022. And it's
8 approximately 9:30 a.m. We are -- this hearing is taking
9 place in Sacramento, California.

10 With me today on the panel of judges are Andrew
11 Kwee and Josh Aldrich. As the lead ALJ for this appeal, I
12 will be conducting the proceeding in this matter. But my
13 co-panelists and I are equal participants. We will be
14 reviewing the evidence, asking questions, and reaching a
15 determination in this case.

16 We will begin with the parties stating their
17 names and who they represent for the record. Let's start
18 with CDTFA.

19 MR. PARKER: Jason Parker, Chief of Headquarters
20 Operations Bureau with CDTFA.

21 MR. BROOKS: Christopher Brooks, Tax Counsel --
22 Christopher Brooks, Tax Counsel for CDTFA.

23 MR. SUAZO: Randy Suazo, Hearing Representative
24 C -- CDTFA.

25 JUDGE LONG: And for the Appellants, please

1 introduce yourselves.

2 MR. BOUTRIS: Basil Boutris, Attorney, acting on
3 behalf of Soul Lounge, LLC.

4 JUDGE LONG: Can you please turn on your mic or
5 maybe scoot in a little closer.

6 MR. BOUTRIS: Basil Boutris -- thank you.

7 Basil Boutris appearing for Soul Lounge, LLC,
8 the -- the Appellant.

9 MR. PERKINS: Jason Perkins, Managing Partner,
10 Soul Lounge, LLC.

11 JUDGE LONG: Thank you.

12 The parties have agreed that the issue before
13 today is whether Appellant has shown that adjustments are
14 warranted to the audited understatement of reported
15 taxable sales of food and beverages established by markup;
16 whether Appellant has shown that adjustments are warranted
17 to the audited amount of facility rentals subject to tax;
18 whether Appellant has shown that adjustments are warranted
19 to the audited amount of sales of drink tickets for
20 non-alcoholic beverages subject to tax; whether Appellant
21 has shown that adjustments are warranted to the audited --
22 audited amount of self-consumed alcoholic beverages
23 subject to tax; and whether respondent properly imposed
24 the negligence penalty.

25 Appellant submits Exhibits A through AD to be

1 admitted into the record. However, CDTFA has stated that
2 it objects to Appellant's submissions.

3 CDTFA, can you please state for the record your
4 objections to Appellant's exhibits?

5 MR. BROOKS: Good morning. Good morning. This
6 is Christopher Brooks.

7 The Department has objected to Appellant's
8 Exhibits N -- N, O, P, U, and AD. We find these -- we
9 believe these are not relevant because some of these
10 involve a -- a separate legal entity rather than the
11 entity that's been audited.

12 JUDGE LONG: Okay. We will take note of your
13 objections. We will overrule it and admit those into
14 evidence. However, the panel will give each exhibit the
15 appropriate weight based on the relevance and probative
16 value.

17 I'll also remind Appellants that we're here to
18 discuss the five issues that we just -- that I mentioned
19 earlier. And so please focus your arguments and relate
20 your exhibits to those arguments.

21 Any other objections by CDTFA?

22 MR. PARKER: No further objections. Thank you.

23 JUDGE LONG: Just to clarify, the objections
24 regarding blank pages -- that's no longer at issue?

25 MR. BROOKS: We didn't want -- the Department

1 didn't know what blank pages that -- we didn't know it was
2 going to appear. We couldn't establish what blank pages
3 were going to be quote/unquote -- why they were there,
4 when they could have been just not included.

5 JUDGE LONG: I -- I -- if you wanted to clarify,
6 Mr. Boutris?

7 MR. BOUTRIS: The -- the blank pages were -- were
8 just a mistake when I put the exhibits together. And then
9 I created them. And I had to take those out because they
10 were not relevant to the case.

11 So I didn't want to have to recopy everything and
12 go through that hassle. So I just said blank pages --
13 it's just a numbering issue, really.

14 JUDGE LONG: I understand. Thank you.

15 So we will exhibit all of -- I'm sorry -- admit
16 all of Appellant's Exhibits A through AD into the record.

17 (Appellant's Exhibit Nos. A-AD were received in
18 evidence by the Administrative Law Judge.)

19 JUDGE LONG: CDTFA submits Exhibits A through G
20 to be admitted. And again, Appellants have stated that it
21 objects to CDTFA's submissions.

22 And Mr. Boutris, can you please state for the
23 record your objections to CDTFA's exhibits?

24 MR. BOUTRIS: Well, my objections really go to
25 the weight to be given to some of the evidence.

1 We don't have their auditor here, today, as a
2 witness; they have no witnesses. We don't have anybody
3 from any of these vendors here to authenticate any of
4 their vendor survey numbers that they're relying on.

5 They didn't provide us with some of these surveys
6 at any time in the process until these exhibits were
7 produced. And we -- we have concerns about the relevance;
8 authentication; and, essentially, double hearsay going on
9 here.

10 JUDGE LONG: So I'll note, under the OTA Rules
11 For Tax Appeals, under our Regulation Section 30214(f),
12 rules relating to evidence contained in the California
13 Evidence Code don't apply to our proceedings before OTA.

14 But I -- as I mentioned earlier -- that OTA kind
15 of -- we rely on the Evidence Code when evaluating the
16 weight. So we will give it the proper weight that we --
17 we deem fit.

18 So we will be admitting all of CDTFA's exhibits.
19 Exhibits A through G will be admitted.

20 (Department's Exhibit Nos. A-G were received in
21 evidence by the Administrative Law Judge.)

22 JUDGE LONG: All right. So I think we are ready
23 to begin the parties' presentations.

24 Appellants, you will have ten minutes to make
25 your opening statements. And then we will move on to

1 Mr. Perkins' testimony. But again, before he begins, we
2 will swear him in. But we will start with your opening
3 statements.

4 Please begin, when you're ready.

5
6 OPENING STATEMENT

7 MR. BOUTRIS: Thank you so much, Judge Long.

8 Again, my name is Basil Boutris. I've been a
9 specialist tax attorney for 35 years. I teach at Golden
10 Gate University in the LLM Program as an adjunct
11 professor. I've had a number of opportunities to work
12 towards policy issues with the -- with the State of
13 California.

14 JUDGE LONG: Mr. Boutris, I'm sorry. Can you
15 speak more directly into the mic?

16 MR. BOUTRIS: Sorry.

17 And in particular, I spent many years working for
18 the Executive Committee of the State Board Tax Section.
19 And I just want to say, this is my first appearance before
20 the OTA.

21 And one of our biggest efforts during my time on
22 the Executive Committee was to get an OTA-type of
23 institution established for the State of California.
24 Because it always felt in -- in the private bar that --
25 that the -- the mechanisms set up with the BOE and the

1 political appointees were -- were not truly an objective
2 way to have an appeal -- to have an effective appeal
3 mechanism in California.

4 So I just wanted to thank you for, you know,
5 being -- offering your services for the OTA. And -- and
6 I'm so glad to see that the OTA is up and functioning.
7 And it's my first opportunity to be before you. So I'm
8 honored to be here.

9 So let me just start by saying I think there were
10 a lot of misunderstandings between the auditor and the
11 taxpayer during the course of -- of this particular audit.
12 I don't think that the CDTFA auditor ever really
13 understood what this business was.

14 He thought it was a bar that was open from
15 8:00 a.m. until 2:00 a.m. every day. And that's not at
16 all what it is. It's -- it's a music venue in San
17 Francisco. Doors open at 8:00 p.m. Music starts at
18 9:00 p.m. Everybody leaves by 11:30 p.m. It's a very
19 specific type of business. It is not just a bar.

20 And that -- I think that misunderstanding is --
21 you will see, is perpetuated throughout this audit.
22 Because then, what you have going on here is that
23 so-called alcohol purchases are then extrapolated to these
24 huge numbers that absolutely make no sense. And
25 Mr. Perkins will -- will testify as to this.

1 But just looking at the numbers extrapolated
2 by the CDTFA, they -- they make no sense. If you look at
3 the forest for the trees, there's absolutely no way that
4 this business is generating the amount of liquor sales
5 that are being attributed to it by the CDTFA.

6 And again, I think that's in part because of
7 their misunderstanding about what kind of operation this
8 is.

9 And the other thing here is that they're treating
10 2012 as -- as a full year. And this business didn't start
11 at the beginning of 2012. Mr. Perkins didn't acquire this
12 business until into the year. And again, he will testify
13 as to that.

14 The -- the biggest point of misunderstanding here
15 is that Mr. Perkins doesn't just operate the Soul Lounge.
16 He was operating five or six other venues.

17 MR. PERKINS: Nine.

18 MR. BOUTRIS: Nine other venues -- I stand
19 corrected -- nine other venues at this period in his life.
20 And these were all music-oriented-type venues. And they
21 were in San Francisco and the East Bay.

22 And because of the economies of scale, what would
23 happen is that the -- the businesses had a central
24 warehouse where the liquor was brought. And then from
25 there, the liquor would be dispersed out to the various

1 venues.

2 And what happened here is that the auditor
3 treated all liquor coming into the warehouse as being
4 liquor solely and exclusively used by Soul Lounge.

5 And that is why, for example, in the exhibits, we
6 have a tax return of PEG Oakland. That was one of the
7 venues that was doing far more revenue generation and used
8 a considerable amount of the -- the liquor and alcohol in
9 its business and is directly relevant to this case.

10 But the CDTFA, all along, ignored that and just
11 treated it as though it was one entity. And somehow
12 conflated that because some of the invoices went to the
13 address of Soul Lounge -- that somehow Soul Lounge was
14 receiving a hundred percent of those liquor shipments.

15 And that -- that's just not the case here. So we
16 will be -- Mr. Perkins will be testifying as to that
17 erroneous assumption of the CDTFA.

18 The other part to this is that -- again, because
19 it's a music venue, a good portion of its revenues are
20 generated, actually, by ticket sales to -- to music events
21 and by rental of the venue to outside parties.

22 So if somebody wants to have an engagement party
23 or a big birthday party or, you know, something like that,
24 they -- they will pay Soul Lounge a fee for the use of the
25 facility. And Soul Lounge was not collecting sales tax on

1 those transactions.

2 Whether or not that was specifically correct is
3 a -- is at issue, you know, before you today. But -- but
4 the point being is that -- and -- and is that Mr. Perkins
5 believed that -- it was advised that -- that rentals of
6 the venue were not subject to sales tax and that he
7 didn't -- he shouldn't collect it. And he didn't collect
8 it.

9 And then as to ticket sales, well, those were
10 done through a third-party operation, Ticketfly. And we
11 will, again, get into that in the course of reviewing the
12 exhibits here.

13 But the -- fundamentally, at the end of the day,
14 the big -- the big adjustment here has to do with the fact
15 that the -- the auditor here treated all alcohol purchases
16 as belonging to Soul Lounge, when that simply was not the
17 case, and then extrapolated a huge markup on top of that
18 fallacious assumption.

19 And that's why we get -- we get projected taxable
20 sales in -- in the audit report that have no -- no basis
21 in reality. They don't even make sense if you were to
22 look at the number of hours that the -- that the club was
23 open.

24 You know, I think that Jason told me it would
25 require a bartender to serve, like, ten drinks in one

1 minute. You know, it's just not -- it's just not feasible
2 based on -- on the numbers that were extrapolated from --
3 from the false assumptions here.

4 And -- and as to the issue of the venue sales,
5 there may have been mistakes made there. I think that my
6 read of the regulations here is that -- is that -- to the
7 extent that a caterer, for example, provides any labor --
8 like a security guard or a waiter or a bartender -- or
9 provides plates and silverware and flowers and such --
10 that -- that that does make a rental of a facility subject
11 to sales tax on the entire amount.

12 And so there may have been mistakes in that
13 regard. In some cases, the venue was simply rented to the
14 lessee. The lessee would handle everything. Okay? So
15 there was no involvement on the part of any Soul Lounge
16 personnel. But on other occasions, there was involvement
17 by Soul Lounge personnel.

18 And -- and, you know, that's just a -- a
19 misunderstanding on -- on the part of Mr. Perkins. And --
20 and he -- he -- he acknowledges that -- or will
21 acknowledge that.

22 And -- and -- but -- but I just want to point out
23 to -- to the Judges that, you know, it was not done with
24 malice or ill intent. He -- he was under the
25 understanding that he did not need to collect sales tax on

1 those amounts; so he did not collect sales tax on those
2 rental venue charges.

3 And if he was wrong, you know, it wasn't -- it
4 wasn't due to negligence. He was seeking the advice of
5 his CPA and -- and tax lawyer. And they advised him that
6 a rental venue was not subject to -- to sales tax.

7 I don't think maybe they understood some of the
8 intricacies of the regulations the way, maybe, I do or you
9 do.

10 So I think we're ready to segue to the witness.
11 I -- my feeling is rather than just letting the witness
12 give dialogue -- and I ask for your feedback on this --
13 maybe I could sort of face him with questions but not do
14 it in sort of the true sense that I would in a trial
15 court.

16 Is that -- is that acceptable?

17 JUDGE LONG: Yes, that's fine.

18 MR. BOUTRIS: Okay.

19 JUDGE LONG: So are we ready for Mr. Perkins'
20 testimony?

21 MR. BOUTRIS: We're ready to start.

22 JUDGE LONG: Mr. Perkins, can you please raise
23 your right hand?

24 Sorry. My mic was not on.

25 Please raise your right-hand.

1 JASON PERKINS,
2 called as a witness on behalf of the Appellant, having
3 first been duly sworn by the Administrative Law Judge, was
4 examined and testified as follows:

5
6 THE WITNESS: Yes, I do.

7 JUDGE LONG: Great. You may begin.

8
9 PRESENTATION

10 THE WITNESS: Well, first of all, I'd -- I'd like
11 to thank the Judges because it's been about six years
12 since I've been trying to get to talk to someone in person
13 about this issue. So this is a relief in a lot of ways.

14 I really believe, like, this case comes down to
15 some basic misunderstandings. And in 2012, when my
16 business partners and I decided to open up an
17 entertainment company, we -- we opened a bunch of venues
18 at the same time. And in the process, we also opened up a
19 cafe, and we had our offices.

20 So when the auditor came -- and this is really
21 the heart of what -- what happened -- is when Mr. Jalal
22 [sic] came to our offices, which is two buildings over
23 from Brick & Mortar -- from Soul Lounge. And he was like,
24 "Well, is this -- this is your office?"

25 And we're like, "Yes. This is where the liquor

1 comes in for all the businesses."

2 And he was like -- and he was confused. And he
3 thought that the cafe that's next-door was also -- was
4 Soul Lounge.

5 I was like, "No. This cafe is Crafty Fox. This
6 is a separate business. And you have to walk around the
7 corner to go to Brick & Mortar, the -- the music venue."

8 And I understand if someone -- you don't really
9 understand the flow of what we're doing. It's -- it's --
10 to him, I think it was one large business. When it was,
11 actually, separate -- there's separate street numbers,
12 separate businesses, separate LLCs with separate business
13 intents.

14 And when we tried to explain to him that we made
15 a deal with our liquor distributors, you know, because we
16 were going for central distribution to get a better
17 discount.

18 You know, obviously, I think Fred Smith came up
19 with the idea. It certainly wasn't me.

20 And -- we just took it all in because they gave
21 us a better discount. And then we would distribute it but
22 also keep control of our inventory that way.

23 And at that time, we had Place Pigalle, which is
24 also listed -- even on the invoices that they are using in
25 the CDTFA's, you know, case against us -- it says "Place

1 Pigalle" right on them, which is a bar, like, a wine bar
2 that we had on K Street, which is, like, six blocks away,
3 you know.

4 And we were just trying to and -- and we got --
5 we had an issue with it at that time. He said, "Well --
6 well, it's not legal."

7 And then we talked to them, like, no. When you
8 go to the ABC and explain to them what you're doing,
9 you're allowed to central distribute. That's why Safeway
10 does it; that's why most people who have multiple
11 locations do it.

12 And I think that confusion just carried through.
13 And we were never able to explain ourselves clearly to the
14 CDTFA and what was going on in this location -- and what
15 was separate about the separate businesses and the
16 separate warehouse that was used also for our businesses
17 in the East Bay and the Sierras, you know, and in -- in
18 Contra Costa County.

19 And it just wasn't -- we never had that dialogue.
20 And I think, unfortunately, that fundamental, basic
21 misunderstanding has carried through this entire process.

22 So I appreciate you guys taking the time to, at
23 least, give me the chance to explain what happened.

24 ///

25 ///

1 DIRECT EXAMINATION

2 BY MR. BOUTRIS:

3 Q So -- so Jason let me -- let me just try to
4 direct you here.

5 Can you describe the nature of the Soul Lounge
6 business?

7 A The Soul Lounge, when we bought it -- the Soul --
8 Soul Lounge -- I bought Soul Lounge. It was a -- like, a
9 supper club. And we bought -- we -- when we bought it off
10 the old owner, we turned it into a straight music venue.

11 We pulled out all the booths and everything. And
12 we put in a sound system and a stage. And -- and we
13 did -- for the first two years, we did try to run some
14 food service.

15 And then we gave up. And we gave it to a
16 third-party caterer. So we didn't have food service after
17 2013. And I even gave contracts showing our catering
18 contracts to the CDTFA on this point.

19 And -- but we were -- we're a music venue, you
20 know. We were -- doors open at 7:00 or 8:00, depending on
21 the time of week, band starts an hour later,
22 two-and-a-half-hour show, and that's it.

23 And so we have -- it's the -- the venue was 110
24 people seated. And then we would -- we would -- much to
25 the fire department's chagrin -- were not happy -- we

1 would probably push it, on shows that were open seating,
2 you know, with no seating -- we would push it to 200, 240.

3 And that's -- and we probably did 140, 150 shows
4 a year, which is a lot for a music venue, actually. It
5 was probably the most of any of our music venues -- the
6 most days. We were probably open more than most.

7 Q Jason, when did you actually acquire Soul
8 Lounge and -- and start operating it?

9 A Well, we acquired it in 2011. We sort of ran it
10 jointly with the old ownership as we sort of were
11 absorbing all these new businesses and new employees.

12 And then we closed the business down and did a
13 complete remodel over Christmas 2011 to about March 20th
14 of 2012. And then we reopened as Brick & Mortar.

15 Q Can you talk about your -- your other venues?
16 What -- what they were? And where they were located?

17 A I mean -- so on the corner, where my partner and
18 I -- and we -- we -- we still operate, to this day, and
19 own the Crafty Fox, which is on the corner -- which is
20 1700 Mission.

21 And then 1710 Mission is where Brick & Mortar
22 was -- Soul Lounge. And then 11 Duboce, which is just
23 around the corner, is where our office was, where it also
24 had the liquor warehouse.

25 So to us, it made perfect sense. But we were

1 doing it every day. I think for someone who -- who showed
2 up, and it -- it looked -- just, like, they weren't sure
3 if it was one complete building or three different
4 separate buildings, which it was.

5 And at the time, we just -- we just knew from our
6 past experiences that we -- we had to operate multiple
7 venues to be successful in the Bay Area. It's a
8 competitive market.

9 And to be able to book bands over other clubs,
10 we -- where we were able to give them, say, "Hey. You can
11 play in Oakland. You can play in San Francisco. And you
12 can play in the Sierras." And we gave them three dates,
13 which gave us a huge competitive advantage over other
14 clubs, who can only offer them one date in San Francisco.

15 So we went in with a plan. We probably never
16 worked so hard in our lives. And, you know, we adjusted
17 along the way.

18 I -- I think, at the time, we weren't -- we
19 didn't quite understand about the -- about the way that --
20 that the CDTFA would look -- or the BOE, as it is at the
21 time -- would look at the central warehousing, you know.

22 And it was something that, you know -- that was
23 sold to us by our vendor -- vendors loved it because they
24 can just drop up one giant truck of liquor. And so they
25 were very enthusiastic and sold us on this -- this idea.

1 And I think we could have probably done a better
2 job explaining. I did -- I did have -- I did have
3 Southern Wine and Spirits -- which by the end of the turn,
4 became our biggest vendor -- talked with the -- with the
5 BOE at the time and explained what we were doing.

6 And I think it was just -- again, it was -- it's
7 not an easy -- it was never a smooth communicative
8 process. And I think that's why we're here today.

9 MR. BOUTRIS: Point of procedure, in terms of
10 exhibits, do the Judges have the exhibits in front of
11 them?

12 JUDGE LONG: Yes.

13 MR. BOUTRIS: Okay. So I can point to my
14 exhibits and pages within the exhibits, and everyone will
15 be on point?

16 JUDGE LONG: Yes.

17 MR. BOUTRIS: Okay.

18 BY MR. BOUTRIS:

19 Q So I wanted to jump into our exhibits,
20 Mr. Perkins, on page 1.

21 A Yes.

22 Q There is a tax return here.
23 Can you identify what that is?

24 A Yes. It's our amended tax return for 2012.

25 Q And -- and on line -- line 2 of that tax return,

1 it says, "cost of goods sold --"

2 JUDGE LONG: Mr. Boutris, can you speak into the
3 mic, please?

4 MR. BOUTRIS: Sorry.

5 JUDGE LONG: Thank you.

6 MR. BOUTRIS: I'll just get it closer. I'm going
7 to put it closer.

8 BY MR. BOUTRIS:

9 Q On -- on -- on the front of the ten form -- Form
10 1065, line 2, "Cost of Goods Sold".

11 Do you see that, Mr. Perkins? \$343,567?

12 A I think that's line 3. Cost of Goods is number
13 2 -- \$299,285.

14 Q Thank you. Thank you. Thank you.

15 A Sure.

16 Q I don't have my bifocals on.

17 Now, can you flip to page 15?

18 A Yes.

19 Q You see -- you see the section breaking down the
20 cost of goods sold from form line -- from Form 1125, line
21 5?

22 A Yes, I do.

23 Q And what does it say the "alcohol purchases"
24 were?

25 A \$87,289.

1 Q And -- and -- and you believe that to be the
2 correct amount of alcohol purchases?

3 A Absolutely. On our amended return, I hired an
4 outside accountant to come in. And we redid all the
5 forms, which we turned over to our tax attorney, Basil.

6 And we are a hundred percent confident in that
7 number.

8 Q And if you could, now, flip to the 2012 Profit
9 and Loss Statement that's on page 80.

10 A Page 80?

11 Q Yes.

12 A Okay. I'm here.

13 Q It showed -- do you see on the second line under
14 "Gross Receipts," it says, "Alcohol Sales, two --"

15 A \$261,865.86.

16 Q And then -- correct. And then it says -- it
17 says, "Alcohol Sales, \$261-".

18 And then underneath, it says, "Cost of Goods
19 Sold, \$87,288"?

20 A Sixty-two, yes.

21 Q And does that match your reported amount on your
22 tax return?

23 A Yes, on our amended -- on our amended return.
24 And -- which we -- we did prepare with much more extreme
25 thoroughness as it was -- as we knew we were under the

1 audit.

2 And we knew that we had to correct some mistakes
3 that were made with our first accountant, who -- who was
4 trying to -- a small accounting firm trying to take in
5 nine different venues at the same time.

6 And so I -- I'm a hundred percent confident in
7 those numbers.

8 Q So let's flip, now, to page 16. This is the 2003
9 U.S. return of partnership income for Soul Lounge. Again,
10 I would ask you to look at the cost of goods sold amount,
11 there.

12 What is that, Mr. Perkins?

13 A \$373,095.

14 Q And then flip to the -- to the summary on page
15 30.

16 Again, the summary reflects the breakdown of the
17 cost of goods sold alcohol purchases as \$112,814?

18 Do you believe that's a correct number?

19 A Yes. I'm -- on the amended return, I have a
20 hundred percent confidence in that number.

21 Q Okay. Can we now flip to the 2013 Profit and
22 Loss Statement that was provided to the CDTFA?

23 This is going to be on page 82.

24 A Okay. I'm -- I'm here at this page.

25 Q So you see where it says, "Cost of Goods Sold,

1 \$112,814.24"?

2 A Yes, I do.

3 Q And -- and does that conform to the amount shown
4 on the federal income tax return?

5 A Yes, it does.

6 Q Let me jump to 2004 amended federal return on
7 page 31.

8 A Yes. And cost of goods sold on line 2 is
9 \$285,299.

10 Q Okay. And if you flip to page 45, the last page
11 of the return, which shows the breakdown of the cost of
12 goods sold, it shows alcohol purchases of \$90,787.

13 Do you believe that's an accurate number?

14 A Yes, I do. I'm -- I'm -- I'm a hundred percent
15 confidence [sic] on the number.

16 Q Let's jump to the Profit and Loss Statement on
17 page 84. This is the P&L for Soul Lounge for tax year --
18 calendar year 2014. It shows cost of goods sold at
19 \$90,786.50.

20 Do you see that?

21 A Yes, I do. And that's an accurate number.

22 Q And does that reconcile with the federal income
23 tax return?

24 A Yes, it does.

25 And I would like to tell the Judges that we used

1 a -- a tax preparer in the beginning, when we first
2 started -- probably because they were less expensive and
3 wouldn't cost us dearly.

4 And so when we started working with a tax
5 attorney, we hired also a proper tax, you know, firm to --
6 to handle and help us do our accounting, which is why our
7 amended returns were all accepted by -- by the IRS.

8 Q Mr. Perkins, if you could turn to page 46 of the
9 exhibits. This is a document identified as a "Transaction
10 List By Date" covering the tax period January 2012 to
11 December 2014.

12 Do you see that, Mr. Perkins?

13 A Yes, I do.

14 Q And what -- what is this -- what is this
15 document? If you could just identify it for -- for the
16 Judges.

17 A This is a -- a -- it's a transaction -- it's just
18 a transactional list printout from our accounting system
19 that shows a, you know -- a -- an event-by-event of -- of
20 invoicing, expensing, and payments coming into Soul Lounge
21 for those three years.

22 Q So take, for example, this entry, here, on
23 1/18/2012. It's about one -- again, we're on page 46, and
24 it's -- it's the sixth entry down -- it says, "1/18/2012
25 Expense, Morris Distributing, Supplies and Materials."

1 Maybe that's not the best one to do it. That
2 shows as a credit. Let's go to -- further down.

3 1/31/2012 -- there is an expense for Matagrano.
4 It's -- it's about 12 line items down.

5 A Yes.

6 Q Do you see that?

7 A Yes.

8 Q And then it says, "Supplies and Materials."

9 Just trying to -- so -- so is that -- maybe, I
10 don't understand the document.

11 Is that reflecting, then, a -- a payment that was
12 made to Matagrano, as far as you can tell?

13 A Yes.

14 Q Okay. And -- and what is "Matagrano"?

15 A Matagrano is a beer distributor in San Francisco.

16 Q Okay. So that would have been the purchase of
17 beer by Soul Lounge?

18 A Correct.

19 Q And -- and do you believe this transaction list
20 covering the entire audit period is -- is an accurate
21 reflection of the transactions performed by Soul Lounge?

22 A Yes, I do.

23 Q Let's jump over to page 53 of our exhibits.

24 Now, I have notated this as "Rental Sales" here.

25 Can you describe exactly what this is,

1 Mr. Perkins?

2 A This is -- is -- many times, when you work with
3 either promoters or a private party person or a nonprofit
4 or a school -- like, my partner and I, like -- are -- we
5 used to do, you know -- like, the school fundraisers every
6 year. Or, like, we had, like, a music promoter who wanted
7 to use the club on a day, and we would rent it out.

8 And this is a reflection of the venue rentals.

9 Q And -- and was the income from these rental sales
10 reported on your federal income tax return?

11 A Yes, they were.

12 Q And to your knowledge, was it reported on your
13 sales and use tax returns?

14 A I do believe so, yes.

15 Q Mr. Perkins, if we could turn to page 57, I have
16 written on here printouts from Ticketfly Ticketing
17 Services.

18 Can you -- can you provide to -- the Judges with
19 an explanation of what this represents?

20 A This is -- this represents, like, a nightly total
21 of advanced ticket sales from Ticketfly, which was our
22 ticketing vendor at the time.

23 And as Brick & Mortar -- Brick & Mortar was more
24 of a local music venue rather than something like the Fox
25 or the Sacramento Auditorium. Probably, our advanced

1 sales are much lower than, let's say, our bigger venues,
2 which would have a much higher percentage of advanced
3 sales.

4 So that's why it shows advance \$20 or \$0. But on
5 local shows, people just don't buy advanced tickets; they
6 just show up at the door.

7 Q And -- and Ticketfly is an independent business,
8 is it not?

9 A Yes.

10 Q So how does it work? The -- the customers who
11 want to buy tickets ahead of time call Ticketfly to get
12 advanced tickets?

13 A Well, the way it works with our venue, and every
14 venue I know, is -- is you make a, you know -- you make
15 a -- an agreement with a ticketing service. You -- you --
16 on your website, when they see the list of the events,
17 they click on it. And it actually takes you to the
18 vendor's website.

19 So like, if you go to Brick & Mortar's website,
20 and you click on, "I want to see this show," it'll take
21 you, then -- then you go to the Ticketfly's website or
22 Ticketmaster's website for the closeout of the sale.

23 And that's the way, you know, the Fox Theater
24 does it. That's the way, you know, the Oakland Coliseum
25 does it as well. All -- all venues do the same in a

1 similar manner.

2 Q And -- and -- let me see if I understand you. Do
3 you then get a percentage of the advanced ticket sales?

4 How does -- how does the split work between you
5 and Ticketfly?

6 A We get -- basically, we get the -- we get the
7 ticket sales. And they get the ticket fee, which is
8 usually -- sometimes you get something from the ticket
9 fee, like a percentage.

10 But in the beginning, we did not know that. So
11 we didn't get it. We were not aware that that -- that was
12 something that was shareable.

13 And so basically, Ticketfly is doing this as a
14 service so they can charge you those ticket -- ticket
15 fees.

16 Q Give me an idea. What is the ticket price in
17 relation to the ticket service fee?

18 A I mean, generally, these days, I would say it's
19 running 20 -- 20 percent, almost. I mean, it's pretty
20 high.

21 Q And was the revenue generated from the ticket
22 sales -- was that reported on your federal income tax
23 return?

24 A Yes. On -- what you're seeing on this list, is
25 the -- the funds that we received from Ticketfly on a

1 per-show basis.

2 Q Okay. These numbers represent what Ticketfly
3 actually paid you?

4 A Paid us without -- these do not reflect the
5 amount they collected; it reflects what they paid us.

6 Q And -- and to your knowledge, were you required
7 to collect sales tax on any of these ticket sales?

8 A There's no sales tax on advanced tickets.

9 (Interruption by reporter to resolve a minor
10 technical difficulty)

11 BY MR. BOUTRIS:

12 Q Okay. Mr. Perkins, I want to jump over to the
13 CDTFA's audit report. This starts on page 590 of the
14 exhibit.

15 So there's a lot of numbers here. And I wouldn't
16 expect you, necessarily, to understand these tables. But,
17 you know, I'm a tax attorney. I'm able to parse it out
18 and -- and figure out what assumptions are being made to
19 generate which numbers here.

20 If you turn to page 594, you will see that the
21 CDTFA is asserting that you underreported taxable sales of
22 food and alcoholic beverage purchases by \$1.966 million.

23 Do you see that?

24 A I -- I did see that. It's just not physically
25 possible. It's just not physical possible for two

1 bartenders to serve that kind of volume.

2 I mean, I'm -- I'm fairly good knowing the size
3 of clubs having -- Brick & Mortar was our smallest club.
4 And even our largest club, which was three and a half
5 times the size of that, did not do that kind of business.

6 Q So Mr. Perkins, if you could -- and Judges, if
7 you could have -- move to page 596. These are sort of the
8 underpinnings of how the CDTFA came up with some of its
9 figures.

10 Okay. So -- so first of all, I just want to
11 direct you to audited food sales, which is line 46 of page
12 596 here. And the CDTFA is claiming that Soul Lounge had
13 \$26,019 of audited food sales in 2014.

14 Is that -- is that possible?

15 A No, it's not possible because we discontinued
16 food sales after 2013. And we rented our kitchen to a --
17 to a third-party caterer.

18 And the person handling the -- and I don't want
19 to mis-say the name -- the person who was handling the
20 audit that was provided the information for the -- the --
21 our kitchen catering and the copy of the contract and
22 their contact information.

23 Q Your auditor was Mr. Mustafa Jalid; is that
24 right?

25 A I think by this time when they added this, this

1 was a different auditor.

2 Q Okay.

3 A I think there was at least three different
4 auditors.

5 Q The -- the original auditor, who you were dealing
6 with was Mustafa -- Mustafa Jalid?

7 A Yes.

8 Q Now, I want you to flip over to page 601. I'm
9 going to have you turn it sideways.

10 A I see it.

11 Q Okay. So this is the basis for how the CDTFA
12 determined what your alcohol purchases were.

13 Now, in 2013, the CDTFA is claiming that Soul
14 Lounge had a total of, by my computations, \$17,159 of beer
15 purchases from DBI.

16 Did Soul Lounge actually use purchases of beer
17 from DBI?

18 A We did not use DBI at Soul Lounge. And as the
19 BOE's previous audit and the invoices themselves show --
20 it says "New Pigalle" right on the invoices. And they
21 used those same invoices, again, when they audited Place
22 Pigalle.

23 Q Okay. Moving along, Column C says "Southern Wine
24 and Spirits" and alleges that, based on my summary -- that
25 in 2013, Soul Lounge purchased \$141,123 of liquor from

1 Southern Wine and Spirits.

2 Is -- is that a correct statement?

3 A I -- I -- I'm sorry. What?

4 Q So -- so -- so if you look at --

5 A 140?

6 Q -- Column C there, the CDTFA is claiming that in
7 2013 -- that this -- these four quarters -- so there's
8 four quarters of purchases listed here.

9 Do you see the --

10 A Yes.

11 Q \$31,429 --

12 A Yes.

13 Q -- \$38,043, \$34,539, and \$37,112?

14 They're claiming that all that alcohol was
15 purchased and used in Soul Lounge.

16 Is -- is that --

17 A No.

18 Q Is that -- is that true?

19 A That's absolutely not just -- it's not true, and
20 it's not possible. That means we would be, just from
21 Southern Wine & Spirits -- would have been purchasing over
22 a thousand dollars a night just for Brick & Mortar.

23 It's just -- and then, when I -- and this is
24 another thing -- is it says it very clearly on the
25 Southern invoices that the -- that the liquor is not going

1 to Soul Lounge. It says it's going to 11 Duboce, not 1710
2 Mission.

3 It says it right there on the -- on the thing.
4 And that's part of the continual miscommunication that we
5 kept having with the auditor -- is -- is we would explain,
6 "Look, this is where --"

7 It's not even -- excuse me. It's two buildings
8 over. It's two buildings over. And -- and this is -- and
9 we're using this as our liquor storehouse.

10 It's -- it's not even -- it didn't even get
11 delivered to Brick & Mortar.

12 Q So if you jump over to "Column I" here on the
13 audit report, it looks like the -- that there was liquor
14 purchased from Young's Market Company in 2013.

15 \$25,542 for the first quarter, \$12,273 for the
16 second quarter, \$23,357 for the third quarter, and \$4,494
17 for the fourth quarter.

18 Do you believe that accurately reflects the
19 liquor purchases by Soul Lounge in 2013?

20 A No. It's the same -- it's the same -- we're at
21 the same -- exactly the same issues that the Southern Wine
22 & Spirits survey has -- is they were not delivered to the
23 Soul Lounge. They were delivered to our central liquor
24 warehouse, which it says right there.

25 And we used it for all of our venues and -- and

1 just like all the -- all the venues. And as we can -- and
2 it's reflected in the tax returns on our -- and in the
3 invoices and the audits of our other bars, you can see all
4 the same invoices.

5 Q Let's jump over to 2014 on that same page.

6 According to the CDTFA, in 2014, Soul Lounge
7 purchased and sold alcohol -- purchased alcohol from DBI,
8 beer specifically -- \$4,587, \$4,453, \$2,269.

9 Is -- is that a true statement? That Soul Lounge
10 acquired and sold beer from DBI?

11 A No.

12 Q -- in 2014?

13 A The -- no. I believe even -- it says it right on
14 the invoices that it was going to New Pigalle.

15 Q Okay. Jumping over to Southern Wine & Spirits,
16 this is "Column C" here. This is for the fourth -- this
17 is for 2014, rather.

18 We have \$51,417 purchases in the first quarter,
19 \$67,899 in the second, \$65,595 in the third, \$59,218 in
20 the fourth. Now, I added those up to be \$244,129.

21 Do you believe it's true that -- that those --
22 all of those liquor purchases that the CDTFA listed there
23 were purchased by Soul Lounge and sold by Soul Lounge in
24 2014?

25 A No. It -- it -- it -- they clearly were not.

1 The reason why our business also increased was
2 Southern Wine & Spirits in -- in the last years -- is
3 because they wanted, really, the -- the biggest venue in
4 the Bay Area at the time was the New Parish, which we
5 owned, which was in Downtown Oakland. And so they gave us
6 a great deal so they could be in the New Parish.

7 And -- and those numbers reflect the total sales
8 from Southern Wine & Spirits to all of our venues.

9 Q Okay. So if we could jump for a moment -- based
10 on what you just said, Mr. Perkins, if you could jump to
11 page 528 of Appellant's exhibits.

12 A Yes, I see it.

13 Q Could you identify what this document is?

14 A This is our -- the partnership return for
15 PEG Oakland, LLC, which was the LLC's name for the New
16 Parish in Oakland.

17 Q Okay. If you could flip to the front page of
18 that tax return, which I believe is on --

19 A 555?

20 Q -- 535?

21 A No, 555.

22 Yes.

23 Q So again, what is PEG Oakland, LLC? What kind of
24 a venue is it? And where is it located?

25 A PEG Oakland, LLC, is the New Parish, which is

1 located Downtown Oakland. And it's a 650-person venue.
2 And it -- it was definitely our busiest venue. It was
3 probably the busiest venue in the Bay Area.

4 Q Now, this return indicates that your gross
5 receipts from this venue were \$2,363,476.

6 Do -- do you believe that's accurate?

7 A Yes, I do.

8 Q And flipping back to the 2014 return for Soul
9 Lounge, which is on page 31.

10 A Yes.

11 Q The gross receipts from Soul Lounge were \$537,517
12 in 2014.

13 A Yes.

14 Q Is that right?

15 A That's correct.

16 Q Okay. So effectively, New Parish is generating
17 four or five times more revenue than Soul Lounge; is that
18 right?

19 A Yes. I mean, and being, also -- knowing the Bay
20 Area scene, I think they did more business than any club
21 of its size in the Bay Area.

22 Q Now, looking at cost of goods sold here, which is
23 on line 2, this \$348,451 -- do you believe that represents
24 alcohol purchases of -- by New Parish?

25 So I'm on page 535.

1 A Sorry.

2 Q Sorry.

3 A Sorry. I've got -- excuse me.

4 Q So line 2 is cost of goods sold?

5 A Yes, cost of goods sold. Yes, I do believe
6 that's right.

7 Q And do you believe that a number of -- or that
8 that number represents, in -- in -- in large part,
9 purchases of liquor from Southern Wine & Spirits?

10 A I think it's Southern Wine & Spirits and beer. I
11 mean, we definitely sold more of a -- it's more of a
12 liquor crowd than, you know -- it's just the type of music
13 and stuff -- more liquor-oriented than our other venues.

14 Q So -- so is it your contention that the liquor
15 from Southern Wine & Spirits that was purchased was
16 primarily utilized for New Parish Oakland venue as opposed
17 to -- to the Soul Lounge venue?

18 A I -- I -- I definitely think so. And I believe
19 that we even had correspondence with Southern Wine &
20 Spirits that confirms that.

21 Q Okay. Let's jump to that.

22 If you could turn to page 672. Tell me when you
23 get to -- tell me when you get to 672.

24 A Okay. Yes, I'm there.

25 Q Can you -- it looks like this is an email from

1 you or between you and -- and Arwen Johnson.

2 Who is Arwen Johnson?

3 A She was the district manager -- she was in charge
4 of, like, sales for San Francisco and Oakland for Southern
5 Wine & Spirits.

6 Q And can you explain what -- what this email is
7 about?

8 A The email is about, when there's a process with
9 the ABC -- and, again, I'm not -- I can't tell you
10 details. I forget because it was ten -- eight years ago.
11 But you have to, like -- when you're warehousing your
12 liquor, you have to let the ABC know.

13 And we were trying to work this out between us
14 and them. And also, I was asking, you know -- I knew that
15 I had put Arwen in touch with the auditor to explain how
16 we were doing our liquor sales. And that's what this is
17 about.

18 We had -- we were running festivals, also, up in
19 the Sierras. So we were trucking everything up there,
20 too, as well.

21 And that was just, you know -- I -- I -- it was
22 just a process that, you know -- that became -- there were
23 just forms that we had to figure -- figure out, fill out,
24 and go and present to the ABC and have the ABC come down
25 and inspect our -- our liquor warehouse. It was a

1 complicated process.

2 Q But I want to get to the central point here. And
3 that is you -- that -- that you -- when I say "you," I
4 mean Soul Lounge and related entities -- were using the
5 warehouse on Duboce to receive all of the liquor for the
6 various businesses; is that right?

7 A Correct.

8 Q And Southern Wine & Spirits was well aware of
9 that?

10 A Very aware.

11 Q And, again, what was the reason for that
12 arrangement?

13 A I believe our discount went to, like, an
14 additional 11 percent when we centralized all of our
15 liquors that, you know, we were purchasing.

16 Q So some fairly significant savings for the
17 company?

18 A Absolutely. I mean, that's a -- that's a lot of
19 dollars.

20 Q If you could now turn to page 695. Again, these
21 are emails between you and -- and Arwen at Southern Wine &
22 Spirits.

23 Can you, again, describe exactly what -- what's
24 going on here? What -- what this communication is about?

25 A This was -- it was -- it was the same issue.

1 The first time, the issue was with the ABC about
2 the -- about the central warehousing. Because the ABC has
3 a particular process.

4 And then -- and then the last we email was about
5 the BOE inquiring about the central warehouse.

6 Q And if you could flip to the next page,
7 Mr. Perkins, 696. It looks like there's a different
8 email.

9 Can you --

10 A So --

11 Q -- tell us what this one is?

12 A This is a discussion -- because we were doing
13 sponsorships, which, sadly for bar owners, stopped in, I
14 believe -- in 2018. We're not allowed to do that anymore.
15 They would -- we would have a liquor brand sponsor a
16 festival or a night or something. And they would give the
17 venue a thousand dollars or something. And, you know, it
18 was a big revenue stream for bars at the time.

19 And Arwen Johnson was in charge of those
20 partnerships. So I think at the time we were doing this
21 thing called the High Rode Festival in Oakland. And she
22 was giving us sponsorship money. And also, as part of the
23 deal, we had to do Malibu at Brick & Mortar as part of the
24 deal.

25 And I think this was just one of our emails back

1 and forth of the discussions on that point.

2 Q So how -- how did you -- how did you track what
3 liquor purchases went to which venues?

4 A We would -- the liquor, when they came in, they
5 would pull -- the guys would pull a sheet. And, again,
6 this is something that we showed the auditor, you know.
7 You have, like, a -- a warehouse; so you sign out from
8 what you're taking for each venue.

9 And then the bookkeeper in the office would
10 assign invoices to the different entities according to
11 what was pulled and what was --

12 Q So let me see if I understand this. Mr. Jalal
13 [sic], the original auditor --

14 A Yes.

15 Q -- came to the warehouse and spoke to you --

16 A Yes.

17 Q -- about this?

18 A Yes.

19 Q And tell -- tell me a little bit more about what
20 happened at that meeting.

21 A He -- I don't believe he -- he did not like the
22 procedure. He thought it was not correct. He wanted --
23 he thought that the -- that the company should
24 invoice every single one to every single different venue,
25 which wasn't really the way that anyone that -- that --

1 Southern or ourselves -- you know, do it.

2 And we walked him through the process about how
3 my delivery guys would pull, like -- like, our bar
4 managers come in for a meeting, like, twice a week. And
5 they would pull inventory and take it to the bars. And
6 then they would do an inventory sheet, and they hand it
7 in.

8 And that was our basic process -- which I
9 explained that to him, and I showed him. And he wanted to
10 see how we did it with Brick & Mortar because it was
11 around the corner.

12 And so then we showed him how our bar manager --
13 Barry, at the time -- showed him how, like, okay. We
14 signed out this case of -- of Altos tequila. And then
15 we'd bring it over to the venue, and we'd put it into the
16 venue's inventory.

17 Q Are you aware of other businesses using -- other
18 bar-type or music venue businesses using a -- a central
19 warehousing location for its supplies?

20 A I mean, I don't know any -- any business that has
21 had four or more locations that was not centrally
22 organized. I mean, it's -- it's -- it's -- again, this
23 wasn't my brilliant idea. It was -- this has been done
24 for a long time.

25 I think, you know, Jeff Bezos made a lot of money

1 with central distribution, you know. And I think it's
2 a -- it's just an efficient way to run your business --
3 discounts and inventory control.

4 And, you know, you have to watch your liquor as
5 the bar owner. And this was a much better way to do it
6 rather than have trucks go to nine different locations.

7 And also the liquor -- let's face it, the
8 distributors loved it too. They would much rather make
9 one delivery than nine.

10 Q Let's go over to your sales and use tax returns,
11 Mr. Perkins. I believe -- bear with me, I have to find
12 these.

13 Let's jump over to --

14 JUDGE LONG: I apologize.

15 MR. BOUTRIS: -- page 668.

16 JUDGE LONG: Sorry. I apologize for
17 interrupting.

18 MR. BOUTRIS: Yeah?

19 JUDGE LONG: I just wanted to remind you all to
20 please --

21 MR. BOUTRIS: Speak into the microphone?

22 JUDGE LONG: -- face -- face the mic when you're
23 speaking.

24 THE WITNESS: Okay.

25 JUDGE LONG: I know you're answering Mr. Boutris'

1 questions.

2 THE WITNESS: Okay. I'll make sure to go this
3 way.

4 JUDGE LONG: Just face the mic. Thank you.

5 MR. BOUTRIS: Thank you. I'm guilty as charged,
6 as well.

7 BY MR. BOUTRIS:

8 Q Page 668, Mr. Perkins.

9 So I -- I think there was some confusion,
10 Mr. Perkins, about the -- what was reported on the sales
11 and use tax returns.

12 So in this particular -- page 668 here -- are you
13 with me?

14 A I'm trying.

15 Q I know some of your pages got --

16 A Okay.

17 Q Yeah.

18 A Okay. I'm ready.

19 Q So this would be a -- an example of a printout
20 for the filing period 10/1/15 to 12/31/15?

21 A Yes. I see that.

22 Q You see that?

23 A Yes, I do.

24 Q Okay. So -- so this shows total gross sales of
25 \$26,661.

1 I believe, in reviewing the return, that you're
2 not reflecting your sales of tickets or your sales of --
3 of rental venue on your sales and use tax return.

4 A No. This was -- I believe this was taxable sales
5 of -- of --

6 Q So -- so when you were filing the sales and use
7 tax return, you would just reflect what you believed were
8 taxable sales? Not total gross sales?

9 A Yes. And I -- I think that's -- we -- we --
10 that's a couple of procedural errors. And this is one, I
11 think, right around the time we -- we got ourselves a tax
12 attorney and came and started doing this correctly.

13 Q Just -- just for the sake of clarity here,
14 Mr. Perkins, the way a sales tax return is done is you
15 report your total gross sales. And then you -- you show
16 on a separate line what your taxable sales are.

17 And so you're sort of required to report both --

18 A Right.

19 Q -- total revenues and total taxable sales?

20 I don't do your sales tax returns.

21 A No. No. No. I was just saying we got better
22 about our procedures.

23 Q Okay. So let's go back to the audit report.

24 Okay. If you could turn to page 596. Tell me
25 when you get there.

1 A Okay. I'm there.

2 Q Okay. So again, this is, you know, this is the
3 schedule that is generating the markup analysis here.
4 This is sort of the proof in the pudding here that the
5 CDTFA is relying on.

6 Now, if you look at the top here, under their
7 reference 11 it says, "Alcohol purchase per new P&L
8 provided." And it says "\$112,814".

9 Do you see that?

10 A Yes, I do.

11 Q And does that conform to what was reported on the
12 federal income tax return and the profit/loss statement?

13 A I -- I -- I believe so.

14 Q Well let's --

15 A Sorry. I'm getting --

16 Q Well, let's go ahead and flip to that return
17 again.

18 A Yeah.

19 Q Okay. This is on page 16 -- is the return. And
20 then the summary description -- breakdown description is
21 on page 30. Go ahead and flip to page 30.

22 You see where it says "Alcohol Purchases"?

23 A Yes. Okay.

24 Q \$112,814.

25 A Yes. Okay.

1 Q Now, flip back to page 596.

2 Is that -- is that the number the CDTFA is -- is
3 inputting there?

4 A Okay.

5 Q It's okay. We'll wait for you.

6 A The report was supposed to say -- yes. Yes.
7 It's the same one. Yeah.

8 Q Okay. And in 2014, you see where the number is
9 \$90,787?

10 A Yes.

11 Q And does that match out to the cost of goods sold
12 you reported on your federal income tax return and Profit
13 and Loss Statement, to your knowledge?

14 A Yes. And if it's on the amended return, I have
15 total faith in the number.

16 Q Okay. And if you could, turn to page 45.

17 A Yes. That's \$90,000 --

18 Q \$90,787?

19 A Yes, I do.

20 Q And does that match the \$90,787 listed on the
21 CDTFA's audit report?

22 A Yes, it does.

23 Q Okay. Now, what the CDTFA then does is it takes
24 your acknowledged -- admitted numbers of purchases, and it
25 adds \$141,123 of liquor purchases from Southern Wine &

1 Spirits in 2013.

2 Do you see that?

3 A Yes.

4 Q So now we're back on page 396.

5 You won't understand my questions unless you're
6 on that page.

7 A I know. Sorry. Sorry. I'm struggling with the
8 paper.

9 Yes, I'm here.

10 Q Okay. Take a minute to look at it. You see --
11 you see those numbers? The numbers that you -- are
12 verified as what you reported on your federal income tax
13 returns and your Profit and Loss Statement of \$112,814 of
14 alcohol purchases in 2013 and \$90,787 of alcohol purchases
15 in 2014.

16 You see that; right?

17 A Yes, I do.

18 Q Okay. So my question then is the -- the auditor
19 then proceeded to say, "Oh. Well, that's not correct.
20 Soul Lounge also purchased \$141,123 of liquor from
21 Southern Wine & Spirits in 2013 and, on top of that, an
22 additional \$17,159 of beer from DBI."

23 Is that -- do you believe that's an accurate
24 statement of what's going on at Soul Lounge?

25 A It's not an accurate statement. And I -- and we

1 went through this, again, with the auditor and explained
2 that. But I think, to the auditor, all they saw was a
3 warehouse full of liquor and assumed it was all for Soul
4 Lounge.

5 Q And in 2014, the auditor is claiming that -- or
6 asserting that Southern -- that on top of the reported
7 amount of alcohol purchases on your federal income tax
8 return and your Profit and Loss Statement and your -- or
9 rather on those two financial documents -- that you had an
10 additional \$244,130 of liquor purchased from Southern Wine
11 & Spirits and an additional amount of beer purchased from
12 DBI of \$11,308.

13 Do you believe those are accurate numbers?

14 A No. This is -- the vendor surveys, especially on
15 these two points, I think, was where we were having
16 trouble on where they were coming up with the number that
17 was never explained to us.

18 Q So -- so just to reiterate, is it your -- is it
19 your contention that the amount of liquor purchases as
20 reported on your federal returns and your Profit and Loss
21 Statements in 2013 and 2014 -- in this case \$112,814 in
22 2013 and \$90,787 in 2014 -- constitutes all of the alcohol
23 purchases made by Soul Lounge in those respective years?

24 A Yes, that's correct. That is correct.

25 Q Okay. Now, let's kind of look down that page.

1 And if you see there "reference number 32," here on the
2 far left-hand side of the page. It has there -- it says,
3 "average markup, 200 percent per taxpayer".

4 And then it goes on to say that -- that --
5 they're going -- the CDTFA decided that -- that somehow
6 200 percent wasn't enough -- that it needed to be
7 300 percent.

8 Is there -- did you have a discussion with the
9 auditor about the markup? And -- and -- and further, what
10 do you think the markup is at Soul Lounge?

11 A Well, first of all, there's -- the problem is --
12 there's two issues here. When we first spoke to him, we
13 never said it was 200 percent markup. We always said --
14 we thought our average at Soul Lounge was 300 percent.

15 Soul Lounge is more of the city's sort of hipster
16 crowd where we were doing more craft beers where you don't
17 get quite the markup like you do on a lot of liquor. So
18 we -- we really averaged it out to 300.

19 But the auditor not only ignored our initial
20 number but added 200 percent to it and also mis-claimed
21 that we -- we said it was 200 percent, which we never said
22 it was 200 percent. And I -- I stood right next to our
23 bar manager when he explained it to the auditor.

24 Q I'm not sure that's how I read this, Mr. Perkins.
25 I think what the CDTFA did here -- and I could be wrong --

1 but I believe they used an average markup of 300 percent
2 for all of the -- all of the -- all of the alcohol sales,
3 rather than using a 200 percent markup.

4 So are you -- are you okay with the 300 percent?

5 A I'm okay with the 300 percent. But that's -- I
6 know that's what we said originally.

7 Q Okay. So based on this particular schedule here,
8 this 12A-1. If you turn to page 597, the CDTFA is
9 alleging that, based on their analysis and their
10 interpretation of what the alcohol sales were -- that you
11 had underreported taxable sales in 2013 of \$644,000 and in
12 2014 of \$763,000.

13 So just in these two years -- and this isn't
14 including 2012 because 2012 gets extrapolated on its own
15 through a separate extrapolated formula -- you have
16 underreported your taxable sales by approximately
17 \$1.4 million.

18 What do you have to say about that?

19 A I think that anyone who visited Brick & Mortar
20 and saw the size of the venue and saw it's a two-bartender
21 operation would say it's physically impossible to reach
22 those numbers. And it's -- especially when you consider
23 the size of the -- considering the size of the operation
24 alone, it's just not possible.

25 And as we pointed out, if you look at any other

1 club or various -- in a same size, which I'm sure the
2 CDTFA has had the ability to look up other clubs of the
3 same size, you could see that those numbers just don't --
4 do not lineup what -- whatsoever.

5 And also, neither did our -- we went through our
6 bank accounts with them. They had bank statements. They
7 had bank records. There was no -- I -- I don't know where
8 the money magically came from or how they -- in San
9 Francisco, especially, where I would say -- I think it
10 was -- we were running like 91, 92 percent credit card.

11 So it's not like you could hide \$1.4 million in
12 credit card sales.

13 Q Let's -- let's flip back to the federal income
14 tax returns for Soul Lounge. So let's go back to page 1
15 of the exhibits. Tell me when you get there.

16 Okay. So page one indicates that you had gross
17 receipts in 2012 of the \$642,852.

18 Do you see that?

19 A Yes, I do see that.

20 Q And it shows cost of goods sold of \$299,285
21 leaving a gross profit of \$343,567.

22 Do you see that?

23 A Yes, I do.

24 Q Okay. And then, after other expenses --
25 primarily rent, but other ordinary, necessary, business

1 expenses -- you had a -- Soul Lounge had a profit for the
2 year of \$35,528.

3 Do you see that?

4 A Yes, I do.

5 Q It doesn't sound like it's a highly-profitable
6 business, Mr. Perkins.

7 A It certainly wasn't in our first year of
8 operation. I don't know many bars and restaurants that
9 are profitable their first year of operation. I actually
10 took the fact that we didn't lose money as a positive
11 step.

12 But yeah, that is accurate.

13 Q Let's look at the 2013 return. This is on page
14 16.

15 A Sixteen?

16 Q Sixteen. One-six.

17 In 2013, you reported gross revenues of \$632,431;
18 cost of goods sold, \$373,095; and a gross profit of
19 \$259,336. You then had expenses.

20 And in that particular year, you had a -- you
21 reported an ordinary loss of \$32,797?

22 A Yes, that's correct.

23 Q Let's jump to tax year '14, page 31.

24 In 2014, you had gross revenues of \$537,517; cost
25 of goods sold, \$285,299; gross profit of \$252,218. After

1 other expenses, rent, payroll, et cetera, you had a loss
2 that year of \$16,659.

3 Is that -- is that -- reflect a true picture of
4 your operations in 2014, Mr. Perkins?

5 A Yes, it does.

6 Q And have -- has the IRS questioned these amended
7 returns that you filed?

8 A No, they have not.

9 Q And you said that you provided Mr. Jalal [sic]
10 with the bank statements for Soul Lounge; is that right?

11 A Yes. Bank statements and credit card statements.

12 Q And to your knowledge, does -- does -- do the
13 bank statements and credit card statements support a -- a
14 revenue --

15 And let's see if we can flip, again, to the audit
16 report. Bear with me a second. So let's flip to page
17 594.

18 So this is kind of extraordinary. The CDTFA,
19 based on its assumptions, goes on to say that during the
20 audit period, you -- Soul Lounge -- under-reported your
21 sales by \$1,966,075.

22 Do you see that?

23 A Yes, I do.

24 Q In other words, that -- in -- in those years,
25 when you reported on your federal income tax return,

1 respectively, \$642,000 in 2012, \$537,000 in 2013 --

2 Oh. No. \$537- -- I stand corrected. Let's go
3 back.

4 \$642,000, approximately, in 2012; \$632,000,
5 approximately, in 2013; and \$537,000, approximately, 2014.
6 And in addition to those three numbers, you -- you
7 actually cheated the government out of \$1.966 million of
8 revenues.

9 A That number is -- is just magical thinking,
10 unfortunately.

11 To be clear, there's nothing that supports that.
12 I mean -- I mean, I guess you can put whatever you want on
13 a piece of paper. But there's no support.

14 We asked them about this. We showed them our --
15 again, we reviewed bank statements and credit card
16 statements. And we asked for further clarification. And
17 that was never forthcoming.

18 Q What percentage of your revenues do you think is
19 received in the form of cash?

20 A Eight or 9 percent. In San Francisco, it's about
21 8 or 9 percent.

22 Q And -- and the rest would be coming from --

23 A Credit cards.

24 Q Credit cards?

25 And how does Ticketfly pay you? By check?

1 A No.

2 Q ACH?

3 A ACH deposits.

4 Actually, I'm talking about 8 or 9 percent cash
5 back in 2014. I would say, today, it's more like 2 or 3
6 percent, in 2022.

7 JUDGE LONG: Mr. Boutris, I just wanted to let
8 you know, we're at the one-hour mark. So close up the
9 testimony in the next few minutes.

10 MR. BOUTRIS: Do you -- no. I think I have,
11 Judge Long. I think I have covered what I wanted to cover
12 with Mr. Perkins. So I can conclude my direct questioning
13 of him at this time.

14 JUDGE LONG: Thank you.

15 I'll turn it over to CDTFA to see if they have
16 any questions for Mr. Perkins.

17 MR. PARKER: We have no questions for the
18 witness.

19 JUDGE LONG: Thank you.

20 I will turn it over to Judge Kwee.

21 Do you have any questions for Mr. Perkins?

22 JUDGE KWEE: Yes. This is Judge Kwee.

23 Oh. That's really loud.

24 Just give me a couple of minutes. I do have a
25 couple of questions for the witness.

1 Thank you for -- so -- so at the beginning of
2 your testimony, you were referring to "different address
3 locations for different entities".

4 THE WITNESS: Correct.

5 JUDGE KWEE: And I think you mentioned one was
6 the Crafty Fox. And then there was one which was Brick &
7 Mortar.

8 Can you clarify the respective addresses for
9 those two entities?

10 THE WITNESS: Yes. The Crafty Fox is
11 1700 Mission; Brick & Mortar is 1710 Mission. They're
12 separate buildings. You can see it on Google. They're
13 next to each other.

14 And then on the back of 1700 Mission is 11
15 Duboce, which is a -- has a separate entrance. And that's
16 where our storage area was.

17 And then, upstairs, we have offices I rented on
18 the third floor to someone else.

19 JUDGE KWEE: Okay. And the returns -- the
20 amended returns that are in the evidence -- those are only
21 for the entity here, which was Soul Lounge doing business
22 as Brick & Mortar. They're not for any other entity.

23 It that my --

24 THE WITNESS: It's on the amended returns, yes --
25 only amended returns we have were for Soul Lounge.

1 JUDGE KWEE: Okay. So when I was looking at
2 those amended returns, there was still a difference
3 between the gross receipts versus, you know, what was
4 reported.

5 And from my understanding -- what you were saying
6 today -- that difference between the gross receipts
7 reported on the federal returns and the sales and use tax
8 total sales was due to ticket sales, venue rentals, and I
9 guess it was the venue rentals and the ticket sales, which
10 you thought were nontaxable.

11 Is that my understanding?

12 THE WITNESS: I'm sorry. Maybe I'm not
13 understanding correctly.

14 Are you talking about what our taxable sales were
15 on the returns?

16 JUDGE KWEE: Okay. So just to clarify -- so when
17 I was looking at the amended federal income tax returns --

18 THE WITNESS: Okay.

19 JUDGE KWEE: So for example, for 2012, I think
20 the original return had reported around \$900,000 in gross
21 receipts. And then there was an amended 2012 return.

22 I think that was on, like, page 1 or 2 --

23 THE WITNESS: Yes.

24 JUDGE KWEE: -- on your first exhibit that
25 dropped it down to \$642,000 in gross receipts.

1 THE WITNESS: Correct.

2 JUDGE KWEE: But then the sales and use tax
3 returns for 2012, I believe they were, like, \$150,000 in
4 total sales reported, in my understanding.

5 THE WITNESS: Because -- because there was a
6 difference between liquor sales and ticket sales and the
7 venue rentals.

8 JUDGE KWEE: Okay. And I see what you're saying.

9 So as far as the venue rentals were concerned, I
10 see that you attached invoices for the venue rentals. And
11 some of them say just "venue rentals" some say, like, "bar
12 and venue rental". And I think there was, like, "door" or
13 "cover".

14 And I'm just wondering -- so I don't see anything
15 specific in the rentals that would indicate, other than
16 the title, whether or not food is included.

17 Is that title, like --

18 THE WITNESS: We -- we rarely -- we never did
19 food as a rental because that was just such a complicated
20 thing.

21 When we say "venue rentals," it's a music
22 promoter, like, a person who wants to bring a band that
23 they like in. Or they're a professional promoter or a
24 group that wants to rent it as a -- just as a -- as a
25 party or a meeting hall.

1 And then, you know, also private parties, which
2 were included. And that included bartenders and liquor
3 sales -- I mean, liquor was going to be added on to that.

4 JUDGE KWEE: Okay. So how do I tell from looking
5 at those documents which ones would have included the bar
6 and which ones would have not included the bar?

7 Or was there an easier way to ascertain -- or for
8 us to ascertain that?

9 THE WITNESS: Well, on the room rentals -- when
10 it's room rental, it's just for the room. It doesn't
11 include the bar.

12 JUDGE KWEE: Okay. So then the only ones that
13 included the bar are the ones that say "bar" on the title?

14 THE WITNESS: They should. It was very rare that
15 we did a room rental with -- with full bar included. I
16 think that might have happened once or twice in eight
17 years.

18 Most -- most of the room rentals were just for
19 the room itself. It was just a charge for the room.

20 JUDGE KWEE: Okay. And as far as the --

21 I'm sorry. I'm kind of jumping around on the
22 order in which I was taking notes of your testimony.

23 And I was going to move on to the ticket sales
24 you have listed. I think it was Ticketfly?

25 THE WITNESS: Ticketfly, correct.

1 JUDGE KWEE: And those ticket sales are for when
2 you do room rentals or --

3 THE WITNESS: Just for, like, concert tickets --
4 like, advance concert tickets. Like, you know, if you
5 want to go see "band whatever," and you want to buy a
6 ticket in advance, you can go through their website.

7 JUDGE KWEE: Okay. So all the ticket sales
8 involved when you were operating -- not you, the entity --
9 was operating the Soul Lounge, Brick & Mortar, not when it
10 was being rented out -- there were no ticket sales
11 involved in this?

12 THE WITNESS: Correct. A lot of times the -- a
13 lot of times, if they're a professional music promoter --
14 let's say someone like Shawn Healy or Another Planet --
15 they have their own ticket link.

16 So they take their own ticket sales because it's
17 part of the value as a promoter. That's how you make your
18 money. They don't want you controlling their money. So
19 you put their ticket link up on the website.

20 JUDGE KWEE: Okay. Thank you. That is helpful.

21 And the one other aspect that you had mentioned
22 about the ticket sales was that you said there was
23 approximately a "percent fee" for using the Ticketfly.
24 And I wasn't sure why you were -- were you mentioning that
25 in the context of that -- that shouldn't have been

1 included.

2 Or I guess --

3 THE WITNESS: I believe the question was, like,
4 how much -- how does the ticket company make money if
5 they're giving you all the ticket fee; right? They're
6 giving me all the -- if a ticket's \$20, you know, how does
7 the ticket company make money?

8 And I said they charge a fee, like, a ticket
9 service fee. And generally it's 20 -- unfortunately, now,
10 it's probably higher. It's probably 25 percent.

11 So if you go to Ticketmaster, you'll see the
12 price of the show and then a ticket fee. And they keep
13 the ticket fee.

14 JUDGE KWEE: Okay. So if I'm correctly
15 understanding this, there's no concern about the way the
16 audit was handled with respect to whether or not a fee was
17 or was not included.

18 You were just explaining how they made their
19 money?

20 THE WITNESS: I was just explaining how they made
21 their money.

22 JUDGE KWEE: Okay.

23 Sorry. I just need a minute to go down my notes.
24 You had a lengthy testimony, which was very helpful for --
25 for me in understanding what was going on.

1 I would like to go -- you had mentioned on your
2 exhibit, page 596, which was the -- the summary of CDTFA's
3 markup for the -- for the bar -- the beer and wine and
4 alcohol purchases.

5 And I believe you had mentioned on your
6 documents -- you had indicated a 200 percent markup. But
7 then I think CDTFA used a 300 percent markup.

8 And was I understanding that you -- you did not
9 dispute the use of the 300 percent markup?

10 THE WITNESS: No, I do not dispute that at all.
11 I thought we always said 300 percent.

12 JUDGE KWEE: Oh, okay. My only concern -- I
13 don't want to say "only" -- but the main concern was the
14 amount of additional purchases that were brought in from
15 the central distribution locations and not the markup
16 aspect.

17 THE WITNESS: Oh, okay.

18 JUDGE KWEE: Is -- that is my understanding.

19 THE WITNESS: Maybe I'm misunderstanding the
20 question. I'm sorry. Sorry, Judge. If you could repeat
21 that back?

22 JUDGE KWEE: Okay. So from my understanding, you
23 know, the liability calculated on that aspect was, you
24 know, to -- well, there were two large elements: One was
25 using a 300 percent markup versus a 200 percent markup.

1 The other aspect was including purchases from those
2 other --

3 THE WITNESS: The --

4 JUDGE KWEE: -- you know -- the vendors, which
5 were, from your testimony, routed to separate entities.

6 THE WITNESS: That's correct.

7 JUDGE KWEE: So at first -- I was just confirming
8 that you didn't dispute the markup aspect.

9 So looking at the purchase aspect -- so I guess
10 my understanding was that the main dispute was with the
11 purchase aspect.

12 THE WITNESS: Absolutely.

13 JUDGE KWEE: Okay.

14 THE WITNESS: I think the whole miscommunication
15 from day one has been over the assigning of all liquor
16 sales for what we call -- we call ourselves "Parish
17 Entertainment Group" to -- to one venue, rather than, as
18 we explained -- that we had -- they were part of a group
19 of nine venues that we used and distributed through.

20 And even on the invoices they were -- they would
21 mark, you know, like, "New Pigalle," "Place Pigalle". It
22 was directly marked on the invoice itself. It says it
23 right there.

24 JUDGE KWEE: Okay. And that was my other
25 question. I did see that you included invoices. And if

1 we were to add up all the numbers on the invoices, would
2 they track what was listed here? And would we be able to
3 figure out -- because I did see that some had addresses
4 for other locations.

5 If we added them up, would they track? The
6 amounts for those locations that CDTFA has listed?

7 THE WITNESS: Yes. Yes, they would.

8 JUDGE KWEE: Okay. And the ones listed as
9 "purchases" on your amended returns as what was allocable
10 to Brick & Mortar -- all of those invoices would add up to
11 the number that you reported?

12 So we'd be able to basically look at the invoices
13 that you submitted and find out how you reported what you
14 reported and had how CDTFA reported what they had for, you
15 know, Southern Wine and DBI; is that correct?

16 THE WITNESS: Yeah. For all the different ones,
17 you should be able to see that right there.

18 JUDGE KWEE: Okay. So -- so we have everything
19 that we need to do that?

20 THE WITNESS: I believe so.

21 JUDGE KWEE: Okay.

22 Sorry. Just one minute.

23 I think that was everything that I had in my
24 notes to ask or clarify. That's all.

25 Thank you very much for your time.

1 I will turn it back to the lead judge, Judge
2 Long.

3 Thank you.

4 JUDGE LONG: Judge Aldrich, do you have any
5 questions for the taxpayer -- I'm sorry -- for the
6 witness?

7 JUDGE ALDRICH: Mr. Perkins, can you hear me?

8 THE WITNESS: Yes, I can.

9 JUDGE ALDRICH: I had a few questions for you
10 with respect to the catering contract.

11 Is there anything in the evidence that would
12 support the catering contract from 2014?

13 THE WITNESS: I -- I gave it to the CDTFA.

14 JUDGE ALDRICH: My question is --

15 THE WITNESS: Do you want us to provide you with
16 that contract? We can get a copy of that. I don't think
17 we brought it.

18 Did we bring that? No?

19 Also, just for clarification, I sold my interest.
20 And I have not been involved with the business for four
21 years. But I know the people that do; so I can still get
22 access to it.

23 JUDGE ALDRICH: Okay. And I guess you had
24 mentioned that Brick & Mortar typically has two
25 bartenders?

1 THE WITNESS: Correct.

2 JUDGE ALDRICH: And how many individuals could
3 that serve, I guess?

4 THE WITNESS: I would say 100 to 120, 140.

5 JUDGE ALDRICH: Okay.

6 THE WITNESS: They should be able to cover that,
7 if they're any good.

8 JUDGE ALDRICH: Okay. And for those shows where,
9 perhaps, the limits were pushed a little, would another
10 bartender --

11 THE WITNESS: Yes.

12 JUDGE ALDRICH: -- be brought in from another
13 venue?

14 How is that --

15 THE WITNESS: We got very good at -- since we had
16 a wide body of work -- I mean, we did 25,000 shows. We
17 had an idea of which crowd is going to be a drinking
18 crowd. And, like, if we knew we had a band from New
19 Orleans that was going to be sold out, we'd have three
20 bartenders.

21 And that happened maybe eight times a year, you
22 know, like, there's certain music types -- if it's, like,
23 a jam band or a New Orleans band, you're going to have
24 a -- you're going to have a heavy drinking crowd.

25 If it's a reggae night, you can go to one

1 bartender for 500 people because they'll just drink water,
2 you know.

3 JUDGE ALDRICH: Okay. So -- and you had given
4 testimony with respect to the hours.

5 And could you -- so -- clarify that? I guess
6 Monday through Friday was the same hours consistently? Or
7 changed depending on whether or not they were shows?

8 THE WITNESS: It's like a, you know -- it was
9 really a music venue. We were open four -- we really
10 tried to be open four to five nights a week. To book
11 those kind of shows, it's tough.

12 So I would say we did 150 shows a year. And
13 usually it was earlier in the week. Let's say, if it was
14 a Sunday, Monday, Tuesday, we would do doors, 7:00; show,
15 8:00. If it was later in the week, we would do doors,
16 8:00; show, 9:00.

17 JUDGE ALDRICH: So you had mentioned that you
18 provided bank statements and credit card statements.

19 THE WITNESS: Correct.

20 JUDGE ALDRICH: With respect to credit card
21 statements, are you referring to form 1099K's? Or are
22 you -- okay.

23 THE WITNESS: No. The actual -- we gave them all
24 the information for our credit card provider.

25 JUDGE ALDRICH: So for the costs?

1 THE WITNESS: No. No. No. For, like, our daily
2 total receipts every night.

3 JUDGE ALDRICH: Got it. Okay.

4 THE WITNESS: You know, the -- forgive me. I'm
5 trying to remember who our provider was back in 2012.

6 But it was one of the big, you know, ones of the
7 bank -- bank. And they give you the printout of all
8 the -- because it goes into your bank account the next
9 day. And they send you a statement every month of all of
10 your credit card deposits.

11 JUDGE ALDRICH: Okay. And then, I guess, just
12 for clarity, I was wondering if you could give me a view
13 of the "forest," so to speak, between the different
14 entities.

15 Soul Lounge is operating Brick & Mortar?

16 THE WITNESS: Correct.

17 JUDGE ALDRICH: And some other entity has the --
18 has the distribution point, I guess, for the liquor?

19 THE WITNESS: So we -- we allowed at the time --
20 we said -- we're going to -- because our company -- we
21 called it "Parish Entertainment Group," but Parish
22 Entertainment Group doesn't have an ABC License.

23 So we couldn't -- they couldn't invoice, under
24 California law, to Parish Entertainment Group, which would
25 have solved everyone's problems.

1 But -- so we -- we did it -- you had to pick a
2 License 47 that was the closest to your -- to the
3 warehouse, which was Brick & Mortar, which is Soul Lounge,
4 which is why we're here.

5 JUDGE ALDRICH: Okay. And internally, you said a
6 bartender --

7 THE WITNESS: Bar -- bar manager.

8 JUDGE ALDRICH: Bar manager -- would come in and
9 check out --

10 THE WITNESS: Correct.

11 JUDGE ALDRICH: Let's say they needed a case of
12 tequila. You -- they --

13 Was there, like, a form to check out?

14 THE WITNESS: Yeah. There's, like, a clipboard
15 to sign everything out.

16 JUDGE ALDRICH: Okay.

17 THE WITNESS: And they drop it off in the office
18 and take the liquor to the venue.

19 JUDGE ALDRICH: Okay. And then -- so since these
20 venues -- you said "we" as -- have nine of them.

21 But really, the person is an LLC -- right? --
22 that owns the venue or the DBA?

23 THE WITNESS: Or the -- yeah. There was a DBA
24 for each liquor license.

25 JUDGE ALDRICH: And there was an LLC for each

1 DBA?

2 THE WITNESS: Correct. Yeah.

3 JUDGE ALDRICH: Okay. And so would someone
4 generate that invoice based off of that clipboard and send
5 it to the respective LLC that was doing business?

6 THE WITNESS: And then they -- and then they pay
7 the bills out of that account.

8 And that was -- again this wasn't easy. It
9 was -- it was -- this was our theoretical setup in the
10 beginning that took us -- you know, we had to knock out
11 the kinks a little bit.

12 We grew very quickly. We went from 0 to 300
13 employees in about, you know -- about a year and a half.
14 And, you know, it was a struggle. It was a lot of work.
15 But we got there. And we -- we -- their systems were
16 really good.

17 JUDGE ALDRICH: Okay. No further questions at
18 this time.

19 I'm going to hand it back over to Judge Long.

20 Thank you.

21 JUDGE LONG: Thank you.

22 So I think, Mr. Boutris, you wanted additional
23 time to make your argument.

24 Did you still need ten minutes?

25 MR. BOUTRIS: I don't, your Honor. I think we've

1 covered everything adequately at this point.

2 JUDGE LONG: Okay. Great.

3 We will, then, move over to CDTFA's presentation.
4 CDTFA indicated they require 20 minutes.

5 So you may begin whenever you're ready.

6 MR. PARKER: Thank you.

7

8 PRESENTATION

9 MR. PARKER: The Appellant and LLC operated a
10 full bar with live music entertainment in San Francisco,
11 California, with a start date of August 2009. The
12 Department performed an audit examination for the period
13 of January 1, 2012, through December 31, 2014.

14 Appellant reported total sales of approximately
15 \$547,000 and claimed no deductions resulting in taxable
16 sales of \$547,000 for the audit period. The Appellant
17 provided limited books and records for the audit period.

18 Appellant did not provide 1099K data, credit card
19 sales data, guest checks, daily cash register tapes, sales
20 journals, or general ledgers for the audit period. Due to
21 lack of complete books and records, the Department was
22 unable to determine Appellant's reporting method and
23 verify the accuracy of its reported amounts.

24 The Department compared gross receipts for the
25 federal income tax returns with sales and use tax returns

1 and noted unexplained differences of approximately
2 \$1.6 million for 2012 and 2013. And that's on your
3 Exhibit A, page 19.

4 The Department compared recorded total sales per
5 Profit and Loss Statements with reported sales per the
6 sales and use tax returns and noted an unexplained
7 difference of approximately \$115,000 for the audit period.
8 And that's on Exhibit A, page 24.

9 Using the Appellant's records, the Department
10 computed a markup which compares cost of goods sold per
11 the Appellant's federal income tax returns for 2012 and
12 2013 to recorded gross receipts. The markup was negative
13 58 percent for 2012 and 2013. And that's on Exhibit A,
14 page 18.

15 And this means that reported total sales were
16 less than the cost of goods sold.

17 Based on the above analysis, the Department
18 decided -- the Department determined that provided books
19 and records were incomplete and unreliable. Therefore,
20 the Department used an indirect audit method to verify the
21 accuracy of reported amounts and determined audited
22 taxable sales.

23 The Department performed a vendor survey for
24 known vendors and noted Appellant's Profit and Loss
25 Statement didn't include any purchases from Southern Wine

1 & Spirits or DBI Beverage.

2 The Department used the revised Profit and Loss
3 Statements for 2013 and 2014 and the vendor surveys from
4 Southern Wine & Spirits and DBI Beverage to determine
5 purchases of a little more than \$617,000 for 2013 and 2014
6 for alcohol and beverages. And that's on Exhibit A, page
7 8, line 15.

8 The Department used the revised profit and loss
9 statements for 2013 and determined that audited purchases
10 of food for 2013 was \$9,000 -- Exhibit A, page 8, line 37.

11 In the absence of food purchases data for 2014,
12 the Department assumed that food purchases would be the
13 same for 2014 as they were in 2013, which was \$9,000.

14 Due to lack of books and records, the Department
15 could not perform any self-test. So the Department used
16 an estimated markup of 200 percent for bar and food sales,
17 which is lower than generally expected, based on audits of
18 similar businesses.

19 In the Appellant's testimony today, they
20 indicated that the markup was not 200 percent, but was, in
21 fact, 300 percent. If a 300 percent markup on costs is
22 used in the audit, the audited taxable bar and food sales
23 would increase the liability for the Appellant.

24 In the audit working papers, the 300 percent
25 indicated is for the markup factor, which the markup

1 factor is the cost plus the markup on the cost. So if a
2 300 percent markup were used, the markup factor would be
3 400 percent.

4 For the bar, the Department used audited
5 purchases and made an adjustment of 1 percent for mixers,
6 2 percent for pilferage, and 2 percent for
7 self-consumption, and a little more than \$2,000 for
8 non-alcohol items to calculate adjusted cost of goods sold
9 of approximately \$582,000 for 2013 and 2014. And that's
10 on Exhibit A, page 8, line 30.

11 The Department used the estimated markup of
12 200 percent to determine audited taxable sales of a little
13 more than \$1.7 million for 2013 and 2014. And that's
14 Exhibit A, page 8, line 35.

15 The Department used food purchases of
16 approximately \$18,000 for 2013 and 2014, allowed pilferage
17 adjustment of 2 percent, self-consumption of 2 percent,
18 and applied an estimated markup of 200 percent to
19 determine audited taxable sales of \$52,000 for 2013 and
20 2014. That's on Exhibit A, page 8, line 46.

21 Based on the above audit procedures, audited
22 taxable sales for the bar and food was determined to be
23 approximately \$1.8 million for 2013 and 2014.

24 When compared with reported taxable sales of
25 approximately \$392,000 for 2013, 2014, the Department

1 calculated an error rate of 359 percent. And that's on
2 Exhibit A, page 8, line 54.

3 Due to lack of books and records for 2012, the
4 Department used the combined error rate of 359 percent for
5 2013 and 2014 to determine unreported taxable sales for
6 2012.

7 The Department applied the error rates to the
8 reported taxable sales to determine unreported taxable
9 sales of approximately \$1.97 million for the audit period.
10 That's Exhibit A, page 7.

11 For the bar, based on self-consumption allowance
12 of 2 percent, the Department determined cost of alcohol
13 and beverage of approximately \$17,000 subject to use tax.
14 And that's on Exhibit A, page 15.

15 During the audit process, the Department noted
16 that Appellant sold entrance tickets to customers under
17 21 years of age. Per Appellant's website and Yelp's
18 review, customers under 21 must buy a drink ticket at the
19 door for \$5 each, which is on Exhibit B, pages 496 and
20 497. And this would allow them to get a free nonalcoholic
21 drink.

22 The Department used the available information for
23 each week's events to determine unreported taxable sales
24 of approximately \$22,000 for the audit period. And that's
25 on Exhibit A, page 10.

1 During the audit process, the Department also
2 noted facility rental revenue for private events and
3 parties as a bar where food and drinks are served. The
4 fees for the rental of the facility are taxable.

5 The Department used the Appellant's revised
6 Profit and Loss Statements and determined unreported
7 taxable facility rental of approximately \$319,000 for the
8 audit period. That's Exhibit A, page 11.

9 Based on the above audit procedures, the
10 Department determined unreported taxable measure of
11 approximately \$2.3 million for the audit period. Exhibit
12 A, page 5.

13 The Department assessed a 10 percent negligence
14 penalty. The Appellant's error rate for unreported
15 taxable sales was 425 percent, which was substantial and
16 constitutes evidence of negligence.

17 Unreported taxable sales are due to Appellant's
18 failure to maintain and provide mandatory books and
19 records as required by Revenue and Taxation Code 7053 and
20 7054 and Regulation 1698, which is also evidence of
21 negligence.

22 Appellant contends that the additional purchases
23 from Southern Wine & Spirits and from DBI Beverage include
24 items purchased for use at a separate legal entity. Based
25 on the review of the vendor surveys, all purchases were

1 made by Appellant at the address registered for its
2 business activities related to the appeal before OTA.

3 The Appellant claimed that the DBI Beverage
4 invoices were for a separate entity. However, based on
5 the vendor's survey from DBI, it specifically lists Brick
6 & Mortar as the customer on the invoice listing. This is
7 Exhibit B, pages 350 to 356.

8 Despite various requests, the Appellant has not
9 provided any documentary proof or evidence to support its
10 contention that any of these purchases were transferred to
11 any of the separate legal entities.

12 Appellant contends that it stopped selling food
13 in 2014. Appellant has been licensed with the Alcoholic
14 Beverage Control with a Type 47 License, which states "47
15 On-Sale General Eating Place". This is Exhibit G, page
16 569.

17 A Type 47 ABC License authorizes the sale of
18 alcohol for consumption on the premises with the
19 requirement that Appellant must maintain suitable kitchen
20 facilities and must make actual and substantial sales of
21 meals for consumption on the premises.

22 Further, a Type 47 License also allowed minors on
23 the premises, as advertised by Appellant on his website.

24 Appellant, in their testimony today, contends
25 that it was not open all of 2012 and was closed from

1 Christmas 2011 until March 2012. However, based on the
2 information from Ticketfly, there are events starting in
3 early 2012 and have dates all throughout the year. This
4 is in Exhibit B, page 303 and 304.

5 Also during this time period, the Appellant made
6 purchases, as can be seen on the purchases from the vendor
7 surveys. This is Exhibit B, page 396 to 405.

8 Based on the above, the Department has fully
9 explained the basis for the deficiency and provided that
10 the determination was reasonable based upon the available
11 books and records. Further, Department used approved
12 audit methods to determine the deficiency.

13 Therefore, based on the evidence presented, the
14 Department requests that the Appellant's appeal be denied.

15 This concludes my presentation. And we are
16 available to answer any questions you may have.

17 JUDGE LONG: Thank you. We will be asking our
18 questions, but we are at the two-hour mark. So we are
19 going to break -- recess for about ten minutes.

20 And we'll come back at -- my clock says 11:28 --
21 so 11:38.

22 Thank you.

23 (The morning recess is taken at 11:28 a.m.)

24 JUDGE LONG: Okay. We are back on the record.

25 We are now going to turn to CDTFA. And I'm going

1 to ask my co-panelists to see if they have any questions.

2 And I'll start with Judge Kwee.

3 JUDGE KWEE: Could you start with Judge Aldrich?
4 My computer shut down.

5 JUDGE LONG: Yes. We will start with Judge
6 Aldrich.

7 Or maybe -- give us a minute to get things back
8 uploaded, if you need it.

9 JUDGE ALDRICH: Hi, Department. This is Judge
10 Aldrich.

11 So I guess one of the arguments I see is that
12 Appellant didn't provide 1099K data. But Appellant
13 indicated that he provided the credit card statements.

14 But I don't see the credit card statements in the
15 record with -- is -- is there, I guess, more? Or were
16 those, I guess, scheduled? Or not provided, according to
17 the Department?

18 MR. PARKER: We did not see anything in the
19 evidence showing that those were provided. However, the
20 credit cards would be deposited into the bank deposits
21 that are included in the audit.

22 And so those same credit card statements --
23 merchant statements should be the same amount as what's
24 deposited in the bank statements as well.

25 JUDGE ALDRICH: Okay. And then -- I guess,

1 that's all of the questions that I had for the moment.

2 Judge Kwee, did you want to resume with your
3 questioning?

4 JUDGE KWEE: Yes. This is Judge Kwee. Thank
5 you.

6 I had one or two questions.

7 So with the taxpayer's exhibit index, they had
8 their Exhibit J, which was those venue rental invoices.
9 And looking at the invoices, some of them do say "venue
10 only". And then some of them say "venue and bar".

11 And I'm curious what was CDTFA's position on why,
12 at least, the ones that said "venue only" -- why those
13 weren't accepted to show nontaxable revenue.

14 MR. PARKER: So generally speaking, we would
15 expect to see the contract between the party for the
16 rental of the venue, which contracts were not provided.
17 The only thing that we have were these invoices that I
18 believe were received at a later date.

19 And generally, with a bar or a restaurant,
20 they're typically serving food and beverages. So we would
21 expect to see that.

22 So without the contracts, there's no evidence to
23 show that they weren't selling food and beverages in
24 conjunction with the rental of the room.

25 JUDGE KWEE: Okay. Thank you.

1 And so maybe I -- do you mind, Judge Long, if I
2 briefly ask the taxpayer one question?

3 JUDGE LONG: Go ahead.

4 JUDGE KWEE: Okay. So I guess CDTFA was saying
5 that the documentation that you had on your invoices,
6 which was your Exhibit J -- that I think one of the
7 concerns they had there was their -- you had their
8 invoices, but you didn't have the supporting agreement --
9 agreement between yourself and your customer.

10 And I'm just asking, is that something that you
11 still have? I understand it's been a while.

12 Is that something that you would be able to
13 provide?

14 THE WITNESS: I can certainly go back and ask.
15 But I'm going to be very clear, I personally gave copies
16 of the contracts to the auditor. Okay?

17 So for them to say, at this point, that I did not
18 provide that -- this is the first time I've heard that I
19 did not provide copies of the contract. This is a
20 brand-new charge.

21 JUDGE KWEE: Okay. Thank you.

22 And I'm going to go back to CDTFA, then, for, I
23 believe, one more question.

24 And that was regarding the taxpayer's Exhibits K,
25 L, and M, which were their purchase invoices for alcohol.

1 And, you know, hearing their testimony today that some of
2 the purchases were for, you know -- they had the central
3 distribution -- and some of their purchases were for other
4 permitized entities.

5 And they had attached tax returns for other
6 permitized entities with the addresses on the returns.
7 And I think some of the invoices showed addresses for
8 other permitized entities as opposed to the Soul Lounge
9 DBA Brick & Mortar.

10 I think that was the testimony today. And I'm
11 wondering what was CDTFA's position on why the invoices --
12 at least the invoices listing addresses of different
13 entities -- why those weren't accepted to reduce the
14 amount of purchases that was used by CDTFA in determining
15 the underreported taxable sales?

16 MR. PARKER: So the -- so the -- their -- their
17 exhibits -- we used the -- our vendor surveys, which
18 should be similar to theirs. I didn't verify that they
19 were the exact same throughout. And our exhibits that
20 listed Brick & Mortar as the purchaser.

21 At least, from what I saw in our record today --
22 I can get the pages for you here in a second -- the --
23 what we would expect -- generally speaking, most taxpayers
24 don't transfer alcohol between locations since it's highly
25 regulated by the Alcoholic Beverage Control.

1 So the Appellant has indicated that they did make
2 transfers, but they have not provided any records showing
3 that they made these transfers to other locations.

4 If there were records showing that alcohol was
5 withdrawn from their location in San Francisco and
6 transferred to other locations, we would have made those
7 adjustments in the audit. But we have not been provided
8 those records.

9 JUDGE KWEE: Okay. And I'm sorry. I'm jumping
10 around.

11 Do you mind if I ask one follow-up question of
12 the witness?

13 So I'll turn back to the question about the
14 invoices I just asked for CDTFA. I am looking, for
15 example, at the Morris Distributing invoice. So I guess
16 there were a lot of them, but I think they used the same
17 format.

18 And I do see where you say on the invoice where
19 it says on the invoice, you know, office at 11 Duboce.

20 THE WITNESS: Duboce.

21 JUDGE KWEE: I'm sorry. Duboce, which, you know,
22 is the other entity. But then -- and that's on the center
23 of the invoice.

24 But then on the top right, it does list Brick &
25 Mortar -- Mortar Lounge. And -- with the 1710 Mission

1 Street.

2 And I guess, would you just please clarify the --
3 the reason, you know, both entities are listed on the
4 invoice?

5 THE WITNESS: Judge, like I said, I think this
6 would have saved us a lot of time.

7 Under the ABC's rules, the liquor distributor
8 cannot invoice a non-liquor license holding entity. So
9 our overall entity, the Parish Entertainment Group,
10 couldn't be the one on file.

11 So even though it says "Brick & Mortar
12 Lounge/closed," you know, on there -- and then it says --
13 and then they show where the delivery address is around
14 the corner. And that was our way of working around these
15 different agencies and their different rules.

16 And of course, it probably wasn't the greatest
17 idea after six years of going through -- but also -- I
18 would also like to point out that we did give copies -- I
19 personally was there, you know, when their auditor was
20 there.

21 And the auditor walked in, saw our inventory
22 sheets, saw copies of all that, saw copies of our sales
23 contracts. They saw copies of our rentals. They saw
24 copies of our catering, the kitchen, and the people that
25 took over.

1 This was all done. I was there. I handled it.
2 I've been to at least 15 different meetings with different
3 auditors on this. And -- which was very hard to get a
4 hold of -- and that always changed. And they always -- it
5 always got delayed.

6 But, you know, the -- I -- I really just take
7 issue with the fact that now, three people we have never
8 met before in this case are saying we didn't do our job.
9 And I have a problem with that.

10 JUDGE KWEE: Okay. Thank you for your response
11 and for -- CDTFA for your response. And that was helpful.

12 And I don't have any additional questions. So I
13 will return it to Judge Long.

14 JUDGE LONG: Thank you.

15 So I did have a couple questions.

16 The taxpayer, or Appellants, have stated that the
17 vendors, Southern Wine & Spirits and DBI, were not
18 attributable to Soul Lounge.

19 How did CDTFA make that connection?

20 MR. PARKER: So when we did the vendor survey, we
21 asked for them to provide sales that those -- the commonly
22 known vendors for bars and restaurants that deliver in the
23 San Francisco area -- we reached out to them and asked for
24 their sales made to Brick & Mortar at the address of the
25 business.

1 And so the records that they provided from the
2 vendors were deliveries and sales made to Brick & Mortar
3 at that business. So that's how we determined that those,
4 Southern Wine and DBI Beverage, belonged to Brick &
5 Mortar.

6 JUDGE LONG: Thank you.

7 And then you mentioned that Soul Lounge has an
8 ABC License Type 47 that would indicate that they also
9 sold food.

10 And based on that licensing, there's an
11 assumption that Brick & Mortar must also have sold food;
12 is that correct? And is that where the numbers relating
13 to the sale of food came about?

14 MR. PARKER: Well, the -- the sales of food came
15 about from their revised Profit and Loss Statement,
16 especially for 2013.

17 We made the assumption that they continued to
18 make food sales in 2014 because of the type of license.
19 And I believe it's Exhibit G, page 549 -- has information
20 on the type of license.

21 I'm sorry. I think it's page 564 -- has
22 information on the -- the type of license and what a Type
23 47 means.

24 JUDGE LONG: Would that require a business to
25 make food on their own? Or could they have -- could they

1 have this license and then, as well, have another separate
2 vendor or caterer providing food under this license?

3 MR. PARKER: You know, I'm not an expert in ABC
4 licenses. So my understanding is that they need to have a
5 kitchen and sell food. I'm not sure if that means that
6 they can't have a caterer make sales at -- at -- out of
7 their kitchen.

8 So -- and actually the -- the information from
9 DMV -- I mean, ABC is on page 569. My apologies for that.

10 JUDGE LONG: Thank you.

11 At this time -- at this time we're going to
12 let -- if the taxpayer wishes to make a final statement or
13 rebuttal.

14 MR. BOUTRIS: Yes, please.

15

16 CLOSING ARGUMENT

17 MR. BOUTRIS: Again, thank you so much for
18 holding this hearing. And again, I'm -- as a senior
19 member of the Tax Bar in California, I'm very happy to see
20 that the OTA is up and running and doing its job. So, you
21 know, kudos to you for taking on these difficult cases.

22 I think we're having -- I'm thinking of this
23 movie, "Cool Hand Luke," and where Paul Newman says,
24 "We're having a failure to communicate here."

25 The problem that we've got here is that we have

1 three gentlemen over here who weren't involved in this
2 case for years, who really just picked up the case, and
3 are just repeating the same mistakes and the same verbiage
4 from the original audit.

5 That's not really helpful here.

6 We have provided lots of evidence and given lots
7 of testimony as to the problems associated with this
8 audit. And rather than taking a proactive approach and
9 making necessary adjustments to what is clearly an
10 erroneous audit, they just stick to their guns.

11 And I want to point out here that not only is
12 there a problem, here, at the administrative level, but
13 there's a problem at the collection level.

14 The CDTFA seized \$200,000 from my client without
15 the benefit of an assessment. So while this appeal was
16 pending, we have seizures going on. And that's a very
17 serious situation. Because you have not made a
18 determination. There has not been a final determination.

19 And yet the CDTFA is making seizures. \$200,000
20 they took from -- from Mr. Perkins without due process.
21 That's a very serious situation. So you can understand
22 why this has sort of, you know, bounced out of control
23 here.

24 I want to address the CDTFA's point, which they
25 continually say that adequate books and records were not

1 provided. That's just not true. The original auditor,
2 Mr. Mustafa, was provided bank statements, credit card
3 statements, he was provided inventory statements.

4 He did -- he appeared at the offices and went
5 through a whole rigmarole with Mr. Perkins about how the
6 operation worked at the warehouse.

7 We've -- we've provided federal income tax
8 returns. We've provided Profit and Loss Statements.
9 We've provided Transaction Detail Reports. To say that --
10 that records were not provided -- it's just wrong.
11 It's -- it's -- it's a misconstrual of the facts.

12 And I -- I understand. Mr. Mustafa may no longer
13 work for the CDTFA, and so he can't be here to testify to
14 what he did or didn't do.

15 But we're here to testify -- Mr. Perkins is under
16 oath. Mr. Perkins is, you know, a very moral, upright,
17 credible witness. And I ask that you take that into
18 account.

19 Now, once the, you know -- the basis for the
20 markup test is that, you know -- that the federal income
21 tax returns, number one, did not reconcile with the sales
22 and use tax returns.

23 And -- and that's not actually true. If you look
24 at the amended federal income tax returns, they reconcile
25 with the sales tax returns once you understand that the

1 sales tax returns are only showing taxable sales, not
2 total revenues of the business -- because, unfortunately,
3 whoever was doing the returns just didn't understand that
4 you have to report total revenues, not just taxable sales.

5 But it's not -- it doesn't result in a -- it's --
6 it's not a fraud. It's not even negligence. It's just
7 filling the form out incorrectly. The -- the form -- the
8 CDTFA -- BOE is still getting the full amount that it's
9 entitled to get. So the return is accurate in that
10 regard.

11 Then they go on to say that -- that there is a
12 359 percent -- percentage of error. And it's like, well,
13 the only reason you're getting that percentage of error is
14 because you're counting inventory that was not used. It
15 was not purchased by Soul Lounge.

16 Sure, if you want to count Southern Wine &
17 Spirits. But I would remind the Judges that Southern Wine
18 & Spirits, contrary to what the CDTFA is saying, did not
19 deliver that inventory to Soul Lounge's address. It
20 delivered that inventory to 11 Duboce, where the warehouse
21 is.

22 And the only reason that Brick & Mortar or Soul
23 Lounge is on that invoice is because of the requirement
24 under the ABC that you have to have a licensed business as
25 the recipient.

1 And so because Brick & Mortar was the closest
2 establishment to the warehouse, Brick & Mortar was used on
3 those invoices for purposes of those relationships with
4 the vendors. And -- and Mr. Perkins testified as to that
5 with respect to those emails that went back and forth with
6 Arwen at Southern Wine & Spirits.

7 Southern Wine & Spirits was completely aware of
8 the fact that these -- alcohol were not being purchased
9 just for Soul Lounge -- that it was going to the warehouse
10 for the greater Parish Entertainment entity.

11 Mr. Perkins testified, also, that the venue
12 contracts were, in fact, provided to Mr. Mustafa Jalal
13 [sic]. And in terms of the -- the CDTFA's taking the
14 position that, well, because the addresses were different,
15 we're just going to just attribute it all to Soul Lounge.

16 And it's like, well, I think there's an
17 explanation for that. And I don't think that that merits
18 treating all of the inventory that was going to the
19 warehouse as being Soul Lounge's inventory.

20 I -- I just want to reiterate, though, that the
21 deliveries weren't made to Soul Lounge's business
22 establishment. They were made to the warehouse at 11
23 Duboce Street. And that's the warehouse for the greater
24 Parish Entertainment Group of businesses.

25 And as far as food sales go, I don't know the ins

1 and outs of permits and regulations and so on. But you've
2 heard the testimony of Mr. Perkins. He didn't sell food
3 in 2014. Can't -- can't we just trust the man and his
4 word?

5 It's his business. He knows what he did. And he
6 says he didn't make any food sales in 2014. Whether or
7 not he properly manipulated or changed or amended a permit
8 is not really relevant today. The question is yes or no.
9 Food sales, yes or no?

10 So I mean, it's frustrating because this has gone
11 on now for close to eight years, this case. We have
12 another case coming now. We have an unlawful seizure. We
13 have a change within the CDTFA and a lack of institutional
14 memory as to what was done by the previous auditors.

15 And it's just a -- it's a sad state of affairs.
16 And I'm sorry it had to come to this. But we're now at
17 sort of the end of our rope here. And we're asking for
18 your help to, you know, understand what transpired here
19 and to apply some -- some -- some logic and some fairness
20 to the facts here.

21 Thank you.

22 JUDGE LONG: Thank you.

23 I'm going to turn it to my panel members and see
24 if they have one last question.

25 Judge Kwee?

1 JUDGE KWEE: So I think -- would the parties be
2 amenable to holding the record open to allow the Appellant
3 to provide additional documentation?

4 And I guess, CDTFA would have an opportunity to
5 respond to any additional documentation.

6 MR. BOUTRIS: The -- the problem that we're going
7 to have, Judge Kwee, is that he doesn't -- Mr. Perkins
8 doesn't work there anymore. The business has been sold
9 four years ago.

10 So he -- I guess, what records are we talking
11 about and whether or not we could retrieve them is -- is a
12 big question mark given that -- that he's not the business
13 anymore. It's not his business any longer.

14 JUDGE KWEE: Right. I think, during the course
15 of the hearing, there were a couple of items that were
16 referenced by the panel that might be potentially helpful.

17 I understand they might not be available anymore.
18 So if it's not something that you would be able to provide
19 or that you would have, there would be no point in holding
20 the record open. But it is something that -- which could
21 be potentially useful. I'll list the items:

22 The first one is the contracts for the venue
23 rentals. With the contracts, I believe CDTFA mentioned
24 there was concern with the invoices because they didn't
25 have supporting documentation. So that was one thing

1 noted as potentially helpful for the panel.

2 A second one is internal invoices, which -- for
3 the alcohol, which would have shown what alcohol was
4 specifically allocated to Brick & Mortar. My
5 understanding was that it would have been an allocation
6 internally. And if there was any documentation of that,
7 that could potentially be helpful.

8 And then I think Judge Aldrich had mentioned
9 wanting to see the contract with the third-party food
10 caterer that was taking over either at the end of 2013 or
11 the beginning of 2014 to show that Appellant no longer did
12 food.

13 MR. BOUTRIS: We -- we -- I'm sorry. I didn't
14 mean to interrupt you.

15 I think we can try to produce those documents for
16 you.

17 JUDGE KWEE: Okay. So yeah, I think those were
18 the -- oh. And Judge Aldrich, I think, mentioned, if --
19 if you have any 1099K forms for the period at issue, just
20 to show what the credit card receipts were for the
21 entities.

22 So then, that would be four documents. Not four
23 documents, but four categories of documents that might be
24 potentially helpful. If you don't have them, that's fine.
25 But I think, potentially, that could be helpful.

1 And do you know how much time you would like to
2 look for that, if you decided that you want to -- to
3 submit it?

4 MR. BOUTRIS: 30 days.

5 JUDGE KWEE: Okay.

6 And turning to CDTFA, does CDTFA have an estimate
7 of time -- how much time it would take them to review the
8 documents and determine if it would impact their position
9 at all on the appeal?

10 MR. PARKER: Depending on the volume of the
11 documents, I would estimate up to 30 days.

12 JUDGE KWEE: Okay. So if we did 30 days for
13 Appellant followed by 30 days for CDTFA with either party
14 having the opportunity to request extension of time either
15 to get more documents or to respond -- but initially set
16 up for 30 and 30 -- does that work for the Appellant?

17 MR. BOUTRIS: It does, your Honor.

18 JUDGE KWEE: Okay. And does that work for CDTFA,
19 also?

20 MR. PARKER: Yes, it does.

21 JUDGE KWEE: Okay.

22 And if it were -- if there were a potential --
23 and I'm not saying, you know, obviously, we don't know
24 what direction it would go -- but if it was potentially
25 possible that an adjustment would be ordered, would it

1 make sense to hold the record -- or to request feedback on
2 CDTFA to do, like, a --

3 Like, say, for example, if -- if you were to
4 leave venue-only rentals after receiving documentation,
5 would it make sense to hold the record open to get CDTFA
6 to provide an estimate of what that impact on the
7 liability would be?

8 Or would that be something where we would just
9 order it in a decision, and CDTFA would make an adjustment
10 after?

11 Is there a preference? Do either parties have a
12 preference on whether or not they would like to see an
13 adjustment before the decision is issued? Or have the
14 adjustment ordered in a decision, if that were something
15 that would potentially be at issue?

16 MR. BOUTRIS: Our preference would be just that
17 you order the adjustment as you determine based on the
18 evidence.

19 JUDGE KWEE: Okay. I'm just waiting -- giving
20 CDTFA an opportunity to respond.

21 MR. PARKER: Yeah. We -- if adjustments are
22 warranted based on the additional documentation, we could
23 make those in advance. Or if you ordered it in the
24 opinion, we could make the adjustments there as well.

25 JUDGE KWEE: Okay.

1 MR. PARKER: We're open to either way.

2 JUDGE KWEE: Okay. Great. Thank you.

3 Then I will turn it back to Judge Long.

4 Thank you.

5 JUDGE LONG: Judge Aldrich, do you have any final
6 questions?

7 JUDGE ALDRICH: Just one quick final question.

8 I understand there's multiple entities. And the
9 Soul Lounge -- the 1099K's wouldn't be -- there wouldn't
10 be any other income attributable to a separate entity.

11 It would only be for Soul Lounge doing business
12 as Brick & Mortar; right?

13 THE WITNESS: Correct. We had separate credit
14 cards and bank accounts for each entity.

15 JUDGE ALDRICH: That's what I was getting at.

16 THE WITNESS: Yeah.

17 JUDGE ALDRICH: Thank you.

18 THE WITNESS: Yeah.

19 JUDGE ALDRICH: No further questions from me.

20 Thank you.

21 JUDGE LONG: Okay.

22 As Judge Kwee mentioned, we're going to hold the
23 record open for additional documents to be submitted
24 within the next 30 days. So by my calendar it looks like
25 it will be September 23rd.

1 But I will also issue an order indicating which
2 documents we -- we are seeking. As Judge Kwee
3 mentioned -- is the contracts for the venue rentals, the
4 internal invoices for the alcohol, and the catering
5 contract, oh, and the 1099K's.

6 So I believe that concludes the hearing for
7 today.

8 Thank you, everyone for your participation.

9 (Proceedings concluded at 12:09 p.m.)

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1 REPORTER'S CERTIFICATION

2
3 I, Sarah M. Tuman, RPR, CSR No. 14463, a
4 Certified Shorthand Reporter and Registered Professional
5 Reporter in and for the State of California, do hereby
6 certify:

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

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

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

22 IN WITNESS WHEREOF, I have this date subscribed
23 my name. Sarah M. Tuman, CSR, RPR, CSR No. 14463

24 Dated: September 13, 2022

Certified Shorthand Reporter
For The State of California

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\$			
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\$0 31:4	\$25,542 37:15	\$582,000 79:9	84:12 99:19
\$1,966,075 58:21	\$252,218 57:25	\$59,218 38:19	1099k's 72:21 102:9 103:5
\$1.4 55:17 56:11	\$259,336 57:19	\$617,000 78:5	11 21:22 37:1 43:14 50:7 61:14 81:8 88:19 95:20 96:22
\$1.6 77:2	\$26,019 34:13	\$632,000 59:4	110 20:23
\$1.7 79:13	\$26,661 48:25	\$632,431 57:17	1125 24:20
\$1.8 79:23	\$261,865.86 25:15	\$642,000 59:1,4 62:25	11:28 83:20,23
\$1.966 33:22 59:7	\$261- 25:17	\$642,852 56:17	11:30 11:18
\$1.97 80:9	\$285,299 27:9 57:25	\$644,000 55:11	11:38 83:21
\$11,308 53:12	\$299,285 24:13 56:20	\$65,595 38:19	12 29:4
\$112,814 26:17 50:8,24 52:13 53:21	\$31,429 36:11	\$67,899 38:19	12/31/15 48:20
\$112,814.24 27:1	\$319,000 81:7	\$763,000 55:12	120 71:4
\$115,000 77:7	\$32,797 57:21	\$87,288 25:19	12:09 2:18 103:9
\$12,273 37:15	\$34,539 36:13	\$87,289 24:25	12A-1 55:8
\$141,123 35:25 51:25 52:20	\$343,567 24:11 56:21	\$9,000 78:10,13	14 57:23
\$150,000 63:3	\$348,451 40:23	\$9,000 51:17	140 21:3 36:5 71:4
\$16,659 58:2	\$35,528 57:2	\$90,786.50 27:19	14463 2:19
\$17,000 80:13	\$37,112 36:13	\$90,787 27:12 51:9,18,20 52:14 53:22	15 24:17 78:7 80:14 90:2
\$17,159 35:14 52:22	\$373,095 26:13 57:18	\$900,000 62:20	150 21:3 72:12
\$18,000 79:16	\$38,043 36:13	<hr/>	16 26:8 50:19 57:14
\$2,000 79:7	\$392,000 79:25	0	1698 81:20
\$2,269 38:8	\$4,453 38:8	<hr/>	17 4:14
\$2,363,476 40:5	\$4,494 37:16	1	1700 21:20 61:11, 14
\$2.3 81:11	\$4,587 38:8	1 23:20 56:14 62:22 76:13 79:5	1710 21:21 37:1 61:11 88:25
\$20 31:4 66:6	\$5 80:19	1/18/2012 28:23, 24	18 77:14
\$200,000 93:14, 19	\$51,417 38:18	1/31/2012 29:3	19 77:3
\$22,000 80:24	\$52,000 79:19	10 4:10 80:25 81:13	19075065 2:6 5:6
\$23,357 37:16	\$537,000 59:1,5	10/1/15 48:20	<hr/>
\$244,129 38:20	\$537,517 40:11 57:24	100 71:4	2
\$244,130 53:10	\$537- 59:2	1065 24:10	2 23:25 24:10,13 27:8 40:23 41:4
	\$547,000 76:15, 16	1099K 76:18	

60:5 62:22 79:6,
17 80:12
20 4:18 32:19 66:9
76:4
200 21:2 54:3,6,
13,20,21,22 55:3
67:6,25 78:16,20
79:12,18
2003 26:8
2004 27:6
2009 76:11
2011 21:9,13 83:1
2012 12:10,11
17:15 21:14 23:24
25:8 28:10 55:14
56:17 59:1,4
62:19,21 63:3
73:5 76:13 77:2,
11,13 80:3,6
82:25 83:1,3
2013 20:17 26:21
34:16 35:13,25
36:7 37:14,19
52:1,14,21 53:21,
22 55:11 57:13,17
59:1,5 77:2,12,13
78:3,5,9,10,13
79:9,13,16,19,23,
25 80:5 91:16
99:10
2014 27:18 28:11
34:13 38:5,6,12,
17,24 40:8,12
51:8 52:15 53:5,
21,22 55:12 57:24
58:4 59:5 60:5
70:12 76:13 78:3,
5,11,13 79:9,13,
16,20,23,25 80:5
82:13 91:18 97:3,
6 99:11
2018 44:14
2022 2:18 5:1,7
60:6
20th 21:13
21 80:17,18

22nd 5:7
23rd 102:25
24 2:18 5:1,7 77:8
240 21:2
25 66:10
25,000 71:16
2:00 11:15

3

3 24:12 60:5
30 26:15 50:21
79:10 100:4,11,
12,13,16 102:24
300 54:7,14,18
55:1,4,5 67:7,9,
11,25 75:12
78:21,24 79:2
30214(f) 9:11
303 83:4
304 83:4
31 27:7 40:9 57:23
76:13
32 54:1
35 10:9 79:14
350 82:7
356 82:7
359 80:1,4 95:12
37 78:10
396 52:4 83:7

4

400 2:16 79:3
405 83:7
425 81:15
45 27:10 51:16
46 28:8,23 34:11
79:20

47 74:2 82:14,17,
22 91:8,23
496 80:19
497 80:20

5

5 24:21 81:12
500 72:1
528 39:11
53 29:23
535 39:20 40:25
54 80:2
549 91:19
555 39:19,21
564 91:21
569 82:16 92:9
57 30:15
58 77:13
590 33:13
594 33:20 58:17
596 34:7,12 49:24
51:1 67:2
597 55:8

6

601 35:8
650-person 40:1
668 47:15 48:8,12
672 41:22,23
695 43:20
696 44:7

7

7 80:10
7053 81:19

7054 81:20
76 4:15
7:00 20:20 72:14

8

8 4:4 59:21 60:4
78:7,10 79:10,14,
20 80:2
80 25:9,10
82 26:23
84 27:17
8:00 11:15,17
20:20 72:15,16

9

9 4:5 59:20,21 60:4
91 56:10
92 4:22 56:10
9:00 11:18 72:16
9:30 2:17 5:2,8

A

A-AD 4:4 8:17
A-G 4:5 9:20
a.m. 2:17 5:2,8
11:15 83:23
ABC 19:8 42:9,12,
24 44:1,2 73:22
82:17 91:8 92:3,9
95:24
ABC's 89:7
ability 56:2
absence 78:11
absolutely 11:24
12:3 25:3 36:19
43:18 68:12
absorbing 21:11

- acceptable** 16:16
- accepted** 28:7
85:13 87:13
- access** 70:22
- account** 73:8
75:7 94:18
- accountant** 25:4
26:3
- accounting** 26:4
28:6,18
- accounts** 56:6
102:14
- accuracy** 76:23
77:21
- accurate** 27:13,
21 29:20 40:6
52:23,25 53:13
57:12 95:9
- accurately** 37:18
- ACH** 60:2,3
- acknowledge**
15:21
- acknowledged**
51:24
- acknowledges**
15:20
- acquire** 12:11
21:7
- acquired** 21:9
38:10
- acting** 6:2
- activities** 82:2
- actual** 72:23
82:20
- AD** 6:25 7:8 8:16
- add** 69:1,10
- added** 34:25
38:20 54:20 64:3
69:5
- addition** 59:6
- additional** 43:14
- 52:22 53:10,11
67:14 75:22 81:22
90:12 98:3,5
101:22 102:23
- address** 13:13
61:2 82:1 89:13
90:24 93:24 95:19
- addresses** 61:8
69:3 87:6,7,12
96:14
- adds** 51:25
- adequate** 93:25
- adequately** 76:1
- adjunct** 10:10
- adjusted** 22:16
79:8
- adjustment**
14:14 79:5,17
100:25 101:9,13,
14,17
- adjustments**
6:13,16,18,21
88:7 93:9 101:21,
24
- ADMINISTRATIO
N** 3:11
- administrative**
8:18 9:21 17:3
93:12
- admit** 7:13 8:15
- admitted** 7:1 8:20
9:19 51:24
- admitting** 9:18
- advance** 31:4
65:4,6 101:23
- advanced** 30:21,
25 31:2,5,12 32:3
33:8
- advantage** 22:13
- advertised** 82:23
- advice** 16:4
- advised** 14:5 16:5
- affairs** 97:15
- agencies** 89:15
- agreed** 6:12
- agreement** 31:15
86:8,9
- ahead** 31:11
50:16,21 86:3
- alcohol** 11:23
13:8 14:15 24:23
25:2,14,17 26:17
27:12 35:12 36:14
38:7 40:24 50:7,
22 52:14 53:7,22
55:2,10 67:4 78:6
80:12 82:18 86:25
87:24 88:4 96:8
99:3 103:4
- alcoholic** 6:22
33:22 82:13 87:25
- Aldrich** 3:5 5:11
70:4,7,9,14,23
71:2,5,8,12 72:3,
17,20,25 73:3,11,
17 74:5,8,11,16,
19,25 75:3,17
84:3,6,9,10,25
99:8,18 102:5,7,
15,17,19
- ALJ** 3:3,5 5:5,11
- alleges** 35:24
- alleging** 55:9
- allocable** 69:9
- allocated** 99:4
- allocation** 99:5
- allowance** 80:11
- allowed** 19:9
44:14 73:19 79:16
82:22
- Altos** 46:14
- amenable** 98:2
- amended** 23:24
25:3,23 26:19
27:6 28:7 51:14
58:6 61:20,24,25
- 62:2,17,21 69:9
94:24 97:7
- amount** 6:17,19,
22 12:4 13:8
15:11 25:2,21
26:10 27:3 33:5
53:7,11,19 67:14
84:23 87:14 95:8
- amounts** 16:1
69:6 76:23 77:21
- analysis** 50:3
55:9 77:17
- Andrea** 3:3 5:4
- Andrew** 3:5 5:10
- answering** 47:25
- anymore** 44:14
98:8,13,17
- apologies** 92:9
- apologize** 47:14,
16
- appeal** 2:5 5:5,6,
11 11:2 82:2
83:14 93:15 100:9
- Appeals** 2:1 9:11
- appearance**
10:19
- APPEARANCES**
3:1
- appeared** 94:4
- appearing** 6:7
- Appellant** 2:7 3:7
6:8,13,16,18,20,
25 17:2 76:9,14,
16,18 78:23 80:16
81:22 82:1,3,8,12,
13,19,23,24 83:5
84:12 88:1 98:2
99:11 100:13,16
- appellant's** 4:4,
17 7:2,4,7 8:16,17
39:11 76:22 77:9,
11,24 78:19 80:17
81:5,14,17 83:14

- Appellants** 5:25
7:17 8:20 9:24
90:16
- applied** 79:18
80:7
- apply** 9:13 97:19
- appointees** 11:1
- approach** 93:8
- approved** 83:11
- approximately**
5:8 55:16 59:4,5
65:23 76:14 77:1,
7 79:9,16,23,25
80:9,13,24 81:7,
11
- area** 22:7 39:4
40:3,20,21 61:16
90:23
- argument** 4:20
75:23 92:16
- arguments** 7:19,
20 84:11
- arrangement**
43:12
- Arwen** 42:1,2,15
43:21 44:19 96:6
- ascertain** 64:7,8
- aspect** 65:21
67:16,23 68:1,8,9,
11
- asserting** 33:21
53:6
- assessed** 81:13
- assessment**
93:15
- assign** 45:10
- assigning** 68:15
- assumed** 53:3
78:12
- assumption**
13:17 14:18
91:11,17
- assumptions**
15:3 33:18 58:19
- attached** 63:10
87:5
- attorney** 6:2 10:9
25:5 28:5 33:17
49:12
- attributable**
90:18 102:10
- attribute** 96:15
- attributed** 12:5
- audit** 11:11,21
14:20 26:1 29:20
33:13 34:20 35:19
37:13 49:23 51:21
58:15,20 66:16
76:12,16,17,20
77:7,20 78:22,24
79:21 80:9,15,24
81:1,8,9,11 83:12
84:21 88:7 93:4,8,
10
- audited** 6:14,17,
19,21,22 7:11
34:11,13 35:21
77:21 78:9,22
79:4,12,19,21
- auditor** 9:1 11:10,
12 13:2 14:15
17:20 34:23 35:1,
5 37:5 42:15 45:6,
13 52:18 53:1,2,5
54:9,19,23 86:16
89:19,21 94:1
- Auditorium**
30:25
- auditors** 35:4
90:3 97:14
- audits** 38:3 78:17
- August** 2:18 5:1,7
76:11
- authenticate** 9:3
- authentication**
9:8
- authorizes** 82:17
- average** 54:3,14
55:1
- averaged** 54:18
- aware** 32:11 43:8,
10 46:17 96:7
-
- B**
-
- back** 40:8 44:25
49:23 51:1 52:4
56:13,14 59:3
60:5 61:14 67:21
70:1 73:5 75:19
83:20,24 84:7
86:14,22 88:13
96:5 102:3
- band** 20:21 63:22
65:5 71:18,23
- bands** 22:9
- bank** 56:6,7
58:10,11,13 59:15
72:18 73:7,8
84:20,24 94:2
102:14
- bar** 10:24 11:14,19
19:1 44:13 46:3,
12 47:5 54:23
63:11 64:5,6,11,
13,15 67:3 74:7,8
76:10 78:16,22
79:4,22 80:11
81:3 85:10,19
92:19
- bar-type** 46:18
- Barry** 46:13
- bars** 38:3 44:18
46:5 57:8 90:22
- bartender** 14:25
15:8 71:10 72:1
74:6
- bartenders** 34:1
64:2 70:25 71:20
- based** 7:15 15:2
35:24 39:9 55:7,9
58:19 75:4 77:17
78:17 79:21 80:11
- 81:9,24 82:4 83:1,
8,10,13 91:10
101:17,22
- basic** 17:15 19:20
46:8
- basically** 32:6,13
69:12
- Basil** 3:7 6:2,6,7
10:8 25:5
- basis** 14:20 33:1
35:11 83:9 94:19
- Bay** 12:21 19:17
22:7 39:4 40:3,19,
21
- bear** 47:11 58:16
- beer** 29:15,17
35:14,16 38:8,10
41:10 52:22 53:11
67:3
- beers** 54:16
- begin** 5:16 9:23
10:4 17:7 76:5
- beginning** 12:11
28:1 32:10 61:1
75:10 99:11
- begins** 10:1
- behalf** 6:3 17:2
- believed** 14:5
49:7
- belonged** 91:4
- belonging** 14:16
- benefit** 93:15
- beverage** 33:22
78:1,4 80:13
81:23 82:3,14
87:25 91:4
- beverages** 6:15,
20,22 78:6 85:20,
23
- Bezos** 46:25
- bifocals** 24:16
- big** 13:23 14:14

44:18 73:6 98:12

bigger 31:1**biggest** 10:21
12:14 23:4 39:3**bills** 75:7**birthday** 13:23**bit** 45:19 75:11**blank** 7:24 8:1,2,
7,12**blocks** 19:2**Board** 10:18**body** 71:16**BOE** 10:25 22:20
23:5 44:5 95:8**BOE's** 35:19**book** 22:9 72:10**bookkeeper** 45:9**books** 76:17,21
77:18 78:14 80:3
81:18 83:11 93:25**booths** 20:11**bought** 20:7,8,9**bounced** 93:22**Boutris** 3:7 4:10,
14,22 6:2,6,7 8:6,
7,22,24 10:7,8,14,
16 12:18 16:18,21
20:2 23:9,13,17,
18 24:2,4,6,8
33:11 47:15,18,21
48:5,7 60:7,10
75:22,25 92:14,17
98:6 99:13 100:4,
17 101:16**Boutris'** 47:25**brand** 44:15**brand-new** 86:20**break** 83:19**breakdown** 26:16
27:11 50:20**breaking** 24:19**Brick** 17:23 18:7
21:14,21 30:23
31:19 34:3 36:22
37:11 44:23 46:10
55:19 61:6,11,22
65:9 69:10 70:24
73:15 74:3 82:5
87:9,20 88:24
89:11 90:24 91:2,
4,11 95:22 96:1,2
99:4 102:12**briefly** 86:2**brilliant** 46:23**bring** 46:15 63:22
70:18**Brooks** 3:12 5:21,
22 7:5,6,25**brought** 12:24
67:14 70:17 71:12**building** 22:3**buildings** 17:22
22:4 37:7,8 61:12**bunch** 17:17**Bureau** 5:20**busiest** 40:2,3**business** 11:13,
19 12:4,10,12
13:9 17:16 18:6,
10,12 20:6 21:12
31:7 34:5 39:1
40:20 46:20 47:2
56:25 57:6 61:21
70:20 75:5 82:2
90:25 91:3,24
95:2,24 96:21
97:5 98:8,12,13
102:11**businesses**
12:23 18:1,12
19:15,16 21:11
43:6 46:17,18
78:18 96:24**buy** 31:5,11 65:5
80:18

C

cafe 17:19 18:3,5**calculate** 79:8**calculated** 67:23
80:1**calendar** 27:18
102:24**California** 2:2,16,
21 3:10 5:1,9 9:12
10:13,23 11:3
73:24 76:11 92:19**call** 31:11 68:16**called** 17:2 44:21
73:21**card** 56:10,12
58:11,13 59:15
72:18,20,24 73:10
76:18 84:13,14,22
94:2 99:20**cards** 59:23,24
84:20 102:14**carried** 19:12,21**case** 5:6,15 8:10
13:9,15 14:17
17:14 18:25 46:14
53:21 74:11 90:8
93:2 97:11,12**cases** 15:13 92:21**cash** 59:19 60:4
76:19**categories** 99:23**caterer** 15:7
20:16 34:17 92:2,
6 99:10**catering** 20:17
34:21 70:10,12
89:24 103:4**CDTFA** 5:18,20,
22,24 7:1,3,21
8:19 11:12 12:2,5
13:10,17 19:14
20:18 22:20 26:22
33:21 34:8,1235:11,13 36:6
38:6,22 50:5 51:2,
23 54:5,25 55:8
56:2 58:18 60:15
67:7 69:6,14
70:13 76:4 83:25
86:4,22 87:14
88:14 90:11,19
93:14,19 94:13
95:8,18 97:13
98:4,23 100:6,13,
18 101:2,5,9,20**CDTFA's** 8:21,23
9:18 18:25 33:13
51:21 67:2 76:3
85:11 87:11 93:24
96:13**center** 88:22**central** 12:23
18:16 19:9 22:21
37:23 43:2 44:2,5
46:18 47:1 67:15
87:2**centralized** 43:14**centrally** 46:21**Certified** 2:20**cetera** 58:1**chagrin** 20:25**chance** 19:23**change** 97:13**changed** 72:7
90:4 97:7**charge** 32:14 42:3
44:19 64:19 66:8
86:20**charged** 48:5**charges** 16:2**cheated** 59:7**check** 59:25 74:9,
13**checks** 76:19**Chief** 5:19**Christmas** 21:13

- 83:1
Christopher 3:12
 5:21,22 7:6
city's 54:15
claimed 76:15
 82:3
claiming 34:12
 35:13 36:6,14
 53:5
clarification
 59:16 70:19
clarify 7:23 8:5
 61:8 62:16 69:24
 72:5 89:2
clarity 49:13
 73:12
clear 59:11 86:15
click 31:17,20
client 93:14
clipboard 74:14
 75:4
clock 83:20
close 60:8 97:11
closed 21:12
 82:25
closeout 31:22
closer 6:5 24:6,7
closest 74:2 96:1
CLOSING 4:20
 92:16
club 14:22 20:9
 30:7 34:3,4 40:20
 56:1
clubs 22:9,14
 34:3 56:2
co-panelists
 5:13 84:1
Code 9:13,15
 81:19
Coliseum 31:24
- collect** 14:7 15:25
 16:1 33:7
collected 33:5
collecting 13:25
collection 93:13
Column 35:23
 36:6 37:12 38:16
combined 80:4
commencing
 2:17
Committee
 10:18,22
commonly 90:21
communicate
 92:24
communication
 43:24
communicative
 23:7
company 17:17
 37:14 43:17 45:23
 66:4,7 73:20
compared 76:24
 77:4 79:24
compares 77:10
competitive 22:8,
 13
complete 21:13
 22:3 76:21
completely 96:7
complicated
 43:1 63:19
computations
 35:14
computed 77:10
computer 84:4
concern 66:15
 67:12,13 98:24
concerned 63:9
concerns 9:7
 86:7
- concert** 65:3,4
conclude 60:12
concluded 103:9
concludes 83:15
 103:6
concluding 2:17
conducting 5:12
confidence 26:20
 27:15
confident 25:6
 26:6
confirming 68:7
confirms 41:20
conflated 13:12
conform 27:3
 50:11
confused 18:2
confusion 19:12
 48:9
conjunction
 85:24
connection
 90:19
considerable
 13:8
consistently
 72:6
constitutes
 53:22 81:16
consumption
 82:18,21
contact 34:22
contained 9:12
contends 81:22
 82:12,24
contention 41:14
 53:19 82:10
context 65:25
continual 37:4
- continually** 93:25
continued 91:17
Contra 19:18
contract 34:21
 70:10,12,16 85:15
 86:19 99:9 103:5
contracts 20:17,
 18 85:16,22 86:16
 89:23 96:12
 98:22,23 103:3
contrary 95:18
control 18:22
 47:3 82:14 87:25
 93:22
controlling 65:18
Cool 92:23
copies 86:15,19
 89:18,22,23,24
copy 34:21 70:16
corner 18:7
 21:17,19,23 46:11
 89:14
correct 14:2 25:2,
 16 26:2,18 29:18
 36:2 40:15 43:7
 45:22 52:19 53:24
 57:22 61:4 63:1
 64:25 65:12 68:6
 69:15 71:1 72:19
 73:16 74:10 75:2
 91:12 102:13
corrected 12:19
 59:2
correctly 49:12
 62:13 66:14
correspondence
 41:19
cost 24:1,10,12,20
 25:18 26:10,17,25
 27:8,11,18 28:3
 40:22 41:4,5
 51:11 56:20
 57:18,24 77:10,16
 79:1,8 80:12

Costa 19:18
costs 72:25 78:21
Counsel 5:21,22
count 95:16
counting 95:14
County 19:18
couple 49:10
 60:24,25 90:15
 98:15
court 16:15
cover 60:11 63:13
 71:6
covered 60:11
 76:1
covering 28:10
 29:20
CPA 16:5
craft 54:16
Crafty 18:5 21:19
 61:6,10
created 8:9
credible 94:17
credit 29:2 56:10,
 12 58:11,13
 59:15,23,24
 72:18,20,24 73:10
 76:18 84:13,14,
 20,22 94:2 99:20
 102:13
CROSS 4:17
crowd 41:12
 54:16 71:17,18,24
CSR 2:19
curious 85:11
customer 82:6
 86:9
customers 31:10
 80:16,18

D

daily 73:1 76:19
data 76:18,19
 78:11 84:12
date 22:14 28:10
 76:11 85:18
dates 22:12 83:3
day 11:15 14:13
 21:18 22:1 30:7
 68:15 73:9
days 21:6 32:18
 100:4,11,12,13
 102:24
DBA 74:22,23
 75:1 87:9
DBI 35:15,17,18
 38:7,10 52:22
 53:12 69:15 78:1,
 4 81:23 82:3,5
 90:17 91:4
deal 18:15 39:6
 44:23,24
dealing 35:5
dearly 28:3
December 28:11
 76:13
decided 17:16
 54:5 77:18 100:2
decision 101:9,
 13,14
deductions
 76:15
deem 9:17
deficiency 83:9,
 12
delayed 90:5
deliver 90:22
 95:19
delivered 37:11,
 22,23 95:20
deliveries 91:2
 96:21
delivery 46:3 47:9
 89:13
denied 83:14
Department 3:10
 7:7,25 76:12,21,
 24 77:4,9,17,18,
 20,23 78:2,8,12,
 14,15 79:4,11,15,
 25 80:4,7,12,15,
 22 81:1,5,10,13
 83:8,11,14 84:9,
 17
department's 4:5
 9:20 20:25
depending 20:20
 72:7 100:10
deposited 84:20,
 24
deposits 60:3
 73:10 84:20
describe 20:5
 29:25 43:23
description
 50:20
Detail 94:9
details 42:10
determination
 5:15 83:10 93:18
determine 76:22
 78:4 79:12,19
 80:5,8,23 83:12
 100:8 101:17
determined
 35:12 77:18,21
 78:9 79:22 80:12
 81:6,10 91:3
determining
 87:14
dialogue 16:12
 19:19
difference 62:2,6
 63:6 77:7

differences 77:1
difficult 92:21
difficulty 33:10
direct 4:17 20:1,4
 34:11 60:12
direction 100:24
directly 10:15
 13:9 68:22
discontinued
 34:15
discount 18:17,
 21 43:13
discounts 47:3
discuss 7:18
discussion 44:12
 54:8
discussions 45:1
dispersed 12:25
dispute 67:9,10
 68:8,10
distribute 18:21
 19:9
distributed 68:19
Distributing
 28:25 88:15
distribution
 18:16 47:1 67:15
 73:18 87:3
distributor 29:15
 89:7
distributors
 18:15 47:8
district 42:3
DMV 92:9
document 28:9,
 15 29:10 39:13
documentary
 82:9
documentation
 86:5 98:3,5,25
 99:6 101:4,22

- documents** 53:9
64:5 67:6 99:15,
22,23 100:8,11,15
102:23 103:2
- dollars** 36:22
43:19 44:17
- door** 31:6 63:12
80:19
- doors** 11:17 20:20
72:14,15
- double** 9:8
- Downtown** 39:5
40:1
- drink** 6:19 72:1
80:18,21
- drinking** 71:17,24
- drinks** 14:25 81:3
- drop** 22:24 74:17
- dropped** 62:25
- Duboce** 21:22
37:1 43:5 61:15
88:19,20,21 95:20
96:23
- due** 16:4 62:8
76:20 78:14 80:3
81:17 93:20
- duly** 17:3
-
- E**
-
- earlier** 7:19 9:14
72:13
- early** 83:3
- easier** 64:7
- East** 12:21 19:17
- easy** 23:7 75:8
- Eating** 82:15
- economies** 12:22
- effective** 11:2
- effectively** 40:16
- efficient** 47:2
- efforts** 10:21
- elements** 67:24
- email** 41:25 42:6,8
44:4,8
- emails** 43:21
44:25 96:5
- employees** 21:11
75:13
- end** 14:13 23:3
97:17 99:10
- engagement**
13:22
- entertainment**
17:17 68:17
73:21,22,24 76:10
89:9 96:10,24
- enthusiastic**
22:25
- entire** 15:11 19:21
29:20
- entities** 43:4
45:10 61:3,9 68:5
73:14 82:11 87:4,
6,8,13 89:3 99:21
102:8
- entitled** 95:9
- entity** 7:10,11
13:11 61:21,22
65:8 73:17 81:24
82:4 88:22 89:8,9
96:10 102:10,14
- entrance** 61:15
80:16
- entry** 28:22,24
- equal** 5:13
- erroneous** 13:17
93:10
- error** 80:1,4,7
81:14 95:12,13
- errors** 49:10
- essentially** 9:8
- establish** 8:2
86:24 87:17,19
- established** 6:15
10:23
- establishment**
96:2,22
- estimate** 100:6,11
101:6
- estimated** 78:16
79:11,18
- evaluating** 9:15
- event-by-event**
28:19
- events** 13:20
31:16 80:23 81:2
83:2
- everyone's** 73:25
- evidence** 5:14
7:14 8:18,25 9:12,
13,15,21 61:20
70:11 81:16,20
82:9 83:13 84:19
85:22 93:6 101:18
- exact** 87:19
- examination**
20:1 76:12
- examined** 17:4
- exclusively** 13:4
- excuse** 37:7 41:3
- Executive** 10:18,
22
- exhibit** 7:14 8:15,
17 9:20 33:14
62:24 67:2 77:3,8,
13 78:6,10 79:10,
14,20 80:2,10,14,
19,25 81:8,11
82:7,15 83:4,7
85:7,8 86:6 91:19
- exhibits** 4:4,5
6:25 7:4,8,20 8:8,
16,19,23 9:6,18,
19 13:5 14:12
23:10,14,19 28:9
29:23 39:11 56:15
- expect** 33:16
85:15,21 87:23
- expected** 78:17
- expense** 28:25
29:3
- expenses** 56:24
57:1,19 58:1
- expensing** 28:20
- expensive** 28:2
- experiences** 22:6
- expert** 92:3
- explain** 18:14
19:8,13,23 37:5
42:6,15
- explained** 23:5
46:9 53:1,17
54:23 68:18 83:9
- explaining** 23:2
66:18,20
- explanation**
30:19 96:17
- extension** 100:14
- extent** 15:7
- extraordinary**
58:18
- extrapolated**
11:23 12:1 14:17
15:2 55:14,15
- extreme** 25:24
-
- F**
-
- face** 16:13 47:7,22
48:4
- facilities** 82:20
- facility** 6:17 13:25
15:10 81:2,4,7
- fact** 14:14 57:10
78:21 90:7 96:8,
12

- factor** 78:25 79:1, 2
facts 94:11 97:20
failure 81:18 92:24
fairly 34:2 43:16
fairness 97:19
faith 51:15
fallacious 14:18
false 15:3
feasible 15:1
federal 27:4,6,22 30:10 32:22 50:12 51:12 52:12 53:7, 20 56:13 58:25 62:7,17 76:25 77:11 94:7,20,24
fee 3:10 13:24 32:7,9,17 65:23 66:5,8,9,12,13,16
feedback 16:12 101:1
feeling 16:11
fees 32:15 81:4
felt 10:24
festival 44:16,21
festivals 42:18
figure 33:18 42:23 69:3
figures 34:9
file 89:10
filed 58:7
filing 48:20 49:6
fill 42:23
filling 95:7
final 92:12 93:18 102:5,7
financial 53:9
find 7:8 47:11 69:13
- fine** 16:17 99:24
fire 20:25
firm 26:4 28:5
fit 9:17
flip 24:17 25:8 26:8,14,21 27:10 35:8 39:17 44:6 50:16,21 51:1 56:13 58:15,16
flipping 40:8
floor 61:18
flow 18:9
flowers 15:9
focus 7:19
follow-up 88:11
food 6:15 20:14, 16 33:22 34:11, 13,16 63:16,19 78:10,11,12,16,22 79:15,22 81:3 82:12 85:20,23 91:9,11,13,14,18, 25 92:2,5 96:25 97:2,6,9 99:9,12
forest 12:3 73:13
forget 42:10
forgive 73:4
form 24:9,20 59:19 72:21 74:13 95:7
format 88:17
forms 25:5 42:23 99:19
formula 55:15
forthcoming 59:17
fourth 37:17 38:16,20
Fox 18:5 21:19 30:24 31:23 61:6, 10
- Francisco** 11:17 12:21 22:11,14 29:15 42:4 56:9 59:20 76:10 88:5 90:23
fraud 95:6
Fred 18:18
free 80:20
Friday 72:6
front 23:10 24:9 39:17
frustrating 97:10
full 12:10 53:3 64:15 76:10 95:8
fully 83:8
functioning 11:6
fundamental 19:20
fundamentally 14:13
fundraisers 30:5
funds 32:25
-
- G**
-
- Gate** 10:10
gave 18:20 20:15, 17 22:12,13 39:5 70:13 72:23 86:15
general 76:20 82:15
generally 32:18 66:9 78:17 85:14, 19 87:23
generate 33:19 75:4
generated 13:20 32:21
generating 12:4 40:16 50:3
generation 13:7
- gentlemen** 93:1
giant 22:24
give 7:14 9:16 16:12 19:23 22:10 32:16 44:16 60:24 73:7,12 84:7 89:18
giving 44:22 66:5, 6 101:19
glad 11:6
Golden 10:9
good 5:4 7:5 13:19 34:2 71:7, 15 75:16
goods 24:1,10,12, 20 25:18 26:10, 17,25 27:8,12,18 40:22 41:4,5 51:11 56:20 57:18,25 77:10,16 79:8
Google 61:12
government 59:7
great 17:7 39:6 76:2 102:2
greater 96:10,23
greatest 89:16
grew 75:12
gross 25:14 40:4, 11 48:24 49:8,15 56:16,21 57:17, 18,24,25 62:3,6, 20,25 76:24 77:12
group 63:24 68:17,18 73:21, 22,24 89:9 96:24
guard 15:8
guess 59:12 62:9 66:2 68:9 70:23 71:3 72:5 73:11, 18 84:11,15,16,25 86:4 88:15 89:2 98:4,10

guest 76:19
guilty 48:5
guns 93:10
guys 19:22 45:5
46:3

H

half 34:4 75:13
hall 63:25
hand 16:23 46:6
75:19 92:23
handle 15:14 28:6
handled 66:16
90:1
handling 34:18,
19
happen 12:23
happened 13:2
17:21 19:23 45:20
64:16 71:21
happy 20:25
92:19
hard 22:16 90:3
hassle 8:12
Headquarters
5:19
Healy 65:14
hear 70:7
heard 86:18 97:2
hearing 5:8,23
87:1 92:18 98:15
103:6
hearsay 9:8
heart 17:21
heavy 71:24
helpful 65:20
66:24 90:11 93:5
98:16 99:1,7,24,
25

Hey 22:10
hide 56:11
high 32:20 44:21
higher 31:2 66:10
highly 87:24
highly-profitable
57:5
hipster 54:15
hired 25:3 28:5
hold 90:4 101:1,5
102:22
holding 89:8
92:18 98:2,19
Honor 75:25
100:17
honored 11:8
hour 20:21
hours 14:22 72:4,
6
huge 11:24 14:17
22:13
hundred 13:14
25:6 26:6,20
27:14

I

idea 18:19 22:25
32:16 46:23 71:17
89:17
identified 28:9
identify 23:23
28:15 39:13
ill 15:24
impact 100:8
101:6
imposed 6:23
impossible 55:21
include 64:11
77:25 81:23

included 8:4
63:16 64:2,5,6,13,
15 66:1,17 68:25
84:21
including 55:14
68:1
income 26:9 27:4,
22 30:9,10 32:22
50:12 51:12 52:12
53:7 56:13 58:25
62:17 76:25 77:11
94:7,20,24 102:10
incomplete 77:19
incorrectly 95:7
increase 78:23
increased 39:1
independent
31:7
index 85:7
indicating 103:1
indirect 77:20
individuals 71:2
information
34:20,22 72:24
80:22 83:2 91:19,
22 92:8
initial 54:19
initially 100:15
inputting 51:3
inquiring 44:5
ins 96:25
inspect 42:25
institution 10:23
institutional
97:13
intent 15:24
intents 18:13
interest 70:19
internal 99:2
103:4

internally 74:5
99:6
interpretation
55:10
interrupt 99:14
interrupting
47:17
interruption 33:9
intricacies 16:8
introduce 6:1
inventory 18:22
46:5,6,16 47:3
89:21 94:3 95:14,
19,20 96:18,19
invoice 45:24
68:22 73:23 75:4
82:6 88:15,18,19,
23 89:4,8 95:23
invoices 13:12
18:24 35:19,20,21
36:25 38:3,4,14
45:10 63:10
68:20,25 69:1,10,
12 82:4 85:8,9,17
86:5,8,25 87:7,11,
12 88:14 96:3
98:24 99:2 103:4
invoicing 28:20
involve 7:10
involved 65:8,11
70:20 93:1
involvement
15:15,16
IRS 28:7 58:6
issue 6:12 7:24
8:13 14:3 15:4
17:13 19:5 43:25
44:1 90:7 99:19
101:15 103:1
issued 101:13
issues 7:18 10:12
37:21 54:12
items 29:4 79:8
81:24 98:15,21

J

Jalal 17:21 45:12
58:9 96:12

Jalid 34:23 35:6

jam 71:23

January 28:10
76:13

Jason 3:11 4:18
5:19 6:9 14:24
17:1 20:3 21:7

Jeff 46:25

job 23:2 90:8
92:20

Johnson 42:1,2
44:19

jointly 21:10

Josh 5:11

JOSHUA 3:5

journals 76:20

judge 5:4,25 6:4,
11 7:12,23 8:5,14,
18,19 9:10,21,22
10:7,14 16:17,19,
22 17:3,7 23:12,
16 24:2,5 47:14,
16,19,22,25 48:4
60:7,11,14,19,20,
22 61:5,19 62:1,
16,19,24 63:2,8
64:4,12,20 65:1,7,
20 66:14,22
67:12,18,20,22
68:4,7,13,24 69:8,
18,21 70:1,4,7,9,
14,23 71:2,5,8,12
72:3,17,20,25
73:3,11,17 74:5,8,
11,16,19,25 75:3,
17,19,21 76:2
83:17,24 84:2,3,5,
9,25 85:2,4,25
86:1,3,4,21 88:9,
21 89:5 90:10,13,
14 91:6,24 92:10
97:22,25 98:1,7,

14 99:8,17,18
100:5,12,18,21
101:19,25 102:2,
3,5,7,15,17,19,21,
22 103:2

judges 5:10 15:23
17:11 23:10 27:25
28:16 30:18 34:6
95:17

jump 23:19 27:6,
16 29:23 33:12
37:12 38:5 39:9,
10 41:21 47:13
57:23

jumping 38:15
64:21 88:9

K

kind 9:14 12:7
34:1,5 39:23
53:25 58:18 64:21
72:11

kinks 75:11

kitchen 34:16,21
82:19 89:24 92:5,
7

knew 22:5 25:25
26:2 42:14 71:18

knock 75:10

knowing 34:2
40:19

knowledge 30:12
33:6 51:13 58:12

kudos 92:21

Kwee 3:5 5:11
60:20,22 61:5,19
62:1,16,19,24
63:2,8 64:4,12,20
65:1,7,20 66:14,
22 67:12,18,22
68:4,7,13,24 69:8,
18,21 84:2,3 85:2,
4,25 86:4,21 88:9,
21 90:10 97:25
98:1,7,14 99:17
100:5,12,18,21

101:19,25 102:2,
22 103:2

L

labor 15:7

lack 76:21 78:14
80:3 97:13

large 18:10 41:8
67:24

largest 34:4

law 8:18 9:21 17:3
73:24

lawyer 16:5

lead 3:3 5:5,11
70:1

leave 101:4

leaves 11:18

leaving 56:21

ledgers 76:20

left-hand 54:2

legal 7:10 19:6
81:24 82:11

lengthy 66:24

lessee 15:14

letting 16:11

level 93:12,13

liability 67:23
78:23 101:7

license 73:22
74:2,24 82:14,17,
22 89:8 91:8,18,
20,22 92:1,2

licensed 82:13
95:24

licenses 92:4

licensing 91:10

life 12:19

limited 76:17

limits 71:9

lineup 56:4

link 65:15,19

liquor 12:4,24,25
13:3,4,8,14 17:25
18:15 21:24 22:24
35:25 36:25 37:9,
13,19,23 38:22
41:9,12,14 42:12,
16,25 43:5 44:15
45:3,4 47:4,7
51:25 52:20 53:3,
10,19 54:17 63:6
64:2,3 68:15
73:18 74:18,24
89:7

liquor-oriented
41:13

liquors 43:15

list 28:10,18 29:19
31:16 32:24 88:24
98:21

listed 18:24 36:8
38:22 51:20 64:24
69:2,6,8 87:20
89:3

listing 82:6 87:12

lists 82:5

live 76:10

lives 22:16

LLC 2:6 6:3,7,10
39:15,23,25
74:21,25 75:5
76:9

LLC's 39:15

LLCS 18:12

LLM 10:10

local 30:24 31:5

located 21:16
39:24 40:1

location 19:14
46:19 88:5

locations 19:11

46:21 47:6 61:3
67:15 69:4,6
87:24 88:3,6
logic 97:19
long 3:3 5:4,25
6:4,11 7:12,23
8:5,14,19 9:10,22
10:7,14 16:17,19,
22 17:7 23:12,16
24:2,5 46:24
47:14,16,19,22,25
48:4 60:7,11,14,
19 70:2,4 75:19,
21 76:2 83:17,24
84:5 86:1,3 90:13,
14 91:6,24 92:10
97:22 102:3,5,21
longer 7:24 94:12
98:13 99:11
looked 22:2
lose 57:10
loss 25:9 26:22
27:16 51:13 52:13
53:8,20 57:21
58:1 77:5,24 78:2,
8 81:6 91:15 94:8
lot 11:10 17:13
21:4 33:15 43:18
46:25 54:17
65:12,13 75:14
88:16 89:6
lots 93:6
loud 60:23
Lounge 2:6 5:6
6:3,7,10 12:15
13:4,13,24,25
14:16 15:15,17
17:23 18:4 20:5,7,
8 21:8,22 26:9
27:17 28:20
29:17,21 34:12
35:14,16,18,25
36:15 37:1,19,23
38:6,9,23 40:9,11,
17 41:17 43:4
52:20,24 53:4,23
54:10,14,15 56:14
57:1 58:10,20

61:21,25 65:9
73:15 74:3 87:8
88:25 90:18 91:7
95:15,23 96:9,15
102:9,11
Lounge's 95:19
96:19,21
Lounge/closed
89:12
loved 22:23 47:8
lower 31:1 78:17
Luke 92:23

M

made 15:5 18:14
21:25 26:3 29:12
33:18 46:25 53:23
66:18,20 79:5
82:1 83:5 88:3,6
90:24 91:2,17
93:17 96:21,22
magical 59:9
magically 56:8
main 67:13 68:10
maintain 81:18
82:19
make 9:24 11:24
12:2 14:21 15:10
31:14 47:8 48:2
65:17 66:4,7
75:23 82:20 88:1
90:19 91:18,25
92:6,12 97:6
101:1,5,9,23,24
making 93:9,19
Malibu 44:23
malice 15:24
man 97:3
manager 42:3
46:12 54:23 74:7,
8
managers 46:4

Managing 6:9
mandatory 81:18
manipulated
97:7
manner 32:1
March 21:13 83:1
mark 60:8 68:21
83:18 98:12
marked 68:22
market 22:8 37:14
markup 6:15
14:17 50:3 54:3,9,
10,13,17 55:1,3
67:3,6,7,9,15,25
68:8 77:10,12
78:16,20,21,25
79:1,2,11,18
94:20
Matagrano 29:3,
12,14,15
match 25:21
51:11,20
Materials 28:25
29:8
matter 2:5 5:12
meals 82:21
means 36:20
77:15 91:23 92:5
measure 81:10
mechanism 11:3
mechanisms
10:25
meeting 45:20
46:4 63:25
meetings 90:2
member 92:19
members 3:5
97:23
memory 97:14
mentioned 7:18
9:14 61:5 65:21

67:1,5 70:24
72:17 91:7 98:23
99:8,18 102:22
103:3
mentioning
65:24
merchant 84:23
merits 96:17
met 90:8
method 76:22
77:20
methods 83:12
mic 6:4 10:15
16:24 24:3 47:22
48:4
microphone
47:21
million 33:22
55:17 56:11 59:7
77:2 79:13,23
80:9 81:11
mind 86:1 88:11
minor 33:9
minors 82:22
minute 15:1 52:10
66:23 69:22 84:7
minutes 9:24
60:9,24 75:24
76:4 83:19
mis-claimed
54:20
mis-say 34:19
**miscommunicati
on** 37:4 68:14
misconstrual
94:11
Mission 21:20,21
37:2 61:11,14
88:25
mistake 8:8
mistakes 15:5,12
26:2 93:3

misunderstandin

g 11:20 12:7,14
15:19 19:21 67:19

misunderstandin

gs 11:10 17:15

mixers 79:5

moment 39:9

85:1

Monday 72:6,14

money 44:22

46:25 56:8 57:10
65:18 66:4,7,19,
21

month 73:9

moral 94:16

morning 5:4 7:5

83:23

Morris 28:25

88:15

Mortar 17:23 18:7

21:14,21 30:23
34:3 36:22 37:11
44:23 46:10 55:19
61:7,11,22 65:9
69:10 70:24 73:15
74:3 82:6 87:9,20
88:25 89:11 90:24
91:2,5,11 95:22
96:1,2 99:4
102:12

Mortar's 31:19

move 9:25 34:7

64:23 76:3

movie 92:23

Moving 35:23

multiple 19:10

22:6 102:8

music 11:16,17

13:19,20 18:7
20:10,19 21:4,5
30:6,24 41:12
46:18 63:21 65:13
71:22 72:9 76:10

music-oriented-

type 12:20

Mustafa 34:23

35:6 94:2,12
96:12

N

names 5:17

nature 20:5

necessarily

33:16

needed 54:6

74:11

negative 77:12

negligence 6:24

16:4 81:13,16,21
95:6

Newman 92:23

next-door 18:3

night 36:22 44:16

71:25 73:2

nightly 30:20

nights 72:10

non-alcohol 79:8

non-alcoholic

6:20

non-liquor 89:8

nonalcoholic

80:20

nonprofit 30:3

nontaxable 62:10

85:13

Nos 8:17 9:20

notated 29:24

note 7:12 9:10

noted 77:1,6,24

80:15 81:2 99:1

notes 64:22 66:23

69:24

number 5:6 10:11

14:22 24:12 25:7
26:18,20 27:13,
15,21 41:7,8 51:2,
8,15 53:16 54:1,
20 59:9 69:11
94:21

numbering 8:13

numbers 9:4

11:24 12:1 15:2
18:11 26:7 33:2,
15,19 39:7 51:24
52:11 53:13 55:22
56:3 59:6 69:1
91:12

O

Oakland 13:6

22:11 31:24 39:5,
15,16,23,25 40:1
41:16 42:4 44:21

oath 94:16

objected 7:7

objections 7:4,
13,21,22,23 8:23,
24

objective 11:1

objects 7:2 8:21

occasions 15:16

offer 22:14

offering 11:5

office 2:1 17:24

21:23 45:9 74:17
88:19

offices 17:19,22

61:17 94:4

On-sale 82:15

one-hour 60:8

One-six 57:16

open 11:14,17

14:23 17:16 20:20
21:1,6 72:9,10
82:25 98:2,20

101:5 102:1,23

opened 17:17,18

opening 4:8 9:25

10:2,6

operate 12:15

21:18 22:6

operated 76:9

operating 12:16

21:8 65:8,9 73:15

operation 12:7

14:10 55:21,23
57:8,9 94:6

operations 5:20

58:4

opinion 101:24

opportunities

10:11

opportunity 11:7

98:4 100:14
101:20

opposed 41:16

87:8

order 64:22 101:9,

17 103:1

ordered 100:25

101:14,23

ordinary 56:25

57:21

organized 46:22

original 35:5

45:13 62:20 93:4
94:1

originally 55:6

Orleans 71:19,23

OTA 2:6 5:6 9:10,

13,14 10:20 11:5,
6 82:2 92:20

OTA-TYPE 10:22

outs 97:1

overrule 7:13

owned 39:5

owner 20:10 47:5
owners 44:13
ownership 21:10
owns 74:22

P

P&I 27:17 50:7
p.m. 2:18 11:17,18
 103:9
pages 7:24 8:1,2,
 7,12 23:14 48:15
 80:19 82:7 87:22
paid 33:3,4,5
panel 3:3,5 5:10
 7:14 97:23 98:16
 99:1
paper 52:8 59:13
papers 78:24
Parish 39:4,6,16,
 25 40:16,24 41:16
 68:16 73:21,24
 89:9 96:10,24
Parker 3:11 4:15
 5:19 7:22 60:17
 76:6,9 84:18
 85:14 87:16 90:20
 91:14 92:3
 100:10,20 101:21
 102:1
parse 33:17
part 12:6 13:18
 15:15,19 37:4
 41:8 44:22,23
 65:17 68:18
participants 5:13
participation
 103:8
parties 5:16 6:12
 13:21 64:1 81:3
 98:1 101:11
parties' 9:23
partner 6:9 21:17
 30:4
partners 17:16
partnership 26:9
 39:14
partnerships
 44:20
party 13:22,23
 30:3 63:25 85:15
 100:13
past 22:6
Paul 92:23
pay 13:24 59:25
 75:6
payment 29:11
payments 28:20
payroll 58:1
PEG 13:6 39:15,
 23,25
penalty 6:24
 81:14
pending 93:16
people 19:10
 20:24 31:5 70:21
 72:1 89:24 90:7
per-show 33:1
percent 13:14
 25:6 26:6,20
 27:14 32:19 43:14
 54:3,6,7,13,14,20,
 21,22 55:1,3,4,5
 56:10 59:20,21
 60:4,6 65:23
 66:10 67:6,7,9,11,
 25 77:13 78:16,
 20,21,24 79:2,3,5,
 6,12,17,18 80:1,4,
 12 81:13,15 95:12
percentage 31:2
 32:3,9 59:18
 95:12,13
perfect 21:25
perform 78:15
performed 29:21
 76:12 77:23
period 12:19
 28:10 29:20 48:20
 58:20 76:12,16,
 17,20 77:7 80:9,
 24 81:8,11 83:5
 99:19
Perkins 3:8 4:18
 6:9 11:25 12:11,
 15,17 13:16 14:4
 15:19 16:22 17:1
 23:20 24:11 26:12
 28:8,12 30:1,15
 33:12 34:6 39:10
 44:7 47:11 48:8,
 10 49:14 54:24
 57:6 58:4 60:12,
 16,21 70:7 93:20
 94:5,15,16 96:4,
 11 97:2 98:7
Perkins' 10:1
 16:19
permit 97:7
permitted 87:4,
 6,8
permits 97:1
perpetuated
 11:21
person 17:12
 30:3 34:18,19
 63:22 74:21
personally 86:15
 89:19
personnel 15:16,
 17
physical 33:25
physically 33:24
 55:21
pick 74:1
picked 93:2
picture 58:3
piece 59:13
Pigalle 18:23 19:1
 35:20,22 38:14
 68:21
pilferage 79:6,16
place 5:9 18:23,25
 35:21 68:21 82:15
plan 22:15
Planet 65:14
plates 15:9
play 22:11,12
point 12:14 14:4
 15:22 20:18 23:9,
 13,15 43:2 45:1
 73:18 76:1 86:17
 89:18 93:11,24
 98:19
pointed 55:25
points 53:15
policy 10:12
political 11:1
portion 13:19
position 85:11
 87:11 96:14 100:8
positive 57:10
potential 100:22
potentially 98:16,
 21 99:1,7,24,25
 100:24 101:15
preference
 101:11,12,16
premises 82:18,
 21,23
prepare 25:24
preparer 28:1
present 42:24
presentation
 4:12 17:9 76:3,8
 83:15
presentations
 9:23
presented 83:13

pretty 32:19
previous 35:19
97:14
price 32:16 66:12
primarily 41:16
56:25
printout 28:18
48:19 73:7
printouts 30:16
private 10:24 30:3
64:1 81:2
proactive 93:8
probative 7:15
problem 54:11
90:9 92:25 93:12,
13 98:6
problems 73:25
93:7
procedural 49:10
procedure 23:9
45:22
procedures
49:22 79:21 81:9
proceeded 52:19
proceeding 5:12
proceedings
2:15 9:13 103:9
process 9:6
17:18 19:21 23:8
42:8,22 43:1 44:3
46:2,8 80:15 81:1
93:20
produce 99:15
produced 9:7
professional
63:23 65:13
professor 10:11
profit 25:8 26:21
27:16 51:12 52:13
53:8,20 56:21
57:1,18,25 77:5,
24 78:2,8 81:6

91:15 94:8
profit/loss 50:12
profitable 57:9
Program 10:10
projected 14:19
promoter 30:6
63:22,23 65:13,17
promoters 30:3
proof 50:4 82:9
proper 9:16 28:5
properly 6:23
97:7
provide 9:5 30:18
70:15 76:18 81:18
84:12 86:13,18,19
90:21 98:3,18
101:6
provided 26:22
34:20 50:8 58:9
72:18 76:17 77:18
82:9 83:9 84:13,
16,19 85:16 88:2,
7 91:1 93:6 94:1,
2,3,7,8,9,10 96:12
provider 72:24
73:5
providing 92:2
pudding 50:4
pull 45:5 46:3,5
pulled 20:11
45:11
purchase 29:16
50:7 68:9,11
86:25
purchased 35:25
36:15 37:14 38:7,
23 41:15 52:20
53:10,11 81:24
95:15 96:8
purchaser 87:20
purchases 11:23
14:15 24:23 25:2
26:17 27:12 33:22

35:12,15,16 36:8
37:19 38:18,22
40:24 41:9 45:3
50:22 51:24,25
52:14 53:7,19,23
67:4,14 68:1 69:9
77:25 78:5,9,11,
12 79:5,15 81:22,
25 82:10 83:6
87:2,3,14
purchasing
36:21 43:15
purposes 96:3
push 21:1,2
pushed 71:9
put 8:8 20:12 24:7
42:15 46:15 59:12
65:19

Q

quarter 37:15,16,
17 38:18
quarters 36:7,8
question 52:18
66:3 67:20 68:25
70:14 86:2,23
88:11,13 97:8,24
98:12 102:7
questioned 58:6
questioning
60:12 85:3
questions 5:14
16:13 48:1 52:5
60:16,17,21,25
70:5,9 75:17
83:16,18 84:1
85:1,6 90:12,15
102:6,19
quick 102:7
quickly 75:12
quote/unquote
8:3

R

raise 16:22,25
ran 21:9
Randy 3:12 5:23
rare 64:14
rarely 63:18
rate 80:1,4 81:14
rates 80:7
reach 55:21
reached 90:23
reaching 5:14
read 15:6 54:24
ready 9:22 10:4
16:10,19,21 48:18
76:5
reality 14:21
reason 39:1 43:11
89:3 95:13,22
reasonable 83:10
rebuttal 92:13
receipts 25:14
40:5,11 56:17
62:3,6,21,25 73:2
76:24 77:12 99:20
receive 43:5
received 4:4,5
8:17 9:20 32:25
59:19 85:18
receiving 13:14
101:4
recess 83:19,23
recipient 95:25
reconcile 27:22
94:21,24
recopy 8:11
record 5:17 7:1,3
8:16,23 83:24
84:15 87:21 98:2,

20 101:1,5 102:23
recorded 77:4,12
records 56:7
76:17,21 77:9,19
78:14 80:3 81:19
83:11 88:2,4,8
91:1 93:25 94:10
98:10
RECROSS 4:17
redid 25:4
REDIRECT 4:17
reduce 87:13
reference 50:7
54:1
referenced 98:16
referring 61:2
72:21
reflect 33:4 39:7
49:7 58:3
reflected 38:2
reflecting 29:11
49:2
reflection 29:21
30:8
reflects 26:16
33:5 37:18
regard 15:13
95:10
reggae 71:25
register 76:19
registered 82:1
regulated 87:25
Regulation 9:11
81:20
regulations 15:6
16:8 97:1
reiterate 53:18
96:20
relate 7:19
related 43:4 82:2
relating 9:12
91:12
relation 32:17
relationships
96:3
relevance 7:15
9:7
relevant 7:9 8:10
13:9 97:8
relief 17:13
rely 9:15
relying 9:4 50:5
remember 73:5
remind 7:17
47:19 95:17
remodel 21:13
rent 30:7 56:25
58:1 63:24
rental 13:21 15:10
16:2,6 29:24 30:9
49:3 63:12,19
64:10,15 81:2,4,7
85:8,16,24
rentals 6:17 14:5
30:8 62:8,9 63:7,
9,10,11,15,21
64:9,18 65:2
89:23 98:23 101:4
103:3
rented 15:13
34:16 61:17 65:10
reopened 21:14
repeat 67:20
repeating 93:3
report 14:20
33:13 37:13
49:15,17,23 51:6,
21 58:16 95:4
reported 2:19
6:14 25:21 30:10,
12 32:22 48:10
50:11 51:12 52:12
53:6,20 57:17,21
58:25 62:4,7,20
63:4 69:11,13,14
76:14,23 77:5,15,
21 79:24 80:8
reporter 2:20
33:9
reporting 76:22
Reports 94:9
represent 5:17
33:2
Representative
5:23
represents
30:19,20 40:23
41:8
request 100:14
101:1
requests 82:8
83:14
require 14:25
76:4 91:24
required 33:6
49:17 81:19
requirement
82:19 95:23
resolve 33:9
respect 66:16
70:10 72:4,20
96:5
respective 53:23
61:8 75:5
respond 98:5
100:15 101:20
respondent 3:10
6:23
response 90:10,
11
rest 59:22
restaurant 85:19
restaurants 57:8
90:22
result 95:5
resulting 76:15
resume 85:2
retrieve 98:11
return 13:6 23:22,
24,25 25:3,22,23
26:9,19 27:4,6,11,
23 30:10 32:23
39:14,18 40:4,8
49:1,3,7,14 50:12,
16,19 51:12,14
53:8 57:13 58:25
62:20,21 90:13
95:9
returns 28:7
30:13 38:2 47:10
48:11 49:20 52:13
53:20 56:14 58:7
61:19,20,24,25
62:2,7,15,17 63:3
69:9 76:25 77:6,
11 87:5,6 94:8,21,
22,24,25 95:1,3
revenue 13:7
32:21 40:17 44:18
58:14 81:2,19
85:13
revenues 13:19
49:19 57:17,24
59:8,18 95:2,4
review 80:18
81:25 100:7
reviewed 59:15
reviewing 5:14
14:11 49:1
revised 78:2,8
81:5 91:15
right-hand 16:25
rigmarole 94:5
Rode 44:21
room 64:9,10,15,
18,19 65:2 85:24
rope 97:17
routed 68:5
RPR 2:19

rules 9:10,12
89:7,15
run 20:13 47:2
running 32:19
42:18 56:10 92:20

S

Sacramento 2:16
5:1,9 30:25
sad 97:15
sadly 44:13
Safeway 19:9
sake 49:13
sale 31:22 82:17
91:13
sales 6:15,19 12:4
13:20,25 14:6,9,
20 15:4,11,25
16:1,6 25:14,17
29:24 30:9,13,21
31:1,3 32:3,7,22
33:7,8,21 34:11,
13,16 39:7 42:4,
16 47:10 48:10,24
49:2,3,4,6,8,14,
15,16,19,20 55:2,
10,11,16 56:12
58:21 62:7,8,9,14
63:2,4,6 64:3,23
65:1,7,10,16,22
68:16 76:14,16,
19,25 77:4,5,6,15,
22 78:16,22
79:12,19,22,24
80:5,8,9,23 81:15,
17 82:20 87:15
89:22 90:21,24
91:2,14,18 92:6
94:21,25 95:1,4
96:25 97:6,9
San 11:16 12:21
22:11,14 29:15
42:4 56:8 59:20
76:10 88:5 90:23
Sarah 2:19

saved 89:6
savings 43:16
scale 12:22
scene 40:20
schedule 50:3
55:7
scheduled 84:16
school 30:4,5
scoot 6:5
seated 20:24
seating 21:1,2
section 9:11
10:18 24:19
security 15:8
seeking 16:4
103:2
segue 16:10
seized 93:14
seizure 97:12
seizures 93:16,19
self-consumed
6:22
self-
consumption
79:7,17 80:11
self-test 78:15
sell 92:5 97:2
selling 82:12
85:23
send 73:9 75:4
senior 92:18
sense 11:24 12:2
14:21 16:14 21:25
101:1,5
separate 7:10
18:6,11,12 19:15,
16 22:4 49:16
55:15 61:12,15
68:5 81:24 82:4,
11 92:1 102:10,13

September
102:25
serve 14:25 34:1
71:3
served 81:3
service 20:14,16
31:15 32:14,17
66:9
services 11:5
30:17
serving 85:20
set 10:25 100:15
setup 75:9
shareable 32:12
Shawn 65:14
sheet 45:5 46:6
sheets 89:22
shipments 13:14
Shorthand 2:20
show 20:22 31:6,
20 35:19 49:15
66:12 72:14,16
85:13,23 89:13
99:11,20
showed 22:1
25:13 45:6 46:9,
12,13 59:14 87:7
showing 20:17
84:19 88:2,4 95:1
shown 6:13,16,
18,21 27:3 99:3
shows 21:1,3
27:11,12,18 28:19
29:2 31:4,5 48:24
56:20 71:8,16
72:7,11,12
shut 84:4
sic 17:22 27:15
45:13 58:9 96:13
side 54:2
sideways 35:9

Sierras 19:17
22:12 42:19
sign 45:7 74:15
signed 46:14
significant 43:16
silverware 15:9
similar 32:1 78:18
87:18
simply 14:16
15:13
single 45:24
situation 93:17,
21
Sixteen 57:15,16
sixth 28:24
Sixty-two 25:20
size 34:2,5 40:21
55:20,23 56:1,3
small 26:4
smallest 34:3
Smith 18:18
smooth 23:7
so-called 11:23
sold 22:23,25
24:1,10,20 25:19
26:10,17,25 27:8,
12,18 38:7,10,23
40:22 41:4,5,11
51:11 56:20
57:18,25 70:19
71:19 77:10,16
79:8 80:16 91:9,
11 98:8
solely 13:4
solved 73:25
sort 16:13,14
21:9,10 34:7
49:17 50:4 54:15
93:22 97:17
Soul 2:6 5:6 6:3,7,
10 12:15 13:4,13,
24,25 14:16

- 15:15,17 17:23
18:4 20:5,7,8
21:7,22 26:9
27:17 28:20
29:17,21 34:12
35:13,16,18,25
36:15 37:1,19,23
38:6,9,23 40:8,11,
17 41:17 43:4
52:20,24 53:3,23
54:10,14,15 56:14
57:1 58:10,20
61:21,25 65:9
73:15 74:3 87:8
90:18 91:7 95:15,
19,22 96:9,15,19,
21 102:9,11
- sound** 20:12 57:5
- Southern** 23:3
35:23 36:1,21,25
37:21 38:15 39:2,
8 41:9,10,15,19
42:4 43:8,21 46:1
51:25 52:21 53:6,
10 69:15 77:25
78:4 81:23 90:17
91:4 95:16,17
96:6,7
- speak** 10:15 24:2
47:21 73:13
- speaking** 47:23
85:14 87:23
- specialist** 10:9
- specific** 11:19
63:15
- specifically** 14:2
38:8 82:5 99:4
- spent** 10:17
- Spirits** 23:3 35:24
36:1,21 37:22
38:15 39:2,8 41:9,
10,15,20 42:5
43:8,22 52:1,21
53:11 78:1,4
81:23 90:17
95:17,18 96:6,7
- split** 32:4
- spoke** 45:15
54:12
- sponsor** 44:15
- sponsorship**
44:22
- sponsorships**
44:13
- stage** 20:12
- stand** 12:18 59:2
- start** 5:17 10:2
11:9 12:10 16:21
21:8 76:11 84:2,3,
5
- started** 28:2,4
49:12
- starting** 83:2
- starts** 11:17 20:21
33:13
- state** 2:2,21 3:10
7:3 8:22 10:12,18,
23 97:15
- stated** 7:1 8:20
90:16
- statement** 4:8
10:6 25:9 26:22
27:16 36:2 38:9
50:12 51:13
52:13,24,25 53:8
73:9 77:25 91:15
92:12
- statements** 9:25
10:3 53:21 56:6
58:10,11,13
59:15,16 72:18,21
77:5 78:3,9 81:6
84:13,14,22,23,24
94:2,3,8
- states** 82:14
- stating** 5:16
- step** 57:11
- stick** 93:10
- stood** 54:22
- stopped** 44:13
82:12
- storage** 61:16
- storehouse** 37:9
- straight** 20:10
- stream** 44:18
- street** 2:16 18:11
19:2 89:1 96:23
- struggle** 75:14
- struggling** 52:7
- stuff** 41:13
- Suazo** 3:12 5:23
- subject** 6:17,20,
23 14:6 15:10
16:6 80:13
- submissions** 7:2
8:21
- submit** 100:3
- submits** 6:25
8:19
- submitted** 69:13
102:23
- substantial** 81:15
82:20
- successful** 22:7
- suitable** 82:19
- summary** 26:14,
16 35:24 50:20
67:2
- Sunday** 72:14
- supper** 20:9
- supplies** 28:25
29:8 46:19
- support** 58:13
59:13 70:12 82:9
- supporting** 86:8
98:25
- supports** 59:11
- supposed** 51:6
- survey** 9:4 37:22
77:23 82:5 90:20
- surveys** 9:5 53:14
78:3 81:25 83:7
87:17
- swear** 10:2
- sworn** 17:3
- system** 20:12
28:18
- systems** 75:15
-
- T**
-
- tables** 33:16
- takes** 31:17 51:23
- taking** 5:8 19:22
45:8 64:22 92:21
93:8 96:13 99:10
- talk** 17:12 21:15
- talked** 19:7 23:4
- talking** 60:4 62:14
98:10
- tapes** 76:19
- tax** 2:1 3:10 5:21,
22 6:17,20,23
9:11 10:9,18 13:6,
25 14:6 15:11,25
16:1,5,6 23:22,24,
25 25:5,22 27:4,
17,23 28:1,4,5,10
30:10,13 32:22
33:7,8,17 38:2
39:18 47:10 48:11
49:3,7,11,14,20
50:12 51:12 52:12
53:7 56:14 57:23
58:25 62:7,17
63:2 76:25 77:6,
11 80:13 87:5
92:19 94:7,21,22,
24,25 95:1
- taxable** 6:15
14:19 33:21 49:4,
8,16,19 55:11,16
62:14 76:15 77:22
78:22 79:12,19,
22,24 80:5,8,23
81:4,7,10,15,17

- 87:15 95:1,4
Taxation 81:19
taxpayer 11:11
 54:3 70:5 86:2
 90:16 92:12
taxpayer's 85:7
 86:24
taxpayers 87:23
teach 10:9
technical 33:10
ten 9:24 14:25
 24:9 42:10 75:24
 83:19
tequila 46:14
 74:12
terms 23:9 96:13
test 94:20
testified 17:4
 96:4,11
testify 11:25
 12:12 94:13,15
testifying 13:16
testimony 10:1
 16:20 60:9 61:2
 64:22 66:24 68:5
 72:4 78:19 82:24
 87:1,10 93:7 97:2
Theater 31:23
theoretical 75:9
thing 12:9 36:24
 37:3 44:21 63:20
 85:17 98:25
things 84:7
thinking 59:9
 92:22
third-party 14:10
 20:16 34:17 99:9
thoroughness
 25:25
thought 11:14
 18:3 45:22,23
 54:14 62:10 67:11
thousand 36:22
 44:17
ticket 13:20 14:9
 30:21 32:3,7,8,14,
 16,17,21 33:7
 62:8,9 63:6 64:23
 65:1,6,7,10,15,16,
 19,22 66:4,5,7,8,
 12,13 80:18
ticket's 66:6
Ticketfly 14:10
 30:16,21 31:7,11
 32:5,13,25 33:2
 59:25 64:24,25
 65:23 83:2
Ticketfly's 31:21
ticketing 30:16,
 22 31:15
Ticketmaster
 66:11
Ticketmaster's
 31:22
tickets 6:19 31:5,
 11,12 33:8 49:2
 65:3,4 80:16
time 9:6 10:21
 17:18 18:23 19:5,
 22 20:21 22:5,18,
 21 23:5 26:5
 30:22 31:11 34:25
 39:4 44:1,18,20
 46:13,24 49:11
 60:13 69:25 73:19
 75:18,23 83:5
 86:18 89:6 92:11
 100:1,7,14
times 30:2 34:5
 40:17 65:12,13
 71:21
title 63:16,17
 64:13
today 5:5,6,10
 6:13 9:1 14:3 23:8
 60:5 62:6 78:19
 82:24 87:1,10,21
 97:8 103:7
told 14:24
top 14:17 50:6
 52:21 53:6 88:24
total 30:20 35:14
 39:7 48:24 49:8,
 15,19 51:15 62:8
 63:4 73:2 76:14
 77:4,15 95:2,4
touch 42:15
tough 72:11
track 45:2 69:2,5
transaction 28:9,
 17 29:19 94:9
transactional
 28:18
transactions
 14:1 29:21
TRANSCRIPT
 2:15
transfer 87:24
transferred 82:10
 88:6
transfers 88:2,3
transpired 97:18
treated 13:3,11
 14:15
treating 12:9
 96:18
trees 12:3
trial 16:14
trouble 53:16
truck 22:24
trucking 42:19
trucks 47:6
true 16:14 36:18,
 19 38:9,21 58:3
 94:1,23
trust 97:3
Tuesday 72:14
Tuman 2:19
turn 6:4 23:3 28:8
 30:15 33:20 35:9
 41:22 43:20 49:24
 51:16 55:8 60:15,
 20 70:1 83:25
 88:13 97:23 102:3
turned 20:10 25:5
turning 100:6
two-and-a-half-hour 20:22
two-bartender
 55:20
two-hour 83:18
type 11:19 41:12
 82:14,17,22 91:8,
 18,20,22
types 71:22
typically 70:24
 85:20
-
- U**
-
- U.S.** 26:9
unable 76:22
under-reported
 58:20
underneath
 25:18
underpinnings
 34:8
underreported
 33:21 55:11,16
 87:15
understand 8:14
 18:8,9 22:19
 29:10 32:2 33:16
 45:12 52:5 86:11
 93:21 94:12,25
 95:3 97:18 98:17
 102:8
understanding
 15:25 62:5,11,13
 63:4 66:15,25
 67:8,18,22 68:10

92:4 99:5
understatement 6:14
understood 11:13 16:7
unexplained 77:1,6
University 10:10
unlawful 97:12
unreliable 77:19
unreported 80:5,
8,23 81:6,10,14,
17
uploaded 84:8
upright 94:16
upstairs 61:17
utilized 41:16

V

vendor 9:4 22:23
23:4 30:22 53:14
77:23 78:3 81:25
83:6 87:17 90:20
92:2
vendor's 31:18
82:5
vendors 9:3
22:23 68:4 77:24
90:17,22 91:2
96:4
venue 11:16
13:19,21 14:6
15:4,13 16:2,6
18:7 20:10,19,23
21:4 30:8,24
31:13,14 39:3,24
40:1,2,3,5 41:16,
17 44:17 45:8,24
46:15,18 49:3
55:20 62:8,9 63:7,
9,10,11,12,21
68:17 71:13 72:9
74:18,22 85:8,9,
10,12,16 96:11

98:22 103:3
venue's 46:16
venue-only 101:4
venues 12:16,18,
19,20 13:1,7
17:17 21:5,15
22:7 26:5 31:1,25
37:25 38:1 39:8
41:13 45:3 68:19
74:20
verbiage 93:3
verified 52:12
verify 76:23 77:20
87:18
versus 62:3 67:25
view 73:12
visited 55:19
volume 34:1
100:10

W

wait 51:5
waiter 15:8
waiting 101:19
walk 18:6
walked 46:2
89:21
wanted 8:5 11:4
23:19 30:6 39:3
45:22 46:9 47:19
60:7,11 75:22
wanting 99:9
warehouse 12:24
13:3 19:16 21:24
37:24 42:25 43:5
44:5 45:7,15 53:3
74:3 94:6 95:20
96:2,9,19,22,23
warehousing
22:21 42:11 44:2
46:19
warranted 6:14,
16,18,21 101:22
watch 47:4
water 72:1
ways 17:13
website 31:16,18,
19,21,22 65:6,19
80:17 82:23
Wednesday 2:18
5:1,7
week 20:21 46:4
72:10,13,15
week's 80:23
weight 7:15 8:25
9:16
whatsoever 56:4
wide 71:16
wine 19:1 23:3
35:23 36:1,21
37:21 38:15 39:2,
8 41:9,10,15,19
42:5 43:8,21
51:25 52:21 53:10
67:3 69:15 77:25
78:4 81:23 90:17
91:4 95:16,17
96:6,7
wishes 92:12
withdrawn 88:5
witnesses 4:17
9:2
wondering 63:14
73:12 87:11
word 97:4
words 58:24
work 10:11 30:2
31:10 32:4 42:13
71:16 75:14 94:13
98:8 100:16,18
worked 22:16
94:6
working 10:17
28:4 78:24 89:14

works 31:13
written 30:16
wrong 16:3 54:25
94:10

Y

year 12:10,12 21:4
27:17,18 30:6
57:2,7,9,20,23
58:2 71:21 72:12
75:13 83:3
years 10:9,17
17:11 20:13 28:21
39:2 42:10 53:23
55:13 58:24 64:17
70:21 80:17 89:17
93:2 97:11 98:9
Yelp's 80:17
Young's 37:14