

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
MUTUAL MEDICINAL COLLECTIVE,) OTA NO. 20035926
)
 APPELLANT.)
)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, October 11, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken
at 12900 Park Plaza Dr., Cerritos, California,
91401, commencing at 9:30 a.m. and concluding
at 10:41 a.m. on Tuesday, October 11, 2022,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ JOSHUA ALDRICH

Panel Members: ALJ MICHAEL GEARY
ALJ EDDY LAM

For the Appellant: LINA DEVERA
CHRISTIAN MACIAS
C. WILLIAMS

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

RANDY SUAZO
CHRISTOPHER BROOKS
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-8 were received at page 13.)

(Department's Exhibits A-E were received at page 13.)

OPENING STATEMENT

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By Mr. Suazo 32

APPELLANT'S

WITNESSES:

DIRECT

CROSS

REDIRECT

RECROSS

Cynthia Williams 20

CLOSING STATEMENT

PAGE

By Ms. Williams 39

1 Cerritos, California; Tuesday, October 11, 2022

2 9:30 a.m.

3
4 JUDGE ALDRICH: This is Judge Aldrich. We're
5 opening the record in the Appeal of Mutual Medicinal
6 Collective before the Office of Tax Appeals, OTA Case
7 Number 20035926. Today's date is October 11th, 2022, and
8 it's approximately 9:30 in the morning. This hearing is
9 being conducted in Cerritos, California and is being live
10 streamed on OTA's YouTube channel.

11 This hearing is being held by a panel of three
12 Administrative Law Judges. My name is Judge Aldrich. I'm
13 the lead for purposes of conducting the hearing. I'm
14 joined by Judge Michael Geary and Judge Eddie Lam. During
15 the hearing the panel members may ask questions or
16 otherwise participate to ensure that we have all the
17 information required to decide the appeal. After the
18 conclusion of the hearing, we three will deliberate and
19 decide the issue presented.

20 As a reminder, the Office of Tax Appeals is not a
21 court. It's an independent appeals body. The panel does
22 not engage in ex parte communications with either party,
23 and our opinion will be based on the parties' arguments,
24 the admitted evidence, and the relevant law. We have read
25 the parties' submissions, and we're looking forward to

1 hearing your arguments.

2 And, for the record, who is present for the
3 Appellant?

4 MS. DEVERA: Lina Devera.

5 JUDGE ALDRICH: Okay. And who else do we have?

6 MS. WILLIAMS: Cynthia Williams.

7 JUDGE ALDRICH: Thank you.

8 MR. MACIAS: Christian Macias.

9 JUDGE ALDRICH: Thank you.

10 And for the Department?

11 MR. SUAZO: Randy Suazo, Hearing Representative.

12 MR. BROOKS: Christopher Brooks, Tax Counsel.

13 MR. PARKER: And Jason Parker, Chief of
14 Headquarters Operation Bureau.

15 JUDGE ALDRICH: Thank you everyone.

16 So the first thing I wanted to address is whether
17 or not there are any objections to the substitution to the
18 Panel.

19 Department, did you have any objections?

20 MR. SUAZO: No objections.

21 JUDGE ALDRICH: And Ms. Devera?

22 MS. DEVERA: No objection.

23 JUDGE ALDRICH: Thank you.

24 According to the September 22nd, 2022, minutes
25 and orders as distributed to the parties, the stated issue

1 is whether Appellant has shown that any further reduction
2 to the amount of unreported taxable sales is warranted.

3 Does that issues statement correctly summarize
4 the issue before us, Appellant.

5 MS. DEVERA: Yes.

6 JUDGE ALDRICH: Thank you.

7 And Department?

8 MR. SUAZO: That's correct.

9 JUDGE ALDRICH: Great. Next we're going to
10 transition to exhibits. Did both parties receive a copy
11 of the exhibit binder?

12 MS. DEVERA: Yes.

13 MR. SUAZO: Yes.

14 JUDGE ALDRICH: Okay. First, I will address the
15 Department's exhibits. The Department's exhibits are
16 identified alphabetically as Exhibits A through E.
17 According to the minutes and orders, Appellant had no
18 objections to admitting the Department's exhibits during
19 the prehearing conference.

20 Do you have any objection now?

21 MS. DEVERA: No.

22 JUDGE ALDRICH: Okay.

23 And according to the hearing binder, Appellant's
24 exhibits are identified numerically as Exhibits 1
25 through 4, and then we'll address the exhibits separately

1 for today.

2 But, Department, did you have any objections to
3 admitting Appellant's Exhibits 1 through 4?

4 MR. SUAZO: No objection.

5 JUDGE ALDRICH: Okay.

6 And then it looks like we have 3 or 4 exhibits
7 that were provided this morning?

8 MS. DEVERA: That's correct.

9 JUDGE ALDRICH: And so according to the minutes
10 and orders, the deadline to provide additional exhibits
11 was 15 days before the hearing, which was September 26,
12 2022. Is there an objection from the Department as to the
13 admission of these untimely exhibits?

14 MR. BROOKS: This is Christopher Brooks. Yes,
15 Your Honor, we would both object for both timeliness and
16 for relevance.

17 JUDGE ALDRICH: Okay. And so I guess my question
18 is to Appellant's representative. First, I was wondering
19 why weren't these exhibits provided prior to today?

20 MS. DEVERA: I was overseas, and I -- when I was
21 reviewing the file, we got a storm. So I didn't have any
22 internet or electricity at this time. I just came back.

23 JUDGE ALDRICH: When did you just come back?

24 MS. DEVERA: Last week.

25 JUDGE ALDRICH: Okay. So last week we also got

1 an Exhibit Number 4. I think that was part of the -- that
2 was submitted on October 4th, which created a revised
3 hearing binder. Why couldn't these exhibits have been
4 provided at that time?

5 MS. DEVERA: I have a prior appoint, so I wasn't
6 really looking at all of those documents prior.

7 JUDGE ALDRICH: Okay. And then I was wondering
8 have these documents been provided to CDTFA at a different
9 time, so the -- during the appeals process or --

10 MS. DEVERA: I believe so because that was the
11 documents, they provided me prior, 'cause I guess there
12 was -- you guys have hearing before, right?

13 MS. WILLIAMS: Yes.

14 MS. DEVERA: This is not the first hearing, I
15 believe.

16 JUDGE ALDRICH: So during the underlying appeal
17 at CDTFA, these were provided as part of the appeals
18 process?

19 MS. DEVERA: Yes.

20 JUDGE ALDRICH: Ms. Williams, you look like you
21 have something to say.

22 MS. WILLIAMS: No, I just don't re -- I don't
23 remember for sure if all of them, but I believe at least
24 one of them for sure.

25 JUDGE ALDRICH: At least one for sure?

1 MS. WILLIAMS: Yeah.

2 JUDGE ALDRICH: Which one?

3 MS. WILLIAMS: The one about the business.

4 MS. DEVERA: I believe that's the two. The only
5 thing I added this morning is the -- a printout for
6 Lawnmower City address through Yahoo.

7 JUDGE ALDRICH: So you're saying that -- I guess
8 we'll mark Lawnmower City as proposed Exhibit 5, the
9 Secretary of State information as proposed Exhibit 6. And
10 then the Articles of Incorporation -- is that a separate
11 exhibit, Ms. Devera?

12 MS. DEVERA: Yes.

13 JUDGE ALDRICH: Okay. -- so proposed Exhibit 7.
14 And then with the last one being some sort of 15-day
15 notice, proposed Exhibit 8. So if we could address each
16 of these, I'd like to know a bit of what relevance. So
17 there's an objections based off of relevance. So what are
18 these being offered for?

19 MS. DEVERA: I think it needs to be -- it's a
20 confirmation that the corporation was formed for a
21 nonprofit purpose. And the Lawnmower City address --

22 JUDGE ALDRICH: Let me stop you right there.

23 MS. DEVERA: Sorry.

24 JUDGE ALDRICH: Which one are you specifically --

25 MS. DEVERA: The Articles of Incorporation.

1 JUDGE ALDRICH: Okay. So the Articles of
2 Incorporation, proposed Exhibit 7, is going to show that
3 it was formed as a nonprofit? Is that --

4 MS. DEVERA: Correct.

5 JUDGE ALDRICH: Okay. And then how about we just
6 take them in order. So proposed Exhibit 5, that's the
7 Lawnmower City. Why is that relevant to the hearing?

8 MS. DEVERA: The Lawnmower City share the same
9 address as the Mutual Medicinal Collective.

10 JUDGE ALDRICH: Okay. And then proposed
11 Exhibit 6, there's a Secretary of State nonprofit
12 certification. Is that going to be the same argument as
13 the --

14 MS. DEVERA: It's the same as the articles.

15 JUDGE ALDRICH: Okay. And that leaves proposed
16 Exhibit 8, the 15-day notice to quit.

17 MS. DEVERA: The 15-day notice is to show that
18 the company doesn't really have that much of an income.
19 They couldn't pay the rent.

20 JUDGE ALDRICH: Okay. So since we just got these
21 today, I'm going to take a quick recess. I want to confer
22 with the other Panel members to see what their opinions
23 are. So we're going to take five minutes. We're going
24 off the record as of now, and when we return we'll proceed
25 with the matter. Okay.

1 (There is a pause in the proceedings.)

2 JUDGE ALDRICH: We're going back on the record in
3 the Appeal of Mutual Medicinal Collective.

4 So we were discussing proposed exhibits that
5 Appellant had provided today. I wanted a little bit more
6 information regarding the Lawnmower City exhibit, so that
7 would be proposed Exhibit 5. What are you trying to show
8 with it, I guess?

9 MS. DEVERA: Because their observation was, they
10 observed the premises. Lawnmower City is in the same
11 building. And according to the taxpayer, most of the time
12 people that goes in there get confused, and they ended up
13 going to their door because they share the same address
14 online.

15 JUDGE ALDRICH: Okay. I see. And I guess for
16 the Department, do these -- so with respect to proposed
17 Exhibit 6, 7, and 8, are they something that have been
18 received by the Department?

19 MR. SUAZO: I do not recall seeing these. They
20 may have, and I just missed it, or -- but I don't recall
21 seeing them. We do have a lease agreement in our exhibits
22 but that's when they first signed the lease, not this
23 15-day notice of evict.

24 JUDGE ALDRICH: Okay. And so I guess I'm
25 wondering from the Department if I were to overrule the

1 objection and admit these documents, would you be asking
2 for time to respond?

3 MR. SUAZO: Yes.

4 JUDGE ALDRICH: Okay. And then is there a
5 dispute as to whether or not Appellant's business was a
6 nonprofit?

7 MR. SUAZO: We have it listed as a corporation,
8 so --

9 JUDGE ALDRICH: Okay. So it sounds like it's in
10 dispute. Okay. I think what my plan of action is to go
11 ahead and admit these proposed Exhibits 5, 6, and 7 into
12 the record. I'm going to allow CDTFA -- is 30-day
13 sufficient?

14 MR. SUAZO: 30-day should be sufficient.

15 JUDGE ALDRICH: Okay. -- 30 days respond to these
16 additional exhibits. And since that's addressed,
17 Exhibits 1 through 8 have been admitted into the record as
18 well as CDTFA or Department's exhibits.

19 (Appellant's Exhibits 1-8 were received
20 in evidence by the Administrative Law Judge.)

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

23 Let's see. So as far as the hearing format, we
24 planned for the hearing to proceed as follows:
25 Appellant's opening statement, and during which time there

1 will be witness testimony, I understand, and we estimated
2 that at 20 minutes. Then the Department will have an
3 opening statement for 30 minutes. Then the Panel may ask
4 questions of either party or witness. And then we'll give
5 the parties an opportunity to have closing remarks. Okay.

6 Does that sound good Mr. Suazo.

7 MR. SUAZO: Yes, sir.

8 JUDGE ALDRICH: Okay.

9 So since we're having witness testimony, I wanted
10 to take this time to go ahead and swear in the witness.
11 If you could make sure your microphone is on and then
12 raise your right hand.

13

14 C. WILLIAMS,

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

18

19 JUDGE ALDRICH: Thank you. Does either party
20 have questions before we proceed to presentations?

21 Ms. Devera?

22 MS. DEVERA: No.

23 JUDGE ALDRICH: Mr. Suazo.

24 MR. SUAZO: No questions.

25 JUDGE ALDRICH: I hear that the mic is having a

1 little bit picking you up, Ms. Williams. So when you do
2 speak, if you could pull it a little closer.

3 With that said, Ms. Devera, we're ready to
4 proceed when you are.

5

6 PRESENTATION

7 MS. DEVERA: Okay. My name Lina Devera. I'm
8 representing for Mutual Medicinal Collective for Christian
9 Macias.

10 Mutual Medicinal Collective was organized by
11 Christian Macias on September 2nd, 2011, for the purpose
12 which it's formed for a nonprofitable purposes to offer
13 marijuana product to those who needs it for medicine.
14 Confirmations, I submitted the Articles of Incorporation
15 filing I.D. Number 3410833 from the Secretary of State as
16 a nonprofit mutual benefit corporation.

17 Taxpayer has no intention to build a
18 million-dollar marijuana business but simply to provide an
19 inexpensive product to those who need it. Taxpayer later
20 on, they sold the nonprofit in 2020, although, they
21 stopped operation in December 2017. The audit was
22 conducted in July and August of 2017. At the time of the
23 observation, it was business as usual for the taxpayer,
24 but there was already a plan of closing it down at the
25 year-end 2017.

1 Taxpayer already had financial struggles to keep
2 it open. He has not paid the rent for this space since
3 August of 2016 and received the 15-day notice to quit in
4 January of 2017; and that I submitted the 15-day notice to
5 quit as evidence. The taxpayer was inexperienced with an
6 audit and keeping records. This is his first-time doing
7 business. Taxpayer has no money or funds for a full-time
8 bookkeeper or an accountant.

9 The audit was concluded on a 12-hour observation
10 and online business comparisons with the big marijuana
11 industry. We would like to appeal that the adjustments
12 are necessary, and that the estimates are far overstated
13 for the following reasons: The auditor concluded the
14 estimated amount of customer on a 12-hour observation of
15 the premises using numbers of people coming in and out of
16 the premises.

17 There was another business sharing the building,
18 which is the Lawnmower City, which confuses people when
19 they go in and outs of the door. Most of the time
20 customers find the Mutual Medicinal Collective door
21 instead of the Lawnmower City. And also, the auditor
22 concluded that number for the years 2014 to 2017.
23 Usually, a number -- normal business grows. It doesn't
24 grow that -- 2014 should have less because they just
25 started at the time.

1 In 2017 the number is, I think, not the right
2 number to use in 2014, '15, and '16. During the
3 observation, they counted the amount of people coming in
4 the premises. We believe that they had counted all people
5 coming in and out, including the Lawnmower City. That's
6 why they counted it so much more than it should.

7 And then for the business hours, they counted the
8 business hour as 14 hours a day, Monday to Sunday, which
9 is seven days a week without holidays or closed days.
10 They base it on the weedmaps.com, which the taxpayer
11 listed the business hours at, but it was not the case.
12 They had trouble opening for that many hours. They don't
13 have man power. They rely on friends and volunteers to
14 stay at the premises.

15 Christian kept a full-time job. That's why he
16 can't really fully be at the premises. He has a full-time
17 job at the Loma Linda Hospital. He will only be at the
18 premises after work and on the weekends. We also
19 submitted his pay stubs to show his hours worked as
20 Exhibit A for 2011 to 2017. And the auditor also
21 concluded calculated operation hours for delivery.
22 Although they have listed their company on the app that
23 has a delivery, but they never utilized it. They don't
24 have man power for it.

25 And for the pricing, the pricing the auditor

1 based comparison with big profitable and well-established
2 business company in a higher income location. Although it
3 was also adjusted for the cost of living, it's on a fair
4 comparison because the big business company are out for
5 profit. This one is for nonprofit. The taxpayer pricing
6 products only offered two -- two items, one for \$5.00 and
7 one for \$10.00. The \$5.00 is the free roll and the \$10.00
8 would be for the ground. And it's a low-income area, so
9 most people don't really buy a lot.

10 Auditor uses the marijuanabusinessnews.com to
11 estimate average sales, but this website amplified the
12 marijuana business and uses data from the best stores in
13 the industry. Taxpayer operation is far from that. It's
14 a very small operation. They can't even afford the rent.
15 Taxpayer being a nonprofit did not file exemptions for
16 sales tax. This is him being inexperienced and didn't
17 have the available resources to pay for good professional
18 help and guidance and also filed a wrong sales tax in a
19 wrong district.

20 He records in a daily sales journal and submits
21 the journal to his tax preparer when it's time to file
22 taxes. They also maintain a computer, but the computer
23 later on was obsolete and cannot retrieve data. In
24 November of 2017, before they finally closed the premises,
25 he started driving for Uber. We submitted hours as a

1 driver for Lyft, Exhibit B, from 2017 to 2018.

2 This is not a lifestyle of someone who had made
3 millions. In fact, he had lost money. He had to pay the
4 rent using his 401K just to release him from it. And this
5 causes him great hardship. He also got audited from the
6 IRS from the money he deposited into his account. The
7 taxpayer cannot keep a bank account for the nonprofit
8 because the bank keeps closing it because of the nature of
9 the business. So he ended up depositing money in his
10 personal account, and that the IRS came and audit.

11 They ended up -- he ended up putting it as a
12 personal income tax -- person income, but the same income
13 was already reflected on the business tax return. The
14 taxpayer agreed to the audit just to move on. The
15 taxpayer has filed his sales and business income tax based
16 on the true and correct numbers, I believe, as reflected
17 on his returns.

18 So we appeal to this Court to consider, and we
19 appreciate your time for hearing us today.

20 JUDGE ALDRICH: Thank you for your presentation.
21 Did you want to add some witness testimony?

22 MS. WILLIAMS: Yeah.

23 MS. DEVERA: Can I start asking?

24 JUDGE ALDRICH: Yeah, you can ask questions or --

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Q I just want to ask, when did you meet Christian?

A In 2014, and I'm Cynthia.

Q In 2014 does -- have you seen his business place?

A Yes. I went there once in 2014.

Q Can you describe how it looks?

And I notice, like, the pre-rolls, which is the pre-rolled marijuana and maybe about 1 or 2 bases of marijuana. And then that was also about another -- a 10 by 10 or 10 by 20. Then the back was a very small area just like for -- maybe they called it their office with a desk and a chair and maybe a computer.

A I don't know my square feet too much, but it's just very small. It's just like maybe from this TV to

1 that wall. That's how long it was from the entrance to
2 the small office.

3 Q Can you describe how people can sometimes get
4 confused by the way the door is with Lawnmower City?

5 A Yes. So I even got confused the first time I
6 went because when you first -- from the street and you
7 turn left or right, whichever one, into the parking lot,
8 it's Lawnmower City, and it's a long building. And kind
9 of towards the middle of Lawnmower City building, it --
10 sorry.

11 It was the main doors to Lawnmower City but to --
12 when you go the right of it a little bit, there's, like,
13 still lawn mowers because that's where the business owner
14 would fix the lawn mowers. But they were next to the door
15 of his business, which were black doors. There was no
16 sign. There wasn't anything. So it still looked like it
17 was part of the Lawnmower business, like another door for
18 it.

19 Q What was your impression with his business or
20 that premises at the time or impression with Christian?

21 A I just -- well, from the business, I just -- to
22 me it looked like a small business that had just started
23 to tell you the truth. I didn't really have much
24 information from him yet of when he started or anything.
25 It looked like to me like a young guy just trying to help

1 out people with -- who were in pain. Cancer patients is
2 something he had mentioned to me. And I was there for
3 about 20 minutes, and I saw two -- about one person come
4 in and noticed how it was someone who was sick. But it
5 just looked like some -- like, he looked like someone who
6 wanted to help others.

7 Q Any indication that it makes a million dollars
8 sales?

9 A Not at all. Like from the business it just
10 looked really empty. There's not much in it. That's all
11 I noticed.

12 Q Go ahead.

13 A So yes. I met Christian in 2014. I started
14 working also at the same place as him. We we're both
15 phlebotomists, and we started to hang out. And he seemed
16 like a really nice person. And we had, like, the same
17 beliefs in helping people because that's what I love to
18 do. And he just told me how he had a business selling
19 marijuana. He noticed how when he began working in Loma
20 Linda in 2010, and we had to draw their blood, like, all
21 cancer patients, really sick children. And we encountered
22 people who were always in pain.

23 And actually, he even said, you know, what do you
24 guys think about marijuana? We have a few patients who
25 sometimes asked. But he told him how I just gave him the

1 idea of opening up a business to help others. And I
2 don't -- I never saw it as something, like, oh my God.
3 He's has a lot of money. He has a Corvette. He has
4 houses. He has a lot of, you know, cars or buying me
5 stuff or luxury. It was just a regular person just trying
6 to help others.

7 And we've been together I don't know, eight -- is
8 it eight years? -- seven, eight years now, and that's the
9 main reason we're together is for how good he is of a good
10 person, no -- nothing monetary, nothing luxurious. And
11 with the amount of money they're claiming on there,
12 there's no way we're living that way. You know, we were
13 young. We would have used the money, shown it off, bought
14 everything with that money.

15 Where are we --there's nowhere to hide this
16 money. We wouldn't be in debt. I wouldn't have student
17 loans. Like, there's just no way, no possible way that
18 business made that much money, and I believe it's just
19 wrong. Just wrong. And that's it for now.

20 JUDGE ALDRICH: Thank you. At this time I wanted
21 to give the Department an opportunity to cross the
22 witness.

23 MR. BROOKS: Point of order. Was the witness
24 sworn at all?

25 JUDGE ALDRICH: Yes.

1 MR. BROOKS: Oh, okay.

2 MR. SUAZO: No questions.

3 JUDGE ALDRICH: Okay.

4 So I had a couple of questions for the witness.
5 You said you had worked there or no? You had just visited
6 the one time?

7 THE WITNESS: Yeah. I worked with him in Loma
8 Linda, but not at the business. I visited one time in
9 2014.

10 JUDGE ALDRICH: Got it. Thank you for the
11 clarification. And on your visit was there a menu?

12 THE WITNESS: Maybe there was a white board --

13 JUDGE ALDRICH: Okay.

14 THE WITNESS: -- that just said the prices.

15 JUDGE ALDRICH: All right.

16 THE WITNESS: The ones she said, like, the gram
17 and the pre-roll.

18 JUDGE ALDRICH: Do you recall any of those
19 prices?

20 THE WITNESS: No. No, I don't recall.

21 JUDGE ALDRICH: Okay. And you had mentioned that
22 there were other tangible items such as pipes or
23 glassware?

24 THE WITNESS: Yeah. Like a few -- maybe I want
25 to say about three in the bottom, four in the middle.

1 Like it was, like, almost empty I could say. That's why
2 it looked like he was just starting the business to me.

3 JUDGE ALDRICH: And I know you stated you
4 couldn't recall the prices, but were there multiple
5 strains or different varieties of cannabis available?

6 THE WITNESS: I believe there were two.

7 JUDGE ALDRICH: Okay.

8 THE WITNESS: I remember seeing two jars, but I
9 don't know if there were two strains or --

10 JUDGE ALDRICH: Okay. So you just -- you don't
11 know. That's fine.

12 At this time I wanted to turn it over to my Panel
13 members to see if they had any questions for the witness.

14 Judge Geary.

15 JUDGE GEARY: Yes. I might have a question for
16 the rep also but first for the witness. When you say,
17 "We've been together 7 or 8 years," you mean that you two
18 are together as a couple.

19 THE WITNESS: Correct.

20 JUDGE GEARY: Okay. Since you're the witness who
21 has seen the physical relationship between Lawnmower City
22 and the business that's appearing before us, I'd like to
23 see if I can get a little bit more detail about that. You
24 said there's no -- there was no sign identifying the
25 Mutual Medicinal Collective?

1 THE WITNESS: Correct.

2 JUDGE GEARY: Was there a sign identifying
3 Lawnmower City.

4 THE WITNESS: Correct.

5 JUDGE GEARY: When the representative indicates
6 that they shared the same address, I take it that you
7 observed they shared the same building; correct?

8 THE WITNESS: Yes.

9 JUDGE GEARY: But different entrances; correct?

10 THE WITNESS: Yes. And there was a wall between
11 them inside. Inside.

12 JUDGE GEARY: All right. You described seeing
13 the office or what you described as an office; correct?

14 THE WITNESS: Yes, correct.

15 JUDGE GEARY: And you thought there was a
16 computer there?

17 THE WITNESS: Yes.

18 JUDGE GEARY: Can you tell us anything about what
19 other equipment existed in that office?

20 THE WITNESS: I believe there was a safe there.
21 I can't recall any other equipment.

22 JUDGE GEARY: Did you see the computer
23 sufficiently to be able to tell us what kind of computer
24 it was? Was it a laptop? Was it a desk top?

25 THE WITNESS: It was a laptop.

1 JUDGE GEARY: Do you know what kind of laptop it
2 was?

3 THE WITNESS: No.

4 JUDGE GEARY: You said you saw one person come
5 into the Collective during the 20 minutes that you were
6 there. Who was working at the Collective at the time?
7 Not -- you don't give me the person's name, but tell me,
8 was there one person? Two people?

9 THE WITNESS: It was one person.

10 JUDGE GEARY: Did the person that came in appear
11 to be engaging with the salesperson about making a
12 purchase?

13 THE WITNESS: Yes, correct.

14 JUDGE GEARY: Did you observe a purchase being
15 made.

16 THE WITNESS: Yes.

17 JUDGE GEARY: What did the person purchase in
18 terms of quantity?

19 THE WITNESS: I just remember hearing him saying,
20 "I just want one gram."

21 JUDGE GEARY: Thank you. I'd like to ask a
22 question of the representative, if I can.

23 JUDGE ALDRICH: Go ahead.

24 JUDGE GEARY: You made a number of factual
25 statements in your initial presentation. You made

1 statements about whether or not your client had a computer
2 or how that computer was obsolete. You talked about how
3 your client used money from his 401K to pay rent. I want
4 to ask you whether any of those facts also appear in any
5 of the physical evidence -- the documents that you have
6 submitted.

7 MS. DEVERA: The 15-day notice to quit, he ended
8 up paying the \$10,000 using his 401K, but we don't have
9 the withdrawal today.

10 JUDGE GEARY: All right. You realize you aren't
11 testifying in the proceeding today; correct? You're here
12 to give argument.

13 MS. DEVERA: Yes.

14 JUDGE GEARY: All right. So there's no evidence
15 that money was withdrawn from his 401K; is that correct?

16 MS. DEVERA: No, there's no evidence.

17 JUDGE GEARY: Is there any evidence about the
18 computer that the Collective used when it was using a
19 computer?

20 MS. DEVERA: I -- it's -- that's according to the
21 taxpayer that they have a computer.

22 JUDGE GEARY: Okay. But the taxpayer -- are you
23 talking about Mr. Macias?

24 MS. DEVERA: Yes.

25 JUDGE GEARY: And he's not testifying today, is

1 he?

2 MS. DEVERA: No.

3 JUDGE GEARY: Okay. Thank you. Those are the
4 only questions I have.

5 JUDGE ALDRICH: I had one more question for the
6 Appellant's representative. You had mentioned the
7 Appellant had completed daily sales journals and used
8 those to complete his sales and use tax returns. Are
9 there any daily sales journals in the record?

10 MS. DEVERA: That's -- that's the only one they
11 had told me.

12 JUDGE ALDRICH: Could you restate that?

13 MS. DEVERA: They report quarterly to their
14 previous accountant to prepare the sales tax.

15 JUDGE ALDRICH: But I guess are there any
16 examples of that in evidence?

17 MS. DEVERA: No. I guess they -- the accountant,
18 they think that they kept the records, but we couldn't
19 find any.

20 JUDGE ALDRICH: Okay. Thank you.

21 And, Judge Lamb, did you have any questions for
22 the witness or Appellant's representative?

23 JUDGE LAM: Yes, I do have a question for
24 Appellant's representative. I notice how you said that
25 the business was serving a low-income area and that, you

1 know, it's basically \$5 or \$10 a roll. And I noticed that
2 in the record that you've agreed that the sales price per
3 customer was around \$50,000 -- oh, I'm sorry -- \$50 per
4 customer during the audit period. Are you disputing that
5 amount?

6 MS. DEVERA: Yes.

7 JUDGE LAM: Do you have any evidence to support
8 that amount or what --

9 MS. DEVERA: I don't have evidence. But based on
10 the interview with the taxpayer, all the prices and the
11 numbers he's telling me is consistent with the sales tax
12 reports they submitted to the sales tax return.

13 JUDGE LAM: Thank you. And I did notice that --
14 this is a question for Appellant's representative. You
15 did indicate that the Lawnmower Company shares a -- or
16 shared a same address as the -- as Mutual Medicinal
17 Collective. During the time -- and it was in the record
18 that CDTFA had excluded one-third of the people entering
19 the business, and you've agreed to that number. Is that
20 number that one-third of exclusion represented in what
21 you're trying to tell us about how CDTFA may have
22 miscounted the number of people entering the business?

23 MS. DEVERA: Correct.

24 JUDGE LAM: Okay. And do you have any
25 substantiation or -- or what are you trying to -- are you

1 disputing that it may be more than one-third of people
2 entering in and out of the premises during the observation
3 period?

4 MS. DEVERA: I'm disputing that they had
5 overstated the amount of people coming in for the Mutual
6 Medicinal Collective.

7 JUDGE LAM: Okay. What then -- what do you
8 think, or what does Appellant think the right number would
9 have been or -- and do you have substantiation for that?

10 MS. DEVERA: Well, I had interviewed Mr. Macias
11 five times, and the numbers was always between 25 to 30 a
12 day. And 50 percent of that would have bought a product.

13 JUDGE ALDRICH: I'm sorry did you say 15 or 50?

14 MS. DEVERA: 50. 50. Because according to him a
15 lot of friends and vendors coming in to have their
16 products -- they're trying to sell the products.

17 JUDGE LAM: Thank you. And do you have
18 substantiation for that type of estimation or to support?

19 MS. DEVERA: The only numbers I'm getting is by
20 the reports that was submitted to the CDTFA for the sales
21 tax return for particular periods.

22 JUDGE LAM: Thank you for the clarification. I
23 don't have any further questions. Thank you.

24 JUDGE ALDRICH: Thank you, Judge Lamb.

25 This is Judge Aldrich. At this time I believe

1 it's the Department's opening. Are you ready to proceed?

2 MR. SUAZO: Yes.

3 JUDGE ALDRICH: Okay. Please go ahead.

4

5 PRESENTATION

6 MR. SUAZO: The Appellant operated both a store
7 front and a delivery service that sold cannabis and
8 cannabis-related products. The seller's permit start date
9 is June 1st, 2012; Exhibit A, page 3. The lease agreement
10 began late 2011; Exhibit B, pages 225 through 44,
11 Exhibit B. Federal income tax returns for the audit
12 period were the only items provided by the Appellant
13 during the audit period. No other financial records were
14 provided despite repeated requests by the Department. The
15 Appellant failed to provide any books and records to
16 support amounts reported per Appellant's sales and use tax
17 returns.

18 The Department analyzed sales amounts Appellant
19 reported on the sale and use tax returns and noted the
20 average daily sales reported was about \$167, which equates
21 to around three-and-a-half customers per day based on a
22 \$53 average selling price noted in audits of other
23 cannabis businesses; Exhibit A, pages 26 through 28.
24 Based on the Department's experience, the reported amounts
25 appear to be extremely low compared to audits of other

1 dispensaries.

2 Due to lack of reliable records, the Department
3 determined the Appellant's records were inadequate for a
4 direct audit approach. Therefore, the Department
5 performed indirect audit testing to compute an audited
6 taxable measure. The Department performed observation
7 tests on two separate days: Four hours on Monday,
8 August 7th, 2017 from 10:00 a.m. to 2:00 p.m., and 8 hours
9 on Friday, August 11, 2017, from 9:00 a.m. to 5:00 p.m.

10 For the 12 hours observed, the Department tallied
11 the number of people who entered the business; Exhibit B,
12 page 19. Per Exhibit E, page 4, footnote 7, BTFD observed
13 the business from across the street where the auditor had
14 a clear view of the front door. BTFD noted that the
15 petitioner was the only business operating the building
16 and that there was only one entrance and exit for
17 customers.

18 Since the observation tests -- or since the
19 observation of the business occurred outside, rather than
20 inside the business, the Department chose to adjust the
21 observation results due to possibility that some people
22 who entered the business did not purchase any product. It
23 should be noted the State-Wide Compliance Outreach
24 Program, also known as scope visited the business on
25 January 15th, 2013, prior to the audit period, and

1 observed seven people inside the business in a ten-minute
2 period; Exhibit E, page 5, footnote 8.

3 The Department adjusted the observation results
4 so that an average of six shoppers per hour were
5 considered to be purchasing customers. Per Appellant's
6 advertising on the internet site weedmaps, the Appellant's
7 storefront location was open from 9:00 a.m. to 11:00 p.m.,
8 14 hours, 7 days a week. Therefore, the Department
9 estimated that the Appellant made on average 84 sales per
10 day from the store front location.

11 Next, the Department estimated that the Appellant
12 made one delivery of product each hour. Even though the
13 Appellant's business was open 14 hours a day, the
14 Department estimated that the Appellant only made
15 deliveries between the hours of 10:00 a.m. and 6:00 p.m.,
16 8 hours, then only one delivery was made per hour. This
17 equates to eight delivery sales per day; Exhibit B,
18 page 18.

19 So the audited total average daily sales
20 transactions for both the storefront and via delivery
21 equaled 92 transactions per day; Exhibit B, page 17. To
22 compute audited taxable measure, the Department multiplied
23 the audited number of customers per day by \$50, which is
24 the average transaction amount provided by the Appellant
25 during the appeals process; Exhibit E, page 6. This

1 computed to audited daily sales of \$4,600 per day.

2 The Department multiplied the audited daily sales
3 by the number of days in the audit period to arrive at
4 audited taxable measure for the three-year period of over
5 \$5 million; Exhibit B, page 15. A comparison of audited
6 taxable sales to reported taxable sales of \$183,000
7 resulted in a difference of more than \$4.8 million;
8 Exhibit B, page 14.

9 The Appellant claims the understatement noted in
10 the examination performed by IRS is proof that the
11 Department's audit findings are overstated. The
12 Department rejects this contention as unfounded. The
13 Appellant has not provided any documentation to support
14 that an IRS audit was conducted on Mutual Medicinal
15 Collective. According to Appellant's exhibits, the IRS
16 was for the personal income tax returns of Christian
17 Macias. A Mutual Medicinal Collective was not the subject
18 of the IRS audit per Exhibit 3, pages 1 through 13.

19 Additionally, the Department is not bound by IRS
20 findings, as the Department's audit findings are based on
21 the indirect testing of the Appellant's business with
22 allowances to ensure the results are reasonable.
23 Specifically, the Department's observation testing
24 includes Monday and a Friday, and all hours observed were
25 during normal business hours. It is very likely that

1 sales on weekends or evening hours would result in more
2 customers per hour.

3 The Department made allowances for the
4 possibility that some customers entering the business did
5 not make a purchase. The Department also estimated only
6 one delivery per hour, when it was more than likely the
7 Appellant made multiple deliveries each hour in the
8 vicinity of the business. The Department used an average
9 sales price of \$50 per transaction, which was the average
10 sales amount provided by the Appellant during the appeals
11 process; Exhibit E, page 6 again.

12 In addition, federal income tax returns for 2015
13 and 2016 shows salaries and wages of only \$3,000 and
14 \$3,750 respectively. No offer or compensation is listed
15 and taxable income for 2015 is \$782 and \$333 for 2016;
16 Exhibit B, pages 23 and 24. Auditor assignment activity
17 history shows at least two other employees in the store
18 plus security guards; Exhibit A, page 29.

19 The store is open 14 hours per day, 365 days per
20 year. With the minimum of three employees to run the
21 store at all times, the average -- the hourly wages
22 compute to 20-cents-per hour in 2015 and 25-cents-per hour
23 in 2016 based on the recorded federal income tax wages.
24 This analysis shows that recorded wages are incorrect, and
25 employees are most likely paid in cash from unreported

1 sales derived from the store.

2 As mentioned before, average reported amount for
3 the entire day is three and a half customers. This is
4 well below any hour noted in the observation test. The
5 Appellant has failed to provide any substantive
6 documentation to support change to the audit findings.
7 Therefore, the Department ask the Appellant's appeal be
8 denied.

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

11 JUDGE ALDRICH: Thank you, Mr. Suazo. I don't
12 have any questions for the Department, but my Panel might.

13 Judge Geary, do you have any questions?

14 JUDGE GEARY: Yes. Mr. Suazo, you said it's more
15 than likely that there were more deliveries made than
16 indicated by Mr. Macias. Is there something in the
17 documents that supports the Department's conclusion in
18 that regard?

19 MR. SUAZO: On Exhibit A, page 23, and Exhibit E,
20 page 14, based on available online information, a total of
21 20 to 40 deliveries per eight-hour shift is a reasonable
22 average for a business who use technology apps and provide
23 marijuana delivery services. It is unknown if the
24 Appellant did use a technology app during the audit
25 period, therefore, a conservative number of deliveries was

1 used.

2 JUDGE GEARY: Is there a log or some type of
3 diary of the observer's that specifically describes what
4 they saw, or anything in the documentary evidence
5 submitted by the parties, that we can look at to determine
6 whether there might have been some confusion regarding the
7 business that was being conducted behind the Appellant's
8 doors?

9 MR. SUAZO: The information that would be showing
10 the tallying of the numbers is on Exhibit B, page 19. I
11 don't know if that would answer your question as to an
12 actual log, but that shows the number of people that
13 entered the business. And, again, they did have a clear
14 view of the business.

15 JUDGE GEARY: Thank you. That's all I have.

16 JUDGE ALDRICH: Judge Lam.

17 JUDGE LAM: I do not have any further questions.
18 Thank you.

19 JUDGE ALDRICH: Thank you.

20 At this time we're going to switch to closing or
21 rebuttal argument.

22 Appellant's representative, are you prepared to
23 proceed for approximately five minutes?

24 MS. DEVERA: Can Cynthia do the closing?

25 JUDGE ALDRICH: Sure. But before you proceed are

1 you doing the closing as argument or as testimony?

2 MS. WILLIAMS: Can I do both -- a little bit of
3 both?

4 JUDGE ALDRICH: Sure. That's fine.

5

6 CLOSING STATEMENT

7 MS. WILLIAMS: So I know we don't have the
8 evidence maybe you guys may be asking for. The only
9 evidence you guys have is his bank accounts, how they were
10 audited by the IRS, which that should be -- they're very
11 thorough in auditing someone. And that shows the
12 discrepancy in the money that was deposited and where it
13 came from. And Christian, you, know wanted this to be
14 over with and just put on there that it was coming from
15 his business. And we believe that that's the only amount
16 that he owes to anyone from this business.

17 There's no other financial -- we're not keeping
18 anything financially from anyone. We're very truthful
19 people. We were both brought up that way, to not do
20 things illegally because things never last that way. It's
21 work for your money. I -- we did everything we could. As
22 you see, we couldn't -- we couldn't pay that much for an
23 attorney. I even consulted with David Clayson. Maybe you
24 guys know him. He's a very well-known attorney, and he
25 couldn't even take this case. He said, "You know, you

1 guys don't have much evidence. I'm so sorry for you
2 guys."

3 But this is all we have is us, you know, just
4 showing you who we are. We're just two people trying to
5 be -- give whatever we can to our children, our 10-month
6 old and 11-year old and make sure that they are good
7 people in this world, not do things illegally.

8 And I'm speaking on behalf of me and my husband.
9 He was a fool the way he ran this business. I didn't know
10 about this business. I didn't know anything of the way it
11 was being run 'cause he never came off as someone who, you
12 know, would ever -- I would never think he would do any
13 type of fraud or lie. The only thing I could say is he
14 lied to me about everything that was going on. I only
15 found out because I opened the mail one day, and I saw
16 this.

17 It was hard for him to face this. It was hard
18 for him to do this on his own. He had nobody, and he
19 thought the previous representative was advising him well
20 and telling him this would all go away soon, until I saw
21 that person. And said, no, we need to face this no matter
22 what. We can't live this life with you having to look
23 like you owe all this money when this isn't true. I know
24 you don't have the evidence, but all you can do is face it
25 and be a man and face it.

1 And that's what we've done, and you guys received
2 a letter from his previous manager, CEO, of the company
3 Westscapes in Exhibit D saying how he was working for two
4 years picking up trash, cleaning trash enclosures,
5 cleaning out apartment complexes that were evicted with
6 termites, with roaches, with anything you can think of.
7 And he did that for two years after the business closed.
8 That's the only way we can make means.

9 How could he have made \$5 million in all those
10 years that you guys are claiming and this is the type of
11 work he's doing. Don't you think this is something he
12 would maybe go back to and say, hey, I made quick money.
13 I'm going to go back to it. Who cares of the IRS?
14 There's many people making money off marijuana, but he saw
15 that you know what, it wasn't making enough money.

16 He was losing money. He was still having to have
17 a full-time job all those years. He was not having any
18 time for family or anyone. And so he just became more of
19 a hard worker, and there's just no way that he owes this.
20 And it's just not going to be him. It's me and my family
21 that owes this. He's a man who makes around \$30,000 a
22 year. Where are you guys going to see this amount of
23 money? Never.

24 Even when he passes away, what are you guys going
25 to see? Nothing. My kids aren't going to have anything,

1 even when he passes away, because all the money is going
2 to go to here, but money he never owed. So it's almost
3 like stealing from our family.

4 And I understand there was an observation done by
5 very professional people, but it's still all wrong. And
6 I'm so sorry we can't provide the documents you guys are
7 asking for. He didn't do his research right in having a
8 business. And I could tell you this, it's never going to
9 happen again. As long as we're together, he's not --
10 we're not ever going to have a business in any type of
11 way, especially, like a marijuana business. We just want
12 to live a good life with our children and work hard the
13 right way.

14 JUDGE ALDRICH: Thank you, Ms. Williams.

15 Department, did you want to give a five-minute
16 rebuttal or closing?

17 MR. SUAZO: We're fine.

18 JUDGE ALDRICH: Okay.

19 At this time I think we're ready to end the
20 hearing.

21 The record is not closed. The Department will
22 have 30 days to respond to the exhibits that were admitted
23 today. I'll issue some post-hearing orders. And then so
24 we're ready to conclude, I believe. You've given your
25 final statement and the Department waived theirs.

1 There is one more hearing for the morning
2 calendar. So we're going to anticipate a ten-minute
3 recess, but thank you everyone for coming and presenting
4 your appeal.

5 (Proceedings adjourned at 10:41 a.m.)

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HEARING REPORTER'S CERTIFICATE

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

That the foregoing transcript of proceedings was
taken before me at the time and place set forth, that the
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proceedings taken at that time.

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

I have hereunto subscribed my name this 17th day
of October, 2022.

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HEARING REPORTER