

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
B. TREYZON,) OTA NO. 19014245
APPELLANT.)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, October 12, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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IN THE MATTER OF THE APPEAL OF,)
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B. TREYZON,) OTA NO. 19014245
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Transcript of Proceedings, taken at
12900 Park Plaza Dr., Cerritos, California,
91401, commencing at 2:30 p.m. and concluding
at 4:45 p.m. on Wednesday, October 12, 2022,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ JOSHUA LAMBERT

Panel Members: ALJ SUZANNE BROWN
ALJ ANDREW WONG

For the Appellant: IGOR DRABKIN
B. TREYZON
R. SALO
I. SIEGEL

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

AMANDA JACOBS
STEPHEN SMITH
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-38 were received at page 6.)
(Department's Exhibits A-EE were received at page 6.)

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1 Cerritos, California; Wednesday, October 12, 2022

2 2:21 p.m.

3
4 JUDGE LAMBERT: We're now on the record in the
5 Office of Tax Appeals oral hearing for the Appeal of Boris
6 Treyzon, Case Number 1901425. The date is October 12th,
7 2022, and the time is 2:30 p.m. My name is Josh Lambert,
8 and I'm the Administrative Law Judge for this hearing, and
9 my Co-Panelists today are Judge Suzanne Brown and Judge
10 Andrew Wong.

11 CDTFA and Ms. Jacobs, could you please introduce
12 yourselves for the record.

13 MS. JACOBS: Amanda Jacobs, Tax Counsel with the
14 California Department of Tax and Fee Administration.

15 MR. SMITH: My name is Stephen Smith, Legal
16 Counsel for CDTFA.

17 MR. PARKER: Jason Parker, Chief of Headquarters
18 Operation Bureau.

19 JUDGE LAMBERT: Thank you.

20 And for the Appellant, could you please introduce
21 yourselves.

22 MR. DRABKIN: Igor Drabkin, counsel for the
23 Appellant Boris Treyzon, who is also present in this room,
24 as well as two witnesses, Renata Salo and Irina Siegel.

25 JUDGE LAMBERT: Thank you. Thank you all for

1 attending.

2 As agreed to at the prehearing conference and
3 stated in the minutes and orders, the issue is whether
4 Appellant is personally liable under Revenue & Taxation
5 Code Section 6829 for the unpaid tax liabilities of West
6 Coast Storm, Inc. The elements in dispute with regard to
7 R&TC Section 6829 are whether Appellant was responsible
8 for West Coast Storm sale and use tax compliance during
9 the liability period, and whether Appellant willfully
10 failed to pay the liability or caused it to be paid. And
11 there were no penalties that are at issue.

12 CDTFA provided Exhibits A through EE, and
13 Appellant provides Exhibits 1 there 38, and there are no
14 objections other than to 38. And as stated previously,
15 we're going to admit it so those exhibits are now in the
16 record.

17 (Appellant's Exhibits 1-38 were received
18 in evidence by the Administrative Law Judge.)

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

21 CDTFA will not be presenting any witnesses, and
22 Appellant presents three witnesses: Mr. Treyzon and
23 Ms. Salo and Ms. Siegel.

24 So Mr. Drabkin, when you're giving your
25 presentation, when you bring each witness up, I could

1 swear them in before they are going to start their
2 testimony at that time. And let me know when they're
3 ready, and I'll just swear them in when each one comes up.

4 MR. DRABKIN: Very well.

5 JUDGE LAMBERT: And after your presentation,
6 which is one hour, we'll take a five-minute break and then
7 come back and then CDTFA and Ms. Jacobs can ask questions
8 of the witnesses and then the Panel may ask questions of
9 the witnesses or of you, Mr. Drabkin. So with that,
10 Mr. Drabkin, if you're ready to proceed, you can have one
11 hour to explain your position -- Appellant's position.
12 Thanks.

13 MR. DRABKIN: Thank you, Your Honor.

14

15 PRESENTATION

16 MR. DRABKIN: This case does involve the only
17 issue.

18 JUDGE LAMBERT: And also your microphone,
19 remember to turn it on and bring it in close. Thank you.

20 MR. DRABKIN: Thank you.

21 So the only issue in this case is whether
22 Mr. Treyzon should be held as a responsible person and
23 personally liable for the unpaid sales taxes of West Coast
24 Storm for the tax period 2009 through 2012. There are two
25 sub-questions or sub-issues in this case. It's whether

1 Mr. Treyzon was a responsible person within the meaning of
2 the Revenue & Taxation Code Section 6829; and whether
3 Mr. Treyzon willfully caused the failure to pay the sales
4 taxes by West Coast Storm to the State.

5 We believe that the Department's determination is
6 erroneous on both elements of the personal liability.
7 Responsible person within the meaning of the statute
8 means, an officer, manager, or other person having
9 necessary control or supervision or the responsibility for
10 tax matters, which include filing of the tax returns and
11 paying of taxes. And this requisite authority should be
12 within the period at issue. It's our contention that
13 Mr. Treyzon did not have this requisite authority or
14 responsibility or control over West Coast Storm's tax
15 affairs for the period at issue.

16 The Department's determination is based on
17 Mr. Treyzon's involvement in the latter parts of the audit
18 and subsequent dealings with the Department through
19 redetermination process and appeal process. But it's our
20 contention that you cannot retroactively impose or assume
21 Mr. Treyzon's responsibility over the affairs of West
22 Coast Storm simply because he became involved in the audit
23 and subsequent dispute over the sales tax liability after
24 the end of April 2012.

25 The evidence in this case, including many

1 documents presented by the Department as well, show that
2 Mr. Treyzon did not sign any tax returns -- income tax
3 returns or sales tax returns, that all the checks were
4 issued by someone else, but specifically by a person named
5 Michelle Padilla, who was the president of the West Coast
6 Storm. Mr. Treyzon did not hold any position with West
7 Coast Storm until April 25th, 2012, when he was named an
8 acting CFO for the specific purpose of dealing with the
9 sales tax issue that has evolved by that time.

10 Many documents submitted by the Department,
11 including interviews, are interviews of people that was
12 done in 2014, for example. And Mr. Treyzon's involvement
13 in 2014 is reflected, but it does not mean that his
14 involvement was in affairs of West Coast Storm was
15 happening in 2009 through 2012. So the Department
16 incorrectly imputes his authority for the previous periods
17 by projecting his involvement in 2012 through 2014 in
18 dealing with the sales tax audit and subsequent appeal.

19 The Department also in large part based his
20 determination of personal liability in being a responsible
21 person on the self-serving hearsay statements of
22 individuals who have had a dispute with Mr. Treyzon and
23 other shareholders subsequent to the dissolution of West
24 Coast Storm. The Department also relies on the statement
25 again, self-serving and hearsay statement by the CPA,

1 Mr. Bianchi, who has handled -- or more precisely --
2 mishandled the tax reporting on the sales tax reports and
3 the subsequent audit.

4 Therefore, the evidence will be presented today,
5 both through documents and testimony of Mr. Treyzon and
6 the witnesses, should have more weight than the
7 self-serving hearsay statements. The second question is
8 whether Mr. Treyzon willfully caused failure to pay the
9 sales taxes by West Coast Storm to the CDTFA. Again,
10 Mr. Treyzon was not responsible for payment of taxes or
11 for payment of any day-to-day expenses by West Coast
12 Storm. He was not involved in the managerial duties. All
13 the checks were signed by Michelle Padilla, not by Boris
14 Treyzon.

15 The interviews conducted in 2018, specifically
16 with Mr. Swanson and Mr. Martello, did not specify when
17 Mr. Treyzon was in charge of the payments or bank
18 statements. They're general, not specific, some describe
19 actions at the time of the closing of the business at the
20 end of 2012. And once again as the testimony will show,
21 these are self-serving statements.

22 Mr. Treyzon was not aware of the tax liabilities
23 of West Coast Storm until the CDTFA filed a tax lien in
24 April of 2012. That's when Mr. Treyzon was asked to step
25 in by the Board of West Coast Storm as the acting CFO to

1 specifically deal with the mishandling of the audit by
2 Mr. Bianchi, and he -- and Mr. Bianchi has continuously
3 assured the shareholders and Mr. Treyzon, that the tax
4 reported was handled properly. And the subsequent reaudit
5 will show that there is no tax liability.

6 So Mr. Treyzon became aware of the sales tax
7 issue and became involved in the process, again, as the
8 acting CFO with a very limited purpose only after
9 April 25, 2012. And therefore, Your Honor, we believe
10 that the Department's determination of Mr. Treyzon's
11 personal responsibilities are incorrect.

12 Appellant's Exhibits 1 through 38, Exhibit 1
13 through 7 show income tax and sales tax returns filed by
14 West Coast Storm. They were not signed or submitted by
15 Mr. Treyzon. Exhibit 8 is the Secretary of State's
16 Statement of Information back from 2011, which does not
17 list Mr. Treyzon as any officer of the corporation.
18 Again, Exhibit 9 shows that Mr. Treyzon became an acting
19 CFO in April 25, 2012.

20 All the business documents, Exhibit 10, 11, 12,
21 13, 14 that had to deal with the Seller's Permit, some
22 contracts signed by West Coast Storm, dealings with the
23 City of Los Angeles show that Michelle Padilla and Ralph
24 Padilla were the officers of the corporation in charge of
25 all the financial affairs.

1 Mr. Treyzon did not have any signature authority
2 on the bank account or on the checks as evidenced by
3 Exhibit 15. Further bank statements show a pretty bad
4 financial position by West Coast Storm at the time when
5 Mr. Treyzon became an acting CFO. And then we look at the
6 documents starting with Exhibit 20, 21, 22, 23, all these
7 documents are signed by Mr. Treyzon in 2014. It has
8 nothing to do with the period at issue. That's when he
9 began -- became acting CFO, specifically, dealing with the
10 sales tax audit that was mishandled previously by
11 Mr. Bianchi.

12 Exhibit 24 is the statute of limitations waiver
13 that was done in 2011 when the audit was pending. It was
14 done by Michelle Padilla. Exhibit Number 25 is a business
15 operations questionnaire by Rodrigo Barrios, which names
16 Ralph Padilla. Ralph Padilla is the person authorized to
17 sign business checks. The statement from landlord,
18 Exhibit 26, there was no conduct other than just the email
19 address of Boris Treyzon. But it does not say that he's
20 responsible for any payments of rent or any affairs of
21 West Coast Storm.

22 And then responsible person questionnaires were
23 conducted in 2014, and they accurately named Mr. Treyzon
24 as in possession of the sales tax return but at the time
25 of the questionnaires, at the time of the interview, which

1 is 2014. Exhibit 32 show the checks issued to Board of
2 Equalization by Michelle Padilla. Exhibit 33 is the
3 Notice of State Tax Lien which, again, when Mr. Treyzon,
4 testifies, he will explain that that was the first time
5 that was when he was put on notice of the sales tax
6 issues.

7 Exhibit 34 is the audit history, which is also
8 presented by the Department. Exhibit 35 show
9 Mr. Treyzon's attorney license, and he's a practicing
10 attorney full time. And then the rent payments and Wells
11 Fargo bank statements, again, signed by Mrs. Padilla. So
12 we believe that the totality of the evidence and the
13 weight of the evidence should overcome the self-serving
14 hearsay statements presented by the Department in support
15 of their case.

16 And we are ready to proceed with the witnesses,
17 Your Honor.

18 JUDGE LAMBERT: Were you going to have
19 Mr. Treyzon testify first?

20 MR. DRABKIN: Yes, please.

21 JUDGE LAMBERT: Okay. Mr. Treyzon, could you
22 please raise your right hand.

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B. TREYZON,

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

JUDGE LAMBERT: Thank you.

DIRECT EXAMINATION

BY MR. DRABKIN:

Q Mr. Treyzon, can please state what is your
profession?

A I'm a licensed attorney in the State of
California.

Q And where do you practice?

A My office is in Encino, California.

Q What kind of law do you practice?

A My job, I'm primarily a trial attorney. That
means I go and actually try cases in court.

Q And how long have you been practicing law?

A Approximately 25 years.

Q What was your involvement with West Coast Storm?

A It depends on the what -- at the time. I -- my
wife made an investment in West Coast Storm through an
entity at some point in 2007. And that's, I guess,
through community property. That's my -- how my

1 involvement began. Over as the time progressed, I acted
2 as retained counsel for certain types of matters. And in
3 the middle of 2014, when I learned of the sales tax --
4 let's call it an issue. I think it was a tax lien that
5 was filed -- I tried to contact the Department.

6 I was told that in order to even have a
7 conversation with somebody, I needed to be -- have a
8 position with the company. That day we filed a Statement
9 of Information that listed me as acting chief financial
10 officer for the purposes of negotiating or discussing or
11 resolving the sale tax issue with the Department.

12 Q Can you please clarify whether it was -- you said
13 middle of 2014. Was that 2012 or 2014?

14 A I apologize. It was 2012.

15 Q And could you please state the name of your wife
16 so the judges are aware of all the names that may appear
17 in the record?

18 A Of course. My wife's name is Yeva Shabsis. It's
19 Y-e-v-a S-h-a-b, as boy, s-i-s.

20 Q What kind of business was West Coast Storm
21 involved in?

22 A Originally, before our involvement, it was a
23 construction clean-up company. When we became involved it
24 was doing hazardous waste cleanup primarily for
25 governmental agencies. Early 2008 it was the winning

1 bidder for a storm drain retrofit project under
2 Proposition O for the City of Los Angeles. And
3 thereafter, it started doing more of the storm drain
4 retrofit projects for various municipalities throughout
5 the United States.

6 Q After your wife's and your investment in the
7 company, what was the ownership structure? Who were the
8 owners the company?

9 A Immediately after, it was owned -- well, for
10 practical purposes, it was owned 25 percent by Ralph and
11 Michelle Padilla who were the operating partners. It was
12 owned 25 percent by my law partner Renata Salo, 25 percent
13 by a woman by the name of Irina Katz, K-a-t-z, and by --
14 and the other 25 percent was by Yeva Shabsis, my wife.

15 Q And what was the management structure of West
16 Coast Storm at that time?

17 A West Coast Storm had two officers. It had a
18 chief executive officer who was Ralph Padilla. It had a
19 president who was Michelle Padilla, and it had a board of
20 directors that was functioning as the board of directors.

21 Q What functions of the business was Ralph Padilla
22 responsible for?

23 A Ralph Padilla was in charge of the operational
24 side of the business. So basically, anything that's out
25 of the office, ordering supplies, making product, hiring

1 people that are out in the installation field, designing
2 the devices, making sure devices were manufactured,
3 obtaining contracts, executing contracts, installing
4 contractors, installing the products, buying the equipment
5 that is necessary for it, things like that.

6 Q And who was responsible for the financial side of
7 the business?

8 A Michelle Padilla was in charge of everything that
9 was office related. She was in charge of all the
10 administrative staff.

11 Q And who was responsible for payment of the
12 invoices, suppliers, vendors?

13 A Responsibility was with Michelle Padilla, but
14 there were other people within the San Bernardino office
15 who were able to authorize payments, depending on the type
16 of a payment it was.

17 Q Do you know who these people were?

18 A I did. I don't remember right now. I know there
19 was a woman by the name of Mary who was Michelle's mother.
20 There was a woman by the same of Sarah. Her last name was
21 Moore, M-o-o-r-e. She was a sister of Michelle Padilla.
22 There was a gentleman by the name of Brian Swanson who was
23 dating Sarah Moore, who was the sister of Michelle
24 Padilla. And I think there was somebody by the last
25 name -- with the last name, if my memory serves me

1 correctly -- of Cruz, who was a dispatch supervisor who
2 could authorize what were called -- I -- I really have
3 very little knowledge of it, but I think he was authorized
4 to pay what were called per diem charges. So if Cruz was
5 asked to pay something or another, I think he had a
6 certain amount of authority.

7 Q And would these individuals report to Ralph or
8 Michelle Padilla?

9 A I don't know exactly. I know that Michelle
10 Padilla was in charge of administrative staff. So I
11 imagine Mary and Sarah would report to her. I would
12 imagine Mr. Cruz and Mr. Swanson would report to Ralph.

13 Q And who had authority on the bank account?

14 A After this process was started, I actually saw
15 the signature cards for the first time. It was Ralph
16 Padilla and Michelle Padilla who were signatories on the
17 bank accounts and had that authority.

18 Q In the management of West Coast Storm, who was
19 responsible for the tax matters? Who was responsible for
20 the tax return preparation and filing?

21 A A gentleman by the name of Robert Bianchi.
22 Mr. Bianchi acted as a chief financial officer. He was
23 paid a monthly salary to do that. He actually put his
24 staff member into West Coast Storm's office, and he would
25 come to West Coast Storm office to do it. He would

1 prepare the tax return, prepare the tax -- the sales tax
2 position transmitted for a -- I believe Michelle Padilla
3 to execute the tax return.

4 Q Who would be responsible for the reviewing of the
5 tax returns on behalf of West Coast Storm before filing?

6 A It would be Robert Bianchi. It would be Michelle
7 Padilla.

8 Q Who would be responsible for payment of the
9 increment sales taxes on behalf of West Coast Storm?

10 A My understanding -- I was not involved in that.
11 But my understanding is that Mr. Bianchi's office would
12 initiate the payment and Mrs. Padilla would have to
13 authorize the payment.

14 Q Mr. Treyzon, would you please explain your role
15 in the company from the time that you and your wife
16 invested in it until the end of April of 2012?

17 A Of course. We acted primarily as investors. At
18 certain times during contracts, legal issues arose, then
19 we acted as counsel. Well, I acted as counsel for the
20 company. There were frequent and common disputes with the
21 City of Los Angeles as to the invoicing and payment of the
22 invoicing. I don't believe I did, but I believe my wife
23 acted as a guarantor for a line of credit that a banking
24 institution extended to West Coast Storm.

25 And starting in 2012, I interacted trying to

1 direct -- resolve the sales tax issue and trying to make
2 sure that all of the accounts receivable were directed to
3 the State of California to satisfy the sales tax liability
4 through whether accounts receivable or through
5 liquidations of assets.

6 Q And can you, one more time, specify when this was
7 happening, the liquidation of assets and --

8 A Liquidation of assets started in 2012 as soon as
9 we learned of the liability. They included accounts
10 receivable. They included disposition of certain assets.
11 The remainder of the assets were taken by Mr. Padilla.
12 There was litigation with the city over acceleration of
13 payments. And I think once the payments were made, I
14 think those were processed to the State, as I recall.

15 Q And who would be responsible for when you testify
16 that you tried to direct liquidation of these assets and
17 some of the accounts receivable towards payment of taxes,
18 who would be responsible to make these payments?

19 A Well, I guess frankly the State was because it
20 placed liens on everything. So we did not object -- and
21 by saying we, West Coast Storm, did not object for the
22 liens to be directed to the State in satisfaction of the
23 obligation.

24 Q Did Mr. And Mrs. Padilla still have signature
25 authority on the bank accounts at that time?

1 A Yes.

2 Q Did they sign any checks at that time, we'll say
3 from April 2012 until December 2012?

4 A I believe so, yes.

5 Q Did you have signature authority after
6 April 25, 2012?

7 A I never had signature authority.

8 Q So now let's talk about your role since
9 April 25, 2012, when the Secretary of State documents
10 reflected you as the CFO --

11 A Acting CFO.

12 Q -- and you mentioned that you were named as an
13 acting CFO, can you please describe the process of you
14 being appointed as an acting CFO, and what role it
15 involved?

16 A Of course. I believe I received a phone call
17 from I think it was Ralph Padilla, who said that there was
18 a Notice of Levy issued and their accounts were frozen,
19 that the -- that none of our customers would issue
20 payments. I think there was an access of 20 notices of
21 levies sent to various customers. And he provided me with
22 a phone number for the State's sales tax office agent in
23 charge of collections.

24 When I received that number, I called the agent.
25 I know at some point I actually drove to the office

1 because I remember meeting with that agent in person. I
2 was told that I cannot communicate with the agent to try
3 to get to the bottom of it because I have no position
4 within the company. I'm not an officer. I'm not an
5 employee. I explained to him I can act as an attorney. I
6 was told no, you need to be an officer in order to do
7 this.

8 So at that point the board of directors appointed
9 me as acting chief financial officer for the purposes of
10 having communications with the Department, and a form was
11 filed to reflect it. I believe it was done the same day
12 as the Notice of Levy was issued.

13 Q By the form, do you mean power of attorney to act
14 for sales tax matters?

15 A No. What I believe was filed was a Statement of
16 Information with the State of California listing me as an
17 acting chief financial officer. And I think the
18 Department accepted that as satisfactory.

19 Q In your testimony, was your role as an acting
20 CFO, did it go beyond representing West Coast Storm in the
21 sales tax audit and post-audit tax matters?

22 A It did not.

23 Q Can you please describe what you learned in
24 April 2012 and subsequent about the audit that was
25 happening before that, and who was handling the audit

1 before your involvement?

2 A Of course. I learned, I believe during my first
3 meeting, that the sales tax Department has made 11
4 separate attempts to contact Mr. Bianchi for a sales tax
5 issues and audit. I was told that there were several
6 field audits that Mr. Bianchi simply did not show up for.
7 I learned that -- that part of this the assessment was not
8 because a sales tax was necessarily owed but because
9 paperwork was simply not submitted. And my recollection
10 is that the State at several times had to guesstimate what
11 the sales tax liability would be. And all of that I
12 learned for the first time when I spoke to the Department.

13 Q Up until the moment that you became involved in
14 this matter in April 2012, has Mr. Bianchi given you, your
15 wife, or other shareholders any assurances about the sales
16 tax liability or how much West Coast Storm would owe?

17 A Before and after there were several instances
18 that we received assurances that everything was fine with
19 the sales tax liabilities. And this was to quote
20 Mr. Bianchi, "bureaucratic snafu." There was a time where
21 Mr. Bianchi filed a -- for a -- some sort of letter of
22 decision arguing that sales tax was not, in fact, owed and
23 West Coast Storm was entitled to a refund. I was made
24 aware of that.

25 But most importantly, I was told that even such

1 things as the variances of the tax rates, because that was
2 the time when the State of California was changing the
3 sales tax rates, and there was a discrepancy between when
4 the invoice was paid and when the invoice was generated as
5 to which rate applied. I was assured that even that was
6 worked out already.

7 Q What was the end result of your involvement as
8 far as it involves a relationship with Mr. Bianchi?

9 A At some point we actively considered a
10 malpractice action against Mr. Bianchi. But then we
11 received information that it would be a futile effort due
12 to the lack of assets to satisfy the liability. His
13 actions resulted in a shutdown of what otherwise would
14 have been a successful flourishing company, and it
15 resulted in doom and destruction is the best way I can
16 describe it.

17 THE STENOGRAPHER: I'm sorry. Please repeat
18 that.

19 MR. TREYZON: Doom and destruction. I mean,
20 that's the best way I can describe it.

21 BY MR. DRABKIN:

22 Q Mr. Treyzon, during the years at issue 2009, '10,
23 '11, the records show that you received a salary from West
24 Coast Storm. Can you please explain what the salary was
25 for? Was it for any services rendered to West Coast

1 Storm?

2 A No it was not. We received -- prior to that,
3 each of the shareholder received a dividend distribution
4 on a regular basis. Mr. Bianchi took a position that IRS
5 frowned on that method of payment, and it would be better
6 to process it as payroll. So I'm not quite sure why it
7 was issued in my name. It should have been issued in my
8 wife's name. I didn't even know because it was just being
9 directly deposited.

10 But what happened was each of the shareholders
11 received a \$20,000 payment. I believe it was per month.
12 In addition to that, Ralph Padilla and Michelle Padilla
13 received a separate salary that was for their work that
14 they were actually doing. So the \$20,000 represented
15 straight dividend for the profit that we believed was
16 being made by West Coast Storm.

17 Q Did you conduct any -- or have you conducted any
18 legal work for West Coast Storm in your capacity as a
19 lawyer?

20 A Yes.

21 Q And what did you and your firm do for West Coast
22 Storm in that capacity?

23 A Our representation dealt with primarily three
24 different lines. One, that was government compliance,
25 which my partner Renata Salo primarily handled, and that's

1 interaction between various government entities as far as
2 contract administration and awards. We did collection
3 work, and that is when a customer would not pay the
4 invoice when it was due or within its terms. That would
5 be legal work to do that.

6 And the third would be dealing with various -- I
7 would call them sundry issues pertaining to owning a
8 company. If we were sued for something, if a lease was
9 being signed, if there was an employment labor dispute,
10 our firm would act as counsel, and we separately provided
11 invoices for that.

12 Q Was your firm paid by West Coast Storm for legal
13 work?

14 A Yes.

15 Q It was separate from any dividends or any
16 compensation or anything in the capacity as a shareholder?
17 It was specifically for that legal work?

18 A Yes.

19 Q Can I please turn your attention to CDTFA
20 Department's exhibits, and I would like you to look at
21 Exhibit Q, please.

22 A I'm there.

23 Q Do you recognize printouts of emails in this
24 exhibit? Some of them contains your email address,
25 apparently.

1 A I'm not seeing my email address. Oh, I'm sorry.
2 I didn't realize how big it was. Hold on a second. I see
3 what appears to be directed to my email address.

4 Q For example, page 4 of 85.

5 A Okay. I'm there. Yeah, I see -- yeah.

6 Q So when you interacted by email with Michelle
7 Padilla or the bank, what capacity did you interact in?
8 What was your role in that?

9 A If I remember, this is 2009. So we were dealing
10 with the issue of varying tax rates. Because what would
11 happen, according to the contract, West Coast Storm was
12 supposed to be paid by the City of Los Angeles at that
13 point that storm drains were installed. But when the City
14 of Los Angeles was taking the position that payment is due
15 once they were installed and they accepted the
16 installation.

17 Normally, that would be a 10 to 15-day period.
18 The problem is that the City of Los Angeles was not
19 complying with that 10 to 15-day period, and they were
20 stretching it out as far out as -- I think the most
21 extreme examples was two years for the inspection. So
22 what happened with that is there was one tax -- sales tax
23 rate that was applicable at the time the drain was
24 installed, but at the time it wasn't paid a different tax
25 rate was applicable because the State of California was

1 raising tax rates incrementally.

2 There was a temporary sales tax increase, then
3 there was a permanent sales tax increase. And we were
4 trying to reconcile with the City of Los Angeles based on
5 our contract agreements. What is the appropriate rate
6 that was supposed to have been charged and paid by the
7 city based on what was applicable to the State of
8 California.

9 Q In these interactions with Michelle Padilla or
10 with Mr. Bianchi's office, did you exercise any authority
11 to issue any sales tax payments?

12 A No. I was simply providing my opinions as to
13 what was legally cognizable under the contract.

14 Q So you would consider it as legal work?

15 A I would consider it legal work.

16 Q Can you please turn your attention within the
17 same exhibit. It's on the bottom right-hand corner it
18 says, "Exhibit 11, page 5 of 85, 6 of 85, 7 of 85."

19 A I'm sorry. Give me the number again.

20 Q It's "Funds Transfer Agreement."

21 A You said number 5?

22 Q Yes, I think you have it open. No, no. It's
23 Exhibit Q, page 5.

24 A I apologize. Sorry. Got it.

25 Q Do you recognize this document?

1 JUDGE WONG: Mr. Drabkin, which exhibit are you
2 referring to?

3 MR. DRABKIN: I'm referring to Department's
4 Exhibit Q. And within this exhibit, the pages are stamped
5 with numbers, and I'm referring to pages 5 through 10.
6 It's a funds transfer agreement from First Bank.

7 JUDGE WONG: Thank you.

8 MR. TREYZON: I see it. I'm not familiar with
9 the document. I don't think that's my signature.

10 BY MR. DRABKIN:

11 Q Mr. Treyzon, if you look at page 9, Appendix A,
12 Authorized Persons.

13 A I see.

14 Q Do you see your name there?

15 A I do see my name on there.

16 Q Do you remember signing this form?

17 A No.

18 Q Do you recognize this form?

19 A I do not recognize this form.

20 Q Thank you. Can I please turn your attention to
21 the next binder Petitioner's exhibit or Appellant's
22 Exhibits 1 through 38?

23 A Yes. Which exhibit number?

24 Q Can you please look at Exhibit Number 1?

25 A Of course.

1 Q It is Form 1120S, U.S. income tax return for
2 2008?

3 A Okay.

4 Q Do you remember signing this form?

5 A A tax return?

6 Q Yes.

7 A No.

8 Q Do you remember reviewing this form?

9 A I don't know the answer to that question to the
10 extent that there was a K-1 that would come to me that
11 would affect my wife's personal tax return. I may have.
12 I apologize. Let me move this closer. I'm sorry.

13 To the extent that there was a K-1 issued, based
14 on that tax return, that would come to me or my wife to
15 include in our tax return, then I may have. But I have no
16 recollection doing it otherwise.

17 Q Let me be more specific with my question. Do you
18 remember or recognize reviewing this return before it was
19 filed?

20 A No.

21 Q And I have the same question about Exhibits 2, 3,
22 and 4?

23 A Give me just one second, please.

24 Q And 5.

25 A I believe my answer would be exactly the same. I

1 do not recall reviewing it prior to it being filed to the
2 extent that there was a K-1 that would be included in mine
3 and my wife's personal tax returns. I may have reviewed
4 that.

5 Q Can you now please take a look at the Exhibits 6,
6 7, and 8. I'm sorry, 6 and 7. These are sales tax
7 returns. Do you remember reviewing these tax returns
8 before they were filed by West Coast Storm?

9 A I definitely do not remember reviewing them
10 before they were filed. I know that one of the documents
11 has handwriting on it. It says amended, and I do not
12 recall reviewing that either.

13 Q Thank you. And Mr. Treyzon, as my last question,
14 can you please briefly describe your relationship with
15 Ralph and Michelle Padilla after you became involved in
16 April of 2012?

17 A Well, in April of 2012, I would say it was a
18 sense of bewilderments because -- I guess I would say the
19 question was what happened? As the scope and the extent
20 of the situation became known, we started diverging in our
21 beliefs. My belief and my partner Renata Salo's belief
22 was above all, the sales tax liability has to be
23 satisfied. It's considered a trust account liability, and
24 that takes paramount importance, especially to lawyers
25 dealing with trust accounts.

1 Mr. Padilla wanted to -- was afraid that this --
2 basically this was one shot at a successful company. So
3 there was a period of time where some of the assets of
4 West Coast Storm were taken for him to start a new
5 company, and he -- after the West Coast Storm was shut
6 down in December of 2012, he did start that new company.

7 Mr. Martello followed him to the new company.
8 Mr. Swanson did. Michelle did. Sarah did. And I'm not
9 sure some other employees did. But after that our
10 relationship became adverse. Let's call it that.

11 Q Did Mr. and Mrs. Padilla initiate, or did you
12 initiate any legal action? Were there any legal actions
13 between and you the Padillas?

14 A No. We chose not to sue the Padillas. We
15 believe that this was Mr. Bianchi's doing. I don't -- we
16 didn't believe they knew about it. It wasn't malicious.

17 JUDGE LAMBERT: Mr. Treyzon, it would be helpful
18 if you could just get a little closer so we can hear you
19 better.

20 MR. TREYZON: Of course.

21 JUDGE LAMBERT: Thanks.

22 MR. TREYZON: We did not believe that what
23 happened with the sales tax was malicious on the part of
24 the Padillas. We thought they were misled by Mr. Bianchi.
25 We weren't very happy with the taking of some of the

1 equipment and starting a different company. Since then,
2 we have been defendants in actions brought on by various
3 vendors who didn't get paid because the money went to the
4 State to satisfy the sales tax liability.

5 But I believe my last interaction with
6 Mr. Padilla would have been shortly after December of
7 2012. He did reach out to me a couple of times since
8 then, but I did not engage in discussion.

9 Q Thank you. And it was not my last question.
10 Here's my last question. Can you please take a look at
11 the exhibit that was marked as Exhibit 38, which you gave
12 me earlier today. And can you please describe for the
13 Court -- for the Administrative Panel what this document
14 is, and what, in your opinion, it shows?

15 A Sure. So this document was a Notice of Ruling in
16 a minute order from a case that was brought on by one of
17 the creditors of West Coast Storm. And that particular
18 creditor was a funding company who had personal guarantees
19 from my wife, Ms. Salo, Mr. Katz, and the Padillas. And
20 Mr. Katz chose to name me as a cross-defendant, and the
21 court ruled that I had no involvement with operations of
22 the company, that I had no contractual obligation for
23 indemnity or indemnification, and the Court dismissed the
24 action against me on the first day of trial.

25 MR. DRABKIN: Thank you. I have no further

1 questions.

2 JUDGE LAMBERT: We can proceed to your next
3 witness?

4 MR. DRABKIN: We can.

5 JUDGE LAMBERT: Okay. And I think there's about
6 15 minutes left. So --

7 MR. DRABKIN: That should be sufficient.

8 JUDGE LAMBERT: Okay.

9 MR. DRABKIN: I would like to call Ms. Renata
10 Salo, please.

11 JUDGE LAMBERT: Okay. Thank you.

12 Ms. Salo, thanks. And could you please raise
13 your right hand.

14

15 R. SALO,

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

19

20 JUDGE LAMBERT: Thank you.

21 MS. SALO: Good afternoon.

22

23 DIRECT EXAMINATION

24 BY MR. DRABKIN:

25 Q Ms. Salo, would you please tell us what do you

1 do?

2 A I'm a litigating attorney.

3 Q What firm do you work for?

4 A I work for Abir Cohen Treyzon and Salo, LLP, and
5 we are in Encino, California.

6 Q It would be fair to say that you're a partner of
7 Mr. Treyzon?

8 A Yes.

9 Q What was your involvement with West Coast Storm
10 company?

11 A I was an investor in West Coast Storm, and I did
12 do some legal work for them when it was necessary.

13 Q Are you familiar with the ownership and
14 management structure of West Coast Storm?

15 A Somewhat.

16 Q During the period of 2009 through 2012, do you
17 remember who were the officers of West Coast Storm?

18 A Ralph Padilla and Michelle Padilla were the
19 officers of West Coast Storm.

20 Q And who was responsible for the financial
21 management of West Coast Storm?

22 A I believe that was Michelle Padilla with guidance
23 of Robert Bianchi who was the CPA.

24 Q Who would be responsible for the preparation in
25 filing of West Coast Storm tax returns?

1 A Robert Bianchi would be filing and preparing the
2 tax returns.

3 Q Whose responsibility would it be to review the
4 financial reports of West Coast Storm?

5 A That would be Michelle Padilla.

6 Q Who be responsible for payment of taxes for West
7 Coast Storm?

8 A I believe that Mr. Bianchi would tell Michelle
9 Padilla what to pay. Or are you asking for who would
10 issue the checks?

11 Q Who would issue the payments?

12 A Michelle Padilla would issue the payments.

13 Q Who would issue the payment to other vendors,
14 creditors? Who was responsible for issuing any kind of
15 payments?

16 A Are you asking about writing up the checks?
17 Michelle Padilla would authorize all payments to vendors
18 on a day-to-day basis with Mr. Bianchi, and I believe that
19 Mr. Bianchi would generate the checks. I'm not quite
20 sure. I know that Mrs. Padilla was in charge of all the
21 financial agreements for payment.

22 Q What were your responsibilities within the
23 company?

24 A I was an investor mostly. If there was a legal
25 matter, like a review of a contract, for any kind of a

1 contract, that they needed to sign, I would review that.
2 I would do some compliance with contractual issues that
3 they had with vendors and with people that hired the
4 company to do work for them.

5 Q And what was Boris Treyzon's role in the company?

6 A He would be -- he would litigate anything that if
7 there was any lawsuits that were filed. If there was any
8 legal issues that they had -- that the company had, he
9 would be primarily the one that would be involved with
10 that.

11 Q Has Mr. Treyzon's role in the company changed
12 after April 25, 2012?

13 A Yes, it did.

14 Q How did it change?

15 A He became an acting CFO.

16 Q And what did this position encompass?

17 A It's my recollection that in 2012 Ralph Padilla
18 either called us -- or I don't remember if I got the news
19 from Mr. Treyzon. I believe it was Mr. Padilla that told
20 us that the accounts of West Coast Storm were frozen and
21 that there was a sales tax issue. At that point, Boris
22 Treyzon wanted to get involved to see what was going on
23 and what was happening, why we had the liens at all.

24 It's my understanding and I know testimony has
25 been given, that he went and he tried to find out why we

1 had the liens on West Coast Storm. And he was not allowed
2 to either obtain the information, or he was not allowed to
3 speak on behalf of West Coast Storm for the information,
4 and he needed to become part of -- he needed to become an
5 active CFO to get any information on the liens. And then
6 it is when his relationship with West Coast Storm changed
7 where he became a CFO, and he just tried to see what was
8 going on and how to get these paid.

9 Q And who was handling the sales tax audit before
10 that time?

11 A Robert Bianchi had been handling it.

12 Q To the best of your recollection one more time,
13 who had the signature authority on the bank accounts of
14 West Coast Storm?

15 A Michelle Padilla had the signatory authority for
16 the West Coast Storm. I also believe Ralph Padilla did.

17 MR. DRABKIN: No further. Questions thank you.

18 MS. SALO: Thank you.

19 MR. DRABKIN: We would like to call Irina Siegel
20 to the stand now.

21 JUDGE LAMBERT: Okay. Thank you, Ms. Salo.

22 MS. SALO: Thank you.

23 JUDGE LAMBERT: And, Ms. Siegel, thank you. And
24 could you please raise your right hand.

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I. SIEGEL,

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

JUDGE LAMBERT: Thank you.

DIRECT EXAMINATION

BY MR. DRABKIN:

Q Thank you, Ms. Siegel, for agreeing to testify today. Can you please describe what is your profession? What do you?

A I'm a bookkeeper.

Q And what was your involvement with the company called West Coast Storm?

A I was hired by Robert Bianchi who was an accountant for Michelle and Ralph Padilla to do accounts payable for West Coast Storm.

Q Were you paid by Mr. Bianchi's office or by West Coast Storm?

A By West Coast Storm.

Q Did you work full time as West Coast Storm's bookkeeper?

A Not in the beginning but then yes.

Q And what were your responsibilities?

1 A I was paying the bills. I would receive the
2 bills for West Coast Storm office approved by Michelle or
3 Mary. And I have to pay the bills, and they are approved
4 by West Coast Storm office.

5 Q So who are your point of contacts on the West
6 Coast Storm side?

7 A I'm sorry?

8 Q Who did you communicate with from West Coast
9 Storm?

10 A With Michelle, Mary, and Michelle's sister from
11 West Coast Storm.

12 Q Who would authorize payments of accounts payable
13 on behalf of West Coast Storm?

14 A Michelle Padilla, Mary, or I would receive the
15 bills with their signature, and would be allowed to pay
16 bills only if I had their signature.

17 Q It would be Michelle's or Mary's signature?

18 A Yes. Most of the time Michelle's.

19 Q Are you -- and what were your interactions with
20 Mr. Treyzon from 2009 through 2012?

21 A Not much interaction.

22 Q Did Mr. Treyzon authorize any payments on behalf
23 of West Coast Storm?

24 A No.

25 Q Did Treyzon sign any checks on behalf of West

1 Coast Storm?

2 A No. I had a stamp with Michelle's signature, so
3 I was the only one who signed the checks.

4 Q Would you need Michelle's approval before using
5 the stamp?

6 A Yes.

7 Q Do you know who was responsible for the
8 preparation of tax returns for West Coast Storm?

9 A I believe Robert Bianchi.

10 Q Did you issue any reports to Mr. Bianchi?

11 A No.

12 Q Did he review anything from your computer or
13 from --

14 A Yes.

15 Q Did he have access to your computer?

16 A Yes, they had an access to the computer.

17 Q Did Mr. Treyzon have access to the checks?

18 A No.

19 MR. DRABKIN: I have no further questions.

20 JUDGE LAMBERT: Thank you, Ms. Siegel.

21 MR. DRABKIN: Thank you.

22 JUDGE LAMBERT: And after your presentation is
23 completed, you'll have five minutes, for when they can
24 stay and then if we have any more questions for them. We
25 appreciate it.

1 MR. DRABKIN: Thank you.

2 JUDGE LAMBERT: Thanks. Does that complete your
3 presentation?

4 MR. DRABKIN: It does.

5 JUDGE LAMBERT: Okay. Then we'll take a
6 five-minute break and go off the record. And when we come
7 back, CDTFA can ask questions, and the Panel as well.
8 Thanks.

9 MR. DRABKIN: Thank you.

10 (There is a pause in the proceedings.)

11 JUDGE LAMBERT: Okay. We can go back on the
12 record, if everyone is ready.

13 Ms. Jacobs, did you have any questions for the
14 witnesses?

15 MS. JACOBS: No questions. Thank you.

16 JUDGE LAMBERT: Okay. Thanks.

17 And I'll turn to the Panel and ask if they have
18 any questions for the witnesses or Mr. Drabkin.

19 Judge Wong, do you do you have any questions?

20 JUDGE WONG: I do have some questions. The first
21 question is actually for Mr. Drabkin. There's some
22 confusion as to the name of one of those witnesses.
23 Originally it was --

24 MR. DRABKIN: Yes, Your Honor, let me clarify.
25 It was my mistake throughout my filings. I referred to

1 Irina Siegel who testified today as Irina Katz. It was my
2 mix up of the last name. I assumed that the bookkeeper's
3 name was Irina Katz, where it was Irina Siegel. These are
4 two separate people.

5 JUDGE WONG: Got it. Okay. Thank you.

6 I have some questions for Mr. Treyzon. So do you
7 dispute that you had an ownership interest in West Coast
8 Storm through your wife, through community property law?

9 MR. TREYZON: I do not. I believe we did.

10 JUDGE WONG: Okay. Thank you. And you had
11 mentioned that you went to, around April 2012, you went to
12 find out about a lien that had been placed. You went to
13 the district office to inquire. And then they had told
14 you that you needed to be either an employee or an officer
15 of West Coast Storm before you could receive information;
16 is that correct?

17 MR. TREYZON: I do not remember them telling me I
18 had to be an employee. I remember them telling me I had
19 to be a dully authorized officer of West Coast Storm, and
20 they couldn't release information without it.

21 JUDGE WONG: So not even if you had signed, like,
22 a power of attorney, like, representing in the capacity as
23 an attorney?

24 MR. TREYZON: That was not an option that was
25 given. They knew I was an attorney. I represented myself

1 as an attorney. They said no. In order to talk to you,
2 we need you to be an officer.

3 JUDGE WONG: Okay. And which office was that.
4 Just curious.

5 MR. TREYZON: I do not remember. I remember
6 there were a lot of cubicles in it, and that particular
7 cubical was against the window. And the gentleman's name
8 I thought was Scott. That's the best I remember.

9 JUDGE WONG: Okay. And you had mentioned -- you
10 did legal work prior to becoming acting CFO. You had done
11 legal work for West Coast Storm; is that correct?

12 MR. TREYZON: Yes.

13 JUDGE WONG: Was that through -- were you an
14 inside counsel, or is that through your law firm?

15 MR. TREYZON: Through my law firm.

16 JUDGE WONG: Did you bill them -- bill West Coast
17 Storm for your services?

18 MR. TREYZON: We did, including cost.

19 JUDGE WONG: Were there any invoices from the
20 liability period to support that relationship as an
21 outside counsel?

22 MR. TREYZON: As a general matter, yes. I mean,
23 given the time -- passage of time, I don't think we would
24 have them anymore. But as a practical matter I believe
25 there would be.

1 JUDGE WONG: Okay. Thank you. And who hired
2 Mr. Bianchi in the beginning? It's like he started as a
3 CPA firm for West Coast Storm in 2007; is that correct?

4 MR. DRABKIN: No. He was a personal CPA for
5 Mr. Boris and Irina Katz, they were one of the owners, and
6 also for Ralph and Michelle Padilla. So they brought him
7 in actually, and Ms. Salo's and my suggestion was we
8 wanted somebody else.

9 JUDGE WONG: Okay. And he directly reported to
10 whom at West Coast Storm?

11 MR. TREYZON: He -- I guess it would be Michelle
12 Padilla.

13 JUDGE WONG: Okay. Thank you. Those are all the
14 questions I had at this time.

15 MR. TREYZON: Thank you.

16 JUDGE LAMBERT: Judge Brown, did you have any
17 questions.

18 JUDGE BROWN: Yes, I may have a question or two.
19 If I can just pick up on the same topic.

20 Mr. Treyzon, when you said Mr. Bianchi, you
21 believe he reported to Mrs. Padilla at West Coast Storm.
22 Do you know how it was that Mr. Bianchi left employment at
23 West Coast Storm?

24 MR. TREYZON: Yes. After the full scope of his
25 actions became known, we brought in a different CPA. So

1 his payments were discontinued. And my best recollection
2 is that a gentleman by the name of David Nadell who is a
3 different CPA came in to try to make sense of this.

4 JUDGE BROWN: And this was after you became
5 acting CFO?

6 MR. TREYZON: Substantially after. There was a
7 time period where Mr. Bianchi came and performed some sort
8 of audit-like proceeding. I have a recollection of that
9 because he explained to me and to several other people
10 that this was a bureaucratic mistake, that there's no
11 issue, that everything is correct, and everything was paid
12 for. And when that went through and it became obvious it
13 was a lot more than a bureaucratic mistake, it was a
14 wholesale failure to do what he was supposed to do, that
15 he was no longer with West Coast Storm.

16 JUDGE BROWN: I wanted to ask about an exhibit.
17 I'm just not sure how to find it. It's Exhibit A of the
18 CDTFA's exhibits. It's the Appeals Bureau decision. So
19 it would be also in Appellant's files as well. Although,
20 I don't think it's not in Appellant's exhibit.

21 MR. DRABKIN: Your Honor, I have something else
22 marked as Exhibit A from the Department. It's I think
23 notes of --

24 MS. JACOBS: We have Exhibit A and Exhibit AA. I
25 think that's what you see.

1 JUDGE BROWN: It's the appeals exhibit that was
2 attached to -- appeals decision that was attached to -- it
3 was in everybody's briefings. So if you have it handy, it
4 is in your briefing.

5 MR. DRABKIN: I do not I apologize.

6 JUDGE BROWN: Okay. Let me see if I can -- then
7 it would be Exhibit A, not Exhibit AA. The very first
8 exhibit of CDTFA's Exhibits.

9 MR. DRABKIN: To the best of my recollection,
10 Your Honor, in the last email exchange maybe it was not
11 part of what the Department sent us.

12 MR. TREYZON: If somebody has a copy, maybe I can
13 just look at it?

14 JUDGE BROWN: Oh, okay. I want to ask about an
15 ACMS note that's attached to the exhibit.

16 MS. JACOBS: Those exhibits and the exhibits to
17 the decision --

18 JUDGE BROWN: Yes.

19 MS. JACOBS: -- are also attached separately. So
20 if you tell me the note, I could probably find the
21 resubmission of that exhibit.

22 JUDGE BROWN: It's Exhibit 3 to the appeal's
23 decision. It's -- how about this. I'll just read it.

24 MR. TREYZON: Yeah.

25 MS. JACOBS: It's Exhibit I. Exhibit I.

1 JUDGE BROWN: Oh, is it. Okay. Yeah. It's also
2 CDTFA's Exhibit I.

3 MR. TREYZON: Okay.

4 JUDGE BROWN: All right. Mr. Treyzon, so these
5 aren't -- this isn't an exhibit. It's an entry by what
6 was then -- by a CDTFA employee that you spoke to on the
7 phone reportedly. It's dated April 17th, 2015.

8 MR. TREYZON: I see it.

9 JUDGE BROWN: Okay. And you can see the notes
10 there --

11 MR. TREYZON: I can.

12 JUDGE BROWN: -- where it says, "Called and spoke
13 to Mr. Treyzon. Per Mr. Treyzon, he joined West Coast
14 Storm in 2007."

15 MR. TREYZON: I see that.

16 JUDGE BROWN: Okay. Do you have any recollection
17 of this conversation, first?

18 MR. TREYZON: I do not.

19 JUDGE BROWN: Okay. So would you have any reason
20 to know why the CDTFA employee noted that you joined West
21 Coast Storm in 2007?

22 MR. TREYZON: My -- the closest I could tell you
23 is probably when my wife became a shareholder, and the
24 question was when did you become -- by you, probably my
25 family -- become part of West Coast Storm. And just like

1 Judge Wong asked, I do not dispute that as community
2 property we started owning it in 2007.

3 JUDGE BROWN: Okay. I was also going to ask --
4 I'm done about my question about that document. I was
5 going to ask also, you mentioned in your testimony and you
6 also indicated in a declaration that you signed, that you
7 placed -- that you placed Mr. Bianchi on notice of a
8 malpractice claim.

9 MR. TREYZON: Correct.

10 JUDGE BROWN: I understand you explained why you
11 didn't pursue any malpractice against him. But I was
12 going to ask what did you mean by that placed him on
13 notice of a malpractice claim?

14 MR. TREYZON: That's a nice way of telling me,
15 that I picked up the phone and I called him, that I think
16 he -- I probably used more colorful language -- but I
17 think he made grievous mistakes that resulted in a
18 destruction of a viable business. And I felt that it
19 would be the right thing for him to do to put his
20 malpractice carrier on notice because I thought he had
21 significant liability.

22 JUDGE BROWN: But so, you're talking about a
23 phone conversation, not any sort of formal like a demand
24 letter or something like that?

25 MR. TREYZON: There may have been a writing. It

1 could have been a text. It could have been a letter. It
2 could have been this. To be honest, Your Honor, I do not
3 remember right now. I remember what precipitated it, and
4 that's when I spoke to somebody at the Department and
5 said, look, the guy missed eleven appointments. And I
6 just -- I flipped out. I said how do you miss eleven
7 appointments?

8 JUDGE BROWN: That's all I have right now. Thank
9 you.

10 MR. TREYZON: Thank you, Your Honor.

11 JUDGE LAMBERT: Thank you.

12 And I think Judge Wong had another question.

13 JUDGE WONG: Yes, thank you.

14 This relates to CDTFA's Exhibit DD. It's titled
15 "Declaration of Boris Treyzon dated May 24, 2018."

16 MR. TREYZON: I have it in front of me.

17 JUDGE WONG: Okay. And you drafted and signed
18 this; is that correct, Mr. Treyzon?

19 MR. TREYZON: I don't recall specifically if I'm
20 the one who drafted it, but I believe so. It sounds like
21 my language.

22 JUDGE WONG: Okay. My question is with regards
23 to page 2 at the top, and it starts near the end of the
24 third line. I'm just going to read it. It says,
25 "Reporting of taxable sales went from Michelle Padilla to

1 Robert Bianchi. My sole interaction on that was
2 secondary, namely to make sure that customers paid money
3 owed to WCS. At all times I was assured by Robert Bianchi
4 that WCS sales tax returns were accurate and all sales tax
5 liability due was paid."

6 I just want you to address where you mention that
7 your interaction with respect reporting of taxable sales
8 was secondary. Could you explain that?

9 MR. TREYZON: Of course. If you recall, Your
10 Honor --

11 JUDGE WONG: Could you pull the mic, please.

12 MR. TREYZON: Of course.

13 JUDGE WONG: Thank you.

14 MR. TREYZON: I'm trying to navigate the binders.

15 JUDGE WONG: Sure. Yeah.

16 MR. TREYZON: Yeah. If you recall that in my
17 testimony, I stated that there was a delay in payment
18 which effected how the sales tax was being calculated.
19 Part of what I did in my legal capacity, I was always
20 trying to understand what was the correlation between the
21 date paid, the date installed, the applicable tax rate.
22 Because I had a legal officer on the other side of the
23 City of Los Angeles that -- the city attorney's office
24 that were constantly, I guess, squabbling over.

25 Because we were saying, look, at the time we

1 installed, the rate was 7 percent. Then there was an
2 increase at 7 and a quarter, and then it went to 7 and a
3 half. You guys are paying at 7, right, but the
4 appropriate rate should have been at 7 and a half based on
5 our contract because of the date of installation and date
6 of inspection.

7 There's something called a green book that
8 applies to the city contracting. And you're paying a
9 7 percent rate, but you should be paying a higher rate
10 because there's a different tax that's due because you
11 delayed the inspection. That's what I meant, secondary
12 and corresponding with invoices.

13 JUDGE WONG: Just a similar question with respect
14 to that last line when Mr. Bianchi was assuring you with
15 respect to accurate reporting and that all sales tax that
16 was due was paid, could you also explain why he had to
17 assure you that the reporting was accurate and the taxes
18 are paid?

19 MR. TREYZON: Of course. Because frankly in
20 talking to the attorney from the city, I would get very
21 confused. We practice in the personal injury arena. We
22 don't do financial issues. We don't do things like that.
23 The sales tax is -- I don't understand it. So the
24 attorney from the city would take a position. I would
25 have to either put him on hold or tell him I'd call him

1 back.

2 I would call Mr. Bianchi and say, okay, what he's
3 saying also makes sense. Are you sure we are right?
4 Because there was always interactions. There were emails
5 being sent allocating purchase orders to the invoices and
6 the dates of payment. And I am even sometimes copied on
7 this. And that, frankly, is an accounting function that
8 went way above what I would understand.

9 So the only thing I would do is I would call the
10 accountant and say, look, are you sure your position is
11 correct, because otherwise they're correct, and that it
12 needs to be a change.

13 JUDGE WONG: Do you recall when these
14 conversations were taking place?

15 MR. TREYZON: They were taking place -- give me a
16 second. I'm trying to go to an event. I would say
17 probably middle of 2012. They may have -- it may have
18 started before because there was a delay in payment, but I
19 recall that it really -- there was just such a huge --
20 such a huge volume of a backup that it really became a big
21 issue in 2012. But that doesn't mean it didn't occur
22 several times before.

23 JUDGE WONG: So it's possible it could have
24 occurred, you mean, prior to when you became acting CFO?
25 Is that what you mean?

1 MR. TREYZON: I don't recall that happening. If
2 you're asking me if that's possible? I guess it could
3 have been. I just remember when there was a
4 multimillion-dollar outstanding number. So I think that
5 was in 2012.

6 JUDGE WONG: Thank you. That's all the questions
7 I have for Mr. Treyzon.

8 MR. TREYZON: Thank you, Your Honor.

9 JUDGE LAMBERT: This is Judge Lambert. I had a
10 couple of questions for Mr. Treyzon. I was just looking
11 at these emails and, you know, there's a lot of them where
12 there's discussion of sales tax, for instance, from 2010
13 July 13th from Ms. Salo, you know, discussing an email
14 from Mr. Padilla where they're talking about a notice from
15 the Board of Equalization about making sales and use tax
16 payments for the second quarter. And it sounds like she's
17 saying, "Let me find out from Boris if that's the case."

18 And then another email from 2010 July 8th where
19 it's from Alex Yu saying, "Hi Boris. Attached is the
20 second quarter sales tax return prepared for WCS. Please
21 review and let me know if any change is necessary. Upon
22 your approval I'll e-file it. And please keep in mind
23 that the tax payment must be submitted through EFT."

24 And then another email on July 13, 2010, from
25 Alex Yu saying -- from you, Mr. Treyzon, saying, "Am I

1 correct that this payment of \$252,000 is due on the 8th of
2 August?" And the subject is second "Quarter Sales Tax
3 Return."

4 And then there's another email giving you
5 information from Sam Shakib sales tax information from
6 WCS. So there's a variety of emails basically that I'm
7 sure you're aware of. So I was just wondering if you
8 could clarify or explain because these make it look like
9 you're involved in the process of -- and aware of the
10 sales tax, filings, and amounts due.

11 MR. TREYZON: I'm certainly aware that there's
12 sales tax filings taking place. We were very cognizant of
13 the fact that there was sales tax owed. Part of our
14 function was because we were gearing towards a loan from
15 Wells Fargo. We had to draw down money from Wells Fargo.
16 And the way Wells Fargo's system worked is you had to give
17 permission as a guarantor for the money to be drawn down.

18 And if you will see, there was like some -- in
19 other places in emails that refers to HELOCs, home equity
20 lines of credits to draw down because the city was not
21 paying West Coast Storm. So as shareholders, we would
22 have to get the money. So our question was not is this
23 the correct the amount owed? Our question was more like,
24 hey, do we need to get the money in to make sure being
25 paid as investors because the city was not paying us. We

1 had to put the money in. And that's my recollection of
2 the emails you're referring to.

3 JUDGE LAMBERT: Okay. Thank you.

4 MR. TREYZON: Of course.

5 JUDGE LAMBERT: And Judge Wong, did you have any
6 more questions for any of the other witnesses?

7 JUDGE WONG: I did have a couple of questions for
8 Ms. Salo. This is with respect to Appellant's Exhibit 30.
9 It's titled "Responsible Person Questionnaire By Renata
10 Salo."

11 MS. SALO: Yes, Your Honor.

12 JUDGE WONG: Ms. Salo, you did sign this and
13 filled it out; is that correct?

14 MS. SALO: I did.

15 JUDGE WONG: Okay. And it looks like it's signed
16 December 12, 2014. I just had two questions. One is with
17 regards to your answer to question 1, which I'll just
18 read, "Was sales tax reimbursement collected from
19 customers?" And you answered, "I don't know," and then
20 you had checked the box with an explanation, "I was only
21 involved in the legal department and had nothing to do
22 with tax compliance."

23 When you use the words "legal department", what
24 were you referring to?

25 MS. SALO: I meant that I was only involved with

1 anything legal that had to do with West Coast Storm. If
2 they had an issue with someone not paying them, I would
3 contact the non-payee. I would file a lawsuit. I would
4 file a demand letter. I never had anything to do with any
5 of the taxes or anything. So I just wasn't the right
6 party to be asking these questions to.

7 JUDGE WONG: Did West Coast Storm have a legal
8 Department, whether formally you or informally?

9 MS. SALO: No, there was no legal Department per
10 se. It was just if they had an issue, we would be the law
11 firm that would take care of that issue for them.

12 JUDGE WONG: Okay. So when you use the term
13 "legal department," what were you referring to?

14 MR. TREYZON: We were the law firm that would be
15 hired to take care of all the legal issues that they had
16 in their everyday business.

17 JUDGE WONG: Okay. And then in question 5, the
18 question was, "Were you paid for your services?" You
19 checked off yes. And then below that you wrote,
20 "Through 10/10," I'm assuming October 2010, "salary
21 by-monthly." So you were paid a salary?

22 MS. SALO: No. I believe it was explained
23 previously. We were provided a dividend, and it was
24 called a salary. And that's what I called it a salary
25 here because that's how -- that's what Mr. Bianchi had

1 called it. So I used the same term.

2 JUDGE WONG: Thank you. No further questions for
3 Ms. Salo.

4 MS. SALO: Thank you very much.

5 JUDGE LAMBERT: Thank you.

6 We can move on now to CDTFA's presentation.

7 Ms. Jacobs, if you're ready, you can have
8 20 minutes. You may proceed. Thanks.

9 MS. JACOBS: Thank you.

10

11

PRESENTATION

12

13 MS. JACOBS: My name is Amanda Jacobs. I'm with
14 the California Department of Tax and Fee Administration.

15

16 As you're aware, four elements must be met for
17 personal liability to attach under Section 6829 of the
18 Revenue & Taxation Code. One, the corporation must be
19 terminated; two, the corporation must have collected sales
20 tax reimbursement; three, the person must have been
21 responsible for the payment of sales and use tax; and
22 four, the person's failure to pay must have been willful.

23

24 In this case, as was stated in the
25 September 27th, 2022, prehearing conference minutes and
26 orders, there's no dispute as to the first and second
27 elements. Both parties agree that West Coast Storm closed
28 as of December 31st, 2012, and it collected sales tax

1 reimbursement.

2 As to the third element, there's ample evidence
3 Appellant was a person responsible for handling West Coast
4 Storm sales and use tax matters throughout the liability
5 period. A responsible person is any person having control
6 or supervision of or who was charged with the
7 responsibility for the filing of returns or the payment of
8 tax or who had a duty to act for the corporation in
9 complying with any provision of the sales and use tax law
10 when the taxes became due.

11 Officially, Appellant was a responsible person
12 beginning April 25th, 2012, when Appellant officially
13 assumed the title of CFO; Exhibit H. However, the
14 evidence shows that while Appellant received a title
15 change on that date, he was a responsible person prior to
16 April 2012. There is evidence that Appellant held an
17 ownership interest in West Coast Storm via community
18 property since 2007 as Appellant testified today. See
19 also Exhibits F, pages 3 and 5, R, pages 1, 4, 5, and 9,
20 AA and DD, page 2.

21 Appellant managed the financial matters for West
22 Coast Storm during the entire liability period at issue.
23 Evidence to that fact includes Appellant's own admission
24 that he joined West Coast Storm in 2007, and his job
25 duties included maintaining and approving adjustments to

1 West Coast Storm's budget, approving funding for projects
2 and supplies, authorizing checks through the budget
3 software system, negotiating lines of credit with Wells
4 Fargo bank, and access to the corporate credit card;
5 Exhibits I and DD.

6 Two former West Coast Storm employees, secretary
7 Sarah Swanson and project manager Bryce Swanson, indicated
8 Appellant had control over West Coast Storm's finances.
9 One stating that Appellant initiated transfers from West
10 Coast Storm's bank account to pay vendors and wages, and
11 the other identifying Appellant as authorizing business
12 purchases and signing business checks; Exhibits X, Y,
13 and Z.

14 So while Appellant did not officially assume the
15 title of CFO until April 25th, 2012, there is strong
16 evidence that Appellant himself was acting as CFO soon
17 after his investment in the corporation. Evidence
18 includes 2009 emails informing Appellant of financial
19 matters to which Appellant responded with questions
20 requesting more information or by giving direction;
21 Exhibit Q, pages 26, 29 and 31, 2009 and 2011 emails with
22 first Century Bank to showing Appellant's authorization to
23 initiate transfers from West Coast Storm, including an
24 example of Appellant approving an advance of \$100,000;
25 Exhibit Q, pages 4, 9, 37 through 38.

1 And while Appellant has testified that he was not
2 a signatory on the business accounts, in evidence is
3 Appellant's telephone admission and multiple emails dated
4 2009, 2011, 2012, showing Appellant has possession and use
5 of West Coast Storm's business checks, and Michelle
6 Padilla's signature stamp; Exhibits I and Q, pages 11, 47,
7 51, and 58. This is also contrary to Ms. Siegel's
8 testimony that only she should have access to the stamp
9 and that Mr. Treyzon did not have access to the business
10 checks.

11 Former West Coast Storm employees Rafael Padilla
12 and Michelle Padilla identified Appellant as West Coast
13 Storm's CFO from as early as 2007 and as someone
14 responsible for all payments on behalf of West Coast
15 Storm, including sales taxes, Exhibits S, T, page 3, and
16 U, pages 1 and 2. Another employee Brian Martello, West
17 Coast Storm's vice president of sales and marketing from
18 2009 to 2012, stated that Appellant was the CFO when he
19 began working for West Coast Storm in 2009, and that he
20 reported directly to Appellant and that Appellant was in
21 charge of making all payments for West Coast Storm,
22 including sales tax and provided sales figures to the CPA
23 for preparation of West Coast Storm's sales and use tax
24 returns; Exhibits T and U, page 3.

25 Former purchasing agent Boris Katz and corporate

1 co-owners Irina Katz, Renata Salo, and Yeva Shabsis all
2 identified Appellant as the person that prepares or
3 possesses tax return sales records, invoices, journals,
4 and other financial records of the business; Exhibit W,
5 pages 1 through 4. This evidence is also corroborated by
6 a statement by Robert Bianchi, West Coast Storm's CPA,
7 that Appellant was quote, "The closest thing to a CEO for
8 West Coast Storm," end quote, and that his firm
9 predominantly dealt with Appellant who authorized or
10 approved payments for e-filed returns that his firm filed
11 on the West Coast Storm's behalf; Exhibit V, pages 5
12 through 7.

13 In fact, there's ample evidence that Appellant
14 was a person responsible for West Coast Storm's sales and
15 use tax matters, specifically, the following emails from
16 2009 and 2010 show Appellant's direct involvement in sales
17 and use tax matters. A June 22nd, 2009, email from senior
18 accountant Alex Yu at West Coast Storm CPA firm to
19 Michelle Padilla relaying that Appellant told you, quote,
20 "The sales tax amount for this period will be sizable, so
21 he, Appellant, wanted us to start preparing for it to get
22 some idea of how much sales tax will be due for this
23 period," end quote. This shows that despite returns being
24 filed by a CPA, Appellant had supervision of filing the
25 returns since as early as 2009; Exhibit Q, page 1.

1 July 10th, 2009, email to Appellant from West
2 Coast Storm's CPA firm, including a copy of the sales tax
3 for second quarter 2009 discussing invoices and informing
4 him of the use of incorrect tax rates; Exhibit Q, pages 11
5 through 12. A July 27th, 2009, email to Appellant from
6 Michelle Padilla discussing taxes and requesting he advise
7 her regarding handling certain payments and invoices due;
8 Exhibit Q, page 15.

9 A July 8th, 2010, email which Mr. Lambert already
10 read to Appellant from senior accountant Alex Yu which
11 reads, quote, "Hi, Boris. Attached is the 2010 second
12 quarter sales tax return prepared for West Coast Storm.
13 Please review and let me know if any change is necessary.
14 I have not yet filed this. Upon your approval, I will
15 e-file for you. Please keep in mind that the tax payment
16 must be submitted through EFT. You must let me know when
17 would be a good time to pay for this, so that I can
18 schedule payment online," end quote, to which Appellant
19 replied with questions.

20 Appellant later forwarded the e-mail string to
21 Michelle Padilla on July 13th stating, quote, "Let me try
22 to figure this out," end quote. This being the issues
23 related to the sales and use tax return; Exhibit Q, pages
24 33 through 34. A July 13th, 2010, email to Appellant from
25 Michelle Padilla regarding a missed second quarter 2010

1 sales and use tax prepayment; Exhibit Q, page 35. The
2 email is dated August 10th, 24th, and 28th of 2009 and
3 September 21st, of 2009, and February 8th of 2010
4 informing Appellant of current invoices sent to a client,
5 which include the tax amounts; Exhibit Q, pages 17
6 through 20, and 27 through 28.

7 Appellant also contacted the Department multiple
8 times regarding West Coast Storm's sales and use tax
9 matters prior to the official -- prior to officially
10 assuming the title of CFO. On July 29th, 2011, Appellant
11 contacted the Department to update West Coast Storm's
12 corporate information and discussed submitting forms on
13 its behalf. On January 11th, 2012, Appellant again
14 contacted the Department on behalf of West Coast Storm.
15 On April 3rd, 2012, Appellant spoke with the Department
16 regarding West Coast Storm's outstanding account;
17 Exhibit K, pages 1 through 4.

18 Also, despite Mr. Treyzon's statements today,
19 there is a record of numerous instances throughout 2011
20 and 2012 prior to his assumption of title of CFO in which
21 Appellant was contacted by the Department regarding West
22 Coast Storm's liabilities; Exhibit F. The evidence also
23 shows Appellant was paid significantly for his work. A
24 payroll screen shot shows that Appellant received \$2,000
25 for the month of December 2009, which was higher than

1 Michelle Padilla's salary of \$1,675; Exhibit Q, page 48.

2 A CROS entry dated May 10th, 2018, reviewing an
3 EDD wage report, revealed that Appellant received \$293,000
4 in wages between 2009 through 2011; Exhibit AA. These
5 figures suggest that Appellant was significantly involved
6 in the business operations of West Coast Storm. Appellant
7 has essentially argued that it's unfair to hold him
8 personally responsible because Mr. Bianchi was hired and
9 in charge of handling West Coast Storm's sales and use tax
10 liabilities. However, his decision to rely on a third
11 party does not relieve Appellant of his authority or his
12 duty to act on the sales and use tax liabilities.

13 Absent an expressed limitation on Appellant's
14 duties and powers, Appellant was responsible to ensure the
15 corporation's sales and use tax obligations were met, even
16 if he delegated those tasks. See Commercial Security
17 Company versus Modesto Drug Company, 43 Cal.App.162
18 pincite 173. Here, there's direct evidence that
19 Appellant's powers and duties included West Coast Storm's
20 sales and use tax compliance.

21 Finally, we note that although Ms. Salo testified
22 today that during the period of 2009 through 2012, Ralph
23 and Michelle Padilla were the sole officers of West Coast
24 Storm, this is contrary to Appellant's own Exhibit 8, West
25 Coast Storm's Statement of Information filed May 31st,

1 2011, which lists Ms. Salo as an officer and director of
2 West Coast Storm. Based on our evidence, Appellant was
3 acting CFO of West Coast Storm and was responsible for
4 handling and had a duty to act with respect to sales and
5 use tax matters.

6 As to the fourth element of personal liability,
7 the evidence shows that Appellant's failure to pay West
8 Coast Storm's tax liabilities was willful. Failure to pay
9 is willful if the person had knowledge that the taxes were
10 not being paid and had the authority and ability to pay
11 the taxes but failed to do so. Failure to pay may be
12 willful even without bad purpose or motivation, Regulation
13 1702.5(b)(2). While Appellant was responsible throughout
14 the liability period, willfulness only needs to be shown
15 on or after the taxes became due.

16 One of the dates taxes become due is a receipt of
17 a Notice of Determination. In this case, Appellant
18 officially assumed the title of CFO on April 25th, 2012,
19 and West Coast Storm was issued a Notice of Determination
20 on April 27th, 2012, and the liability became final on
21 May 27th, 2012, Exhibit C and H. Therefore, as to actual
22 knowledge, the evidence shows that Appellant knew West
23 Coast Storm failed to pay its sales and use tax
24 liabilities for the periods at issue.

25 There's also evidence that Appellant had

1 knowledge of the tax liabilities throughout the liability
2 period. See Exhibits K, V, and Q, pages 11 through 12,
3 15, and 33 through 34. And in addition, Appellant
4 participated in the 2012 audit as well as the 2014
5 reaudit, and a copy of the reaudit work papers were mailed
6 to Appellant on July 3rd, 2014; Exhibit L.

7 As for Appellant's authority to pay taxes or
8 cause them to be paid, as CFO Appellant had the authority
9 to direct the financial affairs of the corporation,
10 including the authority to pay taxes. Nothing indicates
11 that his authority was limited in any way. Evidence of
12 Appellant's actual knowledge and authority include an
13 August 28th, 2012, ACMS note recording that Appellant in
14 his capacity as a corporate officer came into a local
15 CDTFA office to discuss the levies on West Coast Storm's
16 account, during which time Appellant identified himself as
17 person with authority to make financial decisions on
18 behalf of West Coast Storm, including check signing
19 authority; Exhibit J.

20 The record includes many other instances after
21 the April 24th, 2012, NOD was issued in which Appellant
22 handled West Coast Storm's outstanding tax liabilities,
23 including payments on behalf of West Coast Storm, which
24 can be found in Exhibit K. Other evidence of Appellant's
25 authority includes the following CDTFA forms signed by

1 Appellant in his official capacity; Exhibits NN and P.

2 Finally, as to the ability to pay the taxes, the
3 evidence also shows that West Coast Storm had funds
4 available to pay the taxes, even after Appellant obtained
5 actual knowledge of the outstanding audit liability during
6 second quarter 2012. For example, the record shows that
7 the West Coast Storm made payments to supplier Crossroads
8 totaling \$292,560 during the first through third quarters
9 of 2012, and \$13,400 to Southern California Edison during
10 the first through fourth quarters of 2012; Exhibit D,
11 sub-Exhibits I and Z.

12 Also in evidence is West Coast Storm's partial
13 profit and loss statements showing a total income of over
14 \$1 million with expenses of \$300,735 in third quarter 2012
15 alone, as well West Coast Storm's First Century Bank and
16 First Republic Bank statements, which show over \$3 million
17 moving through its accounts, including substantial funds
18 available and payments to various creditors between the
19 first quarter 2012 and fourth quarter 2012; Exhibits BB,
20 CC, and EE. Thus, the evidence shows that there were
21 available funds to pay West Coast Storm's tax liabilities,
22 but the funds were paid to other creditors instead.

23 In sum, Appellant was a person responsible for
24 handling West Coast Storm's sales and use tax matters
25 throughout the liability period, and his failure to pay

1 was willful, meaning Appellant had actual knowledge that
2 the taxes were not being paid and had the authority and
3 ability to pay the taxes but failed to do so. Based on
4 all the evidence provided, the Department has met its
5 burden of proving all elements for imposing personal
6 liability to Appellant. For these reasons, we request
7 that the appeal be denied.

8 Thank you.

9 JUDGE LAMBERT: Thank you, Ms. Jacobs.

10 Judge Wong, did you have any questions?

11 JUDGE WONG: I did. Thank you. I have a
12 question with regards to -- I don't think its disputed
13 that CDTFA has the burden of proof. I do have a question
14 as to what the standard of proof is, specifically, with
15 regards to Regulation Section 702.5(e). There's a
16 presumption there, and I was just wondering whether that
17 presumption applies here or not to raise the standard of
18 proof for the Department.

19 MS. JACOBS: Well, as the Appellant stated today,
20 he was a -- he did have an ownership interest via his wife
21 in community property, and he did say that he received
22 dividends, you know, salary dividends. So we would say
23 that the clear -- that the preponderance of the evidence
24 would be the appropriate standard.

25 JUDGE WONG: But there's -- sorry. Subsection

1 (e), I'll just read the language. It says, "If the person
2 is not an officer or a member or a partner or a manager
3 with an ownership interest in the entity, the person is
4 presumed to not be personally liable under
5 subdivision (a), unless the Board, reads CDTFA, rebuts
6 this presumption with clear and convincing evidence."

7 And so it seems like the ownership interest is
8 linked with being a manager. Was Mr. Treyzon a manager
9 during the liability period or --

10 MS. JACOBS: Well, it's our position that he was
11 the CFO officially during part of the liability period,
12 and was acting as CFO prior, you know, for the other
13 portion of the liability period.

14 JUDGE WONG: Yeah. I guess my question is then
15 presumption -- is there like a partial presumption? Does
16 it apply like -- does he have to be -- like if he
17 satisfies it for the part of the period, does only part of
18 the presumption apply, like to -- like the -- before he
19 was acting -- officially acting? Sorry. Bad question.
20 What am I trying to say here?

21 Does being functionally a manager satisfy this
22 presumption? Because it talks about, you know, being an
23 officer, a member, a partner, a manager with an ownership
24 interest, which all seems, you know, fairly -- does he
25 need the titled, like the official title to satisfy the

1 language here, I guess I'm asking? Can he just be like an
2 informal CFO?

3 MR. SMITH: Well, in addition to that, he's also
4 an owner. So --

5 JUDGE WONG: Right. But my -- but it says --

6 MR. SMITH: Your position as a manager and an
7 owner or -- I understand you're asking like if we've
8 established by a preponderance but not a clear and
9 convincing, does liability begin to attach when he
10 officially, you know, in April of 2012.

11 JUDGE WONG: I guess my question is, like, does
12 it need -- does have to be ownership interest plus,
13 because it seems to say manager with an ownership
14 interest. And I know the D&R -- the underlying D&R seems
15 to be focusing mostly on ownership, but I'm just
16 wondering, like, does he have to be officially an officer
17 or officially a member or officially a manager to satisfy
18 this ownership interest or -- okay. Maybe it's not.

19 MS. JACOBS: It's our position that he was a
20 manager and that the evidence shows that.

21 JUDGE WONG: Functionally a manager?

22 MS. JACOBS: And then officially.

23 JUDGE WONG: Okay. So whether he was officially
24 or unofficially doesn't make a difference. Like, just
25 practically speaking being functionally or practically a

1 manager will satisfy so the presumption doesn't kick in.
2 Is that CDTFA's position?

3 MS. JACOBS: I'm sorry. Can you restate your
4 question?

5 JUDGE WONG: Sure. Is the -- so he doesn't have
6 to have a formal title of manager? He could just be an
7 unofficial manager and it still would overcome this
8 presumption?

9 MR. SMITH: Yes, that's our position.

10 JUDGE WONG: Okay. All right. That's all the
11 questions I had for now, but I might have some circling
12 back. Thanks.

13 JUDGE LAMBERT: Okay. Thanks.

14 And, Judge Brown, do you have any questions?

15 JUDGE BROWN: I think I do have a question or
16 two.

17 CDTFA, if you can look at Regulation 1702.5
18 Responsible Person Liability Regulation, which I'm sure
19 you're very familiar with. In subdivision (a), the second
20 paragraph where it says, "Personal liability shall only
21 apply if the Board establishes that while the person was a
22 responsible person as defined in subdivision (b) (1), the
23 corporation partnership, et cetera, sold tangible personal
24 property in the conduct of its business," and you can read
25 the rest.

1 My question is, you argued a few minutes ago that
2 after Mr. Treyzon became officially CFO on April 25th,
3 2012, a few days later West Coast Storm was issued a
4 determination and, therefore, Mr. Treyzon's failure to pay
5 that determination, that he's liable for that. So my
6 question is looking at the regulation, can he be liable if
7 he wasn't the responsible person for that liability period
8 for the April 27th, 2012, NOD?

9 I understand -- theoretically, I understand it's
10 your position that he was responsible earlier than
11 April 25th. But from a legal perspective, can he be
12 liable if he -- first, let's say if we find that he only
13 became an officer on April 25th, 2012, can he be liable
14 for liability periods prior to that?

15 MS. JACOBS: Unfortunately, those aren't the
16 facts that are before us today.

17 JUDGE BROWN: Okay.

18 MS. JACOBS: So it would be difficult for us to
19 answer that questions.

20 MR. SMITH: I mean, the reason that Ms. Jacobs
21 took great pain to establish responsibility for 2009 and
22 2010 and 2011 was because, you know, it's not our position
23 that he just became responsible when he assumed the title
24 in April of 2012. So --

25 JUDGE BROWN: So you're saying you don't --we

1 don't need to -- your argument is we don't need to worry
2 about whether that would kick in?

3 MR. SMITH: And the willfulness -- I mean, her
4 point in the presentation was to -- if you're willful at
5 the time the NOD is issued, you don't need to when
6 payments become -- when tax becomes due, you don't need to
7 be willful throughout the liability period, but you do
8 have to be responsible throughout the liability period.

9 JUDGE BROWN: But would the third element be met?

10 MR. SMITH: Well, we spent most of our
11 argument -- most of our presentation saying it was met.

12 JUDGE BROWN: Okay. I understand your position.
13 I think that's all I have right now. Thank you.

14 JUDGE LAMBERT: Thanks.

15 And I guess I'll just follow up on what
16 Judge Wong was saying just because it was discussed
17 whether he was a manager or not. I know you were saying
18 he's kind of a defacto CFO. So when I'm just looking at
19 1702.5 how it lists S Corporation, partnership, limited
20 partnership, and LLP or LLC, and then it lists officer,
21 member, partner, or manager. And since this is an S Corp
22 would the appropriate title be an officer that we're
23 looking for instead of a manager, which may apply to,
24 like, maybe a limited partnership and a member may apply
25 to be an LLC, or we just looking for general position of

1 control or supervision?

2 I guess I'm stating, are you saying he's a
3 defacto manager or a defacto officer just to clarify when
4 we're reading this regulation, or does it not matter?

5 MS. JACOBS: Well, we were saying that he was --
6 I mean, as chief financial officer, our position has been,
7 and we think the evidence shows that he was acting as
8 chief financial officer throughout the liability period.
9 So that would make him officer. We also were stating that
10 he had an ownership interest in the corporation as well.

11 JUDGE LAMBERT: Okay. So it's kind of like the
12 responsible person definition where you can be an officer,
13 member, manager, or other person having control or
14 supervision kind of definition. So it's applying a more
15 broad definition, maybe? I mean, like a less strict
16 definition it seems?

17 MS. JACOBS: I'm sorry. I'm not following your
18 question.

19 JUDGE LAMBERT: Because the responsible person
20 definition has that the officer, member, manager, or other
21 person having control or supervision, whereas, the
22 presumption if they're not an officer, member, or partner
23 or manager, does not have that extra language. So it
24 appears that your definition of the presumption is a
25 little more broad. It's kind of following up on what

1 Judge Wong is saying, but I just want to clarify if we're
2 talking about any position in management, or does it have
3 to be a specific officer or defacto officer or a defacto
4 partner or just any kind of control?

5 MR. SMITH: So I mean, you're -- the practical
6 affect is what's the burden of proof for periods prior to
7 April 2012, and we're contending that the standard of
8 proof is a preponderance because he was an owner, and
9 we're saying the defacto CFO. And, you know, I know this
10 just relates to the standard of proof for earlier periods.

11 JUDGE LAMBERT: Okay. Thanks. Yeah, I was just
12 clarifying that. Thank you.

13 And if the Panel has no more questions --

14 JUDGE WONG: Sure. So if the standard of proof
15 or a clear and convincing evidence would -- I think I know
16 the answer to this -- do you think CDTFA has satisfied
17 that standard as well?

18 MS. JACOBS: Yes, we believe there's ample
19 evidence in the record, paper documents that show that
20 standard of proof would be satisfied.

21 JUDGE WONG: Just back to the presumption. When
22 it mentions manager in 1702.5(e), are they using that in
23 the sense of like an LLC, or is it just talking about like
24 any supervisor or manager of a company?

25 MS. JACOBS: I'm sorry. I'm not sure the

1 relevance of that to this specific case. Is -- are you --

2 JUDGE WONG: Well, because if -- WCS is an
3 S Corporation. It's not an LLC, and there's some
4 terminology. Officer could be, I guess, applied to
5 definitely a corporation and maybe an LLC, and then it
6 talks about a member. A member I would imagine would be
7 someone who has an ownership interest in an LLC. And it
8 talks about a partner. A partner has an ownership
9 interest in a partnership.

10 But then it talks about a manager with an
11 ownership interest in the entity, I was just wondering if
12 manager -- because LLC is going to have members, managers,
13 member/managers. Is that word manager referring
14 specifically to a person with a role at an LLC, or is
15 manager talking about more of a supervisor in any kind of
16 business entity, whether it's Corporation, partnership,
17 LLC, LLP, et cetera, et cetera.

18 And how it applies here is because if it applies
19 to -- it applies only -- manager, if they're talking about
20 in an LLC context, then it doesn't apply here because we
21 don't -- we're only talking about the corporation, WCS,
22 right. Then we can only look at whether he's an officer
23 or not in the entity. I just want to see if that phrase
24 manager with an ownership interest applies here or not.

25 MR. SMITH: We don't know, you know. It's our

1 position that he was one of the owners, and that he was a
2 CFO for part of the time and an acting CFO prior to that.
3 And based on that we contend that the preponderance
4 standard applies.

5 JUDGE WONG: Okay. And then I guess, so we have
6 a liability period. It goes from fourth quarter 2008
7 through the end of 2012; is that correct?

8 MS. JACOBS: Sorry. Correct. The NOD is, I
9 believe, from October 1st, 2008, through December 31st --
10 October 1st, 2008, through December 2012.

11 JUDGE WONG: Okay. And so it's Department's --
12 CDTFA's position that if at any time during that period
13 Mr. Treyzon became an official officer, then this
14 presumption just goes away for the entire liability
15 period; is that correct? Like, there's no split standard
16 of proof, like, pre-official CFO or post CFO. The
17 presumption either applies to the whole liability period,
18 it doesn't apply at all. The standard of proof is across
19 the board the whole liability period. It's either a
20 preponderance of the evidence for the entire liability
21 period, or it's clear and convincing for the entire thing.
22 It's no -- there's no split pre-CFO, post official CFO.

23 MR. SMITH: I don't think I agree with that.

24 JUDGE WONG: Okay. So please explain CDTFA's
25 position then.

1 MR. SMITH: If there is -- you could have facts
2 such that someone is -- I think you could have facts where
3 there are different standards, but our position is that
4 under the facts in this appeal, since he was an owner
5 throughout and an acting officer throughout, which is kind
6 of like a manager, we're arguing the preponderance.

7 JUDGE WONG: Okay.

8 MR. SMITH: Standard applies throughout.

9 JUDGE WONG: Okay. And my last question is
10 what's the evidence -- is there any evidence -- is there
11 any liability for the last quarter of 2008 that you're
12 alleging that Mr. Treyzon is responsible for? Because you
13 had mentioned that he was responsible. You had mentioned
14 evidence that he's responsible in 2009, 2010, 2011. So I
15 was just wondering for that last quarter of 2008.

16 MS. JACOBS: Hi. I'm sorry. The Notice of
17 Determination doesn't break it up between the quarters,
18 and that would -- we would need some time to look through
19 and actually figure out those numbers, but we don't have
20 the numbers.

21 JUDGE WONG: Okay. But basically, my question
22 would be is what's the Department's evidence for
23 Mr. Treyzon just -- element three responsibility for that
24 last quarter of 2008? That's basically what would be my
25 question.

1 MR. PARKER: And I just want to indicate that in
2 the audit the differences that make up the major there,
3 their credit differences, which is the refund from the
4 first quarter of '09 through third quarter of '10.
5 There's nothing in the other periods except for third
6 quarter '11 and fourth quarter '11 is the liability within
7 the audit. So all the others are credit amounts. So
8 within the audit there are no assessments against the
9 Appellant.

10 Does that answer the question?

11 JUDGE WONG: I think so. Unless you're
12 co-counsel would like to clarify or --

13 MR. PARKER: No, I think we're good.

14 JUDGE WONG: Okay. No further questions.
15 Thanks.

16 JUDGE LAMBERT: Okay. Thank you.

17 And thank you, CDTFA.

18 And Mr. Drabkin, you can make your closing
19 remarks now for five minutes.

20 MR. DRABKIN: Five minutes should be enough.
21 Thank you, Your Honor.

22

23 CLOSING STATEMENT

24 MR. DRABKIN: I think if I have to describe the
25 CDTFA position in this case, it's confusion. It's

1 confusion of legal concepts. It's confusion of elements
2 of the statute. It's confusion of the concept of time.
3 The State -- the Department here relies on documents that
4 was, for example, questionnaires given by various
5 individuals that were done in 2014 with a question about
6 possession of the tax records in 2014. How does the State
7 track it back to 2008, '09, '10, '11, '12? I don't know.

8 The statute clearly establishes that the
9 responsible person is the one who has control,
10 supervision, duty or responsibility, ownership, which
11 should be a legal concept separate from being an officer
12 of the corporation. Ownership does not equal control,
13 supervision, duty, or responsibility. In the last
14 30 minutes, the State constantly refers to the ownership.
15 Once, again, it's a clear legal concept. Ownership does
16 not equal management. Ownership does not equal being an
17 officer of the corporation.

18 The State is using some concepts that I'm not
19 sure how they can be defined. What is the defacto
20 officer? What's an acting officer? This is the
21 stretching of the statute, the definitions within the
22 statute. This is stretching of the time in order to pin
23 the liability on Mr. Treyzon. Awareness of certain
24 financial matters does not equal control, supervision,
25 duty, or responsibility. Being a lawyer for a corporation

1 does not equal control, supervision, duty, and
2 responsibility. Involvement in a discussion of certain
3 financial matters does not equal control, supervision,
4 duty, or responsibility of the tax matters.

5 I emphasize this responsibility, control,
6 supervision, duty should apply to tax matters. By the
7 arguments that the Department is making here today, any
8 lawyer for any corporation can be liable for sales taxes.
9 The Department chooses to refer to certain documents, for
10 example, the Statement of Information with the Secretary
11 of State reminding us that Ms. Salo was one of the
12 officers of the corporation, but at the same time they're
13 ignoring the same document saying that we should impose
14 some kind of an acting officer position on Mr. Treyzon for
15 the previous years for which the same Statement of
16 Information was filed with different officers.

17 And now to the level of proof, the government
18 here did not meet its burden of proof. We presented
19 credible evidence in the form of testimony that was
20 subject to questions by the Judges, to observation by the
21 Judges, and that explained the documents in the record.
22 It was the State's choice not to bring any witnesses. The
23 only evidence that they rely on are emails back from 10,
24 12 years ago from someone to Mr. Treyzon.

25 There are statements -- hearsay statements from

1 parties that have a conflict of interest here, and there
2 are electronic records of the agents. This is not
3 credible testimony. This is the State's choice of what
4 testimony to put into the records, and we respectfully ask
5 the Judges to weigh this testimony that was presented
6 today through the testimony of Mr. Treyzon, Ms. Salo, and
7 Ms. Siegel as well as all the records here. And it is our
8 contention that the state did not meet its burden of proof
9 and did not and cannot impose the liability on
10 Mr. Treyzon.

11 Thank you.

12 JUDGE LAMBERT: Thank you, Mr. Drabkin.

13 I'll just ask the Panel if they have any final
14 questions.

15 Judge Wong, do you have any questions?

16 JUDGE WONG: No questions. Thank you.

17 JUDGE LAMBERT: And there's the time. And
18 Judge Brown, do you have any questions?

19 JUDGE BROWN: Nothing further. Thank you.

20 JUDGE LAMBERT: And I have no further questions.
21 So I'm going to conclude the hearing, and I want to thank
22 both parties for appearing today.

23 And we will issue a written opinion within
24 100 days. Thank you.

25 The record is now closed.

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(Proceedings adjourned at 4:45 p.m.)

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That the foregoing transcript of proceedings was
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I further certify that I am in no way interested
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I have hereunto subscribed my name this 7th day
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