

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
DIVINE WELLNESS CENTER, INC.,) OTA NO. 20127048
)
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APPELLANT.)
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TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Wednesday, October 19, 2022

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
400 R Street, Sacramento, California, 91401,
commencing at 2:12 p.m. and concluding
at 3:25 p.m. on Wednesday, October 19, 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 KWEE

For the Appellant: BERNARD BUNNING
RICHARD ROBINSON
G. PETROYSIAN
B. SMITH

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

RANDY SUAZO
CHAD BACCHUS
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-6 were received at page 6.)

(Department's Exhibits A-H were received at page 6.)

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Sacramento, California; Wednesday, October 19, 2022

2:12 p.m.

JUDGE LAMBERT: We are now on the record in the Office of Tax Appeals oral hearing for the appeal of Divine Wellness Center, Case Number 20127048. The date is October 19th, 2022, and the time is 2:12 p.m.

My name is Josh Lambert. I'm the lead Administrative Law Judge for this hearing. My co-Panelists today are Judge Andrew Kwee and Judge Susan Brown.

And for CDTFA, could you please introduce yourselves for the record.

MR. SUAZO: Randy Suazo, Hearing Representative CDTFA.

MR. PARKER: Jason Parker, Chief of Headquarters Operations Bureau.

MR. BACCHUS: Chad Bacchus with the Department's Legal Division.

JUDGE LAMBERT: Thank you.

And for the Appellant, could you please introduce yourselves.

MR. ROBINSON: Richard Robinson for Divine Wellness Center, Incorporated, along with Bernard Bunning who is the CPA.

1 JUDGE LAMBERT: Thank you. And I believe we have
2 also Mr. Smith and Mr. Petroysian here?

3 MR. ROBINSON: That's correct.

4 JUDGE LAMBERT: Okay. Thanks. Thanks everyone
5 for attending.

6 The issues in this appeal as agreed upon are
7 whether additional adjustments to the amount of unreported
8 taxable sales are warranted, and whether Appellant is
9 liable for the negligence penalty. And there were some
10 revisions to the measure of unreported taxable sales. It
11 was decreased by CDTFA to \$4,534,731, and the negligence
12 penalty was revised to \$40,812.61.

13 CDTFA provides Exhibits A through H, and
14 Appellant provided Exhibits 1 through 6. There were no
15 objections, and so that evidence is in the record.

16 (Appellant's Exhibits 1-6 were received
17 in evidence by the Administrative Law Judge.)

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

20 And Mr. Robinson, Mr. Petroysian, and Mr. Smith,
21 you're going to have them testify as a witness?

22 MR. ROBINSON: At this time we anticipate
23 Mr. Petroysian will testify. However, Mr. Smith is here
24 just in case anybody from the OTA has any questions
25 regarding his work as we submitted.

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JUDGE LAMBERT: Okay. Great.

So let's move to your presentation for 15 minutes, and we could just have Mr. Petroysian sworn in whenever he comes up and is ready. Just let me know, and I'll swear him in. And you could decide how you want to allocate your time and when he gives his testimony. So you could proceed when you're ready.

MR. ROBINSON: I appreciate that.

JUDGE LAMBERT: Thank you.

PRESENTATION

MR. ROBINSON: I want to thank the judges as well for hearing us out here.

The audit period we're talking about is 2nd quarter 2013 to 1st quarter of 2016. CDTFA found -- I'm going to use the term DWI to refer to my client, which is Divine Wellness -- had a tax liability of \$485,700 --

JUDGE LAMBERT: Also, Mr. Robinson, make sure your mic is on and get up a little closer to it.

MR. ROBINSON: Can you hear me now?

JUDGE LAMBERT: Yeah, that's better. Then we can hear it on the live stream as well. Thanks.

MR. ROBINSON: All perfect. All right. Thank you.

CDTFA found that DWI had a tax liability of

1 \$485,795 after three audits. The first audit found that
2 DWI owed \$1,358,596. While CDTFA claims they conducted
3 one revised audit and two additional audits, the reality
4 is they used the same flawed data for each of these
5 audits. They used an observational test. There's only
6 one set of data based on flawed observational tests that
7 took place in March of 2016. The final revised audit
8 conditioned on an August 13th, 2016, CDTFA decision was
9 based on the flawed methodology admitted to by CDTFA in
10 all of its audits and serves as mere speculation
11 discounting the real data provided by DWI, which is
12 admittedly never been reviewed.

13 DWI had a change of location, had reduced its
14 business operations, and was in re -- and renovation and a
15 reopening of a new facility throughout this process.
16 CDTFA acknowledges that DWI changed locations and was not
17 in business for two months of the audit period,
18 December 2013 through February 2014. In 2013, for which
19 DWI has point-of-sale records was located in north
20 Hollywood. DWI moved to Canoga Park in February of 2014.
21 The Canoga building DWI moved into needed extensive
22 renovations for over a year.

23 From February 9th, 2014, to October 2014, DWI had
24 very limited operations. No regular hours and product was
25 sold in a nearby garage on an ad hoc basis, not in a huge

1 facility. But they were careful to record all of their
2 sales, even small ones, in their SUTRs. DWI was
3 continuing to upgrade the facilities at the new location
4 in Canoga Park from October 2014 to February of 2015.
5 They continued to have limited business activities as they
6 did not hire employees until February of 2015. The SUTRs,
7 Exhibit 3, reflect the true and accurate sales of the
8 entity during this period.

9 Beginning in February 15th, 2015, DWI had a soft
10 opening of their business. A point-of-sale system was
11 implemented and the true and accurate sales were reflected
12 in that POS system, which was never reviewed or
13 acknowledged by CDTFA. DWI had a larger hard opening on
14 May 16th, 2015, and the SUTRs reflect increased revenue as
15 a result of their increased marketing on that date. See
16 Exhibit 4, Bates Stamped 65. Having an observation test
17 in 2016, no matter how the CDTFA applies those results, is
18 beyond speculative.

19 It would be akin to observing a full-service
20 restaurant in 2022 after applying -- and applying those
21 observations to the same restaurant during the Covid era.
22 There's absolutely no nexus between the two operations.
23 Moreover, extrapolating sales from 2013 in an established
24 location in North Hollywood cannot be ascribed to the new
25 location in Canoga Park as variables such as location,

1 business, environment, customer base, et al, are not
2 similar.

3 At this point, I'd like to turn the microphone
4 over to Bernard Bunning our CPA who can talk more about
5 the observational test and the flaws within it.

6 MR. BUNNING: Thank you, Judges. And thank you,
7 rich.

8 There are three reports, and I will try to be as
9 brief as possible here due to the time constraint that
10 we're dealing with today. Through this process we met
11 originally with the audit team that came in to do the
12 audit in my office in Southern California in Century City.
13 At that time, we went through the normal procedures and
14 policies that we go through in an initial audit and what
15 records we're going to look at, what we had available, and
16 what was going to be presented. At that time we were just
17 finishing up an audit -- a subsequent audit that ended,
18 that was for 2000 -- January 1st of 2008 through 12/31 of
19 2010, which was resolved on February 19th, 2016.

20 From that audit, we -- at that time, Divine did
21 not have a POS system, and did not have the records that
22 were -- that were recorded -- the system -- in the
23 reporting system that BOE requested that we move forward
24 with. The audit in question here is they installed a POS
25 system from MJ Freeway and put a complete POS system into

1 effect for the audit that's now in place.

2 And again, as -- as Mr. Robinson alluded to, the
3 POS system was never used or looked at through this whole
4 process. We deem that the accurate records that were in
5 place and should be a focal point of this audit. And in
6 every one of our reports, the one dated April 16th, 2018,
7 there was -- that original report which is in evidence --
8 excuse me -- there is -- let me grab the other report here
9 that we'll allude to. Excuse me. That's a 2018 report.
10 Then there was a subsequent report. Then there was
11 another report by Mr. Smith dated August 25th, 2021.

12 Through the audits and the reaudit period, we
13 had -- we had a conference originally here in Sacramento
14 with the appeals officer, and that was in 5/7 of '19.
15 From that appeal, what was the question there is the
16 appeals officer sent it back for audit redetermination.
17 The audit redetermination came back and basically used the
18 same methodologies that through our whole process was in
19 error, and have been brought to their attention multiple
20 times.

21 The main audit is -- problem is, they closed down
22 the operation -- not to be redundant here -- but these
23 were major facts in this case that come -- that put the
24 process and the calculations in question from the -- from
25 our point of view. In the process, in 2013, they closed

1 the office down in Hollywood, an office that had a major
2 presence with lots of traffic in that area and moved the
3 office to Canoga Park.

4 Through that process, they -- there was a
5 building that was being completely renovated, and Divine
6 had inventory that was remaining at that location. That
7 inventory was moved to the new location into a garage on
8 the backside of the property with very little access. And
9 for the year of -- for 2014, they'd never had an occupancy
10 permit to be able to occupy the new location from the City
11 of Los Angeles until October of '15 or '14 -- '15
12 rather -- 14. Excuse me. October of '14.

13 Therefore, the error that the BOE auditor placed
14 on it used all of 2014 and applied sales, both from an
15 observation point of view, and from an error that they
16 used from 2000 -- 2010 audit -- 2010 audit. And they
17 carried that audit process all the way through for all the
18 three years of the audit.

19 Now, when we apply those standards to a new
20 startup in a new location and the patients or the
21 customers did not drive 25 miles in Los Angeles over to
22 Canoga Park, so he had -- they had to establish a whole
23 brand-new client base in order to be able to then take
24 their sales and get them back to a normal run rate. And
25 again, all of this has been argued multiple times in

1 multiple letters and -- and reconciliation letters to the
2 BOE. So there's not going to be anything new other than
3 what Mr. Smith's report found.

4 After -- after we had the hearing, we hired
5 another forensic accountant to come and look at the BOE
6 report, and they found -- he found that there was actually
7 sales tax that was included in the sales. Therefore, we
8 overpaid the tax for approximately \$2,000 during that
9 period of time because they were -- it was they just
10 properly weren't reported. Now, when we look at the math
11 on this, \$1,265,032 was reported with -- with -- using a
12 head count.

13 First of all, we'll talk about the head count.
14 In order -- and the Board of Equalization claimed that
15 there was \$4,424,625 worth of unreported sales. That's a
16 449 percent error rate. When you have a POS system that
17 has every customer that comes in, name and phone number,
18 2014 there was no purchases at all. It was just sales of
19 inventory, and there's roughly 40 thousand dollars' worth
20 of sales during that period of time but over a million
21 dollars' worth of sales that were -- the auditor claimed
22 that they were unreported. It's impossible.

23 It's mathematically impossible to have those
24 types of sales in a shutdown business off of a garage in
25 the back end of an alley during that period of time. If

1 we took that error rate, that would have been 78,979
2 patients or customers during that audit period of
3 additional customers on top of what was reported on the
4 POS system during that period of time. I've extrapolated
5 that to being over a two-year period. Because of the time
6 we were down, that's impossible to have that many
7 customers coming down to a business.

8 It couldn't possibly have done that type of
9 business out of a garage. That would be 112 patients a
10 day or customers a day of unreported sales. So when we
11 look at reasonableness throughout an audit period, we have
12 to look at all elements of an audit through that process.
13 We have to look and see, first of all, were there adequate
14 books and records? The answer is yes. There were
15 adequate books and records. There was a POS system that
16 was never looked at, asked to look at, identified, or
17 utilized. And we have brought this up in multiple
18 occasions during multiple processes of the audit.

19 Secondly, we have brought up multiple times the
20 down time of moving from one location to another, and
21 through that process where we were -- where -- where you
22 couldn't have possibly had the sales that we had that --
23 that Divine had at their operation that was a seasoned
24 business in Hollywood for a number of years and apply that
25 head count to an unseasoned business at a new location

1 would be -- and -- and again, we never got a permit until
2 October 15th, I believe it was of 2014 to be able to even
3 enter the premises.

4 From that period of time, there was a soft
5 landing, and then there was a big grand opening. And we
6 can see subsequently, it took a number of years on a
7 buildup approach because the BOE came in and did an
8 observation test in 2016. I believe it was March of '16.
9 Certainly, we're going to have more -- we're going to have
10 more head count coming in 2016, naturally. That's a
11 natural assumption, and that's a reasonable assumption.
12 But applying that retroactive to a whole year that we were
13 shut down and having no sales is not accurate. It just
14 simply couldn't take place.

15 MR. ROBINSON: Thank you. And I'd just like to
16 point out from an evidentiary point of view that the
17 exhibits that he was talking about, the Bruce Smith
18 analysis is in your packet, and it's Exhibit 1, Bates
19 Stamped 014 to 019. The -- and this is the back up. We
20 have it Bates Stamped on our exhibit as 020 to 049, but
21 this is the -- this is what you received this morning that
22 you could more easily read.

23 I'd just like to say the other part of this is
24 the Bunning appeal, which is also Exhibit 1, Bates Stamped
25 066 to 071, which outlines both Mr. Bunning's appeal and

1 Renee Cross' analysis. So I'd also like to mention on the
2 head count that the observation test, while they did do a
3 head count of people who went into the facility, they
4 never saw a single transaction. They never witnessed the
5 single transaction. Lots of people go into a store, not
6 everybody buys.

7 And based on the analysis we did, there is no way
8 for them to conclude that the number of people who
9 actually made a purchase made a purchase. So we have
10 vendors going in there. We have employees going in there.
11 We have friends of employees going in there. So the --
12 the entire observation test, in general, is completely
13 speculative.

14 The other thing that's CDTFA asserts is that DWI
15 did not report all of its sales noting its bank statement.
16 Well, the banking industry is federally regulated, and
17 this is a cannabis enterprise. And so banking services
18 have no nexus whatsoever as to sales. And it can't, based
19 on federal banking regulations. But that said, for the
20 benefit of the OTA, we have submitted the expert analysis
21 of Bruce Smith regarding the bank statements, which is
22 Exhibit 2, Bates Stamped pages 088 to 105, so you can
23 review the deposits.

24 We understand the burden falls on the taxpayer,
25 but by real evidence, they paid all required taxes, And

1 DWI has done that. As noted in Exhibit 3, all the SUTRs
2 from Q2 2013 through Q1 2016 have been submitted. In
3 addition, our expert Bruce Smith analyzed those sales
4 documentation and confirmed the sales revenue was in line
5 with the business operations during the audit period
6 covered. And that's Exhibit 1, Bates Stamped 14 to 19,
7 and the backup you have in front of you.

8 Exhibits 4 and 5 you'll find a POS system was
9 implemented at the recommendation of the BOE from the DWI
10 audit of Q1 2008 to 2010. At this point, we would like to
11 point out that the audit process was not completed until
12 March of 2016, one month before the end of this audit
13 period. That will be relevant regarding the negligence
14 penalty currently imposed by CDTFA a little later. For
15 the period of Q1 2004 to February 15th, 2014, we have
16 documentation from Renee Cross, CPA Bunning, Exhibit 1,
17 Bates Stamped 067 to 069, which analyzed the reduced sales
18 while the Canoga DWI building was being renovated.

19 I'd just like to point out that if -- and, you
20 know, this is -- if DWI were trying to avoid sales tax,
21 they didn't have to report any of that. I mean, they
22 wouldn't have reported any of that because this is all
23 done out of a garage. The fact is that this particular
24 entity pays its sales tax. And so even those sales,
25 limited though as they were, were not only recorded, but

1 the sales tax was collected, and it was paid to the State
2 of California.

3 Her analysis -- Renee Cross' analysis of that
4 time period is consistent with the findings of our expert
5 Bruce Smith regarding the sales during that period.
6 Ms. Cross' memo was conveyed to the CDTFA on April 26th,
7 2018. Finally, DWI is asking for a waiver of the
8 negligence penalty even if the OTA were to find there
9 was -- there is some tax liability. As the CDTFA's
10 August 13th opinion states, in analyzing the issue of
11 negligence, one of the factors that must be considered is
12 whether the taxpayer has been previously audited. That's
13 in the CDTFA Exhibit A, Bates Stamped 20.

14 This was settled in March of 2016. It's
15 important to note that the disposition in the DWI previous
16 audit didn't take place until that time. DWI settled the
17 claim by the BOE on the basis of economic necessity but
18 still maintains they paid all the required taxes. During
19 that period, DWI implemented all of the recommendations of
20 the BOE, including implementing a POS system, hiring a
21 full-time bookkeeper, keeping records, et cetera.

22 In addition, DWI has shown good faith and shows
23 actual evidence of paying the taxes through their SUTRs,
24 their POS receipts, expert analysis, bolstered by the
25 DWI's appeals, briefs, documents, and relevant facts. The

1 speculation of numerous flawed audits by the CDTFA, which
2 relied on the same unreliable set out in the original
3 audit, it's simply garbage in and garbage out.

4 Given the changing business conditions of DWI, we
5 respectfully ask that any negligence penalty be removed.
6 DWI has also shown good faith and has cooperated fully
7 with the CDTFA through this process. Nowhere has CDTFA
8 shown that DWI has been deceitful, reckless, or even
9 mildly negligent in paying the required sales tax.

10 At this point I'd like to be able to call Gary
11 Petroysian.

12 JUDGE LAMBERT: Yes. Of course.

13 Mr. Petroysian you can come up and sit down and
14 maybe get a microphone and --

15 MR. ROBINSON: Oh, does he --

16 JUDGE LAMBERT: Yeah, that would be great.
17 Thanks. And can you please raise your right hand.

18

19 G. PETROYSIAN,

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

23

24 JUDGE LAMBERT: Okay. Thank you. Please
25 proceed.

1 MR. ROBINSON: Did you already state his name for
2 the record? Is that okay?

3 JUDGE LAMBERT: That's fine. And also if you
4 guys are -- if you both are turning to talk to each other,
5 sometimes it's hard to pick it up on the microphone as
6 well.

7 MR. ROBINSON: Okay. So he's using that mic.
8 I'm using this one.

9 JUDGE LAMBERT: Okay. Sounds good.

10

11

DIRECT EXAMINATION

12

BY MR. ROBINSON:

13

Q All right. Please tell the Judges what your
14 current occupation is?

15

A CEO of Divine Wellness Center.

16

Q And how long have you been in that position?

17

A Since 2007.

18

Q Can you recount for the Judges your business
19 operations between April 1st, 2013, and December 13th,
20 2013?

21

A Divine Wellness Center operated on 5056
22 Lankershim. Business hours are 10:00 o'clock to 8:00
23 o'clock. Divine Wellness Center ended up closing because
24 of the Los Angeles -- City of Los Angeles regulations, and
25 we closed Divine Wellness Center December 13th and

1 transferred all the licenses to the Canoga address on
2 December 17th.

3 Q And where did the product go from the Lankershim
4 property to the next property?

5 A Whatever we got left from our inventory, we
6 sealed -- vacuum sealed and transferred all the product to
7 a safe located on Eaton Avenue.

8 Q And where you -- did you ever buy more product in
9 2014?

10 A Never.

11 Q And what was the reason for not being able to buy
12 product at that time?

13 A Would not having a business.

14 Q Moving onto February 15th, 2015, can you tell us
15 what was happening to your businesses on that date?

16 A Which date again?

17 Q The 2015 -- February 15th, the reopening -- the
18 soft --

19 A So 2015 --

20 Q February 15th, 2015?

21 A So we final -- we got the final documents, so we
22 can operate in front of the building. So we did a soft
23 opening on February 15th. And then by seeing not getting
24 customer basis, patient basis, we did a re-grand opening
25 on May 16th, which we advertised -- starting to advertise

1 in February 1st. We are going to have singers on -- in
2 Divine Wellness Center. Which their names were Method
3 Men, and we do have all the advertisement. And after
4 May 16th our business started picking up.

5 MR. ROBINSON: I'd just like to point out that
6 the flyer is Exhibit 1, Bates Stamped 065 for the grand
7 opening.

8 BY MR. ROBINSON:

9 Q Have you always recorded all sales and paid all
10 sales tax to the State of California?

11 A Yes.

12 Q You settled with the BOE regarding the 2008, 2010
13 audit; is that correct?

14 A That's correct.

15 Q Can you tell the Judges why you settled and why
16 you're adamant you paid all the sales tax required during
17 the 2008 and 2010 audit?

18 A The reason I paid because I try to waive the more
19 cost of the lawyer fees. Because it's so costful, I just
20 couldn't afford to pay more lawyer and a tax firm fees.
21 So I decided to agree to the fees and paid because it was
22 going to cost me more money to keep the case ongoing and
23 fight for it.

24 Q Thank you.

25 MR. ROBINSON: Does counsel have any questions or

1 OTA members?

2 JUDGE LAMBERT: We can save questions until after
3 you're done with your entire presentation, and I'll ask
4 CDTFA if they have any questions for Mr. Petroysian.
5 Thank you.

6 THE WITNESS: Thank you.

7 MR. ROBINSON: So in summary what we have here is
8 a situation where the data for the audits that CDTFA
9 applied to this particular business is completely flawed.
10 We have provided as much evidence as possible to show that
11 this business paid all the sales tax that it was required
12 to pay, and we ask that the Judges, you know, weigh the
13 evidence of our factual information versus the speculation
14 of the CDTFA and find by a preponderance that the tax was
15 paid.

16 Thank you.

17 JUDGE LAMBERT: Thank you, Mr. Robinson.

18 And now I'll turn to CDTFA.

19 Mr. Suazo, do you have any questions for the
20 witness or anybody? I mean, does anyone on CDTFA have any
21 questions for him?

22 MR. SUAZO: We have no questions.

23 JUDGE LAMBERT: Okay. Thanks.

24 I will turn to the panel and ask if they have any
25 questions.

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Judge Kwee, did you have any?

JUDGE KWEE: This is Judge Kwee. I don't have any questions for the witness. Thank you.

JUDGE LAMBERT: Or for anybody representing Appellant?

JUDGE KWEE: This is Judge Kwee. I don't have any questions at this time. Thank you.

JUDGE LAMBERT: Okay. Thanks.

And, Judge Brown, did you have any questions?

JUDGE BROWN: I may have a few questions, yes. All right. I'll direct my questions at this point to the representatives and -- but I don't know how much the witness might want to participate. So --

MR. ROBINSON: We'll call each person forward if I can't answer the question.

JUDGE BROWN: Okay. I wanted to ask about what evidence there was to show that the Canoga Park operation wasn't making -- the Canoga Park location wasn't making sales during the periods that you've indicated? I saw the building permit approval date in October 2014, I believe. And I saw the flyer about the grand opening, although, it doesn't say grand opening. What other evidence is there that you weren't operating? For example, if we looked at the Employment Development Department wage reports for this period in 2014 versus, you know, during periods of

1 normal operations.

2 MR. ROBINSON: That's correct. If you take a
3 look at the EDD reports, you'll find that they did not
4 make any hires until February of 2015. The reason is
5 while they were permitted in October, there were still
6 many tremendous amounts of work to be done within the
7 location itself in terms of building shelves, building
8 space within that. Although they got the permit, they had
9 to transfer all of them through over there. I do have a
10 picture of the site previous to their renovations if you
11 would like to see it.

12 JUDGE BROWN: I can only look at what's in
13 evidence.

14 MR. ROBINSON: And I thought so. Okay. So but
15 from a --

16 JUDGE BROWN: And that goes to my question about
17 the EDD reports. I didn't see anything like that in the
18 evidence. Did I miss it?

19 MR. BUNNING: I can respond to that.

20 MR. ROBINSON: And I'll let --

21 MR. BUNNING: There were no employees. There was
22 only two family members. So there were no EDD reports at
23 that period of time because there were no paid employees.

24 JUDGE BROWN: But you still had some sort of
25 records with EDD; correct? Like, wouldn't the EDD

1 represent -- show no wages paid?

2 MR. BUNNING: There would have been a report
3 filed to be in compliance with EDD, so it's showing zero
4 wages. That would be correct.

5 JUDGE BROWN: But we don't have those?

6 MR. BUNNING: I do not have that with me.

7 JUDGE BROWN: Okay.

8 MR. BUNNING: But we could certainly get that.

9 JUDGE BROWN: It's not up to me to decide what
10 you submit into evidence. It's up to you to decide.

11 MR. ROBINSON: Right.

12 JUDGE BROWN: I also wanted to ask about -- oh,
13 and if there's any other evidence that -- I don't know if
14 I cut you off Mr. Robinson when I was just asking is
15 there any -- I gave EDD reports as an example. Is there
16 any other evidence that we have in the record that I
17 should be looking at that shows that the business wasn't
18 operating during this time period?

19 MR. ROBINSON: There is a nexus between the sales
20 and the fact that the business was not in operation at
21 that time. If you take a look at the SUTRs during that
22 time, you will find that they had very limited sales, and
23 they reported all of those sales during that time. That's
24 what we have as a -- as evidence that they were not in
25 business. If you take a look at the SUTRs for, I believe

1 April and beyond, you will see a spike in sales revenue.

2 That is the reason that we can show that they
3 opened on February 15th. Not to mention the fact that the
4 POS system implemented on February 15th was in operation,
5 and we have all of those records in exhibit -- in
6 Exhibit 5 -- Exhibit 4, excuse me. So there was a spike.
7 They really weren't open through 2014 except for the very
8 limited time. And as you can see from the permits,
9 certainly, they didn't start -- they couldn't have started
10 until October, and there were still a lot of work to do.
11 And I think we can bring Gary up here to testify that that
12 is the case if that would be helpful.

13 JUDGE BROWN: I mean, that's fine. I'll leave it
14 to you to decide how you know whether -- how you want
15 to --

16 MR. ROBINSON: Can I recall Gary Petroysian,
17 please?

18 And I'd like to remind you you're still under
19 oath.

20

21 DIRECT EXAMINATION (continued)

22 BY MR. ROBINSON:

23 Q Can you explain to the Judges exactly what the
24 conditions of your business were between the time the
25 permit was issued in October and the soft opening in

1 February 15th of 2015?

2 A So I can go back again starting from when I
3 closed my business. I had to relocate the permits, the
4 license, the cannabis license to a new address. So when
5 we got a new lease on Eaton Avenue, there was still a
6 business operating. So I couldn't open and start
7 operating. There was a telephone company called AllCore.
8 He was not going to leave the building until the
9 February 15th. So when we got in on February 15th, the
10 whole building was disaster, you know, in a bad condition.

11 So we had a small garage on the back, which it
12 was only had -- not even 150 square feet. So we put up a
13 couple of shelves over there and did not hire any
14 employees. The reason is because we didn't zero business.
15 We didn't advertise, and we couldn't advertise because the
16 in front of building, which is 3,000 square feet, was
17 being permitted. And we got violation starting the --
18 actually, you know, the work from a code enforcement
19 because we started demoing before we even got the permits.

20 And you know, we start demolition and start the
21 work on October when we got the final sign-off from
22 Los Angeles. We still had to pretty much paint the whole
23 building and put all the shelves until February 15th of
24 2015.

25 JUDGE BROWN: And let me ask a follow-up

1 question. Are you saying that until you got the permit
2 approved -- approval from the city in October of 2014,
3 that you were not permitted to operate at all in that
4 location?

5 THE WITNESS: I was not permitted to operate the
6 front building, but my cannabis permits was good to
7 operate from that address, which we were using the
8 150 square foot garage.

9 JUDGE BROWN: And I have one more question about
10 the parking that Appellant's briefs argue that the parking
11 lot is really small. They didn't have adequate parking to
12 support the number of customers that CDTFA estimated that
13 you had?

14 MR. ROBINSON: I'd like to let Mr. Bunning answer
15 that question.

16 Because you have the blueprints, right?

17 MR. BUNNING: They're in your binder. I don't
18 have it. They're in the binder.

19 MR. ROBINSON: They haven't been submitted. They
20 were in your appeal, I believe.

21 JUDGE BROWN: You know, we can get back to it.
22 In the interest of time, we can -- you can address it on
23 rebuttal if that would be easier.

24 MR. ROBINSON: That would be fine.

25 JUDGE BROWN: Okay. Then I don't have any

1 further questions right now.

2 MR. ROBINSON: Thank you very much.

3 JUDGE LAMBERT: I had a question maybe for
4 Mr. Petroysian. I was wondering in terms of switching
5 locations how it works in this business, like retaining
6 customers, or do you have to build a new customer base and
7 what factors go into that based on changing your location,
8 you know, further away. And do you have to build up an
9 entirely new customer base, or do they go -- do you retain
10 the customers and to what extent?

11 MR. ROBINSON: Can I interject here for just one
12 second. During this time it was a medical marijuana
13 dispensary. The law had not changed to a general
14 dispensary. So he'll answer as a matter of medical
15 marijuana under the medical marijuana law.

16 JUDGE LAMBERT: Okay. That's helpful. Thanks.

17 MR. PETROYSIAN: So the customer base between
18 North Hollywood and Canoga Park 25 miles away, I had zero
19 customers coming from North Hollywood to Canoga Park. So
20 what I did is I put a green-color cross right on the
21 curbside. That's the only way they saw and they knocked
22 on my door, when I was actually doing welding and doing
23 construction with my own hands building the facility, and
24 they asked me if it is open. And I had to lock and unlock
25 the door all the time because I was actually the one who

1 is doing the work, plus I was the one who is doing the
2 sale.

3 So the customers didn't come because of the
4 advertisement. The customers came to the Canoga Park
5 location because we had a cross sign -- green-colored
6 cross sign, and the meaning of the green-colored cross
7 sign is we sell medical marijuana.

8 JUDGE LAMBERT: Okay. Thanks. And I think it
9 was stated that looking at this period, so when it was
10 closed it should be zero. But maybe not necessarily zero,
11 because there were still sales? Or was it not until you
12 opened the new place is when you started selling, like,
13 smaller amounts?

14 MR. ROBINSON: If I could interject here too?

15 JUDGE LAMBERT: Yeah.

16 MR. ROBINSON: The sales were recorded -- the
17 small amount of sales were recorded, and they were through
18 the SUTRs. And so he did pay the sales tax on that
19 limited sales that he did have and the reason is really
20 simple. Because he had already been through one audit
21 through the BOE, and he didn't want to go through another
22 one. So he has been very strident about making sure that
23 the sales tax gets paid.

24 JUDGE LAMBERT: I see. Yeah. Thank you.

25 Also looking at this spread sheet which I think

1 is based on CDTFA's audit report, it says -- there's some
2 comments too, and I just noticed it's on 1Q '14 it said
3 \$71,925, 2Q '14 it says it's supposed to be 77 percent
4 increase from 1Q '14. But then the numbers \$271,206,
5 which seems like more than 77 percent increase, but --
6 maybe I can ask CDTFA about that, but I don't know if you
7 noticed that if that -- that increase seems a little
8 large, perhaps.

9 MR. ROBINSON: This -- Bruce Smith is here, and
10 he did this report. And he can answer that, if you would
11 like.

12 JUDGE LAMBERT: Okay. Well, I don't know if you
13 have to testify as a witness, sorry, because you're just
14 maybe providing argument, unless you were going to provide
15 something that you personally observed. But we'll take
16 everything you say into consideration. So thank you.

17 MR. SMITH: Okay. So what I did was I took the
18 auditor's analysis. So Column L is the auditor's
19 comments. And then, basically, my comments are in the
20 tannish color. So all the work from the -- before the tan
21 color are from the auditor's work papers. So I didn't
22 really concern myself so much with what was in the --
23 what's in the dynamic. I was concerned about, okay, is it
24 reasonable and -- which is Column K, which is what they
25 call a recalculated --

1 JUDGE LAMBERT: Also speak up.

2 MR. SMITH: What they call a calculated sales
3 tax. So in between that didn't really matter to me
4 because I was taking the analysis from what they reported
5 compared to what we reported to determine if this process
6 was reasonable. My conclusion was it's not. Therefore, I
7 went back to the source documents that basically are
8 factual that I could support on that. That was the whole
9 purpose of this analysis.

10 JUDGE LAMBERT: Okay. Thank you. And what do
11 you think that 4Q -- 1Q -- so you think that 4Q '13 are --
12 oh, sorry. -- 1Q '14 should be zero? On the side it
13 says -- they never take down reported sales to zero. On
14 the tan column there's a comment. It states the auditor
15 never takes the unreported sales as zero. The company had
16 to start in a location with no customers that were
17 considered from the old location that was 40 miles away.

18 MR. SMITH: So basically the first quarter of
19 '14, the company reported \$6,410 in sales. Okay. The
20 auditor came up with \$71,000 --

21 MR. ROBINSON: Hang on. I think I've got this.
22 The first two months between December 13th and
23 February 9th, there were no sales at all. So the first
24 quarter really only encompasses February 9th and March of
25 that year -- of the first quarter of '14. And actually,

1 CDTFA has acquiesced to that and acknowledged that the
2 entire business was shut down from that period to that
3 period.

4 JUDGE LAMBERT: Okay. Thanks.

5 MR. ROBINSON: Does that help answer your
6 question?

7 JUDGE LAMBERT: Yeah. I think so.

8 MR. ROBINSON: All right. Thank you.

9 JUDGE LAMBERT: Okay. Well, I'll take a look at
10 it again.

11 And thank you, Mr. Smith.

12 So we can move onto CDTFA, and Mr. Suazo you can
13 have 20 minutes for your presentation. Thanks.

14 MR. SUAZO: Oh, sorry about that. Before I
15 start, just to give you a more firm answer on that
16 \$71,925, it's the \$215,775 from the quarters above divided
17 by three.

18 JUDGE LAMBERT: Right.

19 MR. SUAZO: So it's only a third of the sales
20 from the previous quarter because he was only open -- even
21 though he was open a month and a half, they just said he
22 was open -- they just average it to a month.

23 JUDGE LAMBERT: Okay. I was looking at it on
24 Column L. It goes from 7 -- well, first on Column K it
25 goes from \$71,925 to \$271,206. And in Column L it says

1 that there's a 77 percent increase.

2 MR. SUAZO: That's because that's the -- that's
3 the increase from the \$6,410 on Column D to \$11,350. On
4 line -- if you go to Column D, line 35, which is the first
5 quarter of '14, it says current audit. It's in gray
6 highlight, \$6,410. And then if you go to the 2nd quarter
7 of 2014, which is line 36, again, it says current audit,
8 again, in gray, it's \$11,350. So \$6,410 divided by
9 \$11,350 is 77. The difference is \$4,940. Which is the
10 77 percent difference from one quarter to the other.

11 JUDGE LAMBERT: Okay. And then the revised
12 audited taxable sales, it seems like if you're jumping
13 from \$71,000 to \$271,000 --

14 MR. SUAZO: That's because at this point they're
15 open for the entire quarter.

16 JUDGE LAMBERT: Okay.

17 MR. SUAZO: Because he was -- he was open for
18 like a month and a half, so they -- the auditor, they just
19 put it at one third of a quarter. And the following
20 quarter what they did was they just \$77,000 -- or
21 77 percent is the \$55,000 plus the \$215 above it. Do you
22 see the --

23 JUDGE LAMBERT: Yes, yes.

24 MR. SUAZO: So \$215,775 plus \$55,431 is the
25 \$271,206.

1 JUDGE LAMBERT: Okay. So it was added to 4Q '13?

2 MR. SUAZO: Yeah. Because that way it
3 encompasses the whole quarter at this point.

4 JUDGE LAMBERT: Okay.

5 MR. SUAZO: Okay.

6 JUDGE LAMBERT: Thanks.

7 MR. SUAZO: All right.

8 MR. ROBINSON: So just to point out that -- that
9 number is, you know, wholly made up by division, not by
10 any real sales or even observation. It's just a made-up
11 number by the auditor.

12 JUDGE LAMBERT: Okay. Thank you.

13 And Mr. Suazo, thank you, and you can proceed.

14 MR. SUAZO: Okay.

15

16 PRESENTATION

17 MR. SUAZO: The Appellant is a corporation and
18 operated a medical marijuana dispensary in North Hollywood
19 from April 2007 through mid-December 2013. Appellant then
20 moved the business to Canoga Park for the remainder of the
21 audit period. The dispensary is open daily from
22 10:00 a.m. to 8:00 p.m. Seller's permit start date is
23 April 22nd, 2007. The audit period is from April 1st,
24 2013, through March 31st, 2016.

25 Records reviewed included federal income tax

1 returns for 2013, general ledger for periods April 1st,
2 2013, through December 31, 2013, and April 1st, 2014,
3 through December 31st, 2015, bank statements for 2015 and
4 point of sale -- POS sale summaries for 1st quarter 2016.
5 Comparison of sales for 2013 for federal income tax
6 returns to sales and use tax returns for the same period
7 showed immaterial differences; Exhibit G, page 134.

8 Bank deposits for 2015 were scheduled and
9 compared to reported sales of \$618,000 showing a
10 difference of almost \$540,000, which is an indication that
11 the Appellant did not deposit all sales into the bank
12 account; Exhibit G, page 135. Recorded purchases could
13 not be verified as accurate because a journal is not
14 supported by source documents. Due to the lack of
15 detail -- of detailed records to support summary amounts,
16 the Department conducted observation tests to verify the
17 validity of the recorded and reported sales.

18 The Department conducted 12 1-hour observation
19 tests from Tuesday January 26, 2016, through Sunday,
20 March 13th, 2016. The observation tests were performed
21 during various hours of the day and included a test on
22 every day of the week. The Department tallied the number
23 of individuals entering the facility; Exhibit G, page 130.
24 The Department then reviewed the POS system data for the
25 time frame in which each observation test was conducted

1 and noted differences between individuals entering the
2 facility and sales transactions for the POS system;
3 Exhibit G, pages 126 to 129.

4 Only one of three -- only one out of three
5 individuals who entered the premises was rung up on the
6 Appellant's POS system. The average sales transaction
7 dollar value was computed using the information obtained
8 from the POS system during the observation test; Exhibit
9 G, page 132. Based on the results of the observation test
10 and the evaluation of the POS system data, the Department
11 determined that the POS system was not used to record all
12 sales transactions. Therefore, the Department impeached
13 the POS system data.

14 The impeachment of the POS system data is further
15 supported by, in the prior audit the Appellant stated that
16 the average sales transaction was \$50 in 2008 and \$64 in
17 2009. However, Appellant's POS system data for 2Q '13
18 through 4Q '14, showed the average sale transaction at
19 below \$25; Appellant's reply brief dated September, 3rd,
20 2021, Attachment 1. Based on inflation factors, the
21 average sales amount should have increased from 2008 to
22 2009.

23 When Appellant implemented it's new POS system in
24 February of 2015, the average sales amount nearly doubled
25 from around \$25 to \$50; again, Appellant's reply brief

1 dated September 3rd, 2021. Such a drastic increase from
2 one quarter to the next -- from one quarter to the next is
3 not common. Average sales transaction based on
4 Department's experience is \$50. That's the average
5 selling price of an eighth of an ounce of cannabis.

6 Because sales were impeached, the Department used
7 alternative methods to establish sales for the audit
8 period. The observation tests were used to establish
9 sales for the last three quarters of the audit period and
10 a growth rate formula was used to establish sales for the
11 first nine quarters of the audit period. The Department
12 used a growth rate projection from the prior audit to
13 compute audited sales for the first nine quarters of the
14 current audit period. The growth rate uses the
15 Appellant's admitted total sales for the -- total sales of
16 the prior audit for the -- for 2010 --

17 JUDGE LAMBERT: Mr. Suazo, speak into the
18 microphone also because that will make it easier. Thanks.

19 MR. SUAZO: Sorry.

20 The growth rate uses the Appellant's admitted
21 total sales of the prior audit for year 2010 in
22 conjunction with reported sales for each quarter of the
23 current audit period through 2Q. 2015; Exhibit D, pages 62
24 to 64. Based on this formula, audited sales are almost
25 \$2.8 million, which when compared to reported sales of

1 \$355,000 results in a difference of \$2.4 million.

2 Analysis of the total sales reveal the overall
3 average for the period 2Q '13 through 2Q '15 is seven
4 customers per hour; Exhibit H, page 148. For the period
5 3Q '15 to 1Q '16, the observation tests were used to
6 compute audited sales of \$3 million, which when compared
7 to reported sales of \$910,000 resulted in a difference of
8 \$2.1 million. In total, the Department determined audited
9 sales of \$5.8 million, which when compared to reported
10 sales of less than 3 -- \$1.3 million resulted in
11 unreported taxable sales of just over four-and-a-half
12 million dollars; Exhibit D, page 61.

13 While Appellant argues that the building had
14 physical restrictions that would limit the number of
15 customers at any given time, again, Appellant's reply
16 brief dated September 3rd, 2021, Exhibit 3, the Department
17 relies on information gathered from the observation tests,
18 which showed an average of 24 customers entering the
19 business each hour.

20 Moreover, the Appellant's own record shows that
21 more than 8 customers were sold to within a one-hour
22 period on four separate occasions when the observation
23 tests were being conducted. This is for the last three
24 quarters of the audit period. Wednesday, February 3rd, 13
25 sales transactions, Friday, February 19th, 10 sales

1 transactions, Friday, March 4th, 16 sales transaction, and
2 Sunday, March 13th, 9 sales transactions.

3 For further examination of the building capacity,
4 the Department refers the panel to the floor plan provided
5 by the Appellant that's included in Exhibit A on pages 41
6 and 42, also the Department's analysis on Exhibit H. Based
7 on the foregoing the Department has shown that its
8 determination was reasonable. Aside from its argument we
9 just addressed, Appellant has not met its burden of proof
10 that the Department's determination is overstated.

11 Concerning the negligence penalty, a
12 10 percent -- a penalty of 10 percent is recommended for
13 negligence in maintaining improper books and records.
14 This is the Appellant's second audit and the same issue of
15 unreported sales is again assessed. The percentage of
16 error is 358 percent. The total assessment is
17 \$4.5 million. Books and records were found unreliable
18 and, therefore, impeached.

19 Again, looking at the report of sales, the
20 Appellant stated that they had a closed business.
21 However, looking at the first quarter of 2014, there were
22 sales of \$6,410 reported; the following quarter, \$11,350
23 reported; the third quarter \$11,660. The fourth quarter
24 when he said, basically, they didn't open until
25 February 15th of 2015, there's \$17,000 reported. But

1 during February 15th, which he just said they opened, the
2 sales were also \$17,000. So if they weren't open, then
3 how did they have the \$17,000 in the prior quarter?

4 If you look at the -- if you were to compute the
5 dollars per -- per -- or the sales per day, based on their
6 reported amounts using an average of 90 days per quarter
7 and an average selling price of \$50 per sale or per
8 transaction for the first quarter of 2014 -- or excuse
9 me -- for the second quarter of 2014, they only had
10 two-and-a-half sales per day. Third quarter of 2014, it
11 was only 2.6 sales per day. Fourth quarter it was only
12 four sales per day, and the first quarter '15 when they
13 say they opened, it was only again, four sales per day.

14 When they did the soft opening or when they do
15 the hard opening on May 16th, the sales increased from
16 \$17,000 to \$28,000. However, there's only 6 sales per
17 day. In the third quarter of 2015, it goes up to 41 sales
18 per day; but this is already after they've had the grand
19 opening. Then the sales double the following quarter to
20 three -- basically double the following quarter to
21 \$364,000, and there's 81 sales per day, which they
22 maintain for the first quarter of 2016 as well.

23 That concludes my presentation. I'm available to
24 answer any questions you may have.

25 JUDGE LAMBERT: Thank you, Mr. Suazo.

1 I'll turn to panel and ask if they have any
2 questions.

3 Judge Kwee, did you have any questions?

4 JUDGE KWEE: This is Judge Kwee. I don't have
5 any questions. Thank you.

6 JUDGE LAMBERT: And Judge Brown, did you have any
7 questions?

8 JUDGE BROWN: I may have a couple of questions.
9 I guess I don't understand why -- let me say it. Could
10 you explain why does the Department assume growth in the
11 few months after the tax -- the Appellant moved locations?
12 The calculation of the growth formula assumes that they
13 will have increased their sales from their previous
14 location, even though they just relocated. Is -- is that
15 a good summary? Can you correct me?

16 MR. SUAZO: I believe I understand what you're
17 asking.

18 JUDGE BROWN: Yeah.

19 MR. SUAZO: Basically, when you're moving from
20 one location to another, you're moving to a better --
21 greener pastures. When they left the North Hollywood
22 location, they went to Canoga. You wouldn't leave a
23 place -- well, they said that they were basically kicked
24 out -- but when you're going to move to a better -- to
25 another location, you're going to try and move to a

1 location that has equivalent sales, if not better sales.
2 So that is why they would have calculated in this scenario
3 that the sales would have increased.

4 They're also basing this on the reported sales.
5 So they're saying that based on the reported sales and the
6 increases shown in the audit, that they themselves has
7 shown as their own increase. We're not creating their own
8 increase. They are creating their own increase. Based on
9 our determination, that's what the sales would be.

10 JUDGE BROWN: And did the Department look for any
11 evidence as to whether Appellant's location was shut down
12 as they indicated during that period from -- I guess, from
13 February 2014 until the grand reopening or at least until
14 the soft opening?

15 MR. SUAZO: Well, the lease shows that they took
16 possession of the location on -- in February of 2014. So
17 at this point, we're assuming that they're going to be
18 making sales. Actually, they did -- they did allow for a
19 reduction in sales that first quarter. And then they
20 figure -- they computed that the sales would be in regards
21 pretty much the same as the other location.

22 JUDGE BROWN: What about their argument about the
23 building permit not being approved until October of 2014?

24 MR. SUAZO: If that was the case, then why are
25 they making sales of -- that they reported of \$7,000,

1 \$11,000, \$11,000. They're still making sales. Are they
2 making sales and are they reporting everything? That's
3 what we're saying they're not doing.

4 JUDGE BROWN: Does the Department look at the EDD
5 wage reports in cases like this?

6 MR. SUAZO: For a dispensary it's going to be a
7 little bit different to do the wage -- the wage analysis.
8 Because in a dispensary they may not have payroll, per se,
9 as opposed to paying cash to employees. Since, again,
10 they can't go into the bank, so some dispensaries will pay
11 cash to employees and not put them on the payroll books.

12 JUDGE BROWN: I think that's all I have for CDTFA
13 right now. Thank you.

14 JUDGE LAMBERT: Thanks. I just have one
15 question, I think. Just on the dividing -- the divided --
16 CDTFA divided \$215,775 by 3, I think, to compute the
17 average, and just was it 3 months to just kind of like --
18 was it based on any specific thing or just spreading out
19 over the period to give some sort of allowance, like some
20 sort of, you know, understanding of the -- that it was
21 starting up? But, you know, is the dividing by 3 have any
22 other significance that it's dividing it by 3 months, or
23 is that just the how many months in the quarter?

24 MR. SUAZO: Are we talking about the first
25 quarter of 2014 only?

1 JUDGE LAMBERT: Dividing 4Q '13.

2 MR. SUAZO: Oh, yeah. Then it's basically just
3 to say, hey, you know, we know that you guys were closed
4 for some degree of time. We'll give you the benefit of
5 the doubt and then assess at the 71.

6 JUDGE LAMBERT: Okay. Thanks.

7 At this time Appellant, Mr. Robinson, you can
8 give your closing remarks.

9

10 CLOSING STATEMENT

11 MR. ROBINSON: Oh, I'd like to thank -- I'd like
12 to thank Counsel for making our point for us.

13 If you take a look at the returns from Q '14 --
14 4Q '14 to 1Q '15, you'll notice that it's -- it had very
15 limited business during that time. And then the report
16 jumps in the second quarter of 2015 as the business begins
17 to make money or begins to get new customers. It takes
18 time to build customers. You don't do it overnight. You
19 don't get the same folks that you had in 2013 when you're
20 just building a new business opening in 2015 at a new
21 location.

22 And the new location, it wasn't greener pastures.
23 The City of Los Angeles had a new ordinance which didn't
24 allow the cannabis operation to operate within 1,000 feet
25 of a church. In their North Hollywood location, they were

1 within 1,000 feet of a church and were forced to move to
2 Canoga Park, which is not as good as a -- not a greener
3 pasture as -- as the Counsel pointed out.

4 So I think what has happened here, and I think
5 this has been very productive actually. I think also for
6 the CDTFA, I hope, is to show that this particular entity,
7 Divine Wellness, has gone out of its way to provide the
8 evidence necessary to show that they paid all the sales
9 tax during the time period they were in operation. They
10 explained the limited operation that they had and the
11 division that the CDTFA makes is pretty much out of a
12 whole cloth as you can see. There's absolutely no
13 substance to it.

14 And I understand that they impeached the POS
15 system, but the POS system is really the best basis for
16 acknowledging for what the sales were. This is one of the
17 good guys in the cannabis industry, folks. They're paying
18 their taxes, and they're paying their taxes on a regular
19 basis.

20 And I think what I'd like to just close with is
21 that we just ask the OTA to fairly weigh the evidence
22 presented and determined by the preponderance of the
23 evidence that the factual evidence provided by DWI
24 outweighs the unreasonable speculation that led to three
25 different results from three different CDTFA audits

1 predicated on the same flawed observational data that had
2 no nexus to the changing business conditions of DWI, And
3 that's why we're here today.

4 And I really do appreciate you listening to our
5 argument. Thank you.

6 MR. ROBINSON: Oh, and I'd like to turn this over
7 to Bruce.

8 MR. BUNNING: Through the audit process, and this
9 is also on Exhibit 3 on 000067 Bates Stamped. And I'd
10 like to just bring this to the attention of the Judges,
11 and as rebuttal to testimony that we have from the other
12 side here. During the audit process, the first
13 conversation with our office -- it should be duly noted
14 that during the the first result showed the same estimated
15 sales for each quarter, even though the auditor was
16 presented with the POS system, the transactions, the
17 registers and the information relating to the move in a
18 soft opening period.

19 When questioned on this result, the auditor
20 responded to us that her supervisor told her to do that
21 any way. Secondly, the audit was referred to the district
22 in the Glendale office then. During the first
23 conversation with our office, the lack of science in
24 counting how many people entered the business and the
25 assumption that everyone going to be -- going in made a

1 purchase was discussed in depth with the auditor. Please
2 see her notes on removal of people observed in one hour on
3 2/19 of '16.

4 It also is beneficial if we Google the street and
5 look at the lack of parking nearby the facility, it is
6 strictly street parking with very little -- small lot
7 available in the back. This is a residential
8 neighborhood. There is required special permitting to get
9 approval in those areas. Approximately two blocks in one
10 direction and a business in the other. To get that many
11 people into that space -- I want to get into the space
12 now.

13 JUDGE LAMBERT: Also I'm just noting that the
14 time is just about up, so maybe you could finish pretty
15 soon.

16 MR. BUNNING: Right. I'll wrap up real quick.

17 MR. ROBINSON: Okay.

18 MR. BUNNING: In the report in depth on May 23rd
19 to Mr. Long or the appeals officer at that period of time,
20 we went into depth on the issue of individual work flow,
21 the time a system opens up. Again, the auditor did not
22 look and did not rely on our POS system, completely
23 discounted it. The second part of the deal was -- was the
24 space itself and there was a whole analysis in this
25 report. Please look at the report that explains the

1 square footage of the building.

2 By regulation, the product itself had to be under
3 lock and key in the back door. So there's limited sales
4 space in that area. If you took the average patient that
5 walks in the door or customer to put that many people in
6 there, they would have to have been absolutely stepping on
7 top of each other because the sales area had limited
8 space. So when you look at regulations that have to go
9 with that space, that's all in that report. So that is
10 more reason within compliance with the POS system as we
11 went into the process.

12 MR. ROBINSON: Again, I think we've proved our
13 point with the POS system being the best accurate -- and
14 most accurate way to total the sales. And just to
15 reiterate from my client's point of view, he pays his
16 sales tax, and he is one of the good guys in the industry.
17 And I think that's what we should leave you with going
18 forward. I think we've provided all the evidence that we
19 have, and we do appreciate the Judges listening to our
20 argument.

21 Thank you.

22 JUDGE LAMBERT: Thank you, Mr. Robinson and
23 Mr. Bunning.

24 I'll ask my co-panelists one more time if they
25 have any final questions.

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Judge Kwee?

JUDGE KWEE: This is Judge Kwee. I don't have any questions. Thank you.

JUDGE LAMBERT: Thanks.

And Judge Brown, did you have any questions?

JUDGE BROWN: Nothing further. Thank you.

JUDGE LAMBERT: I have no further questions. So if there's nothing further, I'm going to conclude the hearing, and I want to thank both parties for appearing today; and also Mr. Petroysian and Mr. Smith.

And we will issue a written opinion within 100 days, and thank you. The record is now closed.

(The proceedings adjourned at 2:13 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 14th day of November, 2022.

ERNALYN M. ALONZO
HEARING REPORTER