

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF:	)	
	)	
DELIA LUEVANO,	)	CASE NOS. 18063267
	)	18063268
APPELLANT.	)	
_____	)	

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Friday, December 16, 2022

Reported by:

Maria Esquivel-Parkinson,  
CSR No. 10621, RPR

Job No.:  
39621 OTA(A)

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TRANSCRIPT OF PROCEEDINGS, taken at  
400 R Street, Sacramento, California,  
commencing at 9:45 a.m. and concluding  
at 11:42 a.m. on Friday, December 16, 2022,  
reported by Maria Esquivel-Parkinson,  
CSR No. 10621, RPR, a Certified Shorthand  
Reporter in and for that State of California.

1 APPEARANCES:

2  
3 Panel Members: NATASHA RALSTON, Lead ALJ  
4 TERESA STANLEY  
5 ANDREW KWEE

6 For the Appellant: DELIA LUEVANO  
7 MONICA GONZALES, Representative

8 For the CDTFA: OFFICE OF TAX APPEALS  
9  
10 RANDY SUAZO, Hearing Representative  
11 CHRISTOPHER BROOKS, Tax Counsel  
12 JASON PARKER, Hearing Representative  
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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-20 were admitted on  
page 9)

(Appellant's Exhibits 21-22 were admitted on  
page 24)

(Appellant's Exhibits 23-24 were admitted on  
page 25)

(Respondent's Exhibits A-L were admitted on  
page 9)

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1 Sacramento, California; Friday, December 16, 2022

2 9:45 a.m.

3  
4 ALJ RALSTON: So we are now on the record in  
5 the appeal of Delia Luevano. These matters are being  
6 heard before the Office of Tax Appeals. Office of Tax  
7 Appeal case numbers are 18063267 and 18063268.

8 Today's date is Friday, December 16th, 2022,  
9 and the time is approximately 9:45 a.m.

10 Today's hearing is being heard by a panel of  
11 three administrative law judges. So I am Judge Ralston,  
12 and I will be the lead judge. Judge Stanley and Judge  
13 Kwee are the other members of this Tax Appeals panel.

14 After the hearing all three judges will meet  
15 and produce a written decision as equal participants.  
16 Although as the lead judge I will conduct the hearing,  
17 any judge on this panel may ask questions or otherwise  
18 participate to ensure that we have all the information  
19 needed to decide this appeal.

20 As I mentioned earlier, this hearing is being  
21 live streamed to the public. It is also being recorded.  
22 The transcript and video recording are part of the  
23 public record and will be posted on our website.

24 Also present is our stenographer,  
25 Ms. Esquivel-Parkinson, who is reporting this hearing

1 verbatim. So to ensure that we have an accurate record,  
2 we ask that everyone speaks one at a time and does not  
3 speak over each other. Also, speak clearly and loudly.  
4 When needed, the stenographer will stop the hearing and  
5 ask for clarification. And after the hearing, the  
6 stenographer will produce the official hearing  
7 transcript and this will be available on the Office of  
8 Tax Appeals' website. Okay.

9 First I'm going to ask the parties to please  
10 state their names and who they represent, and I'm going  
11 to start with CDTFA.

12 MR. SUAZO: Randy Suazo, hearing  
13 representative, CDTFA.

14 MR. PARKER: Jason Parker, chief of  
15 headquarters operations bureau with CDTFA.

16 MR. BROOKS: Christopher Brooks, tax counsel  
17 for CDTFA.

18 ALJ RALSTON: Thank you.

19 And for the Appellant?

20 APPELLANT LUEVANO: Delia Luevano.

21 (Reporter interrupted)

22 APPELLANT LUEVANO: Delia Luevano.

23 MS. GONZALEZ: Monica Gonzalez.

24 ALJ RALSTON: And the other persons with you?

25 MR. LUEVANO: Moises Luevano.

1 ALJ RALSTON: Yes. Thank you.

2 Okay. So we had a prehearing conference on  
3 June 29th of this year and we discussed the issues to be  
4 decided in this appeal. And so there are two issues,  
5 and that's whether the appellant has shown that further  
6 reductions to the measure of tax are warranted --

7 THE INTERPRETER: To the measure of tax --

8 ALJ RALSTON: Oh, to the measure of tax are  
9 warranted.

10 THE INTERPRETER: -- with this term.

11 ALJ RALSTON: Oh, when you speak, if you don't  
12 mind, if you could press the button so that --

13 THE INTERPRETER: It's on. Yeah, sorry. I  
14 just wasn't close enough.

15 ALJ RALSTON: Okay. Thank you. What was your  
16 question?

17 THE INTERPRETER: I can't interpret "to the  
18 measure of tax."

19 ALJ RALSTON: Okay.

20 THE INTERPRETER: Because I'm unfamiliar with  
21 the term. Is it a term of art, term of the industry?

22 ALJ RALSTON: Right. Let me see, how about  
23 whether appellant has shown that reductions to the  
24 amount of the liability are warranted and --

25 APPELLANT LUEVANO: Should I say you now?

1 ALJ RALSTON: No. Right now we're just --  
2 we're just going over things. I will let you know when  
3 it's your chance for your opening presentation, but  
4 right now we just want to confirm that everyone's on the  
5 same page.

6 And the other issue is whether the negligence  
7 penalty should apply. Okay. As far as evidence goes  
8 from the prehearing conference, we discussed that the  
9 Appellant is going to testify under oath.

10 APPELLANT LUEVANO: Yes.

11 ALJ RALSTON: And then is Mister -- are you  
12 calling another witness also?

13 APPELLANT LUEVANO: I have my husband.

14 ALJ RALSTON: Okay. So when we get to that  
15 point in the hearing, I will swear both of you in. And  
16 after you give your testimony, you may be asked  
17 questions by Respondent or also by the members of this  
18 panel. Okay.

19 APPELLANT LUEVANO: That's okay.

20 ALJ RALSTON: And then Respondent, CDTFA, does  
21 not intend to call any witnesses.

22 And did Respondent have any objection to  
23 Appellant's witnesses?

24 MR. SUAZO: No objections.

25 ALJ RALSTON: Thank you. So moving on to



1 exhibits, the Appellant has submitted exhibits 1 through  
2 20. Exhibits 1 through 13 were previously submitted.

3 And Respondent did not object to Appellant's  
4 Exhibits 1 through 13?

5 MR. SUAZO: No objection.

6 ALJ RALSTON: So Appellant's Exhibits 1 through  
7 13 will be admitted without objection.

8 (Appellant's Exhibits 1 through 13 admitted.)

9 ALJ RALSTON: With regard to Appellant's  
10 Exhibits 14 through 20, did you receive those exhibits,  
11 Mr. Suazo?

12 MR. SUAZO: We have them.

13 ALJ RALSTON: Okay. And did you have any  
14 objection to them?

15 MR. SUAZO: No.

16 ALJ RALSTON: Perfect. So Appellant's Exhibits  
17 14 through 20 will also be admitted without objection.

18 (Appellant's Exhibits 14 through 20 admitted.)

19 ALJ RALSTON: And Respondent has submitted  
20 Exhibits A through L. And Appellant did not have any  
21 objections to those exhibits, so those exhibits are --  
22 Respondent's Exhibits A through L are also admitted  
23 without objection.

24 (Respondent's Exhibit A through L admitted.)

25 ALJ RALSTON: Moving on to the order of the

1 hearing, the Appellant will have approximately 30  
2 minutes for your opening presentation. And during that  
3 time, you can give your presentation or your -- and/or  
4 your witness testimony. And then after that, Respondent  
5 will also have 30 minutes for their presentation. And  
6 then Appellant will have ten minutes for a rebuttal.

7 THE INTERPRETER: I'm sorry, your Honor. How  
8 much time?

9 ALJ RALSTON: For the rebuttal?

10 THE INTERPRETER: For the rebuttal.

11 ALJ RALSTON: Ten minutes.

12 And as noted before, the panel members may ask  
13 questions of either party at any time during these  
14 proceedings. Okay. So -- I'm sorry. What is the --  
15 the name of the other witness?

16 APPELLANT LUEVANO: Moises Luevano.

17 ALJ RALSTON: The last name, I'm sorry?  
18 Luevano?

19 APPELLANT LUEVANO: Luevano.

20 ALJ RALSTON: Thank you. Thank you. So I'm  
21 going to ask both of you to raise your right hand. Also  
22 Mr. Luevano. Just raise your right hand.

23 And -- and, Ms. Gonzalez, you're not  
24 testifying, correct?

25 MS. GONZALEZ: I will be speaking for what I

1 know so shall I raise my hand as well?

2 ALJ RALSTON: Yeah. Let's have you raise your  
3 hand also. Okay.

4 So do you swear or affirm to tell the truth,  
5 the whole truth and nothing but the truth?

6 APPELLANT LUEVANO: Yes.

7 MS. GONZALEZ: Yes, I do.

8 MR. LUEVANO: Yes.

9 ALJ RALSTON: Okay. And we have -- just for  
10 the record, we have a "Yes" from all three witnesses.

11 APPELLANT LUEVANO: That's right. Yes.

12 ALJ RALSTON: Okay. I'm sorry. Ms. Luevano,  
13 did you have a question about the issues earlier?

14 APPELLANT LUEVANO: No. It was what was sent.

15 ALJ RALSTON: Okay. Thank you. So we are  
16 ready to proceed with your opening presentation. So you  
17 have approximately 30 minutes, and you can begin when  
18 you are ready.

19 MS. GONZALEZ: Why don't you start with the  
20 dates first and the interpreter will say it in English.

21 (Reporter clarification)

22 MS. GONZALEZ: No, he's not -- no, we're not --

23 THE INTERPRETER: I don't know should I  
24 interpret their conversation?

25 MS. GONZALEZ: I mean, we're not saying this in

1 public.

2 He shouldn't be interpreting; right?

3 ALJ RALSTON: Oh, okay. So we're going to  
4 begin your testimony, and we're on the record and being  
5 live streamed. If you need to take a break for a few  
6 minutes, we can do that.

7 MS. GONZALEZ: Okay. So we'll take a  
8 five-minute break just to double-check.

9 ALJ RALSTON: Okay. Yeah. We'll take a  
10 five-minute break. The video will still be moving so --  
11 or the -- it's still recording, so --

12 MS. GONZALEZ: That's fine.

13 ALJ RALSTON: -- just to let you guys know  
14 that. Thank you.

15 (Break taken at 10:01 a.m.)

16 ALJ RALSTON: So we are back on the record.

17  
18 PRESENTATION

19 BY MS. GONZALEZ, Representative for Appellant:

20 So one thing that we think is very important to  
21 understand is the timeline of the two businesses. Yes,  
22 there are two businesses. One is Bar Rio, which is a  
23 single, kind of hole dive bar, and then La Movida  
24 restaurant, which is a restaurant Monday through Friday,  
25 basically, and a nightclub on the weekends.

1           ALJ RALSTON: I'm sorry. Yeah, if you can --  
2 you can move the microphone.

3           MS. GONZALEZ: Yeah. Sorry. Is that better?  
4 Should I repeat what I just said?

5           ALJ RALSTON: Yeah.

6           MS. GONZALEZ: Okay. Initially we want to make  
7 sure that we understand the timeline of the businesses.  
8 So there are two businesses, Bar Rio, which is a small  
9 hole-in-the-wall bar, and La Movida restaurant, which is  
10 a restaurant Monday through Friday but a nightclub on  
11 Friday night and Saturday. And so these two businesses  
12 are in literally the same --

13          ALJ RALSTON: I apologize. Let me stop you  
14 again.

15          Are you interpreting for Ms. Luevano?

16          APPELLANT LUEVANO: Yes, I understand.

17          THE INTERPRETER: But I thought -- okay. I'm  
18 sorry. I wasn't.

19          ALJ RALSTON: Sure.

20          THE INTERPRETER: I wasn't -- okay. No, I  
21 wasn't.

22          ALJ RALSTON: Okay. Yeah. So just because we  
23 have the interpreter, we're -- even though you  
24 understand, we're just going to have him interpret  
25 everything pretty much. Thank you.

1 MS. GONZALEZ: So as I was saying, the  
2 businesses are in -- within the same business strip, so  
3 they share the same location. So there might be --  
4 there -- from my findings were a lot of confusions. So  
5 I'm going to have Delia speak now and refer to when each  
6 business was opened, when there was a fire at one of the  
7 locations, for Bar Rio, specifically. Also, La Movida  
8 when it opened, it opened as a minors club and did not  
9 have access or did not have the availability to sell  
10 alcohol until much later. So she knows the dates by  
11 heart, so I'm going to pass it over to her so she can  
12 give you the dates.

13 APPELLANT LUEVANO: Okay. So Bar Rio, there  
14 was a fire on the 8th of November of 2009 so everything  
15 we had in there was destroyed.

16 ALJ RALSTON: I apologize again for  
17 interrupting. If we could have Ms. Luevano turn off  
18 your mic and then we can just pick up the interpreter's  
19 mic. Thank you so much.

20 APPELLANT LUEVANO: So on the 8th of November  
21 of 2009 there was a fire. So all the inventory in the  
22 place was destroyed. The Department of Health made us  
23 throw away absolutely everything. When we started on  
24 the 3rd of June after everything was fixed with  
25 permissions from the City -- permits from the City,

1 etc., we started the 3rd of June. And we started from  
2 zero as a new business, and we had to buy everything  
3 again, everything that had been destroyed. I tell you  
4 this because of the time that it took to put everything  
5 in order to -- in order to operate.

6 And as far as La Movida nightclub, we opened  
7 that in September 13, 2001. So we weren't qualified for  
8 a liquor license, but we kept working it for minors  
9 until 2012. And the liquor license was approved. I got  
10 the ABC paperwork only on the 25th of May of 2012, and  
11 we started operating the restaurant with alcohol not  
12 until July 22nd.

13 And -- and after that, actually, we didn't sell  
14 much alcohol because people thought it was a club for  
15 minors. We had ordered 18 boxes of beer and that's all.  
16 There was no consumption. There was no alcohol  
17 practically in those three years. That's what I can  
18 say.

19 MS. GONZALEZ: And that's where I pick up. And  
20 the invoices in the number of pages that were in the  
21 case, there were as far as I understood, were under two  
22 audits done at two different time periods, either done  
23 in 2013 or 2014 or 2015. I ensured that you guys  
24 received this, and I downloaded this in the package. So  
25 the most recent one has the color-coordinated invoices

1 grouped together.

2 And what is astounding to me is that a same  
3 invoice from the same merchant is not only being billed  
4 to La Movida or it's being billed to Bar Rio. So in my  
5 experience, an invoice goes to one business, but I find  
6 that it's multiplied once, twice, multiple times.  
7 And so she's being held responsible for these invoices  
8 that, quite frankly, are inflated.

9 I also did the second Excel document which had  
10 the unduplicated invoices. So to put in reference, the  
11 duplicated invoices equates to over \$2 million of  
12 alcohol purchases between 2010 through two thousand --  
13 what was it? Sorry. Turn to the last page -- '12. But  
14 removing the duplicate -- sorry. I'm listening to your  
15 Spanish -- the invoices equates to just over \$400,000.  
16 Now, granted, I could have picked the wrong invoice  
17 number or the amount is different, but I mean, that just  
18 shows to me just blatantly how there was entry errors  
19 when the invoices were put into the big database and  
20 then not taking into account that La Movida has invoices  
21 assigned to her during the time frame that she didn't  
22 have alcohol being sold.

23 So there's just a huge difference. And I just  
24 don't know how -- I have, obviously, the downloads that  
25 you have on the website is a PDF. I provided -- I have



1 a USB drive that has the Excel documents that I'd be  
2 happy to turn over so that you can review and sort out  
3 it anyway, you know, in the Excel document. But I spent  
4 nearly 20 hours of typing this in manually, and I  
5 actually got carpal tunnel because of it. But I just  
6 don't know what else I can say to show that invoices are  
7 inflated. Her -- we know she owes taxes for the alcohol  
8 purchase, but not to the extent that it's being shown.

9 Another thing that Delia wanted to make sure  
10 that we ask is the CRV to the alcohol was added to her  
11 bottom line when the consumer at the locations cannot  
12 walk out. She doesn't charge CRV because they can't  
13 take the bottles without -- with them outside of the  
14 businesses. So that was something that should have --  
15 should also be taken into consideration. As well as the  
16 breakage, she was promised that it was going to be a  
17 2 percent breakage and I believe she only received  
18 1 percent.

19 APPELLANT LUEVANO: (In English) When I say --  
20 when I finish up in the year -- but I'm --

21 (Through Interpreter) In the year '12, to round  
22 off, I was owed \$25,014, and they listed it as something  
23 that I resold. The years after that, that alcohol had  
24 been sold at the bar and I'd been paying taxes. So why  
25 don't they give me credit for that alcohol that was left

1 over and not sold?

2 ALJ RALSTON: Just to clarify, you were -- you  
3 said that in 2012 --

4 APPELLANT LUEVANO: When 2012 ended, after two  
5 and a half years, we had all this alcohol left over in  
6 the basement. And I gave a list to them, but they  
7 listed it as something I had sold.

8 ALJ RALSTON: I see. Thank you. Does that  
9 conclude your presentation?

10 MS. GONZALEZ: I think that's sufficient for  
11 now. I think I've gotten most of -- sorry. I think  
12 we've gotten most of what we needed to say out. There  
13 were some particular invoices that are duplicated that I  
14 think we've covered everything. Thank you.

15 ALJ RALSTON: Okay. And the duplicated  
16 invoices are part of your exhibits; correct?

17 MS. GONZALEZ: Yes. Yes, they are. Or at  
18 least the most recent ones, yes.

19 ALJ RALSTON: Okay. Thank you.

20 Mr. -- oh, let me -- sorry. Yeah. Mr. Suazo,  
21 did you have any questions for the Appellant?

22 MR. SUAZO: No questions.

23 ALJ RALSTON: Okay. Thank you. I'm going to  
24 check in with my panel.

25 Judge Stanley, did you have any questions?

1           ALJ STANLEY: Yes. I have a question for  
2 Ms. Gonzalez. Can you -- we do have your exhibit, and I  
3 was just wondering if you could show us an example of  
4 what you're talking about.

5           MS. GONZALEZ: Certainly. I'm looking for a  
6 real juicy one. That's why -- I'm sorry. Oh, okay. So  
7 if you turn -- it's kind of in the middle of the package  
8 or probably -- it's a different screen. If you look  
9 towards November of 2011, it's towards the middle of the  
10 page.

11          ALJ RALSTON: And is this on the color-coded --

12          MS. GONZALEZ: Yes.

13          ALJ RALSTON: -- or can you let us know an  
14 exhibit number?

15          MS. GONZALEZ: The color-coordinated.

16          ALJ RALSTON: Okay. Okay. Thanks.

17          MS. GONZALEZ: Sorry. I wish I had these pages  
18 numbered on my side. But towards the bottom, it will --  
19 there is an invoice dated as of November 28th, which  
20 has -- if you find there's one, two, three, four -- five  
21 dates of November 28th. The first one says 17  
22 thousand -- 1767 with 85 cents. The second one says  
23 \$1,767.85. And the next three say 17,637.85. So those  
24 numbers -- the balance of those numbers are very -- are  
25 exactly the same. The invoice numbers are exactly the

1 same for a couch. And they're within the audit term or  
2 time frame -- let me just look here a minute -- are  
3 within two of the years, either the 2015 or 2013. And  
4 those are some high -- the \$17,000 amount is pretty  
5 high. But it seems to me it's a clear indication of  
6 some clerical errors.

7 And I did reference to what exhibit number they  
8 were in the file, so they ranged from Exhibits E and F  
9 and L, and I also made sure to include the page number  
10 and the case number. So we're talking about it's being  
11 assigned to La Movida and Bar Rio.

12 ALJ STANLEY: Thank you. That answers my  
13 question.

14 ALJ RALSTON: Okay. Judge Kwee, did you have  
15 any questions?

16 ALJ KWEE: Hi. This is -- this is Judge Kwee.  
17 I did have just one -- actually, I had a couple  
18 questions, but the first is a clarification because the  
19 document that you have in your hand there, I believe,  
20 was the invoices color-coordinated. And then we also  
21 received invoices without duplicates that were submitted  
22 on December 13th, but I don't think those were admitted  
23 into evidence because we only admitted Exhibits 1  
24 through 20 for the taxpayer, and I think these were  
25 submitted after the exhibit binders were created. So

1 I'd, I guess, just double-check that we have that.

2 MS. GONZALEZ: That was my mistake in the sense  
3 of the original ones I did submit, they were, I think,  
4 by date. So you could sort the same information  
5 because they're -- because that particular instance --  
6 sample I provided on November 28th, I did the -- I  
7 didn't actually do the color-coordinated. I had my -- a  
8 friend do the color coordinating because I'm not that  
9 fluent in Excel to make it easy. Again, I have a USB  
10 stick if you'd like to double-check.

11 ALJ KWEE: Oh. I just wanted to confirm that  
12 these two documents were submitted on December 13th,  
13 that you have. Because if they are, I think we just  
14 need to admit them and see if CDTFA has an objection, if  
15 I'm understanding correctly.

16 MS. GONZALEZ: Oh, okay. So essentially it's  
17 the exact same information just the colors were added to  
18 separate.

19 ALJ RALSTON: Okay. Okay. So you submitted --  
20 just to clarify, you submitted some documents on or  
21 about November 30th and you submitted a bunch of  
22 exhibits, and those we put into the hearing binder and  
23 labeled Exhibits 14 through 20. So after you submitted  
24 those exhibits, you submitted the same exhibits again  
25 just with color-coordinated information?

1 MS. GONZALEZ: That is correct.

2 ALJ RALSTON: Okay. Thank you.

3 Is that -- CDTFA, did you receive that  
4 information?

5 MR. SUAZO: The color-coded ones? No.

6 ALJ RALSTON: Okay.

7 MR. PARKER: And, Judge Ralston, I was trying  
8 to follow along what she was talking about in the --  
9 through Exhibit 15, and I was not able to follow and see  
10 what the additional duplicate line items were based on  
11 what is in the hearing binder. So I don't know if we  
12 have specific pages to look at. I know she said  
13 November 28, 2011, but what I saw in the line items, I  
14 saw one time each on different pages.

15 ALJ RALSTON: Okay. Thank you. You guys, I  
16 apologize for the delay, but we're going to take another  
17 break. I want to make sure that CDTFA has time to look  
18 at this information. I was not aware that they hadn't  
19 received it. So we are going to take a short break.  
20 We'll give them time to take a look at it. And then  
21 when we resume, CDTFA can let us know if they have an  
22 objection.

23 Yeah. So I apologize again for the delay.  
24 We're going to take a short break and meet back here  
25 in --

1 CDTFA, those are kind of big documents so I'm  
2 not sure how much time you think you would want to  
3 review them. It seems, from what Appellant is saying,  
4 that it's the same information just color-coordinated.  
5 So let's -- let's do about 30 minutes. That will give  
6 us time to get the documents to you. And if we need  
7 more time, you can just let us know and we can -- we'll  
8 go from there. Oh, yeah. Or if you need less time,  
9 that's great also.

10 MR. BROOKS: We still don't have the  
11 color-coded copy. Oh, you're going to provide that to  
12 us.

13 ALJ RALSTON: Yes. Yes. We're going to get  
14 those copies to you.

15 MR. BROOKS: Okay.

16 MS. GONZALEZ: Do you want the USB stick for  
17 quicker access?

18 ALJ RALSTON: No. We have the information in  
19 our system. Just for some reason it wasn't distributed.

20 MS. GONZALEZ: I did notice a delay in the  
21 system where I would upload the information. So I  
22 didn't do it under -- it did actually days before and it  
23 just took a while for the system to --

24 ALJ RALSTON: Right. So, yeah. We  
25 definitely -- we need to make sure everybody has the

1 same information. So we want to give them time to look  
2 at it. They may need additional time because it's a lot  
3 of information. So -- yeah.

4 Like I said, the live stream will keep going,  
5 and we will get those documents to CDTFA shortly. Thank  
6 you. We're going to go off the record. Thank you.

7 (Break taken at 10:25 a.m.)

8 ALJ RALSTON: Okay. We are back on the record.  
9 Thank you, everyone, for your patience.

10 Mr. Suazo, I -- did you have time to take a  
11 look at the documents?

12 MR. SUAZO: Yes.

13 ALJ RALSTON: Okay. And are you ready to  
14 proceed? Did you have an objection?

15 MR. SUAZO: No, we're okay.

16 ALJ RALSTON: Okay. Great. So no objection.  
17 So we need to admit them into evidence, so I'm just  
18 going to go ahead and admit them into the record. So we  
19 have the invoices color-coordinated, we'll admit that as  
20 Appellant's Exhibit 21.

21 (Appellant's Exhibit 21 admitted.)

22 We have the invoices without duplicates. We  
23 will admit that as Appellant's Exhibit 22.

24 (Appellant's Exhibit 22 admitted.)

25 ALJ RALSTON: And then we have what Appellant



1 has labeled Exhibits C-1 through 10. We will admit that  
2 as Appellant's Exhibit 23.

3 (Appellant's Exhibit 23 admitted.)

4 And then the document that appellant has  
5 labeled Exhibit D-1 through 3, we will admit that as  
6 exhibit -- Appellant's Exhibit 24.

7 (Appellant's Exhibit 24 admitted.)

8 ALJ RALSTON: So I think that's correct. And  
9 we are ready to proceed. Again, thank you, everyone,  
10 for your patience.

11 Mr. Suazo, you have approximately 30 minutes  
12 for your presentation. Please begin when you're -- oh,  
13 I'm sorry. I wanted to have -- since we're all back and  
14 on the same page, I wanted to have, Ms. Gonzalez, if you  
15 could repeat what you were saying about -- with regard  
16 to the color-coordinated exhibits. Everyone didn't have  
17 the same document in front of them, if you could repeat  
18 that, that would be great.

19 MS. GONZALEZ: Certainly. So let's see here.  
20 We were looking at the date of November twenty -- 2011,  
21 specifically the dates of November 28th, 2011, which  
22 were the couch invoices, which are listed one, two,  
23 three, four -- five times, all with the same invoice  
24 number listed in various exhibits, in L, E, and F,  
25 listed in various pages ranging from page 84, 106, 347,

1 155, and 176, and in various audits from 2013 and 2015.

2 For the -- two are listed under the same amount  
3 1,767.85. And three times it is listed as \$17,637.85.

4 So my point was that this invoice was not only  
5 duplicated, but it's being assigned to both businesses,  
6 which is impossible, and at one outrageously large  
7 amount that is not possible, so there's obviously some  
8 clerical error. And she's not -- should not be liable  
9 for all these amounts.

10 ALJ RALSTON: Thank you.

11 Judge Kwee, you had some questions?

12 ALJ KWEE: Yes. Thank you.

13 When we had last ended before the break, I was  
14 going to ask a couple questions in addition to the  
15 exhibits. I was curious, since you were talking about  
16 the invoices, where did these invoices come from? Did  
17 you provide them to CDTFA, the invoices with the  
18 duplicates, or how did this end up in the audit?

19 APPELLANT LUEVANO: They're from the couch  
20 distributor -- distributor couch.

21 ALJ KWEE: Okay. So the vendors provided the  
22 invoices.

23 APPELLANT LUEVANO: The vendors (In English).  
24 They provided everything.

25 (Through the Interpreter) They gave us all the

1 pages with CRV and without CRV, and the auditor took  
2 only the CRV ones.

3 ALJ KWEE: And so if I'm understanding  
4 correctly, the concern is that the vendors improperly  
5 provided too many invoices to CDTFA that you didn't --

6 APPELLANT LUEVANO: No, not them. The one who  
7 made the audit. Since we can't sell the CRV, we can't  
8 charge our customers CRV. So she shouldn't -- she  
9 should have done her audit -- audit --

10 MS. GONZALEZ: The question is, "From where did  
11 those invoices come? Who entered the information?"

12 APPELLANT LUEVANO: The auditor lady.

13 ALJ KWEE: Okay. So you agree that those are  
14 your invoices, and the contention is that the CDTFA  
15 improperly duplicated the invoices multiple times in  
16 addition to the CRV issue?

17 APPELLANT LUEVANO: That's right.

18 ALJ KWEE: Okay. I understand now.

19 And there was another -- I don't remember who  
20 was testifying, but there was a mention that there were,  
21 I think, 18 boxes of beer when you terminated the  
22 business and that that had not been sold. And I'm  
23 wondering if there was any documentation to show what  
24 happened to the beer other than being sold.

25 APPELLANT LUEVANO: Okay. The beer of the 18

1 boxes, those are the only -- those are only invoices  
2 that La Movida bought for La Movida. And your files  
3 that we gave you, those are there. You will see the  
4 three invoices.

5 MS. GONZALEZ: So it wasn't necessarily means  
6 that it was not used. What she's trying to say is that  
7 those were the only -- 18 cases were the only thing  
8 sold -- bought for La Movida during those three years.

9 ALJ KWEE: Okay. Okay. Thank you. And one  
10 last question, then, is I understand that CDTFA took  
11 this audit approach because the business didn't provide  
12 documentation to support the reported amounts and I'm  
13 wondering is that documentation not available?

14 APPELLANT LUEVANO: We gave all the documents  
15 to the auditor lady. Even -- in fact, she even -- with  
16 the accountant and took all the original receipts  
17 without my permission. When she came back, the box with  
18 those receipts, I went for them and I have them now.

19 ALJ KWEE: Okay. All right. Thank you. I  
20 will turn it back to the lead judge.

21 And also for CDTFA when they do their opening  
22 presentation, I guess, if they could consider addressing  
23 that aspect of available source documentation. Or I  
24 might follow up with a question about that afterwards.  
25 Thank you.

1 ALJ RALSTON: Thank you.

2 Mr. Suazo, please begin when you're ready.

3  
4 PRESENTATION

5 BY MR. SUAZO, Hearing Representative:

6 The Appellant is a sole proprietor who operates  
7 a bar and dance club, Bar Rio and La Movida. Each  
8 establishment has its own permit. The audit period for  
9 both permits is January 1st, 2010, through  
10 December 31st, 2012. Bar Rio served liquor, beer, wine,  
11 and non-alcoholic drinks for the entire audit period.  
12 La Movida only sold non-alcoholic drinks and hot  
13 prepared food for 2010 and 2011. In 2012 La Movida  
14 began selling liquor, beer, and wine in addition to  
15 non-alcoholic drinks and hot prepared food.

16 Records provided by the Appellant included  
17 federal income tax returns for 2010 and 2011, partial  
18 bank statements, purchase invoices, various sales  
19 receipts and price list. Detailed POS reports were not  
20 available for either location.

21 Bar Rio audit. Comparison of federal income  
22 tax returns to reported sales disclosed no major  
23 differences.

24 Exhibit F, page 62. Available monthly bank  
25 deposit amounts for three separate bank accounts were

1 transcribed and disclosed higher amounts deposited than  
2 reported. It should be noted that several months of  
3 bank deposit information was missing for two of the  
4 three bank accounts.

5 Exhibit F, pages 58 to 61. The Department  
6 performed a purchase segregation for the entire  
7 three-year period using information provided by both the  
8 Appellant and vendors. Purchases -- the purchases were  
9 segregated into the following categories: Liquor, beer,  
10 soda, and supplies.

11 Exhibit E, pages 29 to 65. Shelf tests were  
12 conducted on call liquor, well liquor --

13 THE INTERPRETER: I'm sorry. I didn't  
14 understand the term.

15 MR. SUAZO: Shelf tests were conducted on.

16 THE INTERPRETER: I can't interpret that.  
17 Shelf test?

18 MR. SUAZO: I was going --

19 ALJ RALSTON: So --

20 MR. SUAZO: Comparison of selling price to  
21 cost --

22 ALJ RALSTON: Thank you.

23 MR. SUAZO: -- were conducted on call liquor,  
24 well liquor, imported and domestic bottled beer for  
25 periods before and after change in prices.

1           Exhibit E, pages 21 to 29. Prices for drinks  
2 were based on a bar fact sheet.

3           Exhibit F, pages 67 to 74. The Department gave  
4 Appellant an allowance of 12 percent for spillage of  
5 liquor and 1 percent for bottled -- breakage of bottled  
6 beer. The Department calculated weighted percentages of  
7 purchases for well and call liquor, Exhibit E, page 28,  
8 and imported and domestic beer, Exhibit E, page 20.

9           By combining the weighted percentages of  
10 purchases to the appropriate shelf test results,  
11 weighted markups of 256.23 percent before the price  
12 change, Exhibit D, page ten, and 355.08 percent after  
13 the price change, Exhibit D, page 11, were computed. To  
14 arrive at audited cost of goods sold, the purchase  
15 segregation amounts were totaled. 2010 purchases for  
16 Bar Rio were reduced by almost \$28,000 for a fire that  
17 occurred in November 2009, as appellant provided  
18 insurance documentation for the reduction. An  
19 adjustment, reducing 2012 purchases by 20 percent was  
20 also made to account for the transfer of alcohol and  
21 beer to La Movida, the related entity. Purchases were  
22 further reduced for self-consumption of \$50 a month and  
23 pilferage of 2 percent. After adjustments were made,  
24 audited costs of goods sold were established.

25           Exhibit D, page 9. Weighted markup factors for

1 prior and post price changes were applied to the audited  
2 costs of goods sold to compute bar sales of 857,000 net  
3 of sales tax. The audited sales were compared to  
4 reported sales of 352,000 and a difference of 515,000  
5 was noted. Percentages of error were determined for  
6 each year.

7 Exhibit D, page 9. The percentage of error  
8 rate was applied to reported taxable sales for the  
9 applicable periods to obtain unreported taxable sales  
10 per quarter.

11 Exhibit D, page 8, A negligence penalty was  
12 applied to the audit determination as records maintained  
13 were inadequate. Audited sales almost tripled reported  
14 sales. An overall percentage of errors was 182 percent,  
15 and the amount of unreported sales of over half a  
16 million dollars is substantial.

17 La Movida audit. La Movida did not sell liquor  
18 or beer in 2010 and 2011. La Movida began selling  
19 liquor and beer in 2012. Comparison of federal income  
20 tax returns for 2010 and 2011 to reported sales  
21 disclosed no major differences.

22 Exhibit L, pages 54 and 55. Bank deposit  
23 analysis was inconclusive as the Appellant did not  
24 supply all bank statements. And, therefore, the records  
25 were inadequate.



1           Exhibit L, page 51 through 53, Cost to good  
2 sold for 2010 and 2011 were established by totaling  
3 recorded purchases of non-alcoholic beverages purchased  
4 in August, September, and October of 2012 and  
5 annualizing the amounts.

6           Exhibit L, page 49. For 2012, the purchases  
7 were accounted for by using the amount of 20 percent of  
8 alcohol and beer purchases transferred from Bar Rio to  
9 La Movida.

10           Exhibit L, page 59. Assignment activity report  
11 dated March 27, 2013, and page 60, bar fact sheet  
12 notation along with purchases of non-alcoholic drinks.

13           Exhibit K, page 18. Shelf tests were conducted  
14 on call liquor, well liquor, imported and domestic  
15 bottled beer, and non-alcoholic drinks for periods  
16 before and after price change.

17           Exhibit L, page 26 to 33, and Exhibit J,  
18 page 14. Prices for drinks were based on bar fact sheet  
19 information and online posting of prices obtained via  
20 the Internet.

21           Exhibit L page 60 to 64. The Department gave  
22 an allowance of 12 percent for spillage and 1 percent  
23 for breakage of bottled beer. The Department calculated  
24 weighted percentages of purchases for well and call  
25 liquor, imported and domestic beer were calculated.

1           Exhibit K, page 28. Amount of alcoholic  
2 beverages and food were also computed, Exhibit K, page  
3 25, however, not included in the markup calculations.  
4 By combining the weighted percentages purchases to the  
5 appropriate shelf test results, weighted markups of  
6 263.57 percent that's before the price change,  
7 Exhibit J, page 12, and 351.89 percent after the price  
8 change, Exhibit J, page 13, were computed.

9           The weighted markup factor was applied to the  
10 audited costs of goods sold, which was reduced by  
11 2 percent for pilferage to arrive at -- to arrive at  
12 taxable sales of 108,000 net of sales tax. The audited  
13 sales were compared --

14           THE INTERPRETER: I'm sorry. I missed the  
15 total of taxable --

16           MR. SUAZO: 108,000.

17           The audited sales were compared to reported  
18 sales of 37,000, and a difference of 71,000 was noted.  
19 Percentages of error were determined for each year.

20           Exhibit J, page 11. The percentage of error  
21 rate was applied to reported taxable sales for  
22 applicable periods to obtain unreported taxable sales  
23 per quarter.

24           Exhibit J, page 10. The Appellant contends the  
25 audit had flaws. During the appeals process, the

1 purchase segregation was corrected. The correction also  
2 included a review of weighted markups which showed that  
3 the markups used on both audits were understated. Using  
4 the corrected purchases -- purchase amounts and  
5 corrected weighted markups disclose that the audited  
6 computable taxable sales were understated by over a  
7 hundred thousand. If corrected amounts are used, the  
8 tax liability would increase by almost \$8,000.

9 Exhibit A, page 18. It should be further noted  
10 that hot prepared foods --

11 THE INTERPRETER: I didn't hear that.

12 MR. SUAZO: It should be further noted that hot  
13 prepared foods --

14 THE INTERPRETER: I'm sorry. The interpreter  
15 doesn't understand that phrase after "It should be  
16 noted."

17 MR. SUAZO: It should be further noted?

18 THE INTERPRETER: After it.

19 MR. SUAZO: Hot prepared foods?

20 THE INTERPRETER: Unprepared --

21 MR. SUAZO: Hot prepared foods were not  
22 accounted for in audited sales. Therefore, the findings  
23 are very conservative and in favor of the Appellant.

24 This concludes my presentation. I am available  
25 to answer any questions you may have.

1           MR. PARKER: I have a couple things that I  
2 wanted to add on to the presentation as well.

3           ALJ RALSTON: Sure.

4           MR. PARKER: So in regards to the color-coded  
5 exhibit with the duplicates, I just wanted to point out  
6 that the -- in the -- in our exhibits, there are  
7 multiple versions of the audits -- the first audit or  
8 original audit, the first re-audit and the second  
9 re-audit -- and the schedules are the same in each of  
10 the audits. So the -- it's the same schedule.

11          ALJ RALSTON: Can I -- I just want to check in.

12          MR. PARKER: Sure.

13          ALJ RALSTON: Are you able to keep up with  
14 Mr. Parker's presentation?

15          APPELLANT LUEVANO: (No audible response)

16          ALJ RALSTON: Okay. Do you mind slowing down  
17 just a bit.

18          MR. PARKER: Sure.

19          ALJ RALSTON: Thank you.

20          MR. PARKER: Do you want me to start over?

21          ALJ RALSTON: Yes. Thank you.

22          MR. PARKER: Okay.

23          THE INTERPRETER: I want to know what he means  
24 by schedule actually.

25          (Reporter clarification)

1 MR. PARKER: Schedule is in Excel worksheet.

2 THE INTERPRETER: Okay.

3 MR. PARKER: So in regards to the additional  
4 exhibit regarding duplicates, we had -- we have multiple  
5 audit packages in our exhibits, so the same schedule or  
6 worksheet is included multiple times in the exhibits  
7 that we provided. So the duplicate transactions are not  
8 actually duplicate transactions.

9 Regarding the transaction for couch for.

10 MR. SUAZO: November 28th, 2011.

11 MR. PARKER: Yeah, November 28th, 2011, I think  
12 it was originally 17,000.

13 MR. SUAZO: It was --

14 MR. PARKER: It was 17,000 -- a little more  
15 than \$17,000 in the audit work papers on Exhibit --

16 MR. SUAZO: On Exhibit E, page 58. It's been  
17 corrected. And that's what they're basing the purchases  
18 on, the corrected version. If you look at E-63, you'll  
19 also see it there. That's already been corrected, so  
20 it's been handled. The taxpayer or the Appellant stated  
21 that there was \$2 million in purchases. There's not \$2  
22 million in purchases. Audited purchases for -- are in  
23 the -- \$250,000 for the audit period.

24 ALJ RALSTON: Is that --

25 MR. SUAZO: For Bar Rio.

1 ALJ RALSTON: Thank you.

2 MR. SUAZO: Okay. On the alcohol purchases for  
3 La Movida, it is -- it's twenty-some thousand. It's  
4 15,000 -- or 1,580, I believe, for the first two years  
5 because that's basically the water, which, by the way,  
6 is probably understated because when they did the  
7 calculation to get that \$1500 amount and annualized it  
8 there was no other beverages being sold -- or there was  
9 other beverages being sold at that time. So they had  
10 more options in 2012 than they did in 2011 and 2010. So  
11 there's good chance that the purchases in 2010 and 2011  
12 would have been a lot higher of Coke, Pepsi, you know,  
13 carbonated drinks, 7 Up -- don't want to leave anybody  
14 out -- and water. Okay. Because that would be your  
15 only option during 2010 and 2011. In 2012 your options  
16 open up because now you have liquor and beer. So  
17 realistically, the option -- the amount in 2010 and 2011  
18 for non-alcoholic beverages is probably understated.

19 There was -- as we stated, there was also a  
20 calculation that was done after the hearing to see if  
21 the amount should be lowered. Another auditor came in,  
22 did the work. And, again, as we stated earlier, the  
23 amounts actually increased because the -- the markups  
24 were corrected and applied correctly. So if there was  
25 to be a change, it would only increase, which would be

1 to the detriment of the Appellant, so the Department  
2 decided to keep the lower amount in favor of the  
3 Appellant.

4 MR. PARKER: And one other point that I wanted  
5 to touch on, the Appellant argued we didn't make an  
6 adjustment for CRV. CRV is part of their cost of goods  
7 sold. If we removed the CRV from the purchases, it  
8 would have increased their markup percentage which would  
9 have increased the audited taxable sales. So the CRV  
10 should be included in their cost. Even though they  
11 don't charge their customers specifically for the CRV,  
12 it is included in their cost, and an adjustment for CRV  
13 should not be made.

14 MR. SUAZO: It would be -- it would be to their  
15 detriment.

16 MR. PARKER: That's all I had. Thank you.

17 ALJ RALSTON: Thank you. Does that conclude  
18 your presentation?

19 MR. SUAZO: Yes.

20 ALJ RALSTON: Thank you.

21 Judge Stanley, did you have any questions for  
22 Respondent?

23 ALJ STANLEY: No, I do not. Thank you.

24 ALJ RALSTON: Thank you.

25 And, Judge Kwee, did you have any questions?

1           ALJ KWEE: I don't have any questions. Thank  
2 you.

3           ALJ RALSTON: Thank you.

4           Ms. Gonzalez, you have approximately ten  
5 minutes for your rebuttal.

6           MS. GONZALEZ: Could I have five minutes to  
7 just go over with Delia what we'd want to rebuttal with  
8 so we're all on the same page?

9           ALJ RALSTON: Sure. We'll take a five-minute  
10 break.

11          MS. GONZALEZ: Thank you.

12          (Break taken at 11:14 a.m.)

13          ALJ RALSTON: We are back on the record. Yeah,  
14 we're back on the record.

15          And, Ms. Gonzalez, you can go ahead. You have  
16 approximately ten minutes.

17          MS. GONZALEZ: Okay. Thank you.

18  
19                           REBUTTAL STATEMENT

20 BY MS. GONZALEZ, Representative for Appellant:

21           I'm confused about where the statement was made  
22 that these invoices aren't duplicated. If I can get  
23 clarification, if, like, a for instance part. In the  
24 July 2nd, 2010, it's -- I see here the audit dates of  
25 being -- let's see, July 7th -- July 2nd -- forgive me.



1 July 2nd, 2010, Invoice No. 317925 for couch.

2 I see it listed under three audit dates, which,  
3 okay, so that means that there was accounted for three  
4 different times. But in 2013 it was listed three times  
5 within the same audit time frame in two different  
6 exhibits, L and F, in three different page numbers. So  
7 wouldn't that constitute that it's being listed three  
8 times within that same time frame? And so I'm just a  
9 little confused as to if things were cleared up. Why  
10 was it still within the big -- the -- all the same  
11 documents so -- of it being listed?

12 So if you were to pull up Exhibit L or  
13 Exhibit F, you'll see that, this invoice. So I'm a  
14 little confused. If I can get clarification as to how  
15 these invoices are not duplicated?

16 ALJ RALSTON: Yes. I can ask CDTFA if they  
17 would like to address Ms. Gonzalez's question.

18 MR. SUAZO: If you look -- if you look at --  
19 I'm trying to find one here. Exhibit E, and let me get  
20 part one here. They left 6-A in there. They didn't  
21 need to leave 6-A in there. Six-B is the one that  
22 should be followed, which is pages -- starts at page  
23 12-A-6B, starts at page E. Exhibit --

24 MS. GONZALEZ: I can't follow because I don't  
25 have the document, so --

1           MR. SUAZO: Okay. All right. So it could be  
2 documented, Exhibit E, page 53, through Exhibit E, page  
3 65, especially if you look at 65, page 65. There is a  
4 304696 that matches up to a 314827. You'll see little  
5 arrows pointing to each one showing one's from the  
6 vendor, and one's from what they got it from. But that  
7 would just be the -- the \$10,000 difference is basically  
8 the food, supplies and sodas. Okay.

9           And if you look at -- if you'll see that  
10 they're highlighted, such as on Exhibit E, page 58, the  
11 one that was being claimed on 11/28/2011 was corrected  
12 down to 1,767.85. There are a few other ones.

13          MS. GONZALEZ: Right. But the specific  
14 one that I'm looking at, if you can help me so I can  
15 follow along.

16          ALJ RALSTON: Ms. Gonzalez, yeah, the purpose  
17 of this hearing is to present information. I understand  
18 that you have some questions for CDTFA, and they were  
19 attempting to answer it but that isn't really the  
20 process for today.

21          MS. GONZALEZ: Thank you.

22          ALJ RALSTON: And so I'm going to let Mr. Suazo  
23 finish, and then if you had anything else you wanted to  
24 add, you can.

25          MR. SUAZO: Okay. So there was other --

1 there's other corrections, and they're sort of --  
2 they're highlighted -- okay. Where you see the  
3 reductions coming through. And on top of that, there  
4 was still a few duplicates involved in the audit.  
5 That's why there was a request during the appeals  
6 hearing for someone else to do the entire three years  
7 over again. And that's included in Exhibit A. Let me  
8 find it. And it's a little hard to read. I couldn't  
9 get -- I was going to say Lotus -- I couldn't get an  
10 Excel document on it. It's only the PDF file that I  
11 could get.

12 But if you see on Exhibit A starting with page  
13 24, there's a run of all the -- of all the three years  
14 involved with the duplicates and everything taken out.  
15 It also happened at -- for 2012. The amount actually is  
16 higher than what was originally posted once they got the  
17 true amounts in. So when you calculated all this out,  
18 the duplicates were taken out. There was a increase in  
19 2012's purchases because that's what they discovered.  
20 And when you calculate the whole thing out doing it one  
21 way without an inventory -- without transferring to  
22 La Movida, it's a hundred and one thousand -- or a  
23 hundred thousand in excess sales. I think that's on  
24 page 18. Yeah, 102,990, on page 18 of Exhibit A.

25 And if you happen to transfer the stuff out

1 from one to the other, you're still going to have a  
2 liability greater than what was -- what was already  
3 produced and what was assessed in the audit. I believe  
4 the liability increases to -- by \$67,000 because at this  
5 point they're using the corrected weighted markups.  
6 They're also using corrected purchases.

7           So if you were to do that calculation, you  
8 would still see that for -- including a transfer across  
9 the La Movida sales that were assessed in the audit are  
10 understated by \$67,000, and as you can see in the --  
11 this isn't a recommendation for La Movida, which is in  
12 Exhibit -- Exhibit G. There's a -- they underassessed  
13 the audit by \$2,253 in sales. Again, that's not  
14 including food sales, so it would probably be even  
15 higher. And, again, that's also in the time period  
16 La Movida didn't probably have the accurate  
17 non-alcoholic purchases for 2010 and 2011. They were  
18 probably understated most likely.

19           In addition -- well, I'll leave it at that.

20           ALJ RALSTON: Thank you.

21           MR. SUAZO: Okay.

22           ALJ RALSTON: Ms. Gonzalez, did you have -- I  
23 think you have approximately five minutes left if you  
24 still wanted to provide additional information.

25           MS. GONZALEZ: I was concerned about the online

1 pricing. If it's the sheet that I think has been  
2 floating around, that does not belong to Delia's  
3 La Movida. I believe it's a color kind of like design  
4 picture which has some wild, you know, alcoholic drinks  
5 and some food plates. Those do not belong to her.  
6 She's never been online. So she doesn't have a website.  
7 She doesn't have anything posting from way -- from that  
8 time period. I want that to be on record.

9           Regarding the 20 percent transfer, and I  
10 believe that was a conversation she had with the auditor  
11 at the time, she was referring to paper products, not  
12 alcohol products. She was referring to toilet paper,  
13 napkins, straws.

14           APPELLANT LUEVANO: Water.

15           MS. GONZALEZ: And so the transferring of  
16 alcohol is -- that is not the case as -- I'm trying to  
17 be quick so I can address everything.

18           Also, the audit of the La Movida having alcohol  
19 in 2012, I think they were saying for the entire 12  
20 months, and that's not the case.

21           Delia, can you refer to the dates exactly.

22           APPELLANT LUEVANO: (In English) Yes. July  
23 22nd we start the restaurant, 2012, but they were not  
24 successful because there was a dance for minors. So  
25 adult people, they don't go there. They don't go to

1 drink. They don't go to eat because they think it's  
2 like a just dance for minors.

3 MS. GONZALEZ: But the alcohol license --

4 APPELLANT LUEVANO: (In English) The alcohol  
5 license, I have to -- I have to make all the things they  
6 require from a health department. We finished with all  
7 the requirement and everything as July. July 20 is when  
8 they gave me the license for the -- for La Movida.

9 I didn't sell alcohol that whole year. And  
10 people, they didn't know we have a liquor. We work the  
11 place for 11 years just with minors. And we just sold  
12 the waters at \$1, not at \$3. \$3 I sell right now on  
13 this date, but the parents, they give it to them for the  
14 cover charge to go and dance and they just give you \$1  
15 or \$2 for water. So they don't have money. And when  
16 they finish, the performer, they go outside because they  
17 have the cars and in the car they have water, they have  
18 sodas because they don't have money too much. Matter of  
19 fact, Lisa told me, "How come you didn't keep the people  
20 inside?" I say, "No, because that one is illegal. I  
21 cannot go to close the door, one, and be able to keep  
22 the people inside." So if they go -- if they want to go  
23 outside, I cannot go to stop it.

24 So when we put the restaurant, they were not  
25 sales either. Like I say, people, they didn't know we

1 have a restaurant. People, they didn't know we have  
2 liquor. So 2012, whatever they say all that the liquor  
3 I sold and the 20 percent, it's not true.

4 MS. GONZALEZ: Also I wanted to note that  
5 Salinas is a rural farm town. You know, we have a lot  
6 of farmworkers who migrate. So the one -- the  
7 calculation of making, you know, it year round as equal  
8 is impossible. Salinas is unique. We're so close to  
9 Silicon Valley, but it's so unique. I'm in advertising.  
10 I work for Univision in my small town, Salinas,  
11 Monterey. Sales drop like crazy November through April  
12 because there's no people buying. And that's the same  
13 with retail businesses, restaurants, bars. Things go  
14 down. And so making the audit in its peak season in the  
15 summer months and assuming that's the case year round,  
16 it's not the case.

17 And the waters for La Movida and Bar Rio were  
18 sold for a dollar in 2010 through 2012. They were sold  
19 at \$2 in 2013 through 2020. And it wasn't until  
20 2021 [sic] through current that they've been \$3.

21 So the price sheet that they have listed at  
22 with -- your know ala frescas, that is not Delia's  
23 La Movida. There are other La Movidas all over the  
24 country but not this specific one. And that price sheet  
25 does not even list -- there's no way to tell where it's

1 from, but it's definitely not hers.

2 APPELLANT LUEVANO: (Through the interpreter)  
3 There's something. When you buy the product, it has a  
4 date of expiry for about two, three months. If you  
5 don't sell it, you practically have to throw that away.  
6 We can't keep it in the building. So there are some  
7 products that were bought. And if they've expired, we  
8 can't sell them. So you're not taking that into  
9 consideration at all. We have to work with the codes of  
10 the liquor control codes. We have to work with the  
11 health department to operate the business. So not  
12 everything that one buys is sold. That's what I want to  
13 make clear. They didn't take that into consideration  
14 for the audit. Thank you.

15 ALJ RALSTON: Ms. Gonzalez, does that conclude  
16 your presentation?

17 MS. GONZALEZ: Yes, ma'am.

18 ALJ RALSTON: Thank you.

19 Judge Stanley, did you have any questions?

20 ALJ STANLEY: Ms. Gonzalez, I was just  
21 questioning whether you misspoke a minute ago. You said  
22 that waters had sold for \$3 starting 2001.

23 MS. GONZALEZ: Forgive me. I did misspoke.  
24 That was 2001 -- yes -- in twenty -- I did it again,  
25 didn't I? 2021 to -- to current. Sorry. I apologize.



1           ALJ STANLEY: That's what I assumed. And then  
2 when you're talking about having to get rid of food  
3 that's expired, do you -- is that what was counted as  
4 part of the spoilage amount that CDTFA allowed.

5           MS. GONZALEZ: I don't know.

6           APPELLANT LUEVANO: The fire was in 2009.  
7 Everything was thrown out. But when you buy products  
8 after the 3rd of June, if the product is expired, we  
9 have to throw it out for the benefit of the consumer and  
10 avoid a lawsuit against the business. We can't sell  
11 anything that's expired. Sodas or beers, whatever  
12 expires we have to throw it away. It can't be sold to  
13 clients.

14          ALJ RALSTON: Thank you.

15          Judge Kwee, did you have any questions?

16          ALJ KWEE: I had a question or two for CDTFA.  
17 The first one, I think the taxpayer was contending that  
18 the price sheet that CDTFA used was from online, but  
19 they didn't post any price sheets online. So could  
20 CDTFA just clarify where the price sheet was obtained  
21 from?

22          MR. SUAZO: When the auditor did the bar fact  
23 sheet, she couldn't get the prices. She researched it,  
24 and that's where she got it from.

25          ALJ KWEE: Oh, okay. So the research was

1 derived -- was that from -- derived from online or from  
2 information provided by the taxpayer?

3 MR. SUAZO: It was provided online. Because if  
4 you look at the bar fact sheet, she wasn't able to get  
5 prices.

6 ALJ KWEE: I'm sorry. I didn't catch the last  
7 part.

8 MR. SUAZO: If you look at the bar fact sheet  
9 for La Movida, she wasn't able to get prices. There is  
10 no prices listed on the bar fact sheet like there is on  
11 Bar Rio.

12 ALJ KWEE: Okay.

13 MR. SUAZO: And then the thing about the water,  
14 water is not even being marked up in the audit. That's  
15 one of the problems that we -- was that in their favor.  
16 So they are arguing something that's actually in their  
17 favor.

18 ALJ KWEE: Okay. And on, I guess a related  
19 question is that another concern that they had raised  
20 was the inclusion of the CRV.

21 MR. SUAZO: CRV, like if you're going to have,  
22 like, \$5 less cost of \$2 -- or let's say \$3 less cost of  
23 \$1, the markup is going to be 200 percent I believe.  
24 Yeah. And if you were to go \$2 less a dollar ten, the  
25 markup's going to fall. So it's, again, going to be --

1 it's in their favor for us to include the CRV.

2 ALJ KWEE: Okay. Thank you. I don't have any  
3 further questions, so I'll turn it back to the lead  
4 judge.

5 ALJ RALSTON: Okay. It looks like we are ready  
6 to conclude this hearing. I want to thank everyone for  
7 coming today. Today's hearing in the appeal of Delia  
8 Luevano is now adjourned and the record is closed. The  
9 judges will meet and will decide your case later on and  
10 send you a written opinion of our decision within 100  
11 days. Thank you, everyone, for attending. And the next  
12 hearing --

13 THE INTERPRETER: I'm sorry, your Honor.

14 ALJ RALSTON: Oh, sorry.

15 THE INTERPRETER: What's within 100 days? I  
16 missed it.

17 ALJ RALSTON: We will send out our written  
18 decision.

19 THE INTERPRETER: Okay.

20 ALJ RALSTON: And the next hearing will resume  
21 at 1:00 p.m.

22 (Conclusion of the proceedings at 11:42 a.m.)

23 ---oOo---

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA )

COUNTY OF SACRAMENTO ) ss.

I, MARIA ESQUIVEL-PARKINSON, do hereby certify that I am a Certified Shorthand Reporter, and that at the times and places shown I recorded verbatim in shorthand writing all the proceedings in the following described action completely and correctly to the best of my ability: IN THE APPEAL OF: DELIA LUEVANO, OTA Case Nos. 18063267 and 18063268

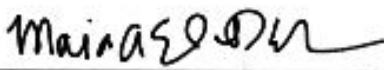
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I further certify that my said shorthand notes have been transcribed into typewriting, and that the foregoing pages 1 through 51 constitute an accurate and complete transcript of all my shorthand writing for the dates and matter specified.

I further certify that I have complied with CCP 237(a)(2) in that all personal juror identifying information has been redacted if applicable.

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California on this 9th day of January, 2023.

  
\_\_\_\_\_  
Maria Esquivel-Parkinson  
CSR No. 10621, RPR

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