

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,           )  
   )  
B. POOL,   ) OTA NO. 21129326  
   )  
                            APPELLANT.         )  
   )  
   )

## TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, January 26, 2023

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
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 B. POOL, ) OTA NO. 21129326  
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 APPELLANT. )  
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Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 9:31 a.m. and concluding at 10:29 a.m.  
on Thursday, January 26, 2023, reported by  
Ernalyn M. Alonzo, Hearing Reporter, in and  
for the State of California.

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APPEARANCES:

Panel Lead: ALJ ANDREW WONG

Panel Members: ALJ JOSHUA ALDRICH  
ALJ MIKE LE

For the Appellant: CARLOS MEZA

For the Respondent: STATE OF CALIFORNIA  
DEPARTMENT OF TAX AND  
FEE ADMINISTRATION  
  
COURTNEY DANIELS  
CHAD BACCHUS  
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-5 were received at page 6.)

(Department's Exhibits A-B were received at page 7.)

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D I R E C T

C R O S S

R E D I R E C T

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B. Pool 10 22

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California; Thursday, January 26, 2023

9:31 a.m.

JUDGE WONG: Let's go on the record.

We're opening the record in the Appeal of Pool before the Office of Tax Appeals. This is OTA Case Number 21129326. Today is Thursday, January 26th, 2023. The time is 9:31 a.m. We're holding this hearing by video conference.

I am lead Administrative Law Judge Andrew Wong, and with me today are Judges Josh Aldrich and Mike Le. We are the Panel hearing and deciding this case. The individuals representing the Appellant taxpayer, please identify yourselves.

MR. MEZA: Carlos Meza for Appellant, Bret Pool, Your Honor.

MR. POOL: Bret Pool.

JUDGE WONG: Thank you.

This is Judge Wong. Individuals representing the Respondent tax agency California Department of Tax and Fee Administration, CDTFA, please identify yourselves.

MS. DANIELS: Courtney Daniels for the Department.

MR. BACCHUS: Chad Bacchus also with the Department.

1 MR. PARKER: And Jason Parker with CDTFA.

2 JUDGE WONG: Thank you.

3 This is Judge Wong. We are considering one issue  
4 today, whether Appellant's storage, use, or other  
5 consumption of a vessel in California is subject to tax.

6 Mr. Meza, is that a correct statement of the  
7 issue?

8 MR. MEZA: That's correct, Your Honor.

9 JUDGE WONG: Ms. Daniels, is that a correct  
10 statement of the issue?

11 MS. DANIELS: Yes, it is. Thank you.

12 JUDGE WONG: Thank you.

13 This is Judge Wong. Appellant has identified and  
14 submitted proposed Exhibits 1 through 5 as evidence and  
15 has no other exhibits to offer as evidence. CDTFA has no  
16 objections to them.

17 Is that correct, Ms. Daniels?

18 MS. DANIELS: That's correct.

19 JUDGE WONG: Okay. Thank you.

20 Therefore, Appellant's Exhibits 1 through 5 will  
21 be admitted into the record as evidence.

22 (Appellant's Exhibits 1-5 were received  
23 in evidence by the Administrative Law Judge.)

24 CDTFA has identified and submitted proposed  
25 Exhibits A through B as evidence and has no other

1 documents to offer in as evidence.

2 Mr. Meza, you have no objections to those  
3 proposed exhibits; is that correct?

4 MR. MEZA: That's correct. No objections.

5 JUDGE WONG: This is Judge Wong. Thank you.

6 CDTFA's Exhibits A and B will be admitted into  
7 the record as evidence.

8 (Department's Exhibits A-B were received in  
9 evidence by the Administrative Law Judge.)

10 Mr. Meza has one witness, Mr. Bret Pool, and  
11 CDTFA has no witnesses. All right. I will now swear in  
12 the record [sic].

13 And then after that, Mr. Meza and Mr. Pool, you  
14 can proceed with your presentation.

15 Mr. Pool, can you please raise your right hand.

16

17 B. POOL,

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

21

22 JUDGE WONG: Thank you.

23 All right. Mr. Meza, you may proceed.

24 MR. MEZA: Yes. Good morning, Your Honor.

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1 sail in October near the fall when weather conditions can  
2 be a little risky.

3 He tried to get it out before the winter and  
4 unfortunately to his bad luck, he ran into a severe storm  
5 that forced him and his crew to seek refuge because the  
6 boat had been extensively damaged out at sea. After that,  
7 it was just a series of onslaught of delays between  
8 repairs and then him not being able to hire a crew  
9 immediately, trying to find people who would sail with  
10 him. And bouncing between that and between work, it was a  
11 bit of a hectic voyage to complete.

12 So it was a constant fight for him to get that  
13 boat down there, and he had to use his wittiness and his  
14 expertise and knowledge in sailing to get it down as safe  
15 as possible. But yes, there was some damage that was very  
16 extensive that he had to repair along the way being an  
17 older boat. And had it not been for that storm and that  
18 damage, he would have been able to one-shot the trip all  
19 the way down to Baja without stopping with his crew.  
20 Without the crew, he could not sail alone for long periods  
21 of time. So that forced him to constantly having to stop.

22 I have nothing more to say at this moment, Your  
23 Honor.

24 JUDGE WONG: This is Judge Wong. Thank you.  
25 Would you like to commence with your witness examination?

1 MR. MEZA: Yes.

2 JUDGE WONG: Please proceed.

3

4 DIRECT EXAMINATION

5 BY MR. MEZA:

6 Q Mr. Pool, good morning.

7 A Good morning.

8 Q Good morning, Bret. I'd just like to start off  
9 by asking a couple of questions. How long would you say  
10 you've been sailing for?

11 A I've been sailing since 1984.

12 Q 1984. How did you start your sailing practice,  
13 or what is your history, if you would like to elaborate a  
14 little bit more on that?

15 A Oh, in 1984 I started wind surfing. In 1986 I  
16 purchased an 18-foot catamaran, which I sailed for years  
17 off of Newport Beach and Dana Point. In 1997 I met a  
18 friend who had a 42-foot sloop in Long Beach. And I  
19 sailed with him extensively through the Channel Islands  
20 and primarily Catalina Island. I sailed with Judd to  
21 Cabos San Lucas in the fall of 2000. And five years later  
22 I sailed from Long Beach to Hawaii with Judd.

23 In January of 2013, I purchased a very heavily  
24 used Newport -- it's called a Newport 41. It's a sloop.  
25 I bought it primarily because there was a mooring that

1 finally became available in Newport Beach, so I bought the  
2 two together. And my intention with that boat -- because  
3 that was a very light sort of racing boat -- was just to  
4 do some amateur racing with that. So I had that boat.

5 And then in January '14, I purchased the Dublin  
6 Dragon in Portland and -- with the intent that that would  
7 eventually be the boat that I would use to do some open  
8 ocean sailing because a Dublin Dragon is a 37-foot Tayana,  
9 which is a world-renowned open blue-water heavy, heavy  
10 cruiser boat primarily made for circumventing the planet.  
11 So that's my history. So it's extensive in the sailing  
12 world, and that doesn't include, you know, my time as a  
13 U.S. Coast Guard captain.

14 Q Okay. And would you say that mooring docks and  
15 slips are limited and scarce at times?

16 A Repeat that, please.

17 Q Mr. Pool, would you say that mooring sloops, for  
18 mooring your ships, are they limited in quantity or scarce  
19 at times? Hard to come by sometimes?

20 A Oh, like this Tayana?

21 Q Well, when you -- locations to moor it, to dock  
22 it?

23 A Oh, yes. Yeah. They're -- in fact, if it hadn't  
24 been for some actions by the Harbor Commission where they  
25 had tripled the fees for moorings, I don't think there had

1     been a mooring sold in Newport Beach for 20 years. There  
2     was a lot of back and forth. They had tripled or  
3     quadrupled the cost for moorings and the fees. So this  
4     mooring with the Newport 41 on it, I had a chance to buy  
5     that. And because I knew that shortly after that they  
6     would -- Newport Beach would have to bring its mooring  
7     rates back in line with the rest of the state.

8             So it was a very narrow window of opportunity  
9     that I had. So there's, you know, the mooring eventually  
10    became quite expensive, but there were no other moorings  
11    available for purchase because I can only buy, I think,  
12    two at the time, and there weren't any others. And  
13    without a mooring, it would be impossible for me to moor a  
14    boat in Newport Beach just because of the cost. It would  
15    be somewhere between 5 and \$6,000 a month possibly for a  
16    45-foot mooring for the Dragon. So I had no other options  
17    thus far. So there was never any intent to keep it in  
18    Newport, just move on past.

19            Q     Right. Okay. And when you purchased the Dublin  
20    Dragon, what was your original sailing intent for that  
21    boat?

22            A     Well, the original sailing intent was to, you  
23    know, keep it in Portland for as long as necessary to  
24    complete the repairs and the upgrades to get it ready  
25    again for the open ocean. And then I -- the intent was to

1 sail it down to Cabo or San Jose del Cabo where I was  
2 going to keep it with a lot of other Americas down there  
3 with their boats. It's a safe harbor. It's obviously a  
4 great place for vacation, but that was the intent to bring  
5 the Dragon down there.

6 Q Okay. And how far off were you delayed in your  
7 original trip plans?

8 A Well, you know, the idea was to leave in about  
9 July, but I ended up having to replace an integral part of  
10 the boat which are called the chain plates. They hold the  
11 rigging on. They are essential to safe operation. That  
12 set me back a couple of months because they had to be  
13 manufactured, and I had to replace the beds on the boat.  
14 It's not an a-typical repair for a boat of that age.

15 I just -- when the boat was surveyed, the  
16 surveyor did not catch that. So that put me deep into the  
17 fall. And all the sailing guides from the sailing the  
18 Pacific Northwest is like, as long as you're heading south  
19 on October 1st, you're okay but don't do it any later. So  
20 I managed to get repairs done, and I thought, well, I can  
21 make the October 1st departure date. And that's how that  
22 came about.

23 Q Okay. Now, the unfortunate incident that caused  
24 damage to your boat was Agua Dio Bay [sic]; correct?

25 A Yeah. It was northwest of Bodega Bay, probably

1       around 40 to 50 nautical miles. That was on October 7th,  
2       late afternoon, and it's one of the things they warn you  
3       about. And in that part of the shore up there there's no  
4       really safe harbor. So -- but what happened is a  
5       gale-force -- a gale came in, which is one level below a  
6       hurricane. And 4 -- you know, 4 out of 7 hours of this  
7       gale, it was, you know -- pardon the language. It was  
8       closer to hell at times.

9               I had the mast in the water several times. The  
10       boat was being rolled from side to side to 180 degrees.  
11       And I've got myself, my dog, and it was a dangerous  
12       situation. It's not that the boat isn't made to do that.  
13       But I mean, at one point I was thrown through the galley,  
14       and I actually broke the galley table off. I've got my  
15       dog in the galley of the boat rolling back and forth.  
16       Stuff is coming out of the -- I mean, the boat is  
17       literally heaving through 180 degrees with the mast  
18       hitting the water.

19              I've got 15 to 20-foot water. And, you know, by  
20       the time I've done this for four hours, I'm -- I've got  
21       all the repairs that were done on the boat. I've got to  
22       seek safe harbor because I didn't know. All I know is  
23       that I'm in a gale. I'm trying to follow the weather  
24       through the U.S. Coast Guard, and I don't know how long  
25       it's going to last. So I made plans to enter Bodega

1 Harbor just to seek safe harbor because I also didn't know  
2 if the gale was going to increase in force or go down.

3 It just -- it was a very dangerous situation, and  
4 it had to be dealt with. So with no intention whatsoever  
5 of entering, you know, any harbor or port in California, I  
6 had to do so just for the safety -- for my safety and my  
7 crew's safety. And -- and at this point, you know, things  
8 had begun -- started to fall apart in the boat.  
9 Primarily, you know, sails were beginning to tear. The  
10 jib sheets which control the force sail, which is the one  
11 you would use in a back wind situation, one of those began  
12 to tear.

13 And, you know, I may have been able to repair it  
14 out at sea, but I've got 15-foot waters with the boat  
15 rolling. I -- it would have been just a very dangerous  
16 situation. And my crew member, David, didn't have the  
17 sailing experience to be able to handle that boat alone if  
18 I was to go overboard. So, you know, just safety dictated  
19 that I had to seek shelter.

20 Q Okay. Mr. Pool, we refer to Exhibit 3. There is  
21 a log, a captains log. Is this something you prepared and  
22 you normally routinely keep? And what kind of information  
23 do you input into that log?

24 A Normally, what is -- you know, the day, the time,  
25 your position. The weather is often included. On a

1 longer, you know, sail like, you know, we had been out at  
2 sea for several days. You might not, you know, enter  
3 every single day, but you would enter details if anything  
4 significant happened.

5 One of the things that was obvious on October 7th  
6 is, even in the morning when I got up, there's something  
7 that most sailors with experience on the West Coast are  
8 going to understand. If you get up and your decks are  
9 dry, there's something going on. And I knew by noon  
10 something was going to happen. So I had already began to  
11 prepare for potential bad weather, and that's when the  
12 U.S. Coast Guard began to announce, you know, the  
13 possibility of a gale.

14 But -- so I had already prepared the boat, but at  
15 this point I'm, you know, 60, 70 miles northwest of  
16 Bodega. There's absolutely no other harbors to go into.  
17 So to be prudent, what you would do is head offshore  
18 further. We went for probably 12 miles off to 20 miles  
19 off just to give some safe room between the rocks and the  
20 shore. And the gale did happen, and so we fought that for  
21 several hours.

22 And the thing was to sit out at sea and ride it  
23 out or try to seek safe harbor but, you know, those were  
24 my two decisions. So what I did though for -- primarily  
25 for my safety and for David, I decided to seek shelter as



1       opposed to stay off shore.

2               Q    Okay.  Mr. Pool, when you said you left with a  
3       crew, how many?

4               A    One.  David Erickson and a dog.

5               Q    A dog.  Okay.  After the Bodega Bay incident, did  
6       you sail with a crew, or were you sailing solo?

7               A    At that point when I took it, after I had the  
8       boat in Bodega Bay and did the repairs, I sailed it solo  
9       to Monterey, which was about 28 hours.  So I'm up for, you  
10      know -- I'm too close near shore to sleep.  So at 24 hours  
11      I'm just like, I've got to seek shelter.  So I called  
12      Monterey, and I got a transient slip in Monterey, and that  
13      forced the -- well, that stop.

14              Do you want me to continue after that on -- or --

15              Q    Yes, please.

16              A    Oh, from Monterey -- so the boat -- I had to  
17      return back to work.  I managed to get a couple of other  
18      friends to do the next leg.  We went, but they didn't have  
19      more than just the long weekends.  So with a couple of  
20      other crew members, I sailed from Monterey to Morro --  
21      Morro Bay and kept the boat there.  I think once in Morro  
22      Bay, we returned to Orange County.

23              And just because of the timing and some weather  
24      issues, I wasn't able to return for like -- my dates might  
25      be off.  I wasn't able to return to Morro Bay for I think

1 two weeks. And then I sailed it with a couple of crew  
2 members around -- around to Santa Barbara and again,  
3 because now we're deep into winter. The days are really  
4 short. It's very cold.

5 At this point I had given up any hope of sailing  
6 directly to Mexico just because now I'm into the winter.  
7 So my next stop was -- let's see. Yeah, right around the  
8 corner. I can't think of the name right now. Gosh, the  
9 University of -- anyway, right -- sorry about that. Let  
10 me -- it wasn't Ventura. It was a harbor prior to  
11 Ventura. Anyway, so from there, you know, the boat sat  
12 for about a week. I went up with -- I sailed there solo.  
13 I think it was early December. From there to San Pedro,  
14 that was solo. That was another 28 hours on the water.

15 And at this point it's almost Christmastime, and  
16 the boat sat in San Pedro for a week or two until I was  
17 able to get a friend of mine, Eric Mai, where we went from  
18 San Pedro to Ensenada in one shot. And that was right  
19 around Christmas or New Year's. I forget the exact dates.

20 Q Okay. Mr. Pool, would you say one shot solo  
21 sailing is a dangerous task that is particularly almost  
22 hard to do during the winter?

23 A Well, yeah. You know, there's various opinions  
24 on that. Some people will say never do it. A lot of  
25 people do it all the time, but they do it out in open

1 water, not anywhere near shore because -- or anywhere near  
2 shipping lanes. That would happen, like, going to the  
3 South Pacific for instance.

4 Around the coast of California with the amount of  
5 fishing and the amount of freighters, it's not -- it's  
6 nothing you can do safely, and you need to be a lot  
7 further offshore than 20 miles because you can cover 20  
8 miles fairly quickly. And if you were to fall asleep, you  
9 could find yourself on the rocks, which is -- the world is  
10 full of those stories.

11 So none of the sailing I did on the way down  
12 would have been prudent to sleep at all. So on the  
13 sections that I did solo, I had to stay awake. And at  
14 some point that becomes not safe in itself just because of  
15 exhaustion.

16 Q Okay. Absent the Bodega Bay incident, would you  
17 have been able to sail straight down to Mexico?

18 A Oh, absolutely. Yeah. That was -- we were -- we  
19 had, you know, 140 gallons of water. We had almost 100  
20 gallons of diesel. We were completely ready to go. I  
21 mean the boat was blue water capable. That was -- had it  
22 not been for Bodega, there would have been no stop in  
23 California whatsoever.

24 My crew at that time, because it was right after  
25 October, they were prepared for, you know, seven days at a

1 minimum, up to 10 days to get to Ensenada. Which is  
2 typical of a boat that size to go from Portland to  
3 Ensenada.

4 Q Okay. And you mentioned Ensenada. So the  
5 original plan was to go to Los Cabos, but then you shipped  
6 towards Ensenada at what point in time?

7 A Well, that was -- Ensenada probably would have  
8 been a stop along the way any way just because that's  
9 about a 900-mile trip. And then from -- well, maybe about  
10 1,000. And from Ensenada to Cabo is about 800 miles.  
11 That was -- I wasn't setup for that. So Ensenada was  
12 always going to be a stop to refit the boat and to, you  
13 know, make any repairs that are necessary, but to outfit,  
14 you know, add food, add water, add diesel for the trip to  
15 Cabo.

16 Q Okay. Well thank you, Mr. Pool.

17 A Okay.

18 MR. MEZA: I'd like to proceed just by stating  
19 that Mr. Pool, as you can tell from his testimony, is that  
20 had it not been for that incident, he would have been able  
21 to sail nonstop to Mexico with his crew. Without the  
22 crew, he'd be sailing solo in dangerous conditions. That  
23 wouldn't be prudent and would just be, I would say,  
24 inconsiderate and reckless to other sailors and other  
25 boats out at sea, especially, if you're going down

1 commercial lanes and -- I mean, for the safety of the  
2 general public welfare. He did the prudent thing by  
3 stopping. If it had not been for that storm, he should  
4 have been able to go nonstop.

5 As you can see from the exhibits that I provided  
6 earlier, there's a log detailing his entire journey,  
7 including repairs. There's receipts as well showing the  
8 extensive amount of repairs that he needed to do. There's  
9 even a weather report showing the storm and when it hit.  
10 Now hearing that story is kind of chilling. It's pretty  
11 chilling, you know. Because, I mean, I love my dogs. And  
12 me out at sea with another person too, and you're playing  
13 with more than one person's life, not just your life at  
14 that point in time.

15 So Mr. Pool did the prudent thing in pulling into  
16 Bodega Bay and having his ship repaired instead of risking  
17 the lives of his crew. It would be unconscionable and  
18 unjust for Mr. Pool to be charged usage tax by the State  
19 of California for an incident that arose from necessity  
20 from an emergency. It was never his intention to moor the  
21 boat in California. It was impossible for him to do so.  
22 He already had a ship in California. And Mr. Pool made it  
23 clear that availability for these slips to moor your boats  
24 is something that's rare. Well, I wouldn't say rare but  
25 scarce.

1           The scarcity of it made it un-seeable in the  
2       future -- in the near future at the very least. But I  
3       mean, at the very least, at least 12 months for him to  
4       even moor the Dublin Dragon in California. That is why he  
5       decided he would take it to Mexico. It was always his  
6       intent to go to Mexico. Had it not been for the storm, he  
7       would have been able to have gone all the way down to  
8       Cabo.

9           But the delays and unforeseen events caused him  
10      to end up in Ensenada at the end point. At this time I  
11      would like you to reconsider all the facts of the case and  
12      understand that Mr. Pool is just a victim of an emergency  
13      and to moor in California for necessity but never for  
14      intent to keep the boat permanently in California.

15           Thank you.

16           JUDGE WONG: Thank you, Mr. Meza.

17           Thank you, Mr. Pool.

18           I will now turn to CDTFA and offer them the  
19      opportunity to cross-examine Mr. Pool.

20           MS. DANIELS: I think I just have one question  
21      for clarification purposes.

22  
23                           CROSS-EXAMINATION

24      BY MS. DANIELS:

25           Q     You just testified that it was always a plan to

1 stop off in Ensenada before heading down to Cabo. So I  
2 just wanted to clarify that -- well, first of all, I'm  
3 assuming we're speaking about Ensenada, California, or are  
4 we speaking about some place in Mexico?

5 A In Mexico. Ensenada, Mexico.

6 Q Okay. That was my question. Thank you.

7 JUDGE WONG: Thank you, Ms. Daniels.

8 All right. I will now turn to my panel to see if  
9 they have questions for the witness or Mr. Meza, starting  
10 with Judge Le.

11 JUDGE LE: This is Judge Le. I have a few  
12 questions. When were the entries in the captain's log  
13 prepared?

14 MR. POOL: What's that?

15 JUDGE LE: When was the entries in the captain's  
16 log prepared?

17 MR. POOL: Oh, they are taken every day as you  
18 go, and they are written down on whatever -- typically,  
19 you have a log in the boat. In this case, I was keeping a  
20 lot of the log on an iPad.

21 JUDGE LE: Okay. Thank you. And sorry if I'm  
22 having trouble a little bit reading your handwriting here.  
23 Does the captain's log discuss the storm that you  
24 mentioned.

25 MR. POOL: It should have, yeah. It's somewhere

1 in that log. It's definitely. It was noted because I  
2 took screen captures of NOAA's weather report and of, you  
3 know, the overall graphic of that storm, including the  
4 date and time. It should be in one of the exhibits.

5 JUDGE LE: Okay. If there's a particular point  
6 or line you can point to, that would be helpful for me.

7 MR. POOL: I don't.

8 MR. MEZA: I can answer that, Your Honor. If you  
9 go to -- it would be October 8th. That's when the  
10 incident -- around the time the incident started. It  
11 would be page 1, 2, 3, 4, 5 -- page 5 of the log in the  
12 exhibit -- of Exhibit 3.

13 JUDGE LE: Okay. Thank you. And I see the  
14 October 8 date. Which particular line are you referring  
15 to?

16 MR. MEZA: It would start -- if you go down to  
17 the middle of the left-hand side, it starts to describe  
18 some of the damage, cable broken. I believe it was -- we  
19 were 540 degrees instantly entering Bodega Bay. We're  
20 disappearing behind 20-foot waves. These descriptions,  
21 basically he's jotting down the description of -- writing  
22 in shorthand what's going on.

23 JUDGE LE: Okay. Thank you. No further  
24 questions from me.

25 JUDGE WONG: This is Judge Wong. Judge Aldrich,



1 do you have any questions for the witness or Mr. Meza?

2 JUDGE ALDRICH: Hi. This is Judge Aldrich. I  
3 have a couple of questions. So you purchased the boat,  
4 and then when was it first registered?

5 MR. POOL: Well, the boat was registered when I  
6 bought it to the previous owner in Oregon. I changed that  
7 registration to my name in Oregon, which is -- in Oregon  
8 that registration is good for two years.

9 JUDGE ALDRICH: Okay.

10 MR. POOL: So -- and then what I proceeded  
11 immediately to do is Oregon requires state registration.  
12 The State of California does not. And I registered the  
13 boat federally with the U.S. Coast Guard. So I have a  
14 U.S. Coast Guard number for the vessel. It's never been  
15 registered in California. It's not necessary.

16 JUDGE ALDRICH: Okay. And then at some point was  
17 it registered in Mexico?

18 MR. POOL: No. I have paperwork from Ensenada  
19 when I entered the country of -- and then cleared customs  
20 and vehicle, all the vessel legalities that are necessary.  
21 All I've got is the paperwork for all of that when I  
22 cleared into Mexico.

23 JUDGE ALDRICH: Okay. And I just kind of wanted  
24 to get the timeline down so as far as the stops in  
25 California.

1 MR. POOL: Okay.

2 JUDGE ALDRICH: So Bodega Bay, when do you leave?

3 MR. POOL: Here let me -- so I departed Portland

4 on 30 September. Bodega -- I entered Bodega Harbor on

5 October 8th shortly after midnight. I departed Bodega

6 Harbor on November 15.

7 JUDGE ALDRICH: November 15th?

8 MR. POOL: Yeah.

9 JUDGE ALDRICH: Okay.

10 MR. POOL: Then I sailed for 24 hours entering

11 Monterey. I departed Monterey on the --

12 JUDGE ALDRICH: So -- hold up. So you arrive in

13 Monterey on the 16th?

14 MR. POOL: Yes.

15 JUDGE ALDRICH: Okay. And then you depart

16 Monterey when?

17 MR. POOL: On the 29th of November.

18 JUDGE ALDRICH: Okay. And you proceed to Morro

19 Bay; is that correct?

20 MR. POOL: Yeah. So I entered Morro on

21 November 30.

22 JUDGE ALDRICH: So that was about a 24-hour trip

23 as well?

24 MR. POOL: Yes.

25 JUDGE ALDRICH: Okay. And then from Morro Bay

1       you go to Santa Barbara?

2               MR. POOL:   Santa Barbara, yeah.

3               JUDGE ALDRICH:   Okay.   And how long was that  
4       trip?

5               MR. POOL:   I departed Morro Bay on December 6th.  
6       And, again, it's another 24, 28-hour trip.   I entered  
7       Santa Barbara on December 7.

8               JUDGE ALDRICH:   Okay.   And from Santa Barbara you  
9       go to San Pedro?

10              MR. POOL:   Yes.   Yeah, departing Santa Barbara on  
11       the 13th of December.   I entered San Pedro on the 14th of  
12       December.

13              JUDGE ALDRICH:   Okay.   And then after San Pedro?

14              MR. POOL:   On January 1, I left with Eric Mai  
15       from San Pedro and headed to Ensenada.

16              JUDGE ALDRICH:   Mexico?

17              MR. POOL:   Yeah.

18              JUDGE ALDRICH:   Okay.   All right.   That's all the  
19       questions that I had at the moment.

20              I'm going to turn it back to Judge Wong.

21              JUDGE WONG:   This is Judge Wong.   Thank you.

22              I also have a few questions for Mr. Pool.   So I  
23       just wanted again go over the timeline a little bit.   So  
24       you purchased the Dublin Dragon in Oregon on January 14th,  
25       2014; right?

1           MR. POOL: I want to make sure. January -- yeah.  
2           That was -- I had started the purchase on -- in December  
3           of 2013. It was completed and all the paperwork and, you  
4           know, the legalities were completed in January of 2014.  
5           You're right.

6           JUDGE WONG: This is Judge Wong. And I believe  
7           you had testified that you had intended to keep it in  
8           Oregon for a period of time; is that correct?

9           MR. POOL: Yeah. I needed -- I needed -- the  
10          boat had been in Oregon for quite a few years on the  
11          Columbia, and it wasn't ready for open ocean water  
12          sailing, which is far more rigorous. So my intent was to  
13          keep it there as long as necessary to make it safe to go  
14          south. I was hoping that I would be ready to go south in  
15          the summer sometime in June or July.

16          But if I wasn't able to complete the repairs, I  
17          was going to leave it in Oregon for that winter. So  
18          that -- what happened is I was able to complete the  
19          repairs before the sort of magical October 1 deadline for  
20          heading south, for transiting south in a boat.

21          JUDGE WONG: This is Wong. Did you -- I noticed  
22          you made arrangements for your boat in Oregon. There's  
23          documents indicating you had, I guess, rented a slip in  
24          Oregon; is that correct?

25          MR. POOL: Yeah. On October -- on 1st of

1       October, I entered a -- it's called a tenancy agreement  
2       with the marina to rent a slip for a month-to-month basis  
3       to keep the boat there as long as possible.

4               JUDGE WONG:   Okay.   So it was on a month-to-month  
5       basis?

6               MR. POOL:    Yeah.

7               JUDGE WONG:   Did you make any arrangements for  
8       the boat ahead of time in Cabo or Ensenada at the time you  
9       purchased the boat in January?

10              MR. POOL:    No, it's not necessary.   I had been in  
11       contact with people in San Jose, but I'd also been in  
12       contact with the marina in Ensenada, and they had plenty  
13       of availability.   They said just let us know you're coming  
14       down or when you think you're going to make it.   There was  
15       no contract made with any of them.   It just wasn't  
16       necessary.

17              JUDGE WONG:   Okay.   So there's no documentary  
18       evidence showing a contract for a long-term rental of a  
19       slip in either Ensenada or Cabo?

20              MR. POOL:    No.   Because even in Cabo I hadn't  
21       decided which of the marinas to stay at, and they all had  
22       availability along with there are some excellent  
23       anchorages.   So --

24              JUDGE WONG:   So there are also no -- like, you  
25       didn't request any quotes for saying like, oh, I'm going

1 to be in Cabo for X amount of months or years or anything  
2 like that?

3 MR. POOL: Yeah. No. I did request those by  
4 email. I don't think I saved any. They just said, here's  
5 what your monthly fee will be. Here's some other  
6 incidentals such as, you know, necessary insurance. And  
7 they gave me a number, but there were no -- there were no  
8 formal quotes. It's very much Mexico that way and --

9 JUDGE WONG: Okay. Let me just see if I have any  
10 other questions. Oh, okay. This is my last question, I  
11 believe. And then I believe Judge Aldrich has another  
12 question for you. In the briefs you had argued that you  
13 intended to keep the vessel moored in Mexico after your  
14 three-month summer vacation there based on a financial  
15 analysis that it would be cheaper. And so do you have any  
16 documentary evidence of this financial analysis,  
17 spreadsheets, again, quotes, contracts, things like that?

18 MR. POOL: No. It's -- it's just that at that  
19 point I was looking at a couple of the slips if they were  
20 available in Southern California. Virtually, nothing was  
21 available. Most people start either in Wilmington or in  
22 the Long Beach harbor that's closest to the commercial  
23 harbor. They -- I was running in the 6 to \$700 range  
24 there in Newport Beach. If I could have found a private  
25 slip probably, it probably would have been in the \$3,500 a

1 month range.

2 So it made anything in Newport Beach  
3 economically. I mean, I couldn't afford that. And it's  
4 very, very difficult to get slips on sort of an immediate  
5 basis like that. In fact, if I probably went to the  
6 downtown harbor in Long Beach right, I'm going to guess  
7 I'd be sitting at 3 or 4 months before I could even get  
8 in.

9 So they keep a fair amount of transient slips.  
10 But for instance, in Santa Barbara you can only stay in  
11 the harbor for two weeks. Your rates will triple after  
12 that. And that's so that they don't get people like sort  
13 of permanently sitting on a transient slip. Slips are  
14 very difficult to get except for a few available transient  
15 slips, which all the harbors maintain.

16 JUDGE WONG: This is Judge Wong. But it also  
17 sounds like you considered -- after you purchased the  
18 boat, you considered bringing it to California? Because  
19 it sounds like you -- when you make a financial analysis  
20 comparing cost and what not with Mexico versus Southern  
21 California, it sounds like you are considering that as an  
22 option.

23 MR. POOL: Well, no. The consideration on that  
24 is just to figure out -- because once I took it down -- I  
25 had looked at the numbers. The reason for the financial

1       analysis was because -- that's why I decided to go to  
2       Mexico, which is where I wanted to go anyway because it's  
3       far, far cheaper. Plus, I intended to sail on the Sea of  
4       Cortez and San Jose for a couple years on vacations, you  
5       know, go down every three months or so.

6               But I had -- you know, I'm probably mixing up  
7       some things because when I looked at getting a boat  
8       initially before I got the Newport 41 in Newport, I had  
9       done a lot of these same numbers. And I realize I could  
10      not keep a boat in Southern California, particularly  
11      Newport Harbor unless I had a mooring. But -- so I had a  
12      mooring, and I had a very inexpensive boat on it, but I  
13      didn't have any other options. So there's a lot of just  
14      quick analysis done, nothing very formal. But --

15             JUDGE WONG: This is Judge Wong. Thank you,  
16      Mr. Pool. That's all the questions I had at this time.

17             Judge Aldrich -- yes, Judge Aldrich, you had a  
18      question?

19             JUDGE ALDRICH: Hi. This is Judge Aldrich.  
20      Mr. Pool, so my understanding is that at each of those  
21      stops certain repairs were made in California?

22             MR. POOL: Not necessarily. The stops were  
23      either because I had limited crew or no crew, and it  
24      wasn't safe for me to continue on. So a lot of the times  
25      it was just to stop. I would rent a car, head back to my



1 home in Aliso Viejo and work for the week or the two until  
2 I could get back up there and sail down.

3 JUDGE ALDRICH: Okay.

4 MR. POOL: Most of those, you know, there were  
5 some repairs made in Monterey, but they were really just  
6 mine, you know making sure -- it's -- it's normal  
7 maintenance for offshore sailing like check batteries,  
8 check fuel pumps, check emergency systems. You know, I --  
9 wouldn't -- once I got out of Bodega, you know, there were  
10 repairs or like sort of refits, but it's just typical  
11 prudent yacht maintenance.

12 JUDGE ALDRICH: Okay. So repairs in Bodega and  
13 repairs in Monterey?

14 MR. POOL: Yeah. Like Monterey was just sort of  
15 like fine tuning tightening, you know, tightening down the  
16 batteries, refill with water, and your lines in the  
17 rigging. It's -- it's normal maintenance on a sailing  
18 vessel if you're sailing offshore.

19 JUDGE ALDRICH: Okay. And the maintenance or  
20 repairs, those were all done by you and not some other  
21 like third party, like a licensed repairman?

22 MR. POOL: No. They were all done by me. And  
23 that's because at the time I held a U.S. Coast Guard  
24 Master Vessel, which is commonly known as a Coast Guard  
25 Captain's license. It's a federally issued license, and I

1 was working commercially for the Sundiver Yachts Charter  
2 out of Long Beach as a dive boat captain on, you know,  
3 some trips even up to seven nights offshore.

4 So as a U.S. Coast Guard Master, I'm required to  
5 know every aspect about a vessel, including its repair.  
6 So I can either do the repair myself or hire someone who  
7 is appropriate to do so. In this case, I felt I was far  
8 better to make these repairs on my own vessel, besides the  
9 fact it was a lot less expensive. But by doing it myself,  
10 I knew it was done correctly.

11 When I replaced the chain plates, that was close  
12 to a \$20,000 estimate to have those done up in Portland.  
13 I did them myself, along with another boat's craftsman up  
14 in Portland. And I'm -- most of my undergrad is in  
15 mechanical engineering. I've worked for 10 -- for a  
16 decade. As a commercial captain, I'm very familiar with  
17 boat repair and vessels.

18 JUDGE ALDRICH: Thank you, Mr. Pool. That  
19 concludes my questions.

20 Back to Judge Wong. Thank you.

21 JUDGE WONG: This is Judge Wong. Thank you,  
22 Mr. Pool, and thank you, Mr. Meza. You will have time at  
23 the end for a closing statement and rebuttal.

24 Now we're going to turn to CDTFA for their  
25 presentation. You have 20 minutes. Thank you.

1 MS. DANIELS: Thank you.

2 PRESENTATION

3 MS. DANIELS: Good morning.

4 As you are aware, we are here today to determine  
5 whether Appellant is liable for use tax with respect to  
6 his purchase of a 1980 36.7-foot Tayana yacht named the  
7 "Dublin Dragon."

8 When a vessel is purchased from a person not  
9 required to hold a seller's permit for the sale of  
10 vessels, the applicable tax, if any, is use tax. That's  
11 Revenue & Tax Code Section 6283. We'll hereinafter refer  
12 to that as the code, and we're looking at subdivision(a).  
13 Also, California Code of Regulations Title 18, hereinafter  
14 referred to as regulation Section 16110 subdivision  
15 (b) (1) (c).

16 Use tax applies to the storage, use, or other  
17 consumption in the state of tangible personal property  
18 purchased for use and used in California measured by the  
19 sales price of the property, And that's Code Section 6201  
20 and Regulation Section 1620 subdivision(b) (1). The taxes  
21 owed by the person using, storing, or otherwise consuming  
22 the property in California, and again, that's Code  
23 Section 6206 subdivision(a).

24 So under Regulation 1620(b) (5) (a), when a vessel  
25 is purchased outside of California is first functionally

1       used outside of California and is brought into California  
2       within 12 months from the date of its purchase, it is  
3       rebuttably presumed that the vessel was acquired for  
4       storage, use, or other consumption in the state, and is  
5       subject to use tax if the vessel is purchased by a  
6       California resident.

7                You can also see Code Section 6246. Under  
8       Regulation 1620(b)(5)(a), this presumption may be rebutted  
9       by documentary evidence that the vessel was purchased for  
10      use outside the State. Moreover, under subsection (d), a  
11      vessel that's brought into the state exclusively for the  
12      purpose of repair, retrofit, or modification shall not be  
13      deemed to be acquired for storage use or other consumption  
14      in the state if the repair, retrofit, or modification is,  
15      in the case of a vessel, performed by a repair facility  
16      that holds an appropriate permit issued by the Board, and  
17      is licensed to do business by the city and/or county in  
18      which it is located, if that city and/or county so  
19      requires.

20              So here the following facts are not in dispute.  
21      Appellant is a California resident, and he did purchase  
22      the vessel in Oregon on January 14th, 2014, for the  
23      purchase price of \$65,000. As Appellant testified, he  
24      purchased the vessel solely for personal, i.e.,  
25      noncommercial use. And he first functionally used the

1 vessel outside of California, and then brought the vessel  
2 into California on October 8, 2014, which is within 12  
3 months from the date of the purchase.

4 So because Appellant is a California resident, he  
5 is presumed to have purchased the vessel for use within  
6 the State. Thus, under Regulation 1620, Appellant has the  
7 burden of rebutting this presumption by providing  
8 documentary evidence showing that the vessel was purchased  
9 for use outside of the State during the first 12 months of  
10 ownership. Appellant has failed to provide this evidence.

11 Appellant has provided registration of the vessel  
12 in Oregon, but he has stated that he did not intend to  
13 keep the vessel in Oregon. Thus, this evidence does not  
14 rebut the presumption. In fact, the evidence indicates  
15 that petitioner intended to moor the vessel at his slip in  
16 Newport Beach when it became possible for him to do so.  
17 And Appellant has admitted that the unavailability of his  
18 slip in Newport Beach at the time he purchased the vessel,  
19 along with the relative inexpensiveness of registering the  
20 vessel in Oregon is why the vessel remained in Oregon  
21 while undergoing its initial repairs and maintenance in  
22 preparation for his Mexico voyage.

23 So based on the foregoing, Appellant has failed  
24 to meet his burden of producing documentary evidence to  
25 rebut the presumption that he purchased the vessel for use

1 in the State. Appellant has also failed to meet the  
2 repair retrofit or modification of vessels exception under  
3 Regulation 1620(b)(5)(d). As provided, a vessel can be  
4 brought into the State and not deemed as used, if it is  
5 brought into the State for purposes of being repaired by a  
6 permitted and licensed repair facility.

7 Appellant brought the vessel into California  
8 numerous times during his voyage to Mexico asserting that  
9 repairs needed to be made. In fact, between October 8th,  
10 2014, and January 1st, 2015, the vessel was docked in  
11 Bodega Bay, Monterey, Morro Bay, Santa Barbara, and  
12 San Pedro, California. Based on the decision dates that  
13 were provided, the vessel was docked at Bodega Bay from  
14 October 8, 2014, through November 18th, 2014, then docked  
15 in Monterey bay from November 19th to 29th, then sailed to  
16 Morro Bay where it was docked from December 7th through  
17 13th, 2014. Afterwards, the vessel was docked at Santa  
18 Barbara from December 13th to 20th, and was finally docked  
19 in San Pedro from December 21st, 2014, until January 1st,  
20 2015, when Appellant departed for Mexico.

21 Based on the Appellant's allegations, the vessel  
22 was docked in California for approximately three months  
23 due to repairs and also his need to rest. However,  
24 Appellant has failed to provide any receipts or invoices  
25 for repairs made at a licensed repair facility during this

1 time. Appellant alleges that he purchased supplies and  
2 made all the necessary repairs himself, but these  
3 self-made repairs do not suffice to meet the requirements  
4 under subsection(d).

5 Moreover, there's evidence that the vessel's  
6 presence within the State was not exclusively due to  
7 repairs that needed to be made. For example, Appellant  
8 testified today that he needed to dock in order to rest,  
9 which we completely understand and also, that it was  
10 docked in Monterey Bay and Morro Bay while he returned  
11 home to work throughout his voyage.

12 So based on the foregoing, Appellant has failed  
13 to provide any evidence to rebut the presumption that as a  
14 California resident he purchased the vessel for use in  
15 California. Appellant's entire case rests on his  
16 allegations that he did not have any intention to bring it  
17 into the State, but his allegations without documentary  
18 evidence do not suffice to usher him with an exemption to  
19 California sales and use tax laws.

20 Additionally, Appellant consistently used the  
21 vessel within the State of California within the 12 months  
22 of its purchase. So although we are very sympathetic to  
23 Appellant's circumstances and the storm he faced, he has  
24 failed to meet his burden, and his appeal should be  
25 denied.

1 Thank you.

2 JUDGE WONG: Thank you, Ms. Daniels. This is  
3 Judge Wong.

4 As CDTFA was providing argument and not witness  
5 testimony, they are not subject to cross-examination. So  
6 I will now just turn to my Panel see if they have any  
7 questions regarding CDTFA's presentation, starting with  
8 Judge Le.

9 JUDGE LE: This is Judge Le. No questions.  
10 Thank you.

11 JUDGE WONG: This is Judge Wong. Thank you.  
12 Judge Aldrich, do you have any questions for  
13 CDTFA?

14 JUDGE ALDRICH: This is Judge Aldrich. No  
15 questions. Thank you.

16 JUDGE WONG: This is Judge Wong. I also do not  
17 have any questions for CDTFA.

18 So I will now turn it back over to Mr. Meza for  
19 your rebuttal and any closing remarks, closing  
20 presentation. You have -- let's see. I think you  
21 budgeted five minutes, but you can take a little bit  
22 longer than that since I don't think you used all your  
23 time at the beginning. Mr. Meza?

24 MR. MEZA: Yes, Your Honor.

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11           Forcing him out of the state and saying he had to  
12 solo-shot at that point by himself would be unreasonable  
13 and unfathomable. Yes, Mr. Pool did the repairs himself.  
14 Mr. Pool is a licensed individual with a lot of expertise  
15 in this. I mean, one could argue that -- I mean, sure  
16 there may be other technicians out there that could match  
17 his work or be better than him. But someone with his area  
18 of expertise -- because it's not just a hobby for him, but  
19 it's also his job at that time as well.

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1       aficionado that does this on his free time.

2               No. This is an individual who is licensed -- who  
3       is licensed by the proper governing agencies to do what he  
4       does. He not only does this for a hobby, he does this for  
5       a living. He needs to know how to do these things because  
6       he's in charge of their lives when he is captaining other  
7       boats, not just his personal vessel. When he purchased  
8       the Dublin Dragon, it was never his intent to have it in  
9       California outright. That's it.

10              Sure, there were considerations maybe  
11       potentially, but from his previous knowledge of what he  
12       knew about how much it would cost to moor in Mexico versus  
13       California, the scarcity in California, that all  
14       influenced his decision at the beginning to keep out of  
15       California. Maybe in the future after 12 months,  
16       possibly, but at that point in time in 2014 when he  
17       purchased that vessel, it was just not possible for him to  
18       do so.

19              Did he have a month-to-month contract? Yes. He  
20       stated earlier that he had a month-to-month contract in  
21       Oregon just for the possibility that he would miss that  
22       window of October 1st. Because after that it would just  
23       have been completely unreasonable for him to try to sail  
24       out in mid -- in the plain of winter where weather  
25       conditions are far worse.

1           So Mr. Pool did everything possible to get it out  
2       of Oregon to go to Mexico, not to California. But he kept  
3       that plan B to stay in Oregon but not California. He  
4       stated earlier that he would potentially have done the  
5       month-to-month contract just because he had the  
6       possibility that he would be forced to keep it in Oregon  
7       and not sail out during the winter. But he really wanted  
8       to go to Mexico.

9           He wanted to sail in Mexico the Sea of Cortez.  
10       He had other future plans for the near future of sailing  
11       that boat down in Mexico and the neighboring shores, the  
12       water, the seas down there. That was his intention. It  
13       was not his intention to sail in California and keep it in  
14       California. It was his intention to sail around Mexico.  
15       The possibility of him not being in Mexico, his plan B,  
16       his fall back was Oregon.

17           I have no further statements, Your Honor. Thank  
18       you.

19           JUDGE WONG: This is Judge Wong. Thank you.

20           I will now turn to my Panel for any final  
21       questions they might have for CDTFA or Appellant,  
22       beginning with Judge Le.

23           JUDGE LE: No additional questions. This is  
24       Judge Le. Thank you so much, everybody.

25           JUDGE WONG: This is Judge Wong. Judge Aldrich,

1 did you have any final questions?

2 JUDGE ALDRICH: This is Judge Aldrich. No final  
3 questions for me. Thank you.

4 JUDGE WONG: This is Judge Wong. I did have one  
5 final question for Mr. Pool. Did you -- at this time, did  
6 you work for -- what was your job? Did you work for,  
7 like, a boat repair facility or --

8 MR. POOL: No. I worked for Sundiver charters  
9 out of Long Beach. It's owned by a guy named Ray Earl.  
10 He owns three boats. Well, he's got more than that, but  
11 there are three of them that are used for dive boat  
12 charters, for both overnight charters to Catalina and the  
13 Channel Islands, and for day charters out of Long Beach to  
14 Catalina Island.

15 So he's a licensed business. He's been operating  
16 for 20-some years. And I would, in an official capacity  
17 as captain of the vessel, as master of the vessel, I  
18 would -- he would -- I was hired sometimes on both  
19 Saturday and Sunday but usually two to four times a month  
20 as a dive boat captain for scuba diving charters to the  
21 islands.

22 JUDGE WONG: Thank you, Mr. Pool. I didn't have  
23 any further questions. Thank you for your testimony  
24 today.

25 And thank you to Appellant and CDTFA for your

1 presentations.

2 If there's no final questions, this will conclude  
3 the hearing. The record is closed, and the case is  
4 submitted today.

5 The Judges will meet and decide the case based on  
6 the exhibits presented and admitted as evidence, as well  
7 as Mr. Pool's testimony. We'll send both parties our  
8 written decision no later than 100 days from today. This  
9 oral hearing is now adjourned, and we will go off the  
10 record.

11 Thank you.

12 (Proceedings adjourned at 10:29 a.m.)  
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HEARING REPORTER'S CERTIFICATE

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

That the foregoing transcript of proceedings was  
taken before me at the time and place set forth, that the  
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 28th day  
of February, 2023.

\_\_\_\_\_  
ERNALYN M. ALONZO  
HEARING REPORTER