

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
M. GELMAN and R. GELMAN,) OTA NO. 19095263
)
 APPELLANT.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Friday, May 19, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:05 p.m. and concluding at 2:13 p.m. on
Friday, May 19, 2023, reported by Ernalyn M.
Alonzo, Hearing Reporter, in and for the
State of California.

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APPEARANCES:

Panel Lead: ALJ TOMMY LEUNG

Panel Members: ALJ OVSEP AKOPCHIKYAN
ALJ EDDY LAM

For the Appellant: MARC GELMAN

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PAUL KIM
BRAD KRAGEL
CHRISTOPHER CASSELMAN

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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 5.)
(Department's Exhibits A-H were received at page 5.)

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California; Friday, May 19, 2023

10:00 a.m.

JUDGE LEUNG: I believe we can go on the record now for Docket No. 19095263. This is the Appeal of Gelman for the taxable year 2010.

The issues to be decided in this appeal are: Number One, whether EADC, LLC, became a partner of South River on or before July 7th, 2010; the second issue is whether the duty consistency also applies to the Franchise Tax Board; Issue Three is whether TEFRA, T-E, F as in frank, R-A, applied in California in 2010 and, if not, what rules the partial audits applied; and the last issue is whether FTB violated the policy favoring low income housing by using hardship tax rules such as allocation methodology.

We have Exhibits A through H from the Franchise Tax Board, Exhibits 1 through 5, formally known as Exhibits A through E, for the Appellants. And as agreed to by the parties before this hearing, they will all be admitted into evidence.

(Appellant's Exhibits 1-5 were received in evidence by the Administrative Law Judge.)
(Department's Exhibits A-H were received in evidence by the Administrative Law Judge.)

1 This hearing is being held electronically by
2 agreement of the parties. Please be aware that this is
3 being live streamed, so anything being said or placed on
4 the screen will be publicly available.

5 May I please have appearances from the parties,
6 starting with Mr. Gelman.

7 JUDGE LEUNG: Mr. Gelman?

8 MR. GELMAN: You just want me to acknowledge that
9 I'm appearing?

10 JUDGE LEUNG: Yes. State your name for the
11 record, please.

12 MR. GELMAN: Marc, M-a-r-c, Gelman, G-e-l-m-a-n.
13 Thank you.

14 JUDGE LEUNG: Thank you, sir. And you are the
15 only person for the Appellants and not Mr. Dror?

16 MR. GELMAN: Correct.

17 JUDGE LEUNG: And I believe you will also be
18 presenting and, I guess, testifying; correct?

19 MR. GELMAN: Correct.

20 JUDGE LEUNG: So I will be swearing you in, in a
21 moment.

22 For the Franchise Tax Board, your appearances,
23 please.

24 MR. KIM: Paul Kim for the Respondent Franchise
25 Tax Board.

1 JUDGE LEUNG: Thank you, Mr. Kim.

2 MR. KRAGEL: Bradley Kragel for Respondent
3 Franchise Tax Board.

4 JUDGE LEUNG: Thank you, Mr. Kragel.

5 And, Mr. Gelman, will you please raise your right
6 hand and repeat after me.

7

8 M. GELMAN,

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

12

13 JUDGE LEUNG: Thank you, sir. Mr. Gelman, you
14 have a total of 30 minutes for your presentation,
15 including your opening, your entire presentation, and your
16 closing. So at your pleasure, please begin.

17 MR. GELMAN: Okay. Thank you very much.

18

19 OPENING STATEMENT

20 MR. GELMAN: I really have nothing to present as
21 an opening except for to just -- everything I presented in
22 our OTA submittal and our rebuttal, essentially, the
23 issues are exactly the issues you laid out in Items 1
24 through 4 in your conference memo.

25 The only issue that I think that maybe is not

1 specified in there is the fact that there was -- the
2 partnership itself was audited and received a No Action
3 Letter relating to its audited return. The partnership
4 gave us a K-1 that was never -- FTB never required the
5 partnership to amend that K-1 as it received the No Action
6 Letter, no further action, or whatever. I don't know the
7 exact terminology you used.

8 I can pull up exhibit -- I believe that is
9 Exhibit Number 5. Hold on. I don't want to disconnect
10 anybody here. It's Appellant's Exhibit -- no, it's not
11 Appellant's Exhibit Number 5. It is Exhibit Number 4, the
12 Partnership No Change Letter. The No Change Letter was
13 issued to South River Road Associates, the partnership for
14 taxable year 2011. And our examination of the tax return
15 resulted in no change in your tax liability, and the
16 partnership was issued K-1s in all years that it existed.
17 And the K-1 that is in question here is the K-1 that
18 distributed certain losses to the Appellant.

19 JUDGE LEUNG: Mr. Gelman, let me interrupt for
20 one minute. I have one administrative matter to take
21 care.

22 Today is May 9th, 2023, and the hearing started
23 at approximately 1:09 p.m.

24 Go ahead, Mr. Gelman. I apologize for that
25 interruption.

1 MR. GELMAN: Okay. I just want -- just
2 clarifying that wasn't one of the issues in your memo up
3 for discussion. That issue is that if the partnership
4 received a No Change Letter, how the partner can be
5 required to report something different than what was
6 reported by the partnership to the Franchise Tax Board.
7 That was the only other issue.

8 Otherwise, all the issues are laid out in my
9 brief. And if the -- any of the judges have any
10 questions, I'm here to answer them.

11 JUDGE LEUNG: Thank you, Mr. Gelman.

12 Franchise Tax Board, do you have an opening
13 statement?

14 MR. KIM: Paul Kim for Respondent. Yes, we do.

15 JUDGE LEUNG: Yes.

16 MR. KIM: Yes.

17 MR. LEUNG: Okay. Please make your opening
18 statement. And you have a total of 20 minutes for your
19 presentation.

20 MR. KIM: Thank you.

21

22 OPENING STATEMENT

23 MR. KIM: Good afternoon. And thank you for the
24 opportunity to present Respondent's position. At issue in
25 this appeal is whether Appellants are correct in arguing

1 that they were entitled to deduct both their losses from
2 Enhanced Affordable Development Corporation or EADC, that
3 resulted from the sale of its interest in South River Toad
4 Associates or South River.

5 Appellants' contention that EADC was a member of
6 South River as early as July 1st, 2010 is incorrect for
7 three reasons. First, Appellants were approved for the
8 purchase of South River on August 27th, 2010. Second,
9 Appellant sold their interest in South River prior to
10 actually receiving a formal approval for said purchase of
11 interest. And third, Appellants stipulated to the fact
12 that EADC was not a member of South River as of July 7th,
13 2010.

14 Appellant-Husband formed EADC in 2002 as a real
15 estate development and management company focused
16 primarily on low-income housing. EADC is affiliated with
17 TC Alliance Group or TCAG. TCAG was formed by
18 Appellant-Husband in 2009 and also participated in the
19 business of affordable housing. South River is the owner
20 of a qualified low-income housing project known as Hidden
21 Creek Village located in the County of the San Luis
22 Obispo, California.

23 JUDGE LAM: Excuse me. This is Judge Lam
24 speaking. FTB, can you speak into the mic or more into
25 the mic. I can't really hear you.

1 MR. KIM: I apologize.

2 MR. GELMAN: Could you do me a favor? This is
3 Marc Gelman. Could you start over because I really did
4 not hear clearly your first three -- you had Items 1, 2,
5 and 3. You're echoing, and it's hard to hear you.

6 MR. KIM: I apologize. Is this better if I hold
7 the mic?

8 MR. GELMAN: Yeah. I think it's better. So if
9 you could start over -- if you could start over because it
10 was very hard to hear you. I was trying to take notes,
11 and I could barely --

12 JUDGE LAM: Sorry. This is Judge Lam speaking.
13 Yeah, I think -- yeah, it is. I think it is better for
14 me.

15 MR. KIM: Perfect.

16 JUDGE LAM: Thank you.

17 MR. KIM: So I'll recap my first few points.

18 Again, Appellants' contention that EADC was a
19 member of South River as early as July 1st, 2010, is
20 incorrect for three reasons: First, Appellants approved
21 the purchase of South River on August 27th, 2010; second,
22 Appellants sold their interest in South River prior to
23 actually receiving a formal approval for said purchase of
24 interest; and third, Appellants stipulated to the fact
25 that EADC was not a member of South River as of July 7th,

1 2010.

2 Appellant-Husband formed EADC in 2002 as a real
3 estate development and management company focused
4 primarily on low-income housing. EADC is affiliated with
5 TC Alliance Group or TCAG. TCAG was formed by
6 Appellant-Husband in 2009 and also participated in the
7 business of affordable housing. South River is the owner
8 of a qualified low-income housing project known as Hidden
9 Creek Village located in the County of San Luis Obispo,
10 California.

11 Under Section 1602, state housing credit agencies
12 are eligible to receive grants for low-income housing
13 projects in lieu of low-income housing credits under
14 Section 42 of the Internal Revenue Code. The state agency
15 receiving the grant uses the funds to make several awards
16 financing the construction, acquisition, and
17 rehabilitation of qualified low-income buildings.
18 Whereas, the grant amount is not taxable to the investor,
19 it serves to increase the partner's basis in the
20 partnership. The partner may then choose to sell their
21 interest at a tax loss, generally, exceeding their initial
22 development.

23 Here, Appellants purchased their interest in
24 South River for approximately \$600,000 and claimed a loss
25 of approximately \$4 million. In March of 2010, South

1 River entered into a grant agreement with the state
2 agency. Under the grant agreement, South River was
3 awarded -- sub-awarded a federal Section 1602 grant for
4 approximately \$14 million. The first distribution of
5 approximately \$4.6 million was scheduled for July 7th,
6 2010.

7 Allegedly, Appellants formed a partnership with
8 South River as of July 1st, 2010. However, that's
9 incorrect. Appellants' claim is based solely on the back
10 dating of South River's amended and restated partnership
11 agreement. As stated in Respondent's opening brief,
12 courts routinely deny backdated documents where such
13 documents are used solely to achieve a particular tax
14 result. Case in point, Moore v Commissioner and Dobrich v
15 Commissioner.

16 Whether a valid partnership --

17 JUDGE LEUNG: Excuse me, Mr. Kim.

18 MR. KIM: Yes.

19 JUDGE LEUNG: Would you mind spelling those case
20 names for us?

21 MR. KIM: Yes. Moore v Commissioner is
22 M-o-o-r-e, versus Commissioner. And Dobrich v
23 Commissioner is D-o-b-r-i-c-h.

24 JUDGE LEUNG: Thank you, Mr. Kim. And you've
25 gone about over four minutes on your opening. You realize

1 this is your opening statement, not your main
2 presentation; correct?

3 MR. KIM: Oh, I --

4 JUDGE LEUNG: It's up to you.

5 MR. KIM: I believed this was the Respondent's
6 presentation.

7 JUDGE LEUNG: So would you like to stop here and
8 let Mr. Gelman proceed with his main presentation before
9 you put on your case?

10 MR. KIM: Yes. I will stop here, and I will
11 continue.

12 JUDGE LEUNG: Okay. I'll let you stop here.

13 MR. KIM: I apologize.

14 JUDGE LEUNG: You've used about four minutes of
15 your time.

16 And, Mr. Gelman, please proceed with your
17 presentation.

18

19 PRESENTATION

20 MR. GELMAN: -- except for the following items
21 that are material to this matter.

22 The first one is I never stipulated that EADC was
23 not a member of the partnership as of July -- as of the
24 date of the partnership agreement. What we agreed in our
25 prehearing, Judge, was that the agreement was signed after

1 the date of the agreement, that the agreement -- because
2 the question was -- the agreement, I believe, has a date
3 of -- let me pull it up. I think it's July 1st. Hold on.
4 Let me pull up the agreement. This might take a second.

5 The partnership agreement is dated July 1st. We
6 agreed -- I stipulated in our hearing that the agreement
7 was signed on July 1st, that it was signed on a later
8 date. I did not say that we were not a partner as of that
9 date. 'Cause one of the main issues in the case is -- is
10 that we were a partner as of July 1st. That's Number One.

11 Number Two, the item -- that was Number Three
12 that he brought up. Number Two was something -- he posted
13 something about that we sold the partnership before we
14 purchased it. And that is not correct as well. 'Cause we
15 sold it way after that date of the agreement. And then on
16 the first comment was that the purchase was made after an
17 approval on August 27, 2010. I don't know what approval
18 was that that we're referring -- that the FTB is referring
19 to as August 27, 2010.

20 This agreement was entered into prior. Our
21 agreement with the City of San Luis Obispo was entered
22 into prior to July 1st. We have correspondence, and
23 there's an email as one of the exhibits between us and the
24 attorney for the City of San Luis Obispo. We also have
25 letter from the City of San Luis Obispo acknowledging that

1 we were a partner as of July 1st.

2 And the understanding and what we'll see by going
3 through the documentation, and if you read through the
4 brief, the concept was these agreements in the affordable
5 housing industry are done as follows: I -- I was --
6 [AUDIO ISSUES] as a -- and so we had the situation being
7 on both sides of the equation.

8 What you do is you work on a project. You apply
9 for tax credits with the state agencies. You make a deal.
10 The developer and the tax credit investor make a deal.
11 The deal goes through. You negotiate all your terms of
12 your deal. You work on your financing. You put
13 everything together. But the deals have what's called
14 a -- you know, you have a condition precedent. And then
15 you have -- this is a condition. In this situation you
16 have a condition that if you don't get credits at the end
17 of the deal -- it's the other way around -- your deal
18 doesn't happen, and it goes away.

19 So you make a deal. You agree as of a certain
20 date that this is your agreement. It comes after you
21 start and you work. Then you go and get your tax credit
22 approvals. In this situation, it was different than the
23 normal tax credit world. It was a 1602 program that was
24 done for a couple of years when after the debacle of the
25 financial industry in 2008, 2009, it was impossible to

1 sell credits. Not impossible, but pretty close to
2 impossible to sell credits at the normal prices that were
3 out there.

4 So what happened was the IRS decided to price
5 credits at an arbitrary price. They came up with 85 cents
6 and decided that if you can't sell your credits, you can
7 do what's called exchange those credits for a grant. And
8 what happened in most situations like these, it was
9 non-profits or cities who took the grants. Because the
10 reason it was non-profits or city because otherwise --
11 you're all tax people here -- the grants become taxable.
12 And no developer or as a tax credit syndicator would want
13 to take the grants because the grants then become -- go
14 right into your income as a taxable income.

15 So the people who took these 1602 exchange
16 credits were either municipalities or non-profits. And
17 what happened was, we then went back and had to deal with
18 the State of California. The fellow we dealt with back
19 then was a fellow named Bill Pavao, who I had a great
20 relationship with. And Bill was the head of California
21 Tax Credit Allocation Committee.

22 And this situation here, there was a provision
23 that they had to approve allowing the sale of these
24 credits because they weren't really credits. It was a
25 grant. They were selling, in effect, losses. And from a

1 pure tax standpoint in the real tax world, you really
2 can't sell losses. Selling losses is not something the
3 IRS and consequently the Franchise Tax Board would never
4 allow. Selling losses is a misnomer and is tantamount
5 amount to what they had in the 80s. They were called tax
6 shelter partnerships.

7 So what happens is there was -- the IRS did an
8 exception for these two years, while they did this, and
9 allowed the effective selling of these losses. And as
10 part of that, the state authorities had a provision that
11 they had the right to determine whether or not the
12 developer themselves was getting too much money for their
13 project to get the -- because the way it works is they
14 allocate them dollars in their project between debt and
15 equity.

16 And so what they wanted to make sure was that the
17 developers, a.k.a., the cities and the non-profits were
18 not putting too much money in their pocket. This could
19 not happen until the project was a feasible project, and
20 this would happen down the road. It wouldn't happen
21 before the project started. So they would go in and put
22 the application into the state tax credit authorities.

23 We did -- there were hundreds of these deals that
24 were done. And shockingly this is only one of a couple of
25 deals that I actually kept for myself to keep those

1 losses. And this one is the one that's subject of this
2 audit. And virtually all the others were approved by the
3 IRS and were approved by all state authorities, including
4 California. No other -- no other project that was done
5 like this that we know of had been audited and has gone to
6 this level.

7 So what we're saying is yes, the agreement
8 100 percent was signed after July 1st. Okay. You want to
9 call it as being backdated. The answer is the agreement
10 was made as of July 1st. That was the date of the
11 agreement, and that's why the agreement is effective as of
12 July 1st. The, you know, the condition that happened
13 later happened. And then the agreement became -- the
14 agreement continued instead of being changed.

15 Had the state said no or the state -- we have
16 deals where the state came back and said sorry, you can't
17 take \$10 million of grant. We'll only allow you to take
18 \$5 million of grant because you're putting too much money
19 back into the project. And then there was what's called
20 over sourced. These states all over the country that has
21 an incentive not to put too much money in the developer's
22 pocket, because then they are wasting taxpayer credits and
23 taxpayer money where they should be loans instead of
24 credits to take -- so it's called over sourcing.

25 So all this was about waiting for the California

1 Tax Credit Authority -- California Tax Credit Allocation
2 Committee to determine whether the project is over sourced
3 or not over source. And we -- and that's that letter.
4 I'm assuming you're talking about August 27th. I'm
5 looking for something dated that day so I could speak
6 intelligently. I'm assuming that's -- nope that's not the
7 date. I don't know what the August 27th date is, but
8 there must be a reason for that date that Paul brought up.

9 So that's my only answer so far to what I've
10 heard from the Respondent.

11 JUDGE LEUNG: Mr. Gelman, so is that your
12 presentation?

13 MR. GELMAN: No. That's just my -- saving my
14 minutes to respond to anything else Franchise Tax Board
15 wants to present or questions you have?

16 JUDGE LEUNG: Okay. You have about 20 minutes
17 left. So I'll book 20 minutes for you.

18 MR. GELMAN: Thank you, Judge.

19 JUDGE LEUNG: You're welcome. I'm just trying to
20 keep track here.

21 And does the Franchise Tax Board have any
22 questions for Mr. Gelman?

23 MR. KIM: Paul Kim for Respondent. Not at this
24 time.

25 JUDGE LEUNG: Okay. Judge Akopchikyan, any

1 questions for Mr. Gelman at this point?

2 JUDGE AKOPCHIKYAN: I have one question. In the
3 letter, Respondent is referring to is dated August 25,
4 2010, and the content of that letter says TC Alliance
5 Group is offering to acquire 99.99 percent interest in
6 South River and there's some other language in there. But
7 it seems like what this letter is saying is there is going
8 to be some approval by TC Alliance Group after this date.

9 TCAG will then present the investment to its
10 review committee, who shall either approve or reject the
11 investment. The general partner hereby grants TCAG the
12 exclusive right to acquire the interest commencing on the
13 date of this letter and terminating 180 days after this
14 letter. Can you please address that letter, please.

15 MR. GELMAN: Thank you. What exhibit number is
16 that by the way?

17 JUDGE AKOPCHIKYAN: I think Exhibit G to FTB's
18 open --

19 MR. GELMAN: Exhibit G. Okay. Great. Because I
20 want to open it up. Okay. Perfect. I will address that
21 100 percent.

22 Okay. So what these are is what we just told you
23 about is that we had to get approval. The projects had to
24 get this approval from the California Tax Credit
25 Allocation Committee. That is Exhibit 5 from my

1 presentation, I believe. Let me just see. Yes. So what
2 happens is, to get the approval of the California Tax
3 Credit Allocation Committee, we needed to submit something
4 to them. They needed to have something submitted to
5 review.

6 So the City of San Luis Obispo said we need to
7 provide something to the California Tax Credit Allocation
8 Committee. So their lawyer said, could you give us an LOI
9 or something that shows the terms of the deal so we can
10 give that to the California Tax Credit Allocation
11 Committee. So they took a stand --

12 JUDGE LEUNG: Excuse me. Excuse me, Mr. Gelman.
13 LOI, meaning --

14 MR. GELMAN: Oh, sorry.

15 JUDGE LEUNG: -- a letter of intent?

16 MR. GELMAN: It's a letter of intent.

17 JUDGE LEUNG: Thank you.

18 MR. GELMAN: It's a standard form letter of
19 intent they asked for. Correct. I have it right in front
20 of me. And I have no idea who these -- I know who Chris
21 Clark is. I don't know this Carol Hailey is who signed
22 it. I don't know who that is. Chris Clark was a broker
23 who brokered these deals to various municipalities and
24 non-profits. He was not an officer or partner at any time
25 in Enhanced Affordable Development or TC Alliance.

1 I believe -- yeah. He writes on it "Acquisition
2 Agent for the TC Alliance Group." I don't know how he
3 gave himself that name. Whatever. But I'm assuming -- so
4 Chris Clark prepared this. This had nothing to do with
5 us. This is dealing with the -- his seller who was the
6 City of San Luis Obispo. They needed to present something
7 to the State so that they can get their dollar amount
8 approved.

9 Because if you see in the last, it says, "They
10 had to show what's it for." And if you look in the last
11 line of the letter that was sent to them on -- in this
12 exhibit that I produced, at the end of the day, we just
13 had to show what the amount of losses are; how much
14 they're getting; and how much they still have of the
15 developer fee.

16 And in most of these situations, it was all about
17 how much these non-profits and/or municipalities were able
18 to take out, and what they were being allowed to take out
19 as part of getting this -- selling their -- selling loss,
20 their losses.

21 JUDGE AKOPCHIKYAN: I have a follow-up question
22 to this.

23 MR. GELMAN: Sure.

24 MR. AKOPCHIKYAN: TC Alliance you're indicating
25 has nothing to do with you. I think you're referring to

1 EADC.

2 MR. GELMAN: No, no, no. TC Alliance had to do
3 with me.

4 JUDGE AKOPCHIKYAN: Okay. You said --

5 MR. GELMAN: Chris Clark -- I said Chris Clark
6 didn't work for -- he was a broker.

7 JUDGE AKOPCHIKYAN: Okay. I misunderstood then.
8 Because I understood you said this letter had nothing to
9 do with you, but if I misunderstood, I misunderstood.
10 Because my question is, this is a letter on August 25th
11 saying TC Alliance gets an exclusive right to acquire an
12 interest, but did TC Alliance acquire any interest or did
13 EADC acquire an interest?

14 MR. GELMAN: To be honest, I think it was
15 purchased -- I'm going to look at the partnership
16 agreement, whatever the partnership agreement says. TC
17 Alliance and EADC were both owned by the same entities, I
18 believe.

19 JUDGE LEUNG: TC Alliance was owned 50 percent by
20 and LLC owned by your own four kids, whereas EADC I don't
21 think involved your children. I think that was you and
22 your 50/50 if I'm --

23 MR. GELMAN: Okay. Yeah. Okay. TC Alliance was
24 owned by my children? I didn't even know that. Okay.

25 JUDGE AKOPCHIKYAN: By LLC, I guess indirectly by

1 your children. I think that's my understanding, but if --
2 it's your argument and your testimony, so I would
3 appreciate any insight you have into this.

4 MR. GELMAN: It looks -- yeah. It was purchased
5 by Enhance. The interest purchased by Enhance. Chris
6 Clark, there were many different entities that we
7 purchased the interest, why Chris Clark wrote this -- I
8 mean, he was -- he was a broker who was just giving the
9 seller something that they needed to go to the city, to
10 the state with to get approval. So this is not something
11 that I would have ever prepared or sent out.

12 You know, it -- we -- when the Franchise Tax
13 Board in an initial examination asked for all our
14 documents, our CFO -- I don't give him everything we have,
15 and he pulled everything out of the file and you know,
16 this was in the file. It's like there's nothing -- we
17 have nothing here to hide. What we did was -- this is
18 definitely something that was written after the July 7th
19 date. There is no question in that.

20 Like I said, we have a condition subsequent. We
21 made a deal. You shake hands with the -- with the equity
22 partner and the equity -- the developer from both sides
23 being a developer and being the equity provider in both
24 situations is always done the same way. Your agreement,
25 when you sign your agreement, they are always effective as

1 of the date you made your deal.

2 This was -- had to do with the condition
3 subsequent that the deal can't -- you don't know how many
4 to fund because you have to wait for the state to
5 determine how much they're going to allow. And this --
6 this document that was provided to the state was provided
7 by the broker -- called him broker or agent, however it
8 worked.

9 He basically got a fee for every deal he brought
10 in. And I don't know the amount, whether it was, you
11 know, 1 percent or 2 percent. Whatever his fee was for
12 doing these deals. But he was just providing a document
13 to the City of San Luis Obispo so they would have
14 something to submit to the state.

15 JUDGE AKOPCHIKYAN: So when you're saying this
16 letter was sent out to see how much would get approved,
17 are you referring to the \$14 million in grants that were
18 approved in March 1st, 2010?

19 MR. GELMAN: No. The grant was already approved.
20 The grant -- so let's start over so we get it because this
21 is something that not everybody is familiar with. This
22 was a one-off program that came out of off the AARA Act.
23 The grants were approved -- the grants get approved and
24 the -- if you have -- if you have tax -- let's use a round
25 number of \$10 million.

1 If you have \$10 million of credits that you
2 received credit allocation from TCAG, you'll apply for --
3 the way it works is you apply for credits with the tax
4 credit in California. We'll just deal with this specific,
5 with the California Tax Credit Allocation Committee.
6 There are two kinds of credits. There are 9 percent
7 credits and 4 percent credits. At the time, 4 percent
8 credits were automatic. They were -- and -- and in
9 today's -- and 9 percent credits were competitive. Okay.

10 So what happened is in this particular deal,
11 first you get your credits. You get your credits, and
12 then after you get your credits, you went to this federal
13 fund that opened up called AA -- whatever it was called.
14 You get an automatic. You can exchange your credits for
15 dollars so -- in the form of a grant.

16 So if I got an allocation from the State of
17 California for \$10 million, I go to the government, and
18 under the exchange program, the government gives me \$8.5
19 million of cash instead of me selling my credits to a tax
20 credit investor who used to pay a dollar for those credits
21 and would pay you \$10 million. So now the developer only
22 received \$8.5 million, so he's short in his budget of \$1.5
23 million.

24 So now that developer now goes back to the state
25 and says okay, Mr. Gelman -- I'm one of many people who

1 are doing this, many entities. I'm using my own name
2 here. Sorry, not the entity. Went back to the State of
3 California, they go, hey, we want -- we'll give you more
4 money because we'll buy your losses. And the IRS we
5 have -- I think we submitted an opinion letter from our
6 firm Reed Smith that we did an opinion letter and we
7 worked with a fellow named Chris Wilson, who is in the IRS
8 group at the time.

9 And we got the IRS to approve that you can now
10 sell your losses, even though officially selling losses is
11 not normally allowed under normal tax law. So we took
12 that \$14 million -- let's use the \$10 million number
13 again. So for that \$10 million grant, it would create X
14 millions of dollars of losses over a period of 15 years or
15 however we calculated it. And then we say okay, we will
16 buy your losses roughly -- let's call it \$0.07 on the
17 dollar.

18 And then we took those losses and sold them to
19 parties A, B, C, D all over, and we syndicated those
20 losses and sold them, usually at a profit. And here in
21 this situation we kept -- we being me. My entity kept few
22 of the losses to offset some of my other income. Okay.
23 Because we're in the program. So overall -- overall what
24 this was, was we had to go back to the state to say hey,
25 here's the million-and-a-half gap they have. We're giving

1 them, \$1.3 million let's say. Will you approve it? Okay.

2 Just to approve, they have to sign off on it. If
3 we were giving them \$1.7 million and we were giving them
4 more than the \$10 million, the state would come back and
5 say, you know, you're now over sourced. We only approved
6 you for \$10 million. You have to -- you can't get that
7 \$200,000 from Mr. Gelman. You need to give it back.

8 So we had to go through -- they -- and you could
9 look in the law and the tax credit, if you want to go back
10 into TCAC's rules. This was part of TCAC's rules and how
11 it worked. So they just needed to essentially rubber
12 stamp the deal you made to make sure you're not taking out
13 too much money. You being -- I'm talking about the
14 municipalities and the non-profits.

15 JUDGE AKOPCHIKYAN: Could this allocation
16 committee just outright deny your involvement or your
17 interest in -- or your intent to purchase an interest in
18 South River?

19 MR. GELMAN: No. They couldn't. They couldn't
20 deny. They couldn't deny it. They could only change the
21 amount based on if the sourcing would create too much
22 funds for the project. They don't -- the constant was
23 TCAC doesn't want to enrich -- over enrich developers
24 because they have certain maximum developer fee. Like at
25 the time, I believe, \$2 million was the maximum developer

1 fee.

2 So like in this situation I believe they had a
3 \$700,000 developer fee. So the price was structured to
4 have them say, let's say, max their developer fee. If we
5 gave them a dollar more, they would have had to give it
6 back to either us or to the state. And so when we
7 negotiated our price, it was based usually on what the max
8 the state will allow.

9 Now, there's some states in the country actually,
10 between us, they didn't have this. There's a few that
11 didn't even catch that and let developers get whatever
12 they want. And they would sell them at whatever price
13 they can get. The State of California was very, very on
14 top of this from day one, and they're intention was why
15 should we give you more credits than you deserve.

16 If we allocated you 10 million credits, we're not
17 going to let you have more than that. We're not giving
18 you more money. And that's the terminology they used.
19 It's called over source, under source, et cetera.

20 JUDGE AKOPCHIKYAN: Okay. So your position at
21 the committee could only adjust the amount of your
22 involve -- of the credit but not -- they had no authority
23 at all to deny your purchasing an interest in South River?

24 MR. GELMAN: 100 percent correct.

25 JUDGE AKOPCHIKYAN: I have no other question at

1 this time, Judge Leung.

2 JUDGE LEUNG: Thank you, Judge Akopchikyan.

3 Mr. Gelman, one clarification before I turn it to
4 Judge Lam. You mentioned TCAC, so that's T as in Tom, C
5 as in Charlie, A as in Al, and C as in Charlie, and that
6 stands for Tax Credit Allocation Committee?

7 MR. GELMAN: Yes, Judge. Sometimes it's referred
8 to as CTCAC, which is the California Tax Credit Allocation
9 Committee. And in the industry, we always refer to it as
10 TCAC.

11 JUDGE LEUNG: Can you spell that.

12 MR. GELMAN: It's the Tax Credit Allocation
13 Committee. One is -- it's the same as TCAC but with a C
14 in front, California Tax Credit Allocation Committee. If
15 you look on exhibit -- I believe exhibit -- I call it
16 Exhibit 5. I call it the TCAC approval letter. But if
17 you look it says Mr. William Pavao, California Tax Credit
18 Allocation Committee.

19 JUDGE LEUNG: Wonderful. Thank you.

20 MR. GELMAN: And I just want to clarify that I
21 made sure I said the right term. I hope -- I want to make
22 sure that I said a condition subsequent and not a
23 condition precedent that the approval by the California
24 Tax Credit Allocation Committee is a condition subsequent
25 and not a condition precedent. And that's a very

1 important thing to lay out there.

2 JUDGE LEUNG: Okay. Thank you.

3 Judge Lam, any questions at this point?

4 JUDGE LAM: This is Judge Lam speaking. I don't
5 have any questions for now. Thank you.

6 JUDGE LEUNG: Okay. So at this point, let's turn
7 to the Franchise Tax Board so they can move forward with
8 their presentation. And my computation is that you have
9 about 16 minutes left of your presentation, Mr. Kim.

10 MR. KIM: Paul Kim for Respondent. Thank you,
11 Judge.

12

13 PRESENTATION

14 MR. KIM: Regarding Respondent's first point,
15 whether a valid partnership existed for tax purposes turns
16 on whether the parties intended in good faith --

17 THE STENOGRAPHER: Mr. Kim, I'm so sorry to
18 interrupt you. Can you speak into your microphone,
19 please. Thank you.

20 MR. KIM: Apologies.

21 Whether a valid partnership existed for tax
22 purposes turns on whether the parties intended in good
23 faith to act as partners. Whether there was such an
24 intent is a question of fact as determined by the totality
25 of circumstances.

1 On August 25th, 2010, Appellants presented a
2 letter of intent to TCAG expressing an interest in
3 purchasing 99.9 percent in South River on behalf of EADC.
4 The letter of intent was accepted and signed on
5 August 27th, 2010. In pertinent part, Appellants' letter
6 of intent stated when TCAG has received an executed copy
7 of this letter and all the documents listed in the due
8 diligence checklist provided to you, TCAG will then
9 present the investment to its review committee, which will
10 either approve or reject the investment.

11 If the committee rejects the investment, then
12 both parties are released from any further obligation
13 under the terms of this letter. The letter further
14 stated, the general partner hereby grants TCAG the
15 exclusive right to acquire the partnership interest
16 commencing on the date of the initial execution of this
17 letter and terminating 180 days after said execution.
18 During this period of time, parenthesis, after TCAG's
19 committee approval, close parenthesis, TCAG and the
20 general partner agree to use their best efforts to achieve
21 TCAG's admission to partnership.

22 The evidence on the record does not support
23 Appellants' position that Appellants, South River, had the
24 requisite mutual consent necessary to form a partnership
25 as of July 1st, 2010. It's impossible for Appellants to

1 have formed a partnership with South River by July 1st,
2 2010, if the parties had yet to even consider or approve
3 EADC's admission into South River until August 27th, 2010.

4 Moreover, an alleged partnership agreement may be
5 disregarded when other factors show that no partnership
6 was intended. It's unlikely that Appellants ever intended
7 to form a valid partnership with South River according to
8 the time of events. According to the grant agreement
9 between South River and the state agency, South River was
10 required to give notice to the state agency in the event
11 South River sold a portion of its ownership interest.

12 In March 2011, a general partner of South River
13 sent a letter to the state agency asking for approval of
14 the sale. The letter ended by saying, "Thank you for
15 considering our request. Please let us know if we're
16 authorized and approved to go forward with this
17 transaction." The letter was date stamped for March 22nd,
18 2011, over eight months after Appellants purported
19 purchase date.

20 However, as of January 2011, EADC had already
21 agreed to sell its interest in South River to a third
22 party. Per Appellants' sale agreement, Appellants sold
23 their interest in South River to the third party for
24 approximately \$1.3 million. Based on these events, EADC
25 terminated their alleged partnership prior to date it was

1 formally authorized to purchase its interest. Therefore,
2 Appellants are incorrect that EADC was a member of South
3 River as of July 1st, 2010.

4 Regarding the duty of consistency, the burden of
5 proof is on the party invoking the doctrine. Here,
6 Appellants have alleged the applicability of the doctrine
7 against Respondent. As such, Appellants' burden of proof
8 to establish that the duty of consistency applies to the
9 case at hand must be done by the preponderance of the
10 evidence. Typically, the duty of consistency requires a
11 showing of three elements. First, the representation or
12 report by taxpayer. Second, on which is the FTB relied.
13 And third, an attempt by taxpayers after the statute of
14 limitations has run to change the previous representation
15 or to re-characterize the situation in such a way as to
16 harm the FTB.

17 Appellants have not met their burden to prove or
18 to establish by the preponderance of the evidence that the
19 duty of consistency applies to Respondent in the case at
20 hand. According to the evidence on record, Appellants
21 have not provided any evidence of any representation made
22 by Respondent to Appellants of which Appellants relied and
23 where now Respondent is attempting to change or
24 re-characterize through the detriment of Appellants after
25 the passing of any relative statute of limitations.

1 Similarly, Appellants argument that Respondent is
2 prohibited from denying the losses due to South River's
3 statute of limitations is incorrect. For federal income
4 tax purposes, Tax Equity and Fiscal Responsibility Act of
5 1982 or TEFRA, created the unified partnership audit and
6 litigation procedures. However, California does not
7 conform to the partnership audit rules under TEFRA.
8 Rather, under California law, the audit rules generally
9 applicable to the state's personal income tax apply to
10 partnership audits.

11 Generally, during the year at issue, the
12 California tax treatment of an adjustment to a partner's
13 items of income are -- apologies. A partnership's items
14 of income, gain, loss, deduction, or credit is determined
15 both administratively and judiciously for each partner in
16 separate proceedings. Likewise, adjustments to items of
17 income, gains, losses, deduction, or credits of the
18 partnership generally are made in separate action for each
19 partner, and each partner has its own separate statute of
20 limitations.

21 Therefore, Respondent is not prohibited for
22 making an adjustment to Appellants' flow-through losses
23 due to South River's prior audit or statute of
24 limitations. Regarding the issue of public policy, for
25 the record, Respondent objects to the admission of the

1 issue as it does not address the nature or amount of taxes
2 owed. That being said, Respondent contends that the
3 denial of Appellants' flow-through losses does not affect
4 public policy.

5 Respondent's position is based on the facts, and
6 the evidence on record shows that Appellants were not
7 partners of South River as of July 7, 2010. The proper
8 administration of tax laws is not violative of public
9 policy and it is not prejudicial to the promoting of
10 low-income housing.

11 Thank you for your time.

12 JUDGE LEUNG: Thank you, Mr. Kim.

13 Questions from the judges?

14 Judge Akopchikyan, any questions for the
15 Franchise Tax Board?

16 JUDGE AKOPCHIKYAN: No questions. Thank you.

17 JUDGE LEUNG: Judge Lam, any questions for the
18 Franchise Tax Board?

19 JUDGE LAM: No questions.

20 JUDGE LEUNG: Okay. Mr. Kim, I'm sort of
21 puzzled. The transaction South River is a limited
22 partnership and -- which allegedly claimed to have sold a
23 99 percent limited partnership interest to EADC. So who
24 held that 99.99 percent limited partnership interest
25 before this transaction?

1 MR. KIM: Paul Kim for Respondent. Respondent --
2 just to make I understand your question. You are asking
3 who held interest in South River prior to Appellants'
4 transactions, the purchase of South River's interest?

5 JUDGE LEUNG: Correct.

6 MR. KIM: Respondent hasn't been briefed on that
7 specific issue. I request additional time to determine
8 who was the prior owner and respond at a later date.

9 JUDGE LEUNG: Well, I'll ask Mr. Gelman later
10 after he does his presentation. So in 2010, California
11 did not follow TEFRA. So did it ever audit partnerships,
12 general partnerships at all?

13 MR. KIM: Paul Kim for Respondent. I believe
14 Respondent did audit partnerships prior to 2010.

15 JUDGE LEUNG: Okay. And if found it appropriate
16 to make adjustments, what would be the process? Would it
17 notify -- clearly notify the partnership. They would
18 notify all the partners? Is that how that worked?

19 MR. KIM: Paul Kim for Respondent. I'm not
20 100 percent sure as to the exact procedure as to auditing
21 partnerships. Again, Respondent requests additional time
22 to verify the specific procedures and provide a response
23 after the hearing.

24 JUDGE LEUNG: Okay. I think -- let me ask you
25 this. Are you familiar with IRC Section 708B, Mr. Kim?

1 MR. KIM: Paul Kim for Respondent. Not off the
2 top of my head I am not.

3 JUDGE LEUNG: That's a partnership determination
4 provision in the code. One of which says that if there's
5 a 50 percent or more disposition of partnership interest,
6 the partnership terminates. There's a short year return
7 that needs to be filed. During your audit of these
8 transactions, were there any termination events that your
9 auditors noticed or any short year returns filed by the
10 partnership or by South River or by the entity it was sold
11 in the partnership interest through the EADC?

12 MR. KIM: Paul Kim for Respondent. Respondent is
13 not aware of any returns filed. However, as this appeal
14 was specifically pertaining to Appellants, Mr. and
15 Mrs. Gelman, Respondent was not aware or made aware of any
16 specifics regarding South River's audit or prior audit
17 return.

18 JUDGE LEUNG: Okay. Thank you, Mr. Kim.

19 Mr. Gelman, you have another 20 minutes left to
20 complete your presentation. So please --

21 MR. GELMAN: Oh, boy. I got a lot -- I've got a
22 lot of responses here.

23 JUDGE LEUNG: Knock it out. Go ahead.

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For sure nobody ever signed it. This was not an agreement. This letter of intent was a pure document supplied by the broker to facilitate something to send to California Tax Credit Allocation Committee because that document -- they needed a document to explain the losses

1 and how it works. And if you look in the approval letter
2 that was just referred to by Mr. Kim, it says in the
3 letter to Mr. Pavao from the City of San Luis Obispo, it
4 says, "As you recall," -- 'cause this is an ongoing
5 process where they're going through getting this approval.

6 This didn't happen overnight. This happened over
7 a period. It started with -- it started as early as --
8 there was a letter, I believe the letter to the Franchise
9 Tax Board emails. There's an email. Exhibit 3 is my
10 email from -- it'll refer to a person named Patrick
11 Sablehouse who was the lawyer for the general partner. He
12 contacted Franchise Tax Board.

13 He contacted to get -- he had to check first with
14 the Franchise Tax Board on their position on taking the
15 grant. That was on Monday, April 26th of 2010. And then
16 he sent us an email telling us the good news that the
17 State of California is treating the grant money the same
18 as the federal government, and we would be able to use the
19 losses. And that was on April 27th of 2010, way before
20 the July date. And that was the date that we agreed
21 and -- July 1st was the exact date that we finally agreed
22 to. But as of April 27th we knew we had a deal.

23 And if you look in this Exhibit Number 5, it
24 says, "As you recall the LOI from Christopher Clark," and
25 this is not from me. This is coming from the general

1 partner offering to purchase projected losses over 15
2 years of \$6 million for an estimated \$549,000. And then
3 he said at the end, "We will, of course, provide TCAC with
4 a cost certification confirming the above and that our
5 non-profit did not have excess proceeds as a result of
6 selling the losses."

7 This was strictly about the concept of having too
8 much money and being over sourced. So I wanted to get
9 back to that. That's the first comment I have on that. I
10 also just mentioned that the partner was the City of San
11 Luis Obispo beforehand. And the most important issue is
12 that it was a question you just asked.

13 Although, TEFRA was not -- although, California
14 did not opt into TEFRA until a later date, the question is
15 what happened before they opted into TEFRA. How are we
16 supposed to treat consistency? And in this situation, the
17 partnership was 100 percent audited. The Franchise Tax
18 Board knows that. It was submitted as one of our
19 exhibits. And we actually submitted the clearance letter,
20 the No Change Letter. It's Exhibit 4 where the Franchise
21 Tax Board specifically cleared the partnership.

22 And our whole argument is we have a very simple
23 situation. You have debits and credits. You have
24 profits, and you have losses. There's always -- there's
25 an a -- there's a plus and there's a minus. If you're

1 going to take away losses, let's say for argument's sake
2 that the Franchise Tax Board is 100 percent, and that the
3 agreement was not effective July 1st, and Mr. Gelman is a
4 liar. And Mr. Gelman never had an agreement with them.
5 And there was no agreement, and Mr. Gelman backdated it.
6 Even if I was all of that, the IRS or the Franchise Tax
7 Board cannot take away losses from me and let them go into
8 the air. Losses have to go somewhere.

9 If I have income -- if I have income, and they
10 want to say, okay, you should have allocated that income
11 to Mr. B. If Mr. B. had already been audited and he's
12 being cleared, they can't say now you have to give him
13 that income. The same way here with the losses. We
14 contacted -- the second we got audited, we contacted the
15 City the San Luis Obispo. And we said, guys, we're
16 dealing with the city, a municipality. This is between
17 you and the State.

18 If you guys can't get -- either give us our money
19 back, if you can't do this. Okay. And they said no.
20 We've been audited, and we're told we are okay. And they
21 received an audit clearance, so they -- right away. So I
22 said, hey, I'm giving you back your losses. Give me back
23 my money. If I can't take losses -- I was only able to
24 take losses for the grant subsequent to whatever date the
25 Franchise Tax Board allows.

1 So let's say with three grants. It came in three
2 tranches because you're given the grants as you do the
3 work in the project. And if there was a grant that came
4 in April, I wouldn't have been able to take that grant
5 because I didn't start with them and make an agreement
6 until July 1st. But for argument's sake that I didn't
7 have an agreement, I said to them, okay, guys. If the
8 Franchise Tax Board is not going to let me have this
9 approval, please take those grants back and give me my
10 money back that I paid you for those losses.

11 And they said, no, Mr. Gelman. We've already
12 filed our tax returns. We've closed off the partnership.
13 The partnership is gone. The partnership is gone. We're
14 not reopening the partnership. We don't want those
15 losses, and we can't take those losses because our
16 partnership is closed. And even if we wanted to take
17 them, we can't take those losses back.

18 So I am now stuck with losses that the Franchise
19 Tax Board wants to take from me and not allow me to give
20 them back to whoever sold them to me. So what we talk
21 about when we talk about consistency, we're just talking
22 about this is fairness. This is simple accounting and tax
23 law. For every income, there's an expense. For every
24 loss, there's a gain. For every debit, there's a credit.

25 If they want to take this away from me, my answer

1 is you take it away from me as long as you make the
2 partnership amend their return and send me a new K-1 that
3 says I don't get those losses, and show me who they're
4 giving the losses to. Because if they give the losses to
5 themselves, they have to give me the money back.

6 And the City of San Luis Obispo has therefore,
7 answered and said, we are a partner as of July 1st. They
8 have never ever, ever argued and said we are not a partner
9 as of July 1st. If the Franchise Tax Board had an
10 opportunity to call them as a witness -- we were given
11 opportunities to subpoena witnesses. If they wanted the
12 City of San Luis Obispo to come in and testify and say you
13 were right. We were not a partner as of that date, and we
14 lied and signed an agreement.

15 We -- you know, this is something. This is a
16 municipality. This is not dealing with two, you know,
17 bozo taxpayers. This is a city. A city signed an
18 agreement with us, a bona fide legal city in California.
19 And they have also given us a letter -- an audit letter
20 that we requested telling -- I believe it's Exhibit 2 --
21 where from the San Luis Obispo Non-Profit Housing
22 Corporation signed saying, "We confirm that the
23 partnership agreement has an effective date of July 1st,
24 2010."

25 Okay. We asked them to do this, and we supplied

1 this. So my answer is that A, we believe we're correct,
2 and we had an agreement, and there's no question. We're
3 saying that even if we were wrong, the Franchise Tax Board
4 does not have a right to make us lose a loss without
5 allocating it to someone else, especially, since they've
6 already audited the partnership and given the audit a
7 clearance and closed out that audit. And, essentially,
8 all the other stuff we can throw into the toilet, but this
9 basically gen -- this is -- this is regular common law.

10 And that's about it for me. If anybody has any
11 questions, I'm more than happy to answer them.

12 JUDGE LEUNG: I just want to tell you,
13 Mr. Gelman, you have five more minutes left of your
14 presentation. If you wish to say more, that's fine. If
15 not --

16 MR. GELMAN: If you have any questions, I'll
17 answer.

18 JUDGE LEUNG: I will go to my fellow judges and
19 ask them. Judge Akopchikyan, do you have any further
20 questions of Mr. Gelman?

21 JUDGE AKOPCHIKYAN: No questions for Mr. Gelman.
22 Thank you.

23 JUDGE LEUNG: Judge Lam, any questions for
24 Mr. Gelman?

25 JUDGE LAM: No questions. Thank you.

1 JUDGE LEUNG: Okay. That's it then.

2 Franchise Tax Board, any further questions for
3 Mr. Gelman?

4 MR. KIM: Paul Kim for Respondent. No questions.

5 JUDGE LEUNG: Okay. And Judge Akopchikyan, any
6 questions for the Franchise Tax Board?

7 JUDGE AKOPCHIKYAN: I just want to clarify
8 something, yes, for the Franchise Tax Board. Mr. Kim in
9 his opening stated that Appellant had stipulated that he
10 was not a partner before July 7th. I just wanted to
11 confirm that is not Franchise Tax Board's position, and he
12 just misspoke, or is that your position that he stipulated
13 to that?

14 MR. KIM: Paul Kim Respondent. It is
15 Respondent's understanding, and as stated in the
16 prehearing conference memo, Appellants did stipulate that
17 they were not partners of EADC as of July 7th. However, I
18 guess according to Appellants' testimony we misheard, but
19 that's Respondent's understanding.

20 JUDGE AKOPCHIKYAN: Okay. Thank you, Mr. Kim. I
21 did review the minutes and orders that was issued by
22 Judge Leung and all it said is that the parties stipulate
23 that the partnership agreement was not signed before
24 July 7th, 2010. So I want to say that for the record.
25 Thank you.

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JUDGE LEUNG: Thank you.

And Judge Lam, any questions for the Franchise
Tax Board?

JUDGE LAM: No questions.

JUDGE LEUNG: Okay. I think that completes the
hearing for today.

We will endeavor to have an opinion out for this
appeal within 100 days. The record for this appeal is now
closed.

This hearing is done, and that concludes all the
hearings for this month. I wish everybody a happy Friday
and have a great weekend. Thank you very much.

(Proceedings adjourned at 2:13 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 12th day
of June, 2023.

ERNALYN M. ALONZO
HEARING REPORTER