

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:)
)
F & B ASSOCIATES, INC.,) OTA No. 21067999
)
Appellant.)
_____)

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Thursday, June 8, 2023

Reported by:

MARCENA M. MUNGUIA,
CSR No. 10420

Job No.:
42315 OTA

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TRANSCRIPT OF PROCEEDINGS, taken at
12900 Park Plaza Drive, Suite 300, Cerritos,
California, commencing at 9:33 a.m. and
concluding at 1:57 p.m. on Thursday,
June 8, 2023, reported by MARCENA M. MUNGUIA,
CSR No. 10420, a Certified Shorthand Reporter
in and for the State of California.

1 APPEARANCES:

2
3 Panel Lead: ALJ NATASHA RALSTON

4
5 Panel Members: ALJ MICHAEL GEARY
6 ALJ ANDREW KWEE

7
8 For the Appellant: KEVIN MC LAUGHLIN

9
10 For the Respondent: STATE OF CALIFORNIA
11 DEPARTMENT OF TAX AND
12 FEE ADMINISTRATION:
13 JARRETT NOBLE
14 CHAD BACCHUS
15 JASON PARKER
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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-39 were received at page 9)
(Appellant's Exhibits 40-41 were received at page 11)
(Respondent's Exhibits A-M were received at page 8)

P R E S E N T A T I O N

PAGE

By Mr. McLaughlin	15
By Mr. Noble	172

W I T N E S S T E S T I M O N Y

By Mr. McLaughlin	
Dirk Alton	27
Jesse Glueck	67
Sara Purdy	95
Natalie Alvarez	122
Jerry Dressel	135

C L O S I N G S T A T E M E N T

By Mr. McLaughlin	187
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1 Cerritos, California, Thursday, June 8, 2023

2 9:33 a.m.

3
4
5 JUDGE RALSTON: Okay. We are now on the record in
6 the appeal of F & B Associates, Inc.

7 This matter is being heard before the Office of
8 Tax Appeals, Office of Tax Appeals Case Number 21067999.

9 Today's hearing is being heard by a panel of
10 three administrative law judges. I am Judge Ralston and
11 I will be the lead judge. Judge Geary and Judge Kwee are
12 the other members of this panel. All three judges will
13 meet after the hearing and produce a written decision as
14 equal participants.

15 Although as the lead judge I will conduct the
16 hearing, any judge on this panel may ask questions or
17 otherwise participate to ensure that we have all the
18 information needed to decide this appeal.

19 As I mentioned earlier, this hearing is being
20 livestreamed to the public and is being recorded. The
21 transcript and video recording are part of the public
22 record and will be posted on the Office of Tax Appeals
23 website.

24 Also present is our stenographer, Ms. Munguia,
25 who is reporting this hearing verbatim. To ensure we

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

8 We're going to start with the party
9 introductions.

10 Starting with the Appellant, if you could,
11 please state your name and who you represent for the
12 record.

13 MR. MC LAUGHLIN: Good morning, your Honor.
14 Kevin McLaughlin on behalf of the Appellant, F & B
15 Associates.

16 JUDGE RALSTON: Thank you.

17 MR. ALTON: Hi. I'm Dirk Alton, F & B Associates.

18 JUDGE RALSTON: Okay. If -- everyone, make sure when
19 you speak that your microphone is on. It should have a
20 green light that comes on. We can hear you in this room,
21 but we just want to make sure that you're heard over the
22 livestream as well. And then when you're not speaking,
23 if you could, make sure your microphone is turned off.
24 Thank you.

25 And CDTFA?

1 MR. NOBLE: Jared Noble, representing CDTFA.

2 MR. BACCHUS: Chat Bacchus, also with CDTFA.

3 MR. PARKER: And Jason Parker with CDTFA.

4 JUDGE RALSTON: Okay. Thank you.

5 So we held the prehearing conference in this
6 matter on May 4th and at the conference, we discussed the
7 issues. There were three, which are: Whether the
8 Appellant has established that further adjustments are
9 warranted to the audited amount of unreported taxable
10 sales, whether Appellant has established that further
11 adjustment is warranted to the audited amount of
12 disallowed claimed nontaxable sales, and whether
13 Respondent has established fraud by clear and convincing
14 evidence. Is that correct?

15 MR. MC LAUGHLIN: Yes, your Honor.

16 MR. NOBLE: Yes, it is.

17 JUDGE RALSTON: Thank you.

18 Also at the prehearing conference, we discussed
19 the witnesses and Appellant has listed the following five
20 witnesses: Sara Purdy, Jerry Dressel, Dirk Alton,
21 Jesse Glueck, and Natalie Alvarez. Are these still the
22 witnesses you intend to call?

23 MR. MC LAUGHLIN: Yes, your Honor.

24 JUDGE RALSTON: And are they all here and ready to
25 testify today?

1 MR. MC LAUGHLIN: Yes, ma'am.

2 JUDGE RALSTON: Okay. So Respondent, did you have
3 any objections to their witnesses?

4 MR. NOBLE: We have no objections.

5 JUDGE RALSTON: Thank you.

6 So before they testify, I'll swear them all in.
7 So we'll get to that in a little bit.

8 Moving on to exhibits, so Respondent has
9 submitted Exhibits A through M, and Appellant did not
10 have any objections to Respondent's exhibits. Is that
11 still correct?

12 MR. MC LAUGHLIN: Yes, your Honor.

13 JUDGE RALSTON: Thank you.

14 Respondents' Exhibits A through M are admitted
15 without objection.

16 Is that correct, Mr. Noble? Those are all your
17 exhibits?

18 MR. NOBLE: Yes, ma'am. That is correct.

19 (Respondent's Exhibits A through M were
20 received in evidence by the Administrative Law
21 Judge.)

22 JUDGE RALSTON: Thank you.

23 As far as Appellant's exhibits, you submitted
24 Exhibits 1 through 39 and then you submitted Exhibits 40
25 through 41. Regarding Exhibits 1 through 39, Mr. Noble,

1 did you have any objection?

2 MR. NOBLE: We have no objection to Exhibits 1
3 through 39.

4 JUDGE RALSTON: Okay. So Appellant's Exhibits 1
5 through 39 will be admitted without objection.

6 With regard to Exhibits 40 and 41, did you
7 see -- receive those, Mr. Noble?

8 MR. NOBLE: No, we did not.

9 JUDGE RALSTON: Okay.

10 (Appellants' Exhibits 1 through 39 were
11 received in evidence by the Administrative Law
12 Judge.)

13 MR. NOBLE: I do know that they were in the hearing
14 binder that was sent out. I just didn't see them on the
15 exhibit index. I can take a look right now and let you
16 know if we have any issues.

17 JUDGE RALSTON: Okay. Do you want to take a break
18 for a few minutes?

19 MR. NOBLE: Just real quick. Thank you.

20 JUDGE RALSTON: Sure. We're going to go off the
21 record and take a -- is five minutes good or ten minutes?

22 MR. NOBLE: Yeah. That's perfect. Thank you.

23 JUDGE RALSTON: Okay. Thanks.

24 So just a reminder to the parties, even though
25 we are off the record, your microphones may still be

1 live, so -- and we're still live streaming, so keep that
2 in mind, please.

3 (Pause in the proceedings)

4 JUDGE RALSTON: We are ready to start, so we are back
5 on the record.

6 Did you have any objections to those two
7 exhibits?

8 MR. NOBLE: No, we don't have any objections. Thank
9 you.

10 JUDGE RALSTON: Okay. Thank you.

11 Mr. McLaughlin, so those exhibits were not
12 submitted 15 days before the hearing. Is there a reason
13 for that?

14 MR. MC LAUGHLIN: Yes, your Honor. These exhibits,
15 first and foremost, were provided to CDTFA during the
16 course of the examination. As you can see, the file
17 sizes are also extremely large, so to be able to compile
18 them in a manner that was efficient for OTA to receive
19 took us some time technologically to do so.

20 JUDGE RALSTON: Okay. So these were the exhibits
21 they were provided during the audit period?

22 MR. MC LAUGHLIN: They were provided during the audit
23 period. They were also taken by CDTFA in October of
24 2021. They've had them for years.

25 JUDGE RALSTON: Oh, okay. But -- okay. I'm going to

1 go ahead and allow Appellant's Exhibits 40 and 41, or
2 Mr. Noble, did you have a comment or --

3 MR. NOBLE: No. That's just -- that's fine. I just
4 wanted to note that anything that was provided to us
5 prior to the hearing before OTA wouldn't necessarily be
6 part of the record.

7 JUDGE RALSTON: Thank you for that.

8 MR. NOBLE: Yeah, no objection. Thank you.

9 JUDGE RALSTON: Okay. So there's no objection, so
10 Appellant's Exhibits 40 and 41 will be admitted without
11 objection.

12 (Appellants' Exhibits 40 and 41 were
13 received in evidence by the Administrative Law
14 Judge.)

15 JUDGE RALSTON: So going over the order of the
16 hearing, Appellant will have approximately 15 minutes for
17 their opening statement.

18 Then we will have witness testimony from the
19 five witnesses, which is expected to take approximately
20 two and a half hours. I will swear the witnesses in
21 prior to their testimony and they will testify under
22 oath.

23 CDTFA will have the opportunity to ask questions
24 of any of the witnesses, as well as the panel members
25 will also have the opportunity to ask questions.

1 After the witness testimony, Respondent will
2 have approximately 25 minutes to present their case.
3 Again, the panel may have questions for the Respondent,
4 and then Appellant will have approximately 10 minutes for
5 their rebuttal.

6 So does anyone have any questions before we move
7 on to the opening presentations?

8 MR. MC LAUGHLIN: Your Honor --

9 JUDGE RALSTON: Oh, yes.

10 MR. MC LAUGHLIN: I just wanted to address the issue.
11 On June 6th, in anticipation of this hearing and the
12 evidence submitted, including witness testimony,
13 Appellant had filed a motion to ask for additional
14 briefing after the closure of evidence. I didn't know if
15 the panel was prepared to rule on that.

16 JUDGE RALSTON: Yes. Thank you for bringing that up.
17 Yeah. Yeah. We can go ahead and discuss that now.

18 So you wanted to submit additional briefing
19 after the -- after today's hearing?

20 MR. MC LAUGHLIN: Yes, your Honor.

21 JUDGE RALSTON: Okay. Did you have a chance,
22 Mr. Noble, to look at Appellant's motion?

23 MR. NOBLE: We didn't receive any of this or the
24 updated exhibits that were submitted. I don't know if we
25 were not copied on the e-mails or if it went to someone

1 else, so we haven't seen it.

2 The idea of additional briefing prior to even
3 having the hearing to me indicates that there are
4 unresolved issues in this case prior to having arguments
5 here, but I think generally CDTFA would not object to
6 anything OTA wanted to do as far as post-hearing briefing
7 goes.

8 JUDGE RALSTON: Okay. And so your motion,
9 Mr. McLaughlin, is just in anticipation just because
10 there's several witnesses and a lot of briefing?

11 MR. MC LAUGHLIN: Correct, your Honor. I believe
12 that there will be a significant amount of oral testimony
13 today that we would like to, for efficiency purposes,
14 consolidate into a briefing to make it easier for the
15 panel to render its opinion later on.

16 JUDGE RALSTON: Okay. Just one second, please.

17 I'm going to hold off on ruling on that
18 objection until later in this -- not objection. Sorry --
19 on that motion until later in this hearing, just seeing I
20 do want to note that OTA, the panel members, will have
21 access to the transcripts as well as the YouTube
22 recording. So if there's anything that we missed or want
23 to review again, we will have the opportunity to do that
24 during the 100-day period where we're writing our
25 decision.

1 JUDGE GEARY: Judge Ralston, could I just ask a
2 question?

3 JUDGE RALSTON: Yes, please.

4 JUDGE GEARY: The motion is to file a post-hearing
5 brief not as a substitution for offering oral argument
6 today, but as a supplement to oral argument today?

7 MR. MC LAUGHLIN: Correct, your Honor. In essence, I
8 anticipate that throughout today, you will hear oral
9 testimony that may be more efficient if consolidated into
10 a post-trial brief, in essence, you know, selecting
11 provisions that support our position that CDTFA has
12 failed to prove fraud, and I think we presented it as a
13 convenience factor to the panel. It's not intended to
14 submit additional evidence, just to present it in an
15 efficient manner.

16 JUDGE GEARY: But the Appellant is not offering to
17 waive oral argument today and in lieu of that submit only
18 written argument.

19 MR. MC LAUGHLIN: That is correct. We are not
20 waiving oral testimony today.

21 JUDGE GEARY: Well, not testimony; argument today.

22 MR. MC LAUGHLIN: Correct.

23 JUDGE GEARY: Thank you.

24 JUDGE RALSTON: Okay. I think we are ready to move
25 on. I'm going to go -- just go ahead and swear in the

1 witnesses now, just to make sure we cover that.

2 So if I could have all five witnesses please
3 raise their right hand.

4 (Whereupon all prospective witnesses were
5 collectively sworn)

6 JUDGE RALSTON: Okay. And just so the record is
7 clear, all five witnesses have said that they do.

8 So ready to move on and, Mr. McLaughlin, you can
9 move right into witness testimony after your opening
10 presentation, if you would like. And please begin when
11 you're ready.

12 MR. MC LAUGHLIN: Thank you, your Honors.

13 And if it please the panel, I'd like to begin
14 our opening presentation by putting this case and the
15 history of it in context in dealing with the CDTFA and
16 its predecessor entity, the State Board of Equalization.

17 I believe this is important not only to frame
18 the current hearing, but also it has a critical impact in
19 understanding the CDTFA's flawed arguments in favor of
20 the California Revenue and Taxation Code Section 6485
21 fraud penalty.

22 Later this morning, you will hear from the
23 Appellant about its 1994 origin and niche business in
24 organizing food and beverage concessions throughout
25 California and, importantly, throughout the

1 United States.

2 But before that, what brings Appellant before
3 you today began many years ago. Following the
4 culmination of what can best be described as a
5 superficial audit for periods October 2008 through
6 September 2013, the SBE issued a Notice of Determination
7 on May 19th, 2016 alleging an additional 7.4
8 million-dollar liability. Included therein was a 1.2
9 million-dollar penalty pursuant to Section 6485 that we
10 take very seriously.

11 Appellant timely filed a Petition for
12 Redetermination on May 25th, 2016 and was eventually
13 issued a D and R, or Decision and Recommendation, on
14 March 2nd, 2020, following a July 2nd, 2019 appeals
15 conference.

16 I would also like to emphasize at this point
17 that the Petition for Redetermination which brings us
18 before you today was prepared and signed by Mr. Jerry
19 Dressel, about whom I will speak more shortly and from
20 whom you will hear directly from later this morning.

21 An option letter was issued to Appellant on
22 April 22nd, 2021 and this timely appeal followed on
23 May 21st, 2021.

24 As you will hear this morning and is laid out in
25 both parties' exhibits, that initial 7.4 million dollar

1 figure has continued to go down and down and down as the
2 CDTFA's conducted multiple reaudits and recognized the
3 errors in its original examination.

4 In fact, that original 4.8 million-dollar tax
5 deficiency has already been reduced by over 1.8 million
6 dollars. I paused to emphasize this because a key basis
7 of CDTFA's arguments in favor of fraud is the mere
8 existence of what it describes as a material
9 underreporting. Notwithstanding the precedential opinion
10 in Marchica vs. State Board of Equalization, this
11 foundation of the CDTFA's fraud determination has been
12 undermined by its own concessions throughout this process
13 and we trust that the OTA will see that the continued
14 reduction of any underreporting, if true, cuts against
15 this argument.

16 I also want to make another observation for the
17 panel about this audit. As part of the audit, the CDTFA
18 took a look at Appellant's federal income tax returns and
19 compared that information to its accounting records and
20 general ledger. And you know what they found? Less than
21 a 1 percent difference.

22 Why is that important? I think it's
23 inconsistent to think that Appellant would be so accurate
24 with respect to its federal tax reporting while
25 concurrently trying to defraud the State of California.

1 Logic would support that if Appellant really was acting
2 nefariously, it would not contain it within a singular
3 silo related to its sales and use tax reporting.

4 So what does that tell us? That any
5 underreporting or claimed sales for resales are either
6 attributable to an honest mistake or a misunderstanding
7 of our State sales and use tax laws but not a fraudulent
8 conspiracy.

9 Furthermore, the October 2008 through September
10 2013 audit was not Appellant's first. Sometimes I may
11 refer to this period that brings us before you today as
12 the second audit or audit number two.

13 On June 21st, 2012, the SBE issued a Notice of
14 Determination for an October 2005 through September 2008
15 period in an amount of 1.4 million dollars, plus
16 interest, in a similar Section 6485 penalty of over
17 \$250,000. I may refer to this today as audit period
18 number one or audit number one.

19 In support of its case for fraud and negligence
20 in that first audit, the SBE argued that a large
21 deficiency existed, Mr. Alton was a knowledgeable
22 businessperson, Mr. Alton created Appellant, Mr. Alton
23 had knowledge of the sales and use tax laws, Mr. Alton
24 was able to differentiate between taxable and nontaxable
25 transactions, Mr. Alton had full control of the business

1 operations, and Mr. Alton and his employees had knowledge
2 of the underreporting of sales. The emphasis was and
3 always has been singularly on Mr. Alton's conduct.

4 The SBE's arguments in the past, just as they
5 are today, are loosely supported by circumstantial facts
6 at best and misleading ones at worst. The Appellant
7 timely petitioned for redetermination in that first audit
8 and was eventually issued a D and R on November 30th,
9 2015, following an appeals conference on May 21st, 2015.

10 At this point, I must mention that Appellant
11 again was represented by Mr. Jerry Dressel, a competent
12 and licensed California CPA with no history of any
13 disciplinary matters. And as I stated before, you will
14 hear from Mr. Dressel later this morning regarding his
15 involvement with Appellant and, in particular, how he
16 handled the preparation of Appellant's sales tax returns.
17 You will also hear the circumstances as to why Appellant
18 was not able to seek review of that D and R dated
19 November 30th, 2015 in the first audit, which it
20 continues to believe overstates the deficiency and is a
21 flawed keystone in CDTFA's current argument and the
22 periods before you today as to why Appellant acted
23 allegedly fraudulently.

24 And importantly, during that first audit period,
25 the SBE itself eventually conceded that its original

1 audit findings were in error and made numerous
2 concessions to reduce the unreported taxable sales by
3 millions of dollars. Also important to consider, the
4 SBE's first D and R struck down fraud.

5 As I stated earlier, the SBE initially pointed
6 to the mere size of the alleged unreported sales, which
7 it nevertheless made numerous concessions to after its
8 October 19th, 2011 memorandum authorizing the first fraud
9 penalty.

10 As applied to us here in that second audit, the
11 case of Marchica vs. State Board of Equalization, has
12 held that the mere establishment of a deficiency is not
13 enough to sustain a finding of fraud. Understatements,
14 if they do exist in this case, arising from ignorance,
15 bad advice, honest mistakes, negligence or even a
16 misunderstanding of the law do not constitute fraud and
17 the burden rests entirely with CDTFA.

18 The evidence before you already demonstrates
19 that a keystone of the SBE's earlier arguments in audit
20 number one, the existence of a large underreporting, has
21 been undermined.

22 Later this morning, you will also hear how each
23 of the other facts advanced in support of SBE's
24 contentions that Appellant intentionally underreported
25 sales tax collected with intent to defraud the State of

1 California are blatantly untrue. Mr. Alton may be a
2 knowledgeable businessperson who is the co-creator of
3 Appellant, but his involvement is nowhere near the level
4 that the SBA -- excuse me -- the SBE and the CDTFA
5 assert. Today you will hear directly from Mr. Alton and
6 other witnesses that undeniably show that he was not in
7 full control over Appellant's books and records. He was
8 not exclusively in control of collecting and depositing
9 cash, reconciling event statements or paying vendors.

10 To the contrary, Mr. Alton doesn't even know how
11 to access Appellant's bank records even if he wanted to.

12 Similar to the findings in the first audit
13 Decision and Recommendation, dated November 30th, 2015,
14 there has been no evidence presented by the CDTFA in this
15 case of Mr. Alton's direct involvement in recording of
16 sales or reporting of sales on the sales and use tax
17 returns.

18 As the judges are aware, fraud for purposes of
19 this Section 6485 penalty must be proven by CDTFA by
20 clear and convincing evidence. The mere existence of an
21 understatement and circumstantial facts projecting a
22 false sense of intent onto Mr. Alton do not meet this
23 standard.

24 Following case law authority, we know that fraud
25 is odious. It is never presumed and must be established

1 by proof. The presumption always is in favor of good
2 faith, innocence, honesty and fair dealing. It has been
3 observed that this presumption has the approximate --
4 approximation and strength as innocence of crime.

5 Ultimately, the SBE included -- excuse me. The
6 SBE itself concluded in audit number one that Appellant
7 did not act fraudulently and struck down the 6485
8 penalty. And not only in audit number one was there no
9 fraud, the SBE found that the negligence penalty was also
10 not applicable.

11 Why are these facts, the outcome of audit number
12 one and the ongoing reduction in balance of audit number
13 two important? Because the CDTFA has advanced the exact
14 same arguments, a mere copy-and-paste approach, in audit
15 number two as they have in audit number one. The
16 evidence today will similarly undermine the CDTFA's
17 flimsy arguments that Appellant, and by their own
18 accounts specifically Mr. Alton, acted fraudulently or
19 intended to evade any rules or regulations.

20 We are confident that the OTA will come to the
21 same conclusion that the SBE did once itself, in that the
22 CDTFA has failed to prove by clear and convincing
23 evidence that Appellant acted fraudulently or with an
24 intent to evade any rules or regulations.

25 And more specifically, your Honors, you will

1 hear and we respectfully ask that you consider some of
2 these following factors today: First, the CDTFA's
3 support in favor of fraud is a March 15th, 2016 memo. At
4 issue in audit number two before us today are periods
5 October 2008 through September 2013; however, Appellant's
6 first audit was not completed until at least
7 November 30th, 2015 when the SBE issued its Decision and
8 Recommendation, notwithstanding the position that
9 Appellant continues to believe those findings overstate
10 the underreporting.

11 Thus, it is a logical fallacy to argue that
12 Appellant's prior audit history unconcluded by the time
13 the periods at issue in audit number two created some
14 higher level intent after the fact. The CDTFA is
15 erroneously attempting to project this after-the-fact
16 outcome, an outcome that nevertheless struck down fraud
17 and negligence, as a basis for fraudulent intent in the
18 periods before us.

19 Second, similar to the continued reduction in
20 the deficiency in audit number one, audit number two has
21 seen a rapid decline in the alleged unreported sales and
22 use tax. Although under the Marchica precedent, the mere
23 existence of a deficiency is not enough to find
24 fraudulent intent; that is all here that the CDTFA can
25 grasp onto.

1 Third, the CDTFA has already determined that
2 insufficient evidence exists that Mr. Alton was
3 personally responsible for the preparation of the
4 Appellant's sales and use tax returns and that he
5 maintained a consistent explanation about the
6 underreported taxable sales and disallowed claims of
7 nontaxable items for resale.

8 Fourth, there is a critical distinction between
9 being a knowledgeable businessperson and orchestrating a
10 greater fraud on the State of California. One may be
11 knowledgeable in their field, as Mr. Alton is, but it is
12 inappropriate to project some greater level of acumen or
13 in this case maybe a bit of luck as the basis for
14 understanding the intricacies of California's State --
15 California's sales and use tax laws.

16 I believe our common experiences hold an
17 understanding that complexities of California sales and
18 use tax laws escape even those who do possess legal and
19 accounting knowledge. This foundation of knowledge, one
20 lacking in Mr. Alton, is a precondition to directing some
21 broader fraudulent scheme to intentionally evade a tax
22 known to be due and owing, as the CDTFA would have you
23 believe.

24 You will hear today about Mr. Alton's background
25 and why his success in the industry is not tantamount to

1 fraudulent intent.

2 The CDTFA has also attempted to analogize
3 federal authority to support certain badges of fraud
4 under the 9th Circuit case of Bradford versus
5 Commissioner. Nevertheless, those badges of fraud still
6 weigh in Appellant's favor.

7 Today, you will hear how Appellant's records may
8 have been unsystematic but were far from being
9 inadequate. You will also see no evidence that Appellant
10 failed to file returns. You will hear plausible and
11 consistent explanations for Appellant's behavior and you
12 will see no evidence that Appellant concealed any assets.

13 And finally, the evidence before you and as
14 presented before you here today demonstrates Appellant's
15 ongoing cooperation with the SBE and the CDTFA throughout
16 the audit and appeals process. This cooperation is
17 emphasized with Appellant's willingness to sign numerous
18 BOE 122 forms voluntarily extending the statute of
19 limitations, although they had no requirement to do so.

20 Ultimately, we are confident that the CDTFA has
21 failed to carry its required burden of clear and
22 convincing evidence to support any fraudulent intent, and
23 the exhibits and testimony presented to you today will
24 vindicate Appellant or at a minimum establish any errors
25 were at most negligent, a far cry from fraudulent.

1 In addition to the erroneous fraud penalty
2 assessment, the CDTFA continues to fundamentally
3 misunderstand Appellant's business and sources of
4 revenue; in particular, those of items for resale and
5 commissions from events and festivals.

6 We trust that the OTA will employ a commonsense
7 approach like it developed in V.A. Auto Sales,
8 2019-OTA-299P, in reviewing the evidence and hearing the
9 testimony today to conclude that additional transactions
10 were not subject to tax.

11 Most -- there are some smaller issues as well;
12 one of which that we will talk about later today is use
13 tax in particular surrounding the PFC Payment Solutions
14 equipment. As the documents being offered today detail
15 and as testimony will corroborate, there were no
16 transfers of tangible property related to this
17 transaction. If they were, under the Dell versus
18 Superior Court precedent, we believe that the OTA can
19 conclude that the items were of mixed use, in which
20 hardware and services may have been rented at the same
21 time. Although CDTFA has apportioned some of those
22 rental payments into later quarters, no separate
23 allocation for nontaxable service aspects have thus far
24 been made.

25 We are thankful for the opportunity to present

1 to you today and if it pleases the judges, I believe we
2 will call our first witness.

3 JUDGE RALSTON: Yes. Go ahead.

4 MR. MC LAUGHLIN: We'd like to call Mr. Dirk Alton.
5 Your Honor, where -- would you like him to continue to
6 sit next to me?

7 JUDGE RALSTON: Yes. That's fine.

8
9 DIRK ALTON,
10 called as a Witness, and having been previously duly
11 sworn by the Administrative Law Judge, was examined and
12 testified as follows:

13
14 DIRECT EXAMINATION

15 BY MR. MC LAUGHLIN:

16 Q Good morning, Mr. Alton.

17 A Hello.

18 THE WITNESS: Can you hear me?

19 JUDGE RALSTON: Yes. Thank you.

20 BY MR. MC LAUGHLIN:

21 Q Mr. Alton, you are currently the owner of
22 Appellant in this case, F & B Associates; correct?

23 A Correct.

24 Q And F & B Associates does business under the
25 name Best Beverage Catering and BBC?

1 A Correct.

2 Q Has it ever operated under a different name?

3 A Originally the name of the corporation was Event
4 Beverage, Inc., but it's the same taxpayer number, but
5 the name was changed because there was ex-employees who
6 confused the marketplace with a company name called Event
7 Beverage Solutions. So part of that settlement, we
8 changed our name but kept the same tax I.D. number.

9 Q And if it pleases the judges and you as well,
10 Mr. Alton, if I refer to Appellant as BBC or F & B, you
11 understand that I'm referring to the Appellant in this
12 case; is that correct?

13 A Yes.

14 Q So let's begin by asking you, Mr. Alton, some
15 questions about your personal background. Can you
16 describe to the panel and myself your educational
17 background?

18 A I got a B.A. in speech and communication at
19 San Francisco State University I think in 1985 and that
20 was it.

21 Q When you obtained that B.A. in speech and
22 communication in 1985, did you ever receive any legal,
23 tax or accounting classes?

24 A No, none at all.

25 Q Have you ever received any legal, tax or

1 accounting training?

2 A No.

3 Q Can you describe what your work history was like
4 after your 1985 degree in speech and communications?

5 A I worked for a company called Bartenders
6 Unlimited.

7 Q What did you do for Bartenders Unlimited?

8 A I did sales and marketing. Basically, that's
9 my -- my niche. I like to do sales and marketing.

10 Q And after that, what was your employment?

11 A I built that business up. I got out of that. I
12 was kind of doing what we're -- what we do now, and then
13 I went and worked for a Showplace Design Center and a
14 design center in San Francisco where they had event
15 facilities and I was a salesperson there also, where I
16 sold spaces where people would have special events.

17 Q Did you have any other work history after that
18 but before you started BBC?

19 A No. During that time, people in the industry
20 wanted me to get back into doing the beverage service I
21 was doing. It was a bartending service that I did for
22 Bartenders Unlimited; not concessions but bartending
23 services, and I went ahead and started that on the side.
24 It was a joint venture with another -- with a group of
25 people and that's when I got a job and knew I could pay

1 the rent and so I quit my straight job and started
2 working for BBC or started developing BBC.

3 Q And approximately when was that that you started
4 developing BBC?

5 A 1990.

6 Q BBC is currently a California corporation; is
7 that correct?

8 A Correct.

9 Q I'll ask you some more questions later on, but
10 part of the CDTFA's case alleging there was something
11 nefarious was the mere establishment of a corporate
12 entity for purposes of operating your business. So why
13 did you choose a corporation?

14 A I mean, I hired an outside accounting firm and
15 that was their recommendation.

16 Q Did anybody else help you establish BBC as a
17 corporation?

18 A Originally I had a group of employees that had
19 done this joint venture with me and we had to own a
20 liquor license to get started, so we raised some funds,
21 and so I had about six partners I believe back then.

22 Q I'm going to ask you some names and maybe
23 they're in those partners.

24 Are you familiar with an individual named
25 Kevin Baker?

1 A He was a board member but was like a general
2 manager of operations.

3 Q And when you say "general manager of
4 operations," that would be a general manager of BBC's
5 operations?

6 A Correct.

7 Q Can you describe what he would do as a general
8 manager of BBC's operations?

9 A That was more of just dealing with producing the
10 jobs we had, you know. He was -- he did a lot of
11 purchasing and things of that nature.

12 Q What do you mean by "purchasing"?

13 A At that point, we were purchasing food and
14 beverage and rental equipment and things of that nature.

15 Q We'll talk about fraud in greater detail later
16 on, but you are aware that the CDTFA is alleging that you
17 intentionally attempted to defraud the State of
18 California; correct?

19 A I'm aware of that, yes.

20 Q Do you recall any mention of Mr. Baker's
21 involvement with BBC in the CDTFA's arguments?

22 A No.

23 Q Are you familiar with an individual named Mike
24 Clarity?

25 A He was one of the original shareholders when the

1 corporation was formed.

2 Q And by "corporation," are you referring to BBC?

3 A BBC, F & B.

4 Q What did he do, if anything, other than being a
5 shareholder?

6 A He worked for the company also in operations.

7 Q What did he do in operations working for BBC?

8 A He'd run -- ran events.

9 Q What does it mean to run an event?

10 A You're managing. You're managing a group of
11 people that are -- at that point, we were doing beverage
12 service for corporate parties, weddings, and he would be
13 the contact with the client and go produce the event.

14 Q Do you recall any mention of Mr. Clarity's
15 involvement with BBC in the CDTFA's argument that you
16 acted fraudulently?

17 A No.

18 Q Are you familiar with an Elizabeth Osley? I
19 believe she also goes by Elizabeth Kelly.

20 A That was Elizabeth. That was my ex-wife that
21 was part of the company also.

22 Q How was she a part of the company, by which we
23 mean Appellant, BBC?

24 A She did do bookkeeping and accounting.

25 Q Do you recall any mention of Ms. Osley's

1 involvement with BBC and CDTFA's arguments in favor of
2 fraud?

3 A No.

4 Q Are you familiar with Jerry Dressel?

5 A Yes.

6 Q Is he present today?

7 A Yes.

8 Q How does Mr. Dressel fit in with BBC?

9 A Jerry, I can't remember how I was referred to
10 him, but he was brought on as basically our accountant
11 but then kind of hired to really take our accounting to
12 another level and do basically all the tax reporting,
13 P & Ls, the tax returns at the end of the year, but
14 basically took on that responsibility for the business.

15 That's kind of an outside source. He was not an
16 employee, but we hired his company to provide the
17 services of bookkeeping, accounting, reporting, things of
18 that nature.

19 Q Do you remember the name of his company?

20 A He's had a couple of different names, but
21 Dressel Advisory Group, Professional Advisory Group.

22 Q And I'm sorry if this was -- if I missed it, but
23 when did you establish a relationship with Mr. Dressel?

24 A I believe around 2000, 2001.

25 Q We will hear from Mr. Dressel later this

1 morning, but I'm going to kind of draw your attention to
2 a few exhibits and ask you some questions, Mr. Alton, if
3 we could.

4 MR. MC LAUGHLIN: And the panel, I'm going to refer
5 now to Exhibit 4 and specifically page two.

6 BY MR. MC LAUGHLIN:

7 Q This is the Petition for Redetermination upon
8 which this case is based and I want to draw, Mr. Alton,
9 your attention to the bottom of that page. Can you
10 identify who signed this Petition for Redetermination on
11 behalf of BBC?

12 A Jerry Dressel.

13 Q Why did Mr. Dressel prepare this and not you?

14 A I -- I'm a believer of getting professionals to
15 do what they do best and I know that I'm weak at this
16 type of -- well, I'm weak and I didn't -- don't like to
17 enjoy doing, so I didn't want to do it. I was dealing
18 with client relations.

19 So I basically entrusted Jerry to handle tax
20 returns, filings, all the different things that I needed
21 or the company needed to operate.

22 Q Do you recall Mr. Dressel's involvement with BBC
23 ever being included in CDTFA's arguments in favor of
24 fraud?

25 A I don't recall it.

1 Q Are you familiar with an individual named Niels
2 Tobias Reinhold?

3 A He was an -- he's -- he's still with the
4 company. He's an officer of the company. He's a
5 longtime college friend of mine and he's been working
6 with me in the production side, which is operations,
7 for -- since the inception.

8 Q Can you elaborate on what that means, the
9 operations side and what Mr. Reinhold -- it sounds like
10 he was there from inception, so what does he do?

11 A Well, in the beginning, he helped run a
12 warehouse and over time he's involved in the large-scale
13 events like Coachella where right now he operates what we
14 call a truck stop, shipping and receiving.

15 Q And do you recall any mention of Mr. Reinhold in
16 his involvement with BBC and the CDTFA's allegations of
17 fraud?

18 A No.

19 Q Suzanne Kavert, are you familiar with that name?

20 A Yes.

21 Q Who is Ms. Kavert and how does she fit in with
22 BBC?

23 A She's on the board also. She's an officer. Her
24 role is -- basically runs the sales and marketing
25 department in the Bay Area.

1 Q Do you recall any mention of Ms. Kavert's
2 involvement with BBC and the CDTFA's arguments in favor
3 of fraud?

4 A No.

5 Q Are you familiar with a gentleman named Ryan
6 Mendez?

7 A Yes.

8 Q Who is Mr. Mendez and how does he fit in with
9 BBC?

10 A Ryan was an employee and he over time helped us
11 when we segued -- we used to be cash sales and
12 concessions and then it's all gone electronic POS
13 systems. He was very involved in the development of a
14 point-of-sale system at primarily festivals and music
15 venues, because the company at that point had segued
16 away -- we still do private events, but we really got
17 involved in the music, providing food and beverage in the
18 music industry. So Ryan was integral in a group with
19 Jesse, who's here, and other individuals to develop the
20 POS and the reporting and manage that side of the
21 business.

22 Q You mentioned something there, Mr. Alton, that I
23 want to go back to. You said that there was a transition
24 from cash to electronic POS systems?

25 A Correct.

1 Q When did that start to take place?

2 A I would say 2014, '15.

3 Q And do you recall Mr. Mendez ever being
4 mentioned in BBC's -- in his involvement with BBC in the
5 CDTFA's narrative that you defrauded the State of
6 California?

7 A No.

8 Q Are you familiar with an individual named Stacy
9 Egusa, I believe it's pronounced?

10 A Yes.

11 Q Who is Ms. Egusa and how does she fit in with
12 BBC?

13 A She's an employee out of our -- basically
14 manages our payroll services, does some payables, some
15 banking. We do primarily most of our banking and
16 payables out of our Bay Area office, but we do some of it
17 out of the San Diego office where Jerry's based and
18 Stacy's based.

19 Q Is she still an employee of BBC today?

20 A Yes.

21 Q Do you recall when she first started working for
22 BBC?

23 A I don't know. I think maybe 2017. That's a
24 total guess.

25 Q James Bauer. Are you familiar with that

1 individual?

2 A Bauer.

3 Q Bauer. Excuse me. James Bauer, are you
4 familiar with Mr. Bauer?

5 A Yes. James was one of the -- when I first
6 started the BBC in 1990, he was one of the partners that
7 we did the joint venture with that was under his
8 corporation. I was the salesperson. James ran the
9 books, but it was under their corporation at that time.
10 That was pre F & B.

11 He did continue to work for the company when we
12 started developing out-of-state business because he moved
13 to Miami and did some work for us when we started to
14 develop out-of-state business.

15 Q You already stated earlier, Mr. Alton, that you
16 were aware of the allegations that CDTFA is proposing, a
17 fraud penalty in this case, but that wasn't the first
18 time that they tried to allege that F & B tried to
19 defraud the State of California, was it?

20 A No.

21 Q There was, in fact, a Decision and
22 Recommendation that was first issued for the 2005 through
23 2008 period and I want to ask you some questions about
24 it.

25 MR. MC LAUGHLIN: And for the panel, this is

1 Exhibit 21.

2 BY MR. MC LAUGHLIN:

3 Q I'm on page two of Exhibit 21, Mr. Alton, and it
4 indicates that appearing for Petitioner was Jerry C.
5 Dressel, CPA. Do you see that?

6 A Correct.

7 Q Did you participate in this appeals hearing?

8 A I don't -- I don't recall. I don't think so. I
9 think I went to one meeting, but I let Jerry handle this.

10 Q Why do you -- why might you not have
11 participated in this appeals hearing?

12 A The fact of the matter is I was not preparing
13 the returns. I was not involved in that side of the
14 business. I relied on the team that I hired to do this,
15 these duties, for our company and Jerry to spearhead that
16 part of it.

17 Q I want to stay with Exhibit 21 and page 19 of
18 Exhibit 21. I want to ask you some questions here.

19 In the earlier Decision and Recommendation,
20 Mr. Alton, the SBE determined that the errors in
21 recording the reporting sales and sales tax
22 reimbursements may have been due to it being careless in
23 maintaining and compiling sales and sales tax
24 reimbursements for different offices and the large amount
25 of events.

1 The Department has not provided any evidence of
2 Mr. Alton's direct involvement in recording of sales and
3 reporting of sales on the sales and use tax returns;
4 therefore, the absence of compelling evidence to the
5 contrary, the SBE at the time could not conclude that
6 your failure to maintain accurate records and properly
7 report taxable sales on the sales and use tax returns was
8 done with the intent to evade payments of its tax.

9 Do you agree with those statements?

10 A Yes.

11 Q Those statements were in reference to the period
12 October 5th to 2008, September 2008. Would you agree
13 with them as they applied to the current period 2008 to
14 2013?

15 A Yes.

16 Q Still with that exhibit, Mr. Alton, the CDTFA,
17 or I should say the SBE, also found that while you might
18 be an integral part of BBC's business, the predecessor to
19 the CDTFA had not established your intent to evade any
20 payment of tax.

21 Do you agree with that statement as well?

22 A Yes.

23 Q And now if I look to the last page of
24 Exhibit 21, this Decision and Recommendation was issued
25 on November 30th, 2015; correct?

1 A Correct.

2 Q Did you ever discuss this Decision and
3 Recommendation with the SBE or the CDTFA?

4 A No.

5 Q Did you ever discuss it with anybody within BBC?

6 A Well, I think you and Jerry.

7 Q Okay. Do you recall having conversations with
8 Mr. Dressel about this first Decision and Recommendation?

9 A I mean, yes, he gave me an overview.

10 Q He didn't provide you specific information about
11 it?

12 A No.

13 Q Were you aware that Mr. Dressel could have
14 appealed this?

15 A I was later.

16 Q Why were you not aware of that at the time?

17 A I kind of entrusted him to handle that.

18 Q Do you have any idea why he did not appeal this?

19 A I recall getting a notice that we didn't appeal,
20 but this was when Jerry had a pretty life-threatening
21 spinal meningitis case and he was in the hospital.

22 Q But at least for now you'd agree with me that
23 this Decision and Recommendation, the conclusion of your
24 first audit, occurred in 2015?

25 A Correct.

1 Q I want to ask you some questions here about the
2 principal support the CDTFA offers that you tried to
3 defraud the State of California.

4 MR. MC LAUGHLIN: And that is found, your Honors, in
5 Exhibit 23.

6 BY MR. MC LAUGHLIN:

7 Q This is the memorandum dated March 15th, 2016,
8 and I wanted, Mr. Alton, to draw your attention to a
9 couple of statements in there and determine whether or
10 not you agree with their account of the truth.

11 In part of it, CDTFA alleges that you currently
12 oversee offices in San Francisco, Los Angeles, and
13 Palm Springs. Do you agree with that statement?

14 A Yes.

15 Q You kind of paused and hesitated there. Why
16 would that be?

17 A Well, there's -- I basically oversee the whole
18 company, but my main directive is to do sales, marketing.
19 I'm a big stickler on operations and quality and that's
20 what I am involved on a day-to-day basis, but -- and I do
21 oversee it. I'm their boss. I'm the owner. But I do
22 let the bookkeeping, accounting, and all those processes
23 be managed by the individuals who are in charge.

24 Q On page four of that same Exhibit 23, Mr. Alton,
25 the CDTFA said that you were a knowledgeable

1 businessperson. Do you agree with that account from
2 CDTFA?

3 A I think that I'm a good sales and marketing
4 person. I've come up with some very good niche marketing
5 strategies. I believe that I work extremely hard. As I
6 just mentioned, I'm a stickler for the highest quality
7 and the clients out there see that.

8 I also believe there's a little bit of luck
9 involved. I was -- our company was diverted into
10 providing food and beverage at music and music boomed in
11 venues and festivals and you could argue we were at the
12 right place at the right time with the right contacts.

13 I am not knowledgeable on accounting. I don't
14 even know how to get into QuickBooks. I don't know how
15 to do online banking. You know, I still do it, my
16 personal checkbook, manually. So when I need to get
17 something from my personal checkbook, I ask my wife to
18 look it up.

19 So I'm just -- the iPhone helped me get kind of
20 computer literate, but it's just the fact that it's
21 something that never really interested me and I like to
22 work on what I like to do. That's really important.
23 That's important to me and so we've really built our
24 business into music and sporting events and supporting
25 that and that's what I enjoy and personal relationships.

1 I do not like being on a computer or filling out forms.

2 Q So when the CDTFA says that you personally
3 prepared schedules for event producers and were
4 personally responsible for large event collection and
5 deposits of receipts, do you agree with that statement?

6 A No.

7 Q Who was involved in preparing summary schedules
8 and depositing proceeds from events?

9 A We have -- we have a structure at our festivals
10 and events, but, you know, we have a team that handles
11 the transactions, the accounting, the deposits, the
12 payables, dealing with vendors and the revenue that they
13 bring in. So I'm not personally involved in that at all.
14 I helped, I would say, overview it as we came up with our
15 processes, but this was a brand-new business. This was a
16 brand-new niche and we became -- we had to kind of
17 make -- kind of develop it as we go because it just
18 wasn't -- music festivals prior to 20- -- I would say
19 2001, but we've developed teams to do that and they
20 handle all that aspect of it.

21 Q So, Mr. Alton, when the CDTFA alleges that you
22 have knowledge of sales and use tax laws, how do you
23 respond to that?

24 A I know the basics. I know I don't -- I know
25 that I don't have to pay sales tax on out-of-state sales,

1 which is something that we developed during this time,
2 too. We branched out from California.

3 And there was -- originally, I knew about -- we
4 were always developed as kind of a wholesale company, so
5 I knew that if I had a resale number and if that event
6 planner, let's say, collected the sales tax, we had a
7 resale card. They would pay us. We wouldn't have to pay
8 the sales tax.

9 And then what developed over time, which became
10 a very large section of our business, was managing food
11 vendors at festivals; and the food vendors, I was very
12 aware that on our settlements, they would collect the
13 funds, they would keep their sales tax, they would
14 reimburse us for expenses, give us our share of the cut
15 and the promoter's share and that was passed through our
16 organization, and I believe that that was nontaxable
17 because that specific food vendor where there could be --
18 I mean, we just did Coachella. I think there were 150 of
19 them out there at least. So that's about my knowledge of
20 it.

21 Q The CDTFA also says that a bookkeeper would
22 calculate and record taxable sales and sales tax from
23 total cash amounts received. Do you agree with that
24 account?

25 A Yes.

1 Q The CDTFA also says that you had full control of
2 the business and books and records are maintained by an
3 internal accountant for all business operations. What is
4 your response to that?

5 A I have basically my team and Jerry have the full
6 control over it. They do give me higher-level reporting.

7 Q Mr. Alton and your Honors, I'm going to turn to
8 Exhibit 23 and specifically the third page from the end,
9 which I believe is page 36, a document entitled Report of
10 Field Audit, Revised. Do you see that?

11 A Yes.

12 Q About a third of the way down the page,
13 Mr. Alton, the SBE says, The audit findings were
14 discussed with Jerry Dressel. Do you see that?

15 A Yes.

16 Q Did Mr. Dressel ever discuss these audit
17 findings with you?

18 A Yes, in overviews.

19 Q Did the CDTFA ever discuss these audit findings
20 with you?

21 A No.

22 Q And if we look in the upper right-hand corner of
23 this exhibit, it appears as though it was dated
24 September 1st, 2015. Do you see that?

25 A Yes.

1 Q And you would agree that that was a period after
2 the close of the 2013 periods that are at issue in this
3 case?

4 A Yes.

5 Q So before I turn, Mr. Alton, to kind of the more
6 nuanced aspects of your business operations, can you just
7 explain what steps you took to defraud the State of
8 California?

9 A None.

10 Q So you gave us a little bit of an understanding,
11 Mr. Alton, about how Best Beverage conducts business and
12 handles proceeds related to these festivals and I want
13 you to take a look at some exhibits as we go through and
14 fill in to give a greater understanding of its
15 operations.

16 I'm going to draw your attention to Exhibit 27
17 first and, in particular, beginning on page two. It's a
18 document that at the top, it says, Agreement for
19 Services. Do you see that?

20 A Yes.

21 Q Are you familiar with this type of document?

22 A Yes.

23 Q It is purportedly an agreement between Best
24 Beverage and Electric Forest. Do you see that?

25 A Yes.

1 Q Are you familiar with the Electric Forest event?

2 A Yes.

3 Q What was that?

4 A It's -- it was -- we provided services. It's a
5 festival in Michigan. We're not -- it's not one of ours
6 right now, but we did it for several years.

7 Q Did you do that in 2013?

8 A Yes.

9 Q So what is the purpose of this type of Agreement
10 for Services?

11 A That's the -- that's the -- I call it a contract
12 agreement, but that's our deal with the promoter, who is
13 our client. The clients are the music promoter, the
14 promoter.

15 Q Were you involved in the drafting of this
16 agreement?

17 A You know, I probably -- I think I had someone
18 else put it together, Jerry; and at the time, I'm not
19 quite sure who was doing sales, supporting me in sales.
20 But I always had a support person who helped me put
21 together agreements. Sara is that person at this point
22 now.

23 Q And you're referring to Sara, Sara Purdy, who
24 will testify later today?

25 A Yes.

1 Q I want to draw your attention, Mr. Alton, to
2 page nine of Exhibit 27. This begins as an agreement
3 list of services for this Electric Forest event and I
4 want you to kind of explain to us what this on-site
5 management of concessions is all about.

6 A Well, basically, we're the master concessionaire
7 and it's -- I would say it's -- you know, there's a
8 couple that we don't control all of the food and
9 beverage, but that -- what makes it clear, that we
10 operate the beverage side of it, we handle all the
11 revenue on the beverage side of it, but we also manage a
12 group of food vendors. We don't -- we did some food on
13 occasion. It's hard to make money in food, so we go in
14 and out of doing food. But primarily our business model
15 is we handle the beverage side in-house and then we
16 procure food vendors, work with the festival in curating
17 food vendors, and then we manage and oversee them. They
18 handle their proceeds, but we then process those to where
19 the promoter gets their share.

20 Q And how does that split between the vendors,
21 BBC, and the promoters? How is that determined?

22 A With the promoters. We come up with what the
23 promoter wants to get on the food revenue. Typically
24 it's 30 -- let's say 30 percent. We then tack on 8 to 10
25 that we keep, and then the vendor keeps the rest to cover

1 all their costs. This is all after tax, after they take
2 their taxes out.

3 Q So that type of fee schedule, if I'm not
4 mistaken, would be represented on page 11?

5 A Correct. Well, that's the beverage, and then
6 there's the different types of food revenue streams.

7 Q Earlier on in this provision that talked about
8 scope of services, there was mention of a vendor
9 management team. Can you describe what a vendor
10 management team or team member does?

11 A Basically, they call them the VCs, vendor
12 coordinators. Their duties are to recruit and work with
13 the festival on developing, you know, an extensive menu,
14 contracting with each one of the vendors. Food vendors
15 we're talking about, not Shotskis or that type of stuff,
16 that nature. They then create the agreement with the
17 food vendor. They then manage that food vendor, loading
18 into the festival, manage them and help them with
19 permitting, Health Department. Again, this is nationwide
20 but primarily in California. And then they settle with
21 the vendor at the post-festival and they do a settlement
22 with each vendor and that's their duties. And then
23 that's processed through the accounting team that's
24 on-site.

25 Q Can you describe a little bit more about what

1 that process of settling up with the vendor is?

2 A They -- it's just they go over the revenue that
3 they brought in. It has to --

4 Q As you refer to "they," who are you referring
5 to?

6 A The VCs, the vendor coordinators, review the
7 sales. Again, back in this period, everything was cash
8 at that point, so there wasn't a point-of-sales system.
9 So we did some -- a little bit of maybe some auditing and
10 things of that nature. But they oversee them and then
11 they go over the revenue that was brought in, the things
12 we provided for that vendor like ice and nonalcoholic
13 beverages and tenting and power. We -- they just create
14 a settlement sheet. We get reimbursed for this, this is
15 our cut, and you get to keep this and you keep your tax
16 revenue.

17 Q Were you ever -- were you ever a member of this
18 vendor management or VC teams?

19 A No.

20 Q Do you recall some individuals who would have
21 been on these VC or vendor management teams?

22 A I mean, Sara Purdy, who's here, did a lot of
23 advance work on developing the contracts early on. There
24 was Megan; I cannot pronounce her last name. Tana
25 Bailey. Natalie Alvarez, who's here, assisted in the

1 actual settlement process.

2 Q Now, in the interest of efficiency, I won't go
3 through the rest of these types of contracts in
4 Exhibit 27, but Exhibit 27 primarily deals with
5 out-of-state events. Did BBC use similar contracts for
6 festivals and events inside California?

7 A Yes. All the templates were the same.

8 Q And how were those records stored?

9 A I mean, some electronically, I believe, that
10 each individual would have and then we had paper files.

11 Q And where are those paper files today?

12 A In October of '21, we were raided by the sales
13 tax people and they took them all and we have not
14 received them back.

15 Q Just to put some things in context, Mr. Alton, I
16 want to go through some of these different revenue
17 sources and those that feature prominently in the books
18 and records and, by extension, CDTFA's audit work papers.

19 Are you familiar with what BBC did or what it
20 provided for something that's referred to as the
21 Shorenstein theaters?

22 A Shorenstein theaters. They were Broadway play
23 theaters up in San Francisco.

24 Q So how did they fit in or what did BBC do for
25 the Shorenstein theaters?

1 A We did concessions, you know, Broadway play
2 theaters.

3 Q What about Cafe Fresh Deli?

4 A That was a cafe at an event facility.

5 Q What -- what do you mean an event facility?

6 A Well, there was a -- I believe Cafe Fresh was in
7 the San Francisco Gift Center and -- which is no longer
8 in existence, but it was a cafe that was operated on a
9 daily basis, but it had a huge atrium. When there was
10 events, we did the beverage service for those events.

11 Q And what about Cafe 101?

12 A Same situation at the Galleria Design Center
13 down the street in San Francisco.

14 Q And The Cafe at Stanford?

15 A I'm not -- I'm not sure which cafe that is, but
16 Stanford is a big client of ours where we provide
17 primarily alcoholic beverage services at their cafes and
18 events and sporting events.

19 Q And what is -- do you know what TI Bar is?

20 A That was Treasure Island Bar and Grill.

21 Q What services does BBC provide for Treasure
22 Island Bar and Grill?

23 A That was a small cafe out on Treasure Island,
24 which is in San Francisco Bay.

25 Q What about Warfield? Are you familiar with

1 that?

2 A Warfield Theater is a music venue in
3 San Francisco.

4 Q And what services did BBC provide for Warfield?

5 A Primarily beverage, but like if you went to a
6 show there, a music show, we were the ones selling
7 beverage and, you know, basically snacks, like a snack
8 bar.

9 Q What about Children's or Children's Hospital?
10 Did BBC ever have a relationship with them?

11 A No. That's probably Children's Museum. I don't
12 know why it says Children's Hospital.

13 Q Well, if it was Children's Museum, what type of
14 relationship and services would BBC provide?

15 A Same thing. Just a cafe and we would go in and
16 do cafes and then we would operate all the events
17 on-site, the beverage side.

18 Q I want to switch then to three specific ones
19 that are recorded in the audit work papers in the
20 San Diego nontaxable columns or San Diego nontaxable
21 categories. What was BBC's relationship with the Rancho
22 Santa Fe Polo Club?

23 A That was the San Diego Polo Club and there we
24 provided bar service, some food service. There were some
25 subs there, but that was a private club and that club,

1 the members, you know, had charge accounts through the
2 club. So we were kind of a wholesale provider there. We
3 were -- we didn't do the transactions. The club did, but
4 we were reimbursed for our portion of the -- of the
5 proceeds.

6 Q I'm not sure I understand this, so a patron at
7 the Rancho Santa Fe Polo Club would be a member and
8 charge their membership --

9 A Consider.

10 Q -- to get food and beverage?

11 A Correct. They had like an account.

12 Q And that money would then flow to whom?

13 A They would get the revenue --

14 Q When you say "they" --

15 A -- the Polo Club, because these people had
16 charge accounts and so then they would collect from each
17 of the private -- you know, their members.

18 Q And then under what -- under what circumstances
19 then would the Rancho Santa Fe Polo Club be paying BBC?

20 A Because we provided services for them, labor,
21 equipment, you know, product.

22 Q Are you familiar with a relationship between BBC
23 and Abbey Catering?

24 A That sounds like a -- it just was a catering
25 company.

1 Q And what type of relationship would BBC have
2 with that catering company?

3 A They were -- they were dealing with the end-user
4 client and then we were providing bartending services for
5 them on a wholesale basis.

6 Q When you say "wholesale basis," what do you
7 mean?

8 A I would give them a price of -- you know, if it
9 was \$25 a person, they would -- Abbey Catering or any
10 catering company would then sell it to the bride or groom
11 and for \$35 a person and then they would pay us that
12 wholesale cost and they would profit from that, that
13 delta.

14 Q Are you familiar with a relationship between BBC
15 and something referred to as Amgen?

16 A Amgen was a bike tour of California. They had
17 the Tour de California.

18 Q So how was BBC involved in the Tour of
19 California?

20 A We provided support to them, you know, catering
21 for their suites and things of that. I was not that
22 involved in that event, so I can't give you a lot of
23 details on that event. It was a tough event. I know
24 that. They had to -- they had to go around the state of
25 California in seven days, logistically.

1 Q You mentioned, Mr. Alton, earlier the use of a
2 process for settling up with vendors. Do you recall that
3 conversation you were just giving me some information a
4 minute ago?

5 A Yes.

6 Q Are you familiar with these concession vendor
7 checkout forms?

8 A I mean, I'm not that familiar with them, but --

9 Q Are you familiar with BBC using them?

10 A Yeah. I'm aware that we use them, but I didn't
11 really look at them.

12 Q So if I'm looking at Exhibit 34, do you
13 recognize this type of document?

14 A Yes.

15 Q What is this, what is its purpose, and who would
16 be responsible for producing this type of document?

17 A This is what the vendor coordinators would
18 produce to deal with our -- our bookkeeping department
19 and a way that provided information to the promoter and
20 to each vendor. That's just a recap right there, I
21 think.

22 Q It's a recap of what?

23 A Of settlements.

24 Q So if we look at this in an electronic version,
25 there's a recap, but there are specific vendors listed as

1 well; correct?

2 A Correct.

3 Q And so who would be in charge of putting
4 together this vendor -- concessions vendor checkout form?

5 A The vendor coordination team.

6 Q And what is your involvement in this?

7 A None. I mean, over time, they've developed it.
8 It's something that like I had mentioned earlier. This
9 was a new industry. There was no standards for this. We
10 had to develop it on our own and then I had entrusted
11 teams that I brought in and let them handle the
12 processes.

13 Q Do you know what the life cycle is or what
14 happens to something like this vendor checkout form after
15 a vendor coordinator puts it together?

16 A I don't understand your question.

17 Q Where does this information go after a vendor
18 coordinator puts it together?

19 A It would then go to, you know, Jesse, who's
20 here, or whoever's posting these sales.

21 Q You mentioned this is also shared with the
22 vendors themselves?

23 A The vendors, yes. I'm sure they each have a
24 copy of it.

25 Q Why would they have a copy of this?

1 A Because it's their settlement sheet.

2 Q And you said you'd also share it with the
3 promoters?

4 A I don't think this internal document was shared
5 with the promoter. There would be a recap of the
6 promoter. This is what we did in sales. This is what
7 they kept in taxes. This is what the promoter got, their
8 share. That's what they're most interested in.

9 Q When you say they collected their taxes, who are
10 you referring to as "they"?

11 A Each individual vendor, they kept their tax
12 revenue.

13 Q This --

14 JUDGE RALSTON: Mr. McLaughlin, I apologize for
15 interrupting. I know we had estimated about 30 minutes
16 for each witness. We're a little over that with
17 Mr. Alton. Did you want to continue with him and maybe
18 make it up with some of the other witnesses or --

19 MR. MC LAUGHLIN: I'll attempt to do so, your Honor.
20 I think that we're getting close to the end of
21 Mr. Alton's testimony.

22 JUDGE RALSTON: Okay. Thank you.

23 BY MR. MC LAUGHLIN:

24 Q This particular exhibit, Mr. Alton, is with
25 respect to one event; correct?

1 A Yes.

2 Q Would you similarly or would BBC similarly use
3 these types of documents at other events?

4 A Yes. They would use the same processes.

5 Q And has that process changed much between 2008
6 and 2013?

7 A During that period, I would say it was pretty
8 consistent.

9 Q And how did BBC retain the records of those
10 actual checkout forms or similar items? What was kind of
11 the document retention policy?

12 A I mean, people would have it on their -- a lot
13 of people used their own computers back then because they
14 were in the field. They would be on their computers or
15 physical documents.

16 Q And where are those physical documents now?

17 A Like I said, they were in storage, but they were
18 confiscated.

19 Q Have they been returned to BBC?

20 A No. "Confiscated" is the wrong word, but they
21 were taken.

22 Q And again, just to summarize, what was your
23 involvement in the developing of these checkout forms and
24 where they ultimately ended up?

25 A I was not involved in them.

1 Q Thank you, Mr. Alton.

2 MR. MC LAUGHLIN: Thank you, panel. I'll probably
3 move on to the second witness at this time.

4 JUDGE RALSTON: Okay. Thank you.

5 And we can have the second witness come up to
6 the table.

7 MR. ALTON: Sit where I'm sitting?

8 JUDGE RALSTON: Yes, if you guys want to switch
9 places, or you can sit on the end.

10 Oh, I apologize, Mr. Alton. We're not quite
11 finished with you yet. Thank you.

12 MR. ALTON: Oh, no.

13 JUDGE RALSTON: Mr. Noble, did you have any
14 questions?

15 MR. NOBLE: The Department doesn't have any
16 questions. Thank you.

17 JUDGE RALSTON: Okay. Thank you.

18 Judge Geary, did you have any questions for
19 Mr. Alton?

20 JUDGE GEARY: I think I do have a couple of
21 questions. Thank you.

22 About the cafes that you were talking about
23 earlier, am I correct that these are cafes that the
24 company operated on a day-to-day basis and also the
25 company would participate and provide food and beverage

1 services for special events for the companies or
2 institutions that housed those cafes? Is that correct?

3 THE WITNESS: All those locations -- so, for example,
4 the Galleria and the Gift Center were very similar. Yes,
5 we did Monday through Friday cafe for the people that
6 were working in those buildings, but their atriums were
7 rental properties for outside promoters but mainly
8 corporate back then. We don't do a lot of that now. And
9 so we had a niche where we could do food and beverage in
10 the cafe, but then we would only do beverage service,
11 allow other caterers in to do the larger events. So
12 those were very -- that was kind of a niche we were doing
13 at that time.

14 JUDGE GEARY: So you would handle the larger events
15 in atriums, for example, in a fashion similar to the way
16 you handle music festivals. You would do the beverage
17 service and hire food people to come in and supply food?

18 THE WITNESS: In that situation, I would do the
19 beverage service, but a lot of times the client was a
20 caterer who brought a client in there, so we weren't
21 involved in the food in those venues.

22 JUDGE GEARY: Thank you. Those are the only --
23 that's the only question I have.

24 JUDGE RALSTON: Thank you, Judge Geary.

25 Judge Kwee, did you have any questions for

1 Mr. Alton?

2 JUDGE KWEE: I don't have a question specifically for
3 Mr. Alton, but I did have a question for the Appellant
4 maybe better directed at the representative, just so I
5 could get a more clear understanding of your position of
6 Appellant's position, because most of the testimony seems
7 to center around the fraud and I'm just curious, is
8 Appellant's -- are they disputing that there was a
9 substantial liability or do they agree that there was an
10 underreporting and the question is more whether Appellant
11 was fraudulent, whether the fraudulent penalty was
12 properly imposed?

13 MR. MC LAUGHLIN: It's a little bit of both, your
14 Honor. Certainly we don't concede the fraud. There may
15 be to some extent a concession that there was some
16 mistakes and there was an underreporting, but we believe
17 that even after the fourth reaudit there are still
18 mistakes in CDTFA's examination and I think what we're
19 discussing, particularly with Mr. Alton, is some of these
20 events and the concessionaire vendors and the sales for
21 resale that have not been appropriately backed out in
22 their work papers.

23 JUDGE KWEE: Okay. And just so I understand, with
24 respect to the extent that there is an understatement, is
25 Appellant's position that the understatement was due to

1 honest mistakes? Is that -- is that essentially what
2 you're arguing?

3 MR. MC LAUGHLIN: Yeah. Absolutely, your Honor. I
4 think it's a combination of honest mistakes and a
5 misunderstanding of sales and use.

6 You heard testimony earlier today from
7 Mr. Alton, for example, regarding the Rancho Santa Fe
8 Polo Club. Whether the receipt of cash that comes from
9 this event organization that is paid to them through
10 members is in some way taxable to them, they concluded it
11 wasn't and it was excluded. CDTFA has concluded that it
12 was.

13 Whatever the determination of the panel, I think
14 that what we are trying to establish in Mr. Alton's
15 testimony or Mr. Alton's testimony corroborates is they
16 believed it wasn't and had a legitimate basis for doing
17 so and that any mistakes were attributable to simple
18 misunderstandings of the law.

19 JUDGE KWEE: Okay. Thank you for that clarification.

20 I'll turn it back to I believe Judge Geary,
21 because he has one more question for the witness. Thank
22 you.

23 JUDGE GEARY: Is that all right with you, Judge
24 Ralston?

25 JUDGE RALSTON: Oh, of course, yes.

1 JUDGE GEARY: Judge Ralston, thank you.

2 I neglected to ask you earlier, you were talking
3 about supplying things to some of the food vendors at
4 music venues and you mentioned ice, power. I think you
5 mentioned tents maybe was one of the things you mentioned
6 and I recall from looking through some of the briefing
7 that there was a reference in -- I think it was in
8 relation to the checkout form, that there will be --
9 there would be other charges made by your company to
10 these vendors. What other types of things would you
11 charge the vendors for other than the commissions in
12 these music venue situations?

13 THE WITNESS: I mean, I think that Sara and Natalie
14 will know a little bit more about that, but definitely
15 the nonalcoholic beverages that they would sell. So we
16 would get reimbursed for that; ice, their portion of a
17 health permit. We would do a master permit. It can be
18 hand washing sinks. You know, you have to kind of --
19 there's a shared cost for the back-of-house structure,
20 infrastructure that's built, so we pass that on. Menus,
21 menu development, banners. You know, it all just
22 depends, but there's some real basic things that happen
23 every time. Pumping of the gray water. Sara and Natalie
24 will know more detail on that.

25 JUDGE GEARY: You specifically mentioned nonalcoholic

1 beverages. So would the company, your company, provide
2 nonalcoholic beverages to some -- at least some of the
3 food retailers for resale?

4 THE WITNESS: Correct.

5 JUDGE GEARY: What about alcoholic beverages that
6 were served at these venues? Would that be handled
7 exclusively through the company?

8 THE WITNESS: Exclusively through us, yeah. We
9 always split. We always han- -- because it's our liquor
10 license, we have to bring that revenue in and insurance
11 reasons also. So the food vendors did have the ability
12 to sell nonalcohol but not alcohol, a little bit
13 different than when you go to a stadium and that's one
14 company doing it all.

15 JUDGE GEARY: Thank you.

16 JUDGE RALSTON: Thank you, Judge Geary.

17 Okay. Now, Mr. Alton, I think we're finished
18 for now.

19 So regarding the remaining witnesses, just in
20 the interest of time, I know they're all probably
21 testifying on similar items, but we want to avoid like
22 redundant testimony, if that is the case, and I think
23 after this next witness, we will take a break for lunch.

24 MR. MC LAUGHLIN: Very good, your Honor.

25 Our next witness is Jesse Glueck. He has some

1 travel -- Glueck. Excuse me. He has some travel
2 restrictions, so we'd like to get him out of here.

3 JUDGE RALSTON: Okay. Thank you.

4
5 JESSE GLUECK,
6 called as a Witness, and having been previously duly
7 sworn by the Administrative Law Judge, was examined and
8 testified as follows:

9
10 DIRECT EXAMINATION

11 BY MR. MC LAUGHLIN:

12 Q I'm sorry I mispronounced your last name.

13 A I grew up with Glueck. I actually like Glueck
14 more. It's the proper German pronunciation.

15 Q So Mr. Glueck --

16 A Glueck.

17 Q Glueck. I want to ask you just some general
18 questions about your personal background and education
19 and work experience before we begin, so can you describe
20 your educational background, Mr. Glueck?

21 A I went to San Francisco State University and
22 graduated with a B.S. in accounting.

23 Q When did you obtain a B.S. in accounting from
24 San Francisco State University?

25 A June of '99.

1 Q What was your work experience after you received
2 your B.A. in accounting from San Francisco State
3 University?

4 A I've been with Best Beverage the whole time
5 since.

6 Q So explain that. How did you become employed
7 with Best Beverage?

8 A So in '96, my brother started working for the
9 company and he was working in the -- managing one of the
10 warehouses in the Bay Area and when I was going to
11 school, he told me there was work available that I could
12 do at night after school. So I started working in the
13 warehouse and then I started working events for the
14 company and then --

15 Q Let me pause there. What does working events
16 mean for the company?

17 A Bartending, barbacking, setting up the event,
18 managing the event. It was more weddings at that point,
19 more corporate parties.

20 Q And continue. After that, your roles and
21 responsibilities started to become what?

22 A Well, the accounting person at the time,
23 Francisco, found out that I had -- that I was studying
24 accounting, so he started having me help him with some of
25 the bookkeeping aspects and particularly handling cash at

1 events.

2 Q Francisco, when was this time that Francisco
3 brought you under his wing?

4 A I'd say probably sometime in '97, about a year
5 into working. The summer of '97.

6 Q And how long did you kind of, for lack of a
7 better term, mentor under Francisco?

8 A I mentored under Francisco for -- until he left
9 the company, which was probably around 2000, and then
10 there was another lady hired to handle bookkeeping. Her
11 name was Sue Gentile and I worked with her for a while.
12 I was still mainly handling cash at events, and
13 eventually she left and I took over her responsibilities.

14 Q And when did she leave, approximately?

15 A Maybe '02, '03. That's a long time ago. I
16 can't remember exactly.

17 Q And so you took on her responsibilities after
18 that; correct?

19 A Correct.

20 Q And can you describe what those roles and
21 responsibilities were?

22 A I was handling basically the accounting in the
23 Bay Area for all of our -- handling the deposits,
24 handling the bank account, making the deposits, putting
25 together the records for sales tax and like tracking all

1 the sales, still handling the cash, because it wasn't as
2 busy then, so I could -- I did more. I started getting
3 some help soon after.

4 Q Who was helping you?

5 A For a while, it was Raul. I forget his last
6 name. Raul worked with me for -- until probably about
7 2010 and he started handling all the cash and I was doing
8 the QuickBooks entry and deposits and reconciling the
9 bank account, and then he left the company and then it
10 was Ryan Mendez and he was with me through about 2019, a
11 little before the pandemic. And after that, it's just
12 been kind of -- there's been a couple people, Tony,
13 Octavio.

14 Q So you mentioned QuickBooks, reports, ledgers,
15 bank accounts, statements, reconciling them. Can you
16 describe Mr. Alton's involvement in any of that?

17 A I would give him overviews on what was
18 deposited, give him -- we would go over basically budgets
19 on what to pay a vendor, what we could afford to pay at
20 the time.

21 So he would kind of have an overview and then we
22 would have conversations and then I would handle the
23 actual details of the payment for vendors and -- but for
24 the bookkeeping itself, there's none. He's -- he's never
25 been in the QuickBooks file. He doesn't have a log-in,

1 wouldn't know how to get in anyways.

2 Q We heard testimony earlier today about the use
3 of concession vendor checkout forms. Are you familiar
4 with those?

5 A I am.

6 Q How are you familiar with them and what purpose
7 do they serve for BBC?

8 A As was stated in terms of the vendor
9 coordinators handled them, I wasn't involved in that
10 process. I received the payments, matched the payments
11 that they -- that they paid us, and then I just matched
12 it up to what the form said.

13 So I wasn't involved with the details of putting
14 them together. I just matched the deposits to what was
15 reported by the vendors and the vendor coordinators.

16 Q So I want to -- I want to kind of break down
17 kind of this process of who's involved and how this data
18 is recorded and transmitted to ultimately getting on the
19 sales and use tax return.

20 So on Exhibit 34, which I have pulled up for
21 you, are you familiar with this type of exhibit?

22 A Yeah.

23 Q This is, in particular, the checkout form for
24 what we've identified as the FYF festival in 2013.

25 JUDGE RALSTON: Excuse me. Which exhibit was this?

1 MR. MC LAUGHLIN: 34, your Honor.

2 JUDGE RALSTON: Thank you.

3 BY MR. MC LAUGHLIN:

4 Q At the end of this, there's a final tab that
5 says "all combined." Do you see that?

6 A Oh, yeah. Yes.

7 Q And it lists under the vertical column B all
8 vendors combined. Do you see that?

9 A Yes.

10 Q So -- and then going horizontally, it starts to
11 break out specific vendors; correct?

12 A Correct.

13 Q Like West Coast would be an independent vendor?

14 A Yes.

15 Q Hudson would be an independent vendor?

16 A Yes.

17 Q Spicy Pie would be an independent vendor?

18 A Yes.

19 Q And then if I'm looking at column B in this
20 Exhibit 34, this is the totality of commissions paid to
21 BBC? How does that process work?

22 A Well, the final line there is the amount
23 that's -- that we ended up depositing, and that is their
24 sales at the top minus fees, sales tax, the commissions
25 that they owe to the -- well, actually, the commissions

1 would be the amount due at the end, but --

2 Q So if I'm looking at this, for example, in the
3 FYF festival, those vendors sold \$414,000 worth of
4 product that weekend?

5 A Correct.

6 Q And sales tax on that was calculated at \$37,000?

7 A Yes.

8 Q Who paid that?

9 A The vendors were responsible for that.

10 Q You make a row there, adjusted gross amount.
11 That would be the subtotal of gross sales less the sales
12 tax that the vendors already paid?

13 A Yes.

14 Q And there was a commission due to BBC of
15 133,000; is that correct?

16 A Yes.

17 Q And then there are products listed below. Can
18 you explain, is that charges, as we heard testimony
19 earlier, about tents, sinks, power that are charged to
20 the vendors?

21 A Exactly, yes.

22 Q So they're paying that back to BBC?

23 A Yes, 'cause BBC pays those bills.

24 Q Okay. And what do you do after you get a
25 concession vendor form like this? What is your

1 accounting process?

2 A My accounting process is to match up the form to
3 what we received and then I would put that on my deposit,
4 my monthly deposit journal, just because I had --
5 tracking all the sales, and that would be in the
6 nonrevenue column.

7 Q So I'm going to draw the judges' attention then
8 and yourself as well to Exhibit 41. Is this what you
9 were talking about as far as a monthly deposit schedule?

10 A This is the sales tax report. That monthly -- I
11 have -- there's also a monthly deposit form, which would
12 be -- it shows every day. This breaks out that by areas,
13 but the monthly -- the monthly form shows exactly what
14 came in from what event. I mean, there might be two
15 things from, say, San Francisco or multiple things from
16 San Francisco on that deposit; but on this form, it's
17 just all together. It's broken out per tax district to
18 make sure the tax is paid correctly for each district.

19 Q So I want to kind of focus on this, this area
20 here, because the FYF fest, as I understand it, was
21 August, late August of 2023 [sic], and do you recall
22 where that was held?

23 A Los Angeles.

24 Q So we have a vertical column in this in D that's
25 Los Angeles; is that correct?

1 A Yes.

2 Q And that would represent the sales from
3 Los Angeles-based events that were deposited on a
4 particular day; is that correct?

5 A Correct.

6 Q So, for example, on August 26th, BBC deposited
7 \$697,000 from L.A.-related events?

8 A Yes.

9 Q And who prepares this document?

10 A I do.

11 Q Does Mr. Alton have any involvement in this?

12 A No.

13 Q I want to ask you about some other things
14 because if we continue over after some of these vertical
15 columns, there's other ones. One of them indicates
16 resale, vertical column T. Do you see that?

17 A Yes.

18 Q What figures are in resale and where do they
19 come from?

20 A Resale would be vendors -- or clients that had
21 resale cards, as was mentioned earlier, that they would
22 collect the tax and be responsible for the tax and they
23 would just pay us, as Dirk said, the wholesale amount,
24 and it also included the vendor coordinator forms, the
25 payouts that they paid us, because they were responsible

1 for the tax. So we would put that under resale.

2 Q So that's -- if I'm correct in understanding
3 you, that number is based on what we saw previously in
4 Exhibit 34 in those individual vendor concession checkout
5 forms?

6 A Yes, and it could also include, say, a caterer.
7 Just remembering one called Now We're Cooking, say they
8 had a resale form. It could include their sales as well
9 because they had a resale form and they were responsible
10 for the sales tax for an event when they paid us.

11 Q So when you put an entry on this resale form,
12 have you seen a resale certificate from any of those
13 people?

14 A Yes.

15 Q And how did BBC maintain those records?

16 A We had physical records.

17 Q And where are those physical records now?

18 A Wherever the CDTFA has them. They took them
19 all.

20 Q So this document, Exhibit 41, the column, that
21 resale that you indicated represents those vendor
22 commissions and items in which you've seen individuals or
23 companies had resale certificates, there's also a column
24 that says redo in column V.

25 A Re-de.

1 Q Re-de. What does that mean?

2 A That's cash redeposited.

3 So to start an event, you need banks.
4 Everything was cash then, so you'd need banks to get with
5 all the bartenders. So we would pull money out of the
6 bank account. Say there's five bartenders. They each
7 get \$400, so we'd pull out \$2,000 and then after the
8 event, we'd redeposit the \$2,000.

9 Q So if I'm understanding you, the re-de, BBC
10 would take cash to have cash on hand at events and if
11 that cash was unused because it didn't go back in change,
12 BBC would be redepositing that?

13 A Well, yeah. It was just change. It was
14 never -- it's a starting bank, so it was never -- it just
15 came out to fund the event, to make it work, to get it
16 started. So --

17 Q So if we're keeping with this August 24th, 25th
18 L.A. and other events throughout California, this would
19 indicate that BBC took \$139,600 in cash out to fund those
20 festivals --

21 A Yes.

22 Q -- and then redeposited that as change later on?

23 A Yes.

24 Q There's also a column on here, vertical column
25 W, that says nonrevenue. Do you see that?

1 A Yes.

2 Q What does nonrevenue represent?

3 A So that could be a couple of things. Back then,
4 there were some tips, so that could include tips from
5 credit cards, but it wasn't much. A lot of that was
6 future payments for events. So in the nonrevenue column
7 would be a client paid us for an event in August, but the
8 event doesn't happen until, say, March of the next year;
9 and so in March of the next year, there would be a
10 negative amount for that. That's why there's negative in
11 some of the columns, to offset when it was a positive,
12 because we would book the sales in the month that the
13 sales actually happened.

14 Q So if I'm interpreting you correctly, in this
15 nonrevenue, you'd have a positive figure that would
16 either represent a deposit for future services or
17 potentially tips?

18 A Correct.

19 Q Let me ask you a follow-up question about tips.
20 Were they mandatory or discretionary?

21 A They're always discretionary.

22 Q And then if I see a negative number in the
23 nonrevenue, that is because a vendor had previously given
24 a deposit and then that is backed out because it is
25 included in the deposit figures earlier?

1 A Correct. So it would be in the -- say the event
2 happened in San Francisco. The full sale would be noted
3 in the San Francisco column even though we collected part
4 of it six months earlier. So the negative -- the
5 negative nonrevenue is the -- is the deposit from six
6 months earlier, but the full sale would be under whatever
7 tax area it was from.

8 Q That would be, for example, in the columns --

9 A Any of those.

10 Q -- B through T, correct, or B through S;
11 correct?

12 A Correct.

13 Q So this is broken up by county; correct?

14 A Correct.

15 Q And I note, and as I've gone through this
16 before, there doesn't appear to be any entries in
17 Riverside, San Diego; and if I'm not mistaken, one of
18 your big customers is the Coachella Music Festival in
19 Riverside.

20 A Correct.

21 Q Why are there no entries on this work paper for
22 Riverside?

23 A Well, that month, either there was none booked
24 through my account or -- or Jerry was handling it in the
25 San Diego bookkeeping.

1 Q And you're referring to Jerry Dressel; is that
2 correct?

3 A Correct.

4 Q So help me understand. This information is used
5 how and by whom?

6 A This information is to track the sales for each
7 taxable zone in California and it's to develop what we
8 owe for the period. Well, that's for the month, and then
9 we'll put together a quarterly report --

10 Q And you see --

11 A -- as well.

12 Q You see there's quarterly reports in there as
13 well?

14 A Yes.

15 Q So these would be broken out by month in the
16 applicable quarter; correct?

17 A Correct.

18 Q What do you do with this information after
19 you've compiled it into Exhibits -- in Excel documents
20 like Exhibit 41?

21 A I send it to Jerry and he files the taxes and
22 makes a payment.

23 Q Do you send this to Mr. Alton?

24 A Yes. Usually I think he sees it as well.

25 Q Okay. Does he do anything with it, to your

1 knowledge?

2 A No. He doesn't change it or anything. He
3 doesn't like it a lot of times.

4 Q He doesn't like it because you didn't make
5 enough money or he's telling you, "Jesse, you need to
6 change these numbers"?

7 A He didn't like it because it's a lot of money
8 that he has to spend.

9 Q Oh. You're referring to the fact that he has a
10 large sales tax obligation?

11 A Yes.

12 Q Has he ever instructed you to change any of
13 these numbers?

14 A No.

15 Q Manipulate them?

16 A No.

17 Q Underreport sales?

18 A No.

19 Q We were just talking a moment ago, and I just
20 want to do this as a bit of a demonstrative, but back on
21 Exhibit 34, one of these vendors that's featured
22 prominently you can see is this Spicy Pie. Do you see
23 that?

24 A Yes.

25 Q And this is in the total all combined. We have

1 Spicy Pie, FYF 2013; correct?

2 A Correct.

3 Q And we also had to add a tab specifically for
4 Spicy Pie?

5 A Yes.

6 Q And I would just for your edification, Jesse, we
7 have here in Exhibit -- a different exhibit, Exhibit 6,
8 in page 13. Have you ever been to a festival where Spicy
9 Pie operated?

10 A Yes.

11 Q These are images of Spicy Pie; correct?

12 A Yes.

13 Q And that's what it would look like if I was a
14 patron going to get food or nonalcoholic beverages at
15 Spicy Pie at a festival or event; correct?

16 A Yes.

17 Q I want to draw your attention to Exhibit 36. Is
18 this similarly a checkout sheet from a festival?

19 A Yes.

20 Q And would it still operate the same in which if
21 there was an event on August 3rd and August 4th of 2013
22 at HARD L.A., how would you use this data? Similar to
23 the way that you did for FYF?

24 A Correct. It was all handled the same.

25 Q Was that consistent between 2008 and 2013?

1 A Yes.

2 Q And then this data would be then carried over to
3 something like Exhibit 41; correct?

4 A Exhibit 41 was my sales tax? Yes.

5 Q Correct. Do you know what Mr. Dressel did with
6 that information that he received from, for example, your
7 Exhibit 41?

8 A He paid the sales tax. I mean, he filed the
9 tax, the Schedule C forms for each individual area. I
10 believe that was then as well, and --

11 Q In the interest of efficiency, I won't go
12 through all of the examples that we have for these
13 different 2013 L.A. HARD, FCF, and others, but would you
14 agree that the way that you handled the creation of
15 Exhibit 41 was consistent throughout these audit periods
16 with respect to these music festivals?

17 A Yes.

18 Q And would you agree that if you put something in
19 the column that said "resale," it was because it either
20 came from one of these vendors or you had seen a resale
21 certificate?

22 A Correct.

23 Q I want to take a look, Jesse, if we could, at
24 Exhibit 24. As you know, fraud is a prominent issue in
25 this proceeding. I want to ask you some questions about

1 this. This is a document entitled Memorandum of
2 Interview with Jerry Dressel on October 19th, 2021, so
3 quite a while ago.

4 I'm going to read you some provisions and I'm
5 going to ask if you agree with them or if you don't agree
6 with them.

7 "Mr. Dressel was informed and believes that
8 Jesse Glueck was already working at F & B Associates when
9 Mr. Dressel was hired."

10 Do you agree with that, that you were already
11 there and Mr. Dressel was hired after you?

12 A Yes, I was there before.

13 Q On page four of this document, Exhibit 24,
14 towards the bottom, it says, "Mr. Dressel stated that he
15 doubts that Mr. Alton has the CDTFA code needed to
16 ultimately e-file the returns or any other CDTFA log-in
17 credentials. Mr. Dressel also stated that even if
18 Mr. Alton had access to the CDTFA account, Mr. Dressel
19 believes Mr. Alton is techno" -- "is not technologically
20 savvy enough to complete the filing, nor did Mr. Alton
21 control the financial information necessary to file
22 California sales tax returns."

23 Based on your experience, do you agree with that
24 statement?

25 A Yes, I agree.

1 Q A little bit before that, still with Exhibit 24,
2 it says, "Quarterly, Mr. Dressel would prepare sales tax
3 returns along with Mr. Glueck from F & B Associates'
4 San Francisco office. Using QuickBooks, Mr. Glueck would
5 prepare reports by county and by city, which are likely
6 to be named SQ4 breakdown. From the varied revenue
7 sources that are accounted for in these Excel sheets, new
8 line items might need to be made. For instance, there
9 are venues that send reimbursement checks because their
10 business depends on hiring F & B Associates' employees.
11 The companies refund F & B, Inc. for providing labor. On
12 top of handling San Diego's books and records,
13 Mr. Dressel also informs Mr. Alton about sales tax
14 estimates. Mr. Alton does not handle any recording of
15 sales. Any estimates were given to Mr. Alton merely to
16 allow F & B, Inc. to manage cash flow and general
17 budgets." Would you agree with that statement?

18 A Yes, I agree.

19 Q Still with that exhibit as well, there's a
20 statement from Mr. Dressel that reads, "Mr. Dressel
21 indicated that Mr. Alton's role in the use and
22 maintenance of the San Francisco's QuickBooks is," quote,
23 "'probably not very much,'" end quote. Do you agree with
24 Mr. Dressel's assessment?

25 A Dirk has no access to QuickBooks, so yes, I

1 agree.

2 Q You already mentioned an individual named Ryan
3 Mendez and that you were familiar with him based on your
4 employment at F & B; correct?

5 A Yes.

6 Q There's another document here in Exhibit 25 and
7 I want to ask if this is accurate based on your
8 experience with BBC. It's a document titled Memorandum
9 of Interview with Mr. Mendez on October 25th, 2021.
10 Mr. Mendez says that, "As," quote, "POS logistics
11 manager, Mr. Mendez was responsible for programming and
12 supporting various point-of-sale devices usually
13 associated with Square mobile card reader platforms. In
14 so doing, Mr. Mendez would also generate various reports
15 which were themselves compiled in the cloud through the
16 Square online platform. Mr. Mendez had access to the
17 Square account, but," other than yourself, Jesse, "was
18 unaware of who else might have access to the Square
19 accounts, including log-in credentials and passwords."

20 Do you agree with Mr. Mendez's statements, based
21 on your experience?

22 A Yes. He had access. He had just come back to
23 the company after COVID for a few months.

24 Q And he says that he was unaware of who else
25 might have it. Were you aware of anyone else who had

1 access to the Square online platform information?

2 A Yes.

3 Q Who else would have access?

4 A Matt Alder. He had access. Maybe Eduardo
5 Moreno. I have an online spreadsheet with passwords and
6 the log-ins and there's a few people who have it. I'd
7 have to check.

8 Q Let me ask --

9 A It's not many.

10 Q -- does Mr. Alton have access to that?

11 A No.

12 Q Mr. Mendez also says that he frequently used the
13 reports compiled online in fill-in template sales
14 reports.

15 Do you believe he's referring to these sales
16 reports that ultimately end up in something like
17 Exhibit 41?

18 A Yes.

19 Q The sales report was an Excel-formatted document
20 that contained various information about the respective
21 events. The sales report Excel document would usually be
22 shared with venue manager, any liaison, yourself, Jesse,
23 and sometimes Mr. Alton. Mr. Alton was generally
24 interested in a 10,000-foot view, which translated into
25 gross sales from each event but little else. Mr. Mendez

1 described Mr. Alton's interest as limited to hard numbers
2 and gross sales.

3 Would you agree with that statement?

4 A Yes.

5 Q Any substantive feedback about the sales,
6 Mr. Mendez continues, was given exclusively by yourself,
7 Jesse. When further asked who at F & B Associates would
8 be most knowledgeable about its accounting practices,
9 Mr. Mendez responded that yourself, Jesse, who he
10 described as the controller, and Jerry Dressel, who he
11 described as either an internal or outside accountant,
12 were the best, if not only two. When asked why Mr. Alton
13 would not be the individual most knowledgeable about
14 F & B Associate, Incorporation's accounting practices,
15 Mr. Mendez responded that he did not feel Mr. Alton dealt
16 with accounting issues but rather delegated those tasks
17 to others like Mr. Glueck and Mr. Dressel.

18 Do you agree with that?

19 A Yes, I agree.

20 Q He mentions here, Mr. Mendez, the use of POS
21 logistics. He is a POS logistics manager using POS
22 systems. Do you know what he's referring to?

23 A Yeah. So when we have an event, he would be in
24 charge of kind of figuring out what we needed for the
25 event's POS requirements, how many units, wi-fi issues.

1 Do we need to bring in wi-fi? Is there wi-fi there? And
2 he would -- handling setting up menus for the -- in the
3 POS systems, so, yeah, that's pretty much --

4 Q So this was an ability for BBC to accept credit
5 card transactions; is that correct?

6 A Credit card transactions was what started it and
7 to get more control over the events as well.

8 Q And when did BBC first start using credit cards
9 at its events, or I should say it differently. When did
10 BBC first start accepting credit cards at its events?

11 A We accepted maybe some like 2012 or so, very
12 few, and I remember we had a -- we had a meeting and we
13 introduced -- Ryan, myself and Matt introduced Square to
14 the company and thought that it would be good going
15 forward and that really started rolling out more in 2013,
16 but really about '14, '15, it really started taking over
17 more.

18 Q So before 2012, BBC was largely cash. It was
19 not credit card transactions; is that accurate?

20 A At events, it was, yes, it was exclusively cash.

21 Q One of the issues on the use taxes issue in this
22 case has been the use or I should -- alleged rental of
23 point-of-sale terminal physical items provided by PFC
24 Payment Solutions. Are you familiar with BBC's
25 relationship with PFC Payment Solutions?

1 A PFC Payment Solutions was a credit card provider
2 in terms of they process card transactions for us. It
3 was -- basically, each office had the ability to take
4 credit card sales for events and that's how they process
5 it.

6 Q How did they process it? Was it they give you a
7 terminal that you physically put a card into or how did
8 BBC use PFC Payment Solutions to run credit cards?

9 A I think at first it was a terminal, just like
10 one terminal that sat on a desk, but it eventually
11 evolved into a cloud-based website that you just went in,
12 entered the information, and you process -- it was mainly
13 used for catered events where the cater -- either the
14 client directly, say a bride and groom or the catering
15 company, would give us their credit card to make the
16 payment.

17 Q And if you had to apportion the times that you
18 used a physical unit versus putting this in online, how
19 frequently would you do either or both of those?

20 A I don't really remember exactly when it switched
21 over, but it wasn't that frequent. Credit cards weren't
22 much at the time. I can't -- I can't say off the top of
23 my head how often, but we could have some big charges
24 because people would put big charges on, but it would be
25 a one charge. It wouldn't be -- it wouldn't be an event

1 really with PFC.

2 Q It would not exist at festivals or something
3 like that?

4 A Not at all.

5 Q Okay. In the interest of time, Mr. Glueck, I
6 want to draw your attention to a couple of provisions
7 here in Exhibit 26.

8 There's a few paragraphs down there that begins
9 with, "During the average day." I would like you to read
10 this and tell me if you agree -- let me say this to build
11 a foundation. Are you familiar with Stacy Egusa?

12 A Yes.

13 Q Did you work with her at BBC?

14 A She works in the San Diego office. We've met a
15 few times.

16 Q You've met a few times?

17 A Yeah.

18 Q Okay. This is a document, a Memorandum of
19 Interview with Stacy Egusa on October 26th, 2021. Can
20 you just read the paragraphs beginning at "During the
21 average day" and tell me if you agree with Stacy's
22 statements in there.

23 A "During the average day" --

24 Q You don't need to read it out loud.

25 A Oh, sorry. Yes, I agree.

1 Q And she also says at the bottom of page two, she
2 did not believe Mr. Alton had access to any QuickBooks
3 information and if he did, he would never use access or
4 even understand the information contained therein.

5 Do you agree with her statements?

6 A I agree.

7 Q So I'm going to ask you one final question and
8 then turn you over to the judges and Respondent.

9 Can you explain to us how you, Mr. Alton or
10 anybody else at BBC attempted to defraud the State of
11 California?

12 A We did not.

13 MR. MC LAUGHLIN: Thank you, your Honors.

14 JUDGE RALSTON: Thank you.

15 Mr. Noble, did you have any questions for
16 Mr. Glueck?

17 MR. NOBLE: No, ma'am, we did not. Thank you.

18 JUDGE RALSTON: Thank you.

19 Judge Geary, did you have any questions?

20 JUDGE GEARY: No questions.

21 JUDGE RALSTON: Thank you.

22 And Judge Kwee, did you have any questions?

23 JUDGE KWEE: I have no questions. Thank you.

24 JUDGE RALSTON: Okay. I think we are going to break
25 in a few minutes, but I did want to check with the

1 parties. It's 11:30 right now. It looks like we have a
2 few more witnesses.

3 Yeah. Mr. Glueck, did you need to go?

4 MR. MC LAUGHLIN: He does. He needs to catch a
5 flight. Can I -- can we excuse him?

6 JUDGE RALSTON: Yes. You can go.

7 Yeah. So I wanted to check with the parties.
8 We can either take like a 20-minute break to give
9 everybody time to stretch their legs and things or we can
10 take like a little bit longer for lunch. Are the parties
11 okay with just doing a shorter break and moving forward?

12 MR. MC LAUGHLIN: I would propose, your Honor, we
13 have three witnesses left. Two of them I don't think
14 should take a lot of time. So if it would be
15 appropriate, maybe we could take a 10- to 15-minute
16 break, call one of the witnesses that also has travel
17 restrictions, and then if desired reconvene for those
18 that do not have travel restrictions.

19 JUDGE RALSTON: Okay. What are you estimating for
20 the remaining witnesses?

21 MR. MC LAUGHLIN: For Ms. Purdy, I would estimate 25
22 to 30 minutes. For Ms. Alvarez, 15 to 20. And for
23 Mr. Dressel, it will probably be 30 minutes as well.

24 JUDGE RALSTON: Okay. So is Ms. Alvarez the witness
25 with the --

1 MR. MC LAUGHLIN: Ms. Purdy is.

2 JUDGE RALSTON: Ms. Purdy. Okay. So that's about 30
3 minutes or so, or 25 or 30?

4 CDTFA, are you guys okay with taking like a
5 15-minute break or so?

6 MR. NOBLE: We are here at your leisure.

7 JUDGE RALSTON: Okay. Thank you.

8 And is that good with you, Ms. Munguia?

9 THE REPORTER: That's fine.

10 JUDGE RALSTON: So it is 11:35. We'll come back at
11 11:50. And just a reminder to the parties, if you remain
12 in this room, the livestream is still on, so make sure
13 you're -- you know, have your mics off. Thank you.

14 (Recess)

15 JUDGE RALSTON: Okay, everyone. We are back and
16 ready to begin.

17 And just to clarify, Mr. McLaughlin -- oh. We
18 are back on the record. Thank you.

19 Mr. McLaughlin, it was Ms. Purdy who had travel
20 issues?

21 MR. MC LAUGHLIN: She does, your Honor, yes.

22 JUDGE RALSTON: Okay. So after her testimony and our
23 questions, if she needs to leave, she can leave then.

24 MR. MC LAUGHLIN: We appreciate that. Thank you,
25 your Honor.

1 JUDGE RALSTON: Thank you.

2 Okay. So please begin when you're ready.

3 MR. MC LAUGHLIN: Thank you.

4 So we will now ask some questions of Ms. Purdy,
5 who has already been sworn in.

6
7 SARA PURDY,
8 called as a Witness, and having been previously duly
9 sworn by the Administrative Law Judge, was examined and
10 testified as follows:

11
12 DIRECT EXAMINATION

13 BY MR. MC LAUGHLIN:

14 Q Ms. Purdy, can you begin by just giving me a
15 general understanding of your educational background.

16 A Yes. I went to Colorado State University and
17 graduated with a B.A. in journalism and communication.

18 Q When did you obtain your degree from Colorado
19 State University?

20 A 1998.

21 Q And after you obtained that degree in 1998, what
22 was your employment history like?

23 A In 1998, I worked as a reporter, a news
24 reporter. And then in -- after that, I moved on to
25 teaching journalism, English, and business and things

1 like that at a high school level. And then I got into
2 event coordinating in Indio, California, and that's how I
3 started working with Best Beverage Catering.

4 Q So can you describe or explain a little bit more
5 in detail how it was you came to be associated with BBC.

6 A Yes. I worked for an event site in Indio and
7 through working there and hiring various vendors, one of
8 the vendors I hired was BBC to do the beverage
9 catering --

10 Q So --

11 A -- at a particular event.

12 Q So you worked for a venue. Do you recall what
13 venue that was?

14 A Corona Yacht Club.

15 Q And you said Crony Yacht Club?

16 A Corona.

17 Q So Corona Yacht Club hired BBC?

18 A Yes. We were looking at hiring them. One of
19 our clients actually was going to -- our catering client,
20 BBC was a preferred beverage provider for this particular
21 catering client.

22 Q So a catering client was going to enter into an
23 agreement with your employer, the Corona Yacht Club --

24 A Uh-huh.

25 Q -- to cater an event --

1 A Yes.

2 Q -- and they asked to contract --

3 A In turn, would --

4 Q -- with BBC?

5 A Yes.

6 Q And what services did BBC provide?

7 A They didn't end up providing services, but it
8 would have been beverage.

9 Q And you began your relationship with BBC at that
10 point?

11 A Yes.

12 Q Do you recall when that was approximately?

13 A 2000- -- summer of 2007 or summer of 2008.

14 Q What was your first job and responsibilities at
15 BBC when you joined them?

16 A I came on in the desert region at -- in Indio
17 helping and assisting one of my colleagues in her office,
18 so --

19 Q What did you do to assist her?

20 A I helped her put together proposals for people,
21 I helped her with sales in that particular office, and
22 then quickly transitioned into helping our lead vendor
23 coordinator coordinate vendors for festivals.

24 Q What proposals -- or can you describe what you
25 mean by that, you're putting together proposals with this

1 individual?

2 A They were catering proposals for on-site
3 catering at Empire Polo fields, which is where one of our
4 regional bases is.

5 Q Is BBC offering the catering or is BBC hiring
6 caterers?

7 A BBC was doing the beverage catering.

8 Q And then you said you transitioned from that
9 into working as a vendor coordinator; is that correct?

10 A Yes.

11 Q Can you describe what your responsibilities and
12 job is like as a vendor coordinator?

13 A Yes. My roles were to procure the vendors.
14 These are third-party vendors that we would hire for
15 festivals; to contract them, collect all of their
16 documentation, insurance, resale permits, all of those
17 things; and then once contracted, then I also did the
18 on-site management of these vendors --

19 Q So --

20 A -- so supporting them on-site.

21 Q So help me understand how you selected these
22 guys, these vendors, I should say.

23 A We work with the promoters. The promoters give
24 us a list, say, Hey, we want pizza, tacos or whatnot, and
25 then we would hire certain vendors based on the

1 promoters' wants and needs.

2 Q And you said there was kind of an onboarding
3 process and you mentioned documentation that you would
4 get from these vendors?

5 A Yes.

6 Q What type of documentation would you get from
7 vendors?

8 A In order to do an event, every vendor had to
9 have the proper insurance and they had to have their
10 resale permit and they had to sign our contract, put down
11 a deposit, agree to our commissions and our -- our rates
12 and whatnot.

13 Q How did BBC store those resale certificates?

14 A Filed them.

15 Q Paper files?

16 A Yes --

17 Q And where are --

18 A -- at that time.

19 Q And where are they today?

20 A We don't have them anymore because they were
21 taken in 2021.

22 Q But is it your testimony that vendors at
23 festivals at some point would have provided you a resale
24 certificate?

25 A Yes.

1 Q After you onboard a vendor, you were talking
2 about supporting them. Can you describe a little bit
3 about what that entails?

4 A Yes. The on-site management included loading
5 them in, placing them in the spot that was selected for
6 them. Let me backtrack a little bit.

7 Q Of course.

8 A We also -- we talked about this earlier with
9 their costs. We would order their tenting and their
10 power and all their infrastructure and on-site needs,
11 make sure that was set up for them. We would load them
12 in and get them placed; and then once the event started,
13 we would support any issues they may have. Power --
14 power goes out, we call the power company to help them.

15 We also sold product to them and then they
16 resold to the public. That was one of our
17 responsibilities as well.

18 So basically troubleshooting and managing and
19 just being there for them.

20 Q What type of products would you provide to these
21 vendors?

22 A Nonalcoholic products; water, soda, Gatorade.

23 Q Ice, things like that?

24 A Ice, yes.

25 Q Okay. And you provided tents as well, you said?

1 A Vendors were responsible for paying for the
2 tents, but we did -- we did order them.

3 Q So you ordered them and then either the vendor
4 paid or reimbursed?

5 A Reimbursed, and that was on their close-outs.

6 Q Okay. So it's a good segue, Ms. Purdy, to talk
7 about close-out statements. Are you familiar with their
8 use at BBC?

9 A Yes.

10 Q If I look at Exhibit 36, is this an example of a
11 close-out or checkout form?

12 A Yes.

13 Q Would you agree that this is for an event HARD
14 L.A. in 2013?

15 A Yes.

16 Q So we've heard testimony earlier today about how
17 these types of information or document was created. Do
18 you -- do you agree with that earlier testimony?

19 A Yes.

20 Q Were you ever involved in the production of
21 these types of forms?

22 A Yes.

23 Q Can you describe your involvement in how they
24 were put together?

25 A They were put together based on the -- the deals

1 we had with the vendors and basically tracking exactly
2 what we collected from them, what they owed to us, their
3 commissions, their fees and all of that, and then also
4 applying any sales tax that was owed as well.

5 Q So who provides the gross sales figures?

6 A At that time, the vendors would. They would
7 tell us what their sales were because we weren't tracking
8 through POS. It was all cash.

9 Q And then the calculation of the sales tax for
10 purposes of this, was that something that BBC did?

11 A Yes.

12 Q Who paid the sales tax for all of these items
13 though?

14 A At that time, the vendors were responsible for
15 their paying their sales tax.

16 Q Was this a common practice between the 2008
17 through 2013 period?

18 A Yes.

19 Q Would you distribute these concession vendor
20 forms to anybody else?

21 A The close-outs?

22 Q Yes.

23 A No. It was just between the vendor and BBC.

24 Q And what -- why would the vendor want a copy of
25 a close-out form?

1 A For a number of reasons: One, to know, you
2 know, what they were getting paid and to reconcile it
3 with their accounting and to know what they were
4 responsible for as far as sales tax.

5 Q Would BBC share this with anybody else, like the
6 promoter of the event?

7 A The promoter would get a copy, more of an
8 umbrella copy showing exactly what -- vendor sales and
9 then their sales tax. So they would get a line-item
10 amount.

11 Q And why would a promoter be interested in this
12 information?

13 A Because a promoter -- the promoters received
14 some of the commission from the vendors. So if we
15 charged -- for example, on these close-outs, if the
16 vendor pays us 40 percent, 30 percent of that is probably
17 going to go to the promoter and 10 percent to BBC.

18 Q If we're sticking with these vendor concession
19 close-out forms, do you recognize Exhibit 31?

20 A Yes.

21 Q If -- and this would be a close-out statement
22 similarly for BBC in the First City Festival in 2013 in
23 Monterey; is that correct?

24 A Yes.

25 Q So can you kind of describe how this process

1 works about collecting this information and what it
2 represents?

3 A Yes. This is a settlement that we provide for,
4 you know, both our accounting internal purposes but more
5 so for the client. So this is a client settlement. It
6 shows the client exactly the sales at every -- gross
7 sales at every single bar, every single food area, and
8 then it also shows the taxes that we take out before we
9 pay the commission. It shows an adjusted gross and then
10 it shows the commission that we are paying to the client
11 or promoter.

12 Q So, for example, on this document, Exhibit 31,
13 the column in column I for commissions, this is the
14 amount that BBC paid the promoter?

15 A Yes.

16 Q And that is based on, it looks like, varying
17 percentages but anywhere between 15 and 20 percent of the
18 adjusted gross sales; is that correct?

19 A Yes.

20 Q Going down this, you have certain ones that look
21 like Spicy Pie, who we've heard earlier about, Rocko's
22 Chocolate Tacos, Aunt Lali's Mobile Cafe, Soul on Wheels.
23 Are those examples of vendors, independent vendors?

24 A Yes.

25 Q Can you explain a little bit about the purpose

1 and process of these items that are entered down below
2 that say meal tickets, meal tickets, drink tickets,
3 catering invoice, on-stage water, artist bar?

4 A Yeah. The items below are what we call
5 billbacks and those are chargebacks to the promoter, so
6 those are actual things that they request on-site.

7 So, for example, catering invoice for 40,000.
8 On this, we provided meals for them and we charged them
9 back for them and we apply it to this overall settlement.

10 Things like meal tickets and drink tickets,
11 those are actual meal tickets and drink tickets the
12 promoter hands out to their different entities on-site,
13 whether it be sponsorship or their staff, and they, in
14 turn, turn in these meal and drink tickets to our bars or
15 our third-party vendors. We collect those at the end of
16 the event and then we bill them back for a
17 noncommissionable amount.

18 Q So you're reducing, in essence, the commission
19 due to the promoter because they have asked you to
20 provide these meals through your various vendors. Is
21 that accurate?

22 A Correct.

23 Q And that catering invoice for \$40,936, can you
24 explain again a little bit about what that was? And I
25 note that there's another tab on here for catering

1 details, so what exactly did BBC provide to First City
2 Festival and how was this accounted for and billed?

3 A We provided on-site meals for the promoter's
4 staff. So when I say "on-site," I mean during the event.
5 That could be, you know, two days prior to when the event
6 starts. It could be during or it could be after and it's
7 based on a number of people.

8 So it's basically an invoice within an invoice
9 to this certain promoter. And so we tracked all of the
10 meals we provided because BBC also does food catering, so
11 we tracked all the meals we provided and number of people
12 and then are billing them back on this particular
13 settlement.

14 So we're applying it to the total amount we owe
15 them. We're saying, Hey, we owe you from the
16 commissions, you know, whatever it is we owe them on
17 there, and then we're subtracting this out of it because
18 that's a service we provided for them on-site.

19 Q And what is the dressing room hospitality?

20 A Dressing room hospitality is oftentimes an
21 artist will ask us for a food platter and some beverages
22 or whatnot and so we will track that as well and bill the
23 promoter back for that.

24 Q And then similarly, if we also look at
25 Exhibit 34, this would be an example of a vendor

1 concession form for the FYF festival; is that correct?

2 A Yes.

3 Q Tell me a little bit about cash banks. Are you
4 familiar with their usage by BBC?

5 A Yes.

6 Q Can you explain that process?

7 A Cash banks were banks that were brought on-site
8 at the start of a festival just to get the festival going
9 at the time when we just had cash.

10 So, for instance, if a patron came up to buy a
11 beer and gave -- you know, first one on-site gave the
12 bartender \$10, then we would need that change to -- if
13 the beer was \$8, we'd need the \$2 to give.

14 Q And then at the end of the day, that was
15 redeposited?

16 A Yes.

17 Q And I think you mentioned earlier that you began
18 your career at F & B or BBC in Indio; is that correct?

19 A Yes.

20 Q Did you ever have any dealings outside Indio on
21 behalf of BBC?

22 A Yes. As a vendor coordinator, yes.

23 Q Where else were you a vendor coordinator, if you
24 recall?

25 A We did festivals nationwide. So primarily in

1 California, but I was in Denver for one. I was in
2 New York for one. So basically nationwide.

3 Q Did you ever have any dealings with the Rancho
4 Santa Fe Polo Club?

5 A No.

6 Q In your employment with F & B, did you ever
7 interact with Mr. Alton?

8 A Yes.

9 Q How frequently and in what capacity?

10 A Are we talking about the time period 2008 to
11 2013?

12 Q Correct.

13 A Very limited. As a vendor coordinator, I
14 reported to someone else who worked more closely with
15 Dirk and who provided my reports and passed those along.

16 Q Who was your vendor coordinator that you
17 reported to during these periods --

18 A Christine.

19 Q -- in 2008 through 2013?

20 A Sorry. Christine Anguiano.

21 Q Do you know who she reported to?

22 A Dirk.

23 Q Did you deal at all with Jesse Glueck during
24 this period 2008 through 2013?

25 A Yes, because we had to give him our reports from

1 the -- as he said earlier, he would match up the amounts
2 that were deposited with the amounts on our close-outs.
3 So if he had any questions, he would contact me.

4 Q So just to be clear, you were responsible for
5 putting together these checkout forms at various
6 festivals in 2008 through 2013?

7 A At some of them, yes.

8 Q And you would report that information to
9 Mr. Glueck?

10 A Yes, either through Christine to Mr. Glueck or
11 directly to Mr. Glueck.

12 Q What about Mr. Dressel? Did you ever have any
13 involvement or interactions with him while you worked at
14 F & B between 2008 and 2013?

15 A Very limited.

16 Q If it was limited, what, if any, communications
17 or relationships would you have with him?

18 A It would have been a question on a vendor
19 contract or a clause or something along those lines of
20 contracting.

21 Q So that's a good question. Let's talk about the
22 contracting process.

23 A Yes.

24 Q Who was involved in that?

25 A As far as creating the contract?

1 Q Correct.

2 A Mr. Dressel helped us to create those.

3 Q And, therefore, Mr. Dressel would be the one
4 that was interested in if there were clauses or issues to
5 be changed?

6 A Yes.

7 Q What was Mr. Alton's involvement in that
8 process?

9 A None, to my knowledge.

10 Q Did you ever receive any feedback about these
11 concessionaire vendor forms, somebody telling you to
12 change information or edit them?

13 A A vendor asking us that or --

14 Q Either, anybody, either a vendor or someone
15 within BBC.

16 A We would get questions from vendors just, you
17 know, wanting explanation on things, but no.

18 Q The gross sales are reported from the vendors;
19 correct?

20 A Yes.

21 Q Did anybody at BBC alter or instruct you to
22 change these documents at any point in time?

23 A No.

24 Q Somewhat in the interest of efficiency,
25 Ms. Purdy, as you've heard earlier today, one of the main

1 principal issues in this hearing is the allegations of
2 fraud, and the CDTFA's repeatedly alleged that Mr. Alton
3 acted fraudulently because he is a knowledgeable
4 businessperson. How would you respond to that statement
5 that Mr. Alton is a knowledgeable businessperson?

6 A As far as accounting and those areas of our
7 business, he's not.

8 Q What other areas of the business would you say
9 he's a little short on?

10 A I would say that he -- I think someone
11 previously said he takes like a bird's eye, 10,000-foot
12 view. So I would say anything to do with accounting,
13 bookkeeping formulas, Excel is out of the question.

14 Q So when the CDTFA argues that Mr. Alton
15 negotiated and executed event contracts, prepared these
16 summary schedules for event producers, and was personally
17 responsible for large event collection and deposits of
18 receipts, do you agree with those statements and
19 allegations?

20 A No.

21 Q Who would be responsible for executing event
22 contracts, preparing summary schedules, and depositing
23 cash?

24 A We have -- we have a system in place for that.
25 So the vendor coordinators would initiate the contracts

1 and get those and have them signed, and then any
2 settlement summaries like this, your salespeople or
3 basically your sales team creates those, and then the
4 process goes directly to Jesse and then to Jerry for
5 their respective categories. As far as depositing money,
6 any sort of accounting, any sort of back-end accounting
7 like the sales tax and whatnot, that's Jerry's
8 responsibility. So it filters. It's a process.

9 Q And Mr. Alton's involvement in that process?

10 A None.

11 Q Would you agree with the CDTFA's statement that
12 Mr. Alton has full control of the business operations?

13 A As far as accounting, no.

14 Q Is he in charge of other aspects of the business
15 operations?

16 A He oversees the entire Best Beverage Catering as
17 far as the operations, so the boots on the ground and
18 things like that, but, again, it's an umbrella view.

19 Q I want to take you back to this kind of
20 boots-on-the-ground comment that you just made --

21 A Uh-huh.

22 Q -- in particular about these events. You as an
23 event coordinator, would you be, quote, unquote, "boots
24 on the ground" during these events?

25 A Yes, in the trenches.

1 Q Why do you say "in the trenches"?

2 A Let me clarify. When I say Dirk boots on the
3 ground, he's just there talking to all the promoters and
4 all that. He's doing his job. He's doing the sales.
5 Boots on the ground in the trenches, vendor coordinating
6 is a very difficult job and you are -- you know, you're
7 in it. You're behind those food booths. It's hot.
8 It's -- you're cleaning out sinks. You know, you're
9 dealing with all their problems and their complaints.
10 It's -- that's what I mean by "boots on the ground."

11 Q Have you ever witnessed a CDTFA representative
12 at one of these events?

13 A I haven't, but I do know that at Coachella, they
14 would come on-site and actually check for the sellers'
15 permits with each and every booth.

16 Q And Coachella's an event that BBC similarly
17 provides these independent vendors at?

18 A Yes. That's one of our biggest events.

19 Q After you're kind of in the trenches, boots on
20 the ground, do you have any further involvement in the
21 processing of these checkout forms or relationships with
22 vendors?

23 A At this time, I also did the settlements, which
24 was also considered boots on the ground. So I would do
25 the settlements at the end of the night on some of the

1 events.

2 Q Describe the settlements. What do you mean that
3 you'd do the settlements and how does that differ from
4 these checkout forms?

5 A Same thing. So the checkout forms are applied
6 at settlement. So each vendor would come in and check
7 out or settle with us at the end of the event and we
8 would go over their close-out form, gather any meal
9 tickets they had and then come to that agreement and have
10 them sign, we'd sign, and then they would pay us.

11 Q And they would typically pay in cash? Is that
12 accurate?

13 A Yes. Yes.

14 Q And those close-out forms that you described
15 that you would go over with these vendors --

16 A Uh-huh.

17 Q -- were those physical hard copies?

18 A Yes.

19 Q Is that how CD -- excuse me -- BBC maintained
20 them, is physical copies?

21 A Yes.

22 Q And is BBC in possession of them now?

23 A No.

24 Q Why not?

25 A They were taken along with all of our files in

1 2021.

2 Q And they have not been returned?

3 A No.

4 Q And they were taken by the CDTFA; correct?

5 A Yes.

6 Q Did you personally handle any of the cash on the
7 close-outs with these vendors?

8 A As far as taking it out of their hands, yeah,
9 but then it was immediately passed to our cash team that
10 was present with us.

11 Q Who would be on the cash team and what was
12 their --

13 A That would be Jesse and his group.

14 Q And was there any type of -- it sounds like it,
15 but was there any type of accounting personnel present
16 during these events as well?

17 A Yeah. The vendor coordinators would be there
18 and then we would have a member of the cash team like
19 Natalie or Jesse there with us.

20 Q And you would consider them part of the
21 accounting team?

22 A Yes.

23 Q Ms. Purdy, did you have any involvement in some
24 of the nonfestival activities of BBC, some of the other
25 catering and other types of services?

1 A Not at that time.

2 Q Have you since?

3 A Yes.

4 Q And what is your role since this period of time,
5 by which we mean 2013, with respect to those other types
6 of services?

7 A We do a lot of private events. So we do sports
8 hospitality and events like that, so I'm involved in
9 those.

10 Q What's an example of sports hospitality?

11 A We do, for example, the Super Bowl, so we have a
12 client that hires us to do the beverage catering. So
13 we're not talking about public concessions and sales.
14 It's more of they're paying us to do them a service, to
15 provide the product and service.

16 Q And you deal with those vendors and those
17 promoters?

18 A Those clients, yeah.

19 Q I am aware and I believe it's in the briefing
20 material that BBC did also provide Super Bowl services
21 during this period of time. Are you aware of that?

22 A Yes.

23 Q Super Bowl's not located in the state of
24 California during this period of time, was it?

25 A I don't -- I don't remember, but I don't think

1 so. Maybe. One of them. I can't -- don't do that.

2 Q It might be a matter of common knowledge, but --

3 A Yes, probably in this room, but yeah, I don't
4 remember.

5 Q I appreciate that.

6 Ms. Purdy, I will rest and open up questions for
7 Respondent and the panel if they like in respect to your
8 time for travel.

9 JUDGE RALSTON: Thank you, Ms. Purdy.

10 Mr. Noble, did you have questions for Ms. Purdy?

11 MR. NOBLE: We have no questions. Thank you.

12 JUDGE RALSTON: Okay. Thank you.

13 Judge Geary, did you have questions?

14 JUDGE GEARY: Sure.

15 JUDGE RALSTON: Sure.

16 JUDGE GEARY: You said that CDTFA had staff at
17 Coachella and were checking for sellers' permits?

18 THE WITNESS: It could have been the -- excuse me.
19 It could have been the B -- it was someone checking to
20 make sure that they had them, so whoever that was in
21 Indio.

22 JUDGE GEARY: It depends on what year you're talking
23 about, but -- because it was BOE that did it --

24 THE WITNESS: Yeah. Yeah.

25 JUDGE GEARY: -- and CDTFA who has done it more

1 recently. So you personally witnessed this?

2 THE WITNESS: Yes, and I remember sitting in their
3 office for a very long time during -- making sure all
4 these vendors had these things.

5 JUDGE GEARY: In whose office?

6 THE WITNESS: In Indio. They had a local office.

7 JUDGE GEARY: All right.

8 THE WITNESS: Yep.

9 JUDGE GEARY: So were you -- did you mean to indicate
10 that they were actually at the event checking the vendors
11 for sellers' permits or did you mean that the checking
12 would take place at the office of BOE in Indio?

13 THE WITNESS: From what I recall, we would have to
14 submit all of their -- their sellers' permits in advance
15 and they would check it and give them the permission to
16 sell, but then they would also come on-site to check to
17 make sure that they had them posted.

18 JUDGE GEARY: So both?

19 THE WITNESS: Uh-huh.

20 JUDGE GEARY: Both in their office --

21 THE WITNESS: Uh-huh.

22 JUDGE GEARY: -- in Indio and on-site at the polo
23 grounds; right?

24 THE WITNESS: Uh-huh.

25 JUDGE GEARY: Is that where it was?

1 THE WITNESS: Uh-huh.

2 JUDGE GEARY: Just a couple of questions or maybe
3 just one about how you would receive cash from the events
4 from the vendors. Do you mean this literally that when
5 the -- at the conclusion of the last day of an event, you
6 would go vendor to vendor and collect cash from them?

7 THE WITNESS: They would come to our office, yes, and
8 settle with us there --

9 JUDGE GEARY: Your office in --

10 THE WITNESS: -- on-site. So we would have temporary
11 offices set up.

12 JUDGE GEARY: So you'd like move a trailer on-site --

13 THE WITNESS: Yes.

14 JUDGE GEARY: -- and that would be your office and
15 each vendor would come? Would this document, the
16 checkout form, be created as a result of them being in
17 the office to turn over the cash?

18 THE WITNESS: Yes.

19 JUDGE GEARY: So you would collect information from
20 them. Then the form would be completed, and would the
21 retailer or the vendor get a copy of the form?

22 THE WITNESS: Yes.

23 JUDGE GEARY: At that time?

24 THE WITNESS: Yes. They were required to sign it.

25 JUDGE GEARY: Okay.

1 THE WITNESS: Uh-huh.

2 JUDGE GEARY: Thank you. Those are all my questions.

3 Thank you, Judge.

4 JUDGE RALSTON: Thank you, Judge Geary.

5 Judge Kwee, did you have any questions?

6 JUDGE KWEE: Yes. This is Judge Kwee.

7 I had a question or two because I believe you
8 were the third witness to mention that CDTFA seized
9 records in 2021, so I had a couple of questions about
10 that.

11 Do you mean that CHP with CDTFA showed up at the
12 business and seized the records pursuant to a search
13 warrant?

14 THE WITNESS: Yes. We have three offices and they
15 showed up at all three and took all of the records from
16 all three.

17 JUDGE KWEE: Okay. And was that in connection with
18 the incident appeal or with the later appeal?

19 THE WITNESS: I don't know the answer to that
20 question.

21 JUDGE KWEE: Okay.

22 THE WITNESS: I'd defer to -- to our attorney for
23 that.

24 JUDGE KWEE: Okay. So there's -- I guess I wasn't
25 sure if there's also a separate matter going on that's

1 maybe like a criminal matter involving this period that
2 was involved with the records seizure or if the records
3 seizure is involved with the incident appeal.

4 Like I guess I was just trying to figure out the
5 relationship between the records seizure because I didn't
6 see a reference to that in the audit file or the audit
7 working papers and maybe -- Judge Ralston, do you mind if
8 I ask CDTFA if they can clarify?

9 JUDGE RALSTON: Please, go ahead.

10 JUDGE KWEE: Thank you.

11 CDTFA, could you clarify, were the records
12 seized for purposes of this audit or is that a separate
13 matter?

14 MR. NOBLE: To my knowledge, these were not seized.
15 At least as part of this determination, there's no
16 indication in any of our records. I think this period
17 was already determined and from what I can tell, I
18 believe this was conducted by our Investigations Division
19 and I don't have any privy or the right to find out what
20 they are investigating, whether it be criminal, civil, or
21 other matters.

22 JUDGE KWEE: Okay. Great. Thank you. That was the
23 only question I had about the records and the
24 relationship to this appeal, so I will turn it back to
25 Judge Ralston. Thank you.

1 JUDGE RALSTON: Okay. Thank you, Ms. Purdy. I think
2 that's all we have for you today.

3 THE WITNESS: Okay. Thanks.

4 MR. MC LAUGHLIN: Your Honor, we have two more
5 witnesses. I believe the testimony from Ms. Alvarez will
6 be somewhat brief. Mr. Dressel's may be a little longer.
7 How -- how would we like to proceed? Neither of which
8 have travel restrictions.

9 JUDGE RALSTON: Okay. I think let's maybe move on
10 with Ms. Alvarez and then we would take a break before
11 Mr. Dressel.

12 MR. MC LAUGHLIN: Thank you, your Honors. So we'd
13 ask Ms. Alvarez.

14
15 NATALIE ALVAREZ,
16 called as a Witness, and having been previously duly
17 sworn by the Administrative Law Judge, was examined and
18 testified as follows:

19
20 DIRECT EXAMINATION

21 BY MR. MC LAUGHLIN:

22 Q Thank you, Ms. Alvarez. Again, some preliminary
23 information and background about your educational
24 experience or your educational background. Would you
25 please provide that to us?

1 A I'm a high school graduate.

2 Q You have no higher level education, community
3 college, four-year degree, or anything like that?

4 A No.

5 Q Where did you go to high school?

6 (Reporter interrupted for clarification of
7 the record)

8 THE WITNESS: Cathedral City High School.

9 BY MR. MC LAUGHLIN:

10 Q And when did you graduate?

11 A 1998.

12 JUDGE RALSTON: I'm sorry. Was that Cathedral City?

13 THE WITNESS: Uh-huh. Cathedral City.

14 BY MR. MC LAUGHLIN:

15 Q What did you to do for work after you graduated
16 high school?

17 A I started my first job at a newspaper company,
18 the Desert Sun in Palm Springs, as an inserter and from
19 there moved to becoming a teller at Bank of America.

20 Q What did you do as a teller at Bank of America?

21 A I was a merchant teller.

22 Q What is a merchant teller?

23 A A merchant teller deals with primarily business
24 account holders, so it makes me -- I'm a little more
25 comfortable with large sums of money.

1 Q Did you receive any training from Bank of
2 America to be a merchant teller?

3 A Yes.

4 Q What was that like, a brief summary, please?

5 A Just a day-to-day standing behind somebody.

6 Q How to count cash --

7 A Yes.

8 Q -- and be accurate, I imagine?

9 A Yes. How to be accurate, how to do deposits,
10 how to work a money counter.

11 Q Was BBC a client of Bank of America?

12 A Yes.

13 Q Is that how you met BBC?

14 A Yes.

15 Q When did you first meet BBC and under what kind
16 of circumstances did you have relations with them?

17 A Probably about 2003, we had somebody come in and
18 ask if I would be interested in a -- working a weekend at
19 Coachella counting money.

20 Q Did you take them up on that offer?

21 A I did.

22 Q So explain kind of your involvement then
23 counting money at Coachella on behalf of BBC.

24 A As previously stated, about that time was purely
25 cash based. So I got to an event, sat in front of a

1 money counter an entire night and counted money;
2 generally beer-soaked money, but money.

3 Q And do you know the source of that money? Was
4 that, as we've heard other witnesses talk about today,
5 both from bar sales and from vendor commissions?

6 A Mine was primarily bar because that was BBC's
7 revenue.

8 Q Were others handling the nonBBC revenue from
9 vendors, the cash from them?

10 A That wasn't until the end of the event and it
11 was generally me.

12 Q So explain it. So there's a difference between
13 accounting for the cash from beverage sales, alcohol, and
14 counting cash for vendor sales?

15 A Correct.

16 Q What's the difference? How does that -- how do
17 those two processes work?

18 A Well, counting money for bars is counting it as
19 we are receiving it. Counting money for vendors is after
20 the fact.

21 Q Why would it be -- is it after the fact because
22 the vendor has received that themselves?

23 A Correct.

24 Q And they come to BBC reporting their gross
25 sales?

1 A Yes.

2 Q And they pay the sales tax on that?

3 A They should be, yes.

4 Q We heard testimony from Ms. Purdy a moment ago
5 about seeing representatives of either the Board of
6 Equalization or the CDTFA present at these festivals
7 verifying resale certificates. Did you ever witness
8 anything like that?

9 A No.

10 Q We've heard testimony before, but CDTFA has said
11 that Mr. Alton was the one that was personally
12 responsible for depositing that cash. Do you agree with
13 that statement?

14 A No.

15 Q What was your involvement with Mr. Alton during
16 this period of time?

17 A Very little, actually, at that time.

18 Q You're handling and counting a tremendous amount
19 of cash and you have little involvement with Mr. Alton?

20 A Correct. I worked in a small makeup trailer
21 with Jesse.

22 Q And what would happen to the cash after you
23 counted it?

24 A We would get it prepared for deposit.

25 Q How does it get prepared for deposit?

1 A We keep a record of all of the money coming from
2 each location or each bar and we would balance it at the
3 end and prepare it for an armored truck pickup.

4 Q So an armored truck would eventually take the
5 cash from you?

6 A Correct.

7 Q And were you involved in any way in the counting
8 of that cash beyond just simply counting it?

9 A No.

10 Q Did you -- did you tell anybody about, Hey, I
11 counted \$400?

12 A Yes. Like I said, we would -- it would all be
13 put together in some kind of spreadsheet or paper that
14 tells us what amount of cash was counted for each
15 location. That's why I said we would balance from said
16 report to actual cash that's being deposited.

17 Q So you would get the cash counted first and then
18 put it in the reports or you would get the reports first
19 and balance it to the cash you counted?

20 A It was simultaneous. We would count money,
21 write it in a report or type it onto an Excel spreadsheet
22 simultaneously. So at the end, whatever my balance was
23 here had to match my cash here.

24 Q Did you ever notice any discrepancies or
25 material discrepancies in reconciling those checkout

1 forms and the cash counted?

2 A In terms of the bar, sometimes, only because, as
3 I said, beer-soaked money kind of doesn't like to go
4 through a machine easily.

5 Q What about nonbeer or nonalcoholic sales? Do
6 you ever remember situations of material differences
7 between these vendor checkout sheets and the amount of
8 cash actually counted?

9 A No.

10 Q And who do you report that information to about
11 the cash counted and the vendor commission statements?

12 A To Jesse.

13 Q Do you know what Jesse does with that
14 information?

15 A No.

16 Q And you did not report that to Mr. Alton;
17 correct?

18 A No.

19 Q Do you provide any other services since your
20 employment with BBC, or I should -- let me go back.

21 You said you began at Coachella.

22 A Correct.

23 Q Approximately when?

24 A Approximately 2003.

25 Q 2003?

1 A Uh-huh.

2 Q In the period at issue here, 2008 through 2013,
3 did you also provide those same services at Coachella?

4 A Yes.

5 Q Did you provide it anywhere else?

6 A Yes.

7 Q Can you give us some examples of locations or
8 festivals?

9 A From that time, 2008 to 2013?

10 Q Yes.

11 A We did FYF, Day of the Dead, Stagecoach. There
12 are various small little events. It was a very long time
13 ago.

14 Q In your experience, did the manner and method in
15 which BBC accounted for this in the vendor checkouts and
16 so on as you've described it and you have heard others
17 describe it, did it remain consistent through 2008 to
18 2013?

19 A Yes.

20 Q That's the way BBC also did business during this
21 period?

22 A Correct.

23 Q You said that you -- has your -- other than
24 counting cash, have you been, during this period or
25 since, tasked with any other responsibilities at BBC?

1 A Yes. I went from part-time to full-time
2 employment with BBC in 2015 and I started as accounts
3 payable clerk.

4 Q So what does an accounts payable clerk do?

5 A I enter invoices into QuickBooks and make sure
6 we receive all invoices and credits that are due to be
7 paid. I also did some staffing.

8 Q Let's focus in on the payables for a second.

9 A Uh-huh.

10 Q BBC would receive an invoice for payment?

11 A Uh-huh.

12 Q You would enter that in QuickBooks?

13 A Correct.

14 Q Did you do anything else?

15 A Now, I can print out payables reports. We
16 review statements. There is various things that are done
17 in accounts payable.

18 Q And what is Mr. Alton's involvement in entering
19 those payables and the data in QuickBooks?

20 A He has no -- he doesn't do anything with that.

21 Q Does anybody else do it besides you?

22 A Jesse.

23 Q And is that Mr. Glueck, who testified earlier
24 today?

25 A Yes.

1 Q Do you believe Mr. Glueck to be a credible
2 individual?

3 A Yes.

4 Q You worked at Bank of America; correct?

5 A Correct.

6 Q You were handling cash for lots of customers at
7 Bank of America; correct?

8 A Correct.

9 Q You would have been then familiar with certain
10 items in the industry dealing with fraud and suspicious
11 account activities; correct?

12 A Correct.

13 Q Would you receive training about identifying
14 suspicious cash activities and what might constitute
15 fraud in your employment at Bank of America?

16 A Yes.

17 Q Can you basically describe a little bit about
18 what you were instructed or learned about fraud in your
19 employment at Bank of America.

20 A In my employment there, they taught us to look
21 for a lot of small invoices that -- I'm sorry -- a lot of
22 small deposits that could be considered money laundering.
23 Sometimes you'll have somebody come in and make a lot of
24 small deposits that are all under a large transaction.
25 \$10,000 is Bank of America's limit, so we were kind of

1 taught to keep a lookout for that -- like how many of
2 these transactions did they do in a month? How many did
3 they do in a few days -- to report suspicious activity.

4 Q So you kind of had an ability to smell out
5 fraudulent activity?

6 A Kind of, yeah.

7 Q Did BBC structure its deposits to be under the
8 \$10,000 limit?

9 A No. BBC's deposits were massive.

10 Q In your experience, based on your experience and
11 education at Bank of America, do you think that BBC's
12 conduct was fraudulent?

13 A No.

14 MR. MC LAUGHLIN: Nothing further, your Honors.

15 JUDGE RALSTON: Thank you, Ms. Alvarez.

16 Mr. Noble, do you have any questions?

17 MR. NOBLE: No, we don't. Thank you.

18 JUDGE RALSTON: Okay. Thank you.

19 I have a question.

20 THE WITNESS: Uh-huh.

21 JUDGE RALSTON: With regard to the vendors, when they
22 would report their cash at the -- or their sales at the
23 end of the day, was there any kind of verification or is
24 it just -- I guess would there be any way to verify that
25 or it was just based on what they provided?

1 THE WITNESS: At that time, it was really what they
2 provided.

3 JUDGE RALSTON: Okay. Thank you.

4 Judge Geary, did you have any questions?

5 JUDGE GEARY: No questions. Thank you.

6 JUDGE RALSTON: Thank you.

7 Judge Kwee?

8 JUDGE KWEE: I have no questions. Thank you.

9 JUDGE RALSTON: Okay. Thank you.

10 So I just want to check in with everybody
11 timewise. It is 12:35 and we have one more witness plus
12 we have CDTFA's presentation and Appellant's rebuttal.

13 Did you guys want to push through? I do want to
14 take a break, but we can take a break for lunch or we can
15 take a short break and then keep going. So I'll leave it
16 up to you guys.

17 MR. MC LAUGHLIN: Your Honor, a short break would be
18 great, but I'd defer to the panel.

19 JUDGE RALSTON: Okay. CDTFA?

20 MR. NOBLE: We're on the side of a short break as
21 well, but also we'll defer to OTA on this. Thank you.

22 JUDGE RALSTON: Okay.

23 JUDGE GEARY: Is our reporter going to be okay for --
24 we're talking about -- how much time were you given for
25 your rebuttal?

1 JUDGE RALSTON: Ten minutes.

2 JUDGE GEARY: Ten. And is it -- how long for the
3 Department's?

4 MR. NOBLE: About 25 minutes is how long we were
5 given.

6 JUDGE GEARY: What do you think on the testimony of
7 your last witness? How much time?

8 MR. MC LAUGHLIN: Probably 30 minutes.

9 JUDGE GEARY: Okay. If we could take a short break,
10 I'm fine going through.

11 JUDGE RALSTON: Okay. Is everybody good with like
12 ten minutes or so?

13 JUDGE KWEE: Is the stenographer going to be okay
14 with --

15 JUDGE RALSTON: Are you okay with like a ten-minute
16 break?

17 Okay. It is 12:36. We'll come back at 12:46.
18 Thank you.

19 (Recess)

20 JUDGE RALSTON: Okay. Thank you, everyone. We are
21 now back on the record and I think we are beginning with
22 Mr. Dressel's testimony.

23 MR. MC LAUGHLIN: Thank you, your Honors. It's Jerry
24 Dressel.

25 JUDGE RALSTON: Dressel. Thank you.

1 JERRY DRESSEL,
2 called as a Witness, and having been previously duly
3 sworn by the Administrative Law Judge, was examined and
4 testified as follows:

5
6 DIRECT EXAMINATION

7 BY MR. MC LAUGHLIN:

8 Q Good afternoon, Mr. Dressel. I'd like to begin
9 today by just having you give us a brief explanation of
10 your educational background.

11 A I have a degree from San Diego State University
12 in accounting from 1976.

13 Q Are you a licensed CPA --

14 A Yes.

15 Q -- in the state of California?

16 A Yes.

17 Q When did you first obtain your license as a CPA?

18 A 1980.

19 Q Has that license ever been revoked or suspended?

20 A No.

21 Q To your knowledge, have you ever been the
22 subject of a malpractice, negligence or any type of
23 ethical violation or inquiry?

24 A No.

25 Q After you obtained your degree from San Diego

1 State University, what was your employment history?

2 A I -- I was working in a local firm in San Diego.
3 I did that for a number of years and --

4 Q What type of work were you doing for this local
5 firm?

6 A It was a CPA firm and I was doing tax returns,
7 financial statements, filing tax returns, filing property
8 tax statements. The returns and individual returns and
9 the other returns would have been corporate or
10 partnership.

11 Q Were these primarily income tax returns or did
12 you have the opportunities to prepare returns for other
13 types of taxes?

14 A Other types of taxes would have been property
15 taxes, sales taxes.

16 Q And that was beginning around when?

17 A That was in 1980.

18 Q And how did it come to be that you took
19 employment or a working relationship with BBC?

20 A In 2000, I was referred to BBC by an attorney
21 that I had a relationship with and that they also had a
22 relationship with.

23 Q And in what capacity did you begin providing
24 services to BBC?

25 A They were having some struggles with their

1 accounting and a few management issues and some planning
2 issues and I was referred by that attorney to assist them
3 in those areas.

4 Q So around 2000, what -- what was your
5 understanding of what problems BBC was having with its
6 accounting?

7 A Just basically volume and changes in the
8 industry and changes in how they were recording things.
9 They were starting to experience some growth and the
10 other side of it was planning, just trying to develop a
11 general business plan.

12 Q So let's break those two apart.

13 How was BBC accounting for sales and income
14 before your involvement?

15 A Well, before my involvement, they were recording
16 sales as they were run through QuickBooks in a system
17 that built into QuickBooks. So they would produce an
18 invoice, record it in QuickBooks, and move on from there.

19 Q And how did that change after your relationship
20 with BBC?

21 A Well, they were starting to get into more cash
22 events and we started to structure the stuff that was --
23 or I should say events, period, and we changed it to
24 accommodate what was going on in the festival world or
25 the other small events that were off the grid from the

1 standpoint of a typical catering invoice.

2 Q And you said in that "we" started making those
3 changes. To whom are you referring in that statement,
4 "we"?

5 A Dirk and myself and Jesse.

6 Q And how is -- you mentioned earlier that you
7 were involved in planning. Business planning on behalf
8 of BBC?

9 A Yeah, just kind of developing a strategic plan
10 on where we needed personnel and sort of trying to
11 achieve some growth goals.

12 Q And were you involved in the decision about
13 personnel and opportunities for growth, you personally?

14 A No.

15 Q Who was in charge of that?

16 A The respective department heads.

17 Q What would an example of a department and a
18 department head be?

19 A Jesse Glueck would have decided how many people
20 he needed.

21 Vendor coordinators were starting at that point
22 or a little bit later maybe and they would decide how
23 many people they needed.

24 There was a staffing division that was in charge
25 of staffing for local events as well as the big events

1 and just general private parties.

2 So there were various departments, including
3 operations, warehouse.

4 Q And what was Mr. Alton's involvement?

5 A He more or less decided who was going to be a
6 department head.

7 Q Did you engage with him frequently --

8 A Yes.

9 Q -- Mr. Alton?

10 A Yes.

11 Q And would that be from your entire tenure at
12 BBC?

13 A Yes.

14 Q Are you an employee at BBC or are you a
15 contractor?

16 A I was a contractor up until the pandemic and
17 then they put me on the payroll.

18 Q So you're currently an employee of BBC?

19 A Correct.

20 Q But before that, you were providing services as
21 an outside accountant?

22 A Correct.

23 Q Did you prepare BBC's income tax returns?

24 A I did.

25 Q Did you prepare any other tax returns on behalf

1 of BBC?

2 A Sales tax returns, property tax returns.

3 Q Is anybody else involved in that process?

4 A Well, there's people involved in the process.
5 For the final filing of the return, that is filed by me,
6 myself.

7 Q You were the one that ultimately files it; is
8 that correct?

9 A Correct.

10 Q Explain that process then. Who else is involved
11 and how?

12 A As far as property tax returns, which are not on
13 the subject here, but the property tax returns is usually
14 on the fixed assets and the fixed assets have to be
15 recorded. They're recorded on a basis of where they
16 physically sit and then the property tax has to be filled
17 out for that particular county. So that's an ongoing
18 process that happens throughout the year.

19 Q Who's involved in that process?

20 A Basically, people in accounts payable.

21 Q Okay.

22 A Jesse would also be involved in that. Jesse
23 Glueck would also be involved in that.

24 Q Is Mr. Alton involved in that process?

25 A No. The sales tax returns are basically --

1 there's -- there are two sets of books. In other words,
2 there's two offices that created and recorded sales in
3 two different QuickBooks and I had to combine the two
4 QuickBooks. Jesse would produce a sales tax sheet that
5 he would give to me and I think you went through that
6 with him earlier.

7 Q Would that be, for example, Exhibit 41?

8 A That's correct.

9 Q So in Exhibit 41 is the work product of --

10 A That's Jesse's work product that he would --
11 hold on one second -- that he would submit to me.

12 Q And continue. You were saying that --

13 A From that standpoint, as you can see, there's no
14 sales under San Diego in that because San Diego records
15 their sales independently. So I would add San Diego or
16 any books that were recorded in San Diego or the
17 Palm Springs books on to that because they were just
18 recorded differently for purposes of both ease and how
19 the company was organized.

20 Q So explain that. Why do we -- it's easier and
21 it was organized with Northern California and the
22 San Diego office for maintaining books and records?

23 A It's the way it evolved. It wasn't ideal, but
24 it evolved that way and even though we have attempted
25 several times to combine the books, we haven't been able

1 to achieve that until recently; but the San Diego books
2 recorded San Diego operations, which would be the various
3 venues in San Diego and private parties, and then the
4 Palm Springs books would apply to events in Riverside
5 County and the Indio area.

6 Q And who's responsible for maintaining the
7 northern, I guess, San Francisco books? I think you said
8 that was Jesse Glueck?

9 A That was Jesse who's the ultimate responsible
10 person.

11 Q And who is responsible for maintaining the books
12 in San Diego and Riverside Counties?

13 A I was the ultimate responsible person.

14 Q Who else was involved in that process of
15 maintaining the books in San Diego and Riverside?

16 A At various times, there's various people, but
17 Elisa Burr was probably the most recent and was there
18 during this time period that we're discussing. There
19 have been other accountants and bookkeepers involved in
20 it over the years. Currently it would be Stacy Egusa.

21 Q I'll get to it in a moment because featured in
22 the work papers from CDTFA is taking data that you
23 differentiated between San Diego taxable and San Diego
24 nontaxable sales. Are you familiar with your separation
25 of those two types of transactions?

1 A Yes.

2 Q How did you differentiate between something that
3 was a San Diego taxable and a San Diego nontaxable sale?

4 A It depended on the nature of the sale.

5 For example -- and some of them weren't sales.
6 Some of them were reimbursements. San Diego sends -- the
7 payroll for an operation in the desert called a Tack Room
8 Tavern is run through the Best Beverage Catering, F & B
9 Associates. They charge the Tack Room Tavern, which is a
10 joint venture of BBC and Empire Polo Club. They -- and
11 they report their own sales and their own item. They
12 then -- we charge them and then they reimburse them --
13 reimburse us.

14 There is another operation in the desert --

15 Q Let me just pause you there. Is this almost
16 like an employee leasing arrangement?

17 A Correct.

18 Q And that's for the Tack Room?

19 A Correct.

20 Q Sorry. You were going to say something about
21 another?

22 A There's another operation in the desert that
23 started in the last couple of years called Skip's Little
24 Bar and it's the same kind of format.

25 Q Did San Diego -- and we've heard testimony that

1 would be pertinent to Riverside concerning Coachella and
2 Stagecoach, but did San Diego have similar festivals where
3 concessionaires or vendors were present?

4 A They did.

5 Q And was anything that you heard today about the
6 vendor checkout forms and the operations about recording
7 reimbursements any different than the way San Diego
8 handled it?

9 A No.

10 Q Were you ever involved in the checkout forms?

11 A Yes.

12 Q Describe your involvement in those checkout
13 forms.

14 A For the larger festivals or even some local
15 festivals, it just depended on the festival. I would
16 look at the close-out forms and the recap and use those
17 both for sales tax purposes but also making sure that the
18 commissions were recorded correctly and paid correctly
19 and I might dive into a particular vendor for some
20 reason. It just depended on the situation, but mostly it
21 was making sure they were all recapped correctly and, you
22 know, proper sales tax rate was applied and making sure
23 that they were billed for everything, billed back for
24 everything they had used.

25 Q Have you ever been, as we've heard described

1 today, in the trenches of these types of events or
2 festivals?

3 A Yes.

4 Q Which ones?

5 A Coachella, several times.

6 Q And would that also be during this audit period
7 of 2008 through 2013?

8 A Probably 2012, 2013.

9 Q Not after 2013?

10 A Yeah, after '13.

11 Q But 2012, 2013, you would describe yourself as
12 being in the trenches at those?

13 A Yes.

14 Q We heard testimony earlier today that
15 representatives from the Board of Equalization or CDTFA
16 were present and reviewed resale certificates for these
17 vendors at the events.

18 A Yes.

19 Q Did you ever witness that?

20 A Yes.

21 Q Do you believe that all of these vendors had
22 resale certificates?

23 A Yes.

24 Q Did you see them?

25 A I verified -- I spot verified them. I can't say

1 I verified every one, but that was one of the charges of
2 the vendor coordinators.

3 Q You -- we've gone in great detail about these
4 checkout forms, these vendor checkout forms, and as I
5 understand it, that information at some point was
6 provided to the promoters; is that correct?

7 A In a recap form, yes.

8 Q Why was it provided to the promoters in a recap
9 form?

10 A They wanted to know how much commission they
11 were getting off of those vendor sales.

12 Q And those would not also -- those would also
13 include BBC's alcohol sales; correct?

14 A On a separate sheet, yes.

15 Q So you'd have a sheet that provided to the
16 promoter the list of BBC alcohol sales and another sheet
17 that would provide information about the vendors; is that
18 correct?

19 A Yes, and then one that brought it all together
20 in another sheet.

21 Q And the purpose of providing that to them was
22 what?

23 A Money. They wanted their money.

24 Q Were those ever examined, questioned,
25 challenged, audited?

1 A The -- the sheets themselves were not
2 necessarily audited. The check on that was not only --
3 well, because there was two people involved in the
4 sheets. There was the vendor and there were us, so
5 there's two people with opposite views on what should be
6 on the sheet.

7 We -- at one time, and I don't even know what
8 time period this was. I just can't recall. When we
9 hired the promoter and in conjunction with us, we hired
10 an outside event auditing team.

11 Q For what purpose?

12 A To make sure that everybody was doing what
13 they -- that they were reporting all their sales.

14 Q Did you as part of that process identify any
15 material misstatements or errors?

16 A They did. They did in several certain
17 circumstances and if there was a problem or an error,
18 that vendor was removed.

19 Q So the problems were on the vendor side
20 providing gross sales back to BBC?

21 A Correct.

22 Q Did they ever verify BBC's reported sales to the
23 promoter?

24 A Absolutely.

25 Q So just to be clear, you had somebody take a

1 look, a third party, take a look at BBC's reported sales
2 backup to the promoter?

3 A The promoter hired them to keep an eye on us and
4 audit us and we had a loss run that we had to work within
5 and we were always below. I think they allowed us
6 4 percent and we were in a 2 to 3 percent loss rate.

7 Q What do you mean "loss rate"?

8 A Evaporation, shortages, just typical type stuff
9 of inventory shrinkage.

10 Q So these auditors from the event promoters
11 audited BBC's books and records and those would consist
12 of the same things that the CDTFA was provided during the
13 audit; correct?

14 A These auditors audited the books and records of
15 a particular festival.

16 Q A particular festival that would have been
17 contained in BBC's records; correct?

18 A Correct.

19 Q And to your recollection, did they ever find any
20 material errors?

21 A Never.

22 Q You were involved in the examinations or the
23 audits for BBC, both the first and the current one; is
24 that correct?

25 A That is correct.

1 Q I want to kind of go through some exhibits here,
2 if you will.

3 MR. MC LAUGHLIN: And the first one, panel, I'd like
4 to look at, Exhibit 24.

5 BY MR. MC LAUGHLIN:

6 Q This is a memorandum of an interview of
7 yourself; correct?

8 A Correct.

9 Q And you recognize the signature on the last page
10 is yours?

11 A That's correct.

12 Q Okay. On page two of this, I want to just ask
13 you a couple follow-up questions. It indicates in there
14 that the last time that you recalled hearing from anybody
15 at the CDTFA was when you provided them a statute
16 extension. Do you recall giving statute extensions to
17 representatives of the CDTFA?

18 A I do.

19 Q You provided many of them; correct?

20 A Correct.

21 Q Because when we look at Exhibit E from
22 Respondent, there's a series of BOE Form 122 that were
23 provided during the course of this audit; correct?

24 A Correct.

25 Q You executed one or Mr. -- I should correct and

1 say Mr. Alton signed one on January 5th, 2012?

2 A Correct.

3 Q Did you provide this to Mr. Alton?

4 A Yeah. I think we had a meeting and I threw it
5 in front of him.

6 Q And you instructed him to sign it?

7 A Yes.

8 Q Were you aware of the fact that you didn't
9 actually have to sign this?

10 A Yes.

11 Q Why did you choose to do so or instruct
12 Mr. Alton to do so?

13 A We were cooperating with the -- with the audit,
14 the auditors. They asked us to sign it and, quite
15 frankly, the way it came about was the auditors would ask
16 for documents. We'd provide them, and then they'd
17 disappear for six to eight weeks and then they'd show up
18 again and say we've got a week to do this or you have to
19 file an extension of the statute.

20 Q So, again, you filed extensions or instructed
21 Mr. Alton to sign additional statute extensions on
22 July 12th, 2012; correct?

23 A Correct.

24 Q And if we continue with Respondent's Exhibit E,
25 there's one on December 12th, 2012. There's one on

1 February 2nd, 2013. There's another one here, what
2 appears to be August 29th, 2013. You had them sign
3 statute extensions on April 7th, 2014?

4 A Correct.

5 Q On September 23rd, 2014, you were the one that
6 signed the statute extension; correct?

7 A I couldn't find him --

8 Q Couldn't find him?

9 A -- or he was out of town or it was just a matter
10 of convenience. I had a power of attorney, so I was
11 qualified to sign them.

12 Q And on March 26, 2015, you again extended the
13 statute of limitations.

14 A Correct.

15 Q October 12th, 2015, BBC again extended the
16 statute of limitations.

17 A Correct.

18 Q February 22nd -- excuse me -- 26th, 2016, BBC
19 again extended the statute of limitations; correct?

20 A Correct.

21 Q And it did so why?

22 A To cooperate with the auditors.

23 Q Also in Exhibit E from Respondent is a letter
24 dated February 21st, 2014. Do you see that?

25 A I do.

1 Q It's a letter from Charles Hetu --
2 A Hetu.
3 Q -- addressed to yourself; correct?
4 A Correct.
5 Q It's not addressed to BBC, although it is
6 copied; correct?
7 A Yes.
8 Q And it's -- he writes to you in there and says,
9 "I first met with you on December 2nd, 2013." Is that
10 correct?
11 A Yes.
12 Q Was that your first meeting, to your
13 recollection, with Mr. Hetu?
14 A I don't have my records with me, but I have no
15 reason to doubt that it would be.
16 Q And this meeting was in person?
17 A Yes.
18 Q Do you remember where the meeting occurred?
19 A I believe it was in my office.
20 Q So you invited the CDTA into your office?
21 A Yes.
22 Q You voluntarily let them in and he says in here,
23 "During the month of December, you provided sales data
24 and financial records."
25 A Yes.

1 Q You voluntarily and freely provided those to
2 him; correct?

3 A Yes.

4 Q And those sales data and financial records, what
5 did that consist of?

6 A Basically, anything he might have asked for,
7 which would have been general ledgers, accounting
8 records. It could have been source documents. It could
9 have been bank statements.

10 Q Do you believe you withheld anything from him?

11 A Never.

12 Q You signed the Petition for Redetermination in
13 this case, what we have as Exhibit 4 --

14 A Yes.

15 Q -- not Mr. Alton.

16 A Correct.

17 Q Why?

18 A I was cooperating with the CDTFA and he wasn't
19 knowledgeable of the situation and he had given me
20 authority to sign it.

21 Q Did you have a discussion with him about the
22 outcome of the audit up until that point?

23 A Yes.

24 Q And can you explain what you and Mr. Alton
25 discussed about the first audit?

1 A I told him where we had started and where we
2 were now and what they were doing about various penalties
3 and where we were headed and other documents they were
4 asking for.

5 Q And where were you heading?

6 A Everything was going lower. The assessed tax
7 was going lower. I don't remember the exact date that
8 they removed the fraud penalty. They were talking about
9 removing a negligence penalty, but they realized that a
10 number of assumptions that they had made had been
11 incorrect.

12 Q And we have already addressed this a little bit,
13 but Exhibit 21 is the D and R from the first audit period
14 and it says appearing on behalf of Petitioner, meaning
15 Appellant in this case, BBC, is just you?

16 A Correct.

17 Q Mr. Alton was not present during that appeals
18 conference?

19 A No.

20 Q Why not?

21 A I'm not sure where he was, but he wasn't
22 qualified to be there.

23 Q What do you mean he was not qualified to be
24 there. He's the person who owns the company.

25 A He's the person that owns the company, but he

1 doesn't have any clue as to what they're talking about
2 when they're talking about assessing tax and what's
3 taxable and what's not taxable.

4 Q Continuing in this Exhibit 21, okay, on
5 page three, there's a portion in here that says that on
6 July 16th, 2012, you filed the Petition for
7 Redetermination. Was that you?

8 A Yes.

9 Q Okay. Later on, on page seven of this exhibit,
10 beginning on paragraph six, it says that you contend that
11 the Department did not make allowances for deposits,
12 commissions, and reimbursement payments related to
13 unreported sales in 2007 Coachella event and the 2007
14 Stagecoach event.

15 A Correct.

16 Q Those allowances, the deposits, and your
17 position that the CDTFA or the BOE did not make those
18 correct adjustments, is that the same types of arguments
19 that you've heard presented today?

20 A Yes.

21 Q Did you explain this to the CDTFA or the BOE
22 during the course of the first audit?

23 A Numerous times.

24 Q And how has your explanation of the way BBC had
25 done -- did business changed? How has your explanation

1 of how it has done business changed over the years?

2 A It's never changed.

3 Q You've been consistent in your explanations, as
4 we've heard others testify to today?

5 A Yes.

6 Q On page nine of the Exhibit 21, beginning on
7 paragraph 24, the author says that petitioner, being BBC,
8 has not presented any evidence to establish that all or
9 any portion of the 1.2 million-dollar amount for the 2007
10 Coachella event were nontaxable sales. Accordingly,
11 there is no basis on which to recommend any reduction to
12 the measure of tax for this item.

13 Do you agree with that? Did you not provide
14 information about the 2007 Coachella event?

15 A I did provide information and it was the vendor
16 close-out sheets.

17 Q And they did not accept it?

18 A No.

19 Q But that's consistent with the explanations that
20 were provided here today about how BBC does business?

21 A Yes.

22 Q You've, Mr. Dressel, already demonstrated an
23 ability to petition a redetermination and it's customary
24 before the CDTFA would make an assessment that they'd
25 send an option letter advising you that you can further

1 protest this D and R to the Board of Equalization and now
2 the OTA. Do you ever recall getting an option letter
3 with respect to this first audit?

4 A Yes.

5 Q Do you agree that -- do you believe that this
6 first D and R was still erroneous?

7 A Yes.

8 Q Why didn't you appeal it?

9 A I got sick.

10 Q What do you mean you got sick?

11 A I almost died.

12 Q What do you mean you almost died?

13 A Spinal meningitis and encephalitis and a coma.

14 Q And you were in a coma?

15 A Nine days.

16 Q During which period of time?

17 A August.

18 Q August of when?

19 A 2016.

20 Q So August of 2016, you were in a coma?

21 A Yes.

22 Q Why didn't anybody else at BBC file a response
23 to that option letter?

24 A They didn't know about it.

25 Q Had you taken the opportunity to continue to

1 protest it, do you think the outcome of this October 2005
2 through September 2008 period would have been different?

3 A Yes.

4 Q I want to ask you some questions, Mr. Dressel,
5 about the way -- because you indicated that you
6 consolidate the books and records from San Diego and
7 Northern California under Mr. Glueck's control.

8 A Correct.

9 Q How do you do that? What does that process look
10 like?

11 A I take the sales tax information that he
12 provides me and I then -- excuse me -- and then I take
13 the information from the San Diego general ledger, I add
14 that information on the sales tax worksheet, and I do
15 certain tests and looking at certain things to make sure
16 they're consistent with prior periods or what I know is
17 going on. For instance, if there's no sales in Riverside
18 in April of any year, I -- in Riverside County, I know
19 that's wrong because that's Coachella or Stagecoach
20 because I have a general feeling or knowing what's going
21 on. And if I have to, I look into to find out whether
22 it's a timing issue or if there's another issue and it's
23 reported in a different way, and sometimes it's even that
24 I think that something happened in-state and it
25 happened -- I mean, it happened in-state and it happened

1 out-of-state.

2 Q There were certain transactions, Mr. Dressel,
3 and I wanted to understand how BBC's books and records --
4 we heard testimony about FYF fest, First City, HARD L.A.,
5 that come from Mr. Glueck in San Francisco to you. Is
6 that accurate?

7 A Say it -- say it -- can you say it again.

8 Q Sure. That information we've heard testimony
9 today about certain events like FYF, HARD L.A., the sales
10 figures from those are ultimately transmitted to you;
11 correct?

12 A They're transmitted to both Jesse and myself and
13 depending on who is responsible, they're the one who
14 records them in the books.

15 Q And where in the books are they recorded? I
16 guess my question is is it accurate that those are in the
17 "other party" category?

18 A Yes. Well, his books, yes.

19 Q So the Northern California books of Jesse's are
20 recorded in the "other party" --

21 A "Other party" revenue.

22 Q -- 50-50 revenue? Yes?

23 A Uh-huh.

24 Q And what about San Diego's and Riverside's?
25 Where do you record those?

1 A They're set up slightly differently just because
2 of how they were set up and they're recorded under -- by
3 a specific general ledger account to the venue or a
4 miscellaneous venue category.

5 Q We've seen in the CDTFA's work products
6 categories of San Diego taxable and San Diego nontaxable.

7 A Correct.

8 Q How and why would you put a transaction in
9 something that was taxable versus nontaxable?

10 A If it's subject to sales tax, it goes in
11 taxable. If it's not subject to sales tax, such as
12 expenses that were reimbursed, space rent, it could have
13 been even -- we could have been a subcontractor to a
14 catering company and it could have been that we just
15 received a fee or we were never the primary person
16 responsible for it.

17 Q So I'm sorry. Who makes that decision that it's
18 subject to sales tax or not subject to sales tax?

19 A It's usually done -- it's subject to the person
20 that really kind of recorded the sale but verified down
21 the road as to whether it's taxable or not, and I would
22 be the one responsible to try to determine whether it's
23 taxable or not.

24 Q And what is Mr. Alton's involvement in that
25 determination?

1 A None.

2 Q And during this period of time, 2008 through
3 2013, you were not an employee of BBC; is that correct?

4 A Correct.

5 Q Did you ever receive any instructions from
6 Mr. Alton about, Hey, this is a taxable sale and this is
7 not a taxable sale?

8 A I may have asked him about a particular
9 transaction, but it was specifically about a particular
10 transaction and how it was structured. I don't think he
11 knew necessarily why I was asking. It was to just
12 determine the nature of it.

13 Q We heard a little bit of testimony earlier about
14 the Rancho Santa Fe Polo Club.

15 A Correct.

16 Q That was maintained in the San Diego nontaxable
17 category of sales; correct?

18 A That's correct.

19 Q Why?

20 A Because they -- they were collecting the sales
21 tax. The Polo Club was collecting the sales tax from the
22 end user. We were paid a commission or a fee based on
23 what -- what they took in as money to compensate us for
24 our costs, our time and our profit.

25 Q Did Rancho Santa Fe Polo Club have a resale

1 certificate?

2 A I don't recall at the time, but I had no reason
3 to think that they wouldn't.

4 Q And who was paying the sales tax on all of those
5 transactions related to Rancho Santa Fe Polo Club?

6 A They were responsible for paying the sales tax.

7 Q What about Abbey Catering? Are you familiar
8 with that?

9 A Familiar with the name.

10 Q Okay. And what type of relationship did BBC
11 have with Abbey Catering?

12 A They again were a catering company that hired us
13 to do bar service.

14 Q So explain what -- how did they hire you to do
15 bar services?

16 A They came in and they said we have a wedding, we
17 have an event, and we're charging X dollars per head and
18 if you can come in with a fee of \$22 a head, you can have
19 the job, but they collected the sales tax. They're the
20 ones that were contracting with the end user.

21 Q And what is the Amgen? Are you familiar with
22 the Amgen relationship between BBC?

23 A Not super familiar. It was a bike race that we
24 were paid to basically get everything out to them and
25 feed them and get some water in them and it traveled all

1 over the state of California.

2 Q So why was that category in San Diego nontaxable
3 transactions?

4 A It was my understanding it was a fee.

5 Q And it was your understanding and your
6 understanding alone that made it in the nontaxable
7 category?

8 A Correct.

9 Q What about Desert Adventures?

10 A Desert Adventures was another catering company.
11 They were out in the desert, the Indio area, the
12 Coachella area, and they had all sorts of events out
13 there and tours and stuff like that, and we would provide
14 box lunches or whatever they included in their fee for
15 the people.

16 Q There's exhibits, Mr. Dressel, Number 37, 38 and
17 39 that profess to be the worksheets for Coachella and
18 Stagecoach in 2013; do you see those? Excuse me.
19 2012 --

20 A Yes.

21 Q -- in Exhibit 39. 37 is 2013 Stagecoach. Do
22 you see that?

23 A Yes.

24 Q How does this differ from the close-out
25 statements that we heard testimony about before?

1 A Well, those are just the recap of the sales
2 figures by area --

3 Q By area?

4 A -- but they're -- but they're not any different
5 than what we've heard from before.

6 Q So, for example, if we see something in here
7 called S&R Thai --

8 A Yes.

9 Q -- that was a vendor?

10 A That's a vendor.

11 Q That was a vendor at Stagecoach?

12 A Right.

13 Q And S&R Thai, for example, in this on Friday of
14 2013 had \$2,780 in revenue --

15 A Correct.

16 Q -- and on the following day, they had 300 --
17 excuse me -- \$3,605 of revenue?

18 A Correct.

19 Q And they had total gross sales at Stagecoach in
20 2013 of \$9,915; correct?

21 A Correct.

22 Q And then they pay their sales tax?

23 A Correct.

24 Q And then there's a split based on that that is
25 shared both with BBC and the promoter?

1 A That fee goes to BBC first and then BBC takes
2 their percentage off the top. So in that case, it's
3 35 percent. I think our usual fee was 10 percent, so we
4 would have -- we would have retained 10 percent of the
5 \$3200 and they -- and the promoter would have gotten the
6 balance.

7 Q And so this is largely consistent with the other
8 checkouts that we've seen in 2013 as well; correct?

9 A It's exactly the same.

10 Q And how has this changed at all between 2008 and
11 2013 and the way BBC handled these types of events and
12 transactions?

13 A It never did.

14 Q It has remained constant?

15 A Yes.

16 MR. MC LAUGHLIN: Thank you, Mr. Dressel.

17 I'll turn it over to the panel and Respondent.

18 JUDGE RALSTON: Okay. Thank you, Mr. Dressel.

19 CDTFA, did you have any questions?

20 MR. NOBLE: We don't have any questions. Thank you.

21 JUDGE RALSTON: Okay. Thank you.

22 I had a question. You spoke earlier about, you
23 know, there were different areas like San Diego and
24 Northern California. What -- was the company doing any
25 of those out-of-states events like the Super Bowl or

1 other events during that period? And if so, what office
2 were they routed through?

3 THE WITNESS: Yes, we were doing events out-of-state.
4 It depended on the situation. Most of the time, all
5 those -- all those were recorded in Northern California
6 books, but there were times when they'd be recorded in
7 the San Diego books. It really depended on the structure
8 of what it was and where it was going and maybe even what
9 the job was.

10 JUDGE RALSTON: Okay. Thank you.

11 Judge Geary, did you have any questions for
12 Mr. Dressel?

13 JUDGE GEARY: I do. Thank you.

14 Did you prepare out-of-state sales tax
15 returns --

16 THE WITNESS: I do.

17 JUDGE GEARY: -- for the company?

18 THE WITNESS: I do.

19 JUDGE GEARY: All of them?

20 THE WITNESS: Yes.

21 JUDGE GEARY: Now, you talked about San Diego books
22 and Sacramento books, but the San Diego books included
23 Palm Springs, Indio, Riverside also. Right, or is that a
24 third set?

25 THE WITNESS: There's three sets, technically.

1 JUDGE GEARY: Three sets.

2 THE WITNESS: There's Northern California,
3 San Francisco, not Sacramento; San Diego; and then
4 Palm Springs -- what we call Palm Springs, but it was
5 just -- just a name for the books.

6 JUDGE GEARY: And I think that one of the other
7 witnesses referred to it as the desert area --

8 THE WITNESS: Yes.

9 JUDGE GEARY: -- or something like that. Okay.

10 THE WITNESS: They're all interchangeable.

11 JUDGE GEARY: Why did you check the sales tax figures
12 supplied by vendors? You mentioned earlier that you
13 checked the sales tax figures. I didn't understand why.

14 THE WITNESS: Oh, I was asked about did I ever look
15 into any of the particular vendor close-outs and I would
16 spot-check things to make sure that we applied -- sales
17 tax rates changed all the time, so I wanted to make sure
18 we were applying the proper sales tax percentages because
19 I was going to report the right number and even if we had
20 to go back to the vendor and say, "You didn't pay enough
21 sales tax," then we would go back to the vendor.

22 JUDGE GEARY: Was there ever an occasion when you
23 identified an error by the vendor and the percentage
24 collected that you actually had to go back to the vendor
25 and say, "You only collected this, but you're going to

1 have to pay a different amount"?

2 THE WITNESS: There was a time when I discovered the
3 sales tax rate that was applied on the first day was
4 wrong and they changed it.

5 JUDGE GEARY: You talked a little bit about how the
6 promoters would -- I'll use term "audit," but they would
7 basically check on your numbers and that your company or
8 the Appellant would also check on the numbers supplied by
9 vendors; right?

10 THE WITNESS: Correct.

11 JUDGE GEARY: How did you check on the vendors?

12 THE WITNESS: Well, the vendors -- first of all,
13 it's -- it's not a very sophisticated system, but it does
14 work from the standpoint if you have a row of vendors or
15 you could even describe it as a row of bartenders, we
16 could figure out if somebody was stealing by what was
17 happening in the row.

18 So if you had 12 stations in a bar and you did a
19 pull -- which they're called pulls -- well, they would
20 pull the cash, and there was a thousand dollars, a
21 thousand dollars, \$300, a thousand dollars, a thousand
22 dollars, you know there's a problem with the line on that
23 \$300 pull.

24 And the same was true with the vendors. If you
25 had a -- vendors in certain areas did a certain amount of

1 volume and you could figure out that if this vendor was
2 doing, you know, this amount of money, this vendor next
3 to it should be doing a similar amount of money just
4 depending on the product or what might be there.

5 So it was a commonsense approach to it and if we
6 had an issue or we wanted to look at something, we would
7 send somebody out to look at them, a shopper or a -- you
8 know, somebody to do something or even stand there and
9 just watch them for a while. I did it myself.

10 JUDGE GEARY: People might like pizza more than they
11 like Thai food, though, so how does that account for it?

12 THE WITNESS: Yeah. That's not -- it accounts for
13 that. Spicy Pie was in an area all of its own. They
14 were like -- they sold more pizza than I can possibly
15 imagine, so -- but, you know, the pizza guy -- excuse me.
16 The Thai guy wasn't likely to do way more than the
17 Mexican guy or vice versa.

18 JUDGE GEARY: In looking at I think it's Exhibit 37,
19 the last -- one of the last exhibits that counsel asked
20 you about, there are percentage figures in the
21 second-to-last column to the right.

22 THE WITNESS: Correct.

23 JUDGE GEARY: Like the top one that I see for
24 California Pop Culture is 27 percent, but right under
25 that it looks like there's something for Johnny McGuire's

1 for 32 and the numbers vary for -- between vendors or
2 among vendors; correct?

3 THE WITNESS: Yes.

4 JUDGE GEARY: How does that work where some vendors
5 pay more than others, I guess?

6 THE WITNESS: Some had higher gross margins. So, for
7 instance, if you were just selling water and water was
8 cheap, it would -- you had to pay a higher percentage.
9 And then there were other people that were maybe a friend
10 of the promoter and they came in and they'd say, "Well,
11 I'm not going to pay 30 percent. I'm going to pay
12 20 percent." So you would have to accommodate them.

13 JUDGE GEARY: That was all negotiated at the front
14 end?

15 THE WITNESS: Yeah. It wasn't at the back end.

16 JUDGE GEARY: Okay. You -- I think you said that you
17 came to know and to start working for BBC in around
18 2000 --

19 THE WITNESS: Yes.

20 JUDGE GEARY: -- first as an independent, private CPA
21 and much more recently after the time period that we're
22 considering as an employee.

23 THE WITNESS: Correct.

24 JUDGE GEARY: So during your earlier years, the years
25 leading up to the years that are at issue here and during

1 the years at issue here, do you think that BBC had an
2 understanding regarding its obligation to retain source
3 documents to -- to show that the returns that they were
4 filing were accurate?

5 THE WITNESS: We did retain records, yes.

6 JUDGE GEARY: And are those records -- is it your
7 understanding or belief that those records were among the
8 records seized? Maybe "seized" is the wrong term, but
9 taken --

10 THE WITNESS: No. "Seized" is the correct word.
11 They came to my office and seized my audit work papers
12 for the period in question.

13 JUDGE GEARY: Okay. So it was pursuant to a search
14 warrant?

15 THE WITNESS: Yes. They showed up at my office and
16 took, with the Highway Patrol, and they came in with six
17 people and they took my records and they went into my
18 computer and they never gave them back, and I don't have
19 any work papers during this period.

20 JUDGE GEARY: Okay. And when you say "during this
21 period," you mean that all of your documents that pertain
22 to BBC's business during the period that's at issue in
23 this appeal were seized in 2021 and have not been
24 returned to you?

25 THE WITNESS: Correct, and more.

1 JUDGE GEARY: All right.

2 THE WITNESS: Other periods.

3 JUDGE GEARY: Okay. Thank you. That's all I have.

4 JUDGE RALSTON: Thank you, Judge Geary.

5 Judge Kwee?

6 JUDGE KWEE: I don't have any questions for the
7 witness. Thank you.

8 JUDGE RALSTON: Okay. Thank you.

9 We are now ready for Respondent's presentation.
10 You have approximately 25 minutes and can begin when
11 you're ready.

12 MR. NOBLE: On May 19th, 2016, Appellant was issued a
13 Notice of Determination for the period October 1st, 2008
14 through September 30th, 2013, for approximately 4.9
15 million dollars in tax and a 25 percent fraud penalty.
16 The determination is based on a February 2nd, 2016 audit
17 report which disclosed measures for unreported taxable
18 sales of about 54 million dollars, disallowed claimed
19 nontaxable sales of around 1 million and equipment
20 purchases subject to use tax of about 900,000.

21 The Department subsequently performed some
22 reaudits which resulted in reductions to these three
23 measures. The measure for unreported sales, taxable
24 sales, was reduced to approximately 30.5 million;
25 disallowed claimed nontaxable sales was reduced to about

1 930,000; and equipment purchases subject to use tax was
2 reduced to approximately 200,000.

3 The issues in this appeal are whether
4 adjustments are warranted to the measures for unreported
5 taxable sales and disallowed claimed nontaxable sales and
6 is whether the fraud penalty was properly imposed.

7 With respect to Appellant's unreported taxable
8 sales, during the audit, the Department noted a sales
9 account labeled 50-50 other party revenue with recorded
10 transactions totaling around 80 million dollars for the
11 liability period. These amounts were not reported on
12 Appellant's sales and use tax returns.

13 The Department used the third quarter of 2013 as
14 a sample period and after accounting for any sales that
15 were not subject to tax such as resales, sales that
16 occurred out-of-state and commissions paid to Appellant
17 that were not part of Appellant's sales of tangible
18 personal property, found that sales of approximately 2.4
19 million dollars out of the 8.8 million-dollar sample
20 period were nontaxable sales.

21 The Department calculated a ratio of nontaxable
22 sales percentage of 26.97, which when applied to
23 Appellant's total sales in the 50-50 account resulted in
24 taxable sales of around 59 million.

25 The Department then added the 59 million in

1 taxable sales to Appellant's other recorded taxable sales
2 to establish total audited sales of around 97 million
3 dollars, which when compared to reported taxable sales of
4 around 66 million dollars resulted in a deficiency
5 measure for unreported taxable sales of \$30,582,801.

6 Section 6051 imposes sales tax on a retailer's
7 retail sales of tangible personal property in this state
8 measured by the gross receipts unless the sale is
9 specifically exempt or excluded from taxation by statute.

10 A retail sale is a sale for any purpose other
11 than resale and Section 1691 provides that the burden of
12 proving that a sale property is not at retail is on the
13 retailer unless they timely accept a resale certificate
14 from the purchaser.

15 Specific to caterers, Regulation 1603,
16 subdivision I, provides that tax applies to the entire
17 charge made by a caterer for serving meals, food and
18 drinks, including charges for dishes, silverware and any
19 charges for event planning and design or other service
20 fees if the charges are part of the caterer's furnishing
21 of meal, food and drinks.

22 When a taxpayer challenges a determination, the
23 Department has the burden to explain the basis of the
24 deficiency. Where that explanation appears reasonable,
25 the burden shifts to the taxpayer to establish by a

1 preponderance that adjustments are warranted.

2 Appellant only provided limited records with
3 respect to the transactions contained in the 50-50
4 account. Specifically, Appellant has provided some sales
5 contracts for different music festivals and some vendor
6 sign-out sheets. Because of the lack of complete
7 documentation, the Department was justified in using an
8 indirect audit method to verify Appellant's sales; and
9 pursuant to Audit Manual Section 0405.2, the projection
10 of errors from a sample period is a valid indirect audit
11 method.

12 As for the determined measure, the Department
13 accounted for nontaxable sales where it could be
14 established that the sale occurred out of state as well
15 as sales for resale.

16 With respect to the commission payments,
17 according to some of the contracts and sign-out forms
18 provided by Appellant as Exhibit D, there were some
19 events where Appellant sold beverages but hired other
20 vendors to sell the food. The evidence indicates for
21 these events, the vendors collected tax reimbursement on
22 their sales and paid Appellant a percentage as a
23 commission fee for coordinating the event and providing
24 space for the vendors to operate.

25 Accordingly, any commission payments received

1 from these types of vendors are not part of Appellant's
2 sales of food or beverage; however, Appellant has not
3 provided contracts for all of the events in the sample
4 period or documents to verify which amounts represent
5 sales made by Appellant and which payments are not
6 subject to tax.

7 In absence of this evidence, the Department
8 removed all transactions that were identified as vendor
9 concessions and the Department's Exhibit M, Schedule R3
10 12b 1a3 contains a detailed list of the transactions in
11 which amounts were allowed.

12 Accordingly, the measure established by the
13 audit represents the best available evidence of
14 Appellant's taxable sales and thus the determination is
15 reasonable. As such, the burden shifts to Appellant to
16 establish that adjustments are warranted.

17 Appellant has not provided any further
18 documentation establishing that there are additional
19 out-of-state sales or sales for resale for this measure.

20 With respect to Appellant's commission payments,
21 Exhibits 30 through 36 contain some documents for four
22 festivals that are part of the sample period; however,
23 the documentation is incomplete. Specifically, there are
24 only some vendor sign-out forms and what appear to be
25 spreadsheets or QuickBooks with total sales figures, but

1 there are no receipts or source documents to verify the
2 amounts in the spreadsheets.

3 In addition, the Department has already removed
4 line items for these festivals that were identified as
5 vendor concessionaires.

6 Appellant also provided some documentation for
7 Coachella; however, the festival is not part of the
8 sample period, so no adjustments for Coachella are
9 warranted for this liability period.

10 With respect to the discussion today about the
11 records being taken pursuant to a search warrant, that
12 occurred in October of 2021. This appeal was filed with
13 OTA in August of 2019, or 2019, I believe, and the appeal
14 and the decision were issued well before these records
15 were taken. The Sales and Use Tax Code requires that a
16 taxpayer maintain these records and provide them upon
17 audit.

18 So I understand there's a contention that they
19 do have these records and these records would prove that
20 further adjustments are warranted and that they can no
21 longer provide these records now because they were taken
22 in October of 2021, but the point is that they had ample
23 time before that when the records were in their
24 possession to provide these.

25 With respect to sales for resale, during the

1 audit, the Department found an account for Appellant's
2 San Diego location labeled as catering sales, nontaxable,
3 which totaled a little over \$1,000,000; however,
4 Appellant was unable to provide resale certificates for
5 these transactions.

6 The Department allowed sales as nontaxable where
7 the evidence established that the sales were, in fact,
8 sales for resale. Specifically, the Department allowed
9 sales where the purchaser had an active seller's permit
10 open at the time of purchase, the purchaser's website
11 indicated that they may be in the business of purchasing
12 food for resale, and where the purchase volume and
13 frequency was indicative of a purchase for resale.

14 The Department's examination resulted in a
15 taxable measure, a reaudited taxable measure, of
16 \$935,584.

17 As previously stated, there's a presumption that
18 all receipts are subject to tax and the retailer has the
19 burden to establish otherwise unless the retailer accepts
20 a timely and valid resale certificate. Regulation 1668,
21 subdivision e, provides that if a seller does not take a
22 valid and timely resale certificate, the seller may be
23 relieved of the liability only if they can prove that the
24 property was, in fact, resold by the purchaser prior to
25 intervening use; that the property is being held for

1 resale; or that the purchaser paid tax to the Department
2 on its consumption of the property.

3 We don't have any further resale certificates in
4 evidence for these transactions or proof that they were
5 accepted; therefore, the burden shifts to Appellant to
6 establish that the questioned sales were, in fact,
7 nontaxable sales for resale. Appellant has not provided
8 further documentation; therefore, no adjustments are
9 warranted to this measure.

10 As far the fraud penalty, Section 6485 provides
11 that if any part of the sufficiency determination is due
12 to fraud or intent to evade the sales and use tax law, a
13 penalty of 25 percent shall be imposed.

14 The Taxation Code does not define fraud, but
15 there are many federal precedents such as Bradford versus
16 Commissioner and Tenzer versus Superscope that provide
17 guidance.

18 Fraud is generally defined as an intentional
19 wrongdoing on the part of a taxpayer with the specific
20 intent to avoid a tax known to be owed and must be proven
21 by clear and convincing evidence. While fraud cannot be
22 presumed, it is rare to find direct evidence of fraud.
23 Accordingly, fraud may be proven by circumstantial
24 evidence.

25 The circumstantial evidence indicative of fraud

1 includes, but is not limited to, substantial
2 discrepancies between recorded and reported amounts that
3 cannot be explained, evidence that tax reimbursement is
4 properly charged but not reported, inadequate records,
5 failure to cooperate with tax authorities, and a lack of
6 credibility and testimony.

7 Federal courts have also concluded that the mere
8 omission of reportable income is not sufficient to
9 warrant a finding of fraud, but repeated understatements
10 in successive years when coupled with other circumstances
11 showing an intent to conceal or misstate taxable tax
12 income present a basis for inferring fraud.

13 We first note that the total deficiency measure
14 of approximately 31.7 million dollars represents an error
15 rate of 47.7 percent when compared to Appellant's
16 reported taxable sales of 66 million dollars. This means
17 that for every dollar Appellant reported, there was
18 almost an additional dollar that it failed to report.

19 While Appellant asserts that most of this amount
20 represents sales that occurred outside of the state,
21 nontaxable sales for resale and commissions, Appellant
22 has failed to establish that any adjustments to these
23 measures are warranted.

24 In addition, Appellant's Exhibits 30 through 39
25 show that Appellant made substantial sales of beverages

1 during festivals that it recorded in its 50-50 account;
2 that Appellant calculated the sales tax due from these
3 sales and failed to report them on its returns.

4 Appellant has failed to provide a reasonable
5 explanation for these discrepancies, especially the
6 unreported sales it made during the festivals and, thus,
7 Appellant's failure to report almost half of its taxable
8 gross receipts is compelling evidence of fraud.

9 In addition, according to Audit Schedule 12A(4),
10 Appellant's records show that it accrued sales tax
11 reimbursement of \$6,847,268 but only reported tax of
12 \$5,669,278, a difference of almost 1.2 million. This
13 establishes that Appellant properly charged and collected
14 sales tax reimbursement, accrued these amounts in its
15 books, and failed to accurately report these amounts and
16 thus is further evidence of fraud.

17 Plus, we note that Appellant has held a seller's
18 permit since 1995 and that despite being in business for
19 over 25 years, Appellant failed to maintain adequate
20 books and records for the sales in its 50-50 account and
21 accurately report its taxable sales.

22 Additionally, Appellant was previously audited
23 for the period October 1st through September 30th, 2008,
24 which ultimately resulted in a deficiency measure of
25 approximately 14.7 million dollars and included measures

1 for unreported taxable sales and disallowed sales for
2 resale.

3 The audit report for this period was issued on
4 August 25th, 2011 and the Notice of Determination was
5 issued on June 21st, 2012, almost one year before the
6 third quarter of 2013 sample period used in the current
7 audit; however, there were no improvements in Appellant's
8 recordkeeping afterwards and it continued to
9 substantially underreport its taxable sales.

10 Accordingly, Appellant's repeated
11 understatements throughout the liability period, despite
12 being in business for over 25 years and going through a
13 prior audit, is further compelling evidence of fraud.

14 In summary, the evidence establishes that
15 Appellant had considerable business experience, including
16 a prior audit; kept books and records demonstrating that
17 it properly charged and collected tax reimbursement for
18 some sales and that it even calculated the tax due from
19 its own sales during various festivals which it failed to
20 report. Therefore, the fraud penalty is supported by
21 clear and convincing evidence of intent to evade the
22 payment of tax and the penalty was properly imposed.

23 For all of the foregoing reasons, no further
24 adjustments are warranted and this appeal should be
25 denied. Thank you.

1 JUDGE RALSTON: Thank you. Does that conclude your
2 presentation?

3 MR. NOBLE: Yes, ma'am.

4 JUDGE RALSTON: Thank you.

5 Judge Geary, did you have questions for
6 Respondent?

7 JUDGE GEARY: Can I defer to Judge Kwee and yourself
8 first?

9 JUDGE RALSTON: Sure.

10 Judge Kwee, did you have any questions?

11 JUDGE KWEE: Hi. Yes.

12 Well, the first question is just the 2005 and --
13 to 2008, was that the very first audit? There was no
14 audit from 1995 to 2005?

15 MR. NOBLE: Yes.

16 JUDGE KWEE: Okay. And before I ask my second
17 question, I'll just preface it by saying that OTA's going
18 to issue a written decision, so OTA hasn't made a
19 decision at this point. This is just a question that if
20 in the decision that we issue OTA determines that the
21 fraud penalty wasn't applicable, does CDTFA have a
22 position on whether the negligence penalty would instead
23 apply instead of the fraud penalty, assuming that OTA --

24 MR. NOBLE: In assuming that OTA did not find that
25 there was clear intent to evade the payment of tax, the

1 Department would most certainly assert that they were at
2 minimum negligent in reporting, yes.

3 JUDGE KWEE: Okay. And is this something that CDTFA
4 would be willing to provide post-hearing briefing on?
5 Because I don't believe the parties have briefed the
6 issue of negligence. I guess the question is, yeah, is
7 that something that you would be willing to provide
8 briefing on?

9 MR. NOBLE: Yes, sir.

10 JUDGE KWEE: Okay. And for Appellant's
11 representative, would you -- was that something that you
12 would also be willing to provide briefing on if OTA
13 requested on whether or not the negligence penalty could
14 apply in the event that the fraud penalty is
15 inapplicable?

16 MR. MC LAUGHLIN: Appellant would appreciate the
17 opportunity to brief that. It has never become an issue
18 and I don't believe it was listed on the Notice of
19 Determination, so it would be -- I would welcome that
20 opportunity.

21 JUDGE KWEE: Okay. I am going to hold that over
22 because my understanding is that you have a pending
23 motion for additional briefing as it stands, so I'm going
24 to let the lead ALJ address that after you have your
25 rebuttal. So I'll turn it back to Judge Ralston at this

1 time. Thank you.

2 JUDGE RALSTON: Okay. Thank you. We are ready for
3 your rebuttal. You have approximately ten minutes.

4 JUDGE GEARY: Actually, I --

5 JUDGE RALSTON: Oh, I'm sorry. Judge Geary, please.

6 JUDGE GEARY: I'm sorry. I deferred. I still had
7 some questions.

8 Mr. Noble, you said something about the
9 Appellant not providing documents such as receipts. Were
10 you referring to receipts that the vendors might have had
11 for sales?

12 MR. NOBLE: The vendor receipts would certainly help
13 derive commission payments and such; but, you know, we've
14 heard a lot of testimony today about point-of-sale
15 systems. I believe Square computing was mentioned. I
16 think what we really would like to see is the receipts
17 evidencing what Appellant's alcohol sales were during the
18 festivals but really generally source documents, source
19 documents that help verify the close-out sheets.

20 JUDGE GEARY: I want to ask you a little bit about
21 the documents that were seized; and you may know nothing
22 about it, but I need to explore this a bit.

23 MR. NOBLE: Yes, sir.

24 JUDGE GEARY: I think you -- part of the argument was
25 that before the date those documents were seized,

1 Appellant had an opportunity to marshal and present
2 evidence at that point to CDTFA or BOE. Does CDTFA -- or
3 are you able to identify for us what exactly was included
4 in the documents that were seized?

5 MR. NOBLE: I cannot and even if I could, I would not
6 know. We -- Investigations is kind of a separate
7 sealed-off branch from CDTFA and we are not really privy
8 to a taxpayer being under investigation until
9 post-investigation and a determination has been issued
10 and then we kind of get to see all the documents.

11 To be perfectly honest with you, it was when the
12 exhibit index was released and all the Appellant's
13 exhibits were provided to us that I saw the memorandums,
14 and it was the first I learned of any sort of search
15 warrant.

16 JUDGE GEARY: Do you know whether the investigative
17 division or the CHP provides a receipt to identify all
18 the documents that were seized?

19 MR. NOBLE: Perhaps Jason Parker can help.

20 MR. PARKER: I believe the Investigations Bureau goes
21 through and makes a record of all the items that were
22 seized. I'm not sure the involvement of CHP in doing
23 that, but I know that the Investigations Bureau goes
24 through and makes a list of everything. We don't have
25 access to it ourselves, as Mr. Noble mentioned, but they

1 do make that as part of the evidence.

2 JUDGE GEARY: Do -- do you know, Mr. Parker, whether
3 or not that list is made available to the individual or
4 entity from whom the documents are seized?

5 MR. PARKER: As I have not been involved in
6 Investigations Bureau, I'm not aware of how that's
7 exactly handled.

8 JUDGE GEARY: Does -- does CDTFA dispute what is
9 apparently the contention of the Appellant that all
10 documents that pertain to the periods that are at issue
11 in this appeal and in this hearing were seized in 2021?

12 MR. NOBLE: We don't have knowledge. I can't tell
13 you one way or another, so I don't concede it.

14 JUDGE GEARY: All right. Thank you. Those are all
15 the questions that I have.

16 JUDGE RALSTON: Thank you.

17 And Mr. McLaughlin, you have your rebuttal now.
18 Thank you.

19 MR. MC LAUGHLIN: Thank you, your Honor.

20 I just wanted to highlight a couple of different
21 things that I heard.

22 First and foremost from Respondent was a concern
23 that source documentation from POS systems has not been
24 available. Your Honors heard testimony earlier today
25 that up until almost the very end of this audit period,

1 no or extremely limited amounts of credit card
2 transactions occurred. It was almost exclusively in
3 cash. Therefore, the absence of point-of-sale
4 transaction information should not be something held
5 against Appellant, because it did not exist.

6 I also go back to an earlier point made in the
7 opening statement that by CDTFA's own accounts, when it
8 came to the federal income tax reporting, the taxpayer
9 was off by less than 1 percent. Again, it would be
10 unfitting for somebody who was truly seeking to defraud
11 federal agencies to be so accurate with respect to one
12 aspect, i.e. income tax, and, as CDTFA alleges, grossly
13 misstated with respect to another.

14 The reason must be a simple misunderstanding as
15 to what is taxable and not taxable and as we know from
16 case precedent, ignorance, bad advice, misunderstandings
17 of the law, which the oral testimony today corroborated,
18 are not fraudulent.

19 We have heard and received absolutely nothing
20 else from CDTFA other than the fact that the numbers are
21 big, they had a previous audit of which we have
22 discussed; the Appellant continues to believe is
23 misstated.

24 Had it not been for Mr. Dressel's near
25 life-threatening ailment, it is likely that an option

1 letter response would have been filed and we would have
2 continued to see a reduction in the first audit as we
3 have in the second audit.

4 These items do not suggest a taxpayer who was
5 evading a tax known to be due and owing. It doesn't even
6 establish that they knew they owed it.

7 We have heard nothing else and I trust that this
8 board will come to the same conclusion that SBE did
9 itself in the first audit, that there was no fraudulent
10 intent. Thank you, your Honors.

11 JUDGE RALSTON: Thank you.

12 I'm going to check with my panel members one
13 more time to see if there are any additional questions.

14 Judge Geary?

15 JUDGE GEARY: No. Thank you.

16 JUDGE RALSTON: Thank you.

17 And Judge Kwee?

18 JUDGE KWEE: I don't have any further questions.
19 Thank you.

20 JUDGE RALSTON: Okay. Thank you.

21 With regard to the motion that was requested
22 earlier for additional briefing, I'm going to go ahead
23 and grant that and give the -- we'll have Appellant's
24 brief due first within 30 days and then Respondent will
25 have the option to respond within 30 days after receipt

1 of Appellant's brief.

2 We also -- and I will send out an order with
3 this information to be clear, but we also would like the
4 parties to address the issue raised by Judge Kwee that if
5 this panel were to determine that the fraud penalty does
6 not apply in this case, would the negligence penalty
7 apply and be appropriate?

8 Is that a correct statement, Judge Kwee?

9 JUDGE KWEE: Yes. That's -- I'm sorry. I didn't
10 have the microphone on. Yeah. That summarizes the
11 question I had. Thank you.

12 JUDGE RALSTON: Yes?

13 MR. NOBLE: With respect to the post-hearing briefing
14 on the witness testimony today, I just wanted to make
15 sure, if we could narrow or be specific, there's not
16 going to be any further argument or anything like that.
17 My understanding is we're going to have a summary or a
18 recap of the witness testimony that was provided;
19 correct?

20 JUDGE RALSTON: Is that correct, Mr. McLaughlin?
21 That's my understanding also.

22 MR. MC LAUGHLIN: Yeah. I will brief and present a
23 statement of facts and the arguments and the law as we've
24 provided it and address the question from Judge Kwee
25 and --

1 JUDGE RALSTON: Okay.

2 MR. MC LAUGHLIN: My question, your Honor, the 30
3 days, is that from today or from the delivery of the
4 transcript?

5 JUDGE RALSTON: Let's make it from the delivery of
6 the transcript.

7 MR. MC LAUGHLIN: Thank you.

8 JUDGE KWEE: I'm sorry to jump in there. The
9 transcript sometimes takes 60 days to arrive. So my
10 understanding is it would be 30 days from the date of the
11 order going out, which probably will come within a week
12 from today's date.

13 JUDGE RALSTON: Okay. So what I'll do is I'll issue
14 my order and then I'll put the due date in there, but it
15 will be 30 days from the date of my order.

16 If the transcript is not available at that time,
17 this hearing will be on OTA's YouTube page, so the
18 parties can refer to that for additional information.

19 MR. MC LAUGHLIN: Thank you, your Honor.

20 JUDGE RALSTON: Thank you. And it will be up later,
21 later today.

22 Okay. So that being taken care of, I don't
23 think there are any additional questions.

24 So today's hearing in the appeal of F & B
25 Associates, Inc. is now adjourned and the record will be

1 held open for additional briefing. After additional
2 briefing is complete, the judges will meet and decide
3 your case and send our written decision, but you should
4 be expecting an order with this information in about a
5 week or so.

6 And there are no hearings -- no further hearings
7 today, so we are adjourned. Thank you.

8 (Proceedings concluded at 1:57 p.m.)
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1 REPORTER'S CERTIFICATION

2
3 I, the undersigned, a Certified Shorthand
4 Reporter of the State of California, do hereby certify:

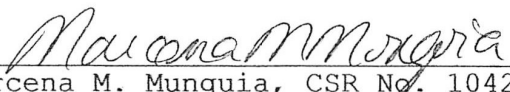
5 That the foregoing proceedings were taken before
6 me at the time and place herein set forth; that any
7 witnesses in the foregoing proceedings, prior to
8 testifying, were duly sworn; that a record of the
9 proceedings was made by me using machine shorthand, which
10 was thereafter transcribed under my direction; that the
11 foregoing transcript is a true record of the testimony
12 given.

13 Further, that if the foregoing pertains to the
14 original transcript of a deposition in a federal case,
15 before completion of the proceedings, review of the
16 transcript was not requested.

17 I further certify I am neither financially
18 interested in the action nor a relative or employee of any
19 attorney or party to this action.

20 IN WITNESS WHEREOF, I have this date subscribed
21 my name.

22 Dated: June 21, 2023

23 
24 Marcena M. Munguia, CSR No. 10420
25 Certified Shorthand Reporter
For The State Of California

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\$1,000,000 178:3	1 8:24,25 9:2,4,10	15 4:12 10:12	20-minute 93:8
\$10 107:12	17:21 172:19	11:16 37:2 89:16	200,000 173:2
\$10,000 131:25	188:9	93:22 104:17	2000 33:24 69:9
132:8	1-39 4:4	15-minute 93:15	136:20 137:4
\$139,600 77:19	1.2 16:8 156:9	94:5	170:18
\$2 107:13	181:12	150 45:18	2000- 97:13
\$2,000 77:7,8	1.4 18:15	15th 23:3 42:7	2001 33:24 44:19
\$2,780 164:14	1.8 17:5	1603 174:15	2003 124:17
\$22 162:18	10 12:4 49:24	1668 178:20	128:24,25
\$25 56:9	103:17 165:3,4	1691 174:11	2005 18:14 38:22
\$250,000 18:17	10,000-foot 87:24	16th 155:6	158:1 183:12,14
\$3,605 164:17	111:11	172 4:13	2007 97:13 155:13
\$30,582,801	10- 93:15	187 4:25	156:9,14
174:5	100-day 13:24	19 39:17	2008 16:5 18:9,14
\$300 168:21,23	101 53:11	1976 135:12	23:5 38:23 40:12,
\$3200 165:5	10420 2:20	1980 135:18	13 60:5 82:25
\$35 56:11	11 4:5 50:4	136:17	97:13 102:16
\$37,000 73:6	11:30 93:1	1985 28:19,22	108:10,19,24
\$40,936 105:23	11:35 94:10	29:4	109:6,14 129:2,9,
\$400 77:7 127:11	11:50 94:11	1990 30:5 38:6	17 145:7 158:2
\$414,000 73:3	12 168:18	1994 15:23	161:2 165:10
\$5,669,278	122 4:21 25:18	1995 181:18	172:13 181:23
181:12	149:22	183:14	183:13
\$6,847,268	12900 2:16	1998 95:20,21,23	2010 70:7
181:11	12:35 133:11	123:11	2011 20:8 182:4
\$697,000 75:7	12:36 134:17	19th 16:7 20:8	2012 18:13 89:11,
\$8 107:13	12:46 134:17	84:2 172:12	18 145:8,11
\$9,915 164:20	12A(4) 181:9	1:57 2:18 192:8	150:1,22,25 155:6
\$935,584 178:16	12b 176:10	1a3 176:10	163:19 182:5
<hr/> 0 <hr/>	12th 150:22,25	1st 46:24 172:13	2013 16:6 18:10
02 69:15	151:15	181:23	23:5 40:14 47:2
03 69:15	13 82:8 145:10	<hr/> 2 <hr/>	48:7 60:6 71:24
0405.2 175:9	133,000 73:15	2 148:6	82:1,21,25 83:13
	135 4:22	2.4 173:18	89:15 101:14
	14 89:16	20 93:22 104:17	102:17 103:22
		170:12	108:11,19,24
			109:6,14 116:5
			129:2,9,18 145:7,
			8,9,11 151:1,2
			152:9 161:3
			163:18,21 164:14,
			20 165:8,11
			172:14 173:13
			182:6

2014 37:2 151:3,5,
24

2015 19:9,19
21:13 23:7 40:25
41:24 46:24 130:2
151:12,15

2016 16:7,12 23:3
42:7 151:18
157:19,20 172:12,
16

2017 37:23

2019 16:14 70:10
177:13

2019-OTA-299P
26:8

2020 16:14

2021 10:24 16:22,
23 84:2 86:9
91:19 99:21 115:1
120:9 171:23
177:12,22 187:11

2023 2:19 5:1
74:21

21 39:1,3,17,18
40:24 52:12
154:13 155:4
156:6

21067999 2:6 5:8

21st 16:23 18:13
19:9 151:24 182:5

22nd 16:22
151:18

23 42:5,24 46:8

23rd 151:5

24 83:24 84:13
85:1 149:4 156:7

24th 77:17

25 12:2 86:6 93:21
94:3 134:4
172:10,15 179:13
181:19 182:12

25th 16:12 77:17
86:9 182:4

26 91:7 151:12

26.97 173:22

26th 75:6 91:19
151:18

27 4:18 47:16 49:2
52:4 169:24

29th 151:2

2nd 16:14 151:1
152:9 172:16

3

3 148:6

30 49:24 59:15
93:22,23 94:2,3
103:16 134:8
170:11 176:21
180:24 189:24,25
191:2,10,15

30.5 172:24

300 2:16 164:16

30th 19:8,19 21:13
23:7 40:25 172:14
181:23

31 103:19 104:12

31.7 180:14

32 170:1

34 57:12 71:20
72:1,20 76:4
81:21 106:25

35 165:3

36 46:9 82:17
101:10 176:21

37 163:16,21
169:18

38 163:16

39 8:24,25 9:3,5,
10 163:17,21
180:24

3rd 82:21

4

4 34:5 148:6
153:13

4.8 17:4

4.9 172:14

40 8:24 9:6 11:1,
10,12 103:16

40,000 105:7

40-41 4:5

41 8:25 9:6 11:1,
10,12 74:8 76:20
80:20 83:3,4,7,15
87:17 141:7,9

47.7 180:15

4th 7:6 82:21

5

50-50 159:22
173:9,23 175:3
181:1,20

54 172:18

59 173:24,25

5th 40:12 150:1

6

6 82:7

60 191:9

6051 174:6

6485 15:20 16:9
18:16 21:19 22:7
179:10

66 174:4 180:16

67 4:19

6th 12:11

7

7.4 16:7,25

7th 151:3

8

8 2:19 4:6 5:1
49:24

8.8 173:19

80 173:10

9

9 4:4

900,000 172:20

930,000 173:1

95 4:20

96 68:8

97 69:4,5 174:2

99 67:25

9:33 2:17 5:2

9th 25:4

A

A-M 4:6

a.m. 2:17 5:2

Abbey 55:23 56:9
162:7,11

ability 66:11 89:4
90:3 132:4 156:23

absence 40:4
176:7 188:3

absolutely 64:3
147:24 188:19

accept 89:4
156:17 174:13

accepted 89:11
179:5

accepting 89:10

accepts 178:19

access 13:21

- 21:11 84:18 85:25
86:16,18,22 87:1,
3,4,10 92:2,3
186:25
- accommodate**
137:24 170:12
- account** 42:10
43:1 45:24 55:11
69:24 70:9 77:6
79:24 84:18 86:17
123:24 131:11
160:3 169:11
173:9,23 175:4
178:1 181:1,20
- accountant**
33:10 46:3 88:11
139:21
- accountants**
142:19
- accounted** 85:7
106:2 129:15
175:13
- accounting**
17:19 24:19 28:23
29:1 30:14 32:24
33:11,17 42:22
43:13 44:11 50:23
67:22,23 68:2,22,
24 69:22 74:1,2
88:8,14,16 103:3
104:4 111:6,12
112:6,13 115:15,
21 125:13 135:12
137:1,6,13 153:7
173:14
- accounts** 22:18
55:1,16 70:15
86:19 130:2,4,17
140:20 169:12
188:7
- accrued** 181:10,
14
- accurate** 6:1
17:23 40:6 86:7
89:19 105:21
114:12 124:8,9
159:6,16 171:4
188:11
- accurately**
181:15,21
- achieve** 138:11
142:1
- act** 22:7
- acted** 19:22
22:18,23 32:16
111:3
- acting** 18:1
- active** 178:9
- activities** 115:24
131:11,14
- activity** 132:3,5
- actual** 52:1 60:10
70:23 105:6,11
127:16
- acumen** 24:12
- add** 82:3 141:15
158:13
- added** 173:25
- addition** 26:1
177:3 180:24
181:9
- additional** 12:13,
18 13:2 14:14
16:7 26:9 150:21
176:18 180:18
184:23 189:13,22
191:18,23 192:1
- Additionally**
181:22
- address** 12:10
184:24 190:4,24
- addressed** 152:3,
5 154:12
- adequate** 181:19
- adjourned**
191:25 192:7
- adjusted** 73:10
104:9,18
- adjustment** 7:11
- adjustments** 7:8
155:18 173:4
175:1 176:16
177:8,20 179:8
180:22 182:24
- ADMINISTRATIO
N** 3:10
- administrative**
5:10 8:20 9:11
11:13 27:11 67:7
95:9 122:17 135:3
- admitted** 8:14 9:5
11:10
- advance** 51:23
118:14
- advanced** 20:23
22:13
- Adventures**
163:9,10
- advice** 20:15
188:16
- advising** 156:25
- Advisory** 33:21
- afford** 70:19
- after-the-fact**
23:15
- afternoon** 135:8
- agencies** 188:11
- agree** 40:9,12,21
41:22 42:10,13
43:1 44:5 45:23
47:1 63:9 83:14,
18 84:5,10,23,25
85:17,18,23 86:1,
20 88:3,18,19
91:10,21,25 92:5,
6 99:11 101:13,18
111:18 112:11
126:12 156:13
157:5
- agreement** 47:18,
23 48:9,12,16
49:2 50:16 96:23
114:9
- agreements**
48:21
- ahead** 11:1 12:17
14:25 27:3 29:23
121:9 189:22
- ailment** 188:25
- alcohol** 66:12
125:13 146:13,16
185:17
- alcoholic** 53:17
66:5
- Alder** 87:4
- ALJ** 3:3,5 184:24
- allegations** 35:16
38:16 111:1,19
- allege** 38:18
- alleged** 20:6
23:21 89:22 111:2
- allegedly** 19:23
- alleges** 42:11
44:21 188:12
- alleging** 16:7
30:10 31:16
- allocation** 26:23
- allowances**
155:11,16
- allowed** 148:5
176:11 178:6,8
- alter** 110:21
- Alton** 4:18 6:17
7:20 18:21,22,23,
25 19:1 21:1,5,10,
22 22:18 24:2,11,
20 27:4,9,16,21
28:10,14 34:2,8
36:22 38:15 39:3,
20 40:16 42:8,24
44:21 46:7,13
47:5,11 49:1
52:15 57:1 59:17,
24 61:1,7,10,12,
19 63:1,3,19 64:7
66:17 75:11 80:23
84:15,18,19,20
85:13,14,15
87:10,23 88:12,15
92:2,9 108:7

- 111:2,5,14 112:12
126:11,15,19
128:16 139:9
140:24 150:1,3,
12,21 153:15,24
154:17 161:6
- Alton's** 19:3
21:15 24:24 40:2
59:21 64:14,15
70:16 85:21 88:1
110:7 112:9
130:18 139:4
160:24
- Alvarez** 4:21 7:21
51:25 93:22,24
122:5,10,13,15,22
132:15
- America** 123:19,
20 124:2,11
131:4,7,15,19
132:11
- America's** 131:25
- Amgen** 56:15,16
162:21,22
- amount** 7:9,11
13:12 18:15 39:24
72:22 73:1,10
75:23 78:10
103:10 104:14
105:17 106:14
126:18 127:14
128:7 156:9
168:1,25 169:2,3
180:19
- amounts** 45:23
109:1,2 173:11
176:4,11 177:2
180:2 181:14,15
188:1
- ample** 177:22
- analogize** 25:2
- ANDREW** 3:5
- Angeles** 42:12
74:23,25
- Angeles-based**
75:3
- Anguiano** 108:20
- anticipate** 14:8
- anticipation**
12:11 13:9
- anymore** 99:20
- apologize** 59:14
61:10
- apparently** 187:9
- appeal** 2:5 5:6,18
16:22 41:18,19
120:18 121:3,24
157:8 171:23
173:3 177:12,13
182:24 187:11
191:24
- appealed** 41:14
- appeals** 2:1 5:8,
22 6:7 16:14 19:9
25:16 39:7,11
154:17
- APPEARANCES**
3:1
- appearing** 39:4
154:14
- appears** 46:23
151:2 174:24
- Appellant** 2:7 3:7
6:10,14 7:8,10,19
8:9 11:16 12:4,13
14:16 15:23 16:2,
11,21 17:23 18:1,
22 19:6,10,15,17,
22 20:24 21:3
22:6,17,23 23:9
25:9,12,24 27:22
28:10,11 32:23
63:3,10 154:15
168:8 172:12
173:16 175:2,4,
18,19,22 176:2,5,
15,17 177:6 178:4
179:5,7 180:17,
19,21,25 181:2,4,
13,17,19,22
182:15 184:16
185:9 186:1 187:9
188:5,22
- appellant's** 4:4,5
8:23 9:4 11:1,10
12:22 17:18 18:10
19:16 21:7,11
23:5,12 24:4 25:6,
7,11,14,17 26:3
63:6,8,25 133:12
173:7,12,17,23
174:1 175:8
176:1,14,20 178:1
180:15,24 181:7,
10 182:7,10
184:10 185:17
186:12 189:23
190:1
- appellants'** 9:10
11:12
- applicable** 22:10
80:16 183:21
- applied** 20:10
40:13 114:5
144:22 167:16
168:3 173:22
- applies** 174:16
- apply** 105:9 142:4
183:23 184:14
190:6,7
- applying** 102:4
106:14 167:18
- apportion** 90:17
- apportioned**
26:21
- approach** 22:14
26:7 169:5
- appropriately**
63:21
- approximate**
22:3
- approximately**
11:16,19 12:2,4
30:3 69:14 97:12
128:23,24 172:10,
14,24 173:2,18
180:14 181:25
185:3
- approximation**
- 22:4
- April** 16:22 151:3
158:18
- area** 35:25 37:16
68:10 69:23 74:19
79:7 83:9 104:7
142:5 163:11,12
164:2,3 167:7
169:13
- areas** 74:12
111:6,8 137:3
165:23 168:25
- argue** 23:11 43:11
- argued** 18:20
- argues** 111:14
- arguing** 64:2
- argument** 14:5,6,
17,18,21 17:15
19:21 32:15
185:24 190:16
- arguments** 13:4
15:19 17:7 19:4
20:19 22:14,17
31:21 33:1 34:23
36:2 155:18
190:23
- arising** 20:14
- armored** 127:3,4
- arrangement**
143:16
- arrive** 191:9
- artist** 105:3
106:21
- aspect** 44:20
188:12
- aspects** 26:23
47:6 68:25 112:14
- assert** 21:5 184:1
- asserts** 180:19
- assessed** 154:6
- assessing** 155:2
- assessment** 26:2

85:24 156:24
assets 25:12
 140:14
assist 97:19
 137:2
assisted 51:25
assisting 97:17
Associate 88:14
Associates 2:6
 5:6 6:15,17 27:22,
 24 84:8 88:7
 143:9 191:25
Associates' 85:3,
 10
assuming
 183:23,24
assumptions
 154:10
atrium 53:9
atriums 62:6,15
attempt 59:19
attempted 25:2
 31:17 92:10
 141:24
attempting 23:15
attention 34:1,9
 42:8 47:16 49:1
 74:7 82:17 91:6
attorney 120:22
 136:20 137:2
 151:10
attributable 18:6
 64:17
audit 10:21,22
 16:5 17:17 18:10,
 12,17,18,20 19:7,
 19,24 20:1,10,19
 21:12 22:6,8,11,
 12,14,15 23:4,6,
 12,13,20 25:16
 41:24 46:10,13,
 16,19 52:18 54:19
 83:15 121:6,12
 145:6 148:4,13

149:23 150:13
 153:22,25 154:13
 155:22 157:3
 168:6 171:11
 172:16 173:8
 175:8,9,10 176:13
 177:17 178:1
 181:9 182:3,7,13,
 16 183:13,14
 187:25 188:21
 189:2,3,9
audited 7:9,11
 146:25 147:2
 148:11,14 174:2
 181:22
auditing 51:9
 147:10
auditors 148:10,
 14 150:14,15
 151:22
audits 148:23
August 74:21
 75:6 77:17 78:7
 82:21 151:2
 157:17,18,20
 177:13 182:4
Aunt 104:22
author 156:7
authorities 180:5
authority 21:24
 25:3 153:20
authorizing 20:8
Auto 26:7
average 91:9,21,
 23
avoid 66:21
 179:20
aware 21:18
 31:16,19 38:16
 41:13,16 45:12
 57:10 86:25
 116:19,21 150:8
 187:6

B

B.A. 28:18,21 68:2
 95:17
B.S. 67:22,23
Bacchus 3:12 7:2
back 10:4 29:20
 30:21 36:23 51:7
 52:14 60:13 62:8
 64:20 73:22 77:11
 78:3 81:20 86:22
 94:10,15,18
 105:9,16 106:12,
 23 112:19 121:24
 128:20 134:17,21
 144:23 147:20
 167:20,21,24
 170:15 171:18
 184:25 188:6
back-end 112:6
back-of-house
 65:19
backed 63:21
 78:24
background
 24:24 28:15,17
 67:18,20 95:15
 122:23,24 135:10
backtrack 100:6
backup 148:2
bad 20:15 188:16
badges 25:3,5
Bailey 51:25
Baker 30:25
Baker's 31:20
balance 22:12
 127:2,15,19,22
 165:6
bank 21:11 69:24
 70:9,15 77:6,14
 123:19,20 124:1,
 11 131:4,7,15,19,
 25 132:11 153:9

banking 37:15
 43:15
banks 77:3,4
 107:3,7
banners 65:21
bar 53:19,20,22
 54:8,24 104:7
 105:3 125:5,6
 127:2 128:2
 143:24 162:13,15
 168:18
barbacking
 68:17
bars 105:14
 125:18
bartender 107:12
bartenders 29:5,
 7,22 77:5,6
 168:15
bartending
 29:21,22 56:4
 68:17
based 34:8 37:17,
 18 76:3 84:23
 86:3,7,20 98:25
 101:25 104:16
 106:7 124:25
 132:10,25 161:22
 164:24 172:16
bases 98:4
basic 65:22
basically 29:8
 33:10,12,14 34:19
 35:24 37:13 42:17
 46:5 49:6 50:11
 54:7 69:22 70:18
 90:3 100:18 102:1
 106:8 108:2 112:3
 131:17 137:7
 140:20,25 153:6
 162:24 168:7
basics 44:24
basis 17:6 23:17
 24:13 42:20 53:9
 56:5,6 61:24
 64:16 140:15

- 156:11 174:23
180:12
- Bauer** 37:25 38:2,
3,4
- Bay** 35:25 37:16
53:24 68:10 69:23
- BBC** 27:25 28:10
29:18 30:2,4,6,16
31:21 32:2,3,7,15,
23 33:1,8 34:11,
22 35:16,22 36:2,
9 37:4,12,19,22
38:6 41:5 49:21
52:5,19,24 53:21
54:4,10,14 55:19,
22 56:1,14,18
57:9 60:2,9,19
71:7 72:21 73:14,
22,23 75:6 76:15
77:9,12,19 86:8
89:4,8,10,18 90:8
91:13 92:10 96:5,
8,17,20 97:4,6,9,
15 98:5,7 99:13
101:8 102:10,23
103:5,17,22
104:14 106:1,10
107:4,18,21
110:15,21 113:16
114:19,22 115:24
116:20 124:11,13,
15,23 125:24
128:20 129:15,20,
25 130:2,10 132:7
136:19,20,24
137:5,13,20 138:8
139:12,14,18
140:1 143:10
146:16 147:20
148:23 151:15,18
152:5 154:15
155:24 156:7,20
157:22 161:3
162:10,22 164:25
165:1,11 170:17
171:1
- BBC's** 31:4,8 37:4
40:18 54:21 89:24
125:6 132:9,11
139:23 146:13
147:22 148:1,11,
- 17 159:3 171:22
- beer** 107:11,13
- beer-soaked**
125:2 128:3
- began** 16:3 97:9
107:17 128:21
- begin** 15:10,13
28:14 67:19 94:16
95:2,14 135:8
136:23 172:10
- beginning** 35:11
47:17 91:20
134:21 136:16
155:10 156:6
- begins** 49:2 91:8
- behalf** 6:14 34:11
107:21 124:23
138:7 139:25
154:14
- behavior** 25:11
- belief** 171:7
- believed** 64:16
- believer** 34:14
- believes** 84:7,19
- beverage** 15:24
27:25 28:4,7
29:20 31:14 32:11
36:17 43:10
47:11,24 49:9,10,
11,15 50:5 53:10,
17 54:5,7,17
55:10 61:25 62:9,
10,16,19 68:4,7
96:3,8,20 97:8
98:7 112:16
116:12 125:13
143:8 176:2
- beverages** 51:13
65:15 66:1,2,5
82:14 106:21
175:19 180:25
- big** 42:19 53:16
79:18 90:23,24
138:25 188:21
- biggest** 113:18
- bike** 56:16 162:23
- bill** 105:16 106:22
- billbacks** 105:5
- billed** 106:2
144:23
- billing** 106:12
- bills** 73:23
- binder** 9:14
- bird's** 111:11
- bit** 8:7 24:13 43:8
47:10 50:25 51:9
63:13 65:14 66:12
81:20 85:1 93:10
96:4 100:2,6
104:25 105:24
107:3 131:17
138:22 154:12
161:13 168:5
185:20,22
- blatantly** 21:1
- board** 15:16 17:10
20:11 31:1 35:23
126:5 145:15
157:1 189:8
- BOE** 25:18 117:23
118:12 149:22
155:17,21 186:2
- book** 78:12
- booked** 79:23
- bookkeeper**
45:21
- bookkeepers**
142:19
- bookkeeping**
32:24 33:17 42:22
57:18 68:25 69:10
70:24 79:25
111:13
- books** 21:7 38:9
46:2 52:17 85:12
141:1,16,17,22,25
142:1,4,7,11,15
148:11,14 158:6
- 159:3,14,15,18,19
166:6,7,21,22
167:5 181:15,20
182:16
- boomed** 43:10
- booth** 113:15
- booths** 113:7
- boots** 112:17,23
113:2,5,10,19,24
- boots-on-the-ground** 112:20
- boss** 42:21
- bottom** 34:9
84:14 92:1
- Bowl** 116:11,20
165:25
- Bowl's** 116:23
- box** 163:14
- Bradford** 25:4
179:15
- branch** 186:7
- branched** 45:2
- brand-new** 44:15,
16
- break** 9:17 66:23
71:16 72:11 92:24
93:8,11,16 94:5
122:10 133:14,15,
17,20 134:9,16
137:12
- breakdown** 85:6
- breaks** 74:12
- bride** 56:10 90:14
- briefed** 184:5
- briefing** 12:14,18
13:2,6,10,14 65:6
116:19 184:4,8,
12,23 189:22
190:13 192:1,2
- bring** 44:13 66:10
89:1

bringing 12:16**brings** 16:2,17
18:11**broader** 24:21**Broadway** 52:22
53:1**broken** 74:17
79:13 80:15**brother** 68:8**brought** 33:10
51:3,11 58:11
62:20 69:3 107:7
146:19**budgets** 70:18
85:17**build** 91:10**buildings** 62:6**built** 29:11 43:23
65:20 137:17**burden** 20:17
25:21 174:11,23,
25 176:15 178:19
179:5**Bureau** 186:20,23
187:6**Burr** 142:17**business** 15:23
18:25 26:3 27:24
29:11 30:12 33:14
36:21 38:12,14
39:14 40:18 43:24
44:15 45:10 46:2,
3 47:6,11 49:14
85:10 95:25
111:7,8 112:12,14
120:12 123:23
129:20 137:11
138:7 155:25
156:1,20 171:22
178:11 181:18
182:12,15**businessperson**
18:22 21:2 24:9
43:1 111:4,5**busy** 70:2**buy** 107:10

C

cafe 53:3,4,6,8,11,
14,15,23 54:15
62:5,10 104:22**cafes** 53:17 54:16
61:22,23 62:2**calculate** 45:22**calculated** 73:6
173:21 181:2
182:18**calculation** 102:9**California** 2:2,17,
21 3:9 5:1 15:20,
25 17:25 19:12
21:1 24:10,17
30:6 31:18 37:6
38:19 42:3 45:2
47:8 50:20 52:6
56:16,17,19,25
77:18 80:7 84:22
92:11 96:2 108:1
116:24 135:15
141:21 158:7
159:19 163:1
165:24 166:5
167:2 169:24**California's**
24:14,15**call** 7:22 27:2,4
35:14 48:11 50:11
93:16 100:14
105:4 167:4**called** 27:10 28:6
29:5 67:6 76:7
95:8 122:16 135:2
143:7,23 164:7
168:19**capacity** 108:9
136:23**card** 45:7 86:13
89:5,6,19 90:1,2,
4,7,15 188:1**cards** 75:21 78:5
89:8,10 90:8,21**care** 191:22**career** 107:18**careless** 39:22**carried** 83:2**carry** 25:21**case** 5:8 12:2 13:4
15:14 18:19
20:11,14 21:15,24
24:13 25:4 27:22
28:12 30:10 34:8
38:17 41:21 47:3
66:22 89:22
153:13 154:15
165:2 188:16
190:6 192:3**cash** 21:9 36:11,
24 45:23 51:7
64:8 68:25 69:12
70:1,7 77:2,4,10,
11,19 85:16
89:18,20 102:8
107:3,7,9 111:23
114:11 115:6,9,
11,18 119:3,6,17
124:6,25 125:9,
13,14 126:12,19,
22 127:5,8,14,16,
17,19,23 128:1,8,
11 129:24 131:6,
14 132:22 137:21
168:20 188:3**catch** 93:4**categories** 54:21
112:5 160:6**category** 159:17
160:4 161:17
163:2,7**cater** 90:13 96:25**catered** 90:13**caterer** 62:20
76:6 174:17**caterer's** 174:20**caterers** 62:11

98:6 174:15

catering 27:25
55:23,24 56:2,9,
10,20 90:14 96:3,
9,19,21,22 98:2,3,
5,7 105:3,7,23,25
106:10 112:16
115:25 116:12
138:1 143:8
160:14 162:7,11,
12 163:10 178:2**Cathedral** 123:8,
12,13**CD** 114:19**CDTA** 152:20**CDTFA** 6:25 7:1,
2,3 10:15,23
11:23 13:5 14:11
15:15 17:17 20:17
21:4,14,19 22:13,
22 23:14,24 24:1,
22 25:2,15,20
26:2,21 31:16
38:16 40:16,19
41:3 42:2,11,25
43:2 44:2,21
45:21 46:1,19
64:11 76:18
84:15,16,18 94:4
111:14 113:11
115:4 117:16,25
120:8,11 121:8,11
126:6,10 133:19
142:22 145:15
148:12 149:15,17
153:18 155:17,21
156:24 165:19
183:21 184:3
186:2,7 187:8
188:12,20**CDTFA's** 15:19
17:2,7,11 19:21
22:16 23:2 30:10
31:21 32:15 33:1
34:23 35:16 36:2
37:5 52:18 63:18
111:2 112:11
133:12 160:5
188:7

- center** 29:13,14
53:7,12 62:4 63:7
- Cerritos** 2:16 5:1
- certificate** 76:12
83:21 99:24 162:1
174:13 178:20,22
- certificates** 76:23
99:13 126:7
145:16,22 178:4
179:3
- Certified** 2:20
- CHAD** 3:12
- challenged**
146:25
- challenges**
174:22
- chance** 12:21
- change** 77:11,13,
22 81:2,6,12
107:12 110:12,22
137:19
- changed** 28:5,8
60:5 110:5 137:23
155:25 156:1,2
165:10 167:17
168:4
- charge** 42:23
55:1,8,16 58:3
65:11 88:24 90:25
112:14 138:15,24
143:9,12 174:17
- chargebacks**
105:5
- charged** 73:19
103:15 105:8
180:4 181:13
182:17
- charges** 65:9
73:18 90:23,24
146:1 174:18,19,
20
- charging** 162:17
- Charles** 152:1
- Chat** 7:2
- cheap** 170:8
- check** 87:7 92:25
93:7 113:14 114:6
118:15,16 133:10
147:2 167:11
168:7,8,11 189:12
- checkbook**
43:16,17
- checked** 167:13
- checking** 117:17,
19 118:10,11
- checkout** 57:7
58:4,14 60:10,23
65:8 71:3,23 76:4
82:18 101:11
109:5 113:21
114:4,5 119:16
127:25 128:7
144:6,10,12 146:4
- checkouts**
129:15 165:8
- checks** 85:9
- Children's** 54:9,
11,12,13
- Chocolate**
104:22
- choose** 30:13
150:11
- CHP** 120:11
186:17,22
- Christine** 108:18,
20 109:10
- Circuit** 25:4
- circumstances**
19:17 55:18
124:16 147:17
180:10
- circumstantial**
19:5 21:21
179:23,25
- city** 85:5 103:22
106:1 123:8,12,13
159:4
- civil** 121:20
- claimed** 7:12 18:5
172:18,25 173:5
- claims** 24:6
- clarification** 6:5
64:19 123:6
- clarify** 94:17
113:2 121:8,11
- Clarity** 31:24
- Clarity's** 32:14
- classes** 28:23
- clause** 109:19
- clauses** 110:4
- cleaning** 113:8
- clear** 7:13 15:7
21:20 22:22 25:21
49:9 63:5 109:4
147:25 179:21
182:21 183:25
190:3
- clerk** 130:3,4
- client** 32:13 34:18
48:13 53:16 56:4
62:19,20 78:7
90:14 96:19,21,22
104:5,6,10 116:12
124:11
- clients** 43:7 48:13
75:20 96:19
116:18
- close** 47:2 59:20
- close-out** 101:7,
11 102:25 103:19,
21 114:8,14
144:16 156:16
163:24 185:19
- close-outs** 101:5
102:21 103:15
109:2 115:7
167:15
- closely** 108:14
- CLOSING** 4:24
- closure** 12:14
- cloud** 86:15
- cloud-based**
90:11
- club** 54:22,23,25
55:2,3,7,15,19
64:8 96:14,15,17,
23 108:4 143:10
161:14,21,25
162:5
- clue** 155:1
- co-creator** 21:2
- Coachella** 35:13
45:18 79:18
113:13 117:17
124:19,23 128:21
129:3 144:1 145:5
155:13 156:10,14
158:19 163:12,17
177:7,8
- Coachella's**
113:16
- Coast** 72:13
- code** 15:20 84:15
177:15 179:14
- colleagues** 97:17
- collect** 45:12
55:16 75:22 98:15
105:15 119:6,19
- collected** 20:25
45:6 59:9 79:3
102:2 162:19
167:24,25 175:21
181:13 182:17
- collecting** 21:8
104:1 161:20,21
- collection** 44:4
111:17
- collectively** 15:5
- college** 35:5
123:3
- Colorado** 95:16,
18
- column** 72:7,19
74:6,24 75:16

76:20,23,24 77:24 78:6 79:3 83:19 104:13 169:21	companies 62:1 76:23 85:11	concede 63:14 187:13	connection 120:17
columns 54:20 75:15 78:11 79:8	company 28:6 29:5 32:6,21,22 33:16,19 34:21 35:4 36:15 38:11 39:15 42:18 43:9 45:4 55:25 56:2, 10 61:24,25 65:9 66:1,7,14 68:9,14, 16 69:9 70:9 86:23 89:14 90:15 100:14 123:17 141:19 154:24,25 160:14 162:12 163:10 165:24 166:17 168:7	conceded 19:25 concern 187:22 concession 57:6 63:15 71:3 73:25 76:4 102:19 103:18 107:1 concessionaire 49:6 63:20 110:11 concessionaires 144:3 177:5 concessions 15:24 17:12 20:2, 7 29:22 36:12 49:5 53:1 58:4 116:13 176:9	considerable 182:15 considered 113:24 131:22 consist 148:11 153:5 consistent 24:5 25:11 60:8 82:25 83:15 129:17 156:3,19 158:16 165:7
coma 157:13,14, 20	compared 17:19 174:3 180:15	conclude 26:9,19 40:5 183:1	consolidate 13:14 158:6
combination 64:4	compelling 40:4 181:8 182:13	concluded 22:6 64:10,11 180:7 192:8	consolidated 14:9
combine 141:3, 25	compensate 161:23	concluding 2:18	conspiracy 18:8
combined 72:5,8 81:25	competent 19:11	conclusion 22:21 41:23 119:5 189:8	constant 165:14
comfortable 123:25	compile 10:17	concurrently 17:25	constitute 20:16 131:14
commencing 2:17	compiled 80:19 86:15 87:13	conduct 5:15 19:3 132:12	consumption 179:2
comment 11:2 112:20	compiling 39:23	conducted 17:2 121:18	contact 32:13 109:3
commission 73:14 103:14 104:9,10 105:18 128:11 146:10 161:22 175:16,23, 25 176:20 185:13	complaints 113:9	conducts 47:11	contacts 43:12
Commissioner 25:5 179:16	complete 84:20 175:6 192:2	conference 7:5, 6,18 16:15 19:9 154:18	contained 87:20 92:4 148:17 175:3
commissions 26:5 65:11 72:20, 24,25 76:22 99:11 102:3 104:13 106:16 125:5 144:18 155:12 173:16 180:21	completed 23:6 119:20	confident 22:20 25:20	contend 155:10
common 24:16 102:16 117:2	complexities 24:17	confiscated 60:18,20	contention 177:18 187:9
commonsense 26:6 169:5	computer 43:20 44:1 171:18	confused 28:6	contentions 20:24
communication 28:18,22 95:17	computers 60:13,14	conjunction 147:9	context 15:15 52:15
communications 29:4 109:16	computing 185:15		continue 27:5 38:11 59:17 68:20 75:14 141:12 150:24 157:25
community 123:2	conceal 180:11		continued 17:1, 13 23:19 182:8 189:2
	concealed 25:12		

- continues** 19:20
23:9 26:2 88:6
188:22
- Continuing** 155:4
- contract** 48:11
97:2 98:15 99:10
109:19,25
- contracted** 98:17
- contracting**
50:14 109:20,22
162:20
- contractor**
139:15,16
- contracts** 51:23
52:3,5 111:15,22,
25 175:5,17 176:3
- contrary** 21:10
40:5
- control** 18:25
21:7,8 46:1,6 49:8
84:21 89:7 112:12
158:7
- controller** 88:10
- convenience**
14:13 151:10
- conversation**
57:3
- conversations**
41:7 70:22
- convincing** 7:13
21:20 22:22 25:22
179:21 182:21
- Cooking** 76:7
- cooperate** 151:22
180:5
- cooperating**
150:13 153:18
- cooperation**
25:15,16
- coordinate** 97:23
- coordinating**
96:2 113:5 175:23
- coordination**
58:5
- coordinator**
58:15,18 75:24
97:23 98:9,12
107:22,23 108:13,
16 112:23
- coordinators**
50:12 51:6 57:17
71:9,15 111:25
115:17 138:21
146:2
- copied** 12:25
152:6
- copies** 114:17,20
- copy** 58:24,25
102:24 103:7,8
119:21
- copy-and-paste**
22:14
- corner** 46:22
- Corona** 96:14,16,
17,23
- corporate** 30:11
32:12 62:8 68:19
136:9
- corporation** 28:3
30:6,13,17 32:1,2
38:8,9
- correct** 7:14 8:11,
16,18 13:11 14:7,
19,22 27:22,23
28:1,12 30:7,8
31:6,18 36:25
39:6 40:25 41:1,
25 50:5 55:11
58:1,2 59:25
61:23 62:2 66:4
69:18,19 72:11,12
73:5,15 74:25
75:4,5 76:2 78:18
79:1,10,11,12,13,
14,20 80:2,3,16,
17 82:1,2,11,15,
24 83:3,5,22 86:4
89:5 98:9 103:23
104:18 105:22
- 107:1,18 108:12
110:1,19 115:4
125:15,23 126:20
127:6 128:17,22
129:22 130:13
131:4,5,7,8,11,12
139:19,22 140:8,9
141:8 143:17,19
146:6,13,18
147:21 148:13,17,
18,24,25 149:7,8,
11,19,20,23,24,25
150:2,22,23
151:4,6,14,17,19,
20 152:3,4,6,10
153:2,16 154:16
155:15,18 158:8
159:11 160:7
161:3,4,15,17,18
163:8 164:15,18,
20,21,23 165:8
168:10 169:22
170:2,23 171:10,
25 190:8,19,20
- correctly** 74:18
78:14 144:18,21
- corroborate**
26:15
- corroborated**
188:17
- corroborates**
64:15
- cost** 56:12 65:19
- costs** 50:1 100:9
161:24
- counsel** 169:19
- count** 124:6
127:20
- counted** 125:1
126:23 127:11,14,
17,19 128:1,8,11
- counter** 124:10
125:1
- Counties** 142:12
- counting** 124:19,
23 125:14,18,19
126:18 127:7,8
- 129:24
- county** 79:13 85:5
140:17 142:5
158:18
- couple** 33:20 42:9
49:8 61:20 70:12
78:3 91:6 119:2
120:9 143:23
149:13 187:20
- coupled** 180:10
- Court** 26:18
- courts** 180:7
- cover** 15:1 49:25
- COVID** 86:23
- CPA** 19:12 39:5
135:13,17 136:6
170:20
- create** 50:16
51:13 110:2
- created** 18:22
23:13 101:17
119:16 141:2
- creates** 112:3
- creating** 109:25
- creation** 83:14
- credentials** 84:17
86:19
- credibility** 180:6
- credible** 131:1
- credit** 78:5 89:4,6,
8,10,19 90:1,4,8,
15,21 188:1
- credits** 130:6
- crime** 22:4
- criminal** 121:1,20
- critical** 15:18 24:8
- Crony** 96:15
- cry** 25:25
- CSR** 2:20
- culmination** 16:4

Culture 169:24	131:10	demonstrated 156:22	132:7,9 155:11,16
curating 49:16	dealings 107:20	demonstrates 20:18 25:14	derive 185:13
curious 63:7	108:3	demonstrating 182:16	describe 28:16
current 15:18	deals 52:4 101:25	demonstrative 81:20	29:3 31:7 50:9,25
19:21 40:13	123:23	denied 182:25	67:19 69:20 70:16
148:23 182:6	dealt 88:15	Denver 108:1	96:4 97:24 98:11
customary 156:23	December 150:25 152:9,23	department 3:10	100:2 101:23
customers 79:18	decide 5:18	35:25 40:1 50:19	103:25 114:2
131:6	138:22 192:2	57:18 61:15	129:17 131:17
cut 45:14 51:15	decided 138:19	138:16,17,18	144:12 145:11
cuts 17:14	139:5	139:6 155:11	168:15
cycle 58:13	decision 5:13	172:21 173:8,13,	describes 17:8
	13:25 16:13 21:13	21,25 174:23	desert 97:16
	23:7 38:21 39:19	175:7,12 176:7	123:18 143:7,14,
	40:24 41:2,8,23	177:3 178:1,6,8	22 163:9,10,11
	138:12 160:17	179:1 184:1	167:7
	177:14 183:18,19,	Department's 134:3 176:9	design 29:13,14
	20 192:3	178:14	53:12 174:19
	decline 23:21	departments 139:2	desired 93:17
	defer 120:22	depended 143:4	desk 90:10
	133:18,21 183:7	144:15,20 166:4,7	detail 26:14 31:15
	deferred 185:6	depending 159:13 169:4	65:24 96:5 146:3
	deficiency 17:5	depends 65:22	detailed 176:10
	18:21 19:20 20:12	85:10 117:22	details 56:23
	23:20,23 174:4,24	deposit 74:3,4,9,	70:23 71:13 106:1
	180:13 181:24	11,16 78:16,24,25	determination 16:6 17:11 18:14
	define 179:14	79:5 99:11	64:13 121:15
	defined 179:18	126:24,25	160:25 172:13,16
	defraud 17:25	deposited 70:18	174:22 176:14
	20:25 31:17 38:19	75:3,6 109:2	179:11 182:4
	42:3 47:7 92:10	127:16	184:19 186:9
	188:10	deposits 44:5,11	determine 42:9
	defrauded 37:5	69:23,24 70:8	160:22 161:12
	degree 29:4	71:14 111:17	190:5
	95:18,21 123:3	124:9 131:22,24	determined 24:1
	135:11,25	depositing 21:8	39:20 49:21
	delegated 88:16	44:8 72:23 111:22	121:17 175:12
	Deli 53:3	112:5 126:12	determines 183:20
	delivery 191:3,5	deposits 44:5,11	develop 36:19
	Dell 26:17	69:23,24 70:8	38:14 44:17 58:10
	delta 56:13	71:14 111:17	80:7 137:10
			developed 26:7
			44:19 45:1,4,9

- 58:7
- developing** 30:2,
4 38:12 50:13
51:23 60:23 138:9
- development**
36:13 65:21
- devices** 86:12
- died** 157:11,12
- Diego** 37:17
54:20,23 79:17,25
91:14 135:11,25
136:2 141:14,15,
16,22 142:1,2,3,
12,15,23 143:3,6,
25 144:2,7 158:6,
13 160:6 161:16
163:2 165:23
166:7,21,22 167:3
178:2
- Diego's** 85:12
159:24
- differ** 114:3
163:24
- difference** 17:21
125:12,16 181:12
- differences**
128:6
- differentiate**
18:24 143:2
- differentiated**
142:23
- differently** 89:9
141:18 160:1
- difficult** 113:6
- direct** 21:15 27:14
40:2 67:10 95:12
122:20 135:6
179:22
- directed** 63:4
- directing** 24:20
- directive** 42:18
- directly** 16:20
21:5 90:14 109:11
112:4
- Dirk** 4:18 6:17
7:20 27:4,9 75:23
85:25 108:15,22
113:2 138:5
- disallowed** 7:12
24:6 172:18,25
173:5 182:1
- disappear** 150:17
- disciplinary**
19:13
- disclosed** 172:17
- discovered** 168:2
- discrepancies**
127:24,25 180:2
181:5
- discretionary**
78:20,21
- discuss** 12:17
41:2,5 46:16,19
- discussed** 7:6,18
46:14 153:25
188:22
- discussing** 63:19
142:18
- discussion**
153:21 177:10
- dishes** 174:18
- dispute** 187:8
- disputing** 63:8
- distinction** 24:8
- distribute** 102:19
- district** 74:17,18
- dive** 144:19
- diverted** 43:9
- division** 121:18
138:24 186:17
- document** 46:9
47:18,21 57:13,16
59:4 60:11 75:9
76:20 84:1,13
86:6,8 87:19,21
91:18 101:17
- 104:12 119:15
- documentation**
98:16 99:3,6
175:7 176:18,23
177:6 179:8
187:23
- documents**
26:14 60:3,15,16
80:19 110:22
150:16 153:8
154:3 171:3,21
176:4,21 177:1
185:9,18,19,21,25
186:4,10,18
187:4,10
- dollar** 16:25
180:17,18
- dollars** 17:6 18:15
20:3 162:17
168:20,21,22
172:15,18 173:10,
19 174:3,4
180:14,16 181:25
- doubt** 152:15
- doubts** 84:15
- drafting** 48:15
- draw** 34:1,8 42:8
47:16 49:1 74:7
82:17 91:6
- Dressel** 4:22 7:20
16:19 19:11,14
33:4,8,21,23,25
34:12,13 39:5
41:8,13 46:14,16
80:1 83:5 84:2,7,
9,11,14,17,18
85:2,13,20 88:10,
17 93:23 109:12
110:2,3 122:11
134:24,25 135:1,8
156:22 158:4
159:2 163:16
165:16,18 166:12
- Dressel's** 34:22
85:24 122:6
134:22 188:24
- dress** 106:19,
- 20
- drink** 105:2,10,11,
14
- drinks** 174:18,21
- Drive** 2:16
- due** 24:22 39:22
63:25 73:1,14
105:19 130:6
179:11 181:2
182:18 189:5,24
191:14
- duly** 27:10 67:6
95:8 122:16 135:2
- duties** 39:15
50:12,22
-
- E**
-
- e-file** 84:16
- e-mails** 12:25
- earlier** 5:19 20:5,
19 38:15 39:19
50:7 57:1 58:8
61:23 64:6 65:2
71:2 73:19 75:21
78:25 79:4,6
100:8 101:16,18
104:21 107:17
109:1 110:25
130:23 138:6
141:6 145:14
161:13 165:22
167:12 170:24
187:24 188:6
189:22
- early** 51:23
- ease** 141:18
- easier** 13:14
141:20
- easily** 128:4
- edification** 82:6
- edit** 110:12
- Eduardo** 87:4
- education** 67:18

- 123:2 132:11
- educational** 28:16 67:20 95:15 122:23,24 135:10
- efficiency** 13:13 52:2 83:11 110:24
- efficient** 10:18 14:9,15
- Egusa** 37:9,11 91:11,19 142:20
- elaborate** 35:8
- Electric** 47:24 48:1 49:3
- electronic** 36:12, 24 57:24
- electronically** 52:9
- Elisa** 142:17
- Elizabeth** 32:18, 19,20
- emphasis** 19:2
- emphasize** 16:16 17:6
- emphasized** 25:17
- Empire** 98:3 143:10
- employ** 26:6
- employed** 68:6
- employee** 33:16 36:10 37:13,19 139:14,18 143:16 161:3 170:22
- employees** 19:1 30:18 85:10
- employer** 96:23
- employment** 29:10 86:4 95:22 108:6 128:20 130:2 131:15,19, 20 136:1,19
- encephalitis** 157:13
- end** 33:13 46:8 59:20 61:9 72:4 73:1 85:23 87:16 97:7 105:15 107:14 113:25 114:7 125:10 127:3,22 132:23 161:22 162:20 170:14,15 187:25
- end-user** 56:3
- ended** 60:24 72:23
- engage** 139:7
- English** 95:25
- enjoy** 34:17 43:25
- ensure** 5:17,25
- entails** 100:3
- enter** 96:22 130:5, 12
- entered** 90:12 105:1
- entering** 130:18
- entire** 112:16 125:1 139:11 174:16
- entities** 105:12
- entitled** 46:9 84:1
- entity** 15:16 30:12 187:4
- entries** 79:16,21
- entrusted** 34:19 41:17 58:10
- entry** 70:8 76:11
- equal** 5:14
- Equalization** 15:16 17:10 20:11 126:6 145:15 157:1
- equipment** 26:14 31:14 55:21 172:19 173:1
- erroneous** 26:1 157:6
- erroneously** 23:15
- error** 20:1 147:17 167:23 180:14
- errors** 17:3 25:24 39:20 147:15 148:20 175:10
- escape** 24:18
- essence** 14:7,10 105:18
- essentially** 64:1
- establish** 25:24 30:16 33:23 64:14 156:8 174:2,25 176:16 178:19 179:6 180:22 189:6
- established** 7:8, 10,13 21:25 40:19 175:14 176:12 178:7
- establishes** 181:13 182:14
- establishing** 176:18
- establishment** 20:12 30:11
- estimate** 93:21
- estimated** 59:15
- estimates** 85:14, 15
- estimating** 93:19
- ethical** 135:23
- evade** 22:19,24 24:21 40:8,19 179:12 182:21 183:25
- evading** 189:5
- Evaporation** 148:8
- event** 21:9 28:3,6 29:14 32:9,13 44:3,4 45:5 48:1 49:3 53:4,5 56:22, 23 59:25 64:9 68:17,18 74:14 76:10 77:3,8,15 78:7,8 79:1 82:15, 21 87:25 88:23 90:25 96:2,6,11, 25 99:8 100:12 101:13 103:6 105:16 106:4,5 111:15,16,17,21 112:23 113:16 114:7 118:10 119:5 124:25 125:10 147:10 148:10 155:13,14 156:10,14 162:17 174:19 175:23 184:14
- event's** 88:25
- events** 26:5 29:16 32:8 35:13 36:16 39:25 43:24 44:8, 10 52:5,6 53:10, 18 54:16 60:3 62:1,11,14 63:20 68:13,15 69:1,12 75:3,7 77:10,18 78:6 87:21 89:7,9, 10,20 90:4,13 112:22,24 113:12, 18 114:1 115:16 116:7,8 119:3 129:12 137:22,23, 25 138:25 142:4 145:1,17 159:9 163:12 165:11,25 166:1,3 175:19,21 176:3
- eventually** 16:12 19:8,25 69:13 90:10 127:4
- evidence** 7:14 8:20 9:11 11:13 12:12,14 14:14 20:18 21:14,20 22:16,23 24:2 25:9,12,13,22

- 26:8 40:1,4 156:8
175:20 176:7,13
178:7 179:4,21,
22,24,25 180:3
181:8,16 182:13,
14,21 186:2 187:1
- evidencing**
185:17
- evolved** 90:11
141:23,24
- ex-employees**
28:5
- ex-wife** 32:20
- exact** 22:13 154:7
- examination**
10:16 17:3 27:14
63:18 67:10 95:12
122:20 135:6
178:14
- examinations**
148:22
- examined** 27:11
67:7 95:9 122:17
135:3 146:24
- examples** 83:12
104:23 129:7
- Excel** 80:19 85:7
87:21 111:13
127:21
- Excel-formatted**
87:19
- excluded** 64:11
174:9
- exclusively** 21:8
66:7,8 88:6 89:20
188:2
- excuse** 21:4 22:5
38:3 67:1 71:25
93:5 114:19
117:18 151:18
158:12 163:18
164:17 169:15
- executed** 111:15
149:25
- executing** 111:21
- exempt** 174:9
- exhibit** 9:15 34:5
39:1,3,17,18
40:16,24 42:5,24
46:8,23 47:16
49:2 52:4 57:12
59:24 71:20,21,25
72:20 74:8 76:4,
20 80:20 81:21
82:7,17 83:3,4,7,
15,24 84:13 85:1,
19 86:6 87:17
91:7 101:10
103:19 104:12
106:25 141:7,9
149:4,21 150:24
151:23 153:13
154:13 155:4,9
156:6 163:21
169:18 175:18
176:9 186:12
- exhibits** 4:4,5,6
8:8,9,10,14,17,19,
23,24,25 9:2,4,6,
10 10:7,11,14,20
11:1,10,12 12:24
16:25 25:23 34:2
47:13 80:19 149:1
163:16 169:19
176:21 180:24
186:13
- exist** 20:14 91:2
188:5
- existed** 18:21
- existence** 17:8
20:20 21:20 23:23
53:8
- exists** 24:2
- expected** 11:19
- expecting** 192:4
- expenses** 45:14
160:12
- experience** 67:19
68:1 84:23 86:8,
21 122:24 129:14
132:10 137:9
- 182:15
- experiences**
24:16
- explain** 47:7 49:4
68:6 73:18 92:9
96:4 104:25
105:24 107:6
124:22 125:12
140:10 141:20
153:24 155:21
162:14 174:23
- explained** 180:3
- explanation** 24:5
110:17 135:9
155:24,25 174:24
181:5
- explanations**
25:11 156:3,19
- explore** 185:22
- extended** 151:12,
15,19
- extending** 25:18
- extension** 52:18
149:16 150:19
151:6
- extensions**
149:16 150:20,21
151:3
- extensive** 50:13
- extent** 63:15,24
- extremely** 10:17
43:5 188:1
- eye** 111:11 148:3
-
- F**
-
- facilities** 29:15
- facility** 53:4,5
- fact** 17:4 23:14
38:21 39:12 43:20
81:9 125:20,21
150:8 178:7,24
179:6 188:20
- factor** 14:13
- factors** 23:2
- facts** 19:5 20:23
21:21 22:11
190:23
- failed** 14:12 22:22
25:10,21 180:18,
22 181:3,4,15,19
182:19
- failure** 40:6 180:5
181:7
- fair** 22:2
- faith** 22:2
- fallacy** 23:11
- false** 21:22
- familiar** 30:24
31:23 32:18 33:4
35:1,19 36:5 37:8,
25 38:4 47:21
48:1 52:19 53:25
55:22 56:14 57:6,
8,9 71:3,6,21 86:3
89:24 91:11 101:7
107:4 131:9
142:24 162:7,9,
21,23
- fashion** 62:15
- favor** 15:19 17:7
22:1 23:3 25:6
33:1 34:23 36:2
- FCF** 83:13
- Fe** 54:22 55:7,19
64:7 108:4
161:14,25 162:5
- feature** 52:17
- featured** 81:21
142:21
- February** 151:1,
18,24 172:16
- federal** 17:18,24
25:3 179:15 180:7
188:8,11
- fee** 3:10 50:3
160:15 161:22

- 162:18 163:4,14
165:1,3 175:23
- feed** 162:25
- feedback** 88:5
110:10
- feel** 88:15
- feeling** 158:20
- fees** 72:24 102:3
174:20
- fest** 74:20 159:4
- festival** 48:5
49:16 50:13,18
71:24 73:3 79:18
82:8,15,18 103:22
106:2 107:1,8
137:24 144:15
148:15,16 177:7
- festivals** 26:5
36:14 43:11 44:9,
18 45:11 47:12
52:6 62:16 77:20
83:16 91:2 97:23
98:15 99:23
107:25 109:6
126:6 129:8
144:2,14,15 145:2
175:5 176:22
177:4 181:1,6
182:19 185:18
- field** 24:11 46:10
60:14
- fields** 98:3
- figure** 17:1 78:15
121:4 168:16
169:1
- figures** 75:18
78:25 102:5
159:10 164:2
167:11,13 169:20
176:25
- figuring** 88:24
- file** 10:16 14:4
25:10 70:25 84:21
121:6 150:19
157:22
- filed** 12:13 16:11
83:8 99:14 140:5
150:20 155:6
177:12 189:1
- files** 52:10,11
80:21 99:15
114:25 140:7
- filing** 84:20 136:7
140:5 171:4
- filings** 34:20
- fill** 47:14
- fill-in** 87:13
- filled** 140:16
- filling** 44:1
- filters** 112:8
- final** 72:4,22 92:7
140:5
- finally** 25:13
- financial** 84:21
136:7 152:24
153:4
- find** 23:23 121:19
148:19 151:7,8
158:21 179:22
183:24
- finding** 20:13
180:9
- findings** 20:1
21:12 23:9 46:13,
17,19
- fine** 11:3 27:7 94:9
134:10
- finished** 61:11
66:17
- firm** 30:14 136:2,
5,6
- fit** 33:8 35:21 36:8
37:11 52:24
- fixed** 140:14
- flawed** 15:19
19:21
- flight** 93:5
- flimsy** 22:17
- flow** 55:12 85:16
- focus** 74:19 130:8
- follow-up** 78:19
149:13
- food** 15:24 31:13
36:17 43:10
45:10,11,17 49:8,
12,13,14,16,17,23
50:6,14,17 54:24
55:10 61:25 62:9,
17,21 65:3 66:3,
11 82:14 104:7
106:10,21 113:7
169:11 174:17,21
175:20 176:2
178:12
- foregoing** 182:23
- foremost** 10:15
187:22
- Forest** 47:24 48:1
49:3
- forget** 70:5
- form** 58:4,14 65:8
71:12,23 73:25
74:2,11,13,16
76:8,9,11 101:11
102:25 107:1
114:8 119:16,20,
21 146:7,9 149:22
- format** 143:24
- formed** 32:1
- forms** 25:18 44:1
57:7 60:10,23
71:3 75:24 76:5
83:9 101:21
102:20 103:19
109:5 110:11
113:21 114:4,5,14
128:1 144:6,10,
13,16 146:4
175:17 176:24
- formulas** 111:13
- forward** 89:15
93:11
- found** 17:20 22:9
40:17 42:4 68:23
173:18 178:1
- foundation** 17:11
24:19 91:11
- four-year** 123:3
- fourth** 24:8 63:17
- frame** 15:17
- Francisco** 28:19
29:14 42:12 52:23
53:7,13,24 54:3
67:21,24 68:2,23
69:2,7,8 74:15,16
79:2,3 85:4 142:7
159:5 167:3
- Francisco's**
85:22
- frankly** 150:15
- fraud** 7:13 14:12
15:21 17:7,11
18:19 20:4,8,13,
16 21:18,24 22:9
23:3,16 24:10
25:3,5 26:1 31:15
33:2 34:24 35:17
36:3 38:17 63:7,
14 83:24 111:2
131:10,15,18
154:8 172:15
173:6 179:10,12,
14,18,21,22,23,25
180:9,12 181:8,16
182:13,20 183:21,
23 184:14 190:5
- fraudulent** 18:7
23:17,24 24:21
25:1,22,25 63:11
132:5,12 188:18
189:9
- fraudulently**
19:23 22:7,18,23
32:16 111:3
- freely** 153:1
- frequency** 178:13
- frequent** 90:21

frequently 87:12
90:19 108:9 139:7

Fresh 53:3,6

Friday 62:5
164:13

friend 35:5 170:9

front 124:25 150:5
170:13

full 18:25 21:7
46:1,5 79:2,6
112:12

full-time 130:1

fund 77:15,19

fundamentally
26:2

funds 30:20 45:13

furnishing
174:20

future 78:6,16

FYF 71:24 73:3
74:20 82:1,23
107:1 129:11
159:4,9

G

Galleria 53:12
62:4

gather 114:8

Gatorade 100:22

gave 41:9 47:10
107:11 171:18

Geary 3:5 5:11
14:1,4,16,21,23
61:18,20 62:14,
22,24 64:20,23
65:1,25 66:5,15,
16 92:19,20
117:13,14,16,22,
25 118:5,7,9,18,
20,22,25 119:2,9,
12,14,19,23,25
120:2,4 133:4,5,
23 134:2,6,9

166:11,13,17,19,
21 167:1,6,9,11,
22 168:5,11
169:10,18,23
170:4,13,16,20,24
171:6,13,20
172:1,3,4 183:5,7
185:4,5,6,20,24
186:16 187:2,8,14
189:14,15

general 17:20
31:1,3,4,7 67:17
85:16 95:15
137:11 139:1
153:7 158:13,20
160:3

generally 13:5
87:23 125:2,11
179:18 185:18

generate 86:14

Gentile 69:11

gentleman 36:5

German 67:14

Gift 53:7 62:4

give 45:14 46:6
47:14 56:8,22
70:17,18 90:6,15
93:8 98:23 107:13
108:25 118:15
129:7 135:9 141:5
189:23

giving 57:3 95:14
149:16

Glueck 4:19 7:21
66:25 67:1,5,13,
15,16,17,20 84:8
85:3,4 88:17 91:5
92:16 93:3 108:23
109:9,10,11
130:23 131:1
138:19 140:23
142:8 159:5

Glueck's 158:7

goals 138:11

good 6:13 9:21
22:1 27:16 43:3,4

66:24 89:14 94:8
101:6 109:21
134:11 135:8

graduate 123:1,
10

graduated 67:22
95:17 123:15

grant 189:23

grasp 23:25

gray 65:23

great 121:22
133:18 146:3

greater 24:10,12
31:15 47:14

green 6:20

grew 67:13

grid 137:25

Grill 53:20,22

groom 56:10
90:14

gross 73:10,11
87:25 88:2 102:5
104:6,9,18 110:18
125:24 147:20
164:19 170:6
174:8 181:8

grossly 188:12

ground 112:17,24
113:3,5,10,20,24

grounds 118:23

group 29:24
30:18 32:10 33:21
36:18 49:12
115:13

growth 137:9
138:11,13

guess 37:24
120:24 121:4
132:24 142:7
159:16 170:5
184:6

guidance 179:17

guy 169:15,16,17

guys 61:8 94:4
98:22 133:13,16

H

half 11:20 181:7

han- 66:9

hand 15:3 65:18
77:10

handle 34:19 39:9
41:17 44:20
49:10,15,18 58:11
62:14,16 69:10
70:22 85:14 115:6

handled 19:16
66:6 71:9 82:24
83:14 144:8
165:11 187:7

handles 44:10
47:12

handling 68:25
69:12,22,23,24
70:1,7 79:24
85:12 89:2 125:8
126:18 131:6

hands 105:12
115:8

happen 65:22
78:8 126:22

happened 78:13
79:2 158:24,25

happening
168:17

hard 43:5 49:13
82:22 83:13 88:1
101:13 114:17
159:4,9

hardware 26:20

head 90:23
138:18 139:6
162:17,18

headed 154:3

heading 154:5

heads 138:16	123:2 170:6,8	hot 113:7	in-house 49:15
health 50:19 65:17	higher-level 46:6	hours 11:20	in-state 158:24,25
hear 6:20 14:8 15:22 16:20,24 19:14,17 21:5 23:1 24:24 25:7, 10 27:18 33:25	highest 43:6	housed 62:2	inadequate 25:9 180:4
heard 5:7,9 6:21 64:6 71:2 73:18 101:16 104:21 110:25 125:4 126:4,10 129:16 143:25 144:5,25 145:14 155:19 156:4 159:4,8 161:13 163:25 164:5 185:14 187:21,24 188:19 189:7	highlight 187:20	Hudson 72:15	inapplicable 184:15
	Highway 171:16	huge 53:9	inappropriate 24:12
	hire 62:17 98:14, 25 162:14	<hr/> I <hr/>	inception 35:7,10
	hired 30:14 33:11, 16 39:14 69:10 84:9,11 96:8,17 147:9 148:3 162:12 175:19	I.D. 28:8	incident 120:18 121:3
	hires 116:12	i.e. 188:12	include 76:6,8 78:4 146:13
	hiring 85:10 96:7, 18 98:5	ice 51:12 65:4,16 100:23,24	included 16:8 22:5 34:23 75:24 78:25 100:4 163:14 166:22 181:25 186:3
	history 15:15 19:12 23:12 29:3, 17 95:22 136:1	idea 13:2 41:18	includes 180:1
	hold 13:17 24:16 141:11 184:21	ideal 141:23	including 12:12 86:19 139:2 174:18 182:15
	holders 123:24	identified 71:24 167:23 176:8 177:4	income 17:18 136:11 137:13 139:23 180:8,12 188:8,12
	honest 18:6 20:15 64:1,4 186:11	identify 34:10 147:14 186:3,17	incomplete 176:23
	honesty 22:2	identifying 131:13	inconsistent 17:23
	Honor 6:13 7:15, 23 8:12 10:14 12:8,20 13:11 14:7 27:5 59:19 63:14 64:3 66:24 72:1 93:12 94:21, 25 122:4 133:17 187:19 191:2,19	ignorance 20:14 188:16	Incorporation's 88:14
	Honors 15:12 22:25 42:4 46:7 92:13 122:12 132:14 134:23 187:24 189:10	images 82:11	incorrect 154:11
	horizontally 72:10	imagine 124:8 169:15	independent 72:13,15,17 104:23 113:17 170:20
	hospital 41:21 54:9,12	immediately 115:9	independently 141:15
	hospitality 106:19,20 116:8, 10	impact 15:18	index 9:15 186:12
		important 15:17 17:22 20:3 22:13 43:22,23	indication 121:16
		importantly 15:25 19:24	indicative 178:13 179:25
		imposed 63:12 173:6 179:13 182:22	
		imposes 174:6	
		improvements 182:7	
helped 35:11 36:10 43:19 44:14 48:20 97:20,21 110:2			
helping 70:4 97:17,22			
hesitated 42:15			
Hetu 152:1,2,13			
Hey 98:24 106:15 127:10 161:6			
high 96:1 123:1,5, 8,16			
higher 23:14			

- Indio** 96:2,6 97:16
107:18,20 117:21
118:6,12,22 142:5
163:11 166:23
- indirect** 175:8,10
- individual** 30:24
31:23 35:1 37:8
38:1 52:10 59:11
76:4 83:9 86:2
88:13 98:1 131:2
136:8 187:3
- individuals** 36:19
42:23 51:20 76:22
- industry** 24:25
29:19 36:18 58:9
131:10 137:8
- inferring** 180:12
- information** 5:18
17:19 41:10 57:3,
19 58:17 80:4,6,
18 83:6 84:21
87:1,20 90:12
92:3,4 101:17
103:12 104:1
109:8 110:12
119:19 122:23
128:10,14 146:5,
17 156:14,15
158:11,13,14
159:8 188:4 190:3
191:18 192:4
- informed** 84:7
- informs** 85:13
- infrastructure**
65:20 100:10
- initial** 16:25
- initially** 20:5
- initiate** 111:25
- innocence** 22:2,4
- inquiry** 135:23
- inserter** 123:18
- inside** 52:6
- instance** 85:8
107:10 158:17
- 170:7
- institutions** 62:2
- instruct** 110:21
150:11
- instructed** 81:12
131:18 150:6,20
- instructions**
161:5
- insufficient** 24:2
- insurance** 66:10
98:16 99:9
- integral** 36:18
40:18
- intend** 7:22
- intended** 14:13
22:19
- intent** 20:25 21:22
22:24 23:14,17,24
25:1,22 40:8,19
179:12,20 180:11
182:21 183:25
189:10
- intentional**
179:18
- intentionally**
20:24 24:21 31:17
- interact** 108:7
- interactions**
109:13
- interchangeable**
167:10
- interest** 18:16
52:2 66:20 83:11
88:1 91:5 110:24
- interested** 43:21
59:8 87:24 103:11
110:4 124:18
- internal** 46:3 59:4
88:11 104:4
- interpreting**
78:14
- interrupted** 123:6
- interrupting**
59:15
- intervening**
178:25
- interview** 84:2
86:9 91:19 149:6
- intricacies** 24:14
- introduced** 89:13
- introductions**
6:9
- inventory** 148:9
- investigating**
121:20
- investigation**
186:8
- Investigations**
121:18 186:6,20,
23 187:6
- investigative**
186:16
- invited** 152:20
- invoice** 105:3,7,
23 106:8 130:10
137:18 138:1
- invoices** 130:5,6
131:21
- involved** 35:12
36:13,17 39:13
42:20 43:9 44:7,
13 48:15 56:18,22
60:25 62:21 71:9,
13,17 101:20
109:24 116:8
121:2,3 127:7
138:7,12 140:3,4,
10,19,22,23,24
142:14,19 144:10
147:3 148:22
187:5
- involvement**
19:15 21:3,15
31:21 32:15 33:1
34:22 35:16 36:2
37:4 40:2 58:6
60:23 70:16 75:11
- 101:23 109:13
110:7 112:9
113:20 115:23
124:22 126:15,19
130:18 137:14,15
139:4 144:12
160:24 186:22
- involving** 121:1
- iphone** 43:19
- Island** 53:20,22,
23
- issue** 12:10 23:4,
13 47:2 83:24
89:21 129:2
158:22 169:6
170:25 171:1,22
183:18,20 184:6,
17 187:10 190:4
191:13
- issued** 16:6,13,21
18:13 19:8 23:7
38:22 40:24
172:12 177:14
182:3,5 186:9
- issues** 7:7 9:16
13:4 26:11 88:16,
25 89:21 94:20
100:13 110:4
111:1 137:1,2
173:3
- item** 143:11
156:12
- items** 24:7 26:4,
19 60:10 66:21
76:22 85:8 89:23
102:12 105:1,4
131:10 177:4
186:21 189:4
-
- J**
-
- James** 37:25
38:3,5,8
- January** 150:1
- Jared** 7:1
- JARRETT** 3:11

Jason 3:12 7:3
186:19

Jerry 4:22 7:20
16:18 19:11 33:4,
9 34:12,19 39:4,9,
15 41:6,20 46:5,
14 48:18 79:24
80:1,21 84:2
88:10 112:4
134:23 135:1

Jerry's 37:17
112:7

Jesse 4:19 7:21
36:19 58:19 66:25
67:5 81:5 82:6
83:23 84:8 86:17
87:22 88:7,9
108:23 112:4
115:13,19 126:21
128:12,13 130:22
138:5,19 140:22
141:4 142:8,9
159:12

Jesse's 141:10
159:19

job 29:25 30:1
97:14 98:12
113:4,6 123:17
162:19 166:9

jobs 31:10

Johnny 169:25

joined 97:15

joint 29:24 30:19
38:7 143:10

journal 74:4

journalism 95:17,
25

judge 5:5,10,11,
15,16 6:16,18 7:4,
17,24 8:2,5,13,21,
22 9:4,9,12,17,20,
23 10:4,10,20,25
11:7,9,14,15 12:9,
16,21 13:8,16
14:1,3,4,16,21,23,
24 15:6 27:3,7,11,
19 59:14,22 61:4,

8,13,17,18,20
62:14,22,24,25
63:2,23 64:19,20,
23,25 65:1,25
66:5,15,16 67:3,7
71:25 72:2 92:14,
18,19,20,21,22,
23,24 93:6,19,24
94:2,7,10,15,22
95:1,9 117:9,12,
13,14,15,16,22,25
118:5,7,9,18,20,
22,25 119:2,9,12,
14,19,23,25
120:2,3,4,5,6,17,
21,24 121:7,9,10,
22,25 122:1,9,17
123:12 132:15,18,
21 133:3,4,5,6,7,
8,9,19,22,23
134:1,2,6,9,11,13,
15,20,25 135:3
165:18,21 166:10,
11,13,17,19,21
167:1,6,9,11,22
168:5,11 169:10,
18,23 170:4,13,
16,20,24 171:6,
13,20 172:1,3,4,5,
6,8 183:1,4,5,7,9,
10,11,16 184:3,
10,21,25 185:2,4,
5,6,20,24 186:16
187:2,8,14,16
189:11,14,15,16,
17,18,20 190:4,8,
9,12,20,24 191:1,
5,8,13,20

judges 5:10,12
21:18 27:1 28:9
92:8 192:2

judges' 74:7

July 16:14 150:22
155:6

jump 191:8

June 2:19 5:1
12:11 18:13 67:25
182:5

justified 175:7

K

Kavert 35:19,21

Kavert's 36:1

keeping 77:17

Kelly 32:19

Kevin 3:7 6:14
30:25

key 17:6

keystone 19:21
20:19

kind 29:12 33:11,
15 34:1 41:17
42:15 43:19
44:16,17 45:4
47:5 49:4 55:2
60:10 62:12 65:18
69:6 70:12,21
71:16,17 74:19
88:24 99:2 103:25
112:19 113:19
124:15,22 127:13
128:3 131:25
132:4,6,23 138:9
143:24 149:1
160:20 186:6,10

knew 29:25 45:3,5
161:11 189:6

knowing 158:20

knowledge 18:23
19:1 24:19 44:22
45:19 81:1 110:9
117:2 121:14
135:21 187:12

knowledgeable
18:21 21:2 24:9,
11 42:25 43:13
88:8,13 111:3,5
153:19

Kwee 3:5 5:11
62:25 63:2,23
64:19 92:22,23
120:5,6,17,21,24
121:10,22 133:7,8
134:13 172:5,6
183:7,10,11,16

184:3,10,21
189:17,18 190:4,
8,9,24 191:8

L

L.A. 77:18 82:22
83:13 101:14
159:4,9

L.a.-related 75:7

labeled 173:9
178:2

labor 55:20 85:11

lack 69:6 175:6
180:5

lacking 24:20

lady 69:10

laid 16:24

Lali's 104:22

large 10:17 18:20
20:20 39:24 44:4
45:10 81:10
111:17 123:25
131:24

large-scale 35:12

largely 89:18
165:7

larger 62:11,14
144:14

late 74:21

LAUGHLIN 3:7
6:13 7:15,23 8:1,
12 10:14,22 12:8,
10,20 13:11 14:7,
19,22 15:12 27:4,
15,20 34:4,6
38:25 39:2 42:4,6
59:19,23 61:2
63:13 64:3 66:24
67:11 72:1,3
92:13 93:4,12,21
94:1,21,24 95:3,
13 122:4,12,21
123:9,14 132:14
133:17 134:8,23

- 135:7 149:3,5
165:16 184:16
187:19 190:22
191:2,7,19
- laundering** 131:22
- law** 5:10 8:20 9:11
11:13 20:16 21:24
27:11 64:18 67:7
95:9 122:17 135:3
179:12 188:17
190:23
- laws** 18:7,23
24:15,18 44:22
- lead** 3:3 5:11,15
97:22 184:24
- leading** 170:25
- learned** 131:18
186:14
- leasing** 143:16
- leave** 69:14 94:23
133:15
- ledger** 17:20
158:13 160:3
- ledgers** 70:14
153:7
- left** 69:8,13 70:9
93:13
- legal** 24:18 28:22,
25
- legitimate** 64:16
- legs** 93:9
- leisure** 94:6
- letter** 16:21
151:23 152:1
156:25 157:2,23
189:1
- level** 21:3 23:14
24:12 33:12 96:1
123:2
- liability** 16:8 63:9
173:11 177:9
178:23 182:11
- liaison** 87:22
- license** 30:20
66:10 135:17,19
- licensed** 19:12
135:13
- lieu** 14:17
- life** 58:13
- life-threatening** 41:20 188:25
- light** 6:20
- limit** 131:25 132:8
- limitations** 25:19
151:13,16,19
- limited** 88:1
108:13 109:15,16
175:2 180:1 188:1
- line-item** 103:9
- lines** 109:19
- liquor** 30:20 66:9
- list** 49:3 98:24
146:16 176:10
186:24 187:3
- listed** 7:19 57:25
73:17 184:18
- lists** 72:7
- literally** 119:4
- literate** 43:20
- live** 10:1
- livestream** 6:22
94:12
- livestreamed** 5:20
- load** 100:11
- loading** 50:17
100:4
- local** 118:6 136:2,
4 138:25 144:14
- located** 116:23
- location** 127:2,15
178:2
- locations** 62:3
129:7
- log-in** 70:25 84:16
86:19
- log-ins** 87:6
- Logic** 18:1
- logical** 23:11
- logistically** 56:25
- logistics** 86:10
88:21
- long** 69:6,15
118:3 129:12
134:2,4
- longer** 53:7 93:10
122:6 177:21
- longtime** 35:5
- lookout** 132:1
- loosely** 19:5
- Los** 42:12 74:23,
25 75:3
- loss** 148:4,6,7
- lot** 13:10 31:10
51:22 56:22 60:12
62:8,19 78:5 81:3,
7 93:14 116:7
131:21,23 185:14
- lots** 131:6
- loud** 91:24
- loudly** 6:3
- lower** 154:6,7
- Ls** 33:13
- luck** 24:13 43:8
- lunch** 66:23 93:10
133:14
- lunches** 163:14
-
- M**
-
- machine** 128:4
- made** 20:1,7
- 26:24 65:9 85:8
112:20 154:10
163:6 174:17
176:5 180:25
181:6 183:18
187:3 188:6
- main** 42:18
110:25
- maintain** 40:6
76:15 177:16
181:19
- maintained** 24:5
46:2 114:19
161:16
- maintaining** 39:23 141:22
142:6,11,15
- maintenance** 85:22
- make** 6:18,21,23
13:14 15:1 17:16
44:17 49:13 59:18
73:10 74:18 77:15
81:4 90:15 94:12
100:11 117:20
118:17 130:5
131:23 147:12
155:11,17 156:24
158:15 167:16,17
187:1 190:14
191:5
- makes** 49:9 80:22
123:24 160:17
186:21,24
- makeup** 126:20
- making** 69:24
118:3 138:2
144:17,21,22
- malpractice** 135:22
- manage** 36:20
49:11,17 50:17,18
85:16
- managed** 42:23
- management** 49:5 50:9,10

- 51:18,21 98:18
100:4 137:1
- manager** 31:2,3,
4,8 86:11 87:22
88:21
- manages** 37:14
- managing** 32:10
45:10 68:9,18
100:18
- mandatory** 78:20
- Manipulate** 81:15
- manner** 10:18
14:15 129:14
- Manual** 175:9
- manually** 43:16
- MARCENA** 2:19
- March** 16:14 23:3
42:7 78:8,9
151:12
- Marchica** 17:10
20:11 23:22
- margins** 170:6
- marketing** 29:8,9
35:24 42:18 43:3,
4
- marketplace**
28:6
- marshal** 186:1
- massive** 132:9
- master** 49:6 65:17
- match** 74:2 109:1
127:23
- matched** 71:10,
11,14
- material** 17:8
116:20 127:25
128:6 147:15
148:20
- Matt** 87:4 89:13
- matter** 2:5 5:7 7:6
39:12 117:2
120:25 121:1,13
- 151:9
- matters** 19:13
121:21
- MC** 3:7 6:13 7:15,
23 8:1,12 10:14,
22 12:8,10,20
13:11 14:7,19,22
15:12 27:4,15,20
34:4,6 38:25 39:2
42:4,6 59:19,23
61:2 63:13 64:3
66:24 67:11 72:1,
3 92:13 93:4,12,
21 94:1,21,24
95:3,13 122:4,12,
21 123:9,14
132:14 133:17
134:8,23 135:7
149:3,5 165:16
184:16 187:19
190:22 191:2,7,19
- Mcguire's** 169:25
- Mclaughlin** 4:12,
17,25 6:14 10:11
13:9 15:8 59:14
94:17,19 187:17
190:20
- meal** 105:2,10,11,
14 114:8 174:21
- meals** 105:8,20
106:3,10,11
174:17
- meaning** 154:14
- means** 35:8
180:16
- measure** 156:12
172:23 174:5
175:12 176:12,19
178:15 179:9
180:13 181:24
- measured** 174:8
- measures**
172:17,23 173:4
180:23 181:25
- meet** 5:13 21:22
124:15 192:2
- meeting** 39:9
89:12 150:4
152:12,16,18
- Megan** 51:24
- member** 31:1
50:10 51:17 55:7
115:18
- members** 3:5
5:12 11:24 13:20
55:1,17 64:10
189:12
- membership**
55:8
- memo** 23:3
- memorandum**
20:8 42:7 84:1
86:8 91:18 149:6
- memorandums**
186:13
- Mendez** 36:6,8
37:3 70:10 86:3,9,
10,11,14,16
87:12,25 88:6,9,
15,20
- Mendez's** 86:20
- meningitis** 41:21
157:13
- mention** 19:10
31:20 32:14,25
35:15 36:1 50:8
120:8
- mentioned** 5:19
36:22 37:4 43:6
57:1 58:8,21 65:4,
5,25 70:14 75:21
86:2 99:3 107:17
138:6 167:12
185:15 186:25
- mentions** 88:20
- mentor** 69:7
- mentored** 69:8
- menu** 50:13 65:21
- menus** 65:20 89:2
- merchant** 123:21,
22,23 124:2
- mere** 17:7 20:6,12
21:20 22:14 23:22
30:11 180:7
- met** 91:14,16
124:13 152:9
- method** 129:14
175:8,11
- Mexican** 169:17
- Miami** 38:13
- MICHAEL** 3:5
- Michigan** 48:5
- microphone**
6:19,23 190:10
- microphones**
9:25
- mics** 94:13
- Mike** 31:23
- million** 16:25 17:5
18:15 172:15,18,
19,24 173:10,19,
24,25 174:2,4
180:14,16 181:12,
25
- million-dollar**
16:8,9 17:4 156:9
173:19
- millions** 20:3
- mind** 10:2 121:7
- mine** 35:5 125:6
- minimum** 25:24
184:2
- minus** 72:24
- minute** 57:4
- minutes** 9:18,21
11:16 12:2,4
59:15 92:25
93:22,23 94:3
134:1,4,8,12
172:10 185:3
- miscellaneous**

160:4
misleading 19:6
mispronounced
 67:12

missed 13:22
 33:22

misstate 180:11

misstated
 188:13,23

misstatements
 147:15

mistake 18:6

mistaken 50:4
 79:17

mistakes 20:15
 63:16,18 64:1,4,
 17

misunderstand
 26:3

**misunderstandin
 g** 18:6 20:16 64:5
 188:14

**misunderstandin
 gs** 64:18 188:16

mixed 26:19

mobile 86:13
 104:22

model 49:14

moment 81:19
 126:4 142:21

Monday 62:5

money 49:13
 55:12 77:5 81:5,7
 112:5 123:25
 124:10,19,23
 125:1,2,3,18,19
 127:1,20 128:3
 131:22 146:23
 161:23 169:2,3

Monterey 103:23

month 78:12
 79:23 80:8,15
 132:2 152:23

monthly 74:4,9,
 10,11,13

months 79:4,6
 86:23

Moreno 87:5

morning 6:13
 15:22 16:20,24
 19:14 20:22 27:16
 34:1

motion 12:13,22
 13:8,19 14:4
 184:23 189:21

move 12:6 14:24
 15:8,9 61:3
 119:12 122:9
 137:18

moved 38:12
 95:24 123:19

moving 8:8 93:11

much,' 85:23

multiple 17:2
 74:15

Munguia 2:19
 5:24 94:8

Museum 54:11,13

music 36:14,17,
 18 43:10,24 44:18
 48:13 54:2,6
 62:16 65:4,12
 79:18 83:16 175:5

N

named 30:24
 31:23 35:1 36:5
 37:8 85:6 86:2

names 30:22
 33:20

narrative 37:5

narrow 190:15

Natalie 4:21 7:21
 51:25 65:13,23
 115:19 122:15

NATASHA 3:3

nationwide 50:19
 107:25 108:2

nature 31:11,14
 33:18 50:16 51:10
 143:4 161:12

necessarily 11:5
 147:2 161:11

needed 5:18 6:3
 34:20,21 84:15
 88:24 138:10,20,
 23

nefarious 30:11

nefariously 18:2

negative 78:10,22
 79:4,5

neglected 65:2

negligence 18:19
 20:15 22:9 23:17
 135:22 154:9
 183:22 184:6,13
 190:6

negligent 25:25
 184:2

negotiated
 111:15 170:13

news 95:23

newspaper
 123:17

niche 15:23 29:9
 43:4 44:16 62:9,
 12

Niels 35:1

night 68:12
 113:25 125:1

Noble 3:11 4:13
 7:1,16 8:4,16,18,
 25 9:2,7,8,13,19,
 22 10:8 11:2,3,8
 12:22,23 61:13,15
 92:15,17 94:6
 117:10,11 121:14
 132:16,17 133:20
 134:4 165:20

172:12 183:3,15,
 24 184:9 185:8,
 12,23 186:5,19,25
 187:12 190:13

nonalcohol
 66:12

nonalcoholic
 51:12 65:15,25
 66:2 82:14 100:22
 128:5

nonbbc 125:8

nonbeer 128:5

**noncommission
 able** 105:17

nonfestival
 115:24

nonrevenue 74:6
 77:25 78:2,6,15,
 23 79:5

nontaxable 7:12
 18:24 24:7 26:23
 45:16 54:20
 142:24 143:3
 156:10 160:6,9
 161:16 163:2,6
 172:19,25 173:5,
 20,21 175:13
 178:2,6 179:7
 180:21

northern 141:21
 142:7 158:7
 159:19 165:24
 166:5 167:2

note 11:4 13:20
 79:15 105:25
 180:13 181:17

noted 79:2 173:8

notice 16:6 18:13
 41:19 127:24
 172:13 182:4
 184:18

notwithstanding
 17:9 23:8

November 19:8,
 19 21:13 23:7
 40:25

- nuanced** 47:6
- number** 5:8
18:12,18 20:20
22:6,8,11,12,15
23:4,13,20 28:4,8
45:5 76:3 78:22
103:1 106:7,11
136:3 154:10
163:16 167:19
- numbers** 81:6,13
88:1 168:7,8
170:1 188:20
- numerous** 20:1,7
25:17 155:23
-
- O**
-
- oath** 11:22
- object** 13:5
- objection** 8:15
9:1,2,5 11:8,9,11
13:18
- objections** 8:3,4,
10 10:6,8
- obligation** 81:10
171:2
- observation**
17:16
- observed** 22:3
- obtain** 67:23
95:18 135:17
- obtained** 28:21
95:21 135:25
- occasion** 49:13
167:22
- occurred** 41:24
152:18 173:16
175:14 177:12
180:20 188:2
- Octavio** 70:13
- October** 10:23
16:5 18:9,14 20:8
23:5 40:12 52:12
84:2 86:9 91:19
151:15 158:1
- 172:13 177:12,22
181:23
- odious** 21:25
- offer** 124:20
- offered** 26:14
- offering** 14:5,16
98:5
- offers** 42:2
- office** 2:1 5:7,8,22
6:7 37:16,17 85:4
90:3 91:14 97:17,
21 118:3,5,6,12,
20 119:7,9,14,17
141:22 152:19,20
166:1 171:11,15
- officer** 35:4,23
- offices** 39:24
42:12 119:11
120:14 141:2
- official** 6:6
- offset** 78:11
- oftentimes**
106:20
- omission** 180:8
- on-site** 49:4 50:24
54:17 98:2,18,20
100:4,10 105:6,12
106:3,4,18 107:7,
11 113:14 118:16,
22 119:10,12
- on-stage** 105:3
- onboard** 100:1
- onboarding** 99:2
- ongoing** 22:12
25:15 140:17
- online** 43:15
86:16 87:1,5,13
90:18
- open** 117:6
178:10 192:1
- opening** 11:17
12:7 15:9,14
188:7
- operate** 34:21
49:10 54:16 82:20
175:24
- operated** 28:2
53:8 61:24 82:9
- operates** 35:13
- operating** 30:12
- operation** 143:7,
14,22
- operations** 19:1
31:2,4,5,8 32:6,7
35:6,9 42:19 46:3
47:6,15 112:12,
15,17 139:3 142:2
144:6
- opinion** 13:15
17:9
- opportunities**
136:12 138:13
- opportunity**
11:23,25 13:23
26:25 157:25
184:17,20 186:1
- opposite** 147:5
- option** 16:21
156:25 157:2,23
188:25 189:25
- oral** 13:12 14:5,6,
8,17,20 188:17
- orchestrating**
24:9
- order** 11:15 99:8
100:9 101:2 190:2
191:11,14,15
192:4
- ordered** 101:3
- organization**
45:16 64:9
- organized**
141:19,21
- organizing** 15:24
- origin** 15:23
- original** 17:3,4
19:25 31:25
- originally** 28:3
30:18 45:3
- Osley** 32:18
- Osley's** 32:25
- OTA** 2:6 10:18
11:5 13:6,20
17:13 22:20 26:6,
18 133:21 157:2
177:13 183:18,20,
23,24 184:12
- OTA's** 183:17
191:17
- out-of-state**
38:12,14 44:25
52:5 159:1 166:3,
14 173:16 176:19
- out-of-states**
165:25
- outcome** 22:11
23:16 153:22
158:1
- oversee** 42:12,17,
21 49:17 51:10
- oversees** 112:16
- overstate** 23:9
- overstates** 19:20
- overview** 41:9
44:14 70:21
- overviews** 46:18
70:17
- owe** 72:25 80:8
106:14,15,16
- owed** 102:2,4
179:20 189:6
- owing** 24:22
189:5
- owner** 27:21
42:21
- owns** 154:24,25

P

p.m. 2:18 192:8**paid** 64:9 71:11
72:20 73:8,12
74:18 75:25 76:10
78:7 83:8 101:4
102:12 103:2
104:14 130:7
144:18 161:22
162:24 173:16
175:22 179:1**Palm** 42:13
123:18 141:17
142:4 166:23
167:4**pandemic** 70:11
139:16**panel** 3:3,5 5:9,
12,16 11:24 12:3,
15 13:15,20 14:13
15:13 17:17 28:16
34:4 38:25 61:2
64:13 117:7
133:18 149:3
165:17 189:12
190:5**paper** 52:10,11
79:21 99:15
127:13**papers** 52:18
54:19 63:22 121:7
142:22 171:11,19**paragraph**
155:10 156:7**paragraphs** 91:8,
20**Park** 2:16**Parker** 3:12 7:3
186:19,20 187:2,5**part** 5:21 11:6
17:17 28:7 30:10
32:21,22 39:16
40:18 42:11 79:3
115:20 121:15
147:14 173:17174:20 176:1,22
177:7 179:11,19
185:24 187:1**part-time** 130:1**participants** 5:14**participate** 5:17
39:7 61:25**participated**
39:11**parties** 9:24 32:12
68:19 93:1,7,10
94:11 139:1 142:3
184:5 190:4
191:18**parties'** 16:25**partners** 30:21,23
38:6**partnership**
136:10**party** 6:8 148:1
159:17,20,21
173:9**pass** 65:20**passed** 45:15
108:15 115:9**passwords** 86:19
87:5**past** 19:4**Patrol** 171:16**patron** 55:6 82:14
107:10**pause** 10:3 68:15
143:15**paused** 17:6
42:15**pay** 29:25 44:25
45:7 56:11 70:19
75:23 104:9
114:10,11 126:2
164:22 167:20
168:1 170:5,8,11**payable** 130:3,4,
17 140:20**payables** 37:14,
16 44:12 130:8,
15,19**paying** 21:9 55:19
73:22 101:1
102:15 104:10
116:14 162:4,6**payment** 26:13
40:20 70:23 80:22
89:24,25 90:1,8,
16 130:10 182:22
183:25**payments** 26:22
40:8 71:10 78:6
155:12 175:16,25
176:5,20 185:13**payouts** 75:25**payroll** 37:14
139:17 143:7**pays** 73:23 103:16**penalties** 154:2**penalty** 15:21
16:9 18:16 20:9
21:19 22:8,9 26:1
38:17 63:11
154:8,9 172:15
173:6 179:10,13
182:20,22 183:21,
22,23 184:13,14
190:5,6**pending** 184:22**people** 29:16,19,
25 32:11 52:13
55:15 60:12,13
62:5,17 70:12
76:13 87:6 90:24
97:20 106:7,11
138:19,23 140:4,
20 142:16 147:3,5
163:15 169:10
170:9 171:17**percent** 17:21
49:24 103:16,17
104:17 148:6
165:3,4 169:24
170:11,12 172:15
179:13 180:15

188:9

percentage
165:2 167:23
169:20 170:8
173:22 175:22**percentages**
104:17 167:18**perfect** 9:22**perfectly** 186:11**performed**
172:21**period** 10:21,23
13:24 18:11,15,17
19:24 38:23
40:11,13 47:1
51:7 60:7 80:8
102:17 108:10,24
116:4,21,24
121:1,16 126:16
129:2,21,24
137:23 142:18
145:6 147:8
154:13 157:16
158:2 161:2 166:1
170:21 171:12,19,
21,22 172:13
173:11,14,20
175:10 176:4,22
177:8,9 181:23
182:3,6,11 187:25**periods** 16:5
19:22 23:4,13,18
47:2 83:15 108:17
158:16 172:2
187:10**permission**
118:15**permit** 65:17
99:10 178:9
181:18**permits** 98:16
113:15 117:17
118:11,14**permitting** 50:19**person** 43:4
48:20,21 56:9,11
68:22 142:10,13

- 152:16 154:24,25
160:15,19
- personal** 28:15
43:16,17,25 67:18
173:18 174:7
- personally** 24:3
44:2,4,13 111:16
115:6 118:1
126:11 138:13
- personnel** 115:15
138:10,13
- pertain** 171:21
187:10
- pertinent** 144:1
- petition** 16:11,17
34:7,10 153:12
155:6 156:23
- petitioned** 19:7
- petitioner** 39:4
154:14 156:7
- PFC** 26:13 89:23,
25 90:1,8 91:1
- physical** 60:15,16
76:16,17 89:23
90:18 114:17,20
- physically** 90:7
140:16
- pickup** 127:3
- Pie** 72:17 81:22
82:1,4,9,11,15
104:21 169:13
- pizza** 98:24
169:10,14,15
- place** 37:1 43:12
111:24 118:12
- places** 61:9
- placing** 100:5
- plan** 137:11 138:9
- planner** 45:6
- planning** 137:1,
10 138:7 174:19
- platform** 86:16
- 87:1
- platforms** 86:13
- platter** 106:21
- plausible** 25:10
- play** 52:22 53:1
- Plaza** 2:16
- pleases** 27:1 28:9
- point** 16:16 19:10
31:13 32:11 36:15
48:21 51:8 68:18
97:10 99:23
110:22 138:21
146:5 153:22
177:22 183:19
186:2 188:6
- point-of-sale**
36:14 86:12 89:23
185:14 188:3
- point-of-sales**
51:8
- pointed** 20:5
- policy** 60:11
- polo** 54:22,23
55:7,15,19 64:8
98:3 108:4 118:22
143:10 161:14,21,
25 162:5
- Pop** 169:24
- portion** 55:4
65:16 155:5 156:9
- POS** 36:12,20,24
86:10 88:20,21,25
89:3 102:8 187:23
- position** 14:11
23:8 63:5,6,25
155:17 183:22
- positive** 78:11,15
- possess** 24:18
- possession**
114:22 177:24
- possibly** 169:14
- post-festival**
- 50:21
- post-hearing**
13:6 14:4 184:4
190:13
- post-investigation**
186:9
- post-trial** 14:10
- posted** 5:22
118:17
- posting** 58:20
- potentially** 78:17
- power** 51:13 65:4
73:19 100:10,13,
14 151:10
- practice** 102:16
- practices** 88:8,14
- pre** 38:10
- precedent** 23:22
26:18 188:16
- precedential**
17:9
- precedents**
179:15
- precondition**
24:20
- predecessor**
15:16 40:18
- preface** 183:17
- preferred** 96:20
- prehearing** 7:5,
18
- preliminary**
122:22
- preparation**
19:16 24:3
- prepare** 34:13
85:2,5 127:3
136:12 139:23,25
166:14
- prepared** 12:15
16:18 44:3 111:15
- 126:24,25
- prepares** 75:9
- preparing** 39:12
44:7 111:22
- preponderance**
175:1
- present** 5:24 12:2
14:14 26:25 33:6
115:10,15 126:6
144:3 145:16
154:17 180:12
186:1 190:22
- presentation**
4:10 15:10,14
133:12 172:9
183:2
- presentations**
12:7
- presented** 14:12
21:14 25:14,23
155:19 156:8
- presumed** 21:25
179:22
- presumption**
22:1,3 178:17
- pretty** 41:20 60:7
89:3
- previous** 188:21
- previously** 27:10
67:6 76:3 78:23
95:8 111:11
122:16 124:24
135:2 178:17
181:22
- price** 56:8
- primarily** 36:14
37:15 49:14 50:20
52:4 53:17 54:5
107:25 123:23
125:6 136:11
- primary** 160:15
- principal** 42:2
111:1
- print** 130:15

- prior** 11:5,21 13:2,
4 23:12 44:18
106:5 158:16
178:24 182:13,16
- private** 36:16
54:25 55:17 116:7
139:1 142:3
170:20
- privy** 121:19
186:7
- problem** 147:17
168:22
- problems** 113:9
137:5 147:19
- proceed** 122:7
- proceeding**
83:25
- proceedings**
2:15 10:3 192:8
- proceeds** 44:8
47:12 49:18 55:5
- process** 6:4
17:12 25:16 49:18
51:1 52:1 57:2
60:5 71:10,17
72:21 74:1,2 90:2,
4,6,12 99:3
103:25 105:1
107:6 109:22
110:8 112:4,8,9
140:3,4,10,18,19,
24 142:14 147:14
158:9
- processed** 50:23
- processes** 42:22
44:15 58:12 60:4
125:17
- processing**
113:21
- procure** 49:16
98:13
- produce** 5:13 6:6
32:13 57:18
137:17 141:4
- producers** 44:3
111:16
- producing** 31:9
57:16
- product** 55:21
73:4 100:15
116:15 141:9,10
169:4
- production** 35:6
101:20
- products** 73:17
100:20,22 160:5
- profess** 163:17
- Professional**
33:21
- professionals**
34:14
- profit** 56:12
161:24
- programming**
86:11
- project** 23:15
24:12
- projecting** 21:21
- projection** 175:9
- prominent** 83:24
- prominently**
52:17 81:22
- promoter** 48:12,
13,14 49:19,23
57:19 59:5,6,7
103:6,7,11,13,17
104:11,14 105:5,
12,19 106:9,23
146:16 147:9,23
148:2,3 164:25
165:5 170:10
- promoter's** 45:15
106:3
- promoters** 49:21,
22 59:3 62:7
98:23 103:13
113:3 116:17
146:6,8 148:10
168:6
- promoters'** 99:1
- pronounce** 51:24
- pronounced** 37:9
- pronunciation**
67:14
- proof** 22:1 179:4
- proper** 67:14 99:9
144:22 167:18
- properly** 40:6
63:12 173:6 180:4
181:13 182:17,22
- properties** 62:7
- property** 26:16
136:7,14 140:2,
12,13,16 173:18
174:7,12 178:24,
25 179:2
- proposals** 97:20,
24,25 98:2
- propose** 93:12
- proposing** 38:16
- prospective** 15:4
- protest** 157:1
158:1
- prove** 14:12 22:22
177:19 178:23
- proven** 21:19
179:20,23
- provide** 33:16
41:10 53:16,21
54:4,14 61:25
66:1 97:6 100:20
104:3 105:20
106:1 116:15,20
122:25 128:19
129:3,5 146:17
150:3,16 156:13,
15 163:13 177:16,
21,24 178:4
179:16 181:4
184:4,7,12
- provided** 10:15,
21,22 11:4 40:1
48:4 51:12 52:20
- 54:24 55:20 56:20
57:19 89:23 99:23
100:25 105:8
106:3,10,11,18
108:15 132:25
133:2 146:6,8,15
148:12 149:15,19,
23 152:23 153:1
156:20 175:2,4,18
176:3,17 177:6
179:7 186:13
190:18,24
- provider** 55:2
90:1 96:20
- providing** 36:17
43:10 56:4 85:11
97:7 136:23
139:20 146:21
147:20 175:23
185:9
- proving** 174:12
- provision** 50:7
- provisions** 14:11
84:4 91:6
- public** 5:20,21
100:16 116:13
- pull** 77:5,7 168:19,
20,23
- pulled** 71:20
- pulls** 168:19
- Pumping** 65:23
- purchase** 178:10,
12,13
- purchaser**
174:14 178:9,24
179:1
- purchaser's**
178:10
- purchases**
172:20 173:1
- purchasing**
31:11,12,13
178:11
- Purdy** 4:20 7:20
48:23 51:22 93:21

94:1,2,19 95:4,7,
14 101:6 110:25
115:23 117:6,9,10
122:1 126:4

purely 124:24

purportedly
47:23

purpose 48:9
57:15 71:6 104:25
146:21 147:11
174:10

purposes 13:13
21:18 30:12
102:10 104:4
121:12 141:18
144:17

pursuant 16:9
120:12 171:13
175:9 177:11

push 133:13

put 48:18,20 52:15
74:3 76:1,11 80:9
83:18 90:7,24
97:20 99:10
101:24,25 127:13,
18 139:17 160:8
191:14

puts 58:15,18

putting 15:14
58:3 69:24 71:13
90:18 97:25 109:5

Q

qualified 151:11
154:22,23

quality 42:19 43:6

quarter 80:16
173:13 182:6

quarterly 80:9,12
85:2

quarters 26:22

question 14:2
58:16 62:23 63:2,
3,10 64:21 78:19

92:7 109:18,21
111:13 120:7,20
121:23 132:19
159:16 165:22
171:12 183:12,17,
19 184:6 190:11,
24 191:2

questioned
146:24 179:6

questions 5:16
11:23,25 12:3,6
28:15 30:9 34:2
38:23 39:18 42:1
61:14,16,18,21
62:25 67:18 83:25
92:15,19,20,22,23
94:23 95:4 109:3
110:16 117:6,10,
11,13 119:2
120:2,5,9 132:16
133:4,5,8 149:13
158:4 165:19,20
166:11 172:6
183:5,10 185:7
187:15 189:13,18
191:23

quick 9:19

Quickbooks
43:14 70:8,14,25
85:4,22,25 92:2
130:5,12,19
137:16,17,18
141:3,4 176:25

quickly 97:22

quit 30:1

quote 85:22,23
86:10 112:23

R

R3 176:9

race 162:23

raided 52:12

raise 15:3

raised 30:20
190:4

Ralston 3:3 5:5,
10 6:16,18 7:4,17,
24 8:2,5,13,22
9:4,9,17,20,23
10:4,10,20,25
11:7,9,15 12:9,16,
21 13:8,16 14:1,3,
24 15:6 27:3,7,19
59:14,22 61:4,8,
13,17 62:24
64:24,25 65:1
66:16 67:3 71:25
72:2 92:14,18,21,
24 93:6,19,24
94:2,7,10,15,22
95:1 117:9,12,15
120:4 121:7,9,25
122:1,9 123:12
132:15,18,21
133:3,6,9,19,22
134:1,11,15,20,25
165:18,21 166:10
172:4,8 183:1,4,9
184:25 185:2,5
187:16 189:11,16,
20 190:12,20
191:1,5,13,20

ran 32:8 38:8

Rancho 54:21
55:7,19 64:7
108:3 161:14,25
162:5

rapid 23:21

rare 179:22

rate 144:22 148:6,
7 168:3 180:15

rates 99:11
167:17

ratio 173:21

Raul 70:5,6

re-de 76:25 77:1,9

read 84:4 91:9,20,
24

reader 86:13

reads 85:20

ready 7:24 10:4

14:24 15:8,11
94:16 95:2 172:9,
11 185:2

real 9:19 65:22

realized 154:9

reason 10:12
144:20 152:15
162:2 188:14

reasonable
174:24 176:15
181:4

reasons 66:11
103:1 182:23

reaudit 63:17

reaudited 178:15

reaudits 17:2
172:22

rebuttal 12:5
133:12,25 184:25
185:3 187:17

recall 31:20
32:14,25 34:22,25
35:15 36:1 37:3,
21 39:8 41:7,19
51:20 57:2 65:6
74:21 96:12 97:12
107:24 118:13
147:8 149:16
157:2 162:2

recalled 149:14

recap 57:20,22,25
59:5 144:16
146:7,8 164:1
190:18

recapped 144:21

receipt 64:8
186:17 189:25

receipts 44:5
111:18 174:8
177:1 178:18
181:8 185:9,10,
12,16

receive 9:7 10:18
12:23 28:22
110:10 119:3

- 124:1 130:6,10
131:13 161:5
- received** 4:4,5,6
8:20 9:11 11:13
28:25 45:23 52:14
68:1 71:10 74:3
83:6 103:13
125:22 160:15
175:25 188:19
- receiving** 35:14
125:19
- recent** 142:17
- recently** 118:1
142:1 170:21
- Recess** 94:14
134:19
- recognize** 57:13
103:19 149:9
- recognized** 17:2
- recollection**
148:19 152:13
- recommend**
156:11
- recommendation**
16:13 21:13 23:8
30:15 38:22 39:19
40:24 41:3,8,23
- reconcile** 103:2
- reconciling** 21:9
70:8,15 127:25
- reconvene** 93:17
- record** 5:5,22 6:1,
12 9:21,25 10:5
11:6 15:6 45:22
94:18 123:7 127:1
134:21 137:18
159:25 186:21
191:25
- recorded** 5:20
54:19 71:18
140:15 141:2,16,
18 142:2 144:18
159:15,20 160:2,
20 166:5,6 173:9
174:1 180:2 181:1
- recording** 5:21
13:22 21:15 39:21
40:2 85:14 137:8,
15 144:6
- recordkeeping**
182:8
- records** 17:19
21:7,11 25:7 40:6
46:2 52:8,18 60:9
69:25 76:15,16,17
85:12 120:9,12,15
121:2,5,11,16,23
141:14,22 148:11,
14,17 152:14,24
153:4,8 158:6
159:3,14 171:5,6,
7,8,17 175:2
177:11,14,16,19,
21,23 180:4
181:10,20 182:16
- recruit** 50:12
- redeposit** 77:8
- redeposited**
77:2,22 107:15
- redepositing**
77:12
- redetermination**
16:12,17 19:7
34:7,10 153:12
155:7 156:23
- redo** 76:24
- reduce** 20:2
- reduced** 17:5
172:24,25 173:2
- reducing** 105:18
- reduction** 17:14
22:12 23:19
156:11 189:2
- reductions**
172:22
- redundant** 66:22
- refer** 18:11,17
28:10 34:4 51:4
191:18
- reference** 40:11
65:7 121:6
- referred** 33:9
52:20 56:15
136:20 137:2
167:7
- referring** 28:11
32:2 48:23 51:4
59:10 80:1 81:9
87:15 88:22 138:3
185:10
- refund** 85:11
- regard** 9:6 132:21
189:21
- region** 97:16
- regional** 98:4
- Regulation**
174:15 178:20
- regulations**
22:19,24
- reimburse** 45:14
143:12,13
- reimbursed**
51:14 55:4 65:16
101:4,5 160:12
- reimbursement**
85:9 155:12
175:21 180:3
181:11,14 182:17
- reimbursements**
39:22,24 143:6
144:7
- Reinhold** 35:2,9,
15
- related** 18:3 26:16
47:12 155:12
162:5
- relation** 65:8
- relations** 34:18
124:16
- relationship**
33:23 54:10,14,21
55:22 56:1,14
89:25 97:9 121:5,
24 136:19,21,22
137:19 162:10,22
- relationships**
43:25 109:17
113:21
- released** 186:12
- relied** 39:14
- relieved** 178:23
- remain** 94:11
129:17
- remained** 165:14
- remaining** 66:19
93:20
- remember** 33:9,
19 69:16 89:12
90:20 116:25
117:4 118:2 128:6
152:18 154:7
- remembering**
76:7
- reminder** 9:24
94:11
- removed** 147:18
154:8 176:8 177:3
- removing** 154:9
- render** 13:15
- rent** 30:1 160:12
- rental** 26:22 31:14
62:7 89:22
- rented** 26:20
- repeated** 180:9
182:10
- repeatedly** 111:2
- report** 40:7 46:9
74:10 80:9 87:19,
21 109:8 127:16,
21 128:10,16
132:3,22 143:11
167:19 172:17
180:18 181:3,7,
15,21 182:3,20
- reportable** 180:8

- reported** 2:19
71:15 108:14,17,
21 110:18 147:22
148:1 158:23
173:11 174:3
180:2,4,16,17
181:11
- reporter** 2:20
94:9 95:23,24
123:6 133:23
- reporting** 5:25
17:24 18:3 21:16
33:12,17 36:20
39:21 40:3 46:6
125:24 147:13
184:2 188:8
- reports** 70:14
80:12 85:5 86:14
87:13,14,16
108:15,25 127:18
130:15
- represent** 6:11
75:2 78:2,16
176:4
- representative**
63:4 113:11
184:11
- representatives**
126:5 145:15
149:17
- represented**
19:11 50:4
- representing** 7:1
- represents** 76:21
104:2 176:13
180:14,20
- request** 105:6
- requested** 184:13
189:21
- required** 25:21
119:24
- requirement**
25:19
- requirements**
88:25
- requires** 177:15
- resale** 24:7 26:4
45:5,7 63:21 66:3
75:16,18,20,21
76:1,8,9,11,12,21,
23 83:19,20 98:16
99:10,13,23 126:7
145:16,22 161:25
174:11,13 175:15
176:19 177:25
178:4,8,12,13,20,
22 179:1,3,7
180:21 182:2
- resales** 18:5
173:15
- resold** 100:16
178:24
- respect** 17:24
59:25 63:24 83:16
116:5 117:7 157:3
173:7 175:3,16
176:20 177:10,25
188:11,13 190:13
- respectfully** 23:1
- respective** 87:20
112:5 138:16
- respond** 44:23
111:4 189:25
- responded** 88:9,
15
- Respondent** 3:9
7:13 8:2,8 12:1,3
92:8 117:7 149:22
151:23 165:17
183:6 187:22
189:24
- respondent's** 4:6
8:10,19 150:24
172:9
- Respondents'**
8:14
- response** 46:4
157:22 189:1
- responsibilities**
68:21 69:13,17,21
97:14 98:11
- 100:17 129:25
- responsibility**
33:14 112:8
- responsible** 24:3
44:4 57:16 73:9
75:22,25 76:9
86:11 101:1
102:14 103:4
109:4 111:17,21
126:12 142:6,9,
11,13 159:13
160:16,22 162:6
- rest** 49:25 52:3
117:6
- restrictions** 67:2
93:17,18 122:8
- rests** 20:17
- result** 119:16
- resulted** 172:22
173:23 174:4
178:14 181:24
- retail** 174:7,10,12
- retailer** 119:21
174:13 178:18,19
- retailer's** 174:6
- retailers** 66:3
- retain** 60:9 171:2,
5
- retained** 165:4
- retention** 60:11
- return** 71:19
140:5
- returned** 60:19
115:2 171:24
- returns** 17:18
19:16 21:17 24:4
25:10 33:13 34:20
39:13 40:3,7
84:16,22 85:3
136:6,7,8,9,11,12
139:23,25 140:2,
12,13,25 166:15
171:3 173:12
181:3
- revenue** 15:20
26:4 44:12 49:11,
23 50:6 51:2,11,
16 52:16 55:13
59:12 66:10 85:6
125:7,8 159:21,22
164:14,17 173:9
- review** 13:23
19:18 51:6 130:16
- reviewed** 145:16
- reviewing** 26:8
- Revised** 46:10
- revoked** 135:19
- right-hand** 46:22
- Riverside** 79:17,
19,22 142:4,12,15
144:1 158:17,18
166:23
- Riverside's**
159:24
- road** 160:21
- Rocko's** 104:21
- role** 35:24 85:21
116:4
- roles** 68:20 69:20
98:13
- rolling** 89:15
- room** 6:20 94:12
106:19,20 117:3
143:7,9,18
- routed** 166:2
- row** 73:10 168:14,
15,17
- rule** 12:15
- rules** 22:19,24
- ruling** 13:17
- run** 32:8,9 35:11
90:8 137:16 143:8
148:4
- runs** 35:24
- Ryan** 36:5,10,18
70:10 86:2 89:13

S

S&r 164:7,13**Sacramento**

166:22 167:3

sale 79:2,6 143:3,
4 160:20 161:6,7
174:8,10,12
175:14**sales** 7:10,12
18:3,5,7,23 19:2,
16 20:2,6,25
21:16 23:21 24:4,
6,15,17 26:7 29:8,
9 35:24 36:11
39:21,23 40:2,3,7
42:18 43:3 44:22,
25 45:6,8,13,22
48:19 51:7 52:12
58:20 59:6 63:20
64:5 69:25 70:1
71:19 72:24 73:6,
11 74:5,10 75:2
76:8,10 78:12,13
80:6 81:10,17
83:4,8 84:22 85:2,
13,15 87:13,15,
19,21,25 88:2,5
90:4 97:21 102:4,
5,7,9,12,15 103:4,
8,9 104:6,7,18
110:18 112:3,7
113:4 116:13
125:5,13,14,25
126:2 128:5
132:22 136:15
137:13,16 140:2,
25 141:2,4,14,15
142:24 143:5,11
144:17,22 146:11,
13,16 147:13,20,
22 148:1 152:23
153:4 155:13
156:10 158:11,14,
17 159:9 160:10,
11,18 161:17,20,
21 162:4,6,19
164:1,19,22
166:14 167:11,13,
16,18,21 168:3172:18,19,23,24,
25 173:5,8,12,14,
15,17,18,20,22,
23,24 174:1,2,3,5,
6,7 175:4,8,13,15,
22 176:2,5,14,19,
25 177:15,25
178:2,6,7,8,9
179:6,7,12
180:16,20,21,25
181:2,3,6,10,14,
20,21 182:1,9,18,
19 185:11,17**salespeople**
112:2**salesperson**
29:15 38:8**sample** 173:14,19
175:10 176:3,22
177:8 182:6**San** 28:19 29:14
37:17 42:12 52:23
53:7,13,24 54:3,
20,23 67:21,24
68:2 74:15,16
79:2,3,17,25 85:4,
12,22 91:14
135:11,25 136:2
141:14,15,16,22
142:1,2,3,7,12,15,
23 143:3,6,25
144:2,7 158:6,13
159:5,24 160:6
161:16 163:2
165:23 166:7,21,
22 167:3 178:2**Santa** 54:22 55:7,
19 64:7 108:4
161:14,25 162:5**Sara** 4:20 7:20
48:21,23 51:22
65:13,23 95:7**sat** 90:10 124:25**savvy** 84:20**SBA** 21:4**SBE** 16:6 18:13,20
19:25 20:5 21:4
22:5,6,9,21 23:725:15 39:20 40:5,
17 41:3 46:13
189:8**SBE's** 19:4 20:4,
19,23**schedule** 50:3
74:9 83:9 176:9
181:9**schedules** 44:3,7
111:16,22**scheme** 24:21**school** 68:11,12
96:1 123:1,5,8,16**scope** 50:8**sealed-off** 186:7**search** 120:12
171:13 177:11
186:14**second-to-last**
169:21**section** 15:20
16:9 18:16 21:19
45:10 174:6,11
175:9 179:10**seek** 19:18**seeking** 188:10**sees** 80:24**segue** 101:6**segued** 36:11,15**seized** 120:8,12
121:12,14 171:8,
10,11,23 185:21,
25 186:4,18,22
187:4,11**seizure** 121:2,3,5**selected** 98:21
100:5**selecting** 14:10**sell** 56:10 65:15
66:12 118:16
175:20**seller** 178:21,22**seller's** 178:9
181:17**sellers'** 113:14
117:17 118:11,14**selling** 54:6 170:7**send** 80:21,23
85:9 156:25 169:7
190:2 192:3**sends** 143:6**sense** 21:22**separate** 26:22
120:25 121:12
146:14 186:6**separation**
142:24**September** 16:6
18:9,14 23:5
40:12 46:24 151:5
158:2 172:14
181:23**series** 149:22**serve** 71:7**served** 66:6**service** 26:23
29:20,21 32:12
53:10 54:24
62:10,17,19
106:18 116:14,15
162:13 174:19**services** 26:20
29:23 33:17 37:14
47:19 48:4,10
49:3 50:8 53:17,
21 54:4,14 55:20
56:4 62:1 78:16
97:6,7 115:25
116:6,20 128:19
129:3 136:24
139:20 162:15**serving** 174:17**set** 100:11 119:11
160:1,2 166:24**sets** 141:1 166:25
167:1

setting 68:17 89:2	show 21:6 54:6 150:17 171:3 180:25 181:10	simultaneous 127:20	sort 112:6 138:10 186:14
settle 50:20 114:7 119:8	showed 120:11, 15 171:15	simultaneously 127:22	sorts 163:12
settlement 28:7 50:21 51:14 52:1 59:1 104:3,5 105:9 106:13 112:2 114:6	showing 103:8 180:11	single 104:7	Soul 104:22
settlements 45:12 57:23 113:23,25 114:2,3	Showplace 29:13	singular 18:2	sounds 35:9 55:24 115:14
settling 51:1 57:2	shows 74:12,13 104:6,8,9,10	singularly 19:3	source 33:15 125:3 153:8 171:2 177:1 185:18 187:23
share 45:14,15 49:19 59:2,8 103:5	shrinkage 148:9	sinks 65:18 73:19 113:8	sources 26:3 52:17 85:7
shared 58:21 59:4 65:19 87:22 164:25	sic 74:21	sir 184:9 185:23	space 160:12 175:24
shareholder 32:5	sick 157:9,10	sit 27:6 61:7,9 140:16	spaces 29:16
shareholders 31:25	side 29:23 35:6,9 36:20 39:13 49:10,11,15 54:17 133:20 137:10 147:19	site 96:6	speak 6:2,3,19 16:19
sheet 51:14 59:1 82:18 141:4 146:14,15,16,20 147:6	sign 25:17 99:10 114:10 119:24 150:6,9,14,21 151:2,11 153:20	sitting 61:7 118:2	speaking 6:22
sheets 85:7 128:7 147:1,4 156:16 175:6 185:19	sign-out 175:6,17 176:24	situation 53:12 62:18 144:20 153:19 166:4	speaks 6:1
shifts 174:25 176:15 179:5	signature 149:9	situations 65:12 128:6	spearhead 39:15
shipping 35:14	signed 16:18 34:10 112:1 150:1 151:6 153:12	size 20:6	special 29:16 62:1
shopper 169:7	significant 13:12	sizes 10:17	specific 41:10 45:17 54:18 57:25 72:11 160:3 174:15 179:19 190:15
Shorenstein 52:21,22,25	silo 18:3	Skip's 143:23	specifically 22:18,25 34:5 46:8 63:2 65:25 82:3 161:9 174:9 175:4 176:23 178:8
short 111:9 133:15,17,20 134:9	silverware 174:18	slightly 160:1	speech 28:18,21 29:4
shortages 148:8	similar 18:16 21:12 23:19 52:5 60:10 62:4,15 66:21 82:22 144:2 169:3	small 53:23 126:20 129:12 131:21,22,24 137:25	spend 81:8
shorter 93:11	similarly 22:16 60:2 82:18 103:22 106:24 113:16	smaller 26:11	Spicy 72:17 81:22 82:1,4,8,11,15 104:21 169:13
Shorthand 2:20	simple 64:17 188:14	smell 132:4	spinal 41:21 157:13
shortly 16:19	simply 127:8	snack 54:7	split 49:20 66:9 164:24
Shotskis 50:15		snacks 54:7	
		soda 100:22	
		sold 29:16 73:3 100:15 169:14 175:19	
		Solutions 26:13 28:7 89:24,25 90:1,8	
		sophisticated 168:13	

spoke 165:22	stands 184:23	States 16:1	subdivision 174:16 178:21
sponsorship 105:13	Stanford 53:14, 16	stations 168:18	subject 26:10 135:22 140:13 160:10,11,18,19 172:20 173:1,15 176:6 178:18
sporting 43:24 53:18	start 6:8 10:4 37:1 77:3 89:8,10 107:8 170:17	statute 25:18 149:15,16 150:19, 21 151:3,6,13,16, 19 174:9	submit 12:18 14:14,17 118:14 141:11
sports 116:7,10	started 29:18,23 30:1,2,3,20 37:21 38:6,12,13 68:8, 12,13,21,24 70:2, 7 77:16 89:6,15, 16 96:3 100:12 123:17 130:2 137:22 138:2 143:23 154:1	stay 39:17	submitted 8:9,23, 24 10:12 12:12,24
spot 100:5 145:25	starting 6:10 77:14 137:9,21 138:21	stealing 168:16	subs 54:25
spot-check 167:16	starts 72:10 106:6	stenographer 5:24 6:4,5 134:13	subsequently 172:21
spreadsheet 87:5 127:13,21	state 2:2,21 3:9 6:11 15:16 17:10, 25 18:7 20:11,25 24:10,14 28:19 31:17 37:5 38:19 42:3 47:7 56:24 67:21,24 68:2 92:10 95:16,19 116:23 135:11,15 136:1 163:1 174:7 175:14 180:20	steps 47:7	substantial 63:9 180:1,25
spreadsheets 176:25 177:2	stated 19:13 20:5 38:15 71:8 84:14, 17 124:24 178:17	sticking 103:18	substantially 182:9
Springs 42:13 123:18 141:17 142:4 166:23 167:4	statement 4:24 11:17 40:21 42:13 44:5 84:24 85:17, 20 88:3 103:21 111:4 112:11 126:13 138:3 188:7 190:8,23	stickler 42:19 43:6	substantive 88:5
SQ4 85:6	statements 21:9 40:9,11 42:9 70:15 86:20 91:22 92:5 101:7 111:18 128:11 130:16 136:7,8 153:9 163:25	stop 6:4 35:14	substitution 14:5
Square 86:13,16, 17,18 87:1 89:13 185:15		storage 60:17	subtotal 73:11
Stacy 37:8 91:11, 19 142:20		store 99:13	subtracting 106:17
Stacy's 37:18 91:21		stored 52:8	success 24:25
stadium 66:13		straight 30:1	successive 180:10
staff 105:13 106:4 117:16		strategic 138:9	Sue 69:11
staffing 130:7 138:24,25		strategies 43:5	sufficiency 179:11
Stagecoach 129:11 144:2 155:14 158:19 163:18,21 164:11, 19		streaming 10:1	sufficient 180:8
stand 169:8		streams 50:6	suggest 189:4
standard 21:23		street 53:13	Suite 2:16
standards 58:9		strength 22:4	suites 56:21
standing 124:5		stretch 93:9	summaries 112:2
standpoint 138:1 141:13 168:14		struck 20:4 22:7 23:16	summarize 60:22
		structure 44:9 65:19 132:7 137:22 166:7	summarizes 190:10
		structured 161:10	summary 44:7 111:16,22 124:4 182:14 190:17
		struggles 136:25	
		studying 68:23	
		stuff 50:15 137:22 148:8 163:13	
		subcontractor 160:13	

summer 69:5 97:13	51:8 111:24 137:16 168:13	20:25 21:16 23:22 24:4,15,18,21 26:10,13 28:8,23, 25 33:12,13 34:19 39:21,23 40:3,7,8, 20 44:22,25 45:6, 8,13,22 50:1 51:15 52:13 59:11 69:25 71:19 72:24 73:6,12 74:10,17, 18 75:22 76:1,10 79:7 81:10 83:4,8, 9 84:22 85:2,13 102:4,9,12,15 103:4,9 112:7 126:2 136:6,7,8, 11 139:23,25 140:2,12,13,16,25 141:4 144:17,22 154:6 155:2 156:12 158:11,14 160:10,11,18 161:21 162:4,6,19 164:22 166:14 167:11,13,17,18, 21 168:3 172:15, 20 173:1,12,15 174:6,16 175:21 176:6 177:15 178:18 179:1,12, 20 180:3,5,11 181:2,10,11,14 182:17,18,22 183:25 188:8,12 189:5	taxpayer 28:4 174:22,25 177:16 179:19 186:8 188:8 189:4
sums 123:25	systems 36:13,24 88:22 89:3 185:15 187:23		teaching 95:25
Sun 123:18			team 39:14 44:10 46:5 50:9,10,23 58:5 112:3 115:9, 11,18,21 147:10
super 116:11,20, 23 162:23 165:25	<hr/> T <hr/>		teams 44:19 51:18,21 58:11
superficial 16:5	tab 72:4 82:3 105:25		technically 166:25
Superior 26:18	table 61:6		techno 84:19
Superscope 179:16	tack 49:24 143:7, 9,18		technologically 10:19 84:19
supplement 14:6	tacos 98:24 104:22		teller 123:19,20, 21,22,23 124:2
supplied 167:12 168:8	takes 111:11 165:1 191:9		telling 81:5 110:11
supply 62:17	taking 89:16 94:4 115:8 142:22		tells 127:14
supplying 65:3	talk 26:12 31:15 101:6 109:21 125:4		template 87:13
support 14:11 18:1,19 20:23 23:3 25:3,22 42:2 48:20 56:20 100:13	talked 50:7 100:8 166:21 168:5		templates 52:7
supported 19:5 182:20	talking 50:15 61:22 65:2 74:9 81:19 100:1 108:10 113:3 116:13 117:22 133:24 154:8 155:1,2		temporary 119:10
supporting 43:24 48:19 86:12 98:20 100:2	Tana 51:24		ten 9:21 134:1,2, 12 185:3
surrounding 26:13	tangible 26:16 173:17 174:7		ten-minute 134:15
suspended 135:19	tantamount 24:25		tenting 51:13 100:9
suspicious 131:10,14 132:3	tasked 129:25		tents 65:5 73:19 100:25 101:2
sustain 20:13	tasks 88:16		tenure 139:11
Suzanne 35:19	taught 131:20 132:1		Tenzer 179:16
swear 8:6 11:20 14:25	Tavern 143:8,9		term 69:7 168:6 171:8
switch 54:18 61:8	tax 2:1 3:10 5:8,22 6:7 17:4,18,24 18:3,7,23 19:16		terminal 89:23 90:7,9,10
switched 90:20		taxation 15:20 174:9 179:14	terms 71:8 90:2 128:2
sworn 15:5 27:11 67:7 95:5,9 122:17 135:3		taxes 50:2 59:7,9 80:21 89:21 104:8 136:13,14,15	
system 36:14			

- testified** 27:12
67:8 95:10 122:18
130:23 135:4
- testify** 7:25 8:6
11:21 48:24 156:4
- testifying** 66:21
- testimony** 4:16
11:18,21 12:1,12
13:12 14:9,20,21
15:9 25:23 26:9,
15 59:21 63:6
64:6,15 66:22
71:2 73:18 94:22
99:22 101:16,18
122:5 126:4,10
134:6,22 143:25
145:14 159:4,8
161:13 163:25
180:6 185:14
187:24 188:17
190:14,18
- tests** 158:15
- Thai** 164:7,13
169:11,16
- thankful** 26:25
- Theater** 54:2
- theaters** 52:21,
22,23,25 53:2
- thing** 54:15 114:5
- things** 31:11,14
33:17 34:20
51:10,11 52:15
56:21 65:3,5,10,
22 74:15 75:13
78:3 93:9 95:25
98:17 100:23
105:6,10 110:17
112:18 118:4
130:16 137:8
148:12 158:15
167:16 187:21
- third-party** 98:14
105:15
- thought** 89:14
- thousand** 168:20,
21
- threw** 150:4
- Thursday** 2:18
5:1
- TI** 53:19
- tickets** 105:2,10,
11,14 114:9
- time** 6:2 10:19
23:12 26:21 29:19
35:12 36:10 38:9,
18 40:5 41:16
43:12 45:1,9
48:18 58:7 61:3
62:13 65:23 66:20
68:4,22 69:2,15
70:20 90:22 91:5
93:9,14 99:18
102:6,14 107:9
108:10 110:22
113:23 116:1,4,
21,24 117:8 118:3
119:23 124:24
126:16,17 129:9,
12 133:1,24 134:7
142:18 147:7,8
149:14 157:16
161:2,24 162:2
166:4 167:17
168:2 170:21
177:23 178:10
185:1 189:13
191:16
- timely** 16:11,22
19:7 174:13
178:20,22
- times** 62:19 81:3
90:17 91:15,16
141:25 142:16
145:5 155:23
166:6
- timewise** 133:11
- timing** 158:22
- tips** 78:4,17,19
- titled** 86:8
- Tobias** 35:2
- today** 7:25 13:13
14:6,8,17,20,21
16:3,18 18:11,17
19:5,22 21:5
22:16 23:2,4
24:24 25:7,14,23
26:9,12,14 27:1
33:6 37:19 48:24
52:11 64:6 71:2
99:19 101:16
110:25 122:2
125:4 130:24
135:9 144:5
145:1,14 155:19
156:4,20 159:9
177:10 185:14
187:24 188:17
190:14 191:3,21
192:7
- today's** 5:9 12:19
191:12,24
- told** 68:11 154:1
- Tony** 70:12
- top** 47:18 72:24
85:12 90:22 165:2
169:23
- total** 37:24 45:23
81:25 106:14
164:19 173:23
174:2 176:25
180:13
- totaled** 178:3
- totaling** 173:10
- totality** 72:20
- tough** 56:23
- tour** 56:16,17,18
- tours** 163:13
- town** 151:9
- track** 80:6 106:22
- tracked** 106:9,11
- tracking** 69:25
74:5 102:1,7
- trailer** 119:12
126:20
- training** 29:1
124:1 131:13
- transaction**
26:17 131:24
160:8 161:9,10
188:4
- transactions**
18:25 26:9 44:11
55:3 89:5,6,19
90:2 132:2 142:25
159:2 162:5 163:3
165:12 173:10
175:3 176:8,10
178:5 179:4 188:2
- transcript** 2:15
5:21 6:6 191:4,6,
9,16
- transcripts** 13:21
- transfers** 26:16
- transition** 36:23
- transitioned**
97:22 98:8
- translated** 87:24
- transmitted**
71:18 159:10,12
- travel** 67:1 93:16,
18 94:19 117:8
122:8
- traveled** 162:25
- Treasure** 53:20,
21,23
- tremendous**
126:18
- trenches** 112:25
113:1,5,19 145:1,
12
- troubleshooting**
100:18
- truck** 35:14 127:3,
4
- true** 17:14 168:24
- trust** 17:13 26:6
189:7
- truth** 42:10
- turn** 46:7 47:5

64:20 92:8 97:3 105:14 119:17 121:24 165:17 184:25	undermine 22:16	unresolved 13:4	138:21 144:6,19 146:2,4,11 147:4, 18,19 156:15 164:9,10,11 167:15,20,21,23, 24 169:1,2 175:5 176:8,24 177:5 185:12
turned 6:23	undermined 17:12 20:21	unsystematic 25:8	
type 34:16 47:21 48:9 50:3,15 54:13 56:1 57:13, 16 71:21 99:6 100:20 115:14,15 127:21 135:22 136:4 148:8 162:10	underreport 81:17 182:9	untrue 21:1	
types 50:6 52:3 60:3 65:10 101:17,21 115:25 116:5 136:13,14 142:25 145:1 155:18 165:11 176:1	underreported 20:24 24:6	unused 77:11	
typical 138:1 148:8	underreporting 17:9,14 18:5 19:2 20:20 23:10 63:10,16	updated 12:24	
typically 49:23 114:11	understand 28:11 55:6 58:16 63:23 74:20 80:4 92:4 98:21 146:5 159:3 167:13 177:18	upper 46:22	vendors 21:9 44:12 45:11 49:12,16,17,20 50:14 57:2,25 58:22,23 63:20 65:3,10,11 66:11 70:23 71:15 72:8, 11 73:3,9,12,20 75:20 81:21 83:20 96:7,8 97:23 98:13,14,18,22,25 99:4,7,22 100:21 101:1 102:1,6,14 103:14 104:23 105:15,20 110:16, 18 113:17,22 114:15 115:7 116:16 118:4,10 119:4 125:9,19 132:21 144:3 145:17,21 146:17 167:12 168:9,11, 12,14,24,25 170:1,2,4 175:20, 21 176:1 185:10
<hr/> U <hr/>	understanding 15:19 24:14,17 47:10,14 63:5 76:2 77:9 95:15 137:5 163:4,5,6 171:2,7 184:22 190:17,21 191:10	usual 165:3	
Uh-huh 96:24 112:21 114:16 118:19,21,24 119:1 120:1 123:13 129:1 130:9,11 132:20 159:23	understatement 21:21 63:24,25	<hr/> V <hr/>	
ultimate 142:9,13	understatements 20:13 180:9 182:11	V.A. 26:7	
ultimately 22:5 25:20 60:24 71:18 84:16 87:16 140:7 159:10 181:24	unfitting 188:10	valid 175:10 178:20,22	
umbrella 103:8 112:18	unit 90:18	varied 85:6	
unable 178:4	United 16:1	vary 170:1	
unaware 86:18,24	units 88:25	varying 104:16	
unconcluded 23:12	University 28:19 67:21,24 68:3 95:16,19 135:11 136:1	VC 51:18,21	
undeniably 21:6	Unlimited 29:6,7, 22	VCS 50:11 51:6	
	unquote 112:23	venders 175:24	
	unreported 7:9 20:2,6 23:21 155:13 172:17,23 173:4,7 174:5 181:6 182:1	vendor 45:17 49:25 50:8,9,11, 17,21,22 51:1,6, 12,18,21 57:6,17, 20 58:4,5,14,15, 17 59:11 70:19 71:3,8,15 72:13, 15,17 73:25 75:24 76:4,21 78:23 97:22 98:9,12 99:8 100:1 101:3 102:19,23,24 103:8,16,18 106:25 107:22,23 108:13,16 109:18 110:11,13,14 111:25 113:5 114:6 115:17 119:6,15,21 125:5,14,22 128:7,11 129:15	venture 29:24 30:19 38:7 143:10
		venue 54:2 65:12 87:22 96:12,13 160:3,4	
		venues 36:15 43:11 62:21 65:4 66:6 85:9 142:3	
		verbatim 5:25	
		verification 132:23	
		verified 145:25 146:1 160:20	
		verify 132:24 147:22 175:8 176:4 177:1	

185:19
verifying 126:7
versa 169:17
version 57:24
versus 25:4 26:17
 90:18 160:9
 179:15,16
vertical 72:7
 74:24 75:14,16
 77:24
vice 169:17
video 5:21
view 87:24 111:12
 112:18
views 147:5
vindicate 25:24
violation 135:23
volume 137:7
 169:1 178:12
voluntarily 25:18
 152:22 153:1

W

waive 14:17
waiving 14:20
wanted 11:4
 12:10,18 13:6
 21:11 29:20 42:8
 93:7 146:10,23
 159:3 167:17
 169:6 187:20
 190:14
wanting 110:17
warehouse 35:12
 68:13 139:3
warehouses
 68:10
Warfield 53:25
 54:2,4
warrant 120:13
 171:14 177:11

180:9 186:15
warranted 7:9,11
 173:4 175:1
 176:16 177:9,20
 179:9 180:23
 182:24
washing 65:18
watch 169:9
water 65:23
 100:22 105:3
 162:25 170:7
weak 34:15,16
website 5:23 6:7
 90:11 178:10
wedding 162:16
weddings 32:12
 68:18
week 150:18
 191:11 192:5
weekend 73:4
 124:18
weeks 150:17
weigh 25:6
West 72:13
whatnot 98:24
 99:12 106:22
 112:7
Wheels 104:22
whoever's 58:20
wholesale 45:4
 55:2 56:5,6,12
 75:23
wi-fi 88:25 89:1
wife 43:17
willingness
 25:17
wing 69:3
withheld 153:10
witnessed
 113:11 118:1

witnesses 7:19,
 20,22 8:3 11:19,
 20,24 13:10 15:1,
 2,4,7 21:6 59:18
 66:19 93:2,13,16,
 20 122:5 125:4
 167:7
word 60:20
 171:10
words 141:1
work 29:3,17
 38:11,13 43:5,22
 49:16 50:12 51:23
 52:18 54:19 63:22
 67:19 68:1,11
 72:21 77:15 79:21
 91:13 98:23
 123:15 124:10
 125:17 136:4
 141:9,10 142:22
 148:4 160:5
 168:14 170:4
 171:11,19
worked 29:5,13
 32:6 69:11 70:6
 95:23 96:6,12
 108:14 109:13
 126:20 131:4
working 30:2
 32:7 35:5 37:21
 62:6 68:8,9,12,13,
 15 69:5 84:8 96:3,
 7 98:9 121:7
 124:18 136:2,19
 170:17
works 91:14
 104:1
worksheet
 158:14
worksheets
 163:17
world 137:24
worst 19:6
worth 73:3
write 127:21
writes 152:8

writing 13:24
written 5:13 14:18
 183:18 192:3
wrong 60:20
 158:19 168:4
 171:8
wrongdoing
 179:19

Y

Yacht 96:14,15,
 17,23
year 33:13 69:4
 78:8,9 117:22
 140:18 158:18
 182:5
years 10:24 16:3
 48:6 136:3 142:20
 143:23 156:1
 170:24,25 171:1
 180:10 181:19
 182:12
York 108:2
Youtube 13:21
 191:17

Z

zone 80:7