

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF, )  
 )  
J. PARKER, ) OTA NO. 220510399  
 )  
 APPELLANT. )  
 )  
 )

## TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, July 20, 2023

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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Transcript of Electronic Proceedings,  
taken in the State of California, commencing  
at 10:18 a.m. and concluding at 10:46 a.m. on  
Thursday, July 20, 2023, reported by Ernalyn M.  
Alonzo, Hearing Reporter, in and for the State  
of California.

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APPEARANCES:

Administrative Law Judge:      ANDREA LONG

For the Appellant:                DANIEL FORGY

For the Respondent:                STATE OF CALIFORNIA  
FRANCHISE TAX BOARD

JOSH RICAFORT  
ERIC YADAO

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I N D E X

E X H I B I T S

(Appellant's Exhibit 1-3 were received at page 6.)

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

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

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By Mr. Ricafort 20

A P P E L L A N T ' S  
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D I R E C T

C R O S S

R E D I R E C T

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P A G E

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California; Thursday, July 20, 2023

10:18 a.m.

JUDGE LONG: Good morning. We are on the record.

I am Andrea Long, the Administrative Law Judge for this appeal. Appellant has elected to have this case heard under the Small Case Program. So I'm the sole judge that will be hearing and deciding this appeal.

We are here today for the Appeal of Parker, Case Number is 220510399. This hearing is taking place virtually on Wednesday, July 20th, 2023, and it is 10:18 a.m.

We'll begin with the parties stating their names and who you represent for the record. Let's begin with FTB.

MR. RICAFORT: Josh Ricafort on behalf of the Franchise Tax Board.

MR. YADAO: Good morning. Eric Yadao, Franchise Tax Board.

JUDGE LONG: And for the Appellant.

MR. FORGY: This is Daniel Forgy, representative for Ms. Parker.

MS. PARKER: And I'm Joni Parker.

JUDGE LONG: Thank you.

The parties have agreed that the issues before us

1       today are whether Appellant has established reasonable  
2       cause to abate the late payment penalty, and whether  
3       Appellant has established the basis to abate the estimated  
4       tax penalty.

5               Appellant submitted Exhibit 1, and FTB submitted  
6       Exhibits A through G, which were all admitted pursuant to  
7       the July 6th, 2023, minutes and orders.

8               (Appellant's Exhibit 1 was received in  
9       evidence by the Administrative Law Judge.)

10              (Department's Exhibits A-G were received in  
11       evidence by the Administrative Law Judge.)

12              Appellant has additionally submitted two  
13       additional documents, an email exchange between Ms. Parker  
14       and her tax representative, which will be marked as  
15       Exhibit 2; and a notice of Appellant's mother's funeral,  
16       which will be marked as Exhibit 3. And they are hereby  
17       admitted without objection.

18              (Appellant's Exhibits 2-3 were received  
19       in evidence by the Administrative Law Judge.)

20              JUDGE LONG: And so I think we're ready to begin  
21       each party's presentation.

22              So Mr. Forgy, you have 25 minutes to make your  
23       presentation and Ms. Parker's testimony.

24              Ms. Parker, I'm going to swear you in now.  
25       Please raise your right hand.

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J. PARKER,

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

JUDGE LONG: Thank you.

Mr. Forgy, you may begin when you're ready.

DIRECT EXAMINATION

BY MR. FORGY:

Q Ms. Parker, how long have you used the tax preparation services at H&R Block?

A Well over five years, maybe closer to ten.

Q Thank you. And what kinds of services has your tax representative at H&R Block perform for you over those years?

A Majority of time it was itemization of my taxes because I work as an independent contractor.

Q And did you use the same tax representative each time you used H&R Block to file your taxes, or was it someone new each time?

A Most of the time it's the same person. I've used Maria at least three or four times, and it was the most recent taxes that I used her for.

Q Got it. So just to clarify, for the tax year at

1 issue 2020, did you use Maria Fernandez' services from H&R  
2 Block?

3 A Yes.

4 Q And before using H&R Block to help you prepare  
5 your 2020 tax return, have you ever encountered any  
6 problems using the services of Maria Fernandez or H&R  
7 Block to file your taxes?

8 A No.

9 Q And could you please describe the problems you  
10 encountered when filing your taxes for the 2020 tax year?

11 A So for 2020, I believe we filed on May 17th. I  
12 believe we got the extension because of the pandemic or  
13 something. But she -- what she did at that point is state  
14 that she would have to file an extension. And I told her  
15 that well, I didn't want to file an extension because I  
16 was concerned about getting, you know, any type of  
17 penalties or whatever. And she said, no you would not --  
18 I would not get that as long as I paid the taxes up front,  
19 which she estimated the taxes would be.

20 And so she told me what they would be for the  
21 Feds and for the State. And then she went ahead and got  
22 my bank information to electronically submit the payment.  
23 And noticed, I guess, a couple of days later the Feds took  
24 it out, like, two days later. So it pretty much all went  
25 through, you know, right away, but I didn't see it for the



1 State. And that's when I contacted her and sent her an  
2 email and said, you know -- you know, what happened? And  
3 then I was, you know, asking her to follow up on, you  
4 know, what had occurred.

5 Q I see. And earlier I believe you said that you  
6 would usually submit tax payments yourself, either email  
7 or electronically. Why did you have H&R Block submit your  
8 federal and state tax payments this time?

9 A The reason why I had things submitted this time,  
10 you know, with the whole issue with Covid, there were a  
11 lot of the post offices that were either closed or had  
12 limited hours, and I didn't know which ones. We were  
13 right on the deadline. We were on the 17th. So I said at  
14 this point to try to find a post office to postmark it,  
15 and it was in the evening, I didn't want to get into the  
16 problem of not finding a post office, not getting it  
17 postmarked in a timely manner. So I told her to just to  
18 go ahead and submit electronically so that way that would,  
19 you know, take care of that issue.

20 Q And did H&R Block notify you that your tax  
21 liability for the State of California had been  
22 successfully paid?

23 A They did not notify me, and I think what I --  
24 this is some of the information that I sent to you, some  
25 of the newer information that's in the evidence. When she

1 prepared my taxes, prior to the extension to meet the  
2 deadline for the extension in that paperwork, it shows in  
3 there that I got a refund from federal and from the state  
4 after she prepared the taxes. I think that she, like,  
5 overestimated how much I owed.

6 So she said the federal and the state I would get  
7 refunds, and she had included in there what I had already  
8 paid or what they had already received. And that's some  
9 of the paperwork I submitted. It was -- it was difficult  
10 trying to get information from them, you know, in terms of  
11 substantiating that.

12 Q I see. And when you said that you had reached  
13 back out to H&R Block to inquire as to why the state tax  
14 payments hadn't gone through, what did they tell you at  
15 H&R Block?

16 A Yeah. And that's in some of the newer emails  
17 that I sent. They said -- she said that she would look  
18 into it. And also, when I had verbal conversations with  
19 her, she said that she would call the State Tax Board.  
20 She was -- there was -- difficulty kind of getting through  
21 again, you know, because of downsizing, because of Covid  
22 and so forth. That was a little bit challenging, but she  
23 said that she would follow up on it and look into it.

24 Q I see. And did the State tell you, I believe  
25 that the -- or sorry. Did H&R Block inform you that

1 perhaps the state was slow in processing the payments? Is  
2 that something you mentioned earlier?

3 A Correct. That's what she told me that some of  
4 the other clients that was something that they were kind  
5 of noticing in terms of processing paperwork and so forth,  
6 that they were a little bit slow. So that might have, you  
7 know, led to them not taking the money out right away like  
8 the federal agency did.

9 Q I see. And did the explanations at H&R Block  
10 provide you, did you believe them at the time? Did those  
11 explanations make sense?

12 A Absolutely.

13 Q And now I'd like to move on to sort of a  
14 different topic. Besides the 2020 tax year, have you ever  
15 been late in paying your taxes?

16 A No.

17 Q And during the time after you filed your 2020  
18 taxes, were there other circumstances that perhaps  
19 effected your mental health and wellbeing when you were  
20 filing your taxes for the tax year at issue?

21 A Absolutely. Unfortunately, my mother  
22 unexpectedly became ill that following month, and that was  
23 in July. And when we took her to the hospital, we went in  
24 with the idea of -- one diagnoses thought she was going to  
25 be there for a couple days and that was going to be the

1 end of that. Instead, we got a much more ominous  
2 diagnosis. She was there quite some time and unexpectedly  
3 passed. So once that happened, everything kind of -- you  
4 know, that was more of the focus was my mother's passing.

5 Q I see. And how often would you say you typically  
6 check your bank account?

7 A Probably at least once a month and --

8 Q And -- oh, sorry.

9 A No. Go right ahead.

10 Q And would you say that your mother's passing  
11 affected your ability to monitor your bank account as  
12 closely as you might have?

13 A Absolutely. And then to add to that, we have a  
14 family member that was one -- that wasn't with the rest of  
15 the family and was opposing these -- the settlement or the  
16 estate so -- and it's been very, very difficult. That  
17 family member -- and I can provide documentation of  
18 that -- sent the police to our home. That family member  
19 took all of the death certificates and would not share  
20 that with us, so we couldn't do business for a while.

21 It was just -- it wasn't -- it was a very, very  
22 difficult process. It still is. And that was also adding  
23 to that, dealing with the legal aspect of my mother's  
24 passing with a family member that is fighting the whole  
25 way. We got another letter from her attorney, and it's

1 just right after my mother passed it started. And so that  
2 was another side to it.

3 MR. FORGY: Thank you so much for your testimony,  
4 Ms. Parker.

5 Judge, that concludes my direct examination of  
6 Appellant. Should I launch into my oral argument or would  
7 the FTB like a chance to cross-examine Ms. Parker?

8 JUDGE LONG: This is Judge Long. Yes, we can  
9 ask.

10 FTB, do you have any questions for Ms. Parker?

11 MR. YADAO: No questions, Judge.

12 JUDGE LONG: Thank you.

13 All right. You may continue with your  
14 presentation.

15

16 PRESENTATION

17 MR. FORGY: This is Daniel Forgy. If I may just  
18 briefly summarize the facts as Ms. Parker testified.

19 Appellant attempted to timely file her taxes for  
20 the 2020 tax year on May 17th, 2021, using the trusted  
21 service of H&R Block and Maria Fernandez. Appellant's tax  
22 representative Maria Fernandez confirmed that both the  
23 federal and state tax payment she owed were properly  
24 submitted. Appellant diligently monitored her bank  
25 account, and in June Appellant noticed that her state tax

1 payment had not yet been withdrawn.

2 Appellant followed up with her tax representative  
3 who informed her that the state was simply slow in  
4 processing her tax payments and told her other taxpayers  
5 were experiencing similar delays. And then Appellant's  
6 mother became ill suddenly in July and passed away in  
7 August with the funeral in early September. And finally,  
8 Appellant received the Notice of Proposed Assessment from  
9 the FTB in October.

10 To escape a late payment penalty, the taxpayer  
11 bears the burden of proving both that the failure did not  
12 result from willful neglect and two, that the failure was  
13 due to reasonable cause. This is from United States  
14 versus Boyle. Here, Appellant's failure was clearly not  
15 due to willful neglect, and the FTB is not contesting  
16 this. So we only need to look at the reasonable cause.  
17 And here, I believe that Appellant has established  
18 reasonable cause to abate the late payment penalty.

19 From the Appeal of Friedman, a failure to pay  
20 would be considered due to reasonable cause if the  
21 taxpayers make a satisfactory showing that they exercised  
22 ordinary business care and prudence in providing for the  
23 payment of their tax liability and were nevertheless,  
24 either unable to pay the tax or would suffer undue  
25 hardship if they paid on the due date.

1 JUDGE LONG: Mr. Forgy, I apologize for  
2 interrupting, but can you please slow down.

3 MR. FORGY: Sorry.

4 JUDGE LONG: Thank you.

5 MR. FORGY: I'll try to slow down from here.  
6 This is Daniel Forgy again.

7 Here Appellant exercised ordinary business care  
8 and prudence in providing for the payment of her tax  
9 liability by employing a trusted tax representative from a  
10 national chain to file and pay her taxes for her.  
11 Appellant has a track record of timely paying her taxes.  
12 And the fact that this was the first time using H&R Block  
13 to pay her taxes shows a good-faith effort to pay her  
14 taxes on time, a method that a reasonably prudent person  
15 would have relied on given the circumstances.

16 Furthermore, Appellant's tax representative at  
17 H&R Block informed her that both her state and federal  
18 taxes have been successfully paid. However, despite these  
19 representations, Appellant diligently monitored her bank  
20 account. And as demonstrated by Exhibit 2, Appellant  
21 reached out to the FTB as soon as she noticed that the  
22 funds for her state tax payment had not been withdrawn.

23 Unfortunately, however, her mother became  
24 unexpectedly ill in July, and she passed away the next  
25 month in August with the funeral being held in September.

1     The death of her mother understandably affected her mental  
2     well-being and her efforts to deal with the ensuing grief  
3     hampered efforts to monitor her bank account as closely as  
4     she otherwise would have.

5             Now, the FTB relies on the cases of Friedman and  
6     Scanlon for the proposition that Appellant should have  
7     closely monitored her bank account. But we can see from  
8     Appellant's testimony and the exhibits entered into  
9     evidence that she did, in fact, monitor her bank account  
10    as any reasonably prudent person could have. It was due  
11    to unforeseen circumstances, such as the death of her  
12    mother, that prevented her from monitoring it as closely  
13    as she otherwise would have.

14            In addition, I would like to submit to the court  
15    that the result in Friedman and Scanlon should be  
16    distinguished because there the taxpayers themselves were  
17    processing the payments that were in error, and the  
18    taxpayers themselves made the error. Whereas here,  
19    Appellant reasonably relied on an agent to transmit the  
20    payment, and it was the agent that made the error in  
21    submitting the California tax payment in a timely fashion.

22            Instead of Friedman and Scanlon, I believe the  
23    Court should look to the 2022 Appeal of Fisher. There  
24    they stated that the exercise of ordinary business care  
25    and prudence requires that taxpayers do more than merely



1 perform and/or delegate the task necessary to  
2 electronically file. It also requires the taxpayer to  
3 personally verify that the tax return was successfully  
4 transmitted, and where it has not been, to take the  
5 appropriate corrective actions.

6 Now, in Fisher they found that Appellants had not  
7 met this burden because Appellants chose to rely solely on  
8 the representations of the tax return preparer that the  
9 return had been filed. But here, Appellant did not  
10 totally rely on the representations of H&R Block, but also  
11 monitored the bank account herself and caught the error  
12 long before the FTB sent her the Notice of Proposed  
13 Assessment. She then took measures to ensure her tax  
14 payment was going through that were in line with what  
15 could be expected of an ordinary and reasonably prudent  
16 person.

17 Appellant trusted the advice of her tax  
18 representative when they told her the State was just slow  
19 at processing the payments. And this is especially  
20 reasonable because she had already seen the federal  
21 payments go through. Thus, she had no reason to suspect  
22 that anything would be wrong with the state payments.

23 In addition, the fact that Maria Fernandez had  
24 informed Appellant that other peoples' tax payments were  
25 similarly delayed due to the Corona virus pandemic or

1 other circumstances only reenforces how reasonable this  
2 belief was. While reliance on an agent is generally not  
3 deemed as an excuse, an exception, I believe, should be  
4 made in cases such as this one where the Appellant had  
5 repeatedly relied on the same tax preparation service to  
6 file and pay their taxes.

7 Thus, I believe that the U.S. -- the case of  
8 United States versus Boyle should be distinguished from  
9 this case because in Boyle, it was the first time using  
10 the tax attorney that they had relied on there. And here,  
11 Ms. Parker has relied on H&R Block for several years, and  
12 always without incident until the tax year in question.  
13 Instead, I believe that the standard, which is that  
14 proposed by Rohrabach versus the United States, which is  
15 a Seventh Circuit decision should be relied on instead as  
16 it would be a more equitable standard to apply in cases  
17 like that of Appellant.

18 In Rohrabach, the United States Court of Appeals  
19 for the Seventh Circuit held that reliance upon counsel  
20 constitutes reasonable cause under Section 6651(a)(1) when  
21 the taxpayer is unfamiliar with the tax law, the taxpayer  
22 makes full disclosure of all relevant facts to the  
23 attorney that he relies upon and maintains contact with  
24 the attorney from the time to time during the  
25 administration of the estate, and three, the taxpayer has

1 otherwise exercised ordinary business care and prudence.

2 Here, of course, Ms. Parker was not relying on an  
3 attorney but rather, a tax representative of H&R Block.

4 But I feel like the situation is applicable. Here,  
5 Appellant was clearly unfamiliar with the tax law, and she  
6 obviously made full disclosure to her tax representative  
7 that she was relying on at H&R Block of all the relevant  
8 facts as she attempted to submit her taxes in any timely  
9 fashion, and H&R Block assured her that they had been.  
10 And as demonstrated earlier, the Appellant has exercised  
11 ordinary business care and prudence.

12 And now I would like to turn to the estimated tax  
13 penalty and to the Salzman case in particular, which  
14 states that IRC Section 6654(e)(3)(a) provides that the  
15 taxing agency may waive the estimated tax penalty that  
16 determines that by reason of casualty, disaster, or other  
17 unusual circumstances, the imposition of the estimated tax  
18 penalty would be against equity in good conscience. Here,  
19 the mother's death certainly applies, I believe, because  
20 it caused the Appellant significant grief and emotional  
21 distress. And thus, in equity and good conscience, the  
22 State should not impose the estimated tax penalty in this  
23 case.

24 This concludes my case in chief. I would yield  
25 the rest of my time.

1 JUDGE LONG: This is Judge Long. Thank you for  
2 your presentation.

3 FTB has ten minutes for their presentation. You  
4 may begin when you are ready.

5 MR. RICAFORT: Thank you, Judge.

6

7 PRESENTATION

8 MR. RICAFORT: Good morning. My name is Josh  
9 Ricafort, and along with Eric Yadao we represent the  
10 Respondent Franchise Tax Board.

11 The issues on appeal are whether Appellant has  
12 established reasonable cause to abate the late payment  
13 penalty, and whether Appellant has established a basis for  
14 abating the estimate penalty. The law requires that FTB  
15 assess a late payment penalty when a taxpayer pays the  
16 taxes due on their return late, unless the taxpayer  
17 establishes that the failure -- their failure to pay  
18 timely was due to reasonable cause and not willful  
19 neglect.

20 For the tax year 2020, payment for taxes were due  
21 no later than May 17, 2021. On October 28th, 2021, FTB  
22 issued a Notice of Tax Return Change, marked as Exhibit B,  
23 to inform Appellant that the timely payments claimed on  
24 her return were overstated. FTB introduced -- excuse me.  
25 FTB's notice included the unpaid tax and the late payment

1       and estimate penalties.

2               Appellant paid the balance on November 12, 2021,  
3       more than five months past the due date. Appellant  
4       asserts that the late payment penalty should be abated  
5       based on her reliance on her representative to submit  
6       timely electronic payment on her state taxes. However,  
7       FTB has no record of receiving an electronic payment  
8       request on behalf of Appellant from January 1, 2021  
9       through May 17, 2021. FTB supported this fact with  
10      Exhibit F, the declaration of its employee who is assigned  
11      responsibility over FTB's electronic payment record  
12      system.

13              The law is well settled under United States v  
14      Boyle that a taxpayer's reliance not a tax representative  
15      is not reasonable cause because a taxpayer's duty to  
16      timely pay taxes is an obligation that cannot be delegated  
17      to a representative. In this appeal, Appellant admitted  
18      in her testimony that she continuously delegated payment,  
19      delegated follow-up on payment, and when she later  
20      attended to a state issue, she did not at the expense  
21      continued -- to continue delay of payment of her tax.  
22      Appellant failed to pay her taxes, a duty for which she  
23      alone is responsible for and cannot delegate to a tax  
24      representative.

25              Appellant submitted evidence of an email to her

1 preparer dated July 15, 2021, asking why her payment had  
2 not been withdrawn from her bank account. Appellant's  
3 evidence shows she waited nearly a full month to follow up  
4 on her payment. Appellant's email establishes that she  
5 knew her taxes had not been paid timely and then continued  
6 to delay her payment an additional four months until  
7 November 12, 2021. Thus, Appellant has not established  
8 reasonable cause because Appellant willfully neglected to  
9 timely pay her taxes due and allowed five months after the  
10 due date to pass before taking action to remedy her  
11 failure to pay her taxes due.

12 FTB is sympathetic to Appellant's mother's  
13 passing as evidenced by the services held in September  
14 2021. In sum, however, Appellant's arguments do not  
15 establish reasonable cause for missing the payment  
16 deadline in May 2021. And her recently submitted evidence  
17 does not show she has -- was continuously prevented from  
18 making payment until nearly six months later in November  
19 of 2021.

20 While Appellant also requested abatement of her  
21 tax year 2020 late payment penalty based on her good  
22 payment history, California does not have any laws in  
23 place for abating late payment of penalties for taxable  
24 years prior to tax year 2022 based solely on prior good  
25 payment history. Accordingly, Appellant has not

1 established a legal basis for the abatement of the late  
2 payment penalty.

3 With regards to the estimate penalty, Appellant  
4 has not provided any argument supported by objective and  
5 contemporaneous evidence that falls within the narrow  
6 exceptions required by the law for abating the estimate  
7 penalty. Therefore, the estimate penalty was properly  
8 imposed by the FTB and cannot be abated. Accordingly, FTB  
9 respectfully requests that the OTA sustain the late  
10 payment penalty and the estimate penalty.

11 I'm happy to any questions the questions -- any  
12 questions the OTA may have at this time. Thank you.

13 JUDGE LONG: This is Judge Long. Thank you,  
14 Mr. Ricafort.

15 Mr. Forgy, would you like to make a rebuttal or a  
16 final statement to address any of FTB's arguments?

17 I believe you're still muted, Mr. Forgy.

18 MR. FORGY: My apologies.

19

20 CLOSING STATEMENT

21 MR. FORGY: This is Daniel Forgy. Yes, Judge, I  
22 would like to simply reiterate and reenforce the position  
23 that I believe cases like the United States versus Boyle  
24 where people are relying -- when taxpayers are relying on  
25 a representative for the first time should be

1 distinguished in cases such as this, where a taxpayer was  
2 taking all the appropriate precautions knowing that they  
3 are approaching the filing deadline to pay their taxes in  
4 a timely fashion and thus, did what any reasonable and  
5 prudent person would do by employing the services of a  
6 trusted tax preparation service, such as H&R Block in this  
7 case, and relying on an individual H&R Block who they had  
8 relied on for several years prior to that.

9 In such circumstances it seems to me that the  
10 most equitable thing to do would be to describe that as  
11 reasonable cause and thus, the late payment penalty should  
12 be abated under those circumstances.

13 Thank you. That concludes my rebuttal.

14 JUDGE LONG: Thank you.

15 That concludes the hearing for today. We will  
16 keep the record open for Appellants to submit their  
17 additional evidence that they -- which they had mentioned  
18 before we went on the record.

19 I will give you 30 days from today to submit  
20 those documents. And then afterwards, once we receive it,  
21 OTA will acknowledge it, and then FTB will have 30 days to  
22 submit a reply brief after reviewing those documents.

23 Mr. Forgy, do you have any questions?

24 MR. FORGY: No questions, Your Honor.

25 JUDGE LONG: And for FTB, do you have any



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questions?

MR. RICAFORT: No questions, Judge.

JUDGE LONG: Great. Thank you again all for attending today. The Office of Tax Appeals will now be in recess until 1:00 p.m.

Thank you.

(Proceedings adjourned at 10:46 a.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 7th day  
of August, 2023.

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