

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
LA BOOM ENTERTAINMENT,) OTA NO. 221011555
)
 APPELLANT.)
)

)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, February 14, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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IN THE MATTER OF THE APPEAL OF,)
LA BOOM ENTERTAINMENT,) OTA NO. 221011555
APPELLANT.)
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Transcript of Proceedings,
taken at 12900 Park Plaza Dr., Suite 300,
Cerritos, California, 90703, commencing at
9:40 a.m. and concluding at 10:11 a.m. on
Wednesday, February 14, 2024, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ JOSHUA LAMBERT

Panel Members: ALJ LAUREN KATAGIHARA
ALJ ANDREW WONG

For the Appellant: LEONARDO LOPEZ

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE ADMINISTRATION

RAVINDER SHARMA
CHRISTOPHER BROOKS
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-2 were received at page 6.)
(Department's Exhibits A-G were received at page 6.)

OPENING STATEMENT

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1 Cerritos, California; Wednesday, February 14, 2024

2 9:40 a.m.

3

4 JUDGE LAMBERT: We are now on the record in the
5 Office of Tax Appeals oral hearing for the Appeal La Boom
6 Entertainment, Case No. 221011555. The date is
7 February 14th, 2024, and the time is 9:40 a.m.

8 My name is Josh Lambert, and I'm the lead
9 Administrative Law Judge for this hearing, and my
10 co-Panelists today are Judge Wong and Judge Katagihara.

11 First, we can introduce ourselves, the parties.

12 CDTFA, can you please introduce yourselves for
13 the record.

14 MR. SHARMA: Ravinder Sharma, Hearing
15 Representative. Thank you.

16 MR. PARKER: Jason Parker, Chief of Headquarters
17 Operations Bureau.

18 MR. BROOKS: Christopher Brooks, attorney for
19 CDTFA.

20 JUDGE LAMBERT: Thank you.

21 And for Appellant, can you please introduce
22 yourself for the record.

23 MR. LOPEZ: Leonardo Lopez for La Boom
24 Entertainment.

25 JUDGE LAMBERT: Thank you.

1 Thank you all for attending.

2 As agreed to by the parties, the issues are
3 whether Appellant has shown that an additional reduction
4 to the amount of unreported taxable sales is warranted,
5 and whether the negligence penalty was properly imposed.

6 As stated in the minutes and orders, CDTFA
7 prepared a reaudit which resulted in reduction of the
8 audited understatement of reported taxable sales to
9 \$1,852,074, and reduction of the unreported taxable cost
10 of self-consumed merchandise to \$8,512. And as a result,
11 CDTFA reduced the determined tax to \$144,884 and the
12 negligence penalty to \$14,488.43. Appellant is not
13 disputing adjustments for unreported self-consumed
14 merchandise or unreported district taxes. And Appellant
15 also provides a worksheet indicating a concession of at
16 least unreported sales of \$1,134,407.

17 CDTFA provides Exhibits A through G, and
18 Appellant provides Exhibits 1 through 2. And there was no
19 objections, so that evidence is now in the record.

20 (Appellant's Exhibits 1-2 were received
21 in evidence by the Administrative Law Judge.)

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

24 JUDGE LAMBERT: At this time, Mr. Lopez, you can
25 provide your presentation and explain your position. And

1 as discussed before, you could have 20 minutes. So if
2 you're ready to proceed, did you want to proceed?

3

4 PRESENTATION

5 MR. LOPEZ: Well, thank you all for your time.
6 Good morning. Thank you guys.

7 Mainly, I was here as a business owner, family
8 man. And, yeah, I know things are bad. We try to pay
9 them. They took us out, and we had bad representation,
10 that's all I'm appealing, maybe that negligence thing.
11 And that's pretty much simple. I mean, we have bad
12 representation. I was -- we were being told everything
13 was under control, and we thought everything was being
14 paid. Unfortunately, it wasn't, and that's pretty much
15 it. I mean, everything is already paid. Like I said, I'm
16 just here trying to appeal, trying maybe get that -- at
17 least that back.

18 But, yeah, I have nothing else.

19 JUDGE LAMBERT: Okay. Thank you, Mr. Lopez.

20 I'll just ask the panel if they have any
21 questions.

22 Judge Wong, did you have any questions?

23 JUDGE WONG: Yeah. For Mr. Lopez, I just wanted
24 to confirm. So you're not contesting the audit result?
25 You're just contesting the negligence penalty; is that

1 correct?

2 MR. LOPEZ: No. Well, I agree with the audit
3 report too. I mean, it's already paid for. So, I mean,
4 that's a done thing already.

5 JUDGE WONG: Okay. So about regarding the
6 negligence penalty -- I guess my question is about your
7 records. You mentioned something about -- I mean did
8 you -- did you keep records? Or how did you interact with
9 your accountant or representative?

10 MR. LOPEZ: Yes. He had everything, and then
11 this guy just went rogue. I don't know what happened to
12 this guy. He kept telling us everything was under control
13 and everything good. And I think he even turned some
14 papers in to the CDTFA. Then, I don't know. He was
15 talking to somebody there.

16 JUDGE WONG: What did you give him? What records
17 did you give him?

18 MR. LOPEZ: Receipts, sale receipts, purchase
19 orders. Everything.

20 JUDGE WONG: And then he was interfacing with
21 CDTFA during the audit?

22 MR. LOPEZ: Yes.

23 JUDGE WONG: And then do you know what he gave to
24 CDTFA for the audits?

25 MR. LOPEZ: I have no idea.

1 JUDGE WONG: And then what happened to the
2 records that he -- that you gave to him and that he
3 supposedly gave to CDTFA? Do you know?

4 MR. LOPEZ: He -- he said that he gave them and
5 never got them back.

6 JUDGE WONG: Because he --

7 MR. LOPEZ: He was just excuses after excuses at
8 the end, this guy.

9 JUDGE WONG: Because there's a document in the
10 briefs where it seems that your representative gave the
11 documents to CDTFA. CDTFA wrote up a list of what those
12 documents were. He signed it. And at the bottom it
13 indicates that someone signed your name that received the
14 documents back, the records. So it seems like someone
15 signed for the records that were returned to -- CDTFA gave
16 the records back to --

17 MR. LOPEZ: Oh, wow.

18 JUDGE WONG: -- you. Are you -- do you know --

19 MR. LOPEZ: I have -- I was not aware of that.

20 JUDGE WONG: Okay. Okay. No --

21 MR. LOPEZ: If somebody signed for me, I was not
22 aware of that. No.

23 JUDGE WONG: Okay. I'll try to find it, but for
24 right now I don't have any further questions. Thanks.

25 JUDGE LAMBERT: Thanks.

1 And Judge Katagihara, do you have any questions?

2 JUDGE KATAGIHARA: No questions.

3 JUDGE LAMBERT: Thanks.

4 I was wondering, Mr. Lopez, you provided this
5 drink menu, and it was a printout of prices. And you
6 said -- I think it was stated that the bar didn't have its
7 own menu. Is that true that the bar didn't have a menu,
8 so you just provided a printout of what you --

9 MR. LOPEZ: Well, we don't have a -- I mean, we
10 know our prices, but we don't have, like, a menu. It's a
11 bar. You know, people just go and ask for a beer.

12 JUDGE LAMBERT: Okay.

13 MR. LOPEZ: Yeah. It's not like we -- maybe I
14 should have a menu. That would be a good idea for
15 business. But, yeah, no. People just go, give me a beer,
16 give me this, and -- yeah. It's --

17 JUDGE LAMBERT: Okay. And also I believe there
18 was a picture that CDTFA provided that had, you know,
19 liquor bottles, and they were saying that that shows that
20 there was more liquor at the bar.

21 MR. LOPEZ: Well, there is a full liquor license.
22 So, I mean, there is liquor bottles on there. But, I
23 mean, it's mostly beer sales. But we do have a Type 47
24 full liquor license. Yes.

25 JUDGE LAMBERT: Okay. And also, lastly, there

1 was sales summaries provided that you provided as evidence
2 and just to show, like, what kind of drinks were being
3 sold and the prices. Where did that sales summary come
4 from? Can you just explain so we can clarify where you
5 got it.

6 MR. LOPEZ: The sales summaries from --

7 JUDGE LAMBERT: It was 23 pages or 23 different
8 sales summaries, if you recall.

9 MR. LOPEZ: I guess from the rolls that was --
10 sales rolls.

11 JUDGE LAMBERT: Okay. Like, the -- okay.

12 MR. LOPEZ: The nightly sales, yeah.

13 JUDGE LAMBERT: Okay. Because I think CDTFA was
14 stating that the amounts didn't necessarily match up with
15 what they had found in their audits, so I was just
16 wondering, you know.

17 MR. LOPEZ: Yeah. They didn't 'cause they were
18 using estimates. They were comparing me to other clubs
19 and bars around there that are way more successful. So
20 they thought I would be, like, competing with them but no.

21 JUDGE LAMBERT: Okay. Okay. Thanks.

22 We can move onto CDTFA's presentation, which is
23 going to be for 30 minutes.

24 So, Mr. Sharma, if you're ready, you can proceed.

25 MR. SHARMA: Sure. Thank you.

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STATE OF CALIFORNIA OFFICE OF TAX APPEALS 12

1 In the absence of complete and reliable books and
2 records, the Department used indirect audit method to
3 verify the accuracy of reported amounts and to determine
4 audited taxable sales. The Department conducted vendor
5 service for known beverage vendors. Based on responses
6 from vendors, the Department calculated total beer
7 purchases of little more than \$159,000 for fourth quarter
8 2016 through fourth quarter 2018; Exhibit A, page 21.
9 Despite various requests, Appellant did not provide any
10 purchase invoices or vendors information for liquor
11 purchases. However, based on Yelp.com Review. The
12 Department noted that Appellant operated a bar with
13 entertainment during the audit period; Exhibit A, page 64
14 and 65.

15 Due to lack of purchase records, the Department
16 estimated that liquor purchases should be the same amount
17 as beer purchases. Based on the stated audit procedures,
18 the Department calculated total taxable purchases of
19 little more than \$319,000 for fourth quarter 2016 through
20 fourth quarter 2018; Exhibit A, page 21. In the absence
21 of complete sales and purchase records, the Department
22 used audited markup of 463 percent from the prior audit
23 for the period first quarter 2010 through first quarter
24 2013.

25 To determine the audited taxable sales for the

1 current audit, the Department reviewed markup for similar
2 businesses in the area and noted an average markup of
3 461 percent. Based on the Department's review, it was
4 determined that audited markup of 463 percent is
5 reasonable and acceptable; Exhibit A, page 20. The
6 Department used total purchase of approximately \$319,000
7 adjusted for pilferage and self-consumption allowance of
8 2 percent each, and applied a markup of 463 percent to
9 determine audited taxable sales of approximately
10 \$1.7 million for fourth quarter 2016 to fourth quarter
11 2018.

12 Appellant reported taxable sales of \$430,000
13 resulted in unreported taxable sales of approximately
14 \$1.3 million with an error rate of around 302 percent for
15 fourth quarter 2016 through fourth quarter 2018;
16 Exhibit A, page 70. Due to incomplete books and records
17 for 2019, Department applied error rate of 302 percent to
18 reported taxable sales of little more than \$184,000 to
19 determine unreported taxable sales of around \$556,000 for
20 first quarter 2019 to third quarter 2019; Exhibit A,
21 page 16. Based on the markup method, the Department
22 determined unreported taxable sales of little more than
23 \$1.8 million for the audit period; Exhibit A, page 16.

24 Based on the self consumption allowance of
25 2 percent, the Department determined unreported

1 self-consumption of little more than \$8,000 for the audit
2 period; Exhibit A, page 24. During the audit process, the
3 Department noted that Appellant failed to report district
4 taxes for second quarter 2019. The Department used sales
5 and use tax returns data and determined unreported
6 district taxes of \$311 for taxable measures of little more
7 than \$62,000 for second quarter 2019; Exhibit A, page 14.

8 When the Department is not satisfied with the
9 amount of tax reported by the taxpayer, the Department may
10 determine the amount required to be paid based on any
11 information which is in its possession or may come into
12 its possession. In the case of an appeal, the Department
13 has a minimal initial burden of showing that its
14 determination was reasonable and rational. Once the
15 Department has met its initial burden, the burden of proof
16 shifts to the taxpayer to establish that a result
17 differing from the Department's determination is
18 warranted.

19 Unsupported assertions are not sufficient to
20 satisfy a taxpayer's burden of proof. The Department used
21 vendor service, Appellant's prior audit data, and other
22 best available information to determine the audit
23 liability. Doing so produced a reasonable and rational
24 determination. The Department assessed a 10 percent
25 negligence penalty for the audit period. Negligence

1 penalty is appropriate for several reasons. Unreported
2 taxable measure is 302 percent of the reported taxable
3 sales because due to negligence in maintaining and
4 providing necessary books and records as required and
5 mandated by Revenue & Taxation Code 7053 and 7054 and
6 Regulation 1698.

7 This is Appellant's third audit with similar
8 errors. Significant high percentage of understatement
9 clearly demonstrates that Appellant was negligent in
10 reporting the correct amount of sales tax to the
11 Department. The understatement cannot be attributed to a
12 bona fide and reasonable belief that the bookkeeping and
13 reporting practices was sufficiently complied with the
14 requirements of sales and use tax law. Therefore,
15 Appellant was negligent, and the penalty should be upheld.

16 During the appeal process, Appellant submitted 23
17 sales summaries showing liquor purchases of approximately
18 \$201 for fourth quarter 2016, \$404 for 2017, and \$359 for
19 2018. The Department has reviewed these sales summaries
20 and rejected the same as incomplete, unverifiable, and not
21 representative of Appellant's business activities during
22 the audit period. For details, please refer to Exhibit D,
23 pages 137 and 138. As of now Appellant has not provided
24 any documentary evidence to show that audited purchases
25 are not correct or markup used by the Department based on

1 the prior audit is not correct.

2 In the minutes and orders for the prehearing
3 conference, Appellant conceded around \$1.1 million. But
4 based on the Department's review, the Appellant used
5 markup of 463 percent, which is not correct. Actually,
6 markup factor should be 563 percent, which will result in
7 unreported taxable sales of approximately \$1.4 million.

8 Based on the foregoing, the Department has fully
9 explained the basis for the deficiency and proved that the
10 determination was reasonable based on the available books
11 and records. Further, the Department has used approved
12 audit methods to determine the deficiency. Therefore,
13 based on the evidence presented, the Department requests
14 that Appellant's appeal be denied.

15 This concludes my presentation, and I'm available
16 to answer any questions you may have. Thank you.

17 JUDGE LAMBERT: Thank you, Mr. Sharma.

18 I'm going to turn to the Panel to ask if they
19 have any questions.

20 Judge Wong, did you have any questions?

21 JUDGE WONG: I did have a couple of questions.

22 The first question is with regards to the markup
23 used. It was about 460 percent; is that correct?

24 MR. SHARMA: 463 percent, approximately.

25 JUDGE WONG: And that was mainly derived from a

1 prior audit; is that correct?

2 MR. SHARMA: That's correct.

3 JUDGE WONG: Was that prior audit petitioned or
4 appealed? Are you aware of that?

5 MR. SHARMA: So far I think I'm concerned it was
6 not appealed.

7 JUDGE WONG: Okay.

8 MR. SHARMA: But we can confirm. Give us one
9 minute, please.

10 JUDGE WONG: Sure. Meanwhile, while Mr. Parker
11 is checking, I did have a couple of other questions.
12 Regarding the reasonable test for the markup, you compared
13 Appellant's business to two other businesses within a
14 15-mile radius of his business; is that correct?

15 MR. SHARMA: That is correct.

16 JUDGE WONG: How was a 15-mile radius
17 established? Because that seems to be a very large area.
18 How -- were they comparing based on characteristics or --

19 MR. SHARMA: I think the Department used the
20 similarity of the business, which Appellant has, like full
21 bar with entertainment and sales of liquor and other
22 stuff, those two businesses. And that's the criteria they
23 used.

24 JUDGE WONG: And is the 15-mile radius, is that
25 like a standard or is that kind of -- or expanded --

1 MR. SHARMA: It's not standard. I think that's
2 what the auditor used. And they tried to come up with
3 something reasonable because of Appellant -- Appellant's
4 business activities. The Department wanted to make sure
5 that it's kind of a similar business.

6 JUDGE WONG: Okay. And then the last question is
7 about the purchases of -- the ratio of purchases of beer
8 to liquor, it was 50/50; is that correct?

9 MR. SHARMA: That is correct. That --

10 JUDGE WONG: How --

11 MR. SHARMA: I'm sorry. That is the estimate.

12 JUDGE WONG: And how is that estimated?

13 MR. SHARMA: I think benefits the Appellant.

14 Based on Department's experience, generally, the liquor
15 purchases are higher than the beer purchases. Even one of
16 the similar business we used for comparison, I look at
17 that one and there, if you look at the liquor and beer
18 purchases, that ratio comes to 59 to 41, 59 percent
19 liquor. But, generally, based on the Department's
20 experience, it ranges from 60 to 80 percent in general,
21 but there are some other factors which may govern. But
22 it's always appears to be more than the beer purchases, so
23 it means the 50 percent estimate the Department used
24 actually benefits the Appellant.

25 JUDGE WONG: So 60 to 80 percent liquor versus

1 about 20 to 40 beer; is that right?

2 MR. SHARMA: That's correct. That's in general.

3 JUDGE WONG: In general.

4 MR. SHARMA: But there are some factors which may
5 factor as I said. The one of the comparable business we
6 used, that is 59 percent to 41 percent.

7 JUDGE WONG: Thank you.

8 MR. SHARMA: Thanks.

9 JUDGE WONG: No further questions.

10 MR. PARKER: Judge Wong, just to let you know
11 about the prior audits. The prior audit just before this
12 period that went through, March 31st of 2016, was
13 petitioned. The prior audit to that that we used the
14 markup percentage from, that was 2010 through March 31st,
15 2013, was not petitioned.

16 JUDGE WONG: So the 460 plus percent markup came
17 from an audit that was not petitioned?

18 MR. PARKER: That's what it shows in our system,
19 yes.

20 JUDGE WONG: Great. Thank you.

21 MR. PARKER: Oh, I'd also like to add -- I know
22 you were asking about the receipt for books and records
23 that was signed. It was on, I believe, page 76 of the --
24 Exhibit B, page 76.

25 JUDGE WONG: Got it.

1 MR. PARKER: Okay.

2 JUDGE WONG: We had that page printed out, and we
3 circulated copies to Appellant and to CDTFA. The Panel
4 also has a copy. But I was going to ask Appellant about
5 that, but I will wait until it's back to Appellant's turn
6 to pursue that questioning. Thank you.

7 Okay. I'll ask him. I'll just ask him now.

8 Mr. Lopez --

9 MR. LOPEZ: Yeah.

10 JUDGE WONG: -- you have a copy of what's titled
11 as CDTFA-945, Receipt For Books and Records of Account.

12 MR. LOPEZ: Hm-hm.

13 JUDGE WONG: And at the bottom there's a section
14 that says, "Return of the above described records is
15 acknowledged." And then there's a signature which seems
16 to say, "Leo Lopez."

17 MR. LOPEZ: Yeah, it does.

18 JUDGE WONG: And it's dated June 25th, 2020.

19 MR. LOPEZ: And my birthday.

20 JUDGE WONG: Oh, is that your signature?

21 MR. LOPEZ: I just sign "Leonardo Lopez, Leonardo
22 A. Lopez."

23 JUDGE WONG: So is that your signature?

24 MR. LOPEZ: I don't remember signing. I don't
25 remember this document, no.

1 JUDGE WONG: Okay. All right. No further
2 questions. Thank you.

3 JUDGE LAMBERT: Thanks.

4 Judge Katagihara, do you have any questions?

5 JUDGE KATAGIHARA: I do have a question for CDTFA
6 as a follow up to Judge Wong's question. Is the liquor to
7 beer ratio, the 50/50 ratio, is that the same as found in
8 the previous audits?

9 MR. SHARMA: No. Previous audit, we don't have
10 enough information to determine that. So previous audit
11 was done based on the Appellant's federal income tax
12 returns compared to the reported amount, and those
13 numbers -- information available to the Department was
14 reasonable, so we accepted that. So we don't have that
15 ratio. We could not establish that.

16 JUDGE KATAGIHARA: I understand. Thank you.

17 MR. SHARMA: Thanks.

18 JUDGE KATAGIHARA: No further questions.

19 JUDGE LAMBERT: Thanks.

20 And, Mr. Lopez, I just want to confirm. You're
21 saying that the taxpayer was negligent in preparing the
22 returns or just in losing records?

23 MR. LOPEZ: In everything. He just strung me
24 along. Kept telling me -- because I remember talking to
25 Grace Kim and telling me everything is good. She's paying

1 everything. You're good. You're good. You're good. And
2 like I said, yeah, my bar is a beer bar. I'm in a little
3 part of the neighborhood, not 15 miles where those other
4 bars are in downtown Fullerton rocking every night of the
5 week. I open two days, Friday and Saturday. And I do
6 sell liquor, like, I have a my license, but it's way more
7 beers. I would say maybe, like, 70 percent to 30 percent
8 but, yeah. That's -- yeah.

9 JUDGE LAMBERT: Okay. Thanks. So you're still
10 contesting the audit results because you're arguing that
11 the beer versus liquor ratio, like, should be adjusted.

12 MR. LOPEZ: Yeah. We felt that was real, the
13 estimate, I mean. I knew this guy was messing me up at
14 the end, and I was trying to fix it. But, yeah, the beer
15 sales and the estimates, I understand they didn't have any
16 records and they had to go by that, but they were very
17 unfair. That's how we were kind of contesting. Not kind
18 of, we are contesting. I mean, those estimates are very
19 off. I mean, I sell beer, a lot of beer and alcohol too,
20 but not even close. I mean -- yeah.

21 JUDGE LAMBERT: Okay. Thank you.

22 And, CDTFA, I was just wondering in terms of the
23 negligence penalty. If Mr. Lopez is arguing that the
24 taxpayer maybe messed up on the return or lost records,
25 can -- hypothetically, can the negligence penalty be

1 relieved based on tax preparer error in that case?

2 MR. SHARMA: The Department's position is that
3 the Appellant is responsible for the errors of the
4 representative. It's not the representative who is
5 negligent. If the representative failed to report the
6 correct amount, it's still Appellant's responsibility and
7 Appellant should be held responsible for the negligence
8 penalty.

9 JUDGE LAMBERT: Okay. Thank you.

10 MR. SHARMA: Thank you.

11 JUDGE LAMBERT: Mr. Lopez, at this time if you
12 want to make you're closing remarks for five minutes.
13 Thanks.

14

15 CLOSING STATEMENT

16 MR. LOPEZ: Well, again, thank you all of you for
17 your time. I have pretty much said everything I have to
18 say. I don't know what else I could say. Sorry for
19 wasting your time your time, if anything, but I will
20 greatly appreciate any consideration, you know. Thank
21 you. That's it.

22 JUDGE LAMBERT: Thank you.

23 I'll just ask the Panel if there's any final
24 questions.

25 Judge Wong, did you have any questions?

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JUDGE WONG: No questions. Thank you.

JUDGE LAMBERT: And, Judge Katagihara, did you have any final questions?

JUDGE KATAGIHARA: No questions.

JUDGE LAMBERT: Thanks.

So if there's nothing further, I'm going to conclude the hearing. I want to thank both parties for appearing today. We will issue a written opinion within 100 days. Thank you.

The record is now closed.

(Proceedings adjourned at 10:11 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 March, 2024.

ERNALYN M. ALONZO
HEARING REPORTER