

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
G. VASQUEZ,) OTA NO. 240716867
)
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) APPELLANT.
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, August 21, 2025

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 1:58 p.m. and concluding at 3:13 p.m. on
Thursday, August 21, 2025, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead:	ALJ JOSH LAMBERT
Panel Members:	HEARING OFFICER KIM WILSON ALJ GREG TURNER
For the Appellant:	DAVID PIDAL
For the Respondent:	STATE OF CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION NALAN SAMARAWICKREMA CHRISTOPHER BROOKS JASON PARKER

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I N D E X

E X H I B I T S

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

(Department's Exhibits A-F were received into evidence at page 6.)

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California; Thursday, August 21, 2025

1:58 p.m.

JUDGE LAMBERT: We are now on the record in the Office of Tax Appeals oral virtual hearing for the Appeal of Gerardo Vasquez, Case No. 240716867. The date is August 21st, 2025, and the time is 1:58 p.m.

As I stated before, my name is Josh Lambert, and I'm the lead panel member for this hearing, and my co-panelists today are Judge Turner and Hearing Officer Wilson.

So first, CDTFA could you please introduce yourselves for the record by stating your name.

MR. SAMARAWICKREMA: This is Nalan Samarawickrema, hearing representative for CDTFA. Thank you.

MR. PARKER: Jason Parker, Chief of Headquarters Operations Bureau with CDTFA.

MR. BROOKS: Christopher Brooks, attorney for CDTFA.

JUDGE LAMBERT: Thank you.

And for the Appellant, could you please introduce yourselves for the record by stating your name.

MR. PIDAL: Yeah. I'm David Pidal. I'm the representative for the Appellant.

1 JUDGE LAMBERT: Thank you. Thank you all for
2 attending.

3 The issue in this hearing is whether adjustments
4 to the measure of unreported taxable sales are warranted.

5 CDTFA provided Exhibits A through F, and
6 Appellant provided Exhibits 1 through 5. That concludes
7 the most recent submission.

8 CDTFA, were there any objections to the exhibits?

9 MR. SAMARAWICKREMA: This is Nalan
10 Samarawickrema. No, Judge.

11 JUDGE LAMBERT: Okay.

12 And for Appellant, Mr. Pidal, is there any
13 objections to CDTFA's exhibits?

14 MR. PIDAL: No objections.

15 JUDGE LAMBERT: Okay. Thank you.

16 That evidence is now in the record.

17 (Appellant's Exhibits 1-5 were received into
18 evidence by the Administrative Law Judge.)

19 (Department's Exhibits A-F were received into
20 evidence by the Administrative Law Judge.)

21 JUDGE LAMBERT: So, Mr. Pidal, this will be your
22 opportunity to explain Appellant's position. And as
23 discussed, you have 45 minutes. So if you're ready to
24 proceed, you can start.

25 ///

1 footwear or game -- game control handheld controllers.

2 Now, when -- when the Appellant was notified of
3 the upcoming -- or the routine sales and -- routine sales
4 and use tax audit, the Appellant unfortunately did not
5 receive the initial request for books and records. And it
6 should be noted that in their standard engagement letter,
7 I believe it says CDTFA-5024, there's a -- the letter is
8 in Exhibit A, page 88. And that's just a boilerplate of
9 standard records that they just requesting. Not everyone
10 has those records, but its -- its the in the engagement
11 letter. The Appellant is one of many permit holders that
12 don't have all the books and records listed in this
13 letter. The Appellant does not maintain sales of purchase
14 journals or any summaries.

15 The Appellant did summarize their sales in Excel
16 spreadsheet for each -- I mean by kiosk location, which
17 was provided to the Respondent. The excel files, along
18 with bank statements and income tax returns were made
19 available to the Respondent. The Appellant -- the
20 Appellant would summarize purchases for income tax returns
21 based on statements received from its vendors or requested
22 from the Appellant's vendors. The summaries weren't
23 retained by the Appellant, but the amounts were provided
24 to the income tax preparer. The income tax preparer only
25 prepared income taxes and was not the bookkeeper. And I

1 am not also the bookkeeper.

2 The tax preparer did not maintain any books or
3 records for the Appellant. A negligence penalty was not
4 recommended for lack of records, as Respondent determined
5 that the books and records made available were sufficient
6 for sales and use tax purposes. The Respondent's penalty
7 comments state, quote, "A 10 percent negligence penalty is
8 not recommended. The errors were related to bookkeeping
9 and not egregious enough in size to warrant a penalty."
10 This is noted in the Respondent's Exhibit A, page 6.

11 Based on the records available and initially
12 provided to the Respondent, the Respondent relied on the
13 purchases from the income tax returns to establish an
14 understatement of taxable sales. The Respondent routinely
15 uses purchases from income tax returns, even though
16 purchases cannot be verified by pricing to books and
17 records. In this case, there were no formal purchase or
18 sales journals. The Respondent accepted the purchases
19 were cost of sales for the income tax returns for 2018,
20 2019, and 2020. The gross profit analysis was -- was
21 tabulated for each year using the reported taxable sales
22 from the sales tax returns. The markups for each -- for
23 each year was 308.66 percent, 167.13 percent, and
24 242.08 percent for 2000 -- 2018, 2019, and 2020
25 respectively.

1 CDTFA accepted the 308.66 percent markup. By
2 accepting the markup, the Respondent concluded that
3 reported taxable sales for 2018, and the purchases for
4 2018 income tax returns were acceptable and reasonably
5 correct. The reported taxable sales that the Respondent
6 accepted for 2018 includes taxable charge sales and cash
7 sales. As previously mentioned, Respondent accepted the
8 purchases from the federal income tax returns for the
9 years 2018, 2019, and 2020. The Respondent's comments in
10 the audit working papers states in Exhibit 1, page 47,
11 quote, "Based on a discussion with the supervisor -- with
12 supervisor, the taxpayer is given the benefit of the doubt
13 that the purchases were recorded accurately," end quote.

14 The purchases or cost of sales from the federal
15 income tax for 2019 and 2020 were marked up after
16 computing a quarterly average. They just -- they just
17 took the total from the income tax return, divided by
18 four, and got the quarterly average, and applied the
19 308.66 percent markup to arrive at -- excuse me --
20 estimated taxable sales. Generally, when a markup method
21 is used, a shelf test is tabulated. A shelf test is
22 getting the selling price and the respective cost for
23 representative items to calculate the markup. In this
24 case, the Respondent did not conduct the shelf test. The
25 estimated sales were then compared to the reported

1 quarterly tax bill -- taxable sales.

2 In 2020, credits were noted for first quarter '20
3 and fourth quarter 2020. But the Respondent using 19.74
4 percent of error for the total year of 2022 eliminate the
5 credits. This was applied to 2020 reported taxable sales
6 to eliminate the credits. For first quarter '21, the
7 Respondent applied a 44.29 percent of error, which was
8 calculated using the period January 1st, 2019, to
9 December 31st, 2020. A percentage of error for 2020 is
10 19.47 percent. If anything, this percentage should have
11 been applied to the first quarter of '21 report of sales,
12 since this is a post-COVID period, and the errors are not
13 related to 2019.

14 As a result, taxable measure for first quarter
15 '21 is overstated by \$9,596, which is calculated by
16 subtracting the 44.29 percent minus the 19.47 percent
17 times the \$36,663 reported. This issued was addressed in
18 the D&R but know adjustment made since purchases were not
19 provided for first quarter '21. First quarter '21
20 purchases have been provided now to which a markup can be
21 applied. An adjustment is warranted based on the
22 information provided. Since the Respondent accepted the
23 reported taxable sales for 2018, the Appellant presented
24 an alternative indirect methodology to estimate additional
25 taxable sales.

1 The alternative indirect method is to use a
2 credit card method. It's to use the ratio of taxable
3 sales to credit and debit card receipts. The Respondent
4 disagreed with this procedure on the basis that an
5 observation test was not conducted. The Appellant
6 disagrees with the Respondent's reasoning on the basis
7 that a shelf test was not conducted to apply the markup.
8 The Respondent's agency, CDTFA, has routinely used the
9 credit card ratio on businesses, other than bars and
10 restaurants, as described in Audit Manual section 0810.12
11 to estimate taxable sales, which consist of cash and
12 charge taxable sales.

13 When the CDTFA cannot verify the cost of sales,
14 specifically the cost of sales on the income tax returns,
15 CDTFA will use a credit card ratio. And that is based on
16 my personal experience in dealing with audits involving
17 credit card ratios. The decision and recommendation
18 ignores that the reported taxable sales include charge
19 sales and cash sales and increase the focus on nontaxable
20 sales. The D&R concludes that credit card receipts did
21 not account for taxable cash sales and their nontaxable
22 labor sales. The D&R errors in that the credit card ratio
23 are being applied to estimate, quote, "Taxable sales, both
24 charge and cash, and not to determine the credit or cash
25 exempt labor sales." You can view Exhibit 1, page 4 or

1 Exhibit 4, page 72 for use of the credit card ratio.

2 The D&R erred in their conclusion and a request
3 for reconsideration and RFR was filed. Since the D&R
4 concluded that the markup method was the best indirect
5 method in establishing taxable sales, the Appellant
6 requested that the purchases be adjusted for cost of sales
7 for resale, and the ending inventory to be made for the
8 LIV Boots, which is the unique footwear sold at separate
9 kiosks.

10 The Respondent concedes that sufficient
11 documentation was submitted to establish that a valid sale
12 for resale was made. XYZ letters, sales invoices, and
13 purchase records were submitted to support the sale for
14 resale and the respective costs. The Respondent, however,
15 concluded that sufficient information was not available to
16 verify that the cost of resales was included in the
17 purchases of the income tax returns. The fact is the
18 Appellant did not have purchase journals or purchase
19 summaries. The purchases were summarized by vendor for
20 the preparation of income tax returns as previously
21 discussed. The Appellant did not retain the summaries
22 used for income tax purposes, but the Appellant prepared a
23 summary for this immediate case to verify the purchases on
24 income tax returns.

25 And these summaries -- these summaries were

1 obtained from the vendors directly and included all
2 purchases. This was from third-party source vendors and
3 can be verified by the Respondent. The Respondent
4 double-downed and did not file an adjustment for the cost
5 of resale, since they did not believe all purchases are
6 included. The Respondent cites a differences of purchases
7 from the summaries to income tax returns. The differences
8 of \$13,714 and a minus \$2,528 were noted for 2019 and 2020
9 respectively. The purchases included \$25,860 of the
10 initial purchases for the LIV Boots.

11 Although the Respondent accepted the 2018
12 purchases from the income tax returns, the summaries
13 obtained from the vendors also revealed a difference of
14 \$13,889. The purchase summary amount was more than
15 purchases in the federal -- in the 2018 federal income tax
16 return. The Appellant proposed to markup the purchases
17 summarized from the vendors by the markup of 308.66
18 percent, but the Respondent continues to believe the
19 Appellant has not presented purchases as accurate. The
20 Appellant asserts that the purchases presented are
21 accurate.

22 As previously noted, the Respondent did not
23 recommend a negligence penalty. Since the markup method
24 is used, the purchases resold for resale should be --
25 should not be included in the purchases that were marked

1 up by 308.66 percent, furthermore, the Respondent did not
2 allow an ending inventory adjustment on the basis that
3 documentation for inventory was not available for all
4 beginning and ending inventory. Yet, the Respondent has
5 conceded that an ending inventory for LIV Boots exists.

6 In short, the Respondent considered the
7 inventories to be constant. The Respondent erred in the
8 interpretation of Audit Manual section 0407.10, which
9 states in part, quote, "Inventory Adjustments (Item E), in
10 many cases the taxpayer will not have inventories which
11 can be checked for accuracy." In this case, purchases may
12 be considered the cost of sales if there is evidence that
13 inventories are substantially constant." And I emphasize
14 the word that there's evidence that the inventories were
15 substantially constant. The evidence is overwhelming,
16 shows that LIV Boots inventories was not substantially
17 constant. You have zero beginning because the LIV Boots
18 were introduced in the middle of the audit period and at
19 the end of the audit period. And I'll discuss that later.
20 There was over half -- or there was quite a few pairs of
21 LIV Boots still in inventory.

22 Furthermore, the Audit Manual section 0101.05
23 states, quote, "The Audit Manual is a guide to conducting
24 CDTFA audits. It incorporates procedures and techniques
25 that evolved over a period of years and have proven to be

1 sound and practical. Auditor should carefully study this
2 manual to conduct audits and prepare reports in a uniform
3 manner consistent with approved auditing practices. The
4 manual, however, is not a substitute for experience,
5 training in accounting and auditing, good judgment, and
6 active supervision. The procedures outlined in this
7 manual are not inflexible. However, auditors should
8 discuss any situation when they're supervised for any
9 deviations from these guidelines and instructions." And I
10 emphasize the procedures outlined in the manual are not
11 inflexible.

12 As previously discussed, the Appellant operated
13 kiosks in various malls located at various locations. You
14 can -- you can see Exhibit 4, page 78 for the Appellant --
15 for the Appellant's kiosk locations. The Appellant was
16 issued a consolidated permit, and a sub permit was issued
17 for each location -- each kiosk. This is the Respondent's
18 agency policy and not a legal requirement. A separate
19 permit can be issued for each kiosk, but the Appellant was
20 not given the opportunity -- or given the option by the
21 Respondent's agency. You can view Exhibit 4, pages 73, 74
22 for the Respondent's agency information regarding the
23 issuance of permits for separate locations at different
24 locations. Since the products and/or services are
25 different at kiosks, the NAICS code would be different.

1 For example, the NAICS code for cell phone
2 accessories is 449210. The NAICS code for electronic
3 games is 339930. The NAICS code for footwear is 458210.
4 The Respondent's agency will issue NAICS code or SIC code
5 based on the majority of sales when they issue a
6 consolidated permit. To tell you the truth, I don't know
7 what their -- what the NAICS code is issued on the -- on
8 the Appellant's permit. The LIV Boots kiosks are separate
9 businesses located at various locations. The LIV Boots
10 were purchased in fourth quarter 2019, basically, in the
11 middle of the audit period. The fact that a consolidated
12 permit was issued for the sales to be recorded under one
13 permit should not prevent the LIV Boot kiosk from being
14 considered a separate business.

15 Each kiosk required a separate lease agreement in
16 respective malls. The lease agreements were restrictive
17 as to what merchandise can be sold at the respective
18 kiosks. You can view Exhibit 5, pages 83 through 85 for a
19 sample of the lease agreement. These are just a sample,
20 but all these agreements are available. It's a fact that
21 the beginning inventory of LIV Boots is zero, and the
22 ending inventory is well documented in Exhibit 3, pages 52
23 to 58. There's no legal precedent to ignore the
24 inventory -- the ending inventory for LIV Boots when the
25 fact is the beginning inventory is zero.

1 Additionally, LIV Boots are not fungible goods.
2 They have unique and distinguishable characteristics of
3 cell phone -- from cell phone accessories. See Exhibit 4,
4 pages 75 to 77 for the product and kiosk of LIV Boots.
5 Allowing the Respondent to -- to assess tax on the
6 inventory of LIV Boots is assessing tax on goods never
7 sold. The ending inventory should be excluded from the
8 cost of sales that are subject to the markup of
9 308.66 percent. And the alternative, if these kiosks are
10 not to be considered as separate businesses, the opening
11 and operating a separate kiosk for LIV Boots in the middle
12 of the audit period still warrants an adjustment for
13 LIV Boot -- for the LIV Boot ending inventory. And here's
14 why.

15 You have a new product line, a new inventory.
16 Introducing LIV Boots creates an entirely new category
17 inventory that was not present at the beginning of the
18 audit. The Appellant purchased, stored, and managed the
19 new set of products LIV Boots, which was distinct from the
20 cell phone accessories. The impact of inventory, while
21 the cell -- the impact of the existing inventory, while
22 the cell phone accessory inventory continued, the overall
23 inventory landscape changed. The businesses now has two
24 distinct inventory types. However, in reality, the
25 Appellant had three because the electronic games were also

1 involved but are not being addressed because there's no
2 ending inventory available for the electronic games.

3 Cell phone accessories have their own sales
4 patterns, seasonability, and stocking requirements.
5 LIV Boots also have their unique demands, seasonality, and
6 storage needs. Most product lines will experience
7 different demands, patterns, and seasonal fluctuations.
8 For example, LIV Boots were introduced for the Christmas
9 season and during the winter of 2019. Which, by the way,
10 is the only time they sold the LIV Boots and operated
11 those kiosks for the LIV Boots. Cell phone accessories
12 might have different cycles, which include new phone
13 releases. As you all know, new phones are issued
14 annually. Cell phone cases become obsolete a year or two
15 later. Also, seasonal holiday impact on the -- on cell
16 phone accessories.

17 A reasonably accurate inventory is crucial in
18 determining the cost of sales used to apply the markup.
19 Changes in the inventory levels directly affect the cost
20 of goods, and the Appellant's understated taxable sales.
21 As mentioned earlier, if a -- if the ending inventory for
22 LIV Boots is not adjusted, taxes being assessed on the
23 LIV Boots that are sitting in the -- in the storage units.
24 I'll share that the Respondent will state somewhere in
25 their opening statement that when the Department is not

1 satisfied with the accuracy of the tax returns filed, it
2 may base its determination of tax due upon the facts
3 contained in the return or upon any information that comes
4 within its possession. This is Revenue & Taxation Code
5 section 6481.

6 It is the taxpayer's responsibility to maintain
7 and make available for examination all records necessary
8 to determine the correct tax liability, including bills,
9 receipts, invoices, other documents of original entries,
10 according to entries, and the books of account. If a
11 taxpayer's records are insufficient or proven unreliable,
12 it is appropriate for the Department to compute and
13 estimate the Department's -- I'm sorry -- the taxpayer's
14 liability by alternative means. The Appellant has
15 provided the purchase summaries obtained directly from the
16 vendor. The purchase invoices are in these summaries.

17 That's -- that's a good idea. I have a drink
18 here. Thank you.

19 I've extended the Appellant has provided the
20 purchase summaries obtained directly from the vendors.
21 The purchase invoices are listed in these summaries. The
22 purchases in 2019 exceeded the purchases on the federal
23 income tax return. The purchases of 2020 were slightly
24 less than the purchases on the federal income tax return.
25 Furthermore, the purchases summaries for 2018 exceeded the

1 purchases on the federal income tax returns. Basically,
2 this illustrates that the purchases submitted are correct
3 when compared to the federal income tax purchases.

4 The purchase summaries corroborate the amounts
5 from the purchase summaries when they are compared to the
6 federal income tax returns. The summaries are the best
7 information available when compared to the federal tax
8 returns. The summaries, they are the best information
9 available, which has been presented to the Respondent.
10 The Respondent initially gave the Appellant the benefit of
11 the doubt that purchases were recorded accurately.
12 However, the amount of purchase summaries are more than
13 the purchases on the federal income tax returns.

14 Now that purchase summaries are presented, the
15 Respondent states purchase submitted directly from the
16 vendors are insufficient and cannot be corroborated.
17 Well, when you compare them to the federal income tax
18 returns, I believe that's corroboration. The Appellant is
19 not going to hide purchases. They're not going to not
20 include purchases for sales for resale. They are all in
21 purchase summary. The Appellant believes it has provided
22 sufficient documentation to the Respondent to warrant an
23 adjustment by alternate means. The adjustment recommended
24 by the Appellant are supported by assertions.

25 I should say let me clear that. The adjustment

1 recommended by the Appellant are supported assertions.
2 They are not just assertions. They are supporting
3 documentation. They show that the cost of resales are
4 included in the purchases. The purchases are, in fact,
5 correct when compared to the federal income tax returns.
6 Keep in mind, again, that the Respondent did not recommend
7 a penalty for maintaining books and records or preparing
8 the sales and use tax returns. Adjusting the cost of
9 sales based on purchase summaries for the cost of resales,
10 an ending inventory would result in a fair and reasonable
11 amount of understated taxable sales.

12 Federal income tax return purchases for 2019,
13 2020 should not be used. The submitted purchase summaries
14 amount should be used, even though they are higher than
15 the federal income tax returns. The Appellant submits
16 that the understated taxable sales should be as
17 illustrated on exhibit -- in Exhibit 4, page 59. This
18 shows a fair and reasonable understatement of \$124,113,
19 and not the Respondent's understatement of \$205,440 as
20 noted on Exhibit A, page 43.

21 This concludes the Appellant's opening statement,
22 and I will more than happy to answer any questions. And I
23 hope you have many questions, and I'll be happy to answer
24 them all.

25 JUDGE LAMBERT: Thank you, Mr. Pidal.

1 I'll turn to the panel now to see if there's any
2 questions.

3 Hearing Officer Wilson, do you have any
4 questions?

5 HEARING OFFICER WILSON: I do not have any
6 questions. Thank you.

7 JUDGE LAMBERT: Thank you.

8 And, Judge Turner, do you have any questions?

9 JUDGE TURNER: Yeah. Mr. Pidal, you had made the
10 argument at the first about utilization of the credit card
11 methodology for estimating total sales. But I didn't get
12 a sense from you as to why you think that's more reliable
13 here than using a markup methodology.

14 MR. PIDAL: Okay. First of all, the -- the
15 credit card ratio was used to estimate taxable, sales, not
16 total sales.

17 JUDGE TURNER: Fair enough.

18 MR. PIDAL: And the reason I bring that up is
19 because the Department, CDTF, Respondent, they have used
20 this procedure in -- in many cases where they cannot
21 verify purchases from the federal income tax returns. In
22 lieu of using a markup, they say, well, we can't use a
23 markup because we don't know what the purchases are. So
24 we're going to use a credit card ration to estimate
25 taxable sales.

1 And I'll give you another example, a liquor
2 store. Okay. Typical industry business that is set for a
3 markup. Okay. But they can't -- they, meaning CDTFA,
4 can't verify the purchases. So they estimate the credit
5 card sales, and they adjust for nontaxable sales to get a
6 taxable ratio. So they say, okay -- and this is
7 illustrative. Let's say that 30 percent is exempt.
8 70 percent is taxable. So they will say, okay, we're
9 going to compare that 70 -- 70 percent to the total credit
10 card receipts and get a taxable ratio and -- and compute
11 the understated taxable measure. Okay.

12 So in this case, the 105 percent credit card
13 ratio is not trying to determine total sales. It's just
14 trying to estimate the taxable sales. And -- and I
15 will -- I will explain that in my closing argument
16 further.

17 So very good question, though. Thank you. I
18 hope I answered it.

19 JUDGE TURNER: It's sufficient for now.

20 MR. PIDAL: I'm sorry.

21 JUDGE TURNER: That's sufficient for now. Thank
22 you.

23 MR. PIDAL: Okay. Thank you. Sorry.

24 JUDGE LAMBERT: Okay. Thanks.

25 Now, we can move on to CDTFA's presentation for

1 30 minutes.

2 So, Mr. Samarawickrema, if you're ready to
3 proceed, you can start.

4 MR. SAMARAWICKREMA: Thank you, Judge.

5

6 PRESENTATION

7 MR. SAMARAWICKREMA: This is Nalan
8 Samarawickrema.

9 Appellant is a sole proprietor doing business as
10 Wireless Planet. Appellant operates kiosks within
11 shopping malls located in various cities in Southern
12 California. Appellant made retail sales of electronic
13 items, such as mobile phone accessories, game consoles,
14 gaming accessories, and other electronic-related items.
15 Appellant also provided repair labor and installation of
16 mobile phone screen protectors. In addition to electronic
17 items, Appellant made retail sales of fashion footwear
18 described as LIV brand boots.

19 The Department audited business for the period of
20 April 1st, 2018, to March 31st, 2021. During the audit
21 period, Appellant reported around \$1.1 million as total
22 sales and claimed deductions of around \$155,000 for
23 nontaxable labor, and around \$75,000 for sales tax
24 reimbursement included in reported total sales. This
25 resulted in reported taxable sale of around \$853,000; and

1 this is shown on Exhibit A, pages 36 through 38.

2 During our presentation, we will explain why the
3 Department rejected Appellant's reported taxable sales;
4 why the Department used an indirect audit approach; and
5 how the Department determined Appellant's unreported
6 taxable sales for the audit period.

7 During the audit field work, Appellant explained
8 that he prepared sales summaries for each location using
9 daily sales cash receipts, credit card sales receipts, and
10 sales slips from repair labor and installation of screen
11 protectors. Appellant provided those sales summaries for
12 each location for the audit period. However, Appellant
13 failed to provide complete sales records, such as sales
14 receipts, credit card sale slips, or payment information
15 from his retail, resale, and out-of-state customers, which
16 would support his reported total taxable and nontaxable
17 sales for the audit period. In addition, Appellant failed
18 to provide complete purchase invoices for the audit
19 period.

20 Due to Appellant's inconsistent reported book
21 markups and lack of reliable records, the Department did
22 not accept Appellant's reported taxable sales. The
23 Department also determined that Appellant's record was
24 such that taxable sales could not be verified by a direct
25 audit approach for the audit period. Therefore, the

1 Department used an indirect audit approach to determine
2 Appellant's taxable sales for the audit period. The
3 Department completed two verification methods to verify
4 the accuracy of Appellant's reported total and taxable
5 sales.

6 First, Appellant provided his federal income tax
7 returns for years 2018 through 2020, and the Department
8 compared those federal income tax returns with Appellant's
9 sales and use tax returns. The Department noted Appellant
10 reported taxable sale of around \$501,000 for year 2018,
11 \$315,000 for year 2019, and \$110,000 for year 2020 on its
12 sales and use tax returns; and this is shown on Exhibit A,
13 page 47. Those reported sales were compared with
14 purchases reflected on Appellant's federal income tax
15 returns and calculated a reported taxable book markup of
16 around 309 percent for year 2018, 167 percent for year
17 2019, and 242 percent for year 2020; and these
18 calculations are shown on Exhibit A, page 47.

19 The Department also noted Appellant's reported
20 taxable sales dropped by around 37 percent from year 2018
21 to 2019, but its purchases remained almost the same
22 showing only a 4 percent decrease. Based on these sales
23 and purchase variances, the Department concluded that
24 Appellant did not report his actual taxable sales on its
25 sales and use tax return for the same period.

1 Second, Appellant did not provide complete sales
2 information for the audit period. Therefore, the
3 Department obtained Appellant's credit card sales
4 information for the period April 2018 through
5 December 2019 from its internal sources; and this
6 information is on Exhibit A, page 58. The Department
7 compared the recorded credit card sales reflected on
8 Appellant's sales summaries of around \$753,000 with the
9 credit card sales reflected on Appellant's Form 1099-K of
10 around \$772,000, resulting a difference of around \$19,000
11 for this period. And the information required to
12 calculate this difference is shown on Exhibit A, pages 57
13 and 58.

14 This is an indication that not all of Appellant's
15 cash and credit card sales transactions had been recorded
16 on its sales summaries. Therefore, the Department did not
17 accept sales reflected on Appellant's sales summaries.
18 Appellant was unable to explain the reasons for
19 inconsistent reported taxable book markups and credit card
20 sales differences. Therefore, the Department conducted
21 further investigation. The Department used a cost-plus
22 markup method as an indirect audit approach to determine
23 Appellant's taxable sales for the audit period.

24 Appellant did not provide complete sales and
25 purchase information that would allow the Department to

1 verify merchandise purchases reflected on Appellant's
2 federal income tax return or to perform a shelf test to
3 understand Appellant's pricing policies and product mix.
4 Appellant's federal income tax return indicate that he
5 made purchases totaling \$273,000 for the period
6 January 2018 through December 2020; and this is shown on
7 Exhibit A, page 61.

8 Even though the Department was unable to verify
9 the completeness of purchases reflected on Appellant's
10 federal income tax returns, the Department accepted those
11 purchases. Therefore, the Department determined that
12 around \$273,000 in purchases as inventories available for
13 sales without making any beginning and ending inventory
14 adjustments. As mentioned earlier, Appellant also failed
15 to provide recent sales and purchase invoices to determine
16 the product mix, product markups, and taxable sales
17 percentages for each business location. Using the only
18 available information, the Department used the reported
19 taxable sales and the purchases reflected on Appellant's
20 federal income tax return to calculate Appellant's
21 reported taxable book markups.

22 Based on those calculated reported taxable book
23 markups and the net income reflected on Appellant's
24 federal income tax returns, the Department accepted the
25 2018 reported taxable book markup of around 309 percent as

1 overall expected markup for this business. Appellant
2 failed to provide verifiable information to support that
3 his overall taxable markup from his 2018 federal income
4 tax return is lower than 309 percent. Therefore, this was
5 the best available information to determine Appellant's
6 overall taxable markup of 309 percent for this business;
7 and this is shown on Exhibit A, page 47.

8 Then the Department used the inventories
9 available for sales of around \$273,000 and applied the
10 recorded taxable markup factor to determine audited
11 taxable sale of around \$1.1 million for the period January
12 2018 to December 2020. Audited taxable sales were
13 compared with a reported taxable sales to determine
14 unreported taxable sales of around \$188,000 and percentage
15 of error of around 44 percent for the period January 2018
16 through December 2020. And these calculations are shown
17 on Exhibit A, page 46.

18 Appellant did not provide purchase information
19 for first quarter 2021 and, therefore, the Department used
20 the reported taxable sales and percentage of error of
21 around 44 percent to determine unreported taxable sales of
22 around \$17,000 for this period. In total, the Department
23 calculated unreported taxable sales of around \$205,000 for
24 the audit period; and this is shown on Exhibit A, page 43.
25 Unreported taxable sales were compared with a reported

1 taxable sale of around \$853,000 to calculate the error
2 rate of around 24 percent for the audit period.

3 The audit calculation of unreported taxable
4 sales, based on the cost-plus markup method was
5 reasonable. When the Department is not satisfied with the
6 accuracy of the sales and tax return filed, it may rely
7 upon any facts containing the return, or upon any
8 information that comes into the Department's possession to
9 determine if any tax liability exists. Taxpayer shall
10 maintain and make available for examination upon request
11 by the Department, all records necessary to determine the
12 correct tax liability under the sales and use tax laws,
13 and all records necessary for the proper completion of the
14 sales and use tax returns.

15 When a taxpayer challenge a Notice of
16 Determination, the Department has the burden to explain
17 the basis for that deficiency. When the Department's
18 explanation appears reasonable, the burden of proof shift
19 to the taxpayer to explain why the Department's asserted
20 deficiency is not valid. Since Appellant failed to
21 provide necessary records, the Department used the best
22 available information to determine the unreported taxable
23 sales for the audit period. The audit calculation of
24 unreported taxable sales based on the best available
25 information was reasonable.

1 Appellant did not agree with the audit findings
2 and continues to assert that the merchandise purchases
3 need to be adjusted for cost of resales and ending
4 inventory for LIV brand boots. To support this resale
5 adjustment, Appellant presented two sales invoices from
6 December 2019 for video game consoles and boots totaling
7 around \$15,000 for sales to a Las Vegas customer. The
8 Department analyzed Appellant's argument but ultimately
9 rejected them, noting that Appellant failed to provide
10 crucial information, such as payment information from that
11 Las Vegas customer to verify the actual sales for resales.

12 Also, to support his cost of resale adjustment,
13 Appellant scheduled the purchases from three vendors and
14 contends that the schedule purchases constitute total
15 purchases for the period January 2019 to March 2021.
16 Appellant also contends that the cost of resales is
17 included in purchases from one of the vendors, which was
18 sold to a resale customer in Las Vegas. Thus, Appellant
19 argues that the cost of resale should be excluded from the
20 purchases subject to markup. The Department also reviewed
21 this information and reconciled schedule purchases from
22 the three vendors with purchases reflected on the federal
23 income tax returns, resulted in difference of around
24 \$14,000 for year 2019 and \$3,000 for year 2020.

25 While the Department believes that the

1 documentation provided by Appellant shows that Appellant
2 made purchases from the three vendors, the Department does
3 not agree that the documentation is sufficient to support
4 Appellant's contention that the schedule purchases from
5 the three vendors constitute total purchases, because it
6 does not disclose whether Appellant made purchases from
7 other vendors during the audit period. As such, the
8 Department believe that the bank statements and credit
9 card statements for the audit period are necessary to
10 determine whether Appellant made additional purchase from
11 other vendors.

12 The Department further notes that those records
13 were previously requested from Appellant, and those
14 records were never provided. For all these reasons, the
15 Department finds that the documentation provided does not
16 warrant an adjustment for cost of resales. Had the
17 Department markup Appellant provided purchases for years
18 2019 and 2022 without an adjustment for unsupported cost
19 of resales, the unreported taxable sales would have
20 increased by around \$45,000 changing the unreported
21 taxable sales from \$205,000 to \$250,000. And the
22 information required to calculate these amounts are shown
23 on Exhibit A, page 47 and Exhibit E, page 144.

24 Regarding ending inventory of boots, Appellant
25 argues that the boots were sold from various kiosks during

1 the month of November and December 2019 only. Appellant
2 also argues that these kiosks were separate and distinct
3 from the other kiosks that sold cell phone accessories and
4 game consoles. As such, Appellant asserts that those boot
5 kiosks can be viewed as a separate product line or
6 separate business in which the beginning and ending
7 inventory can be checked for accuracy.

8 Appellant argues that the fact that all kiosks
9 sales are reported under one seller's permit does not
10 preclude any inventory adjustment when the facts show the
11 inventory of boots is not constant. As support, Appellant
12 provided photographs of the boxes of boots with a copy of
13 the Press Enterprise newspaper dated January 16, 2024,
14 which Appellant claim constitute a physical inventory of
15 the boots that the Department can inspect. In addition,
16 Appellant provided a letter from a church to support that
17 he donated 30 pairs of boots to them in 2023. These
18 events, however, are clearly outside of the audit period.
19 Therefore, they failed to establish that these ending
20 inventories exceeded -- exist at the last day of the audit
21 period. It is also the Department's position that the
22 ending inventory of boots cannot be segregated from the
23 ending inventory of other items for the purpose of making
24 a separate inventory adjustment for boots.

25 Appellant operates one business and one seller's

1 permit in which all items purchased and sold by Appellant
2 were reported on one federal income tax return for the
3 business. Under these circumstances, all items in
4 inventory must be considered in making an inventory
5 adjustment as an increase and decrease in inventory of
6 items other than boots would result in a net decrease in
7 the cost of ending inventory that would offset or surpass
8 any increase in the cost of ending inventory for boots.

9 Also, the Department noted that the difference
10 between the beginning and ending inventory on the file
11 federal returns for years 2018 through 2020 was only a
12 \$3,400 increase. Consequently, the Department finds that
13 the inventory adjustment for boots is not warranted. The
14 Department found that the Appellant's audit calculation
15 using credit card sales ratio method are unreliable. This
16 is because Appellant failed to provide complete sales data
17 for the audit period making it impractical to accurately
18 determine credit card taxable and nontaxable sales
19 percentage for each location. Therefore, based on the
20 available information, cost-plus markup audit approach is
21 considered the most appropriate method for this Appellant.

22 Furthermore, a comparison of Appellant calculated
23 taxable sales using the credit card sales ratio method and
24 his purchases on his federal income tax returns reveal low
25 taxable book markups of around 225 percent for year 2019

1 and 284 percent for year 2020. And the information
2 required to calculate these markups are shown on
3 Exhibit A, page 47 and Exhibit G, page 121. This further
4 supports the Department's decision to rely on the
5 cost-plus markup audit approach.

6 Again, the Department determined the unreported
7 taxable sales based on the best available information
8 while the Appellant did not provide his complete books and
9 records necessary for a secondary audit method to verify
10 the reasonableness of these audit finding. The available
11 evidence demonstrates that the audit results are
12 reasonable. Therefore, the Department requests the appeal
13 be denied.

14 This concludes our presentation. We are
15 available to answer any questions the panel may have.
16 Thank you.

17 JUDGE LAMBERT: Thank you, Mr. Samarawickrema.
18 Hearing Officer Wilson, do you have any
19 questions?

20 HEARING OFFICER WILSON: No. I do not have any
21 questions.

22 JUDGE LAMBERT: Thanks.

23 And, Judge Turner, do you have any questions?

24 JUDGE TURNER: No. I don't have any questions.

25 JUDGE LAMBERT: Thank you.

1 I don't have any questions right now.

2 So, Mr. Pidal, if you want to make your closing
3 remarks for 5 minutes you can proceed.

4 Mr. Pidal, you have to unmute your microphone.

5 MR. PIDAL: Sorry about that.

6 JUDGE LAMBERT: It's okay.

7 MR. PIDAL: I was trying to not -- sure. I'm
8 watch -- I'm watching the Dodger game. No. I'm kidding.

9

10 CLOSING STATEMENT

11 MR. PIDAL: I want to draw a picture. Oh, I got
12 somebody laughing out there. Dodger fans, I guess.

13 I want to draw a picture here, an illustration of
14 what is fair and reasonable understated taxable sales. I
15 don't disagree with -- with the Department's audit
16 procedure. Okay. I know he went through all that jig --
17 jigamaree (sic) and all purchases. I'm not -- I'm not
18 disputing the -- the audit procedure. What I'm disputing
19 is the adjustments that need to be considered on -- on the
20 purchases that are marked up. Keep in mind these purchase
21 summaries were provided by -- from the vendors. They
22 exceeded the purchases that are federal tax -- income tax
23 returns.

24 So I'm saying don't use the federal income tax
25 returns. Use the purchases that are higher, but let's

1 adjust the purchases accordingly for sales for resales,
2 which are included in those purchase summaries. But let
3 me -- let me illustrate something that's fairly
4 reasonable. And -- and just picture this. During the
5 entire audit period the Appellant sold cell phone
6 accessories, electronic games, et cetera. Picture them as
7 triangles. Okay. In the middle of the audit period, the
8 Appellant introduced a new product line, LIV Boots, which
9 can be represented as circles.

10 So you got the -- you got purchase -- you got
11 triangles. You got circles. Some of the triangles and
12 circles were sold for resale. And that's documented that
13 they were sold to -- for resale to a retailer in Las
14 Vegas, and CDTFA is not disputing that it was a valid sale
15 for resale. So at the end audit period when the inventory
16 consisted of triangles and circles, can you picture that?
17 You got triangles and circles. Since the beginning of
18 circles was zero, because it was introduced in the middle
19 of the audit period. So the beginning of the audit period
20 it was -- the circles were zero. They didn't exist.

21 That is undisputed evidence that the inventory
22 should not remain constant. Okay. I -- I don't know how
23 else you can picture that. So you got -- you got
24 triangles and circles. The beginning you had no circles,
25 but at the end you got triangles and circles. So when you

1 add the triangles and circles and you look at the
2 beginning, it's undisputable that there's evidence that
3 the inventory is not constant.

4 It's obvious that the circles and triangles can't
5 be commingled. LIV Boots, they're unique. You saw the
6 pictures. You can see it in the exhibits I -- I
7 previously mentioned. They're -- they're not cell phone
8 accessories. They're not cases. They're not screen
9 protectors. They're not the chargers. They're not
10 cables. They're -- they're boots, circles. Okay. The
11 cost of the resales is traceable to the -- to the purchase
12 summaries that were submitted from the vendors. Evidence
13 is -- is provided that you -- I've highlighted the
14 purchase invoices, and -- and it wasn't 300 -- it wasn't
15 30 pairs that were donated to -- to a pastor of a church.
16 It was 300 boots that were donated, not 30. And that's
17 documented in the exhibits as well.

18 And the reason it's outside of the audit period,
19 because trying to show that when the physical inventory
20 was taken on January 16th, 2024, those boots were donated
21 prior to the inventory. But they were donated after the
22 end of the audit period, which meant that at the end of
23 the audit period, those 300 boots were in there. That's
24 what that is. So that's why it's outside of the audit
25 period. Just trying to show that, hey, we had more boots

1 in the storage. In storage we had X amount of boots, but
2 300 were donated. But those 300 and the ones in storage
3 they were at the end of the audit period.

4 Those -- those circles were in there. So you've
5 got to adjust for the circles. Therefore, these costs
6 should be deleted for the applying, the markup to the
7 purchases. Again, not disputing the markup method. I
8 have no question that the -- I have no problem with that.
9 It's what's being marked up is the problem. Is the --
10 it's what we're trying to get you to see here. Okay.

11 Audit Manual section 407.05 and it's discussed in
12 Exhibit D. It discusses when an alternate audit method
13 markup is used, results should be compared to another
14 alternate for the reasonableness of the estimate. Okay.
15 Yes, we used an alternate indirect audit approach markup.
16 I introduce, initially, the credit card ratio. If you
17 look at Exhibit 1, page 4, the difference of additional
18 taxable sales is \$82,784. Okay. Keep in mind that is
19 based on a credit card ratio for 2018. LIV Boots were not
20 sold. So that doesn't -- that doesn't include the
21 LIV Boots. Okay.

22 If you look at the -- the projection of adjusted
23 cost of sales --

24 JUDGE LAMBERT: Mr. Pidal, I just want to say
25 you're over your time, but I can give you more time

1 because you ended your opening presentation early. So if
2 you need more time, you know, to continue that's fine.

3 MR. PIDAL: Yes, I'll --

4 JUDGE LAMBERT: I'm just letting everyone know.

5 MR. PIDAL: Okay. I appreciate it. Thank you.
6 Yeah, I said 40 minutes. I probably took 25 minutes.

7 JUDGE LAMBERT: Yeah. So maybe like if you want
8 10 more minutes?

9 MR. PIDAL: Yeah. Okay. I just want to -- I
10 want to show that the -- the Audit Manual talks about
11 showing two -- two procedures to show the reasonableness.
12 I'm pointing out that the credit card ratio showed
13 projected sales of \$82,784, but that didn't include the
14 LIV Boots because they didn't sell LIV Boots. So there
15 was no taxable sales of LIV Boots. Okay. When you markup
16 the purchases, adjusting for sales for resale, so on --
17 you know, when you project, that totals understatement of
18 \$77,533. This supports the reasonableness of either
19 indirect method and estimating the sales of what I call
20 triangles. Okay.

21 To estimate the sales of circles, which is the
22 LIV Boots, we know what the actual count is at the end of
23 the audit period. So if that was at the end of the audit
24 period, that means what the difference had to be sold.
25 So there was 6,000 pairs that were purchased, okay, but

1 was sold or donated or resold. That's the balance of
2 \$23,029 -- I'm sorry -- \$2,329. That's circles,
3 LIV Boots, of \$2,329. The selling price is \$20 a pair.
4 You multiply that by -- by the boots that were supposedly
5 sold, that equals \$46,580. And you add that to the
6 \$77,533, the reasonable understatement should be \$124,113.
7 Again, illustrated on Exhibit 4, page 59.

8 That is -- that is the fair way to come up with a
9 reasonable estimation of sales. I'm asking to think
10 outside the box. You know, here we are. Hey, it's
11 simple. You got 6,000 pairs of boots. We -- we have so
12 many boots still in inventory. So whatever is left, we're
13 going to assume they're sold. Maybe they got stolen.
14 Maybe they were donated. I don't know, but we're going to
15 get the benefit of the doubt. We're going to say, okay,
16 whatever is not accounted for got sold. What are they
17 selling for? \$20 a pair. So that's the most sales you
18 should get out of the boots. And that, again, is \$46,580.

19 And if you want to say that's tax included, it's
20 going to be less than that. But I'll -- I'll -- benefit
21 of the doubt we'll say it's \$20 ex tax. So the sales of
22 boots is \$46,000. That's the sales of triangles, which is
23 the cell phone accessories, the game things. Just mark
24 them up at 308.66 percent. Adjust the purchases for the
25 sales for resale. That's going -- that's going to equate

1 to \$77,533. So the total reasonable markup -- or I'm
2 sorry. The total reasonable tax understatement taxable
3 measure is \$124,113. Think of circles and triangles.

4 Again, and I -- I know that the Respondent went
5 through the all the -- all the rigmarole. Yeah. We all
6 know that. Yeah. We had to do a markup method. So let's
7 do the markup method, but compare it to the credit card
8 ratio that I initially introduced. And they're barely --
9 they're only \$5,000 apart. So I think -- I -- I think
10 that section -- or Audit Manual section 0407.05 is used by
11 two different methods to come up with the reasonableness
12 of either answer.

13 And that concludes my closing statement, and I'm
14 happy to answer questions. Do we have time for questions?

15 JUDGE LAMBERT: Okay. Thank you, Mr. Pidal.

16 MR. PIDAL: Thank you.

17 JUDGE LAMBERT: I'll ask the co-panelists if they
18 have any final questions of either party.

19 Hearing Officer Wilson, did you have any
20 questions?

21 HEARING OFFICER WILSON: Yeah. I had did have a
22 question.

23 Mr. Pidal, do you know if the income tax return
24 for 2021 is available, and did it show what the ending
25 inventory was or the beginning?

1 MR. PIDAL: Yeah. I do not have it. I didn't --
2 no. I -- I'm sure it's been filed since we're in 2024
3 now, but no. I'm not the tax preparer. I'm not the
4 bookkeeper, and -- and I did not get that info -- I do not
5 have that information.

6 HEARING OFFICER WILSON: Okay. I'm not sure if
7 you'll know, but do you know how they determined the
8 beginning and ending inventories on the income tax
9 returns?

10 MR. PIDAL: I do not. But I'm going to -- I'm
11 going to guess that as a lot of retailers, it might take
12 markup and say okay, here's -- here's what the inventory
13 is. Let's mark it down or whatever. Was it -- was it a
14 physical inventory? That I do not know. But what I do
15 know is -- and I know that's not your question -- is that
16 LIV Boots was zero for the audit period, beginning. And
17 that's what I'm focusing on. It's -- it's not that much.
18 But doesn't make sense when you see those picture of -- of
19 the boots sitting in -- in the storage room --
20 container -- storage container, boxes all the way to the
21 roof, and -- and the Department wants to assess tax on
22 that, that doesn't seem right. Especially if --

23 JUDGE LAMBERT: Okay. Thank you.

24 MR. PIDAL: No. I want to keep going. No. I'm
25 kidding. Go ahead.

1 HEARING OFFICER WILSON: That answered my
2 question. Thank you.

3 MR. PIDAL: Okay. And I'm sorry I wasn't really
4 able to answer your question because I do not know the
5 2021 information. I do not do their books and records
6 and -- okay.

7 JUDGE LAMBERT: Okay. Thank you.

8 And, Judge Turner, do you have any questions?

9 JUDGE TURNER: I don't. Thank you.

10 JUDGE LAMBERT: Thanks.

11 I just had one question. Mr. Pidal, you were
12 stating that they're different businesses, and you
13 submitted evidence showing one of the kiosks has a lease
14 stating it's only selling the boots, and you're saying the
15 different products. Was there anything else separating
16 them in terms of like a separate book -- accounting of the
17 books or separate bank accounts that you know of?

18 MR. PIDAL: No. And I know that's one of the --
19 the things that they look at to determine whether or not
20 separate business, the organizational structure and the
21 separate accounting books, Schedule C. The Department
22 mentioned that, but under the -- under the IRS Code, you
23 don't have to file one Schedule C. This is a sole
24 proprietorship, so it would be a Schedule C. You can have
25 5 different -- 15 different Schedule C's. Obviously, that

1 would be very inefficient just like the permits being
2 issued by the state -- oh, I'm sorry -- by the CDTFA.

3 They don't want to issue individual permits for
4 the different locations because it's not efficient. They
5 want to issue one permit, and then they say let's call
6 this a consolidate permit. All you have to do is allocate
7 the local tax to the local -- to the local tax
8 jurisdictions. But there is no requirement, as I pointed
9 in the -- in the CDTFA pamphlet. It's not required to get
10 one permit. They have the option. They can.

11 JUDGE LAMBERT: Okay. Thank you.

12 So if there's nothing further, I'm going to
13 conclude the hearing.

14 And I want to thank both parties for appearing
15 today.

16 We will issue a written opinion within 100 days,
17 and the record is now closed.

18 Thank you.

19 (Proceedings concluded at 3:13 p.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 12th day of September, 2025.

ERNALYN M. ALONZO
HEARING REPORTER