

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,        )  
  )  
SUKAR AND SONS OF CALIFORNIA,        ) OTA NO. 240816985  
  )  
   APPELLANT.        )  
  )  
  )  
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, December 17, 2025

Reported by:  
ERNALYN M. ALONZO  
HEARING REPORTER

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2 STATE OF CALIFORNIA

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14 Transcript of Electronic Proceedings,  
15 taken in the State of California, commencing  
16 at 1:01 p.m. and concluding at 3:18 p.m. on  
17 Wednesday, December 17, 2025, reported by  
18 Ermalyn M. Alonzo, Hearing Reporter, in and  
19 for the State of California.

1 APPEARANCES:

2

3 Panel Lead: ALJ ANDREW WONG

4 Panel Members: ALJ SHERIENE ANNE RIDENOUR  
ALJ KEITH T. LONG

5

6 For the Appellant: STEVE SCHNIPER  
GREGORY YAGHMAI

7

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

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10 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 Exhibit 1 and supplemental documents were received into evidence at page 8.)

(Department's Exhibits A-G were received into evidence at page 9.)

## PRESENTATION

By Mr. Yaghmai 13

Res. Min. Sb 200 mg/l

By Mr. Sharma 59

APPELLANT'S  
WITNESSES:

## DIRECT

## CROSS

## REDIRECT

## RECROSS

Mr. Sniper

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## CLOSING STATEMENT

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By Mr. Yaghmai

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1 California; Wednesday, December 17, 2025

1:01 p.m.

4 JUDGE WONG: Let us go on the record.

5 This is Appeal of Sukar and Sons of California  
6 before the Office of Tax Appeals, OTA Case No. 240816985

7 It is Wednesday, December 17th, 2025, and the time is  
8 1:01 p.m. We are holding this hearing online via Zoom

9 I'm Andrew Wong, the lead member of the three-person panel  
10 hearing this case, and with me are Administrative Law  
11 Judges Sheriene Ridenour and Keith Long.

14 MR. YAGHMAI: My name is Greg Yaghmai. I'm the  
15 attorney for the Appellants, and I have Mr. Steve Schniper  
16 here who will testify.

17 JUDGE WONG: Thank you. And Mr. Ferris Sukar is  
18 not here; is that correct?

19 MR. YAGHMAI: He is not. He is not.

20 JUDGE WONG: Okay. Thank you.

21                   Individuals representing the Respondent tax  
22 agency, the California Department of Tax and Fee  
23 Administration or CDTFA, could you please introduce  
24 yourselves.

25 MR. SHARMA: Good afternoon. This is Ravinder

1 Sharma, Hearing Representative for CDTFA.

2 JUDGE WONG: Hello.

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

5 JUDGE WONG: Hello.

6 MR. BROOKS: Good afternoon. I'm Christopher  
7 Brooks attorney for CDTFA.

8 JUDGE WONG: Hello.

16 Is that a correct statement of the issues.

17 Mr. Yaghmai?

18 MR. YAGHMAI: Yes, sir. We've just -- we have an  
19 issue with the audit methodology and also, the abatement  
20 of the interest for the two issues.

21 JUDGE WONG: Great.

22 MR. SHARMA: This is Ravinder Sharma. That is  
23 correct. Thank you.

24 JUDGE WONG: Thank you.

25 Let's talk about the exhibits now. Appellant has

1 identified and submitted proposed Exhibit 1, which was a  
2 copy of an OTA case called Appeal of Goren. And then  
3 Appellant supplemented that proposed Exhibit 1 with an  
4 836-page packet of additional information containing sales  
5 and use tax returns, federal income tax returns, bank  
6 records, and other financial documents.

7 Mr. Yaghmai, are there any other exhibits that  
8 you wanted to submit?

9 MR. YAGHMAI: No, Your Honor. We had just  
10 adopted what the opposing party had. As opposed to  
11 resubmitting them, we just adopted their Bates Stamp in  
12 case we needed them also.

13 JUDGE WONG: Okay. CDTFA, did you have any  
14 objections to the proposed exhibits?

15 MR. SHARMA: This is Ravinder Sharma. The  
16 Department is not aware of the relevance of these  
17 documents, 836 pages. Some of them are duplicates, but  
18 there's no cover sheet or summary attached to these  
19 documents. But still, the Department has no objection to  
20 the submission.

21 JUDGE WONG: Okay. So Appellants' proposed  
22 Exhibits 1 and supplemental documents will be admitted  
23 into the record as evidence.

24 ///

25 ///

(Appellant's Exhibit 1 and supplemental documents were received into evidence by the Administrative Law Judge.)

4 JUDGE WONG: And CDTFA has identified and  
5 submitted proposed Exhibits A through G as evidence.

6 No other exhibits to submit, CDTFA?

7 MR. SHARMA: This is Ravinder Sharma. That is  
8 correct. No other evidence.

11 MR. YAGHMAI: I did not have any objections. And  
12 I just want to clarify I have a -- not an exhibit, but  
13 just sort of a demonstrative summary that I may use in the  
14 presentation, but it's not an exhibit. And I just wanted  
15 to make you aware of that.

16 JUDGE WONG: Okay. Did you submit that to us  
17 or --

18 MR. YAGHMAI: I did not. It was just something.  
19 It's just a summary is all that is. It's not -- again,  
20 it's not an exhibit. It's just something I was going to  
21 use as demonstrative.

22 JUDGE WONG: Okay. All right.

23 MR. YAGHMAI: I -- I sent it to Mr. Rios earlier  
24 today. I just wanted to know if I could use it on a  
25 shared screen. It -- it's nothing in dispute. It's not

1 new evidence. It's -- it's just a -- just to simplify,  
2 you know, some dates. It's just a timeline is all it is.

3 JUDGE WONG: Okay. Rather than sharing your  
4 screen to show that, is it possible that you could email  
5 it to OTA and the other party? And then we would just  
6 refer off of that.

7 MR. YAGHMAI: Absolutely. Yeah. I could do it  
8 right now. It's a -- it's a one-page document. I can --

9 JUDGE WONG: Okay.

10 MR. YAGHMAI: -- submit it.

11 JUDGE WONG: Great. While you do that, I will  
12 just mention that CDTFA's Exhibits A through G will be  
13 admitted into the record as evidence.

14 (Department's Exhibits A-G were received into  
15 evidence by the Administrative Law Judge.)

16 JUDGE WONG: Next, while we wait for that from  
17 Mr. Yaghmai, I was going to go over witnesses.

18 CDTFA, you have no witnesses; is that correct?

19 MR. SHARMA: This is Ravinder Sharma. That is  
20 correct.

21 JUDGE WONG: Okay. And, Mr. Yaghmai, you had one  
22 witness, Mr. Schniper; is that correct? Mr. Yaghmai?

23 MR. YAGHMAI: That's correct. That's correct. I  
24 was just emailing. So I emailed the one page  
25 demonstrative evidence, and then there's another one page,

1 sort of, demonstrative to go -- I just emailed it to  
2 everybody. It's two separate one-page documents.

3 JUDGE WONG: Okay. Perfect. And then OTA staff  
4 will forward it as necessary to the panel and CDTFA.  
5 Okay. I will swear the witness in right before I turn it  
6 over to Mr. Yaghmai.

7 MR. YAGHMAI: I do have a housekeeping question  
8 or --

9 JUDGE WONG: Sure.

10 MR. YAGHMAI: I didn't know if it was proper to  
11 give a short, sort of, opening summation or --

12 JUDGE WONG: Yes, just --

13 MR. YAGHMAI: -- to try to give an overview.

14 JUDGE WONG: Yes, absolutely. I will turn --  
15 once we go over -- get through these housekeeping things,  
16 I will turn it over to you for your presentation, and you  
17 can use that however you want; presentation and then  
18 witness examination and what not. And so, we'll go over  
19 that in just one second.

20 MR. YAGHMAI: Yes, sir.

21 JUDGE WONG: Okay. So it was -- let's see.

22 Okay. It was anticipated the oral hearing would take  
23 approximately 130 minutes.

24 Mr. Yaghmai, you've asked for 90 minutes total,  
25 which includes the witness examination. You can break

1           that up between your opening and witness examination and  
2           then a rebuttal and closing at the end. I'll leave that  
3           to your discretion.

4           And then, CDTFA, you've asked for 25 minutes  
5           total; is that right?

6           MR. SHARMA: This is Ravinder Sharma. That is  
7           correct. Thank you.

8           JUDGE WONG: Okay. Great.

9           MR. YAGHMAI: One of the documents I just emailed  
10          was something I was going to use in the open. Again, if  
11          I'm not able to share a screen, which --

12          JUDGE WONG: We have -- yes. We have -- we've  
13          received it, and they have been circulated to us, the  
14          panel. So --

15          MR. YAGHMAI: Okay. The timeline was the one I  
16          was going to use for the open.

17          JUDGE WONG: Okay. Got it. We got the timeline  
18          and then something else, calculations; is that correct?

19          MR. YAGHMAI: Correct. Correct. That would be  
20          for Mr. Schniper's testimony.

21          JUDGE WONG: Okay. Got it. All right. Any  
22          other questions, Mr. Yaghmai or CDTFA?

23           Mr. Yaghmai --

24          MR. YAGHMAI: No.

25          JUDGE WONG: -- let's go with you first with

1 any questions --

2 MR. YAGHMAI: No, Your Honor.

3 JUDGE WONG: Okay.

4 MR. YAGHMAI: No, sir.

5 JUDGE WONG: All right. CDTFA, any final  
6 questions?

7 MR. SHARMA: No question. Thank you.

8 JUDGE WONG: Okay. All right. So we will turn  
9 it over to Mr. Yaghmai for your presentation.

10 Oh, let me swear in the witness really quick.

11 Mr. Schniper, could you please raise your right  
12 hand.

13

14 S. SCHNIPER,

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

18

19 JUDGE WONG: Okay. Great. Thank you so much.  
20 Just to let you know that after you testify, CDTFA well  
21 have an opportunity to cross-examine you to ask you  
22 questions, as well the panel.

23 Okay. So I will turn it over to Mr. Yaghmai.

24 You have 90 minutes.

25 MR. YAGHMAI: All right. Thank you, Your Honors.

## PRESENTATION

MR. YAGHMAI: Sukar and Sons of California, Inc., which I'll refer to as "Sukar", is a company that originated out of Birmingham, Alabama, where I am. There were two brothers, Sam and Clint Sukar who started this business. Sam lost his battle with cancer in the summer of 2018 when this audit began. And I actually met, in the Riverside office, with the CDTFA the day of his funeral, and that's how we started this audit.

24                   What's important to understand is Cricket  
25                   controls the point of sale system. You'll hear the phrase

1 RQ. That is the acronym that Cricket uses for their POS  
2 system. And again, Cricket has the sole control over it,  
3 and it's really the reason that we're here today. Because  
4 what Cricket was doing was -- you'll hear the term  
5 trailing credits, and all that means is solely on cell  
6 phones. Let's say if there's a cell phone for \$100, and  
7 it's discounted to a customer for \$65, Sukar would -- may  
8 get a trailing credit to their account for phones in  
9 the -- in the amount of \$35. And what Cricket was not  
10 doing was taxing the customer like they should have been.

11 And we, ultimately, understand as the taxpayer,  
12 that's our responsibility. We're not denying that. But,  
13 really, that's how the problems in this whole situation  
14 began was that Cricket was not properly charging the sales  
15 tax to the customers on these discounted phones. And it's  
16 important to understand it's only on the phones. It's not  
17 on the accessories. It's not on the payment. It was just  
18 on the phones. But, luckily, Cricket figured out the  
19 problem. And in the quarter -- second quarter of 2016,  
20 they fixed the problem. So come Q2 2016, they started  
21 charging the proper amount of sales tax on these trailing  
22 credits.

23 So we come before this honorable Board today  
24 admitting that we owe money. There -- there's no doubt  
25 about that. It's the amount of money that we disagree

1       upon. And Mr. Schniper is going to be able to enlighten  
2       us more on the amount and what -- and -- and to understand  
3       Mr. Schniper's qualifications, just briefly, he has been  
4       in sales tax audits representing clients some 200 times.  
5       And he's also represented cell phones dealers, like Sukar,  
6       on approximately a dozen occasions. So he's very familiar  
7       with the business. He's prepared tax returns for cell  
8       phone businesses at least a couple hundred times. So he  
9       understands the Cricket business model. He understands  
10      the trailing credits. He understands how the proper taxes  
11      are supposed to be allocated, which is important in this  
12      case.

13           And what his opinion is going to be is that the  
14      base amount of tax that Sukar owes is \$100,540. And one  
15      of those charts that we have submitted to you will show  
16      the calculations and the breakdowns exactly. Again, it is  
17      for the 2015-timeframe that the money is owed and the  
18      first quarter of 2016 because Cricket fixed the problem in  
19      the second quarter of 2016. And how we also know this is  
20      true is that Ms. Lisa Nickerson, who is the auditor,  
21      Ms. Davis's supervisor with CDTFA, did not issue a  
22      negligence penalty. And the reason that occurred -- I  
23      went and met with her in person at the Riverside office --  
24      was because they acknowledged that the issue was  
25      originally created by Cricket, but, ultimately, our

1 responsibility. We all agreed upon that too. That's why  
2 they say we underpaid some \$500,000 in base sales tax,  
3 that there was no negligence penalty, and there was no  
4 fraud penalty was because of the issue with the RQ system  
5 in the trailing credits.

6 And so, Mr. Schniper will go through that some of  
7 the calculations that Ms. Davis tried to extrapolate  
8 couldn't be accurate based on the number of locations,  
9 based on the sales. Again, Sukar started in late 2014, so  
10 they were a new business out there. They had very few  
11 locations. They only had, I believe, five locations in  
12 the beginning of 2015, and they started to expand. And I  
13 think by 2016, they had 22, 24 different locations. And  
14 so based just purely on the numbers, you will see that the  
15 number of sales tax that was paid by Sukar greatly  
16 increased in the second quarter of 2016. And the reason  
17 that's important is that's when Cricket fixed the problem  
18 with the RQ system.

19 And so, I think the numbers will bear out what  
20 Mr. Schniper is going to tell us, and how it greatly  
21 differs from what Ms. Davis' audit of 5 -- somewhere  
22 around \$500,000. Now, I admit that CDTFA has worked hard  
23 on this case. We've met several times. I think  
24 originally when I got involved, their tax, they claimed it  
25 was north of a million dollars, and they have worked and

1 come down and come down and come down. And we still think  
2 that they have the methodology wrong, and the numbers will  
3 ultimately bear out at the \$100,540 mark.

4 The second issue, which has been mentioned  
5 several times and, really -- the chart that I submitted by  
6 email shortly ago will really be beneficial -- is a purely  
7 legal one that, Your Honors, will have to decide. It is a  
8 timeline of the taxpayer's request in appeals proceedings.  
9 None of these dates are in dispute, and that's based on  
10 the CDTFA's responses. And I think really, it's allocated  
11 in their response that are Bates Stamped 5719 to 5721. In  
12 those three pages, we're all in agreement on these dates,  
13 that July 2nd of 2020, the taxpayer formally made the  
14 request for an appeals hearing. There's no disputing that  
15 whatsoever. There's no disputing that, from December 23rd  
16 of 2020 until March 18th of 2021, it was in the settlement  
17 division. And it's interesting in their response, on the  
18 5/7/19 to 5/7/21, is the CDTFA kind of says, well, that's  
19 in the purview of the legal division. That's strictly the  
20 legal division's department, not ours. So it was in the  
21 settlement division for 85 days.

22 Then June 9th, 2021, again, there was another  
23 request made for this in-person hearing for the appeals  
24 conference. Now, here's where the timeframe in our  
25 opinion becomes just de facto unreasonable in the delay.

1       From March 19th of 2021 -- and this is per their own  
2       documents -- until March 21st of 2023, when the appeals  
3       hearing was finally set, was 732 days. That's undisputed  
4       732 days. And then when we got the appeals hearing set  
5       for March 21st, we said, "Hey, we have a little bit of a  
6       conflict."

7               And they said, "Well, you only have 30 days to  
8       fix this issue."

9               So we had waited more than two years, and they  
10       said, "You got 30 days to fix it."

11               They gave us certain days of the week we had to  
12       do. And finally we said, "Well, we can't do it."

13               And they said, "You have to do it by Zoom."

14               And we said, "Sure."

15               Those are undisputed, and they have never given a  
16       reason for the delay, other than this, that the taxpayer  
17       requested an in-person hearing. Now, when they submit the  
18       form when you ask for a hearing, they say in-person or not  
19       in person. They don't say it's going to take any longer.  
20       They don't say you might wait two years. They simply make  
21       the offer; do you want to do it in-person or not in  
22       person? And based on the several issues and the several  
23       times that we had met with the CDTFA -- and actually had  
24       some positive meetings -- we said we want to do it  
25       in-person.

1                   There has been no other delay, other than the  
2 maybe the two weeks caused by the taxpayer, that delayed  
3 this entire process. And finally, we had the appeals  
4 conference on April 4th of 2023. So from July 2nd of  
5 2020, when we first made the request, until March 21st of  
6 2023, that's when the hearing was set. It was 992 days.  
7 In their response, the CDTFA, on those pages from 5719 to  
8 5721, they again defer to, well, that's the legal  
9 division. From March 19th of 2021 until March 21st of  
10 2023, those 732 days, our hands are off of it. That's the  
11 legal division. We don't really have anything to do with  
12 it.

13                   And so, when you look at the statute that  
14 governs -- and I put it on the bottom of that sheet --  
15 which is 6593.5, which deals with the sales tax that we're  
16 here about, it says when the failure to pay tax is due in  
17 whole or in part to the CDTFA. I don't think that's in  
18 doubt. We did nothing to delay the process, other than  
19 for a couple of weeks after some 900 days. I don't think  
20 that's in dispute. The only issue this honorable Board  
21 will have to decide was, was it reasonable or not. Was  
22 the reason that the CDTFA delayed this, whether it was the  
23 legal division, the appeals -- whatever division it was,  
24 was it reasonable?

25                   In the record is absolutely void of any reason

1       whatsoever. The only reason they sort of suggest is that  
2       we requested an in-person hearing. You can't offer a  
3       taxpayer one or two options in here, in-person, not  
4       in-person, and then penalize them for choosing one of the  
5       two options they'd been given. Again, they never advised  
6       us it was going to take longer. The only time they ever  
7       did it was when we tried to get the short delay, and they  
8       said you got to do it by Zoom, and we did. Or, for  
9       example, before Your Honors today, we tried to do it  
10      in-person. We couldn't do a mix in-person and Zoom to  
11      accommodate Mr. Schniper's health. So we said, fine.  
12      We'll do it by Zoom. We were ready to accommodate  
13      whatever process that we were given, and we were never  
14      given any other option, other than pick in person or don't  
15      pick in person; and we waited 992 days. Again, they don't  
16      have any other reason in the record.

17           The reason I submitted to this Honorable Board  
18      the Goren case that we submitted at the pretrial  
19      conference or report, was it deals with a similar issue.  
20      It deals with the FTB a little bit different of kind of  
21      taxes. And that statute is actually more stringent or  
22      strict than what we're dealing with here. There, they can  
23      abate interest, if it's an unreasonable error or delay by  
24      an officer of the FTB, which is the same here, but it  
25      requires there that they do a ministerial or managerial

1           act -- there's no requirement here for that -- which  
2           occurred after the FTB contacted the taxpayer in writing  
3           regarding the assessment.

4           There's no requirement in this statute here. The  
5           only thing in this statute requires an unreasonable delay  
6           caused by the CDTFA and not significantly caused by the  
7           taxpayer. That's the only thing. And in the Goren case,  
8           the OTA, who used an abusive discretion standard there,  
9           said that FTB abused their discretion when there was a  
10           248-day delay. So in Goren we got 248 days abusive  
11           discretion standard, and the OTA abated the interest.  
12           Here, we have a less stringent standard. We have 992-days  
13           delay. You can use that timeframe, or certainly, at a  
14           minimum, the 732-day timeframe from the time that it was  
15           under the control of the legal division from when we  
16           requested this hearing.

17           And, again, we did nothing else, other than say  
18           we want it in-person. And I believe that purely from a  
19           legal standpoint, they have no defense in this situation.  
20           And the only thing before the OTA was, was it  
21           unreasonable? And I understand the OTA opinion that I  
22           cited was the FTB, but it also says precedential on the  
23           top of the opinion; that it's precedent for the OTA to be  
24           able to use that as guidance. I did a Lexus search of the  
25           6593.5, which deals with sales tax. There are no reported

1 cases in California that I could find. I've done it  
2 several times. I did it again this morning. There is no  
3 guidance with respect to that, but the Goren case does  
4 give us great guidance.

5 And so I think, if the interest is abated, you  
6 know, we're in a different situation. And as I've said a  
7 many times, whether it's in consideration or not, this  
8 case is so important to us. This is the business death  
9 penalty to us. We -- that's why we have to go through all  
10 these processes. We're not some huge margin business.  
11 We're not some big -- you know, I think we're down to,  
12 like, 12, 13 stores. And that's why this is so important  
13 to us. And we expect that after we present the evidence  
14 from Mr. Schniper, and also the consideration of the legal  
15 issue, that we respectfully request that you reduce the  
16 amount of the base tax to \$100,540, and that you abate the  
17 interest while we've waited on this for years at no fault  
18 of our own.

19 Thank you.

20 JUDGE WONG: All right. Thank you, Mr. Yaghmai.  
21 Would you like to present Mr. Schniper and his testimony  
22 now?

23 MR. YAGHMAI: Yes, sir.

24 JUDGE WONG: Okay. Go ahead.

25 ///

DIRECT EXAMINATION

2 | BY MR. YAGHMAI:

3 Q All right. Could you please tell us your name?

4 A Steven, S-t-e-p-h-e-n, Sniper, S-c-h-n-i-p-e-r.

5 Q And, Mr. Sniper, are you accountant?

6 A I am.

7 Q And are you familiar with the sales tax audit  
8 process?

9                   A    Yes, sir. I am.

10 Q And can you give us ballpark idea of how many  
11 clients you've represented the taxpayer in a sales tax  
12 audit?

13 A Over the last 40 some odd years, about 200.

14 Q And that's you on your own. I'm -- I'm talking  
15 about outside the attorneys getting in the way, that's you  
16 on your own; correct?

17 A That's correct.

Q And you've done this in multiple states; correct?

19 A I have done in four to five states, yes.

20 Q And are you familiar with the cell phone process  
21 and the taxes regarding cell phone dealers?

22 A Yes, I am.

23 Q And have you been the sole representative for a  
24 taxpayer in cell phone tax -- sales tax audits?

25 A Yes, I have.

1 Q Can you have approximation of how many times?

2 A I have probably represented about 20 cell phone  
3 cases over the period. And I would say that I probably  
4 been involved in 18 of them as -- on my own.

5 Q All right. And have you prepared sales tax  
6 returns as an -- or -- strike that.

7 Have you prepared income tax returns for cell  
8 phone dealers?

9 A Yes, I have.

10 Q Can you give us a ballpark of how many?

11 A Be kind of difficult. Probably in the area of  
12 about 150 or so.

13 Q All right. And are you familiar with Cricket  
14 cell phone dealers?

15 A I am.

16 Q And is that through representing them in sales  
17 tax audits?

18 A Representing them in all tax matters.

19 Q Okay. Income tax? Sales tax? All tax matters?

20 A That's correct.

21 Q Are you familiar with the POS system, the RQ,  
22 that Cricket uses?

23 A I am familiar with it. Of course, it's no longer  
24 in existence, but at the time of the audit, it was. It's  
25 a -- it's a -- the Retail Management Solutions is what

1           they call it, and it's unique to the telecom industry.

2           Q    And as the dealer, like Sukar, when the audit was  
3           in -- you know, the audit period that we're talking about,  
4           did they have the ability to alter the POS system with  
5           regards to the -- the cell phone sales?

6           A    No.

7           Q    All right. So Cricket controlled all of that;  
8           correct?

9           A    That is correct.

10          Q    Are you familiar with the term "trailing credits"  
11          with regards to cell phones?

12          A    I am.

13          Q    And tell us about that?

14          A    Basically, the phones are purchased by the  
15          dealers, by the franchisees, at a retail selling price.  
16          The phones are then offered as an enticement to have  
17          people come in to -- to sign up for the prepaid wireless  
18          communications. And the phone, again, is basically an  
19          incentive. So, if a phone is \$500, Cricket may decide to  
20          run that phone for \$299 as a incentive.

21           So when that occurs, if the software works  
22          properly, the customer pays the \$299, but they pay the  
23          sales tax on the entire amount of the purchase. That's  
24          where the rebate trailing credit situation comes in. And  
25          with that trailing credit, the dealer ends up with a

1 credit against their balances for the telephones they  
2 purchased.

3 Q So, in that scenario, they'd get a \$201 credit on  
4 inventory, not cash credit, but an inventory credit when  
5 they have to order more phones through Cricket; correct?

6 A That is correct.

7 Q But the entire -- the customer -- they're  
8 supposed to collect the sales tax on the entire \$500 in  
9 the example that you gave us?

10 A That is exactly right.

11 Q And so Cricket had the RQ system prior to Q2 of  
12 2016. It was not collecting the proper amount of sales  
13 tax; correct?

14 A I found that to be the case, yes.

15 Q Okay. But did they remedy the problem starting  
16 in second quarter of 2016?

17 A The second quarter of 2016, the problem was  
18 remedied. Everything -- everything, prior to that, had  
19 the issue with the proper amount of taxes being withheld.

20 Q Okay. They also -- I made reference in the  
21 opening statement. Do you know what TIO payments are,  
22 T-I-O, the acronym?

23 A Those are the payments that are received from  
24 various customers for their continued service with  
25 Cricket. Since it's prepaid wireless, it has a drop-dead

1 date, due date, and the customer is obligated to come in  
2 prior to or by that due date and make payment for the --  
3 for the next month coming in.

4 Q And we've seen it on the bank statements that I  
5 think the CDTFA has submitted where there was a bank  
6 statement that just had all the entries were TIO payments;  
7 correct?

8 A Chase account ending in 1153, and that was the  
9 TIO account.

10 Q All right. And that's something the CDTFA had,  
11 correct, and submitted?

12 A Yes.

13 Q And that -- and Sukar just acts look a pass  
14 through to the Cricket corporation; correct?

15 A That's basically all that Cricket -- that the  
16 Sukar entities are.

17 Q Okay.

18 A It's just a pass through.

19 Q All right. And so, did you have a chance in this  
20 particular case to look over the auditor, Ms. Davis'  
21 complete audit?

22 A I did. There were approximately 5,700 pages  
23 submitted, and I was able to scan those pages and extract  
24 from those pertinent information, which I downloaded.  
25 Also, I think it needs to be noted that I've only been on

1       this particular case for about 60 days. So this has taken  
2       the entire length of times to be able to go through those  
3       documents and to try to formulate what is going on here  
4       with the methodology and everything else and correct it.

5           Q    Okay. And did you -- what -- what else did you  
6       review to give us your opinions here today, other than the  
7       sales tax audit performed by Ms. Davis?

8           A    Well, I started off with just trying to put the  
9       history of the company together first and get a grasp of  
10      everything, number of stores in existence during the audit  
11      period. The -- I reviewed the audit documents, various  
12      letters, various calculations and recalculations for the  
13      purpose of the audit. I reviewed the bank statements for  
14      a period. I reviewed the sales tax reports that I was  
15      able to obtain from the California website, and I was able  
16      to review the RQ reports for the most part.

17           I did have missing reports for 2015. At that  
18      time, they were with a company called Unique Accounting, I  
19      believe based out of -- outside of Las Vegas. And I had  
20      no records whatsoever for '15. And I believe that was one  
21      of the contentions that Ms. Davis and the prior account --  
22      auditor had. So I had to come up with a method to be able  
23      to -- to distinguish what we thought the '15 was but --  
24      and using the basis for the sales tax paid to California.  
25      It was no -- no question that this was severely

1 understated.

2 So the '15 -- all four periods of '15 were  
3 understated. First period of '16 was understated. So I  
4 had to use future information, being the 2016, which  
5 actually had more stores at that time and volume was  
6 greater. And I used those numbers to come up with numbers  
7 that would give me the total gross receipts, the  
8 nontaxable and the taxable, and I came up with significant  
9 issues on those periods. On '17 -- I'm sorry -- on second  
10 quarter of '16, the RQ report changed dramatically. It  
11 started distinguishing the trailing credits or the  
12 rebates, and you could see a tremendous uptick in the  
13 amount of taxes collected and paid for those periods going  
14 forward. It's never -- never deviated.

15 So basically, the -- the concession to make is  
16 that for the five periods 4 of '15 and 1 of '16, we are  
17 definitely liable for those taxes, but anything beyond  
18 that the reports are correct. And, I used the bank  
19 deposits also and the tax returns to try to come up with  
20 some semblance of in -- of the income generated for those  
21 periods. And I would -- I would have to say that the  
22 biggest issue that occurred here -- and I think there's  
23 frustration on both sides of the fence from what I could  
24 read -- was that there was lacking information and that  
25 the methodology became skewed because of that lack of

1 communication.

2 So I -- I believe that we put forth a very honest  
3 report in trying to own up to our tax liability but also  
4 to defend the fact that the, going forward from the second  
5 quarter '16 on, that we're dead on as far as the taxes  
6 paid, taxes collected, and everything was done properly.

7 Q Okay. What I submitted to the Board a little  
8 while ago, you provided a chart to me for the order of --  
9 for all of 2015 and the first quarter of 2016.

10 A Yes.

11 Q You had it in a printed form that broke down the  
12 gross sales, the nontaxable, the taxable, and the  
13 underreported; correct?

14 A That is correct.

15 Q Can you go through that with us?

16 A I can. So basically, what is -- what's going on  
17 is that, instead of what was reported on the tax returns  
18 for those periods -- hello?

19 Q Yes. Go ahead.

20 A I'm sorry. We blanked out.

21 Q Yeah.

22 A The tax return -- going through the tax returns  
23 that were reported for those periods and comparing them  
24 with the methods I used to calculate, I show that in 2015  
25 first quarter we underreported \$84,862, and that's -- in

1 second quarter we underreported \$41,036; third quarter  
2 \$23,056. We had growth at the end of 2015 that went from  
3 about 6 stores, picked up 2 in the very last end of the  
4 third quarter, and then grew to 18 stores by the fourth  
5 quarter. So the underreported amount there was \$235,558.

6 In the first quarter 2016, the growth was also  
7 there. And also, it's an important period because it's  
8 tax season, which is -- which is one of the main holiday  
9 areas for this business, and we underreported \$460,013.  
10 So a total underreported for those five periods is  
11 \$844,525. Beyond that, I don't see any underreporting  
12 whatsoever.

13 Q And is that based -- I'm sorry. Go ahead.

14 A No. I'm sorry. Go ahead.

15 Q So based on that number of the underreporting of  
16 \$844,525, is that how you come up with your opinion that  
17 the base tax that Sukar owes is \$100,540?

18 A I went ahead and took the liberty of adding about  
19 20 percent just for safe -- for safety net in case my  
20 calculations were not 100 percent. And like I said,  
21 the -- the fact of it is, is I could use statistics and I  
22 can use the future information to try to formulate this,  
23 but I wanted to be totally upfront about the situation.  
24 And adding that in is how I came up with \$100,540.

25 Q Okay. And let's talk about -- I know you've

1       talked on -- about it some. And then based on the number  
2       starting Q2, it's your professional opinion that the  
3       proper amount of money was paid in sales tax; correct?

4       A    That is correct.

5       Q    And tell us what the number showed to you  
6       starting Q2 of 2016?

7       A    If you can give me just a second --

8       Q    Sure.

9       A    -- I'm doing this off the report right here. So  
10       basically, what it amounted to was I went back and pulled  
11       the taxes paid for -- for Sukar for the periods starting  
12       from January through March 15. Base tax that we paid was  
13       \$5,347; in the second quarter '15, we paid \$5,573; in the  
14       third quarter, we paid \$6,665; and in the fourth quarter,  
15       \$8,019; and in the first quarter '16, we paid \$7,308.

16           RQ system kicked in the second quarter of '16,  
17       and, basically, our tax liability jumped to \$30,333; in  
18       the second quarter of \$23,874; and the third quarter,  
19       \$31,825; and the fourth quarter --

20       Q    Hold on. Slow down. You're going a little bit  
21       too fast for all of us.

22       A    I'm sorry. I'm sorry.

23       Q    Let's go to the -- so the first quarter of 2016  
24       it was \$7,300 that was paid; correct?

25       A    That is correct.

1           Q    And the second quarter of 2016, after the RQ  
2           system got fixed, the amount paid jumped up to \$30,033;  
3           correct?

4           A    \$30,333.

5           Q    All right. And then the third quarter of 2016,  
6           how much sales tax did we pay?

7           A    \$23,874.

8           Q    All right. And then the fourth quarter of 2016  
9           how much did we pay?

10          A    \$31,825.

11          Q    And then in the first quarter of 2017, since  
12           we're still in the audit period, how much did we pay?

13          A    \$38,982.

14          Q    In the second quarter of 2017, how much did we  
15           actually pay?

16          A    \$38,514.

17          Q    In the third quarter of 2017, how much did we  
18           pay?

19          A    \$42,628.

20          Q    In the fourth quarter of 2017, how much did we  
21           pay?

22          A    \$33,109.

23          Q    All right. And then the first quarter of 2018?

24          A    \$48,447.

25          Q    And then, finally, I think the audit ended

1 after Q -- what was Q2 of 2018?

2 A The base tax paid was \$37,740 -- excuse me --  
3 743.

4 Q All right. And so --

5 A The major -- the major change in this was the  
6 allocation between the nontaxable to the taxable because  
7 of the trailing credits kicking in.

8 Q And the trailing credits, again, it's important  
9 because Ms. Davis, I think, tries to address it in a  
10 different way. The trailing credit only was ever given by  
11 Cricket to the actual cell phones, not the accessories;  
12 correct?

13 A That is -- the accessories are totally separate.  
14 Only the cell phones received rebates.

15 Q And was that one of the, sort of, things you  
16 disagreed with? Well, let me ask you this. Were some  
17 things -- other than the ultimate results, was there some  
18 things that you disagreed with the methodology of how  
19 Ms. Davis for the CDTFA did her audit?

20 A Well, I think it needs to be stated today that  
21 the Cricket franchisee does not make one penny profit on  
22 these telephones. They're sold at cost. Cost being  
23 either the full price or cost being the discounted price,  
24 along with the trailing credit; but not one penny of  
25 profit is on these phones. The dealers purchase these

1 phones to basically facilitate Cricket's ability to lure  
2 new subscribers through deals or upgrades. The  
3 accessories, on another hand, make up a small portion of  
4 the overall business, but there is profitability on the  
5 accessories. Even if an accessory is discounted due to  
6 overstock or due to its stock or something of that nature,  
7 no rebates are received. So, therefore, the taxpayer has  
8 the ability to tax the customer on the final sales price,  
9 not on the list price.

10 Q And during the audit, did Ms. Davis sort of  
11 highlight the fact that some of -- she had some of the  
12 inventory at zero?

13 A She had a great deal of the inventory at zero or  
14 at one cent, and the -- there were several things that  
15 happened on the audit. She acknowledged that the phones  
16 did not have profitability, but in June 4th of '18, she  
17 suggested a markup of on the telephones of 18 percent.

18 Q Let me stop you right there. Let me stop you  
19 right there. I want to make sure we're clear on that. At  
20 one point --

21 JUDGE WONG: I'm sorry. Mr. Yaghmai, can I just  
22 stop -- I just want to get clarification for the numbers  
23 that Mr. Schniper had just read. Were those numbers  
24 for -- is he reading from the supplemental additional  
25 information that you submitted, or is that from a

1 different source?

2 MR. YAGHMAI: That's from the sales tax that were  
3 submitted to the State of California. We -- I think they  
4 submitted them, and we actually submitted them too. They  
5 were the sales tax actually submitted and paid through the  
6 State of California.

7 JUDGE WONG: And -- okay. So that information is  
8 included in both exhibits that you guys provided; is that  
9 right?

10 MR. YAGHMAI: Correct. Yeah, I think both sides.  
11 I looked back. We submitted it in our supplemental, but I  
12 think they've also submitted it in their original filings  
13 too.

14 JUDGE WONG: All right. Thank you.

15 MR. YAGHMAI: You're talking about the numbers  
16 where he was testifying about much sales tax --

17 JUDGE WONG: Right.

18 MR. YAGHMAI: -- was actually paid?

19 JUDGE WONG: Right.

20 MR. YAGHMAI: Yes, sir.

21 JUDGE WONG: Okay.

22 MR. YAGHMAI: They're in -- they're in both sets  
23 of exhibits.

24 JUDGE WONG: Okay. Thank you.

25 MR. YAGHMAI: Yes, sir.

1                   JUDGE RIDENOUR: I'm going to ask a question. If  
2 you guys could please refer to the Bates Stamps so we  
3 could actually follow along, that would be greatly  
4 appreciated.

5                   MR. YAGHMAI: Yeah. Yes, ma'am.

6                   JUDGE RIDENOUR: Thank you.

7                   MR. YAGHMAI: Let me see. I'm trying to pull up  
8 the Bates Stamps of the -- so the Bates Stamps on the  
9 actual taxes paid is in the Sukar supplement docs that  
10 start at page 3 -- Bates Stamp page 3, and they end  
11 page 24. So that's the supplemental docs 3 through 24,  
12 Your Honor.

13                   JUDGE RIDENOUR: Thank you.

14 BY MR. YAGHMAI:

15                   Q Mr. Schniper, you started to testify about there  
16 was an agreement with no markups on the phone. That was  
17 in Ms. Davis' audit that she had an agreement with Clint  
18 Sukar, who was one of the principals of Sukar?

19                   A Actually, I think it was with the accountant,  
20 Nathan Goss, that she spoke of it.

21                   Q Okay?

22                   A She did speak with Mr. Sukar on 6/4 of '18, but  
23 there were no further details given on that. I think he  
24 only confirmed that there was no -- no profitability.

25                   Q Okay. I'm sorry. I didn't mean to interrupt.

1       So you said some of the disagreements you had with her  
2       audit?

3           A    Well, in the beginning of the situation, she  
4       determined that the accessories made up about 10 percent  
5       of the total sales with a markup of 100 percent.  Later,  
6       she came back with a -- bear with me while I'm looking  
7       through my notes here.  Later, she came back and assessed  
8       that it would be a 20 percent for the accessories, with an  
9       industry average of 131.48 percent.  The -- there was a --  
10      on Bates Stamp 0040 of the California documents, she came  
11      again and said that 10 percent was reasonable, and she  
12      didn't want to pursue that, and that the accessories  
13      appeared to be minor.  But it turned out that the  
14      accessories became a major part of this audit later on.

15           In the -- up through November 7th, there were  
16      still adjustments made to the accessories, and there was  
17      discussion about adding rebate to the accessories for  
18      taxation, and that was on Bates Stamps 0072 to 75.  And  
19      apparently, there was a test run that was made on that  
20      same date on document 294 where she stated that she ran a  
21      test to sort out the sales, but she did not retain the  
22      results of that test.  And that was the first of three  
23      different times that that was noted over the course of the  
24      audit, that tests were run, but she did not retain any  
25      copies of them.

20 There was also stated, that in the month April  
21 alone, that there were 43,175 transactions that took place  
22 in these stores, which is impossible. Items sold, that  
23 would be impossible. So --

24 Q Why is that? Why is that impossible?

25 A Volume of the sales. What I believe happened was

1       that a number of sales that had multi-items on them were  
2       construed to be one sale only. And in the course of all  
3       of this, the biggest issue with the markup is that there's  
4       no consideration for any inventory that's in the store  
5       prior to April 1. There's no consideration for any  
6       inventory left over at the end of April 30th. The \$8,997  
7       is basically is purported to be a shipment that came in  
8       divided into 24 stores and immediately was sold in full;  
9       not anything left over, for \$40,000, which is an  
10      impossibility too. These stores --

11           Q    Why -- let me stop you. Why is that an  
12      impossibility?

13           A    This is not going to happen in -- in this -- in  
14      this market. You're not -- there's no realization that  
15      this kind of markup with this caliber for these -- for  
16      these supplies. None. You have to take into  
17      consideration cost of goods sold. Cost of goods sold is  
18      comprised of beginning inventory purchases, less ending  
19      inventory and adjustments. And without those factors,  
20      it's meaningless.

21           There's also a situation where -- and may -- if  
22      you can bear with me, I'll find it -- that after these  
23      were disputed -- I believe by you -- then three days,  
24      four days later, she absolutely stopped using the  
25      10 percent factor for sales and increased it. And this is

1       the second time that she ran a test, Bates Stamp 0015 to  
2       0027, and did not retain it.

3                   The -- the situation basically is, is that she  
4       had access to tax returns. And that's going to be another  
5       issue. But each tax return had an end-of-the-year  
6       inventory. And she acknowledged that in some of her  
7       reports. So she acknowledged those over \$200,000 worth of  
8       inventory. But yet, she didn't acknowledge the fact that  
9       there was inventory on the floor in the store for this one  
10      month of April of '17.

11               Q    So the tax returns that we've submitted at the  
12     end of the year show a certain amount of inventory. And  
13     then your issue with her April of 2017 that she used  
14     across -- she picked the one month and used it across the  
15     audit; correct?

16               A    That's exactly right, and used the wrong bank  
17     account.

18               Q    And used the wrong -- because there were two  
19     different Chase bank accounts; correct?

20               A    Correct.

21               Q    One of them was for the TIO that -- and of the  
22     pass through payments, and one of it was for the inventory  
23     and everything else; correct?

24               A    That's correct.

25               Q    All right. And so she picked the one month, and

she extrapolated with not considering beginning inventory  
or ending inventory for that particular month; correct?

3 A That's correct.

4 Q And that's where she came up with the 453 percent  
5 markup. Somehow she went from an \$8,917 one-time purchase  
6 and claims the sales were \$40,833 with not considering the  
7 existing inventory that was already in the store?

8                   A     Or what inventory was left out of that \$8,900.

9 Q And so if you make a mistake or a big mistake on  
10 that one particular month and you apply it across the  
11 entire audit, then it just inflates the number  
12 significantly; correct?

13           A    Correct.  And I do have a report here, which is  
14           California stamped 0134 through 01185.  And looking at  
15           that, it lists columns for -- along with the product name  
16           and the skew number and -- and so forth.  It gives  
17           customer names and all kinds of data.  It gives a unit  
18           cost.  It gives a total cost.  It gives a list price.  It  
19           gives a sold for price, a discount price, and a profit --  
20           a gross profit.  Numerous ones of these are anywhere unit  
21           cost of one penny, and she had extracted all the zero cost  
22           of items, and they were enormous.  From one penny to,  
23           let's just say \$2.50 in that area, and she shows  
24           everything in there being at such high profit levels.

25 The first item on here is a -- a kickstand with a

1 screen protector, unit cost one penny, selling price  
2 \$24.99, gross profit \$24.99. Using these numbers -- and  
3 it went on to telephones too. Even though it's been said  
4 over and over again that there's not one penny of profit  
5 in the phone, she shows numerous phones being sold at --  
6 at gross profit. Examples of what I found were \$0.50  
7 items being sold for \$30.00, \$0.25 items being sold for  
8 \$49.99, \$1.25 items being sold for as high as \$111.37,  
9 \$0.16 items at \$25.00, and it goes on and on. There's not  
10 an item this company can purchase for a penny or a nickel  
11 or a dime, or a dollar. Taking consideration that even  
12 though they may not be high dollar products, freight alone  
13 would not allow this product to come in for one penny.

14 So the entire markups is -- is skewed, and that  
15 has created markup issues throughout the entire audit in  
16 the areas from second quarter of '16 on through the end of  
17 the audit period 6/18. And keeping in mind that because  
18 the RQ system failed in the first four quarters of '15 and  
19 the first quarter '16, does not mean that the company  
20 didn't collect the proper sales tax on accessories,  
21 because they did.

22 Q It was just the telephone --

23 A Telephone.

24 Q Because that's the trailing credit that it was  
25 the issue that got fixed in the second quarter of 2016?

1           A    Correct.  That is correct.  And -- and looking at  
2 the entire situation, I mean, the entire markup agenda  
3 that was taken here should be disregarded because it has  
4 no -- it has no bearing on what this audit is.

5           Q    All right.  Let me ask you this.  While we're  
6 talking about records, I know at some point they were  
7 saying there was not adequate records.  But on Bates Stamp  
8 114 supported by -- submitted by the State of California  
9 for the CDTFA, Ms. Nickerson who was the actual supervisor  
10 says that records provided were adequate for sales and use  
11 tax purpose.  Based on product detail downloads sales tax  
12 reimbursement was added to product sold.  Are you familiar  
13 with that?

14           A    Her quote was, "Records provided were adequate  
15 for sales and use tax purposes."

16           Q    Okay.  And I know we had some issues with -- go  
17 ahead.  I'm sorry.

18           A    I'm sorry.  I don't mean to interrupt you.  But  
19 one thing is very important.  When I said that 5,000 pages  
20 were devoted to single-line items, multi-items on a page,  
21 with the -- she had to have had access to the -- to the  
22 software or to -- I can't imagine this being downloaded on  
23 paper.  She had to have access.

24                   When these items are put into inventory, first of  
25 all, they have to come from approved Cricket vendors,

1       number one. Number two, is they're placed into the system  
2       by their UPC code, skew code. When put into the system,  
3       the quantities received, the cost and the selling prices  
4       are entered. So basically, by just following this  
5       half-a-dozen categories right here, a little bit further  
6       would have given her -- ending inventory would have given  
7       her the gross profit -- true gross profit. She didn't  
8       follow through with that.

9           Q    All right. What other issues do you have with  
10       the audit that we haven't talked about?

11          A    I have so many that I have to look. The -- the  
12       inconsistency and the methodology, it kept flip-flopping  
13       from percentages to revisions to various changes in the  
14       method of audit. I have a problem with the fact that in  
15       mid-audit, when everyone thought they were coming  
16       together, the audit changed; and it went south for Sukar.  
17       And then there was questioning about the tax returns not  
18       matching with the sales reports. They're not ever going  
19       to match. And there was a question that was followed up  
20       by her, which was valid, concerning a nominee payment.  
21       And it was on Bates Stamp 0078 that it was a nominee  
22       income was listed on there as a deduction.

23           So, basically, if you look at the tax return, the  
24       total amount of sales is not going to match if there are  
25       matters affecting those gross sales, such as payments to a

1       nominee. It's either proper to reduce income or to  
2       increase cost of goods sold. They're more hesitant to  
3       reduce cost of goods sold, trying to show a true picture  
4       to the company, as far as what their gross profit is,  
5       whether it's meeting standards or not. So normally  
6       they'll deduct that from the gross receipts.

7               There was also issues about the fact that an  
8       audit of this caliber that initially created \$12 million  
9       liability and narrowed down to \$5 million with everybody's  
10       hard work, should not have been based on one month's worth  
11       of audit. And it should have based with the fact of two  
12       bank accounts, which were knowledgeable to her to be used.  
13       This -- the -- the entire -- the entire method used in  
14       this seemed to be avoiding information that was critical.  
15       And it was -- we were -- our records. We may not have  
16       complete records in the beginning, but they pieced things  
17       together. We can see that. We had another accountant  
18       in '15. I don't know what happened to those records, but  
19       from that point going forward, every -- every record that  
20       could be obtained was given to the auditor.

21               And, again, it goes back to Ms. Nickerson saying  
22       that it was adequate. In this particular case, she  
23       disregarded records that were made available, and she  
24       based it -- there was no sufficient reason for this. If  
25       it was based on -- on a suspicion of anything, then that

1 was wrong. It's against code. And the other part of it  
2 is, is that she did not use a sound and reasonable  
3 estimate in trying to conclude this. She did not use  
4 professional judgement in assessing these estimates. And  
5 I --

6 Q Is there any other -- go ahead. I'm sorry.

7 A I'm sorry. I'm just -- I'm -- I'm saying that  
8 because of the fact of the lack of bank statements, the  
9 lack of following through with all information, and  
10 exaggerating the profit margins, and it continued on to  
11 areas that we know were sound reports. Once we got past  
12 that first quarter of '16, there was no reason to doubt  
13 those reports. One thing she did do, is in doubt of those  
14 reports, is she provided a letter or sent a letter  
15 demanding records from AT&T home office in Florida.

16 AT&T --

17 Q Let me -- let me clarify something. AT&T owned  
18 Cricket; correct?

19 A That's correct. And AT&T -- Cricket is a -- is a  
20 company under AT&T separate of AT&T, owned by AT&T. With  
21 all the research and all the effort that went into this --  
22 this audit, it would have been very easy to find the home  
23 office for Cricket in Atlanta versus sending something to  
24 a multi-international company in Florida demanding  
25 records, which they replied they had no records. If she

1       would have gone to the proper source, they would have  
2       provided her with the exact same records that we provided  
3       her with.

4       Q     All right. Is there anything else regarding --  
5       so, for example, on her worksheet that she did, she claims  
6       we underreported 1,372 percent of error of taxable income.  
7       Is that plausible?

8       A     No, sir. It's not.

9       Q     And why is that?

10      A     The -- let me find that line very quickly. I'm  
11      sorry. That would have been in the first quarter of 2016.

12      Q     Right.

13      A     Basically we underreported. We showed \$86,398 as  
14      measured taxable. The actual measured taxable for that  
15      period was \$546,000, and we admit to that. She added  
16      additional taxable measure based on '16, '17, and '18 on  
17      cost product detail. She recorded a figure here, recorded  
18      versus reported book, and she came up with an audited  
19      taxable measure of \$1.2 million, which difference of  
20      \$1.1 million which showed that 1 -- that 1,373 percent  
21      margin of error. The thing about it is though, the '16  
22      return, albeit it was -- it was incorrect. There was  
23      nothing that would have supported that the taxable measure  
24      should have gone into \$1.2 million. Nothing. Looking --

25      Q     Unless -- go ahead. I'm sorry.

1           A I'm sorry. So looking at the number of stores  
2 and looking at the RQ reports, in the years after the  
3 acquisitions in late '15 and into '16, 40 to 50 percent of  
4 the stores were underperforming. So you can't use an  
5 overall basis to try to evaluate for a quarter.

6           Q And is there any other issues you had with the  
7 audit?

8           A If you can give me just a second.

9           Q Sure.

10          A I do know that two audit letters were received  
11 10/17/17 from Maya Tang, for audit period 10/11/14 through  
12 6/30/17. And then Ms. Davis got involved with an audit  
13 letter on 3/1/18, and she sent that as an email to Bob  
14 Brogdon who was the CPA for the company. Just for  
15 clarification purposes, these -- both of these letters  
16 refer to this as a routine audit. This was not a routine  
17 audit.

18           It was based on the fact that it became  
19 knowledgeable that Cricket software was failing, and  
20 that's what prompted this audit. Not that it makes any  
21 difference; an audit is an audit. But just to show the  
22 effects of what happened for '15 on through '18 when we  
23 had 20-some-odd stores. They have 12 stores now. Since  
24 we opened in August of '14, our retained earnings for the  
25 company are at a negative \$2.7 million.

1 Q It's a failing business?

2 A It's a failing business. And at this -- at this  
3 point -- and it's -- the profit margin does not change  
4 store to store, whether it's a store in Hawaii or whether  
5 it's in Alabama or California. There's high cost of doing  
6 business in California, and they have not adjusted -- they  
7 did not adjust to all of that. And so, basically, this  
8 entire situation, if we were realizing 450 percent  
9 profits, and we were realizing profits on phones and  
10 everything, we would not be in this dismal situation  
11 financially.

12 Q I don't believe I have any -- I mean, all your  
13 opinions are based on a reasonable degree of accounting  
14 certainty, in your opinion?

15 A I would -- I have to say yes. I'm sure some  
16 people may disagree, but I would have to say yes.

17 MR. YAGHMAI: All right. I don't have any  
18 further questions at this point.

19 JUDGE WONG: All right. Thank you, Mr. Yaghmai.

20 I'll turn it over to CDTFA, if they have any  
21 questions for Schniper on cross-examination.

22 MR. SHARMA: This is Ravinder Sharma. Department  
23 has no question. Thank you.

24 JUDGE WONG: Okay. Thank you very much.

25 Mr. Yaghmai, did you have anything else for your

1 main presentation?

2 MR. YAGHMAI: I do not, Your Honor. That was  
3 just Mr. Schniper's testimony and the exhibits we've  
4 submitted.

5 JUDGE WONG: Okay. So you have about half an  
6 hour left to reserve your time to be used at the -- in  
7 your rebuttal and closing.

8 I will now turn it over to my co-panelists to see  
9 if they have any questions for Mr. Yaghmai or  
10 Mr. Schniper, beginning with Judge Long.

11 JUDGE LONG: This is Judge Long. I do have a  
12 couple of questions.

13 Mr. Schniper, one thing that you said was that  
14 the returns and the sales reports would never match, and  
15 I'm not familiar with that kind of occurrence. Can you  
16 explain that a little bit?

17 MR. SCHNIPER: Yes, sir, I can. So when you get  
18 the sales reports, the RQ reports that we're talking  
19 about, you receive the gross amount. Which, in this case,  
20 what I used was with the vendor rebates, which is  
21 important because it includes a trailing credit. Then you  
22 have a breakdown between the nontaxable portion payment  
23 and so forth, and you have a breakdown to taxable, and it  
24 comes back to calculate the amount of tax per district and  
25 state.

1           If the -- let me find a number here I can -- I  
2 can refer to. So, basically, in 2017, we had on our tax  
3 return gross receipts per California and state -- and  
4 federal income tax of \$9,000,200 -- excuse me -- \$2,358.  
5           Our total gross on the reports was \$9,00,681 -- excuse  
6 me -- \$9,681,941. There is -- in that case, there was a  
7 nominee payment. There are two stores in California that  
8 are -- have a different investor. And one of those is  
9 located in San Bernardino, and one is in Ontario. What  
10 the accountant chose to do, was for the monies that were  
11 paid to that so-called nominee. So the monies owed to him  
12 was from the Caladus, the CSP money, which is the -- the  
13 commissions.

14           So, basically, whatever was paid to that nominee  
15 was deducted from gross receipts. And like I said  
16 earlier, it could either be deducted through gross  
17 receipts or added to cost of goods. And in this case,  
18 they chose to go through gross receipts. So that's why  
19 there's a difference. There's always going to be minor  
20 differences. There's going to be things that occur within  
21 the system that cause adjustments. But like I said,  
22 they're not major by any means, and it shouldn't be a  
23 factor.

24           JUDGE LONG: Okay. Thank you.

25           And then, Mr. Yaghmai, I do have some questions

1       regarding your timeline and the interest abatement  
2       argument.

3                    MR. YAGHMAI: Yes, sir.

4                    JUDGE LONG: So this, obviously, references  
5        CDTFA's March 8th, 2023, letter, which is Exhibit 2 of  
6        CDTFA's Appeals Bureau decision. And I just wanted to  
7        verify. So looking at that letter, it looks like  
8        settlement consideration was occurring between  
9        July 8th, 2020, and March 18th, 2021, but, for a portion  
10      of that time, the Appeals Bureau was doing, like, a  
11      parallel track. Is that in dispute that was the case?

12                  MR. YAGHMAI: No, sir. I -- I don't dispute  
13      that. I don't --

14                  JUDGE LONG: Okay.

15                  MR. YAGHMAI: Again, I think we agree on the  
16      facts.

17                  JUDGE LONG: But then -- that makes sense. Okay.  
18      Fine. And then with respect to the -- sorry. I'm  
19      flipping between tabs. With respect to the period of time  
20      that was exclusively in settlement, it looks like that was  
21      at Appellant's request that -- that appeals defer during  
22      that time. Are you alleging that there was an  
23      unreasonable delay during that time that it was solely in  
24      settlement?

25                  MR. YAGHMAI: Not the 85 days. I mean, if you

1 can remove --

2 JUDGE LONG: Oh, okay.

3 MR. YAGHMAI: -- the 85 days, you can remove --  
4 even if you remove the 85 days from the -- we're still  
5 over 900 days I think --

6 JUDGE LONG: And then --

7 MR. YAGHMAI: -- total, you know.

8 JUDGE LONG: Again, in addition to that -- so  
9 just looking at the Exhibit 2 of the decision, it looks  
10 like an appeals conference was scheduled for  
11 July 14th, 2021, but it was then deferred until an  
12 in-person conference could be postponed. My understanding  
13 is that was due to the COVID-19 pandemic. Is it in  
14 dispute that Appellant requested that deferral?

15 MR. YAGHMAI: I don't remember a deferral. I  
16 just remember filling out one sheet of paper that said you  
17 can request in-person or not in-person, and we requested  
18 in-person. I don't ever remember making a deferral. I  
19 disagree with that assertion. I think the only deferral  
20 was ever requested was a short -- they gave us a 30-day  
21 window, and that was it. And that was in 2023.

22 JUDGE LONG: Right. I see that. Okay. All  
23 right. So then I'll -- that piece of it is in dispute.  
24 Okay. Thank you. I don't have any further questions.

25 MR. YAGHMAI: Thank you, Your Honor.

1 JUDGE WONG: Thank you, Judge Long.

4 JUDGE RIDENOUR: Yes. Thank you.

5 It's actually to bounce off of Judge Long's  
6 questions, Mr. Yaghmai. So when did you put in that  
7 request that indication that you wanted an in-person  
8 hearing?

9 MR. YAGHMAI: I mean, the initial request was  
10 July 2nd, 2020, is when we made the initial demand for it.

11 JUDGE RIDENOUR: Okay. So my question is,  
12 knowing that was during COVID, did you not anticipate that  
13 maybe an in-person conference would be postponed based on  
14 the various protocols per the pandemic?

1       hey, it might be two years, three years because of COVID  
2       protocols whatsoever.

3                   Anytime it was suggested we need to switch to  
4       Zoom, we did it. For example, when we asked for the short  
5       recess, and they gave us 30 days, and they said, well, you  
6       got to do it by Zoom 'cause we're only available in-person  
7       two days a week or whatever, we did it, just like we did  
8       for this particular hearing. So it was never presented  
9       that it was an either/or situation.

10                  JUDGE RIDENOUR: I'm actually going to ask CDTFA  
11       a question. I'm going to go out of order real quick, and  
12       this maybe -- when did CDTFA Appeals Bureau stop having  
13       in-person conferences and then resumed in-person  
14       conferences for COVID? Someone from CDTFA, please.

15                  MR. SHARMA: Oh, I'm sorry. This is Ravinder  
16       Sharma. We -- we stopped doing when the COVID was  
17       declared by the executive order of the governor in 2020.  
18       And when the governor declared that emergencies are over  
19       in 2023, that's when we started scheduling in-person  
20       hearing.

21                  JUDGE RIDENOUR: Okay.

22                  MR. SHARMA: These are all based on executive  
23       orders by the governor.

24                  JUDGE RIDENOUR: Thank you. I just was wanting  
25       to clarify for the record.

1                   And one more question for -- oh, one more  
2 question for Mr. Schniper. I understand you're testifying  
3 that, like, the \$0.01 for the case with screens unit price  
4 was unreasonably low, if I understand your testimony  
5 correctly. I was wondering if you have any documentation  
6 indicating the actual cost?

7                   MR. SCHNIPER: We could provide this  
8 documentation. I don't have anything here with me. It  
9 would have been on the program that the -- that Ms. Davis  
10 examined when she obtained this information. It would  
11 have had unit cost. No, ma'am, I don't have anything to  
12 give you today, but I can just have it forwarded to your  
13 office.

14                  JUDGE RIDENOUR: Okay. I will speak with my  
15 panelists about it. Thank you very much. No further  
16 questions from me.

17                  MR. SCHNIPER: Thank you, Your Honor.

18                  JUDGE WONG: All right. As for myself. I do not  
19 have any questions for Appellant at this time or  
20 Mr. Schniper.

21                  So what we're going to do is we are going to take  
22 a recess. And then when we come back, we will turn it  
23 over to CDTFA for their presentation. So we will recess  
24 until 2:30. And then just so please just turn off your  
25 cameras, mute yourselves, and we'll come back at 2:30.

1                   And we're off the record. Thank you.

2                   (There is a pause in the proceedings.)

3                   JUDGE WONG: Let us go back on the record.

4                   Okay. So we're about to turn it over to CDTFA  
5                   for their presentation, but I thought of one last question  
6                   I had for Appellant, Mr. Yaghmai.

7                   MR. YAGHMAI: Yes, sir.

8                   JUDGE WONG: So in your briefs you had talked  
9                   about -- this in regards to the interest relief issue.

10                  MR. YAGHMAI: Okay.

11                  JUDGE WONG: And you had mentioned in your briefs  
12                  the word "presumption", that there was a presumption that  
13                  several-hundred day delay was caused by CDTFA. Did you  
14                  have any authority for that presumption?

15                  MR. YAGHMAI: As far as a -- let me -- let me  
16                  refer to the page. You're talking about in the pretrial  
17                  brief submitted?

18                  JUDGE WONG: Yes.

19                  MR. YAGHMAI: I mean, there's no case law on it.  
20                  I mean, I think I was just referring to the Goren case  
21                  which said, you know, the 274 days was a delay. There is  
22                  not -- again, I've shepardized and tried to find anything  
23                  on the statute this morning, and there's no case law that  
24                  says that. But I think that was in reference to that.

25                  JUDGE WONG: Okay. All right. And the specific

1 sentence that I was referring to was -- I'll just quote  
2 it, "By virtue of this timeframe," and you had referenced  
3 the 574-day delay, "it should be presumed that the  
4 petitioner has met its requisite burden in proving that  
5 CDTFA caused unreasonable delay." But -- so you were --  
6 you think you were referencing Goren?

7 MR. YAGHMAI: Correct, the 248-day delay in  
8 Goren.

9 JUDGE WONG: Okay. Great. Thank you so much.

10 MR. YAGHMAI: Yes, sir.

11 JUDGE WONG: All right. All right. We will now  
12 turn it over to CDTFA for their presentation, and you will  
13 have 25 minutes.

14 MR. SHARMA: Thank you, Judge.

15

16 PRESENTATION

17 MR. SHARMA: This is Ravinder Sharma.

18 Appellant is a retailer of wireless cellular  
19 phones at various locations in Southern California and has  
20 been in business since September 2014. The Department  
21 performed an audit examination for the period  
22 January 1, 2015, through June 30, 2018. Appellant  
23 reported total sales of around \$9.7 million, claimed  
24 deduction of \$5.4 million for others, and reported taxable  
25 sales of \$4.3 million for the audit period; Exhibit A,

1 page 31 and 32. Appellant provided books and records,  
2 such as federal income tax return for 2015 to 2017, sales  
3 tax collected report for first quarter 2016 to second  
4 quarter 2018; product details download for first quarter  
5 2016 to second quarter 2018, except fourth quarter 2017;  
6 general ledgers for 2015 to 2017; and bank statements for  
7 first quarter 2016.

8 Appellant's sales tax collected reports show  
9 taxable sales of \$4.6 million for first quarter 2016 to  
10 second quarter 2018. However, Appellant only reported  
11 taxable sales of \$4 million, resulting in unreported  
12 taxable sales of \$600,000 for first quarter 2016 to second  
13 quarter 2018; Exhibit A, page 42. Appellant's product  
14 details reports, for first quarter 2016 to second quarter  
15 2018, reflect audited total purchases of \$9.3 million;  
16 Exhibit A, pages 72 to 75 and 187 to 5,565. During the  
17 audit process, the Department noted that Appellant leased  
18 phones through a third party. The Department used product  
19 details reports and determined total leases of around  
20 \$2 million for the audit period; Exhibit A, page 25.

21 Using the product detail reports for April 2017,  
22 the Department determined an accessories purchase ratio of  
23 around 4 percent; Exhibit A, page 23 and 134 to 186, and  
24 calculated audited markup of 454 percent; Exhibit A,  
25 page 24. The Department used total purchases of

1       \$9.3 million, adjusted for total leases of around  
2       \$2 million to calculate taxable purchases of \$7.4 million.  
3       The Department applied a ratio of 4 percent to taxable  
4       purchase of \$7.4 million and determined audited excessive  
5       purchases of \$300,000 for first quarter 2016 to second  
6       quarter 2018, which were then marked up with an audited  
7       markup of 454 percent to determine audited taxable  
8       accessories sales of \$1.7 million for first quarter 2016  
9       to second quarter 2018; Exhibit A, page 20.

10           Based on its review of product details report,  
11          the Department determined that phones were sold at cost.  
12          So audited taxable sales for phones were determined to be  
13          \$7 million. Then the Department combined audited taxable  
14          phone sales of \$7 million with audited accessories sales  
15          of \$1.7 million to calculate total audited taxable sales  
16          of \$8.7 million for first quarter 2016 to second quarter  
17          2018. Appellant reported taxable sales of \$4.6 million,  
18          resulting in unreported taxable sales of around  
19          \$4.2 million for first quarter 2016 to second quarter  
20          2018; Exhibit A, page 19 and 20.

21           Due to lack of books and records for first  
22          quarter 2015 to fourth quarter 2015, the Department used  
23          unreported taxable sales for the period second quarter  
24          2016 to second quarter 2018 to determine average quarterly  
25          sales of around \$33,000 per location. The Department used

1 the average quarterly sales of \$33,000 per location and  
2 multiplied by the number of active locations to determine  
3 unreported taxable sales of around \$1.1 million for first  
4 quarter 2015 to fourth quarter 2015; Exhibit A, pages 12  
5 to 14. Based on the stated audit procedures, the  
6 Department determined unreported taxable sales of around  
7 \$5.9 million for the audit period; Exhibit A, page 12.

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. It is the taxpayer's responsibility to  
13 maintain and make available for examination on request all  
14 records necessary to determine the correct tax liability,  
15 including bills, receipts, invoices, or other documents of  
16 original entry supporting the entries in the books of  
17 account. If a taxpayer's records are insufficient or  
18 proven unreliable, it is appropriate for the Department to  
19 compute an estimate of the taxpayer's liability by all  
20 alternative means.

21 The burden of proof is upon the taxpayer to prove  
22 all issues of fact by a preponderance of the evidence.  
23 The taxpayer must establish that the circumstances it  
24 asserts are more likely than not to be correct. In the  
25 case of an appeal, the Department has a minimum initial

1 burden of showing that its determination was reasonable  
2 and rational. Once the Department has met its initial  
3 burden, the burden of proof shifts to the taxpayer to  
4 establish that a result differing from the Department's  
5 determination is warranted. Unsupported assertions are  
6 not sufficient to satisfy a taxpayer's burden of proof.

7 The Department used Appellant's books and records  
8 to determine the audit liability. Doing so produced a  
9 reasonable and rational determination. Appellant contends  
10 that the markup of 454 percent is too high. In response,  
11 the Department submits that it used Appellant's books and  
12 records for April 2017 to determine an audited markup of  
13 454 percent. As of now, Appellant has not provided any  
14 documentary evidence to support a lower markup.  
15 Therefore, no adjustments are warranted for this  
16 contention.

17 Appellant is also seeking relief from interest.  
18 On May 10, 2023, Appellant filed a Form CDTFA 735  
19 requesting the Department grant interest relief based on  
20 an unreasonable error or delay by the Department's  
21 employees. Appellant signed a form under penalty perjury  
22 seeking relief from interest that has accrued from  
23 July 2, 2020, to March 21, 2023. However, Appellant  
24 failed to allege any error by the Department's employees.  
25 Instead, it merely contends that it should not be

1       penalized for the delay in setting the appeals conference.  
2       Finally, Appellant asserts that it had no fault in the  
3       delay in setting the appeals conference; Exhibit F,  
4       page 5,700.

5               The imposition of interest is mandatory. There's  
6       no statutory right to interest relief. Instead, Appellant  
7       must qualify for relief under one of a limited number of  
8       provisions. Only section 6593.5 is arguably applicable.  
9       It is important to clarify that interest is not a penalty.  
10      It is merely compensation for the taxpayer's use of money  
11     that should have been paid to the Department. Further,  
12     the Department notes that it automatically granted relief  
13     of interest that accrued on unpaid taxes from March 2020  
14     through June 2020, consistent with governor's executive  
15     orders due to COVID-19 pandemic.

16               Despite Appellant's failure to cite any error by  
17       the Department's employees, the Department has reviewed  
18       the timeline and concluded that none its employees caused  
19       an unreasonable error or delay to occur in this matter;  
20       Exhibit D, page 5690 to 5692, page 5697, Exhibit F,  
21       page 5719 to 5721. As the timeline shows, this case was  
22       moving without any delays. On May 28, 2021, the  
23       Department sent Appellants a Notice of Appeals Conference  
24       scheduled for July 14, 2021. The notice advised Appellant  
25       that due to the COVID-19 health crisis, all appeals

1 conferences were being conducted by telephone or by video.

2 This statement is added as a note on this letter.

3                   Then on June 9, 2021, Appellant elected and  
4 signed a letter to have its appeals conference postponed  
5 until it could have an in-person appeals conference;  
6 Exhibit F, page 5657. Upon receipt of this election, the  
7 Department sent an acknowledgement letter confirming the  
8 matter would be taken off the calendar until an in-person  
9 conference could be scheduled. Then the matter was  
10 properly removed from the calendar until in-person  
11 hearings were permitted. When the governor declared an  
12 end to the COVID emergency, the Department immediately, on  
13 February 3, 2023, notified Appellant of a new in-person  
14 conference date of March 21, 2023. Appellant postponed  
15 the hearing to April 4, 2023, for an in-person conference.  
16 The conference was eventually conducted on that day as a  
17 video conference.

18                   The only reason the appeals conference was not  
19 held on July 14, 2021, was the fact that Appellant  
20 postponed the conference date. There was no error or  
21 delay on the part of the Department. As a result,  
22 Appellant's request for the interest relief under  
23 section 6593.5 was properly denied. Without filing any  
24 additional statement under penalty of perjury, Appellant  
25 had made additional contention regarding interest

1 abatement. First, Appellant claims that it was never  
2 informed that interest would continue to accrue while its  
3 case was postponed. Appellant asserts that if it had been  
4 notified, it could have made an informed decision about  
5 whether to proceed virtually or not.

6 Second, in its prehearing conference statement,  
7 Appellant seeks interest relief from the time of the  
8 appeal to the Office of Tax Appeals until the hearing date  
9 of December 9, 2025. Again, Appellant has failed to  
10 identify any unreasonable error or delay by the  
11 Department's employee during this secondary period.  
12 Moreover, the Department notes that the Appellant was  
13 provided with various letters which specifically stated  
14 that interest would keep accruing during the appeals  
15 process. These letters are: Number one, Department's  
16 letter dated May 29, 2019, Exhibit A, page 113; second,  
17 the Department's letter dated May 28, 2020, Exhibit A,  
18 page 109; third, the Department's letter dated  
19 December 13, 2023, Exhibit A, page 2; fourth, the Office  
20 of Tax Appeals letter dated August 1, 2024. After  
21 reviewing all available documents, the Department  
22 determined that it has followed appropriate timelines, and  
23 there were no unreasonable delays by the Department. No  
24 adjustments are warranted for this contention.

25 Based on the foregoing, the Department has fully

1 explained the basis for the deficiency and proved that the  
2 determination was reasonable based on the available books  
3 and records. Further, the Department has used approved  
4 audit methods to determine the deficiency. Therefore,  
5 based on the evidence presented, the Department request  
6 that Appellant's appeal be denied.

7 This concludes my presentation, and I'm available  
8 to answer any question you may have.

9 Thank you.

10 JUDGE WONG: Thank you, Mr. Sharma.

11 I'll now turn it over to my co-panelists to see  
12 if they have any questions for CDTFA, beginning with  
13 Judge Long.

14 JUDGE LONG: This is Judge Long. I just have a  
15 couple of questions regarding the May 28th, 2021,  
16 conference notice -- the appeals conference notice. Is  
17 that in record anywhere?

18 MR. SHARMA: This is Ravinder Sharma. No, it is  
19 not part of the exhibit we submitted, but that's a letter  
20 we have. If the panel needs, we can provide a copy of  
21 that.

22 JUDGE LONG: Okay. Do you have the June 9th as  
23 well -- the June 9th response?

24 MR. SHARMA: June 9th is attached, signed by the  
25 Appellant, as exhibit -- page 5657. Let me correct to

1 make sure. Yeah. It's page 5657 that is attached as  
2 Exhibit F, which is signed by Appellant's attorney.

3 JUDGE LONG: Okay. Thank you. I'll leave it.  
4 I'll defer to Judge Wong as to whether we would like to  
5 have a copy of the May notice in the record. I have no  
6 further questions. Thank you.

7 JUDGE WONG: Thank you, Judge Long.

8 I'll turn it over to Judge Ridenour for any  
9 questions for CDTFA.

10 THE HEARING REPORTER: Judge Ridenour, I cannot  
11 hear you.

12 JUDGE RIDENOUR: I will hold off my question.

13 JUDGE WONG: It sounded a little garbled. Is  
14 there a microphone issue?

15 JUDGE RIDENOUR: Can you hear me now, Hearing  
16 Reporter?

17 JUDGE WONG: Very faintly.

18 JUDGE RIDENOUR: How about now? Can you hear me  
19 a little bit more?

20 JUDGE WONG: A little bit more, yes.

21 JUDGE RIDENOUR: I will hold off my question.

22 JUDGE WONG: Okay. All right. So I just want to  
23 give CDTFA an opportunity as far as my questions. Is  
24 there any -- I'll just give CDTFA an opportunity to  
25 address Mr. Schniper's presentation. Did you have any

1 response or commentary about that, CDTFA?

2 MR. SHARMA: This is Ravinder Sharma. We don't  
3 have any reasonable document of -- I mean, supporting  
4 documents for all the calculation which Appellant provided  
5 during the presentation. The only thing the Department  
6 can add at this time is, this audit is based on the actual  
7 purchases based on the production detail reports, and the  
8 phones are assessed at cost. These are Appellant's own  
9 records, which provided the total purchases. And as of  
10 now, Appellant has not provided anything to refute that  
11 the total audited purchase of \$9.4 million are not  
12 correct, or audited markup of 454 percent is not correct,  
13 or the percentage of taxable accessories of 4 percent is  
14 not correct. And without looking at the actual documents  
15 supporting those calculations, Department cannot provide  
16 any further explanation at this time. Thank you.

17 JUDGE WONG: Okay. Thank you, CDTFA.

18 All right. Let me double check with  
19 Judge Ridenour to see if her microphone issues may have  
20 been resolved. Can we just do a quick mic check?

21 Hello?

22 JUDGE RIDENOUR: Hello.

23 JUDGE WONG: Okay. Not great. Okay.

24 Judge Ridenour has provided -- has typed out a  
25 question. And let me just see it, and then I will relay

1 it to CDTFA. Okay.

2 So, CDTFA, did you have a response to  
3 Mr. Schniper and Appellant's questioning whether the  
4 reasonableness of using one month, April 2017, for the  
5 liability period? So I think using that as a test period,  
6 I believe, did you have a response to that?

7 Hold on. Let me --

8 MR. SHARMA: This is -- this is Ravinder Sharma.  
9 Using a block sample of one month is an accepted audited  
10 procedure. It's approved, and it's done by the Department  
11 in all the cases. The copy of the test and everything was  
12 provided to the Appellant. And as of now, Appellant has  
13 not provided anything to refute those numbers or refute  
14 the audit findings. There were many opportunities given  
15 to the Appellant during the audit procedures and appeal  
16 procedures to provide or select another month if they want  
17 to and show that the markup was lower or find errors in  
18 the markup calculated by the Department for April 2017,  
19 the test period.

20 JUDGE WONG: Okay. Thank you very much, CDTFA.

21 All right. So with that, we will now turn back  
22 to Appellants for a final time for their rebuttal and  
23 closing. So I will turn it over to Mr. Yaghmai, and if he  
24 wants -- I'm not sure if Mr. Schniper will be also  
25 providing anything at closing. But just a reminder that

1 Mr. Schniper is still under oath if he does. You have  
2 about 30 minutes. Thank you.

3

4 REDIRECT EXAMINATION

5 BY MR. YAGHMAI:

6 Q Mr. Schniper, can you hear? You're on mute right  
7 now?

8                   Okay. You're off mute now. Did you hear what  
9 Mr. Sharma presented to the Court?

10 A Yes, I did.

11 Q Do you have anything in response with regard --  
12 let's start with -- I mean, you're familiar with the  
13 markup in general in the cell phone industry, aren't  
14 you --

15 A Yes, I am.

16 Q -- based on you're experience that you -- you  
17 testified as 453 percent, the generally accepted markup in  
18 the cell phone industry?

19 A It's not conceivable.

20 Q And tell us why?

21           A    Basically, because it's such a competitive  
22 market, you cannot overprice a product. You're trying to  
23 retain a customer; that big picture being to retain --  
24 retain a continued communications customer. You can't  
25 take advantage of the situation. And like I said, there

1 are too many competitors out there that sell the same  
2 products, including Walmarts and everything else. There's  
3 no way that the -- that the customer is not savvy enough  
4 to realize that they're overpaying a tremendous amount  
5 money for -- for accessories.

6 Basically, the acceptance of the 453.88 percent  
7 is -- cannot be justified. Once again, the formula,  
8 whether it's stated that it is acceptable or not, makes  
9 little difference to me. Common sense is what makes a  
10 difference to me. The fact that there were a purchase  
11 with the total amount of sales. Now, I did not question  
12 the sales. But I question the item for the formula, for  
13 the markup. During that period, April 17 was coming to  
14 the end of tax season. So basically, the stores were well  
15 stocked from mid-January through the end of March because  
16 of tax refunds.

17 If you go back one month prior to the bank  
18 statement, from the bank account that she supposedly used,  
19 and then I have to refer back to the other bank account  
20 that was not used, I find several entries, online  
21 purchases from overseas for supplies. I find a dot-com  
22 company in California that they purchased from. And I  
23 also see extensive expenses with the American Express card  
24 and Chase credit card, which a lot of that was used to  
25 settle accounts or was used to purchase.

1                   So, basically, on the same token that being in  
2 this picture short times as I have, I've never seen  
3 anything that came across that basically asked us to  
4 support any additional purchases. This -- this became  
5 a -- almost an obsession with the auditor, going from a  
6 123 percent national average to 453 percent. And that --

7                   Q    So in her actual audit -- well, in her actual  
8 audit, she has in there that the national average was  
9 123 percent; right?

10                  A    That's correct.

11                  Q    And then she isolates on this one month, and  
12 you've already explained the lack of the consideration of  
13 the beginning and ending inventory. Let me ask you this.  
14 With regards to Mr. Sharma saying that you haven't -- you  
15 know, with regards to your calculations. I mean, that was  
16 a summary of your calculations in the document that we  
17 looked at; correct?

18                  A    That is correct.

19                  Q    And that's just based on the exhibits that are  
20 already in the evidence before this court; correct?

21                  A    That is correct.

22                  Q    So it's not some new documents you made up or  
23 relied upon. It is already in the record; right?

24                  A    It is already in the record, and it is acceptable  
25 practice for accounting.

1           Q    All right.  Is there anything else that you  
2    think -- I want to make sure that I'm not missing anything  
3    that you want to address that Mr. Sharma said?

4           A    I'm still questioning some of the numbers, where  
5    they come from as far as sales, purchases, and so forth.  
6    I'm not armed today to be able to go over these numbers  
7    that Mr. Sharma provided.  But some of those were not --  
8    or -- or don't seem to be correct.  Now, he's going  
9    strictly off the audit report, which is --

10          Q    Sure.

11          A    -- basically, just a verbatim of what's already  
12    been declared by the -- by -- at this point today, the  
13    Department has not yet shown anything that supports  
14    anything more than the verbiage that went into the final  
15    audit report.

16          Q    All right.  Do you have anything else you want  
17    the Board to consider?

18          A    I am going to honor the request for invoices, if  
19    it's acceptable by the Court -- and I'll -- I'll monitor  
20    those through you -- basically, to prove that there is no  
21    such thing as a \$0.01 item, and, basically, to disprove  
22    the markup situation.

23          Q    Okay.  Anything --

24           JUDGE WONG:  Let me just jump in here -- let me  
25    just jump in here really quick about that.  Yes, the panel

1 will be requesting documents from both parties. I will  
2 cover that after the presentations. I will -- we'll get  
3 into that later. Thank you.

4 MR. YAGHMAI: Okay. Thank you, Your Honor.

5 Do you have anything else, Mr. Schniper?

6 MR. SCHNIPER: Not at this time, I don't.

7 MR. YAGHMAI: Okay. You can go ahead and mute  
8 your microphone. That would be great.

9 MR. SCHNIPER: I'll go ahead and thank everyone  
10 here. I -- I appreciate the time that's been given to me.

11 MR. YAGHMAI: Can he be excused, Judge Wong?

12 Or --

13 JUDGE WONG: Certainly. Yes. If -- if he --

14 MR. YAGHMAI: Okay.

15 JUDGE WONG: -- need be. Yes. I will -- any  
16 request from the panel, I will direct to you, and then you  
17 could channel that to Mr. Schniper as needed. But we  
18 thank Mr. Schniper for his testimony today. Thank you.

19 MR. YAGHMAI: Thank you.

20 MR. SCHNIPER: Thank you, Judge Wong.

21 JUDGE WONG: Anything else, Mr. Yaghmai, in  
22 closing?

23 MR. YAGHMAI: I don't have anything as far as  
24 testimony, just a brief closing.

25 ///

## CLOSING STATEMENT

2 MR. YAGHMAI: I mean, I know we've been here a  
3 while. There's a couple of things I want to point out.  
4 And I understand the process, and we're not in a court of  
5 law, you know. And I've been through these sales tax  
6 issues in a couple of other states. But all Mr. Sharma  
7 did was -- as Mr. Schniper pointed out -- was just reread  
8 the audit. And I would ask the Board to give that towards  
9 the weight of the testimony. We have presented a live  
10 qualified witness subject to cross-examination, which they  
11 undertook no cross-examination, which in my view, is an  
12 acceptance of what Mr. Schniper said.

I mean, if there was some contradiction of what he said, or some impeachment of it, he would have been cross-examined. But the fact that they asked zero questions, I think the Board should take the weight of the testimony. We have, basically, hearsay within hearsay within hearsay, and I understand it's admissible. We're not in a court. But what they had presented is just an audit document that's replete with hearsay. Quite frankly, I'm surprised they didn't present Ms. Davis' testimony to be subject to her credibility or methodology or anything in front of this Board that would be subject to cross-examination. She has never been subject to cross-examination under oath or any -- or not under oath.

1                   And so the idea that they're just going to reread  
2 the findings of an audit and not put their witness up  
3 subject to cross-examination, while we presented expert  
4 who is subject to cross-examination should go towards the  
5 weight of the decision. And I understand this might be  
6 the normal process, but still in the due process of the  
7 whole situation, I think I would request the Board to take  
8 that into consideration because there's nothing to dispute  
9 what Mr. Schniper said that was backed up by the numbers  
10 that we underreported in 2015. I think we can all agree  
11 upon that.

12                  The amount of it we disagree upon. But they  
13 didn't cross-examine him on how he came up with his  
14 figures. I mean, he told us how he came up with the  
15 figures in 2015. He conceded it. He didn't say, oh, we  
16 don't owe a penny, you know, because that's not true. And  
17 so his numbers, as far as us owing \$100,545 as far as  
18 before this Board in live testimony, it's not being  
19 contradicted. I mean, I don't know what else we can do,  
20 because he relied upon the documents that are already in  
21 evidence and that we supplemented that were received  
22 without objection.

23                  So if you take that testimony that has not been  
24 challenged, I think we've overcome whatever presumption we  
25 have to defeat or whatever that we have the burden, if we

1 have the burden to convince this Board, because they got  
2 nothing to contradict it with regards to the factual  
3 testimony and the audit; because it was consistent. I  
4 mean, what he said was logical about this one month that  
5 was selected that they say -- to try to use it across the  
6 board. It was not considered the tax season month about  
7 what the inventory was. I mean, it's just an error on  
8 it -- the face of it. If you are not considering the cost  
9 of goods or the beginning or ending inventory of  
10 particular month, if you're going to just apply it across  
11 the board of a 48-month audit or how -- however many  
12 months the audit was to apply it. And so, they may say  
13 it's acceptable, and maybe it is acceptable. But in this  
14 situation, the math doesn't bear out for the reason that  
15 Mr. Schniper testified to.

16 The second thing with regards to Mr. Schniper,  
17 they have nothing to contradict. I mean, they had the  
18 ability to get in touch with Cricket, AT&T, whoever. I  
19 mean, the testimony as it stand now is that the RQ system  
20 was fixed, and we have the numbers to bear that out. He  
21 went through painstaking detail of how the sales tax that  
22 was paid jumped up by 300, 400 percent starting in Q2 of  
23 2016 when the RQ system was remedied. I mean, that's not  
24 in dispute. They're in the record about the amount of  
25 sales tax that we actually paid of how they were small

1 amounts in 2015, and then they quadrupled, tripled  
2 quadrupled starting Q2 of 2026. That confirms and  
3 verifies and corroborates Mr. Sniper's testimony, which  
4 has not been challenged. And when you take that into  
5 consideration, and all that the Board has -- that the  
6 CDTFA has presented is just a recitation of what the  
7 auditor, that's not here, found in her particular audit.

8 With regards to the abatement of interest, they  
9 now sort of say, well, I signed this -- you know, and now  
10 I do see it the record. I didn't see it before -- signed  
11 some document saying we wanted in-person, but I would  
12 still argue it's an unreasonable action. You can't  
13 offer -- I mean, this goes towards the other argument that  
14 we presented about estoppel. We presented that in the --  
15 in our presentation, in our preconference hearing that,  
16 you know, the elements of estoppel by the government is  
17 that they, you know, superior to the knowledge. They  
18 can't offer something that doesn't exist. They're saying,  
19 well, we had COVID restrictions and therefore -- then how  
20 you offer something that doesn't exist? Again, in 2021,  
21 you know, in courts across the country -- I understand  
22 California was a different situation, but there's courts  
23 going on across the country. We're here in Alabama. You  
24 know, I'm going to different courts across the country.

25 But to suggest that, oh, we're excused because

1       we've offered that something doesn't exist is the  
2       definition of unreasonable no matter how you break the  
3       timeframe down; whether you start the trigger date of July  
4       2nd, 2020, or you bring it later on after this June 9th  
5       letter, or you bring it later on to -- up to March 23rd of  
6       2023, to say well, we didn't have any duty to notify  
7       anybody, or we didn't have any duty to offer something  
8       that doesn't exist. I mean, I think that violates the  
9       California, you know, Taxpayer's Bill of Rights. I think  
10      it violates Goren. And I think that nothing that they had  
11      said has stated otherwise.

12           Like in Ms. Do's appeals hearing denial, she just  
13      said it was not unreasonable. But to suggest that we had  
14      some sort of duty to not select something that didn't  
15      exist, and that is our position there. Because again,  
16      we're talking about hundreds and hundreds of thousands of  
17      dollars that they say we're taking the -- you know, it's  
18      not a penalty, but we're utilizing. We're not utilizing.  
19      We don't have it. And so, the purpose of interest is to  
20      not give us a windfall while the appeal is going on.  
21      That -- that's not occurring here. I mean, I think the  
22      testimony is undisputed about the financial condition of  
23      the company.

24           So to penalize a company for selecting something  
25      that's offered to them, and then they say, well, never

1       mind, we couldn't really offer it, is the definition of  
2       unreasonable regardless of COVID restrictions or not COVID  
3       restrictions. All they had to do is say, well, you know,  
4       we're never going to offer it; or you need to switch, like  
5       we did here today. And I think the only evidence  
6       presented to this Board is that the taxpayer made an error  
7       in 2015 based on Cricket, but we accept the  
8       responsibility. That's why we didn't get penalized with  
9       negligence. If we really had a 1,372 percent error in the  
10       first quarter of 2016, that Ms. Davis contends in her  
11       audit that is solely relied upon, I'm sure we would have  
12       gotten hit with negligence, fraud, and everything else.

13           I've never heard of any taxing authority saying  
14       that you underreported by over 1,300 percent. And this  
15       just goes to the totality of the circumstances in the big  
16       picture. The taxpayer is trying to do right. We're not  
17       hiding from anything. We're not -- not withholding trust  
18       tax. We're not doing anything. But we got caught in a  
19       situation with Cricket. That's our responsibility. We're  
20       trying to resolve it. We're trying to sit down and see if  
21       we can resolve this thing, you know, old school in person,  
22       and then we get penalized for it. And again, we're  
23       hanging on by a thread, and this is the absolute business  
24       death penalty. And we respectfully request, based on  
25       Mr. Schniper's testimony and arguments that we made, that

1       the base tax gets reduced -- it's at \$100,540 -- and that  
2       the interest be abated as the Board sees fit for whatever  
3       period, because there is so many different timeframes.

4               Thank you.

5               JUDGE WONG: All right. Thank you, Mr. Yaghmai.

6               All right. For the final time I will turn to my  
7       co-panelists to see if they have any final questions for  
8       either party, beginning with Judge Long.

9               JUDGE LONG: No questions. Thank you.

10              JUDGE WONG: All right. And I will now turn to  
11       Judge Ridenour for any final questions.

12              JUDGE RIDENOUR: Can you guys hear me?

13              JUDGE WONG: Yes.

14              MR. YAGHMAI: Yes, Your Honor.

15              JUDGE RIDENOUR: I wanted to get a better  
16       understanding when you say they offered something that  
17       didn't exist. Eventually, you were offered an in-person  
18       hearing, no?

19              MR. YAGHMAI: Eventually, but I think in -- in  
20       the -- they're the -- well, that's true, number one.  
21       Obviously, we were offered an in-person hearing at some  
22       point. But to suggest that we had the duty to make sure  
23       that it wasn't going to exist for two years is -- is not  
24       the taxpayer's responsibility. I -- I don't think for an  
25       appeals conference that the taxpayer should sit there and

1 say, okay, it's our responsibility to make sure this  
2 occurs. And that's why I'm saying, to offer something  
3 that didn't exist at the time. It didn't exist the next  
4 year, apparently. I mean, by 2023, you know, the entire  
5 country was open in 2022.

6 JUDGE RIDENOUR: Do you have any correspondence  
7 from you or your client between June 9th, 2021, and  
8 February 3rd, 2023, inquiring to the status of the  
9 hearing -- I mean, the conference.

10 MR. YAGHMAI: I don't know off the top of my  
11 head, to be honest with you. It's not in the record, if  
12 that's it. If there maybe -- I just don't -- I can't  
13 answer it one way or the other.

14 JUDGE RIDENOUR: Okay. Thank you. No further  
15 questions.

16 MR. YAGHMAI: Thank you.

17 JUDGE WONG: All right. Thank you.

18 All right. I also did not have any final  
19 questions for either party. But as I mentioned earlier --  
20 alluded to earlier, the panel does have some requests of  
21 the parties, mainly documents. So I'm just going to go  
22 over that right now. From CDTFA -- and I'm going to issue  
23 a post-hearing order specifying exactly what these  
24 documents are, and I will be laying out some deadlines for  
25 that.

1                   But from CDTFA, I believe we wanted a  
2 May 21st, 2021, conference notice. Let's see. Double  
3 check.

4                   Judge Long, is that correct, May 21st, 2021,  
5 conference?

6                   JUDGE LONG: May 28 --

7                   JUDGE WONG: May 28.

8                   JUDGE LONG: -- 2021.

9                   JUDGE WONG: Thank you. Yes, May 28, 2021,  
10 conference notes from CDTFA.

11                  And then from Appellant's side, we were looking  
12 for substantiation as far as the cost of accessories that  
13 was Mr. Schniper had alluded to earlier. And also -- so  
14 Mr. Schniper was also testifying as a capacity as a wit --  
15 expert witness. Is that correct, Mr. Yaghmai?

16                  MR. YAGHMAI: Yes, Your Honor.

17                  JUDGE WONG: Okay. Under the rules for tax  
18 appeals, we would like to request a summary of his  
19 credentials, as well as a brief summary of his testimony.  
20 I had not realized, prior to this hearing, that he would  
21 be testifying in the capacity of an expert witness. So we  
22 just request that from him.

23                  And then just to clarify for CDTFA, perhaps we  
24 would request all correspondence regarding scheduling a  
25 hearing in this case. And I will list all of these items

1 out for both parties in my post-hearing order, which I  
2 will hopefully will issue later this week or early next  
3 week.

4 As far as deadlines go, I realize there's a  
5 couple of holidays coming up.

6 Mr. Yaghmai, would 45 days be adequate for you to  
7 provide those requested documents?

8 MR. YAGHMAI: Yeah. I'm sorry. I know it's  
9 going to be in the orders. A summary of credentials, and  
10 what was the second? Summary of testimony or --

11 JUDGE WONG: Yes. It's basically a summary of  
12 his credentials and a summary of and nature of his  
13 testimony.

14 MR. YAGHMAI: Yeah. And 45 days would be more  
15 than sufficient, Your Honor.

16 JUDGE WONG: Okay. So it will be 45 days from  
17 when this issue -- order is issued. So just be looking  
18 out for that. And then we'll turn it over to CDTFA for a  
19 response, plus the correspondence, 30 days. I'll give  
20 you, CDTFA, 30 days after Mr. Yaghmai has provided his  
21 documentation. And then we'll give -- I'll say right now,  
22 we'll give Mr. Yaghmai the last word for final response,  
23 tentatively. But we'll lay that out in the order.

24 So, Mr. Yaghmai, you'll have 45 days.

25 CDTFA, 30 days after that.

1                   And then perhaps you'll have 30 days for the  
2 final response.

3                   Does that make sense?

4                   MR. YAGHMAI: Yes, Your Honor.

5                   JUDGE WONG: Hopefully it'll make sense after I  
6 issue the order. But anyway, so be on the lookout for  
7 that. Okay.

8                   So that will conclude the hearing.

9                   The evidentiary hearing -- record is not closed.  
10                  We're going to keep that open. And then after we receive  
11                  all the responses, then we'll close the record, and the  
12                  panel will decide the case and issue its opinion 100 days  
13                  from when the record closes sometime in the future.

14                  All right. So I appreciate both sides for your  
15                  presentation. I appreciate Mr. Schniper's witness  
16                  testimony. I thank both sides on behalf of the panel.

17                  This oral hearing for this case is now adjourned.

18                  There are no more hearings for today or this week  
19                  or probably for this year. So that's it. Thank you very  
20                  much, everyone.

21                  We're off the record, please.

22                  Thank you.

23                  (Proceedings concluded at 3:18 p.m.)

HEARING REPORTER'S CERTIFICATE

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

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

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

14 I have hereunto subscribed my name this 29th day  
15 of January, 2026.

ERNALYN M. ALONZO  
HEARING REPORTER