

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.)
)
)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Wednesday, December 17, 2025

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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

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APPEARANCES:

Panel Lead: ALJ ANDREW WONG

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

For the Appellant: STEVE SCHNIPER
GREGORY YAGHMAI

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

RAVINDER SHARMA
CHRISTOPHER BROOKS
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibit 1 and supplemental documents were received into evidence at page 8.)

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

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California; Wednesday, December 17, 2025

1:01 p.m.

JUDGE WONG: Let us go on the record.

This is Appeal of Sukar and Sons of California before the Office of Tax Appeals, OTA Case No. 240816985. It is Wednesday, December 17th, 2025, and the time is 1:01 p.m. We are holding this hearing online via Zoom. I'm Andrew Wong, the lead member of the three-person panel hearing this case, and with me are Administrative Law Judges Sheriene Ridenour and Keith Long.

Will the individuals representing Appellants, Sukar and Sons of California please introduce yourselves.

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

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

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

JUDGE WONG: Okay. Thank you.

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

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.

9 All right. So we will be going over the issues
10 that we will be covering; going over exhibits, witnesses,
11 and then the time allocation before getting into the
12 presentations. We're considering two issues today. Issue
13 No. 1 is whether further adjustments to the measure of
14 unreported taxable sales are warranted; and Issue No. 2 is
15 whether relief of interest is warranted.

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 ///

1 (Appellant's Exhibit 1 and supplemental
2 documents were received into evidence by
3 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.

9 JUDGE WONG: And, Mr. Yaghmai, did you have any
10 objections to CDTFA's proposed exhibits?

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.

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Sukar is a franchisee of Cricket cell phones. They are prepaid cell phones that customers come that they will buy phones, accessories. And another major thing they do is make payments there because these phones are prepaid in the sense of if a customer doesn't pay their bill by the first of the month, Cricket automatically cuts it off. So customers who will come pay cash in the store or make other forms of payment, which Sukar solely passes on to Cricket. And there was a lot of revenue generated that way as they pass through, as you will have seen in some of the exhibits, the bank statements submitted by both sides. They're referred to as "TIO" is the acronym, T-I-O, payments. And so, you will see a lot of TIO payments that are a significant amount of money.

24

25

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

BY MR. YAGHMAI:

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

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

Q And, Mr. Schniper, are you accountant?

A I am.

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

A Yes, sir. I am.

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

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

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

A That's correct.

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

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

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

A Yes, I am.

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

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 s 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.

1 The situation with markup accelerated to an
2 unbelievable, uncontrollable step whereas, the --
3 eventually, that it was decided by Ms. Davis that the
4 markup on accessories was 453.88 percent. She based that
5 on the fact that she only analyzed one month's bank
6 statement, April of 2017. She did not analyze the account
7 comparable -- or I'm sorry -- the second account on
8 this -- on this company that basically was responsible for
9 all of the payments and withdrawals. So somehow or
10 another, she found a purchase in April of 2017 of \$8,997
11 for accessories.

12 She discerned from her downloads that she had
13 accessed nearly 5,000 pages of the 5,700 that were
14 submitted or dedicated to line items of -- of each
15 particular sale of item and the supposed cost, list price,
16 selling price, et cetera. And from that, she was able to
17 come up with a number, total sales for accessories in that
18 month of \$40,833, which shows that profitability, \$31,836,
19 which comes up with 453 percent profit.

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

1 she extrapolated with not considering beginning inventory
2 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 list 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.

2 Judge Ridenour, do you have any questions for
3 either Mr. Yaghmai or Mr. Schniper?

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?

15 MR. YAGHMAI: Well, we had -- I mean, I didn't
16 realize it was going to be four years or three years. I
17 mean, I understand COVID was going on in different stages
18 and different locations. I mean, it was not some
19 discussion. I mean, I even followed -- I believe I
20 followed up with them with another letter June 9th of
21 2021. I don't think COVID protocols were in effect as of
22 June 9th of 2021. Certainly, from March 19th of 2021,
23 through March 21st of 2023, which the CDTFA acknowledges,
24 was under the control of the Appeals Bureau. There wasn't
25 any COVID protocols that were -- it was never presented,

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 the 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.

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And we're off the record. Thank you.

(There is a pause in the proceedings.)

JUDGE WONG: Let us go back on the record.

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

MR. YAGHMAI: Yes, sir.

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

MR. YAGHMAI: Okay.

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

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

JUDGE WONG: Yes.

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

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 as 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.

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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. Shniper'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.)
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I, Ernalyne M. Alonzo, Hearing Reporter in and for
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proceedings taken at that time.

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

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

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