

1 BEFORE THE OFFICE OF TAX APPEALS

2 STATE OF CALIFORNIA

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5 In the Matter of the Appeal of:)
6 M. MUHAREB,)
7) OTA NO. 250421877
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15 TRANSCRIPT OF PROCEEDINGS, taken at
16 400 R Street, Sacramento, California, commencing
17 at 10:14 a.m. and concluding at 11:50 a.m.
18 on Wednesday, February 18, 2026, reported by
19 Christina L. Rodriguez, CSR No. 14898, a Certified
20 Shorthand Reporter in and for the State of California.

1 APPEARANCES:

2
3 Panel Lead: ALJ SUZANNE B. BROWN

4
5 For the Appellant: MICHAEL MUHAREB
6 RITA LAVELLE

7
8 For the Respondent: NALAN SAMARAWICKREMA
9 JASON PARKER
10 CHRISTOPHER BROOKS

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1 through 5 were received on page 9)

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1 Sacramento, California; Wednesday, February 18, 2026

2 10:14 a.m.

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4
5 JUDGE BROWN: Good morning. Welcome to the
6 Office of Tax Appeals. We are on the record in the
7 appeal of Muhareb. This is OTA Case No. 250421877.
8 Today is Wednesday, February 18th, it is approximately
9 10:14 a.m.

10 I'm Administrative Law Judge Suzanne Brown,
11 I'm the sole administrative law judge or ALJ -- will be
12 conducting the hearing for this case. This case is
13 being heard by a single administrative law judge under
14 the Office of Tax Appeals Small Case Program.

15 I will start the hearing by asking each of the
16 participants to identify themselves each for the record.

17 And I will start with the California
18 Department of Tax and Fee Administration or CDTFA can
19 identify themselves, please.

20 MR. SAMARAWICKREMA: This is Nalan
21 Samarawickrema, representing for CDTFA.

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

24 MR. BROOKS: Good morning. Christopher
25 Brooks, Attorney for CDTFA.

1 JUDGE BROWN: Thank you.

2 And if each of the representatives for
3 Appellant can identify themselves, please.

4 MR. MUHAREB: Michael Muhareb, Appellant.

5 MS. LAVELLE: Rita Lavelle, representative.

6 JUDGE BROWN: I'll just note, I think you
7 don't have to hold down the button once you push it, the
8 green light should turn on, and then you can have your
9 hands available for taking notes or something.

10 MS. LAVELLE: Thank you.

11 JUDGE BROWN: Thank you. Thank you, everyone.

12 This hearing is before the Office of Tax
13 Appeals, which I may refer to as OTA. OTA is not a
14 court, but is an independent appeals body. OTA is
15 staffed by tax experts and independent from the state's
16 tax agencies, including independent from the California
17 Department of Tax and Fee Administration, which I may
18 refer to as CDTFA.

19 Because the Office of Tax Appeals is a
20 separate agency from CDTFA, arguments in evidence that
21 were previously submitted to CDTFA are not necessarily
22 part of the record before OTA unless they had provided
23 to us directly.

24 OTA's written opinion for this appeal will be
25 based upon the briefs the parties have submitted to OTA,

1 the exhibits that will be admitted into evidence today,
2 and the arguments presented at the the hearing today.
3 As a reminder, I do not engage in what's called ex parte
4 communications, meaning that I don't speak to one party
5 without the other party present.

6 We had a prehearing conference in this matter
7 back in January, and I issued prehearing conference
8 minutes and orders dated January 22nd. And as we
9 discussed at the prehearing conference, the issue for
10 the hearing today is whether reductions are warranted to
11 the measure of unreported taxable sales.

12 And Appellant confirmed that he is disputing
13 both audit items. One is the measure of -- the measure
14 based on a credit card sales ratio, and one is a measure
15 between differences between recorded and reported sales.

16 First, I'll turn to Appellant -- and when I
17 say Appellant, I recognize that Mr. Muhareb is the
18 Appellant, but his representative is also here, so I
19 will leave it up to you as who wants to respond to any
20 of my questions.

21 I will confirm that that is the issue for the
22 hearing today as your understanding of the issue?

23 MR. MUHAREB: Yes.

24 JUDGE BROWN: Thank you.

25 And I will confirm with CDTFA. That is

1 understanding of the hearing issue today?

2 MR. SAMARAWICKREMA: Yes, Judge.

3 JUDGE BROWN: Thank you.

4 All right. Now, I'm going to just briefly
5 discuss what the exhibits are, and I'm going to admit
6 the exhibits.

7 First, we had Appellant timely submitted five
8 exhibits. They were previously marked with letters
9 A through E, but pursuant to our regulations, we have
10 the Appellant number their exhibits because CDTFA has
11 their exhibits marked with letters, so I renumbered them
12 as one through five. But we all know what we're talking
13 about -- the same documents.

14 I did receive two additional pages today, and
15 I assume CDTFA received them, also. And I understood
16 what happened, it looked to me that these were -- I'm
17 going to pull them out, hold on. I received two
18 additional pages that Appellant brought for the hearing,
19 but these have been previously submitted as part of
20 Appellant's brief, from June 27th, 2025, and I see what
21 appeared -- what I think happened is that when Appellant
22 submitted this brief as Appellant's Exhibit E or Exhibit
23 5, these pages somehow got omitted, because they were
24 blank, but we already had them as part of the record as
25 part of Appellant's briefing, and so I don't have any

1 concerns. I already read them previously. These are
2 not nothing new.

3 CDTFA, I will confirm. I don't anticipate
4 you're going to have any objection to these pages being
5 entered as part of Appellant's Exhibit 5?

6 MR. SAMARAWICKREMA: No, Judge.

7 JUDGE BROWN: Thank you very much.

8 And then I'm going to turn -- I'm just going
9 to say, we have Appellant's Exhibit 1 through 5.

10 CDTFA, you did not previously raise any
11 objection to these documents being admitted into
12 evidence; is that correct? That you still have no
13 objection to Appellant's Exhibits 1 to 5 being admitted?

14 MR. SAMARAWICKREMA: Yeah. No objection,
15 Your Honor.

16 JUDGE BROWN: Thank you.

17 Appellant's Exhibit 1 to 5 are admitted into
18 the record.

19 (Appellant's Exhibits 1 through 5 were
20 admitted into evidence.)

21 JUDGE BROWN: And next, I'm going to turn to
22 CDTFA's Exhibits. CDTFA timely submitted exhibits A
23 through J. Appellant did not identify any objection to
24 any of these documents being admitted into the record.

25 And I will confirm. Appellant has no

1 objection to these being admitted; correct?

2 MR. MUHAREB: Yeah. No objection.

3 JUDGE BROWN: I will remind you --

4 MR. MUHAREB: No.

5 JUDGE BROWN: Thank you.

6 CDTFA's Exhibits A through J are admitted into
7 evidence.

8 (Department's Exhibits A through J were
9 admitted into evidence.)

10 JUDGE BROWN: And in terms of the witnesses
11 that we are going to hear today, CDTFA indicated it's
12 not calling any witnesses. And we discussed during the
13 prehearing conference that Appellant may call
14 Mr. Muhareb to testify as a witness, but we -- and I
15 believe I explained the difference between making
16 arguments and testifying under oath.

17 I think we talked about this at the prehearing
18 conference -- you have a microphone as well, Ms.
19 Lavelle.

20 MS. LAVELLE: I don't recall that. I'm sorry.

21 JUDGE BROWN: Okay. I will revisit it.

22 Essentially, the question is whether Mr. Muhareb wants
23 to just make argument -- which is what CDTFA will be
24 doing -- must be pointing to documents and telling --
25 you know, making arguments about what I'm supposed to

1 take from the documents, what they mean, what weight I
2 should give to them; verses testifying under penalty of
3 perjury means that you're also providing -- Mr. Muhareb
4 would also be provided evidence about things that
5 happened during the audit.

6 Let's say I can take as evidence when I'm
7 considering -- making my findings. It is up to Mr.
8 Muhareb whether he wants to testify or not. I
9 understand the difference between testimony and
10 argument, so if part of his testimony includes argument,
11 I know that that's just argument. Like, if you're
12 arguing about, say, what the audit manual means, I'm not
13 considering his testimony under oath in that way.
14 That's just your understanding of what the audit manual
15 means -- for one example.

16 MS. LAVELLE: So Your Honor, we would be
17 testifying as well, because we're -- he's -- Mr. Muhareb
18 and myself are going to comment on things that occurred
19 that were not in the exhibits.

20 JUDGE BROWN: I'll suggest, rather than having
21 to lean, why don't you just pull the microphone a little
22 bit closer to you. It should be fine.

23 MS. LAVELLE: Okay. Your Honor, I think that
24 we should be classified as testifying as well, because
25 it's a little bit more than the written submissions.

1 JUDGE BROWN: And Ms. Lavelle, so you're
2 saying that you would like to testify as a witness?

3 MS. LAVELLE: Yes, ma'am. And also I think
4 Mr. Muhareb as well.

5 JUDGE BROWN: I put in my prehearing
6 conference minutes and orders just -- my understanding
7 was that just Mr. Muhareb would be testifying. So I'm
8 going to turn to CDTFA and ask if CDTFA has any
9 objection to both Mr. Muhareb and Ms. Lavelle
10 testifying.

11 MR. SAMARAWICKREMA: No objection, Judge.

12 JUDGE BROWN: Okay. Thank you.

13 Before we begin your presentation, I'm going
14 to swear you both in as witnesses. We'll wait just a
15 minute. I just want to run through a few logistical
16 things, and then we'll start.

17 I'm just going to remind everyone that as we
18 discussed during the prehearing conference and as I put
19 in my prehearing conference minutes and orders the
20 logistics are that Appellant's presentation is first,
21 and then I may have questions because Appellant and
22 Appellant's representative are testifying under oath,
23 CDTFA will be permitted to ask questions.

24 Once we're done with the questions, then CDTFA
25 then has its presentation. Our estimate for Appellant's

1 presentation was up to 45 minutes. You don't have to
2 use all the time; CDTFA's estimate was up to 30 minutes.

3 I may have questions for both parties after
4 I've heard presentations, and then Appellant will have a
5 few minutes for rebuttal, I estimated up to five
6 minutes. And the purpose of the rebuttal is essentially
7 just to address anything that has arisen during CDTFA's
8 presentation or during questions or answers to questions
9 that you didn't have the opportunity to address during
10 your initial presentation.

11 And then I will close the record. And as I
12 said earlier, then you will receive my written opinion
13 within 100 days of the closing of the record today.

14 Does anyone have any questions about anything
15 in the process or have anything that you want to point
16 out that I need to cover that I have not yet covered
17 before we go ahead with Appellant's presentation?

18 If anyone needs a short -- we're not going to
19 break for lunch or anything, we're going to go straight
20 through. But if anyone needs like a five or a 10-minute
21 break at any point during the proceedings, please just
22 say so.

23 If no one has any questions about anything in
24 this process, then I will go ahead and swear in both
25 Ms. Lavelle and Mr. Muhareb.

1 requirement; the second one is the accuracy of using the
2 two updated CDTFA indirect audit method. The first
3 issue is the CDTFA claimed their justification in June
4 27, '25 response, in their brief. Page two, paragraph
5 two, they said Appellant did not provide complete POS
6 and purchase information to the audit -- for the audit
7 period.

8 Consequencely (sic), Department was unable to
9 verify the accuracy for that report -- excuse me,
10 reported sales for the audit period. Given the
11 Appellant records that the sales cannot be verified,
12 direct audit approach or reliance cannot be placed on
13 Appellant record.

14 The Department had to calculate the Appellant
15 taxable sales from available information using incorrect
16 audit method. The Department used Appellant POS summary
17 record and credit card sales to determine the taxable
18 amount as explained below.

19 The justification was not only false, but not
20 been communicated to the Appellants since January 21,
21 when we voluntarily agreed to participate in the CDTFA's
22 statewide compliance outreach program school, who's
23 supposed to be for education program for retail taxpayer
24 filing sales tax and report -- excuse me -- see Exhibit
25 A for letter explaining the program participation.

1 Beginning --

2 JUDGE BROWN: I'm sorry, are you trying to
3 direct me to your Exhibit A? Or so your Exhibit 1?

4 MR. MUHAREB: Yes.

5 JUDGE BROWN: Go ahead.

6 MR. MUHAREB: Beginning February 5th, 2021,
7 the scope program, instead of visiting Old Mill Cafe to
8 review the filing, they demanded numerous records from
9 2018 to 2021, which later became an audit period.

10 I showed in Exhibit C17, which is 317 through
11 C20, I provided extensive points of sales records. We
12 gave them everything they wanted and more. We gave them
13 the Z-tapes from the daily -- the purchase order from
14 the products that we buy for the food and other stuff;
15 the daily and quarterly and annual bank statements.

16 We gave them -- bank has deposit records. We
17 gave them federal and state records to support our COS
18 schedules. These documents complies with every request
19 made by the scope office. And we were even cited an
20 exhibit source documenting that CDTFA's appellant
21 finding in Government Exhibit 85.

22 So, basically, we gave them everything they
23 asked for and some. We made everything available to
24 them, but they needed to do the audit. These exhibits
25 were provided to the Department during February 5th,

1 2021, through April 26th, 2021.

2 On April 26th, 2021, the Department
3 acknowledged and received of these documents as well as
4 a large box of original receipts for the '21 to -- I'm
5 sorry -- 2018 through 2021 period. We gave them the
6 daily tickets that, actually, we write for the
7 customers. We put it in a large box and gave it to
8 them.

9 On April 28, a day later, the Department
10 issued a demand letter -- I'm sorry, e-mail -- not a
11 demand letter -- for payment, \$82,000, within 24 hours
12 of taxes. We have to pay \$82,000 of taxes. That's what
13 they wanted. They claim it was underreported.

14 In addition to the \$78,294, we already paid
15 for that period. The portion from scope, I think his
16 name was Holligan (phonetic), he demanded that I file an
17 amended return for the year 2018 through 2021 periods
18 reflected the 54% cash to credit card ratio that he came
19 up with.

20 With no other support in documents or base for
21 his calculation, on April 30th, Rita, which is my POA,
22 sent a letter to the CDTFA stating that I would not
23 provide the unsupported amended returns or pay the claim
24 that the tax due -- that's when I contacted her, and we
25 started working on this.

1 The scope official responded by saying the
2 program will be handled by the audit department and the
3 CDTFA.

4 The second issue, in early July 2021, we
5 submitted a request for audit closure sighting the scope
6 and professional contact challenging the 54/46 cash
7 ratios was false and requested chronological transmitter
8 records and financial spreadsheet showing inaccurate
9 consistency by scope program.

10 In addition, we provided several industry
11 studies. It shows that -- especially post-COVID
12 period -- that dramatic decline in cash-to-sale, which
13 was 7% to 11% cash verses what it was before. In July
14 2029 (sic), the CDTFA responded by notifying us with a
15 new audit officer, which was CJ -- I forgot his last
16 name.

17 I introduced myself and the previously
18 provided document to him. And also stated that the
19 referral to the audit unit totally unwarranted and
20 punitive.

21 Using these documents as well as supplies, the
22 ones that was supplied through 2023, the auditors
23 completed a side visit and stated that more appropriate
24 internal ratio would be the 2010 CDTFA manual published
25 of 80/20 credit card ratio to cash.

1 The 2023 spreadsheet and record document,
2 which we provided, are cited in Exhibit A through J,
3 which later changed to 1 through -- whatever, 5, 6, in
4 the Department Resources' opening brief.

5 In March 2025, the CDTFA Appeal Bureau
6 rendered a decision that the 2010 published CDTFA ratio
7 was accurately applied, and they demanded that \$12,394
8 be paid to that included interest and late fees. The
9 appeal bureau did not consider the two issues that we
10 raise today and the accuracy of the two legal base for
11 the scope.

12 I don't think the employees at fault is at
13 fault. It's the management and the -- or, actually,
14 it's the handbook that's the problem. They outdated
15 training tools and than they operate procedures. The
16 reason I'm here today, it's not about money. We pay
17 more than that every quarter. It is a challenge for our
18 family's honesty and integrity.

19 One time, the officer, CJ -- I forgot his name
20 -- his last name -- CDTFA officer -- he offered us to
21 settle for \$2,000 off the books.

22 But he said, "Let me take you to our boss."

23 I said, "No."

24 The main thing that my issue is maybe in the
25 old days, there were mistakes made in the '80s and the

1 '90s, but now there's no mistakes. I stand behind it
2 100%. We take the numbers from the computer, and we
3 process it. We don't -- it's too big for me to even
4 play with. We gave them the purchase orders; we gave
5 them the food purchase, you know, which shows a payroll.
6 We gave them everything. And since they couldn't find
7 anything else to pick on, they went to the store itself.
8 And, actually, the visit to the store, it helps my
9 cause, I think.

10 The -- CJ, I'm just going to refer to him as
11 CJ, because I forgot his last name -- the officer. CJ,
12 he went to military duty from August '21 to August '23
13 -- I mean, to March. August of 2021 to March 2023.
14 That's why there's a gap. There's nothing going on.
15 And then when he came back, he did the site visit.

16 The main thing is, you know, the issue is
17 reported verses recorded. I never paid attention to the
18 ratio or the cash or the -- sometimes it's 50% cash,
19 sometimes it's 0% cash. There's a lot of months, which
20 is zero. When you go out to the field, it's
21 actually -- that's the way it is.

22 I -- sometimes I don't even have enough cash
23 in the drawer to give the girls their tips. I have to
24 take it out of petty cash. So it's -- to come to me and
25 say it has to be 80/20, it's -- I'm not in charge of it.

1 That's what I'm trying to say. It's the the way it is.
2 This is the field. Sometimes people pay cash, sometimes
3 they don't. And I also -- I'd like to go over -- I
4 think this was one of the exhibits, the day that he
5 visited.

6 JUDGE BROWN: Do you know which exhibit you're
7 pointing us to?

8 MR. MUHAREB: The calculation on the process
9 of the worksheet for the 3/13/23.

10 JUDGE BROWN: And so this is part of the audit
11 work papers?

12 MR. MUHAREB: Yeah.

13 JUDGE BROWN: Okay. Go ahead.

14 MR. MUHAREB: The way we processed it, they
15 came up with -- even though that -- I'm saying that the
16 ratio is not right -- 80/20 all the time. But on the
17 day he visited, the ratio came out to 9% cash and 90%
18 credit card, which is support -- generally, support the
19 rest of that period. What we do is something that all
20 restaurants do, but I think the CDTFA have no idea.

21 At the end of the day, at the the end of the
22 shift for every day, we take the cash from the drawer,
23 because the server has credit card tips -- like, they
24 have \$200 in credit card tips. I take if out of the
25 cash, and I give it to the servers, and I use the credit

1 card tips instead. I replace it. So it messed up the
2 ratio.

3 If they have 20% cash, came in the store, I
4 give 10% of it. For example, normally it's about 10% to
5 18% of the daily tips. I take the 10% -- for
6 example -- tips, and I give it to the girls, and I use
7 their credit card tips as income -- as taxable income or
8 whatever -- taxable sales. It does not change the
9 total. It changes the ratio. At the end of the day.

10 And that's all.

11 JUDGE BROWN: So that concludes Appellant's
12 presentation?

13 MR. MUHAREB: Do you want to add anything?
14 You can.

15 MS. LAVELLE: Can I?

16 JUDGE BROWN: Yes, you have time.

17

18 PRESENTATION

19 MS. LAVELLE: Thank you, Your Honor.

20 Basically, I think this is just a case of use by the
21 Department of an outdated audit tool to try and prove
22 that Ms. Muhareb did not report all of his taxable
23 sales. That's the dispute.

24 So as Mr. Muhareb walked you through, it's
25 absolutely impossible, given the new required electronic

1 points of sale equipment to basically hide any income.
2 Because the point of sale, the cash register, goes in,
3 it immediately goes over to the bank with the credit
4 cards being reported as the total, and the cash being
5 reported as a total.

6 Where the problem arose, is Mr. Muhareb, as a
7 daily practice in the industry, he takes out the tips
8 from that day, and so it reduces the net cash that is
9 posted to the account. The total never changes. It's
10 just if you look at the total -- oh, thank you. I'm so
11 sorry. I didn't have my green light on.

12 If you look at the total, the dispute is over
13 total credit card sales for the day verses cash sales
14 for the day. The issue is more correctly totaled
15 taxable sales for the day; and of that, what is the
16 ratio credit cards minus tips and cash minus tips. So
17 there's absolutely no difference between the reportable
18 and recordable sales.

19 And I respectfully submit that the Department
20 failed numerous, numerous, numerous times from '21 under
21 the scope program, which I personally believe was abused
22 in this exercise which was supposed to be a voluntarily
23 educational program, and it turned into a confrontation
24 with a scope officer who within 24 hours said that he
25 had reviewed hundreds of receipts, hundreds of pages of

1 bank statements of point of sales documents, et cetera,
2 and established that Mr. Muhareb had underreported his
3 sales for the day because it did not reflect basically a
4 50/50 ratio credit card sales to cash sales. Okay.

5 I point out that that's out of the scope of
6 the work for a scope officer, he gave him 24 hours to
7 pay up or else, and then thirdly, that particular ratio
8 50/50 -- though it's a little bit tweaked a little
9 bit -- percentage off -- is from the CDTFA manual and
10 was used in 2010, and it was for bars. It wasn't for
11 coffee cafe, breakfast cafe, lunch cafes like Mr.
12 Muhareb's business.

13 Regardless of the abuse from the scope
14 officer, where he said we would not pay up -- via an
15 e-mail, not even a formal letter -- he never notified us
16 of what he thought to be discrepancies between the
17 reported amount, and the actual recorded amount. Okay.

18 And he said, "I am referring you to the audit
19 unit."

20 And that's when all the drama began. That was
21 in '21, okay? And like Mr. Muhareb said, '21, I filed a
22 letter saying, basically, just what I discussed with you
23 -- that this was an abuse and it wasn't correct and
24 blah, blah, blah -- and that they had failed to show a
25 reason that an audit was even required. Okay.

1 The response from the Department was that they
2 said, "Well, we're going to appoint an audit officer to
3 try and resolve this whole situation."

4 Rather than disputing their ability to go
5 forward or whatever -- typical of Mr. Muhareb and his
6 family, they're honest. They want to just get this
7 behind us, so they agreed to have CJ to come in and be
8 the auditor. CJ then went on military leave from '21 to
9 early '23, which is when this issue begins again. Okay.

10 During that period of time, there was nothing
11 that occurred. When CJ came back, he introduced
12 himself, like Michael said, and basically was brought up
13 to speed. He hadn't even been given all of the '21
14 documents. But he found them -- communication back and
15 forth between Michael. He even found the box of the
16 original cash receipts. Right?

17 And he said, "Okay. I'm going to do an audit,
18 per my training --" right, "-- and you have to sign an
19 extension -- or I ask you to sign an extension for the
20 audit period."

21 Which we did voluntarily, because we felt we
22 had absolutely nothing to hide and done nothing
23 incorrect o r even wrong. CJ went ahead and did his
24 audit, and he did a very good job using the internal
25 tools that the employees have been given to do the

1 audits.

2 One of of them was a visit to the site where
3 he stayed all day, like Michael said, and examined
4 everything -- all of the internal operating controls.
5 There was absolutely no discrepancy he noticed between
6 the sales, the deposits to the checks -- excuse me, to
7 the bank accounts and to the reporting to CDTFA on a
8 daily basis that we in turn submit as a monthly and a
9 quarterly report. Okay.

10 So -- and he noted even that day, which was
11 like Michael said, you can't say one day is the perfect
12 example of the period. He noted that day -- what was it
13 about?

14 MR. MUHAREB: Our calculations comes out to 9%
15 versus 90%.

16 MS. LAVELLE: Nine verses 90% when he applied
17 the 80/20 tool, it was still accurate and consistent.
18 So there was no evidence of any unreported sales.

19 Then we go through '23 all the the way up
20 to -- and thank you again for allowing us to present our
21 side -- to today, and it's been back and forth. And I
22 think I failed the Muharebs in that I didn't -- A, I
23 didn't stop them from voluntarily complying with all
24 these audits, which was very, very time intensive and
25 emotionally expensive to my clients. But we got caught

1 up in the weeds.

2 We were disputing the 80/20. We were saying
3 it's 90/10 -- blah, blah, blah. When it comes down to
4 is that using either tool, the Department's assertion
5 that there were unreported sales was never evidence or
6 proven. And that's why I showed you the two pages that
7 I submitted this morning as just kind of a summary.

8 If you use their tool of 80/20, or you use our
9 tool of any average monthly 90/10 which is even going
10 down more. I mean, I challenge you to get a Starbucks
11 drink with cash anymore. The net effect is zip, there's
12 no difference. So the Department has failed to prove
13 that. I think they were abusive in their enactment of
14 the scope voluntary educational -- quote,
15 unquote -- program.

16 That the Department -- it's a management
17 problem with the Department in that their internal audit
18 tools are inaccurate, untimely, and not indicative of
19 industry practices.

20 Industrywide, I have other clients with the
21 same types of problems where they're applying an
22 arbitrary ratio, which is unreal, not representative
23 with industry standards nor of a post-COVID situation
24 where nobody uses cash anymore, we're all electronic.

25 So thank you very much. And, again, we

1 welcome -- we don't hold the Department at fault. We
2 just think it's a management problem with the
3 Department's senior people. CJ was outstanding, honest,
4 he tried to settle numerous times, but as Mr. Muhareb
5 said, it's a matter of ethics to the family.

6 They never had an audit. They never been
7 accused of unreporting, and they've been in business as
8 a small business -- family-owned business for 15-plus
9 years as Old Mill for many more years as other business.
10 And they never underreported or had a fine or even
11 missed a personal income tax bill.

12 So thank you, again, Your Honor.

13 JUDGE BROWN: Thank you. I may have a couple
14 questions now, and then I may have more questions once
15 I've heard the Department's presentation.

16 MS. LAVELLE: Yes, ma'am.

17 JUDGE BROWN: One of of my questions is, in
18 Appellant's briefing, you indicated that Appellant is
19 due an overpayment of \$3,475?

20 MS. LAVELLE: Yes, ma'am. That was due to
21 when we were going through the numbers with CJ. We both
22 agreed that there have been an overpayment of --

23 Was it one or two tax quarters?

24 MR. MUHAREB: Two.

25 MS. LAVELLE: -- two tax quarters. So it's my

1 impression and conclusion that the Department had no
2 problem with that number. But, you know, I stand
3 corrected if the Department has another position.

4 JUDGE BROWN: Do you know which two quarters?

5 MS. LAVELLE: Honestly, I don't remember. But
6 I can supply that.

7 JUDGE BROWN: If it's in the record, you
8 can --

9 MS. LAVELLE: Yes, ma'am.

10 JUDGE BROWN: At some point, we're going
11 to -- CDTFA is going to be making a presentation. If
12 you can both listen and look through the audit work
13 papers to point me to that. I didn't see how that
14 calculation came to be. So --

15 MS. LAVELLE: Thank you.

16 JUDGE BROWN: But I don't want to distract you
17 from focussing this as well. So if you can't figure
18 that it out today, maybe CDTFA can point us to it. But
19 we'll see.

20 MS. LAVELLE: Okay. Thank you.

21 JUDGE BROWN: But I will confirm. Are you
22 aware of whether you filed a claim for refund for that
23 amount?

24 MS. LAVELLE: We did not. We were waiting for
25 resolution on this.

1 JUDGE BROWN: And then I wanted to ask about
2 if Mr. Muhareb can describe just briefly to what extent
3 your procedures changed for during the pandemic starting
4 in March 2020 through the end of the audit period.

5 Did your procedures change, I guess, in terms
6 of payments? Yes.

7 MR. MUHAREB: On my part, nothing changed.
8 But -- that you mean the money that was coming in was
9 different. Yeah. People stop paying with -- we didn't
10 mandate anything but mostly with cash -- I mean with
11 credit card, not enough cash. Yeah. I think that was
12 way before the audit period we installed a new system.

13 MS. LAVELLE: Your Honor, that was not a
14 mandate from the Department, but a recommendation to
15 retailers, right? That they implement a "point of
16 sales," they call it -- a point of sales, electronic
17 recording device for all sales, et cetera, et cetera.

18 So Mr. Muhareb and his family put that in a
19 2016, to the best part of my recollection, at his
20 expense voluntarily. And that was operated through the
21 period we're talking about. Okay.

22 JUDGE BROWN: Thank you. I think that's all
23 the questions that I have for Appellant right now. But
24 I may have more. We'll see.

25 I will then say we now have for CDTFA's

1 presentation. CDTFA will have up to 30 minutes, and
2 CDTFA can proceed whenever you're ready.

3
4 PRESENTATION

5 MR. SAMARAWICKREMA: Thank you, Judge.

6 Appellant of California partnership, doing
7 business as Old Mill Cafe, operates a restaurant in
8 Modesto, California. The Department audited Appellant's
9 business for the period July 1st, 2018, through June
10 30th, 2021.

11 During the audit period, Appellant reported
12 total sales of around \$1.2 million and claim deduction
13 of around \$87,000, resulting in reported taxable sale of
14 around \$1.1 million. And this is shown on Exhibit A,
15 page 65.

16 During our presentation, we will explain why
17 the Department rejected Appellant's reported taxable
18 sales. Why? The Department used an involuntary
19 approach, and how the Department determined Appellant's
20 unreported taxable sales for the audit period. During
21 the audit, Appellant informed the Department that they
22 made sales through their POA system and generated PO's
23 reports to prepare their sales and used tax returns.

24 But during the audit, Appellant failed to
25 provide complete PO's reports necessary to verify the

1 accuracy of the amount reflected of their sales and used
2 tax returns for the audit period. However, Appellant
3 deprived quarterly financial order summaries for the
4 audit period.

5 Appellant did not provide complete sales
6 documents of original entrees such as sales invoices,
7 credit card sales, receipts, for the audit period.

8 In addition, Appellant failed to provide
9 complete purchase invoices and purchase journals for the
10 audit period. The Department did not accept Appellant's
11 reported taxable sales due to lack of reliable records
12 and inconsistent reported credit card sales ratios.

13 The Department also determined that
14 Appellant's record was such that sales could not be
15 verified by a direct audit approach. Therefore, the
16 Department relied upon an indirect audit approach using
17 Appellant's credit card sales ratio to determine audited
18 sales for the audit period.

19 The Department completed four verification
20 methods to verify the accuracy of Appellant's reported
21 taxable sales.

22 First, the Department analyzed Appellant's
23 reported taxable sales for the audit period and noted
24 every daily reported taxable sale of \$1,032 ranging from
25 as low as \$444 as high as \$1,360 for the audit period.

1 And these calculations are shown on Exhibit B, page 65.

2 Based on the restaurant's capacity, location
3 of the restaurant, customer based, and the number of
4 days opened for the business, the Department billed this
5 as a low daily taxable sales for this business.

6 Based on March 2023 daily POS reports,
7 Appellant recorded daily taxable sales of \$2,420. And
8 the information required to calculate this amount is
9 shown on Exhibit B, page 70. This is an indication that
10 not all of Appellant's sales have been reported in the
11 sales annuals tax returns.

12 Second, the Department reviewed Appellant's
13 federal income tax returns for years 2018 and 2019, and
14 compared, the sales reflected on federal income tax
15 returns of around \$922,000 for the reported total sale
16 for the same period. The Department calculated and an
17 overall difference of around \$55,000. And this
18 calculation is shown on Exhibit A, page 79.

19 The Department also compared reported total
20 sales with the adjusted cost of goods sold reflected on
21 appellant federal tax returns and calculated reported
22 bookmark of around 203% for year 2018, and 133% for year
23 2019. And the information required to calculate these
24 markups are shown on Exhibit A, page 79.

25 (Reporter clarification.)

1 MR. SAMARAWICKREMA: Exhibit A, page 79.

2 These reported book markups are compared to
3 below, and very substantially, he paid two years. The
4 Department expect markups to exceed the reported labors
5 an to remain relatively consistent from year to year
6 unless there is significant change in
7 pricing -- production or operating conditions.

8 Third, the Department compared reported total
9 sales of around \$867,000 to the rate of around \$140,000
10 reflected on Appellant's federal tax returns and
11 calculated an over ratio of around 16%. And the
12 information required to calculate this range ratio is
13 shown on Exhibit A, page 79.

14 Based on this high-rate ratio, the Department
15 determined that Appellant did not report all their sales
16 on their sales annual tax returns. Based on his
17 experience in auditors (inaudible) restaurant, the
18 Appellant's area, the Department expected to see
19 lower-rate ratio for this restaurant.

20 Fourth, the Department did not -- sorry.
21 Fourth, the Appellant did not provide complete sales
22 information for the audit period. The Department
23 obtained Appellant's credit card sales information for
24 the audit period from his internal sources. And this is
25 shown on Exhibit A, page 75.

1 The Department compared the reported total
2 sales to the credit card sales. This comparison
3 relieved significant fluctuations in the ratio of credit
4 card sales to total reported sales ranging from around
5 40%, 92% across quarters.

6 These inconsistencies indicate that certain
7 cash may not have been fully reported on some sales and
8 used tax returns. Appellant was unable to explain the
9 low average reported daily taxable sales. Federal
10 income tax returns -- sales differences, high-rate
11 ratios, and inconsistent reported credit card sale
12 ratios.

13 Therefore, the Department conducted further
14 investigation by analyzing Appellant's credit card
15 sales, credit card sales ratios, available POS records,
16 and reported sales. Appellant did not provide detailed
17 POS reports that are necessary to verify the accuracy of
18 reported taxable sale for the audit period. However,
19 Appellant provided their daily POS reports from March
20 2023. And this information is shown on Exhibit A, pages
21 70, and Exhibit H.

22 To verify the completeness and accuracy of
23 March 2023 daily POS reports, the Department conducted a
24 site observation on Thursday, March 13, 2023. And this
25 is shown on Exhibit A, pages 71 and 71.

1 Based on this site observation, the Department
2 concluded that the March 2023 POS sales records were
3 complete. Therefore, the Department used the March 2023
4 daily POS reports to determine the credit card sales
5 percentage of around 77% and credit card percentage of
6 around 13%, including mandatory duties. And this
7 information is shown on Exhibit A, page 70.

8 The Department also noted average daily sales
9 of around \$2,400. And this is shown on Exhibit A, page
10 70.

11 During the audit field work, Appellant failed
12 to provide credit card margin statements to calculate
13 credit card sales for the audit period. Therefore, the
14 Department obtained Appellant's credit card sales
15 information for the audit period from the Department's
16 internal sources. And this is shown on Exhibit A, page
17 85.

18 The Department also determined the third-party
19 delivery network sales for the audit period. And this
20 is shown on Exhibit A, page 75. Then the Department
21 used total credit card sales of around \$1.1 million, the
22 audited credit card sales ratio of around 77%, and
23 credit card ratio of around 30%, including mandatory
24 duties.

25 There are applicable tax rate factors and

1 third-party delivery network sales to determine audited
2 taxable sales of around \$1.2 million. And this is shown
3 on Exhibit A, page 69. The Department then compared the
4 audited taxable sales to the reported taxable sale of
5 around \$1.1 million to calculate unreported taxable sale
6 of around \$170,000. And this is shown on Exhibit A,
7 page 69.

8 In addition, the Department compared the
9 recorded sales tax reflected on Appellant's POS
10 financial or review summaries with the reported sales
11 tax for the audit period. And this is shown on Exhibit
12 A, page 76. The Department noted credit differences and
13 Appellant did not provide any documentary supported to
14 substantiate or adjust those credit differences.

15 The Department also noted Appellant recorded
16 more sales tax than reported for the third quarter to
17 \$1,019. And this is shown on Exhibit, A, page 76.
18 Therefore, the Department realized the third quarter to
19 2019 sales tax difference using the applicable sales tax
20 rate to determine sale of around \$12,000. And this is
21 shown on Exhibit A, page 76.

22 In total, the Department determined unreported
23 taxable sales of around \$129,000 for the audit period.
24 The Department then compared the unreported taxable
25 sales with the reported taxable sale of around \$1.1

1 million to calculate the rate of around 11% for the
2 audit period. The sales tax rate in Modesto was 7.8,
3 75% during the audit period.

4 However, Appellant charged customers a tax
5 rate of 8% to compensate for the Modesto meal tax during
6 the audit period.

7 The Modesto meal tax was a city-imposed tax on
8 Appellant, and Appellant added this expense onto
9 customers. As such, reimbursement for the Modesto meal
10 tax constitutes part of taxable sales. Additionally,
11 the POS daily report reflected (inaudible) which were
12 mandated in gratuities charged to customers.

13 The Department did not include or assess daily
14 sales amounts in the audit mentioned. Had the
15 Department used the audited average daily sales of
16 \$2,400 derived from the March 2023 daily POS reports
17 without adjusting for the annual grower, and Covid-19
18 pandemic periods, then the audited taxable sales would
19 have increased by around \$1.5 million from \$1.2 million
20 to \$2.7 million for the audit period. And the
21 information required to calculate is shown on Exhibit A,
22 page 65 and 70.

23 Six, Appellant failed to provide the complete
24 POS reports. The Department used a base-available
25 information to determine the unreported taxable sales

1 for the audit period -- the audit calculation of
2 unreported taxable sales. Based on the base-available
3 information was reasonable, and (indiscernible)
4 Appellant's favor since it was a lowest deficiency
5 measure to give a benefit to the Appellant.

6 Ultimately, the Department used an audit
7 method, which gave the lowest deficiency measure to give
8 a benefit to Appellant. When the Department is not
9 satisfied with the accuracy, all the sales and used tax
10 return filing. It may rely upon any facts, continue the
11 return, or avoid any information that comes into the
12 Department's position to determine if any tax
13 (indiscernible) taxes.

14 A taxpayer maintain and make available for
15 examination on request by the Department or records
16 necessary to determine the correct tax liability and the
17 sales and used tax, and all records necessary for the
18 proper completion of the sales and used tax returns.

19 When a tax pay challenging an audit for
20 determination, the Department has the burden to explain
21 the basis for that deficiency. When the Department
22 explanation appeal's reasonable, the burden of proof
23 shift to the taxpayer to explain why did the Department
24 asserted deficiency is not made.

25 Appellant did not agree with the audit

1 findings. They claim that the Department utilized
2 inappropriate audit methods and incorrectly calculated
3 their sales. However, Appellant has not identified any
4 calculation errors or provided supporting documents to
5 support any adjustment to the audit finding.

6 As stated earlier, the audit calculation of
7 unreported taxable sales based on the credit card sales
8 and one month complete sales information were reasonable
9 and was in Appellant's favor since it was the lowest of
10 the differences determined.

11 Ultimately, the Department use an audit
12 method, which is the lowest deficiency measure to give a
13 benefit to Appellant. Appellant did not provide
14 complete source documentation, such as complete POS
15 reports, POS sales receipts, and credit card sales
16 receipts.

17 Appellant did not provide complete purchase
18 invoices. Appellant failed to provide documentary to
19 support their taxable sale for the audit period. The
20 Department was unable to verify the accuracy of reported
21 taxable sales using and during the audit method.
22 Therefore, the Department applied the credit card sales
23 ratio method.

24 The credit card sales ratio method is an
25 accepted audit technique for establishing total or

1 taxable sales, because sales paid by credit cards are
2 required to be deposited directly into Appellant's bank
3 account and are reflected in bank statements and
4 merchant processing statements of credit card deposits
5 provided reliable and liable source of information.

6 Appellant have made baseless accusation of --
7 accusation and gave the Department employee working on
8 this case. These claims are not accurate and are made
9 without any foundation. These claims do not establish
10 that the Department's audited made determination was
11 unreasonable or lack any rational basis.

12 The Department determined the unreported
13 taxable sales based upon the based available
14 information. The evidence showed that the audit
15 purviews reasonable (indiscernible). Appellant has not
16 provided any reasonable documentation or evidence to
17 support adjustment to the audit finding.

18 Therefore, the Department request the offer be
19 denied. This concludes our presentation. We're
20 available to answer any questions the panel may have.
21 Thank you.

22 MR. PARKER: Judge Brown --

23 JUDGE BROWN: Thank you.

24 MR. PARKER: I just have one thing to add.

25 JUDGE BROWN: Yes, go ahead.

1 MR. PARKER: So the -- Appellant has made
2 claims that the credit card usage went up during and
3 after the pandemic. However, if you look at the way
4 that they reported -- this is on Audit Schedule 12C,
5 which is Exhibit A, page 74. The credit card percentage
6 was much higher prior to the pandemic in the 90% range.
7 Then during and after the pandemic where the credit card
8 ratio went to 76% and then down to as low as 48%.

9 So they're claiming that people use credit
10 cards 96% of the time, their own records show that the
11 credit cards were only used 48% of the time in the
12 fourth quarter of 2020.

13 So I just wanted to point that out.

14 JUDGE BROWN: Thank you, CDTFA.

15 I do realize that I -- in diving into my
16 questions for Appellant, I forgot to ask whether CDTFA
17 had any questions for the witness. But I assume you did
18 not, or you would have spoken up.

19 MR. SAMARAWICKREMA: Yes, Judge. We don't
20 have any questions.

21 JUDGE BROWN: Okay. Thank you.

22 I believe I will have questions for CDTFA.
23 First I want to ask about the notice of determination
24 issued -- which is something that we have not discussed
25 yet during this proceeding, but I want to make sure I

1 cover this.

2 The notice of determination issued only to
3 Mr. Muhareb, even though this is a partnership. I
4 wanted to ask does the Department know why the NOD was
5 issued only to Mr. Muhareb instead of to the
6 partnership? And can you address whether there's any
7 concern about the validity of the NOD for that reason.

8 I'll note I do see that it appears to use the
9 account number of the partnership.

10 And do you want me to point you to the
11 exhibit? It's in your exhibits.

12 MR. SAMARAWICKREMA: We have it, Judge. It
13 appears that this partnership is a husband-wife.

14 MR. MUHAREB: No, it's not.

15 JUDGE BROWN: I'll let you what. I'll let you
16 respond in just a minute, Mr. Muhareb.

17 Go ahead, Mr. Samarawickrema.

18 MR. SAMARAWICKREMA: Yeah. Yeah. So it's
19 issued only to one individual.

20 JUDGE BROWN: I'll say while you're looking
21 through the documents, I will turn to Mr. Muhareb.

22 You were clarifying it's not a
23 husband-and-wife partnership.

24 MR. MUHAREB: No. It's not a
25 husband-and-wife. No. It's two different individuals.

1 JUDGE BROWN: Okay. A different relative?

2 MR. MUHAREB: Yes.

3 MS. LAVELLE: Brothers. And in addition, I
4 will point out as their taxpayer of record, I always
5 filed a partnership return with the State of California
6 as well as federal return with a K-1.

7 MR. SAMARAWICKREMA: And it appears the
8 Department issued a notice of determination to the
9 member who had the controlling interest of the business.

10 MR. PARKER: Judge Brown, although not in the
11 record, a copy was also issued to Belal Muhareb on the
12 same date. So if needed, we can get a copy of that as
13 well.

14 JUDGE BROWN: I did see some copies of some
15 documents being issued also to Ms. Muhareb, but it
16 looked to me like they were just copies, it was not
17 actually named -- just like a copy is issued to a
18 representative. I did not see any -- an NOD in the
19 record issued to Belal Muhareb. Like, as in naming
20 Ms. Muhareb as an Appellant as one who is obligated to
21 pay the notice of determination.

22 MR. PARKER: We have a copy in our system that
23 has it addressed to Belal Muhareb, and it says "copy
24 Michael Muhareb" on the letter. So if needed, we can
25 print this and provide this copy to you as well.

1 JUDGE BROWN: Okay.

2 And let me ask Mr. Muhareb. Do you know
3 whether a copy was also issued -- whether this notice
4 determination was also issued to your partner, Belal
5 Muhareb.

6 MR. MUHAREB: No, I don't know.

7 JUDGE BROWN: Okay. Because I'm just
8 wondering whether it is that the NOD was issued to both
9 individuals and only one appealed, or the NOD was only
10 issued to one individual.

11 We'll discuss at the end of the hearing. I
12 may ask to leave the record open just so I have a
13 thorough record. I guess my question is whether this is
14 -- if the NOD uses the partnership number, but it is
15 issued to only one partner, is that still -- is the
16 determination still issued to the partnership?

17 If someone wants to answer.

18 Yes, go ahead.

19 MR. BROOKS: The Department's point of view is
20 that the -- first, that the NOD was issued to each of
21 the individuals, and that it would be valid for both
22 individuals since it was issued to each of them.

23 JUDGE BROWN: Okay. And I understand
24 Appellant's position is that Appellant doesn't know
25 whether the NOD was issued to the other partner or not,

1 correct?

2 MR. MUHAREB: That's correct.

3 JUDGE BROWN: Okay. Thank you.

4 And as I said, I'm just covering my basis here
5 to make sure that there isn't any question later about
6 the validity of the NOD for this reason. I'm going to
7 move on to another topic.

8 I wanted to ask if CDTFA can address
9 Appellant's argument regarding the -- I'm just going to
10 quote from Appellant's briefing.

11 "The problem is that the Department utilizes a
12 line one total sales and subtracts Line 14 nontaxable
13 tips; whereas the industry utilizes Line 1 total sales
14 as already having deducted tips."

15 And you heard Appellant's argument about the
16 cash sales -- the credit card -- cash sales being used
17 to pay out to the servers as tips. Can you address that
18 argument and why Appellant -- why your understanding is
19 that Appellant's concern does not establish any grounds
20 for adjustment or any error in the Department's
21 camlation.

22 MR. SAMARAWICKREMA: Yes, Judge. Appellant
23 has a (indiscernible) report -- the reported sales the
24 way that they want. But they reverified the credit
25 card. They verified the total sales. And we make

1 adjustment for tips for the credit cards because the
2 baseline for the calculation to verify the accuracy of
3 reported sales is the credit card.

4 So the Department make adjustment for 13%,
5 including mandatory gratuities, because mandatory
6 gratuities are subject to tax. And the way the
7 Department calculated its tax and its tips, we used the
8 13% instead of 12% so that the right percentage should
9 be 12% but the -- we reviewed the audit, and there was
10 no calculation errors.

11 And schedule -- the page 70 of Exhibit
12 A -- the Department used a taxpayers own records and
13 also the Colomitch NG (phonetic) separated the optional
14 tips from the other tips, and the taxpayer -- Appellant
15 did not provide the complete POS daily reports for the
16 audit period.

17 The only information we had was the March 2023
18 to understand that the Appellant reported practices.
19 And based on this information, we correctly identified
20 the tips and made those adjustments when we determined
21 the audited taxable sales.

22 JUDGE BROWN: Thank you.

23 I'm going to turn back to Appellant now.
24 I -- to be sort of -- to summarize, is Appellant arguing
25 that this audit should have only been conducted on an

1 actual basis instead of using indirect audit methods?

2 MR. MUHAREB: Yes. Actually, he said several
3 times that we failed to provide the POS, and they used
4 the POS that we gave to them to calculate the numbers.
5 So I'm not sure how did we fail to give you POS numbers
6 if you used it to calculate them? We did provide them
7 everything they asked for, right there on the dot. They
8 asked for -- I gave them way more than they asked for.
9 They even asked me for 1099s. And the federal matches
10 exactly the state in the last one we gave you today --
11 exact number to the penny. We did -- I'm sorry. I'm
12 going on all the stuff.

13 We do tax the automatic gratuity. I'm not
14 sure what he's talking about. It's in the POS system.
15 The POS system was programmed by geniuses, not by me.
16 I don't know nothing about computers. They have the
17 correct taxes in there. We didn't add the meal tax, as
18 he claimed.

19 When they first told me, "You added this, and
20 you added this," I thought okay, I'm sorry, because I
21 didn't program it. So when I went back and I went to
22 the record, we do add the tax on the gratuity -- it's
23 automatically in the system. We don't add the meal tax.
24 We pay it out of our own pocket. It's separate
25 expenses, we don't add it to that.

1 A lot of the stuff that he's saying, it's not
2 true. We did provide them everything. They have no
3 probable cause to go any further. And as far as the
4 average daily sale for the day he came out -- I tell
5 that as a joke, which is true -- the highest day in
6 business and the lowest day in business in five years
7 were two days apart. We set two records in one week for
8 the highest day in five years and the lowest day in five
9 years.

10 So you can't tell me that because it says
11 1,400 or 2,400, I should calculate the whole year as
12 2,400. This restaurant business is so unpredictable.
13 I'm sure everybody knows that.

14 I'm sorry, what was the question?

15 MS. LAVELLE: Your Honor, if I may add to
16 that.

17 JUDGE BROWN: Go ahead.

18 MS. LAVELLE: I think there's a problem here
19 as well with the CDTFA representatives in that their
20 exhibits all are '23. They -- I don't know if they ever
21 saw all of the information we sent over in '21 through
22 '23 when CJ took over. And then we in turn sent other
23 information -- copious amounts of information -- '23
24 forward.

25 So there is absolutely no notice, either

1 verbally or written, of a discrepancy between our
2 recorded -- automatically recorded deposits. Be it from
3 credit card or cash, our daily deposits are correct and
4 are reported cash and credit card sales totals are
5 accurate and are accurate on all of our sales tax
6 filings quarterly and monthly. Mr. Belal pays monthly
7 rather than quarterly. It's totally accurate.

8 And if you use the two pages that I supplied
9 this morning, which I supplied earlier, you can just see
10 that it's just a matter of interpretation. Is
11 it -- does -- should we have included the tips in our
12 total sales number or not? The industry standard is we
13 do not.

14 In fact, the CDTFA policy manual states that
15 taxable tips -- voluntary taxable tips are not to be
16 taxed, nor are they to be reported. So the allegation
17 that there's a difference in line one is incorrect.
18 It's absolutely incorrect and is baseless.

19 And then to go to your other question -- yes,
20 we are asserting that this audit should never have
21 occurred. The Department has absolutely no basis to
22 allege under the scope of voluntary educational program,
23 much less any audit approach, that there was an
24 inconsistency with the reported sales, recorded sales.

25 Recorded sales are automatically recorded and

1 deposits made to the bank. They use all of those
2 receipts -- all of those Z-tapes, all of those point of
3 sales -- not payroll reports, point of sales
4 reports -- to derive their calculations, which only
5 occurred under CJ, not the previous scope person.

6 So there's no basis. We still to this day do
7 not know a basis other than use of -- an arbitrary use
8 of an arbitrary tool, which I submit respectfully is
9 outdated and unwarranted.

10 The basis for this -- they never communicated
11 with Mr. Belal, his partner, I know that for a fact
12 because Michael and I were constantly down there, and
13 Belal was doing other things. I don't know if he
14 received a notice of tax due, but I don't know about the
15 notice of determination.

16 But -- so yes, you are correct in
17 understanding that that's our position. No audit was
18 warranted. And to the state, there's no proof of any
19 underreporting of sales, and that the use of the
20 internal auditing tool of the Department is
21 inappropriate.

22 But even if we accept that, there's no change
23 in the net results. Total taxable sales are what we
24 have on all our daily receipts -- all of our daily
25 postings, all of our point of sales, all of our Z-tapes

1 that go over to the bank, all of the bank deposits, all
2 of our income tax reports for the partnership -- there
3 are no inconsistencies between any of those because
4 there are no inconsistencies.

5 So thank you very much for letting us talk.

6 JUDGE BROWN: Thank you.

7 I'm going to turn back to CDTFA just briefly.
8 In CDTFA's presentation, I heard you talk a little bit
9 about the types of POS reports that were provided versus
10 the types that were not provided. I wonder if you can
11 just revisit that and, you know, sort of walk me through
12 what more detail POS reports the Department would have
13 needed to use a more direct audit approach, for example.

14 MR. SAMARAWICKREMA: Yes, Judge. Before we
15 started the audit, we did -- the Department tried to
16 understand the method of reporting. Based on the
17 initial discussion, Appellant used POS reports. This
18 includes daily POS reports to report sales to the
19 Department.

20 But during the field work, Appellant failed to
21 provide those POS reporting, including daily POS
22 reports. They provided financial overview summaries.
23 And in our exhibit, we released all the POS reports that
24 we received. Like, for Exhibit B, that's the sales
25 records for March 13, 2023. And our audit period is

1 July 1st -- July 2018 to June 2021.

2 Appellant did not provide any daily POS
3 reports, so -- you know -- or the monthly for the audit
4 period. And the only information that we received, like
5 a inquiry in the daily POS reports for the March 2023,
6 that's the only available information -- detailed
7 information that the Department received.

8 And when you review the Exhibit A page
9 manual -- the exhibit page 65 to 67 -- that's the
10 summary of Appellant's reported sales.

11 And we tried to verify -- the Department tried
12 to verify taxable sales that excluded tax and tips. So
13 that's the reason we used the credit card sales and make
14 adjustment for tax and tips and compared to the reported
15 taxable sales to verify the reasonable and the accuracy
16 of the reported sales.

17 JUDGE BROWN: Thank you. All right. I think
18 that's all that I have for the the Department right now.

19 I just want to turn back to Appellant and
20 revisit one thing that I had asked about, which was the
21 calculation of the \$3,470 something overpayment, and I
22 was just trying to figure out what that was based on,
23 and you indicated that you thought there was something
24 about it in the record.

25 MS. LAVELLE: I think so, Your Honor. But at

1 this point, I can't identify it for you but glad to do
2 it if you --

3 JUDGE BROWN: Well, there's no claim for
4 refund at the moment. I don't think it's something that
5 I actually need. I was just trying to piece everything
6 together.

7 MS. LAVELLE: Yes, ma'am.

8 JUDGE BROWN: I'll say I don't think I need
9 you to submit anything else. But if I have it already,
10 you can point me to it.

11 MS. LAVELLE: Yes, ma'am.

12 JUDGE BROWN: Okay.

13 Also, I did not forget about the discussion I
14 had with CDTFA, whether the NOD was issued to the other
15 partner.

16 Given that Mr. Muhareb is the only one who's
17 before us today, I don't think I need it. But I'll ask
18 if CDTFA -- if it's something that you think I should
19 have in the record, you can tell me, and I will consider
20 leaving the record open.

21 MR. PARKER: We can provide it if you think it
22 might be an issue of whether the NOD is valid. So we
23 have issued the NOD to both of the partners, so we can
24 provide a copy.

25 So it might be best just to leave it open so

1 that way we can provide it so you have it in the record.

2 JUDGE BROWN: I think that's fine. I will
3 briefly leave the record open. Thirty days should be
4 more sufficient.

5 MR. PARKER: That's more than enough.

6 JUDGE BROWN: Okay.

7 I don't think I will need a response from
8 Appellant on this question, but I can leave the record
9 open for appellant to respond if Appellant requests so.

10 MS. LAVELLE: Your Honor, can we have a copy
11 of that letter?

12 JUDGE BROWN: It will be sent to you as well.

13 MS. LAVELLE: Thank you.

14 JUDGE BROWN: Yeah. CDTFA always submits to
15 OTA -- they send a copy to the other party, which is the
16 standard, just as you submit copies to them.

17 MS. LAVELLE: Yes.

18 JUDGE BROWN: Okay. So I think I'm just going
19 to leave the record open in 30 days unless I have a
20 question for Appellant, I will close the record at that
21 time.

22 Now that we have covered all that, we do have
23 time for Appellant's rebuttal. Assuming I've heard -- I
24 believe I heard everything from CDTFA. I asked all my
25 questions at this time.

1 So we'll go back to Appellants for a brief
2 rebuttal for anything that -- you don't have to repeat
3 anything that you said during your opening presentation,
4 but if there's anything that you want to address that
5 hasn't arisen since then, you have five minutes to
6 provide a rebuttal.

7 Whenever you're ready.

8
9 CLOSING STATEMENT

10 MR. MUHAREB: Okay. I'll go first.

11 He keeps repeating -- the State repeating that
12 we did not provide daily or monthly or whatever -- is
13 there any request they can show that they asked for this
14 stuff and we failed to -- because we gave them
15 everything they asked for and more.

16 I repeat that -- I know I repeat that a few
17 times, but he reiterated that we gave him the purchase
18 order, the credit card sale, the bank statement, the
19 federal filing; we gave them POS for dailies, monthly,
20 and quarterly as they asked for. They didn't ask for
21 everything.

22 They sent me specific -- I have the e-mails.
23 I can send them to you. They said I need the quarterly
24 for this year; I need the daily for this month; I need
25 the monthly for this month and the daily for this day.

1 And he keeps saying that the reason that they
2 proceeded with the audit estimation because we did not
3 provide the record. So I'm confused. Either he didn't
4 get it -- we gave him a box of the daily sales, the
5 tickets for the customers, and the credit cards sales.
6 We gave them boxes of records, and they acknowledged at
7 the time receiving it. So I'm not sure what he's
8 referring to.

9 And as far as the state and the federal
10 mismatch he spoke of, we have the record. I'm not
11 sure -- I'm confused. I'm not sure what he's talking
12 about. That's my main thing.

13 And then the 2000 -- exhibit -- 2018, the
14 sales were higher than 2019. I think he mentioned that
15 -- I think he forgot about COVID. We closed for awhile
16 during that first quarter or second quarter -- I can't
17 remember -- of '19. We actually closed for a while. So
18 that explains the sales being low.

19 And we addressed the fluctuation, it's a
20 natural of the business. It's a significant
21 fluctuation. And about the fluctuation credit card
22 verses it was 40% at one time and then 92% at one time.
23 I'm not a dumb person. If I was going to steal, I would
24 make it consistent. I won't send it 40% one week or one
25 month, and next month 92%. That would throw a red flag

1 even.

2 But I never paid attention to this. I just
3 reported as it came. And there was days it was 0% was
4 the cash. We didn't have any cash in the whole house to
5 report. It was all credit card. And there was times it
6 was 40% cash. You know, it's -- it looks bad because I
7 report it as it come. I didn't play with it. If I
8 would've played with it, they wouldn't have suspected
9 it. I would've made sure it's all (indiscernible).

10

11 CLOSING STATEMENT

12 MS. LAVELLE: And then just two other points.
13 Again, with all due respect, I think the representatives
14 don't know about the '20, '21 submittals that we made.
15 The copious amount of paperwork, and it's identified and
16 acknowledge in our attachments, especially to the prior
17 audit hearing where we delaminated all of them with the
18 Department's agreement that they had received them. And
19 it's like in our Exhibits C, 17, 18, 19, where I was
20 asking that -- well, I was updating Mr. CJ -- oh,
21 Austrias is his last name -- Austria, like the country
22 -- CJ on what indeed was in the Department so that he
23 could go around and search and find, which he did in '21
24 and then he came back in '23 and started the audit after
25 his military leave. So that's number one.

1 Number two, the 8% meal tax, that was a simple
2 mistake, because the the City of Modesto has an
3 additional -- what was it, 1% or 5% -- anyway, we
4 collected on our sales. We collected the meal tax, the
5 local city tax, but we incorrectly reported it to the
6 state and paid it to the state. So the state in turn
7 said no, you should be paying it directly to the city.
8 That's what that dispute was about. So there's no
9 inconsistency whatsoever.

10 Thank you, your Honor.

11 JUDGE BROWN: Thank you. I believe I've heard
12 everyone's arguments now. So I can say that I'm going
13 to leave the record open just for CDTFA's submission of
14 the copy of the NOD to the other partner -- that was
15 issued to the other partner.

16 Once I receive that, I anticipate I will close
17 the record, unless I have other questions, and then I
18 will issue a written opinion at least within one hundred
19 days from the date that the record is closed.

20 So I believe I've covered everything. So I
21 can say that this concludes the hearing. And the
22 hearing is now adjourned, and the next hearing will
23 begin I believe at 1:00 p.m.

24 Thank you everyone for your participation
25 today. We are off the record.

1 (The proceeding concluded at 11:50 a.m.)

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1 REPORTER'S CERTIFICATION

2
3 I, the undersigned, a Certified Shorthand
4 Reporter of the State of California, do hereby certify:

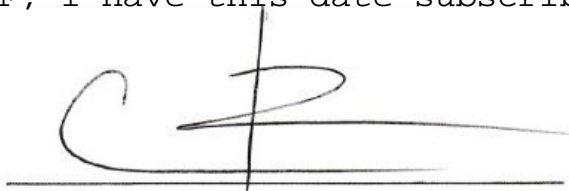
5 That the foregoing proceedings were taken
6 before me at the time and place herein set forth; that
7 any witnesses in the foregoing proceedings, prior to
8 testifying, were duly sworn; that a record of the
9 proceedings was made by me using machine shorthand,
10 which was thereafter transcribed under my direction;
11 that the foregoing transcript is a true record of the
12 testimony given.

13 Further, that if the foregoing pertains to the
14 original transcript of a deposition in a federal case,
15 before completion of the proceedings, review of the
16 transcript [] was [] was not requested.

17 I further certify I am neither financially
18 interested in the action nor a relative or employee of
19 any attorney or party to this action.

20 IN WITNESS WHEREOF, I have this date subscribed
21 my name.

22 Dated: March 16, 2026

23
24 

25 Certified Shorthand Reporter
For the State of California

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