

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
FAMILY AUTO SALES 04, LLC,) OTA NO. 240716941
)
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APPELLANT.)
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, March 19, 2026

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:30 a.m. and concluding at 10:05 a.m. on
Thursday, March 19, 2026, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: HEARING OFFICER KIM WILSON

Panel Members: ALJ SUZANNE B. BROWN
ALJ JOSH ALDRICH

For the Appellant: HOWARD B. BORENSTEIN
NICOLE SYMUNDS

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

NALAN SAMARAWICKREMA
RAVINDER SHARMA
CHRISTOPHER BROOKS

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I N D E X

E X H I B I T S

(Department's Exhibits A-I were received into evidence at page 8.)

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California; Thursday, March 19, 2026

9:30 a.m.

HEARING OFFICER WILSON: We are going on the record.

This is the Appeal of Family Auto Sales 04, LLC, OTA Case No. 240716941. The date is March 19, 2026, and the time is 9:30 a.m. This hearing is being held electronically with the agreement of the parties.

I'm Hearing Officer Kim Wilson. I will be the lead for purposes of conducting the hearing. My co-panelists are Administrative Law Judges Suzanne Brown and Josh Aldrich. We are equal participants in deliberating and determining the outcome of the appeal.

I'm going to ask the parties to identify themselves and who they represent, starting with Appellant.

MR. BORENSTEIN: Yes. Howard Borenstein. Howard Borenstein, appearing on behalf of Appellant Family Auto Sales 04.

HEARING OFFICER WILSON: Mr. Borenstein --

MS. SYMONDS: And my name is Nicole Symonds.

HEARING OFFICER WILSON: I'm sorry. Please proceed. Could you repeat your name, please.

MS. SYMONDS: Oh, my name is --

1 MR. BORENSTEIN: Yes. Yes. My name or Nicole?
2 Go ahead, Ms. Symonds.

3 HEARING OFFICER WILSON: Nicole.

4 MS. SYMONDS: Oh, yeah. Nicole Symonds, member
5 of Family Auto Sales.

6 HEARING OFFICER WILSON: Thank you.

7 And now CDTFA.

8 MR. SAMARAWICKREMA: Nalan Samarawickrema,
9 hearing representative for CDTFA. Thank you.

10 MR. SHARMA: Ravinder Sharma, hearing
11 representative for CDTFA. Thank you.

12 MR. BROOKS: Good morning. I'm Christopher
13 Brooks, attorney for CDTFA.

14 HEARING OFFICER WILSON: Thank you.

15 Next we'll go over the issues in this appeal.

16 Mr. Borenstein, you mentioned in an email
17 yesterday that Appellant concedes all the audit items
18 except the penalty. Can you confirm that Appellant
19 concedes the audit item and that the only issue to be
20 decided is whether Appellant was negligent.

21 MR. BORENSTEIN: Yes. I'd like to put it in this
22 context that Family Auto Sales, through Nicole Symonds,
23 will not dispute the findings of the OTC. However, in not
24 disputing, they're not disputing the negligence penalty,
25 and it would like to be put forth that the non-disputable

1 finding of the OTC is not to be considered as an admission
2 of negligence. So, Your Honor, yes, you are correct.

3 HEARING OFFICER WILSON: Thank you.

4 Next, we'll go over the exhibits.

5 Mr. Borenstein, you did not submit any exhibits
6 for Appellant; is that correct?

7 MR. BORENSTEIN: That is correct, Your Honor.

8 HEARING OFFICER WILSON: Thank you.

9 And CDTFA submitted Exhibits A through E.
10 Appellant did not object to the admissibility of these
11 exhibits. Therefore, Exhibits A through E are admitted
12 into evidence.

13 HEARING OFFICER WILSON: Mr. Borenstein, you
14 indicated during the prehearing conference that Appellant
15 will be calling Nicole Symonds. Is that still your
16 intention?

17 MR. BORENSTEIN: Yes, Your Honor.

18 HEARING OFFICER WILSON: Okay. CDTFA did not
19 have any objections to the witness testifying.

20 One moment, please. I'm just checking the
21 Exhibits. CDTFA was A through E correct?

22 MR. SAMARAWICKREMA: A through I.

23 HEARING OFFICER WILSON: A through I. I
24 apologize.

25 CDTFA's Exhibits A through I will be admitted

1 into evidence.

2 (Department's Exhibits A-I were received into
3 evidence by the Administrative Law Judge.)

4 HEARING OFFICER WILSON: All right. We'll go
5 ahead and go to the presentations.

6 Mr. Borenstein, you originally requested
7 90 minutes for your presentation. Will you still need
8 90 minutes?

9 MR. BORENSTEIN: I believe the whole matter can
10 be concluded in ten minutes.

11 HEARING OFFICER WILSON: Ten minutes. Okay.

12 Before we begin the Appellant's presentation, I
13 need to place Ms. Symonds under oath so we can consider
14 her statements as testimony, and she will remain under
15 oath until the close of this hearing.

16 Ms. Symonds, please raise your right hand.

17

18 N. SYMONDS,

19 produced as a witness, and having been first duly sworn by
20 the Administrative Law Judge, was examined, and testified
21 as follows:

22

23 MS. SYMONDS: Thank you.

24 HEARING OFFICER WILSON: Thank you.

25 Mr. Borenstein, you may have your witness testify

1 in a narrative or ask specific questions. Please proceed
2 when you're ready.

3 MR. BORENSTEIN: I would like to give a quick
4 opening and then proceed with a few questions if that is
5 okay with the court.

6 HEARING OFFICER WILSON: That would be fine.

7

8 PRESENTATION

9 MR. BORENSTEIN: Okay. The -- I'm going to -- to
10 place forward that Nicole Symonds will testify that
11 Appellant acted in best business practices under the
12 circumstances. You will hear testimony of a data crash,
13 trying to rectify the crash to help crisis of Nicole
14 Symonds' father, and then COVID.

15 With that, may I proceed with some questions?

16 HEARING OFFICER WILSON: Yes, please proceed.

17

18 DIRECT EXAMINATION

19 BY MR. BORENSTEIN:

20 Q Okay. Nicole -- I'm going to say Nicole or I'll
21 say Ms. Symonds. I'll say Ms. Symonds.

22 Can you please explain to the Court and this
23 party -- these parties of a data crash that took place, I
24 believe, in early 2019?

25 A Yes, that's right. It's at the beginning of

1 2019. We had a data crash. We had a DOS version system
2 named "ANTS" where we had all of our sales, the
3 information, when we did retail sales. And that system
4 crashed when my computer did, and we had to upload
5 everything deal-by-deal myself. And I had an office
6 manager help input all of -- for that period up into the
7 crash also into our cloud system.

8 And that's where I believe a lot of data might
9 have not been computed correctly or a little bit of
10 miscommunication between -- between that. So it could
11 have started with the data crash, essentially.

12 Q And when you mention communication --
13 miscommunication, can you elaborate a little bit on that?

14 A Just if I gave her a task to do if I wasn't in
15 the office or -- because a lot of it was a lot of tedious
16 work to input every single deal and all the numbers,
17 figures. And not only that, it's just like customer
18 information, like, the whole deal. And I told her
19 different tasks to do, and she -- she was one of my newest
20 managers. So maybe just a miscommunication, like, she
21 didn't understand quite what to do 'cause I did find some
22 errors when I went through it when we converted it all to
23 the cloud or online. That's -- that could have been a
24 problem.

25 Q Okay. And -- and during the -- during this --

1 all this process, I understand and you've stated, that
2 there were health crisis of your father. Can you
3 please -- and that -- and that impacted your ability to --
4 to work through all this. Can you please give a little
5 explanation of what happened to your father and how that
6 impacted you, which impacted the business?

7 A So, right. So, my -- my father got injured right
8 when COVID -- right before COVID started, about February
9 or March of 2020. He had a spinal cord injury from a
10 chiropractor that resulted in him being paralyzed. So --
11 excuse me. I wasn't in the office a lot. Left book
12 keep -- I left my bookkeeping hands in my office girls, my
13 managers. So it just turned into sloppy bookkeeping.
14 Like I said, the miscommunication, too many hands going
15 through my -- my online, and it just fell behind.

16 Q Can you -- can you, please elaborate a little
17 more on the extent of your father's paralysis and the
18 process that it took, and that, basically, your
19 relationship with your father? Not in detail, but whether
20 you're close or not?

21 A Oh, yes, we're very close. We -- we've worked
22 together. I've -- I've lifted him for a while. Yeah,
23 we're very close. I'm -- I'm the oldest child. I'm
24 pretty much his -- his golden child. So, we're -- I mean,
25 we're -- I mean, not to brag or anything, but we're very

1 close. So, I did --

2 Q And with that -- with that what -- what happened
3 here? What actually -- not in detail. But what was going
4 on with your father, and how long did it take for him to
5 actually, maybe paralysis subside? And what was the
6 paralysis?

7 A So the paralysis -- what he had a -- to be a
8 little detailed, he had an abscess on his back that he
9 went to a chiropractor, and they adjusted him. And it
10 turned out they didn't do the full care, and he ended up
11 in the hospital the next day. And then that -- later that
12 day he became paralyzed. His neck -- from his neck down
13 from the injury, and they had to rush -- excuse me. They
14 had to rush to do emergency surgery and -- and then
15 they -- he had, actually, had a total of three different
16 surgeries in the matter of over a year, and he's still not
17 100 percent. So, he's still -- I mean, he's permanently
18 disabled.

19 Q And with that, and with the data crash and trying
20 to get that done, and your dad, how did then COVID impact?

21 A Oh, and then COVID. Yes, that is true.

22 Q And did that have an impact on everything -- on
23 everything you're going through, and everything you had to
24 do, and where you were at?

25 A Oh, of course. Of course, it did. Yeah, I was

1 short -- I was short staffed trying to run the business
2 alone. A lot of it makes me emotional just talking about
3 it.

4 Q Okay. I don't -- I don't want to go there.

5 MR. BORENSTEIN: With that, Your Honor, the
6 Appellant rests, but for follow-up questions of the OTA.

7 HEARING OFFICER WILSON: Thank you.

8 Let me ask CDTFA.

9 Do you have any questions?

10 MR. BORENSTEIN: I mean, I'm sorry. Not the OTA,
11 CDTFA.

12 HEARING OFFICER WILSON: Yes.

13 MR. BORENSTEIN: I'm sorry, Your Honor. I -- I
14 meant -- go ahead. I'm sorry.

15 HEARING OFFICER WILSON: Okay. Just to reminder,
16 let each person finish speaking before you begin. Maybe
17 give a few seconds in between responses.

18 All right. CDTFA, do you have any questions for
19 the witness?

20 MR. SAMARAWICKREMA: This is Nalan
21 Samarawickrema. No, we don't have any questions, Judge.

22 HEARING OFFICER WILSON: Thank you.

23 Judge Aldrich, do you have any questions for
24 either the witness or Appellant?

25 JUDGE ALDRICH: Hi. This is Judge Aldrich. Yes,

1 I do have a couple of questions.

2 Ms. Symonds, with respect to your father, could
3 you explain what role he had with the business during this
4 liability period.

5 MS. SYMONDS: He didn't have any role with the
6 business. If -- if I needed any help or advice, I would
7 ask him, but it was -- no. It was -- it was my business.

8 JUDGE ALDRICH: Okay. All right. And the prior
9 two audit periods, did he have any role in the business?

10 MS. SYMONDS: No.

11 JUDGE ALDRICH: Okay. Thank you. No further
12 questions.

13 I'll refer it back to Hearing Officer Wilson.

14 HEARING OFFICER WILSON: Thank you.

15 And, Judge Brown, do you have any questions for
16 either the witness or Appellant?

17 JUDGE BROWN: I don't have any questions at this
18 time. Thank you.

19 HEARING OFFICER WILSON: Thank you.

20 I did have a question for Appellant. Let's see.
21 Per the audit report under Reporting Method, it states
22 taxpayer records all sales of vehicles per ROS, which is
23 compiled in an Excel file and used as recorded taxable
24 sales per the profit and loss statements. All services
25 are inputted into the profit and loss statements using

1 taxpayer POS or the service department. The accountant
2 retrieves the profit and loss statements, which are then
3 used to file the sales and use tax returns.

4 Can you explain how your reporting changed from
5 the second audit to the third audit, Ms. Symonds?

6 MS. SYMONDS: How the reporting changed. I'd
7 have to look on my records to see when we started. The
8 DMV started at a certain time where you had to report
9 everything online, which actually made it actually easier
10 for us. But the big -- the big -- the big struggle for us
11 is when our system crashed going into our new -- our
12 online QuickBooks system.

13 HEARING OFFICER WILSON: I'm sorry. Could you
14 please let us know when that was?

15 MS. SYMONDS: When the system crashed?

16 HEARING OFFICER WILSON: Yes.

17 MS. SYMONDS: Okay. So the system crashed the
18 beginning of 2019.

19 HEARING OFFICER WILSON: Okay.

20 MS. SYMONDS: And it took -- it took -- it took
21 me awhile. A long -- like, I'm talking like a year almost
22 to clear up, you know -- to clear up all of the
23 bookkeeping.

24 HEARING OFFICER WILSON: Thank you. Also, can
25 you explain or detail what steps you took to correct the

1 reporting errors from the previous audits?

2 MS. SYMONDS: So I had to help with my accountant
3 the oversight, just make sure I was putting -- inputting
4 everything correctly. I had Google sheets to crosscheck
5 to make sure I didn't miss anything. And I -- I pretty
6 much just did the best I can to make sure I inputted
7 everything correctly.

8 HEARING OFFICER WILSON: Okay. Thank you. That
9 was my questions.

10 MS. SYMONDS: Okay.

11 HEARING OFFICER WILSON: Next, we we'll go to the
12 Department. CDTFA, is not presenting any witness and only
13 argue the appeal, so they will not be testifying under
14 oath or affirmation.

15 Mr. Samarawickrema, you requested 30 minutes for
16 your presentation. Please begin when you're ready.

17 MR. SAMARAWICKREMA: Thank you, Judge.

18

19 PRESENTATION

20 MR. SAMARAWICKREMA: Appellant, a California
21 limited liability company, operates a used car dealership
22 and auto repair shop in Hemet, California. Appellant was
23 issued a seller's permit with the effective start date of
24 June 1st, 2009. The Department audited Appellant's
25 business for the period of January 1st, 2019, through

1 December 31st, 2021. This is Appellant's third audit.
2 During the audit period, Appellant reported around
3 \$6.9 million as total sales and claimed deductions for
4 nontaxable sales, including sales for resale of around
5 \$129,000, nontaxable labor sales of around \$722,000,
6 interstate or foreign commerce sale of around \$239,000.

7 HEARING OFFICER WILSON: Excuse me. Just a
8 reminder, if you could mute your microphones when not
9 speaking. There's a little bit of feedback on the audio.

10 Ms. Symonds, can you mute? Thank you.

11 And Mr. Borenstein? Thank you.

12 Sorry for that interruption. Please proceed.

13 Mr. Samarawickrema, you're muted.

14 MR. SAMARAWICKREMA: Oh, sorry.

15 HEARING OFFICER WILSON: Thank you.

16 MR. SAMARAWICKREMA: You want me to start from
17 the beginning? Did you hear?

18 THE HEARING REPORTER: Go ahead and start from
19 "nontaxable labor sales of interstate or foreign."

20 MR. SAMARAWICKREMA: Okay.

21 HEARING OFFICER WILSON: Thank you.

22 MR. SAMARAWICKREMA: Interstate or foreign
23 commerce of sale of around \$239,000, and other sale of
24 around \$410,000. These deductions resulted in reported
25 taxable sale of around \$5.4 million; and this is shown on

1 Exhibit D, page 48.

2 Based on Appellant's financial records and DMV
3 information, the Department determined unreported taxable
4 sale of around \$3.5 million; and this is shown on
5 Exhibit D, page 56. Unreported taxable sales were
6 compared with the reported taxable sale of around
7 \$5.4 million to calculate the error rate of around
8 66 percent for the audit period. And the information
9 required to calculate this error rate is Exhibit A,
10 page 56.

11 Because Appellant agree with the amounts of
12 unreported taxable sales, the Department will not address
13 the audit methods used to compute those amounts.

14 Appellant now concedes the audit liability but
15 dispute the imposition of the negligence penalty.
16 Revenue & Taxation Code section 6484 provides that if any
17 part of the deficiency is due to negligence or intentional
18 disregard of the law or authorized rules and regulations,
19 a penalty of 10 percent of the deficiency shall be added.
20 Negligence is defined as a failure to exercise care that a
21 reasonable and prudent person would exercise under similar
22 circumstances. The Department imposed the negligence
23 penalty because this is Appellant's third audit, and
24 substantial unreported taxable sales were identified
25 between Appellant's books and records and the taxable

1 sales reported on its sale and use tax returns.

2 Additionally, errors occurred in every quarter of
3 the audit period. Appellant contends that it crashed its
4 accounting system, and it changed its reporting methods in
5 2021. On January 1st, 2021, the Department implemented a
6 change in the filing frequency for all used car
7 dealerships to a monthly reporting basis and required
8 detail transaction information, including any retail sale
9 of vehicles to be submitted with a sales and use tax
10 returns. The Department also acknowledged that unreported
11 taxable sales for all items combined declined beginning in
12 the fourth quarter of 2020.

13 However, Appellant was previously audited and
14 should have been aware of its reporting and recordkeeping
15 obligations. Despite this, a significant portion of
16 unreported taxable sales of around \$2.8 million or about
17 80 percent was determined using a direct audit method by
18 reconciling reported sales to Appellant's financial
19 records. And the information required to calculate this
20 amount and percentage is shown on Exhibit A, page 56. In
21 total, unreported taxable sales of around \$3.5 million
22 represent 66 percent error rate compared to reported
23 taxable sales. And the information required to calculate
24 this error rate is on Exhibit A, page 56.

25 Additionally, the Department identified around

1 \$316,000 in sales related to 24 vehicles that were not
2 reflected in Appellant's records and DMV information.
3 Including these amounts would increase error rate of
4 around 66 percent to 72 percent. And the information
5 required to identify these 24 vehicles are on Exhibit A,
6 pages 114 through 174, and Exhibit I. However, the
7 Department did not include these amounts in determining
8 taxable sales or error rate for the audit period. The
9 magnitude and recurrence of these errors provide further
10 evidence of negligence. Accordingly, the Department
11 concludes that Appellant was negligent, and the negligent
12 penalty was properly imposed. Therefore, the Department
13 request the appeal be denied.

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

17 HEARING OFFICER WILSON: Thank you.

18 Let's turn to the panel.

19 Judge Aldrich, do you have any questions for
20 CDTFA?

21 JUDGE ALDRICH: Yes. I have a couple of
22 questions.

23 Mr. Samarawickrema, you mentioned that there was
24 two prior audit periods. Where in the evidence can I find
25 the error rate and the measure for -- for those two?

1 MR. SAMARAWICKREMA: Judge Aldrich, those working
2 papers or the documents are not included in the exhibit.
3 However, we can provide that information. But when I
4 check it, the prior -- the first audit period is
5 April 1st, 2012 through March 31st, 2015. The unreported
6 tax was based on the first audit is \$40,000. The second
7 audit, audit period is January 1st, 2016 through December
8 31st, 2018. Taxes were \$118,867. And the current audit,
9 the unreported tax was almost \$308,000.

10 JUDGE ALDRICH: So based on the tax, it seems
11 like there's an increase across the three audit periods of
12 unreported taxable sales?

13 MR. SAMARAWICKREMA: Yes, Judge.

14 JUDGE ALDRICH: Okay. All right. Thank you.
15 I'll refer back to Hearing Officer Wilson.

16 HEARING OFFICER WILSON: Thank you.

17 And, Judge Brown, do you have any questions for
18 CDTFA?

19 JUDGE BROWN: I do not have any questions at this
20 time. Thank you.

21 HEARING OFFICER WILSON: Thank you.

22 I did have a question for CDTFA. The decision
23 mentions that Appellant was changed to monthly filing.
24 Was that the only change in the reporting requirement for
25 Appellant?

1 MR. SAMARAWICKREMA: This is Nalan
2 Samarawickrema. The -- from January 20 --
3 January 1st, 2021, through December 2021, the -- the
4 Appellant reported on -- on a monthly basis.

5 HEARING OFFICER WILSON: Okay. Thank you. And
6 was that the only change in the reporting requirement for
7 Appellant? I seem to recall something about DMV changed
8 the reporting.

9 MR. SAMARAWICKREMA: That's correct, Judge. So
10 yeah. They are required to report it to DMV. Yes.

11 HEARING OFFICER WILSON: And was that in the same
12 time period?

13 MR. SAMARAWICKREMA: Yes, Judge.

14 HEARING OFFICER WILSON: Thank you. I don't have
15 any further questions for CDTFA.

16 Mr. Borenstein, would you like to make a final
17 statement or rebuttal to CDTFA's presentation? You have
18 five minutes, and it's star six to unmute, Mr. Borenstein.

19 Mr. Borenstein, you're still muted so we can't
20 hear if you're speaking. As I mentioned it's star six to
21 unmute. Still can't hear you, Mr. Borenstein.

22 Okay. Looks like we're having a little
23 difficulty.

24 Mr. Borenstein?

25 MS. SYMONDS: Did he get disconnected? I'm here.

1 I mean, I can hear you.

2 HEARING OFFICER WILSON: He is still muted. So
3 not sure what --

4 We'll go off the record for a couple of minutes,
5 and I'll have Mr. Borenstein reconnect.

6 (There is a pause in the proceedings.)

7 HEARING OFFICER WILSON: Let's go back on the
8 record.

9 Mr. Borenstein, you have five minutes for a
10 rebuttal or a statement.

11 MR. BORENSTEIN: Hi. It's breaking up, Your
12 Honor.

13 HEARING OFFICER WILSON: Can you hear me?

14 MR. BROOKS: Not very clearly.

15 MR. BORENSTEIN: Hi. You're breaking up.

16 JUDGE ALDRICH: So I believe what Hearing Officer
17 Wilson mentioned was that you have five minutes,
18 Mr. Borenstein. So if you'd like to present a closing or
19 rebut any of the arguments raised by CDTFA, now is the
20 time to do it.

21 And we're back on the record.

22 MR. BORENSTEIN: Thank you.

23

24 CLOSING STATEMENT

25 MR. BORENSTEIN: Again, whether not disputing or

1 conceding is it's -- it's non-disputing in the terminology
2 in the world of -- this world is -- would be conceding.
3 Also, the Appellant states that the prior audit what --
4 anything that happened in any prior audit was not -- it
5 was not what happened during the current audit period
6 based on the information submitted and the best practices
7 that Appellant was trying to put in place to resolve any
8 issues that may have taken place.

9 And with that, Appellant closes.

10 HEARING OFFICER WILSON: Thank you,
11 Mr. Borenstein.

12 Everybody hear me okay?

13 Okay. We'll go to the panel to see if anybody
14 has any final questions.

15 Judge Aldrich, any questions for either party?

16 JUDGE ALDRICH: No questions. Thank you.

17 HEARING OFFICER WILSON: Thank you.

18 And, Judge Brown, do you have any questions for
19 either party?

20 JUDGE BROWN: No questions. Thank you.

21 HEARING OFFICER WILSON: Thank you.

22 I don't have any further questions either, so
23 we'll go ahead and close.

24 Thank you, everyone, for participating today.

25 The panel will meet to deliberate and decide your

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case. We will issue a written opinion within 100 days.

Today's hearing in the Appeal of Family Auto Sales 04, LLC, is now concluded, and we are off the record.

(Proceedings concluded at 10:05 a.m.)

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HEARING REPORTER'S CERTIFICATE

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

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

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

I have hereunto subscribed my name this 8th day of April, 2026.

ERNALYN M. ALONZO
HEARING REPORTER