

T-A-B-L-E O-F C-O-N-T-E-N-T-S

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1 Sample of online quarterly reports. 9

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1 Partially completed quarterly report. 52

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P-R-O-C-E-E-D-I-N-G-S

3:39 p.m.

CHAIRPERSON MILLER: Okay. The next case on the calendar is Case No. 12-AUD-00046, Caf, Japone, located at 2032 P Street, N.W., License No. 10581 in ANC 2B.

Okay. Would you identify yourselves for the record, please?

MS. PHILLIPS: Louise Phillips, Assistant Attorney General for the District of Columbia. Good afternoon, Board Members.

CHAIRPERSON MILLER: Good afternoon.

MR. MPRAS: Emanuel Mpras for Caf, Japone.

MR. AKIHO: Kenji Akiho, Caf, Japone.

CHAIRPERSON MILLER: What? I didn't catch your name, sir. I'm sorry.

MR. AKIHO: Kenji Akiho.

CHAIRPERSON MILLER: Okay. Thank you.

1 All right. This is a show cause
2 hearing. Are there any preliminary matters?

3 MS. PHILLIPS: There are not,
4 Madam Chair.

5 CHAIRPERSON MILLER: Okay. Are
6 you ready to go forward then?

7 MS. PHILLIPS: We indeed are,
8 Madam Chair.

9 CHAIRPERSON MILLER: Okay. Can I
10 ask how many witnesses each of you are going
11 to have?

12 MS. PHILLIPS: We have one, Madam
13 Chair.

14 CHAIRPERSON MILLER: Thank you.

15 MR. MPRAS: Just Mr. Akiho.

16 CHAIRPERSON MILLER: So one?
17 Okay. Good.

18 MS. PHILLIPS: Is the Board ready?

19 CHAIRPERSON MILLER: Yes. Yes,
20 absolutely.

21 MS. PHILLIPS: Do you want to do
22 openings first?

1 CHAIRPERSON MILLER: Yes, do you
2 want to do your opening?

3 MS. PHILLIPS: You know me, I'm so
4 brave. This is a quarterly statement case.

5 CHAIRPERSON MILLER: Okay.

6 MS. PHILLIPS: I call it a
7 quarterly statement case with a twist. It was
8 not timely filed, but it will be a longer one-
9 witness case than the usual quarterly
10 statements that I do.

11 CHAIRPERSON MILLER: Okay.

12 MR. MPRAS: Yes, Madam Chair, this
13 is a quarterly statement case. We contend
14 that it was timely filed, that there was an
15 error in the ABRA system and we have proof to
16 indicate that the filing attempt was made in
17 a timely fashion.

18 CHAIRPERSON MILLER: Okay. So
19 whenever you're ready to call your first
20 witness.

21 MS. PHILLIPS: Okay.

22 CHAIRPERSON MILLER: Okay.

1 MS. PHILLIPS: The Government
2 calls the first witness.

3 CHAIRPERSON MILLER: Hello, do you
4 swear to tell the truth, the whole truth,
5 nothing but the truth?

6 MS. CLARK: I do.

7 CHAIRPERSON MILLER: Okay. Thank
8 you.

9 MS. PHILLIPS: Good afternoon.
10 Will you state your name and spell it for the
11 record, please?

12 MS. CLARK: Good afternoon. My
13 name is Monica Clark. Last name is spelled C-
14 L-A-R-K.

15 MS. PHILLIPS: And where do you
16 work?

17 MS. CLARK: I work for the Alcohol
18 Beverage Regulation Administration.

19 MS. PHILLIPS: And in what
20 capacity?

21 MS. CLARK: I am a compliance
22 analyst.

1 MS. PHILLIPS: And how long have
2 you been a compliance analyst?

3 MS. CLARK: For roughly about
4 nine-and-a-half months.

5 MS. PHILLIPS: There has been some
6 time in which you've had some other service to
7 ABRA?

8 MS. CLARK: No.

9 MS. PHILLIPS: Okay. What does a
10 compliance analyst do in your case?

11 MS. CLARK: In my capacity I
12 receive the quarterly reports from restaurants
13 and hotels. I record the information, the
14 data from those reports into the ABRA database
15 and I analyze that information. I also assist
16 in audit matters.

17 MS. PHILLIPS: Let me ask you
18 this: I understand that there is more than
19 one way one can file a quarterly statement.
20 Is that an accurate statement that I just
21 made?

22 MS. CLARK: Yes.

1 MS. PHILLIPS: How many ways are
2 there that you can file a quarterly statement?
3 Well, that you know about.

4 MS. CLARK: You can fall the
5 quarterly statement through submission of the
6 online system, you can fax the quarterly
7 statement to ABRA, you can bring the statement
8 in, or you can email it as an attachment.

9 MS. PHILLIPS: Can you mail it,
10 too?

11 MS. CLARK: You can mail it, yes.

12 MS. PHILLIPS: Okay. So we got a
13 lot of ways?

14 MS. CLARK: Yes.

15 MS. PHILLIPS: Now I understand
16 that this case is focusing on one way, is that
17 correct?

18 MS. CLARK: Correct.

19 MS. PHILLIPS: And what way is
20 that that we're focusing on here today for
21 this particular case?

22 MS. CLARK: In this particular

1 case the statement would have been submitted
2 through the ABRA online system.

3 MS. PHILLIPS: And as far ask you
4 know via the ABRA online system was the
5 quarterly statement in question filed timely?

6 MS. CLARK: No.

7 MS. PHILLIPS: Has the quarterly
8 statement for the quarter in question been
9 filed subsequently?

10 MS. CLARK: Yes.

11 MS. PHILLIPS: When?

12 MS. CLARK: It was filed and
13 received on August 16th, 2012.

14 MS. PHILLIPS: Okay. I have a
15 packet that I have presented to the other side
16 that I would like to give to the investigator
17 so that I can have her identify the documents.
18 And I have copies for the Board.

19 CHAIRPERSON MILLER: Great. Okay.

20 MS. PHILLIPS: Now I should tell
21 you that I have one color copy and the rest
22 are black and white, and they are separated by

1 paper clips.

2 CHAIRPERSON MILLER: Thank you.

3 MS. PHILLIPS: There are multiple
4 exhibits.

5 For the record I'd like the color
6 copy to go into the record that we preserve,
7 if that could happen.

8 CHAIRPERSON MILLER: And you've
9 given a copy of these to Licensee's counsel?

10 MS. PHILLIPS: As I said, yes, I
11 did, just before --

12 CHAIRPERSON MILLER: Okay. And
13 are you moving yet any of them into evidence,
14 or are you waiting to?

15 MS. PHILLIPS: No, I always like
16 to --

17 CHAIRPERSON MILLER: Have them be
18 identified?

19 MS. PHILLIPS: -- identify my
20 documents before I move them into admission.
21 I can do it either way.

22 CHAIRPERSON MILLER: No, no, go

1 right ahead.

2 MS. PHILLIPS: My system is
3 identify them first.

4 CHAIRPERSON MILLER: That's a good
5 idea.

6 MS. PHILLIPS: All right.

7 CHAIRPERSON MILLER: Okay.

8 MS. PHILLIPS: I've handed you a
9 packet of documents. And to begin with we
10 have talked about one fact, and that was that
11 there was a late submission of the quarterly
12 statement in question. You said that was
13 true?

14 MS. CLARK: Correct.

15 MS. PHILLIPS: Is there a document
16 that reveals that information to you?

17 MS. CLARK: Yes, the actual form
18 that was submitted to ABRA which indicates the
19 date that it was submitted, which would be the
20 form that has the -- it's the last page.

21 MS. PHILLIPS: I have it at the
22 last page of the exhibit.

1 MS. CLARK: Yes.

2 MS. PHILLIPS: Is that where you
3 have it?

4 MS. CLARK: Yes, it was the next
5 to the last page here, which actually has the
6 trade name and the license number of the
7 licensee. It's dated Thursday, August 16th,
8 2012.

9 MS. PHILLIPS: All right. And
10 before we go into that, did the Board Members
11 find the exhibit that we're talking about?
12 It's the last page or the second to the last
13 page. It's the last page in my exhibit. It's
14 dated Thursday, August 16th, 2012 at 3:04 p.m.

15 CHAIRPERSON MILLER: That's the
16 last line of the --

17 MS. PHILLIPS: No, that's in the
18 subject matter. It's called "Sent."

19 CHAIRPERSON MILLER: Oh, I don't
20 see that.

21 MS. PHILLIPS: The subject matter
22 is "Caf, Japone," but that might be the

1 subject matter of all of these documents, so
2 you don't want to use the subject matter. The
3 most distinguishing mark is handwriting --

4 CHAIRPERSON MILLER: Oh, yes.
5 Okay.

6 MS. PHILLIPS: -- on the upper
7 right hand corner.

8 CHAIRPERSON MILLER: The second
9 line, sent Thursday, August 16, 2012, 3:04
10 p.m.? Is that what you're referring --

11 MS. PHILLIPS: That would be it.

12 CHAIRPERSON MILLER: Okay. I
13 found it on mine.

14 MS. PHILLIPS: Sorry I didn't have
15 time to number them and do everything I
16 usually do.

17 CHAIRPERSON MILLER: Okay.

18 MS. PHILLIPS: All right. There's
19 some handwriting at the upper right-hand
20 corner. Is that your handwriting?

21 MS. CLARK: Yes.

22 MS. PHILLIPS: And what does that

1 handwriting signify to you?

2 MS. CLARK: Well, the first thing
3 it says late and that signifies that -- that
4 indicates that I received it late. The second
5 item would be my initials, which indicates
6 that I was the individual who recorded the
7 information. And the third thing is the date
8 8/17/12, which is the date that I actually
9 entered the data into the ABRA database.

10 MS. PHILLIPS: Okay. So in other
11 words it took you a day to do that? Is that
12 fair?

13 MS. CLARK: That's fair.

14 MS. PHILLIPS: Okay. All right.
15 Now I see that the from says,
16 "notify@quickbase.com." What is that?

17 MS. CLARK: That is the name of
18 the actual system that the form -- the data
19 that was entered goes into.

20 MS. PHILLIPS: Okay. And then
21 we've already talked about the date. And then
22 the to is what?

1 MS. CLARK: The to is ABRA
2 quarterly filing. That is the name of the
3 email system that the form shows up in.

4 MS. PHILLIPS: Okay. And the
5 subject matter is the establishment in
6 question, is that correct?

7 MS. CLARK: That's correct.

8 MS. PHILLIPS: All right. And
9 then the next line we have it says the
10 quarter. So the quarter in question was what?

11 MS. CLARK: Second quarter.

12 MS. PHILLIPS: All right. And
13 that is?

14 MS. CLARK: April through June.

15 MS. PHILLIPS: And when is the
16 report actually due?

17 MS. CLARK: The quarter ends at
18 the end of June. The report would have been
19 due by the 30th of July.

20 MS. PHILLIPS: Okay. So is it
21 fair to say that each quarter has a certain
22 date and then 30 days after the close of the

1 quarter is -- on or before that date the
2 report is due?

3 MS. CLARK: Yes.

4 MS. PHILLIPS: Okay. All right.
5 And then there's license information, is that
6 correct?

7 MS. CLARK: Correct.

8 MS. PHILLIPS: And I see that it's
9 Caf, Japone. Now is that something that's
10 typed in at some point in time by somebody?

11 MS. CLARK: Yes, that information
12 has to be typed in.

13 MS. PHILLIPS: And who types that
14 in?

15 MS. CLARK: The person submitting
16 the form.

17 MS. PHILLIPS: Okay. And I see
18 the address. And then I see owner. Now
19 correct me if I'm wrong, but this is not the
20 owner that I have on my notice.

21 MS. CLARK: That is --

22 MS. PHILLIPS: Can you explain

1 that to me?

2 MS. CLARK: The owner listed here
3 is not the owner that we have listed as being
4 the owner on file with ABRA.

5 MS. PHILLIPS: And so what owner
6 do we have listed as being on file by ABRA?

7 MS. CLARK: We have Caf, Japone,
8 LLC listed.

9 MS. PHILLIPS: Okay. So this
10 notice doesn't concern that, but I'm pointing
11 it out in case there are questions.

12 And then there's other what I call
13 license information. Is that fair?

14 MS. CLARK: Correct.

15 MS. PHILLIPS: And then there's
16 sales information?

17 MS. CLARK: Yes.

18 MS. PHILLIPS: Okay. And then
19 there's expenditures?

20 MS. CLARK: Right.

21 MS. PHILLIPS: And then there's
22 contact information at the bottom?

1 MS. CLARK: Yes.

2 MS. PHILLIPS: And is that the
3 information that's found in the contact
4 section, is that the information that's filled
5 out by the filer also?

6 MS. CLARK: Yes, it is.

7 MS. PHILLIPS: Now what is the
8 last paragraph, for want of another word?

9 MS. CLARK: The last three lines
10 indicate the record number that -- when it
11 goes into the system, it's assigned a record
12 number and it also gives the date that the
13 form was created. The date and time.

14 MS. PHILLIPS: So the record
15 number. So if I'm filling out the form --
16 we're going to get to explain that.

17 MS. CLARK: Yes.

18 MS. PHILLIPS: If I'm filling out
19 the quarterly statement form online and I
20 submit it properly, is that when I get a
21 record number?

22 MS. CLARK: Once you hit submit,

1 you get a record number.

2 MS. PHILLIPS: But it isn't submit
3 that you hit, is it?

4 MS. CLARK: It's called save.

5 MS. PHILLIPS: Thank you. All
6 right.

7 CHAIRPERSON MILLER: I'm sorry,
8 what did you say?

9 MS. CLARK: The actual button is
10 titled save.

11 CHAIRPERSON MILLER: Save?

12 MS. CLARK: Save.

13 CHAIRPERSON MILLER: Okay.

14 MS. PHILLIPS: Right. So if you
15 do everything correctly and hit save, it
16 issues a report that comes to you that has a
17 record number?

18 MS. CLARK: Correct.

19 MS. PHILLIPS: What is the record
20 number for?

21 MS. CLARK: The record number is a
22 couple of things. It indicates that it has

1 been submitted and it identifies it as what
2 number it was within that day.

3 CHAIRPERSON MILLER: I'm sorry,
4 could you repeat the last thing you said?

5 MS. CLARK: The record number
6 indicates what number record it was that was
7 submitted within that day.

8 CHAIRPERSON MILLER: Within that
9 day?

10 MS. CLARK: Yes.

11 CHAIRPERSON MILLER: Okay.

12 MS. PHILLIPS: Okay. So is that
13 saying that we had 2025 records submitted that
14 day?

15 MS. CLARK: No, not 2025 records
16 submitted that day.

17 MS. PHILLIPS: Okay. I was just
18 confused.

19 MS. CLARK: Not that day, but
20 that's the sequence number.

21 CHAIRPERSON MILLER: Okay. Right.

22 MS. PHILLIPS: All right. That's

1 good. So may I ask another question about
2 record ID?

3 MS. CLARK: Yes.

4 MS. PHILLIPS: Is that a unique
5 number to this particular filing and no other
6 filing?

7 MS. CLARK: That number would
8 appear only for this particular filing. And
9 even if the person submitted it again, the
10 number would be the same.

11 MS. PHILLIPS: So if they
12 submitted another quarter, they'd get a new
13 record number? It wouldn't be this record
14 number?

15 MS. CLARK: Correct.

16 MS. PHILLIPS: And we have record
17 numbers why?

18 MS. CLARK: In order to identify
19 the form and to let us know, you know -- to be
20 able to go back and trace the form.

21 MS. PHILLIPS: So it's a tracking
22 number as well?

1 MS. CLARK: Tracking, yes.

2 MS. PHILLIPS: Okay. And then the
3 next line says "Record Owner," and it says
4 "empty."

5 MS. CLARK: Correct.

6 MS. PHILLIPS: Okay. I don't know
7 what that means.

8 MS. CLARK: Okay.

9 MS. PHILLIPS: Is it always empty?

10 MS. CLARK: It's always empty.

11 MS. PHILLIPS: Okay. Thank you.

12 All right. And then the next one is -- I
13 think you told me what it was, but it's the
14 date that the person fills it out online?

15 MS. CLARK: Correct.

16 MS. PHILLIPS: So that would be
17 the establishment owner, or their accountant,
18 or whoever that --

19 MS. CLARK: Yes, right. The
20 business --

21 MS. PHILLIPS: Okay. All right.

22 MS. CLARK: -- is responsible for

1 that.

2 MS. PHILLIPS: All right. And the
3 date at the top in the "Sent" column means
4 that they submitted it at 3:03 on that date
5 and it was received in our system at 3:04
6 presumably?

7 MS. CLARK: Correct.

8 MS. PHILLIPS: Okay. All right.
9 Now and so that's why you know that the
10 quarterly statement in question was filed on
11 August 17th, 2012? I mean, on August 16th,
12 2012, recorded by you on August 17th, 2012.
13 Is that correct?

14 MS. CLARK: That's correct.

15 MS. PHILLIPS: Okay. And you
16 searched the system and did not find any other
17 filings for that quarter. Is that fair?

18 MS. CLARK: That's correct.

19 MS. PHILLIPS: Okay. Now because
20 I haven't done it before, what is the quarter
21 that we're talking about in this time period?

22 MS. CLARK: The quarter would be

1 the second quarter of 2012.

2 MS. PHILLIPS: Second quarter of
3 2012. And the dates of that would be?

4 MS. CLARK: April through June of
5 2012.

6 MS. PHILLIPS: Okay. Thank you.
7 Now in this particular case did you conduct a
8 investigation into this quarterly statement?

9 MS. CLARK: Yes.

10 MS. PHILLIPS: And did you reduce
11 your investigation to a brief report?

12 MS. CLARK: Yes, I did.

13 MS. PHILLIPS: And is that report
14 12 audit 46?

15 MS. CLARK: Yes, it is.

16 MS. PHILLIPS: All right. And in
17 summary, does that quarterly report just say
18 that the quarterly report was not filed
19 timely?

20 MS. CLARK: Correct.

21 MS. PHILLIPS: And all this stuff
22 that we're going into today about the system

1 is not in this report. Is that fair?

2 MS. CLARK: That's fair.

3 MS. PHILLIPS: Okay. And at the
4 end of the report you signed it. Is that
5 fair?

6 MS. CLARK: That's correct.

7 MS. PHILLIPS: Do you remember
8 when you signed it?

9 MS. CLARK: That would have been
10 October 4th, 2012.

11 MS. PHILLIPS: And there's another
12 signature on the second page. Whose signature
13 is that?

14 MS. CLARK: That would be the
15 Chief of Enforcement, Johnnie Jackson.

16 MS. PHILLIPS: Okay. And my
17 understanding is that that's already part of
18 this record. Otherwise, I'll make another
19 copy and I'm submitting it.

20 CHAIRPERSON MILLER: Okay. Let me
21 just check. Is this the investigative report
22 you're referring to?

1 MS. PHILLIPS: Yes.

2 CHAIRPERSON MILLER: Yes, that's
3 part of the record.

4 MS. PHILLIPS: Thank you.

5 CHAIRPERSON MILLER: Okay.

6 MS. PHILLIPS: All right. Now
7 because this is in the opening statement, we
8 know that this is a case about an alleged
9 problem with the system on the date filed,
10 allegedly filed. Is that a fair summary of
11 what you think has happened here?

12 MS. CLARK: Yes.

13 MS. PHILLIPS: Okay. So prior to
14 coming to this hearing I asked you to do
15 something for me. What did I ask you to do?

16 MS. CLARK: You asked me to show
17 you the process by which a written response is
18 filed through that system.

19 MS. PHILLIPS: Right. And before
20 I met with you I had a system that showed that
21 I learned how to do it. Is that fair?

22 MS. CLARK: Yes.

1 MS. PHILLIPS: Okay. So all
2 right. Now the first page in the packet, is
3 that the first screen that you see when you
4 try to file a quarterly report?

5 MS. CLARK: Actually you would
6 have to go to ABRA's Web site first.

7 MS. PHILLIPS: Okay. So if I was
8 a consumer -- and the Board's going to learn
9 all about this, too, if they don't already
10 know it. If I were a consumer and I wanted to
11 file a quarterly report on online, what would
12 I do first, the very first thing?

13 MS. CLARK: First you would go to
14 ABRA's Web site, which is abra.dc.gov.

15 MS. PHILLIPS: And when I got
16 there, what would I see?

17 MS. CLARK: Numerous things.
18 Different informational items.

19 MS. PHILLIPS: Yes.

20 MS. CLARK: To get to the
21 quarterly report, you would need to scroll
22 down on that page.

1 MS. PHILLIPS: Right. And I don't
2 have to go to another page? That's really all
3 on the first page?

4 MS. CLARK: This page.

5 MS. PHILLIPS: Is that fair?

6 MS. CLARK: It's all on one page,
7 yes.

8 MS. PHILLIPS: Okay. And what
9 would I click on? What does it say? What do
10 I have to do?

11 MS. CLARK: You would have to
12 click on a statement that says "ABRA's New
13 Quarterly Filing System."

14 MS. PHILLIPS: Okay. And so I
15 click on that line. Is that in blue?

16 MS. CLARK: Yes, it is.

17 MS. PHILLIPS: Okay. And I click
18 on that line and something happens, right?

19 MS. CLARK: Yes, you click on that
20 line and it takes you into that QuickBase
21 system.

22 MS. PHILLIPS: Okay. And so as

1 page 1 of this packet, do I know see this on
2 the screen?

3 MS. CLARK: Page 1 of the packet
4 you just gave me is the page that you would
5 see.

6 MS. PHILLIPS: Okay. Now at the
7 top of what is labeled 3, it has like a
8 header. It says, "ABRA Quarterly Statement
9 Reporting-Add Restaurant and Hotel Filing."
10 Do you see that, or is that just something
11 that happens when you print it out?

12 MS. CLARK: That shows up when you
13 print it out.

14 MS. PHILLIPS: Okay. All right.
15 So the first thing we see is what?

16 MS. CLARK: The first thing you
17 would see is ABRA Restaurant and Hotel Filing
18 and a green button that says "save," or
19 another button that says "cancel."

20 MS. PHILLIPS: Aha. So now, of
21 course I didn't give a color to myself, but I
22 notice that when you printed out these -- oh,

1 yes, I did. When you printed out these things
2 from the computer, the save button is outlined
3 in green. Is that the way it looks on a
4 screen?

5 MS. CLARK: Actually on a screen
6 the button is completely filled in in green.

7 MS. PHILLIPS: In green. And then
8 is the writing -- like save is like white
9 writing, is that right?

10 MS. CLARK: No, it's black. It's
11 black.

12 MS. PHILLIPS: It's black writing?
13 Okay.

14 MS. CLARK: Yes.

15 MS. PHILLIPS: All right. Now so
16 then what's the next thing we see?

17 MS. CLARK: Oh, there's another
18 little button that says "cancel."

19 MS. PHILLIPS: Okay. And then --

20 CHAIRPERSON MILLER: I'm sorry.
21 What did you say?

22 MS. CLARK: Beside the save button

1 there's a button that says "cancel."

2 CHAIRPERSON MILLER: Cancel?

3 MS. CLARK: Yes.

4 CHAIRPERSON MILLER: All right.

5 MS. PHILLIPS: Right. And can you
6 see that on -- well, I can't it on mine. Can
7 you see it on yours?

8 MS. CLARK: Yes.

9 MS. PHILLIPS: Okay. All right.
10 Now what's the next thing you see?

11 MS. CLARK: The next lines,
12 "Alcohol Beverage Regulation Administration."

13 MS. PHILLIPS: And then?

14 MS. CLARK: Followed by the
15 Quarterly Statement Filing for Restaurants and
16 Licensees indicating the quarters and the due
17 dates.

18 MS. PHILLIPS: Right. So you can
19 click on the quarter you're trying to file.
20 Is that fair?

21 MS. CLARK: Yes. Well, actually
22 the next box is a drop-down box where it has

1 quarter where you can click the appropriate
2 quarter, right.

3 MS. PHILLIPS: And then it says --
4 "Calendar Year" is the next block directly
5 across from quarter?

6 MS. CLARK: That's correct.

7 MS. PHILLIPS: Right. At the top
8 it gives you all four quarters. Is that fair?

9 MS. CLARK: That's fair.

10 MS. PHILLIPS: And it also gives
11 you the deadline by which you must file. Is
12 that fair?

13 MS. CLARK: That's correct.

14 MS. CLARK: Okay. All right. Now
15 I happened to notice when we get to the little
16 drop-down box that says "quarter" and the
17 little drop-down box that says "calendar year"
18 there are red stars next to each one of those
19 items. What do those red stars mean?

20 MS. CLARK: Those red stars
21 indicate that this is information that has to
22 be completed in order to submit the form.

1 MS. PHILLIPS: And there are many
2 red stars. Is that fair?

3 MS. CLARK: That's correct.

4 MS. PHILLIPS: Okay.

5 CHAIRPERSON MILLER: I'm sorry, I
6 don't know if your voice drops at they very
7 end --

8 MS. CLARK: I'm sorry.

9 CHAIRPERSON MILLER: -- but you
10 said they indicate what?

11 MS. CLARK: The red stars indicate
12 information that has to be completed in order
13 to submit the form.

14 CHAIRPERSON MILLER: Okay. Thank
15 you.

16 MS. PHILLIPS: Okay. Now let me
17 ask you this: What if I miss a box that has
18 a red star and try to file? What happens?

19 MS. CLARK: If you miss a box what
20 will happen is that the form will not submit
21 and you will get an error message indicating
22 what you have not completed.

1 MS. PHILLIPS: So say for example
2 I forgot to fill out sales of food, which has
3 a red star on my form, but I filled out
4 everything else perfectly and I go up and I
5 hit the green save button. What happens?

6 MS. CLARK: The system will give
7 you an error message indicating that you had
8 not completed that portion.

9 MS. PHILLIPS: Okay. All right.
10 And then I fill out that portion and I filled
11 out everything correctly or incorrectly, but
12 there's information in all of the red-starred
13 boxes and I hit the green button for save.
14 What happens?

15 MS. CLARK: If everything is
16 completed as required, once you hit the save
17 button, you will get a copy of the form that
18 says "Restaurant and Hotel Filing Saved."

19 MS. PHILLIPS: Okay.

20 MS. CLARK: It's just one little
21 box on the page.

22 MS. PHILLIPS: Okay. Before we go

1 to that piece of paper that I know was in
2 here, right below the quarter and calendar
3 year there's a whole bunch of writing. And in
4 summary, what does that say?

5 MS. CLARK: That's pretty much
6 instructions telling you what you need to do
7 in order to submit the form. It's telling you
8 to click save in order to submit.

9 MS. PHILLIPS: All right.

10 MS. CLARK: And that a copy will
11 come both to you and to ABRA.

12 MS. PHILLIPS: Okay. And it also
13 says we recommend that -- or not we, but it
14 says it is recommended that you save a copy.
15 Is that correct?

16 MS. CLARK: Yes.

17 MS. PHILLIPS: Okay. And here's
18 the question; because this is my true problem
19 with databases, is when you're filling this
20 out -- this takes up more than one screen, is
21 that correct?

22 MS. CLARK: Yes.

1 MS. PHILLIPS: So when I complete
2 the form, I go all the way to the bottom. Can
3 I save it without going all the way back to
4 the top?

5 MS. CLARK: Yes. The save and
6 cancel buttons stays on the page the entire
7 time. No matter how far you scroll down on
8 that screen, that button stays standard right
9 in that position.

10 MS. PHILLIPS: So the position
11 that I see it on my form is the position it
12 stays in when I scroll down to fill out the
13 information?

14 MS. CLARK: Yes, it's like a
15 screen freeze-type.

16 MS. PHILLIPS: Okay. All right.
17 Now and I realize for quarterly statement and
18 auditing purposes all the other categories are
19 very important, however, I'm only going to
20 focus on the very bottom of the second page,
21 which is contact information. There's four
22 sections to the contact information. Is that

1 fair?

2 MS. CLARK: Yes.

3 MS. PHILLIPS: I understand that
4 there might be a most important section of the
5 contact information that is really important
6 to fill out, and it's also got a red star.
7 What is that?

8 MS. CLARK: The email.

9 MS. PHILLIPS: Right. And why is
10 the email address of the establishment or
11 filer so important?

12 MS. CLARK: Well, that information
13 is important because putting the email address
14 allows the filer to also receive a copy for
15 their records to prove that they have
16 submitted the form to ABRA.

17 MS. PHILLIPS: And just to
18 reiterate, the email address has a red star
19 next to it, is that correct?

20 MS. CLARK: That's correct.

21 MS. PHILLIPS: And so if that is
22 not filled out, you can't save it and send it.

1 Is that fair?

2 MS. CLARK: That's correct.

3 MS. PHILLIPS: Okay. So this
4 doesn't guarantee that the information you put
5 in is correct. Is that fair?

6 MS. CLARK: That's fair.

7 MS. PHILLIPS: It just guarantees
8 that it will not allow you to file it and save
9 unless all of the red-starred information
10 blocks are filled out?

11 MS. CLARK: Yes.

12 MS. PHILLIPS: Okay. Now my third
13 page to this stapled package is blank. Is it
14 supposed to be?

15 MS. CLARK: Yes. When you print
16 the form, there's just more space.

17 MS. PHILLIPS: Just for fun,
18 right?

19 MS. CLARK: Yes.

20 MS. PHILLIPS: All right. After
21 the stapled section I have a one-page document
22 that has very little information on it. What

1 is that?

2 MS. CLARK: That is the page that
3 you will see once you save the form, once it's
4 submitted. It indicates that the form was
5 saved.

6 MS. PHILLIPS: Okay. So when you
7 hit the green button, save, after filling out
8 all of the information in the red-starred
9 boxes, this is what you see on the screen?

10 MS. CLARK: Yes.

11 MS. PHILLIPS: And so this tells
12 you that whatever you did you did -- it was
13 done?

14 MS. CLARK: Correct.

15 MS. PHILLIPS: And it doesn't give
16 you any other information than that, is that
17 correct?

18 MS. CLARK: That's correct.

19 MS. PHILLIPS: And so the person
20 who's filing will see this page. Is that
21 fair?

22 MS. CLARK: Yes.

1 MS. PHILLIPS: Okay. Now I have
2 the next page. Now in my record it's the one
3 that says "ABRA Quarterly Filing (ABRA)." Is
4 that your next page?

5 MS. CLARK: Yes, it is.

6 MS. PHILLIPS: All right. What's
7 that for?

8 MS. CLARK: That is a replica of
9 the page that is received at ABRA once the
10 form is saved and submitted.

11 MS. PHILLIPS: Okay. So this is a
12 complete copy of what the filer who's filing
13 the quarterly statement through the database
14 has put --

15 MS. CLARK: Yes.

16 MS. PHILLIPS: -- in the boxes?

17 MS. CLARK: Correct.

18 MS. PHILLIPS: And who does this
19 go to?

20 MS. CLARK: That copy goes
21 directly to ABRA.

22 MS. PHILLIPS: Okay. And as you

1 said in your testimony earlier, when you were
2 looking at the last page, which was the late
3 filed quarter in question, which we'd already
4 identified, the record number is different
5 even though the establishment is the same.
6 And this is a test case, right?

7 MS. CLARK: Correct.

8 MS. PHILLIPS: Okay. So that
9 shows that. Now this is something that you
10 did for me so I could have a copy to show the
11 Board. Is that fair?

12 MS. CLARK: That's correct.

13 MS. PHILLIPS: It was done Friday?

14 MS. CLARK: Yes, Friday.

15 MS. PHILLIPS: Okay. And I see
16 that the trade name is "Test?"

17 MS. CLARK: Right.

18 MS. PHILLIPS: And that shows that
19 you were doing it for me so I could use it as
20 an exhibit. Is that fair?

21 MS. CLARK: That's fair.

22 MS. PHILLIPS: And all the

1 information in here is made up?

2 MS. CLARK: It's fictitious.

3 MS. PHILLIPS: Fictitious. And it
4 says down on contact information your email
5 address because you were the filer?

6 MS. CLARK: Correct.

7 MS. PHILLIPS: All right. And if
8 I had done it to make an exhibit, would it say
9 me?

10 MS. CLARK: If you indicated your
11 email address, yes.

12 MS. PHILLIPS: Correct. Okay.
13 All right. So there are lots of test
14 information -- tests in various stages of the
15 contact information, so we know that this is
16 a test. And this is the copy of the quarterly
17 statement that's identical to what was filed
18 when you pushed the save button that ABRA
19 gets, right?

20 MS. CLARK: Correct.

21 MS. PHILLIPS: All right. Now the
22 next page, what's that?

1 MS. CLARK: That is a replica of
2 the page that is received by the person who
3 submitted the form.

4 MS. PHILLIPS: Okay. So let me
5 ask you this question: Is it identical to the
6 information that the establishment filed as
7 well as -- because I'm going to ask you a
8 compound question -- as well as the copy that
9 comes directly to ABRA?

10 MS. CLARK: This page would be an
11 exact replica even down to the record number.

12 MS. PHILLIPS: Okay. Because it's
13 all the same record?

14 MS. CLARK: Correct.

15 MS. PHILLIPS: So the first copy
16 you identified is the one that comes to ABRA?
17 The second one you identified is the one that
18 goes to the filer or the establishment?

19 MS. CLARK: Correct.

20 MS. PHILLIPS: I got it right?

21 MS. CLARK: You got it right.

22 MS. PHILLIPS: Okay. Now is there

1 some way to check and see if something
2 happened to the system on the day that the
3 establishment alleges that they filed it?

4 MS. CLARK: Yes.

5 MS. PHILLIPS: How do we do that?

6 MS. CLARK: We can go back and
7 pull other records that were submitted on that
8 day to make sure that submissions went through
9 properly.

10 MS. PHILLIPS: So did somebody do
11 that?

12 MS. CLARK: Yes.

13 MS. PHILLIPS: Who?

14 MS. CLARK: My coworker and the
15 lead auditor in my department did so.

16 MS. PHILLIPS: Did so? Okay. And
17 so you were able to tell that on the day in
18 question -- and I'll just tell you that the
19 form that I've been given by the establishment
20 is dated 7/26/2012. Am I correct, Mr. Mpras?

21 MR. MPRAS: You are.

22 MS. PHILLIPS: So you looked on

1 that date and other dates?

2 MS. CLARK: Yes.

3 MS. PHILLIPS: And you made a
4 determination that it had not been filed, is
5 that correct?

6 MS. CLARK: Correct.

7 MS. PHILLIPS: On 7/26, which we
8 have now had an agreement was the day that
9 something was done --

10 MR. MPRAS: I would object because
11 we don't know who did the record search. We
12 don't have a name.

13 MS. CLARK: Okay.

14 MS. PHILLIPS: All right. Who did
15 it?

16 MS. CLARK: That would have been
17 Neal Adejunmobi.

18 MS. PHILLIPS: Okay. And did you
19 check behind to see that other things were
20 filed that date?

21 MS. CLARK: Yes.

22 MS. PHILLIPS: Okay. And you did

1 not find anything either for this
2 establishment on the date in question?

3 MS. CLARK: No, no other records
4 were found for this establishment.

5 MS. PHILLIPS: All right. Did you
6 find records on the date in question, which is
7 7/26/2012, from other establishments that were
8 filed through the database system?

9 MS. CLARK: Yes.

10 MS. PHILLIPS: Were there several?

11 MS. CLARK: There were over 20.

12 MS. PHILLIPS: Okay. And they
13 were all filed on that day and they were all
14 submitted and everything was correct that you
15 could see from the database?

16 MS. CLARK: Yes.

17 MS. PHILLIPS: Okay. And I don't
18 mean correct by the intake. I mean correct by
19 the pages of the intake form.

20 MS. CLARK: Yes.

21 MS. PHILLIPS: Okay. Is that what
22 you called it, an intake form for the

1 quarterly statements? What they fill out, the
2 establishment fills out, what's that called?

3 MS. CLARK: It's just a form.

4 MS. PHILLIPS: A form? Okay. So
5 as far as you could tell the information was
6 transmitted correctly as it should have been
7 if they filled all the red-starred areas out
8 and hit the save button?

9 MS. CLARK: Correct.

10 MS. PHILLIPS: And there were over
11 20 establishments that filed on 7/26/2012 and
12 the information came through the system?

13 MS. CLARK: That's correct.

14 MS. PHILLIPS: So I got it right?

15 MS. CLARK: Yes, you did. Right.

16 MS. PHILLIPS: Is there any other
17 fail-safe mechanism or information that's on
18 any of these forms that I haven't asked you
19 about that you think is important and I just
20 forgot to ask?

21 MS. CLARK: Well, the form does
22 indicate the date, the time that it was

1 recorded and sent.

2 MS. PHILLIPS: For the tests --

3 MS. CLARK: For the --

4 MS. PHILLIPS: -- or the other
5 establishments?

6 MS. CLARK: Correct.

7 MS. PHILLIPS: Okay. All right.

8 So I have no further questions of this
9 witness.

10 CHAIRPERSON MILLER: Okay. Mr.
11 Mpras?

12 MR. MPRAS: Yes. Ms. Clark?

13 MS. CLARK: Yes?

14 MR. MPRAS: You just now testified
15 as to what the system tells you, is that
16 correct?

17 MS. CLARK: That's correct.

18 MR. MPRAS: Okay. But you can't
19 testify as to whether the system was
20 functioning properly or not in and of itself
21 without looking at the data the system gave
22 you, is that correct?

1 MS. CLARK: Could you rephrase the
2 question?

3 MR. MPRAS: Okay. You just now
4 testified that the system was working
5 correctly on July 26th, 2012, and you based
6 that on the information the system itself gave
7 you?

8 MS. CLARK: Yes, I based that on
9 looking at other records that were submitted
10 on that day.

11 MR. MPRAS: Okay. So but that
12 information doesn't tell you whether the
13 system itself was functioning properly or not
14 as a program, as a computer program, does it?

15 MS. CLARK: I can't speak to the
16 programming.

17 MR. MPRAS: Okay. Now since July
18 26th, 2012 have there been any updates,
19 patches or fixes to this system?

20 MS. CLARK: The system has worked
21 properly since I've been here, actually.

22 MR. MPRAS: Since you've been

1 here?

2 MS. CLARK: Yes.

3 MR. MPRAS: Now also since you've
4 been here do you have any knowledge or reports
5 of complaints from individuals who have stated
6 have filed quarterly reports but have not been
7 properly received by ABRA?

8 MS. CLARK: I've always received
9 some -- well, let me rephrase that. Generally
10 every quarter I receive someone who indicates
11 that they submitted a report for some reason.

12 MR. MPRAS: Okay. Now I believe
13 you just answered this, but I'm going to ask
14 you just for my own clarification. Now to
15 your knowledge have there been any errors that
16 have been attributed to this database system?

17 MS. CLARK: No.

18 MR. MPRAS: Okay. And I know
19 you're not a computer expert, but is it
20 possible that the system may have
21 malfunctioned at one point or another?

22 MS. PHILLIPS: I'm going to object

1 as to time. We're really only concerned on
2 July 26th, 2012.

3 MR. MPRAS: Yes, I'll rephrase.
4 So as for that period, for the month of July
5 2012, does a possibility exist?

6 MS. CLARK: I wouldn't be aware of
7 that.

8 MR. MPRAS: Okay. Now do you know
9 when this system was created?

10 MS. CLARK: I'm not aware of the
11 actual date it was created. It was prior to
12 my starting at ABRA.

13 MR. MPRAS: Okay. Now when this
14 system was created, has there been any changes
15 or updates in the forms or reporting format?

16 MS. CLARK: I'm not sure. If that
17 was before my --

18 MR. MPRAS: No? So it is possible
19 that there was a different format in 2012, say
20 early 2012, or summer, July 2012 through
21 today's date?

22 MS. PHILLIPS: What?

1 MR. MPRAS: I'll rephrase.

2 MS. PHILLIPS: Okay. I'm sorry, I
3 just didn't understand the question.

4 MR. MPRAS: Okay. My first
5 question was that if there was any change or
6 upgrade to the reporting format.

7 MS. CLARK: Not to my knowledge.

8 MR. MPRAS: Okay. Not to your
9 knowledge? So it is possible that there was
10 some change then that you don't know about?

11 MS. PHILLIPS: Objection as to
12 time. Are you talking still about July 2012?

13 MR. MPRAS: The reference period
14 will be July 2012 through present.

15 MS. CLARK: Okay. From that
16 reference time there have been no updates that
17 were made on that particular form, no.

18 MR. MPRAS: Okay. I'd like to
19 present our exhibit to the Board.

20 MS. CLARK: This would be a copy
21 of a submission form for the reporting system.

22 MR. MPRAS: And would you read the

1 date on the bottom, please?

2 MS. CLARK: The date on the bottom
3 says 7/26/2012.

4 MR. MPRAS: All right. Would you
5 also read the first part right after where the
6 quarter is specified?

7 MS. CLARK: Okay. The quarter is
8 listed as the second quarter. The calendar
9 year 2012. Then there's the license
10 information with the trade name, Caf, Japone;
11 the address, 2032 P Street; owner, Kuba, LLC;
12 number of seats available to patrons on the
13 floor; License No. 10581.

14 MR. MPRAS: That's fine. Thank
15 you.

16 MS. CLARK: Okay.

17 MR. MPRAS: So, ma'am, this would
18 be the form that one would fill out to submit
19 the quarterly report?

20 MS. CLARK: Yes, that looks like
21 the form.

22 MR. MPRAS: Okay. And would you

1 look at -- I'm going to have to come up again.

2 MS. PHILLIPS: Do you want me to
3 give her my copy so you can stay and question?

4 MR. MPRAS: That would be great.

5 MS. CLARK: Thank you.

6 MR. MPRAS: Would you please
7 direct your attention to the bottom left-hand
8 corner?

9 MS. CLARK: Yes.

10 MR. MPRAS: Do you recognize that
11 site?

12 MS. CLARK: I recognize OCTO
13 QuickBase.

14 MR. MPRAS: Okay. Could you tell
15 us to your knowledge what that is?

16 MS. CLARK: QuickBase is the name
17 of the system that houses this online system.

18 MR. MPRAS: Okay. Thank you very
19 much. Now, ma'am, is it possible that there
20 was some type of error in which case this form
21 was just not properly submitted or received by
22 ABRA?

1 MS. CLARK: Anything's possible.

2 MR. MPRAS: Anything's possible?

3 But in terms of this form does it look to you
4 that an attempt was made to submit this on
5 July 26th, 2012?

6 MS. CLARK: I can't say that for
7 sure because the form is not in its entirety.

8 MR. MPRAS: But the site was
9 accessing information was -- that you can read
10 was entered for that establishment prior to
11 the deadline for the quarterly report filing?

12 MS. CLARK: From what I see on
13 this form I can say that the form was
14 accessed.

15 MR. MPRAS: Okay.

16 MS. CLARK: I can't speak to
17 whether or not it was being submitted.

18 MR. MPRAS: All right. Thank you
19 very much.

20 CHAIRPERSON MILLER: I'm sorry, I
21 didn't catch that whole thing.

22 MS. CLARK: Okay. I'm sorry.

1 CHAIRPERSON MILLER: You can say
2 what and you can't say what?

3 MS. CLARK: I can say that the
4 form was accessed, but I can't speak to the
5 fact that it was actually saved and submitted.

6 CHAIRPERSON MILLER: Okay. Thank
7 you.

8 MS. PHILLIPS: May I ask questions
9 now, or does the Board want to ask questions?

10 CHAIRPERSON MILLER: No, you can
11 go first.

12 MS. PHILLIPS: Okay. Can I use
13 your copy so I can ask questions? Let's look
14 at the copy that Mr. Mpras just gave you.

15 MS. CLARK: Yes.

16 MS. PHILLIPS: And would it be
17 fair that it's a little bit faded, it's not
18 the perfect copy?

19 MS. CLARK: Correct.

20 MS. PHILLIPS: All right. And I'm
21 comparing it to the exhibit that I used on
22 behalf of the Government. Does this look like

1 it's the first page?

2 MS. CLARK: Yes.

3 MS. PHILLIPS: All right. So
4 everything below the license information is
5 blank. Is that fair?

6 MS. CLARK: Yes.

7 MS. PHILLIPS: So whatever was
8 done on this page that we have a copy of that
9 was the Respondent's exhibit, it could not --
10 from what you said; and if I say this wrong,
11 you correct me --

12 MS. CLARK: Yes.

13 MS. PHILLIPS: -- could not have
14 been saved and submitted because all of the
15 boxes with the red stars have not been
16 completed.

17 MS. CLARK: That's correct.

18 MS. PHILLIPS: Okay. So all this
19 tells us is that the form was accessed?

20 MS. CLARK: Correct.

21 MS. PHILLIPS: On the database?

22 MS. CLARK: Yes.

1 MS. PHILLIPS: And that the
2 license information was filled in?

3 MS. CLARK: That's correct.

4 MS. PHILLIPS: But when you said
5 you can't speak about saving and filing, this
6 does tell us about saving and filing, doesn't
7 it, this exhibit that Mr. Mpras gave us on
8 behalf of the Respondent?

9 MS. CLARK: Well, yes, it couldn't
10 have been submitted without the other
11 information.

12 MS. PHILLIPS: Okay. And the page
13 I have has none of that information. Is that
14 fair?

15 MS. CLARK: That's correct.

16 MS. PHILLIPS: Okay. Below
17 license information?

18 MS. CLARK: Right.

19 MS. PHILLIPS: Okay. I move for
20 the submission of the exhibit packet that I
21 gave to the Board. One, two, three, four,
22 five, six, seven pages. I would like the

1 colored one to be made part of the record, if
2 it could be, please, because there's only one
3 color copy on the dais.

4 CHAIRPERSON MILLER: Right.

5 MS. PHILLIPS: Whoever has it.

6 CHAIRPERSON MILLER: Right, I
7 don't know who has it.

8 MS. PHILLIPS: Okay.

9 CHAIRPERSON MILLER: But that one
10 will be the one in the record.

11 Any objection?

12 MR. MPRAS: Well, I would object
13 because that was a test that was run under
14 optimal conditions by an ABRA technician and
15 it doesn't speak to the conditions where the
16 original quarterly report has been filed or
17 would be filed. It's a perfect copy under
18 optimal conditions assuming that the system is
19 working properly.

20 CHAIRPERSON MILLER: So do you
21 want to respond, Ms. Phillips?

22 MS. PHILLIPS: It's a template

1 that's given for the edification of the fact
2 finders showing how the system works. We had
3 testimony that on the date in question of Mr.
4 Mpras' exhibit, which is 7/26/12, I think,
5 because I now no longer have a copy --

6 CHAIRPERSON MILLER: Yes.

7 MS. PHILLIPS: -- that that
8 particular document never came to ABRA. It
9 could not have because the information on the
10 red boxes is not filled out.

11 Now just by way of explanation, if
12 Mr. Mpras had come into me and given me a copy
13 of a form that he somehow got that had every
14 single box with a red star filled out and said
15 I hit the save button and see, every red box
16 is filled out, every box with a red star is
17 filled out, that would be a different
18 argument. The testimony we have is you can't
19 save it and send it to ABRA unless every box
20 with a red star is filled out and that when
21 you do so, it gives you this page which says
22 you did it, and then it gives you this page

1 that goes to ABRA, and it gives you this page
2 which goes to you as the filer. And so you
3 have proof.

4 CHAIRPERSON MILLER: Okay.

5 MR. MPRAS: If I may, that is
6 assuming that the system is working, the
7 software is working properly, which the
8 witness could not testify to.

9 CHAIRPERSON MILLER: Okay. I'm
10 going to admit the document though. I think
11 that it's relevant to this case. And then
12 we'll give it the weight it deserves
13 considering your arguments as to, you know,
14 under what conditions it was done.

15 Okay. So that's Government
16 Exhibit No. 1.

17 Okay. I think it's time for Board
18 questions of this witness. Mr. Alberti?

19 MEMBER ALBERTI: Hi, Investigator
20 Clark. Good afternoon.

21 MS. CLARK: Good afternoon.

22 MEMBER ALBERTI: Forgive me if

1 you've answered some of these questions
2 already. Okay? First of all, I'm assuming
3 that the last page of the Government's
4 exhibit, all right, the last two pages of the
5 Government's exhibit, which are emails from
6 notify quickbase.com. All right?

7 MS. CLARK: Yes.

8 MEMBER ALBERTI: I'm assuming that
9 you have to go in and collect those emails.
10 Is that correct?

11 MS. CLARK: That's correct.

12 MEMBER ALBERTI: Okay. What is
13 your routine for collecting those? When do
14 you do that? How often do you do that?

15 MS. CLARK: Oh, I do that five
16 days a week when I'm here several times a day.

17 MEMBER ALBERTI: Several times a
18 day?

19 MS. CLARK: Several times a day.

20 MEMBER ALBERTI: Okay. So the
21 last page of the Government's exhibit at the
22 top it says, "Late, MC, 8/17/12." What does

1 that date signify?

2 MS. CLARK: 8/17/12 is the date
3 that I actually entered the data on that form
4 into the ABRA database.

5 MEMBER ALBERTI: Okay. Oh, that's
6 the date you entered it? It's not the date
7 that you got this form?

8 MS. CLARK: Right, the date I
9 received the form would have been the 16th,
10 and I indicated on there the date and initials
11 to let myself know that I have entered the
12 information.

13 MEMBER ALBERTI: Okay. Are you
14 positive that you got this form from the
15 database on the 16th or the 17th?

16 MS. CLARK: I'm positive that I
17 got it based on the sent date on the 16th
18 listed at the top of the form there.

19 MEMBER ALBERTI: Okay. Have you
20 noticed that date to be wrong?

21 MS. CLARK: No.

22 MEMBER ALBERTI: Okay. On our

1 about July 26th do you remember looking into
2 this email database and getting forms?

3 MS. CLARK: Yes.

4 MEMBER ALBERTI: All right.

5 MS. CLARK: There were several
6 forms.

7 MEMBER ALBERTI: Did you notice
8 anything odd about the emails coming through?

9 MS. CLARK: None. Not at all.

10 MEMBER ALBERTI: Did they all
11 appear to have the correct dates at the top?

12 MS. CLARK: Quite normal.

13 MEMBER ALBERTI: Okay. I have no
14 further questions right now.

15 CHAIRPERSON MILLER: Others? Mr.
16 Brooks?

17 MEMBER BROOKS: Yes. Ms. Clark,
18 you said you've been here what, about eight-
19 and-a-half months?

20 MS. CLARK: About eight-and-a-
21 half.

22 MEMBER BROOKS: Okay. Have you

1 had any occasion where a licensee has come to
2 you and said that the report was not filed and
3 there was perhaps something wrong with the
4 computer system?

5 MS. CLARK: Not where it's been
6 able to be substantiated.

7 MEMBER BROOKS: Okay. But someone
8 has come to you and said that they did file,
9 but somehow your records don't indicate that
10 you received it?

11 MS. CLARK: I get that from all
12 filing methods.

13 MEMBER BROOKS: Okay. So that's a
14 regular occurrence as far as allegations?

15 MS. CLARK: Yes.

16 MEMBER BROOKS: Okay. All right.
17 Thank you, Madam Chair.

18 CHAIRPERSON MILLER: Okay.
19 Others?

20 (No audible response.)

21 CHAIRPERSON MILLER: Ms. Clark, do
22 you get any feedback that this particular

1 filing system is confusing to people?

2 MS. CLARK: No.

3 CHAIRPERSON MILLER: Okay. Do you
4 get feedback where someone has said that they
5 actually messed up on the filing and they
6 thought it saved and didn't save?

7 MS. CLARK: No, I've had people
8 resubmit more than once.

9 CHAIRPERSON MILLER: Okay. And
10 how often do people call you to make sure that
11 it went through? Is that common?

12 MS. CLARK: It's common among some
13 establishments that are just very cautious.

14 CHAIRPERSON MILLER: Okay. And
15 this system was in place before you came on
16 board, correct?

17 MS. CLARK: Yes. Yes, it was.

18 CHAIRPERSON MILLER: And do you
19 know how long it's been in place?

20 MS. CLARK: I'm not sure of the
21 exact time frame, but I would say over a year.

22 CHAIRPERSON MILLER: Okay. All

1 right. I don't have any other questions. Any
2 other Board questions? Mr. Alberti?

3 MEMBER ALBERTI: Yes.

4 Investigator Clark, this email database sends
5 a notice to ABRA, comma, Quarter Filing.

6 MS. CLARK: Yes.

7 MEMBER ALBERTI: Right? That's
8 the address it sends it to?

9 MS. CLARK: Correct.

10 MEMBER ALBERTI: And that's where
11 you pick it up, right? Does that database
12 store a copy of that email any other place?
13 Now, let me give you an example. When I send
14 out emails from my account, I automatically
15 have them saved to a sent folder. So that's
16 another place.

17 MS. CLARK: Yes.

18 MEMBER ALBERTI: It goes out to
19 the recipient. If I send it to myself, I
20 would get it, but it would also be in my sent
21 folder. Do you know if this system has
22 anything like that?

1 MS. CLARK: This system actually
2 has a method where it saves all of these type
3 of submissions into a spreadsheet that can be
4 accessed and you can go back and look up and
5 find the exact date, time and everything and
6 pull that particular email up.

7 MEMBER ALBERTI: Oh. Did you
8 check that spreadsheet?

9 MS. CLARK: Yes.

10 MEMBER ALBERTI: Was it consistent
11 with the email that you got?

12 MS. CLARK: Yes.

13 MEMBER ALBERTI: Okay. No further
14 questions. Thank you.

15 CHAIRPERSON MILLER: Is there
16 redirect?

17 MS. PHILLIPS: Yes. When Mr.
18 Alberti asked you the question was that
19 consistent with the email you got, did you
20 know which email he was talking about?

21 MEMBER ALBERTI: Well, I meant the
22 email -- just to clarify the question, the

1 email to ABRA, Quarter Filing for this
2 particular case, the last page of the
3 Government's document.

4 MS. PHILLIPS: Was the late one,
5 with the "late" at the top?

6 MEMBER ALBERTI: It says, "Late,
7 MC" at the top, yes.

8 MS. PHILLIPS: Okay.

9 MS. CLARK: Yes, that was my
10 understanding.

11 MS. PHILLIPS: Okay.

12 MEMBER ALBERTI: Thank you, Ms.
13 Phillips.

14 MS. PHILLIPS: Because I was
15 totally confused.

16 MEMBER ALBERTI: No, no, no. No,
17 that's good. Thank you.

18 MS. PHILLIPS: All right. Let me
19 ask you this, because I know you were not
20 here, I heard, when this database, the
21 notify@quickbase.com was implemented.

22 MS. CLARK: Correct.

1 MS. PHILLIPS: Do you know whether
2 there was another quarterly statement filing
3 database before this one for ABRA?

4 MS. CLARK: I believe so.

5 MS. PHILLIPS: Okay. And we
6 replaced that database with this one, is that
7 correct?

8 MS. CLARK: That's correct.

9 MS. PHILLIPS: Okay. Thank you.

10 CHAIRPERSON MILLER: Mr. Mpras?

11 MR. MPRAS: I just have a couple
12 questions. You said you haven't had that many
13 complaints regarding the quarterly statement
14 system other than not receiving what people
15 said they had submitted?

16 MS. CLARK: Well, at the end of a
17 quarter I get several people indicating they
18 submitted and filed different methods.

19 MR. MPRAS: Yes. Okay. Including
20 this system?

21 MS. CLARK: Online, in mail, every
22 method available.

1 MR. MPRAS: And have any of them
2 every been able to provide you any type of
3 proof that they have submitted it?

4 MS. CLARK: Not that -- no.

5 MR. MPRAS: Now is it part of your
6 job description to deal with individuals who
7 have complaints on the system or filing in
8 general?

9 MS. CLARK: Yes.

10 MR. MPRAS: Okay. Thank you very
11 much.

12 MS. CLARK: You're welcome.

13 CHAIRPERSON MILLER: You have
14 another question?

15 MEMBER ALBERTI: No, never mind.
16 It's not necessary.

17 CHAIRPERSON MILLER: Okay. Thank
18 you.

19 MS. CLARK: Thank you.

20 CHAIRPERSON MILLER: Do you rest?

21 MS. PHILLIPS: I asked for my
22 exhibits to be admitted and they were

1 admitted, correct?

2 CHAIRPERSON MILLER: One. Was
3 there one of seven pages?

4 MS. PHILLIPS: Oh, yes, that
5 multiple page? Yes.

6 CHAIRPERSON MILLER: Yes, they've
7 been admitted.

8 MS. PHILLIPS: I rest.

9 CHAIRPERSON MILLER: Okay. Good.
10 All right, Mr. Mpras?

11 MR. MPRAS: First off, I would
12 also ask that our exhibit be admitted as
13 Defense Exhibit 1.

14 CHAIRPERSON MILLER: Okay. The
15 exhibit with the date 7/26/2012 on the bottom?

16 MR. MPRAS: Yes, ma'am, the only
17 one I provided.

18 CHAIRPERSON MILLER: Okay. Ms.
19 Phillips, any objection?

20 MS. PHILLIPS: No, I don't have
21 any objection.

22 CHAIRPERSON MILLER: Okay. Then

1 that will be admitted as Licensee's Exhibit
2 No. 1.

3 MR. MPRAS: I have a couple
4 questions for Mr. Akiho.

5 CHAIRPERSON MILLER: Okay. Do you
6 want to take the stand? All right. I'll
7 swear you in. Would you raise your right
8 hand?

9 MR. AKIHO: Yes.

10 CHAIRPERSON MILLER: Do you swear
11 to tell the truth, the whole truth, nothing
12 but the truth?

13 MR. AKIHO: Yes.

14 CHAIRPERSON MILLER: Okay. Thank
15 you. All right.

16 MR. MPRAS: Please state your name
17 for the record.

18 MR. AKIHO: Kenji Akiho, Caf,
19 Japone, Kuba, LLC.

20 MR. MPRAS: So you are the owner
21 of Caf, Japone?

22 MR. AKIHO: Yes.

1 MR. MPRAS: And on July 26th, 2012
2 did you attempt to submit the --

3 MR. AKIHO: Yes, my account sent
4 from office to quarterly report or -- I didn't
5 know that's missing.

6 MR. MPRAS: Okay.

7 CHAIRPERSON MILLER: Can you speak
8 a little louder, please?

9 MR. AKIHO: My account sent from
10 office to the --

11 CHAIRPERSON MILLER: Okay.

12 MR. AKIHO: -- quarterly record.
13 Then I thought everything sent already. Then
14 one missing, right?

15 CHAIRPERSON MILLER: I'm sorry,
16 I'm having trouble hearing. Your accountant
17 sent from his office?

18 MR. AKIHO: Yes.

19 CHAIRPERSON MILLER: Is that what
20 you said?

21 MR. AKIHO: He send.

22 CHAIRPERSON MILLER: Then what?

1 MR. AKIHO: Then wonder why all
2 okay, right?

3 MR. MPRAS: And he thought that it
4 was properly submitted on July 26th by his
5 accountant from his office.

6 CHAIRPERSON MILLER: Okay. Thank
7 you.

8 MR. MPRAS: And did your
9 accountant confirm to you that this was done
10 on July 26th?

11 MR. AKIHO: Yes, later on he sent
12 me -- she give it to me.

13 MR. MPRAS: Okay.

14 MEMBER ALBERTI: Can you speak up,
15 please?

16 MR. AKIHO: Yes.

17 MEMBER ALBERTI: Okay. Thank you.

18 MR. MPRAS: Mr. Akiho, is this the
19 document --

20 MR. AKIHO: Yes.

21 MR. MPRAS: -- that he sent you?

22 MR. AKIHO: Yes.

1 MR. MPRAS: Just note that Mr.
2 Akiho is referring to Defense Exhibit 1.

3 CHAIRPERSON MILLER: Okay. Thank
4 you.

5 MR. MPRAS: No further questions.

6 MR. AKIHO: Thank you.

7 MR. MPRAS: She ask --

8 CHAIRPERSON MILLER: Yes, we may
9 have questions. Ms. Phillips, do you have
10 questions?

11 MS. PHILLIPS: I do.

12 CHAIRPERSON MILLER: Okay.

13 MS. PHILLIPS: I want to make sure
14 I understand what you said. You said your
15 accountant filed this --

16 MR. AKIHO: And -- yes. Filed,
17 yes.

18 MS. PHILLIPS: -- form?

19 MR. AKIHO: Yes.

20 MS. PHILLIPS: He did it?

21 MR. AKIHO: She did it.

22 MS. PHILLIPS: What is your

1 accountant's name?

2 MR. AKIHO: Ed Sauer.

3 MS. PHILLIPS: Do you know how to
4 spell that?

5 MR. AKIHO: E-D-D, Ed, E-D, E-D,
6 the Sauer.

7 MS. PHILLIPS: S-O-U-R?

8 MR. AKIHO: No, G-U-R. G-E-R. G-
9 E-R. Sauer.

10 MR. MPRAS: You don't have it
11 written down?

12 MS. PHILLIPS: Okay. So you
13 didn't file this paper which is --

14 MR. AKIHO: No, I --

15 MS. PHILLIPS: -- Respondent --

16 MR. MPRAS: You were there?

17 MS. PHILLIPS: Don't do that,
18 please.

19 All right. You said --

20 MR. AKIHO: Next time I going to
21 bring him here.

22 MS. PHILLIPS: Yes, just a second.

1 Let me try to ask one question and then you
2 give me the answer to that question. Then
3 I'll ask another question. Would that be
4 helpful?

5 Your accountant filed this form,
6 yes?

7 MR. AKIHO: Yes.

8 MS. PHILLIPS: I thought you said
9 he filed it at his office.

10 MR. AKIHO: His office, yes.

11 MS. PHILLIPS: His office?

12 MR. AKIHO: Yes.

13 MS. PHILLIPS: Did you see him
14 file this form?

15 MR. AKIHO: I think so, yes.

16 MS. PHILLIPS: Were you at his
17 office --

18 MR. AKIHO: Yes.

19 MS. PHILLIPS: -- when he filed
20 it?

21 MR. AKIHO: Yes.

22 MS. PHILLIPS: You were?

1 MR. AKIHO: Because I ask her that
2 time.

3 MS. PHILLIPS: Yes, so you went to
4 his office?

5 MR. AKIHO: Yes.

6 MS. PHILLIPS: And you watched him
7 push the button?

8 MR. AKIHO: I don't know that
9 exactly, but you know, that's --

10 MS. PHILLIPS: Did you watch him
11 type in the information?

12 MR. AKIHO: I don't exactly that,
13 but --

14 MS. PHILLIPS: So you didn't see
15 that part?

16 MR. AKIHO: Yes, that part I don't
17 -- I notice later.

18 MS. PHILLIPS: Yes, you know it's
19 there, right, because you --

20 MR. AKIHO: No, I notice later
21 that.

22 MS. PHILLIPS: You know what? I'm

1 sorry.

2 MR. AKIHO: I notice that paper
3 later. Then I went over then. Then she told
4 me that he has already --

5 MS. PHILLIPS: All right.

6 MR. AKIHO: -- another one, too.

7 MS. PHILLIPS: So did you go over
8 to his office the same day he tried to file
9 the report, or some other day?

10 MR. AKIHO: I don't remember
11 exactly, but --

12 MS. PHILLIPS: Okay.

13 MR. AKIHO: -- I remember he had
14 this paper with number supposed to send
15 already. Send already, but doesn't work. I
16 don't know what.

17 MS. PHILLIPS: So it was this
18 paper?

19 MR. AKIHO: Yes. That paper, yes.

20 MS. PHILLIPS: It was this paper
21 that he sent?

22 MR. AKIHO: Yes. No, that paper,

1 that don't work. He said he had, you know, a
2 number one already. Then supposed to be this,
3 you know? So I don't -- he said --

4 MS. PHILLIPS: What paper was
5 that? Did you bring that paper today?

6 MR. AKIHO: No, that one.

7 MS. PHILLIPS: So you only brought
8 this paper today?

9 MR. AKIHO: Yes. No, I don't
10 bring it. Mr. --

11 MS. PHILLIPS: So when you went to
12 your accountant's office --

13 MR. AKIHO: Yes.

14 MS. PHILLIPS: -- and you're not
15 sure what day, he gave you this paper?

16 MR. AKIHO: No, I brought that.
17 Then -- yes.

18 MS. PHILLIPS: Just a second.

19 MR. AKIHO: I don't remember
20 exactly.

21 MS. PHILLIPS: All right. It's
22 okay. Your accountant gave you this paper,

1 yes?

2 MR. AKIHO: I think so, yes.

3 MS. PHILLIPS: Yes, you think so?

4 MR. AKIHO: Yes, it doesn't work.

5 That was some machine mistake, he said, but --

6 MS. PHILLIPS: But you don't know?

7 MR. AKIHO: I don't know.

8 MS. PHILLIPS: He said?

9 MR. AKIHO: Yes, he said that.

10 MS. PHILLIPS: Okay. Did he give
11 you another paper?

12 MR. AKIHO: Yes.

13 MS. PHILLIPS: And you're sure
14 what day he gave you that -- did he give --
15 never mind. Did he give you another paper the
16 same day he gave you this paper?

17 MR. AKIHO: No, I think later, you
18 know?

19 MS. PHILLIPS: Later he gave you
20 another paper?

21 MR. AKIHO: Yes. Yes, because I
22 did not know that mistake, you know? They

1 don't get it.

2 MS. PHILLIPS: Okay. All right.

3 MR. AKIHO: Because another paper
4 already going -- go through.

5 MS. PHILLIPS: So another paper
6 went through?

7 MR. AKIHO: Yes.

8 MS. PHILLIPS: Okay. So did you
9 look at the other paper that went through?

10 MR. AKIHO: I think so, yes.

11 MS. PHILLIPS: At some later date,
12 right?

13 MR. AKIHO: Later? That was long
14 time, right?

15 MS. PHILLIPS: Well, yes, 2012 was
16 a long time ago.

17 MR. AKIHO: Long time, I think.

18 MS. PHILLIPS: Okay. Just a
19 second. I'm coming. I'm coming with that.
20 Thank you.

21 MR. AKIHO: I just remember --

22 MS. PHILLIPS: Just a second. No

1 question is -- I don't have a question in
2 front of you. Just a second. I'm trying to
3 find -- okay.

4 All right. May I approach the
5 witness?

6 CHAIRPERSON MILLER: Yes.

7 CHAIRPERSON MILLER: You need to
8 show Mr. Mpras what you're approaching with.

9 MS. PHILLIPS: I'm approaching
10 with the last page of the packet that says
11 "Late" on the top.

12 MR. MPRAS: Okay.

13 MS. PHILLIPS: Okay. Is this the
14 paper he showed you at some later date?

15 MR. AKIHO: No. No, she show all
16 -- later on find out the paper doesn't
17 through. So I went over there. What's going
18 on now? One paper doesn't -- all the paper go
19 and one paper doesn't through, he told me, so
20 I went.

21 MS. PHILLIPS: So you've never
22 seen this piece of paper?

1 MR. AKIHO: I don't remember. I
2 don't think so.

3 MS. PHILLIPS: Okay.

4 MR. AKIHO: I don't know.

5 MS. PHILLIPS: Let the record
6 reflect that counsel for the Government showed
7 the owner the paper that was the last page of
8 its Exhibit No. 1 that has, "Late, MC,
9 8/17/12" on the top, which was the late filing
10 submission through the database in August for
11 the quarter in question.

12 CHAIRPERSON MILLER: Yes.

13 MS. PHILLIPS: I have no further
14 questions.

15 CHAIRPERSON MILLER: Okay. Board
16 questions? Yes, Mr. Alberti?

17 MEMBER ALBERTI: Good afternoon,
18 Mr. Akiho.

19 CHAIRPERSON MILLER: Please try to
20 talk into the mic though.

21 MR. AKIHO: Yes. Yes, sir.

22 CHAIRPERSON MILLER: Okay. So we

1 can hear you. Go ahead.

2 MEMBER ALBERTI: When did you
3 discover that this report was filed late?

4 MR. AKIHO: They didn't -- I don't
5 remember, but I went to his office twice.
6 Then I saw the first page. Every page he sent
7 for me. Then I left. Then later on, I think
8 a notice from here or -- then paper one's
9 number missing. So I went back again. Then
10 he said he sent a new -- same number, sent to
11 here again, I think. I don't know exactly
12 since then.

13 MEMBER ALBERTI: Okay. How did
14 you find out that you had not filed on time?

15 MR. AKIHO: I don't remember.
16 That not -- maybe from my account or I got a
17 note from ABC Board.

18 MEMBER ALBERTI: Okay. So do you
19 remember whether it was from your accountant?
20 How would your accountant know that the
21 Agency's records showed that they had not
22 gotten it on time?

1 MR. AKIHO: I don't think that
2 time I didn't notice. He say he going to send
3 this with computer, so --

4 MEMBER ALBERTI: Okay. But you
5 did get a notice from ABRA telling you that --

6 MR. AKIHO: Yes, I did. Yes.

7 MEMBER ALBERTI: -- according to
8 them you had not filed on time, is that
9 correct?

10 MR. AKIHO: Yes.

11 MEMBER ALBERTI: Okay. Does your
12 accountant always file your quarterly
13 statements?

14 MR. AKIHO: Yes.

15 MEMBER ALBERTI: How long has been
16 doing that?

17 MR. AKIHO: Since 20 some years.

18 MEMBER ALBERTI: Okay. Have you
19 ever filed it yourself?

20 MR. AKIHO: I can't. I don't know
21 how to use a computer, so --

22 MEMBER ALBERTI: Okay. Has your

1 accountant ever filed a quarterly report for
2 you late?

3 MR. AKIHO: Some months, a couple
4 months I used some different account. Then we
5 got a mistake before.

6 MEMBER ALBERTI: You used
7 something what?

8 MR. AKIHO: Couple years ago or --
9 I use a different account, but doesn't work.
10 Then I go back to him. Only three months --
11 except the three months, all the time he's my
12 accountant.

13 MEMBER ALBERTI: Okay. So when
14 did you go back to this accountant?

15 MR. AKIHO: Long ago.

16 MEMBER ALBERTI: 2011? 2010?
17 2012? When did you go back to this
18 accountant?

19 MR. AKIHO: I think until -- yes,
20 but I don't remember. Always contact with
21 him, so --

22 MEMBER ALBERTI: Was it 2012 that

1 you went back to him, or was it before that?

2 MR. AKIHO: Before, I think.

3 MEMBER ALBERTI: Before that?

4 Okay. Was it 2011, or was it before then?

5 MR. AKIHO: I don't remember
6 exactly. Always I using him to -- since over
7 20 year.

8 MEMBER ALBERTI: Okay. I have no
9 further questions.

10 CHAIRPERSON MILLER: Okay.

11 Others?

12 (No audible response.)

13 CHAIRPERSON MILLER: Did you say
14 that your accountant admitted that he made a
15 mistake?

16 MR. AKIHO: He doesn't -- this
17 paper I don't think -- he sent everything.
18 Then doesn't work one paper, he told me. And
19 when I was his -- front of his desk, so
20 supposed to be I should know, too, why he
21 doesn't missing a paper, but I didn't notice,
22 too. So I don't get receipt yet from him. So

1 I don't know that.

2 CHAIRPERSON MILLER: You didn't
3 get a receipt?

4 MR. AKIHO: No. Later on, yes.
5 They show me one the number empty, so I think
6 he sent again, but that -- then I thought that
7 okay. And then I ask what's going on?
8 Something happen.

9 CHAIRPERSON MILLER: Okay. I
10 don't have any other questions. Are there any
11 other questions from -- Mr. Mpras, do you have
12 any questions?

13 MR. MPRAS: No, ma'am.

14 MS. PHILLIPS: None for the
15 Government.

16 CHAIRPERSON MILLER: Okay. All
17 right. Thank you very much.

18 MEMBER ALBERTI: Mr. Mpras, was
19 this admitted, do you remember, your exhibit?

20 MR. MPRAS: It was.

21 MEMBER ALBERTI: It was? Okay.

22 Thank you. Ms. Phillips agrees.

1 MS. PHILLIPS: I agree.

2 MEMBER ALBERTI: Thank you. It's
3 late in the day for us.

4 CHAIRPERSON MILLER: Okay. Yes.
5 All right.

6 MS. PHILLIPS: Exactly.

7 MR. MPRAS: For all of us.

8 CHAIRPERSON MILLER: So we have
9 one exhibit for the Government and one exhibit
10 for the Licensee?

11 MS. PHILLIPS: Yes.

12 CHAIRPERSON MILLER: Okay.

13 MS. PHILLIPS: One multi-page
14 exhibit from the Government.

15 CHAIRPERSON MILLER: Seven pages.

16 MS. PHILLIPS: And a single-page
17 exhibit from the Respondent.

18 CHAIRPERSON MILLER: Yes, got it.
19 Okay. And one has color on it.

20 MS. PHILLIPS: Yes.

21 CHAIRPERSON MILLER: That will go
22 into the record.

1 MS. PHILLIPS: And the color one
2 is going to be admitted.

3 CHAIRPERSON MILLER: Okay.

4 MS. PHILLIPS: Thank you.

5 MEMBER ALBERTI: How fancy.

6 CHAIRPERSON MILLER: I believe
7 we're at closing now. Right. Okay.

8 MS. PHILLIPS: May I begin, Madam
9 Chair?

10 CHAIRPERSON MILLER: Sure, we'd
11 love you to. Yes.

12 MS. PHILLIPS: All right.

13 CHAIRPERSON MILLER: Thank you.

14 MS. PHILLIPS: I believe the
15 Government has carried the case with their
16 exemplar showing how the system works and
17 having the explanation of the compliance
18 analyst as to how the system worked, which was
19 very useful for me because I had no idea
20 before I had this case how the system worked.
21 And the information that she was able to give
22 was that: (1) Here's how the system works;

1 (2) that if you don't fill out the information
2 with the red stars, you cannot submit the
3 form. The copy of the exhibit admitted into
4 evidence by the Respondent shows clearly that
5 only the license information was filled out.
6 It shows clearly. So in that comparison alone
7 I think that you are duty bound to rule for
8 the Government and against the Respondent.

9 However, the investigator went
10 further to say that she checked the checks and
11 balances that the computer system offers the
12 Agency and that she found no record on July
13 26th, 2012, which is the date on the
14 Respondent's exhibit, of a record submitted by
15 this particular establishment, Caf, Japone.
16 What she also testified was that there were
17 over 20 other quarterly statements that there
18 was a record of in the ABRA record keeping
19 system and in the checks and balances system
20 that were filed on that day and were filed
21 correctly, which is further evidence that on
22 the day in question the computer system was up

1 and running.

2 Additionally, the testimony we
3 have from the Respondent is that he didn't do
4 it, he wasn't there when it was done and he's
5 taking the word of his accountant, who did not
6 come and testify. And while hearsay evidence
7 is admissible, this kind of unsubstantiated
8 hearsay, while can be admitted, should not be
9 credited given the overwhelming information
10 that the Government has presented about the
11 system's workings, the fail safes and the
12 investigation that was conducted by the
13 compliance analyst to make sure that the
14 computer system was working on the day of
15 whatever the attempt was.

16 Therefore, I move that you rule in
17 favor of the Government and find the notice
18 upheld that the quarterly statement was not
19 filed. And if you need to find that the
20 system was working, you have evidence to do
21 that. And that there was no credible
22 testimony by the witness. And that based on

1 the information about the system itself and
2 how it works and the exemplars that were given
3 as Exhibit 1 for the Government were that the
4 Respondent's exhibit did not contain the
5 appropriate information to have ever come to
6 us.

7 Therefore, again I ask that you
8 move in favor of the Government and against
9 the Respondent and have a fine only for
10 \$2,000. My recollection is that there has
11 been a quarterly statement issued previously.
12 Thank you.

13 CHAIRPERSON MILLER: Mr. Mpras?

14 MR. MPRAS: Members of the Board,
15 the Government has informed us as to how a
16 quarterly report is filed and described the --

17 MEMBER ALBERTI: Can you speak up
18 a little bit, Mr. Mpras?

19 MR. MPRAS: I'm sorry. Members of
20 the Board, the Government has informed us as
21 to how a quarterly report is filed and has
22 described the screens and methods for the data

1 input. The Government has however not
2 informed us or described the information
3 acknowledging aspect or the inner workings of
4 the system itself. The Government assumes
5 that the system was working perfectly as
6 described by the Government's witness, Ms.
7 Clark.

8 Now, Ms. Clark is tasked with data
9 entry and analysis of data provided by the
10 system and solely relies on the system being
11 accurate and running properly to make her
12 determinations. So should there be an error
13 in the system, Ms. Clark would not be the one
14 who's able to detect it because it doesn't
15 fall under her job description or the
16 activities she described.

17 This is a relatively new system,
18 as Ms. Clark testified, in existence for
19 approximately one year. And Ms. Clark has
20 also indicated that she has received several
21 complaints from quarterly report filers that
22 their reports were filed and had not been

1 properly received by the system.

2 Now, Ms. Clark indicated that
3 Defense Exhibit 1 is the ABRA reporting file.
4 Now, Mr. Akiho through his accountant made a
5 good faith effort to file his quarterly report
6 on time and was unaware that the ABRA system
7 had not received it. Defense Exhibit 1
8 unfortunately is not complete, but is a clear
9 indication that the filing was not effective.

10 Based on that information, it is
11 evident that Mr. Akiho through his accountant
12 made a genuine and good faith attempt to fully
13 comply with the ABRA regulations in submitting
14 the quarterly report on time, and the report
15 was not received, but not through any fault of
16 Mr. Akiho or his accountant. And we
17 respectfully request you decide in our favor
18 on that basis.

19 CHAIRPERSON MILLER: Okay. Thank
20 you. Ms. Phillips, I would like to just ask
21 a follow-up question on your recommendation of
22 a penalty of \$2,000 in this case if the Board

1 were to find that the Licensee did violate the
2 law about, you know, failing to file the
3 quarterly statements in a timely manner. When
4 I look at the penalty schedule, it looks like
5 to me like the range is \$4,000 to \$6,000
6 because of all the secondary violations that
7 he's had in the past four years.

8 MS. PHILLIPS: When I give a
9 recommendation, it's the recommendation
10 usually that the Agency gives me. That's why
11 I gave the recommendation. I always rely on
12 the Board's reading of the investigative
13 history and the Board's decision as to what to
14 do. That's why we haven't always -- I've seen
15 you either accept it or reject it. And then
16 when we come here and I make a recommendation,
17 you either accept it or reject it.

18 CHAIRPERSON MILLER: Okay. I just
19 wanted to see if it was based in the penalty
20 schedule. Okay.

21 MS. PHILLIPS: Apparently, if you
22 what you say is correct, it was not based on

1 the penalty, but some other reasoning.

2 CHAIRPERSON MILLER: Okay.

3 MS. PHILLIPS: And I don't
4 remember what it was because this was given to
5 me for the OIC, which was in February.

6 CHAIRPERSON MILLER: That's right.
7 Okay. Yes, I think this OIC may be treated
8 differently. But all right. I just sometimes
9 like to ask the rationale.

10 Okay. I'm going to close the
11 record in this case. All the evidence has
12 been admitted. Each of you have an exhibit in
13 the record. And I'm going to ask you if you
14 want to file proposed findings of fact and
15 conclusions of law, or waive your right to do
16 so.

17 MS. PHILLIPS: The Government
18 waives.

19 MR. MPRAS: We waive.

20 CHAIRPERSON MILLER: Thank you.

21 MEMBER ALBERTI: You want us to
22 explain it to you, Mr. Mpras? I take that

1 back.

2 (Laughter.)

3 CHAIRPERSON MILLER: All right.

4 Then that concludes this hearing. And we will
5 be issuing an order within 90 days. I'm going
6 to read the directions for a closed meeting,
7 but you don't have to stay if you don't want
8 to.

9 MS. PHILLIPS: Thank you.

10 MEMBER SILVERSTEIN: Madam Chair?

11 CHAIRPERSON MILLER: Yes, Mr.

12 Silverstein?

13 MEMBER SILVERSTEIN: If I may ask
14 a question after all these years. Mr. Akiho,
15 is it Caf, Zha-pohn or Zha-poh-nay?

16 MR. AKIHO: Zha-poh-nay.

17 MEMBER SILVERSTEIN: It is Zha-
18 poh-nay?

19 MR. AKIHO: Yes, I read the law
20 book.

21 MEMBER SILVERSTEIN: Okay. Thank
22 you.

1 MEMBER ALBERTI: Thank you.

2 CHAIRPERSON MILLER: Okay. Thank
3 you very much.

4 Okay. As Chairperson of the
5 Alcoholic Beverage Control Board for the
6 District of Columbia and in accordance with
7 Section 405 of the Open Meetings Amendment Act
8 of 2010, I move that the ABC Board hold a
9 closed meeting for the purpose of seeking
10 legal advice from our counsel on Case No. 12-
11 AUD-00046, Caf, Japone, per Section 405(b)(4)
12 of the Open Meetings Amendment Act of 2010 and
13 deliberating upon this case for the reasons
14 cited in Section 405(b)(13) of the Open
15 Meetings Amendment Act of 2010.

16 Is there a second?

17 MEMBER BROOKS: Second.

18 CHAIRPERSON MILLER: Mr. Brooks
19 has seconded the motion. I'll take a roll
20 call vote on the motion before us now that
21 it's been seconded. Mr. Brooks?

22 MEMBER BROOKS: I agree.

1 CHAIRPERSON MILLER: Ms. Miller
2 agrees. Mr. Silverstein?

3 MEMBER SILVERSTEIN: I agree.

4 CHAIRPERSON MILLER: Mr. Alberti?

5 MEMBER ALBERTI: I agree.

6 CHAIRPERSON MILLER: Okay. It
7 appears that the motion has passed by a vote
8 or 4-0-0. I hereby give notice that the ABC
9 Board will recess this proceeding to hold a
10 closed meeting in the ABC Board conference
11 room pursuant to the Open Meetings Amendment
12 Act of 2010. And an order will issue within
13 90 days. Okay.

14 That meeting will be held today.

15 (Whereupon, the hearing was concluded at
16 5:01 p.m.)

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