



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

2 (10:24 a.m.)

3 CHAIRPERSON MILLER: Our next case  
4 on our calendar is a show cause hearing, and  
5 now I'm going to call that case. Case Number  
6 12-CMP-00537, Baja Fresh, located at 1333 New  
7 Hampshire Avenue NW. License number 83801 in  
8 ANC 2B.

9 Anybody hear for Baja Fresh? Ms.  
10 Gephardt?

11 MS. GEPHARDT: Yes, my name is  
12 Chrissie Gephardt. I'm here on behalf of the  
13 Office of the Attorney General for the  
14 District of Columbia.

15 CHAIRPERSON MILLER: Have you had  
16 any communication with the licensee in this  
17 case?

18 MS. GEPHARDT: No, I have not had  
19 any communication with the licensee.

20 CHAIRPERSON MILLER: Okay. And I  
21 don't believe that the office had any  
22 communication that the licensee is running

1 late. This case was scheduled for 10 o'clock.  
2 It's now 10:25.

3 I want to state for the record  
4 that notice of this case was issued on  
5 September 16, 2013 and served on the  
6 respondent on September 20th, 2013. There was  
7 a status hearing held on October 30th, 2013,  
8 and the respondent failed to appear.

9 So Ms. Gephardt, are you prepared  
10 to go forward ex parte in this case?

11 MS. GEPHARDT: Yes, I am prepared.

12 CHAIRPERSON MILLER: Okay.

13 MS. GEPHARDT: Okay, so --

14 CHAIRPERSON MILLER: We're ready.

15 MS. GEPHARDT: Can I start?

16 CHAIRPERSON MILLER: Yes, please.

17 MS. GEPHARDT: Okay. Members of  
18 the Board, two charges are being brought  
19 against this licensee today. The first charge  
20 is failing to file with the Board the  
21 quarterly statement for the second quarter of  
22 2012 by July 31st, 2012.

1                   You will hear from Monica Clark  
2                   ABRA's compliance analyst regarding the  
3                   licensee's second quarter statements for 2012.  
4                   She will state that as of July 31st, the  
5                   second quarter statement had not been filed.

6                   She will explain the process by  
7                   which ABRA determines if a statement has been  
8                   filed timely and that through that process she  
9                   was able to determine that the licensee's  
10                  filing was received on August the 9th, 2012.

11                  The second charge is failure to  
12                  have a Board approved manager on site. You  
13                  will hear that on August 29th, 2012,  
14                  Investigator Erin Mathieson visited Baja Fresh  
15                  to conduct a regulatory inspection, and when  
16                  asked to speak to an ABC manager or owner she  
17                  was told that the ABC manager had just left.

18                  She observed a patron consuming a  
19                  Heineken beer on the sidewalk cafe. The  
20                  government would now like to call Monica Clark  
21                  to the stand.

22                  CHAIRPERSON MILLER: Good morning.

1 Do you swear to tell the truth, the whole  
2 truth and nothing but the truth?

3 MS. CLARK: I do.

4 CHAIRPERSON MILLER: Okay.

5 MS. GEPHARDT: Good morning, Ms.  
6 Clark. Can you please state your name and  
7 spell it for the record?

8 MS. CLARK: My name is Monica  
9 Clark. M-O-N-I-C-A, C-L-A-R-K.

10 MS. GEPHARDT: And where do you  
11 work?

12 MS. CLARK: For the Alcoholic  
13 Beverage Regulation Administration.

14 MS. GEPHARDT: And what is your  
15 title?

16 MS. CLARK: Compliance analyst.

17 MS. GEPHARDT: And how long have  
18 you been a compliance analyst with ABRA?

19 MS. CLARK: Since July 2012.

20 MS. GEPHARDT: Okay. And what are  
21 the job responsibilities of a compliance  
22 analyst?

1 MS. CLARK: I receive quarterly  
2 statements received from the licensees of  
3 ABRA. I record them, review them and mark  
4 them for our records. I also assist in audit  
5 matters.

6 MS. GEPHARDT: Okay. And are you  
7 familiar with a licensee by the name of Baja  
8 Fresh?

9 MS. CLARK: I am.

10 MS. GEPHARDT: I want to draw your  
11 attention to the quarterly statement filing  
12 period for the second quarter of 2012. Can  
13 you state when those filings are due?

14 MS. CLARK: For the second quarter  
15 of 2012 that would be due by the 30th of July.

16 MS. GEPHARDT: And do you know if  
17 Baja Fresh filed their 2012 second quarter  
18 statement by July 31st, 2012?

19 MS. CLARK: No, Baja Fresh had not  
20 filed by the due date of July 30th, 2012.

21 MS. GEPHARDT: Okay. The  
22 government would like to show the witness what

1 I've marked as Government's Exhibit Number 1.

2 CHAIRPERSON MILLER: Okay.

3 (Off microphone comments)

4 CHAIRPERSON MILLER: We'll make an  
5 exception because our staff isn't here. Thank  
6 you. That's okay.

7 MS. GEPHARDT: All right, Ms.  
8 Clark, what is this piece of paper that I  
9 showed you?

10 MS. CLARK: This is a copy of an  
11 electronic quarterly statement filing from  
12 Baja Fresh.

13 MS. GEPHARDT: Okay. And what  
14 exactly does it state?

15 MS. CLARK: It states at the top  
16 that it was sent on Thursday, August the 9th,  
17 2012 at 10:51 a.m.

18 MS. GEPHARDT: And how can you  
19 tell which quarter it, well, first of all, how  
20 can you tell which establishment this was a  
21 filing for?

22 MS. CLARK: Okay, the form is

1 broken into several sections, and on one of  
2 the top few sections it states the license  
3 information and it gives the trade name of  
4 Baja Fresh.

5 MS. GEPHARDT: Okay. And how can  
6 you tell which quarter this is a filing for?

7 MS. CLARK: Above the license  
8 information it states the quarter and it's  
9 listed as second quarter, April through June,  
10 along with the calendar year 2012.

11 MS. GEPHARDT: And can you explain  
12 this electronic system and how this works?

13 MS. CLARK: Well, with the  
14 electronic system a licensee is able to go to  
15 the ABRA website, enter their sales and  
16 expenditures and submit them to the ABRA  
17 office. That system then sends a copy of this  
18 information to an inbox here at ABRA and it  
19 also sends a copy back to the licensee.

20 MS. GEPHARDT: And based on the  
21 information shown on this sheet, was the  
22 second quarter filing late in this case?

1 MS. CLARK: Yes, it was.

2 MS. GEPHARDT: And again, how do  
3 you tell that it was late?

4 MS. CLARK: Well, I can tell by  
5 the due date. The due date would have been  
6 July 30th for the second quarter, and it was  
7 not received until August 9th.

8 MS. GEPHARDT: Okay. All right,  
9 thank you. That's all I have for this  
10 witness.

11 MS. CLARK: Thank you.

12 (Off microphone comments)

13 CHAIRPERSON MILLER: Thank you,  
14 yes. Do you need me to repeat that? Okay.

15 MS. GEPHARDT: And just finally,  
16 the government would ask that Government's  
17 Exhibit 1 be admitted into evidence.

18 CHAIRPERSON MILLER: And would you  
19 just identify what it is?

20 MS. GEPHARDT: This is the  
21 quarterly filing, electronic quarterly filings  
22 showing that Baja Fresh submitted their second

1           quarterly statement for 2012, late, on August  
2           the 9th, 2012.

3                   CHAIRPERSON MILLER: Okay. Thank  
4           you then. Yes, Exhibit Number 1, Government's  
5           Exhibit Number 1 is admitted into evidence.

6                   MS. GEPHARDT: Okay. And the  
7           government would now like to call Erin  
8           Mathieson to the witness stand.

9                   CHAIRPERSON MILLER: Okay.  
10           Do you swear to tell the truth,  
11           the whole truth and nothing but the truth?

12                   MS. MATHIESON: I do.

13                   CHAIRPERSON MILLER: Okay. Thank  
14           you.

15                   MS. GEPHARDT: All right, Ms.  
16           Mathieson, can you please state your name and  
17           spell it for the record?

18                   MS. MATHIESON: Sure. Erin  
19           Mathieson. Last name is M-A-T-H-I-E-S-O-N.

20                   MS. GEPHARDT: And where do you  
21           work?

22                   MS. MATHIESON: At the Alcoholic

1 Beverage Regulation Administration.

2 MS. GEPHARDT: And what is your  
3 title?

4 MS. MATHIESON: I'm an  
5 investigator.

6 MS. GEPHARDT: And how long have  
7 you been an investigator with ABRA?

8 MS. MATHIESON: Approximately six  
9 years.

10 MS. GEPHARDT: And what are your  
11 responsibilities as an investigator?

12 MS. MATHIESON: I conduct  
13 inspections and investigations in licensed ABC  
14 establishments throughout the District of  
15 Columbia.

16 MS. GEPHARDT: And are you  
17 familiar with a licensee by the name of Baja  
18 Fresh?

19 MS. MATHIESON: Yes.

20 MS. GEPHARDT: And I want to draw  
21 your attention to the date of August the 29th,  
22 2012. Do you recall visiting Baja Fresh on

1           that date?

2                           MS. MATHIESON:   Yes.

3                           MS. GEPHARDT:   And what was the  
4           purpose of your visit?

5                           MS. MATHIESON:   I was there to  
6           issue a citation for a quarterly statement  
7           violation.

8                           MS. GEPHARDT:   And did you also  
9           conduct the regulatory inspection?

10                          MS. MATHIESON:   Not on that visit.  
11           Oh yes, I'm sorry.   I did on that visit.

12                          MS. GEPHARDT:   Okay.   And what did  
13           you observe when you were there on that date,  
14           in particular?

15                          MS. MATHIESON:   While I was  
16           conducting the inspection I asked for an ABC  
17           manager or an owner.   I was met by a man named  
18           Hussein, sorry if I pronounce this wrong, but  
19           I believe it was Hussein Najad.

20                          I asked Mr. Najad if he was an ABC  
21           manager or owner.   He stated he was not, and  
22           that the ABC manager had just left.   And while

1           conducting the inspection I looked out to the  
2           sidewalk cafe area where there was a patron  
3           who was consuming a Heineken. I advised Mr.  
4           Najad that it was a violation to have alcohol  
5           sold, served or consumed without an ABC  
6           manager or owner.

7                   MS. GEPHARDT: Okay. And did Mr.  
8           -- I apologize. What was his name?

9                   MS. MATHIESON: I believe it was  
10          Najad.

11                   MS. GEPHARDT: Mr. Najad. You  
12          stated that he said that he had just left.

13                   MS. MATHIESON: Correct.

14                   MS. GEPHARDT: Did he state  
15          whether there had been one on the premises  
16          ever at that point, or just at that moment?

17                   MS. MATHIESON: He said in  
18          reference to an ABC manager being there at  
19          that point, no there was not, and there was  
20          not an owner, and he indicated simply that the  
21          ABC manager who had been there had just left.

22                   MS. GEPHARDT: Okay. And did you

1 take any photographs when you were there?

2 MS. MATHIESON: Yes.

3 MS. GEPHARDT: And what did you  
4 photograph?

5 MS. MATHIESON: I took a  
6 photograph of the beer that was on the table  
7 in the sidewalk cafe.

8 MS. GEPHARDT: I'd like to show  
9 the witness now what I have marked as  
10 Government's Exhibit Number 2.

11 CHAIRPERSON MILLER: Okay.

12 MS. GEPHARDT: I kind of apologize  
13 because this is the only version I have, but  
14 I can show it to the Board after she's done.  
15 Or I don't know if any of you need a copy or -  
16 -

17 CHAIRPERSON MILLER: Is it  
18 attached to the investigative report?

19 MS. GEPHARDT: Yes, it is attached  
20 to the investigative report.

21 CHAIRPERSON MILLER: Okay. So we  
22 have the investigative report.

1 MS. GEPHARDT: Oh, okay. Okay.

2 CHAIRPERSON MILLER: So we can  
3 look at that. Yes, and so you can proceed  
4 with your witness.

5 MS. GEPHARDT: Okay. Okay. Ms.  
6 Mathieson, can you tell me what this is a  
7 picture of?

8 MS. MATHIESON: Yes, this is a  
9 picture of the sidewalk cafe area outside of  
10 Baja Fresh --

11 (Off microphone comments)

12 MS. GEPHARDT: And on what date  
13 was this picture taken?

14 MS. MATHIESON: Wednesday, August  
15 29th.

16 MS. GEPHARDT: And is this an  
17 accurate representation of what you saw on  
18 that date?

19 MS. MATHIESON: Yes.

20 MS. GEPHARDT: Okay. That's all I  
21 have for this witness. Thank you very much.

22 CHAIRPERSON MILLER: Ms. Gephardt,

1           can I clarify though that the exhibit you just  
2           showed, Government Exhibit Number 2 is the  
3           same as Exhibit 1 to the investigation report?  
4           Is that the picture you were looking at?

5                       MS. GEPHARDT: Excuse me, the  
6           Exhibit 1, well the Exhibit 1 was the  
7           quarterly --

8                       CHAIRPERSON MILLER: No, your  
9           Government Exhibit 1 is the quarterly  
10          statement filing, right. No, I had said to  
11          you that we have the investigation report,  
12          case report, and attached to that is an  
13          Exhibit Number 1.

14                      MS. GEPHARDT: Right.

15                      CHAIRPERSON MILLER: Is that the  
16          same photo that you showed as Government  
17          Exhibit 2?

18                      MS. GEPHARDT: Oh, I see. I  
19          didn't even really notice that that was  
20          considered Exhibit 1. That was Exhibit 1 in  
21          the investigator's report. I was just  
22          admitting it as Government's Exhibit 2 for my

1 purposes in this hearing. But --

2 CHAIRPERSON MILLER: No, that's  
3 fine. It is.

4 MS. GEPHARDT: Okay.

5 CHAIRPERSON MILLER: But we didn't  
6 see it because you only had one.

7 MS. GEPHARDT: I know. I  
8 apologize.

9 CHAIRPERSON MILLER: But I wanted  
10 to make sure it's the same.

11 MS. GEPHARDT: Yes, yes, yes.  
12 It's the exact same, right. But I'm admitting  
13 it as Government's Exhibit --

14 CHAIRPERSON MILLER: Exactly. Are  
15 you ready to move for its admission?

16 MS. GEPHARDT: I'm asking that  
17 that exhibit be admitted into evidence. Thank  
18 you, Madam Chair.

19 CHAIRPERSON MILLER: Okay. So  
20 Government's Exhibit Number 2, the photograph,  
21 is admitted into evidence.

22 MS. GEPHARDT: Right.

1 CHAIRPERSON MILLER: Okay.

2 MS. GEPHARDT: And as previously  
3 stated, the government is finished with this  
4 witness. Thank you.

5 CHAIRPERSON MILLER: Okay, wait.  
6 Let me see if there are any questions by Board  
7 members. No. Thank you very much.

8 MS. GEPHARDT: All right, I'd like  
9 to do a closing statement at this time.

10 CHAIRPERSON MILLER: Okay.

11 MS. GEPHARDT: The government has  
12 shown through the testimony of Ms. Clark that  
13 this licensee's quarterly report for the  
14 second quarter of 2012 was not received before  
15 the deadline of July 31st, 2012.

16 She testified that ABRA's system  
17 reflects that Baja Fresh submitted their  
18 second quarter filing electronically on August  
19 9th, 2012, approximately a week over the  
20 actual due date.

21 The government has also shown that  
22 on August 29th, 2012, through the testimony of

1 Investigator Erin Mathieson that this  
2 establishment was operating without a Board  
3 approved manager on site. Per the testimony  
4 of the manager/owner, as she stated, he  
5 informed Investigator Mathieson that the ABC  
6 manager had just left.

7 The investigator observed a patron  
8 consuming an alcoholic beverage on the  
9 sidewalk cafe as shown, not only through her  
10 testimony but within the photograph, which is  
11 Government's Exhibit Number 2.

12 So based on this evidence, the  
13 government has proven by a preponderance of  
14 the evidence the licensee's in violation of  
15 both charges, and we ask that the Board fine  
16 the licensee \$1,350 for this violation, which  
17 would be \$650 for Charge 1 and \$650 for Charge  
18 2. Thank you.

19 CHAIRPERSON MILLER: Okay, thank  
20 you. And at this point then I'm going to  
21 close the record and ask if you want to file  
22 proposed findings of facts and conclusions of

1 law.

2 MS. GEPHARDT: No, thank you.

3 CHAIRPERSON MILLER: Okay. Thank  
4 you very much. Then I'm going to then call a  
5 vote on adjudicating this hearing in closed  
6 session.

7 As chairperson of the Alcoholic  
8 Beverage Control Board for the District of  
9 Columbia and in accordance with D.C. Official  
10 Code Section 2-574(b) of the Open Meetings  
11 Act, I move that the ABC Board hold a closed  
12 meeting for the purpose of seeking legal  
13 advice from our counsel on Case Number 12-CMP-  
14 537, Baja Fresh, pursuant to Section 2-574(b)  
15 of the Open Meetings Act and deliberating upon  
16 this case for the reasons cited in Section 2-  
17 574(b)(13) of the Open Meetings Act.

18 Is there a second?

19 MEMBER SILVERSTEIN: Second.

20 CHAIRPERSON MILLER: Mr.

21 Silverstein has seconded the motion. I'll now  
22 call a roll call vote.

1 Mr. Brooks?

2 MEMBER BROOKS: I agree.

3 CHAIRPERSON MILLER: Mr. Alberti?

4 MEMBER ALBERTI: I agree.

5 CHAIRPERSON MILLER: Mr.

6 Rodriguez?

7 MEMBER RODRIGUEZ: I agree.

8 CHAIRPERSON MILLER: Ms. Miller  
9 agrees. Mr. Silverstein?

10 MEMBER SILVERSTEIN: I agree.

11 CHAIRPERSON MILLER: Mr. Short?

12 MEMBER SHORT: I agree.

13 CHAIRPERSON MILLER: Okay, it  
14 appears that the motion has passed by a 6-0-0  
15 vote. The ABC Board will therefore hold a  
16 closed meeting to adjudicate this issue, and  
17 issue an order within 90 days.

18 Thank you very much.

19 MS. GEPHARDT: Thank you.

20 CHAIRPERSON MILLER: Our next  
21 hearing is scheduled for 11 o'clock a.m., so  
22 at this point then the Board will recess until

1 11 o'clock. Thank you.

2 (Whereupon, the foregoing matter

3 went off the record at 10:42 a.m.)

4

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6

7

<b>A</b>	11:8 18:19 <b>April</b> 8:9 <b>area</b> 13:2 15:9 <b>asked</b> 4:16 12:16 12:20 <b>asking</b> 17:16 <b>assist</b> 6:4 <b>attached</b> 14:18,19 16:12 <b>attention</b> 6:11 11:21 <b>Attorney</b> 2:13 <b>audit</b> 6:4 <b>August</b> 4:10,13 7:16 9:7 10:1 11:21 15:14 18:18 18:22 <b>AVC</b> 1:6 <b>Ave</b> 1:8 <b>Avenue</b> 2:7	<b>calendar</b> 2:4 8:10 <b>call</b> 2:5 4:20 10:7 20:4,22,22 <b>case</b> 1:9 2:3,5,5,17 3:1,4,10 8:22 16:12 20:13,16 <b>cause</b> 1:7 2:4 <b>Chair</b> 17:18 <b>chairperson</b> 1:14 1:16 2:3,15,20 3:12,14,16 4:22 5:4 7:2,4 9:13,18 10:3,9,13 14:11 14:17,21 15:2,22 16:8,15 17:2,5,9 17:14,19 18:1,5 18:10 19:19 20:3 20:7,20 21:3,5,8 21:11,13,20 <b>charge</b> 3:19 4:11 19:17,17 <b>charges</b> 3:18 19:15 <b>Chrissie</b> 1:22 2:12 <b>citation</b> 12:6 <b>cited</b> 20:16 <b>clarify</b> 16:1 <b>Clark</b> 4:1,20 5:3,6 5:8,9,12,16,19 6:1 6:9,14,19 7:8,10 7:15,22 8:7,13 9:1 9:4,11 18:12 <b>close</b> 19:21 <b>closed</b> 20:5,11 21:16 <b>closing</b> 18:9 <b>Code</b> 20:10 <b>Columbia</b> 1:1 2:14 11:15 20:9 <b>comments</b> 7:3 9:12 15:11 <b>communication</b> 2:16,19,22 <b>compliance</b> 4:2 5:16,18,21 <b>conclusions</b> 19:22 <b>conduct</b> 4:15 11:12 12:9	<b>conducting</b> 12:16 13:1 <b>considered</b> 16:20 <b>consumed</b> 13:5 <b>consuming</b> 4:18 13:3 19:8 <b>Control</b> 1:2,12,13 20:8 <b>copy</b> 7:10 8:17,19 14:15 <b>Corp</b> 1:6 <b>Correct</b> 13:13 <b>counsel</b> 20:13	<b>exact</b> 17:12 <b>exactly</b> 7:14 17:14 <b>exception</b> 7:5 <b>Excuse</b> 16:5 <b>exhibit</b> 7:1 9:17 10:4,5 14:10 16:1 16:2,3,6,6,9,13,17 16:20,20,22 17:13 17:17,20 19:11 <b>expenditures</b> 8:16 <b>explain</b> 4:6 8:11
	<b>B</b>	<b>D</b>	<b>F</b>	
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