EVIDENTIARY HEARING

BEFORE THE

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT

COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the:	)	
	)	
Complaint Against and	)	Docket No.
Request for Investigation	)	12-CAI-01
of CalCERTS, Inc.	)	
	)	

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

FRIDAY, MAY 11, 2012

11:00 a.m.

Reported by:
Ramona Cota
Contract No. 170-09-002

COMMITTEE MEMBERS PRESENT

Karen Douglas, Presiding Member

Andrew McAllister, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Kourtney Vaccaro, Hearing Officer

David Hungerford, Advisor to Commissioner McAllister

Galen Lemei, Advisor to Commissioner Douglas

Jennifer Nelson, Advisor to Commissioner Douglas

CEC STAFF AVAILABLE TO TESTIFY

Dennis Beck

Eurlyne Geiszler

Jim Holland

Bill Pennington

Dick Ratliff

OFFICE OF THE PUBLIC ADVISER

Jennifer Jennings, Public Adviser

COMPLAINANTS

David Haddock, Attorney
David Haddock Legal

Patrick Davis
JAAR Sales, Inc.
DBA Valley Duct Testing

Erik Hoover
JAAR Sales, Inc.
DBA Valley Duct Testing

RESPONDENT

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Shelby Gatlin, Attorney
Downey Brand, LLP

Andrew L. Collier, Attorney
Downey Brand, LLP

Sandra Collier
Downey Brand, LLP

Charlie Bachand
CalCERTS, Inc.

Mike Bachand
CalCERTS, Inc.

ALSO PRESENT

George Nesbitt

John Flores
JAAR Sales, Inc.
DBA Valley Duct Testing

Tommy Young
E3 NorCal

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E X H I B I T S

COMPLAINANTS

Numbers	Received	Withdrawn
1-4	20	
5	--	292
6-20	20	
21-23	--	292
24	20	

RESPONDENT

Numbers	Received	Withdrawn
200-250	114	--

P R O C E E D I N G S

11:11 a.m.

PRESIDING MEMBER DOUGLAS: Good morning, everybody. Welcome to the Energy Commission for this evidentiary hearing on the complaint against and request for investigation of CalCERTS, Incorporated.

I would like to begin by introducing the Committee. I am Commissioner Douglas; I am the Presiding Member of this siting committee -- not siting, this is a complaint committee.

To my left is our hearing officer, Kourtney Vaccaro, and to her left is Commissioner McAllister, the Associate Member of this Committee. To his left is David Hungerford, Commissioner McAllister's advisor. To my right, Galen Lemei, my advisor, and to his right, Jennifer Nelson, also my advisor.

So again I'd like to welcome you here and ask the parties to introduce themselves, beginning with the Complainants.

MR. HADDOCK: Good morning. My name is David Haddock appearing on behalf of Complainants Erik Hoover and Patrick Davis. To my right is Mr. Hoover and to his right is Mr. Davis.

PRESIDING MEMBER DOUGLAS: Thank you very much. And CalCERTS, please.

MS. LUCKHARDT: This is Jane Luckhardt from Downey Brand on behalf of CalCERTS. And sitting to my right is Shelby Gatlin and to her right is Sandra Collier, both from Downey Brand. And also behind me is Andrew Collier from Downey Brand, unrelated but nonetheless. And then we have a lot of folks here from CalCERTS. We have Charlie Bachand, we have Mike Bachand, we have Russ King, Mark Wiese and Tim O'Neil. Thank you.

PRESIDING MEMBER DOUGLAS: Thank you very much.

Are there any representatives of public agencies or any representatives of public officials here today or on the phone?

(No response.)

PRESIDING MEMBER DOUGLAS: Very well. With that, with the introductions out of the way, I'll turn this over to the hearing officer.

HEARING OFFICER VACCARO: Thank you. I am almost embarrassed, but not quite, to start this proceeding out to mention that I had a handout for the parties and for the Commissioners. It's a combined exhibit list that is intended to just sort of ensure that everything that was intended to be admitted into the record is, in fact, admitted. Whatever is rejected that the record is clear that it was rejected.

I wanted that to be something available to

everyone at the beginning of the proceeding but I think what's going to happen is sometime later before the record closes today we will go back and use that tool to ensure that all of the housekeeping is taken care of.

So my apologies to the parties for handing you something and then quickly snatching it away. But it's really a housekeeping tool. It has no substantive impact, the task that we would be using that list for. It doesn't affect the ability of the parties to move forward today.

That somewhat embarrassed admission aside, I want to orient everyone in the room and those on the phone to why it is that we're here today. This complaint and investigation proceeding was brought by Mr. Hoover and Mr. Davis against CalCERTS, Inc. and it relates to the Energy Commission's Home Energy Rating Systems Program. this is also known as the HERS Program.

In particular, Mr. Hoover and Mr. Davis had been previously certified by CalCERTS and then at some point later they were subsequently decertified.

What they have asked for in their complaint and their request for investigation are essentially three remedies. They have asked the Energy Commission to reverse the decision of CalCERTS to decertify, them, they have asked that the Energy Commission investigate the way CalCERTS imposes discipline upon HERS raters who are alleged to have

made mistakes, and the final remedy is that they asked the Commission to require CalCERTS to adopt a written discipline procedure that complies with the HERS regulations and with the constitutional requirements of due process.

So the proceeding before you today is a matter of the complainants making their case and CalCERTS responding to and defending against that case.

On Tuesday we conducted a prehearing conference where we went over all of the various procedural matters that would allow us to have an efficient proceeding today, and also to assess the parties' readiness to move forward today. I think the parties ably and amply demonstrated that they are ready to go today. I think they have all of their witnesses, they have all of their exhibits.

I think we are prepared to move forward with the exception of one leftover housekeeping issue. And that had to do with the request of the Committee of the parties that sometime between Tuesday and this morning, if possible, to let us know if you were able to reach any stipulations with respect to the exhibits that each of the parties is proposing to have admitted in this proceeding.

So I think we'll start with you, Mr. Haddock, hear what you have to say in that regard, then we'll hear from Ms. Luckhardt. And after that we're ready to go with opening statements. And opening statements will, of course,

begin with the complainants and be followed by an opening statement by the respondent.

MR. HADDOCK: We did meet and my understanding is that we reached an agreement as to a number of the complainants' exhibits but not all of them. We had -- and Ms. Luckhardt can, of course, correct me if I get it wrong, but my understanding is that we agreed to stipulate regarding the authenticity and admissibility --

HEARING OFFICER VACCARO: I'm sorry, Mr. Haddock, I need you to project, enunciate. Because I am really close to you and I'm having a little difficulty.

MR. HADDOCK: Okay. My understanding is that we reached an agreement regarding complainants' exhibit -- all but Exhibit 5, 21, 22 and 23.

HEARING OFFICER VACCARO: Okay, I'm sorry, I was distracted for a few seconds there. So just to clarify my understanding, you have reached a stipulation with respect to all of the complainants' exhibits but for 5, 21, 22 and 23?

MR. HADDOCK: Yes.

HEARING OFFICER VACCARO: And what exactly is that stipulation?

MR. HADDOCK: The stipulation is that they are authentic and admissible.

HEARING OFFICER VACCARO: Okay. Ms. Luckhardt,

does that representation, is that something that you have agreed to or that's consistent with your understanding?

MS. LUCKHARDT: Yes, that's correct.

HEARING OFFICER VACCARO: Great, thank you. Anything with respect to the respondent's exhibits? Any similar stipulations?

MS. LUCKHARDT: Yeah, we --

MR. HADDOCK: Uh --

MS. LUCKHARDT: Go ahead.

MR. HADDOCK: I was going to say that we agreed to stipulate on the same terms to all of respondent's exhibits.

HEARING OFFICER VACCARO: Okay. And the same terms being properly authenticated and admissible.

MR. HADDOCK: That's correct.

MS. LUCKHARDT: The only thing that we didn't discuss that I would like to confirm are 249 and 250, which were the additional emails that we provided at the prehearing conference. I didn't know if you had concerns about those or if those were included in your previous statement.

HEARING OFFICER VACCARO: Before you answer, Mr. Haddock. Ms. Luckhardt, I don't know, I'm having the same difficulty with you. Perhaps if you could move the microphone closer and really be on it that would be helpful, thank you. Mr. Haddock.

MS. LUCKHARDT: Okay. I was stating that I -- we had discussed the list but I wanted to ensure that Mr. Haddock meant to include 249 and 250. I don't know that there is a problem with those but I just wanted to clarify that.

MR. HADDOCK: That's right, we'll stipulate to 249 and 250 as well.

MS. LUCKHARDT: Thank you.

HEARING OFFICER VACCARO: Thank you. I think with that then we'll move forward with opening statements. Mr. Haddock, if you remember, I did give you an admonition, five minutes. It is 11:20, five minutes.

MR. HADDOCK: Thank you.

OPENING STATEMENT ON BEHALF OF COMPLAINANTS

MR. HADDOCK: Not too many years ago the State of California created a new profession, the HERS rating profession. Men and women who want to become professional HERS raters get training on performing home energy efficiency tests and they are certified to perform these tests. Without a certification these tests cannot be performed.

Erik Hoover and Patrick Davis were certified HERS raters. This means they were trained and certified to perform home energy efficiency tests. CalCERTS certified them as HERS raters.

After being certified they performed many thousands of tests. The HERS program says that one percent of the tests a rater performs must be retested by CalCERTS for quality assurance.

But even though Mr. Hoover and Mr. Davis have performed thousands of tests over a period of years they had never had any of their ratings retested by CalCERTS until last October. CalCERTS performed quality assurance tests for a handful of jobs, found some errors that CalCERTS believes Mr. Hoover and Mr. Davis committed, and then promptly suspended their ability to work as HERS raters and then decertified them. Which took away their ability to ever work again as HERS raters.

There are two legal issues presented in the compliant that Mr. Hoover and Mr. Davis filed. One, did CalCERTS follow the procedure that the HERS regulations say must be followed if a HERS rater fails a quality assurance evaluation.

The evidence will show that CalCERTS did not follow that procedure. When CalCERTS discovered that Mr. Hoover and Mr. Davis had made mistakes in some of their ratings, CalCERTS should have made a note of the failures in the rater registry and then done additional quality assurance evaluations over a period of time.

What CalCERTS did instead is immediately suspend

their ability to work and then permanently decertify them.

(Music heard over WebEx.)

HEARING OFFICER VACCARO: I think this is a perfect opportunity to remind those of you on the telephone that we can hear you just as you can hear us. And what we'd prefer is for you to hit the mute button so that we don't have to hear you.

But when you do hit the hold button what's going to happen is what's happening now, which is the projection of Muzak into our proceeding. Which is actually pretty disruptive to the flow of narrative.

So we would ask, please hit the mute button, please do not hit the hold button. What we can do from our end, of course, is mute all of you. But when the time comes that you might wish to speak it might make it harder for us to recognize your wish to do so. So again, please do not push the hold button. Please do, though, hit the mute button and we won't hear your paper shuffling, sighing and background conversations.

My apologies to you, Mr. Haddock. If you would please continue. Start where you think you need to start to continue making your point.

MR. HADDOCK: It was actually not a bad place to break if we had to break. (Laughter.)

The second legal issue is about due process. Is

CalCERTS so closely entangled with government that it should be treated essentially like a part of government for due process purposes.

The evidence will show that CalCERTS is very closely entangled with government. CalCERTS is so closely entangled that CalCERTS essentially controls access to the HERS rating profession. Without the approval of CalCERTS a person cannot become a HERS rater for newly constructed homes. CalCERTS is one of only two entities that can provide any certifications. CalCERTS is allowed to exercise this control only because the state of California put them in this unique position.

If due process applies to CalCERTS the question is, what quantity or quality of legal process was due to Mr. Hoover and Mr. Davis before CalCERTS took away their ability to work in their chosen profession.

We will begin by showing what process was actually provided to them.

We will show that their ability to work as HERS raters was taken away from them before they even knew it was at risk. By the time Mr. Hoover and Mr. Davis were notified that they had failed a quality assurance review their ability to work had already been suspended. CalCERTS had no urgent reason to do this without notice. They had known about possible quality assurance failures for months.

The evidence will show that although the notice that was given to Mr. Hoover and Mr. Davis told them of the addresses of the houses where they had allegedly made mistakes it did not tell them what particular mistakes they had made. It did not provide them with any documents or data that they could have used to meaningfully defend themselves.

When Mr. Hoover and Mr. Davis attended an interview with CalCERTS to talk about the errors CalCERTS still did not provide them with documents. It did not give them access to the data to let them compare their tests with quality assurance test results. CalCERTS asked Mr. Davis about tests done at homes that he did not even know had been evaluated for quality assurance.

When CalCERTS decided to decertify Mr. Hoover and Mr. Davis it said that their quality assurance failures were not rectifiable, but it made no effort to rectify them. They did not offer Mr. Hoover or Mr. Davis any additional training or supervision.

It is also important to recognize what this case is not about. It is not about whether Mr. Hoover and Mr. Davis were good HERS raters. It is not about whether they made mistakes or whether those mistakes were serious ones. Due process doesn't care about that. For the purposes of due process as long as Mr. Hoover and Mr. Davis

were accused of something that had the potential to take away their profession from them it doesn't matter what they were accused of.

The evidence will show that CalCERTS took away the right of Erik Hoover and Patrick Davis to work in their chosen profession. CalCERTS didn't follow the regulations. It didn't follow the constitutional requirement of due process because it didn't provide them with meaningful notice or a meaningful opportunity for a hearing before their ability to work was impacted. For these reasons the decertifications were unlawful. Thank you.

HEARING OFFICER VACCARO: Thank you. Ms. Luckhardt?

MS. LUCKHARDT: If you don't mind I'm going to stand, I can't stand talking from a seated position.

OPENING STATEMENT ON BEHALF OF THE RESPONDENT

MS. LUCKHARDT: Okay, so what we're talking about today is the HERS program. The HERS program is part of the highest priority in the Commission's loading order, energy efficiency. This program was established and expanded upon for two reasons. It was for -- to protect the consumer. To ensure that the consumer obtains consistent, accurate and uniform ratings.

In order to maintain this program and to set it up to ensure that the consumer has consistent, accurate and

uniform ratings is by setting up two separate and independent entities, the raters and the providers. The raters rate the homes, the providers provide QA and respond to complaints. As part of that they have to have contracts that establish the relationship between the two entities.

In CalCERTS' Rater Agreement there are specific terms -- and these terms come from Title 20, Section 1672(m) that require that both raters and providers ensure that the information provided to homeowners is true, accurate, complete. True, accurate, complete, uniform, that the field verifications are done correctly.

So the sections that are up there are from the CalCERTS Rater Agreement that allow CalCERTS to suspend or permanently decertify raters who show willful failure to provide true, accurate and complete rating, field verifications or diagnostic testing. They also allow suspension or decertification when there is a pattern of such behavior.

Now Mr. Haddock has expressed concerns about the complaint response program as to the process. His concerns have gone to process. Our concern is that process doesn't work if the other side doesn't participate. Both Mr. Davis and Mr. Hoover have had numerous opportunities to provide additional information to CalCERTS, none of which they have taken advantage of.

Okay, now I'm going to go over, and our witnesses will more fully describe, the complaint response process that CalCERTS goes through.

Once they receive a complaint they first investigate the complaint to see if there are any actionable items. Do they have complaints about specific individuals, addresses or anything that they can actually investigate?

Once they do that then in this instance they conducted field reviews. The field reviews were conducted of all Valley Duct Testing raters because all Valley Duct Testing raters were the subject of the complaint. They found that five of the nine had quality assurance failures. That included Mr. Hoover and Mr. Davis.

They provided notice to those individuals who failed quality assurance reviews. They provided an interview and an opportunity for those individuals, Mr. Davis, Mr. Hoover, to provide their side of the story. They were provided with addresses.

These raters keep their field notes. They know what ratings were done at each house. They were also offered additional opportunities since that time, including an offering to Mr. Haddock to provide additional information to support their side of the story, to address the merits of the concerns that CalCERTS saw.

Okay, so what's the basis of CalCERTS'

decertification? Why did they take this action? Why did they put them on suspension immediately?

They did that because the CalCERTS quality assurance team found multiple instances of repeated, falsified entries to the database. The falsified entries always favored the contractor. These included filling out forms saying that something was there that wasn't there. Saying they performed a test that physically could not be completed. I am going to give you one example of the types of failures that they saw. Can you pull it up?

HEARING OFFICER VACCARO: Two minutes, Ms. Luckhardt.

MS. LUCKHARDT: I've got it, pull it up.

Okay, so the green bars show the reported values for Mr. Hoover and Mr. Davis. The red bars show the -- oh, we're going in a different order. That's okay.

The red bars show the actual measured values from the CalCERTS QA and the blue shows where the acceptable range is. And thermal expansion valve has to do with the efficiency of an air conditioning unit. These values are, in most instances, double -- the actual values are double what was reported.

So in conclusion, today we are going to discuss and today we are asking this Commission to address -- CalCERTS has to address the petitioners, Mr. Davis and

Mr. Hoover's egregious conduct. They can't just let this stuff go.

CalCERTS' process was fair. It offered numerous opportunities to Mr. Davis and Mr. Hoover. And in order for this process and the HERS system to continue these decertifications must be affirmed. How are other raters supposed to go out to houses and push back on mechanical contractors, general contractors, developers, if there is no consequence for those who report false data. Thank you.

HEARING OFFICER VACCARO: Thank you, Ms. Luckhardt. I think -- your presentation I think is the perfect segue for some important ground rule for today's proceeding. Certainly nothing that I needed to bring up before we start presenting witnesses and discussing exhibits. But I think we need to understand a few things.

The presentation that we just saw identified properties by address but gave very generalized information about subject matter. Some of the exhibits, as I understand it, may or may not tie a particular address to particular findings. If that is the case we would like you to refrain from identifying the property address in the context of questioning or answering. That is very important to the Energy Commission that you not identify a property and tie it to the particular findings. I think I briefly had a conversation with Ms. Luckhardt about this when the answer

was being posted on our website.

I think any of you who have looked at the answer will notice it is what is called a redacted answer. What we have done is take away from public view specific addresses as they pertain to the inspection results. We would like to continue that in today's proceeding and I don't think it would be difficult. I think we can identify them as Property A, B, C, D for the purposes of what is stated for the public listening. The exhibits are only going to be seen by the witnesses and by the Commission at this point. Everyone will know what you're discussing, the public will not know it by a specific address. Is that confusing, clear as mud, do you need further clarification, Mr. Haddock?

MR. HADDOCK: I think I understand. I'm just trying to think if my brain will adapt fast enough to make reference to the property that I'm thinking of but I think we can work through it.

MS. LUCKHARDT: We may have to use street names so that everyone can understand the specific site that we're talking about. That's the difficulty with this. We may be able to do just street names or maybe just street numbers, I don't --

HEARING OFFICER VACCARO: I guess maybe you could --

MS. LUCKHARDT: Street names without, without

addresses -- I guess without the city. We might be able to do it without the city.

HEARING OFFICER VACCARO: Can you explain why it's essential to have the number or the address if the exhibit actually is showing what you're talking about, right? This is just for the purposes of what people are hearing because no one will be seeing these exhibits.

MS. LUCKHARDT: As long as everyone is able -- you know, all of us and the witnesses that we're talking to are able to determine what we're talking about I think that's fine.

HEARING OFFICER VACCARO: Okay.

MS. LUCKHARDT: And we can give it a go. And if somebody is confused we may have to find another way to describe it.

HEARING OFFICER VACCARO: Okay.

MS. LUCKHARDT: But I just want to make sure there isn't confusion between any of the witnesses about what we're asking about.

HEARING OFFICER VACCARO: No, fair enough. And I think since you'll have the documents in front of you I trust that you in your questioning, Mr. Haddock in his questioning, will fashion an approach that works. So I am not setting limits on how you creatively do it but I am setting limits on what is publicly disclosed. Because we do

have a proceeding here that is not a closed proceeding.

MR. HADDOCK: Is it your preference that we not refer even to a street name?

HEARING OFFICER VACCARO: That is my preference. Yes, that is my preference. Because all you have to do is take a look at what is publicly available and just add two and two. And I think we don't need to go there. I think you can make your cases ably without referring to a particular street address or a property address. And if it becomes too cumbersome or confusing we can take a brief recess, take a look at the documents and figure out something that will be mutually agreeable. This should not come as a surprise to anyone, though, that we are discussing this fact of not disclosing inspection information as it directly relates to an identifiable property.

I think -- so, Mr. Haddock, you go first, it's your case in chief.

I think you might want at this point, though, to make a motion with respect to the exhibits in the stipulation. I think that might make it a little bit easier. And if that's cryptic. You know, you have some exhibits that are hanging out there that have been offered but you certainly haven't -- or they are intended to be offered but you have not yet made an offer. You have merely apprised us that the housekeeping task that we gave you was

accomplished.

MR. HADDOCK: I understand. Complainants would move that the exhibits that we had stipulated to with regard to authenticity and admissibility be moved into evidence.

HEARING OFFICER VACCARO: Which would be all exhibits except for numbers 5, 21, 22 and 23.

MR. HADDOCK: That's correct.

HEARING OFFICER VACCARO: Ms. Luckhardt, I don't anticipate an objection but for a clean record, do you have any objections?

MS. LUCKHARDT: No objection.

HEARING OFFICER VACCARO: Thank you.

(Complainants' Exhibits 1-4, 6-20
and 24 were admitted into evidence.)

HEARING OFFICER VACCARO: We have set the table up up here in the front of the room to allow for the panel approach that we discussed on Tuesday. So, Mr. Haddock, of course you are not compelled to use the panel approach, but should you do that there is your opportunity to present your witnesses in a panel fashion.

MR. HADDOCK: Thank you.

HEARING OFFICER VACCARO: And the court reporter, I would ask that when the witnesses prepare to give their testimony that you give them the oath or swear them in. Thank you.

MR. HADDOCK: Complainants call Erik Hoover and Patrick Davis as our first witnesses as a panel.

HEARING OFFICER VACCARO: Okay. So why don't you have them come sit up here and the court reporter will administer the oath.

Whereupon,

PATRICK DAVIS and ERIK HOOVER

Were called as a witnesses herein, and after being duly sworn, were examined and testified as follows:

THE REPORTER: Please state and spell your names for the record.

MR. HADDOCK: Erik Hoover, E-R-I-K, H-O-O-V-E-R

MR. DAVIS: It's Patrick Davis, P-A-T-R-I-C-K, D-A-V-I-S.

THE REPORTER: Thank you.

DIRECT EXAMINATION

BY MR. HOOVER:

Q Good morning, Mr. Hoover and Mr. Davis.

MR. HADDOCK: Good morning.

MR. HADDOCK: Were you both certified as HERS raters, Mr. Hoover?

MR. HOOVER: Yes.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: Yes.

MR. HADDOCK: When did you become certified as

HERS raters, Mr. Hoover?

MR. HOOVER: In 2008.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: 2007.

MR. HADDOCK: What were you certified to do, Mr. Hoover?

MR. HOOVER: I was certified to test new homes and alterations.

MR. HADDOCK: What does that mean, to test new homes and alterations?

MR. HOOVER: Provide various testing on new homes that are required by the Title 24 or by what's required from the installation of alterations.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: The same thing, new construction and alterations.

MR. HADDOCK: What kind of tests would you do for --

MR. DAVIS: For alterations? You would do -- at the time it was just duct test and then verify that a TXV was installed but as of 2010 then we added the refrigerant charge. And in new construction there's various tests of the blower door, air flow, fan, insulation inspections and a duct test.

MR. HADDOCK: What does a duct test measure,

Mr. Hoover?

MR. HOOVER: Air loss inside of a duct system.

MR. HADDOCK: Mr. Davis, what is a refrigerant charge test?

MR. DAVIS: A refrigerant charge is measuring the refrigerant in an AC unit. Basically making sure that the system is charged properly so that it's running at its best efficiency.

MR. HADDOCK: Do you know how many of these tests that you have performed, Mr. Hoover?

MR. HOOVER: Approximately 2700.

MR. HADDOCK: Mr. Davis, do you know?

MR. DAVIS: About 4700.

MR. HADDOCK: Do you know any other raters who have done as many of these tests as you have, Mr. Hoover?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: Was it necessary for you to be certified to do these things, Mr. Hoover?

MR. HOOVER: Yes.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: Yes.

MR. HADDOCK: Could you have done them without being certified, Mr. Hoover?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: We talk about ratings sometimes. Is a rating the same as a test, Mr. Hoover?

MR. HOOVER: It's a series of the testing, a compilation.

MR. HADDOCK: Is that term interchangeable, rating and test?

MR. HOOVER: Yes.

MR. HADDOCK: Mr. Hoover, how did you become a certified HERS rater?

MR. HOOVER: I took a test.

MR. HADDOCK: Who administered the test to you?

MR. HOOVER: CalCERTS.

MR. HADDOCK: Were you a certified HERS rater before you took a test with CalCERTS?

MR. HOOVER: Yes.

MR. HADDOCK: How did you become certified at that point?

MR. HOOVER: I was certified through CHEERS.

MR. HADDOCK: Mr. Davis, how did you become certified?

MR. DAVIS: I took the two day and the test.

MR. HADDOCK: Who gave you the class?

MR. DAVIS: CalCERTS.

MR. HADDOCK: Okay. Are you familiar with the term "quality assurance," Mr. Davis?

MR. DAVIS: Yes.

MR. HADDOCK: Mr. Hoover?

MR. HOOVER: Yes.

MR. HADDOCK: What does that term mean to you in the context of HERS rating, Mr. Hoover?

MR. HOOVER: It means to me they follow behind and verify that we are doing the proper tests that are required.

MR. HADDOCK: Who follows behind?

MR. HOOVER: CalCERTS.

MR. HADDOCK: Mr. Davis, is that your understanding?

MR. DAVIS: Yes.

MR. HADDOCK: To your knowledge when CalCERTS does quality assurance evaluations does another rater go out in the field and do all the same tests you did when you first tested the house, Mr. Hoover?

MR. HOOVER: Yes.

MR. HADDOCK: Is that right, Mr. Davis?

MR. DAVIS: Yes.

MR. HADDOCK: Have you ever had quality assurance evaluations done for your work, Mr. Hoover?

MR. HOOVER: Yes.

MR. HADDOCK: Mr. Davis?
MR. DAVIS: Yes.
MR. HADDOCK: Is the term for that "QAed?"
MR. DAVIS: Yes.
MR. HOOVER: Yes.
MR. HADDOCK: Okay. How did you know that you had been QAed, Mr. Hoover?
MR. HOOVER: I received an email.
MR. HADDOCK: Mr. Davis?
MR. DAVIS: The same.
MR. HADDOCK: Mr. Hoover, I want to draw your attention to Complainants' Exhibit 3. Do you recognize this document?
MR. HOOVER: Yes.
MR. HADDOCK: What is it?
MR. HOOVER: That is the email I received from CalCERTS.
MR. HADDOCK: Did you receive this email on the same date it was sent?
MR. HOOVER: Yes.
MR. HADDOCK: What day was that?
MR. HOOVER: December 16th.
MR. HADDOCK: At the time you received this December 16th email did you understand that you had failed a QA?

MR. HOOVER: Yes.

MR. HADDOCK: Did you know what addresses of the houses you had made the mistakes at?

MR. HOOVER: Yes.

MR. HADDOCK: How did you know that?

MR. HOOVER: They were stated on the email.

MR. HADDOCK: Did you know what particular tests you had made mistakes on?

MR. HOOVER: No.

MR. HADDOCK: Why didn't you know that?

MR. HOOVER: It didn't say in the email.

MR. HADDOCK: When you received this email dated December 16th did you feel that CalCERTS was punishing you?

MR. HOOVER: Yes.

MR. HADDOCK: What was the punishment you received?

MR. HOOVER: A 15 day suspension.

MS. LUCKHARDT: Objection, assumes it's a punishment.

MR. HADDOCK: Did you think there was a consequence for failing a quality assurance review?

MR. HOOVER: Yes.

MR. HADDOCK: What was that consequence?

MR. HOOVER: A 15 day suspension.

MR. HADDOCK: What did it mean to you to be

suspended for 15 days?

MR. HOOVER: Loss of income for approximately two weeks.

MR. HADDOCK: Did that mean you were not able to work?

MR. HOOVER: Yes.

MR. HADDOCK: At the time you received this December 16th email was your suspension already in effect?

MR. HOOVER: Yes.

MR. HADDOCK: Prior to the time you received this December 16th email did you know that CalCERTS was considering any punishment for you?

MR. HOOVER: No.

MR. HADDOCK: Did you think your suspension was temporary?

MR. HOOVER: Yes.

MR. HADDOCK: How long did you think your suspension would last?

MR. HOOVER: Fifteen days.

MR. HADDOCK: At this time did CalCERTS tell you there was any possibility that your suspension could continue beyond 15 days?

MR. HOOVER: No.

MR. HADDOCK: What did you think CalCERTS was punishing you for?

MR. HOOVER: Some failed --

MS. LUCKHARDT: Objection.

MR. HOOVER: Some failed QAs.

HEARING OFFICER VACCARO: Just so that we're sort of clear on the ground rules here. Objections are fine. It's better if you make an objection and actually tell us the basis for it. Mr. Haddock, you will get an opportunity to respond. But remember, at the end of the day it's the panel up here that decides if an objection is sustained or overruled. I understand that your objection was a continuation of your prior one but we are making a record here as well so I am just reminding everybody that clarity is particularly important.

MS. LUCKHARDT: We're objecting to the characterization of "punishment."

MR. HADDOCK: Mr. Hoover, did you characterize it as a punishment?

MR. HOOVER: Yes.

MR. HADDOCK: Okay. At this time did you now that CalCERTS was considering additional punishment for you?

MR. HOOVER: No.

MR. HADDOCK: Prior to receiving this email on December 16th did you know that CalCERTS was doing or had done any quality assurance review for you?

MR. HOOVER: No.

MR. HADDOCK: Did you feel you needed to respond to the December 16th email?

MR. HOOVER: Yes.

MR. HADDOCK: Why did you feel that way?

MR. HOOVER: It told me in the email that if I didn't respond within the 15 days I would be decertified.

MR. HADDOCK: Did you respond?

MR. HOOVER: Yes.

MR. HADDOCK: What did you do?

MR. HOOVER: I replied with an email.

MR. HADDOCK: Who did you respond to?

MR. HOOVER: Charlie Bachand.

MR. HADDOCK: Mr. Davis, I want to direct your attention to Complainants' Exhibit 4. Do you recognize this document?

MR. DAVIS: Yes.

MR. HADDOCK: What is it?

MR. DAVIS: This is my suspension email.

MR. HADDOCK: Did you receive this email on the same day it was sent?

MR. DAVIS: I did not.

MR. HADDOCK: Do you check your email every day?

MR. DAVIS: I do.

MR. HADDOCK: So why didn't you receive it on December 16th?

MR. DAVIS: This was sent to an old email from four years ago, or five now.

MR. HADDOCK: When did you receive the email?

MR. DAVIS: It was a couple of days later.

MR. HADDOCK: Okay. At the time you received this December 16th email did you understand that you had failed a QA?

MR. DAVIS: Yes.

MR. HADDOCK: Did you know the houses or the addresses of the houses where you had made the mistakes?

MR. DAVIS: Yes.

MR. HADDOCK: How did you know that?

MR. DAVIS: It was listed in the email.

MR. HADDOCK: Did you know what particular tests you had made mistakes on?

MR. DAVIS: No.

MR. HADDOCK: Why didn't you know that?

MR. DAVIS: It was not listed.

MR. HADDOCK: When you received this email dated December 16th did you feel that CalCERTS was punishing you?

MR. DAVIS: Yes.

MS. LUCKHARDT: Objection, characterization as a punishment.

MR. HADDOCK: I'm asking whether he feels he was punished.

MR. DAVIS: Yes.

MR. HADDOCK: What was the punishment you received?

MS. LUCKHARDT: Excuse me, objection. You're characterizing it as a punishment. If he felt it was a punishment that's one thing. But for you to continue to characterize it as a punishment I think is not a fact that is established within the record and is an improper characterization.

HEARING OFFICER VACCARO: Are you going to respond, Mr. Haddock, or are you going to change your line of questioning? What is it you are going to do?

MR. HADDOCK: Well I think what I am asking about is continuing his characterization as punishment, which he has expressed is the way he felt it was.

HEARING OFFICER VACCARO: And I think that is probably the more accurately stated -- that is an accurate statement of what the testimony is so far. So Ms. Luckhardt, your objection is noted. I understood it the first time that you made it. I think at this point it has been established that it is not the attorney's word choice, that it is the word choice of the witnesses. And so we will allow Mr. Haddock to continue questioning that uses the word choice that was raised by the witnesses in their testimony. The objection is overruled.

MR. HADDOCK: Mr. Davis, what was the punishment you received?

MR. DAVIS: It was a 15 day suspension.

MR. HADDOCK: What did it mean to you to be suspended?

MR. DAVIS: That I'd be suspended for 15 days without being able to work.

MR. HADDOCK: At the time you received this December 16th email was your suspension already in effect?

MR. DAVIS: Yes.

MR. HADDOCK: Prior to the time you received this email did you know that CalCERTS was considering punishment for you?

MR. DAVIS: No.

MR. HADDOCK: Did you think your suspension was temporary?

MR. DAVIS: Yes.

MR. HADDOCK: How long did you think your suspension would last?

MR. DAVIS: For 15 days.

MR. HADDOCK: At this time did CalCERTS tell you there was a possibility that your suspension would continue longer than 15 days?

MR. DAVIS: Yes, only if I didn't respond to the email.

MR. HADDOCK: Okay. What did you think CalCERTS was punishing you for?

MR. DAVIS: Failed QAs.

MR. HADDOCK: At this time did you know that CalCERTS was considering additional punishments due to your QA failures?

MR. DAVIS: No.

MR. HADDOCK: Prior to receiving this email on December 16th did you know that CalCERTS was doing or had done quality assurance review for you?

MR. DAVIS: No.

MR. HADDOCK: Did you feel you needed to respond to the December 16th email?

MR. DAVIS: Yes.

MR. HADDOCK: Why?

MR. DAVIS: Because I would be decertified if I didn't respond within 15 days.

MR. HADDOCK: Did you respond?

MR. DAVIS: Yes.

MR. HADDOCK: How did you respond?

MR. DAVIS: Through email.

MR. HADDOCK: Mr. Hoover, I'd like to draw your attention to Complainants' Exhibit 12. Do you recognize that document?

MR. HOOVER: Yes.

MR. HADDOCK: What is it?

MR. HOOVER: It's an email I received from Mark Wiese.

MR. HADDOCK: When did you receive it?

MR. HOOVER: On January 3rd.

MR. HADDOCK: Prior to the time you received this email did you believe that your suspension would end after 15 days?

MR. HOOVER: Yes.

MR. HADDOCK: Did this email change your belief about when your suspension would end?

MR. HOOVER: Yes.

MR. HADDOCK: Why?

MR. HOOVER: It said it would continue until January 13th.

MR. HADDOCK: Do you know why or did you know why your suspension was extended to January 13th?

MR. HOOVER: No.

MR. HADDOCK: Did CalCERTS tell you the reasons why your suspension was extended?

MR. HOOVER: No.

MR. HADDOCK: Prior to receiving this email, Complainants' Exhibit 12, did you know that CalCERTS was considering decertifying you?

MR. HOOVER: No.

MR. HADDOCK: Mr. Hoover and Mr. Davis, did you ultimately have interviews with CalCERTS to discuss your QA failures, Mr. Hoover?

MR. HOOVER: Yes.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: Yes.

MR. HADDOCK: Prior to your interviews did CalCERTS provide you with any documents describing the particular tests you had made mistakes on, Mr. Hoover?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: Prior to your interviews did CalCERTS provide you with any data telling you what tests you had done incorrectly, Mr. Hoover?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: When you attended the meeting who was present, Mr. Hoover?

MR. HOOVER: Charlie Bachand and Mark Wiese.

MR. HADDOCK: Mr. Davis, who was present in your meeting?

MR. DAVIS: The same.

MR. HADDOCK: At your interview, Mr. Hoover, did

CalCERTS provide you with any documents describing the particular tests you had made mistakes on?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: When you were at the interview did CalCERTS tell you what tests the quality assurance rater had done, Mr. Hoover?

MR. HOOVER: No, not every test.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: Yes.

MR. HADDOCK: What did he tell you?

MR. DAVIS: He just told me which tests I did not pass.

MR. HADDOCK: Did he tell you all the tests that the QA rater had done?

MR. DAVIS: No.

MR. HADDOCK: Did CalCERTS tell you the result of the QA rater's tests, Mr. Hoover?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No, just that it didn't pass.

MR. HADDOCK: Did you have an opportunity to compare the results of your tests with the results of the QA rater's tests, Mr. Hoover?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: Mr. Davis, I want to draw your attention to Complainants' Exhibit 9. Do you recognize that document?

MR. DAVIS: Yes.

MR. HADDOCK: I want to draw your attention in particular to the page marked Page 2 of 4. Do you see that there are addresses listed on that page?

MR. DAVIS: Yes.

MR. HADDOCK: The second address on that page. In your interview with CalCERTS did CalCERTS ask you about ratings you did at the second address on that page?

MR. DAVIS: Yes.

MR. HADDOCK: Before you went to the interview did you know that CalCERTS was going to ask you about the second address on that page?

MR. DAVIS: No.

MR. HADDOCK: Did CalCERTS tell you they were going to ask you about that address?

MR. DAVIS: No.

MR. HADDOCK: Mr. Davis, will you turn to the page marked Page 3 of 4. Do you see an address at the top of that page?

MR. DAVIS: Yes.

MR. HADDOCK: In your interview did CalCERTS ask you about ratings you did at that address on the top of the page?

MR. DAVIS: Yes.

MR. HADDOCK: Before you went to the interview did you know that CalCERTS was going to ask you about that address?

MR. DAVIS: No.

MR. HADDOCK: Did CalCERTS tell you they were going to ask you about that address?

MR. DAVIS: No.

MR. HADDOCK: When did you first become aware that CalCERTS had done a QA for these two addresses mentioned in Exhibit 9?

MR. DAVIS: At the interview.

MR. HADDOCK: At that point had your ability to work already been suspended?

MR. DAVIS: Yes.

MR. HADDOCK: After your interviews did CalCERTS end your suspension, Mr. Hoover?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: Did they tell you why they weren't

ending your suspension, Mr. Hoover?

MR. HOOVER: That it was still under investigation.

MR. HADDOCK: Mr. Davis, did they tell you why?

MR. DAVIS: The same thing.

MR. HADDOCK: Mr. Davis, I want to -- pardon me. Mr. Hoover, I would like to draw your attention to Complainants' Exhibit 13. Do you recognize that document?

MR. HOOVER: Yes.

MR. HADDOCK: What is it?

MR. HOOVER: That's an email I received from Charlie Bachand.

MR. HADDOCK: When did you receive it?

MR. HOOVER: On January 18th.

MR. HADDOCK: Mr. Hoover, did you write an email that's quoted at the bottom of Exhibit 13?

MR. HOOVER: Yes.

MR. HADDOCK: Would you please read that, read what you wrote.

MR. HOOVER: It says: "Charlie, I am inquiring to see if there have been any developments with my suspension and when it will be lifted. I have been suspended for over 30 days now and I am eager to get back to work."

MR. HADDOCK: Why did you write that?

MR. HOOVER: Because it had been just over a month

since I was originally suspended.

MR. HADDOCK: Did CalCERTS respond to your question?

MR. HOOVER: Yes.

MR. HADDOCK: How did they respond?

MR. HOOVER: They said they will have a decision very soon within the next seven days.

MR. HADDOCK: Did CalCERTS give you a decision about your suspension within seven days?

MR. HOOVER: No.

MR. HADDOCK: Did they tell you why they weren't giving you a decision within seven days?

MR. HOOVER: No.

MR. HADDOCK: Did they tell you how much longer your suspension would continue?

MR. HOOVER: No.

MR. HADDOCK: Did you at some point learn of CalCERTS' decision?

MR. HOOVER: Yes.

MR. HADDOCK: How did you learn about it?

MR. HOOVER: I received a letter in early February that I was decertified.

MR. HADDOCK: I'd like to draw your attention to Complainants' Exhibits 6 and 7. Complainants' Exhibit 6. Mr. Hoover, do you recognize that document?

MR. HOOVER: Yes.
MR. HADDOCK: What is it?
MR. HOOVER: That is my decertification letter.
MR. HADDOCK: Do you recall when you received this letter?
MR. HOOVER: The beginning of February.
MR. HADDOCK: Mr. Davis with Exhibit 7, do you recall when you received that?
MR. DAVIS: Yeah, the first of February.
MR. HADDOCK: Did CalCERTS decertify you, Mr. Hoover?
MR. HOOVER: Yes.
MR. HADDOCK: Mr. Davis?
MR. DAVIS: Yes.
MR. HADDOCK: What does it mean for you to be decertified, Mr. Hoover?
MR. HOOVER: Loss of work, loss of career.
MR. HADDOCK: Mr. Davis?
MR. DAVIS: I can no longer be a HERS rater, no job.
MR. HADDOCK: To your knowledge is there something that you can do to become certified again with CalCERTS, Mr. Hoover?
MR. HOOVER: No.
MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: Is your decertification permanent as far as you understand, Mr. Hoover?

MR. HOOVER: Yes.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: Yes.

MR. HADDOCK: Is it possible that you could be certified by another provider, Mr. Hoover?

MR. HOOVER: Yes.

MR. HADDOCK: What is your understanding about that?

MR. HOOVER: There is another rating company out there that only does alterations.

MR. HADDOCK: Mr. Davis, what is your understanding?

MR. DAVIS: I've heard the same thing.

MR. HADDOCK: How many providers are there that could provide you with a certification, Mr. Hoover?

MR. HOOVER: Two.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: Two.

MR. HADDOCK: Is there another provider who can certify you to perform ratings on new construction, Mr. Hoover?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: Were you both certified to do solar inspections, Mr. Hoover?

MR. HOOVER: Yes.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: Yes.

MR. HADDOCK: To your knowledge has CalCERTS ever done any QA evaluations for your solar inspections, Mr. Hoover?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: Has CalCERTS ever told you that you had made a mistake with solar inspections, Mr. Hoover?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: Are you still permitted to do solar inspections, Mr. Hoover?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: Did your decertification take away your ability to do solar inspections, Mr. Hoover?

MR. HOOVER: Yes.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: Yes.

MR. HADDOCK: Did CalCERTS tel you that your QA failures were not rectifiable, Mr. Hoover?

MR. HOOVER: Yes.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: Yes.

MR. HADDOCK: Do you know why CalCERTS said your QA failures were not rectifiable, Mr. Hoover?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: Do either of you have learning disabilities, Mr. Hoover?

MR. HOOVER: No.

MR. DAVIS: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: Do you consider yourselves to be capable of learning, Mr. Hoover?

MR. HOOVER: Yes.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: Yes.

MR. HADDOCK: Did either of you ever tell CalCERTS that you refused to follow the standards for HERS rating,

Mr. Hoover?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: Are you willing to learn how to be a better HERS rater, Mr. Hoover?

MR. HOOVER: Yes.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: Yes.

MR. HADDOCK: Did CalCERTS ever offer you additional training, Mr. Hoover?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: Did CalCERTS offer to supervise your work, Mr. Hoover?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: Do you know how many quality assurance evaluations CalCERTS performed on you during the time you were a certified HERS rater, Mr. Hoover?

MR. HOOVER: Four.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: Seven.

MR. HADDOCK: Do you know that that's the exact number?

MR. HOOVER: As far as I'm aware.

MR. DAVIS: Yes, as far as I know.

MR. HADDOCK: Prior to the notice email that was sent to you on December 16th, 2011, had you ever been notified that CalCERTS was going to perform a quality assurance evaluation for you, Mr. Hoover?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: Had you ever been notified that CalCERTS had already performed a quality assurance review for you, Mr. Hoover?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: Had you ever been notified that you had failed a quality assurance evaluation, Mr. Hoover?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: Had you ever been notified that you had passed a quality assurance review, Mr. Hoover?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: Was there a time when your name appeared in the CalCERTS rater registry, Mr. Hoover?

MR. HOOVER: Yes.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: Yes.

MR. HADDOCK: Does your name appear there now?

MR. HOOVER: No.

MR. DAVIS: No.

MR. HADDOCK: To your knowledge has CalCERTS ever reported your QA failures in its rater registry, Mr. Hoover?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: Did CalCERTS ever tell you that because of your QA failures CalCERTS was going to do additional QA evaluations for your work, Mr. Hoover?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: No.

MR. HADDOCK: Did CalCERTS ever provide you with any documents describing the particular mistakes you had made, Mr. Hoover?

MR. HOOVER: Yes.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: Yes.

MR. HADDOCK: What were the circumstances of you receiving those documents, Mr. Hoover?

MR. HOOVER: They had to be requested by my lawyer.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: The same.

MR. HADDOCK: Okay, thank you, I have no more questions for you.

HEARING OFFICER VACCARO: You're not yet excused though, gentlemen.

Ms. Luckhardt, before you begin your cross -- and this isn't by way of rushing you, this is just to get a time estimate because we have a need to take a break at 12:25. And so if you think in the next 20 minutes you can start your cross. I do want to get a sense of how long you think it might take and to give you forewarning that there might be somewhat of a break. That might help you figure out what set of questions you might want to start with and what would be a logical breaking point so it doesn't unduly disrupt your flow.

MS. LUCKHARDT: Okay, if I can just have a minute here. Okay. Okay, are you ready for me to start?

HEARING OFFICER VACCARO: I am but I think there

was a question. So the question was, are you going to be able to find a natural breaking point at about 12:25 that doesn't disrupt or unduly disrupt sort of your flow or the rhythm. It was forewarning and also a question.

MS. LUCKHARDT: Yeah, no, I think we can definitely start.

HEARING OFFICER VACCARO: Okay. And then how long do you think your cross will take, approximately?

MS. LUCKHARDT: My guess is it would take -- it's going to take 30 minutes, it might take 40.

HEARING OFFICER VACCARO: Okay, thank you.

MS. LUCKHARDT: Okay, so beginning with Mr. Davis.

CROSS EXAMINATION OF MR. DAVIS

BY MS. LUCKHARDT:

Q I believe you stated earlier that you were certified as a HERS rater through training offered by CalCERTS.

A Yes.

Q As a CalCERTS rater. And as part of that training you were required to familiarize yourself with the HERS regulations?

A Correct.

Q And as part of your training you understood you had an obligation to provide truthful and accurate ratings?

A Yes.

Q Okay. So we're pulling up Exhibit 248. It's also marked as page 1440. I don't know if we can blow that up at all. I'm looking at Title 20, Section 1672(m). And I'm going to read it off my copy. It states: "Providers and Raters shall not knowingly provide untrue --" or you guys might be able to read it easier behind you, unless your eyesight is a whole lot better than mine.

> "Providers and Raters shall not knowingly provide untrue, inaccurate or incomplete rating information or report rating results that were not conducted in compliance with these regulations. Providers and Raters shall not knowingly accept payment or other consideration in exchange for reporting a rating result that was not in fact conducted and reported in compliance with these regulations."

Q Did I read that correctly? You think so?

A Yes.

Q Thank you. You were aware of this regulation at the time you were certified; is that correct?

A Correct.

Q And you understood that you could not submit untrue or inaccurate ratings, correct?

A Yes.

Q Okay. I'm going to go through this with Mr. Hoover and then I may try and put them together like Mr. Haddock did so we can shorten the time further.

CROSS EXAMINATION OF MR. HOOVER

BY MS. LUCKHARDT:

Q Okay, Mr. Hoover, you were certified as a rater through training offered by CalCERTS, correct, as a CalCERTS rater?

A Yes.

Q As part of your training you were required to familiarize yourself with the HERS regulations?

A Correct.

Q And as part of your training and in the course of your review of the HERS regulations you understood you had an obligation to provide truthful and accurate ratings?

A Yes.

Q And you were aware of the regulation that I just went over with Mr. Davis, the one I just read, at the time you were certified, correct?

A Yes.

Q And you understood that you could not submit untrue or inaccurate ratings?

A Correct.

MS. LUCKHARDT: Okay, turning back to Mr. Davis. I need Exhibit 200. Okay. So Mr. Davis, Exhibit 200 is a

copy of the Certified Rater Agreement. Do you recognize this document?

MR. DAVIS: Yes.

MS. LUCKHARDT: Can you explain what it is?

MR. DAVIS: It's the agreement that you sign when you take the class. In the class you have to sign it before you leave to certify as a rater.

MS. LUCKHARDT: And when you signed the agreement you agreed to be bound by its terms, correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: And you don't dispute the validity of this agreement?

MR. DAVIS: No.

MS. LUCKHARDT: Okay, so I'm going to try and read this. I've got to look at this one too.

"The RATER shall comply with all applicable, federal, state and local laws and regulations."

Did I read that correctly?

MR. DAVIS: Yeah.

MS. LUCKHARDT: In signing this agreement you agreed to be bound by all applicable laws and regulations, correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: Okay, now we're going to call up

on page 8, Section IV.E. Section E reads:

"RATER acknowledges that RATER has read California Code of Regulations, Title 20, Chapter 4, Article 8, Sections 1670-1675, the Regulations, a copy of which is attached and incorporated herein by reference."

And F states:

"RATER understands the regulations and agrees to provide home energy ratings, field verification services and diagnostic testing services in compliance with the Regulations, laws and requirements of the State of the California."

In signing this agreement you acknowledged you read the regulations, correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: And you agreed to be bound by the regulations, correct?

MR. DAVIS: Yes.

MS. LUCKHARDT: And this included the section we read before about truth and accuracy, Section 1672(m), correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: Okay. CalCERTS may -- I'm going to read the section, this is Section III.B out of this

agreement.

"CalCERTS may reprove, suspend for a period not to exceed two years, or PERMANENTLY decertify, any RATER who is found to have committed one or more of the following acts:"

Did I read that correctly?

MR. DAVIS: Yes.

MS. LUCKHARDT: And in signing this agreement you understood you could be decertified for certain acts; is that correct?

MR. DAVIS: Correct

MS. LUCKHARDT: Okay, now we're moving on to the same page, Section B.4. Okay, Section B.4 reads as follows:

"Willful failure of RATER to provide a true, accurate and complete rating, field verification or diagnostic testing."

Did I read that correctly?

MR. DAVIS: Yes.

MS. LUCKHARDT: And in signing this agreement you understood that you could be decertified for failing to provide true and accurate ratings, correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: And you had an obligation to provide truthful and accurate ratings under the regulations.

MR. DAVIS: Correct.

MS. LUCKHARDT: And you had an obligation to provide true and accurate ratings under this agreement, correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: And if you understood you didn't do that you could be decertified, correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: Acts have consequences, right?

MR. DAVIS: Yes.

MS. LUCKHARDT: And you knew the consequences of untruthful or inaccurate ratings could be decertification.

MR. DAVIS: Correct.

MS. LUCKHARDT: And you signed this contract with that understanding, correct?

MR. DAVIS: Say that again.

MS. LUCKHARDT: And you signed the contract knowing that you could be decertified for untruthful ratings.

MR. DAVIS: Correct.

MS. LUCKHARDT: Okay, Exhibit 201, if you could call that one up. Okay. I can tell your eyes are better than mine. Okay. Do you recognize this document?

MR. DAVIS: Not really.

MS. LUCKHARDT: Can you blow it up? Thank you.

Are you more familiar with it now that you see it

larger?

MR. DAVIS: I see it but I don't remember it.

HEARING OFFICER VACCARO: The record will reflect that the attorneys have just provided the witness with a copy of the exhibit that we are all seeing, which is Exhibit number 201.

MS. LUCKHARDT: Now that you have it in front of you do you recognize it?

MR. DAVIS: Yes.

MS. LUCKHARDT: And what is this agreement?

MR. DAVIS: It says it's a subscription agreement.

MS. LUCKHARDT: And you signed and agreed to be bound by its terms, correct?

MR. DAVIS: Yes I did.

MS. LUCKHARDT: And you don't dispute the validity of this agreement, do you?

MR. DAVIS: No.

MS. LUCKHARDT: Okay, so we're going to pull up page 22. Is it up? Okay. And this section states:

"Subscriber acknowledges that Subscriber has read California Code of Regulations, Title 20, Chapter 4, Article 8, Sections 1670-1675."

Did I read that correctly?

MR. DAVIS: Yes.

MS. LUCKHARDT: And are those your initials?

MR. DAVIS: Yes they are.

MS. LUCKHARDT: And in signing this agreement you acknowledged that you had read California Code of Regulations Title 20, Chapter 4, Article 8, Sections 1670-1675, correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: And those are the HERS regulations, correct?.

MR. DAVIS: Correct.

MS. LUCKHARDT: And are the HERS -- and the HERS regulations obligate you to submit truthful and accurate rating information, right?

MR. DAVIS: Correct.

MS. LUCKHARDT: Okay, now we're pulling up page 20. Section F on page 20, which continues on to page 21. Okay. The title of the section is Termination Agreement. Sub-part (1). Termination of Agreement, excuse me. Sub-part (1):

"Failure of a Subscriber to comply with any of the terms and conditions of this agreement or any other agreements between Subscriber and CalCERTS."

And the next page continues on. Looking at Sub-part (4):

"Willful failure of a Subscriber to

provide true and accurate data and information."

In signing this agreement you understand that it can be terminated by your failure to comply with the terms and conditions of the agreement.

MR. DAVIS: Yes.

MS. LUCKHARDT: Plus any other agreement, like the Rater agreement, with CalCERTS, correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: And you also understood that this agreement could be terminated for your failure to provide true and accurate data and information?

MR. DAVIS: Yes.

MS. LUCKHARDT: Okay, turning to Mr. Hoover. Okay, we're going to 202, so back to the Rater Agreement.

Mr. Hoover, do you recognize this document?

MR. HOOVER: Vaguely.

MS. LUCKHARDT: Okay, why don't you give him a copy of it.

Okay, have you had a chance to look at it now?

MR. HOOVER: Yes.

MS. LUCKHARDT: Do you recognize this document?

MR. HOOVER: I don't remember but I have signed it, yes.

MS. LUCKHARDT: Is the title of the document,

CalCERTS Certified Rater Agreement?

MR. HOOVER: What is the question?

MS. LUCKHARDT: Is the title of the document you're looking at, CalCERTS Certified Rater Agreement?

MR. HOOVER: Yes.

MS. LUCKHARDT: And you just stated that you signed this agreement and agreed to be bound by its terms, correct?

MR. HOOVER: Correct.

MS. LUCKHARDT: And you don't dispute the validity of this agreement?

MR. HOOVER: Like I said, I don't remember signing it but that is my signature on it. I don't remember the specifics of this document when I signed it three years ago.

MS. LUCKHARDT: Okay, let's look at the document then. Let's pull up page 28. Okay. This is Section II.D and I'm going to read the section:

"RATER shall comply with all applicable federal, state and local laws and regulations."

Did I read that correctly?

MR. HOOVER: Yes.

MS. LUCKHARDT: And in signing this agreement you acknowledged that you read the regulations; is that correct?

MR. HOOVER: Yes.

MS. LUCKHARDT: And you agreed to be bound by the regulations?

MR. HOOVER: Yes.

MS. LUCKHARDT: And that includes Section 1672(m); is that correct? Section 1672(m) to refresh your memory, it's back on Exhibit 248, page 1440. Okay, I'm going to read the section for you to help you remember it.

"Providers and Raters shall not knowingly provide untrue, inaccurate or incomplete rating information or report rating results that were not conducted in compliance with these regulations. Providers and Raters shall not knowingly accept payment or other consideration in exchange for reporting a rating result that was not in fact conducted and reported in compliance with these regulations."

Did I read that correctly?

MR. HOOVER: From what I can tell, yeah.

MS. LUCKHARDT: Okay, let's go back to Exhibit 202, page 6. We're looking for Section III.B. We are back on the Rater Agreement. Okay, this section is entitled Termination and Decertification. Okay. Looking at Section 4. Section 4, I'm going to read it.

"Willful failure of rater to provide a

true, accurate and complete rating, field verification or diagnostic testing."

Did I read that correctly?

MR. HOOVER: Yes, willful failure of rater to provide a true, accurate and complete rating, field verification of diagnostic testing, yes.

MS. LUCKHARDT: Thank you. And in signing the agreement you understood that you could be decertified for certain acts, correct?

MR. HOOVER: Yes, for willful failure, yes.

MS. LUCKHARDT: Okay, we're moving on. Okay. So we're moving to the Subscription Agreement, Exhibit 203. We're going to bring a copy over to you so you've got it handy.

HEARING OFFICER VACCARO: Ms. Luckhardt, why don't you go with about another three or so questions and then, as I mentioned, we are going to -- there's a need for a break in just a couple of minutes. So if you want to do it now or if you want to continue with a few questions since you are on a particular document that would be fine.

MS. LUCKHARDT: Okay. Okay.

HEARING OFFICER VACCARO: Maybe just finish up with the Subscription Agreement.

MS. LUCKHARDT: Yeah, okay. It may take five but I'll try, okay. So have you had a chance to look at the

document?

HEARING OFFICER VACCARO: We'll I'm going to interrupt. If it's going to take five or if it may take five, unfortunately there really is a need for us to break.

MS. LUCKHARDT: That's fine.

HEARING OFFICER VACCARO: So we could go ahead -- why don't we do it now --

MS. LUCKHARDT: We could break here.

HEARING OFFICER VACCARO: -- and allow you the opportunity to question as you had intended.

So we are going to go off the record in just a few moments. We'll come back on the record at -- okay, I guess then we're going to combine this break with a lunch break as well so why don't we reconvene at 1:15 and we will promptly begin. So I ask you all to be here a little bit early so that we go back on the record exactly at 1:15. Thank you.

(Off the record at 12:26 p.m.)

A F T E R N O O N S E S S I O N

1:22 p.m.

HEARING OFFICER VACCARO: Thank you all for being here as requested by 1:15 or shortly before 1:15, we appreciate that. I think it is going to enable us to keep moving.

Where we left off before the break was that the respondent was cross-examining Mr. Hoover and Mr. Davis. I do need you to go back, please, to the witness table. You have already been sworn in so there is no reason to have that done again. Ms. Luckhardt, once they're seated you may proceed.

CROSS EXAMINATION (CONTINUED)

BY MS. LUCKHARDT:

Q Okay, so what we have up on the screen is Exhibit 203. Okay. So, Mr. Hoover, do you recognize this document?

MR. HOOVER: Not exactly, no.

MS. LUCKHARDT: Can you read the title of it?

MR. HOOVER: CalCERTS, Incorporated, Subscription Agreement.

MS. LUCKHARDT: And you signed this agreement, didn't you?

MR. HOOVER: Yes. Yes I did.

MS. LUCKHARDT: And by signing the agreement you agreed to be bound by its terms, correct?

MR. HOOVER: Yes.

MS. LUCKHARDT: And before you sign an agreement you read an agreement, don't you?

MR. HOOVER: That's correct.

MS. LUCKHARDT: And you don't dispute the validity of this agreement, do you?

MR. HOOVER: No.

MS. LUCKHARDT: On page 46. I'm going to read this section to you that's been highlighted. It's on Exhibit 203, page 46.

"Subscriber acknowledges that Subscriber has read California Code of Regulations, Title 20, Chapter 4, Article 8, Section 1670-1675."

Did I read that correctly?

MR. HOOVER: Yes.

MS. LUCKHARDT: And are those your initials?

MR. HOOVER: Yes.

MS. LUCKHARDT: And in singing this agreement you acknowledged that you had read those code sections, correct?

MR. HOOVER: Correct.

MS. LUCKHARDT: And are those the HERS regulations?

MR. HOOVER: Yes.

MS. LUCKHARDT: And the HERS regulations obligate

you to be truthful and accurate in your rating information, correct?

MR. HOOVER: Correct.

MS. LUCKHARDT: Okay, we're moving on to page 45 -- 44, I'm sorry. Forty-four, which continues on to 45. Okay. The title of this section is Termination of Agreement. I'm going to read Sub-part 1:

"Failure of Subscriber to comply with any of the terms and conditions of this agreement or any other agreement between subscriber and CalCERTS --"

And then on to the next page. Section 4.

"Willful failure of a Subscriber to provide true and accurate data and information."

In signing this agreement you understand that it could be terminated by your failure to comply with the terms and conditions of this agreement plus any other agreement; isn't that correct?

MR. HOOVER: Yes.

MS. LUCKHARDT: And you also understood that this agreement could be terminated for your failure to provide true and accurate data and information.

MR. HOOVER: True.

MS. LUCKHARDT: Okay, moving back to Mr. Davis.

Okay, so we need to pull up Exhibit 207. Okay. Okay. Do you recognize this email?

MR. DAVIS: Yes.

MS. LUCKHARDT: And on December 16th you were notified that you failed a QA review, correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: And you were asked to schedule a meeting, correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: And the email states that you will be given the opportunity to present your records and documentation; is that correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: And you understood you had the ability to provide that information during the meeting, correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: And you participated in the meeting, correct?

MR. DAVIS: Yes.

MS. LUCKHARDT: And you brought your records and field notes with you to the meeting with CalCERTS, correct?

MR. DAVIS: I brought my papers that said everything passed, that's all I had.

MS. LUCKHARDT: Would those include your field

notes?

MR. DAVIS: The only field notes I take is whether a job passes or not. But I didn't bring specific -- I didn't know specifically what jobs -- what failed so I brought my CF-4Rs.

MS. LUCKHARDT: Okay, Mr. Davis, looking at, looking at the email. Isn't it true for the first address on the Friday, December 16, 2011 email that there were only two tests that were conducted at that address?

MR. DAVIS: There was three tests.

MS. LUCKHARDT: Can you identify which tests there were?

MR. DAVIS: A duct test, an RCA with the air flow.

MS. LUCKHARDT: Okay, that --

HEARING OFFICER VACCARO: Ms. Luckhardt, before you continue. Is it possible -- because I don't know what your line of questioning is and I don't really want to interrupt it as you go through it. But I don't know that this document really needs to be projected, does it, as long as you and the witnesses, Mr. Haddock and I know the Committee Members all have this document. Why don't we just take this one off and then you can ask the questions that you feel that you need.

MS. LUCKHARDT: Sure, that's fine. I'm trying to do it without verbally identifying addresses.

HEARING OFFICER VACCARO: Yes, I get that, but we're all looking right at them. And so my point is, you can still say, first, second, third, fourth, yet they all have the document before them. They know what you're talking about. We also know which addresses you're talking about just by giving it a reasonable qualifier.

MS. LUCKHARDT: That's fine.

HEARING OFFICER VACCARO: Thank you.

MS. LUCKHARDT: So for the second address, isn't it true that that address also, also has two tests associated with it?

MR. DAVIS: It has the same three as the other one.

MS. LUCKHARDT: Okay, what are the three tests? You named two tests.

MR. DAVIS: I said, refrigerant charge and temperature split as well as a duct test. It's part of it. Or you can do an air flow but we did the temperature split.

MS. LUCKHARDT: Okay, so I'm still coming up with two tests; is that correct?

MR. DAVIS: Sure.

MS. LUCKHARDT: Okay. And so you knew the tests that were conducted at those locations, correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: Thank you. And during the

meetings, isn't it true that you were provided with the magnitude of the difference between your results and the results of CalCERTS' field tests?

MR. DAVIS: I do not recall that.

MS. LUCKHARDT: So you don't recall whether you discussed the differences in the results?

MR. DAVIS: We did discuss that they had a different score, they never told me the exact score.

MS. LUCKHARDT: Do you recall that the differences were of a certain magnitude?

MR. DAVIS: Just that it did not pass.

MS. LUCKHARDT: And that's your recollection?

MR. DAVIS: Yes.

MS. LUCKHARDT: You were showed photos of some of the residences during the meeting, weren't you?

MR. DAVIS: Yes.

MS. LUCKHARDT: Okay. This is Exhibit 231, this is photo number eight. Okay. The location of this photo is -- let's see if we can pull it. Can we pull up the exhibit so he can look at it so he knows where it's located.

Do you know where this photo was taken?

MR. DAVIS: Yes.

MS. LUCKHARDT: Thank you. (Laughter.) Okay. And these stickers are put on to indicate something; isn't that correct?

MR. DAVIS: That is correct.

MS. LUCKHARDT: Okay, let's look -- pull up photo -- And it's to indicate the location of the temperature measurement access hole; is that correct?

MR. DAVIS: That's correct.

MS. LUCKHARDT: Okay, let's pull up Exhibit 231, photo number seven. Okay. You were shown this photo during the interview, were you not?

MR. DAVIS: Correct.

MS. LUCKHARDT: And can you find a hole underneath the sticker?

MR. DAVIS: There does not appear to be one.

MS. LUCKHARDT: Thank you. Okay. So now let's pull 231, pages 142 to 146.

You were also shown, isn't it correct, the data that you reported for this address?

MR. DAVIS: Correct.

HEARING OFFICER VACCARO: You need to move that up higher, please, to cover the top of the page. This is exactly what we were discussing, tying a property address to an inspection result. Which is why the redacted answer in the exhibits actually don't show any of this. So do you need to actually project it, is what I'm asking, because --

MS. LUCKHARDT: Okay, we can take it off the projection as long as --

HEARING OFFICER VACCARO: Why don't we go off the record for five minutes. Why don't you just make the copy of the exhibit available. If you don't have a hard copy I've got a box up here with me.

MS. LUCKHARDT: Okay, okay. She's going to redact it, I guess, off the -- this thing can do more stuff than I understood.

HEARING OFFICER VACCARO: Okay, thank you.

MS. LUCKHARDT: So we'll do our best to try and cover these up. That's the difficulty is you have to -- they need to also understand the specific location we're talking about. So trying to find a way to do that.

HEARING OFFICER VACCARO: And again, what I had just mentioned is that I have the hard copies here with me. So if you need the witness to have a hard copy in front of the witness, and that's really what we're talking about, they know what you're discussing. Because all of the parties and the Committee have copies as well. We can certainly do that. You're just not projecting it to the room.

MS. LUCKHARDT: Okay, all right. Okay, so I guess she's taken it away; wonderful. Okay.

So what we have up here is that's your form that you submitted on the CalCERTS registry which -- and what do those check marks represent?

MR. DAVIS: They represent that the holes are there.

MS. LUCKHARDT: And you signed this form under penalty of perjury, correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: And you were unable to explain why you placed the Valley Duct Testing TMAH, I'm going to use the acronym, the temperature measurement access home stickers, when there were no holes, correct?

MR. DAVIS: Correct.

MR. HADDOCK: I'm going to object to that question just in terms of relevance. If the question is what was presented at the interview I think that could be a relevant question. But if the question is going to the details of all the test results and what was found by CalCERTS, I'm not sure that's relevant to the question we're trying to answer about the process.

MS. LUCKHARDT: In order -- go ahead.

HEARING OFFICER VACCARO: No, why don't you go ahead and respond to that. I am hoping that what Mr. Haddock did was cue you to basically what we did discuss as well at Tuesday's prehearing conference. There is a certain amount of latitude, of course, but maybe you can tie the relevance together for us.

MS. LUCKHARDT: Right. We discussed this at the

prehearing conference. And the relevance of the data goes to two points that Mr. Haddock has brought up repeatedly. One of them is why were they decertified -- why were they suspended prior to an interview with CalCERTS.

And there's a lot of latitude given when there are -- it -- the evidence informs the process. And in this instance the evidence is critical in informing why these two individuals were suspended upon notification and why others were not. That is one of Mr. Haddock's questions.

He is arguing that these individuals should have been given an opportunity to talk to CalCERTS and have their interview before they were suspended. And unless you understand the gravity of what CalCERTS determined when they did their quality assurance reviews it is impossible to truly understand why CalCERTS made the decision and took the additional process step of suspending these individuals prior to the interview.

It is also critical in looking at the other process issues. There is not just one entity. There's also -- there is not just one individual that is harmed by the conduct that we are talking about here today. We are also talking about the critical point of the HERS regulations, that is, consumer protection. And that is ensuring that consumers have true, accurate and consistent ratings. Therefore you can't look at the process independently from

the other entities that are harmed. And in order to understand whether the process is proper you also have to understand the potential harm to consumers.

HEARING OFFICER VACCARO: Okay, I want to unbundle what you said just a bit. I thought I first understood Mr. Haddock as objecting because the line of inquiry was about the interview and what they were shown, what they knew, what they were told, what they said in the context of the interview. And so I am just making sure I am following you. You are saying that these documents were part of the, the interview?

MS. LUCKHARDT: Yes.

HEARING OFFICER VACCARO: Okay. And --

MS. LUCKHARDT: These were documents that were shown at the interview.

HEARING OFFICER VACCARO: Okay. So now I understand that connection. I understand your point with respect to what information informs the process decisions that were made by CalCERTS. So I understand that and I think we discussed it at the prehearing conference as well that there was some level of going into the details that might be necessary but that we were not going to exhaustively do so.

MS. LUCKHARDT: Correct.

HEARING OFFICER VACCARO: So maybe you can help us

understand how far into all of these exemplar documents you plan on going into, for how many properties, how many documents. Because my recollection of the declaration in the answer, it was pretty thick. And we could be here for hours if you were planning on going over each of these but I'm certain you weren't planning on doing that.

MS. LUCKHARDT: You bet, we could be here for hours, but we're not. We are giving you just a couple of examples of the dozens of situations that we saw.

HEARING OFFICER VACCARO: Okay. Well then I think with that explanation we are going to go ahead and overrule the objection. You've got a pretty fair amount of latitude, but if you start to exceed it I think we'll remind you that you've exceeded it.

MS. LUCKHARDT: Okay. So Mr. Davis, you were unable to explain why you reported the holes being missing in the interview; isn't that correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: Okay. So we're going to hand you a copy of Exhibit 210, page 74. Okay. Do you have a copy in front of you?

MR. DAVIS: Yes.

MS. LUCKHARDT: During your meeting with CalCERTS you were asked about the development identified in the document, correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: And isn't it correct that you rated at least 12 homes in this development?

MR. DAVIS: I believe that is correct.

MS. LUCKHARDT: And in fact you rated eight homes in one day, isn't that correct, on August 8th?

MR. DAVIS: I do not know that to be correct.

MS. LUCKHARDT: Do you know what is correct?

MR. DAVIS: It could have been eight. I mean, I was out there for several days, so.

MS. LUCKHARDT: And Mr. Flores scheduled you to rate these homes; is that correct.

MR. DAVIS: That is correct.

MS. LUCKHARDT: And didn't you admit in your meeting with CalCERTS that rating all 12 of these homes as alterations was a mistake?

MR. DAVIS: I believe I said it could have been a mistake.

MS. LUCKHARDT: And you were asked about the temperature measurement access holes in that meeting, for this development, weren't you?

MR. DAVIS: Correct.

MS. LUCKHARDT: And you were asked how you were able to obtain the temperature split readings without the temperature measurement access holes, correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: And you didn't dispute that there were problems, correct?

MR. DAVIS: Didn't dispute there were problems. What do you mean?

MS. LUCKHARDT: You didn't dispute that you couldn't take that specific reading without the access holes, correct?

MR. DAVIS: That is not correct.

MS. LUCKHARDT: Can you obtain a temperature split reading without the access holes in accordance with the regulations?

MR. DAVIS: Not in accordance.

MS. LUCKHARDT: Isn't it true that after the interview you were asked if you had questions or comments?

MR. DAVIS: Yes.

MS. LUCKHARDT: And did you have any additional questions?

MR. DAVIS: I asked when I was going to be -- my suspension was going to be over.

MS. LUCKHARDT: And did you make any additional comments?

MR. DAVIS: No. Other than I needed to prove about all my rating activity on a particular day.

HEARING OFFICER VACCARO: When the witness speaks

I need you to speak directly into the microphone, please.

MR. DAVIS: Sorry.

HEARING OFFICER VACCARO: I think you're audible --

MR. DAVIS: I was trying to locate it on the paperwork here.

HEARING OFFICER VACCARO: That's fine. And if you want to just move the microphone slightly closer to you instead of leaning in.

MR. DAVIS: I gotcha, okay, thank you.

HEARING OFFICER VACCARO: Thank you.

MS. LUCKHARDT: And you understand that you have an obligation to provide truthful and accurate ratings, correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: And you understand you have an obligation to report the results of your ratings to the registry, correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: And you understood that your ratings were submitted under penalty of perjury; is that correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: Okay, turning to you, Mr. Hoover. Do you recognize the redacted email -- we'll hand you a

copy of the full email, Mr. Hoover.

MR. HOOVER: Yes.

MS. LUCKHARDT: And on December 16th you were notified that you failed a quality assurance review and placed on a 15 day suspension; is that correct?

MR. HOOVER: Yes.

MS. LUCKHARDT: And you were asked to schedule a meeting; is that correct?

MR. HOOVER: Yes.

MS. LUCKHARDT: And the email states you will be given an opportunity to present your records and documentation; is that correct?

MR. HOOVER: Yes.

MS. LUCKHARDT: And you understood you had the ability to provide information during the meeting, correct?

MR. HOOVER: That's correct.

MS. LUCKHARDT: And you participated in the meeting?

MR. HOOVER: Yes.

MS. LUCKHARDT: And did you bring any field notes or records with you?

MR. HOOVER: Yes.

MS. LUCKHARDT: And during the interview you were told that the results of the CalCERTS field surveys were different from yours; isn't that correct?

MR. HOOVER: That's correct.

MS. LUCKHARDT: And you were told that they were different by, in some cases, a large order of magnitude; is that correct?

MR. HOOVER: I was given different scales, yes.

MS. LUCKHARDT: And you were told what the problems were with the quality assurance review, correct?

MR. HOOVER: Yes.

MS. LUCKHARDT: And you were shown photos. Can we bring up the photos. It's Exhibit 240. I don't think it has an address on it. Okay. And you were shown this photo during the interview; is that correct?

MR. HOOVER: I don't know if that was the exact photo. I was shown some photos, yes. I don't know if it was that one.

MS. LUCKHARDT: You were shown some photos during the interview?

MR. HOOVER: Yes.

MS. LUCKHARDT: Okay, we're going to go to 239. Do you recall this photo from the interview?

MR. HOOVER: No, not specifically.

MS. LUCKHARDT: But you do know that you were shown photos during the interview.

MR. HOOVER: Yes.

MS. LUCKHARDT: Okay, so we're going to hand you a

copy of Exhibit 216, starting with page 89. That's page 89 of the list. All right, so we have the redacted 216 up on the screen. Have you seen this document before?

MR. HOOVER: Yes.

MS. LUCKHARDT: And during your meeting with CalCERTS you were asked about your insulation measurements; is that correct?

MR. HOOVER: That's correct.

MS. LUCKHARDT: And you were asked about the energy efficiency ratio, correct?

MR. HOOVER: Correct.

MS. LUCKHARDT: And CalCERTS didn't decertify you based on your energy efficiency failures, did they?

MR. HOOVER: That was one of the fails.

MS. LUCKHARDT: Okay, so we're pulling up Exhibit number 218, which I don't believe has any addresses on it. Can you please explain what this document is?

MR. HOOVER: This is the decertification letter, I believe.

MS. LUCKHARDT: And does it list your energy efficiency ratio failures as a reason for your decertification?

MR. HOOVER: No, not on this one, on this paperwork here, no.

MS. LUCKHARDT: Thank you. And you stated in the

meeting that you were confident in your abilities as a rater; is that correct?

MR. HOOVER: Yes.

MS. LUCKHARDT: And you were asked about your ratings at a development where you rated -- on August 8th. Do you recall the location that you were rating on August 8?

Okay. So at the bottom of Exhibit 210. We're going to hand -- so at the bottom of Exhibit 210. It's marked as page 74. There are two addresses at the bottom of that. It's the QA action report for Mr. Davis so Mr. Davis may have it sitting in front of him. But at the very bottom of it on page 1 of 3 there are two addresses listed. Do you recall the -- do you recall the development where those addresses are located?

MR. HOOVER: This one is not mine, I'm sorry.

MS. LUCKHARDT: Okay, now I'm referring to Exhibit 216, page 90. And I'll hand you a copy of that so you can see it.

MR. HOOVER: The one circled here?

MS. LUCKHARDT: Yeah.

MR. HOOVER: Yes.

MS. LUCKHARDT: Do you remember that development?

MR. HOOVER: Yes.

MS. LUCKHARDT: Okay. Did you go to that development prior to conducting your final ratings?

MR. HOOVER: Yes.

MS. LUCKHARDT: Do you remember when that was?

MR. HOOVER: A week or two before.

MS. LUCKHARDT: And did you conduct ratings at your earlier, the earlier time you were there?

MR. HOOVER: I was there. We tried to test some and they did fail.

MS. LUCKHARDT: And then you went back to that same development on August 8th; is that correct?

MR. HOOVER: That's correct.

MS. LUCKHARDT: And you rated approximately six homes that day?

MR. HOOVER: Approximately.

MS. LUCKHARDT: And during the meeting with CalCERTS you didn't dispute that there were problems with those ratings, correct?

MR. HOOVER: In the initial day that I went out there, there were problems. That's why we had to come back.

MS. LUCKHARDT: Okay. And the second time -- and when you had the meeting with CalCERTS they identified -- they identified concerns they had with your initial rating; is that correct? Not your initial rating but your August 8th ratings, the ones you actually entered into the CalCERTS registry.

MR. HOOVER: That's correct.

MS. LUCKHARDT: And did you dispute those ratings?
MR. HOOVER: Yes.
MS. LUCKHARDT: You disputed whether there were problems with those ratings?
MR. HOOVER: Oh no, I did not dispute that there were problems with those ratings the first time I went out.
MS. LUCKHARDT: Okay, all right, 217 is an email. It was also one of the emails you referred to earlier. It's probably in the stack right here. Okay, so we're putting in front of you exhibit 217. And after the meeting you were asked if you had any questions or comments; is that correct?
MR. HOOVER: That's correct.
MS. LUCKHARDT: And did you provide any additional information?
MR. HOOVER: No, not that I recall.
MS. LUCKHARDT: Did you ask any additional questions?
MR. HOOVER: Yes, I did ask additional questions. when I could go back to work and when they'd be done with their investigation.
MS. LUCKHARDT: Okay. But you didn't ask questions about the specific addresses or quality assurance failures that you discussed in the meeting, correct?
MR. HOOVER: No, because we discussed them in the meeting.

MS. LUCKHARDT: And you understand you have an obligation to provide truthful and accurate ratings, correct?

MR. HOOVER: That's correct.

MS. LUCKHARDT: And you understand that you have an obligation to report the results of your ratings by submission to the registry, correct?

MR. HOOVER: That's correct.

MS. LUCKHARDT: And you understood that your ratings were submitted under penalty of perjury, correct?

MR. HOOVER: That's correct.

MS. LUCKHARDT: Mr. Hoover, I'm referring to, I believe it's Mr. Haddock's Exhibit number 3, which is the email dated Friday, February 16th from Charlie Bachand. Do you have that sitting in front of you?

MR. HOOVER: I do.

MS. LUCKHARDT: So I can refer to the first, second and third on the list. Okay, so the first address on the list. Isn't it true that there were only two tests conducted at that address?

MR. HOOVER: Three tests, two certificates.

MS. LUCKHARDT: Three tests, two certificates, okay. Address number two on that, on that email. Isn't it true that there were four tests conducted at that address?

MR. HOOVER: I don't have the number but there

were multiple tests at that address.

MS. LUCKHARDT: Okay. Mr. Davis, let's -- Mr. Davis, you had testified that there was an incorrect email address.

MR. DAVIS: Correct.

MS. LUCKHARDT: Are you responsible for maintaining a correct email address with CalCERTS?

MR. DAVIS: Correct.

MS. LUCKHARDT: Okay. Mr. Davis and Mr. Hoover, is it correct to say that you work for Valley Duct Testing?

MR. DAVIS: Correct.

MS. LUCKHARDT: And are you still employed by Valley Duct Testing?

MR. HOOVER: Somewhat.

MR. DAVIS: Yes.

MR. HOOVER: More or less an offset business of his, not Valley Duct Testing directly.

MS. LUCKHARDT: And isn't it true that you conduct a lot of alterations, a lot of ratings on alterations?

MR. DAVIS: Not anymore.

MS. LUCKHARDT: Isn't it true that you could at this point in time be doing alterations for the other provider, CBPCA?

MR. HOOVER: Technically, yes. But from what I understand they don't deal with people who have been

suspended or decertified.

MS. LUCKHARDT: Did you try to work for them?

MR. HOOVER: No, I did not call them.

MS. LUCKHARDT: How about you, Mr. Davis?

MR. DAVIS: I honestly didn't even know about them until a couple of weeks ago.

MS. LUCKHARDT: So CalCERTS didn't take your livelihood away, did they?

MR. HOOVER: Inadvertently, yes they did.

MS. LUCKHARDT: But you could be working for CBPCA, correct?

MR. HOOVER: It is a possibility, an unlikely possibility.

MS. LUCKHARDT: So you said you're still working for an entity or an affiliate of Valley Duct Testing. So have you been paid since you have been decertified to work as a CalCERTS rater?

MR. HOOVER: I have been able to scrape together and make some sort of money to provide for my family.

MR. DAVIS: Same here.

MS. LUCKHARDT: And so are you still being paid by Valley Duct Testing?

MR. DAVIS: No, it's JAAR Sales.

MS. LUCKHARDT: Mr. Davis, isn't it true that you never asked for additional documents until Mr. Haddock

started sending letters to CalCERTS?

MR. DAVIS: That is correct.

MS. LUCKHARDT: Did you ever ask to talk with the quality assurance individual who did the quality assurance reviews for CalCERTS?

MR. DAVIS: No, I didn't know who he was.

MS. LUCKHARDT: Mr. Hoover, is the situation the same for you? Isn't it true that you never asked for additional documents until Mr. Haddock sent letters to CalCERTS?

MR. HOOVER: That is not true. I asked for it in my meeting and they denied any access to numbers, who did it, anything of the sort.

MS. LUCKHARDT: Did you ask to --

MR. HOOVER: They said it was confidential.

MS. LUCKHARDT: Did you ask to talk to the individual who had done the quality assurance reviews?

MR. HOOVER: When I was told I couldn't tell his name I didn't ask if I could talk to him.

MS. LUCKHARDT: Mr. Hoover, once you got your notice of suspension did you talk to your employer?

MR. HOOVER: Yes. I had to notify him I would not be able to perform ratings.

MS. LUCKHARDT: Did your employer inform you that other raters had received letters from CalCERTS?

MR. HOOVER: No, I was the first one.

MS. LUCKHARDT: Did you learn subsequently that that had happened?

MR. HOOVER: Later I learned.

MS. LUCKHARDT: Did you learn that some of them were suspended and some were not?

MR. HOOVER: Yes.

MS. LUCKHARDT: Did that concern you?

MR. HOOVER: A little.

MS. LUCKHARDT: Earlier in your testimony you claimed you had no idea what your situation was; is that correct?

MR. HOOVER: That is correct.

MS. LUCKHARDT: And yet you were suspended and others were not; is that correct?

MR. HOOVER: That is correct.

MS. LUCKHARDT: And Mr. Davis, you also testified that when you received your suspension that you did not know how serious it was; is that correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: Did you talk to Mr. Flores about that?

MR. DAVIS: Yes.

MS. LUCKHARDT: And did you talk to other raters?

MR. DAVIS: The ones I knew.

MS. LUCKHARDT: And did some of those other raters also received letters from CalCERTS?

MR. DAVIS: Yes.

MS. LUCKHARDT: And were you aware that some were suspended and some were not?

MR. DAVIS: Yes.

MS. LUCKHARDT: And yet you still claim you had no idea that your situation was serious?

MR. DAVIS: Say it again?

MR. HADDOCK: I'm going to object to that question. Is that what he said?

MS. LUCKHARDT: I'm sorry, I'm asking the questions.

MR. HADDOCK: You were characterizing the words that he spoke.

HEARING OFFICER VACCARO: Can the court reporter just read back the Q&A that preceded the last question by Ms. Luckhardt so that we at least are using the same word choice that was used by the witness.

(Off the record to attempt to play back the recording.)

HEARING OFFICER VACCARO: Back to the Q&A, thank you for trying.

Ms. Luckhardt, if you would please just rephrase since you had offered to do so. I think that would move

this along.

MS. LUCKHARDT: Mr. Davis, you claimed, and you can correct me if I've got the characterization wrong, that when you received the notice from CalCERTS that you failed your quality assurance review, and through the process and throughout the process, that you did not -- that you did not -- that you did not understand that the situation -- that your suspension could be continued.

MR. DAVIS: After the 15 days I assumed it was being continued.

MS. LUCKHARDT: Okay. And you testified that you didn't realize, and you can correct me if I'm wrong, that you didn't realize that you could be decertified; is that correct?

MR. DAVIS: I said I realized that if I didn't contact them within 15 days.

MS. LUCKHARDT: So you did understand that you could be decertified.

MR. DAVIS: If I didn't contact them within 15 days.

MS. LUCKHARDT: Mr. Davis, once you got that email did you take it seriously?

MR. DAVIS: Of course.

MS. LUCKHARDT: And how long did it take you to schedule a meeting with CalCERTS?

MR. DAVIS: I emailed them the next day. I got it at night.

MS. LUCKHARDT: Okay, the notice you said you received in December and when did you email them and request a meeting?

MR. DAVIS: It's December 16th on there but that's to my Liberty email. I didn't get one to my Gmail until a few days later. And then soon as I got it I emailed them back.

MS. LUCKHARDT: And did you email them back with dates that you could meet?

MR. DAVIS: Yes.

MS. LUCKHARDT: And when did that meeting occur?

MR. DAVIS: I honestly don't even remember the date.

MS. LUCKHARDT: Do you recall that that was in January?

MR. DAVIS: I knew it was in January, yes.

MS. LUCKHARDT: And why didn't you request a meeting in December?

MR. DAVIS: I was on vacation.

MS. LUCKHARDT: Okay. Did you discuss the meeting and the situation with your employer prior to the -- prior to the meeting?

MR. DAVIS: Did I discuss the meeting. What do

you mean?

MS. LUCKHARDT: Did you discuss your situation that you were suspended and that you had to go talk to CalCERTS, with your employer?

MR. DAVIS: Yes.

MS. LUCKHARDT: And you were prepared to discuss the addresses when you arrived, isn't that true?

MR. DAVIS: The three addresses I had on my email.

MS. LUCKHARDT: And you came to the meeting with a letter from your employer; isn't that true?

MR. DAVIS: That is true.

MS. LUCKHARDT: So you were prepared for the meeting; isn't that correct?

MR. DAVIS: Correct.

MS. LUCKHARDT: And during the meeting you were asked about additional addresses; is that correct?

MR. DAVIS: That is correct.

MS. LUCKHARDT: And you recalled those addresses; is that correct?

MR. DAVIS: Yes.

MS. LUCKHARDT: And Mr. Hoover, when you got your email from Mr. Bachand notifying you that you were on suspension, did you take it seriously?

MR. HOOVER: Yes.

MS. LUCKHARDT: And did you discuss it with your

employer?

MR. HOOVER: Yes.

MS. LUCKHARDT: And you said you came in prepared, correct?

MR. HOOVER: That's correct.

MS. LUCKHARDT: Mr. Hoover and Mr. Davis, do contractors request raters?

MR. HOOVER: Yes.

MR. DAVIS: Yes.

MS. LUCKHARDT: And do contractors put pressure on you to speed up your ratings or to pass -- pass homes?

MR. HOOVER: Yes.

MR. DAVIS: Yes.

MS. LUCKHARDT: Aren't raters left unprotected to stand up to contractors and developers and subcontractors if there isn't a threat of decertification?

MR. HOOVER: I'm sorry, I'm not sure what you mean.

MS. LUCKHARDT: Is it easier to stand up to contractors and subcontractors if you know, and in fact could tell them, that if you don't provide true and accurate ratings that you could be decertified?

MR. HOOVER: Yes.

MR. DAVIS: Yes.

MS. LUCKHARDT: Isn't it easier to tell a

contractor, I can't drill your TMAH holes because I'll lose my certification, rather than, I can't drill your TMAH holes but somebody else might, some different rater might?

MR. HOOVER: No.

MS. LUCKHARDT: Okay, I have nothing further.

HEARING OFFICER VACCARO: Mr. Haddock, did you want to do very limited redirect with your witnesses?

MR. HADDOCK: Yes.

REDIRECT EXAMINATION

BY MR. HADDOCK:

Q Mr. Hoover, are you currently certified by CBPCA?

MR. HOOVER: No.

MR. HADDOCK: Mr. Davis, are you certified by CBPCA?

MR. DAVIS: No.

HEARING OFFICER VACCARO: Mr. Haddock, for the record, why don't you tell us what that acronym stands for.

MR. HADDOCK: I have to confess I don't know what the acronym stands for.

(Laughter.)

HEARING OFFICER VACCARO: Perhaps one of the witnesses could tell us what that acronym stands for.

MR. HOOVER: I don't know, I just found out about it recently.

MR. DAVIS: Same here.

MR. HOOVER: I don't know what it stands for. I'm sure somebody out there does.

MR. HADDOCK: My understanding is that that's another organization that certifies raters for alterations in the state. Do you know whether that's correct, Mr. Hoover?

MR. HOOVER: That's correct.

MR. HADDOCK: Mr. Davis?

MR. DAVIS: Yes, I believe that to be correct.

ASSOCIATE MEMBER McALLISTER: Should we say what it is?

HEARING OFFICER VACCARO: Say it.

ASSOCIATE MEMBER McALLISTER: It's the California Building Performance Contractors Association.

MR. HADDOCK: Thank you.

MR. HOOVER: Thank you.

ASSOCIATE MEMBER McALLISTER: It's another -- anyway.

HEARING OFFICER VACCARO: Thank you, Commissioner McAllister.

MR. HADDOCK: Mr. Hoover, a few minutes ago Ms. Luckhardt asked you if you came into the meeting with CalCERTS prepared, is that right?

MR. HOOVER: Yes.

MR. HADDOCK: Were you prepared to discuss the

1 particular tests that you had failed?
2 MR. HOOVER: No.
3 MR. HADDOCK: Mr. Davis, did you understand the
4 particular tests you had failed when you went to meet with
5 CalCERTS?
6 MR. DAVIS: When I got there but not prior.
7 MR. HADDOCK: Were you prepared to discuss those
8 particular tests?
9 MR. DAVIS: No.
10 MR. HADDOCK: Thank you, that's all I have.
11 HEARING OFFICER VACCARO: Before we dismiss these
12 witnesses I want to find out if the commissioners or
13 advisors might have any questions and I think I have a few
14 of my own.
15 PRESIDING MEMBER DOUGLAS: I have one question for
16 Mr. Hoover or Mr. Davis. You mentioned, and I don't
17 remember which said which, but that one of you had four QAs
18 done on your ratings and one of you had seven; is that
19 right?
20 MR. DAVIS: Correct.
21 MR. HOOVER: I had four.
22 PRESIDING MEMBER DOUGLAS: You had four. And
23 Mr. Davis, you had seven?
24 MR. DAVIS: Yes.
25 PRESIDING MEMBER DOUGLAS: And were these ratings,

were these QAs done in conjunction with the events that led to the meeting that we had spent quite a bit of time hearing about or were they done in the past, over your time as raters?

MR. HOOVER: From the dates on them they only go back a few months prior to.

PRESIDING MEMBER DOUGLAS: Okay. So all of them go back to just a few months prior to -- can you give a sense of how many months prior?

MR. HOOVER: October, I believe, was the earliest that I can remember.

PRESIDING MEMBER DOUGLAS: Mr. Davis?

MR. DAVIS: The same, I believe.

PRESIDING MEMBER DOUGLAS: Okay, thank you.

ASSOCIATE MEMBER McALLISTER: My name is Andrew McAllister, Commissioner.

(Side conversation heard over WebEx.)

ASSOCIATE MEMBER McALLISTER: I'm sorry, I'll try to speak louder.

HEARING OFFICER VACCARO: For those of you on the telephone line, we are hearing your background conversations. So again we would ask that you please mute your telephone so we don't hear your conversations, otherwise we will take the liberty of muting you. Thank you.

ASSOCIATE MEMBER McALLISTER: So I'd like to hear a little bit more about the number of ratings that each of you performed. I guess, you know, one -- I can't remember which one said -- one seems to have performed like almost 3,000 ratings, the other almost 5,000 in a few years, one of you from 2007, the other from 2008. And I guess I'd like to understand -- my experience is more with existing buildings, which is a little different, so I'd like to understand. That's a pretty serious average of, you know, three to five ratings per day, every day, for four to five years, if you look at sort of, you know, five days a week kind of thing.

So I want to sort of hear how that works in practice. And are these mostly, you know, production builders and you're just boom-boom-boom. Is it like what's the -- how can you sort of -- you know, how long does one rating take, what are all the steps, sort of how do you document that? How -- you know, when do you have to go back to the office to write? I'm trying to get a sense of how you can hammer out that many, that many ratings in what seems to me a short time. So I guess I want a better sense for that.

MR. DAVIS: Well for -- I was certified in 2007. For the first three years it was only -- for alterations only required duct and TXV. So all you had to do was a duct test and to verify that a TXV was installed.

ASSOCIATE MEMBER McALLISTER: So no blower door?

MR. DAVIS: So no blower -- those are on alterations. And I believe I had 2,000 of those. And that's going back from 2007.

And then new construction, it all depends on what the builder puts in the house. It might not require a blower door, it might just require a duct test and an EER verification.

And then along with those I had probably around -- I was the 4700 so I had about 1,000 solar tests, which take about 15 minutes apiece to do.

ASSOCIATE MEMBER McALLISTER: So each of those solar tests is one --

MR. DAVIS: One test.

ASSOCIATE MEMBER McALLISTER: You're saying that's one rating. That's one test.

MR. DAVIS: Right.

ASSOCIATE MEMBER McALLISTER: Okay. So we're not talking about 4700, you know, drive to the house, show up to the house, unpack your blower door, unpack your duct tester.

MR. DAVIS: Correct.

ASSOCIATE MEMBER McALLISTER: You know, the whole kit and caboodle thing.

MR. DAVIS: The whole thing, yeah.

ASSOCIATE MEMBER McALLISTER: So those are

discrete, individual tests, not whole HERS ratings, I guess is what --

MR. DAVIS: Correct.

ASSOCIATE MEMBER McALLISTER: Okay.

MR. HOOVER: And oftentimes with new construction there might be a grouping so you can get four or five done right next door to each other. Walk from one to the other without any drive time.

ASSOCIATE MEMBER McALLISTER: And when you say do one rating on a new construction that's an identical design to a whole bunch of other buildings in that development, is that one rating or are you counting that as multiple ratings?

MR. HOOVER: I'm sorry, are you referring to ratings as tests or?

ASSOCIATE MEMBER McALLISTER: Yeah, well, let's see. So yeah, the whole rating. So let's say you're doing a Title 24 test on new construction.

MR. HOOVER: Sometimes the owner requires just a duct test, other times it requires just an EER, which is just verification, or it may be a combination of, you know, blower door, duct. Any combination, basically. In most subdivisions they're usually pretty similar with a few variances as far as from house to house in each different subdivision.

ASSOCIATE MEMBER McALLISTER: Okay, so a ballpark average of how long, how long one rating would take you, I guess, in a new construction environment?

MR. HOOVER: It would depend on what was required. You know, a smaller house with just a duct test won't take very long. You know, you're talking just a duct test. And that's not processing the paperwork. That's just on the job, you know, covering registers and hooking up to it. Take 15 minutes.

ASSOCIATE MEMBER McALLISTER: Thanks, I appreciate you bearing with me here.

MR. HOOVER: No problem.

ASSOCIATE MEMBER McALLISTER: What's the process by which houses are identified and put into the pipeline and you are sent to those jobs? You know, the way the housing market is now, obviously, you just don't have that kind of flow. I imagine in the southern half of the state that I'm more familiar with there aren't 5,000 ratings, you know, to be had.

MR. HOOVER: Right.

ASSOCIATE MEMBER McALLISTER: But acknowledging that part of this was sort of the tail end of the housing boom, I could see that there were a lot of new developments coming on line and maybe there's some flow there. That's a lot of ratings. And I'm just kind of wondering what the

project -- what the rating pipeline for you as, you know, small business people, look like. How did you generate those and how did you kind of, you know. So how did you fill your pipeline with work?

MR. HOOVER: Well we have a combination, you know, that we do, new construction and alteration. And a lot of times we'll do a grouping of new construction, different subdivisions in various locations. We go anywhere from, you know, the Bay Area to the northern border so we cover a very large area.

ASSOCIATE MEMBER McALLISTER: And so was it all through -- were all your jobs generated through Valley Duct Testing or did you do it --

MR. HOOVER: Yes.

ASSOCIATE MEMBER McALLISTER: Okay. Okay, I think I'm good, thanks. Thank you very much.

HEARING OFFICER VACCARO: I just have a couple of questions. I think -- Exhibit 218, do you have that before you? That would be specific to Mr. Hoover. And it's a letter dated January 30th from CalCERTS basically telling you, you know, that you're going to be decertified.

MR. HOOVER: Um-hmm.

HEARING OFFICER VACCARO: Do you have that in front of you?

MR. HOOVER: Yes.

HEARING OFFICER VACCARO: Okay. And Mr. Davis, I don't remember the exhibit number of the corresponding letter that was sent to you but I --

MR. DAVIS: I've got it, it's Six.

HEARING OFFICER VACCARO: Okay, which exhibit number is that?

MR. DAVIS: Six.

HEARING OFFICER VACCARO: Okay, thank you. I put these exhibits before you but the context is the meeting that precipitated these letters. Each of you, as I understand it, had separate meetings with CalCERTS to discuss their findings with respect to inspections that you performed; is that correct?

MR. HOOVER: Yes.

MR. DAVIS: Correct.

HEARING OFFICER VACCARO: Okay. So I'm going to start with one of you first then I'll move to the other because I think that makes for a cleaner record. So I'll start with you, Mr. Davis. I think if you look at the exhibit before you, what you identified, I believe, as Exhibit number 6, it lists very specific findings for why you were being decertified.

And what I'd like to know is, were each of those items that are specified in that letter, discussed, to the best of your recollection, in the meeting, the meeting that

we all keep talking about. It's been called either a meeting or interview in the context of this proceeding. But were each of those items, to your recollection, discussed in that meeting?

MR. DAVIS: The only one I have a question on is the QII, I don't recall that one being discussed. That's Exhibit 3 on there.

HEARING OFFICER VACCARO: Okay. But as to --

MR. DAVIS: All the other ones, duct test, yes, refrigerant charge.

HEARING OFFICER VACCARO: Okay. And so the same question for you, Mr. Hoover. Everything that was in that letter, is that something that was discussed in the meeting?

MR. HOOVER: I believe so.

HEARING OFFICER VACCARO: Okay. Who, Mr. Davis, was in the meeting that you participated in?

MR. DAVIS: It was just me, Charlie Bachand and Mike Wiese -- Mark Wiese.

HEARING OFFICER VACCARO: Okay. And Mr. Hoover, who was in --

MR. HOOVER: The same.

HEARING OFFICER VACCARO: Okay. And to your recollection, Mr. Davis, were there any written charges or allegations handed to you at the beginning of the meeting or was it merely a series of exhibits, the kind that

Ms. Luckhardt walk d us through earlier in today's proceedings?

MR. DAVIS: It was similar to the exhibits that they just popped up on the screen and showed me.

HEARING OFFICER VACCARO: Okay, but no list of charges or anything like that?

MR. DAVIS: No.

HEARING OFFICER VACCARO: Okay. Mr. Hoover?

MR. HOOVER: The same, no list of charges.

HEARING OFFICER VACCARO: Okay. Did anyone, to your recollection, take any written minutes, notes, take any type of record of the proceedings or record it in any way? Starting with you, Mr. Davis and then the same question, Mr. Hoover.

MR. DAVIS: I don't believe anything was recorded or written notes but, I mean, I think Charlie was taking a little bit of notes as we were talking.

HEARING OFFICER VACCARO: Did you take any notes yourself?

MR. DAVIS: I took a few.

HEARING OFFICER VACCARO: Okay. Have you provided those to Mr. Haddock?

MR. DAVIS: They were not. They're not in the record or anything, no.

HEARING OFFICER VACCARO: Okay. Do you still have

those notes?

MR. DAVIS: It was just -- all it was was to specify which jobs and what particular tests were failed, which we ended up getting from -- from them later on anyway.

HEARING OFFICER VACCARO: Okay, fair enough, but that was a yes or no question.

MR. DAVIS: Sorry.

HEARING OFFICER VACCARO: So do you still have those notes?

MR. DAVIS: No, I do not.

HEARING OFFICER VACCARO: Okay. Mr. Hoover, the same question for you. To your recollection did anyone record in any way, whether it was audio or just in writing, what took place or transpired during your meeting?

MR. HOOVER: As far as I know no recording, audio recording of it, but we were all taking notes.

HEARING OFFICER VACCARO: Okay. And do you have your notes?

MR. HOOVER: I don't have them with me, no.

HEARING OFFICER VACCARO: Well not today but do you still have in your possession --

MR. HOOVER: Yes I do.

HEARING OFFICER VACCARO: -- notes from that meeting?

MR. HOOVER: Yes.

HEARING OFFICER VACCARO: Okay. After the meeting took place did you receive -- other than this letter that I've pointed out in the exhibits that are before each of you, did you receive any other more detailed written findings or conclusions or summary of the meeting, Mr. Davis?

MR. DAVIS: He requested more information on a job, which I provided him. Other than that, I'd emailed him a couple of times asking him when he was going to get his solution or get it resolved or whatever and he just kept pushing it off until finally they came to the verdict.

HEARING OFFICER VACCARO: Okay. So what I understand from your answer is that there was some communication following that meeting. But what I am asking is, was there some sort of written summary or narrative provided to you of that meeting?

MR. DAVIS: No.

HEARING OFFICER VACCARO: Other than the decertification letter?

MR. DAVIS: No.

HEARING OFFICER VACCARO: Okay. Mr. Hoover?

MR. HOOVER: No, just the decertification letter. I didn't receive anything after the initial meeting.

HEARING OFFICER VACCARO: Okay, thank you, I don't have any other questions.

So are we finished with these witnesses? Okay, you may be excused. I think --

PRESIDING MEMBER DOUGLAS: I think we have a question.

HEARING OFFICER VACCARO: Oh. No, you may not be excused. (Laughter.)

(Hearing Officer and Committee Members confer.)

HEARING OFFICER VACCARO: Thank you for your patience, everyone. Just for those of you who are not in the room and were wondering why there was this lengthy silence.

Every now and again when we are up here on the dais we, the advisors, the commissioners, the hearing adviser, and we get to the point where we're asking questions. Sometimes it's not so easy to take what's in your head and put it in clear words that everyone can understand. And so sometimes there's a little bit of discussion, A, to determine whether or not a question might need to be asked, and if so, is there a clear and concise way of asking it?

In this case there is no further question that is going to come out of that brief discussion with Commissioner's Advisor Galen Lemei and Commissioner Douglas. But just for the benefit of all of you to understand what that colloquy was about.

You know, we're not always, or at least I'm not always so quick with my words and I do need to think about them. But in this instance there is no question for me to pose so I am not going to worry about how I ask it.

So thank you, gentlemen, you're excused.

MR. HOOVER: Thank you.

HEARING OFFICER VACCARO: Mr. Haddock, do you have any other witness that you want to call that you had identified? Now let me put the caveat here. We are still going to make staff available but my objective is you make your case, respondent puts on their case and then staff will be available for questioning. So staff is coming at the end and not right now so I just make that caveat before you identify your next witness, if you are going to identify one.

MR. HADDOCK: I am not going to call any additional witnesses, thank you.

HEARING OFFICER VACCARO: Okay. So, Ms. Luckhardt.

MS. LUCKHARDT: Okay, then we can bring all our witnesses up. If you'll give us a moment to get folks seated.

HEARING OFFICER VACCARO: Yes. And then if the court reporter will be prepared to swear them all in once they find their places.

If it works at all, it looks as though there is the ability for -- I know you've got all your papers spread out before you, Ms. Luckhardt. But even if we needed to put a witness over here closer to the podium if there is not enough room or if that's uncomfortable for them you do have the freedom to do that.

MS. LUCKHARDT: Okay. We're trying to do it efficiently and we thought if they were all together it would be easier for everyone to ask their questions.

HEARING OFFICER VACCARO: Yeah. I thought there was one other gentleman who was sort of -- but I see him back over there. So you weren't trying to be part of this panel then or did you just not --

MR. COLLIER: No I'm not, I'm Ms. Luckhardt's partner, Andrew Collier.

HEARING OFFICER VACCARO: Okay. Then we definitely don't want to put you up on the witness stand.

(Laughter.)

HEARING OFFICER VACCARO: Okay, so we'll have the court reporter swear the witnesses in before they identify themselves for the record.

Whereupon,

CHARLIE BACHAND, MIKE BACHAND,

RUSS KING, TIM O'NEIL AND MARK WIESE

Were called as witnesses herein, and after being duly sworn,

were examined and testified as follows:

THE REPORTER: Please state and spell your names for the record, starting with the gentleman in the white shirt.

MR. KING: My name is Russ King, R-U-S-S, K-I-N-G.

MR. WIESE: My name is Mark Wiese. It's M-A-R-K, W-I-E-S-E.

MR. O'NEIL: Tim O'Neil, T-I-M, O apostrophe N-E-I-L.

MR. M. BACHAND: Mike Bachand, M-I-K-E, B-A-C-H-A-N-D.

MR. C. BACHAND: Charlie Bachand, C-H-A-R-L-I-E, B-A-C-H-A-N-D.

THE REPORTER: Thank you.

MS. LUCKHARDT: Okay. And then before I begin I would offer into evidence all of CalCERTS' exhibits at this time.

HEARING OFFICER VACCARO: Okay.

MS. LUCKHARDT: And they would be numbered 200 through 250, I believe.

HEARING OFFICER VACCARO: Okay, that's what my records show that you have, numbers 200 through 250. There was a stipulation made by the parties at the beginning of the proceeding that the complainants had no objections to the admissibility of any of these exhibits. But again for a

complete record, Mr. Haddock, I want to be clear that that is your position.

MR. HADDOCK: That is my position, no objection.

HEARING OFFICER VACCARO: Okay. I think with that then -- is there something you wanted to add before I say they are admitted or no?

MS. LUCKHARDT: No, no.

HEARING OFFICER VACCARO: Okay, Exhibits 200 through 250 are admitted.

(Respondents' Exhibits 200 through 250 were admitted into evidence.)

DIRECT EXAMINATION

BY MS. LUCKHARDT:

Q Okay, so I'd like each of you to take a moment to explain what your position is and what you do at CalCERTS. Charlie, why don't you start.

C. BACHAND: Again, I'm Charlie Bachand. I am the director of quality assurance and solar programs at CalCERTS.

MR. M. BACHAND: Mike Bachand, I'm the president of CalCERTS.

MR. O'NEIL: Time O'Neil, quality assurance inspector.

MR. WIESE: I'm Mark Wiese, I'm quality assurance coordinator at CalCERTS.

MR. KING: Russ King, I'm the vice president of technical services at CalCERTS.

HEARING OFFICER VACCARO: If we could just round-robin that one more time. We got your titles and I think that was great but I believe your question wasn't just what their titles were, it was a little more what they do. Or maybe I misunderstood and all you wanted was their title but I'd like to know what each of these titles means.

MR. C. BACHAND: As the director of quality assurance I oversee the actions of my QA coordinator and our QA reviewers, among others, Tim O'Neil. I participate in interviews and complaints and reviewing the information gathered in field reviews and also reports gathered from the data registry.

As the director of solar programs I instruct and oversee the interaction of CalCERTS and the registry with the NSHP program, the New Solar Homes Partnership.

HEARING OFFICER VACCARO: Thank you.

MR. M. BACHAND: Mike Bachand again. As president I am responsible for all the activities of all the departments of CalCERTS. I work with the Commission on advisory to regulation decisions and so forth. I work, as you know, with all the people at the Commission to help understand how the HERS industry is working.

I do business development and I have ultimate

decision responsibility for all the actions at CalCERTS.

HEARING OFFICER VACCARO: Thank you.

MR. O'NEIL: Tim O'Neil, quality assurance inspector. I do field reviews and research.

MR. WIESE: Mark Wiese. I'm the quality assurance coordinator. Oversee more of the day-to-day aspects of the quality assurance, processing complaints. And also I do field support with the raters as well, phone field support and email field support.

MR. KING: Russ King, vice president of technical services. I'm primarily responsible for the design, development and implementation of all the training curriculum for our certification classes.

All of our certification classes have to go through a rigorous review and approval process with Energy Commission staff and I'm in charge of walking it through that process. Every time the code changes it has to get recertified.

HEARING OFFICER VACCARO: Thank you.

MS. LUCKHARDT: Okay, so I'll begin then. Turning first to Mike Bachand. Can you explain what CalCERTS is.

MR. M. BACHAND: We're a privately held corporation and we are approved as a HERS provider in the state of California.

MS. LUCKHARDT: Can you explain to the

Commissioners what are the duties of a HERS provider?

MR. M. BACHAND: A HERS provider trains and certifies home energy raters in California. We also are required to do QA on those raters and we are required to have a complaint response system.

MS. LUCKHARDT: And when were you initially certified?

MR. M. BACHAND: October of 2003.

MS. LUCKHARDT: And then have you been certified since then?

MR. M. BACHAND: Yes, every code cycle we go through an approval process.

MS. LUCKHARDT: And can you explain what it is that a HERS rater does.

MR. M. BACHAND: They do field verification and diagnostic testing of requirements that have been triggered through Title 24, Building Energy Efficiency Standards.

MS. LUCKHARDT: And have the responsibilities changed over time?

MR. M. BACHAND: Insomuch as the codes change and more types of HERS tests become available then HERS raters have to be retrained for that. So in that sense, yes.

MS. LUCKHARDT: And have the raters' requirements for honesty and accuracy in reporting changed over time?

MR. M. BACHAND: No, that's been the same all

through.

MS. LUCKHARDT: And does CalCERTS want to decertify raters?

MR. M. BACHAND: It's the hardest thing that we do. We spend a lot of time at it. We take it very seriously. We spend so much time and effort on it that it gets in the way of us doing other productive things that we could be doing. We take it very seriously.

MS. LUCKHARDT: And what's the purpose of the Rater Agreement?

MR. M. BACHAND: The Rater Agreement helps the rater commit to doing true and accurate and complete ratings. And it says in the Rater Agreement that it's over a period of time, so certification is not a one-time event. Certification is a commitment that every rating that they will do as long as they are a rater will follow the regulations and be true and accurate.

MS. LUCKHARDT: And what's the purpose of the Subscription Agreement?

MR. M. BACHAND: The Subscription Agreement describes the business arrangement between the rater and CalCERTS. It talks about how to deal with the registry and other things.

MS. LUCKHARDT: And do you have proprietary data that you're protecting through the Subscription Agreement?

MR. M. BACHAND: Yes, we protect our training materials, such portions of them that are not public record, and our data registry and some of our processes.

MS. LUCKHARDT: And did Petitioners enter into these agreements with CalCERTS?

MR. M. BACHAND: They did.

MS. LUCKHARDT: And have you used these agreements, the clauses in the agreements, to decertify raters in the past?

MR. M. BACHAND: Yes we have.

MS. LUCKHARDT: Okay. And we're going to pull up Exhibit 204, which is a public document that's on the Commission's website. Do you know what this document is?

MR. M. BACHAND: Yes I do.

MS. LUCKHARDT: And can you explain what it is.

MR. M. BACHAND: It's the listing of decertified or disciplined raters that the Energy Commission publishes.

MS. LUCKHARDT: And has the Commission ever instructed you to decertify anyone on this list?

MR. M. BACHAND: No.

MS. LUCKHARDT: Okay, let's talk about quality assurance generally. In 2010 the Commission adopted changes to the energy efficiency standards from the 2005 to 2008 standards; is that correct?

MR. M. BACHAND: Yes.

MS. LUCKHARDT: And did that result in any changes to your proprietary program?

MR. M. BACHAND: Yeah, in the sense that we had to match our data registry to the test results that are going to be entered under the new code requirements. We have to reprogram that to accept those data results properly and intelligently. And also the QA requirements changed during that period of time too.

MS. LUCKHARDT: So you're saying the quality assurance program was changed after those new --

MR. M. BACHAND: Yes.

MS. LUCKHARDT: -- standards were put into effect.

MR. M. BACHAND: Yes.

MS. LUCKHARDT: Okay. So we're looking at -- we're looking at Exhibit 248, starting at page 1445. What is a provider's responsibility under the HERS regulations with regard to quality assurance?

MR. M. BACHAND: We have to do quality assurance at a prescribed rate on all of the raters. There's different percentages and it's laid out.

MS. LUCKHARDT: And then is -- are you required -- and I'm reading from the document now that she's got it up. Are you required to have a quality assurance staff?

MR. M. BACHAND: I'm required to have a quality assurance staff and the Commission has the opportunity to

review that staff.

MS. LUCKHARDT: And then are you required to conduct routine quality assurance tests on raters?

MR. M. BACHAND: Yes we are, at the prescribed rate.

MS. LUCKHARDT: And are you also required to have a complaint response system?

MR. M. BACHAND: Yes we are.

MS. LUCKHARDT: And turning to you, Charlie. Do you handle the quality assurance program?

MR. C. BACHAND: Yes. Using this notation here, I would be the quality assurance manager.

MS. LUCKHARDT: And is part of our obligation to conduct field reviews or field tests?

MR. C. BACHAND: It is part of CalCERTS obligation, yes.

MS. LUCKHARDT: And is Tim one of the individuals who does that?

MR. C. BACHAND: Tim is one of our field reviewers, yes.

MS. LUCKHARDT: Thank you. And are raters notified when you conduct a quality assurance review?

MR. C. BACHAND: Under a standard quality assurance review, no they are not notified except -- well, let me understand. Prior to the review being performed, no,

they are never notified. Subsequent to the review being performed they may be notified in the case of failure.

MS. LUCKHARDT: So do you notify raters when they pass quality assurance reviews?

MR. C. BACHAND: We do not.

MS. LUCKHARDT: And why don't you notify them?

(WebEx announcement.)

MS. LUCKHARDT: Okay, so going back. Or maybe we should wait a moment.

HEARING OFFICER VACCARO: Sorry for that disruption.

MS. LUCKHARDT: That's okay, no. We were asking you why you don't notify raters either before you conduct a quality assurance review or afterwards if they pass that review.

MR. C. BACHAND: The reason why we don't inform them beforehand is because -- my understanding of the intent of Title 20's language is very clear in that the rater should not be given foreknowledge of a quality assurance review in order to make sure that they don't pay extra attention or perhaps change their methodology in order to pass a quality assurance review.

After we perform a quality assurance review we do not notify them if they pass. Because notifying them when they pass gives them the opportunity to guess at our quality

assurance rate, to guess at when they will be subject to quality assurance review again and perhaps give them advance notice on when they may not need to be as diligent as usual if they know that quality assurance won't recur again for say the next six months.

MS. LUCKHARDT: And did Mr. Hoover and Mr. Davis pass quality assurance reviews in the past?

MR. C. BACHAND: Yes they did.

MS. LUCKHARDT: And were Mr. Hoover and Mr. Davis notified of these passed reviews?

MR. C. BACHAND: No, according to our standard practice they were not notified.

MS. LUCKHARDT: We're looking at Exhibit 248, we're looking at page 1446.

Okay, so Mike, turning back to you. Under the regulations is CalCERTS also required to have a complaint response system?

MR. M BACHAND: Yes.

MS. LUCKHARDT: And Charlie, do you also oversee CalCERTS' complaint response system?

MR. C. BACHAND: Yes I do.

MS. LUCKHARDT: And can you describe the steps that CalCERTS goes through once they receive a complaint.

MR. C. BACHAND: Yeah, I'll be happy to discuss that and then if there's further clarification our QA

coordinator might chime in.

When we first receive a complaint our -- the first thing that we do is ask for it in writing, if possible. We ask for interviews with the complainants.

After we've received the complete or as complete as possible information about the complaint our first step is to investigate the complaint for merit. Some complaints have less merit than others. Some complaints accuse fraudulent activity or incompetent behavior but don't list actual addresses, some complaints are about business practices between raters or about contractors, over whom CalCERTS has no authority, or sometimes they're just personal.

Assuming that we have investigated the complaint and found it to be, to have merit, then the next thing we do is we try to find out what actionable items there are. What addresses can we perform field reviews at or inspections of other types. What sort of data auditing we need to do in the registry or what sort of review of testing material in our own records there may be.

And after that we initiate the complaint. We perform whatever inspections are necessary. We have multiple meetings and reviews of that information to determine what our final actions will be, including if we need more field reviews or more data auditing.

And then after we have resolved the complaint and achieved some disposition we notify the complainant of the result of the complaint. Do you have anything to add, Mark?

MR. WIESE: No, I really don't.

MS. LUCKHARDT: And then do you submit a summary to the Commission of your resolution of complaints?

MR. C. BACHAND: There is a yearly summary that is provided to the Commission that has the resolution of complaints, yes.

MS. LUCKHARDT: And so turning to you, Mark. What's your role in the complaint response system?

MR. WIESE: I receive the -- receive the complaints. I process them. As Charlie was saying, we review them for merit. I'll usually -- in a conversation I ask for specifics of the complaint, parties involved, I always ask for addresses. I usually ask them to send me an email with a written complaint and I'll send them a reminder as well, an email reminder to follow-up on the complaint, to send me the information.

MS. LUCKHARDT: And Charlie, you submitted a declaration in support of CalCERTS' answer. Do you still stand by that declaration?

MR. C. BACHAND: Yes I do.

MS. LUCKHARDT: And can you please describe the complaint resolution process that led to the decertification

of Mr. Hoover and Mr. Davis.

MR. C. BACHAND: After having received information in an interview and having confirmed that information in writing with the complainant we initiated a fairly substantial investigation at Valley Duct Testing -- on Valley Duct Testing raters. That investigation included field reviews, included data auditing and an investigation with building departments regarding some of the residences in question. So we --

After we completed those field reviews we assembled a QA summary document. We notified the raters in question of the need to have an interview with them. We conducted those interviews. We formed our QA action report. We put everything together.

We had additional meetings to continue to discuss these matters and ultimately we ended up decertifying Misters Davis and Hoover and putting three more raters on probation. The remaining raters were not found to have committed any sort of wrongdoing or QA failures of any kind under the complaint.

MS. LUCKHARDT: And before you initiated your investigation did you perform some investigation on Mr. Barrett who filed the complaint?

MR. C. BACHAND: One of the parts of investigating a complaint for merit is to find out whether or not the

complainant is somebody who is in the position to speak about what the complaint is about. So in this case with Mr. Barrett, we knew that he had been a rater, he had recorded ratings in our registry. And we provided some quality assurance field reviews on him to determine whether or not he seemed to have an understanding of the Title 24 field verification process. And Mr. Barrett passed his quality assurance field reviews.

MS. LUCKHARDT: And why were some of the raters you investigated from Valley Duct Testing decertified and others put on additional probation?

MR. C. BACHAND: As a result of our investigation we were able to determine that some raters had committed some significant and we believed intentional mis-ratings, whereas other raters had committed errors or were perhaps subject to business practices that made it difficult for them to perform ratings. And we were able to determine in the case of some of those raters that further education or simply a discussion of what those matters were, were able to resolve those problems.

MS. LUCKHARDT: Can you concisely describe the steps you went through. Mr. Haddock has brought us here today to talk about CalCERTS' process. Can you just quickly hit what the process is.

MR. C. BACHAND: The process in this case involved

-- after we received the complaint and performed our inspections we notified the raters in question about the need to have an interview with them. At the interviews we certainly asked them to provide any sort of evidence or explanation or any sort of questioning they might have about our results.

Subsequently there were further communications between myself and Mr. Davis who communicated some answers to a question I posed during the interview. And after that there were some additional emails from me asking them if they had any additional information to provide regarding the failures that we found.

MS. LUCKHARDT: And then turning to Tim. Let's talk about the field reviews that you conducted. Did you conduct the field reviews on Mr. Davis and Mr. Hoover?

MR. O'NEIL: I did most of them. I also had Mark Wiese assist me in a couple.

MS. LUCKHARDT: Okay, so we're going to pull up redacted versions of 209 and 215. These are the QA summary reports. The first one is the QA summary report for Mr. Davis. Are these the summaries of the field reviews?

MR. O'NEIL: Yes they are.

MS. LUCKHARDT: And can you tell us about the field reviews at a subdivision that includes 18 homes?

MR. O'NEIL: Yes I can. When --

MS. LUCKHARDT: Can you describe what the subdivision is without describing the name or the addresses?

MR. O'NEIL: When I received the complaint, first Charlie and Mark directed me to -- because there was a complaint filed, to try and get in to certain addresses. And these addresses were located in Stockton. We can say that, right?

MS. LUCKHARDT: Don't continue to repeat it.

MR. O'NEIL: Okay. And they were part of the complaint. So I tried first to contact most alterations. These addresses were considered alterations. Most of these alterations were -- usually have a homeowner and a phone number in our registry. But in this case these homes were a group of homes listed by Visionary Builders. And after numerous calls to them that went unreturned I decided to go down there in person and to try and get in to do those tests.

The first step when I arrived there is I noticed all these -- they're two-story dwellings that looked like they were brand new. There was a new park right there, there was new sidewalks, everything looked brand new about them.

At that time I was able to get into one of the homes and I performed the testing that the raters did. I got my results and then I returned back to the office. And

at that point I asked Mark Wiese to accompany me back down there to try and get into a few more.

MS. LUCKHARDT: And did either you or Mark investigate as to whether these were in fact new homes?

MR. O'NEIL: Yes we did and I'll turn it over to Mark.

MS. LUCKHARDT: That's fine.

MR. WIESE: Yeah. When Tim told me it looked like it was all new construction I went back down there with him. And like he said, everything about it said it was new construction. We intended to go down to the building department that day but we also wanted to try and do some more field reviews while we were there.

We were able to get into two more of the homes, which by the way isn't easy. What Tim did was just knocking on doors to get in. I think you knocked on seven before you got into any of them. Fortunately when we were in one a neighbor pulled up, and the house we were in, they went to the neighbor and helped us to get into that second house.

But anyway, I was unable to go to the building department that day because we ran after hours on doing the field reviews. But that night I just simply Googled the addresses and came up with some information that it was all new construction, low income housing. Then later on I went to the building department and got copies of the permit,

which also showed that it's all new construction.

MS. LUCKHARDT: Okay. And Tim and Mark, what did you find when you conducted your field reviews of this development?

MR. O'NEIL: Well, we found that all three -- well, let's talk about duct leakage first. The difference between an alteration and a new constructed house requires different targets on their duct leakage. You guys probably already know this but an alteration, there's a 15 percent leakage target and a new construction it's 6 percent.

My findings of duct leakage on all three of these homes, that they may have passed the alteration duct leakage amount, they were -- they failed the new construction duct leakage. And a lot of the numbers that I got were much different than the raters got, they were much higher.

When I went to the refrigerant charge part of the testing -- there's four components of refrigerant charge. One is the verification of TMAH, temperature measurement access holes. And one of the tests -- well -- and all three of the raters claimed they did temperature split tests to verify refrigerant charge air flow. That test is not valid if there are no TMAHs present in the -- in the plenums. I did that visual verification and I saw none.

I did try and see -- because then I needed to try and test refrigerant charge air flow. And the only other

way that you're allowed to do it without using these access holes is to do -- using a flow capture hood. And I did that on all three of these and they all passed.

The other part of the refrigerant charge that was significant here is the TXV portion where we test the super-heat differential. And in this case not only did they fail on all three dwellings, they failed by almost double the numbers that the raters got. So that was fairly significant to me.

MS. LUCKHARDT: And is it common to have homes rated by different raters fail in similar ways?

MR. O'NEIL: Not to my knowledge. There are so many variations that could make tests vary in their numbers, so no.

MS. LUCKHARDT: And were you concerned about the measurements you were collecting in the field?

MR. O'NEIL: Yes I was.

HEARING OFFICER VACCARO: We have a brief question just for clarification based on what you were indicating that you observed when you conducted sort of these follow-up quality assurance inspections.

MR. O'NEIL: Yes.

HEARING OFFICER VACCARO: I'm going to turn it over to the Commissioner to ask it.

ASSOCIATE MEMBER McALLISTER: I want to be crystal

clear here. So basically the test requires a sensor to be stuck into that hole, right?

MR. O'NEIL: Yes, to measure temperatures.

ASSOCIATE MEMBER McALLISTER: So if the hole -- yes. So if the hole -- and generally speaking, if that hole is not already there when the rater shows up, they have to drill that hole; is that right?

MR. O'NEIL: No.

ASSOCIATE MEMBER McALLISTER: No? Okay.

MR. O'NEIL: The rater is not -- by our protocols, the rater is not allowed to drill the hole.

ASSOCIATE MEMBER McALLISTER: Okay, okay.

MR. O'NEIL: It's the installer that needs to have those -- those holes.

ASSOCIATE MEMBER McALLISTER: Okay. So the installer of new construction under Title 24 has to drill that hole?

MR. O'NEIL: That's correct.

ASSOCIATE MEMBER McALLISTER: Okay. And so the rater then shows up -- and what does the rater do if the hole is not there?

MR. O'NEIL: He needs to record it as a fail in our registry and ask the installer to come back and either drill the hole -- and I think Mark can add to that.

ASSOCIATE MEMBER McALLISTER: Okay.

MR. WIESE: I was just saying that's not just new construction, it's alterations.

ASSOCIATE MEMBER McALLISTER: Okay.

MR. WIESE: Any time refrigerant charge is required the TMAH holes need to be present.

ASSOCIATE MEMBER McALLISTER: Okay. So then if that's not the -- so there is a clear protocol for the rater and that should be reflected in the report back, right?

MR. O'NEIL: That's correct.

ASSOCIATE MEMBER McALLISTER: And then when you showed up and saw the cover without the hole underneath it, what did that tell you?

MR. O'NEIL: Well, that -- that number one it automatically failed refrigerant charge, our refrigerant charge test because that's the first verification that we do. Number two, it also said that the rater didn't do the test they said they did. Because if they did, there was no way to do it without those holes.

ASSOCIATE MEMBER McALLISTER: Okay, thank you.

MR. O'NEIL: You're welcome.

MS. LUCKHARDT: Okay, so --

HEARING OFFICER VACCARO: I'm sorry, I just, I want to make sure that I'm not misunderstanding what I'm hearing. There was that question and answer where we were basically trying to understand protocol and what would

happen if in fact there was no hole drilled. But I think the part I didn't catch, and maybe you said it so please forgive me if I missed it, did you actually find when you went out to look at some of these homes, that the holes that should have been there were not in fact there?

MR. O'NEIL: On all three of them they were not there.

HEARING OFFICER VACCARO: Okay, thank you.

MR. O'NEIL: You're welcome.

MS. LUCKHARDT: Okay, and then I don't know who is the appropriate person to answer this but we're going to pull up and Sandra is going to blow up a copy of the Residential Compliance Manual. We've got it marked as our Exhibit 246. We're looking at page -- on the number system, page 541. It's actually page number 2-9 in the manual. And I'm going to blow that up. And does that appropriately characterize the requirement for the installer to place the temperature measurement access holes in the supply and return?

MR. O'NEIL: Yes, that's correct.

MS. LUCKHARDT: Thank you, Tim.

MR. WIESE: In particular the fact that it's an installer-provided feature. That the installer needs to provide those.

MS. LUCKHARDT: And when you say "the installer"

who are you referring to?

MR. WIESE: The HVAC installer. The person that puts the --

MS. LUCKHARDT: That would be heating, ventilating and air conditioning installer.

MR. WIESE: Yes.

MS. LUCKHARDT: Thank you. These guys have got me well trained. Okay, so. Okay. Okay. And Mark, maybe you're the appropriate person to answer this. How many homes in this particular subdivision that we were just discussing with you and Tim did Mr. Davis and Mr. Hoover rate?

MR. WIESE: They did all of them. There were 16 homes and one duplex.

MS. LUCKHARDT: Thank you. And was it -- was it fairly obvious to you that this was new construction?

MR. WIESE: Yeah, I mean, everything about it said it was new construction. From, you know, new landscaping, new lawns, new trees, brand new homes, you know. New paint, carpet. You go in the attic and it was just immaculate. I mean, it was a nice, clean, new attic. Everything about it was new. That's what made me go down to the building department to verify that.

MS. LUCKHARDT: And when you went to the building department did you pull the -- look at the permit and verify

that it was new?

MR. WIESE: Yeah, I got a copy of the permit and also looked at the Title 24 calcs on the plans for the, for the homes.

MS. LUCKHARDT: And the building permit is Exhibit number 241. We're not going to pull it up because it has the address on it or addresses.

Okay. So Charlie, what happened after Tim completed his field reviews?

MR. C. BACHAND: After Tim completed his field reviews he came back to the office, he entered all of that information into the registry including the pictures that he took, and he created the QA summary. Subsequent to that Mark and I and Tim and Mike as well had our first meeting to discuss the result of these reviews and the level of seriousness that they indicated.

MS. LUCKHARDT: And you sent the email notices that we've talked about before, those would be Exhibits 204 and Exhibits 214, to Mr. Davis and Mr. Hoover, is that correct?

MR. C. BACHAND: Yes.

MS. LUCKHARDT: And why did you list the addresses in the notices?

MR. C. BACHAND: The purpose of listing the addresses in the notices was to give them an indication of

which, which measures they had failed and what we would need to discuss with them when they arrived. By listing the addresses my intent was to make clear to them, at this address you know which measures you performed because you did the work, so you should be prepared to discuss any or all of those measures when you arrive at the interview.

MS. LUCKHARDT: And for a home -- an alteration where say you have two or three different measures. Would that be a lot of information to have to be aware of, two or three different measures?

MR. C. BACHAND: No.

MS. LUCKHARDT: And what about for a new construction? Say you had -- do you have four or five for new construction, typically?

MR. C. BACHAND: Although there are many measures possible to be used in new construction, in practice only very few of them are used. And in these cases I would say there were no more than four tests for any address and I believe that it was closer to two on every one.

MS. LUCKHARDT: And to your recollection did either Mr. Davis or Mr. Hoover take issue with the temporary suspension levied at the time these notice letters were issued?

MR. C. BACHAND: They didn't email me or communicate with me in any way to indicate that that was the

case.

MS. LUCKHARDT: And why did these notices come with a temporary suspension where others did not?

MR. C. BACHAND: These failures when put together, particularly with respect to the subdivision that we just mentioned that we will not name, indicated such a level of serious error and it appeared intentional error, that we felt that we would not be respecting the intent of the regulations or the integrity of CalCERTS or the safety and comfort level of homeowners if we allowed Misters Davis and Hoover to continue rating for another 15 days. Bearing in mind that Mr. Davis and Mr. Hoover both said that they could perform 25 ratings a week. And so that would have been at least 100 ratings that could have potentially been improperly verified.

MS. LUCKHARDT: Now does -- did CalCERTS suspend all of the raters that you evaluated under this particular investigation?

MR. C. BACHAND: No. We suspended two raters, we put three on probation and the remaining raters at Valley had no discipline or QA failures at all.

MS. LUCKHARDT: Thank you. And did the petitioners in fact meet with you?

MR. C. BACHAND: Yes.

MS. LUCKHARDT: We're calling up -- we're seeing

if we can call up -- maybe we won't, maybe we'll hand them out. I think she's got them up there. Exhibits 210 and 216, which are -- the ones we have on the screen are the redacted QA action reports.

MR. C. BACHAND: Yes.

MS. LUCKHARDT: Are these the summaries of your meetings?

MR. C. BACHAND: Yes they are.

MS. LUCKHARDT: And starting, starting with Mr. Davis. I believe you sent your notices out on December 16th; is that correct?

MR. C. BACHAND: Yes, I believe so.

MS. LUCKHARDT: And you met with Mr. Davis on January 4th; is that correct?

MR. C. BACHAND: That sounds about right, yes.

MS. LUCKHARDT: And --

MR. C. BACHAND: It's exactly right, January 4th, 2012.

MS. LUCKHARDT: Thank you. And how did that meeting begin?

MR. C. BACHAND: That meeting began initially with the conversation about whether or not Mr. Davis wanted us to record the meeting. He indicated that he did not so we decided not to. I explained to him the suspension and the purpose of the suspension. And the language I used here was

gross failures and that we felt it was our responsibility to stop them from continuing until we could resolve those failures.

HEARING OFFICER VACCARO: I'm just going to hit the pause button for a moment on the testimony. Is this your recollection or are you reading from the document? I'm just trying to make sure of the nature of the question and what you're being asked to answer. I mean, we can all read the document. So I don't know if you are using it to refresh your recollection or if you are just telling us what your recollection is but it seems like it's a little bit of a hybrid.

MR. C. BACHAND: Sure. I'll turn this over talk about --

HEARING OFFICER VACCARO: I don't know what your intent was, Ms. Luckhardt. I'm just trying to understand what that was supposed to be about.

MS. LUCKHARDT: We're trying to describe their recollection of what happened in the meeting. And they did provide summaries of what happened in the meeting, afterwards to. Those are also in the record and in the documents. But I'd like him to describe his recollection of what happened during the meeting.

We heard testimony from Mr. Davis and Mr. Hoover that they were not given specific information about their

failures. And so I would like Mr. Bachand and Mr. Wiese to provide their recollection of the meeting as well.

HEARING OFFICER VACCARO: Which is fair enough. And it's also fair -- you don't have to turn the document over and not use it. I just wasn't sure if you were telling us what you recalled or if you were going to walk us through the document.

MR. C. BACHAND: I won't walk you through line by line, I promise.

HEARING OFFICER VACCARO: And so, I guess, I'm sort of doing Ms. Luckhardt's job. Maybe not the way she wants me to do it. But I want to do first, I guess, is find out -- you know what the document is.

MR. C. BACHAND: Yes.

HEARING OFFICER VACCARO: And you looked through it. And I'm assuming but I'd like you to verify that you are saying that is an accurate summary of what took place, although you might have a recollection of what took place that goes beyond what's written on the document; is that correct?

MR. C. BACHAND: Absolutely.

HEARING OFFICER VACCARO: So we're getting a little bit of a hybrid?

MR. C. BACHAND: Yes.

HEARING OFFICER VACCARO: Okay, thank you.

MR. C. BACHAND: Okay.

MS. LUCKHARDT: Okay. And did you discuss the specific failures with Mr. Davis?

MR. C. BACHAND: Yes we did discuss the specific failures with Mr. Davis.

HEARING OFFICER VACCARO: You can project this document.

MS. LUCKHARDT: Oh, okay. We had it up at one time. And I think we've got stuff taken off of it.

MR. C. BACHAND: I -- I'm sorry to interrupt. One of the reasons why I was doing that is because my recollections are correct but not in chronological order. And she had kind of asked, what did you do first? And so I was going according to the time line. But if you'd like I can just discuss the key points.

HEARING OFFICER VACCARO: I am not asking the questions, I was just trying to understand what you were doing in answering. So I leave it to Ms. Luckhardt to ask the questions.

MS. LUCKHARDT: Okay. So I was asking, and I can't remember if we answered this one or not so I may ask this again. Did you discuss the specific failures with Mr. Davis?

MR. C. BACHAND: Yes, absolutely.

MS. LUCKHARDT: And did you discuss them by the --

by address?

MR. C. BACHAND: We did discuss them by address. We called up the CF-4Rs that he had claimed to have entered into our registry on a projector that we had with us in the room. We also brought up Tim's pictures to show him what we were talking about and partially to refresh his memory if he had any problems recalling them.

MS. LUCKHARDT: And when you say "a CF-4R." Can you explain what that is?

MR. C. BACHAND: The CF-4R is a document that the raters fill out verifying that they had performed a certain test, recording the results of their diagnostic testing and certifying that it passes. It has the truth and correctness statement attached to each 4R swearing that the information is accurate.

MS. LUCKHARDT: Okay. And then turning to the meeting with Mr. Hoover. Did you discuss -- did that meeting in fact occur on the date that is written on the QA summary report, on January 6, 2012?

MR. C. BACHAND: Yes.

MS. LUCKHARDT: Thank you. And did you discuss specific failures with Mr. Hoover?

MR. C. BACHAND: Yes we did.

MS. LUCKHARDT: And did you discuss specific addresses?

MR. C. BACHAND: Yes we did.

MS. LUCKHARDT: And did you show him photographs as well?

MR. C. BACHAND: Yes we did.

MS. LUCKHARDT: And when you discussed the failures did you discuss specific numbers or orders of magnitude?

MR. C. BACHAND: In all cases with them I discussed orders of magnitude. For example, on one of the previous screens that Tim was mentioning, the rater had found 77 CFM and the QA rater had found 134 CFM. So in a case like that I would indicate, we found a CFM of approximately twice what you recorded in the registry. Do you have an explanation for this failure?

MS. LUCKHARDT: And is CFM "cubic feet per minute?"

MR. C. BACHAND: Yes, I'm sorry, yes.

MS. LUCKHARDT: Thank you. And is that a significant difference?

MR. C. BACHAND: Yes, it's very substantial.

MS. LUCKHARDT: And how long did these meetings occur? How long were the meetings with Mr. Hoover and Mr. Davis?

MR. C. BACHAND: I'm not sure which is which but one of them was approximately three hours and one of them

was two. I believe Mr. Davis was three hours and Mr. Hoover was two.

MS. LUCKHARDT: And during the meeting did Mr. Davis and Mr. Hoover provide explanations?

MR. C. BACHAND: No.

MS. LUCKHARDT: Did they participate in the discussion?

MR. C. BACHAND: They did. They discussed some of the incidents around the subdivision in question. We discussed the verification of quality insulation installation. We discussed the placement of TMAH holes and the placement of stickers when TMAH holes weren't present, among other things.

MS. LUCKHARDT: And did Mr. Davis have notes with him?

MR. C. BACHAND: Yes he did.

MS. LUCKHARDT: And did Mr. Hoover have notes with him?

MR. C. BACHAND: Yes.

MS. LUCKHARDT: Why did you not allow Mr. Davis or Mr. Hoover to tape record the meetings?

MR. C. BACHAND: There are a few reasons. First off, we had never recorded any of these interviews that we've conducted with past raters so it was a new thing for us. Secondly, we would not in general have these interviews

recorded because we have confidentiality concerns between raters and employers. But also about the integrity of our quality assurance process. we don't want to reveal the complete nature of the questions that we might have to ask raters until raters come for quality assurance. And this is to prevent other raters from being prepared to answer those questions in particular ways.

MS. LUCKHARDT: And after these meetings what did your team do? What did your quality assurance team do?

MR. C. BACHAND: Well immediately after the meeting, I mean after the raters walked out the door, Mark and I sat down and created this action report based on our written notes that we took during the interview process. And we also created our action plan at that time. And then immediately afterwards, the same day if possible, we met again with the field reviewer, Tim and Mike, to discuss the results of the meeting, our possible follow-up activities, and our initial concerns or judgments, if any.

MS. LUCKHARDT: And was the summary that you created a true and accurate summary of your recollection at the time?

MR. C. BACHAND: Yes.

MS. LUCKHARDT: Okay. So if you could call up Exhibits 211 and 217. These are emails, I believe, from Charlie to Mr. Davis and Mr. Hoover.

Did you provide both Mr. Davis and Mr. Hoover an additional opportunity to present additional information, ask questions or provide additional documents?

MR. C. BACHAND: Yes I did. I asked for it verbally at the end of the interview, reminding them if they had any concerns or questions they could direct them to me. And then there were these emails as well that asked them again for more information.

MS. LUCKHARDT: And do you typically offer raters additional opportunities to submit information after the meeting with CalCERTS?

MR. C. BACHAND: Yes.

MS. LUCKHARDT: And then after that what happened with regard to Mr. Davis and Mr. Hoover?

MR. C. BACHAND: Well we received nothing further from them in terms of providing explanations and so ultimately we sent out our letter regarding our disposition to them.

MS. LUCKHARDT: Did Mr. Davis provide clarification of some addresses to you?

MR. C. BACHAND: He did. In the initial letter that we had sent him we asked him about his rating activities on April 20th, 2011. And during the interview itself he claimed that he had not been present at those addresses and that there may have been a data entry error in

which his name was put on those forms by data entry personnel at Valley Duct Testing. And so I asked him if he could provide some evidence to verify that and he did. Their scheduler provided us with an email showing that he had not actually be scheduled for all those addresses.

MS. LUCKHARDT: And were any of those addresses the ones that were listed on your initial information to him?

MR. C. BACHAND: Yes. In the initial request to him we had mentioned the April 20th date without mentioning the addresses.

MS. LUCKHARDT: And why did you have questions about the April 20th date?

MR. C. BACHAND: On the April 20th date not only were there recorded in the registry a very large number of ratings for that day but they were in multiple and quite separate and far apart physical locations. So it was clearly impossible for him to have been in both Sacramento and Gilroy completing 10 or 14 ratings that day. And he acknowledged that during the interview.

MS. LUCKHARDT: And did that impact your discussions at all?

MR. C. BACHAND: It did because it rose a -- it re-rose a concern that we had in the past concerning the data entry practices at Valley Duct Testing.

MS. LUCKHARDT: Did they impact any of the addresses where you had concerns about QA failures?

MR. C. BACHAND: No they did not.

MS. LUCKHARDT: Thank you Now we're going to pull up Exhibits number 212 and 218, which are the decertification letters sent to Mr. Davis and Mr. Hoover. Why did you decide to decertify Mr. Davis and Mr. Hoover?

MR. C. BACHAND: Again, based on the fact that we found their errors to be substantial and dramatically different than our own findings. And we also, lacking any other sort of evidence or explanation, we were forced to conclude that some of the discrepancies were the result of intentional mis-entry of data into the registry. And because of that and the number of failures that we found we felt that we had no choice but to decertify those raters.

MS. LUCKHARDT: And didn't you also create longer QA dispositions for Petitioners?

MR. C. BACHAND: Yes, at the request of Mr. Haddock.

MS. LUCKHARDT: And was Mr. Haddock requesting additional data?

MR. C. BACHAND: Yes he was.

MS. LUCKHARDT: And those were provided to Mr. Haddock, weren't they?

MR. C. BACHAND: Yes they were.

MS. LUCKHARDT: And were Petitioners extended another opportunity to submit information to Mr. Haddock?

MR. C. BACHAND: Yes they were.

MS. LUCKHARDT: So Mr. Haddock was given another opportunity to provide information to CalCERTS.

MR. C. BACHAND: That is correct.

MS. LUCKHARDT: On behalf of Mr. Davis and Mr. Hoover.

MR. C. BACHAND: Yes, absolutely.

MS. LUCKHARDT: And who approved that?

MR. C. BACHAND: That was Mike Bachand, I believe.

MS. LUCKHARDT: Was that you, Mike, who approved the opportunity to present it to Mr. Haddock to provide additional information for Mr. Hoover and Mr. Davis?

MR. M. BACHAND: Yes. We, at advice of counsel, talked about whether or not that would be appropriate. And we decided that in the spirit of cooperation we would give him as much as we possibly could.

MS. LUCKHARDT: Thank you. And was that included in Mr. Collier's letter to Mr. Haddock dated February 8th, 2012?

MR. M. BACHAND: Yes it was.

MS. LUCKHARDT: Thank you. Charlie, this process you just described, the field reviews, the QA summary, the QA action report, the email correspondence, the dispositions

and decertifications, the interviews. Are these the steps that CalCERTS takes regularly or were they just made for Petitioners?

MR. C. BACHAND: These are the steps that are taken regularly. The forms have evolved, the internal forms that we use have evolved over time. But this essentially the same process that we have conducted with other raters in the past prior to the initial complaint being filed against Valley Duct Testing.

MS. LUCKHARDT: Thank you.

Mike, turning to you, talking about rater discipline. Does the Commission require you to investigate Mr. Davis and Mr. Hoover?

MR. M. BACHAND: Not the Commission but the regulations do.

MS. LUCKHARDT: And did anyone from the Commission tell you to decertify Mr. Davis or Mr. Hoover?

MR. M. BACHAND: No.

MS. LUCKHARDT: And who authorized the decertifications of Mr. Davis and Mr. Hoover?

MR. M. BACHAND: I did.

MS. LUCKHARDT: And why did you authorize that?

MR. M. BACHAND: After a careful review with my team whom I queried on three separate occasions to try to make sure that I felt that they were confident in their

information that was being handed to me, that I could make a conscious decision.

What I saw was willful misrepresentation of facts in the field by these two raters. And I believe there is no other explanation from somebody who told us in their own words that they are competent raters, they understand the process, they have done 4,000 of them. And yet here are some, you know, there is no hole under the tape. That didn't square. So I believe that this was willful. And because of that -- in the Rater Agreement it says if you do willful things you might be decertified. So in this case I felt that was appropriate.

MS. LUCKHARDT: And does CalCERTS decertifying Petitioners prevent them from working as raters for other companies?

MR. M. BACHAND: No, there's not only other building energy standards rating firms such as CBPCA providers, but there's LEED Green Rating -- there's other rater types of occupations out there that are not necessarily administered by the HERS programs.

MS. LUCKHARDT: Okay, then we're going to pull up Exhibit 205, which is a letter from Dennis Beck to Mr. Haddock. Are you familiar with this letter?

MR. M. BACHAND: Yes I am. I was CC'd on it, I believe.

MS. LUCKHARDT: What is this letter? Do you remember this letter?

MR. M. BACHAND: I remember I got it. Give me a clue.

MS. LUCKHARDT: Okay. Let's look at the --

MR. M. BACHAND: I believe it was Dennis Beck's response to Mr. Haddock indicating what the HERS system providership is intended to do.

MS. LUCKHARDT: Okay, we're going to provide you with a copy of it so you can remember it. Talking about a lot of documents today.

MR. HADDOCK: I'm going to object if Mr. Bachand is going to testify about the contents of this letter. I'm not sure he's competent to do that.

MS. LUCKHARDT: I'm going to ask him if he agrees with a paragraph.

HEARING OFFICER VACCARO: But even if he were to testify about the contents, the letter is before us. It's a document that's been admitted. I think it speaks for itself. The words are plain language that are before us. He certainly didn't write it and he doesn't know what Mister -- what Commission staff was thinking in writing it. But I think the letter does speak for itself. He can answer questions to the best of his ability about this letter, to the extent that he can do so.

MS. LUCKHARDT: Okay. And this letter, it's marked as our exhibit in chronological order as page 51. And at the top -- the top paragraph. The top paragraph there. The highlighted section reads:

"Taken together, the above-cited HERS Regulations create a system in which the Energy Commission has direct oversight of the Providers, and the Providers have direct oversight of the Raters."

Do you agree with that statement?

MR. M. BACHAND: Yes, it's a fair characterization of Title 20.

MS. LUCKHARDT: And has this been your experience in working with the Commission?

MR. M. BACHAND: Yes.

MS. LUCKHARDT: And is CalCERTS the only HERS provider?

MR. M. BACHAND: No, CBPCA can do alterations.

MS. LUCKHARDT: And how does CalCERTS distinguish itself as a provider?

MR. M. BACHAND: We do it with the proprietary materials that we talked about that we protect; the data registry; our training curriculum, how we present it, how we train it; the quality of oversight that we provide to the industry.

MS. LUCKHARDT: And do other providers have their own materials?

MR. M. BACHAND: Yes.

MS. LUCKHARDT: And how do you protect the integrity of your registry?

MR. M. BACHAND: We use secured passwords, secured log-ins unique to each individual user. We send out notices and make sure the people understand do not share that so that it does remain secure. We have terms and conditions on the website that usage of that website says that you are agreeing to those terms and conditions. Typical website registry type security.

MS. LUCKHARDT: And must the raters who enter data into the system attest to the information they submit?

MR. M. BACHAND: Yes.

MS. LUCKHARDT: And attest to the truth and the accuracy of that information?

MR. M. BACHAND: Yes.

MS. LUCKHARDT: What we're going to pull up is a copy of one of the forms. This is Exhibit 231, it's marked as our page 146. So does a declaration statement attesting to the truth and the accuracy of the information such as the one -- in the form such as the one that we've got up on the screen here, appear in all of the forms that are required to be submitted to the registry?

MR. M. BACHAND: Yes. These forms, the declaration statement is on all the forms. It's an exact copy of what the Energy Commission has created. That's what we have on our registry.

MS. LUCKHARDT: And is it true and correct?

MR. M. BACHAND: Yes it is.

MS. LUCKHARDT: Does it require true and correct submissions?

MR. M. BACHAND: It does. And it says that the HERS rater who is signing is the guy who did the tests. Bullet point two.

MS. LUCKHARDT: And is submitted under penalty of perjury?

MR. M. BACHAND: Yes.

MS. LUCKHARDT: And Russ, turning to you. Your role is in training at CalCERTS. That's one of your roles; is that correct?

MR. KING: Correct.

MS. LUCKHARDT: And describe how our training covers ethics, if you would.

MR. KING: We basically quote straight out of the code language, which covers the conflict of interest rules. We also quote and discuss the language that's in the Rater Agreement that talks about reporting true and correct data. We point out the declaration statement that's on the forms

and we discuss that as well.

MS. LUCKHARDT: And what are raters' responsibilities with regards to verifying the measures they need to test?

MR. KING: In the capacity of the raters being discussed in this meeting they're what we call field verification diagnostic testing raters or what we call compliance raters. They are basically special inspectors working on behalf of the local building department. They have been delegated to go out to a job site to inspect code-related items that have been delegated to them because of the special expertise or equipment that's required to do those tests. So even though they may be hired or working on behalf or working for an installer or a general contractor they really report to the building department. And so their job is to report what they see and to do it in a true and correct manner, just as a building inspector would.

MS. LUCKHARDT: And what are a rater's responsibilities with regard to testing measures accurately?

MR. KING: Accuracy is critical. Because of the nature of the tests that they're performing and the complexity of the equipment that's being used there's a lot of potential for human error that comes into play. And because of that the Energy Commission has come up with some very precise step-by-step protocols that raters are required

to follow and that we spend a lot of time on in our training. And this ensures accuracy and consistency. If a rater is too strict they potentially can damage the -- or cause damage to the installer's business. And if a rater is too lenient they potentially could cause harm to the homeowner by not enforcing something that should have been caught.

MS. LUCKHARDT: Thank you.

And then, Mike, coming back to you. How does -- in your opinion, how does decertifying raters help support other raters who are out in the field?

MR. M. BACHAND: Well, they're competing in the business world, for one thing, so they want to make sure that they're playing on a level field. But more than that I think they are concerned that damage will occur to their industry and their credibility with the building departments, with homeowners, with rebate programs and other entities and stakeholders in the business will be diminished by that. So it's not a good thing to have people out there doing bad ratings, for whatever reason.

MS. LUCKHARDT: And why did you feel it was important to bring in Mr. Hoover and Mr. Davis when you saw the types of failures that you saw?

MR. M. BACHAND: Because I wanted to satisfy through their own ability to clarify why their mistakes were

the types of mistakes that they were. Things weren't squaring off with what I thought a rater should know and what I thought a rater might be mis-stating. So I wanted to give them every opportunity to tell me why the discrepancies were what they were.

MS. LUCKHARDT: And is this an expensive process?

MR. M. BACHAND: We spend hundreds of hours on this, on complaint responses. And it's very diligent, difficult work and we have to focus on it so it takes us away from other tasks and things. So yeah, it costs us a lot of money to do an investigation.

MS. LUCKHARDT: And if you were required to conduct a hearing, something like we have going on today, could you do that every time you had to investigate a rater or consider decertifying a rater?

MR. M. BACHAND: It would be way too costly. We could not stand that financially.

MS. LUCKHARDT: Okay. And then, Tim, I'm going to ask you this question, or Mark, I don't know who is the appropriate person. Mr. McAllister asked about the time it takes to conduct some of these tests. Can you give us some ideas on how long it takes to conduct some of these tests.

MR. O'NEIL: Yes. Usually with my extra responsibilities of taking pictures, interviewing homeowners, it takes me about two hours to get through a

duct leakage and refrigerant charge test.

MS. LUCKHARDT: And do some of the tests have specific time frames? Like equipment has to run for so long or?

MR. O'NEIL: Yes. During the refrigerant charge test you need to have the condenser and air handler set to the cooling mode and it needs to run for about 15 minutes for the pressures to settle. That's according to protocol.

MS. LUCKHARDT: Why did you -- why in some instances in response to -- in response to Mr. Barrett's complaint why did you offer additional training to some raters but not offer additional training to Mr. Davis and Mr. Hoover?

MR. C. BACHAND: In discussing the other raters first. They did seem to have some slight confusion, in particular in regards to the way that high EER was meant to be verified. They indicated that the business practices at Valley and their own understanding of high EER was not adequate to fully verify high EER equipment in a home. And that was something that we were able to resolve with a conversation.

In the cases of Misters Davis and Hoover. During their interviews one of the very questions that we asked of both of them was whether or not they felt that they were competent as raters and understood how to perform Title 24

verifications properly.

During the interview with them Mark and I asked them questions and their answers indicated that they did seem to understand exactly the important points of field verification and the tests that we covered with them, which were duct leakage, refrigerant charge, QII and others.

Because of that and because of my feeling that you can't address ethics in additional classes but you can only address the skills that we have already covered in our curriculum, it seemed like training was not an appropriate answer to the failed inspections that Mr. Davis and Mr. Hoover had reported.

MS. LUCKHARDT: And you've heard Mr. Haddock characterize the suspensions as punishment. Do you -- How would you characterize the suspensions?

MR. C. BACHAND: I would characterize the suspensions as a way of preventing further damage to the industry and to the raters' reputation. Once we determined that they were making serious errors, for whatever reason, in their verification process, we felt that it would be to their benefit, to our benefit, to the homeowners' benefit and to the HERS industry's benefit if they were not allowed to continue those ratings until we were able to address those questions. I didn't intend for those suspensions to last 15 days necessarily. If they had come in on the 17th

then we could perhaps have addressed those issues right then.

MS. LUCKHARDT: And the petitioners talked about how they were now prohibited from conducting solar tests. Can you -- are solar tests a part of the HERS program?

MR. C. BACHAND: Solar tests are related to the HERS program but do not fall under Title 24 and Title 20. So they are slightly separate animals.

MS. LUCKHARDT: Okay, Charlie, just to ask you a few additional questions. Was the detailed process that you conducted in this instance where you had -- you conducted four additional field reviews and seven additional field reviews in the other instance. Was that driven by the seriousness of the findings? What was that driven by?

MR. C. BACHAND: The complaint indicated that there were potentially some very serious issues that needed to be investigated. And further we determined that Patrick and Erik both entered a high volume of ratings.

So we knew that we would have to, to be fair, to address multiple addresses for each of them in order to find out what was going on. And then as we did one address and found substantial failures then we would go on and do more and more and eventually we came to the conclusion that we came to.

MS. LUCKHARDT: And did you talk today about each

and every failure that you found?

MR. C. BACHAND: No, there are many more.

MS. LUCKHARDT: And this investigation that you conducted, was this a standard QA investigation?

MR. C. BACHAND: No. This was initiated by a complaint and it's been treated like a complaint ever since then. We performed field reviews much as we would during the standard QA process, but we consider it to be a separate type of investigation. And it's listed separately in Title 20 so that's been my understanding.

MS. LUCKHARDT: Thank you. The witnesses are available for cross.

HEARING OFFICER VACCARO: Mr. Haddock.

CROSS EXAMINATION

MR. HADDOCK: Are you aware of how many ratings were entered into the CalCERTS registry last year, approximately?

MR. M. BACHAND: Are you talking to me?

MR. HADDOCK: Whoever might know the answer. Mr. Mike Bachand, if you know.

MR. M. BACHAND: I do have an approximate number.

MR. HADDOCK: What would that be?

MR. M. BACHAND: In excess of 40,000.

MR. HADDOCK: Are any of you certified as HERS raters?

(Affirmative responses.)

HEARING OFFICER VACCARO: For the record --

MR. M. BACHAND: We all are.

HEARING OFFICER VACCARO: You know, that really doesn't help anybody who is trying to read a transcript of the proceeding. So for a question like that I do need you to identify yourself for the record and then answer. And in this case, only answer if it's yes.

MS. LUCKHARDT: Okay, so maybe we should start with Charlie and move down.

MR. C. BACHAND: Yes, I'm a certified HERS rater.

MR. M. BACHAND: I'm a certified HERS rater also.

HEARING OFFICER VACCARO: You are still not identifying yourselves for the record. (Laughter.) So even if we start from the far left and move to the right, which I think is a great start, we still for the purposes of the written transcript need you to say your name and give us the answer, thank you.

MR. C. BACHAND: My name is Charlie Bachand and I am a certified HERS rater.

MR. M. BACHAND: My name is Mike Bachand and my number is 0000, I'm a certified HERS rater. The very first under CalCERTS.

MR. O'NEIL: Tim O'Neil, I'm a certified HERS rater.

MR. WIESE: Mark Wiese, I'm a certified HERS rater.

MR. KING: Russ King, I'm also certified as a HERS rater.

MR. HADDOCK: Mr. Charlie Bachand, are you the person who knows most about the way quality assurance is done at CalCERTS?

MR. C. BACHAND: I'm the director of quality assurance, yes.

MR. HADDOCK: I'm just trying to figure out who -- so I can avoid some of this confusion that we had before, who I should direct most of my questions to about quality assurance. So I'll direct them at you.

MR. C. BACHAND: That's fine.

MR. HADDOCK: In your view, what is the purpose of quality assurance?

MS. LUCKHARDT: Objection, this isn't a case about quality assurance, it's a case about a complaint.

HEARING OFFICER VACCARO: Go ahead.

MR. HADDOCK: I'm a little dumbfounded. I think quality assurance is what led to my clients being decertified. And so --

MS. LUCKHARDT: I believe that's an incorrect statement of the facts. The facts of this case display that his clients were decertified in response to a complaint.

HEARING OFFICER VACCARO: And I believe we just received testimony that that complaint investigation had some hallmarks of the QA process, even though it was not a -- it was initiated based on a complaint, it wasn't part of what would be the QA process that's set forth in the regulations. I believe we just heard testimony to that effect.

You can go ahead and ask questions because certainly the QA process, hallmarks of that process relate to this proceeding. But yes, we understand the testimony that this initiated from a complaint process. I think that is clear and in the record so your objection is overruled. Go ahead and ask your questions but, you know, Mr. Haddock, I think you already know the ground rules. Keep it contained to what's relevant. And if in fact you have a relevancy objection then make a properly founded relevance objection.

MR. HADDOCK: Mr. Charlie Bachand, what is the purpose of a quality assurance evaluation?

MR. C. BACHAND: I would prefer to use the terminology "field review."

MR. HADDOCK: Okay. What is the purpose of that?

MR. C. BACHAND: And the purpose of a field review is to investigate the existing work of a rater and to determine whether they are meeting their obligations and

responsibilities as a rater to correctly and accurately perform Title 24 verifications.

MR. HADDOCK: Do you think that the purpose of quality assurance is to assure quality performance by HERS raters?

MR. C. BACHAND: I think the purpose of a field review is to determine whether or not they are -- raters are correctly and accurately performing Title 24 verifications.

MR. HADDOCK: Do I understand you to be saying that it's not to assure quality performance by HERS raters?

MR. C. BACHAND: The purpose is to determine whether or not they have been performing with quality.

MR. HADDOCK: Okay. When CalCERTS does quality assurance evaluation do you handle it internally or do you hire outside raters to perform the field reviews?

MR. C. BACHAND: I'm sorry, could you repeat the question.

MR. HADDOCK: When CalCERTS performs quality assurance evaluation does CalCERTS handle it internally or do you hire outside raters to do the field reviews?

MR. C. BACHAND: Currently the raters that we use for performing quality assurance include one person that is on our staff and one person that is not on our staff but is a consultant.

MR. HADDOCK: Okay. Does CalCERTS use outside

raters that do HERS rating for a living?

MR. C. BACHAND: We have in some cases.

MR. HADDOCK: Do all raters make mistakes?

MR. C. BACHAND: According to the quality assurance reviews that we have performed there are some raters who have not had any quality assurance failures.

MR. HADDOCK: Have you ever known a quality assurance rater to make a mistake?

MR. C. BACHAND: No.

MR. HADDOCK: How many quality assurance evaluations does CalCERTS do in an average month?

MR. C. BACHAND: I'm not sure there is any such thing as an average month. We have a turnover rate with quality assurance reviewers. There are seasonal variations in the type of inspections that we can perform based on the requirements for refrigerant charge and the new construction industry.

MR. HADDOCK: Do you know how many were done last month, April?

MR. C. BACHAND: Not off the top of my head. But Mark or Tim?

MR. O'NEIL: I did 30 last month. But I can't attest -- we do have another quality assurance rater and I don't know how many he did.

MR. HADDOCK: Do you know, over the course of a

year would it be 12 times 30 or would it --

MS. LUCKHARDT: Objection, relevance to the case at hand. We're talking about a complaint response, not average quality assurance on every rater in the state.

MR. HADDOCK: In fairness, I'm not asking about every rater in the state. I'm asking about how frequently CalCERTS does quality assurance and whether they are complying with their obligation under the regulations to do a certain number of quality assurance reviews according to the number of ratings that are done.

MS. LUCKHARDT: Again, it's not relevant to the confines of this complaint. This complaint is about what happened to Mr. Davis and Mr. Hoover. This is a response to a complaint, it's not a random quality assurance evaluation. It's not relevant to this proceeding.

HEARING OFFICER VACCARO: I guess here is where there is a difference in perception as to what is being alleged. I understand the defense position and I understand the characterization. I think though I also understand that aspects of the complaint question whether or not CalCERTS has complied with the QA process and that somehow or another the complainants are tying that to their situation.

I think they get some degree of latitude in trying to make that case. But certainly, just as I admonished you earlier, Ms. Luckhardt, when they start to push it we'll

rein them back in and feel free to make objections.

But how they perceive the case and how you perceive the case are not one and the same, which is why we're sitting here today. And how the committee members and how I see it may not even be how both of you are presenting it.

So I believe that there is some degree of relevance to the line of questioning but there is a limit to how far I think Mr. Haddock can go in raising QA issues. So the objection is overruled; you can proceed, Mr. Haddock. But I think you're understanding the message that I'm sending to you as well.

MR. HADDOCK: I do understand, thank you.

Does CalCERTS have a policy of notifying raters about quality assurance evaluation?

MR. C. BACHAND: Only when they fail.

MR. HADDOCK: I'm sorry, I didn't understand.

MR. C. BACHAND: Only when they fail. In other words, we don't notify them when they pass a quality assurance review.

MR. HADDOCK: Does CalCERTS always notify them when they fail?

MR. C. BACHAND: Yes.

MR. HADDOCK: Do you review all the QA results yourself?

MR. C. BACHAND: Not all of them. Occasionally Mark will review them as well.

MR. HADDOCK: The two of you together review them all yourselves?

MR. C. BACHAND: Yes.

MR. HADDOCK: How often do you find that a rater has made errors when you do a QA review?

MR. C. BACHAND: Again I think it would be difficult to express an average. There are some raters that perform many evaluations without having a single error found by quality assurance review. Other raters have committed a number of infractions or mistakes during their Title 24 verifications.

MR. HADDOCK: When CalCERTS does QA evaluation and no errors are found does CalCERTS document that no errors were found?

MR. C. BACHAND: All of our field reviews and the results of them are entered into the data registry.

MR. HADDOCK: When CalCERTS finds that a rater has made errors does it always impose some kind of discipline? Is there a consequence?

MR. C. BACHAND: Not necessarily. It's dependant upon the results of the interview and the nature of the error in question.

MR. HADDOCK: How does CalCERTS make that

decision?

MR. C. BACHAND: By reviewing the error in question and by conducting an interview and weighing the nature of the mistake, whether or not there are any extenuating circumstances as recorded by our field reviewer. And whether or not we believe after the interview the rater understands the mistake and won't repeat it.

MR. HADDOCK: Are there errors that CalCERTS considers to be minor errors?

MR. C. BACHAND: In the sense that there are some errors that result in decertification and some that do not, I suppose. I'm not sure I understand the question.

MR. HADDOCK: Is there a particular type of error that CalCERTS sees that it doesn't view to be especially significant?

MR. C. BACHAND: No. No.

MR. HADDOCK: Okay. Are there some errors that CalCERTS considers to be especially egregious?

MR. C. BACHAND: Yes.

MR. HADDOCK: What are some of those?

MR. C. BACHAND: We've discussed some of them today. Listing or treating a subdivision as if it was 18 new alterations instead of 18 newly constructed buildings. Lying or misrepresenting the amount of insulation present in an attic.

MR. HADDOCK: That one always considered egregious?

MR. C. BACHAND: It depends on the type of misrepresentation. There are -- I don't want to say "nuances." There are complicating factors to the way that insulation is put in an attic.

MR. M. BACHAND: May I make a comment?

MR. HADDOCK: Please.

MR. M. BACHAND: Thank you. It's not the nature of the violation that we look at, it's the circumstances. A lie is a lie. And a lie, if we feel that it was an intentional misrepresentation of the fact, it does not matter what the fact was. The egregious part is that it's intentional and it's a misrepresentation. That's really all it boils down to.

MR. HADDOCK: How does CalCERTS distinguish between inadvertent or careless errors as opposed to purposeful errors?

MR. M. BACHAND: Through the interview process is one of the main ways. We expect an interview to be a two-way conversation. We seek to find out if we've got a deficiency in our training program. Maybe an instructor is not saying things that he should be saying during a program. We expect to have a dialogue with that person to find out why they are not able to make that test or do that process

or follow protocols correctly. And so with an answer from them then we can craft our understanding of what needs to be done from there.

MR. HADDOCK: What happens in the interview that helps you determine whether an error was careless or inadvertent?

MR. M. BACHAND: The answers we receive from questions that we ask.

MR. HADDOCK: So that if a rater who is being interviewed admits that it was purposeful then you know or is there another way for you to tell?

MR. M. BACHAND: We have had raters admit in interviews on multiple occasions that they falsified information. And others said nothing. We got very little feedback from Misters Hoover and Davis.

MR. HADDOCK: When a rater doesn't admit that they did it purposeful how can you tell whether it was purposeful?

MR. M. BACHAND: Common sense carries us quite a ways in the sense of, you know, photographs of things that we can -- we can photograph something and it's pretty obvious. They're not always obvious and we don't always act on ones that we don't know about.

MR. HADDOCK: Are you saying that the photograph tells you whether the error was careless or purposeful?

MR. M. BACHAND: No, the photograph tells me whether a sensible person would have answered the way we received -- would have recorded the results that we saw. Would any normal person lift up a sticker and see no hole under it and then say "that's a hole" when there's not a hole there. That characterizes what I'm trying to get at.

MR. HADDOCK: How badly does a rater have to do to be suspended?

MR. M. BACHAND: We don't have a measuring stick like that.

MR. HADDOCK: That was going to be my next question. There is no metric that says, for example, two errors means suspension.

MR. M. BACHAND: That's correct because it depends on the nature and so forth. A complaint response requires us to look at the complaint and to determine the facts of that so that's what we look at.

MR. HADDOCK: What does it mean to be suspended?

MR. M.. BACHAND: Suspended means you are not allowed access into the registry, which means you can't do ratings.

MR. HADDOCK: How long can a suspension last?

MR. M. BACHAND: According to the signed Rater Agreement it's up to two years.

MR. HADDOCK: How badly does a rater have to do to

receive probation?

MR. M. BACHAND: Again --

MR. C. BACHAND: May I? If a rater fails a field review and is unable to explain the answer they may be pushed or placed, pardon me, on probation. Probation is required by Title 20 and it is considered a lesser punishment than decertification.

MR. HADDOCK: Does CalCERTS have a metric or some standard that it uses to decide whether the errors that have been committed justified probation?

MR. C. BACHAND: The metric that we use is whether or not a rater fails a field review test. That language is pretty clearly spelled out in Title 20. If they fail they must be placed on a plus-two probationary period.

MR. HADDOCK: Are you saying that every failure leads to probation?

MR. C. BACHAND: Unless there is some sort of explanation for it, yes.

MR. HADDOCK: By explanation do you mean that a rater convinces you that it's not a genuine failure?

MS. LUCKHARDT: Mr. Haddock, are you referring to the standard QA process or the complaint response process?

MR. HADDOCK: Either one will be fine. If you're talking about the complaint process -- I'm asking about the process that CalCERTS uses when it does quality assurance

evaluations. If there's a different process let's talk about them separately.

MS. LUCKHARDT: Again, are you referring to a standard result from a QA or in response to a complaint.

MR. HADDOCK: Let's begin --

MS. LUCKHARDT: There are two different processes.

MR. HADDOCK: Let's begin with the standard result from a QA.

MS. LUCKHARDT: Okay, so you want to go through the process for a standard quality assurance failure?

MR. HADDOCK: For a standard quality assurance failure.

MS. LUCKHARDT: Again I would object that this doesn't have relevance to this proceeding.

MR. HADDOCK: For a standard quality assurance failure does every failure lead to probation?

MR. C. BACHAND: When our field reviewer goes out they may find information that is contradictory to what the rater entered. When our field rater goes out they also interview the homeowner, asking them a number of questions about work that's been done to the home since the initial rater was present or any changes in the system.

So the only case really -- well this is a good example at least, is if we are able to find that yes, the QA rater's results are different than the initial rater's

results but the homeowner indicates that there has been a substantial change to the duct work in the attic for whatever reason. Then we might conclude that the failure on the field review was not something that required a probationary period for the initial rating.

MR. HADDOCK: Does CalCERTS use a different approach when it's responding to a complaint?

MR. C. BACHAND: The issue with a complaint is that while we conduct interviews and perform field reviews, we also have questions pertaining to the complaint itself that need to be addressed.

MR. HADDOCK: Does CalCERTS treat quality assurance errors differently when it's responding to a complaint as opposed to the routine quality assurance process?

MR. C. BACHAND: We treat the two processes separately. The overlap is in the fact that we have field reviews for both.

MR. HADDOCK: What I am trying to find out about is whether the consequences of an error are more severe when the investigation is done pursuant to a complaint as opposed to whether it's done as part of a routine quality assurance.

MR. C. BACHAND: Not in and of itself or as a policy but that may change relative to the nature of the complaint. If, for example, a complaint is made saying that

raters are deliberately lying duct leakage failures and we find evidence supporting that, we need to be convinced even more so than usual that they are not in fact lying.

MR. WIESE: My I, Charlie? In addition to that, when you have multiple failures that changes how you view one particular failure. One failure in and of itself is different than when you have a body of multiple failures. And you do another QA and you do another field evaluation and you're finding the same kind of misrepresentations. That definitely plays into it.

MR. HADDOCK: That's true also of routine quality assurance evaluations, isn't it?

MR. WIESE: Correct.

MR. HADDOCK: Are you familiar with the requirements in the regulations about how many quality assurance evaluations are supposed to be done for each rater each year?

MR. C. BACHAND: I am.

MR. HADDOCK: Does CalCERTS perform the required number of quality assurance evaluations for each rater each year?

MR. C. BACHAND: We do not although we make our best effort to do so.

MR. HADDOCK: How close does CalCERTS come to achieving the standard?

MR. C. BACHAND: That's impossible to quantify here. The difficulties that we face are in gaining access to homes after the rater has departed. Or sometimes if the contractor's ongoing work interferes with the QA process.

MR. HADDOCK: Are you able to give me an estimate? Does CalCERTS do 50 percent or more of the number of QAs that are required?

MR. C. BACHAND: I think it's lower than 50 percent; 20 to 25 percent might be more accurate. Of course we prioritize complaints above the standard quality assurance process.

MR. M. BACHAND: May I add one more component to that?

MR. HADDOCK: Sure.

MR. M. BACHAND: When people enter the wrong rater's name on the document, and that happens an incredible number of times, it skews our data and we have no idea what the actual numbers really are and we never will know that until people enter their data accurately. So if a person has had their name inadvertently put on 120 ratings that he didn't or she didn't do, we don't have a way of knowing that. So there's some -- there's some slack in this system that's not able for us to determine rock solid numbers.

MR. HADDOCK: So how does CalCERTS --

HEARING OFFICER VACCARO: I'm sorry, one quick

question because that answer just, I think, piqued our curiosity up here.

ASSOCIATE MEMBER McALLISTER: Having managed databases at least with something in common. I understand that data quality is a humongous issue. But I'm curious and I'm going to ask you to speculate on why someone would enter the name of a rater that is not the rater that actually did the rating.

MR. M. BACHAND: There's a couple of reasons.

ASSOCIATE MEMBER McALLISTER: Other than just basic human error, which I find a little bit hard to believe.

MR. M. BACHAND: Yeah, I do too. The most common occurrence of that is with what we call a multi-rater firm such as Valley or some of the others, there are others. And they have secretaries who enter data on behalf of their field people. And so -- using an authority process that allows them. So sometimes the secretary may choose the wrong name on a drop-down list or forget to change or forget to choose the drop-down list, it comes up with some name in there. There's that reason. They shuffle papers on their desk, they un-test items, they retest items. So there's a lot of activity going on there around that process that allows for errors in different ways.

MR. C. BACHAND: May I add one thing? There's

another reason, for example, that we don't have to speculate about because Mr. Flores in one of the documents he submitted explained that when Mr. Barrett had first started working for Valley Duct Testing he was performing ratings and their -- he claimed there was some problem getting Mr. Barrett's information into the registry. And so a different rater put in that information and claimed to have performed those ratings himself.

MR. HADDOCK: I just wanted to note that that document is not in the record but I will follow up on the comment you made. Isn't it true that a rater is supposed to enter the results of his test within a certain period of time?

MR. C. BACHAND: Yes.

MR. HADDOCK: Did I understand, Mr. Michael Bachand, that you said "within 48 hours?"

MR. M. BACHAND: Yes.

MR. HADDOCK: And so if a rater doesn't have access to the registry for a period of time and more than 48 hours is passing, what is he supposed to do to get his data entered?

MR. M. BACHAND: He could notify us that he can't get in for whatever --

MR. HADDOCK: Do you know whether that was done in this case?

MR. M. BACHAND: Pardon me?

MR. HADDOCK: Do you know whether that was done in this case with regard to Mr. Barrett?

MS. LUCKHARDT: I believe we're outside the scope of this proceeding, now we're talking about Mr. Barrett.

MR. HADDOCK: I'm just responding to a comment --

HEARING OFFICER VACCARO: We are but I think it's a fair question in follow-up to the testimony. But I think, ask your question, have it answered and then I think we are done with that line of inquiry for now unless you find another relevant reason to raise it.

MR. M. BACHAND: Yeah, Charlie has information about that.

MR. C. BACHAND: So we were notified of Mr. Barrett's problems but no one at Valley Duct Testing provided us with the data in question so that we could facilitate the process of putting that data in under the proper rater's name.

MR. HADDOCK: Didn't it take quite a bit longer than 48 hours to get Mr. Barrett access to the registry?

MS. LUCKHARDT: Only if you remember.

MR. M. BACHAND: That may be but that's not what the Rater Agreement says. It says to get your information in if you are a rater. And he wasn't in our registry at that time so he wasn't a rater yet.

MR. HADDOCK: Thank you.

MR. M. BACHAND: So it's irrelevant.

HEARING OFFICER VACCARO: And just a reminder, objections are always welcome, helping the witnesses answer questions is not.

MR. HADDOCK: Do you know approximately how many quality assurance evaluations were done for Mr. Hoover and Mr. Davis?

MR. C. BACHAND: Are you asking in reference to the complaint or prior to that? Because I can answer both. In reference to the complaint we did seven on Mr. Davis and four on Mr. Hoover. Prior to that we had, I believe, eight for Mr. Davis and five for Mr. Hoover, all of which were passes.

MR. HADDOCK: Are you aware of how many ratings Mr. Hoover has done?

MR. C. BACHAND: Well I'm told that it's around 4700 but I am not convinced based on the data entry problems, among other things.

MR. HADDOCK: You don't believe that number?

MR. C. BACHAND: I wouldn't say I disbelieve it, I am just not convinced. It seems like a very large number. And in fact, as I think someone mentioned before, I don't know of any other rater who has performed as many ratings in as short a time span as Mr. Davis.

MR. HADDOCK: The CalCERTS registry contains the data about all the ratings that he's done, right?

MR. C. BACHAND: The registry contains data about ratings. The question has been raised about who actually performed those ratings.

MR. HADDOCK: Okay. Did CalCERTS receive a complaint about Valley Duct Testing?

MR. C. BACHAND: Yes.

MR. HADDOCK: Who made the complaint?

MR. C. BACHAND: Beg your pardon?

MR. HADDOCK: Who made the complaint?

MR. C. BACHAND: Although I prefer to keep complainants' names anonymous, in this case the complaint was made by William Barrett.

MR. HADDOCK: Did you receive the complaint?

MR. C. BACHAND: It came to us in late September.

MR. HADDOCK: Did you interview Mr. Barrett?

MR. C. BACHAND: We did.

MR. HADDOCK: Do you recall when you conducted the interview?

MR. C. BACHAND: I believe it was October, I'm not sure about the exact date.

MR. HADDOCK: I want to draw your attention to Respondent's Exhibit number 206. Is this the declaration that you signed, Mr. Charlie Bachand?

MR. C. BACHAND: Yes.

MR. HADDOCK: Did you record the date of your interview with Mr. Barrett in this declaration?

MR. C. BACHAND: On September 21st, 2011, Mr. Barrett was interviewed regarding his allegations against Valley Duct Testing and its raters.

MR. HADDOCK: Is that -- is that the correct date?

MR. C. BACHAND: Yes.

MR. HADDOCK: Thank you. Did you believe what Mr. Barrett told you in the interview?

MR. C. BACHAND: Initially I didn't have cause to either believe it or disbelieve it. He listed certain addresses and certain problems at those addresses. And I certainly would be remiss in my duties if I didn't first investigate his complaint for merit and Mr. Barrett's history as a rater before I decided to either believe or disbelieve something.

MR. HADDOCK: Okay. Did you consider whether to tell Mr. Hoover and Mr. Davis that a complaint had been filed against them?

MR. C. BACHAND: No.

MR. HADDOCK: Why didn't you do that?

MR. C. BACHAND: For one thing, the complaint was meant to be anonymous. And for another thing and more importantly, after the complaint was filed and we determined

that it had merit, our next steps were determine -- to determine what the actionable items were and to investigate those actionable items. At that point it seems to me that Mr. Davis and Mr. Hoover have no need to know whether or not a complaint was filed because the evidence, based on the data that they entered, should speak for itself. Either it's correct or its incorrect.

MR. HADDOCK: You decided not to tell them, right?

MR. C. BACHAND: Like I said, yes, they were not told.

MR. HADDOCK: Were you aware that they were going to continue rating homes?

MR. C. BACHAND: Yes.

MR. HADDOCK: In October of 2011 did CalCERTS perform some quality assurance evaluations for Mr. Hoover and Mr. Davis?

MR. C. BACHAND: Yes.

MR. HADDOCK: Do you recall when those were done?

MR. C. BACHAND: There's many. Do you want me to list the dates for all 11?

MR. HADDOCK: For the ones that were done in October, please.

HEARING OFFICER VACCARO: If you have a question or you don't understand what Mr. Haddock is asking or need clarification the question needs to be posed back to

Mr. Haddock to clarify and to help you answer the questions, not one another.

MR. C. BACHAND: Understood. So I see here that there was a particular address, whose name I will not name, but it was one of the addresses in the subdivision in Stockton. That was performed in October. And another one of the same type. And that's it for Mr. Davis.

Going on to Mr. Hoover. I see a different address, a home with two systems, an alteration with two systems on it. Yet another address in the subdivision. And that is it for Mr. Hoover.

MR. HADDOCK: Did you identify four homes where QAs were done in October?

MR. C. BACHAND: I wasn't keeping count. I believe it's four, yes. The three in the subdivision and the alteration with two systems.

MS. LUCKHARDT: Can you refer, just for the purposes of the record, to the paragraphs you're talking about in your Exhibit 206 so that it's clear.

MR. C. BACHAND: Yes. So I made reference to paragraph 19, paragraph 23, paragraph 44 and paragraph 49.

MR. HADDOCK: Did the QA evaluations done in October show that Mr. Davis and Mr. Hoover had made errors?

MR. C. BACHAND: I still prefer the language of field reviews but yes, they did show errors.

MR. HADDOCK: So after the field reviews were completed in October did you believe that Mr. Hoover and Mr. Davis were harming homeowners with the way they were doing HERS ratings?

MR. C. BACHAND: We didn't complete our analysis at that time but certainly we had some grave concerns.

MR. HADDOCK: But did the field reviews show errors?

MR. C. BACHAND: They certainly did.

MR. HADDOCK: Do errors harm homeowners, in your view?

MR. C. BACHAND: They can, yes.

MR. HADDOCK: And did you believe then that Mr. Davis and Mr. Hoover were harming homeowners?

MR. C. BACHAND: I believed that the evidence of the field reviewer showed that there was a serious contradiction between our results and theirs. I did not want to jump to any more conclusions until giving them the chance to explain what was going on at those addresses.

MR. HADDOCK: Did you make a decision to suspend Mr. Hoover and Mr. Davis at that point?

MR. C. BACHAND: The decision I made to suspend them was made immediately prior to their letters being sent out.

MR. HADDOCK: Okay, so it wasn't made in October

after you received these negative field reviews for them?

MR. C. BACHAND: That's correct.

MR. HADDOCK: Okay. Did you think suspension was a possibility?

MR. C. BACHAND: We considered the possibility, yes.

MR. HADDOCK: Did you think decertification was a possibility?

MR. C. BACHAND: We considered that possibility as well.

MR. HADDOCK: Did you consider telling Mr. Hoover and Mr. Davis there was a possibility they could be suspended or decertified?

MR. C. BACHAND: Not at that time.

MR. HADDOCK: Did you tell them?

MR. C. BACHAND: Ultimately, yes.

MR. HADDOCK: Did you tell them after the field reviews were done in October?

MR. C. BACHAND: I told them on December 16th.

MR. HADDOCK: Why didn't you tell them in October after you received the negative field reviews?

MR. C. BACHAND: We were still performing quality assurance.

MR. HADDOCK: Is it --

MR. C. BACHAND: Pardon me, field reviews. Even

I've messed up the language.

MR. HADDOCK: Is it CalCERTS policy to notify raters when they fail field reviews? I thought you had mentioned that earlier. Is that right?

MR. C. BACHAND: Our policy is to ultimately notify them and we did ultimately notify them.

MR. HADDOCK: How soon after a negative field review is completed does CalCERTS typically notify the rater?

MR. C. BACHAND: That time frame may vary. In this case because our field reviews were components of a complaint that affected many raters and had many different questions and sub-questions to it, a review of the addresses was not completed for some time. In other instances, in a normal QA perhaps when we've completed our initial one percent testing on the measures performed, we would notify them after we had completed the one percent testing.

MR. HADDOCK: Does that mean within a few days?

MR. C. BACHAND: Not necessarily.

MR. HADDOCK: How soon after it was completed would you notify them?

MR. C. BACHAND: After the last one was completed we would try to notify them within two weeks' time.

MR. HADDOCK: Within two weeks, okay. Were you aware that Mr. Hoover and Mr. Davis were going to continue

rating homes after the October QA reviews?

MR. C. BACHAND: I believe you asked that already but yes, I did believe that they would.

MR. HADDOCK: Did you give Mr. Hoover and Mr. Davis a copy of the QA documents that were prepared for the homes that were QAed in October?

MR. C. BACHAND: No.

MR. HADDOCK: In November did CalCERTS perform some additional quality assurance evaluations for Mr. Hoover?

MR. C. BACHAND: I believe the answer is yes but let me verify it with my declaration. Go ahead.

MR. M. BACHAND: With the Committee Chair's permission, may I speak? To the question.

HEARING OFFICER VACCARO: Well, let's finish with this Q&A first. I think he's trying to find the information to answer the question. And then yes, you certainly can.

MR. M. BACHAND: I want to continue an answer to the question. Not the one he's asked at the moment but --

HEARING OFFICER VACCARO: That's fine. But I want the answer to the question first and then you are welcome to if you have something to add. So if you could just hold that thought for a moment I'd appreciate it.

MR. C. BACHAND: On paragraph 53 here I note one address, new construction with significant failures of QII

verification. And again on paragraph 57, new construction with significant errors in quality insulation -- installations.

MR. HADDOCK: Did you say that there were two --

HEARING OFFICER VACCARO: Can we -- I'm sorry, since you asked that and he answered. Did you have a subsequent answer or follow-up to that question?

MR. M. BACHAND: I do have a subsequent answer. You're asking two separate questions. You're asking for what's our notification process under a normal QA process and what's our normal notification process under a complaint response. They are different. And so one answer doesn't answer both questions.

MR. HADDOCK: Okay, Mr. Bachand, what's your normal time for responding after a failed QA as part of the routine QA process?

MR. M. BACHAND: Well normally that would be right away. And that would be on that one instance and we would call in to find out if that person can come in for an interview and tell us what's going on.

MR. HADDOCK: What does "right away" mean? How quickly is that?

MR. M. BACHAND: As soon as that person can respond to our notification. So we notify within a business day or so, depending on, you know, what we're busy doing in

the office and so forth.

MR. HADDOCK: Okay, when CalCERTS is doing QAs in response to a complaint how quickly does it notify the rater after a failed QA?

MR. M. BACHAND: QA if you're using the word to mean field reviews, then we have an entire complaint to deal with so we have to get answers throughout that entire complaint. And we can't parse that out or we don't feel that it would be fair or proper or responsible to parse it out. So we try to investigate the entire process, the entire complaint as given to us, so that we can report it and do it properly.

MR. HADDOCK: Are you saying then that you don't necessarily notify someone as quickly, you wait until the complaint is resolved before you notify them?

MR. M. BACHAND: That's pretty close. I guess complaint resolved versus within a few days of resolution.

MR. C. BACHAND: Until we are able to complete our field reviews pertinent to the complaint we do not provide notification. So in this case with multiple raters being reviewed and multiple addresses pertinent to each and pertinent to the complaint, there was a substantial time frame involved in which we were performing these field reviews one after the other in order to address the complaint in it's entirety as best we could.

MR. HADDOCK: I was going to follow up on what you said earlier. Did you do QAs, QA field reviews for Mr. Hoover in November? Did you identify two of those?

MR. C. BACHAND: I did.

MR. HADDOCK: Okay.

MR. C. BACHAND: Paragraphs 53 and 57. I said that they were new construction with QII errors.

MR. HADDOCK: Did the QA evaluations done in November show that Mr. Hoover had made errors?

MR. C. BACHAND: They determined that there was a discrepancy between the field reviewer's findings and Mr. Hoover's reported data in the registry. Whether or not those were the results of errors or intentional mis-entry of data was not concluded at that time.

MR. HADDOCK: Did you conclude that it was either an error or an intentional entry of data? I'm sorry, I didn't use the same phrase you did. But did you conclude that it was intentional or an error, one of those two things?

MR. C. BACHAND: There was a discrepancy between the data that we found and the data that was entered, yeah.

MR. HADDOCK: Okay. Did you make a decision -- let me ask you this. After those QA evaluations were done for Mr. Hoover in November did you believe that Mr. Hoover was harming homeowners with the way he was doing HERS

ratings?

MR. C. BACHAND: I certainly suspected it but I wouldn't come to that conclusion for sure without having first heard from Mr. Hoover.

MR. HADDOCK: Did you make a decision to suspend Mr. Hoover and Mr. Davis at that point?

MR. C. BACHAND: I believe I already answered this question. I said that I had made the decision to suspend them immediately prior to my sending out the letters on the 16th.

MR. HADDOCK: I just wanted to clarify that you didn't make that decision after, immediately after the November QAs; is that correct?

MR. C. BACHAND: That is correct. We were still involved in investigating the complaint.

MR. HADDOCK: Did you still think suspension was a possibility?

MR. C. BACHAND: Suspension was still a possibility, decertification was still a possibility. If he had some sort of explanation for the problems that we had with him there might be other resolutions.

MR. HADDOCK: Did you consider telling Mr. Hoover and Mr. Davis at that point that there was a possibility they could be suspended or decertified?

MR. C. BACHAND: No because we were still

investigating a complaint.

MR. HADDOCK: And you didn't tell them; is that right?

MR. C. BACHAND: Correct.

MR. HADDOCK: Were you aware that they were going to continue rating homes?

MR. C. BACHAND: I certainly believed it.

MR. HADDOCK: Did you give Mr. Hoover a copy of the QA documents that CalCERTS prepared after the November field reviews?

MR. C. BACHAND: No.

MR. HADDOCK: In early December didn't CalCERTS perform some additional QA for Mr. Davis?

MR. C. BACHAND: I believe the answer is yes, let me check my declaration.

On paragraph -- let me go in order here. Paragraph 14, there was an address with the duct leakage failure and the TMAH sticker.

On paragraph 27, an issue with passing a home on smoke.

MR. HADDOCK: Did those QA evaluations in early December show that Mr. Davis had made some errors?

MR. C. BACHAND: They showed a discrepancy.

MR. HADDOCK: Okay. Do I understand that you didn't know whether that was an error or intentional --

MR. C. BACHAND: I hadn't spoken to him yet.

MR. HADDOCK: Okay. Did you make a decision to suspend Mr. Hoover and Davis at that point?

MS. LUCKHARDT: I'm sorry, I believe this has been asked and answered like 15 times. "At that point." At what point? You're asking this question over and over again and it's the same question. I object, asked and answered, vague.

PRESIDING MEMBER DOUGLAS: Do you have a response?

MR. HADDOCK: No, I'll move on.

PRESIDING MEMBER DOUGLAS: Okay.

MR. HADDOCK: When did you tell Mr. Hoover and Mr. Davis there was a possibility they could be suspended or decertified?

MS. LUCKHARDT: I believe that's also been asked and answered.

MR. HADDOCK: But the question is about --

MR. M. BACHAND: I can change the answer to the correct one. They knew it because it's in their Rater Agreement that they signed when they became raters.

MR. HADDOCK: Mr. Bachand, are you saying that every rater understands at every moment that there is a possibility that he could be decertified or suspended?

MR. M. BACHAND: I'm saying they sign a contract to that effect. Whether they actually do or not is inside

their own mind. I don't know that.

MR. HADDOCK: My question is about whether CalCERTS specifically notified them that they should have reason to believe that there was some risk to their certification at any given time?

MS. LUCKHARDT: I believe that's been --

MR. M. BACHAND: Charlie already answered that.

MS. LUCKHARDT: -- asked and answered.

MR. HADDOCK: Was there something special about December 16th? Why did CalCERTS decide to give notice to them then?

MR. C. BACHAND: Because we had reached a conclusion. We had reached a conclusion regarding all of the raters that were subject to the complaint. We had gathered enough information on each of them to be able to call them in and have interviews with them discussing these results without, we hoped, fear of contaminating any evidence in the complaint.

MR. HADDOCK: As of December 16th CalCERTS had not interviewed either of these raters; is that right?

MR. C. BACHAND: That is correct.

MR. HADDOCK: So you made a decision about whether they should be suspended without having interviewed them; is that right?

MR. C. BACHAND: That is correct. After we had

gathered all of the information for Davis and for Hoover and for the other raters and compared it to the complaint and discussed it amongst ourselves multiple times we did reach the conclusion that we would be forced to suspend Mr. Davis and Hoover. It was not a decision that we took lightly.

MR. HADDOCK: I understand you to have said earlier that in October you had information about their negative QAs but that you had just put off making a decision about their suspension until you had a chance to interview them; is that right?

MR. C. BACHAND: What I said was that they had failing field reviews and that we decided not to impose discipline on them without giving the chance to be interviewed. As I mentioned before, I did not view suspension as a punishment, I viewed it as a protection for them, us, homeowners and the Energy Commission.

MR. HADDOCK: Did you just say that in October you decided not to suspend them until they had a chance to have an interview?

MS. LUCKHARDT: I believe this has been asked and answered as well so I object to repeating the question.

MR. HADDOCK: Mr. Bachand said quite a lot of things in his answer and so I'm trying to narrow it down to the --

MS. LUCKHARDT: Because you've asked the question

over and over again. It's been asked and answered.

HEARING OFFICER VACCARO: This is a colloquy that we are not going to have. If there is an objection it's made to the Committee. If you have a response, Mr. Haddock, make it to the Committee, please, and let either me or one of the two Commissioners be the referee. We're not going to have the two of you go back and forth.

Because, I mean, I understand it's late in the day and we're all getting a little bit tired and I completely get that. But we still have, I think, some more questions to ask and to be answered. Let's try not to have diminishing returns in the Q&A. But it is fair to clarify what you're hearing in the answers because you are receiving multiple answers from different people.

That said, I'm looking at the clock. We're getting close to 4:30. We have a number of members of Commission staff who have made themselves available today. They were directed to do so and they're here. And I know that there are some questions that you all would like to pose to them.

But Mr. Haddock, I know you're still doing your cross of these folks. So if we could just talk for a minute about how much longer do you think you're going to go. Because I really think courtesy would dictate that staff not have to stay here until the very last minute. That doesn't

mean that you couldn't continue your cross after staff but let's hear about how long you think you're going to go. Because these folks do need to get home at some point in time and they aren't parties to this proceeding.

MR. HADDOCK: I have quite a few more questions, probably at least a half an hour or 45 minutes more.

HEARING OFFICER VACCARO: Really? And they are not all variations of a theme? Five different ways of asking the same question?

MR. HADDOCK: That's correct.

HEARING OFFICER VACCARO: Okay. What have you got and then we'll hear from Ms. Luckhardt in terms of time for staff questions. I mean, because what I foresee is not a direct and cross type approach. It's just you're going to ask questions, they're going to answer them. Ms. Luckhardt is going to be able to ask questions and receive answers. And should the Commissioners or advisors or if I have questions we would ask them.

And I'm just trying to figure that out because you certainly get to finish your cross-examination. If it's going to take you a half an hour or 45 minutes, so be it. But we still have questions for staff, I believe, or at least I got that sense at the prehearing conference. If the parties have no questions for staff that's fantastic. There might be some from the dais so let's maybe get that worked

out right now.

MR. HADDOCK: I had a small number of questions for staff, it might take 10 or 15 minutes.

HEARING OFFICER VACCARO: Okay. Ms. Luckhardt?

MS. LUCKHARDT: I probably have a similar amount. I think I have -- I think I have two pages. I'm having trouble locating it right now. But I think I have two pages of questions, which shouldn't take more than 15, 20 minutes.

HEARING OFFICER VACCARO: So Mr. Haddock, are you, are you agreeable to finding a good breaking point in the cross. They'll still be available for cross, but bringing staff up just so that we can get those questions answered.

MR. HADDOCK: That would be fine.

HEARING OFFICER VACCARO: And then let them go home?

MR. HADDOCK: Yes.

HEARING OFFICER VACCARO: Okay, thank you, I appreciate that.

So gentlemen, we're going to ask that you please leave the witness table for now, take your materials with you. You are still going to come back and the cross-examination is going to continue but you get a breather just for the moment. But what I would ask is that you do stay in the room and I really would not like you conferring with each other at all at this time.

MR. M. BACHAND: Can we one at a time go out to the restroom?

(Laughter.)

HEARING OFFICER VACCARO: Sure. Yes. Okay. Again, thank you, Mr. Haddock, for allowing us to do that. I'm just looking at the clock and seeing all of the staff members here and thinking we need to let them go soon, so thank you.

With that I think Commission staff but for Mr. Ratliff and Mr. Beck, please come up.

Whereupon,

EURLYNE GEISZLER, JIM HOLLAND and BILL PENNINGTON

Were called as witnesses herein, and after being duly sworn, were examined and testified as follows:

THE REPORTER: Please state and spell your names for the record, starting with Mr. Pennington.

MR. PENNINGTON: My name is Bill Pennington, B-I-L-L, P-E-N-N-I-N-G-T-O-N.

MR. HOLLAND: It's Jim Holland, J-I-M, H-O-L-L-A-N-D.

MS. GEISZLER: Eurlyne Geiszler, E-U-R-L-Y-N-E, G-E-I-S-Z-L-E-R.

THE REPORTER: Thank you.

HEARING OFFICER VACCARO: So, Mr. Haddock, we'll let you ask your questions first.

EXAMINATION OF COMMISSION STAFF

MR. HADDOCK: Are you familiar with what a person must do to become a HERS rater? If any of you know.

MR. PENNINGTON: Certainly.

MR. HADDOCK: Where does the list of things come from that a person must do?

MR. PENNINGTON: From the regulations.

MR. HADDOCK: Does the provider also add additional requirements?

MR. PENNINGTON: I think the providers amplify on those requirements.

MR. HADDOCK: Is the provider --

MR. PENNINGTON: I think they -- I don't think they create additional things.

MR. HADDOCK: Is the provider limited to the basic scope that's in the regulations?

MR. PENNINGTON: Yes. Do you agree?

MR. HOLLAND: I would just say in some areas where we're silent there's opportunity for them to, to fill that silence. Such as the entire decertification process, which we don't speak to in the regulations.

HEARING OFFICER VACCARO: I'm sorry, I don't understand anything that you're saying.

MR. HOLLAND: I'm sorry. What I'm saying is where the regulations are silent I believe there's opportunity for

the HERS providers to fill that silence. Such as the decertification process, which the regulations do not cover.

MR. HADDOCK: To your knowledge has the Energy Commission ever told a provider that it can't consider certain things when it decides to certify or decertify a rater?

MR. PENNINGTON: Not to my knowledge.

MR. HADDOCK: Where --

HEARING OFFICER VACCARO: Okay, I'm sorry. For the record again. The shaking of the head won't translate well into the written page so I need all responses to be audible. So if you're going to give one I do need you to say no or yes into the record. And I think I did see some head movement. So again, if you just put it into the record through the microphone that makes for a cleaner record.

MR. HOLLAND: Could you repeat that question, please.

MR. HADDOCK: If I can remember what question I asked. Has the Energy Commission ever told a provider that it cannot consider certain things when it decides to certify or decertify a rater?

MS. GEISZLER: No.

MR. HOLLAND: Not that I'm aware of.

MR. HADDOCK: Where the regulations are silent is the provider empowered to adopt any additional criteria it

chooses?

MR. HOLLAND: I believe as long as it's not in contradiction with any other laws.

MR. HADDOCK: Does the Energy Commission have any informal criteria for decertifying raters?

MS. GEISZLER: The Energy Commission doesn't have any criteria for decertification.

MR. HADDOCK: Okay.

MS. GEISZLER: It's not covered in the regulations.

MR. HADDOCK: Thank you. Does the Energy Commission do anything to make sure that certifications are done correctly?

MR. HOLLAND: Yes we do. We do our own checking of registries on a regular basis on behalf of questions and complaints that we get, often directed at contractors and so on. And so that gives us an opportunity to ensure that the registries are working correctly, and that's across all HERS providers.

MR. HADDOCK: Does the Energy Commission do anything to verify that decertifications are done correctly?

MR. HOLLAND: Once again, since the regulations are silent on any kind of a decertification process, all we can do is take the information that we get from providers. And barring any other statute or law that may be violated by

their actions we have no say.

MR. HADDOCK: Have any of you ever decertified a rater on your own?

MR. HOLLAND: No we haven't.

MS. GEISZLER: No.

MR. HADDOCK: Thank you. Are you aware of any Energy Commission staff ever decertifying a rater on their own?

MR. HOLLAND: We don't have that authority. I'm not sure how it could be accomplished.

MR. HADDOCK: Have any of you ever told a provider that a rater must be decertified?

MR. HOLLAND: I don't believe so, no.

MS. GEISZLER: No.

MR. HADDOCK: Are you aware of any Energy Commission staff ever having done such a thing?

MS. GEISZLER: No.

MR. HADDOCK: Have any of you ever tried to influence a provider's decision about whether they should decertify a rater?

MS. GEISZLER: No.

MR. HADDOCK: Does that apply to all of you?

MR. PENNINGTON: No.

MR. HOLLAND: Right, correct.

MR. HADDOCK: Are you aware of any Energy

Commission staff ever having done such a thing?

MR. HOLLAND: No.

MS. GEISZLER: No.

MR. HADDOCK: If a person wants to become a HERS rater and wants to become certified for testing new homes can they do that without going to CalCERTS?

MR. HOLLAND: Not currently under the current HERS providers that are available.

MR. HADDOCK: Has the Energy Commission developed any criteria for decertifying HERS providers?

MR. HOLLAND: Well, the regulations cover our role in HERS providers but we don't have any role in the regulations regarding HERS raters.

MR. HADDOCK: Okay, thank you. That's all my questions, thank you.

HEARING OFFICER VACCARO: Ms. Luckhardt?

MS. LUCKHARDT: From staff's perspective, what is the purpose of the HERS program?

MR. PENNINGTON: I think it's covered quite well in the statute. The program is seeking to have consistent, accurate and uniform ratings based on a single statewide scale. And the statute also explains why, to promote accurate ratings and to protect consumers.

MS. LUCKHARDT: And who is harmed when incorrect or false data is put in the ratings?

MR. PENNINGTON: We probably -- we may have more than one answer here. A variety of people are harmed by that. Certainly the homeowners or the builders that are relying on the veracity of the rating process.

Ultimately the regulations were put into effect to reduce the number of construction defects that were happening in the state and to reduce the energy lost as a result of that. And all Californians benefit from that. And the California utility systems benefit from that in terms of having -- being able to rely on the standards requirements and the benefits of the standards requirements coming to fruition.

MS. LUCKHARDT: And whose job is it to discipline the raters?

MR. PENNINGTON: It's the providers.

MS. LUCKHARDT: And Mr. Beck submitted one letter that is our Exhibit 205, which is from January 11th, 2012. He also provided copies of three additional letters to us this morning, both to Mr. Haddock and myself. One is to a Michael, I'm going to guess on the name, Normoyle, who is an attorney in Modesto, dated August 5th, 2011. He provided a copy of a letter to Tommy Young dated December 22nd, 2010. And a copy of a letter dated January 24th, 2011. All four of these letters provide the position of Commission staff. Do these --

HEARING OFFICER VACCARO: Are those other letters exhibits or are those just documents that you happen to have in your hand that the rest of us haven't seen?

MS. LUCKHARDT: We would like to enter them into evidence. Mr. Beck handed them to us this morning. Since staff is in kind of a unique role in this proceeding I think it unfortunately falls to us to deal with whatever additional information we get in the morning of the day of the hearing. And they're just a set of additional letters that I wasn't aware of before now. And I -- they just provide a kind of historical depiction of staff's interpretation of the regulations.

I wanted to ask the individuals who are here, since Mr. Beck is not testifying unless we really need him, whether they agree with the interpretations that are shown on these letters. And then if I need to I can have Mr. Beck authenticate the letters that they are what they say they are and then I'd like to enter them into evidence.

I just assumed that he had provided you with a copy of them since he was providing the rest of us with a copy of them. And maybe that assumption was inaccurate.

HEARING OFFICER VACCARO: I think your assumption was probably a fair assumption to make but you are accurately stating the fact that you really seem to be the only person in the room in possession of those documents.

I have not received copies of them. I am pretty certain no one up here has. I don't know, maybe Mr. Haddock has a copy.

But -- so yes, your assumption is correct but, you know, you're assuming, based on what you've got, which is sort of an expectation of process. I have that same expectation of process as well so I'm a little dumbfounded that there are documents not only circulating around but that are intended to be offered and admitted when we did housekeeping this morning with respect to the exhibits and only got as far as Exhibit 250 of respondent's.

We did ask staff if they were going to submit exhibits to attend the prehearing conference, identify them and make them available for everyone.

So at this point I am not quite comfortable with you asking questions just yet of staff without us also having the opportunity to see those documents.

Although, Mr. Haddock, you kind of nodded or suggested you have seen them?

MR. HADDOCK: I do have a copy of the documents. I have not reviewed them and I did not anticipate them being added to the record.

HEARING OFFICER VACCARO: So I'll hear from you, Mr. Beck, and then sort of turn and look to my Presiding Member to see if I have concurrence in sort of getting those

routed and distributed before we make any hard and fast determinations about them. We'll hear from you first and then we'll let the Presiding Member give us a sense of what her leaning is.

But this is sort of one of those elements of surprise that I think all of us try to avoid, which is why we do so much up-front procedure.

MR. BECK: The documents are, they are three letters, one authored by Panama Bartholomew, two authored by myself. Staff does not intend to -- it's not the intent of staff to enter these into the record or have them as exhibits.

But what happened is that yesterday afternoon Ms. Luckhardt contacted me and let me know that they had -- could let staff know the questions that CalCERTS intended to ask. And in looking at those questions it looked like there might be some questions regarding what staff's interpretation of the role of the provider in disciplining raters.

It was my opinion that up until that point, and it still is, that there isn't really any dispute that the provider is the one who is solely responsible, primarily responsible for disciplining raters. I's just a matter of whether as Mr. Haddock contends, they are -- that makes them quasi-governmental entities in to which due process is owed

to the raters, or whether as CalCERTS contends, that they are purely private actors who have contractual relationships with raters and that no due process is at issue.

But I just wanted to make counsel for both of, for both sides aware of the existence of these documents in which there had previously been an articulated -- the position that was articulated in my letter to Mr. Haddock that it is staff's view that, that the providers are primarily responsible for discipline of the raters.

And it was -- the first thing this morning I gave them copies and it was my intent to let them do what they want to do with them. I don't think that they add anything in particular but I just wanted to let them know that they existed and to give them copies of it. And I did not know whether or not Ms. Luckhardt was going to question anybody on the contents of those documents.

PRESIDING MEMBER DOUGLAS: Thank you, Mr. Beck. I think that under the circumstances, I am looking at an extraordinarily capable and informed panel of staff witnesses and I think that they ought to be able to answer your questions about how the HERS regulations are implemented on the basis of their knowledge and the letter that is in the record. So I don't see any reason to add these letters to the record.

MR. BECK: And again, staff is not necessarily

asking that they be added to the record.

MS. LUCKHARDT: Okay. So referring to -- I'm going to refer to Exhibit 205 and ask whether Mr. Beck's characterization is consistent with the characterization of the role of the Energy Commission and the role of CalCERTS in -- the role of providers in disciplining raters is consistent with your interpretation and understanding? And I need more than just a nod of a head.

MS. GEISZLER: Yes.

MR. PENNINGTON: Yes.

MS. LUCKHARDT: And are you -- has this -- has staff's position regarding the Commission on rater discipline, has this changed over time or did staff have the same position in 2011?

MS. GEISZLER: The same position.

MR. PENNINGTON: We had the same position in 1999.

MS. LUCKHARDT: And through today?

MS. GEISZLER: Yes.

MS. LUCKHARDT: Thank you.

Did you have a chance to review the declaration of -- I'm sorry, I'm going to move on.

So is it your understanding that the HERS program was designed for providers to administer the HERS program as a public entity subject to the due process obligations asserted by Mr. Haddock?

MR. PENNINGTON: It was our intent and understanding that the providers would be implementing the program and enforcing the program through rater agreements.

MS. LUCKHARDT: And that was your intent from the initiation of the program through now?

MR. PENNINGTON: Correct.

MS. LUCKHARDT: And would you be concerned if providers were treated like a public entity?

MR. PENNINGTON: I'm not sure we have an opinion.

MS. LUCKHARDT: Okay.

HEARING OFFICER VACCARO: Well actually you can only speak for yourself so why don't each of you answer that in turn, I think. Because when you say the "we" I guess I'm not sure who you're referring to. Whether it's the three panelists or if you're referring to the Energy Commission. So just maybe a bit of clarity in that response would be helpful as to the "we."

MR. PENNINGTON: Okay.

MS. LUCKHARDT: I was referring to the staff, whether the staff has a specific position.

HEARING OFFICER VACCARO: Okay. And I think Mr. Pennington said "we." And I just sort of want to make sure he clarifies his answer.

MR. HOLLAND: I also -- don't know what that would look like and I'm not sure what the repercussions would be

if a HERS provider were considered a public entity. I know we don't consider them to be that now.

MR. PENNINGTON: I guess I do have a little concern that I don't know how that could happen simultaneously with the program being enforced through a rater agreement. I'm not quite understanding how that would work.

MS. LUCKHARDT: Thank you. Under the HERS regulations, providers must have rater agreements. Do you guys have a copy of the regulations in front of you by chance?

MS. GEISZLER: Yes.

MS. LUCKHARDT: Can I direct you to 1673(b). You seem to have sufficient paper. What's the purpose of Section 1673(b)?

MR. PENNINGTON: To lay out the duties of raters and to establish a basis for providers to enforce those duties.

MS. LUCKHARDT: And why mandate rater agreements if providers cannot enforce them?

MR. PENNINGTON: I think they can enforce them.

MS. LUCKHARDT: Would it be a problem if they could not?

MS. GEISZLER: I think because the regulations require that providers have rater agreements. If providers

were not making sure that raters complied with those agreements the provider would be out of compliance with regulations.

MS. LUCKHARDT: What is the purpose of the energy efficient -- the energy efficiency standards set forth in Title 24 and verified by the HERS raters?

MR. PENNINGTON: To ensure that newly constructed buildings and additions and alterations to existing buildings that are subject to permit in California incorporate cost-effective energy efficiency measures at that opportunity point to reduce energy bills for, for homeowners and ratepayers. And also to benefit California's energy system and contribute to the reliability of California's energy system.

MS. LUCKHARDT: And do raters have a responsibility to ensure that they are verifying the correct energy measures in a home?

MR. HOLLAND: Yes.

MS. GEISZLER: Yes.

MS. LUCKHARDT: And do they have a responsibility to ensure that they are verifying measures correctly?

MR. HOLLAND: Yes. And if they are in any doubt they are to contact their provider to ensure that they're doing it correctly.

MS. LUCKHARDT: And what's the harm of entering

false or inaccurate data?

MR. HOLLAND: It's certainly, as has been said before, the homeowner can suffer in increased energy consumption and comfort in the home. It's also possible if ducts are leaking to some degree on the return side you could be pulling in dust and debris into the home. Those are the, those are the main items that --

MR. PENNINGTON: There could be other pollutants as well. So there's an indoor air quality issue with defects in the duct system.

MS. LUCKHARDT: And without the threat of decertification aren't raters left unprotected from contractors asking for favors?

MR. PENNINGTON: So we do hear that raters are under pressure to provide favorable ratings, favorable information, so we do hear that. So if there is not some mechanism to reinforce that then we'll have some, some raters probably will, you know, fail to do their job properly as a result of that pressure.

PRESIDING MEMBER DOUGLAS: Bill, I see that some people in the room are having a hard time hearing. If you could make -- please make sure, all of you, speak into the mics and the mics are on.

MR. PENNINGTON: Okay.

MS. LUCKHARDT: You publish a list, in this

proceeding it's Exhibit 204, that is a public notice of rater discipline. Can you explain what that is?

MR. HOLLAND: Certainly. This is a list that we place, we the Commission places on our HERS website. And it indicates punitive measures that have been taken by HERS providers against raters or potential raters. And it is used to notify the public and HERS providers of measures taken so they can make an informed decision on if they want to utilize that particular rater for other purposes.

MS. LUCKHARDT: And who decides whether a rater gets on that list?

MR. HOLLAND: The HERS providers.

MS. LUCKHARDT: And do you review -- who receives -- does staff receive and review the summaries of rater discipline?

MR. HOLLAND: I receive the summaries of discipline and I put it into this chart without editing unless -- spelling errors or so on but I don't edit it for content.

MS. LUCKHARDT: And did the Commission -- did you or anyone on your staff that you're aware of participate in the investigation that led to the decertification of Mr. Hoover and Mr. Davis?

MR. HOLLAND: No, we did not.

MS. LUCKHARDT: And then, is there anything in the

regulations that is preventing another provider from petitioning for certification to compete with CalCERTS?

MR. HOLLAND: No there are not. There are no restrictions on the number of HERS providers that exist.

MS. LUCKHARDT: Okay, I have nothing further.

PRESIDING MEMBER DOUGLAS: I think that we probably all have some questions up here. I don't know that I have a question. I just wanted to ask the three of you in addition -- you've said your names on the record. But if you could have -- give us a really succinct description of your role at the Commission and your role with the HERS program.

MR. PENNINGTON: Bill Pennington. I am currently the Acting Deputy Director for the Energy Efficiency and Renewable Energy Division. I have worked in building standards for about 30 years, here at the Commission and other programs as well, related to energy efficiency. I managed the project that developed the HERS program and developed these regulations and pursued those to adoption.

MS. GEISZLER: I'm currently the office manager of the High-Performance Buildings and Standards Development Office, just recently got that appointment. And was more recent than that the supervisor of the Compliance and Enforcement Unit, which oversees the HERS program. And I was in that position for about four or five years over the

HERS program.

MR. HOLLAND: So I'm Jim Holland and I'm in the Compliance and Enforcement Unit. I've been there a little over two years now, I believe. And I work with the HERS program and also other compliance and enforcement duties that we have related to contractors and public complaints.

ASSOCIATE MEMBER McALLISTER: So my question is really probably a clarifying question. I haven't heard any talk about the combustion appliances and the carbon monoxide issues. And I'm just wondering, you know, Bill, you mentioned briefly, indoor air quality.

I kind of wonder, that is a -- that is an issue that, you know, if it's an issue here in this case and relevant for these particular jobs that we're talking about here in this complaint review, that would up the seriousness, right, because that's sort of a life and death issue. And I'm just wondering if that is relevant here and whether -- well, yeah. Combustion testing and indoor air quality safety and carbon monoxide issues are fundamental to HERS and how you think about that.

MR. PENNINGTON: Okay. The diagnostic testing for field verification for the building standards grew out of concern about construction defects and field work research that the Energy Commission sponsored related to defects. And those were primarily oriented towards energy efficiency

ramifications of defects.

The Commission has not up to this point included in its regulations combustion testing as a factor there. The issue about combustion testing has really become prominent in the last three or four years related to whole-house home energy performance upgrades that include a number of things including tightening the building envelope and are pervasive, are potentially pervasive in older combustion equipment, furnaces and water heaters that develop a back-drafting issue or have really old equipment that crack and leak carbon monoxide.

So the issue really comes more from the weatherization industry and the experience with older homes. Whereas these regulations were born related to newly constructed buildings. And so it's clearly an issue that we should be addressing but it's not an issue that's in these regulations right now. It's not covered in these regulations right now.

ASSOCIATE MEMBER McALLISTER: Okay. So all the buildings we're talking about here are for all intents and purpose, basically new or recent?

MR. PENNINGTON: The kinds of verifications that are done here are either done a series of verifications related to measure that are prone to defect in newly constructed buildings. The exception is primarily duct

leakage related to change-outs of HVAC equipment. And so basically the kinds of improvements that are resulting from the standards requirements and are checked through the verification process are not a combination of measures that would lead to tighter, older buildings. Arguably it's an issue that shouldn't be overlooked and you could get into issues with duct/ceiling possibly but that's not part of the current regulations.

ASSOCIATE MEMBER McALLISTER: Okay, thanks very much.

HEARING OFFICER VACCARO: I just have a couple of questions. We've heard testimony today and the three of you also discussed the role of the rater agreement. And we also heard testimony -- we heard testimony about the rater agreement, we also -- we saw exhibits of some of the rater agreements that actually pertain to Mr. Hoover and Mr. Davis. We also saw documents that I believe were called Subscriber Agreements. Was that correct language, Ms. Luckhardt? Were they subscriber?

MS. LUCKHARDT: Subscription Agreements.

HEARING OFFICER VACCARO: Subscription Agreements. I guess what I'm wondering is what role, if any, does the Energy Commission or Commission staff have in the preparation of those agreements, the review of those agreements, the approval of the content of those agreements?

Are those things that are done really at the discretion of the provider without any oversight of the Energy Commission?

Yes, that was a compound question that typically wouldn't be allowed but I get to ask it. (Laughter.) But you get where I'm going. And that's why I made it a longer question because I am just trying to understand what role, if any, the Commission has with respect to pretty much all aspects of those agreements?

MR. HOLLAND: During our review when a provider comes to us for approval. For example, when the new building standards come about, such as for the 2008 building standards, we do require, along with all their training materials and registry and database, we require a rater agreement and a complaint process to be presented to us.

However, we are not -- we are not given authority to tell them what's their rater agreement. We do not, as far as I can remember, review their subscription agreement but we do review their rater agreement. But we have no authority to tell them what's in that rater agreement.

Once again, I think it's part of our process just to be familiar with what the HERS provider has in their rater agreements and to ensure that it covers the areas that are required in the regulations rather than giving them input on how to write it. As long as it covers the requirements that the raters provide home energy ratings and

field verification services in compliance with these regulations, provide, true, accurate and complete. As long as it checks all those boxes we don't tell them how to write it. So we do have a role in reviewing it but not necessarily formulating it. I'm sorry if that was rambling but that was a long question.

HEARING OFFICER VACCARO: No, no, it wasn't rambling. And my question was a rambling question though but your answer wasn't.

MR. PENNINGTON: So I would just add that the Commission does have expectations that there be a way that rater agreements can be enforced and we expect in the application process for that to be explained. We don't -- we don't really dictate how that's done but, you know, these requirements beg the question of how they would be enforced and what kind of agreement the provider and the rater are entering into to assure these expectations are met.

HEARING OFFICER VACCARO: Okay, thank you. I don't think there are any further questions from any of us up here so thank you.

MR. PENNINGTON: Okay, thank you.

MS. GEISZLER: Thank you.

MR. HADDOCK: Thank you.

HEARING OFFICER VACCARO: And look, it's 5:10. I think with that why don't we take like a five minute break.

Everybody stretch your legs and we're going to come back. The gentlemen from CalCERTS, when we come back please take your places at this front table.

(Off the record at 5:10 p.m.)

(On the record at 5:20 p.m.)

HEARING OFFICER VACCARO: Mr. Haddock, again thank you for allowing us to interrupt the rhythm of your cross-examination. We are back on the record so please go ahead and get started with your questioning.

CROSS-EXAMINATION (RESUMED)

MR. HADDOCK: At the time notice was given to Mr. Hoover and Mr. Davis on December 16th they had already been suspended; is that right?

MR. C. BACHAND: Yes.

MR. HADDOCK: Was it possible for the suspension to end within 15 days?

MR. C. BACHAND: Certainly. It could have ended the next day if they had come in and been able to provide explanations.

MR. HADDOCK: Did CalCERTS intend for the suspension to continue for 15 days or until they had an interview with CalCERTS?

MR. C. BACHAND: Well the purpose of the suspension, like I said, was to protect the various agencies that I mentioned. And so since I was asked to postpone our

deadline because Mr. Davis was on vacation we extended the suspension to that point. Have I answered your question?

MR. HADDOCK: No, my question is about what CalCERTS intended the length of the suspension to be. Was it supposed to be 15 days or was it supposed to be until the interview was held?

MR. C. BACHAND: It was supposed to be until the interview was held.

MR. HADDOCK: Did CalCERTS say that in the email?

MR. C. BACHAND: I don't think we said that explicitly, no.

MR. HADDOCK: I just want to turn your attention to Complainant's Exhibit 9. If you could turn to the page marked 2 of 4. The second address on that page, do you see that, Mr. Charlie Bachand?

MR. C. BACHAND: I do.

MR. HADDOCK: Did CalCERTS perform a quality assurance evaluation for Mr. Davis related to his work done at that address?

MR. C. BACHAND: We did.

MR. HADDOCK: When was that QA done?

MR. C. BACHAND: I see noted here October 28th of 2011.

MR. HADDOCK: Are you looking at the second address on that page?

MR. C. BACHAND: Perhaps you mean the bottom-most address?

MR. HADDOCK: Yes, that would be the one, yes.

MR. C. BACHAND: That one was performed in December of -- December 9th of 2011.

MR. HADDOCK: Did CalCERTS consider the results of that QA evaluation in making a decision about discipline for Mr. Davis?

MR. C. BACHAND: We did.

MR. HADDOCK: Did CalCERTS list that address on the notice email that it sent on December 16th?

MR. C. BACHAND: We did not.

MR. HADDOCK: Why didn't you?

MR. C. BACHAND: Because we had not yet -- Oh, I'm sorry. Why didn't we include this address? Mark?

MR. WIESE: What was the date of the notices? The 16th, did he say?

MR. C. BACHAND: Yeah.

HEARING OFFICER VACCARO: Again, if you are not certain of something ask Mr. Haddock, please, or try to figure it out on your own but please don't ask each other.

MR. WIESE: Okay.

MR. C. BACHAND: The only answer I can provide, and perhaps Mark and Tim can correct me if I'm wrong, is that data may not have been completely entered into the

registry and ready for us to act on by that time. Entry of data into the registry was slower at that time and as well our QA field reviewer, Tim, was performing many evaluations. So it may have been that he didn't have this entered into the registry.

MR. HADDOCK: Did CalCERTS -- pardon me. If you have an answer please go ahead.

MR. O'NEIL: That could be correct or we didn't, we didn't review that, that address. Did we review that address?

MR. C. BACHAND: I'm not sure that we had reviewed it before the 16th. We reviewed it before January 6th.

MR. O'NEIL: Yeah, I believe that to be correct.

MR. HADDOCK: Did CalCERTS send an additional notification to Mr. Davis before his interview to tell him that that address would be discussed at the interview?

MR. C. BACHAND: No.

MR. HADDOCK: Did you discuss that address with Mr. Davis at his interview?

MR. C. BACHAND: We did, in some depth.

MR. HADDOCK: Did you expect him to be able to discuss that address?

MR. C. BACHAND: We asked him if he was able to and he said that he was.

MR. HADDOCK: Could I ask you to turn to page 3 of

4 in this same exhibit. Are you familiar with the address at the top of the page?

MR. C. BACHAND: Yes.

MR. HADDOCK: Did CalCERTS perform a quality assurance evaluation for Mr. Davis relating to his work done at that address?

MR. C. BACHAND: Yes, on December 8th of 2011. And again we did not notify Mr. Davis of that at the time and I believe it was for the same reasons as previously discussed.

MR. HADDOCK: Did you also not send an additional notification prior to the interview?

MR. C. BACHAND: That's correct.

MR. HADDOCK: Did you discuss that address with him at his interview?

MR. C. BACHAND: Yes, in some depth.

MR. HADDOCK: The second address on that page, do you recognize that address?

MR. C. BACHAND: The one under post-interview QA?

MR. HADDOCK: Correct.

MR. C. BACHAND: Yes I do.

MR. HADDOCK: You do recognize it?

MR. C. BACHAND: Yes.

MR. HADDOCK: Yes. Did CalCERTS perform a QA evaluation for Mr. Davis relating to his work done at that

address?

MR. C. BACHAND: We did and we performed it on January 18th of 2012.

MR. HADDOCK: Did CalCERTS consider the result of that QA evaluation when it decided about discipline for Mr. Davis?

MR. C. BACHAND: Mark, was this listed on the decertification letter that we sent?

MR. WIESE: I believe it was.

MR. C. BACHAND: The answer is yes.

MR. HADDOCK: Did CalCERTS ever interview Mr. Davis about that address?

MR. C. BACHAND: We did not.

MR. HADDOCK: Did CalCERTS give any notice to Mr. Davis that he had failed the QA at that address?

MR. C. BACHAND: No, we did not.

MR. HADDOCK: Does CalCERTS have a policy of not providing copies of recordings that are done of interviews to the rater who is interviewed?

MR. C. BACHAND: We have never --

MS. LUCKHARDT: Object -- go ahead.

MR. C. BACHAND: We have never recorded an interview.

MR. HADDOCK: Okay. Does CalCERTS have a policy of not providing copies of the recordings

MS. LUCKHARDT: I believe that's been asked and answered.

MR. HADDOCK: I'm asking about a policy.

MS. LUCKHARDT: Objection.

MR. M. BACHAND: If I may answer. No, we don't have a policy either way regarding recordings.

(Side conversation heard over WebEx.)

HEARING OFFICER VACCARO: Those of you on the telephone, we can hear you. So we'd ask that you hit your mute button so that we don't hear your conversations. Please do not hit the hold button. But we'd greatly appreciate if you hit the mute button, that way we don't hear all of your background conversations and noise. Thank you.

MR. HADDOCK: Mr. Wiese, can I draw your attention to Complainants' Exhibit 12?

MR. WIESE: Yes.

MR. HADDOCK: Do you recognize this document?

MR. WIESE: Yeah.

MR. HADDOCK: Is this an email that you wrote to Mr. Erik Hoover?

MR. WIESE: It is.

MR. HADDOCK: Would you read the first paragraph, please.

MR. WIESE: If we choose to have our QA interview

with CalCERTS recorded --

"If you choose to have your QA interview with CalCERTS recorded we will record it. It is our policy that only CalCERTS may make a recording of proceedings with the consent of all parties. All meetings with CalCERTS are confidential and CalCERTS will maintain custody of any recording."

MR. HADDOCK: Does CalCERTS have a policy of maintaining custody of any recordings?

MR. WIESE: This is a response to Erik Hoover's request to record the interview.

MR. HADDOCK: I understand. Does CalCERTS have a policy of maintaining custody of the recordings?

MR. WIESE: The only policy is this right here, this response to Mr. Hoover's request.

MR. HADDOCK: Was the policy established by this email?

MR. WIESE: The policy was established by the request, I suppose.

MR. HADDOCK: Okay, thank you. Are you familiar with the quality assurance evaluations of Daniel Sidhu, Jennifer McFall and Donald Scott White?

MS. LUCKHARDT: Objection, relevance.

MR. HADDOCK: The relevance of the question is to

see why these raters were treated differently than Mr. Hoover and Mr. Davis.

MS. LUCKHARDT: These individuals were not raised in the complaint. Do you want to go outside of the complaint and talk about different raters?

HEARING OFFICER VACCARO: I don't want to -- I don't want to have this conversation in this fashion again. Again, I think we have asked so many times today already, pose it this way, not have the conversation this way. I think it makes it easier for all of us.

I think yes, your point is well made, no one was addressed by name. However, I do believe that there was testimony that said there were individuals who were suspended and we were given the number of individuals suspended, that were put on probation, those that were put on -- and those that were decertified.

What I'm finding is you're just asking a question out of the blue that's apropos of nothing. So if you would like to try to ask a question based on testimony that's be provided, do that. But the question that is posed, I think the objection will be sustained because there is no reason for asking a question invoking those very specific names.

MR. HADDOCK: Did you testify earlier that some other Valley Duct Testing -- pardon me, if I can speak clearly today -- Valley Duct Testing raters were put on

probation?

MR. C. BACHAND: Yes I did.

MR. HADDOCK: Did CalCERTS do quality assurance evaluations for those raters in response to the complaint submitted by Mr. Barrett?

MR. C. BACHAND: Yes we did.

MR. HADDOCK: To your knowledge did the regulations require probation?

MR. C. BACHAND: Yes.

MR. HADDOCK: Then why wasn't probation required for Mr. Hoover and Mr. Davis?

MR. C. BACHAND: Because as a result of their significant and we believed deliberate mis-ratings, the disciplinary action that was applied to them was at an elevated level relative to probation. In other words, their mis-ratings were, as we found them, so significant that rather than being put on a probationary basis we had no choice but to extend the level of discipline to decertification.

MR. HADDOCK: Are you saying that when you find errors that you consider significant that that justifies you departing from what the regulations require?

MS. LUCKHARDT: Objection, you're assuming that the action departs from the regulations. That's a fact that's not in evidence or it calls for a legal conclusions.

MR. HADDOCK: Did CalCERTS decide that Mr. Hoover's and Mr. Davis' failures established a pattern?

MR. C. BACHAND: Yes we did.

MR. HADDOCK: Did the performance of the QA reviews match the performance of Hoover and Davis in their prior QA evaluations?

MR. C. BACHAND: In their prior evaluations they passed, in this case they failed multiple times.

MR. HADDOCK: I'm interested in what the pattern that was established. Do you mean a pattern over time including all the evaluations or just the most recent ones?

MR. C. BACHAND: The pattern of failures was established at the -- for example, at the subdivision in Stockton, as well as the other failures reported and investigated during the current complaint.

MR. HADDOCK: What does the term "not rectifiable" mean to you?

MR. C. BACHAND: When I used the terminology "not rectifiable" in the letter that I sent to Mr. Davis and Mr. Hoover what I was trying to indicate was that there were no imaginable training or conversation that we could have with them that would address what we had been forced to conclude were ethical shortcomings.

MR. HADDOCK: Did you make any attempt to rectify their errors?

MR. C. BACHAND: Like I said, we have no way of addressing ethical shortcomings.

MR. HADDOCK: So you didn't make an attempt, right?

MR. C. BACHAND: Yes, we didn't attempt the impossible.

MR. HADDOCK: Did CalCERTS notify the homeowners about the errors that Mr. Hoover and Mr. Davis allegedly made?

MR. C. BACHAND: No, we did not.

MR. HADDOCK: Did you notify the builders?

MR. C. BACHAND: No, we did not.

MR. HADDOCK: Was CalCERTS concerned that the homeowners would be harmed by those errors?

MR. C. BACHAND: Yes we were.

MR. HADDOCK: Does CalCERTS have a process for appealing decertification decisions?

MR. C. BACHAND: Although it's not expressly written as such the first part of the process would be to provide us with evidence explaining why it was that we found these discrepancies. And that was never provided.

MR. HADDOCK: Did you notify Mr. Hoover and Mr. Davis of an opportunity for an appeal?

MR. C. BACHAND: I notified them multiple times that they could send additional evidence to us to help

explain their discrepancies.

MR. M. BACHAND: I think I can add information to that. It notifies them in their agreements that there is an appeal process available. And that they have to notify homeowners that there is an appeal process available. And that's in their agreements per the regulations.

MR. HADDOCK: Do you know which agreement that's in?

MR. M. BACHAND: Excuse me?

MR. HADDOCK: Do you know which agreement that language is contained in?

MR. M. BACHAND: No, I'd have to look.

MR. HADDOCK: If Mr. Hoover had been QAed 25 times do you think that might have helped him be a better rater?

MR. M. BACHAND: That's speculation, I don't know.

MR. HADDOCK: Did CalCERTS ever do any QAs for Mr. Hoover and Mr. Davis' solar inspections?

MR. M. BACHAND: I'll defer to one of the other gentlemen.

MR. O'NEIL: I don't think so because it's not a part of Title 24 compliance that my field -- what's the terminology?

MR. M. BACHAND: Field review.

MR. O'NEIL: Field reviews.

PRESIDING MEMBER DOUGLAS: Okay, I'm going to ask

that -- you know, we're having a panel in order to move the proceedings along and be respectful of everybody's time and improve efficiency. But the reason of a panel is not so the witnesses can talk to each other or help each other with answers. I understand that you were just trying to help him find a word that he was temporarily missing but I really want to make sure that we maintain that distinction. Thank you.

MR. O'NEIL: I apologize.

PRESIDING MEMBER DOUGLAS: Absolutely. Go ahead.

MR. HADDOCK: Did the decertifications of Mr. Hoover and Mr. Davis prevent them from doing solar inspections?

MR. C. BACHAND: As they are decertified from the CalCERTS registry they would not be able to process their solar inspections through us.

MR. HADDOCK: Are you aware of what the regulations say that a provider must do if a rater fails a quality assurance review?

MR. C. BACHAND: I'm familiar with Title 20, yes.

MR. HADDOCK: Did CalCERTS do that with Mr. Hoover and Mr. Davis?

MS. LUCKHARDT: Are you referring to the complaint response regulations or the QA regulations?

MR. HADDOCK: I asked about the quality assurance

regulations.

MR. C. BACHAND: Repeat the question, please.

MR. HADDOCK: Did CalCERTS follow the quality assurance regulations in responding to Mr. Hoover's and Mr. Davis' QA failures?

MR. C. BACHAND: We believe that they fell under the complaint provisions of Title 20 -- complaint response provisions of Title 20 and not the standard quality assurance in which you test one percent per measure and then at a failure you test plus-two and then again two percent.

MR. HADDOCK: When CalCERTS does quality assurance evaluations do you check the quality of the equipment that was installed?

MR. O'NEIL: The quality of our testing equipment?

MR. HADDOCK: No, I mean the air conditioning unit, all the equipment that's already there in the home.

MR. O'NEIL: Only the ones that are, that are called out for us to test based on the CF-1R.

MR. HADDOCK: Does CalCERTS check the quality of the installation of that equipment?

MR. O'NEIL: I think some of the tests go to that but we're not -- we're not HVAC contractors.

MR. HADDOCK: If a thermal expansion valve was not installed well could that make a difference as to how well it performs over time?

MR. O'NEIL: I'm not sure, I just test to see if it works or not.

MR. KING: I can answer that. If the TXV valve is not installed correctly it will have a significant impact on the efficiency and capacity of the air conditioning system.

MR. HADDOCK: What if the insulation on the TXV isn't installed well? Will that also have an impact?

MR. KING: It's not as significant but yes it can.

MR. HADDOCK: From your experience do TXVs ever get stuck?

MR. KING: I've heard that they have been stuck. I train a lot of HVAC contractors and they do mention that that happens.

MR. HADDOCK: Is it possible that a TXV could, could allow a passing result in August and then several months later in October you could get a failure?

MR. KING: I can't think of any good reason why that may happen in a new system. In an old system that's been modified or tampered with you can kick loose particles in the refrigerant. But I can't think of a reason why that would happen in a new system.

MR. HADDOCK: Could it happen if it's not installed well?

MR. KING: Not -- a TXV is a very simple device. So if it's working at one point in time it's very unlikely

that it would -- that something would happen within, you know, a year that would change.

MR. HADDOCK: From your experience have you ever seen a situation where a TXV isn't strapped securely to the unit?

MR. KING: Yes.

MR. HADDOCK: And if it's not strapped securely could it become loose over time?

MR. KING: Yes.

MR. HADDOCK: Do any of you know how to predict when a TXV will fail?

MS. LUCKHARDT: I believe that calls for speculation.

MR. HADDOCK: No, I'm asking them what they know.

MR. KING: It's not possible to know that.

MR. HADDOCK: When HERS raters are testing newly constructed homes isn't it common for contractors to still be working on the homes after the HERS rater leaves?

MR. M. BACHAND: Yes.

MR. HADDOCK: Does the rater have control over whether the contractor goes back in and works on the house after the rater leaves?

MR. M. BACHAND: Not control, no.

MR. HADDOCK: What if an air conditioning system got worked on? Could that change the result you would get

from a refrigerant charge test?

MR. M. BACHAND: It depends on how it was worked on.

MR. HADDOCK: I want to draw your attention to Respondent's Exhibit 232. Would you please turn to the page marked 194. Mr. O'Neil, were you the QA rater for this property?

MR. O'NEIL: Yes I was.

MR. HADDOCK: Are those your notes there that appear in the notes box?

MR. O'NEIL: Yes they are.

MR. HADDOCK: Would you please read them.

MR. O'NEIL: "Tenant states that she has lived here for a month. Two weeks ago she called the AC installer to fix the AC. It was just blowing warm air."

MR. HADDOCK: Did you know that there was a problem with the AC unit before you arrived?

MR. O'NEIL: Not before I arrived.

MR. HADDOCK: When you arrived did you learn that there had been a problem?

MR. O'NEIL: Yes.

MR. HADDOCK: Is it reasonable for you to think that the unit was in the same condition as it was when Mr. Davis tested it?

MR. O'NEIL: I believe it wasn't.

MR. HADDOCK: Can you say for sure that the problem existed at the time Mr. Davis tested it?

MR. O'NEIL: No, I can't be sure of that.

MR. HADDOCK: Can I ask you to turn to page 174 of this exhibit. Mr. O'Neil, you know this document way better than I do. But if I look down at option number one towards the bottom.

MR. O'NEIL: Yes, I see it.

MR. HADDOCK: Does that indicate that your target for duct leakage was 15 percent when you did this test?

MR. O'NEIL: What happens is on this document -- this is my -- I believe this is my QA document. Yes. In the registry it defaults to this number and I can't change it. So I have to note it in the registry under, under "Notes." So I had to go with that, that number, I couldn't change it. I had to -- I could not enter my results into the registry by trying to change it to the six percent leakage that I thought it was.

MR. HADDOCK: Did you make a note that's anywhere within this exhibit indicating that you thought it was supposed to be tested at the six percent target?

MR. O'NEIL: In my QA summary it is in there but I don't know about this exhibit.

MR. HADDOCK: You want to take a minute to look through it or do you know that you didn't make a note?

MR. O'NEIL: Oh, here's my summary. Page 170. I do not see it listed there. This was the first address. When I did this I assumed that it was -- that it is what it is. And this is when I brought it up to Mark that I think this, this was new construction. But at the time I recorded it as it was presented.

MR. HADDOCK: So when you made this initial visit to this address you thought it was an alteration?

MR. O'NEIL: When I ran the tests I thought it was a new construction.

MR. HADDOCK: Okay. But you didn't make a note of that, correct?

MR. O'NEIL: No I didn't.

MR. HADDOCK: I want to draw your attention to Respondent's Exhibit number 238. Could you please turn to page 354. Mr. O'Neil, do some of your notes appear on that page?

MR. O'NEIL: Yes.

MR. HADDOCK: Can you read them.

MR. O'NEIL: "This may have been misclassified as an alteration. Tenant says the builders got behind and they were rushing to complete the job, sometimes working 12 hour days."

That was part of -- that particular statement was part of

the question that I was asking of the homeowner and then my results followed.

And it says: Duct leakage. Rater recorded 78 cubic feet per minute, QA recorded 99. Both passed a target of 166 heating and 150 cooling. If this is new it fails as the targets are 66 heating and 60 cooling. That is if it's new construction.

Then I went on to report my refrigerant charge findings: No TMAHs. Failed a split-temp because we couldn't run a split temp test if you had no TMAHs. And then the metering device refrigerant charge failures.

MR. HADDOCK: Did you believe that the builder had misclassified this house as an alteration?

MR. O'NEIL: I had no idea of who misclassified it, I was just out there to gather data.

MR. HADDOCK: From your experience -- and again you know this better than I do.

MR. M. BACHAND: I'd like to clarify something you said.

MR. HADDOCK: Please.

MR. M. BACHAND: The builder didn't classify it as an alteration, the builder classified it as new construction as it shows on the permits.

MR. HADDOCK: Let me ask you. Is there a form that gets submitted to CalCERTS that begins this process?

MR. M. BACHAND: Yes.

MR. HADDOCK: Is it submitted by the builder?

MR. M. BACHAND: The builder or the builder's representative, aha.

MR. HADDOCK: Is that where the builder specifies whether it's new construction or an alteration?

MR. M. BACHAND: The decision of whether it's new construction primarily lands with the building department. They have authority to say that something is -- they would only say that in -- be called in if it's a borderline case of a gut rehab. Is it new, is it old. But in normal new construction there's no question. There's a permit and then, you know, subsequent things go with new construction.

MR. HADDOCK: And so there's data entered on the permit, I understand. But then at some point the data has to be entered into the CalCERTS registry, right?

MR. M. BACHAND: Yes.

MR. HADDOCK: Is that done by the rater?

MR. M. BACHAND: Oftentimes but it could be by the builder or the Title 24 consulting firm.

MR. WIESE: Or the installer.

MR. M. BACHAND: Or the installer can do it.

MR. HADDOCK: The question I'm getting to is whether this was initially mis-classified as an alteration by Mr. Hoover or Mr. Davis or whether it was done by

somebody else. Do you know the answer to that?

MR. M. BACHAND: It was misclassified by Misters Hoover and Davis as it was already a new construction based on the building permit.

MR. HADDOCK: Like Mr. O'Neil doesn't Mr. Hoover and Mr. Davis go out with the papers in hand that come from CalCERTS telling them how to do the test?

MR. M. BACHAND: They came -- they come out to the subdivision or to the property with the papers that the rater submitted to us. The test results that they submitted to us.

MR. HADDOCK: Okay.

MR. WIESE: I want to add to that as well. The CF-1R-ALT for alterations that these CF-4Rs, that they were used to generate this. There is also a CF-1R from an energy consultant loaded into the registry. And not a CF-1R-ALT but a CF-1R showing it as new construction.

MR. HADDOCK: When a QA rater goes out to do a duct test and the duct test fails do you smoke the house?

MR. O'NEIL: Not often. It depends on the homeowner as well, if they'll allow us to.

MR. HADDOCK: Respondent's Exhibit 231, are you familiar with the house mentioned there?

MR. O'NEIL: Yes I am.

MR. HADDOCK: Did the duct test fail on that

house?

MR. O'NEIL: System one I believe passed, I think system two failed.

MR. HADDOCK: Is system one the downstairs system?

MR. O'NEIL: Yes.

MR. HADDOCK: And the upstairs system failed?

MR. O'NEIL: That's the one.

MR. HADDOCK: Did you do a -- did you smoke the house?

MR. O'NEIL: No I didn't. Would you like me to go through my process?

MR. HADDOCK: I don't necessarily need to hear about all the process but if you could describe what it means to smoke a house that would be helpful.

MR. O'NEIL: Well, I'd like to cover this house. Because when I -- when I -- when I see that a house is failing duct leakage or any test I go back and I double-check to make sure all the vents are covered and that there is no leakage.

I also talked to the homeowner that was there and they said that -- I asked them if I missed any ducts. They said, I don't think so, there's only one duct that's in the ceiling downstairs. I asked them, well, I can find out for sure if I smoke the system, they said they'd rather not go there. I said, okay, well if there is any discrepancies

will you allow us back in the house and they said, sure.

So at this case they didn't want to -- they didn't really want us to smoke the house. And I don't know why because it's theatrical smoke, it's not really smoke, but some people have an affinity to that. And in other cases I've had homeowners say, oh no, I don't want you to do that. So we try and respect the homeowner in that regard because QA, unlike ratings, is voluntary to the homeowner. They have the right to reject it if they want to.

Now in your question about how to smoke a house. You keep the ducts closed, you have your duct fan there. It's fairly simple. You just warm up your fogger and you put it close to the machine. You set it on a low setting, maybe 10 percent, 10 Pascals of pressure, and then you emit smoke in the system and you see if it's leaking.

MR. HADDOCK: Is there a way to know for sure whether you've sealed all the registers without smoking the house?

MR. O'NEIL: Well, I mean, it depends on the house. I mean, I came across one house that when I smoked the system I found a vent that was buried under books. It depends -- without smoke it is hard to find out if you can seal all the vents.

MR. HADDOCK: Do you know for sure in this case that all the vents were sealed?

MR. O'NEIL: To the best of my knowledge I think they were.

MR. HADDOCK: What does it mean for a crawl space under a house to be inaccessible?

MR. O'NEIL: To me it means that I can't get to the ducts to see if those ducts are leaking.

MR. HADDOCK: Does it depend on how big the rater is?

MR. O'NEIL: It could. It could, yeah.

MR. HADDOCK: Did CalCERTS fail Mr. Hoover and Mr. Davis because insulation certificates weren't posted in the attic?

MR. C. BACHAND: I can speak to that. We failed them -- pardon me. They failed their quality assurance inspections on many more criteria than simply the presence of an insulation certificate. And they were decertified based on the pattern of significant and, we felt, intentional failures. Of which the QII was a component, of which the certificates are just a component.

MR. HADDOCK: Did they receive failures because certificates weren't posted in the attic?

MR. C. BACHAND: We don't break it down that way. They received failures in the QII process. Certificates are one way that people might fail. Other ways that they might fail are by misrepresenting the amount of insulation present

in the attic or by not recording the appropriate targets for that insulation in the attic. Or by not properly making sure that every part of the attic has been properly weather-stripped and sealed. All of which are relevant to the QII failures of the complainants today.

MR. WIESE: Can I add to that?

MR. C. BACHAND: Yes.

MR. WIESE: The main thing about the certificates is that's where you get your information on what the requirements are for the insulation installed in that attic.

MR. HADDOCK: Are the certificates required to be posted in the attic?

MR. WIESE: They're required to be posted on the job site.

MR. HADDOCK: Could that include the contractor's trailer?

MR. WIESE: That would be unusual but I suppose that it could be.

MR. HADDOCK: Or it could be anywhere on the site, right? It doesn't have to be the attic.

MR. WIESE: The regulations just specify that the certificates be posted onsite for each, each address that the rater is, is doing verifications at.

MR. HADDOCK: I believe I heard one of you mention earlier that a refrigerant charge test can't be performed

without TMAH holes; is that right?

MR. WIESE: A temperature split can't be performed without TMAHs.

MR. HADDOCK: Thank you. That's what I was going to ask, I just got the term wrong.

Isn't it true that a temperature split test can be performed, say by measuring temperature at the return and registers?

MR. KING: The protocols for refrigerant charge verification are a 3.2 and they have a very specific diagram of where you're supposed to put the TMAH holes. And the protocols do not allow for taking that measurement anywhere except in those TMAH holes.

MR. HADDOCK: I understand that it's not within what the protocols say but can we infer by the lack of TMAH holes that a test wasn't performed?

MS. LUCKHARDT: Objection, it's vague.

MR. HADDOCK: Do you know whether --

MR. KING: Can you restate the question?

MR. HADDOCK: Sure. When you find that there are no holes for doing the temperature split test do you know that no test has been performed?

MR. KING: No test following the protocols have been performed but any number of other tests that aren't pertinent to a rater's job could have been performed on that

system.

MR. HADDOCK: Okay, thank you. Does it hurt homeowners if the test isn't performed with the holes?

MS. LUCKHARDT: I'm sorry, I have to object, I think that's vague. Does it hurt homeowners? I need something more.

HEARING OFFICER VACCARO: I don't think that was particularly vague. If you can't answer the question let him know that you can't answer it. I think it followed from the prior question.

MR. KING: I think I understand the gist of the question. By harming homeowners you mean, is the system less efficient than it should be and causing their bills to be higher than it should be.

If you don't perform the test according to the protocols you can't assure that it's installed correctly.

MR. HADDOCK: Do you know -- is there some -- when a rater uses the holes and sticks his probe in the hole, if he moves the probe around does he get a different result?

MR. KING: You can get slightly different temperatures. The purpose of measuring the air flow in both the supply and return side is to get an average temperature of the air flow entering the coil and exiting the coil. And there are spots inside that air stream where you can get higher and lower temperature readings.

MR. HADDOCK: At the registers is there much variation?

MR. KING: There could be substantial variation at the registers. I have personally measured a ten degree difference between a return grill and the air entering the coil.

MR. HADDOCK: Okay I have no more questions, thank you.

HEARING OFFICER VACCARO: Okay. We were trying to figure out whether the few questions that we have up here would be appropriate at this point. But I think what we think is more appropriate is to ask Ms. Luckhardt if she has some limited redirect that she would like to do, and if so, I think we would do that first. And then if there are any residual questions up here then we would ask them.

MS. LUCKHARDT: Okay, then I'll begin.

REDIRECT EXAMINATION

MS. LUCKHARDT: Mr. Haddock asked you about the certificates in the attic and the QII-I test. Were there other reasons that Mr. Hoover and Mr. Davis failed those tests?

MR. C. BACHAND: Yes, there were many reasons.

MS. LUCKHARDT: And could you explain what those were?

MR. C. BACHAND: Misters Davis and Hoover, I don't

remember the exact address at this point in time, Tim might refresh my memory. First off, they misrepresented the targets for depth and so-called density for that insulation. And that was troublesome because if they had actually gotten that information from the job site it was not correct and our own rater was able to find out the correct information for that insulation later on.

Furthermore, when they misreported those targets they also misreported findings indicating that they were in compliance with those targets. However, our findings showed that the depth and so-called density measurements were far from agreement with what the initial raters had entered and also were outside of compliance.

MS. LUCKHARDT: Thank you. And Tim, did you have something to add or am I moving on?

MR. O'NEIL: Well, I just wanted to add that, you know, specifically at one address, thanks for catching me there, the incorrect target insulation depth was 14 and three-quarter inches. I found by contact -- because there was no insulation certificate anywhere on the premises that I could find I called the installer, the insulation installer, and he provided me with the type of insulation that he installed.

And then I went to the website and determined that that insulation should have had a target depth of 12 and

three-quarter inches, two inches less than what the raters reported. And what was more troubling to me is that they said that it passed the original depth of 14 and three-quarter inches. Which any depth that I took was either 12 and three-quarter inches or less.

MS. LUCKHARDT: And did you take a photo from that house?

MR. O'NEIL: Yes I did.

MS. LUCKHARDT: And if we pull it up I'd like you identify whether -- it should be Exhibit 239, photo 19. Is that the photo that you took at that address?

MR. O'NEIL: Yes. And you could see the insulation ruler to the top there labeling it -- I can't see it. The depth is like right around 12 and a half, maybe 13. And then my tape measure is recording, you know, under ten inches.

MS. LUCKHARDT: And Tim, you were asked about conducting a smoke test. Did you conduct a smoke test at one of the residences? And I'm going to have Ms. Collier pull up Exhibit 234, photo 12 to identify the location.

MR. O'NEIL: Yes, this is the address I have in front of me.

MS. LUCKHARDT: And were you able to conduct a smoke test at this address?

MR. O'NEIL: Yes I did, the homeowner allowed me

to. This is where the rater passed -- the rater did record a number that did not meet the target. And I did a similar test and my number did not meet the target either and it was substantially higher than the rater's. I then proceeded to do a smoke test where I crawled under the house and noticed many areas of leakage that were accessible. And maybe Russ can go to the issue of this area.

MS. LUCKHARDT: Can I ask you --

HEARING OFFICER VACCARO: There's no question before Russ at this time so Ms. Luckhardt can certainly ask him one.

MR. O'NEIL: I'm sorry.

HEARING OFFICER VACCARO: But I think her question was specific to you and whether or not you conducted a smoke test and what your findings were.

MS. LUCKHARDT: And did Mr. Davis also conduct a smoke test at this house?

MR. O'NEIL: In the registry it --

MR. C. BACHAND: May I speak to that?

MR. O'NEIL: Yes.

MR. C. BACHAND: Mr. Davis indicated in the registry, what Tim was about to say, that he claimed to have performed a smoke test. However, both during the interview and based on Tim's results we find it difficult to believe that he actually completed all components of a smoke test.

Which include --

MS. LUCKHARDT: And -- Go ahead.

MR. C. BACHAND: I'm sorry. Which include sealing of all accessible leaks and visual verification, which clearly did not take place in the crawl space.

MS. LUCKHARDT: And you were asked by Mr. Haddock, Tim, whether the size of a rater could impact whether you could conduct the -- you could get down to actually what's accessible. Were you able to get underneath this house?

MR. O'NEIL: Yes. As a matter of fact that is on the far end of the house from where the crawl space access is.

MS. LUCKHARDT: And based upon your experience at this particular location do you think Mr. Davis would be able to access that area of the house?

MR. O'NEIL: Yes.

MS. LUCKHARDT: You were asked about the notations about alterations and new construction on your analysis, Tim. Was this the same address that you questioned as to whether it was new construction or an alteration?

MR. O'NEIL: Yes, absolutely.

MS. LUCKHARDT: And was this the subdivision we spoke about earlier which had 18 homes in it?

MR. O'NEIL: Yes.

HEARING OFFICER VACCARO: Just for the record,

would you identify which exhibit you are referring to that houses this notation. I know it was part of the cross-examination, I just don't remember what exhibit number that was. Please, again, don't help each other as a witness.

MS. LUCKHARDT: We're trying to find a way to identify that.

HEARING OFFICER VACCARO: I understand. You can but it's different when the witnesses are communicating again with each other.

MS. LUCKHARDT: Okay. We'll find some kind of way to refer to that. So he's referring to the results at -- the results -- we believe it's the -- the house is identified on Exhibit 232.

HEARING OFFICER VACCARO: Thank you.

MS. LUCKHARDT: Sorry. Russ, you were asked about potential mechanical failures with, you know, problems with the temperature expansion valve over time. Based on the results that you -- that CalCERTS found in its quality assurance evaluation do you think that that was occurring at these houses?

MR. KING: That there was an accidental change or unintentional change to the system after the original inspection was done? I don't think so. There was multiple houses that had the same, exact problem in terms of what the rater tested versus what the QA -- I believe I saw three

where it was almost -- it was one of your bar charts in your introduction. And I find that extremely unlikely that something would have happened to three houses to cause the reading to change between the time that the rater was there and then the QA inspector.

MS. LUCKHARDT: Tim, you were asked about Exhibit 238, page 354, and your comments that were included on that page. I'll wait until you get that in front of you.

MR. O'NEIL: Okay.

MS. LUCKHARDT: Were there other failures at that house?

MR. O'NEIL: Yes there was.

MS. LUCKHARDT: Can you describe what those were.

MR. O'NEIL: Not only -- let me make sure I'm right. This is Exhibit 238 page 354?

MS. LUCKHARDT: Yes.

MR. O'NEIL: Well we had the -- we had the refrigerant charge failures based on no temperature measurement access holes. And they claimed to do a temperature split when it was -- that's not a valid test without those holes. And it also failed the TXV, the metering device test where it failed by way out of the range. Where my numbers were almost double the rater's.

MS. LUCKHARDT: And then I'm going to ask you about one more if you guys can dig around and find Exhibit

232. I'm looking at page 194.

MR. O'NEIL: Yes, I have it.

MS. LUCKHARDT: If an air conditioning installer came back to fix an air conditioning system do you think that that would change whether there were the existence of the temperature -- the TMAH holes?

MR. O'NEIL: Absolutely not.

MS. LUCKHARDT: Charlie, Mr. Haddock characterized what you found in your reviews of the work of Mr. Davis and Mr. Hoover as errors or mistakes. Do you believe that these were errors or mistakes?

MR. C. BACHAND: No, I do not.

MS. LUCKHARDT: And why is that?

MR. C. BACHAND: There's a number of reasons, in particular with respect to the subdivision. I see no way that you can make an error or mistake in identifying something as an alteration when it's clearly, physically new construction.

At other addresses such as the measurements of the insulation depth. I again don't see how that mistake could be made given the presence of rulers that themselves demonstrate that there is not adequate insulation in the attic.

Again, I don't see how you can put a sticker indicating a TMAH is present over a place where there is no

hole and call that a mistake rather than intentional.

MS. LUCKHARDT: And have you heard any evidence today explaining how what Mr. Davis and Mr. Hoover reported to the registry were mistakes or errors?

MR. C. BACHAND: I have not.

MS. LUCKHARDT: And have Mr. Davis or Mr. Hoover ever tried to explain how these were mistakes or errors rather than intentional misrepresentations?

MR. C. BACHAND: Mr. Davis and Mr. Hoover have never contacted me with any information to that effect.

MS. LUCKHARDT: I have nothing further.

HEARING OFFICER VACCARO: Any questions?

PRESIDING MEMBER DOUGLAS: I have a couple of questions. There were a number of questions about the difference between the QA process versus the complaint process. My first question is, are the actions that are taken in field verification the same in terms of the tests run or rerun and so on, for both the QA and the complaint process?

MR. C. BACHAND: The field review portions are identical.

PRESIDING MEMBER DOUGLAS: Okay, the field review portions are identical. And you said that when there is a discrepancy noted between the field verification done by your QA person and what was reported by the rater that when

this is through the regular QA process the rater will not be notified if they passed but they will be notified if they fail, is that correct?

MR. C. BACHAND: Yes.

PRESIDING MEMBER DOUGLAS: And they'll be notified in very short order such as a day or two, correct?

MR. C. BACHAND: That's the attempt that we make, yes.

PRESIDING MEMBER DOUGLAS: All right. And when there is a complaint you said that the time it takes to notify the rater is substantially longer because you want to complete the QA or the field verification regarding all of the raters discussed or raised in the complaint, is that right?

MR. C. BACHAND: That's essentially correct. What happened in this case was there was a complaint involving every rater at Valley Duct Testing. And during the course of that complaint we felt that we were -- that we needed to perform field reviews on each and every one. Those field reviews took a substantial amount of time. And then of course there were inquiries made with the building department, there were reviews of the data that had been entered into the registry, et cetera. And we felt that making piecemeal judgments would be premature and not fair to the -- the purpose of the complaint and investigating the

complaint.

PRESIDING MEMBER DOUGLAS: Okay, all right. In terms of what can happen out of one of these discrepancies. Am I right that there are three possible options, probation, suspension and decertification? Are there any other possible outcomes once there is a discrepancy like this found?

MR. C. BACHAND: Yeah. Nothing could happen. In other words --

PRESIDING MEMBER DOUGLAS: Okay. So there's no --

MR. C. BACHAND: And there's one more.

PRESIDING MEMBER DOUGLAS: Okay, go ahead.

MR. C. BACHAND: Which is education.

PRESIDING MEMBER DOUGLAS: Okay. So there could be no adverse action taken or no consequence. There could be a requirement of additional education or probation or suspension or decertification, correct?

MR. C. BACHAND: That is correct.

MR. M. BACHAND: Can I give you one further piece of information on that? We had another rating firm that had several failures in one of the tests that they were running so we required their entire team to take the -- retake that portion of our training. And we sent down a person, I believe, and did a special training for that company to reinstruct and reinforce that information.

PRESIDING MEMBER DOUGLAS: Okay, all right. Now in terms of where CalCERTS draws the line or makes a judgment as to whether a discrepancy merits no consequence or education or probation or suspension or decertification. Are the standards that you apply the same regardless of whether this comes to your attention through the QA process or through a complaint?

MR. C. BACHAND: The results are the same. The way that the complaint weighs in is in our determination of what the actions were in the failures. For example, if we find -- do we find that something was deliberate or accidental.

The fact that there might be additional information from the complaint or from the complainant, might sway our decision to determine that something is deliberate rather than accidental. So in that sense the fact that it's a complaint applies.

But once we have determined what the errors were, whether or not they were the result of a deliberate falsification or simple error, after that point we no longer differentiate between the QA and complaint.

PRESIDING MEMBER DOUGLAS: Okay. So a complaint might give you some additional information provided that you believe it.

MR. C. BACHAND: Yes. Sorry.

PRESIDING MEMBER DOUGLAS: Based on looking into the person bringing the complaint and the allegations they're bringing, correct?

MR. WIESE: Yes.

PRESIDING MEMBER DOUGLAS: All right. But beyond giving you some additional information the, if I can call it factors that you would apply that I've heard some of you talk about, would be the same in the QA or the complaint?

MR. C. BACHAND: Yes.

MR. WIESE: Yes.

PRESIDING MEMBER DOUGLAS: That's correct. And can you help me understand what some of those factors are. They've come up kind of here and there throughout the proceeding but I'd love to hear more about what they actually are.

MR. C. BACHAND: One of the most important is whether or not the rater was performing deliberate falsification. If we determine that that's the case, again, since we feel we can't retrain ethics and since they have signed a number of contracts and perjury statements, we would have to decertify in almost any instance.

One of the other factors that weigh in is whether or not the discrepancy is within a plus-or-minus say three percent tolerance range, which is what some of the equipment specifies. Whether or not the homeowner was able to give

information that might tell us, well something was altered in between the time that the rater visited and the QA field reviewer visited.

MR. WIESE: The only thing to add to that is something that weighs heavily in our decision is the amount of errors that we find. It's not something where we act on one or two or three. It's just when you get to the point where, you know, it's what's the point of going forward. We keep -- every time we look at something else we're finding the same thing.

MR. C. BACHAND: I do have one other thing to add. I'm sorry to --

PRESIDING MEMBER DOUGLAS: Go ahead.

MR. C. BACHAND: The other thing we concern ourselves with is the potential of -- of damage in the sense of energy efficiency damage to the homeowner.

PRESIDING MEMBER DOUGLAS: All right. So what I heard was willfulness or deliberate misrepresentation, size of the discrepancy, a range of -- is it whether or not it's within the range variation that you believe exists in the machinery that's testing or is it also whether or not it's a very big discrepancy versus a relatively smaller?

MR. C. BACHAND: We don't have a precise numerical value. One of the things we consider is the range of the machinery. The other thing we consider is if it's outside

an order of magnitude or if it's twice as much or three times as much, that usually carries a lot of weight.

PRESIDING MEMBER DOUGLAS: Okay. Okay. So information from homeowners that might give you alternative explanations for the discrepancy would be considered, the number of errors.

MR. C. BACHAND: Yes.

PRESIDING MEMBER DOUGLAS: Potential damage to the homeowner meaning the potential discrepancy in a way, right, or do you mean something else by that?

MR. C. BACHAND: I mean something else by that. Let me see if I can provide an example. Let's suppose that the protocols demand that there be five rulers, five insulation rulers in an attic and we find only three. Well, that's not a good thing but occasionally rulers can be disrupted. What would weigh more on our decision at that point was whether or not the rulers and our QA rater's independent verification so that there was adequate insulation in the attic.

If there was adequate installation in the attic but a ruler had been misplaced or two rulers perhaps, we might simply notify the rater, you were missing rulers at this address. This is not an unimportant thing but at this time we are not placing you under discipline. That's never happened in real life, that's an example.

PRESIDING MEMBER DOUGLAS: Okay. And can you help me understand more, and I know there was some discussion of this earlier, what factors weigh in to you coming to believe that a discrepancy might be deliberate versus accidental.

MR. C. BACHAND: That one is harder to clarify for me. It's simply that we can't imagine a way for somebody to make some of the mistakes accidentally that have been discussed today. The placement of the TMAH sticker does not seem to me like it could have been an accident.

The continued misrepresentation of the amount of insulation present doesn't seem like it could be an accident because there's a number of measurements that raters need to make in that insulation to report that value to the registry.

MR. WIESE: Can I add to that, Charlie?

MR. C. BACHAND: Yeah, please do.

MR. WIESE: In our -- we meet as a QA team when we have these failures. And one of the things that we'll do is brainstorm. Is there a plausible explanation for what we found? A plausible explanation for the discrepancy. We look for those. We don't just discount it. We try to find a solution.

MR. O'NEIL: I also would like to add that's why it's so important for the raters to weigh in on what they saw out there, what their feeling was. And that's -- that

also factors into what we -- we can conclude.

PRESIDING MEMBER DOUGLAS: Okay. So what I heard is that the QA team confers about the nature of the mistakes that they see and posits alternative explanations that could exist for why those discrepancies are there. And in this case the QA team did not believe that there were plausible alternative explanations. Correct so far?

MR. C. BACHAND: Yes.

MR. WIESE: That's correct, yes.

MR. C. BACHAND: Yes.

PRESIDING MEMBER DOUGLAS: And that's the reason for suspending the raters without first having an interview?

MR. WIESE: Yeah, we did meet and we did confer regarding that, yeah. And that was part of our concern is that -- and even if they were -- even if they were clear mistakes we would still want to suspend this rater from doing ratings until it's correct -- until they can be corrected because mistakes are being made that are hurting a consumer.

PRESIDING MEMBER DOUGLAS: I've heard different things, or at least I have not from the testimony so far, been able to fully understand the purpose of the interview. In this case it appears that CalCERTS took an action based on the field verification results and the interview was the opportunity for the raters to explain or get CalCERTS to

reverse its position.

However, I have also heard a number of panelists from time to time say, well, I was waiting for the interview in order to better understand this. Can you help me better understand the role of the interview in both this case and generally.

MR. M. BACHAND: Yeah, I'll start anyway. The interview is the first but not the only opportunity for a rater to give us whatever explanation they can that will help us find why there is a discrepancy between their test results and our test results. That's probably the number one reason for the interview.

But as I said earlier, another reason for the interview is that we take note of what's confusing people and what they may not be sure on so that we can make sure that our training is addressing those issues and that our instructors are addressing those issues.

If we see a pattern of people saying, I didn't get that from your course, I thought I was doing this right, then that would be a case where we would use the interview to say wait a minute, we need to go back and check our curriculum and our presentation and so forth. That's the main reason and it's -- we think that's part of a fair process. To give the people an opportunity to come in and tell us what's going on, why they did things.

PRESIDING MEMBER DOUGLAS: Is the fact that this got to your attention through a complaint a factor in this decision?

MR. M. BACHAND: No. The factor in the decision is the nature of the types of errors that they did that we believe are willful.

PRESIDING MEMBER DOUGLAS: Okay.

MR. WIESE: Can I add to that also?

PRESIDING MEMBER DOUGLAS: Please.

MR. WIESE: A good example would be like the interviews we had with Mr. Sidhu and Mr. White. In both cases we had discussions regarding high EER verifications. What we found in that interview is some confusion over what's required with high EER verification.

And in fact I don't think we needed further education with them after the interview because we covered it in the interview. We reviewed the process with them and I think they left with a clear understanding of what is -- what is required.

PRESIDING MEMBER DOUGLAS: Okay. I saw a couple of factors in one of the exhibits, it might have been the Rater Agreement, delineating reasons that CalCERTS puts forward as reasons for decertification. I saw willful, falsification, pattern of inaccuracy I guess and also conduct that reflects badly on CalCERTS or on the HERS

program. Those were at least three of a number of factors I saw. Do you have any policies that are written down or can you articulate what those mean, what are the differences between those.

MR. M. BACHAND: The willfulness I hope is relatively clear.

PRESIDING MEMBER DOUGLAS: Yes.

MR. M. BACHAND: A pattern doesn't necessarily in and of itself generate massive amounts of guilt unless it's a pattern that tells us something. So a pattern of failure that is always very similar in repetition to the nature of the things. For instance, incorrect or duct leakage measurements that are always just a CFM under target. All of the errors that we found benefited the contractor. That's pretty statistically hard to swallow. So patterns can tell us different things like that.

In terms of denigrating CalCERTS. That's not the word that's in the document but -- we expect them through that agreement to understand that commitment to truth and accuracy is important to all stakeholders. We happen to be one of them. We are the oversight party.

And so we mention ourselves first because if we lose credibility or if we stand -- you know, if people can come by and wink, well CalCERTS does this and they don't care, then that's not going to be healthy for the industry.

So we need to make sure that there's an understanding that this is important and that respectability and responsibility need to be maintained throughout the process.

PRESIDING MEMBER DOUGLAS: I've just got a small number of additional questions. I heard that there were -- not that there were 30 QAs done in the last month but that -- I'm sorry, I've just --

MR. WIESE: Tim.

PRESIDING MEMBER DOUGLAS: Tim, that you performed 30 in the last month. And then I think that you all kind of stopped short of giving us an annual number. Can you tell me annually in the last year or the last couple years how many QAs CalCERTS has performed?

MR. C. BACHAND: I'm not sure what the exact number is. The rate established by Tim and a similar but not quite as high a rate established by our other current QA rater has been in effect for about five to six months. So putting that together I would say somewhere around 100

PRESIDING MEMBER DOUGLAS: Say around 100 annually.

MR. C. BACHAND: -- 150 in the year.

PRESIDING MEMBER DOUGLAS: Okay.

MR. C. BACHAND: I apologize for not being able to be more precise but I did, I did deliver that information to the CEC a few months ago.

PRESIDING MEMBER DOUGLAS: Okay.

MR. C. BACHAND: And so I can get that information.

PRESIDING MEMBER DOUGLAS: Okay. And did you also deliver information on what percentage of those QA tests revealed no problems versus some problems in the results, some discrepancy?

MR. C. BACHAND: I'm not sure I wrote it that way but we could certainly provide that information.

PRESIDING MEMBER DOUGLAS: Okay. I think it would be -- I would be interested in hearing it. Although obviously if you don't know it today then it's not going to come into the record here.

MR. O'NEIL: I would also like to add that I think we are on pace to do a lot more QAs this year than in the past. You know, going forward we are always getting more efficient in the way we're reporting numbers, the way we're handling the QAs. So I'm -- I've done more QAs this year than I did last year. Of course, I was -- I started late.

PRESIDING MEMBER DOUGLAS: So let me ask you this question then. Of the QAs that you have done this year can you give me a sense of what percentage came out without problems, without any discrepancies?

MR. O'NEIL: I'd say close to 70 percent.

PRESIDING MEMBER DOUGLAS: Okay, that's helpful.

I think that's all of my questions.

MR. WIESE: I want to possibly clarify as far as the percentage too. A lot of the field verifications that Tim were doing -- was doing were pertaining to complaints, which when we're dealing with a complaint we may tend to find more errors than when we're just doing our general QA.

PRESIDING MEMBER DOUGLAS: I understand. I was asking about this calendar year because I understood that the verifications that were done this year might not have arisen out of this complaint. Is that correct or is that a wrong assumption?

MR. O'NEIL: That is correct. I've had -- because the complaint part of this proceeding was based on last year, this year I'd say about 70 percent of the measures are passing.

PRESIDING MEMBER DOUGLAS: Okay, thank you.

ASSOCIATE MEMBER McALLISTER: So thank you, Commissioner Douglas, for anticipating many of my questions so that's great. Let's see. I wanted to just ask a few -- a few additional questions.

So how many complaints have you gotten, say the last year?

MR. C. BACHAND: I believe it's approximately 13. And that does not include complaints that had been ongoing from the year before. That was, again, part of the report.

Go ahead, Mark.

MR. WIESE: Yeah. And that's why I was asking Charlie to speak because I know that we filed the report with the CEC.

ASSOCIATE MEMBER McALLISTER: Okay. So I've got -- this is my first week at the CEC so, you know, I'm not even going to apologize for that. (Laughter.)

But, I guess, could you characterize the complaints that you get? You know, I imagine -- you sort of mentioned -- I think, Charlie, you mentioned before sort of general categories. But it seems like from -- within raters maybe there's some homeowners filing complaints, maybe there's some others. I don't know what the marketplace looks like and who files complaints. It would be helpful to sort of have context for this complaint.

MR. WIESE: The complaints we get, they could be about, say there's incompetence or fraudulent activity. It could be about somebody's personal business practices. I get complaints coming in from homeowners, from installers, from raters, from builders, from building officials.

ASSOCIATE MEMBER McALLISTER: Okay, okay. So it's sort of all over the map. Anybody who is -- we can't ascribe motivations here but it's a variety of complaints.

MR. WIESE: Yes, yes.

ASSOCIATE MEMBER McALLISTER: Okay. So how many

raters have you decertified in the last year?

MR. C. BACHAND: Apart from Mr. Davis and Mr. Hoover I believe there were two additional raters. They were listed on the -- one of the exhibits, the one from the CEC website.

ASSOCIATE MEMBER McALLISTER: Okay. Right, right. But that was it.

MR. C. BACHAND: I don't know if it's kosher for me to say their names.

ASSOCIATE MEMBER McALLISTER: No, that's not necessary. So this is a fairly uncommon occurrence.

MR. C. BACHAND: That's correct.

ASSOCIATE MEMBER McALLISTER: Okay. Did all the -- what percentage of the or what portion of the decertified raters came, originated from complaints versus your standard QA QC process?

MR. C. BACHAND: A number of them came from complaints.

MR. WIESE: The other two from last year, one was from a complaint, one was from our standard QA.

ASSOCIATE MEMBER McALLISTER: Okay. So you do pick up some of these things in your QA as well.

MR. WIESE: Yes.

ASSOCIATE MEMBER McALLISTER: Okay. It seems like for the most egregious you're kind of in some ways relying

on complaints. Or complaints tend to turn up some of the most egregious things. Is that a fair assumption?

MR. C. BACHAND: That's fair but it's also important to remember that the complaints that we do get are put on the highest priority and receive a lot of our time, our QA staff's time so in some sense we don't always have the time to investigate the other QA. Perhaps we would find more raters being decertified except for the complaint process takes up so much of our time. Does that make sense?

ASSOCIATE MEMBER McALLISTER: Yeah, that makes sense. I guess sort of the other side of this issue -- and I'm thinking, you know, bandwidth and all the issues you're talking about just from a business perspective. So you're supposed to do one percent, right? So of all the ratings that are done you're supposed to get out there and do one percent. Do you think you're doing one percent?

MR. C. BACHAND: No.

ASSOCIATE MEMBER McALLISTER: So I'm hearing that your intent is to scale that up and really try to get there. Is that a fair assumption?

MR. C. BACHAND: Yes.

ASSOCIATE MEMBER McALLISTER: So as -- I guess -- well, okay. I might follow up on that a little bit later.

So with respect to these, the two raters that we're talking about here. I'm wondering about the pattern.

So you did some QA on their jobs prior to the complaint.

MR. C. BACHAND: Yes.

ASSOCIATE MEMBER McALLISTER: And they passed all of those.

MR. C. BACHAND: That's correct.

ASSOCIATE MEMBER McALLISTER: And then when you really dug in on the complaint you found a bunch of cases in which they didn't. And so I'm wondering about the use of the word "pattern." Because you could say that there was a positive pattern established prior and then for some reason there was a negative pattern more recently.

MR. C. BACHAND: Let me speak to that. First of, of course, part of the reason why they were decertified was for the willful nature, not just the pattern. But the pattern that we established was -- for one thing there was a pattern at the subdivision in Stockton. That's a very clear pattern of identical QA failures across multiple buildings and across multiple types of raters -- I mean multiple raters, pardon me.

We found a pattern of multiple instances of QII failure. We found a pattern which we didn't really get into today of misrepresenting duct leakage results and claiming to have achieved very close to target values when in fact our values that we found were far off of that. So in that sense we found a pattern.

And additionally, and this has come up before, even if you have a longstanding pattern of accuracy, that can be swayed by laziness, apathy, or as Mr. Barrett claimed in his complaint, for financial reasons that were specific to individual contractors or individual building developments and may not represent the universe of ratings as a whole.

ASSOCIATE MEMBER McALLISTER: I guess one concern that I have, and I'm sorry to everyone here if I am asking questions that aren't directly related to the question at hand. You know, I guess -- well, let's see if I can think through this a little bit better. Let's see, I sort of lost my thought, hold on just a second.

I guess my concern is that -- so there are two things here. One is that, you know, the frequency of rating hasn't been what it optimally would be. Or of QA, I'm sorry, the one percent and everything.

And then also since you don't let the raters know that you've done a QA and that they've passed, the raters, I mean, I can imagine out there in the market, get complacent and sort of, oh, well I'm not even being -- nobody is looking over my shoulder so why should I even bother. Not that that's an excuse but I just think that's sort of a pitfall maybe that you're encountering here.

MR. C. BACHAND: That decision has been one that

we -- the decision not to notify after a pass is one that we came to after a long period of deliberation and we did consider that component of things.

On the flip side, we considered that a rater that had received a sort of a passing grade from CalCERTS might use that as a way of advertising against other raters who had not yet been caught in the QA cycle and we didn't want to see that take place either. So there were a lot of factors that weighed into that choice about whether or not to notify regarding a pass.

ASSOCIATE MEMBER McALLISTER: Okay.

MR. C. BACHAND: And one other thing I'd like to say real quick and then I'll let Russ speak, is that I have trained personally many of the classes that raters come through in the last two to three years. And as part of that training I always mention, I am a QA director, I will be QAing you. You will not be necessarily notified when you pass but we are out there and we will be looking at your results.

ASSOCIATE MEMBER McALLISTER: Okay, thanks.

MR. KING: I just wanted to add, in the training we call that "no news is good news." And we emphasize that point to them.

ASSOCIATE MEMBER McALLISTER: Okay.

(The Reporter passed a note to Ms. Vaccaro.)

HEARING OFFICER VACCARO: Thank you very much for this. The note that I was passed says if anyone is parked in the structure they have to have cars out by seven o'clock because the structure closes. So -- and you're talking about the structure directly across the street over here. Not by voices but just by a show of hands can I get a sense of who is parked over there?

(Show of hands.)

HEARING OFFICER VACCARO: Okay. Okay. Thank you for this, this is good to know. It also gives us --

ASSOCIATE MEMBER McALLISTER: New urgency. (Laughter.)

HEARING OFFICER VACCARO: Well, I think what we need to do is to go ahead and go off the record, allow people the opportunity to move their cars and to park them. I say that but please don't get too comfortable because we are not going to be here much longer. So don't park in a way that makes you think that you're going to be here for another three hours or so because that's not going to happen. But I don't want anybody not able to get to their car and get home. So we need to go off the record.

ASSOCIATE MEMBER McALLISTER: Can I have one more question and then I'll be done and we'll be at a stopping point?

MS. JENNINGS: We just lost WebEx.

ASSOCIATE MEMBER McALLISTER: Okay.

HEARING OFFICER VACCARO: Okay, thanks, Jennifer.

And also because, just because people have to get wherever you're parked. So let's go off the record and come back at 7:05. Thank you.

(Off the record at 6:43 p.m)

(On the record at 7:06 p.m.)

HEARING OFFICER VACCARO: All right, we're back on the record. I think Commissioner McAllister had just a few more follow-up questions for this panel.

ASSOCIATE MEMBER McALLISTER: Very quickly, really. Really just one. Drilling in a little bit on the willful aspect of this. And in particular definitely -- you described the insulation issue and the two other issues that I kind of wanted to drill in a little bit were, one, the characterization of the house, whether it's new or existing, and sort of what -- are there any possible explanations for that. Who actually makes that decision? You know, is it the rater or is it somebody else?

And a similar question for trying to understand a little bit more in detail the seal over the hole in the plenum that the instrument goes through. What the standard process is, that who puts that tape over the hole and, you know, is it CalCERTS standard issue? You know, what is the -- I'm trying to drill in on like what are the possible

explanations for the fact that there is tape over a place where there is no hole.

MR. C. BACHAND: Let me address the alterations and new construction issue and then I think I'll punt the other question down towards that end of the table.

The alterations versus new construction issue. Mike went into some detail about who might upload the 1Rs to the registry. And the point that we were making about that determination and the willful violation of Title 24 was that our rater and the raters in question, as soon as they went to the job site, should have seen that it was new construction.

And in that case, even if the documentation in the registry is incorrect, it is up to the rater to go ahead and say, wait a sec, this is -- the information I received is clearly on the face of it incorrect. And I need to treat this subdivision differently and I need to maybe do some investigation to find out what the cause of this misunderstanding is.

So my point is that by failing to do so they made a willful decision to go ahead with information that they clearly knew was, was false.

ASSOCIATE MEMBER McALLISTER: Do you -- so what would the possible motivations for that be, I guess? Since it's -- well, anyway, I think we can all -- never mind,

yeah.

MR. C. BACHAND: I can discuss the activation of the complaint.

ASSOCIATE MEMBER McALLISTER: If it lacks -- if it's easier to get a passing rating for a laxer standard then, I mean, that's sort of an obvious motivation. Are there any others?

MR. C. BACHAND: I can't think of --

ASSOCIATE MEMBER McALLISTER: I mean, if we're talking about the willful -- if we're talking about willful intent, right?

MR. C. BACHAND: I can't think of another reason to do so apart from making it easier to pass. And also quicker because they don't have to go through the process of resubmitting paperwork or getting new, new calculations done. Part of the nature of the complaint was that there was a strong financial motive to get these addresses passed and there were some details, we didn't go into much detail today, that kind of addressed that.

ASSOCIATE MEMBER McALLISTER: Thanks.

MR. C. BACHAND: And then the TMAH question goes down this way, Russ or Mark.

MR. WIESE: Could you repeat the TMAH portion of that question?

ASSOCIATE MEMBER McALLISTER: Yes. There's a

reference picture. What are the possible explanations for why there would be the seal placed on a, on a location with no hole underneath it? Who might have like -- what's the standard process for when that, you know, that tape or that seal gets put over the hole after doing a measurement?

MR. WIESE: First of all it's the installer that puts the hole in. He has the option of putting tape over it. Once the installer uses that hole -- he's punched a hole in it, he may want to reseal it.

ASSOCIATE MEMBER McALLISTER: Right.

MR. WIESE: So as far as --

ASSOCIATE MEMBER McALLISTER: Let's see. So when you show up and you're doing a QA or a field inspection and you see, okay, there's no hole under this seal.

MR. WIESE: Right.

ASSOCIATE MEMBER McALLISTER: Is there -- do you -- would you want to go talk to both the installer -- so would you want to -- what would your train of activity be after that to sort of figure out what the deal was?

MR. WIESE: I think the train of activity is --

ASSOCIATE MEMBER McALLISTER: Or is it just -- or you don't even need to do anything because you know?

MR. WIESE: What we did is the train of activity we take. They claim to have done a temperature split to determine airflow. And since that hole wasn't there they

couldn't have done.

ASSOCIATE MEMBER McALLISTER: So it doesn't really matter who actually put the seal on, on there?

MR. WIESE: No.

ASSOCIATE MEMBER McALLISTER: Okay.

MR. WIESE: No.

MR. C. BACHAND: May I clarify a couple of points real fast? Regardless of who put the seal there, it's the rater's task to verify that the hole was present. In other words, lifting that sticker and verifying that the hole is present.

ASSOCIATE MEMBER McALLISTER: Okay, so that clarifies, thanks very much.

HEARING OFFICER VACCARO: Okay, there are no further questions from anyone up here so you are all excused, thank you very much.

MR. C. BACHAND: Thank you.

ASSOCIATE MEMBER McALLISTER: Thank you.

HEARING OFFICER VACCARO: Okay, so in my mind I have a sense of what's next but I don't want to smile or get hopeful. (Laughter.)

I think I want to hear, you know, from the respective attorneys on where we are. So, Mr. Haddock, it seems as though you put on your case, respondent put on theirs. Ms. Luckhardt would let us know if she anticipated

bringing on any other witnesses but it seemed to me that we have gone through a pretty complete set of folks and have elicited quite a bit of information in today's proceedings. So, Mr. Haddock, where are we?

MR. HADDOCK: I have nothing more to add.

HEARING OFFICER VACCARO: Okay, Ms. -- well, except for your closing statement of course. Ms. Luckhardt, what about you?

MS. LUCKHARDT: We won't be calling anyone else so our case is on as well.

HEARING OFFICER VACCARO: Okay, thank you. I have, I guess, a minor housekeeping issue. I just want to be clear. We went ahead and admitted into the record based on the parties' stipulations virtually all of the exhibits that were served on the parties prior to today's proceeding with the exception of numbers 5, 21, 22 and 23. Are you withdrawing those, Mr. Haddock?

MR. HADDOCK: I am, yes.

HEARING OFFICER VACCARO: Okay. So thank you. I just want to be sure that the record reflects that because both parties submitted tentative exhibit lists to the Commission.

(Complainants' Exhibits 5, 21, 22
and 23 were withdrawn.)

And just as a matter of convenient reference, once

all is said and done in this proceeding, those exhibit lists will be put into one combined list, and it will be done correctly this time, capturing everything. But it will identify everything that was offered, everything that was admitted. It will show that those documents were withdrawn.

So if you have any corrections to make on those exhibit lists that you submitted prior to today please take a look at them and within the next few days let me know. Those are not really part of the record so we don't need to address that right now, it's just a matter of making sure that the descriptors are as you intended for them to be. We already have all of the exhibits.

So I think with that here is how I would like to see closing arguments take place. Complainants get the first bite at the apple, no more than five minutes. Respondent gets the second bite. Complainant gets the last word but you get two minutes for that, maybe three. And maybe you don't want it but that's what we're offering. So, Mr. Haddock, I think we are ready at this point to listen to your closing.

MR. HADDOCK: I understand that I am going to have opportunities for post-hearing briefing. With that in mind and the fact that it's getting later on a Friday evening I'll waive closing statements.

HEARING OFFICER VACCARO: Okay, okay.

Ms. Luckhardt. You still get five minutes but you get the full five minutes.

MS. LUCKHARDT: I get the whole five minutes. I'm going to stand. Okay. And if we're lucky it won't take me quite five.

CLOSING STATEMENT

MS. LUCKHARDT: Okay. So today we heard from Energy Commission staff that the HERS program is based upon developing actions by private entities. The complainants testified that they had valid contracts. Those contracts specify that decertification was possible.

The record contains ample evidence that the failures were intentional misrepresentations. And we clearly did not go through all the evidence today that we submitted but we hope that you will in your evaluation of this proceeding.

We also note that there has been no evidence presented to the contrary. That even today Mr. Haddock did not ask questions of Mr. Davis or of Mr. Hoover as to why this information was presented to the registry that was clearly inaccurate.

The Commission staff's testimony further made clear that CalCERTS is not a state actor. That there is no entanglement between the Commission -- or insufficient entanglement between the Commission and CalCERTS as a

provider, or any of the other providers, to create them as a state actor.

CalCERTS had a contractual right to decertify Mr. Davis and Mr. Hoover. It was justified, given that the -- given the fact that these were clearly intentional misrepresentations. Reporting that the holes were there, reporting that they conducted the tests that had to be conducted with the holes, were clear misrepresentations of what actually happened.

Constitutional due process was not required. But even so there was a process and the process was fair and it balanced the competing interests.

But what is really important about today is we need a solution. And you guys are put in a position of determining what that solution is. You can affirm the decertification of Mr. Davis and Mr. Hoover. Or you can send this process out to who knows what else to develop a different process to create something new.

But it is critical that good raters and that all raters, even Mr. Davis and Mr. Hoover, are not put in the position of being asked in some instances to pass homes or pressured to do it quickly without knowing that if they do it incorrectly they would be decertified.

We also ask that you take into account the individuals. We've talked a lot about a 14 unit complex.

That 14 unit complex is low-income and those individuals deserve to get systems that are working properly so that their energy bills are as low as they were expected to be based on the equipment that was installed. Thank you.

HEARING OFFICER VACCARO: Thank you. Before we go to public comment I'm just going to quickly refresh everyone's recollection that on Tuesday the Committee represented that it would like post-hearing briefs from the parties. That we will set some contours for what that briefing should include at minimum and that's something that will come out in writing.

We also indicated to you that the deadline for submitting those post-hearing briefs would be seven business days after the Energy Commission posts the transcript on the website. Those representations remain true. Today there are no changes.

And I recall Ms. Luckhardt asked if sooner than later we could issue the directive about what the post-hearing briefs should contain. First thing Monday I'll get on it. I won't work on it this weekend but you will get it I think with sufficient time to craft the type of briefs that you would like to craft that are thoughtfully done. And then you will have the benefit also of the transcripts in submitting those.

Okay. I think that's all that I needed to say

with respect to the post-hearing briefs and the transcript.

I think we'll turn now to public comment. I do have four blue cards in front of me that are typically what we ask people to complete if they want to make a public comment. We have been pretty good lately at the Energy Commission of holding public commentors to three minutes. I am not shy about holding people to that, even without the clock ticking in front of you.

So I have four cards. We'll start with the folks that are in person then we'll move to anyone on the telephone who might wish to make a public comment. Again, it gets hard being the police woman up here so please don't make me tell you to stop talking but I will if I have to. So we'll start first with Mr. George Nesbitt. And if you would just come up to the podium, please.

MR. NESBITT: Thank you. George Nesbitt. I'm going to take my hat off and I think we should all observe a moment of silence. It's a sad day for the rating industry.

I think Title 20 is basically sound, although implementation and enforcement has often lacked. And if things don't change I think we're going to see a lot more actions like this. We'll have a lot more complaints, raters against raters, causing the providers a lot of effort investigating. You're going to have more complaints coming to the Commission. There's already another one in the

pipeline.

And the thing is, we're all vulnerable. If we hold the standard of absolute perfection to every letter. I mean, you know, to be a rater you really need to read a set of documents about that thick. Thousands of pages. There's a lot of technical stuff, you know, testing, a lot of data points.

We all make mistakes. So quite frankly, we could decertify all raters. We could decertify all the providers. As CalCERTS has said, they are not in compliance with the one percent QA rate according to the Title 20 regulations. The Energy Commission has allowed the providers to not meet the regulations. So we could either spend all our time fighting together or I would rather spend our time working together to fix it.

Title 20 did two important things different than the rest of the country. You separated the roles of provider and rater and you prohibited conflicts of interest. These are very important things. Unfortunately it's created a wall between provider and rater and the Energy Commission and provider. And we've got to tear that wall down.

What the Commission and the providers need to realize is that raters are an equal and important partner and stakeholder.

What we need to do. I'd view this complaint as

not purely a complaint against CalCERTS --

PRESIDING MEMBER DOUGLAS: Mr. Nesbitt, just one more minute.

MR. NESBITT: Yeah. But I think you need to look at the QA and discipline process of all the providers. And what we really need to do is go back and look at Title 20. And what we really need is a workshop. This is not a good forum to really talk about the problems between the industry. What we really need is an informal all-day workshop between the Commission, the providers and the raters to air all the issues and to work out a plan. Thank you.

HEARING OFFICER VACCARO: Thank you. Mr. John Flores. I think Mr. Nesbitt set a good model, he kept to the time limit and I suspect you will as well.

MR. FLORES: Yes. I'm John Flores, I'm a HERS rater for CalCERTS. And a couple of things I just wanted to state was that there were a lot of statements made throughout the day of many errors and patterns. To me it seems very difficult to develop a pattern or develop many errors with four QAs done on one of the raters and seven QAs done on the other rater.

The other thing that I'd like to bring up to the Commission is that, you know, that the idea of the HERS industry and what's been talked about today is making sure

the homeowners get taken care of. Making sure they get accurate ratings, making sure that their houses are the most efficient that they possibly can.

For almost eight months there has been QAs being done on homeowners that apparently there's errors made and there has not been one -- to this day there has not been one homeowner, contractor or builder that's been contacted regarding getting those problems resolved. I don't believe that's the best interest of the homeowners. I don't think we're doing justice to those homeowners by not -- by not contacting them and getting those problems resolved if they are problems or if they potentially are errors. Okay, thank you.

HEARING OFFICER VACCARO: Thank you. Ralph Coleman?

SPEAKER FROM THE AUDIENCE: Ralph left.

HEARING OFFICER VACCARO: Okay. Tommy Young.

MR. YOUNG: I promise to be brief because I can see a lot of people that look like they need a drink. (Laughter.) Forgive me for reading verbatim from my statement but it's the only way I'm going to stay under three minutes, under two.

It should be obvious to all that the realization of California's energy efficiency goals through the HERS program is built upon the assumption that the HERS rater

will provide true and accurate results. As HERS raters we sign our name to a certification of verification, supposedly under threat of felony perjury, that our results are indeed true and accurate.

That being said, it is my belief that the integrity of California's energy efficiency goals can only be ensured by proactive vigilance against fraud, deception and those who would wrap themselves in the cloak of plausible deniability. These are raters who seemingly spend more time devising ways to circumvent the code than follow it, and always at the homeowner's expense.

It is my belief that we do a great disservice to the public, our industry and the dictionary if we choose to redefine perjury and falsification of documents as simply a mistake.

From the perspective of the HERS rater in the field it has always appeared that little more than lip service has been paid to actual code enforcement as our concerns are routinely rebuffed or ignored by building departments, utilities, the CEC and our providers.

It is my hope that with this hearing and those to follow you will begin to right these wrongs and clean up our industry. Because, and please forgive me if this sounds contentious, but all are partially responsible for allowing it to get this far by consistently ignoring our pleas and in

many cases not even returning our phone calls.

My intent is to remind the Commissioners that this is not an isolated incident, there is history here. In May 2010 and January 2011 I filed formal complaints with CalCERTS against Valley Duct Testing raters, naming both Patrick Davis and Erik Hoover. These complaints contained the very same allegations that we have discussed today.

In another incident, September 2010, a HERS rater presented 500 potentially fraudulent jobs closed by Valley Duct Testing. The CEC's response? There was no response and the rater was never contacted.

On January 7th, 2011, during a CEC-initiated phone conference in regards to refrigerant charge testing, the owner of Valley Duct Testing in front of over 75 participants and with great specificity detailed the tools and methods he used for performing cold weather refrigerant charge tests in violation of code. The CEC representative had already told the attendees that anyone caught doing this would have their tests nullified, and you would assume, suffer the consequences. Nothing ever happened.

In addition I have at least six informal complaints referenced by emails to the CEC and CalCERTS informing them of violations, with names and addresses.

It's my contention that any Valley Duct Testing rater who didn't feel the heat of the spotlight wasn't

paying attention.

So here we are two years later with the chance to begin a campaign to clean up the HERS industry. This is a campaign that I have grown used to waging alone against severe opposition and at great cost to my family and my business.

I believe my intentions have always been pure. I am proud and fortunate to work in this industry and I will not allow it to become a free-for-all. The days of the HERS industry as the Wild West need to end.

In closing, I'm grateful to my friend Dave Owen for imparting these words to me when this all began two years ago. He told me, never be a guilty bystander. It is my hope that the CEC will not be a guilty bystander in this matter.

And I'd like to submit my statement and accompanying documents to the board. Thank you.

HEARING OFFICER VACCARO: Okay. And if you have that in writing you could give it to he Public Adviser, Ms. Jennifer Jennings, and she can get your written statement docketed.

I read from the blue cards but there are still a number of individuals in the room. Are there any other members of the public in the room who wish to make a comment at this time?

(No response.)

HEARING OFFICER VACCARO: Okay. Seeing none I am going to turn to the phones. I'm hopeful that WebEx is still up and running, Ms. Jennings?

MS. JENNINGS: Yes.

HEARING OFFICER VACCARO: Is there anybody on the line?

MS. JENNINGS: Four people.

HEARING OFFICER VACCARO: Okay. If there are any members of the public on the phone who might wish to make a comment at this time, this is your opportunity to do so.

(No response.)

HEARING OFFICER VACCARO: Of course you are under no obligation to do so. And I am hearing no one offer to make a comment but I'll make the final call just to ensure that no one is left out. If anyone on the telephone wishes to make a public comment at this time please do so.

(No response.)

HEARING OFFICER VACCARO: Okay, I hear none. I think that allows me to turn the microphone back over to the Presiding Member to adjourn today's proceeding.

PRESIDING MEMBER DOUGLAS: All right. Well I'd like to thank everybody. I found this day to be very helpful and very productive. Let me ask Commissioner McAllister, do you have any closing comments?

(Sounds over WebEx.)

ASSOCIATE MEMBER McALLISTER: No.

PRESIDING MEMBER DOUGLAS: All right. Did we hear a person on the phone who wanted to make a public comment?

(No response.)

PRESIDING MEMBER DOUGLAS: We heard a voice but we don't know if that was an intent to make a public comment or merely something picked up on the microphone.

All right. So with that, we will look forward to receiving your briefs and we are adjourned.

(The Evidentiary Hearing adjourned at 7:32 p.m.)

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CERTIFICATE OF REPORTER/TRANSCRIBER

I, RAMONA COTA, an Electronic Reporter and Transcriber, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Evidentiary Hearing; that it was thereafter transcribed.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, or in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of May, 2012.

RAMONA COTA, CERT**478