



UNITED STATES MARINE CORPS  
1ST MAINTENANCE BATTALION  
COMBAT LOGISTICS REGIMENT-15  
1ST MARINE LOGISTICS GROUP, MARFORPAC  
BOX 55747  
CAMP PENDLETON, CALIFORNIA 92055-5747

# 1st Maintenance Battalion

## FAX COVER SHEET



**FAX COVER SHEET**

TO: Mr. Puckett FROM: SGT SABERON WILSON M.  
FAX: \_\_\_\_\_ FAX: \_\_\_\_\_  
PHONE: \_\_\_\_\_ PHONE: (210) 793 1801  
NUMBER OF PAGES: \_\_\_\_\_ wsaberon@aol.com

SUBJECT: Article 32 Investigation

DATE/TIME: 2011/06/28



UNITED STATES MARINE CORPS  
WESTERN AREA COUNSEL OFFICE  
BOX 555231  
CAMP PENDLETON, CALIFORNIA 92055-5231

IN REPLY REFER TO:  
5811  
ENV/rbs  
29 Nov 10

From: Investigating Officer  
To: Commanding Officer, Combat Logistics Regiment 15  
Subj: FORMAL PRETRIAL INVESTIGATION IN THE CASE OF U.S. v.  
SERGEANT WILSON M. SABERON, 44452/3051, USMC

Ref: (a) Commanding Officer ltr 5800 CO of 12 Oct 10  
(b) Article 32, Uniform Code of Military Justice  
(c) Rule for Courts-Martial 405, Manual for Courts-Martial  
(d) Rule for Courts-Martial 707, Manual for Courts-Martial

Encl: (1) DD Form 457 (with exhibits and additional sheets  
attached)

1. Pursuant to references (a)-(c), the subject investigation is complete. As discussed in greater detail in the enclosure, I recommend the charges against Sergeant Saberon, with some revisions, along with an additional charge be referred for trial to a general court-martial.

2. If Sergeant Saberon were to make complete restitution to Corporals Brar, Ngyuen and Velasquez and to Lance Corporal Mendoza, then disposition of these charges at a forum as low as Summary Court-Martial would be appropriate.

3. During the course of my investigation, the defense requested two (2) continuances totaling twenty-six (26) days. I approved these continuances and they should be attributed to the defense in accordance with reference (d) and relevant case law.

4. Should you wish to discuss this matter further, you may reach me at 760-725-5613 or ray.slabbekorn@usmc.mil.

*Bart Slabbekorn*

R.B. SLABBEKORN

**INVESTIGATING OFFICER'S REPORT**

*(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)*

<b>1a. FROM:</b> <i>(Name of Investigating Officer - Last, First, MI)</i> Slabbekorn, Jr., Ray Barto	<b>b. GRADE</b> O-3	<b>c. ORGANIZATION</b> Western Area Counsel Office, Camp Pendleton, California	<b>d. DATE OF REPORT</b> 29 Nov 10	
<b>2a. TO:</b> <i>(Name of Officer who directed the investigation - Last, First, MI)</i> B.E. Nickle	<b>b. TITLE</b> Commanding Officer	<b>c. ORGANIZATION</b> Combat Logistics Regiment 15, 1st Marine Logistics Group		
<b>3a. NAME OF ACCUSED</b> <i>(Last, First, MI)</i> Saberon, Wilson M.	<b>b. GRADE</b> E-5	<b>c. SSN</b> XXXXX4452	<b>d. ORGANIZATION</b> 1st Maintenance Bn, CLR 15	<b>e. DATE OF CHARGES</b> 10 Sept 2010

*(Check appropriate answer)*

<b>4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)</b>	YES	NO
	X	

<b>5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)</b>	YES	NO
	X	

<b>6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d) (2), 502(d)</b>	YES	NO
	X	

<b>7a. NAME OF DEFENSE COUNSEL</b> <i>(Last, First, MI)</i> Robles, Benjamin A.	<b>b. GRADE</b> O-3	<b>8a. NAME OF ASSISTANT DEFENSE COUNSEL</b> <i>(If any)</i> None	<b>b. GRADE</b> N/A
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<b>c. ORGANIZATION</b> <i>(If appropriate)</i> Legal Services Support Section, CLR-17, 1st Marine Logistics Group	<b>c. ORGANIZATION</b> <i>(If appropriate)</i> N/A
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<b>d. ADDRESS</b> <i>(If appropriate)</i> Box 555607, Camp Pendleton, CA 92055	<b>d. ADDRESS</b> <i>(If appropriate)</i> N/A
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**9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)**

<b>a. PLACE</b> Building 22163, Camp Pendleton, California	<b>b. DATE</b> 15 November 2010
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I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.


<b>c. SIGNATURE OF ACCUSED</b> N/A
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<b>10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF:</b> <i>(Check appropriate answer)</i>	YES	NO
<b>a. THE CHARGE(S) UNDER INVESTIGATION</b>	X	
<b>b. THE IDENTITY OF THE ACCUSER</b>	X	
<b>c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31</b>	X	
<b>d. THE PURPOSE OF THE INVESTIGATION</b>	X	
<b>e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE</b>	X	
<b>f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT</b>	X	
<b>g. THE RIGHT TO CROSS-EXAMINE WITNESSES</b>	X	
<b>h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED</b>	X	
<b>i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION</b>	X	
<b>j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING</b>	X	

<b>11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE</b> <i>(If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)</i>	YES	NO
	X	

<b>b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL</b> None.
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**NOTE:** If additional space is required for any item, enter the additional material in Item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c"). Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer)				
NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
Mendoza, Aaron J.	E-3	1st Maintenance Battalion, Combat Logistics Regiment 15 1st Marine Logistics Group, Camp Pendleton, California	X	
Brar, Jaskiranjot K.	N/A	Fresno, California	X	
Velasquez, Jovanny	N/A	Longview, Texas	X	
b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.			X	
13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED: THE ACCUSED WAS PERMITTED TO EXAMINE EACH.				
DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)		YES	NO
IE-1: Appointing Order with Enclosure (1), Charge Sheet	Military Justice Officer, Legal Services Support Team-Echo, LSSS, CLR-17 1st MLG, Building 1463, Camp Pendleton, California		X	
IE-2: First Defense Request for Continuance with Endorsements	Military Justice Officer, Legal Services Support Team-Echo, LSSS, CLR-17 1st MLG, Building 1463, Camp Pendleton, California			X
IE-3: Second Defense Request for Continuance with Endorsements	Military Justice Officer, Legal Services Support Team-Echo, LSSS, CLR-17 1st MLG, Building 1463, Camp Pendleton, California			X
IE-4: Command Investigation into Allegations of Larceny/Wrongful Approp. ICO Sgt Saberon	1st Maintenance Battalion		X	
IE-5: Standard Pages from Service Record Book of Sergeant Saberon	Consolidated Administrative and Personnel Records, Camp Pendleton, CA		X	
[[Es-6 through _]]	[SEE ADDITIONAL SHEETS]		X	
b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED			X	
14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 909, 916(k).)				X
15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.)			X	
16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL.			X	
17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM			X	
18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED			X	
19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 405(d) (1).)			X	
20. I RECOMMEND:				
a. TRIAL BY <input type="checkbox"/> SUMMARY <input type="checkbox"/> SPECIAL <input checked="" type="checkbox"/> GENERAL COURT-MARTIAL				
b. <input type="checkbox"/> OTHER (Specify in Item 21 below)				
21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)				
See Attached Sheets.				
<p>* NOTE: COLONEL NICKLE ORALLY WITHDREW THESE CHARGES FROM THE SPECIAL COURT-MARTIAL TO WHICH THE WERE REFERRED WHEN/AT THE SAME TIME THAT HE APPOINTED THIS INVESTIGATION</p> <p style="text-align: right;">RBS</p>				
22a. TYPED NAME OF INVESTIGATING OFFICER		b. GRADE	c. ORGANIZATION	
Slabbekorn, Jr., Ray Barto		O-3	Western Area Counsel Office Camp Pendleton, California	
d. SIGNATURE OF INVESTIGATING OFFICER			e. DATE	
			29 November 2010	

**INVESTIGATING OFFICER'S REPORT**  
*(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)*  
*in case of*  
**SERGEANT WILSON M. SABERON, U.S. MARINE CORPS**

Box 12b.

*Mendoza*

Lance Corporal Aaron J. Mendoza, 1st Maintenance Battalion, Combat Logistics Regiment (CLR) 15, 1st Marine Logistics Group (MLG) was sworn and testified substantially to the following facts and opinions. LCpl Mendoza knows Sergeant Saberon because Sgt Saberon had served as LCpl Mendoza's platoon sergeant at the Repairable Issue Point in 2008. Sgt Saberon looked out for LCpl Mendoza and helped the witness whenever the witness needed help. Sgt Saberon gave LCpl Mendoza career advice about the Marine Corps and the witness looked up to Sgt Saberon as a kind of mentor. Sgt Saberon and LCpl Mendoza worked in the same shop. These two Marines met each other a few times during off work hours and socialized with other Marines from the shop.

Around June 2009, Sgt Saberon called LCpl Mendoza and told the witness that Sgt Saberon's grandmother was in really bad health. She needed an operation and he did not have enough money to pay for the operation. She did not have insurance. Sgt Saberon requested LCpl Mendoza loan him \$4,000.00. Sgt Saberon told LCpl Mendoza that he would give his tax return to LCpl Mendoza to pay off the balance of the loan.

LCpl Mendoza called Navy Federal Credit Union and applied by phone for a \$4,000.00 personal loan. LCpl Mendoza was approved to receive a loan in the amount of \$3,000.00. Sgt Saberon drove LCpl Mendoza to Navy Federal Credit Union where the witness received a check for the loan proceeds. The witness offered to endorse the check to Sgt Saberon but Sgt Saberon instructed LCpl Mendoza to go back into the bank and exchange the check for cash. LCpl Mendoza complied and delivered \$3,000.00 in cash to Sgt Saberon at that time. LCpl Mendoza acknowledged the inherent conflicts of a Marine Non-Commissioned Officer (NCO) borrowing money from one of their junior Marines but made the loan due to the hardship of Sgt Saberon. LCpl Mendoza does not know how Sgt Saberon used the money.

The terms of the loan between Mendoza and NFCU were that Mendoza would pay approximately \$187 every month by the 18th day of every month. Sgt Saberon told LCpl Mendoza that Sgt Saberon would pay the amount due on the loan every month until the balance was paid off. Sgt Saberon made this payment according to the terms of the agreement for the first two months. Several months later, Sgt Saberon made a third payment. Since that third payment was made, Sgt Saberon has made no payments to LCpl Mendoza or his loan. Each of these three payments was in the amount of \$200.00. In the aggregate, Sgt Saberon has paid LCpl Mendoza \$600.00 in roughly seventeen (17) months since the loan was dispersed. LCpl Mendoza incurred late fees and additional interest as a result of Sgt Saberon's nonpayment.

ADDITIONAL SHEET

**INVESTIGATING OFFICER'S REPORT**

*(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)  
in case of*

**SERGEANT WILSON M. SABERON, U.S. MARINE CORPS**

LCpl Mendoza was reluctant to push Sgt Saberón to demand the loan payments due the witness. LCpl Mendoza told Sgt Saberón the witness did not want to take the matter to anyone but that he needed Sgt Saberón to pay back the loan money. Sgt Saberón told the witness that Saberón was going through a rough patch and that he would repay the witness when he had the money. The witness reported the matter to Sgt Arredondo in October or November 2009 but asked Sgt to keep the matter off the record. LCpl Mendoza was struggling financially. Sgt Arredondo told the witness the best course of action would be to raise the matter up the chain of command. LCpl Mendoza did not raise the matter with the chain of command because he did not want to seek anything negative happen to Sgt Saberón. When Corporal Brar approached LCpl Mendoza and told him she and Cpl Velazquez had also loaned money to Sgt Saberón, LCpl Mendoza realized Sgt Saberón had no intention of paying back the money he owed any of these Marines. At that time, LCpl Mendoza reported the matter to his chain of command. Cpl Brar approached LCpl Mendoza in the aftermath of a Company formation where the Repairable Maintenance Company Commander, Major McFaul, specifically instructed the troops that senior Marines were not to be loaning money to junior Marines. This was a Friday afternoon, safety brief type formation.

LCpl Mendoza accompanied Cpls Brar and Velazquez to civil court to pursue actions against Sgt Saberón to recover the money owed them. LCpl Mendoza chose not to file an action, however, because he did not want anything bad to happen to Sgt Saberón. Also, the witness could not afford the \$300 filing fee.

Sgt Saberón now works in the Company administrative offices. LCpl Mendoza has seen Sgt Saberón in this office space in recent weeks. About two months ago, Sgt Saberón approached the witness and asked the witness why Mendoza had reported the matter to the chain of command. Sgt Saberón assured the witness that if the witness helped Sgt Saberón get out of this bind, that he had the full intention of paying back the money owed to LCpl Mendoza. Sgt Saberón told LCpl Mendoza to recant his earlier statements and to say that Cpls Brar and Velazquez had pressured the witness to make up those statements to help their cases against Sgt Saberón. Conversations like this have occurred approximately 4-5 times. One or more of these conversations occurred in the barracks living spaces. Sgt Saberón told the witness to lie and say no loan was made between the witness and Sgt Saberón. Brar and Velazquez encouraged the witness to come forward for the witness' own benefit. Nothing contained in this witness' statements and testimony was embellished or added as a result of the coercion of Brar and Velazquez.

The witness is in the process of divorcing his spouse. Financial stress was not among the causes of the marital discord. The witness traded in his vehicle in July 2009 for a more expensive vehicle in reliance on Sgt Saberón honoring the terms of the loan arrangement between the two. LCpl Mendoza has never been formally counseled for financial management. The witness has been given a spousal support order through his command.

ADDITIONAL SHEET

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in case of  
**SERGEANT WILSON M. SABERON, U.S. MARINE CORPS**

LCpl Mendoza gave an oral interview and made a written statement to Captain Perng in the course of her Command Investigation into this incident. These statements are contained in Enclosure (2) to IE-4. After authenticating Enclosure (2) to IE-4, the witness adopted the substance of this statement as incorporated into his testimony before the Article 32 hearing.

*Brar*

Ms. Jaskiranjot K. Brar, currently a Corporal in the U.S. Marine Corps Individual Ready Reserves, was sworn and testified via telephone substantially to the following facts and opinions. Presently, Cpl Brar resides in Fresno, California and attends Ridley College. The witness worked with Sgt Saberon in 1st Maintenance Battalion during a 2008 deployment. After the deployment, Sgt Saberon became her platoon sergeant when the unit returned to California. The witness cannot remember what year she picked up Corporal. During the deployment, the witness and Sgt Saberon became closer while still maintaining supervisor-subordinate relationship. All the Marines who deployed together became very close friends in Iraq.

Cpl Brar and Sgt Saberon knew each other well but they did not typically socialize together. The witness stated she typically saw Sgt Saberon at unit functions but this was the extent of their social interactions by and large.

Cpl Carlos Remache, another Marine in the unit and the then boyfriend of the witness, told Cpl Brar that Sgt Saberon would call her asking for money. Sgt Saberon subsequently pulled the witness into the platoon sergeant's office and asked her to borrow money. Sgt Saberon told the witness that his wife had taken all his money and that he needed money to divorce his wife. Sgt Saberon promised to use his next tax return to pay off the loan had worked with the witness on her taxes in Iraq so she believed he would be getting a big return. Cpl Brar trusted Sgt Saberon to pay back the loan.

Cpl Brar agreed to loan Sgt Saberon the money he requested. Sgt Saberon assured the witness he would cover all the expenses of the loan by transferring money to the witness every month. According to the terms of their agreement, Sgt Saberon would pay Cpl Brar an amount equal to her monthly loan payment until he received his tax refund. Upon receipt of his tax refund, Sgt Saberon would pay off the loan balance in full.

Cpl Brar called NFCU over the phone and NFCU approved her request for a loan in the amount of \$4,000.00. NFCU approved Cpl Brar's loan application. Sgt Saberon covered for the witness while she left work to go to NFCU and picked up the cash. Sgt Saberon demanded cash in lieu of transferring money into his account. Cpl Brar took a photograph of herself holding \$4,000.00 in cash while she rode with Cpl Remache back to deliver the money to Sgt Saberon. Sgt Saberon told Cpl Brar to make sure you don't tell anyone. Sgt Saberon took the loan agreement form from Cpl Brar. Cpl Brar got another copy of the loan agreement from NFCU.

ADDITIONAL SHEET

**INVESTIGATING OFFICER'S REPORT***(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)**in case of***SERGEANT WILSON M. SABERON, U.S. MARINE CORPS**

Sgt Saberón paid Cpl Brar in August, September, and October and then stopped paying in November. When he was making timely payments, Sgt Saberón transferred \$368.00 each month into her savings account and she would apply that money to her loan.

When Sgt Saberón failed to make payments, Cpl Brar attempted to contact him by telephone, electronic mail, and text messages. Sgt Saberón responded to some of these contacts but was generally very difficult to reach. After several months of attempting to obtain payment from Sgt Saberón, Sgt Saberón told the witness along with Cpl Velazquez that he would receive his tax refund on or about 10 February 2010. Around 9 February, Cpl Brar told SSgt Gonzalez about the transaction. Sgt Saberón had initially told Cpl Brar his tax refund would arrive on 6 February. Sgt Saberón's reactions to Cpl Brar persistent efforts to be paid, including denial of the transaction in the first place, caused Cpl Brar to realize that Sgt Saberón had no intent to repay the loan.

Cpl Brar realized that Sgt Saberón had borrowed money from Cpl Velazquez because Velazquez was always asking the witness for the whereabouts of Sgt Saberón. Eventually, Cpl Brar asked Cpl Velazquez

Cpls Velazquez and Brar filed a civil action in small claims in Vista, California. When the parties went to small claims court, Sgt Saberón made several statements about the debt. Velazquez and Brar won a judgment and Sgt Saberón appealed. On appeal, Sgt Saberón changed many of his statements. Sgt Saberón was represented by counsel during these proceedings. The judgment was affirmed, in part, and the judge awarded the plaintiff-appellees attorney fees and court costs. Sgt Saberón reportedly requested to pay the judgment in installments. Sgt Saberón told small claims court judge that there was no divorce. The witness believes MSgt Carten has knowledge to the contrary. A number of Marines were present for both the first and second hearings before the Vista court. All the parties were identified as Marines before the court.

The witness reported that an involuntary allotment request was approved by the Defense Finance Accounting Service (DFAS). Sgt Saberón's pay should be garnished beginning in December 2010 in the amount of twenty-five percent (25%) of his pay.

According to Cpl Brar, the Company First Sergeant reported that the Battalion Sergeant Major asked Sgt Saberón about the transactions between Saberón and his Marines. Sgt Saberón reportedly denied the transaction all together. According to Enclosure (23) of IE 4, 1stSgt Erick Robles states Sgt Saberón exercised his rights to counsel when questioned about the transaction before SgtMaj Miller.

About a week after Sgt Saberón borrowed the money from the witness, Sgt Saberón went on leave. The witness does not know for what purpose Sgt Saberón used the money.

Cpl Brar reviewed Enclosure (11) to IE 4 and affirmed this statement is the one she gave in the course of the Command Investigation. The witness adopted Enclosure (11) as part of her testimony before the Article 32 investigation.

ADDITIONAL SHEET



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Cpl Brar has paid off the balance of the loan.

*Velazquez*

Mr. Jovanny Velazquez, formerly a Corporal with 1st Maintenance Battalion, was sworn and testified substantially to the following facts and opinions. Velazquez is a student at Laterno University. Velazquez left active duty in April 2010.

Sgt Saberón was a mentor to the witness at one time.

Sgt Saberón approached the witness a day or two after the witness returned from Iraq. This occurred around the 20-29 November 2010 timeframe. Sgt Saberón appeared to be stressed out. Sgt Saberón told the witness he needed to go to VA to pay his lawyers to finalize his divorce from his wife. Sgt Saberón asked to borrow money from the witness and offered to pay the witness \$100.00 monthly. Initially, the witness refused because the witness intended to leave active duty and move away from California well before the loan would be paid off according to those terms. At that point, Sgt Saberón told the witness he would receive a tax refund for 2010 and he would use that money to pay off the balance of the loan. Velazquez believed he could trust Sgt Saberón. The following day, Sgt Saberón drove the witness to the bank. The witness withdrew \$4,000.00 cash and gave it to Sgt Saberón. The money loaned to Sgt Saberón was money earned by the witness during his deployment to Iraq.

According to the terms of the agreement between Sgt Saberón and Cpl Velazquez, Sgt Saberón would pay Velazquez \$500.00 each month beginning on 15 December 2010. Monthly payments would be made by the 15th day of each subsequent month. When Sgt Saberón received his tax refund, he would repay the balance of the loan at that time. Cpl Velazquez received no payments from Sgt Saberón. When the time came that Cpl Velazquez believed Sgt Saberón should have received his tax returns, he set up a meeting with Sgt Saberón to allow Sgt Saberón to call the IRS and confirm for the witness that the refund had not yet been issued. Sgt Saberón failed to appear for that appointment. No written agreement was recorded between Sgt Saberón and Cpl Velazquez.

Velazquez recorded a conversation between the witness and Sgt Saberón which took place via an online chat application. The original recording was delivered to the Captain Perng during the Command Investigation. Sgt Saberón told the witness he would deny the transaction all together if the witness reported the matter to the chain of command. During this conversation, Velazquez told Sgt Saberón, "If you don't pay me back, I will take it to the command." As soon as the witness said this, Sgt Saberón responded by saying he would deny the transaction. The witness informed Sgt Saberón that their current conversation was being recorded. The accused asked the witness why the witness was recording the conversation. The witness made the recording on his own volition without instructions from anyone else to do so.

ADDITIONAL SHEET

**INVESTIGATING OFFICER'S REPORT***(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)**in case of***SERGEANT WILSON M. SABERON, U.S. MARINE CORPS**

Velazquez filed an action in civil court to recover the amount owed him. After winning the initial judgment, Cpl Velazquez chose not to appear during the appeals hearing. Velazquez chose to do so in order to move on from this incident.

The witness testified about his relationship with Cpl Brar and their conversations about this case in a manner substantially consistent with the prior testimony of Cpl Brar summarized above.

Sgt Saberón asked the witness to tell the command that no loan occurred between Sgt Saberón and the witness. This occurred three or four times.

Box 13a.

THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.			
DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)	YES	NO
IE-6: Marine Corps Total Force System Database (MCTFS) Records for Sgt Saberón	Consolidated Administrative and Personnel Records, Camp Pendleton, CA	X	
IE-7: U.S. Navy Regulations, Article 1165	<a href="http://doni.daps.dla.mil/navyregs.aspx">http://doni.daps.dla.mil/navyregs.aspx</a>	X	
IE-8: Government Closing Arguments	Attached	X	

Box 15.

During the hearing, Detailed Military Defense Counsel objected to the consideration of testimony from Corporal Velazquez pertaining to Sergeant Saberón's statements during a web chat session between the witness and the accused. This was the only objection lodged by the defense to the consideration of IE 4.

"An admission does not need to have the dramatic effect or to be the all-encompassing acknowledgement of responsibility that the word confession connotes. Admissions are simply words or actions inconsistent with the party's position at trial, relevant to the substantive issues in the case, and offered against the party." McCormick § 254 (citations omitted); *See also* 2 Wigmore §1048. Since the defense decline an invitation to brief this matter further, the original ruling to consider the testimony of Cpl Velazquez on this point remains unchanged.

Box 16.

LCpl Mendoza expects to leave active duty in the next thirty-sixty days. LCpl Mendoza intends to move back to his home of record in Big Spring, Texas. If the trial in this case is not held prior to his release from active duty, the witness will need advanced travel expenses to be tendered in order to travel to Camp Pendleton for his testimony. LCpl Mendoza currently has no plans that would make him unavailable to appear for such a court-martial.

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Cpl Brar will be out of the country from 18 December 2010 until 4 January 2011. Other than that timeframe, the witness will be available to testify before a court-martial in this case.

Cpl Velazquez plans to travel to Mexico over the holidays and will return to the United States by mid-January. The spring semester begins around the same time. As long as the trial does not conflict with these dates, Cpl Velazquez will be available to testify before a court-martial in this case.

Other than Mendoza, Brar and Velazquez, the government offered no evidence about the availability of potential witnesses in this case.

Box 17.

Charge I and its four (4) specifications contain no fatal errors as to form. However, the following corrections and amendments are required. In Specification 1, the correct time of the fraternization should be "June 2009" vice "July 2009." In Specification 3, the correct time of the fraternization should be "November 2009" vice "July 2009." In Specification 4, the correct time of the fraternization should be "August 2009" vice "July 2009." See Enclosure (16) to IE 4.

Charge II and its four (4) specifications contain no apparent errors.

Charge III and its four (4) specifications contain no fatal errors as to form. However, the following amendment is suggested. In each specification under Charge III, the phrase "due or payable" should be amended to read "due *and* payable" to match the sample specification found in Paragraph 71.f on Page IV-121 of the MCM. Additionally, the sum of the indebtedness should be amended in each specification to reflect the fact that (a) Sgt Saberon did repay varying amounts of his debts before allegedly defaulting and (b) due to Sgt Saberon's failure to make payments according to the respective terms of the loans, each of his creditors incurred late fees and interest they otherwise would not have incurred. IE 8 contains a rough estimate of these amounts. However, a precise accounting of the amount of money wrongfully taken from the victims should be reflected on the charge sheet prior to arraignment.

Box 18.

**Charge I**

Sergeant Saberon is charged with violating Article 92 of the UCMJ in four (4) separate specifications. The elements of Charge I are as follows:

(1) That there was in existence a certain lawful general regulation, namely the U.S. Navy Regulations of 1990 and Article 1165 thereof;

(2) That the accused had a duty to obey such regulation; and

**INVESTIGATING OFFICER'S REPORT***(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)**in case of***SERGEANT WILSON M. SABERON, U.S. MARINE CORPS**

(3) That, at various times between June and November 2009, the accused violated Article 1165 by wrongfully fraternizing with the four (4) above named complainants.

Specifically, the government alleges Sergeant Saberon violated paragraph 1165 of the U.S. Navy Regulations by fraternizing with Lance Corporal Aaron J. Mendoza, Corporal Jaskiranjot K. Brar, Corporal Loc X. Ngyuen and Corporal Jovanny Velazquez, all of whom were Marines under the charge of Sergeant Saberon at the time of the alleged fraternization. The alleged fraternization consists of Sergeant Saberon entering into personal loan transactions with each of these Marines whereby he borrowed a total of \$13,500.00. If true, such a transaction would constitute a "personal relationship between enlisted members that are unduly familiar and that do not respect differences in grade or rank (which) are prejudicial to good order and discipline and violate long standing traditions of the naval service." Such relationships are prohibited by Article 1165. See Investigative Exhibit 7. "U.S. Navy Regulations Article 1165 is a punitive regulation." *United States v. Jackson*, 61 M.J. 731, 734 (N.M.C.C.A. 2005); see also *United States v. Bland*, 39 M.J. 921 (N.M.C.M.R. 1994).

IE-7 establishes element one and IEs-5 and 6 establish element two.

The government's exclusive theory of fraternization is that the accused entering into a personal loan with his subordinate Marines constitutes fraternization. As a matter of law, \_\_\_\_\_. Testimony revealed that the Company Commander instructed his Marines to refrain from the kind of behavior alleged in Charge I. Testimony also revealed that each of the complaining witnesses agreed to loan Sgt Saberon money in part due to their respect for him as a Sergeant of Marines. Each of the complaining witness testified or made a statement that they trusted him at least partially due to his role as a mentor and a platoon sergeant charged with their welfare. Thus, the actions of Sgt Saberon leveraged his superior-subordinate relationship for personal gain. Therefore, reasonable grounds exist to support the premise that the loan transactions violate Article 1165.

**Charge II**

Sergeant Saberon is charged with stealing amounts exceeding \$500 in value from the same four (4) complainants alleged in Charge I. These form the bases for the four (4) specifications under Charge II. According to the Manual for Courts-Martial (2008 ed.) (MCM), the elements of larceny, as alleged, are as follows:

- (1) That the accused wrongfully took, obtained, or withheld certain property from the possession of the owner or of any other person;
- (2) That the property belonged to a certain person;
- (3) That the property was of a certain value greater than \$500.00; and

**INVESTIGATING OFFICER'S REPORT***(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)**in case of***SERGEANT WILSON M. SABERON, U.S. MARINE CORPS**

(4) That the taking, obtaining, or withholding by the accused was with the intent permanently to deprive or defraud another person of the use and benefit of the property or permanently to appropriate the property for the use of the accused or for any person other than the owner.

Generally, "a debtor does not withhold specific property from the possession of a creditor by failing or refusing to pay a debt, for the relationship of debtor and creditor does not give the creditor a possessory right in any specific money or other property of the debtor." Para. 46.c(1)(b), Part IV, MCM. However, "an obtaining of (specific) property from the possession of another is wrongful if the obtaining is by false pretense." Para. 46.c(1)(d), Part IV, MCM. In IE 8, the government argues the false pretense was the accused intent to repay. The government argues the accused never intended to repay the debts. If true, this misrepresentation of an existing fact at the time of the loan would amount to a wrongful obtaining of the cash given by the victim to the accused.

In other words, these transactions would not amount to valid debts in the first place because of the accused false pretense. According to this theory, the accused merely conned his victims into giving him money he intended to keep for himself all along. Of course, a problem with this theory is the accused payments made to at least 3 of the 4 victims. Other facts which might have been misrepresented include the illness of Sgt Saberon's grandmother, the status of divorce proceedings between Sgt Saberon and his wife, and the entitlement to a certain refund amount from the Internal Revenue Service. Reasonable grounds exist to believe the accused committed the offense of wrongful obtaining by false pretenses in violation of Article 121 and specifically elements (1) and (4) above. Element (2) is satisfied by the testimony of the respective complainants. Specifically, each witness testified or made a statement that they either owned or borrowed in their own name the money they gave to Sgt Saberon according to the purported terms of a loan agreement. This loan agreement, according to the logic of IE 8, was merely a scam to obtain the property of these respective victims. Based on the evidence offered before this investigation, reasonable grounds support this theory. However, proving this beyond a reasonable doubt will require careful analysis and specific proof.

**Charge III**

Sergeant Saberon is charged with dishonorably failing to pay debts he owed to the same four complainants alleged in Charges I and II, in four (4) specifications. The amounts of the debts vary and the amounts described in the respective specifications are generally consistent with the testimony and statements of the complainants subject to the suggested amendments listed in Box 17. Dishonorable failure to pay a debt is an enumerated offense under Article 134 of the UCMJ contained in Paragraph 71 of Part IV of the 2008 MCM. The elements of this offense, as described in the MCM are as follows:

- (1) That the accused was indebted to a certain person or entity in a certain sum;
- (2) That this debt became due and payable on or about a certain date;

**INVESTIGATING OFFICER'S REPORT***(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)**in case of***SERGEANT WILSON M. SABERON, U.S. MARINE CORPS**

(3) That while the debt was still due and payable the accused dishonorably failed to pay this debt; and

(4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Charge III is charged essentially in the alternative to Charge II. Each of the four complainants testified that they entered into some sort of arrangement with Sgt Saberon. If one does not believe that it was a scam but rather a valid transaction, then the transaction would result in Sgt Saberon's being indebted to each of these four Marines. Each witness testified or made statements that their arrangements included terms of repayment. In each case, Sgt Saberon failed to pay the debts. "The failure to pay (was) characterized by deceit, evasion (each witness testified or made statements that they made efforts to contact the accused and seek payment which the accused affirmatively avoided), false promises (see discussion pertaining to Charge II above), and other distinctly culpable circumstances (such as the superior-subordinate relationship) indicating a deliberate nonpayment [toward] (Sgt Saberon's) just obligations." Para. 71.c. Testimony regarding the Company Commander being required to discuss financial transactions among his Marines during a unit formation, as well as testimony that this controversy resulted in court proceedings before civilian authorities, satisfies the element of service discrediting conduct or conduct prejudicial to good order and discipline. Therefore, reasonable grounds exist to support each of the Specifications under Charge III.

**Box 21.****Additional Charge**

During the testimony of LCpl Mendoza, evidence came to light that supports an additional charge of obstructing justice. Obstructing justice is an enumerated offense under Article 134 of the UCMJ contained in Paragraph 96 of Part IV of the 2008 MCM. The elements of this offense, as described in the MCM are as follows:

(1) That the accused wrongfully did a certain act;

(2) That the accused did so in the case of a certain person against whom the accused had reason to believe there were or would be criminal proceedings pending;

(3) That the act was done with the intent to influence, impede, or otherwise obstruct the due administration of justice; and

(4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

**INVESTIGATING OFFICER'S REPORT**

*(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)*

*in case of*

**SERGEANT WILSON M. SABERON, U.S. MARINE CORPS**

LCpl Mendoza testified the accused approached him within the past two months. The context of this request clearly indicates the accused knew he was under investigation and that LCpl Mendoza's testimony would be in a criminal proceeding. It was Sgt Saberón's intent to cast doubt on the allegations against him through the use of perjured testimony. Given that Sgt Saberón remains a senior NCO to LCpl Mendoza, this act facially causes a degradation in the moral authority of this Sergeant of Marines. Therefore, reasonable grounds exist to support the additional charge as suggested in the specification drafted in IE 8.

**Other Remarks**

*Transcription of Testimony* -- In the event the charges in this case are referred for trial to a court-martial, I recommend the testimony of the witnesses before this Article 32 Investigation be transcribed verbatim and certified by a qualified court reporter. This transcript will facilitate trial preparation and cross-examination of witnesses before the court-martial and it is required by the rules of the Western Judicial Circuit.

*Witness Credibility* -- At least three of the complaining witnesses in this case, LCpl Mendoza, Cpl Brar and Cpl Velazquez, had substantial contact with each other before, during and after they made their respective allegations in this case. Whether this is an elaborate story contrived by these Marines is a credibility issue that may bear on the truth of their allegations. There are some inconsistencies between the witness testimonies presented. For example, Cpl Velazquez and LCpl Mendoza differ in the timing of the formation held where Command leadership instructed the troops to avoid financial transactions between senior and junior. The defense chose not to make any argument in this case. While this fact was not considered as evidence of the accused guilt, it leaves the record silent on the issue of witness credibility. In other words, the record contains insufficient evidence or argument for me to doubt the truthfulness of any witness or statement offered as evidence by the government. The most telling way to evaluate the likelihood of this scenario is to interview other senior and junior Marines in Repairable Maintenance Company. Additionally, a complete analysis of Sgt Saberón's own statements to his fellow Marines and in civil court proceedings may provide greater insight.

*Appropriate Forum* -- The maximum punishment for any one specification of the charged offenses or the recommended additional charge exceeds the jurisdictional maximum punishment for either a summary or special court-martial. See Article 19, UCMJ. The pattern of conduct revealed by the testimony of the alleged victims in this case suggests a callous intent on the part of the accused to exploit his status as a mentor, leader and senior NCO to wrongfully obtain money from his Marines. The money lost by Cpl Velazquez was earned as combat pay while he served in harm's way in Iraq. Extra pay during a deployment is a substantial source of a junior Marine's wealth. Stealing this money is wrong. This fact aggravates the severity of the offenses. Finally, the amount of the money at issue is large enough to warrant a felony prosecution. If Sgt Saberón were to make his victims whole, this would justify a substantially less severe disposition of these charges.

*Enclosure (21) to Investigative Exhibit 4* was not considered in the course of this investigation.

*The accused invocation of his rights to counsel or silence* were not considered in any respect.

ADDITIONAL SHEET