THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS
THE HONORABLE ROGER M. YOUNG, SR.

Appellate Case No.: 2020-000232

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Sep 04 2020
SC Court of Appeals

Charleston Laboratories, Inc.,

vs.

Womble, Carlyle, Sandridge & Rice, LLP,

RECORD ON APPEAL

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TRANSCRIPTS (continued)

10. Continued Transcript and Exhibits from the 30(b)(6) Deposition of Charleston Labs (George Scott) dated December 4, 2018.....1001

like I was in a position to raise these concerns at that point in my career.

Q Either during your tenure at Womble Carlyle or at the time that you transferred -- or went to work for Greenberg, did you ever communicate your concerns about -- or any concerns about Womble's representation of Charleston Labs to Mr. Bosse?

A Yes. In a sense that Mr. Bosse communicated to me his frustrations and my communications that I felt that that was not proper and that I wanted -- since we've chosen to take on Charleston as a client, I would make sure that I did not -- that I would take that responsibility as an attorney fully and not be defined of whether or not, you know, them being a startup, you know, that they could pay.

If that affected my billable hours in Womble Carlyle, so be it.

Q And you currently serve, I think as you mentioned, as in-house counsel for Charleston Labs; is that correct?

A Yes, sir. True.

Q When did you --

When did you commence that role?

A I guess November of 2015.
Q So you were at Greenberg for approximately a year before --
A Yes.
Q -- joining Charleston Labs?
A Yes, sir.
Q Okay. And does Greenberg still serve as Charleston Labs' corporate counsel?
A Yes, sir, to the extent we have one at this point. We have an in-house attorney now, so ...
Q What attorney at Greenberg currently serves as the relationship attorney for Charleston Labs matters?
A There's a number of attorneys that serve this relationship. It depends on the matter.
Q Are they in the Palm Beach area? Or where are those attorneys primarily located?
A So if it's a corporate Delaware issue, it would be Delaware; and if it's a litigation issue, it would be in West Palm Beach.
Q Okay. During your time as an employee of Womble Carlyle, did you ever have an occasion to review the SRA and the SHA?
A No.

Q So while you were working --

While you were working at Womble and representing Charleston Labs, there was never a time when you reviewed the SRA and that SHA?

A I don't believe at Womble Carlyle --

So just so -- so to clarify, I began doing anything on Charleston Laboratories a few months after July of 2012, that area. But that is --

So as an associate at Womble Carlyle, my first assignment was via Karl Knoll and assisting him with one particular, I think, amendment to the Certificate of Organization, and so my work was very narrow.

And then even when things kind of shifted more on my shoulders where I begin to head up that relationship when Karl stepped aside -- or left the firm, I believe, and I became the point person in that relationship, it was -- the main thing that I did was do a lot of cleanup, mainly to the Series B, not really going back to 2008 documents at that time.

I don't recall a reason why I would have to look at those documents at that time.

Q Okay. Would you agree with me that the

SHA and the SRA are foundational documents for the company?

A Yes.

Q Okay. And as the primary attorney handling the representation of Charleston Labs while you were at Womble, you never had occasion to review what those documents --

A I was not the primary attorney. Dean Rutley was the primary attorney handling the Charleston Labs case. I was his associate, and he pushed off Charleston Laboratories onto me, just like he pushed onto other people.

And as a young associate, okay, I did the task at hand. I was never given the responsibility to go through the whole --

I eventually got to that point after my relationship grew. But at Womble, I was an associate assigned to the project by Dean Rutley who was supervising attorney.

Q When would you have first reviewed the SRA and the SHA?

A The first time I reviewed both of those documents was when --

The first time I looked at those documents --

There's two major times when I first looked at those documents. There was a time when I looked at it thoroughly and a time when I looked at it as a general reference.

It would be when Thompson Hine, who was a law firm that actually represented Ray Takigiku back in 2010, e-mailed me in 2015 on behalf of Ray, a company called BioLOGIC, an individual called Chuck Schrepper asking to see our cap table.

Q What was the name of the attorney at Thompson Hine, do you recall?

A I don't remember who --

It may have been -- David Willibrand was cc'd on it and it was at his direction. It may have been another individual who actually sent the e-mail.

Q Okay. And that was an e-mail that you said you received in 2012?

A No, sir.

Q When did you say?

A 2015.

Q 2015.

A I was at GT.

Q Okay. And that would have --

You said that there was a time where you

had -- where you reviewed the SRA and SHA in detail and another time where you reviewed it for reference.

Would that have been the time you reviewed it in detail or for reference?

A For reference.

Q Okay. And that would have been the first time that you ever reviewed those documents?

A That would have been the first time it was relevant in the capacity of what was assigned to me as -- as -- as whatever duties was directed towards me to handle for Charleston; so wherever it was relevant for me to look at those.

Q And when would you have reviewed the SRA and the SHA in detail?

A When we received the letter from Ray Takigiku's attorney requesting to inspect our books and records.

Q That would be the attorney from Bray & Long?

A Yes. Jeff Long.

Q Where did the concept of the SRA originate?

A That is a very historical question, sir, that --

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I mean, probably from some innovative attorney that did a lot of venture capital deals years ago.

Q Okay. And I'll clarify. I'm not asking for the first time anybody ever considered drafting a document like this, but --

A Oh, I'm sorry.

Q No. That's fine.

As a concept for use by Charleston Labs, where did the SRA concept originate?

A Well, if --

Charleston requested that Womble provide --

Charleston wanted to deal with and manage the rights of the company and its stock with respect to its employees. So Charleston asked Womble to give a counsel in those respects. So -- so the idea that we needed something to that effect came from Charleston and then Womble advised accordingly.

Q Okay. And what about the concept of the SHA? With respect to adopting that document for Charleston Labs, where did that concept originate?

A It's the same thing. It's --

You know, the concepts with respect to

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the stock restrictions in both documents are manifestations of Charleston's desire to manage its stock and its employees considering their history with the company.

And so the SHA was something that, as a layperson, Paul appreciated and then gave it to Womble to use their expertise to draft that agreement if they -- if they, therefore, advised to to achieve Charleston's goals.

Q Okay. And if you look at Exhibit Number 5 in your notebook.

- - -

(E-mail with Attached Draft Stockholders Agreement, PL-0034596-610 previously marked Defendant's Exhibit Number 5 for identification.)

- - -

THE WITNESS: Yep.

BY MR. JORDAN:

Q And this is an e-mail from Mark Blomquist to Mr. Bosse in April of 2008.

Who is Mr. Blomquist?

A He's an individual from Landmark Financial.

Q And was Landmark Financial considering

investing in Charleston Labs?

A Yes.

Q And Mr. Blomquist provided Mr. Bosse with a draft Shareholders Agreement, correct?

A Yes, sir.

Q And am I correct in understanding that this SHA that Mr. Blomquist forwarded became the template for the SHA that was executed by the Charleston Labs founding shareholders?

A You'll have to ask Womble that.

Q So this document was provided by Mr. Bosse to Womble; is that correct?

A It was provided to Mr. Bosse.

So in this context of this e-mail, this is actually when they're still contemplating negotiating with Landmark Financial. But at some point when this relationship is not going to be where Charleston is going to go, Charleston appreciates a lot of the terms in the Stockholders Agreement and wants those provisions, however Womble decides to implement them, to be part of our structure and our stock.

Q Okay. Womble didn't draft the SHA, did it?

A They did, yes, sir.

- - -

(Plaintiff/Counter-Defendant Charleston Laboratories, Inc.’s Statement of Undisputed Material Facts In Support of Its Motion for Summary Judgment previously marked Defendant's Exhibit Number 68, for identification.)

- - -

BY MR. JORDAN:

Q We've talked about the Florida litigation and Greenberg's representation of Charleston Labs. And this is Exhibit Number 68, which is Charleston Labs' statement of undisputed material facts in support of its motion for summary judgment.

A Uh-huh.

Q If you'll flip over to the second page, paragraph 7: The Stockholders Agreement was not prepared based on a form proffered by the Company or its counsel, but instead was prepared based on a form proffered by Landmark Financial Corporation. Accordingly, Charleston is not the drafter of the Stockholders Agreement.

Do you see that?

A I do.

Q And with respect to who drafted the SHA,

the position that Charleston Labs took in the Florida litigation was that it was not the drafter of that agreement, correct?

A Incorrect.

Q Okay. Explain to me how that's so.

A This says that the form was proffered by Landmark Financial. It didn't say that Landmark drafted the form that we're proffering as the Stockholders Agreement in this --

Q Okay.

A -- in this agreement.

Then it says: Charleston is not the drafter of the Stockholders Agreement. It doesn't say that Womble is not the drafter. So -- so what -- so --

You know, I would say it's very consistent with the Stock Restriction Agreement, that there's a form that sits at Womble Carlyle that attorneys use for transactions. And I can almost guarantee, from my experience at Womble Carlyle, that the Stock Restriction Agreement did not originate at Womble Carlyle either. It came from some other place that some attorney brought to Womble Carlyle and they adopt that form for companies and they draft it on their

client's behalf.

This was a form that came maybe through Charleston from another third party and given to Womble to adopt it, draft it on Charleston's behalf.

So that's the explanation for that.

Q And it's your position --

Or it's Charleston Labs' position that where Charleston Labs writes to the federal court in Florida: Charleston is not the drafter of the Stockholders Agreement, that that does not mean that Womble is not the drafter of the Stockholders Agreement?

A Charleston and Womble are not the same. Charleston is Charleston Laboratories and Womble is its law firm.

Q Would you agree with me that during the representation of Charleston Labs, Womble acted as agent of Charleston Labs?

A In many cases, yes. But here we're talking --

This is specific, and this is in the context of this litigation this is fact, not in the context of defining the relationship between Womble and Charleston.

Q Why was it, if you know, that Charleston was making the point in the Florida litigation that it did not draft the Stockholders Agreement?

A That was -- that was in the sense of -- That was in a sense of --

I believe one of the defenses that the defenses -- that Dr. Ray was raising into the -- the fairness of the Stockholders Agreement, so ...

And this is just a list of facts, by the way, that came out in discovery, so it's not necessarily everything we're putting in here is proffering some sort of position but as a summary judgment motion.

So -- but that was -- it was more to the extent of, you know, this -- this -- the concept of the Stockholders Agreement, you know, that things that we -- that Charleston liked about the Stockholders Agreement came from a third party, right? So it wasn't Charleston draconianly making up these provisions to try to boohoo Dr. Ray.

Q If the court -- well, strike that.

So it's your position that Charleston Labs' position in this case that Womble drafted the Stockholders Agreement and its position in the Florida case that Charleston is not the

drafter of the Stockholders Agreement are consistent positions?

A Yes, sir.

- - -

(E-mail, PL-0021113, previously marked Defendant's Exhibit Number 6 for identification.)

- - -

BY MR. JORDAN:

Q Flip over to Exhibit 6, please. Is this an e-mail that you have reviewed before?

A Yep. Yes, sir.

Q And this is a May 27, 2008 e-mail from Paul Bosse to Dr. T, correct?

A Yes, sir.

Q And Bosse is sending to Dr. T the SHA and the SR -- SRA, correct?

A Yes, sir.

Q Okay. Did Charleston Labs review these documents before they were submitted to Dr. T?

A Charleston reviewed this with Womble Carlyle, as well as this e-mail with Womble Carlyle prior to sending it to Dr. T.

Q Okay. And, in fact, Mr. Bosse says that --

In this e-mail he says: Both the legal team and myself are comfortable with these documents, correct?

A Yes. I mean, typically Paul Bosse, to this day, if their legal team is comfortable with something, he's comfortable with it.

Q And what, if any, questions did Charleston Labs raise with Womble about the SHA and the SRA before they were sent to Dr. T for execution?

A The only -- the only thing --

The only things -- issues it would raise, it would just be around making sure that what Charleston desired from a layperson's perspective were accomplished in these agreements.

Q What did Charleston desire from the layperson's perspective with these -- with these documents?

A Stock restrictions on the stock, transfer, buyback provisions, and treating the three new founders or employees differently because they're new to the company as opposed to Paul, Ryan, and Chris and making sure that, you know, they earn their right to those shares.

Q Did Charleston Labs raise any concerns to

Womble about these documents before they were sent to Dr. T?

A Charleston Laboratories wouldn't have the sophistication to have any concerns beyond, you know, if they didn't just understand it, "hey, does this accomplish what we want to do?"

"Yes."

"Okay. Great."

Q Did Charleston Labs ask any questions or raise any concerns with Womble about how the documents, the SRA and the SHA, related to one another?

A Again, Charleston Laboratories did not have any in-house counsel at that point. It was relying solely on Womble Carlyle.

So the direction to Womble Carlyle from Charleston was please accomplish these things, and Charleston trusted Womble that these documents did that.

Q Did Charleston Labs raise any concerns with Womble about which one of these documents, the SRA or the SHA, would control under specific circumstances?

A Again, Charleston Laboratories would not be sophisticated enough to even understand that.

It was, "This is -- I'm relying on you, Womble Carlyle, to draft these documents with your expertise and experience in these situations, understanding that stock is important, employment is important, and the possibilities that could occur in the future in startups."

Q Did any founders or employees who were presented with these documents in 2008 raise any concerns about how the documents related to each other or which would control under specific scenarios?

A Yes.

Q Who was that?

A Bernie Schachtel.

Q When was that?

A Sometime in 2008.

Q What did Mr. Schachtel -- what concerns did he raise?

A Through his attorney, Dr. Schachtel raised a concern of how Bernie could keep -- whether or not he could keep his stock, depending on how he was terminated.

Q How was that issue resolved?

A I'm not sure what you mean by "resolved."

Q Well, Mr. Schachtel ended up signing the

SRA and the SHA, correct?

A Yes, sir.

Q Okay. And you said that his attorney raised questions about how Mr. Schachtel could keep his stock or his shares in the event that he was terminated, correct?

A Yes, sir.

Q Okay. So what explanation or comfort was offered to Mr. Schachtel or his attorney that led him to sign the documents?

A I believe Womble Carlyle, via Dean Rutley, was in communications with Bernie and expressed -- I'm not sure if he had phone calls as well, but he had definitely e-mail communication.

Q Did Mr. Schachtel or his counsel raise specific concerns about how these two documents operated with one another?

A I don't know.

Q Flip back to Exhibit 4. This is the SHA, and it's dated May 30th of 2008, correct?

A Yes, sir.

Q And this was signed effective May 30th of 2008 by all six of the founding shareholders, including Dr. T; is that correct?

A Yes, sir.

Q And to the best of your knowledge, is this the final version of the document that was in effect in 2010?

A Sitting here right now not reading every little detail of this, because I know there were some minor changes and that's why we had a third amended complaint, yes, I would say this is the final version.

Q Okay. And since you mentioned that, the third amended complaint substituted an exhibit for the correct version of the SHA; is that correct?

A That's right.

Q Okay. So it's fair to say that the document that is attached to that third amended complaint would be the final version of the SHA, correct?

A Correct.

Q Okay. All right. On Exhibit 3, this is the Stock Restriction Agreement that is signed by Dr. T, correct?

A Yes, sir.

Q And it's dated May 30th of 2008, correct?

A Yes, sir.

Q And to the best of your knowledge, is this the final version of that document?

A Yes, sir.
Q Flip to Exhibit 7.
- - -
(Stock Certificate Receipt, PL-0026873, previously marked Defendant's Exhibit Number 7, for identification.)
- - -
BY MR. JORDAN:
Q And is this a stock certificate receipt signed by Dr. T?
A Yes, sir.
Q Okay. And it shows that Dr. T received 210 shares of Charleston Labs' common stock effective May 30th of 2008, correct?
A Yes, sir.
Q Flip to Exhibit 8.
- - -
(Stock Certificate, PL-0026874-75, previously marked Defendant's Exhibit Number 8, for identification.)
- - -
BY MR. JORDAN:
Q And is this a copy of the stock certificate for Dr. T?
A Yes, sir.

Q And, again, it shows 210 shares of Charleston Labs' common stock dated May 30th, 2008, correct?

A Yes, sir.

Q And Mr. Bosse signed this document as secretary and president of Charleston Labs?

A Yes, sir.

Q Okay. The next page of this document is the back of the stock certificate.

Is that correct, that it's the back?

A Yes. It's a copy of the back.

Q And the paragraphs up at the top of this page, the first paragraph indicates that the shares are subject to the terms of the SHA dated May 30th, 2008, correct?

A Yes, sir.

Q And the second paragraph states that the shares are subject to the terms of the SRA dated May 30th of 2008, correct?

A That's correct.

Q So this stock certificate itself would indicate that the shares are subject to both the SRA and the SHA, correct?

A Yes, this particular one that was canceled. And so this is 12. Yep.

Q Okay. Who created the stock certificate?
A Well, I would say Womble printed the stock certificates.
Q Okay. Who would have drafted and added the paragraphs that are on the back page of Exhibit Number 8?
A Someone at Womble Carlyle.
Q And you mentioned that the first page of this stock certificate shows that it was canceled September 25, 2008, correct?
A Yes, sir.
Q And would that have been at the time of the stock split?
A Yes, sir. That should be around the time of the stock split.
Q Okay. Flip over to Exhibit 9.

- - -

(Stock Certificate, PL-0026879-80, previously marked Defendant's Exhibit Number 9, for identification.)

- - -

BY MR. JORDAN:
Q And this is another stock certificate for Dr. T that shows 420,000 shares dated September 25th of 2008, correct?

A Yes, sir.
Q Okay. So in September of 2008, there was a 2,000-to-1 stock split; is that correct?
A Yes, sir.
Q And Dr. T's 210 shares went to 420,000?
A That's right.
Q And this document, this stock certificate, shows that it was canceled on March 26th, 2010; is that correct?
A Yes, sir.
Q And that would have been at the time of Dr. T's termination from Charleston Labs?
A At the time of the repurchase of the stock.
Q Okay. If you'll flip to the second page of Exhibit 9. This is the back of the September 25th, '08 stock certificate.
And, again, it shows the same paragraphs that the earlier stock certificate included, correct?
A Correct.
Q Okay. And so it, again, indicates that this document is subject to the terms of both the SRA and the SHA, correct?
A True. But this was never delivered to

Ray.

Q This document was never delivered to Ray?

A No, sir. So Ray only had the certificate 12 from whenever he received it to, you know, sometime before September 25th, 2008 and never had another stock certificate.

MR. JORDAN: Everybody good? Anybody need a break or anything? You okay?

THE WITNESS: I'm all right.

BY MR. JORDAN:

Q At what point did Charleston make the decision to terminate Dr. T?

A Well, sometime by March 2010.

Q Who at Charleston Labs was responsible for making that decision?

A Paul Bosse.

Q For what reason or reasons was Dr. T.'s termination decided?

A Well, they're articulated in our complaint against -- in the Florida litigation.

Q Okay. Can you --

And you don't have to go through every single detail, but can you summarize the reasons for his termination?

A The fundamental reason was that he was

essentially absent for 10 or more months from everything. I mean, there was no correspondence. He wasn't showing up at the meetings or anything like that.

That was the fundamental reason that he was terminated.

Q Effectively, he wasn't doing the work that he was hired to do; is that correct?

A Correct.

- - -

(E-mail, WBD CHLAB0006170, previously marked Defendant's Exhibit Number 10, for identification.)

- - -

BY MR. JORDAN:

Q Look over at Exhibit 10. This is an e-mail from David Baddour to Dean Rutley dated March 16 of 2010.

A Uh-huh.

Q And David says: Spoke with Paul for about an hour this morning. They need to get rid of Ray Takigiku, their COO, but they want to take all of his stock back (vested and unvested). Let me know when you have a couple of minutes, and I'll update you.

This would have been about the time Charleston Labs made the decision to terminate Dr. T, correct?

A Yes, sir.

Q And it says: "They want to take all of his stock back (vested and unvested.)"

Is this an accurate statement of Charleston Labs' desire at this time?

A I would say --

I'm not sure. I don't think so. I think it's more accurate that we just wanted to buy back all of Ray's shares.

Q Okay. Help me understand the distinction there.

A Well, when you say vested and unvested, you're referring to the Stock Restriction Agreement, and what's attached here is only the Stock Restriction Agreement. And this is internal from David Baddour, Dean Rutley, so I guess you'd have to ask them.

But -- but it was Charleston's stance that we wanted to buy back all their shares. The vesting is irrelevant at that point because we're really talking about the Stockholders Agreement.

Q Okay. So it's fair to say that

Charleston Labs wanted to repurchase all of Dr. T's stock at the time of his termination, correct?

A Yes. And so --

And so that's why I mean this is not totally accurate, because the way I read this, they need to get rid of Ray, their COO, but they want to take back all the stock. It almost implies as if we can't do that.

Q Is it fair to say that Charleston Labs expected that the documents that Womble assisted them in drafting and executing would allow Charleston Labs to repurchase all of Dr. T's shares?

A I'm sorry. Could you say that one more time?

Q Sure. You've testified that at this time, in March of 2010, it was Charleston Labs' desire to repurchase all of Ray's stock, correct?

A Correct.

Q Was it Charleston Labs' expectation that the documents that Womble had drafted or assisted in drafting would allow Charleston Labs to do that?

A That was our expectation. That's what we directed Charleston to draft, so that was our expectation, yes.

- - -

(3/16/2010 Meeting Minutes, WBD_CHLAB0024370, previously marked Defendant's Exhibit Number 11, for identification.)

- - -

BY MR. JORDAN:

Q Look at Exhibit 11. These are minutes of a meeting of the board of directors of Charleston Labs from March 16th of 2010, correct?

A Yes, sir.

Q Okay. And this was a board meeting at which Mr. Bosse resolved to terminate Dr. T, correct?

A Yes, sir.

Q And at this board meeting it was determined that such termination would be for cause, correct?

A Yes, sir.

- - -

(3/22/2010 Meeting Minutes, WBD_CHLAB0024371, previously marked Defendant's Exhibit Number 12, for identification.)

- - -

BY MR. JORDAN:

Q Look at Exhibit 12. This is minutes of a meeting of board of directors of Charleston Labs from March 22nd of 2010.

Now, Mr. Bosse was the only individual present for these meetings; is that correct?

A He's the sole board member, yes, sir.

Q Is he still the sole board member?

A Yes, sir.

Q This document resolves that Charleston Labs would purchase Dr. T's shares under the SHA, correct?

A Yes. These are board minutes that Paul drafted by himself.

Q Okay. And that the fair value of the stock was .000005 for each of the 420,000 shares, correct?

A Yes, sir.

Q Okay. And it was resolved by Charleston Labs at this time to offer Dr. T a severance package of $70,000; is that correct?

A Yes, sir.

Q Where did the idea of paying Dr. T a $70,000 severance come from?

A Well, the number essentially came from

Paul's concept of attempting to --

You know, we're a startup company. We don't have funds. We don't pay -- at this point we're not paying our employees salary. So if -- at most, we try to cover their expenses because all of our money is going to development.

So to the extent we wanted to try to resolve any issues we had with Ray, we thought it fair to try to value the time that he spent with the company, and that was the number that we came up with.

Q Okay. And I understand that with respect to where the $70,000 as a number came from. What about just the idea of paying Dr. T any severance after terminating him for cause? Where did that idea --

A I mean, it's a combination of consultation with Womble Carlyle and Paul Bosse just during discussions on how to resolve this.

Q At this point had Dr. T indicated to Charleston Labs his belief that Charleston Labs did not have the right to purchase -- repurchase all of his equity in the company under the SRA and SHA?

A At March 22nd, 2010?

Q Yeah.

A Ray had communicated nothing to Charleston for 10 months, so ...

Q Okay. Did Charleston Labs' willingness to offer this severance to Dr. --

Well, let me start over. You mentioned a couple minutes ago to resolve any issues that Charleston Labs was willing to consider this severance payment.

What issues might that be?

A I mean, any time you terminate an employee, there's tons of things that can come from that employment, you know, including stock, which was the most critical thing because that was the only type of compensation, just to call it compensation, that he received.

So, you know, we're a startup company. You know, we are -- made the assumption probably that Ray was not gonna be happy for his termination and how are we going to handle his stock, so all things -- let's resolve all things mutual -- mutual, you know, non-disparagement, blah, blah, blah.

Q And at the time of this March 22nd, 2010 board of directors meeting, did Charleston Labs have any concern that it would not be able to

repurchase all of Dr. T's shares under the SRA and SHA?

A So Charleston Labs did not. Charleston Labs felt comfortable and knew that we had the right to buy back all their shares.

Now, Womble didn't necessarily -- wasn't absolutely on that same page, but Charleston Labs was always comfortable that we had this right.

Q And Womble had communicated to Charleston Labs that there was uncertainty about whether or not Charleston Labs could repurchase all the shares, correct?

MR. RICHTER: Object to the form.

THE WITNESS: Yes, sir.

BY MR. JORDAN:

Q At the time of the March 22nd, 2010 meeting, correct?

A Around this time.

Q Okay. And that uncertainty that we discussed that Womble had, that uncertainty was known by Charleston Labs, correct?

A No.

Q It was not?

A No -- so I just want to clarify. So Charleston was always certain that -- that we had

rights, but we, again, were listening to Womble Carlyle as our counsel.

So what I'm saying is: In the details of those conversations, it was a process. But at the end of the day, Womble advised us of how the -- how to go forth, and we relied that they were enforcing the rights that we thought we had.

So there was never a situation at this time where Charleston felt that Womble wasn't just going forth in its best legal minds to enforce the rights we thought we had.

So in the sense that it wasn't just a clearcut, there was just -- there was always a conversation, but ultimately we relied on counsel and took their lead, and we were always at this point confident that they were doing everything that we thought -- we thought that they should do.

Q Okay. In March of 2010, Womble had communicated to Charleston Labs that there was uncertainty concerning whether or not Charleston Labs could repurchase all of Dr. T's shares, correct?

A They -- they --

They came across as not as confident. We were more confident, but we said: Go repurchase

all the rights according to your expertise, and we relied on that.

- - -

(E-mail Chain, WBD CHLAB0019085, previously marked Defendant's Exhibit Number 13, for identification.)

- - -

BY MR. JORDAN:

Q Go to Exhibit 13, please.

All right. This is an e-mail chain between Mr. Bosse and Mr. Baddour, correct?

A Yes, sir.

Q And this is from March of two thousand -- March 25th of 2010, correct?

A Yes, sir.

Q The top e-mail from Mr. Baddour to Mr. Bosse and copying Mr. Rutley says: As we've discussed, if Ray doesn't agree to the package (and the contingent $70k payment} it is likely that he'll have a claim on the vested portion of his stock, correct?

A That's what it says, yes.

Q Okay. And then it continues: If CL does nothing to change the status quo, it is likely that Ray will simply sit tight and do nothing, until

such time as the stock becomes worth something, which is when he'll file suit.

And then it says: Again, the worst case scenario seems to be that he'll ultimately be entitled to the vested portion of his stock, correct?

A That's what it says, yes, sir.

Q Okay. What was Charleston Labs' understanding of why Dr. T might have such a claim that Mr. Baddour was referencing in this e-mail?

A We did not have an understanding.

Q Okay. Is it fair to say that as of March 25th, 2010, Charleston Labs knew from Womble Carlyle that Dr. T was likely to have a claim on the vested portion of his stock in Charleston Labs?

A No, sir.

Q Why is that not true?

A Because this -- that was not articulated to Charleston that --

You know, this e-mail says something --

You've got to understand. The -- all we knew is we wanted to buy back all the stock, and now what we are being told from our expert counsel is that if we wanted to clarify that, we'd have to

file suit.

Q And my -- my question for you, Mr. Scott, is: You said that Charleston Labs knew that it wanted to buy back all of Ray's stock. This e-mail from Mr. Baddour to Mr. Bosse confirms, does it not, that Charleston Labs might not be able to do that under the SRA and the SHA, correct?

A So -- okay. So --

MR. RICHTER: Object to the form.

THE WITNESS: I'm just trying to understand the question. The question is that this -- whether or not this e-mail confirms that, under the Stockholders Agreement and the Stock Restriction Agreement, that Charleston Laboratories cannot buy back all of their stock, and that's our advice that we got from Womble Carlyle?

BY MR. JORDAN:

Q Let me rephrase it.

David Baddour is informing Mr. Bosse, as of March 25th, 2010, that unless Dr. T signs the severance agreement and accepts the $70,000 payment, Dr. T is likely to have a claim on the vested portion of his stock, correct?

MR. RICHTER: Object to the form.

THE WITNESS: I agree with the words in this e-mail, what they say, that communications with Charleston from this is that, in order to get clarity on the stock, we may have to sue Ray.

BY MR. JORDAN:

Q Okay. I think you testified that you -- Charleston Labs didn't understand why Mr. Baddour would be explaining this; is that correct?

A Yeah. You'd have to ask Mr. Baddour why he wrote this e-mail.

Q Okay. Why wouldn't Charleston Labs want to know why Mr. Baddour was offering this advice?

MR. RICHTER: Object to the form.

THE WITNESS: Why wouldn't Charleston --

BY MR. JORDAN:

Q Did Mr. Bosse write back to Mr. Baddour and say, "Why are you saying this? I don't think that's correct," to your knowledge?

A So, again, Charleston does not have in-house counsel, right? So Charleston is relying on Womble Carlyle.

What Charleston knows is that we originally asked them to give us documents that give us the right to buy back all the shares under

circumstances. Then when the circumstances arose, Charleston asked Womble to repurchase all the shares.

So however they do that with the communicating, there's no expertise within Charleston to filter through that and try to decipher this, that, and the other.

All Charleston knows is we have a right to buy back all the shares, please go forth and do that.

If they give us an opinion that we may have to sue Ray to clarify that, okay, but at this time there's no in-house counsel at Charleston. There's no way to evaluate this and enter into some argument esoterically with our legal counsel.

So that's why I mean, there's -- there's no reason to do that. As long as we're -- Charleston is -- we were being told by Womble that they're going forth and they're doing what we're asking them to do competently, that is what it is.

They want to give us their legal stuff and give us e-mails about it, okay. But, understand, you tell us that we may have to sue somebody in the future to clarify this, that's more legal advice we'll have to consider.

Q Okay. Let me try and simplify it a little bit.

Charleston Labs desired for the SRA and the SHA to permit it to buy back all of Ray's shares, correct?

MR. RICHTER: Object to the form.

THE WITNESS: That's a very specific instance for a very broad --

I mean, Charleston directed Womble to draft documents, right, whether one, five, six, however they thought in their mind to do, and they came up with two, to give -- to manage its stock in multiple situations, including when an employee left the company.

BY MR. JORDAN:

Q Okay. Charleston Labs expected that at the time of Dr. T's termination, it would be permitted under the SHA and the SRA to buy back all of Ray's shares, correct?

MR. RICHTER: Object to the form.

THE WITNESS: It -- it --

What Charleston expected is that it had the right to buy back its shares -- buy back Ray's shares --

BY MR. JORDAN:

Q Okay.

A -- in those documents.

Q Okay. And this e-mail from March 25th of 2010 from Mr. Baddour to Mr. Bosse is telling Mr. Bosse that that might not be the case, correct?

MR. RICHTER: Object to the form.

THE WITNESS: My understanding of this e-mail is telling them that you would have to sue Ray to make it that case -- to make it -- to clarify that case, I guess.

BY MR. JORDAN:

Q So you read that when it says "it is likely that he will have a claim on the vested portion of his stock" to mean that Charleston Labs would have to sue Ray?

A To clarify? Yes. If Charleston's position is that we can buy back all his shares and counsel is saying he may have a claim, then that says we have to sue them to clarify that.

Q Or that Dr. T might sue Charleston Labs, correct?

A I don't -- that's not how I read this e-mail. I think it says more that we'd have to clarify that.

Q You read the e-mail that says Ray might have a claim as not suggesting that Ray might have a lawsuit?

MR. RICHTER: Object to the form.

THE WITNESS: In the context, yes.

BY MR. JORDAN:

Q Okay. Flip to --

MR. JORDAN: Actually, let's take a five-minute break and use the restroom.

THE VIDEOGRAPHER: The time is 10:41. We are going off video record.

- - -

(Whereupon there was a recess in the proceedings from 10:41 to 10:52.)

- - -

THE VIDEOGRAPHER: We're back on the video record. The time on the monitor is 10:52 a.m.

- - -

(3/26/2010 Letter with Attached Draft Redemption and Settlement Agreement and Release, PL-0025970-85, previously marked Defendant's Exhibit Number 14, for identification.)

- - -

BY MR. JORDAN:

Q Mr. Scott, let's look back at Exhibit Number 14, please.

Is this a document that you've seen before?

A Yes, sir.

Q This is the March 26th, 2010 letter from Mr. Bosse to Dr. T.

Who drafted this letter?

A This was a combination of --

Well, so Paul Bosse had drafted the original form and then gave it to Womble Carlyle to make any edits as they saw fit.

Q And this correspondence informs Dr. T that his employment is terminated with cause effective March 19th of 2010, correct?

A That is incorrect. This document reminds him. There was a previous letter to Dr. T that informed him.

Q Okay. So this is -- this is March 26th. There was some -- some communication to Dr. T on March 19th of 2010 that his employment was terminated with cause, correct?

A Correct.

Q And was that a phone call or a letter, do

you recall?

A That was a letter.

Q And who drafted that letter?

A Same process. Because Womble did not want to spend a lot of time on Charleston files, you know, Charleston had to do things on its own so that they would continue to work with us. So Womble drafted the document and then gave it to Womble Carlyle to review/edit as they saw fit in their expertise.

Q Was it that Womble didn't want to work on Charleston Labs' files or was it that Charleston Labs didn't want to incur additional legal fees in having Womble assist it?

A It was Womble did not want to incur outstanding fees and consistently communicated to Charleston that that was an issue of them doing anything for them.

And so, with that pressure, Charleston got -- got the understanding and tried to alleviate that stress for Womble as much as possible, but always relying on Womble's counsel.

Q This correspondence informs Dr. T that his full equity in Charleston Labs is being repurchased for the amount of $2.10, correct?

A Yes. It states: Please find enclosed a check in the amount of $2.10, which the company hereby tenders as payment in full for your equity.

Q And this letter included a draft Redemption and Settlement Agreement and Release; is that correct?

A Yes, sir.

Q And the redemption and settlement agreement that's attached references a $70,000 payment to Dr. T, correct?

A Yes.

Q And that would have been effectively a severance payment, correct?

A Yes, sir.

Q Okay. And Dr. T did not ever sign the settlement agreement, did he?

A No, sir.

Q Okay. Look at Exhibit 15.

- - -

(E-mail Chain, WBD CHLAB0006298, previously marked Defendant's Exhibit Number 15, for identification.)

- - -

BY MR. JORDAN:

Q This is e-mail correspondence between

David Willibrand and David Baddour at the bottom on May 6th of 2010 and then correspondence from David Baddour to Paul Bosse at the top on the same day.

After his termination, Dr. T was represented by an attorney named David Willibrand, correct?

A Yes, sir.

Q Okay. And Mr. Willibrand and Mr. Baddour communicated about possible resolution of any issues related to Dr. T's employment and termination, correct?

A Yes, sir.

Q Did Womble bill Charleston Labs for the time that Womble spent attempting to resolve the issues with Dr. T?

A My understanding is yes.

Q Did Charleston Labs pay Womble for that time?

A Charleston Labs has paid Womble every outstanding invoice.

Q Okay. As of May 6th of 2010, Charleston Labs understood that Dr. T was taking the position that Charleston Labs had not repurchased all of his shares in Charleston Labs, correct?

A I'm actually not sure what Ray's position was at this time. I know that Ray did not agree with Charleston.

Q Well, Mr. Willibrand at the bottom here is communicating to Mr. Baddour, is he not, that Ray believes he still has an ownership position in Charleston Labs, correct?

A Can you point that out to me?

Q Sure. Paragraph 3: My understanding is that Ray's ownership position is 3.5 percent.

A Yes.

Q And Mr. Baddour's communication to Mr. Bosse at the top here, the third sentence says: Your original offer was cash in exchange for giving up the stock, correct?

A I'm sorry. Can you point where --

Q Sure. You see the first sentence and then there's a parenthetical, and then it starts: Your original offer ...

A "The original offer was cash."

Q So it says: "Your original offer was cash (described in 2 below) in exchange for giving up the stock," correct?

A Yes. That's what it says.

Q So there's -- at this point in time

there's a question about whether or not Ray still owns or claims to still own stock in Charleston Labs, correct?

A I'm not sure. This is in the context of negotiations with David Willibrand, and you'd have to ask Mr. Baddour what he meant; is it a technical kind of exchange or was it in the context of negotiating and just generally saying, you know, if he's still saying he wants stock, we want to give him cash to resolve that issue.

To let you know, I don't really know.

Q Let me say this: In March of 2010, Charleston Labs had sent Mr. -- Dr. T a letter tendering the payment of $2.10 for all of his shares, correct?

A That's Charleston's position.

Q Okay. And so as of May of 2010, it is clear that Dr. T does not agree that Charleston Labs has effectively repurchased all of its shares, correct?

A That it's Ray's position?

Q Correct.

A Yes. He's communicated that.

Q Look at Exhibit 16.

- - -

- - -

(Draft Financial Statement, PL-0058273-84, previously marked Defendant's Exhibit Number 16, for identification.)

- - -

BY MR. JORDAN:

Q This is some sort of draft financial statement.

Do you know who would have prepared this document for Charleston Labs?

A This would be Cornelia who is independent valuator. This is -- these are financials --

Oh. These are 2010 financials which were being prepared. So this is fiscal year -- so 2010, so that means this is sometime 2011 when we were doing our option valuation.

And so these are the -- this is all in that time period when, you know, we're working to clean up our books and records and these are draft financials.

Q Okay. And I'm sorry. Is Cornelia an employee of Charleston Labs or outside --

A No. They're just a third-party engagement through our CPA firm.

Q And the information that's contained in

this financial statement regarding Charleston Labs, where would Cornelia have received -- or how would Cornelia have received or obtained that information?

A Womble Carlyle.

Q Okay. So Womble Carlyle would have provided the information necessary to prepare this financial statement?

A That's my understanding, yes.

Q Would any of the information come directly from Charleston Labs?

A I mean, some of the financial information obviously, but most of it not even necessarily because our CPAs really was managing our accounting.

So as far as the numbers, she wouldn't really get that from our accounting firm. The corporate stuff, you know, we would direct --

You know, again, we're not the experts. Womble is our corporate counsel. We would direct those kind of questions to our corporate counsel.

Q Would Charleston Labs have reviewed this document before it was finalized?

A Before it was finalized?

Q Yes.

A It may have, but only to the extent that we're really looking at, you know, our finance and stuff.

We would rely on our counsel for our corporate stuff.

Q Okay. Flip over to page 10 of this document, and it has a Bates label on the bottom of it 58283.

A Yes.

Q And the third paragraph from the top of this document says: "In March 2010, the relationship between the Company and one of its founders was terminated, at which time the Company repurchased 140,000 of his then outstanding 420,000 shares, which represents the number of shares that were not vested per the stock restriction agreement as mentioned above."

Did I read that correctly?

A I believe so.

Q Okay. And then at the bottom of the page, the second paragraph from the bottom says: "When the Company repurchased the common stock from one of the founders, as described above, the Company also began proceedings to redeem the remainder of the stock held by the former

shareholder"; is that correct?

A Uh-huh.

Q What are these proceedings that this is referring to?

A I don't know. It never occurred. This is a draft. It's not the final form.

Q Okay.

A And it's probably consistent with Womble instructing Charleston that we'd have to at some point file an action to clarify these rights.

Q You testified earlier about Mitchell Ryan at the Ryan & Ryan law firm, correct?

A Yes.

Q Look at Exhibit Number 17.

- - -

(E-mail Chain, WBD CHLAB0007510-12, previously marked Defendant's Exhibit Number 17, for identification.)

- - -

THE WITNESS: Uh-huh.

BY MR. JORDAN:

Q This is a copy of a March 10, 2011 e-mail from Mr. Baddour --

I'm sorry. If you look on the second page.

A Second page?

Q Yep. There is a Thursday, March 10, 2011 e-mail from Mr. Baddour to Mitchell Ryan and copying Mr. Bosse, correct?

A Yes, sir.

Q Okay. At this point in time was Mr. Ryan engaged to assist Charleston Labs on legal matters?

A To assist us on a very narrow aspect of making sure our books, specifically our corporate books, were clean for our valuation.

Q And part of that making sure they were clean would include making sure the company understood the outstanding shares of stock in the ownership of the company; is that correct?

A Well, not make sure the company understood it. Making sure it was accurately reflected in our stock ledger and everything else.

Q In this e-mail from Mr. Baddour to Mr. Ryan and copying Paul Bosse, Mr. Baddour says --

If you look on paragraph 2, it says: I'm certain -- in the middle of this paragraph: I am certainly comfortable as well assuming -- and "assuming" is underlined -- we do in fact get Ray's shares back.

Do you see that?

A I do see that.

Q And then two lines down it says: To be clear, even if we ultimately do not get all of Ray's shares back ...

Do you see that?

A Uh-huh.

Q So at this time in March of 2011, it was still unclear whether Charleston Labs had effectively repurchased all of Dr. T's shares back, correct?

A Unclear to David Baddour. It seems as though Dave Baddour was -- did have -- unclear to him.

Q Unclear to David Baddour and communicated to Charleston Labs, correct?

A Communicated to Mitchell David's uncertainty and suggestion that we would have to somehow file declaratory action to clear it, cc'd by Paul, yes.

Q Okay. And I just want to make sure I'm clear that your testimony is that, as of this date, March 10 of 2011, it's accurate that there was apparently -- that Mr. Baddour was apparently unclear about whether or not Charleston Labs had

effectively repurchased all of Ray's shares, correct?

A Reading this e-mail today, when I read it and see this, it is clear that in this conversation that -- that David Baddour, I guess, felt that Charleston had to do some step through some type litigation to get Ray's -- to clarify that we had Ray's shares.

Q Okay. And that position of Mr. Baddour's was communicated to Mr. Bosse on March 10th of 2011.

A Well, it was communicated to Mr. Mitchell.

Q Mr. Bosse was copied on the communication. It states this, correct?

A He was, correct.

Q Okay. Did Mitchell Ryan ever give an opinion to Charleston Labs about how the SRA and the SHA related to one another?

A No, sir.

Q Did Mitchell Ryan ever give an opinion to Charleston Labs as to whether Charleston Labs had successfully repurchased the shares?

A Actually, I don't -- we haven't waived any privilege with Ryan & Ryan and

Charleston Laboratories.

Q Okay. We'll get there in a minute. The first question is -- well, let me start here.

Did Charleston Labs ever seek from Ryan & Ryan an opinion as to whether or not Charleston Labs had effectively repurchased Dr. T's shares in March of 2010?

A Charleston engaged Ryan & Ryan to make sure our books -- our stock ledger, our books and records, were clean and up to date for our valuation.

Q Okay. And I appreciate that. My question is: Did Charleston Labs ever seek an opinion from Mitchell & Mitchell about whether or not it had effectively repurchased Ray's shares under the SRA and SHA?

A So I'm sorry. No.

Q Okay.

A We engaged him to clean our book and records. Whatever that entails, go forth and do.

Q Okay. And you have testified that Charleston Labs never sought such an opinion from Mitchell & Mitchell.

Did Mitchell & Mitchell ever offer any opinion as to whether or not the SHA -- whether or

not Charleston Labs had effectively repurchased Dr. T's shares under the SRA and SHA?

MR. RICHTER: Objection and instruct him not to answer. We've not waived privilege as to Ryan & Ryan.

I'm comfortable with dates of engagement and purpose of engagement, which your questions have been limited to, but now you're asking him about affirmative advice and I'm going to instruct him not to answer that.

MR. JORDAN: Okay. I have not asked about what the advice was, just whether or not advice was obtained. And so --

MR. RICHTER: So read your question again. I'm sorry.

MR. JORDAN: My position would be --

He has testified that he did -- that Charleston Labs did not seek advice from Mitchell & Mitchell about that issue.

My follow-up question was: Did Mitchell & Mitchell offer advice on that issue?

If his answer is yes, then I understand the assertion of the attorney-client privilege. But if his answer

is no, I think I can ask him the subject of it.

MR. RICHTER: I'm gonna ask you to table that question and let me come back to it. But my position right now is I think that's one step too far. I think that's gone beyond the date and purpose of the engagement.

MR. JORDAN: Consider it tabled.

MR. RICHTER: Okay. Thank you.

BY MR. JORDAN:

Q Okay. Flip over to the first page of this e-mail chain, still in Exhibit Number 17.

And there's an e-mail in the middle of this page on March 10th of 2011 from Mr. Baddour to Mr. Ryan, correct?

A Yes.

Q Okay. And the second paragraph says: "Clearly there is uncertainty about the legal status of those shares."

Do you see that?

A I do.

Q And the next sentence says: "For example, as I told Paul earlier this week, if our firm were asked to give a formal legal opinion on the capitalization of the company, we would very

likely have to qualify the opinion as to the legal status of Ray's shares (until the dispute is resolved)."

Do you see that?

A I do see that.

Q Was Charleston Labs aware of this position taken by Womble?

A Not -- I don't believe so, not in this context. I mean --

As he said, I have reviewed David Baddour's and Dean Rutley's e-mails. They testified that it was pretty clear that we purchased the shares, so there's no reason this e-mail is inconsistent with that. So there must be some context to this that Charleston didn't fully understand.

Q And that was --

This e-mail was communicated by Mr. Baddour to Mr. Ryan, correct?

A Correct.

Q And Mr. Ryan was counsel to Charleston Labs at the time, correct?

A With respect to our books and records cleanup for our valuation, yes.

Q Okay. And they were included in this

discussion in order that Mitchell & Mitchell could ensure that the cap table was correct.

A Womble was included in this discussion?

Q I'm sorry. Mitchell & Mitchell was included in this discussion so that Mitchell & Mitchell could verify that the cap table was correct.

A Mitchell & Mitchell was directing Charleston Laboratories' corporate counsel, Womble Carlyle, to do what it felt it needed to be done in order to update and clean up the books and records.

Q Including the cap table for Charleston Labs, correct?

A The stock ledger.

Q Did Charleston Labs pay Mitchell Ryan fees in order for Ryan & Ryan to assist in these legal matters?

A I don't believe it actually did.

Q Why not?

A Because Ryan & Ryan understood where we were as a company, as a startup company not having funds at that point in time, and so there was --

Ryan & Ryan's hope ultimately was that at some point this small engagement would come to

where they would fully become our outside corporate counsel.

So it was at a time when Charleston was debating leaving Womble fully and thought, okay, well, here's one small opportunity you can do. But ultimately, we decided they didn't have the capability to really handle Charleston Laboratories.

Q As of March of 2011 --

We've looked at a number of documents, but as of March of 2011, it was clear that there was -- at least in Womble's mind and as communicated to Charleston Labs, there was uncertainty about whether or not Charleston Labs had effectively repurchased Dr. T's shares, correct?

A No. Charleston Labs was always confident that Charleston repurchased and had the right to repurchase Ray's shares. That's why we wanted to make sure that our books and records were consistent with that, consistent with everything we thought was the case.

And so, you know, our counsel from Womble Carlyle was -- was that they were enforcing those rights accordingly.

So throughout this process, reading these e-mails now, if I were -- you know, although they're inconsistent with what I understand David Baddour and Dean Rutley said in their testimony, he is -- David Baddour is communicating uncertainty to Ryan & Ryan.

Q Okay. And to Paul Bosse on the prior e-mail, correct?

A To the extent that he's cc'd, but he's not talking to Paul Bosse.

Q Does -- is it your position that Mr. Bosse is not expected to read an e-mail in which he's cc'd?

A It depends who has that expectation. But when it comes to these --

We have two hired legal expertise trying to accomplish goals and Paul Bosse trying to change the world. I don't know if he's going through all these e-mails and reading them in looking to understand what David Baddour -- what he means by what he's saying and what Ryan & Ryan are saying.

They're both working on Charleston's behalf to accomplish the goals that Charleston wants.

Q As of March 2011 when Womble had

communicated this uncertainty about the repurchase of Dr. T's shares to Charleston Labs, did Charleston Labs ever advise Womble that it considered Womble to have breached a duty that it owed to Charleston Labs?

A Did Charleston Labs ever advise Womble that it breached a duty?

Q Yep.

A Absolutely not. Womble Carlyle was our counsel. This was -- this was a purely books issue. You know, it was just clean up the books. That's all it was.

If there was any issue that was going back and forth here that Charleston was aware of, it was the books need to be cleaned up, this is what needs to be done. Dave Baddour may have certain opinions about it. Okay. Hey, guys, get on the same page. You on the same page? We've got an updated stock ledger? Good. Let's go forth and conquer.

Q Did Charleston Labs ever communicate to Womble that the documents, the SHA and the SRA, were ambiguous?

A At this time, 2011?

Q Yes.

A No, sir.

Q Did Charleston Labs ever communicate at this time in 2011 to Womble that the documents were in conflict with one another?

A No, sir.

Q Did Charleston Labs ever communicate to Womble as of March 2011 that the documents, the SRA and the SHA, did not accomplish Charleston Labs' objectives?

A Yeah. Charleston wouldn't have had a reason to do that in 2011 because we -- we felt that Womble did what we asked them to do.

So we asked them to draft these documents and enforce them. According to what they did, they said they did. We had faith in them.

Q Look at Exhibit 18, please.

- - -

(5/24/2011 Letter with Attached Redemption and Settlement Agreement and Release, PL-0027070-79, previously marked Defendant's Exhibit Number 18, for identification.)

- - -

BY MR. JORDAN:

Q Is this a document you've seen before?

A Yep.
Q This is a demand letter drafted by Mitchell Ryan; is that correct?
A That's right.
Q Okay. Did this letter ever -- was this -- let me start over.
This was a demand letter to Dr. T, correct?
A Correct.
Q And as of May 24th, 2011, correct?
A Correct.
Q Did Mitchell Ryan ever send this document out to Dr. T?
A No, sir.
Q Why not?
A Because at that point we had --
Again, it was about cleaning up books and records. And in a perfect world it was initially discussed, you know, with Womble's comments of you have to file this action in order to clarify these things, blah, blah, blah; that to really have really clean books and records, if Ray could sign this, that would be great.
But ultimately, right now, we just had our books and records problem, which we cleaned up,

so let's keep that a books and records problem and not try to -- you know, we've played defense with our books and records. They're clean. It's consistent with what we did. Let's just go forward.

Q If you look at the last paragraph of this letter on page 3 --

A Uh-huh.

Q -- Mr. Ryan enclosed the redemption agreement and release; is that correct?

A The last paragraph, redemption agreement and release. Yes.

Q And he -- it instructs Dr. T to respond by signing this document by June 23rd of 2011.

Do you see that?

A Uh-huh. Uh-huh.

Q I know this correspondence never went out to Dr. T --

A Correct.

Q -- but Dr. T never did sign the redemption and settlement agreement, correct?

A Well, so this never went out to him, so correct, he never signed this redemption agreement and release agreement.

Q At any time, whether it was sent by this

correspondence or any other correspondence, he never signed it, correct?

A Well, I mean, eventually he signed the settlement agreement after the Ray -- the Florida litigation, but ...

- - -

(E-mail with Attached July 2012 Series B, PL-0029851-54, previously marked Defendant's Exhibit Number 19, for identification.)

- - -

BY MR. JORDAN:

Q Okay. Look at Exhibit Number 19. This is an e-mail that -- from George Scott -- from you to Bridget Berry in January of 2016.

Do you see that?

A Yes, sir.

Q And it attaches -- and I'm most interested in the attachment. It attaches the July 2012 Series B; is that correct?

A Yes, sir.

Q If you look at the disclosure schedule with Bates Number 29852.

A Uh-huh.

Q You see that?

A Uh-huh.

Q The bottom note on this page states: The company's former COO, Ray Takigiku, was issued 210 shares of common stock on 5/30/08. These shares were subsequently included in a 2000 for 1 stock split on 9/25/08, leaving Takigiku with 420,000 shares of fully diluted stock. On March 19, 2010, Mr. Takigiku's services were terminated. On March 26, 2010, the company tendered payment for all 420,000 of Takigiku's shares pursuant to the repurchase provision found in Article 2.2 of the Stockholders Agreement. While Takigiku has conceded that the company was entitled to repurchase 140,000 of his 420,000 shares pursuant to the Stock Restriction Agreement and its accompanying Vesting Schedule, Takigiku disputes the company's ownership of the remaining 280,000 shares. The company is presently considering pursuing a declaratory judgment action as to the aforementioned 280,000 shares. Until such time as the issue is resolved, the Company intends to refrain from issuing 280,000 of the 800,000 shares reserved in the option pool, correct?

A Uh-huh.

Q As of this date in July of 2012, Charleston Labs was aware that there was a question

as to whether or not Charleston Labs had effectively repurchased all of Dr. T's shares pursuant to the SRA and the SHA, correct?

A So Karl Knoll from Womble Carlyle is the master of these disclosure schedules. So this is -- this is his ultimate draft that he approves and goes through.

Obviously at this -- this is a continuation of the time that Womble Carlyle and Ryan & Ryan are working together with our books and records. So we had our valuation, we cleared our option pool, all connected to doing this Series B capital raise, which Womble counseled Charleston on. So this is the disclosure schedule to that.

And so in working with that, they came up with this language to describe it. Their reasons for that, I guess Karl Knoll would have to answer that.

Q Okay. Charleston Labs certainly had possession of this document in July of 2012, correct?

A Possession of this document. So, yes. I'm sure we were kept up abreast as far as this document was drafted. This isn't dated, so I'm not sure if it's the final draft, but ...

Q Look over at Exhibit 54.

- - -

(E-mail with Attached Revised Disclosure Statement, WBD CHLAB0011506-10, previously marked Defendant's Exhibit Number 54, for identification.)

- - -

BY MR. JORDAN:

Q We mentioned Karl Knoll a minute ago. He was an attorney at Womble, correct?

A Yes, sir. He's one of the -- my supervising attorneys, and at this time taking over this -- assisting Dean Rutley with the supervisory role of the Charleston Laboratories matters.

Q Okay. This is an e-mail from Paul Bosse to Karl Knoll in July of 2012, correct?

A Uh-huh.

Q Okay. And in this e-mail Paul indicates that he has -- in the second paragraph he says: I've attached the revised disclosure schedule, correct?

A Uh-huh.

Q Okay. Look at the next page at this disclosure schedule.

A Uh-huh.

Q And this is a disclosure schedule dated July 10 of 2012, correct?

A Yeah.

Q And it's got redline changes in it, correct?

A Uh-huh.

Q Do you know whose redline edits these are?

A I do not.

Q Okay. And, again, we see a note indicating the repurchase questions regarding Dr. T's shares, correct?

A Yes.

Q Do you know who drafted this note?

A I do not. I would assume, though, that --

I don't this for sure. We'll have to ask Karl Knoll. But Karl Knoll --

This looks like the redlines against the original draft from our Series A document in 2008. Since Womble Carlyle is the -- you know, does this for Charleston Laboratories, they would have created the redline.

Q Okay. Did Charleston Labs fire anyone else who signed the SRA?

A The Stock Restriction Agreements?
Q Yeah.
A So it was only Ray, Bernie, and John. So no.
Q Okay. This -- the last sentence of this note in the disclosure schedule says, quote: The Company is presently considering pursuing a declaratory judgment action as to the aforementioned 280,000 shares.
What does that mean?
A That means that Womble counseled us that, again, we'd have to file a dec action in order to clarify these rights.
Q What was Charleston Labs doing to consider taking such action?
A Not sure I understand your question.
Q Was Charleston --
Well, let me start here: Who at Womble Carlyle advised Charleston Labs that it might need to commence a declaratory judgment action?
A It's a pretty consistent theme throughout. So it went from David Baddour to at this point this is Karl Knoll because these are his disclosure schedule.

So whatever he authorized to do on this disclosure schedule ultimately is from Womble Carlyle.

Q So when this was in the disclosure schedule, was Charleston Labs talking to other law firms to consider bringing a declaratory judgment action in July of 2012?

A No.

Q Was Charleston Labs conducting its own research in any way into considering bringing a declaratory judgment action against Dr. T?

A I'm not sure. Not that I recall.

Q Dr. T was terminated in May of 2010; is that correct -- March of 2010.

A That's right.

Q Between March of --

Well, between the spring of 2010 and September of 2015, did Charleston Labs have any communication with Dr. T or any attorney representing Dr. T?

A So after the last communications with David Willibrand in 2010 via Womble, Dave Baddour, we did not hear anything from Dr. T until the e-mail I received from Thompson Hine that referenced Dr. T but not really directly from Dr. T

until the letter from Long & Long. That's when we first heard from Dr. T.

Q From Bray & Long?

A Bray & Long. I'm sorry.

Q Okay. Flip back to Exhibit 20.

- - -

(E-mail Chain, PL-0063786, previously marked Defendant's Exhibit Number 20, for identification.)

- - -

BY MR. JORDAN:

Q This is e-mail correspondence between Paul Bosse and an individual named Frederic Smith at Bradley Arant Boult & Cummings.

Do you know who Frederic Smith is?

A He's one of the attorneys from Bradley Arant which was the firm we engaged for tax -- for tax counsel.

Q Okay. The second paragraph of the top e-mail from Mr. Smith to Mr. Bosse says: "I am copying Dylan Black, one of my litigation partners. Dylan and I will be working together to review and advise the company on the stock ownership documents."

What is he referencing there?

A So what he's referencing is --

So we engaged Bradley Arant --

So Charleston engaged Bradley Arant to review tax consequences of paying our dividends to our shareholders.

In our Series A and Series B that Womble drafted for us, we gave all of our shareholders a preference. One asked for a Series A, two asked for a Series B.

We had the ability at this time to pay those preferences and convert them to common shares and remove the preference. And we had, you know, over 80 shareholders, and so our accountant advised that we get tax counsel to look at how to do that.

Now, specifically, one of our concerns was we wanted to look at -- you know, this is prior to the e-mail -- is to look at one of our shareholders called Chuck Schuppert who we knew had some association with Ray.

We didn't really know the ins and outs at that time, but we knew from one of our other employees that something was going on with a third party. And because we're in the pharmaceutical industry and we're -- we have opioid products, a company that still couldn't be commercialized, and

we wanted to make sure -- we had to protect our information from danger or raise the risk.

So we had stopped communicating with Chuck Schuppert prior to that. And one of the things we were contemplating is whether or not we had to pay Chuck Schuppert a dividend. And in going through that and evaluating that, Bradley came upon issues with stock ownership and asked -- and what they saw, they say, "You know what? We got to -- we got to look at this a little deeper, and this looks like it may be a litigation issue, so let me bring out a lit person with litigation expertise."

Q When you say they came across or upon issues related to stock ownership, what issues are you referring to?

A Well, when you --

MR. RICHTER: I'll object and ask him not to answer that question. We've not waived privilege as to Bradley Arant.

Again, the purpose and date of the representation is not a privileged matter but the affirmative advice given is.

BY MR. JORDAN:

Q Are you going to follow your counsel's

instruction on that matter?

A Yes, sir.

MR. STEPP: Is the question clear on the record? I just wanted to make sure.

BY MR. JORDAN:

Q Yeah. So the question was: Is --

Well, you referenced that in the course of Bradley Arant providing advice on tax issues, the issue of stock ownership came up, which they felt was important to address. And my question was: What issue regarding stock ownership came up, and that is when the privilege was asserted.

MR. JORDAN: Is that correct?

MR. RICHTER: Yes.

THE WITNESS: So just sort of clarify something that has nothing to do with the privilege.

As I said, we engaged them -- one of the --

Part of the engagement of a tax consequence is -- or paying our dividends was whether or not we had to pay one particular shareholder. In order to evaluate that, you have to look at stock ownership of that shareholder.

BY MR. JORDAN:

Q And related to that, the issue of what ownership interest Ray had.

A No. Chuck Schuppert.

Q Okay. Look at Exhibit 21.

- - -

(E-mail Chain, PL-0063857, previously marked Defendant's Exhibit Number 21, for identification.)

- - -

BY MR. JORDAN:

Q This is an e-mail, again, between Mr. Bosse and Frederic Smith at Bradley Arant.

The top e-mail from Mr. Bosse to Mr. Smith, the paragraph below bullet points 1 and 2 it says: "We ultimately tried to reach a mutual position with Ray - that Womble Carlyle handled unsuccessfully - and then a 2nd outside counsel we hired to look further into the situation agreed that the Company repurchased Ray's stock that vested per the executed Shareholders Agreements section 2.2 (v)," correct.

A That's what it says, yes.

Q And that issue was addressed to Mr. Smith at Bradley Arant, correct?

A This e-mail is written to them, yes.
Q Okay. And so Mr. --
Was Charleston Labs seeking advice from Bradley Arant regarding Ray's ownership of stock in Charleston Labs as of September of 2014?
A No, not necessarily.
Q Okay.
A So this --
The context of this e-mail is that we've engaged Bradley to give us tax advice with regard to our dividends. In that process, they are looking at our documents and see that our documents, as is clean as we say the case is for, you know, these tax purposes and these documents, and so they want to look further into that so they can advise us accordingly, right?
So when they -- this is in response --
MR. RICHTER: Let me instruct him to discontinue the answer. Getting to the substantive advice.
If we can go off the record for a minute and I can consult with him on privilege, we may just waive it --
MR. JORDAN: That's fine.
MR. RICHTER: -- and then you guys can

move on.

THE VIDEOGRAPHER: The time is 11:33. We're going off the video record.

- - -

(Whereupon there was a recess in the proceedings from 11:33 to 11:41.)

- - -

THE VIDEOGRAPHER: We're back on the record. The time is 11:41 a.m.

MR. RICHTER: So after consultation and it appearing that the advice from Ryan & Ryan and/or Bradley Arant may have actually waded into the area of the status of the Ray shares, we're gonna withdraw our objection on privilege as to those questions.

BY MR. JORDAN:

Q Mr. Scott, in light of that withdrawal from counsel, I'm gonna jump back to the Mitchell Ryan line of questions for a moment.

I believe I asked whether or not Charleston Labs sought advice from Mitchell Ryan or his law firm as to whether or not Charleston Labs had effectively repurchased all of Dr. T's shares under the SRA and the SHA.

What is your answer to that question?

A We did not seek advice on that, no.

Q Did Mitchell Ryan or any other attorney in his firm give any opinion to Charleston Labs on that issue?

A Yes. They said that we should be comfortable that we did that based on what they ultimately accomplished for the books and records.

Q And that would have been in the time period of March of 2011 when that advice was rendered; is that correct?

A Yes, sir.

Q And when you say "comfortable," the advice that -- or the opinion that Mr. Ryan or his firm gave you was that Charleston Labs should be comfortable that Charleston Labs had effectively repurchased all of Dr. T's shares at the time of Dr. T's termination.

A Yeah. I don't know how specific -- I mean, we --

They understood that Charleston's intention was to repurchase all of Ray's shares pursuant to the Stockholders Agreement. One of the many things that they had to do to clean up was to make sure our books and records reflected that

fact. And when they were completed, they said, "We've done what we feel reflects that fact."

I mean, that's ultimately what it amounts to.

Q Okay. So they were comfortable that as of March of 2011, everything that had been done to that date had effectively repurchased all of Dr. T's shares.

A Our books and records reflected that and we should be comfortable with that. We can be comfortable. We can choose to ...

Q Was the advice that Mitchell Ryan and his firm were -- was giving to Charleston Labs, was that advice that the shares had effectively been repurchased or was it that the books and records accurately reflected that the shares had been repurchased?

A I'm not sure if the advice from Ryan & Ryan goes to that fundamental detail. What I do know is that the advice they gave us is that Charleston felt comfortable that, you know, our books and records were cleaned up, we can feel comfortable at this point that -- you know, feel confident and strong to go forth. Because this is -- again, this is before --

This whole cleanup was for a valuation for the option pool in getting to our Series B. And now it's -- that's cleaned up, we can go forth and be comfortable with our Series B.

And as you see, they worked with Womble and Womble drafted the disclosure schedules to reflect everything and we can go forth and conquer that.

Q So comfortable including the disclosures about Dr. T's shares, correct?

A That's right, to make our representations in the disclosure statement accurate and feel comfortable that those representations didn't create an issue for us.

Q Let me ask you about -- back to the Bradley Arant, what we were talking about earlier.

If you'll look at Exhibit 21. Again, this is the e-mail from Bosse to Frederic Smith at Bradley Arant, and it says: We ultimately tried to reach a mutual position with Ray - that Womble Carlyle handled unsuccessfully - and then a 2nd outside counsel we hired to look further into the situation agreed that the Company repurchased Ray's stock that vested per the executed Shareholders Agreements section 2.2 (v), correct?

A Uh-huh.

Q Is the other --

The second outside counsel this refers to, is that Mitchell Ryan's firm?

A Yeah. So -- and I'll give you the context of this e-mail.

So we engaged Bradley Arant to evaluate the tax consequences of paying our dividends how we were -- deciding how to pay them. Through that process, Bradley Arant came across this Ray situation and essentially had reservations about the clarity of the ownership of stock and brought that to Charleston's attention.

So when that happened, Paul's like, "Wait. You know, Womble said we did this. Ryan & Ryan cleaned up our books and records" --

That's what he means when --

We didn't hire outside counsel to look further into this situation. We hired counsel to clean up the books and records, and as a result of that, they ended up looking further into this situation.

And -- and, you know, they agreed. They made us feel comfortable that we're good, and now you're telling us we're not good?

Q Okay. So what Mr. Bosse is communicating to Mr. Smith is that it was Mitchell Ryan's law firm that agreed that the company repurchase Ray's stock that vested per the executed Shareholders Agreement, correct?

A Yeah. They agreed with the --

They agreed with what Charleston and Womble did, you know, according to Charleston, you know, and they came through, cleaned it up and said, "Yeah, you're good."

And then they said, "Ah, I don't know. This doesn't look as clean."

Q Okay. And so this was in September of 2014 when -- or around that time --

A It's '15 -- or 2014. Yes. September 15, 2014, yeah.

Q When Bradley Arant raised this concern, correct?

A Yes.

Q Did Bradley Arant offer any opinion as to whether Charleston Labs had repurchased all of Dr. T's shares?

A They did not render an opinion saying whether or not one way or the other. They essentially just communicated that it was a hairy

situation, quote, unquote, and it wasn't as clean as Charleston felt.

Q Did Charleston Labs pay Bradley Arant for the work Bradley Arant performed?

A Yes.

Q Other than Womble Carlyle, Mitchell Ryan's law firm, Bradley Arant, did Charleston Labs seek or obtain advice from any other lawyers or law firms related to Dr. T's termination or the repurchase of his shares in Charleston Labs?

A Well, so at this particular date I was still at Womble Carlyle, and so this continued on till when I went to GT. And -- and then it also was the same time when we started getting contacted by Thompson Hine and then ultimately Ray, so it all happened at the same time. So I went to GT. Then I continued kind of my -- my looking --

This brought me into -- this is about the time I started looking at everything in detail.

Q Okay. So Greenberg would be included in that list of law firms that advised Charleston Labs about the effectiveness of the repurchase of Ray's shares.

A Yeah. For that time period that I was

there, yeah.

Q And just to clarify, back on Bradley Arant, when you were talking about Bradley Arant advised Charleston that these documents weren't as clean as they could be and there was, I think you said, a hairy situation about how they worked, would that have been around this September of 2014 time period that we see this e-mail from Mr. Bosse to Mr. Smith?

A It would have been after. This is a gathering information.

Q Okay. Do you know when it would have been?

A Without looking at further e-mails, I don't know. I mean, clearly sometime substantially after that. I mean ...

Q Flip over to Exhibit 22.

- - -

(9/22/2015 Letter, PL-0010437-38, previously marked Defendant's Exhibit Number 22, for identification.)

- - -

BY MR. JORDAN:

Q You've referenced this a couple times, I believe. This is the September 22nd of 2015 demand

letter from Bray & Long on behalf of Mr. -- Dr. T, correct?

A Yes.

Q And this would have been received by Charleston Labs in September of 2015?

A Yes. This was received while I was at Greenberg Traurig.

Q Okay. And so consistent with the position that he had taken in the months after his termination, Dr. T was again asserting that Charleston Labs had not prepurchased all of his shares in the company, right?

A I'm not sure how consistent the position in this letter is with the position in 2010. But he is asserting that he has ownership of stock of Charleston Labs.

Q Okay. And he's demanding access of certain books and records of the company, correct?

A That is correct.

Q Did Charleston Labs respond to this demand letter in writing, do you recall?

A Yes. I believe I did from Greenberg Traurig.

Q Okay. On the Florida litigation, the original complaint in the Florida action that

Charleston Labs filed against Dr. T in Florida state court was filed November 6th of 2015, and I'll represent that to you.

And Greenberg represented Charleston Labs in that litigation, correct?

A That is correct.

Q And Charleston Labs was the plaintiff, correct?

A Correct.

Q Okay. Before filing the Florida litigation, did Charleston Labs discuss with Greenberg the possibility that any claim that Dr. T would have against Charleston Labs would be barred by the statute of limitations?

A No.

Q You don't remember that issue being discussed at all?

A No. Because the -- well, I'm sorry. Any claim that Charleston would have against who?

Q So Dr. T had been terminated in 2010, right?

A Yeah.

Q And this demand letter comes in 2015, correct?

A Correct.

Q Was there any discussion between Charleston Labs and Greenberg that Dr. T -- any claim that he might have would be barred by the statute of limitations.

Do you recall that?

A Yeah. I believe there was discussion that they may have a statute of limitations issue. But, you know, ultimately, there was ambiguity that needed to be cleared up and that's why we filed a declaratory action.

Q Why didn't Charleston Labs wait to see if Dr. T filed a lawsuit against it?

A For lots of reasons. So first, as a corporation, Delaware corporation and as a company, Charleston has a right and a fiduciary duty to make sure that there's clarity in its stock ledger. So there was a justiciable issue about ownership of our stock. So that's -- that's --

You know, so now --

Before it was just a book and records issue. Now we have a party proactively claiming interest in our shares. That's a whole different risk profile of clarity in our stock -- stock ledger. That's just a fundamental thing.

Secondly, we are a pharmaceutical company

and we are in the midst of an opioid crisis and we have an opioid product that we're expecting to be marketed in the United States. We have some information at this time that we got back in 2010, very loose information, and now with e-mails I received prior to this communication from some other third parties that some third parties believe they have some interest in our company, and most -- a lot of times individuals in these industries that are like those conglomerates have physicians or other type of doctors that have interest which could possibly prescribe our product, okay?

One of the biggest exposures for pharmaceutical companies, especially in an opioid crisis, is physicians doing prescriptions that are outside the norm of reasonableness. We have to have -- we have to track that and regulate that. We can't have people believing they have interest in our company when they do not; another reason why our fiduciary duty is to clarify our stock ledger, okay?

So then, for all those things, we get a letter from Bray & Long, an attorney in -- licensed in South Carolina, okay? And I believe his office may be in North Carolina.

Q I think they're in Charlotte.

A They're in North Carolina, so ...

And Ray is in Kentucky or Ohio. I can't remember. And they reference certain things in here that, you know -- you know, isn't -- this is where, you know -- stuff that just is very inconsistent with how we understand the facts.

So knowing that there's this ambiguity in these documents that needs to be clarified and there's ambiguity and the enforcement of those documents need to be clarified, instead of sitting back and waiting for them to file suit in some jurisdiction which we don't know they're going to file, where we're not located, is unpredictable, we decide to proactively clarify the ambiguity in the courts of Florida where we are located and frame the context of litigation through declaratory judgment.

Q You mentioned that there were some third parties that were claiming interest in Charleston Labs; is that correct?

A We -- we --

We had a general understanding at this time that some third parties were claiming interest through communication of Thompson Hine and then

some vague communication from another employee in 2010.

Q How was bringing litigation against Dr. T in Florida helpful to Charleston Labs to address third parties that were claiming interest in Charleston Labs?

A Because the understanding was that Ray attempted to transfer his shares to third parties, and that is why they were claiming they had interest in Charleston.

So if you clarify the fact that Charleston repurchased all of Ray's shares, that in effect would undermine that contention that he had transferred any shares.

Q And what third parties were at issue?

A I mean, at this time we could only --

I mean, I think there was BioLOGIC which was mentioned in the e-mail, you know, and then I'm not sure if we knew the name SIDIS at this point, but maybe PrimeDP we may have known at that point.

Q Prior to filing the Florida litigation, did Greenberg offer Charleston Labs an opinion as to whether or not Charleston Labs had effectively repurchased Dr. T's share -- Dr. T's shares under the SHA at the time of his termination?

A No. No. And that would have been me, really. So I don't -- I don't believe that I advised Charleston an opinion --

My opinion was that --

My opinion was, yes, I believe that -- I believe that -- I believe it's actually a little bit -- there's a justiciable argument or general argument on our side that we did not do that. I would --

I would vigorously argue that we did do that, but we need to clarify that, so let's go forth and clarify that.

Q Was -- and you said that would have been you at Greenberg Traurig. Was that opinion --

- - -

(Discussion held off the record.)

- - -

BY MR. JORDAN:

Q You said that would have been you at Greenberg Traurig.

Did you offer the opinion that you just articulated to me to Charleston Labs?

A Yes, sir.

Q Who at Charleston Labs did you communicate that to?

A Paul Bosse.

Q Did Greenberg advise Charleston Labs to commence the Florida litigation against Dr. T?

A Yes. We decided to commence the Florida litigation against Dr. T.

Q Okay. And was that --

You just articulated the reasons for doing that in Florida as opposed to waiting for Dr. T to sue somewhere else and all of that.

Was it Greenberg's advice to Charleston Labs to take that action?

A Yeah. They agreed with that action.

Q Flip back to Exhibit Number 2. In the Florida litigation, Greenberg filed documents on behalf of Charleston Labs, correct?

A Correct.

Q Okay. And this is the third amended complaint in the Florida litigation, which we've looked at, correct?

A Uh-huh.

Q And so Greenberg would have filed this document on behalf of Charleston Labs, correct?

A Yes, sir.

Q Did Charleston Labs review this document before it was filed with the federal court?

A Yes, sir.
Q Who at Charleston Labs would have reviewed this document before it was filed?
A Myself.
Q Are the statements and the allegations contained in this third amended complaint true and accurate?
A Yes, sir.
Q Look at paragraph 24, please.
In the Florida litigation we see in paragraph 24 Charleston Labs represented to the federal court in Florida: "Following the termination of Takigiku's employment, Charleston exercised its right under the Stockholders Agreement to repurchase all of Takigiku's Shares for "Fair Value" (as defined and calculated in accordance with the Stockholders Agreement)."
Do you see that?
A Yes, sir.
Q And was that a true statement at the time Charleston Labs made that representation to the court in Florida?
A Yes, sir.
Q And it's true today, isn't it?
A Yes, sir.

Q Charleston Labs never thought otherwise, did it?

MR. RICHTER: Object to the form.

THE WITNESS: I'm sorry. Repeat the question.

BY MR. JORDAN:

Q Charleston Labs never thought contrary to that statement, did it?

A Yeah. Charleston always believed it would be purchased through the Stockholders Agreement and asked Womble Carlyle to do as such.

Q And that issue that's articulated in paragraph 24 of the third amended complaint, that issue was litigated in the Florida case, correct?

A Of whether or not we in fact --

Q Correct.

A -- purchased, Stockholders Agreement?

Q Correct.

A Yes.

Q And Charleston Labs was successful on that point, was it not?

A We were successful in convincing the court that we effectively did adequate -- took adequate action enforced under the Stockholders Agreement to repurchase.

Q Okay. And convincing the court of that point was part of the way in which Charleston Labs obtained summary judgment in its favor, correct?

A Correct.

Q Look at paragraph 27.

A Okay.

Q Charleston Labs represented to the court in Florida that: "As a result of the termination of Takigiku's employment, and the repurchase by Charleston Labs of the Shares, Takigiku was no longer a shareholder of Charleston Labs as of March 26, 2010, and has not been a shareholder of Plaintiff since at the latest March 26, 2010."

Do you see that?

A I do.

Q And that was true at the time Charleston Labs made that representation to the Florida court, wasn't it?

A That's right. That's Charleston's position.

Q And it's true today, isn't it?

A That's Charleston's position today.

Q And that issue was litigated in the Florida litigation, correct?

A Well, that was our position. And they

may have disputed that on the other side and ultimately, yes, in a general sense, litigated.

I don't know if that is actually determined one way in the declaratory judgment, specifically anyway.

Q And Charleston Labs succeeded in the Florida litigation in its position that it had terminated Dr. T's employment and effectively repurchased all of his shares, correct?

A Yes. Charleston Laboratories won summary judgment to clarify the ambiguity.

Q Look at Exhibit 23, please.

- - -

(Plaintiff Charleston Laboratories, Inc.’s Motion to Strike Defendant’s Affirmative Defenses and Incorporated Memorandum of Law previously marked Defendant's Exhibit Number 23, for identification.)

- - -

BY MR. JORDAN:

Q This is a motion to strike defendant's affirmative defenses filed by Charleston Labs in the Florida litigation, correct?

A Yes, sir.

Q And this was a document filed by Greenberg Traurig on behalf of Charleston Labs, correct?
A Uh-huh.
Q Okay. Did Charleston Labs review this document before it was filed?
A Yes, sir.
Q And who at Charleston Labs reviewed this document before it was filed?
A That would be me.
Q And if you can wait till --
A I'm sorry.
Q You know where I'm going, so it's easy to do.
A I'm sorry.
Q Just wait until I finish and I'll try to do the same.
Are the statements and allegations contained in this motion to strike affirmative defenses true and accurate?
A Yes, sir.
Q Look at paragraph 3. Paragraph 3 states: "Under the Stockholder's Agreement, upon termination of Takigiku's employment, the Company had the right to repurchase all shares held by

Takigiku for 'Fair Value,'" correct?

A Yes, sir.

Q And that was a representation that Charleston Labs made to the federal court in Florida, correct?

A Yes, sir.

Q And that was a true statement at the time Charleston Labs made that representation, correct?

A That's right.

Q And it's true today?

A Yeah, that we had that right and how is that relevant, but yes.

Q Okay. And that issue was litigated in the Florida litigation?

A I don't know if the right that we had was litigated ultimately, but, yes, I mean, ultimately it was resolved and it was confirmed that we had that right, yes.

Q And Dr. T contested that you had the right to repurchase all of his shares, correct?

A Yes. That term was litigated.

Q And Charleston Labs succeeded on that point to win summary judgment, correct?

A Correct.

Q Give me just one minute.

MR. JORDAN: Can we go off the record for just a minute?

THE VIDEOGRAPHER: Sure. The time is 12:08. We're going off video record.

- - -

(Whereupon there was a recess in the proceedings from 12:08 to 12:11.)

- - -

THE VIDEOGRAPHER: We're back on the video record. The time is 12:11 p.m.

BY MR. JORDAN:

Q Mr. Scott, generically, in the Florida litigation when Greenberg would draft documents to be filed with the court, it's my understanding that you were the employee and representative of Charleston Labs that undertook the responsibility of reviewing those documents prior to them being filed; is that correct?

A Yes, sir.

Q Okay. And with respect to all of the filings in the Florida litigation, did you review those documents prior to them being filed?

A Yes, sir.

Q Okay. And as part of that review, did you ensure that the documents were accurate as to

the information they provided to the court in the Florida litigation?

A Yeah. To the extent of my knowledge. I'm not a litigation expert, so ...

Q In terms of the positions that Charleston Labs was taking in that litigation, did you ensure that the representations made to the court were consistent with --

A Yes.

Q -- accurate -- accurate statement of the positions?

A Yes.

Q Okay. And as you sit here today, you're not aware of anything in any of the filings in the Florida litigation that was not true, correct, and accurate; is that correct?

A Yes, sir.

Q All right. Look at Exhibit Number 24, please.

- - -

(Charleston Laboratories. Inc.’s Motion for Summary Judgment previously marked Defendant's Exhibit Number 24, for identification.)

- - -

BY MR. JORDAN:

Q Charleston Labs moved for summary judgment in the Florida litigation; is that correct?

A Yes. Yes, sir. Both sides moved for summary judgment.

Q Okay. And this document is Charleston Labs' motion for summary judgment, correct?

A Yes, sir.

Q Okay. Look at page 3 of this document. Charleston Labs on the bottom of this page represented to the court that the Stockholders Agreement and the SRA gave the company concurrent rights to repurchase the shares, correct?

A Yeah. That was our argument to resolve the ambiguity.

Q Okay. And that argument was successful, correct?

A Ultimately, the -- the court used our argument we put forth in order to resolve the ambiguity in the documents.

Q Isn't it accurate that in the Florida litigation the court found there wasn't an ambiguity in the documents?

A No, that's not true. If you read the order --

Do you have a copy of the order?

Q I believe so.

A Okay. Can we turn to it?

Q Yeah. It's 26.

A 26. Just give me a minute to find it.

Q Sure.

- - -

(Order on Motions for Summary Judgment previously marked Defendant's Exhibit Number 26, for identification.)

- - -

THE WITNESS: So on page 7 on the top, the judge here says: In order to harmonize the Agreements and give each effect, the Court finds that the SHA and the SRA created concurrent rights of the Company to repurchase the shares.

So that means that the documents themselves were not harmonized. There was ambiguity, which is why we had to file the dec action to clarify the ambiguity, and we put forth arguments of why they should be clarified in our favor, and the court agreed

with our arguments to interpret as concurred rights.

BY MR. JORDAN:

Q It's Charleston Lab's position that the court's statement: In order to harmonize the Agreements and give each effect, is evidence that the court was determining that the agreements were ambiguous?

A Well, recognizing that there was ambiguity in the purpose of the dec action in the first place.

So just to answer your question, there was ambiguity clearly two ways -- or multiple ways that the documents and the actions of Charleston could have been interpreted which were based on legitimate principles. Charleston had our position, because it was our position that we repurchase the shares pursuant to the Stockholders Agreement. We organized that point and the court sided with us.

Q And the argument by Charleston Labs was what Paul Bosse had understood since 2008 and what he testified about the documents, correct?

MR. RICHTER: Object to the form.

THE WITNESS: That we had the right to

repurchase Ray's shares and that we did in fact do what was legally required to purchase the shares.

BY MR. JORDAN:

Q And those were concurrent rights under those two documents, correct?

MR. RICHTER: Object to the form.

THE WITNESS: That -- that was --

That was the argument put forth in front of the court to clarify any ambiguity to that effect.

BY MR. JORDAN:

Q And the court agreed that the documents created concurrent rights, correct?

A In order to harmonize the agreements, that's how you have to read those documents.

Q Is there any reference in the summary judgment order that is Exhibit 26 that you're aware of where the court says "the court finds the documents are ambiguous"?

A A specific reference that says these two documents are ambiguous? No. What I'm saying to you is that the nature of the declaratory action is because there is ambiguity, and we are requesting that the court clarify the ambiguity.

Q Look over at Exhibit 27, please.

- - -

(Summons and Complaint previously marked Defendant's Exhibit Number 27, for identification.)

- - -

BY MR. JORDAN:

Q This is the complaint that Charleston Labs filed against Womble in this case, correct?

A Yes, sir.

Q And are you the individual at Womble -- Excuse me. Are you the individual at Charleston Labs who has responsibility for reviewing and approving documents that are filed in this litigation?

A Yes, sir.

Q And did you review this document before it was filed?

A Yes, sir.

Q And as you sit here today, are the representations and allegations made in this complaint accurate, true, and correct?

A Yes, sir.

Q And as you sit here today, you're not

aware of anything that is in this complaint that is not an accurate statement; is that correct?

A Correct.

Q Look at paragraph 49, please. This paragraph references the termination letter -- the second termination letter to Dr. T, correct?

A Correct.

Q Okay. And it says: Womble again failed to make reference to either the SHA or SRA and failed to advise Bosse of the importance of making clear which Agreement was being utilized for purposes of determining Takigiku's post-employment ownership rights, correct?

A Correct.

Q What is Charleston Labs' understanding about the importance of making that clear?

A Well, if you make that clear, then Ray would clearly understand under which and how and what rights Charleston's exercising to repurchase his shares. And in this case, being the Stockholders Agreement, then we know exactly its rights to go through any process with respect to that repurchase.

Q Are you saying that if different language had been included that Charleston Labs believes

would have made these documents more clear, that Dr. T would not have claimed he was still a shareholder in Charleston Labs?

A I don't know what Dr. T would have claimed, but no suit would have been filed.

Q How do you know that?

A Because it would have been a frivolous lawsuit, and I don't believe an attorney would have ever attempted to or threatened to file a frivolous lawsuit.

Q So assume that these documents are drafted perfectly, that there's no -- Charleston Labs has no issue with them, there's no question about them, and Dr. T shows up --

A Wait. I'm sorry. That Charleston Labs had no issues with them?

Q Assume that the documents are drafted exactly as Charleston Labs contends they should have been.

A Okay.

Q And Dr. T is fired in 2010.

A Okay.

Q He shows up in 2015 and says I am a shareholder.

A Uh-huh.

Q Is it your position that Charleston Labs would not have filed a lawsuit against him to clarify that issue?

A That's right.

Q And why is that?

A Because our --

It would have been --

They would have --

It would have been clear at that point that that was the case because of --

Because if the documents would have said pursuant to section 2.2, whatever, in the Stockholders Agreement, you know, we are enforcing the company's right to repurchase all your shares and the board of directors have determined that the fair value is X and here is the check for that purpose, right, at that point you -- now you have clarity in where the rights are, how they're exercised, and any case -- any case to dispute that would be a frivolous case.

So there's no need to clarify. There's no longer ambiguity.

Q Didn't Dr. T dispute fair market value of the shares as well?

A In the Florida litigation are you asking?

Q Correct.

A In the Florida litigation he did dispute --

Well, I don't know. He disputed the value that we repurchased the shares at.

Q Okay. And that could have necessitated a filing against Dr. T even if the documents had been drafted exactly as Charleston Labs claims they should have been, correct?

A Incorrect. The Stockholders Agreement has a provision for disputing the fair market value. So if you would have --

If the letter was drafted properly, it also would have given him -- you know, according to the Stockholders Agreement, and actually done properly, it would have also referenced that he had a certain amount of days to dispute the fair market value.

If he disputed the fair market value within that time period, it would have went through a process. If there wasn't a resolution, we would have hired an independent appraiser. If he didn't agree to that, he would have hired an independent appraiser and we would have had two. And, ultimately, it would have been tied to the ultimate

resolution.

Any -- any claim or potential after that would have been: A, it would have only been fair market value, not an ownership of stock issue, and it would have been frivolous at that point because it would have been clear communication in the letter and the process that he already agreed to would have been completed.

Q So it's Charleston Labs' position in this case that if the documents had been drafted as they should have been, those documents would have been litigation proof?

A From frivolous lawsuits? Yes.

Q Is it Charleston Labs' testimony that if the documents had been drafted as Charleston Labs claims they should have been, that Dr. T still would have signed them and agreed to the SRA and the SHA?

MR. RICHTER: Object to form.

THE WITNESS: If the documents were -- the SRA and SHA were drafted as Charleston contends they should have been drafted, that Dr. T would have still signed those documents?

BY MR. JORDAN:

Q Correct.

A I can't --

We're kind of playing Monday morning quarterback, but I don't -- I can't right now think of a reason why if they cross-referenced each other and described which one was superior over the other -- except for the fact it would have been a lot more clearer to him that the Stockholder Agreement clearly says we can repurchase all your shares upon termination at fair value and that if you do leave the employ, you're not gonna walk away with stock outside of some waiver of rights. But I can't pretend, you know --

You know, he clearly had these documents. He read both of them, so I don't know if it would change that.

Q Well, we know that he signed the documents that are Exhibit 3 and Exhibit 4 to this deposition, correct?

A Correct.

Q What we don't know is, if the documents had been the drafted in some other manager, had included some other provisions, we don't know whether or not he would have signed them, do we?

MR. RICHTER: Object to the form.

THE WITNESS: Well, he looked at both

documents.

MR. STEPP: Calls for speculation.

THE WITNESS: Yeah. It --

MR. RICHTER: No, it mischaracterizes -- mischaracterizes his testimony. You're talking about whether he would have signed the original SRA, SHA. He's answering whether he would have signed the severance agreement when it was offered to him.

MR. STEPP: Then let's clarify.

BY MR. JORDAN:

Q Let's clarify that.

A Please do.

Q What I'm getting at is: Exhibits 3 and 4 to this deposition, which is the SRA and the SHA, they are signed by Dr. T.

A Okay.

Q Correct? We know that he signed those documents.

A He did.

Q Okay. If the SRA and the SHA had been drafted differently, as Charleston Labs claims it should have been --

A Uh-huh.

Q -- do you have any evidence that Dr. T

would have signed those documents?

MR. RICHTER: Same. Object to the form.

THE WITNESS: I mean, would have signed the documents that he signed?

BY MR. JORDAN:

Q Correct.

A Assuming they were drafted better?

Q Well, differently. If they had different provisions, as you claim they should have --

A I mean, to the extent --

To the extent that he did sign those agreements, right, and what -- our criticism of those agreements in this particular case -- we haven't opened up to other criticisms -- but this particular case is cross-reference and clarifying when you're talking about the same subject matter.

I'm not -- I cannot --

No, I can't speculate of whether or not if a different fact happened in the past it would change the future. But the substantial -- you know, as far as what Ray communicated to Charleston as far as any questions he had, I'm not sure those would have changed, right? But ...

Q Let's flip to Exhibit 24, please. If you'll look at page 18 of this document.

And, again, this is Charleston Labs' motion for summary judgment, correct?

A Yes, sir.

Q That it filed in the Florida litigation, correct?

A Yes, sir.

Q The first full paragraph says: "Finally, the Stockholders Agreement and the SRA are not ambiguous," correct?

A As I read, yes.

Q And that was the position that Charleston Labs took in the Florida litigation, correct?

A In the context of a declaratory action which, by nature, says that there is ambiguity. We argued to clarify the ambiguity that they are not ambiguous and then argued to support that answer, as you see in the motion.

Q Help me understand why you would need to clarify an ambiguity when there is no ambiguity.

A There is an ambiguity. The documents created ambiguity, right? And then triggered -- triggered by, you know, the effects of the -- or because of the ambiguity in the documents, the letter that -- you know, enforcing the rights

amplified that ambiguity which created an issue on where, you know, two reasonable minds could differ on the effectiveness of Charleston's repurchase.

We wanted to file a declaratory action to get the court to declare that our position was the correct one. And when you do that in litigation, you make your point and you argue your point, and that's what we were doing here, support to clarify the ambiguity.

Q So there is an ambiguity.

A There was until we got a declaratory action.

Q There was an ambiguity. So when you say in this document: The Stockholders Agreement and the SRA are not ambiguous, that was just a lie to the federal court.

A No. That was the position to clarify an ambiguity to argue to the court to get declaratory action.

Q But what you're testifying to right now, Mr. Scott, is that that's not true, correct?

A No. What I'm testifying is that's our position and that there is a logical other position that is in -- at Dr. Ray's summary judgment motion,

okay? And our position is that it is not ambiguous and their position is it was ambiguous both are legitimate claims, and we're asking the court to clarify it.

Q Your position was it's not ambiguous, his position was it is ambiguous, and the court decided what -- which? That it was not ambiguous, correct?

MR. RICHTER: Object to the form.

THE WITNESS: The courts decided that -- declared it was not ambiguous. They gave us a declaratory action which we were looking for because there was ambiguity, and the court clarified the ambiguity the way we argued for it.

BY MR. JORDAN:

Q If you look at the complaint in this case, which is Exhibit Number 27, paragraph 33.

Paragraph 33, Charleston alleges that Womble: "Drafted ambiguity, confusion and conflict into the Agreements which Womble prepared"; is that correct?

A That is correct.

Q And that is completely inconsistent with what Charleston Labs told the federal court in Florida, is it not?

MR. RICHTER: Object to the form.

THE WITNESS: It is not inconsistent. It is actually very consistent. So like I said --

Actually, so because of this ambiguity that was drafted into the documents, it necessitated a declaratory action to clarify that ambiguity. And as I've said over and over again, we had a position on how to resolve that ambiguity and to argue that it wasn't in fact ambiguous.

Another legitimate argument that it was justiciable at the time we had declaratory action to clarify was that it was ambiguous. But we needed the court to clarify that because of the fundamental ambiguity that the documents -- how they were drafted.

BY MR. JORDAN:

Q Let me ask it, to make sure we're clear, Charleston Labs communicated to the federal court in the Florida litigation that the documents are not ambiguous, correct?

A That -- to communicate our position, yes.

Q Okay. Charleston Labs has communicated to a court in South Carolina that Womble drafted

ambiguity into the documents, correct?

A Yes.

Q Those are inconsistent positions, are they not?

A They are consistent positions.

Q How are they consistent? They're opposite.

A The fundamental purpose of a declaratory action is to clear up ambiguity; to clear up -- to clarify the rights that are ambiguous. That's why you file a dec action.

So by its nature, you're saying --

By its nature, you are saying that there is ambiguity, okay? There is a justiciable issue going on, okay? One party says one thing, another party says another thing. "Dear Court, please give us a decision to clarify this. Here's our position. After discovery, here's what we say this discovery says."

So that's very consistent. And consistently we say, "Hey, you, Womble, created this ambiguity to put us in a situation we had to clarify in a dec action," which Womble's been telling us all along you were gonna have to do.

Q Well, Mr. Scott, if that's the case, then

why -- why did Charleston Labs represent to the federal court in Florida that the documents are not ambiguous? Why didn't Charleston Labs say, "These documents are ambiguous. We need you, Court, to clarify them"?

That's what you're saying to me now, correct; that you needed the court to clarify the ambiguity, correct?

MR. RICHTER: Object to the form.

THE WITNESS: When we -- when we filed -- I don't know how many times I've answered this question.

When we filed the dec action, we are saying to the court, "Please clarify."

That's -- that's what a dec action is.

BY MR. JORDAN:

Q Please clarify what?

A Clarify the rights in this stock. The documents are ambiguous and what we did was ambiguous, which is clearly an issue here. Clarify.

Q Okay. So your position is that you were communicating to the Florida court that the documents are ambiguous.

A By filing a dec action.

Q And that you're communicating to the Florida court that the documents are not ambiguous.

A No. What I'm saying to you is that those positions are consistent. That's what I'm saying to you.

Q All right. Flip to Exhibit 26, please. And this is the order in the Florida litigation granting summary judgment in favor of Charleston Labs and denying it with respect to Dr. T's motion, correct?

A Yes, sir.

Q Okay. And this was entered on November -- excuse me -- September the 13th of 2016 it appears?

A Is it 2016?

Q Looks like on the docket sheet up there.

A Uh-huh. Yeah.

Q And if you look at the last page, it's signed by the judge on September 12 of 2016.

A Yes, sir.

Q And pursuant to this order, Charleston Labs was successful in -- in persuading the court that Dr. T -- Dr. T's shares in Charleston Labs were effectively repurchased by Charleston Labs pursuant to the SHA, correct?

A Yes.

Q And that, as of that date -- as of the date of that repurchase, Dr. T was no longer an owner of Charleston Labs, correct?

A Yes. This order clarified that.

Q Okay. Was there any better possible result for Charleston Labs to receive in the Florida litigation?

A Well, a better result would be never have to be in the Florida litigation.

Q Okay. Is there a better result that Charleston Labs could have received in the Florida litigation?

A Dismissal after the -- you know, just --

Not dismissal, I guess, since we're the plaintiff. A -- I don't know what's --

Whatever the first dispositive of disposition of the case could be.

Q Did Charleston Labs file a motion for judgment on the pleadings in this case?

A No, sir.

Q Did it ever discuss that possibility with Greenberg?

A No. It was never a possibility because the -- it was never -- the likelihood of success on

pleading the motion was very low.

Q And who communicated that to you, or was that just knowledge that Charleston Labs had?

A It's -- it's a combination of Charleston Labs and GT strategizing.

Q All right. Page 6 of this order. No. Same exhibit. Sorry. Page 6.

A Oh, I'm sorry.

Q All right. You see where it says section III: Discussion?

A Yes.

Q Second sentence there says: "The Court finds that the repurchase provisions of the SHA are valid and enforceable independent of the SRA."

Do you see that?

A I do.

Q The next sentence says: "There is no reasonable dispute that Plaintiff complied with the SHA's repurchase procedures, based on the admissible evidence presented."

Do you see that?

A "There is no reasonable dispute" --

Oh, "dispute that Plaintiff complied with." I do see that, yes.

Q Okay. And over on page 7, the first

sentence, which you've pointed out before says: "In order to harmonize the Agreements and give each effect, the Court finds that the SHA and the SRA created concurrent rights of the Company to repurchase the shares in the circumstances enumerated in the SRA and the circumstances enumerated in the SHA."

Do you see that?

A I do.

Q And you're not aware of anywhere in this order where the court says these documents are ambiguous, are you?

A That this order says the words "these documents are ambiguous"?

Q Correct.

A No. I would not expect that if they -- that the court decided to clarify any ambiguity as we argued that it would say that.

Q You don't think that if the court determined that the documents were ambiguous, the court would say, "I find that the documents are ambiguous and, therefore, require clarification based on the evidence"?

MR. RICHTER: Object to the form.

THE WITNESS: The court would say that if

it decided to side with Dr. Ray's interpretation of how to resolve the ambiguity.

BY MR. JORDAN:

Q Well, why --

If the court was finding that there was an ambiguity, why would it only say that if it was resolving the ambiguity in Dr. T's favor.

MR. RICHTER: Object to the form.

THE WITNESS: You know, honestly, I don't know. I'm not a judge, but this is an order and it's saying, "This is what I find. This is the declaration." Boom.

BY MR. JORDAN:

Q If you look at page 9.

A Uh-huh.

Q Section B of the court's order, the first sentence says: "Plaintiff has established that it materially complied with all of the requirements of the SHA in exercising its repurchase rights."

Do you see that?

A I do.

Q Okay. Flip to page 12, please. This is section 3 of the court's order. It says: "Plaintiff's Tender Letter to Defendant provided

sufficient notice that Plaintiff was exercising its repurchase rights under the SHA."

Do you see that?

A I do.

Q Mr. Scott, isn't it accurate that the court in the Florida litigation found that the documents did exactly what they were intended to do?

MR. RICHTER: Object to the form.

THE WITNESS: I don't know. I don't understand the question. I don't know --

I don't think this order says that these documents --

I don't think anywhere in this order it says these documents did what they were intended to do.

BY MR. JORDAN:

Q Well, you testified earlier that -- that Charleston Labs' expectation for the documents that Womble had assisted in drafting was that, at the termination, Charleston Labs -- termination of an employee or shareholder, Charleston Labs would be able to repurchase all of the shares, correct?

A We wanted documents that would, another specific example, give us the right to repurchase

all the shares upon termination of an employee, yes.

Q Okay. And this order finds that, as to Dr. T, that's exactly what those documents did, correct?

A What it finds is that Charleston's actions -- Charleston. Not its counsel -- but Charleston's actions were adequate on a legal level to provide this declaratory judgment to do that.

Q Okay. You've testified --

It's your testimony that Womble drafted the SRA and the SHA, correct?

A Correct.

Q It's your testimony that Womble reviewed and assisted in the termination letter that repurchased the shares, correct?

A Correct.

Q Okay. So it's not your position, is it, that Charleston Labs did everything it was supposed to do only and not its counsel. That's not correct, is it?

A My position is that Charleston Labs --

Charleston Labs held a meeting without the -- not because Womble told them, and determined the fair value per the terms of the Stockholders

Agreement and drafting minutes in that effect and calculated the fair value to support these actions here, which ultimately it did. It's justified that it's sufficient under the documents, so that's why I have to say I have to clarify that. This is looking at what Charleston's actions did, not what Womble advised Charleston to do. Because if that was the case, in this case it would have been a different case.

So we -- what Charleston did, right, to enforce its rights, okay, was legally sufficient to repurchase Ray's shares.

Q How does what Charleston did differ from what Womble advised Charleston to do?

A Well, so Charleston --

When I look at all the documents we went through today, it's clear in looking back, as in Monday morning quarterback eyes, that since --

If I look at the Stockholders Agreement, what I would advise Charleston to do is have a meeting to determine the fair value. We go through section 2.2 or whatever in the Stockholders Agreement, write a letter that specifically references that, your fair value, your board minutes, give notice to Ray specifically about his

opportunity to dispute pursuant to the Stockholders Agreement, you know. And, in addition, if it went back any further, I would cross-reference the documents to make sure that, not only with Ray in mind in the letter, but if he for whatever reason decided to look at one document, it would refer to the other document so he would understand his full rights in that situation, so ...

Q Okay. I just want to make sure that I understand this point, and that -- that is that what Charleston Labs desired out of these documents with respect to Dr. T is that they give Charleston Labs the ability to repurchase all of Dr. T's shares in the event he was terminated, correct?

A That's -- yes. We desired that. We also desired that it's done in a way that doesn't force us to do that and have to spend $2 million to clarify it.

Q What Charleston desired out of these documents it got in the summary judgment order, correct?

A After we suffer $2 million of getting it? Yes, we also need clarified as well.

But when we hired Womble Carlyle, what we

wanted was competent legal counsel that created these rights in a way that did not put you in a situation where you had to litigate to clarify these rights.

Q And it's your position that it's possible for corporate documents to be drafted in a way that makes them not subject to litigation.

A Not subject to frivolous litigation.

MR. JORDAN: Let's take a lunch break.

THE VIDEOGRAPHER: The time is 12:46. Let's go off the record.

- - -

(Whereupon there was a recess in the proceedings from 12:46 to 1:47.)

- - -

THE VIDEOGRAPHER: We're back on the video record. The time on the monitor is 1:47 p.m.

BY MR. JORDAN:

Q Mr. Scott, before the lunch break we were discussing some of the different documents in the Florida litigation and in this litigation. I want to back up a little bit to the Florida litigation.

I know that you testified that a portion of what Charleston Labs was seeking to do in that

case was clarify its rights with respect to Dr. T and the SHA and the SRA.

What other issues was Charleston Labs seeking to address in the Florida litigation?

A That was the issue in the Florida litigation.

Q That was it?

A I mean, there's other related factors that we had to explore considering the counterclaims and defenses, but, fundamentally, that was the issue.

Q Okay. What were the other factors that --

- - -

(Discussion held off the record.)

- - -

BY MR. JORDAN:

Q What were the other factors that you had to explore in connection with the Florida litigation?

A Well, the counterclaim that Dr. Ray had was fundamentally that he owned shares pursuant to the Stock Restriction Agreement. And so when you file a claim and you have counterclaims, to the extent that any of that was going to bear out in

their favor, you had to look a the Stock Restriction Agreement. There was -- there's --

He also disputed, you know, the for-cause termination which was critical in the Stockholders Agreement. There's also other provisions in the Stockholders Agreement under which Charleston has a right to repurchase the shares, which includes transfer restrictions. So, you know, all those things -- just establishing the facts.

But all of it amounts to whether or not Charleston repurchased all of Ray's shares.

Q Flip back to Exhibit Number 2, which is the third amended complaint.

A Uh-huh.

Q And if you flip to paragraph 21.

A Uh-huh.

Q And in this paragraph Charleston alleges that Dr. T abandoned his employment duties and was terminated for cause, correct?

A Correct.

Q Okay. And so whether his termination was for cause or not for cause was an issue that arose in the Florida litigation; is that correct?

A I don't know if it arose in the Florida litigation, but it was a disputed issue because the

counterclaim was that the Stock Restriction Agreement superceded the Shareholders Agreement. That was their interpretation of the ambiguity.

So on top of that fact, cause was defined the rights of repurchase under the Stock Restriction Agreement. So it became an issue that also needed to be clarified.

Q And then paragraph 22 refers to the cause for termination of Dr. T's employment and lists itemized reasons for Dr. T's termination, correct?

A Correct.

Q So that issue was -- as well was litigated in the Florida litigation; is that correct?

A The cause issues weren't --

So I just want to make sure I'm clear here. This --

Fundamentally, this case was about Charleston's repurchase of all Ray's T -- Dr. T's shares, and his termination is what triggered that right.

And you have to look at both agreements to understand the standards by which needed to be met for any trigger. So, therefore, if you're disputing cause, okay, and they're also looking --

So to the extent that we would fail under clarity to find ambiguity to the Stockholders Agreement in our argument and our stance in how you're gonna resolve that, okay, you also have to plead to -- to -- to the extent that we had to go under the Stock Restriction Agreement and you needed cause to do that.

Q Okay. And Dr. T disputed in the Florida litigation that he was terminated for cause, correct?

A Correct.

Q Okay. Look at paragraph 30. That paragraph states that: There is abundant evidence supporting a reasonable belief that Takigiku would use the Company's proprietary and confidential information for improper purposes, correct?

A Correct.

Q And that was an issue raised in the Florida litigation; is that correct?

A Yeah. Related to his seeking our -- to inspect our books and records.

Q Paragraph 31 refers to --

One of the cusses of termination of Dr. T was his attempt to assign his interest in Charleston to SIDIS; is that correct?

A That was one of the causes -- secondary causes, yes.

Q Okay. And so that issue was also raised in the Florida litigation and was disputed by Dr. T; is that correct?

A That's right. He disputed a for-cause termination and the premises thereof.

Q Were there any other issues that you're aware of that were litigated in the Florida litigation beyond those that we've just discussed?

A I mean, if it's -- if it's --

I mean, to the extent that they're not related to what we pled in this complaint, no, we litigated all issues that related to what was pled in this complaint.

Q Okay. After the federal court granted Charleston Labs' motion for summary judgment in November 2016, Dr. T filed an appeal, correct?

A Correct.

Q Okay. And during the pendency of the appeal, Charleston Labs and Dr. T ultimately reached a settlement agreement, correct?

A That's correct.

Q Okay. Look at Exhibit 28.

- - -

- - -

(E-mail Chain, PL-0054130-131, previously marked Defendant's Exhibit Number 28, for identification.)

- - -

BY MR. JORDAN:

Q On the first page of this document is an e-mail from Bridget Berry at Greenberg to you dated October 19, 2016, correct?

A This is to me? Oh, it's a forward of an e-mail, yes.

Q And it's her --

It's her proposed e-mail to Jeff Long who was Dr. T's lawyer, correct?

A That's correct.

Q Okay. And it has to do with attempts to resolve the pending appeal with Dr. T, correct?

A Yes.

Q Okay. And in the second paragraph -- well, let me start on the first paragraph.

It says: Charleston’s effort is to resolve all issues with Dr. T and SIDIS and PrimeDP, because the facts of which we are all aware show that they are inextricably intertwined, then it would not make business sense to resolve

some but not all of the issues.

A Uh-huh.

Q So the settlement discussions that arose following Dr. T's appeal included more than just Dr. T's ownership of Charleston Labs, correct?

A The discussions?

Q Correct.

A Well, no, not necessarily. So -- so at the beginning --

So also recall one of the reasons why we needed to clear the ambiguity and get a judgment to clarify the ambiguity in regards our shares was because we needed to clarify who and who did not have interest, and make sure people that didn't have interest knew they didn't have; or if they did, we would know so we could act accordingly as a -- having a product in the opioid crisis.

So since there was an appeal and there was an issue that's related to his for-cause termination, which is a separate issue, but of transferring his shares, okay, we would have to deal with that, especially because at this point it's a little uncertain exactly the ramifications of that, and -- and through this process we wanted to try to get Ray initially to speak on behalf of

SIDIS and other entities so we could not just clarify his shares, but that there were also -- also, that these other third parties also don't have interest in our shares.

So because there was this understanding that Ray transferred shares instead of, you know -- That the case only had to do --

The Florida litigation only had to do with the repurchase of Ray's shares. It didn't have to do with clarifying ownership of third parties.

So what we wanted to do is -- because they are in practice, not necessarily as a legal term intertwined, but in a business sense they're related, we want a global sentiment is what we tried to do. Ultimately, didn't get one, but that's what we attempted.

Q Okay. What is SIDIS?

A My understanding is that it's an organization of individuals who represent that they have knowledge in the biotech space and try to offer some type of assistance to biotech companies.

Q And what about PrimeDP?

A Same. I think that's some -- an affiliate of SIDIS that does that seem thing.

Q So the reason SIDIS and PrimeDP were involved -- or Charleston Labs desired for them to be involved in these settlement discussions was because of the concern that Dr. T had transferred or attempted to transfer some of his Charleston Labs' shares to these other entities?

A Not just that concern, but the concern that SIDIS and PrimeDP, because of that attempted transfer and their multiple shareholders, right, had an interest in Charleston and were representing that they had an affiliation or interest in Charleston.

That's the -- that's the problem with SIDIS and PrimeDP.

Q But if Charleston Labs was successful in obtaining an order saying that it had effectively purchased all of Dr. T's shares, then how was there a concern about whether he had transferred those shares?

A That's only as to Ray, not as to SIDIS and PrimeDP. They weren't part of this Ray litigation. And ultimately, the transfer and the accuracy of that transfer, that wasn't necessarily litigated in it.

So we were trying to confirm that SIDIS

and PrimeDP also, with this decision, would agree that that was the case.

Q When did Charleston Labs learn about the purported transfer by Ray of some of his shares to either SIDIS or PrimeDP?

A It was generally kind of alluded to throughout the process of terminating Ray that -- that there was some claim or understanding that Ray may have attempted to transfer his shares.

Q So during the 2010 time period when he was informed of his termination; is that --

A That's right, throughout that whole transaction.

Q This e-mail from Bridget Berry to you also talks about John Ameling?

A Ameling.

Q Ameling?

A Uh-huh.

Q And any purported assignment or an interest by him to SIDIS or PrimeDP.

A Uh-huh.

Q How was that an issue?

A So this -- this e-mail's in 2016. This is after we've gone through discovery in the Ray case, so we know a lot more about what this

purported transfer was and wasn't.

But back in -- and all that comes from the fact that Ray raising the affirmative defense in the Florida litigation that John did the same thing that he did and he didn't get terminated and he didn't get his shares purchased back so, therefore, you can't do it to me.

So back in 2010, John --

See, back in 2010, you know, we're still a startup company. We're not paying our guys salaries. We're trying to cover their expenses, so we're not gonna tell them they can't pay their bills through other means.

So John initially, as I said, he had the contact with Ray initially in the same city. He was invited to work out of these guys', PrimeDP's, office or what have you.

And -- and so when -- when Charles --

When John said -- made a decision to, "Hey, I'm leaving you guys. I'm just gonna focus on Charleston. Getting out of here. I'm going to Jupiter" -- or not Jupiter. That's before then. But whatever -- "I'm not dealing with you guys. You know, Ray has been absent for 10 months," whatever, SIDIS or PrimeDP, whatever entity he was

working out of, told John something to the effect of, "Oh, no. We have your shares. You transferred them to us and so did Ray. You can't do that."

So John informed us of that general conversation and position, and that's pretty much at that time all we knew, that there was something going on nefarious about that. But all we cared about was let's just get our shares back.

Q When did John Ameling inform Charleston Labs that PrimeDP was taking the position that it was the owner of John's shares?

A I mean, he alluded to that generally at that same time.

Q Around the May 2010 time frame?

A Right. I mean, it was nothing that Charleston delved into in detail at that time, but that, you know, it was more than just Tom -- or I'm sorry -- Ray being absent and there was something else going on.

Q Was Ameling terminated as well?

A No, sir.

Q Is he still with the company?

A No, sir. He's not an employee of the company.

Q When did he leave the company?

A 2015. December? No, that's not right. Two thousand and --

I believe his employment was terminated December 31st of two thousand and -- 2017, I believe.

Q And --

A I could be wrong.

Q -- what was the reason for his termination?

A Retired. It was something that was in the works for a long time.

Q All right. Flip over to Exhibit 29.

- - -

(E-mail, PL-0009814-15, previously marked Defendant's Exhibit Number 29, for identification.)

- - -

BY MR. JORDAN:

Q This is an e-mail from Bridget Berry to attorneys at Thompson Hine and Bray & Long, and this is dated November 18 of 2016, correct?

A Yes.

Q And the subject is: 2016-11-18 Charleston/Proposed Global Settlement, correct?

A Yes, sir.

Q So would this e-mail outline the terms upon which Charleston Labs was proposing to resolve the matter with Dr. T as well as other issues?

A On this date, yes.

Q And that --

Down in the body of the e-mail, that would include the first -- first paragraph. Those first three bullet points relate to Dr. T's pending case and the appeal, correct?

A Yes.

Q In other words, that the agreement would be that Charleston Labs and Dr. T would resolve all the litigation between them in the district of Florida, correct?

A Correct.

Q And the fourth bullet point, the dismissal of Charleston versus SIDIS, correct?

A Correct.

Q And that was a case that was pending in federal court in Kentucky?

A I'm sorry. Discussing dismissal actions?

Q Yeah. We're still on paragraph 1.

A Oh, paragraph 1.

Q Fourth bullet point down.

A Oh. Issues you're saying with respect to

Ray. Yep.

Q So this settlement proposal would include Charleston's dismissal of the federal lawsuit it had pending against SIDIS and other parties in Kentucky, correct?

A Yes. But just to clarify, this settlement is a settlement -- it's a trilateral settlement, right?

So it's between SIDIS and its affiliates, Charleston and Ray. So you have multiple settlements actually just working out the business terms globally as we see it. So it's not as if we're settling the Ray case or the Florida litigation by settling the SIDIS.

We're settling multiple issues, multiple cases, I guess, at the same time because, you know, related parties.

Q Okay. So Charleston Labs is seeking to settle the dispute with Dr. T, the dispute with SIDIS, and the dispute with Ameling and PrimeDP all at the same time, correct?

A Yes.

Q This fourth bullet point, it says, the case against SIDIS: Seeking in excess of $100,000 in damages, plus all profits gained by use of

Charleston's name, statutory damages and attorney's fees.

Is that an accurate description of what the nature of the Kentucky litigation against SIDIS was?

A That's an accurate description of what we were seeking.

Q Why do you qualify it in that way?

A Because we also were -- I mean, we also --

I think we may have been seeking some declaratory judgments and --

And this is the case against -- this is the case against -- I'm sorry. For SIDIS?

Q Correct.

A We also had --

You know, there's several claims in that case, so, I mean, it didn't list out the claims, so unless there's a full summary of the case ...

Q In general terms, what did Charleston seek in that litigation against SIDIS and other parties in the Eastern District of Kentucky?

A Essentially damages for, you know, conspiracy. I mean, it's laid out in the complaint, but, you know, misuse of confidential

information.

Q Is SIDIS a competitor of Charleston Labs?

A Yes.

Q And is this case against SIDIS in the Eastern District of Kentucky, is it still pending?

A The one against SIDIS? No.

Q How was it resolved?

A Charleston dismissed the case.

Q Was there any settlement?

A No.

Q For what reason was the case dismissed?

A Well, because we had settled the Ray case and had the order that clarified the rights of Ray Takigiku, and because in the John Ameling case we also received an order that clarified John Ameling's transfer, or lack thereof, it's really about the settlement agreement that Ameling and SIDIS had, although they're appealing that right now, in the best interest of the company we felt that we could stand on those two decisions to resolve any ambiguity in our stock ledger, and so, you know, we dismissed it without prejudice.

We'll see what the appeal comes out with, if that changes anything, but ...

Q So Charleston Labs' success in the

Florida litigation against Dr. T and success in the Eastern District of Kentucky litigation against Ameling gave it comfort that it did not need to continue to pursue its suit against SIDIS and the other parties that was pending in Kentucky?

A Considering all the circumstances and everything that goes into making decisions in a business, yes.

Q Okay. The Ameling case in Kentucky, I think the parties -- the defendants to that action filed by Charleston Labs were John Ameling -- Ameling -- I can't say it right -- SIDIS Corporation and PrimeDP, LLC; is that correct?

A Yes, sir.

Q And what -- what was the nature of the lawsuit? What was Charleston Labs seeking in that action?

A We were seeking a declaration that the -- both the transfer agreement or -- I don't know what they titled it -- but to which SIDIS and PrimeDP claim that John transferred shares to them was void; and also that the settlement agreement on which they tried to resolve John and SIDIS's issue as owners to stock was also void as violation of the Stockholders Agreement.

Q And what was the outcome of that case?
A It's still -- it's being appealed right now. It's still pending. But the outcome of the lower court was that -- let me think -- that the --
The original transfer agreement is just not enforceable because it was terminated; and that the settlement agreement is void to the extent that it transfers any interest in Charleston shares.
Q So at the trial court level, Charleston Labs succeeded in the case against Ameling and PrimeDP and SIDIS?
A Yes. Once again, we had to clarify the ambiguity in our documents drafted by Womble Carlyle, and we -- and once again, after much expense, we became successful and then the court clarified the ambiguity in our favor.
Q What was the ambiguity in that case?
A Well, the Stockholders Agreement is the ability to transfer, quote, any interest. The language of "any interest" was in there.
So, you know, the settlement agreement was drafted in a way that transferred an interest in the proceeds of the stock as opposed to direct stock. And so SIDIS took the position that it was okay and didn't violate the Stockholders Agreement.

Q Was Charleston Labs successful on motion for summary judgment or motion for judgment on the pleadings, or do you recall?

A I believe it was motion on the pleadings.

Q Did a court in that case find that there was an ambiguity in the SHA?

A Similar to the previous court, it -- what it found was and when we asked to clarify the ambiguity, it agreed with our position how to resolve that.

Q It agreed that the Stockholders Agreement worked in the way Charleston Labs argued that it did?

MR. RICHTER: Object to the form.

THE WITNESS: It agreed that Charleston Labs -- that the Stockholders Agreement supported -- you know, was consistent with its positon as far as the ability for John to transfer his shares without giving us notice.

BY MR. JORDAN:

Q Who represented Charleston Labs in the Kentucky litigation against Ameling and the other parties?

A Greenberg Traurig.

Q And in this litigation Charleston Labs is not seeking to recover any fees that it expended in the Kentucky litigation against Ameling against Womble Carlyle, correct?

A Not at this time.

Q All right. Turn to Exhibit 30, please.

- - -

(Mutual Settlement Agreement and Release, PL-0055222-235, previously marked Defendant's Exhibit Number 30, for identification.)

- - -

BY MR. JORDAN:

Q Is this a copy of the settlement agreement that was ultimately executed by Charleston Labs and Dr. T?

A Yes, sir.

Q And this resolved the Florida litigation and the resulting appeal --

A Yes, sir.

Q -- is that correct?

Now, this settlement agreement is only between Dr. T and Charleston Labs, correct?

A Correct.

Q Okay. Ameling and SIDIS that were part of the negotiations did not become parties to the

settlement agreement; is that correct?

A Correct.

Q Okay. And Charleston Labs agreed to pay Dr. T $250,000 to settle this case; is that correct?

A I'm sorry. Charleston agreed to pay --

Q Charleston Labs agreed to pay Dr. T $250,000 --

A Correct.

Q -- to settle the case --

A Yes, sir.

Q -- is that correct?

A Yes, sir.

Q For what reason did Charleston Labs decide to pay $250,000 to settle the case?

A Well, I mean, the amount of money was negotiation which went back and forth. I think they were demanding something north of $15 million, so 250,000, I think, is success.

We also -- obviously we understood that, although we did get a favorable order in the summary judgment, there is -- there is a lot of things in this case, and so that there was a real possibility of not being successful on the appeal.

And even if -- and even if we were

successful, I mean, in theory, if it could in some form or fashion been sent down and have to continue to litigate the issues, or maybe some other related issues, so, you know, it was kind of a mathematical thing.

We also originally offered him $70,000, you know, for his time. So looking at that and looking at, you know, probably what he had to pay the attorney fees, you know, so it all kind of came to that number through negotiation.

Q You mentioned that there was concern about whether or not this -- and I'll use different -- I won't be able to quote you exactly, but you testified there was some concern about whether or not the order granting summary judgment in Charleston Labs' favor would stick on appeal.

A Uh-huh.

Q Did -- did anyone advise Charleston Labs of that concern?

A I just think that was part of the conversations that we had about what to do as a business. I mean, any -- every litigation's unpredictable, so -- I mean ...

Q Did Greenberg recommend that Charleston settle this case for $250,000 after it had been

successful in summary judgment?

A I don't recall them necessarily recommending that we settle for $250,000. You know, it's -- this --

You know, GT obviously was involved and helped us negotiate these things, but these are business decisions.

Q Did Greenberg provide any analysis to Charleston Labs concerning the likelihood of Charleston Labs succeeding on the appeal?

A Not in the sense of likelihood but, you know, we didn't do any mathematical calculation of percentages or anything like that. It's just looking at what it took to get where we were.

The issues that were in the summary judgment, you know, the standard of appeal, looking at all those things, and it's evaluating all the likelihood and possibility, I mean, at the end of the day, what was guaranteed was that we were gonna have an appellate process. So you can factor that into the calculation as a business matter.

Q So to your recollection or -- or Charleston Labs is not aware or does not recall that Greenberg offered any opinion to Charleston Labs that Charleston Labs was likely to

lose the appeal.

A No. I'm not aware of any offering of an opinion that we were likely to lose the appeal, but we were likely --

What we knew was going to happen was we were going to have to go through the appeal process and incur not only the real expense, but also the other business expense that we already gained a toll on throughout over this year of litigation.

And, you know, we --

You know, my job was not only to manage these things as in-house counsel, but I also am part of the business, and we're all part of the business. We're a small company. You know, so you factor --

You know, and then, of course, the risk of litigation, it's always possible things aren't gonna go your way, so ...

Q Okay. When Charleston Labs was considering filing a lawsuit against Dr. T that ultimately resulted in the Florida litigation, how did it come to retain Greenberg to represent it in that matter?

A Well, Greenberg Traurig was -- was already --

I'm sorry. I'm speaking in kind of some -- with some falsities practical, so ...

Clearly I was at Womble Carlyle originally -- well, as far as my -- any work with Charleston. Then I left Womble Carlyle and went with Greenberg Traurig.

During that transition, probably a couple months before when I was at Womble to GT, we -- it was at the time when we started getting communication -- this is the time when we're doing the dividends and all that stuff. And so right around that time we all started communication from Thompson Hine about, you know, Ray and Biological or whatever their name is and then other people having -- may have shares in the company.

So a few months later, I'm at GT, I get a letter from Jeff Long from Bray & Long on Ray's behalf, and so -- and now all Womble's files transfer to GT's file. So now GT, through me, has the legacy and history of all this and is, you know, clearly, via me, up to speed on all these details.

Now, initially -- initially what Charleston wanted to do was to go to Womble Carlyle to represent it in the Florida litigation.

Q Okay. And did it go to Womble Carlyle?
A It tried to.
Q Who contacted who?
A I contacted Womble Carlyle.
Q Who did you contact at Womble Carlyle?
A Dean Rutley.
Q What was that?
A Dean Rutley.
Q Okay. And when was this?
A I sent him an e-mail just -- really just getting -- trying to get some documents to look over just to prepare for whatever we were gonna do with Ray. This is before we filed any action.
Q So this would have been in between the time that you received Jeff Long's letter and when the lawsuit was filed --
A Correct.
Q -- is that fair?
A Correct. Because I sent him an e-mail really asking for the file, but also saying, you know, we kind of look to you for assistance in this.

And then I -- then I went to his office to follow up on that, in which my intention was to go and try to see if, since it was their documents,

it was their file, I clearly had a relationship with those guys, and I kind of --

At that point I'd already been through the documents, looked at them and kind of saw what Womble had done or not done, and I felt they -- you know, let's give them an opportunity to defend their documents and what they did.

That was my intention.

Q And that would have been when you were still at Greenberg or were you at Charleston Labs by then?

A I was at Charleston Labs -- was I at Charleston --

Yeah, I was at Charleston Labs by then.

Q Okay. And --

A Yeah. It all kind of transitioned throughout that whole year. Yeah.

Q And how did that conversation with Dean Rutley go? What was the result of that conversation?

A The conversation did not go good, and the result was that there was -- they weren't --

You know, I didn't even get those words out of my mouth.

Q Did Charleston Labs ask Womble to

represent it in a DJ action against Dr. T?

A I can't remember where we were on the stage of -- of --

You know, I'm thinking that probably would have been the case of the context of it. I mean, we --

I mean, there was -- there was going to be some type of litigation, and -- because of the ambiguity. And the intention was that Womble would represent us and we could work out maybe some discounted fee, because ultimately it was Womble's documents, but we never got to that point in the discussion.

Q Okay. How did Charleston Labs end up being represented by Greenberg after -- after that discussion with Womble?

A Well, I mean, once -- once that wasn't an option, you know, and time is really of the essence at this point and understanding the legacy and the competency of Greenberg Traurig, especially being here in our backyard and the relationship we had with Greenberg Traurig, it was easy to look for a litigation partner that I personally worked well with in -- for Charleston's stuff and behalf.

So Greenberg had already worked on

litigation with us, knew our -- knew our company, comfortable with Paul, how we worked, all that stuff.

Q Did Charleston Labs contact any other law firms in Florida about representing it in the Florida litigation against Dr. T?

A No.

Q Didn't compare rates with any other law firms in Florida?

A Well, at that time I understood rates and cost and, you know, getting what you pay for. I mean, I have a business at one, two -- three law firms in different regions and in different sizes, so I understood.

And Greenberg actually, compared to my previous experiences at Womble, they were -- although they are technically a mega firm, they don't charge like a lot of white-shoe firms. They have a different structure, so ...

I think it is an informed decision, especially considering the history and the knowledge and understanding of Charleston. It was a lot of upfront stuff you could save because they had that legacy understanding.

Q Are you aware of any written

communication between Charleston Labs and Womble in which Charleston Labs request that Womble bring a DJ action on behalf of Charleston Labs with respect to Dr. T?

A Yes. The disclosure schedules. The Series B.

Q That is a request by Charleston Labs that Womble file a lawsuit on its behalf?

A Oh, I'm sorry. It's a request by Charleston Labs that Womble file a lawsuit on its behalf?

Q You mentioned going to Dean Rutley and having a conversation with him about --

A Right. The intention of that conversation was to ask him, right? That never occurred. So it wouldn't have been --

Because as soon as I walked in that office, he put on this defenders about defending Womble, so we couldn't even get to a conversation of what ultimately --

Beyond the documents, I mean, the initial kind of thing was, hey -- because the documents -- I asked for the documents some time ago, he hadn't gotten them to me, time was of the essence; hey, we had a relationship, I just spoke to him often not

too long ago, I live down the street, "Hey."

"Hey, I just want to follow up on these documents." And the intention was, "By the way, why don't you guys handle this litigation."

I never got to that second part, so there wouldn't be an e-mail because I never had that conversation with him.

Q What did Dean say during that meeting?

A With respect to what? I'm sorry.

Q Well, you said that it didn't go well.

A Right.

Q What did he communicate to you?

A Well, for the first part of that communication he was just telling me how busy he was and how he didn't really have time to get these documents and he had all these deals going on and, you know, I don't have anything going on in my life and he's really busy so, you know, be patient. You know, I'm more -- essentially communicating I'm more important than you, what I'm doing is more important than you. So that's -- that's that.

And then he started to go, "Oh, you know, we didn't" -- you know, started just going in defense mode about Womble.

Q About the documents themselves?

A Yes.

Q What did he say about the documents themselves?

A Well, actually, what he focused more on was the letter. I was trying --

I was just trying to describe to him the urgency of these -- of these -- why we need these documents. And I was actually telling him about the Stockholders Agreement and saying that one of our biggest issues is that the letter does not reference the Stockholders Agreement.

And, you know, he just started, you know, "Oh, well, you know, this is -- this is about, you know, Paul and we didn't do anything wrong" kind of thing.

Q Did you tell Dean Rutley during that meeting that you believe that Womble had done something incorrectly?

A Well, I believe what I told him was I don't agree with you. I said, "I don't think that's the case, Dean."

And what Dean said at that point, and which is inconsistent with what Dean and David said in their depositions, was that when Paul drafted the initial version of the letter and gave it to

David Baddour and David Baddour blessed it, right before Paul sent it, David Baddour called Paul and said, "Wait, wait, wait, wait. You need to reference the Stockholders Agreement," and then Paul ignored him. That's what he said in that meeting.

And I said, "No, that's not what occurred." And, you know --

Then I don't -- I don't think we discussed that much more anymore, because at that point he was, you know, totally defensive. I was offended. You know, we had a personal relationship, and this was very -- we were on two different sides. He threatened to call security on me.

You know, so I decided to walk down the hallway and talk to another partner and just ask for -- make sure the documents got to Charleston.

Q Who at Charleston Labs made the decision ultimately to retain Greenberg to represent it in the Florida litigation?

A I mean -- I mean --

I mean, technically, you know, Paul Bosse makes -- you know, has the final say in all the decisions, but, you know, it was with my

consultation that this is the best thing to do.

Q Did Charleston Labs seek advice from Greenberg about whether or not a declaratory judgment against Dr. T was a good idea?

A I'm sure we did. I mean, we discussed -- we discussed filing the dec action before litigation with Greenberg, absolutely.

Q Did Charleston Labs obtain an opinion from Greenberg about whether or not it was necessary to file a declaratory judgment action against Dr. T?

A I don't know if anything was, quote, unquote, necessary or the meaning of -- what you mean by "necessary," but we decided it was the best course of action.

Q And Charleston Labs decided that based on advice from Greenberg; is that correct?

A With the advice of Greenberg. I mean, I was heavily involved in the strategy as Charleston in-house counsel.

Q To your recollection, did Charleston Labs speak with any other lawyers or law firms other than Greenberg and Womble about whether Charleston Labs should file a declaratory judgment action against Dr. T?

A You know, not -- I mean, it may have come up in my conversations with Dean or Womble. I can't remember at what stage we were at that point, if I said this is what we're gonna do. But from my recollection, I don't believe so.

Q Okay. Did Charleston Labs have any discussion with Mitchell Ryan about the DJ action?

A No.

Q Any discussions with Bradley Arant --

A No.

Q -- about the DJ action?

A No.

Q All right. If you'll look at Exhibit 31.

- - -

(Invoice, PL-0026518-524, previously marked Defendant's Exhibit Number 31, for identification.)

- - -

MR. JORDAN: And, in fact, Exhibits 31 all the way through 52 are copies of the Greenberg Traurig invoices that have been produced in this litigation.

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(Invoice, PL-0026525-533, previously marked Defendant's Exhibit Number 32, for identification.)

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(Invoice, PL-0026534-542, previously marked Defendant's Exhibit Number 33, for identification.)

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(Invoice, PL-0026543-559, previously marked Defendant's Exhibit Number 34, for identification.)

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(Invoice, PL-0026560-583, previously marked Defendant's Exhibit Number 35, for identification.)

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(Invoice, PL-0026584-614, previously marked Defendant's Exhibit Number 36, for identification.)

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(Invoice, PL-0026615-649, previously marked Defendant's Exhibit Number 37, for identification.)

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(Invoice, PL-0026650-672, previously marked Defendant's Exhibit Number 38, for identification.)

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(Invoice, PL-0026673-694, previously marked Defendant's Exhibit Number 39, for identification.)

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(Invoice, PL-0026695-712, previously marked Defendant's Exhibit Number 40, for identification.)

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(Invoice, PL-0026713-717, previously marked Defendant's Exhibit Number 41, for identification.)

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(Invoice, PL-0026718-722, previously marked Defendant's Exhibit Number 42, for identification.)

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(Invoice, PL-0026723-727, previously marked Defendant's Exhibit Number 43, for identification.)

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(Invoice, PL-0026728-732, previously marked Defendant's Exhibit Number 44, for identification.)

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(Invoice, PL-0026733-735, previously marked Defendant's Exhibit Number 45, for identification.)

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(Invoice, PL-0026736-738, previously marked Defendant's Exhibit Number 46, for identification.)

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(Invoice, PL-0026739-741, previously marked Defendant's Exhibit Number 47, for identification.)

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(Invoice, PL-0026742-743, previously marked Defendant's Exhibit Number 48, for identification.)

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(Invoice, PL-0026744-745, previously marked Defendant's Exhibit Number 49, for identification.)

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(Invoice, PL-0026746-748, previously marked Defendant's Exhibit Number 50, for identification.)

- - -

(Invoice, PL-0026749-750, previously marked Defendant's Exhibit Number 51, for identification.)

- - -

(Invoice, PL-0026751-752, previously marked Defendant's Exhibit Number 52, for identification.)

- - -

BY MR. JORDAN:

Q And I'm not going to ask you about every one of them. Don't worry, but --

A All right.

Q I just want to ask you a few questions about them.

If you look at Exhibit 31 --

A Uh-huh.

Q -- on the second page, it looks like the earliest time entry was from Bridget Berry on November the 2nd, 2015; is that correct?

A Looks like it.

Q Okay. And then if you flip over to Exhibit 50, it looks like on the second page of this exhibit, the last time entry is from September the 13th of 2017; is that correct?

A Uh-huh. Yeah.

Q Okay. And the Florida litigation was settled in January of 2017; is that correct?

A Yes.

Q Okay. So the litigation in the Florida litigation was through -- was from November of 2015 through around January of 2017 when it settled; is that correct?

A I mean, that's the -- that's the -- you know, the filings and ultimate settlement. Obviously there's post~hoc work you have to do when these things happened.

It looks like this document -- these invoices relate to the confidentiality issues we had and how to handle those things.

Q Okay. But the litigation itself -- and I understand there was some after-litigation work necessary.

A Yeah.

Q The litigation itself was about 15 months; is that fair?

A I guess, yes.
Q Does Charleston Labs consider it to be reasonable to spend nearly $1.6 million in legal fees for litigation that lasted 15 months?
A Ended in the Florida litigation? Yes.
Q Okay. Did Charleston Labs negotiate the rates that Greenberg was charging for representation in the Florida litigation?
A Yes, sir.
Q And were those rates reduced?
A Yes. I think on every one of these bills you'll see a courtesy discount.
Q And is the courtesy discount something that Greenberg offered or something that Charleston requested?
A It's something we negotiated, in addition to other kind of management of time and things that won't necessarily be billed.
Q And what -- I guess I could do the math. What was the courtesy discount? Was it 10 percent?
A It looks that way, but I don't want to do the math.
Q Okay. But it was a uniform discount per invoice throughout the entire representation; is that correct?

A I mean, that -- yeah, minimally. But obviously every bill will have discussions on what I feel like --

You know, as in-house counsel, you know, you manage these things, and, you know, what I feel like is -- you know, makes sense, doesn't make sense; you know, hey, I didn't want this person on this call, why am I being charged for it or -- you know.

You know, it wasn't just they gave a bill, we paid it.

Q So you went through each time entry and considered whether it was reasonable and appropriate --

A Yes.

Q -- before you were paying the bill?

A Yes, sir.

Q Do you know how many different attorneys and paralegals worked on the Charleston Labs matter from Greenberg?

A Not off the top of my head, no.

Q Okay. Would it surprise you that 24 different timekeepers worked on the matter?

A Not necessarily.

Q Does Charleston Labs consider it

reasonable for 24 different timekeepers to work on a single matter that lasted 15 months?

A Yes. Because you're doing things as efficiently as possible. People have different rates.

I wouldn't want the -- you know, Bridget Berry and everybody at her level or above working on everything that needed to happen in the timeline that we had.

Q Did Charleston Labs ever complain to Greenberg about the invoices Greenberg provided for the Florida litigation?

A No. I wouldn't say we ever complained. I mean, the normal course of business of doing my due diligence on the invoices and making sure that there were no, you know, things that people may have not paid attention to that, you know, we may have to work on the charge.

Q Did you or anyone else at Charleston Labs ever communicate to Bridget Berry or anyone else at Greenberg that you thought that an invoice was too high given the amount of time that was devoted or the nature of the work that was done?

A No. That was really never the gripe. It was always just trying to get a discount when we

get a discount.

Q Flip over to Exhibit 35, please. This is an invoice dated June 6th of 2016 and it shows legal services through April 16 of 2016.

A Uh-huh.

Q And this is a bill for the April 2016 time that Greenberg worked on the Charleston Labs matter.

You see before the courtesy discount the bill for that month was $244,192.50?

Do you see that?

A I do.

Q Does Charleston Labs consider it reasonable for Greenberg to bill at -- or to charge $244,192 in a single month on --

A Well, if you look at this invoice, it's dated June 6th, 2016. The first entry is 4/1/16. So you're talking about March, April -- so April, May, and June.

So you have three months of very complicated litigation. Yeah, it's reasonable.

Q Well, if you look at the invoice itself, it is dated June 6th of 2016.

A Uh-huh.

Q But it only involves time from April 1 of

'16 to April 29th -- April 30 of '16.

A Okay.

Q So if you look at page 19 of the invoice.

A There's 19 pages of this invoice, so that would tell me there's a lot of work going on here.

So, yes, going through these documents and understanding where we were in litigation and what was going on. And this is heavy discovery going on here. ESI I see. There's also a lot of -- there's $10,000, roughly estimated, a little south of that, expenses.

So, yes, it's reasonable.

Q So Charleston Labs considers it reasonable for Greenberg to have fees totaling this amount in a 30-day period?

A So, to give context, because you're asking questions and I just want to make sure you have context in the answers, when you evaluate bills, you don't say what month is this for, how much is it, oh, that's too high, that's too low.

What you do is you take your knowledge of what's going on, what's -- what is being done, right, and you make sure -- and you read the entries and you look at the time that was spent and you evaluate that off of your involvement and

whether or not, from your experience -- and I'm fortunate to have worked in multiple places and to have been an associate that I understand, for the most part -- you know, I'm not a litigator but, for the most part, I've had some experience in litigation -- I can evaluate the reasonableness of the fees through that.

Whether it happens in two days and we spend a million dollars or a year and we spend $5, it all has to make sense about the services they're providing.

Q Was Bridget Berry an attorney that was primarily responsible for the representation of Charleston Labs in the Florida litigation?

A Yes, sir.

Q Okay. Do you know what Mrs. Berry's -- Ms. Berry's hourly rate was that she was charging?

A Off the top of my head? I don't know off the top of my head.

Q I might be able to help you out a little bit. If you look --

Are you in Exhibit 35?

A Yeah.

Q If you look at page 6.

A Page 6. What's the Bates number?

Q 26566.
A Yes.
Q There's a time entry a little over halfway down --
A Oh. One hour, $650.
Q And is that --
A That's before a Juris discount, but yes.
Q Does Charleston Labs consider that to be a reasonable hourly rate for a partner working on this case?
A Yeah. Her level of experience? Yes.
Q Do you know what hourly rate Dean Rutley was charging Charleston Labs during his representation?
A My understanding was pretty close to that.
Q What about David Baddour?
A No. I don't know David Baddour. He worked in this office, and I -- I wouldn't know that.
Q Less than the amount that you would have seen, correct?
A Perhaps. But I think at this time he may have been a partner. And he's also in -- I guess he was in North Carolina. But I know I -- I worked

with Dean more than him.

Q Look at Exhibit 53.

- - -

(Invoice, PL-0026502-514, previously marked Defendant's Exhibit Number 53, for identification.)

- - -

BY MR. JORDAN:

Q And if you look, this is another Greenberg invoice dated May 26 of 2017. In the "Re:" line it says: Takigiku Appeal.

Do you see that?

A Through -- yes, sir.

Q So did Greenberg open a new matter for the Dr. T appeal?

A Yes, sir.

Q Why was that?

A Because it was a different matter. It's an appeal now. So it's part of the same case in litigation, but for --

I mean, you'd have to ask Greenberg why exactly they account that way. But it did help me to kind of communicate for business purposes that the case cost this and this appeal cost this.

It kind of relates back to your question

about the resolution we reached. I mean, now I can start seeing the number add up for the appeal.

Q Did the invoices that have been produced in this litigation from Greenberg --

The Greenberg invoices that have been produced in this litigation, did Charleston Labs pay all those?

A Yes, sir.

Q Okay. And any -- do any of the invoices that have been produced, were they discounted by Greenberg any further than is indicated on the invoice itself?

A I couldn't be a hundred percent confident like, you know, whether or not these were invoices --

I mean, I made the assumption that these invoices were produced, which was provided, you know, as here's all the invoices from our accounting things.

I mean, there were times when we got invoices and they were pushed back and the fees were reduced and they've given it to us again. So I'm assuming that these are those final invoices, yes.

Q Were there ever times when an invoice was

produced by Greenberg Traurig to Charleston Labs, Charleston Labs contacted Greenberg and said, "Hey, this seems off or seems wrong," and Greenberg adjusted it without providing another amended statement?

A No. They always provided another amended statement to approve for payment.

Q All right. Flip over to Exhibit 27. Need a break or anything?

A Nope.

Q Okay. And this is, again, the complaint that has been filed against Womble Carlyle in this case. And if you'll flip to paragraph 53, please.

A Uh-huh.

Q Paragraph 53 of the complaint says: Over the intervening several years and with the legal assistance of Womble, Charleston Labs successfully raised significant additional capital from investors. In doing so, it issued prospectuses which represented the ownership structure of Charleston Labs, assuming that Takigiku was not a shareholder.

A Uh-huh.

Q Correct?

A That's what it says.

Q Is that an accurate statement?
A That is a correct statement, yes.
Q Am I not correct in understanding that Charleston Labs did not actually provide any investors with prospectuses?
A Not in the traditional sense of prospectuses. What we provided to them was what's reflected in the Series B documents.
Q So there were no actual prospectuses. It's just the Series B documents that were provided, correct?
A That's correct. But, I mean, you could deem -- you could deem the Series B document as prospectus. Because before they invest, we're just -- it's a prospectus.
Q In paragraph 58 on the same page of the complaint it says: If Takigiku was correct, then, among other negative consequences for Charleston, it had raised substantial working capital through offerings which misstated the corporate ownership structure, correct?
A Correct.
Q And is that an accurate statement?
A That is.
Q Okay. Can you identify a person or an

organization to whom Charleston Labs represented that Dr. T's shares were no longer outstanding?

A You mean that -- that Ray didn't own any shares?

Q Correct.

A Every single Series B and Series A stockholder. Everyone who saw those Series B documents.

All of our Series B documents are stockholders, and anyone who considered the Series B documents, to invest in that round, who were also Series A investors.

Q And can you identify who those individuals or entities are?

A I could. If I had my stock ledger, I could read names to you, but I don't have that.

Q The stock ledger, would that only indicate those who did invest or also those to whom the information was provided who decided not to invest?

A It would be -- it would --

Well, I guess there would be other individuals who did invest, but if didn't invest, it wouldn't matter.

Q Are you able to identify any documents in

which Charleston Labs communicated to an investor that Charleston -- that Dr. T's shares were no longer owned by Dr. T?

A Invest -- I'm sorry.

Q Are you aware of any documents through which Charleston Labs communicated to a potential investor that Dr. T no longer owned his shares?

A The Series B documents.

Q Okay. Any other documents?

A Only related to the Series B documents, so there was a cap table in those discussions in Series B documents. But that was a very, very rare occasion. I mean, once or twice we produced them this, so ...

Q Isn't it true that Womble had advised Charleston Labs about some uncertainty regarding the ownership of Dr. T's shares by 2011?

A I was not aware that is Womble's position that they advised Charleston that there was uncertainty.

I do know that Womble advised Charleston --

Well, I guess -- I guess in a sense, in the sense that they -- they always felt that we needed a declaratory action to clarify the

ambiguity in the ownership of the shares.

Q Didn't the Series B documents that we looked at include a disclaimer about whether or not Dr. T was an owner in the company?

MR. RICHTER: Object to the form.

THE WITNESS: What do you mean by "disclaimer"?

BY MR. JORDAN:

Q If you look at Exhibit Number 19. This is where you forward to Bridget Berry this July 12, 2012 disclosure schedule, correct?

A Yes, sir.

Q And this July 2012 disclosure schedule makes it clear that, while Takigiku concedes that the company purchased 140,000 of his shares, that he does not concede and he disputes that the company's -- that the company owns the remaining 280,000, correct?

MR. RICHTER: Object to the form.

THE WITNESS: That's what's on the disclosure schedule, yes.

BY MR. JORDAN:

Q Okay. So to the extent that Charleston Labs was communicating to potential investors that Dr. T did not have any ownership in

the company, that is contrary to this information on this disclosure schedule, correct?

A Not correct.

MR. RICHTER: Object to the form.

THE WITNESS: What we say is -- in this disclosure schedule is that Charleston Laboratories repurchased all of his shares. That's what it says. That's what we're disclosing.

BY MR. JORDAN:

Q But it's also disclosing that Dr. T disputes that, correct?

A Correct. But it doesn't -- but it doesn't --

But it discloses that we repurchased all of his shares. We're disclosing that there's -- that he disputes that but not that we didn't repurchase all of his shares. I just want to be clear.

Q And the document that we see, this disclosure schedule, did all of the Series B investors get this same disclosure schedule?

MR. RICHTER: Object to the form.

THE WITNESS: Yes, sir.

BY MR. JORDAN:

Q And all of the Series B investors got a schedule which indicated that Dr. Takigiku disputed that Charleston Labs had repurchased all of his shares, correct?

A They got this disclosure schedule, correct.

Q Okay. So --

Are you aware of any individual or entity who invested in Charleston Labs who did not receive this disclosure schedule?

A No. I'm not aware of anyone who didn't understand that it was Charleston's position that we purchased all of those shares and that Ray --

Q That Ray disputed that position.

A That's right.

Q Look at Exhibit 55, please.

- - -

(E-mail Chain, PL-0024407-411, previously marked Defendant's Exhibit Number 55, for identification.)

- - -

BY MR. JORDAN:

Q All right. This is an e-mail chain between Ryan Baker and Bernie Schachtel in March of

2011, correct?

A Yes.

Q Is this a document that you've seen before?

A Yes, sir.

Q If you look at the second page of the document -- I'm sorry. Look at the third page of the document.

There's an e-mail from Bernie to Ryan at 9:31 p.m., and he asks several questions.

Do you see that?

A Yes, sir.

Q Okay. And -- well, all of the questions are numbered number 1 for some reason.

The second question in that list is: Was Ray Takigiku fully (i.e., legally) removed as a Founding Member? If not, is this stock option document legal?

Do you see that?

A Uh-huh.

Q And was Mr. Schachtel a prospective investor in Charleston Labs?

A No.

Q Okay. What -- what was he at this time? Why was he asking these questions?

A Well, because he is working with a -- you know, I'm not really clear. But essentially --

So Bernie was already a shareholder of Charleston. I mean, he's Bernie Schachtel. He's one of the founders. Under the Stockholders Agreement, he had a Stock Restriction Agreement. So this is March 21st, 2011.

This is either because he is looking at being part of the option pool and getting some options or on behalf of one of his colleagues that was gonna do some work for Charleston.

Q So this e-mail exchange between Ryan and Bernie was not in connection with Bernie considering making an investment in Charleston Labs; is that correct?

A I would not think so. Not in the traditional sense that he was going to give cash in exchange for stock, but --

So the disclosure schedules are --

After you do whatever you do with potential investors, the disclosure schedules are your last representations you make to these investors. They're gonna sign a document and that's where they're going to set up a reserve they're going to rely on. And you try to disclose

all these possibilities there are. But then you disclose it, if something fundamentally changes, you have an issue.

Q So in the complaint Charleston alleges that it potentially issued incorrect prospectuses to potential investors because of the issues with Dr. T, correct?

A Correct.

Q This document -- this e-mail exchange would not fall into that category; is that correct?

A From my understanding, this isn't a part of the Series B documents. This is a year before.

Q Okay. Look at Exhibit 56, please.

- - -

(Summary of Terms and Conditions of Series B Stock, PL-0019980-981, previously marked Defendant's Exhibit Number 56, for identification.)

- - -

BY MR. JORDAN:

Q Will you explain to me what this document is?

A April 30, 2009. This is -- well, a very, very early draft of a Series B round of financing.

Q And it shows 6 million shares of

common -- 6 million common shares in Charleston Labs outstanding?

A Yes. This is April 30 of 2009. So Ray's still here as a -- at Charleston. He was terminated in 2010, so this is soon after our Series A, I believe.

Q Okay. So Dr. T's shares in Charleston Labs would be included in that common shares column?

A They should be. I haven't done -- haven't looked back to confirm that it's correct, but ...

Q Flip over to Exhibit 57, please.

- - -

(Summary of Terms and Conditions of Series B Stock, PL-0007159-160, previously marked Defendant's Exhibit Number 57, for identification.)

- - -

BY MR. JORDAN:

Q And this is the same document for July 30 of 2009, correct?

A I mean, same type of document, yes.

Q Okay. And, again, it shows 6 million shares -- 6 million common shares outstanding?

A On July 30th, 2009, yeah. From this draft, that's what it shows.

Q And the 6 million shares -- common shares would include Dr. T's shares?

A It should, assuming that it was done properly.

Q Okay. Look at Exhibit 58.

- - -

(Summary of Terms and Conditions of Series B Stock, PL-0026303-304, previously marked Defendant's Exhibit Number 58, for identification.)

- - -

BY MR. JORDAN:

Q This is the September 24th, 2009 Series B stock summary and terms, correct?

A Uh-huh.

Q And again, it shows 6 million common shares?

A Correct.

Q And presumably those shares would include Dr. T's shares?

A If done correctly.

Q Okay. The purpose of these term sheets, is it not, is to make sure that potential Series B

investors know the ratio between common and preferred shares, correct?

A Well, that's --

So I don't know what these particular drafts -- the purpose of these particular drafts were. The purpose of term sheets generally are not just to show a cap table structure of how many common shares, how many preferred shares, you know, kind of percentages, but also the terms of the shares that they're looking to offer for sale and maybe some fundamental aspects of the company they would have related to the rights in those shares.

Q What do you mean when you say "the terms of the shares"?

A Well, do they have a preference, do they participate preferred, do they -- you know, do the company have a right to, you know -- you know, automatic redemption, you know -- you know, dividends, accruing dividends.

You know, all the terms that you have in these types of structures.

Q Is Charleston Labs aware of any term sheet for Series B that removed shares from the common stock column?

A Well, if a --

If a term sheet was accurate for a Series B and that term sheet would -- would be someplace in 2012 probably, it should --

I mean, it depends on when it does because although --

I'm sorry. What was your question?

Q Is Charleston Labs aware of any term sheet for the Series B that removed shares from the common shares column?

A Removed shares.

Q In other words, so that it didn't -- it didn't show 6 million common shares.

A Yeah. That probably wouldn't be the case since -- even though shares were buy back and you still have an incentive option pool here, so these numbers might have adjusted up or down.

I mean, again, we're looking at 2009 so I don't know if the terms and how many things they wanted to offer in Series B changed.

But fundamentally, wherever they ended up --

What would happen is -- I don't know what the ultimate number was. The answer to the question is I don't know. But ultimately, it wouldn't be a tit for tat necessarily because you

have an option pool you could work with.

Q Is it accurate that there was -- there were always 6 million common shares of stock in Charleston Labs, both before and after Dr. T's termination?

A Honestly, I'd have to look.

MR. JORDAN: Let's take a couple minutes.

THE VIDEOGRAPHER: The time is 2:59. We're going off video record.

- - -

(Whereupon there was a recess in the proceedings from 2:59 to 3:09.)

- - -

THE VIDEOGRAPHER: We are back on the video record. The time is 3:09 p.m.

BY MR. JORDAN:

Q Mr. Scott, the demand letter that Charleston Labs received from Jeff Long on behalf of Dr. T references a company called Daiichi; is that correct?

Do you remember that?

A Daiichi Sankyo, yes.

Q What was the nature of the relationship between Charleston Labs and Daiichi?

A Daiichi -- I'll just call them Daiichi

for short -- licensed the US rights to commercialize CL-108.

Q Did Charleston Labs ever make any representations to Daiichi about Dr. T's ownership in Charleston Labs?

A No.

Q Did Daiichi ever take an equity position in Charleston Labs?

A No.

Q I don't have anything further. Thank you for your time.

A Thank you.

- - -

EXAMINATION

- - -

BY MR. RICHTER:

Q Mr. Scott, I have a few questions for you. If you would, take out Exhibit 62. It was one of the loose-leaf, I think, exhibits.

A Oh, did I put it over here?

Q You may?

A Right. This.

Q 62 is your engagement letter with Womble Carlyle, correct?

A Yes, sir.

Q You were asked questions about the reasonableness of the fees that were charged to you by Greenberg Traurig.

Do you remember -- do you recall those questions?

A Yes, sir.

Q And specifically Bridget Berry's rate of $650 in the year 2017.

Do you remember that?

A Yes, sir.

Q Look at page 2 of Exhibit 62. In the middle of the page, the fees and rates charged by Womble Carlyle a decade earlier in 2007 are set forth, right?

A Yes, sir.

Q Did Charleston Labs think it was reasonable in 2007 that Womble Carlyle charged rates of $575 an hour for its most experienced members?

A Yes, sir.

MR. JORDAN: Object to form.

BY MR. RICHTER:

Q And for Dean Rutley, his personal rate at that time was $450 an hour; is that correct?

MR. JORDAN: Object to form.

THE WITNESS: Yes, sir.
BY MR. RICHTER:
Q Was that rate paid to Dean Rutley for the services that he performed for Charleston Labs?
A That's my understanding, yes.
Q And David Baddour at that time was charging $290 an hour; is that correct?
A Yes, sir.
Q Did you understand that he was a five-year lawyer at that point?
A No, sir.
Q All right. So did Charleston Labs think it unreasonable to pay $290 an hour for a lawyer who had been out of law school for five years as of 2007?
MR. JORDAN: Object to form.
THE WITNESS: At that time, having that knowledge --
I mean, I wasn't with the company in 2007, but I'm not sure they would have the same conclusion.
BY MR. RICHTER:
Q Do you know what Dean Rutley's rates are today in 2018?
A I do not.

Q Do you suspect it had gone up since 2007?
MR. JORDAN: Object to the form.
THE WITNESS: Yes, sir.
BY MR. RICHTER:
Q How about David Baddour? Do you think his rate has gone up or down since 2007?
MR. JORDAN: Object to the form.
THE WITNESS: I suspect it's gone up, sir.
BY MR. RICHTER:
Q At the time Charleston Labs was formed, Womble Carlyle did that for them, right? They filed the Articles of Incorporation.
A Yes.
MR. JORDAN: Object to the form.
THE WITNESS: They formed the entity, correct.
BY MR. RICHTER:
Q And what year was that?
A I believe it was 2007.
Q At the time of the formation of the company, was any corporate control document prepared for Charleston Labs?
A No, sir.
Q So an entity was formed that had

basically no rules.

MR. JORDAN: Object to the form.

BY MR. RICHTER:

Q Is that right?

MR. JORDAN: Object to the form.

THE WITNESS: Yes, sir.

BY MR. RICHTER:

Q All right. At the time of the formation of Charleston Labs, was there a document that controlled the relationship between its owners?

A No, sir.

Q All right. Was it the client who subsequently came to the lawyer to say that the client would like such a document or was it the lawyer who later said to the client you should have such a document?

A The client came to the lawyer and said I would like such a document.

Q All right. So subsequent to the formation of the entity, it was the client who came to the lawyer to say, hey, we should have an agreement that regulates the relationship between the owners.

MR. JORDAN: Object to the form.

THE WITNESS: Yes, sir.

BY MR. RICHTER:

Q And by then, how many owners were there in Charleston Labs?

A There were -- there was Paul Bosse, Ryan Baker, and Chris Godwin. So I think there -- I might be missing someone. Three original founders. Yeah.

Q And so the three were referred to as founders?

MR. JORDAN: Object to the form.

THE WITNESS: Yeah, the original founders. Yeah.

BY MR. RICHTER:

Q All right. And so -- so who were --

Why were you also referring to the others as founders?

A Because, although they came later, I mean, in the big scheme of things, it was so early in the totality of things.

So you're talking about 2008, so Bernie Schachtel, Ray Takigiku, and John Ameling came to the company later after Ryan, Paul, and Chris had already been putting forth effort and work and expense into the company.

Q All right. So by the time we get to the

SRA and the SHA, how many total shareholders are there at Charleston Labs?

A So you have Chris Godwin, Ryan Baker, Paul Bosse, Bernie Schachtel, Ray Takigiku, John Ameling. So there's six.

Q All right. So six shareholders, an entity that's been formed for some time and no agreement between them to regulate the ownership of the shares, correct?

MR. JORDAN: Object to the form.

THE WITNESS: Correct.

BY MR. RICHTER:

Q So in the drafting of a corporate control document, what was Charleston Labs trying to accomplish between the old guard and the new guard?

A Well, first, some general governance of the company and -- as far as its stock and its corporate governance; and second, to delineate the difference between and recognize Paul, Ryan's, and Chris's already work they've put into the company vis-a-vis the, quote, unquote, new founders who have yet to really have any skin in the game and could end up getting a whole bunch of shares and then walking away without doing nothing.

Q Did Charleston Labs care if it was one

agreement, two agreements, 10 agreements?

A No, sir.

Q How did it come to be that we're gonna have two agreements that are going to regulate the relationship with these shareholders as opposed to one?

A That's just what Womble ultimately decided is best, I guess.

Q In the Stock Restriction Agreement, does it address and contemplate the departure of a shareholder?

A Yes, sir.

Q And does it provide a mechanism for recovering those shares in the event of a departure?

A Yes, sir.

Q Does it contemplate the termination of a shareholder's employment?

A Yes, sir.

Q And does it provide a mechanism for the recovery of shares in that event?

A Yes, sir.

Q The Stockholders Agreement, does contemplate the departure of a shareholder?

A Yes, sir.

Q And does it contemplate the cessation of employment by a stockholder?
A Yes, sir.
Q Does it contemplate the recovery of shares in that circumstance?
A Yes, sir.
Q Does it provide a methodology for the recovery of those shares?
A Yes, sir.
Q Is the methodology under the Stockholders Agreement different than the methodology under the Stock Restriction Agreement?
A Yes, sir.
Q Under the Stock Restriction Agreement, if an employee is terminated for cause, it doesn't speak to the amount of the shares I can recover if -- at Charleston Labs.
A Yes, sir.
Q And what does it say about how many shares I can recover in that event?
A In the Stock Restriction Agreement?
Q The Stock Restriction Agreement.
A It's according to a schedule which is tied to the amount of -- the length of time -- time period that you're attempting to repurchase shares.

Q All right. And what about the Stockholders Agreement? What does it say about the amount of shares that I can recover in the event of a triggering event under the SHA?

A All shares.

Q Do the two agreements have different valuation methodologies for the recovery of those shares?

A Yes, sir.

Q And what does the SHA say about how I am to value the shares in the event of a trigger?

A It would be at fair value as determined by the board.

Q All right. And what does the SRA say about the determination of value in the event that it's triggered?

A It would be a penny per share.

Q All right. Fast forward to the time of Dr. T's departure. Did Charleston Labs seek the counsel of Womble Carlyle to assist it -- assist the company in the separation of Dr. T's employment?

A Yes.

Q Did Charleston Labs seek the counsel of Womble Carlyle in the recovery of Dr. T's shares?

A Yes, sir.
Q And what portion of Dr. T's shares did the company seek to recover?
A All of Dr. T's shares.
Q All right. And under which agreement would Charleston Labs have been entitled to recover all of the shares?
MR. JORDAN: Object to the form.
THE WITNESS: The Stockholders Agreement, SHA.
BY MR. RICHTER:
Q As of the time we wanted to part company with Dr. T, was Dr. T fully vested under the Stock Restriction Agreement?
A No, sir.
Q The letters that were sent to Dr. T, one to terminate his employment and the other to recover his shares --
MR. JORDAN: Object to the form.
BY MR. RICHTER:
Q -- were those letters reviewed and approved by counsel at Womble Carlyle?
A Yes, sir.
Q Take a look at Exhibit 14, if you would. All right. What is Exhibit 14?

A This is a March 26th letter, so this is -- yeah. This is the -- I guess I'll call it the repurchase letter. It's after the termination notice.

Q This is Charleston Labs' effort to recover Dr. T's shares.

MR. JORDAN: Object to the form.

BY MR. RICHTER:

Q Is that correct?

A Yes, sir.

Q And there's a document attached to it, correct?

MR. JORDAN: Object to the form.

THE WITNESS: Yes, sir.

BY MR. RICHTER:

Q And what is the document that accompanies the letter?

A The Redemption and Settlement Agreement and Release.

Q All right. And who prepared the Redemption and Settlement Agreement and Release?

A Womble Carlyle.

Q All right. Did Womble Carlyle review the cover letter before it was issued?

A Yes, sir.

Q All right. Let's take a look at the cover letter.

Anywhere in the cover letter does it reference the SHA?

A The SHA. No, sir.

Q Does it expressly say, "We're exercising rights under the SHA"?

A No, sir.

Q Anywhere in the letter does it say expressly, "We are exercising rights under the SRA"?

A Expressly? No, sir.

Q All right. Take a look at the attachment to the redemption and settlement agreement.

What agreement is referenced in paragraph A under recitals?

A The Stock Restriction Agreement.

Q The Stock Restriction Agreement. Is the Stockholders Agreement referenced in the recitals?

A No, sir.

Q All right. And so in communicating this to Dr. T's team, Charleston Labs, with the assistance of its counsel, is notifying Dr. T that we're redeeming your shares pursuant to the attached agreement which makes reference to the

Stock Restriction Agreement, correct?

MR. JORDAN: Object to the form.

THE WITNESS: Correct.

BY MR. RICHTER:

Q And as of March 26, 2010, how many shares was Charleston Labs entitled to recover from Dr. T under the Stock Restriction Agreement?

A Under the Stock Restriction Agreement, I'd have to see the schedule. Some portion less than 420,000 shares.

Q So suffice it to say, he wasn't fully vested.

MR. JORDAN: Object to the form.

THE WITNESS: Under the Stock Restriction Agreement, correct. Yes.

BY MR. RICHTER:

Q Look at recital B on the redemption and settlement agreement. Same exhibit, 14.

A Okay.

Q The attachment, recital number B.

A Yes.

Q It says: On March 19, 2010 the Stockholder’s employment with the Company was terminated for cause.

Do you see that?

A Yes, sir.
Q Do the words "for cause" appear in this Stock Restriction Agreement?
A Yes, sir.
Q All right. Do the words "for cause" appear in the Stockholders Agreement?
A No, sir.
Q And so when this --
This is a communication by which Charleston Labs sought to recover Dr. T's shares, correct?
A Yes.
MR. JORDAN: Object to the form.
BY MR. RICHTER:
Q And in response to this, Dr. T's legal team said, "You can't buy them all."
MR. JORDAN: Object to the form.
BY MR. RICHTER:
Q Right?
A Yes, sir.
Q Was there legal uncertainty, after Dr. T's departure, about the status of his shares?
A Yes, there was legal uncertainty.
Q All right. Did Womble Carlyle advise Charleston Labs after Dr. T's departure to continue

to seek to raise money?
A Yes, sir.
Q All right. Did Womble Carlyle advise Charleston Labs after Dr. T's departure to, quote, sit tight?
A Yes, sir.
Q All right. Did Womble Carlyle ever affirmatively say, "We think you should file a lawsuit"?
A Affirmatively? No, sir.
Q But they did affirmatively say, "We think you should just sit tight"?
MR. JORDAN: Object to the form.
THE WITNESS: Yes, sir.
BY MR. RICHTER:
Q And not take any action with regards to Dr. T, right?
MR. JORDAN: Object to the form.
THE WITNESS: Yes, sir.
BY MR. RICHTER:
Q And just see what comes.
A Yes, sir.
MR. JORDAN: Object to the form.
BY MR. RICHTER:
Q And did Dr. T ever come?

A Yes, sir.
Q All right. When did he finally come?
A 2015.
Q All right. And what form did he come?
A Well, the most clear form is through a letter from Bray & Long, his attorney.
Q And after receipt of that letter, with Greenberg Traurig the decision was made to file a declaratory judgment action, correct?
MR. JORDAN: Object to the form.
THE WITNESS: Yes, sir.
BY MR. RICHTER:
Q Look at tab number 2 with me for a second.
MR. JORDAN: Can we fix this notebook before we get out of --
MR. RICHTER: Oh, sure.
MR. JORDAN: Make sure the exhibits don't get --
THE VIDEOGRAPHER: Sure. The time is 3:23. We are going off video record.
- - -
(Whereupon there was a recess in the proceedings from 3:23 to 3:24.)
- - -

THE VIDEOGRAPHER: We're back on the video record. The time is 3:24 p.m.

BY MR. RICHTER:

Q All right. Now, Mr. Scott, we're looking at Exhibit Number 2. What is this document?

A This is the Florida litigation.

Q Okay.

A I believe. Yep.

Q And this is the complaint that Charleston Labs filed or the third amended version of the complaint that it filed in Florida?

A Yes, sir.

Q All right. You were asked about certain provisions of this complaint earlier.

Do you recall that?

A Yes, sir.

Q All right. On page one it says at paragraph 3 that this is a declaratory -- an action for declaratory relief brought pursuant to 28 U.S.C. §2201.

Do you see that?

A Yes, sir.

Q Do you know what 28 U.S.C. §2201 says about the types of controversies that you -- for which you can seek relief?

A I mean, as a general matter. I mean, but it's just to clarify certain things that aren't clear.

Q Well, do you know if courts issue advisory opinions, for example?

MR. JORDAN: Object to the form.

THE WITNESS: My understanding is they do not issue advisory opinions.

BY MR. RICHTER:

Q All right. Take a look at paragraph 36.

A Yes, sir.

Q Paragraph 36 says that: The parties are in a bona fide dispute with regard to the ownership of the Shares.

Is that a true statement?

A Yes, sir.

Q Paragraph 37 says that: The relief sought by the Court is not merely the giving of legal advice or to answer questions propounded from curiosity.

Do you see that?

A Yes, sir.

Q Do you know why your counsel would include language like that in the DJ action?

MR. JORDAN: Object to the form.

THE WITNESS: To be consistent with the statute.

BY MR. RICHTER:

Q Do you know if it's legally impermissible to file a DJ for which there's not an actual controversy between the parties?

MR. JORDAN: Object to the form.

THE WITNESS: Yes. You cannot do that.

BY MR. RICHTER:

Q All right. Was there an actual controversy between Charleston Labs and Dr. T at the time of the commencement of the Florida litigation?

A Yes, sir.

Q Did Charleston Labs have a position in that litigation?

A Yes, sir.

Q Did Dr. T have a position in that litigation?

A A different one, yes, sir.

Q Was Dr. T's position frivolous?

A No, sir.

MR. JORDAN: Object to the form.

BY MR. RICHTER:

Q Was it sanctionable?

A No, sir.

MR. JORDAN: Object to the form.

BY MR. RICHTER:

Q Were sanctions sought?

A No, sir.

MR. JORDAN: Object to the form.

BY MR. RICHTER:

Q Were sanctions issued?

MR. STEPP: Slow down and let him get the objection on, please.

THE WITNESS: No, sir.

MR. RICHTER: All right. We can do it again.

BY MR. RICHTER:

Q In the Florida litigation, was Dr. T's position frivolous?

MR. JORDAN: Object to the form.

THE WITNESS: No, sir.

BY MR. RICHTER:

Q In the Florida litigation, was Dr. T's position sanctionable?

MR. JORDAN: Object to the form.

THE WITNESS: No, sir.

BY MR. RICHTER:

Q In the Florida litigation, did sanctions

issue against Dr. T for the position he took?

MR. JORDAN: Object to the form.

THE WITNESS: No, sir.

BY MR. RICHTER:

Q All right. On page 8 of Exhibit 2, there's a "Wherefore" clause.

Do you see that?

A Yes, sir.

Q Does the "Wherefore" clause describe all of the relief sought by Charleston Labs in the Florida litigation?

A Yes, sir.

Q All right. Is there anything outside of this "Wherefore" clause that Charleston Labs sought through the Florida litigation?

A No, sir.

Q Take a look at Exhibit Number 17.

A Yep.

Q David Baddour's e-mail in the middle, clearly there's uncertainty about the legal status of those shares.

Do you see that?

A Yes, sir.

Q All right. Would there have been uncertainty about the legal status of those shares

had the departure letter to Dr. T stated clearly we're going under the SRA and, pursuant to that agreement, we're purchasing you at the fair market value as determined by our board?

MR. JORDAN: Object to the form.

THE WITNESS: The SRA?

BY MR. RICHTER:

Q I'm sorry. The SHA.

MR. JORDAN: Same objection.

THE WITNESS: If it was under the SHA, no, it would -- there would not be uncertainty.

BY MR. RICHTER:

Q Who created the uncertainty about the legal status of these shares?

MR. JORDAN: Object to the form.

THE WITNESS: Womble Carlyle.

BY MR. RICHTER:

Q And how did Womble Carlyle create uncertainty about the legal status of these shares?

A Well, first --

MR. JORDAN: Object to the form.

THE WITNESS: -- by the foundation of the Stockholders Agreement and Stock Restriction Agreement being ambiguous in the sense that

they didn't reference each other or clarify what's to precede other in the same subject matter and then culminating ultimately with the letter that was sent to -- and the redemption agreement that was sent to Dr. T.

BY MR. RICHTER:

Q You were asked questions earlier about can you speculate as to whether Dr. T would have signed different agreements with different language.

Do you remember those questions?

A Yes, sir.

Q All right. With the agreements that were executed --

A Yes.

Q -- okay? Not asking Dr. T to sign any different agreement, had the departure letter simply said, "We are going under the SHA. We're buying all of your shares. Here's the procedure. Here's our determination. You're on notice," would there be any uncertainty about what Charleston Labs had done?

MR. JORDAN: Object to the form.

THE WITNESS: No, sir.

BY MR. RICHTER:

Q All right. Did it create an uncertainty to tell Dr. T, "We're buying all of your shares pursuant to the attached redemption agreement," which is an agreement that references only the SRA which only allowed Charleston Labs to purchase a certain portion of those shares?

MR. JORDAN: Object to the form.

THE WITNESS: Yes, it did.

BY MR. RICHTER:

Q At the same time --

What's the date of this e-mail from David Baddour?

A March 10th, 2011.

Q All right. At the same time he's telling Mitchell Ryan that there's uncertainty about the legal status of those shares, is Charleston -- is Womble Carlyle also telling Charleston Labs that it had successfully repurchased all of those shares?

A Yes, sir.

- - -

(Discussion off the record.)

- - -

(Stockholder Ledger, wcsr 3928963, marked Exhibit Number 69 for identification.)

BY MR. RICHTER:

Q Let me show you what's been marked as Exhibit 69. What's the date on this document at the top right?

A March 15th, 2011.

Q All right. And at the bottom left, do you see the indicator that this was a Womble Carlyle-produced document?

A Yes, sir.

Q And with regard to Dr. T's shares, what's indicated on this schedule?

A It is indicated that, per article 2 of the Stockholders Agreement dated March 30, 2008, the document was surrendered in that column, and then it was repurchased by the corporation.

Q All right. So in this table prepared by Womble Carlyle on March 15th, 2011, it indicates that, per Article 2 of the Stockholders Agreement dated May 30th, 2008, all 420,000 shares were repurchased, correct?

A That's right.

MR. JORDAN: Object to the form.

BY MR. RICHTER:

Q If we go back to the letter that was issued, does it ever say that we're operating under

Article 2 of the Stockholders Agreement?

A No, sir.

Q All right. And on the redemption agreement that accompanies the letter, does it ever make reference to the Stockholders Agreement?

A No, sir.

Q Does it make reference to the Stock Restriction Agreement?

A Yes, sir.

Q Did Charleston Labs have the right under the Stock Restriction Agreement to repurchase 420,000 shares as of March 26th, 2010?

A No, sir.

Q Was this document shared by Womble Carlyle with Charleston Labs?

A Yes, sir.

Q For what purpose?

MR. JORDAN: Object to the form.

THE WITNESS: It was given to us as a -- our stock ledger.

BY MR. RICHTER:

Q So at the time when Charleston Labs is trying to clean up its stock ledger, this is how Womble Carlyle advised that you should reflect the ownership of the shares.

MR. JORDAN: Object to the form.

THE WITNESS: Yes, sir.

BY MR. RICHTER:

Q Does Exhibit 69 evidence any legal uncertainty on Womble Carlyle's behalf?

A No, sir.

Q Take me back to your efforts to have Womble Carlyle resume the representation of Charleston Labs after the 2015 letter.

You went to see Dean Rutley?

A Yes, sir.

MR. JORDAN: Object to the form.

BY MR. RICHTER:

Q What was your purpose in going to see Dean?

A It was -- it was twofold. The -- one was to just remind him that I would like parts of the file from the Ray era forwarded; specifically, communications between Baddour and Ray's attorney, and then ultimately was to request that they represent us in this litigation.

I mean -- so, you know, I worked for Dean Rutley. You know, we had -- we had a good relationship. And the intention of Charleston, despite all this as I was coming to work at the

time, was to work with Womble to resolve this and ultimately they would have benefited from it from the litigation. What I expected is Dean would put his arm around me as a former colleague, you know, former client, "Hey, man. You're in this tough situation."

But that's not what happened, so couldn't go in that route.

Q Did he threaten to call security if you didn't leave the building?

A Yes, sir. He's threatened to call security if -- at least if I didn't leave the office, his office.

Q Did Dean Rutley tell you that Charleston Labs was the worst kind of client?

MR. STEPP: Object to the form.

THE WITNESS: Yes, sir.

BY MR. RICHTER:

Q He did tell you that?

A Yes.

Q All right. Did he tell you that their product, quote, wasn't worth crap?

MR. JORDAN: Object to the form.

THE WITNESS: Dean Rutley? No. I don't think he ever said that.

BY MR. RICHTER:

Q Did the --

Who came up with the argument that the SRA and the SHA were intended to create concurrent rights?

MR. JORDAN: Object to the form.

THE WITNESS: Greenberg Traurig.

BY MR. RICHTER:

Q All right. At the time those agreements were being developed by Womble Carlyle, are you aware of any communication from Womble explaining to Charleston Labs that we're trying to establish concurrent rights here?

A No, sir.

MR. JORDAN: Object to the form.

BY MR. RICHTER:

Q Does the SRA have an integration clause?

A Yes, sir.

Q All right. What does it say about all prior agreements that relate to the same subject matter?

A It would be superceded by that particular agreement.

Q And does the SHA have an integration clause?

A Yes, sir.
Q And what does it say about all prior agreements dealing with the same subject matter?
A That that particular agreement would be -- would supercede it.
Q And do those agreements deal with the same subject matter?
A Yes, sir.
Q When is the first time you heard that the argument should be to treat these as concurrent as opposed to prior superceding?
MR. JORDAN: Object to the form.
THE WITNESS: At sometime during the Florida litigation.
BY MR. RICHTER:
Q Okay. In the Florida litigation, do you recall that there was a single cause of action for declaratory relief? It's Exhibit Number 2.
A A single cause of action for declaratory relief.
Q Yes. Charleston Labs did not sue Dr. T for tortious interference.
MR. JORDAN: Object to the form.
THE WITNESS: Oh. No, they did not.

BY MR. RICHTER:

Q Did they sue Dr. T for conspiracy?

A No, sir.

Q Did it sue Dr. T for breach of fiduciary duty?

A No, sir.

Q Did it sue Dr. T for breach of contract?

A No, sir.

Q Did Charleston Labs want to file a declaratory judgment action?

A We didn't want to be in the position where we had to do that, no.

Q Did Charleston Labs want to pay $1.5 million in legal fees to clarify these rights?

A No, sir.

Q Did Charleston Labs --

You won, right?

A Yes, sir.

Q Well, if you won, why would you pay an additional $250,000 to Dr. T?

MR. JORDAN: Object to the form.

THE WITNESS: Because there was an appeal.

BY MR. RICHTER:

Q Did Charleston Labs want to continue to

pay the expense of defending an appeal?

A No, sir.

MR. RICHTER: All right. That's all I have.

- - -

EXAMINATION

- - -

BY MR. JORDAN:

Q Mr. Scott, did Charleston Labs have bylaws from the time of its incorporation?

A I believe Womble provided some very standard boilerplate bylaws.

Q So the answer to that's a yes.

A Correct. Yes. But bylaws don't address the overall governance and stock ownership of the company.

Q Well, you testified to Mr. Richter's questions that Charleston Labs was going along without any corporate formation, did you not?

MR. JORDAN: Object to the form.

THE WITNESS: I don't recall that was the question. My understanding is whether or not --

So you're talking about prior to incorporating?

BY MR. JORDAN:

Q No. At the time that it was incorporated --

A Uh-huh.

Q -- Charleston Labs had bylaws, correct?

A It had bylaws that addressed things, but it didn't address the stock and how it governed and treat the original founders with respect to the new founders and how to manage the stock.

As far as the stock's concerned and how it's treated in the business and the development of, it was not governed.

Q Okay. But it would not be accurate to say that Charleston Labs didn't have any corporate governance documents at the time that it was incorporated, correct?

A As a technical matter, that's right.

Q In the Florida litigation, did Dr. -- did Charleston Labs consider Dr. T's position to be a bona fide position?

A Yes, sir.

Q It did.

A In the sense that it's -- there's a bona fide dispute, so not -- not --

Maybe I don't understand your question, but we agree there was a bona fide dispute and that -- you know, that his position was not frivolous.

Q Did Charleston Labs consider Dr. T's position in the litigation to be bona fide; to be justified?

A What we considered was that our position was justified and there was a bona fide dispute and that Dr. T's position was not frivolous.

Q Did Charleston Labs ever file a motion for sanctions or seek sanctions against Dr. T in the Florida litigation?

A No, sir.

Q At one point in time do you recall Charleston Labs referring to Dr. T's position in the Florida litigation as specious?

A In the context of litigation?

Q Yes.

A Something along those lines. I'm sure we used a lot of colorful language in our litigation.

Q The redemption agreement that Mr. Richter asked you some questions about that Dr. T never ended up signing --

A Uh-huh.
Q -- that was a voluntary release that would have been executed by Dr. T, correct?
A To the extent that he didn't have to sign that?
Q Correct.
A Yes.
Q In other words, that redemption agreement was not necessary under the SRA or the SHA, was it?
A No. None of those documents required that we enter into a settlement agreement.
Q And Charleston Labs never actually asked Womble to represent Charleston Labs in a DJ action against Dr. T, did they?
A No. It was our -- it was Charleston's intention to do that. Unfortunately, we never got to that conversation.
Q I don't have anything further.
MR. RICHTER: No questions.
THE VIDEOGRAPHER: The time is 3:43 p.m. We're going off the video record.
MS. WATTERS: Would you like a copy of the transcript?
MR. JORDAN: Yes.

MR. RICHTER: E-tran only.

- - -

(Witness excused.)

- - -

(Deposition concluded at 3:43 p.m.)

- - -

CERTIFICATE OF REPORTER

I, Tami I. Watters, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof. Witness my hand, I have hereunto affixed my official seal this 4th day of December, 2018, at Lexington, Lexington County, South Carolina.



Tami I. Watters,
Registered Professional Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
February 6, 2019

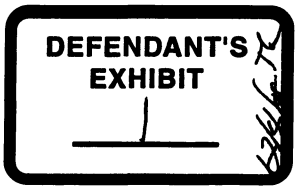
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	IN THE NINTH JUDICIAL CIRCUIT
Charleston Laboratories, Inc.,	)	Civil Action No.: 2017-CP-10-3768
	)	
Plaintiff,	)	
	)	
vs.	)	**AMENDED NOTICE OF 30(B)(6) VIDEO DEPOSITION OF CHARLESTON LABORATORIES, INC. (Change of Location Only)**
	)	
Womble, Carlyle, Sandridge & Rice, LLP,	)	
	)	
Defendant.	)	

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6), SCRCP, Defendant Womble, Carlyle, Sandridge & Rice, LLP will take the video deposition, on oral examination, of Charleston Laboratories, Inc., by and through its designee on **December 4, 2018 beginning at 9:00 a.m., and continuing day to day until completed,** before a notary public or other person authorized by law to take depositions at the offices of **Greenberg Traurig, LLP, 777 South Flagler Drive, West Palm Beach, Florida 33401**.

The deponent is instructed to designate one or more witnesses to testify regarding the areas set forth in **Exhibit A**, attached hereto. The person specified must be an officer, director, managing agent, or other person duly authorized to speak on Charleston Laboratories, Inc.'s behalf.

PLEASE TAKE FURTHER NOTICE, that pursuant to Local Rule 30(j)(8) of the South Carolina Rules of Civil Procedure, the Defendant hereby notifies all counsel of record of their intent to utilize, show, and question the witness about any and all documents provided by any party in discovery to date, including but not limited to, any and all records obtained by subpoena, discovery or otherwise.

You are hereby notified to appear and take such part as you deem fit and proper.



ROBINSON GRAY STEPP & LAFFITTE, LLC

By: 

Robert E. Stepp (SC Bar No. 5335)
William H. Jordan (SC Bar No. 76172)
Benjamin R. Gooding (SC Bar No. 100620)
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Attorneys for Defendant

Columbia, South Carolina
November 27, 2018

ROA-1236

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	IN THE NINTH JUDICIAL CIRCUIT
Charleston Laboratories, Inc.,	)	Civil Action No.: 2017-CP-10-3768
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	**CERTIFICATE OF SERVICE**
Womble, Carlyle, Sandridge & Rice, LLP,	)	
	)	
Defendant.	)	
	)	

I, the undersigned paralegal of the law offices of Robinson Gray Stepp & Laffitte, LLC, attorneys for Defendant Womble, Carlyle, Sandridge & Rice, LLP, do hereby certify that I have served all counsel in this action with a copy of the document specified below by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Document: **Amended Notice of 30(b)(6) Video Deposition of Charleston Laboratories, Inc.**

Counsel Served:

Ronald L. Richter, Jr., Esq.
Bland Richter, LLP
Peoples Building
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Charleston, SC 29401
CO
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Bland Richter, LLP
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Columbia, SC 29202
Attorneys for Plaintiff

Cyndi Nygord
Cyndi Nygord

Columbia, South Carolina
November 27, 2018

ROA-1237

Exhibit A

Charleston Laboratories, Inc. v. Womble Carlyle Sandridge & Rice, LLP

1. Allegations of the complaint in the present case.
2. Allegations of the pleadings in the matter of Charleston Laboratories, Inc. v. Takigiku, Case No. 9:15-cv-81694-JIC, 2016.
3. Representation of Charleston Laboratories, Inc. by Womble.
4. Transfer of representation from Womble Carlyle Sandridge & Rice, LLP to Greenberg Traurig.
5. Business history and current status of Charleston Laboratories, Inc.
6. Employment of Dr. Takigiku by Charleston Labs, including the reasons for the termination thereof.
7. Terms of Shareholders Agreement and Stock Restriction Agreement.
8. The history of Takigiku's claim to be a shareholder of Charleston Labs from the date of his termination forward.
9. All reasons for the selection of Greenberg Traurig to represent Charleston Labs in connection with Takigiku's claim to be a shareholder.
10. Communication with and advice provided by Greenberg Traurig in connection with the claim by Takigiku in 2015 to be shareholder of Charleston Laboratories, Inc.
11. All reasons for the filing of the DJ action against Dr. Takigiku in Florida, including any representations made by Charleston Labs regarding its ownership and/or capitalization structure that were affected by Takigiku's claim to be a shareholder of Charleston Labs.
12. The conduct of the litigation in Case No. 9:15-cv-81694-JIC, 2016 and the supervision thereof by Charleston Labs.
13. Invoices from Greenberg Traurig for work done in connection with Case No. 9:15-cv-81694-JIC, 2016.
14. Terms of and reasons for the settlement of claims of Dr. Takigiku.
15. The decision to sue Defendant.
16. The decision to sue Dr. Takigiku and others in Kentucky and the claims asserted in that litigation.
17. Other litigation filed by or against Charleston Laboratories in other states.
18. History and current status of efforts to obtain FDA approval of any Charleston Labs drugs and/or products.
19. Nature, terms, and history of the relationship between Charleston Labs and Daiichi Sankyo, Inc.
20. History and current status of any efforts by Charleston Labs to raise funds and/or attract investors.
21. Decision to move headquarters of Charleston Labs from South Carolina to Florida.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division

CASE NO. 15-81694-CIV-COHN/SELTZER

CHARLESTON LABORATORIES, INC.,
a Delaware Corporation,

Plaintiff,

v.

DR. RAYMOND TAKIGIKU,

Defendant.
_____/

THIRD AMENDED COMPLAINT FOR DECLARATORY RELIEF

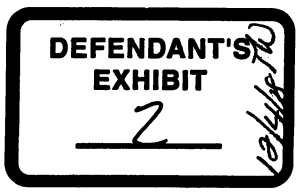
Plaintiff CHARLESTON LABORATORIES, INC., a Delaware corporation, sues Defendant RAYMOND ("Ray") TAKIGIKU, Ph.D. ("Takigiku"), an individual, and states:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff CHARLESTON LABORATORIES, INC. ("Plaintiff" or "Charleston") is a Delaware corporation authorized to transact and transacting business in Florida, with a principal place of business at 1001 N. US Highway 1, Suite 500, Jupiter, Palm Beach County, Florida.

2. Takigiku is an individual who at all times relevant to this action is subject to personal jurisdiction in Palm Beach County, Florida, pursuant to §48.193, Florida Statutes, and by stipulation of the parties. See DE 18, Stipulation Relating to Jurisdiction and Venue, ¶11. Further, Takigiku has filed a counterclaim in this action.

3. This is an action for declaratory relief brought pursuant to 28 U.S.C. §2201(a) and Fed. R. Civ. P. 57.



4. This case was removed to Federal Court by Takigiku. See DE 1 and DE 18 (wherein Charleston agrees not to seek remand).

5. Plaintiff seeks entry of a Declaratory Judgment declaring Charleston to be the true, sole owner of the Shares (as defined below); and declaring that Takigiku is not the owner of such Shares.

COUNT I: SUIT FOR DECLARATORY AND SUPPLEMENTAL RELIEF

6. Plaintiff realleges and incorporates herein the allegations of paragraphs 1 through 4, inclusive, above.

Charleston Laboratories, Inc.

7. Charleston is a privately owned specialty pharmaceutical company focused on the research and development of novel pain products that prevent or significantly reduce nausea and vomiting, the two most burdensome side effects related to opioid analgesics and other pain associated disease states. In addition, Charleston is developing other products.

8. Charleston was organized under Delaware law in 2007. G. Paul Bosse III has served as President and Chief Executive Officer of Charleston since September 2007 and has served either as the sole director or as the Chairman of the Board of Directors since that time.

9. On or about May 30, 2008, Charleston entered into a Stockholders Agreement (the "Stockholders Agreement") with G. Paul Bosse III, Ryan Baker, John F. Ameling, Bernard P. Schachtel, Chris Godwin and Takigiku (collectively, the "Founding Shareholders"). A true and correct copy of the Stockholders Agreement is attached hereto and incorporated herein as **Substitute Exhibit "A."**[1]

[1] Substitute Exhibit "A" is comprised of Exhibit "Substitute A" to Plaintiff's Motion to Substitute Exhibit to Complaint to Conform to Evidence [DE 117] and the signature page of Takigiku evidencing his agreement to the terms of the Stockholders Agreement identified as Exhibit "Substitute A" as reflected in Exhibit 16 to Plaintiff's Motion to Substitute Exhibit to Complaint to Conform to Evidence [DE 117].

ROA-1240

10. The purpose of the Stockholders Agreement was (and is) to protect the Company by restricting the transfer of shares by the Founding Shareholders, and providing to the Company a right to repurchase all shares held by a Founding Shareholder upon the occurrence of certain events, including termination of employment with the Company.

11. Pursuant to the Stockholders Agreement, and as shown on Appendix A to the Stockholders Agreement, Takigiku owned as of May 30, 2008 210 shares of common stock of Charleston, subject to the terms and conditions of the Stockholders Agreement, and evidenced by Stock Certificate No. 12.

12. Stock Certificate No. 12 contains legends documenting the restrictions placed on the transfer of the Shares, including pursuant to the Stockholders Agreement.

13. Pursuant to Article FOURTH of the Amended and Restated Certificate of Incorporation of the Company filed with the Secretary of State of the State of Delaware on September 25, 2008 (the "Charter Amendment"), the 210 shares of common stock of the Company issued to Takigiku were automatically converted into and became 420,000 shares of common stock of the Company.

14. In connection with the Charter Amendment, Stock Certificate No. 12 was surrendered to the Company and marked "canceled" and new Stock Certificate No. 14 evidencing Takigiku's ownership of 420,000 shares of common stock of the Company was prepared.

15. Prior to the repurchase described below, Takigiku owned a total of 420,000 shares of common stock of Charleston, par value $0.001 per share, all subject to the Stockholders Agreement (the "Shares").

ROA-1241

16. As alleged above, and as set forth in the Stockholders Agreement, Takigiku and the other parties to the Stockholder Agreement agreed to restrictions on the right to transfer, pledge or assign any shares of Charleston stock. More specifically, and without exclusion, Articles 1.1, 1.3, 2.1, and 2.2 of the Stockholders Agreement prohibit the unauthorized pledge, transfer or assignment of Charleston common stock.

17. Further, pursuant to Article II of the Stockholders Agreement, the parties agreed that the Company had the right to repurchase shares issued upon the occurrence of certain events, including termination of employment with the Company.

18. Relevant to this action, Section 2.2 sets forth the "Right to Purchase Upon Certain Other Events" and subsection (a.) sets forth "The Company's Right to Purchase" as follows:

> (a.) The Company shall have the right to purchase any or all of the Shares held by a Founding Stockholder (including his transferees hereunder) pursuant to the terms of this Section (the "Terminating Founding Stockholder", and such Shares held by such Terminating Founding Stockholder referred to as the "Terminating Shares") at the Agreement Price and on the Agreement Terms for a period of 90 days after the Company and the Purchasing Founding Stockholder receives notice from the Terminating Founding Stockholder or relevant third party, as applicable, of the occurrence of any of the following events, which notice shall be provided in the case of a Terminating Founding Stockholder within five (5) business days of the occurrence of such event:
>
> (i) The Terminating Founding Stockholder who is an employee ceases to be, for any reason, an employee of the Company or a subsidiary of the Company (any uninterrupted absence for a period of 180 days or more, without approval of the Board of Directors of the Company shall be deemed to be termination of employment)....
>
> (v) The Terminating Founding Stockholder sells, pledges, encumbers, hypothecates or otherwise transfers any interest in, or purports to sell, pledge, encumber, hypothecate or otherwise transfer any interest in, any

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of his or her Shares, except as permitted by and in full compliance with the terms of this Agreement.

19. Takigiku was an at-will employee of Charleston and his employment was not governed by a written employment agreement.

20. At the time of the signing of the Stockholder Agreement and until March 16, 2010, Takigiku was employed by Charleston and owed fiduciary duties to Charleston and its stockholders as the Company's Chief Operating Officer.

21. While Takigiku had previously abandoned his employment duties, Takigiku's employment with Charleston was terminated "for cause" effective March 16, 2010, as documented more formally by the written notice of termination from Charleston Founder, CEO and Director Paul Bosse dated March 19, 2010 delivered to Takigiku, a copy of which is attached hereto and incorporated herein as **Exhibit "B"** (the "Notice of Termination").

22. More specifically, and without limitation, the "cause" for the termination of Takigiku's employment included:

- Takigiku's prohibited assignment to SIDIS Corp. LLC ("SIDIS") of his equity interest in Charleston;
- Takigiku's fraudulent misrepresentation to Charleston CEO Paul Bosse, in or around July 2008, that his voluntary capital contribution to the Company was funded entirely with personal monies and no portion of the funds were provided by one or more third parties;
- Takigiku's repeated attempts, beginning in or around May 2009, to convince one or more fellow Charleston officers that the Company was destined for failure and to abandon their work with the Company;
- Takigiku's involvement in publicly and falsely representing Charleston to be a portfolio company of SIDIS, conduct that involved violations of U.S. Securities laws;
- Takigiku's undertaking to serve as the CEO of Bexion Pharmaceuticals ("Bexion), which included a commitment to dedicate 100% of his time and efforts to Bexion-related work, in or around August 2009, while Takigiku was still an officer of Charleston;
- Takigiku's failure and refusal to disclose to the Company's Board of Directors his conflicting agreement with Bexion to devote 100% of his time to Bexion;

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- Takigiku, to the detriment of Charleston, misrepresented that another company in which he was and is involved, Prime DP, conducted a pre-IND meeting resulting in FDA recommendation of advancement to Phase III of an emerging pain therapeutics company and Formulated bilayer biphasic drug candidate, when in fact Charleston, not PrimeDP, had obtained the FDA recommendation;
- Takigiku's total abandonment of Charleston-related work beginning in or around August 2009 and continuing until the termination of his employment in March 2010;
- Takigiku's overall pattern and practice of subordinating the interests of Charleston to those of SIDIS, PrimeDP Bexion and other SIDIS-affiliated companies.

23. Takigiku did not file any lawsuit to challenge or otherwise dispute the for-cause termination of his employment by Charleston. Any applicable limitation period expired no later than April 2013.

24. Following the termination of Takigiku's employment, Charleston exercised its right under the Stockholders Agreement to repurchase all of Takigiku's Shares for "Fair Value" (as defined and calculated in accordance with the Stockholders Agreement).

25. More specifically, by letter dated March 26, 2010 delivered to Takigiku, at or about that date, Charleston tendered to Takigiku a check in the amount of $2.10 as payment in full for his Shares pursuant to the Stockholders Agreement. A true and correct copy of the letter showing delivery of the "Fair Value" payment to Takigiku by Charleston for the repurchase of Shares is attached hereto and incorporated herein as **Exhibit "C."**

26. Repurchase of the Shares by Charleston was effective upon delivery of such payment, and Stock Certificate No. 14 evidencing the Shares was thereafter marked cancelled.

27. To summarize, as a result of the termination of Takigiku's employment, and the repurchase by Charleston of the Shares, Takigiku was no longer a shareholder of Charleston as of March 26, 2010, and has not been a shareholder of Charleston since at the latest March 26, 2010.

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The bona fide, actual and present practical need for the Court's determination

28. Five years later, by letter dated September 22, 2015, counsel for Takigiku sent a letter to the Company claiming that Takigiku is a shareholder of Charleston, and is entitled to inspect corporate records and information relating to Charleston pursuant to Delaware law. A true and correct copy of counsel's letter is attached hereto as **Exhibit "D"** (the "Record Demand").

29. Charleston asserts that Takigiku is not a shareholder (and therefore is not entitled to inspect the Company's records and information under Delaware law – or any other law).

30. Moreover, there is abundant evidence supporting a reasonable belief that Takigiku would use the Company's proprietary and confidential information for improper purposes.

31. More specifically, among the causes for termination of Takigiku's employment with the Company was Takigiku's prohibited assignment or attempt to assign, in violation of the Stockholders Agreement and other restrictions, his equity interest in Charleston to SIDIS.

32. Following the termination of Takigiku's employment with Charleston, Takigiku's interest in SIDIS and other related or affiliated companies (such as Bexion, BioLOGIC, and PrimeDP) has increased. On information and belief, Takigiku is currently an officer and director and shareholder of SIDIS, and stands to gain, personally, from his actions benefitting SIDIS to the detriment of Charleston.

33. Among other things, Charleston and SIDIS compete for investors and shareholders.

34. In that regard, on information and belief, Takigiku was directly involved in and responsible for and continues to be involved in and responsible for publicly and falsely representing Charleston to be a portfolio company of SIDIS, conduct that has been detrimental

and damaging to Charleston, and involves possible violations of U.S. Securities laws. On information and belief, such representations have been made to potential investors and shareholders of SIDIS. Among other things, Charleston has suffered damage to its goodwill.

35. Takigiku's conduct, his demands to the Company, and his misrepresentations to potential investors of Charleston, and his public representations relating to ownership of the Shares is damaging to Charleston and constitutes a bona fide, actual and present practical need for the Court's determination.

36. The parties are in a bona fide dispute with regard to the ownership of the Shares, and related rights and responsibilities, and Charleston seeks a declaration that it is the sole owner of the Shares.

37. The relief sought from the Court is not merely the giving of legal advice or to answer questions propounded from curiosity.

38. Plaintiff has retained the law firm of Greenberg Traurig, P.A. to represent it in this matter, and is obligated to pay Greenberg Traurig, P.A. a reasonable fee for its services.

39. All conditions precedent to the filing of this action of occurred, been waived, or would otherwise be futile to perform.

WHEREFORE, Plaintiff respectfully requests that the Court take jurisdiction of the matter and determine the rights and obligations of the parties:

a) Declaring that Charleston is the true, sole owner of the Shares;

b) Declaring that Takigiku is not the owner of the Shares.

c) In the event that Takigiku claims actual or constructive possession of Stock Certificate No. 14, directing Takigiku to immediately forfeit and return Stock Certificate No. 14

to Charleston (without the payment by Charleston of any consideration for such Shares other than the $2.10 already tendered); and

d) Awarding Charleston its reasonable attorneys' fees and costs, and granting such other and further relief as the Court deems just and proper.

Dated this 12th day of August, 2016.

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Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via CM/ECF this 12th day of August, 2016 to: Eric T. Salpeter, Esq. (eric@salpetergitkin.com) and Joseph H. Rose, Esq. (joe@salpetergitkin.com), SALPETER GITKIN, LLP, One E. Broward Blvd., Ste. 1500, Fort Lauderdale, FL 33486; Jeffrey A. Long, Esq. (jlong@braylong.com) and Charles J. Bridgmon, Esq. (cbridgmon@braylong.com), BRAY & LONG, PLLC, 2820 Selwyn Ave., Suite 400, Charlotte, NC 28209.

s/ Bridget Ann Berry
BRIDGET ANN BERRY

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SUBSTITUTE
Exhibit A

CHARLESTON LABORATORIES, INC.

STOCKHOLDERS AGREEMENT

THIS CHARLESTON LABORATORIES, INC. STOCKHOLDERS AGREEMENT (this "Agreement") is made and entered into as of May 30, 2008 by and among Charleston Laboratories, Inc., a Delaware corporation (the "Company") and G. Paul Bosse III, John F. Ameling, Bernard P. Schachtel, Ray Takigiku, Ryan Baker, and Chris Godwin (the "Founding Stockholders").

WITNESSETH:

WHEREAS, the Founding Stockholders are collectively the owners of 100% of the issued and outstanding shares of the common stock of the Company as set forth on Exhibit A hereto ("Common Stock");

WHEREAS, the Founding Stockholders believe that it is in the best interests of the Founding Stockholders and the Company to make provisions for the future disposition of the shares of common stock of the Company held by the Founding Stockholders and other matters set forth herein; and

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants herein set forth, the parties hereto agree as follows:

ARTICLE I

RESTRICTIONS ON TRANSFER OF STOCK

1.1 General

(a.) The Founding Stockholders shall not dispose of any shares of Common Stock now or hereafter owned by them ("Shares"), whether by sale, exchange, assignment, transfer, gift, devise, bequest, mortgage, pledge, encumbrance or otherwise, except in accordance with the terms and conditions of this Agreement. The Company and each Founding Stockholder shall also not take or omit to take any action which will impair the absolute and unrestricted right, power, authority and capacity of the Company or the Founding Stockholders to purchase or sell Shares in accordance with the terms and conditions hereof.

(b.) The Company, by its execution of this Agreement, agrees that it will not cause or permit the transfer of any Shares to be made on its books except in accordance with the terms of this Agreement.

1.2 **Permitted Transfers of Founding Stockholder's Shares**

(a.) A Founding Stockholder may sell, assign or transfer any Shares held by such Founding Stockholder by complying with the provisions of Sections 2.1 and 3.1 hereof or, with prior written notice to the Company, (i) to any immediate family member (parent, sibling, spouse, child (including stepchildren or adopted children), niece, nephew, first cousin, or grandchild), (ii) to a trust whose sole beneficiaries are immediate family members, (iii) to a Founding Stockholder, (iv) to the Company, (v) in the event of the death of any Founding Stockholder, subject to and in accordance with the rights set forth in Article 2 hereof, to the estate of such Founding Stockholder or individual or entity named in the will of such Founding Stockholder, (vi) subject to and in accordance with the rights set forth in Article 2 hereof, to any person solely in connection with the transfer of the community property interest of a Founding Stockholder spouse in all or part of such Founding Stockholders' Shares upon death of such spouse or termination of the marital relationship of the spouse and such Founding Stockholder, (vii) in the event of any Founding Stockholder being judicially declared to be incompetent, subject to and in accordance with the rights set forth in Article 2 hereof, to such specified transferee of such Founding Stockholder, (viii) in the event of the total or permanent disability, as defined in Section 422(1)(6) of the Internal Revenue Code, of any Founding Stockholder, subject to and in accordance with the rights set forth in Article 2 hereof, to such specified transferee of such Founding Stockholder, and (ix) to another company or entity in connection with the exchange of all shares of capital stock of the Company to such other company (collectively, "Permitted Transferees"); provided, however, that such Permitted Transferee (other than pursuant to clause (ix) above) agrees to be bound by the terms of this Agreement and such transfer complies with applicable federal and state securities laws,

(b.) Each Founding Stockholder may also sell, assign or transfer any Shares held by such Founding Stockholder without complying with the provisions of Section 2.1 and 3.1 by obtaining the prior written consent of each of the other Founding Stockholders, provided that the transferee agrees in writing to assume the obligations of the Founding Stockholders under this Agreement and that the transfer is made in accordance with any other restrictions or conditions contained in such written consent, if any, and in accordance with applicable federal and state securities laws.

1.3 **No Pledge**. Shares held or otherwise owned by any Founding Stockholder may not be pledged, mortgaged or otherwise encumbered to secure indebtedness of money borrowed or any other obligation for which such Founding Stockholder is primarily or secondarily liable without the consent of the Company and each of the other Founding Stockholders.

1.4 **Shares Certificate Legend**. Each certificate for Founding Stockholders Shares shall have conspicuously written, printed, typed or stamped upon the face thereof, or upon the reverse thereof with a conspicuous reference on the face thereof, the following legends:

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"THESE SHARES ARE SUBJECT TO CERTAIN TRANSFER RESTRICTIONS AND RIGHT OF REPURCHASE AS SET FORTH IN THE CHARLESTON LABORATORIES, INC. STOCKHOLDERS AGREEMENT DATED AS OF MAY 30, 2008 ON FILE WITH THE SECRETARY OF THE COMPANY."

"THESE SHARES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("ACT"). SUCH SHARES MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS TO SUCH TRANSFER, UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL OR OTHER EVIDENCE REASONABLY SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT REGISTRATION IS NOT REQUIRED."

Promptly after execution of this Agreement, each of the existing stock certificates for the Shares issued to the Founding Stockholders, if any, shall be surrendered and new stock certificates shall be issued to such Founding Stockholders with the legends referred to above. Any stock certificate not so surrendered shall be deemed to have the legends referred to above.

1.5 **Definitions**. The words "sale," "sell," "transfer," and the like shall include any disposition by way of transfer, with or without consideration, to any person for any purpose, but shall not apply to exchanges of securities on account of merger, consolidation, reorganization or any other similar transaction affecting all of the securities of the Company.

ARTICLE 2

CERTAIN RIGHTS TO PURCHASE

2.1 Sales of Shares

(a.) Right of First Refusal. In the event that a Founding Stockholder (the "Selling Founding Stockholder") shall desire to sell, assign or transfer any Shares held by such Selling Founding Stockholder to any other person (the "Offer"), the following procedure shall apply. The Selling Founding Stockholder shall give to the Company and to each other Founding Stockholder (the "Non-Selling Founding Stockholders") written notice (the "Selling Founding Stockholder Notice") containing the terms and conditions of the Offer, including, but not limited to (i) the number of Offered Shares; (ii) the price per Share; (iii) the method of payment, and (iv) the name(s) of the proposed purchaser(s).

An Offer shall not be deemed bona fide unless, among other things, the method of payment is cash, the Selling Founding Stockholder has informed the prospective purchaser of its obligation under

this Agreement and the prospective purchaser has agreed to become a party hereunder and to be bound hereby. The Company and the other Founding Stockholders are entitled to take such steps as they reasonably may deem necessary to determine the validity and bona fide nature of the Offer.

The Company and the Non-Selling Founding Stockholders shall have sixty (60) days after receipt of the Selling Founder Stockholder Notice within which to elect to purchase some or all of the Offered Shares. Until thirty (30) days after receipt of the Selling Founder Stockholder Notice, the Company shall have the right to elect to purchase, within fifteen (15) days after the expiration of such 30-day period, the Offered Shares or any portion thereof at the price offered by the prospective purchaser. Such purchase shall be, at the option of the Company, either on the payment terms offered by the prospective purchaser or on the Agreement Terms, as defined in Section 2.5.

If the Company does not elect to purchase all of the Offered Shares, the Non-Selling Founding Stockholders shall have the right (i) to elect to purchase, within sixty (60) days after receipt of the Selling Founder Stockholder Notice, the Offered Shares of any portion thereof at the price offered by the prospective purchaser and specified in such notice or (ii) co-sell Shares to such third party in accordance with Section 3.1 below. The Non-Selling Founding Stockholders electing to purchase or co-sell must give written notice of such election to purchase or co-sell Shares to the Company and the Selling Founding Stockholder which notice shall specify the number of Offered Shares such Stockholder desires to purchase hereunder or the number of Shares such Stockholder desires to co-sell in accordance with Section 3.1. In the event that there are more than one Non-Selling Founding Stockholders desiring to purchase the Offered Shares (or the remaining portion thereof) and they desire to purchase more shares than the aggregate number of Offered Shares (or the remaining portion thereof), then each Non-Selling Founding Stockholder shall have the right to purchase, on a pro rata basis based on the number of Shares owned by such Non-Selling Founding Stockholders, the Offered Shares (or the remaining portion thereof). Such purchase shall be, at the option of the Non-Selling Founding Stockholders, either on the payment terms specified in such notice or on the Agreement Terms, as defined in Section 2.5.

(b) After giving notice under this Section, the Selling Founding Shareholder shall refrain from participating as an officer, director or shareholder of the Company in the Company's decision whether to purchase any or all of the Offered Shares.

(c) Failure of the Company and the Non-Selling Founding Stockholders to Purchase Offered Shares. If all of the Offered Shares are not purchased by the Company and/or the Non-Selling Founding Stockholders within the 60-day period granted for such purchases, then, subject to the co-sale rights set forth in Section 3.1, the remaining Offered Shares may be sold, assigned, or transferred pursuant to the Offer; provided that the Offered Shares are so transferred within ninety (90) days of the expiration of the 60-day period to the person or persons named in, and under the terms and conditions of, the Offer described in the notice to the Company and Founding Stockholders; provided, further, that such transfer requires the new shareholder(s) (being the purchaser(s) under the Offer) to assume the

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obligations of the Selling Founding Stockholder under this Agreement; and provided, further, that such transfer complies with all applicable federal and state securities laws. Notwithstanding the foregoing, prior to consummating any such sale, the Selling Founding Stockholder will, upon request from the Company, provide the Company with reasonable supporting documentation with respect to the terms and conditions of any such sale so as to demonstrate such Selling Founding Stockholder's compliance with the provisions of the preceding sentence. If such sale has not been completed within ninety (90) days of the expiration of the 60-day period as provided above, the Offered Shares may not thereafter be sold by the Selling Founding Stockholder unless the Selling Founding Stockholder reoffers the Offered Shares to the Company and the Non-Selling Founding Stockholders and complies with the procedures set forth in this Section 2.1.

(d) The Right to Withdraw. The Selling Founding Stockholder may at any time prior to the sale of its Shares give notice to the Company that it no longer desires to sell the Offered Shares, provided that if it again desires to sell, assign or transfer any Shares held by it, it must comply with the provisions of the Agreement.

2.2 **Right to Purchase Upon Certain Other Events**

(a.) The Company's Right to Purchase. The Company shall have the right to purchase any or all of the Shares held by a Founding Stockholder (including his transferees hereunder) pursuant to the terms of this Section (the "Terminating Founding Stockholder", and such Shares held by such Terminating Founding Stockholder referred to as the "Terminating Shares") at the Agreement Price and on the Agreement Terms for a period of 90 days after the Company and the Purchasing Founding Stockholder receives notice from the Terminating Founding Stockholder or relevant third party, as applicable, of the occurrence of any of the following events, which notice shall be provided in the case of a Terminating Founding Stockholder within five (5) business days of the occurrence of such event:

(i) the Terminating Founding Stockholder who is an employee ceases to be, for any reason, an employee of the Company or a subsidiary of the Company (any uninterrupted absence for a period of 180 days or more, without approval of the Board of Directors of the Company, shall be deemed to be termination of employment);

(ii) the Terminating Founding Stockholder defaults on any debts to the Company as they become due and fails to repay such debts within 60 business days after written notice of such default;

(iii) the Terminating Founding Stockholder is adjudicated a bankrupt or the Terminating Founding Stockholder makes an assignment for the benefit of creditors or a petition under any insolvency or bankruptcy laws is filed for readjustment of such Stockholder's debts or financial affairs by such Stockholder or by any creditor of such Stockholder;

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(iv) any of the Terminating Founding Stockholder's Shares are levied upon under a writ of execution or become subject to sale under any legal process, or are transferred or ordered to be transferred to or for the benefit of any spouse or any other person or entity as a result of or in connection with any property settlement or judgment incident to a divorce, dissolution of marriage or separation,, or are transferred or ordered to be transferred to any person or entity who is not a party hereto by decree of distribution or other court order in a proceeding arising from the death of the spouse of the Terminating Founding Stockholder; or

(v) the Terminating Founding Stockholder sells, pledges, encumbers, hypothecates or otherwise transfers any interest in, or purports to sell, pledge, encumber, hypothecate or otherwise transfer any interest in, any of his or her Shares, except as permitted by and in full compliance with the terms of this Agreement.

(b.) The Founding Stockholder's Right of Purchase. In the event the Company elects not to purchase all of the Terminating Shares to which the Company is entitled, Each Founding Stockholder (or its transferees hereunder) (a "Purchasing Founding Stockholder") shall have the right to purchase on a pro rata basis based upon the number of Shares owned by such Purchasing Founding Stockholder, within 15 days after the expiration of such 90-day period, any remaining Terminating Shares at the Agreement Price and on the Agreement Terms.

2.3 **Manner of Exercise**. Any right to purchase under Section 2.2 shall be exercised by giving written notice of election to the Company and the Terminating Founding Stockholder or his or her personal representative, as the case may be, prior to the expiration of such right to purchase. Such notice shall be given as provided in Section 5.5 hereof.

2.4 **Agreement Price**

(i) The "Agreement Price" shall be the fair value ("Fair Value") of the Shares to be purchased on a fully diluted basis, calculated on the basis of the Company as a going concern. Initially, the Board of Directors of the Company, in good faith in the exercise of its reasonable business judgment, shall determine the Fair Value of the shares. The Company shall notify the Founding Stockholders (or their representatives) as soon as possible of such determination, but in any event, not later than 30 days after the date giving rise to the right to purchase such Terminating Shares. If the Terminating Founding Stockholder or any Purchasing Founding Stockholder fail to notify the company within 15 days after the date of such notice of their objection to the proposed Fair Value, then the Fair Value proposed in the Company's notice shall be binding and conclusive.

(ii) If any Purchasing Founding Stockholder or the Terminating Founding Stockholder notifies the Company of its objection in writing within such 15-day period and if the

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Company, the Purchasing Founding Stockholders and the Terminating Founding Stockholder (or their representatives) can not mutually agree on the Fair Value of such shares within 10 days after the date of the notice of objection, then the Fair Value of the Shares shall be determined by an independent appraiser selected jointly by the Company, the Purchasing and Terminating Founding Stockholders (or their representatives). The determination of Fair Value by that appraiser shall be binding and conclusive on all parties to the Agreement. If the parties are unable to agree on the selection of an appraiser, each of the Purchasing and Terminating Founding Stockholders shall select an independent appraiser. The two appraisers so selected shall each independently appraise the Shares within 30 days of their appointment and, as long as the difference in the two appraisals does not exceed 5 percent of the lower of the two appraisals, the Fair Value shall be conclusively deemed to equal the average of the two appraisals. If the difference between the two appraisals referred to above exceeds 5 percent of the lower of the two appraisals, the two appraisers selected shall select a third appraiser within 5 business days after delivery of both appraisal, who shall also independently appraise the Fair Value of the shares and whose appraisal shall be conclusively deemed to be the Fair Value of the Shares. If either party fails to select an independent appraiser within the time required by this paragraph or if their appraiser fails to deliver their appraisal to the Company and the other party within the 30-day period, the Fair Value of the Shares shall be conclusively deemed to equal the appraisal of the independent appraiser timely selected by the other or timely delivered to the Company, as the case may be. The Founding Stockholders shall share equally the fees and expenses of the appraisers jointly named, but each party shall be responsible for the fees and expenses of any appraiser named solely by that party. Each party shall bear his, her, or its own expenses in presenting evidence to the appraisers.

2.5 **Agreement Terms**. "Agreement Terms" shall mean 100% of the purchase price, which shall be payable, in the Company's sole discretion, (i) in the form of a check or via wire transfer as directed at the Closing of such purchase and sale, or (ii) 25% of the purchase price in the form of a check or via wire transfers as directed at the Closing, with the balance due in three (3) equal annual installments commencing on the first anniversary of the Closing, which balance shall be represented by a negotiable promissory note bearing interest at the prime rate as published in the Wall Street Journal and secured by a pledge of all shares of Stock involved in such purchase of shares of Stock to the payee of the note.

2.6 **Delivery of Shares and Closing Date**. Within thirty (30) days of the exercise of any right to purchase hereunder or final determination of the Fair Value of the Shares, as the case may be, (the "Closing"), the Selling Founding Stockholder or the Terminating Founding Stockholder or his or her personal representatives, as the case may be, shall deliver certificates representing the Shares to be sold, properly endorsed for transfer, and with the necessary documentary and transfer tax stamps, if any, affixed, to the purchasers of such Shares. Payment of the purchase price therefor shall concurrently be made to the Selling Founding Stockholder or Terminating Founding Stockholder or his or her personal representatives as the case may be. Such delivery and payment shall be made at the principal office of the Company or at such other place as the parties mutually agree. Notwithstanding the above, any such

transfer shall not be consummated unless it complies with all federal and state securities laws and the purchaser of such Shares assumes the obligations under this Agreement.

ARTICLE 3

CO-SALE AND DRAG-ALONG RIGHTS

3.1 Co-Sale Provisions.

(a) In the event that a Selling Founding Stockholder proposes to offer for sale or otherwise transfer any Shares to any person or entity (individually a "Third Party" and collectively, "Third Parties") in any one transaction or any series of related transactions, directly or indirectly, other than a sale to a Permitted Transferee under Section 1.2 hereof, such sale or other disposition to a Third Party shall not be permitted unless the Selling Founding Stockholder shall offer (or cause the Third Party to offer) each other Founding Stockholder and its permitted transferees (each being a "Co-Selling Founding Stockholder") the right to elect to include, at the sole option of such Co-Selling Founding Stockholder, in the sale to the Third Party, to the extent such shares have not been purchased by the Company or Non-Selling Founding Stockholder pursuant to Section 2.1(a) above, such number of Shares owned by such Co-Selling founding Stockholder as permitted under Section 3.1(b) and (c) below (the "Tag-Along shares")

(b) The Selling Founding Stockholder shall deliver a notice to the Company and the Co-Selling Founding Stockholders as provided in Section 2.1(a) above. Within sixty (60) days after the date of such notice, the Co-Selling Founding Stockholders may make an election to either (i) include a number of its Shares as Tag-Along Shares (up to the percentage set forth in paragraph (c) below) in such a sale or other disposition (the "Inclusion Election"), (ii) elect to purchase such Offered Shares pursuant to Section 2.1(a) above, or (iii) neither purchase Offered Shares nor sell Tag-along Shares. Such Co-Selling Founding Stockholder shall notify the Company and the Selling Founding Stockholder of its Inclusion Election within such 60-day period. Any Co-Selling Founding Stockholder electing to sell Tag-Along Shares shall also promptly deliver to the Company a stock certificate or certificates representing the number of Tag-Along Shares, together with a power-of-attorney authorizing the Selling Founding Stockholder to sell or otherwise dispose of such Tag-Along Shares pursuant to the terms of such Third Party's offer.

(c) Each Co-Selling Founding Stockholders shall have the right to co-sell, pursuant to the Third Party's offer, the number of Offered Shares equal to the product obtained by multiplying (x) the number of Offered Shares by (y) a fraction, (A) the numerator of which is the aggregate number of Shares then held by such Co-Selling Founding Stockholder, and (B) the denominator of which is the total number of Shares then held by the Selling Founding Stockholder and all of the Co-Selling Founding Stockholders.

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(d) The purchase of the Tag-Along Shares shall be on the same terms and conditions, including the price per share and the date of sale or other disposition, as are received by the Selling Founding Stockholder and stated in the notice referred to above.

(e) If the Third Party refuses to purchase Shares from the Co-Selling Founding Stockholders at the closing, then the Selling Founding Stockholder shall not be entitled to sell any Shares to the Third Party.

(f) If no Founding Stockholder has elected to make an Inclusion Election or an election to purchase Shares pursuant to Section 2.1, the Selling Founding Stockholder shall have ninety (90) days after the expiration of 60-day period referred to in Section 2.1(c) in which to sell or otherwise dispose of such shares to the Third Party at a price and on terms not more favorable than were set forth in the Offer referred to above. If, at the end of such 90-day period, the Selling Founding Stockholder has not completed the sale of shares in accordance with the terms of the Third Party's offer, all the restrictions on sale contained in this Agreement shall again be in effect (unless such 90-day period is extended with the consent of the other Founding Stockholders). In the event that a sale of Shares is made to a Third Party pursuant to their Section 3.1, such Third Party shall be bound by the Terms of this Agreement.

(g) The Founding Stockholders may elect to either (i) purchase Offered Shares pursuant to Section 2.1 or (ii) sell Tag-along Shares pursuant to Section 3.1, but not both.

3.2 Drag-Along Provisions. In the event the Board of Directors and the holders of at least Sixty Five Percent (65%) of the then outstanding Shares approve a bona fide offer from a third party that is not a Founding Stockholder or an affiliate of any Founding Stockholder (as defined in Rule 144 under the Securities Act of 1933, as amended) to purchase all of the then outstanding capital stock of the Company, then each Founding Stockholder shall vote all of the Shares owned or controlled by such Founding Stockholder in favor of the proposed transaction and shall take all other action deemed necessary or desirable by the Board of Directors to effect the proposed transaction.

ARTICLE 4

MANAGEMENT

4.1 Board of Directors. Each Founding Stockholder hereby agrees that the Board of Directors of the Company shall consist of the number of members determined by the Board of Directors of the Company from time to time. The Founding Stockholders hereby agree that each shall vote all shares of Common Stock held or controlled by each Founding Stockholder so as to provide for the election to the Board of Directors of the Company of each of G. Paul Bosse III, John Ameling, and Ray

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Takigiku PhD, so long as such individuals continue to own at least 50% of the shares of Common Stock of the Company owned as of the date hereof (as adjusted for stock splits and stock dividends, if any).

4.2 Protective Provisions. Until this Agreement is terminated, the Company shall not, without obtaining the written consent of the Founding Stockholders (or their transferees) then subject to this Agreement holding not less than sixty-five percent (65%) of the total Shares held by the Founding Stockholders then subject to this Agreement (a "Super-Majority of Founding Stockholders"):

(a) authorize or issue, or obligate itself to authorize or issue, additional Shares of Common Stock, Preferred Stock or any other capital stock except the issuance of such number of shares of Common Stock as approved by the Board of Directors for issuance pursuant to exercise of stock options granted to employees, consultants, officers or directors; or

(b) sell, convey, or otherwise dispose of all or substantially all of its property or business, or merge into or consolidate into any other corporation, or effect any transaction or series of related transactions in which more than 50% of the voting power of the Corporation is disposed of; or

(c) Amend its Articles of Incorporation.

ARTICLE 5

MISCELLANEOUS

5.1 Additional Founding Stockholders. Until this Agreement shall be terminated, all transferees of the Founding Stockholder Shares shall execute and deliver to the Company a written agreement, in form and content satisfactory to the Company, agreeing to be bound by all of the terms and conditions of the Agreement. The term "Founding Stockholder" as used herein shall be deemed to include the Founding Stockholders and their transferees.

5.2 Representatives and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto, their legal representatives, and permitted assigns and designees.

5.3 Violations or Remedies. The parties agree that any violation of this Agreement (other than a default in the payment of money) cannot be compensated for by damages and any aggrieved party shall have the right, and is hereby granted the privilege, of obtaining specific performance of this Agreement in any court of competent jurisdiction in the event of any breach hereunder.

5.4 Governing Law. This Agreement shall be deemed to be made under and governed by and construed in accordance with the laws of the State of Delaware.

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5.5 **Notices**. All notices required to be delivered pursuant to this Agreement shall be delivered in person or by telegraphic or other facsimile transmission and deemed given on the date of transmission or sent by certified mail, return receipt requested and deemed given three (3) business days after mailing, and shall be addressed to the Company at its principal business office, to the attention of the President, and to a Founding Stockholder at the address of the Founding Stockholder shown in the Company's stock ledger or to such other address as the Founding stockholder may indicate by duly giving written notice to the Company.

5.6 **Severability**. If any term or condition of this Agreement, or application thereof to any person or circumstance, shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or application of such term or condition to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and shall remain in full force and effect.

5.7 **Amendment and Waiver**. This Agreement may be modified or amended in whole or in part, and the observance of any term hereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a written instrument signed by the Company and a Super-Majority of Founding Stockholders. Any amendment, modification or waiver so effected shall be binding upon the Company, the Founding Stockholders and all of their respective successors and permitted assigns whether or not such party, assignee or other shareholder entered into or approved such amendment, modification or waiver. Notwithstanding the foregoing, (i) this Agreement may not be amended or modified and the observance of any term hereunder may not be waived with respect to any Founding Stockholder without the written consent of such Founding Stockholder unless such amendment, modification or waiver applies to all Founding Stockholders, respectively, in the same fashion and (ii) Exhibit A hereto may be amended by the Company from time to time to add information regarding additional Founding Stockholders without the consent of the other parties hereto.

5.8 **No Waiver**. No delay or failure on the part of a Company or a Founding Stockholder in the exercise of any right, power or remedy shall operate as a waiver thereof, not shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

5.9 **Integration**. This Agreement embodies the entire agreement and understanding of the parties hereof in respect of the actions and transactions contemplated by this Agreement. This Agreement supersedes all other prior written or oral understandings between and among the parties hereto relating to the subject matter hereof.

5.10 **Termination of this Agreement**. This Agreement shall terminate upon the earlier of (a) the written agreement of (i) the Company and (ii) a Super-Majority of Founding Stockholders, (b) the sale of all the outstanding shares of capital stock of the company to a third party or, sale of all or

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substantially all of the assets of the Company to a third party, or (c) upon the closing of a registered, underwritten initial public offering of the Company's Common Stock.

5.11 **Counterparts**. This Agreement may be executed in any number counterparts, each of which, when so executed, shall be deemed an original.

5.12 **After-Acquired Shares**. Each Founding Stockholder agrees and acknowledges that all of the terms, conditions and restrictions of this Agreement shall apply to all shares of the capital stock of the Company now owned or hereafter acquired by him.

5.13 **Additional Parties**. Any person exercising a right, option or warrant to acquire shares of the Company's capital stock and any purchaser of shares of the Company's capital stock issued by the Company may be admitted as a party to this Agreement as a Founding Stockholder upon the execution of a counterpart signature page by such person.

[Signature Page Follows]

ROA-1261

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year above written.

G. PAUL BOSSE III

JOHN F. AMELING

BERNARD P. SCHACHTEL

RAY TAKIGIKU

RYAN BAKER

CHRIS GODWIN

ROA-1262

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year above written.

G. PAUL BOSSE III

JOHN F. AMELING

BERNARD P. SCHACHTEL

5/30/08
RAY TARIGIKU

RYAN BAKER

CHRIS GODWIN

APPENDIX A

Shareholders	Number of Shares of Common Stock
G. Paul Bosse III	1,800
Ray Takigiku PhD	210
John Ameling	270
Bernie Schachtel M.D.	360
Ryan Baker	270
Chris Godwin	90
TOTAL	3,000

ROA-1264

Exhibit B

Charleston
LABORATORIES

Executive Offices
65 Gadsden St. Ste 201
Charleston, SC 29401
843-577-2626

March 19, 2010

VIA CERTIFIED MAIL AND HAND DELIVERY

Dr. Ray Takigiku P.h.D
3952 Timberwoods Court
Loveland, OH 45140

Re: Termination of Employment

Dear Ray:

Written notice is hereby given that your employment is terminated with cause, effective immediately. In addition to other potential actions (and inactions) that have been detrimental to Charleston Laboratories, Inc., the Board of Directors notes in particular the abandonment of your executive responsibilities to the company and your recent employment as the full time CEO of Bexion Pharmaceuticals.

REDACTED

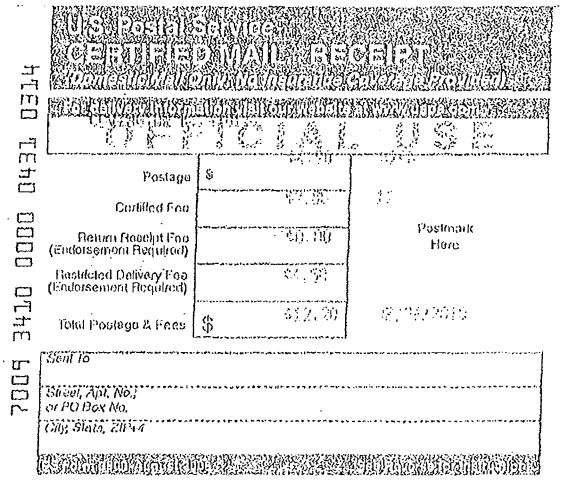
Sincerely yours,

PB

Paul Bosse
CEO, President and Sole Director
Charleston Laboratories, Inc.

cc: Ryan Baker, Chief Financial Officer
John F. Ameling, VP of Regulatory Affairs
Bernard Schachtel, M.D., Chief Scientific Officer
David Baddour, Womble Carlyle Sandridge & Rice

Confidential


U.S. Postal Service
CERTIFIED MAIL RECEIPT
OFFICIAL USE
Postage
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees
Postmark Here
Sent To
Street, Apt. No.; or PO Box No.
City, State, ZIP+4
7009 3410 0000 0431 0E14

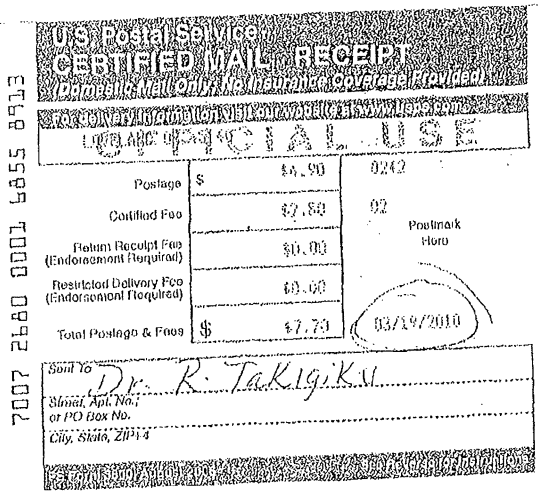

U.S. Postal Service
CERTIFIED MAIL RECEIPT
OFFICIAL USE
Postage
$4.90
Certified Fee
$2.80
Return Receipt Fee (Endorsement Required)
$0.00
Restricted Delivery Fee (Endorsement Required)
$0.00
Total Postage & Fees
$7.70
0242
02
Postmark Here
03/19/2010
Sent To
Dr. R. Takiguchi
Street, Apt. No.; or PO Box No.
City, State, ZIP+4
7007 2680 0001 6855 8913

Exhibit C

Charleston
LABORATORIES

Executive Offices
65 Gadsden St. Ste 201
Charleston, SC 29401
843-577-2626

March 26, 2010

VIA CERTIFIED MAIL

Ray Takigiku P.h.D
632 Russell Street
Covington, KY 41011

Re: Termination of Employment / Redemption and Settlement Agreement / Stock Power

Dear Ray:

On Friday March 19th your employment was terminated with cause. Please find enclosed a check in the amount of $2.10, which the company hereby tenders as payment in full for your equity.

REDACTED

Sincerely,

PB

Paul Bosse
CEO, President and Sole Director
Charleston Laboratories, Inc.

cc: Ryan Baker, Chief Financial Officer
John F. Ameling, VP of Regulatory Affairs
Bernard Schachtel, M.D., Chief Scientific Officer
David Baddour, Womble Carlyle Sandridge & Rice

Confidential

Exhibit D

BRAY & LONG, PLLC
ATTORNEYS AT LAW

William P. Bray *
Jeffrey A. Long * †
Lee A. Peindl
Brendan G. Dillashaw
Charles J. Bridgmon *

* Also licensed in South Carolina
† NC Superior Court Mediator &
Certified SC Circuit Court Mediator

September 22, 2015

VIA UPS DELIVERY
Paul Bosse, President
Charleston Laboratories, Inc.
1001 N. US Hwy. 1, Suite 500
Jupiter, Florida 33477-4305

Re: Ray Takigiku's Shares in Charleston Labs, Inc.,

Dear Mr. Bosse:

I represent Ray Takigiku. Dr. Takigiku retained my firm to obtain information about his stock ownership in Charleston Laboratories, Inc., (hereinafter "CLI") in light of the $650MM investment made by Daiichi in CLI. Please direct any response to this letter to my attention. If CLI engages counsel to respond to this request, I ask that such response be directed to my attention.

I have reviewed substantial correspondence between your and my client (or other counsel acting on behalf of my client), as well as the following documents related to CLI's capital structure and governance:

- Bylaws of CLI;
- CLI's Stockholder Agreement (May 2008);
- Stock Restriction Agreement (May 2008);
- CLI's Amended and Restated Certificate of Incorporation of CLI (Sept. 2008);
- Written Consent of the Stockholders of CLI – Issuance of 1,200,000 Series A Preferred Shares (Sept. 2008);
- CLI's Series A Preferred Stock Purchase Agreement (Sept. 2008);
- CLI's Amendment to Series A Preferred Stock Purchase Agreement – Sept. 2008);
- Capitalization Tables Preceding the Series A Issuance; and
- Capitalization Tables Post-dating the Series A Issuance.

Based upon my review of the foregoing documents and a review of a CLI "Cap Table" produced after issuance of the Series A preferred shares, I am convinced that my client has been denied any information regarding his stock or how Daiichi's investment of $650,000,000.00 affects his ownership stake. More to the point: CLI has wrongfully repudiated Dr. Takigiku's ownership interest granted him by the CLI Stockholder Agreement and affirmed in the Series A Preferred Stock Purchase Agreement.

Perhaps you believe that my client does not own any shares based on CLI's ineffective attempt to terminate Dr. Takigiku's employment, and divest him of his CLI shares. However, my client refused to accept CLI's tender of $2.10 in conjunction with the company's effort to wrongfully terminate him "with cause." We, therefore, ardently believe that my client remains a CLI shareholder. Nevertheless, there has been a blatant, calculated, and unjustifiable effort to deny him information about CLI.

Please forward to my attention a copy of any and all CLI Capitalization Tables produced from September 2008 through the present, including information about the identity of all shareholders and their respective interest/ownership stake in the company. Additionally, we seek information directly related to the Daiichi stake/investment in CLI, including without limitation: Meeting Minutes; Shareholder Consent; Authorization of Dividends; Summaries of Terms and Conditions for issues subsequent to the Series A Preferred shares; Disclosure Statements; and/or any Amended or Restated Articles.

My client is willing to provide CLI a reasonable amount of time to comply with all the terms of this request; however, we would appreciate a response to this letter and CLI's confirmation of Dr. Takigiku's status as a CLI shareholder within 15 business days.

Regards,

Jeffrey A. Long

cc: Ray Takigiku

STOCK RESTRICTION AGREEMENT

THIS STOCK RESTRICTION AGREEMENT (the "Agreement"), dated as of May 30, 2008, by and between Charleston Laboratories, Inc., a Delaware corporation (the "Company"), and Ray Takigiku, Ph.D (the "Stockholder").

RECITALS

WHEREAS, the Stockholder is the holder of Two Hundred Ten (210) shares of the Company's common stock, $0.001 par value per share (the "Common Stock"), which shares represent seven percent (7%) of the outstanding capital stock as of the date hereof; and

WHEREAS, as partial consideration for the entry into an employment agreement between the Stockholder and the Company dated as of even date herewith, and for other good and valuable consideration, the Stockholder has agreed to grant to the Company certain rights to repurchase all of the shares of Common Stock held by the Stockholder (the "Restricted Shares"), as provided below.

NOW, THEREFORE, in consideration of the premises, which are incorporated into and made part of this Agreement, and of the mutual representations, warranties, covenants, agreements and conditions set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Repurchase Option.

(a) Termination of Employment. In the event that prior to May 30, 2011 the Stockholder either (i) resigns or otherwise voluntarily terminates his employment with the Company or (ii) is terminated for Cause (as defined below), the Company shall have the right and option, for a period of sixty (60) days next following the effective date of such resignation or termination, to repurchase from the Stockholder, at a price of $0.01 per share payable in cash or by check, any or all of the number of Restricted Shares set forth on Schedule A attached hereto and made a part hereof. For purposes of this provision, "Cause" shall have the meaning given in a written employment agreement between the Stockholder and the Company, if any, and otherwise shall have the meaning determined by the Board of Directors of the Company, in its reasonable judgment after consultation with counsel for the Company.

(b) Termination of Repurchase Option. Notwithstanding the provisions of Section 1(a), (i) the Company's right to repurchase fifty percent (50%) of the number of Restricted Shares then subject to repurchase by the Company pursuant to Section 1(a) on each date set forth on Schedule A shall expire and be of no further force or effect upon the occurrence of a Change in Control, as defined below, and (ii) any of the Restricted Shares then subject to repurchase by the Company pursuant to Section 1(a) shall

DEFENDANT'S EXHIBIT 3

expire and be of no further force or effect if the Purchaser's employment is terminated by the Company without cause during the 12 month period following a Change in Control. A "Change in Control" shall be deemed to have occurred on the earliest of the following dates: (i) the date on which the Company consummates a merger, share exchange, consolidation or reorganization that results in the stockholders of the Company immediately prior to such event holding securities or other rights immediately after such event that represent less than fifty percent (50%) of the voting power and equity ownership of the surviving, acquiring or successor entity, or of the parent of the surviving, acquiring or successor entity; or (ii) the date on which any person or entity, other than a person or entity who was a beneficial owner of the Company's securities on the date of this Agreement, becomes the beneficial owner of more than fifty percent (50%) of the outstanding Common Stock, calculated on a fully-diluted, as converted basis, by means of a purchase or acquisition of the Company's securities from one or more stockholders of the Company, whether by tender offer or otherwise.

(c) Closing. The closing of any repurchase of Restricted Shares pursuant to this Section 1 shall be held at the principal office of the Company on a date selected by the Company but not later than the sixtieth (60th) day next following the occurrence of any event giving rise to the Company's right to repurchase such Restricted Shares. At the closing, the Purchaser shall deliver certificates representing the Restricted Shares being repurchased, duly endorsed for transfer, and shall execute and deliver such other documents as may be reasonably requested by the Company to effectuate the repurchase of the Restricted Shares. The Restricted Shares shall be transferred free and clear of all security interests, liens, encumbrances, restrictions and other claims or charges of any kind whatsoever.

2. Restrictive Legends.

(a) Primary Legends. Certificates representing the Restricted Shares shall bear the following legends:

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER ANY STATE SECURITIES LAW AND MAY NOT BE SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR TRANSFERRED UNLESS THERE EXISTS AN EFFECTIVE REGISTRATION STATEMENT THEREFOR UNDER THE ACT AND ALL APPLICABLE STATE SECURITIES LAWS OR THE ISSUER HEREOF HAS RECEIVED AN OPINION OF COUNSEL, REASONABLY ACCEPTABLE TO THE ISSUER, THAT SUCH SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR TRANSFER IS EXEMPT FROM REGISTRATION.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO REPURCHASE BY THE ISSUER UPON THE OCCURRENCE OF CERTAIN EVENTS SET FORTH IN THAT CERTAIN STOCK RESTRICTION AGREEMENT DATED AS OF MAY 30, 2008 BY AND BETWEEN THE ISSUER AND THE ORIGINAL HOLDER OF SUCH SHARES.

(b) Other Legends. Certificates representing the Restricted Shares shall bear any other legend(s) required by any applicable federal or state securities law or by any other agreement to which the holder thereof is a party or by which the holder thereof is bound.

3. Governing Law. This Agreement shall be governed by and shall be construed and enforced in accordance with the laws of the State of Delaware applicable to agreements entered into and performed within such State, but without reference to the conflicts of law rules of such State.

4. Successors and Assigns. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

5. Entire Agreement; Amendment and Waiver. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and this Agreement supersedes and renders null and void any and all other prior oral or written agreements, understandings, or commitments pertaining to the subject matter hereof. Neither this Agreement nor any term hereof may be amended, waived, discharged or terminated except by a written instrument signed by the Company and the Stockholder. The failure of any party to this Agreement to insist upon the strict performance of any of the terms, conditions or provisions of this Agreement shall not be construed as a waiver or relinquishment of future compliance therewith, and said terms, conditions and provisions shall remain in full force and effect.

6. Invalidity. Should any part of this Agreement, for any reason whatsoever, be declared invalid, illegal, or incapable of being enforced in whole or in part, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in full force and effect as if this Agreement had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties hereto that they would have executed the remaining portion of this Agreement without including therein any portion which may for any reason be declared invalid.

7. Notices. Any notices required to be delivered under this Agreement shall be in writing and sent to the address(es) set forth below. Any party may change its address for notice purposes by giving written notice of such change as set forth herein.

To the Company:	Charleston Laboratories, Inc. 548 Clearview Drive Charleston, SC 29412 Attn: Board of Directors	Copy to:	Womble Carlyle Sandridge & Rice 8065 Leesburg Pike, 4th Floor Vienna, VA 22182 Attn: Dean Rutley, Esq.

To the Stockholder: Ray Takigiku
3952 Timberwoods Ct
Loveland, OH 45140

Copy to: _____

Attn: _____

8. Captions. The captions contained in this Agreement are for convenience of reference only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

IN WITNESS WHEREOF, the Company and the Stockholder have entered into this Agreement as of the date first written above.

CHARLESTON LABORATORIES, INC.

By: _____
Paul Bosse
President

STOCKHOLDER

5/30/03
Ray Takigiku, Ph.D

SCHEDULE A
TO
RESTRICTED STOCK PURCHASE AGREEMENT

If Employment Terminates On or After:	But Prior to:	Company shall have the right to repurchase the following number of Shares of Common Stock
May 30, 2008	May 30, 2009	105
May 30, 2009	May 30, 2010	70
May 30, 2010	May 30, 2011	35
May 30, 2011	n/a	0

CHARLESTON LABORATORIES, INC.

STOCKHOLDERS AGREEMENT

THIS CHARLESTON LABORATORIES, INC. STOCKHOLDERS AGREEMENT (this "Agreement") is made and entered into as of May 30, 2008 by and among Charleston Laboratories, Inc., a Delaware corporation (the "Company") and G. Paul Bosse III, John F. Ameling, Bernard P. Schachtel, Ray Takigiku, Ryan Baker, and Chris Godwin (the "Founding Shareholders").

WITNESSETH:

WHEREAS, the Founding Stockholders are collectively the owners of 100% of the issued and outstanding shares of the common stock of the Company as set forth on Exhibit A hereto ("Common Stock");

WHEREAS, the Founding Stockholders believe that it is in the best interests of the Founding Stockholders and the Company to make provisions for the future disposition of the shares of common stock of the Company held by the Founding Stockholders and other matters set forth herein; and

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants herein set forth, the parties hereto agree as follows:

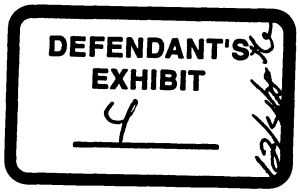
ARTICLE I

RESTRICTIONS ON TRANSFER OF STOCK

1.1 **General**

(a.) The Founding Stockholders shall not dispose of any shares of Common Stock now or hereafter owned by them ("Shares"), whether by sale, exchange, assignment, transfer, gift, devise, bequest, mortgage, pledge, encumbrance or otherwise, except in accordance with the terms and conditions of this Agreement. The Company and each Founding Stockholder shall also not take or omit to take any action which will impair the absolute and unrestricted right, power, authority and capacity of the Company or the Founding Stockholders to purchase or sell Shares in accordance with the terms and conditions hereof.

(b.) The Company, by its execution of this Agreement, agrees that it will not cause or permit the transfer of any shares to be made on its books except in accordance with the terms of this Agreement.



1.2 **Permitted Transfers of Founding Stockholder's Shares**

(a.) A Founding Stockholder may sell, assign or transfer any Shares held by such Founding Stockholder by complying with the provisions of Sections 2.1 and 3.1 hereof or, with prior written notice to the Company, (i) to any immediate family member (parent, sibling, spouse, child (including stepchildren or adopted children), niece, nephew, first cousin, or grandchild), (ii) to a trust whose sole beneficiaries are immediate family members, (iii) to a Founding Stockholder, (iv) to the Company, (v) in the event of the death of any Founding Stockholder, subject to and in accordance with the rights set forth in Article 2 hereof, to the estate of such Founding Stockholder or individual or entity named in the will of such Founding Stockholder, (vi) subject to and in accordance with the rights set forth in Article 2 hereof, top any person solely in connection with the transfer of the community property interest of a Founding Stockholder spouse in all or part of such Founding Stockholders' Shares upon death of such spouse or termination of the marital relationship of the spouse and such Founding Stockholder, (vii) in the event of any Founding Stockholder being judicially declared to be incompetent, subject to and in accordance with the rights set forth in Article 2 hereof, to such specified transferee of such Founding Stockholder, (viii) in the event of the total or permanent disability, as defined in Section 422(d)(6) of the Internal Revenue Code, of any Founding Stockholder, subject to and in accordance with the rights set forth in Article 2 hereof, to such specified transferee of such Founding Stockholder, and (ix) to another company or entity in connection with the exchange of all shares of capital stock of the Company to such other company (collectively, "Permitted Transferees"); provided, however, that such Permitted Transferee (other than pursuant to clause (ix) above) agrees to be bound by the terms of this Agreement and such transfer complies with applicable federal and state securities laws.

(b.) Each Founding Stockholder may also sell, assign or transfer any Shares held by such Founding Stockholder without complying with the provisions of Section 2.1 and 3.1 by obtaining the prior written consent of each of the other Founding Stockholders, provided that the transferee agrees in writing to assume the obligations of the Founding Stockholders under this Agreement and that the transfer is made in accordance with any other restrictions or conditions contained in such written consent, if any, and in accordance with applicable federal and state securities laws.

1.3 **No Pledge**. Shares held or otherwise owned by any Founding Stockholder may not be pledged, mortgaged or otherwise encumbered to secure indebtedness of money borrowed or any other obligation for which such Founding Stockholder is primarily or secondarily liable without the consent of the Company and each of the other Founding Stockholders.

1.4 **Shares Certificate Legend**. Each certificate for Founding Stockholders Shares shall have conspicuously written, printed, typed or stamped upon the face thereof, or upon the reverse thereof with a conspicuous reference on the face thereof, the following legends:

CL-000007

PL-0026855

ROA-1279

"THESE SHARES ARE SUBJECT TO CERTAIN TRANSFER RESTRICTIONS AND RIGHT OF REPURCHASE AS SET FORTH IN THE CHARLESTON LABORATORIES, INC. STOCKHOLDERS AGREEMENT DATED AS OF MAY 30, 2008 ON FILE WITH THE SECRETARY OF THE COMPANY."

"THESE SHARES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("ACT"). SUCH SHARES MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS TO SUCH TRANSFER, UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL OR OTHER EVIDENCE REASONABLY SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT REGISTRATION IS NOT REQUIRED."

Promptly after execution of this Agreement, each of the existing stock certificates for the Shares issued to the Founding Stockholders, if any, shall be surrendered and new stock certificates shall be issued to such Founding Stockholders with the legends referred to above. Any stock certificate not so surrendered shall be deemed to have the legends referred to above.

1.5 **Definitions**. The words "sale," "sell," "transfer," and the like shall include any disposition by way of transfer, with or without consideration, to any person for any purpose, but shall not apply to exchanges of securities on account of merger, consolidation, reorganization or any other similar transaction affecting all of the securities of the Company.

ARTICLE 2

CERTAIN RIGHTS TO PURCHASE

2.1 **Sales of Shares**

(a.) *Right of First Refusal*. In the event that a Founding Stockholder (the "Selling Founding Stockholder") shall desire to sell, assign or transfer any Shares held by such Selling Founding Stockholder to any other person (the "Offer"), the following procedure shall apply. The Selling Founding Stockholder shall give to the Company and to each other Founding Stockholder (the "Non-Selling Founding Stockholders") written notice (the "Selling Founding Stockholder Notice") containing the terms and conditions of the Offer, including, but not limited to (i) the number of Offered Shares; (ii) the price per Share; (iii) the method of payment; and (iv) the name(s) of the proposed purchaser(s).

An Offer shall not be deemed bona fide unless, among other things, the method of payment is cash, the Selling Founding Stockholder has informed the prospective purchaser of its obligation under

CL-000008

PL-0026856

ROA-1280

this Agreement and the prospective purchaser has agreed to become a party hereunder and to be bound hereby. The Company and the other Founding Stockholders are entitled to take such steps as they reasonably may deem necessary to determine the validity and bona fide nature of the Offer.

The Company and the Non-Selling Founding Stockholders shall have sixty (60) days after receipt of the Selling Founder Stockholder Notice within which to elect to purchase some or all of the Offered Shares. Until thirty (30) days after receipt of the Selling Founder Stockholder Notice, the Company shall have the right to elect to purchase, within fifteen (15) days after the expiration of such 30-day period, the Offered Shares or any portion thereof at the price offered by the prospective purchaser. Such purchase shall be, at the option of the Company, either on the payment terms offered by the prospective purchaser or on the Agreement Terms, as defined in Section 2.5.

If the Company does not elect to purchase all of the Offered Shares, the Non-Selling Founding Stockholders shall have the right (i) to elect to purchase, within sixty (60) days after receipt of the Selling Founder Stockholder Notice, the Offered Shares of any portion thereof at the price offered by the prospective purchaser and specified in such notice or (ii) co-sell Shares to such third party in accordance with Section 3.1 below. The Non-Selling Founding Stockholders electing to purchase or co-sell must give written notice of such election to purchase or co-sell Shares to the Company and the Selling Founding Stockholder which notice shall specify the number of Offered Shares such Stockholder desires to purchase hereunder or the number of Shares such Stockholder desires to co-sell in accordance with Section 3.1. In the event that there are more than one Non-Selling Founding Stockholders desiring to purchase the Offered Shares (or the remaining portion thereof) and they desire to purchase more shares than the aggregate number of Offered Shares (or the remaining portion thereof), then each Non-Selling Founding Stockholder shall have the right to purchase, on a pro rata basis based on the number of Shares owned by such Non-Selling Founding Stockholders, the Offered Shares (or the remaining portion thereof). Such purchase shall be, at the option of the Non-Selling Founding Stockholders, either on the payment terms specified in such notice or on the Agreement Terms, as defined in Section 2.5.

(b) After giving notice under this Section, the Selling Founding Shareholder shall refrain from participating as an officer, director or shareholder of the Company in the Company's decision whether to purchase any or all of the Offered Shares.

(c) Failure of the Company and the Non-Selling Founding Stockholders to Purchase Offered Shares. If all of the Offered Shares are not purchased by the Company and/or the Non-Selling Founding Stockholders within the 60-day period granted for such purchases, then, subject to the co-sale rights set forth in Section 3.1, the remaining Offered Shares may be sold, assigned, or transferred pursuant to the Offer; provided that the Offered Shares are so transferred within ninety (90) days of the expiration of the 60-day period to the person or persons named in, and under the terms and conditions of, the Offer described in the notice to the Company and Founding Stockholders; provided, further, that such transfer requires the new shareholder(s) (being the purchaser(s) under the Offer) to assume the

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obligations of the Selling Founding Stockholder under this Agreement; and provided, further, that such transfer complies with all applicable federal and state securities laws. Notwithstanding the foregoing, prior to consummating any such sale, the Selling Founding Stockholder will, upon request from the Company, provide the Company with reasonable supporting documentation with respect to the terms and conditions of any such sale so as to demonstrate such Selling Founding Stockholder's compliance with the provisions of the preceding sentence. If such sale has not been completed within ninety (90) days of the expiration of the 60-day period as provided above, the Offered Shares may not thereafter be sold by the Selling Founding Stockholder unless the Selling Founding Stockholder reoffers the Offered Shares to the Company and the Non-Selling Founding Stockholders and complies with the procedures set forth in this Section 2.1.

(d) The Right to Withdraw. The Selling Founding Stockholder may at any time prior to the sale of its Shares give notice to the Company that it no longer desires to sell the Offered Shares, provided that if it again desires to sell, assign or transfer any Shares held by it, it must comply with the provisions of the Agreement.

2.2 **Right to Purchase Upon Certain Other Events**

(a.) The Company's Right to Purchase. The Company shall have the right to purchase any or all of the Shares held by a Founding Stockholder (including his transferees hereunder) pursuant to the terms of this Section (the "Terminating Founding Stockholder", and such Shares held by such Terminating Founding Stockholder referred to as the "Terminating Shares") at the Agreement Price and on the Agreement Terms for a period of 90 days after the Company and the Purchasing Founding Stockholder receives notice from the Terminating Founding Stockholder or relevant third party, as applicable, of the occurrence of any of the following events, which notice shall be provided in the case of a Terminating Founding Stockholder within five (5) business days of the occurrence of such event:

(i) the Terminating Founding Stockholder who is an employee ceases to be, for any reason, an employee of the Company or a subsidiary of the Company (any uninterrupted absence for a period of 180 days or more, without approval of the Board of Directors of the Company, shall be deemed to be termination of employment);

(ii) the Terminating Founding Stockholder defaults on any debts to the Company as they become due and fails to repay such debts within 60 business days after written notice of such default;

(iii) the Terminating Founding Stockholder is adjudicated a bankrupt or the Terminating Founding Stockholder makes an assignment for the benefit of creditors or a petition under any insolvency or bankruptcy laws is filed for readjustment of such Stockholder's debts or financial affairs by such Stockholder or by any creditor of such Stockholder;

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(iv) any of the Terminating Founding Stockholder's Shares are levied upon under a writ of execution or become subject to sale under any legal process, or are transferred or ordered to be transferred to or for the benefit of any spouse or any other person or entity as a result of or in connection with any property settlement or judgment incident to a divorce, dissolution of marriage or separation, or are transferred or ordered to be transferred to any person or entity who is not a party hereto by decree of distribution or other court order in a proceeding arising from the death of the spouse of the Terminating Founding Stockholder; or

(v) the Terminating Founding Stockholder sells, pledges, encumbers, hypothecates or otherwise transfers any interest in, or purports to sell, pledge, encumber, hypothecate or otherwise transfer any interest in, any of his or her Shares, except as permitted by and in full compliance with the terms of this Agreement.

(b.) The Founding Stockholder's Right of Purchase. In the event the Company elects not to purchase all of the Terminating Shares to which the Company is entitled, Each Founding Stockholder (or its transferees hereunder) (a "Purchasing Founding Stockholder") shall have the right to purchase on a pro rata basis based upon the number of Shares owned by such Purchasing Founding Stockholder, within 15 days after the expiration of such 90-day period, any remaining Terminating Shares at the Agreement Price and on the Agreement Terms.

2.3 **Manner of Exercise**. Any right to purchase under Section 2.2 shall be exercised by giving written notice of election to the Company and the Terminating Founding Stockholder or his or her personal representative, as the case may be, prior to the expiration of such right to purchase. Such notice shall be given as provided in Section 5.5 hereof.

2.4 **Agreement Price**

(i) The "Agreement Price" shall be the fair value ("Fair Value") of the Shares to be purchased on a fully diluted basis, calculated on the basis of the Company as a going concern. Initially, the Board of Directors of the Company, in good faith in the exercise of its reasonable business judgment, shall determine the Fair Value of the shares. The Company shall notify the Founding Stockholders (or their representatives) as soon as possible of such determination, but in any event, not later than 30 days after the date giving rise to the right to purchase such Terminating Shares. If the Terminating Founding Stockholder or any Purchasing Founding Stockholder fail to notify the company within 15 days after the date of such notice of their objection to the proposed Fair Value, then the Fair Value proposed in the Company's notice shall be binding and conclusive.

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(ii) If any Purchasing Founding Stockholder or the Terminating Founding Stockholder notifies the Company of its objection in writing within such 15-day period and if the Company, the Purchasing Founding Stockholders and the Terminating Founding Stockholder (or their representatives) can not mutually agree on the Fair Value of such shares within 10 days after the date of the notice of objection, then the Fair Value of the Shares shall be determined by an independent appraiser selected jointly by the Company, the Purchasing and Terminating Founding Stockholders (or their representatives). The determination of Fair Value by that appraiser shall be binding and conclusive on all parties to the Agreement. If the parties are unable to agree on the selection of an appraiser, each of the Purchasing and Terminating Founding Stockholders shall select an independent appraiser. The two appraisers so selected shall each independently appraise the Shares within 30 days of their appointment and, as long as the difference in the two appraisals does not exceed 5 percent of the lower of the two appraisals, the Fair Value shall be conclusively deemed to equal the average of the two appraisals. If the difference between the two appraisals referred to above exceeds 5 percent of the lower of the two appraisals, the two appraisers selected shall select a third appraiser within 5 business days after delivery of both appraisal, who shall also independently appraise the Fair Value of the shares and whose appraisal shall be conclusively deemed to be the Fair Value of the Shares. If either party fails to select an independent appraiser within the time required by this paragraph or if their appraiser fails to deliver their appraisal to the Company and the other party within the 30-day period, the Fair Value of the Shares shall be conclusively deemed to equal the appraisal of the independent appraiser timely selected by the other or timely delivered to the Company, as the case may be. The Founding Stockholders shall share equally the fees and expenses of the appraisers jointly named, but each party shall be responsible for the fees and expenses of any appraiser named solely by that party. Each party shall bear his, her, or its own expenses in presenting evidence to the appraisers.

2.5 **Agreement Terms**. "Agreement Terms" shall mean100% of the purchase price, which shall be payable, in the Company's sole discretion, (i) in the form of a check or via wire transfer as directed at the Closing of such purchase and sale, or (ii) in five (5) equal annual installments, represented by a negotiable promissory note secured by a pledge of all shares of Stock involved in such purchase of shares of Stock to the payee of the note.

2.6 **Delivery of Shares and Closing Date**. Within thirty (30) days of the exercise of any right to purchase hereunder or final determination of the Fair Value of the Shares, as the case may be, (the "Closing"), the Selling Founding Stockholder or the Terminating Founding Stockholder or his or her personal representatives, as the case may be, shall deliver certificates representing the Shares to be sold, properly endorsed for transfer, and with the necessary documentary and transfer tax stamps, if any, affixed, to the purchasers of such Shares. Payment of the purchase price therefor shall concurrently be made to the Selling Founding Stockholder or Terminating Founding Stockholder or his or her personal representatives as the case may be. Such delivery and payment shall be made at the principal office of the Company or at such other place as the parties mutually agree. Notwithstanding the above, any such

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transfer shall not be consummated unless it complies with all federal and state securities laws and the purchaser of such Shares assumes the obligations under this Agreement.

ARTICLE 3

CO-SALE AND DRAG-ALONG RIGHTS

3.1 **Co-Sale Provisions.**

(a) In the event that a Selling Founding Stockholder proposes to offer for sale or otherwise transfer any Shares to any person or entity (individually a "Third Party" and collectively, "Third Parties") in any one transaction or any series of related transactions, directly or indirectly, other than a sale to a Permitted Transferee under Section 1.2 hereof, such sale or other disposition to a Third Party shall not be permitted unless the Selling Founding Stockholder shall offer (or cause the Third Party to offer) each other Founding Stockholder and its permitted transferees (each being a "Co-Selling Founding Stockholder") the right to elect to include, at the sole option of such Co-Selling Founding Stockholder, in the sale to the Third Party, to the extent such shares have not been purchased by the Company or Non-Selling Founding Stockholder pursuant to Section 2.1(a) above, such number of Shares owned by such Co-Selling founding Stockholder as permitted under Section 3.1(b) and (c) below (the "Tag-Along shares")

(b) The Selling Founding Stockholder shall deliver a notice to the Company and the Co-Selling Founding Stockholders as provided in Section 2.1(a) above. Within sixty (60) days after the date of such notice, the Co-Selling Founding Stockholders may make an election to either (i) include a number of its Shares as Tag-Along Shares (up to the percentage set forth in paragraph (c) below) in such a sale or other disposition (the "Inclusion Election"), (ii) elect to purchase such Offered Shares pursuant to Section 2.1(a) above, or (iii) neither purchase Offered Shares nor sell Tag-along Shares. Such Co-Selling Founding Stockholder shall notify the Company and the Selling Founding Stockholder of its Inclusion Election within such 60-day period. Any Co-Selling Founding Stockholder electing to sell Tag-Along Shares shall also promptly deliver to the Company a stock certificate or certificates representing the number of Tag-Along Shares, together with a power-of-attorney authorizing the Selling Founding Stockholder to sell or otherwise dispose of such Tag-Along Shares pursuant to the terms of such Third Party's offer.

(c) Each Co-Selling Founding Stockholders shall have the right to co-sell, pursuant to the Third Party's offer, the number of Offered Shares equal to the product obtained by multiplying (x) the number of Offered Shares by (y) a fraction, (A) the numerator of which is the aggregate number of Shares then held by such Co-Selling Founding Stockholder, and (B) the denominator of which is the total number of Shares then held by the Selling Founding Stockholder and all of the Co-Selling Founding Stockholders.

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(d) The purchase of the Tag-Along Shares shall be on the same terms and conditions, including the price per share and the date of sale or other disposition, as are received by the Selling Founding Stockholder and stated in the notice referred to above.

(e) If the Third Party refuses to purchase Shares from the Co-Selling Founding Stockholders at the closing, then the Selling Founding Stockholder shall not be entitled to sell any Shares to the Third Party.

(f) If no Founding Stockholder has elected to make an Inclusion Election or an election to purchase Shares pursuant to Section 2.1, the Selling Founding Stockholder shall have ninety (90) days after the expiration of 60-day period referred to in Section 2.1(c) in which to sell or otherwise dispose of such shares to the Third Party at a price and on terms not more favorable than were set forth in the Offer referred to above. If, at the end of such 90-day period, the Selling Founding Stockholder has not completed the sale of shares in accordance with the terms of the Third Party's offer, all the restrictions on sale contained in this Agreement shall again be in effect (unless such 90-day period is extended with the consent of the other Founding Stockholders). In the event that a sale of Shares is made to a Third Party pursuant to their Section 3.1, such Third Party shall be bound by the Terms of this Agreement.

(g) The Founding Stockholders may elect to either (i) purchase Offered Shares pursuant to Section 2.1 or (ii) sell Tag-along Shares pursuant to Section 3.1, but not both.

3.2 **Drag-Along Provisions**. In the event the Board of Directors and the holders of at least Sixty Five Percent (65%) of the then outstanding Shares approve a bona fide offer from a third party that is not a Founding Stockholder or an affiliate of any Founding Stockholder (as defined in Rule 144 under the Securities Act of 1933, as amended) to purchase all of the then outstanding capital stock of the Company, then each Founding Stockholder shall vote all of the Shares owned or controlled by such Founding Stockholder in favor of the proposed transaction and shall take all other action deemed necessary or desirable by the Board of Directors to effect the proposed transaction.

ARTICLE 4

MANAGEMENT

4.1 **Board of Directors**. Each Founding Stockholder hereby agrees that the Board of Directors of the Company shall consist of the number of members determined by the Board of Directors

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of the Company from time to time. The Founding Stockholders hereby agree that each shall vote all shares of Common Stock held or controlled by each Founding Stockholder so as to provide for the election to the Board of Directors of the Company of each of G. Paul Bosse III, John Ameling, and Ray Takigiku PhD. so long as such individuals continue to own at least 50% of the shares of Common Stock of the Company owned as of the date hereof (as adjusted for stock splits and stock dividends, if any).

4.2 **Protective Provisions**. Until this Agreement is terminated, the Company shall not, without obtaining the written consent of the Founding Stockholders (or their transferees) then subject to this Agreement holding not less than sixty-five percent (65%) of the total Shares held by the Founding Stockholders then subject to this Agreement (a "Super-Majority of Founding Stockholders"):

(a) authorize or issue, or obligate itself to authorize or issue, additional Shares of Common Stock, Preferred Stock or any other capital stock except the issuance of such number of shares of Common Stock as approved by the Board of Directors for issuance pursuant to exercise of stock options granted to employees, consultants, officers or directors; or

(b) sell, convey, or otherwise dispose of all or substantially all of its property or business, or merge into or consolidate into any other corporation, or effect any transaction or series of related transactions in which more than 50% of the voting power of the Corporation is disposed of; or

(c) Amend its Articles of Incorporation.

ARTICLE 5

MISCELLANEOUS

5.1 **Additional Founding Stockholders**. Until this Agreement shall be terminated, all transferees of the Founding Stockholder Shares shall execute and deliver to the Company a written agreement, in form and content satisfactory to the Company, agreeing to be bound by all of the terms and conditions of the Agreement. The term "Founding Stockholder" as used herein shall be deemed to include the Founding Stockholders and their transferees.

5.2 **Representatives and Assigns**. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto, their legal representatives, and permitted assigns and designees.

5.3 **Violations or Remedies**. The parties agree that any violation of this Agreement (other than a default in the payment of money) cannot be compensated for by damages and any aggrieved party shall have the right, and is hereby granted the privilege, of obtaining specific performance of this Agreement in any court of competent jurisdiction in the event of any breach hereunder.

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5.4 **Governing Law**. This Agreement shall be deemed to be made under and governed by and construed in accordance with the laws of the State of Delaware.

5.5 **Notices**. All notices required to be delivered pursuant to this Agreement shall be delivered in person or by telegraphic or other facsimile transmission and deemed given on the date of transmission or sent by certified mail, return receipt requested and deemed given three (3) business days after mailing, and shall be addressed to the Company at its principal business office, to the attention of the President, and to a Founding Stockholder at the address of the Founding Stockholder shown in the Company's stock ledger or to such other address as the Founding stockholder may indicate by duly giving written notice to the Company.

5.6 **Severability**. If any term or condition of this Agreement, or application thereof to any person or circumstance, shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or application of such term or condition to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and shall remain in full force and effect.

5.7 **Amendment and Waiver**. This Agreement may be modified or amended in whole or in part, and the observance of any term hereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a written instrument signed by the Company and a Super-Majority of Founding Stockholders. Any amendment, modification or waiver so effected shall be binding upon the Company, the Founding Stockholders and all of their respective successors and permitted assigns whether or not such party, assignee or other shareholder entered into or approved such amendment, modification or waiver. Notwithstanding the foregoing, (i) this Agreement may not be amended or modified and the observance of any term hereunder may not be waived with respect to any Founding Stockholder without the written consent of such Founding Stockholder unless such amendment, modification or waiver applies to all Founding Stockholders, respectively, in the same fashion and (ii) Exhibit A hereto may be amended by the Company from time to time to add information regarding additional Founding Stockholders without the consent of the other parties hereto.

5.8 **No Waiver**. No delay or failure on the part of a Company or a Founding Stockholder in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

5.9 **Integration**. This Agreement embodies the entire agreement and understanding of the parties hereof in respect of the actions and transactions contemplated by this Agreement. This Agreement supersedes all other prior written or oral understandings between and among the parties hereto relating to the subject matter hereof.

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5.10 **Termination of this Agreement**. This Agreement shall terminate upon the earlier of (a) the written agreement of (i) the Company and (ii) a Super-Majority of Founding Stockholders, (b) the sale of all the outstanding shares of capital stock of the company to a third party or, sale of all or substantially all of the assets of the Company to a third party, or (c) upon the closing of a registered, underwritten initial public offering of the Company's Common Stock with net proceeds to the Company in excess of $20,000,000.

5.11 **Counterparts**. This Agreement may be executed in any number counterparts, each of which, when so executed, shall be deemed an original.

5.12 **After-Acquired Shares**. Each Founding Stockholder agrees and acknowledges that all of the terms, conditions and restrictions of this Agreement shall apply to all shares of the capital stock of the Company now owned or hereafter acquired by him.

5.13 **Additional Parties**. Any person exercising a right, option or warrant to acquire shares of the Company's capital stock and any purchaser of shares of the Company's capital stock issued by the Company may be admitted as a party to this Agreement as a Founding Stockholder upon the execution of a counterpart signature page by such person.

[Signature Page Follows]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year above written.

G. Paul Bosse III

G. PAUL BOSSE III

JOHN F. AMELING

BERNARD P. SCHACHTEL

RAY TAKIGIKU

RYAN BAKER

CHRIS GODWIN

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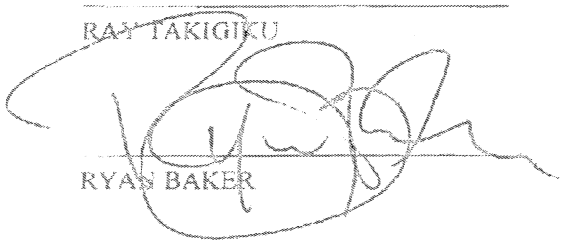
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year above written.

G. PAUL BOSSE III

JOHN F. AMELING

BERNARD P. SCHACHTEL

RAY TAKIGUCU



RYAN BAKER

CHRIS GODWIN

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year above written.

G. PAUL BOSSE III

JOHN F. AMELING

BERNARD P. SCHACHTEL M.D.

RAY TAKIGIKU PhD

RYAN BAKER

CHRIS GODWIN

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year above written.

G. PAUL BOSSE III

JOHN F. AMELING

BERNARD P. SCHACHTEL

RAY TAKIGIKU

RYAN BAKER

CHRIS GODWIN

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year above written.

G. PAUL BOSSE III

JOHN F. AMELING

BERNARD P. SCHACHTEL

5/30/08

RAY TARIGIKU

RYAN BAKER

CHRIS GODWIN

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year above written.

G. PAUL BOSSE III

JOHN E. AMELING

BERNARD P. SCHACHTEL

RAY TAKIGIKU

RYAN BAKER

CHRIS GODWIN

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APPENDIX A

Shareholders	Number of Shares of Common Stock
G. Paul Bosse III	1,800
Ray Takigiku PhD	210
John Ameling	270
Bernie Schachtel M.D.	360
Ryan Baker	270
Chris Godwin	90
TOTAL	3,000

From: Mark Blomquist <mblomquist@landmarkfinancialcorp.com>
Sent: Wednesday, April 9, 2008 11:54 AM
To: pbosse@charlestonlabs.com
Subject: Draft Shareholder's Agreement
Attachments: Charleston Laboratories Stockholder Agreement.doc

Paul:

As discussed, attached for your review & comment is a draft shareholder's agreement. Exhibit A & Schedule A need to be added once the founding shareholders have come to agreement upon the specific terms of those additions.

Call or email me with any questions/comments.

Thanks,

Mark



CHARLESTON LABORATORIES, INC.

STOCKHOLDERS AGREEMENT

THIS CHARLESTON LABORATORIES, INC. STOCKHOLDERS AGREEMENT (this "Agreement") is made and entered into as of April ____, 2008 by and among Charleston Laboratories, Inc., a Delaware corporation (the "Company") and G. Paul Bosse III, John F. Ameling, Bernard P. Schachtel, John J. Moroney, Ryan Baker, and Chris Godwin (the "Founding Shareholders").

WITNESSETH:

WHEREAS, the Founding Stockholders are collectively the owners of 100% of the issued and outstanding shares of the common stock of the Company as set forth on Exhibit A hereto ("Common Stock");

WHEREAS, the Founding Stockholders believe that it is in the best interests of the Founding Stockholders and the Company to make provisions for the future disposition of the shares of common stock of the Company ("Common Stock") held by the Founding Stockholders and other matters set forth herein; and

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants herein set forth, the parties hereto agree as follows:

ARTICLE I

RESTRICTIONS ON TRANSFER OF STOCK

1.1 General

(a.) The Founding Stockholders shall not dispose of any shares of Common Stock now or hereafter owned by them ("Shares"), whether by sale, exchange, assignment, transfer, gift, devise, bequest, mortgage, pledge, encumbrance or otherwise, except in accordance with the terms and conditions of this Agreement. The Company and each Founding Stockholder shall also not take or omit to take any action which will impair the absolute and unrestricted right, power, authority and capacity of the Company or the Founding Stockholders to purchase or sell Shares in accordance with the terms and conditions hereof.

(b.) The Company, by its execution of this Agreement, agrees that it will not cause or permit the transfer of any shares to be made on its books except in accordance with the terms of this Agreement.

1.2 **Permitted Transfers of Founding Stockholder's Shares**

(a.) A Founding Stockholder may sell, assign or transfer any Shares held by such Founding Stockholder by complying with the provisions of Sections 2.1 and 3.1 hereof or, with prior written notice to the Company, (i) to any immediate family member (parent, sibling, spouse, child, niece, nephew, first cousin, or grandchild), (ii) to a trust whose sole beneficiaries are immediate family members, (iii) to a Founding Stockholder, (iv) to the Company, (v) in the event of the death of any Founding Stockholder, subject to and in accordance with the rights set forth in Article 2 hereof, to the estate of such Founding Stockholder or individual or entity named in the will of such Founding Stockholder, (vi) to any other person or entity, with the prior written consent of holders of capital stock owning 75% of then issued and outstanding shares of Common Stock, (vii) subject to and in accordance with the rights set forth in Article 2 hereof, top any person solely in connection with the transfer of the community property interest of a Founding Stockholder spouse in all or part of such Founding Stockholders' Shares upon death of such spouse or termination of the marital relationship of the spouse and such Founding Stockholder, (viii) to stockholders, members or beneficiary of a Founding Stockholder (if such Founding Stockholder is a corporation, limited liability company or trust, respectively, (xix) in the event of any Founding Stockholder being judicially declared to be incompetent, subject to and in accordance with the rights set forth in Article 2 hereof, to such specified transferee of such Founding Stockholder, (x) in the event of the total or permanent disability, as defined in Section 422(1)(6) of the Internal Revenue Code, of any Founding Stockholder, subject to and in accordance with the rights set forth in Article 2 hereof, to such specified transferee of such Founding Stockholder, and (xi) to another company or entity in connection with the exchange of all shares of capital stock of the Company to such other company (collectively, "Permitted Transferees"); provided, however, that such Permitted Transferee (other than pursuant to clause (xi) above) agrees to be bound by the terms of this Agreement and such transfer complies with applicable federal and state securities laws,

(b.) Each Founding Stockholder may also sell, assign or transfer any Shares held by such Founding Stockholder without complying with the provisions of Section 2.1 and 3.1 by obtaining the prior written consent of each of the other Founding Stockholders, provided that the transferee agrees in writing to assume the obligations of the Founding Stockholders under this Agreement and that the transfer is made in accordance with any other restrictions or conditions contained in such written consent, if any, and in accordance with applicable federal and state securities laws.

1.3 **No Pledge**. Shares held or otherwise owned by any Founding Stockholder may not be pledged, mortgaged or otherwise encumbered to secure indebtedness of money borrowed or any other obligation for which such Founding Stockholder is primarily or secondarily liable without the consent of the Company and each of the other Founding Stockholders.

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1.4 **Shares Certificate Legend**. Each certificate for Founding Stockholders Shares shall have conspicuously written, printed, typed or stamped upon the face thereof, or upon the reverse thereof with a conspicuous reference on the face thereof, the following legends:

> "THESE SHARES ARE SUBJECT TO CERTAIN TRANSFER RESTRICTIONS AND RIGHT OF REPURCHASE AS SET FORTH IN THE CHARLESTON LABORATORIES, INC. STOCKHOLDERS AGREEMENT DATED AS OF NOVEMBER 17, 2003 ON FILE WITH THE SECRETARY OF THE COMPANY."

> "THESE SHARES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("ACT"). SUCH SHARES MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS TO SUCH TRANSFER, UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL OR OTHER EVIDENCE REASONABLY SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT REGISTRATION IS NOT REQUIRED."

Promptly after execution of this Agreement, each of the existing stock certificates for the Shares issued to the Founding Stockholders, if any, shall be surrendered and new stock certificates shall be issued to such Founding Stockholders with the legends referred to above. Any stock certificate not so surrendered shall be deemed to have the legends referred to above.

1.5 **Definitions**. The words "sale," "sell," "transfer," and the like shall include any disposition by way of transfer, with or without consideration, to any person for any purpose, but shall not apply to exchanges of securities on account of merger, consolidation, reorganization or any other similar transaction affecting all of the securities of the Company.

ARTICLE 2

CERTAIN RIGHTS TO PURCHASE

2.1 **Sales of Shares**

(a.) The Founding Stockholders; Right of First Refusal. In the event that a Founding Stockholder (the "Selling Founding Stockholder") shall desire to sell, assign or transfer any Shares held by such Selling Founding Stockholder to any other person (the "Offer"), the following procedure shall apply. The Selling Founding Stockholder shall give to the Company and to each other Founding Stockholder (The "Non-Selling Founding Stockholders") written notice containing the terms

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ROA-1300

and conditions of the Offer, including, but not limited to (i) the number of Offered Shares; (ii) the price per Share; (iii) the method of payment; and (iv) the name(s) of the proposed purchaser(s).

An Offer shall not be deemed bona fide unless, among other things, the method of payment is cash, the Selling Founding Stockholder has informed the prospective purchaser of its obligation under this Agreement and the prospective purchaser has agreed to become a party hereunder and to be bound hereby. The Company and the other Founding Stockholders are entitled to take such steps as they reasonably may deem necessary to determine the validity and bona fide nature of the Offer.

Until 20 days after receipt of such notice, the Non-Selling Founding Stockholders shall have the right (i) to purchase the Offered Shares of any portion thereof at the price offered by the prospective purchaser and specified in such notice or (ii) co-sell Shares to such third party in accordance with Section 3.1 below. The Non-Selling Founding Stockholders electing to purchase or co-sell must give written notice of such election to purchase or co-sell Shares to the Company and the Selling Founding Stockholder which notice shall specify the number of Offered Shares such Stockholder desires to purchase hereunder or the number of Shares such Stockholder desires to co-sell in accordance with Section 3.1. In the event that there are more than one Non-Selling Founding Stockholders desiring to purchase the Offered Shares and they desire to purchase more shares than the aggregate number of Offered Shares, then each Non-Selling Founding Stockholder shall have the right to purchase, on a pro rata basis based on the number of Shares owned by such Non-Selling Founding Stockholders, the Offered Shares. Such purchase shall be, at the option of the Non-Selling Founding Stockholders, either on the payment terms specified in such notice or on the Agreement Terms, as defined in Section 2.5.

(b) The Company's Rights to Purchase if the Non-Selling Founding Stockholders Fail to Purchase All Offered Shares. If the Non-Selling Founding Stockholders do not exercise their right to purchase all of the Offered Shares within the 20-day period, the Company shall have the right to purchase, within 15 days after the expiration of such 20-day period, the remaining Offered Shares or any portion thereof at the price offered by the prospective purchaser. Such purchase shall be, at the option of the Company, either on the payment terms offered by the prospective purchaser or on the Agreement Terms, as defined in Section 2.5.

After giving notice under this Section, the Selling Founding Shareholder shall refrain from participating as an officer, director or shareholder of the Company in the Company's decision whether to purchase any or all of the Offered Shares.

(c) Failure of the Company and the Non-Selling Founding Stockholders to Purchase Offered Shares. If all of the Offered Shares are not purchased by the Company and/or the Non-Selling Founding Stockholders within the 35-day period granted for such purchases, then, subject to the co-sale rights set forth in Section 3.1, the remaining Offered Shares may be sold, assigned, or transferred pursuant to the Offer; provided that the Offered Shares are so transferred with in 90 days of the

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expiration of the 35-day period to the person or persons named in, and under the terms and conditions of, the Offer described in the notice to the Company and Founding Stockholders; provided, further, that such transfer requires the new shareholder(s) (being the purchaser(s) under the Offer) to assume the obligations of the Selling Founding Stockholder under this Agreement; and provided, further, that such transfer complies with all applicable federal and state securities laws.

(d) The Right to Withdraw. The Selling Founding Stockholder may at any time prior to the sale of its Shares give notice to the Company that it no longer desires to sell the Offered Shares, provided that if it again desires to sell, assign or transfer any Shares held by it, it must comply with the provisions of the Agreement.

2.2 **Right to Purchase Upon Certain Other Events**

(a.) The Founding Stockholder's Right of Purchase. Each Founding Stockholder (or its transferees hereunder) (a "Purchasing Founding Stockholder") shall have the right to purchase on a pro rata basis based upon the number of Shares owned by such Purchasing Founding Stockholder, the Shares held by a Founding Stockholder (including his transferees hereunder) pursuant to the terms of this Section (the "Terminating Founding Stockholder", and such Shares held by such Terminating Founding Stockholder referred to as the "Terminating Shares") at the Agreement Price and on the Agreement Terms for a period of 90 days after the Company and the Purchasing Founding Stockholder receives notice from the Terminating Founding Stockholder or relevant third party, as applicable, of the occurrence of any of the following events, which notice shall be provided in the case of a Terminating Founding Stockholder within 5 business days of the occurrence of such event:

(i) the Terminating Founding Stockholder who is an employee ceases to be, for any reason, an employee of the Company or a subsidiary of the Company (any uninterrupted absence for a period of 180 days or more, without approval of the Board of Directors of the Company, shall be deemed to be termination of employment);

(ii) the Terminating Founding Stockholder defaults on any debts to the Company as they become due and fails to repay such debts within 60 business days after written notice of such default;

(iii) the Terminating Founding Stockholder is adjudicated a bankrupt or the Terminating Founding Stockholder makes an assignment for the benefit of creditors or a petition under any insolvency or bankruptcy laws is filed for readjustment of such Stockholder's debts or financial affairs by such Stockholder or by any creditor of such Stockholder;

(iv) any of the Terminating Founding Stockholder's Shares are levied upon under a writ of execution or become subject to sale under any legal process, or are transferred or ordered

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to be transferred to or for the benefit of any spouse or any other person or entity as a result of or in connection with any property settlement or judgment incident to a divorce, dissolution of marriage or separation,, or are transferred or ordered to be transferred to any person or entity who is not a party hereto by decree of distribution or other court order in a proceeding arising from the death of the spouse of the Terminating Founding Stockholder; or

(v) the Terminating Founding Stockholder sells, pledges, encumbers, hypothecates or otherwise transfers any interest in, or purports to sell, pledge, encumber, hypothecate or otherwise transfer any interest in, any of his or her Shares, except as permitted by and in full compliance with the terms of this Agreement.

(b.) The Company's Right to Purchase on the Founding Stockholder's Refusal. In the event a Purchasing Founding Stockholder elects not to purchase all of the Terminating Shares to which such Purchasing Founding Stockholder is entitled, the Company shall have the right to purchase, within 15 days after the expiration of such 90-day period, any remaining Terminating Shares, at the Agreement Price and on the Agreement Terms.

2.3 **Manner of Exercise**. Any right to purchase hereunder shall be exercised by giving written notice of election to the Company and the Terminating Founding Stockholder or his or her personal representative, as the case may be, prior to the expiration of such right to purchase. Such notice shall be given as provided in Section 5.5 hereof.

2.4 **Agreement Price**

(i) The "Agreement Price" shall be the fair value ("Fair Value") of the Shares to be purchased on a fully diluted basis, calculated on the basis of the Company as a going concern. Initially, the Board of Directors of the Company, in good faith in the exercise of its reasonable business judgment, shall determine the Fair Value of the shares. The Company shall notify the Founding Stockholders (or their representatives) as soon as possible of such determination, but in any event, not later than 30 days after the date giving rise to the right to purchase such Terminating Shares. If the Terminating Founding Stockholder or any Purchasing Founding Stockholder fail to notify the company within 15 days after the date of such notice of their objection to the proposed Fair Value, then the Fair Value proposed in the Company's notice shall be binding and conclusive.

(ii) If any Purchasing Founding Stockholder or the Terminating Founding Stockholder notifies the Company of its objection in writing within such 15-day period and if the Company, the Purchasing Founding Stockholders and the Terminating Founding Stockholder (or their representatives) can not mutually agree on the Fair Value of such shares within 10 days after the date of the notice of objection, then the Fair Value of the Shares shall be determined by an independent appraiser selected jointly by the Company, the Purchasing and Terminating Founding

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Stockholders (or their representatives). The determination of Fair Value by that appraiser shall be binding and conclusive on all parties to the Agreement. If the parties are unable to agree on the selection of an appraiser, each of the Purchasing and Terminating Founding Stockholders shall select an independent appraiser. The two appraisers so selected shall each independently appraise the Shares within 30 days of their appointment and, as long as the difference in the two appraisals does not exceed 5 percent of the lower of the two appraisals, the Fair Value shall be conclusively deemed to equal the average of the two appraisals. If the difference between the two appraisals referred to above exceeds 5 percent of the lower of the two appraisals, the two appraisers selected shall select a third appraiser within 5 business days after delivery of both appraisal, who shall also independently appraise the Fair Value of the shares and whose appraisal shall be conclusively deemed to be the Fair Value of the Shares. If either party fails to select an independent appraiser within the time required by this paragraph or if their appraiser fails to deliver their appraisal to the Company and the other party within the 30-day period, the Fair Value of the Shares shall be conclusively deemed to equal the appraisal of the independent appraiser timely selected by the other or timely delivered to the Company, as the case may be. The Founding Stockholders shall share equally the fees and expenses of the appraisers jointly named, but each party shall be responsible for the fees and expenses of any appraiser named solely by that party. Each party shall bear his, her, or its own expenses in presenting evidence to the appraisers.

2.5 **Agreement Terms**. "Agreement Terms" shall mean 100% of the purchase price, which shall be payable in the form of a check or via wire transfer as directed at the Closing of such purchase and sale. Any payment may be reduced by any indebtedness from the purchase of such purchase and sale.

2.6 **Delivery of Shares and Closing Date**. Within thirty (30) days of the exercise of any right to purchase hereunder or final determination of the Fair Value of the Shares, as the case may be, (the "Closing"), the Selling Founding Stockholder or the Terminating Founding Stockholder or his or her personal representatives, as the case may be, shall deliver certificates representing the Shares to be sold, properly endorsed for transfer, and with the necessary documentary and transfer tax stamps, if any, affixed, to the purchasers of such Shares. Payment of the purchase price therefor shall concurrently be made to the Selling Founding Stockholder or Terminating Founding Stockholder or his or her personal representatives as the case may be. Such delivery and payment shall be made at the principal office of the Company or at such other place as the parties mutually agree. Notwithstanding the above, any such transfer shall not be consummated unless it complies with all federal and state securities laws and the purchaser of such Shares assumes the obligations under this Agreement.

2.7 **Voting Trust**. Upon the occurrence of the following events the Shares held by the applicable Founding Stockholder (the "Trust Founding Stockholder") shall become subject to a voting trust substantially in the form contained at Schedule A:

(a.) the Trust Founding Stockholder is judicially declared to be competent;

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(b.) the death of the Trust Founding Stockholder; or

(c.) the total or permanent disability, as defined in Section 422(I)(6) of the Internal Revenue Code, of the Trust Founding Stockholder.

ARTICLE 3

CO-SALE AND DRAG-ALONG RIGHTS

3.1 **Co-Sale Provisions**.

(a) For 24 months from the date hereof, in the event that a founding Stockholder (or his transferees hereunder) (the "Selling Founding Stockholder") proposes to offer for sale or otherwise transfer any Shares to any person or entity (individually a "Third Party" and collectively, "Third Parties") in any one transaction or any series of related transactions, directly or indirectly, other than a sale to a Permitted Transferee under Section 1.2 hereof, such sale or other disposition to a Third Party shall not be permitted unless the Selling Founding Stockholder shall offer (or cause the Third Party to offer) each other Founding Stockholder and its permitted transferees (each being a "Co-Selling Founding Stockholder") the right to elect to include, at the sole option of such Co-Selling Founding Stockholder, in the sale to the Third Party, to the extent such shares have not been purchased by the Company or Non-Selling Founding Stockholder pursuant to Section 2.1 (a) above, such number of Shares owned by such Co-Selling founding Stockholder as permitted under Section 3.1 (b) and (c) below (the "Tag-Along shares")

(b) The Selling Founding Stockholder shall deliver a notice to the Company and the Co-Selling Founding Stockholders as provided in Section 2.1 (a) above. Within 20 days after the date of such notice, the Co-Selling Founding Stockholders may make an election to either (i) include a number of its Shares as Tag-Along Shares (up to the percentage set forth in paragraph (c) below) in such a sale or other disposition (the "Inclusion Election"), (ii) elect to purchase such Offered Shares pursuant to Section 2.1(a) above, or (iii) neither purchase Offered Shares nor sell Tag-along Shares. Such Co-Selling Founding Stockholder shall notify the Company and the Selling Founding Stockholder of its Inclusion Election within such 20-day period. Any Co-Selling Founding Stockholder electing to sell Tag-Along Shares shall also promptly deliver to the Company a stock certificate or certificates representing the number of Tag-Along Shares, together with a power-of-attorney authorizing the Selling Founding Stockholder to sell or otherwise dispose of such Tag-Along Shares pursuant to the terms of such Third Party's offer.

(c) The Co-Selling Founding Stockholders shall have the right to co-sell in the aggregate, pursuant to the Third Party's offer; up to 75% of the number of Offered Shares to be sold to

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the Third Party. If the Co-Selling Founding Stockholders desire to sell in the aggregate more than 75% of the Offered Shares, then the Co-Selling Founding Stockholders will have the right to sell, pro rata based on their number of Shares owned by them, the remaining number of Offered Shares, up to such 75% limit.

(d) The purchase of the Tag-Along Shares shall be on the same terms and conditions, including the price per share and the date of sale or other disposition, as are received by the Selling Founding Stockholder and stated in the notice referred to above.

(e) Promptly (but in no event later than five business days) after the consummation of the sale or other disposition of Shares of the Selling Founding Stockholder to the Third Party pursuant to the Third Party's offer, the Selling Founding Stockholder shall (i) notify the Co-Selling Founding Stockholders electing to sell Shares of the completion thereof, (ii) cause to be remitted to such Co-Selling Founding Stockholders the total sales price attributable to the Tag-Along Shares sold by him or her, and (iii) furnish such other evidence of the completion and time of completion of such sale or other disposition.

(f) If no Founding Stockholder has elected to make an Inclusion Election or an election to purchase Shares pursuant to Section 2.1, the Selling Founding Stockholder shall have 90 days after the expiration of 35-day period referred to in Section 2.1 © in which to well or otherwise dispose of such shares to the Third Party at a price and on terms not more favorable than were set forth in the Offer referred to above. If, at the end of such 90-day period, the Selling Founding Stockholder has not completed the sale of shares in accordance with the terms of the Third Party's offer, all the restrictions on sale contained in this Agreement shall again be in effect (unless such 90-day period is extended with the consent of the other Founding Stockholders). In the event that a sale of Shares is made to a Third Party pursuant to their Section 3.1, such Third Party shall be bound by the Terms of this Agreement.

(g) The Founding Stockholders may elect to either (i) purchase Offered Shares pursuant to Section 2.1 or (ii) sell Tag-along Shares pursuant to Section 3.1, but not both.

ARTICLE 4

MANAGEMENT

4.1 **Board of Directors**. Each Founding Stockholder agrees to vote their shares in favor of as directors of the Company.

4.2 **Protective Provisions**. Until this Agreement is terminated, the Company shall not, without obtaining the written consent of each Founding Stockholder;

PL-0034605

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(a) authorize or issue, or obligate itself to authorize or issue, additional Shares of Common Stock, Preferred Stock or any other capital stock except the issuance of such number of shares of Common Stock as approved by the board of directors for issuance pursuant to exercise of stock options granted to employees, consultants, officers or directors; or

(b) sell, convey, or otherwise dispose of all or substantially all of its property or business, or merge into or consolidate into any other corporation, or effect any transaction or series of related transactions in which more than 50% of the voting power of the Corporation is disposed of, or

(c) Amend its Articles of Incorporation

ARTICLE 5

MISCELLANEOUS

5.1 **Additional Founding Stockholders**. Until this Agreement shall be terminated, all transferees of the Founding Stockholder Shares shall execute and deliver to the Company a written agreement, in form and content satisfactory to the Company, agreeing to be bound by all of the terms and conditions of the Agreement. The term "Founding Stockholder" as used herein shall be deemed to include the Founding Stockholders and their transferees.

5.2 **Representatives and Assigns**. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto, their legal representatives, and permitted assigns and designees.

5.3 **Violations or Remedies**. The parties agree that any violation of this Agreement (other than a default in the payment of money) cannot be compensated for by damages and any aggrieved party shall have the right, and is hereby granted the privilege, of obtaining specific performance of this Agreement in any court of competent jurisdiction in the event of any breach hereunder.

5.4 **Governing Law**. This Agreement shall be deemed to be made under and governed by and construed in accordance with the laws of the State of North Carolina.

5.5 **Notices**. All notices required to be delivered pursuant to this Agreement shall be delivered in person or by telegraphic or other facsimile transmission and deemed given on the date of transmission or sent by certified mail, return receipt requested and deemed given three (3) business days after mailing, and shall be addressed to the Company at its principal business office, to the attention of the President, and to a Founding Stockholder at the address of the Founding Stockholder shown in the Company's stock ledger or to such other address as the Founding stockholder may indicate by duly giving written notice to the Company.

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5.6 **Severability**. If any term or condition of this Agreement, or application thereof to any person or circumstance, shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or application of such term or condition to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and shall remain in full force and effect.

5.7 **Amendment**. This Agreement may be modified or amended in whole or in part by a written instrument signed by the Company and each Founding Stockholder.

5.8 **No Waiver**. No delay or failure on the part of a Company or a Founding Stockholder in the exercise of any right, power or remedy shall operate as a waiver thereof, not shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

5.9 **Integration**. This Agreement embodies the entire agreement and understanding of the parties hereof in respect of the actions and transactions contemplated by this Agreement. This Agreement supersedes all other prior written or oral understandings between and among the parties hereto relating to the subject matter hereof.

5.10 **Termination of this Agreement**. This Agreement shall terminate upon the earlier of (a) the written agreement of each Founding Stockholder, (b) the sale of all the outstanding shares of capital stock of the company to a third party or, sale of all or substantially all of the assets of the Company to a third party, or (c) upon the closing of a registered, underwritten initial public offering of the Company's Common Stock with net proceeds to the Company in excess of $20,000,000.

5.11 **Counterparts**. This Agreement may be executed in any number counterparts, each of which, when so executed, shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year above written.

_____

G. PAUL BOSSE III

_____

JOHN F. AMELING

_____

BERNARD P. SCHACHTEL

JOHN J. MORONEY

RYAN BAKER

CHRIS GODWIN

PL-0034608

ROA-1309

APPENDIX A

[to be added]

PL-0034609

ROA-1310

SCHEDULE A

[to be added]

PL-0034610

ROA-1311

05-27-30-08

Subject: Fw: Revised Founders Stockholder Agmt and Restricted Stock Agmt--- Confidential

From: Paul Bosse (pbosse@charlestonlabs.com)

To: rtakigiku@axellerate.com;

Date: Tuesday, May 27, 2008 9:02 PM

Ray,

I hope you are well.

Please find attached the founders stockholder agreements and the restricted stock agreement that both the legal team and myself are comfortable with. I would like you to look over so we can discuss if you feel any changes are necessary. For purposes of this email I have attached Bernie's stock agreement that will be a template for you and John.

Of note:

1. The founders stock is a 60 / 40 split between myself and the rest of the team.

2. I would like for you, John and Bernie to sign the stock agreements that vest each of you 50% now and the rest unpon completed time served over 3 years.
This stock would accelerate upon an M&A / out right sale etc... This provison is one that legal & I feel must be included to protect the company from anyone quiting (I think you know who/ what I mean).

I am in hopes you and I can connect tomorrow morning to discuss.

Thanks,

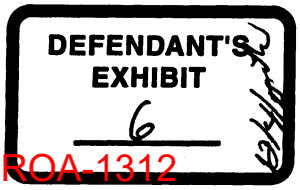
Paul Bosse
CEO
(843)577-2626 (Office)
(843)364-3256 (Cell)
PBosse@Charlestonlabs.Com

****Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Attachments

- Founder Restrictred Stock Agmt - v2.DOC (60.00KB)
- Charleston Laboratories - Founders Stockholder Agreement - v3.DOC (93.00KB)

T001254



ROA-1312

CHARLESTON LABORATORIES, INC.
Stock Certificate Receipt

TO: RAY TAKIGIKU

Attached is stock certificate # 12 for 210 shares of Charleston Laboratories, Inc., common stock dated May 30, 2008.

Please acknowledge receipt of this certificate by signing this memo and returning it in the enclosed stamped, return envelope for filing among the corporate records.

RECEIPT ACKNOWLEDGED:

Ray Takigiku

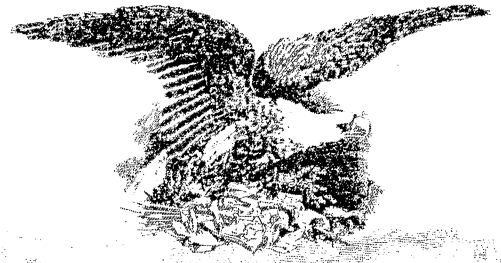
Feb 29, 2008
Date

DEFENDANT'S EXHIBIT
7

DEFENDANT'S EXHIBIT
8
12/4/08 RE

CL-000026

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE



NUMBER
12

SHARES
210

CANCELED
9/25/08

CHARLESTON LABORATORIES, INC.

AUTHORIZED TO ISSUE 5,000 SHARES - PAR VALUE $.001 PER SHARE

This Certifies that RAY TAKIGIKU is the registered holder of * * * TWO HUNDRED TEN * * * Shares of the capital stock of the above named corporation, fully paid and non-assessable, transferrable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

SPECIMEN

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 30th day of May, 2008.

G. Paul Bosse III
SECRETARY

G. Paul Bosse III
PRESIDENT

PL-0026874

THESE SHARES ARE SUBJECT TO CERTAIN TRANSFER RESTRICTIONS AND RIGHT OF REPURCHASE AS SET FORTH IN THE CHARLESTON LABORATORIES, INC. STOCKHOLDERS AGREEMENT DATED AS OF MAY 30, 2008 ON FILE WITH THE SECRETARY OF THE COMPANY.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO REPURCHASE BY THE ISSUER UPON THE OCCURRENCE OF CERTAIN EVENTS SET FORTH IN THAT CERTAIN STOCK RESTRICTION AGREEMENT DATED AS OF MAY 30, 2008 BY AND BETWEEN THE ISSUER AND THE ORIGINAL HOLDER OF SUCH SHARES.

THESE SHARES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("ACT"). SUCH SHARES MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS TO SUCH TRANSFER, UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL OR OTHER EVIDENCE REASONABLY SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT REGISTRATION IS NOT REQUIRED.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	-as tenants in common	UNIF GIFT MIN ACT- .... Custodian ....
TEN ENT	-as tenants by the entireties	(Cust) (Minor)
JT TEN	-as joint tenants with right of survivorship and not as tenants in common	under Uniform Gifts to Minors Act ..... (State)

Additional abbreviations may also be used though not in the above list.

For Value Received, ___ hereby sell, assign and transfer unto

_____

_____ *Shares*

represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ *Attorney*

to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated _____, ____

In presence of _____

_____

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THIS CERTIFICATE, IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATSOEVER.

WCSR 3928837v1

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

NUMBER

14

SHARES

420,000

CANCELED
3/26/2010

CHARLESTON LABORATORIES, INC.

AUTHORIZED TO ISSUE 9,100,000 SHARES COMMON STOCK PAR VALUE $0.001 and 1,200,000 SHARES PREFERRED STOCK PAR VALUE $0.001

This Certifies that RAY TAKIGIKU is the registered holder of * * * FOUR HUNDRED TWENTY THOUSAND * * * Shares of the capital stock of the above named corporation, fully paid and non-assessable, transferrable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

SPECIMEN

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 25th day of September, 2008.

PB
SECRETARY

PB
PRESIDENT

DEFENDANT'S EXHIBIT 9

CONFIDENTIAL

CL-004022

PL-0026879

THESE SHARES ARE SUBJECT TO CERTAIN TRANSFER RESTRICTIONS AND RIGHT OF REPURCHASE AS SET FORTH IN THE CHARLESTON LABORATORIES, INC. STOCKHOLDERS AGREEMENT DATED AS OF MAY 30, 2008 ON FILE WITH THE SECRETARY OF THE COMPANY.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO REPURCHASE BY THE ISSUER UPON THE OCCURRENCE OF CERTAIN EVENTS SET FORTH IN THAT CERTAIN STOCK RESTRICTION AGREEMENT DATED AS OF MAY 30, 2008 BY AND BETWEEN THE ISSUER AND THE ORIGINAL HOLDER OF SUCH SHARES.

THESE SHARES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("ACT"). SUCH SHARES MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS TO SUCH TRANSFER, UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL OR OTHER EVIDENCE REASONABLY SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT REGISTRATION IS NOT REQUIRED.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

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TEN ENT	-as tenants by the entireties	(Cust) (Minor)
JT TEN	-as joint tenants with right of survivorship and not as tenants in common	under Uniform Gifts to Minors Act ..... (State)

Additional abbreviations may also be used though not in the above list.

For Value Received, ___ *hereby sell, assign and transfer unto*

_____

_____ *Shares*

represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ *Attorney*

to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated _____, _____

In presence of _____

_____

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THIS CERTIFICATE, IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATSOEVER.

WCSR 3928837v1

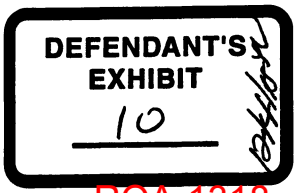
Message

From: Baddour, David [/O=FIRM/OU=FIRM/CN=RECIPIENTS/CN=D_BADDOUR]
Sent: 3/16/2010 11:17:23 AM
To: Rutley, Dean [DRutley@wcsr.com]
Subject: Founder Restricted Stock Agmt (Takigiku)
Attachments: Founder Restricted Stock Agmt (Takigiku) - v3.DOC

Dean,

Spoke with Paul for about an hour this morning. They need to get rid of Ray Takigiku, their COO, but they want to take all of his stock back (vested and unvested). Let me know when you have a couple of minutes, and I'll update you.

David
x2352



ROA-1318

CHARLESTON LABORATORIES, INC.

MINUTES OF MEETING OF BOARD OF DIRECTORS

March 16, 2010

The meeting of the board of directors of Charleston Laboratories, Inc. (hereinafter sometimes referred to as the "Corporation"), a corporation created under the laws of Delaware, was held on March 16, 2010, at 6:30 p.m. at 65 Gadsden Street, Suite 201, Charleston, South Carolina 29401, pursuant to a call of a majority of the initial directors.

The following directors, who are all of the initial directors of the corporation, were present: G. Paul Bosse, III.

G. Paul Bosse, III, was elected to preside at the meeting, and G. Paul Bosse, III, was elected to serve as secretary and record the minutes.

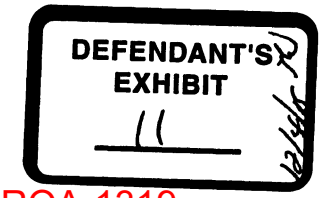
Upon a motion duly made, seconded, and unanimously carried, the following resolution was adopted:

RESOLVED that the employment of Ray Takigiku as the Chief Operating Officer of Charleston Laboratories, Inc., is hereby terminated for cause pursuant to Takigiku's acts and/or omissions detrimental to the Corporation, including but not limited to abandonment of his responsibilities as an officer of the Corporation and breaches of his fiduciary duties to the Corporation's shareholders.

There being no further business to come before the meeting, the meeting was adjourned.

PB

G. Paul Bosse, III



CHARLESTON LABORATORIES, INC.

MINUTES OF MEETING OF BOARD OF DIRECTORS

March 22, 2010

The meeting of the board of directors of Charleston Laboratories, Inc. (hereinafter sometimes referred to as the "Corporation"), a corporation created under the laws of Delaware, was held on March 22, 2010, at 9:30 a.m. at 65 Gadsden Street, Suite 201, Charleston, South Carolina 29401, pursuant to a call of a majority of the initial directors.

The following directors, who are all of the initial directors of the corporation, were present: G. Paul Bosse, III.

G. Paul Bosse, III, was elected to preside at the meeting, and G. Paul Bosse, III, was elected to serve as secretary and record the minutes.

Upon a motion duly made, seconded, and unanimously carried, the following resolution was adopted:

RESOLVED that the Corporation will repurchase all of the Common Stock currently held by the Corporation's former Chief Operating Officer, Ray Takigiku, pursuant to Article 2.2(a) of the Corporation's Stockholders Agreement.

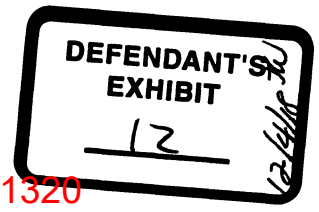
RESOLVED that in accordance with the repurchase protocol outlined in Article 2 of the Stockholders Agreement, the Board of Directors determines the Fair Value of the Corporation's Common Stock to be $0.01 per pre-recapitalization share or $0.000005 per fully-diluted share of Common Stock.

RESOLVED that, as a gesture of goodwill, the Corporation will gratuitously offer a severance package to the Corporation's former Chief Operating Officer, Ray Takigiku, under which the Corporation will pay Takigiku a sum of $70,000.00 contingent upon the closing of a qualified financing.

There being no further business to come before the meeting, the meeting was adjourned.

PB

G. Paul Bosse, III



Message

From: Baddour, David [/O=FIRM/OU=FIRM/CN=RECIPIENTS/CN=D_BADDOUR]
Sent: 3/25/2010 6:20:31 PM
To: Paul Bosse [pbosse@charlestonlabs.com]
CC: Rutley, Dean [DRutley@wcsr.com]
Subject: FW: Ray Takigiku
Attachments: Charleston Laboratories - Takigiku Package.DOC; Charleston Labs - Takigiku Redemption and Release Agmt - v2.DOC

Paul,

Please see attached.

As we've discussed, if Ray doesn't agree to the package (and the contingent $70k payment) it is likely that he'll have a claim on the vested portion of his stock. If CL does nothing to change the status quo, it is likely that Ray will simply sit tight and do nothing, until such time as the stock becomes worth something, which is when he'll file suit. Again, the worst case scenario seems to be that he'll ultimately be entitled to the vested portion of his stock.

Keep us posted.

Best,

David

David B. Baddour | Womble Carlyle Sandridge & Rice, PLLC | Direct: 919-484-2352 | Facsimile: 919-484-2090 | dbaddour@wcsr.com

---

From: Paul Bosse [mailto:pbosse@charlestonlabs.com]
Sent: Thursday, March 25, 2010 3:59 PM
To: Baddour, David
Subject: Ray Takigiku

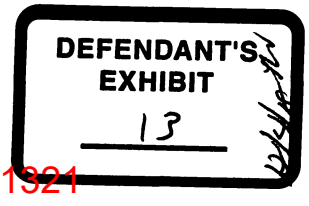
David,

Attached... Please revise edit as you see fit..

Best,

Paul Bosse
CEO & President
Charleston Laboratories Inc
www.charlestonlabs.com
(843)577-2626 (Office)
(843)628-1061 (Fax)
(843)364-3256 (Cell)
PBosse@Charlestonlabs.Com

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COPY

Charleston

Executive Offices
65 Gadsden St. Ste 201
Charleston, SC 29401
843-577-2626

March 26, 2010

VIA CERTIFIED MAIL

Ray Takigiku P.h.D
632 Russell Street
Covington, KY 41011

Re: Termination of Employment / Redemption and Settlement Agreement / Stock Power

Dear Ray:

On Friday March 19th your employment was terminated with cause. Please find enclosed a check in the amount of $2.10, which the company hereby tenders as payment in full for your equity.

In addition, please find enclosed two copies of a Redemption and Settlement Agreement and a single copy of a Stock Power. The settlement package described in the Redemption and Settlement Agreement includes a severance payment to you in the amount of $70,000, which will be payable upon the closing of a qualified financing. This package is non-negotiable. Please sign one copy of the Redemption and Settlement Agreement and the Stock Power and return both to us, in order to finalize our relationship.

I need these documents signed and returned no later than April 5th 2010. If we do not receive a response from you by then, we will assume you do not intend to cooperate and we will pursue all other legal remedies at our disposal.

Sincerely,

PB

Paul Bosse
CEO, President and Sole Director
Charleston Laboratories, Inc.

cc: Ryan Baker, Chief Financial Officer
John F. Ameling, VP of Regulatory Affairs
Bernard Schachtel, M.D., Chief Scientific Officer
David Baddour, Womble Carlyle Sandridge & Rice

Confidential

DEFENDANT'S EXHIBIT 14

T001517

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ROA-1322

REDEMPTION AND SETTLEMENT AGREEMENT AND RELEASE

THIS REDEMPTION AND SETTLEMENT AGREEMENT AND RELEASE (this "Agreement"), made and entered into as of the ____ day of March, 2010, is by and between Ray Takigiku (the "Stockholder"), and Charleston Laboratories, Inc., a Delaware corporation (the "Company").

RECITALS

A. The Stockholder is the holder of stock certificate no. 14, representing 420,000 of the Company's common stock, par value $0.001 per share (the "Common Stock"). The Stockholder is a party to that certain Stock Restriction Agreement dated May 30, 2008, pursuant to which the Common Stock is subject to vesting.

B. On March 19, 2010 the Stockholder's employment with the Company was terminated for cause, and the Company believes it has several causes of action against the Stockholder. Nevertheless, the Company and the Stockholder desire to resolve any and all disputes as provided herein.

C. The Stockholder desires to sell to the Company, and the Company desires to purchase and redeem from the Stockholder, all of the Stockholder's Common Stock on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. Redemption and Contingent Severance Payment.

(a) The Company hereby purchases and redeems from the Stockholder, and the Stockholder hereby sells, transfers and conveys to the Company, all of the Stockholder's right, title and interest in and to the Common Stock for the Purchase Price specified in Section 2 of this Agreement.

(b) As a contingent severance payment, upon the closing by the Company of either (A) a convertible preferred stock financing in which the Company issues shares of convertible preferred stock with an aggregate purchase price equal to or greater than Five Million Dollars ($5,000,000.00) or (B) a sale of all or substantially all of the assets of the Company for an aggregate purchase price equal to or greater than Five Million Dollars ($5,000,000.00) (either (A) or (B) being referred to hereinafter as a "Qualified Transaction"), the Company agrees to pay to the Stockholder Seventy Thousand Dollars ($70,000.00). Such payment will be made within sixty (60) days following the closing of the Qualified Transaction.

Section 2. Purchase Price. The purchase price for the Common Stock is $0.01 per share of pre-recapitalization common stock (or $0.000005 per share of Common Stock), and the

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ROA-1323

aggregate purchase price for all the Stockholder's Common Stock is $2.10 (the "**Purchase Price**"), the receipt of which is hereby acknowledged by the Stockholder.

Section 3. **Closing; Deliveries**. The closing of the purchase and redemption of the Common Stock contemplated hereby (the "**Closing**") shall take place concurrently with the execution and delivery of this Agreement by the parties hereto. Stock certificate no. 14 representing the Common Stock is hereby delivered by the Stockholder to the Company, properly endorsed by the Stockholder or accompanied by a duly executed stock power of attorney, in either case with signature guaranteed, for transfer of the Stockholder's Common Stock to the Company.

Section 4. **Acknowledgments**. Stockholder hereby acknowledges that: (i) the Purchase Price, together with the Release described in Section 7 below, represents full, fair and adequate consideration for the redemption and purchase of the Stockholder's Common Stock and represents a value mutually determined by the Stockholder and the Company; (ii) the Stockholder is familiar with the business, operations and financial condition of the Company and its subsidiaries and the Stockholder understands the prospects and industry of the Company and its subsidiaries; (iii) the Stockholder has taken such due diligence actions as the Stockholder deems necessary or appropriate; (iv) the Stockholder has consulted with legal counsel, tax advisors or other third parties of the Stockholder's choice in connection with the transactions contemplated hereby; (v) the Stockholder has the capacity to evaluate the merits and risks of the transactions contemplated by this Agreement and to protect the Stockholder's interests in connection with such transactions; (vi) no representations, warranties or tax or legal advice have been made or given to the Stockholder by the Company or any of its agents, representatives, attorneys, officers, directors or employees to induce the Stockholder to enter into this Agreement, other than those expressly set forth herein; (vii) the Stockholder has not relied upon any representation, warranty or tax or legal advice of the Company or any of its agents, representatives, attorneys, officers, directors, or employees in making the Stockholder's decision to enter into this Agreement, other than those expressly set forth herein; and (viii) upon the Closing, the Stockholder will no longer be a stockholder of, or own any interest in, the Company.

Section 5. **Representations and Warranties of the Stockholder**. The Stockholder represents and warrants to the Company of the date hereof as follows (which representations and warranties shall survive the sale, transfer and conveyance of the Common Stock to the Company pursuant to this Agreement): (i) the Stockholder is the record and beneficial owner of the Common Stock and has valid title to the Common Stock; (ii) the Common Stock is free and clear of any security interests, pledges, claims, liens, encumbrances, charges and assessments, restrictive agreements and other restrictions, preemptive or similar rights, and any other rights or interests of any nature whatsoever; (iii) the Common Stock represents all the equity interest or other ownership rights that the Stockholder has in the Company; (iv) the Stockholder has full legal right, power, authority and legal capacity to enter into this Agreement and sell, assign, convey and transfer the Common Stock to the Company; (v) this Agreement constitutes the valid and binding obligation of the Stockholder, enforceable against the Stockholder in accordance with its terms; (vi) the Common Stock is not subject to any restrictions on transferability that have not been waived, and may be sold, assigned, conveyed and transferred to the Company in accordance with the terms of this Agreement; (vii) the execution, delivery and performance of this Agreement, and the consummation by the Stockholder of the transactions contemplated

hereby have been duly authorized by all necessary limited liability company action on the part of the Stockholder; and (viii) the Stockholder's execution and delivery of this Agreement and the performance of the Stockholder's obligations hereunder does not and will not conflict with, violate, result in a breach of, or constitute a default under any agreement, contract, instrument or other arrangement to which the Stockholder is a party or by which the Stockholder or the Stockholder's property is bound.

Section 6. Representation and Warranty of the Company. The Company represents and warrants to the Stockholder as of the date hereof (which representations and warranties shall survive the sale, transfer and conveyance of the Common Stock to the Company pursuant to this Agreement) that: (i) it has full legal right, power and authority to enter into this Agreement and redeem and purchase the Common Stock from the Stockholder; (ii) this Agreement constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms; and (iii) its execution and delivery of this Agreement and the performance of its obligations hereunder does not and will not conflict with, violate, result in a breach of, or constitute a default under any agreement, contract, instrument or other arrangement to which it is a party or by which its property is bound.

Section 7. Releases and Non-disparagement.

(a) Release by the Stockholder.

(i) The Stockholder, for itself and for its heirs, legal representatives, administrators, executors, successors and assigns, hereby releases and forever discharges the Company, and each of their respective individual, joint or mutual, past, present and future representatives, parent companies, affiliates, stockholders, managers, members, directors, officers, employees (both current and former), partners, controlling persons, subsidiaries, insurers, attorneys, successors and assigns (individually, a "Releasee" and collectively, the "Releasees") from any and all claims, demands, proceedings, causes of action, orders, obligations, damages, interest, contracts, agreements, debts, liabilities, attorneys' fees and expenses, whatsoever, whether in law or equity, whether known or unknown, suspected or unsuspected in connection with the Stockholder's ownership of the Company's Common Stock, or its status as a stockholder of the Company (collectively, "Claims"), relating to the Company, its subsidiaries or their respective businesses or securities which the Stockholder now has, has ever had or may hereafter have against the respective Releasees arising contemporaneously with or prior to the date hereof or on account of or arising out of any matter, cause or event occurring contemporaneously with or prior to the date hereof.

(ii) In executing this Agreement, the Stockholder acknowledges that it has been informed that the Company and/or their subsidiaries may from time to time enter into agreements for additional types of financing, including without limitation recapitalizations, mergers and initial public offerings of capital stock of the Company and/or their subsidiaries, and also may

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ROA-1325

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by a duly authorized person, or has set their hand, as of the day and year first above written.

STOCKHOLDER:

_____

Ray Takigiku

COMPANY:

Charleston Laboratories, Inc.

By: PB

Paul Bosse, CEO and President

REDEMPTION AND SETTLEMENT AGREEMENT AND RELEASE

THIS REDEMPTION AND SETTLEMENT AGREEMENT AND RELEASE (this "**Agreement**"), made and entered into as of the ____ day of March, 2010, is by and between Ray Takigiku (the "**Stockholder**"), and Charleston Laboratories, Inc., a Delaware corporation (the "**Company**").

RECITALS

A. The Stockholder is the holder of stock certificate no. 14, representing 420,000 of the Company's common stock, par value $0.001 per share (the "**Common Stock**"). The Stockholder is a party to that certain Stock Restriction Agreement dated May 30, 2008, pursuant to which the Common Stock is subject to vesting.

B. On March 19, 2010 the Stockholder's employment with the Company was terminated for cause, and the Company believes it has several causes of action against the Stockholder. Nevertheless, the Company and the Stockholder desire to resolve any and all disputes as provided herein.

C. The Stockholder desires to sell to the Company, and the Company desires to purchase and redeem from the Stockholder, all of the Stockholder's Common Stock on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. **Redemption and Contingent Severance Payment**.

(a) The Company hereby purchases and redeems from the Stockholder, and the Stockholder hereby sells, transfers and conveys to the Company, all of the Stockholder's right, title and interest in and to the Common Stock for the Purchase Price specified in Section 2 of this Agreement.

(b) As a contingent severance payment, upon the closing by the Company of either (A) a convertible preferred stock financing in which the Company issues shares of convertible preferred stock with an aggregate purchase price equal to or greater than Five Million Dollars ($5,000,000.00) or (B) a sale of all or substantially all of the assets of the Company for an aggregate purchase price equal to or greater than Five Million Dollars ($5,000,000.00) (either (A) or (B) being referred to hereinafter as a "Qualified Transaction"), the Company agrees to pay to the Stockholder Seventy Thousand Dollars ($70,000.00). Such payment will be made within sixty (60) days following the closing of the Qualified Transaction.

Section 2. **Purchase Price**. The purchase price for the Common Stock is $0.01 per share of pre-recapitalization common stock (or $0.000005 per share of Common Stock), and the

aggregate purchase price for all the Stockholder's Common Stock is $2.10 (the "**Purchase Price**"), the receipt of which is hereby acknowledged by the Stockholder.

Section 3. **Closing; Deliveries**. The closing of the purchase and redemption of the Common Stock contemplated hereby (the "**Closing**") shall take place concurrently with the execution and delivery of this Agreement by the parties hereto. Stock certificate no. 14 representing the Common Stock is hereby delivered by the Stockholder to the Company, properly endorsed by the Stockholder or accompanied by a duly executed stock power of attorney, in either case with signature guaranteed, for transfer of the Stockholder's Common Stock to the Company.

Section 4. **Acknowledgments**. Stockholder hereby acknowledges that: (i) the Purchase Price, together with the Release described in Section 7 below, represents full, fair and adequate consideration for the redemption and purchase of the Stockholder's Common Stock and represents a value mutually determined by the Stockholder and the Company; (ii) the Stockholder is familiar with the business, operations and financial condition of the Company and its subsidiaries and the Stockholder understands the prospects and industry of the Company and its subsidiaries; (iii) the Stockholder has taken such due diligence actions as the Stockholder deems necessary or appropriate; (iv) the Stockholder has consulted with legal counsel, tax advisors or other third parties of the Stockholder's choice in connection with the transactions contemplated hereby; (v) the Stockholder has the capacity to evaluate the merits and risks of the transactions contemplated by this Agreement and to protect the Stockholder's interests in connection with such transactions; (vi) no representations, warranties or tax or legal advice have been made or given to the Stockholder by the Company or any of its agents, representatives, attorneys, officers, directors or employees to induce the Stockholder to enter into this Agreement, other than those expressly set forth herein; (vii) the Stockholder has not relied upon any representation, warranty or tax or legal advice of the Company or any of its agents, representatives, attorneys, officers, directors, or employees in making the Stockholder's decision to enter into this Agreement, other than those expressly set forth herein; and (viii) upon the Closing, the Stockholder will no longer be a stockholder of, or own any interest in, the Company.

Section 5. **Representations and Warranties of the Stockholder**. The Stockholder represents and warrants to the Company of the date hereof as follows (which representations and warranties shall survive the sale, transfer and conveyance of the Common Stock to the Company pursuant to this Agreement): (i) the Stockholder is the record and beneficial owner of the Common Stock and has valid title to the Common Stock; (ii) the Common Stock is free and clear of any security interests, pledges, claims, liens, encumbrances, charges and assessments, restrictive agreements and other restrictions, preemptive or similar rights, and any other rights or interests of any nature whatsoever; (iii) the Common Stock represents all the equity interest or other ownership rights that the Stockholder has in the Company; (iv) the Stockholder has full legal right, power, authority and legal capacity to enter into this Agreement and sell, assign, convey and transfer the Common Stock to the Company; (v) this Agreement constitutes the valid and binding obligation of the Stockholder, enforceable against the Stockholder in accordance with its terms; (vi) the Common Stock is not subject to any restrictions on transferability that have not been waived, and may be sold, assigned, conveyed and transferred to the Company in accordance with the terms of this Agreement; (vii) the execution, delivery and performance of this Agreement, and the consummation by the Stockholder of the transactions contemplated

hereby have been duly authorized by all necessary limited liability company action on the part of the Stockholder; and (viii) the Stockholder's execution and delivery of this Agreement and the performance of the Stockholder's obligations hereunder does not and will not conflict with, violate, result in a breach of, or constitute a default under any agreement, contract, instrument or other arrangement to which the Stockholder is a party or by which the Stockholder or the Stockholder's property is bound.

Section 6. Representation and Warranty of the Company. The Company represents and warrants to the Stockholder as of the date hereof (which representations and warranties shall survive the sale, transfer and conveyance of the Common Stock to the Company pursuant to this Agreement) that: (i) it has full legal right, power and authority to enter into this Agreement and redeem and purchase the Common Stock from the Stockholder; (ii) this Agreement constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms; and (iii) its execution and delivery of this Agreement and the performance of its obligations hereunder does not and will not conflict with, violate, result in a breach of, or constitute a default under any agreement, contract, instrument or other arrangement to which it is a party or by which its property is bound.

Section 7. Releases and Non-disparagement.

(a) Release by the Stockholder.

(i) The Stockholder, for itself and for its heirs, legal representatives, administrators, executors, successors and assigns, hereby releases and forever discharges the Company, and each of their respective individual, joint or mutual, past, present and future representatives, parent companies, affiliates, stockholders, managers, members, directors, officers, employees (both current and former), partners, controlling persons, subsidiaries, insurers, attorneys, successors and assigns (individually, a "Releasee" and collectively, the "Releasees") from any and all claims, demands, proceedings, causes of action, orders, obligations, damages, interest, contracts, agreements, debts, liabilities, attorneys' fees and expenses, whatsoever, whether in law or equity, whether known or unknown, suspected or unsuspected in connection with the Stockholder's ownership of the Company's Common Stock or its status as a stockholder of the Company (collectively, "Claims"), relating to the Company, its subsidiaries or their respective businesses or securities which the Stockholder now has, has ever had or may hereafter have against the respective Releasees arising contemporaneously with or prior to the date hereof or on account of or arising out of any matter, cause or event occurring contemporaneously with or prior to the date hereof.

(ii) In executing this Agreement, the Stockholder acknowledges that it has been informed that the Company and/or their subsidiaries may from time to time enter into agreements for additional types of financing, including without limitation recapitalizations, mergers and initial public offerings of capital stock of the Company and/or their subsidiaries, and also may

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ROA-1329

pursue acquisitions or enter into agreements for the sale of the Company and/or their subsidiaries or all or a portion of the Company's and/or their subsidiaries' assets, which may result in or reflect an increase in equity value or enterprise value, and that any and all claims arising from or relating to such transactions or such increases in equity value or enterprise value (without limitation) are encompassed within the scope of this release, and that the sole exceptions to the scope of this release are for claims arising after the date hereof directly under this Agreement in accordance with its terms.

(iii) The Stockholder hereby irrevocably covenants to refrain from, directly or indirectly, asserting any Claim, or commencing, instituting or causing to be commenced, any proceeding of any kind against any Releasee, based upon any matter released hereby.

(b) Release by the Company.

(i) The Company, for itself and for its legal representatives, administrators, successors and assigns, hereby releases and forever discharges the Stockholder from any and all claims, demands, proceedings, causes of action, orders, obligations, damages, interest, contracts, agreements, debts, liabilities, attorneys' fees and expenses, whatsoever, whether in law or equity, whether known or unknown, suspected or unsuspected in connection with the Stockholder's employment by the Company as an officer arising contemporaneously with or prior to the date hereof or on account of or arising out of any matter, cause or event occurring contemporaneously with or prior to the date hereof.

(ii) The Company hereby irrevocably covenants to refrain from, directly or indirectly, asserting any claim, or commencing, instituting or causing to be commenced, any proceeding of any kind against any the Stockholder, based upon any matter released hereby.

(c) Non-disparagement. The Stockholder shall not make any disparaging remarks, or any remarks that could reasonably be construed as disparaging, regarding the Company or any of its affiliates, or their officers, directors, employees, partners, or agents. The Stockholder shall not take any action or provide information or issue statements, to the media or otherwise, or cause anyone else to take any action or provide information or issue statements, to the media or otherwise, regarding the Company or any of its affiliates or their officers, directors, employees, partners, or agents.

(d) If any provision of the release contained in this Section 7 is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of such release will remain in full force and effect. Any provision of the release contained in this Section 7 held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

Section 9. Further Assurances. The Stockholder hereby agrees to from time to time execute and deliver, or cause to be executed and delivered, such additional or further documents, instruments, certificates and agreements, and do or cause to be done such further acts, as the Company may reasonably request for the purpose of effectively carrying out the transaction contemplated by this Agreement.

Section 10. Assignment; Binding Effect. This Agreement may not be assigned by the Stockholder, whether by operation of law or otherwise, without the express prior written consent of the Company. This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, personal and legal representatives, successors and permitted assigns.

Section 11. Entire Agreement; Amendment. This Agreement and the exhibits attached hereto represent the entire understanding and agreement between the parties with respect to the subject matter hereof and shall supersede any prior agreements and understandings between the parties with respect to that subject matter. This Agreement may not be amended, modified or changed, in whole or in part, except by a written instrument signed by both of the parties hereto.

Section 12. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the substantive laws of the State of Delaware, without regard to principles governing conflicts of law.

Section 13. Counterparts. Any number of counterparts of this Agreement may be executed, and each counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement. The facsimile signature of either party to this Agreement for purposes of execution or otherwise, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document.

Section 14. Interpretation. In the event of any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

Section 15. Section Headings. The section headings contained herein are for convenience of reference only and are not to be considered in interpreting or construing this Agreement.

Section 16. Effective Date. The purchase, redemption, sale, transfer and conveyance of the Redemption Shares contemplated hereby shall be effective as of the date of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by a duly authorized person, or has set their hand, as of the day and year first above written.

STOCKHOLDER:

_____

Ray Takigiku

COMPANY:

Charleston Laboratories, Inc.

By: PB

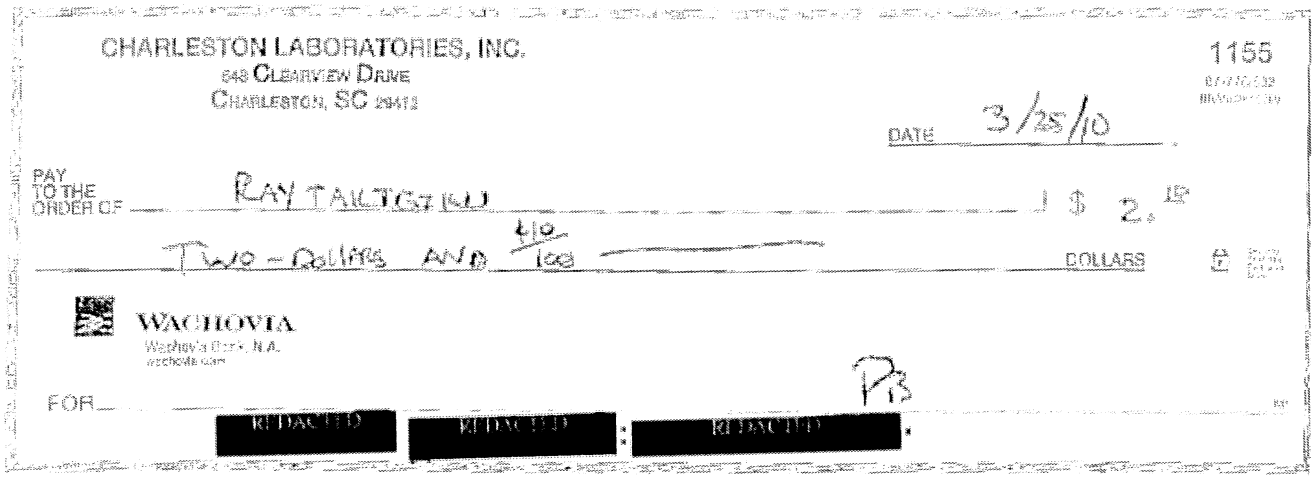
Paul Bosse, CEO and President

STOCK POWER

FOR VALUE RECEIVED, I, Ray Takigiku, do hereby sell, assign and transfer to Charleston Laboratories, Inc., a Delaware corporation, four hundred twenty (420,000) shares of Common Stock of Charleston Laboratories, Inc. a corporation organized under the laws of the State of Delaware (the "Corporation"), represented on the books of the Corporation as Certificate No. 14 (the "Shares") and do hereby irrevocably constitute and appoint Paul Bosse as my true and lawful attorney to sell, assign and transfer the Shares, and for that purpose to make and execute all necessary acts of assignment and transfer thereof, and to substitute one or more persons with like full power, hereby ratifying and confirming all that said attorney or substitutes shall lawfully do by virtue hereof.

Dated: March ____, 2010

Signature: _____
Printed Name: Ray Takigiku



CHARLESTON LABORATORIES, INC.
848 CLEARVIEW DRIVE
CHARLESTON, SC 29412

1155

DATE 3/25/10

PAY TO THE ORDER OF RAY TAILTGZ LLC $ 2.15

TWO - DOLLARS AND 15/100 DOLLARS

WACHOVIA
Wachovia Bank, N.A.
wachovia.com

FOR [redacted] [redacted] [redacted]

P13

PL-0025982

ROA-1334

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

COPY

COPY

CHARLESTON LABORATORIES, INC.

AUTHORIZED TO ISSUE 3,000 SHARES - PAR VALUE $.001 PER SHARE

This Certifies that RAY TAKIGIKU is the registered holder of * * * TWO HUNDRED TEN * * * Shares of the capital stock of the above named corporation, fully paid and non-assessable, transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

SPECIMEN

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 30th day of May, 2008.

G. Paul Bozec III
SECRETARY

COPY

G. Paul Bozec III
PRESIDENT

ROA-1335

PL-0025983

THESE SHARES ARE SUBJECT TO CERTAIN TRANSFER RESTRICTIONS AND RIGHT OF REPURCHASE AS SET FORTH IN THE CHARLESTON LABORATORIES, INC. STOCKHOLDERS AGREEMENT DATED AS OF MAY 30, 2008 ON FILE WITH THE SECRETARY OF THE COMPANY.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO REPURCHASE BY THE ISSUER UPON THE OCCURRENCE OF CERTAIN EVENTS SET FORTH IN THAT CERTAIN STOCK RESTRICTION AGREEMENT DATED AS OF MAY 30, 2008 BY AND BETWEEN THE ISSUER AND THE ORIGINAL HOLDER OF SUCH SHARES.

THESE SHARES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("ACT"). SUCH SHARES MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS TO SUCH TRANSFER, UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL OR OTHER EVIDENCE REASONABLY SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT REGISTRATION IS NOT REQUIRED.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	-as tenants in common	UNIF GIFT MIN ACT- .... Custodian ....
TEN ENT	-as tenants by the entireties	(Cust) (Minor)
JT TEN	-as joint tenants with right of survivorship and not as tenants in common	under Uniform Gifts to Minors Act ..... (State)

Additional abbreviations may also be used though not in the above list.

For Value Received, ___ hereby sell, assign and transfer unto

_____

_____ *Shares*

represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ *Attorney*

to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated _____, ____

In presence of _____

_____

WCSR 39788374v1

CHARLESTON LABORATORIES, INC.
Stock Certificate Receipt

TO: RAY TAKIGIKU

Attached is stock certificate # 12 for 210 shares of Charleston Laboratories, Inc., common stock dated May 30, 2008.

Please acknowledge receipt of this certificate by signing this memo and returning it in the enclosed stamped, return envelope for filing among the corporate records.

RECEIPT ACKNOWLEDGED:

Ray Takigiku

Feb. 24, 2008
Date

Message

From: Baddour, David [/O=FIRM/OU=FIRM/CN=RECIPIENTS/CN=D_BADDOUR]
Sent: 5/6/2010 11:29:33 AM
To: Paul Bosse [pbosse@charlestonlabs.com]
CC: Rutley, Dean [DRutley@wcsr.com]
Subject: FW: 10 Charleston/Takigiku Conversation

Paul,

Just chatted with Dean; he has to run, but thinks the counteroffer below is dead on arrival. (It is a better deal than Ray has currently, probably.) Your original offer was cash (described in 2 below) in exchange for giving up the stock. Below they are asking for both, which they obviously can't have. If you do decide to give him some stock, it obviously can't be nondilutable (it should dilute just like any other founder's stock).

Dean's strong recommendation is to just ignore Ray and focus on closing your next round. If you want to fight with Ray once you have funding, that would be a different story.

(Just got your message; thanks for letting me know it was a disconnection. I have to leave now, but am available to discuss tomorrow if you like.)

Best,

David

David B. Baddour | Womble Carlyle Sandridge & Rice, PLLC | Direct: 919-484-2352 | Facsimile: 919-484-2090 | dbaddour@wcsr.com

From: Willbrand, David [mailto:David.Willbrand@thompsonhine.com]
Sent: Thursday, May 06, 2010 11:07 AM
To: Baddour, David
Cc: Willbrand, David
Subject: RE: 10 Charleston/Takigiku Conversation

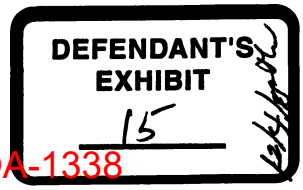
Hi David -

I apologize for the delay in getting back to you after our call. After some discussion on our end, here is where we sit. I welcome your thoughts and appreciate your openness to this discussion.

1. The agreement is phrased and structured as a mutual voluntary separation with typical mutual releases, mutual nondisparagement clauses, etc.
2. The conditional/contingent cash severance payment is ok as originally presented by your client.
3. My understanding is that Ray's ownership position is 3.5%. Ray would like to either (1) hold on to his equity, or (2) if your client has a strong preference for reacquiring the equity, then Ray would agree to that in exchange for a carve-out which would deliver to him 2% (nondilutable) of the proceeds available for distribution to the shareholders in a liquidity event.
4. The acknowledgement and reaffirmation of Ray's equity holdings tied to his $20,000 investment.

I hope this helps gets us closer to closure. Thanks for your consideration.

DW



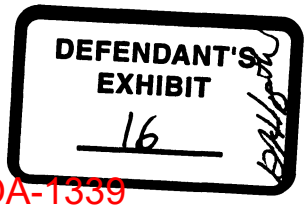
CHARLESTON LABORATORIES, INC.

(A Development Stage Company)

FINANCIAL STATEMENTS

December 31, 2010

Abroms & Associates, P.C.
Certified Public Accountants
Florence, Alabama



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CHARLESTON LABORATORIES, INC.

(A Development Stage Company)

FINANCIAL STATEMENTS

December 31, 2010

Item	*Page Number*
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Financial Statements	
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Statements of Revenues and Expenses - Income Tax Basis	3
Statement of Stockholders' Equity - Income Tax Basis	4
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CHARLESTON LABORATORIES, INC.

(A Development Stage Company)

STATEMENT OF ASSETS, LIABILITIES AND STOCKHOLDERS' EQUITY--INCOME TAX BASIS

DECEMBER 31, 2010

ASSETS	
Current Assets	
Cash	$ 490,784
Total	490,784
Property and Equipment, net	595
Other Assets, net	135,093
TOTAL ASSETS	$ 626,472
LIABILITIES AND STOCKHOLDERS' EQUITY	
Current Liabilities	
Accounts payable	$ 226,973
Short-term debt	250,000
Current portion of long-term debt	0
Total	476,973
Long-Term Liabilities	895,000
Stockholders' Equity	
Series A preferred stock, $0.001 par value; 1,200,000 shares authorized; 585,000 shares issued and outstanding	585
Common stock, $0.001 par value; 8,000,000 shares authorized; 6,000,000 shares issued; 5,860,000 shares outstanding	6,000
Additional paid-in capital	1,028,445
Treasury stock, at cost; 140,000 shares	(2)
Deficit accumulated during the development stage	(1,780,529)
Total	(745,501)
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	$ 626,472

See accompanying notes and accountant's compilation report.

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CHARLESTON LABORATORIES, INC.

(A Development Stage Company)

STATEMENTS OF REVENUES AND EXPENSES--INCOME TAX BASIS
FOR THE YEAR ENDED DECEMBER 31, 2010, AND THE PERIOD
FROM JUNE 27, 2007 (DATE OF INCEPTION) THROUGH DECEMBER 31, 2010

	Year Ended December 31, 2010	From June 27, 2007 (Date of Inception) to December 31, 2010
REVENUES		
Interest income	$ 374	$ 5,982
Dividend income	-	471
Qualifying Therapeutic Discovery Grant funds	244,479	244,479
Total	244,853	250,932
EXPENSES		
Advertising	-	4,209
Amortization	39,728	92,527
Bank charges	260	1,065
Clinical site	-	370,000
Consulting	79,950	228,564
Depreciation	397	2,850
Insurance expense	2,079	22,782
Interest expense	3,182	4,614
Market research	20	32,326
Meals and entertainment	2,842	8,622
Miscellaneous	198	818
Patheon Pharmaceutical	(23,401)	703,392
Professional fees	144,832	380,905
Registration fees	-	15,387
Rent expense	23,609	54,526
Office supplies and postage	679	9,736
Start-up costs	-	5,000
Supplies	-	2,934
Taxes and licenses	2,137	4,758
Telephone expense	2,666	13,107
Travel expense	14,295	71,416
Utilities	851	1,846
Loss on temporary investments	-	77
Total	294,324	2,031,461
NET LOSS	$ (49,471)	$ (1,780,529)

See accompanying notes and accountant's compilation report.

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CHARLESTON LABORATORIES, INC.

(A Development Stage Company)

STATEMENT OF STOCKHOLDERS' EQUITY -- INCOME TAX BASIS

FOR THE PERIOD FROM JUNE 27, 2007 (DATE OF INCEPTION) THROUGH DECEMBER 31, 2010

	Transaction Date	Common Stock		Series A Preferred Stock		Additional Paid-In Capital	Treasury Stock	Deficit Accumulated During the Development Stage	Total Stockholders' Deficit
		Shares	Amount	*Shares*	Amount				
INITIAL CAPITALIZATION	06/27/07	*1,000*	$ 1	-	$ -	$ -	$ -	$ -	$ 1
Issuance of common stock	08/01/07	*1,295*	1						1
Net loss								(52,777)	(52,777)
BALANCES, DECEMBER 31, 2007		*2,295*	2	-	-	-	-	(52,777)	(52,775)
Issuance of common stock	05/30/08	*705*	1			60,027			60,028
Common stock split (2,000 for 1)	09/25/08	*5,997,000*	5,997			(5,997)			-
Issuance of preferred stock	09/26/08			*165,000*	165	274,835			275,000
Issuance of preferred stock	10/20/08			*15,000*	15	24,985			25,000
Issuance of preferred stock	11/12/08			*315,000*	315	524,685			525,000
Issuance of preferred stock	12/03/08			*30,000*	30	49,970			50,000
Net loss								(571,361)	(571,361)
BALANCES, DECEMBER 31, 2008		*6,000,000*	6,000	*525,000*	525	928,505	-	(624,138)	310,892
Issuance of preferred stock	01/09/09			*60,000*	60	99,940			100,000
Net loss								(1,106,920)	(1,106,920)
BALANCES, DECEMBER 31, 2009		*6,000,000*	6,000	*585,000*	585	1,028,445	-	(1,731,058)	(696,028)
Repurchase of common stock							(2)		(2)
Net loss								(49,471)	(49,471)
BALANCES, DECEMBER 31, 2010		*6,000,000*	6,000	*585,000*	585	1,028,445	(2)	(1,780,529)	(745,501)

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CHARLESTON LABORATORIES, INC.

(A Development Stage Company)

STATEMENTS OF CASH FLOWS--INCOME TAX BASIS

FOR THE YEAR ENDED DECEMBER 31, 2010, AND THE PERIOD

FROM JUNE 27, 2007 (DATE OF INCEPTION) THROUGH DECEMBER 31, 2010

	Year Ended December 31, 2010	From June 27, 2007 (Date of Inception) to December 31, 2010
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	$ (49,471)	$ (1,780,529)
Adjustment to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	40,125	95,377
Increase (decrease) in operating liabilities:		
Accounts payable	(445,894)	226,973
Total adjustment	(405,769)	322,350
Net cash used in operating activities	(455,240)	(1,458,179)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of equipment	-	(3,446)
Net cash used in investing activities	-	(3,446)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Start-up costs	-	(43,470)
Organizational costs	-	(184,149)
Borrowings	945,000	1,145,000
Issuance of common stock	-	60,030
Issuance of Series A preferred stock	-	975,000
Purchase of treasury stock	(2)	(2)
Net cash provided by financing activities	944,998	1,952,409
NET INCREASE (DECREASE) IN CASH	489,758	490,784
CASH AT BEGINNING OF YEAR	1,026	-
CASH AT END OF YEAR	$ 490,784	$ 490,784
Supplemental Disclosure of Cash Flows Information:		
Cash paid during the period for interest	$ 3,182	$ 4,614
Cash paid during the period for income taxes	$ -	$ -

See accompanying notes and accountant's compilation report.

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CHARLESTON LABORATORIES, INC.
(A Development Stage Company)
NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 2010

NOTE 1—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES:

DESCRIPTION OF BUSINESS
Charleston Laboratories, Inc. was formed on June 27, 2007, under the laws of the state of Delaware and is a privately funded specialty pharmaceutical company. The Company operates in Charleston, South Carolina and has several products in various stages of development and testing.

The Company is in the development stage. This stage is characterized by significant expenditures for the design and development of the Company's products and manufacturing process. Once the Company's planned principal operations commence, its focus will be on the manufacturing and marketing of its pharmaceutical products and the continued research and development of new products.

INCOME TAX BASIS OF ACCOUNTING
The Company prepares its financial statements on the accrual basis of accounting used for income tax purposes; consequently, depreciation and amortization are amortized over the periods of time and using the methods as required by the Internal Revenue Code. Under accounting principles generally accepted in the United States of America, the Company would estimate the useful life of each depreciable or amortizable asset as well as the estimated value at the end of such period and expense the net amount over that period of time using one of several acceptable methods.

Accounting principles generally accepted in the United States of America would require the Company to calculate diluted number of shares due to the conversion features of its debt instruments. The income tax basis of accounting does not require such calculation and these financial statements do not include such calculation or the specific conversion ratios of the debt instruments of the Company.

Under current tax law, no deduction is allowed for interest on a debt instrument issued by a corporation that is payable in equity of the issuer. Therefore, the Company has not accrued interest expense on the convertible debt.

PROPERTY AND EQUIPMENT
Acquisitions of property and equipment are recorded at cost. Improvements and replacements of property and equipment are capitalized. Maintenance and repairs that do not improve or extend the lives of property and equipment are charged to expense as incurred. When assets are sold or retired, their cost and related accumulated depreciation are removed from the accounts and any gain or loss is reported in the statement of revenues and expenses – income tax basis. Property and equipment are depreciated using the modified accelerated cost recovery system over the statutory lives as established by the Internal Revenue Code. Depreciation expense amounted to $397 for 2010.

AMORTIZATION OF INTANGIBLE COSTS
As specified in the Internal Revenue Code, the Company expensed the first $5,000 of start-up costs in the year incurred and amortized the remaining costs over a period of fifteen years. The organizational costs of the Company were capitalized and are amortized over a five-year period, as established by the Internal Revenue Code.

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RESEARCH AND DEVELOPMENT COSTS
Costs of research and development are expensed as they are incurred. This includes laboratory fees, consulting expenses, and the legal fees incurred as related to the costs of obtaining the various patents for which the Company has applied.

INCOME TAXES
The Company reports income taxes due as they are incurred, in accordance with the income tax basis of accounting. No calculation has been made regarding the future benefit of the net operating losses available to offset income in future periods, as would be required under accounting principles generally accepted in the United States of America.

CASH AND CASH EQUIVALENTS
For purposes of the statement of cash flows, cash equivalents include time deposits, certificates of deposit, and all highly liquid debt instruments with original maturities of three months or less.

ESTIMATES
The preparation of financial statements in conformity with income tax basis of accounting requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates.

NOTE 2 – CASH

The total cash held by the Company at December 31, 2010 includes $233,950 in monies that are not covered by insurance provided by the federal government. It is the opinion of management that the solvency of the referenced financial institution is not of particular concern at this time.

NOTE 3 – PROPERTY AND EQUIPMENT

Property and equipment consists of the following at December 31, 2010:

Description	Balance
Furniture and equipment	$ 3,446
Less accumulated depreciation	(2,851)
Total	$ 595

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NOTE 4 – OTHER ASSETS

Other assets consist of the following at December 31, 2010:

	Amortization Period	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Amortizable intangible assets:				
Organizational costs	5	$ 184,150	$ (82,867)	$ 101,283
Start-up costs	15	43,470	(9,660)	33,810
Total other assets		$ 227,620	$ (92,527)	$ 135,093

Amortization expense for the year ended December 31, 2010 totaled $39,728. Estimated amortization expense at December 31, 2010 for each of the five succeeding years is as follows:

Year ending December 31,	
2011	$ 39,728
2012	39,728
2013	30,520
2014	2,898
2015	2,898

NOTE 5 – SHORT-TERM DEBT

At December 31, 2010, short-term debt consists of:

Lender	Balance
SC Launch! promissory note	$ 200,000
Unsecured loan in anticipation of issuance of additional long-term debt	50,000
Total	$ 250,000

On or about August 3, 2007, the Company issued a convertible promissory note in the principal amount of $200,000 to SC Launch!, a South Carolina nonprofit corporation. The note will automatically convert to Series A preferred stock upon the occurrence of a triggering event, defined as the issuance of convertible preferred stock led by a financial institutional investor, including a venture capital fund, with an aggregate purchase price of at least five million dollars, if the triggering event occurs before the due date of the promissory note. If the triggering event has not occurred before the due date of the promissory note, the note automatically converts to preferred stock unless SC Launch! elects to amend the agreement or demands payment thereof. As of December 31, 2010, the agreement had been amended four times. The due date of the note is now May 31, 2011. The interest rate of the note is 10% per annum, compounded monthly. As of December 31, 2010, the total amount of accumulated interest on the convertible promissory note was $80,876.

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Per the November 2010 amendment to the SC Launch! promissory note, as of January 2, 2011, the interest rate was modified to be set as the U.S. Prime Rate, as published by the Wall Street Journal, plus 2% per annum. The adjusted interest rate is to be adjusted semi-annually in January and July, should the note be extended. In no event will the adjusted interest rate be higher than 10% per annum.

On August 11, 2010, the Company received funds in anticipation of an additional long-term debt issue. The lender opted to forego the December 1, 2010 issue of long-term debt as discussed later, and is expected to participate in the long-term debt to be issued in 2011.

NOTE 6 – LONG-TERM DEBT

On December 1, 2010, the Company issued convertible subordinated debt in the amount of $895,000, bearing an annual interest rate of 6%. Principal and interest is due on December 1, 2012, unless conversion is automatically triggered by the Company receiving cash proceeds from sale of capital stock of at least one million dollars. This indebtedness is subordinate and junior to the full payment of all other Company indebtedness. The Company received funds in advance of this convertible debt issue that were treated as unsecured loans. Interest was paid covering the period from the date funds were received to the date of closing totaling $3,182.

Maturities of the convertible subordinated debt subsequent to December 31, 2010, are as follows:

2011	$ 0
2012	895,000
Total	$ 895,000

NOTE 7 – CAPITAL STOCK

Each share of common stock and Series A preferred stock is entitled to one vote. Of the 6,000,000 shares of common stock outstanding, an aggregate of 105,000 shares were subject to repurchase by the Company at $0.01 per share in the event the holder, being a Company founder, resigns or is terminated for cause, pursuant to the provisions a stock restriction agreement. Such shares will be fully vested on May 30, 2011, unless the Company consummates a merger or another triggering event occurs as stipulated in the stock restriction agreement.

Each share of Series A preferred stock is convertible into common stock at the rate of one common share for each share of preferred stock. The Series A preferred stock will automatically convert to common stock upon the closing of a public offering of the Company's common stock involving net proceeds of at least ten million dollars ($10,000,000) or at a price of at least $5.00 per share, subject to certain adjustments. In addition, The Series A preferred stock will automatically convert to common stock upon the vote or written consent of at least 50% of the then outstanding Series A preferred stockholders or when the aggregate dividends per share totals the amount of the original issue price of $1.6667 per share.

The holders of the Series A preferred stock are entitled to receive dividends when and if declared by the Board of Directors. Dividends on preferred stock are in preference to and prior to any payment of any

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dividend on common stock and are not cumulative. As of December 31, 2010, no dividends had been declared.

The Company has reserved shares of common stock in an amount sufficient for the conversion of all Series A preferred stock. The Company has also reserved eight hundred thousand (800,000) shares of common stock for issuance to officers, directors, employees and consultants of the Company as equity incentives pursuant to an equity incentive plan to be adopted in the future by the Board of Directors and approved by the Company stockholders. None of such reserved shares of common stock have been issued or are currently subject to any option or right.

In March 2010, the relationship between the Company and one of its founders was terminated, at which time the Company repurchased 140,000 of his then outstanding 420,000 shares, which represents the number of shares that were not vested per the stock restriction agreement as mentioned above.

NOTE 8 – QUALIFYING THERAPEUTIC DISCOVERY GRANT FUNDS

In 2010, the Company received a governmental grant of $244,479 for the funding of a qualifying therapeutic discovery project as defined under section 48D of the Internal Revenue Code. Although the grant is not included in gross income for federal income tax purposes, the proceeds must be used to offset the expenses incurred on the federal tax return. The Company will amend its 2009 federal tax return as instructed by the Internal Revenue Service in its notification of grant qualification.

NOTE 9 – INCOME TAXES

The Company has experienced losses since inception. The net operating losses can be carried forward for up to twenty years following the loss year to offset taxable income. Thus, the losses will expire as follows:

2027	$ 52,606
2028	569,625
2029	861,459
2030	292,529
Total	$ 1,776,219

NOTE 10 – COMMITMENTS AND CONTINGENCIES

The Company leases office space from an unrelated party under an operating lease that expires in 2011. Rental payments made in 2010 totaled approximately $23,600.

When the Company repurchased the common stock from one of the founders, as described above, the Company also began proceedings to redeem the remainder of the stock held by the former stockholder.

The Company owes approximately $227,000 to its attorneys for services rendered in connection with patent applications filed for the Company's intellectual property. This is reflected on the financial statements as accounts payable.

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NOTE 11 – SUBSEQUENT EVENTS

Management has evaluated subsequent events through February 14, 2011, the date on which the financial statements were available to be issued. There were no items determined to be reportable.

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Message

From: Mitchell S. Ryan [mitchell@ryan-lawyers.com]
Sent: 3/10/2011 3:54:04 PM
To: Baddour, David [dbaddour@wcsr.com]
Subject: RE: Charleston Labs - Revised Cap Table for Auditor (Feb 2011).xlsx

Looks good. I should've been more clear re: the note – I was intending to refer solely to the note about the Series A offering documents, but I can see how that could be misconstrued. I'll forward this on to Paul and the CPAs. Let me know once the stock ledger has been revised. Thanks.

Mitchell S. Ryan
RYAN & RYAN, LLC
Attorneys at Law
3300 Woodward Avenue
Post Office Box 4082
Muscle Shoals, Alabama 35662
T 256.381.7673
F 256-263-4272
mitchell@ryan-lawyers.com

From: Baddour, David [mailto:dbaddour@wcsr.com]
Sent: Thursday, March 10, 2011 1:43 PM
To: Mitchell S. Ryan
Subject: RE: Charleston Labs - Revised Cap Table for Auditor (Feb 2011).xlsx

I thought you had asked me to do so.

Clearly there is uncertainty about the legal status of those shares. For example, as I told Paul earlier this week, if our firm were asked to give a formal legal opinion on the capitalization of the company, we would very likely have to qualify the opinion as to the legal status of Ray's shares (until the dispute is resolved). As such, I am certainly more comfortable including the note. Again, I thought you had asked me to remove it and did so based on what I thought were your instructions.

Attached has the note back in. Let me know what you think.

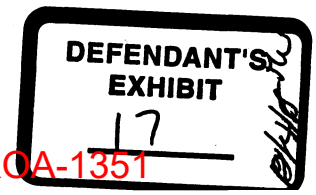
David

David B. Baddour | Womble Carlyle Sandridge & Rice, PLLC | Direct: 919-484-2352 | Facsimile: 919-484-2090 | dbaddour@wcsr.com

From: Mitchell S. Ryan [mailto:mitchell@ryan-lawyers.com]
Sent: Thursday, March 10, 2011 2:34 PM
To: Baddour, David
Subject: RE: Charleston Labs - Revised Cap Table for Auditor (Feb 2011).xlsx

Great, David. Thanks for the explanations. One quick question: I noticed that the note in the cap table re: the company's repurchase of Ray's shares was removed also – was that intentional? If so, what are your thoughts there?

Mitchell S. Ryan



RYAN & RYAN, LLC
Attorneys at Law
3300 Woodward Avenue
Post Office Box 4082
Muscle Shoals, Alabama 35662
T 256.381.7673
F 256-263-4272
mitchell@ryan-lawyers.com

From: Baddour, David [mailto:dbaddour@wcsr.com]
Sent: Thursday, March 10, 2011 8:23 AM
To: Mitchell S. Ryan
Cc: Paul Bosse
Subject: RE: Charleston Labs - Revised Cap Table for Auditor (Feb 2011).xlsx

Mitchell,

Please find attached the revised cap table.

To answer your questions below:

1) To reserve stock for the plan, we need board approval. We are preparing an Equity Incentive Plan (which will permit the Company to issue up to 1.22 million of Common Stock awards) and board consent resolutions approving the same, which Paul can sign as sole director. BUT PLEASE NOTE: in order for the Company to grant qualified "Incentive Stock Options" to employees (recall that ISOs are tax favored), the Internal Revenue Code requires stockholder approval of the plan as well. As such, we are also drafting stockholder consent resolutions for Paul and the rest of the stockholders. Paul and the management team collectively clearly control this vote and can approve it without going to the Series A investors. However under DE law if the stockholders take corporate action by less than unanimous consent, the Company is required to promptly notify the stockholders who didn't vote of the action taken. In short, at a minimum Paul will need to notify the Series A investors that the stockholders have approved an Equity Incentive Plan. I am happy to discuss in greater detail with you and/or Paul as necessary.

2) I have removed the note regarding the reservation of shares for the Option Pool. The Series A Purchase Agreement does state that the Company has reserved 800,000 shares of Common for the equity pool. However, there is no prohibition against increasing the size of the pool. (Normally this anti-dilution protection would be in the Certificate of Incorporation, along with a host of other Series A protective provisions.) So from a corporate law perspective, it is fine to increase the size of the Option Pool. From a securities law perspective (meaning, "we told the investors that the pool was 800,000 and now we're increasing it to 1.22 million, which has the potential to dilute them") I am certainly comfortable as well assuming we do in fact get Ray's shares back. In other words, all we've done is to shift Ray's 420,000 shares from his line to the Option Pool line on the cap table, thus there has been no net dilution. To be clear, even if we ultimately do not get all of Ray's shares back, we still have a strong argument that there is no securities law issue, given that the corporate documents clearly permit us to increase the size of the pool. (By the way, see paragraph 2(b) clause (v) of the Accredited Investor Questionnaire and Supplemental Representation that each Series A investor signed, per which they acknowledge that the Series A stock "will be subject to dilution if additional capital stock is sold.")

3) I'll ask our paralegal to update the common stock ledger.

Let me know if you'd like to discuss.

Best,

David

David B. Baddour | Womble Carlyle Sandridge & Rice, PLLC | Direct: 919-484-2352 | Facsimile: 919-484-2090 | dbaddour@wcsr.com

From: Mitchell S. Ryan [mailto:mitchell@ryan-lawyers.com]
Sent: Tuesday, March 08, 2011 7:17 PM
To: Baddour, David
Subject: Charleston Labs - Revised Cap Table for Auditor (Feb 2011).xlsx

David,

Please disregard the version of the cap table I sent you earlier. Attached is the latest iteration. From my perspective, the only outstanding issue with it is the note re: the option pool. I haven't reviewed the Series A docs in detail, but I'm assuming they said the option pool would be restricted to 10% of the total common shares (i.e., 800K shares). As you know, Paul wants to include Ray's 420K in the option pool. (1) What do we need to do in order to make that happen? (2) What would you do with the aforementioned note in the cap table to account for this?

On a related note, assuming you're good with the current version of the cap table, can you revise the common stock ledger to be consistent with the cap table? That is, can you revise it to reflect the fact that the company repurchased all 420K of Ray's shares on March 26, 2010?

Let me know what you think.

Thanks,

Mitchell

IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).

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May 24, 2011

Via Certified and Electronic Mail

Ray Takigiku P.h.D
632 Russell Street
Covington, KY 41011

RE: Charleston Laboratories, Inc.

Dear Ray:

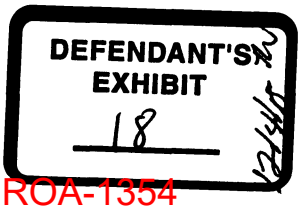
I am an attorney representing Charleston Laboratories, Inc. ("Charleston Labs" or "the Company"). I have been hired to explore and pursue any and all available avenues of legal recourse against you in connection with certain actions and omissions as a Charleston Labs officer and founding stockholder. You may be held liable for breach of contract, breach of fiduciary duty, fraudulent misrepresentation, fraudulent suppression, conversion, tortious interference with business relations and conspiracy. Such claims arise from your extensive and extraordinary record of malfeasance as an officer of Charleston Labs – a record which includes, but is not limited to, the following:

- Your prohibited assignment to SIDIS of your equity stake in Charleston Labs.

- Your fraudulent misrepresentation to Charleston Labs CEO Paul Bosse, in or around July 2008, that your mandatory capital contribution[1] to the Company was funded entirely with personal monies and no portion of the funds were provided by one or more third parties.

- Your repeated attempts, beginning in or around May 2009, to convince one or more fellow Charleston Labs officers that the Company was destined for failure and to abandon their work with the Company.

[1] As you have known from the outset, the Founders' initial capital contributions were not loans to the Company nor were they offered in exchange for any equity in the Company. Instead, these contributions were made to demonstrate a good faith commitment to Charleston Labs, primarily to assist in the Company's efforts to attract investors. This fact has been attested to in writing by every other Charleston Labs Founder.



ROA-1354

- Your involvement in publicly representing Charleston Labs to be a portfolio company of SIDIS, conduct that involved clear violations of U.S. Securities laws.

- Your undertaking to serve as the CEO of Bexion Pharmaceuticals (which included a commitment to dedicate 100% of your time and efforts to Bexion-related work) in or around August 2009, while still an officer of Charleston Labs.

- Your refusal to disclose your conflicting employment with Bexion to the Company's Board of Directors.

- Your total abandonment of Charleston Labs-related work beginning in or around August 2009 and continuing until your March 2010 termination.

- Your overall pattern and practice of subordinating the interests of Charleston Labs to those of SIDIS, Bexion and other SIDIS-affiliated companies.

While the Company is prepared to file suit against you, I have been authorized to offer you the opportunity to settle this matter and avoid lengthy, stressful and expensive litigation. Enclosed with this letter is a Redemption Agreement and Release acknowledging the fact that all 210 pre-recapitalization shares of Charleston Labs common stock you once owned were effectively repurchased by the Company in March 2010. Please execute the Release and return to me **within thirty (30) days** of the date of this letter or the Company will have no choice but to file suit.

For your benefit, allow me to recap some of the relevant facts and events regarding this stock. On or around May 30, 2008, you signed a Stockholders Agreement with Charleston Labs. In numerous sections of the Stockholders Agreement – including Articles 1.1, 1.3, 2.1, and 2.2 – the unauthorized pledge, transfer or assignment of Charleston Labs common stock is expressly prohibited. Specifically, Article 2.2 reads in relevant part:

2.2 Right to Purchase Upon Certain Other Events

(a.) The Company's Right to Purchase. The Company shall have the right to purchase any or all of the Shares held by a Founding Stockholder (including his transferees hereunder) [...] after the Company and the Purchasing Founding Stockholder receives notice [...] of the occurrence of any of the following events:

(v) the Terminating Founding Stockholder sells, pledges, encumbers, hypothecates or otherwise transfers any interest in, or purports to sell, pledge, encumber, hypothecate or otherwise transfer any interest in, any of his or her Shares, except as permitted by and in full compliance with the terms of this Agreement.

Subsequent to your signing the Stockholders Agreement, you did or purported to transfer, assign or pledge to SIDIS some or all of your Charleston Labs common stock. In doing so, you breached the express terms of the Stockholders Agreement and, pursuant to the above-quoted provision, entitled the Company to repurchase in full your equity in Charleston Labs.

In a letter dated March 26, 2010, Charleston Labs Founder and CEO Paul Bosse gave you formal written notice of the for-cause termination of your employment with the Company. In this same letter, Bosse noted that the Company was exercising its option to repurchase the entirety of your Charleston Labs equity and, to that end, enclosed a check for $2.10.

Again, I have enclosed with this letter a Redemption Agreement and Release. Please execute the Release and return to me **within thirty (30) days** of the date of this letter. If you fail to respond before June 23, 2011, we will file suit seeking compensatory and punitive damages, as well as all costs of litigation, including attorney's fees.

I look forward to hearing from you.

Sincerely,

Mitchell S. Ryan

REDEMPTION AND SETTLEMENT AGREEMENT AND RELEASE

THIS REDEMPTION AND SETTLEMENT AGREEMENT AND RELEASE (this "**Agreement**"), made and entered into as of the ____ day of March, 2010, is by and between Ray Takigiku (the "**Stockholder**"), and Charleston Laboratories, Inc., a Delaware corporation (the "**Company**").

RECITALS

A. The Stockholder is the holder of stock certificate no. 14, representing 420,000 of the Company's common stock, par value $0.001 per share (the "**Common Stock**"). The Stockholder is a party to that certain Stock Restriction Agreement dated May 30, 2008, pursuant to which the Common Stock is subject to vesting.

B. On March 19, 2010 the Stockholder's employment with the Company was terminated for cause, and the Company believes it has several causes of action against the Stockholder. Nevertheless, the Company and the Stockholder desire to resolve any and all disputes as provided herein.

C. The Stockholder desires to sell to the Company, and the Company desires to purchase and redeem from the Stockholder, all of the Stockholder's Common Stock on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. **Redemption and Contingent Severance Payment**.

(a) The Company hereby purchases and redeems from the Stockholder, and the Stockholder hereby sells, transfers and conveys to the Company, all of the Stockholder's right, title and interest in and to the Common Stock for the Purchase Price specified in Section 2 of this Agreement.

(b) As a contingent severance payment, upon the closing by the Company of either (A) a convertible preferred stock financing in which the Company issues shares of convertible preferred stock with an aggregate purchase price equal to or greater than Five Million Dollars ($5,000,000.00) or (B) a sale of all or substantially all of the assets of the Company for an aggregate purchase price equal to or greater than Five Million Dollars ($5,000,000.00) (either (A) or (B) being referred to hereinafter as a "Qualified Transaction"), the Company agrees to pay to the Stockholder Seventy Thousand Dollars ($70,000.00). Such payment will be made within sixty (60) days following the closing of the Qualified Transaction.

Section 2. **Purchase Price**. The purchase price for the Common Stock is $0.01 per share of pre-recapitalization common stock (or $0.000005 per share of Common Stock), and the

aggregate purchase price for all the Stockholder's Common Stock is $2.10 (the "**Purchase Price**"), the receipt of which is hereby acknowledged by the Stockholder.

Section 3. **Closing; Deliveries**. The closing of the purchase and redemption of the Common Stock contemplated hereby (the "**Closing**") shall take place concurrently with the execution and delivery of this Agreement by the parties hereto. Stock certificate no. 14 representing the Common Stock is hereby delivered by the Stockholder to the Company, properly endorsed by the Stockholder or accompanied by a duly executed stock power of attorney, in either case with signature guaranteed, for transfer of the Stockholder's Common Stock to the Company.

Section 4. **Acknowledgments**. Stockholder hereby acknowledges that: (i) the Purchase Price, together with the Release described in Section 7 below, represents full, fair and adequate consideration for the redemption and purchase of the Stockholder's Common Stock and represents a value mutually determined by the Stockholder and the Company; (ii) the Stockholder is familiar with the business, operations and financial condition of the Company and its subsidiaries and the Stockholder understands the prospects and industry of the Company and its subsidiaries; (iii) the Stockholder has taken such due diligence actions as the Stockholder deems necessary or appropriate; (iv) the Stockholder has consulted with legal counsel, tax advisors or other third parties of the Stockholder's choice in connection with the transactions contemplated hereby; (v) the Stockholder has the capacity to evaluate the merits and risks of the transactions contemplated by this Agreement and to protect the Stockholder's interests in connection with such transactions; (vi) no representations, warranties or tax or legal advice have been made or given to the Stockholder by the Company or any of its agents, representatives, attorneys, officers, directors or employees to induce the Stockholder to enter into this Agreement, other than those expressly set forth herein; (vii) the Stockholder has not relied upon any representation, warranty or tax or legal advice of the Company or any of its agents, representatives, attorneys, officers, directors, or employees in making the Stockholder's decision to enter into this Agreement, other than those expressly set forth herein; and (viii) upon the Closing, the Stockholder will no longer be a stockholder of, or own any interest in, the Company.

Section 5. **Representations and Warranties of the Stockholder**. The Stockholder represents and warrants to the Company of the date hereof as follows (which representations and warranties shall survive the sale, transfer and conveyance of the Common Stock to the Company pursuant to this Agreement): (i) the Stockholder is the record and beneficial owner of the Common Stock and has valid title to the Common Stock; (ii) the Common Stock is free and clear of any security interests, pledges, claims, liens, encumbrances, charges and assessments, restrictive agreements and other restrictions, preemptive or similar rights, and any other rights or interests of any nature whatsoever; (iii) the Common Stock represents all the equity interest or other ownership rights that the Stockholder has in the Company; (iv) the Stockholder has full legal right, power, authority and legal capacity to enter into this Agreement and sell, assign, convey and transfer the Common Stock to the Company; (v) this Agreement constitutes the valid and binding obligation of the Stockholder, enforceable against the Stockholder in accordance with its terms; (vi) the Common Stock is not subject to any restrictions on transferability that have not been waived, and may be sold, assigned, conveyed and transferred to the Company in accordance with the terms of this Agreement; (vii) the execution, delivery and performance of this Agreement, and the consummation by the Stockholder of the transactions contemplated

hereby have been duly authorized by all necessary limited liability company action on the part of the Stockholder; and (viii) the Stockholder's execution and delivery of this Agreement and the performance of the Stockholder's obligations hereunder does not and will not conflict with, violate, result in a breach of, or constitute a default under any agreement, contract, instrument or other arrangement to which the Stockholder is a party or by which the Stockholder or the Stockholder's property is bound.

Section 6. **Representation and Warranty of the Company**. The Company represents and warrants to the Stockholder as of the date hereof (which representations and warranties shall survive the sale, transfer and conveyance of the Common Stock to the Company pursuant to this Agreement) that: (i) it has full legal right, power and authority to enter into this Agreement and redeem and purchase the Common Stock from the Stockholder; (ii) this Agreement constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms; and (iii) its execution and delivery of this Agreement and the performance of its obligations hereunder does not and will not conflict with, violate, result in a breach of, or constitute a default under any agreement, contract, instrument or other arrangement to which it is a party or by which its property is bound.

Section 7. **Releases and Non-disparagement.**

(a) Release by the Stockholder.

(i) The Stockholder, for itself and for its heirs, legal representatives, administrators, executors, successors and assigns, hereby releases and forever discharges the Company, and each of their respective individual, joint or mutual, past, present and future representatives, parent companies, affiliates, stockholders, managers, members, directors, officers, employees (both current and former), partners, controlling persons, subsidiaries, insurers, attorneys, successors and assigns (individually, a "**Releasee**" and collectively, the "**Releasees**") from any and all claims, demands, proceedings, causes of action, orders, obligations, damages, interest, contracts, agreements, debts, liabilities, attorneys' fees and expenses, whatsoever, whether in law or equity, whether known or unknown, suspected or unsuspected in connection with the Stockholder's ownership of the Company's Common Stock or its status as a stockholder of the Company (collectively, "**Claims**"), relating to the Company, its subsidiaries or their respective businesses or securities which the Stockholder now has, has ever had or may hereafter have against the respective Releasees arising contemporaneously with or prior to the date hereof or on account of or arising out of any matter, cause or event occurring contemporaneously with or prior to the date hereof.

(ii) In executing this Agreement, the Stockholder acknowledges that it has been informed that the Company and/or their subsidiaries may from time to time enter into agreements for additional types of financing, including without limitation recapitalizations, mergers and initial public offerings of capital stock of the Company and/or their subsidiaries, and also may

pursue acquisitions or enter into agreements for the sale of the Company and/or their subsidiaries or all or a portion of the Company's and/or their subsidiaries' assets, which may result in or reflect an increase in equity value or enterprise value, and that any and all claims arising from or relating to such transactions or such increases in equity value or enterprise value (without limitation) are encompassed within the scope of this release, and that the sole exceptions to the scope of this release are for claims arising after the date hereof directly under this Agreement in accordance with its terms.

(iii) The Stockholder hereby irrevocably covenants to refrain from, directly or indirectly, asserting any Claim, or commencing, instituting or causing to be commenced, any proceeding of any kind against any Releasee, based upon any matter released hereby.

(b) Release by the Company.

(i) The Company, for itself and for its legal representatives, administrators, successors and assigns, hereby releases and forever discharges the Stockholder from any and all claims, demands, proceedings, causes of action, orders, obligations, damages, interest, contracts, agreements, debts, liabilities, attorneys' fees and expenses, whatsoever, whether in law or equity, whether known or unknown, suspected or unsuspected in connection with the Stockholder's employment by the Company as an officer arising contemporaneously with or prior to the date hereof or on account of or arising out of any matter, cause or event occurring contemporaneously with or prior to the date hereof.

(ii) The Company hereby irrevocably covenants to refrain from, directly or indirectly, asserting any claim, or commencing, instituting or causing to be commenced, any proceeding of any kind against any the Stockholder, based upon any matter released hereby.

(c) Non-disparagement. The Stockholder shall not make any disparaging remarks, or any remarks that could reasonably be construed as disparaging, regarding the Company or any of its affiliates, or their officers, directors, employees, partners, or agents. The Stockholder shall not take any action or provide information or issue statements, to the media or otherwise, or cause anyone else to take any action or provide information or issue statements, to the media or otherwise, regarding the Company or any of its affiliates or their officers, directors, employees, partners, or agents.

(d) If any provision of the release contained in this Section 7 is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of such release will remain in full force and effect. Any provision of the release contained in this Section 7 held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

Section 9. **Further Assurances**. The Stockholder hereby agrees to from time to time execute and deliver, or cause to be executed and delivered, such additional or further documents, instruments, certificates and agreements, and do or cause to be done such further acts, as the Company may reasonably request for the purpose of effectively carrying out the transaction contemplated by this Agreement.

Section 10. **Assignment; Binding Effect**. This Agreement may not be assigned by the Stockholder, whether by operation of law or otherwise, without the express prior written consent of the Company. This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, personal and legal representatives, successors and permitted assigns.

Section 11. **Entire Agreement; Amendment**. This Agreement and the exhibits attached hereto represent the entire understanding and agreement between the parties with respect to the subject matter hereof and shall supersede any prior agreements and understandings between the parties with respect to that subject matter. This Agreement may not be amended, modified or changed, in whole or in part, except by a written instrument signed by both of the parties hereto.

Section 12. **Governing Law**. This Agreement shall be governed by and construed and enforced in accordance with the substantive laws of the State of Delaware, without regard to principles governing conflicts of law.

Section 13. **Counterparts**. Any number of counterparts of this Agreement may be executed, and each counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement. The facsimile signature of either party to this Agreement for purposes of execution or otherwise, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document.

Section 14. **Interpretation**. In the event of any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

Section 15. **Section Headings**. The section headings contained herein are for convenience of reference only and are not to be considered in interpreting or construing this Agreement.

Section 16. **Effective Date**. The purchase, redemption, sale, transfer and conveyance of the Redemption Shares contemplated hereby shall be effective as of the date of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by a duly authorized person, or has set their hand, as of the day and year first above written.

STOCKHOLDER:

_____

Ray Takigiku

COMPANY:

Charleston Laboratories, Inc.

By: _____

Paul Bosse, CEO and President

STOCK POWER

FOR VALUE RECEIVED, I, Ray Takigiku, do hereby sell, assign and transfer to Charleston Laboratories, Inc., a Delaware corporation, four hundred twenty (420,000) shares of Common Stock of Charleston Laboratories, Inc. a corporation organized under the laws of the State of Delaware (the "Corporation"), represented on the books of the Corporation as Certificate No. 14 (the "Shares") and do hereby irrevocably constitute and appoint Paul Bosse as my true and lawful attorney to sell, assign and transfer the Shares, and for that purpose to make and execute all necessary acts of assignment and transfer thereof, and to substitute one or more persons with like full power, hereby ratifying and confirming all that said attorney or substitutes shall lawfully do by virtue hereof.

Dated: March ____, 2010

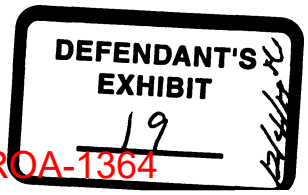
Signature: _____
Printed Name: Ray Takigiku

From: George Scott [gscott@charlestonlabs.com]
ent: Wednesday, January 27, 2016 5:10 PM
To: Berry, Bridget (Shld-WPB-LT)
Cc: Terribile, Kelly (Shld-Del-CP)
Subject: Per Conversation
Attachments: Charleston Labs Schedule of Exceptions July 2012 - Final - CLT (1).pdf

See Section 2.2(d). From July 2012 Series B.

George A. Scott, Jr., JD, MBA
Chief Legal Officer & General Counsel
Charleston Laboratories, Inc.
www.charlestonlabs.com
(703) 505-0849 (Cell)
gscott@charlestonlabs.com

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Disclosure Schedule

July __, 2012

Schedule of Exceptions to Series B Preferred Stock Purchase Agreement, dated as of July __, 2012 (the "Stock Purchase Agreement"), by and between Charleston Laboratories, Inc. (the "Company") and the purchasers named therein (the "Purchasers"). All capitalized terms used in this Schedule of Exceptions that are not otherwise defined in this Schedule of Exceptions will have the meanings ascribed to such terms in the Stock Purchase Agreement. **Any matter disclosed in any Section of this Schedule of Exceptions will be deemed to have been disclosed under each other applicable Section of this Schedule of Exceptions notwithstanding the fact that such other Section may not be referenced in the Schedule of Exceptions.**

Section	Explanation	
2.2(d)	**Capitalization**	
	Issued Capital Stock:	
	Common Stock held by Founders	5,200,000
	Series A Preferred Stock	585,000
	Authorized but Unissued Capital Stock:	
	Series B Preferred Stock Authorized	1,902,334
	Option Pool:	
	Issued Options:	
	Allan Conger	659 (fully vested, $0.001 exercise price)
	Stefan Antonsson	60,000 (fully vested, issued as bonus w/o exercise price)
	Common Stock Reserved for Option Pool	739,341
	Total Option Pool Shares:	800,000
	Total Issued Common, Authorized Series B and Option Pool Shares:	8,487,334

Note: The company's former COO, Ray Takigiku, was issued 210 shares of common stock on 5/30/08. These shares were subsequently included in a 2000 for 1 stock split on 9/25/08, leaving Takigiku with 420,000 shares of fully diluted stock. On March 19, 2010, Mr. Takigiku's services were terminated. On March 26, 2010, the company tendered payment for all 420,000 of Takigiku's shares pursuant to the repurchase provision found in Article 2.2 of the Stockholders Agreement. While Takigiku has conceded that the company was entitled to repurchase 140,000 of his 420,000 shares

pursuant to the Stock Restriction Agreement and its accompanying Vesting Schedule, Takigiku disputes the company's ownership of the remaining 280,000 shares. The company is presently considering pursuing a declaratory judgment action as to the aforementioned 280,000 shares. Until such time as the issue is resolved, the Company intends to refrain from issuing 280,000 of the 800,000 shares reserved in the option pool.

2.2(e) **Accelerated Vesting**

The Company has issued consultant Allen Conger a Nonqualified Stock Option Agreement that is subject to Accelerated Vesting as an effect of change of control. The Company intends to terminate Mr. Conger's option agreement in connection with the issuance of 659 shares (the number of shares that have vested under the agreement).

2.8 **Company Intellectual Property**

See Exhibit 2.8 Attached Below.

2.10 **Agreements; Actions**

(a)(i) – Obligations in excess of $50,000:

On or about August 2, 2007, the Company issued a convertible promissory note in the principal amount of $200,000 to SC Launch!,a South Carolina nonprofit corporation. The Company has previously paid down the interest and,as of the date hereof, the total amount owed on the note (principal and interest) is equal to Two Hundred Six thousand Thousand Seven Hundred Seventy One Dollars and Ninety Eight cents ($206,771.98). In the event SC Launch decides not to convert its note into Series B shares the Company will repurchase the note.

The Company currently owes approximately Three Hundred Fifty Six Thousand, Four Hundred Fifty Nine Dollars and Rwenty One Cents $356,459.21 to Wilson Sonsini for services rendered in connection with the protection of the Company's intellectual property, in particular patent prosecution work. Wilson Sonsini, at its discretion, may convert all or a portion of the outstanding balance into Series B shares. The Company will pay off any remaining balance to Wilson Sonsini.

The Company will enter into an agreement with Patheon Pharmaceuticals, Incorporated ("Patheon") for the development of CL-108 Phase III clinical trial materials (CTM) . The proposal has not been finalized yet but the total cost is expected to be less than $600,000.00.

The Company will enter into an agreement with a Clinical Research Organization (CRO) to manage the CL-108 Phase III Efficacy study. The proposal has not been finalized yet but the total cost is expected to be less than $1,600,000.00.

The Company will enter into agreements with five (5) or more clinical research sites that include Universities and outside independent research centers. The proposals have not yet been finalized but the total cost is expected to be less than $5,000,000.00.

The Company is seeking key man, clinical and general liability insurance quotes, and expects that in the aggregate, the costs of such insurance will exceed $50,000 per year.

(b)(ii)&(iii) – Indebtedness and Loans:

See item 2.10(a)(i) above for a discussion of outstanding indebtedness.

2.11 Certain Transactions

Currently, only one of the Company's founders – Paul Bosse, is drawing a salary in excess of $50,000.00 per year. The Company plans to execute full time employment agreements with the other founders and begin paying a salaries & benefits to the management team and other hired employees or consultants as appropriate.

2.14 Material Liabilities

See item 2.10(a)(i) above for a discussion of outstanding indebtedness.

2.15(a) Employment Matters

As of the date hereof, the Company does not have any full-time employees or part-time employees rather the Company engages with the founders and others as consultants & independent contractors. The company plans to hire the founders and certain other service providers as full-time employees upon the closing of the Series B round of financing.

2.15(g) Employment Matters – Benefit Plans

None.

From: Smith, Jr., Frederic L. <fsmith@babc.com>
Sent: Monday, September 8, 2014 7:48 PM
To: Paul Bosse
Cc: Black, Dylan C.; Grissom, Christopher R.
Subject: RE: Charleston Laboratories, Inc

Paul,

Our conflicts check on the names you gave me last week is clear. We are in the process of getting a file opened internally and will ultimately need to send you another engagement letter for this matter, but in the meantime, please go ahead and send the documents you referenced last week and we will begin reviewing.

I am copying Dylan Black, one of my litigation partners. Dylan and I will be working together to review and advise the company on the stock ownership documents. As I mentioned last week during our call, due to the potential for litigation, I think it is important to involve a litigator in the review at the front end. (I am also copying Chris Grissom for reference.)

We look forward to working with you. Thanks.

Frederic

BRADLEY ARANT BOULT CUMMINGS

Frederic L. Smith, Jr.
Partner

Phone 205-521-8486
Fax 205-488-6486
Email fsmith@babc.com

One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2119

From: Paul Bosse [mailto:pbosse@charlestonlabs.com]
Sent: Monday, September 08, 2014 9:12 AM
To: Smith, Jr., Frederic L.
Subject: Re: Charleston Laboratories, Inc
Importance: High

Frederic,

Just checking in on conflicts check and second engagement letter (if necessary). We are already set up for billing in your system.

DEFENDANT'S EXHIBIT 20

PL-0063786

ROA-1368

From: Paul Bosse <pbosse@charlestonlabs.com>
Sent: Monday, September 15, 2014 12:16 PM
To: Smith, Jr., Frederic L.
Cc: Grissom, Christopher R.; Black, Dylan C.
Subject: RE: Charleston Laboratories, Inc
Attachments: John Ameling - Affidavit for Ray Takigiku Termination _1_.pdf; Charleston Labs - Demand Letter to Takigiku (second draft).docx

Frederic,

1. Affidavit from John Ameling – who is current CL employee that was privy to Ray's actions.
2. Demand Letter that a 2nd law firm drafted (that was never sent) but thought it might help with background

We ultimately tried to reach a mutual postion with Ray – that Womble Carlyle handled unsuccessfully – and then a 2nd outside counsel we hired to look further into the situation agreed that the Company repurchased Ray's stock that vested per the executed Shareholders Agreements section 2.2 (v).

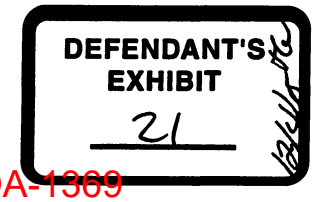
Paul Bosse
President & Chief Executive Officer
Charleston Laboratories Inc
www.charlestonlabs.com
(561)748-2111 (Office)
(843)628-1061 (Fax)
(843)364-3256 (Cell)
PBosse@Charlestonlabs.Com

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From: Paul Bosse [mailto:pbosse@charlestonlabs.com]
Sent: Monday, September 15, 2014 12:01 PM
To: 'Smith, Jr., Frederic L.'
Cc: 'Grissom, Christopher R.'; 'Black, Dylan C.'
Subject: RE: Charleston Laboratories, Inc
Importance: High

Fredric,

1. Receipt Letters were sent via Certified mail
2. Certified mail Receipt
3. Ray Instruction Letter following Termination
4. Ray Redemption and Release
5. Ray Stock Power



PL-0063857

ROA-1369

Paul Bosse
President & Chief Executive Officer
Charleston Laboratories Inc
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From: Paul Bosse [mailto:pbosse@charlestonlabs.com]
Sent: Monday, September 15, 2014 11:56 AM
To: 'Smith, Jr., Frederic L.'
Cc: 'Grissom, Christopher R.'; 'Black, Dylan C.'
Subject: RE: Charleston Laboratories, Inc
Importance: High

Fredric,

Good morning –

I will be sending the documents over several emails that will help enclose the issue with a current Shareholder – Chuck Scheper who invested through his trust. Chuck is the current Chairman of Ray Takigiku's company Bexion (www.bexionpharma.com). Ray is the employee we terminated with cause. Additionally, Chuck Scheper is the brother of Margret Van Gilse who serves as the BD director for Bexion. Once Ray was terminated, we ceased all communication with the Scheper's.

1. By Laws
2. Executed Stockholders Agreement
3. Ray Restricted Stock Agreement
4. BOD Ray Termination
5. Ray Termination Letter

More to follow….

Paul Bosse
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BRAY & LONG, PLLC
ATTORNEYS AT LAW

William P. Bray *
Jeffrey A. Long * †
Lee A. Peindl
Brendan G. Dillashaw
Charles J. Bridgmon *

* Also licensed in South Carolina
† NC Superior Court Mediator &
Certified SC Circuit Court Mediator

September 22, 2015

VIA UPS DELIVERY
Paul Bosse, President
Charleston Laboratories, Inc.
1001 N. US Hwy. 1, Suite 500
Jupiter, Florida 33477-4305

Re: Ray Takigiku's Shares in Charleston Labs, Inc.,

Dear Mr. Bosse:

I represent Ray Takigiku. Dr. Takigiku retained my firm to obtain information about his stock ownership in Charleston Laboratories, Inc., (hereinafter "CLI") in light of the $650MM investment made by Daiichi in CLI. Please direct any response to this letter to my attention. If CLI engages counsel to respond to this request, I ask that such response be directed to my attention.

I have reviewed substantial correspondence between your and my client (or other counsel acting on behalf of my client), as well as the following documents related to CLI's capital structure and governance:

- Bylaws of CLI;
- CLI's Stockholder Agreement (May 2008);
- Stock Restriction Agreement (May 2008);
- CLI's Amended and Restated Certificate of Incorporation of CLI (Sept. 2008);
- Written Consent of the Stockholders of CLI – Issuance of 1,200,000 Series A Preferred Shares (Sept. 2008);
- CLI's Series A Preferred Stock Purchase Agreement (Sept. 2008);
- CLI's Amendment to Series A Preferred Stock Purchase Agreement – Sept. 2008);
- Capitalization Tables Preceding the Series A Issuance; and
- Capitalization Tables Post-dating the Series A Issuance.

Based upon my review of the foregoing documents and a review of a CLI "Cap Table" produced after issuance of the Series A preferred shares, I am convinced that my client has been denied any information regarding his stock or how Daiichi's investment of $650,000,000.00 affects his ownership stake. More to the point: CLI has wrongfully repudiated Dr. Takigiku's ownership interest granted him by the CLI Stockholder Agreement and affirmed in the Series A Preferred Stock Purchase Agreement.

DEFENDANT'S EXHIBIT 22

Perhaps you believe that my client does not own any shares based on CLI's ineffective attempt to terminate Dr. Takigiku's employment, and divest him of his CLI shares. However, my client refused to accept CLI's tender of $2.10 in conjunction with the company's effort to wrongfully terminate him "with cause." We, therefore, ardently believe that my client remains a CLI shareholder. Nevertheless, there has been a blatant, calculated, and unjustifiable effort to deny him information about CLI.

Please forward to my attention a copy of any and all CLI Capitalization Tables produced from September 2008 through the present, including information about the identity of all shareholders and their respective interest/ownership stake in the company. Additionally, we seek information directly related to the Daiichi stake/investment in CLI, including without limitation: Meeting Minutes; Shareholder Consent; Authorization of Dividends; Summaries of Terms and Conditions for issues subsequent to the Series A Preferred shares; Disclosure Statements; and/or any Amended or Restated Articles.

My client is willing to provide CLI a reasonable amount of time to comply with all the terms of this request; however, we would appreciate a response to this letter and CLI's confirmation of Dr. Takigiku's status as a CLI shareholder within 15 business days.

Regards,

Jeffrey A. Long

cc: Ray Takigiku

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division

CASE NO. 15-81694-CIV-COHN/SELTZER

CHARLESTON LABORATORIES, INC.,
a Delaware Corporation,

Plaintiff,

v.

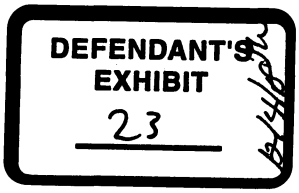
DR. RAYMOND TAKIGIKU,

Defendant.
_____/

PLAINTIFF CHARLESTON LABORATORIES, INC.'S MOTION TO STRIKE DEFENDANT'S AFFIRMATIVE DEFENSES AND INCORPORATED MEMORANDUM OF LAW

Plaintiff/Counter-Defendant CHARLESTON LABORATORIES, INC. ("Charleston" or the "Company"), by and through its undersigned counsel, and pursuant to Fed. R. Civ. P. 8(a) and 12(f), moves to strike the affirmative defenses [DE 36, pp. 7-10] asserted by Defendant/Counter-Plaintiff RAY TAKIGIKU ("Takigiku" or "Defendant) to Charleston's Second Amended Complaint [DE 34] (the "Complaint"). Charleston's Complaint seeks a declaration by the Court only that Takigiku is not a stockholder of the Company, Charleston having repurchased all of the Company's shares from Takigiku in March 2010. The several affirmative defenses stated by Takigiku do not constitute an avoidance or affirmative defense to that single claim for relief pled by Charleston, and are therefore improper.[1] Such "defenses" are not relevant to stockholder status, which is the sole issue raised by the Complaint. As grounds for this Motion, Charleston states as follows:

[1] The various "defenses" now raised by Takigiku may have entitled him to additional payment for the shares, or other remedies had he timely asserted his arguments pursuant to the terms of the Stockholders Agreement and/or filed suit within the statute of limitations. He did not.



I. CHARLESTON'S COMPLAINT FOR DECLARATORY RELIEF

1. Charleston is a privately-held, emerging specialty pharmaceutical company organized in 2007 under the laws of the State of Delaware, with its current principal place of business in Jupiter, Florida. See Complaint, DE 34, ¶¶ 1, 7.

2. Takigiku is a former at-will employee and former stockholder of Charleston who was terminated for cause effective March 16, 2010, as documented by the written notice of termination from Charleston Founder, CEO and Director Paul Bosse dated March 19, 2010. Id. at ¶¶19, 21, 22 and Ex. B.[2]

3. Under the Stockholder's Agreement, upon termination of Takigiku's employment, the Company had the right to repurchase *all* shares held by Takigiku for "Fair Value." Id. at Ex. A, §2.2(a.)(i), §2.4(i).

4. On March 26, 2010, the Company exercised this right and delivered to Takigiku the "Fair Value" (as determined in accordance with the Stockholders Agreement) of all of the shares held by Takigiku prior to the repurchase. Id. at ¶¶ 24-26 and Ex. C.

5. Takigiku has not been a stockholder of Charleston since the date that Charleston repurchased his shares by letter and tender of payment dated March 26, 2010.

6. Nevertheless, five years later, by letter dated September 22, 2015, demanded inspection of the corporate records and information of Charleston, claiming that he is a stockholder. Id. at ¶ 28 and Ex. D.

7. Charleston filed this action, and in its Complaint seeks a declaration that Takigiku is not the owner of the Shares, Shares being defined as the total of 420,000 shares of common

[2] There was no written employment agreement between the Company and Takigiku. "Cause" (as defined in the Stock Restriction Agreement) relied upon by Takigiku means "Cause" as "determined by the Board of Directors of the Company [G. Paul Bosse III] in its reasonable judgment after consultation with counsel for the Company." DE 36, Ex. B at §1.(a).

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stock of Charleston owned by Takigiku immediately prior to the Company's repurchase of the Shares by letter dated March 26, 2010.

8. Takigiku filed his answer and affirmative defenses and countersued for declaratory relief, seeking a declaration that Takigiku is a stockholder of Charleston. See DE 36.

9. Charleston now moves to strike each of Takigiku's affirmative defenses on one or more of the following grounds: a) the defense does not constitute a defense to the claim for relief stated by Charleston; b) the defense is a mere denial of Charleston's allegations and thus not a proper affirmative defense; or c) the defense is bare bones, consisting of conclusory allegations that fail to comply with Fed.R.Civ.P. 8(a).

II. ARGUMENT AND AUTHORITY

A. Legal Standard

First, an affirmative defense must be stricken if it is insufficient as a matter of law. Charleston is a Delaware corporation, and pursuant to the terms of the Stockholder's Agreement, Delaware law applies. Under Delaware law, the Company's tender of Fair Value terminated Takigiku's standing as a stockholder. See e.g., In Prokupek v. Consumer Capital Partners LLC, 2014 WL 7452205 (Del. Ch. Dec. 30, 2014) (where the limited liability company had delivered notice of its exercise of its redemption right and the purchase price (as determined by the manager of the limited liability company in accordance with the limited liability company agreement) to the terminated employee, the terminated employee ceased to be a member of the limited liability company); Len v. Fuller, 1997 WL 305833, *5 (Del. Ch. May 30, 1997) (holding that "it would be inequitable and would violate the reasonable expectations of the parties at the time of contracting to conclude that [a former employee] had, and could effectively exercise, the power to express a shareholder consent pursuant to Section 228 [of the Delaware General

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Corporation Law ("DGCL")] following his receipt of notice that the company was exercising its right to buy his stock" even when the purchase price for such stock had not been paid); Silverstein v. David J. Stone & Co., Inc., 1990 WL 161092 at *3. (Del. Ch. Oct. 17, 1990) (concluding that the plaintiffs were no longer stockholders of the corporation and therefore lacked standing to bring an action to compel an annual meeting of stockholders of the corporation under Section 211 of the DGCL, notwithstanding that the certificates had not been surrendered nor the purchase price determined (much less tendered)); Freeman v. Fabiniak, 1985 WL 11583 *8 (Del. Ch. Aug. 15, 1985) (holding that notice of "exercise" was sufficient to give the holder of an option "equitable title to the shares [upon delivery of such notice] even though payment was not tendered until [later]."); Coleman v. Taub, 638 F.2d 628, 637 (3rd Cir. 1981) (suggesting that solely the "tender" of the purchase price by the corporation is required for former employee to cease to be a stockholder of the corporation, reasoning that the employee bargained for the right to be a stockholder only while he remained an employee). The defenses raised by Takigiku here may have been valid claims or defenses relating to the determination of Fair Value or other matters if timely and properly asserted by Takigiku, but they are not substantive, legally sufficient challenges to the discreet declaration sought by Charleston that Takigiku is not a stockholder of Charleston.

Next, a "defense which points out a defect in the plaintiff's *prima facie* case is not an affirmative defense." In re Rawson Food Serv., Inc., 846 F.2d 1343, 1349 (11th Cir. 1988). Instead, by its very definition, an affirmative defense is established only when the defendant admits facts contained in the complaint, and sets up other facts in justification or avoidance. Boldstar Technical, LLC v. Home Depot, Inc., 517 F. Supp. 2d 1283, 1291 (S.D. Fla. 2007) (Hurley, J.); Falzarano v. Retail Brand Alliance, Inc., 2008 WL 899257 (S.D. Fla. 2008) (to

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plead an affirmative defense, a defendant must allege some additional facts supporting the defense that go beyond a denial of the plaintiff's claims). Otherwise, the assertion is a denial rather than an affirmative defense and should be stricken as redundant. Exhibit Icons, LLC v. XP Cos., LLC, 609 F. Supp. 2d 1282, 1300 (S.D. Fla. 2009); Wiemer v. Fleberbaum & Assocs. v. ADP Totalsource III, Inc., No. 07-80934-CIV, 2008 WL 299016, at *2 (S.D. Fla. Feb. 1, 2008).

Finally, affirmative defenses must comply with Fed.R.Civ.P. 8(a), which requires "a short and plain statement" of the defense asserted. Certain Interested Underwriters at Lloyd's, London v. AXA Equitable Life Ins. Co., 10-62061-CV, 2013 WL 3892956, *4 (S.D. Fla. July 26, 2013) (Hurley, J.); Home Mgmt. Solutions Inc. v. Prescient, Inc., 2007 WL 2412834, *2 (S.D. Fla. 2007). A defendant must "plead an affirmative defense with enough specificity or factual support to give the plaintiff 'fair notice' of the defense that is being asserted," Home Mgmt., 2007 WL 2412834, at *2; Morrison v. Executive Aircraft Refinishing, Inc., 434 F. Supp. 2d 1314, 1318 (S.D. Fla. 2005), and also plead the "'grounds' on which the [defense] rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964, 167 L. Ed. 2d 929 (2007) (explaining the need for factual support to give defendant fair notice of claims, but equally applicable to defenses); Castillo v. Roche Labs. Inc., 10-20876-CIV, 2010 WL 3027726, *2 (S.D. Fla. Aug. 2, 2010) (affirmative defenses must meet the pleading standard set out in Twombly).

Although an answer need not include a detailed statement of applicable defenses, "where an affirmative defense is no more than 'bare bones conclusory allegations, [it] must be stricken.'" Romero v. S. Waste Sys., LLC, 619 F. Supp. 2d 1356, 1358 (S.D. Fla. 2009); AXA Equitable Life Ins. Co., 2013 WL 3892956, at *4; Oriole Gardens Condo. Ass'n I v. Aspen

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Specialty Ins. Co., 11-62281-CV, 2012 WL 864629, *1 (S.D. Fla. Mar. 13, 2012). Purported affirmative defenses that are "nothing more than bald assertions that a particular legal doctrine applies to th[e] case" are improper and should be stricken. AXA Equitable Life Ins. Co., 2013 WL 3892956, at *4. Improperly raised affirmative defenses are subject to being stricken. See Aidone v. Nationwide Auto Guard, L.L.C., 295 F.R.D. 658, 661 (S.D. Fla. 2013).

B. Charleston Requests that the Court Strike Defendants Affirmative Defenses as legally insufficient or inadequately pleaded.

Takigiku has asserted the following eight (8) affirmative defenses in this matter, as well as a reservation to assert additional affirmative defenses at some later date:

First Affirmative Defense

Charleston Labs' allegations of wrongdoing by Dr. Takigiku, which are denied, are intended to impugn his character and reputation and should be stricken from the record as irrelevant, immaterial, impertinent and scandalous pursuant to Rule 12(f) of the Federal Rules of Civil Procedure.

Second Affirmative Defense

To the extent Charleston Labs' allegations of Charleston Labs' Second Amended Complaint are nothing more than thinly veiled attempts to state a claim against Dr. Takigiku to justify the declaration of rights sought by Charleston Labs, such claims are barred by the applicable statutes of limitation and repose.

Third Affirmative Defense

Charleston Labs' claims, which are denied, are barred by the doctrine of estoppel. Specifically, Charleston Labs is estopped from asserting any claim that it repurchased shares of common stock issued to Dr. Takigiku because Charleston Labs did not comply with the applicable requirements of repurchase as stated in the relevant documents. Additionally, Dr. Takigiku did not impliedly or expressly consent to Charleston Labs' offer to repurchase his authorized shares of Charleston Labs.

Fourth Affirmative Defense

The Stock Restriction Agreement dated May 29, 2008, between Dr. Takigiku and Plaintiff modifies and supersedes any conflicting terms of the Stockholder Agreement. To the extent that any ambiguity results of the Stockholders

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Agreement and the Stock Restriction Agreement, such ambiguity must be construed against Plaintiff and in favor of Dr. Takigiku's just and reasonable interpretation.

Fifth Affirmative Defense

Plaintiff is estopped from claiming that Dr. Takigiku's shares did not irrevocably vest and, therefore, were not eligible for repurchase. By way of example, in the Charleston Laboratories, Inc., Series A Financing Disclosure Statement dated September 26, 2008, in which Plaintiff solicited more than $1,000,000.00 in investments from investors throughout the country, Plaintiff stated:

> Of the 6,000,000 shares of Common Stock held by the founders, an aggregate of 840,000 shares currently are subject to repurchase by the Company at $0.01 per share in the event the holder resigns or is terminated for cause, pursuant to the provisions of a stock restriction agreement signed by Bernard P. Schachtel (360,000 shares), Ray Takigiku (210,000 shares) and John F. Ameling (270,000 shares).

Series A Preferred Stock Purchase Agreement , Disclosure Schedule (relevant portion attached hereto as Exhibit D).

As admitted by Plaintiff, the 210,000 shares listed above represent the only shares owned by Dr. Takigiku potentially subject to repurchase. Stated differently, at the time the Disclosure Statement was disseminated to potential shareholders, only 210,000 shares, or one-half (1/2) of the 420,000 shares issued to Dr. Takigiku, were "currently subject to repurchase." Plaintiff should be estopped from claiming in this action that it was entitled to repurchase all of Dr. Takigiku's shares.

Sixth Affirmative Defense

Dr. Takigiku is informed, believes, and therefore alleges that John F. Ameling entered into an agreement and purported to transfer all or a portion of his Charleston Laboratories, Inc., shares. Nevertheless, Dr. Takigiku is informed, believes, and therefore alleges Plaintiff did not terminate Ameling's employment "for cause" or attempt to deny Ameling the rightful ownership of his shares. Plaintiff's failure to enforce the alleged restriction on transfer or selling shares constitutes a waiver of the restriction and, therefore, did not bind Dr. Takigiku to same.

Seventh Affirmative Defense

Dr. Takigiku denies he was terminated "for cause." Dr. Takigiku resigned his employment with Plaintiff in response to G. Paul Bosse's belligerent treatment of

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> Dr. Takigiku when Dr. Takigiku inquired about Plaintiff's outstanding balance owed to Patheon Pharmaceuticals, Inc. Patheon Pharmaceuticals, Inc., was hired by Plaintiff "for the development of CL-108 through Phase I validation, manufacturing and clinical packaging." *Series A Preferred Stock Purchase Agreement, Disclosure Schedule, 2.10.* Despite representing that capital raised through Series A and Series B Preferred Shares would be used to pay Patheon Pharmaceuticals, Inc., balances remained due from Plaintiff Dr. Takigiku confronted Mr. Bosse about the debt and thereafter became a pariah.
>
> **Eighth Affirmative Defense**
>
> Plaintiff is estopped from claiming the "Fair Value" of Dr. Takigiku's 420,000 shares of stock was worth a total of $2.10. As of July 2009, Charleston Laboratories, Inc., in a "Summary of Terms and Conditions of Series B Stock [for] Charleston Laboratories, Inc.," stated a "Pre- Money Valuation" of $50,000,000.00 "calculated on a fully diluted basis (including all stock options)." Such valuation was based upon a total of 6,000,000 Common Shares issued (of which Dr. Takigiku's 420,000 shares represented seven percent (7%) of the common shares outstanding).
>
> **Additional Affirmative Defenses and/or Counterclaims Not Waived**
>
> Dr. Takigiku may have additional, as yet unstated, affirmative defenses and/or counterclaims. Accordingly, Dr. Takigiku hereby reserves his right to assert additional affirmative defenses and/or counterclaims in the event discovery indicates it would be appropriate.

DE 36, pp. 7-10.

1. **Takigiku's defenses are legally insufficient defenses to Charleston's claim for a declaration that Takigiku is not a stockholder of Charleston.**

As stated above, under Delaware law, the Company's tender of Fair Value terminated Takigiku's status as a stockholder. Takigiku's status as a stockholder is the only issue raised by Charleston's Complaint. The sixth, seventh and eight defenses stated by Takigiku, relating to his employment and termination of employment and relating to the Fair Value paid by the Company for the shares, are not defenses to the discreet claim for relief pled. Takigiku may have had rights to challenge the termination of his employment or the amount of the Fair Value paid, but he did not; not under the terms of the Stockholder's Agreement, and not by filing suit within the

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applicable one to three-year statute of limitations period. See e.g., 10 Del. C. §8106 (three years) or 10 Del. C. §8111 (one year), SC Code Section 15-3-530 (three years) or SC Code Section 15-3-560 (one year), the Delaware Declaratory Judgment Act, the Florida Declaratory Judgment Act and the Federal Declaratory Judgment Act (adopting the limitation period applicable to the nature of the underlying action). Moreover, such matters would not have changed Takigiku's status as a *former* stockholder of Charleston, once notice was given to Takigiku and Fair Value was tendered on March 26, 2010. The defenses should be stricken, with prejudice.

Similarly, Takigiku's vague and ambiguous first, second and third defenses, based upon "applicable requirements of repurchase as stated in the relevant documents," are legally insufficient. As demonstrated by the many Delaware cases cited above, procedural defects or lingering requirements on the part of the Corporation, even if found, are insufficient to change Takigiku's status as a *former* shareholder. Further, to the extent that Takigiku may identify specific provisions of the Stockholder's Agreement that state the yet unidentified requirements, Takigiku has no standing to assert and cannot defend this action by relying on provisions that are intended to benefit *other shareholders*, not Takigiku, as the Terminating Founding Stockholder under Section 2.2 of the Stockholders Agreement.

Relating thereto, Takigiku's fourth affirmative defense, upon which the fifth defense also relies, makes the conclusory assertion that the Stockholders Agreement is to be construed against Charleston, and that only the Stock Restriction Agreement ("SRA") is to be considered, without any factual or legal basis for the defense. That is not generally an accurate statement of Delaware law. The defenses are substantively inadequate as stated, and are insufficient under Rule 8 to put Charleston on notice of the defense, or allow Charleston to evaluate the application of Delaware law to the defense. Charleston requests that the defenses be stricken.

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2. Takigiku's mere denials are not proper affirmative defenses and should be stricken.

All of Takigiku's affirmative defenses are mere denials of Charleston's claims–not affirmative defenses at all–and should be stricken. See Exhibit Icons, 609 F. Supp. 2d at 1300. For example, Takigiku outright states in his first, third and seventh affirmative defenses that Charleston's allegations are "denied." In particular, Takigiku's first affirmative defense seeks to "strike[] from the record" Charleston's allegations of wrongdoing on the part of Dr. Takigiku–which resulted in his for cause termination– as "irrelevant, immaterial, impertinent and scandalous pursuant to Rule 12(f) of the Federal Rules of Civil Procedure." DE 36, p. 7. Clearly, this denial of Charleston's allegations, followed by a request in the affirmative defense to strike these allegations pursuant to Rule 12 is an improper affirmative defense. See In re Rawson, 846 F.2d at 1349; Oriole Gardens, 2012 WL 864629, at *1. To be sure, "an affirmative defense is established only when a defendant *admits the essential facts* of a complaint and sets up other facts in justification or avoidance." Morrison, 434 F.Supp.2d at 1318. Accordingly, Takigiku's defenses must admit to the essential facts of the Complaint. It is however patently obvious when reading Takigiku's affirmative defenses that instead of admitting the essential facts for the defense, he instead improperly attempts to deny Charleston's specific allegations in an attempt to point out the alleged defects in Charleston's case. Takigiku's affirmative defense denials, followed by unsupported allegations for the denial, fails as a matter of law as an improper affirmative defense. Pujals ex rel. El Rey De Los Habanos, Inc. v. Garcia, 777 F. Supp. 2d 1322, 1328 (S.D. Fla. 2011) ("A defense which points out a defect in the Plaintiff's prima facie case is not an affirmative defense."). Accordingly, these purported "defenses" are nothing more than denials, and,therefore, must be stricken.

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3. Takigiku's defenses that are bare bones pleadings must be stricken.

Assuming *arguendo*, that any of Takigiku's affirmative defenses are legally applicable to Charleston's claim for declaratory relief and are more than mere denials–which they are not–they are still bare bones pleadings that should be stricken for that reason. All of Takigiku's defenses are fact-dependent, but Takigiku pleads little or no facts in support of the several theories asserted. Takigiku thus fails to give Charleston "fair notice" of the factual bases of the asserted affirmative defenses. Takigiku's bare bones defenses are like those struck by the Honorable Judge King in Katz v. Chevaldina, 12-22211-CIV, 2013 WL 2147156 (S.D. Fla. May 15, 2013):

> The remaining affirmative defenses… are alleged with little or no factual support. In fact, these affirmative defenses appear to be a recital of nearly every circumstance that *could* relieve Defendant from liability, but they are asserted without any factual allegations that would necessarily apply to this case. Many of the affirmative defenses fail to even identify the elements of such a defense, let alone provide factual support thereof. Significantly, none satisfy Rule 8 pleading standards. "[A]lthough an affirmative defense 'does not need detailed factual allegations, [it] requires more than labels and conclusions.'" Defendant's affirmative defenses do not meet this standard.

Id. at *3 (the Court's footnotes and citation omitted). As in Katz, Takigiku's bare bones defenses should also be stricken.

Takigiku's third, fifth and sixth affirmative defenses – estoppel and waiver – exemplify the egregious bare bones pleading. None of these affirmative defenses are supported by sufficient facts to put Charleston on notice, accordingly, these defenses, as well as all of Takigiku's affirmative defenses, are woefully insufficient as a matter of law.

In Home Mgmt., 2007 WL 2412834, at *3, the court struck defenses of waiver and estoppel–which had the same or more detail than Takigiku pleads here–because they were not pleaded "with enough specificity or factual support to give the plaintiff "fair notice" of the

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defense that is being asserted."[3] The court found the defense to be bare bones pleading, stating that "such scant pleading fails to provide Plaintiff fair notice of its defense." Id. As to waiver, the court explained:

> [Defendant] does not plead the specific elements of waiver or provide any factual support to give Plaintiff fair notice of its defense. For example, Plaintiff does not know what subsequent agreement, course of conduct or dealing Prescient is referring to or what type of conduct or operative facts on Plaintiff's part gave rise to a waiver.

Id. (citations omitted). Cf. Morrison, 434 F.Supp.2d 1314, 1319 ("Defendants assert that '[t]he action and/or damages claimed in this action are barred by waiver, estoppel (collateral or otherwise), laches, satisfaction, release or agreement.' Defendants have altogether failed to allege any facts to support these defenses"). It is well settled that the standards for proving waiver under Delaware law are "quite exacting." Bantum v. New Castle Cty. Vo-Tech Educ. Ass'n, 21 A.3d 44, 50 (Del. 2011). "Waiver is the voluntary and intentional relinquishment of a known right [and] [i]t implies knowledge of all material facts and an intent to waive, together with a willingness to refrain from enforcing those rights." Indeed, "[t]he facts relied upon to prove waiver must be unequivocal." Id.[4] Here, Takigiku does not identify any "known right" Charleston "intentionally relinquished," let alone allege facts to explain the circumstances in which Charleston intentionally relinquished rights so as to amount to a knowing and intentional waiver. See DE 36, p. 9.

John Ameling's status with Charleston, which apparently serves as the basis for Takigiku's sixth affirmative defense, has absolutely no relevance to these proceedings, nor could

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[3] The waiver defense in Home Mgmt stated "that Plaintiff's claims are barred because it has waived any right to strictly enforce the agreement due to subsequent agreements, course of conduct and dealings" and the estoppel defense "stat[ed] that Plaintiff is estopped from asserting its purported reading of the Joint Venture Agreement by its subsequent agreements, course of conduct and dealings." Id.

[4] Florida law is in accord. See O'Brien v. O'Brien, 424 So. 2d 970 (Fla. 3d DCA 1983) (citing Opler v. Wynne, 402 So.2d 1309 (Fla. 3d DCA 1981) ("Waiver is an affirmative defense which may be established only by proving the intentional relinquishment of a known right.")

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it, now six years after the termination of Takigiku's employment in March 2010. Takigiku fails to plead the specific elements of waiver, much less plead sufficient facts in support of the defense of waiver.[5] Further, Takigiku fails to admit that assignment or transfer, or an attempted assignment or transfer, of restricted shares is a violation of the Stockholders Agreement, and denies that Takigiku attempted to assign or transfer to SIDIS his equity interest in Charleston in violation of the Stockholders Agreement. See id., 16-18; ¶22.a. Moreover, Takigiku denies that his employment was terminated for cause – or terminated by the Company. Takigiku asserts for the first time in his March 25, 2016 Answer, Affirmative Defenses, and Counterclaim to Plaintiff's Second Amended Complaint that he "voluntarily resigned and retained his shares of Charleston Laboratories, Inc. stock" (Id., ¶23). As pled, and given such other conflicting assertions, the sixth affirmative defense fails to provide fair and adequate notice to Charleston of the grounds for the asserted waiver.

Takigiku's third, fifth and eighth affirmative defenses asserting estoppel fail for the same reason. Not only are these defense not supported by sufficient facts supporting estoppel, Takigiku fails to plead the elements of estoppel. Rather, for example, Takigiku simply states in his third affirmative defense that Charleston "did not comply with the applicable requirements of repurchase as stated in the relevant documents" and he also provides *an example* in support of his fifth affirmative defense pertaining a purported vesting of his shares. Id., at pp. 7-8. Takigiku fails to identify what the requirements are or from what "relevant document" the asserted requirement derives. Charleston is not on "fair notice" of the factual bases of the asserted affirmative defense, and cannot respond to or seek to avoid the defense as it is pled.

[5] Takigiku uses the phrase "is informed, therefore believes and therefore alleges" in his sixth affirmative defense. This lack of clarity alone warrants striking Takigiku's sixth affirmative defense. At a minimum, Takigiku must allege, in good faith, that some fact *actually supports* his defenses, and not just say Takigiku believes certain facts exists that may support that defense.

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In AXA Equitable Life Ins. Co., 2013 WL 3892956, this Court aptly described such unspecific, bare bones pleading as "literally nothing more than bald assertions that a particular legal doctrine applies to this case." Id. at *4; see also Merrill Lynch Bus. Fin. Servs., Inc. v. Performance Mach. Sys. U.S.A., Inc., 04-60861-CIV, 2005 WL 975773, *12 (S.D. Fla. Mar. 4, 2005) (striking defenses, including waiver and estoppel, which "contain[] a bare-bones conclusory allegation which simply names a legal theory but does not indicate how the theory is connected to the case at hand"). In a passage precisely on point here, this Court stated that:

> it is inappropriate for [defendant] to place the burden on Plaintiffs and on the Court ... to determine which [facts defendant] might have intended to form the basis of each of its defenses. Rather, the onus is [on the defendant] to select the facts that are relevant to each defense and state them as part of that defense. This way, both the Court and the other parties are fairly apprised of not just the name of a defense [defendant] may wish to invoke but also the manner in which [defendant] suggests the defense applies to the facts of the instant case.

AXA Equitable Life Ins. Co., 2013 WL 3892956, at *4. Merely referencing documents, without identifying a specific provision supporting a defense to the claims made, is bare bones pleadings that is routinely stricken. For example, in Oriole Gardens, 2012 WL 864629, the Court struck as bare bones pleading a defense asserting that the defendant's "liability is limited 'by the terms and conditions of the policy, including all exclusions, limitations, definitions and deductible provisions contained therein,'" because "the defense is so broad as to encompass the entirety of the insurance contract and therefore fails to give [plaintiff] fair notice of the defense." Id. at *2. And, in Meridian of Palm Beach Condominium Ass'n v. QBE Insurance Corp., 06-81108-CIV, 2007 WL 1364334 (S.D. Fla. May 8, 2007), the defendants asserted several defenses based on insurance contracts, including "that the damages alleged in the Plaintiff's Complaint are not covered under the provisions of the subject insurance policy, in whole or in part, and/or are excluded from coverage, in whole or in part, pursuant to various exclusions contained within the

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policy." Id. at *2. Judge Ryskamp struck this defense because it failed to "advise Plaintiff how, why or in what way the coverage is allegedly excluded . . . . When a 50 plus page insurance policy is involved, such an allegation could not be any more conclusory." Id. Similarly, here, for example, Takigiku plainly refers to "the applicable requirements of repurchase as stated in the relevant documents" and "to the extent that any ambiguity results of the Stockholders Agreement and the Stock Restriction Agreement…" (DE 36, at pp. 7-8), which simply invokes numerous documents and agreements, leaving it to the Court and Charleston to guess which sections of which documents might apply to which defenses. Plainly, that is insufficient as a matter of law.

Takigiku's remaining affirmative defenses suffer similar deficiencies. To be sure, the second affirmative defense does not set forth *any* facts to support the allegation that Charleston's claims are barred by the applicable statutes of limitations and repose. See Falzarano, 2008 WL 899257, at *2 (striking as "insufficiently pled" affirmative defense that "'[s]ome or all of plaintiff's claims may be barred by the applicable statute of limitations…"). Moreover, Takigiku's fourth affirmative defense fails to identify any alleged ambiguity— he merely asserts the defense in the event an ambiguity is found to exist. See DE 36, p. 8.

Accordingly, Takigiku's affirmative defenses are legally insufficient and bare bones legal conclusions without sufficient facts supporting same that should be properly stricken.

4. Takigiku's reservation of affirmative defenses must be stricken.

Per this Court's Scheduling Order, the deadline to amend pleadings was March 18, 2016. See DE 22. Takigiku nonetheless purports to reserve the right to add additional affirmative defenses at some unknown time. See DE 36, p. 10 ("Dr. Takigiku hereby reserves his right to assert additional affirmative defenses and/or counterclaims in the event discovery indicates it would be appropriate."). Rule 8 of the Federal Rules of Civil Procedure, which governs the

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general rules of federal pleadings, strictly prohibits a party from reserving future affirmative defenses based on the mere possibility that they may eventually arise. Fed.R.Civ.P. 8(c). Specifically, Rule 8(c) mandates that:

> [i]n pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, *and any other matter constituting an avoidance or affirmative defense.*

Fed.R.Civ.P. 8(c) (emphasis added). Thus, affirmative defenses that are not specifically raised are waived. Frederick v. Kirby Tankships, Inc., 205 F.3d 1277 (11th Cir. 2000) ("failure to plead an affirmative defense results in waiver of that defense"). Indeed, there is no added benefit or consideration due to Takigiku for reserving the right to assert additional defenses. See Merrill Lynch, 2005 WL 975773, at *12 ("Such a motion will be considered on its own merits, without regard to Defendant's reservation of rights."); Int'l Metalizing & Coatings, Inc. v. M & J Constr. Co. of Pinellas Cnty., Inc., 2010 WL 2889687, at *2 (M.D. Fla. July 19, 2010) ("Reserving the right to assert more affirmative defenses in the future will not allow the defendant to escape the requirement of Federal Rule of Civil Procedure 12(b)."). Takigiku "cannot simply abrogate the Rules of Federal Procedure and hold the Court hostage to [his] inclination to later amend [his] pleading." Hayes v. Agilysys, Inc., No. 09 C 727, 2009 WL 891832, at *2 (N.D. Ill. Mar. 30, 2009).

Moreover, Takigiku should not be allowed to make Rule 8 a nullity by reserving the right to plead more defenses at the eleventh hour. See F.D.I.C. v. Mahajan, 923 F. Supp. 2d 1133, 1141 (N.D. Ill. 2013) ("The time to plead affirmative defenses under [Rule] 8 is at the time of answer.") (citing Castro v. Chi. Housing Auth., 360 F.3d 721, 735 (7th Cir. 2004) ("If Rule 8(c) is not to become a nullity, we must not countenance attempts to invoke [affirmative] defenses at

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the eleventh hour.")). Because the reservation of affirmative defenses is a nullity and not a cognizable affirmative defense, it must also be stricken.

III. CONCLUSION

Plaintiff/Counter-Defendant CHARLESTON LABORATORIES, INC., by and through its undersigned counsel, respectfully requests that the Court grant this Motion to Strike Defendant/Counter-Plaintiff RAY TAKIGIKU's affirmative defenses [DE 36, pp. 7-10], and grant all such other relief as the Court deems just and proper.

IV. LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7 .1 (a)(3) of the Local Rules for the Southern District of Florida, undersigned counsel for Charleston certifies that a reasonable effort has been made to confer with counsel for Takigiku in a good faith effort to resolve the issues raised by the Motion. The parties have been unable to reach agreement on any of the issues raised in this Motion.

Dated: April 20, 2016.

Respectfully Submitted,

By: s/ Bridget Ann Berry

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by CM/ECF this 20th day of April, 2016 to: Eric T. Salpeter, Esq. (eric@salpetergitkin.com) and Joseph H. Rose, Esq. (joe@salpetergitkin.com), SALPETER GITKIN, LLP, One E. Broward Blvd., Ste. 1500, Fort Lauderdale, FL 33486; Jeffrey A. Long, Esq. (jlong@braylong.com) and Charles J. Bridgmon, Esq. (cbridgmon@braylong.com), Bray & Long, PLLC, 2820 Selwyn Ave., Suite 400, Charlotte, North Carolina 28209.

By: s/ Bridget Ann Berry

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division

CASE NO. 15-81694-CIV-COHN/SELTZER

CHARLESTON LABORATORIES, INC.,
a Delaware Corporation,

Plaintiff,

v.

DR. RAYMOND TAKIGIKU,

Defendant.
_____/

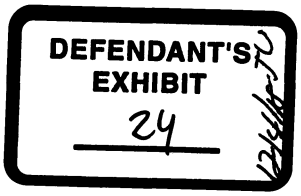
CHARLESTON LABORATORIES, INC.'S MOTION FOR SUMMARY JUDGMENT

Plaintiff/Counter-Defendant CHARLESTON LABORATORIES, INC. ("Charleston" or the "Company"), by and through its undersigned counsel and pursuant to Federal Rule of Civil Procedure 56, respectfully moves this Court for the entry of summary judgment against Defendant/Counter-Plaintiff Dr. Raymond ("Ray") Takigiku ("Takigiku") on Charleston's Second Amended Complaint [DE 34] ("Complaint") and on Takigiku's Counterclaim to the Complaint [DE 36] ("Counterclaim"). In accordance with Local Rule 56.1(a), this Motion for Summary Judgment ("Motion") is accompanied by Charleston's Statement of Undisputed Material Facts (the "SOF") as to which Charleston contends that there does not exist a genuine issue to be tried. The grounds for this Motion follow.

INTRODUCTION

Charleston is a Delaware corporation. Takigiku was an employee and stockholder of the Company and, as such, executed and delivered together to the Company a Stockholders Agreement dated as of May 30, 2008 (the "Stockholders Agreement") and a Stock Restriction Agreement dated as of May 30, 2008 (the "SRA").[1] The Charleston Board of Directors (the

[1] Takigiku on May 30, 2008 executed and delivered to the Company his signature to a Stockholders Agreement identified by footer WCSR 3905566v4 and an SRA identified by footer WCSR 3909546v1, both dated and effective as of May 30, 2008 (the "First-Signed Set"). At the request of another employee-stockholder, Bernard ("Bernie") Schachtel ("Schachtel"), on June 19, 2008, the Company circulated and Takigiku executed and delivered to the Company his signature to a Stockholders Agreement identified by footer WCSR 3905566v5 and an SRA



"Board") terminated Takigiku's employment with Charleston by action taken at a meeting held on March 16, 2010. SOF ¶ 31. Takigiku was informed of his termination for cause by letter dated March 19, 2010 (the "Termination Letter"). Id. ¶ 32. Among the many causes for termination was that Takigiku totally abandoned Charleston beginning in or about August 2009 and Charleston learned that Takigiku had committed to dedicate 100% of his time and efforts to Bexion Pharmaceuticals, a subsidiary of SIDIS Corporation ("SIDIS"). Charleston also learned that Takigiku had impermissibly purported to transfer an interest in his Shares[2] to SIDIS or one of the subsidiaries of SIDIS.

Section 2.2(a) of the Stockholders Agreement gave the Company the right to repurchase "any or all of the Shares" at the "Agreement Price"[3] when, under subsection (i), a Founding Stockholder "who is an employee ceases to be, for any reason, an employee of the Company" or, under subsection (v), a Founding Stockholder "purports to sell, pledge, encumber, hypothecate or

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identified by footer WCSR 3909546v3, both dated and effective as of May 30, 2008 (the "Second-Signed Set"). The provisions at issue in this Motion are the same in the First-Signed Set and the Second-Signed Set, and so reference is made to the two executed versions of the Stockholders Agreement and SRA, jointly and severally, as the "Stockholders Agreement" and "SRA," respectively. SOF n.2. It should be noted, however, that one of the changes in the Stockholders Agreement that Takigiku considered and agreed to was a change in the manner in which the Fair Value (as defined below) was to be paid upon repurchase of the shares of a Founding Stockholder (as defined below) upon the triggering events provided in Section 2.2(a) of the Stockholders Agreement. Id. at Ex. 11 and 12 (deposition exhibits 72 and 75).

[2] "Shares" is defined in the Stockholders Agreement as "shares of Common Stock [of Charleston] now or hereafter owned" (hereinafter referred to as the "Shares") by a "Founding Stockholder," which is defined as G. Paul Bosse III ("Bosse"), John F. Ameling ("Ameling"), Schachtel, Takigiku, Ryan Baker ("Baker") and Chris Godwin ("Godwin") (hereinafter, the "Founding Stockholders"). [DE 34-1, Opening Paragraph & § 1.1(a)]. As stated both in the Stockholders Agreement and the SRA, 210 shares of Charleston common stock originally were issued to Takigiku. The 210 shares were automatically converted into and became 420,000 shares upon the filing of the Amended and Restated Certificate of Incorporation of the Company with the Secretary of State of the State of Delaware on September 25, 2008 (the "Charter Amendment") pursuant to the consummation of the 2,000 to 1 forward split effected by the Charter Amendment (the "Forward Split"). SOF ¶ 21. The "Takigiku Shares" is used herein to mean the 210 shares of common stock of the Company held by Takigiku before the Forward Split and the 420,000 shares of common stock of the Company held by Takigiku after the Forward Split and before the Company's repurchase of such shares.

[3] The "Agreement Price" is defined in Section 2.4(i) of the Stockholders Agreement as "the fair value ('Fair Value') of the Shares to be purchased on a fully diluted basis, calculated on the basis of the Company as a going concern" and is referred to in this Motion as the "Fair Value." [DE 34-1].

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otherwise transfer any interest in any of" his Shares, "except as permitted by and in full compliance with the terms of th[e] [Stockholders] Agreement." [DE 34-1, § 2.2(a)]. A trigger event having occurred, the Board made a good faith determination of the Fair Value of the Takigiku Shares, and by letter dated March 26, 2010 (the "Tender Letter"), Charleston repurchased all of Takigiku's Shares pursuant to § 2.2(a) of the Stockholders Agreement by tendering Fair Value. In this action, Charleston seeks a declaration from the Court that Takigiku is no longer a stockholder of the Company. See [DE 34, ¶ 5].

In response to the Complaint, Takigiku filed an answer and eight affirmative defenses, as well as one counterclaim. See DE 36. By order dated May 26, 2016, the Court granted in part Charleston's Motion to Strike Affirmative Defenses [DE 48], striking Takigiku's First and Second Affirmative Defenses, and holding that the Seventh Affirmative Defense will be treated as a specific denial. See [DE 69]. As set forth more fully below, Takigiku's Third through Sixth and Eighth Affirmative Defenses, see [DE 36, pp. 7-10] (hereinafter, the "Defenses"), are insufficient to avoid summary judgment.

In his Counterclaim, Takigiku alleges that the SRA, which was signed together with the Stockholders Agreement, should apply to the exclusion of the Stockholders Agreement. See [DE 36 ("Counterclaim") at ¶¶ 19-20 and Wherefore Clause at 1]. Takigiku further alleges that the Company failed to properly repurchase any of the "unvested" Takigiku Shares, and, therefore, did not repurchase any of the Shares as of March 2010. Id. Defendant's Counterclaim fails because the Stockholders Agreement and the SRA gave the Company concurrent rights to repurchase the Shares, and neither obviated the other, as specifically acknowledged by Takigiku in 2008. Moreover, Charleston materially complied with the repurchase procedures as set forth in the Stockholders Agreement and the SRA, such that it properly repurchased the Shares upon tendering $2.10 to Takigiku, thereby terminating him as a stockholder of the Company. Charleston is entitled to summary judgment on Charleston's Complaint, Takigiku's Defenses, and Takigiku's Counterclaim on the evidence and argument presented below.

LEGAL ARGUMENT

I. CHARLESTON HAS MET THE LEGAL STANDARD FOR SUMMARY JUDGMENT.

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a

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matter of law." FED. R. CIV. P. 56(c). The movant "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The mere existence of some factual dispute will not defeat summary judgment unless that factual dispute is material to an issue affecting the outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-49 (1986). Once the moving party meets its initial burden, summary judgment is appropriate as a matter of law against the non-moving party "who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which the party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. "[A] non-moving party's failure to prove an essential element of its claim renders all factual disputes as to that claim immaterial and requires the granting of summary judgment." Malewski v. NationsBank of Fla., 978 F. Supp. 1095, 1099 (S.D. Fla. 1997) (citing Celotex, 477 U.S. at 322-23)). Evaluated under this standard, and as set forth more fully below, Charleston is entitled to summary judgment.

II. DELAWARE SUBSTANTIVE LAW APPLIES.

This case was removed to this Court on diversity jurisdiction. See [DE 1]. A federal court sitting in diversity will apply the choice-of-law rules of the forum state. See Direct Gen. Ins. Co. v. Houston Cas. Co., 139 F. Supp. 3d 1306, 1312 (S.D. Fla. 2015) (citation omitted). Both the Stockholders Agreement and the SRA contain choice-of-law provisions specifying that the agreements shall be construed and enforced in accordance with the laws of the State of Delaware. See [DE 34-1 at § 5.4; DE 36-2 at § 3]. "Under Florida law, a contractual choice-of-law provision is enforceable 'unless the law of the chosen forum contravenes strong public policy.'" Lamm v. State St. Bank & Trust Co., 889 F. Supp. 2d 1321, 1326 (S.D. Fla. 2012), aff'd sub nom. Lamm v. State St. Bank & Trust, 749 F.3d 938 (11th Cir. 2014) (citation omitted). Delaware corporate law does not contravene a strong public policy of Florida. To the contrary, in International Ins. Co. v. Johns, the court explained that "[w]e rely with confidence upon Delaware law to construe Florida corporate law. The Florida courts have relied upon Delaware corporate law to establish their own corporate doctrines." 874 F.2d 1447, 1459 n.22 (11th Cir. 1989) (citations omitted).

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III. TAKIGIKU IS NOT A STOCKHOLDER OF THE COMPANY, ALL OF HIS SHARES HAVING BEEN REPURCHASED BY THE COMPANY PURSUANT TO THE STOCKHOLDERS AGREEMENT IN MARCH 2010.

The undisputed facts establish that upon the termination of Takigiku's employment, Charleston had the right to repurchase all of Takigiku's Shares for Fair Value under the Stockholders Agreement and the concurrent right to repurchase 70 (140,000 taking into account the Forward Split) of the 210 (420,000 taking into account the Forward Split) Shares for the nominal amount of $0.01 ($0.000005 taking into account the Forward Split) per share (the "Nominal Amount") under the SRA. The value of the Company, and therefore the Shares, at the time of Takigiku's termination (March 2010) had not appreciated since the original issuance of the Shares to Takigiku on May 30, 2008 for $0.01 per share, and therefore, the Fair Value (under the Stockholders Agreement) at the time of Takigiku's termination was the same as the Nominal Amount (under the SRA). Charleston properly exercised its rights under the Stockholders Agreement to repurchase all of Takigiku's Shares.

A. The SRA and the Stockholders Agreement Must Be Read Together, and Gave the Company Concurrent Rights to Repurchase Takigiku's Shares.

As demonstrated by undisputed facts, the Stockholders Agreement and the SRA were intended to and did in fact create concurrent rights of the Company to repurchase the Shares in the circumstances enumerated in the SRA and the circumstances enumerated in the Stockholders Agreement. Takigiku admitted in his deposition that both the SRA and the Stockholders Agreement "control." SOF ¶ 9. In 2008, the Stockholders Agreement and SRA were circulated, revised, negotiated and ultimately executed at the same time. Id. ¶¶ 6, 8, n.2. The SRA was sent to Takigiku along with the Election to Include Value of Restricted Property in Gross Income in Year of Transfer (the "83(b) Election"). Id. ¶ 19 and Ex. 11 and 12 (deposition exhibits 72 and 75). In addition to revisions made at the request of Schachtel (id. at n.2), Takigiku himself pointed out errors, and requested changes or clarifications. Id. ¶ 10. Yet, Takigiku never identified ambiguity relating to the Company's right to repurchase his Shares under both the Stockholders Agreement and the SRA Id. Both the Stockholders Agreement and the SRA contain a provision stating that the agreement "supersedes" only other prior (but not contemporaneous) agreements. Id. ¶ 11. Stock Certificate No. 12 evidencing the 210 Takigiku

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Shares contained restrictive legends, as required by Delaware law,[4] referring to both the Stockholders Agreement and the SRA Id. ¶ 16. Finally, Takigiku expressly acknowledged that there were "two" agreements – the Stockholders Agreement and the SRA– which served different purposes, stating in 2008: "the two documents seem ok, and the tag-along provisions are also good. The Stock Restriction agreement [SRA] may be unnecessary, but it's good to protect all of the other shareholders." Id. ¶ 9.

Takigiku's observation in 2008 relating to the SRA makes sense. Bosse had conceived the CL-108 product, filed for the patents, and launched the Company. The three original founders of the Company (Bosse, Baker and Godwin) were parties only to the Stockholders Agreement. The employees, who had joined the Company later (Takigiku, Ameling and Schachtel), were all parties to the Stockholders Agreement.[5] Each of Takigiku, Ameling and Schachtel also signed a stock restriction agreement with the Company. As Takigiku himself observed, the Company and the three original founders would logically want to limit the amount the Company may have to pay a new employee to repurchase shares during the initial years of employment. Id. ¶¶ 9, 18 and Ex. 9.

Based on that same reasoning, Takigiku's new position in this litigation – that the SRA controls to the exclusion of the Stockholders Agreement – does not make sense. Under Takigiku's construction, the Company would have the right at any time to purchase all of the shares held by the original founders (Bosse, Baker and Godwin), respectively, under the Stockholders Agreement, but only some of the shares held by the new employees (Takigiku, Ameling and Schachtel) solely because the new employees signed a stock restriction agreement.[6]

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[4] See 8 Del. C. § 202(a).

[5] The primary purpose of the Stockholders Agreement was to provide protections and rights to the Company and other "Founding Stockholders" vis-à-vis the signing stockholder. As stated in the Recitals of the Stockholders Agreement, "the Founding Stockholders believe that it is in the best interests of the Founding Stockholders and the Company to make provision for the future disposition of the shares of common stock of the Company held by the Founding Stockholders. . . ." See [DE 34-1].

[6] Takigiku's construction also does not make sense because only the Company and Takigiku (and not also the other Founding Stockholders) were parties to the SRA. Under Section 2.2(b) of the Stockholders Agreement, however, if the Company failed to repurchase Shares of a Founding Stockholder for Fair Value upon the occurrence of any of the triggering events provided in Section 2.2(a) of the Stockholders Agreement, the other Founding Stockholders could purchase such shares for Fair Value under the Stockholders Agreement. See SOF at Ex. 17, Godwin Aff.

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Under Takigiku's construction, therefore, the original founders could be terminated from the Company (even after 20 years of exemplary service) and have all of their Shares repurchased under the Stockholders Agreement, but the new employees could resign or be terminated from the Company for cause (after just one day) and have only some of their Shares repurchased. Takigiku's contorted construction therefore puts the new employees in a better position than the original founders!

This was not the intent. See e.g., n.5 supra. Instead, as clearly recognized by Takigiku in 2008, the purpose of the stock restriction agreements was not only to grant a tax election beneficial to the new employees, but also to allow Charleston to repurchase certain of the employee's shares at a pre-determined Nominal Amount under the stock restriction agreements (as opposed to Fair Value under the Stockholders Agreement) if the employee abandoned the Company or was terminated for cause prior to May 30, 2011.

Relating to the SRA's purpose of granting a tax election beneficial to the new employees, a brief explanation of the § 83(b) of the Internal Revenue Code (as amended) ("§ 83(b)" of the "Code") and Regulations promulgated thereunder ("Regulations") is appropriate to debunk Takigiku's position that "vested" shares could not be repurchased by the Company.

Schedule A to the SRA, which Takigiku refers to as the "vesting schedule," must be viewed in the context of the tax benefits to the employee-stockholders. Takigiku's Shares were intended to be "substantially nonvested" as defined in 26 C.F.R. § 1.83-3(b) at the time of issuance (e.g., the grant date) so that Takigiku could make a § 83(b) election and pay ordinary income on the $2.10 stated in Takigiku's tax return in 2008 (e.g., the "grant" date), rather than at the later time of "vesting," and then pay taxes at the lower capital gains rate rather than the ordinary income rate on the difference between the total income realized upon a later transfer of the Shares and the ordinary income earlier recognized in connection with the grant of the Shares. However, nowhere in the SRA does it state, as Takigiku now asserts, that Shares "vested" under the SRA couldn't be repurchased under the Stockholders Agreement.

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at ¶ 7. Assuming, as Takigiku would have it, that the Company was limited by the SRA to repurchase 70 of the Shares (140,000 taking into account the Forward Split), the other Founding Stockholders had the right to purchase the remaining 140 Shares (280,000 taking into account the Forward Split) at Fair Value under the Stockholders Agreement. Accordingly, under no circumstances could Takigiku prevent the purchase of all of his Shares for Fair Value under the Stockholders Agreement.

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Furthermore, the term "vest" does not appear in the SRA, and "irrevocably" or "irrevocable" is never used in the SRA or the Stockholders Agreement. See [DE 34-1; DE 36-2]. Rather, the concept of "vesting" was used by Bosse in an email referring to the Company's attorney at Womble Carlyle, Dean Rutley, and by Mr. Rutley in his discussions with Schachtel's attorney, both referring only to the SRA and the § 83(b) election(s) of the employee-stockholders SOF ¶ 9. Takigiku wasn't even privy to Mr. Rutley's discussions with Schachtel's attorney, and, in deposition, admitted that he first became aware of Mr. Rutley's discussion with Schachtel's attorney as a result of discovery in this litigation. Id.

Moreover, "vesting" of the Shares under the Code never meant that the Shares could not be purchased for Fair Value under the Stockholders Agreement. Instead, as discussed above, the concept of "vesting" derives from § 83(b), and is premised on Regulations that confer favorable tax treatment where stock issued to an employee-stockholder are "substantially vested" because they are not subject to a "substantial risk of forfeiture," all as defined in the Code and Regulations.[7] Stated otherwise, "vesting" of the Takigiku Shares merely refers to the concept that a portion of Takigiku's Shares, over time, were no longer subject to a "substantial risk of forfeiture" per § 83(b) of the Code (e.g., subject to repurchase at the price Takigiku paid for the Takigiku Shares, that is, the Nominal Amount under the SRA). However, the ability of the Company to repurchase the Takigiku Shares for Fair Value without running afoul of the tax benefits intended by the SRA is expressly acknowledged in the Regulations. See 26 C.F.R. § 1.83-3(b) and (c) (defining shares subject to a right of the Company to repurchase for fair value as "vested" shares). Accordingly, not only does the "vesting" of the Shares have no impact on Charleston's rights to repurchase Takigiku's Shares under the Stockholders Agreement, but the Regulations reinforce the Company's right to purchase "vested" stock for Fair Value.[8]

In sum, the uncontroverted record evidence establishes that the Stockholders Agreement and the SRA must be read together, creating concurrent rights of the Company to repurchase all

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[7] The Code defines "substantially vested" as follows: "[p]roperty is substantially vested . . . when it is . . . not subject to a substantial risk of forfeiture." 26 C.F.R. § 1.83-3(b). "Further, property is not transferred subject to a substantial risk of forfeiture to the extent that the employer is required to pay the *fair market value* of a portion of such property to the employee upon the return of such property." 26 C.F.R. § 1.83-3(c) (emphasis added).

[8] Coincidentally, the Fair Value payable in March 2010 for repurchase under the Stockholders Agreement equaled the Nominal Amount payable for repurchase under the SRA.

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or some of Takigiku's Shares upon the occurrence of certain events for a stated price, all as set forth in the agreements, respectively.

B. The Company Properly Exercised Its Right to Repurchase Pursuant to the Stockholders Agreement.

Delaware law is clear that a company can effectively exercise its repurchase rights even if it has not strictly complied with requirements to do so. For example, in Len v. Fuller, the Court of Chancery of the State of Delaware (the "Court of Chancery") held that "it would be inequitable and would violate the reasonable expectations of the parties at the time of contracting to conclude that [a former employee] had, and could effectively exercise, the power to express a shareholder consent pursuant to Section 228 [of the DGCL] following his receipt of notice that the company was exercising its right to buy his stock" even when the purchase price for such stock had not been paid. No. CIV. A. 15352, 1997 WL 305833, at *5 (Del. Ch. May 30, 1997). Thus, the Court found that the company's call right had been exercised, even though there was no determination of a price to be paid for the employee's shares pursuant to the procedure set forth in the shareholders agreement, no cancellation of the certificates, and no change on the company's stock ledger. Id. at *2-4; see also Freeman v. Fabiniak, No. 8035, 1985 WL 11583, at *8 (Del. Ch. Aug. 15, 1985) (holding that beneficial ownership of shares subject to an option passed to the holder of the option upon "exercise" despite the failure of the holder of the option to pay the purchase price for the shares as required until later); Coleman v. Taub, 638 F.2d 628, 637 (3d Cir. 1981) (suggesting that solely the "tender" of the purchase price by the corporation is required for former employee to cease to be a stockholder of the corporation pursuant to an employment agreement). Similarly, here, following termination of employment, the Company determined Fair Value and notified Takigiku pursuant to the Tender Letter that it was exercising its repurchase rights. Fair Value was tendered to Takigiku with the Tender Letter, effecting the repurchase of all of Takigiku's Shares.

1. The Company's Right to Repurchase All Shares Was Triggered.

The Stockholders Agreement permitted the Company to repurchase the Takigiku Shares to the extent Takigiku was "an employee," who "cease[d] to be, *for any reason*, an employee of the Company"[9] or "transfer[ed] any interest in, or purport[ed] to . . . transfer any interest in" any

[9] The Stockholders Agreement and SRA as well as the Tax Election all indicate that Takigiku was an "employee" of the Company until his termination on March 16, 2010. See [DE 36-2, 34-

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of the Takigiku Shares, except as permitted by and in compliance with the terms of the Stockholders Agreement. See DE 34-1, § 2.2(a)(i) and (v) (emphasis added). By Written Consent of the Board dated March 16, 2010, Takigiku was terminated as "the Chief Operating Officer" of the Company "for cause pursuant to Takigiku's acts and/or omissions detrimental to the Corporation, including but not limited to abandonment of his responsibilities as an officer of the Corporation and breaches of his fiduciary duties to the Corporation's shareholders" (the "Termination Board Consent"). SOF ¶ 31.

2. The Company Notified Takigiku of the Employment Termination.

By the Termination Letter dated March 19, 2010, the Company informed Takigiku of his termination as an employee of the Company "with cause, effective immediately." Id. ¶ 32. Takigiku concedes his employment terminated on or about March 19, 2010. Id. ¶ 31. While Takigiku did make employment-related claims informally in 2010, he has never filed legal action relating to the termination of his employment.[10]

3. The Company Made the Fair Value Determination.

The Stockholders Agreement states that "the Board of Directors of the Company, in good faith in the exercise of its reasonable business judgment, shall determine the Fair Value of the shares." [DE 34-1, § 2.4(i)]. At its meeting on March 22, 2010, the Board determined that the Fair Value of the Takigiku Shares was "$0.01 per pre-capitalization share or $0.000005 per fully-diluted share of Common Stock" (after giving effect to the Forward Split) (the "Fair Value Board Consent"). SOF ¶ 33.

1, 36-3]. Although he equivocated in deposition testimony, Takigiku admits he was an employee of Charleston. SOF ¶ 5.

[10] As set forth in the Affidavit of G. Paul Bosse III filed in support of this motion, the Company attempted to enter into a mutually acceptable severance agreement with Takigiku related to his employment services, non-disparagement and confidentiality, as set forth in the Stock Redemption and Settlement Agreement (the "Settlement Agreement") which was never executed by Takigiku.SOF ¶ 37. Bosse attempted to resolve those claims pursuant to an offer of compromise set forth in a Stock Redemption and Settlement Agreement ("Settlement Agreement") referenced in the second paragraphs of both the Termination Letter and the Tender Letter, but Takigiku did not accept the offer. Id. It is Charleston's position that the second paragraphs of the Termination Letter and the Tender Letter, respectively, together with the Settlement Agreement and documents referenced therein, are privileged and protected. See Fed. R. Evid. 408; Fla. Stat. § 90.408.

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There is no evidence that the Board did not, in good faith in the exercise of its reasonable business judgment, determine the Fair Value of the Shares. Further, there is no evidence that the Fair Value of the Shares on a fully diluted basis, "calculated on the basis of the Company as a going concern" was other than the amount tendered by the Company.

To the contrary, Takigiku – in sworn deposition testimony – agreed that in March of 2010, Charleston was an early-stage start-up company with only one prototype product in development (CL-108), and that CL-108 was six to ten years away from being commercially viable. Id. ¶ 43. Takigiku also agreed with the Board's analysis and the opinion stated in the Expert Disclosure of Charleston dated June 28, 2016 (the "Expert Report) on the factors relevant to valuation of an early stage start-up company like Charleston. Id. ¶ 44. With respect to these factors, Takigiku stated that both in June 2008 (just a few months after the Shares were issued to Takigiku) and March 2010 (when the Shares were repurchased from Takigiku), the Company had: (i) CL-108, but no issued patents; (ii) no products on the market and no customers; (iii) no revenue and no expectation of revenue within the next year; (iv) no sales force; (v) no product approved by the FDA; and (vi) significant debt. Id.

Takigiku only now, in this litigation, asserts that the value of his Shares when repurchased in March 2010 should have been set by a Draft Summary of Terms and Conditions of Series B Preferred Stock, Charleston Laboratories, Inc., February 2010 (the "Draft Term Sheet"). Id. ¶ 45. However, the Company never raised capital based on the terms of the Draft Term Sheet. Id. ¶ 46. Further, the Company was unable to raise additional capital through the issuance of Series B Preferred Stock until July 2012. Id.; see also n.10, supra. Moreover, Takigiku himself, in deposition testimony, admitted that projections of potential future value as contained in term sheets do not reflect the value of a company.

More specifically, Takigiku acknowledged in his communications with Schachtel in 2008 relating to the § 83(b) elections and the Company's Series A Preferred Stock Offering, that "pre-money/post-money" valuations, which are terms of art setting a price for shares of preferred stock in the context of raising funds for a company, are not a determination of the fair value of the Company or shares of its common stock, and, specifically, are not determinative or even relevant to the Fair Value determination required under the Stockholders Agreement. Instead, valuation of the Company as a going concern is based on factors such as the product(s) and patents owned by the Company, revenue, sales force, and debt, as referenced above. SOF ¶ 44.

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Analyzing precisely those factors, Charleston's Expert opines that: (i) The "Fair Value of the common stock of the Company, as of [March 22, 2010] was de minimis," such that "the purchase price paid to Dr. Takigiku for his common stock ownership interest in the Company is reasonably equivalent to my determination of the Fair Value of the common stock of the Company as of [March 22, 2010]," id., Ex. 16, ¶ 81; (ii) "The Company had not made sufficient progress on achieving its important milestones as of [March 22, 2010]. This lack of progress resulted in no material change to the value of the common stock between 2008 and March 19, 2010," id., Ex. 16, ¶ 73c; (iii) "[T]he Board acted in good faith in the exercise of its reasonable business judgment when it determined the Fair Value of the common stock of the Company in connection with the termination of Dr. Takigiku on the Valuation Date," id., Ex. 16, ¶ 21; and (iv) "[T]he $0.000005 per share price paid for the common stock of Dr. Takigiku was reasonably equivalent to the Fair Value of a share of common stock of the Company as of [March 22, 2016], to a reasonable degree of certainty," id., Ex. 16, ¶ 22. In sum, the Draft Term Sheet relied upon by Takigiku is a red herring.

4. The Company's Notice of Repurchase Was Sufficient.

After the Fair Value Board Consent, Fair Value was paid to Takigiku in accordance with the Stockholders Agreement. By the Tender Letter dated March 26, 2010 the Company delivered a check for $2.10 to Takigiku, pursuant to which the Company paid the Fair Value of the Takigiku Shares. See DE 34-3 (redacted); SOF ¶ 35.[11] Takigiku admits that he received the Tender Letter, and that the Company delivered the check in the amount of $2.10. Id. Takigiku argues that he did not cash the check that accompanied the Tender Letter. However, the notice by the Company to Takigiku (as set forth in the Tender Letter) that it was exercising its right to repurchase all of Takigiku's equity in the Company was sufficient to effect repurchase of the Takigiku Shares and terminate Takigiku's status as a stockholder of the Company. See Prokupek v. Consumer Capital Partners LLC, C.A. No. 9918–VCN, 2014 WL 7452205, at *4-6 (Del. Ch. Dec. 30, 2014) (finding that where the LLC had delivered notice of its exercise of its redemption right upon termination of employment, and the purchase price (as determined by the manager of the LLC in accordance with the LLC Agreement) was tendered to the terminated employee, the

[11] The redacted portions of the Tender Letter constitute an offer to compromise a claim by Takigiku relating to the value of his employment services, which was disputed as to validity and amount, and are not relevant to this Motion or action. See n.10.

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terminated employee ceased to be a member of the LLC). Notice to other Founding Stockholders was provided by copy of the Tender Letter. SOF ¶ 36.[12] Charleston materially complied with all requirements in order to repurchase the Takigiku Shares.

5. Repurchase of the Takigiku Shares Was Self-Executing.

It is uncontested that Takigiku held neither Certificate No. 12, which he had returned to Charleston in connection with the Forward Split, nor Certificate No. 14, which was prepared by the Company to reflect the Forward Split.[13] Even if Takigiku had been in possession of a stock certificate evidencing the Takigiku Shares, failure to surrender the stock certificate evidencing the Takigiku Shares or a stock power with respect to the Takigiku Shares would not invalidate the Company's repurchase of the Takigiku Shares. See Silverstein v. David J. Stone & Co., Inc., Civ. A. No. 11480, 1990 WL 161092, at *3 (Del. Ch. Oct. 17, 1990) (holding that where a repurchase triggering event had occurred, plaintiffs were no longer stockholders notwithstanding that certificates had not been surrendered, nor had the purchase price been determined or tendered).

Further, it is uncontested that the Company's stock ledger reflects that Takigiku is not a stockholder. As Takigiku previously argued in this matter, "[i]n a case where both parties agree the issue is the ownership of stock, few documents may shed more light on the issue than the Company's stock ledger . . . ." See Takigiku's Motion to Compel and Incorporated Memorandum of Laws in Support Thereof, [DE 43 at 7].

Certificate No. 12 had been marked "cancelled" in connection with the Forward Split and the preparation of Certificate No. 14. SOF ¶ 22. After the repurchase of all of the Takigiku

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[12] Notice to other Founding Stockholders was intended to give such other stockholders the opportunity to purchase any of the Takigiku Shares not purchased by the Company. See n.12, supra. Takigiku has no standing to assert the rights of other Founding Stockholders. Further, because the Company repurchased all of the Takigiku Shares, notice to other stockholders is immaterial. In any event, all of the Founding Stockholders other than Godwin are copied on the Tender Letter, and Godwin received actual notice. See Godwin Aff. at ¶ 4.

[13] Delivery by Takigiku of Certificate Number 14 was not necessary, as Certificate Number 14 was already in the possession of the Company. SOF ¶ 23. Furthermore, Section 8-401 of the Uniform Commercial Code as adopted and in effect in the State of Delaware (the "UCC") does not mandate that the Company receive a stock power or an endorsed certificate before recognizing the repurchase of the Takigiku Shares. 6 Del. C. § 8-401 cmt. 1 ("This section states the duty of the issuer to register transfers. . . . This section does not constitute a mandate that the issuer must establish that all preconditions are met before the issuer registers a transfer.").

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Shares, the original Certificate No. 14 was marked "cancelled." Id. ¶ 40. The Company's repurchase of Takigiku's Shares was reflected in the Company's Stock Ledger (the "Stock Ledger") when next updated, on March 15, 2011, effective as of March 26, 2010. Id. ¶ 41. This is because Takigiku's status as a stockholder terminated upon the tender of the $2.10 aggregate purchase price for the Takigiku Shares, even if Takigiku had (which he didn't) properly disputed the Board's determination of Fair Value.

That the Company's repurchase was self-executing and effective regardless of any challenge to the Board's determination of Fair Value is well supported by Delaware law. For example, in Prokupek, the Court of Chancery found that the company's call notices under the LLC agreement "were facially valid exercises of its redemption power." 2014 WL 7452205 at *5. While the Court of Chancery recognized that the former employee "may have legitimate concerns that he was undercompensated," the fact that "damages might ultimately be forthcoming does not prevent the Court from concluding that Prokupek was no longer a member of [the LLC] . . . ." Id. Just as in Prokupek, Takigiku ceased to be a shareholder upon Charleston's tender of Fair Value for the Takigiku Shares. Even if Takigiku had a legitimate objection to the Fair Value determination—which he does not—his objection would not negate Charleston's exercise of its repurchase rights, and the termination of Takigiku's stockholder status. See also Stewart v. BF Bolthouse Holdco, LLC, C.A. No. 8119–VCP, 2013 WL 5210220, at *12 (Del. Ch. Aug. 30, 2013) (concluding that the terminated employees ceased to be members of the LLC upon the LLC's proper exercise of its "repurchase option," noting that "[o]nce [the LLC] elected to repurchase Plaintiffs' Units, it was free to do whatever it wished with those Units after tendering the requisite consideration to Plaintiffs").

Takigiku's argument relating to the unexecuted "Stock Power" and "Stock Redemption Agreement" accompanying the Tender Letter is another red herring, as explained above. See Section III.B.5. and n.10, supra. Those documents reflect the Company's efforts to compromise Takigiku's claim relating to his employment services, and are not relevant to the claims made in this litigation. It is clear from the Tender Letter and the tender of a check for Fair Value that the repurchase of the Takigiku Shares was effective immediately, without regard to Takigiku's acceptance of the Company's offer to compromise other matters.

In sum, Takigiku's arguments notwithstanding, because the Company properly repurchased the Shares and recorded the repurchase in the Stock Ledger, Takigiku is no longer a

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stockholder of Charleston. See Rainbow Navigation, Inc. v. Pan Ocean Navigation, Inc., 535 A.2d 1357, 1360 (Del. 1987) ("The rights of stockholders under Delaware corporate law are generally limited to *stockholders of record*."); Testa v. Jarvis, C.A. No. 12847, 1994 WL 30517, at *6 (Del. Ch. Jan. 12, 1994) ("Delaware corporations may rely almost exclusively on the stock ledger to determine the record holders eligible to vote in an election.") (citation omitted).

6. Takigiku Did Not Properly Challenge the Fair Value Tender.

Takigiku failed to challenge the determination of Fair Value pursuant to the applicable requirements of the Stockholders Agreement. See [DE 34-1, § 2.4(i) and (ii)]. Further, even if Takigiku could avoid the provisions of the Stockholders Agreement restricting Takigiku's ability to challenge the Fair Value determination, Takigiku failed to challenge the Fair Value determination within the applicable statute of limitations period. See Section V.E. infra, addressing Takigiku's Eighth Defense. Finally, even if Takigiku could nevertheless challenge the determination of Fair Value at this late date, and even if the Court were to reject the opinion of Takigiku and the opinion of Charleston's Expert relating to the factors to be considered in determining Fair Value under the Stockholders Agreement, and even if Takigiku were to convince the Court that the Fair Value tendered by the Company was materially less than the actual Fair Value in March 2010, Takigiku's remedy would be limited to money damages – the difference between the amount tendered by the Company and the actual Fair Value in March 2010. See, e.g., [DE 34-1, § 2.4 (ii)]. Even if Takigiku prevailed on all of these points, he still would not be a stockholder, and Charleston would still be entitled to judgment as a matter of law.

C. The Company Had the Concurrent Right to Repurchase Some of the Takigiku Shares Under the SRA.

Although the Fair Value Board Consent indicates that the Company intended to repurchase the Takigiku Shares pursuant to the Stockholders Agreement – not the SRA – because Takigiku was terminated for cause, the Company had the concurrent right under the SRA to purchase the applicable number of shares set forth on Schedule A (e.g., the "unearned" Takigiku Shares) at the predetermined Nominal Amount. SOF ¶ 18. Therefore, Takigiku's argument that the Company could repurchase under the SRA only 70 (140,000 taking into account the Forward Split) of the 210 (420,000 taking into account the Forward Split) Shares held by Takigiku is unavailing.

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In all events, the Company notified Takigiku of the repurchase, and tendered $2.10, which, in addition to representing the Board's determination of the Fair Value under the Stockholders Agreement for all 210 (420,000 taking into account the Forward Split) of Takigiku's Shares, exceeded the Nominal Amount required to purchase Shares under the SRA. SOF ¶¶ 34-35. The Company followed the proper procedures for repurchasing the Takigiku Shares under the SRA as well as the Stockholders Agreement. Thus, Charleston is entitled to judgment as a matter of law.

IV. CHARLESTON IS ENTITLED TO SUMMARY JUDGMENT ON CHARLESTON'S COMPLAINT.

As demonstrated above, Takigiku's employment was terminated for cause, and Charleston therefore had the right to repurchase any or all of the Takigiku Shares pursuant to the Stockholders Agreement, whether "vested" or "unvested." Charleston exercised this right by tendering Fair Value to Takigiku. As a result, Takigiku's status and rights as a stockholder of Charleston ceased. As a matter of law and equity, Charleston is entitled to a declaration that Takigiku is not a stockholder of Charleston.

V. CHARLESTON IS ENTITLED TO SUMMARY JUDGMENT ON TAKIGIKU'S DEFENSES.

A. Takigiku's Third Defense (Estoppel) Fails.

In his Third Defense, Takigiku alleges that the Company "is estopped from asserting any claim that it repurchased shares of common stock issued to Dr. Takigiku because Charleston did not comply with the applicable requirements of repurchase as stated in the relevant documents." See [DE 36 at Third Affirmative Defense]. However, as more fully set forth above, while this defense fails to put Charleston on notice of any particular requirement with which Charleston did not comply, Charleston has demonstrated that it did materially comply with all conditions precedent to repurchase of the Takigiku Shares.

B. Takigiku's Fourth Defense (That the SRA Modifies and Supersedes the Stockholders Agreement) Fails.

In his Fourth Defense, Takigiku argues that the SRA "modifies and supersedes any conflicting terms of the Stockholders Agreement" and that "[t]o the extent that any ambiguity results of the Stockholders Agreement and the [SRA], such ambiguity must be construed against Plaintiff and in favor of Dr. Takigiku's just and reasonable interpretation." See [DE 36 at Fourth Defense]. However, as detailed in Section III.A. above, the SRA does not supersede the

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Stockholders Agreement. The two agreements created concurrent rights of the Company to repurchase the Takigiku Shares.

Further, the Stockholders Agreement was not drafted by the Company, but instead was drafted and initially proposed by another potential Founding Stockholder. SOF ¶ 7. The Stockholders Agreement and the SRA were proposed together to Takigiku, and he reviewed, commented on and made changes to them together. Id. ¶¶ 8-9. That the contracts at issue here are "bilateral" agreements precludes application of the rule of *contra proferentem*. See I.U. N. Am., Inc. v. A.I.U. Ins. Co., 896 A.2d 880, 884-85 (Del. Super. 2006) ("The rule [of *contra proferentem*] is not appropriately applied to situations where an agreement resulted from a series of negotiations between experienced drafters.") (citation omitted).

Takigiku executed the Stockholders Agreement and the SRA on the same date, effective as of the same date. That the Stockholders Agreement and the SRA therefore must be read together is well-recognized in the law. See Crown Books Corp. v. Bookstop, Inc., CIV. A. No. 11255, 1990 WL 26166, at *1 (Del. Ch. Feb. 28, 1990) ("[I]n construing the legal obligations created by [a] document, it is appropriate for the court to consider . . . the language of contracts among the same parties executed or amended as of the same date that deal with related matters."); Comerica Bank v. Global Payments Direct, Inc., No. 9707-CB, 2014 Del. Ch. LEXIS 127, at *23-24 (Ch. July 21, 2014) (applying "the rule that contemporaneous contracts between the same parties concerning the same subject matter should be read together as one contract" and finding that "it is appropriate to consider the terms of the LLC Agreement and other related agreements when construing Section 15(d) of the Service Agreement").

Furthermore, the Stockholders Agreement and the SRA must be read together because any other construction makes the Stockholders Agreement "superfluous" or "surplusage," violating fundamental contract construction principles. See NAMA Holdings, LLC v. World Mkt. Ctr. Venture, LLC, 948 A.2d 411, 419 (Del. Ch. 2007) ("Contractual interpretation operates under the assumption that the parties never include superfluous verbiage in their agreement, and that each word should be given meaning and effect by the court.") (citation omitted); Comerica Bank, 2014 Del. Ch. LEXIS 127, at *37 (construing multiple agreements which governed the parties' relationship so that the Service Agreement reconciled with each of the provisions in the LLC Agreement and the Contribution Agreements, thereby preventing any surplusage). Further, it is common for restrictions on transfer of shares by a stockholder to be governed by more than

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one agreement, as is the case here. See, e.g., Crown EMAK Partners, LLC v. Kurz, 992 A.2d 377, 384 (Del. 2010) (recognizing that shares were restricted from transfer by both a "Restricted Stock Grant Agreement" and a "Resale Restriction Agreement").

Finally, the Stockholders Agreement and the SRA are not ambiguous. See Norton v. K-Sea Transp. Partners L.P., 67 A.3d 354, 365 n.56 (Del. 2013) (noting that the doctrine of *contra proferentem* only applies where an agreement is ambiguous). Under the Stockholders Agreement, the Company had the right upon the occurrence of certain stated events to repurchase any or all of Takigiku's Shares for Fair Value. Under the SRA, the Company had the right upon the occurrence of certain stated events to repurchase certain of Takigiku's Shares as set forth in Schedule A of the SRA for the stated Nominal Amount. For the reasons set forth above, Charleston is entitled to summary judgment as a matter of law.

C. Takigiku's Fifth Defense (Estoppel) Fails.

In his Fifth Defense, Takigiku alleges that Charleston is estopped from claiming that the Takigiku Shares did not "irrevocably vest" and, therefore, were not "eligible for repurchase." In this defense, Takigiku relies on a Series A Preferred Stock Purchase Agreement Disclosure Schedule (the "Disclosure Schedule"), arguing that the Disclosure Schedule evidences that only ½ of the 210 Shares originally issued to Takigiku were repurchaseable as of September 26, 2008. See [DE 36-4; DE 36 at Fifth Affirmative Defense].

However, as a threshold matter, Takigiku was never a preferred stockholder, and has no rights under the Series A Preferred Stock Purchase Agreement ("Series A SPA") or its Disclosure Schedule. Further, the terms of the Series A SPA do not alter the Company's rights or Takigiku's rights under the Stockholders Agreement. Moreover, the clear language of Section 2.2(d) of the Disclosure Schedule, as quoted by Takigiku in his Defense, states only that "[o]f the 6,000,000 shares of Common Stock held by the founders, an aggregate of 840,000 shares currently are subject to repurchase by the Company at $0.01 per share in the event the holder resigns or is terminated for cause, pursuant to the provisions of a stock restriction agreement signed by Bernard P. Schachtel (360,000 shares), Ray Takigiku (210,000 shares) and John F. Ameling (270,000 shares)." [DE 36-4] (emphasis added). Thus, Section 2.2(d) specifies that it is discussing the Company's repurchase rights only under the SRA. See [DE 36-2; DE 36-4]. The Disclosure Schedule is silent (for the reasons explained below) relating to the Company's concurrent right to repurchase any and all of the Takigiku Shares pursuant to the terms of the

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Stockholders Agreement, which is what occurred in this case. In all events, the Disclosure Schedule, or any lack of disclosure thereunder, does not define or limit the Company's rights under the Stockholders Agreement, which is a separate document independent of the Disclosure Schedule.

Moreover, not relating to the Stockholders Agreement, the Disclosure Schedule merely consists of qualifications, or footnotes, to specific provisions of the Series A SPA. Without the context of the related Series A SPA provision(s), the meaning of Section 2.2(d) of the Disclosure Schedule cannot be understood. In that regard, only the first sentence of Section 2.2(d) of the Series A SPA is qualified by Disclosure Schedule Section 2.2(d). As relevant here, the first sentence of Section 2.2(d) of the Series A SPA states "Section 2.2(d) of the Disclosure Schedule sets forth the capitalization of the Company immediately following the Initial Closing including the number of shares of the following: (i) issued and outstanding Common Stock, including, with respect to restricted Common Stock, vesting schedule and repurchase price . . ." (e.g., the relevant terms that are only contained in the SRA). SOF, Ex. 13. The second sentence of Section 2.2(d) of the Series A SPA does not refer to and thus is not qualified by Disclosure Schedule 2.2(d). That provision of the Series A SPA refers to the Stockholders Agreement. Id.

In sum, the first sentence of Section 2.2(d) of the Series A SPA (which refers to the Disclosure Schedule) refers to Schedule A of the SRA, while the second sentence of Section 2.2(d) of the Series A SPA (which does not refer to the Disclosure Schedule) refers to the Stockholders Agreement. Accordingly, the Series A SPA does not raise a genuine issue of material fact relating to Takigiku's argument that the Takigiku Shares were "irrevocably vested" and "ineligible for repurchase" under the Stockholders Agreement.

D. Takigiku's Sixth Defense (You Didn't Fire Ameling) Fails.

In his Sixth Affirmative Defense, Takigiku asserts that Ameling also entered into a stock restriction agreement and purported to transfer all or a portion of his Charleston shares to SIDIS, and because Charleston did not terminate Ameling's employment for cause, Charleston could not bind Takigiku to the restriction on transfer. See [DE 36 at Sixth Defense]. First, Takigiku's purported transfer of his equity in Charleston to SIDIS or a SIDIS related entity is only one of many bad acts that resulted in his for-cause termination. See [DE 34, ¶22]; see also, SOF ¶¶ 27-30. Next, each of the Stockholders Agreement and the SRA contain a no-waiver provision. See [DE 34-1 at § 5.8 (providing that no delay or failure by the Company to exercise any right,

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power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by the Company of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.") and DE 36-2 at § 5 (failure of any party to insist upon strict performance shall not be construed as a waiver or relinquishment of future compliance therewith)]. Thus, the clear, unambiguous terms of the Stockholders Agreement and the SRA defeat Takigiku's Sixth Defense. In sum, the Company's resolution of issues with Ameling, who, unlike Takigiku, never abandoned his responsibilities to the Company, is wholly immaterial to the Company's rights to terminate Takigiku's employment and repurchase the Takigiku Shares under the Stockholders Agreement.

E. Takigiku's Eighth Defense (Failure to Pay Fair Value) Fails.

Takigiku argues that the Company failed to repurchase the Takigiku Shares because it failed to pay Fair Value under the Stockholders Agreement. See [DE 36 at Eighth Defense]. This defense fails for the reasons set forth in Section III.B.6. above.

VI. CHARLESTON IS ENTITLED TO SUMMARY JUDGMENT ON TAKIGIKU'S COUNTERCLAIM.

In his Counterclaim, Takigiku alleges that the Company was "only entitled to repurchase 70 (140,000 Shares taking into account the Forward Split) of the original 210 (420,000 taking into account the Forward Split) shares" issued to Takigiku. [DE 36, Counterclaim at ¶ 16]. Takigiku further alleges that the Company, "in contravention of the procedures mandated by the SRA, failed to properly repurchase (or redeem) any of the common shares not irrevocably vested to Dr. Takigiku, and, therefore, did not repurchase any of the shares owned by Dr. Takigiku as of March 2010." [DE 36, Counterclaim at ¶ 19].

However, as explained in detail above, Charleston materially complied with the repurchase procedures as set forth in the Stockholders Agreement (and the SRA), such that it properly repurchased the Takigiku Shares upon the tender of $2.10 to Takigiku, thereby terminating him as a shareholder of the Company. See Section III.B., supra. Accordingly, Charleston is entitled to summary judgment on Takigiku's Counterclaim.

CONCLUSION

For the foregoing reasons, Charleston respectfully requests that the Court: (1) grant summary judgment in favor of Plaintiff/Counter-Defendant and (2) grant any other or additional relief that the Court deems just and proper, reserving jurisdiction to award fees and costs to Charleston in this action.

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Dated: July 25, 2016.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by CM/ECF this 25th day of July, 2016 to: Eric T. Salpeter, Esq. (eric@salpetergitkin.com) and Joseph H. Rose, Esq. (joe@salpetergitkin.com), SALPETER GITKIN, LLP, One E. Broward Blvd., Ste. 1500, Fort Lauderdale, FL 33486; Jeffrey A. Long, Esq. (jlong@braylong.com) and Charles J. Bridgmon, Esq. (cbridgmon@braylong.com), BRAY & LONG, PLLC, 2820 Selwyn Ave., Suite 400, Charlotte, NC 28209.

By: s/ Bridget Ann Berry

ROA-1411

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division

CASE NO. 15-81694-CIV-COHN/SELTZER

CHARLESTON LABORATORIES, INC.,
a Delaware Corporation,

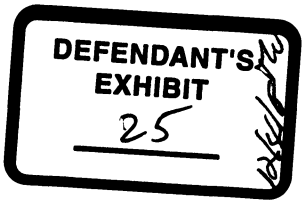
Plaintiff,

v.

DR. RAYMOND TAKIGIKU,

Defendant.
_____/

CHARLESTON LABORATORIES, INC.'S REPLY TO TAKIGIKU'S RESPONSE TO CHARLESTON'S MOTION FOR SUMMARY JUDGMENT [DE 102]



Plaintiff/Counter-Defendant Charleston Laboratories, Inc. ("Charleston" or the "Company"), pursuant to FED. R. CIV. P. 56 AND S.D. FLA. LOCAL RULE 7.1(C), files this reply ("Reply") to the Response in Opposition filed by Defendant/Counter-Plaintiff Ray Takigiku ("Takigiku") [Filed Under Seal on Aug. 11, 2016 ("TR" or "Response")] to Charleston's Motion for Summary Judgment [DE 102 (the "CMSJ")] on Charleston's Second Amended Complaint [DE 34 ("Complaint")][1] and on Takigiku's Counterclaim to the Complaint [DE 36 ("Counterclaim")]. Charleston seeks fees and costs against Takigiku. See DE 34, 45.[2] Without reargument of matters covered in the CMSJ, Charleston rebuts herein the TR.

I. CHARLESTON HAS MET THE LEGAL STANDARD FOR SUMMARY JUDGMENT.

Charleston is entitled to summary judgment because the TR fails to make a showing sufficient to establish the existence of an issue relating to an element essential to Charleston's case, and on which Charleston will bear the burden of proof at trial. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). More specifically, the Complaint states a cause of action for declaratory relief, requesting that the Court declare, relevant to this Reply, that Takigiku is not a stockholder of Charleston. Charleston has met its burden of demonstrating that the Company had a right to purchase (or repurchase or purchase back) (hereinafter "purchase"), any or all of the Shares held by Takigiku pursuant to the SHA; the Company exercised that right pursuant to the Tender Letter and tender of Fair Value on March 26, 2010; and Takigiku is not a stockholder of the Company. The TR relies almost entirely on inadmissible evidence lacking trustworthiness,

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[1] Charleston was granted leave to amend and filed its Third Amended Complaint [DE 133] on August 12, 2016, amending to attach as Substitute Exhibit A the most recent version of the SHA executed by Takigiku. The cross-motions for summary judgment are not affected by the substitution, and Charleston adopts all arguments herein as to the Third Amended Complaint.

[2] Takigiku purports to incorporate, apparently wholesale, his "Response to SOF," and "Dr. Takigiku's MSJ [DE 100]." Wholesale incorporation is improper. See, e.g., Ocean's 11 Bar & Grill, Inc. v. Indem. Ins. Corp. RRG, 11-61577-CIV, 2012 WL 2675367, at *4 n.8 (S.D. Fla. July 6, 2012). In this Reply, Charleston incorporates specific facts and arguments set forth in the CMSJ; Charleston's Statement of Facts in support of CMSJ [DE 130] ("CSOF"); Takigiku's Response to Charleston's Statement of Facts [Filed Under Seal on Aug. 11, 2016] (herein, "TRCSOF"); Charleston's Response to Takigiku's Motion for Summary Judgment [DE 131] (herein, "CRTMSJ") and Charleston's Response to Takigiku's Statement of Facts [DE 130] ("CRTSOF"). To the extent not otherwise defined herein, Charleston adopts the abbreviations set forth in the CMSJ and CRTMSJ as set forth in **Exhibit "A"** hereto, which includes abbreviations set forth in this Reply for the Court's ease of reference.

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that does not make a difference, even if admissible. The arguments in the TR cannot change the fact that Takigiku is not a stockholder.

On the other hand, in his Counterclaim Takigiku attempts to state a cause of action for declaratory relief and for specific performance. More specifically, Takigiku asks that the Court "reject" the SHA and declare that pursuant to the ESRA, Takigiku is the owner "of at least 420,000 shares of Charleston Labs common stock" (Counterclaim, Wherefore Clause, ¶¶ 1, 3). The Counterclaim further requests that the Court "[d]irect Charleston Labs to immediately issue a new certificate of common stock in the name of Raymond Takigiku for all shares of Charleston Labs' common stock owned by Dr. Takigiku" (Id., ¶4). Takigiku has failed to state a claim for specific performance upon which relief can be granted, and that claim, at least, is barred by the statute of limitations and laches, as established by the undisputed facts. See CRTMSJ, p. 3, 14.

Further, Charleston is entitled to judgment as a matter of law on the Complaint and Counterclaim as established in the CMSJ and below. The TR does not and cannot show that, assuming the ESRA entitled Charleston to purchase from Takigiku 70 of the 210 shares initially issued to him at the Nominal Amount of $0.01 per share (140,000 of the 420,000 shares at $0.00005 per share following the Forward Split), the Company did not have the right under the SHA to purchase all Shares for Fair Value. In fact, both the "original certificate issued to Dr. Takigiku" (Counterclaim, ¶ 13) and the certificate prepared in connection with the Forward Split contained the same legend, stating that the Shares were subject to purchase by the Company under both the SHA and the ESRA. See CSOF, Ex. 10; CRTSOF, Ex. 24. As demonstrated below, to the extent the TR raises any issue of fact, such issue is not relevant to Takigiku's stock ownership, but instead to the determination of Takigiku's ability to dispute the Fair Value as determined by the Board and paid by Charleston under the SHA. Therefore, the CMSJ should be granted.

II. CHARLESTON HAD THE RIGHT TO PURCHASE ANY OR ALL OF THE SHARES HELD BY TAKIGIKU PURSUANT TO THE SHA.

Takigiku admits that he participated in the drafting of the SHA and ESRA, not only once, but twice, and that the SHA and ESRA are not ambiguous in material respects. Because there is no ambiguity, the TR's reliance on extrinsic evidence must be disregarded, as shown below.

The First-Signed Set (SHA and ESRA)

Takigiku on May 30, 2008 executed and delivered to the Company his signature to a SHA identified by footer WCSR 3905566v4 and an ESRA identified by footer WCSR

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3909546v1, both dated and effective as of May 30, 2008 (the "First-Signed Set"). CSOF, n.2. Takigiku reviewed, made comparisons and suggested changes between the SHA and ESRA. Id., ¶ 10. Takigiku identified no ambiguity between the Company's rights to purchase only some of the Shares for Nominal Value under the ESRA, but any and all Shares for Fair Value under the SHA. In fact there was, and is, no ambiguity. The two documents were meant to be and under Delaware law must be read together. See CMSJ, p.5-9; CRTMSJ, n.9.

As agreed by Takigiku, the SHA was entered into between Charleston, the original three founders of Charleston (Bosse, Baker, and Godwin), and the three new employees (Ameling, Schachtel, and Takigiku), all of whom are collectively defined in the SHA as the "Founding Shareholders." CSOF ¶ 12. Takigiku repeatedly refers to himself as a "founding shareholder," a term found only in the SHA, not the ESRA. See, e.g., Counterclaim, ¶¶ 5, 6, 10. Takigiku did not in his defenses challenge the enforceability of the SHA against him on the grounds of authority or execution. Those grounds, first raised in the TMSJ, are in all events rebutted in the CRTMSJ § IV. Contrary to the TR at I, Bosse, on behalf of Charleston, did have authority to execute both the SHA and the ESRA as CEO, president, secretary and treasurer of the Company, and intended to do so. CRTSOF ¶ 31, n.4; CRTMSJ, p. 6. Should the Court find that Bosse did not sign the SHA on behalf of Charleston, Charleston also did not sign the ESRA. See DE 36-2. Takigiku can't have it both ways: he can't attempt to enforce the ESRA against Charleston even though not signed by Charleston, but argue that Charleston can't enforce the SHA because not signed by Charleston.

Further, following Takigiku's execution of the SHA effective as of May 30, 2008, the "Founding Shareholders," including Takigiku, and the Company all proceeded as though the SHA was a valid and enforceable agreement. CRTSOF ¶ 3. The original founders, Bosse, Baker, and Godwin, surrendered their stock certificates, respectively, to have the Share Certificate Legend required by §1.4 of the SHA included on the certificates representing their shares, respectively. The Company required and made such notation on the certificates. The original certificate evidencing Takigiku's Shares contained the same SHA legend, in addition to the legend required by the ESRA. Takigiku further testified that he agreed to be bound by the terms of the SHA. Id. At the very least, the Company was an intended third party beneficiary of the Stockholders Agreement. See CRTMSJ § IV.B. The TR Introduction ("Intro") and §I, p. 8 do not raise a genuine issue of material fact.

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The SHA and ESRA both provided protection to the closely-held, start-up Company, and its shareholders. CSOF ¶¶ 17, 18. Takigiku expressly acknowledged that the SHA and ESRA were intended to be read together, and that they were intended to protect the Company and all of the other shareholders. CSOF ¶ 9.

The Second-Signed Set (SHA and ESRA)

At the request of Schachtel, on June 19, 2008 the Company circulated and Takigiku executed and delivered to the Company his signature to an SHA identified by footer WCSR 3905566v5 and a ESRA identified by footer WCSR 3909546v3, both dated and effective as of May 30, 2008 (the "Second-Signed Set"). CSOF, n.2. The provisions of the particular sections of the SHA and ESRA material to Charleston's entitlement to summary judgment are the same in the First-Signed Set and the Second-Signed Set. See **Exhibit "B"** hereto.[3]

Contrary to the TR § II. p. 10, 11, having signed both the SHA and ESRA, together and twice, Takigiku admitted in his deposition that both the ESRA and the Stockholders Agreement "control" and that the two contracts could be read together without ambiguity. See CSOF ¶ 20, citing Takigiku Depo. I at 236:24-238:20, 248:21-249:12. Takigiku testified in his deposition to what Charleston has been saying all along: under the ESRA, the Company had the right to purchase back a certain limited number of shares as set forth in Schedule A of the ESRA for a penny, and, concurrently, the right to purchase back any or all of the Shares for Fair Value under the SHA. Id. The SHA and ESRA were intended to and did provide to the Company and "the other shareholders," as Takigiku said (CSOF ¶¶ 17, 18), certain rights and protections from a bad apple employee, such as Takigiku. Contrary to the arguments contained in the TR (Intro, Background ("Bg."), Summary ("Sum.") and Argument ("Arg.") II, and IV. b, e., but consistent with Takigiku's sworn testimony as well as Charleston's consistent testimony and position, the Company exercised its right to purchase back all of the Shares for Fair Value under the SHA.

The Shares

In the TR, Bg. p. 3, Takigiku asserts that he "offered to purchase 210 shares" of common stock of Charleston, but then later, Takigiku asserts that the stock transferred to Takigiku was "in

[3] It should be noted, however, that there was a change in the method or mode of payment for the Shares under the SHA, which shows that there was specific consideration and agreement that the Company could repurchase under the SHA any and all shares from the employee stockholders who were also entering into stock restriction agreements.

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essence, his compensation for work performed" over the next three-year period, even though there is no such provision in either the SHA or the ESRA.[4] The TR asserts that the Company could not repurchase the shares that had "vested" under the ESRA. The TR also argues that the Company did not purchase the Shares because Takigiku refused to deliver either the Certificate or the Settlement Agreement. See Intro, Bg. p. 3-4, Sum. p. 6 and Arg. § Ia. However, it is undisputed that Takigiku held no certificate. Further, failure to surrender the certificate or a stock power would not invalidate the Company's purchase of the Shares. See CMSJ § III.B.5.; CRTMSJ § VIII. Moreover, the Stock Ledger is the best evidence of ownership of the Shares, as Takigiku has admitted. See CMSJ § III.B.5. at p. 13. As demonstrated by Charleston's 2011 Stock Ledger, Takigiku is not a stockholder. The TR's reliance on inadmissible settlement discussions and hearsay does not raise a genuine issue of material fact, as shown below.

III. THE RUTLEY EMAIL IS INADMISSIBLE AND IMMATERIAL

Takigiku relies on the Rutley email throughout the TR. See, e.g., Bg. p. 3; § II.b; § IV.a., c. In doing so, Takigiku misrepresents Rutley's email and testimony. See CRTMSJ § V.A. Rutley, the Company's attorney at Womble Carlyle, was communicating only with Schachtel's attorney, Charles Kauffman. Rutley testified at deposition and again by affidavit that: a) the Company had a right to repurchase Takigiku's Shares both under the ESRA and under the SHA (Rutley Dep. at 64:22-65:14, 72:06-73:01, 74:08-16; Rutley Aff. ¶¶ 14-15); b) Rutley's email made no reference to the SHA, and Schachtel's attorney was writing to Rutley only about the ESRA (Rutley Dep. at 59:14-22, 79:22-80:05; Rutley Aff. ¶ 22); c) it was clear to Rutley that in his email he was talking only about the ESRA "since an 83(b) election would apply to a stock

[4] Takigiku's new argument that the Shares were compensation for work performed, and therefore "vested" and "irrevocable" is unsupported by the evidence. See CRTMSJ § V.A. The "vesting" language is derived from § 83(b), and property is not subject to a substantial risk of forfeiture if the employer is required to pay fair market value for return of the property. 26 C.F.R. §1.83-3(c). The "vesting" concept supports Charleston's arguments, and there is no factual support for Takigiku's argument that "vested" meant that Charleston could not repurchase all of the Shares under the SHA. Further, the argument is contrary to the unambiguous language of the SHA, which allows repurchase of the Shares for Fair Value; the ESRA, Schedule A, which provides that as of May 30, 2008, when all Shares were first issued to Takigiku, and the Company had the right to repurchase only 105 of the 210 Shares issued for Nominal Value, even though no work had yet been performed by Takigiku. Moreover, the is abundant evidence that Takigiku served not Charleston, but SIDIS and SIDIS-related entities to the detriment of Charleston. CSOF ¶ 27-31.

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restriction agreement" (Rutley Dep. at 59:20-22); and d) Takigiku wasn't privy to Rutley's discussions with Schachtel's attorney (Rutley Aff. ¶¶ 19-21). Further, as indicated by Rutley, the "vesting" terminology is undisputedly derived from § 83(b), and only the ESRA references and is related to §83(b).

Moreover, Takigiku signed the First-Signed Set prior to the Rutley email (and therefore could not have relied on the Rutley email in agreeing to the terms); and Takigiku signed the Second-Signed Set after the Rutley email, and there were no changes in the documents material to the CMSJ, as shown on Exhibit "B." The SHA provides at § 5.9 that the SHA embodies the entire agreement and understanding of the parties in respect of the actions and transactions contemplated by the SHA. Moreover, the SHA and ESRA are not ambiguous, and therefore extrinsic evidence is inadmissible, as shown below. Accordingly, the statements in the Rutley email are wholly immaterial, even if Takigiku had known about them prior to signing the Second-Signed Set, which Takigiku has testified he did not. CRTSOF ¶ 37. While the TR points to the Rutley email as a smoking gun, it is inadmissible and wholly immaterial to the CMSJ.

IV. THE PROPOSED SETTLEMENT AGREEMENT AND EMAILS BETWEEN BADDOUR AND WILLBRAND ARE INADMISSIBLE AND IMMATERIAL.

The arguments made in the TR Bg. p.3-5 and n.4 and Arg. § I.a., c. do not raise a genuine issue of material fact. What does it matter to the issues before this Court on CMSJ that Charleston and Takigiku attempted to avoid the cost and nuisance of litigation by engaging in efforts to compromise their disputes? At the time of the Termination Letter and the Tender Letter, the Company believed it had rights against Takigiku for, among other things, breach of fiduciary duty, breach of confidentiality obligations, fraud, and potential security violations. CSOF ¶ 27-31. The Company was aware that Takigiku may claim a right to employment compensation or severance. The Company attempted to enter into a mutually acceptable severance agreement with Takigiku as set forth in the paragraphs of the Termination Letter and the Tender Letter redacted in Exhibits "B" and "C" to Charleston's Complaint, and the Stock Redemption and Settlement Agreement, including a Stock Power (the "Settlement Agreement"). CSOF ¶¶ 32, 34, 37. The Settlement Agreement and the settlement discussions contained in the redacted paragraphs of the Termination Letter and the Tender Letter respectively, are privileged and inadmissible as evidence. See FED. R. EVID. 408; FLA. STAT. § 90.408; D.R.E. 408 (collectively, "Rule 408"); see also CRTMSJ VII.C. Likewise, discussions between Takigiku, through his counsel, Willbrand, and Charleston, through its counsel, Baddour, following the

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Tender Letter and relating to efforts to compromise issues are privileged and inadmissible, as well as immaterial. Id. Furthermore, any communications with Baddour are inadmissible due to lack of foundation and because they constitute hearsay, even if they are otherwise admissible.[5] The TR recognizes the hearsay prohibition by attempting to argue that the emails are not offered for the truth of the matter asserted. See TR n.4. However, among other things, the TR repeatedly quotes (only incomplete parts of) the emails for the matter asserted. Further, the TR attempts to create a "hearsay exception" applicable to Rule 408, which does not exist. Instead, any relevant conduct or statements made in negotiations concerning a compromise are wholly inadmissible for the very reasons for which Takigiku seeks to use them.

V. CHARLESTON MATERIALLY COMPLIED WITH THE SHA REPURCHASE PROCEDURES.

The arguments made in TR § I.a., b. that Charleston failed to strictly comply with the requirements of the SHA in purchasing the Shares, do not raise a genuine issue of material fact. First, Takigiku apparently acknowledges (by citing no caselaw to the contrary) that material compliance (not strict compliance) is sufficient. See CMSJ § III.B.[6] Next, Section 2.6 of the SHA providing for Takigiku's deliver of a certificate inures to the benefit of Charleston (not Takigiku) and therefore can be waived only by Charleston (not Takigiku).[7] See In re Giant Portland Cement Co., 21 A.2d 698, 701 (Del. Ch. 1941) (limited contract restrictions, relating to

[5] In the TR, TMSJ, and TSOF Takigiku acknowledges that the emails and related telephone discussions reflect an effort to compromise or settle issues between the parties following the Company's repurchase of Shares. See TR § I.c.; TSOF ¶ 17-29 and references in the TMSJ citing TSOF ¶ 17-29. The hearsay objection is especially relevant because there is no testimony from either Willbrand or Baddour relating to the telephone calls between them referenced in and clearly part of such negotiations. Should the court consider the settlement negotiations despite the privilege, the emails alone would tell only part of the story, and would not be trustworthy.

[6] In attempting to argue that Charleston's reliance on Silverstein v. David J. Stone & Co., Inc., is "misplaced" [See TR at 15], Takigiku overlooks the fact that the stockholders agreement in *Silverstein* required a triggering event (the termination of the Partnerships) and "delivery to the Company… [of] the certificate(s) representing the shares of Stock in exchange for payment… of any cash then due…." 1990 WL 161092, at *1 (Del. Ch. Oct. 17, 1990). Notwithstanding that delivery of the certificates was not made in Silverstein, the court held that the plaintiffs were no longer stockholders. Id. at *3. Further, here, payment was made by the Tender Letter without condition of delivery of a certificate, and Takigiku was not in possession of a certificate.

[7] Contrary to Takigiku's assertions [TR at 13], Section 8-401 of the UCC – not Sections 8-301 and 8-304 – governs when a Delaware corporation is required to recognize a transfer of its stock. The comment to Section 8-401 makes clear that the delivery of a stock certificate can be waived by the corporation. 6 Del. C. § 8-401 cmt. 1; 7 Hawkland UCC Series at § 8-401:2.

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stock transfers, are for the benefit of the corporation, and to enable it to ascertain from its records who its stockholders are); 12 Fletcher's, at § 5495 ("The corporation may waive compliance with formalities in the registration of transfers, whether the formalities are prescribed by the bylaws or by the charter of corporation…."); id. at § 5540 ("provisions [requiring surrender of stock certificates] are for the benefit of the corporation, and hence it may waive them"). In all events, Takigiku had no Charleston stock certificate in his possession, he had nothing to endorse.[8] CMSJ § III.B.5.; CRTMSJ § VIII and n.19.

VI. CHARLESTON DETERMINED AND TENDERED FAIR VALUE.

Contrary to the factually unsupported arguments posed in TR n.2, Sum p. 6, and Arg. § I b.1. and 2., it is undisputed that the Board did determine Fair Value of the Shares on a fully diluted basis, calculated on the basis of the Company as a going concern, and provide notice to Takigiku of that determination. See CMSJ § III.B.3.; CRTMSJ § VII.B.

As a threshold matter, none of the documents cited by Takigiku are admissible, and none should be considered by the Court on summary judgment. When presented with an unambiguous contract, consideration of extrinsic evidence is not permitted to interpret the parties' intent, vary the contract terms, or create an ambiguity. See, e.g., Eagle Indus., Inc., DeVilbiss Health Care, Inc., 702 A.2d 1228, 1232 (Del. 1997). Takigiku is attempting to convince the Court to do just that, despite his own statements that the SHA and ESRA "say what they say." See Takigiku's Response in Opposition to Plaintiff's Motion to Compel, DE 44 at p. 8. Even if extrinsic evidence were permitted to be considered here (which it is not), the documents are not relevant to the parties' intent at the time they entered into the SHA and ESRA. See id. at 1233 n.11 ("[R]elevant extrinsic evidence is that which reveals the parties intent at the time they entered into the contract. . . . [E]vidence gathered after the time of contracting is not usually helpful.").

Further, none of the documents raise an issue of material fact. It makes no difference to the legal issues presented in the CMSJ that certain corporate documents, or the Settlement Agreement, may not reference the SHA. The Annual Franchise Tax Report for Tax Year 2010 error is immaterial. See CRTMSJ § VII.B.1. The Series A Preferred Stock Purchase Agreement

[8] Because the Company was in possession of Certificate No. 14 at the time of the repurchase of the Shares under the SHA, there was no need for Takigiku to deliver such stock certificate to the Company. 6 Del. C. § 8-301(a); see also 12 Fletcher's, at § 5683 ("Actual delivery of the certificate is unnecessary where it is already in the possession of the donee….").

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and Disclosure Schedule is immaterial. See CMSJ § V.C.; CRTMSJ § V.B. The Draft Summary of Terms and Conditions of Series B Preferred Stock, Charleston Laboratories, Inc., February 2010 is immaterial. See CMSJ § III.B.3; CRTMSJ §VII.B.2. The December 31, 2010 Balance Sheet is also immaterial. For example, the balance sheet does not show who owns shares or reflect rights under the SHA or the exercise of such rights. Neither Baker nor Schachtel have authenticated the March 22, 2011 email and it is also immaterial to the March 2010 repurchase. Further, Baker states therein that Takigiku was removed as a Founding Stockholder (under the SHA) [by the Company's purchase of the Shares] and that the stock interest once held by Takigiku was available for re-issuance, and so it supports Charleston's position. In sum, in addition to being misconstrued by Takigiku, none of these documents define, limit or alter the Company's rights under the SHA to purchase the Shares, or bear on the Company's exercise of such rights pursuant to the Tender Letter. None of the documents define Fair Value as set forth in the SHA. None raise a material issue of fact.

VII. CHARLESTON PROVIDED SUFFICIENT NOTICE

In the TR Sum. p. 6, and Arg. § I.a., b.2., Takigiku argues that Charleston did not materially comply with all notice requirements, ignoring the uncontroverted facts set forth by Charleston. See CMSJ §§ III.B.2., 4.; CRTMSJ § VII.A.1. No specific form of notice was required under the SHA. Therefore, the one case cited in the TR §I.b.2. is not controlling. Further, the argument that a reader of the Tender Letter could not determine under which agreement Charleston exercised its rights to purchase the Shares is specious. The Tender Letter states that the Company was tendering a check as payment in full for all of Takigiku's equity in the Company. Takigiku's position was and is that under the ESRA, the Company could purchase only some of the Shares for a penny, a position with which Charleston has never disagreed. See Rutley email. Charleston's position was and is that under the SHA, the Company could purchase any or all Shares for Fair Value, a position with which Takigiku agrees. See CRTSOF, ¶ 36. Therefore, Takigiku was on notice that the Company was exercising its rights under the SHA. Similarly, Takigiku's argument that Charleston attempted to purchase all Shares under the ESRA is simply not plausible. Both Charleston and Takigiku have agreed that the Company could repurchase all Shares only under the SHA. Likewise, simple math, together with Takigiku's own knowledge of the status of the Company, told Takigiku that the Fair Value of the Company had been determined to be the same as the Nominal Value – a penny a share pre-Forward Split. Further,

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notice was given to all Founding Stockholders, and Takigiku has no standing to challenge lack of notice to other stockholders. Also, because the Company repurchased all Shares, such notice is immaterial. CMSJ, n.12.

Finally, the Company's repurchase rights under the SHA are self-executing and so, under both the terms of the SHA and Delaware law, even if the Court were to find that notice of Fair Value was lacking, the first paragraph of the Tender Letter, together with the unconditional tender of the check in the Fair Value amount were self-executing, and Takigiku has not been a stockholder of the Company since March 2010. At best, Takigiku may be entitled to assert a late challenge to the Fair Value determination under the SHA. Under no circumstances would Takigiku still be a stockholder. See CRTMSJ §VII.A.1.

VIII. CHARLESTON IS ENTITLED TO SUMMARY JUDGMENT ON THE COUNTERCLAIM.

As explained in CMSJ § III.C., CRTMSJ § V, and in § III above, Charleston had the concurrent right to purchase certain of the Shares pursuant to the ESRA as set forth in Schedule A to the ESRA for Nominal Value, and any or all of the Shares pursuant to the SHA for Fair Value. As set forth in the Complaint and in the CMSJ and above, Charleston exercised its right to purchase all of the Shares pursuant to the SHA for Fair Value. What Takigiku seems to be puzzled by (see TR II) is Charleston's defense to the Counterclaim that even if the Court were to find that Charleston was required to purchase the "unvested" shares for Nominal Value under the ESRA, and then the remaining "vested" shares for Fair Value, the distinction would be immaterial because as of March 2010, the Fair Value happened to be the same as the Nominal Value -- $0.00005 per share. Further, even if the Court were to find that Charleston was limited to exercising its rights under the ESRA, then Takigiku still would not be entitled to the declaration he seeks because Charleston repurchased at least 140,000 of the 420,000 Shares. As established in CMSJ § III.C., material compliance with the SHA notice requirements also happens to be material compliance with the ESRA requirements, and, if anything, Charleston paid too much for the limited amount of Shares.

CONCLUSION

For the foregoing reasons, Charleston respectfully requests that the Court: (1) grant summary judgment in favor of Plaintiff/Counter-Defendant and (2) grant any other or additional relief that the Court deems just and proper, reserving jurisdiction to award fees and costs to Charleston in this action.

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Dated: August 22, 2016.

Respectfully Submitted,

By: s/ Bridget Ann Berry

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by CM/ECF this 22nd day of August, 2016 to: Eric T. Salpeter, Esq. (eric@salpetergitkin.com) and Joseph H. Rose, Esq. (joe@salpetergitkin.com), SALPETER GITKIN, LLP, One E. Broward Blvd., Ste. 1500, Fort Lauderdale, FL 33486; Jeffrey A. Long, Esq. (jlong@braylong.com) and Charles J. Bridgmon, Esq. (cbridgmon@braylong.com), BRAY & LONG, PLLC, 2820 Selwyn Ave., Suite 400, Charlotte, NC 28209.

By: s/ Bridget Ann Berry

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Exhibit A

Exhibit "A"

Index of Abbreviations Used in Charleston's Reply to Takigiku's Response to Charleston's Motion for Summary Judgment

Abbreviation	Definition
"§ 83(b)"	§ 83(b) of the Internal Revenue Code (as amended)
"Agreement Price"	The "Agreement Price" is defined in Section 2.4(i) of the Stockholders Agreement as "the fair value ('Fair Value') of the Shares to be purchased on a fully diluted basis, calculated on the basis of the Company as a going concern" and is referred to in this Motion as the "Fair Value." [DE 34-1].
"Ameling"	John F. Ameling
"Arg."	TR Argument
"Baddour"	Charleston's Counsel, David Baddour, Esq.
"Baker"	Ryan Baker
"Bg."	TR Background
"Board"	Charleston Board of Directors
"Bosse Aff."	Affidavit of G. Paul Bosse III dated July 25, 2016
"Bosse Depo."	Deposition of G. Paul Bosse III dated April 27, 2016
"Bosse"	G. Paul Bosse III
"Charleston" or the "Company"	Plaintiff/Counter-Defendant Charleston Laboratories, Inc.
"CMSJ"	Charleston's Motion for Summary Judgment [DE 102]
"CN"	Stock Certificate No. 12 and 14
"Complaint"	Charleston's Second and Third Amended Complaint, jointly and severally, [DE 34 and DE 133]
"Counterclaim"	Takigiku's Counterclaim to the Complaint [DE 36]
"CRTMSJ"	Charleston's Memorandum in Opposition to Defendant's Motion for Summary Judgment [DE 131]
"CRTSOF"	Charleston's Response to Takigiku's Statement of Facts [DE 130]
"CSOF"	Charleston's Statement of Material Facts in support of CMSJ [DE 103]
"Dr. Takigiku's MSJ" or "TMSJ"	Takigiku's Motion for Summary Judgment, Statement of Material Facts, and Incorporated Memorandum of Law [DE 100]
"Fair Value"	Section 2.2(a) of the SHA gave the Company the right to purchase "any or all of the Shares" at the "Agreement Price"
"First-Signed Set"	Takigiku on May 30, 2008 executed and delivered to the Company his signature to a SHA identified by footer WCSR 3905566v4 and an ESRA identified by footer WCSR 3909546v1, both dated and effective as of May 30, 2008

Abbreviation	Definition
"Forward Split"	The 210 shares were automatically converted into and became 420,000 shares upon the filing of the Amended and Restated Certificate of Incorporation of the Company with the Secretary of State of the State of Delaware on September 25, 2008 (the "Charter Amendment") pursuant to the consummation of the 2,000 to 1 forward split effected by the Charter Amendment (the "Forward Split")
"Founding Stockholders"	Bosse, Baker, Godwin, Ameling, Schachtel, and Takigiku
"Godwin"	Chris Godwin
"Nominal Value"	$0.01 per share under the ERSA ($0.00005 per share following the Forward Split)
"Reply"	Charleston's Reply to Takigiku's Response to Charleston's Motion for Summary Judgment [DE 102]
"Rutley Aff."	Affidavit of Dean Wayne Rutley dated August 11, 2016
"Rutley Depo."	Deposition of Dean Rutley, Esq. dated June 23, 2016
"Rutley email"	Email between the Company's attorney, Dean Rutley, and Schachtel's attorney, Charles Kauffman, relating to the ESRA dated June 14, 2008
"Rutley"	The Company's attorney at Womble Carlyle Sand, Dean Rutley
"Schachtel"	Bernard P. Schachtel, M.D.
"Second-Signed Set"	Takigiku on May 30, 2008 executed and delivered to the Company his signature to an SHA identified by footer WCSR 3905566v5 and a ESRA identified by footer WCSR 3909546v3
"Settlement Agreement"	Proposed Stock Redemption and Settlement Agreement, including a Stock Power
"SHA"	Stockholders Agreement dated as of May 30, 2008
"Shares"	The 210 shares of common stock of the Company held by Takigiku before the Forward Split and the 420,000 shares of common stock of the Company held by Takigiku after the Forward Split and before the Company's repurchase of such Shares.
"SIDIS"	SIDIS Corporation
"SRA" or "ESRA"	Stock Restriction Agreement dated as of May 30, 2008
"Sum."	TR Summary
"Takigiku Depo. I"	Deposition of Dr. Raymond Takigiku dated May 3, 2016
"Takigiku Depo. II"	Deposition of Dr. Raymond Takigiku dated June 27, 2016
"Takigiku"	Defendant/Counter-Plaintiff Dr. Raymond ("Ray") Takigiku
"Tender Letter"	March 26, 2010 letter to Takigiku repurchasing all of the Shares pursuant to § 2.2(a) of the SHA by tendering Fair Value
"Termination Letter"	March 19, 2010 letter to Takigiku terminating his employment with the Company

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Abbreviation	Definition
"TR" or "Response"	Defendant/Counter-Plaintiff Ray Takigiku ("Takigiku") Response in Opposition to Charleston's Motion for Summary Judgment
"TRCSOF"	Takigiku's Responses to Plaintiff's Charleston's Statement of Undisputed Materials Facts [Filed Under Seal on August 11, 2016]
"Willbrand"	Takigiku's Counsel, David Willbrand, Esq.
"Womble Carlyle"	Womble Carlyle Sandridge & Rice LLP

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Exhibit B

Stockholders Agreement Executed by Takigiku May 30, 2008 Effective as of May 30, 2008 Footer WCSR 3905566v4	Stockholders Agreement Executed by Takigiku June 19, 2008 Effective as of May 30, 2008 Footer WCSR 3905566v5
THIS CHARLESTON LABORATORIES, INC. STOCKHOLDERS AGREEMENT (This "Agreement") is made and entered into as of May 30, 2008 by and among Charleston Laboratories, Inc., a Delaware corporation (the "Company") and G. Paul Bosse III, John Ameling, Bernard P. Schachtel, Ray Takigiku, Ryan Baker, and Chris Godwin (the "Founding Shareholders").	THIS CHARLESTON LABORATORIES, INC. STOCKHOLDERS AGREEMENT (this "Agreement") is made and entered into as of May 30, 2008 by and among Charleston Laboratories, Inc , a Delaware corporation (the "Company") and G. Paul Bosse III, John F. Ameling, Bernard P. Schachtel, Ray Takigiku, Ryan Baker, and Chris Godwin (the "Founding Stockholders").
WHEREAS, the Founding Stockholders are collectively the owners of 100% of the issued and outstanding shares of the common stock of the Company as set forth on Exhibit A hereto ("Common Stock");	WHEREAS, the Founding Stockholders are collectively the owners of 100% of the issued and outstanding shares of the common stock of the Company as set forth on Exhibit A hereto ("Common Stock");
WHEREAS, the Founding Stockholders believe that it is in the best interests of the Founding Stockholders and the Company to make provisions for the future disposition of the shares of common stock of the Company held by the Founding Stockholders and other matters set forth herein; and	WHEREAS, the Founding Stockholders believe that it is in the best interests of the Founding Stockholders and the Company to make provisions for the future disposition of the shares of common stock of the Company held by the Founding Stockholders and other matters set forth herein; and
RESTRICTIONS ON TRANSFER OF STOCK **1.1 General** (a.) The Founding Stockholders shall not dispose of any shares of Common Stock now or hereafter owned by them ("Shares"), whether by sale, exchange, assignment, transfer, gift, devise, bequest, mortgage, pledge, encumbrance or otherwise, except in accordance with the terms and conditions of this Agreement. The Company and each Founding Stockholder shall also not take or omit to take any action which will impair the absolute and unrestricted right, power, authority and capacity of the Company or the Founding Stockholders to purchase or sell	**RESTRICTIONS ON TRANSFER OF STOCK** **1.1 General** (a.) The Founding Stockholders shall not dispose of any shares of Common Stock now or hereafter owned by them ("Shares"), whether by sale, exchange, assignment, transfer, gift, devise, bequest, mortgage, pledge, encumbrance or otherwise, except in accordance with the terms and conditions of this Agreement. The Company and each Founding Stockholder shall also not take or omit to take any action which will impair the absolute and unrestricted right, power, authority and capacity of the Company or the Founding Stockholders to purchase or sell

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Shares in accordance with the terms and conditions hereof. (b.) The Company, by its execution of this Agreement, agrees that it will not cause or permit the transfer of any shares to be made on its books except in accordance with the terms of this Agreement.	Shares in accordance with the terms and conditions hereof (b.) The Company, by its execution of this Agreement, agrees that it will not cause or permit the transfer of any Shares to be made on its books except in accordance with the terms of this Agreement.
RESTRICTIONS ON TRANSFER OF STOCK **1.3 No Pledge.** Shares held or otherwise owned by any Founding Stockholder may not be pledged, mortgaged or otherwise encumbered to secure indebtedness or money borrowed or any other obligation for which such Founding Stockholder is primarily or secondarily liable without the consent of the Company and each of the other Founding Stockholders.	**RESTRICTIONS ON TRANSFER OF STOCK** **1.3 No Pledge.** Shares held or otherwise owned by any Founding Stockholder may not be pledged, mortgaged or otherwise encumbered to secure indebtedness of money borrowed or any other obligation for which such Founding Stockholder is primarily or secondarily liable without the consent of the Company and each of the other Founding Stockholders.
RESTRICTIONS ON TRANSFER OF STOCK **1.4 Shares Certificate Legend**. Each certificate for Founding Stockholders Shares shall have conspicuously written, printed, typed or stamped upon the face thereof, or upon the reverse thereof, with a conspicuous reference on the face thereof, the following legends: "THESE SHARES ARE SUBJECT TO CERTAIN TRANSFER RESTRICTIONS AND RIGHT OF REPURCHASE AS SET FORTH IN THE CHARLESTON LABORATORIES, INC. STOCKHOLDERS AGREEMENT DATED AS OF MAY 30, 2008 ON FILE WITH THE SECRETARY OF THE COMPANY." "THESE SHARES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("ACT"). SUCH SHARES MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS	**RESTRICTIONS ON TRANSFER OF STOCK** **1.4 Shares Certificate Legend.** Each certificate for Founding Stockholders Shares shall have conspicuously written, printed, typed or stamped upon the face thereof, or upon the reverse thereof with a conspicuous reference on the face thereof, the following legends: "THESE SHARES ARE SUBJECT TO CERTAIN TRANSFER RESTRICTIONS AND RIGHT OF REPURCHASE AS SET FORTH IN THE CHARLESTON LABORATORIES, INC. STOCKHOLDERS AGREEMENT DATED AS OF MAY 30, 2008 ON FILE WITH THE SECRETARY OF THE COMPANY." "THESE SHARES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("ACT"). SUCH SHARES MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS

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TO SUCH TRANSFER, UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL OR OTHER EVIDENCE REASONABLY SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT REGISTRATION IS NOT REQUIRED."	TO SUCH TRANSFER, UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL OR OTHER EVIDENCE REASONABLY SATISFACTORY TO THE COMPANY AND ITS COUNSEL, THAT REGISTRATION IS NOT REQUIRED."
RESTRICTIONS ON TRANSFER OF STOCK **1.5 Definitions**. The words "sale," "sell," "transfer," and the like shall include any disposition by way of transfer, with or without consideration, to any person for any purpose, but shall not apply to exchanges of securities on account of merger, consolidation, reorganization or any other similar transaction affecting all of the securities of the Company.	**RESTRICTIONS ON TRANSFER OF STOCK** **1.5 Definitions.** The words "sale," "sell," "transfer," and the like shall include any disposition by way of transfer, with or without consideration, to any person for any purpose, but shall not apply to exchanges of securities on account of merger, consolidation, reorganization or any other similar transaction affecting all of the securities of the Company.
CERTAIN RIGHTS TO PURCHASE **2.1 Sales of Shares** (a.) Right of First Refusal. In the event that a Founding Stockholder (the "Selling Founding Stockholder") shall desire to sell, assign or transfer any Shares held by such Selling Founding Stockholder to any other person (the "Offer"), the following procedure shall apply. The Selling Founding Stockholder shall give to the Company and to each other Founding Stockholder (the "Non-Selling Founding Stockholders'') written notice (the "Selling Founding Stockholder Notice") containing the terms and conditions of the Offer, including, but not limited to (i) the number of Offered Shares; (ii) the price per Share; (iii) the method of payment; and (iv) the name(s) of the proposed purchaser(s). An Offer shall not be deemed bona fide unless, among other things, the method of payment is cash, the Selling Founding Stockholder has informed the prospective purchaser of its	**CERTAIN RIGHTS TO PURCHASE** **2.1 Sales of Shares** (a.) Right of First Refusal. In the event that a Founding Stockholder (the "Selling Founding Stockholder") shall desire to sell, assign or transfer any Shares held by such Selling Founding Stockholder to any other person (the "Offer"), the following procedure shall apply. The Selling Founding Stockholder shall give to the Company and to each other Founding Stockholder (the "Non-Selling Founding Stockholders") written notice (the "Selling Founding Stockholder Notice") containing the terms and conditions of the Offer, including, but not limited to (i) the number of Offered Shares; (ii) the price per Share; (iii) the method of payment; and (iv) the name(s) of the proposed purchaser(s). An Offer shall not be deemed bona fide unless, among other things, the method of payment is cash, the Selling Founding Stockholder has informed the prospective purchaser of its

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obligation under this Agreement and the prospective purchaser has agreed to become a party hereunder and to be bound hereby. The Company and the other Founding Stockholders are entitled to take such steps as they reasonably may deem necessary to determine the validity and bona fide nature of the Offer.	obligation under this Agreement and the prospective purchaser has agreed to become a party hereunder and to be bound hereby. The Company and the other Founding Stockholders are entitled to take such steps as they reasonably may deem necessary to determine the validity and bona fide nature of the Offer.
The Company and the Non-Selling Founding Stockholders shall have sixty (60) days after receipt of the Selling Founder Stockholder Notice within which to elect to purchase some or all of the Offered Shares. Until thirty (30) days after receipt of the Selling Founder Stockholder Notice, the Company shall have the right to elect to purchase, within fifteen (15) days after the expiration of such 30-day period, the Offered Shares or any portion thereof at the price offered by the prospective purchaser. Such purchase shall be, at the option of the Company, either on the payment terms offered by the prospective purchaser or on the Agreement Terms, as defined in Section 2.5.	The Company and the Non-Selling Founding Stockholders shall have sixty (60) days after receipt of the Selling Founder Stockholder Notice within which to elect to purchase some or all of the Offered Shares. Until thirty (30) days after receipt of the Selling Founder Stockholder Notice, the Company shall have the right to elect to purchase, within fifteen (15) days after the expiration of such 30-day period, the Offered Shares or any portion thereof at the price offered by the prospective purchaser. Such purchase shall be, at the option of the Company, either on the payment terms offered by the prospective purchaser or on the Agreement Terms, as defined in Section 2.5.
If the Company does not elect to purchase all of the Offered Shares, the Non-Selling Founding Stockholders shall have the right (i) to elect to purchase, within sixty (60) days after receipt of the Selling Founder Stockholder Notice, the Offered Shares of any portion thereof at the price offered by the prospective purchaser and specified in such notice or (ii) co-sell Shares to such third party in accordance with Section 3.1 below. The Non-Selling Founding Stockholders electing to purchase or co-sell must give written notice of such election to purchase or co-sell Shares to the Company and the Selling Founding Stockholder which notice shall specify the number of Offered Shares such Stockholder desires to purchase hereunder or the number of Shares such Stockholder desires to co-sell in accordance with Section 3.1. In the event that there are more than one Non-Selling Founding Stockholders desiring to purchase the Offered Shares	If the Company does not elect to purchase all of the Offered Shares, the Non-Selling Founding Stockholders shall have the right (i) to elect to purchase, within sixty (60) days after receipt of the Selling Founder Stockholder Notice, the Offered Shares of any portion thereof at the price offered by the prospective purchaser and specified in such notice or (ii) co-sell Shares to such third party in accordance with Section 3.1 below. The Non-Selling Founding Stockholders electing to purchase or co-sell must give written notice of such election to purchase or co-sell Shares to the Company and the Selling Founding Stockholder which notice shall specify the number of Offered Shares such Stockholder desires to purchase hereunder or the number of Shares such Stockholder desires to co-sell in accordance with Section 3.1. In the event that there are more than one Non-Selling Founding Stockholders desiring to purchase the Offered Shares

(or the remaining portion thereof) and they desire to purchase more shares than the aggregate number of Offered Shares (or the remaining portion thereof), then each Non-Selling Founding Stockholder shall have the right to purchase, on a pro rata basis based on the number of Shares owned by such Non-Selling Founding Stockholders, the Offered Shares (or the remaining portion thereof). Such purchase shall be, at the option of the Non-Selling Founding Stockholders, either on the payment terms specified in such notice or on the Agreement Terms, as defined in Section 2.5.	(or the remaining portion thereof) and they desire to purchase more shares than the aggregate number of Offered Shares (or the remaining portion thereof), then each Non-Selling Founding Stockholder shall have the right to purchase, on a pro rata basis based on the number of Shares owned by such Non-Selling Founding Stockholders, the Offered Shares (or the remaining portion thereof). Such purchase shall be, at the option of the Non-Selling Founding Stockholders, either on the payment terms specified in such notice or on the Agreement Terms, as defined in Section 2.5.
(b) After giving notice under this Section, the Selling Founding Shareholder shall refrain from participating as an officer, director or shareholder of the Company in the Company's decision whether to purchase any or all of the Offered Shares.	(b) After giving notice under this Section, the Selling Founding Shareholder shall refrain from participating as an officer, director or shareholder of the Company in the Company's decision whether to purchase any or all of the Offered Shares.
(c) Failure of the Company and the Non-Selling Founding Stockholders to Purchase Offered Shares. If all of the Offered Shares are not purchased by the Company and/or the Non-Selling Founding Stockholders within the 60-day period granted for such purchases, then, subject to the co-sale rights set forth in Section 3.1. the remaining Offered Shares may be sold, assigned, or transferred pursuant to the Offer; provided that the Offered Shares are so transferred within ninety (90) days of the expiration of the 60-day period to the person or persons named in, and under the terms and conditions of, the Offer described in the notice to the Company and Founding Stockholders; provided, further, that such transfer requires the new shareholder(s) (being the purchaser(s) under the Offer) to assume the obligations of the Selling Founding Stockholder under this Agreement; and provided, further, that such transfer complies with all applicable federal and state securities laws. Notwithstanding the foregoing, prior to consummating any such sale, the Selling Founding Stockholder	(c) Failure of the Company and the Non-Selling Founding Stockholders to Purchase Offered Shares. If all of the Offered Shares are not purchased by the Company and/or the Non-Selling Founding Stockholders within the 60-day period granted for such purchases, then, subject to the co-sale rights set forth in Section 3.1, the remaining Offered Shares may be sold, assigned, or transferred pursuant to the Offer; provided that the Offered Shares are so transferred within ninety (90) days of the expiration of the 60-day period to the person or persons named in, and under the terms and conditions of, the Offer described in the notice to the Company and Founding Stockholders; provided, further, that such transfer requires the new shareholder(s) (being the purchaser(s) under the Offer) to assume the obligations of the Selling Founding Stockholder under this Agreement; and provided, further, that such transfer complies with all applicable federal and state securities laws. Notwithstanding the foregoing, prior to consummating any such sale, the Selling Founding Stockholder

will, upon request from the Company, provide the Company with reasonable supporting documentation with respect to the terms and conditions of any such sale so as to demonstrate such Selling Founding Stockholder's compliance with the provisions of the preceding sentence. If such sale has not been completed within ninety (90) days of the expiration of the 60-day period as provided above, the Offered Shares may not thereafter be sold by the Selling Founding Stockholder unless the Selling Founding Stockholder reoffers the Offered Shares to the Company and the Non-Selling Founding Stockholders and complies with the procedures set forth in this Section 2.1. (d) The Right to Withdraw. The Selling Founding Stockholder may at any time prior to the sale of its Shares give notice to the Company that it no longer desires to sell the Offered Shares, provided that if it again desires to sell, assign or transfer any Shares held by it, it must comply with the provisions of the Agreement	will, upon request from the Company, provide the Company with reasonable supporting documentation with respect to the terms and conditions of any such sale so as to demonstrate such Selling Founding Stockholder's compliance with the provisions of the preceding sentence. If such sale has not been completed within ninety (90) days of the expiration of the 60-day period as provided above, the Offered Shares may not thereafter be sold by the Selling Founding Stockholder unless the Selling Founding Stockholder reoffers the Offered Shares to the Company and the Non-Selling Founding Stockholders and complies with the procedures set forth in this Section 2.1. (d) The Right to Withdraw. The Selling Founding Stockholder may at any time prior to the sale of its Shares give notice to the Company that it no longer desires to sell the Offered Shares, provided that if it again desires to sell, assign or transfer any Shares held by it, it must comply with the provisions of the Agreement.
CERTAIN RIGHTS TO PURCHASE **2.2 Right to Purchase Upon Certain Other Events** (a.) The Company's Right to Purchase. The Company shall have the right to purchase any or all of the Shares held by a Founding Stockholder (including his transferees hereunder) pursuant to the terms of this Section (the "Terminating Founding Stockholder", and such Shares held by such Terminating Founding Stockholder referred to as the "Terminating Shares") at the Agreement Price and on the Agreement Terms for a period of 90 days after the Company and the Purchasing Founding Stockholder receives notice from the Terminating Founding Stockholder or relevant third party, as applicable, of the occurrence of any of the following events, which notice shall be	**CERTAIN RIGHTS TO PURCHASE** **2.2 Right to Purchase Upon Certain Other Events** (a.) The Company's Right to Purchase. The Company shall have the right to purchase any or all of the Shares held by a Founding Stockholder (including his transferees hereunder) pursuant to the terms of this Section (the "Terminating Founding Stockholder", and such Shares held by such Terminating Founding Stockholder referred to as the "Terminating Shares") at the Agreement Price and on the Agreement Terms for a period of 90 days after the Company and the Purchasing Founding Stockholder receives notice from the Terminating Founding Stockholder or relevant third party, as applicable, of the occurrence of any of the following events, which notice shall be

provided in the case of a Terminating Founding Stockholder within five (5) business days of the occurrence of such event: (i) the Terminating Founding Stockholder who is an employee ceases to be, for any reason, an employee of the Company or a subsidiary of the Company (any uninterrupted absence for a period of 180 days or more, without approval of the Board of Directors of the Company, shall be deemed to be termination of employment); (ii) the Terminating Founding Stockholder defaults on any debts to the Company as they become due and fails to repay such debts within 60 business days after written notice of such default; (iii) the Terminating Founding Stockholder is adjudicated a bankrupt or the Terminating Founding Stockholder makes an assignment for the benefit of creditors or a petition under any insolvency or bankruptcy laws is filed for readjustment of such Stockholder's debts or financial affairs by such Stockholder or by any creditor of such Stockholder; (iv) any of the Terminating Founding Stockholder's Shares are levied upon under a writ of execution or become subject to sale under any legal process, or are transferred or ordered to be transferred to or for the benefit of any spouse or any other person or entity as a result of or in connection with any property settlement or judgment incident to a divorce, dissolution of marriage or separation,, or are transferred or ordered to be transferred to any person or entity who is not a party hereto by decree of distribution or other court order in a proceeding arising from the death of the spouse of the Terminating Founding Stockholder; or	provided in the case of a Terminating Founding Stockholder within five (5) business days of the occurrence of such event: (i) the Terminating Founding Stockholder who is an employee ceases to be, for any reason, an employee of the Company or a subsidiary of the Company (any uninterrupted absence for a period of 180 days or more, without approval of the Board of Directors of the Company, shall be deemed to be termination of employment); (ii) the Terminating Founding Stockholder defaults on any debts to the Company as they become due and fails to repay such debts within 60 business days after written notice of such default; (iii) the Terminating Founding Stockholder is adjudicated a bankrupt or the Terminating Founding Stockholder makes an assignment for the benefit of creditors or a petition under any insolvency or bankruptcy laws is filed for readjustment of such Stockholder's debts or financial affairs by such Stockholder or by any creditor of such Stockholder; (iv) any of the Terminating Founding Stockholder's Shares are levied upon under a writ of execution or become subject to sale under any legal process, or are transferred or ordered to be transferred to or for the benefit of any spouse or any other person or entity as a result of or in connection with any property settlement or judgment incident to a divorce, dissolution of marriage or separation,, or are transferred or ordered to be transferred to any person or entity who is not a party hereto by decree of distribution or other court order in a proceeding arising from the death of the spouse of the Terminating Founding Stockholder; or

(v) the Terminating Founding Stockholder sells, pledges, encumbers, hypothecates or otherwise transfers any interest in, or purports to sell, pledge, encumber, hypothecate or otherwise transfer any interest in, any of his or her Shares, except as permitted by and in full compliance with the terms of this Agreement. (b.) The Founding Stockholder's Right of Purchase. In the event the Company elects not to purchase all of the Terminating Shares to which the Company is entitled, Each Founding Stockholder (or its transferees hereunder) (a "Purchasing Founding Stockholder") shall have the right to purchase on a pro rata basis based upon the number of Shares owned by such Purchasing Founding Stockholder, within 15 days after the expiration of such 90-day period, any remaining Terminating Shares at the Agreement Price and on the Agreement Terms.	(v) the Terminating Founding Stockholder sells, pledges, encumbers, hypothecates or otherwise transfers any interest in, or purports to sell, pledge, encumber, hypothecate or otherwise transfer any interest in, any of his or her Shares, except as permitted by and in full compliance with the terms of this Agreement. (b.) The Founding Stockholder's Right of Purchase. In the event the Company elects not to purchase all of the Terminating Shares to which the Company is entitled, Each Founding Stockholder (or its transferees hereunder) (a "Purchasing Founding Stockholder") shall have the right to purchase on a pro rata basis based upon the number of Shares owned by such Purchasing Founding Stockholder, within 15 days after the expiration of such 90-day period, any remaining Terminating Shares at the Agreement Price and on the Agreement Terms.
CERTAIN RIGHTS TO PURCHASE **2.4 Agreement Price** (i) The "Agreement Price" shall be the fair value ("Fair Value") of the Shares to be purchased on a fully diluted basis, calculated on the basis of the Company as a going concern. Initially, the Board of Directors of the Company, in good faith in the exercise of its reasonable business judgment, shall determine the Fair Value of the shares. The Company shall notify the Founding Stockholders (or their representatives) as soon as possible of such determination, but in any event, not later than 30 days after the date giving rise to the right to purchase such Terminating Shares. If the Terminating Founding Stockholder or any Purchasing Founding Stockholder fail to notify the company within 15 days after the date of such notice of their objection to	**CERTAIN RIGHTS TO PURCHASE** **2.4 Agreement Price** (i) The "Agreement Price" shall be the fair value ("Fair Value") of the Shares to be purchased on a fully diluted basis, calculated on the basis of the Company as a going concern. Initially, the Board of Directors of the Company, in good faith in the exercise of its reasonable business judgment, shall determine the Fair Value of the shares. The Company shall notify the Founding Stockholders (or their representatives) as soon as possible of such determination, but in any event, not later than 30 days after the date giving rise to the right to purchase such Terminating Shares. If the Terminating Founding Stockholder or any Purchasing Founding Stockholder fail to notify the company within 15 days after the date of such notice of their objection to

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the proposed Fair Value, then the Fair Value proposed in the Company's notice shall be binding and conclusive. (ii) If any Purchasing Founding Stockholder or the Terminating Founding Stockholder notifies the Company of its objection in writing within such 15-day period and if the Company, the Purchasing Founding Stockholders and the Terminating Founding Stockholder (or their representatives) can not mutually agree on the Fair Value of such shares within 10 days after the date of the notice of objection, then the Fair Value of the Shares shall be determined by an independent appraiser selected jointly by the Company, the Purchasing and Terminating Founding Stockholders (or their representatives). The determination of Fair Value by that appraiser shall be binding and conclusive on all parties to the Agreement. If the parties are unable to agree on the selection of an appraiser, each of the Purchasing and Terminating Founding Stockholders shall select an independent appraiser. The two appraisers so selected shall each independently appraise the Shares within 30 days of their appointment and, as long as the difference in the two appraisals does not exceed 5 percent of the lower of the two appraisals, the Fair Value shall be conclusively deemed to equal the average of the two appraisals. If the difference between the two appraisals referred to above exceeds 5 percent of the lower of the two appraisals, the two appraisers selected shall select a third appraiser within 5 business days after delivery of both appraisal, who shall also independently appraise the Fair Value of the shares and whose appraisal shall be conclusively deemed to be the Fair Value of the Shares. If either party fails to select an independent appraiser within the time required by this paragraph or if their appraiser fails to deliver their appraisal to the Company and the other party within the 30-day period, the Fair Value of the Shares shall be conclusively deemed to equal the appraisal of the	the proposed Fair Value, then the Fair Value proposed in the Company's notice shall be binding and conclusive. (ii) If any Purchasing Founding Stockholder or the Terminating Founding Stockholder notifies the Company of its objection in writing within such 15-day period and if the Company, the Purchasing Founding Stockholders and the Terminating Founding Stockholder (or their representatives) can not mutually agree on the Fair Value of such shares within 10 days after the date of the notice of objection, then the Fair Value of the Shares shall be determined by an independent appraiser selected jointly by the Company, the Purchasing and Terminating Founding Stockholders (or their representatives). The determination of Fair Value by that appraiser shall be binding and conclusive on all parties to the Agreement. If the parties are unable to agree on the selection of an appraiser, each of the Purchasing and Terminating Founding Stockholders shall select an independent appraiser. The two appraisers so selected shall each independently appraise the Shares within 30 days of their appointment and, as long as the difference in the two appraisals does not exceed 5 percent of the lower of the two appraisals, the Fair Value shall be conclusively deemed to equal the average of the two appraisals. If the difference between the two appraisals referred to above exceeds 5 percent of the lower of the two appraisals, the two appraisers selected shall select a third appraiser within 5 business days after delivery of both appraisal, who shall also independently appraise the Fair Value of the shares and whose appraisal shall be conclusively deemed to be the Fair Value of the Shares. If either party fails to select an independent appraiser within the time required by this paragraph or if their appraiser fails to deliver their appraisal to the Company and the other party within the 30-day period, the Fair Value of the Shares shall be conclusively deemed to equal the appraisal of the

independent appraiser timely selected by the other or timely delivered to the Company, as the case may be. The Founding Stockholders shall share equally the fees and expenses of the appraisers jointly named, but each party shall be responsible for the fees and expenses of any appraiser named solely by that party. Each party shall bear his, her, or its own expenses in presenting evidence to the appraisers.	independent appraiser timely selected by the other or timely delivered to the Company, as the case may be. The Founding Stockholders shall share equally the fees and expenses of the appraisers jointly named, but each party shall be responsible for the fees and expenses of any appraiser named solely by that party. Each party shall bear his, her, or its own expenses in presenting evidence to the appraisers.
CERTAIN RIGHTS TO PURCHASE **2.6 Delivery of Shares and Closing Date**. Within thirty (30) days of the exercise of any right to purchase hereunder or final determination of the Fair Value of the Shares, as the case may be, (the "Closing"), the Selling Founding Stockholder or the Terminating Founding Stockholder or his or her personal representatives, as the case may be, shall deliver certificates representing the Shares to be sold, properly endorsed for transfer, and with the necessary documentary and transfer tax stamps, if any, affixed, to the purchasers of such Shares. Payment of the purchase price therefor shall concurrently be made to the Selling Founding Stockholder or Terminating Founding Stockholder or his or her personal representatives as the case may be. Such delivery and payment shall be made at the principal office of the Company or at such other place as the parties mutually agree. Notwithstanding the above, any such transfer shall not be consummated unless it complies with all federal and state securities laws and the purchaser of such Shares assumes the obligations under this Agreement.	**CERTAIN RIGHTS TO PURCHASE** **2.6 Delivery of Shares and Closing Date**. Within thirty (30) days of the exercise of any right to purchase hereunder or final determination of the Fair Value of the Shares, as the case may be, (the "Closing"), the Selling Founding Stockholder or the Terminating Founding Stockholder or his or her personal representatives, as the case may be, shall deliver certificates representing the Shares to be sold, properly endorsed for transfer, and with the necessary documentary and transfer tax stamps, if any, affixed, to the purchasers of such Shares. Payment of the purchase price therefor shall concurrently be made to the Selling Founding Stockholder or Terminating Founding Stockholder or his or her personal representatives as the case may be. Such delivery and payment shall be made at the principal office of the Company or at such other place as the parties mutually agree. Notwithstanding the above, any such transfer shall not be consummated unless it complies with all federal and state securities laws and the purchaser of such Shares assumes the obligations under this Agreement.
MANAGEMENT **4.2 Protective Provisions**. Until this Agreement is terminated, the Company shall not, without obtaining the written consent of the Founding Stockholders (or their transferees) then subject to	**MANAGEMENT** **4.2 Protective Provisions**. Until this Agreement is terminated, the Company shall not, without obtaining the written consent of the Founding Stockholders (or their transferees) then subject to

this Agreement holding not less than sixty-five percent (65%) of the total Shares held by the Founding Stockholders then subject to this Agreement (a "Super-Majority of Founding Stockholders"): (a) authorize or issue, or obligate itself to authorize or issue, additional Shares of Common Stock, Preferred Stock or any other capital stock except the issuance of such number of shares of Common Stock as approved by the Board of Directors for issuance pursuant to exercise of stock options granted to employees, consultants, officers or directors; or (b) sell, convey, or otherwise dispose of all or substantially all of its property or business, or merge into or consolidate into any other corporation, or effect any transaction or series of related transactions in which more than 50% of the voting power of the Corporation is disposed of; or (c) Amend its Articles of Incorporation.	this Agreement holding not less than sixty-five percent (65%) of the total Shares held by the Founding Stockholders then subject to this Agreement (a "Super-Majority of Founding Stockholders"): (a) authorize or issue, or obligate itself to authorize or issue, additional Shares of Common Stock, Preferred Stock or any other capital stock except the issuance of such number of shares of Common Stock as approved by the Board of Directors for issuance pursuant to exercise of stock options granted to employees, consultants, officers or directors; or (b) sell, convey, or otherwise dispose of all or substantially all of its property or business, or merge into or consolidate into any other corporation, or effect any transaction or series of related transactions in which more than 50% of the voting power of the Corporation is disposed of; or (c) Amend its Articles of Incorporation.
MISCELLANEOUS **5.4 Governing Law**. This Agreement shall be deemed to be made under and governed by and construed in accordance with the laws of the State of Delaware. **5.5 Notices**. All notices required to be delivered pursuant to th[e] [Stockholders] Agreement shall be delivered in person or by telegraphic or other facsimile transmission and deemed given on the date of transmission or sent by certified mail, return receipt requested and deemed given three (3) business days after mailing, and shall be addressed to the Company at its principal business office, to the attention of the President, and to a Founding Stockholder shown in the Company's stock ledger or to such other address as the Founding Stockholder may indicate by duly	**MISCELLANEOUS** **5.4 Governing Law**. This Agreement shall be deemed to be made under and governed by and construed in accordance with the laws of the State of Delaware. **5.5 Notices.** All notices required to be delivered pursuant to this Agreement shall be delivered in person or by telegraphic or other facsimile transmission and deemed given on the date of transmission or sent by certified mail, return receipt requested and deemed given three (3) business days after mailing, and shall be addressed to the Company at its principal business office, to the attention of the President, and to a Founding Stockholder at the address of the Founding Stockholder shown in the Company's stock ledger or to such other address as the Founding stockholder

giving written notice to the Company.	may indicate by duly giving written notice to the Company.
5.6 Severability. If any term or condition of this Agreement, or application thereof to any person or circumstance, shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or application of such term or condition to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and shall remain in full force and effect.	**5.6 Severability.** If any term or condition of this Agreement, or application thereof to any person or circumstance, shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or application of such term or condition to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and shall remain in full force and effect.
5.8 No Waiver. No delay or failure on the part of a Company or a Founding Stockholder in the exercise of any right, power or remedy shall operate as a waiver thereof: not shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.	**5.8 No Waiver.** No delay or failure on the part of a Company or a Founding Stockholder in the exercise of any right, power or remedy shall operate as a waiver thereof, not shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.
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5.12 After-Acquired Shares. Each Founding Stockholder agrees and acknowledges that all of the terms, conditions and restrictions of this Agreement shall apply to all shares of the capital stock of the Company now owned or hereafter acquired by him.	**5.12 After-Acquired Shares.** Each Founding Stockholder agrees and acknowledges that all of the terms, conditions and restrictions of this Agreement shall apply to all shares of the capital stock of the Company now owned or hereafter acquired by him.

APPENDIX A

Shareholders	Number of Shares of Common Stock
G. Paul Bosse III	1,800
Ray Takigiku PhD	210
John Ameling	270
Bernie Schachtel M.D.	360
Ryan Baker	270
Chris Godwin	90
TOTAL	3,000

APPENDIX A

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TOTAL	3,000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-81694-CIV-COHN/SELTZER

CHARLESTON LABORATORIES, INC.,

Plaintiff,

v.

DR. RAYMOND TAKIGIKU,

Defendant.
_____/

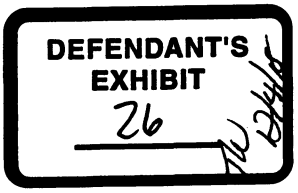
ORDER ON MOTIONS FOR SUMMARY JUDGMENT

THIS CAUSE is before the Court upon Plaintiff's Motion for Summary Judgment [DE 102] and Defendant's Motion for Summary Judgment [DE 100] (collectively, "Motions"). The Court has reviewed the Motions, the responses and replies thereto, and the record in this case, and is otherwise advised in the premises. For the reasons stated herein, the Court will deny Defendant's Motion and grant summary judgment in favor of Plaintiff.

I. BACKGROUND

In this action, Plaintiff Charleston Laboratories, Inc. ("Charleston Labs" or "Company") seeks a declaratory judgment that Defendant Dr. Raymond Takigiku is not one of its shareholders. See DE 133. Defendant's counterclaim seeks a declaratory judgment that he is, in fact, the rightful owner of at least 420,000 shares of Charleston Labs' common stock, as well as the issuance of a certificate of common stock consistent with that declaration. See DE 141.

Plaintiff is a privately-held Delaware corporation in the specialty pharmaceutical industry organized on June 27, 2007. DE 103 ¶ 1. Plaintiff's three original founders



were G. Paul Bosse III, Ryan Baker, and Chris Goodwin. Id. ¶ 4. In 2008, Plaintiff hired three new at-will employees—John Ameling, Bernard Schachtel, and Defendant. Id. ¶ 5. Together these six individuals represent the "Founding Stockholders" of Charleston Labs. Id. ¶ 12. All Founding Stockholders signed a Stockholders Agreement ("SHA"), and each of the three new employees also entered into a Stock Restriction Agreement with the Company. Id. ¶¶ 12–13. As an employee and stockholder of the Charleston Labs, Defendant executed the SHA and a Stock Restriction Agreement ("SRA"), both dated and effective as of May 30, 2008. Id. ¶ 6.

The SHA and SRA each contain an integration clause, which provides that the Agreement supersedes other prior agreements relating to the matters therein. Id. ¶ 11. The integration clauses are silent on the issue of contemporaneous agreements.

The Agreements also contain provisions that allow the Company to repurchase shares upon the occurrence of certain events. The SRA gives the Company the right to repurchase a specified number of "Restricted Shares," as set forth in its "Schedule A," at a predetermined price of $0.01 per share. DE 141-2 § 1(a). This repurchase right is only triggered if the employee (1) resigns or otherwise voluntarily terminates his employment with the Company or (2) is terminated for cause. Id. The longer the employee remains employed with the Company, the fewer of his shares are considered "Restricted Shares." Id. at "Schedule A".

Under the SHA, in contrast, Plaintiff has the right to purchase "any or all" shares held by a Founding Stockholder, who is also an employee, if that individual ceases to be an employee of the Company "for any reason." DE 133-1 § 2.2(a)(i). The "Agreement Price" to be paid for the shares purchased under the SHA is "the Fair Value . . . on a

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fully diluted basis, calculated on the basis of the Company as a going concern," as "determined by the Board of Directors of the Company, in good faith in the exercise of its reasonable business judgment." Id. § 2.4(i). The SHA requires that the Company exercise its right to repurchase by notifying the "Terminating Founding Stockholder" in writing. Id. § 2.3. The Terminating Founding Stockholder then has fifteen days from the date of such notice to object to the Fair Value determination before it becomes "binding and conclusive." Id. § 2.4(i). Additionally, within thirty days of the Company's exercise of its right to repurchase, the Terminating Founding Stockholder is required to deliver the certificates representing the shares to be sold, properly endorsed for transfer, to the Company. Id. § 2.6.

Effective as of May 30, 2008, the Board of Directors of the Company ("Board"), then consisting only of Bosse, issued 210 shares of Charleston Labs' common stock to Defendant for an aggregate of $2.10 ($0.01 per share). DE 103 ¶ 14. Defendant received Stock Certificate No. 12, issuing the 210 shares. Id. ¶ 15. The reverse side of Stock Certificate No. 12 indicated that the shares were subject to the transfer restrictions and rights of repurchase contained in both the SHA and SRA. Id. ¶ 16.

On September 25, 2008, Defendant's 210 shares were automatically converted into 420,000 shares of common stock upon consummation of a 2,000 to 1 "forward split." Id. ¶ 21. The Company marked Stock Certificate No. 12 "Cancelled" and issued Stock Certificate No. 14, representing the 420,000 of converted stock. Id. ¶¶ 22–23. Stock Certificate No. 14 remained in Plaintiff's possession. Id. ¶ 23.

In March 2010, Defendant's employment with Plaintiff ceased. Plaintiff maintains that Defendant was terminated for cause, id. ¶ 31, while Defendant contends that he

resigned, DE 127 ¶ 31. Either way, on March 19, 2010, the Board sent Defendant a letter informing him of his termination for cause. DE 103 ¶ 32; DE 103-5 at 47 ("Termination Letter"). On March 22, 2010, the Board, still consisting solely of Bosse[1], passed a resolution that: "in accordance with the repurchase protocol outlined in Article 2 of the [SHA], the Board of Directors determines the Fair Value of the Corporation's Common Stock to be $0.01 per pre-capitalization share or $0.000005 per fully-diluted share of Common Stock." DE 103 ¶ 33; DE 103-5 at 49 ("Board Minutes"). On March 26, 2010, Plaintiff sent Defendant a check in the amount of $2.10 and stated in the accompanying "Tender Letter" that the check was "tender[ed] as payment in full for your equity." DE 103-5 at 51.

Defendant did not object to the Board's Fair Value determination within fifteen days of March 26, 2010. DE 103 ¶ 39. Although Defendant's attorney contacted Plaintiff's attorney on April 7, 2010, there is no evidence that Defendant or anyone on his behalf questioned the repurchase until May 18, 2010. See DE 100 ¶¶ 25, 27. The Company's repurchase of Defendant's shares was reflected in the Company's Stock Ledger when next updated, on March 15, 2011, effective as of March 26, 2010. DE 103 ¶ 41. In September 2015, more than five years after Defendant received the Termination Letter, he made a demand to inspect Plaintiff's books and records as a shareholder. Id. ¶ 47.

Plaintiff maintains that Defendant has no rights as a shareholder because Plaintiff properly exercised its rights under the SHA to repurchase all of Defendant's

[1] The Court rejects Defendant's contention that Bosse was not a Board Member at that time. His status as the sole member of the Board was established by the Company's Certificate of Incorporation, Bylaws, and Minutes. Any error as to designation of Board membership in other Charleston Labs' filings is not material for purposes of this litigation.

shares upon his termination. Defendant argues that the SRA circumscribed Plaintiff's repurchase rights, limiting repurchase to his Restricted Shares. Defendant further argues that even if the repurchase provisions of the SHA were enforceable and controlling, Plaintiff failed to properly exercise its rights under that Agreement.

II. LEGAL STANDARD

A district court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). To satisfy this burden, the movant must show the court that "there is an absence of evidence to support the nonmoving party's case." Id. at 325.

After the movant has met its burden under Rule 56(a), the burden of production shifts, and the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). As Rule 56 explains, "[i]f a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact . . . the court may . . . grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it." Fed. R. Civ. P. 56(e)(3). Therefore, the nonmoving party "may not rest upon the mere allegations or denials in its pleadings" but instead must present "specific facts showing that there is a genuine issue for trial." Walker v. Darby, 911 F.2d 1573,

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1576–77 (11th Cir. 1990). In deciding a summary-judgment motion, the Court must view the facts in the light most favorable to the nonmoving party. Davis v. Williams, 451 F.3d 759, 763 (11th Cir. 2006).

III. DISCUSSION

Plaintiff has met its burden to prove that there are no genuinely disputed issues of material fact and that it is entitled to a declaratory judgment in its favor as a matter of law.[2] The Court finds that the repurchase provisions of the SHA are valid and enforceable independent of the SRA. Additionally, there is no reasonable dispute that Plaintiff complied with the SHA's repurchase procedures, based on the admissible evidence presented. For the reasons set forth below, Plaintiff is entitled to summary judgment on its claim and Defendant's counterclaim.

A. Enforceability of the SHA

To determine Plaintiff's rights to repurchase Defendant's shares, the Court must consider the relationship between the SHA and the SRA. Contemporaneous writings generally should be construed together, meaning that "if any provision in one of them limits, explains, or otherwise affects the provisions of another, all of the provisions should be harmonized and given effect . . .; the purpose of the rule being to give effect to the intent of the parties and the entire agreement that was actually made." 11 Williston on Contracts § 30:26 (4th ed.). "Where two contracts of equal dignity are in apparent conflict, . . . a court must give to each such a construction, if possible, that each may have effect." 17A C.J.S. Contracts § 401.

[2] The Agreements both contain choice-of-law provisions specifying that they shall be construed and enforced in accordance with the laws of the State of Delaware. The parties do not dispute that Delaware law applies to this case, and the Court agrees that Florida's choice-of-law rules require the application of Delaware law.

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In order to harmonize the Agreements and give each effect, the Court finds that SHA and SRA created concurrent rights of the Company to repurchase the shares in the circumstances enumerated in the SRA and the circumstances enumerated in the SHA. Defendant has failed to demonstrate that the SRA is of "greater dignity" than the SHA. Both Agreements were executed at the same time, and neither claims to limit or supersede contemporaneous agreements. Furthermore, Stock Certificate No. 12 states that the stock issued was subject to the repurchase and transfer restrictions of both the SRA and SHA, evidencing an intent to create concurrent rights. And Defendant never identified any ambiguity in the repurchase rights created by the Agreements during their negotiation, despite requesting other changes and clarifications.

Finding that the Agreements create concurrent repurchase rights also makes sense in practice. Under the concurrent-rights construction, the Company would have the option to exercise its rights under the SHA to purchase all shares at Fair Value. Alternatively, by exercising its rights under both Agreements upon Defendant's resignation or termination for cause, the Company could pay only a *de minimus* amount for the Restricted Shares under the SRA and Fair Value for the Unrestricted Shares under the SHA. This is consistent with the apparent purposes of the SRA—that is, to grant a tax election benefit to Defendant as a new employee under Section 83(b) of the Internal Revenue Code, reward Defendant for staying with the Company by gradually decreasing the number of shares that the Company could repurchase for a *de minimus* value, and limit the amount of money that Plaintiff would be required to pay in its infancy if an employee abandoned the Company or was terminated for cause. That the *de minimus* value and Fair Value, as determined by the Board, were the same when

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Defendant's employment ceased does not alter this analysis.

Moreover, adopting Defendant's position that the SRA controls to the exclusion of the SHA would put the new employees in a better position than the original founders. Under Defendant's construction, the original founders could be terminated from the Company after many years of loyal service and have all of their shares repurchased, but the new employees could be terminated for cause after one day and have only some of their shares repurchased. This could not have been the parties' intent when entering into the Agreements. As Defendant himself acknowledged, the purpose of the SRA was "to protect all of the other shareholders" and the Company. DE 103-9.

Defendant's remaining arguments against the enforceability of the SHA also lack merit. First, Defendant argues that Plaintiff cannot exercise any rights under the SHA because the Company did not sign it. See DE 100 at 10; DE 128 at 8. However, Defendant has already admitted that Charleston Labs was a party to the SHA and cannot now argue to the contrary. DE 130-3 ¶ 62. Second, Defendant cites to a "Series A Disclosure Statement" made by the Company to investors in September 2008, which represented that only some of Defendant's shares were subject to repurchase at $0.01 per share in the event that he resigned or was terminated for cause. DE 100 at 12; DE 128 at 13. Although this statement was consistent with Plaintiff's rights under the SRA, it in no way contradicted, limited, or even mentioned Plaintiff's rights under the SHA. Third, Defendant cites to an email between Plaintiff's attorney and Schachtel's attorney regarding Schachtel's right to keep "vested shares." DE 100 at 11; DE 128 at 12. But it is apparent from the testimony of Plaintiff's attorney that his email was referring to the Company's rights solely under the SRA. See DE 130 at ¶ 37.

Moreover, Defendant was not aware of the email or privy to the related discussions before he entered into the Agreements. Therefore, the email is not probative of the parties' intent, Defendant's reliance, or any relevant issue.

B. Exercise of Repurchase Rights Under the SHA

Plaintiff has established that it materially complied with all of the requirements of the SHA in exercising its repurchase rights. Specifically, Plaintiff has shown that: (1) an event triggering its repurchase rights occurred; (2) the Board made a Fair Value determination in good faith; (3) the Company gave Defendant sufficient written notice that it was exercising its repurchase rights; (4) Defendant failed to challenge the Fair Value determination within fifteen days; and (5) the shares were properly transferred back to the Company. Defendant has not met his burden to come forward with sufficient evidence to create a genuine dispute of material fact as to Plaintiff's satisfaction of any of these SHA requirements.

1. Triggering Event

Under the SHA, Plaintiff's repurchase rights were triggered upon the cessation of Defendant's employment "for any reason." Defendant's Termination Letter makes clear that his employment ceased on March 19, 2010. Whether Defendant was terminated for cause or resigned on or about that date is immaterial for purposes of triggering the Company's rights under the SHA.

2. Fair Value

Plaintiff has established that the Board made a Fair Value determination. The SHA requires that Fair Value be determined "on a fully diluted basis, calculated on the basis of the Company as a going concern," by "the Board of Directors of the Company,

in good faith in the exercise of its reasonable business judgment." DE 34-1 § 2.4(i). At its meeting on March 22, 2010, the Board determined that, "in accordance with the repurchase protocol outlined in Article 2 of the [SHA]," the Fair Value of Defendant's stock was "$0.01 per pre-capitalization share or $0.000005 per fully-diluted share of Common Stock" (after giving effect to the forward split). DE 103 ¶ 33; DE 103-5 at 49.

Defendant has not established, let alone created a genuine dispute, that the Board failed to determine Fair Value as a going concern. In determining value as a going concern, "the business should be deemed as an operating business, rather than as a business in the process of liquidation." Cox Enters., Inc. v. News-Journal Corp., 469 F. Supp. 2d 1094, 1107 (M.D. Fla. 2006) (internal quotations and citation omitted). Relevant factors may include "net asset values, market price, earnings, and the like." Id. at 105–06 (citation omitted). The undisputed evidence shows that Bosse, as the sole member of the Board, considered a wide range of factors in making the Fair Value determination, including: the total number of common shares; price paid for the shares; the fact that the stock was no more valuable in March 2010 than it was in May 2008; the upcoming elections; the stock market crash two years prior; the current condition of the stock market; what milestones the Company had to achieve and the likelihood of achieving them; market conditions; volatility of the industry; the stage of the Company in the FDA process; the amount of money raised from investors; the issuance of Class A preferred stock, which is superior to common stock; the difficulties raising additional capital; likelihood of success as a going concern; negative publications or statements at the time relative to "pain products"; similar companies in the same position that achieved financing; financial statements; Charleston Labs' status as an early-stage

company in significant debt that was in need of substantial additional invested capital; and the status of the Company's patent portfolio. DE 130 ¶ 42.[3] Together, this demonstrates a good faith valuation as a going concern in light of the appropriate degree of deference afforded to the Board's business judgment.

The Company's Draft Summary of Terms and Conditions of the Series B Preferred Stock Offering, dated from April 2009 to May 2010 (the "Draft Term Sheets"), and the communications describing them, do not create a genuine dispute as to the Board's good faith valuation. The Draft Term Sheets do represent a much higher value of the Company using "pre-money/post-money" valuations, which are terms of art setting a price for shares of preferred stock in the context of raising funds for a company. However, Defendant himself has admitted that the "pre-money/post-money" valuations are not a determination of the Fair Value of the Company or shares of its common stock. See id. ¶ 41; DE 130-22.

Furthermore, even if Defendant could establish that Plaintiff undercompensated him for his shares, that alone would not entitle him to reinstatement as a shareholder. See Prokupek v. Consumer Capital Partners LLC, No. CV 9918-VCN, 2014 WL 7452205, at *5 (Del. Ch. Dec. 30, 2014) (holding that, where LLC's call notices were "facially valid exercise of its redemption power," possible undercompensation did not prevent court from concluding that he was no longer a member). Rather, Defendant's available relief would be damages, which he does not seek in this lawsuit. See id.

[3] Defendant's Motion to Exclude Testimony of Plaintiff's Designated Expert is currently pending before the Court. DE 98. The Court has not considered the opinions of Plaintiff's expert, Daniel R. Van Vleet, for purposes of this Order.

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3. Sufficiency of Notice

Plaintiff's Tender Letter to Defendant provided sufficient notice that Plaintiff was exercising its repurchase rights under the SHA. Section 2.4(i) of the SHA does not specify any form of notice or require any reference to the SHA in the notice. Rather, Section 2.4(i) states only that "the Company shall notify the Founding Stockholders (or their representatives) as soon as possible of such [Fair Value] determination." The Tender Letter clearly stated that Plaintiff was tendering $2.10 to Defendant "as payment in full for [his] equity" in the Company. The SHA requires nothing more. And the Tender Letter, as well as notice to all Founding Stockholders, was sent within four days of the Fair Value determination—well within the SHA's time constraints.

4. No Timely Objection

Defendant did not challenge the Board's Fair Value determination within fifteen days of receiving notice pursuant to the applicable requirements of the SHA.[4] Although Defendant's attorney may have contacted Plaintiff's attorney before the fifteen-day deadline, there is no evidence that anything even remotely resembling an objection was made on Defendant's behalf until nearly two months after the Tender Letter. According to the express terms of the SHA, Defendant's failure to timely object made the Fair Value determination "binding and conclusive." DE 133-1 § 2.4(i).

[4] The Court rejects Defendant's attempts to prove that Plaintiff unilaterally modified the terms of the SHA by citing to the unexecuted "Stock Power" and "Stock Redemption Agreement," as well as the portions of the Termination Letter and Tender Letter redacted in Exhibits B and C to Plaintiff's Third Amended Complaint. See DE 133-2; DE 133-3. These communications are confidential settlement discussions that are privileged, protected, and inadmissible evidence. Therefore, they are inappropriate for consideration on a motion for summary judgment. But even if the Court were to consider the substance of the redacted portions of the Letters, it is readily apparent that their references to response times and non-negotiability do not relate to the repurchase of Defendant's shares. Therefore, the redacted portions of the Letters are also immaterial.

5. Transfer of Shares

Defendant's failure to endorse and deliver his stock certificates to Plaintiff did not render Plaintiff's repurchase of those shares invalid. Section 2.6 of the SHA specifies that the Terminating Founding Stockholder is required to deliver the certificates representing the shares to be sold, properly endorsed for transfer, to the Company within thirty days of the Company's exercise of its right to repurchase. Id. § 2.6. It is undisputed that Defendant had no certificate to surrender because Stock Certificate No. 12 had been cancelled and Stock Certificate No. 14 was never in his possession. Because the Company possessed Certificate No. 14 at the time of repurchase, there was no need for Defendant to deliver the certificate to Plaintiff. See 6 Del. C. § 8-301(a) (stating that delivery occurs "when the purchaser acquires possession of the security certificate").

Even if Defendant had possessed a stock certificate, his failure to surrender it would not have invalidated the transfer. "Where the purchaser of stock does not insist, as a condition precedent, that the certificate be surrendered to the company for cancellation, and a transfer of the stock is made on the books of the company, the transfer passes the title to the stock without a surrender of the certificate . . . ." 12 Fletcher Cyc. Corp. § 5494; accord Silverstein v. David J. Stone & Co., Inc., Civ. A. No. 11480, 1990 WL 161092, at *3 (Del. Ch. Oct. 17, 1990). Plaintiff, as the purchaser of the stock, did not insist that the certificate be transferred at the time of repurchase. The certificate-transfer provision created an affirmative obligation on Defendant that was intended to benefit Plaintiff, and therefore, the Company was within its rights to waive the requirement. See 12 Fletcher Cyc. Corp. § 5540 ("provisions [requiring surrender of

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stock certificates] are for the benefit of the corporation, and hence it may waive them."). By tendering payment and recording the transfer without timely objection from Defendant, Plaintiff properly effectuated the transfer. Thus, Plaintiff also materially complied with all requirements of the SHA.

C. Affirmative Defenses

Finally, none of Defendant's remaining Affirmative Defenses would defeat Plaintiff's claim. Defendant's Third, Fourth, Fifth, and Eighth Affirmative Defenses require a finding that Plaintiff did not comply with applicable requirements of repurchase and/or that the SRA superseded the SHA. Id. at 7–10. As set forth above, the Court finds no reasonable grounds for making such findings. Defendant's Sixth Affirmative Defense alleges that a supposed ground for his termination for cause—the improper transfer or attempt to transfer his shares—was invalid because Plaintiff did not terminate Ameling for cause after he allegedly engaged in similar conduct. Id. at 9. However, the SHA and SRA each contain a no-waiver provision that defeats this argument. See DE 133-1 § 5.8; DE 141-2 § 5.[5]

IV. CONCLUSION

In sum, Defendant has not come forward with sufficient evidence to demonstrate a genuine dispute of material fact for trial or that it is entitled to judgment as a matter of law. In contrast, Plaintiff has established that the SHA was an enforceable agreement

[5] Section 5.8 of the SHA states: "No delay or failure on the part of a Company or a Founding Stockholder in the exercise of any right, power or remedy shall operate as a waiver thereof, no[r] shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy." Section 5 of the SRA states, in relevant part: "The failure of any party to this Agreement to insist upon the strict performance of any of the terms, conditions or provisions of this Agreement shall not be construed as a waiver or relinquishment of future compliance . . . ."

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and that Plaintiff properly exercised its rights under the SHA in repurchasing Defendant's shares in the Company. It is accordingly

ORDERED AND ADJUDGED as follows:

1. Plaintiff's Motion for Summary Judgment [DE 102] is **GRANTED**.
2. Defendant's Motion for Summary Judgment [DE 100] is **DENIED**.
3. The Court will enter a separate judgment consistent with this Order.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 12th day of September, 2016.

JAMES I. COHN
United States District Judge

Copies provided to:
Counsel of record via CM/ECF

ROA-1457

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	ACTION NUMBER: 2017-CP-10-3768
Charleston Laboratories, Inc.	)	
Plaintiff,	)	
v.	)	SUMMONS (Legal Malpractice)
Womble, Carlyle, Sandridge & Rice, LLP,	)	
Defendant.	)	Jury Trial Demanded!

2017 JUL 25 PM 3:04

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Charleston, South Carolina
July 24, 2017

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DEFENDANT'S EXHIBIT 27

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	ACTION NUMBER: 2017-CP-10-3768
Charleston Laboratories, Inc.	)	
	)	
Plaintiff,	)	
	)	COMPLAINT
v.	)	(Legal Malpractice)
	)	
Womble, Carlyle, Sandridge & Rice, LLP,	)	
	)	Jury Trial Demanded!
Defendant.	)	

The Plaintiff, complaining of the conduct of the Defendant herein, alleges as follows:

Parties and Jurisdiction

1. Charleston Laboratories, Inc. ("Charleston Labs", "Charleston", or "Company") is a corporation organized and existing under the laws of the State of Delaware. During the relevant time period described herein, Charleston Labs had its principal place of business in Charleston, South Carolina from approximately 2007-2013.

2. Upon information and belief, Defendant Womble, Carlyle, Sandridge & Rice, LLP ("WCSR") is a North Carolina limited liability company which is organized for the purpose of practicing law and which maintains offices and transacts business in Charleston, South Carolina.

3. WCSR is subject to the jurisdiction of the South Carolina courts pursuant to the South Carolina Long Arm Statute, 36-2-802 and/or 803, as it does business in South Carolina, contracts to provide services in South Carolina and as set forth herein, has committed tortious acts in South Carolina which affected a client in Charleston, South Carolina.

4. Venue is proper in this court as the events giving rise to this action occurred in Charleston County, South Carolina.

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Factual Background

5. Charleston Labs is a privately-held Delaware corporation in the specialty pharmaceutical industry organized on June 27, 2007.

6. As a start-up pharmaceutical company, Charleston Labs' initial research was dedicated to the development of drugs which reduce opioid induced nausea and vomiting in opioid pharmaceuticals.

7. The three original founders of Charleston Labs were G. Paul Bosse III ("Bosse"), Ryan Baker ("Baker"), and Chris Goodwin ("Goodwin").

8. After reaching out to WCSR partner Dean Rutley ("Rutley") because of his work on venture capital deals in the pharmaceutical industry, Bosse engaged WCSR through Rutley to assist Charleston Labs for its legal needs and raising capital for the company.

9. Rutley was a recognized attorney in the venture capital arena for pharmaceutical start-ups.

10. Rutley practiced out of WCSR's Tysons Corner, Virginia offices.

11. With the understanding that Charleston was, at the time, a start-up company and not a "funding risk", Rutley and WCSR agreed to hold/delay invoices for WCSR services to Charleston with the expectation that such invoices would be issued and paid when Charleston was able to raise capital.

12. Subsequently, Charleston Labs hired three new at-will employees - John Ameling ("Ameling"), Bernard Schachtel ("Schachtel") and Raymond Takigiku ("Takigiku").

13. Together these six individuals (Bosse, Baker, Goodwin, Schachtel, Ameling, and Takigiku) represent the "Founding Stockholders" of Charleston Labs.

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14. WCSR was engaged by Charleston Labs to prepare corporate documents to reflect a proposed new ownership structure of the entity and related provisions that would govern the relationships by and amongst the shareholders while they were employees with Charleston Labs and if their association with Charleston Labs terminated.

15. At the time, Rutley was busy as a partner in WCSR and delegated some of the drafting of the necessary corporate documents, including but not limited to the SRA (as defined below in Paragraph 19) to David Baddour ("Baddour") who was an associate in WCSR's Charlotte, NC offices.

16. Rutley told Bosse that Baddour was "a smart attorney who would do a good job for Charleston Labs and his hourly rate was cheaper than mine".

17. In preparing the new corporate documents, Charleston Labs sought a set of documents that would extend ownership to its newest shareholders (Ameling, Schachtel and Takigiku), while at the same time restricting the marketability and transferability of their shares until such time as they had achieved sufficient tenure with the company or in the event that their employment with Charleston Labs terminated.

18. Charleston Labs relied exclusively on the advice and representation of WCSR in structuring the transaction to protect Charleston Labs in the event that one of its new shareholders elected to leave the company and/or was expelled from the company before becoming fully vested in their ownership and reduce such recommendations to an integrated written binding agreement.

19. WCSR advised Charleston Labs that it would be best protected by having all of the Founding Members execute a Stockholders Agreement ("SHA") and by having each of the new employee/owners execute a Stock Restriction Agreement ("SRA").

20. WCSR thereafter prepared both the SHA and the SRA (the SHA and SRA are sometimes hereinafter referred to together as "Agreements" and each an "Agreement").

21. Each Agreement contained a provision that allowed the Company to repurchase shares upon the occurrence of certain events.

22. The SRA gave the Company the right to repurchase a specified number of "Restricted Shares", as set forth in its "Schedule A", at a predetermined price of $0.01 per share, but only if the employee (1) resigned or otherwise voluntarily terminated his employment with the Company or (2) was terminated for cause.

23. Under the SRA, the longer the employee remained employed with the Company, the fewer of his shares would be considered "Restricted Shares" at "Schedule A" subject to repurchase for $0.01 per share.

24. In contrast, the SHA granted Charleston Labs the right to purchase "any or all" shares held by a Founding Stockholder, who was also an employee, if that individual ceased to be an employee of the Company "for any reason".

25. Unlike the $0.01 repurchase price of the SRA, the "Agreement Price" to be paid for the shares purchased under the SHA was "the Fair Value . . . on a fully diluted basis, calculated on the basis of the Company as a going concern," as "determined by the Board of Directors of the Company, in good faith in the exercise of its reasonable business judgment."

26. The SHA required that the Company exercise its right to repurchase by notifying the "Terminating Founding Stockholder" in writing.

27. When read together, the "for any reason" clause of the SHA would seem to subsume the "for cause termination" language of the SRA.

28. In preparing both the SHA and the SRA, WCSR knew or should have contemplated a future controversy between the parties to the Agreements and that it should have drafted the two agreements so that they would work harmoniously with each other in a clear and unambiguous fashion.

29. In preparing the Agreements, WCSR knew or should have known that the standard of care required that they prepare the documents in such a way as to avoid confusion, avoid conflict, avoid having the terms and provisions be construed as ambiguous and avoid litigation.

30. In preparing the two documents, WCSR failed to include any language in the SHA that made reference to the SRA and integrating and explaining any inconsistent provisions or to identify which provisions would control in the event of a dispute regarding the two agreements or in connection with a shareholder's dispute of a Charleston Labs repurchase of shares.

31. In preparing the two documents, WCSR failed to include any language in the SRA that made reference to the SHA and integrating and explaining any inconsistent provisions or which identified which provisions would control in the event of a dispute regarding the two agreements or in connection with a shareholder's dispute of a Charleston Labs repurchase of shares.

32. To further complicate matters, both the SRA and the SHA were drafted with integration clauses which provided that each Agreement superseded other prior agreements related to the same subject matter.

33. Unbeknownst to Charleston Labs, WCSR drafted ambiguity, confusion and conflict into the Agreements which WCSR prepared.

34. WCSR assured Charleston Labs that the Agreements would satisfy their desired goals and that the execution of the Agreements was in the best interests of Charleston Labs.

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35. Charleston Labs relied on WCSR's advice and paid for its legal services.

36. In direct reliance on WCSR's advice, the SHA and SRA were executed by the parties and were dated and made effective as of May 30, 2008.

37. Also on May 30, 2008, Charleston Labs issued 210 shares of common stock to Takigiku for an aggregate of $2.10 ($0.01 per share).

38. Takigiku was issued Stock Certificate No. 12. The reverse side of Stock Certificate No. 12 indicated that the shares were subject to the transfer restrictions and rights of repurchase contained in both the SHA and SRA.

39. On September 25, 2008, Takigiku's 210 shares were automatically converted into 420,000 shares of common stock upon consummation of a 2,000 to 1 "forward split".

40. The Company then marked Stock Certificate No. 12 "Cancelled" and issued Stock Certificate No. 14, representing the 420,000 of converted stock.

41. When Charleston decided not to continue to pursue institutional capital funding, Rutley described Charleston Labs as a "funding risk" and shifted the WCSR responsibility for its client to Baddour and other WCSR associates.

42. In March, 2010, Takigiku's employment with Charleston Labs ceased.

43. Prior to terminating Takigiku's employment, Bosse contacted WCSR once again for legal advice as to Takigiku's employment termination and the Company re-acquiring his stock.

44. WCSR agreed to provide legal counsel with respect to Takigiku's employment termination and the re-acquiring of his stock.

45. As WCSR communicated to Charleston that WCSR wanted to minimize its time dedicated to Charleston, Bosse drafted the initial draft of a proposed Takigiku termination letter,

which he forwarded to WCSR for its review and comment (the "First Letter"). The First Letter failed to make mention of either the SHA or SRA.

46. In reviewing the First Letter, WCSR made comments to and blessed such letter for delivery, but as WCSR did not have command of the Charleston documents which it drafted, the letter lacked reference to either the SHA or SRA and failed to advise Bosse of the importance of making clear which Agreement was being utilized for purposes of determining Takigku's post-employment ownership rights.

47. On March 19, 2010, Charleston Labs issued its termination letter (the First Letter) to Takigiku. The letter stated that the termination was "with cause".

48. As WCSR continued to communicate to Charleston that WCSR wanted to minimize its time dedicated to Charleston, Bosse subsequently drafted the initial draft of a proposed letter to repurchase Takigiku's shares and provide an offer to settle (pursuant to an enclosed Redemption and Settlement Agreement drafted by WCSR) any issues related to Takigiku's employment, which he forwarded to WCSR for its review and comment (the "Second Letter").

49. In reviewing the Second Letter, WCSR made comments to and blessed such letter for delivery, but as WCSR still did not have command of the Charleston documents which it drafted, WCSR again failed to make reference to either the SHA or SRA and failed to advise Bosse of the importance of making clear which Agreement was being utilized for purposes of determining Takigiku's post-employment ownership rights.

50. On March 26, 2010, Charleston Labs sent Takigiku the Second Letter with a check for his stock in the amount of $2.10, along with a Redemption and Settlement Agreement; however, the enclosed Redemption and Settlement Agreement only made mention of the SRA.

51. Takigiku disagreed that he was separated for cause. Instead, he insisted that he had resigned.

52. Charleston Labs continued its work thereafter and continued to grow as a company.

53. Over the intervening several years and with the legal assistance of WCSR, Charleston Labs successfully raised significant additional capital from investors. In doing so, it issued prospectuses which represented the ownership structure of Charleston Labs, assuming that Takigiku was not a shareholder.

54. WCSR continued to provide legal services to Charleston until late 2014 and Charleston has paid all amounts that were due to WCSR for WCSR's legal services provided to it.

55. In September 2015, Takigiku made a demand to inspect Plaintiff's books and records as a shareholder. Charleston Labs had not heard from Takigiku in the ensuing years after it sent him the Second Letter and the Redemption and Settlement Agreement in 2010.

56. Charleston Labs maintained that it had properly repurchased all of Takigiku's shares and that he was no longer a shareholder.

57. In response, Takigiku argued that the SRA circumscribed Plaintiff's repurchase rights, limiting repurchase to his Restricted Shares. He further contended that even if the repurchase provisions of the SHA were enforceable and controlling, Charleston Labs failed to properly exercise its rights under that Agreement as the letters separating his employment and purportedly repurchasing his shares made no reference to it.

58. If Takigiku was correct, then, among other negative consequences for Charleston, it had raised substantial working capital through offerings which misstated the corporate ownership structure.

59. In order to resolve the dispute which was caused directly by the conflicts and ambiguities which were drafted into the SHA and SRA, Charleston Labs was forced to engage legal counsel and to file a declaratory judgment action in the United States District Court seeking to determine the rights and interests of the parties.

60. After a year of litigation and nearly $2,000,000.00 in legal expenses and related costs, an Order of the United States District Court for the Southern District of Florida issued on September 13, 2016, which declared once and for all that Charleston Labs had repurchased all of Takigiku's shares in the Company such that he had no ownership rights.

61. But for the malpractice of the Defendant in drafting the SHA and SRA and in their advising Charleston Labs at the time of Takigiku's termination of employment (with respect to, among other things, the First Letter and the Second Letter), Charleston Labs would not have been forced to initiate legal action to determine its rights and would not have incurred nearly $2,000,000.00 of expense in doing so.

For a First Cause of Action
Legal Malpractice

62. The Paragraphs above are incorporated herein as if realleged and restated in full verbatim.

63. At all times relevant hereto, an attorney client relationship existed between the Plaintiff and Defendant.

64. Pursuant to their relationship, the Defendant owed duties to the Plaintiff, including but not necessarily limited to the duty to possess and to exercise the same degree of care, skill and learning which would be expected of reasonable and competent lawyers under the same or similar circumstances.

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65. The Defendant breached its duties to the Plaintiff and otherwise acted in a negligent, grossly negligent, willful, wanton and reckless manner in a number of particulars, including but not limited to some or all of the following:

a. In failing to possess and/or to exercise the degree of care, skill and learning required by the circumstances;

b. In drafting documents which created conflict and ambiguity when it was their duty to draft documents which would avoid conflict and ambiguity;

c. In failing to draft the SHA in such a manner as to reference expressly the SRA and which document or provisions would control in the event of a dispute between them;

d. In failing to draft the SRA in such a manner as to reference expressly the SHA and which document or provisions would control in the event of a dispute between them;

e. In failing to state explicitly in the SHA that Charleston Labs' rights under the SHA were concurrent with and in no way limited by the rights under the SRA;

f. In failing to state explicitly in the SRA that Charleston Labs' rights under the SRA were concurrent with and in no way limited by the rights under the SHA;

g. In failing to make clear that the "for any reason" separation language of the SHA was not limited by the "for cause" language of the SRA;

h. In failing to advise Charleston Labs to make express reference to the Agreement on which it was relying at the time of Takigiku's separation from employment; and

i. In such other particulars as the evidence in the case may demonstrate.

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66. As a direct and proximate result of the conduct of the Defendant, Charleston Labs was forced at considerable expense to initiate legal action to clarify the right and obligations of the parties to the SHA and SRA, which rights and obligations should have been made clear in the drafting of the documents themselves, as well as in the First Letter and in the Second Letter.

67. The Plaintiff has been harmed and is entitled to recover damages, both actual, in an amount sufficient to compensate them fully for all losses herein, and punitive, in an amount determined by a jury to be sufficient to impress upon the Defendant the seriousness of its conduct and to deter such similar conduct in the future.

WHEREFORE, the Plaintiff prays for judgment against the Defendant, for both actual damages, in an amount sufficient to compensate them fully for all losses herein, and punitive damages, in an amount determined by a jury to be sufficient to impress upon the Defendant the seriousness of its conduct and to deter such similar conduct in the future, together with such further relief as the Court deems just and proper.

Charleston, South Carolina
July 24, 2017

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ROA-1470

STATE SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Charleston Laboratories, Inc., Plaintiff, vs. Womble, Carlyle, Sandridge & Rice, LLP, Defendant.	ACTION NO: 2017-CP-10-3768 AFFIDAVIT OF EXPERT OPINION OF DR. GREGORY B. ADAMS

PERSONALLY APPEARED before me Gregory B. Adams who, being duly sworn, deposes and says that:

1. It is my expert opinion, held to a reasonable degree of professional certainty, that the complaint in this matter alleges facts establishing that the defendant law firm, Womble, Carlyle, Sandridge & Rice, LLP, [WCSR] and its lawyers Dean Wayne Rutley and David B. Baddour had attorney–client relationships with plaintiff Charleston Laboratories, Inc. [Charleston Labs] and owed it professional and fiduciary duties, which defendant breached, failing to adhere to the standard of care required of lawyers; some of these negligent acts and the factual basis for them are set forth below:

   A. Defendant and its lawyers Dean Rutley and David Baddour owed professional, legal, ethical, and fiduciary duties to plaintiff Charleston Labs throughout the events forming the basis for this lawsuit:

      i. Shortly after its incorporation in June 2007, Charleston Labs retained defendant WCSR and its partner Dean Rutley to provide the legal advice and services it needed as a new business,

including corporate organization, documentation, and securities as well as assisting it in raising capital. WCSR continued to provide corporate legal advice and services to Charleston Labs for more than seven years, until late 2014.

ii. On May 20, 2008 defendant WCSR, through its lawyers Rutley and Baddour, undertook to advise Charleston Labs how to protect its interests when it hired three new at-will employees, John Ameling, Bernard Schachtel, and Raymond Takigiku, who were all to become shareholders in Charleston Labs, along with its founders, G. Paul Bosse III, Ryan Baker, and Chris Goodwin.

a. Defendant WCSR, through its associate Baddour, advised Charleston Labs that its interests could be protected through the execution of two contracts that WCSR would draft for it:

(1) a Stockholders' Agreement (SHA) between all six of the "Founding Stockholders"– Bosse, Baker, and Goodwin as well as newcomers Ameling, Schachtel, and Takigiku, and

(2) a Stock Restriction Agreement (SRA) executed by newcomers Ameling, Schachtel, and Takigiku.

b. Over the next ten days Baddour spent eight hours drafting and revising the SHA and SRA and advising Charleston Labs, through its CEO Bosse, about the proper content of the agreements and their execution.

c. On May 30, 2008, as advised by WCSR, the SHA and SRA WSCR drafted were executed and made effective as of May 30, 2008.

d. The SHA and the SRA drafted by WCSR were inconsistent and their relationship was unclear.

(1) Although the agreements had overlapping sets of parties (both agreements affected the company's legal relationships with newcomers Ameling, Schachtel, and Takigiku, but only the SHA applied to Bosse, Baker, and Goodwin – who were not parties to the SRA) and

(2) although both the SHA and the SRA gave Charleston Labs rights to repurchase shares of its stock from Ameling, Schachtel, and Takigiku and

(3) although the triggering events and repurchase price terms differed between the two agreements,

(4) neither agreement referred to the other or contained any provision governing the relationship with contemporaneous agreements;

(5) instead, both the SHA and the SRA merely contained a standard integration clause superseding all prior written and oral agreements.

e. Also on May 30, 2008, Charleston Labs issued 210 shares of common stock to Takigiku for an aggregate price of $2.10 ($0.01 per share) evidenced by Charleston Labs

Stock Certificate No. 12. The reverse side of Stock Certificate No. 12 indicated that the shares were subject to the transfer restrictions and rights of repurchase contained in both the SHA and SRA.

f. On September 25, 2008, Takigiku's 210 shares were automatically converted into 420,000 shares of common stock upon consummation of a 2,000-to-1 forward split. Charleston Labs marked Stock Certificate No. 12 "Cancelled" and replaced it with Stock Certificate No. 14, representing the 420,000 shares of converted stock belonging to Takigiku.

iii. On March 16, 2010 defendant WCSR, through its lawyers Rutley and Baddour, undertook to advise Charleston Labs about the termination of Raymond Takigiku and the repurchase of his shares in the company.

a. On March 19, 2010, after consultation with and following the legal advice of WCSR, Charleston Labs sent Takigiku a letter terminating him for cause. This letter had been reviewed, analyzed, and revised by WCSR, and Charleston Labs' CEO Bosse had discussed it with and received correspondence from WCSR lawyer Baddour.

b. On March 26, 2010, after consultation with and following the legal advice of WCSR, Charleston Labs sent Takigiku a letter exercising its right to repurchase his shares. Enclosed with the letter was a check for $2.10 in full payment for

his shares and a Redemption and Settlement Agreement prepared by WCSR, which referred to the SRA but not the SHA. This letter, too, had been reviewed, analyzed, and revised by WCSR, and Charleston Labs' CEO Bosse had discussed it with and received correspondence from WCSR lawyer Baddour.

iv. WCSR continued to advise and provide legal services to Charleston Labs through 2014. The most recent WSCR Statement for Services Rendered to Charleston Labs that I have reviewed is dated December 19, 2014.

v. I have been informed, and the Complaint alleges, that Charleston Labs has paid all of the amounts billed it by WCSR throughout the seven years that WCSR and its lawyers had ongoing attorney–client relationships with the company.

B. In September 2015, Raymond Takigiku asserted that he was still a shareholder in Charleston Labs because Charleston Labs had not properly repurchased his shares under the terms of the SHA and the SRA.

i. Takigiku claimed that the SRA limited Charleston Labs' repurchase rights and that it had no right to repurchase his shares under the terms of the SHA.

ii. Takigiku also claimed that, even if Charleston Labs had the right to repurchase his shares under the SHA, the company had not effectively exercised that right because neither of the March 2010 letters referred to the SHA or purported to exercise rights under it

(and the Redemption and Settlement Agreement accompanying the March 26 letter referred to the SRA, not the SHA).

C. To resolve this dispute about whether Raymond Takigiku was still a shareholder in Charleston Labs, Charleston Labs retained the Greenberg Traurig law firm and in November 2015 filed a declaratory judgment action against Takigiku. Takigiku filed a counter-claim. On September 12, 2016 U.S. District Judge James I. Cohn granted Charleston Labs' motion for summary judgment and denied Takigiku's motion for summary judgment, ruling that Takigiku was not a shareholder in Charleston Labs because his shares had been repurchased in March 2010. Charleston Labs spent a considerable amount of money to resolve this dispute; the Complaint in this action alleges that the litigation cost to Charleston Labs was almost $2,000,000.00.

D. The claim asserted by Takigiku, resulting in the federal court litigation and legal expenses, was based on (1) the terms of the 2008 SRA and SHA and (2) the wording of the March 2010 letters and the attached Redemption and Settlement Agreement. All of these documents were drafted or revised by WCSR. All were analyzed by WCSR lawyers. All were used by Charleston Labs because WCSR advised it to use them, assuring it that these documents were appropriate to achieve its legal goals and meet its legal needs.

E. It is my expert opinion that WCSR and its lawyers owed their client Charleston Labs professional, fiduciary, and contractual duties of competence, diligence, and communication. WCSR was obligated to render its legal advice and services to Charleston Labs with the degree of

skill, care, knowledge, and judgment usually possessed and exercised by members of the legal profession. "Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Rule 1.1, S.C. Rules of Professional Conduct, S.C.A.C.R. 407.

F. It is my expert opinion that WCSR and its lawyers violated their duties to their client Charleston Labs by violating the standard of care governing them and in rendering legal advice and services to Charleston Labs while failing to exercise the degree of skill, care, legal knowledge, thoroughness, preparation, and judgment reasonably necessary for the representation and usually possessed and exercised by members of the legal profession. Some of the breaches by WCSR and its lawyers include

i. creating ambiguity and legal uncertainty regarding their client's rights by drafting the SRA and SHA as contemporaneous agreements without assuring their consistency and clarifying their relationship,

(1) although the agreements had overlapping sets of parties (both agreements affected the company's legal relationships with newcomers Ameling, Schachtel, and Takigiku, but only the SHA applied to Bosse, Baker, and Goodwin – who were not parties to the SRA), and

(2) although both the SHA and the SRA gave Charleston Labs rights to repurchase shares of its stock from Ameling, Schachtel, and Takigiku, and

(3) although the triggering events and repurchase price terms differed between the two agreements.

(4) Both agreements should have explicitly referred to the other and contained provisions governing their relationship as contemporaneous agreements.

(5) Once the SHA and SRA had been executed and the shares issued, the rights of Charleston Labs should have been clear.

ii. In failing to draft the March 2010 letters terminating Takigiku and repurchasing his shares to explicitly, unambiguously specify the rights being exercised by Charleston Labs and the source of those rights and in failing to correctly refer to the SHA – not the SRA – in the attached Redemption and Settlement Agreement.

iii. In creating ambiguity in the agreements and uncertainty in Charleston Labs' exercise of its rights under them, leading to costly litigation that would have been unnecessary and unlikely had WCSR fulfilled its duties to its client.

G. It is my expert opinion that these violations of duty by WCSR and its lawyers proximately caused substantial damage to their client Charleston Labs. It is more likely than not that there would have been no litigation between Charleston Labs and Takigiku had they not breached these duties, and even if there had been claims by Takigiku or litigation, it most certainly would have been much less expensive.

2. My resumé, attached as Exhibit A, demonstrates why federal and state courts, including the South Carolina Supreme Court and Court of Appeals, have held

that I am qualified as an expert witness and thus to execute the affidavit required by South Carolina Code of Laws § 15-36-100, which does not require me to state all negligent acts, omissions, or wrongdoing by defendant.

A. I am a tenured law professor at the University of South Carolina School of Law, where I have been teaching since 1978. My subjects of expertise include lawyers' ethics, professional responsibility, and fiduciary duties.

B. I have earned a J.S.D. (Doctor of Juridical Science) and an LL.M. from Columbia University, as well as my J.D. from Louisiana State University.

C. Federal and state courts in South Carolina have recognized my expertise, including the South Carolina Supreme Court in *State v. Morris*, 376 S.C. 189, 656 S.E.2d 359 (2008) (holding that I am qualified as an expert witness and that my expert testimony was accurate and proper) and *Smith v. Haynsworth, Marion, McKay & Guerard*, 322 S.C. 433, 472 S.E.2d 612 (1996) (holding that I am qualified as an expert witness on issues of lawyers' duties and it was reversible error to rule otherwise), and the Court of Appeals in *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004) (holding it was reversible error to discount my expert opinion in a legal malpractice case and to refuse to give it efficacy). Additionally, three South Carolina Attorneys General, the South Carolina Secretary of State, and the United States Attorney for the District of South Carolina have relied upon my expertise to guide and assist them in significant criminal investigations and prosecutions, and the United States Securities and Exchange Commission has retained me as an expert witness on lawyers' duties.

3. I hold all of the expert opinions I have expressed in this affidavit to a reasonable degree of legal certainty; the results are more probable than not.

4. I have been retained as an expert witness by counsel for plaintiff. My expert opinions are based upon the allegations of the complaint, which I assume to be true because they are supported by substantial, incontrovertible evidence which I have reviewed. This evidence is the kind usually relied upon by experts in this field and includes

   A. the WSCR invoices to Charleston Labs from November 29, 2007 to December 19, 2014;

   B. the September 12, 2016 Order on Motions for Summary Judgment of U.S. District Judge James I. Cohn in *Charleston Laboratories, Inc. v. Dr. Raymond Takigiku* and the docket, pleadings, and motions in that case;

   C. the May 30, 2008 Stockholders Agreement (SHA);

   D. the May 30, 2008 Stock Restriction Agreement (SRA) of Raymond Takigiku;

   E. Charleston Labs Stock Certificate No. 12 and corporate records associated with it;

   F. Charleston Labs Stock Certificate No. 14 and corporate records associated with it;

   G. the March 19, 2010 letter of Charleston Labs to Takigiku terminating him with cause;

   H. the March 26, 2010 letter of Charleston Labs to Takigiku paying him for his shares of stock and enclosing the Redemption and Settlement

Agreement;

I. the Redemption and Settlement Agreement sent by Charleston Labs to the March 19, 2010 letter of Charleston Labs to Takigiku with the March 26, 2010 letter.

5. Because of the preliminary nature of this case, these opinions are subject to expansion and modification as further evidence or issues develop.

Further the affiant sayeth not.

Dr. Gregory B. Adams

Sworn to and subscribed before me
this 7th day of July 2017.

Notary Public for South Carolina
My Commission Expires: 4/9/2023

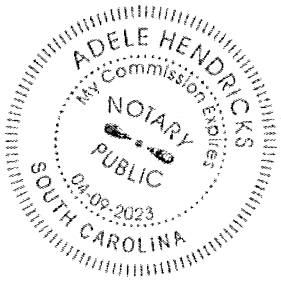


EXHIBIT A

DR. GREGORY B. ADAMS

UNIVERSITY OF SOUTH CAROLINA SCHOOL OF LAW
1525 Senate Street, Columbia, South Carolina 29208

PROFESSIONAL EXPERIENCE

Law Professor (tenured), University of South Carolina, 1978–present.
SUBJECTS TAUGHT: Professional Responsibility; Ethical Issues in Criminal Practice; Judicial Ethics; Legal Profession; Legal Technology; Contracts; Corporate Law; Business Planning; Agency, Partnership & Limited Liability Companies; Antitrust; International Business Law; European Union Law.

Associate, University of South Carolina Rule of Law Consortium (2011-present).

Founding Director, Program on Judicial Ethics, Selection, Accountability, and Independence, University of South Carolina School of Law (2003-12).

Visiting Professor of Law, Pskov Volny University, Pskov, Russia, Spring 2001.

Visiting Professor of Law, University of Southampton, Southampton, England, Fall 1989.

Visiting Professor of Law, Rutgers University, Newark, NJ, 1983-1984.

Stagiaire, Commission of the European Communities (European Union), Brussels, Belgium, 1979.

Research Associate, Institute of European Studies, University of Brussels (U.L.B.), 1979.

Visiting Scholar, Faculté de Droit, Université Catholique de Louvain, Louvain-la-Neuve, Belgium, 1978.

Assistant Professor, Southern University School of Law, 1975-1977.

Consultant, Louisiana Legislative Council, 1976-1977.

Attorney with Breazeale, Sachse & Wilson, Baton Rouge, LA, 1973-1975.
Admitted to Practice by the Louisiana Supreme Court on October 5, 1973.

EDUCATION

J.S.D. 1986
Columbia University School of Law New York, New York
Dissertation: Control of Monopoly Power in Europe and the United States

LL.M. 1979
Columbia University School of Law New York, New York
Thesis: E.E.C. and U.S. Antitrust Regulation of Monopolists' Refusals to Deal
Jervey Fellow in Foreign Law, Parker School, Columbia University, 1977-1979.

J.D. 1973
Louisiana State University Law Center Baton Rouge, LA
Order of the Coif; Louisiana Law Review; Moot Court Board; Winner, Robert Lee Tullis Moot Court Competition before the Louisiana Supreme Court.

B.S. 1977
Louisiana State University Baton Rouge, LA
Phi Kappa Phi
College of Arts & Science, Vanderbilt University Nashville, TN 1966-1968

ROA-1482

Honors and Recognition

Outstanding Faculty Publications Award, University of South Carolina School of Law (April 2006, Book, Runner Up)
Louisiana State University Law Center Hall of Fame
Twenty Year Who's Who Honoree
Who's Who in the World
Who's Who in America
Who's Who in American Law
Who's Who in American Education
Who's Who in the South and Southwest
Who's Who of Emerging Leaders in America
Who's Who in Law Education
Dictionary of Int'l Biography (Cambridge, U.K.)

State v. Morris, 376 S.C. 189, 656 S.E.2d 359 (2008) (holding GBA qualified as an expert witness and that GBA's expert testimony was accurate and proper)

Smith v. Haynsworth, Marion, McKay & Guerard, 322 S.C. 433, 472 S.E.2d 612 (1996) (holding GBA qualified as an expert witness; reversible error to rule otherwise)

Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App., 2004) (holding it was reversible error to discount GBA's expert opinion and fail to give it efficacy)

Davis v. Hamm, 300 S.C. 284, 387 S.E.2d 676 (Ct. App., 1989) ("excellent discussion of the ramifications of these statutes" in "Litigation of Corporate Law Disputes After the Recent Amendments of the Corporate Code," in Current Issues in Civil Litigation, S.C. Bar Continuing Judicial Legal Education Seminar 1989)

Publications

South Carolina Corporate Practice Manual (2nd ed. 2005, S.C. Bar) (lead author, coauthors: Burkhard, Cleveland, Clark, Hellwig, Merline).

"Reflections on the Reactions to Proposed Rule 8.5: Consensus of Failure," 36 S. Texas Law Review 1101 (1995).

"Introductory Remarks to the Conference on the Commercialization of the Legal Profession," 45 S.C. L. Rev. 883 (1994) (with Nathan M. Crystal).

Report of the Proceedings, Conference on the Commercialization of the Legal Profession (with Nathan M. Crystal), authored: "Summary of Discussion of Frankel Paper," 45 S.C.L. Rev. 901; "Summary of Discussion of Palay/Galanter Paper," 45 S.C.L. Rev. 929; "Summary of Discussion of Martyn Paper," 45 S.C.L. Rev. 961; "Summary of Discussion of Dimitriou Paper," 45 S.C.L. Rev. 999 (1994).

"The Ethical Lawyer," occasional column in the S.C. Trial Lawyer Bulletin beginning 1994.

"Suing Corporations and Those Behind Them," 1992 S.C. Trial Lawyer Bulletin 17.

South Carolina Corporate Practice Manual (S.C. Bar, 1989) (with Cleveland, Burkhard, McWilliams).

"European and American Antitrust Regulation of Pricing by Monopolists," 18 Vanderbilt Journal of Trans. Law 1 (1985).

"Antitrust Constraints on Single-Firm Refusals to Deal by Monopolists in the European Economic Community and the United States," 20 Texas Int'l L. J. 1 (1985).

"The 1981 Revision of the South Carolina Business Corporation Act," 33 S.C. L. Rev. 405 (1982).

"Inheritance Taxation of Trusts," in 11 L. Oppenheim & S. Ingram, Louisiana Civil Law Treatise, Trusts (1977).

PUBLIC SERVICE

Member, American Bar Association Ethics and Professionalism Committee, A.B.A. Law Practice Division (2015-2018).

Member, American Bar Association Law Practice Futures Initiative, A.B.A. Law Practice Division (2015-2016).

Expert Witness, United States Securities and Exchange Commission, *U.S. S.E.C. v. Staples* (2013)

Invited Expert Witness, Judicial Merit Selection Study Committee, SC Senate (9/17/07)

Member, S.C. Bar, Professional Responsibility Committee, 1993-2012 (chair or member of numerous subcommittees, including Ethics 2000 Subcommittee; presented Ethics 2000 recommendations to S.C. Bar House of Delegates).

Member, S.C. Bar, Unauthorized Practice Committee, 1994, 2000-2003.

Member, S.C. Bar, Technology Committee, 1996-1998.

Ethics Consultant, South Carolina Association for Justice, 1994-2014.

Co-Founder and Vice-President, South Carolina Association of Ethics Counsel, 2000-present.

Expert Witness and advisor to the South Carolina Attorney General in the criminal investigation and prosecutions for securities fraud in connection with the failure of Carolina Investors and HomeGold Financial, 2003-2008.

Expert Consultant for the South Carolina Department of Natural Resources, re: piercing the corporate veil, 2000

Expert Consultant for the South Carolina Department of Health and Environmental Control, re: piercing the corporate veil to impose environmental liability under CERCLA, 1997-1999.

Reporter, South Carolina Uniform Commercial Code Article 2A (South Carolina Law Institute at the request of the South Carolina General Assembly, 1996-2001).

Expert Witness and advisor to the South Carolina Attorney General in criminal prosecution of John O'Quinn, Esq. for unauthorized practice of law and illegal solicitation, 1996-1997.

Co-Reporter, Conference on the Commercialization of the Legal Profession, Charleston, S.C., May 1993.

Expert Witness for the United States before the Federal Grand Jury investigating securities fraud, May 1993.

Member, Governing Board, Center for Law, the Legal Profession, and Public Policy, 1991-93, 1998-2000.

Member, Blue Ribbon Committee on Corporate Law, South Carolina Secretary of State, 1991-95.

Securities Law Expert for the South Carolina Attorney General in connection with the bankruptcy of Patriots Point Associates, 1989-91.

Advisor to the S.C. Deputy Securities Commissioner and the S.C. Senate Judiciary Committee on Corporate Law issues.

Co-Reporter, South Carolina Business Corporation Act of 1988 (South Carolina Law Institute for the South Carolina General Assembly, 1986-88).

Member, Louisiana State Law Institute, Civil Code Revision Committee, 1975-1977.

PRESENTATIONS

"Cyber-Ethics for Lawyers," Workers Injury Law and Advocacy Group Regional Conference, Atlanta, GA (3/27/17) (with Paula J. Frederick, Esq., General Counsel, State Bar of Georgia)
"Operational Cyber-Security for Lawyers," WFG Winter Underwriting Seminar, Columbia, SC (2/7/17)
"Cyber-Fraud, Cyber-Ethics, Cyber-Liability, Cyber-Security," S.C. Bar LEAPP Law Office Management School, Columbia, SC (2/7/17)
"Cyber-Ethics, Cyber-Security, Cyber-Liability, and Cyber-Insurance for Lawyers and Law Firms," Sixth Annual Everything You Need To Know About Ethics, S.C.A.E.C. – S.C. Bar CLE, Columbia, SC (1/13/17)
"Ethical Issues in Criminal Cases: *Slager* & *Roof*," Twenty-first Annual Charleston County Probate Court Seminar, The Mills House Wyndham Grand Hotel, Charleston, SC (12/16/16)
"Getting Clients Ethically While Promoting Our Profession," Florence County Bar (11/30/16)
"Technology for Safe and Sane Lawyering," S.C. Bar LEAPP Law Office Management School (9/29/16)
"Regulating Unauthorized Multijurisdictional Virtual Law Practice," S.C. Law School (2/22/16)
"Practice-Specific Concerns Regarding Cyber Attacks," Panel Moderator, Cyber Attacks & Civil Liability, S.C. Law Review Symposium (2/5/16)
"Highlights from the Technology and Law Seminar: Why Do I Have To Understand This Stuff?," Fifth Annual Everything You Need To Know About Ethics, S.C.A.E.C. – S.C. Bar CLE, Columbia, SC (1/15/16)
"Future Ethics for Lawyers in the Age of the Jetsons," Twentieth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, SC (12/17/15)
"Ethical Management of Technology: Survival Techniques for Lawyers and Law Firms," Technology Techniques & Security for Litigators and Transactional Lawyers, S.C. Bar CLE, Columbia, SC (12/10/15)
"The Ethics of Technology in Law Practice," Technology Techniques & Security for Litigators and Transactional Lawyers, S.C. Bar CLE, Columbia, SC (12/10/15)
"Technology for Safe & Sane Lawyering," S.C. Bar LEAPP Law Office Management School (10/1/15)
"Cybersecurity Ethics: Encryption for Solo Lawyers and Small Law Firms," LPM-TECH CONFERENCE 2015, S.C. Bar Solo & Small Firm Section, Columbia, SC (9/18/05)
"Minister of Justice, Guardian of the Constitution," 14th Circuit Solicitor's Office Career Prosecutor Program and Externship, Bluffton, SC (6/1/15)
"Ethics for Criminal Defense Counsel in the Age of Social Media and the Internet," Federal Public Defender Seminar for Criminal Justice Act Attorneys (5/8/15)
"Ethics of Lawyers Working for Nonprofits & Serving on Nonprofit Boards," South Carolina Nonprofit Corporate Update, S.C. Bar CLE, Columbia, SC (2/5/15)
"Ethics of Confidentiality Online: Cybersecurity & Encryption," Fourth Annual Everything You Need To Know About Ethics, S.C.A.E.C. – S.C. Bar CLE, Columbia, SC (1/16/15)
"*Fabian v. Lindsay*: Lawyers' Liability to Intended Beneficiaries," with Professor S. Alan Medlin, Nineteenth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, SC (12/12/14)
"Cybersecurity: Lawyers Safely Using Smartphones, Email, and the Cloud in the Age of International Hackers and Government Spies," S.C. Bar CLE, Columbia, SC (8/26/14)
"Ethics for Prosecutors," 14th Circuit Solicitor's Office Career Prosecutor Program and Externship, Bluffton, SC (6/30/14)
"Modification of Fees and Other Contract Questions: Rules 1.8 and 1.5," Third Annual Everything

You Need To Know About Ethics, S.C.A.E.C.-S.C. Bar CLE, Columbia, SC (1/17/14)

"Modification of Fee Agreements During the Representation: Ethical Duties, Fiduciary Duties, Contract Law," Eighteenth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, SC (12/12/13)

"Legal Ethics and Social Media: How to Stay Out of Trouble and Protect Your Lawyer's Law License," Palmetto Paralegal Association Seminar, Columbia, SC (10/16/13)

"Professional Responsibility for Prosecutors," 14th Circuit Solicitor's Office Career Prosecutor Program and Externship, Bluffton, SC (May 29-30, 2013)

"War of the Roses & Roses, LLC: The Sequel – When Partners Leave the Firm," Everything You Need To Know About Ethics, S.C.A.E.C.-S.C. Bar CLE, Columbia, SC (1/18/13)

"Getting Paid, Keeping the Money, and Safeguarding Your License: How to Manage Your Cash Flow, Trust Account,and Bottom Line Under the New Rules Without Inviting a Visit from Disciplinary Authorities," Seventeenth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, SC (12/6/12)

"Getting Paid, Keeping the Money, and Safeguarding Your License: How to Manage Your Cash Flow, Trust Account,and Bottom Line Under the New Rules Without Inviting a Visit from Disciplinary Authorities," S.C. Association for Justice, Auto Torts Seminar, Buckhead Ritz Carlton, Atlanta, GA (12/1/12)

"Mike Nifong – Aberrational Rogue?," U.S.C. Law School Symposium on Prosecutorial Ethics and Duties, Columbia, SC (3/16/12)

"How to Get Paid Now!," Everything You Need To Know About Ethics, S.C.A.E.C.-S.C. Bar CLE, Columbia, SC (1/13/12)

"Current Professional Responsibility Issues for Litigators," S.C. Tort Law Update, S.C. Bar CLE, U.S.C. Law School (1/6/12)

"Fiduciary Duties of Estate Planning & Probate Lawyers: General Principles and S.C. Cases," Sixteenth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, SC(12/13/11)

"Advanced Ethics for Legislative Attorneys," South Carolina General Assembly, Columbia, SC (10/5/11)

"Judicial Ethics for S.C. Workers' Compensation Commissioners," S.C. Workers' Compensation Commission Continuing Judicial Ethics Seminar, Columbia, SC (11/16/10)

"Ethics for Legislative Attorneys," South Carolina General Assembly, Columbia, SC (10/6/10)

"Current Ethical Issues and Trends," York County Bar Association Ethics CLE, Panel with S.C. Supreme Court Justice Costa M. Pleicones and S.C. Disciplinary Counsel Lesley M. Coggiola, Esq., Rock Hill, SC (3/12/10)

"Lawyers in the Crosshairs: Recent South Carolina Cases of Concern to Estate Planning and Probate Lawyers," Fourteenth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, SC (12/15/09)

"Judicial Ethics for S.C. Workers' Compensation Commissioners," S.C. Workers' Compensation Commission Continuing Judicial Ethics Seminar, Columbia, SC (11/17/09)

"Regulating Lawyer Behavior Through Recent South Carolina Tort Cases: Issues of Lawyer Ethics, Professionalism, and Liability," S.C. Tort Law Update, S.C. Bar CLE, U.S.C. Law School (11/13/09)

"Lawyers' Ethical Responsibilities and the Torture Memoranda," Amnesty International Panel Discussion, University of South Carolina, Columbia, SC (4/15/09)

"The 'Of Counsel' Agreement," S.C. Bar Annual Convention, Myrtle Beach, SC (1/24/09)

"Ethical Duties in Family Estate Planning," Thirteenth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, SC (12/11/08)

"Teaching Professional Responsibility in U.S. Law Schools," Southeastern Ass'n of Law Schools, Ritz Carlton, Palm Beach, FL (7/31/08)

"Judicial Selection in the United States," S.C. Supreme Court Teachers Institute, Columbia, SC (6/23/08)

"Corporate Lawyers as Fiduciaries," S.C. Bar Annual Convention, Charleston, SC (1/25/08)

"My Heroes Have Always Been Lawyers and They Still Are, It Seems," Twelfth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, SC (12/13/07)

"Prosecutorial Ethics: Was the Duke Lacrosse Case an Aberration or the Tip of the Iceberg?," SCTLA Annual Convention, Hilton Head Island (8/3/07).

"Malpractice Liability of Estate-Planning Lawyers," Eleventh Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, S.C. (12/7/06).

"Ethics for Trial Lawyers: How to Avoid Those Hidden Land Mines," S.C.T.L.A. Auto Torts Seminar XXIX, Ritz-Carlton, Buckhead, Atlanta, GA (12/2/06).

"Ethical Issues for the Sports Attorney-Agent: Lessons from *Vortex v. Ware*," International Sport and Entertainment Management Conference, Metropolitan Convention Center, Columbia, SC (11/9/06).

"Ethics in Workers Comp Practice: Negotiation," ASCCAWC Annual Convention, Grove Park Inn, Asheville, NC (11/4/06).

"Probate Judges and Lawyers: Prohibition of *Ex Parte* Communications," Fourteenth Annual Probate Bench/Bar Conference, Columbia, SC (9/15/06).

"The Future Regulation of Lawyer Advertising Under the Proposed S.C. Rules of Professional Conduct," SCTLA Annual Convention, Hilton Head Island (8/4/06).

"Free Speech and Judicial Selection: Implications of *White v. Republican Party*," Southeastern Association of Law Schools, The Breakers Hotel, Palm Beach, FL (7/20/06).

"The New South Carolina Rules of Professional Conduct," Tenth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, S.C. (12/15/05).

"Ethical Use of Discovery Under the Workers' Compensation Act; Contact with Employer Witnesses; Use of Subpoenas in a Workers' Compensation Case; Frivolous Defenses: What to do About Them," ASCCAWC Annual Meeting, Grove Park Inn, Asheville, N.C. (11/4/05).

"Applying the SC Code of Judicial Conduct to Workers' Compensation Commissioners: Lessons for Lawyers Practicing Before the Commission," SCWCEA Educational Conference CLE, Marriott Myrtle Beach Resort (10/24/05).

"The New SC Rules of Professional Conduct: You Really Can't Do THAT Anymore!," SCWCEA Educational Conference, Marriott Myrtle Beach Resort (10/24/05).

"Newly Revised Frivolous Procedures Act & Other Ethical Issues," SCTLA Tort Reform Seminar, Columbia, S.C. (10/14/05).

Moderator and Coordinator, S.C. Corporate Practice Seminar, S.C. Bar CLE, U.S.C. Law School (9/30/05). Speaker: "Ethical Issues in S.C. Corporate Law for the General Practitioner and the Corporate Lawyer:

Ethical Issues Presented by Choices of Control Devices
Ethical Issues Arising from Threats of Owner Liability
The Big Ethical Question: Who Is The Client?"

"The Code of Judicial Conduct: Does It Effect How We Practice Workers' Comp?," S.C. Bar CLE, U.S.C. Law School (8/26/05).

"Ethics Seminar: The New Rules of Professional Conduct," SCTLA Annual Convention, Hilton Head Island (8/5/05).

"Ethics 2000: The New Rules of Professional Conduct — You Can't Do That Anymore!," C.L.E.

Ethics Seminar, Richland County Bar Association (11/5/04).
"Judicial Ethics Review," J.C.L.E. Ethics Seminar, S.C. Court Administration Magistrates' Training Program, Charleston, S.C. (8/18/04).
"The New S.C. Lawyers' Oath," C.L.E. Seminar, S.C. Bar, Charleston, S.C. (6/25/04).
"Judicial Ethics Review," J.C.L.E. Ethics Seminar, S.C. Court Administration Magistrates' Training Program, Columbia, S.C. (4/23/04).
"Ethics 2000 and Lawyers' Fees," C.L.E. Ethics Seminar, S.C. Bar & S.C. Association of Ethics Counsel, Columbia, S.C. (11/15/03).
"The Ethical Implications of *Brown v. Bi-Lo*," S.C. Workers Comp. Educational Ass'n Educational Conference, Kingston Plantation, Myrtle Beach, S.C. (10/20/03).
"Ethics 2000: The New Rules of Professional Conduct & Multi-Jurisdictional Practice of Law," C.L.E. Ethics Seminar, Investors Title Insurance Co. Seminars (9/17/03 Rock Hill, 9/12/03 Hilton Head).
"Ethics 2000: The New Rules of Professional Conduct — You Can't Do That Anymore!," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/8/03).
"Political & Legal Ethics: The Pitfalls to Avoid," C.L.E. Ethics Seminar, S.C. Bar Annual Convention (Young Lawyers Division) (1/24/03).
"Recent Developments in Legal Ethics," C.L.E. Ethics Seminar, S.C. Bar & S.C. Association of Ethics Counsel (12/14/02).
"Current Ethical Issues in Real Estate Practice," C.L.E. Ethics Seminar, Security Title Insurance Company (11/8/02).
"Ethics of Attorney's Fees for Domestic Law Attorneys," C.L.E. Ethics Seminar, S.C. Bar (9/20/02).
"Discovery Abuse and Litigation Ethics," Paralegal Continuing Education Seminar, S.C.T.L.A. Convention (8/3/02).
"Discovery Abuse, Litigation Ethics, Supervision and Other Horrors," C.L.E. Ethics Seminar, S.C.T.L.A. Convention, Hilton Head, S.C. (8/2/02).
"Ethical Issues in Attorney Marketing Under the Amended Rules," C.L.E. Ethics Seminar, S.C. Bar (7/26/02).
"Ethics in the Practice of Criminal Law," C.L.E. Ethics Seminar, S.C. Bar (5/10/02).
"Professional Ethics in the Real World: Communication with Witnesses," C.L.E. Ethics Seminar, Ass'n S.C. Claimants' Attorneys for Workers Comp. (5/3/02).
"Lawyers and Paralegals Practicing Law When and Where They Shouldn't," C.L.E. Ethics Seminar, S.C. Bar and South Carolina Ass'n of Ethics Counsel (12/15/01).
"Proposed Disclosure Rule and Goods Funds Statute in South Carolina,"C.L.E. Ethics Seminar, S.C. Bar (8/17/01).
"Recent Developments in Ethics and Professional Responsibility," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/3/01).
"Ethical Perils for Family Practitioners: Keeping Your License and Keeping Your Practice," C.L.E. Ethics Seminar, S.C. Bar (12/2/00).
"Ethical Issues in Workers Compensation Practice," C.L.E. Ethics Seminar, S.C. Workers' Comp. Educational Ass'n, Kingston Plantation, Myrtle Beach, S.C. (10/23/00).
"The Things That Make Paralegals Indispensable: Technology and the Future of the Practice of Law," Paralegal Continuing Education Seminar, S.C.T.L.A. Convention (8/5/00).
"Recent Developments in Ethics and Professional Responsibility," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/4/00).

"The Internet – Legal Ethics in Cyberspace: Marketing on the Web and Communicating Via Email Under the Rules of Professional Conduct and the Amended South Carolina Rules Governing Advertising," SC Defense Trial Attorney's Association & SC Claim Manager's Association CLE at Grove Park Inn, Asheville, N.C. (7/29/00).

"The Internet – Legal Ethics in Cyberspace: Marketing on the Web and Communicating Via Email Under the Rules of Professional Conduct and the Amended South Carolina Rules Governing Advertising," C.L.E. Ethics Seminar, S.C. Bar (4/28/00).

"The Responsibility of Administrative Law Judges to Control Unethical and Unprofessional Conduct by Lawyers: Ethical Prohibitions, Remedies and Sanctions," ALJ CLE Seminar, Southern States Association of Administrative Law Judges (3/17/00).

"S.C. Appellate Procedure: The New Relationship Between the Supreme Court and the Court of Appeals," Paralegal Continuing Education Seminar, Ass'n S.C. Claimant Attorneys for Workers Comp., Asheville, N.C. (1/22/00).

"Professionalism: Advertising Ethically Under the Amended S.C. Rules of Professional Conduct," C.L.E. Ethics Seminar, S.C. Bar (1/14/00).

"Multi-Jurisdictional Practice of Law: *Pro Hac Vice* Admission and Unauthorized Practice," C.L.E. Ethics Seminar, S.C. Bar (12/11/99).

"Hot Issues in Ethics: Marketing Under the Rules of Professional Conduct and the Amended South Carolina Rules Governing Advertising," C.L.E. Ethics Seminar, S.C. Bar (10/29/99).

"Ethical and Professional Responsibility Issues in Litigation: Discovery Abuse," C.L.E. Ethics Seminar, S.C. Bar and Univ. of South Carolina School of Law (12/12/98).

"Multi-Jurisdictional Practice of Law: *Pro Hac Vice* Admission and Unauthorized Practice," C.L.E. Ethics Seminar, S.C. Bar (12/8/98).

"Discovery Abuse: Bane of Professionalism? Ethical Prohibitions & Court-Ordered Sanctions," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/14/98).

"*Hedgepath* & *McCormick* and the Ethics of Ex-Parte Communication with Treating Physicians," Workers Comp. C.L.E. Seminar, S.C.T.L.A. Convention (8/14/98).

"Legal Ethics for a Multi-State Law Firm," C.L.E. for a Major S.C. Law Firm (8/8/98).

"Prudent Ethical Conduct after *Hedgepath*," Medical Staff, McLeod Hospital, Florence, S.C. (4/6/98).

"What is the Effect of *Hedgepath* on Doctors' Duties to Workers' Comp Patients?" S.C. Workers Comp. Educational Ass'n Annual Meeting, Charleston, S.C. (2/22/98).

"Confidentiality, Privilege, and the Attorney as Witness, Gossip, or Snitch," C.L.E. Ethics Seminar, S.C. Bar and Univ. of South Carolina School of Law (1/10/98).

"Law Firm Breakups and Departing Lawyers," C.L.E. Ethics Seminar, S.C. Bar and University of South Carolina School of Law (12/13/97).

"*Hedgepath* & Lawyers' Professional Conduct: Implications in Workers' Compensation Proceedings," C.L.E. Seminar, The Association of South Carolina Claimant Attorneys, Asheville, N.C. (11/14/97).

"Ethics: Judicial Immunity for Administrative Law Judges," J.C.L.E. Seminar, Chief Administrative Law Judges Conference, Charleston, SC (11/6/97).

"*Hedgepath* and the Rules of Professional Conduct: Who Can We (and They) Talk to Now?" C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/15/97).

"Ways to Get in Trouble: Old and New," C.L.E Ethics Seminar, U.S.C. School of Law (12/7/96).

"Ethics for the Modern Lawyer on the Information Superhighway," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/9/96).

"Mobile Lawyers and Mobile Clients," C.L.E Ethics Seminar, U.S.C. School of Law (12/95).

"Constitutional Restrictions on Regulation of Lawyer Advertising," House of Delegates, S.C. Bar(1/21/94).
"Ethical Issues Facing Law Firms," C.L.E. Seminar, University of South Carolina School of Law (1/9/93).
"Ethical Issues in Office Practice," C.L.E. Seminar, University of South Carolina School of Law (12/5/92).
"Lawyer Television Advertising: A Video Presentation," U.S.C. Law School Faculty Ethics C.L.E. (10/22/92).
"The Ethical Dilemma of Corporate Counsel," C.L.E. Seminar, Farm Credit Sys. General Counsels Conference (10/7/92).
"Lawyer Advertising-The Great Debate," Moderator, C.L.E. Ethics Seminar, S.C.T.L.A. Conv. (8/14/92).
"Civil Litigation," in Ethical Issues in Litigation, C.L.E. Seminar, University of South Carolina School of Law (1/11/92).
"Shareholders' Rights in Disputes with a Corporation and those in Control," in Planning for Business Corporations: A Guide for General Practitioners, C.L.E. Seminar (1/3/92).
"Ethical Issues in Civil Litigation," Legal Ethics and Professional Responsibility, C.L.E. Seminar (12/6/91).
"A Walk Through the New South Carolina Rules of Professional Conduct," C.L.E., U.S.C. School of Law (1/12/91).
"Corporate Litigation and Liabilities of Corporations, Directors, Officers, and Shareholders after the 1988 Revision of the South Carolina Business Corporation Act," in Current Issues in Civil Litigation, a C.J.E. Seminar (4/14/89).
"Fundamental Corporate Changes and Dissenters' Rights under the South Carolina Business Corporation Act of 1988," in The New South Carolina Corporation Act, C.L.E. Seminar (12/16/88).

Amicus Curiae Briefs Drafted

Ex Parte Strom, in re Collins Entertainment Corp. v. Columbia "20" Truck Stop, 343 S.C. 257, 539 S.E.2d 699 (2000) (establishing that attorney's duties to client continued until court granted motion relieving attorney as counsel of record).
Linder v. Insurance Claims Consultants, 348 S.C. 477, 560 S.E.2d 612 (2002) (on behalf of the S.C.Bar, clarifying scope of activities constituting the practice of law).
Brown v. Bi-Lo, 354 S.C. 436, 581 S.E.2d 836 (2003) (on behalf of the S.C. Trial Lawyers Association, protecting the confidentiality of physician-patient relationship).

University and Community Service

Parliamentarian, University of South Carolina School of Law Faculty, 2004-2007, 2008-2014.
Member, Dean Review Committee for the Dean of the College of Criminal Justice, 2003.
Member, Faculty Manual Revision Committee, Faculty Senate, University of South Carolina, 1998-1999.
Parliamentarian, University of South Carolina Faculty, 1997-2004.
Member, Steering Committee, University of South Carolina Faculty Senate, 1997-2004.
Faculty Senator, University of South Carolina, 1983-1985, 1995-1998, 2000-2003.
Faculty Advisor, ABA National Appellate Advocacy Competition Team, University of South Carolina School of Law, 1995-1996.
Faculty Advisor, ABA National Appellate Advocacy Competition Team, University of South Carolina School of Law, 1982-1983 (winner Regional Competition).
Faculty Advisor, National Moot Court Team, University of South Carolina School of Law, 1980-1981.
Committee Chairman, BSA Troop 788, St. David's Episcopal Church, Columbia, SC 1996-2003.
Scoutmaster & Founder, BSA Troop 788, St. David's Episcopal Church, Columbia, SC 1992-1996.
Assistant Scoutmaster, Committee Chairman, Committee Member, BSA Troop 388, Windsor United Methodist Church, Columbia, SC 1986-1992.
Junior Warden, Vestry, St. David's Episcopal Church, Columbia, SC 1984-1987.
Chorister, Good Shepherd Episcopal Church, Columbia, SC 1999-2004.
Chorister, St. David's Episcopal Church, Columbia, SC 1984-1998.
Chairman, Christian Education Committee, St. Michael and All Angels Episcopal Church, Columbia, SC 1981-1983.
President, Richland Northeast High School P.T.S.O., Columbia, SC 1992-1997.
Member, Richland School District Two Strategic Planning Committee, Columbia, SC 1995-96.
Member, Richland School District Two Ridge View High School Planning Committee, Columbia, SC 1993-1994.

From: Berry, Bridget (Shld-WPB-LT)
nt: Wednesday, October 19, 2016 11:59 AM
.o: George Scott
Cc: Whitfield, Dawn (Secy-WPB-LT)
Subject: REVISED proposed email to Hornbach

Bridget A. Berry
Shareholder
Greenberg Traurig, P.A. | 777 S. Flagler Drive, Suite 300 East | West Palm Beach, FL 33401
Tel 561.650.7912 | Fax 561.655.6222 | Cell 786.609.6655
BerryB@gtlaw.com | www.gtlaw.com

GT GreenbergTraurig

From: Berry, Bridget (Shld-WPB-LT)
Sent: Wednesday, October 19, 2016 10:55 AM
To: 'George Scott'
Cc: Whitfield, Dawn (Secy-WPB-LT)
Subject: FW: Dr. Takigiku
Importance: High

Proposed response:

Jeff,

ıank you for your email. Charleston is certainly open to discussion and will consider any proposal you may make, but Charleston's effort is to resolve all issues with Dr. Takigiku and SIDIS and Prime DP, because the facts of which we are all aware show that they are inextricably intertwined, and that it would not make business sense to resolve some but not all issues. For example, you ask whether Takigiku could accept a "walk away" deal, even if SIDIS/Prime DP reject the offer.

In our minds, a resolution with Dr. Takigiku relating to his appeal of the judgment entered by the United States District Court, Southern District of Florida relating to Dr. Takigiku's purported assignment of an interest by Dr. Takigiku to SIDIS of Dr. Takigiku's interest in Charleston stock involves a resolution with SIDIS, Prime DP and John Ameling relating to any purported assignment of an interest by John to SIDIS/Prime DP of John's interest in Charleston stock. Among other things, Dr. Takigiku at all relevant times was a close friend of Nigel Ferrey, the founder, Chairman of the Board, and CEO of SIDIS, and, at one time, the CEO of Prime DP. Dr. Takigiku has also been a director of SIDIS, a founder of Prime DP, and an owner of both SIDIS and Prime DP. Dr. Takigiku is likely to be a material witness in any litigation with SIDIS, as is his "common law wife" Margaret van Gilse, and his friend Charlie LeCroix, both of whom have been principals and/or directors of both SIDIS and Prime DP.

We can't imagine that SIDIS would not join in a resolution. We agree with your observation that the purported agreement between Mr. Ameling and SIDIS/Prime DP is probably a non-issue, given representations by Dr. Takigiku that his purported transfer of an interest in Charleston stock to SIDIS was unenforceable; the decision of the United States District Court, Southern District of Florida; Nigel Ferrey's declaration that SIDIS has no interest in Charleston; and our understanding from John that he agrees that any agreement with SIDIS relating to Charleston stock is unenforceable.

We welcome the opportunity to discuss further.

Bridget

.idget A. Berry
Shareholder
Greenberg Traurig, P.A. | 777 S. Flagler Drive, Suite 300 East | West Palm Beach, FL 33401

DEFENDANT'S EXHIBIT 28

PL-0054130

Tel 561.650.7912 | Fax 561.655.6222 | Cell 786.609.6655
BerryB@gtlaw.com | www.gtlaw.com

GreenbergTraurig

From: Jeff Long [mailto:jlong@braylong.com]
Sent: Tuesday, October 18, 2016 7:18 AM
To: Berry, Bridget (Shld-WPB-LT)
Subject: Dr. Takigiku
Importance: High

Bridget:

In discussing your offer with Dr. Takigiku he asked for a point of clarification: Is the offer "all or nothing"? By that he means, must SIDIS/Prime DP and Takigiku all accept the terms to "walk away" or (for instance) could Dr. Takigiku reach a resolution with Charleston if SIDIS/Prime DP reject the offer? Please let me know at you earliest convenience.

Jeff Long

Jeffrey A. Long, Esq.
Bray & Long, PLLC
ɲquil Court
2820 Selwyn Avenue, Suite 400
Charlotte, North Carolina 28209
Direct: (704) 790-5522
Phone: (704) 523-7777
Fax: (704) 523-7780
Email: jlong@braylong.com
Web: www.braylong.com
Trusted. Skilled. Experienced.

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. This message may be an attorney-client communication and as such is PRIVILEGED and CONFIDENTIAL. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, this serves as notice to you that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please delete the original message and any attachments, as well as all copies thereof, and notify me immediately via e-mail at jlong@braylong.com or by telephone at (704) 523-7777. Thank you.

IRS CIRCULAR 230 NOTICE: To ensure compliance with the requirements of IRS Circular 230, we inform you that any U.S. tax advice contained in this communication or attachment hereto is not intended or written to be used and cannot be used for the purpose of avoiding penalties under the Internal Revenue Code or for promoting, marketing or recommending to another party any transaction or matter addressed in this communication or attachment.

Message

From: Berry, Bridget (Shld-WPB-LT) [/O=GTLAW/OU=WPB/CN=RECIPIENTS/CN=BERRYB1]
Sent: 11/18/2016 5:54:46 PM
To: Tony.Hornbach@ThompsonHine.com; jlong@braylong.com; Charlie Bridgmon (CBridgmon@braylong.com) [CBridgmon@braylong.com]
CC: Thomson, Jennifer (Para-WPB-LT) [/O=GTLAW/OU=WPB/cn=Recipients/cn=THOMSONJ]; Kane, Robert R. (Assoc-WPB-LT) [/O=GTLAW/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Kane, Robert R. (Assoc-WPB-LT)508]; Whitfield, Dawn (Secy-WPB-LT) [/O=GTLAW/OU=WPB/cn=Recipients/cn=WilliamsD]
Subject: 2016-11-18 Charleston/Proposed Global Settlement

Tony, Charlie and Jeff,

As Tony requested during our settlement conference yesterday, and after consulting with Charleston's management, Charleston's proposed global resolution would include the following, and all parties would have to agree, in their individual and representative capacities, to the following:

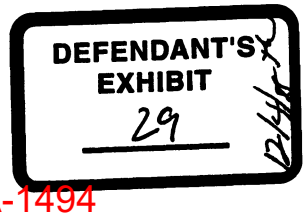
1. Upon full execution and delivery of the agreements and releases described below, dismissal, with prejudice, of the following, with each party to bear its own fees and costs as applicable:

   - Charleston Laboratories, Inc. v. Raymond Takigiku, Case No. 16-16510, 11th Circuit Court of Appeals;
   - Charleston's Verified Motion for Award of Non-Taxable Costs, Case No. 9:15-cv-81694-JIC, USDC, Southern District of Florida, DE 161($23,482.96 value to Charleston);
   - Charleston's Motion to Tax Costs, Case No. 9:15-cv-81694-JIC, USDC, Southern District of Florida, DE 155 ($17,232.44 value to Charleston);
   - Charleston v. SIDIS etc. et al, Case No. 2:16-cv-00195-DLB-JGW, USDC, Eastern District of Kentucky (seeking in excess of $100,000 in damages, plus all profits gained by use of Charleston's name, statutory damages and attorney's fees); and
   - Charleston v. Ameling et al, Case No. 2:16-cv-00200-WOB-JGW, USDC, Eastern District of Kentucky.

2. An agreement to be executed between all parties, together with releases, and a statement, which statement is to be also posted on each company's website, and sent to the shareholders of each company (with copies and an affidavit of delivery to opposing counsel), and sent to Soapbox (with a mutual request of retraction of contrary information), all to the effect that:

   - SIDIS Corp, LLC, a/k/a SIDIS Corp, and all of its affiliates including, without limitation, SIDIS PS, LLC, BioLOGIC Corp LLC, Prime DP, LLC, and Bexion Pharmaceeuticals, LLC (collectively, "SIDIS") does not have, and has never had, directly or indirectly:
     - any equity in or interest in the equity of Charleston;
     - any equity interest in Charleston held by any Charleston stockholder, including, without limitation, John Ameling and Ray Takigiku;
     - a partnership with; and/or
     - any other contractual relationship with Charleston Laboratories, Inc. or any of its subsidiaries or affiliates (collectively, "CLI").

   - CLI is not, and has never:
     - been a client of,
     - been a development company of, or



- had any strategic relationship with SIDIS; and

- SIDIS has made no contribution to, and has or had no responsibility for, CLI's business (including without limitation, any of its research and development related to its products, including, without limitation, CL-108).
- Without limiting the generality of the foregoing, Dr. Ray Takigiku was employed by Charleston Laboratories, Inc. from May 2008 to March 2010.
- Without limiting the generality of the foregoing, any agreement between SIDIS and John Ameling in any way relating to Charleston or Charleston equity or any interest in the stock or proceeds of stock of Charleston, including, without limitation, the Settlement Agreement, is void and unenforceable.

- SIDIS is to pay CLI $100,000 to replace known funds diverted from Charleston to SIDIS.

Please call me once you have had an opportunity to consider the foregoing. In any event, I would like to schedule a call by Wednesday, prior to Thanksgiving.

Thank you,

Bridget

Bridget A. Berry
Shareholder
Greenberg Traurig, P.A. | 777 S. Flagler Drive, Suite 300 East | West Palm Beach, FL 33401
Tel 561.650.7912 | Fax 561.655.6222 | Cell 786.609.6655
BerryB@gtlaw.com | www.gtlaw.com



MUTUAL SETTLEMENT AGREEMENT AND RELEASE

THIS MUTUAL SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is made and entered into by and between: 1) CHARLESTON LABORATORIES, INC. ("CL") and LOCL PHARMA, INC. ("LOCL") (CL and LOCL, together the "Company" or "Charleston"); and 2) RAY TAKIGIKU ("Takigiku") effective as of January 13, 2017 (the "Effective Date"). The Company and Takigiku may be referred to herein, collectively, as the "Parties" or singularly as a "Party."

WHEREAS, a dispute arose between CL and Takigiku regarding ownership of common stock of CL by Takigiku, specifically those two hundred ten (210) shares (four hundred and twenty thousand (420,000) shares post-split) issued to Takigiku by CL in or around May 2008 (the "Shares") pursuant to the Stockholders Agreement dated as of May 30, 2008 and the Stock Restriction Agreement dated as of May 30, 2008, entered into between CL and Takigiku, among others; and

WHEREAS, on or about November 6, 2015, CL filed a Complaint for Declaratory Relief in the Circuit Court of the 15th Judicial Circuit, in and for Palm Beach County, Florida, captioned as *Charleston Laboratories, Inc., a Delaware Corporation, vs. Dr. Raymond Takigiku, an individual*, Case No. 2015-CA-012516-xxxx-MB (the "Stock Declaratory Judgment Action"), in which CL sought, among other things, a declaration that CL was the true, sole owner of the Shares; that Takigiku had no rights related to the Shares; and that Takigiku had no right to inspection of the books and records of CL; and

WHEREAS, on or about December 11, 2015, Takigiku filed his Notice of Removal, removing the Stock Declaratory Judgment Action to the United States District Court for the Southern District of Florida, West Palm Beach Division; and

WHEREAS, on or about December 14, 2015, Takigiku filed his Answer, Affirmative Defenses, and Counterclaim to Plaintiff's Amended Complaint, in which Takigiku sought, among other things, a declaration that Takigiku was the rightful owner of the Shares (the "Counterclaim"); and

WHEREAS, on or about September 13, 2016, the District Court entered its Order on Motions for Summary Judgment [DE 152], wherein the Court granted summary judgment in favor of CL, and then entered Final Judgment in favor of CL [DE 153]; and

WHEREAS, on or about October 5, 2016, Takigiku filed his Notice of Appeal to the United States Court of Appeals for the Eleventh Circuit (the "Appeal"); and

WHEREAS, on or about December 19, 2016, the District Court entered its Amended Order on Motion to Tax Costs [DE 171] (the "Taxable Cost Order") wherein the Court granted CL's post-judgment motion and awarded CL $7,751.00 in taxable costs from Takigiku; and

WHEREAS, on or about November 11, 2016, CL filed its post-judgment Verified Motion for Award of Non-Taxable Costs and Expenses [DE 161] (the "Non-Taxable Cost Motion"), on which the Court has not yet ruled; and

DEFENDANT'S EXHIBIT 30

WHEREAS, the Parties have resolved any and all disputes between them directly related to the Stock Declaratory Judgment Action; the Counterclaim; the Appeal; and the Taxable Cost Order, as described above, and desire by this Agreement to memorialize their settlement in writing; and

WHEREAS, the Parties wish to resolve their differences to avoid the expense of continued litigation related to the Shares, and they seek to achieve peace relating to the Shares; and

WHEREAS, the Parties hereinafter agree to dismissal of the Appeal and dismissal of the Non-Taxable Cost Motion and satisfaction of the Taxable Cost Order, **with prejudice;** notwithstanding the foregoing, it is **not** the intent of the Parties to resolve their differences, compromise or release any claims or defenses, limit or release or waive CL's or Takigiku's rights or remedies, or in any way by this Agreement affect that litigation currently pending between CL and Takigiku, among others, in the Eastern District of Kentucky at Covington, Case No. 16-195-DLB-JGW, and it is **not** the intent of the Parties to resolve their differences, compromise or release any claims or defenses, limit or release or waive CL's or Takigiku's rights or remedies, or in any way by this Agreement affect that litigation currently pending between CL and others in the Eastern District of Kentucky at Covington, Case No. 16-200-WOB-JGW (Case No. 16-195-DLB-JGW and 16-200-WOB-JGW referred to hereinafter collectively as the "Kentucky Litigation"), and specifically, this Agreement is not intended to and the Parties expressly and specifically agree that this Agreement does not resolve or settle either the Company's claims or Takigiku's claims or limit or release or waive the Company's or Takigiku's rights or remedies except as specifically and expressly set forth herein; and

WHEREAS, without limiting the generality of the foregoing, the Parties expressly intend that this Agreement does not resolve or settle the Company's or Takigiku's claims or defenses or limit or release or waive the Company's or Takigiku's rights or remedies against any person or entity, including each other, related to the Company or Takigiku, including, without limitation, any principals, agents, representatives, predecessors, successors or assigns, pending in the Kentucky Litigation; and

WHEREAS, the Parties further intend that (1) the "Kentucky Litigation" shall be deemed to include any claim or defense or right or remedy, whether or not asserted as of the date of this Agreement, that may rely on, be dependent on, and/or that the elements of which are facts (whether or not disputed) related to Takigiku's employment with the Company and/or Takigiku's and/or the Company's actions during and related to Takigiku's employment with the Company (including, without limitation, any attempted or purported transfer of the Shares by Takigiku, whether or not in violation of such Shares' restrictions, and whether or not pursuant to the Heads of Agreement dated November 13, 2008 or Equity Transfer Agreement dated February 4, 2009, or otherwise, and/or any disclosure or transfer of Company confidential information by Takigiku, whether or not in violation of the Confidential Information & Invention Assignment Agreement executed by Takigiku on September 23, 2008 (the "CIIAA"), (2) any and all such claims or defenses included in the Kentucky Litigation are not waived, released, resolved or settled pursuant to this Agreement, (3) any removal, change in venue, and/or jurisdiction of the

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Kentucky Litigation shall have no effect on the fact that any and all such claims or defenses included in the Kentucky Litigation are not waived, released, resolved or settled pursuant to this Agreement, and (4), for the purposes of clarity, any (x) claim or defense or position that is in contradiction to, inconsistent with, or otherwise could have the effect of undermining the Motions Order (as defined in Section 5 a) i)(A)) and/or the Final Judgment (as defined in Section 5 a) i) (A)) and/or (y) employment-related claim, as described in Sections 5 a)(i) and 5 b)(i), and/or claim by Takigiku to have any interest in Company Equity Interests (as defined in Section 5 a)(i)) shall not be included in the Kentucky Litigation and is hereby released and forever waived in this Agreement.

NOW, THEREFORE, for and in consideration of the promises and the covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereto agree as follows:

1. **Payment**.

In consideration for the mutual releases herein, dismissal with prejudice of the Appeal, and the promises contained in this Agreement, CL agrees to deliver by wire transfer into the Trust Account of Takigiku's attorneys, Bray & Long, PLLC, within five (5) business days of the full execution of this Agreement the total amount of Two Hundred and Fifty Thousand Dollars ($250,000) (the "**Payment**"), which CL will report in accordance with CL's customary practices in effect from time to time.

The Parties agree Takigiku shall be solely and wholly responsible for any tax consequences associated with the Payment. It is acknowledged and agreed by Takigiku that neither the Company nor its attorneys have expressed any opinion or made any representations concerning any tax consequences associated with the Payment, and that Takigiku will seek advice from his own tax counsel or advisors relating to such consequences or obligations.

2. **Withdrawal or Satisfaction of Post-Judgment Motions**.

Upon full execution of this Agreement, the Parties shall submit to the United States District Court for the Southern District of Florida a stipulation whereby any and all Post-Judgment Motions are irrevocably withdrawn with prejudice, and the Court's Taxable Cost Order is deemed satisfied in full, with each side to bear its own attorneys' fees and costs incurred relating to post-judgment matters, and with the Court retaining jurisdiction with respect to the terms of this Agreement.

For clarity, the purpose of this provision is to provide to Takigiku the benefit of the Company's release of the Company's claim for $23,482.96 in costs as set forth in the Company's Verified Motion for Award of Non-Taxable Costs and Expenses [DE 161], and the Company's right to recover a total of $7,751.00 in taxable costs from Takigiku, plus interest, as set forth in the Taxable Cost Order [DE 171], and to avoid and resolve any future appeals by Takigiku relating to Case No. 15-81694.

The Parties agree that withdrawal or satisfaction of post-judgment matters shall in no way constitute cancellation of a debt owed by Takigiku, but rather, that these items are included as

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part of the consideration for entry into this Agreement. Neither the Company nor its attorneys have expressed any opinion or made any representations concerning any tax consequences associated with the withdrawal or satisfaction of post-judgment matters, and Takigiku will seek advice from his own tax counsel or advisors relating to any such consequences or obligations.

3. Dismissal With Prejudice of the Appeal.

Upon full execution of this Agreement and delivery of Payment into the Bray & Long Trust Account, the Parties shall submit to the United States Court of Appeals for the Eleventh Circuit, in accordance with Fed. R. App. P. 42(b) and 11th Cir. R. 42-1(a), a joint motion to dismiss with prejudice the Appeal, with each side to bear its own attorneys' fees and costs incurred in the Appeal, and the Parties shall take such other and further action as may be required to dismiss the Appeal with prejudice. Bray & Long shall not disburse Payment until the Appeal has been dismissed with prejudice and any other conditions precedent have been fulfilled.

4. Return of Property.

Save and except for documents produced or obtained in the Stock Declaratory Judgment Action, which shall be disposed of in accordance with the Consent Protective Order entered by the Court on March 14, 2016 [DE 27], Takigiku represents that he has delivered to the Company or destroyed (erased) all documents (including, without limitation, any electronically stored information) containing Confidential Information of the Company and any other tangible or intangible property of the Company, including without limitation, keys, phones, computers and equipment.

5. Releases by each Party.

By Takigiku:

a) Without intending to limit in any manner the Parties' claims and/or defenses and/or rights and/or remedies in the Kentucky Litigation (as further defined by reference to the WHEREAS clauses of this Agreement, which are expressly incorporated herein by reference), and provided that Takigiku does not release CL from any covenants made by CL in this Agreement upon execution of this Agreement by CL, Takigiku, for himself and his successors, assigns, affiliates, agents, servants, attorneys, heirs, administrators, executors, grantees, insurers, and legal representatives (collectively, the "**Takigiku Releasors**"), hereby releases, remises, acquits, and forever discharges the Company, together with its successors, assigns, affiliates, agents, servants, attorneys, heirs, administrators, executors, grantees, insurers, employees, and legal representatives, including, but not limited to, G. Paul Bosse III; Ryan Baker; John F. Ameling; Bernard Schachtel; Chris Godwin; George Scott; Womble Carlyle Sandridge & Rice LLP and its attorneys, past and present; Greenberg Traurig and its attorneys, past and present; and Wilson Sonsini Goodrich & Rosati, P.C. and its attorneys, past and present (hereinafter, jointly and severally, the "**Released Company Parties**") of and from any and all claims, actions, causes of action, suits, debts, rights, demands, damages, losses, and expenses of whatever kind and nature (including, but not limited to, claims for wages (including, without limitation, any compensation or bonus or expenses or benefits), liquidated damages, economic damages, damages for pain, suffering, mental distress or any other compensatory damages, punitive

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damages, consequential losses or damages, equitable relief, costs, expenses, attorneys' fees, expert witness fees, interest and penalties of any kind and every nature whatsoever), known or unknown, for or relating to any claim, counterclaim, cross-claim, and/or issue directly or indirectly related to the Shares or his employment with the Company.

i) Without limiting the general releases and discharges provided in Section 5.a), Takigiku represents to the Company, as a material inducement to the Payment described in Section 1 above, that (A) the Order on Motions for Summary Judgment entered in Case No. 15-81694 [DE 152] (the "Motions Order") remains in full force and effect, as does the Final Judgment [DE 153] (the "Final Judgment"); (B) Takigiku's employment with the Company (or any affiliated entity) was terminated in March 2010, and any rights or remedies he may have had relating thereto have been forever extinguished and are forever and irrevocably barred by applicable limitation periods; and (C) any rights Takigiku may have or may have had pursuant to the Shares or any shares or stock issued by the Company (or any affiliated entity), including, without limitation, any right to any gain, vote, dividends or interest of any kind (any existing on or prior to the Effective Date of this Agreement, individually and collectively, "**Company Equity Interests**") were purchased or repurchased by the Company, expired and/or were terminated by the Company in March 2010 pursuant to the Stockholders Agreement. Without limiting the foregoing, the general release in Section 5.a) *includes, but is not limited to*, any employment-related claim, whether asserted as a claim, an affirmative defense, or in any other manner or in any forum, for any employment-related salary, pay, wages, bonuses, severance pay, vacation pay, benefits, stock, options or equity, and any claims arising under any and all applicable statutes regulating the terms and conditions of Takigiku's employment, including, without limitation, and if and as applicable, the laws of the State of Delaware, Florida, South Carolina, Kentucky or Ohio, and any federal, state, or local law, statute, regulation, ordinance, common law or equitable theory, regulation or ordinance, (including any claims for wrongful discharge, slander, libel, unintentional or intentional torts, for emotional distress and for pain and suffering or otherwise), and any and all claims for damages of any kind whatsoever, including without limitation compensatory, punitive, treble, liquidated and/or consequential damages; any and all claims for attorneys' fees, costs, disbursements, wages, bonuses, benefits, vacation and/or the like or under any policy, agreement, understanding or promise, written or oral, formal or informal, between the Company (or any affiliated entity) and Takigiku, including, without limitation, any claim for severance, termination or severance pay pursuant to any Company (or any affiliated entity) severance policies or practices as from time to time in effect, or otherwise, and also specifically including any claim Takigiku ever may have had or have with respect to any Company Equity Interests, including any claims arising under any securities laws or regulations, and any consumer or employee protection laws. For clarity, Takigiku (on behalf of himself and the other Takigiku Releasors) hereby forever and irrevocably waives and forfeits any and all Company Equity Interests.

Takigiku further releases and absolutely discharges the Company of any obligation or duty whatsoever and however arising to indemnify or defend or reimburse or advance fees or costs to Takigiku relating to any matter, cause, fact, thing, act, event or omission occurring or existing at any time up to and including the Effective Date. Notwithstanding the foregoing, the Company acknowledges that Takigiku is identified as the inventor or co-inventor on one or more of the patents held by the Company or its affiliates. To the extent necessary, the Company will continue to defend and indemnify Takigiku with respect to these patents.

RJ

RJ