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

Charleston Laboratories, Inc.,

vs.

Womble, Carlyle, Sandridge & Rice, LLP,

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SC Court of Appeals

RECORD ON APPEAL

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TRANSCRIPTS (continued)

11. Continued Transcript and Exhibits from the March 13, 2019 Deposition of Gregory Adams 2001

12. Transcript and Exhibits from the Deposition of Bridget Berry dated April 14, 2019 2024

13. Transcript and Exhibits from the July 18, 2019 Deposition of Paul Bosse 2355

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.

ROA-2001

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.

ROA-2002

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.

ROA-2003

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.").

ROA-2004

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.

ROA-2006

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

ROA-2007

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

ROA-2008

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

ROA-2009

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,

ROA-2010

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.

ROA-2011

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-2012

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To: Dr. Gregory B. Adams dr.g.b.adams@icloud.com
Cc: Eric S. Bland ericbland@blandrichter.com, Scott Mongillo Scott@blandrichter.com, Lisa M. Lescord Lisa@blandrichter.com

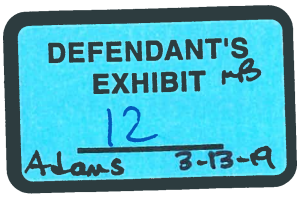


I'll call you this morning

Get Outlook for iOS

On Thu, Jul 6, 2017 at 10:54 PM -0400, "Dr. Gregory B. Adams" <dr.g.b.adams@icloud.com> wrote:

> Still waiting for the answer to the question we discussed.
>
> *Greg*
> Dr. Gregory B. Adams
> 1154 Sea Eagle Watch
> Charleston, SC 29412-8249
> Dr.G.B.Adams@iCloud.com
> 843.324.8221
>
> On Jul 5, 2017, at 9:42 AM, Ronnie Richter <Ronnie@blandrichter.com> wrote:
>
> > Greg. Are you stopping by this morning with the affidavit
> >
> > Get Outlook for iOS



From: **Dr. Gregory B. Adams** dr.g.b.adams@icloud.com
Subject: Re: Charleston Laboratories - Requested documents
Date: March 5, 2019 at 11:24 AM
To: Larry Blackmer LBlackmer@blandrichter.com
Cc: Eric S. Bland ericbland@blandrichter.com, Ronald L. Richter Jr. Ronnie@blandrichter.com, Scott Mongillo Scott@blandrichter.com, Lisa M. Lescord Lisa@blandrichter.com, Mary Ellen F. Shirley MEFShirley@blandrichter.com



Larry,
Thanks for following up. I had not seen your original email because my mail program labeled it as junk. I have downloaded the zip file from Dropbox and unzipped it. The files open fine and are not corrupted. You appear to have sent everything I requested.
Thanks,
Greg

DR. GREGORY B. ADAMS
1154 Sea Eagle Watch, Charleston, SC 29412
Dr.G.B.Adams@iCloud.com
843.324.8221 (mobile)

> On Mar 5, 2019, at 10:48 AM, Larry Blackmer <LBlackmer@blandrichter.com> wrote:
>
> Dr. Adams,
>
> I am following up to confirm that you have received the link and to ask whether you successfully downloaded and extracted the files.
>
> Please advise.
>
> Larry
>
> **From:** Larry Blackmer <LBlackmer@blandrichter.com>
> **Sent:** Monday, March 4, 2019 1:43 PM
> **To:** dr.g.b.adams@icloud.com
> **Cc:** Eric S. Bland <ericbland@blandrichter.com>; Ronnie Richter <Ronnie@blandrichter.com>; Scott Mongillo <Scott@blandrichter.com>; Lisa M. Lescord <Lisa@blandrichter.com>; Mary-Ellen Shirley <MEFShirley@blandrichter.com>
> **Subject:** Charleston Laboratories - Requested documents
>
> Dr. Adams,
>
> Please find a link to a ZIP file containing the documents you requested via voicemail this morning

DEFENDANT'S EXHIBIT MB 13 Adams 3-13-19

this morning.

Please confirm when you have downloaded and successfully extracted the files.

Thank you!

Larry

https://www.dropbox.com/s/secpzipvbre9ffx/2019-03-04%20Docs%20to%20Dr%20Adams.zip?dl=0

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Gregory B. Adams

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July 8, 2017

Ronald L. Richter, Esq.
Bland Richter, L.L.P.
The Peoples Building
Mezzanine Level
18 Broad Street
Charleston, SC 29401

RE: Charleston Laboratories, Inc. v. WCSR
Invoice # 01760

STATEMENT FOR SERVICES RENDERED

April 17, 2017 – July 8, 2017

Expert Witness Services	Telephone consultation, email correspondence, document and pleading review, case review and analysis, research, expert opinion formulation, expert opinion affidavit drafting, execution, and delivery.	$11,430.00
	Total Time 19:03 @ $600.00/ hour	
Expenses	None	$ 0.00

TOTAL DUE **$ 11,430.00**

terms: Payment in Full in 10 Days
Thank You

DEFENDANT'S EXHIBIT MB 14 Adams 3-13-19

DETAILS

Date	Hours	Amount	Category	Notes
7/8/17	0:31	$310.00	Document Review	
7/7/17	0:07	$70.00	Email	RLRjr
7/7/17	0:52	$520.00	Affidavit Drafting	
7/7/17	0:02	$20.00	Email	RLRjr
7/7/17	0:10	$100.00	Email	RLRjr
7/7/17	3:00	$1,800.00	Affidavit Drafting	
7/7/17	1:09	$690.00	Affidavit Drafting	
7/7/17	0:03	$30.00	Phone Call	RLRjr
7/7/17	0:41	$410.00	Affidavit Drafting	
6/30/17	0:07	$70.00	Phone Call	RLRjr
6/30/17	0:17	$170.00	Affidavit Drafting	
6/30/17	0:08	$80.00	Phone Call	ESB
6/30/17	0:38	$380.00	Document Review	
6/29/17	0:23	$230.00	Affidavit Drafting	
6/29/17	0:37	$370.00	Document Review	
6/29/17	0:47	$470.00	Affidavit Drafting	
6/29/17	0:02	$20.00	Phone Call	LML
6/29/17	0:02	$20.00	Phone Call	LML
6/29/17	0:11	$110.00	Affidavit Drafting	
6/29/17	0:55	$550.00	Affidavit Drafting	
6/29/17	0:03	$30.00	Email	ESB
6/29/17	0:22	$220.00	Affidavit Drafting	
6/29/17	0:03	$30.00	Email	RLRjr
6/29/17	0:27	$270.00	Document Review	
6/29/17	0:13	$130.00	Case Review	
6/14/17	0:06	$60.00	Email	RLRjr
6/14/17	0:38	$380.00	Document Review	
6/14/17	0:11	$110.00	Document Review	
6/14/17	0:04	$40.00	Email	RLRjr
6/14/17	0:21	$210.00	Phone Call	RLRjr
6/14/17	0:10	$100.00	Case Review	

6/14/17	0:58	$580.00	Case Review	
6/9/17	0:04	$40.00	Email	RLRjr
6/8/17	0:05	$50.00	Email	RLRjr
6/5/17	0:04	$40.00	Email	GS, ESB
5/30/17	0:09	$90.00	Email	GS
5/25/17	0:23	$230.00	Document Review	
5/25/17	0:05	$50.00	Email	RLRjr
4/20/17	2:20	$1,400.00	Meeting	RLRjr, SM
4/20/17	0:12	$120.00	Document Review	
4/20/17	0:35	$350.00	Case Review	
4/18/17	0:03	$30.00	Email	RLRjr
4/18/17	0:12	$120.00	Email	RLRjr
4/18/17	0:11	$110.00	Case Review	
4/17/17	0:14	$140.00	Email	ESB
4/17/17	0:08	$80.00	Phone Call	ESB
Totals	**19:03**	**$11,430.00**		

Gregory B. Adams

1154 Sea Eagle Watch, Charleston, SC 29412-8249

Tel: 843.324.8221 *Email: dr.G.B.Adams@iCloud.com*

August 22, 2017

Eric S. Bland, Esq. sent via email only: EricBland@BlandRichter.com
Ronald L. Richter, Esq. sent via email only: ronnie@blandrichter.com
Bland Richter, L.L.P.
Columbia & Charleston, SC

RE: Charleston Laboratories, Inc. v. WCSR
Invoice # 01760 - balance due

STATEMENT FOR SERVICES RENDERED

April 17, 2017 – July 8, 2017

Expert Witness Services	Telephone consultation, email correspondence, document and pleading review, case review and analysis, research, expert opinion formulation, expert opinion affidavit drafting, execution, and delivery.	$11,430.00
	Total Time 19:03 @ $600.00/ hour	
Expenses	None	$ 0.00

TOTAL INVOICED	**$ 11,430.00**
LESS AMOUNT PAID 8/8/17 CHECK 4478	**- 10,000.00**
BALANCE DUE	**$ 1,430.00**

terms: Payment in Full in 10 Days
Thank You

Gregory B. Adams

1154 Sea Eagle Watch, Charleston, SC 29412-8249

Tel: 843.324.8221 *Email: dr.G.B.Adams@iCloud.com*

January 15, 2019

Ronald L. Richter, Jr., Esq. *Via Email Only:* ronnie@blandrichter.com
Eric S. Bland, Esq. *Via Email Only:* ericbland@blandrichter.com
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18 Broad Street
Charleston, SC 29401

RE: Expert Witness Services - Charleston Labs v. WCSR
Invoice # 01905

STATEMENT FOR SERVICES RENDERED

July 14, 2017 – December 31, 2018

Expert Witness Services	Email correspondence, case review and analysis, affidavit execution and delivery. (Details shown on attachment.)	
	Total Time @ $600.00/ hour 1:14	$758.00
	Total Time @ $675.00/ hour 0:36	$418.31
Expenses		None

TOTAL FEE & EXPENSES DUE **$1,176.31**

terms: Payment in Full in 10 Days
Thank You

ROA-2020

Invoice Details

Date	Hours:Mins	Amount	Category	Notes
@$675.00/hour				
18/12/20	0:04	$49.69	Email	LML
18/12/19	0:12	$136.31	Email	LML
18/12/19	0:20	$232.31	Case Review	
@$600.00/hour				
17/8/22	0:35	$359.83	Email	ESB, RLRjr
17/7/18	0:22	$220.00	Affidavit Execution & Delivery	
17/7/17	0:03	$30.00	Email	RLRjr
17/7/14	0:14	$148.17	Email	RLRjr
Totals	**1:50**	**$1,176.31**		

Gregory B. Adams

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February 4, 2019

Ronald L. Richter, Jr., Esq. *Via Email Only:* ronnie@blandrichter.com
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Bland Richter
Peoples Building, Mezzanine
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Charleston, SC 29401

RE: Expert Witness Services - Charleston Labs v. WCSR
Invoice # 01907

STATEMENT FOR SERVICES RENDERED

January 2019

Expert Witness Services	Email correspondence, document review, case review and analysis, meeting. (Details shown on attachment.)	
	8:57 @ $675.00/ hour	$6,048.38
Expenses	**Parking for Meeting**	$ 14.00

CURRENT FEE & EXPENSES DUE	**$6,062.38**
PAST DUE FEE (1/15/19 INVOICE 01905)	**$1,176.31**
TOTAL FEE & EXPENSES DUE	**$7,238.69**

terms: Payment in Full in 10 Days
Thank You

ROA-2022

Invoice Details

Date	Hours:Mins	Amount	Category	Notes
19/1/28	0:16	$189.38	Case Review	
19/1/25	0:57	$641.25	Document Review	
19/1/14	0:29	$326.25	Document Review	
19/1/14	0:49	$551.25	Case Review	
19/1/12	1:07	$753.75	Document Review	
19/1/11	0:54	$607.50	Document Review	
19/1/11	0:19	$218.06	Email	MEFS, LB
19/1/4	2:49	$1,901.25	Meeting	SM - incl. travel
19/1/3	1:02	$699.38	Case Review	
19/1/3	0:04	$47.81	Email	LML
19/1/3	0:10	$112.50	Case Review	
Totals	**8:57**	**$6,048.38**		

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
CHARLESTON LABORATORIES, INC.,)
)
)
Plaintiff,)
v.)
)
WOMBLE, CARLYLE, SANDRIDGE &)
RICE, LLP,)
)
Defendant.)
_____)

DEPOSITION OF BRIDGET BERRY, ESQUIRE

Taken on behalf of the Defendant

DATE TAKEN: June 14, 2019

TIME: 9:09 - 12:47

PLACE: One North Clematis Street
Suite 500
West Palm Beach, Florida 33401

EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

Proceedings taken before:
Michele L. Savoy, RMR

ROA-2024

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Appearing via telephone

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Appearing via telephone

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P R O C E E D I N G S

- - -

MR. JORDAN: My name is Will Jordan; I am at Robinson Gray in Columbia. I'm here with Ben Gooding, and we represent the defendants.

MR. RICHTER: This is Ronnie Richter and Scott Mongillo in Charleston, South Carolina, on behalf of the plaintiff.

MR. MCKISSOCK: This is Tim McKissock; I represent Bridget Berry and the Greenberg Traurig law firm.

MS. TARBE: Susan Tarbe, deputy general counsel of Greenberg.

MS. STUCKEY: This is Erin Stuckey. I practice with Mr. McKissock, for Mrs. Berry and Greenberg Traurig.

MR. JORDAN: Michele, can I make one comment for the record, real quick?

THE COURT REPORTER: Is this Mr. Jordan?

MR. JORDAN: This is Mr. Jordan.

THE COURT REPORTER: Thank you.

MR. JORDAN: I have just noticed on, at least my copy of the deposition exhibit, that the caption on the cover page is incorrect. I assume it's probably incorrect down there as well. If it suits

everyone, we will send an amended, just cover page, for the deposition exhibits.

MR. MCKISSOCK: That's fine, Will. It is, and we will just note that it's the current caption of your case in Charleston.

MR. JORDAN: Okay. Thank you, all.

MR. MCKISSOCK: Thanks.

Thereupon,

BRIDGET BERRY, ESQUIRE,

acknowledged having been duly sworn to tell the truth and testified upon her oath as follows:

THE WITNESS: Yes.

DIRECT EXAMINATION

BY MR. JORDAN:

Q Good morning, Mrs. Berry.

A Good morning.

Q As I said a few minutes ago, my name is Will Jordan; and I'm attorney at Robinson Gray Stepp & Laffitte in Columbia, South Carolina, and our firm represents the defendants in a legal malpractice lawsuit brought by Charleston Laboratories, which I am sure you understand.

Would you please state your full name for the record.

A My name is Bridget Anne Berry. That's my

legal name.

Q Okay. Thank you.

Mrs. Berry, have you ever been deposed before?

A No.

Q I'm sorry. Was that a "no"? I couldn't hear you.

A Correct. That was a "no."

Q Okay. Well, just a couple of rules that our supreme court requires that I tell you before we get started. If I ask a question that you don't understand, please ask me to clarify it as opposed to directing questions towards your counsel. If you answer a question that I pose, I will assume that you understood it. Is that fair for me to do?

A I will answer each question, based upon my understanding of what the question is, to the best of my ability.

Q Okay. And is it fair for me to assume that if you don't understand a question that I ask, that you will ask me to clarify it?

A I'm not sure how to answer that's except to tell you that if I can't answer a question because I don't understand it, I will ask you to clarify it.

Q Okay. That is fair. Thank you.

And, of course, we are not all in the same

physical location, so I'll say this for you and for counsel for the plaintiff, if anyone needs a break at any time, please just let me know, and we are happy to go off the record for a few minutes and accommodate.

A Thank you.

Q Mrs. Berry, do you have a copy of the exhibits notebook that we had sent down in front of you?

A My attorney does.

MR. JORDAN: Okay. Tim, or Madam Court Reporter, would you please provide a copy of the exhibits to Mrs. Berry. I think one of them should be marked premarked already.

MR. MCKISSOCK: I just did, Will. Thank you. I handed her the one that said "Witness Copy," and I have the one that says "Attorney Copy," so that's what we are working on now.

MR. JORDAN: Okay. That's perfect. Thank you.

BY MR. JORDAN:

Q Mrs. Berry, if you will turn to Exhibit No. 1 in that notebook.

A I have.

Q Okay. And is this a copy of your file from your law firm?

A It appears to be what is posted by my law firm

on the website.

Q Okay.

A I can't --

Q And your law firm is Greenberg Traurig; is that correct?

A Yes. Yes.

Q Okay. And is the information contained in this bio that is Exhibit No. 1 accurate?

A I think it needs to be updated.

Q Okay. Is there any information in it that is not accurate, or is it just there's additional information that could be added?

A To the best of my knowledge, sitting here today looking through it, everything on it is accurate and it just needs to be updated.

Q Okay. And when you say "updated," is that updated with respect to, for example, awards that you have received, accolades you have received, presentations you have given, things of that nature?

A Correct.

Q Okay. Mrs. Berry, when did you join Greenberg?

A The law firm that I was affiliated with merged into Greenberg Traurig. And I'm using that word loosely. I don't know what the legal -- I don't know

how legally it occurred, but the law firm that I was working with joined Greenberg Traurig in 1991.

Q And what was the name of that law firm?

A I believe the name of the law firm was Shapiro & Bregman.

Q And that merger or combination, or whatever it was, was it in 1991?

When did you join -- was it Shapiro & Bregman?

A Okay. So I graduated from law school in 1985. I had been a summer associate at Wolf, Block, Schorr & Solis-Cohen. After I graduated, I became an associate at Wolf, Block, Schorr & Solis-Cohen. And Mr. Shapiro and Mr. Bregman were the, you know, managing partners of the Florida offices of Wolf, Block, Schorr & Solis-Cohen at the time.

So from 1985, I was -- I am answering more than you asked me, so I'm just going to stop there.

Q Okay. So you graduated in 1985, and what -- and tell me the name of the law firm that you joined upon graduation.

A Wolf, Block, Schorr & Solis-Cohen.

Q Okay. And did that firm -- did partners from that firm leave to form Shapiro & Bregman?

A I'm not sure that is how you would characterize it, but the people that I was working with

at Wolf Block, then were working at Shapiro & Bregman.

Q Okay. And what year did you go from Wolf Block to Shapiro & Bregman?

A I don't remember.

Q Throughout your career, you have worked at Wolf, Block; Shapiro & Bregman; and Greenberg Traurig. Are those the three names of the firms that you have worked at?

A No.

Q Is that a "yes"? I'm sorry.

A That was a "no."

Q Okay. Tell me the names of the law firms you have worked at during your career.

A Wolf, Block, Schorr & Solis-Cohen; Moyle Flanigan; Shapiro Bregman or Shapiro & Bregman; Brown Newsom & Cordova. I may also have done some contract work for one or more other firms. I don't remember that. I mean, I don't remember the names of those firms.

Q Okay. What year did you join Shapiro & Bregman?

A I thought I said I didn't remember. And I still don't remember.

Q Okay. You had -- have you been at Greenberg since 1991?

A Yes.
Q I think you mentioned, was it Brown, Newsom?
A Brown, Newsom, Cordova.
Q When were you at that firm?
A My best guess is 1990 until the end of 1991.
And now I'm questioning whether the -- whether the folks that I was with became attorneys at Greenberg Traurig in '91 or '92. I still think it was '91, but it could be '92. I'm just not sure of the dates.
Q Okay. Are you a shareholder at Greenberg?
A I am.
Q Okay. What year did you become a shareholder?
A I don't remember.
Q When you started at Greenberg in 1991 or 1992, were you a shareholder at that point?
A No.
Q Would you have been a shareholder by, say, 2000?
A I don't -- I would be guessing.
Q Are you able to say whether you have been a shareholder there for the last five years?
A Absolutely.
Q Okay. What about the last ten years?
A I think so.
Q Okay. What is your primary area of practice

at Greenberg?

A Generally, litigation.

Q If you look at the -- on Exhibit No. 1, if you look at the first two paragraphs of your bio there on the first page, is that an accurate kind of overview of what your practice entails?

A Yes.

Again, I said it could be updated. I think that a large -- the majority of my practice relates to employment and employment disputes and, you know, issues that companies have relating to employees, that kind of thing. But I also do a substantial amount of work in the financial industry, as well as general commercial.

Q Okay. Thank you.

Mrs. Berry, if you will turn to Exhibit No. 2.

A I have.

Q I just want to -- okay. Thank you. I want to just take a minute to make sure that we are on the same page with some terms that we will be using throughout the deposition.

Charleston Labs filed a lawsuit in state court against a former employee named Dr. Raymond Takigiku. And I know that your firm represented Charleston Labs in that litigation, correct?

A Greenberg Traurig represented Charleston

Laboratories, Inc., in the litigation, Case No. 15-81694, correct.

Q Okay. And if I refer to that litigation as the "Florida litigation" throughout this deposition, you'll understand what I am referring to?

A Yes.

Q Okay. And I am sure the court reporter will appreciate this, and so will I. If I refer to Dr. Raymond Takigiku as "Dr. T" thought this deposition, is that okay with you?

A It's your deposition. You can do that if you'd like, and I will understand that you are referring to Dr. Raymond Takigiku.

Q Okay. Thank you.

Mrs. Berry, the Florida litigation concerns, in part, at least, two different agreements that were executed by Dr. T in connection with his employment at Charleston Labs, there was a stock restriction agreement and a stockholders agreement; do you recall that?

A I'm not sure that I understand the premise of your question. I don't know that I would agree that that is how to describe the litigation, but I do recall that there was a stockholders agreement and a stock restriction agreement that were issues in the litigation.

Q Okay. And are you familiar with those two documents?

A I was very familiar with those two documents four years ago when the case started, yes.

Q And I'm going to, throughout this deposition, refer to the stock restriction agreement as the SRA, and you'll understand what I am talking about when I do that?

A I accept that you are telling me that you are going to call the stock restriction agreement the SRA, yes.

Q Okay. And do you accept that I'm going to call the stockholders agreement the SHA throughout this deposition, and you'll understand what I mean when I say that?

A Sure.

Q Okay. Was that a "yes"?

A Yes.

Q Thank you.

And, Mrs. Berry, am I correct in understanding that Charleston Labs has waived the attorney-client privilege with respect to work performed by Greenberg in the Florida litigation?

A I have no knowledge of that. I mean, you would have to ask Charleston Labs that question.

Q Okay. Well, I guess my question is: Is it your understanding that, in the course of this deposition when I ask you questions about your communications with Charleston Labs with respect to the Florida litigation, that you will decline to answer on the basis of attorney-client privilege?

A I will follow the instruction of Charleston Labs' attorney to the extent that they raise an objection, or my attorneys to the extent they raise an objection.

Q Okay. If you will turn to exhibit -- you are already there maybe -- Exhibit No. 2.

MR. MCKISSOCK: Excuse me for one second.

Ronnie and Scott, I would like you, for purposes of the record, to clarify that Charleston Labs has waived the privilege that Mrs. Berry can answer questions from that legal representation in the Florida case as Mr. Jordan referred.

MR. RICHTER: Yes, Charleston Labs waives the privilege, and Mrs. Berry is free to testify on these subject matters.

MR. MCKISSOCK: Thank you.

BY MR. JORDAN:

Q All right. Mrs. Berry, looking at Exhibit No. 2, is this -- do you recognize this as a copy of the

third amended complaint for declaratory relief filed on behalf of Charleston Labs in the Florida litigation?

A I do.

Q Okay. If you'll flip to Exhibit No. 3., we talked just a second ago about the SRA; do you recognize this as a copy of the SRA?

A I can't answer that without comparing what you have marked as Defendant's Exhibit 3 to the exhibit that is attached to the third amended complaint for declaratory relief. But if what you marked as Defendant's Exhibit 3 is the substitute Exhibit A, then I do recognize it as the stockholders agreement.

Q Okay. And that is --

A Oh. I'm sorry. I'm sorry. I'm sorry. I have to correct myself. I'm very sorry.

I -- you asked me to look at Defendant's Exhibit No. 3, and I accidentally turned to Defendant's Exhibit 4.

The Defendant's Exhibit 3 is titled "Stock Restriction Agreement." So hold on. Let me see if that is an exhibit to the third amended complaint.

I'm sorry. If you'll just bear with me while I try to look at the exhibits to the amended.

Okay. So the stock restriction agreement is not an exhibit to the third amended complaint for

declaratory relief, which is Defendant's Exhibit No. 2, which makes sense. And so I have no way of verifying that this is the stock restriction agreement. But it does appear to be familiar, and it does look like the stock restriction agreement upon which Dr. Takigiku was relying.

Q Okay. And if you look at the last page, or the fourth page, it appears to have Dr. T's signature on it, correct?

A Yes, it does.

Q Okay. And --

A Let me say that it was his position that that was his signature, yes.

Q Okay. If you look at Exhibit No. 4, that appears to be a copy of the SHA, correct?

A Exhibit 4 is titled "Stockholders; Agreement." And that was what I was trying to explain to you before, there were different versions of the stockholders agreement. And we were -- "we" meaning Charleston -- was having difficulty obtaining the documents and, ultimately, that is one of the reasons we had to amend. And so whatever stockholders agreement is attached to the third amended complaint is the stockholders agreement.

Q Okay. In Exhibit 2, substitute Exhibit A to

that third amended complaint is the SHA, correct?

A That is the SHA upon which we proceeded, correct.

Q Okay.

A But you'll notice -- sorry -- you'll notice that the document that you have marked as Defendant's Exhibit No. 4 has a CL000006 on the bottom of it. And the one that was filed in the court as substitute Exhibit A to the third amended complaint for declaratory relief does not. So I just am explaining to you why I'm hesitant.

I can tell you that what we attached to the third amended complaint is the operative stockholders agreement.

Q That's fine. Thank you.

Mrs. Berry, if you'll turn to Exhibit No. 5.

A Yes.

Q This is a copy in the legal malpractice case that we are here about today, of plaintiff's response to defendant's first interrogatories. And if you'll flip over to page number 5.

A I have done so, sir.

Q Okay. And item O has your name; is that correct?

A That is my name.

Q Okay. And then the description states that you are an attorney at Greenberg Traurig, LLP, and represented Charleston Laboratories, Inc. in the Florida litigation; and then states, "Mrs. Berry has knowledge of that litigation." Do you see that?

A I see that.

Q Okay. Mrs. Berry, what do you understand to be the purpose of your testimony in this legal malpractice case?

A I can't answer that question.

Q Why is that?

A The purpose of my testimony is that you subpoenaed me, and so I appeared.

Q Okay. You understand that you have been identified as a witness in this case?

A I see that now.

Q Okay.

A And, also, you haven't asked me this question, but you have directed my attention to this answer. I'm not sure it's "Greenberg Traurig, LLP." Just so you know, I don't know if that is correct.

Q Okay. Mrs. Berry, do you understand that you have been scheduled or subpoenaed or noticed to offer de bene esse deposition in July in this case?

A I'm sorry. Say that again.

Q Sure. Do you understand that you have been -- that you are scheduled to offer trial testimony in July for this case?

A I do know that my deposition is being taken for trial purposes, and the -- both this deposition and the other deposition have been scheduled and rescheduled many times.

It sounds right that it's now rescheduled for July, yes.

Q What issues do you understand your testimony, either in this deposition or in your future deposition, will address?

A I think it will address my representation of Charleston in the litigation with Dr. Takigiku.

Q Have you discussed with anyone what topics you plan to cover in your testimony in this case, Mrs. Berry?

A You told me to let you know if I don't understand your question, and so I am telling you I don't understand your question.

Q Okay. Well, let me clarify then. I don't want to know any discussions that you have had with your counsel, whether it's Mr. McKissock or Ms. Stuckey or Greenberg's general counsel. Have you spoken with anyone else about the testimony that you will be

offering in this case?

A Again, that is a broad question.

So if you are -- can I answer based upon what my understanding of the question might be?

Q Sure.

A Okay. So you could be asking me -- in my mind, you could be asking me two different things. One thing you could be asking me is, have I had any discussions about what the areas of inquiry may be in July, and the answer is no.

If -- you could be asking me if I have spoken to anybody about what the areas of inquiry might be today, and the answer is yes.

Q Okay. So you have not spoken with anyone about what topics may be addressed in your July trial deposition; is that correct?

A To the best of my knowledge, correct.

Q Okay. And you said that you have spoken with someone or more than one person about topics that may be addressed in this deposition, correct?

A Correct. Yes.

Q Okay. Who have you spoken with about topics that may be addressed in this deposition?

A My attorneys.

Q Okay.

A And --

Q Anyone other than -- go ahead.

A Go ahead.

Q I'm sorry.

Have you spoken with anyone, other than your attorneys, about the topics that may be covered in this deposition?

A Yes.

Q Okay. Who is that?

A My attorney and the attorneys for Charleston. And I had a telephone call on -- I want to say possibly Monday of this week.

Q Okay. And was that -- was that Mr. Richter or Mr. Mongillo, or do you recall?

A I'm very sorry and -- I'm very sorry, I'm not sure who was on the call on behalf of Charleston.

Q Okay. Other than the telephone call on Monday that you just described or just mentioned, have you had any conversations with counsel for Charleston Labs about topics to be covered in this deposition?

A We had a call with them yesterday. And I'm trying to think if it was -- if it would respond to your question that it was relating to topics as compared to, you know, scheduling matters, and I think the answer is probably yes.

As a matter of fact, yes. The answer is yes.

Q Okay. Other than those two telephone calls, one on Monday and one yesterday, at any point, have you had any discussions, correspondence, meetings with counsel for Charleston Labs in this case?

A I can assure you that I have had no meetings that I know of.

Again, there were a lot of scheduling issues. It is possible that there was some communication relating to scheduling. It's possible that there were attorney communications, but as far as I'm concerned, I don't recall any others.

Q Okay. So other than the two that you have discussed that occurred this week, you don't recall any other communications with counsel for Charleston Labs in this case about the substance of your testimony in this case; is that correct?

A That is fair. That is a fair summary.

Q Okay. All right. Well, let's start with the telephone call on Monday of this week. How long did that telephone call last?

A My guesstimate is a half an hour.

Q And during that telephone call, did counsel for Charleston Labs ask you any questions about your testimony?

A Could I pause here for a second?
Q Sure.
A Okay. I'm sorry. Say that again.
Q During the telephone call on Monday, did counsel for Charleston Labs ask you any questions about your testimony in this case?
A I do not recall the attorney for Charleston Labs asking me any questions about my testimony in the case.
Q What do you recall as to the substance of the Monday telephone call that you've described?
A I think it was more my attorney inquiring as to what areas you are likely to ask about.

We did not yet have -- I think that I might have gotten the exhibits that you were going to use -- today is Friday -- maybe Wednesday night. And so that was my first clue from you as to what you might be interested in.

And so, on Monday, we spoke to Charleston's counsel to determine, you know, whether they might know what areas of inquiry -- what the areas of inquiry would be.

Q Did counsel for Charleston Labs identify any possible or likely areas of inquiry that they expected us to go into in this deposition?

A Basically, the litigation.

Q Anything more specific than just the litigation?

A I think that there was a question relating to why the declaratory judgment action was filed, why it was filed in Florida, why -- you know, the staffing at Greenberg Traurig and the judge's order, the motions for summary judgment. Pretty much that.

Q Did anyone from Charleston Labs participate on that call?

A Not to my knowledge.

Q Okay.

A I mean, are you asking me if any of the principals attended? Is that your question?

Q If any of the principals or employees; for example, Paul Bosse or George Scott?

A I -- to the best of my knowledge, neither Paul Bosse nor George Scott participated in that call.

Q Okay. Did counsel for Charleston Labs, during the Monday call, suggest any specific topic or testimony that you should offer in this case?

A He did not.

My recollection is that he asked me to -- well, he didn't -- I don't -- strike that.

I don't know if he asked me to or not. He

told me that he was going to send me transcripts of depositions of other individuals that have been taken in this case, and he did.

Q What deposition transcripts did you receive?

A And, again, I'm not saying I received them directly, although I might have. They may have gone through my attorney. But I do recall receiving, either late Monday or Tuesday, transcripts of the depositions of George Scott, who is general counsel for Charleston Labs, and Dean Rutley, who is an attorney at Womble, and David Baddour, who is an attorney at Womble.

Q Any other deposition transcripts you've received?

A In the Womble case, not that I recall.

Q Okay. You haven't received deposition transcripts of any of the expert witnesses who have been identified?

A I'm not even aware that experts have been retained.

Q Okay. Did you read the deposition of George Scott?

A I did.

Q Okay. Did you make any notes or highlights or annotations on that deposition while you were reading it?

A I did not.

Q On a separate notepad or anything, did you make any notes regarding that deposition?

A Not that I recall.

Q Okay. In reviewing Mr. Scott's deposition testimony, do you recall reading anything with which you disagreed?

A I did -- I have to tell you that I -- you know, have my regular practice and had other obligations this week, not to mention also personal obligations, but from a professional standpoint, I had other obligations and other deadlines this week.

Although I read it, I really only -- you know, I don't want to say skimmed, but more or less skimmed the transcript.

And, also, I want to go back and possibly amend my answer a little bit because it's possible that I would have jotted down, you know, for example, it's been, what, four or five years since I was involved in the underlying litigation against Dr. Takigiku. It's possible that I would jot down, you know, 2008, 2010, you know, just to try to remind myself of the time line of these events.

Q Okay.

A But if I did, I threw it away because it was

just something for me to try to get my bearings as I was briefly trying to review the transcript.

Q Okay. And I understand that you had other obligations and didn't study the deposition transcript of George Scott in great detail. Do you recall reading anything, skimming anything, seeing anything, in that deposition with which you disagreed?

A I do not.

Q Okay. Did you read the deposition of Dean Rutley?

A At a very, very high level, partially because a lot of it was information that I never knew about until I read his testimony.

Q Okay. Did you take any notes while you were reading Mr. Rutley's deposition --

A No.

Q -- or thereafter?

A No.

Q And, again, I understand that you didn't study it in great detail, but do you recall reading anything in Mr. Rutley's deposition with which you disagreed?

A Again, I can't agree or disagree with anything that occurred prior to the litigation, so I -- you know, I read through that very quickly because I -- I couldn't agree or disagree.

I did disagree with his testimony relating to what happened in connection with the litigation.

Q Okay. In what respect did you disagree with his testimony about what happened in the litigation?

A My reading of what he said was that he came up with the defense, which I strongly disagree with; and my reading of his testimony was that he told Greenberg Traurig how to frame the defense, which I strongly disagree with.

Q And when you refer to the defense, what defense are you referring to?

A So the -- Dr. Takigiku had said that the stock restriction agreement allowed him to keep stock that was referred to as the, quote, vested, quote, stock. And so part of what we had to do to demonstrate that Charleston was the rightful owner of the stock and that Dr. Takigiku was not, is to show that Dr. Takigiku did not have rights to keep what he referred to as the, quote, vested, quote, stock.

Q Okay. And is that -- and correct me if I'm wrong, because you certainly know this better than I do, but is the defense that you are referring to this theory that ultimately succeeded that the two documents, the SRA and the SHA, created concurrent rights?

A I'm sorry. I am not understanding your

question. Could you repeat that?

Q Sure. I believe you testified a moment ago that you disagreed with Mr. Rutley's testimony to the extent that he claimed that Womble came up with the defense that was asserted in the Florida litigation. Am I correct in understanding that that defense relates to the argument that the SRA and the SHA created concurrent rights that Charleston Labs could exercise?

A Well, first of all, the defense was much, much broader and much more complicated than that. There were many, many issues raised by the documents. And, at the beginning, we reached out to Mr. Rutley, and he was very vague and not helpful and noncommittal about how the stockholders agreement and the stock restriction agreement were intended to work together.

Q Did you or others at Greenberg reach out to Mr. Rutley before the litigation was filed in Florida?

A It is my understanding that George Scott reached out to him. And then it is my recollection -- and again, obviously, I haven't gone through and read everything in the case -- it is my general recollection, sitting here today, that fairly early on, before even the complaint was filed, that I participated in at least one call with Womble and that Mr. Rutley said he was not involved in it and that we would need to talk to

Mr. Baddour. And Mr. Baddour was out on medical leave.

Q Okay. Is it your testimony that Mr. Rutley did not offer you any explanation about how the documents worked together, the SRA and the SHA?

A I do not recall him being helpful in that regard. If you have something to show me, I would very much like to look at it. But sitting here today, thinking back four or more years ago, I -- my general recollection is that it was not helpful.

Q All right. So back to your review of Mr. Rutley's deposition, I understand that your testimony is that you disagree with his testimony to the extent that he claims that he or Womble came up with the defense that was asserted in the Florida litigation.

Based upon your review of his deposition, did you have any other areas of his testimony with which you disagreed?

A Again, I just did a very, very, you know, quick review of his testimony. Some things jumped out at me, like when he said he should have gotten a Pulitzer award, maybe an Academy Award in this case for his testimony, I wish he had been as strong in his testimony when his testimony was taken in the case against Dr. Takigiku. That might have been helpful. But, those are the two things that jump out at me about

his testimony.

And I would have to, you know, really go back and take some time to see if I disagree with anything else.

The two general things that pop out to me are he seemed to say that he told Greenberg Traurig how to win the case, and he did not. And then the second thing is that he seemed to say that he deserved a Pulitzer Prize, and I would respect fully disagree with that.

Q Okay. Did you read or review the deposition transcript of David Baddour in this case?

A I did not.

Q Okay. Other than the three deposition transcripts that you have identified, have you received any additional documents to review from counsel for Charleston Labs?

A I did, yes.

Q What have you received?

A Yesterday they sent -- I -- it's pages. I think it was like a PowerPoint or something.

Q Okay.

A I understand it was a PowerPoint.

Q Okay. And did they send that directly to you, or did they send it to your counsel to provide to you?

A I believe they sent it to my counsel. I

received it from my counsel.

Q Okay. And did you review that PowerPoint document?

A Again, briefly.

Q What did you understand the purpose to be of counsel for Charleston Labs providing you with that PowerPoint document?

A My understanding was that he was trying to tell me what this litigation was about. "This litigation" being the litigation between Charleston and Womble.

Q Have you ever read the complaint in this case?

A No.

Q Have you ever read any pleading in this case?

A Not that I recall, no.

Q Okay. In your review of the PowerPoint document that was provided to you, did you see anything in that PowerPoint with which you disagreed?

A It's not for me to agree or disagree. There were some things in it that I was very surprised by. There was -- seemed to be a lot of correspondence that I was not aware of.

Q When you say that, what correspondence are you -- well, let me start over.

You say there were things that you were

surprised by in the PowerPoint. What are you surprised by?

A Well, for example -- and again, this is just stuff that sort of jumped out at me -- there could be other stuff in there, or maybe I misunderstood what I was reading at the time. But it seemed that there was correspondence between David Baddour and Mr. Rutley and also between -- it seemed like there might have also been some correspondence between Charleston and the Womble firm that I had been unaware of.

Q What was the substance of that correspondence that you were surprised by?

A Relating to the stock restriction agreement and how that harmonized with the stockholders agreement.

Q Okay. What do you recall the substance of that correspondence being?

A I recall that there was some -- something in the PowerPoint where Womble was saying that Dr. Takigiku had a claim to some shares; in other words, that he was still the owner of some shares.

Q Okay. Do you recall anything else from the PowerPoint that you reviewed that -- with which you disagreed or that you were surprised by?

A I didn't even get through the whole PowerPoint.

Q Okay. Other than the PowerPoint that you received yesterday and the three deposition transcripts that you have received, have you received any additional documents from counsel for Charleston Labs in this case?

A I'm thinking. Sitting here today, I don't recall any others.

Q Okay. On the telephone call on Monday that you estimated lasted for about half of an hour, did you or counsel for Charleston Labs discuss any specific documents?

A Yes.

Q What documents do you recall discussing?

A He discussed that he was going to be sending -- and you know what? I should be careful here. I don't want to characterize it as though counsel for Charleston in this case was talking to me. My attorney was on the phone, and I was relying -- you know, in other words, the conversation was really between Charleston's attorney in this case -- between Charleston and Womble and my attorney. So ...

Q I understand.

A Okay. I did -- I was on the call. I -- so to that extent, I, quote, participated. I was on the call.

Q Okay. Other than the three deposition transcripts and the PowerPoint -- well, other than the

three deposition transcripts, were any other documents discussed on that Monday telephone call?

A It is possible that there was mention that you would be, under South Carolina law, sending me whatever documents you were going to ask me about.

Q Okay. Was there any discussion on the Monday telephone call about the PowerPoint that you ultimately received?

A No, not that I recall.

Q Okay. The second telephone call that you identified, I believe you said was yesterday, correct?

A Yes.

Q How long did that telephone call last?

A I am going to guess that it was less than the first call on Monday. So less than 30 minutes would be my guess.

Q And what was the substance of the telephone call yesterday?

A Oh. We had gotten your documents, so there was discussion that we had gotten your documents and had Charleston's attorney in this case gotten your documents. And then there was discussion that Charleston's attorney was going to send the PowerPoint. I am calling it a PowerPoint because I think that is how it was described to me.

And there was discussion -- I don't want to go into this because it's personal, but my husband is -- there was discussion about personal conflicts I am having.

Q Yes. That's fine. We don't need to go any further into that.

With respect to the documents that we had provided to your counsel and to counsel for Charleston, did you -- on that phone call yesterday, did you all discuss any specific documents that we have provided?

A May I look through this binder and refresh my recollection on what is in the binder?

Q Sure.

A So, my bio, no, there was no discussion about my bio.

Third amended complaint for declaratory relief, no, I don't recall discussing anything about that. Other than, you know, possibly that I might have said that the reason for the third amended was because we were still trying to get the final documents.

No, we didn't discuss the stock restriction agreement. No, we didn't discuss the stockholders agreement.

This -- when I got your binder, that was the first time I had seen the plaintiff's response to

defendant's first interrogatories in the State of South Carolina, Charleston versus Womble case. And I probably said that, you know, that is the first time I have seen it. I hadn't seen it before that.

I don't recall talking to him about the invoice, except generally that Womble's position is that Greenberg Traurig charged too much.

I don't recall discussing anything specific about the order on motions for summary judgment, except that we won.

I don't recall discussing anything about the mutual settlement agreement and release.

I don't recall discussing what you have attached as Defendant's Exhibit 9, which is an email relating to settlement.

I do recall generally talking or being aware that Womble had a position in the case that -- and you know what? Actually, if we go back to the -- I'm sorry. I might have to correct myself here.

You attached only one invoice in your binder, only one invoice you were going to ask me about today, and that is an invoice, Defendant's Exhibit 6.

Q Okay.

A So I kind of wondered why you attached that invoice.

And I noticed that there was some entries here about SIDIS BioLOGIC, et cetera.

And then you also attached Defendant's Exhibit 9, which referenced SIDIS. And there was some discussion that a -- apparently in the case between Charleston and Womble, Womble -- one of the things Womble is saying is, is questioning why there was time relating to SIDIS and Prime DP.

Then the next thing on the motion to strike, I don't recall any discussion on that.

Next is the motion for summary judgment; I don't recall any discussion on that.

Next is Plaintiff's/Counter-Defendant Charleston Laboratories, Inc.'s statement of undisputed material facts in support of its motion for summary judgment. I don't recall any discussion with Charleston's counsel on that, nor do recall any discussion with Charleston's counsel on Defendant's Exhibit 13.

Q Okay. What did counsel for Charleston Labs say regarding the PowerPoint during the call yesterday?

A That he would like me to look at it.

Q Did he say anything else about why he wanted you to look at it?

A Not that I recall, no.

Q Okay. You just mentioned the settlement agreement and -- or the invoice and the email that we've attached as -- or that we marked as an exhibit and then the reference to SIDIS and Prime DP. What did counsel for Charleston Labs communicate to you yesterday regarding SIDIS and Prime DP?

A I think I already told you. He communicated to me that Womble -- that that was, you know, one of the issues Womble was raising in the Charleston versus Womble action, questioning whether the time invested by Greenberg Traurig relating to SIDIS, Prime DP, et cetera, could be claimed in the action between Charleston and Womble.

Q Okay. And did you say anything to counsel for Charleston Labs regarding that issue yesterday?

A I told him that I would look at the invoices and that I would look at the, you know, look at the -- whatever that other exhibit was.

Q Okay. Did counsel for Charleston Labs indicate any response to what it communicated Womble's position to be on those topics?

A I don't recall that. I think he was just asking me to look at the documents.

Q Are there any topics that were discussed during the telephone call yesterday that you recall that

you haven't shared with me yet so far today?

A Are you asking me if you have asked me all the questions you should?

I am not sure what you are asking me.

Q Well, you have discussed a number of topics that you discussed on the telephone call with counsel for Charleston Labs yesterday. You have discussed the SIDIS, Prime DP topic. You discussed documents that I identified. You have discussed the PowerPoint. You have discussed that there was some communication about a personal and scheduling issue that you had.

My question is: Are there any additional topics that you discussed during that phone call that have not been discussed so far today?

A Okay. Let me think for a second.

I'm sorry. I don't recall any.

Q Okay. Other than the telephone call on Monday of this week and the telephone call yesterday, have you had any communications with counsel for Charleston Labs in this case?

A Not that I recall sitting here today.

Q Okay. Have you had any communications with Paul Bosse about this case?

A Not that I recall.

Q Have you had any communication with

George Scott about this case?

A Yes.

Q I'm sorry. Did you answer? I couldn't hear you.

A I'm sorry. Yes.

Q Okay. What have you and George Scott discussed about this case?

A Could you reword that question?

Q Sure. Well --

A So -- so let me -- do you want me to tell you what I am struggling with?

Q Sure.

A If you are asking me what have George and I spoke -- discussed relating to the litigation between Charleston and Womble, is that the question?

Q Yes.

A Okay. Relating to the litigation between Charleston and Womble, George and I have discussed Charleston's desire that Greenberg Traurig go out of its way to make itself available for deposition, which I think we have. And it's been scheduled and rescheduled. And very frustrating.

Also relating to the litigation, we have discussed that George's deposition was taken. We have discussed that Paul's deposition -- there was something

about Paul's deposition and could we move things around because Paul had a conflict. But, again, that was, again, relating to scheduling.

We have discussed the tremendous amount of work and time that Greenberg Traurig has had to invest in connection with Womble's document request.

And we have discussed the waiver of privilege.

And you know what? I have to correct an earlier answer because it is very possible that we had discussions with Charleston's attorney in this case about the waiver of privilege, which I forgot about until just now. I'm sorry.

Q Okay. That's okay.

When do you recall first speaking with George Scott about this litigation, meaning the legal malpractice case brought by Charleston Labs against Womble?

A I believe it was after the lawsuit was filed.

Q Okay. You don't recall any discussion that you had with George Scott or any other representative of Charleston Labs about a possible legal malpractice case against Womble before the case was filed; is that correct?

A I never discussed -- I do not recall discussing with George -- I mean, it's just not a

discussion I would have had with Paul. And I do not recall discussing with George the -- I do -- I was very aware that Charleston was very disappointed that Womble did not assist Charleston in order to establish that Charleston was the owner of the stock and that Dr. Takigiku was not. I was aware of that, that they were very disappointed.

I don't think they ever said that they were going to sue Womble for malpractice, but I was very aware that they were very upset.

I can't even remember any, like, if you are going to ask me what were the specific words that were said four years ago, I don't remember that, but I was aware.

Q I understand.

Well, what do you recall being Charleston Labs' disappointment about how Womble should have helped Charleston Labs establish that Dr. T was no longer a shareholder?

A My recollection was that George, who had worked at Womble, anticipated that Mr. Rutley would be helpful and cooperative and that he was not.

Q Okay. When was the last time that you spoke with George Scott about any topic related to this litigation, the malpractice litigation?

A Last night.

Q Okay. How long did you and Mr. Scott talk last night?

A I am going say 15, 20 minutes, something like that.

Q What was the substance of your discussion last night?

A We talked about my husband, and we talked about the answers to interrogatories. And it's possible that I made a joke about Mr. Rutley saying he deserved a Pulitzer Prize.

Q What did you all discuss with respect to the answers to interrogatories?

A That I -- I mean, George and I worked -- we were probably in daily communication throughout the litigation against Dr. Takigiku.

This was absolutely a "bet your company" litigation. Paul absolutely thought it would be devastating to the company. He was worried about possible claims of security violation. There was a question about the stock. There was a question about the impact it may have in connection with the contract with Daiichi. There was a question about the relationships with other founding stockholders. It was just an end-of-the-world sort of situation and -- as

Paul looked at it. And George was in -- strike that.

Initially, George was an attorney at Greenberg Traurig, and then George became in-house counsel at Charleston. And so, during that time period, we were in very, very close contact, almost on a daily basis.

Did that answer your question?

Q My question was: In your conversation with Mr. Scott last night, you said that you all discussed the answers to interrogatories. What was your discussion --

A Oh, yeah, yeah. I'm sorry. I'm sorry. I got off track there.

So bottom line, though, it was all the -- the conversations were with me. And certainly George felt very welcome, too, and did contact other attorneys directly to get things done. We encourage that.

But they -- I think they used to call it "quarterback," but I was definitely the leader of this and I'm the one with knowledge. So I -- you know, the other attorneys have -- there is nothing that anybody else is going to be able to say that I don't say. There is no knowledge that others have that I don't have.

Q Okay. Have you and Mr. Scott discussed at all, at any point, your testimony that you will offer in

this case?

A In the context of the litigation between Charleston and Womble, have George and I discussed the testimony that I will offer?

We have discussed that they want to take my trial deposition because Charleston, very considerately, doesn't want to require that my counsel and I, you know, be in a trial setting where we're waiting around for me to testify, et cetera. So we have discussed that. And I appreciate that.

I don't -- I mean, obviously, during the Charleston litigation, again, we discussed on a daily basis all of the issues we were addressing. So I think George knows what my testimony is going to be about all the issues that we were addressing, so there would be no reason for us to discuss it again.

Q Has Mr. Scott offered you any specific information about what Charleston expects or hopes you to testify to in this litigation?

A No.

Q Okay. When you discuss conversations with Mr. Scott, you said that you all had talked about or communicated about Greenberg going out of its way to assist or to respond to this litigation, or however you described it, what is the substance of those

communications that you have had with Mr. Scott?

A I was -- I was not happy that Greenberg Traurig had to incur so much expense reviewing all of the documents and correspondence, et cetera, et cetera. It made me very uncomfortable about the waiver of privilege.

Q What did Mr. Scott say to you about that issue?

A That I should have my attorney talk to his attorney, which is, I think, what I did.

Q Has Charleston Labs agreed to reimburse Greenberg for any of its expense related to this litigation?

A It has not.

Q Has Greenberg requested that?

A It has not.

Q Okay. Is Charleston Labs still a client of Greenberg?

A It is.

Q Has Mr. Scott provided you with any documents related to this litigation?

A I cannot recall this exactly. It is possible that Mr. Scott -- that George sent me a copy of his deposition, his transcript. I am not positive as to whether I got that transcript for the first time from

his attorney or whether I got it from him. I just don't -- I'm not sure about that.

Q Have you had any discussions with Mr. Scott about his deposition?

A I believe that, at the time that his deposition was being -- can you refresh my recollection on when his deposition was taken?

Q That is a good question.

A Okay. Well, then, just let me generally say, if you can't remember either, then let me just generally say that I vaguely recall that we were supposed to talk about something else at the time, and then he was like wrapped up in his deposition. So we did have discussions that he was wrapped up in his deposition, and so we were going to have to wait until after his deposition to talk about something else. It's possible.

Q Okay. Mrs. Berry, just to kind of close the loop, other than the deposition of George Scott, Dean Rutley, and David Baddour, the documents that have been provided to you as possible exhibits for your deposition today, the PowerPoint that you have referenced, do you recall receiving any additional documents in connection with this litigation?

A Yes.

Q What other documents have you received?

A Well, that's a different question. I thought the first question was, do I recall seeing any. And then the second question is, have I received.

I recall seeing probably -- I don't know if I should say thousands, but certainly hundreds of documents because Greenberg Traurig was subpoenaed for documents, and I participated in reviewing.

Q Okay. And my first question was, additional documents that you have received, meaning received from counsel, either George Scott or counsel for Charleston in this case?

A Other than what I have already told you about, I do not recall, sitting here today, receiving any other documents from either George Scott or from Charleston Lab's counsel in this litigation relating to this litigation.

Q Okay. Do you have a file in your office related to this legal malpractice litigation?

A I, personally, do not have any file in my office, no. And --

Q Okay.

A -- I don't know if I -- I don't know if, when a subpoena is served on Greenberg Traurig, they open or file or not. I don't know.

Q Okay. You individually, whether in your

office, at your house, in your car, wherever, you don't have any file related to the legal malpractice litigation; is that correct?

A I do not have a file.

Q Do you have any notes that you have taken or anything along those lines that you have kept?

A Not relating to the malpractice litigation, the case by Charleston against Womble.

MR. JORDAN: Okay. If you all don't mind, I'll take a restroom break, and we will reconvene in about five minutes. Does that work?

MR. MCKISSOCK: Perfect timing. Thank you.

(Thereupon, a recess was taken.)

BY MR. JORDAN:

Q Okay. Mrs. Berry, in this legal malpractice case, do you intend to offer any opinion testimony?

A No.

Q So you don't intend to offer any testimony in this case regarding whether or not Womble's representation of Charleston Labs breached the standard of care or was the proximate cause of any alleged damage of Charleston Labs; is that correct?

A That is correct.

Q Okay. Am I correct in understanding that you were the primary attorney at Greenberg representing

Charleston Labs in the Florida litigation against Dr. T?

A That is correct.

Q If you'll look at Exhibit No. 6, this is invoice No. 4115822, dated April 15, 2016; do you see that?

A I do.

MR. MONGILLO: Hey, Will, this is Scott. Can I just interrupt?

When you go to the exhibits, can you just describe them? Because the way they printed out for me is not the same way you guys have in your notebook. So just like you did is perfect. Thank you.

MR. JORDAN: I'm sorry about that, Scott, but, yeah, I will do that.

THE WITNESS: Excuse me. I should probably amend my answer again. I'm sorry. I should amend my answer to say that when George Scott was at Greenberg Traurig, he was primarily responsible for Charleston.

When we left -- you know what? Never mind. Let's stick with the original answer, because I was always primarily responsible for the litigation. So I stick with my original answer.

If your question is, who was primarily

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responsible for this litigation, me.

BY MR. JORDAN:

Q Okay. And that breaks up a time line question that I have always been a little bit confused about.

When Greenberg undertook the representation of Charleston Labs in the lawsuit, the DJ action against Dr. T, was George Scott still at Greenberg at that time, or had he gone in-house at Charleston Labs?

A It is my recollection that in November of 2015, Mr. Scott was still at Greenberg Traurig.

Q Okay. Do you recall when Mr. Scott left Greenberg and went to Charleston Labs?

A You know, I told you that I, you know, just briefly reviewed his transcript, but I'm sorry to tell you that I don't recall that from reading his transcript, nor do I recall it from, you know, just remembering what happened four years ago or five years ago.

Q That's fine.

Okay. All right. Back to Exhibit No. 6, which is this invoice 4115822, we have received, either from Charleston Labs or in our response to our subpoena to Greenberg, the invoices that were submitted by Greenberg to Charleston Labs related to the Florida litigation. Does this appear to be a copy of one of

those invoices?

A Yes.

Q Okay. And based on my review, Mrs. Berry, this is the earliest invoice that we have received. To the best of your knowledge, does this invoice reflect the earliest work performed by Greenberg on the Florida litigation?

A To the best of my recollection, it does, yes.

And it's consistent with my recollection that we, you know, that this started sometime in November 2015. It was my recollection, before looking at this when you sent it to me, that it might have been later in November. But maybe that is just because I was remembering, you know, as the activity, you know, increased.

Q Okay. If you flip to the third page of this exhibit, which is actually labeled page 1 at the top right, do you see the November 2, 2015, time entry with your name on it?

A I do.

Q Okay. And that time entry, the description says, "Continue analysis regarding grounds for personal jurisdiction over Takigiku in Florida." Do you see that?

A I see that.

Q Okay. And is it your recollection that this would have been the earliest work that you did on this case?

A Sitting here today, that is my recollection. I have nothing else to refresh my recollection, so, relying on this invoice, I would say yes.

Q Okay. Do you recall whether you did any work that you did not invoice for prior to November 2, 2015?

A I don't recall that. I don't recall. I just -- it's not that I -- I just have no recollection. Again, if you have anything to refresh my recollection, please point me to it.

Q Okay. Exhibit 7 is docket number or document No. 152 in the Florida litigation, the order on motions for summary judgment; do you see that?

A I do.

Q Okay. And based upon this -- the date of this document, it appears that Charleston Labs won summary judgment in the Florida case on September 13, 2016; is that correct?

A Yes.

Q Okay. Was there a hearing on -- let me back up. Scratch that.

Dr. Takigiku had also filed a motion for summary judgment, correct?

A Dr. Takigiku had filed a motion for summary judgment, that is correct.

Q Was there a hearing held on the cross-motions for summary judgment?

A I don't think so, no.

Q Okay. So, based on your recollection, the Florida court -- federal court decided the summary judgment order based upon the briefs filed on the cross-motion for summary judgment?

A Is that the same question as whether there was oral argument?

Q It's a related question.

A Can you tell me what is the difference between the question of whether there was oral argument and whether the court decided the summary judgment -- the competing summary judgment motions on the papers?

Q I'm just trying to clarify that there wasn't any type of telephone conference, anything other than just what was submitted to the court in writing that resulted in the court's order.

A There was no -- there was no hearing of any kind, whether a telephonic or appearance.

Q Thank you.

After the order granting summary judgment in Charleston Labs' favor, Dr. T filed an appeal, correct?

A He did.

Q Okay. And, ultimately, Charleston Labs and Dr. T reached a settlement agreement; is that correct?

A Yes.

Q Okay. And if you look at Exhibit No. 8, which is the document titled "Mutual Settlement Agreement and Release," it has an execution copy, January 13, 2017. Does that appear to be a copy of the settlement agreement that Charleston Labs and Dr. T entered into?

A It does.

Q Okay.

A Although, may I amend that answer?

Q Sure.

A I believe that the confidential information invention assignment agreement was, in fact, attached as Exhibit 1 to the mutual settlement agreement and release.

Q Okay. Mrs. Berry, did Charleston Labs contact Greenberg about Greenberg representing Charleston Labs in possible litigation against Dr. T?

A I -- I don't know the answer to that. George would know.

Well, I don't know -- I don't know what George knows.

I think that, to the extent Charleston

contacted Greenberg Traurig about representing Charleston in litigation against Dr. Takigiku, that would have been between Charleston and Mr. Scott initially.

Q Okay. And did Mr. Scott contact you about handling that litigation at Greenberg on behalf of Charleston Labs?

A He did.

Q Okay. Do you recall how long before the complaint was filed you were contacted by Mr. Scott about handling that litigation?

A My general recollection is that it was a couple of weeks. A few weeks, a month maybe.

Q Okay.

A I knew that there was an issue because -- actually, I am so sorry, but I need to amend that answer. I knew that there was an issue because Dr. Takigiku had made a demand for the books and records of the company. And I think Paul Bosse would rather have taken a bullet than give to Dr. Takigiku the confidential and proprietary books and records of the company because Dr. Takigiku was, at the time, working with SIDIS and Prime DP, and, you know, the SIDIS entities. And so, I was aware that there was an urgent issue.

I can't remember exactly what my role was in that, but I was very aware of that. And I can't remember what the -- when I became aware of that or what the date of the demand was, et cetera.

Q Okay.

A Can you refresh my --

Q You were involved, to some extent, in the discussion about Dr. T's demand to inspect the books and records?

A Yes.

Q Okay. When you were contacted by Mr. Scott about potentially pursuing this litigation or handling this litigation against Dr. T for Charleston Labs, were you approached about whether or not Dr.- -- excuse me, whether or not Charleston Labs should file a lawsuit against Dr. T, or were you approached about, "The decision has been made, we want you to file a lawsuit against Dr. T"?

A Neither.

Q Okay. What was the discussion with you at that time?

A So, my recollection is that George and I already had a relationship as colleagues at Greenberg Traurig, and this very critical issue for Charleston Labs came up. And George involved me in the

strategy in connection with what to do about it.

Q And was Paul Bosse also involved in discussions about the strategy that you just discussed?

A He might have been, but my recollection is really mostly talking with Mr. Scott. Mr. Bosse may have been involved, but unless you have something to refresh my recollection, I can't tell you that I definitely recall that.

Q Okay. You discussed that you had some strategy discussions with Mr. Scott about how to handle the situation. Obviously, ultimately there was a lawsuit filed against Dr. T.

What do you recall about the strategy discussions that you and Mr. Scott had that led to the lawsuit being filed against Dr. T?

A Okay. So my recollection is, again, that this was, from Mr. Bosse's perspective, very critical, and that Mr. Scott was trying to be responsive and timely in that response.

Opposing counsel, meaning the attorney for Dr. Takigiku, let -- go back. Go back. Because as I am talking, I am recalling more.

Apparently -- I really need you to refresh my recollection.

There was -- there was -- something that went

on between the law firm of Thompson Hine. It's maybe a little earlier than the demand for the books and records; but then the demand for books and records came, I believe, from Jeff Long. And, again, this is just off my recollection, so I could be corrected. But my recollection is that Jeff Long was the one that sent a demand, which was a statutory demand under Delaware law for the books and records claiming that he was a stockholder; claiming him, meaning Dr. Takigiku, was a stockholder.

Q Okay. What do you recall being communicated to you as the reason that Mr. Bosse was -- viewed this as a critical issue and was concerned about Dr. T's claim?

A Okay. So what I recall is that Charleston had entered into an agreement with Daiichi and, in connection with that agreement with Daiichi, had made certain representations, including the representations to who the stockholders were. And Dr. Takigiku was not one of the stockholders and so that was an issue.

I recall, although -- I only recall that there was some question about a potential claim of a security violation in that regard if Dr. Takigiku was actually a stockholder, and, of course, Charleston did not think he was a stockholder. But that seemed to be a concern.

That was a concern.

There was a concern relating to other stockholders. And there was a strong concern that Dr. Takigiku was, at the time, very much aligned with and working with a guy named -- I'm sorry, a gentleman named Nigel Ferrey.

Nigel Ferrey and Paul Bosse had a strong dislike for each other. And Nigel Ferrey was -- Paul believed that Nigel Ferrey was trying to take over Charleston, which Paul Bosse had created and had sacrificed and had worked very hard for for the last ten years, and which Paul Bosse thought had, you know, world-changing, life-changing potential to assist people who had migraines, who had chronic pain, who had to have, you know, surgery, and who had to have cancer treatment.

Q Okay. So on -- Mr. Bosse's concern, as you understood it, about the agreement with Daiichi and certain representations made by Charleston Labs to Daiichi about the shareholders of Charleston Labs, do you know whether you or anyone else at Greenberg looked into or investigated or verified that those concerns were accurate?

A Wow. Over a four-year -- you know, I don't -- I can't answer that. It wasn't anything that was

presented to me as something that would be discussed today, and I -- I'm sorry, I don't recall.

Q That's okay.

Is it fair to say that, in representing Charleston Labs, Greenberg was relying upon Charleston Labs' representations about its concerns about the possible uncertainty of Dr. T's shares?

A Let me be very clear with you: Paul didn't think there was any uncertainty. Paul was certain that Dr. Takigiku did not own any shares; however, Dr. Takigiku was claiming that he did own shares.

Did I answer your question?

Q Let me try and reframe it.

What I am trying to understand is -- I asked you a few minutes ago what you understood to be Mr. Bosse's concerns that led him to believe that this lawsuit against Dr. T was necessary or important or critical or whatever words you might have used. And one of those concerns that you relayed to me was that Charleston Labs had entered into some sort of agreement with Daiichi, and, as you understood it, had made certain representations to Daiichi about Charleston Labs' shareholders.

What I am trying to understand is: Do you know whether you or anyone else at Greenberg reviewed

any documents or did any investigation to verify that that concern was legitimate?

A Are you asking me if I looked at -- I am so sorry. What are you asking me? I'm not understanding the question. You told me to let you know if I don't understand a question. I don't. I'm sorry.

Q That's fine. You understood that Mr. Bosse was concerned about representations that Charleston Labs had made to Daiichi about who the Charleston Labs' shareholders were, correct?

A It is my understanding that, in connection with whatever the deal was between Daiichi and Charleston, Charleston had to tell Daiichi who the stockholders were and had.

Q Okay. My question is: Do you recall whether Greenberg reviewed any documents or did any investigation into the extent of any representations made by Charleston Labs to Daiichi about who Charleston Labs shareholders were?

A To the best of my recollection, Greenberg Traurig did not represent Charleston in connection with the Daiichi deal. So the answer is no. I have no knowledge in that regard, because I don't think Greenberg Traurig -- to the best of my knowledge, Greenberg Traurig did not represent Charleston in

connection with the Daiichi deal.

Q Okay. You mentioned another concern of Mr. Bosse's was that there were potential securities violation related to the disclosures of who Charleston Labs' shareholders were, correct?

A You know, I can't even tell you that. I do remember that there was some concern about that somebody could possibly claim that there was a securities violation. I don't -- I can't even tell you exactly what that concern was or what -- how this, you know, a securities violation could have possibly been implicated.

I thought I -- I thought I made it clear that -- I'm trying to be, you know, forthright and tell you what I recall, but other than recalling generally that there was some discussion, and unless you can refresh my recollection, that is all I can tell you sitting here today. I'm sorry.

Q Okay. That's fine.

And based on your recollection, Greenberg would not have conducted any analysis of whether or not there had been a potential securities violation; is that correct?

A I don't know what Greenberg would have done.

I can tell you that I did not.

Q Okay.

A I mean, I don't think Greenberg Traurig was engaged to do that. So, I'm sorry, unless you can refresh my recollection, I can't say anything else.

Q Mrs. Berry, do you recall whether you or any other attorneys at Greenberg provided advice to Charleston Labs about whether or not it should file a lawsuit against Dr. T in Florida?

A Yes.

Q Okay. And what advice was that?

A Okay. So it would be me, I was the one, again, that, you know, the buck stops with me. I would have been the one that would have discussed that with George -- possibly George and Paul. But, again, my recollection is that it would have been George and Paul together.

And so there were, you know, many, many considerations that went into that strategy and that decision.

I recall that when they first -- "they" being Charleston -- when Charleston first asked me to become involved in connection with the demand for books and records and the issue of Dr. Takigiku taking the position that he was a stockholder, I believe it was George that told me that Womble had advised that

Charleston would have to bring a declaratory judgment action. And then the question was, where?

And so we considered that if we sat and did nothing, that there was going to be the issue of whether or not Charleston was obligated to turn over its books and records to Dr. Takigiku. And, again, that was perceived by Charleston as being, not only to Dr. Takigiku, but to SIDIS and the SIDIS entities.

That was, you know, one consideration.

The other consideration is that Dr. Takigiku's counsel was taking the position that Dr. Takigiku had always worked out of Cincinnati and had signed the documents in Cincinnati, et cetera, et cetera.

And, absolutely, Charleston did not want to be defending an action brought by Dr. Takigiku in Cincinnati, which is where SIDIS was.

Another consideration was, you know, state court or federal court?

I am sure there's documents that will refresh my recollection on this, but sitting today, I know that we looked at questions of personal jurisdiction, and that was also a question as to whether the suit would be against Dr. Takigiku only or against Dr. Takigiku and SIDIS. And the reason for that was that Dr. Takigiku had purported to transfer some of his stock to SIDIS.

So then there was a question in Charleston's mind as to, if it went through the lawsuit and got a ruling favorable as to Dr. Takigiku, could SIDIS still come back and say that Dr. Takigiku had transferred his stock to SIDIS.

So there were many, many, many issues at the beginning that were evaluated and decided.

Q Who, ultimately, made the decision that filing a declaratory action in state court in Florida was the course of action that would be taken?

A Charleston.

Q Do you recall there being any document, whether it's a memo or an email or a letter, that Greenberg prepared that outlined these considerations that you've discussed about pursuing litigation or not?

A You have -- you have our documents. So I don't recall any on the top of my head, but please refresh my recollection because you have our documents.

Q I understand. I will tell you that we haven't seen anything from the beginning of the litigation that we can tell. But I just wanted to -- I wanted to ask to make sure that we weren't missing something, to your knowledge.

A Yeah. That would --

Q Okay.

A That -- again, that would not surprise me, because, again, I do recall being on the phone with George on a daily basis.

Q Okay. Do you recall discussing, whether with Mr. Bosse directly or with Mr. Scott, what Mr. Bosse's understanding was about how the SRA and SHA worked together?

A My recollection was that Mr. Bosse believed that he was -- "he" being Charleston Laboratories, the company -- was authorized, had the right under the stockholders agreement to repurchase all of the shares.

Did that answer your question?

Q In part.

So he believed that he had the right under the SHA to purchase all of Dr. T's shares.

Do you recall what his position was with respect to how the SRA and the SHA worked together?

A Well, initially, I don't think that Mr. Bosse even necessarily cared about the stock restriction agreement because he had re- -- he believed that he had repurchased all of the shares of Dr. Takigiku pursuant to the stockholders agreement because he had paid fair value for those shares, which he believed he was entitled to do under the stockholders agreement as -- when I say "he," I mean Charleston.

Q Okay.

A So let me say that again. Mr. Bosse, as the president and chairman of Charleston Laboratories, believed that he had repurchased all of the shares of Dr. Takigiku pursuant to the stockholders agreement for fair value. So it's my recollection that he didn't concern too much about the stock restriction agreement, because he had proceeded pursuant to the stockholders agreement.

Q Okay. And, in fact, he had, correct?

A That was our argument and the judge agreed with us.

Q Okay. Before the litigation was filed, do you recall whether Greenberg prepared, whether in writing or otherwise, any analysis of the likelihood of Charleston Labs succeeding in the litigation against Dr. T?

A As to that specific question, the answer is we did not.

Q Okay. Do you recall Charleston Labs asking you for any prediction or analysis about the likelihood of it succeeding in its case against Dr. T?

A My recollection is that Paul Bosse could not, in his mind, imagine the possibility of not succeeding against Dr. Takigiku because it would be the end of his company and the end of his life's mission, and, you

know, the end of everything that he had worked so hard for for ten-plus years. So I don't think he would have asked for a memo about the possibility of not succeeding. I don't recall that.

Q Okay. At the time that you -- that Greenberg filed the Florida litigation on behalf of Charleston Labs, was it your opinion that Charleston Labs was likely to prevail in the lawsuit against Dr. T?

A When I got the order granting summary judgment, I was very happy. And until I got that order, it could have, you know -- I mean, we all know as litigators, it could go -- we -- the -- we fought very, very, very hard to win that litigation. There were many issues raised by the documents.

Q At the beginning of the litigation, were you confident in the position that Charleston Labs was taking in that litigation?

A I think that Greenberg Traurig worked very hard to put together the very best case. And I think, as litigators, we are usually confident in our positions. I think that Greenberg Traurig put together the very best case that could have been put forth to the court. So, yes, I was confident.

Q Mrs. Berry, a minute ago, when talking about the litigation, you said that -- and I'm paraphrasing,

but that Greenberg -- that you were very happy when the order came out granting Charleston Labs' summary judgment and that Greenberg did the best it could in the litigation. And I think you mentioned that your position was that there were issues created by the documents. Is that what you said?

A We addressed many, many issues, correct.

Q What issues would those be?

A I cannot recall, sitting here today, all of the issues, but I am confident that they would be reflected in the many documents that you have.

Q Okay. And is it fair to say that all of those issues were resolved in Charleston's favor by the summary judgment order entered in the Florida litigation?

A I am confident that Charleston won in the trial court. I don't know that the judge necessarily addressed every issue, but at the end of the day, Greenberg Traurig was successful in obtaining a judgment in favor of Charleston Labs in the trial court.

Q Okay. Do you recall any discussion that you had, or any other attorneys that Greenberg had prior to filing the Florida litigation, about the possibility that Dr. T would have a statute of limitations issue if he sought to bring a claim against Charleston Labs?

A Okay. So I cannot testify about any other -- you know, when you say, do I know what any other attorney -- that is rather broad. We have many, many attorneys at Greenberg Traurig.

As to my team, my Greenberg Traurig team that was handling this litigation, yes, I am aware that there were significant discussions relating to the statute of limitations. Dr. Takigiku's counsel, before the litigation was filed, had taken the position that Charleston could not contest that Dr. Takigiku was a stockholder because his position was that the repurchase had occurred, you know, beyond the statute of limitations period, and that somebody from Womble had said that if Dr. Takigiku didn't agree, that Charleston was going to file a lawsuit. And it never did. That is my recollection.

It could be wrong, but, again, if you could refresh my recollection, that would be helpful.

Q Okay. Do you recall any discussion -- or what discussions do you recall about whether, if Dr. T were to file a lawsuit against Charleston Labs, whether Charleston Labs might have a statute of limitations defense against Dr. T?

A Well, again, you might have noticed that Greenberg Traurig was, you know, very careful in the

declaratory judgment action to focus on the current dispute and current issue, which is that Dr. Takigiku is claiming to be a stockholder and demanding the books and records of Charleston.

We definitely discussed that we knew, because Dr. Takigiku's attorney had told us that they thought that the stockholders agreement -- that the company could not travel under the stockholders agreement because the company was not a party to the stockholders agreement. And he had also told us -- he had also told us or it's my recollection that he told us that, you know, there was a statute of limitations issue on that side.

We, therefore, had to consider -- which, of course, is what happened. That -- whether Takigiku -- this is how it was going to play out: Either Dr. Takigiku was going to file a lawsuit against Charleston for the books and records claiming that he was a stockholder, and so the same litigation that ultimately was decided by Judge Cohn in the Southern District of Florida would have been decided, worst case, probably Cincinnati, possibly Delaware, possibly South Carolina -- it would have been the flip side and Dr. Takigiku would have been in the driver's seat as the plaintiff. So -- and then we would have been the

counterclaimant.

So, this way, we felt that the best strategy was -- when I say "we," I mean Charleston, together with Greenberg Traurig, me -- decided that Charleston wanted to be the plaintiff, wanted to be in the driver's seat.

They felt that there was a strategic advantage to having the litigation here where Charleston is located, not where SIDIS is located. And also to be the plaintiff first, arguing that the stock was repurchased pursuant to the stockholders agreement as compared to having Dr. Takigiku have the advantage of being the first to say that the shares could not be repurchased pursuant to the vesting schedule and the stock restriction agreement.

Did I answer your question?

Q I think so.

A Okay. Thank you.

Q Let me back up a little bit.

Do you have an opinion, Mrs. Berry, about whether or not Charleston Labs was compelled to file a lawsuit against Dr. T as a result of Dr. T's claim to still be a shareholder?

A If it -- if Charleston wanted to not give its books and records to Dr. Takigiku, who was, at that time, very much affiliated with SIDIS and the SIDIS

entities; and if Charleston wanted to resolve the claim by Dr. Takigiku that he was a stockholder, I think that they -- that Charleston made the right decision, yes, to bring the declaratory judgment action, which is what Womble had also recommended.

Q Do you know what --

A And, you know, let -- I'm sorry. I need to amend that answer.

Q Okay.

A I said which is what Womble had also recommended. Womble did not recommend that to me. It is my understanding that Womble had recommended that to Charleston.

Q Okay. Who communicated that to you?

A I'm sorry?

Q Who told you that Womble had made that recommendation to Charleston Labs?

A I believe it was Mr. Scott.

Q Okay. Do you know what damage Charleston Labs was suffering when Dr. T made a claim that he was still a shareholder?

A I have gone -- I have answered that question, I think, a couple of times.

Q I mean, are you referring back to the discussion about Dr. T's involvement in other companies

and demand for books and records?

A Okay. So I'm not going to be able to remember my answer verbatim, but I think what I said was that the risks and the damages that they were suffering as a result of Dr. Takigiku's claim to be an owner of Charleston stock was potential issues relating to the relationship with Daiichi; potential issues relating to the relationship with its other stockholders; potential securities issues; the fact that Dr. Takigiku was trying to get their books and records, which are proprietary and confidential; and the fact that SIDIS would then get this information -- SIDIS being a competitor of Charleston.

That is what I remember right now. I may have remembered additional things before, but that is what I remember right now sitting here at this moment.

Q Okay. Charleston Labs was or is incorporated in Delaware; is that correct?

A That is correct. It is a Delaware corporation.

Q Okay. Is it your understanding, Mrs. Berry, that if Dr. T sought to file litigation concerning his right to inspect the books and records of Charleston Labs, he would have to do so in the Delaware chancery court?

A I don't recall what the analysis was on that. I would have to go back and look.

Q Do you recall --

A I don't think that that was our analysis, but, again, I don't want to speak out of turn. I would have to go back and look.

Q Okay. Do you recall having discussions with either George or directly with Charleston Labs about where Dr. T would be required to bring a claim if he were to assert his right to inspect the books and records?

A I think I already answered that. I think I told you that we analyzed and considered various potential venues, such as Charleston's principal place of business back at the time of incorporation and at the time of the stockholders agreement and the stock restriction agreement was South Carolina.

Dr. Takigiku claimed that he always worked out of -- I want to say off the top of my head, Cincinnati, which is where SIDIS was.

Charleston wanted the litigation to be here in South Florida where its home is.

And then, of course, there was also the consideration about the litigation being in Delaware -- I want to say chancery court. So we considered all of

those potential venues.

Q Do you recall considering which party would have the burden of proof in those various scenarios?

A We did.

Q Okay. And do you recall discussing that with Mr. Scott or Charleston Labs?

A Don't forget, we anticipated that whoever -- there was going to be somebody who filed first who was going to get to be the plaintiff and we considered that would be a strategic advantage. There was no doubt that the other side was going to file on the other side. And so the burdens of proof would be -- you know, obviously we had the burden of proof on some things; they had the burden of proof on other things.

Q Mrs. Berry, I believe you testified that prior -- well, let me just ask. Prior to filing the lawsuit against Dr. T, did you have a discussion with Dean Rutley about the SRA and the SHA?

A I believe I already answered you that I recalled that I thought that there was at least one conversation that I took part in, in addition to Mr. Scott telling me that he had had communications with Mr. Rutley.

Q Do you recall what, if anything, Mr. Rutley communicated about how the SRA and the SHA worked

together?

A He did -- I think I answered that question, too. He -- he didn't answer any questions. He said that we had to talk to Mr. Baddour.

Q Okay. And you did not talk to Mr. Baddour; is that correct?

A I would have loved to have been able to talk to Mr. Baddour, but he was on medical leave and I wasn't permitted to talk to Mr. Baddour.

Q Have you ever met Mr. Rutley?

A Yes.

Q Have you formed any impressions of him?

A You mean, as a human being have I formed any impressions of him?

Q Well, as a human being or as a lawyer.

A As a lawyer, I have not formed any impressions of him.

Q Okay. What about as a human being?

A No.

Q You have not formed any impressions of him?

A Well, I think I told you before that I wish that he had testified at the deposition in the Charleston versus Takigiku case as stridently as he testified in this litigation. But in the litigation between Charleston and Dr. Takigiku, off the record, he

was not helpful and very equivocal in saying that he wasn't responsible for anything.

And then, on the record, he was also equivocal and very hypertechnical in his testimony, which was not helpful to us.

Q Okay. Have you ever met Mr. Baddour?

A I have not.

Q Okay. Have you formed any impressions of Mr. Baddour, either as a lawyer or as a human?

A I was very sorry to hear that he was sick. I don't know if you mean that that is an impression.

Q Okay. Mrs. Berry, did Charleston Labs either directly or through Mr. Scott ever communicate to you that it believed that one agreement controlled over the other as between the SRA and the SHA?

A Yes.

Q How was that communicated to you?

A That both Mr. Bosse and Mr. Scott told me that it was Mr. Bosse's understanding that he was entitled, on behalf of Charleston Labs, to repurchase all of the shares that Dr. Takigiku had held at fair value, which he thought he had done.

Q Okay. Was it your understanding that Mr. Bosse's understanding of the SRA and the SHA was that he could proceed under either document to

repurchase shares of Dr. T?

A It was my understanding that Mr. Bosse believed that he had instructed his attorneys at Womble that he wanted to be able to repurchase all of the shares. And I think, at that point in time, he had hoped that his attorneys had done that.

Q Okay.

A And I probably need to amend that answer because it's also my understanding that Mr. Bosse, you know, told his -- my understanding was that Mr. Bosse had communicated what he wanted to be able to do, which is control the company and specifically to control who the stockholders were and to repurchase shares, and that he left it up to his attorneys to achieve that result.

Q And, at the end of the day, Mr. Bosse was able to repurchase all of his shares under the SHA, correct? All of Dr. T's shares, correct?

A Not without going through two years of litigation.

Q Well, the litigation confirmed that he had, in fact, repurchased all the shares, correct?

A Yes. "He" being that Charleston had repurchased his, being Dr. Takigiku's, shares.

Q Did Charleston Labs ever contend that the SRA and the SHA were ambiguous, Mrs. Berry?

A We contended that the two documents had been executed at the same time and should be read together so that each document would be given meaning.

Q Okay. During your representation of Charleston Labs, did Charleston Labs ever communicate to you or otherwise take the position that the SRA and the SHA were ambiguous?

A It's a fact that there were issues with the documents. For example, Charleston is -- there was no place for Charleston to sign on the stockholders agreement. And, in fact, Charleston did not sign on the stockholders agreement.

We had to, from a strategy standpoint, develop a strategy to ultimately get testimony from Dr. Takigiku where he admitted that it was his understanding and his admission that Charleston was a party to the stockholders agreement and had the right to enforce the stockholders agreement.

Q Did Dr. T also admit in the Florida litigation that both the SRA and the SHA controlled?

A Please give me a minute and let me look through these documents that I have in front of me and see if any of those refresh my recollection. Okay?

Q Okay.

A Yeah. Let me just point out also, as I am

reading through our motion for summary judgment, that on page 5, under subsection 3(a), we say, probably much more eloquently than I just said, that the stock restriction agreement and the stockholders agreement must be read together and gave the company concurrent rights to repurchase Takigiku's shares. So that was our position.

Okay. I'm sorry. Can you tell me that question again? I think I found here the answer, but can you tell me the question again, please?

MR. JORDAN: Madam court reporter, can you read the question back? I, frankly, forgot it.

THE WITNESS: Did you forget it?

MR. JORDAN: I did.

(Thereupon, the referred-to question was read back as recorded above.)

BY MR. JORDAN:

Q Do you recall the answer to that question, Mrs. Berry?

A So I think on page 16 of our motion for summary judgment under section 5(b), we address that. And it says, "In this fourth defense, Takigiku argues that the SRA, quote, modifies and supersedes any conflicting terms of the stockholders agreement, quote, and that, quote, to the extent that any ambiguity

results of the stockholder agreement and the SRA, comma, such ambiguity must be construed against plaintiff and in favor of Dr. Takigiku's just and reasonable interpretations," period, quote.

And then we cite to that.

"However, as detailed in section 3(a) above, the SRA does not supersede the stockholders agreement. The two agreements create a concurrent right to the company to repurchase the Takigiku shares."

And then we go on and we say that Takigiku executed the stockholders agreement and the SRA on the same date, effective as of the same date.

Q Okay. And I will come back in a few minutes to some of the filings in the federal court.

Let me change gears a little bit, if it's okay.

MR. MCKISSOCK: Can we take a break whenever you get a chance?

MR. JORDAN: We can take one right now.

MR. MCKISSOCK: That would be great. Thank you.

(Thereupon, a recess was taken.)

BY MR. JORDAN:

Q Mrs. Berry, did you make the decision concerning how Greenberg would staff the Florida

litigation?

A I, together with Charleston, made the decisions relating to staffing, yes.

Q Okay. And with respect to invoices that were submitted by Greenberg to Charleston Labs, did you review the invoices before they were submitted?

A Yes.

Q Okay. Did Greenberg's invoices accurately reflect the work that was performed by Greenberg in the Florida litigation?

A All of the work that is on the invoices accurately reflects the work that was on the invoices, yes.

There were discounts and -- there were discounts.

Q Okay. But all of the work that is on the invoices accurately reflects work that was performed by Greenberg on behalf of Charleston Labs?

A Yes. There could have been additional work that was not billed to the client, but, yes. Anything there, yes, is accurate.

Q Okay. And did Greenberg's invoices accurately reflect the amount of time spent by Greenberg attorneys and staff on behalf of Charleston Labs in the Florida litigation?

A Yes.

Q Okay. Do Greenberg invoices accurately reflect the various attorneys and staff members who worked on the Florida litigation?

A Yes.

Q Okay. Other than the invoices that have been produced to us, are there any other records that would reflect the time that Greenberg spent on the Charleston Labs matter?

A I believe that everything that you had asked for was provided to you in the documents.

Q Okay. In comparison with other cases that you handled or that you have been the lead attorney on, how would you say that this case was staffed?

Did this case have more attorneys than usual, less attorneys than usual, or average?

A I am not comparing this case to any other case. I think any other case is unique and stands on its own. And I am not discussing with you any case other than this case unless instructed to do so by a judge.

Q I am not asking for specifics on any other cases. I am just wondering how this case, the number of attorneys and staff members that worked on this case compares to other litigation that you handle?

MR. MCKISSOCK: We will --

THE WITNESS: I can't answer that question.

MR. MCKISSOCK: Let me -- the concern is, once we go down this road where we're bringing up other privileged matters that she is working on, there is really no stopping it at that point. And, I mean, you know, her work for other -- you know, she has not waived a privilege in regard to anything else, and she can't discuss privileged information here today.

MR. JORDAN: Yeah. And I agree with that. And I guess my point is, I don't think that asking how this case -- that the staffing of this case compares to general cases has -- calls for any privileged information.

THE WITNESS: I cannot -- I cannot compare this case to any other case. It was unique. I cannot compare it to any other case, period. So that's your answer.

BY MR. JORDAN:

Q Well, the answer is that you are not willing to. It's not that you can't.

A No. I just amended my answer. My answer is that I cannot compare this case to any other case because it was very unique.

Q In what respect was it unique?
A There were different people involved, there were different issues involved, there were different stakes; in other words, different risks, different consequences, different client, different client expectations.
Q Okay. Mrs. Berry, are you familiar with the term billing judgment?
A Yes.
Q What do you understand that term to mean?
A That the attorney responsible for the billing and the invoices is to exercise billing judgment.
Q And with respect to Greenberg's representation of Charleston Labs in the Florida litigation, did you exercise billing judgment?
A I did.
Q Okay. In the Florida litigation, Charleston Labs sought a determination that it had bought out Dr. T's shares in Charleston Labs under the SHA and that, as a result, Dr. T was no longer a shareholder of Charleston Labs, correct?
A The pleadings say what they say. I stand by the pleadings.
Q Well, I would like an answer to my question, Mrs. Berry. Do you agree with me that what Charleston

Labs sought in the Florida litigation was a declaration that it had purchased Dr. T's shares pursuant to the SHA and, as a result, Dr. T was no longer a shareholder of Charleston Labs?

A I ask that you please review the third amended complaint for declaratory relief attached as Defendant's Exhibit 2. That is what Charleston Labs sought.

And then, if you would look at Dr. Takigiku's counterclaim and our defenses to the counterclaim, you'll see what our defenses were to Dr. Takigiku's claim.

Q And I can read the documents, but I can also ask you questions, Mrs. Berry.

MR. JORDAN: And, Tim, we are going to be here all day if this going to be how this is going to go.

I mean, I am asking you a very simple question about what Charleston Labs' was seeking in the Florida litigation, and I think I am entitled to an answer to that question.

MR. MCKISSOCK: And, Will, she answered the question. I mean, it's set forth in a document. Do you want her to sit here and read it to you? I mean, is that what you're asking?

MR. JORDAN: I am asking a very simple

yes-or-no question. And I think that it can be answered with yes or no. I mean, she can explain in any way that she wants to explain it.

BY MR. JORDAN:

Q But my question is simply: Did Charleston Labs seek a declaration that it had bought out Dr. T's shares under the SHA, and therefore, Dr. T was no longer a shareholder of Charleston Labs?

I --

A I refer you to page --

Q I don't know why that --

A I refer you to page 8 of the third amended complaint.

MR. MCKISSOCK: Bridget, go ahead and read the --

THE WITNESS: I am.

MR. MCKISSOCK: -- whatever --

THE WITNESS: "Wherefore" --

MR. MCKISSOCK: -- the thing is into the record.

THE WITNESS: Exactly.

MR. MCKISSOCK: I mean, if that's what he wants.

THE WITNESS: Yes. That's what I am going to do.

"Wherefore, comma, plaintiff respectfully requests that the court take jurisdiction of the matter and determine the rights and obligations of the parties, colon. 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, parentheses, without the payment by Charleston of any consideration for such shares other than the $2.10 already tendered, parentheses, colon; and, D, awarding Charleston its reasonable attorneys fees and costs and granting such other and further relief as the court deems just and proper."

BY MR. JORDAN:

Q And other than those four items that you have read from Charleston's prayer for relief, did Charleston Labs have any other goals in the Florida litigation that you are aware of?

A Yes.

Q What were the additional goals?

A I don't recall.

Q How do you recall that there were additional

goals, but you don't recall what they were?

A Well, for example, our goal was to defeat Dr. Takigiku's claim that the stock restriction agreement controlled over the stockholders agreement and that Charleston had no right to repurchase the shares under the stockholders agreement, et cetera, et cetera, which I have already testified to.

Q Okay. Other than the goal of declaring that Charleston is the true owner of the shares and that Dr. T is not the true owner of the shares, did Charleston Labs, pursuant to your understanding, have any other goals in the Florida litigation?

A You already asked that and I already answered it.

Q What was your answer? I don't recall it.

THE WITNESS: Madam Court Reporter, will you please read back my answer.

You know, I told you my father was in surgery yesterday, and you told me we would be done by lunch. And you keep asking me repetitive questions, and I don't think that is kind.

MR. JORDAN: Mrs. Berry, I am not trying to delay this anymore --

THE WITNESS: I'm sorry. My husband? What did I say?

MS. TARBE: Your father.

THE WITNESS: Oh, I'm so sorry. My husband. I'm sorry. See how upset I am. My husband.

My father is deceased. It's my husband.

You know what, as a matter of fact -- as a matter of fact, I better take a break.

Give me a minute.

MR. JORDAN: Are we taking a break?

MR. MCKISSOCK: Yes.

(Thereupon, a recess was taken.)

THE WITNESS: Sir, I am ready again.

BY MR. JORDAN:

Q All right. Mrs. Berry, I asked you about Charleston Labs' goals in the Florida litigation. You have pointed me to the third amended complaint and Charleston Labs' prayer for relief.

What I am trying to understand is: Other than a finding that Dr. T was not a shareholder and that Charleston had repurchased Dr. T's shares, do you understand Charleston Labs to have had any other goal in the Florida litigation?

A I can't answer that question because, for example, one goal would be to establish that Charleston had rights under the stockholders agreement to repurchase all of the shares of its stockholders for

fair value, and that was done.

Q And that is in the prayer for relief. I mean, that is -- wouldn't you agree that that is part of seeking a declaration that Charleston Labs is the owner and Dr. T is not the owner of those shares, correct?

A I don't understand your question.

Q My question is: Separate and apart from a finding that Dr. T is no longer a shareholder, did Charleston Labs have any other goals in the Florida litigation?

A Yes. To clarify its stock ownership and to clarify that it had rights under the stockholders agreement and that those rights gave it the right to repurchase all shares of the stockholders, including stockholders that had also signed stock restriction agreement, et cetera. And there could be other things that I just don't recall sitting here today.

Q Okay. Sitting here today, you don't recall any other goals?

A Sitting here today, without documents to refresh my recollection, I don't recall other goals.

Q Okay. Do you recall in the Charleston Labs -- in the Florida litigation that Charleston Labs hired a valuation expert, Mr. Van Vleet?

A I do.

Q Okay. Was the work that was performed by Mr. Van Vleet related in any way to the drafting of the SHA or the SRA?

A Of course. Yes.

Q In what way?

A Well, because if Paul Bosse's repurchase on behalf of Charleston of all of the shares of Dr. Takigiku under the stockholders agreement was found to be ineffective, and instead he could only -- Charleston could only repurchase, quote, unvested, quote, shares under the stock restriction agreement, there would be the question of valuation of the shares.

Furthermore, under the stockholders agreement, the repurchase was for fair value, and so we had to establish fair value.

Q Okay. Is it your understanding that -- do you have any understanding about whether or not Womble had any involvement or advice towards Charleston Labs regarding the fair value determination?

A Actually, my recollection, it was very fortunate that Paul Bosse --

(Cell phone interruption.)

THE WITNESS: I'm sorry. I have to get that. it may be relating to my husband.

It is.

May I take a break, please?

MS. TARBE: Sure.

(Thereupon, a recess was taken.)

THE WITNESS: Okay. I am back.

BY MR. JORDAN:

Q Okay. We all ready?

A Yes.

Q And I'll just say for the record, for everyone, you know, Mrs. Berry, if you need to go --

A No.

Q -- we can --

A No. Let's finish this. Go ahead, please.

Q Okay. Well, I'm just letting you know that I spoke with Mr. McKissock yesterday and gave him the best estimate that I could about how long this would take, but as we all know --

A Okay. Please just ask your questions and I will answer them, please.

Q I just want the record to be clear that I'm moving along as quickly as I can, and I am not going to be pressured into running through my deposition without asking the questions I need to ask. So I will move forward.

Mrs. Berry, I was asking you about the valuation expert, Mr. Van Vleet. My last question, I

believe, was whether you have any knowledge about whether the valuation determination made by Mr. Bosse was pursuant to any advice offered by Womble.

A I don't know what communications went on between Womble and Mr. Bosse in that regard. I know that Womble was representing Charleston in connection with the repurchase. I know that Mr. Bosse himself did a fair value determination, and it was very helpful in the litigation that there was a resolution that documented that fair value determination. That is what I recall.

Q Okay. Am I correct in understanding that Mr. Van Vleet's opinions regarding valuation would only be important in the Florida litigation if a court were to determine that Charleston Labs had not repurchased all of Dr. T's shares?

A No.

Q What was that?

A No.

Q And why is that?

A Sitting here today, what I recall off the top of my head is that Dr. Takigiku took the position that even if Charleston had rights to repurchase under the stockholders agreement, which Dr. Takigiku denied, that Charleston had not followed the procedures set forth in

the stockholders agreement to repurchase the shares, including the fair value determination.

Q Okay. There was an allegation -- well, there was an allegation that Dr. T had transferred or had attempted to transfer certain of his shares to a third party, Mrs. Berry?

A Yes.

Q And was that issue related in any way to the drafting of the SHA or the SRA?

A Yes.

Q How was that?

A Well, the question was whether the company could repurchase all of the shares of Dr. Takigiku.

Q Okay. So the issue concerning whether or not Dr. T had transferred certain shares to a third party would only be an issue if the court determined that Charleston Labs had not effectively repurchased all of Dr. T's shares, correct?

A I can't answer that question without reviewing all of the documents that I looked at four years ago; and I don't have them all in front of me, nor do I have the capacity to do that at this time.

Q Well, would you agree with me that if Charleston Labs repurchased all of Dr. T's shares, then any subsequent attempt to transfer shares would not be

possible, correct?

A I don't know. I would have to go back and look at the documents and look at what we were considering at the time.

Q In the Florida litigation, did Greenberg conduct discovery regarding SIDIS?

A We did.

Q What was the purpose of the discovery regarding SIDIS?

A Well, for one thing, Dr. Takigiku had asserted that Charleston could not terminate the employment of Dr. Takigiku. It's a rather complicated answer. So at the get-go, Charleston's position was that it had repurchased all of the shares of Dr. Takigiku for fair value because he was no longer an employee, among other things.

Dr. Takigiku claimed that he could only be terminated for cause, and that even if he was terminated for cause, that Charleston could only repurchase unvested shares. And he claimed that the termination was a pretext and that John Ameling had also transferred shares or purported to transfer shares, et cetera. It's all in the pleadings.

Q I am having a little bit -- was that answer -- I was having a little bit of trouble with hearing you

Mrs. Berry. Help me understand what was the discovery in SIDIS related to?

A There were a number of issues relating to SIDIS, most of which were raised by Dr. Takigiku.

Q And what were those issues?

A I already told you. And they are in the pleadings.

Q Was the discovery in SIDIS in any way related to how the SRA and the SHA were drafted?

A Yes.

Q How?

A I have already told you.

Q Mrs. Berry, I don't believe that you have already told me. If you have, then I don't understand what your response is. How were the -- how was the discovery into SIDIS related to how the SHA and SRA were drafted?

A Could you read back my -- should I just answer again? It might be faster.

MR. MCKISSOCK: Just go ahead and answer.

A Okay. So the answer is, once again, that it was Charleston's position that Charleston was entitled to repurchase all shares of Dr. Takigiku pursuant to the stockholders agreement and did so.

Dr. Takigiku's position was that Charleston

had no rights to repurchase shares under the stockholders agreement for a number of reasons. And even if it did have a right to repurchase under the stockholders agreement, it had not followed the procedures set forth in the stockholders agreement. And that, instead, the stock restriction agreement controlled.

They even claimed that the stock restriction agreement had been executed after the stockholders agreement had superceded the stockholders agreement due to the provision in the stock restriction agreement that the document supercedes any prior agreement between the parties.

And so under his theory, Dr. Takigiku's theory that the stock restriction agreement controlled, he said that the -- only the unvested shares could be repurchased.

And so, for example, if there had been a provision in the stockholders agreement -- and these are just examples and just based upon my recollection, not having reviewed all of the documents that you have, only what you have provided to me in this binder today, to refresh my recollection -- for example, if the stockholders agreement had been drafted with a place for Charleston to sign and Charleston had signed, that would

have taken care of one issue.

If the stockholders agreement had had a sentence, for example, that said, some stockholder -- some stockholders or founding stockholders may also be entering into a separate stock restriction agreement on this date, and these two documents shall be read together, and that the company and/or that the company has rights to repurchase all stock for fair value under this stockholders agreement and concurrently the right to repurchase some shares for whatever the amount was that was stated, which was a nominal amount, that would have resolved those issues and there would not have been a bona fide dispute, and, therefore, no need for the litigation or at least no need for the litigation on those issues.

Q Okay. And I -- how does that relate to the SIDIS discovery?

THE WITNESS: Can you -- I'm sorry. Can you read me back his question before this?

(Thereupon, the referred-to question was read back as recorded above.)

THE WITNESS: So the discovery relating to SIDIS in connection with those issues about the drafting of the documents also related to the question of the ability of a stockholder to

transfer shares; and SIDIS and Dr. Takigiku took the position that they could transfer shares the way they had, and Charleston took the position they could not.

BY MR. JORDAN:

Q Mrs. Berry, in the Florida litigation, did Greenberg conduct discovery into Prime DP?

A Those were the SIDIS-related entities, yes.

Q Okay. So your answer with respect to SIDIS discovery would be the same for Prime DP?

A Prime DP, Bexion -- there might have been other companies -- I refer to them as the SIDIS-related entities, but yes.

Q Is BioLOGIC included in that --

A Yes. Yes. Thank you for refreshing my recollection.

Q So that discovery all had to do with whether or not Dr. T's shares had been transferred to third parties?

A Do you have a copy of the subpoenas that we served? That would refresh my recollection on what we were looking for in connection with that discovery, and then I would be able to give you a much better answer as to how that relates to the stockholders agreement and the stock restriction agreement.

Q Okay.
A I just don't remember sitting here today.
Q I don't have those in front of me, but it's fair to say that those would reflect what you are seeking in that discovery?
A That would be fair.
Q Okay. Do you recall, in the Florida litigation, Greenberg conducting discovery regarding van Gilse? V-a-n G-i-l-s-e.
A Margaret van Gilse. And I think you have spelled it right. It was the -- my understanding was that she was the, quote, common-law wife, quote, of Dr. Takigiku and was very involved with the SIDIS entities together with Dr. Takigiku.
Q Okay. Did discovery regarding van Gilse relate in any way to the drafting of the SHA and the SRA?
A I believe it did. And, again, I would refer to my answer relating to the, quote, SIDIS entity, quote, discovery, which is that it would be very helpful to me if you could refresh my recollection, you know, with the subpoenas. And then I would then remember what we were asking for, and I would be probably able to answer you better as to why.
Q Okay. In the Florida litigation, did

Greenberg conduct discovery regarding Dr. T's divorce?

A I think, as in any deposition that we would take, we would -- that, you know, Dr. Takigiku was the other side. And I think that, as to any witness that we deposed in this case, we would do some background information because, of course, the credibility of a witness is always important. So although I don't recall that, it would not in any way surprise me.

Q Okay. Mrs. Berry, if, at the beginning of the Florida litigation, Charleston Labs had communicated to you, "All we want to do is get an order that says Dr. T is not a shareholder of Charleston Labs," would that have changed your approach to this litigation at all?

A You are asking me a hypothetical question that I cannot answer.

Q What additional facts would you need in order to answer that?

A Well, I -- you know, I'm not an expert, and I can't give you -- I just -- I can't answer you. Every case stands on its own, and I would have to know what was being asked. And I just can't answer that question. I'm sorry.

Q If Charleston Labs has said, "We -- all we want is an order stating that Dr. T is not a shareholder," would it have been necessary to conduct

discovery into these third parties --

A Maybe. I don't know.

Q -- that we discussed?

A Maybe. I don't know. Sitting here right now, I don't know. Maybe.

Q Mrs. Berry, did you have a good-faith basis of the facts and arguments you presented in the Florida litigation were true and accurate?

A Yes.

Q Are there any facts that you presented or arguments that you made in the Florida litigation that, to your knowledge, were false or incorrect?

A No.

Q Okay. And with respect to the Exhibit 10, 11, 12, and 13, which, Exhibit 10 is the motion to strike defenses, Exhibit 11 is the motion for summary judgment, Exhibit 12 is the statement of facts in support of the motion for summary judgment, and Exhibit 13 is the reply to Dr. T's response to motion for summary judgment, to your knowledge, are the facts and arguments presented in those pleadings true and correct?

A Yes.

If they are all Charleston's, anything I signed was true and correct, to the best of my knowledge, correct. Yes.

So let me just look.

Yes. Those are all Charleston pleadings, so yes. Everything is true and correct, to the best of my knowledge, yes.

Q And were the pleadings that you filed on behalf of Charleston Labs, were they reviewed and approved by Mr. Bosse or Mr. Scott before they were filed?

A They would -- I don't know if they were reviewed and approved by Mr. Bosse. I know that they were reviewed and approved by Mr. Scott.

Q Okay. The federal court in Florida, as we discussed, granted summary judgment in Charleston Lab's favor. So -- and this is an obvious question, but Charleston Labs won as a matter of law, correct?

A Charleston won, yes.

Q And that was as a matter of law, correct?

A I'm not sure what you mean by that. If you mean did the court look beyond the plain language of the stockholder agreement and the stock restriction agreement, then the answer is that the order reflects that the judge did consider evidence outside the documents. But at a summary judgment is that there is no genuine issue of material fact.

Q Okay. And so in ruling on summary judgment,

the court necessarily concluded that there was no genuine issue of material fact, correct?

A I think that would be more fair to say.

Q Okay. In ruling on summary judgment, will you agree with me that the court determined that it did not need the assistance of a trier of fact to reach its decision in the case?

A I am not going to purport to say what the judge said, other than what is set forth in his order. So hold on a second so that I can look at his order, which I think you included in your materials.

Can you help me out by telling me the exhibit number?

Q Yes. Exhibit No. 7.

A Thank you.

Okay. So what the court says is, for example, he says in the first paragraph, "For the reasons stated herein, the court will deny defendant's motion and grant summary judgment in favor of plaintiff."

Can you repeat your question?

Q My question was just if you agree with me that, in reaching a conclusion, the court did not need the assistance of a trier of fact?

A The court was the trier of fact.

Q Okay. But the court didn't hold a trial,

correct?

A It is correct that we did not have to go to trial in this case because Greenberg Traurig was successful in obtaining judgment on, you know, summary judgment, which saved the client a lot of money.

Q Do you believe the Florida court correctly decided the case?

A I do.

Q In looking at Exhibit 7, are you aware of any statements in this order with which you disagreed?

A I agree that we should have won, and I --

Q Okay.

A -- don't disagree with the court's reasoning, which is the reasoning that we had argued.

Q Okay. In granting summary judgment in favor of Charleston Labs, is it correct that the court had to view the light -- excuse me -- view the facts in the light most favorable to Dr. T?

A That is a loaded question because the court was considering -- this order is an order on both our motion for summary judgment and Dr. Takigiku's motion for summary judgment, so I would really have to think carefully about your question in terms of what light different things were looked at.

Q Okay. In the Florida litigation, did

Greenberg ever consider filing a motion for judgment on the pleadings?

A We did.

Q And did you ultimately file one, or not?

A We did not.

Q Do you recall the reason for not filing one?

A Yeah. I'm sorry. Yes.

Q What was the reason or reasons?

A And, by the way, I don't know if we specifically -- there were a lot of strategy conferences. Charleston's goal was to establish that it was the owner of the shares and that Dr. Takigiku was not an owner of the shares and had no right to review the books and records of the company, et cetera. And had no right to transfer his shares and wanted to do so as quickly, efficiently, and inexpensively as possible. And so there were a lot of strategy conferences involved in that regard.

One of those strategies would have been, what is the, you know, quickest way to try to resolve the dispute. Because there were so many factual challenges by Dr. Takigiku, such as the challenge that Charleston Labs had not signed the stockholders agreement and was not entitled to enforce it, we decided that we would only be educating the other side and that the court was

unlikely to grant judgment on the pleadings; and that if the court did grant judgment on the pleadings, it would be much easier to have an appellate court reverse.

And so, ultimately, I think the decision between Charleston and Greenberg Traurig was to not spend the money to move for judgment on the pleadings and instead to try to conduct discovery, you know, on the issues presented and then move for summary judgment, which is what we did.

Q Okay.

A And then we won. And we avoided trial.

Q And I assume it's safe to say that if Charleston Labs had filed a motion for judgment on the pleadings, sitting here today, you don't know whether that would have been granted or denied, correct?

A Do you?

Q I do not. Do you?

A That is a hypothetical question. I don't know. I don't even know if Judge Cohn would know the answer to that question. I don't know.

Q Okay. Okay. If Dr. T had been the plaintiff in the case, whether it was filed in Ohio or Delaware or South Carolina or wherever it might have been filed, Charleston Labs would have the option of filing a motion to dismiss the complaint, correct?

A I'm sorry. Say that again.

Q If Dr. T had been the plaintiff and had filed a lawsuit against Charleston Labs, Charleston Labs would have had the option of filing a motion to dismiss the complaint, correct?

A I don't think so.

Q You don't think it could have filed a motion to dismiss?

A Well, again, you are asking me hypothetical questions. But if Dr. Takigiku had filed an action saying that he had the right to the books and records, I don't know how we could have moved to dismiss that. I don't know. I don't know. I would have to go back and do the research on that.

And it's a hypothetical. I can't answer your question. I'm sorry.

Q Okay.

A I do -- I do believe that -- I do believe that there was a lot of analysis and research about, you know, kind of like if you are playing chess and the different chess piece is moving and what was our best strategy.

Again, I can't remember four years ago what all of those considerations were. I can't remember specifically if we addressed the issue of -- of, you

know, if he had -- for example, your exact question, if he filed a complaint, could we have obtained dismissal of the lawsuit. I do believe that we considered all of the potential ramifications of different strategies.

Q Okay.

THE WITNESS: Are we done?

MR. JORDAN: I am reviewing my notes.

THE WITNESS: Okay. Thank you.

BY MR. JORDAN

Q Mrs. Berry, ultimately, Charleston Labs settled the Florida litigation with Dr. T, correct?

A Let me say that after we won at summary judgment, Dr. Takigiku appealed and the appeal was resolved by settlement.

Q Okay and in Exhibit No. 8 of the settlement agreement, as we have discussed, do you recall how much Charleston Labs paid Dr. T to settle this dispute, the $250,000?

A Is it stated in the agreement, Defendant's Exhibit 8?

Q I believe it's on page 3 of the agreement.

A Thank you. Hold on.

Yes, the payment amount is $250,000. Thank you.

Q Okay. Do you recall the reason or reasons

that Charleston Labs decided to pay that amount to settle the case?

A Charleston would be better able to answer that question.

I think one of the questions was the cost of going through an appeal and the risk.

Q If you look at Exhibit No. 9, this is an email -- sorry, Scott -- this is the Bridget Berry, Wednesday, October 19, 2016, email to George Scott.

You have here a proposed response to Dr. T's counsel that you sent to Mr. Scott in October of 2016; is that correct?

A This is an email from me to Mr. Scott, October 19, 2016, yes.

Q Okay. And this email references SIDIS and Prime DP. Is it fair to say that in reaching a resolution with Dr. T, Charleston also wanted to resolve all its issues with SIDIS and Prime DP as well?

A Well, that was the issue relating to Dr. Takigiku because it was his shares, which he had purportedly transferred to them.

Q Okay.

A That we had -- that "we," being Charleston, had repurchased. It was relating to the same shares and the same issues that Dr. Takigiku had raised in the

litigation.

Q Okay. All right. Mrs. Berry, at the time of the Florida litigation, do you recall what your standard rate was?

A I did not recall that, but I think that, if I look at the invoice that you have in here, I may be able to figure that out.

Hold on just a second, please.

Do you know what it was, based upon the invoice?

Okay. Here, I found it. Defendant's Exhibit 6 is the invoice. And you had brought my attention to the first entry on November 2, 2015, where for one half hour of time the amount was $312.50. So my standard rate at that time must have been, $625.

Q Okay.

A If my math is correct.

Now, we gave a discount, so then my effective rate was less than that.

Q Okay. And if you look at the first page of this -- at the very first page of this invoice, it shows a courtesy discount. Is that what you are referring to?

A We gave a discount correct, and I guess they describe it as a courtesy discount.

Q Okay. What was the reason for that discount?

A I'm sorry. I don't understand the question.
Q Why did you discount the invoices that you provided to Charleston Labs?
A Because Mr. Scott asked us to, and it was apparently decided that we should.
Q Mrs. Berry, do you know how, at the time of the Florida litigation, how your standard hourly rate of $625 an hour would compare to other attorneys and law firms in the area?
A No, not specifically, no.
Q Mrs. Berry, did you ever offer any advice to Charleston Labs about whether or not it should file a legal malpractice lawsuit against Womble?
A I did not.
Q Let me jump back to one question real quick that I want to make sure I understand.

We had talked about the concerns that Charleston Labs had that led it to the decision to file a lawsuit against Dr. T. And you have talked about the Daiichi contract. You talked about the other stockholders. You talked about their concerns about security violations.

What I want to make sure that I understand is, with respect to those concerns, did Greenberg conduct any investigation into whether or not those concerns

were valid, or did it rely on the representations of Charleston Labs about those concerns?

A I am -- I'm really very sorry, but I don't understand your question.

Q All right. Well --

A I think I already told you that Greenberg Traurig did not represent Charleston, to the best of my knowledge, relating to any question of whether or not there was a securities issue.

There clearly was an issue relating to the stockholders agreement and the stock restriction agreement and who was the rightful owner of what once had been Dr. Takigiku's shares. So, yes, I, on behalf of Greenberg Traurig, conducted a lot of investigation on that. Yes, I did.

MR. JORDAN: Okay. All right. You all give us just a minute or two, and I think we're about to wrap up, if we can take a little break.

THE WITNESS: Thank you.

(Thereupon, a recess was taken.)

BY MR. JORDAN:

Q Okay. Mrs. Berry, at Greenberg, is shareholder compensation related to the amount of fees generated and collected by attorneys?

A I'm sorry. Say that again.

Q Is compensation of shareholders at Greenberg related to or impacted by the amount of fees generated and recovered by the attorney?

A I can't answer that question except to tell you about my compensation, okay.

Q Okay.

A So it is my understanding that my compensation relates in some way to the revenue that comes into the firm based upon the hours that I have worked, and -- yes.

Q Okay.

A Does that answer your question?

Q I'm sorry. Go ahead.

A Does that answer your question?

Q I think so.

Does it also relate to the hours worked and fees billed for attorneys -- other attorneys working on cases that you oversee?

A Okay. So the first part of the question is, the harder you work, more likely the more money you will earn. And the second part is, if you are responsible for other attorneys and their work, are you also compensated for that. And I think the answer is yes, in some way. Theoretically, yes.

MR. JORDAN: Okay. All right. Thank you,

Mrs. Berry. I don't have any other questions for you.

MR. RICHTER: We have no questions.

MR. MCKISSOCK: Thank you all very much.

Will, the only question I have is, there is a binder of documents that Bridget has been relying on during the course of the deposition. Would you like me to give that to the court reporter to mark as an exhibit, or how do you want to handle that?

MR. JORDAN: Yes, please. I mean, we can mark it, as far as I'm concerned, as Exhibit 14. And I can get a copy of it from the court reporter.

MR. MCKISSOCK: Okay. So I will give the court reporter the copy that says "witness copy." and it's the one, actually, that has blue exhibit labels on it. And then I will keep the one that says "attorney copy."

MR. JORDAN: Yes, that's fine.

Now, I'm sorry. Are you referring to the documents -- to the binder that I sent or a separate binder that she brought?

MR. MCKISSOCK: No. This is the binder that you sent. The one that actually has a Wendy Willen case on the front that -- Bridget has been relying on this. It has tabs -- I believe 13 tabs in it.

And you sent two copies: One says "witness copy" and the other says "attorney copy."

MR. JORDAN: Yes. So the witness copy, it should have exhibits stickers on it. Those are the actual exhibits to the deposition, and those will go with the court reporter.

MR. MCKISSOCK: Okay. That's good. Then I will go ahead -- and I just didn't know what to do with this one, so I will hand this over right now to the court reporter to attach to the deposition.

MR. JORDAN: Yes.

MR. MCKISSOCK: All right.

MR. JORDAN: That is not Exhibit 14. They are already labeled as exhibits.

MR. MCKISSOCK: And Bridget does want to read and sign the deposition.

MR. JORDAN: Okay.

THE COURT REPORTER: Is this deposition being ordered?

MR. MCKISSOCK: What do you mean?

THE COURT REPORTER: Is the transcript being ordered? It's Florida. This is Florida. They don't necessarily order.

MR. MCKISSOCK: What do you all --

MR. JORDAN: This is Will. We would like a

copy of it, please.

THE COURT REPORTER: A copy, or are you ordering the original?

MR. JORDAN: I am ordering -- yeah, I want the original and an E-tran, please.

THE COURT REPORTER: Okay. Sure.

Does anybody else need a copy?

MR. RICHTER: Yeah. This is Ronnie Richter. We will take an E-tran, only.

MR. MCKISSOCK: We don't need a copy of it, but Bridget will read and sign it. So she'll receive that.

(Thereupon, the document was marked as Defendants' Exhibit 14 for identification, and at 12:47 p.m., the deposition was concluded.)

(Witness excused.)

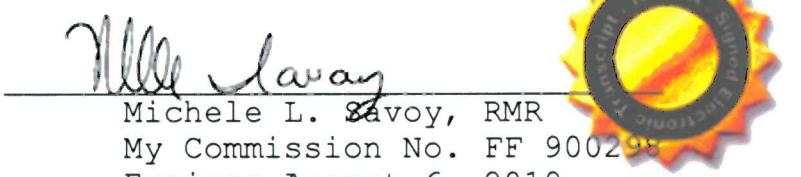
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C E R T I F I C A T E

THE STATE OF FLORIDA,)
COUNTY OF BROWARD.)

I, the undersigned authority, certify that Bridget Berry, Esquire, personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 21st day of June, 2019.



Michele L. Savoy, RMR
My Commission No. FF 900298
Expires August 6, 2019

C E R T I F I C A T E

THE STATE OF FLORIDA,)
COUNTY OF BROWARD.)

I, Michele L. Savoy, Shorthand Reporter, do hereby certify that I was authorized to and did report said deposition in stenotype; and that the foregoing pages are a true and correct transcription of my shorthand notes of said deposition.

I further certify that I am not an attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel or party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

Dated this 21st day of June, 2019.

Michele L. Savoy, RMR
My Commission No. FF 900298
Expires August 6, 2019

C E R T I F I C A T E

THE STATE OF FLORIDA,)
COUNTY OF)

I hereby certify that I have read the foregoing deposition by me given, and that the statements contained herein are true and correct to the best of my knowledge and belief, with the exception of any corrections or notations made on the errata sheet, if one is executed.

Dated this _____day of _____, 2019.

_____
BRIDGET BERRY, ESQUIRE

ERRATA SHEET

Re: Charleston Laboratories v Womble, Carlyle, Sandridge & Rice, LLP

PURSUANT TO RULE 1.310(E) of the Florida Rules of Civil Procedure, this deposition is being submitted to you for examination, reading, and signing. Please DO NOT WRITE on the transcript. Any changes in form or substance you desire to make should be entered upon this sheet as follows:

Page	Line	Change	Reason

Under penalties of perjury, I declare that I have read my deposition and that it is true and correct subject to any changes in form or substance entered here.

Signature_____Date_____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Wendy C. H. Wellin, on behalf of the Estate of Keith S. Wellin as its duly appointed Special Administrator, Plaintiff, vs. Thomas M. Farace, Esq., individually and as agent for Nixon Peabody, LLP and Nixon Peabody Financial Advisors, LLC; Nixon Peabody, LLP; and Nixon Peabody Financial Advisors, LLC, Defendants.	Civil Action No. 2:16-cv-00414-DCN

BRIDGET BERRY DEPOSITION EXHIBITS

(WITNESS COPY)

DEFENDANT'S EXHIBIT #14 MS 4/14/16

GT GreenbergTraurig

Bridget A. Berry



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T +1 561.650.7900

Bridget A. Berry counsels clients relating to business disputes, and advocates on behalf of clients in jury and non-jury, state and federal court actions, including collective and class actions, arbitrations and administrative proceedings.

Bridget regularly counsels employers and represents local and national clients relating to: protection of trade secrets and restrictive covenants, federal and state laws and regulations; gender, age and disability discrimination claims; harassment, hostile work environment and retaliation claims; wage and hour issues; Equal Employment Opportunity (EEOC) investigations and proceedings; and general employment matters. Additionally, Bridget enjoys a robust general litigation practice.

Concentrations

- Industries including: sports nutrition, nutraceutical, medical, financial institutions, hotels, resorts and clubs, real estate, construction, online education, retail, aviation, and domestic help
- Injunction actions, confidentiality and trade secret issues and employment restrictive covenant issues
- Real estate and financial institution disputes including lender and lien foreclosures, development litigation, and disputes relating to affordable housing developments
- Complex title insurance matters, including closing protection letter disputes, coverage disputes, defalcation actions, title and closing agent claims, fraud and forgery claims

Capabilities

Litigation | Labor & Employment | Trial Practice | Food, Beverage & Agribusiness

DEFENDANT'S EXHIBIT 1

Experience

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Representative Matters

- In dispute involving litigation in U.S. and Europe against clients, affiliated companies and their officers and directors spanning a period of twelve years, obtained Florida state court jury verdict for multi-level marketing company and related nutrition supplement companies on breach of contract claims, and defeated employee's counterclaim for over $200 million in damages on fraud, racketeering, conspiracy and other claims.
- Obtained state court jury verdict and attorneys' fees award for condominium unit owners against condominium association for breach of statutory and common law duties to maintain condominium property.
- Obtained federal court jury verdict for $3 million in compensatory damages and an additional $1.5 million against each of three defendants in a case involving fraudulent inducement and conduct in violation of the Federal Securities Act.
- Defended commercial shopping center owners in litigation brought by neighboring residential property owners, obtaining partial judgments resulting in settlement favorable to client.
- Defended credit card transaction processor in action relating to merchant accounts and chargeback transactions on internet sales, resulting in settlement favorable to client.

Previous Experience

- Transactional law and litigation in San Juan, Puerto Rico, 1990-1991
- Adjunct Professor, Palm Beach Atlantic College, MBA Program, Legal Environment of Business Course, 1999, 2000

Internship

- Intern, Chief Justice Boyd, Supreme Court of Florida, 1984-1985

Recognition & Leadership

Awards & Accolades

- Listed, *The Best Lawyers in America*, Commercial Litigation; Litigation - Construction; Litigation - Labor and Employment; Litigation - Real Estate; Employment Law - Management, 2012-2019
    - Named, "Lawyer of the Year," Employment Law - Management, West Palm Beach, 2019
    - Named, "Lawyer of the Year," Litigation - Labor and Employment, West Palm Beach, 2015
- Listed, *Super Lawyers* magazine, *Florida Super Lawyers*, 2012-2018
- Listed, *South Florida Legal Guide*, "Top Lawyer," Labor & Employment, 2013-2019
- Listed, *Florida Trend*, "Legal Elite - Labor & Employment," 2017

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- Recognized, *Palm Beach Illustrated*, "Top Lawyers," 2018
- Recipient, Gold Pin (for 100+ hours of pro bono service, Legal Aid Society of Palm Beach County), 2014
- Recipient, "Florida Bar President's Pro Bono Service Award," Fifteenth Judicial Circuit, Florida Bar Association, 2013
- Team Member, a *Law360* "Employment Practice Group of the Year," 2011 & 2013
- Listed, *Marquis* Who's Who and *Marquis* Who's Who in America, 2012
- Recipient, "Juvenile Law Award," Legal Aid Society of Palm Beach County, 2011
- Team Member, Firm Award (for Independent Living Review Project), Legal Aid Society of Palm Beach County, 2011
- Recipient, "Mentor of the Year Award," Greenberg Traurig Second Annual Outstanding Pro Bono Service Awards, 2010
- Team Member, "Office of the Year Award" (for Independent Living Review Project), Greenberg Traurig, 2010
- Martindale-Hubbell® Bar Register of Preeminent Women Lawyers™
- Rated, AV Preeminent® 5.0 out of 5.0

°AV®, AV Preeminent®, Martindale-Hubbell Distinguished℠ and Martindale-Hubbell Notable℠ are certification marks used under license in accordance with the Martindale-Hubbell® certification procedures, standards and policies.

Professional & Community Involvement

- Member, Palm Beach North Chamber of Commerce
  - Member, Executive Trustee Council, 2015-Present
  - Member, Board of Directors, 2018-Present
- Judge, Palm Beach/Martin County Pathfinders Scholarship Fund Awards (history and political science category), Palm Beach Post, 2008-2016
- United Way of Palm Beach County, 1996-2013
  - General Counsel, United Way of Palm Beach County, 2002-2006
  - Chair, Improving the Lives of Seniors Impact Area, 2006-2009
  - Executive Committee, 2002-2010
  - Board of Directors, 2002-2013
  - Oversight Committee, 2006-2009
  - Strategic Planning Task Force Committee, 2006-2012

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- Women's Leadership Counsel, 2008
- Campaign Cabinet, 2006-2007
- Community Impact Steering Committee, 2009-2012
  - Initiatives, Grants, and Contracts Subcommittee
- Campaign Committee, 2010-2012
  - Chair, Leadership Circle (donors giving $1,000 and above annually), 2010-2012
- Sub-Committee for Agency Affiliation, 2010

- Member, Palm Beach County Bar Association, 1985-Present
  - Former Business Court Committee
  - Former Chairperson, Alternative Dispute Resolution Committee
  - Former Liaison, Diversity Mentoring Committee
- Legal Aid Society of Palm Beach County
  - Member, Board of Directors
  - Founder and Chair, Greenberg Traurig Independent Living Review Program (representing children aging out of foster care)
  - Member, Juvenile Advocacy Project, 1993-Present (representing children through age 18 in Juvenile Court (dependency and delinquency matters, adoption and foster care); Family Court and Probate Court
- Member, Fifteenth Judicial Circuit Pro Bono Committee, 2015-Present
- Member, Florida Association of Women Lawyers, Palm Beach Chapter
- Catholic Lawyers Guild of the Diocese, Palm Beach County
  - President, Palm Beach County, 2014-present
- Member, Notre Dame Club of the Palm Beaches
- Member, Board of Directors, Council on Child Abuse and Neglect, 1988-1989
- Chair, "Raise the Bar" event to benefit the Girl's Leadership Institute, Woman's Foundation of Palm Beach County, 2011

Credentials

Education

- J.D., *cum laude*, Florida State University College of Law, 1985
  - Articles and Notes Editor, *Florida State University College of Law*

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- B.A., American Studies and French, *cum laude*, University of Notre Dame, 1981
- Awarded Diploma in French Economics, Chamber of Commerce and Industry of Paris at Universite Catholique de l'Ouest, Angers, France, 1978

Admissions

- Florida
- U.S. Court of Appeals for the First Circuit
- U.S. Court of Appeals for the Eleventh Circuit
- U.S. District Court for the District of Puerto Rico
- U.S. District Court for the Middle District of Florida
- U.S. District Court for the Southern District of Florida
- Supreme Court of the United States

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News, Insights & Events

March 15, 2019 PRESS RELEASE

23 Greenberg Traurig Attorneys Recognized by 2019 South Florida Legal Guide

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September 04, 2018 PRESS RELEASE

13 Greenberg Traurig West Palm Beach Attorneys Selected as "Top Lawyers" 2018 by Palm Beach Illustrated

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August 15, 2018 PRESS RELEASE

No. 1 for 12th Year: Greenberg Traurig has the Most Attorneys in Best Lawyers in America

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August 15, 2018 PRESS RELEASE

133 Greenberg Traurig Florida Attorneys Listed in Best Lawyers in America 2019

May 30, 2019, 5:30 PM - 8:00 PM EST EVENT

Palm Beach North Chamber of Commerce Young Professionals Event: "Trustees Unplugged"

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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.
_____/

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-2159

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-2160

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

ROA-2161

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;

- 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.

ROA-2163

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

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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

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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

ROA-2179

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-2180

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-2181

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 TARIGIKU 5/30/08

RYAN BAKER

CHRIS GODWIN

ROA-2182

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-2183

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

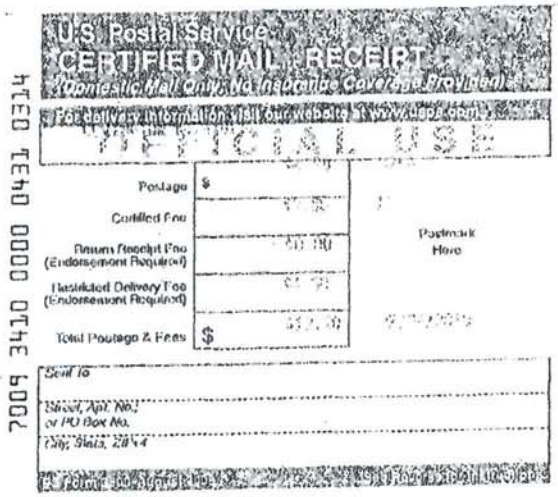
Sincerely yours,

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


7009 3410 0000 0431 0314
U.S. Postal Service
CERTIFIED MAIL RECEIPT
Domestic Mail Only; No Insurance Coverage Provided
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

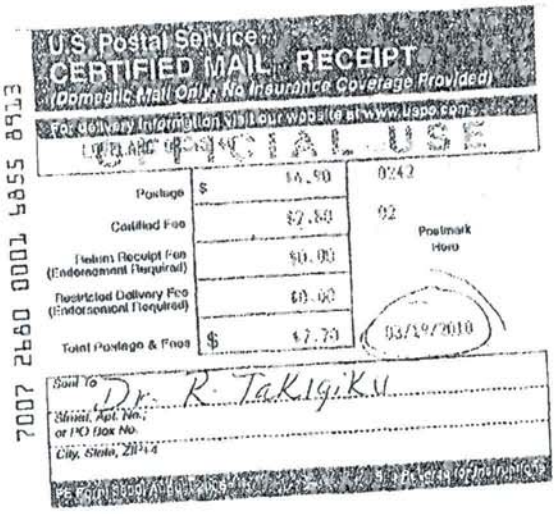

7007 2680 0001 5855 8913
U.S. Postal Service
CERTIFIED MAIL RECEIPT
Domestic Mail Only; No Insurance Coverage Provided
For delivery information visit our website at www.usps.com
OFFICIAL USE
Postage $ 4.90
Certified Fee $2.80
Return Receipt Fee (Endorsement Required) $0.00
Restricted Delivery Fee (Endorsement Required) $0.00
Total Postage & Fees $ 7.70
0242
02
Postmark Here
03/29/2010
Sent To Dr. R. Takigiku
Street, Apt. No.; or PO Box No.
City, State, ZIP+4

Exhibit C

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.

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: Roy 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



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 (60^{th}) 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

ROA-2196

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(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:

ROA-2200

"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

ROA-2201

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

ROA-2202

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(e) 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.

CL-000016

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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

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 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

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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 TARIGIKU 5/30/08

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

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

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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,	)	
	)	**PLAINTIFF'S RESPONSE TO DEFENDANT'S FIRST INTERROGATORIES**
v.	)	
	)	
Womble, Carlyle, Sandridge & Rice, LLP,	)	
	)	
Defendant.	)	

The Plaintiff, by and through the undersigned attorneys, hereby submits its response to Defendant's First Interrogatories. These responses reflect Plaintiff's present knowledge and the results of Plaintiff's investigation to date. Plaintiff reserves the right to amend and supplement this response as may be necessary or appropriate throughout the course of discovery in this matter.

GENERAL OBJECTIONS

1. Plaintiff objects to each interrogatory to the extent it seeks information that constitutes evidence or reflects confidential communications between Plaintiff and its attorneys.

2. Plaintiff objects to each interrogatory to the extent it seeks information that constitutes evidence or reflects trial preparation materials or work product of Plaintiff or its representatives, agents or attorneys.

3. Plaintiff will remove those documents from files, records or other documents to be produced that come within the foregoing objections. If there are documents withheld based on the privilege, Plaintiff will provide Defendants with a separate list of those documents.

4. Plaintiff objects to each interrogatory to the extent it seeks information already available to or equally available to Defendants.



5. The following interrogatory responses are based upon information presently available to Plaintiff and are made without prejudice to the rights of Plaintiff to utilize subsequently discovered information.

6. By making a response to any interrogatory or document request, Plaintiff does not intend to or mean to waive the attorney-client privilege, the work-product rule or any other privilege, objection or other limitation upon discovery as to that interrogatory or as to any other present or future request for discovery.

7. Plaintiff objects to the purported definitions and instructions set forth in the interrogatories on the grounds that they are overly broad, burdensome and outside the proper scope of discovery.

8. All answers to the interrogatories and responses to the requests for production of documents are made without the waiver of these general objections, or the specific objections which are hereinafter set forth.

9. The foregoing objections are general ones applicable to all categories of information to be produced. The following responses to any particular item of information should be deemed to include these objections.

RESPONSES TO INTERROGATORIES

1. Provide the names and addresses of any witnesses who may have knowledge of the facts of the case and state whether written or recorded statements have been taken from the witnesses and identify who has possession of such statements.

ANSWER: Unless otherwise indicated below, the Plaintiff does not have any statements from the following potential witnesses.

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a. **Defendant Womble, Carlyle, Sandridge & Rice, LLP**
c/o Defendant's Counsel of Record

Womble, Carlyle, Sandridge & Rice, LLP is the defendant in this matter and has knowledge of the facts giving rise to this litigation.

b. **Dean W. Rutley, Esq.**
c/o Defendant's Counsel of Record

Mr. Rutley is an attorney with Defendant. He has knowledge of his representation of Charleston Laboratories, Inc. Mr. Rutley was deposed in *Charleston Laboratories, Inc. v. Takigiku*, Case No. 9:15-cv-81694-JIC (S.D. Fl. Sept. 13, 2016) ("the Florida litigation") The parties are in possession of that transcript.

c. **David B. Baddour, Esq.**
c/o Defendant's Counsel of Record

Mr. Baddour is an attorney with Defendant. He has knowledge of his representation of Charleston Laboratories, Inc.

d. **Allison Boost, Esq.**
c/o Defendant's Counsel of Record

Ms. Boost is an attorney with Defendant. She has knowledge of her interactions with Charleston Laboratories, Inc.

e. **G. Michael Barnhill, Esq.**
c/o Defendant's Counsel of Record

Mr. Barnhill is an attorney with Defendant. He has knowledge of his interactions Charleston Laboratories, Inc.

f. **Plaintiff Charleston Laboratories, Inc.**
c/o Plaintiff's Counsel of Record

Charleston Laboratories, Inc. is the plaintiff in this matter and has knowledge of the facts giving rise to this litigation.

g. **G. Paul Bosse, III**
c/o Plaintiff's Counsel of Record

Mr. Bosse is the CEO and Founder of Charleston Laboratories, Inc. and has knowledge of the facts giving rise to this litigation and the Florida litigation. He was deposed in the Florida litigation.

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h. **Ryan Baker**
c/o Plaintiff's Counsel of Record

Mr. Baker is the Senior Executive Vice President, Chief Strategy Officer, and Founder of Charleston Laboratories, Inc. and has knowledge of the facts giving rise to this litigation and the Florida litigation.

i. **George Scott, Esq.**
c/o Plaintiff's Counsel of Record

Mr. Scott is Charleston Laboratories, Inc. is the Chief Legal Officer and General Counsel of Charleston Laboratories, Inc. He has knowledge of the facts giving rise to this litigation and the Florida litigation. Plaintiff is not waiving attorney client privilege with Mr. Scott.

j. **Chris Goodwin**
Current address unknown

Mr. Goodwin was a founder of Charleston Laboratories, Inc. and has knowledge of the facts giving rise to this litigation and the Florida litigation.

k. **John F. Ameling**
c/o Plaintiff's Counsel of Record

Mr. Ameling is the Vice President of Regulatory Affairs for Charleston Laboratories, Inc. He has knowledge of the facts giving rise to this litigation and the Florida litigation. Mr. Ameling provided an affidavit in the Florida Litigation.

l. **Bernard P. Schachtel, M.D.**
c/o Plaintiff's Counsel of Record

Dr. Schachtel is the Chief Scientific Officer and Founder of Charleston Laboratories, Inc. and has knowledge of the facts giving rise to this litigation and the Florida litigation.

m. **Raymond Takigiku**
Current address unknown

Dr. Takigiku has knowledge of the facts giving rise to this litigation and the Florida litigation. He was deposed in the Florida litigation.

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n. Greenberg Traurig, LLP
777 South Flagler Drive, Suite 300
West Palm Beach, FL 33401

Greenberg Traurig, LLP represented Charleston Laboratories, Inc. in the Florida litigation. Greenberg Traurig, LLP has knowledge of that litigation and Plaintiff is currently not waiving attorney-client privilege concerning Greenberg Traurig, LLP or any of their attorneys listed below.

o. Bridget Ann Berry, Esq.
Greenberg Traurig, LLP
777 South Flagler Drive, Suite 300
West Palm Beach, FL 33401

Ms. Berry is an attorney at Greenberg Traurig, LLP and represented Charleston Laboratories, Inc. in the Florida litigation. Ms. Berry has knowledge of that litigation.

m. Robert Russell Kane, III, Esq.
Greenberg Traurig, LLP
777 South Flagler Drive, Suite 300
West Palm Beach, FL 33401

Mr. Kane is an attorney at Greenberg Traurig, LLP and represented Charleston Laboratories, Inc. in the Florida litigation. Mr. Kane has knowledge of that litigation.

n. Lauren Whetstone, Esq.
Greenberg Traurig, LLP
777 South Flagler Drive, Suite 300
West Palm Beach, FL 33401

Ms. Whetstone is an attorney at Greenberg Traurig, LLP and represented Charleston Laboratories, Inc. in the Florida litigation. Ms. Whetstone has knowledge of that litigation.

o. Glenn E. Goldstein, Esq.
Greenberg Traurig, LLP
401 E. Las Olas Blvd, Suite 2000
Fort Lauderdale, FL 33301

Mr. Goldstein is an attorney at Greenberg Traurig, LLP and represented Charleston Laboratories, Inc. in the Florida litigation. Mr. Goldstein has knowledge of that litigation.

p. **Eric Todd Salpeter, Esq.**
Salpeter Gitkin, LLP
One East Broward Blvd., Suite 1500
Fort Lauderdale, FL 33301

Mr. Salpeter is an attorney at Salpeter Gitkin, LLP and represented Dr. Raymond Takigiku in the Florida litigation. Mr. Salpeter has knowledge of that litigation.

q. **Joseph Harris Rose, Esq.**
Salpeter Gitkin, LLP
One East Broward Blvd., Suite 1500
Fort Lauderdale, FL 33301

Mr. Rose is an attorney at Salpeter Gitkin, LLP and represented Dr. Raymond Takigiku in the Florida litigation. Mr. Rose has knowledge of that litigation.

r. **Charles J. Bridgmon, Esq.**
Bray & Long PLLC
2820 Selwyn Ave., Suite 400
Charlotte, NC 28209

Mr. Bridgmon is an attorney at Bray & Long, PLLC and represented Dr. Raymond Takigiku in the Florida litigation. Mr. Bridgmon has knowledge of that litigation.

s. **Jeffrey A. Long, Esq.**
Bray & Long PLLC
2820 Selwyn Ave., Suite 400
Charlotte, NC 28209

Mr. Long is an attorney at Bray & Long, PLLC and represented Dr. Raymond Takigiku in the Florida litigation. Mr. Long has knowledge of that litigation.

t. **Daniel Van Vleet, ASA**
6821 W. North Avenue
Suite 203
Oak Park, IL 60302

Mr. Van Vleet was an expert in the Florida Litigation and has more than 27 years of experience in providing valuation opinions and expert witness testimony.

2. For each witness identified in response to Interrogatory No. 1, set forth either a summary sufficient to inform Defendant of the facts known to or observed by such witness,

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or provide a copy of any written or recorded statements taken from such witness.

ANSWER: Please see the answer to interrogatory number one.

3. Provide a list of any photographs, plats, sketches, or other prepared documents that relate to any of the claims or defenses in this case.

ANSWER: Plaintiff relies upon Rule 33(c), SCRCP, to produce documents in lieu of a written answer to this interrogatory. In addition, please see documents provided by Plaintiff in its answer to Defendant's Request for Production.

4. Provide a complete itemized statement of damages and describe in detail every item of damages for which you seek recovery in this lawsuit and in what capacity, and describe how the amount of damages was calculated for each.

ANSWER: Plaintiff relies upon Rule 33(c), SCRCP, to produce documents in lieu of a written answer to this interrogatory. In addition, please see the answers to interrogatories number 9, 12, 13, and 14.

5. Identify and itemize with specificity the "legal expenses and related costs" referenced in paragraph 60 of the Complaint.

ANSWER: Please see the answer to interrogatory number four.

6. Identify every expert witness whom you intend to use as a witness at the trial of this case and for each such expert witness, set forth the subject matter on which the witness is expected to testify, a complete statement of all opinions to be expressed and the basis and reasons for the opinions, the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or for support for the witness's opinions, and the qualifications of the witness, including a list of all publications authored by the witness.

ANSWER: Please see the July 7, 2017, Expert Affidavit of Dr. Greg Adams filed in this litigation on July 24, 2017. Plaintiff reserves the right to supplement this answer.

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PLEASE NOTE that Defendant's interrogatories omitted interrogatory number 7.

8. State with specificity all things you contend Womble did that it should not have done and all things you contend Womble did not do which should have been done in connection with Womble's representation of Charleston Labs.

ANSWER: Plaintiff objects to this interrogatory in that it violates the work product privilege (both fact work product and opinion work product) in that it seeks to discover protected mental impressions, legal opinions, legal strategy, and thought process all of which are essentially immune from discovery per Rule 26(c), Rule 26(b)(3), SCRCP, *Hickman v. Taylor*, 329 U.S. 495, 510, 67 S. Ct. 385, 91 L. Ed. 451 (1947), and *Better Gov't Bureau v. McGraw (In re Allen)*, 106 F.3d 582, 607 (4th Cir. 1997). Reserving said objection, please see the July 7, 2017, Expert Affidavit of Dr. Greg Adams filed in this litigation on July 24, 2017. In addition, given the early state of this litigation, Plaintiff reserves the right to supplement this response as discovery continues.

9. State the total amount of money you paid to Womble in connection with the representation at issue in this matter.

ANSWER: Plaintiff objects this interrogatory because it seeks information already available to or equally available to Defendants. For example, in Defendant's answer to Plaintiff's Interrogatory number thirteen it states that, "Womble previously produced copies of its bills to Greenberg Traurig. Womble's bills identify the individuals who performed work on Plaintiff's matter and the specific services performed by each individual." Therefore, Defendant can review its own bills to calculate the amount it was paid by Plaintiff.

10. Identify the date you retained Greenberg Traurig to provide counsel in connection with your dispute with Takigiku.

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ANSWER: September 22, 2015

11. Identify the date Takigiku "disagreed that he was separated for cause" and "insisted he had resigned" as alleged in paragraph 51 of the Complaint.

ANSWER: On March 19, 2010 notice of termination for case was sent to Takigiku and on or before April 12, 2010 Takigiku through his counsel disputed Takigiku's termination.

12. State the total amount of money you paid to counsel representing you in connection with the Florida Litigation.

ANSWER: $1,569,462.43 to Greenburg Traurig plus $250,000.00 to settle for total of $1,819,462,.43.

13. State the total amount you paid for expert witnesses and other consultants in the Florida Litigation, and identify the amount paid to each.

ANSWER: In addition to the amounts listed in the answer to interrogatory twelve, Plaintiff paid expenses in the amount of $6,666.59

14. State the total amount of money you paid to settle the Florida Litigation.

ANSWER: Please see the answer to interrogatory number twelve.

15. State whether you have ever filed a legal malpractice lawsuit other than this lawsuit. If so, identify all parties involved and provide the case caption, the civil action number, and the outcome of the lawsuit.

ANSWER: None.

/

/

{SIGNATURE PAGE TO FOLLOW}

ROA-2227

Charleston, South Carolina
February 2, 2018

BLAND RICHTER, LLP
Attorneys for Plaintiff

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ROA-2228

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,	)	
	)	**CERTIFICATE OF SERVICE**
v.	)	
	)	
Womble, Carlyle, Sandridge & Rice, LLP,	)	
	)	
	)	
Defendant.	)	

I, Lisa M. Lescord, the undersigned paralegal at Bland Richter, LLP, do hereby certify that I have served upon the parties in the above referenced matter, by forwarding a copy of the same, via email and/or first-class mail postage prepaid, unless otherwise stated below, to the following counsel listed below:

Documents:

PLAINTIFF'S RESPONSE TO DEFENDANT'S FIRST INTERROGATORIES

Counsel:

Robert E. Stepp, Esquire
Tina Cundari, Esquire
SOWELL GRAY STEPP & LAFFITTE, LLC
Attorneys for Defendant
1310 Gadsden Street
P.O. Box 11449
Columbia, SC 29211

Lisa M. Lescord
Paralegal

Charleston, South Carolina
February 2, 2018

ROA-2229

GT GreenbergTraurig

Invoice No.: 4115822
File No. : 155480.010200
Bill Date : April 15, 2016

Charleston Laboratories, Inc.
1001 N US Highway 1, Suite 500
Jupiter, FL 33477

Attn: George Scott
Chief Legal Officer and General Counsel

INVOICE

Re: Dr. Raymond Takigiku

Legal Services through December 31, 2015:

	$	26,873.50
Less Courtesy Discount:	$	(2,687.35)
Total Fees:	$	24,186.15

Expenses:

Filing Fees	413.03		
Messenger/Courier Services	37.50		
Service Company Charges	147.81		
Subpoenas	719.00		
Information and Research	490.60		
Total Expenses:		$	1,807.94
Current Invoice:		**$**	**25,994.09**

BAB:LMH
Tax ID: 59-1270754



GT GreenbergTraurig

Invoice No.: 4115822
File No. : 155480.010200

FOR YOUR CONVENIENCE, PAYMENT INSTRUCTIONS FOR GT FIRM ACCOUNT FOR FEES & COSTS ARE AS FOLLOWS:

For Wire Instructions:
Bank: WELLS FARGO BANK
ABA #: 121000248

For ACH Instructions:
Bank: WELLS FARGO BANK
ABA# 063107513

CREDIT TO: GREENBERG TRAURIG DEPOSITORY ACCOUNT
ACCOUNT #: 2000014648663
PLEASE REFERENCE:

CLIENT NAME:	**CHARLESTON LABORATORIES, INC.**
FILE NUMBER:	**155480.010200**
INVOICE NUMBER:	**4115822***
BILLING PROFESSIONAL:	**Bridget A. Berry**

****

"When you provide a check as payment, you authorize us to either use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction."

Wire fees may be assessed by your bank.
*** If paying more than one invoice, please reference all invoice numbers in wiring instructions.**

BAB:LMH
Tax ID: 59-1270754

Invoice No.: 4115822
Re: Dr. Raymond Takigiku
Matter No.: 155480.010200

Description of Professional Services Rendered:

DATE	TIMEKEEPER	DESCRIPTION	HOURS	AMOUNT
11/02/15	Bridget A. Berry	Continue analysis regarding grounds for personal jurisdiction over Takigiku in Florida.	0.50	312.50
11/02/15	Robert R. Kane	Continued legal research and analysis of Florida's long arm statute and corporate statutes to determine the basis for personal jurisdiction over the Defendant in Florida in preparation for filing the Complaint; call with George Scott regarding same.	1.00	365.00
11/03/15	Bridget A. Berry	Continue analysis regarding grounds for personal jurisdiction over R. Takigiku in Florida; analyze whether R. Takigiku is a necessary party to declaratory judgment action; communications with G. Scott re: personal jurisdiction and re: cause of action against R. Takigiku accruing after the time the company moved to Florida	1.50	937.50
11/04/15	Bridget A. Berry	Analysis relating to personal jurisdiction and filing of Complaint in Palm Beach County.	0.80	500.00
11/05/15	Bridget A. Berry	Research and analysis regarding subject matter and personal jurisdiction issues; revise complaint and follow up.	2.20	1375.00
11/05/15	Robert R. Kane	Final review and edits to draft complaint and compilation of exhibits in preparation for filing.	1.00	365.00
11/06/15	Bridget A. Berry	Communications with G. Scott and client; analyze comments; finalize complaint for filing in State Court.	1.00	625.00
11/09/15	Bridget A. Berry	Confer with G. Scott and follow up relating to expedited service of process on R. Takigiku.	0.50	312.50
11/10/15	Bridget A. Berry	Push for Court assignment and issuance of summons; expedite service of process; confer with G. Scott re: payment of Fair Value.	0.90	562.50
11/11/15	Bridget A. Berry	Handle issues relating to service of process at R. Takigiku place of business given security wall.	0.60	375.00
11/12/15	Bridget A. Berry	Analyze draft letter to J. Long; Draft Amended Complaint to reflect payment of Fair Value; Draft Amended Complaint; Analyze claim against BioLOGIC; begin work on discovery; confer with G.Scott on all issues.	3.30	2062.50
11/13/15	Bridget A. Berry	File Amended Complaint and follow up with process server; advise G. Scott of status.	0.50	312.50
11/16/15	Bridget A. Berry	Assist G. Scott re: service of preservation letter on J. Long; review email from J. Long; analysis and fact investigation re: his statement that Amended Complaint not served; obtain affidavit of service and follow up with G. Scott.	0.70	437.50
11/18/15	Bridget A. Berry	Confer with G. Scott (General Counsel, Charleston) re: SIDIS, BioLOGIC, and review information.	0.30	187.50
11/20/15	Bridget A. Berry	Analysis re: BioLOGIC's corporate structure.	0.50	312.50

11/20/15	Jennifer Thomson	Conduct online research regarding corporate structure of Biologic LLC in Kentucky and Colorado; conduct online research regarding corporate structure of Molecular Diagnostics Laboratories in Ohio, Kentucky, NY, and FL; prepare Accurint Reports for Biologic Corp.LLC and Molecular Diagnostics Laboratories; prepare email to G. Scott advising of same.	3.80	931.00
11/23/15	Bridget A. Berry	Read cease and desist letter; confer with G. Scott re: answer due date; draft letter to opposing counsel confirming service, attaching affidavit of service, and stating due date.	0.80	500.00
11/30/15	Bridget A. Berry	Read correspondence to E. Off at Thompson Hine; telephone call from J. Long; confer with G. Scott re: J. Long request for extension to respond to Amended Complaint; draft agreed order on extension; communications with opposing counsel re: same; continue work on discovery requests.	2.30	1437.50
12/01/15	Bridget A. Berry	Multiple communications with opposing counsel re: agreed order on extension; communications with G. Scott re: status.	0.50	312.50
12/02/15	Bridget A. Berry	Draft document request; communications with G. Scott regarding document request.	1.80	1125.00
12/02/15	Bridget A. Berry	Draft letter to Judge regarding agreed order on extension in case against Dr. Takigiku; inform G. Scott regarding status.	0.70	437.50
12/03/15	Bridget A. Berry	Correspond with G. Scott; analyze proposed changes and follow up; receive and review Order granting extension and follow up.	0.50	312.50
12/04/15	Bridget A. Berry	Fact investigation; Revise discovery request; communications with G. Scott; communication with opposing counsel regarding service.	1.30	812.50
12/07/15	Bridget A. Berry	Email Communication with J. Long re: service and R. Takigiku retention of local counsel.	0.20	125.00
12/08/15	Bridget A. Berry	Review correspondence from BioLOGIC.	0.10	62.50
12/09/15	Bridget A. Berry	Review correspondence from G. Scott to BioLOGIC.	0.10	62.50
12/10/15	Bridget A. Berry	Review correspondence from G. Scott to SoapBox Media.	0.10	62.50
12/11/15	Bridget A. Berry	Receive and review notice of filing notice of removal; analysis re: removal and remand; communications with G. Scott re: removal and strategy; fact investigation re: local counsel and communication with G. Scott re: same.	2.40	1500.00
12/11/15	Jennifer Thomson	Review Notice of Removal with insufficient documents filed by opposing counsel in the United States District Court of the Southern District of Florida; review court website regarding same.	0.70	171.50
12/14/15	Bridget A. Berry	Receive and review court orders and email to G. Scott re: same; communications with opposing counsel J. Long re: discovery and other issues; receive and review Takigiku Notice of Filing exhibits to notice of removal and follow up with G. Scott; follow up with G. Scott re: Answer/Counterclaim.	1.50	937.50
12/15/15	Bridget A. Berry	Telephone conference with G. Scott.	0.50	312.50

12/15/15	Lindsay L. MacDonald	Conduct research on personal jurisdiction defense used by Defendant.	0.90	211.50
12/16/15	Bridget A. Berry	Multiple communications with J. Long and analysis re: discovery filed and served in state court proceedings.	0.70	437.50
12/16/15	Lindsay L. MacDonald	Complete research on personal jurisdiction defense and begin to draft memo to B. Berry with findings	3.00	705.00
12/17/15	Bridget A. Berry	Communications with client and review communications between Dean Rutley at WCSR and G. Scott re: Amended Complaint and Answer, Affirmative Defenses and Counterclaim of Takigiku.	0.50	312.50
12/17/15	Lindsay L. MacDonald	Complete memo to B. Berry with research findings on personal jurisdiction defense.	0.40	94.00
12/18/15	Bridget A. Berry	Analyze Counterclaim; Work on answer and affirmative defenses to Counterclaim	4.00	2500.00
12/21/15	Bridget A. Berry	Telephone call with J. Long; report to G. Scott.	0.70	437.50
12/22/15	Bridget A. Berry	Telephone conference with G. Scott; receive and review Answer and Affirmative Defenses to Amended Complaint and Amended Counterclaim	1.30	812.50
12/23/15	Bridget A. Berry	Draft unopposed motion for extension of time to respond to amended counterclaim; confer with client re: strategy; telephone conference with opposing counsel J. Long and email to J. Long re: various matters; prepare for conference with Magistrate Judge.	2.00	1250.00
12/24/15	Bridget A. Berry	Confer with opposing counsel J. Long re: various issues and follow up re: stipulation and extension.	0.50	312.50
12/28/15	Bridget A. Berry	Communications with client re: Womble settlement discussions with Takigiku's attorney;	0.30	187.50
12/29/15	Bridget A. Berry	Review G. Scott correspondence; confer with G. Scott; work on Stipulation waiving Takigiku personal jurisdiction defenses and waiving Charleston right to seek remand.	1.50	937.50
12/29/15	Jennifer Thomson	Attention to Stipulation Regarding Plaintiff's Answer or Other Response to Defendant's Amended Counterclaim.	0.50	122.50
12/31/15	Bridget A. Berry	Follow up re: finalizing and filing Motion for Extension and correspondence to court.	0.30	187.50
12/31/15	Jennifer Thomson	Attention to Plaintiff's Unopposed Motion for Extension of Time to Respond to Amended Counterclaim and proposed order re: same; file/serve Motion on opposing counsel and email proposed order to Judge.	0.90	220.50
		Total Time:	50.10	
		Total Fees:		$ 26,873.50

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

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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.

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[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.

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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

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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).

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[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-2251

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



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.

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ii) Takigiku acknowledges (on behalf of himself and the other Takigiku Releasors) that claims or facts in addition to or different from those which are now known or believed to exist with respect to the matters released herein, may become known or discovered and that the releases and discharges shall be and remain in effect as a full and complete general release notwithstanding the discovery or existence of any such additional or different claims or facts.

iii) Takigiku covenants and agrees (on behalf of himself and the other Takigiku Releasors) never to commence, assist in any way, prosecute or cause, permit or advise to be commenced or prosecuted against any Released Company Party any action or proceeding based upon or arising out of any of the matters released in this Agreement.

iv) If, notwithstanding the foregoing, a Court of competent jurisdiction concludes Takigiku has breached Section 5 of this Agreement, Takigiku shall be required, to the maximum extent permitted by law, to indemnify and hold harmless any costs or expenses incurred by such Released Company Party in connection therewith, including attorneys' fees and other expenses which result from, or are incident to, such violation.

v) Nothing in this Agreement shall be construed to prevent Takigiku (or any other Releasor) from responding truthfully to a valid subpoena, from filing a charge with, or participating in, any investigation conducted by a governmental agency and/or any local human rights agency, and/or responding as otherwise required by law.

vi) Takigiku agrees, represents and warrants that he is the sole owner of the matters released herein, and that he has the full right and power to grant, execute and deliver the releases and promises in this Agreement.

vii) Takigiku hereby waives the provision of any applicable law or principle in equity, whether Federal, state or local, that may limit the scope of this Agreement.

By CL:

b) 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 CL does not release Takigiku from any covenants made by Takigiku in this Agreement upon execution of this Agreement by Takigiku, CL, for itself and its successors, assigns, affiliates, agents, servants, attorneys, heirs, administrators, executors, grantees, insurers, and legal representatives (collectively, the "**Company Releasors**"), hereby releases, remises, acquits, and forever discharges Takigiku, his attorneys, heirs, administrators and executors (hereinafter, jointly and severally, the "**Released Takigiku 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 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

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or unknown, for or relating to any claim, counterclaim, cross-claim, and/or issue directly or indirectly related to the Shares or Takigiku' employment with the Company.

i) Without limiting the foregoing or intending to limit in any manner the Parties' claims and/or defenses in the Kentucky Litigation, the general release in Section 5.b) *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 CL (or any affiliated entity) and Takigiku, including, without limitation, any claim for severance, termination or severance pay pursuant to any CL (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.

ii) CL acknowledges (on behalf of itself and the other Company Releasors) that claims or facts, in addition to or different from those which are now known or believed to exist with respect to the matters released herein, may become known or discovered and that the releases and discharges shall be and remain in effect as a full and complete general release notwithstanding the discovery or existence of any such additional or different claims or facts.

iii) CL covenants and agrees (on behalf of itself and the other Company Releasors) never to commence, assist in any way, prosecute or cause, permit or advise to be commenced or prosecuted against any Released Takigiku Party any action or proceeding based upon or arising out of any of the matters released in this Agreement.

iv) If, notwithstanding the foregoing, a Court of competent jurisdiction concludes CL has breached Section 5 of this Agreement, CL shall be required, to the maximum extent permitted by law, to indemnify and hold harmless any costs or expenses incurred by such Released Takigiku Party in connection therewith, including attorneys' fees and other expenses which result from, or are incident to, such violation.

v) Nothing in this Agreement shall be construed to prevent CL (or any other Company Releasor) from responding truthfully to a valid subpoena, from filing a charge with, or participating in, any investigation conducted by a governmental agency and/or any local human rights agency, and/or responding as otherwise required by law.

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vi) CL agrees, represents and warrants that it is the sole owner of the matters released herein, and that it has the full right and power to grant, execute and deliver the releases and promises in this Agreement.

vii) CL hereby waives the provision of any applicable law or principle in equity, whether Federal, state or local, that may limit the scope of this Agreement.

c) Specific Provisions Relating to Patents, Products, Approvals.

i) Definition. For purposes of this Section 5.c), "Company" has the meaning set forth in the opening paragraph.

ii) Mutual Non-Disparagement. Except as required to provide testimony or support claims or defenses or rights or remedies in the Kentucky Litigation, the Parties covenant and agree that they shall not make any comments or statements, whether written or oral, to any third party, including, without limitation, the press or media or on any social media cite or other public forum or to any individual or entity, including but not limited to, current or former Company employees, clients, customers, consultants, vendors, financial or credit institutions, investors or potential investors of the Company or of SIDIS, Bexion, PrimeDP or BioLOGIC, that may in any way disparage, damage the business or reputation discredit, or otherwise call into disrepute, Takigiku, the Company, the Released Company Parties, or the Released Takigiku Parties or any of the Company's products or services or business, including, without limitation, CL-108.

iii) Pre-Existing Obligation. Takigiku agrees to, acknowledges and affirms his obligations and the rights he granted to the Company under the Confidential Information & Invention Assignment Agreement dated September 23, 2008, attached hereto as Exhibit 1 (the "CIIAA"), which Takigiku stipulates and agrees remains in full force and effect on its terms. The terms and conditions of this Section 5.c. are in addition to and in continuation of any all obligations of Takigiku and all rights and benefits of the Company under the CIIAA.

iv) Patent Challenge. Takigiku hereby agrees not to, directly or indirectly, challenge or aid any third party in challenging the validity, scope, enforceability or ownership of any Patent or cause, request, participate in, or support in any way, any reissue, opposition, declaratory judgment action, interference, *inter partes* review, reexamination, reconsideration or similar proceeding of any Patent or any review by a governmental entity of any Patent, except solely for the benefit of the Company to the extent such action is requested in writing by the Company. As used herein, "Patent" means any patent or patent application (whether utility, design, inventors certificate or the like) owned or controlled by the Company.

v) Non-Interference. Takigiku shall not, and shall not cause or assist any third party to, initiate or otherwise undertake any activity, directly or indirectly, to interfere with any Company product or any regulatory approval therefor, including by the U.S. Food and Drug Administration, including but not limited to the filing or submission of any Citizen Petitions, correspondence or other submissions with FDA or any other regulatory or governmental authority. Without limiting Section 5.c)ii), Takigiku agrees to refrain from any defamation, libel or slander of the Company, or tortious interference with the contracts and

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relationships of the Company. Takigiku also agrees that he will not make any statements (orally or in writing, including, without limitation, whether in fiction or nonfiction, publicly or privately) nor take any actions which in any way publicly disparage, defame, or reflect negatively on the Company (including without limitation discussion of the past, present or future performance of the Company or the Company), or in any way, directly or indirectly, cause or encourage the making of such statements or the taking of such actions by anyone else. Nothing herein shall prevent Takigiku from testifying truthfully pursuant to judicial process or in any judicial or arbitral proceeding.

vi) Confidentiality. Without limiting Section 5.c)iii), Takigiku agrees to, acknowledges and affirms his obligation under the CIIAA to hold in strictest confidence, and not to use or to disclose to any person, firm or corporation any Confidential Information of the Company. Takigiku confirms his understanding and agreement that "Confidential Information" means any non-public information that relates to the actual or anticipated business or research and development of the Company, technical data, trade secrets or know-how, including, but not limited to, research, product plans or other information regarding Company's products, services and markets therefor, customer lists and customers (including, but not limited to, customers of the Company on whom Takigiku may have called or with whom Takigiku may have become acquainted during the term of his employment with the Company), software, developments, inventions, patents, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information. Takigiku further understands that Confidential Information does not include any of the foregoing items that have become publicly known and made generally available through no wrongful act of Takigiku's or of others who were under confidentiality obligations as to the item or items involved or improvements or new versions thereof.

vii) Inventions. Without limiting Section 5.c)iii), Takigiku agrees to, and acknowledges and affirms his obligation under the CIIAA to make full written disclosure to the Company, hold in trust for the sole right and benefit of the Company, and hereby assigns to the Company, or its designee, all of Takigiku's right, title, and interest in and to any and all inventions, original works of authorship, developments, concepts, improvements, designs, discoveries, ideas, trademarks or trade secrets, whether or not patentable or registrable under copyright or similar laws, which Takigiku solely or jointly conceived or developed or reduced to practice, or cause to be conceived or developed or reduced to practice, during the period of time he was in the employ of the Company, which relate to the actual or anticipated business or research and development of the Company or uses any Company Confidential Information (collectively referred to as "Invention(s)"). Takigiku further acknowledges and affirms, as agreed in the CIIAA, that all original works of authorship that were made by him (solely or jointly with others) within the scope of and during the period of his employment with the Company that are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act. Takigiku agrees, acknowledges and affirms that the decision whether or not to commercialize or market any Invention was and is within the Company's sole discretion and for the Company's sole benefit and that no royalty or other compensation whatsoever was, is or ever will be due to him as a result of the Company's efforts to commercialize or market any Invention.

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viii) Further Assurances. Without limiting Section 5.c)iii), Takigiku hereby agrees to, acknowledges and affirms his obligations under the CIIAA to assist the Company, or its designee, at the Company's expense, in every proper way to secure the Company's rights in the Inventions and any copyrights, patents, mask work rights or other intellectual property rights relating thereto in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments that the Company shall deem necessary in order to apply for, obtain or assert such rights and in order to assign and convey to the Company, its successors, assigns, and nominees the sole and exclusive rights, title and interest in and to such Inventions, and any copyrights, patents, mask work rights or other intellectual property rights relating thereto. Takigiku agrees, acknowledges and affirms, as he agreed in the CIIAA, that if the Company is unable because of my mental or physical incapacity or for any other reason to secure Takigiku's signature in connection with the preparation, prosecution, endorsement or otherwise of any United States or foreign patents or copyright registrations covering Inventions or original works of authorship assigned to the Company, then Takigiku has assigned or hereby irrevocably assigns, designates and appoints the Company and its duly authorized officers and agents as Takigiku's agent and attorney-in-fact, to act for and in his behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the same with the same legal force and effect as if executed by Takigiku.

6. Specific Performance; Injunctive Relief.

The Parties agree that they shall have the right and remedy to have the provisions of this Agreement specifically enforced to the extent permitted by law by any court having competent jurisdiction, it being acknowledged and agreed that any breach of the CIIAA or this Agreement would cause immediate and irreparable injury and that money damages alone would not provide an adequate remedy at law for any breach. Therefore, the Parties agree that they shall be entitled to obtain equitable relief by specific performance, temporary restraining order, preliminary and/or permanent injunction or otherwise from any court of competent jurisdiction (without the requirement of demonstrating any actual damage or of posting a bond or other security). Such rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available to the Parties at law or in equity, including the right to liquidated damages as provided in paragraph 13 of this Agreement. The Parties agree that the existence of any claim or cause of action by the other Party, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by either Party of the covenants and restrictions set forth in this Section 6.

7. Representation by Counsel; Free Will.

The Parties represent and acknowledge that each has been represented by the counsel of their choosing in connection with the negotiation, drafting, and execution of this Agreement, and that each has consulted with their respective counsel prior to execution of this Agreement. Each Party acknowledges that his/its attorneys have reviewed this Agreement, and that he/it is entering into this Agreement on his/its own free will, intending to be bound hereby.

8. No Admission of Liability.

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Nothing set forth in this Agreement shall be construed as an admission of any Party of liability or wrongdoing of any kind to any person or entity.

9. Entire Agreement.

The Parties hereto agree that this Agreement, together with the documents expressly referenced herein, sets forth the entire agreement between the Parties concerning the subject matter of this Agreement and that they have not relied upon any representation or statement, written or oral, not expressly set forth in this Agreement, including its exhibits, and specifically have not relied upon any statements made in the Stock Declaratory Judgment Action or on any discovery or the completeness of any discovery in the Stock Declaratory Judgment Action. This Agreement, together with documents referenced herein (including the CIIAA), expressly supersedes any and all previous understandings and agreements between the Company and Takigiku and constitutes the sole and exclusive understanding between the Company and Takigiku concerning the Shares; the Stock Declaratory Judgment Action; the Counterclaim; the Appeal; and the Costs.

10. Confidentiality of this Agreement.

The Parties agree that the terms and conditions of this Agreement shall remain confidential and that they and their agents, respectively, shall not disclose, disseminate or publicize the existence of this Agreement or any information about this Agreement to any other person(s) except as follows:

a) to state and federal tax authorities to the extent necessary;

b) in response to an order of a court of competent jurisdiction, following notice to the other Party;

c) in response to a properly issued subpoena, following notice to the other Party;

d) in an action to enforce this Agreement;

e) to professional advisors including attorneys, accountants, and tax advisors where such disclosure is relevant to their provision of services;

f) to immediate family members if those family members have agreed to not disclose the terms and conditions of this Agreement; and

g) as to the Company, to officers, directors, and affiliated entities on a need-to-know basis.

Except as expressly permitted above, the Parties agree that if they receive inquiries relating to the status of the Stock Declaratory Judgment Action; the Counterclaim; the Appeal; or the Costs, the Parties shall respond only that matters were resolved between the Parties and the Motions Order and Final Judgment remain in full force and effect.

11. Waiver.

No waiver of any term, provision, or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of that or any other term, provision or condition of this Agreement.

12. Governing Law.

This Agreement shall be interpreted, construed, and enforced in accordance with, and shall be governed by, the laws of the State of Delaware, without regard to conflicts of laws principles and regardless of the place of execution, or of the places of performance. Except that either Party shall be entitled to obtain from any Court of competent jurisdiction injunctive relief against the other Party, without bond, as set forth in Section 6, any legal action, suit or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in a) the Federal Courts of the United States of America or the Court of the State of Delaware in each event location in the city of Wilmington, Delaware, or, alternatively, b) in the United States District Court of the Southern District of Florida, Ft. Lauderdale, and, to the fullest extent permitted by law, each Party irrevocably submits to the exclusive jurisdiction of such courts. To the fullest extent permitted by law, the Parties irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceedings in such courts, and irrevocably waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

13. Severability/Enforceability.

The Parties agree that if any provision in this Agreement is held to be invalid, illegal, or unenforceable, either legislatively or judicially, such provision will be severed here from, and the remainder of this Agreement will continue to be valid and enforceable unless such determination of invalidity shall deprive either Party of the substantial benefit of its bargain. Furthermore, if Takigiku in any way breaches Sections 5 c) iv and/or v of this Agreement and/or asserts that such Sections and/or provisions of this Agreement is/are invalid, illegal or otherwise unenforceable, Takigiku must refund to the Company all consideration paid to Takigiku under this Agreement as this is a reasonable estimate of the monetary damage(s) that would accrue to Charleston as a result thereof in the future, and all Parties agree that the damages that would result from such breach are uncertain or incapable of calculation and this amount of liquidated damages is fair and reasonable and would not act as a penalty to Takigiku. The liquidated damages in this Section shall be in addition to, and not in lieu of, the Company's right to obtain equitable relief by specific performance, temporary restraining order, preliminary and/or permanent injunction as set forth in Section 6.

14. Construction.

The Parties acknowledge that each party has participated in the drafting and negotiation of this Agreement. The Parties intend for this Agreement to be construed and interpreted neutrally in accordance with the plain meaning of the language contained herein, and not presumptively construed against any actual or purported drafter of any specific language contained herein.

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15. **Attorney's Fees.**

In the event any action is brought to enforce the terms of this Agreement, the prevailing Party shall be entitled to his or its attorney's fees and costs reasonably incurred in the defense or prosecution of such action.

16. **Counterparts.**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, and all such counterparts shall constitute one and the same instrument. A facsimile copy of this Agreement or a signed copy of this Agreement transmitted in Portable Document Format ("PDF") shall have the same force and effect as an original and shall bind a Party to the terms and conditions hereof.

17. **Jury Trial Waiver.**

EACH PARTY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT WHICH SUCH PARTY HAS OR MAY HAVE TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, LITIGATION, OR PROCEEDING RELEASED BY THIS AGREEMENT, WHETHER AT LAW OR IN EQUITY, WHETHER BASED ON ANY CLAIM OR COUNTERCLAIM, ARISING BEFORE OR AFTER THE EFFECTIVE DATE OF THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM OR COUNTERCLAIM, AND INCLUDING CLAIMS UNDER TORT, CONTRACT, STATUTORY OR COMMON LAW.

RAY TAKIGIKU Date: 18 JAN 2017	CHARLESTON LABORATORIES, INC. By: Name: LAURI BOSSE Title: PRESIDENT & CEO Date: 1/18/2017

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EXHIBIT 1

CONFIDENTIAL INFORMATION & INVENTION ASSIGNMENT AGREEMENT

From: Berry, Bridget (Shld-WPB-LT)
Sent: Wednesday, October 19, 2016 11:59 AM
To: 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,

Thank 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

Bridget A. Berry
Shareholder
Greenberg Traurig, P.A. | 777 S. Flagler Drive, Suite 300 East | West Palm Beach, FL 33401



PL-0054130

Tel 561.650.7912 | Fax 561.655.6222 | Cell 786.609.6655
Berryb@gtlaw.com | www.gtlaw.com

GT 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

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anquil Court
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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.

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.

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.

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[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.

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.

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

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

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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.
_____/

PLAINTIFF/COUNTER-DEFENDANT CHARLESTON LABORATORIES, INC.'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Plaintiff/Counter-Defendant CHARLESTON LABORATORIES, INC., ("Charleston" or the "Company"), by and through its undersigned counsel, set forth the following statement of undisputed material facts:

Charleston Labs Is Formed

1. Charleston is a privately-held, emerging specialty pharmaceutical company organized under Delaware law on June 27, 2007. See DE 34 ¶¶ 1, 7-8; DE 36 ¶¶ 1, 7-8. Charleston's business is in the area of global life sciences. See Request for Admissions ("RFA"), attached as **Exhibit "1,"** at ¶ 1; Deposition of Dr. Raymond Takigiku dated May 3, 2016 ("Takigiku Depo. I"), attached as **Exhibit "2,"** at 204:20-23.

2. G. Paul Bosse III ("Bosse") is the original inventor of Charleston's novel product concepts, drug delivery platforms, and patent filings. See DE 34 ¶¶ 7-8; DE 36 ¶¶ 7-8; Deposition of G. Paul Bosse III dated April 27, 2016 ("Bosse Depo."), attached as **Exhibit "3,"** at 91:15-17, 198:09-14. Affidavit of Paul Bosse ("Bosse Aff."), attached as **Exhibit "4,"** at ¶ 2.

3. Having launched those concepts in 2006, Bosse incorporated the Company in 2007 and recruited his Tanner, Alabama Calhoun Community College friend and baseball teammate, Ryan Baker ("Baker") to join the Company, as well as friend Chris Godwin ("Godwin") soon thereafter. See Bosse Depo. at 206:10-22; Bosse Aff. ¶ 3.



4. Bosse, Baker, and Godwin represent the three original founders of Charleston that preceded the May 2008 Stockholders Agreement. See Bosse Depo. at 206:19-22; Bosse Aff. ¶ 5.

5. Later, in 2008, the Company brought on three new at-will employees—John Ameling ("Ameling"), Bernard Schachtel ("Schachtel"), and Ray Takigiku ("Takigiku"). See Bosse Depo. at 59:13-17; Bosse Aff. ¶ 6; Takigiku Depo I. at 20:17-21:06, 28:23-29:16.[1]

The Stockholders Agreement and the Stock Restriction Agreement Are Executed Together as of May 30, 2008

6. Relating to the Company's efforts to raise money for its operations and in connection with the employment of Takigiku, Ameling, and Schachtel, two documents were executed, both made and entered into as of May 30, 2008: (1) the Stockholders Agreement (DE 34-1) (the "Stockholders Agreement") and (2) the Stock Restriction Agreement (DE 36-2) (the "SRA"). RFA ¶¶ 62-63; Takigiku Depo. I at 150:01-151:15; 160:24-162:02; 238:09-14; Bosse Aff. ¶ 8.

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 Corp. Accordingly, Charleston is not the drafter of the Stockholders Agreement. See Bosse Aff. ¶ 9.

8. The Stockholders Agreement and the SRA were provided to Takigiku for execution on the same date and were also signed by him on the same date. See RFA ¶¶ 72-73; Takigiku Depo. I at 238:09-14; See Deposition of Dr. Raymond Takigiku dated June 27, 2016 ("Takigiku Depo. II"), attached as **Exhibit "5,"** at 287:09-13.[2]

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[1] Ameling and Schachtel were acting as consultants to the Company before becoming employees of the Company. See Bosse Aff. ¶ 7.

[2] More specifically, Takigiku on May 30, 2008 executed and delivered to the Company his signature to a Stockholders Agreement identified by footer WCSR 3905566v4 and a Stock Restriction Agreement identified by footer WCSR 3909546v1, both dated and effective as of May 30, 2008 (the "First-Signed Set"). See Takigiku Depo. II, at 286:18-287:16 and Ex. 68 to the deposition, attached hereto as **Exhibit "6."** At the request of another employee-stockholder, Bernard 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 a Stock Restriction Agreement identified by footer WCSR 3909546v3, both dated and effective as of May 30, 2008 (the "Second-Signed Set"). Id. at 301:08-302:11 and Ex. 73 to the deposition, attached hereto as **Exhibit "7."** The provisions of the particular sections of the Stockholders Agreement and the SRA cited in this Statement of Facts are the same in the First-Signed Set and the Second-Signed Set, and so reference is made to the two executed

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9. Takigiku was aware that he was signing two agreements (the Stockholders Agreement and SRA) with different purposes and Takigiku admitted in deposition that both "control". See RFA ¶ 78; Deposition of Dean Rutley, Esq. dated June 23, 2016 ("Rutley Depo."), attached as **Exhibit "8,"** at 65:02-06, 74:08-16; E-mail from Takigiku dated May 21, 2008, attached as **Exhibit "9"**("the two documents seem ok, and the tag-along provisions are also good. The Stock Restriction agreement may be unnecessary, but it's good to protect all of the other shareholders."); Takigiku Depo. II at 286:01-17, 318:24-319:01. The concept of vesting was used by Bosse in an e-mail 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. Bosse Depo. at 160:11-161:14; Rutley Depo. at 59:03-22. Takigiku wasn't even privy to Mr. Rutley's discussions with Schachtel's attorney. Takigiku Depo. II at 293:09-24.

10. Despite having the opportunity to review and, in fact, having reviewed and made comparisons between the SRA and the Stockholders Agreement on numerous occasions (Id. at 278:04-14, 284:18-22, 300:05-11), Takigiku told no one (other than his attorneys in this litigation 5 years later) that there was an ambiguity between the Stockholders Agreement and the SRA. Id. at 247:12-248:06, 302:12-21, 323:23-324:04. The only reason articulated by Takigiku that the alleged ambiguity should be construed against Charleston is that *he believes* the Stock Restriction Agreement protects his rights. Id. at 324:05-12 ("Q: Assuming there is an ambiguity between the Stockholders Agreement and the Stock Restriction Agreement, why do you think it should be construed against Charleston?" A: I believe the Stock Restriction Agreement protects my rights. Q: Any other reason? A: No.").

11. Both the Stockholders Agreement and the SRA provide that they "supersede" other prior (not contemporaneous) agreements relating to the matters therein. See DE 34-1 at §5.9 and DE 36-2 at §5.

12. The Stockholders Agreement was entered into between Charleston and both 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 Stockholders

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versions of the Stockholders Agreement and SRA, jointly and severally, as the "Stockholders Agreement" and "SRA," respectively.

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Agreement as the "Founding Stockholders." See DE 34-1; RFA ¶ 62; Takigiku Depo. I at 151:11-15.

13. A stock restriction agreement was entered into between Charleston and only new employees Ameling, Schachtel, and Takigiku. See Bosse Depo. at 38:13-16, 164:11-16 ("G. Paul Bosse, Ryan Baker, and Chris Godwin only entered into Stockholders Agreements. John F. Ameling, Bernie Schachtel, Ray Takigiku are the only three that entered into a Stock Restriction Agreement.").

14. Effective as of May 30, 2008, the Board of Directors of the Company (the "Board") (then consisting solely of Bosse), executed a Written Consent issuing 210 shares of common stock of the Company to Takigiku for an aggregate of $2.10 ($0.01 per share). See Bosse Aff. ¶ 10; Takigiku Depo. I at 156:17-19.[3]

15. Takigiku acknowledged receipt of Stock Certificate No. 12 issuing 210 shares of stock in Charleston. Takigiku Depo. I at 156:07-19 and Ex. 36 to the deposition, attached hereto as **Exhibit "10."**

16. In compliance with 8 Del. C. § 202(a), the reverse side of the Stock Certificate No. 12 issued to Takigiku and evidencing the 210 shares contains the following two statements indicating that the Shares were subject to transfer restrictions and right of repurchase in both the Stockholders Agreement and SRA: (i) "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" and (ii) "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 of the holder of such shares." See RFA ¶¶ 83-84; Takigiku Depo. I at 155:12-159:01, 168:01-170:07 and Exhibit 10 attached hereto.

17. The Stockholders Agreement provided protection to the closely-held, start-up Company, and the Company's stockholders. Among other things, the Stockholders Agreement

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[3] "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.

provided Restrictions on Transfer of Stock (Article 1), Certain Rights to Purchase (Article 2), Co-Sale and Drag-Along Rights (Article 3) and Management provisions (Article 4). See DE 34-1 Bosse Aff. ¶ 8. In particular, the Stockholders Agreement gives the Company the right to repurchase "any or all" of the Common Stock "now or hereafter owned" by the Founding Shareholders at "the Fair Value of the Shares to be purchased 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," upon the occurrence of certain events. See DE 34-1 at ¶¶ 2.2 and 2.4(i); RFA ¶ 82; Takigiku Depo. I at 238:04-08, 239:12-18, 249:08-13, 249:22-250:04.

18. The SRA was tied to Takigiku's employment with the Company and gave the Company the right to repurchase "Restricted Shares" set forth on Schedule A to the SRA at a *predetermined* nominal price of $0.01 per share in the event that prior to May 30, 2011, Takigiku either (1) resigned or otherwise voluntarily terminated his employment with the Company or (ii) was terminated For Cause (as defined in the SRA). See DE 36-2; RFA ¶ 80; Takigiku Depo. I 237:19-22, 248:13-24.

19. The SRA was beneficial to Takigiku because it qualified him for favorable tax treatment under Section 83(b) of the Internal Revenue Code of 1986, and set forth the schedule by which the Fair Value of Takigiku's shares of common stock were to be earned over time. DE 36-3; Bosse Depo. at 35:22-36:07, 41:16-42:02, 159:11-22; Takigiku Depo. II at 299:08-18, 313:05-314:21 and Ex. 72 and 75, attached hereto as **Exhibits "11" and "12,"** respectively.

20. It is undisputed that the Company could repurchase any or all of the Shares for Fair Value under the Stockholders Agreement, including those that were no longer subject to repurchase pursuant to Schedule A of the SRA. See RFA ¶ 82. Specifically, Takigiku testified:

Q: Okay. So can we agree that Schedule A to the Stock Restriction Agreement does not contain the word "vest" or "vesting"?

A: Yeah. I can't find it.

Q: You can't find it because it's not there, correct?

A: Must be.

Q: Okay. Would you agree that the Stock Restriction Agreement gave the company the ability to buy back certain shares at a penny per share, giving

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you the ability to earn fair value of the shares over time and to take advantage of an 83(b) election?

(MR. LONG: Objection to the form, calls for a legal conclusion.)

A: Yeah. I'm not an attorney, but I would agree that the Stock Restriction Agreement allows the company to buy back certain amounts of shares.

Q: It could buy back those certain amount of shares at a predetermined value of one penny per share, correct?

A: Correct.

Q: The Stockholders Agreement, on the other hand, allowed the company to buy back any or all of your shares, correct?

A: I believe that language is in the Stockholder Agreement, yes.

Q: Okay. So the company could repurchase any or all of your shares for fair value under the Stockholders Agreement, true?

A: That is what is stated in the Stockholder Agreement, yes.

Q: And the Stockholders Agreement was executed contemporaneously with the Stock Restriction Agreement, true?

A: They were both signed on the same date.

Q: And they're both referenced on your stock certificate, correct?

A: I assume it is, since I don't remember what was on the back of that stock certificate, but, yes, they're both mentioned in what I was presented as exhibit whatever it was.

...

A: That the Stock Restriction Agreement, as I understand it, permits the company to buy back a certain limited number of shares at a penny.

Q: So what happens to the shares that it can no longer buy back at a penny?

A: They're mine.

Q: They're irrevocable? They can't buy them back at all for any reason?

A: I imagine that would be covered by the Shareholder Agreement.

Q: Well, we've already established the Shareholder Agreement says the company can repurchase any or all of your shares for fair value, correct?

A: Yeah. Well, that's what it says.

See Takigiku Depo. I at 236:24-238:20, 248:21-249:12.

Charleston Labs Effects a Forward Split in September 2008

21. 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 converted into and automatically became 420,000 shares of common stock of the Company upon consummation of the 2,000 to 1 forward split (the "Forward Split"). See Bosse Aff. ¶ 11.

22. The original Stock Certificate No. 12 representing the 210 shares of common stock of the Company originally issued to Takigiku was returned to the Company and marked "cancelled" in connection with the Forward Split and the preparation of Stock Certificate No. 14. Id. ¶ 12.

23. The original Stock Certificate No. 14 representing the 420,000 Shares into which the original 210 shares were converted in the Forward Split remained in the Company's possession, and thus, Takigiku does not have any Charleston stock certificates in his possession. Id. ¶ 13; RFA ¶ 85.

24. On September 26, 2008, the Company executed the Series A Stock Purchase Agreement, attached hereto as **Exhibit "13."**

Takigiku Is Fired in March 2010 "For Cause" and His Shares Are Repurchased Pursuant to the Stockholders Agreement

25. In March 2010, Bosse was the Company's sole director. See Bosse Aff. ¶14.

26. Among the events triggering the Company's repurchase rights under the Stockholders Agreement are "the Terminating Founding Stockholder who is an employee ceases to be, for any reason, an employee of the Company" and/or "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." See DE 34-1 ¶¶ 2.2 (a)(i) and (v), respectively.

27. While employed by Charleston, Takigiku transferred or purported to transfer his Shares or his interest in his Shares to PrimeDP, a subsidiary of SIDIS Corp. LLC. See DE 34

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¶22; Equity Transfer Agreement between Takigiku and PrimeDP dated February 2009, attached hereto as **Exhibit "14."**

28. Takigiku subordinated the interests of Charleston to those of SIDIS and the SIDIS-related entities. See RFA ¶ 61; Takigiku Depo. II at 351:11-352:05.

29. While Takigiku was an employee and officer of Charleston, he executed an Employment Agreement dated October 16, 2009, attached hereto as **Exhibit "15,"** with Bexion, which included a commitment to dedicate 100% of his business time and efforts to Bexion-related work. See DE 34 ¶22. Takigiku failed and refused to disclose to the Company's Board of Directors his conflicting agreement with Bexion to devote 100% of his business time to Bexion. See RFA ¶ 96; Takigiku Depo. I at 25:02-06.

30. Takigiku totally abandoned Charleston-related work beginning in or around October 2009 and continuing until the termination of his employment in March 2010. Takigiku Depo. II at 352:02-05.

31. As a result of these acts, and others, Takigiku's employment with the Company was terminated "for Cause" in March 2010. See DE 34 ¶¶ 21-22; Bosse Aff. ¶ 15; Takigiku Depo. I at 21:04-06, 193:21-23.

32. On March 19, 2010, the Company sent and Takigiku received a letter informing him of his termination for Cause (the "Termination Letter"). See RFA ¶ 67; Bosse Aff. ¶ 16.

33. By the resolutions reflected in the Minutes of Meeting of the Board of Directors dated March 22, 2010, the Board of Directors of the Company (the "Board") determined that the Fair Value (as defined in and calculated in accordance with the Stockholders Agreement and hereinafter referred to as the "Fair Value") of the shares of common stock of the Company held by Takigiku was "$0.01 per pre-capitalization share or $0.000005 per fully-diluted share of Common Stock" (the "Fair Value Board Consent").[4] See Bosse Aff. ¶ 17.[5]

34. Thereafter, by letter dated March 26, 2010, the Company exercised its rights pursuant to the Stockholders Agreement to purchase all of Takigiku's Shares for Fair Value, as defined and calculated in accordance with the Stockholders Agreement (the "Tender Letter").

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[4] "Pre-capitalization share" is a reference to the original 210 shares issued to Takigiku and "fully-diluted share" is a reference to the 420,000 shares owned by Takigiku post-Forward Split.

[5] The Expert Report of Daniel R. Van Vleet, ASA dated June 28, 2016 (the "Expert Report") confirms that the Fair Value, as determined by the Board, was paid to Takigiku. See Charleston's Expert Disclosure, at ¶¶ 21-22, 73, 81, attached hereto as **Exhibit "16."**

See DE 34 ¶24-27; DE 34-3; RFA 68; Bosse Aff. ¶ 18; Takigiku Depo. I at 231:12-20, 247:12-14 ("A: At the time that Mr. Bosse sent me a letter, **the March 26, 2010 letter, attempting to repurchase all shares for $2.10.**") (emphasis added).

35. Pursuant to the Tender Letter, the Company delivered and Takigiku received a check for $2.10, which the Company tendered as the Fair Value for Takigiku's equity. See DE 34-3 (redacted); RFA ¶ 69; Takigiku Depo. I at 233:11-20; Bosse Aff. ¶ 18.

36. In accordance with the Stockholders Agreement, the Company provided notice to the Founding Stockholders that the Board of Directors of Charleston had determined that the Fair Value (as defined in the Stockholders Agreement) of the shares then held by Takigiku was $2.10, and that by letter dated March 26, 2010, the Company exercised its rights pursuant to the Stockholders Agreement to purchase all of Takigiku's Shares for Fair Value. See Bosse Aff. Ex. E and G; Affidavit of Chris Godwin ("Godwin Aff."), attached as **Exhibit "17,"** at ¶ 5.

37. The Termination Letter and Tender Letter, respectively, also separately attempted to enter into a mutually acceptable severance agreement with Takigiku related to his employment services, non-disparagement and confidentiality, as set forth in an attached Stock Redemption and Settlement Agreement (the "Settlement Agreement") which was never executed by Takigiku. The second paragraphs of the Termination Letter and Tender Letter, respectively, together with the Settlement Agreement and its attachments, were intended to be a privileged settlement negotiation having no impact on the Company's repurchase of the Takigiku Shares pursuant to the Stockholder's Agreement, and therefore, are not relevant to this action. See Bosse Aff. ¶ 19; Bosse Depo. at 65:19-66:18, 77:08-13, 80:14-23, 109:05-18, 114:20-116:02, 116:13-25, 125:17-126:01; Takigiku Depo. I at 259:08-16 ("Q: Do you know what Mr. Bosse meant by that last sentence [in the March 26, 2010 letter]? A: I have no idea but I was waiting for it. Q: You were waiting for what? A: I don't know. Whatever he meant. Q: So we would have to ask Mr. Bosse what he meant, correct? A: I assume so.")

38. In connection with the Company's exercise of its repurchase rights, Section 2.4(i) of the Stockholders Agreement provides that "[i]f [Takigiku] fail[s] to notify the company within 15 days after the date of such notice of [his] objection to the proposed Fair Value, then the Fair Value proposed in the Company's notice shall be binding and conclusive." See DE 34-1.

39. Takigiku failed to object to the Fair Value determination of the Board within 15 days of March 26, 2010. See Takigiku Depo. I at 258:08-260:12.

40. The original Stock Certificate No. 14 representing the 420,000 shares of common stock of the Company into which the original 210 shares of common stock of the Company issued to Takigiku were converted in the Forward Split was marked "cancelled" in connection with the Company's repurchase of such shares. See Bosse Aff. ¶ 20.

41. The Company's repurchase of Takigiku's Shares was reflected in the Company's Stock Ledger when next updated, on March 15, 2011, effective as of March 26, 2010. See Bosse Aff. ¶ 22.

42. Takigiku did not receive any information from Charleston after March 2010 and he took no action until 2015. See Takigiku Depo. I at 258:15-17, 263:17-265:06.

Charleston's Valuation as of March 2010

43. In March of 2010, Charleston was an early-stage start-up company with one prototype product in development (CL-108) that was six to ten years away from being commercially viable. See Takigiku Depo. II at 303:03-23.

44. Both in June 2008 (when Takigiku joined the Company) and March 2010 (when he was terminated), the Company had: (i) no products approved by the FDA; (ii) no issued patents; (iii) no customers; (iv) no revenue and no expectation of revenue within the next year; (v) no sales force; and (vi) significant debt. Id. Takigiku Depo. II at 306:06-308:06, 309:20-310:09.

45. The ***sole*** fact relied upon by Takigiku in support of his Eighth Affirmative Defense that Charleston failed to pay Fair Value for his shares in March 2010 is a ***Draft*** Summary of Terms and Conditions of Series B Preferred Stock, Charleston Laboratories, Inc., February 2010 (the "Draft Term Sheet"). See Takigiku Depo. II at 330:06-14; 331:15-24.

46. The Company never raised capital based on the terms of the Draft Term Sheet and was unable to raise additional capital through the issuance of the Series B Preferred Stock until 2012. See Bosse Aff. ¶ 23.

Takigiku Demands to Inspect Charleston's Books and Records

47. More than five years after Takigiku's termination, in September 2015, Takigiku, through his attorney, made a demand on Charleston to inspect Charleston's books and records. See DE 34 ¶28; DE 34-4; Takigiku Depo. I at 263:17-265:06.

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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-2322

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

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

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[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

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[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....").

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,

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

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

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

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(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

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provided in the case of a Terminating Founding Stockholder within five (5) business days of the occurrence of such event:	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);	(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;	(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;	(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	(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

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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

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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.
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.	**5.9 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.
5.12 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.

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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

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

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

COUNTY OF CHARLESTON NINTH JUDICIAL CIRCUIT

- - -

Charleston Laboratories, Inc., Plaintiff, vs. Womble, Carlyle, Sandridge & Rice, LLP, Defendant.	Civil Action No.: 2017-CP-10-3768

VIDEOTAPED DEPOSITION OF G. PAUL BOSSE, III

DATE TAKEN: July 18, 2019

TIME BEGAN: 9:10 a.m.

TIME ENDED: 1:13 p.m.

LOCATION: Nelson Mullins
One North Clematis Street
West Palm Beach, Florida

REPORTED BY: Tami I. Watters, RPR, CRR
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
(803) 212-0012

APPEARANCES:

BLAND RICHTER, LLP
BY: RONALD L. RICHTER, JR., ESQUIRE
BY: SCOTT M. MONGILLO, ESQUIRE
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Representing the Plaintiff

ROBINSON GRAY STEPP & LAFITTE, LLC
BY: BENJAMIN GOODING, ESQUIRE
BY: WILLIAM H. JORDAN, ESQUIRE
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Columbia, South Carolina 29201
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bgooding@robinsongray.com
wjordan@robinsongray.com
Representing the Defendant

ALSO PRESENT:

MICHAEL HOLLANDER - CLVS

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E X H I B I T S

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1	Summons and Complaint	8
2	Third Amended Complaint for Declaratory Relief	9
3	Stock Restriction Agreement, CL-000001-000005	10
4	Stockholders Agreement, CL-000006-000024	10
5	Deposition of G. Paul Bosse, III, dated 04/27/16	156
6	Engagement Letter dated 06/06/07, WBD_CHLAB0016317-16320	33
7	E-mail correspondence dated 05/21/08, CL-003392	62
8	E-mail correspondence dated 5/28/08	68
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EXHIBITS, Continuing:

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13	Charleston Laboratories, Inc. Minutes of Meeting of Board of Directors dated 03/22/10, CL-000845	88
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15	E-mail correspondence dated 03/25/10, WBD_CHLAB0019085	98
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21	Mutual Settlement Agreement and Release dated 01/13/17	176
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THE VIDEOGRAPHER: Good morning. We are now on the video record. Today is Thursday, the 18th day of July, 2019. The time is 9:10 a.m.

We are here at One North Clematis Street in West Palm Beach, Florida, for the purpose of taking the video deposition of Paul Bosse taken by the defendant in case number 2017-CP-10-3768 in the case of Charleston Laboratories, Incorporated versus Womble, Carlyle, Sandridge & Rice, LLP, which is filed in the Ninth Judicial Circuit of Charleston County, South Carolina.

The court reporter is Tami Watters. The videographer is Michael Hollander. Would all counsel please state their appearance for the record.

MR. MONGILLO: Scott Mongillo and Ronnie Richter of Bland Richter for the plaintiff.

MR. GOODING: Ben Gooding and Will Jordan, Robinson Gray Stepp and Lafitte for the defendant.

THE VIDEOGRAPHER: Would you raise your right hand, please? Do you swear the testimony you are about to give will be the

truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE VIDEOGRAPHER: All right.

- - -

EXAMINATION

- - -

BY MR. GOODING:

Q Mr. Bosse, we just met a moment ago, but my name is Ben Gooding and I represent Womble Carlyle in this lawsuit that Charleston Labs has brought against Womble Carlyle.

Would you please state your full name for the record?

A Yes. George Paul Bosse, III.

Q Okay. And I know you've been deposed before but I'm required to go over a couple of rules with you before we get started, so I'm going to go over these real quick.

If I ask you a question and you don't understand the question, please ask me to clarify it. If you don't -- if you answer, I'm going to assume you understood the question; is that fair?

A That's fair.

Q Okay. If you have any questions, please

direct those towards me and not to your counsel.

A Okay.

Q And we have a court reporter here taking down everything you've said so, for her sake, I'm going to try not to -- I'm going to try to let you finish answering your question, and if you'll let me finish asking mine and let's not talk over each other because that's going to be very difficult for Tami here to put everything down for us.

So -- and the final thing is: This is not a marathon, so if you want to take a break at any point, just ask. And I just want to let you know, though, that, during the break, any conversations you have with your counsel, I'm allowed to ask you about. So just be aware of that.

Is that fair?

A That's fair.

Q Okay. And again, another thing to go over real quick, there's a couple of terms I'm going to use today. I want to make sure we're on the same page about everything.

I'm going to hand you this notebook of exhibits here.

A Okay.

MR. GOODING: Scott, I've got one for you here.

MR. MONGILLO: Oh, thank you.

BY MR. GOODING:

Q So I'm going to use the phrase "Charleston Labs" today to refer to Charleston Laboratories, Inc., which is the plaintiff in this case. So if I say Charleston Labs, you're going to know who I'm referring to?

A Correct.

Q Okay. And one of the persons involved in the underlying facts of this case is Dr. Raymond Takigiku, and for the court reporter's sake and for mine, I'm just going to call him Dr. T; is that fair?

A Fair.

- - -

(Summons and Complaint marked Bosse Exhibit Number 1, for identification.)

- - -

BY MR. GOODING:

Q All right. If you will turn to Exhibit 1 of this notebook in front of you. I will represent to you that this is a copy of the summons and complaint that was filed in this legal malpractice

action in this case which is Charleston Labs, Inc. versus Womble, Carlyle, Sandridge & Rice, LLP. It's the case pending in the Ninth Circuit of -- the Court of Common Pleas in the Ninth Circuit in Charleston, South Carolina. So I'm going to refer to this case as the malpractice action. So when I say the malpractice action, you will know what I mean?

A Yes.

- - -

(Third Amended Complaint for Declaratory Relief marked Bosse Exhibit Number 2, for identification.)

- - -

BY MR. GOODING:

Q Okay. And if you turn to tab Number 2, this is the complaint of the -- or the third amended complaint in an action that was brought in the Federal District Court for the Southern District of Florida against -- brought by Charleston Labs Inc. against Dr. Raymond Takigiku. I'm going to refer to this case as the Florida litigation or the Florida action; is that fair?

A That's fair.

- - -

- - -

(Stock Restriction Agreement, CL-000001-000005 marked Bosse Exhibit Number 3, for identification.)

- - -

(Stockholders Agreement, CL-000006-000024, marked Bosse Exhibit Number 4 for identification.)

- - -

BY MR. GOODING:

Q Turn to Tab Number 3 for me, please. This is a copy of the Stock Restriction Agreement in this case. I'm going to refer to the stock restriction agreement as the SRA.

A Okay.

Q And the next tab is going to be a copy of the share -- Stockholders Agreement which I will refer to as the SHA, okay?

A Okay.

Q Tell me what you did to prepare for your deposition today.

A You guys sent over, I think, this notebook, which I looked at. I was a part of Dean Rutley's deposition. I was listening on the phone, so I skimmed back through that, in addition

to David's deposition, and skimmed over Bridget's. There was some things, my notes I had taken down on that, so ...

Q Okay. Did you meet with anybody to discuss your testimony today?

A No.

Q Okay.

A But I do -- I do have some issues with those, if I could --

You know, there's some things that I would like to say about some of those depositions. Is that possible or --

Q Sure. We'll go over that in a little bit. How about that?

So other than the documents in this notebook and the transcripts for Bridget Berry, Dean Rutley, and David Baddour, is there any other documents you reviewed to prepare for this deposition?

A No.

Q Did you review the deposition transcript for the deposition of George Scott?

A No.

Q Other than your attorneys, have you discussed your testimony today with anybody else?

A No.
Q Okay. I'm going to go over some background now. You're still employed by Charleston Labs, correct?
A Yes.
Q And you're still the president and CEO of Charleston Labs?
A I am.
Q And you've held that position since 2007, correct?
A That's correct.
Q And do you still serve as a member of the Charleston Labs board?
A I am -- I am the sole member of the board.
Q Okay. And are you employed with any other company in any other position or is this your sole employment?
A It's my sole employment.
Q Okay. Let's talk about your educational background for a second.
A Uh-huh.
Q It's my understanding you started your college career at Calhoun Community College; is that correct?

A That's correct.
Q And you played baseball there?
A I did.
Q And after one year there, you transferred to Samford University?
A No. I went to Spartanburg Methodist for my second year.
Q Okay. And so you spent one year at Spartanburg Methodist?
A I did.
Q And then transferred to Samford?
A I did.
Q And you ultimately graduated from Samford?
A I did.
Q And what was your degree in?
A Sociology with a -- had a cognate in history. I don't know. It was kind of like a minor, what they called it. So it was a sociology/history --
Q Okay. And what year did you graduate from Samford?
A 2001.
Q Okay. Any additional education after that?

A No.

Q Briefly, where are you from originally?

A So born in -- near Charlotte, North Carolina, Concord, lived in Albemarle, and then my family moved to Middle Tennessee. My father was an executive in textiles, so we lived in Middle Tennessee, and you talked about my college. And then after college I lived in Charleston, South Carolina, for what -- 10, 11 years before we moved to Jupiter, Florida with the company.

Q Okay. Tell me about your work experience prior to Charleston Labs.

A I out of college worked with Motley Rice in Charleston, and after that I moved into the pharmaceutical industry with a company called Athlon Pharmaceuticals. And then after that I stepped aside to really start this venture.

And we had another company called Palm Pharmaceuticals in which we had purchased a product that was really just meant to kind of keep the house over the head and the lights on, so ...

But it was really in an attempt to set up what Charleston is.

Q Okay. Do you recall being deposed on April 27th, 2016 in the Florida litigation?

A I do.

Q Okay. This is the one exhibit that's not in the notebook given how large it is.

MR. MONGILLO: Thank you.

- - -

(Deposition Transcript marked Bosse Exhibit Number 22, for identification.)

- - -

BY MR. GOODING:

Q Okay. So do you recognize this document?

A I do.

Q All right. And is this a copy of the transcript for your prior deposition?

A It appears to be, yes.

Q Okay. And was that your first time being deposed?

A It was.

Q So I'm assuming that you took the deposition pretty seriously?

A Very serious.

Q Tell me what you did to prepare for that deposition.

A Wow. To the best of my recollection, I would have reviewed whatever exhibits that they would have sent over, just like you guys did.

I don't think I had to do too much. It wasn't really too hard because this is -- this is what I lived for 10 years --

Q Okay.

A -- so ...

Q Did you meet with your counsel prior to that deposition?

A Yeah. We -- we met but, again, it was really -- anything that we did would have been in the exhibits that they would have provided.

Q Okay. And do you recall being under oath in that deposition?

A Absolutely.

Q And so you swore to tell the truth, the whole truth, and nothing but the truth prior to that deposition?

A I did.

Q And that's the same oath you took this morning?

A That's correct.

Q And that's the same oath you would take if you were in a court of law testifying before a jury?

A That's right.

Q Okay. And you understood all that at the

time of your deposition in the Florida case?

A I did.

Q Okay. And so the testimony that you gave during your deposition in the Florida litigation was truthful, correct?

A Yes, it was truthful.

Q And the testimony that you gave during your deposition in the Florida litigation was accurate, correct?

A Yes.

Q Okay. And since that deposition was taken, have you had a chance to review your transcript in that case?

A I have.

Q And did you make any changes to your testimony after reviewing it?

A No.

Q And did you review that transcript in preparation for today's deposition?

A I did. I think you provided it.

Q I did. Is there anything in that transcript -- in that transcript from the Florida case that is wrong or inaccurate that needs to be corrected?

A Well, that's a tricky question because

sitting here today -- you know, when I did this deposition and sitting here today where we are in this malpractice case, there's any number of things that you can read and think that I agree with, you know, Womble Carlyle or you can think that I'm saying that were one and the same but were not.

So sitting here today having, you know, all the view that I have now versus the view that I had then, right? So, you know, that's -- that's really it. I mean, when I -- when I look at this, you know, this was about defending what I did, not what my attorneys did, right? I trusted -- I trusted my attorneys, but ...

So if that's a broad answer to your question -- but I was truthful in everything that I -- you know, that I -- that I answered.

Q Okay. So just to clarify, there's not any point when you didn't tell the truth --

A No.

Q -- during this deposition?

A No.

Q And you accurately represented your understanding of the facts when asked questions in that case?

A Yes. Absolutely.

Q So if I were to ask you a question from that previous deposition, I can assume that the answer you gave in that would be truthful and accurate?

MR. MONGILLO: Object to the form of the question. Please answer it.

THE WITNESS: Yeah. I was going to ask him to restate that. Could you restate it?

BY MR. GOODING:

Q Okay. If I were to ask you a question as you were asked in that prior deposition, could I expect your answer to be the same today?

A No, because we're in a different spot today.

Q Okay.

A I'm now -- I'm now sitting through, you know -- I've heard depositions and testimony and I've seen discovery and documentation that -- that I didn't have then, right? So I can't sit here and say that while this is not the truth, that I might have added something to what I said.

So if you ask me a question today, sitting in the malpractice, I cannot give you the exact same answer having all the view that I do now.

Q I know you said in preparing for today's deposition you did not reread the transcript of the 30(b)(6) in this case, but have you read the transcript of the deposition of George Scott, which is the 30(b)(6) in this case?

A I did not. George was -- served as our -- you know, as the corporate designee, and that's legal -- that's legalese. I'm not an attorney. I'm on the business side of things. So there was really no need for me to review that.

Again, I think I said earlier, I was listening to Bridget's, so I heard some things that she misspoke about inadvertently, but there was no -- no reason for me to review anything about legalese.

Q Sure. So just so I'm clear, though, you understand how a 30(b)(6) deposition works; that Mr. Scott was the designee for Charleston Labs and was speaking on behalf of the company. You understand that?

A That's correct. I do.

Q Okay. And you understand that his testimony in that deposition was the testimony of Charleston Labs?

A I do.

Q And would you defer to him and his answers in that testimony as the position of Charleston Labs in this case?

A I would. I think you guys asked him some -- I recall hearing questions about how the company started and there were some things in the beginning that, you know, that if it's important, I can give further, you know, insight on. But as far as the legalese go, absolutely.

Q Okay.

A And that would be just because it predated him, right?

Q Sure. No, I understand.

A To be fair, as humans, we -- you know, memories are --

Q Gotcha. But any testimony he had about after he started with the company, that -- you would defer to his testimony in that deposition.

A Absolutely.

Q Okay. Let's talk about how you began working with Dean Rutley and Womble Carlyle.

A Uh-huh.

Q How did you first learn about Dean and Womble Carlyle?

A So, you know, Charleston, our company,

is -- you know, we're homegrown and -- you know, with big dreams and big vision, and we had a lot of interest in what we were doing. And very quickly, we had some venture capital institutional and potential investors that we were working very strongly with. And I'm, either fortunately or unfortunately, a very thorough person. And in my diligence, I went and looked to see who the companies that they had done deals with, and I saw that Womble Carlyle had represented a company pretty recently, and he was one of three that I called.

It was a cold call. I didn't know anything about him. And Dean very much sold me on himself and what he could provide us, not only having recently provided guidance or counsel to that particular company, he -- you know, I think they were a smaller regional player at that time, which, you know, that's really kind of who we are. That's kind of one of the values of Charleston is that we're very southern and we're very -- you give us -- you know, you give me your word and I -- that's as good as a handshake and putting your signature on a piece of paper.

So he very much made me comfortable, and

so, you know, through that conversation and conversation with some of the other partners, Ryan Baker, Chris Godwin, you know, we made the decision to move forward with Womble Carlyle, so ...

Q Okay. So that conversation was on the phone or in person?

A That was on the phone.

Q Okay. Did you ever meet him -- I'm assuming you met Dean in person.

A Yes. Dean and I -- Dean and I met -- were around each other a handful of times; two or three times I would say. There were a couple times where we went to the regional venture meetings. So Dean and I were around each other several times.

Q And so I think you mentioned during your testimony just a second ago that you also called around a couple other firms as well?

A I did.

Q Who were they?

A Gosh. Sitting here today, I really -- I really don't remember. It would have been some of the players, but I don't remember.

Q Two other firms that specialized in capital venture though?

A Yeah. We always -- yeah. We always try

to do two or three to get a good feel.

Q And when was the first time, then, you were introduced to David Baddour?

A So I really was never really introduced to David Baddour. I was kind of passed off to David Baddour. And that was really once the venture deal -- and that was one of the things --

And I'll just -- I guess I'll do it this way: You know, listening to -- listening to Dean's testimony, I, like Bridget, agree that he did a really good job of acting.

You know, even when he was telling the story about how I got passed to David, I -- there was a venture deal that we had. We flew up to Toronto. They sent over a term sheet while we were actually flying that got worse, not better. They were bringing some new partners into the syndicate, and I remember where I was standing in the hotel room when he said, "Paul, I'm going to tell you guys to get on the plane to fly home."

And I went down to the other two guys that were there, John Ameling and Bernie Schachtel, and I said, "Dean's advising us to get on the plane and fly home and not even attend the meeting." But because of that southern roots and when we give you

our word, we decided to go ahead and attend the meeting.

He made an incorrect statement about -- there was one of the venture partners did get rather upset and went to throw a pen, and it almost hit one of my guys, but it had absolutely nothing to do with me, rather than, you know, the circumstance of, I guess, the tensions of maybe trying to get a deal done.

So I think I recall him saying that, but that was one of the things. So when that deal did not go through -- one of the things that Dean and I discussed was that we were a promising company, I guess you could say, and that Womble Carlyle was not the only law firm that we worked with, right?

Having worked in a law firm before, I mean, I heard testimony that I was unsophisticated or they taught me how to be sophisticated or a user of services or whatever.

I mean, we -- it's a little bit ridiculous, but when that deal didn't go down, one of the things that Dean had discussed with me was that they were going to hold all of our bills until funding.

Now, telling you as I did that I have to

tell the truth, did anybody contemplate the road -- how it shifted? I don't think so. And I think that's part of the big problem, you know, with Dean telling me that he was going to hold the bills and the comfort of that -- and that's standard with what we had with other firms as well -- when that venture deal did not move forward, I think we fell into a spot because I had made a decision based on that meeting.

One of the things that I saw was they were telling my now chief scientific officer, who has done things like develop Advil -- you know, he's done some pretty big things, we had people in the room that were trying to tell him how to do what -- to do his job that had no business doing it.

And so that very much made me concerned that if they're going to tell someone, you know, that is that seasoned or credentialed and experienced --

You know, and it was all based on money. So I had made the decision right there when that whole thing went down that we were going to take this company in a different direction and go noninstitutional, if you will. And I believe when

we did that --

Q What do you mean by noninstitutional?

A Meaning that we didn't -- our funding, short of -- short of one of our other law firms, Wilson Sonsini, we had no venture capital money, ever. So it was all raised private, high-net-worth investors, and that was because of that meeting. And when we made that turn --

Q Hold on. Which meet -- the meeting in Toronto?

A The meeting in Toronto. I apologize, yes.

Q Okay.

A So post that meeting -- and you have to remember, so Dean and I interacted. I didn't interact with anybody else. It was Dean. I had Dean's time.

So when we turned that corner and we came out of that meeting and that didn't, you know, come together and consummate, we then fell -- because I didn't want to stay in institutional, we fell out of a sweet spot. We fell out of what they knew, their templates, right? Because had I received funding from that particular conglomerate, if you will --

Q And what was the name of that conglomerate?

A So one of the -- the lead -- the lead firm was Nexus Medical Partners.

Q Okay.

A And so no matter what question you guys ask me today, in trial, whatever it may be, everything that you see supports what I'm getting ready to say.

When we turned that corner, the documentation that we would have used for venture and what -- where they were was what they used and what was wrong, right?

Because they would have -- they would have said, "No way, Paul. I don't care that you think that you've earned your shares or what you -- I don't care that you second mortgaged your house. I don't care. You're going to go on a stock restriction agreement as well, because I don't know that you're not going to quit."

So when we turned that corner, I already had a bill, and now we're moving away from what Dean Rutley promised me and what he -- what he -- where I believe his sweet spot was and now I'm getting passed to David Baddour.

Q Okay. Would you agree with me that David Baddour did not operate in the exact same -- he didn't do venture capital in the same way that Dean did?

A I would have to agree with that because -- just because of the experience level. Dean is a very, very experienced attorney.

Q But -- okay. Would you also agree with me, though, that Womble Carlyle provided other legal services beyond just venture capital services?

A To me?

Q To Charleston Labs.

A I'm not sure. You would have to clarify that.

Q Sure. I mean, did they not help you, you know, in forming the company, in putting, you know, stock agreements in place? I mean, those are corporate documents rather than fundraising documents, correct?

A Yes.

Q Okay. So they provided legal services beyond just traditional, you know, fundraising or capital venture legal services.

A I can agree with that.

Q Okay. And would you agree with me that a lot of the work outside the fundraising and venture capital was done by David Baddour?

A No, I can't agree with that.

Q Okay. Why not?

A Because at that point -- so -- let me back up.

So when you say "other work" -- let me -- let me have you say again what you said about -- because --

So in the early stages when we were doing venture, the things that Dean were doing were the introductions and the -- and the -- there were some, you know, documents that were being prepared and things like that that Dean heavily did. When we transitioned and we did our Series A right when the real estate crash -- was that in '08 or '09 -- September of '09, I believe -- yeah, there were things along the way that David assisted on. But I don't want to overstate maybe what you're asking.

I mean, the relationship really was all about me asking them to help me protect my stock. That's the one thing that if you know anything about this industry, there are people out there that want to get entangled in stock because it's so

hard to unwind, okay?

So having -- trying to put together a company and go and do good for this, you know, society, the one thing you know is that you have to have control of your stock.

And so that's really the one thing -- that's what it is. When you raise money, what is the money for? Who's getting what? You're getting a piece of paper and it's all about stock.

So that's really what I hired Womble Carlyle to do was protect my stock.

Q Sure.

A Because I thought it was going to be valuable one day. And what I was going is, I think on page -- page -- the whole -- if I could, on page 128 --

Q Of your deposition?

A Of my deposition. Jeff Long asked me -- but I'm looking -- he says to me: I'm trying to understand why your testimony is one thing and the document your lawyers drafted says something else.

Circle it, star it. This is it right here. This is the crux of every -- the whole reason we're sitting here today.

When I turned -- when we turned that

corner and we went noninstitutional, I got passed off. There were five attorneys that I worked with: Dean Rutley, David Baddour, Kelly Sayed. There was another one in there. Karl Knoll. There's one more. George Scott.

Q Okay.

A And I never was introduced -- when you say introduced -- that's long-winded to say I was never introduced to anyone other than, "hey, their rate's less than mine."

So, Ben, what happened to me is I got swam out to an island. Dean Rutley swam me out to an island. And we had the nicest boat. We were together -- sitting there together driving that thing. And when I didn't -- we didn't consummate that deal, he left me on that island, because I had -- right? Because I had expenses that -- "hey, Paul, I'm going to take you to that island but you're paying for the gas."

"Hey. All right. I'll pay for the boat, I'll do all this stuff."

We went out to that island together and he got a ride back. And I couldn't pay him -- I couldn't pay him at that point in time, but he knew that. So what he did was -- that's why I got

passed off, and that's where the mistakes happened, right?

Q Okay. We can talk about all that a little later.

- - -

(Engagement Letter dated 06/06/07, WBD_CHLAB0016317-16320 marked Bosse Exhibit Number 6, for identification.)

- - -

BY MR. GOODING:

Q Let's turn to Exhibit 6 here. And do you recognize this document?

A Yes, I do.

Q And is this a copy of the engagement letter that was sent to you by Womble Carlyle related to the services they provided you?

A It is.

Q Okay. It's dated June 6th, 2007, correct?

A Correct.

Q And -- so this would have been about the time that you started working with Womble Carlyle?

A It is.

Q Okay. Let's talk about some of these documents that were the key documents at issue in

this case.

A Okay.

Q Let's talk about Exhibit 3, which is the SRA.

A Exhibit 3.

Q Yes.

A Okay. SRA.

Q Which came first, the SRA or the SHA?

A The SHA.

Q Okay.

A It had to. The SHA is what I -- so, again, the one thing that I asked Womble to do is protect my stock.

Q Okay.

A And the SHA was a document -- one of the things that was happening after we -- right? One of the things that was happening after we didn't go institutional money was -- one of the things that I kept hearing was, "You have a really impressive team, Paul, but how do you ensure me they're not going to walk away and not quit?"

So at that point in time I didn't have a document, right, that could promise anybody that my founders and my -- weren't going anywhere; that they were truly all in.

And so we had just finished a meeting with some potential investors, and they -- what really their plan was was to talk to us about being investors, but their plan was to really kind of do what I said and, "Hey, let me be a part of your company. I'll help you go raise the money but we want to be founders, too."

Q And that's Landmark Capital?

A That's Landmark Capital.

Q Okay.

A So that's where the shareholders agreements came in. I liked them. I said, "You know what? This is very much what I've been" -- since we turned on institutional, right?

Because I'll be, again, brutally honest. Had we stayed institutional, this stock -- this agreement would have been -- probably in some version, it would have been what I signed and everybody else signed.

Q Okay.

A Okay?

Q So the SHA, then, so I'm understanding your testimony correctly, was brought to you by a potential investor, Landmark Capital?

A Correct.

Q And then you passed that document along to David and Dean --

A I did.

Q -- to modify it to use at Charleston Labs?

A I did. I said, "I want to use this" --

And that's another thing that was said. At no point in time did anybody ever have to convince me to use this -- not this document, whatever -- wherever it is. Oh, in Number 4, I guess -- the stockholders agreement. Like, I was adamant about it.

Q So did you have any concerns about this document when it was first brought to you?

MR. MONGILLO: When you say "this document" --

MR. GOODING: I'm sorry. We have moved on. We're now referring to Exhibit 4, which is the SHA. We're going to talk -- we'll go back to the SRA once we get done talking about this.

THE WITNESS: Did I have any concerns about it? Materially, no. I -- it did what I thought we needed to do, and that was protect the stock.

BY MR. GOODING:

Q Okay. So you didn't have any concerns, then, about the buyback provision that allowed the company to buy back, for instance, your shares?

A I did not. I had to be treated just like anybody else.

Q Okay.

A Which is why -- which is why --

Again, the mistake is, had we not --

You know, suffering through the damages and everything and now having the hindsight and having to spend $2 million, had we lost, I would be ungoverned in this company right now, because I didn't sign an RSA.

Q Okay. Explain that. You would be ungoverned in this company?

A I would be ungoverned. Because what you -- what would have happened is an employee that I put on a vesting schedule had better and more rights than me, the original founder. I didn't sign an RSA.

Q A stock restriction agreement?

A Right.

Q An SRA?

A Right.

Q I'm sorry. You --

Okay. So then back to the SHA -- let's stick with this. We'll go back to the SRA here in a minute.

What was your understanding of the purpose of this document? I think you said to protect the stock. Beyond that, is there any other purpose of this document?

A It's -- the majority of this is about stock. There may be other clauses in here that -- I'm not going to -- I couldn't testify that there wouldn't be another sentence or two in here that's not about stock, but this is about stock.

Q Okay. And so when you brought this document to Dean and David, did y'all discuss the document?

A We absolutely did.

Q Okay. And what did you discuss about the document?

A Just that I -- I -- and I believe -- and you guys may not have it, but I said, "I like this. Please take this and let's -- let's incorporate this," and, you know --

And I know there were a number of changes to it because there were obviously things that we

had to change and tailor to Charleston. And David and I talked about -- I think David and I talked about some things that were -- that were changed and ultimately we -- I think we flipped it to everybody for their -- for them to read.

Because I don't -- while I am what I am, the head of the company, my understanding is not their understanding, right?

So they all had their own counsels and their own advisers and they had to -- they all were given the ability to read and come back and --

Q Sure. So you discussed -- but you discussed this document with David Baddour extensively?

A David Baddour, yes.

Q And did you have any questions for David about how the document operated?

A I'm sure -- I'm sure I could have. I mean, I'm not -- I don't proclaim to be -- know it all.

Q Sure.

A Right?

Q So -- but if you had any questions, you could have asked Dean or David and they would have provided you counsel about how the document

operated, correct?

A Yes. I would --

Q And you likely did that?

A I would say that I believe they would have given me the right answer, yes.

Q Sure. And then -- well, then, let's go back and talk about the SRA briefly.

How did the SRA come to be, then? If the SHA was brought to you by Landmark Capital and then transferred over to Womble, how did the SRA come about?

A So -- so this is a document that Womble was familiar with and this originated from Womble, and this is in the bailiwick in the -- in the -- as I was saying earlier, this is what they knew. This is the type of document that they knew. So this came from them.

They knew I was talking, and while I trusted -- you know, Ray was the newest member, I still had the same -- I still wanted to protect myself from the other guys as well. I mean, things always happen.

So I couldn't be in a situation where I had divvied out a pretty nice amount of stock, which David and I had conversations about. I mean,

he told me, "Paul, you're being really generous." And I actually believe it was in some correspondence as well from Ray -- maybe even you provided it -- it was like, "You're being really generous."

So to be honest with you, I would have just done the shareholders agreements and Dean -- or excuse me -- David was probably protecting me more than I was thinking about going on the restriction agreement.

So I was over on the shareholders agreement and they were over on the restriction agreement.

Q Okay.

A And so -- so this generated from them.

Q What is your understanding of what the objective of this document was?

A Of the restriction agreement?

Q Yes.

A Right. It gave me the ability to buy back, you know, at a penny over -- you know, over time. And every -- you know, if the employee was here, then they got a little more stock released, right?

Q Okay.

A And so -- and it also gave -- it also had some different provisions and things that really should have been cleaned up. I mean, they're -- it gets messy. But that was the general purpose was for me to have the comfort, instead of just going on the shareholders agreement, right?

Q Sure.

A And giving them the stock, you know, there was -- there was -- there was some comfort there to have another document and put them -- it was about vesting. It really is.

Q I gotcha. And so this document was brought to you by Womble, then. This is -- is this something you requested or is this something they brought to you and said are you interested?

A It was just through conversation, right? I was just telling them "Hey, this is what I'm going to do. I'm going to take a 60/40 split." And, you know -- maybe you guys have -- I don't recall all of the correspondence, but this is what came out of those conversations.

Q All right. So did you read the SRA before it was sent out to everybody?

A Yes.

Q And did you understand the SRA when you

read it?

A Again, I'm a businessperson, and so sitting -- you know, sitting here now having gone through $2 million of litigation where I see -- and even the PowerPoint, I believe, that -- you know, that Will was a part of, I'm astonished at all the errors and mistakes. But I'm not a lawyer.

Q Sure. But you read the document?

A I read the document.

Q And you understood that it allowed you to buy back shares on a vested schedule --

A I did.

Q -- at a penny per share?

A I understood -- the main concepts I understood, yes.

Q Okay. And if you had any questions about this document, you could have asked Dean or David about it?

A I could have asked him -- asked about it.

Q And did you ask him any questions about the document?

A I don't recall if I did. Because I didn't -- I didn't sign this.

Q Okay.

A Right? So --

Q Sure.
A -- while I understood it, I understood it --
Q But you're the CEO of the company. You're the president of the company.
A I am.
Q These are your employees.
A Yeah.
Q That's all true, right?
A But again, they have -- they could have said, "No, Paul, I'm not going to sign this."
I can't make them sign this. So this was really about -- while I understand generally it gave me the ability -- it was about vesting, right? I'm thinking about other things.
This was for them. I didn't sign this. So I did understand it --
Q Okay.
A -- in 360-foot view.
Q But, again, you understood the basic terms.
A I did.
Q You understood that it allowed you to buy back shares at a penny a share?
A I absolutely understood.

Q You understand that over time, the amount of shares that you could buy back went down?
A I did, yes.
Q Okay. And this document was ultimately signed by the three additional employees?
A That's correct.
Q Which is --
A Ray, John, and Bernie.
Q Okay. All three of those signed this document.
So between these two documents, did you have any questions about how these two documents worked together for Dean and David?
A Did I have any questions about how they worked together?
Q Yes.
A I don't -- I don't -- I don't think I did. I mean --
Q Okay. So from the very beginning, you had the understanding --
A I mean, my request of Womble was to protect my stock, and, you know, the shareholders agreement did that.
Q And the stock restriction agreement did that to a greater extent?

A No. The shareholders agreement did that. The stock restriction agreement put new employees on something different. The stock restriction agreement didn't protect my stock the way my shareholders agreement did.

Q Sure. So -- but the shareholders agreement and the stock restriction agreement were signed by those three employees. Both -- those employees signed both documents, correct?

A They did.

Q Okay. And so it was your understanding that you could proceed to buy back the shares under either document?

A That's not entirely true.

Q Okay. Why is that not true?

A They both gave me -- they both gave me -- They both gave me the ability to buy it back, but there's a myriad -- there's so many scenarios that we could sit here and talk about. The shareholders agreement is the only one that ever gave me the ability to buy them back right now.

Right now, I have the ability to buy back Ryan Baker's stock.

Q Sure. For fair value?

A For fair value. And if the only thing we ever signed was this, that time would have lapsed and now I'm stuck.

Q Sure. But you -- but you ultimately did put in place both the stock restriction agreement and the stockholders agreement?

A Yes. Everybody --

Q So Charleston Labs has the right to purchase back stock under either of these agreements, correct?

A If -- yes, depending upon who signed what. Yeah.

Q Sure. No, absolutely. We're talking about an employee -- we're talking about the three people who signed both documents.

A Yes.

Q So just so I understand as well, you were focused on the SHA and David then brought into the picture the SRA; is that correct?

A Yeah. I mean, it was through the conversation about the size of the stock that I was probably divvying out.

Q And so the SRA did provide an additional benefit in the sense that if someone were to quit or be terminated from the company before their

stock was fully vested, you could purchase back their unvested stock for a penny a share rather than fair value, correct?

MR. MONGILLO: Object to the form of the question. Please answer.

THE WITNESS: Yeah. You have to restate that. I'm sorry. You --

BY MR. GOODING:

Q Sure. So how the SRA functions differently than the SHA is that the SRA permits you to purchase back unvested shares for a penny per share?

A That's correct.

MR. MONGILLO: Same objection. Please answer.

THE WITNESS: Correct, penny a share.

BY MR. GOODING:

Q Okay. And so in the event that a penny a share was less than the fair value of the stock, you could have purchased back the stock for less than fair value, the unvested shares under the SRA.

MR. MONGILLO: Same objection. Please answer.

THE WITNESS: Again, there could --

BY MR. GOODING:

Q Let me -- let me clean that question up for you. How about that? Let's back up.

So the SRA provided you the opportunity to purchase back unvested shares for a penny per share --

A Right.

Q -- even if that penny per share was less than the fair value of those shares, correct?

MR. MONGILLO: Same objection. Please answer.

THE WITNESS: So, yes. You're asking a question that there's a scenario where that could have played out, but that's not what happened here.

So me answering that question that I could have done it that way does not at all mean that that's -- no.

The way it -- yes. There could be scenarios where you do that, but not here.

BY MR. GOODING:

Q Okay.

A Yeah.

Q You -- the documents provide that opportunity, though.

A Right.

Q You would agree with me? I mean, you could choose to proceed under either the SRA or the SHA, correct?

MR. MONGILLO: Object to the form of the question. Please answer it.

THE WITNESS: Again, depending upon other certain factors, yes. You could -- each of them -- I could have got a penny over here and fair market value over here. I said there could be a scenario, depending on where the company --

BY MR. GOODING:

Q Sure. I'm going to ask you -- I'm going to stop you. I'm going to ask you one more time to be clear.

You had the option -- just to clear up my question, because I asked you multiple questions in a row there, he's objecting, I'm just trying to clarify here.

You had the option to proceed under either the SHA or the SRA to purchase back stock from shareholders who were members to both agreements.

A So, Ben, are you asking me -- are you -- I want to make sure that I understand the question.

Because if you're going to take -- are you asking me specifically about Ray's situation or are you asking me just broadly before anything ever happened?

Q I'm asking you how these -- your understanding of how these two documents worked. Not talking about Ray's situation. I'm talking about, hypothetically speaking, with an investor -- a shareholder who signed both documents.

A Yes. Both documents gave --

MR. MONGILLO: Object to the form of the question. Please answer it.

THE WITNESS: Both documents gave the ability to repurchase.

BY MR. GOODING:

Q Okay. And so you had the option to proceed under either document. You could choose which document to proceed under.

MR. MONGILLO: Object to the form of the question. Please answer.

THE WITNESS: I had the option --

BY MR. GOODING:

Q Let me ask again. So you had the option to proceed under either document.

MR. MONGILLO: Same objection. Please

answer.

THE WITNESS: Again, that would be specific to each individual or time point of the company and the course.

So if we're talking at the beginning when we signed these documents and -- you know, yes. Clearly the document, the shareholders agreement, shall I call it -- I'm sorry if I'm --

BY MR. GOODING:

Q No, that's fine. Shareholders agreement, SHA. As long as we're understanding each other.

A Yes. The shareholders agreement was fair value and I could get all of them at any time.

Q Okay. And that was your understanding from the time you put these documents in place?

A And the restriction -- part of the restriction is to -- really for someone that's --

You know, in all honesty, in my understanding, and I could be entirely wrong, but a stock restriction agreement and a vesting schedule -- it's about a vesting schedule. It's about you being able -- having the ability to -- to learn that person and that person obviously -- what do they want? They want stock, right? This is a

document that's really institutional based.

Q Sure. So just -- let's just clarify a couple things.

So your understanding from the very beginning was the SHA allowed you to purchase back shares for fair value at any time.

A That's correct.

Q Okay. And the SRA allowed you to purchase back unvested shares for a penny per share for those employees who had signed that document.

A Right. And there were other things in there.

Q Sure.

A I think -- I think there was cause provisions in this as well.

Q Sure. And so you --

A That didn't match up.

Q When I say "you," I mean Charleston Labs.

Charleston Labs had the opportunity to purchase back the shares under either agreement and could pick whichever one resulted in the lower price.

MR. MONGILLO: Object to the form of the question. Please answer.

THE WITNESS: Theoretically speaking,

yes.
BY MR. GOODING:
Q Okay. Let's take a look at some of your prior testimony real quick on this subject.
Page 55 in your deposition.
A 55.
Q You want to take a second to read that page?
A Okay. Okay.
Q Okay. So in this portion of the transcript, Dr. T's attorney is asking you questions about --
A Uh-huh.
Q -- how these documents work together.
And starting on line 7 here, you say: The stockholders agreement, Exhibit 3, and the stock restriction agreement, Exhibit 7, work together. This agreement gave me the ability to buy back -- buy it back at a penny, this one for fair value. It gives me the right to see whichever is less really.
A Yep.
Q And he responds: Okay. Hold on.
And you say: Jeff, let me finish, please. You said you wouldn't interrupt me.

He said: You're right. I did. I apologize.

And it goes on: So your question is, I repurchased Ray's shares pursuant to the stockholders agreement. I had the right to repurchase per this as well.

"Okay. Well, which did you use?"

"I repurchased on Exhibit 3, the stockholders agreement, as it says here in 15 of the Second Amended Complaint for Declaratory Relief."

Did I read that correctly?

A Yep.

Q Okay. And so that was your understanding of how these two documents -- how did you come to that understanding?

A Well, again, I think I've already testified here. I mean, my main thing that I hired Womble to do was ultimately protect my stock. Because no matter what institutional or what I did, it's all about stock.

So I think I told you that, right, when I say they work together -- again, I only signed the shareholders agreement. So in my mind, you have to -- it could have been one -- it could have --

really, what should have happened is maybe we just should have had the shareholders agreement and you would have taken the restriction agreement and you would have put it in it.

So when I'm answering this question and -- I'm sorry. I turned -- what page was that on again?

Q 55.

A 55. So when I'm answering that question at this point in time, I'm answering based on --

Q Just so I'm clear here --

MR. MONGILLO: Let him finish.

BY MR. GOODING:

Q Okay.

A So here, you know, when I say they work together, by no means am I saying -- because as I told Womble, David, I want -- I need your help to terminate Ray and I want all the stock back, right?

Q Okay. And what I'm trying to get at is, I think both in this testimony and your testimony today, you've testified that it's your understanding the two documents provide contemporaneous rights to repurchase shares.

MR. MONGILLO: Object to the form of the question. Please answer.

THE WITNESS: No. I don't -- I'm not saying that.

BY MR. GOODING:

Q Okay. Well, I think you've testified -- I think we can agree you've testified that you had the option to proceed under either agreement when it comes to --

A No. That's what I was trying to clarify, Ben. There's -- I couldn't -- I couldn't with Ray specifically. Because now you're going to Ray specifically. Now you're going -- you're going into specific testimony.

Q No, no, no. Well, this is --

A Because you asked me globally.

Q Sure.

A And now -- and now we're talking -- my answer here was about Ray T.

Q Okay.

A So there was no way that I could get all of Ray T's stock on the restriction agreement. So I apologize. What you're asking me is incorrect.

Q Okay. Well, let me clarify, then.

You had the understanding, of these two documents, that you had the option to proceed under either. We were talking hypothetically, not with

Ray T here, when it comes to -- let me rephrase the question. Let me clean it up here.

I believe your testimony earlier was that you understood that these two documents, you had the option to proceed under either the SRA and repurchase unvested shares for a penny or the SHA and repurchase shares for fair value.

MR. MONGILLO: Objection.

BY MR. GOODING:

Q Is that a fair --

MR. MONGILLO: Object to the form of the question. Please answer it.

THE WITNESS: We -- we had two documents that had repurchase rights in them, and maybe this line of questioning is getting difficult because -- I'm really -- Ben, I apologize. I'm trying to understand.

Yes, I had the ability to repurchase on the shareholders agreements in all scenarios.

BY MR. GOODING:

Q Sure.

A And I had the ability to purchase -- repurchase on a restriction agreement, for those that signed it, under certain scenarios.

Q Okay. And how did you come to that understanding?

A How did I come to that understanding?

Q Did you -- is that from conversations with Womble?

A No.

Q Is that from reading the documents?

A No. See, that's the thing. Earlier when I read you what I did -- this is all about what I did. This testimony and what this is is all about what I did.

What Womble did was on the restriction agreement, which is why they never understood how we did repurchase the shares, which is why I was having to defend and get asked the question -- and spend $2 million -- why is your testimony one thing and the document your lawyers drafted something else, so ...

Q And I understand that that's your testimony. What I'm trying to figure out is: You have testified and you just explained to me that you had an understanding that you could proceed under either of these agreements, and I'm trying to understand where your understanding came from.

Is it from conversations with your

lawyers or is it --

A No.

Q -- from reading the documents?

A My lawyers -- my lawyers would have been Womble Carlyle at the time.

Q Okay.

A So it was not. I mean, I -- I guess -- you know, really having sat where we did and everything that was going on, I can't tell you, Ben.

I think maybe I just -- it was so -- I mean, there are e-mails that -- again, you swam me out to the island, okay? I'm on that island.

Q Sure.

A Now I'm trying to --

Q We don't need to rehash the island.

A No, but --

MR. MONGILLO: Let him finish his answer, please.

THE WITNESS: But then I'm on the island and I'm trying to get palm leaves and I'm trying to keep the rain off of me and everything. And I say, "Hey, I need to" --

I felt bad about any time I ever had to ask him to do something.

BY MR. GOODING:

Q Okay.

A And so I say I need to fire -- I need to get rid of Ray T and get all his shares back. And the e-mail is, "I went -- let me go talk to Dean. Dean -- oh, I got permission from Dean to work on this."

Right? It wasn't, "Oh, hey, Paul, you know, we got you."

So -- so you're asking me maybe to think back on a time as to how did I know this. I -- again, I wanted to protect my stock and I knew my shareholders agreements, I knew -- I knew what those said.

Q So is your understanding from reading the documents themselves, then, from the terms of the documents?

A Yeah, I would have to say that it would have been --

But you're asking me to remember back then how I came to know. But, I mean, yeah, you get a document and you read it.

But, again, I don't -- I'm not speaking -- I'm not speaking in conjunction that because I understood it, Womble understood it; or

Womble understood it and they made me understand it; or if I understood it, everybody else understood it, because clearly Ray didn't understand it.

And what I asked Womble to do -- you know, Jeff didn't understand it. Later, you know, other ...

Q The stockholders agreement, the SHA, who drafted this document?

A The -- which --

Q The SHA, Exhibit 4. Who drafted this document?

A So this came from -- this was a template that came from Landmark, as you earlier said, and then I took it and I gave it to Womble Carlyle and asked them -- I liked it. And so by virtue of -- they took it and worked on it, and so this is a Womble document as far as I'm concerned.

- - -

(E-mail correspondence dated 05/21/08, CL-003392 marked Bosse Exhibit Number 7, for identification.)

- - -

BY MR. GOODING:

Q Okay. Let's turn to Exhibit 7 in the

notebook in front of you.

Are you good? You need a break? Are you okay?

A I'm okay.

Q Okay. Take a look at that document.

A Sure.

Q Let me know when you're done reading that.

A It's back to front. Okay.

Q Okay. Do you recognize this document?

A Yes. E-mail.

Q And is this an e-mail exchange between you and Dr. T on May 21st of 2008?

A Yes.

Q Okay. And if we look on the e-mail -- I'm looking at your e-mail to Ray on the bottom half of the first page. It says: Attached -- please find two attachments. The second one is titled Founders Stock -- Restricted Stock Agreement which is -- which the attorney at Womble created.

And then it goes on to read more. And then at the very bottom it says: I would like your opinion on the first attachment, which is the template that I had.

Do you see where I'm talking about?

A Yep.
Q And did I read that correctly?
A Uh-huh.
Q And the template that's referred to there is the SHA; is that correct?
A No. Stock restriction agreement. So this e-mail -- so, all it -- so, Ben, here -- and I testified to it here.

Like, so what was going on is the shareholders agreement is what I wanted, okay? And so this was -- this was tricky, because here I am trying to keep guys convinced to keep working for me and I have to go and say basically I don't trust you.

So what this -- what this was is on the restriction agreement, okay? So I was saying to Ray, "I'm getting ready to ask you to sign this and I want your opinion," right? Because there's -- I think there's another e-mail somewhere where I say, you know, it's unnecessary -- because, again, the shareholders agreement is what I wanted.

So I'm talking to him about, "Hey, I'm getting ready to make you sign something that I think is unnecessary." And that was my way of seeing and kind of testing him to see how he felt

about it.

Q Okay. So in this e-mail you're attaching two documents. What are the two documents you're attaching?

A The SA -- the shareholders agreement and the restriction agreement.

Q Okay.

A Okay? And what Ray and I were talking about was the -- was him going on the restriction agreement, him, Bernie, and John. And I was saying I feel it's unnecessary, right, because --

And to be honest with you --

Q Now, are you telling him that it's unnecessary in -- I mean, via conversation? I don't see in this e-mail where you're saying it's unnecessary.

A Yeah, I mean, I am. I'm saying -- all it is -- the attachment --

Q Oh, I see it down here: I still feel this document is a little unnecessary.

A Yeah. I said -- I said it in my deposition here. I mean, if you wanted to give me time to say it, that's -- you know, that's what it was. That was a conversation between Ray and I.

Q Sure.

A So, you know, David kind of convinced me on the restriction agreement because of the stock I was divvying out. And so I -- by the way, right, when someone goes on a vesting schedule, I'm not going to disagree with that.

But, again, I didn't endorse -- I did not ultimately endorse what happened.

Q Okay. So in this bottom e-mail you were sending him copies of both the SHA and the SRA, correct?

A Yes.

Q And then in the top e-mail he is responding back after reviewing those documents?

A Yes.

Q Okay. And the final paragraph of this top e-mail says: Otherwise, the two documents seem okay, and the tagalong provisions are also good. The stock restriction agreement may be unnecessary, but it's good to protect all the other shareholders.

A Yeah.

Q Okay. Did I read that correctly?

A Yeah.

Q So Dr. T is telling you he has read the two documents and they seem okay?

A That's what it says.

Q Is -- was it your understanding at that time --

I mean, did you have the understanding he had read the documents and understood their terms?

A Ben, I think I -- I mean, yeah. I mean, my understanding is we gave everything to each individual and they were supposed to go and talk it with their attorneys and their people.

So, you know, that's clearly what he's saying here. He's agreeing with what I just told you, the stock restriction agreement may be unnecessary, and that's what I was talking about.

Q Sure.

A Because that was kind of -- you could see it as inflammatory, but what he's in reference to, Ben, is not it's good to protect all the other shareholders, that means all the other people on this side and money already raised, right?

So he's saying, "Hey, you've raised money from the state of South Carolina and if I up and quit, you have to replace me, you know, whatever it may be."

So that's how I read that.

- - -

(E-mail correspondence dated 5/28/08 marked Bosse Exhibit Number 8, for identification.)

- - -

BY MR. GOODING:

Q Okay. Let's turn to Exhibit 8, then.

And so this is on 5/28. This is about a week later, eight days later. And read through this e-mail exchange and let me know when --

A It's pretty much the same other than the top e-mail, right, Ben? It should be about the same, right?

Q No. It's a little different.

A Because I see PrimeDP. I think the only thing is he just came back on top, unless I'm missing something.

Q Are we on Exhibit 8?

A Yes.

Q No. I think you need to turn the page. There's two -- I think there's two copies of the same e-mail back to back, and it's 7. But if we turn to page 8, this is the e-mail I'm talking about.

P. Bosse on 5/28 at 2:00 in -- 2 in the morning --

A Yes.
Q -- is the top e-mail?
A Yep. Yep.
MR. GOODING: That's my 8 as well. I think that he was looking at a different document. I think he's looking at a prior exhibit.
THE WITNESS: Okay. So maybe that -- so maybe I have 8 in both of them maybe. That's what it is. I've got a copy of 8 in both, I believe.
BY MR. GOODING:
Q Oh, I'm sorry.
A Okay.
Q Do I have a copy of 8 in both?
A Yeah.
Q I do. I apologize about that. That's --
A So actually, I read this one a minute ago.
Q Okay. Sorry. This is a separate e-mail. This is not part of the previous correspondence, so we're clear. The first e-mail correspondence is from May 21st?
A Yes.
Q The second e-mail correspondence is from

May 28th. It's a week later.

A Correct.

Q Okay. And so just so I'm understanding what's happening in this e-mail, this is after you had sent out the -- you had sent out the stock restriction agreement and the shareholders agreement to Ray on the 21st, and it appears as though there's been some amendments.

Does that appear correct to you?

A Yeah. I believe what happened is that there were --

Q Some revisions?

A Yeah. Revisions from either Bernie or Ray or -- I don't recall. But there were some changes.

Q Sure. And so you have sent out a revised version of these agreements to Ray now?

A Yep.

Q And in the top e-mail here after you've sent the revised versions, Ray responds and says: I am reading through the agreement now. It looks pretty good, and many thanks for your generosity.

Do you see that?

A Uh-huh.

Q And did I read that correctly?

A Yes.

Q Okay. So at 2 in the morning on the 28th, Ray is e-mailing you to tell you that he is reading through the revised agreement at that point.

A Uh-huh.

- - -

(E-mail correspondence dated 05/28/08 marked Bosse Exhibit Number 9, for identification.)

- - -

BY MR. GOODING:

Q And if we turn the page to Exhibit 9, this is 7:50 the following -- 7:49 the following morning.

A Uh-huh.

Q And, again, I think the only thing that's different on this is the top e-mail here from Ray.

A Yes.

Q Okay?

A Okay.

Q And it says: Hi, Paul. Looked through the attachments last night. I don't have any major questions. Overall looks solid but I'll call you around 11:30.

Did I read that correctly?

A Yes.

Q And so did you take this e-mail to mean that Ray had read through the revised version of the stockholders -- I mean the stock restriction agreement? Excuse me.

A You know, Ben, I take this like anybody else would do. When you're -- to be honest with you, I don't think many people -- many people read much of anything anymore.

So, you know, if I read this on its face, he's telling me that he looked it over. Can I confirm that he did? No. Can I confirm that he really didn't have any questions? No, I cannot.

But looking at it right here and, you know, and then sitting where we are today, clearly he had questions and clearly -- you know, clearly, whether he was great here, we weren't great here. So there was -- there was -- there was confusion.

- - -

(E-mail correspondence dated 05/29/08 with attachments marked Bosse Exhibit Number 10, for identification.)

- - -

BY MR. GOODING:

Q Okay. Let's turn to Exhibit 10 real quick, then.

Do you recognize this document?

A I do.

Q I'll give you a chance to read through it.

A I really do, yeah. This document here, and number 6, again, as I've testified to you today, these shareholders agreements -- shareholders, SHA, number 6 -- will be the governing body of CL until an investor is secured and/or documents are revised.

I didn't say the restriction agreement. I said these shareholder agreements.

Q Okay. So in this e-mail, which is May 29th, the day after Ray e-mailed you back and said he had read through the revised version, you were sending out -- this is the final version of the stockholders agreement and the stock restriction agreement; is that correct?

A That's correct.

Q Okay. And you're sending it to Dr. T and to John Ameling? Am I pronouncing that correct?

A John Ameling.

Q Okay. And you also sent this document to Bernie Schachtel as well?

A Bernie, yes.

Q Okay. And so after you sent out this e-mail to everybody -- this is after there have been revisions and comments from the parties -- from each of those parties, correct?

A Correct.

Q Okay. And -- so after you sent out this e-mail with the final versions, did any of those parties come back with any questions to you?

A I don't recall if they did or did not.

Q Okay. So you don't recall whether any of them had any questions about how either of these documents worked?

A Again, if they did or didn't, I don't know. I don't recall, but --

Q Okay.

A But if they didn't -- if they didn't, that doesn't mean that everybody was solid. And if they did, that didn't mean that if I answered the question they became solid. I -- you know, I just have to read this as it is.

Q Yeah, sure.

A I can't read more into it.

Q I understand. So no one called you back with any questions --

A I don't think so.

Q -- about how the documents worked?

A Unless you have something. I know we had changes up to the last minute. So if this was it, it was it.

Q Did anybody have any questions about how the buyback provisions in any of these documents worked?

A No. But that doesn't mean they didn't ultimately have them.

Q Did anyone tell you that the SRA and the SHA conflicted with each other?

A No. But that doesn't mean they don't conflict.

Q Okay. Well, Florida court's determined that they don't.

MR. MONGILLO: Object to the form of the question.

BY MR. GOODING:

Q Is that fair?

MR. MONGILLO: Object to the form of the question.

THE WITNESS: No, I don't think that's

fair.

BY MR. GOODING:

Q Okay. Well, did anybody tell you that these two documents -- either of these documents were ambiguous?

A No. But, again, that doesn't mean that they're not.

Q Okay. Did anybody ask any questions about which document had priority of the other?

A They should have, but they did not --

Q At the time you sent these documents out, did you have any doubt about whether these documents worked as they intended and gave you rights to purchase back shares under either agreement?

A I'm sorry. Can you -- one more time.

Q Sure. Let me ask again.

A Yeah.

Q At the time you sent these documents to the three people who signed them, did you have any doubt about whether the documents worked as you intended, to allow you to buy back shares under either the SHA or the SRA?

A No. Look. I hired -- I trusted my counsel. I trusted my counsel -- let me say it

again. I trusted my counsel.

When you -- at that point in time I had money from the state of South Carolina. I'm a homegrown company. I believe you guys -- I don't know if you're from South Carolina or not, but that means something to me. It means something to my early shareholders. I would still be there, right there today, and I took that money from the state and I paid it to Womble Carlyle because I trusted them to do what I asked them to do.

Q So my question was, though, is: Did you have any doubt about whether these documents worked as you intended them to at the time you sent them out?

MR. MONGILLO: Object to the form of the question. Please answer it.

THE WITNESS: Did I have any doubt? I don't recall how I felt when I sent these out, to be fair.

BY MR. GOODING:

Q And to be clear as well, none of the signatories to these documents came back with any questions about the documents.

A No. They did. There were -- there were questions about the documents because there were

clearly revisions, so ...

Q Okay. Well, these are the final documents being sent out and executed.

A To my -- to my -- if this is it and there's no other -- there was no other e-mail or question, then that was it. But that didn't mean that they didn't have other questions. Because they didn't come back and say it, I'm not going to sit here and say that they didn't have any other questions, or that I --

Q Well, they didn't express any concerns to you, did they?

A I don't recall if they did.

Q Did you offer to answer any questions they had?

A I would have -- my MO and practice is if anybody asks me a question, then I'm going to do my damndest to get them the answer.

Q Sure. So under the culture of your company, they would have had the opportunity to come to you with any concerns and you would have answered their questions or gotten your lawyers to answer the questions.

A Or I would have gotten my lawyers to answer the question, yes.

Q Sure. So there was the opportunity for them to come and ask any questions at that time.

A Yeah. But I think -- I think the thing is, Ben, that we need to make sure that we get on the record is that this is all daisies and rainbows at this point. You're asking me about the gloom and doom, right?

So we went through -- the gloom and doom is having to spend $2 million and me having to --

Q And we're going to talk about that in a little bit.

A -- and me having to testify. And what I'm going to say is: Following a grenade, after we came to Womble Carlyle on two or three different occasions to protect me still, but why -- again, "why is your testimony one thing and the document your lawyer says in another?"

So this right here, this day is a great day. This is a great day. We're coming together as a team. So this isn't, "Hey, something's going to go wrong," and everybody look at the documents and say, "Does everything work?"

Q Sure. But and -- no one comes back and asks any questions, though. That's the point I'm asking.

A I -- I don't recall.
Q Okay. You don't recall any questions.
A I --
Q So if you'd have had any questions about how these documents worked, you would have clarified those with your lawyer at that time, correct?
A No. I can't say --
Look, again, I trusted my counsel, and I can't use that word lightly or strongly enough. I trusted them.
So, you know, my trust was in them, and my trust was I wanted to protect my stock. So --
Q I understand.
MR. MONGILLO: Please let him finish. Go ahead. Please.
THE WITNESS: You're asking me did I have any questions, sitting here today, where I knew there was going to be a problem? Again, I trusted my counsel.
BY MR. GOODING:
Q Well, I understand what your testimony is, and I've heard you say it several times now, and what I'm trying to clarify is, I mean, you are the CEO of the company.

A I am. I am.
Q And you are the president of the company.
A I am.
Q And you are the sole member of the board of the company.
A I am. And I don't understand -- I'm not an attorney. And I told you earlier, I do not profess to know everything.
Q But you can read.
A I think I was taught to read pretty well.
Q And you read these documents?
A I did. But I missed a lot.
Q Sure. But you had an understanding of generally how they functioned. You testified today that you understood how these documents --
A No, that's not how I testified. I testified that's how I understood that -- what I asked them to do.
So again, I -- when I'm here April 27 of 2016, I'm not sitting here having seen a lot of the e-mails and listening to a lot of the testimony.
And honestly, I was probably even -- I was probably even blind to what Jeff was even probably really asking me, to be honest with you, Ben, because this is about what I did; the board

minutes and things that I did, the things that I put in there.

So I knew that if I was -- because it was there, right? That's how -- that's how I'm answering this question.

Q Sure. But -- and, again, in your deposition when Jeff asked you questions --

A Uh-huh.

Q -- I mean, you're answering those questions truthfully.

A I'm answering them truthfully. But, again, at that time -- and I tried to explain this earlier, right? I didn't sign a restriction agreement.

Q But it's a document that relates to the stock in your company.

A So when I say -- when I say they worked together, I'm saying, generally speaking, I signed this and they signed that. So what I mean is is that you can't take the restriction agreement and say, "Well, here it is. This superceded this."

Q Sure. But your testimony today is not that you sent this document out to three of your founding shareholders to be signed without understanding it, is it?

A But I can't -- Ben, that's the intent, but that's obviously not what happened, right? So I can't control -- I'm with you on the front end. That's anybody's -- I think that's anybody. But, again, I cannot sit here today and say that nobody had questions that they either did or didn't ask; or did I have questions? I can't -- I can't say that.

Q You can testify that nobody came to you with questions, though, correct?

A I don't recall if they did. I know there were revisions. So, no, there were questions.

Q Do you recall whether any of those revisions related to the buyback provisions?

A Yeah. I specifically remember Bernie's attorney asking questions about stock.

Q Okay.

A But I wasn't on all the calls, so maybe I -- maybe they said "Absolutely, Paul, we didn't understand." So -- but I wasn't -- I wasn't a part to everything that Dean and David and the calls and the conversations that were going on. So I can't tell you that they were not.

MR. GOODING: Let's take a break real quick.

THE VIDEOGRAPHER: We're going off the video record. The time is 10:22 a.m.

- - -

(Whereupon there was a recess in the proceedings from 10:22 to 10:34.)

- - -

THE VIDEOGRAPHER: We're back on the video record. The time is 10:34 a.m.

BY MR. GOODING:

Q Let's turn to Exhibit -- well, at some point Charleston Labs made the decision to terminate Dr. T's employment, correct?

A Correct.

Q When was that decision made?

A Around the time -- or shortly before the letter was sent.

Q Okay. And who made that decision for Charleston Labs?

A I did.

Q Okay. And what were the reasons for Dr. T's termination?

A I believe there's a document that has all the reasons in it. I don't -- I apologize. My memory -- it was really, really messy with Ray.

You know, Ray was -- had abandoned his

responsibilities to the company and became inactive, and there was talk of transferring shares. And there was -- you know, found out that he had signed an exclusive agreement for another company, you know. So there was a myriad of reasons.

- - -

(E-mail correspondence dated 3/16/10, WBD_CHLAB0006170 marked Bosse Exhibit Number 11, for identification.)

- - -

BY MR. GOODING:

Q Okay. Looking at Exhibit 11 here, this is an e-mail dated March 16th of 2010.

A Uh-huh.

Q And David Baddour is e-mailing Mr. Rutley in this e-mail, and he says that he spoke with you for about an hour this morning and that they need to get rid of Dr. T, their COO, but they want to buy back all of his -- or buy his stock back, excuse me -- vested and unvested.

A That's right.

Q Does that accurately represent what you conveyed to David on the morning of March 16th, 2010?

A Accurately is I wanted all of his stock back. But, I think, interestingly, David attaches the restriction agreement and says vested and unvested. But I -- it didn't matter to me. I wanted all his stock back. But David -- clearly we see the path that we started to take here.

Q Sure. So, again, at that time it was your objective to repurchase all of Dr. T's shares?

A Yes.

Q And did you have any doubt that you could do that?

A No.

- - -

(Charleston Laboratories, Inc. Minutes of Meeting of Board of Directors dated 03/16/20, CL-000844 marked Bosse Exhibit Number 12, for identification.)

- - -

BY MR. GOODING:

Q Let's turn to Exhibit 12, then.

Do you recognize this document?

A I do.

Q And these appear to be board minutes -- or minutes --

A That's correct.

Q -- of the meeting of the board of directors for Charleston Labs?
A Yes.
Q And they're dated the same date, March 16th, 2010?
A Uh-huh.
Q And following some recitations it says: Resolved that the employment of Dr. T as the COO of Charleston Labs is hereby terminated for cause pursuant to Dr. T'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 fiduciary duties to the corporation shareholders.
A That's correct.
Q Okay. I read that correctly.
And so there was a board meeting held on March 16th, 2010?
A Yes. That was the day that I, yep, told him he was terminated.
Q And you are --
A That's me, the sole member, yes.
Q So you held a meeting with yourself?
A I did.
Q Okay. So the decision to terminate Dr. T

was made by you and you alone?

A Yes.

Q Okay.

A I mean, look, when I say by me, ultimately I had to -- I'm not going to sit here and say that the other members of the team didn't understand and know what was going on, so ...

Q And so it mentions in this resolution here at the bottom that he was terminated for cause.

A Okay.

Q Why did Charleston Labs care that Dr. T was terminated for cause?

A Honestly, it really didn't matter. I mean, but we did have some employment issues, right? So settlement in my mind was really all about employment.

Q Sure.

A Okay?

- - -

(Charleston Laboratories, Inc. Minutes of Meeting of Board of Directors dated 03/22/10, CL-000845 marked Bosse Exhibit Number 13, for identification.)

- - -

BY MR. GOODING:

Q Let's turn to Exhibit Number 13, then. Well, explain to me what you mean by that, the employment issues you were concerned with.

A I mean, you had somebody where I had repurchased all the stock, right? So -- it's something that I felt needed to be there, but it didn't -- I don't -- I don't think it had to be. You know, my shareholders agreement gave me the right, you know, to repurchase them all. But as a young company, he -- you know, it was for cause so no reason for it not to be there.

Q Okay. Looking at Exhibit Number 13 now, this appears to be some additional minutes for the board of directors for Charleston Labs.

A Uh-huh.

Q And these are from March 22nd, 2010?

A That's correct.

Q And, again, following some recitations here: It is 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 one cent per pre-recapitalization share or a very small decimal per fully-diluted shares of common stock.

Did I read that correctly?

A That's correct.

Q Okay. And so in this, you resolve to repurchase the shares for .00005 for each of the 420 shares that Dr. T owned.

A That's right.

Q And at this time, were you still the sole member of the board?

A I was.

Q Okay. So at this meeting, you were conducting the meeting with yourself?

A That's right.

Q And the determination of value that was made during this meeting was made by you.

A That's correct.

Q Okay. And did you get any assistance from anyone in making that determination of value?

A I -- again, like I testified here, you know, there were a number of things that I did. I didn't need to, right? We were in a -- like we had raised money, we were in debt, right? And when you say assistance on -- for the fair market value? I

mean, there were things that I looked at and I knew that the stock was not worth any more than -- than had been paid for. In fact, I think that was verified later that we overpaid.

But -- so really, that wasn't really a difficult task to do.

Q Okay. So you didn't seek any assistance from Womble in making that determination of value.

A No. They didn't -- they didn't even -- they didn't even know -- this is what I did on my own. So Womble Carlyle had nothing to do with this; didn't -- didn't know anything about this.

Q Okay. And so I think you just testified to this but I want to make sure I'm clear.

How did you come up with the $2.10?

A Yeah. Because that's what he -- that was the -- there was a forward split. So the point, you know, originally -- you know, he paid $2.10 for his stock and I gave him his $2.10 back, right? But the assessment that I did was I had to look at the debt that we had, the market conditions, what was going on. We had just come out of a real estate crash. What was my likelihood of success; what did I need, right; what did I -- what did my financials look like?

Q So is there any reason why you didn't pick a number that was different than the per share value listed in the stock restriction agreement?

A No. It was -- again, I just told you. It was simply -- I paid him the same amount that he paid back because there was nothing that I did in my assessment, right? There was nothing that I did in my assessment that --

Q Well, could you have picked a different number than one cent a share?

A Could I have picked a different number? I mean, I think ultimately the valuation came back and I overpaid him. So I think that probably means I could have picked a lower number.

Q Okay. And so, I mean, for instance, could you have paid two cents a share?

A Could I have overpaid him?

Q Could you have paid $4.20 for his shares instead of $2.10?

A No.

Q You could not have paid him that?

A No.

Q You were setting the fair value at the time.

A I was the sole member of the board and my

shareholders agreements told me, you know, I needed to do a fair market assessment, and that's, unfortunately, as simple and as difficult as it was.

Q Sure. Well, would it have made more sense to pick a number that was different than the provision --

A No.

Q -- the number provided in the SRA?

A No, I don't think so.

Q Would that not have cleared up any confusion about which document you were proceeding under?

A No.

Q In addition, if you go on down the page, the next paragraph says: It is resolved that as a gesture of goodwill, the corporation will gratuitously offer a severance package to the corporation's former COO, Dr. T, under which the corporation will pay Dr. T a sum of $70,000 contingent upon the closing of qualified financing.

Did I read that correctly?

A You did.

Q Okay. And so where did the idea of paying Dr. T a $70,000 severance package come from?

A Right. So that's what I was getting to. Obviously while -- you know, as a young company, there was a capital contribution made by Ray in the sum of like $20,000. You know, so he was there for a period of time doing work.

And so, as a young company, as I said, settlement to me, when I clearly expressed to them that I wanted a settlement, non-disparagement --

You know, we were moving forward as a company. Didn't want somebody out there saying anything bad about us.

So that was, just as it says, a gesture of goodwill, here's some of your money -- your money back plus. Thank you. You know, hope you do well.

Q So why were you willing to pay $70,000 to Dr. T then?

A There was a $20,000 capital contribution and I think there was some calculation I did for the 50 saying you were here for X amount of time and here's gratuitously something that we'll pay you under qualified financing.

Q Did you have any concerns at that time that the SHA did not provide you the right to repurchase Dr. T's shares?

A No.

Q Okay. Did you -- as part of the severance package, that necessarily would have included a release of all claims Dr. T would have had against Charleston Labs?

A Yes. I mean, generally, releases do that, yes.

Q Okay. Is there any reason why you wanted Dr. T to sign a release at that time?

A I think I just said it. It's really all about the fact that when you're out raising money and -- you know, you don't -- you don't want any -- you don't want any warts.

Q Sure. Were you concerned that he might sue you?

A Was I concerned that he might sue me? I don't -- I can't say that I -- I can't say that I was.

Q Okay. Were you concerned that he was going to make a claim that he still had an ownership interest in his shares?

A No. I mean, why -- I'm not sure that I would have. Again, I'm on the business side.

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(Termination of Employment Letter dated 03/19/10, CL-000034 marked Bosse Exhibit Number 14, for identification.)

- - -

BY MR. GOODING:

Q Let's turn to Exhibit 14 real quick.

A Uh-huh.

Q Take a look at that document and let me know when you've read it.

A I'm ready.

Q Okay. Do you recognize this document?

A I do, partly because I wrote some of it and David wrote some of it.

Q Okay. And in this document -- this is a termination letter from Charleston Labs to Dr. T informing him of your decision to terminate him?

A Yes.

Q And attaching a copy of the severance package, which was referenced in the previous minutes, correct?

A Uh-huh.

Q Within this document, I think you just referenced that you wrote some of this and David Baddour wrote some of this.

A Yes.
Q Which portions did you write?
A All the -- you know, all the logo and all the stuff at the top, and David wrote the bottom half, right?
This is kind of where we got off the skids.
Q When you say "bottom half," there's two paragraphs. Are you saying --
A Yeah. Second paragraph. I probably -- I had some -- he probably put something in the first one as well. The actions and inactions is something that I -- that first sentence might be mine and he may have ended it in the first paragraph. But the rest of it was his.
Q Okay. So it's your testimony, then, that Mr. Baddour wrote the entire second paragraph and may have edited portions of the first paragraph?
A That -- that's what I recall. Because -- and, again, in 20/20 hindsight, right, my stress is about what I'm having to do. So clearly I see here he's talking about transfers.
I mean, I had to repurchase his equity. This letter says -- my severance package, what I talked about was paying him $70,000, getting a

release. David, again, because he talked about the restriction agreement, here he is saying transfer -- you know, we had repurchased it, so there was no transfer. So that word I should have caught.

- - -

(E-mail correspondence dated 03/25/10, WBD_CHLAB0019085 marked Bosse Exhibit Number 15, for identification.)

- - -

BY MR. GOODING:

Q Okay. Let's turn the page to Exhibit 15, then. Do you recognize this document?

A Is it the -- is it an e-mail?

Q It is an e-mail.

A Okay.

Q A communication I should say.

A Yes.

Q And so this is an e-mail from David to you on March 25th, 2010.

A Right. And then I -- but I had e-mailed him prior where I say: Attached, please revise/edit as you see fit.

Q That's where you attached a copy of the letter we were just looking at?

A 3/25 -- yes. That would be -- is this the 3/26 letter? No, this is 19. I -- this e-mail might have been to the second one then, so the 26th letter maybe.

Q Okay. So the following exhibit then.

A Okay.

Q But let's stick with Exhibit 15 for a second then.

A Okay.

Q Here in David's e-mail to you he says: Paul, please see attached. As we discussed, if Ray doesn't agree to the package, and the contingent $70,000 payment, then it is likely that he'll have a claim on the vested portion of the stock. If Charleston Labs 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 likely file -- is when he'll file suit. Excuse me. Again, the worst case scenario seems to be that he'll ultimately be entitled to the vested portion of his stock.

Did I read that correctly?

A You did.

Q Okay. What did you understand this

e-mail to mean when he e-mailed you this?

A I mean, you know, at the time -- at the time where I'm so focused on the stress of what's going on, I -- it showed me that he was on the wrong page.

But I -- again, I didn't put a whole lot into this.

Q So just so I'm clear, what did you understand this paragraph that I just read to you to mean?

A What did I understand it to mean?

Q Yes.

A You know, again, we were -- and had I been a lawyer, you know, and had I not depended on trusting my law firm, right, I would have noticed and I would have picked up on some of this. Sitting here now, you know, my hair's raised.

Two million dollars later, right, I'm defending -- I'm getting asked questions about this in April 27th, right? But at the time, you know, I'm tendering $2.10 for your equity so that's where my mind is.

Q Okay.

A Yeah.

Q But, again, he's saying: As we've

discussed, if Ray doesn't agree to the package, the contingent $70,000 payments, it's likely he'll have a claim on the vested portion of the stock.

What did you understand that sentence to mean?

MR. MONGILLO: Object to the form of the question. Please answer it.

THE WITNESS: What I take -- what -- then?

BY MR. GOODING:

Q Yes. What did you understand at that time?

A I'm telling you, I didn't -- I didn't understand it at that point in time.

Q Well, did you ask David to explain what he meant when he said that to you?

A No, I did not.

Q Why did you not ask David to explain?

A Because I was giving $2.10 for the shareholders agreement, you know, how rocky things were and everything that was going on. "I got permission to talk to you today, Paul." You know what I'm saying? Like it's -- this is a very -- this is not a very good situation that's happening at this time.

Q So in Exhibit 13 here, David Baddour is informing you that if Ray does not agree to the severance package, it's likely he'll have a claim on his vested shares of stock.

MR. MONGILLO: Hold on. You said Exhibit 13. Are we looking at 13?

MR. GOODING: You're looking -- we're looking at 13.

MR. MONGILLO: Okay. Board of directors minutes?

THE WITNESS: So, no, you're not marrying --

MR. GOODING: I'm sorry. Not Exhibit 13.

THE WITNESS: Okay.

MR. GOODING: This is Exhibit 15. I apologize. The same exhibit we've been discussing.

MR. MONGILLO: Okay.

THE WITNESS: But I do want to make one clarity. What I wrote in these board minutes and $70,000 does not transcribe -- does not -- excuse me -- does not come over to what David -- like, so -- so this right here does not marry with this.

What David -- what David attempted

to do and what I sent out about listening and trusting my counsel, that doesn't match up with my board minutes. So in my board minutes I'm saying I'm offering $70,000.

BY MR. GOODING:

Q Well, in Exhibit 13 is David Baddour informing Charleston Labs that Dr. T may have a claim on the vested portion of his stock?

A I didn't see it that way. I --

Q Well, how did you see it differently? How did you interpret this first sentence?

A I just -- I just told you, Ben. I mean, this was a very, very rocky time. There's a lot going on. I'm a client that's begging -- begging for attention and service and I'm being told that "I've gotten permission to help you on this, Paul," as opposed to "we're your counsel" and we swam you out to the island, sort of just leaving me high and dry.

So honestly, like, you know, I'm sure we all get copied on e-mails, but I didn't -- I didn't think anything of this.

When I read this now after $2 million and having to figure out where, you know, my counsel, Bridget Berry, and a strategy, you know, where we

have to come up with a way to win this litigation? You know, so hey, when I read this now, this is a big problem.

Q Okay. Well, let's back up and -- did you read this e-mail at the time it was sent to you?

A I don't -- honestly, I can't say that I did. I don't recall.

Q So you had an e-mail from your counsel that you may or may not have read?

A I can't sit here today and tell you that -- it did not make my hairs raise like now. So hindsight, when I sit here and read this, I'm trusting my -- my -- you know, my counsel. So I'm just telling you, I --

Q Is it -- was it common for you at the time to not read e-mails from your attorney?

A No. No.

MR. MONGILLO: Object to the form of the question. Please answer.

THE WITNESS: No. But I cannot sit here right now today and tell you that I read this, didn't read it, and when I read it I was like, "Really? Wait a minute. What do you mean?"

No. I -- you know, I sent $2 -- you know, $2.10. That's what it was, and so --

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Listen. There are a lot of things. David and I had correspondence about things. I think he even testified to it, you don't always have to agree --

BY MR. GOODING:

Q Sure.

A -- so ...

Q Would it have -- would it have been your common practice to read e-mails from your attorney?

MR. MONGILLO: Object to the form of the question. Please answer.

THE WITNESS: Yes, it would be a common practice.

BY MR. GOODING:

Q Okay. Did -- are there other e-mails -- I mean, again, were you not -- were you not reading e-mails from other people?

A No.

MR. MONGILLO: Object to the form of the question. Please answer it.

THE WITNESS: Ben, what I'm saying is you put this in here. This is how many years -- 2010? What I'm -- what I want you to take away from this is I didn't get concerned by this.

BY MR. GOODING:

Q You didn't get concerned by this, meaning that you read it and understood what it said but wasn't concerned?

A No. Because had I got concerned, I think you guys have probably -- you can see or know and heard enough --

I mean, if I was concerned, I was going to let you know I was concerned.

I got concerned in -- later, in 2015 or '16 when another law firm told me when we were doing, you know, an exercise on paying out dividends, going through all the records and through all of that, they tell me, "Paul, what is all this about?"

So then I -- I got concerned. And then I got a letter from Jeff.

Q So it's true that Ray never signed the $70,000 severance package?

A Not to my knowledge.

Q Okay. And so Ray did not agree to the package that you provided him.

A No.

Q Okay. And so this sentence from David which says: If Ray doesn't agree to the package,

it is likely that he'll have a claim on the vested portion of his stock, that didn't cause you any concern at the time as to whether or not you had repurchased all of his shares?

A No, it did not.

Q Okay. But you read that statement at the time.

MR. MONGILLO: Object to the form of the question. Please answer it.

THE WITNESS: I think I've tried. I -- it didn't -- it didn't cause me any concern.

- - -

(Termination Letter with attachments dated 03/26/10, T001517-1529 marked Bosse Exhibit Number 16, for identification.)

- - -

BY MR. GOODING:

Q Let's read Exhibit 16 here, if you will.

A Okay.

Q Do you recognize this document?

A I do.

Q And this is a letter from Charleston Laboratories to Dr. T dated March 26th, 2010?

A That's correct. And this is another instance where I wrote the top and David finished

it -- you know, David finished it.

Q Okay. So this document was drafted by both you and Mr. Baddour, then?

A That's correct.

Q Okay. Which portions of this document did you write?

A Again, all the top was mine, the first paragraph was mine, the signature was mine. Everything else, the enclosures, I did. The second and third paragraph were Baddour's.

If I did anything in those paragraphs -- again, I -- I'm not a lawyer. I don't -- what do I know about a stock power, right?

I gave him the number 70,000 obviously, so I'm not -- I don't think I was the one to say, you know -- maybe I did. Maybe I told him pursue all legal remedies. I don't -- I don't recall, but ...

Q Okay. And so this letter, though, starts by informing Dr. T that his employment was terminated for cause on March 9th, 2019 -- or excuse me -- 2010. Excuse me.

A That's correct.

Q And it follows up with: Please find enclosed a check in the amount of $2.10 which the

company hereby tenders as payment in full for your equity.

A Uh-huh.

Q And then, again, the second paragraph references another -- I guess this is another settlement agreement, redemption of settlement agreement?

A No. I think this is the same one that David's been talking about the entire time.

Q So this is the same severance package that you previously offered him?

A Maybe this is the first time it went out but I'm not -- so it would have been -- it would have gone with this letter.

Q So this would have been the first time you presented that document to Dr. T?

A You know, I'm -- I mean, I suffered damages before this, but I think this is where the damage really starts, right? If he just would have referenced my shareholders agreement here --

I mean, again, sitting here today, I'm not an attorney, but having gone through it, I now see.

Q Sure.

A So all we -- all we had to do was

reference the shareholders agreement.

Q You drafted the sentence regarding the repurchase: Enclosing a check in the amount of $2.10 --

A I did.

Q -- which the company hereby tenders as payment in full for your equity.

A But I'm not an attorney. I gave it to my attorneys and I said, "Hey, help me."

"Hey, Paul, I got permission."

So again, I trusted my counsel; trusted them to do and draft things that would protect me.

Q And it was fully your intention --

MR. MONGILLO: Could you let him finish his answer, please?

MR. GOODING: Sure. I think he was --

MR. MONGILLO: Go ahead. Go ahead.

MR. GOODING: Do you have anything else to add?

THE WITNESS: No.

MR. GOODING: Scott, do you have anything to add?

MR. MONGILLO: No, that's fine.

MR. GOODING: Okay.

MR. MONGILLO: It's just hard for the

court reporter, too.

MR. GOODING: No. I understand.

BY MR. GOODING:

Q At the time that you issued this check of $2.10, it was your belief you were proceeding under the SHA, correct?

A Absolutely. There was no other way to proceed.

Q Well, isn't it true that you could have purchased the unvested portion of his shares for -- under the SRA for a penny per share?

A Yeah. But that makes this even more wrong. You still -- I still would have had to do a fair market for half of it. I still would have had to do what I did, which Womble did not command because it wasn't really their document. They're in the --

Remember what I said earlier. They're in the institutional world and the restriction agreement is their world.

So even if that was the case, there's absolutely nothing in any documentation or -- you know, un-factual testimony that I'm disappointed in, but this still wouldn't be right and you still would have to reference an agreement.

Q Okay. Well, under the two documents, you could have purchased the unvested portions of Dr. T's shares for one penny per share under the SHA, and the remaining portion -- I mean, excuse me -- under the SRA, and the remaining portion of Dr. T's vested shares for fair value under the SHA?

A Could have been -- that's a scenario, but that's not what -- that's not what I -- that's not what I asked, and that's not -- no. So you could have, but again, that's not what was done.

Q Okay. And so it wouldn't have made any difference as far as the amount you would have paid --

If you had chosen to do it under that scenario versus proceeding only under the SHA, it wouldn't have changed the value you were paying for his shares, correct?

A Well, I mean, I paid $2.10. Oddly, quirkily, the math worked out, so ...

- - -

(E-mail correspondence dated 05/07/10 marked Bosse Exhibit Number 17, for identification.)

- - -

BY MR. GOODING:

Q Let's turn to Exhibit Number 17. Have you seen this document?

A I have.

Q And this is an e-mail between David Baddour and David Willbrand?

A Yeah. And there are others that are not attached. I mean, there are others.

Q Other e-mails between them?

A Yes.

Q Sure. Who is David Willbrand?

A To my recollection, he was -- he was an attorney on behalf of Ray.

Q Okay. And David Willbrand and your attorney, David Baddour, are discussing trying to resolve Ray's termination in this e-mail?

A That's correct.

Q Okay. Did you -- were you aware at the time that David Baddour was talking to David Willbrand about resolving any issues with Ray's termination?

A Yeah. We were -- we were trying to get into a settlement here, yes.

Q Okay. So at this time did you understand that Ray was making a claim that you had not repurchased his shares of the stock?

A No. I had repurchased his stock. This e-mail to me signals that, you know, two sides are always willing to try to compromise and settle, so ...

Q Okay. Let's -- one of the reasons that's been given for bringing the action in Florida relates to disclosures that were made to potential investors regarding the ownership structure of Charleston Labs.

Does that sound familiar?

A I think that's -- that's an incorrect -- I think that's -- is that testimony from Bridget Berry?

Q Yes. I believe Ms. Berry testified about that.

A Yeah, and that's incorrect.

Q Okay.

A Yeah. So that was in our Series B. So when she was talking about that, we had to make disclosures to our Series B shareholders.

Q Well, let's turn to the Exhibit 1, all the way back to the very beginning, which is a copy of the complaint in this legal malpractice action.

A Okay.

Q And let's look at paragraph 53.

Paragraph 53 reads: Over the intervening several years and with the legal assistance of Womble Carlyle, 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 Dr. T was not a shareholder.

A Okay.

Q Did I read that correctly?

A You did.

Q And then paragraph 58 reads: If Dr. T was correct, then, among other negative consequences for Charleston, it would have raised substantial working capital through offerings which misstated the ownership -- the corporate ownership structure.

Did I read that correctly?

A Yes, sir, you did.

Q So was it a concern that Charleston had issued prospectuses to potential investors that did not disclose Dr. T's potential claim on his shares?

A Was it -- so you're asking -- so repeat the question now.

Q Do these paragraphs accurately reflect a concern of Charleston Labs?

A If we -- they're saying -- yeah. This would have been further damage, right? Because -- because we had repurchased his shares and because we had represented that we did repurchase his shares, right? So if he would have won, then I would have a bigger problem than $2 million.

Q The representations in which you had made representations that you repurchased his shares, who made those representations?

A Who made them?

Q Yes.

A We did. Charleston did.

Q How were they made?

A In Series -- in documents, Series B documents. Series A documents, Series B documents. So he was terminated in '10 and we raised money in '12.

So there's a -- you know ...

Q Okay.

A Okay?

Q So what were the documents which contained potential misrepresentations?

A I mean, it would have been our -- it would have been our cap table, ultimately our stock ledger. There were reps and warranties you had to

give to shareholders, potential shareholders.

- - -

(Charleston Laboratories, Inc. Capitalization Table as of 01/09/09 marked Bosse Exhibit Number 18, for identification.)

- - -

BY MR. GOODING:

Q Well, let's look at Exhibit 18 real quick, then.

A Yeah. So this is all wrong. I mean, this is obviously a draft.

Q Okay.

A Number one, you have a date of January 9, 2009.

Q Sure.

A Ray was terminated in 2010.

Q I agree with you the date at the top is inaccurate.

A So I have to totally -- I -- I'm happy to answer whatever question you want but this wouldn't be representative --

Q So let's -- does this appear to be a draft cap table for Charleston Laboratories?

A It appears that way.

Q Okay. And do you see at the bottom of

the page the note?

A I do.

Q Okay. And that note reads: The company's former COO, Dr. T, was issued 210 shares of common stock on May 30th, 2008. These shares were subsequently included in a 2,000 for 1 stock split on November -- or excuse me -- September 25th, 2008, leaving Dr. T with 420 shares of fully diluted stock. On March 19th, 2010, Dr. T's employment was terminated. On March 26th, 2010, the company tendered payment for all 420 of Dr. T's shares pursuant to the repurchase provision found in Article 2.2 of the Stockholders Agreement. While Dr. T has concluded -- conceded that the company was entitled to repurchase 140 of his 420 shares pursuant to the Stock Restriction Agreement and its accompanying vesting schedule, Dr. T disputes the company's ownership in the remaining 280 shares. For present purposes, all 420 shares previously owned by Dr. T have been earmarked for inclusion in the option pool and are included as such in the above table. The company is presently considering pursuing a declaratory judgment action as to the aforementioned 280 shares.

Did I read that correctly?

A It looks like you did.

Q So are you telling me, then, that there were cap tables issued that did not contain this disclosure?

A This -- I don't think this was the final disclosure. This was a working draft, and to my knowledge, I -- I think this ultimately changed somewhat. So if you have it, I can certainly look at it. But I put a big X through this.

I know there were conversations between, you know, Mitchell, Ryan, and David. And whether this was, you know, probably -- it would appear to me that some of this is David's conservative because he didn't truly believe that we had repurchased the stock and then probably later it was worked out that we had indeed done that.

Q Sure. So you were being advised by your lawyers to include --

A No. I'm not being advised by this. I don't even -- I don't even know that I even saw this.

Q Were your lawyers recommending to include a note at the bottom of your cap tables regarding Dr. T's -- the status of Dr. T's shares?

A No. I can't -- I mean, obviously you

have to have reps and warranties. So this is something, you know, that -- this is something that was being worked out between two other people. And if you can show me that I was copied on an e-mail with this or something like that, but I don't -- I don't know that I ever saw this. And I think it did change, if I'm correct.

Q So a similar note, though, regarding the status of his shares was included on future cap tables?

A Yeah. I think the note was that we repurchased all 420 and that they went into the stock option pool, I believe.

Q Did it also include language that Dr. T disputed the ownership of 140 --

A I can't say that it did.

Q Okay. But at some point you were advised to include that language in your cap tables.

A I wasn't -- I wasn't a part of this. So you're trying to assign this to me? My job is something else. I wasn't on the phone. I wasn't doing this.

Q So are you aware whether or not these disclosures -- this note was included and disclosed to potential investors?

A I don't think this disclosure -- this right here was included on anything.

Q Do you know whether a note -- do you know whether a note was included on your Series B?

A Yeah. Yeah. I think there was ultimately -- there was something ultimately on our -- that was included.

Q Okay. Are you aware of any investors that were given documents that did not include a note regarding the status of Dr. T's share?

A Well, you're using the word "status." Charleston -- when you say "status," what? That we repurchased them?

There's -- status means that -- status means that there's maybe something -- status? I mean, maybe it should have said that we tried to enter into a severance package and he didn't do it, but I don't know there would be a status.

Q Well, this draft includes a provision that says: While Dr. T has conceded that the company was entitled to repurchase 140 of his 420 shares pursuant to the Stock Restriction Agreement and its accompanying vesting schedule, Dr. T disputes the company's ownerships in the remaining 280 shares.

A Yeah. Ben, I apologize. I want to be really respectful. You're talking to me like I authored this, that I was all a part of this, every word, choosing the word. This was -- this was -- this was David.

Q Okay. Well, that's my question. So David was advising you you should disclose that information?

A No. No. You're taking that too far. You're saying he advised me. Just because he did it doesn't mean he came back --

Like, things happen. He doesn't advise me. He clearly -- just because he did something doesn't mean he advised me. He could have done something wrong. And I'm saying that I -- my recollection is this ultimately changed.

Q Okay.

A And this is probably part of the conversation that they had about, "Hey, we repurchased these shares. Why are -- why are we being so conservative here?"

Again, this is not my document. But when I see January 2009 and I look through here and I see other things, yeah. I don't see all drafts. I'm not a part of every conversation, nor can I let

it be kind of positioned that I disclosed something because of a draft.

Did I disclose to any shareholders that -- no.

Q So it's your testimony today, then, that in future Series B cap tables that were issued to potential investors, you did not include a disclosure regarding Dr. T's --

A There was --

Q -- dispute over the 280 shares which he claimed were unpurchased?

MR. MONGILLO: Now you let him finish. Go ahead. I got to be fair.

THE WITNESS: Okay. I recall a disclosure. We had to make reps and warranties. Sitting here today, you haven't given it to me. But I don't think this is it.

BY MR. GOODING:

Q Okay. But I'm asking you, not this document specifically, but I'm asking you whether Series B cap tables that were issued contained a note that stated that Dr. T disputed the repurchase of 280 shares?

A No. I cannot sit here and say that there was any note that says he disputed 280 shares

because that -- that would be on the restriction agreement. Okay? That's language that's consistent with the restriction agreement. It's not consistent with the SHA, which is what I did.

Q To be clear, was the disclosure made that Ray disputed whether the company had repurchased his shares? Was that made on all future cap tables?

MR. MONGILLO: Object to the form of the question. Please answer it.

THE WITNESS: I think I already answered it, Ben. I think -- again, I -- this was language that was worked out through cleanup of books and records. I -- I know that there was a disclosure, and I don't think -- I don't recall the word dispute.

If you have something you can show me where that was a word that was used, then I would have to say that's the word they used.

But sitting here today, this language looks wrong to me. And I don't think that we would have said there was a dispute. How was there -- how was there -- there was no dispute. We were trying to enter into a settlement agreement. We had given $2.10 per

the SHA for all the shares.

MR. GOODING: Let's take a brief break.

THE VIDEOGRAPHER: Going off the video record. The time is 11:15 a.m.

- - -

(Whereupon there was a recess in the proceedings from 11:15 to 11:24.)

- - -

THE VIDEOGRAPHER: We're back on the video record. The time on the monitor, 11:24 a.m.

BY MR. GOODING:

Q Mr. Bosse, is it fair to say that cap tables issued during your Series B fundraising contained a disclosure related to Dr. T's shares?

A Yes. I think there was some similar disclosure. But ultimately, that -- that wouldn't take the place of David telling me that there's a real problem.

I mean, again, these things were done between them, and I -- I'm agreeing that there was some sort of a note.

Q Okay.

A What that exactly was, again, if you have it, show it to me.

Q Sure.
A But I know this is not it.
Q I'm working on it. But are you aware of any potential investors that were given a cap table that did not include a disclosure about Dr. T's --
A No.
Q -- disputed shares?
Okay. And did you or anyone at Charleston Labs ever make an inaccurate disclosure related to a company Daiichi Sankyo? Did I pronounce that correctly?
A No. We did not make an inaccurate -- Daiichi Sankyo was a licensing deal. It had nothing to do with an equity investment. They didn't -- they cared about intellectual property that it was assigned to them and they had commercial rights in the U.S. and Puerto Rico. So it had nothing to do with who the shareholders were, what their names were, what they owned.
They didn't -- again, they didn't care about me like they didn't care about anybody else. So that was where Bridget Berry incorrectly spoke.
Q Sure. Let's turn to Exhibit 2 here. Let's talk about the Florida litigation some.
A I will do as best I can.

Q Sure. Why did Charleston Labs decide to bring the lawsuit in Florida?

A We wanted -- we wanted to make sure that we did indeed repurchase the stock.

Q Okay. Did you ever give any consideration to waiting to see whether Dr. T would make a claim in Delaware regarding his right to review the books?

A So one of the things -- again, one of the things about me is I try to hire the best and put the best around me. So George is our general counsel and then we have outside counsel. Those are the decisions and things that they would have decided, not me. I'm on the business side of things.

But I can tell you that this was really messy. I know that Womble Carlyle knew this was messy and that Ray was kind of the head of the spear, right? There were lots of issues associated with this. And so I don't -- so, again, that's something that counsel and -- they had to make those decisions about why and what and when.

Q What would have been Charleston Labs' approximate value in 2015 when Dr. Ray came forward claiming to be a shareholder?

A Wow. I wouldn't have any way of answering that question.
Q Can you ballpark it?
A I could not.
Q Is it more than $5 million?
A Yeah, I would say that it would be more than $5 million.
Q More than $10 million?
A I would say so.
Q More than $25 million?
A Yeah, I think it would be more than that.
Q More than $50 million?
A I think it's in excess of, you know, hundreds of millions.
Q Hundreds of millions of dollars?
A Yeah.
Q In 2015? I'm not talking about today. I'm talking about in 2015 when --
A Absolutely. Absolutely.
Q Okay. So Charleston Labs' value at that time was hundreds of millions of dollars?
A Yeah.
Q Okay. And --
A Ben, not to understate it, had we not won -- had we not won this, the damages would have

been considerable. Considerable.

Q And what are you basing that value on?

A What am I basing that value on?

Q Yes. How are you coming up with --

A Well, the fact that we received $200 million in an upfront payment tells me right there that I'm worth at least 200 million. Although that was split between two milestones, the total value of my deal was 650 million.

Q And so --

A But to answer your question, did I know in 2015 what the value of my company was? No, I don't.

Q Had you received FDA approval at that point?

A No.

Q Have you received FDA approval as of today?

A Nope.

Q Do you have any property --

So generally talking about the nature of your business, it's my understanding that the company developed an antinausea opioid drug, CL-108?

A Uh-huh.

Q Okay. Are there any other drugs being developed by Charleston Labs?

A There are.

Q Okay. In 2015, were there any other drugs being developed by Charleston Labs?

A There were.

Q Okay. Have any of those -- have any of the research and development been trademarked, copyrighted -- or had there been patents issued -- excuse me. Let me back up.

Had there been patents submitted for any of the drugs you were developing as of 2015?

A Yes, of course.

Q Okay. So, again, I just want to clarify from earlier. We talked about potential disclosures leading to possible security violations.

Do you recall one of the reasons for filing the Florida lawsuit was related to potential disclosures that could lead to securities violations -- potential fraudulent or inaccurate disclosures that could lead to securities violations?

A Yeah. That would have been -- Ray -- Ray was terminated and we purchased his shares, so if

the cap table was wrong, there could have been -- those options went in a pool and now somebody sitting -- sitting with those, things would have been a little bit of a mess.

Q Okay.

A And -- yeah, so ...

Q All right. So other than that concern, were there any other reasons for bringing the Florida lawsuit?

A Yeah. I think I answered that. We needed clarification that we repurchased the stock.

Q Okay. Any additional reasons?

A I'm sure it's in here. I think -- I think our corporate designee already answered those questions about this.

Q Okay. So you would defer to Mr. Scott's testimony.

A I think that's what I said earlier, yes.

Q So Charleston Labs' sole purpose in bringing the Florida litigation was to clarify the ownership of the stock?

MR. MONGILLO: Object to the form of the question. Please answer it.

THE WITNESS: Again, I believe that's something that corporate designee would have

answered about this, so ...

BY MR. GOODING:

Q You can answer the question. I mean, I'm asking you in your personal knowledge, not as speaking on behalf of the company.

A I have to defer to -- to the corporate --

Q Are you aware of any other reasons --

Other than to clarify the ownership of the stock issued to Dr. T, are you aware of any other reasons that the Charleston -- that the Florida litigation was brought? Excuse me.

MR. MONGILLO: Object to the form of the question. Please answer.

THE WITNESS: So, yeah. There were -- because Ray was -- because Ray was -- there were other things. It wasn't -- this was about that, but Ray, the individual, there were other things behind him. So there were things with other companies that were -- you know, that he was a part of.

Because if Ray owned stock and he transferred stock, you know, there's all kinds of issues there, so ...

BY MR. GOODING:

Q Okay.

A All generating from the stock. All generating did we repurchase the stock.

Q Okay. So you're referring to SIDIS or SIDIS? How do you pronounce that company? Your guess is as good as mine?

A I think that's what it is.

Q Okay. So was one of the objectives for bringing the Florida litigation to find out information about SIDIS?

A No.

Q Okay. Well, then, what was the goal of all the discovery that was served on SIDIS in that litigation?

A Well, I think I just answered that. I think because of some of the things that he was a part of and the fact that he had attempted to transfer shares to individuals. And I believe --

- - -

(Discussion off the record.)

- - -

MR. GOODING: Sorry for the interruption there.

THE WITNESS: I think you have Jeff Long's letter in here somewhere. And there was some correspondence prior, too, that there

were probably other people that felt like they owned that stock.

So, again, I would have to rely on the corporate designee and counsel for that, but we were not just doing unnecessary discovery.

BY MR. GOODING:

Q Well, isn't it true that Dr. T testified at his deposition that he did not transfer any stock to any other entities?

A Boy. I don't -- I don't know that I -- sitting here, I mean, he could have said anything. So sitting here right now, Ben, I did not review his deposition so I can't -- I can't really go one way or another on that, so ...

Q Do you know whether anyone at SIDIS or any of the affiliated companies, Bexion, BioLOGIC, all those related entities, do you know whether any of those companies had made a claim that they had an ownership interest in Charleston Labs?

A Yeah. I believe there was a letter that was sent or an e-mail or something on behalf of Ray and other people that we did not recognize as shareholders that clearly probably maybe thought they were.

Q Okay.
A It all generated through Ray.
Q So who's Nigel Ferrey?
A Just an individual that I met one time in probably 2007 or '08. That was one of the individuals that, you know, was a part of some of this business model that they had.
Q Okay. And what is your relationship like with Mr. Ferrey? I mean, are y'all social friends?
A No. No, no. We -- we're not social friends.
Q Okay.
A There was -- I -- I think, you know -- I don't think I agree with him too much, but other than that, the way he acted during a meeting and -- you know, that was it for me.
Q Okay. Tell me what you're talking about there.
A Well, when I -- when we met -- when I originally met Ray, we were introduced to Ray through one of our manufacturing companies in Cincinnati, a big manufacturing facility. And so my initial meeting with Ray was with Ray and other people.
But the intent and the purpose was Ray,

not the other people. The other people were trying to do what everybody's tried to do, and that's get a piece of this; get stock in this company. So he was one of them.

Q Okay. And so something happened at that meeting that caused you to --

A No. I just -- we were -- our purpose was Ray. Our purpose wasn't Ray plus.

Q Okay. And I'm asking about Mr. Ferrey, though. You mentioned that meeting as --

A Yeah, just --

Q That you were done with him following that meeting?

A When you say done, I just -- it wasn't -- we didn't align. But that wasn't the purpose. My purpose was Ray.

Q The discovery related to SIDIS that was issued in the Florida litigation, was that at the direction of Charleston Labs or was that something that Greenberg presented to you and you guys agreed to?

A Again, I'm not the corporate designee on that, so you --

Q I'm not asking you to speak on behalf of the company. I'm asking if you have any knowledge

personally as to whether or not --

A Listen, what I can tell you is is that we do not do anything unnecessarily at Charleston. I will stand behind that.

Q Okay. So in some other depositions and other testimony in this case, some folks have described this litigation in Florida as "bet the company" litigation.

Do you agree with that characterization?

A "Bet the company" litigation?

Q Yes.

A I can understand why that was said, yeah.

Q Okay. Would you call the Florida litigation "bet the company" litigation?

A Yeah, I think it would -- we would have had a big mess on our hands. Big mess.

Q What about "end of the world" litigation?

A Yeah. I think we would have had a big problem.

Q Why do you consider the Florida case to be either a "bet the company" case or an "end of world" litigation?

A Simple. You would have had -- you would have had someone that had nothing to do with any of the success, you would have had people behind him,

that maybe potentially owned stock.

We're a -- we're a company that has an opioid in an opioid crisis. There are a myriad of reasons where that could have been, boy, multiples of $2 million to rectify.

So, yes, it would have ultimately changed -- it would have been a big bombshell.

Q Okay. And so what were the concerns, though? What was the concern that -- what could --

A Well, because, Ben, we have an opioid and we're in an opioid crisis. Okay? So one of the things that from day one is I sought to control what? My stock. This all goes back to me controlling my stock.

Q Okay. So let's back -- let's break that down.

The fact that you have an opioid in an opioid crisis, how does that --

A Yeah. That's a big deal.

Q Okay.

A Because I think you can Google it right now, you can get on any news thing and read about all the issues associated. And one of the things that -- that, you know -- with potentially an improved product and, you know, shareholders going

rogue and potentially -- there's all kinds of things that can happen from that.

Q Okay. Well -- and explain to me, what does the opioid crisis have to do with the potential that Dr. T had a minority shareholder interest in your company. Connect those dots for me.

A So you don't see how somebody that's -- you don't see how somebody that -- there's a contentious -- someone that's contentious and a group behind him that are contentious, you don't see how that could be a conflict with maybe the direction of the company and the vision and mission of the company?

If they don't align with that vision and mission, you don't see how that could be a problem?

Q Well, again, explain to me then. Dr. T, at that point, had a maximum interest of 3.5 percent in your company?

A So you're assigning this just to him.

Q Okay.

A He did assign his stock. He did do that, which is -- there's correspondence. There's correspondence to that.

Q Okay.

A It's PrimeDP, other people.

Okay. So I don't know those people. And I don't know who's invested in those companies, and I don't know who -- what they think they own. So it gets really, really, really dicey.

Q And again, explain to me, though, what could those -- if he had transferred his interest and those other folks had an interest in your company, what could they have forced the company to do as a 3.5 percent minority shareholder?

A I don't think -- I'm not sure that it has anything to do with forcing the company to do anything. I think it has everything to do with not being aligned with the vision and the voice of the company.

So let's just say one of those -- let's just say that one of these people that potentially own stock because Womble didn't buy back Ray's -- you know, because they didn't know what they were doing, let's just say that one of these people thought they had stock and they happened to be a physician. So let's just say that I have a specific indication handed down to me by the FDA and this person goes, "No, I have financial interest in this company. I'm not going to pay

attention to what this -- I'm just going to write this drug." That's something that I need to control.

Q So are you saying, then, that the -- it was the uncertainty as to who the owners of the stock were more so than the fact that Dr. T possibly was still an owner --

A I'm saying to you that you asked me originally -- what did you ask me? Was this end of -- could you repeat the two?

Q "Bet the company" litigation.

A "Bet the company"? I'm agreeing.

Q "End of world" litigation.

A I'm agreeing.

Q And I'm trying to understand why you felt that way?

A So you're asking me. So that would be for the corporate designee, and that would be for the person that answered that question. And also, you know, again --

Q Sure. But you've agreed with the characterization and I'm trying to understand that --

A Yeah, I've given you my answer.

MR. MONGILLO: Object to the form of the

question. Asked and answered.

MR. GOODING: I don't think he has answered though.

BY MR. GOODING:

Q I don't have an understanding as to why you felt that this litigation --

A So you don't think -- you don't think a company that is in an opioid -- has an opioid and is a pain company in an opioid crisis, you don't think that a company not having control and knowing who the shareholders may or may not be, what they are or what they are not doing?

I would challenge you to go and look and Google and see that there are people and big fines -- there are big fines being levied for companies and potential people doing things that upper management probably, in all due respect, never knew. You can make an argument that they should have known, but, hey, when that $50 million fine comes down, they don't care.

Q So just so we're clear, other than the uncertainty of who the owners were in your company, were there any other concerns that gave you -- related to Dr. T potentially owning 3.5 percent of the company?

MR. MONGILLO: Object to the form of the question. Please answer.

THE WITNESS: Again, I think that question is best -- it's best --

You guys have asked that. I've given you my perspective on this Florida litigation.

BY MR. GOODING:

Q Okay. I'm going to ask the question again. Are there any other concerns, besides the ownership interest, who the potential owners were in the company for Ray's 3.5 percent interest? Are there any other concerns that made you characterize this litigation as "bet the company" litigation?

MR. MONGILLO: Same objection. Please answer.

THE WITNESS: Ben, I've answered that question as best I can.

MR. RICHTER: And it's not his characterization. He agreed with your characterization, but --

MR. GOODING: Sure.

BY MR. GOODING:

Q Okay. I'm not sure that -- again, if there are -- if the answer is there are no other

concerns, that's a fine answer. I'm just trying to understand.

A I can't say there are no other concerns.

MR. MONGILLO: Same objection. You can answer.

THE WITNESS: I can't say there are no other concerns. I am not -- I am not an attorney.

BY MR. GOODING:

Q I understand that.

A I am -- I am on the business side. I have given you the response from where I sit. I've given you how -- I've given you a scenario where Ray owning shares into a company that could have a very large market cap, where I now have a shareholder and there are people behind him. That could present me, on the business side, lots of problems.

So when you ask me is that "bet the world" litigation, that's how I align with that statement. So you'll have to ask other people how they align with that statement.

Q And I'm trying to understand your perspective --

A And I can't --

Q -- as to why you're aligning with that statement.

A I just told you.

Q And you have said that you were uncertain as to who the owners were. You have made that point clear.

I'm asking you if there's any other additional reasons, beyond that, that gave you -- that made you have that characterization of this litigation.

MR. MONGILLO: Object to the form of the question. Please answer.

THE WITNESS: Ben, there could be, but I'm just answering with what I -- with what comes to me right now, okay? And that's a pretty serious one.

BY MR. GOODING:

Q Sitting here right now, today, you don't have any additional reasons?

A I can't -- I can't say that, I mean, but --

Q You just said that. Well, if you have an additional reason, just tell me what it is?

MR. MONGILLO: Object to the form of the question. Asked and answered. Can we please

move on?

MR. JORDAN: After it's answered.

BY MR. GOODING:

Q Yeah, after it's answered. I'm not --

A I've given you a very big one that would concern me and why I align with those statements.

Q And I'm asking you, in addition to that very big one that you just identified, are there any other concerns?

MR. MONGILLO: Object to the form of the question. Please answer.

BY MR. GOODING:

Q It's fine if you don't have any additional answers. I'm just asking what those are if there are additional reasons.

A Do I have any additional reasons why? No. That's my biggest -- my biggest reason would be how it affects my cap table and how it affects my -- how it affects my stock.

So from my side, that's what affects me.

Q Okay. How did Charleston Labs choose to retain Greenberg Traurig in this -- in the Florida litigation?

A So George was working at Womble Carlyle, was the reason ultimately that we stayed with