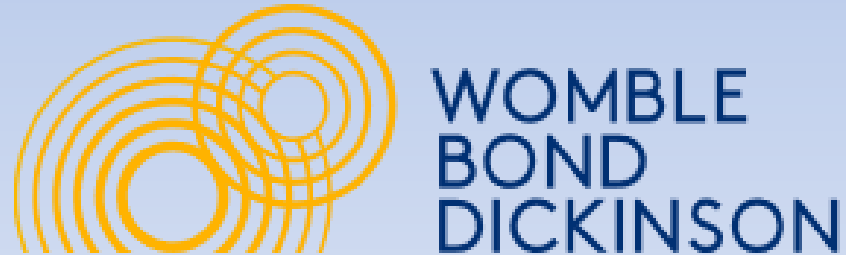




VS.



PLAINTIFF'S SUMMARY JUDGMENT PRESENTATION



Charleston

L A B O R A T O R I E S





Charleston
LABORATORIES

Charleston Laboratories, Inc, an emerging specialty pharmaceutical company dedicated to reducing opioid induced nausea and vomiting (OINV) in opioid pharmaceuticals, ... received approval to proceed with its proposed Clinical Development Program, utilizing a modified 505 (b)(2) NDA process.

NEWS



Charleston Laboratories, Inc. Attends Pre-IND Meeting

Charleston completes successful Type B, Pre-IND meeting with FDA's Division of Anesthesia, Analgesia and Rheumatology Products on November 8, 2007, held at FDA's Silver Spring, Maryland offices.

Charleston, South Carolina – November 8, 2007 – Charleston Laboratories, Inc, an emerging specialty pharmaceutical company dedicated to reducing opioid induced nausea and vomiting (OINV) in opioid pharmaceuticals, publicly announced today the results of its Pre-IND meeting with FDA on its first drug candidate. At this meeting Charleston received approval to proceed with its proposed Clinical Development Program, utilizing a modified 505 (b)(2) NDA process.

Commenting on this meeting with the FDA, Mr. John Ameling, Vice President, Regulatory Affairs, at Charleston Laboratories, noted that "the Agency accepted the plan to develop low-dose, immediate-release promethazine, hydrocodone, and acetaminophen, CL-108, which will be indicated for the treatment of moderate-to-severe acute pain and the prevention/reduction of opioid-induced nausea and vomiting (OINV), a new drug indication."

LEGAL TEAM



June 6, 2007

Paul Bosse, CEO

Charleston Laboratories, Inc.

We are pleased that you have asked Womble Carlyle Sandridge & Rice, PLLC to represent Charleston Laboratories, Inc. (“Charleston Labs”) for general corporate legal advice, venture capital financing, and other matters that you may request from time to time.

WOMBLE
CARLYLE
SANDRIDGE
& RICE
A PROFESSIONAL LIMITED
LIABILITY COMPANY

Fourth Floor
4065 Lenoirville Pike
Tysons Corner, Virginia 22181-2738
Telephone: (703) 790-3310
Fax: (408) 790-1628
Web site: www.wcsr.com

DEAN WAYNE RUTLEY
Direct Dial: (703) 334-2255
Direct Fax: (703) 918-2267
E-mail: drutley@wcsr.com

June 6, 2007

Via Email phosse@palmpharmaceuticals.com

Paul Bosse, CEO
Charleston Laboratories, Inc.
548 Clearview Drive
Charleston, SC 29412

Dear Paul:

We are pleased that you have asked Womble Carlyle Sandridge & Rice, PLLC to represent Charleston Laboratories, Inc. (“Charleston Labs”) for general corporate legal advice, venture capital financing, and other matters that you may request from time to time. We submit for your approval the following provisions governing our engagement. If these are agreeable, please sign the enclosed copy of this letter and return it to me via facsimile (703) 918-2267, with the original transmittal in the enclosed self-addressed envelope. Should you have any questions regarding these provisions, please do not hesitate to call so that we may discuss any proposed changes.

1. Scope of Representation

We will advise Charleston Labs with regard to matters on which you specifically request our services from time to time and on which we specifically agree to provide such services. On any particular matter, you may limit or expand the scope of our representation from time to time, provided that any substantial expansion must be agreed to by us.

2. Term of Engagement

Either of us may terminate the engagement at any time for any reason by written notice, subject on our part to the applicable rules of professional responsibility. In the event that we terminate the relationship, we will take whatever steps are reasonably practicable to protect the interests of Charleston Labs, and, if you so request, we will suggest to Charleston Labs possible successor counsel and cooperate in making available to them whatever papers you have provided to us.

At the conclusion of our work for Charleston Labs on any particular matter, we will return to you, upon your request, any materials you have furnished to us in connection with that matter. Thereupon, we will store files respecting that matter for six (6) years following the conclusion of our representation of Charleston Labs in that matter, and we will provide you with access to those files upon request. After six (6) years from the conclusion of our representation

LEGAL TEAM



June 6, 2007

I will be responsible for our overall relationship with Charleston Labs and my hourly rate is \$450. David Baddour (\$290) and Julia Kreyskop (\$225) will be assisting me on your matters.

Very truly yours,

Dean Wayne Rutley

WOMBLE
CARLYLE
SANDRIDGE
& RICE
A PROFESSIONAL LIMITED
LIABILITY COMPANY

Fourth Floor
4065 Lonsburg Pike
Tysons Corner, Virginia 22181-2738
Telephone: (703) 790-3310
Fax: (435) 790-1625
Web site: www.wcsr.com

DEAN WAYNE RUTLEY
Direct Dial: (703) 394-2255
Direct Fax: (703) 918-2267
E-mail: drutley@wcsr.com

June 6, 2007

Via Email phosse@palmpharmaceuticals.com

Paul Bosse, CEO
Charleston Laboratories, Inc.
548 Clearview Drive
Charleston, SC 29412

Dear Paul:

We are pleased that you have asked Womble Carlyle Sandridge & Rice, PLLC to represent Charleston Laboratories, Inc. ("Charleston Labs") for general corporate legal advice, venture capital financing, and other matters that you may request from time to time. We submit for your approval the following provisions governing our engagement. If these are agreeable, please sign the enclosed copy of this letter and return it to me via facsimile (703) 918-2267, with the original transmittal in the enclosed self-addressed envelope. Should you have any questions regarding these provisions, please do not hesitate to call so that we may discuss any proposed changes.

1. Scope of Representation

We will advise Charleston Labs with regard to matters on which you specifically request our services from time to time and on which we specifically agree to provide such services. On any particular matter, you may limit or expand the scope of our representation from time to time, provided that any substantial expansion must be agreed to by us.

2. Term of Engagement

Either of us may terminate the engagement at any time for any reason by written notice, subject on our part to the applicable rules of professional responsibility. In the event that we terminate the relationship, we will take whatever steps are reasonably practicable to protect the interests of Charleston Labs, and, if you so request, we will suggest to Charleston Labs possible successor counsel and cooperate in making available to them whatever papers you have provided to us.

At the conclusion of our work for Charleston Labs on any particular matter, we will return to you, upon your request, any materials you have furnished to us in connection with that matter. Thereupon, we will store files respecting that matter for six (6) years following the conclusion of our representation of Charleston Labs in that matter, and we will provide you with access to those files upon request. After six (6) years from the conclusion of our representation

LEGAL TEAM



Dean Rutley

Dean counsels venture capital firms in the areas of organization, financing, equity distribution, **venture capital investments** and other operational matters.

VENTURE MAN



LEGAL TEAM

WOMBLE
CARLYLE 

David Baddour

Bar admission - 2002 North Carolina

FIVE-YEAR ATTORNEY



*State of Delaware
Secretary of State
Division of Corporation
Delivered 12:55 PM 06/27/2007
Filed 12:55 PM 06/27/2007
SRV 070757504 – 4379838 FILE*

CERTIFICATE OF INCORPORATION OF
CHARLESTON LABORATORIES, INC.
A STOCK CORPORATION

- **FIRST:** The name of this Corporation is Charleston Laboratories, Inc.
- **FOURTH:** The total amount of authorized common shares of this corporation is **Three thousand (3000) common shares, each having a par value of \$0.001.**
- **FIFTH:** The name and mailing address of the incorporator are as follows:

Name: Dean Wayne Rutley

Mailing Address: 8064 Leesburg Pike, 4th Floor, Vienna, VA 22182


BY: 
Dean Wayne Rutley, Incorporator

06/27/2007 12:55 7832880622 WDMLE CARLYLE PAGE 02/02

State of Delaware
Secretary of State
Division of Corporations
Delivered 12:55 PM 06/27/2007
Filed 12:55 PM 06/27/2007
SRV 070757504 – 4379838 FILE

CERTIFICATE OF INCORPORATION OF
CHARLESTON LABORATORIES, INC.
A STOCK CORPORATION

- **FIRST:** The name of this Corporation is Charleston Laboratories, Inc.
- **SECOND:** Its Registered Office in the State of Delaware is to be located at Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801. The registered agent in charge thereof is The Corporation Trust Company.
- **THIRD:** The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.
- **FOURTH:** The total amount of authorized common shares of this corporation is Three thousand (3000) common shares, each having a par value of \$0.001.
- **FIFTH:** The name and mailing address of the incorporator are as follows:
Name: Dean Wayne Rutley
Mailing Address: 8065 Leesburg Pike, 4th Floor, Vienna, VA 22182
- **I, THE UNDERSIGNED,** for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this Certificate, and do certify that the facts herein stated are true, and I have accordingly hereunto set my hand this 27 day of June, 2007.

BY: 
Dean Wayne Rutley, Incorporator





WCSR 362979v2

THREE Founding Shareholders (2007)

- **G. Paul Bosse III**
- **Ryan Baker**
- **Chris Godwin**

ZERO Shareholder Agreements

VENTURE MAN

From: Dean Rutley 
Sent: December 10, 2007 5:15 PM
To: Clint Richardson 
Cc: Paul Bosse,  Charleston Kent Webb, David Baddour 
Subject: FW: Execution One-Pager for Charleston Labs
Attachments: Charleston Laboratories Executive Summary.doc

Please see attached the executive one-pager for our client Charleston Laboratories, based in Charleston, SC. ... We are serving as corporate and finance counsel.

VENTURE MAN

Charleston Laboratories has identified a unique and novel Phase III pain relief product. [CL-108]

CL's executive management, clinical research consultant and outside board member have over 80+ years of large pharmaceutical and entrepreneurial experience in regulatory, clinical research, and marketing. Some of the CL team has worked together on past industry projects that were very successful.

Charleston Laboratories, Inc.

Contact: G. Paul Bosse III, CEO
 Email: pbosse@charlestonlabs.com
 Phone: 843.364.3256; Fax: 843.628.1061

Innovation in the Narcotic Analgesic Pain Market

Industry Segment: Innovative Specialty Pharmaceutical Company

Company Stage: First institutional round. A PCT patent incorporating three previous provisional patents filed, signed seed money investor, successful completion of Pre-IND meeting, and finalized drug development program of Phase III drug, CL-108.

Number of FTE's: 3

Company History: Founded in August 2007, Charleston Laboratories' Management Team, Clinical Research and Board of Directors were organized by G. Paul Bosse, III who is also the company's inventor of the "novel" product concept.

Executive Management: G. Paul Bosse III, CEO and President; John F. Ameling, COO and Head of Regulatory Affairs.

Clinical Research Consultant: Bernard P. Schachtel, MD

Business Development: Chris Godwin

Outside Board Member: Irwin "Wirt" Gerson

Financing Sought: \$10.6 million in first institutional round

Law Firms: Womble Carlyle and Wilson Sonsini

Company and Management

Charleston Laboratories, Inc. ("CL") is an innovative specialty pharmaceutical company in the narcotic analgesic market sector. CL has identified a unique and novel Phase III pain relief product, CL-108, and pipeline. CL's products will reduce or eliminate side effects such as nausea and vomiting that are commonly associated with this category of drugs. On November 8, 2007, Charleston Laboratories completed the Pre-IND with FDA's Anesthesia, Analgesia and Rheumatology Division Key FDA personnel, including Dr. Robert Rappaport, Division Director, and Dr. Sharon Hertz, Deputy Division Director, were involved. The highlight of CL's interaction with the FDA was their use of the descriptors, "novel product" and "novel indication" (transmitted in writing and verbally during the meeting) when speaking about CL-108. The Agency has agreed with CL's drug development program and planned sequence of studies for CL-108 through the 505(b)(2) NDA approval process. Using the 505(b)(2) NDA approval process will give CL between 3 and 5 years of exclusivity from the FDA. CL's executive management, clinical research consultant and outside board member have over 80+ years of large pharmaceutical and entrepreneurial experience in regulatory, clinical research, and marketing. Some of the CL team has worked together on past industry projects that were very successful. Of note, G. Paul Bosse III, John Ameling and Dr. Bernard Schachtel are the three key personnel who moved CL's project through the FDA meeting.

Products Pipeline

CL is advancing a novel pipeline of narcotic analgesic therapies

Description	Indication	Status
CL-108 (Hydrocodone, APAP + Anti-emetic)	Moderate to Severe Pain While Reducing or Eliminating Nausea / Vomiting	Phase III
CL-308 (Oxycodone, APAP + Anti-emetic)	Moderate to Severe Pain While Reducing or Eliminating Nausea / Vomiting	Phase III
CL-508 (Optimal Dose)	Mild, Moderate and Severe Pain	Pre-Clinical

Market and IP

The CL management team and industry consultants conservatively estimate the incidence of nausea and vomiting at 30% to 40% associated with these narcotic analgesics. The market for these opiates is between \$5-6 billion in the United States and Europe. CL's potential for CL-108 (priced at current market or slightly above) ranges from \$600 - \$800 million a year in both the United States and Europe. Vern Norvick, a senior partner with Wilson Sonsini, is heading CL's intellectual property efforts. Wilson Sonsini conducted a freedom-to-operate search and no blocking patents were identified. Periodically, an updated freedom-to-operate search will be conducted. In addition, Wilson Sonsini has filed a PCT application to cover the current product pipeline, in a wide scope and breadth. Furthermore, additional patents will be filed for a wide range of possible future products/combinations.

Competition and Differentiation

There are no known direct competitors offering a combination analgesic and an anti-emetic within the industry, and the company's intellectual property should enable it to maintain a competitive advantage. CL's novel products will condition the system before the release of the narcotic, eliminate the need for an additional self-medicated prescription for anti-emetic, cost less than pain killer plus anti-emetic, and allow the physician to offer their patient the full prescription dose(s) of the most effective analgesic medication.

Revenue Model and Forecasts

Hydrocodone generated 130,000,000 total prescriptions in 2006. The average hydrocodone growth per year from 2001 to 2006 was 6.5%. Assuming CL can achieve 50% market penetration in year one following FDA approval, using a conservative 30% incidence of nausea/vomiting, the 6.5% average growth, and a \$30 average prescription cost, expected revenue for CL-108 is as follows:

	Year 1	Year 2	Year 3	Year 4	Year 5
CL-108 Revenue (Millions)	\$600 - 800	\$639 - 852	\$681 - 907	\$725 - 966	\$769 - 1,209

This information is strictly confidential and is not to be distributed to third parties without prior consent of Charleston Laboratories, Inc.

	Year 1	Year 2	Year 3	Year 4	Year 5
CL-108 Revenue (Millions)	\$600-800	\$539-852	\$681-907	\$725-966	\$769-\$1,209



LANDMARK
PEGASUS INC.

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OUR TEAM

SERVICES

CLIENTS

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OUR COMMITMENT

We are committed to providing comprehensive strategies and creative solutions to build value for our clients.

LANDMARK PEGASUS IS A PREMIER CORPORATE FINANCE ADVISORY
AND STRATEGY CONSULTING FIRM SPECIALIZING IN THE LIFESCIENCES
AND HEALTHCARE INDUSTRIES.


SHA

From: Mark Blomquist  LANDMARK PEGASUS INC.
Sent: Wednesday, April 9, 2008 11:54 AM
To: Paul Bosse  Charleston LABORATORIES
Subject: Draft Shareholder's Agreement
Attachments: Charleston Laboratories Stockholder Agreement.doc


Paul:

As discussed, attached for your review & comment is a draft shareholder's agreement. Exhibit A & Schedule A need to be added once the **founding shareholders** have come to an agreement upon the specific terms of those additions.

SHA

From: Paul Bosse  Charleston
LABORATORIES

Sent: Wednesday, April 9, 2008 12:26 PM

To: David Baddour  WOMBLE
CARLYLE

Subject: Fw: Draft Shareholder's Agreement



Attachments: Charleston Laboratories Stockholder Agreement.doc

David,

Calling you now to discuss this document and what the current plan is moving forward.

Paul Bosse

SHA

From: Paul Bosse  Charleston
LABORATORIES
Sent: May 20, 2008 3:50 PM
To: David Baddour  WOMBLE
CARLYLE
Subject: Shareholder Agreements




David,

Just wondering how these things are coming along?

Thanks,

Paul

SRA

From: David Baddour 
Sent: May 20, 2008 6:29 PM
To: Paul Bosse 
Cc: Dean Rutley 
Subject: Stock Restriction Agreement
Attachments: Founder Restricted Stock Agmt-v1.DOC

Please find attached a draft Stock Restriction Agreement.

SRA

WHEREAS, as partial consideration for the entry into an **employment agreement** between the Stockholder and the Company dated as of even date herewith...

1. Repurchase Option.

(a) **Termination of Employment.** In the event that the Stockholder's employment with the Company is terminated prior to May __, 2011, **for any reason, or no reason**, with or without cause, the Company shall have the right and option, for a period of sixty (60) days next following the effective date of such termination, to repurchase from the Stockholder, at a price of **\$0.001 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.

SRA ¶ 1(a)

STOCK RESTRICTION AGREEMENT

THIS STOCK RESTRICTION AGREEMENT (the "Agreement"), dated as of May __, 2008, by and between Charleston Laboratories, Inc., a Delaware corporation (the "Company"), and [Bernie Schachtel MD.] (the "Stockholder").

RECITALS

WHEREAS, the Stockholder is the holder of Three Hundred Sixty (360) shares of the Company's common stock, \$0.001 par value per share (the "Common Stock"), 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 the Stockholder's employment with the Company is terminated prior to May __, 2011, for any reason, or no reason, with or without cause, the Company shall have the right and option, for a period of sixty (60) days next following the effective date of such termination, to repurchase from the Stockholder, at a price of \$0.001 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.
- (b) Termination of Repurchase Option. Notwithstanding the provisions of Section 1(a), the Company's right to repurchase (i) 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

SRA

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.

SRA ¶ 5

STOCK RESTRICTION AGREEMENT

THIS STOCK RESTRICTION AGREEMENT (the "Agreement"), dated as of May _____, 2008, by and between Charleston Laboratories, Inc., a Delaware corporation (the "Company"), and [Bernie Schachtel MD.] (the "Stockholder").

RECITALS

WHEREAS, the Stockholder is the holder of Three Hundred Sixty (360) shares of the Company's common stock, \$0.001 par value per share (the "Common Stock"); 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 the Stockholder's employment with the Company is terminated prior to May _____, 2011, for any reason, or no reason, with or without cause, the Company shall have the right and option, for a period of sixty (60) days next following the effective date of such termination, to repurchase from the Stockholder, at a price of \$0.001 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.
 - (b) **Termination of Repurchase Option.** Notwithstanding the provisions of Section 1(a), the Company's right to repurchase (i) 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


WCSR 3903823v1

← **WCSR 3903823v1**

SHA

From: Paul Bosse  Charleston
LABORATORIES

Sent: May 21, 2008 8:19 PM

To: David Baddour  WOMBLE
CARLYLE

Subject: Shareholders

Attachments: Charleston Laboratories Stockholder Agreement.doc

Could you revise this per our discussion some weeks ago when [Landmark Pegasus] sent this? I know we spoke about voting % and not just that one person could say no... and I know you mentioned a few other places that we would want to change.

SHA

Document comparison done by DeltaView on Thursday, May 22, 2008 5:56:02 PM

Input:	
Document 1	PowerDocs://WINSTON/3905566/1
Document 2	PowerDocs://WINSTON/3905566/2
Rendering set	standard

Legend:	
<u>Insertion</u>	
<u>Deletion</u>	
<u>Moved from</u>	
<u>Moved to</u>	
Style change	
Format change	
Moved-deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	76
Deletions	58
Moved from	8
Moved to	8
Style change	0
Format changed	0
Total changes	150

CONFLICTING AGREEMENTS

SCHEDULE A TO RESTRICTED STOCK PURCHASE AGREEMENT

If Employment

Terminates On or After:

May 30, 2008

May 30, 2009

May 30, 2010

May 30, 2011

But Prior to:

May 30, 2009

May 30, 2010

May 30, 2011

n/a

Company shall have the right to repurchase the following number of Shares of Common Stock

105

70

35

0

210 Shares

CONFLICTING AGREEMENTS

SRA ¶ 1(a)

STOCK RESTRICTION AGREEMENT

THIS STOCK RESTRICTION AGREEMENT (the "Agreement"), dated as of May ____, 2008, by and between Charleston Laboratories, Inc., a Delaware corporation (the "Company"), and [Bernie Schachtel M.D.] (the "Stockholder").

VS

SHA ¶ 2.4(i)

CHARLESTON LABORATORIES, INC. STOCKHOLDERS AGREEMENT

1. Repurchase Option.

(a) Termination of Employment. In the event that the Stockholder's employment with the Company is terminated prior to May ____, 2011, for any reason, or no reason, with or without cause, the Company shall have the right and option...to repurchase from the Stockholder, at a price of \$0.001 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.

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

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.

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

CONFLICTING AGREEMENTS

SRA ¶ 5

STOCK RESTRICTION AGREEMENT

THIS STOCK RESTRICTION AGREEMENT (the "Agreement"), dated as of May _____, 2008, by and between Charleston Laboratories, Inc., a Delaware corporation (the

VS

SHA ¶ 5.9

CHARLESTON LABORATORIES, INC. STOCKHOLDERS AGREEMENT

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.

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.

the right and option, for a period of sixty (60) days next following the effective date of such termination, to repurchase from the Stockholder, at a price of \$0.001 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.

- (b) Termination of Repurchase Option. Notwithstanding the provisions of Section 1(a), the Company's right to repurchase (i) 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

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

CONFLICTING AGREEMENTS



Dean Rutley – April 16, 2018

Pg 87, Lns 13 – 22



CONFLICTING AGREEMENTS



David Baddour – May 2, 2018

Pg 76, Ln 24 – Pg 77, Ln 05

SHA / SRA

From: Paul Bosse  Charleston LABORATORIES
Sent: Thursday, May 29, 2008 6:33 PM
To: David Baddour; Dean Rutley  WOMBLE CARLYLE
Subject: Shareholders Agreements & Vesting Schedule

David and Dean,

Please see the email below that I will send with the SA [SHA] and RSA [SRA].

Please feel free to add or delete anything from the email below.

Paul

Message

From: Paul Bosse [pbosse@charlestonlabs.com]
Sent: 5/29/2008 6:33:24 PM
To: Baddour, David [dbaddour@wcsr.com]; Rutley, Dean [DRutley@wcsr.com]
Subject: Shareholders Agreements & Vesting Schedule
Importance: Low

David and Dean,

Please see the email below that I will send with the SA and RSA.

Is it ok for them to fax me a signed copy then once we are all together in a few weeks get 7 (One for your records and one for each of us) with original signatures for official record???

Please feel free to add or delete anything from the email below.

Thanks,

Paul Bosse
CEO
(843)577-2626 (Office)
(843)364-3256 (Cell)
PBosse@Charlestonlabs.Com

****Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Guys,

I hope all is well.




Womble Carlyle and I have finished the shareholder's agreements and a stock agreement specific that specifies a vesting schedule. You each will be vested 50% of your founder stock and the remaining will vest and be issued on time served. This protects both myself and the company to make sure everyone has a reason to come to work and not quit. This stock will accelerate with any M&A or sale etc.....

****Bernie, due to your travel, you are actually the only founder that I have been unable to speak with personally but certainly want to talk with you about these documents. I know your counsel raised premature questions (due to lack of information) for a start-up company. David Baddour & Dean Rutley are free to speak with anyone's counsel on CL start-up issues. If needed, let me know and I will set-up accordingly.

Of note:

1. CL is a registered Delaware C Incorporation
2. CL is a **START-UP** Company with only debt and no value to date (idea, non-issued patents, etc...)
3. I have been the sole director / board member
4. There have been no official board meetings to therefore no official minutes necessary
5. The founder stock is issued to founders at .001 / therefore the CL book will show a total of 3,000 shares sold for a grand total of \$3.00.
6. These shareholders agreements will be the governing body of CL until an investor is secured and / or documents are revised
7. We will execute employee contracts once investor is secured

SHA / SRA

From: Paul Bosse 
Sent: Thursday, May 29, 2008 9:13 PM
To: Ray Takigiku; John Ameling
CC: Dean Rutley;  David Baddour 
Subject: Shareholders Agreement and Stock Agreement

Womble Carlyle and I have finished the shareholder's agreements and a stock agreement that specifies a vesting schedule ... David Baddour & Dean Rutley are free to speak on any CL start-up issues.

1. CL is a registered Delaware C Incorporation
2. CL is a **START-UP** Company with only debt and no value to date (idea, non-issued patents, etc...)
3. I have been the sole director / board member
4. There have been no official board meetings to therefore no official minutes necessary (the only official board action relates to the SC Launch debt and the organization of CL)
5. The founder stock is issued to founders at .001 / therefore the CL book will show a total of 3,000 shares sold for a grand total of \$3.00.
6. These shareholders agreements will be the governing body of CL until an investor is secured and / or documents are revised
7. We will execute employee contracts once investor is secured


Never Done by Womble

SHA

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



RAY TAKIGIKU

Same 210 from SRA

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 P. 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.

CONFIDENTIAL


WBD_CHLAB0019789

SRA

STOCKHOLDER


Ray Takigiku, Ph.D

5/30/08


**210 Shares
Subject to Vesting**

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.**

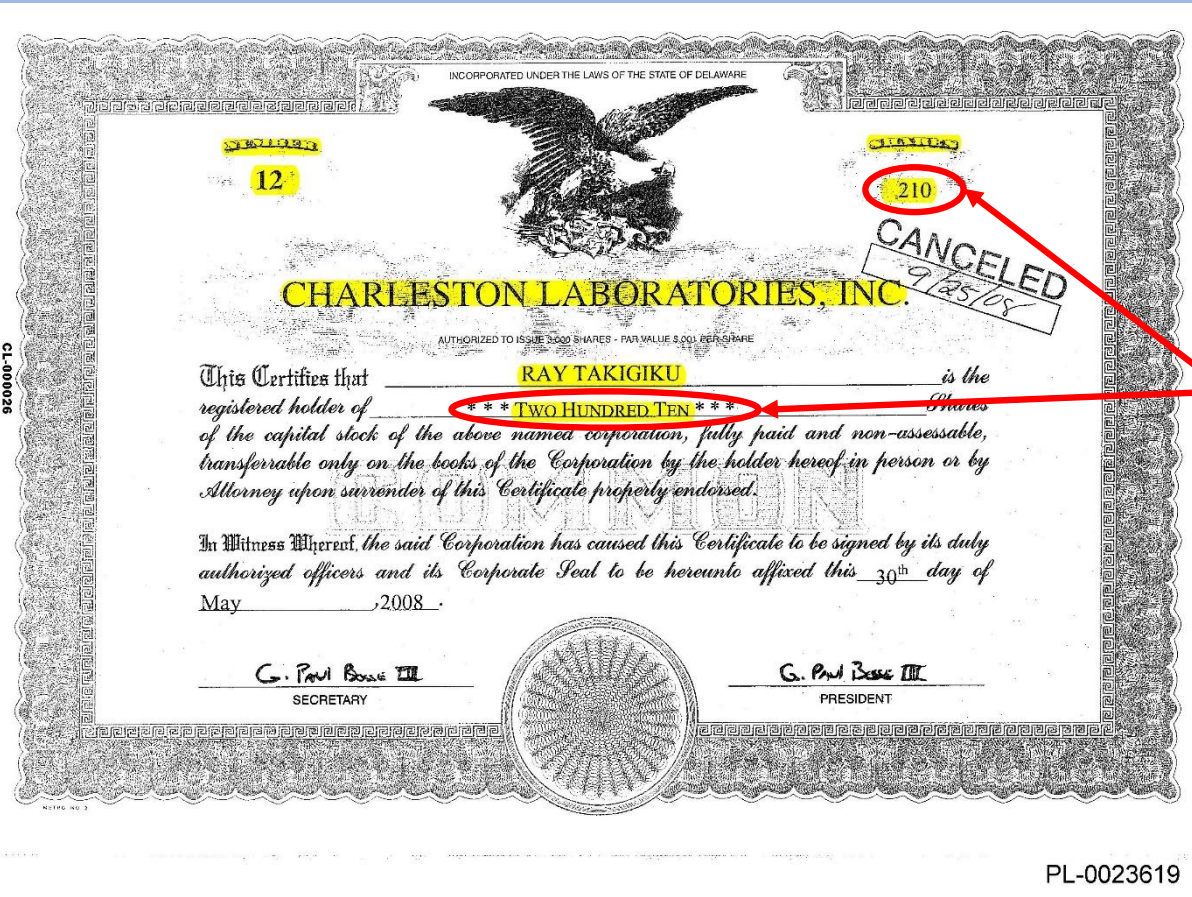
(a) **Termination of Employment.** In the event that prior to May 30, 2011 the Stockholder either (i) resigns or otherwise voluntarily terminates his employment with the Company or (ii) is terminated for Cause (as defined below), the Company shall have the right and option, for a period of sixty (60) 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

WCSR 3903823v1

←

CONFIDENTIAL WBD_CHLAB0019784



**210 From SRA
& SHA**

WOMBLE
CARLYLE 



SHA

SRA

IT ONLY MATTERS WHEN IT MATTERS

SECTION 83(b)

1. **The name, address and taxpayer identification number of the undersigned taxpayer are:**

Name: **Ray Takigiku**

Address: 3952 Timberwoods Ct

SSN: 524-92-7427

Loveland, OH 45140

2. **Description of property with respect to which the election is made:**

210 shares (the "Shares") of Common Stock of Charleston Laboratories, Inc. (the "Company").

3. **The date on which the Property was transferred to the taxpayer was:**

May 30, 2008

The taxable year to which this election relates is the 2008 calendar year.

**ELECTION TO INCLUDE VALUE OF RESTRICTED PROPERTY
 IN GROSS INCOME IN YEAR OF TRANSFER**

The undersigned taxpayer hereby elects to include the value of property described below in gross income pursuant to Section 83(b) of the Internal Revenue Code of 1986 and provides the following information in accordance with the Treasury Regulations promulgated thereunder:

1. **The name, address and taxpayer identification number of the undersigned taxpayer are:**

Name: Ray Takigiku

Address: 3952 Timberwoods Ct

SSN: 524-92-7427

Loveland, OH 45140

2. **Description of property with respect to which the election is made:**

210 shares (the "Shares") of Common Stock of Charleston Laboratories, Inc. (the "Company").

3. **The date on which the Property was transferred to the taxpayer was:**

May 30, 2008

The taxable year to which this election relates is the 2008 calendar year.

4. **The nature of the restrictions to which the Property is subject is:**

Termination of Employment. In the event that prior to May 30, 2011 the taxpayer 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 taxpayer, 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 taxpayer 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.

Termination of Repurchase Option. Notwithstanding the foregoing provisions the Company's right to repurchase fifty percent (50%) of the number of Restricted Shares then subject to repurchase by the Company 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 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

WCSR 3916694v4

WCSR 3916694v4

SECTION 83(b)

4. **The nature of the restrictions to which the Property is subject is:**

Termination of Employment. In the event that prior to May 30, 2011 the taxpayer 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 taxpayer, 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 taxpayer 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.

Same Language as SRA

No Mention of SHA

Dated: June 27, 2008.



Ray Takigiku

WRONG

ELECTION TO INCLUDE VALUE OF RESTRICTED PROPERTY IN GROSS INCOME IN YEAR OF TRANSFER

The undersigned taxpayer hereby elects to include the value of property described below in gross income pursuant to Section 83(b) of the Internal Revenue Code of 1986 and provides the following information in accordance with the Treasury Regulations promulgated thereunder:



- The name, address and taxpayer identification number of the undersigned taxpayer are:
 Name: Ray Takigiku Address: 3952 Timberside Ct
 SSN: 524-92-7427 Loveland, OH 45140
- Description of property with respect to which the election is made:
 210 shares (the "Shares") of Common Stock of Charleston Laboratories, Inc. (the "Company").
- The date on which the Property was transferred to the taxpayer was:
 May 30, 2008
- The taxable year to which this election relates is the 2008 calendar year.
- The nature of the restrictions to which the Property is subject is:
Termination of Employment. In the event that prior to May 30, 2011 the taxpayer 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 taxpayer, 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 taxpayer 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.
Termination of Repurchase Option. Notwithstanding the foregoing provisions the Company's right to repurchase fifty percent (50%) of the number of Restricted Shares then subject to repurchase by the Company 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 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

WCSR 3916694v4

WCSR 3916694v4



SECTION 83(b)

From: Dean Rutley 
Sent: Monday, June 16, 2008 7:26 PM
To: Charles Kaufmann
Cc: David Baddour 
Subject: RE: Bernie Schachtel

Charles:

You are correct in your email below that many of the inquiries you raised are business, not legal, issues. ... **Below in brackets and RED text are certain initial responses to your email.**

Dean

SECTION 83(b)

Dean,

...Be that as it may, and assuming the restrictions remain and I believe Bernie should forfeit his shares only if he is terminated for "cause" or if he terminates his employment other than by reason of constructive discharge. The law gives Paul unusually broad discretion to get rid of him for any reason. [Charles: for a very few dollars left Paul doesn't want to complicate the arrangement.] Paul said that NONE of the initial founders/employees will have 83(b) agreements. The simple structure is that ALL vested shares are for the employee to KEEP and the unvested shares are paid over time for service over the vesting period. Thus termination of the employment relationship for ANY reason will result in the employee keeping ALL shares that are vested and just a stop to further vesting. We can discuss this further with you.]

SRA NOT SHARE

SECTION 83(b)



*Dean Rutley – April 16, 2018
Pg 141, Ln 23 – Pg 142, Ln 21*

STOCK SPLIT

PASTE CANCELLED CERTIFICATE IN THIS SPACE

CL-0000330

CERTIFICATE No. **12**

FOR TWO HUNDRED TEN (210) SHARES

ISSUED TO

RAY TAKIGIKU

DATED May 30, 2008

RECEIVED CERTIFICATE No. 12

FOR TWO HUNDRED TEN SHARES

THIS 25th DAY OF September, 2008

TRANSFER FROM ORIGINAL ISSUE BELOW

FROM WHOM TRANSFERRED:

DATED _____

NO. ORIGINAL CERTIFICATE	NO. ORIGINAL SHARES	NO. OF SHARES TRANSFERRED

TRANSFER DETAILS FOR SURRENDERED CERTIFICATES

NEW CERTIFICATES ISSUED TO:

**Ray Takigiku pursuant to
2,000:1 stock split**

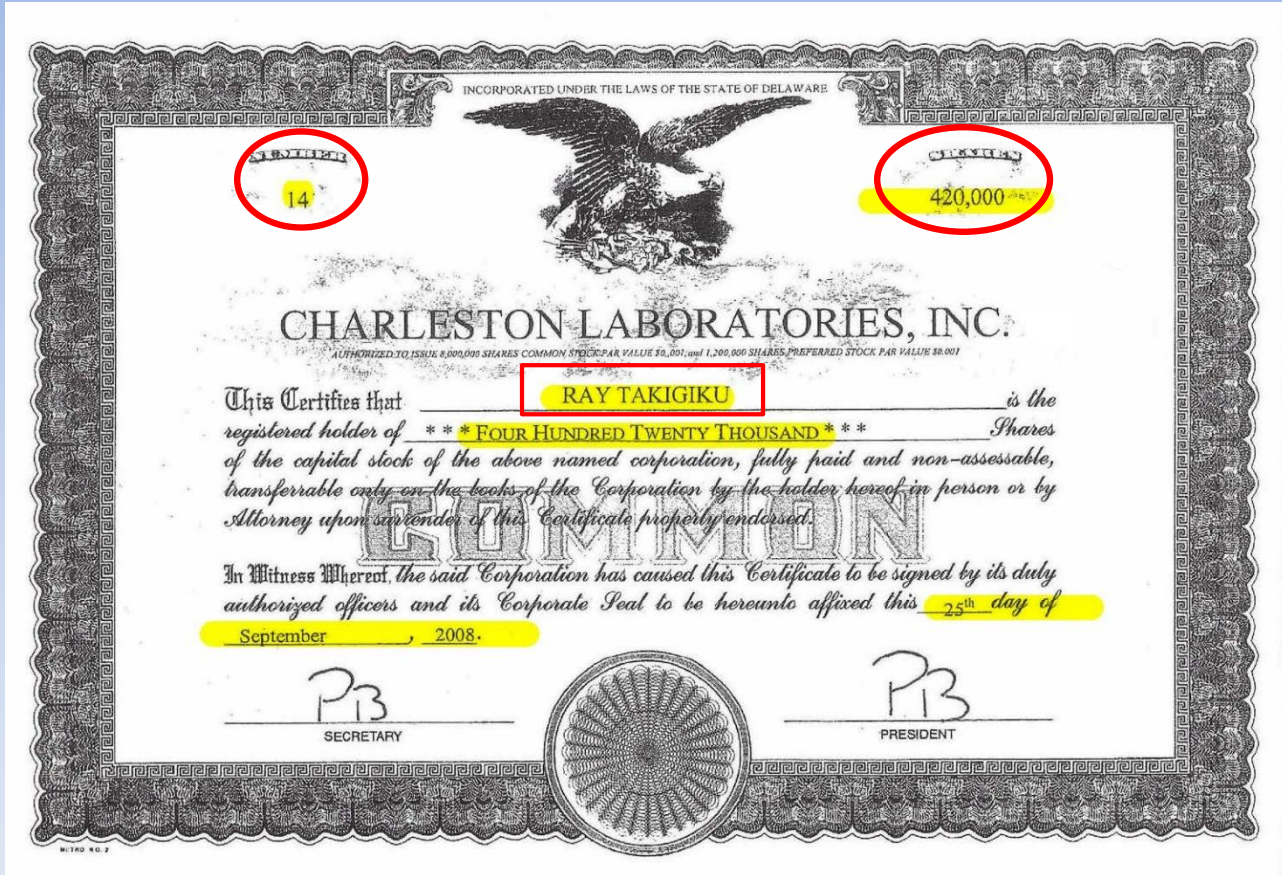
NO. OF SHARES
TRANSFERRED

210

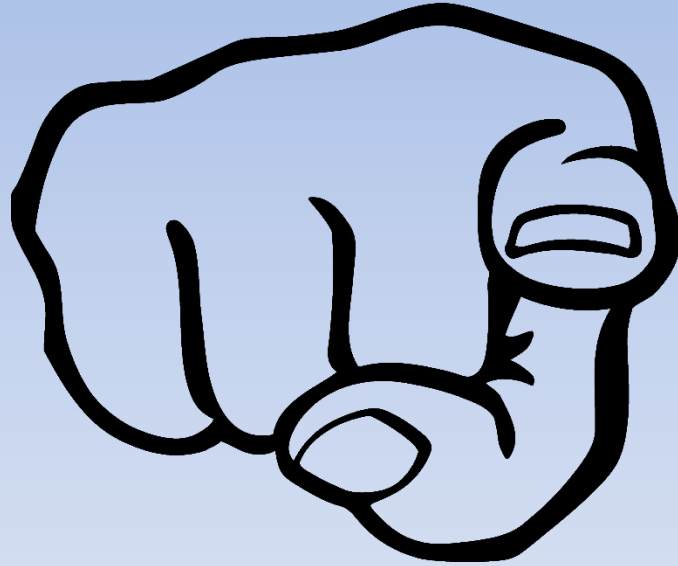
NO. OF NEW
CERTIFICATES

14

STOCK SPLIT





YOU'RE



FIRED!

TERMINATING DR. T

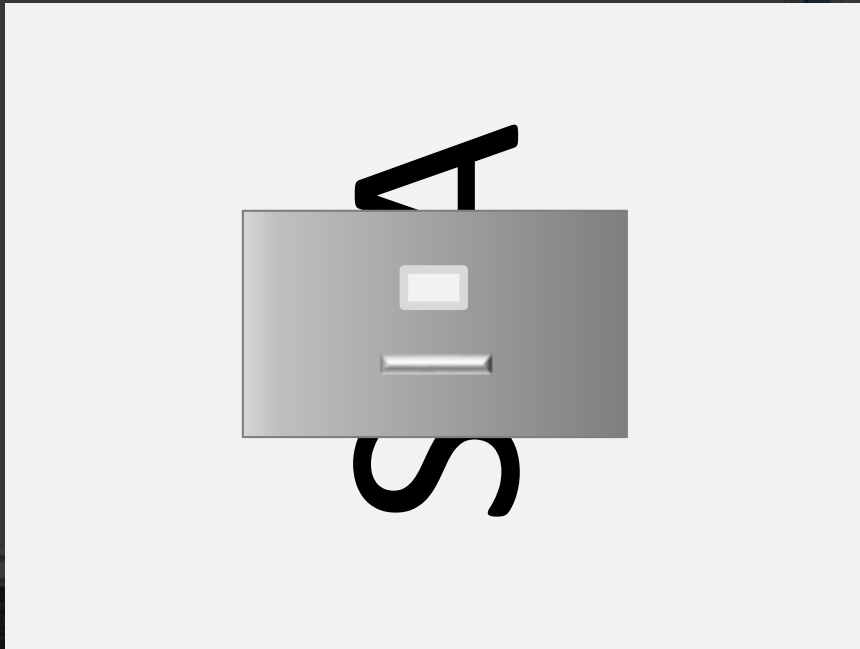
From: David Baddour 
Sent: Tuesday, March 16, 2010 11:23 AM ← **Two Years Later**
To: Dean Rutley 
Subject: Founder Restricted Stock Agmt (Takigiku)
Attachments: Founder Restricted Stock Agmt (Takigiku)-v3.DOC

Dean,

Only sent SRA – NOT SHA

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

David



IT MATTERS

SCHEDULE A TO RESTRICTED STOCK PURCHASE AGREEMENT

<u>If Employment Terminates On or After:</u>	<u>But Prior to:</u>	<u>Shares of Common Stock</u>	
May 30, 2008	May 30, 2009	105	
May 30, 2009	May 30, 2010	70	
May 30, 2010	May 30, 2011	35	70,000 Unvested
May 30, 2011	n/a	0	



Company shall have the right to repurchase the following number of Shares of Common Stock

TERMINATING DR. T



*David Baddour – May 2, 2018
Pg 36, Ln 05 – Pg 36, Ln 08*

TERMINATING DR. T

From: Paul Bosse  Charleston
LABORATORIES
Sent: Wednesday, March 17, 2010 10:58 AM
To: David Baddour  WOMBLE
CARLYLE
Subject: Termination Letter



David,

Being that none of us have ever had to terminate anyone, nor do we have a human resource department, we were hoping / would feel best if you could draft the short termination letter using the language (mutual releases, non disparagement etc.) that you know we need in the letter and we can insert the payment / stock section and place on our letterhead.

Paul





TERMINATING DR. T

From: David Baddour 
Sent: Wednesday, March 17, 2010 10:59 AM
To: Dean Rutley 
Subject: Re: **Termination Letter**



Dean,

Would you like me to do this?

From: Dean Rutley 
Sent: Wednesday, March 17, 2010 10:59 AM
To: David Baddour 
Subject: Re: **Termination Letter**

Okay. But pull a form from one of the labor & employment guys.

TERMINATING DR. T

From: Paul Bosse  Charleston LABORATORIES
Sent: Wednesday, March 17, 2010 8:30 PM
To: David Baddour  WOMBLE CARLYLE
Subject: Ray Termination
Attachments: Ray Takigiku Termination Letter.doc; Ray Takigiku Mutual Release.doc

I need to get everyone on the mgt team to sign a copy of the termination letter and overnighted to John for Friday. I need your help on the Severance section as it relates to the stock. Is it the 210 shares? and other sections as you see fit.

Paul

TERMINATING DR. T

Ref: Termination Letter with Cause

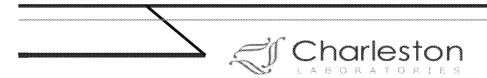
Dear Ray Takigiku, Ph.D.

Severance.

As severance, and in lieu of all ownership of Charleston Laboratories, Inc common stock, Charleston will pay to you \$70,002.10 upon closing the Series B Preferred stock investment round. The \$70,002.10 includes your \$20,000.00 original investment plus a \$50,000.00 salary for your work during the 12 month period and \$2.10 for repurchase of your original 210 common stock shares at 0.0001 notwithstanding the existence of just cause for the termination of your employment.

Attempted Reference to SRA

CC – David Baddour, Womble Carlyle Sandridge & Rice



Executive Offices
65 Gadsden St. Ste 201
Charleston, SC 29401
843-577-2626

March 22, 2010

Ref: Termination Letter with Cause

Dear Ray Takigiku Ph.D.

You are hereby notified that Charleston Laboratories, Inc has decided to terminate your employment with cause as Chief Operating Officer effective immediately. The reason for termination is abandonment of your executive and fiduciary responsibilities to the shareholders for well over 6 months and your eventual signing an exclusive employment contract without notice or resignation from Charleston as the full time CEO of Bexion Pharmaceuticals.

Severance.

As severance, and in lieu of all ownership of Charleston Laboratories, Inc common stock, Charleston will pay to you \$70,002.10 upon closing the Series B Preferred stock investment round. The \$70,002.10 includes your \$20,000.00 original investment plus a \$50,000.00 salary for your work during the 12 month period and \$2.10 for repurchase of your original 210 common stock shares at 0.0001 notwithstanding the existence of just cause for the termination of your employment. This payment is being made on a purely ex gratia basis, without prejudice, and in no way does it constitute a waiver of our position that your employment has been terminated for just cause.

Non-disparagement

The Parties agree not to make any statements, written or verbal, or cause or encourage others to make any statements, written or verbal, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of Defendant, its employees, directors, and officers. The Parties acknowledge and agree that this prohibition extends to statements, written or verbal, made to anyone, including but not limited to, the news media, investors, potential investors, any board of directors or advisory board or directors, industry analysts, competitors, strategic partners, vendors, employees (past and present), and clients.

Confidential

Page 1

3/17/2010

TERMINATING DR. T

CHARLESTON LABORATORIES

MINUTES OF MEETING OF BOARD OF DIRECTORS

March 22, 2010 at 9:30am

RESOLVED that the Corporation will repurchase all of the Common Stock currently held by the Corporation's former Chief Operating Officer, Ray Takigiku, pursuant to Article 2.2(a) of the Corporation's Stockholders Agreement.

RESOLVED that in accordance with the repurchase protocol outlined in Article 2 of the Stockholders Agreement, the Board of Directors determines the Fair Market Value of the Corporation's Common Stock to be \$0.01 per pre-recapitalization share or \$0.000005 per fully-diluted share of Common Stock.

CHARLESTON LABORATORIES, INC.

MINUTES OF MEETING OF BOARD OF DIRECTORS

March 22, 2010

The meeting of the board of directors of Charleston Laboratories, Inc. (hereinafter sometimes referred to as the "Corporation"), a corporation created under the laws of Delaware, was held on March 22, 2010, at 9:30 a.m. at 65 Gadsden Street, Suite 201, Charleston, South Carolina 29401, pursuant to a call of a majority of the initial directors.

The following directors, who are all of the initial directors of the corporation, were present: G. Paul Bosse, III.

G. Paul Bosse, III, was elected to preside at the meeting, and G. Paul Bosse, III, was elected to serve as secretary and record the minutes.


Upon a motion duly made, seconded, and unanimously carried, the following resolution was adopted:

RESOLVED that the Corporation will repurchase all of the Common Stock currently held by the Corporation's former Chief Operating Officer, Ray Takigiku, pursuant to Article 2.2(a) of the Corporation's Stockholders Agreement.




RESOLVED that in accordance with the repurchase protocol outlined in Article 2 of the Stockholders Agreement, the Board of Directors determines the Fair Value of the Corporation's Common Stock to be \$0.01 per pre-recapitalization share or \$0.000005 per fully-diluted share of Common Stock.

RESOLVED that, as a gesture of goodwill, the Corporation will gratuitously offer a severance package to the Corporation's former Chief Operating Officer, Ray Takigiku, under which the Corporation will pay Takigiku a sum of \$70,000.00 contingent upon the closing of a qualified financing.

There being no further business to come before the meeting, the meeting was adjourned.


G. Paul Bosse, III

TERMINATING DR. T

From: David Baddour 
Sent: Monday, March 22, 2010 4:19 PM
To: Paul Bosse 
Cc: Dean Rutley 
Subject: Takigiku Paperwork
Attachments: Charleston Labs–Takigiku Redemption and Release Agmt-v1.DOC; Charleston Labs–Board Consent re Redemption-v1.DOC; Charleston Labs–Takigiku Stock Power-v1.DOC

The following should be returned to Mr. Takigiku:

- 1) The second fully executed original of Redemption and Separation Agreement and Release
- 2) Check for \$420
- 3) Photocopy of his original stock certificate, with words “cancelled” stamped or written across his name

TERMINATING DR. T

ACTION WITHOUT MEETING OF THE BOARD OF DIRECTORS OF CHARLESTON LABORATORIES, INC.

March 22, 2010

WHEREAS, Mr. Ray Takigiku ("Takigiku") is and beneficial owner of Four Hundred Twenty Thousand (420,000) of the issued and outstanding shares of \$0.001 par value Common Stock of the Corporation (the "Redemption Shares");

Attempted Reference

Cert #14

WHEREAS, it is deemed to be in the best interest of the Corporation and its shareholders to redeem the Redemption Shares for a total purchase price of Four Hundred Twenty Dollars (\$420.00) in cash, and to settle all other matters relating to Takigiku's employment on the terms and conditions described in the Redemption and Settlement Agreement and Release by and between Takigiku and the Company.

ACTION WITHOUT MEETING OF THE BOARD OF DIRECTORS OF CHARLESTON LABORATORIES, INC.

The undersigned, being the sole member of board of directors of Charleston Laboratories, Inc., a Delaware corporation (the "Company"), acting pursuant to the authority of Section 141 of the Delaware General Corporation Law, does hereby adopt the following resolutions by signing his written consent thereto:

REDEMPTION OF STOCK

WHEREAS, Mr. Ray Takigiku ("Takigiku") is the record and beneficial owner of Four Hundred Twenty Thousand (420,000) of the issued and outstanding shares of \$0.001 par value Common Stock of the Corporation (the "Redemption Shares");

WHEREAS, on March 19, 2010 Takigiku was terminated for cause; and

WHEREAS, it is deemed desirable and in the best interest of the Corporation and its shareholders to redeem the Redemption Shares (the "Redemption") for a total purchase price of Four Hundred Twenty Dollars (\$420.00), payable in cash, and to settle all other matters relating to Takigiku's employment on the terms and conditions described in that certain Redemption and Settlement Agreement and Release (the "Redemption Agreement") by and between Takigiku and the Company.

NOW, THEREFORE, BE IT RESOLVED, that the proper officers of the Corporation, acting for and in behalf of the Corporation, are hereby authorized and directed to purchase from Takigiku the Redemption Shares in accordance with the Redemption Agreement for a total purchase price of Four Hundred Twenty Dollars (\$420.00); and




BE IT FURTHER RESOLVED, that the proper officers of the Corporation, acting for and in behalf of the Corporation, are hereby authorized and directed to execute and deliver the Redemption Agreement and to make the contingent severance payment described therein, upon the closing of a \$5 million financing or sale; and

BE IT FURTHER RESOLVED, that the proper officers of the Corporation, acting for and in behalf of the Corporation, are hereby authorized and directed to execute any and all further documents and take any and all further actions deemed necessary or desirable to carry out the intent and purpose of the foregoing resolutions.

WCSR 4338500v1




← **WCSR 4338500v1**

TERMINATING DR. T

From: David Baddour 
Sent: Thursday, March 25, 2010 6:20 PM
To: Paul Bosse 
Cc: Dean Rutley 
Subject: FW: Ray Takigiku
Attachments: Charleston Labs–Takigiku Package.DOC; Takigiku Redemption and Release Agmt-v2.DOC




As we've discussed, if Ray doesn't agree to the package (and the contingent \$70k payment) it is likely that he'll have a claim on the vested portion of his stock. If CL does nothing to change the status quo, it is likely that Ray will simply sit tight and do nothing, until such time as the stock becomes worth something, which is when he'll file suit. Again the worst case scenario seems to be that he'll ultimately be entitled to the vested portion of his stock.

TERMINATING DR. T

From: David Baddour 
Sent: Thursday, March 25, 2010 6:20 PM
To: Paul Bosse 
Cc: Dean Rutley 
Subject: FW: Ray Takigiku
Attachments: Charleston Labs–Takigiku Package.DOC; Takigiku Redemption and Release Agmt-v2.DOC




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Attachments: Charleston Labs–Takigiku Package.DOC; Takigiku Redemption and Release Agmt-v2.DOC

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“change the status quo” = D.J. Action

TERMINATING DR. T

From: David Baddour 
Sent: Thursday, March 25, 2010 6:20 PM
To: Paul Bosse 
Cc: Dean Rutley 
Subject: FW: Ray Takigiku
Attachments: Charleston Labs–Takigiku Package.DOC; Takigiku Redemption and Release Agmt-v2.DOC

As we've discussed, if Ray doesn't agree to the package (and the contingent \$70k payment) it is likely that he'll have a claim on the vested portion of his stock. If CL does nothing to change the status quo, it is likely that Ray will simply sit tight and do nothing, until such time as the stock becomes worth something, which is when he'll file suit. Again the worst case scenario seems to be that he'll ultimately be entitled to the vested portion of his stock.

TERMINATING DR. T

From: David Baddour 
Sent: Thursday, March 25, 2010 6:20 PM
To: Paul Bosse 
Cc: Dean Rutley 
Subject: FW: Ray Takigiku
Attachments: Charleston Labs–Takigiku Package.DOC; Tak



As we've discussed, if Ray doesn't agree to the (payment) it is likely that he'll have a claim on the v nothing to change the status quo, it is likely that Ray until such time as the stock becomes worth something, which is when he'll file the suit. Again the worst case scenario seems to be that he'll ultimately be entitled to the vested portion of his stock.

*David Baddour – May 2, 2018
Pg 28, Ln 07 – Pg 28, Ln 20*

TERMINATING DR. T



March 26, 2010

Ray Tagigiku, Ph.D

Re: Termination of Employment / Redemption and Settlement Agreement / Stock Power

On Friday March 19th your employment was terminated with cause. Please find the enclosed check in the amount of **\$2.10**, which the company hereby tenders as payment in full for **your equity**.

Cc: David Baddour, Womble Carlyle Sandridge & Rice

Womble Drafted

Sincerely,



Paul Bosse
CEO, President and Sole Director
Charleston Laboratories, Inc.



Executive Offices
65 Gadsden St. Ste 201
Charleston, SC 29401
843-577-2626

March 26, 2010

VIA CERTIFIED MAIL

Ray Takigiku P.h.D
632 Russell Street
Covington, KY 41011

Re: Termination of Employment / Redemption and Settlement Agreement / Stock Power

Dear Ray:

On Friday March 19th your employment was terminated with cause. Please find enclosed a check in the amount of \$2.10, which the company hereby tenders as payment in full for your equity.

In addition, please find enclosed two copies of a Redemption and Settlement Agreement and a single copy of a Stock Power. The settlement package described in the Redemption and Settlement Agreement includes a severance payment to you in the amount of \$70,000, which will be payable upon the closing of a qualified financing. This package is non-negotiable. Please sign one copy of the Redemption and Settlement Agreement and the Stock Power and return both to us, in order to finalize our relationship.

I need these documents signed and returned no later than April 5th 2010. If we do not receive a response from you by then, we will assume you do not intend to cooperate and we will pursue all other legal remedies at our disposal.

Sincerely,


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

TERMINATING DR. T

REDEMPTION AND SETTLEMENT AGREEMENT AND RELEASE

A. The Stockholder [Takigiku] is the holder of stock certificate no. 14, representing 420,000 of the Company's common stock, par value \$0.001 per share (the "Common Stock"). The Stockholder is a party to that certain **Stock Restriction Agreement** dated May 30, 2008, pursuant to which the Common Stock is **subject to vesting**.

B. On March 19, 2010 the Stockholder's employment with the Company was terminated **for cause**, and the Company believes it has several causes of action against the Stockholder. Nevertheless, the Company and the Stockholder desire to resolve any and all disputes as provided herein..

SRA NOT SHA

REDEMPTION AND SETTLEMENT AGREEMENT AND RELEASE

THIS REDEMPTION AND SETTLEMENT AGREEMENT AND RELEASE (this "**Agreement**"), made and entered into as of the ____ day of March, 2010, is by and between Ray Takigiku (the "**Stockholder**"), and Charleston Laboratories, Inc., a Delaware corporation (the "**Company**").

RECITALS

A. The Stockholder is the holder of stock certificate no. 14, representing 420,000 of the Company's common stock, par value \$0.001 per share (the "**Common Stock**"). The Stockholder is a party to that certain Stock Restriction Agreement dated May 30, 2008, pursuant to which the Common Stock is subject to vesting.

B. On March 19, 2010 the Stockholder's employment with the Company was terminated for cause, and the Company believes it has several causes of action against the Stockholder. Nevertheless, the Company and the Stockholder desire to resolve any and all disputes as provided herein.

C. The Stockholder desires to sell to the Company, and the Company desires to purchase and redeem from the Stockholder, all of the Stockholder's Common Stock on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. Redemption and Contingent Severance Payment

- (a) The Company hereby purchases and redeems from the Stockholder, and the Stockholder hereby sells, transfers and conveys to the Company, all of the Stockholder's right, title and interest in and to the Common Stock for the Purchase Price specified in Section 2 of this Agreement.
- (b) As a contingent severance payment, upon the closing by the Company of either (A) a convertible preferred stock financing in which the Company issues shares of convertible preferred stock with an aggregate purchase price equal to or greater than Five Million Dollars (\$5,000,000.00) or (B) a sale of all or substantially all of the assets of the Company for an aggregate purchase price equal to or greater than Five Million Dollars (\$5,000,000.00) (either (A) or (B) being referred to hereinafter as a "Qualified Transaction"), the Company agrees to pay to the Stockholder Seventy Thousand Dollars (\$70,000.00). Such payment will be made within sixty (60) days following the closing of the Qualified Transaction.

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE



SHARES

14

SHARES

420,000

CHARLESTON LABORATORIES, INC.

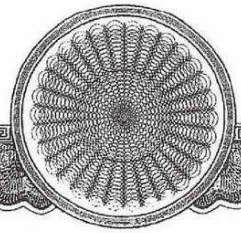
AUTHORIZED TO ISSUE 4,000,000 SHARES COMMON STOCK PAR VALUE \$0.001 and 1,200,000 SHARES PREFERRED STOCK PAR VALUE \$0.001

CANCELED
3/26/2010

This Certifies that RAY TAKIGIKU is the registered holder of *** FOUR HUNDRED TWENTY THOUSAND *** Shares of the capital stock of the above named corporation, fully paid and non-assessable, transferrable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.



In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 25th day of September, 2008.

PB
SECRETARY



PB
PRESIDENT



TERMINATING DR. T

From: David Willbrand 
Sent: Wednesday, April 7, 2010 2:07 PM
To: David Baddour 
Subject: Lawyer Contact Inquiry

I'm working with Ray Takigiku on issues relating to Charleston Labs. Office is 513-352-6646, cell is 513-240-3001 email is David.willbrand@thomsonhine.com. Look forward to speaking with you!



DW

TERMINATING DR. T

From: Unify Messaging System
Sent: Tuesday, April 27, 2010 9:11 AM
To: David Baddour 
Subject: Voice Message from Paul Bosse (8433643256) 
Attachments: VoiceMessage.wav



TERMINATING DR. T

From: David Baddour 
Sent: Tuesday, April 27, 2010 11:11 PM
To: Paul Bosse 
Subject: Your VM




Paul,

Got your VM – no word from Ray or his attorney. I recommend we sit tight, at least for now.

Keep us posted – and good luck – on the next round!



David

TERMINATING DR. T

From: David Baddour 
Sent: Thursday, May 6, 2010 11:29 PM
To: Paul Bosse 
Cc: Dean Rutley 
Subject: FW: 10 Charleston/Takigiku Conversation



Just chatted with Dean; he has to run, but thinks the counteroffer below is dead on arrival. ... **Dean's strong recommendation is to just ignore Ray and focus on closing your next round. If you want to fight with Ray once you have funding, that would be a different story.**

TERMINATING DR. T

From: David Baddour 
Sent: Friday, May 7, 2010 10:39 AM
To: David Willbrand 
Subject: FW: 10 Charleston/Takigiku Conversation

... Charleston Labs is willing to file suit and take any actions necessary to make this situation right, from their perspective.

TERMINATING DR. T




From: David Willbrand 
Sent: Tuesday, May 18, 2010 11:27 PM
To: David Baddour 
Subject: RE: 10 Charleston/Takigiku Conversation

David,

The May 30, 2008 **Stock Restriction Agreement** provides that Ray's **210** common shares are subject to a stepped buyback. If employment is terminated between May 30, 2009 and May 30, 2010, the Company can buy back 70 common shares – which, on a 2,000:1 split basis, equates to 140,000 common shares. That would leave 280,000 common shares in Ray's hands, or 4.67% of the post-settlement common and 4.25% of the fully-diluted equity. **On what basis do you believe that the Company is entitled to a full repurchase (even a for-cause termination (which Ray vigorously contests, as you know) is subject to this step process)?**


SRA vs. SHA

TERMINATING DR. T

From: Dean Rutley 
Sent: Tuesday, May 18, 2010 1:59 PM
To: Ryan Baker; David Baddour 
Cc: Paul Bosse 
Subject: RE: FW: 10 Charleston/Takigiku Conversation

Unless you can get a company favorable deal prior to closing, **my strong advice is to leave this issue alone until AFTER you have raised your next round**. Then look at negotiations with Ray and his counsel. If early discussions go sideways, it could blow up any investor deal before it happens. You'll have more cash to **fight** and more leverage after a new financing round.

CAP TABLE

From: Mitchell S. Ryan [Ryan-Lawyers.com]
Sent: Tuesday, March 8, 2011 11:55 AM
To: David Baddour 
Subject: RE: Stock Ledger / SOP



Retained by CL to assist with Cap Table

A couple of additional questions:

If we want to put all of the 420 shares formerly owned by Ray into the option pool (i.e., stock that is classified as “authorized but unissued”):

(2) In doing so, are you aware of any potential tax implications for which we should account?

CAP TABLE

From: David Baddour 
Sent: Tuesday, March 8, 2011 11:55 AM
To: Mitchell S. Ryan [Ryan-Lawyers.com]
Cc: Paul Bosse 
Subject: RE: Charleston Labs – Revised Cap Table for Auditor (Feb 2011).xlsx

To answer your questions below:


(2) I am certainly comfortable as well assuming we do in fact get Ray's shares back. In other words, all we've done is shift Ray's 420,000 shares from his line to the Option pool line on the cap table, thus there has been no net dilution. To be clear, even if we ultimately do not get all of Ray's shares back, we still have a strong argument that there is no securities law issue, given that the corporate documents clearly permit us to increase the size of the pool.

CAP TABLE



*David Baddour – May 2, 2018
Pg 169, Ln 11 – Pg 170, Ln 05*

CAP TABLE

From: David Baddour 
Sent: Tuesday, **March 10, 2011** 1:43 PM
To: Mitchell S. Ryan [Ryan-Lawyers.com]
Cc: Paul Bosse 
Subject: RE: Charleston Labs – Revised Cap Table for Auditor (Feb 2011).xlsx

I thought you had asked me to do so.

Clearly there is uncertainty about the legal status of those shares. For example, as I told Paul earlier this week, if our firm were asked to give a formal legal opinion on the capitalization of the company, we would very likely have to qualify the opinion as to the legal status of Ray's shares (until the dispute is resolved).

CAP TABLE

Message
From: Mitchell S. Ryan [mailto:mitchell@ryan-lawyers.com]
Sent: 3/7/2011 3:54:04 PM
To: Baddour, David [mailto:dbaddour@wcsr.com]

From: Baddour, David [mailto:dbaddour@wcsr.com]
Sent: Thursday, March 10, 2011 1:43 PM
To: Mitchell S. Ryan
Subject: RE: Charleston Labs - Revised Cap Table for Auditor (Feb 2011).xlsx

I thought you had asked me to do so.

Clearly there is uncertainty about the legal status of those shares. For example, as I told Paul earlier this week, if our firm were asked to give a formal legal opinion on the capitalization of the company, we would very likely have to qualify the opinion as to the legal status of Ray's shares (until the dispute is resolved). As such, I am certainly more comfortable including the note. Again, I thought you had asked me to remove it and did so based on what I thought were your instructions.

Attached has the note back in. Let me know what you think.

David

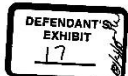
David B. Baddour | Womble Carlyle Sandridge & Rice, PLLC | Direct: 919-484-2352 | Facsimile: 919-484-2090 |
dbaddour@wcsr.com

dbaddour@wcsr.com

From: Mitchell S. Ryan [mailto:mitchell@ryan-lawyers.com]
Sent: Thursday, March 10, 2011 2:34 PM
To: Baddour, David
Subject: RE: Charleston Labs - Revised Cap Table for Auditor (Feb 2011).xlsx

Great, David. Thanks for the explanations. One quick question: I noticed that the note in the cap table re: the company's repurchase of Ray's shares was removed also – was that intentional? If so, what are your thoughts there?

Mitchell S. Ryan






CONFIDENTIAL

WBO_CHLAB0007510



*George A. Scott – ChasLabs 30(b)(6)
December 4, 2018
Pg 261, Ln 17 – Pg 264, Ln 20*

CAP TABLE

From: Rosanne Labrozzi 
Sent: Tuesday, **March 15, 2011** 12:46 PM
To: David Baddour 
Cc: Dean Rutley 
Subject: RE: Charleston Labs – Revised Cap Table for Auditor (Feb 2011).xlsx
Attachments: **Common Stock Transfer Ledger–v6.xls**

David and Dean,

Attached is the Common Stock Ledger reflecting the repurchase of Ray Takigiku's shares. Please let me know if there are any changes or corrections.

CAP TABLE

CONFIDENTIAL

CHARLESTON LABORATORIES, INC.

Last Update 3/15/2011

STOCKHOLDER LEDGER

COMMON SHARES

Stock Cert. #	Date	Stockholder	# of Shares	Consideration	From Whom Transferred or Original Issue (Cert # Referenced)	Date Certificate Surrendered	No of Shares Transferred	To Whom Transferred/Cert # Referenced
12	5/30/2008	Ray Takigiku	210		Original issue	9/25/2008 - Per 2,000:1 stock split	210	Ray Takigiku / Cert #14
Authorized to issue 6,000,000 shares Common Stock; par value \$0.001 (9/25/2008)								
13	9/25/2008	G. Paul Bosse, III	3,600,000	Transfer per stock split	G. Paul Bosse, III (Cert # 6)			
14	9/25/2008	Ray Takigiku	420,000	Transfer per stock split	Ray Takigiku (Cert # 12)	3/26/2010 per Article 2 of the Stockholders' Agreement dated May 30, 2008	420,000	Repurchased by the Corporation
14	9/25/2008	Ray Takigiku	420,000	Transfer per stock split	Ray Takigiku (Cert # 12)	3/26/2010 per Article 2 of the Stockholders' Agreement dated May 30, 2008	420,000	Repurchased by the Corporation
19	9/25/2008	John Ameling	270,000	Transfer per stock split	John Ameling (Cert # 8)			
						TOTAL # OF SHARES OUTSTANDING 5,580,000		

WBD_CHLAB0014135

wcsr 3928963

← WCSR 3928963

CAP TABLE

CHARLESTON LABORATORIES, INC.
 STOCKHOLDER LEDGER
 COMMON SHARES

Last Update: 3/15/2011

Stockholder Name	Date	Quantity	Description	Original Issue Date	Original Issue Price	Original Issue Par Value	Original Issue Cert #	Transfer Date	Transfer From	Transfer To	Transfer Cert #	
Ray Takigiku	5/30/2008	210	Original issue	5/25/2008	Per 2,000.1					Ray Takigiku	Cert #14	
G. Paul Boese, II	8/25/2008	3,600,000	Transfer per stock split	8/25/2008						G. Paul Boese, II	Cert # 0	
Ray Takigiku	8/25/2008	420,000	Transfer per stock split	8/25/2008						Ray Takigiku (Cert #12)	420,000	
John Anneling	8/25/2008	270,000	Transfer per stock split	8/25/2008						John Anneling (Cert # 9)		
Bernard P. Schachet	8/25/2008	720,000	Transfer per stock split	8/25/2008						Bernard P. Schachet (Cert # 11)		
Ryan Baker	8/25/2008	640,000	Transfer per stock split	8/25/2008						Ryan Baker (Cert #7)		
Chis Godwin	8/25/2008	180,000	Transfer per stock split	8/25/2008						Chis Godwin (Cert # 8)		
John Anneling	8/25/2008	270,000	Transfer per stock split	8/25/2008						John Anneling (Cert # 10)		
TOTAL # OF SHARES OUTSTANDING		15,680,000										

WCR 3028903



Page 2

EXHIBIT 69



George A. Scott – ChasLabs 30(b)(6)
 December 4, 2018
 Pg 265, Ln 02 – Pg 267, Ln 6

PROTECT EACH OTHER

From: Karl Knoll 
Sent: Thursday, May 26, 2011 2:30 PM
To: David Baddour 
Subject: Voice message from Knoll, Karl
Attachments: VoiceMessage.wav






PARTNER





HARVARD
LAW SCHOOL

PROTECT EACH OTHER



From: Karl Knoll 
Sent: Thursday, May 26, 2011 5:06 PM
To: David Baddour 
Subject: RE: this is what I am working off of. It shows to be right \$6.83

I knew that would be the case. **This guy is the absolute worst kind of client.** Everything is someone else's fault and he doesn't have the communications skills to explain what he needs. A formula for disaster. Maybe we really should just fire him. I am not that frustrated with him yet, but seeing the way he is reacting to this issue makes me think that **we may want to distance ourselves before something bad happens.**

PROTECT EACH OTHER

From: Karl Knoll 
Sent: Thursday, May 26, 2011 5:11 PM
To: David Baddour 
Subject: RE: this is what I am working off of. It shows to be right \$6.83

You know what, I think I will call his bluff on this. I am going to ask him to send me the last email from you where you sent over the cap table. We can use this as an object lesson and have a real heart to heart. **He either needs to change his tune or find a new law firm.**

From: David Baddour 
Sent: Thursday, May 26, 2011 5:14 PM
To: David Baddour 
Subject: RE: this is what I am working off of. It shows to be right \$6.83

Sounds good to me! But be warned, he is irrational. **It is like having a conversation with my 3 year old.**

DECLARATORY JUDGMENT ACTION



Dean Rutley – April 16, 2018

Pg 15, Ln 21 – Pg 16, Ln 03

DECLARATORY JUDGMENT ACTION

Disclosure Schedule July~~September~~ 10, 201~~20~~08

Note: The company's former COO, Ray Takigiku, was issued 210 shares of common stock on 5/30/08. These shares were subsequently included in a 2000 for 1 stock split on 9/25/08, leaving Takigiku with 420,000 shares of fully diluted stock. On March 19, 2010, Mr. Takigiku's employment was terminated. ...

... The company is presently considering pursuing a **declaratory judgment action** as to the aforementioned 280,000 shares.

Schedule
 September 26, 2007
 (the "Company")
 Schedule of Excess
 Holdings ascribed
 Section of this S
 applicable Section
 may not be refer

Section
 2.2(d)

Comment[CL11]: Karl – Do you want to revise this word? He was not an employee rather a founder who was terminated. Just don't want people to read employee here and then in the sections below see we have no employees

Note: The company's former COO, Ray Takigiku, was issued 210 shares of common stock on 5/30/08. These shares were subsequently included in a 2000 for 1 stock split on 9/25/08, leaving Takigiku with 420,000 shares of fully diluted stock. On March 19, 2010, Mr. Takigiku's employment was terminated. On March 26, 2010, the company tendered payment for all 420,000 of Takigiku's shares pursuant to the repurchase provision found in Article 2.2 of the Stockholders Agreement. While Takigiku has conceded that the company was entitled to repurchase 140,000 of his 420,000 shares pursuant to the Stock Restriction Agreement and its accompanying Vesting Schedule, Takigiku disputes the company's ownership of the remaining 280,000 shares. For present purposes, all 420,000 shares previously owned by Takigiku 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 280,000 shares. Of the 6,000,000 shares of Common Stock held by founders, an aggregate of 840,000 shares currently are subject to repurchase by the Company at \$0.64 per share in the event the holder thereof resigns or is terminated for cause, pursuant to the provisions of a stock restriction agreement signed by each of Bernard P. Schoofel (460,000 shares), Ray Takigiku (210,000 shares) and John F. Fleming (170,000 shares).

Such restrictions vest annually in three equal installments beginning on May 30, 2009, provided that (i) in the event of a "change in control" the Company's right to repurchase by the Company shall expire and be of no further force or effect, and (ii) any of the restricted shares then subject to repurchase by the Company shall expire and be of no further force or effect if the holder's employment is terminated by the

Comment [CL11]: Karl - Do you want to revise this word? He was not an employee rather a founder who was terminated. Just don't want people to read employee here and then in the sections below see we have no employees.

DECLARATORY JUDGMENT ACTION



*Dean Rutley – April 16, 2018
Pg 185, Ln 07 – Pg 186, Ln 12*

DECLARATORY JUDGMENT ACTION

Note: The company's former COO, Ray Takigiku, was issued 210 shares of common stock on 5/30/08. These shares were subsequently included in a 2000 for 1 stock split on 9/25/08, leaving Takigiku with 420,000 shares of fully diluted stock. On March 19, 2010, Mr. Takigiku's employment was terminated. On March 26, 2010, the company tendered payment for all 420,000 of Takigiku's shares pursuant to the repurchase provision found in Article 2.2 of the Stockholders Agreement. While Takigiku has conceded that the company was entitled to repurchase 140,000 of his 420,000 shares pursuant to the Stock Restriction Agreement and its accompanying Vesting Schedule, Takigiku disputes the company's ownership of the remaining 280,000 shares. For present purposes, all 420,000 shares previously owned by Takigiku 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 280,000 shares. Of the 6,000,000 shares of Common Stock held by 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 thereof resigns or is terminated for cause, pursuant to the provisions of a stock restriction agreement signed by each of Bernard P. Schachtel (360,000 shares), Ray Takigiku (210,000 shares) and John F. Ameling (270,000 shares).

David Baddour



David Baddour – May 2, 2018
Pg 23, Ln 22 – Pg 24, Ln 15

DECLARATORY JUDGMENT ACTION



David Baddour – May 2, 2018

Pg 70, Lns 05 – 08

JUSTICIABLE CONTROVERSY

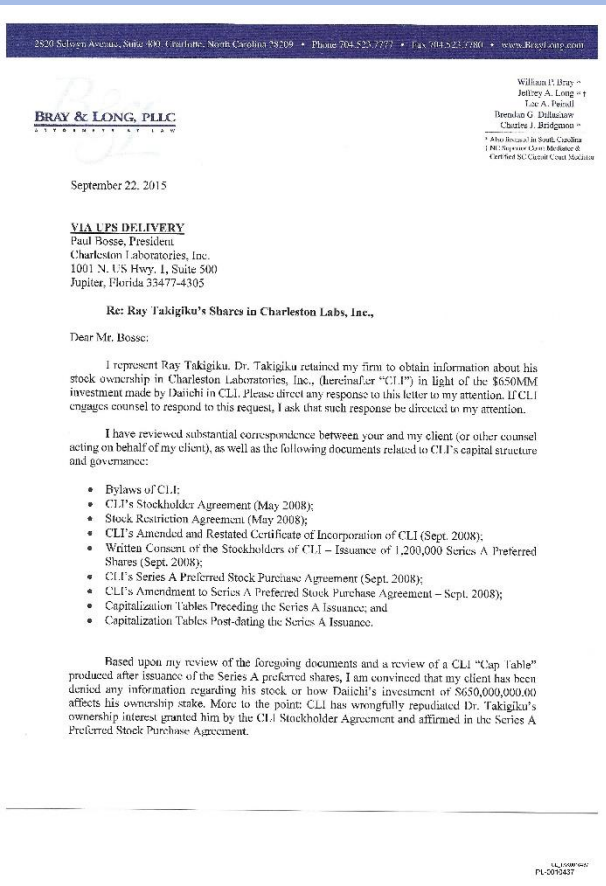
September 22, 2015

Ref: Ray Takigiku's Shares in Charleston Labs, Inc.

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.

S O L





IT REALLY MATTERS

JUSTICIABLE CONTROVERSY

From: George Scott  Charleston LABORATORIES
Sent: Tuesday, December 1, 2015 3:21 PM
To: Dean Rutley  WOMBLE CARLYLE
Subject: Charleston Laboratories, Inc. – Ray T.

Dean,

Per our discussion, please see the correspondence between Womble and Ray Takigiku's ("Ray T.") employment with Charleston Laboratories, Inc. (the "Company"), the Company's employment agreement with Ray T. and specifically, any around March of 2010 regarding any proposed stock repurchase program and the Company's exercise of its **right to repurchase his stock.**

Rutley threatens to call security

JUSTICIABLE CONTROVERSY



George A. Scott – ChasLabs 30(b)(6) – December 4, 2018

Pg 267, Ln 07 – Pg 268, Ln 17

JUSTICIABLE CONTROVERSY

A dark blue square containing the white letters 'GT' in a bold, sans-serif font.**GreenbergTraurig**
Bridget Berry



JUSTICIABLE CONTROVERSY

Bridget Berry

Deposition

Pg 30, Lines 9-15

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.

JUSTICIABLE CONTROVERSY

Bridget Berry

Deposition

Pg 77, Lns 2 – 16

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.

JUSTICIABLE CONTROVERSY

Bridget Berry

Deposition

Pg 118, Lines 10-15

A: 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.

DECLARATORY JUDGMENT ACTION

THIRD AMENDED COMPLAINT FOR DECLARATORY RELIEF

August 12, 2016

3. This is an action for declaratory relief brought pursuant to **28 U.S.C. §2201**(a) and Fed. R. Civ. P. 57.

28 U.S.C. §2201

In a case of **actual controversy** within its jurisdiction, ..., any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.

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.

Case 9:15-cv-81694-JIC Document 133 Entered on FLSD Docket 08/12/2016 Page 1 of 10

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.

DECLARATORY JUDGMENT ACTION

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

8

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.

9



*George A. Scott – 30(b)(6) – December 4, 2018
Pg 261, Lns 05 – 16*

DECLARATORY JUDGMENT ACTION

ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM TO PLAINTIFF'S AMENDED COMPLAINT

December 14, 2015

WHEREFORE, Defendant/Counter-Plaintiff, DR.
RAYMOND TAKIGIKU, prays the Court for the following:

1. **Reject the interpretation of the Stockholders' Agreement** (Charleston Labs' Exhibit "A") sought by Charleston Labs;
2. Deny Charleston Labs had the right to repurchase (or redeem) all of the shares of common stock owned by Dr. Takigiku in March 2010;
3. Declare that pursuant to the **unambiguous, plain language of the Stock Restriction Agreement, Dr. Takigiku is the rightful owner of at least 420,000 shares of Charleston Labs common stock;**

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division

CASE NO.: 9:15-cv-81694-JIC

CHARLESTON LABORATORIES, INC.,
A Delaware Corporation,

Plaintiff,

v.

DR. RAYMOND TAKIGIKU,

Defendant.

**ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM TO
PLAINTIFF'S AMENDED COMPLAINT**

Defendant, DR. RAYMOND TAKIGIKU ("Dr. Takigiku"), by and through the undersigned counsel, hereby files his Answer, Affirmative Defenses, and Counterclaim to Plaintiff's, CHARLESTON LABORATORIES, INC. ("Charleston Labs"), Amended Complaint [D.E. 5.2] and respectfully states the following:

ANSWER

For his Answer to the Amended Complaint, all allegations of which are denied unless specifically admitted. Dr. Takigiku respectfully states as follows:

PARTIES, JURISDICTION AND VENUE

1. Dr. Takigiku admits the allegations contained in Paragraph 1 of the Amended Complaint upon information and belief.
2. Dr. Takigiku is an adult citizen and a resident of Kentucky. However, Dr. Takigiku denies the allegations contained in Paragraph 2 of the Amended Complaint that he is subject to personal jurisdiction in the State of Florida.

DECLARATORY JUDGMENT ACTION

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

September 13, 2016

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.



JAMES I. COHN
United States District Judge

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

DECLARATORY JUDGMENT ACTION

FINAL JUDGMENT

September 13, 2016

Plaintiff Charleston Laboratories, Inc. is declared the true, sole owner of the 420,000 shares of stock in Charleston Laboratories, Inc. previously held by Defendant Dr. Ray Takigiku, as described in the Third Amended Complaint.


JAMES I. COHN
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-81694-CIV-COHN/SELTZER

CHARLESTON LABORATORIES, INC.,

Plaintiff,

v.

DR. RAYMOND TAKIGIKU,

Defendant.

FINAL JUDGMENT

THIS CAUSE is before the Court upon its separately entered Order on Motions for Summary Judgment [DE 152]. It is thereupon

ORDERED AND ADJUDGED as follows:

1. Judgment is entered in favor of Plaintiff Charleston Laboratories, Inc. and against Defendant Dr. Raymond Takigiku on the single count of the Third Amended Complaint [DE 133] and the single counterclaim in Defendant's Answer, Affirmative Defenses, and Counterclaim [DE 141].
2. Plaintiff Charleston Laboratories, Inc. is declared the true, sole owner of the 420,000 shares of stock in Charleston Laboratories, Inc. previously held by Defendant Dr. Ray Takigiku, as described in the Third Amended Complaint.
3. The Clerk of Court is directed to **CLOSE** this case and **DENY** as moot all pending motions.

Florida, this 12th day of September, 2016.


JAMES I. COHN
United States District Judge

DECLARATORY JUDGMENT ACTION

MUTUAL SETTLEMENT AGREEMENT AND RELEASE

January 13, 2017

➤ Settles Appeal

➤ \$250,000.00

Settlement Agreement and Release
Execution Copy: January 13, 2017

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-012316-xxxx-AMB (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

EXPERT – STANDARD OF CARE



**Law Professor (Emeritus)
University of South Carolina
1978 – present**

EXHIBIT A

DR. GREGORY B. ADAMS

University of South Carolina School of Law
Columbia, South Carolina 29208

Professional Experience

Law Professor (tenured), University of South Carolina, 1978-present.

SUBJECTS TAUGHT: Professional Responsibility; Ethical Issues in Criminal Practice; Judicial Ethics; Legal Profession; Legal Technology; Contracts; Corporate Law; Business Planning; Agency, Partnership & Limited Liability Companies; Antitrust; International Business Law; European Union Law.

Associate, University of South Carolina Rule of Law Consortium (2011-present).

Founding Director, Program on Judicial Ethics, Selection, Accountability, and Independence, University of South Carolina School of Law (2003-12).

Visiting Professor of Law, Pskov Volny University, Pskov, Russia, Spring 2001.

Visiting Professor of Law, University of Southampton, Southampton, England, Fall 1989.

Visiting Professor of Law, Rutgers University, Newark, NJ, 1983-1984.

Stagiaire, Commission of the European Communities (European Union), Brussels, Belgium, 1979.

Research Associate, Institute of European Studies, University of Brussels (U.L.B.), 1979.

Visiting Scholar, Faculté de Droit, Université Catholique de Louvain, Louvain-la-Neuve, Belgium, 1978.

Assistant Professor, Southern University School of Law, 1975-1977.

Consultant, Louisiana Legislative Council, 1976-1977.

Attorney with Breazcale, Sachse & Wilson, Baton Rouge, LA, 1973-1975.

Admitted to Practice by the Louisiana Supreme Court on October 5, 1973.

Education

J.S.D. 1986

Columbia University School of Law New York, New York

Dissertation: Control of Monopoly Power in Europe and the United States

LL.M. 1979

Columbia University School of Law New York, New York

Thesis: E.E.C. and U.S. Antitrust Regulation of Monopolists' Refusals to Deal

Jervey Fellow in Foreign Law, Parker School, Columbia University, 1977-1979.

J.D. 1973

Louisiana State University Law Center Baton Rouge, LA

Order of the Coif, Louisiana Law Review; Moot Court Board; Winner, Robert Lee Tullis Moot Court Competition before the Louisiana Supreme Court.

B.S. 1977

Louisiana State University Baton Rouge, LA

Phi Kappa Phi

College of Arts & Science, Vanderbilt University Nashville, TN 1966-1968

EXPERT – STANDARD OF CARE

It is my expert opinion that WCSR violated the standard of care in rendering legal advice and services to Charleston Labs... Some of the breaches by WCSR and its lawyers include:

i. Creating ambiguity and legal uncertainty regarding their client's rights by drafting the SRA and SHA as contemporaneous agreements without assuring their consistency and clarifying their relationship

ii. In failing to draft the March 2010 letters terminating Takigiku and repurchasing his shares to explicitly, unambiguously specify the rights being exercised by Charleston Labs and the source of those rights and in failing to correctly refer to the SHA - not the SRA - in the attached Redemption and Settlement Agreement.

STATE SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Charleston Laboratories, Inc., Plaintiff,	ACTION NO: 2017-CP-10- 3768
vs.	AFFIDAVIT OF EXPERT OPINION OF DR. GREGORY B. ADAMS
Womble, Carlyle, Sandridge & Rice, LLP, Defendant.	

PERSONALLY APPEARED before me Gregory B. Adams who, being duly sworn, deposes and says that:

1. It is my expert opinion, held to a reasonable degree of professional certainty, that the complaint in this matter alleges facts establishing that the defendant law firm, Womble, Carlyle, Sandridge & Rice, LLP, [WCSR] and its lawyers Dean Wayne Rutley and David B. Baddour had attorney-client relationships with plaintiff Charleston Laboratories, Inc. [Charleston Labs] and owed it professional and fiduciary duties, which defendant breached, failing to adhere to the standard of care required of lawyers; some of these negligent acts and the factual basis for them are set forth below:
 - A. Defendant and its lawyers Dean Rutley and David Baddour owed professional, legal, ethical, and fiduciary duties to plaintiff Charleston Labs throughout the events forming the basis for this lawsuit:
 - i. Shortly after its incorporation in June 2007, Charleston Labs retained defendant WCSR and its partner Dean Rutley to provide the legal advice and services it needed as a new business,

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EXPERT – STANDARD OF CARE

It is more likely than not that there would have been **no litigation** between Charleston Labs and Takigiku had they not breached these duties, and even if there had been claims by Takigiku or litigation, it most certainly would have been much less expensive.

STATE SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Charleston Laboratories, Inc.,
Plaintiff,

vs.
Womble, Carlyle, Sandridge & Rice, LLP,
Defendant.

ACTION NO: 2017-CP-10-3768

AFFIDAVIT OF
EXPERT OPINION OF
DR. GREGORY B. ADAMS

PERSONALLY APPEARED before me Gregory B. Adams who, being duly sworn, deposes and says that:

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DAMAGES

Greenburg Traurig Legal Fees	\$ 1,569,462.43
Settlement	250,000.00
Expert Witnesses/Other Consultants	6,666.59
SIDIS	??????????
TOTAL	\$ 1,826,129.02

DAMAGES



*George A. Scott – ChasLabs 30(b)(6) – December 4, 2018
Pg 271, Ln 09 – Pg 272, Ln 2*

ESTOPPEL DOES **NOT** APPLY

Judicial Estoppel - Elements

- (1) Two inconsistent positions must be taken by the same party or parties in privity with each other;
- (2) The two inconsistent positions were both made pursuant to sworn statements;
- (3) the positions must be taken in the same or related proceedings involving the same parties in privity with each other;
- (4) the inconsistency must be part of an intentional effort to mislead the court; and
- (5) the two positions must be totally inconsistent-that is, the truth of one position must necessarily preclude the veracity of the other position.

Quinn v. Sharon Corp., 343 S.C. 411, 422, 540 S.E.2d 474, 480 (2000)

ESTOPPEL DOES **NOT** APPLY

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Quinn v. Sharon Corp., 343 S.C. 411, 422, 540 S.E.2d 474, 480 (2000)

ESTOPPEL DOES **NOT** APPLY

Judicial Estoppel - Purpose

- The purpose of judicial estoppel is to prevent the manipulation of the judicial system by the litigants.
- ‘When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him.’ *Id.* However, the Hayne court only adopted the doctrine **as it applies to facts, not law.** [Emphasis Added]

Cothran v. Brown, 350 S.C. 352, 357, 566 S.E.2d 548, 551 (2002)

LEGAL FEES INCURRED IN MITIGATION

“The point, again, is not whether the client ultimately is able to obtain relief. **RATHER, THE POINT IS THAT THE ATTORNEY’S NEGLIGENCE PLACED THE CLIENT IN A POSITION WHERE HE FOUND IT NECESSARY TO SEEK RELIEF**, whether through application to the trial court, as here, or through an appeal. That the client was able to obtain temporary or permanent relief from the adverse judgment resulting from attorney negligence may affect the amount of damages, but it does not negate the fact of injury.” [Emphasis added]

Safine v. Sinnott, 15 Cal. App. 4th 614 (1993)

LEGAL FEES INCURRED IN MITIGATION

“The client’s injury may be the expense of retaining another attorney. Such damages can result from an attempt to avoid or minimize the consequences of the former attorney’s negligence. The negligence may be erroneous advice or an incorrect document, which allegedly resulting in the expense of defending a challenge to that advice or to a document prepared by the lawyer.” Legal Malpractice, Smith and Mallen, Section 21:6, Direct damages – Attorneys fees and related expenses. (2011 Edition).

LEGAL FEES INCURRED IN MITIGATION

“The rule barring recovery of fees does not prevent a successful legal-malpractice plaintiff from recovering as damages additional legal expenses reasonably incurred outside the malpractice action itself as a result of a lawyer’s misconduct. **FOR EXAMPLE, IF A LAWYER’S NEGLIGENT TITLE SEARCH CAUSES A CLIENT TO BUY LAND WITH AN UNCLEAR TITLE AND AS A RESULT TO INCUR LEGAL EXPENSES DEFENDING THE TITLE AGAINST A CHALLENGER, THE CLIENT MAY RECOVER THOSE EXPENSES FROM THE NEGLIGENT LAWYER.**” Restatement of the Law Third, The Law Governing Lawyers, Volume 1, Section 53, Causation and Damages. The American Law Institute.

LEGAL FEES INCURRED IN MITIGATION

All of this is inconsistent with the fee simple marketable title Shealy had the right to expect. We think it inescapable that the predicament in which Shealy finds himself at this time was proximately caused by the delicts of Walters. But for the Walters erasure, there would have been no suit by Ellis and Shealy would have the land. Judge Nicholson's order was not an intervening cause which insulated Walters from liability.

Shealy should not have been called upon to defend the action; he was brought into the court solely because the grantee in the deed was improperly substituted. He should not now be called upon, as argued by Walters' counsel, to bring two, or even one lawsuit in quest of good title. **THE LOWER COURT ERRED IN FAILING TO FIND THAT THE NEGLIGENCE OF WALTERS PROXIMATELY CAUSED INJURIES TO SHEALY.** We think that plaintiff has proved all elements of his case as a matter of law, so that if the matter had been tried before a jury a directed verdict would have been in order. [Emphasis added]

Shealy v. Walters, 273 S.C. 330, 256 S.E.2d 739 (1979)

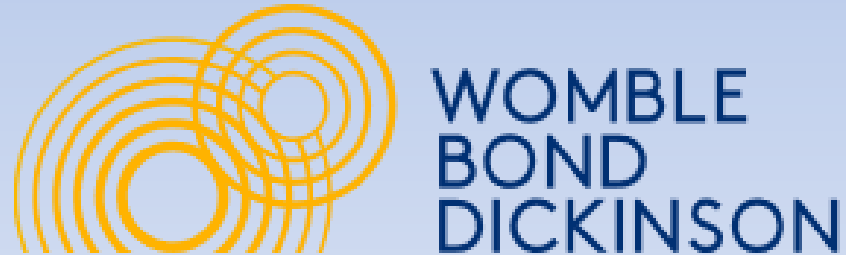
LITIGATION PROOF DOCUMENTS

“In sum, today we affirmatively recognize causes of action both in tort and in contract by a third-party beneficiary of an existing will or estate planning document against a lawyer whose drafting error defeats or diminishes the client's intent.”

Fabian v. Lindsey, 410 S.C. 475, 491, 765 S.E.2d 132, 141 (2014)



VS.



PLAINTIFF'S SUMMARY JUDGMENT PRESENTATION