

# The same old story – MiMedx’s response is typical of companies trying to cover their tracks and is unacceptable.

Recently MiMedx (NASDAQ:MDXG) was the subject of two unrelated research reports one of which by Viceroy Research. In response MiMedx held a shareholder call on September 21, ostensibly to reassure investors. Viceroy finds both the content and the subtext of the call to be selective and evasive; in our eyes MiMedx and its management failed to address the concerns raised in our previous research report.

Our previous report can be viewed at:

<https://viceroyresearch.org/2017/09/20/mimedxs-nasdaqmdxg-employment-of-kickback-bribery-scheme-inducers-makes-it-uninvestable/>

MiMedx **cherry-picked a handful** of bulls for the September 21 call last week, restricting access for their own investors and others with an interest in the events that transpired on the week ending September 22, 2017. During the call, analysts asked pertinent questions that remain substantially unanswered. To assist investors, we’ve compiled a list of items that were conveniently **ignored, avoided** or even **blatantly** misrepresented.

Over the last week, MiMedx has:

- Dismissed “Deceptive Short Seller Reports”, including Viceroy’s, which presented evidence in the form of a withheld FOIA request **suggesting that MiMedx was the subject of an undisclosed SEC enforcement investigation.**
- **Announced that MiMedx are complying with an SEC subpoena, thus subject to an SEC investigation.**
- Failed to formally announce to the market that they are a subject of an SEC investigation. **Viceroy requested management confirm whether it will fulfill their regulatory requirements by filing an 8-K in relation to an ongoing SEC investigation within the four days** of becoming aware of it. If they have not filed an 8-K within 4 days of becoming aware of an SEC investigation, they are in breach of withholding material information from the investing public.
- Been announced as the subject of an investigation by two securities litigation firms: Block & Leviton and Bragar Eigel & Squire, P.C. Both firms announced it had **commenced investigations into a class action on behalf of MiMedx shareholders** on September 22 and 25, 2017 respectively for not disclosing they were under SEC investigation, amongst other things.
- **Backdated government FAR & DFARS certification records** as far as **2013** which were previously filled out by an employee, Don Ayers – who no longer worked at MiMedx at the time of certification – with Kimberley Durgan – who only commenced employment with MiMedx in **2014.**
- **Backdated FAR & DFARS certifications** remained signed with the authority of VP Brent Miller, whose LinkedIn status as of May 2017 is ‘Officially Retired’, and thus had no authority within MiMedx at the time of the amendments.
- Announced it had come to a settlement of a confidential lawsuit with terminated employee Hal Purdy, **a move we believe serves only to distract from the issues raised in our report** which as yet go unacknowledged and undiscussed by the company. With ‘sealed’ documentation.

Viceroy believe MiMedx’s has continued its trend of extremely misleading behaviors which reinforce our belief that MiMedx is uninvestable.

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*Viceroy value MiMedx at \$0.00. Even Needham & Co wouldn’t want certain personnel hired, how can they cover a stock they would not want hired?*

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## Important Disclaimer – Please read before continuing

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## 1. MiMedx investor call and the missing 8-K

MiMedx CEO Parker “Pete” Petit would have you believe that Viceroy’s extensive investigative report released on September 20, 2017, is compiled with a “litany” of “innuendo” and material misstatements. However, a day after Viceroy’s publication MiMedx essentially corroborated the accuracy of Viceroy’s report by confirming it is a subject of an SEC investigation. A MiMedx statement was issued notifying shareholders that MiMedx were complying with a subpoena from the SEC:

Separately, Parker H. “Pete” Petit, CEO, said, “After the counterclaims alleging channel-stuffing were filed by the terminated employees last December, we began to assemble summary documentation to supply to the SEC, which would include information from the investigation conducted by the Board of Directors and others. We were in the process of taking the same proactive approach we took with the Department of Veterans Affairs (VA) as reported in our previous press release dated September 7, 2017. The Company then received a subpoena from the SEC that appears to relate to the former employees’ allegations, and primarily is related to the matters that were the subject of the Company’s previously disclosed internal investigation.”

Figure 1 Extract from MiMedx PR release – September 21, 2017

Despite having had this subpoena for at least a month, MiMedx **failed to notify its shareholders** through a formal 8-K that it had indeed been served a subpoena by the SEC. Apparently, MiMedx does not understand why the proceedings are taking place, despite the extensive number of red flags we have pointed out in our report:

September 7, 2017. The Company then received a subpoena from the SEC that appears to relate to the former employees’ allegations, and primarily is related to the matters that were the subject of the Company’s previously disclosed internal investigation.”

The Company believes that the matters related to the subpoena were reviewed as part of the completed investigation conducted by the Audit Committee of the MiMedx Board of Directors, independent outside legal counsel, the Company’s independent auditors, and executive management. The Company also engaged a

Figures 2 & 3 Extracts from MiMedx PR release on September 21, 2017

We note that in the conference call, MiMedx utilized the terms it believes “deceptive” short sellers use to mislead investors, such as “believe” and “appears”. We find it interesting that MiMedx is using language which it claims comes across as innuendo in making a succinct argument.

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*Viceroy requests management confirm whether they will fulfill their regulatory requirements by filing an 8-K in relation to an ongoing SEC investigation*

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### Déjà vu

This is not MiMedx’s first roll in the hay with improper disclosure issues. MiMedx investors would be wise to remember allegations of managerial misconduct resulting in a 2013 shareholder class action. MiMedx settled the class action law suit for a claim that alleged:

Act”). These claims are asserted against MiMedx and certain of its officers and/or directors who made materially false and misleading statements during the Class Period in press releases, analyst conference calls, and SEC filings.

Figure 4 MiMedx Class Action Lawsuit 1-13-cv-03074-TWT

Reminiscent of the events of the last few weeks; MiMedx management were alleged to have known and willingly concealed material facts from the investing public.

6. The true facts, which were known by Defendants but concealed from the investing public during the Class Period, were as follows:

Figure 5 MiMedx Class Action Lawsuit 1-13-cv-03074-TWT

Amazingly, there's a common theme: MiMedx were accused by the class action law suit of making "materially false and misleading statements during the class Period in press releases, analyst calls, and SEC Filings."

Now we've press released about a dozen significant positive events for MiMedx in the past two months or so. Now I've been here for over eight years, and I don't recall any two-month period in time at MiMedx with so many positive press release worthy events. Let me just take a moment to summarize the operational achievements that our teams here, our

Figure 6 Extract from MiMedx Call –September 21, 2017

### Impending shareholder class actions

It was no surprise to Viceroy when Block & Leviton - a securities litigation firm representing investors - announced it had commenced investigations into a class action on behalf of MiMedx shareholders on September 22, 2017.

BOSTON, Sept. 22, 2017 /PRNewswire/ -- Block & Leviton LLP ([www.blockesq.com](http://www.blockesq.com)), a securities litigation firm representing investors nationwide, is investigating whether MiMedx Group, Inc. ("MiMedx" or the "Company") (NASDAQ: MDXG) and certain of its officers and directors violated federal securities laws following claims that the Company is engaged in a fraudulent accounting scheme and is under investigation by the SEC.

On September 20, 2017, two prominent market research groups—Aurelius Value and Viceroy Research—published reports alleging, among other things, that the Company may be engaged in a scheme involving undisclosed third-party transactions and entanglements with distributors to improperly account for revenue and that the Company may be under investigation by the SEC.

Figure 7 Block & Leviton – MiMedx investigation announcement September 22, 2017<sup>1</sup>

A second securities litigation firm, Bragar, Eagel & Squire, P.C. announced on September 25, 2017 that it too was investigating potential claims against MiMedx.

NEW YORK--(BUSINESS WIRE)--Bragar Eagel & Squire, P.C. is investigating potential claims against MiMedx Group, Inc. (NASDAQ:MDXG). Our investigation concerns whether MiMedx Group has violated the federal securities laws and/or engaged in other unlawful business practices.

Bragar Eagel & Squire PC is Investigating MiMedx Group and Encourages Investors to Contact the Firm at 212-355-4648

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On September 20, 2017, the market research groups Aurelius Value and Viceroy Research published reports alleging that MiMedx may be under investigation by the SEC. The Aurelius report claimed to "see large undiscounted channel stuffing and kickback risks lurking beneath the surface at MiMedx," while the Viceroy report similarly stated that "a number of former employees-turned whistleblowers have accused MiMedx of aggressive channel-stuffing practices and improper revenue recognition policies." Following this news, shares of MiMedx fell \$0.82, or 6.2%, to close at \$12.34 on September 20, 2017.

Figure 8 Bragar Eagel & Squire, P.C. – MiMedx investigation announcement<sup>2</sup>

<sup>1</sup> <http://www.prnewswire.com/news-releases/block--leviton-llp-investigates-mimedx-group-inc-mdxg-following-revelation-of-sec-investigation-300524474.html>

<sup>2</sup> <http://www.businesswire.com/news/home/20170925006456/en/Bragar-Eagel-Squire-P.C.-Investigating-MiMedx-Group>

Investors will note that Petit, while reiterating that MiMedx had done nothing wrong, was apologizing throughout the entire conference call.

**Parker H. Petit**  
*Chairman and Chief Executive Officer*

Okay. Thank you very much. And again, I would suggest that you discuss these matters with our analysts, discuss them with us directly. I apologize maybe the third time this morning about this sort of circumstances. But something good will come out of this. These kinds of things if managed well always

*Figure 9 Extract from MiMedx conference call – September 21, 2017*

Viceroy believe that MiMedx should have been apologizing for not disclosing the SEC subpoena instead of trying to discredit the publication of factual research detailing management's missteps.

What's more obscure is that - by MiMedx's own admission - they had **"press released about a dozen significant positive events for MiMedx in the past two months or so."** Despite their prolific release schedule, they failed to inform the investors about an SEC subpoena. This is not innuendo, take COO William "Bill" Taylor's word for it:

Now we press released about a dozen significant positive events for MiMedx in the past 2 months or so. Now I've been here for over 8 years, and I don't recall any 2-month period in time at MiMedx with so many positive press release-worthy events. Let me just take a moment to summarize the operational achievements that our teams here, our group at MiMedx, have accomplished, which really emphasize how we are hitting on all cylinders organizationally.

*Figure 10 Extract from MiMedx conference call – September 21, 2017*

We question what Taylor considers a "press release-worthy event" and where an SEC subpoena fits in to this criteria. Note that the receipt of the SEC subpoena was only announced the morning of the investor call when it appears to have been received quite some time prior. As detailed in section 5 of this report, Petit has previously been the subject of a shareholder class action for improper disclosure at Matria Healthcare, his previous company.

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*MiMedx were accused by the 2013 class action law suit of making "materially false and misleading statements during the class Period in press releases, analysts' calls, and SEC Filings."*

*Only after our report did MiMedx admit the existence of an SEC subpoena and investigation.*

*Several securities litigation firms have begun investigation into potential shareholder class actions based on management's improper disclosure.*

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## 2. The mysterious FAR & DFARS backdated record changes

In our initial report published on September 20, 2017, we highlighted a number of issues. Amongst them, MiMedx's FAR & DFARS (Federal Acquisition Regulation & Defense Federal Acquisition Regulation Schedule) report was signed by **Donald Ayers<sup>3</sup>**, who not only worked for a competitor/other provider for nearly 2 years while with MiMedx, but had left MiMedx 3 months prior to the date of the 2017 FAR & DFARS report. Viceroy have reported this discrepancy along with issues concerning the conduct of principals to the Office of the Inspector General of the VA and GSA.

**Viceroy note the lack of comment by MiMedx on this**, preferring the default position of claiming its opponents are vicious liars. However, investors can make simple checks and confirm what disclosures are required and who should sign the reports.

Since the publication of our report, MiMedx have gone about backdating the certifying party on their FAR & DFARS report to a Kimberly Durgan. We sarcastically applaud MiMedx for taking the initiative.

This is significant for those dealing with the United States Government given the importance of transparency on the part of contractors. Viceroy contacted the GSA relating to SAM (Schedule for Award Management) procedures who emphatically stated they would not advise anyone backdating filings, instead adding amendments and make clear changes have occurred with notes showing the reasons why. MiMedx preferred instead to attempt to change history. We consider this another admission by MiMedx of misconduct and the impropriety of listing Ayers as certifying party.

Below are the reports both before and after publication, note the change of the MiMedx representative from Don Ayers, to Kimberly Durgan:

FAR & DFARS Report
<b>Certification for: MiMedx Group, Inc.</b> <b>DUNS: 876485496</b> <b>Certification Validity From: Mon Mar 27 12:13:59 EDT 2017</b> <b>To : Tue Mar 27 12:13:59 EDT 2018</b>
<p>I have read each of the FAR and DFARS provisions presented below. By submitting this certification, I, <b>Donald Ayers, am attesting to the accuracy of the representations and certifications contained herein</b>, including the entire NAICS table. I understand that I may be subject to penalties if I misrepresent MiMedx Group, Inc. in any of the below representations or certifications to the Government.</p> <p>By maintaining an active entity registration in SAM, the entity complied with requirements to report proceedings data in accordance with FAR 52.209-7 Information Regarding Responsibility Matters and with requirements to report executive compensation data in accordance with FAR 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards.</p> <p><b>FAR 52.203-2 Certificate of Independent Price Determination (Apr 1985)</b></p> <p>(a) The offeror certifies that-</p> <ul style="list-style-type: none"><li>(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to-</li><li>(i) Those Prices</li><li>(ii) The intention to submit an offer; or</li><li>(iii) The methods or factors used to calculate the prices offered.</li><li>(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and</li><li>(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.</li></ul> <p>(b) Each signature on the offer is considered to be a certification by the signatory that the signatory-</p> <ul style="list-style-type: none"><li>(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or</li><li>(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision: <b>Brent Miller, Exec VP;</b></li><li>(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; and</li><li>(iii) As an agent, has not personally participated, and will not participate, in any action contrary to</li></ul>

Figure 11 MiMedx's 2017 FAR & DFARS Report prior to Viceroy Publication

<sup>3</sup> <https://www.linkedin.com/in/don-ayers-a3a942a/>

## FAR & DFARS Report

Certification for: MiMedx Group, Inc.

DUNS: 876485496

Certification Validity From: Mon Mar 27 12:13:59 EDT 2017

To : Tue Mar 27 12:13:59 EDT 2018

I have read each of the FAR and DFARS provisions presented below. By submitting this certification, I **Kimberly Durgan**, am attesting to the accuracy of the representations and certifications contained herein, including the entire NAICS table. I understand that I may be subject to penalties if I misrepresent MiMedx Group, Inc. in any of the below representations or certifications to the Government.

By maintaining an active entity registration in SAM, the entity complied with requirements to report proceedings data in accordance with FAR 52.209-7 Information Regarding Responsibility Matters and with requirements to report executive compensation data in accordance with FAR 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards.

### FAR 52.203-2 Certificate of Independent Price Determination (Apr 1985)

- (a) The offeror certifies that-
  - (1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to-
    - (i) Those Prices
    - (ii) The intention to submit an offer; or
    - (iii) The methods or factors used to calculate the prices offered.
  - (2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
  - (3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.
- (b) Each signature on the offer is considered to be a certification by the signatory that the signatory-
  - (1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or
  - (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision: **Brent Miller, Exec VP;**
    - (ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; and
    - (iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision.

Figure 12 MiMedx's 2017 FAR & DFARS Report after Viceroy Publication

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*Since our publication MiMedx have quietly gone about backdating the certifying party on its SAM FAR and DFARS report to a Kimberly Durgan. Durgan is employed as a contracts assistant at MiMedx.*

*MiMedx changed the FAR/DFAR to Kimberley, however they missed a crucial detail: Kimberley Durgan did not have the authority of Brent Miller Exec VP of MiMedx as highlighted above, because Miller retired in May 2017.*

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Unfortunately for MiMedx this has created somewhat of a temporal problem with its filings as its FAR & DFARS reports are **once more** are signed by employees who were not at the company during the time of signing.

## Brent Miller

Brent Miller, VP is listed as the authorizing person allowing the signatory to act for the principals of the company in the 2013 through 2017 FAR & DFARS reports. Miller's LinkedIn tells a conflicting story: **he left MiMedx in May of 2017**. While this timeframe is consistent with the original 2017 report signed by Ayers, we find it difficult to understand how he could authorize Durgan considering the **amendment occurred after he left the company**.

This is important as without authorization the FAR & DFARS report is essentially **signed with no authority and of questionable legitimacy, never mind disclosures required for MiMedx principals involved in Advanced BioHealing's kickback and bribery scheme such as Sean McCormack and others**.

**Brent Miller**  
Officially Retired at Brent Miller LLC  
Brent Miller LLC • Rensselaer Polytechnic Institute  
Greater Atlanta Area • 177

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Results-focused sales, marketing and business development executive with a proven track record of increasing revenues and EBITDA in the Healthcare sector. Broad based general management experience in both do...

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### Experience

**Officially Retired**  
Brent Miller LLC  
May 2017 – Present • 5 mos

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**Executive VP**  
MiMedx Group  
**Jun 2012 – May 2017 • 5 yrs**  
Marietta, Georgia

MiMedx® is the global premier processor, marketer, and distributor of human amniotic tissue. MiMedx® has distributed over 130,000 amniotic tissue grafts worldwide and achieved profound clinical outcomes in multiple therapeutic areas including ophthalmology, spine, chronic wounds, dental, orthopedic surgery, sports medicine, and urology. Over 50,000 of those amniotic tissue grafts were delivered in 2012 alone. With this groundbreaking human tissue offering that promotes bioactive healing, MiMedx® believes its unmatched knowledge and superior processing of amniotic tissue strategically positions the Company to become the leader in regenerative medicine.

Figure 13 Extract from Brent Miller's LinkedIn profile<sup>4</sup>

**So where is MiMedx's transparency?** Rather than admit their compliance issues, MiMedx set about changing things quietly hoping people would not notice. **Viceroy are always backed up – for the record, this is innuendo.**

The reality is, **the certification is once again invalid and the method of its amendment is extremely questionable for a company whose CEO claims:**

<sup>4</sup> <https://www.linkedin.com/in/brent-miller-8014519/>



Again, our organization has done the right thing. And this painful process will soon pass. I do not believe there will be anything that dismantles our rapid revenue and profit growth. I'll say that again. I do not believe there will be anything that transpires that dismantles our rapid revenue and profit growth. There are very few public companies that have the quality, compliance systems and the disciplines to administer them as we do.

Figure 14 Extract from MiMedx conference call – September 21, 2017

In one sense, we must agree that very few public companies have such compliance systems; most of them have systems that work.

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*"Investors should demand to know whether the company has disclosed to the federal government that they are retroactively changing their historical records"*

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### Kimberly Durgan

Likewise, in their haste to alter documents we had backed up, **MiMedx changed the signatory to their 2013 FAR & DFARS reports to Kimberley Durgan**. In fact, all MiMedx's FAR & DFARS reports dating back to 2013 now list Durgan as the certifying party.

Viceroy do not believe in time travel, but apparently MiMedx and Durgan do. **Durgan did not commence employment with MiMedx until 2014**, bringing in to question how she could be signatory to a 2013 MiMedx FAR & DFARS report

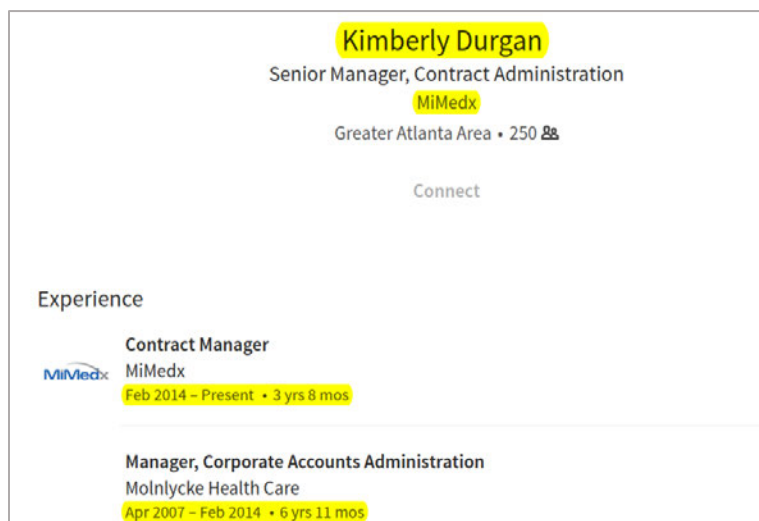


Figure 15 Extract from Kimberley Durgan's LinkedIn profile<sup>5</sup>

MiMedx in their desperation to sweep the issue under the rug, **made false statements to the GSA again** relating to their certification by wholesale amendments to their disclosures. **Viceroy can only conclude that MiMedx have little respect for the compliance and certification of GSA policies.**

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<sup>5</sup> <https://www.linkedin.com/in/kimberly-durgan-20132311/>

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*How could these revised reports be valid? Durgan was not even employed by MiMedx at the time of the 2013 FAR & DFARS report. Don't take our word for it, look for yourself.*

*Viceroy do not believe in time travel, but apparently MiMedx and Durgan do. MiMedx in their desperation to clean up their compliance, made false statements to the GSA relating to their certification.*

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### Viceroy's investigation continues

Viceroy have notified the OIG of the GSA (<https://www.gsaig.gov/>) and VA (<https://www.va.gov/oig/>) relating to this attempt to **adjust records without following the necessary compliance requirements and checks.**

It is not innuendo or a false statement, **but fact** that MiMedx's FAR & DFARS reports were signed off by someone no longer employed by the business, making the statements false. Nor is it innuendo, that since the publication of our research, MiMedx have **backdated government records without following the necessary compliance requirements or, in any case, due care.**

We reverted to this compliance certificate after our publication as we expected MiMedx to make corrections regarding its principals' involvement with Advanced BioHealing's bribery and kickback scheme. Upon checking, MiMedx had discreetly backdate several reports with a new certifier, Kimberly Durgan, which remains factually incorrect as VP Brent Miller, whom Durgan is acting with authority from, no longer worked at MiMedx. Additionally, Durgan has backdated certifications back to 2013, when only employed by the business in 2014.

In line with the SEC subpoena that the company only admitted after our report, MiMedx have resorted to attempting to change the past. MiMedx underestimate the research backups that are prudent when publishing a report.

### 3. Miscellaneous plot holes in the “MiMedx director’s cut”

The following is a quote from MiMedx’s September 21 investors call:

*“We’ve never had a distributorship owned by employees or family of employees. The only one we have is we have a former employee that is a distributor of ours now.”*

- William “Bill” Taylor (COO)

**Viceroy’s response: Impossible.** Stability Biologics alone would classify as one former employee distributor – we’ve identified several others. Stability Biologics was a disastrous acquisition by MiMedx, one that displayed signs of channel-stuffing.

**William Charles Taylor**

*President, Chief Operating Officer and Director*

We’ve never had a distributorship that was owned by employees or family of employees. The only one we have is we have a former employee that is a distributor of ours now. But we’ve never sold products to or recognize revenue from any arrangement as you described. We’ve never had anything like that.

*Figure 16 Extract from MiMedx conference call – September 21, 2017*

Stability Biologics’ prior stakeholders, who eventually re-purchased the Stability business, were listed as employees of MiMedx in the company’s most recent annual filings.

**15. Related Party Transactions**

On January 13, 2016, when the Company completed the acquisition of Stability Inc., d/b/a Stability Biologics (“Stability”) there was an assumed payable of \$5,954,555 to a related party. The Company made payments of \$1,361,030 during 2016. The payable was further reduced by \$3,367,250 as a result of the return or destruction of expired inventory. The outstanding payable at 12/31/16 is \$1,226,275 and is included in Accounts Payable. The related party is a limited liability company that is controlled by a former stockholder of Stability Inc. who is now an employee of the Company.

*Figure 17 Extract from MiMedx 10-K<sup>6</sup> – page 74*

If this is the company Taylor is referring to, Viceroy’s report further highlighted the following employee owned firms:

- **SLR Medical** – established by Jerry Morrison<sup>7</sup> in 2010, and remains active. Morrison catalogues MiMedx products in SLR’s website, which remains active: [www.slrmedicalconsulting.com](http://www.slrmedicalconsulting.com)  
SLR was also named in whistleblower reports as a channel stuffing facilitator, who would allegedly purchase substantial portions of MiMedx goods on favorable credit terms, and store them within MiMedx facilities<sup>8</sup>.
- **Streamlogix / Spinelogix** – is a company owned by current MiMedx employee: Frank H Braly<sup>9</sup>. SpineLogix catalogues MiMedx items for sale on its website: [www.spinelogixllc.com/shop/](http://www.spinelogixllc.com/shop/)

<sup>6</sup> FY 2016 Annual Filings – 10-K

<sup>7</sup> <https://www.linkedin.com/in/jerry-k-morrison-a8771a3/>

<sup>8</sup> Kruchoski vs MiMedx Case No.: 50-2016-CA-013806-XXXX-MB Filing #9739508

<sup>9</sup> <https://www.linkedin.com/in/frank-braly-a5992333/>



Figure 18 Extract of Jerry Morrison's LinkedIn profile<sup>10</sup>

Aurelius Value, who released an exceptional report unconnected to Viceroy's, further **highlighted an entanglement of related party distributors.**

Aurelius Value's report can be viewed at: <http://aureliusvalue.com/research/mimedx-flying-close-sun/>

Upon further investigation, Viceroy conducted searches on several ex-Advanced BioHealing employees on numerous state registers. A number had operated businesses with names that sounded like a MiMedx product distributor. For example, our case study Sean McCormack appeared to hold a business which was deregistered earlier in 2017 called Applied Biosolutions, LLC.

Officer/Registered Agent Name List		
Officer/RA Name	Entity Name	Entity Number
<a href="#">MCCORMACK, SEAN</a>	MACS RESTORATION, LLC	L08000105679
<a href="#">MCCORMACK, SEAN</a>	MACS RESTORATION, LLC	L08000105679
<a href="#">MCCORMACK, SEAN</a>	ALWAYS FAITHFUL MOVING, LLC	L11000124348
<a href="#">MCCORMACK, SEAN</a>	HURLEY MCCORMACK INC.	P03000066207
<a href="#">MCCORMACK, SEAN</a>	MAC'S MOVING AND STORAGE, INC.	P03000123175
<a href="#">MC CORMACK, SEAN A</a>	MC CORMACK INC.	P94000064436
<a href="#">MCCORMACK, SEAN MICHAEL</a>	APPLIED BIOSOLUTIONS, LLC	L15000137069
<a href="#">MCCORMACK, SHARON</a>	TRUTH FOR THE FINAL GENERATION, INC.	N04000011555

Figure 19 Extract from Florida Business Registry

McCormack was one of many we found to hold or have previously held what appear to be distribution companies outside of their regular duties as MiMedx employees.

Just for the record, MiMedx will no doubt have excuses for this so we also highlight the case of Nicholas Andolino.

<sup>10</sup> <https://www.linkedin.com/in/jerry-k-morrison-a8771a3/>



## Nicholas Andolino and NJG Biosurgical

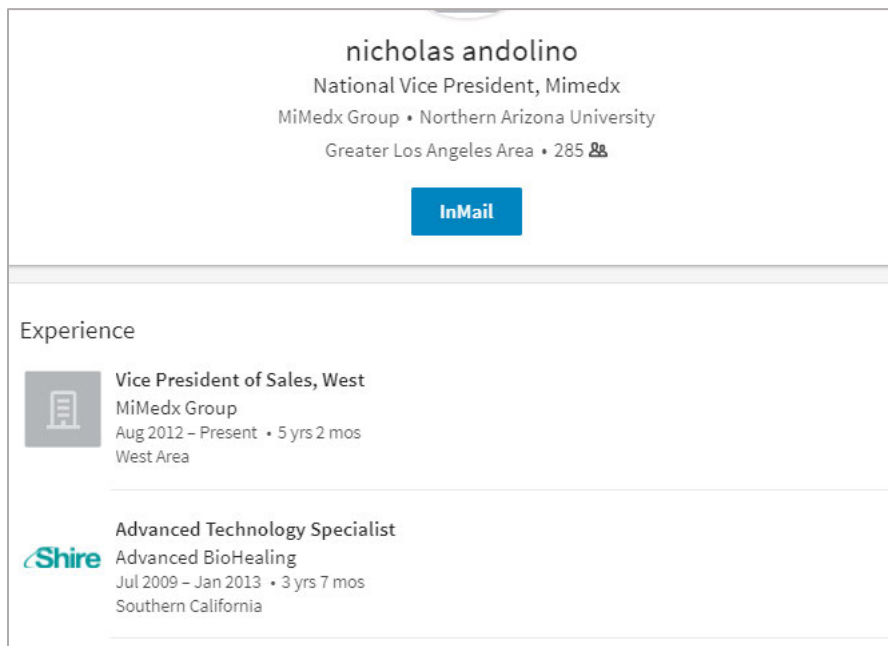


Figure 20 Extract from Nicholas Andolino<sup>11</sup>

As visible above, Nicholas Andolino is the Vice President of Sales at MiMedx, a position he has occupied since August 2012.

Nicholas Andolino is also the owner of NJG Biosurgical LLC, a California company he founded in June 2012 and only dissolved in August 2016 according to California company filings<sup>12</sup>. We doubt that Andolino would keep a defunct company running for 4 years, much less that a company named NJG Biosurgical LLC is not in the field of biosurgical products.

<sup>11</sup> <https://www.linkedin.com/in/nicholas-andolino-8b6960a/>

<sup>12</sup> To view the filings, visit <https://businesssearch.sos.ca.gov/> and enter “201220010197” in the search criteria field with “entity number” selected as field type.

Pete says: Sean McCormack was not a target of the SEC investigation into ABH, period, end of discussion  
Viceroy congratulates Needham & Company analyst Michael Matson for stating the obvious here:

**Michael Stephen Matson**

Needham & Company, LLC, Research Division

Viceroy will – it's Sean McCormack

Okay, I understand. And then -- but I guess specifically, there is at least 1 particular employee, and I'm not going to mention names, but that's called out in one of these reports that apparently was cited in some of the filings around Advanced BioHealing legal action. So I mean, I guess, how do you respond to that? I mean, it seems like this is someone that you would not have wanted to hire, but yet he is an employee of the company now. So I mean, is -- those legal filings, is that not factually correct that he's actually named in those filings and was involved with some of those stuff?

Figure 21 Extract from MiMedx conference call – September 21, 2017

The employee in discussion is Sean McCormack, **MiMedx's Director of New Market Initiatives** we must not forget the other ~50 ex-Advanced BioHealing employees employed at MiMedx. After investigating Advanced BioHealing and the claims of former employees, McCormack's involvement stood out as a key influence on the kickback and bribery scheme. He was specifically named as directing the illegal inducements to improve sales usually through bribery and kickbacks per Figure 20 below:

19. Many of these inducements were directed by National Sales Director Sean

McCormack. Others were directed by Regional Manager Pete Goodwyn.

Figure 22 Advanced BioHealing Case Complaint 8-11-cv-00176-JSM-MAP<sup>13</sup>

Perhaps most concerning is that Sean McCormack appears to have been one of those responsible for training the sales staff committing these offenses:

**ABH's Remuneration-Based "Marketing" Program**

56. Harvey worked for ABH for just over one year. During that time, he witnessed rampant use of remuneration by ABH sales representatives.

57. Upon joining the Company, he attended a training conducted by Keith O'Briant, Tony Ezell, and Sean McCormack.

58. At that time, O'Briant was the Vice President of Sales; now, he is ABH's Senior Vice President of North American Sales.

59. Ezell is the Western Regional Sales Director and McCormack is the Eastern Regional Sales Director.

Figure 23 Extract from Case 1:11-cv-00898-KBJ – COMPLAINT - Plaintiff/Relater Mark J. Harvey

As a side note, MiMedx did not elaborate on what "New Market Initiatives" McCormack had established throughout his employment, nor what his responsibilities were at all.

<sup>13</sup> Advanced BioHealing Case Complaint 8-11-cv-00176-JSM-MAP Available on PACER

#### 4. The “Bill & Pete Shoot Themselves in the Foot” segment

Here are statements by William “Bill” Taylor, MiMedx’s COO and Parker “Pete” Petit MiMedx’s CEO, which we believe are concerning at best, and incriminating at worst. The following passages are taken from MiMedx’s September 21 conference call. While the purpose of the call was ostensibly to reassure investors that all is well in MiMedx, management appear to contradict themselves within the call leading to some unsavory conclusions.

“MiMedx has strong controls, but these do not apply for employees who choose to operate outside those controls”

Taylor claims that MiMedx has policies and procedures which prohibit activities which fall within the definition of federal violations, however the company has no way of telling if people are avoiding MiMedx’s policies and procedures.

**William Charles Taylor**

*President, Chief Operating Officer and Director*

If I could add in there too. We have policies and procedures that explicitly prohibit that kind of behavior. We also have controls in place that should that behavior occur, we can typically pick it up. But if people operate outside of our controls, if they do something on their own, where we have no way of verifying what they've done or no knowledge of it, those are the kind of situations that we're talking on here.

*Figure 24 Extract from MiMedx conference call – September 21, 2017*

Petit had previously claimed:

Again, our organization has done the right thing. And this painful process will soon pass. I do not believe there will be anything that dismantles our rapid revenue and profit growth. I'll say that again. I do not believe there will be anything that transpires that dismantles our rapid revenue and profit growth. There are very few public companies that have the quality, compliance systems and the disciplines to administer them as we do.

We do miss something minor from time to time, yes. Once we find it, however, we quickly correct it. A

*Figure 25 Extract from MiMedx conference call – September 21, 2017*

We find the two above statements to be in direct conflict; as very few public companies seem to have the number of legal actions against employees for violation of non-compete agreements as MiMedx.

MiMedx’s “strong controls” appear to have missed the following events making us wonder if they even exist at all:

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*Settling a class action law suit for concealing information from the investing public.*

*Failing to disclose an SEC subpoena. Viceroy happen to believe the SEC don't issue subpoenas for “innuendo” or “shits and giggles”*

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## Petit pre-empting SEC investigation

Pete Petit made a comment that at one of this previous businesses, Healthdyne, he pre-emptively reported internal fraud to the SEC.

We had an audit from a Big 8 auditing firm, which was quite unusual for an \$8 million to \$10 million a year business. We did our normal due diligence and bought the business. Within a few months, I got 2 "Dear Pete" letters, which is a process we've always had that allows employees to write me directly on a form to discuss problems that they have seen or have.

Both the letters basically said that there was, perhaps, some fraud taking place at the company. I set an internal audit team up. And within a few weeks, we've had a company that previous owners had set up to funnel money through to doctors to pay them to prescribe patients for the black lung services. We got all the information, and we took it to the black lung program [indiscernible]. They thanked us and stated that no one had ever come forward like this previously. We found out that these 2 principals had been paying doctors, lawyers and [ some other ] people.

Initially, the regulators turned on us. However, within a few months, I received a phone call thanking me for what we've done. He related we had broken the back of the fraud that had been taking place in Kentucky for years. He said they'd never been able to break into the inner sanctum, but our information allowed them to do that. He told me they were indicting doctors, lawyers and even some Kentucky politicians.

Therefore, Healthdyne went through a period of time where I thought like doing the right thing was not going to be respected by regulators. However, it was. Therefore, we did the right thing, not necessarily the easy thing. And now frankly, that's still my philosophy.

*Figure 26 Extract from MiMedx conference call – September 21, 2017*

Petit goes on to say that this is 'exactly what he did' when the allegations by whistleblowers - which management continuously dismiss as false – were brought to light. Petit goes as far as to say he had planned to send the SEC a 'package' containing an internal fraud investigation regarding the MiMedx whistleblowers.

That's exactly what we did when we faced all these allegations that were publicized by the attorney for 2 of our fired employees last December. The attorney went public to attempt to intimidate MiMedx into paying a huge ransom to stop the allegations. As always, we did the right thing. We did our investigation through the executive management, through our board, through our audit committee, through our outside attorneys, through our auditors, and we even hired an outside expert on revenue recognition.

Almost immediately, we went to the regulatory agencies that would be involved since these salespeople involved were selling to the Veterans Administration hospitals. We went straight to the Veterans Administration and made contact with the Office of the Inspector General. We were in the process of preparing a similar package for the SEC when they contacted us.

*Figure 27 Extract from MiMedx conference call – September 21, 2017*

MiMedx has previously claimed that its employees were in breach of a non-compete agreement which we note is not an SEC matter.

Once again, we find these two statements to be somewhat contradictory with the narrative MiMedx has been pushing so far: had MiMedx been breaching the law, albeit through the actions of former employees? Or were the allegations made by employees lies?



## 5. Petit's previous ventures

Pete Petit on several occasions has used his professional track record as a perception qualifier in order to convince shareholders he is incapable of (if not unknowingly) committing fraud. In reality, Petit's professional track record is littered with allegations of securities and federal violations.

### Matria Healthcare is a stellar example

Prior to running MiMedx Petit was the founder of Healthdyne, who eventually merged with another entity to become Matria Healthcare. Matria Healthcare, under Petit's stewardship, was eventually sold to Alere Inc. (previously Inverness Medical Innovations) after a lurid series of events connected to regulatory breaches and managerial wrongdoing.

### The Off Wall Street report

Matria was the subject of a short seller report by Off Wall Street in 2006.

In a similar fashion to MiMedx's PR release titled "MiMedx Responds To Deceptive Short Seller Reports", Matria immediately took to the media to dismiss the bearish Off Wall Street report, which **Pete Petit claimed to be full of "misstatements and innuendo" – sound familiar?**

Amongst the claims made by Off Wall Street were concerns for large Matria acquisitions in disease management, claiming that growth in that sector was slowing.

OWS's new report also mentions that Matria made two acquisitions in 2005, which added to its growth in disease management revenues. That is correct. What is not correct is the suggestion that management had not disclosed the impact of those acquisitions on its growth rate or the underlying innuendo that disease management growth is slowing. Recall that the first OWS report claimed that the disease management industry was becoming "commoditized." This report seems to be similarly intent on discrediting the growth potential in the disease management area of healthcare. Investors can make up their own minds about that issue.

Figure 28 Extract Matria Healthcare – 8-K filing dated 22 March 2006 <sup>14</sup>

Investors did not have to wait long to see the disastrous effects of Matria's acquisitions – by June, Matria had slashed its aggressive full-year targets, with Pete Petit citing – you guessed it – Matria's major acquisitions in the disease management space:

"The market's reaction to our acquisition of CorSolutions appears to be a general delay in awarding new-employer business to Matria," explained CEO Pete Petit. "Because our acquisition of CorSolutions is currently the largest transaction of this nature to occur in the disease-management market, consultants and prospective clients are being cautious. ... We believe this market pause is temporary, and the metrics upon which we acquired CorSolutions are still very compelling."

Figure 29 Extract from The Street article - 2008 <sup>15</sup>

At the time of Off Wall Street's report release, Matria shares were trading at ~\$45 per share. By June, Matria shares were trading at ~\$22 per share; the Off Wall Street article target price<sup>16</sup>. Matria was sold in 2008 at an implied value of \$39 per share (\$6 in cash, remainder in stock), well below the peak price in 2006.

Ironically, Piper Jaffray were already following the mantra of Pete Petit at this time, being one of Matria's staunchest sellside supporters.

The insinuation by Pete Petit on MiMedx's investor call on September 21, 2017 that Off Wall Street short sellers were somehow proven wrong due to the sale of Matria is false – the per share sale price was well below the peak

<sup>14</sup> Matria Healthcare – 8-K filing dated 22 March 2006

<sup>15</sup> <https://www.thestreet.com/story/10290585/1/matria-mashed-again.html>

<sup>16</sup> See footnote 2

price in 2016. Further, EPS continued to fall from 2006 (\$2.43 per share, diluted) to its last twelve months ending March 2008 (\$0.77 per share, diluted).

We believe Matria's purchaser, Alere Health Inc (previously Inverness Medical Innovations) felt the effects of their poor acquisition. By 2014, Alere had agreed to offload the Matria disease management group for \$600m, **approximately half of the implied value (\$1.18b) it paid in 2008**<sup>17</sup>.

The short report by Off Wall Street was not the problem – Matria's fundamental business was. Alere Health Inc ignored the fundamental issues brought to light by the Off Wall Street short report, ultimately to their detriment.

### Class action claims – improper disclosure

In august 2003, shareholders filed a class action against Matria Healthcare and Petit alleging that the defendants had:

1. Failed to inform investors of significant issues within the company notably the crippling issues faced with its IT operations.
2. Used these problems to purchase technology solutions from, and give significant business to companies in which Petit had financial interests
3. Withheld these developments from investors due to a significant loan from the business to Petit which would be forgivable if the share price reached \$24 by January 1, 2002.

The allegations within the claim are numerous and concerning given Petit's integral role in the events. Several Matria employees claimed that Petit's attitude toward the crippling IT problems at the company was negligent or improper. Petit appears to be more concerned with lining the pockets of himself and his friends than actually addressing the issues the company was facing.

Many of these allegations revolve around the purchase of new software for distribution and ordering; Matria's core business. According to the allegations, not only did Petit and management fail to disclose that there were IT problems **in the first place**, Petit ultimately decided to purchase a solution in which **he had a financial interest** on the recommendation of an outside entity in which **he also had a financial interest**.

243. As described above, Petit – against the recommendation of at least two IT directors – selected Confer for the platform for Matria's disease management business. It, however, was apparent from the outset that Confer suffered from deficiencies and the software required major technical assistance. Nonetheless, at the recommendation of Healthcare.com, in which Petit was a substantial shareholder, Petit insisted throughout the majority of the Class Period that Matria stick with Confer.

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<sup>17</sup> <http://www.chilmarkresearch.com/alere-unravels-what-went-wrong-what-it-means/>

245. On May 14, 2001, an entity named XCare.net issued press releases announcing that it signed agreements to acquire both Confer and Healthcare.com. As disclosed in XCare.net's August 8, 2001 Form S-1, Petit owned 856,011 shares of Healthcare.com, or approximately 3% of that company. After the merger, Petit was a substantial shareholder of XCare.net.

*Figures 30 & 31 Extract from CIVIL ACTION FILE NO. 1 :03-CV-2007 - 2008*

MiMedx investors should be concerned about Petit's involvement with the company at all. Clearly the issues surrounding MiMedx's staffing choices extend all the way up to the executive level, as Needham and Company spotted

### Allegations of defrauding Medicare

It is also noteworthy that Matria Healthcare management conducted due diligence and acquired a pharmacy and supplies business alleged to have sold supplies to dead people, according to Off Wall Street.

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*Despite assertions to the contrary, Matria Healthcare and its former subsidiary, Diabetes Self Care (DSC), agreed to pay \$9 million to settle claims of improper billing practices for mail-order diabetes supplies in 2016.*

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Pete Petit's website claims Matria Healthcare acquired DSC in 1999:



*Figure 32 Extract Pete Petit's website<sup>18</sup>*

Matria sold DSC's operations in June 2004, but DSC's purchaser refused to pay the SEC fine as the exposure was incurred by Matria.

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<sup>18</sup> <http://www.petepetit.com/pete-petit-professional.html>

The settlement stems from separate whistleblower lawsuits filed by two former DSC employees: Kim Politsky, reimbursement director; and Sandra Clarke, customer service supervisor. Politsky and Clarke alleged that, from January 1, 1998, through December 31, 2003, DSC:

Politsky and Clarke charged that, from Jan. 1, 1998, through Dec. 31, 2003, DSC:

- Billed Medicare prior to obtaining a valid physician's order, assignment of benefits or CMN;
- Failed to credit Medicare for returns;
- Billed Medicare for the shipment of duplicate orders, over-shipped or under-shipped DME and un-ordered DME;
- Failed to maintain required signature logs for shipments;
- Falsely created or altered documentation to support shipments;
- Failed to maintain proof of delivery;
- Falsified or changed dates of service, dates of shipment or dates of request related to shipments;
- Improperly billed Medicare for blood glucose meters;
- Made false representations regarding eligibility to participate in various state Medicaid programs; and
- Falsely billed for items shipped from a California location without a valid Medicare supplier number.

Clark's lawsuit included allegations that she was unlawfully retaliated against after raising concerns about DSC's billing practices.

*Figure 33 Extract from HME news - Matria cuts \$9 million check in fraud settlement<sup>19</sup>*

In summary, Politsky and Clarke claims were that DSC were essentially utilizing channel stuffing techniques. Investors should also note the stark similarities between Matria's settled fraud allegations and the allegations of such conduct at MiMedx put forward by their own whistleblowers.

## 6. Summary

For the reasons outlined above in addition to those in our report, Viceroy believes MiMedx is uninvestable and reiterate our valuation of its shares at \$0.00. Shareholders should be concerned about management's actions since the publication of our report which we believe are indicative of an attempted cover up.

Management at MiMedx, have made no efforts to acknowledge the many issues brought to light by our research opting instead for deflection, denial and empty platitudes. Given Petit's history of improper disclosure accusations, we believe a similar story will soon play out at MiMedx leaving investors who take MiMedx at their word with little to show for it.

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<sup>19</sup> <http://www.hmenews.com/article/matria-cuts-9-million-check-fraud-settlement>