

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

MID-SOUTH BIOLOGICS, LLC,)
Plaintiff,)
vs.) No. : 2017-cv-02028-JTF
MIMEDX GROUP, INC.,)
Defendant.)

- - -

Deposition of MICHAEL CARLTON, taken on
behalf of the Plaintiff, pursuant to notice,
before Jodi P. Scheffel, Certified Court
Reporter, taken at the office of Adams and Reese,
3424 Peachtree Road, N.E., Suite 450, Atlanta,
Georgia, on the 10th day of October, 2017,
commencing at the hour of 9:15 a.m.

WHEELER REPORTING COMPANY, INC.
1600 Northside Drive, N.W.
Suite 250
Atlanta, Georgia 30318
404) 351-4577

♀

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A P P E A R A N C E S

On behalf of the Plaintiff:
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Page 1

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7

8 On behalf of the Defendant:

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18

19 * * *

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1 I N D E X

2 Witness: Michael Carlton

3 Examination

Page:

4 By Mr. Peel

4

5

6 E X H I B I T S

7 PLAINTIFF'S DEPOSITION EXHIBITS:

8 1 08/29/11 Email to Roberta McGraw
and Bill Taylor from Mike Carlton
9 Subject: Mid-South Biologics

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10 2 08/2011 Email Chain to Bob Fruin
from Norm LaChapelle
11 Subject: Distribution/Oregon

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| | | | |
|----|---|---|-----|
| 12 | 3 | 09/2011 Email Chain from Mike Carlton to Bill Taylor and Norm LaChapelle Subject: FW: Re: Distribution/Oregon | 46 |
| 13 | | | |
| 14 | 4 | 08/09/17 Email to Bill Taylor; Pete. Petitt@thepetigroup.com; Mike Carlton from Norm LaChapelle cc: Judd Grisanti Subject: MSB Contract | 82 |
| 15 | | | |
| 16 | | | |
| 17 | 5 | 08/09/17 Email Chain from Mike Carlton to Bill Taylor; Mark Diaz Subject: FWD: Questions | 89 |
| 18 | | | |
| 19 | 6 | 12/13/13 Email from Mike Carlton to Bill Taylor Subject: FW: AvKare Payment | 90 |
| 20 | | | |
| 21 | 7 | 03/24/14 Email Chain from Norm LaChapelle to Mike Carlton; Bill Cochrane Subject: Fw: Fwd: Re: New Order: po# MIDSOUTH3. 24. 14 | 100 |
| 22 | | | |
| 23 | | | |
| 24 | | | |
| 25 | | (*Exhibits attached to the transcript.) | 4 |

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1 Whereupon,

2 MICHAEL CARLTON,

3 having been first duly sworn to state the whole truth,

4 was examined and testified as follows:

5 EXAMINATION

6 BY MR. PEEL:

7 Q Mr. Carlton, will you please state your name

8 for the record?

9 A Yeah. Michael Ray Carlton.

10 Q Mr. Carlton, I introduced myself earlier. My

11 name is Paul Peel. I represent the plaintiff in this

12 case, Mid-South Biologics.

13 Have you ever had your deposition taken

14 before?

15 A No.

16 Q That's good, though. Good for you. So I

17 want to kind of go over some ground rules. They're not

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18 really -- well, they're probably really not ground rules.

19 They're more, like, guidelines about our communication
20 today and it's something that all lawyers do in
21 depositions and it's repeated ad nauseam in every
22 deposition I've ever been in, but it is useful guidelines.

23 A Uh-huh.

24 Q And the first guideline is to wait till I
25 finish my question before you give me your response. The 5

1 reason why that is, is she's recording what we're saying
2 this morning.

3 A Okay.

4 Q And it's very difficult when you're trying to
5 read the transcript later on when two people are talking
6 over each other. So, if you would, just let me finish my
7 question before you give me your response and I'll try to
8 do the same for you, which is I'll try not to ask you
9 another question until you give me your full response. I
10 can guarantee you today that we're going to talk over each
11 other, that's going to happen, but we'll try to manage as
12 best we can. And -- you know, like -- because look,
13 normal everyday conversation, we do talk over each other.
14 That's what we do. We interrupt, we say this, we do this.
15 And I've always thought that this practice of listening
16 and waiting is a good human skill regardless of whether
17 you're in a deposition. So --

18 A My wife would agree with that.

19 Q So, you know, if I -- we'll just try to
20 manage as best we can today.

21 A Yes, sir.

22 Q The second thing is -- and this is also kind
23 of difficult which is answering verbally. And we, in

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24 normal everyday interaction communicate with each other by

25 a lot of different ways other than what we say; sometimes
6

1 we may shake our head, sometimes we may look incredulous,
2 you know, sometimes we may use body language that
3 communicates what we're doing. And this is the whole
4 range of communication and that makes it a wonderful
5 thing, right; but from her perspective and from our
6 perspective later, we can't really understand what an
7 "uh-huh" was or what a shaking of the head was. She can't
8 record it. And I can guarantee you a week later or a
9 month later, whenever we look at the transcript, we won't
10 know necessarily what the response was. So, if you could,
11 please, answer verbally. I may prompt you -- if you
12 don't, I'm not trying to be rude, at least not that I
13 think of -- just prompt you to respond verbally. Okay?

14 A Yes, sir.

15 Q The last general thing is, I'm not here to
16 trick you, I'm not here to get one past you -- I know a
17 lot of people that aren't lawyers have that -- have that
18 idea about the legal profession; but, in general, it may
19 be just a poorly worded question. You know, we're trying
20 to do the best we can asking you questions; you're trying
21 to do the best you can responding to those questions, and
22 sometimes we trip over our own tongues and sometimes we
23 construct sentences -- or questions that are four
24 sentences long, you know. I'm going to try to ask you
25 very narrow, tailored questions and sometimes I may ask
7

1 you just to expound on things; but if you don't understand
2 my question, just ask me to rephrase it.

3 A Okay.

4 Q I'll try to do the best I can rephrasing it.

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5 I'm not going to promise you that how I rephrase it is
6 going to be any better than the first time, but I'll try
7 to do the best I can to not ask confusing questions.

8 Okay?

9 A Okay.

10 Q And in that regard, is it fair to assume from
11 you that if you don't ask me to rephrase it, or you don't
12 say it's confusing to me, or ask me to reask the question,
13 that if you answer you understood it and answered
14 accordingly; is that fair?

15 A That's fair.

16 Q Okay. Mr. Carlton, where do you reside?

17 A Roswell, Georgia.

18 Q And your address?

19 A 330 Boundary Place, Roswell, 30075.

20 Q 3 -- say it again.

21 A 330 Boundary Place.

22 Q No. The ZIP. I'm sorry. The ZIP.

23 A Oh, 30075.

24 Q And how long have you resided there?

25 A 2004.

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8

1 Q And do you have any plans on moving anytime
2 soon?

3 A No.

4 Q Are you married?

5 A Yes.

6 Q What's wife's name?

7 A Laurie, L-A-U-R-I-E.

8 Q How long have you been married?

9 A 1991.

10 Q Oh, wow. And what is your highest level of
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11 education?

12 A A bachelor's in science. I got half of an
13 MBA. We moved and ever finished.

14 Q And where did you receive your bachelor's in
15 science degree?

16 A Miami University of Ohio.

17 Q What year did you graduate?

18 A 1989.

19 Q So you're about 50 years old?

20 A Fifty-one.

21 Q I know that because I graduated high school
22 in '89.

23 A Okay.

24 Q And I understand you're a former football
25 player?

9

1 A Uh-huh.

2 Q At the Miami University?

3 A Yes, sir.

4 Q What position did you play?

5 A Fullback.

6 Q So are you native of Ohio?

7 A Actually, Buffalo, New York.

8 Q Kind of, if you could, lead me through what
9 you did after graduation. And what I mean by that is kind
10 of an employment history, that kind of deal.

11 A Uh-huh. Sure. I worked in medical initially
12 with a company called Kendall Healthcare which became
13 Tyco, then Covidien, then Medtronic. I worked there four
14 years; sales and marketing and management. I worked at a
15 company called Boston Scientific. I worked there six
16 years, various roles, training, management, sales. I

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17 worked at a company called Abbott Vascular. I worked
18 there six years, roles up to VP of sales. And then I went
19 to Synthes Spine & Orthopaedics, my final company before
20 MiMedx. So I had four companies before MiMedx, various
21 areas of healthcare.

22 Q And how long have you been with MiMedx?

23 A December of 2009.

24 Q And I'm assuming -- well, you tell me --

25 sometimes I try to cut to the case -- cut to the chase 10

1 when I talk about assuming something -- but can you just
2 generally describe what your roles were -- and I'm
3 assuming it may have been in sales, but I don't know --
4 through your employment career?

5 A Through the whole career or just at MiMedx?

6 Q Just kind of -- I don't want to get -- you
7 know, I'm not your biographer, but I would like to try --

8 A It's just getting kind of fun.

9 Q -- to understand --

10 A It's all been sales related and sales
11 management, a little bit of marketing; generally, all
12 jobs.

13 Q And the products have generally been medical
14 products?

15 A Yes.

16 Q I'm sorry. Has it been generally medical
17 products, or medical-type services, or...

18 A Medical products would be more accurate;
19 devices, instruments and now biologicals.

20 Q Did you ever work for Medtronic, or is that
21 just a company that event- --

22 A I never worked for Medtronic. Kendall was
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23 separate before it was -- now, it's under Medtronic.

24 Q So I guess it's fair to -- so if you
25 graduated in '89, what year did you start working for

11

1 Kendall?

2 A Well, actually -- okay. Going back, I had a
3 year and a half out of college -- I went to work right
4 away, literally June of '89, one month after graduating --
5 with a small company called Lanier Products selling office
6 copiers for a short time, 15 months, and then went to
7 Kendall. So there was one nonmedical company, Lanier
8 Voice Products, first job out of college, and then went
9 right to medical.

10 Q And -- so since probably what?

11 A I did backpack in Europe and didn't take any
12 time off.

13 Q So about -- since about '91; I guess you've
14 been basically in medical sales your entire life?

15 A Yeah. November of '90, I took the job at
16 Kendall and been in medical ever since.

17 Q And when you first began with MiMedx in 2009,
18 what position did you start in?

19 A Hired as VP of sales and marketing.

20 Q And what is your position?

21 A VP of global sales. My position has changed
22 a few times.

23 Q So just kind of give me the starting point
24 and ending point of your positions at MiMedx.

25 A VP of sales and marketing, first position,

12

1 first commercial guy hired; and as the company's grown, we
2 hired a marketing person so I became just VP of sales; and

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3 then we hired another sales guy to be VP of domestic sales

4 so I became global. So my positions changed three times.

5 Q Gotcha. And how would you describe your
6 responsibilities and duties? That's probably a very poor
7 question because you might say that they suck. What do
8 you do?

9 A Responsible for the sales -- for sales and
10 revenue.

11 Q And can you please describe your day-to-day
12 activities in your role as vice president of global
13 sales?

14 A Manage the business in countries we're
15 approved in and attempt to open countries we're not
16 approved in.

17 Q Does that exclude the domestic market?

18 A The only domestic responsibility I have now
19 and I've had in 2017 is a few strategic partnerships, one
20 being Medtronic and one being Zimmer.

21 Q Did you say Zimmer?

22 A Uh-huh.

23 Q Like Z-I-M-M-E-R?

24 A Correct.

25 Q And this current -- these current

13

1 responsibilities, when did those start, that is, I guess,
2 when did you start becoming, I guess, mainly attuned to
3 global sales versus domestic sales; when did that start?

4 A Formally 2017, so this year. Prior to this I
5 had responsibility, but we didn't have a heavy company
6 focus on international until this year.

7 Q So before this more formal role of global
8 sales, you did have some domestic responsibilities at

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9 Mi Medx?

10 A Yes.

11 Q Let me kind of do some laundry here. Since
12 you'd never had a deposition before, you know, there's
13 certain questions that we're allowed to ask about certain
14 things in the past that sometimes can be a little
15 intrusive, but that's just the way the law is. So I don't
16 mean to offend you by asking you some of these questions,
17 but it's something I need to make sure of. Okay?

18 A Yes, sir.

19 Q Have you ever been arrested?

20 A No, sir.

21 Q Have you ever been sued?

22 A No, I have not.

23 Q Have you ever sued anyone?

24 A I have not.

25 Q Is there any reason why today you can't give
14

1 truthful testimony?

2 A No, there's not.

3 Q And sometimes when you -- as a lawyer,
4 sometimes when you're asking questions of people in
5 deposition, sometimes people take medication that
6 sometimes can affect their recollection.

7 A Okay.

8 Q And that's -- I have it written down better
9 than what I just asked, but --

10 A I'm not on medication.

11 Q Okay. You're not drunk, are you?

12 A No, I'm not.

13 Q Not yet.

14 You understand you're sworn to tell the truth

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15 here?

16 A Yes, sir.

17 Q Being in medical sales pretty much your
18 entire professional career, how would you describe the
19 profession; opinions, dangers, good things, bad things?
20 What's your opinion generally on it?

21 A Very positive.

22 Q In what ways?

23 A We're providing a clinical answer to unmet
24 needs for patients.

25 Q Well, I guess, you've been out there in the 15

1 field making sales?

2 A Uh-huh.

3 Q And I'm assuming before you became more of a
4 super- -- supervisor or more of a manager of sales forces,
5 I'm assuming, at some point in time, you were making the
6 calls, you were going out there trying to beat the bushes,
7 you were trying out there to develop clientele. Am I
8 fairly stating some of your history?

9 A Yes, sir.

10 Q So that's more what I'm talking about, is
11 like when you were getting out there actually doing the
12 sales, actually making the connections, actually
13 developing the relationships, you know, what are the
14 pitfalls and the benefits of being in that type of
15 profession, if you understand what I'm talking about?

16 A The benefit is to help with patient care
17 through technology; pitfall being occasionally patients
18 don't do well. That's the reality of the business.

19 Q How important are relationships with doctors
20 in medical sales?

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21 A Important. I would say very important, but
22 there's a lot more to it than just that.

23 Q And would you describe -- or is it fair to
24 describe a salesman's relationship with a doctor as the
25 coin of the realm, if you understand what I'm talking 16

1 about?

2 A You could debate that because it's typically
3 more over -- tied to the technology, the clinical aspect
4 of the product offering as much as it is a relationship.
5 You could argue those. It's not just a relationship.

6 Q Which weighs more?

7 A Debatable. My opinion?

8 Q Yeah.

9 A The clinical product you carry.

10 Q Are you saying that certain products are
11 going to sell itself; you don't need relationships?

12 A An A products with a B relationship would
13 compete with an A relationship and B product.

14 Q How about an A product and no relationship?

15 A It does not sell itself. You need to have
16 some relationship.

17 Q And correct me if I'm wrong, but aren't the
18 doctors more or less the gatekeepers for sales?

19 A That's changing over time.

20 Q How about when you started out?

21 A For the most part, if a doctor has a
22 relationship with a sales rep, they'll consider what they
23 have in their sales bag. That doesn't make the ultimate
24 decision though. And now some doctors are being told they
25 can't use products they desire to use because of contracts 17

1 and other prevailing circumstances. So the industry's

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2 shifting that way.

3 Q How are you going to sell your product into
4 hospitals and clinics and that sort of thing as a medical
5 salesperson, not necessarily MiMedx scenario, just in
6 general?

7 A You need to have, these days, clinical
8 studies to support your claims. That's critical.

9 Q Well, I guess, who are you going to tell that
10 to? There's got to be someone you have to connect with;
11 right?

12 A It starts with a physician.

13 Q And it's going to be contacts at the
14 hospitals that salesmen utilize in order to sell product;
15 right?

16 A They would be the one to purchase the
17 product; correct.

18 Q And that relationship between the salesman
19 and the contact at the hospital or the contact at the
20 medical clinic or the contact at whatever, medical
21 provider, is that valued by the salesman?

22 A To some extent.

23 Q When you say to some extent -- I usually -- I
24 love the word to some extent. I use it all the time and I
25 catch myself saying it too much because I realize I'm

18

1 trying to qualify something without necessarily
2 quantifying it. So when you say to some extent, I mean,
3 what's going to be more important than that relationship
4 excluding the product?

5 A It varies between hospitals and between
6 markets. But generally speaking, the doctor has quite a
7 bit of say on what's being used and in other circumstances

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8 the hospitals have final say on what's being used. It
9 varies.

10 Q Yeah, because, I mean, a lot of us -- I'm
11 sure the doctors would love -- you know, just to use kind
12 of an analogy, they would love BMW type medical care, but
13 sometimes maybe the budget for the hospital is only for
14 Volkswagens. Is that what you're talking about, that
15 sometimes a doctor's preference for a particular product
16 or a particular salesman might not match up with the
17 people that are actually calling the shots and buying the
18 products for the hospital or the medical practice?

19 A That analogy could be used.

20 Q I think it's been debated in the recent
21 healthcare debate about Cadillac care, right, not to get
22 political but...

23 A Uh-huh.

24 Q Are -- you know, as a salesman, as a person
25 who is actually out there beating the bushes and

19

1 developing relationships with doctors and hospitals, what
2 was your biggest concern in that regard?

3 A I mean, hard to say generally what it -- I
4 mean, there's -- the products doing very well. We've
5 grown quickly. There weren't huge concerns over there
6 MiMedx technology.

7 Q I'm not talking necessarily about MiMedx. I'm
8 just talking about --

9 A Okay.

10 Q -- you working as a salesman; the guy who was
11 out there beating the bushes, the guy who was out there
12 knocking on doors, the guys who were following up on
13 contacts, the guys who were trying to maintain

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14 relationships with the people that are actually making the
15 decision to buy your product, what was your biggest
16 concern at that time?

17 MR. WILBON: At any time during that
18 process?

19 MR. PEEL: Well, during the time that he
20 was a salesman.

21 A The biggest concern from my perspective is
22 that the technology doesn't do what it's supposed to do.
23 Fortunately, that hasn't really happened in my career
24 often, but you're putting a lot of faith and trust in the
25 in the product and that's how you sell it. Sometimes

20

1 products don't work, sometimes patients don't improve and
2 then that's when the sale's over in healthcare.

3 Q Yeah. Well, did you ever worry about losing
4 your contacts to some competitor or losing your
5 relationship to someone else; someone gets in the door
6 before you do where you have a relationship that you spent
7 a lot of time on and someone comes in and bigfoots your
8 sale, I mean, is that not a concern of yours?

9 A Always. Competition's always a concern.

10 Q Is it a concern of yours?

11 A Sure.

12 Q For your companies that you worked for
13 previously in medical -- medical devices or whatever,
14 which ones were you primarily a salesman for?

15 A Primarily sales at Kendall and Boston
16 Scientific.

17 Q Now, is Kendall spelled K-E-N-D-A-L-L?

18 A Correct.

19 Q What I was trying to say, it's probably not

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20 K-I-N-D-L-E.

21 A That's right, phonetically.

22 Q And what did Kendall sell?

23 A We had urology products, vascular, wound care
24 and anesthesia; four bags.

25 Q Now, were you an employee of Kendall, or were
21

1 you have just someone that was contracted with Kendall?

2 A Employed.

3 Q So you were a commission employee, a
4 salaried employee, some kind of combination thereof?

5 A Salary and commission.

6 Q I'm sorry. I didn't catch the other
7 companies that you worked for primarily as a salesman?

8 A Boston Scientific.

9 Q Anymore?

10 A I started in sales at Abbott Vascular and was
11 quickly promoted into management. So it was mostly
12 management and I was in management ever since. I got
13 hired as manager actually. So it was more Kendall and
14 Boston Scientific in a pure sales role.

15 Q At Boston Scientific, were you an employee?

16 A Yes.

17 Q So you were salaried or receiving some form
18 of salary plus commission?

19 A Correct.

20 Q Did Boston Scientific or Av- --Avett [sic] --
21 and I'm going to guess on this one. Is that A-V-E-T-T?

22 A No. Abbott.

23 Q Oh, Abbott.

24 A A-B-B-O-T-T.

25 Q And when you worked at Boston and Kendall,
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1 did you also -- I mean, did Boston Scientific and Kendall
2 utilize somewhat, like, freelance salesmen that weren't
3 employees but had contractual relationships with Kendall
4 or Boston Scientific?

5 A They did not.

6 Q Have you ever worked for a company, other
7 than MiMedx, that had a sales model for its force where
8 they were primarily just using contracted salesmen?

9 A The only company that I had experience before
10 MiMedx doing that is Synthes in the orthopedic market had
11 some distributors. But our Synthes team was direct, so I
12 became aware of distributors in the Synthes job
13 experience, not because Synthes did it, we were direct,
14 but in that business, there's quite a few distributors in
15 orthopedics.

16 Q Okay. And Synthes is S-Y-N-T-H-E-S-E?

17 A Just T-H-E-S. S-Y-N-T-H-E-S.

18 Q S-Y-N-T-A- -- T- --

19 A T-H, Synthes.

20 Q S?

21 A Uh-huh. Now, it's DePuy owned by J&J.

22 Q And when you started at MiMedx, you started
23 as a VP of sales and marketing; correct?

24 A Correct.

25 Q And how would you describe MiMedx's sales
23

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1 structure at that time as contrasted with your previous
2 employment where you were primarily an employee as a
3 salesman receiving a salary and commission? How would you
4 describe MiMedx's sales approach?

5 A We didn't have the funding initially to hire

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6 direct full-time employees. So like most many startup

7 companies, we needed to go the distribution route and then
8 transition back to direct. So we --

9 MR. WILBON: This is Mi Medx you're talking
10 about?

11 THE WITNESS: Mi Medx yeah.

12 A -- so we pursued medical distributors
13 initially to expose the product to the market.

14 BY MR. PEEL:

15 Q Do you recall when Mi Medx began its
16 business?

17 A The company's been in existence for quite a
18 while from a technology standpoint but it first
19 commercialized the products in January of 2010 which is
20 why I was hired.

21 Q And what role did you have working with the
22 distributorships that were associated with Mi Medx's
23 products?

24 A To attract them to carry our products.

25 Q To recruit them basically?

24

1 A Basically. Some called us and I called some,
2 back and forth.

3 Q It's always better when they call you, isn't
4 it?

5 A Leads are nice.

6 Q And in dealing with these distributorships
7 initially, what was your challenges trying to recruit and
8 retain distributorships for Mi Medx?

9 A The technology was the initial challenge
10 because our product in 2010 was a product called HydroFix,
11 which is no longer on the market. We discontinued it.

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12 That was the initial challenge. We acquired a company
13 called Surgical Biologics at the end of 2010 and opened up
14 that business in January 2011, one year later. That's the
15 amniotic membrane that has appeal in the market. That's
16 the one that we were able to quickly sign up distributors
17 and move the market because it's a better product, product
18 related basically.

19 Q And developing or maintaining distributors
20 ships -- and other than the technology, I'm talking about
21 the relationship aspect of it -- what was your greatest
22 challenge with distributors at this period of time when
23 you were working for Mi Medx?

24 A After the technology hurdle's made -- because
25 typically distributors don't associate with technology,

26 they can't sell -- once they embrace the technology and
27 they've got their market they can sell it into, the
28 challenge became flexibility with distributors to
29 accommodate the growth of a company like Mi Medx.

30 Q When you say flexibility with distributors,
31 are you saying distributors want more flexibility or
32 Mi Medx wants more flexibility?

33 A Both.

34 Q And when you talk about flexibility, what are
35 you talking about?

36 A Some distributors wanted to sell the product
37 to anybody they knew, you know, friends and family, call
38 friends all over the country. We had to constantly try to
39 keep them within their territory of the contract and that
40 was a challenge.

41 Q Well, why wouldn't -- in your position -- I
42 mean, what role do you have in that? Is that something

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
18 above you or is that something that -- I guess making that

19 call, that is who gets to sell where, is that your call or
20 someone else's call or maybe it's not that hierarchal?

21 A It's a combination of people that would
22 evaluate that decision, but it was my primary role to try
23 to keep them within their contract lanes so they don't
24 step on another distributor in a different state which
25 happens.

‡

26

1 Q Yeah.

2 A They kind of run wild with the product. We
3 have to keep them within their lanes. That was -- that's
4 a constant back and forth. I don't have final approval on
5 contracts, but I would try to execute the contract and
6 enforce it in some ways.

7 Q And I guess it's unclear to me why you
8 wouldn't want to have everybody trying to sell your
9 product to everyone at all times.

10 A That's a great question. Free for all. From
11 a pure sales perspective, we appreciate the free for all.
12 But to try to maintain some sanity in the business to grow
13 and expand, we had to maintain some discipline to the
14 contract so that we didn't have turf wars between
15 distributors.

16 Q I mean, to some extent I can understand
17 wanting to value a better distributor over a mediocre
18 distributor, or value a mediocre distributor over a
19 horrible distributor, and certain distributors are not all
20 created equal.

21 A Correct.

22 Q Is that what you're talking about, is you're
23 trying to maintain relationships for distributors that in

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
24 Mi Medx's business model made more sense for it?

25 A From my experience, many distributors 27

1 embellished what they could actually deliver to get a
2 favorable contract and then they wouldn't deliver. So we
3 had to constantly manage that expectation.

4 Q And when you say favorable contract, what
5 kind of favorable contract are distributors seeking?

6 A Territory, terms, commission rates.

7 Q Cancellations of the contract?

8 A Everything tied to the contract they would
9 ask for in exchange for promise for business which
10 oftentimes didn't happen so we always had to kind of
11 manage that.

12 Q So would cancellation of a distributorship
13 agreement not be a term that a distributor would be
14 seeking favorable terms on?

15 A They would seek that; but it's sort of common
16 in the distribution business, especially orthopedics, that
17 contracts come and go and these distributors understand
18 that and so they would attempt to put out performance
19 quickly to impress the company to then negotiate later
20 better terms. You wouldn't get the best terms up front;
21 you have to show it on paper first.

22 Q And better terms might include more favorable
23 termination provisions?

24 A Oftentimes, it was more territory. They
25 wanted more of a map, give me four states instead of two, 28

1 so... but it varies. It depends.

2 Q With any of the distributors that you were
3 working with during this period of time, did any of those
4 distributors express concerns about the relationships that

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

5 they had with certain doctors or certain hospitals being
6 taken over by Mi Medx should Mi Medx cancel the
7 distributorship agreement with that particular
8 distributor?

9 A Many --

10 MR. WILBON: Object to form. You can
11 answer, if you understand it.

12 A Well, many distributors, if I understand the
13 question, would claim to have the best relationship with a
14 certain physician and I'd hear it three separate times all
15 from the same physician. So claims were often made,
16 that's my guy, then the physician would speak otherwise,
17 so... if that's what you're asking for.

18 Q Well, if that was a concern of the
19 distributor, that is that if the contract is canceled
20 Mi Medx might be jumping in on a relationship that they
21 either didn't start with, or, you know, didn't develop
22 initially.

23 A If I understand the question, on
24 cancellation, most distributors with a new technology, new
25 startup company, nobody signs a binding contract that they

1 can't get out of, both sides, so it's just a matter of
2 trying to sell product. And then once you do sell product
3 with certain physicians, do pretty well to impress, then
4 you can negotiate more of a map, typically more states,
5 more docs, so it's back and forth.

6 Q Well, I guess the question is -- and I may be
7 asking it poorly -- but was it a concern to distributors
8 that you worked with that should the contract be canceled
9 that Mi Medx might be assuming or taking over a
10 relationship that they either didn't have initially or

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

11 didn't develop?

12 MR. WILBON: You're asking him if the
13 distributors were concerned about that?

14 MR. PEEL: Yeah, his personal
15 relationships.

16 A If they were concerned about that, they would
17 probably negotiate a tail at the end of the contract to
18 protect those doctors, but that didn't often come up.

19 Q What's a tail?

20 A You know, you're paid commission on a certain
21 doctor after the contract's over, but it didn't come up
22 very much. From my experience, it didn't come up that
23 often.

24 Q When you say tail -- this is me being
25 funny -- T-A-I-L, not T-A-L-E?

30

1 A T-A-I-L.

2 Q It would be weird if it was spelled T-A-L-E,
3 right?

4 A Exactly.

5 Q What's an override agreement?

6 A Overrides were used that if a territory map
7 changed over time based on the business conditions,
8 sometimes there would be, I call it, a turf war where the
9 geography would be split between distributors and we would
10 compensate for a period of time a tail, if you call it,
11 for the time period that that overlap would exist. Other
12 times it was more of a finder's fee. Let's say you have a
13 doctor in a different state that's not in your contract
14 that you think is interested in the product based on your
15 relationship, you pay a finder's fee for that, for the
16 lead. Those are kind of examples of overrides.

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

17 MR. PEEL: This is not germane to any of
18 this, but I met an expert up in St. Louis on a
19 case and I'm about to hire him, right, and invest
20 maybe a lot of money on him and --

21 THE COURT REPORTER: Is this on the record?

22 MR. PEEL: No.

23 MR. WILBON: No.

24 (Discussion of the record.)

25 MR. PEEL: Okay. We can go back on the

31

1 record.

2 BY MR. PEEL:

3 Q We were talking about overrides and tails and
4 what that is. As I understand an override or a tail, and,
5 you know, you've got a distributor or whatever and it's a
6 certain territory, that territory may change is what you
7 said; is that correct?

8 A It could.

9 Q And when it changes, it could -- you're not
10 going to give an override when it increases, right,
11 because there would be no lead.

12 A You're talking about for existing sales.

13 Q Yeah. So what we're talking about is a
14 territory that a distributor has; right?

15 A Uh-huh.

16 Q And in certain situations where that
17 territory changes, they may receive an override. Am I
18 stating it fairly correctly right now?

19 A Correct.

20 Q Okay. So what we're talking about when a
21 distributor receives an override, we're not talking about
22 a situation where the territory has increased because that

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

23 would make no sense; right?

24 A Correct.

25 Q It would only be when it shrinks; right?

32

1 A It depends. Sales could stay the same. If
2 you try and expand your sales map and add more sales reps,
3 more distributors, better focus, maybe some direct sales
4 reps and maybe the companies expand. This happens all the
5 time. So To be fair -- and some companies don't do this,
6 but we always try to be real fair with these guys -- we
7 give an override on some of the stuff they would claim
8 they lost, which they didn't really lose, it's just, you
9 know, we wanted to make sure we were fair to them on the
10 the back side of a chain, but that was all based on the
11 contract. It was all on paper. It wasn't just a
12 handshake.

13 Q I mean, you're talking about in general and
14 I'd like to talk more about specifics.

15 A Uh-huh.

16 Q Was there a time during this process with
17 Mi Medx where a territory for a distributorship shrunk and
18 that distributor lost sales that Mi Medx would then give
19 them an override?

20 A Correct.

21 Q Okay. And when we're talking about losing
22 sales, we're also talking it could, you know, maybe
23 limiting the amount of product or the type of product that
24 Mi Medx was selling or it could be that particular
25 hospitals were no longer in that territory or particular

33

1 practice groups may no longer be in that particular
2 distributorships territory to sell, in those instances

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
3 when that was taken away from that distributor from Mi Medx

4 decision, would they receive an override for that?

5 A Not every time, but occasionally.

6 Q And in those situations where an override was
7 given, would that particular distributor have any further
8 responsibility with those sales, or with those doctors, or
9 with those hospitals or with those particular product
10 lines that was reduced or taken away by Mi Medz?

11 A Generally speaking, no. If it was agreed in
12 the contract that there was going to be an expansion for
13 better focus, part of your, say, three-state territory was
14 going to shrink to two states. And if it was agreed in a
15 contract that that state that was going to a different
16 distributor or a direct rep would be in an override for
17 few months or whatever the contract says, there would be
18 no responsibility --

19 Q For the --

20 A -- formally.

21 Q -- for the distributor?

22 A Correct.

23 Q And in situations where introductions were
24 made where a distributor may not be able to authorize a
25 sale, and, for example, Oregon but had contacts there and
34

1 made the introduction, and if an agreement is eventually
2 reached between Mi Medx and that doctor or whatever group
3 in Oregon, would an override agreement be sometimes given
4 in those situations?

5 A Sometimes.

6 Q I guess it depends on how great the contact
7 is; right?

8 A All that has to be evaluated.

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

9 Q I mean, if you're just making one or two
10 sales a month, you're not going to give someone an
11 override for that; is that correct?

12 A It's based on the value of the contact, what
13 happens and then also the type of introduction. If it's
14 just a phone number versus an active introduction and it
15 had work associated with it --

16 Q Yeah.

17 A It all is depending.

18 Q Yeah, because I --

19 MR. PEEL: We can go off the record real
20 quick again.

21 (Discussion off the record.)

22 MR. PEEL: We can go back on the record.

23 BY MR. PEEL:

24 Q So we were talking about override with
25 introductions that are made between a distributor and

35

1 Mi Medx and perhaps a client, or a customer, or a contact
2 in a different territory, and we talked about the
3 scenarios where an override may or may not be given; do
4 you recall that?

5 A Yes.

6 Q And depending upon what that distributor
7 brings to the table with respect to the value of the
8 contact that was made and the relationship that is entered
9 into later between Mi Medx and that contact, would those be
10 scenarios where overrides could possibly be given by
11 Mi Medx?

12 A Possibly.

13 Q And after the introduction's made and after
14 the relationship is consummated between Mi Medx and this

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

15 third-party contact, would that distributor have any role
16 in helping out later on with that contact, or with the
17 relationship, or with sales to that contact? What would
18 be the responsibility of the distributor that made the
19 introduction thereafter?

20 A It depends. There wouldn't be a requirement
21 necessarily to have an active role, but oftentimes there
22 would be a role that they play. It just depends on the
23 situation.

24 Q Yeah. You know, maybe there's a dispute
25 between you and -- that is MiMedx and this third-party 36

1 contact and maybe the relationship's about to go south,
2 right, you may call your distributor and say, hey, man,
3 help us out here; is that something that can happen?

4 A Could happen.

5 Q Is that something that did happen on
6 occasion?

7 A With a -- I have to back. There's a few
8 doctor relationships that would happen, if there's a
9 friendly doc across state lines that's not in your
10 contract. There's a few situations I can think of where
11 there was a relationship, enhanced relationship with the
12 original lead generator. So it happens on occasion with
13 docs.

14 Q All right. Do you know a gentleman by the
15 name of Norm LaChapelle? I'm going to call him Norm
16 because it's too difficult to keep saying LaChapelle the
17 entire time.

18 A Understood.

19 Q When did you first meet Norm, if you recall?

20 A I don't remember the date; sometime in 2000

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
21 and -- shortly after the company started, within a few

22 years. I can't remember the exact date. When I say the
23 company, I mean, the company with amniotic membrane in
24 2011. It wouldn't have been in the 2010 days because that
25 was Hydrofix, different technology. At some point

37

1 probably in 2011.

2 Q And do you recall where you met him?

3 A We met actually at O'Charley's restaurant.

4 Q Where?

5 A I can't remember. We picked a spot in
6 between Memphis and Atlanta. I think it was near
7 Birmingham somewhere.

8 Q Did you just happen to be in the O'Charley's
9 and run into him, or --

10 A We set up an appointment.

11 Q How did you first learn of Norm?

12 A I can't remember. I think he called the
13 company. I remember he was looking for a -- an amniotic
14 membrane. He was -- to the best of my recollection, he
15 was looking to leave Bio-D, which is one of our
16 competitors, and he was shopping around to looking for a
17 new amniotic membrane and that's when we decided to meet
18 and I was going to show him our product. He was already
19 in the business.

20 Q I'm assuming you talked with him on the phone
21 the first time you ever...

22 A Yeah. Yes, sir.

23 Q Do you recall anything about that
24 conversation?

25 A Not really. It was just more of he described

38

1 what he needed and we decided to meet. It was pretty

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

2 business related, nothing more to it than that.

3 Q Did he describe what his contacts were,
4 relationships were with this company that he was running
5 at the time?

6 A I can't remember. Probably, but I can't
7 remember exactly the conversation. I remember the meeting
8 once we had lunch.

9 Q Okay. So you met for lunch?

10 A Yes.

11 Q And this was sometime in 2011?

12 A I think so.

13 Q Do you remember if it was spring, summer or
14 fall?

15 A I do remember it was warm out. So it had to
16 be sometime in the summer. I'm taking a guess.

17 Q In the south it depends; right?

18 A You never know.

19 Q You could be December.

20 A Yeah, it was warm out. I do remember that.

21 Q Were there green leaves on the deciduous
22 trees?

23 A I can't remember that.

24 Q And I don't know what happened at your
25 meeting. Tell me what you remember.

♀

39

1 A He was there with you Judd Grisanti --

2 MR. WILBON: G-R-A- --

3 MR. PEEL: GRI - --

4 MR. WILBON: G-R-I-S-A-N-T-I.

5 A -- we had a good conversation, discussed the
6 opportunity, and I showed him our products and they
7 expressed an interest to sign up as a distributor for

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

8 Memphis.

9 Q And did you have a first impression of Norm?

10 A Nice guy.

11 Q What about Judd?

12 A First impression, I thought he was -- looked

13 like a weightlifter, a gym guy, like, a gym rat. I was

14 kind of surprised he was in the medical business, but nice

15 guy. I'm kind of easy to get along with. First

16 impression is he was a Gold's gym guy. But he was in the

17 medical business and Norm -- he's with Norm and so we had

18 a nice conversation, talked about the business opportunity

19 and signed him up.

20 (Plaintiff's Exhibit No. 1 was marked for

21 identification.)

22 (Tenders document to witness.)

23 MR. PEEL: And let me know when you

24 finished reviewing it.

25 THE WITNESS: Yeah, I remember this.

40

♀

1 BY MR. PEEL:

2 Q This is Exhibit 1 which is an email between

3 Mike Carlton and -- it says Mi Medx Roberta McGraw and

4 Bill Taylor with a copy to Denise Bell dated August 29th,

5 2011; is that correct?

6 A Yes, sir.

7 Q Tell me what's going on in this email.

8 A Norm was giving us names of people outside

9 his territory to potentially consider working with, you

10 know, the override concept. And I was trying to formalize

11 that Mi Medx, you know, everything's done by contract, not

12 handshakes. So I was trying to get that on paper to

13 reward him for those efforts if it became something. Some

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

14 of these relationships did and some did not, the people he
15 was giving us to work with.

16 Q It says, "Norm continues to bring more reps
17 to Mi Medx (1 more today, this totals 5 new groups)." Did
18 I read that correctly?

19 A Yeah, a little misunderstanding the way it's
20 worded. These were distributor contracts, 1099 people,
21 sales agents, some distributors. They weren't full-time
22 employees, but there were other distributors -- a lot of
23 distributors know each other across state lines, swap
24 leads, hey, I got a new product, check this out kind of
25 thing.

41

1 Q So he's -- looks like he's trying to bring
2 more sales distributors to Mi Medx at this time?

3 A For commission, yeah; for opportunity, yes.

4 Q So you're saying it's not entirely
5 altruistic?

6 A We we appreciate the leads. August of 2011,
7 we were just getting started.

8 Q Would it be fair to say he's helping Mi Medx
9 to build a base of distributors?

10 A To an extent. Some of them did not pan out,
11 but a few of them did. I just said to an extent. Sorry.

12 Q That's okay. I catch myself saying it all
13 the time. I guess what I'm trying to get to, it looks
14 like he's trying to help out Mi Medx. Whether that was
15 successful or not or to what degree it may have been, he's
16 certainly trying to help out Mi Medx build a base of
17 distributors at this time in August of 2011?

18 A He was, and other groups did the same thing.
19 Other distributors in other areas of the country we'd sign

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

20 up would start calling their friends and it became easier
21 to recruit distributors because leads were coming in from
22 all over the country; hence, the contract had to dictate
23 how to go forward because these guys would be all over --
24 on top of each other if we took them all, free for all.

25 Q "Can we add a clause to his contract stating ⁴²

1 that we'll pay him 5 percent on documented sales to these
2 other groups up to 12 months." Did I read that correctly?

3 A Yes, sir.

4 Q What's the "up to 12 months" mean?

5 A We don't have overrides that are lifetime
6 overrides. They're all for a period of time, typically
7 six months, a couple percent. It depends on the lead. In
8 this case, I was trying to be generous and give him 12 at
9 5 percent. I'm not even sure happened when Bill decided
10 what to do it here. I'm not even sure what happened
11 after. I was just suggesting something.

12 (Plaintiff's Exhibit No. 2 was marked for
13 identification.)

14 BY MR. PEEL:

15 Q I'm handing you Exhibit 2.

16 (Tenders document to witness.)

17 A Okay.

18 Q It's an email chain between you, Norm
19 LaChapelle and a gentlemen by the name of Bob Fruin --
20 which is spelled F-R-U-I-N -- between August 26th, 2011,
21 and August 30th, 2011. Does that fairly describe what's
22 going -- or the people and the dates?

23 A Yes, sir.

24 Q Would you tell me what's going on here?

25 A Just another person that Norm knew from

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
43

♀

1 previous experience. This one did not work out and did
2 not become a partnership or distributorship.

3 Q Was this part of the one or five groups that
4 was referenced in Exhibit 1?

5 A I'm not sure. It could have been. I'm not
6 sure.

7 Q Do you recall how many groups he had gotten
8 MiMedx in contact with up to this point in time?

9 A No, I don't remember. He was calling
10 friends. This is one of them. This date is after the
11 other dates. I can't remember. Again, some of the
12 contact worked out, some did not. We never contracted
13 with this guy.

14 Q Would the month that you first met Norman
15 Judd, could that have been August of 2011?

16 A Yeah, possibly. It was warm, I do remember
17 that. The AC was working in O'Charley's. But I can't
18 remember exactly date. In and around there. I would
19 guess springtime. It would have had to predate August.

20 Q Here it says on August the 29th -- it's an
21 email to Bob Fruin from Norman in Exhibit 2, dated
22 August 29th, 2011, with a copy to you. It says, "Bob, It
23 was a pleasure speaking with you today about a product
24 that I feel is game changer. When you can find the time
25 please give me all pertinent information so I can relate

44

♀

1 it back to Mike Carlton. Name of company, address, phone
2 numbers, et cetera."

3 A He's trying to generate a lead.

4 Q Would you consider Norman enthusiastic about
5 your product at this time?

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

6 A Sure.

7 Q Would you consider him motivated to help out
8 Mi Medx at this time?

9 A It looks like it.

10 Q And did you appreciate that Norm was
11 including you on this email with this contact?

12 A Yeah.

13 Q Did you feel that Norm was trying to do a
14 good job, both for himself and for Mi Medx, at this time?

15 A As I mentioned, a lot of distributors did
16 this. Norm certainly did it as well. Once they saw the
17 technology, I was getting these kind of leads and calls
18 all over the country, calling buddies and friends. And
19 Norm was doing the same thing, trying to help out but also
20 make a little money on the side.

21 Q Did you feel like he was motivated to help
22 out Mi Medx and Mid-South Biologics at this time?

23 A At the time, yeah.

24 Q Did you feel like he was trying to be a team
25 player?

45

1 A He copied me on the emails which was nice,
2 good courtesy. Yeah, there was no issues early on at all.

3 Q And I'm -- I'm sorry, I don't -- part of what
4 lawyers do too is when we feel like we haven't had a
5 response to the question, I'm going to ask it again.

6 Did you feel like he was being a team player
7 at this time?

8 A Yeah.

9 Q And being a former football player, what does
10 that mean to you?

11 A Appreciated.

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

12 Q But a team player, what does a team player
13 mean?

14 MR. WILBON: And he said appreciated. He
15 can answer it again.

16 A You're willing to block for me, I'll block
17 for you.

18 BY MR. PEEL:

19 Q You got the same goal; right?

20 A Open a few holes.

21 (Plaintiff's Exhibit No. 3 was marked for
22 identification.)

23 (Tenders document to witness.)

24 BY MR. PEEL

25 Q Exhibit 3 is an email exchange between Norm,
46

1 Mr. Fruin, you --

2 MR. WILBON: F-R-U-I-N.

3 MR. PEEL: I already spelled it.

4 BY MR. PEEL:

5 Q -- Mr. Grisanti and Bill Taylor. Is that the
6 parties that are a party to these email exchanges?

7 A Yes, sir.

8 Q And it looks like it starts on Friday,
9 September 2nd, 2011, and goes to September 3rd, 2011; is
10 that correct?

11 A Yes.

12 Q And there's an email from Norm to you with a
13 copy to Judd on September 3rd, 2011. It says, "Mike,
14 MSB -- which is Mid-South Biologics -- would like the deal
15 we had set up with getting 5 percent of sales for setting
16 up distributors and stock in company. Norm" Did I read
17 that correctly?

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
18 A Yes.

19 Q And you say to Bill Taylor shortly thereafter
20 on September 3rd, 2011, "Bill, These guys have sent almost
21 ten groups to me. We need to agree on a program. Mike"
22 Did I state that correctly?

23 A Correct.

24 Q Tell me what's going on here.

25 A Same thing, he's sending us leads, same guy,
47

1 Bob, and Bill being a fact-based pragmatist, you know,
2 told me it could be 10 or 20, 30, but if these result into
3 a contract, then we can agree on a program. These are
4 just leads. I got excited. There's ten. But Bill, I
5 think he responded by saying, well, let's see what
6 actually turns out to be real.

7 Q But you got excited about what Norm was
8 doing?

9 A Those days, we'll take all the leads we can
10 get. I was getting the leads from other people as well,
11 but Norm was certainly trying to send me his buddies. I
12 don't think this one resulted in a contract though.

13 Q Did you get excited at this time?

14 A Yeah.

15 Q Did you feel like Norm was motivated to help
16 out Mi Medx albei t wi th a commi ssi on to hi m?

17 A Yeah, at the time, sure.

18 Q And did you appreciate his efforts?

19 A Yeah.

20 Q And I think you were appreciative enough that
21 you state "We need to agree on a program."?

22 MR. WILBON: Is that a question?

23 MR. PEEL: Yeah.

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
24 A Yeah, that's what I wrote.

25 MR. PEEL: You want to take about a five- 48

♀
1 minute break?

2 MR. WILBON: Okay.

3 (Recess taken.)

4 BY MR. PEEL:

5 Q We were talking about some emails with Norm.
6 This all kind of happened around 2011, summer, beginning
7 of fall, 2011. Kind of lead me on through the remaining
8 of the year about your relationships with Norm and
9 Mid-South Biologics, if you recall.

10 A I don't remember anything other than Norm
11 will distribute a relationship. I don't remember anything
12 outstanding that occurred back after 2011 in particular.

13 Q Did MiMedx have any governmental sales at
14 all?

15 A After a while, he stopped sending me leads
16 because he kind of ran out of buddies. That's what
17 typically happens.

18 Q Yeah.

19 A He just settled in, took care of Memphis.

20 Q Yeah. Tell me about what type of
21 governmental sales MiMedx has at this time.

22 A Actually, can I go back to the other
23 question?

24 Q Uh-huh.

25 A I did think of something. In and around the 49

♀
1 fall --

2 MR. WILBON: 2011?

3 THE WITNESS: I think so.

4 A -- it was within six, nine months of signing
Page 39

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

5 up Mid-South Biologics, we did have to counsel Norm to
6 coach Judd to not run outside his boundaries. Like I
7 mentioned before, it happens with distributors. We have a
8 contract for a reason. Judd was kind of a loose cannon.
9 He would be all over the place. He would be up in Ohio.
10 I'm like what's he doing there; selling product in Toledo.
11 We had to constantly say, you got a contract for a reason;
12 stay in the contract limit. I think it was Alaba- --
13 maybe just a couple docs in Alabama, but mostly Memphis.
14 Maybe a couple of docs in Mississippi. It was a very
15 small area. But he was in Ohio. I remember calling Norm
16 saying, Why is Judd in Ohio? And he says, I can't control
17 Judd, he's all over the place. So that's one thing that I
18 remember having a conversation with Norm about when it
19 comes to abiding by the contract, so... Other than that,
20 everything that we've discussed.

21 BY MR. PEEL:

22 Q So let's get to governmental sales. What
23 type of governmental sales did Mi Medx have in 2011?

24 A I don't remember the exact figures. We were
25 pursuing VAs, but I can't remember the actual sales line

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1 at that time.

2 Q Were there any sales at all?

3 A Yeah.

4 Q How would you describe it?

5 A Everything at that point was infancy stage.
6 You know, we were within the first year of the company
7 launching amniotic membrane so everything was new at that
8 time.

9 Q Do you, as we sit here today, remember any
10 particular sales, any particular governmental agencies or

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

11 facilities?

12 A Not in particular.

13 Q At this time in 2011, did you know what was
14 required of the federal government in order to sell to the
15 federal government products like MiMedx offered?

16 A Yeah.

17 Q What was that?

18 A You could sell in an open government, like, a
19 GSA contract which is -- there's diff- -- as I remember,
20 there was a few choices, open government pricing, GSA
21 pricing; there's a federal supply schedule, FSS; there was
22 Service Disabled Veteran-Owned Small Businesses that were
23 out there -- that's the path we chose to take -- SDVOSB.
24 I can't remember the time frame of all these, but that was
25 the initial table set for government VA facilities.

51

1 Q Did you -- were you on the FSS at this time?

2 A Not at the time. I remember we didn't want
3 to restrict ourselves on the FSS because then you can't
4 change pricing and we wanted to keep things open with VAs.
5 And then we started working with a company called
6 Affirmative Solutions out of Atlanta to try go in that
7 angle working with disabled vets, but it was all new at
8 the time.

9 Q Do you know what a pie chart?

10 A Uh-huh.

11 Q How would you describe the pie chart piece of
12 MiMedx's sales to the government at this time in 2011?

13 A Similar to commercial sales outside the
14 government, small piece of pie. The opportunity was huge
15 for the business and we were just getting started.

16 Q When you say "opportunity was huge for the

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Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

17 business," you mean, opportunity to sell to the
18 government?

19 A As well as the commercial sector. Both
20 sectors were untapped potential, small piece of pie at the
21 time.

22 Q What was the big piece of pie, if it's not
23 commercial? I guess I'm confused. You got commercial and
24 you got governmental.

25 A Uh-huh.

52

1 Q What other piece of the pie would there be?

2 A If you want to make it one big pie, there you
3 have it; if you want to make it two different pies,
4 government and nongovernment, both represented opportunity
5 for the company. There's a market being served with the
6 technology and there's a market not served with the
7 technology what we call potential market. So the market
8 served was relatively small. These products were new. We
9 had a small piece of the small pie. The big opportunity
10 was no one using anything because these amniotic
11 membranes were relatively new to the market on both sides.
12 So the potential, commercial and government, was available
13 to all companies which is why there's so much excitement.
14 What pie was served with the product; small.

15 Q I'm not talking about everybody's pie. I'm
16 talking about Mi Medx's pie --

17 A And docs.

18 Q -- and it's sales, because Mi Medx has a pie
19 representing sales.

20 A Uh-huh.

21 Q All right. And of that pie there's
22 governmental and commercial sales. Are there any other

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

23 different slices of that pie other than commercial and
24 governmental sales?

25 A International, but you could -- you could 53

1 bucket it into two pies, government and nongovernment.

2 Q And of that MiMedx pie, how much of that pie
3 was governmental sales?

4 A Hard to say. I can't remember exactly.

5 Q And I'm not asking you for a -- like, a
6 percentage number, like, 15 percent. I'm just kind of
7 giving it overall. Is it a big piece of pie? Is it a
8 very sliver of pie?

9 A I'd say one-third to two-thirds. I mean, we
10 were -- it was smaller than commercial, but both were
11 growing and both had high opportunity because of
12 physicians not using anything. The big opportunity, both
13 government and nongovernment, are physicians who don't use
14 any amniotic membrane. So that's why everybody was
15 chasing will both sides and we had a relatively small
16 piece of pie on both sides. It would be nice if there was
17 a big piece of pie coming our way from a competitor but
18 didn't exist on either side. It was all new docs
19 considering using these products for the first time.

20 Q So you think -- obviously, we're talking
21 about a pie, not an actual pie chart.

22 A Right.

23 Q We're just using a pie chart as a way to get
24 your understanding of the composition of the sales that
25 MiMedx has in 2011. Is that what we're talking about? 54

1 A Uh-huh.

2 Q Okay. And your recollection of that pie

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
3 chart, governmental sales represented one-third to two-

4 thirds of the pie chart for Mi Medx?

5 A Estimated.

6 Q One-third to two-thirds?

7 A In 2011 or 2012?

8 Q 2011.

9 A 2011, both pies were small, it's kind of hard
10 to know how it breaks down, but you could sug- -- it was
11 less than half of the commercial side, but both relatively
12 small.

13 Q I mean -- and, listen, your position at
14 Mi Medx at this time may not be -- you may not be a party
15 to the pie. I don't know. You may not even know what the
16 pie looks like.

17 A Everything was so new and there's so much
18 opportunity, VA and non-VA, we weren't really tracking it
19 by pie because everything was opportunity. Most docs docs
20 weren't using anything in VA and non-VA so everything was
21 new and it was open. It wasn't, like, a served piece of
22 pie that we either had or didn't have.

23 Q What was the total amount of sales that
24 Mi Medx had for 2011?

25 MR. WILBON: If you know.

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1 A Seven or 8 million I'm taking a guess.

2 MR. WILBON: We don't want you to guess.

3 If you know.

4 A I think it was -- I think it was 7.7 million
5 actually. That's my best --

6 MR. WILBON: Guess.

7 A -- recollection; hypothesis, recollection.

8 It was less than 10 million.

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
9 MR. PEEL: I'm growing to like him a lot

10 more. But you'll get your chance to ask
11 questions at the end of this. Okay? Let me ask
12 my questions.

13 BY MR. PEEL:

14 Q So you think your best recollection of the
15 total amount of sales representing the pie of MiMedx was
16 around 7.7 million for 2011?

17 A To the best of my recollection --

18 Q Yes.

19 A -- I think that was the year-end number,
20 2011, 7.7, yes.

21 Q Okay. And what was it in 2012?

22 A I can't remember the -- hard to say. It
23 maybe tripled. It would be over 20 million.

24 Q What was the difference?

25 A We hired direct reps in VAs. The VA business
56

1 took off because we hired direct reps from a company
2 called Advanced BioHealing that serviced the VAs and they
3 came on to the company direct. That was our first move
4 outside distributors, to have more control with full-time
5 employees and go outside distributor and kind of balance
6 the two, so... Nobody -- this was a small direct sales
7 force that actually converted business over to MiMedx in
8 VAs. That was the difference for 2012.

9 Q Was that the only difference for 2012 in
10 sales?

11 A Yeah.

12 Q Do you know a company called AvKare?

13 A Yes.

14 Q What is AvKare?

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

15 A It's another one of the Service-Disabled
16 Veteran-Owned Small Businesses. There's a few of them out
17 there. We had Affirmative Solutions. AvKare was another
18 one. There's a few more.

19 Q When did you first learn of AvKare?

20 A Sometime in 2012. I can't remember exactly
21 the date.

22 Q How did you learn of it?

23 A Judd Grisanti called me.

24 Q It's Grisanti.

25 A Grisante. Sorry. That's my Buffalo accent ⁵⁷

1 coming out; Grisanti, Grisanti.

2 Judd called me and let me know -- and, again,
3 Judd was frequently outside his lines of the contract. So
4 I was expecting another crazy call from Judd up in
5 Michigan -- but he said he has a friend at AvKare that's
6 interested in the tissue business. I never heard of
7 Avkare so we learned more about it.

8 Q You think that conversation took place in
9 2012?

10 A I think so.

11 Q Do you remember what month?

12 A I can't remember.

13 Q Would it have been June 2012?

14 A Could have been. I honestly don't remember.

15 I do remember I was in the office so I can't describe the
16 O'Charley's hot parking lot. I was in the office. I
17 don't remember the month.

18 Q And after you received this phone call, what
19 did you do?

20 A Just like any of these leads, I wanted to

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
21 hear more about it, maybe meet these guys, let Bill know
22 there's another opportunity to follow up on it just like
23 a lot these distributors had -- I didn't think much of it.
24 I didn't think much of it. I didn't know what it would
25 turn out to be, so we decided to go meet them.

58

1 Q What did it turn out to be?

2 A A good relationship.

3 Q And of this 20 million in 2012, do you know
4 how much of that 20 million represented sales through
5 AvKare and to the governmental facilities?

6 A We -- AvKare didn't sell the product. They
7 didn't do anything. They just made it easier to sell.
8 AvKare is just like Affirmative solutions. We realized
9 that they're bigger and have more size of the company than
10 the small Affirmative Solutions. So it made it easier to
11 do business with AvKare than with AF, but it was really
12 our direct guys that sold the product. It just made it
13 easier to sell. So you could argue -- all of it went
14 through AvKare because we left the other relationship and
15 moved to AvKare, but it wasn't because -- AvKare just made
16 it easier to do business. They didn't have sales guys.

17 Q Made it possible to do business?

18 A No. We were doing business anyway. We were
19 going to hire these people -- we started hiring direct
20 reps in 2012 from Advanced BioHealing. And they were
21 converting their dermograph business over to amniotic
22 membrane in these VAs. We could have pursued our own FSS
23 at the time as well.

24 Q But you chose not to?

25 A Well, because Pete is a veteran, Army guy, 59

1 and he really wanted to work with the veteran companies,
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EXHIBIT 3

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2 Service-Disabled Veteran-Owned Small Business. He liked
3 that. And we decided -- and the government sets aside a
4 small quota for the SDVOSBs. So that's why instead of
5 Affirmative Solutions, we'd work with AvKare.

6 Q Because they were a bigger company?

7 A Bigger than Affirmative Solutions, yeah. the
8 sales were made by our guys direct, but AvKare was a
9 bigger customer service company than Affirmative
10 Solutions.

11 Q Were you able to sell your products under the
12 FSS at this time prior to a deal being struck with AvKare?

13 A We chose not to do an FSS prior to. We
14 considered doing it on our own. We actually, I think,
15 started the process. It just takes a little while, and
16 AvKare already had a relationship where they could add it
17 to their FSS. We could have our own. Affirmative
18 Solutions was telling us we didn't need an FSS. We were
19 getting conflicting opinions. AvKare already had an FSS
20 so we just added it to them. It made it easier to do
21 business, so...

22 Q Before you struck your deal with AvKare,
23 could you have sold product to the government under an
24 FSS?

25 A We could have. We had to obtain an FSS.

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1 Q But you didn't have one?

2 A Correct.

3 Q Okay. You chose not to?

4 A We sold under a GSA open contract to have
5 more pricing flexibility.

6 Q But you chose not to sell on an FSS until you
7 started working with AvKare?

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

8 A Correct.

9 Q Had you ever heard of AvKare before Judd
10 Grisanti told you about AvKare?

11 A Uh-uh.

12 Q Is that a no? I'm sorry.

13 A No, sir.

14 Q Had anyone at MiMedx heard of AvKare before
15 Judd Grisanti told you about them?

16 A Bill Cochran; but he didn't tell me about
17 AvKare before Judd did, but shortly after.

18 Q Tell me about that. Tell me about your
19 conversation with Mr. Cochran or your communication with
20 Mr. Cochran about AvKare.

21 A He was aware of the company and Judd's
22 relationship with AvKare and suggested we meet. It was as
23 simple as that. So we decided to meet with AvKare
24 directly in Nashville shortly after just to check it out.

25 Q Well, okay. So you have this conversation 61

1 with Judd about AvKare sometime in 2012. Do you just walk
2 into Bill's office and say, hey, man, I heard this great
3 deal going. It sounds great. Have you ever heard of
4 AvKare? And Bill goes, I already know what AvKare is. So
5 how did that --

6 A Bill Cochran or Bill Taylor?

7 Q Bill Cochran. Excuse me.

8 A Bill Cochran did not have an office. He was
9 with a different distributor that worked with MiMedx. He
10 was based in Tucson, but he worked out of Dallas with a
11 different distributor. He eventually became a full-time
12 hire for us, but at that time he was with another
13 distributor.

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

14 Q Okay. So you didn't just walk into his
15 office?

16 A He didn't have an office.

17 Q Okay. So did you call Bill or did Bill call
18 you?

19 A I can't remember how he -- I honestly can't
20 remember how he was involved, but he was involved. So the
21 first meeting with AvKare he was there and he and Judd
22 were the ones that were really involved with this
23 potential deal and we were just going to investigate, get
24 the facts and meet these guys at AvKare, and I was there
25 for the first meeting.

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1 Q You were there for the first meeting; is that
2 what you just said?

3 A For the first meeting with Mi Medx, yeah.

4 Q Oh, between who?

5 A A guy named Bobby Lindsey of AvKare, Bill
6 Cochrane was there, Judd and Norm. I think that was it.
7 I'm not sure if Norm was even there actually. I can't
8 remember. Judd was there.

9 MR. WILBON: Can you repeat? Who did you
10 say was there?

11 THE WITNESS: Bill Cochrane, Bobby Lindsey
12 of AvKare, the VP of sales over there, their
13 sales contact who wanted to meet me -- Bill
14 Cochrane, Judd. I honestly don't remember if
15 Norm was there or not, but we had a first meeting
16 in Nashville.

17 BY MR. PEEL:

18 Q And --

19 A I actually don't think he was there, but I'm

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

20 not sure about that.

21 Q But this communication with Mr. Cochrane, was
22 it a phone call? Was it an email? What was it?

23 A I cannot remember, actually, how he was
24 involved. And these guys are all distributors that knew
25 each other just like the ones you've seen in these emails
63

1 and somehow he was connected to this one. He wasn't with
2 us full time initially, but he was there for the first
3 meeting. I cannot remember whether I had an email or
4 phone call with him prior to. Judd was the one that
5 called me about AvKare and then we decided to set up a
6 meeting.

7 Q But you did have a communication with
8 Mr. Cochrane where Mr. Cochrane also informed you about
9 AvKare; correct?

10 A He was there for the first meeting. I can't
11 say he informed me about AvKare, Judd did.

12 Q I know Judd first first told you that --

13 A Right.

14 Q -- but you said afterwards that you had a
15 conversation or you had communication with Mr. Cochrane
16 about AvKare too?

17 A Yeah. He -- yes. And it was over the phone
18 to my best recollection. And he told me that Judd cooked
19 up this potential relationship with AvKare and Norm and
20 Judd were too small to service this so they were trying to
21 get a CPM in Dallas, a big distributor, much bigger, like,
22 ten times bigger than Norm.

23 Q Is that --

24 A Bill Cochran's affiliated with CPM in Dallas,
25 big distributor, a master distributor, which Norm wasn't,

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
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1 so they had to size to scale. And he was trying to pull
2 Bill in to try to get product for AvKare, which he didn't
3 have a contract for that. None of this was by contract.
4 So Cochrane said that Mark Brooks, the owner and principal
5 of CPM didn't want to touch this because it was not in his
6 contract. It was just Texas. Ship a product into Memphis
7 or wherever AvKare is, Pulaski. He just didn't want to
8 touch it.

9 Q Did you say Mark Brooks didn't want to touch
10 it?

11 A No. Bill Cochrane suggested to bring it to
12 us because there was no other way to get product. Norm
13 wasn't big enough. I think that's how Cochrane was
14 involved.

15 Q And did you have a conversation with
16 Mr. Brooks or how did you know that?

17 A Just from Bill Cochrane. I did not speak
18 with Mark Brooks about it. It was positioned to me as
19 Judd has another crazy idea, let's check it out. And the
20 idea wasn't going to work without MiMedx directly so
21 that's why I decided to meet this guy, Bobby Lindsey, and
22 see what's real and what's not real.

23 Q When did Mr. Cochrane come on as an employee
24 of MiMedx?

25 A I can't remember his exact employment date.
65

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1 I think it was the fall sometime and he was -- we, at that
2 time, were getting big enough a as company to hire a few
3 managers to work for me to be at that point of
4 relationship with these distributors and Bill Cochrane was
5 one of the ones we hired and I don't remember his

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
6 employment date.

7 Q Do you know why Bill was contacting you or
8 had called you about this deal with AvKare?

9 A You have to ask him. All these guys try to
10 sniff out a deal. He thought there might be a deal to
11 move inventory in and out of CPM, but Mark didn't want to
12 do it, Mark Brooks. So Bill suggested, if you're going to
13 be shipping VAs, it has to come from MiMedx so Judd called
14 me with the AvKare opportunity. I don't know whether it
15 was Bill urged him to or Judd decided to. I don't know
16 how it all worked. But the deal they were trying to work
17 wasn't going to happen. No one had a contract for it. It
18 was unauthorized. They were trying to figure out a way to
19 ship product through CPM, through Norm, AvKare. Nothing
20 made sense. No one had a contract or authority to do any
21 of this. So like a lot of these opportunities were, I
22 need to go investigate, get the facts, run it back by Bill
23 Taylor and see what we can actually do, if anything,
24 because we already had a relationship with Affirmative
25 Solutions and already sort of had a strategy around FSS.

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1 So I needed investigate, get the facts. That was the
2 first meeting with AvKare.

3 Q Did you investigate?

4 A Yes, met Bobby Lindsey and we started a
5 relationship with -- it went to the next step where their
6 principals came into Atlanta, met Pete, Bill, and it
7 ultimately resulted in a contract.

8 Q And when you were investigating this, how
9 were you going about investigating it?

10 A Trying to understand what they were trying to
11 do, what they did. AvKare was an STVOSB, which we already

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
12 had. AvKare had a big generic pharmaceutical company that
13 they were pushing a lot of products in VAs. That's where
14 they had the FSS. They were not in the tissue business,
15 didn't know anything about our products, so I had to sort
16 of inform them about the products. Bill Cochrane helped
17 with that. And we had to understand the relationship and
18 the way it was going to work because they didn't have --
19 their intention, I remember, was to be a selling agent for
20 us. They didn't know the product. So we said, well,
21 we've got our own people in VAs, this might be more
22 customer service, not you selling the product. So we had
23 to straighten a few things out, make sense of the deal and
24 then it resulted in a relationship with Mi Medx directly.

25 Q So during this time, are you having 67

1 communication with Bobby Lindsey personally?

2 A Once it kicked up to a contract level, it
3 goes to Bill and Pete and then Shirley and Troy, the
4 principals over there, and that's when I stepped out.

5 Q Before the contract, were you having
6 communications with Bobby Lindsey?

7 A Yeah. I don't remember how often, but we had
8 a few. We met the first time and so I was the initial
9 contact for Bobby in the Nashville meeting. I'm not sure
10 how often after that.

11 Q Would you have exchanged emails with
12 Mr. Lindsey?

13 A Could have. Possible. I can't remember.

14 Q Have you looked for any emails in regards to
15 your communications with Mr. Lindsey before you stepped
16 out of the AvKare deal?

17 A I have not gone back and looked at emails.

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
18 They're archived. I don't have access to any emails on my

19 system before 2015; so, no, I didn't go back to look to
20 see if there was email traffic. There could have been.

21 Q As we sit here today, are you saying that
22 that there are any?

23 A I don't know. Could be. And this is where
24 we want to do an override for Judd and he was tied to Norm
25 and helped him out with and override just like we talked
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1 about in the past with these kind of things.

2 Q Because they made a connection between Mi Medx
3 and AvKare that wasn't there before they made the
4 connection?

5 A As like a lead generation finders fee kind of
6 thing.

7 Q Is that a yes?

8 A That's a yes. The deal they presented wasn't
9 going to work. But once the deal changed and became
10 something we could actually do, we wanted to to be fair to
11 Judd and Norm.

12 Q You mentioned something about archive emails.
13 Did I hear that right?

14 A Well, there's a server at the company, but I
15 didn't go back and look to so what was emailed between
16 Bobby and I.

17 Q But you described it as an archive. Did I
18 hear that wrong?

19 A No. There's -- I think -- I'm not an IT
20 person -- but I think every email in the company's history
21 is archived somewhere. That's what IT tells us. I don't
22 go back and look, but... And I have not had an email
23 exchange with Bobby Lindsey. It's been quite some time.

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
24 We don't have the relationship with AvKare anymore.

25 Q When you were investigating the facts with 69

1 AvKare after you were presented with this information by
2 Judd, did you keep all of that information concerning your
3 investigation in your head only?

4 A I don't remember. It could be emailed. It
5 could have been over the phone. Things move fast. I
6 don't remember.

7 Q Well, I guess what I'm trying to say is,
8 you're investigating this AvKare deal; right?

9 A I probably emailed something to Bill or at
10 least called him and told him about the meeting we had in
11 Nashville, that there is potential if we want to go this
12 route, you know, but the deal was clumsy and didn't make
13 any sense at all and wasn't in Norm and Judd's contract
14 yet. They were good guys. They had an FSS. We had not
15 strategically gone that direction. We might want to
16 consider it. And that's when we kicked up to Bill and
17 Pete to talk to the other guys.

18 Q Let me be very direct. When you're doing
19 this investigation, are you keeping notes of what you're
20 finding out?

21 A We were at a restaurant eating chicken wings.
22 Bobby's a big guy and he was pounding wings and we were
23 talking to each other like sales guys do. And
24 oftentimes -- and this is sort of an admission --
25 salespeople are notorious for not keeping copious notes on 70

1 paper. I did not have my laptop up and I did not -- we
2 were at a restaurant eating dinner -- I liked him -- and
3 then probably called Bill or maybe emailed them. But once
4 it goes to contract stage beyond the initial meet and

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

5 greet which is what I did, I don't remember how much was
6 on email versus -- but I do remember the contract was
7 negotiated between AvKare and MiMedx and then it was let's
8 figure out a way to compensate for the lead and finders
9 fee with -- it was really Judd and Bill Cochrane came on
10 with the company direct, MiMedx, so he didn't get paid on
11 the deal. So it became let's work an out override for
12 norm and Judd, but again that was after. We wanted to be
13 fair because that was the initial contact.

14 Q And I want to be fair to you --

15 A Sure.

16 Q -- so I'm going to ask the question again.

17 A Yeah.

18 Q Did you keep notes of your investigation of
19 AvKare during the time that you investigated the facts?

20 A I might have. I honestly don't remember if
21 it was email. I don't have any written notes at all. I
22 could have had some emails on that or it would have been
23 over the phone, but the initial meeting was a restaurant
24 and we were not taking notes at that time.

25 Q Would you have -- you said you have a laptop;
71

1 right?

2 A Not with me at the restaurant; but, yeah, we
3 have laptops.

4 Q And with respect to the laptops, you know,
5 after you have a meeting with a potential prospect, would
6 you keep notes or...

7 A Not defined as notes to the meeting, not my
8 style. Could have emailed Bill sizing up a few things
9 from the meeting, maybe didn't, maybe did it over the
10 phone. I honestly can't remember.

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

11 Q Would those emails be on your laptop or would
12 they be on -- if they exist, would they be on your laptop,
13 or would they be on MiMedx's server, or how would they be
14 stored if you did send emails from you to anyone at MiMedx
15 concerning your investigation of this AvKare deal or any
16 conversation that you may have had with AvKare?

17 A I'm assuming our IT could pull all those old
18 emails up, but they're not on the existing laptop. But
19 they weren't bleached like Hillary's 30,000 missing
20 emails. We keep record of all the emails. They're
21 probably discoverable. I don't know if they're missing
22 emails, or if they even existed in the first place,
23 actually.

24 Q So you had a meeting with Mr. Lindsey?

25 A Yes.

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1 Q Where did that take place?

2 A At a restaurant in Nashville.

3 Q Was it just you and Mr. Lindsey?

4 A No. Judd was there and Bill Cochrane was
5 there.

6 Q And Norm may have been there, you just don't
7 know?

8 A I'm not sure. Yeah, he could have been
9 there. I remember Judd was friends with Bobby.

10 Q So did you speak with Mr. Lindsey or meet
11 with Mr. Lindsey after this initial meeting with
12 Mr. Lindsey?

13 A Yeah, I think they came to Atlanta to meet
14 Bill and Pete. Bobby was there and I was there in that
15 meeting. So that would have been afterwards, yeah.

16 Q Okay. So I've got two meetings now.

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

17 A Uh-huh.

18 Q Any other ones?

19 A Not that I'm aware of.

20 Q Okay. What about conversation on the phone
21 with Mr. Lindsey between your first email -- between your
22 first meeting and your second meeting?

23 A Probably. I remember one phone call, he
24 called me to make sure Judd was taken care of. Bill
25 Cochrane was trying to orchestrate the deal and Bobby

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1 wanted to make sure his friend Judd was taken care of. I
2 said -- you know, with a finder's fee override. I said,
3 No problem, that'll happen; let's get this agreement
4 worked out. But Bobby and I weren't involved in the
5 negotiation of the deal. It was more Shirley, Troy, Bill,
6 and Pete. Bobby could have been in there, but I wasn't in
7 negotiation the itself. I was kind of the "tee up" guy.

8 Q So this is -- your involvement in the -- in
9 the investigation of AvKare would have ended once it came
10 to the contract stage; is that what I understand you to
11 say?

12 A Correct. From an investigative perspective,
13 yeah. You could use the word investigative. I'm sizing
14 up an opportunity that might work for the company, and
15 then it just comes down to trying to work out the contract
16 with the company. So that was where it went.

17 Q Would you have been involved in working out
18 the terms of the contract with the company?

19 A No. That's Bill and Pete make that decision.
20 And I'm not sure if Bobby was involved. I know Troy and
21 Steve Shirley were involved.

22 Q So do you have -- even though you weren't

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

23 involved in the negotiations of the AvKare contract with
24 Mi Medx, are you aware of how the negotiations were going
25 or proceeding?

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1 MR. WILBON: At that time?

2 MR. PEEL: Yeah.

3 A Yeah, generally aware it's going back and
4 forth. They didn't want too many folks in the room
5 working out the terms and conditions. I know there was a
6 lot of back and forth. When I say a lot, it was -- it
7 took some period. It wasn't a quick one meeting kind of
8 thing. There was redline agreements going back and forth
9 and ultimately landed into a -- into a deal. But I wasn't
10 privy to the way it was negotiated back and forth, no.

11 Q You just kind of generally were aware they're
12 negotiating?

13 A Yeah, exactly. We stepped out and let them
14 kind of work it out. If it didn't work out, it didn't
15 work out. If it did, it did.

16 Q Was -- were you aware at any point in time
17 that the AvKare deal with Mi Medx was in jeopardy of
18 failing or not being consummated?

19 A No. I think it was mutual that there was a
20 desire to make something work. I don't remember where the
21 deal was going to not work out. There was one call with
22 Judd to me over the phone saying Bobby was upset at Bill
23 Taylor. I cannot remember what they were upset about.
24 Typical negotiations; you draw positions and then work
25 around them. So I shared that with Bill and he just kind

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1 of said, you know, we'll get this worked out. I cannot
2 remember what the issue was, but there was one call by

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

3 Judd saying Bobby was upset and was going to pull away,
4 and I don't remember why. And then from there, after
5 sharing that with Bill, they came back to the table. I --
6 I -- I don't remember the -- Judd didn't play an active
7 role. He was sort of a person who new Bobby. Then he
8 called me saying this is not going to work, so -- but Bill
9 assured me, It will work out; this is just typical
10 negotiations. That's why they don't have all the sales
11 guys in the room. They work out the Ts and Cs. So -- and
12 then Bobby called me saying, Make sure Judd's taken care
13 of. I said, Yeah, we'll have to work out some kind of
14 override. Their intention to be selling the product
15 wasn't going to work because they didn't know the
16 products. So I didn't know which way it was going to go,
17 but they -- over a period of time, they worked out the
18 deal.

19 Q Are you aware of whether Bill Taylor ever
20 contacted Mid-South Biologics, whether that was Norm or
21 Judd, to help and assist in, I guess, bringing the deal
22 across the line with AvKare?

23 A I don't think that happened. I guess it
24 could have, but I'm not aware of that, no. That wouldn't
25 be typical Bill. He -- once people shake hands, Bill

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1 takes it over on the negotiation. I don't think he'd pull
2 in -- Norm wasn't really the relationship guy. I don't
3 think he'd be pulling in Judd. I'm guessing Bill didn't
4 do that, but maybe he did. I don't -- I don't remember
5 that.

6 MR. WILBON: He don't want you spec- -- no
7 speculation.

8 A Right. I'm not aware of that.

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
9 BY MR. PEEL:

10 Q You don't know?

11 A I don't know. And again, in the background,
12 we could have, at the time, just pursued our own FSS
13 hired, started to hire direct reps, that could have made
14 it easier, but how much is that worth? You know, could
15 the VA opportunity have happened without it? Yeah. It
16 just would take a little longer. Their pitch to us was,
17 "We'll get you on the FSS."

18 Q And did they?

19 A They did. It just moved our time frame up.
20 It was something we could have done direct, which we have
21 now. We have an FSS now.

22 Q When did you obtain your FSS?

23 A I can't remember the date, but as a big
24 company, you'd want to have your own FSS, as well as other
25 relationships, so just decided to run parallel path, 77

1 follow up on our FSS at some point just to have it, sort
2 of a risk position. If something ever happened to AvKare,
3 we'd have our own. I can't remember the exact date, but
4 we sometime's last year, I'm guessing. I don't know. I
5 shouldn't guess; sorry. We have an FSS. I'm not sure of
6 the date.

7 Q So the sales in 2011 for MiMedx went from
8 7.7 million or so to around 20 million in 2012?

9 A Somewhere in there; 20, 25.

10 Q Twenty to 25?

11 A Yeah. We made a big jump. The jump was
12 20 million, so maybe 27 million. It was a 20-million
13 jump. And that was because of the Advanced BioHealing
14 guys that came on board that pitched to us they've got

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

15 20 million in VAs, they can convert their dermograph to
16 amnio effects. And that's why we were successful. It
17 wasn't AvKare selling the product. It was direct hires.
18 But it was with the customer service extension of AvKare.

19 Q So tell me again who these people were that
20 you brought on.

21 A They were a company called Advanced
22 Bi oHealing, ABH. The company was acquired by Shire
23 Pharmaceuticals, S-H-I-R-E. Shire laid off their federal
24 division in 2012 and we hired them. That's what made the
25 VA business tick.

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1 Q Okay. So could Advanced Bi oHealing have come
2 on and made the sales in 2012 without the AvKare deal
3 going down between you and AvKare?

4 A They could have. Yeah, they had
5 relationships and they had connections in VAs. We could
6 have sold on the open market. It would have been -- it's
7 hard to say how successful we would have been. AvKare
8 made it easier because it's an FSS, but we could have
9 pursued our own FSS and still been successful because
10 these guys have control of -- of the business.

11 Q Okay. Could Advanced Bi oHealing have sold
12 product on this FSS without the AvKare contract being
13 executed with Mi Medx at this time in 2012?

14 A When you say Advanced Bi oHealing, I'm not
15 sure if I understand.

16 Q You said that Advanced Bi oHealing is the real
17 reason why Mi Medx made 27 million.

18 A You mean --

19 MR. WILBON: He said brought former
20 employees.

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
21 BY MR. PEEL:

22 Q Oh, you rehired the former employees?

23 A We hired the former employees.

24 Q Okay.

25 A They were laid off by Shire Pharmaceuticals.
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1 They were on the street with VA business and we hired
2 them.

3 Q Okay. So could these people that were now
4 working for MiMedx, could you all -- okay. So let's put
5 aside Advanced BioHealing for a second. You hired their
6 staff?

7 A Correct.

8 Q Okay. They were now MiMedx employees?

9 A Uh-huh.

10 Q Okay. So when we're talking about these guys
11 from Advanced BioHealing, we're really talking about
12 MiMedx employees?

13 A Correct.

14 Q Okay. So could MiMedx have sold on the FSS
15 its products to the federal government before the AvKare
16 deal was executed between MiMedx and AvKare?

17 A We didn't have an FSS at the time. We would
18 have had to continue pursuing our own FSS, which would
19 have taken -- sometime we would have been able to achieve
20 it, but just -- I think it was a six-month process, six to
21 nine months. So we would have eventually been on the FSS,
22 but the AvKare made it easier because they already had it.

23 Q So approximately \$20 million of sales was
24 sold via the AvKare contract --

25 A Approximately.

1 Q -- product in 2012?

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EXHIBIT 3

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

2 A Uh-huh.

3 Q Is that a yes?

4 A Approximately, yeah.

5 Q So an important contract that Mi Medx executed
6 with AvKare in 2012?

7 A It -- it helped move the time frame up on
8 sales. If not, it would have been get our own FSS and
9 been selling the 20 million in -- we would have been able
10 to sell right away with the open GSA. Not as quickly, but
11 we would have been able to sell some. I'm not sure how
12 much. It's a portion of that we still could have sold on
13 our own. And let's say the AvKare relationship fell
14 through. We still could have sold on our own in the open
15 GSA. We still would have hired these guys, had our own
16 FSS, but the big ease of doing business through the FSS
17 would have been just pushed back a little bit. So that's
18 why Bill was negotiating back, well, how much was this
19 worth to us to have instant sales on the FSS or wait til
20 nine months. And that was his negotiation with AvKare.

21 Q Was it --

22 A So it served a role to move up the time frame
23 quicker.

24 Q Was it an important contract to Mi Medx?

25 A Yes.

♀

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1 Q Are you familiar with Mi Medx's SEC filings
2 with the SEC? For example, its Form 10-K?

3 MR. WILBON: Tell him what the SEC is.

4 Maybe he doesn't know.

5 MR. PEEL: Oh, okay.

6 THE WITNESS: Securities and Exchange
7 Commi ssi on?

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

8 MR. PEEL: He knows what it is.

9 THE WITNESS: Maybe Southeastern
10 Conference?

11 MR. PEEL: Don't be -- don't be dismi --
12 don't be diminishing his knowledge.

13 THE WITNESS: Well, the SEC, it could come
14 down to Georgia and Alabama.

15 MR. WILBON: Yeah, but you can ask people
16 in every other country, if it's not securities --

17 MR. PEEL: It's going to come down to
18 Georgia and Alabama.

19 A I think so. I don't read the 10-K. I'm
20 familiar with it, but I don't...

21 BY MR. PEEL:

22 Q Would you disagree with how Mi Medx has
23 characterized its AvKare contract in its SEC 10-K filings?

24 MR. WILBON: Objection. That assumes he
25 knows how it's characterized.

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1 A Yeah, I -- how is it characterized?

2 BY MR. PEEL:

3 Q I don't have it here in front of me. I'm
4 just --

5 A I didn't -- I haven't seen it. I'm not sure
6 whether I disagree when I haven't seen it.

7 Q Okay. So you haven't seen it, so you have no
8 real opinion on it one way or the other?

9 A Correct.

10 Q Okay.

11 (Discussion off the record.)

12 (Thereupon, Plaintiff's Exhibit No. 4 was
13 marked for identification.)

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

14 (Tenders document to witness.)

15 BY MR. PEEL:

16 Q Okay. This is an email dated August the
17 9th -- oh, excuse me -- May 21, 2012, from Norm to Bill
18 Taylor, Pete Petit. That's P-E-T-I-T.

19 A Uh-huh.

20 Q And you with a copy to Judd Grisanti; is that
21 correct?

22 A Yes.

23 Q And it wasn't directly to you, but he copied
24 you on it?

25 A Uh-huh.

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1 Q Do you remember getting this email?

2 A Not this particular email but I remember the
3 discussion about the cap.

4 Q And he's just basically saying, look, I don't
5 want a cap?

6 A Yeah. I remember that. He called me about
7 that.

8 Q Okay. And I'm assuming you had -- when it
9 comes to contracts either with distributors or with
10 whomever, that is that kind of Bill or Pete's call in
11 stuff like that, or do you have a role in it?

12 A Ultimately, they make the decision, but I
13 help tee things up and sort of play the middleman.

14 Q Okay.

15 A I remember telling Norm, You need to put this
16 is in writing because there's -- it's not likely they're
17 going to sign an uncapped contract, because you don't know
18 where this business could go. But if you want to take a
19 shot, put it in writing. So this is what he did.

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

20 Q Okay.

21 A The answer was no, but he took a shot.

22 Q Okay. Had you seen the agreement?

23 A Not the actual agreement. I mean, I could

24 have. I don't remember. I remember Norm called me.

25 Sometimes I remember kind of where I am. I was in an

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1 airport and he was asking if Bill would agree to no cap

2 contract. I said, I don't think so. So I said, State

3 your case; copy Pete.

4 Q But it's not really your call?

5 A No. I -- I -- I was trying to -- again, on

6 the relationship guise, I was trying to help Nor- -- Norm

7 understand, I don't think that's going to fly, but you can

8 try. He was also trying to get a higher percent, too. He

9 wanted much higher than the percent. I said, Norm, Judd

10 did this; you didn't really play a big role here; take the

11 money. And I was just trying to help him out, to

12 understand. But in this case, I do remember saying, you

13 know, Put it in writing and we'll see; make sure you copy

14 Pete. We'll see what happens. He was asking me to go to

15 bat for him. But I can try, but, you know, I said,

16 There's no way they're going to give you that uncapped. I

17 think he wanted 10 percent or something. I was, like, You

18 better cut that in half. Bill want -- Bill was only two.

19 This is going way back, so I don't remember the back and

20 forth. But Norm wanted a bigger contract, but then he

21 eventually agreed to this, so...

22 Q Do you know whether Bill Taylor ever told

23 Norm that either you take the deal that was finally

24 executed or you get nothing?

25 A I don't remember that.

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
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1 Q Do you remember any type of negotiating
2 position of a threat of that nature?

3 A No. That's not Bill's style. We always did
4 overrides. We did overrides for other leads Norm gave us.
5 And in this case, I remember trying to help Norm
6 understand that unlike that guy Bob Fruen that Norm was
7 friends with, he didn't even know these AvKare guys. I'm
8 like, look, take -- take the -- take the money. You know,
9 Judd teed this up with Bobby. Take it. You know, you
10 didn't do anything for it. Take it. So I was trying to
11 encourage him, because in other situations, he would
12 actually get the conversation going, email back and forth.
13 You know, we saw some of that documentation. In this
14 case, it's kind of Judd's deal; take the money. But Norm
15 wanted more. He wanted a bigger amount. But he
16 eventually came to his senses and signed off on it.

17 Q Well, I know you --

18 A I don't know if -- I don't think Bill
19 threatened him. That's not really Bill's style. I don't
20 know.

21 Q So that's what I was trying to ask.

22 A So the answer is I don't know.

23 Q Now, have you ever looked at the consulting
24 agreement in this case?

25 A I can't remember. I mean, I've got a file
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1 cabinet full of -- there might be some contracts in there
2 with this, but I don't remember seeing it specifically. I
3 would know of the negotiation, kind of what Norm got,
4 which I thought was pretty fair. But I didn't -- I don't
5 remember seeing the actual contract. I wasn't involved

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
6 with it going back and forth. I could have been copied on

7 the email at some point, but -- so I don't know.

8 Q So I just want to make sure I understand --
9 we understand each other.

10 A Uh-huh.

11 Q Have you ever reviewed a consulting fee
12 agreement up to today?

13 A Read and formally reviewed? Not that I'm
14 aware of. For the purpose of -- or negotiating or just
15 FYI, I want to read it just for fun? I mean, I'm not
16 sure -- when you say reviewed, just help me understand the
17 clarity. When you say have I ever reviewed, like, what do
18 you mean? Look at it? Have a copy of it on email? It's
19 in the file somewhere? Or actually read it top to bottom?

20 Q Well, have you ever read it? I mean...

21 A No. I have not read it top to bottom. I
22 would hear of the bottom line to these contracts. And I
23 remember this was one that it's a typical contract. It
24 had a cap. It had a period of time matching up with
25 AvKare. It had a higher percent than Bill wanted to do,

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1 which is at -- I mean, I thought it was, like, a pretty
2 big contract for Norm. And a 30-day termination, I think.
3 I mean, I thought it was a pretty fair deal. I didn't
4 read the contract, though, no. I thought Norm thought it
5 was pretty good. He was making money on it early on.

6 Q Between the time the contract was executed
7 and the time that Mi Medx paid MSB on the override
8 agreement, which is the consulting agreement, are you
9 aware of any disputes as to whether those payments were
10 being made timely and accurately between Mi d-South
11 Bi ologi cs and Mi Medx?

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

12 A The consulting agreement or the AvKare
13 agreement? You're referring to the consulting agreement
14 with Norm, the override agreement?

15 Q Yeah.

16 A I remember hearing about Norm's people -- I
17 forgot this guy's name, Steve or something -- Scott,
18 Steve, and Judd kind of berating our finance team. I
19 heard some flack from finance that these guys are calling
20 me, trying to shake me down, get the money, intimidate me.
21 They were upset. But we eventually paid up with the
22 contract. I mean, we -- we -- we pay our bills. I
23 didn't -- I had no doubt that we were going to square up
24 on it. This is an agreement we executed. I'm not aware
25 of any unnecessary delay or purposeful delay in paying 88

1 them. I do remember their anxiety about getting paid
2 quicker. I knew they were upset. I heard the noise in
3 finance. But if I was involved in that at all, I would
4 probably just reassure Norm, You'll get your money. I
5 mean, we're going to pay our bills. It could have been
6 accounting. It could have been the AvKare sales tracings.
7 It could have been lots of reasons for -- if -- if there
8 was a delay, it could have been a reasonable delay, so...

9 Q Do you know whether there was any delay of
10 payment by Mi Medx to Mid-South Biologics on a consulting
11 agreement that was outside the parameters of what was
12 required of the timing of that payment by the consulting
13 fee agreement?

14 A I'm not aware of that. But I do remember
15 there was a lot of noise around that, so it could have
16 been -- it could have been delayed. It wasn't purposeful.
17 Like, nobody was trying to hide the money from Norm, so...

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

18 Q Do you know when they were finally paid, or
19 when they were first paid?

20 A I don't know the date, no. I knew they were
21 paid, and I expected that to be the case. You'll get your
22 money.

23 Q But are you involved in any of those?

24 A No. Not with finance, accounting, and
25 contract team. I hear noise. I'm copied on emails. But
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1 I get 200 a day, so my role would have been, You'll get
2 your money. Let them square up with the AvKare sales
3 tracings and you'll get your -- it's an accounting issue.
4 I do remember -- oh, what's her name -- Jackie was
5 literally upset, crying, like, upset because they were
6 pummeling her over getting their money. But that was a
7 while ago. I can't remember the circumstances around it.

8 Q But you don't know whether Mi Medx was
9 adhering to the agreement in the contract between
10 Mid-South Biologics and Mi Medx concerning the timing of
11 the payments under that agreement to Mid-South Biologics?

12 A Not -- not aware if we were outside those
13 parameters or not, honestly.

14 (Plaintiff's Exhibit No. 5 was marked for
15 identification.)

16 (Tenders document to witness.)

17 THE WITNESS: Okay.

18 BY MR. PEEL:

19 Q Exhibit 5 is an email chain between Norm and
20 you, and eventually you and Mr. Taylor and Mark Diaz,
21 dated October the 4th, 2012. Is that a fairly accurate
22 description of Exhibit 5?

23 A Yep. Yes, sir.

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
24 Q Tell me what's going on here.

25 A Yeah, this is what we just talked about. 90

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1 There must have been a delay and I was asking the contract
2 team, which is Diaz and Bill, to communicate and get
3 them -- get them -- get them paid. You know, just kind of
4 playing my role of what's the issue here? So I obviously
5 wasn't involved in the back and forth, but I was trying to
6 help them get squared away, paid up. I don't know why
7 there was a delay and what the contract term was of the
8 payment per contract. I'm not -- I wasn't aware of that.
9 But obviously I'm being pulled in to try to get them paid
10 up, which I think shortly -- I mean, I'm guessing we paid
11 them shortly after this.

12 Q And you say, "Need to square him away before
13 Judy complains to Big Bobby." Did I say that correctly?

14 A Yeah, Bobby Lindsey. That's Judd's
15 relationship. So we needed to get these guys paid on the
16 override. I'm not sure why there would be a delay.

17 (Thereupon, Plaintiff's Exhibit No. 6 was
18 marked for identification.)

19 BY MR. PEEL:

20 Q I'm handing you Exhibit 6.
21 (Tenders document to witness.)

22 A Okay.

23 Q This is an email from Norm to Mark Diaz with
24 a copy to you.

25 A Uh-huh. 91

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1 Q And then you forwarded it from yourself to
2 Bill Taylor on December the 13th, 2013. Did I fairly --
3 did I fairly and accurately state what's being
4 described here in Exhibit 6?

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

5 A Yes.

6 Q And he -- Norm says, "Mark, I was hoping that
7 you could look into the status of payment to Mid South
8 Biologics. When I spoke to Bill, he informed me that
9 payment would be every 30 days. I emailed him with no
10 response as of yet. Thanks again."

11 I know this wasn't being direct -- I mean,
12 this email wasn't directly to you, but you were copied on
13 it.

14 A Uh-huh.

15 Q What's going on here?

16 A Norm's looking for his money and I saw Bill's
17 name on here, that he informed Norm something that wasn't
18 being done, so I wanted to flip it over to Bill and make
19 sure he's aware. I wasn't aware that it was supposed to
20 be 30 days, so yeah, I just want to keep moving along and
21 get Norm paid. So I don't know what the situation was,
22 actually, but I wanted to make sure Bill was aware that
23 Norm had talked to him and payment wasn't done. Just
24 trying to help out.

25 Q And do you know whether Mi Medx intentionally⁹²

1 delayed payment?

2 A I do not. And I would vehemently argue
3 against that assumption because that's not the way we do
4 things. But in this particular case, I don't know what
5 the terms were and how he was supposed to be paid. I know
6 it was a big check. I couldn't have told you whether it
7 would be one check for the year or it looks like 30 days,
8 every 30 days. I don't know. But it's not our style to
9 not pay bills. No knowledge of any intention not to pay
10 Norm.

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

11 Q I'm not talking about to pay him regardless.
12 I'm talking about delaying payment.

13 A No. No knowledge of purposeful delays at
14 all, so... I'm guessing. I shouldn't guess. AvKare's
15 accounting, back with our accounting on the sales. I know
16 there was initial issues because they had a system that
17 was different than our system recognizing -- we drop ship
18 to VAs. We bill through AvKare. It's a little clumsy.
19 It was supposed to be a distributor agreement. It turned
20 out to be more of a customer service agreement. So
21 there's some delays in reconciling inventory per SKU,
22 which is a product number, and then reports on when it's
23 used in a patient, there's a tissue utilization record
24 needs to come back through the clinic and they have to be
25 reconciled, AvKare on their PO, and then reconciled with

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1 us on the PO. And I know it's -- it was initially clumsy
2 with AvKare trying to figure out the books, probably why
3 there -- if there was a delay, that's probably why, making
4 sure the number's accurate to make sure Norm gets his --
5 gets paid. I do remember accounting being upset that they
6 got direct phone calls from Judd, and I think his name was
7 Scott, but in the way they handled it. But I'm -- I'm
8 pretty sure it was just a system with AvKare, the
9 relationship of how things were going to be reconciled to
10 know what to pay was probably the nature of the delay.

11 No, you know, holding the money, so...

12 Q Wasn't anyone at Mi Medx, to your knowledge,
13 resentful of the money that was being paid to Mid-South
14 Biologics under this override agreement?

15 A Not that I'm aware of, no.

16 Q Have you reviewed any documents to refresh
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Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

17 your recollection for your testimony here today?

18 A Just met with these guys yesterday.

19 Q I'm not asking who you met with.

20 A Yeah.

21 Q I don't --

22 A Looked at a few emails and the contracts
23 yesterday with -- with these two. That's all I've done.

24 Q Again, I'm not asking you how you --

25 A Uh-huh.

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1 Q How you -- what the circumstances were.

2 Those are your words. I'm asking you what documents did
3 you use to refresh your recollection for your testimony
4 today?

5 A Looked at a couple of emails and looked at
6 the original contract with Norm from 2011. That's the
7 only one I could find.

8 Q What were those emails?

9 THE WITNESS: The ones you -- we talked
10 about yesterday, the -- yeah.

11 BY MR. PEEL:

12 Q Don't need to talk to your lawyer.

13 A I get you.

14 Q I just need to -- you need to talk to me.

15 A Yeah.

16 Q That's who you need to talk to.

17 A But --

18 Q I don't need to know the circumstances of it.
19 I don't care about the circumstances. The only thing I
20 care about is what emails you looked at to review for your
21 testimony here today?

22 MR. WILBON: You're asking him which emails
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EXHIBIT 3

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

23 I showed him?

24 MR. PEEL: No, no, no. That's your words.

25 I'm not saying --

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1 BY MR. PEEL:

2 Q My question is what emails did you look at to
3 review for -- to refresh your recollection for your
4 testimony today? If -- that's a very simple question. It
5 doesn't call for the circumstances of it. It just calls
6 for what emails were reviewed?

7 A The ones I looked at were around the first
8 contract we had with Norm, some of the back and forth, and
9 then the contract itself, because I couldn't remember when
10 the whole relationship started. So they were just kind of
11 nothing emails going back and forth over the initial
12 agreements we had.

13 Q So you looked at no emails past the execution
14 of the contract? And when you say -- let me back up for a
15 second. When you're talking about contract, you're
16 talking about the consulting agreement; right?

17 A No, no. His initial sales contract with us.
18 I just was curious when that started and tried to refresh
19 my memory about the whole relationship with Norm. And I
20 didn't look at all the emails in between, but then I also
21 looked at some emails at the end when the decision was
22 made to move on. So that was all I was -- all I was
23 prepped on.

24 Q I'm not asking what you were prepped on.

25 A That's all I looked at. That's all I

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1 reviewed. The beginning and the end.

2 Q So you looked at some emails near the end of,

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

3 I guess, the relationship between Norm and Mid-South

4 Biologics and MiMedx; is that correct?

5 A Yes.

6 Q And do you recall the dates of those emails?

7 A I don't remember.

8 Q Do you recall whether there were little Bates

9 stamp numbers at the bottom, like, for example,

10 (indicating)?

11 A I don't remember that either.

12 MR. PEEL: I need to use the bathroom. I

13 need a five-minute break.

14 MR. WILBON: Sure.

15 (Recess taken.)

16 MR. PEEL: Back on the record.

17 BY MR. PEEL:

18 Q We were -- we were talking about some things

19 that you had reviewed to refresh your recollection today

20 and not the circumstances thereof; right?

21 A Uh-huh.

22 Q I believe you said you reviewed some emails

23 near the end of this relationship that is once this

24 contract between Norm -- between Mid-South Biologics and

25 MiMedx was terminated. Are these the emails that you're ⁹⁷

1 talking about?

2 A Yes.

3 Q Okay. Let's talk about what's going on in

4 MiMedx's business model around this period of time in

5 2014. And I'll just give you a preface. So it seems to

6 that with -- with -- there's an effort by the company that

7 is MiMedx to transition distributorships to sales

8 agencies. Am I kind of on the mark there?

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
9 A Correct.

10 Q Okay. And what that basically was is is,
11 look, we're going to go from a distributorship model to a
12 sales agency model, whatever that means legally. I don't
13 know. But I'm just trying to set the pretext for the
14 context for this period of time in the first six months of
15 2014. Is that about right?

16 A I'm not sure about the time period but there
17 was a move to move away from stock and bill distributors
18 to sales agents, yes.

19 Q And I believe Mid-South Biologics was one of
20 those distributors that was selected, or at least --
21 selected is probably a good word -- selected by MiMedx to
22 move from a distributorship model to a sales agency model.
23 Is that your recollection?

24 A Correct.

25 Q And I believe you were involved in some of
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1 that process?

2 A I was.

3 Q And tell me what your involvement was.

4 A Just supervising the transition. Make sure
5 everything was done fairly.

6 Q But the ultimate decision about contracts
7 being executed or not executed, that would not have been
8 your call. That would have been someone else's?

9 A I'd be, like all these things, in the middle
10 of it. But the ultimate contracts were done, sales
11 operations is Mark Diaz and then Bill Taylor makes the
12 final decisions on contracts.

13 Q And do you -- I think you did say that
14 Mid-South Biologics was one of those distributors that was

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
15 selected by MiMedx to transition from a distributorship to

16 a sales agency?

17 A Correct.

18 Q If Mid-South Biologics had refused to become
19 a sales agent under a sales agency agreement with MiMedx,
20 would -- to -- whether you know -- would MiMedx have
21 canceled or terminated the contract that he had with
22 MiMedx at that time regardless?

23 A Not immediately, but if you stayed a
24 distributor stock and bill, you purchased product and
25 resell, if you stayed in that model, which was our first⁹⁹

1 model, then you're going to have to hit quota, and the
2 problem with Norm is they didn't have much sales. They
3 weren't doing well. So, you know, if you come with us and
4 move with us and be flexible, then you could just have
5 your handful of docs that used product as a sales agent,
6 all is well. If you want to stock and occupy a territory
7 as a stock and bill distributor, which means you kind of
8 own your turf a little bit, because you got vendor --
9 vendor status in hospitals, you own the stock, you need to
10 perform better. He was our smallest by far distributor.
11 And we were so courteous and kind to Norm because we just,
12 you know, wanted to be fair with him and be professional
13 with him and try to be fair with the transition.

14 Q Well, let me cut straight to the point. If
15 Norm had not signed that sales agency agreement, would the
16 relationship between MiMedx and Mid-South Biologics have
17 ended?

18 A Don't know. He would have had to perform
19 better to stay a stock and bill. He would have had to
20 raise his performance, actually start working. But that's

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
21 speculative, you know. I don't think -- he wasn't doing

22 much to remain a stock and bill. As an example, there's
23 other -- like, CPM stayed stock and bill. They were a
24 hundred times the size. So we just sort of outgrew Norm's
25 relationship. Norm's a small business guy. So we were
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1 trying to be, I thought, fair to -- to transition him to
2 an agency with his few docs that used product.

3 Q But the decision to either terminate Norm or
4 continue in some form, would that have been your decision
5 or someone else's decision?

6 A I would have had a hand in on it. One -- and
7 our sales guys who were involved taking care of Norm and
8 other distributors would have had hand in on it. You
9 know, Bill Cochrane was one. Ultimately, that decision is
10 Bill's, but we would make a suggestion.

11 Q Were you aware that Bill Cochrane and Jeff
12 Chavies had a meeting Norm sometime in the spring of 2014?

13 A They could have. I mean, Jeff was one of our
14 full-time reps in town. Bill Cochrane was taking care of
15 the relationship. It could have happened.

16 MR. WILBON: C-H-A-I-V-E-S, right?

17 MR. PEEL: Yeah, that's right, Chavies.

18 (Thereupon, Plaintiff's Exhibit No. 7 was
19 marked for identification.)

20 (Tenders document to witness.)

21 THE WITNESS: Okay.

22 BY MR. PEEL:

23 Q This is a email chain between you, Norm, and
24 Bill Cochrane, which is spelled C-O-C-H-R-A-N-E, and maybe
25 JS Beville -- it's kind of hard to tell -- between and with
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1 a copy to Mark Diaz, a copy to Jeff Schultz, a copy to
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Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

2 Jeff Chavies, a copy to Tony Thompson, a copy to Mike Fox,
3 and a copy to Jeff [sic] Schmidt. These are all the
4 parties that are involved in this email chain that was
5 dated March 24, 2014. Am I stating that correctly?

6 A Yes.

7 Q This is Exhibit 7; correct?

8 A Yes.

9 Q And tell me what's going on here.

10 A We're trying to transition, like most other
11 distributors in the country were very willing to
12 transition to agency, which actually is easier for them
13 because we ship -- we ship and bill and we do all the
14 paper and they just get paid commission. So Norm was
15 resistant. He was becoming very difficult. And he's very
16 small, and we are trying to work it out. That's why I
17 pulled in all these other guys, because they were involved
18 with -- they were direct reps with our company involved in
19 sort of this geography. We're trying to work as a team
20 here. Norm was asking for something we -- we don't do.

21 Q For small guys?

22 A I mean, the termination clause is typically
23 30 days. There's a few that are 60, but they're huge
24 companies. So I don't think what he was asking for
25 worked. I'm not sure what the ultimate contract looked

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1 like, but I don't think we gave him something different
2 than other people. He wanted to keep his stock in town;
3 wasn't selling much; he didn't want to transition to
4 agency. And that's kind of what this is all about, this
5 time frame.

6 Q So you mentioned a company called CPM.

7 A Uh-huh.

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

8 Q Right? Is that correct?
9 A Uh-huh.
10 Q Is that a yes?
11 A Yes.
12 Q I told you I was going to tell you.
13 A No, that's fine. Yeah, they're --
14 Q I told you it was going to happen.
15 A That's fine.
16 Q And CPM remained a distributor?
17 A During that time, they remained a distributor
18 in Dallas.
19 Q But smaller operators like Norm were being
20 transitioned to sales agencies?
21 A Correct. There was a few stock and bill
22 distributors left, maybe two, three tops, but out of the
23 12 to 15 that we had, they were all moving to agency. It
24 was easier for them. We had did all customer service. We
25 paid them commission, worked out the numbers, but I think
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1 Norm was afraid. I don't know. He was resisting. We
2 were trying to make it work for him.
3 Q Do you understand what his concern was in
4 this email where he says, "Mike, waiting on you guys to
5 change agreement to say we can't be terminated in 30 days
6 and also what percentage does MSB get after all accounts
7 are signed up to order from you."
8 A Uh-huh.
9 Q Do you understand what his concern is?
10 A Uh-huh.
11 Q What is his concern? Is that a yes, by the
12 way?
13 A Yes.

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

14 Q What is his concern?

15 A We worked out a pretty good commission
16 structure, very generous, with money he was making off
17 stock and bill and just made it a commission percentage so
18 he didn't lose any money. But the termination clause I
19 think remained at 30. I don't think we extended that. I
20 think we only had a few that were extended to 60 days, and
21 they were huge companies. So I don't remember the results
22 of this, but I remember he was asking for it. He wanted
23 to maintain vendor status. As the company was growing we
24 had reps coming in these accounts that also had vendor
25 credentials and they were selling in other areas outside
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1 of what Norm had, so we were trying to coexist.

2 Q So, I mean, you know, Mi Medx is growing
3 rapidly at this time, right?

4 A Uh-huh.

5 Q Is that a yes?

6 A Uh-huh. Yes. Sorry.

7 Q That's okay. I know it's getting long.

8 A No, that's okay.

9 Q It's getting long.

10 A Yes, sir.

11 Q And Mi Medx is, I guess, busting at the seams;
12 right?

13 A Yes.

14 Q And it just didn't make much business sense
15 any longer, from Mi Medx's standpoint, to maintain
16 distributorships with smaller operators like Norm at this
17 time; right?

18 A Correct. We outgrew the relationship. We
19 were trying to make it work as an agent, which most

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

20 companies agreed with. In fact, I got many comments
21 saying this is really going over and above because we
22 expected you just to steamroll us, get rid of us, but
23 you're keeping our doctors with us under an agency and
24 still paying me commission? It's kind of a win-win and I
25 can coexist with your direct reps, which most companies

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1 would just wipe them out. We were trying to make it all
2 work win-win. Norm was one of the ones that was
3 resistant. He didn't want to lose control, even though he
4 didn't have much sales.

5 Q I know you haven't seen Mi Medxs' SEC 10-K
6 filings for 2012; right?

7 A Correct.

8 Q Have you seen them for 2013?

9 A No.

10 Q How about for 2014?

11 A Uh-uh.

12 Q As we sit here today, do you have any reason
13 to disagree with what's stated in there with -- not only
14 what's in there, but any reason to dispute that it's
15 accurate?

16 MR. WILBON: Objection. I don't -- calls
17 for speculation. I'm not sure he can agree to
18 something he doesn't know what it is.

19 MR. PEEL: That's fair.

20 MR. WILBON: Yeah.

21 A I can't agree or disagree with what I don't
22 know or haven't seen.

23 BY MR. PEEL:

24 Q Would you have any reason to believe that
25 Mi Medx would mislead the SEC with its filings?

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
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1 A No.

2 Q So let's talk about this conversation that
3 happened, I believe, May 14, 2014, between Mr. Norm and
4 various people at Mi Medx. Do you recall what I'm talking
5 about?

6 A No.

7 Q As I understand, there was a phone call
8 between Norm and various people on that phone call with
9 Mi Medx?

10 A I'm sorry. I'm not aware of what you're
11 referring to.

12 Q You allege --

13 A There's lots of phone calls, but I'm not sure
14 which one you're referring to.

15 Q You allege, do you not, that Norm threatened
16 you in some way?

17 A Oh, that phone call. I'm aware of that phone
18 call.

19 Q How many phone calls are there?

20 A Norm was complaining about all kinds of
21 stuff. He was always complaining about something. That
22 particular phone call, yes, I'm aware of that.

23 Q That's what I'm talking about.

24 A Yes.

25 Q Okay. Do you remember what day was?

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1 A I don't remember the day, no.

2 Q Do you remember who was on the phone call?

3 A Norm, and he was on speakerphone in a
4 conference room just like this. Jeff Schultz, Bill
5 Cochrane, Tim O'Brien, I believe Judy Slovinski was

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
6 there -- and God rest her soul, she's passed on now --

7 might have been someone else there. It was a sales
8 meeting and we were going through this list of how to
9 create win-wins with distributors moving to agencies. So
10 we decided to talk to Norm about it. I wanted to play
11 role in that to make nice with Norm, make sure -- you
12 know, they were complaining that Norm was not going to do
13 it and I said, Well, put him on the phone and talk about
14 it, you know.

15 Q And was this a scheduled phone call from
16 Norm, or was it --

17 A It was not.

18 Q So Norm had no idea before this phone call
19 was made that we're talking was actually made?

20 A He -- we were -- lots of conversations were
21 happening at that time because we were sending out letters
22 from Mark Diaz's area of the desire to move to an agency,
23 so he was well aware of the topic. The call itself at
24 that very moment wasn't scheduled. He picked up and we
25 had a conversation.

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1 Q Do you know what time of day the phone call
2 was?

3 A I can't remember. It was during the
4 afternoon like this. It was a sales -- it was a meeting
5 during the day. So it was not, like, a nighttime phone
6 call or weekends. It was sometime during the business
7 day.

8 Q Do you recall what day of week it was?

9 A I can't remember.

10 Q Was it Wednesday?

11 A No idea. It could have been because we were

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
12 in a sales meeting in Chicago. Typically that's midweek.

13 That could be the case. It wasn't out of the ordinary to
14 be calling a distributor, agent-type person at that time
15 during the business day.

16 Q So Norm didn't know you were going to call
17 when you called?

18 A Uh-uh.

19 Q Is that a no?

20 A Pardon me?

21 Q Is that a no?

22 A That's a no. He didn't have to talk to us,
23 but he did. He called us sometimes out of the blue as
24 well. But during the business day, you could call
25 somebody as a customer and they could pick up or not. 109

1 Q So what was the purpose of the call?

2 A To discuss this letter he got, you know, that
3 all the agents were getting. I was trying to help the
4 discussions along to understand big picture, what we're
5 trying to do, nobody's getting burned here. We're trying
6 to make it a win-win type of thing. That day we must have
7 called 20 people, you know, the distributors, agencies.
8 It was a productive meeting to move a lot of -- move the
9 business along and create win-win situations for a lot of
10 people. We called people throughout day. Norm was one of
11 them.

12 Q Before you made this call to norm, was there
13 a consensus in the room that if Norm didn't agree to the
14 sales agency during that call, that he would be
15 terminated?

16 A There was not. It was if you want to stay a
17 stock and bill, you have to hit a number, a quota, which

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18 Norm was vastly missing. You know, so he just wasn't big
19 enough to keep this territory, you know, exclusive stock
20 and bill. We outgrew his small relationship, so I thought
21 we could make it work for him. I was optimistic when we
22 called. There was no pending doom termination threats,
23 none of that.

24 Q Do you know AvKare sales were in 2014?

25 A I don't remember the date. 2014.

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1 30 million? I don't remember.

2 Q Does 56 million sound about right?

3 A Could be. We were growing fast. And I
4 wasn't on, really, the VA side. I had all sales, but
5 there was people running that business, so it was pretty
6 substantial. I don't know. It could have been.

7 Q Do you know percentage of that 56 million
8 represents sales to the government through the AvKare
9 contract?

10 A I don't remember in 2014.

11 Q Now, when I say there was no consensus on --
12 in the room, that is between you, Jeff Schultz, Bill
13 Cochrane, Tim O'Brien, and this Judy Lady, about
14 terminating Norm if he didn't sign this sales contract,
15 were there people in the room advocated for terminating
16 regardless?

17 A Not advocated for terminating. That would be
18 extreme. But there was anxiety around Norm because he
19 complained to everybody about everything, and he was
20 difficult to work with, and he was making things difficult
21 to transition. Other guys were willing to, again,
22 transition because I was getting comments, most companies
23 just take -- just get rid us. You know, we start off and

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
24 go direct. We were trying to do a win-win. Norm was

25 being very difficult; people were complaining. Nobody was
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1 going to terminate him, you know, but I thought I could
2 help. Let's call him and -- we called other people too.
3 I knew some people a little better than -- because I had
4 the original relationships, so if I could help move it
5 along, get him to understand. Maybe meet in Memphis or
6 meet somewhere afterwards and discuss.

7 Q Do you -- have you reviewed the deposition
8 transcript of Bill Taylor?

9 A I did not review it in detail, no. It's too
10 thick. It's, like -- I did not read the whole thing.

11 Q Now, when I asked you earlier what documents
12 you reviewed in preparation for your testimony today, was
13 there some reason you failed to mention that one?

14 A No. But I didn't go through Bill's
15 deposition. I knew he had a deposition. I could have
16 read the stack, and it was just, I guess, too
17 intimidating, too much stuff in there. I should have
18 mentioned that, yes. That was presented to me in our
19 meeting and I didn't read all the details. Sorry.

20 Q Please don't tell us about that.

21 A I didn't read whole thing, no.

22 Q I'm not asking that question. It's a
23 separate question. The only thing I'm asking is -- okay.
24 So this is what I got to understand. Because now what
25 you're telling me, is there some document you didn't tell
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1 me about that you reviewed in addition to some other
2 documents that you told me earlier that you reviewed? So
3 I'm going to give you an opportunity now, if there's other
4 documents that you reviewed that you haven't already told

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5 me about in preparation for your testimony today. And I
6 don't care about the circumstances.

7 A I understand.

8 Q Or how you got those -- I don't care. I
9 don't care about that. I've giving you this opportunity
10 now to tell me.

11 A A few emails, his original contract, and
12 that's what I actually looked at. Could have read the
13 entire transcript, but didn't. It was too -- there was
14 too much stuff there. Calls happening all day long.

15 Q You didn't review the end con- -- of the
16 testimony, did you?

17 A No.

18 Q Do you know what Mr. Taylor said about
19 whether Mr. -- whether Mid-South Biologics would have been
20 terminated had they not signed that sales agreement?

21 A Do not. Sorry.

22 Q Would it have been his decision or your
23 decision to terminate?

24 A His decision. I would advocate or recommend.
25 I don't remember what he said about that, no.

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1 Q Okay. So who dialed the numbers?

2 A Bill Cochrane.

3 Q Bill did?

4 A I can't remember. I think Bill Cochrane
5 called him. I think it was Bill Cochrane. He was the
6 relationship. Again, it was a speakerphone. Everybody
7 was listening. I thought I could help, but I think it was
8 Bill Cochrane. So the number that went into Norm I think
9 was Bill Cochrane's.

10 Q What did Bill say when he first called?

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11 A I can't remember exact words.

12 Q Do you remember in general the words?

13 A Something about the intention of the call to
14 discuss the transition. I can't remember specifics of how
15 he opened the conversation. You know, he and Norm were
16 all friendly so probably talked about small talk initially
17 and then got into the meat of the matter. I don't
18 remember. I mean, it was a long time ago. I can't
19 remember exactly how the call opened up, actually. I just
20 remember that Norm was pretty hostile on the call. I
21 remember that part.

22 MR. WILBON: Pretty what?

23 THE WITNESS: Hostile.

24 MR. WILBON: Oh, hostile.

25 THE WITNESS: Yeah.

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1 MR. PEEL: What did you think he said?

2 MR. WILBON: Awesome.

3 A As -- as Norm was ranting and -- he was very
4 upset. People in the room were -- their faces were --
5 jaws were dropped, like, I cannot believe we're going to
6 tolerate this. No one else was like that; other
7 distributors, agents, you know, people we work with. He
8 was ripping and roaring. We tried to calm him down, you
9 know. I remember saying, you know, Norm, hold on, hold
10 on. Why don't we come to Memphis and sit down. I was
11 going to suggest dinner or something, talk about it, and
12 then that's when he threatened. He says, Don't you ever
13 come to Memphis, something like that. People were, like,
14 What's up with this guy? So that's when we ended the
15 call. And that's when -- I think that's when the
16 relationship, the tipping point of where it just spiraled

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EXHIBIT 3

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17 down. Once Bill heard about that, he was, like, upset.

18 You just don't treat people that way; it's unprofessional.

19 Q Now, he said, Don't ever come to Memphis.

20 Did he say that to you?

21 A To me personally, yeah. Others were
22 watching, like, How are you going to handle this?

23 Q Yeah.

24 A I was upset because I liked Norm, he just
25 should have handled himself -- he was very unprofessional
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1 to a lot of people in our company. I was kind of, like,
2 the last hold out. I was, you know, trying to fix it.

3 And I was -- I was by that, because it takes me a while to
4 get bothered by something. I can usually handle things.

5 But I was, like, come on. I mean, you don't threaten
6 people like that, so...

7 Q What were his words exactly?

8 A Don't ever set foot in Memphis, something
9 like that. It was considered a threat. So we were just
10 trying to get together, work this stuff out, and he's
11 hostile.

12 Q So you offered to come to Memphis to speak
13 with him?

14 A Yeah. We were trying to take it to the next
15 level; hey, maybe now is not a good time to handle all
16 this; let's get together. And he said, you know -- that's
17 when he issued the threat. So we hung up the call and
18 everybody was, like, kind of stunned. I mean, some
19 weren't surprised because Norm was always complaining
20 about something, but I was upset, actually. I'll deliver
21 that as my testimony, because that was very unprofessional
22 and I thought we were friendly and I always helped him.

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23 But he's -- he was -- he went low. So that actually
24 happened.

25 Q You thought he was physically threatening
1 you? 116

2 A It was -- yeah. I considered that a "don't
3 you come here if you know what's good for you." I mean, I
4 was, like, this is business. We're just trying to handle
5 something. I mean, come on, you know. We're trying to
6 make this work for you. Pay you, square you away, make it
7 fair. And he went low. And I never got an apology.
8 Never, the next day or so, never got a, dude, I'm sorry.
9 I was having a bad moment. I guess you caught me off
10 guard. None of that. I was upset. Yeah, that was
11 bothersome.

12 Q Were you in fear for your life?

13 A I wouldn't go that far.

14 Q You're a football player; right?

15 A Well, I didn't go to Memphis.

16 Q You're --

17 A I stayed in Atlanta.

18 Q I've met Norm. You're a pretty big dude.

19 A It wasn't -- yeah.

20 Q How big are you?

21 A 6' 1", 215. I wasn't worried. I wasn't
22 fearing for my life, no. But I also wasn't going to
23 Memphis any time soon either. You know, if the guy's
24 volatile, I mean, you hear about people going postal
25 walking into McDonald's or the post office. You don't
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1 know what's on the guy's mind. He went nuts over nothing.
2 Over simple stuff.

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

3 Q Okay. Now, let's back up.

4 A Yeah.

5 Q Okay. So when Mr. Cochrane initiates this
6 phone call, tell me what you remember he said to initiate
7 the phone call.

8 A I don't remember. I'm not sure how he
9 initiated the call.

10 Q Did he let Norm know that there were other
11 people on the line?

12 A We were all on speaker. I mean, we were --
13 it was -- I can't remember whether -- the formality of,
14 you know, here's -- here's who's in the room; let's have
15 the conferences call. But it was on speaker phone. And
16 we were all talking. When I say all, I know Bill Cochrane
17 and I were in conversation with him. I'm not sure if the
18 other guys played a role. He may or may not have known
19 who was in room. Not sure.

20 Q Would you have wanted to know if you were on
21 speaker phone with a group of people?

22 A At least he knew that myself and Cochrane
23 were on speaker phone together. I still don't think it
24 was a professional way to handle things even if it was
25 just us two. He knew Jeff Schultz real well as well.

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1 Q Did he know Jeff was on the phone during this
2 call?

3 A No. Or he might have. I don't remember.

4 Q How about Judy, did he know Judy was on the
5 phone?

6 A I don't even know if she was there. I can't
7 remember if she was even at the meeting. But she's since
8 passed away. Tim O'Brien was there.

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
9 Q Did he know Tim was on the phone?

10 A He knew it was speaker phone. I think he got
11 the sense it was a meeting. He knew Bill Cochrane and I
12 were on the phone and he bowed up on us, which I thought
13 was inappropriate. I don't know what he knew about other
14 people in the room. I don't remember.

15 Q So people around the room didn't go along and
16 say, hey, Norm, I just want you to know I'm on the phone
17 call too, just so you know?

18 A Yeah, they might have, yeah. It wasn't a
19 significant part of the call. They could have. I mean,
20 I'd be curious. I haven't talked to these guys about this
21 particular situation in a long time. I would be willing
22 to bet maybe they did say something. I can't remember.
23 It wasn't like an unusual situation.

24 Q Where did you understand Norm to be at that
25 time?

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1 A No idea.

2 Q So did you ask?

3 A We didn't really talk about -- I don't
4 remember -- I don't remember what Norm was doing. I can't
5 remember. He might have said something to Bill Cochrane.
6 I don't know.

7 Q Y'all had long list of distributors that you
8 were calling that day to discuss this; right?

9 A That was the purpose of our sales meeting, to
10 go through the distributor list, yeah.

11 Q Yeah. So it was a long day talking with
12 distributors about transitioning people from
13 distributorships to sales agencies; right?

14 A I don't know about an unusually long day. It

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
15 was a typical day, meeting with the purpose of trying to
16 work out all these contract situations. The day was going
17 well till this.

18 Q Was norm at the end of that list?

19 A No, I think it was midday, actually. I don't
20 remember the time. It was during the day for sure, and it
21 wasn't late. It would have been somewhere in the middle.
22 I'm not sure if lunch was in the room at that point or
23 not. I'd have to ask the other guys. I don't know. It
24 wasn't outside the norm -- I shouldn't say Norm -- outside
25 the usual situations.

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1 Q Did Bill say, Hey, is this a good time to
2 talk?

3 A Bill Cochrane? I don't -- I don't know.
4 Now, if it wasn't a good time, I'm assuming Norm would
5 have said, Dude, let's just talk later. I'm busy doing
6 something. I mean, he took the call. We were chatting
7 about business.

8 Q Was a decision of his required during that
9 call before --

10 A No.

11 Q Hold on. Hold on.

12 A Yeah, go ahead. Sorry. Sorry.

13 Q Before the end of that call to make a
14 decision on a sales agency agreement?

15 MR. WILBON: Was a decision from Norm
16 needed?

17 MR. PEEL: Yeah.

18 A Not a final decision. It was to discuss with
19 Norm this move that the company was making. And with
20 Norm, it usually took two, three shots on goal to try to

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
21 explain things. This wasn't a final decision, no.

22 BY MR. PEEL:

23 Q Was there's a threat made to Norm that if --
24 unless he signed the sales agency agreement, not only
25 would the distributorship agreement that he was operating
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1 under be terminated, but so would the consulting agreement
2 be terminated?

3 A That wasn't discussed, no. Not on that call.

4 Q Before this call, was that discussed?

5 A Not that I'm aware of, no. That's why I was
6 so caught off guard by his reaction. Some weren't
7 surprised because Norm was always a complainer whining
8 about something. I was surprised because he went crazy on
9 this. And there was no threat or pending doom on
10 contracts, none of that. So that was kind of the final
11 straw, I guess.

12 Q Not going to tolerate this type of behavior
13 from small companies; right?

14 A Nobody else treated us that way. We didn't
15 treat people that way. And we were very fair. They were
16 the only noisy -- to my knowledge, the only one that was
17 unusually noisy to the people in the house that were
18 trying to help them get paid, work things out. They were
19 always complaining about something. But we didn't -- you
20 want to be professional with people. We had sort of a
21 long patience with them. I don't remember people treating
22 us like that. We didn't treat other people like that. I
23 don't think we treated Norm like that. I thought we were
24 trying to accommodate everything with Norm since the
25 beginning. You know, overrides and everything else. I
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1 thought we were pretty fair. Just my opinion.

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2 Q Mi Medx outgrew companies like Norm at this
3 time?

4 A Companies grow. We wanted these guys to grow
5 with us. Little guys that occupy a small piece of turf.
6 Memphis is small but not that small. It's a big medical
7 market. So we were trying to coexist. I thought we were
8 being reasonable.

9 Q These emails you say you reviewed in
10 preparation for your testimony or to refresh your
11 recollection, do you recall who they were between?

12 A The initial email between Norm and I. Then
13 the last emails were -- the one I looked at was myself,
14 Bill, Diaz, over what had occurred on the threat. I saw
15 an email on that. That's it.

16 Q Was this email before or after this
17 conversation with Norm at this conference call?

18 A After.

19 Q Anything you want to clarify, change, revisit
20 in your testimony here today?

21 A No. Actually, that's kind of what happened.
22 I can't think of anything else. Kind of cut and dry.

23 Q Do you know whether there was any comment
24 made by executives of Mi Medx following termination of the
25 consulting agreement that Mi Medx had just saved \$300,000
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1 and everyone was going to get a bonus?

2 A No. I don't remember any of that. I don't
3 remember anybody speaking of that. I didn't get a bonus
4 over this. I was actually quite disappointed from my
5 perspective. I don't remember anybody gloating over it,
6 no. And nobody was talking about that, you know, now
7 let's have a party.

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8 Q Do you remember anybody being gleeful about
9 it?

10 A Some were frustrated with Norm for years and
11 thought we tolerated a lot of unprofessional behavior too
12 long, actually. I wasn't one of them.

13 Q Would you consider it unprofessional behavior
14 not to adhere to the contract and when those payments were
15 due under a contract?

16 A Just the way you handle it. There could be a
17 legitimate issue with maybe a delayed payment because the
18 AvKare numbers weren't in and there was a report we were
19 waiting for. But there's just a way to handle it. You
20 don't blow up the finance people over the phone and
21 threaten. You know, you could inquire. You know, I don't
22 think Judd and Scott did Norm any favors when they were
23 blowing up people in finance. Hindsight 20/20, I would
24 have suggested Norm handle those calls and be a little
25 calmer. When Norm got -- exercised unprofessional --

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1 that's just not the way you handle yourself. But there
2 was no -- I was disappointed, but there was no intent to
3 save money.

4 Q Do you think it takes six months to process
5 payments under the consulting fee agreement and the AvKare
6 agreement upon which it was based?

7 A I don't know. I don't have a comment on
8 that. It sounds like a long time, but I don't know. I
9 wasn't involved in that.

10 Q And is it unprofessional to have those same
11 problems still going into 2012 and to 2013? Is it
12 unprofessional not to resolve it on MiMedx's end?

13 A Well, the way I saw it is he got his money.

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

14 Contract was abided by. And in terms of the day-to-day
15 around Memphis, the stuff we were trying to work on was
16 the distributor to sales agency. We were trying to be
17 more than fair with the commission structure and all that.
18 There was no reason to get super upset over this.

19 Q Just not timing of the payments. I mean, you
20 were going to adhere to the contract except when those
21 payments were due; right?

22 A If he was -- if there were -- if -- yeah, I
23 didn't think the lawsuit was over delayed payments. You
24 know, but there could have -- I mean, I didn't -- I didn't
25 know until right now it took six months to pay him. I

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1 didn't know the terms of that. Obviously, there was some
2 back and forth over the delays.

3 MR. WILBON: Well, the fact that he asked
4 you a question don't mean it took six months. I
5 mean, so...

6 MR. PEEL: Please don't. Please don't.

7 A But in fair --

8 MR. PEEL: I understand, but you get your
9 questions at the end.

10 A And it is -- I'd testify to the fact that I
11 didn't really remember how long payments took and why they
12 were delayed and all that. I remember the -- as a mention
13 of reporting, it was clumsy at best, but I don't remember
14 how long. It wasn't such an issue that it was not
15 handled.

16 BY MR. PEEL:

17 Q It wasn't an issue on your end.

18 A Well, a couple times I jumped in to help him
19 get paid. I didn't think that was the crux of the matter,

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt

20 because he did -- he did get paid and we figured out the
21 reporting structure. That was more of a Mark Diaz
22 question.

23 Q So other than him complaining about when he
24 was getting paid under the consulting agreement, what
25 other basis do you have to say that Norm was a complainer
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1 or a whiner?

2 A He complained about physicians in Memphis
3 that were being called on by MiMedx reps outside of his
4 contract. He was complaining about MiMedx reps -- he
5 complained about -- he complained about a lot of things.

6 Q Hold on a second. He complained about MiMedx
7 reps calling on his doctors?

8 A Not his doctors, no. He was complaining
9 about MiMedx reps who were calling on doctors, and then
10 after the fact, Norm would say those were his doctors even
11 though there was no sales. He complained about -- I mean,
12 there's a list of things he was upset about.

13 Q So y'all were competing with him?

14 A No. These are doctors that were called on by
15 MiMedx reps that were new doctors to the company and they
16 happened to be in Memphis.

17 Q Authorized to sell the products --

18 A Yeah. Yeah.

19 Q -- that -- hold on.

20 A Oh, sorry.

21 MR. WILBON: You've got to let him finish
22 his question.

23 THE WITNESS: Sorry about that.

24 BY MR. PEEL:

25 Q Do you think I've been fair to you today?

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♀

1 A Yeah.

2 Q I'm not a bad guy, am I?

3 A No.

4 Q As far as you know; right?

5 MR. PEEL: I don't have any more questions.

6 MR. WILBON: I don't have anything.

7 (Signature waived.)

8 (The deposition was concluded at

9 12:50 p.m.)

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1 D I S C L O S U R E

2 STATE OF GEORGIA DEPONENT:

3 DEKALB COUNTY MICHAEL CARLTON

4

5 Pursuant to Article 10.B. of the Rules and
 Regulations of the Board of Court Reporting of the
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EXHIBIT 3

Exhibit 3 to Notice of Filing Depo Trans (Depo of Michael Carlton.txt
6 Judicial Council of Georgia, I make the following disclosure:

7
8 I am a Georgia Certified Court Reporter. I am a representative of Wheeler Reporting Company, a Georgia Corporation registered as a court reporting firm. I am not disqualified for a relationship of interest under the provisions of O.C.G.A. 9-11-28 (c).

10 The firm was contacted by Farris Bobango Branan, PLC, to provide court reporting services for this deposition. The firm will not be taking this deposition under any contract that is prohibited by O.C.G.A. 15-14-37 (a) and (b).

13 The firm has no contract/agreement to provide reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition. The firm will charge its usual and customary rates to all parties in the case, and a financial discount will not be given to any party to this litigation.

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21 This 13th day of October, 2017.

22
23

24 _____
25 Jodi P. Scheffel, #2750
Certi fied Court Reporter

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♀

1 C E R T I F I C A T E
2 STATE OF GEORGIA
3 COUNTY OF DEKALB:

4
5 I hereby certify that the foregoing deposition
6 was taken down, as stated in the caption, and the
7 colloquies, questions, and answers were reduced to
8 typewriting under my direction; that the foregoing
9 transcript is a true and correct record of the evidence
10 given upon said proceeding.

11 The above certification is expressly withdrawn

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12 and denied upon the disassembly or photocopying of the
13 foregoing transcript, unless said disassembly or
14 photocopying is done under the auspices of Wheeler
15 Reporting Company, Inc., Certified Court Reporters, and
16 the signature and original seal is attached thereto.

17 I further certify that I am not a relative or
18 employee or attorney of any party, nor am I financially
19 interested in the outcome of this action.

20

21 This 13th day of October, 2017.

22

23

24

25

Jodi P. Scheffel, #2750
Certified Court Reporter

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