

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

THE UNITED STATES OF
AMERICA, ET AL.

versus

BLUEWAVE HEALTHCARE
CONSULTANTS, INC., ET AL.

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Case No. 9:14-cv-230

January 17, 2018

REPORTER'S OFFICIAL TRANSCRIPT OF THE JURY TRIAL - DAY TWO
HELD BEFORE THE HONORABLE RICHARD M. GERGEL
UNITED STATES DISTRICT JUDGE
January 17, 2018

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1 (Call to order of the Court.)

8 : 4 1 A M 2 THE COURT: The exhibits -- getting the exhibits --
8 : 4 1 A M 3 first of all, we require hard copies of any exhibits. If
8 : 4 1 A M 4 you're going to present something on a disk that is too
8 : 4 1 A M 5 voluminous, that's fine. But generally you got to realize that
8 : 4 1 A M 6 the jury needs to take this information back to the -- to the
8 : 4 1 A M 7 jury room during deliberations.

8 : 4 1 A M 8 So here's what I'm going to direct because of
8 : 4 2 A M 9 the volume of documents. In the end -- first of all, you've
8 : 4 2 A M 10 got to make sure that Ms. Ravenel has a complete list of
8 : 4 2 A M 11 everybody's proposed exhibits, even the ones not yet admitted,
8 : 4 2 A M 12 just so she can -- she doesn't have -- she can check them off
8 : 4 2 A M 13 as they come in.

8 : 4 2 A M 14 Secondly, one member of each team who has
8 : 4 2 A M 15 offered into evidence any document that day must come to
8 : 4 2 A M 16 Ms. Ravenel at the end of the day and confirm that list is
8 : 4 2 A M 17 complete and in. Because in the end it's not fair to anyone to
8 : 4 2 A M 18 have mistakes in the record. We're going to prevent that.

8 : 4 2 A M 19 Yesterday was a little unwieldy. We've never
8 : 4 2 A M 20 had a case where hard copies weren't presented. So at the end
8 : 4 2 A M 21 of the day, I was surprised to learn they weren't there. Now
8 : 4 2 A M 22 we've apparently corrected that.

8 : 4 2 A M 23 So everybody designate -- if you didn't offer
8 : 4 2 A M 24 evidence that day, that's not a problem. But if you offered an
8 : 4 2 A M 25 exhibit, you must come to Ms. Ravenel at the end of the day, go

1 through it with her, and make sure that her list matches your
2 list. And if there's any dispute about that, take it up with
3 me the next morning. Okay? This is important. A lot of
4 documents, and we need to do it right.

5 Okay. Let's talk about the Fifth Amendment
6 right against self-incrimination.

7 I assume Mr. Blasko is not in the room; is that
8 correct? I don't know what he looks like.

9 **MR. LEVENTIS:** Correct, Your Honor.

10 **THE COURT:** Okay. First of all, I had -- the
11 question arose whether the -- someone who may have spoken to an
12 investigator about something, does that waive the privilege?

13 The law is that it must be specific to the
14 proceeding. So if -- there's even law that says someone who
15 testifies before a grand jury has not waived as to the criminal
16 trial.

17 So the answer is, because Mr. Blasko or anyone
18 else may have spoken to somebody at some prior time, that does
19 not waive the privilege. It involves prior testimony under
20 oath.

21 So the first answer is that, up to this point,
22 what y'all have provided me, Mr. Blasko has not waived his
23 Fifth Amendment right against self-incrimination.

24 Now, what's wonderful about trials like this, it
25 makes you be very precise about the scope of rules; right? And

1 sometimes you think you know them, but as -- last evening, I'm
2 sure all of us hit the books about trying to figure out the
3 nature of the Fifth Amendment privilege.

4 It is a privilege against incriminating
5 statements; that is, your answer must be incriminating. So if
6 someone says, "What is your name?" and you say, "I refuse to
7 answer," that's not -- your name is not incriminating.

8 I gave an example which I think was accurate on
9 the video, for him to say, "Is that you on the video?" That's
10 not an incriminating statement.

11 Now, if you ask him about something on that
12 video that is incriminating, then that -- he can then assert
13 the right.

14 Now, let's talk about what -- an incriminating
15 statement. That means that it increases the witness's chances
16 of criminal prosecution or conviction, and it must be a
17 reasonable -- objectively reasonable and plausible danger of
18 prosecution. And the answer must implicate the witness in a
19 crime or furnish the link in the chain of evidence needed to
20 prosecute the witness. That's what an incriminating statement
21 is.

22 The -- waiver is never favored, but you can
23 waive the privilege. And the way you do it is you give an
24 answer to an incriminating fact and then you don't want to give
25 the details.

8 : 4 5 A M 1 An example, one of the cases -- I'm sure y'all
8 : 4 5 A M 2 may have read this. Somebody makes a general statement about
8 : 4 5 A M 3 knowledge of something but then doesn't want to provide --
8 : 4 6 A M 4 well, "when did that happen? where did it happen?"

8 : 4 6 A M 5 "No, I take the Fifth."

8 : 4 6 A M 6 Now you've already waived it by addressing
8 : 4 6 A M 7 everything within the reasonable scope of relevant
8 : 4 6 A M 8 cross-examination. So just because you waived as to -- the
8 : 4 6 A M 9 privilege as to one set of questions doesn't mean the next set
10 of questions has been waived. If it's not reasonably within
11 that, that's a whole nother issue.

8 : 4 6 A M 12 It is my job to make findings, as the trial
8 : 4 6 A M 13 judge, of whether that fear of prosecution is reasonable and
8 : 4 6 A M 14 whether the statement is potentially incriminating. I've got
15 to make that determination.

8 : 4 6 A M 16 So what I would like to do, unless there's some
8 : 4 6 A M 17 quarrel with what -- as I've stated my understanding of the
8 : 4 6 A M 18 law, I'd like to bring Mr. Blasko in. I'd like to explain to
8 : 4 6 A M 19 him, since he is without counsel, the nature of his privilege.

8 : 4 6 A M 20 And then whoever is going to question him, for
8 : 4 7 A M 21 questions you think may potentially require a possible
8 : 4 7 A M 22 incriminating response, you need to ask him. He may wish to
8 : 4 7 A M 23 answer, and that will be fine. Or he may wish to invoke the
8 : 4 7 A M 24 Fifth Amendment right against self-incrimination. And I will
8 : 4 7 A M 25 determine whether that is a proper invocation of that

8 : 4 7 A M 1 privilege.

8 : 4 7 A M 2 Does anybody have any quarrel with that
8 : 4 7 A M 3 approach?

8 : 4 7 A M 4 The government?

8 : 4 7 A M 5 **MR. LEVENTIS:** No, Your Honor.

8 : 4 7 A M 6 **THE COURT:** From the defense?

8 : 4 7 A M 7 **MR. COOKE:** Oh, I was being asked a question.
8 : 4 7 A M 8 what -- could you repeat the question?

8 : 4 7 A M 9 **THE COURT:** I'd be delighted to. I'm proposing to
8 : 4 7 A M 10 bring in Mr. Blasko and have the government identify questions
8 : 4 7 A M 11 they intend to ask him that may require a potentially
8 : 4 7 A M 12 incriminating response and to determine his -- what his answer
8 : 4 7 A M 13 to that is. And then I'll determine whether that's a proper
8 : 4 8 A M 14 invocation of the Fifth Amendment.

8 : 4 8 A M 15 But I want to begin by explaining to him, since
8 : 4 8 A M 16 he is without counsel, how the Fifth Amendment works and the
8 : 4 8 A M 17 scope of it.

8 : 4 8 A M 18 Do you have a problem with that, Mr. Cooke?

8 : 4 8 A M 19 **MR. COOKE:** No, I don't. But did you want us to
8 : 4 8 A M 20 respond to any of the things that you --

8 : 4 8 A M 21 **THE COURT:** If you want to say something, I'm glad to
8 : 4 8 A M 22 hear it.

8 : 4 8 A M 23 **MR. COOKE:** I do. Your Honor, first of all, I don't
8 : 4 8 A M 24 know whether you have seen the one document we've got relating
8 : 4 8 A M 25 to him, which is his interview with the FBI and his proffer

8 : 4 8 A M 1 agreement. Because in this case, he signed the proffer
8 : 4 8 A M 2 agreement where he expressly agreed to testify in any trial
8 : 4 8 A M 3 fully and truthfully in which he's called by the government.

8 : 4 8 A M 4 And so I think this is an express waiver of
8 : 4 8 A M 5 Fifth Amendment in connection with the --

8 : 4 8 A M 6 **THE COURT:** I've never heard about a proffer. Tell
8 : 4 8 A M 7 me about that.

8 : 4 8 A M 8 **MR. COOKE:** Can I hand it up?

8 : 4 8 A M 9 **THE COURT:** Absolutely. Hand it to Ms. Ravenel.

8 : 4 8 A M 10 **MR. LEVENTIS:** Yes, Your Honor. I can give you some
8 : 4 8 A M 11 context of the history of Mr. Blasko as well.

8 : 4 8 A M 12 **THE COURT:** Okay. That would be fine.

8 : 4 9 A M 13 **MR. LEVENTIS:** So it actually starts -- in June of
8 : 4 9 A M 14 2013, we first interviewed Mr. Blasko. I was present, your
8 : 4 9 A M 15 Honor.

8 : 4 9 A M 16 we asked general questions about BlueWave and
8 : 4 9 A M 17 HDL, nothing about the video. And then the next day,
8 : 4 9 A M 18 investigators for BlueWave contacted Mr. Blasko, and they
8 : 4 9 A M 19 interviewed Mr. Blasko themselves on two different occasions.

8 : 4 9 A M 20 An investigator wrote up the report of those
8 : 4 9 A M 21 interviews, and we saw them. And then fast-forward about
8 : 4 9 A M 22 10 months later, an attorney for Mr. Blasko, Lorraine
8 : 4 9 A M 23 Gauli-Rufo, she obtained the proffer agreement that we provided
8 : 4 9 A M 24 through defense counsel from our office, a criminal proffer.
8 : 4 9 A M 25 This was in 2014.

8 : 4 9 A M 1 Then the attorney, Ms. Gauli-Rufo, allowed us to
8 : 4 9 A M 2 conduct another interview of Mr. Blasko. We talked about the
8 : 4 9 A M 3 video. That was in -- then followed in July, we showed the
8 : 4 9 A M 4 video to the defendants, Brad Johnson and Cal Dent, and
8 : 4 9 A M 5 provided them copies of the video.

8 : 5 0 A M 6 In February 2017, we noticed Mr. Blasko's
8 : 5 0 A M 7 deposition. We provided the defendants with copies of the
8 : 5 0 A M 8 video transcripts, the proffer agreement he signed. We deposed
8 : 5 0 A M 9 Mr. Blasko on March 10th, 2017. Mr. Blasko's attorney,
8 : 5 0 A M 10 Lorraine Gauli-Rufo, she was present at the deposition. And it
8 : 5 0 A M 11 appears that she advised Mr. Blasko to invoke his Fifth
8 : 5 0 A M 12 Amendment constitutional right.

8 : 5 0 A M 13 THE COURT: Does the proffer agreement immunize him?

8 : 5 0 A M 14 MR. LEVENTIS: Your Honor --

8 : 5 0 A M 15 MR. COOKE: I don't believe it does.

8 : 5 0 A M 16 MR. LEVENTIS: I guess I feel a little uncomfortable
8 : 5 0 A M 17 talking about a criminal proffer agreement that I -- obviously,
8 : 5 0 A M 18 I did not participate in.

8 : 5 0 A M 19 THE COURT: Okay. Somebody for the government want
8 : 5 0 A M 20 to address this? I mean, the question is you must have a
8 : 5 0 A M 21 reasonable, plausible risk of prosecution. This is the first
8 : 5 0 A M 22 moment I've heard about a proffer agreement with immunity.

8 : 5 0 A M 23 MR. LEVENTIS: All I can say is I don't believe that
8 : 5 0 A M 24 it does, Your Honor. I just think he was --

8 : 5 0 A M 25 THE COURT: Where is the relevant part about the

8 : 5 0 A M 1 immunization?

8 : 5 1 A M 2 MR. COOKE: Your Honor, you've got my copy there. I
8 : 5 1 A M 3 don't believe it immunizes him. It specifically says that he
8 : 5 1 A M 4 will give truthful testimony if he's called, he can be charged
8 : 5 1 A M 5 with perjury. And, you know, I'm not an expert on --

8 : 5 1 A M 6 THE COURT: Yeah, I don't think that -- let me read
8 : 5 1 A M 7 it. You know, just -- you can sue me for breach of contract or
8 : 5 1 A M 8 something. I mean, you know, the point is that he waived his
8 : 5 1 A M 9 Fifth Amendment right.

8 : 5 1 A M 10 If he faces the reasonable risk of -- of
8 : 5 1 A M 11 criminal prosecution, I'm going to allow him to invoke his
8 : 5 1 A M 12 Fifth Amendment right. If he's immunized, then he doesn't face
8 : 5 1 A M 13 the realistic possibility, a plausible risk -- he doesn't have
8 : 5 1 A M 14 a reasonable fear of prosecution, and then that would be -- let
8 : 5 1 A M 15 me read it real quick, because this is the first I've heard of
8 : 5 1 A M 16 it.

8 : 5 1 A M 17 (Pause.)

8 : 5 4 A M 18 THE COURT: Okay. I've had a chance to review. I'm
8 : 5 4 A M 19 not unfamiliar with these types of agreements.

8 : 5 4 A M 20 It is an agreement between the government and
8 : 5 4 A M 21 Mr. Blasko in which he will cooperate and to the extent -- and
8 : 5 4 A M 22 in return for that, he will get certain benefits in terms of
8 : 5 4 A M 23 the information he provides won't be used against him. There
8 : 5 4 A M 24 are certain benefits to him to cooperate.

8 : 5 4 A M 25 It does not immunize him. In fact, it talks

8 : 5 4 A M 1 about how certain information won't be used in his sentencing
8 : 5 4 A M 2 guidelines. And, in fact, his -- the consequence of not fully
8 : 5 4 A M 3 cooperating is that he actually does face a greater risk of the
8 : 5 4 A M 4 consequences of this because he -- because any information he
8 : 5 4 A M 5 may have previously provided could be used against him.

8 : 5 5 A M 6 So the answer to this is it -- it either has no
8 : 5 5 A M 7 effect on the assessment of whether he faces criminal
8 : 5 5 A M 8 prosecution or enhances it. It doesn't decrease it. And he
8 : 5 5 A M 9 does -- you know, the party to this agreement is -- is the
8 : 5 5 A M 10 government, and the government's remedy is -- is -- says we can
8 : 5 5 A M 11 put this agreement aside if you don't honor it.

8 : 5 5 A M 12 So I don't think the defendants here have any
8 : 5 5 A M 13 standing regarding -- and this is a right of the -- this is a
8 : 5 5 A M 14 constitutional right, folks, against self-incrimination. And
8 : 5 5 A M 15 it's not owned by the government, and it's not owned by the
8 : 5 5 A M 16 defendants.

8 : 5 5 A M 17 And so I'd like to mark as a court exhibit the
8 : 5 5 A M 18 proffer agreement.

8 : 5 5 A M 19 **MR. COOKE:** Your Honor?

8 : 5 5 A M 20 **THE COURT:** Yes.

8 : 5 5 A M 21 **MR. COOKE:** May I just add that I didn't hand it up
8 : 5 5 A M 22 for the purpose of saying that he was immune from prosecution.
8 : 5 6 A M 23 I meant to call attention to the second page, midway down the
8 : 5 6 A M 24 first paragraph, where he says, "Also, client understands that
8 : 5 6 A M 25 client must fully disclose and provide truthful information to

8 : 5 6 A M 1 government."

8 : 5 6 A M 2 THE COURT: I read that. But the point is, what's
8 : 5 6 A M 3 the remedy if he doesn't do it? And the remedy -- he knows the
8 : 5 6 A M 4 risk. He can -- this is a breach of contract. This is a
8 : 5 6 A M 5 contract.

8 : 5 6 A M 6 MR. COOKE: But my problem is that the government --
8 : 5 6 A M 7 the government has called him. The government has an agreement
8 : 5 6 A M 8 from him where he's waived the Fifth Amendment as to any
8 : 5 6 A M 9 proceedings, says he must testify fully. But then they want to
8 : 5 6 A M 10 use it against us when we -- when he pleads the Fifth.

8 : 5 6 A M 11 And under the Labudi case, which Your Honor
8 : 5 6 A M 12 cited in the order, that looked at the relationship of the
8 : 5 6 A M 13 parties at the time that the Fifth Amendment is invoked. And
8 : 5 6 A M 14 Mr. -- Mr. -- if you look at the statement that's attached to
8 : 5 6 A M 15 that, it's clear that he is not an agent, employee. He did not
8 : 5 6 A M 16 consider himself to be working for Bluewave. His relationship
8 : 5 6 A M 17 solely was with Mr. Maimone. He had his own company where
8 : 5 7 A M 18 he -- he actually represented --

8 : 5 7 A M 19 THE COURT: That's another issue. The question is,
8 : 5 7 A M 20 does he have -- as a witness in this court, he has a
8 : 5 7 A M 21 constitutional right not to be a witness against himself.

8 : 5 7 A M 22 And I'm sorry, Mr. Cooke, I'm not going to take
8 : 5 7 A M 23 away that right because it happens to suit the defendants'
8 : 5 7 A M 24 case. I would do the same thing if it was the other way. He
8 : 5 7 A M 25 has potential consequences of dishonoring a contract, but he

8 : 5 7 A M 1 never waives his right. He recognizes there are potential
8 : 5 7 A M 2 consequences adverse to him, which may actually increase his
8 : 5 7 A M 3 risk of criminal prosecution.

8 : 5 7 A M 4 Now, has the statute of limitations run against
8 : 5 7 A M 5 potential claims involving Mr. Blasko?

8 : 5 7 A M 6 **MR. LEVENTIS:** Not to my understanding, no, Your
8 : 5 7 A M 7 Honor.

8 : 5 7 A M 8 **MR. COOKE:** Your Honor, my complaint is not -- I
8 : 5 7 A M 9 appreciate his dilemma. My complaint is about the government.
8 : 5 7 A M 10 They've got it within their ability to compel his testimony by
8 : 5 7 A M 11 the agreement that they elicited from him.

8 : 5 8 A M 12 **THE COURT:** They cannot compel his testimony. Their
8 : 5 8 A M 13 remedy here is not specific performance. Their remedy here is
8 : 5 8 A M 14 that they will not give him the benefit of a proffer agreement,
8 : 5 8 A M 15 and he faces actually enhanced risk of prosecution as a result
8 : 5 8 A M 16 of this.

8 : 5 8 A M 17 **MR. COOKE:** But the case law says, in looking at a
8 : 5 8 A M 18 couple of Fourth Circuit cases, you can waive your Fifth
8 : 5 8 A M 19 Amendment privilege by voluntarily disclosing information. In
8 : 5 8 A M 20 this case --

8 : 5 8 A M 21 **THE COURT:** It's in the -- it's specific to the
8 : 5 8 A M 22 proceeding, Mr. Cooke.

8 : 5 8 A M 23 **MR. COOKE:** It is. It's the same proceeding. He's
8 : 5 8 A M 24 cooperating with the --

8 : 5 8 A M 25 **THE COURT:** I've ruled, Mr. Cooke.

8 : 5 8 A M 1 MR. COOKE: Okay.

8 : 5 8 A M 2 THE COURT: Okay. Let me hand that back.

8 : 5 8 A M 3 MR. DUFFY: Your Honor, Brian Duffy here on behalf of
8 : 5 8 A M 4 third-party witness Kyle Martel, who has reengaged my firm.
8 : 5 8 A M 5 And I extend apologies for any inconvenience as far as --

8 : 5 8 A M 6 THE COURT: Hold on just a second, Mr. Duffy. Come
8 : 5 8 A M 7 to the podium, please. My court reporter may have trouble.
8 : 5 9 A M 8 It's "be kind to the court reporter" day, okay, and to the
8 : 5 9 A M 9 clerk staff.

8 : 5 9 A M 10 Yes, go ahead.

8 : 5 9 A M 11 MR. DUFFY: Well, Your Honor, I've been informed that
8 : 5 9 A M 12 you were addressing Fifth Amendment issues this morning, and
8 : 5 9 A M 13 Mr. Martel will have some in his testimony as well. So I just
8 : 5 9 A M 14 wanted to inquire whether the procedure you had outlined of
8 : 5 9 A M 15 having the witness appear in advance of the jury -- before the
8 : 5 9 A M 16 jury came out and exploring those Fifth Amendment issues is the
8 : 5 9 A M 17 same process that you'd --

8 : 5 9 A M 18 THE COURT: I'm not necessarily going to do it on
8 : 5 9 A M 19 everyone. He has counsel. He will -- I was worried he doesn't
8 : 5 9 A M 20 have counsel.

8 : 5 9 A M 21 MR. DUFFY: Sure.

8 : 5 9 A M 22 THE COURT: And he has counsel, so that would not be
8 : 5 9 A M 23 my anticipated plan. I will do it every time someone does not
8 : 5 9 A M 24 have counsel.

8 : 5 9 A M 25 MR. DUFFY: Okay. Well, if there's anything the

8 : 5 9 A M 1 Court would like further from us, I know we did some earlier
8 : 5 9 A M 2 briefing on that issue.

8 : 5 9 A M 3 THE COURT: Yeah. Thank you very much, Mr. Duffy.

8 : 5 9 A M 4 Okay. Let's bring Mr. Blasko in, and we will
9 : 0 0 A M 5 put him under oath and put him in the witness chair.

9 : 0 0 A M 6 MR. LEVENTIS: Your Honor, I guess one question --
9 : 0 0 A M 7 well, I'll wait.

9 : 0 0 A M 8 THE COURT: Yeah. Sir, if you will come forward and
9 : 0 0 A M 9 place your hand on the Bible.

9 : 0 0 A M 10 THE DEPUTY CLERK: Please place your left hand on the
9 : 0 0 A M 11 Bible and raise your right hand. State your full name for the
9 : 0 0 A M 12 record, please.

9 : 0 0 A M 13 THE WITNESS: Leonard Blasko.

9 : 0 0 A M 14 THE DEPUTY CLERK: Thank you.

9 : 0 0 A M 15 (Witness sworn.)

9 : 0 0 A M 16 THE DEPUTY CLERK: Thank you. You may be seated.

9 : 0 0 A M 17 THE WITNESS: Good morning, Your Honor.

9 : 0 0 A M 18 THE COURT: Good morning, Mr. Blasko. Could you
9 : 0 0 A M 19 state your full name for the record please, sir.

9 : 0 0 A M 20 THE WITNESS: Leonard Blasko. Sometimes I use J.,
9 : 0 0 A M 21 Leonard J. Blasko.

9 : 0 1 A M 22 THE COURT: Very good. Mr. Blasko, do you have
9 : 0 1 A M 23 counsel retained to represent you in the matter of this
9 : 0 1 A M 24 proceeding?

9 : 0 1 A M 25 THE WITNESS: Today I do not.

9 : 0 1 A M 1 **THE COURT:** Okay. Obviously, when -- I've been
9 : 0 1 A M 2 informed that you may wish to invoke your Fifth Amendment right
9 : 0 1 A M 3 against self-incrimination.

9 : 0 1 A M 4 **THE WITNESS:** I do, to all the questions.

9 : 0 1 A M 5 **THE COURT:** Okay. I want to make sure, because
9 : 0 1 A M 6 you're not represented by counsel, that you understand the
9 : 0 1 A M 7 nature and function of the Fifth Amendment right so you can
9 : 0 1 A M 8 understand what would be a proper invocation and what might not
9 : 0 1 A M 9 be a proper invocation of the Fifth Amendment right. So let me
10 explain that to you since you do not have counsel here.

9 : 0 1 A M 11 You obviously have a constitutional right not to
9 : 0 1 A M 12 be a witness against yourself. That is in the Fifth Amendment
9 : 0 1 A M 13 of the United States Constitution. And we call that the right
14 against self-incrimination.

9 : 0 1 A M 15 There are elements to it. You must be
9 : 0 1 A M 16 responding to a question in which your answer may be
9 : 0 2 A M 17 incriminating; that is, it means that your answer would
9 : 0 2 A M 18 directly implicate you in a crime or furnish a link in the
9 : 0 2 A M 19 chain of evidence needed to prosecute you. So it's got to be
20 self-incriminating.

9 : 0 2 A M 21 **THE WITNESS:** Okay.

9 : 0 2 A M 22 **THE COURT:** The -- I need -- in just a moment, I'm
23 going to have the government ask you questions.

9 : 0 2 A M 24 **THE WITNESS:** Uh-huh.

9 : 0 2 A M 25 **THE COURT:** And -- because if a response is not

9 : 0 2 A M 1 self-incriminating, you must answer it. The classic example,
9 : 0 2 A M 2 "what is your name? what is your address?" It's not
9 : 0 2 A M 3 self-incriminating. That would not be a problem.

9 : 0 2 A M 4 On the other hand, if they ask you something
9 : 0 2 A M 5 that your response -- and I have to make this determination --
9 : 0 2 A M 6 would be -- potentially implicate you in a crime or provide a
9 : 0 2 A M 7 key piece of evidence linking you to a crime, then that -- I
9 : 0 2 A M 8 would determine that is potentially self-incriminating. And if
9 : 0 2 A M 9 you should invoke the Fifth Amendment, I would determine that
10 that was a proper invocation.

9 : 0 2 A M 11 And we're trying to do this ahead of time so you
9 : 0 2 A M 12 can have a better idea when it's proper and not proper to do
9 : 0 3 A M 13 that.

9 : 0 3 A M 14 **THE WITNESS:** Okay.

9 : 0 3 A M 15 **THE COURT:** And you'll know in advance my ruling on
9 : 0 3 A M 16 that. Okay?

9 : 0 3 A M 17 Do you have any questions for me?

9 : 0 3 A M 18 **THE WITNESS:** So I -- I understand that there are
9 : 0 3 A M 19 criminal charges associated with this trial today.

9 : 0 3 A M 20 **THE COURT:** There are actually no pending criminal
9 : 0 3 A M 21 trials to my knowledge; is that correct?

9 : 0 3 A M 22 **MR. LEVENTIS:** Not that I'm aware of, Your Honor.

9 : 0 3 A M 23 **THE COURT:** But there -- there potentially could be.
9 : 0 3 A M 24 I think the determination of whether -- is it plausible that
9 : 0 3 A M 25 criminal charges could arise from this -- and I had previously

9 : 0 3 A M 1 advised counsel that, with an army of Department of Justice
9 : 0 3 A M 2 lawyers involved in health care fraud, that that's possible.

9 : 0 3 A M 3 THE WITNESS: Yes. That's what I've been advised by
9 : 0 3 A M 4 my attorney, and I also --

9 : 0 3 A M 5 THE COURT: But you have to reasonably believe that
9 : 0 3 A M 6 your answer will incriminate you. You see, it's not just the
9 : 0 3 A M 7 general risk of prosecution. It must be that your answer to a
9 : 0 3 A M 8 question -- it may be that sometimes a question -- your
9 : 0 4 A M 9 response would not necessarily be incriminating, and you cannot
9 : 0 4 A M 10 assert it. And there are other occasions -- and it's not just
9 : 0 4 A M 11 because you invoke it on one line of questioning, it's only
9 : 0 4 A M 12 applicable to that line of questioning and the reasonable
9 : 0 4 A M 13 follow-up question.

9 : 0 4 A M 14 So there could be different categories of
9 : 0 4 A M 15 information, and it would be necessary for you to invoke it.
9 : 0 4 A M 16 But your response must be potentially incriminating.

9 : 0 4 A M 17 Do you understand that?

9 : 0 4 A M 18 THE WITNESS: I do. And I also understand that,
9 : 0 4 A M 19 first of all, I was interviewed by the FBI once and I answered
9 : 0 4 A M 20 all their questions.

9 : 0 4 A M 21 THE COURT: Right.

9 : 0 4 A M 22 THE WITNESS: And I was forthcoming with all the
9 : 0 4 A M 23 information that they asked of me. The second time, I answered
9 : 0 4 A M 24 all their answers under a proffer agreement, and I was
9 : 0 4 A M 25 forthcoming again.

9 : 0 4 A M 1 And then a third time I was deposed. And at
9 : 0 4 A M 2 this time, we -- my attorney asked for a nonprosecution
9 : 0 4 A M 3 agreement by the civil fraud division, which, my understanding,
9 : 0 4 A M 4 there is no agreement.

9 : 0 4 A M 5 So in answering -- listening to all those
9 : 0 5 A M 6 questions which I pleaded the Fifth, to me, they seem
9 : 0 5 A M 7 innocuous. But to the attorney --

9 : 0 5 A M 8 THE COURT: well, I'm going to tell you that an
9 : 0 5 A M 9 innocuous response on your part -- if the response is merely
9 : 0 5 A M 10 innocuous and would not implicate you in a crime, it's not
9 : 0 5 A M 11 proper to invoke the Fifth Amendment, only if your answer would
9 : 0 5 A M 12 potentially be self-incriminating.

9 : 0 5 A M 13 THE WITNESS: Okay.

9 : 0 5 A M 14 THE COURT: Do you understand that? So general
9 : 0 5 A M 15 questions or innocuous questions or answers that would not be
9 : 0 5 A M 16 incriminating, it would not be proper to invoke the Fifth
9 : 0 5 A M 17 Amendment.

9 : 0 5 A M 18 THE WITNESS: Okay.

9 : 0 5 A M 19 THE COURT: Okay? Okay.

9 : 0 5 A M 20 Mr. Leventis, are you going to be the one
9 : 0 5 A M 21 questioning?

9 : 0 5 A M 22 MR. LEVENTIS: Yes, Your Honor.

9 : 0 5 A M 23 THE COURT: Very good.

9 : 0 5 A M 24 LEONARD J. BLASKO,
9 : 0 5 A M 25 a witness called on behalf of the plaintiff, being first duly

1 sworn, was examined and testified as follows:

2 **DIRECT EXAMINATION**

3 **BY MR. LEVENTIS:**

4 Q. Good morning, Mr. Blasko.

5 A. Good morning.

6 **MR. LEVENTIS:** Your Honor, I just want to just ask a
7 couple and see how we go.

8 **THE COURT:** Yes.

9 **BY MR. LEVENTIS:**

10 Q. Okay. Mr. Blasko, did you market lab tests for HDL and
11 Singulex on behalf of BlueWave?

12 A. Yes.

13 Q. Did Bluewave pay you a commission every time one of your
14 physicians ordered a --

15 A. I'm sorry. Can I retract that answer, the first one?

16 **THE COURT:** No, you've given that answer. Go ahead.

17 **BY MR. LEVENTIS:**

18 Q. Did Bluewave pay you a commission every time one of your
19 physicians ordered HDL or Singulex tests?

20 A. No.

21 Q. How were you paid for selling HDL and Singulex tests?

22 A. I was paid -- I received a check from Quasi Maturi.

23 Q. And what is your understanding of Quasi Maturi?

24 A. well, initially, I thought I was working for Bluewave
25 until the check came in. And then I questioned, "what is this

9 : 0 6 A M 1 Quasi Maturi check coming from?" which was another LLC.

9 : 0 6 A M 2 Q. Okay. And what is the significance of Quasi Maturi being
9 : 0 7 A M 3 an LLC?

9 : 0 7 A M 4 A. I don't know what the significance is. I just thought I
9 : 0 7 A M 5 was working for Bluewave, and then I got -- my first check was
9 : 0 7 A M 6 Quasi Maturi.

9 : 0 7 A M 7 Q. And do you know who -- is Quasi Maturi owned by anyone?

9 : 0 7 A M 8 A. Yes.

9 : 0 7 A M 9 Q. Do you know who it's owned by?

9 : 0 7 A M 10 A. Charles Maimone.

9 : 0 7 A M 11 Q. And how do you know Charles Maimone?

9 : 0 7 A M 12 A. He just interviewed me for -- for a position with HDL.

9 : 0 7 A M 13 Q. So do you work for HDL?

9 : 0 7 A M 14 A. Well, this is where it's getting confusing. I thought I
9 : 0 7 A M 15 was working for HDL. Then I see a card for Bluewave, and then
9 : 0 7 A M 16 I get a paycheck from Quasi Maturi. That's --

9 : 0 7 A M 17 Q. And so, again, how do you know Mr. Maimone, Charles
9 : 0 8 A M 18 Maimone?

9 : 0 8 A M 19 A. He -- he was introduced to me by another person.

9 : 0 8 A M 20 Q. And do you know who -- does Charles Maimone work for
9 : 0 8 A M 21 Bluewave?

9 : 0 8 A M 22 A. Well, he showed me his card. So I believe he did, yeah.

9 : 0 8 A M 23 Q. And what did the card say?

9 : 0 8 A M 24 A. It said Charles Maimone with Bluewave -- a business card,
9 : 0 8 A M 25 that I can recall.

9 : 0 8 A M 1 Q. And did you receive any training on how to sell HDL or
9 : 0 8 A M 2 Singulex tests?

9 : 0 8 A M 3 A. Could you define "training"? Be a little more specific,
9 : 0 8 A M 4 because my definition of "training" and other types --

9 : 0 8 A M 5 Q. Tell me what your definition of "training" is.

9 : 0 8 A M 6 A. Well, in my field, we're given two weeks of home-study
9 : 0 8 A M 7 training with books to read. And we're tested intensively, and
9 : 0 9 A M 8 then we spend one to two weeks in a classroom.

9 : 0 9 A M 9 Q. Okay. And did you --

9 : 0 9 A M 10 A. And then we're tested again.

9 : 0 9 A M 11 Q. Sorry. I didn't mean to interrupt you. Anything else?

9 : 0 9 A M 12 A. Then we're tested again. And then if we pass those tests,
9 : 0 9 A M 13 we're on board and on to the company.

9 : 0 9 A M 14 Q. Okay. And so did that occur with the HDL testing?

9 : 0 9 A M 15 A. That type of training did not occur, no.

9 : 0 9 A M 16 Q. Okay. So how did you know what to do -- how did you know
9 : 0 9 A M 17 what the HDL tests were or how to market them?

9 : 0 9 A M 18 A. I've -- I was asked to follow Charles Maimone around --

9 : 0 9 A M 19 Q. Who asked you to follow --

9 : 0 9 A M 20 A. -- giving presentations. He asked me to follow him around
9 : 0 9 A M 21 and watch him make presentations.

9 : 0 9 A M 22 Q. Charles Maimone asked you to follow him around?

9 : 0 9 A M 23 A. Yes.

9 : 0 9 A M 24 Q. And is that -- how many of these presentations did you
9 : 1 0 A M 25 follow him around on?

9 : 1 0 A M 1 A. well, I met him in -- well, what time period are you
9 : 1 0 A M 2 talk -- I mean, the whole time period or just --

9 : 1 0 A M 3 Q. Yeah, what time period are we talking about that you sold
9 : 1 0 A M 4 HDL and Singulex tests?

9 : 1 0 A M 5 A. You know, I really don't -- it might have been a year and
9 : 1 0 A M 6 a half. I don't -- it's been a long time ago. I really don't
9 : 1 0 A M 7 remember. It just --

9 : 1 0 A M 8 Q. Were you selling HDL and Singulex tests in 2012?

9 : 1 0 A M 9 A. I believe that was the year. I believe that was the year,
9 : 1 0 A M 10 yes.

9 : 1 0 A M 11 Q. All right. And when did you stop working for HDL and
9 : 1 0 A M 12 Singulex -- selling HDL and Singulex tests?

9 : 1 0 A M 13 A. I really -- I really don't -- I don't know.

9 : 1 0 A M 14 MR. LEVENTIS: Your Honor, I'm going to move on to
9 : 1 0 A M 15 some questions about the videos. Is that all right?

9 : 1 0 A M 16 THE COURT: Yes.

9 : 1 0 A M 17 BY MR. LEVENTIS:

9 : 1 0 A M 18 Q. Mr. Blasko, you've seen a video of you taken -- an
9 : 1 1 A M 19 undercover video taken of you calling on a Dr. Sabido in
9 : 1 1 A M 20 January of 2012; correct?

9 : 1 1 A M 21 A. Correct. Was that the year, 2012? Yes.

9 : 1 1 A M 22 Q. Do you know a Dr. Sabido?

9 : 1 1 A M 23 A. Yes.

9 : 1 1 A M 24 Q. And how long have you known Dr. Sabido?

9 : 1 1 A M 25 A. Roughly? I sold -- I used to sell him Claritin, so that

9 : 1 1 A M 1 would go back to maybe 2002, 2004.

9 : 1 1 A M 2 Q. And did you recognize yourself on the video taken?

9 : 1 1 A M 3 A. Yes, I did.

9 : 1 1 A M 4 Q. Did you also recognize the voice of Bluewave salesman
9 : 1 1 A M 5 Charles Maimone on the phone?

9 : 1 1 A M 6 A. Yes. I called him.

9 : 1 1 A M 7 Q. Do you recall any of the specifics of that video that you
9 : 1 1 A M 8 watched?

9 : 1 1 A M 9 A. That was a long time ago. No.

9 : 1 1 A M 10 THE COURT: That's not the question. Do you recall
9 : 1 1 A M 11 the --

9 : 1 1 A M 12 THE WITNESS: Specifics?

9 : 1 2 A M 13 THE COURT: Yes.

9 : 1 2 A M 14 THE WITNESS: Like, what do you mean? Like, some of
9 : 1 2 A M 15 the --

9 : 1 2 A M 16 MR. LEVENTIS: I guess at some point we'll be showing
9 : 1 2 A M 17 him the video again, Your Honor. I can move on to some of the
9 : 1 2 A M 18 other questions.

9 : 1 2 A M 19 THE COURT: Okay.

9 : 1 2 A M 20 BY MR. LEVENTIS:

9 : 1 2 A M 21 Q. So as part of your training -- you said you were trained
9 : 1 2 A M 22 by Mr. Maimone; is that correct?

9 : 1 2 A M 23 A. That's correct, yes.

9 : 1 2 A M 24 Q. And as part of your training, did Mr. Maimone tell you to
9 : 1 2 A M 25 talk about the processing and handling fees?

9 : 1 2 A M 1 A. Say -- would you repeat that again? Did he --

9 : 1 2 A M 2 Q. Let me back up.

9 : 1 2 A M 3 A. Okay.

9 : 1 2 A M 4 Q. In your marketing of HDL and Singulex tests, do you recall
9 : 1 2 A M 5 a term "processing and handling fee"?

9 : 1 2 A M 6 A. Yes. Yes, I do.

9 : 1 2 A M 7 Q. And what's your understanding of a processing and handling
9 : 1 2 A M 8 fee?

9 : 1 2 A M 9 A. The processing and handling fee, it was reimbursement to
9 : 1 2 A M 10 the physician because HDL did not provide any bandages or
9 : 1 3 A M 11 sharps or provide any rent to the -- to the physician's office.

9 : 1 3 A M 12 Other lab companies, I understand getting into this
9 : 1 3 A M 13 business, did those things, or they also paid for a
9 : 1 3 A M 14 phlebotomist. So my understanding was that, because the
9 : 1 3 A M 15 physician has to schedule a patient, draw the blood, package
9 : 1 3 A M 16 it -- spin it, package it, and send it in, that he was
9 : 1 3 A M 17 reimbursed for a processing and handling fee.

9 : 1 3 A M 18 Q. Did you also use the processing and handling fee as a
9 : 1 3 A M 19 selling point to the physician?

9 : 1 3 A M 20 A. No.

9 : 1 3 A M 21 Q. In the video, when you lean in and tell the doctor there's
9 : 1 3 A M 22 an economic thing to this, what did you mean?

9 : 1 3 A M 23 A. Well, I meant to say do the math. If you have 10 patients
9 : 1 3 A M 24 and you're getting 20 or -- I don't even recall what the fee
9 : 1 4 A M 25 was, but you multiply that out, and that's what you would

9 : 1 4 A M 1 receive at the end of the month, with a detailed report of all
9 : 1 4 A M 2 the patients that were drawn.

9 : 1 4 A M 3 Q. So in the video you tell the doctor, "300 tests times \$20,
9 : 1 4 A M 4 you do the math." what did you mean by that?

9 : 1 4 A M 5 A. what was the -- well, the math, 20 times 300? Did I say
9 : 1 4 A M 6 300? 300. 20 times 300.

9 : 1 4 A M 7 Q. what did you mean by that?

9 : 1 4 A M 8 A. You would get a check for \$6,000 under -- with listing all
9 : 1 4 A M 9 the patients that you drew the blood from them.

9 : 1 4 A M 10 Q. And did BlueWave train you that one way to get doctors to
9 : 1 4 A M 11 order HDL tests is by telling the doctor about these payments?

9 : 1 4 A M 12 A. No, no.

9 : 1 4 A M 13 Q. where did you get the idea to talk about these payments?

9 : 1 4 A M 14 A. They would ask.

9 : 1 4 A M 15 Q. The doctor would ask for the payment?

9 : 1 4 A M 16 A. Not all of them. Not all of them. Many -- actually, I
9 : 1 5 A M 17 would say, 30 to 50 percent of them, it didn't come up in a
9 : 1 5 A M 18 sales call. That's my guess.

9 : 1 5 A M 19 Q. I'm sorry. In how many?

9 : 1 5 A M 20 A. I would say -- I'm only guesstimating -- maybe 30 percent
9 : 1 5 A M 21 of the calls, it never -- it never came up.

9 : 1 5 A M 22 Q. In 30 percent it never came up?

9 : 1 5 A M 23 A. It never came up. They were more interested in the --
9 : 1 5 A M 24 they had -- HDL had one proprietary test for the omega-3, and
9 : 1 5 A M 25 they were interested in the particle sizes. And they were

9 : 1 5 A M 1 asking me if they could use -- incorporate some of their daily
9 : 1 5 A M 2 tests into this. Those were the typical questions.

9 : 1 5 A M 3 Q. So what about in the other 70 percent of doctors that you
9 : 1 5 A M 4 called on, where they did ask about the processing and handling
9 : 1 6 A M 5 fee? What would you tell a doctor who asked you about the
9 : 1 6 A M 6 processing and handling fee?

9 : 1 6 A M 7 A. HDL will give you a processing and handling fee of I
9 : 1 6 A M 8 think -- I believe it was \$15. Was it 20? I don't know. I
9 : 1 6 A M 9 think it was 15 for each patient that you draw on. At the end
9 : 1 6 A M 10 of the month, you will get a check with a detailed report of
9 : 1 6 A M 11 all the patients' names. And I would also tell them at the end
9 : 1 6 A M 12 of the year they would get -- I believe it was a 1099 of all
9 : 1 6 A M 13 the checks that were disbursed to their --

9 : 1 6 A M 14 Q. And how were you compensated, Mr. Blasko, for selling HDL
9 : 1 6 A M 15 and Singulex tests?

9 : 1 6 A M 16 A. I got -- for each test -- for each patient tested -- for
9 : 1 6 A M 17 each patient, I would get a fee.

9 : 1 6 A M 18 Q. And how much did you get per patient?

9 : 1 6 A M 19 A. I don't remember.

9 : 1 6 A M 20 Q. Did the amount you got per patient depend on how many
9 : 1 7 A M 21 tests that the doctor ordered on that patient?

9 : 1 7 A M 22 A. No, no.

9 : 1 7 A M 23 Q. Did Bluewave incentivize you to get doctors to order as
9 : 1 7 A M 24 many tests as possible?

9 : 1 7 A M 25 A. Did they incentivize me to order?

9 : 1 7 A M 1 Q. No, no, no. To get doctors to order.

9 : 1 7 A M 2 A. No, no.

9 : 1 7 A M 3 Q. And do you recall marketing the HDL and Singulex tests

9 : 1 7 A M 4 together to a physician?

9 : 1 7 A M 5 A. I -- I can't recall that right now. My mind draws a

9 : 1 7 A M 6 blank.

9 : 1 7 A M 7 Q. So in the video that you're going to see, you market both

9 : 1 7 A M 8 HDL and Singulex together to Dr. Sabido. Do you recall that?

9 : 1 7 A M 9 A. If I see -- yes.

9 : 1 7 A M 10 Q. But as you're sitting here, you don't remember?

9 : 1 7 A M 11 A. It's been a long time. I can't -- I can't --

9 : 1 8 A M 12 Q. Did Bluewave train you to market combining HDL and

9 : 1 8 A M 13 Singulex tests together when you were selling to doctors?

9 : 1 8 A M 14 A. No. Not that I can recall, no.

9 : 1 8 A M 15 Q. Mr. Blasko, did you represent HDL at any events on behalf

9 : 1 8 A M 16 of BlueWave?

9 : 1 8 A M 17 A. I attended a conference in Atlantic City.

9 : 1 8 A M 18 Q. And what was the -- that conference about?

9 : 1 8 A M 19 A. It was just a trade show.

10 : 1 6 A M 20 Q. Did you wear any clothing that said "HDL" or "Singulex"?

9 : 1 8 A M 21 A. I don't -- I don't remember if I had -- I usually wear a

9 : 1 8 A M 22 badge at one of those. Maybe I had a paper -- you know, when

9 : 1 8 A M 23 you register in at the expo, I might have had a sticky badge

9 : 1 8 A M 24 on.

9 : 1 8 A M 25 Q. Have you been to more than one trade show?

9 : 1 8 A M 1 A. Oh, yes, with other companies.

9 : 1 8 A M 2 Q. Okay. How about trade shows -- did you do this -- the one
9 : 1 9 A M 3 we're talking about in Atlantic City, did you do that on behalf
9 : 1 9 A M 4 of BlueWave?

9 : 1 9 A M 5 A. I'm getting confused by HDL and BlueWave. I'm assuming it
9 : 1 9 A M 6 was all HDL at the time.

9 : 1 9 A M 7 Q. Okay. So you went on behalf of HDL?

9 : 1 9 A M 8 A. Yes, with Charles.

9 : 1 9 A M 9 Q. So you went with Charles?

9 : 1 9 A M 10 A. Yes.

9 : 1 9 A M 11 Q. And who paid for your hotel?

9 : 1 9 A M 12 A. Somebody did. I didn't pay for it. I -- maybe HDL; maybe
9 : 1 9 A M 13 BlueWave. It gets -- it gets confusing.

9 : 1 9 A M 14 Q. Do you get confused between whether you were working for
9 : 1 9 A M 15 BlueWave or HDL?

9 : 1 9 A M 16 A. Well, yeah, because that and the Quasi Maturi checks. It
9 : 1 9 A M 17 was --

9 : 1 9 A M 18 MR. LEVENTIS: Your Honor, one second.

9 : 1 9 A M 19 THE COURT: Uh-huh.

9 : 1 9 A M 20 (Pause.)

9 : 2 0 A M 21 MR. LEVENTIS: Your Honor, my thought was I would
9 : 2 0 A M 22 like to see what some of his answers would be about the proffer
9 : 2 0 A M 23 agreement.

9 : 2 0 A M 24 THE COURT: Okay. And why would you want that?

9 : 2 0 A M 25 MR. LEVENTIS: To see about this idea of whether he

9 : 2 0 A M 1 agreed to provide the U.S. with truthful information about his
9 : 2 0 A M 2 time at BlueWave. Is this his agreement? Things that -- I
9 : 2 0 A M 3 believe it sounds like from the defense side that they're going
9 : 2 0 A M 4 to ask him about these same questions.

9 : 2 0 A M 5 THE COURT: Does defense intend to inquire into the
9 : 2 0 A M 6 proffer agreement?

9 : 2 0 A M 7 MR. COOKE: I hadn't thought -- I'm going to ask him
9 : 2 0 A M 8 some questions about the statements that he gave to the FBI. I
9 : 2 0 A M 9 wasn't going to ask him specifically about the proffer
10 agreement. I mean --

9 : 2 0 A M 11 THE COURT: Tell me what the purpose -- I'm just
9 : 2 0 A M 12 trying to keep the jury from being confused. It raises the
9 : 2 1 A M 13 specter of a criminal prosecution, which I think is a potential
9 : 2 1 A M 14 smear on the defendants. And you haven't done it, and that
9 : 2 1 A M 15 concerns me. That's my only concern about that.

9 : 2 1 A M 16 Tell me, what's the nature of the questions you
9 : 2 1 A M 17 want to ask about the proffer agreement?

9 : 2 1 A M 18 MR. LEVENTIS: Is this -- is this your agreement? Is
9 : 2 1 A M 19 this your signature? Did you agree to testify truthfully if
9 : 2 1 A M 20 called as a witness at trial?

9 : 2 1 A M 21 THE COURT: Okay. And what else?

9 : 2 1 A M 22 MR. LEVENTIS: Really, that would be the extent of
9 : 2 1 A M 23 it, Your Honor. I'm -- there may be one or two other that I'll
9 : 2 1 A M 24 think of.

9 : 2 1 A M 25 THE COURT: I just don't know why it's relevant, and

9 : 2 1 A M 1 I think it's sort of a 403 issue to me. I don't know why
9 : 2 1 A M 2 you're getting into the proffer agreement.

9 : 2 1 A M 3 MR. LEVENTIS: I guess the thing -- but if the -- my
9 : 2 1 A M 4 concern is --

9 : 2 1 A M 5 THE COURT: If they raise something, then, redirect,
9 : 2 1 A M 6 you can go into it if they raise it.

9 : 2 1 A M 7 MR. LEVENTIS: Yeah, I just don't want it to look
9 : 2 1 A M 8 like we're hiding it from the jury, Your Honor. That was my
9 : 2 2 A M 9 concern, if they stand up about it without me having asked him.

9 : 2 2 A M 10 THE COURT: About the proffer agreement?

9 : 2 2 A M 11 MR. LEVENTIS: Yes, Your Honor.

9 : 2 2 A M 12 THE COURT: Again, does counsel intend to raise the
9 : 2 2 A M 13 proffer agreement?

9 : 2 2 A M 14 MR. COOKE: No, Your Honor.

9 : 2 2 A M 15 THE COURT: Mr. Ashmore?

9 : 2 2 A M 16 MR. ASHMORE: No, sir.

9 : 2 2 A M 17 THE COURT: Okay. Then I'm not going to allow you to
9 : 2 2 A M 18 go into it.

9 : 2 2 A M 19 MR. LEVENTIS: That's fine.

9 : 2 2 A M 20 THE COURT: Thank you.

9 : 2 2 A M 21 Okay. Anything further? Yes?

9 : 2 2 A M 22 MR. COOKE: Should we ask questions too?

9 : 2 2 A M 23 THE COURT: well, do you think any of the questions
9 : 2 2 A M 24 he may require incriminating responses?

9 : 2 2 A M 25 MR. COOKE: Potentially, no. No.

9 : 2 2 A M 1 THE COURT: Then you don't need to.

9 : 2 2 A M 2 MR. COOKE: I just didn't want to be caught by
9 : 2 2 A M 3 surprise if I ask him a question that I don't think is
9 : 2 2 A M 4 incriminating, but he --

9 : 2 2 A M 5 THE COURT: Well, it strikes me that Mr. Blasko is an
9 : 2 2 A M 6 intelligent person, seems to understand what I've explained to
9 : 2 2 A M 7 him. And my concern about doing that was that he did not have
9 : 2 2 A M 8 counsel here. And I'm satisfied by the way he responded to me
9 : 2 2 A M 9 and to Mr. Leventis that he understands the nature of the Fifth
9 : 2 2 A M 10 Amendment.

9 : 2 2 A M 11 Is that fair, Mr. Blasko? You think you do?

9 : 2 2 A M 12 THE WITNESS: I believe it's fair.

9 : 2 3 A M 13 THE COURT: Okay. I don't think it's -- I don't
9 : 2 3 A M 14 believe it's necessary to go any further. This was really just
9 : 2 3 A M 15 to protect him and to protect his constitutional right without
9 : 2 3 A M 16 counsel here. Okay?

9 : 2 3 A M 17 MR. LEVENTIS: I'm sorry. The one thing I wanted to
9 : 2 3 A M 18 bring up, Your Honor, is I just wanted to make sure -- there
9 : 2 3 A M 19 was some confusion before opening. I listed off a number of
9 : 2 3 A M 20 exhibits which included the video.

9 : 2 3 A M 21 THE COURT: Yes.

9 : 2 3 A M 22 MR. LEVENTIS: And my understanding was that they
9 : 2 3 A M 23 came in.

9 : 2 3 A M 24 THE COURT: Yes. It's in. I hope you -- make sure
9 : 2 3 A M 25 you provided that to Ms. Ravenel.

9 : 2 3 A M 1 **MR. LEVENTIS:** Yes, Your Honor.

9 : 2 3 A M 2 **THE COURT:** Mr. Blasko, why don't you go sit in the
9 : 2 3 A M 3 courtroom for a moment. You can just take -- and we'll call --
9 : 2 3 A M 4 when the jury comes in, we'll have you called as a witness.
9 : 2 3 A M 5 okay?

9 : 2 3 A M 6 Any other matters to address before we bring in
9 : 2 3 A M 7 the jury?

9 : 2 3 A M 8 From the government?

9 : 2 3 A M 9 **MR. LEVENTIS:** Your Honor, we just had -- yes, one
9 : 2 4 A M 10 issue about one of the attorneys.

9 : 2 4 A M 11 **MS. STRAWN:** Yes, Your Honor, Elizabeth Strawn. We
9 : 2 4 A M 12 need some guidance from Your Honor on how you would like to
9 : 2 4 A M 13 handle a situation where the witness may have their own private
9 : 2 4 A M 14 attorney who's present in the courtroom, where that attorney
9 : 2 4 A M 15 may have some issues about privilege.

9 : 2 4 A M 16 In this case, I'm asking because Dr. Mayes's
9 : 2 4 A M 17 counsel is present in the courtroom, but I would be the one
9 : 2 4 A M 18 directing the witness and addressing cross.

9 : 2 4 A M 19 **THE COURT:** So what are you asking me? Obviously,
9 : 2 4 A M 20 witnesses are sequestered, so everyone is required not to share
9 : 2 4 A M 21 with any sequestered witness the substance of what's happening
9 : 2 4 A M 22 in the courtroom. That's an obligation.

9 : 2 4 A M 23 what would you like me to inquire into?

9 : 2 4 A M 24 **MS. STRAWN:** I guess the question is whether counsel
9 : 2 4 A M 25 for Dr. Mayes can be present at counsel table or near counsel

9 : 2 4 A M 1 table during the examination.

9 : 2 4 A M 2 THE COURT: No. He's going to sit in the -- he's not
9 : 2 4 A M 3 a party; he's a witness. He's -- he can be in the courtroom,
9 : 2 5 A M 4 but he's not going to be at counsel table.

9 : 2 5 A M 5 MS. STRAWN: Thank you, Your Honor.

9 : 2 5 A M 6 THE COURT: He will not be allowed to question.

9 : 2 5 A M 7 Okay. Anything else?

9 : 2 5 A M 8 MR. LEVENTIS: No, thank you, Your Honor.

9 : 2 5 A M 9 THE COURT: Anything further from the defense?

9 : 2 5 A M 10 MR. GRIFFITH: Just to make our position known that
9 : 2 5 A M 11 we believe he is a party, Mr. Mayes, but I understand your
9 : 2 5 A M 12 ruling.

9 : 2 5 A M 13 THE COURT: I have ruled on that. I've severed those
9 : 2 5 A M 14 matters. Bring in the -- bring in the jury.

9 : 2 5 A M 15 THE DEPUTY: We're waiting on one.

9 : 2 5 A M 16 THE COURT: We're waiting on one? Okay.

9 : 2 5 A M 17 THE DEPUTY: She's down there.

9 : 2 5 A M 18 THE COURT: Okay. Good.

9 : 2 6 A M 19 (Pause.)

9 : 2 6 A M 20 THE COURT: Very good. Bring in the jury.

9 : 2 6 A M 21 (Whereupon the jury entered the courtroom.)

9 : 2 7 A M 22 THE COURT: Please be seated.

9 : 2 7 A M 23 Government, call your next witness.

9 : 2 7 A M 24 MR. LEVENTIS: Thank you, Your Honor. The government
9 : 2 7 A M 25 calls Leonard Blasko.

9 : 2 7 A M 1 THE DEPUTY CLERK: Swear him again, Judge?

9 : 2 7 A M 2 THE COURT: Yes, in the presence of the jury.

9 : 2 7 A M 3 THE DEPUTY CLERK: Please state your full name for
9 : 2 7 A M 4 the record.

9 : 2 7 A M 5 THE WITNESS: Leonard Blasko.

9 : 2 7 A M 6 THE DEPUTY CLERK: Say it so they can --

9 : 2 7 A M 7 THE WITNESS: Leonard Blasko.

9 : 2 7 A M 8 THE DEPUTY CLERK: Thank you.

9 : 2 7 A M 9 (Witness sworn.)

9 : 2 7 A M 10 THE DEPUTY CLERK: Thank you. You may have a seat.

9 : 2 7 A M 11 LEONARD J. BLASKO,

9 : 2 7 A M 12 a witness called on behalf of the plaintiff, being first duly
1 1 : 0 3 A M 13 sworn, was examined and testified as follows:

9 : 2 7 A M 14 DIRECT EXAMINATION

9 : 2 7 A M 15 BY MR. LEVENTIS:

9 : 2 7 A M 16 Q. Good morning. would you please state your name for the
9 : 2 7 A M 17 record.

9 : 2 7 A M 18 A. Leonard Blasko.

9 : 2 8 A M 19 Q. Mr. Blasko, did you market laboratory tests for HDL and
9 : 2 8 A M 20 Singulex?

9 : 2 8 A M 21 A. Yes.

9 : 2 8 A M 22 Q. And did you market them on behalf of BlueWave Healthcare?

9 : 2 8 A M 23 A. I marketed them under HDL, BlueWave, and I guess Quasi
9 : 2 8 A M 24 Maturi.

9 : 2 8 A M 25 Q. Okay. Let's start with -- what's your understanding of

9 : 2 8 A M 1 what Bluewave Healthcare is?

9 : 2 8 A M 2 A. A sub -- a subcontractor, a company marketing a product
9 : 2 8 A M 3 for HDL.

9 : 2 8 A M 4 Q. And were you paid a commission by Bluewave every time you
9 : 2 8 A M 5 sold an HDL or Singulex test?

9 : 2 8 A M 6 A. Every time the physician used an HDL/Singulex test, yes.

9 : 2 8 A M 7 Q. Who were you paid by?

9 : 2 9 A M 8 A. Quasi Maturi.

9 : 2 9 A M 9 Q. And what's your understanding of who Quasi Maturi is?

9 : 2 9 A M 10 A. Quasi Maturi was an LLC that was developed by Charles
9 : 2 9 A M 11 Maimone.

9 : 2 9 A M 12 Q. Okay. And who do you know Charles Maimone to be?

9 : 2 9 A M 13 A. Charles Maimone is the person that interviewed me to sell
9 : 2 9 A M 14 and market HDL.

9 : 2 9 A M 15 Q. Okay. And does Charles Maimone work for Bluewave?

9 : 2 9 A M 16 A. Yes.

9 : 2 9 A M 17 Q. Mr. Blasko, are you familiar with a Dr. Benjamin Sabido
9 : 2 9 A M 18 who practices medicine in New Jersey?

9 : 2 9 A M 19 A. Yes.

9 : 2 9 A M 20 Q. And did you visit Mr. Sabido for the purpose of getting
9 : 2 9 A M 21 him to order HDL and Singulex tests?

9 : 2 9 A M 22 A. Yes.

9 : 2 9 A M 23 Q. Have you previously had an opportunity to review an
9 : 3 0 A M 24 undercover video taken of you where you were selling those
9 : 3 0 A M 25 tests to Dr. Sabido?

9 : 3 0 A M 1 A. Yes.

9 : 3 0 A M 2 Q. Was that in January of 2012 that the video was taken?

9 : 3 0 A M 3 A. If you say so. If that was the date, yes.

9 : 3 0 A M 4 MR. LEVENTIS: Your Honor, we'd now like to play a
9 : 3 0 A M 5 portion of the video --

9 : 3 0 A M 6 THE COURT: Very good. It's previously been
9 : 3 0 A M 7 admitted --

9 : 3 0 A M 8 MR. LEVENTIS: Yes, Your Honor.

9 : 3 0 A M 9 THE COURT: -- as 1135.

9 : 3 0 A M 10 (Video playing.)

9 : 3 0 A M 11 DR. SABIDO: Come on in.

9 : 3 0 A M 12 MR. BLASKO: Hello.

9 : 3 0 A M 13 DR. SABIDO: How are you?

9 : 3 0 A M 14 MR. BLASKO: Fine. Nice place. Beautiful here. Oh,
9 : 3 0 A M 15 this is so much nicer than the other place, the one on the
9 : 3 0 A M 16 corner.

9 : 3 0 A M 17 DR. SABIDO: Oh, yeah.

9 : 3 0 A M 18 MR. BLASKO: Okay. So do you remember me from my
9 : 3 0 A M 19 vituran days?

9 : 3 1 A M 20 DR. SABIDO: Yeah, I remember you.

9 : 3 1 A M 21 MR. BLASKO: Okay. I did 40 years there, and I got
9 : 3 1 A M 22 let go. Two years unemployed, but I got involved with this new
9 : 3 1 A M 23 lab. Okay?

9 : 3 1 A M 24 DR. SABIDO: I'm sorry. Every time you call, I
9 : 3 1 A M 25 cannot receive you, because --

9 : 3 1 A M 1 **MR. BLASKO:** I get it. I get it. I totally
9 : 3 1 A M 2 understand that.

9 : 3 1 A M 3 So this is the lab. It's called HDL. And we do
9 : 3 1 A M 4 cardiometabolic testing in addition to some of your traditional
9 : 3 1 A M 5 tests. The lab itself was founded by a doctor -- by Joseph
9 : 3 1 A M 6 McDonald [verbatim], who is a director of cardiovascular at the
9 : 3 1 A M 7 Mayo Clinic. Okay? He's authored over 160 papers. Okay?

9 : 3 1 A M 8 So now the lab itself is located in Virginia.

9 : 3 1 A M 9 **DR. SABIDO:** Oh, okay.

9 : 3 1 A M 10 **MR. BLASKO:** It's in Virginia. He wanted to offer
9 : 3 1 A M 11 this type of testing to all patients -- to physicians and all
9 : 3 1 A M 12 their patients. So with this lab here, we accept all insurance
9 : 3 1 A M 13 companies.

9 : 3 2 A M 14 **DR. SABIDO:** Medicare?

9 : 3 2 A M 15 **MR. BLASKO:** Medicare, Medicaid, Horizon,
9 : 3 2 A M 16 HealthFirst. I know some of them -- Patterson HealthFirst,
9 : 3 2 A M 17 Horizon. We take them all.

9 : 3 2 A M 18 **DR. SABIDO:** That's everybody?

9 : 3 2 A M 19 **MR. BLASKO:** Everybody.

9 : 3 2 A M 20 **DR. SABIDO:** Everybody.

9 : 3 2 A M 21 **MR. BLASKO:** Everybody.

9 : 3 2 A M 22 Okay. So now keep that in mind. This is what
9 : 3 2 A M 23 it looks like. Here's your traditional LDL/HDL, right, panel.
9 : 3 2 A M 24 We break down the particle size, apolipoproteins, ApoB,
9 : 3 2 A M 25 LDL-P -- I think it's known as the NMR -- SDL, ApoA1, HDL, LPA

9 : 3 2 A M 1 mass. It's broken down. It's color-coded -- red, green --
9 : 3 2 A M 2 green being good; red being not so good. We also do the
9 : 3 2 A M 3 anti-inflammatories. Okay? We do the aspirin test. We also
4 do --

9 : 3 2 A M 5 DR. SABIDO: That's a big panel.

9 : 3 2 A M 6 MR. BLASKO: It's a pretty good panel. Let me show
9 : 3 2 A M 7 you. Let's see. It's on page -- on this page here. We do
9 : 3 3 A M 8 apolipoprotein E. You're familiar with that?

9 : 3 3 A M 9 DR. SABIDO: Yeah.

9 : 3 3 A M 10 MR. BLASKO: This is actually the Plavix test too.

9 : 3 3 A M 11 DR. SABIDO: Right.

9 : 3 3 A M 12 MR. BLASKO: Okay. Okay. So we do that. And then I
9 : 3 3 A M 13 have -- I actually have -- this is my personal test.

9 : 3 3 A M 14 DR. SABIDO: This is yours?

9 : 3 3 A M 15 MR. BLASKO: This is mine, yeah. We do -- we do the
9 : 3 3 A M 16 omega-3 index also.

9 : 3 3 A M 17 DR. SABIDO: Okay.

9 : 3 3 A M 18 MR. BLASKO: We break it down and we show you.

9 : 3 3 A M 19 Now, this is the actual test. This is what you
9 : 3 3 A M 20 would get. Now, at the end of the test -- you get two copies
9 : 3 3 A M 21 of this. At the end of the test, we provide comments that are
9 : 3 3 A M 22 written in layman terms for both the physician and the patient
9 : 3 3 A M 23 to understand.

9 : 3 3 A M 24 DR. SABIDO: Okay. Right.

9 : 3 3 A M 25 MR. BLASKO: And because what we do is we offer a

9 : 3 3 A M 1 health coach afterwards that -- a nutritionist/dietician that
9 : 3 4 A M 2 can call the 800 number.

9 : 3 4 A M 3 DR. SABIDO: And that has to be in English; right?
9 : 3 4 A M 4 You don't have any Spanish? Remember, my population -- oh,
9 : 3 4 A M 5 okay. Good. You have both.

9 : 3 4 A M 6 MR. BLASKO: I begged him to have this for me in my
9 : 3 4 A M 7 hand so when I came here, I have this answer. They have
9 : 3 4 A M 8 bilingual.

9 : 3 4 A M 9 DR. SABIDO: Right.

9 : 3 4 A M 10 MR. BLASKO: Doctor, I just -- I'm showing you this.
9 : 3 4 A M 11 I just had this done. I talked to the coach on Monday because
9 : 3 4 A M 12 I asked all different questions about myself. And then I asked
9 : 3 4 A M 13 about -- she said they have bilingual coaches that can coach
9 : 3 4 A M 14 them along.

9 : 3 4 A M 15 So, in addition, you can go over this with your
9 : 3 4 A M 16 patient, and you can direct -- I believe the number's on here
9 : 3 4 A M 17 somewhere. There's an 800 number to set up --

9 : 3 4 A M 18 DR. SABIDO: So tell me how it works.

9 : 3 4 A M 19 MR. BLASKO: Okay. So this is how it works. So you
9 : 3 4 A M 20 will be --

9 : 3 4 A M 21 DR. SABIDO: This is -- the medical part, I
9 : 3 4 A M 22 understand.

9 : 3 4 A M 23 MR. BLASKO: Okay. That's the clinical part. We
9 : 3 4 A M 24 also do the PLAC test. We do that. So okay. That works that
9 : 3 5 A M 25 way. Let me see.

9 : 3 5 A M 1 DR. SABIDO: I read the pamphlet the other day.

9 : 3 5 A M 2 MR. BLASKO: Oh, you did. Okay. So here's your
9 : 3 5 A M 3 requisition. It looks like this.

9 : 3 5 A M 4 DR. SABIDO: This is the what?

9 : 3 5 A M 5 MR. BLASKO: This is the requisition for each
9 : 3 5 A M 6 patient. It's going to look like this. You're going to cross
9 : 3 5 A M 7 off -- you're going to attach the demographics here. You will
9 : 3 5 A M 8 cross -- there will be a box here, cross off baseline.

9 : 3 5 A M 9 DR. SABIDO: Do I have to do it or my person
9 : 3 5 A M 10 downstairs can do it? If I order the test in my --

9 : 3 5 A M 11 MR. BLASKO: They just check it off. No, you don't
9 : 3 5 A M 12 have to do it. It doesn't need a signature. You just check
9 : 3 5 A M 13 off a box here that says "baseline." It will have all of
9 : 3 5 A M 14 these. If you need additional, you would have to check this
9 : 3 5 A M 15 off, and then the diagnosis codes are there.

9 : 3 5 A M 16 DR. SABIDO: Oh, okay.

9 : 3 5 A M 17 MR. BLASKO: Now, the way it works is I send you a
9 : 3 5 A M 18 box. The box is like this. And I'll go over this with the
9 : 3 5 A M 19 person downstairs. There's four tubes. Three are spun. Okay?

9 : 3 5 A M 20 Okay. So then -- so then on this side is a
9 : 3 6 A M 21 sleeve right here. This requisition goes in the side. It's in
9 : 3 6 A M 22 the box.

9 : 3 6 A M 23 DR. SABIDO: Yes.

9 : 3 6 A M 24 MR. BLASKO: It's in the box. You put one of these
9 : 3 6 A M 25 cold on top, slap it up. One -- this is a prepaid label,

9 : 3 6 A M 1 1-800-GoFedEx. If you use them every day, I have FedEx come
9 : 3 6 A M 2 here every day.

9 : 3 6 A M 3 DR. SABIDO: Oh, okay. And FedEx comes?

9 : 3 6 A M 4 MR. BLASKO: Yes, yes. It's been working very, very
9 : 3 6 A M 5 good so far. But it's a nice -- it's a nice panel. And you
9 : 3 6 A M 6 can use -- you know, you can use your standard -- your A1C,
9 : 3 6 A M 7 hemoglobin A1C. I know some tests we don't do, like a Lyme
9 : 3 6 A M 8 test. We don't do a Lyme test.

9 : 3 6 A M 9 DR. SABIDO: You don't do Lyme test?

9 : 3 6 A M 10 MR. BLASKO: There are certain -- I don't have the
9 : 3 6 A M 11 list in front of me, but a lot of them that we --

9 : 3 6 A M 12 DR. SABIDO: I use this for -- as you told me, right,
9 : 3 6 A M 13 this -- or you can use it for everything?

9 : 3 6 A M 14 MR. BLASKO: You can use it for everything. I would
9 : 3 6 A M 15 like you to use it for everything.

9 : 3 7 A M 16 DR. SABIDO: Okay.

9 : 3 7 A M 17 MR. BLASKO: Yes. Definitely, yes. Listen -- oh,
9 : 3 7 A M 18 oh, oh, oh, one more thing. Your patients will get this also.
9 : 3 7 A M 19 We do not balance-bill the patient.

9 : 3 7 A M 20 DR. SABIDO: No. Okay. Yes, I understand that.
9 : 3 7 A M 21 Yes, I understand.

9 : 3 7 A M 22 MR. BLASKO: Wait a second.

9 : 3 7 A M 23 DR. SABIDO: If, for example, it doesn't cover
9 : 3 7 A M 24 enough, you don't -- you don't -- you don't send it to the
9 : 3 7 A M 25 patient?

9 : 3 7 A M 1 MR. BLASKO: That's right.

9 : 3 7 A M 2 DR. SABIDO: Right. Very good.

9 : 3 7 A M 3 MR. BLASKO: Doc, I have Aetna. I get a bill from
9 : 3 7 A M 4 LabQuest. That's bullshit, because they don't pay enough, so I
9 : 3 7 A M 5 get the bill. We will not do that.

9 : 3 7 A M 6 So if you're interested, and you want me to
9 : 3 7 A M 7 start, I would ask you -- there's -- Doctor -- oh, oh, oh. Now
9 : 3 7 A M 8 there's something else that's not in here.

9 : 3 7 A M 9 DR. SABIDO: Okay.

9 : 3 7 A M 10 MR. BLASKO: There's an economic thing to this.

9 : 3 7 A M 11 DR. SABIDO: Well -- well, this and the other thing,
9 : 3 7 A M 12 that I wanted to speak to you privately.

9 : 3 7 A M 13 MR. BLASKO: I know. I didn't want to talk in there.
9 : 3 8 A M 14 Okay. We give you a processing and handling fee. That's what
9 : 3 8 A M 15 we call it. I can -- there's no Stark violations here. Here's
9 : 3 8 A M 16 a -- here's our -- here's our letter to support it -- I put
9 : 3 8 A M 17 that in -- \$20 -- \$20 a patient.

9 : 3 8 A M 18 DR. SABIDO: Oh, that's the way it works?

9 : 3 8 A M 19 MR. BLASKO: Yep.

9 : 3 8 A M 20 DR. SABIDO: So you will give me \$20.00 for each
9 : 3 8 A M 21 patient, Medicare, Medicaid, (inaudible) Medicaid the same?

9 : 3 8 A M 22 MR. BLASKO: The same, everything, \$20.

9 : 3 8 A M 23 DR. SABIDO: And how do you do this?

9 : 3 8 A M 24 MR. BLASKO: I got some docs, 300 a month.

9 : 3 8 A M 25 DR. SABIDO: 300 tests a month?

9 : 3 8 A M 1 MR. BLASKO: Times 20. You do the math.

9 : 3 8 A M 2 DR. SABIDO: It's good. All right.

9 : 3 8 A M 3 MR. BLASKO: And I was told -- I haven't seen it, but
9 : 3 8 A M 4 when they send the check to you, they have -- they list all the
9 : 3 8 A M 5 patients. So there's no -- there's no funny business here.
9 : 3 8 A M 6 It's all on the up and up. It's all --

9 : 3 9 A M 7 DR. SABIDO: So you don't give me cash. You just
9 : 3 9 A M 8 give me --

9 : 3 9 A M 9 MR. BLASKO: No, no cash. Listen, I'm going to have
9 : 3 9 A M 10 to give you --

9 : 3 9 A M 11 DR. SABIDO: By check?

9 : 3 9 A M 12 MR. BLASKO: You're going to have to sign a
9 : 3 9 A M 13 processing and handling agreement and your w-9 so -- so they
9 : 3 9 A M 14 could -- with your business. That's it.

9 : 3 9 A M 15 Oh, no. This is on the up and up. This is
9 : 3 9 A M 16 no --

9 : 3 9 A M 17 DR. SABIDO: Oh, okay. Very good.

9 : 3 9 A M 18 MR. BLASKO: So if you want this -- if you want to
9 : 3 9 A M 19 hold onto that for -- I don't usually give it out. So -- so
9 : 3 9 A M 20 that's what I would ask. So I would ask you to sign -- sign
9 : 3 9 A M 21 here. It will allow me to send this stuff to you, the kits.
9 : 3 9 A M 22 And it also says that, you know, your patient's information
9 : 3 9 A M 23 will go on -- it's available on the website to release it.

9 : 3 9 A M 24 DR. SABIDO: Okay.

9 : 3 9 A M 25 MR. BLASKO: Not only can they call, but they can get

9 : 3 9 A M 1 this on the website if they're good with the computer.

9 : 3 9 A M 2 DR. SABIDO: They can do it, the patient?

9 : 3 9 A M 3 MR. BLASKO: Absolutely. Once they get the test,
9 : 3 9 A M 4 they go on and they set up an account and they see their test
9 : 3 9 A M 5 right online. It's pretty cool.

9 : 3 9 A M 6 DR. SABIDO: I only hear about this, you know. It's
9 : 4 0 A M 7 new for me that the patient goes straight to see the results.
9 : 4 0 A M 8 Okay.

9 : 4 0 A M 9 MR. BLASKO: Oh, and I can have your girl --

9 : 4 0 A M 10 DR. SABIDO: Yes.

9 : 4 0 A M 11 MR. BLASKO: If she's computer savvy, we sign her up
9 : 4 0 A M 12 and she can look at any patient online she wants, if you want
9 : 4 0 A M 13 to do that.

9 : 4 0 A M 14 DR. SABIDO: Yes.

9 : 4 0 A M 15 MR. BLASKO: I have -- I have a phlebotomist in
9 : 4 0 A M 16 Dr. Feldman's office goes online and checks it. It's very cool
9 : 4 0 A M 17 stuff. This is cutting edge, so --

9 : 4 0 A M 18 DR. SABIDO: So I can -- can I keep this?

9 : 4 0 A M 19 MR. BLASKO: well, I would ask you, if you want to
9 : 4 0 A M 20 start, that you sign here. And then I'll send this in, which
9 : 4 0 A M 21 will allow me to send these kits to you.

9 : 4 0 A M 22 DR. SABIDO: How many kits do you send me?

9 : 4 0 A M 23 MR. BLASKO: I'll send you probably four small ones
9 : 4 0 A M 24 and two big ones. You can get -- you can get about five or six
9 : 4 0 A M 25 of these in one of these boxes.

9 : 4 0 A M 1 DR. SABIDO: Okay.

9 : 4 0 A M 2 MR. BLASKO: So what I would do -- so you sign. I'll
9 : 4 0 A M 3 get it out. You'll have it by Monday here. And then I'll come
9 : 4 1 A M 4 back and I'll go over it with the phlebotomist. How's that?

9 : 4 1 A M 5 DR. SABIDO: I have to write my name here; right?

9 : 4 1 A M 6 MR. BLASKO: I'll take care of that. I'm going to
9 : 4 1 A M 7 put your business card right there and send it in.

9 : 4 1 A M 8 DR. SABIDO: My business card. Okay.

9 : 4 1 A M 9 MR. BLASKO: wait. which -- we got to talk now. You
9 : 4 1 A M 10 got, like, five addresses. which one do you want -- you want
9 : 4 1 A M 11 to start here first, or you want to start in Patterson or --

9 : 4 1 A M 12 DR. SABIDO: well, let me -- why don't you leave me
9 : 4 1 A M 13 this and I fax you this form and I tell you how many I need --
9 : 4 1 A M 14 how many patients. Okay?

9 : 4 1 A M 15 MR. BLASKO: Yeah, I love that.

9 : 4 1 A M 16 DR. SABIDO: And can I keep this here?

9 : 4 1 A M 17 MR. BLASKO: Yeah, you can have all of this. Do you
9 : 4 1 A M 18 want -- let's see. I normally just -- what I normally do is I
9 : 4 1 A M 19 take a picture of this on my phone and I send it right in.
9 : 4 1 A M 20 It's pretty cool. Then you get it the next -- should I leave
9 : 4 1 A M 21 you a couple more? I don't know if you need more, but I'll
9 : 4 1 A M 22 just need the -- just do one.

9 : 4 1 A M 23 DR. SABIDO: Just one, and I fax you this.

9 : 4 2 A M 24 MR. BLASKO: This is the -- is it --

9 : 4 2 A M 25 DR. SABIDO: And then where is your name?

9 : 4 2 A M 1 MR. BLASKO: Okay.

9 : 4 2 A M 2 DR. SABIDO: Write your name and give me your card --
9 : 4 2 A M 3 business card.

9 : 4 2 A M 4 MR. BLASKO: Okay.

9 : 4 2 A M 5 DR. SABIDO: Leonard Blasko.

9 : 4 2 A M 6 MR. BLASKO: You got it.

9 : 4 2 A M 7 DR. SABIDO: The other day, I call your company --

9 : 4 2 A M 8 MR. BLASKO: which one?

9 : 4 2 A M 9 DR. SABIDO: Two days ago. Do you remember we
9 : 4 2 A M 10 talk -- we talk on the phone? I call your company, and
9 : 4 2 A M 11 nobody -- they told me nobody know you.

9 : 4 2 A M 12 MR. BLASKO: where? I'm with -- I'm an LLC. This is
9 : 4 2 A M 13 my -- I'm an LLC.

9 : 4 2 A M 14 DR. SABIDO: See, because I call your --

9 : 4 2 A M 15 MR. BLASKO: This company here does not have sales
9 : 4 2 A M 16 reps. I don't work for this company.

9 : 4 2 A M 17 DR. SABIDO: They do. They send you.

9 : 4 2 A M 18 MR. BLASKO: well, I actually work for Bluewave. I
9 : 4 2 A M 19 work for -- that's how it works. We're international. We got
9 : 4 2 A M 20 accounts in Hawaii. This is me.

9 : 4 3 A M 21 DR. SABIDO: That is your company?

9 : 4 3 A M 22 MR. BLASKO: This is my company, and this is my email
9 : 4 3 A M 23 address. This is my -- this is what I'm calling myself. I'm
9 : 4 3 A M 24 just starting up.

9 : 4 3 A M 25 DR. SABIDO: Oh, right. So this is your company.

9 : 4 3 A M 1 **MR. BLASKO:** Because, otherwise, I have to take --
9 : 4 3 A M 2 they have to 1099 me.

9 : 4 3 A M 3 **DR. SABIDO:** Yes.

9 : 4 3 A M 4 **MR. BLASKO:** And I don't want to do that. So --

9 : 4 3 A M 5 **DR. SABIDO:** Now I understand. This is again --

9 : 4 3 A M 6 **MR. BLASKO:** Let me see if I got Chuck's. Here.
9 : 4 3 A M 7 This is the guy -- this is the guy right here. That's the guy
9 : 4 3 A M 8 that hired me. That's BlueWave. And if you have any -- I
9 : 4 3 A M 9 love -- you should hear this guy talk. He's got -- he's got
9 : 4 3 A M 10 the -- this is --

9 : 4 3 A M 11 **DR. SABIDO:** So this guy is --

9 : 4 3 A M 12 **MR. BLASKO:** This guy is running -- works -- is the
9 : 4 3 A M 13 guy that I'm hired by.

9 : 4 3 A M 14 **DR. SABIDO:** This is yours or mine?

9 : 4 4 A M 15 **MR. BLASKO:** Yours. Keep that. And --

9 : 4 4 A M 16 **DR. SABIDO:** Okay. Now I call your company. So if I
9 : 4 4 A M 17 call you and --

9 : 4 4 A M 18 **MR. BLASKO:** well, you know, what they don't -- I
9 : 4 4 A M 19 guess this is the way things are going now. I mean, they're
9 : 4 4 A M 20 hiring -- look, I just heard 60 percent of Novartis got cut. I
9 : 4 4 A M 21 ran into a sales rep. 60 percent. The girl was sick in
9 : 4 4 A M 22 virginia. And then Monday, AstraZeneca, 25 percent.

9 : 4 4 A M 23 **DR. SABIDO:** Oh, my God.

9 : 4 4 A M 24 **MR. BLASKO:** It's pretty tough out there. So this is
9 : 4 4 A M 25 yours. This is yours. And -- and this is yours, too, the PLAC

9 : 4 4 A M 1 test.

9 : 4 4 A M 2 DR. SABIDO: So tell me, the fax number is this;
9 : 4 4 A M 3 right? This is the fax number form? This one?

9 : 4 4 A M 4 MR. BLASKO: I'm saying yes. The only reason I'm
9 : 4 4 A M 5 hesitant is because I've never faxed the form in. I take a
9 : 4 4 A M 6 picture of it, and I send it to Chuck. Chuck processes all of
9 : 4 4 A M 7 this stuff.

9 : 4 4 A M 8 DR. SABIDO: Give me a call Monday.

9 : 4 5 A M 9 MR. BLASKO: At what time?

9 : 4 5 A M 10 DR. SABIDO: At any time. I am telling you they will
9 : 4 5 A M 11 fax it (inaudible) fax to fax it. Okay?

9 : 4 5 A M 12 MR. BLASKO: Can I go out to my car and get my phone
9 : 4 5 A M 13 and call you and tell you right now?

9 : 4 5 A M 14 DR. SABIDO: Yes.

9 : 4 5 A M 15 MR. BLASKO: Okay. Okay.

9 : 4 5 A M 16 DR. SABIDO: I'd like to help you right now.

9 : 4 5 A M 17 MR. BLASKO: Oh, great. Okay. I'm pretty sure
9 : 4 5 A M 18 that's it. So I'll put my name on top.

9 : 4 5 A M 19 DR. SABIDO: Is there a minimum that has to be there?
9 : 4 5 A M 20 For example, if I -- for one test or for other tests, there is
9 : 4 5 A M 21 not a minimum?

9 : 4 5 A M 22 MR. BLASKO: A minimum of -- what do you mean? That
9 : 4 5 A M 23 you have to send out?

9 : 4 5 A M 24 DR. SABIDO: Yes.

9 : 4 5 A M 25 MR. BLASKO: No.

9 : 4 5 A M 1 DR. SABIDO: For this expense, if I ask for a urine
9 : 4 5 A M 2 test -- no, you don't do urine.

9 : 4 5 A M 3 MR. BLASKO: No, you can do a urine test.

9 : 4 5 A M 4 DR. SABIDO: If I ask for a urine test --

9 : 4 5 A M 5 MR. BLASKO: Right.

9 : 4 5 A M 6 DR. SABIDO: -- and I need only the urine test, is it
9 : 4 5 A M 7 worth it for all the expenses? So it must -- it has to be a
9 : 4 5 A M 8 minimum --

9 : 4 5 A M 9 MR. BLASKO: Of how many different --

9 : 4 5 A M 10 DR. SABIDO: How many tests I have to use or I can
9 : 4 6 A M 11 send one test or --

9 : 4 6 A M 12 MR. BLASKO: Oh, I thought you meant one patient.
9 : 4 6 A M 13 You mean one --

9 : 4 6 A M 14 DR. SABIDO: I got one patient, and this one --

9 : 4 6 A M 15 MR. BLASKO: well, this box here is going to let me
9 : 4 6 A M 16 do -- where I showed you baseline, it will give you those
9 : 4 6 A M 17 tests.

9 : 4 6 A M 18 DR. SABIDO: Oh, okay. This is the minimum?

9 : 4 6 A M 19 MR. BLASKO: You see what I'm --

9 : 4 6 A M 20 DR. SABIDO: If I don't -- if I don't use this box,
9 : 4 6 A M 21 this box has to --

9 : 4 6 A M 22 MR. BLASKO: where was that? It's in here. I just
9 : 4 6 A M 23 showed it to you.

9 : 4 6 A M 24 DR. SABIDO: Yeah, you showed me.

9 : 4 6 A M 25 MR. BLASKO: I wish I would have had -- here.

9 : 4 6 A M 1 There's going to be a square up here. It's going to say
9 : 4 6 A M 2 "baseline." And then over here, it's going to say another
9 : 4 6 A M 3 box -- oh, here it says "follow-up." Here it is, "baseline."

9 : 4 6 A M 4 DR. SABIDO: It has to be this. If it's not this, I
9 : 4 6 A M 5 cannot send it, because you have to have baseline --

9 : 4 6 A M 6 MR. BLASKO: well, what I tell doctors, you check
9 : 4 6 A M 7 this off. And if there's something on here you don't want, you
9 : 4 6 A M 8 cross it off.

9 : 4 6 A M 9 DR. SABIDO: Uh-huh. Okay.

9 : 4 6 A M 10 MR. BLASKO: That's what I tell them. Because some
9 : 4 7 A M 11 doctors aren't even checking this off, and then we got to call
9 : 4 7 A M 12 them back.

9 : 4 7 A M 13 DR. SABIDO: So let me -- I don't want confusion for
9 : 4 7 A M 14 myself. If I send a CBC, CMB --

9 : 4 7 A M 15 MR. BLASKO: We don't -- I don't think we do CBC
9 : 4 7 A M 16 because that's time sensitive. CBC is the --

9 : 4 7 A M 17 DR. SABIDO: Right.

9 : 4 7 A M 18 MR. BLASKO: It's like 20 -- it has to be there in
9 : 4 7 A M 19 like -- I know we don't do CBC or Lyme test because it's
9 : 4 7 A M 20 very --

9 : 4 7 A M 21 DR. SABIDO: Only serum. But you have here a box --
9 : 4 7 A M 22 let me -- show me. You have here a box, a tube.

9 : 4 7 A M 23 MR. BLASKO: Yeah.

9 : 4 7 A M 24 DR. SABIDO: This tube is for -- this tube is time
9 : 4 7 A M 25 sensitive. I understand that. So this is for CBC, this --

9 : 4 7 A M 1 this color.

9 : 4 7 A M 2 MR. BLASKO: well, maybe I was just -- let me
9 : 4 7 A M 3 double-check on that, because I know CBC is time sensitive.
9 : 4 7 A M 4 It's 24 -- it has to be there in a certain --

9 : 4 8 A M 5 DR. SABIDO: This is for CBC. This means the red
9 : 4 8 A M 6 cells and white blood cells.

9 : 4 8 A M 7 MR. BLASKO: Okay.

9 : 4 8 A M 8 DR. SABIDO: That's why we do -- this is the color,
9 : 4 8 A M 9 because -- all of the others are for serum (inaudible) because
9 : 4 8 A M 10 this is (inaudible).

9 : 4 8 A M 11 MR. BLASKO: These -- no, that's not your -- this is
9 : 4 8 A M 12 for -- this is for this metabolic test. This is our special
9 : 4 8 A M 13 tube.

9 : 4 8 A M 14 DR. SABIDO: This one -- this one -- this color is
9 : 4 8 A M 15 for --

9 : 4 8 A M 16 MR. BLASKO: I know we don't do CBC. I know, because
9 : 4 8 A M 17 it's time sensitive. I was asked that once before, and I said
9 : 4 8 A M 18 no.

9 : 4 8 A M 19 DR. SABIDO: My question is if I have a CMB or --

9 : 4 8 A M 20 MR. BLASKO: I would say the answer is yes, because
9 : 4 8 A M 21 you're not going to do it all the time, or are you?

9 : 4 8 A M 22 DR. SABIDO: Yes, and then -- if it's only CMB, I
9 : 4 8 A M 23 don't use you because I have to use this -- this box, the green
9 : 4 8 A M 24 box, right, that has all the --

9 : 4 9 A M 25 MR. BLASKO: Yes, and then you want to customize this

9 : 4 9 A M 1 later on. We can customize it.

9 : 4 9 A M 2 DR. SABIDO: You send the payment when I have this.
9 : 4 9 A M 3 Because I don't have this part -- this is not going to come
9 : 4 9 A M 4 (inaudible).

9 : 4 9 A M 5 MR. BLASKO: Honestly, I don't know the answer to
9 : 4 9 A M 6 that. I'm telling you, I never got asked that question.

9 : 4 9 A M 7 DR. SABIDO: Okay.

9 : 4 9 A M 8 MR. BLASKO: Do you have five more minutes? Could I
9 : 4 9 A M 9 get my phone -- get Chuck on the phone?

9 : 4 9 A M 10 DR. SABIDO: Yes.

9 : 4 9 A M 11 MR. BLASKO: Yeah, let's get Chuck. All right. Hold
9 : 4 9 A M 12 on. My car's right outside.

9 : 4 9 A M 13 DR. SABIDO: Okay. I wait.

9 : 4 9 A M 14 (Video paused.)

9 : 4 9 A M 15 MR. LEVENTIS: Your Honor, just so we know, we
9 : 4 9 A M 16 fast-forward through --

9 : 4 9 A M 17 THE COURT: Yes.

9 : 4 9 A M 18 (Video resumed.)

9 : 4 9 A M 19 MR. BLASKO: Chuck, I'm going to put you on
9 : 4 9 A M 20 speakerphone because I'm here with the doctor and they've got a
9 : 5 0 A M 21 couple of questions. One was the -- huh? Yeah, yeah. One of
9 : 5 0 A M 22 them is -- hold on a second.

9 : 5 0 A M 23 Are you there, Chuck? Charles?

9 : 5 0 A M 24 MR. MAIMONE: Yes, I am.

9 : 5 0 A M 25 MR. BLASKO: Charles, I have Dr. Sabido. We're in

9 : 5 0 A M 1 the office. We're going over the presentation. And he had a
9 : 5 0 A M 2 couple of questions to ask in -- in the actual -- you know the
9 : 5 0 A M 3 form that I send you for the boxes for the -- can he fax that
9 : 5 0 A M 4 in Monday?

9 : 5 0 A M 5 MR. MAIMONE: Okay. The new account form?

9 : 5 0 A M 6 MR. BLASKO: Yeah, there's a fax number on the
9 : 5 0 A M 7 bottom, 1-877-448-6658.

9 : 5 0 A M 8 MR. MAIMONE: Yes, just make sure, before he faxes it
9 : 5 0 A M 9 in, you go over what needs to be filled in -- you know, filled
9 : 5 0 A M 10 out. That's all.

9 : 5 0 A M 11 MR. BLASKO: I did. I did. Okay.

9 : 5 0 A M 12 MR. MAIMONE: If he faxes it in Monday, then we'll
9 : 5 0 A M 13 have -- if he faxes it Monday, he'll have the supplies on
9 : 5 1 A M 14 Tuesday.

9 : 5 1 A M 15 MR. BLASKO: Okay. So now we have a technical
9 : 5 1 A M 16 question, clinical question. It's regarding the -- we don't do
9 : 5 1 A M 17 CBC; right?

9 : 5 1 A M 18 MR. MAIMONE: Yes, we do.

9 : 5 1 A M 19 MR. BLASKO: Oh, we do. Oh, okay. There it is.
9 : 5 1 A M 20 Okay.

9 : 5 1 A M 21 DR. SABIDO: Okay. So do I have to send a minimum of
9 : 5 1 A M 22 tests to be rewarded?

9 : 5 1 A M 23 MR. MAIMONE: Yes. What I think his question was,
9 : 5 1 A M 24 does he have to send a minimum of tests per order? Was that
9 : 5 1 A M 25 the question?

9 : 5 1 A M 1 DR. SABIDO: To have the -- to have the --

9 : 5 1 A M 2 MR. BLASKO: To get the \$20 handling -- processing
9 : 5 1 A M 3 and handling --

9 : 5 1 A M 4 MR. MAIMONE: Yeah. Yes, the \$20 handling fee is
9 : 5 1 A M 5 based on the amount of tubes drawn. The panel that we have
9 : 5 1 A M 6 selected -- or that Len has reviewed with you is a panel that
9 : 5 1 A M 7 will pay you \$20. There are a couple of things on that panel
9 : 5 1 A M 8 that, if what you want on there, I can take them off and you
9 : 5 1 A M 9 can still get your full \$20. But if you take too many off,
9 : 5 2 A M 10 then the processing and handling fee will go down because not
9 : 5 2 A M 11 as much processing is required.

9 : 5 2 A M 12 DR. SABIDO: It has to be the green box? It must be
9 : 5 2 A M 13 in the green box there?

9 : 5 2 A M 14 MR. BLASKO: It must be in that green box; right?
9 : 5 2 A M 15 Yeah, the baseline, the custom panel?

9 : 5 2 A M 16 MR. MAIMONE: The baseline, yes.

9 : 5 2 A M 17 MR. BLASKO: Okay.

9 : 5 2 A M 18 MR. MAIMONE: Like I said, if Doc wants to, you know,
9 : 5 2 A M 19 cross a few things off, he can -- show him the new account
9 : 5 2 A M 20 form. Okay?

9 : 5 2 A M 21 MR. BLASKO: I did.

9 : 5 2 A M 22 MR. MAIMONE: Okay. Do you have it right -- do you
9 : 5 2 A M 23 have it right now in front of you?

9 : 5 2 A M 24 MR. BLASKO: Yeah, it says complimentary -- oh, the
9 : 5 2 A M 25 new -- oh, the new account form. This one here. Yeah, go

9 : 5 2 A M 1 ahead.

9 : 5 2 A M 2 MR. MAIMONE: All right. So in order -- we can
9 : 5 2 A M 3 customize his panel. If he goes through those -- the list of
9 : 5 2 A M 4 tests there, let him -- you know, let him know whatever he does
9 : 5 2 A M 5 not want as his baseline panel, just to cross off.

9 : 5 3 A M 6 MR. BLASKO: I understand. I get it now.

9 : 5 3 A M 7 MR. MAIMONE: Like I said, you know, we can't cross
9 : 5 3 A M 8 too many off because then he won't get the full 20. But if
9 : 5 3 A M 9 it's a couple things, that's fine.

9 : 5 3 A M 10 MR. BLASKO: Okay. We'll work with him. Okay.

9 : 5 3 A M 11 DR. SABIDO: Hey, how about if I ask for more than
9 : 5 3 A M 12 this?

9 : 5 3 A M 13 MR. BLASKO: How about if he asks for more?

9 : 5 3 A M 14 MR. MAIMONE: No. Because ordering more tests is not
9 : 5 3 A M 15 going to require more tubes. The more tubes -- the three serum
9 : 5 3 A M 16 separators and the one lavender is -- you can add -- you can
9 : 5 3 A M 17 add on as many as you want and we're not going to require more
9 : 5 3 A M 18 tubes. We can run them off of what we have.

9 : 5 3 A M 19 MR. BLASKO: Okay. Okay. That's good.

9 : 5 3 A M 20 DR. SABIDO: It has to be a new set of tubes.

9 : 5 3 A M 21 MR. MAIMONE: Now, there is -- now, Len, if you want,
9 : 5 3 A M 22 you can give him that folder on Singulex and show him the other
9 : 5 3 A M 23 panel. And that panel is just one tube, and he would get an
9 : 5 3 A M 24 additional \$13 processing and handling fee.

9 : 5 3 A M 25 DR. SABIDO: Okay. 13 additional for a new tube.

9 : 5 3 A M 1 **MR. BLASKO:** Yeah, but this is the Singulex panel
9 : 5 3 A M 2 that we have here.

9 : 5 4 A M 3 **DR. SABIDO:** Yeah, I understand.

9 : 5 4 A M 4 **MR. BLASKO:** Okay. Okay. Good; right?

9 : 5 4 A M 5 **DR. SABIDO:** Yes.

9 : 5 4 A M 6 **MR. MAIMONE:** So a lot of my doctors, what they'll do
9 : 5 4 A M 7 is they'll order an HDL panel on a patient and also the
9 : 5 4 A M 8 Singulex panel on the same patient. And then you're getting
9 : 5 4 A M 9 \$33 because you're getting 20 plus 13.

9 : 5 4 A M 10 **DR. SABIDO:** Oh, I understand. Okay.

9 : 5 4 A M 11 **MR. MAIMONE:** All right?

9 : 5 4 A M 12 **MR. BLASKO:** All right, Charles. Thank you.

9 : 5 4 A M 13 **MR. MAIMONE:** Bye-bye.

9 : 5 4 A M 14 **MR. BLASKO:** I like this company because I can get
9 : 5 4 A M 15 ahold of people and I can talk and it's -- it's good. It's
9 : 5 4 A M 16 good businesspeople.

9 : 5 4 A M 17 Okay. So that answers that question.

9 : 5 4 A M 18 **DR. SABIDO:** So you give me until Monday. I have to
9 : 5 4 A M 19 study this because I have to see --

9 : 5 4 A M 20 **MR. BLASKO:** Well, you got a lot of offices too. I
9 : 5 4 A M 21 mean, you have --

9 : 5 4 A M 22 **DR. SABIDO:** It's difficult. It's difficult, but I
9 : 5 4 A M 23 have to be there because people want me to see them. Okay.

9 : 5 4 A M 24 **MR. BLASKO:** Yeah. Oh, yeah. So I can -- should
9 : 5 4 A M 25 I -- should I take this with me? I'll take this here.

9 : 5 5 A M 1 DR. SABIDO: Yes. You can take it with you.

9 : 5 5 A M 2 MR. BLASKO: Because you're going to get them soon.

9 : 5 5 A M 3 You tell me Monday, they'll be here Tuesday.

9 : 5 5 A M 4 DR. SABIDO: Yeah, I tell you Monday, and --

9 : 5 5 A M 5 MR. BLASKO: How does it look? What do you think?

9 : 5 5 A M 6 Good?

9 : 5 5 A M 7 DR. SABIDO: Very good.

9 : 5 5 A M 8 MR. BLASKO: Okay. That's good enough. Thank you so
9 much. Your office is beautiful. You did a really nice job,
10 very nice.

9 : 5 5 A M 11 DR. SABIDO: Thank you so much.

9 : 5 5 A M 12 MR. BLASKO: I like the hardwood floors. Okay.
13 Thank you, Doctor.

9 : 5 5 A M 14 (Video ends.)

9 : 5 5 A M 15 BY MR. LEVENTIS:

9 : 5 5 A M 16 Q. So, Mr. Blasko, do you recognize yourself on this video?

9 : 5 5 A M 17 A. Yes, a little younger.

9 : 5 5 A M 18 Q. I'm not sure if your microphone --

9 : 5 5 A M 19 A. A little younger.

9 : 5 5 A M 20 Q. Okay. Gotcha.

9 : 5 5 A M 21 And do you also recognize the voice of Bluewave
22 salesman Charles Maimone on the phone?

9 : 5 5 A M 23 A. Yes.

9 : 5 5 A M 24 Q. I'm sorry?

9 : 5 5 A M 25 A. Yes.

9 : 5 6 A M 1 Q. Mr. Blasko, I'm going to show you Plaintiffs' Exhibit -- a
9 : 5 6 A M 2 couple of documents that I believe you left with Mr. Sabido.
9 : 5 6 A M 3 I'm going to ask you about these. Okay? The first one is
9 : 5 6 A M 4 Plaintiffs' Exhibit 1138. Look on the screen there.

9 : 5 6 A M 5 Do you recognize that document?

9 : 5 6 A M 6 A. Yes.

9 : 5 6 A M 7 Q. Are these the cards that you left with Dr. Sabido?

9 : 5 6 A M 8 A. Yes.

9 : 5 6 A M 9 Q. At the top, is that your card where it says "Advanced
9 : 5 6 A M 10 Healthcare Consultants, Len Blasko"?

9 : 5 6 A M 11 A. Yes.

9 : 5 6 A M 12 Q. And whose card is the second one?

9 : 5 6 A M 13 A. Charles Maimone.

9 : 5 6 A M 14 Q. Did you also call him Chuck on the phone?

9 : 5 6 A M 15 A. On the phone, Charles, Chuck.

9 : 5 6 A M 16 MR. LEVENTIS: Your Honor, we would move Exhibit 1138
9 : 5 6 A M 17 into evidence.

9 : 5 6 A M 18 THE COURT: Any objection?

9 : 5 6 A M 19 MR. COOKE: No objection.

9 : 5 6 A M 20 MR. ASHMORE: No, sir.

9 : 5 6 A M 21 THE COURT: Plaintiffs' Exhibit 1138 is admitted
9 : 5 6 A M 22 without objection.

9 : 5 6 A M 23 BY MR. LEVENTIS:

9 : 5 6 A M 24 Q. Mr. Blasko, I'm now going to show you Exhibit 1140.

9 : 5 7 A M 25 Do you recognize this document?

9 : 5 7 A M 1 A. Yes.

9 : 5 7 A M 2 Q. Is this the document you handed to Dr. Sabido that you
9 : 5 7 A M 3 said showed some history of the founders of HDL?

9 : 5 7 A M 4 A. Yes. It was in a packet, yes.

9 : 5 7 A M 5 MR. LEVENTIS: Your Honor, we'd move in Exhibit 1140.

9 : 5 7 A M 6 THE COURT: Any objection?

9 : 5 7 A M 7 MR. COOKE: No objection.

9 : 5 7 A M 8 MR. ASHMORE: No, sir.

9 : 5 7 A M 9 THE COURT: Plaintiffs' 1140 admitted without
9 : 5 7 A M 10 objection.

9 : 5 7 A M 11 BY MR. LEVENTIS:

9 : 5 7 A M 12 Q. Next please look at Exhibit 1137.

9 : 5 7 A M 13 Do you recognize this document, Mr. Blasko?

9 : 5 7 A M 14 A. Yes.

9 : 5 7 A M 15 Q. Is that your handwriting at the top?

9 : 5 7 A M 16 A. Yes.

9 : 5 7 A M 17 Q. Is that -- in the video where the doctor asks you to write
9 : 5 7 A M 18 your name, is that where you wrote your name?

9 : 5 7 A M 19 A. I guess I did.

9 : 5 7 A M 20 Q. Is that your handwriting?

9 : 5 7 A M 21 A. Yeah, it looks like it, yeah. I printed.

9 : 5 7 A M 22 Q. Is this the new account form that you were talking about
9 : 5 7 A M 23 on the video?

9 : 5 7 A M 24 A. Yes -- pick it up a little bit. I think -- yes.

9 : 5 8 A M 25 MR. LEVENTIS: Your Honor, we would move Exhibit 1137

9 : 5 8 A M 1 into evidence.

9 : 5 8 A M 2 THE COURT: Any objection?

9 : 5 8 A M 3 MR. COOKE: No objection.

9 : 5 8 A M 4 MR. ASHMORE: No, sir.

9 : 5 8 A M 5 THE COURT: Plaintiffs' 1137 admitted without
9 : 5 8 A M 6 objection.

9 : 5 8 A M 7 BY MR. LEVENTIS:

9 : 5 8 A M 8 Q. Mr. Blasko, actually, let me ask you a follow-up question
9 : 5 8 A M 9 on this document. There was a point in the video where you
9 : 5 8 A M 10 talk about a green column.

9 : 5 8 A M 11 Do you recall which of these columns was green in the
9 : 5 8 A M 12 original?

9 : 5 8 A M 13 A. No, I --

9 : 5 8 A M 14 Q. Do you recall talking about panels in the video?

9 : 5 8 A M 15 A. Yes. Some of them are over here to the right here. I
9 : 5 8 A M 16 believe that --

9 : 5 8 A M 17 Q. When you say "to the right," can you read what you're --

9 : 5 8 A M 18 A. I can barely read like --

9 : 5 8 A M 19 MR. LEVENTIS: Your Honor, if I can approach --

9 : 5 8 A M 20 THE WITNESS: LDL-P, yeah, right there. That --
9 : 5 8 A M 21 there you go. Some of those. They would check them off, the
9 : 5 8 A M 22 doctors.

9 : 5 8 A M 23 BY MR. LEVENTIS:

9 : 5 8 A M 24 Q. Okay. I see there are already check boxes on this copy.

9 : 5 8 A M 25 Did you write those checks?

9 : 5 8 A M 1 A. No.

9 : 5 8 A M 2 Q. It was already on the document?

9 : 5 8 A M 3 A. That are up on the top there?

9 : 5 8 A M 4 Q. Correct.

9 : 5 8 A M 5 A. No. No.

9 : 5 9 A M 6 Q. Do you know who put those on there?

9 : 5 9 A M 7 A. No.

9 : 5 9 A M 8 Q. Are those the panels you were talking about on the video?

9 : 5 9 A M 9 A. I believe those were the panels. And what we were talking
9 : 5 9 A M 10 about in the video, he could cross so many of them off that he
9 : 5 9 A M 11 didn't want to --

9 : 5 9 A M 12 Q. Okay.

9 : 5 9 A M 13 A. -- use. That's -- that's my understanding.

9 : 5 9 A M 14 Q. And where did you get that understanding from? who told
9 : 5 9 A M 15 you that?

9 : 5 9 A M 16 A. We just -- Charles.

9 : 5 9 A M 17 Q. Let's look at Exhibit 1139, please.

9 : 5 9 A M 18 Is this what you'd call an HDL req form or the
9 : 5 9 A M 19 requisition form?

9 : 5 9 A M 20 A. Yes.

9 : 5 9 A M 21 Q. Does this look like the document that you handed to
9 : 5 9 A M 22 Dr. Sabido?

9 : 5 9 A M 23 A. Yeah.

9 : 5 9 A M 24 MR. LEVENTIS: Your Honor, we'd move in Exhibit 1139.

9 : 5 9 A M 25 THE COURT: Any objection from the defense?

9 : 5 9 A M 1 MR. GRIFFITH: No objection.

9 : 5 9 A M 2 MR. ASHMORE: No, sir.

9 : 5 9 A M 3 THE COURT: Plaintiffs' Exhibit 1139 is admitted
10 : 0 0 A M 4 without objection.

10 : 0 0 A M 5 BY MR. LEVENTIS:

10 : 0 0 A M 6 Q. Mr. Blasko, now let's look at Exhibit 1136. In the video,
10 : 0 0 A M 7 you referenced a letter that -- a letter to support paying the
10 : 0 0 A M 8 \$20.

10 : 0 0 A M 9 Does this look like that letter?

10 : 0 0 A M 10 A. Keep going. Keep -- yes.

10 : 0 0 A M 11 Q. And you handed this letter to Dr. Sabido; correct?

10 : 0 0 A M 12 A. I don't recall if I handed it to him or not. I -- I don't
10 : 0 0 A M 13 know.

10 : 0 0 A M 14 Q. Did you talk to him about it?

10 : 0 0 A M 15 A. I don't recall that either.

10 : 0 0 A M 16 Q. Have you seen this letter before?

10 : 0 0 A M 17 A. I have. This was the -- I believe this was what they
10 : 0 0 A M 18 called the time study.

10 : 0 0 A M 19 Q. And when you say they called it the time study, who do you
10 : 0 1 A M 20 mean by they?

10 : 0 1 A M 21 A. I guess HDL.

10 : 0 1 A M 22 Q. Where did you get this letter from?

10 : 0 1 A M 23 A. It was usually sent to the doctor.

10 : 0 1 A M 24 Q. Okay. But you have seen a copy of it before?

10 : 0 1 A M 25 A. I have, yes.

10:01AM 1 Q. And where did you get your copy?

10:01AM 2 A. I don't remember. I mean, I didn't have a pile of these
10:01AM 3 copies on my person. I just saw one of them.

10:01AM 4 Q. Did you ever hand one of these letters out to a doctor?

10:01AM 5 A. I don't recall. I don't recall.

10:01AM 6 MR. LEVENTIS: Your Honor, we move to admit
10:01AM 7 Exhibit 1136.

10:01AM 8 THE COURT: Any objection?

10:01AM 9 MR. GRIFFITH: No objection.

10:01AM 10 MR. COOKE: No, sir.

10:01AM 11 THE COURT: Plaintiffs' Exhibit 1136 admitted without
10:01AM 12 objection.

10:01AM 13 BY MR. LEVENTIS:

10:01AM 14 Q. Mr. Blasko, you've had an opportunity to watch this entire
10:02AM 15 video. What we're going to do now is show -- I'm going to show
10:02AM 16 you a short clip and ask you some questions about it. The
10:02AM 17 first one is about 30 seconds.

10:02AM 18 (Video played.)

10:02AM 19 MR. BLASKO: Oh, oh, oh, one more thing. Your
10:02AM 20 patients will get this also. We do not balance-bill the
10:02AM 21 patient.

10:02AM 22 DR. SABIDO: No. Yes, I understand that. Yes, I
10:02AM 23 understand.

10:02AM 24 MR. BLASKO: Wait a second.

10:02AM 25 DR. SABIDO: If, for example, it doesn't cover

1 enough, you don't -- you don't -- you don't send it to the
2 patient?

3 MR. BLASKO: That's right.

4 DR. SABIDO: Right. Very good.

5 MR. BLASKO: Doc, I have Aetna. I get a bill from
6 LabQuest. That's bullshit, because they don't pay enough, so I
7 get the bill. We will not do that.

8 (video stopped.)

9 BY MR. LEVENTIS:

10 Q. Mr. Blasko, what is your understanding of the no-balance
11 billing that you were describing?

12 A. If a patient gets a bill -- for example, if you get a bill
13 from LabCorp, let's say, and the bill is \$100 and your
14 insurance company pays \$70, my understanding of no-balance
15 billing is that they will not require you to pay the \$30.

16 Q. So who told you about the no-balance billing policy?

17 A. I guess Charles did, Chuck.

18 Q. I'm sorry. Go ahead.

19 A. Chuck or Charles.

20 Q. And why would you tell a doctor about the no-balance bill
21 policy?

22 A. Well, a lot of times -- one of the main questions that
23 always came out, is this -- is this covered under insurance?

24 Q. Well, why would a doctor ask you that?

25 A. Because if it's not covered, they usually don't use it or

1 10:03 AM they won't prescribe your medication.

2 10:04 AM Q. So -- so what was your purpose in telling them about
3 no-balance billing, then?

4 10:04 AM A. That it's -- that there's coverage.

5 10:04 AM Q. Was it to encourage the doctor to order the test?

6 10:04 AM A. Not encourage, but he could order the test.

7 10:04 AM Q. Mr. Blasko, we're going to show you Clip Number 2, where
8 you discuss the payments to the doctor.

9 (Video played.)

10 MR. BLASKO: Now there's something else that's not in
11 here, Doctor. Okay? There's an economic thing to this.

12 DR. SABIDO: Well, this, that, and the other thing,
13 that I wanted to speak to you privately.

14 MR. BLASKO: I know. I didn't want to talk in there.
15 Okay. We -- we give you a processing and handling fee. That's
16 what we call it. I can -- there's no Stark violations here.
17 Here's our -- here's our letter to support it -- I put that in
18 your -- \$20 -- \$20 a patient.

19 DR. SABIDO: Oh, that's the way it works?

20 MR. BLASKO: Yep.

21 DR. SABIDO: So you will give me \$20 for each
22 patient, Medicare, Medicaid, (inaudible), Medicaid, the same?

23 MR. BLASKO: The same, everything, \$20.

24 DR. SABIDO: And how do you do this --

25 MR. BLASKO: I got some docs 300 a month. 300 tests.

10:05 AM 1 DR. SABIDO: 300 tests, uh-huh.

10:05 AM 2 MR. BLASKO: Times 20. You do the math.

10:05 AM 3 DR. SABIDO: Oh, it's good.

10:05 AM 4 MR. BLASKO: And I was told -- I haven't seen it, but
10:05 AM 5 when they send the check to you, they have to list all the
10:05 AM 6 patients. So there's no -- there's no funny business here.
10:05 AM 7 It's all on the up and up. It's all --

10:05 AM 8 DR. SABIDO: So you don't give me cash. You just
10:05 AM 9 give me --

10:05 AM 10 MR. BLASKO: No, no cash. No, listen, I'm going to
10:05 AM 11 have to give you --

10:05 AM 12 DR. SABIDO: By check?

10:05 AM 13 MR. BLASKO: You're going to have to sign a
10:05 AM 14 processing and handling agreement and your w-9. So they
10:05 AM 15 could -- with your business. That's it. Oh, no. This is on
10:05 AM 16 the up and up. This is no --

10:06 AM 17 DR. SABIDO: Oh, okay. Very good.

10:06 AM 18 (Video stopped.)

10:06 AM 19 BY MR. LEVENTIS:

10:06 AM 20 Q. Mr. Blasko, in this clip, what did you mean when you said
10:06 AM 21 "there's an economic thing to this"?

10:06 AM 22 A. That they were going to be reimbursed for the processing
10:06 AM 23 and handling fee.

10:06 AM 24 Q. And why did you describe it as "an economic thing"?

10:06 AM 25 A. I don't know.

1 Q. Mr. Blasko, how did you develop your sales pitch? How did
2 you learn how to sell HDL and Singulex tests?

3 A. watching Charles Maimone.

4 Q. How many times did you watch Charles Maimone?

5 A. From -- from what time period?

6 Q. what time period do you have in mind?

7 A. well, you're showing me this video, so I'm thinking how
8 many times did I watch Charles Maimone from the time I met him?

9 Q. Sure, from before -- up until this video, how many times
10 had you watched Charles Maimone? This is in 2012.

11 A. well, maybe half a dozen times.

12 Q. what did you mean when you told Dr. Sabido "300 tests
13 times \$20. You do the math"?

14 A. I meant that if you had 300 patients and you had \$20 a
15 test, 20 times 300. And I was told that we had some physicians
16 in the country that were doing that quantity, that amount.

17 Q. who -- when you say "I was told," who told you that some
18 physicians were doing that amount?

19 A. Charles.

20 THE COURT: Just for the record, that is Mr. Maimone
21 you're talking about?

22 THE WITNESS: Yes.

23 MR. LEVENTIS: Thank you, Your Honor.

24 BY MR. LEVENTIS:

25 Q. Charles Maimone, the same person on the business card that

10:07 AM 1 we showed; correct?

10:07 AM 2 A. Yes. When I was interviewed, yes. Yes.

10:08 AM 3 Q. And he works for BlueWave?

10:08 AM 4 A. Correct.

10:08 AM 5 Q. Mr. Blasko, were you using the \$20 fee as a selling point
10:08 AM 6 to the doctor to get him to order the test?

10:08 AM 7 A. No. No, I wasn't.

10:08 AM 8 Q. No?

10:08 AM 9 A. No, I wasn't.

10:08 AM 10 Q. Did Bluewave train you that one way to get doctors to
10:08 AM 11 order HDL tests is by telling them about the processing and
10:08 AM 12 handling fee?

10:08 AM 13 A. Repeat that again, please.

10:08 AM 14 Q. Sure.

10:08 AM 15 Did Bluewave train you that one way to get doctors to
10:08 AM 16 order the HDL and Singulex tests is to talk about the
10:08 AM 17 processing and handling fee, just one of the factors?

10:08 AM 18 A. It might have been -- it was more like -- no, I wouldn't
10:08 AM 19 say that. I wouldn't -- I wouldn't say that. Okay?

10:08 AM 20 Q. What would you say?

10:08 AM 21 A. I would say I was giving the panel and all the brochures
10:09 AM 22 and go through it with the physicians, but the majority of the
10:09 AM 23 time it was -- the panels were left with them. And I would get
10:09 AM 24 back to them because we just didn't have -- I didn't have the
10:09 AM 25 time to go through them. They wouldn't give me the time to go

1 through all the panels like that.

2 Q. Okay. So let me see if I'm following you. You would go
3 through the panel like we saw in the video. You would go
4 through the tests. Is that what you're saying?

5 Is that correct?

6 A. Yeah, that's correct.

7 Q. And then would you also talk about the processing and
8 handling fee?

9 A. If it was brought up, I would, yes.

10 Q. And how many times -- how often was it brought up,
11 roughly?

12 A. I would say it wasn't brought up every time.

13 Q. More often than not?

14 A. No. No, I would say the former.

15 Q. Did -- Mr. Charles Maimone, did he mention processing and
16 handling fees in his sales pitch when you watched him?

17 A. Yes, he did. I believe I recall he did, yes.

18 Q. Now let's watch Clip Number 3. In this clip, there will
19 be the voice of Charles Maimone. He'll be talking about how
20 many tests the doctor has to order.

21 (Video played.)

22 DR. SABIDO: So do I have to send a minimum of tests
23 to be rewarded?

24 MR. MAIMONE: Yes. What I think his question was,
25 does he have to send a minimum of tests per order? Was that

10:10AM 1 the question?

10:10AM 2 DR. SABIDO: To have the -- to have the --

10:10AM 3 MR. BLASKO: To get the \$20 handling -- processing
10:10AM 4 and handling --

10:10AM 5 MR. MAIMONE: Yes, yes. The \$20 handling fee is on
10:10AM 6 the amount of tubes drawn. The panel that we have selected --
10:10AM 7 or that Len had reviewed with you is a panel that will pay you
10:10AM 8 \$20. There are a couple of things on that panel that if --
10:11AM 9 if -- what you want on there, I can take them off and you can
10:11AM 10 still get your full \$20. But if you take too many off, then
10:11AM 11 the processing and handling fee will go down because not as
10:11AM 12 much processing is required.

10:11AM 13 DR. SABIDO: And it has to be the green box? It must
10:11AM 14 be in the green box there?

10:11AM 15 MR. BLASKO: It must be in that green box; right?
10:11AM 16 Yeah, the baseline, the custom panel?

10:11AM 17 MR. MAIMONE: The baseline, yes.

10:11AM 18 MR. BLASKO: Okay.

10:11AM 19 MR. MAIMONE: Like I said, if Doc wants to, you know,
10:11AM 20 cross a few things off, he can -- show him the new account
10:11AM 21 form. Okay?

10:11AM 22 MR. BLASKO: I did.

10:11AM 23 MR. MAIMONE: Okay. Do you have it right there in
10:11AM 24 front of you?

10:11AM 25 MR. BLASKO: Yeah. It says "complimentary" -- oh,

10:11AM 1 yeah, the new -- oh, the new account form. This one here.

10:11AM 2 Yeah, go ahead. We have it.

10:11AM 3 MR. MAIMONE: All right. So in order -- he can
10:11AM 4 customize his panel. If he goes through those -- the list of
10:11AM 5 tests there, let him know, whatever he does not want as his
10:12AM 6 baseline panel, just to cross off.

10:12AM 7 MR. BLASKO: I understand. I get it now. I get it.

10:12AM 8 MR. MAIMONE: Like I said, now, he can't cross too
10:12AM 9 many off because then he won't get the full 20, but if it's
10:12AM 10 couple of things, that's fine.

10:12AM 11 MR. BLASKO: Okay. We'll work with him.

10:12AM 12 (Video stopped.)

10:12AM 13 BY MR. LEVENTIS:

10:12AM 14 Q. So, Mr. Blasko, I guess I'll ask you again. We'll show
10:12AM 15 you Exhibit 1137. Is that the document you were talking about?

10:12AM 16 A. That's the -- yeah.

10:12AM 17 Q. And if we could zoom in on the panel section. So where is
10:12AM 18 the baseline panel that you talk about in the video?

10:12AM 19 A. I believe it's this first one on the left.

10:12AM 20 Q. whoops --

10:12AM 21 A. Keep going.

10:12AM 22 Q. It's not going very well. Oh, it's off by a little. I
10:12AM 23 apologize. Mine's off a little. But it's the first one on the
10:12AM 24 left. It says "HDL assessment panel"?

10:13AM 25 A. Yes.

10:13AM 1 Q. That's the one?

10:13AM 2 So were you trained that a physician could only cross
10:13AM 3 off a few of these tests?

10:13AM 4 A. No, I wasn't trained that. No, you heard it in the video.
10:13AM 5 That was the first I learned about it.

10:13AM 6 Q. Okay.

10:13AM 7 A. About crossing off -- I can cross off a few.

10:13AM 8 Q. Had doctors ever crossed off tests before?

10:13AM 9 A. Later on, yeah. A couple, yeah.

10:13AM 10 Q. So --

10:13AM 11 A. I think I recall a couple of doctors crossing some off.

10:13AM 12 Q. Did most of your doctors order the full panel?

10:13AM 13 A. I would have to say yes. I would have to say yes.

10:13AM 14 Q. Mr. Blasko, how were you paid by HDL and Singulex?

10:13AM 15 A. I was given -- I was given a fee for each patient.

10:13AM 16 Q. And where did you get the fee from?

10:13AM 17 A. Quasi Maturi.

10:13AM 18 Q. And who was Quasi Maturi?

10:13AM 19 A. Charles Maimone's LLC.

10:13AM 20 Q. And did you have any knowledge of where Charles Maimone
10:14AM 21 got the money to pay you?

10:14AM 22 A. Well, I just assumed he got it from HDL.

10:14AM 23 Q. And you said you were paid per patient?

10:14AM 24 A. Correct.

10:14AM 25 Q. So can you explain to me what that means.

10:14 AM 1 A. It means if you went to Dr. Sabido and had your panel
10:14 AM 2 tested, at the end of the month, I would get -- I believe it
10:14 AM 3 was \$5 for that panel, for that -- for your test -- for your
10:14 AM 4 test.

10:14 AM 5 Q. For that patient?

10:14 AM 6 A. For -- yes, for one patient.

10:14 AM 7 Q. So the more patients you got him to order tests on, the
10:14 AM 8 more money you got?

10:14 AM 9 A. Correct.

10:14 AM 10 Q. And in the video, I guess you're saying that that was when
10:14 AM 11 you learned what? About crossing off tests?

10:14 AM 12 A. Yes.

10:15 AM 13 Q. That there was only a certain number you could cross off?

10:15 AM 14 A. That's when I just learned about it, yes.

10:15 AM 15 Q. We're going to show the last clip. This one is where you
10:15 AM 16 talk about the Singulex and HDL tests.

10:15 AM 17 (Video played.)

10:15 AM 18 DR. SABIDO: How about if I ask for more than this?

10:15 AM 19 MR. BLASKO: How about if he asks for more?

10:15 AM 20 MR. MAIMONE: No, because ordering more tests is not
10:15 AM 21 going to require more tubes. The more tubes, the three serum
10:15 AM 22 separators and the one lavender, you can add on as many as you
10:15 AM 23 want, and we're not going to require more tubes. We can run
10:15 AM 24 them off of what we have.

10:15 AM 25 MR. BLASKO: Okay. Okay. That's good.

10:15 AM 1 DR. SABIDO: It has to be a new set of tubes?

10:15 AM 2 MR. MAIMONE: Now, there is -- now, Len, if you want,
10:15 AM 3 you can give him that folder on Singulex and show him the other
10:15 AM 4 panel. And that panel is just one tube. And he would get an
10:15 AM 5 additional \$13 processing and handling fee.

10:15 AM 6 DR. SABIDO: Okay. 13 additional for a new tube.

10:15 AM 7 MR. BLASKO: Yeah, but this is the Singulex panel
10:16 AM 8 that we have here?

10:16 AM 9 DR. SABIDO: Yeah, I understand.

10:16 AM 10 MR. BLASKO: Oh, okay. Good. Right?

10:16 AM 11 DR. SABIDO: Yes.

10:16 AM 12 MR. MAIMONE: So a lot of my -- a lot of my doctors,
10:16 AM 13 what they'll do is they'll order an HDL panel on a patient and
10:16 AM 14 also a Singulex panel on the same patient. And then you're
10:16 AM 15 getting \$33 because you're getting 20 plus 13.

10:16 AM 16 DR. SABIDO: Oh, I understand. Okay.

10:16 AM 17 MR. MAIMONE: All right.

10:16 AM 18 MR. BLASKO: All right, Charles.

10:16 AM 19 MR. MAIMONE: Let me know if you need anything else.

10:16 AM 20 MR. BLASKO: Okay. Thank you. Bye-bye.

10:16 AM 21 (Video stopped.)

10:16 AM 22 BY MR. LEVENTIS:

10:16 AM 23 Q. Mr. Blasko, in the video, we see you talking about a
10:16 AM 24 Singulex test, and you reach down to the side. Do you ever
10:16 AM 25 talk to the physician about Singulex tests, the actual tests

10:16 AM 1 themselves?

10:16 AM 2 A. I don't recall. I just had -- I just had a folder with
10:16 AM 3 the actual order sheet on it.

10:16 AM 4 Q. And did you ever describe those Singulex tests to the
10:16 AM 5 doctor?

10:17 AM 6 A. Did I ever? I might have. I don't recall. That was --
10:17 AM 7 that was something new, like, within a week before I -- this
10:17 AM 8 video was -- that I learned about.

10:17 AM 9 Q. What was new?

10:17 AM 10 A. The Singulex.

10:17 AM 11 Q. Selling Singulex tests?

10:17 AM 12 A. Yes.

10:17 AM 13 Q. I'm not following you.

10:17 AM 14 Okay. You hadn't sold Singulex tests before that
10:17 AM 15 day?

10:17 AM 16 A. I don't believe -- I don't recall because it was so -- it
10:17 AM 17 was so -- like, I met Charles, like, Thanksgiving week. I went
10:17 AM 18 out with him a couple of times in December, then we had the
10:17 AM 19 holidays. And then you could see this was January 12th. So it
10:17 AM 20 was a real short time.

10:17 AM 21 Q. So after this encounter, did you ever sell Singulex and
10:17 AM 22 HDL tests together?

10:17 AM 23 A. Yes. Yes.

10:17 AM 24 Q. And when you did these Singulex and HDL tests together,
10:18 AM 25 did you talk about the additional \$13 processing and handling

10:18 AM 1 fee?

10:18 AM 2 A. I did, yes.

10:18 AM 3 Q. And why would you talk about the additional fee?

10:18 AM 4 A. Because that's what was -- was offered with -- for
10:18 AM 5 spinning that extra tube. Because they would probably ask me
10:18 AM 6 about, again, supplies, phlebotomists.

10:18 AM 7 Q. Did you routinely market to doctors that they could order
10:18 AM 8 HDL and Singulex tests together?

10:18 AM 9 A. I would say yes. Yes.

10:18 AM 10 Q. Mr. Blasko, one final thing I'd like to talk to you about.
10:18 AM 11 And that is did you represent HDL at any trade functions on
10:18 AM 12 behalf of BlueWave?

10:18 AM 13 A. Yes.

10:18 AM 14 Q. Okay. More than one?

10:18 AM 15 A. Let me think.

10:19 AM 16 Yes.

10:19 AM 17 Q. Roughly, how many?

10:19 AM 18 A. I think two. I know two, maybe three.

10:19 AM 19 Q. Okay. And what did you do at these trade shows?

10:19 AM 20 A. Well, the trade shows, you set up a table. You have, you
10:19 AM 21 know, all your information. You have -- you actually have the
10:19 AM 22 tests -- diagnostic testing there, all the clinical
10:19 AM 23 information, handouts. And that was basically it.

10:19 AM 24 I think we gave out some pens.

10:19 AM 25 Q. What would be on the pens that you were handing out?

10:19 AM 1 A. "HDL," I think. I'm not sure. I can't recall if that
2 was --

10:19 AM 3 Q. Do you know if you wore any clothing that said a
4 particular company?

10:19 AM 5 A. I -- normally, when I go out to work, I have a badge, but
6 I don't think I had one with -- with HDL, but I know when you
7 have to register at the expos, they give you a white sticker
8 paper that you have to put on your jacket.

10:20 AM 9 Q. And so who would invite you to represent HDL in these
10 functions?

10:20 AM 11 A. Charles.

10:20 AM 12 Q. Charles Maimone?

10:20 AM 13 A. (Nodding.)

10:20 AM 14 MR. LEVENTIS: Beg your indulgence just one second,
15 Your Honor.

10:20 AM 16 (Pause.)

10:20 AM 17 MR. LEVENTIS: Thank you, Mr. Blasko. I have no
18 further questions, but please answer any questions defense
19 counsel has. Thank you.

10:20 AM 20 THE COURT: Cross-examination?

10:20 AM 21 MR. COOKE: Thank you, Your Honor.

10:20 AM 22 CROSS-EXAMINATION

10:20 AM 23 BY MR. COOKE:

10:20 AM 24 Q. Good morning, Mr. Blasko.

10:20 AM 25 A. Good morning.

10:20AM 1 Q. We've never met, have we?

10:20AM 2 A. No, we -- I don't think we have.

10:20AM 3 Q. We actually did, because I was on the telephone for your
10:20AM 4 deposition.

10:21AM 5 A. Okay.

10:21AM 6 Q. We didn't meet in person.

10:21AM 7 A. We didn't meet in person.

10:21AM 8 Q. Do you know Brad Johnson or Cal Dent, the two larger
10:21AM 9 gentlemen that are sitting over there?

10:21AM 10 A. No.

10:21AM 11 Q. Do you know who they are?

10:21AM 12 A. I do.

10:21AM 13 Q. Okay. But you never met them before?

10:21AM 14 A. No, I haven't.

10:21AM 15 Q. Did you ever speak with them before?

10:21AM 16 A. No. No, I did not.

10:21AM 17 Q. I wanted to talk to you just a little bit about -- first
10:21AM 18 of all, about the way your business was set up.

10:21AM 19 Now, you showed -- they showed you a picture of your
10:21AM 20 business card; right?

10:21AM 21 A. Uh-huh.

10:21AM 22 Q. And had your own business card. And your card didn't say
10:21AM 23 "HDL"; it didn't say "BlueWave"; it said "Advanced Health Care
10:21AM 24 Consultants, LLC"?

10:21AM 25 A. Yes.

10:21AM 1 Q. And what was that?

10:21AM 2 A. When I started working for Charles, he told me I should
10:21AM 3 check with my accountant, because my gas expenses and things
10:21AM 4 would -- it would be better if I set up an LLC so that I could
10:22AM 5 expense them at the end of the year.

10:22AM 6 Q. And that takes me to another question. You paid your own
10:22AM 7 expenses; right?

10:22AM 8 A. Well, yeah.

10:22AM 9 Q. You owned your own car?

10:22AM 10 A. Yeah.

10:22AM 11 Q. Mr. Maimone didn't buy your car for you, did he?

10:22AM 12 A. No.

10:22AM 13 Q. Didn't pay for your gas?

10:22AM 14 A. Didn't pay for gas, tolls, no.

10:22AM 15 Q. Your phone, you provided your own phone?

10:22AM 16 A. Own phone.

10:22AM 17 Q. Okay. So those were business expenses for you --

10:22AM 18 A. Yes.

10:22AM 19 Q. -- under your company? And you could do whatever your
10:22AM 20 accountant said to do with it -- with your expenses.

10:22AM 21 Did Mr. Maimone tell you what hours to work?

10:22AM 22 A. No.

10:22AM 23 Q. So you were pretty much on your own in terms of how you
10:22AM 24 did what you did?

10:22AM 25 A. Yes.

10:22 AM 1 Q. But that doesn't mean that you didn't get instruction on
2 how to sell these HDL tests; correct?

10:22 AM 3 A. Correct.

10:22 AM 4 Q. And the way you were instructed was you got to ride around
5 with him for a while to see how he did it, and then you did it?

10:23 AM 6 A. Correct.

10:23 AM 7 Q. Now, you weren't exactly new to the medical field, though,
8 were you?

10:23 AM 9 A. No, but -- but after going through this, it was -- it was
10 quite different.

10:23 AM 11 Q. Right. Right. But you had worked for -- I guess it was
12 Schering-Plough, Merck, a big pharmaceutical company, for 39
13 years?

10:23 AM 14 A. Yes.

10:23 AM 15 Q. I have to say --

10:23 AM 16 A. 39 years, 10 months.

10:23 AM 17 Q. You may look older that you did in the video, but you
18 still don't look like somebody who's already worked for 39
19 years for another company. But you did? You worked for 39
20 years --

10:23 AM 21 A. Thank you. I appreciate that.

10:23 AM 22 Q. All right. And you were -- you considered yourself a
23 contractor with Mr. Maimone?

10:23 AM 24 A. Correct. Correct.

10:23 AM 25 Q. And his company that he paid you from was called Quasi

10:23 AM 1 Maturi LLC?

10:23 AM 2 A. Correct.

10:23 AM 3 Q. So did he -- and don't hesitate to tell me if you don't
10:23 AM 4 know the answer, but is it your understanding that he set up
10:23 AM 5 his own company in much the way that you set up your own
10:24 AM 6 company?

10:24 AM 7 A. I would say -- I would agree with that, yes.

10:24 AM 8 Q. And do you know if -- and you've said several times that
10:24 AM 9 he was a sales rep for BlueWave or worked for BlueWave, but do
10:24 AM 10 you know whether he was an independent contractor or an
10:24 AM 11 employee of BlueWave?

10:24 AM 12 A. I -- I don't know.

10:24 AM 13 Q. Do you know -- do you know whether these gentlemen told
10:24 AM 14 him what hours to work or which doctors to visit or anything
10:24 AM 15 like that?

10:24 AM 16 A. No, I -- no, no.

10:24 AM 17 Q. You'd be surprised if that were the case; right?

10:24 AM 18 A. I -- yes.

10:24 AM 19 Q. Okay. And as far as him paying his own expenses, do you
10:24 AM 20 know -- do you know how he ran his business?

10:24 AM 21 A. I assume he paid his own expenses. I don't know. I don't
10:24 AM 22 know what he had with --

10:24 AM 23 Q. What does the word "compliance" mean to you in the health
10:24 AM 24 care field? You've had compliance training, right, when you
10:24 AM 25 worked for Merck?

10:25 AM 1 A. Yes.

10:25 AM 2 Q. And that basically means to try to stay on the right side
10:25 AM 3 of the law, because there are a lot of regulations and laws
10:25 AM 4 that affect the health care field; right?

10:25 AM 5 A. Correct.

10:25 AM 6 Q. And so you're very careful to try to follow the law?

10:25 AM 7 A. Correct.

10:25 AM 8 Q. Was it -- was it reassuring for you to see that position
10:25 AM 9 paper that HDL put out in 2010 that explained the basis for
10:25 AM 10 processing and handling fees?

10:25 AM 11 A. Well, yes, they had -- at least they had documentation
10:25 AM 12 of -- of what it consisted of.

10:25 AM 13 Q. Have you ever heard --

10:25 AM 14 A. I understand it was a time study that they did.

10:25 AM 15 Q. A time and motion study?

10:25 AM 16 A. Yes.

10:25 AM 17 Q. And that would be a study from, again, a firm to try to
10:25 AM 18 actually go out into the field and find out how much work a
10:25 AM 19 doctor's office actually had to do to process and handle
10:25 AM 20 specimens?

10:25 AM 21 A. Yes.

10:25 AM 22 Q. And so you were told that that was done by HDL; right?

10:26 AM 23 A. Or some -- or HDL had it done, yes, contracted somebody to
10:26 AM 24 do so.

10:26 AM 25 Q. Okay. And are you aware that that's actually the truth,

1 10:26AM that they did have that done?

2 A. well, I would believe so, yeah.

3 Q. Have you ever heard of a law firm called LeClairRyan?

4 A. No.

5 Q. Okay.

6 A. No.

7 Q. Were you aware that HDL not only got this time and motion
8 study done but they actually had a law firm, a big health care
9 law firm, review the processing and handling fee agreements and
10 give them an opinion as to whether they were legal or not?

11 A. I wasn't aware of that, no.

12 Q. would that have been reassuring to you if you had known
13 that, in fact, that was the case, that HDL not only had a time
14 and motion study done but had a big law firm review their
15 processing and handling agreements?

16 A. Yes.

17 Q. At any time, either when it was with Dr. Sabido or any of
18 the other doctors, did you think that you were breaking the law
19 by offering reimbursement for process and handling?

20 A. No.

21 Q. what were you told to emphasize in your sales presentation
22 to the doctors?

23 A. Begin with the -- the background of the company, which
24 they show --

25 Q. HDL?

10:27AM 1 A. Yeah, HDL. And then I would go through the individual
10:27AM 2 tests. Then I would talk about the -- they offered an
10:27AM 3 800 number for free coaching. I gave them that. And then we
10:27AM 4 reviewed the individual tests.

10:27AM 5 Q. Did you present these to these doctors as groundbreaking
10:27AM 6 tests, that they were going to allow them to take better care
10:27AM 7 of their patients than they'd ever been able to do before?

10:27AM 8 A. Well, I talked a lot about the cardiovascular, because
10:28AM 9 that was my background, the breakdown of the particles with LDL
10:28AM 10 and HDL. And then I also talked about the omega-3. I happen
10:28AM 11 to like that test, the omega-3 test.

10:28AM 12 Q. All right. I'm going to come back and ask you some more
10:28AM 13 about that in just a few minutes.

10:28AM 14 But Dr. Sabido, you had known him before, right,
10:28AM 15 because you had sold him some things for your prior employer
10:28AM 16 back in the earlier 2000s; correct?

10:28AM 17 A. Correct.

10:28AM 18 Q. And did you actually visit with him a week before this
10:28AM 19 video was taken?

10:28AM 20 A. Well, yes.

10:28AM 21 Q. Okay. And did he invite you to come back?

10:28AM 22 A. He did.

10:28AM 23 Q. Did he tell you that he was going to be videotaping your
10:28AM 24 meeting?

10:28AM 25 A. No.

10:28 AM 1 Q. Did you see the camera there?

10:28 AM 2 A. I did not.

10:28 AM 3 Q. Did he tell you that the government actually gave him a
10:28 AM 4 script of what he was supposed to ask you in that meeting?

10:28 AM 5 A. No, he did not.

10:28 AM 6 Q. So what would be your typical way that you would explain
10:29 AM 7 these particles to the doctors?

10:29 AM 8 A. Well, we talked about -- I can't remember the gentleman's
10:29 AM 9 name. He was a -- he was on television, and his -- he was a
10:29 AM 10 correspondent.

10:29 AM 11 Q. Tim Russert?

10:29 AM 12 A. Tim Russert, right. That's it. And, you know, his -- he
10:29 AM 13 was -- he was in good health, I understand. His HDL levels
10:29 AM 14 were good. LDL levels were good. And he had an acute MI.

10:29 AM 15 Q. Age 52?

10:29 AM 16 A. Yeah. So -- and it turned out that his particles were --
10:29 AM 17 had he taken this test, it could have saved his life.

10:29 AM 18 Q. Is that part of the presentation that you would make with
10:29 AM 19 the doctors?

10:29 AM 20 A. I think I brought it up a couple of times, but not -- not
10:30 AM 21 on every call, no.

10:30 AM 22 Q. Now, the video that we saw, that was your second visit
10:30 AM 23 with Dr. Sabido.

10:30 AM 24 That was not your initial introduction; correct?

10:30 AM 25 A. Correct.

10:30AM 1 Q. well, you've worked with doctors for a long time.

10:30AM 2 Do you -- do you think that doctors would have even
10:30AM 3 let you into their office if you had led with processing and
10:30AM 4 handling fees, "Doc, hey, we'll pay you \$20 a specimen if
10:30AM 5 you'll do these tests"?

10:30AM 6 You're shaking your head. The court reporter can't
10:30AM 7 take that down.

10:30AM 8 A. I'm sorry. No.

10:30AM 9 Q. why not?

10:30AM 10 A. Because most doctors are -- that I call on are more
10:30AM 11 interested about the clinical side of it and how they can help
10:30AM 12 their patients.

10:30AM 13 Q. what kind of questions would they typically ask?

10:30AM 14 A. With HDL?

10:30AM 15 Q. Yes.

10:30AM 16 A. They asked me about the different tests.

10:31AM 17 Q. And we saw the sheet that had the panel with all those
10:31AM 18 different things on there.

10:31AM 19 Now, they could scratch off any of those that they
10:31AM 20 didn't want to do; right?

10:31AM 21 A. I later learned yes, yes.

10:31AM 22 Q. Now, you're not a doctor; right?

10:31AM 23 A. I'm not a doctor.

10:31AM 24 Q. And the doctors that you were visiting knew that you
10:31AM 25 weren't a doctor; right?

10:31 AM 1 A. Correct.

10:31 AM 2 Q. Did you ever encourage any doctor to order a test that he
10:31 AM 3 didn't think was medically necessary?

10:31 AM 4 A. No.

10:31 AM 5 Q. would you even be able to do that?

10:31 AM 6 A. I wouldn't be able to. He had -- the list was there.
10:31 AM 7 That was it. I mean --

10:31 AM 8 Q. And would you have to rely on the doctor's expertise and
10:31 AM 9 his training to decide which tests he thought were going to be
10:31 AM 10 beneficial to the particular patient?

10:31 AM 11 A. Yes. Yes, I did.

10:31 AM 12 Q. You talked about the processing and handling fee.

10:31 AM 13 Again, what was the purpose of the processing and
10:31 AM 14 handling fee?

10:32 AM 15 A. well, the doctors -- the doctors did not get any
10:32 AM 16 materials, any sharps. They didn't get bandages. They weren't
10:32 AM 17 paid any rent. They weren't give a phlebotomist. And they had
10:32 AM 18 to schedule the patient, draw the blood, spin it, package it,
10:32 AM 19 slap a label on it, and call Federal Express.

10:32 AM 20 Q. Now, were you familiar with other laboratory tests?

10:32 AM 21 A. Somewhat.

10:32 AM 22 Q. was the HDL test somewhat unique in that it involved
10:32 AM 23 drawing four tubes and handling four tubes rather than just one
10:32 AM 24 tube?

10:32 AM 25 A. I would say yes. There were four tubes there.

10:32 AM 1 Q. would it take more work to process and handle four tubes
2 than it would take to handle one tube?

10:32 AM 3 MR. LEVENTIS: Objection, Your Honor. I'm not sure
4 what foundation he's laid for him to be able to answer that.

10:33 AM 5 THE COURT: Only if he knows.

10:33 AM 6 BY MR. COOKE:

10:33 AM 7 Q. Do you know whether it would take more work to process and
8 handle four tubes than one tube?

10:33 AM 9 A. Well, after the first one is filled, you have to put the
10 second one, then the third one, then the fourth one.

10:33 AM 11 Q. Right.

10:33 AM 12 A. You put them in a centrifuge and spin it. It goes into a
13 plastic bag. They slap the demographics label on it and then
14 package it and send it out.

10:33 AM 15 Q. So you'd have to do that with four --

10:33 AM 16 A. Four tubes versus one tube.

10:33 AM 17 Q. May not have been four times as much work, but it was more
18 work than one tube. Is that fair to say?

10:33 AM 19 A. That's fair to say.

10:33 AM 20 Q. Was it your understanding that it was common practice in
21 the laboratory business for laboratories to reimburse doctors
22 part of the cost that they incurred in processing and handling
23 the specimens?

10:33 AM 24 A. Say that again. Say that because --

10:33 AM 25 MR. LEVENTIS: Your Honor, I guess, again, I'm not

10:33 AM 1 sure what foundation he has for these questions.

10:34 AM 2 THE COURT: Only if you can establish that he would
10:34 AM 3 have knowledge.

10:34 AM 4 BY MR. COOKE:

10:34 AM 5 Q. Right. Do you remember -- do you remember meeting a
10:34 AM 6 Dr. Andrea -- what was her name? See if I have a note here --
10:34 AM 7 Andrea Frank, a Dr. Andrea Frank?

10:34 AM 8 A. Yes.

10:34 AM 9 Q. Do you remember talking to that doctor about the Boston
10:34 AM 10 Heart Lab and how much they paid?

10:34 AM 11 A. Yes.

10:34 AM 12 Q. And what did Dr. Frank tell you that they paid?

10:34 AM 13 A. \$30 to draw the blood.

10:34 AM 14 Q. Okay. So based on that and other experience that you had
10:34 AM 15 in seeing doctors, was it your belief, your good-faith belief,
10:34 AM 16 that other laboratories were routinely paying processing and
10:34 AM 17 handling fees to underwrite the cost of processing and
10:34 AM 18 handling?

10:34 AM 19 A. I might have just assumed it until I heard that one from
10:34 AM 20 that --

10:35 AM 21 Q. Were you ever trained to use processing and handling fees
10:35 AM 22 as an inducement to get doctors to order tests they weren't
10:35 AM 23 going to order --

10:35 AM 24 A. No.

10:35 AM 25 Q. -- anyway?

10:35 AM 1 A. No.

10:35 AM 2 Q. In fact, you were told that your emphasis ought to be on
10:35 AM 3 the clinical utility of these tests?

10:35 AM 4 A. That's correct.

10:35 AM 5 Q. The ability of these tests to make the doctors better --
10:35 AM 6 better doctors for their patients?

10:35 AM 7 A. That's correct.

10:35 AM 8 Q. You said that many times you would go through your whole
10:35 AM 9 presentation and the subject of money would never even come up?

10:35 AM 10 A. That's correct.

10:35 AM 11 Q. That is money to the doctor, processing and handling or
10:35 AM 12 any other money that the doctor might make during the test?

10:35 AM 13 A. Correct. The managed care would come up more.

10:35 AM 14 Q. Just give me a moment, if you would.

10:35 AM 15 (Pause.)

10:36 AM 16 BY MR. COOKE:

10:36 AM 17 Q. Do you happen to know whether Mr. Maimone formerly worked
10:36 AM 18 for Cleveland or Boston Heart Labs?

10:36 AM 19 A. I think Cleveland rings a bell. I'm not sure about
10:36 AM 20 Boston.

10:36 AM 21 Q. How long did you -- did you work for Mr. Maimone?

10:36 AM 22 A. Well, I met him in, let's say, November of 2011. I
10:36 AM 23 believe I only did this for maybe a year and a half. That's
10:36 AM 24 it. I -- that's my recollection, just --

10:36 AM 25 Q. And you were successful in selling these tests?

10:36AM 1 A. well, I don't know about that.

10:36AM 2 Q. I guess it's all relative.

10:36AM 3 A. It's relative to the expenses I incurred to what I

10:36AM 4 received, no.

10:37AM 5 Q. Okay. All right.

10:37AM 6 A. All right?

10:37AM 7 Q. So you'd like to think that, if you had more time, you'd

10:37AM 8 have done better.

10:37AM 9 Did you believe in these tests?

10:37AM 10 A. I did. I did. I do.

10:37AM 11 Q. Did you have the test taken yourself?

10:37AM 12 A. I did.

10:37AM 13 Q. And did it help you?

10:37AM 14 A. It did.

10:37AM 15 Q. How about the doctors that you were successful in selling

10:37AM 16 to? were they enthusiastic about these tests?

10:37AM 17 A. They were. They were. I mean, it seemed like either they

10:37AM 18 were or they weren't. It was like black or white.

10:37AM 19 Q. Some would take it, and some wouldn't take it; right?

10:37AM 20 A. Some wouldn't take it.

10:37AM 21 Q. Some people like iPhones, and some people don't like

10:37AM 22 iPhones; right?

10:37AM 23 A. I would go back once or twice, and that's it. I can't

10:37AM 24 afford to keep coming.

10:37AM 25 Q. Among the doctors who did adopt these advanced lipid

10:37 AM 1 testings, did you ever hear any great stories about patients
2 that they thought they'd saved by using the tests?

10:37 AM 3 A. Not that I can recall, no.

10:37 AM 4 Q. And, again, you were just doing this for about a year and
5 a half?

10:38 AM 6 A. With -- that's how I think -- it might have been a little
7 bit longer, but I don't -- maybe two years.

10:38 AM 8 Q. All right. Well, thank you very much.

10:38 AM 9 THE COURT: Mr. Ashmore?

10:38 AM 10 MR. ASHMORE: Thank you, Your Honor.

10:38 AM 11 CROSS-EXAMINATION

10:38 AM 12 BY MR. ASHMORE:

10:38 AM 13 Q. Mr. Blasko, good morning. I'm Beattie Ashmore.

10:38 AM 14 A. Good morning.

10:38 AM 15 Q. Do you know Tonya Mallory?

10:38 AM 16 A. I know the name.

10:38 AM 17 Q. What do you know about Tonya Mallory?

10:38 AM 18 A. She was one of the founders of HDL, I believe.

10:38 AM 19 Q. Have you ever communicated with Tonya Mallory?

10:38 AM 20 A. No, I don't -- no.

10:38 AM 21 Q. Phone, email, ever communicated with Tonya Mallory, to the
22 best of your knowledge?

10:38 AM 23 A. To the best of my knowledge, no.

10:38 AM 24 Q. Would you recognize Tonya Mallory?

10:38 AM 25 A. I might right now. I might because someone pointed her

10:38AM 1 out to me this morning. So -- but I'm not sure. I wouldn't be
10:39AM 2 able to pick her out. I'd take a guess.

10:39AM 3 Q. Fair enough. And we can't see you, so I don't think you
10:39AM 4 can see her.

10:39AM 5 But can you sit up a little bit? Can you recognize
10:39AM 6 this person right here?

10:39AM 7 A. No.

10:39AM 8 Q. What if I told you that's Tonya Mallory?

10:39AM 9 A. Well, hello, Tonya.

10:39AM 10 Q. That's Tonya.

10:39AM 11 And to be clear, as we were all waiting on the doors
10:39AM 12 to be opened this morning, I believe you and Ms. Mallory had a
10:39AM 13 conversation?

10:39AM 14 A. Yes.

10:39AM 15 Q. And was it about this case?

10:39AM 16 A. No.

10:39AM 17 Q. Would it be described as small talk?

10:39AM 18 A. Yes.

10:39AM 19 Q. Okay. All right. Now, in your video, you talk about HDL
10:39AM 20 and a Dr. Joe McDonald; correct?

10:39AM 21 A. Yes. That was one of the founders on that --

10:39AM 22 Q. Yes. And that was on the video that we all watched and
10:39AM 23 heard this morning. But I believe you were confused.

10:40AM 24 It's actually Dr. Joe McConnell that started HDL.
10:40AM 25 Fair enough?

10:40 AM 1 A. Fair enough.

10:40 AM 2 Q. Okay. And so you didn't mention Tonya's name to that
10:40 AM 3 Dr. Sabido; correct?

10:40 AM 4 A. Correct. I think she was on the bottom of the -- there
10:40 AM 5 was one -- there were two on there.

10:40 AM 6 Q. As one of the founders -- third founder -- do you know who
10:40 AM 7 the third founder was?

10:40 AM 8 Let me throw a name at you. Russ Warnick?

10:40 AM 9 A. No.

10:40 AM 10 Q. Never heard that name?

10:40 AM 11 A. No.

10:40 AM 12 Q. Okay. So, again, Dr. Joe McConnell, to the best of your
10:40 AM 13 knowledge, he was the face of HDL; is that fair?

10:40 AM 14 A. That's fair.

10:40 AM 15 Q. He was your sales pitch; is that fair?

10:40 AM 16 A. That's fair. The two found -- yes.

10:40 AM 17 Q. He was a rock-star doctor from the Mayo Clinic; correct?

10:40 AM 18 A. Correct.

10:40 AM 19 Q. And when you went to these trade shows and wore your HDL
10:41 AM 20 badge, did you ever tell anybody about Tonya Mallory?

10:41 AM 21 A. I believe I did, yes.

10:41 AM 22 Q. Did you ever tell anybody about Russ Warnick?

10:41 AM 23 A. Whatever was on those detail pieces, I would review.

10:41 AM 24 Q. Okay. Did you talk to people about Dr. Joe McConnell?

10:41 AM 25 A. I believe I did, yes. His background, yes.

10:41AM 1 Q. Right. His background because, again, he had the
10:41AM 2 education and the ability to develop these tests and run HDL;
10:41AM 3 correct?

10:41AM 4 A. Correct.

10:41AM 5 Q. He was one of the original founders; correct?

10:41AM 6 A. (Nodding.)

10:41AM 7 Q. Now, let me understand this.

10:41AM 8 You told Mr. Cooke that you had a conversation with
10:41AM 9 Dr. Andrea Frank; correct?

10:41AM 10 A. I do. I remember her, yeah. I know -- she moved.

10:41AM 11 Q. Okay. And based on that, you learned that Boston Heart
10:42AM 12 Lab was paying \$30?

10:42AM 13 A. That's what she told me.

10:42AM 14 Q. Okay. All right. Well, what did she say when she found
10:42AM 15 out that HDL was only paying \$20?

10:42AM 16 A. She asked me if I could raise it to 30.

10:42AM 17 Q. Sure. And what was -- what was your response?

10:42AM 18 A. "I'm sorry. I can't -- we can't do that."

10:42AM 19 Q. Can't do that. Can't do that. Because --

10:42AM 20 A. Actually, I believe I sent her a -- that time study test
10:42AM 21 too.

10:42AM 22 Q. The time study test determined the fair market value of
10:42AM 23 what HDL could reimburse the doctors; correct?

10:42AM 24 A. Correct.

10:42AM 25 MR. COOKE: That's all I have, Your Honor.

10:42 AM 1 THE COURT: Thank you.

10:42 AM 2 Anything on redirect by the government?

10:42 AM 3 MR. LEVENTIS: Yes, Your Honor.

10:42 AM 4 REDIRECT EXAMINATION

10:42 AM 5 BY MR. LEVENTIS:

10:42 AM 6 Q. Mr. Blasko, I believe you said you had 39-plus years
10:42 AM 7 health care experience?

10:42 AM 8 A. 39, 10.

10:42 AM 9 Q. 39, 10. Exactly. Excuse me.

10:42 AM 10 A. They wouldn't let me go two more months.

10:42 AM 11 Q. And in any of that experience, did you work for any other
10:42 AM 12 companies that offered a processing and handling fee?

10:43 AM 13 A. No.

10:43 AM 14 Q. And you were asked if you knew Cal Dent and Brad Johnson;
10:43 AM 15 correct?

10:43 AM 16 A. Yes.

10:43 AM 17 Q. And you did?

10:43 AM 18 A. (Nodding.)

10:43 AM 19 Q. What's your understanding of who they are? How do you
10:43 AM 20 know them?

10:43 AM 21 A. I heard their names quite often. I believe they --
10:43 AM 22 they're the CEO, I guess, of Bluewave. They're affiliated with
10:43 AM 23 Bluewave. That's what my belief is.

10:43 AM 24 MR. LEVENTIS: Thank you, Your Honor. No further
10:43 AM 25 questions.

10:43 AM 1 THE COURT: You may step down, sir.

10:43 AM 2 THE WITNESS: That's it?

10:43 AM 3 THE COURT: That's it.

10:43 AM 4 (Witness excused.)

10:43 AM 5 THE COURT: Ladies and gentlemen, I think this is a
10:43 AM 6 good time for our morning break. Go to the jury room.

10:43 AM 7 (Whereupon the jury was excused from the courtroom.)

10:44 AM 8 THE COURT: You may be seated.

10:44 AM 9 Are there any matters to come before the Court
10:44 AM 10 at this point?

10:44 AM 11 MR. LEVENTIS: Not from the government, Your Honor.

10:44 AM 12 THE COURT: From the defense?

10:44 AM 13 MR. COOKE: Nothing. Thank you.

10:44 AM 14 THE COURT: What -- who -- we have -- what should we
10:44 AM 15 project in terms of future witnesses this morning?

10:44 AM 16 MR. LEVENTIS: Your Honor, we have Mr. Cornwell,
10:44 AM 17 who's ready outside.

10:44 AM 18 THE COURT: What's the nature of his testimony?

10:44 AM 19 MR. LEVENTIS: I'll let Mr. Terranova, who's going to
10:44 AM 20 be doing his direct, answer.

10:44 AM 21 MR. TERRANOVA: He was a sales representative for
10:44 AM 22 Bluewave.

10:45 AM 23 THE COURT: Okay. And then how about after that?

10:45 AM 24 MS. STRAWN: After that would be Dr. Mayes.

10:45 AM 25 THE COURT: Okay. We got -- and, you know, we

1 explained patiently the scope of the Fifth Amendment. I didn't
2 hear it asserted one time. Once properly explained, huh?

3 Okay. Let's take about a 10-minute break.

4 (Recess.)

5 **THE COURT:** Very good. Please be seated.

6 Any matters to address with the Court, before we
7 bring in the jury, from the government?

8 **MR. LEVENTIS:** No, Your Honor.

9 **THE COURT:** From the defense?

10 **MR. COOKE:** None, Your Honor. Thank you.

11 **THE COURT:** Please bring in the jury.

12 **THE DEPUTY CLERK:** Judge, my 10 minutes isn't up yet.
13 I'm still working.

14 **THE COURT:** We're not fair to you, Miss Eunice.

15 **THE DEPUTY CLERK:** I have to check and see who spent
16 the night and who parked in the garage and all that stuff.
17 (Whereupon the jury entered the courtroom.)

18 **THE COURT:** Please be seated.

19 Government, call your next witness.

20 **MR. TERRANOVA:** Your Honor, the government calls
21 Jeffrey Cornwell to the stand.

22 **THE DEPUTY CLERK:** Right here, sir.

23 **THE COURT:** Sir, you need to --

24 **THE DEPUTY CLERK:** Please place your left hand on the
25 Bible and raise your right hand. State your full name for the

1 record, please.

2 THE WITNESS: Jeffrey Paul Cornwell.

3 THE DEPUTY CLERK: Could you spell your last name for
4 the record.

5 THE WITNESS: C-o-r-n-w-e-l-l.

6 THE DEPUTY CLERK: Thank you.

7 (Witness sworn.)

8 THE DEPUTY CLERK: You may be seated.

9 JEFFREY PAUL CORNWELL,
10 a witness called on behalf of the plaintiff, being first duly
11 sworn, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. TERRANOVA:

14 BY MR. TERRANOVA:

15 Q. Good morning, Mr. Cornwell.

16 A. Good morning.

17 Q. What is your full name?

18 A. Jeffrey Paul Cornwell.

19 Q. Do you go by any other names?

20 A. Yes, I go by the nickname Boomer.

21 Q. Where did you get that nickname?

22 A. My dad gave it to me.

23 Q. Can you explain to the jury how you got that nickname?

24 A. My dad has a nickname for everybody, and I think he
25 liked -- there was a children's book about a dog named Boomer,

1 and I think he really liked that. I don't know the whole
2 story, actually.

3 Q. Are you familiar with Bluewave Healthcare Consultants?

4 A. Yes, I am.

5 Q. How are you familiar with Bluewave?

6 A. I -- my company had contracted with them to sell and
7 promote their laboratory products.

8 Q. How did you first hear of Bluewave?

9 A. Through a friend of my named Lisa Lourcey.

10 Q. What did Ms. Lourcey say to you?

11 A. She had explained to me -- it was kind of confusing at
12 first, actually. She had explained to me that there was a
13 laboratory called Health Diagnostic Laboratories but that they
14 had a marketing team called Bluewave and that Bluewave was
15 responsible for contracting or hiring their reps.

16 Q. When did you hear about Bluewave from Ms. Lourcey?

17 A. Did you say when?

18 Q. When, yes.

19 A. This would have been around November of 2010.

20 Q. How did you know Ms. Lourcey?

21 A. I had worked with her previously.

22 Q. Where?

23 A. At a company called Myriad Genetics.

24 Q. What position did you have at Myriad?

25 A. It was a sales role, account executive.

1 11:05AM 1 Q. what types of products were you selling at Myriad?

1 11:05AM 2 A. It was laboratory products, mainly oncology.

1 11:05AM 3 Q. How long did you work at Myriad as a sales rep?

1 11:05AM 4 A. It would have been just about -- maybe just over two
1 11:05AM 5 years, a little over two years.

1 11:05AM 6 Q. were you employed when you first heard about Bluewave from
1 11:05AM 7 Ms. Lourcey?

1 11:05AM 8 A. Yes, I was.

1 11:05AM 9 Q. where were you working?

1 11:05AM 10 A. Quest Diagnostics.

1 11:05AM 11 Q. what position did you have at Quest?

1 11:05AM 12 A. The same; it was a sales role.

1 11:05AM 13 Q. what types of products were you selling at Quest?

1 11:06AM 14 A. The same, their laboratory products.

1 11:06AM 15 Q. How long did you work at Quest?

1 11:06AM 16 A. It would have been right about a year and a half.

1 11:06AM 17 Q. what happened after your initial conversation about
1 11:06AM 18 Bluewave with Ms. Lourcey?

1 11:06AM 19 A. She had, I guess, given my information to Brad, who
1 11:06AM 20 then -- several weeks had gone by, and then he called me to
1 11:06AM 21 discuss the BlueWave offer.

1 11:06AM 22 Q. You mentioned Brad. who are you referring to?

1 11:06AM 23 A. Brad Johnson.

1 11:06AM 24 Q. what happened after that conversation with Ms. Lourcey?

1 11:06AM 25 A. After the conversation with Ms. Lourcey?

11:06AM 1 Q. Yes.

11:06AM 2 A. I had spoken with Brad. He and I spoke by phone two or
11:06AM 3 three times, and then he actually traveled to Dallas. And Lisa
11:06AM 4 and I met with him in Dallas.

11:06AM 5 Q. What did defendant Brad Johnson tell you when you spoke
11:06AM 6 with him on the phone?

11:06AM 7 A. It was just a general overview. I asked a few questions.
11:06AM 8 I wanted to know specifically what BlueWave did for HDL. He
11:07AM 9 explained it. He challenged me to find out as much as I could
11:07AM 10 about the company BlueWave and about their respective
11:07AM 11 laboratories, just things of that nature.

11:07AM 12 Q. Did you do anything after you spoke with defendant Johnson
11:07AM 13 to discover more about BlueWave?

11:07AM 14 A. I did. I spoke with Sonja Stafford about it, and I spoke
11:07AM 15 with Sandra Tankersley. And then I spoke with a couple of the
11:07AM 16 reps, the contracted reps.

11:07AM 17 Q. Who is Sonja Stafford?

11:07AM 18 A. She's -- I believe she's -- she works in an administrative
11:07AM 19 role.

11:07AM 20 Q. Where?

11:07AM 21 A. To be -- I'm not sure if she's employed by BlueWave or one
11:07AM 22 of the other companies.

11:07AM 23 Q. And you mentioned Sandra Tankersley as someone else that
11:07AM 24 you had spoken with?

11:07AM 25 A. Yes.

11:07AM 1 Q. where did you understand that she worked?

11:07AM 2 A. My understanding is that she worked in an administrative
11:07AM 3 role for Bluewave.

11:07AM 4 Q. which sales representatives at Bluewave did you talk to
11:08AM 5 after your initial call with defendant Johnson?

11:08AM 6 A. I spoke with a Chad Sloat and spoke with Kyle Martel.

11:08AM 7 Q. Do you recall your conversation with Mr. Sloat?

11:08AM 8 A. Yes.

11:08AM 9 Q. Can you describe to the jury what you learned from
11:08AM 10 Mr. Sloat?

11:08AM 11 A. It was a fairly brief conversation. He gave -- he was
11:08AM 12 kind of a fast talker, so he just gave a quick overview of what
11:08AM 13 he does, how long he's been with the company, and just a brief
11:08AM 14 kind of introduction to his sales pitch.

11:08AM 15 Q. what about Kyle Martel? Do you recall what he told you?

11:08AM 16 A. It was very similar. He didn't talk as much. I didn't
11:08AM 17 speak to him as long. He just encouraged me to, you know,
11:08AM 18 consider this offer, because it was a good opportunity.

11:08AM 19 Q. And we'll come back to the sales pitch that you heard from
11:08AM 20 Mr. Sloat. You mentioned that you had a meeting with defendant
11:09AM 21 Johnson in person?

11:09AM 22 A. Yes.

11:09AM 23 Q. where was that meeting?

11:09AM 24 A. It was in Dallas.

11:09AM 25 Q. who else attended?

11:09 AM 1 A. Lisa Lourcey.

11:09 AM 2 Q. Can you describe what defendant Johnson told you at that
11:09 AM 3 meeting in Dallas?

11:09 AM 4 A. He -- again, it was kind of a recap of our phone
11:09 AM 5 conversations. He had asked me some questions about my
11:09 AM 6 experience at Quest, my relationship with the doctors in the
11:09 AM 7 Dallas area, how long I'd been doing this. And then he had
11:09 AM 8 mentioned a little bit more in depth about the types of tests
11:09 AM 9 that HDL offers. Really, just things like that.

11:09 AM 10 Q. Did you speak with defendant Cal Dent before joining
11:09 AM 11 Bluewave?

11:09 AM 12 A. I did.

11:09 AM 13 Q. When was that?

11:09 AM 14 A. It was later in the process. We spoke by phone. It was
11:09 AM 15 sometime later.

11:09 AM 16 Q. Why did you speak with defendant Dent before joining
11:09 AM 17 Bluewave?

11:09 AM 18 A. Why did I speak with him?

11:10 AM 19 Q. Yes.

11:10 AM 20 A. It was my understanding that it was just kind of the way
11:10 AM 21 the process works. Brad had told me that he was going to talk
11:10 AM 22 with me first, and then if he would -- if he was going to move
11:10 AM 23 on, to recommend me that I would then talk to Cal.

11:10 AM 24 Q. Did you talk with Cal Dent?

11:10 AM 25 A. Yes.

11:10 AM 1 Q. Did Bluewave ultimately make you an offer to work for
2 them?

11:10 AM 3 A. Yes.

11:10 AM 4 Q. Did you accept that offer?

11:10 AM 5 A. Yes.

11:10 AM 6 Q. What was your initial employment status at Bluewave?

11:10 AM 7 A. As I recall, we had a choice to either come on as
8 full-time employees, or we could -- we could contract with
9 them. And I chose to be a full-time employee initially.

11:10 AM 10 Q. Why did you choose to become a full-time employee of
11 Bluewave instead of be a contractor?

11:10 AM 12 A. That's just what I was used to. I had not contracted like
13 this before, and so I just chose the full-time employment.

11:10 AM 14 Q. Did you ever change your employment relationship with
15 Bluewave?

11:10 AM 16 A. Yes.

11:10 AM 17 Q. Can you explain what happened?

11:11 AM 18 A. Sometime a couple of months into 2011, we were told that
19 we would all be switching to a contractor status and moving
20 away from --

11:11 AM 21 Q. Who told you that?

11:11 AM 22 A. I'm sorry?

11:11 AM 23 Q. Who told you that you'd be switching into a contractor
24 status?

11:11 AM 25 A. There was a conference call that I believe Brad Johnson

1 led where we were told to move to a contractor status.

2 Q. What did defendant Johnson tell you?

3 A. Really just that this is the way that we needed to work in
4 order to represent the products for Bluewave and HDL and
5 Singulex. And then he kind of went over some of the advantages
6 of being -- having an entity or a corporation. He offered the
7 services of his accountant if we had trouble doing it.

8 Q. Can you explain that portion about an entity or a
9 corporation. How does that relate to what was discussed by
10 defendant Johnson during that conference call?

11 A. He just kind of went over some of how he had formed his
12 corporation, talked about some of the benefits of having either
13 an LLC, but that, ultimately, how we set it up would be up to
14 our accountant or whoever was in charge of doing that for us.

15 Q. Did anyone in that conference call say whether the
16 Bluewave sales representatives needed to have their own
17 corporate entity?

18 A. Yeah, it was suggested by both Brad and Cal that we needed
19 to have our own corporate entity.

20 Q. Have you ever been a contractor selling lab tests before?

21 A. No.

22 Q. In your two previous jobs selling lab tests, what was your
23 employment status?

24 A. Full-time employee.

25 Q. After the conference call with Bluewave about switching

1 the sales reps to contractor status, what did you do?

2 A. I contacted my accountant, and he recommended forming an S
3 corporation. And so that's what we did.

4 Q. What was the name of your S corporation?

5 A. It was J.P. Cornwell Inc.

6 Q. Had you ever formed an S corporation before?

7 A. No, I had not.

8 Q. Did your company, J.P. Cornwell Inc., ultimately do
9 business with Bluewave?

10 A. Yes.

11 Q. Did J.P. Cornwell Inc. enter into an agreement with
12 Bluewave to sell lab tests?

13 A. Yes.

14 Q. Who provided that agreement to you?

15 A. It was emailed to me -- it would have been emailed by
16 Sandra Tankersley.

17 Q. Did Bluewave provide you an email address when you started
18 work?

19 A. Yes.

20 Q. What was the email address?

21 A. It was bcornwell@bluewavehealth.com.

22 Q. Did Bluewave provide you with any business cards when you
23 started work?

24 A. Yes.

25 Q. What was listed on the business card?

1 11:13 AM 1 A. It listed my name, and then I believe it said "executive
2 disease consultant," and then it had my contact information on
3 there.

4 Q. What does "executive disease consultant" refer to?

5 A. It was just a fancy way of saying account executive,
6 salesperson.

7 Q. Before your first sale at Bluewave, did they provide you
8 with any documents?

9 A. Yeah, there was -- there was some initial documents sent
10 over.

11 Q. What documents did Bluewave provide to you before your
12 first sale?

13 A. Well, there was obviously a contract between my entity and
14 theirs. There was some basic sales and marketing material from
15 the laboratories.

16 Q. Any other documents that you received from Bluewave before
17 your first sale?

18 A. It -- as I recall, there was kind of a packet that was
19 sent that gave an overview of the lab, an overview of the test
20 offering, some documents around processing and handling
21 agreements.

22 Q. Can you describe what documents around processing and
23 handling fees you received from Bluewave?

24 A. One of them was the HDL position statement around
25 processing and handling.

11:14 AM 1 Q. Any others that you recall?

11:14 AM 2 A. I believe there was a sample processing and handling
11:14 AM 3 agreement that -- that would be given to doctors upon them
11:14 AM 4 coming on board as a client.

11:14 AM 5 Q. When you joined Bluewave, did they provide you any legal
11:15 AM 6 training?

11:15 AM 7 A. After I joined. Not initially, no.

11:15 AM 8 Q. Any compliance training?

11:15 AM 9 A. Not initially, no.

11:15 AM 10 Q. Had you ever sold HDL tests before you joined Bluewave?

11:15 AM 11 A. No.

11:15 AM 12 Q. Did you know HDL's product offerings before you joined
11:15 AM 13 Bluewave?

11:15 AM 14 A. I had a general idea, but I had not heard of HDL previous
11:15 AM 15 to this, no.

11:15 AM 16 Q. How did you learn to sell HDL tests?

11:15 AM 17 A. In the beginning, Brad Johnson would fly into Dallas. He
11:15 AM 18 flew in maybe two or three times. I would schedule
11:15 AM 19 appointments and really just go and watch him pitch this to a
11:15 AM 20 doctor.

11:15 AM 21 Q. When defendant Johnson flew into Dallas with you, where
11:15 AM 22 did you and defendant Johnson go?

11:15 AM 23 A. We mainly just went to doctors' offices. We would
11:15 AM 24 schedule a breakfast appointment or a lunch appointment, or we
11:16 AM 25 would just drop in and see if we could catch them. No rhyme or

1 11:16 AM 1 reason to it.

1 11:16 AM 2 Q. How many offices did you visit with defendant Johnson
1 11:16 AM 3 during that trip of his to Dallas?

1 11:16 AM 4 A. We would probably visit five or six offices a day.

1 11:16 AM 5 Q. And how many days was defendant Johnson down there in
1 11:16 AM 6 Dallas with you?

1 11:16 AM 7 A. I recall about three times he was in Dallas.

1 11:16 AM 8 Q. How soon after joining BlueWave did defendant Johnson come
1 11:16 AM 9 down to Dallas with you?

1 11:16 AM 10 A. How long after -- he was -- it was fairly quick. It was
1 11:16 AM 11 within the first couple of weeks that he came out there.

1 11:16 AM 12 Q. And why did you go out on these visits to doctors' offices
1 11:16 AM 13 with defendant Johnson?

1 11:16 AM 14 A. I was not familiar with the company yet, and he wanted to
1 11:16 AM 15 make sure that I knew how to sell this and how to speak to
1 11:16 AM 16 doctors about this. So -- and I -- I had requested that he
1 11:16 AM 17 come in and show me how to pitch this to doctors.

1 11:16 AM 18 Q. Did defendant Johnson come in and show you how to pitch --

1 11:16 AM 19 A. Yes, he did.

1 11:16 AM 20 Q. -- the BlueWave product?

1 11:17 AM 21 Can you explain what you saw in Dallas with defendant
1 11:17 AM 22 Johnson?

1 11:17 AM 23 A. It was a pretty standard sales pitch. He would go over
1 11:17 AM 24 the laboratory offering, give a history of the lab, give them
1 11:17 AM 25 the clinical information, the test offering that they have, how

1 it works, the turnaround time. He would go over a sample
2 report. He would talk about the business model that involved
3 the no-balance billing to patients and then the processing and
4 handling offer to the doctors.

5 Q. Was defendant Johnson selling individual HDL tests?

6 A. I don't recall if he specifically sold individual tests or
7 not. I don't know if that came up.

8 Q. How did HDL sell its tests?

9 A. Really, we would -- it would just -- we would just kind of
10 put the offer in front of the doctor, and then they'd kind of
11 have their choice as to what they wanted to do. There -- there
12 was -- later on in the process, HDL offered a lot more tests.
13 In the initial offering, there was a good amount, but the
14 doctors would be able to choose what they wanted.

15 Q. And how many tests were HDL offering when you joined
16 Bluewave?

17 A. I don't recall exactly. I would say somewhere in the
18 vicinity of 25 or 30 tests.

19 Q. Was there any term that you used to describe the 20 or 30
20 tests that HDL was offering?

21 A. The doctors' offices had an option to put it into a panel
22 if they wanted to.

23 Q. What is a panel of tests?

24 A. A panel is very simply just a grouping of tests that a
25 doctor, if he or she knows that they want this particular --

1 these particular tests, let's say these 10 or 15 tests, on
2 every patient that they would draw blood on, for ease of
3 ordering, they could put it into a panel so they wouldn't have
4 to check a whole lot of boxes.

5 Q. During your training with defendant Johnson, what did he
6 say about no-balance billing?

7 A. Very simply that HDL would agree to accept whatever the
8 insurance policy pays and that there would be no further
9 billing to the patient.

10 Q. Did defendant Johnson provide that information to
11 physicians?

12 A. Yes.

13 Q. What was the physician's reaction to hearing of the
14 no-balance billing policy?

15 A. In Dallas, it was very welcome news because Quest and
16 LabCorp and another regional lab called CPL, they would bill
17 patients and they would bill them multiple times. And they
18 would send them to collections. And that was a big problem in
19 Dallas. They were glad to hear that.

20 Q. Why were physicians interested in that information?

21 A. Well, I'm sure it would benefit the physician, because if
22 a patient gets a bill from a laboratory or any other entity,
23 they don't call the laboratory; they call the doctor and they
24 complain there. So I'm sure it decreased the amount of phone
25 calls.

11:19AM 1 Q. Did defendant Johnson tell physicians about the types of
11:19AM 2 patients who should order HDL tests?

11:19AM 3 A. He described it in a very broad term. He said whoever
11:19AM 4 they draw blood on to look at, you know, like a screening
11:20AM 5 panel, like a physical, or whoever they would draw blood to get
11:20AM 6 a lipid panel on would be the appropriate patient for this.

11:20AM 7 Q. Can you explain to the jury what a lipid panel is?

11:20AM 8 A. A standard lipid panel consists of maybe five, six, seven
11:20AM 9 tests that a doctor would order on a physical or a wellness
11:20AM 10 visit of some kind, traditionally to look at certain cardiac
11:20AM 11 markers.

11:20AM 12 Q. What are lipid panels used for?

11:20AM 13 A. In a primary care setting, it would be used for screening.

11:20AM 14 Q. What were the HDL panels used for?

11:20AM 15 A. In primary care, they were used for screening.

11:20AM 16 Q. Were there any types of patients defendant Johnson said
11:20AM 17 should not receive HDL tests?

11:20AM 18 A. That question didn't come up too often. When it did, you
11:20AM 19 know, it was suggested that anybody under the age of 18 needed
11:20AM 20 to have parental consent. You wouldn't want to run this
11:20AM 21 necessarily on someone that's in an extreme inflammatory state,
11:20AM 22 say, like a pregnant person or something like that. You
11:21AM 23 wouldn't do this on them.

11:21AM 24 Q. Any others?

11:21AM 25 A. Some of the questions came up more in the cardiovascular

1 office. If the patient already has these issues, there's no
2 need to do it. So a traditional test offering in a
3 cardiovascular office would look different than a primary care.

4 Q. Did defendant Johnson tell physicians how often they
5 should order HDL panel of tests?

6 A. He had stated that some of the literature suggested in a
7 primary care setting that the patient could have this done
8 every three months.

9 Q. Did defendant Johnson tell physicians that they could
10 order HDL tests every three months?

11 A. Yes.

12 Q. During his sales pitch, what did defendant Johnson tell
13 physicians about processing and handling fees?

14 A. That it was something that HDL offered back to the
15 physician in lieu of -- you know, if -- kind of gave them their
16 choice basically, that the laboratory could place a
17 phlebotomist in the office or, if they didn't want a
18 phlebotomist in the office, that they could accept the
19 processing and handling.

20 Q. Did defendant Johnson explain the amount of processing and
21 handling fees?

22 A. Yes.

23 Q. What did he say?

24 A. He described it as being \$20 per patient. And then he
25 broke it down to explain the \$3 draw fee and then the actual

1 \$17 processing and handling fees.

2 Q. Did defendant Johnson mention anything about competitors
3 when he was explaining processing and handling fees to
4 physicians?

5 A. Yes.

6 Q. What did he say?

7 A. He typically would reference Berkeley Heart -- in some
8 cases, Boston Heart -- and the amounts that they were paying in
9 processing and handling as well.

10 Q. And what would defendant Johnson say?

11 A. He would -- he would estimate about what they paid in
12 their processing and handling, the competitors, and then would
13 reference HDL's being higher than the competitors.

14 Q. Did you ever see any processing and handling fee
15 agreements by competitors?

16 A. I never saw any of the competitors, no.

17 Q. When you started working at BlueWave, how did you develop
18 your sales pitch?

19 A. By watching Brad Johnson as he would come in and pitch in
20 front of the doctors. And then we also would have some
21 training phone calls led by both Brad and Cal where the whole
22 sales team was on there.

23 Q. You mentioned Cal. Who were you referring to?

24 A. Cal Dent.

25 Q. Why did you follow defendant Johnson's sales pitch?

1 A. He had been doing this much longer than I had and was
2 obviously successful in doing it, so I figured that was the
3 best way to develop my sales pitch.

4 Q. Did you ever witness defendant Dent's sales pitch?

5 A. I did, but it was sometime later.

6 Q. Do you recall about when it was?

7 A. This would have been -- that would have been probably mid
8 2013 -- or early to mid 2013.

9 Q. Where?

10 A. He had flown into Dallas to spend a day traveling in my
11 territory with me.

12 Q. Did you meet with defendant Dent when he came to Dallas?

13 A. Yes.

14 Q. Where did you go?

15 A. We went all over. We started off at a doctor's office out
16 in Fort Worth.

17 Q. How many physician offices did you visit during that trip
18 with defendant Dent?

19 A. We must have seen probably six or seven physicians that
20 day.

21 Q. Did you have an opportunity during defendant Dent's visit
22 to see his sales pitch?

23 A. Yes.

24 Q. Can you describe to the jury defendant Dent's sales pitch?

25 A. It was a little bit slower and more methodical. Cal

1 really liked to delve deep into the science and the tests and
2 what they all meant and why a lot of them are relevant.

3 Q. Anything else that you saw during defendant Dent's sales
4 pitch?

5 A. It was -- it was similar in structure. I mean, he would
6 describe the test offering. He would describe a brief history
7 on the laboratory. He would go over the report logistically,
8 how things work. And then he would also address the no-balance
9 billing and the processing and handling fees.

10 Q. What did defendant Dent say during his sales pitch about
11 processing and handling fees?

12 A. He initially put it out there like everybody else did,
13 that it was an offering that the laboratory had. And then he
14 would break it down and describe the \$3 draw fee versus the
15 \$17.

16 Q. Did defendant Dent provide any examples about processing
17 and handling fees?

18 A. To the office in Fort Worth, yes, he did.

19 Q. Can you explain what defendant Dent said to the office in
20 Fort Worth?

21 A. He had described, I guess, a scenario where -- this
22 particular doctor had owned this building and had relayed back
23 to Cal kind of what the rent was on this building. And so Cal
24 took a piece of paper and pen and described, you know, how he
25 could match his rent in processing and handling payments.

11:26 AM 1 Q. Can you explain that a little further for us?

11:26 AM 2 A. It was referred to as a pro forma. And, really, very
11:26 AM 3 simply, what would happen is they would -- they would have a
11:26 AM 4 rent amount or an amount that the doctor needed to make, and
11:26 AM 5 then he would divide that number by 20 and tell them this is
11:26 AM 6 how many patients per month that would be.

11:26 AM 7 Q. Do you recall the name of the doctor to whom defendant
11:26 AM 8 Dent presented this pro forma?

11:26 AM 9 A. It was Dr. Randall Richwine.

11:26 AM 10 Q. Do you recall anything about this physician's rent
11:26 AM 11 payments on the building?

11:26 AM 12 A. Not specifically, just that he didn't own the entire
11:26 AM 13 building; he just owned a good portion of it.

11:26 AM 14 Q. It sounds like there was some space in the building that
11:27 AM 15 this physician owned that was vacant?

11:27 AM 16 A. Yes. That's correct.

11:27 AM 17 Q. Was defendant Dent explicit in telling the physician how
11:27 AM 18 much money he could make in P&H fees?

11:27 AM 19 A. Yes.

11:27 AM 20 Q. Did defendant Dent use the amount of P&H fees as a selling
11:27 AM 21 point?

11:27 AM 22 A. Yes.

11:27 AM 23 Q. Did defendant Dent talk to you about using pro formas?

11:27 AM 24 A. He had discussed it previously on a couple of phone calls,
11:27 AM 25 but, I mean, as a general rule, it was not brought up.

11:27 AM 1 Q. What do you recall defendant Dent telling you about pro
2 formas?

11:27 AM 3 A. Just that, if necessary, it's something that we could use
4 for a doctor. But I don't know many people did.

11:27 AM 5 Q. Did Bluewave allow sales reps to use pro formas to sell
6 tests?

11:27 AM 7 A. I don't know if they allowed it necessarily. It was -- I
8 guess they did because we were told to do it if we needed to.

11:28 AM 9 Q. How did defendant Dent's sales pitch compare to defendant
10 Johnson's?

11:28 AM 11 A. It was much more in-depth, much more detailed, again, a
12 little bit slower and more methodical.

11:28 AM 13 Q. Were there any common elements between defendant Dent's
14 sales pitch and defendant Johnson's?

11:28 AM 15 A. Yeah. Structurally, they were the same. I mean, it went
16 through the same components in terms of the laboratory, the
17 test offering, the reporting, the business model.

11:28 AM 18 Q. What business model are you referring to that was the same
19 between defendant Dent and defendant Johnson?

11:28 AM 20 A. It would be HDL's policy on accepting whatever the
21 insurance paid and not bill the patient anything further and
22 then also the processing and handling and/or placement of a
23 phlebotomist.

11:28 AM 24 Q. How did those common elements of defendants Dent and
25 Johnson's sales pitch compare to the HDL business model?

1 A. well, it was -- it was HDL's business model.

2 Q. Did you witness any other Bluewave sales reps use the
3 sales pitch of defendants Dent and Johnson?

4 A. Yes.

5 Q. who?

6 A. I witnessed Richard Younger give the sales pitch whenever
7 I rode with him.

8 Q. How often did you ride with Richard Younger?

9 A. Just one day.

10 Q. How many offices did you see during that day?

11 A. Maybe only three or four that day.

12 Q. What was Richard Younger's sales pitch?

13 A. His was very similar -- very similar to Brad, very -- kind
14 of quick, decisive, and to the point.

15 Q. Do you recall what Richard Younger mentioned to physicians
16 in his sales pitch?

17 A. It was the same. It was the same history of the
18 laboratory, reporting, business model pitch.

19 Q. Can you be more specific about the business model that you
20 heard Richard Younger explain to physicians?

21 A. Yes. He went over the same information about the
22 no-balance billing to the patient and then the processing and
23 handling.

24 Q. Were there other Bluewave sales reps whose sales pitch you
25 heard?

11:30 AM 1 A. Over the telephone, yes.

11:30 AM 2 Q. Who was that?

11:30 AM 3 A. I heard a bunch of them. Mainly Kyle Martel. At the
11:30 AM 4 time, there was a girl named Emily that was also in Florida.
11:30 AM 5 And then -- actually, I don't recall who all I heard.

11:30 AM 6 Q. You mentioned an individual named Emily. Do you know her
11:30 AM 7 last name?

11:30 AM 8 A. I don't know Emily's last name.

11:30 AM 9 Q. Do you recall what Kyle Martel told you over the phone
11:30 AM 10 about his sales pitch?

11:30 AM 11 A. He just would walk through an example sales pitch of how
11:30 AM 12 he talked to doctors about this. And it was all very, very
11:30 AM 13 similar to the previous ones.

11:30 AM 14 Q. Did Kyle Martel's sales pitch include no-balance billing?

11:30 AM 15 A. Yes.

11:30 AM 16 Q. Did Kyle Martel's sales pitch include processing and
11:31 AM 17 handling fees?

11:31 AM 18 A. Yes.

11:31 AM 19 Q. You mentioned earlier that you had spoken with Chad Sloat?

11:31 AM 20 A. Yes.

11:31 AM 21 Q. Did he describe his sales pitch to you?

11:31 AM 22 A. He did, and all of it was very similar.

11:31 AM 23 Q. Was there anything distinctive about Chad Sloat's sales
11:31 AM 24 pitch?

11:31 AM 25 A. Not that I recall.

11:31AM 1 Q. Did chad Sloat mention no-balance billing?

11:31AM 2 A. He did.

11:31AM 3 Q. Did chad Sloat mention processing and handling fees?

11:31AM 4 A. Yes.

11:31AM 5 Q. Did you use the Dent and Johnson sales pitch that you
11:31AM 6 learned?

11:31AM 7 A. Yes, I did.

11:31AM 8 Q. Do you know of anyone at BlueWave who did not use that
11:31AM 9 sales pitch?

11:31AM 10 A. Not that I'm aware of.

11:31AM 11 Q. Mr. Cornwell, could you please turn to Tab 1, which has
11:31AM 12 Plaintiffs' Trial Exhibit 1203. This is an exhibit that has
11:31AM 13 been previously admitted.

11:32AM 14 Are you familiar with Exhibit 1203?

11:32AM 15 A. Yes.

11:32AM 16 Q. What is it?

11:32AM 17 A. This is an email that I had sent to a gentleman named
11:32AM 18 Jorge Morano, who is a clinical administer for a small
11:32AM 19 physician-owned group of doctors in Dallas.

11:32AM 20 Q. What is the date of your email in Exhibit 1203?

11:32AM 21 A. That is Wednesday, August 8th, 2012.

11:32AM 22 Q. And you said you sent this email to an administer of a
11:32AM 23 physician practice?

11:32AM 24 A. Yes. Jorge was a -- kind of the primary administer over
11:32AM 25 this group of doctors offices.

11:32 AM 1 Q. Do you recall the other email addresses that are listed in
2 Exhibit 1203?

11:32 AM 3 A. Not all of them. I don't know who ebarajas is. I don't
4 remember that person.

11:32 AM 5 If you skip down, mvenegas is one of their primary
6 doctors. That's Dr. Venegas. Carmen Ramirez would be an
11:33 AM 7 office manager. Veronica Boy was a clinical person. I think
11:33 AM 8 she was a nurse. And then Lety was also a nurse.

11:33 AM 9 Q. Did you send Exhibit 1203 in the course of your work for
10 Bluewave?

11:33 AM 11 A. Yes.

11:33 AM 12 Q. Go down to the first sentence. And I'll read it to you.

11:33 AM 13 "My name is Boomer Cornwell, and I'm the local
11:33 AM 14 representative for Health Diagnostic Laboratories and Singulex
11:33 AM 15 Laboratories."

11:33 AM 16 Did I read that correctly?

11:33 AM 17 A. Yes.

11:33 AM 18 Q. Why did you describe yourself to this physician practice
11:33 AM 19 as the local representative for HDL and Singulex?

11:33 AM 20 A. Probably just for convenience, to make it easier for the
11:33 AM 21 doctors and administrators to understand who I represent.

11:33 AM 22 Q. How would you describe yourself during sales calls?

11:33 AM 23 A. As the local representative.

11:33 AM 24 Q. Who was the face of HDL and Singulex for your physician
25 clients?

11:33 AM 1 A. Me.

11:34 AM 2 Q. When you were selling HDL tests, what type of clothing
11:34 AM 3 would you wear on sales calls?

11:34 AM 4 A. Typically, it was dress slacks of some kind. And I
11:34 AM 5 typically like to wear, like, a golf polo.

11:34 AM 6 Q. Anything other than golf polos that you wore during your
11:34 AM 7 sales calls at BlueWave?

11:34 AM 8 A. Not initially. Within a few months, HDL did supply some
11:34 AM 9 of their reps with some HDL logo polos.

11:34 AM 10 Q. Can you describe to the jury what those polos looked like?

11:34 AM 11 A. Yeah, they were just black Nike polos. And then there was
11:34 AM 12 a little two- or three-inch HDL logo on the left chest, I
11:34 AM 13 believe.

11:34 AM 14 Q. When did you start wearing clothing with HDL logos during
11:34 AM 15 your sales calls?

11:34 AM 16 A. I believe they sent it to me within the three or four
11:34 AM 17 months of my contract.

11:34 AM 18 Q. And once you received those HDL shirts, how often did you
11:34 AM 19 wear them on your sales calls?

11:34 AM 20 A. Once I had enough of them, I would wear them every day.

11:35 AM 21 Q. Let's turn back to Exhibit 1203. The subject of your
11:35 AM 22 email is "Offering for Health Diagnostic Laboratories and
11:35 AM 23 Singulex Laboratories."

11:35 AM 24 Did I read that correctly?

11:35 AM 25 A. Yes.

11:35 AM 1 Q. What were you offering in Exhibit 1203 to a physician
2 practice?

11:35 AM 3 A. At this point in time, this particular group of clinics
4 called Mi Doctor, they were utilizing LabCorp. And I was --
5 Dr. Venegas, who was an existing client, had some relationships
6 with the Mi Doctor people and had suggested I reach out to them
7 and see if we could pull them away from LabCorp and begin using
8 Health Diagnostics and Singulex.

11:35 AM 9 Q. What were you offering to this physician practice?

11:35 AM 10 A. Really just the total clinical offering from Health
11 Diagnostics and Singulex.

11:35 AM 12 Q. Did you mention a business model to this physician
13 practice?

11:35 AM 14 A. Yes, I did.

11:36 AM 15 MR. TERRANOVA: Mr. Phaneuf, could you please scroll
16 down a little bit in the document towards the lower portion
17 where it's bold and underlined and says "business model."

11:36 AM 18 BY MR. TERRANOVA:

11:36 AM 19 Q. Do you see that, Mr. Cornwell?

11:36 AM 20 A. Yes.

11:36 AM 21 Q. Let me read that first sentence underneath "business
22 model."

11:36 AM 23 "The key aspect that truly sets us apart from our
24 competitors is our business model. Nobody else can do what we
25 do."

11:36 AM 1 Did I read that correctly?

11:36 AM 2 A. Yes.

11:36 AM 3 Q. What were you telling the physician practice with that
11:36 AM 4 statement?

11:36 AM 5 A. That was an attempt to set us apart from what they were
11:36 AM 6 doing currently with LabCorp just to let them know that LabCorp
11:36 AM 7 did not have the same business model that we did.

11:36 AM 8 Q. What was the business model that BlueWave was offering?

11:36 AM 9 A. They were offering the HDL and Singulex business model of
11:36 AM 10 the -- the reporting, the test offering, which is pretty
11:36 AM 11 in-depth, and then, of course, the business model of the
11:36 AM 12 no-balance billing and the processing and handling.

11:37 AM 13 Q. And you specifically noted in the second bullet point
11:37 AM 14 under business model the processing and handling
11:37 AM 15 reimbursements?

11:37 AM 16 A. Yes.

11:37 AM 17 Q. What did you tell the physician practice they could
11:37 AM 18 receive for P&H fees?

11:37 AM 19 A. For the HDL test, it would be a \$20 P&H fee. And then for
11:37 AM 20 Singulex, it would be the \$13 P&H fee.

11:37 AM 21 Q. And if you go down three additional bullets, do you see
11:37 AM 22 the bullet that reads, "Work with physicians to show how their
11:37 AM 23 bottom line can increase"?

11:37 AM 24 A. Yes.

11:37 AM 25 Q. What were you explaining to the physician practice about

11:37 AM 1 their bottom line increasing?

11:37 AM 2 A. As this was an administrator, he would not have been that
11:37 AM 3 interested in the clinical information, so I was trying to show
11:37 AM 4 him the business model in terms of what this could do for the
11:37 AM 5 practice.

11:37 AM 6 Q. What was Bluewave offering that could increase this
11:37 AM 7 practice's bottom line?

11:38 AM 8 A. Well, the only thing that would have directly affected the
11:38 AM 9 bottom line would have been the processing and handling
11:38 AM 10 payments.

11:38 AM 11 Q. Could you please turn to the second page of Exhibit 1203.

11:38 AM 12 At the top, in bold and underlined language, do you
11:38 AM 13 see the statement in your email, "We do not bill patients for
11:38 AM 14 any amount, even if the insurance decides not to pay"?

11:38 AM 15 A. Yes.

11:38 AM 16 Q. What are you explaining here to the physician practice?

11:38 AM 17 A. I was explaining that the respective laboratories will
11:38 AM 18 assume the risk and that typically the insurance companies will
11:38 AM 19 pay and, if they do, any balance remaining would not be billed
11:38 AM 20 to the patient.

11:38 AM 21 In some cases, insurances do not the pay for these
11:38 AM 22 tests and, if they don't pay, that there still will be no
11:38 AM 23 billing to the patient.

11:38 AM 24 Q. Do you know whether this no-balance billing policy applied
11:38 AM 25 to TRICARE claims?

1 A. It would have applied to all policies, yeah.

2 Q. Move down to the next paragraph.

3 Do you see that it states, "Next, we decided to offer
4 a process and handling reimbursement. We are allowed by law to
5 reimburse \$20 per patient for every panel ordered through
6 Health Diagnostics"?

7 A. Yes.

8 Q. Who told you that you were allowed by law to offer \$20 per
9 patient for P&H fees?

10 A. That came from both Bluewave and Health Diagnostic
11 Laboratories.

12 Q. Who at Bluewave told you you're allowed to offer \$20
13 processing and handling fees?

14 A. It would have been Brad Johnson and Cal Dent.

15 Q. Who at HDL told you you were allowed to offer \$20
16 processing and handling fees?

17 A. There were several people at HDL that mentioned that.
18 Tonya Mallory had mentioned it. Tabitha Henley had mentioned
19 it. Some of the clinical people there.

20 Q. If you go down to, sticking to the same paragraph, the
21 last sentence, "Coincidentally, we offer the highest P&H
22 reimbursement in the industry."

23 Did I read that correctly?

24 A. Yes.

25 Q. Who told you that HDL offered the highest P&H

1 reimbursement in the industry?

2 A. That would have come from Bluewave and HDL.

3 Q. Did you ever see what other competitors actually were
4 paying physicians?

5 A. I never saw it. I only heard what they were offering.

6 Q. And in your prior sales jobs, did you ever have any other
7 job where the company paid process and handling fees?

8 A. No.

9 Q. Did you ever have any job where the company paid doctors
10 money per patient?

11 A. No.

12 Q. Let's continue down this Exhibit 1203. If you could go
13 down to the middle of the page, the big paragraph, towards the
14 end it references Singulex testing, offering an additional \$13
15 process and handling reimbursement.

16 A. Yes.

17 Q. And in the last sentence of that paragraph, you say, "So
18 as you may imagine, most providers choose to run these labs
19 together, thus maximizing their total P&H reimbursement to \$33
20 per patient."

21 Did I read that correctly?

22 A. Yes.

23 Q. And then after that sentence, you included an exclamation
24 point; is that right?

25 A. Yes.

1 Q. why did you include this sentence in your email to the
2 physician practice?

3 A. As -- Singulex had a little bit different lab offering.
4 It didn't traditionally overlap with HDL. And so we -- the
5 sales contractors were encouraged to offer these two together
6 at the doctors office should they choose to run both Singulex
7 and Health Diagnostic Laboratory tests.

8 Q. who encouraged the Bluewave sales representatives to offer
9 both HDL and Singulex processing and handling fees?

10 A. That -- it would have been Brad and Cal.

11 Q. Go down to the next paragraph on this exhibit. You write,
12 "Make no mistake, we at Health Diagnostic Laboratories were the
13 first to offer such a business model. Many labs have since
14 tried to copy our business model. To date, not one competitor
15 lab can match what we do."

16 Do you see that?

17 A. Yes.

18 Q. what were you explaining to the physician practice in this
19 paragraph?

20 A. It was another attempt to try to set us apart from the
21 competitor labs and let them know that we had a wholly and
22 completely different offering.

23 Q. were you aware of any other laboratories that offered the
24 HDL and Singulex business model?

25 A. Several of the competitor labs began trying to mimic what

1 HDL and Singulex were doing but after the fact.

2 Q. How does Plaintiffs' Exhibit 1203 compare to defendant
3 Johnson's sales pitch?

4 A. It's very similar. This is taken off of what I would
5 typically say to a doctor.

6 Q. How does Exhibit 1203 compare to defendant Dent's sales
7 pitch?

8 A. It's structurally similar.

9 Q. In what ways?

10 A. Just the wording, the explanation. The offering of the
11 business models. I mean, this is -- this would be a typical
12 sales pitch.

13 Q. What percentage of your physician clients received P&H
14 fees?

15 A. Virtually all of them did.

16 Q. Who were your top physician clients?

17 A. There was a Kaner Medical. There was a Bent Tree
18 Physicians. There was a Ferris Family Physicians. Family
19 Doctors of Denton.

20 Q. Did all of those physician clients that you just mentioned
21 receive processing and handling fees from HDL --

22 A. Yes.

23 MR. TERRANOVA: Mr. Phaneuf, could you please put on
24 the screen Plaintiffs' Demonstrative 13?

25 BY MR. TERRANOVA:

11:44 AM 1 Q. Mr. Cornwell, are you able to read Demonstrative 13 on
2 your screen?

11:44 AM 3 A. Yes.

11:44 AM 4 Q. Does Plaintiffs' Demonstrative 13 list any of your
5 clients?

11:44 AM 6 A. Yes. Bent Tree Physicians is my client. Well, Dr. Robert
11:45 AM 7 Megna down there is with Ferris Family, which is listed on the
11:45 AM 8 right-hand side. Kaner Medical is on there. Yeah, those
11:45 AM 9 are -- that's it.

11:45 AM 10 Q. You ever have any sales calls with Reddy Cardiology that's
11 listed towards the bottom?

11:45 AM 12 A. That was in Houston, which would have been Heather's
11:45 AM 13 territory. I met with Dr. Reddy one time, but it was not an
11:45 AM 14 initial sales pitch.

11:45 AM 15 Q. Did any defendant ever communicate with you about
11:45 AM 16 money-hungry doctors?

11:45 AM 17 A. Yes.

11:45 AM 18 Q. Who?

11:45 AM 19 A. Initially, Brad sent me an email listing that.

11:45 AM 20 Q. Brad who?

11:45 AM 21 A. Brad Johnson.

11:45 AM 22 Q. Can you describe this money-hungry doctors email to the
11:45 AM 23 jury?

11:45 AM 24 A. It was a list of doctors in the state of Texas that I
11:46 AM 25 assume were previous Berkeley HeartLab clients.

11:46 AM 1 Q. why did you receive this money-hungry doctors email?

11:46 AM 2 A. I had just -- this was shortly after my contract had
11:46 AM 3 started, and I'm assuming it was a way to create a target list
11:46 AM 4 of people to go talk to pretty quickly.

11:46 AM 5 Q. what is a target list?

11:46 AM 6 A. Just a list of doctors that might be interested in the lab
11:46 AM 7 offering for HDL and Singulex.

11:46 AM 8 Q. what is a sales representative supposed to do with a
11:46 AM 9 target list?

11:46 AM 10 A. Set appointments for those offices, drop by and see if we
11:46 AM 11 can't talk to the doctor or possibly the office manager.

11:46 AM 12 Q. Did you try to follow up with any of the physicians on
11:46 AM 13 defendant Johnson's list?

11:46 AM 14 A. I followed up with a few of them.

11:46 AM 15 Q. was there anything that Bluewave was selling that would
11:46 AM 16 appeal to a money-hungry doctor?

11:46 AM 17 A. The only thing that would have appealed would have been
11:46 AM 18 the processing and handling payments.

11:46 AM 19 Q. Did any of your physician clients ask for more than \$20
11:47 AM 20 per patient --

11:47 AM 21 A. Yes.

11:47 AM 22 Q. -- in processing and handling?

11:47 AM 23 A. Yes, they did.

11:47 AM 24 Q. Do you recall who?

11:47 AM 25 A. Initially, Bent Tree Physicians in Frisco. They were

1 quite adamant about wanting more.

2 Q. Who at Bent Tree reached out to you asking for more than
3 \$20 per patient in P&H fees?

4 A. There was a Dr. Bryan Ferguson, who was one of the
5 partners in the practice.

6 Q. And what did Dr. Ferguson say?

7 A. He had asked me if there was any additional money
8 available or if the lab could go over \$20.

9 Q. Did defendant Ferguson -- excuse me. Did Dr. Ferguson say
10 what he would do if HDL did not pay some additional money?

11 A. In our initial phone conversation, I told him that I
12 didn't think they could go over the amount of 20 but all I
13 could do is ask. Well, he ended up directly contacting -- I
14 believe he spoke with Tonya at HDL to where I believe I was
15 demanding 50 or \$55 per patient.

16 And then when Tonya called me later to tell me about
17 this phone call, she had indicated that he had threatened to
18 stop using HDL if they didn't match this requirement.

19 Q. Tonya who?

20 A. Tonya Mallory.

21 Q. Did defendant Mallory agree to pay the \$50 processing and
22 handling fee to Bent Tree?

23 A. No, she didn't.

24 Q. Did anyone have another idea about how to get Bent Tree
25 money?

1 11:48 AM 1 A. Dr. Culpepper, the other partner in the group, had said
2 that -- that HDL should consider leasing space in their
3 practice.

4 11:48 AM 4 Q. Can you explain this proposal that Bent Tree had?

5 11:48 AM 5 A. Bent Tree had two locations, one in Frisco and one in
6 11:48 AM 6 Dallas. They had additional patient rooms that weren't being
7 11:48 AM 7 used, and so the proposal was to place an employee of -- of HDL
8 11:49 AM 8 inside the practice, and then in turn there would be a lease
9 11:49 AM 9 agreement that would be signed and then a monthly lease fee
10 11:49 AM 10 that would be paid for that space.

11 11:49 AM 11 Q. Who would pay this monthly lease fee to Bent Tree?

12 11:49 AM 12 A. HDL would pay it.

13 11:49 AM 13 Q. For a lease of what?

14 11:49 AM 14 A. Essentially, it was a patient room that the employee was
15 11:49 AM 15 taking.

16 11:49 AM 16 Q. What type of employee?

17 11:49 AM 17 A. It was an HDL employee. It was a health coach.

18 11:49 AM 18 Q. Whose patients would the HDL health coach see?

19 11:49 AM 19 A. They would see the patients of the physician practice.

20 11:49 AM 20 Q. Which physician practice?

21 11:49 AM 21 A. Bent Tree.

22 11:49 AM 22 Q. Who would decide which Bent Tree physician practices the
23 11:49 AM 23 health coach could see?

24 11:49 AM 24 A. The providers inside the practice would choose.

25 11:49 AM 25 Q. Which practice?

11:49 AM 1 A. The Bent Tree practice.

11:49 AM 2 Q. Did defendant Mallory agree to pay Bent Tree the lease
11:50 AM 3 payments that it asked for?

11:50 AM 4 A. Yes. There was a lease agreement, and the payments
11:50 AM 5 were -- they started soon after.

11:50 AM 6 Q. How much were the payments that HDL was making?

11:50 AM 7 A. If I recall, I believe it was \$5,000 per practice per
11:50 AM 8 month.

11:50 AM 9 Q. How much in total per month was HDL paying to Bent Tree?

11:50 AM 10 A. It would have been \$10,000.

11:50 AM 11 Q. Was the \$10,000 per month paid in addition to the
11:50 AM 12 processing and handling fees that HDL was already paying this
11:50 AM 13 practice?

11:50 AM 14 A. Yes, it was.

11:50 AM 15 Q. Once HDL began making lease payments to Bent Tree, did HDL
11:50 AM 16 reduce the processing and handling fees that it was paying to
11:50 AM 17 Bent Tree?

11:50 AM 18 A. No, they didn't.

11:50 AM 19 Q. How soon after Bent Tree's request for the \$50 lease
11:50 AM 20 payment -- excuse me -- \$50 processing and handling payment did
11:51 AM 21 Bent Tree raise the idea of these lease payments?

11:51 AM 22 A. It was very soon. It was within a few days.

11:51 AM 23 Q. What services did you provide to Bluewave as a sales
11:51 AM 24 representative?

11:51 AM 25 A. It was my responsibility to come up with a physician

1 target list, schedule appointments, make the initial offering
2 to the physician or the physician practice. If they decided to
3 become a client, I would set them up with a new account, make
4 sure that supplies were ordered.

5 And then once supplies came to the practice, I would
6 then in-service the phlebotomist or the nurse or whoever would
7 draw blood and do the processing at that point, walk them
8 though a patient or two maybe.

9 And in a couple of weeks, once they got the reports
10 back, we would set up, like, a case review meeting where we
11 would go over some of the results.

12 Q. How did BlueWave pay you for your services?

13 A. There was a contracted rate that was dependent upon a
14 percentage of the total revenue collected.

15 Q. Can you explain that a bit further?

16 A. My -- my contracted rate was 6 percent for HDL. And the
17 way I understood it, it was that whatever the insurance would
18 pay HDL, my payment would be 6 percent of that amount.

19 Q. And what insurers would make payments that you could
20 receive a portion of?

21 A. All commercial and government policies.

22 Q. Can you explain any government payers that you understand
23 you received a portion of?

24 A. Medicare, TRICARE were the two predominant ones.

25 Q. What did you have to do to earn commissions from BlueWave?

11:52 AM 1 A. I would actually have to go and get doctors and physician
11:52 AM 2 practices to agree to utilize the laboratories.

11:52 AM 3 Q. If you sold more tests, you earned more commissions from
11:53 AM 4 Bluewave?

11:53 AM 5 A. If we brought new client -- yes, if we brought new clients
11:53 AM 6 on board and if they ordered more tests on more patients, then
11:53 AM 7 yes, our commissions went up.

11:53 AM 8 Q. Did Bluewave pay commissions to you or to your company,
11:53 AM 9 J.P. Cornwell, Inc.?

11:53 AM 10 A. They would pay J.P. Cornwell, Inc.

11:53 AM 11 Q. If I told you that Bluewave's bank's records indicate that
11:53 AM 12 Bluewave paid J.P. Cornwell, Inc., \$210,628 in 2011, is that
11:53 AM 13 accurate?

11:53 AM 14 A. Yes.

11:53 AM 15 Q. And 1,027,180 in 2012?

11:53 AM 16 A. Yes.

11:53 AM 17 Q. 1,408,966 in 2013?

11:53 AM 18 A. Yes.

11:53 AM 19 Q. And 1,018,646 in 2014?

11:53 AM 20 A. Yes.

11:53 AM 21 MR. TERRANOVA: Mr. Phaneuf, could you please put on
11:53 AM 22 the screen Plaintiffs' Demonstrative 10.

11:54 AM 23 BY MR. TERRANOVA:

11:54 AM 24 Q. Mr. Cornwell, do you see your company,
11:54 AM 25 J.P. Cornwell, Inc., listed on this demonstrative?

11:54 AM 1 A. Yes, I do.

11:54 AM 2 Q. Plaintiffs' Demonstrative 10 lists you as having received
11:54 AM 3 \$3,671,800 in commissions?

11:54 AM 4 A. Yes.

11:54 AM 5 Q. Did you receive that amount of money in commissions from
11:54 AM 6 Bluewave?

11:54 AM 7 A. Yes, I did.

11:54 AM 8 Q. How did the commissions you received from Bluewave compare
11:54 AM 9 to the amount of money you earned in your prior sales jobs?

11:54 AM 10 A. They were much higher.

11:54 AM 11 Q. What was the most that you had ever earned in a sales job
11:54 AM 12 in a year before you joined Bluewave?

11:54 AM 13 A. About \$200,000.

11:54 AM 14 Q. 200,000 is about -- well, and what was -- let me back up.

11:55 AM 15 You had indicated that in 2013 you had received from
11:55 AM 16 Bluewave about \$1.4 million?

11:55 AM 17 A. Yes.

11:55 AM 18 Q. That was about seven times as much as you had ever earned
11:55 AM 19 in sales jobs before?

11:55 AM 20 A. Yes.

11:55 AM 21 Q. About \$1.2 million more than in any job you've ever had?

11:55 AM 22 A. Yes.

11:55 AM 23 Q. You said you were paid commissions to arrange physicians
11:55 AM 24 to refer samples to HDL and Singulex?

11:55 AM 25 A. Yes.

1 11:55 AM 1 Q. Explain what you meant.

1 11:55 AM 2 MR. COOKE: Objection to form of the question.

1 11:55 AM 3 Choice of the word "arrange" is just --

1 11:55 AM 4 THE COURT: Overruled.

1 11:55 AM 5 THE WITNESS: It was our job to go and bring on
1 11:55 AM 6 clients that were either using local laboratories -- excuse
1 11:55 AM 7 me -- or existing competitors and have them switch over to
1 11:55 AM 8 utilize HDL and Singulex.

1 11:55 AM 9 BY MR. TERRANOVA:

1 11:55 AM 10 Q. And one of the things you were paid for at BlueWave was to
1 11:55 AM 11 arrange for physicians to order HDL and Singulex tests?

1 11:56 AM 12 A. Correct, yes.

1 11:56 AM 13 Q. Who paid the commissions to you?

1 11:56 AM 14 A. BlueWave.

1 11:56 AM 15 Q. Once a physician agreed to order HDL and Singulex tests,
1 11:56 AM 16 what would you do?

1 11:56 AM 17 A. I would set them up with a new account, which typically
1 11:56 AM 18 was a new account form. The doctor would take a look at the
1 11:56 AM 19 test offering, decide what test he or she wanted. They would
1 11:56 AM 20 sign the form. We would send everything into -- well, we would
1 11:56 AM 21 send it to the laboratory but copy the BlueWave administrator.

1 11:56 AM 22 And then the laboratories would send the supplies to
1 11:56 AM 23 the physician's office, and then we would in-service the
1 11:56 AM 24 physician at that point.

1 11:56 AM 25 Q. Would any documents come to you regarding processing and

11:56 AM 1 handling?

11:56 AM 2 A. Yes, the processing and handling agreements were typically
11:56 AM 3 sent to the reps.

11:56 AM 4 Q. By whom?

11:56 AM 5 A. Initially, they came directly from Sandra Tankersley.

11:56 AM 6 Q. What happened after that?

11:56 AM 7 A. We would take that and present it to the doctor typically
11:57 AM 8 during the in-service parts. The doctor would look over it,
11:57 AM 9 sign it, and send it back to the laboratory.

11:57 AM 10 Q. Would you ever mail to a physician office a processing and
11:57 AM 11 handling agreement?

11:57 AM 12 A. Not typically.

11:57 AM 13 Q. Why not?

11:57 AM 14 A. Most physicians wanted us to hand it to them personally
11:57 AM 15 and not be sent to the practice.

11:57 AM 16 Q. Why would physicians want you to come into their office to
11:57 AM 17 hand it to them personally?

11:57 AM 18 A. I -- many of them said they didn't want their office staff
11:57 AM 19 to see that there was a payment arrangement being made.

11:57 AM 20 Q. Why did physicians tell you they didn't want their office
11:57 AM 21 staff to know about these processing and handling fees?

11:57 AM 22 MR. COOKE: Objection, Your Honor. Calls for hearsay
11:57 AM 23 and lacks foundation.

11:57 AM 24 THE COURT: Establish your foundation. Sustained.

11:57 AM 25 BY MR. TERRANOVA:

11:57 AM 1 Q. Did you hear from any physician clients about why they
11:58 AM 2 wanted you to come in and present to them in person the P&H
11:58 AM 3 agreement?

11:58 AM 4 A. They typically didn't go into a lot of detail; they just
11:58 AM 5 asked if I could bring it to them. And I would just agree to
11:58 AM 6 do that without asking too many questions.

11:58 AM 7 Q. Did any physicians ask for the P&H checks to be sent
11:58 AM 8 somewhere other than their physician office?

11:58 AM 9 A. Yes, they did.

11:58 AM 10 Q. Did you describe that?

11:58 AM 11 A. There were just a few physicians that requested that the
11:58 AM 12 P&H payments be sent to their home address.

11:58 AM 13 Q. Did this physician explain why he wanted P&H checks sent
11:58 AM 14 to his house rather than to his physician office?

11:58 AM 15 A. He didn't go into a lot of detail; he just asked if that
11:58 AM 16 was an objection. I referred that question back to Tabitha
11:58 AM 17 Henley. She said that they could do that.

11:58 AM 18 Q. Where did Tabitha Henley work?

11:58 AM 19 A. She worked at Health Diagnostic Laboratories.

11:59 AM 20 Q. Did any physicians ask you for free or complimentary
11:59 AM 21 tests?

11:59 AM 22 A. Yes.

11:59 AM 23 Q. Do you recall which physicians?

11:59 AM 24 A. A lot of them asked for it. The biggest offender was Bent
11:59 AM 25 Tree.

11:59 AM 1 Q. How did you respond to the request for free or
11:59 AM 2 complimentary tests?

11:59 AM 3 A. Typically, I said that I couldn't make that call; that's
11:59 AM 4 up to the laboratory. The -- our first point of contact was
11:59 AM 5 typically either Brad or Cal at BlueWave, so, in this
11:59 AM 6 particular case, the Bent Tree, I had contacted Brad. He said
11:59 AM 7 as a general rule that they doesn't do any free or
11:59 AM 8 complimentary tests. This particular office once again
11:59 AM 9 contacted HDL directly, got in contact with Tabitha Henley
11:59 AM 10 about it.

11:59 AM 11 Q. Do you recall what happened next?

11:59 AM 12 A. In this particular instance, Tabitha agreed to go ahead
11:59 AM 13 and run them as complimentary.

11:59 AM 14 Q. would Bluewave send you reports about your sales
11:59 AM 15 performance?

12:00 PM 16 A. Yes.

12:00 PM 17 Q. what type of reports?

12:00 PM 18 A. There were two. There was a daily report, and then there
12:00 PM 19 was a weekly report.

12:00 PM 20 Q. Starting first with the daily report, can you explain what
12:00 PM 21 was in that report.

12:00 PM 22 A. It was pretty quick. They just -- really, whatever was
12:00 PM 23 delivered into the lab the day previous, they would just count
12:00 PM 24 it and then just put it on a quick spreadsheet and send it to
12:00 PM 25 us. We didn't pay too much attention to that.

1 12:00 PM Q. who would send it to you?

2 12:00 PM A. I think initially it was sent by Bluewave, but I think
3 there were times it was also sent by HDL.

4 12:00 PM Q. And how was this daily report of your sales sent?

5 12:00 PM A. Email.

6 12:00 PM Q. You also mentioned weekly reports?

7 12:00 PM A. Yes.

8 12:00 PM Q. Can you describe those weekly reports that you received.

9 12:00 PM A. Typically, we would get them, on a late Friday, maybe over
10 the weekend, sometimes Monday morning for the week previous --
11 and it was more comprehensive. It was in an Excel format --
12 where it would list the practice, each individual provider, and
13 then how many tests they ordered for the previous week.

14 12:01 PM Q. Could you understand from receiving these weekly reports
15 how much your commissions would be?

16 12:01 PM A. We could estimate it.

17 12:01 PM Q. who would send you these weekly reports?

18 12:01 PM A. It was either Bluewave or HDL that would send them.

19 12:01 PM Q. Did you ever receive feedback from Bluewave on your sales
20 performance?

21 12:01 PM A. Periodically, yes.

22 12:01 PM Q. what type of feedback?

23 12:01 PM A. Generally, it was good. We had kind of a slower start in
24 Texas. It took us a little bit to get ramped up. Once we did,
25 we quickly moved to the top one or two spots in the company.

1 12:01 PM Q. Have any of your physician clients ever requested supplies
2 or equipment from HDL?

3 12:01 PM A. Yes, they did.

4 12:01 PM Q. Who would they ask?

5 12:01 PM A. They would ask me.

6 12:01 PM Q. What would you do after receiving these requests for
7 supplies and equipment?

8 12:01 PM A. It depended on what supplies they were asking for. If
9 they were typical blood draw supplies, that was pretty easy.
10 Some would ask for other items, such as refrigerators or draw
11 chairs.

12 12:02 PM Q. Did HDL provide any supplies and equipment to physicians?

13 12:02 PM A. They did.

14 12:02 PM Q. What -- what supplies and equipment did HDL provide?

15 12:02 PM A. They would supply centrifuges. They would supply -- on a
16 couple of occasions, they supplied refrigerators. And I recall
17 one instance where they gave a draw chair to a practice.

18 12:02 PM Q. Did HDL provide blood draw supplies as well?

19 12:02 PM A. They did.

20 12:02 PM Q. You mentioned a centrifuge. What is a centrifuge?

21 12:02 PM A. A centrifuge is just kind of a small mechanism that spins
22 blood after the blood is drawn from the patient.

23 12:02 PM Q. Did you ever order centrifuges for your physician clients?

24 12:02 PM A. When they would request them, yes, I would order them
25 through HDL.

1 12:02 PM 1 Q. Did HDL provide shipping envelopes to physicians?

2 12:02 PM 2 A. Yes.

3 12:02 PM 3 Q. Did HDL provide prepaid FedEx labels?

4 12:02 PM 4 A. Yes.

5 12:02 PM 5 Q. Did HDL provide all the supplies that were needed for
6 processing and handling?

7 12:03 PM 7 A. Yes, they did.

8 12:03 PM 8 Q. Did physicians have to pay anything for those supplies?

9 12:03 PM 9 A. No.

10 12:03 PM 10 Q. Did HDL provide all those supplies needed for processing
11 and handling even to physicians that were already receiving P&H
12 fees?

13 12:03 PM 13 A. Yes.

14 12:03 PM 14 Q. Did you ever see the processing and handling process take
15 place?

16 12:03 PM 16 A. What do you mean by the "process"?

17 12:03 PM 17 Q. I'll rephrase. That was a poor question.

18 12:03 PM 18 Did you ever see anyone processing and handling
19 blood?

20 12:03 PM 20 A. Yes, I did.

21 12:03 PM 21 Q. How many times?

22 12:03 PM 22 A. Over my lab career, many times.

23 12:03 PM 23 Q. Who -- what type of personnel typically processed and
24 handled blood?

25 12:03 PM 25 A. In a physician's office, it would be typically the MA, or

1 medical assistant, or the phlebotomist, or sometimes the nurse
2 in the practice would do it.

3 Q. What types of steps did you see in process and handling?

4 A. They would draw the blood from the patient. Typically,
5 there wasn't a lot of treatment for the blood tubes after that.
6 They would set them down. Sometimes they had to sit for a
7 little bit. Sometimes they would go on a little rocker.

8 And then, after a few minutes, they were placed in
9 the centrifuge. They were spun for 15 to 20 minutes. And then
10 the phlebotomist would then place it into the collection kit,
11 make sure the requisition was filled out, and then get it ready
12 for FedEx to pick up.

13 Q. How long did it take for the phlebotomist to process and
14 handle the blood?

15 A. If you count the time for centrifuging, it might be
16 about -- maybe a 30-minute process.

17 Q. How much of the time was the phlebotomist actually
18 processing and handling blood?

19 A. During the centrifuge process, they could do other things.
20 So they probably spent between 5 and 10 minutes total.

21 Q. Mr. Cornwell, could you please turn to Tab 3 in
22 Plaintiffs' Exhibit 1155? Are you familiar with Plaintiffs'
23 Exhibit 1155?

24 A. Yes.

25 Q. What is it?

1 A. This is HDL's position statement on processing and
2 handling fees.

3 Q. What is the date of this physician statement?

4 A. It's May 10th -- I'm sorry -- May 1st, 2010.

5 Q. And how are you familiar with Plaintiffs' Trial Exhibit
6 1155?

7 A. This was part of their preliminary paperwork that was sent
8 to us after we contracted with Bluewave.

9 Q. When did you first receive Plaintiffs' Trial Exhibit 1155?

10 A. It would have been very soon after my contract.

11 Q. Your contract with who?

12 A. Bluewave.

13 MR. TERRANOVA: Your Honor, we offer Plaintiffs'
14 Exhibit 1155 into evidence.

15 THE COURT: Any objection?

16 MR. COOKE: No objection.

17 MR. ASHMORE: No, sir.

18 THE COURT: Plaintiffs' 1155 is admitted without
19 objection.

20 BY MR. TERRANOVA:

21 Q. Mr. Cornwell, could you please turn to the second page of
22 1155 towards the bottom.

23 who did you understand signed the position statement?

24 A. Tonya Mallory.

25 Q. What did you understand the purpose of that position

1 statement was?

2 A. Just to give some detail and backup regarding the
3 processing and handling payments to the physician offices.

4 Q. Did you take that position statement in Exhibit 1155 with
5 you on sales calls?

6 A. I would have it in my car, but I typically didn't have it
7 in the office with me.

8 Q. You had it somewhere you could easily access it if needed?

9 A. If needed.

10 Q. would you proactively show the position statement to
11 physicians?

12 A. Not proactively, no.

13 Q. why not?

14 A. Typically, the question didn't come up that much. And I
15 guess I kind of figured it would avoid a little bit of a
16 problem. If this was presented to the physician proactively,
17 then maybe they would think that there's a problem with this.

18 Q. why would presenting the position statement to physicians
19 proactively cause a bit of a problem?

20 A. I mean, if -- if HDL had gone to the trouble to issue a
21 position statement on processing and handling and the legality,
22 then I'm sure the physician would have the question around the
23 legality at that point.

24 Q. In all your years of sales before Bluewave, did you ever
25 carry with you a position statement like this?

1 12:07 PM A. No.

2 12:07 PM Q. Was it unusual to you?

3 12:07 PM A. It was.

4 12:07 PM Q. Do you know whether HDL had any legal opinions regarding
5 offering processing and handling fees?

6 12:07 PM A. We were told that they did have legal opinions.

7 12:07 PM Q. Mr. Cornwell, could you please turn to Tab 4 of your
8 binder. This is Plaintiffs' Exhibit 1310.

9 Are you familiar with Exhibit 1310?

10 12:07 PM A. Yes.

11 12:07 PM Q. What is it?

12 12:08 PM A. This is an email from Tonya Mallory to me regarding an
13 incident at Kaner Medical Group.

14 12:08 PM Q. What is the date of Defendant Mallory's email to yourself?

15 12:08 PM A. It's Wednesday, August 22nd, 2012.

16 12:08 PM Q. What is the subject of defendant Mallory's email?

17 12:08 PM A. Kaner Medical.

18 12:08 PM Q. Was Kaner Medical one of your physician clients?

19 12:08 PM A. Yes, they were.

20 12:08 PM Q. Who else was copied on this email?

21 12:08 PM A. Brad Johnson and Cal Dent and Sandra Tankersley.

22 12:08 PM MR. TERRANOVA: Your Honor, we would offer
23 Plaintiffs' Trial Exhibit 1310 into evidence.

24 12:08 PM THE COURT: I have seen it. Is it up --

25 12:08 PM MR. TERRANOVA: Mr. Phaneuf, could you please put it

1 on the screen.

2 THE COURT: Is there any objection?

3 MR. COOKE: No objection.

4 MR. ASHMORE: No, sir.

5 THE COURT: Plaintiffs' 1310 is in without objection.

6 BY MR. TERRANOVA:

7 Q. Can you explain why defendant Mallory sent this email,
8 Exhibit 1310, to you?

9 A. Yeah. There were two gentlemen -- one named Scott Davis,
10 another named Frank Ruderman -- who had set up shop with
11 another laboratory down around the Houston area. And they were
12 specifically targeting the HDL offices. They were going into
13 the HDL offices and explaining to the managers and to the
14 physicians that what HDL was doing was illegal, violating
15 federal law, and that the physician offices needed to cease
16 doing business with them.

17 Q. It's fair to say Scott Davis and Frank Ruderman were
18 acting for a competitor to HDL?

19 A. They were.

20 Q. And were Mr. Davis and Mr. Ruderman going around to your
21 physician clients in Texas telling them that HDL was violating
22 the law?

23 A. They were predominantly in Houston, but they had come up
24 and talked to my client at Kaner Medical on this particular
25 case.

12:09PM 1 Q. what were these gentlemen saying HDL was doing in
12:10PM 2 violation of the law?

12:10PM 3 A. They had told Kaner Medical that it was illegal to pay
12:10PM 4 processing and handling and that it was also illegal to waive
12:10PM 5 patient responsibility.

12:10PM 6 Q. Did you tell anyone that one of your largest physician
12:10PM 7 clients had heard from a competitor that HDL was violating the
12:10PM 8 law?

12:10PM 9 A. I believe I first reached out to Cal Dent about it, yes.

12:10PM 10 Q. Reached out to anyone else about these accusations?

12:10PM 11 A. After I spoke with him, I called and spoke to Tonya about
12:10PM 12 it.

12:10PM 13 Q. what did you tell defendant Mallory?

12:10PM 14 A. Just gave her a background of what was happening. And I
12:10PM 15 think she apparently knows Scott Davis and Frank Ruderman. And
12:10PM 16 then she sent me this email and provided the LeClairRyan
12:10PM 17 opinion.

12:10PM 18 Q. You mentioned the LeClairRyan opinion. Do you see the
12:11PM 19 attachment portion of this email? It says "LeClair opinion,
12:11PM 20 P&H"?

12:11PM 21 A. Yes.

12:11PM 22 Q. would you please turn to Tab 4 -- excuse me -- Tab 5 of
12:11PM 23 your binder, Plaintiffs' Trial Exhibit 1253. Are you familiar
12:11PM 24 with Exhibit 1253?

12:11PM 25 A. Yes, I am.

1 12:11 PM Q. How are you familiar with it?

2 12:11 PM A. This is the -- this is the legal opinion that was emailed
3 to me.

4 12:11 PM Q. From who?

5 12:11 PM A. From Tonya Mallory.

6 MR. TERRANOVA: Your Honor, we would offer into
7 evidence Plaintiffs' Trial Exhibit 1253.

8 THE COURT: Any objection?

9 MR. COOKE: No objection.

10 MR. ASHMORE: No, sir.

11 THE COURT: Plaintiffs' 1253 is offered without
12 objection -- admitted without objection.

13 BY MR. TERRANOVA:

14 Q. What is the date of LeClairRyan's letter in Exhibit 1253?

15 A. This is April 27th, 2012.

16 Q. How did you react to receiving from defendant Mallory the
17 LeClairRyan letter?

18 A. I was relieved to know that there was a medical -- or a
19 legal opinion out there regarding this.

20 Q. If you'd turn back to Tab 4, which is Plaintiffs' Exhibit
21 1310, do you see the date of this email attaching the
22 LeClairRyan opinion as August 22nd, 2012?

23 A. Yes.

24 Q. Did you ever received a copy of a LeClairRyan letter
25 that's in Exhibit 1253 before August 2012?

1 12:12 PM A. No, I had not.

2 12:12 PM Q. How long had you be been working at Bluewave selling HDL
3 tests by August 2012?

4 12:12 PM A. It would have been right about a year and a half at that
5 point.

6 12:12 PM Q. Before August 2012, had you been explaining to physician
7 practices that they could receive processing and handling fees
8 per patient?

9 12:13 PM A. Yes.

10 12:13 PM Q. Were other Bluewave sales representatives doing that?

11 12:13 PM A. I'm sorry. Can you repeat the question?

12 12:13 PM Q. Sure.

13 were other sales representatives at Bluewave going
14 around to physician practices before August 2012 offering
15 processing and handling fees?

16 12:13 PM A. Yes, they were.

17 12:13 PM Q. During your time at Bluewave, did you ever see a legal
18 opinion regarding waiving copayments and deductibles?

19 12:13 PM A. I did not.

20 12:13 PM Q. Did you ever see a legal opinion regarding waiving
21 copayments and deductibles on TRICARE claims?

22 12:13 PM A. No.

23 12:13 PM Q. Did you ever see a legal opinion on paying commissions to
24 contractors to refer Medicare patients?

25 12:13 PM A. No.

1 1 2 : 1 3 P M 1 Q. Did any physicians ask you how HDL could pay \$20 in
2 processing and handling fees?

3 1 2 : 1 3 P M 3 A. The question didn't come up that much, but it came up
4 maybe a handful of times.

5 1 2 : 1 4 P M 5 Q. Did any physicians ask you how HDL could pay processing
6 and handling fees at all?

7 1 2 : 1 4 P M 7 A. There was a Dr. Crumbliss in Abilene who was a former
8 Berkeley user and current Boston Heart user who was asking
9 about it.

10 1 2 : 1 4 P M 10 Q. Other physicians?

11 1 2 : 1 4 P M 11 A. Several of them had asked about it, I guess.

12 1 2 : 1 4 P M 12 Q. How did you respond to questions about the legality of P&H
13 fees?

14 1 2 : 1 4 P M 14 A. If it came up, we responded by saying that there was a
15 medical opinion based on a time and motion study that actually
16 presented a dollar amount higher than 20.

17 1 2 : 1 4 P M 17 Q. How did you know what to say to physicians about the
18 legality of P&H fees?

19 1 2 : 1 4 P M 19 A. Just simply that HDL had a legal opinion that backed up
20 the decision to do it.

21 1 2 : 1 4 P M 21 Q. And how did you know about that?

22 1 2 : 1 4 P M 22 A. We were informed by BlueWave and HDL.

23 1 2 : 1 4 P M 23 Q. Who at BlueWave informed you?

24 1 2 : 1 5 P M 24 A. It would have been Brad and Cal.

25 1 2 : 1 5 P M 25 Q. Brad who?

1 12:15 PM A. Brad Johnson and Cal Dent.

2 12:15 PM Q. Who at HDL advised you about the legality of the
3 processing and handling fees?

4 12:15 PM A. There were several individuals. There was Tonya Mallory,
5 Joe McConnell, Russ Warnick, Tabitha Henley. They all said it
6 at one point or another.

7 12:15 PM Q. As a sales representative for Bluewave, did your ability
8 to offer processing and handling fees have any effect on sales?

9 12:15 PM A. I'm sure it probably did.

10 12:15 PM Q. In what way?

11 12:15 PM A. I'm sure doctors agreed to come over and utilize this
12 because they had not previously received processing and
13 handling from their former laboratories.

14 12:15 PM Q. Did your ability to offer no-balance billing have any
15 effect on sales?

16 12:15 PM A. I believe it did.

17 12:15 PM Q. What effect?

18 12:15 PM A. It was -- again, it was good news to the doctor because
19 that was a real paying point, especially in the Texas market.
20 So it was a relief to know that these patients would not be
21 billed.

22 12:16 PM Q. Did there come a time when you began to have concerns
23 about offering P&H fees?

24 12:16 PM A. Later on in the process, yes.

25 12:16 PM Q. And when was that?

1 12:16 PM A. when we had learned that an investigation was under way.

2 12:16 PM Q. How did you learn of the investigation?

3 12:16 PM A. we had had a conference call. Bluewave conducted a
4 conference call about it.

5 12:16 PM Q. who was on that conference call?

6 12:16 PM A. All of the contracted sales reps and then Brad Johnson and
7 Cal Dent.

8 12:16 PM Q. On this BlueWave conference call, who informed you about
9 the investigation?

10 12:16 PM A. As I recall, I believe Cal Dent did most of the talking
11 and explained that the investigation was happening.

12 12:16 PM Q. what did defendant Dent explain to the Bluewave sales reps
13 on the call about the investigation?

14 12:16 PM A. As I recall, he had mentioned that it had been rumored for
15 a long time that an investigation was occurring. And then he
16 said that unfortunately those rumors are correct but as of
17 right now there was no action that we needed to take as a sales
18 team, that it was just business as usual, and we just needed to
19 be aware that there was an investigation.

20 12:17 PM Q. Did anyone on this sales call mention what they thought
21 the focus of the investigation was?

22 12:17 PM A. They mentioned that it was around processing and handling,
23 but they also mentioned that several labs were undergoing the
24 same investigation.

25 12:17 PM Q. were there any attorneys for Bluewave on this conference

1 call?

2 A. I don't remember.

3 Q. Did anyone at Bluewave say whether the Bluewave sales
4 representatives could speak with investigators?

5 A. We were advised not to speak with investigators.

6 Q. Who advised you not to speak with investigators?

7 A. I believe Cal said that.

8 Q. Cal who?

9 A. Cal Dent.

10 Q. And that conference call with Bluewave, did anyone
11 recommend what you should do with your emails?

12 A. It was suggested that we get rid of any emails that were
13 over 90 days old.

14 Q. Who suggested that?

15 A. Cal Dent suggested that.

16 Q. Did that explain why he told Bluewave sales
17 representatives to get rid of any emails that were over 90 days
18 old?

19 A. He had indicated that it's a practice that he undergoes
20 and that he recommended that we do the same.

21 Q. Did there come a time when HDL stopped paying processing
22 and handling fees to physicians?

23 A. Yes.

24 Q. When was that?

25 A. Immediately following the special fraud alert issued by

1 the OIG.

2 Q. What was the special fraud alert?

3 A. I believe it was in June of 2014, where they basically
4 stated that the payment of processing and handling would be
5 considered a violation of anti-kickback laws.

6 Q. How did you learn of the special fraud alert?

7 A. There was a link to the special fraud alert that was
8 emailed to all of us.

9 Q. Emailed by who?

10 A. Probably would have been emailed by somebody at BlueWave.

11 Q. Did you ever discuss the special fraud alert with any of
12 the defendants?

13 A. Not -- not in great detail, no. I mean, we had a couple
14 of conference calls about it, but I don't think I had any
15 one-on-one conversations.

16 Q. What was discussed on the conference call regarding the
17 special fraud alert?

18 A. Primarily that we needed to start informing our physician
19 practices that, due to this, that the payment of processing and
20 handling would no longer continue beyond a certain date.

21 Q. And who said that during this conference call?

22 A. I believe -- I believe it was Cal that was telling us
23 about this.

24 Q. Cal who?

25 A. Cal Dent. Sorry.

1 12:19 PM Q. who else was on this conference call?

2 12:19 PM A. Brad Johnson was on it; all the Bluewave contractors were
3 on it. I don't recall who else was on it, actually.

4 12:20 PM Q. Did anyone at Bluewave during this conference call mention
5 physicians' ordering practices?

6 12:20 PM A. They referenced it a little bit.

7 12:20 PM Q. Can you explain to the jury what was described on the
8 conference call by Bluewave?

9 12:20 PM A. The suggestion was that again we get this notice out and
10 tell the physicians that this is the reason that the processing
11 and handling would have to start going -- or would go away.

12 And then, you know, we were encouraged to, you know,
13 tell the doctors and the physician practices to keep ordering
14 the tests and to not change their habits.

15 12:20 PM Q. who encouraged you on this conference call to tell
16 physician practices to keep ordering the tests after the
17 special fraud alert after HDL stopped paying P&H fees to
18 physicians?

19 12:20 PM A. Both Brad Johnson and Cal Dent said that.

20 12:21 PM Q. well, why did they -- explain that.

21 12:21 PM A. Just because there was, I guess, a little bit of a concern
22 that once the processing and handling payments went away, the
23 doctors would stop utilizing the laboratory. And they didn't
24 want that, neither did the salespeople.

25 12:21 PM Q. Did anyone at Bluewave suggest any sales tactics that the

1 BlueWave representatives could use to try and keep up sales
2 after the P&H fees ended?

3 A. Yes. We were told that the laboratories could place
4 either a phlebotomist in the practice or that, if need be, the
5 practice could utilize a third-party draw station.

6 Q. Let's talk about both of those sales tactics; the first,
7 placing a phlebotomist in a physician's office. Can you
8 explain what that entails?

9 A. If a physician practice had a problem drawing blood or
10 they were short-staffed, we could request that either HDL or
11 Singulex provide a person in there as a phlebotomist to perform
12 that task for the doctor.

13 Q. In that scenario, who would be paying the phlebotomist's
14 salary?

15 A. The laboratory.

16 Q. In this case HDL?

17 A. HDL or Singulex would pay the salary.

18 Q. Did HDL hire as a phlebotomist any physician practice's
19 existing employee?

20 A. I don't recall specifically, although I know the question
21 came up.

22 Q. With respect to that second sales tactic, third-party draw
23 sites, can you explain what that referred to?

24 A. Yeah. We didn't -- this wasn't big in north Texas, but
25 there are freestanding draw sites, either independently owned

1 or they would be owned in some cases by the lab. whereas, if
2 the patient couldn't get their blood drawn in the doctor's
3 office, then they could actually go to the draw site and have
4 their blood drawn there.

5 Q. would HDL pay anyone for this third-party draw site?

6 A. If the draw site requested a fee for that, then HDL would
7 agree to pay a fee to the draw site.

8 Q. what was this fee called that HDL was paying to the draw
9 site?

10 A. I believe it was just a third-party processing and
11 handling fee.

12 Q. Even after the special fraud alert, HDL was paying
13 processing and handling fees to third-party draw sites?

14 A. To third-party draw sites, yes.

15 Q. were any of the draw sites associated with physician
16 practices?

17 A. I don't -- they may have been.

18 Q. Did you have any in-person meetings with Bluewave after
19 the special fraud alert?

20 A. Yes.

21 Q. where?

22 A. we had a -- a team meeting in Atlanta in August of 2014, I
23 believe it was.

24 Q. who attended this team meeting in Atlanta in August 2014?

25 A. It was all of the BlueWave contractors except for one, and

1 then Brad Johnson and Cal Dent were there.

2 Q. During your years at Bluewave, have there ever been an
3 in-person meeting with all the Bluewave sales reps before?

4 A. No.

5 Q. Did any lawyers attend this meeting in August 2014 in
6 Atlanta?

7 A. Not that I remember.

8 Q. In the Atlanta meeting, did any of the defendants mention
9 sales tactics that could be used instead of P&H?

10 A. Yes. Again, they referenced the placement of
11 phlebotomists or the utilization of the third-party draw sites.

12 Q. After the special fraud alert, did you notice any change
13 in your client physicians' ordering?

14 A. We didn't have a big change in Texas. I think we noticed
15 maybe a moderate 15 to 20 percent decline.

16 Q. What caused the 15 to 20 percent decline in orders in your
17 practice after the special fraud alert?

18 MR. COOKE: Objection. That calls for speculation.
19 Lacks foundation.

20 THE COURT: Lay the foundation. Sustained.

21 BY MR. TERRANOVA:

22 Q. Were there any reasons that physician clients ordered
23 fewer tests after the special fraud alert?

24 A. Several of the providers --

25 MR. COOKE: Same objection, Your Honor. Lacks

1 foundation and calls for speculation.

2 THE COURT: I believe he -- overruled. He's
3 describing his communication.

4 Proceed.

5 Overruled.

6 THE WITNESS: Several of the providers had indicated
7 that they were frustrated that the processing and handling was
8 going away, but those providers that expressed their
9 frustration didn't tend to change their ordering habits.

10 The ones that declined, we were never really
11 told why. They just kind of trailed off. We never saw them
12 again.

13 BY MR. TERRANOVA:

14 Q. How long did you keep selling tests for BlueWave?

15 A. Until HDL canceled the contract.

16 Q. When was that?

17 A. In January of 2015.

18 Q. Were you the only one whose contract was canceled by HDL?

19 A. Well, no. The BlueWave contract was canceled by HDL. And
20 then all of the contractors were relieved of our non-compete by
21 HDL.

22 Q. What happened to HDL after it canceled the BlueWave
23 contract?

24 A. They tried to remain in business. They reached out to
25 several of the BlueWave contractors and made several of them

1 offers to come on as full-time w-2 employees.

2 Q. How long did HDL continue to operate after -- after it
3 ended the BlueWave contract?

4 A. Just a few months. Maybe six months after.

5 Q. What happened then?

6 A. They filed bankruptcy.

7 Q. Were there any statements by defendants that you now find
8 concerning?

9 MR. COOKE: Objection, Your Honor. Lacks foundation.

10 THE COURT: Why don't you be more precise.

11 Sustained.

12 BY MR. TERRANOVA:

13 Q. Did any of the defendants talk to you about the law in a
14 manner that you found concerning?

15 A. Yes. There were conversations where it was stated that
16 it's not so much what the law says; it's what the law doesn't
17 say.

18 Q. Who told you it's not what the law says; it's what the law
19 doesn't say?

20 A. Cal Dent.

21 Q. In what context did defendant Dent make that statement
22 about the law to you?

23 A. It was over the course of a typical phone call. So I
24 don't specifically recall what we were discussing at the time,
25 but that statement stood out.

1 12:27 PM Q. Do you recall whether P&H fees were being discussed on
2 that call?

3 12:27 PM A. I'm sure that's what led to this.

4 12:27 PM Q. Do you have any regrets about your time working at
5 Bluewave?

6 12:27 PM A. Yes.

7 12:27 PM Q. What are they?

8 12:27 PM A. Everything.

9 12:27 PM Q. Why is that?

10 12:27 PM A. Because this has cost me my career.

11 12:28 PM MR. COOKE: Your Honor, objection to the relevance of
12 this question.

13 12:28 PM THE WITNESS: Well, I'm going to talk anyway.

14 12:28 PM THE COURT: Overruled.

15 12:28 PM THE WITNESS: This has cost me my reputation. My
16 association with them has almost cost me my family. This just
17 wasn't worth it.

18 12:28 PM BY MR. TERRANOVA:

19 12:28 PM Q. Did processing and handling fees play a role in physicians
20 ordering HDL and Singulex tests?

21 12:28 PM MR. COOKE: Objection. Calls for speculation and
22 lacks --

23 12:28 PM THE COURT: Overruled.

24 12:28 PM THE WITNESS: I believe now that it did.

25 12:28 PM BY MR. TERRANOVA:

1 12:28 PM Q. Do you believe P&H fees should have been offered to
2 physicians?

3 MR. COOKE: Objection, Your Honor. Not qualified to
4 answer that. Pure speculation.

5 THE COURT: Overruled.

6 Go ahead.

7 THE WITNESS: Knowing what I know now, no, they
8 should have never been offered.

9 MR. TERRANOVA: No further questions, Your Honor.

10 THE COURT: Folks, it's 12:30. I think it's a good
11 time to break for lunch. If we can get back within the hour,
12 that would be great. Very good.

13 (Whereupon the jury was excused from the courtroom.)

14 THE COURT: Okay. Please be seated. Are there any
15 matters that the parties need to address with the Court?

16 First the government?

17 MR. LEVENTIS: No, Your Honor.

18 THE COURT: Defense?

19 MR. COOKE: No, Your Honor.

20 MR. ASHMORE: No, sir.

21 THE COURT: Very good. We'll begin cross-examination
22 immediately after lunch.

23 MR. COOKE: Thank you.

24 MR. LEVENTIS: Thank you.

25 THE COURT: Counsel, let me make one statement here.

1 Obviously, the witness is on the stand, and no one should speak
2 to him during lunch regarding his testimony.

3 Thank you. You're free to leave.

4 Thank you, sir. Out the front.

5 (Lunch recess.)

6 **THE COURT:** Good afternoon. Please be seated.

7 Any matters to bring to the Court's attention?

8 **MR. LEVENTIS:** No, Your Honor.

9 **THE COURT:** From the defense?

10 **MR. COOKE:** None, Your Honor.

11 **THE COURT:** Are all our jurors available?

12 **THE DEPUTY:** Yes, sir.

13 **THE COURT:** Very good. Let's bring in the jury.

14 **MR. LEVENTIS:** Your Honor, do you want us to go ahead
15 and have Mr. Cornwell seated?

16 **THE COURT:** You can do that.

17 (Whereupon the jury entered the courtroom.)

18 **THE COURT:** Please be seated.

19 Cross-examination, Mr. Cooke?

20 **MR. COOKE:** Thank you, Your Honor. May I proceed?

21 **THE COURT:** You may.

22 **MR. COOKE:** Thank you.

23 **CROSS-EXAMINATION**

24 **BY MR. COOKE:**

25 **Q.** Good afternoon, Mr. Cornwell.

1 : 3 8 P M 1 A. Hello.

1 : 3 8 P M 2 Q. My name is Dawes Cooke, and I represent BlueWave and I
1 : 3 8 P M 3 represent Brad Johnson and Cal Dent. Nice to meet you.

1 : 3 8 P M 4 A. Thank you.

1 : 3 8 P M 5 Q. I want to cover pretty much the subject matter, maybe not
1 : 3 8 P M 6 as much length as Mr. Terranova covered with you. But you
1 : 3 9 P M 7 talked about your business relationship with BlueWave.

1 : 3 9 P M 8 And if I understand correctly, you initially elected
1 : 3 9 P M 9 to become an employee but then around February of 2011 you
1 : 3 9 P M 10 became an independent contractor?

1 : 3 9 P M 11 A. Yes, that's correct.

1 : 3 9 P M 12 Q. And by that, that meant that you were no longer a w-2
1 : 3 9 P M 13 employee, for example; you were paid under a 1099.

1 : 3 9 P M 14 Is that how they paid you?

1 : 3 9 P M 15 A. Yes, that's correct.

1 : 3 9 P M 16 Q. All right. And they would pay your company -- you formed
1 : 3 9 P M 17 a company called J.P. Cornwell?

1 : 3 9 P M 18 A. Yes.

1 : 3 9 P M 19 Q. Yes?

1 : 3 9 P M 20 A. Yes.

1 : 3 9 P M 21 Q. And you paid your own expenses?

1 : 3 9 P M 22 A. Yes.

1 : 3 9 P M 23 Q. So they didn't supply you with a cell phone?

1 : 3 9 P M 24 A. They did not, no.

1 : 3 9 P M 25 Q. They did let you use -- you had a Bluewave email address;

1 correct?

2 A. Correct.

3 Q. And a business card, I presume, that said "BlueWave" on
4 it?

5 A. Yes.

6 Q. But you considered yourself an independent contractor?

7 A. Yes.

8 Q. Did they try to tell you what hours to work or what
9 doctors that you could visit and couldn't visit?

10 A. No, they didn't do that.

11 Q. All right. So it was left to you to try to find the best
12 way to sell these tests; right?

13 A. Correct.

14 Q. And any questions about it but that they wanted you to
15 sell as many of them as you could?

16 A. Yes.

17 Q. Well, my question was a double negative.

18 You understood they wanted you to sell as many of
19 them as you could; right?

20 A. Correct. That's correct.

21 Q. That's what salesmen do?

22 A. Yes.

23 Q. And you didn't question whether there was anything wrong
24 with trying to sell these things as hard as you could?

25 A. I did not question that, no.

1 : 4 0 P M 1 Q. Did you learn about the -- well, I'll get into that in
1 : 4 0 P M 2 just a minute.

1 : 4 0 P M 3 Your company actually did some work for another
1 : 4 0 P M 4 laboratory and a pharmacy too; right? Correct? A small amount
5 of work selling for somebody else other than HDL and Singulex?

1 : 4 0 P M 6 A. We -- we had a separate compounding pharmacy that we would
1 : 4 1 P M 7 do business with.

1 : 4 1 P M 8 Q. Okay. And that had nothing to do with Bluewave, had
1 : 4 1 P M 9 nothing to do with HDL, had nothing to do with Singulex?

1 : 4 1 P M 10 A. Correct.

1 : 4 1 P M 11 Q. That was just something you did as another line of
1 : 4 1 P M 12 business for yourself?

1 : 4 1 P M 13 A. That's correct.

1 : 4 1 P M 14 Q. Did you learn about the science behind these tests?

1 : 4 1 P M 15 A. I did.

1 : 4 1 P M 16 Q. Did you believe -- you're not a doctor; right?

1 : 4 1 P M 17 A. I'm not a doctor, no.

1 : 4 1 P M 18 Q. You've got experience -- you worked at a company called
1 : 4 1 P M 19 Myriad and a company called Quest.

1 : 4 1 P M 20 And Quest is a lab; right?

1 : 4 1 P M 21 A. They are.

1 : 4 1 P M 22 Q. Did you -- did you believe in the science behind these
1 : 4 1 P M 23 tests?

1 : 4 1 P M 24 A. Yes, I did.

1 : 4 1 P M 25 Q. Okay. And what was -- what was unique about them?

1 : 4 1 P M 1 A. They were tests typically that we had not seen before.
1 : 4 1 P M 2 Other laboratories would offer them, but we didn't -- I had
1 : 4 1 P M 3 never sold these particular tests before.

1 : 4 1 P M 4 Q. Were they -- did you review literature that made it pretty
1 : 4 2 P M 5 clear to you that they could pick up abnormalities in the blood
1 : 4 2 P M 6 that a standard lipid test would not pick up?

1 : 4 2 P M 7 A. Yes, the literature would show that.

1 : 4 2 P M 8 Q. And that's what you would explain to doctors when you went
1 : 4 2 P M 9 into their offices; right?

1 : 4 2 P M 10 A. Yes.

1 : 4 2 P M 11 Q. You've got a lot of experience as a salesman; right?

1 : 4 2 P M 12 A. Yes.

1 : 4 2 P M 13 Q. Do you find in your experience that, when you go to try to
1 : 4 2 P M 14 sell things to doctors, you better know what you're talking
1 : 4 2 P M 15 about?

1 : 4 2 P M 16 A. In most cases, yes.

1 : 4 2 P M 17 Q. But a doctor, chances are, is going to be fairly skeptical
1 : 4 2 P M 18 of some young guy who's obviously a salesman walks in and
1 : 4 2 P M 19 starts telling them a bunch of hogwash about -- about medical
1 : 4 2 P M 20 studies; right?

1 : 4 2 P M 21 A. Well, yeah. They'll know if what I'm telling them is not
1 : 4 2 P M 22 right.

1 : 4 2 P M 23 Q. So you would -- it would be fair to say that, if you were
1 : 4 2 P M 24 able to sell these tests to the doctor, it's because you
1 : 4 2 P M 25 provided him with the relevant information and he made his

1 judgment as to whether they were valid or not?

2 A. Yes. He would make his or her judgment on the clinical
3 efficacy of it, yes.

4 Q. I assume not every doctor you offered the test to bought
5 them?

6 A. No, not every one of them.

7 Q. Some did, some didn't.

8 You've had compliance training throughout your career
9 as a salesman; right?

10 A. Yes, I have.

11 Q. And that -- and when we say compliance, is that just kind
12 of shorthand for understanding some of the complex laws that
13 involve the health care field?

14 A. Yes.

15 Q. And that would be things like the Anti-Kickback Statute,
16 Stark Law, HIPAA, all those kinds of things?

17 A. Yes.

18 Q. And when you're dealing with doctors and in the medical
19 profession, you need to understand something about the law?

20 A. Correct.

21 Q. So you received compliance training at Myriad?

22 A. I did.

23 Q. You received compliance training at Quest?

24 A. Yes.

25 Q. And you also received -- I think you said not immediately,

1 : 4 3 P M 1 but after some time you received some additional training at --
2 with BlueWave?

1 : 4 3 P M 3 A. Yes.

1 : 4 4 P M 4 Q. You would have to listen to a presentation for an hour,
5 hour and a half on the telephone; is that right? On a
6 conference call?

1 : 4 4 P M 7 A. That's -- yes, we did that.

1 : 4 4 P M 8 Q. And then you'd be tested on whether you learned enough
9 about the material; right?

1 : 4 4 P M 10 A. Correct.

1 : 4 4 P M 11 Q. I'm going to show you a few of the tests that you took and
12 just have you go over it with the jury because there's some
13 concepts in here that they may not have seen before.

1 : 4 4 P M 14 So can I have BW-281?

1 : 4 4 P M 15 Okay. Can you see what that is?

1 : 4 4 P M 16 A. Yes.

1 : 4 4 P M 17 Q. And what is it?

1 : 4 4 P M 18 A. It's a -- a test that we had after a legal conference call
19 that we conducted as a team.

1 : 4 4 P M 20 Q. Did you pass this test?

1 : 4 4 P M 21 A. Yes, I did.

1 : 4 4 P M 22 Q. Okay. So this one was in December 30, 2012.

1 : 4 4 P M 23 was this the first one that you took? Do you
24 remember?

1 : 4 5 P M 25 A. I don't recall if this is the first one.

1 : 4 5 P M 1 Q. what's the first question?

1 : 4 5 P M 2 A. "I can give gift cards to physicians and phlebotomists?"

1 : 4 5 P M 3 Q. And the answer was?

1 : 4 5 P M 4 A. No.

1 : 4 5 P M 5 Q. Did you ever give gift cards to physicians or
1 : 4 5 P M 6 phlebotomists --

1 : 4 5 P M 7 A. No, I did not.

1 : 4 5 P M 8 Q. -- when you were in the offices?

1 : 4 5 P M 9 Never did?

1 : 4 5 P M 10 A. No.

1 : 4 5 P M 11 Q. Number 2, "You're working at a conference and see many of
1 : 4 5 P M 12 your current doctors. Can you take your doctors out to eat at
1 : 4 5 P M 13 this conference?"

1 : 4 5 P M 14 The answer?

1 : 4 5 P M 15 A. No.

1 : 4 5 P M 16 Q. why can't you do that?

1 : 4 5 P M 17 A. That, in some ways, would be against some Stark
1 : 4 5 P M 18 anti-kickback rules.

1 : 4 5 P M 19 Q. Because you might be providing an inducement to the doctor
1 : 4 5 P M 20 by trying to ingratiate yourself with him?

1 : 4 5 P M 21 A. Yes.

1 : 4 5 P M 22 Q. Can you supply hotel and pay for travel?

1 : 4 5 P M 23 A. No.

1 : 4 5 P M 24 Q. Same reason?

1 : 4 5 P M 25 A. Same reason.

1 : 4 5 P M 1 Q. Can you pay for referrals?

1 : 4 5 P M 2 A. To a doctor, no, you cannot. Whenever I took this, I read
1 : 4 6 P M 3 that to understand referrals coming from partner
1 : 4 6 P M 4 representatives.

1 : 4 6 P M 5 Q. Right. And we're going to show you a later one where you
1 : 4 6 P M 6 got that one right.

1 : 4 6 P M 7 But on this one, you thought it was like could you
1 : 4 6 P M 8 give a referral fee from another sales rep or something like
1 : 4 6 P M 9 that?

1 : 4 6 P M 10 A. Right, because I worked with several reps in the
1 : 4 6 P M 11 territory, and I read that question to mean the rep, not the
1 : 4 6 P M 12 doctor.

1 : 4 6 P M 13 Q. Okay. But no question in your mind, you can't pay a
1 : 4 6 P M 14 doctor a referral fee?

1 : 4 6 P M 15 A. No, you cannot pay them.

1 : 4 6 P M 16 Q. Can you supply your physician with a -- I'm sorry.

1 : 4 6 P M 17 Can you supply a lab with equipment not related to
1 : 4 6 P M 18 lab services?

1 : 4 6 P M 19 A. No.

1 : 4 6 P M 20 Q. But you can supply a phlebotomist.

1 : 4 6 P M 21 what's the difference between supplying a
1 : 4 6 P M 22 phlebotomist and supplying equipment not related to lab
1 : 4 6 P M 23 services?

1 : 4 6 P M 24 A. Well, the contracted representatives and Bluewave would
1 : 4 6 P M 25 not supply a phlebotomist. It would be the laboratory that

1 would supply that.

2 Q. Right. But -- and the reason they can do that is because
3 the phlebotomist would be performing a service for the
4 laboratory; right?

5 A. Correct.

6 Q. Getting the blood to the lab.

7 whereas, if you supplied equipment not related to lab
8 services, you'd be providing a benefit to the doctor not for
9 the benefit of the laboratory?

10 A. Correct.

11 Q. Okay. Can you persuade your doctor to perform unnecessary
12 tests?

13 A. No.

14 Q. All right. Do you think you're even able to do that?

15 A. Well, no, probably not. If a doctor doesn't believe in a
16 certain test, then he or she is not going to order it based on
17 anything that I say.

18 Q. And you don't sit with your doctor when the doctor's
19 taking care of his patients, do you?

20 A. No.

21 Q. Okay. So you don't even know what disease conditions the
22 patients are coming in with?

23 A. Correct, I don't know that.

24 Q. Basically, you're providing the doctor with a toolbox of
25 tests that he can choose from the ones that he thinks are going

1 to help his patients?

2 A. Correct.

3 Q. And if he doesn't want to order a whole panel, he can
4 order less than a whole panel?

5 A. Yeah, the physician has the discretion to make that
6 choice.

7 Q. Can you send a physician on a cruise?

8 A. No.

9 Q. Did somebody try to do that one time? Is that why they
10 put that on the exam?

11 A. I have no idea. Maybe.

12 Q. Okay. Can you emphasize in your presentations how much
13 the physician will make?

14 A. No.

15 Q. And that was your answer then?

16 A. Yes.

17 Q. would that always have been your answer?

18 A. Previous to this, we were -- we were told we could use a
19 pro forma if we needed to.

20 Q. well, is there any rule that you're aware of that says you
21 can't answer questions that a doctor asks about the financial
22 aspects of your arrangement?

23 A. I'm not aware of any rule to that.

24 Q. Okay. Can you go to prison for violating Stark and
25 anti-kickback laws?

1 : 4 8 P M 1 A. Yes.

1 : 4 8 P M 2 Q. Can you persuade your doctor to perform unnecessary tests?

1 : 4 8 P M 3 A. No.

1 : 4 8 P M 4 Q. Then "Do we balance-bill patients? Explain."

1 : 4 9 P M 5 A. Yeah, it says that we will bill in accordance with any
1 : 4 9 P M 6 federal or state laws along with the parameters outlined by the
1 : 4 9 P M 7 patient's insurance policy.

1 : 4 9 P M 8 Q. And does that refer to the fact that some states may have
1 : 4 9 P M 9 different laws about whether you can balance-bill a patient,
1 : 4 9 P M 10 and some contracts -- and some insurance programs may also have
1 : 4 9 P M 11 specific rules about that?

1 : 4 9 P M 12 A. I believe that question refers to the state-specific rules
1 : 4 9 P M 13 about that, yes.

1 : 4 9 P M 14 Q. Okay. Do we bill for copays and deductibles?

1 : 4 9 P M 15 A. Yeah, it says we bill for copays and deductibles if the
1 : 4 9 P M 16 patient's insurance policy or any statutory requirements
1 : 4 9 P M 17 mandate that we bill for that.

1 : 4 9 P M 18 Q. Here are a couple of trickier ones.

1 : 4 9 P M 19 If the doctor tells you he will do a hundred tests a
1 : 4 9 P M 20 week if you "give him an RD" -- what's an RD?

1 : 4 9 P M 21 A. Registered dietician.

1 : 4 9 P M 22 Q. What do you say?

1 : 4 9 P M 23 A. It says that we have no requirements for that, but I'll
1 : 4 9 P M 24 check and see if we can get the person approved.

1 : 5 0 P M 25 Q. In other words, we have no requirements that you have to

1 meet a certain level before you're entitled to have a
2 dietician?

3 A. Correct.

4 Q. Is that the same as a health coach, a dietician?

5 A. It is the same as a health coach, yes.

6 Q. A doctor asks if I can get a \$25.00 draw fee.

7 Your answer?

8 A. No, that the limit is \$3 on the draw fee, and then the
9 additional processing and handling portion is \$17.

10 Q. Now, that was actually kind of a trick question, wasn't
11 it, because it uses the word "draw fee"?

12 A. Correct.

13 Q. All right. And you can do a \$3.00 draw free; right? A
14 draw fee is different than a P&H fee?

15 A. Yes. The laboratory would offer a \$3 draw fee and a \$17
16 processing and handling.

17 Q. So one word makes a big difference there; right?

18 If you call it a draw fee, that means one thing.

19 That's drawing the blood. And if you use processing and
20 handling, that's the rest of the process of getting the blood
21 and specimen to the laboratory?

22 A. Correct.

23 Q. Okay. So they didn't trick you on that question. You
24 said, no, we have \$3 on the draw fee, an additional 17 for the
25 processing and handling portion?

1 : 51 PM 1 A. Correct.

1 : 51 PM 2 Q. One word makes a big difference, doesn't it?

1 : 51 PM 3 A. Yes.

1 : 51 PM 4 Q. Do we have a legal document for the P&H?

1 : 51 PM 5 A. Yes.

1 : 51 PM 6 Q. Both internal and third party?

1 : 51 PM 7 A. Yes.

1 : 51 PM 8 Q. And what are you referring to there?

1 : 51 PM 9 A. Apparently, the way I read this question is -- is there --
1 : 51 PM 10 there's a -- I'm referring to apparently the internal time and
1 : 51 PM 11 motion study, and then there's apparently a third party that I
1 : 51 PM 12 was told to conduct a time and motion study as well.

1 : 51 PM 13 Q. What is the P&H fee? Describe.

1 : 51 PM 14 A. A P&H reimbursement is given for any legal provider that
1 : 51 PM 15 chooses to send out testing to HDL from his or her own
1 : 51 PM 16 practice. \$3 of the reimbursement is the Medicare-allowable
1 : 51 PM 17 draw fee, and the additional \$17 is the P&H reimbursement
1 : 51 PM 18 itself.

1 : 51 PM 19 Q. I notice that you use the word "reimbursement" there.

1 : 52 PM 20 That was your word; right?

1 : 52 PM 21 A. Yes.

1 : 52 PM 22 Q. You didn't say "profit." You said reimbursement.

1 : 52 PM 23 A. Correct.

1 : 52 PM 24 Q. And that suggests that it's to reimburse him for his own
1 : 52 PM 25 costs?

1 : 5 2 P M 1 A. Correct.

1 : 5 2 P M 2 Q. How much is the P&H fee? Can you pay any amount?

1 : 5 2 P M 3 A. No. \$17 is the P&H fee with the additional \$3 draw fee
1 : 5 2 P M 4 added if the physician chooses. If the provider agrees to
1 : 5 2 P M 5 accept less, then the laboratory can do that. However, the
1 : 5 2 P M 6 laboratory cannot go higher than that.

1 : 5 2 P M 7 Q. And no matter how many tests he ordered, if it's still
1 : 5 2 P M 8 just four tubes, then it's the same amount of work for the
1 : 5 2 P M 9 doctor at least; right?

1 : 5 2 P M 10 A. Correct.

1 : 5 2 P M 11 Q. How many tests do I have to do to get an RD?

1 : 5 2 P M 12 A. There's no preset requirements. We have to ask for
1 : 5 2 P M 13 approval from the laboratory.

1 : 5 2 P M 14 Q. "And then how much can you spend per year?"

1 : 5 2 P M 15 Does that mean taking them out to dinner, stuff like
1 : 5 2 P M 16 that?

1 : 5 2 P M 17 A. Yeah, that was in reference to the Stark Law and how much
1 : 5 3 P M 18 you can spend per provider, NPI. And the rule was \$372.

1 : 5 3 P M 19 Q. Here's a good trick question: How much does a doctor earn
1 : 5 3 P M 20 from P&H fees for performing ten tests a week?

1 : 5 3 P M 21 And you answered that pretty well, didn't you?

1 : 5 3 P M 22 A. Yes.

1 : 5 3 P M 23 Q. Could you read your answer.

1 : 5 3 P M 24 A. "Providers do not earn money from P&H fees. It is a
1 : 5 3 P M 25 reimbursement that is offered for their time and effort for

1 staff allocation when sending out tests to HDL. However, if a
2 provider sent in an average of 10 tests per week for one
3 calendar year, he or she would be reimbursed a total of \$10,400
4 for accepting the full \$20 amount or \$8,840 if they opt out of
5 the \$3 draw portion."

6 Q. I get some important points from this, and one is that you
7 could do the math. It was all right to do the math to show how
8 much in P&H fees they would get for a certain number of tests,
9 but you couldn't characterize it as earnings; it had to be
10 characterized as a reimbursement?

11 A. Correct.

12 Q. Where did you learn that information?

13 A. On the legal compliance conference call that we had had
14 previous to this test, this is the information we discussed.

15 Q. Okay. So you learned that from BlueWave?

16 A. Correct.

17 Q. I'm not going to go through all the questions on all the
18 tests, but I do want to show 283. There are a few different
19 questions on here. Go to the second page of that, if you can,
20 Questions 21 -- and I'm sorry, this is for the year 2013,
21 September 18, 2013.

22 Question 21: Are you allowed to check boxes on
23 requisition forms? why?

24 what's the answer there?

25 A. No, only medical providers can check boxes.

1 : 5 5 P M 1 Q. In other words, you can't -- you can't prepopulate his
1 : 5 5 P M 2 order form; he's got to use his judgment about which tests he
1 : 5 5 P M 3 wants?

1 : 5 5 P M 4 A. Correct.

1 : 5 5 P M 5 Q. would you even know -- I mean, without seeing a patient,
1 : 5 5 P M 6 would you even know which tests the patient needs to have?

1 : 5 5 P M 7 A. I wouldn't know what test the patient needs to have. The
1 : 5 5 P M 8 only thing I would know is if the doctor gave me a preset list
1 : 5 5 P M 9 of tests that he's going to want on every patient.

1 : 5 5 P M 10 Q. Okay. Question 22 is a new one: Can you give comp tests
1 : 5 5 P M 11 to offices? Yes or no. why or not?

1 : 5 5 P M 12 A. No, because the laboratories do not offer comp tests.
1 : 5 5 P M 13 That would compete with Medicare.

1 : 5 5 P M 14 Q. All right. And where did you get that answer from?

1 : 5 5 P M 15 A. From the same. It would be from the compliance phone
1 : 5 5 P M 16 call.

1 : 5 5 P M 17 Q. Question 26: Can HDL place a phlebotomist in a practice
1 : 5 5 P M 18 and the practice still receive the P&H fee?

1 : 5 5 P M 19 A. No.

1 : 5 6 P M 20 Q. And go back to page 1, Question Number 4. This was the
1 : 5 6 P M 21 one that we talked about earlier.

1 : 5 6 P M 22 Can you pay for referrals?

1 : 5 6 P M 23 A. Right. The answer is no.

1 : 5 6 P M 24 Q. Take a quick look at BW-282. And I just want to get you
1 : 5 6 P M 25 to confirm that you took and passed that test again on May 23rd

1 of 2014. Did you?

2 A. Yes.

3 Q. You -- let's look at Plaintiffs' Exhibit 1253. This is
4 the letter from LeClairRyan.

5 what were you told about this letter?

6 A. I was told that this was the legal opinion that HDL
7 possessed which referenced and gave legal backup to the
8 processing and handling portion of the business model.

9 Q. Did you know who LeClairRyan was?

10 A. No, I had not heard of them.

11 Q. Did you look them up or anything?

12 A. No.

13 Q. How about Michael Ruggio? That's the lawyer who signed
14 that letter.

15 A. No, I'm not familiar with him.

16 Q. So what did this letter mean to you? As a person who's
17 out there trying to comply and trying to follow the law, what
18 did it mean to you to have a letter like this?

19 A. I typically didn't need to use this letter very much
20 except for the one circumstance that was referenced earlier.
21 It's not something I carried with me routinely, but it was good
22 to know that it was there.

23 Q. We will talk for a second about balance billing. And not
24 to beat a dead horse on that, but balance billing is the
25 process a lot of laboratories have where they'll bill what they

1 : 5 8 P M 1 can get for insurance and then the rest they'll send to the
1 : 5 8 P M 2 patient.

1 : 5 8 P M 3 And does that -- is that a barrier to patients who
1 : 5 8 P M 4 maybe can't afford or don't have good enough insurance to
1 : 5 8 P M 5 afford the best tests?

1 : 5 8 P M 6 A. It may be a barrier to some. I mean, doesn't necessarily
1 : 5 8 P M 7 stop the tests from being ordered.

1 : 5 8 P M 8 Q. Well, it certainly wouldn't stop the tests from being
1 : 5 8 P M 9 ordered from HDL; right? Because they don't balance-bill; they
1 : 5 8 P M 10 don't bill their patients for the difference?

1 : 5 8 P M 11 A. Right. Correct.

1 : 5 8 P M 12 Q. So that means that any patient can afford to have that
1 : 5 8 P M 13 test if they need it?

1 : 5 8 P M 14 A. Correct.

1 : 5 8 P M 15 Q. Now, that doesn't put any money in the doctor's pocket;
1 : 5 8 P M 16 right? The doctor's not paying for the test in the first
1 : 5 9 P M 17 place; the patients or their insurance companies are paying for
1 : 5 9 P M 18 the test?

1 : 5 9 P M 19 A. Correct.

1 : 5 9 P M 20 Q. But it's a benefit to the patients because, if they need
1 : 5 9 P M 21 the test -- if their doctor thinks they need the test, they can
1 : 5 9 P M 22 get the test?

1 : 5 9 P M 23 A. Correct.

1 : 5 9 P M 24 Q. It allows for better care for patients?

1 : 5 9 P M 25 A. Yes, it does.

1 : 5 9 P M 1 Q. Because a doctor is not going to order a test that is not
1 : 5 9 P M 2 medically indicated just because insurance will pay for it;
1 : 5 9 P M 3 right? The doctor has to only order tests that are medically
1 : 5 9 P M 4 necessary?

1 : 5 9 P M 5 A. Correct. They need to order that, and they need to order
1 : 5 9 P M 6 tests that they understand.

1 : 5 9 P M 7 Q. Exactly right. It's got to be something that they
1 : 5 9 P M 8 consider to be useful in taking care of this patient and
1 : 5 9 P M 9 hopefully make this patient less likely to have a heart attack?
1 : 5 9 P M 10 That's the bottom line?

1 : 5 9 P M 11 A. Correct.

1 : 5 9 P M 12 Q. You were asked some questions about targeting and looking
1 : 5 9 P M 13 for money-hungry doctors.

2 : 0 0 P M 14 A. Yes.

2 : 0 0 P M 15 Q. The only reference you ever saw to that you said was in an
2 : 0 0 P M 16 email?

2 : 0 0 P M 17 A. Correct.

2 : 0 0 P M 18 Q. You never saw a document until your deposition, right,
2 : 0 0 P M 19 that said the criterion for physicians?

2 : 0 0 P M 20 A. No. No.

2 : 0 0 P M 21 Q. There was no regular practice by BlueWave or by HDL or
2 : 0 0 P M 22 anybody else to say, "Go out and look for money-hungry
2 : 0 0 P M 23 doctors"?

2 : 0 0 P M 24 A. No. Not outside of the email, no.

2 : 0 0 P M 25 Q. And, actually, that didn't make a whole lot of sense to

2 : 0 0 P M 1 you anyway; right? Because when you approach a doctor, you
2 : 0 0 P M 2 don't have any way of knowing whether he's money hungry or not,
2 : 0 0 P M 3 do you?

2 : 0 0 P M 4 A. No. Not initially, no.

2 : 0 0 P M 5 Q. And because of that, you did not use that as a criterion
2 : 0 0 P M 6 for targeting doctors?

2 : 0 0 P M 7 A. Well, no. And most of the doctors listed on that email
2 : 0 0 P M 8 anyway were on a do-not-call list from the Berkeley HeartLab
2 : 0 0 P M 9 that we couldn't go after anyway.

2 : 0 0 P M 10 Q. But even generally, you would target doctors who were
2 : 0 1 P M 11 cardiologists, endocrinologists, family practice doctors, or
2 : 0 1 P M 12 doctors that you could get an entree with from other sales reps
2 : 0 1 P M 13 from other companies; right?

2 : 0 1 P M 14 A. Correct.

2 : 0 1 P M 15 Q. That's how you targeted doctors?

2 : 0 1 P M 16 A. Yes.

2 : 0 1 P M 17 Q. You weren't out there looking at eviction notices or
2 : 0 1 P M 18 something like that to find money-hungry doctors, were you?

2 : 0 1 P M 19 A. No, I was not doing that.

2 : 0 1 P M 20 Q. And nobody at Bluewave ever suggested that you do that,
2 : 0 1 P M 21 did they, Mr. Cornwell?

2 : 0 1 P M 22 A. No, they did not suggest that.

2 : 0 1 P M 23 Q. The meeting that you described with the doctor in Fort
2 : 0 1 P M 24 worth that Cal attended, you said that the doctor brought up
2 : 0 1 P M 25 the fact that he had certain rent obligations or something like

2 : 0 1 P M 1 that, and he asked the question of "How many P&H fees would I
2 : 0 1 P M 2 have to earn to pay that amount?"

2 : 0 1 P M 3 A. Yes, the doctor brought up that subject.

2 : 0 1 P M 4 Q. "How many P&H fees would I have to get?" The doctor
2 : 0 1 P M 5 brought that question up?

2 : 0 1 P M 6 A. Correct.

2 : 0 1 P M 7 Q. And it was a simple math question; right? I mean, it was
2 : 0 2 P M 8 \$20 -- how many increments of \$20 would it take to add up to a
2 : 0 2 P M 9 certain amount?

2 : 0 2 P M 10 A. Correct.

2 : 0 2 P M 11 Q. So that didn't involve any sort of complicated business
2 : 0 2 P M 12 analysis by Cal, did it?

2 : 0 2 P M 13 A. No, it did not.

2 : 0 2 P M 14 Q. So he was answering an honest math -- arithmetic question
2 : 0 2 P M 15 from a physician who asked a specific question?

2 : 0 2 P M 16 A. Yes.

2 : 0 2 P M 17 Q. And as an aside, that physician did not become a client of
2 : 0 2 P M 18 yours anyway, did he?

2 : 0 2 P M 19 A. No, he did not.

2 : 0 2 P M 20 Q. You never saw a written pro forma -- a document that
2 : 0 2 P M 21 called itself a pro forma-type document, did you?

2 : 0 2 P M 22 A. No, I never saw a document that said that.

2 : 0 2 P M 23 Q. You talked about Bent Tree, one of your biggest practices;
2 : 0 2 P M 24 right?

2 : 0 2 P M 25 A. Yes.

2 : 0 2 P M 1 Q. And they sounded like they were kind of lowest maybe.

2 : 0 2 P M 2 They wanted a \$50 processing and handling fee?

2 : 0 2 P M 3 A. That's correct.

2 : 0 2 P M 4 Q. And did they tell you that that's because they had higher
2 : 0 3 P M 5 overhead or higher expenses associated with the processing and
2 : 0 3 P M 6 handling?

2 : 0 3 P M 7 A. Yes. They explained that the \$20 that was being offered
2 : 0 3 P M 8 would not cover their employees' payment to do this.

2 : 0 3 P M 9 Q. Let's think about that for a minute. They told you that
2 : 0 3 P M 10 they didn't think \$20 was enough to cover their costs in doing
2 : 0 3 P M 11 your laboratory's work for them, processing and handling its
2 : 0 3 P M 12 specimens to get its specimens delivered to that laboratory?

2 : 0 3 P M 13 A. Correct.

2 : 0 3 P M 14 Q. So they made their case -- they made their case and said
2 : 0 3 P M 15 why they thought they should get more, why it was costing more?

2 : 0 3 P M 16 A. They did.

2 : 0 3 P M 17 Q. But they got what answer from HDL and from BlueWave?

2 : 0 3 P M 18 A. They were instructed that they could not receive over and
2 : 0 3 P M 19 above the \$20 amount.

2 : 0 3 P M 20 Q. No matter how much it was actually costing them to process
2 : 0 3 P M 21 and handle them?

2 : 0 3 P M 22 A. Correct.

2 : 0 3 P M 23 Q. So when they threatened to stop ordering tests, the
2 : 0 3 P M 24 implication was because they were having to pay out of their
2 : 0 4 P M 25 own pockets for the cost of ordering these tests for their

2 : 0 4 P M 1 patients?

2 : 0 4 P M 2 A. well, they didn't say that to me, but I'm assuming that's
2 : 0 4 P M 3 what they meant.

2 : 0 4 P M 4 Q. So what they did instead was they proposed that the --
2 : 0 4 P M 5 that they lease some space to HDL; right?

2 : 0 4 P M 6 A. Correct.

2 : 0 4 P M 7 Q. And this would not be space for processing and handling
2 : 0 4 P M 8 specimens; this would be space for providing the dietician or
2 : 0 4 P M 9 the life care coach?

2 : 0 4 P M 10 A. Correct.

2 : 0 4 P M 11 Q. I mean, health care coach.

2 : 0 4 P M 12 A. Correct.

2 : 0 4 P M 13 Q. So that would be -- that would be a function of HDL;
2 : 0 4 P M 14 right? HDL was the one that provides the health coaches --

2 : 0 4 P M 15 A. That's correct.

2 : 0 4 P M 16 Q. -- as part of its testing process?

2 : 0 4 P M 17 A. Yes.

2 : 0 4 P M 18 Q. So they could legitimately say, "well, we're going to rent
2 : 0 4 P M 19 space from you, and we're going to -- we're going to put our
2 : 0 4 P M 20 phlebotomist" -- I mean, not our phlebotomist -- "our health
2 : 0 4 P M 21 care coach in there," and that that would at least be -- help
2 : 0 4 P M 22 you offset some of your costs; right?

2 : 0 4 P M 23 A. Correct.

2 : 0 5 P M 24 Q. Now, you talked to -- you talked to Cal Dent about that,
2 : 0 5 P M 25 didn't you?

2 : 0 5 P M 1 A. I spoke with both Cal Dent and Brad Johnson about that.

2 : 0 5 P M 2 Q. Okay. And do you remember what Cal told you he thought
2 : 0 5 P M 3 you needed to do?

2 : 0 5 P M 4 A. His initial response was to see if they were really
2 : 0 5 P M 5 serious about that and if there was any way that they would not
2 : 0 5 P M 6 go down that road but then told me that it needed to be
2 : 0 5 P M 7 referred to HDL beyond that.

2 : 0 5 P M 8 Q. And before he told you that, he told you that he thought
2 : 0 5 P M 9 that, if you were going to do that, you needed to prorate the
2 : 0 5 P M 10 rent to account for the actual use that HDL would be making of
2 : 0 5 P M 11 that space?

2 : 0 5 P M 12 A. Yes. He described a way to prorate the rent. That's
2 : 0 5 P M 13 correct.

2 : 0 5 P M 14 Q. And the reason for that is to make sure that HDL wasn't
2 : 0 5 P M 15 paying one nickel more than they needed to pay for their space
2 : 0 5 P M 16 to do their business; correct?

2 : 0 5 P M 17 A. I assume so, yes.

2 : 0 5 P M 18 Q. So that it wouldn't be viewed as a kickback to a doctor?

2 : 0 6 P M 19 A. I believe so, yes.

2 : 0 6 P M 20 Q. Did you question Cal on why he thought that was important?

2 : 0 6 P M 21 A. No.

2 : 0 6 P M 22 Q. When you would call on doctors, they would not generally
2 : 0 6 P M 23 be interested in hearing about processing and handling fees up
2 : 0 6 P M 24 front; right? They wanted to hear about the tests and the
2 : 0 6 P M 25 quality of these tests before they got into anything like

2 : 0 6 P M 1 processing and handling?

2 : 0 6 P M 2 A. Yes. We would talk about the laboratory and the test
2 : 0 6 P M 3 offering initially, yes.

2 : 0 6 P M 4 Q. Did you have any clients that didn't even bring up P&H
2 : 0 6 P M 5 fees at all?

2 : 0 6 P M 6 A. Yeah, most of them wouldn't bring it up until they learned
2 : 0 6 P M 7 that it was an offer from the laboratory.

2 : 0 6 P M 8 Q. I'm going to look at this Exhibit 1203. This was --
2 : 0 7 P M 9 Mr. Terranova asked you about this. This was dated August 8th,
2 : 0 7 P M 10 2012, and you sent it to a J. Moreno?

2 : 0 7 P M 11 A. Correct.

2 : 0 7 P M 12 Q. And you said something, and it kind of went by quickly. I
2 : 0 7 P M 13 want to make sure that we heard it. I think what you said was
2 : 0 7 P M 14 that Mr. Moreno was the administrator, not the doctor; right?

2 : 0 7 P M 15 A. That's correct.

2 : 0 7 P M 16 Q. And that, as such, he wouldn't be interested in the
2 : 0 7 P M 17 clinical benefits of the test; he was more interested in the
2 : 0 7 P M 18 business aspects of the testing?

2 : 0 7 P M 19 A. That's correct.

2 : 0 7 P M 20 Q. And that's why you didn't start out this letter with a
2 : 0 7 P M 21 long description of the benefits of -- the medical benefits of
2 : 0 7 P M 22 the test because that would have gone right over his head?

2 : 0 7 P M 23 A. That's correct.

2 : 0 7 P M 24 Q. But that's -- that's not to suggest, if anybody were
2 : 0 7 P M 25 trying to suggest that from this document, that you did not

2 : 0 7 P M 1 sell these tests to the physicians based on the merits of the
2 : 0 7 P M 2 tests rather than the economic aspects of the tests?

2 : 0 7 P M 3 A. Could you say that again?

2 : 0 7 P M 4 Q. All right.

2 : 0 7 P M 5 This was just part of your effort to sell to that
2 : 0 8 P M 6 practice; right? You were going to have to convince these
2 : 0 8 P M 7 doctors that the tests were meritorious tests, that they were
2 : 0 8 P M 8 good tests and make them better doctors?

2 : 0 8 P M 9 A. If I were to ever get in front of the physicians at this
2 : 0 8 P M 10 particular practice, then, yes, I would have to do that.

2 : 0 8 P M 11 Q. And did you, in fact, get in front of the physicians in
2 : 0 8 P M 12 this practice?

2 : 0 8 P M 13 A. No, I did not.

2 : 0 8 P M 14 Q. So they did not become a client of yours either?

2 : 0 8 P M 15 A. No, we -- the doctor did not become a client.

2 : 0 8 P M 16 Q. And I noticed that you didn't copy Brad or Cal or Tonya,
2 : 0 8 P M 17 as far as I can tell, on this email; right?

2 : 0 8 P M 18 A. Correct.

2 : 0 8 P M 19 Q. Is there any particular reason that you didn't include
2 : 0 8 P M 20 them?

2 : 0 8 P M 21 A. I didn't think it was necessary.

2 : 0 8 P M 22 Q. You created this letter yourself, didn't you?

2 : 0 8 P M 23 A. Yes.

2 : 0 8 P M 24 Q. And you were never told my HDL -- I'm sorry -- you were
2 : 0 8 P M 25 never told by anybody at Bluewave to tout the fact that HDL had

2 : 0 8 P M 1 the highest P&H fees in the industry?

2 : 0 8 P M 2 A. I was not specifically told to do that, no.

2 : 0 9 P M 3 Q. Well, in fact, I think in your direct testimony, you said
2 : 0 9 P M 4 the only thing you ever heard about that was a comparison to
2 : 0 9 P M 5 Berkeley and maybe Boston Heart Lab?

2 : 0 9 P M 6 A. Correct.

2 : 0 9 P M 7 Q. Now, to be clear, HDL had four vials; right --

2 : 0 9 P M 8 A. Yes, they had four.

2 : 0 9 P M 9 Q. -- to process and handle. Those other laboratories
2 : 0 9 P M 10 typically would have one that had to be processed and handled?

2 : 0 9 P M 11 A. That's my understanding, yes.

2 : 0 9 P M 12 Q. So if you looked at it on a per-tube basis, you might say
2 : 0 9 P M 13 that HDL had the lowest processing and handling fees in the
2 : 0 9 P M 14 business?

2 : 0 9 P M 15 A. On a per-tube basis, that would be correct.

2 : 0 9 P M 16 Q. Out of the -- throughout the process -- and you said you
2 : 0 9 P M 17 have seen this many times -- how much time does it take to
2 : 0 9 P M 18 actually just draw the blood?

2 : 0 9 P M 19 A. An experienced phlebotomist could have blood drawn in
2 : 1 0 P M 20 probably under a minute.

2 : 1 0 P M 21 Q. So that's just kind of the tip of the iceberg of what has
2 : 1 0 P M 22 to be done to get that blood prepared and ready and delivered
2 : 1 0 P M 23 to the laboratory?

2 : 1 0 P M 24 A. Yes.

2 : 1 0 P M 25 Q. And that's the part that you get paid \$3 for; right?

2 : 1 0 P M 1 A. Yes.

2 : 1 0 P M 2 Q. And that's been for eons; right? I mean, it's been for a
2 : 1 0 P M 3 long time that that's been limited to \$3, but that's for that
2 : 1 0 P M 4 less-than-a-one-minute worth of work?

2 : 1 0 P M 5 A. That's my understanding, yes.

2 : 1 0 P M 6 Q. These guys Davis and Ruderman, they were going around
2 : 1 0 P M 7 spreading rumors about -- about HDL and claiming that
2 : 1 0 P M 8 everything that they were doing was illegal. Now, they had a
2 : 1 0 P M 9 vested interest in doing that; right?

2 : 1 0 P M 10 A. I would assume so.

2 : 1 0 P M 11 Q. Did they work for Berkeley HeartLab by any chance?

2 : 1 0 P M 12 A. I was told that they worked for Berkeley at one point.

2 : 1 0 P M 13 Q. And that was kind of an archrival of HDL?

2 : 1 1 P M 14 A. They were.

2 : 1 1 P M 15 Q. In fact, the people that started HDL used to work for
2 : 1 1 P M 16 Berkeley?

2 : 1 1 P M 17 A. Correct.

2 : 1 1 P M 18 Q. And Brad and Cal used to work for Berkeley?

2 : 1 1 P M 19 A. Correct.

2 : 1 1 P M 20 Q. Berkeley wasn't too happy about being competed with like
2 : 1 1 P M 21 that, were they?

2 : 1 1 P M 22 A. No, they were not.

2 : 1 1 P M 23 Q. So would you -- just out of curiosity, would you take the
2 : 1 1 P M 24 word of somebody like Davis and Ruderman if they said to you,
2 : 1 1 P M 25 "Hey, these P&H fees are illegal"? would you take their word

2 : 1 1 P M 1 for it and say "Oh, okay. I guess we better stop doing that"?

2 : 1 1 P M 2 A. No. That's why I referred it to Brad and Cal and Tonya.

2 : 1 1 P M 3 Q. Right. And then they might send you a letter like you got
2 : 1 1 P M 4 from LeClairRyan, one of the largest health care law firms in
2 : 1 1 P M 5 the country, saying that, oh, those people are not telling you
2 : 1 1 P M 6 the truth. P&H fees are legal.

2 : 1 1 P M 7 A. Correct.

2 : 1 1 P M 8 Q. So that gave you some reassurance; right?

2 : 1 1 P M 9 A. Yes.

2 : 1 1 P M 10 Q. Let's talk about outside laboratories. Outside
2 : 1 2 P M 11 laboratories can charge more than 15 or \$20; right?

2 : 1 2 P M 12 A. What do you mean by "outside laboratories"?

2 : 1 2 P M 13 Q. Well, let's say that you don't have a phlebotomist in a
2 : 1 2 P M 14 doctor's office and you can't pay them processing and handling
2 : 1 2 P M 15 fees. You said one of the alternates was to send the specimens
2 : 1 2 P M 16 to --

2 : 1 2 P M 17 A. Oh, a draw station.

2 : 1 2 P M 18 Q. -- an outside laboratory?

2 : 1 2 P M 19 A. A draw station.

2 : 1 2 P M 20 Q. A draw station.

2 : 1 2 P M 21 Or you might send it to -- you might have one of the
2 : 1 2 P M 22 competitors -- if they had a phlebotomist, one of those big
2 : 1 2 P M 23 companies, LabCorp or Quest, you might work out a deal with
2 : 1 2 P M 24 them to have them draw the blood and process and handle it;
2 : 1 2 P M 25 right?

2 : 1 2 P M 1 A. You could.

2 : 1 2 P M 2 Q. That's going to cost you a lot more money, though, isn't
2 : 1 2 P M 3 it?

2 : 1 2 P M 4 A. It depends. Sometimes they would ask for reimbursement on
2 : 1 2 P M 5 that; sometimes they wouldn't.

2 : 1 2 P M 6 Q. Well, would it be your experience that, if you go to an
2 : 1 2 P M 7 outside draw center, that you're probably looking at \$25 or
2 : 1 2 P M 8 more?

2 : 1 3 P M 9 A. I believe that's typically what the arrangement was, yeah.

2 : 1 3 P M 10 Q. So it was actually less expensive for HDL and Singulex to,
2 : 1 3 P M 11 instead of doing that, to say, "Doc, we'll just -- we'll just
2 : 1 3 P M 12 reimburse you" -- in the case of Singulex, \$13; in the case of
2 : 1 3 P M 13 HDL, \$20 -- "if you'll do the phlebotomy and the processing and
2 : 1 3 P M 14 handling in your office with your personnel"? That was
2 : 1 3 P M 15 actually less expensive for the labs, wasn't it?

2 : 1 3 P M 16 A. Yes, that would have been less expensive.

2 : 1 3 P M 17 Q. You said that you felt okay based on the information you
2 : 1 3 P M 18 were provided about processing and handling fees up until you
2 : 1 3 P M 19 found out about the investigation.

2 : 1 3 P M 20 So before the investigation, did you feel comfortable
2 : 1 3 P M 21 that you were not selling these tests based on the revenue that
2 : 1 4 P M 22 P&H fees would generate? Did you feel comfortable that you
2 : 1 4 P M 23 were following the rules that you answered on those tests that
2 : 1 4 P M 24 said that you would sell on the merits of the tests and not on
2 : 1 4 P M 25 the financial benefits to the physician?

2 : 1 4 P M 1 A. Yes, I felt comfortable that what we were offering was
2 perfectly fine.

2 : 1 4 P M 3 Q. And after you found out about the investigation, there
4 were a number of conference calls; right?

2 : 1 4 P M 5 A. Correct.

2 : 1 4 P M 6 Q. Were you told that HDL had retained another big law firm
7 called Ropes & Gray? Did you ever hear that name?

2 : 1 4 P M 8 A. I did.

2 : 1 4 P M 9 Q. Were you -- did -- were you made aware that they were in
10 constant communication with the federal government over
11 processing and handling fees and what was going to happen with
12 processing and handling fees?

2 : 1 4 P M 13 A. I didn't know exactly what Ropes & Gray was doing, but I
14 understood that they were investigating something.

2 : 1 4 P M 15 Q. Okay. Did you -- did you rely on them to let you know or
16 let Bluewave know or let HDL know or let somebody know if they
17 needed to stop -- if you needed it stop talking about
18 processing and handling fees?

2 : 1 5 P M 19 A. Our communication at that point came directly from
20 Bluewave, so if -- if we were told by Brad or Cal to stop any
21 kind of practice, we weren't -- I wasn't really sure where it
22 came from; I was just told that.

2 : 1 5 P M 23 Q. One thing I want to make sure that we haven't forgotten
24 about is you never made any claim whatsoever with the federal
25 government. I mean, you never applied for any reimbursements

2 : 1 5 P M 1 from the federal government for anything, did you?

2 : 1 5 P M 2 A. No.

2 : 1 5 P M 3 Q. You were never present when HDL or Singulex would apply
2 : 1 5 P M 4 for a reimbursement from the federal government for anything?

2 : 1 5 P M 5 A. No, I was not present.

2 : 1 5 P M 6 Q. That's not part of what you do, is it?

2 : 1 5 P M 7 A. No.

2 : 1 5 P M 8 Q. Were you ever even present when a physician ordered tests?

2 : 1 6 P M 9 A. Not that I remember, no.

2 : 1 6 P M 10 Q. Did you have any way of knowing, Mr. Cornwell, if a
2 : 1 6 P M 11 physician -- what -- what reimbursement, if any, physician was
2 : 1 6 P M 12 asking for from Medicare or TRICARE or any insurance company
2 : 1 6 P M 13 for that matter?

2 : 1 6 P M 14 A. No, I would not have been involved in that process.

2 : 1 6 P M 15 Q. Okay. And nobody at Bluewave would have been involved in
2 : 1 6 P M 16 that process, would they?

2 : 1 6 P M 17 A. I don't believe so.

2 : 1 6 P M 18 Q. So when -- when Mr. Terranova got you to say that you were
2 : 1 6 P M 19 arranging for tests, you're not licensed to arrange for tests
2 : 1 6 P M 20 or to order tests, are you?

2 : 1 6 P M 21 A. I cannot order tests, no.

2 : 1 6 P M 22 Q. All you could do would be to provide the physician with
2 : 1 6 P M 23 the materials that he needed and the process by which he could
2 : 1 6 P M 24 order tests; right?

2 : 1 6 P M 25 A. Correct.

2 : 1 6 P M 1 Q. And you're not qualified to even recommend tests? You can
2 : 1 6 P M 2 provide information to a physician, but a physician has to make
2 : 1 6 P M 3 the medical judgment; right?

2 : 1 6 P M 4 A. Yes, the physician makes that decision.

2 : 1 7 P M 5 Q. And the physician doesn't call you up and say, "I need you
2 : 1 7 P M 6 to arrange for this test to be taken"? That's not the way it
2 : 1 7 P M 7 works, is it?

2 : 1 7 P M 8 A. No, that did not happen.

2 : 1 7 P M 9 Q. You said that Cal once made a statement about the law. Do
2 : 1 7 P M 10 you remember when that was?

2 : 1 7 P M 11 A. I don't recall the specific time, no.

2 : 1 7 P M 12 Q. But the statement was something to the effect that it's
2 : 1 7 P M 13 not what the law says as much as what the law doesn't say?

2 : 1 7 P M 14 A. Correct.

2 : 1 7 P M 15 Q. Now, you weren't in the courtroom when we did our opening
2 : 1 7 P M 16 statements, were you?

2 : 1 7 P M 17 A. I was not.

2 : 1 7 P M 18 Q. Did you ever hear anybody out there express a wish that
2 : 1 7 P M 19 the government would just tell us what we're allowed to do?

2 : 1 7 P M 20 A. I don't remember that.

2 : 1 7 P M 21 Q. Or what we're not allowed to do?

2 : 1 7 P M 22 Do you think it would have been helpful if the
2 : 1 7 P M 23 government at some point had just said you can't pay P&H fees
2 : 1 8 P M 24 or you can only pay \$5 for P&H fees? would that have been
2 : 1 8 P M 25 helpful to you in knowing what to do out there?

2 : 1 8 P M 1 A. If it was as concrete as that, that would have been
2 helpful.

2 : 1 8 P M 3 Q. And so that would be an example of, you know, it's not
4 just what the law says; it's what the law doesn't say. Right?

2 : 1 8 P M 5 A. Correct. Uh-huh.

2 : 1 8 P M 6 Q. Because the law wasn't telling you whether you could do
7 P&H fees or not, was it?

2 : 1 8 P M 8 MR. TERRANOVA: Objection.

2 : 1 8 P M 9 BY MR. COOKE:

2 : 1 8 P M 10 Q. You have lawyers telling you you can do them based on
11 their interpretation of the law, but did anybody ever show you
12 a law that said you couldn't pay P&H fees?

2 : 1 8 P M 13 A. No, I was never shown a document like that.

2 : 1 8 P M 14 Q. You talked about how this ordeal has affected you. And I
15 assume that by that -- and you made a lot of money; right? I
16 think that came out, that you did very well, made more money
17 working for BlueWave than you ever had?

2 : 1 8 P M 18 A. I did.

2 : 1 8 P M 19 Q. Okay. BlueWave is out of business now; right?

2 : 1 9 P M 20 A. I believe so.

2 : 1 9 P M 21 Q. At the time that you were working for BlueWave, you
22 appreciated what they were doing?

2 : 1 9 P M 23 A. I did.

2 : 1 9 P M 24 Q. So what's hurt your life has been the fallout from all of
25 this; right?

2 : 1 9 P M 1 A. Correct.

2 : 1 9 P M 2 Q. What if it turns out that this is all wrong? What if it
2 : 1 9 P M 3 turns out that nobody was trying to break the law --

2 : 1 9 P M 4 A. Well, the damage has been done.

2 : 1 9 P M 5 Q. -- and that BlueWave shouldn't have been put out of
2 : 1 9 P M 6 business and that HDL shouldn't have been forced out of
2 : 1 9 P M 7 business? What if it turns out that's all wrong?

2 : 1 9 P M 8 A. Well, that's wonderful, but the damage has been done to
2 : 1 9 P M 9 the reps.

2 : 1 9 P M 10 Q. And to these guys; right?

2 : 1 9 P M 11 A. Yeah.

2 : 1 9 P M 12 Q. Okay. Do you remember writing a letter to Brad and Cal in
2 : 1 9 P M 13 January of 2015?

2 : 1 9 P M 14 A. I wrote a lot of things to them. I'm sure I did.

2 : 1 9 P M 15 Q. All right. Let me just ask you -- and you can either say
2 : 1 9 P M 16 you did or you didn't. And if you didn't, we'll let it go.
2 : 1 9 P M 17 But how about this?

2 : 1 9 P M 18 "Brad and Cal, in light of the recent contract
2 : 1 9 P M 19 cancellation by HDL, I feel it is now somewhat safe to discuss
2 : 1 9 P M 20 some items with the two of you of which I was previously
2 : 2 0 P M 21 instructed to be quiet about."

2 : 2 0 P M 22 Do you remember that?

2 : 2 0 P M 23 A. Yes.

2 : 2 0 P M 24 Q. Okay. "I would like to discuss via telephone rather than
2 : 2 0 P M 25 in writing. I'm not sure if this information will be helpful

2 : 2 0 P M 1 to you in your ongoing disputes with HDL, though it may at
2 : 2 0 P M 2 least shed some light on a few things. Given the tremendous
2 : 2 0 P M 3 opportunity BlueWave has afforded me and my family over these
2 : 2 0 P M 4 past four years, it is my intention to help both of you in any
2 : 2 0 P M 5 way possible and to make you aware of the imminent threats and
2 : 2 0 P M 6 verbal agreement I have faced from HDL since October 2014.

2 : 2 0 P M 7 I'm sure I'm not the only rep that has dealt with
2 : 2 0 P M 8 this, though I feel the pressure and expectations placed on me
2 : 2 0 P M 9 by HDL was very significant and has forced me in into a very
2 : 2 0 P M 10 tough position."

2 : 2 0 P M 11 Do you remember writing those words?

2 : 2 0 P M 12 A. I do.

2 : 2 0 P M 13 Q. "I hope we can talk soon and go over these items. If not,
2 : 2 0 P M 14 please know how thankful I am for the unbelievable opportunity
2 : 2 0 P M 15 you both have given me."

2 : 2 0 P M 16 Did you say that?

2 : 2 0 P M 17 A. I did.

2 : 2 1 P M 18 Q. "This has been a roller-coaster ride, and I wouldn't trade
2 : 2 1 P M 19 a single minute of it."

2 : 2 1 P M 20 Did you write that?

2 : 2 1 P M 21 A. I did.

2 : 2 1 P M 22 Q. "I remember interviewing with the both of you four and a
2 : 2 1 P M 23 half years ago, telling myself how I hope I never have to face
2 : 2 1 P M 24 the hardships and challenges you described to me. I also
2 : 2 1 P M 25 remember you telling me of the ridiculous rumors and libelous

2 : 2 1 P M 1 information you were confronted with on a daily basis."

2 : 2 1 P M 2 Did you write that too?

2 : 2 1 P M 3 A. I believe so.

2 : 2 1 P M 4 Q. "I never thought this could happen to me. I was very
2 : 2 1 P M 5 sorely and seriously mistaken about this. I've learned that
2 : 2 1 P M 6 companies will do whatever they think is necessary to get their
2 : 2 1 P M 7 desired result. I've also learned that people who I thought
2 : 2 1 P M 8 were my friends were never my friends at all. I've learned
2 : 2 1 P M 9 that people are motivated more by jealousy and perception than
2 : 2 1 P M 10 they are success and family. And, unfortunately, I've learned
2 : 2 1 P M 11 that I need to harden myself against people and other aspects
2 : 2 1 P M 12 of this world I never wanted to be hardened against."

2 : 2 1 P M 13 You said that?

2 : 2 1 P M 14 A. Yes, I did.

2 : 2 1 P M 15 Q. "No matter what happens from here, I need you both to
2 : 2 2 P M 16 understand the respect and reverence I have for you and for
2 : 2 2 P M 17 Bluewave, and I need you to also understand that despite the
2 : 2 2 P M 18 grotesque and envy-laden rumors of the past few months, I would
2 : 2 2 P M 19 never put Bluewave and myself in jeopardy at any point in time.
2 : 2 2 P M 20 Winston Churchill once said, "A lie gets halfway around the
2 : 2 2 P M 21 world before the truth has a chance to get its pants on." I
2 : 2 2 P M 22 now believe truer words were never spoken.

2 : 2 2 P M 23 You wrote that?

2 : 2 2 P M 24 A. I did.

2 : 2 2 P M 25 MR. COOKE: Just give me a moment.

(Pause.)

MR. COOKE: Thank you.

THE COURT: Mr. Ashmore?

MR. ASHMORE: Thank you, Your Honor. May it please the Court.

CROSS-EXAMINATION

BY MR. ASHMORE:

Q. Mr. Cornwell, I'm Beattie Ashmore. How are you?

A. Good. Thank you.

Q. This letter, that apparently you wrote, indicates that, quote, it is my intention to help both of you -- and you're talking to Mr. Dent and Mr. Johnson; correct?

A. Correct.

Q. "So it is my intention to help both of you in any way possible and to make you aware of the imminent threats and verbal agreement I have faced from HDL since October 2014."

A. Correct.

Q. Those are your words?

A. Yes.

Q. Tonya Mallory was fired in September of 2014 -- you're aware of that -- from HDL?

A. I'm aware of that.

Q. Sure. So she was not around in October of 2014?

A. Correct.

Q. So who in October of 2014 at HDL was issuing imminent

2 : 2 3 P M 1 threats against you?

2 : 2 3 P M 2 A. Their compliance personnel. There was a gentleman named
2 : 2 4 P M 3 Chris Johnson, there was a Kathy Johnson, and there was a Doug
2 : 2 4 P M 4 Sbertoli.

2 : 2 4 P M 5 Q. And what kind of threats were they making against you at
2 : 2 4 P M 6 HDL?

2 : 2 4 P M 7 A. Just they were reminding me on a weekly basis that I was
2 : 2 4 P M 8 under investigation, that it would be advisable for me to no
2 : 2 4 P M 9 longer go into doctors' offices, that any request that I have
2 : 2 4 P M 10 from this point forward is going to be turned down. I'm not to
2 : 2 4 P M 11 share this information with Brad and Cal, and I need to
2 : 2 4 P M 12 basically keep my mouth shut.

2 : 2 4 P M 13 Q. Did Joe McConnell threaten you in any way?

2 : 2 4 P M 14 A. I don't recall him threatening me at that point in time.

2 : 2 4 P M 15 Q. Russ Warnick?

2 : 2 4 P M 16 A. No, I never really had much contact with Russ.

2 : 2 4 P M 17 Q. Who -- and how did you handle all of that, Mr. Cornwell?

2 : 2 4 P M 18 A. How did I handle it at the time?

2 : 2 4 P M 19 Q. Yes, sir.

2 : 2 4 P M 20 A. I complied with what I was told.

2 : 2 4 P M 21 Q. So the people at HDL who threatened you, they threatened
2 : 2 4 P M 22 you and forced you to be silent; is that correct? Do I
2 : 2 5 P M 23 understand that correctly?

2 : 2 5 P M 24 A. Well, in no uncertain terms, yes.

2 : 2 5 P M 25 Q. And Tonya Mallory, again, had already been fired from HDL?

2 : 2 5 P M 1 A. She was gone at this time, yes.

2 : 2 5 P M 2 Q. Sure. We talked a good bit about the -- this lease at
2 : 2 5 P M 3 Bent Tree.

2 : 2 5 P M 4 That's a family -- well, that's a doctor's office;
2 : 2 5 P M 5 correct?

2 : 2 5 P M 6 A. Correct.

2 : 2 5 P M 7 Q. And what was your recollection of how much that lease was
2 : 2 5 P M 8 for?

2 : 2 5 P M 9 A. I -- I believe the lease was for about \$5,000 per
2 : 2 5 P M 10 location.

2 : 2 5 P M 11 Q. Over what period of time?

2 : 2 5 P M 12 A. That would have been -- that would have been \$5,000 a
2 : 2 5 P M 13 month.

2 : 2 5 P M 14 Q. Okay. Would it surprise you to learn that the lease was
2 : 2 5 P M 15 for \$2,190 a month for 1,500 square feet?

2 : 2 6 P M 16 A. That would surprise me.

2 : 2 6 P M 17 Q. You've never seen the lease?

2 : 2 6 P M 18 A. I've never seen the lease.

2 : 2 6 P M 19 Q. You can't disagree that the lease was only for \$2,190?

2 : 2 6 P M 20 A. If that's what the lease says, then I can't disagree with
2 : 2 6 P M 21 that.

2 : 2 6 P M 22 Q. And that the lease was drawn up between the Bent Tree
2 : 2 6 P M 23 lawyers and the HDL lawyers?

2 : 2 6 P M 24 A. That's my understanding.

2 : 2 6 P M 25 Q. Okay. And it was -- it was simply to put a health coach

2 : 2 6 P M 1 on-site; correct?

2 : 2 6 P M 2 A. Correct.

2 : 2 6 P M 3 Q. And that health coach was, in fact, on-site every single
2 : 2 6 P M 4 day.

2 : 2 6 P M 5 A. That's correct.

2 : 2 6 P M 6 Q. Plaintiff Exhibit 1203, that we spent a good bit of time
2 : 2 6 P M 7 on here today, that's your email to Jorge Moreno.

2 : 2 6 P M 8 A. Okay.

2 : 2 6 P M 9 Q. Okay. You indicate that HDL consists of five primary
2 : 2 6 P M 10 partners.

2 : 2 6 P M 11 who are you referring to there?

2 : 2 7 P M 12 A. Five primary partners? Could I see the --

2 : 2 7 P M 13 Q. Absolutely.

2 : 2 7 P M 14 MR. ASHMORE: May I approach, Your Honor?

2 : 2 7 P M 15 THE COURT: Let's put it up on the screen here.

2 : 2 7 P M 16 MR. ASHMORE: Your Honor, I don't know that I have
2 : 2 7 P M 17 that capability.

2 : 2 7 P M 18 THE COURT: would the government please put up 1203?

2 : 2 7 P M 19 BY MR. ASHMORE:

2 : 2 7 P M 20 Q. You see it now, Mr. Cornwell?

2 : 2 7 P M 21 A. Okay. And where is the part about the five partners --

2 : 2 7 P M 22 Q. Let's go under to -- see where it says "history"?

2 : 2 7 P M 23 A. Yes.

2 : 2 7 P M 24 Q. Okay. And it's simply the first and second line there,
2 : 2 7 P M 25 "consisting of five primary partners."

2 : 2 7 P M 1 A. Okay. Yeah, I see that.

2 : 2 7 P M 2 Q. Okay. Do you recall, as we sit here, who you were
2 : 2 8 P M 3 referring to?

2 : 2 8 P M 4 A. I don't recall. I mean, I may have been referring to the
2 : 2 8 P M 5 original investors in this.

2 : 2 8 P M 6 Q. Would you be referring to Tonya Mallory, Russ Warnick, and
2 : 2 8 P M 7 Joe McConnell and Cal Dent and Brad Johnson? Those five?

2 : 2 8 P M 8 A. Yeah, that's probably who I was referring to here.

2 : 2 8 P M 9 Q. Okay. But, of course, Cal and Brad are BlueWave, which is
2 : 2 8 P M 10 totally separate from the other three I mentioned with HDL?

2 : 2 8 P M 11 A. It was my understanding they had a small ownership piece
2 : 2 8 P M 12 in HDL.

2 : 2 8 P M 13 Q. All right. Let's keep going. In the next sentence, it
2 : 2 8 P M 14 says, "Three of the partners were former owners of the Berkeley
2 : 2 8 P M 15 HeartLab in California."

2 : 2 8 P M 16 who are you talking about there?

2 : 2 8 P M 17 A. I must be referring to Tonya Mallory, Joe McConnell and
2 : 2 8 P M 18 Russ Warnick.

2 : 2 8 P M 19 Q. And they were, in truth and in fact, not owners of the
2 : 2 9 P M 20 Berkeley HeartLab in California; correct?

2 : 2 9 P M 21 A. I'm not sure, to be honest with you.

2 : 2 9 P M 22 Q. Well, I mean, that's what you said in your email.

2 : 2 9 P M 23 A. Okay. Well, if I did, that's what I was told. But if
2 : 2 9 P M 24 you're telling me they weren't owners, then maybe they weren't
2 : 2 9 P M 25 owners.

2 : 2 9 P M 1 Q. Then the next paragraph, you talk about the number of
2 : 2 9 P M 2 people that have been brought in as partners and you were
2 : 2 9 P M 3 excited that they had joined you, and these people include
2 : 2 9 P M 4 Dr. Joseph McConnell, CMO of HDL.

2 : 2 9 P M 5 what does CMO mean?

2 : 2 9 P M 6 A. Chief medical officer.

2 : 2 9 P M 7 Q. Okay. And former -- and he was also a former chief of
2 : 2 9 P M 8 cardiology for the Mayo Clinic; is that correct?

2 : 2 9 P M 9 A. That was my understanding.

2 : 2 9 P M 10 Q. Okay. And these other -- you list a number of other
2 : 2 9 P M 11 doctors. Dr. Thomas Dayspring, Dr. Russ Warnick.

2 : 2 9 P M 12 He's one of the HDL founders; is that correct.

2 : 2 9 P M 13 A. That's my understanding.

2 : 2 9 P M 14 Q. Did you -- did you know he's not a doctor?

2 : 2 9 P M 15 A. Are you referring to Russell Warnick?

2 : 2 9 P M 16 Q. Yes, sir.

2 : 3 0 P M 17 A. Oh, okay. I did not know that.

2 : 3 0 P M 18 Q. "Dr. Bill Cromwell, Dr. Bill Harris, Dr. Sam Fillingane,
2 : 3 0 P M 19 all speak for and sit on the board for Health Diagnostics."

2 : 3 0 P M 20 Those are your words; correct?

2 : 3 0 P M 21 A. Yes.

2 : 3 0 P M 22 Q. And, of course, nowhere in this entire document is Tonya
2 : 3 0 P M 23 Mallory mentioned; correct?

2 : 3 0 P M 24 A. That's correct.

2 : 3 0 P M 25 Q. You also indicate in this document that "We offer the

2 : 3 0 P M 1 highest P&H reimbursement in the industry."

2 : 3 0 P M 2 So you're aware of what your competitors might have
2 : 3 0 P M 3 been offering in terms of P&H?

2 : 3 0 P M 4 A. I'm aware of what I was told that they offered, yeah.

2 : 3 0 P M 5 Q. All right. What was your understanding of what the
2 : 3 0 P M 6 competitors offered in the industry?

2 : 3 0 P M 7 A. I was aware that there was a competitor that offered about
2 : 3 0 P M 8 \$16. There was a competitor that offered around 12 or 13.

2 : 3 0 P M 9 Q. I'm sorry to interrupt.

2 : 3 0 P M 10 Can you identify that particular competitor that was
2 : 3 0 P M 11 charging -- or paying \$16?

2 : 3 0 P M 12 A. I believe that was the Boston Heart Lab.

2 : 3 1 P M 13 Q. Okay. Sorry for the interruption. If you'd keep going.

2 : 3 1 P M 14 A. I'm finished.

2 : 3 1 P M 15 Q. Okay. Well, I interrupted you. Berkeley had \$16.

2 : 3 1 P M 16 There was another competitor, I thought, that you
2 : 3 1 P M 17 were going to mention.

2 : 3 1 P M 18 A. There were some other competitors in the market. There
2 : 3 1 P M 19 was the Cleveland HeartLab, SpectraCell. There was a lot of --
2 : 3 1 P M 20 Dynexus. I mean, they all ranged around 12 or 13. I wasn't a
2 : 3 1 P M 21 hundred percent sure what they offered.

2 : 3 1 P M 22 Q. Okay. So they're all paying P&H fees?

2 : 3 1 P M 23 A. Yes.

2 : 3 1 P M 24 Q. And that was the uncertainty in the industry at that time,
2 : 3 1 P M 25 correct, whether or not P&H fees could or could not be paid

2 : 3 1 P M 1 and, if so, in what amount?

2 : 3 1 P M 2 A. At that point in time, those questions never came up.

2 : 3 1 P M 3 Q. You didn't have any concern about whether or not P&H fees
2 : 3 1 P M 4 could or should be paid?

2 : 3 1 P M 5 A. I did not have those concerns. And if a physician
2 : 3 1 P M 6 practice ever asked those questions, I never answered it.

2 : 3 1 P M 7 Q. So you were perfectly comfortable that that was all on the
2 : 3 2 P M 8 up and up, so to speak, and legal?

2 : 3 2 P M 9 A. Correct.

2 : 3 2 P M 10 Q. And Mr. Cooke touched briefly on this, but Frank Ruderman,
2 : 3 2 P M 11 that was saying bad things about HDL and P&H fees, you remember
2 : 3 2 P M 12 bringing that up with Ms. Mallory?

2 : 3 2 P M 13 A. I do.

2 : 3 2 P M 14 Q. Okay. He was actually the CEO at one time of Berkeley
2 : 3 2 P M 15 HeartLab, wasn't he?

2 : 3 2 P M 16 A. I have no idea.

2 : 3 2 P M 17 Q. Well, you know that Berkeley HeartLab is a major
2 : 3 2 P M 18 competitor of HDL?

2 : 3 2 P M 19 A. I did know that.

2 : 3 2 P M 20 Q. Yeah. And the great irony, of course, is that Berkeley
2 : 3 2 P M 21 HeartLab was paying P&H fees, weren't they?

2 : 3 2 P M 22 A. That's my understanding.

2 : 3 2 P M 23 Q. You talked to a number of people at HDL about legal
2 : 3 2 P M 24 opinions.

2 : 3 2 P M 25 That was your prior testimony; correct?

2 : 3 2 P M 1 A. Correct.

2 : 3 2 P M 2 Q. And when the issue of legal opinions came up and the
2 : 3 2 P M 3 appropriateness of P&H fee, you said that you talked to a
2 : 3 3 P M 4 number of people at HDL to include Tonya, Russ, and Joe; is
2 : 3 3 P M 5 that correct?

2 : 3 3 P M 6 A. That's correct.

2 : 3 3 P M 7 Q. And some others.

2 : 3 3 P M 8 So Russ and Joe were just as involved in those
2 : 3 3 P M 9 conversations as Tonya. Is that a fair statement?

2 : 3 3 P M 10 A. That's a fair statement.

2 : 3 3 P M 11 Q. And June 25th, 2014, was the special fraud alert?

2 : 3 3 P M 12 A. I believe that's the day, yes.

2 : 3 3 P M 13 Q. Okay. And can you tell the members of the jury what your
2 : 3 3 P M 14 understanding is of a special fraud alert.

2 : 3 3 P M 15 A. Of a special fraud alert?

2 : 3 3 P M 16 Q. Well, let's talk about this one in particular.

2 : 3 3 P M 17 A. Okay. I had not seen a special fraud alert before this
2 : 3 3 P M 18 one was issued on the date, June 24th or 25th of 2014. And it
2 : 3 3 P M 19 said, in so many words, that the federal government may
2 : 3 3 P M 20 consider processing and handling payments to be a violation of
2 : 3 3 P M 21 the federal anti-kickback laws from that day forward.

2 : 3 3 P M 22 Q. From that day forward?

2 : 3 3 P M 23 A. That was my understanding of it.

2 : 3 3 P M 24 Q. Okay. And what happened when the special fraud alert came
2 : 3 4 P M 25 out?

2 : 3 4 P M 1 A. The laboratories HDL and Singulex decided to stop paying
2 : 3 4 P M 2 the P&H fees.

2 : 3 4 P M 3 Q. Immediately?

2 : 3 4 P M 4 A. Immediately.

2 : 3 4 P M 5 Q. And, of course, that's -- that's the government issuing
2 : 3 4 P M 6 the special fraud alert; correct?

2 : 3 4 P M 7 A. Correct.

2 : 3 4 P M 8 Q. Were you aware that there had been another one issued some
2 : 3 4 P M 9 years earlier addressing P&H fees?

2 : 3 4 P M 10 A. I was not aware at that time that there was another
2 : 3 4 P M 11 issuance of it, no.

2 : 3 4 P M 12 Q. But surely it was your understanding that there was
2 : 3 4 P M 13 uncertainty in the air over P&H fees?

2 : 3 4 P M 14 A. Absolutely, yeah.

2 : 3 4 P M 15 Q. You ever heard of Project Twilight?

2 : 3 4 P M 16 A. I don't recall.

2 : 3 4 P M 17 Q. Did you know that HDL was getting away from P&H fees and
2 : 3 4 P M 18 building their own freestanding blood site -- draw sites?

2 : 3 4 P M 19 A. Yes, I was aware that that was a project, yeah.

2 : 3 4 P M 20 Q. They were moving away from paying P&H fees, weren't they?

2 : 3 5 P M 21 A. Well, I didn't know if they were specifically doing that
2 : 3 5 P M 22 previous to the fraud alert, but I knew that they were looking
2 : 3 5 P M 23 at opening up draw sites in different territories.

2 : 3 5 P M 24 Q. And they started that years before this special fraud
2 : 3 5 P M 25 alert of June 25th, 2014, was handed down?

2 : 3 5 P M 1 A. I'm not sure when they started it. I know I spoke to
2 Tonya about it a few times, and she was telling me about it.

2 : 3 5 P M 3 Q. Okay. And, of course, once they did that, they'd never
4 have to pay P&H fees again?

2 : 3 5 P M 5 A. If -- if the physicians were referring to these draw
6 sites, then yeah, there would be no reason to pay P&H.

2 : 3 5 P M 7 Q. Thank you very much.

2 : 3 5 P M 8 MR. ASHMORE: Thank you, Your Honor.

2 : 3 5 P M 9 THE COURT: Redirect?

2 : 3 5 P M 10 REDIRECT EXAMINATION

2 : 3 5 P M 11 BY MR. TERRANOVA:

12 Q. Mr. Cornwell, just briefly about the Bent Tree agreement,
13 I want to hand you a document that has been marked Plaintiffs'
14 Exhibit 614.

2 : 3 5 P M 15 May I approach, Your Honor?

2 : 3 5 P M 16 THE COURT: You may.

2 : 3 6 P M 17 BY MR. TERRANOVA:

2 : 3 6 P M 18 Q. Mr. Cornwell, are you familiar with Exhibit 614?

2 : 3 6 P M 19 A. I don't recall seeing this, but apparently it was emailed
20 to me.

2 : 3 6 P M 21 Q. What is the date of the email?

2 : 3 6 P M 22 A. Tuesday, November 29th, 2011.

2 : 3 6 P M 23 Q. Who wrote the email?

2 : 3 6 P M 24 A. Tonya Mallory.

2 : 3 6 P M 25 Q. Who did she send it to?

2 : 3 6 P M 1 A. She sent it to Michelle Kuhn and Steve Carroll.

2 : 3 6 P M 2 Q. And who is copied on this email?

2 : 3 6 P M 3 A. Brad Johnson and then myself.

2 : 3 6 P M 4 Q. What is listed among the attachments to the email?

2 : 3 7 P M 5 A. The Bent Tree lease agreement.

2 : 3 7 P M 6 Q. I'm going to hand you what's marked Plaintiffs'
2 : 3 7 P M 7 Exhibit 6 -- 1615.

2 : 3 7 P M 8 May I approach, Your Honor?

2 : 3 7 P M 9 THE COURT: You may.

2 : 3 7 P M 10 BY MR. TERRANOVA:

2 : 3 7 P M 11 Q. Mr. Cornwell, are you familiar with Exhibit 1615?

2 : 3 7 P M 12 A. Vaguely. I think I just looked at this briefly.

2 : 3 7 P M 13 Q. If you go to the first paragraph, it says, "This lease is
2 : 3 8 P M 14 made as of the 20th day of October 2011 by and between Bent
2 : 3 8 P M 15 Tree Family Physicians, herein referred to as lessor, and
2 : 3 8 P M 16 Health Diagnostic Laboratory, Inc., herein referred to as
2 : 3 8 P M 17 lessee."

2 : 3 8 P M 18 Did I read that correctly?

2 : 3 8 P M 19 A. Yes.

2 : 3 8 P M 20 Q. If you turn to page 2, Plaintiffs' Exhibit 1615, do you
2 : 3 8 P M 21 see paragraph A lists basic rent; and at the end, it says
2 : 3 8 P M 22 payable in monthly installments of \$4,380 per month?

2 : 3 8 P M 23 A. Yes, I see that.

2 : 3 8 P M 24 Q. If you turn to the fifth page of this agreement, do you
2 : 3 8 P M 25 see paragraph 18(a), which reads, "Lessee shall pay as

2 : 3 8 P M 1 additional rent lessee's pro rata share -- i.e., 10.8
2 : 3 9 P M 2 percent -- of the common area maintenance expenses relating to
2 : 3 9 P M 3 the buildings and other improvements of which the leased
2 : 3 9 P M 4 premises are a part, the land and any other improvements now or
2 : 3 9 P M 5 hereinafter located upon the land as well as the lessee's pro
2 : 3 9 P M 6 rata share of all taxes imposed upon or relating to the
2 : 3 9 P M 7 buildings and the land"?

2 : 3 9 P M 8 A. I see that.

2 : 3 9 P M 9 Q. Do you know how much the total rent would be if you add up
2 : 3 9 P M 10 the \$4,380 per month plus the additional rent relating to the
2 : 3 9 P M 11 expenses and taxes on the Bent Tree office?

2 : 3 9 P M 12 A. I wouldn't have any idea how much that is.

2 : 3 9 P M 13 MR. TERRANOVA: Thank you. No further questions.

2 : 3 9 P M 14 THE COURT: Could I ask --

2 : 3 9 P M 15 Yes, Mr. Ashmore?

2 : 3 9 P M 16 MR. ASHMORE: May I follow up, Your Honor?

2 : 3 9 P M 17 THE COURT: No. We do just redirect. We don't
2 : 4 0 P M 18 continue.

2 : 4 0 P M 19 MR. ASHMORE: Yes, sir.

2 : 4 0 P M 20 THE COURT: Can we bring up Exhibit 1203? I want to
2 : 4 0 P M 21 ask the witness a question.

2 : 4 0 P M 22 And if we could blow up the -- yes.

2 : 4 0 P M 23 Mr. Cornwell, if you would -- in the first
2 : 4 0 P M 24 paragraph, it says, "We truly have a lot to offer the arena in
2 : 4 0 P M 25 advanced lipid, metabolic, and nutritional testing, and I know

2 : 4 0 P M 1 we can present a tremendous and lucrative business partnership
2 : 4 0 P M 2 with your company."

2 : 4 0 P M 3 what are you referring to as a tremendous and
2 : 4 0 P M 4 lucrative business partnership?

2 : 4 0 P M 5 **THE WITNESS:** It's the HDL business model that was
2 : 4 0 P M 6 offered at the time for the no-balance billing and the
2 : 4 0 P M 7 processing and handling reimbursements directed to this
2 : 4 0 P M 8 particular clinical manager, Jorge Moreno.

2 : 4 0 P M 9 **THE COURT:** But the no billing you indicate didn't
2 : 4 0 P M 10 really help the practice itself; that did not go to the benefit
2 : 4 1 P M 11 of the practice?

2 : 4 1 P M 12 **THE WITNESS:** Not financially, that's correct.

2 : 4 1 P M 13 **THE COURT:** So in terms of the tremendous and
2 : 4 1 P M 14 lucrative business partnership with your company, what is that
2 : 4 1 P M 15 referring to specifically?

2 : 4 1 P M 16 **THE WITNESS:** That was referring Jorge Moreno to the
2 : 4 1 P M 17 business model of the processing and handling reimbursement.

2 : 4 1 P M 18 **THE COURT:** Thank you.

2 : 4 1 P M 19 Any questions occasioned by the Court's
2 : 4 1 P M 20 questions from the government?

2 : 4 1 P M 21 **MR. TERRANOVA:** No, Your Honor.

2 : 4 1 P M 22 **THE COURT:** From the defense?

2 : 4 1 P M 23 **MR. COOKE:** Let me just have a moment to look at
2 : 4 1 P M 24 that, Your Honor.

2 : 4 1 P M 25 **THE COURT:** Yes.

(Pause.)

RE CROSS-EXAMINATION

BY MR. COOKE:

Q. I believe you testified earlier that these were your words; right? This was not vetted or approved by Brad or Cal; correct?

A. Correct, yeah. They were not subjects on this email.

Q. Was that a large practice?

A. Mi Doctor was a collection of many individual practices.

Q. So about how many doctors altogether would that likely have been?

A. Oh, they probably have 50 total doctors between Dallas and Fort Worth.

Q. But they wound up not becoming clients of yours; correct?

A. That's correct, they did not.

MR. COOKE: Thank you.

THE COURT: Mr. Ashmore?

MR. ASHMORE: Nothing.

THE COURT: Sir, you may step down.

(Witness excused.)

THE COURT: Ladies and gentlemen, I think this might be a good time between witnesses that we might take our afternoon break.

(Whereupon the jury was excused from the courtroom.)

THE COURT: You may be seated.

2 : 4 3 P M 1 Any matters to come before the Court, before we
2 : 4 3 P M 2 break, from the government?

2 : 4 3 P M 3 MR. LEVENTIS: No, Your Honor.

2 : 4 3 P M 4 THE COURT: From the defense?

2 : 4 3 P M 5 MR. COOKE: No.

2 : 4 3 P M 6 MR. ASHMORE: No, sir.

2 : 4 3 P M 7 THE COURT: Very good. We'll take about a 10-minute
2 : 4 3 P M 8 break.

2 : 4 3 P M 9 Sir, you may step down.

2 : 4 3 P M 10 (Recess.)

2 : 5 8 P M 11 THE COURT: Please be seated.

2 : 5 8 P M 12 Is our next witness Dr. Mayes?

2 : 5 9 P M 13 MS. STRAWN: Yes, Your Honor.

2 : 5 9 P M 14 THE COURT: Let me just remind counsel of an earlier
2 : 5 9 P M 15 order of the Court concerning that there shall be no suggestion
2 : 5 9 P M 16 or reference to the trouble damages, that that's an order of
2 : 5 9 P M 17 the Court.

2 : 5 9 P M 18 So if you're talking about this financial
2 : 5 9 P M 19 incentive on cross, you cannot suggest anything other than what
2 : 5 9 P M 20 might be actual damages.

2 : 5 9 P M 21 Everybody understand that?

2 : 5 9 P M 22 MR. COOKE: Yes.

2 : 5 9 P M 23 THE COURT: Mr. Griffith, you seemed a little
2 : 5 9 P M 24 concerned about that.

2 : 5 9 P M 25 That's what I love about Mr. Griffith. He never

2 : 5 9 P M 1 gives up; right?

2 But everybody understand?

3 Okay. Let's bring in the jury.

4 Ms. Strawn? Hold on just a second.

5 MS. STRAWN: I believe that order also referred to
6 the settlement with HDL and Singulex --

7 THE COURT: Yes.

8 MS. STRAWN: -- not just the troubles and the
9 penalties?

10 THE COURT: Correct.

11 MS. STRAWN: Thank you.

12 THE COURT: Very good.

13 (Whereupon the jury entered the courtroom.)

14 THE COURT: Please be seated.

15 Government, call your next witness.

16 MS. STRAWN: The government calls Dr. Michael Mayes.

17 THE DEPUTY CLERK: Please place your left hand on the
18 Bible and raise your right. State your full name for the
19 record, please.

20 THE WITNESS: Michael Patrick Mayes.

21 THE DEPUTY CLERK: Thank you.

22 (Witness sworn.)

23 THE DEPUTY CLERK: Thank you. You may be seated.

24 MICHAEL PATRICK MAYES,
25 called on behalf of the plaintiff, being first duly

1 sworn, was examined and testified as follows:

2 THE WITNESS: Okay.

3 MS. STRAWN: Your Honor, I don't believe I was
4 introduced. So my name is Elizabeth Strawn, and I'm one of the
5 attorneys representing the United States in this matter.

6 THE COURT: Very good, Ms. Strawn. Please proceed.

7 DIRECT EXAMINATION

8 BY MS. STRAWN:

9 BY MS. STRAWN:

10 Q. Will you please state your full name?

11 A. Yes. Michael Patrick Mayes.

12 Q. What kind of work do you do?

13 A. I am an internal medicine physician.

14 Q. What is an internal medicine physician?

15 A. It's a physician who specializes in the treatment of
16 adults aged 16 and over, especially elderly adults.

17 Q. How long have you been a physician?

18 A. I've been a physician for 24 years if you include my three
19 years of residency.

20 Q. Dr. Mayes, are you board-certified?

21 A. Yes, I am.

22 Q. What does it mean to be board-certified?

23 A. The board-certification process is something that in
24 internal medicine you have to do every 10 years. It really
25 involves taking an exam to document and justify that you're

3 : 0 3 P M 1 staying current with latest techniques and keeping up with
3 : 0 3 P M 2 current medications and current treatments for various disease
3 : 0 3 P M 3 entities.

3 : 0 3 P M 4 Q. what are you board-certified in?

3 : 0 3 P M 5 A. Internal medicine.

3 : 0 3 P M 6 Q. And do you have a license to practice medicine?

3 : 0 3 P M 7 A. Yes, I do.

3 : 0 3 P M 8 Q. And where is that?

3 : 0 3 P M 9 A. In the state of South Carolina.

3 : 0 3 P M 10 Q. where do you live?

3 : 0 3 P M 11 A. I live in Hilton Head Island in South Carolina.

3 : 0 3 P M 12 Q. Is that where you practice medicine?

3 : 0 3 P M 13 A. Yes, it is.

3 : 0 3 P M 14 Q. And what kind of practice are you in?

3 : 0 3 P M 15 A. I'm currently in a solo practice.

3 : 0 3 P M 16 Q. And how long have you had your solo practice?

3 : 0 3 P M 17 A. I've been in solo practice since August of 2014.

3 : 0 3 P M 18 Q. where were you before that?

3 : 0 3 P M 19 A. I was a partner in a group practice from January of 1999
3 : 0 3 P M 20 through August of 2014 at Heritage Medical Partners.

3 : 0 4 P M 21 Q. And where was Heritage Medical Partners?

3 : 0 4 P M 22 A. That's also on Hilton Head Island in South Carolina.

3 : 0 4 P M 23 Q. Dr. Mayes, approximately what proportion of the patients
3 : 0 4 P M 24 at Heritage were Medicare patients?

3 : 0 4 P M 25 A. I would estimate somewhere between 60 and 70 percent.

3 : 0 4 P M 1 Q. And did Heritage have any TRICARE patients?

3 : 0 4 P M 2 A. Yes, they did.

3 : 0 4 P M 3 Q. Dr. Mayes, did you personally refer any of your patients
3 : 0 4 P M 4 or order tests for your patients from the -- a lab called
3 : 0 4 P M 5 Health Diagnostic Laboratory, or HDL for short?

3 : 0 4 P M 6 A. No, I did not.

3 : 0 4 P M 7 Q. And did you order any tests for your patients from a lab
3 : 0 4 P M 8 called Singulex, Inc.?

3 : 0 4 P M 9 A. No, I did not.

3 : 0 4 P M 10 Q. why not?

3 : 0 4 P M 11 A. I thought for two reasons. I was concerned about the P&H
3 : 0 4 P M 12 fees that were being paid to physicians. I thought that --

3 : 0 4 P M 13 MR. COOKE: Your Honor, object to the relevance.

3 : 0 4 P M 14 THE COURT: Overruled.

3 : 0 4 P M 15 THE WITNESS: I was concerned that the excessive P&H
3 : 0 5 P M 16 fees would present an inducement to physicians, that it may
3 : 0 5 P M 17 comprise a kickback. And I was also concerned that the way
3 : 0 5 P M 18 they were bundling labs, which included significant numbers of
3 : 0 5 P M 19 expensive genetic tests and other types of tests, for the most
3 : 0 5 P M 20 part, were irrelevant to a lot of --

3 : 0 5 P M 21 MR. COOKE: Your Honor, I have an additional
3 : 0 5 P M 22 objection. He's not identified as an expert witness, and he's
3 : 0 5 P M 23 giving opinions about --

3 : 0 5 P M 24 THE COURT: He's describing why he did not order the
3 : 0 5 P M 25 tests.

3 : 0 5 P M 1 Overruled.

3 : 0 5 P M 2 **BY MS. STRAWN:**

3 : 0 5 P M 3 Q. Did you finish your answer?

3 : 0 5 P M 4 A. I was concerned that they were bundling so many different
3 : 0 5 P M 5 tests related to so many different disease entities that the
3 : 0 5 P M 6 vast majority of the bundle would be inappropriate or not
3 : 0 5 P M 7 related to the patients being tested.

3 : 0 5 P M 8 Q. And how did you hear about the processing and handling
3 : 0 5 P M 9 fees that HDL and Singulex were paying?

3 : 0 5 P M 10 A. I heard about that through my partners.

3 : 0 6 P M 11 Q. And what did you hear?

3 : 0 6 P M 12 A. I heard that they were --

3 : 0 6 P M 13 **MR. COOKE:** Objection, Your Honor. This is hearsay.
3 : 0 6 P M 14 And the reason why he's not ordering tests is not relevant.
3 : 0 6 P M 15 They're using it as a way of getting hearsay before the jury.
3 : 0 6 P M 16 So I object.

3 : 0 6 P M 17 **THE COURT:** Sustained.

3 : 0 6 P M 18 **BY MS. STRAWN:**

3 : 0 6 P M 19 Q. Dr. Mayes, are you familiar with a company by the name of
3 : 0 6 P M 20 Bluewave?

3 : 0 6 P M 21 A. Yes.

3 : 0 6 P M 22 Q. And what is Bluewave?

3 : 0 6 P M 23 A. To my understanding, it was a company that was hired by
3 : 0 6 P M 24 HDL and Singulex to market their labs to physicians nationwide
3 : 0 6 P M 25 and would also be a conduit for getting physicians their P&H

3 : 0 6 P M 1 fee payments for the labs they were ordering through HDL and
3 : 0 6 P M 2 Singulex.

3 : 0 6 P M 3 Q. Do you know anyone who marketed on behalf of Bluewave?

3 : 0 6 P M 4 A. Yes, I do.

3 : 0 6 P M 5 Q. And who was that?

3 : 0 6 P M 6 A. Our local regional marketing rep from BlueWave was a
3 : 0 6 P M 7 gentleman by the name of Tony Carnaggio.

3 : 0 6 P M 8 Q. And have you ever met anyone else from Bluewave?

3 : 0 7 P M 9 A. Yes, I have.

3 : 0 7 P M 10 Q. And who was that?

3 : 0 7 P M 11 A. I met Cal Dent at one point in a meeting.

3 : 0 7 P M 12 Q. Dr. Mayes, do you know any physicians who did order tests
3 : 0 7 P M 13 from HDL and Singulex?

3 : 0 7 P M 14 A. Yes, I do.

3 : 0 7 P M 15 Q. And who was that?

3 : 0 7 P M 16 A. My -- most of my previous physicians within the group of
3 : 0 7 P M 17 Heritage Medical Center were ordering those labs.

3 : 0 7 P M 18 Q. And, Dr. Mayes, what did you observe about your Heritage
3 : 0 7 P M 19 partners when they were ordering HDL and Singulex tests?

3 : 0 7 P M 20 MR. COOKE: Your Honor, object to the lack of
3 : 0 7 P M 21 foundation and personal knowledge.

3 : 0 7 P M 22 THE COURT: I think it's sufficient. Overruled.
3 : 0 7 P M 23 Please continue.

3 : 0 7 P M 24 THE WITNESS: I noticed that, over time, their --
3 : 0 7 P M 25 once they saw the checks that they were getting, they were

1 increasing their frequency of ordering the labs and they were
2 increasing the number of patients per month that they were
3 ordering the labs on.

4 **BY MS. STRAWN:**

5 Q. Okay. Now, Dr. Mayes, I'd like to ask you to explain
6 about some information about office visits and how that works.

7 Dr. Mayes, are you a kind of physician that sees
8 patients in your office?

9 A. Yes.

10 Q. And are you entitled to be paid for those office visits?

11 A. Yes.

12 Q. And how do you as the physician get paid for that visit?

13 A. Well, we establish the level of office visit based upon
14 the complexity of interaction with the patient and the number
15 of medical problems involved and the time spent with the
16 patient, and then we -- we justify -- excuse me -- we kind of
17 mark on our billing code that level of service, which is then
18 transmitted to Medicare by our billing staff.

19 Q. And what does Medicare then do with that information?

20 A. Medicare then assesses the information provided and
21 generates a payment to us based upon their fee schedule.

22 Q. And does it work the same way if a patient's insurance --
23 health insurance company is -- is a TRICARE program?

24 A. Yes.

25 Q. And how about other kinds of health insurance? Does it

3 : 0 9 P M 1 work the same way with those?

3 : 0 9 P M 2 A. Essentially the same way, yes.

3 : 0 9 P M 3 Q. And did it work the same way for your Heritage Partners
3 : 0 9 P M 4 office visit fees?

3 : 0 9 P M 5 A. Yes.

3 : 0 9 P M 6 Q. Now, Dr. Mayes, if you're in an office visit -- if you're
3 : 0 9 P M 7 visiting with -- seeing a patient, if you decide to order blood
3 : 0 9 P M 8 tests for that patient from an outside lab, who submits the
3 : 0 9 P M 9 claim to that patient's health insurance company for those lab
3 : 0 9 P M 10 testing services?

3 : 0 9 P M 11 A. The lab where the services were provided would generate
3 : 0 9 P M 12 the fee to the insurance company or to Medicare.

3 : 0 9 P M 13 Q. And then does the lab get paid directly from the patient's
3 : 1 0 P M 14 insurance company?

3 : 1 0 P M 15 A. Yes, they do.

3 : 1 0 P M 16 Q. Does that work the same way with TRICARE?

3 : 1 0 P M 17 A. It should, yes.

3 : 1 0 P M 18 Q. Now, what if the patient's health insurance policy
3 : 1 0 P M 19 requires that patient to share the cost of those tests, such as
3 : 1 0 P M 20 a copayment, whose responsibility is it to collect that
3 : 1 0 P M 21 copayment?

3 : 1 0 P M 22 MR. COOKE: Your Honor, I believe he's being asked
3 : 1 0 P M 23 expert questions. He's not identified as an expert.

3 : 1 0 P M 24 THE COURT: He's not an expert. He's testifying from
3 : 1 0 P M 25 his own personal knowledge. Overruled.

1 Please continue.

2 THE WITNESS: It would be the responsibility of the
3 company -- the lab company that was generating the fee to
4 Medicare to also collect a copay from the patient who had those
5 labs drawn.

6 BY MS. STRAWN:

7 Q. You as the ordering physician, would you know whether or
8 not the lab has collected the copayment from a patient or not?

9 A. Not under most circumstances. On rare occasions, you
10 might know.

11 Q. Well, tell me about those rare occasions. On what rare
12 occasions might you know?

13 A. If there were a circumstance where a patient was concerned
14 about one of the labs you had ordered, if they were wondering
15 if that lab was relevant, if they were questioning the price of
16 the lab that you had ordered, the necessity of it, then they
17 may bring that to your attention. And in that process, you
18 might find out if a copay was also charged.

19 Q. And why would you find out if a copay was charged? How
20 would that be important?

21 A. Well, because if the patient is complaining about those
22 fees, they would be complaining about their obligation for that
23 percentage of that fee based upon the labs that were ordered.

24 Q. Now, in your answer just now, you referred to ordering
25 labs.

3 : 1 1 P M 1 A. Right.

3 : 1 1 P M 2 Q. I want to make sure we understand what you mean by
3 : 1 1 P M 3 "ordering a lab."

3 : 1 1 P M 4 A. Okay.

3 : 1 1 P M 5 Q. What do you mean by "ordering a lab"?

3 : 1 1 P M 6 A. Ordering a lab is, you know, filling out a form for blood
3 : 1 1 P M 7 work for the patients. And so it's essentially a lab test that
3 : 1 2 P M 8 you're ordering for a patient based upon your office visit or
3 : 1 2 P M 9 other types of interaction with the patient.

3 : 1 2 P M 10 Q. Okay. So when you use the term "ordering a lab," is it
3 : 1 2 P M 11 synonymous with saying "ordering tests"?

3 : 1 2 P M 12 A. Ordering a blood test, synonymous with "ordering a blood
3 : 1 2 P M 13 test."

3 : 1 2 P M 14 Q. It's a synonym for --

3 : 1 2 P M 15 A. Yes.

3 : 1 2 P M 16 Q. Okay. I want to make sure we understand your testimony.

3 : 1 2 P M 17 A. Sure. Sure.

3 : 1 2 P M 18 Q. Dr. Mayes, what's your understanding of the role of
3 : 1 2 P M 19 copayments in the health care system?

3 : 1 2 P M 20 A. It's -- my understanding in general, it's the patient's
3 : 1 2 P M 21 percentage of cost-sharing obligation in any test that's
3 : 1 2 P M 22 ordered or an office visit that's conducted by a physician.
3 : 1 2 P M 23 And, in my opinion, it's a necessary evil, because it gives --

3 : 1 2 P M 24 MR. COOKE: Objection, Your Honor. He's giving an
3 : 1 2 P M 25 opinion.

3 : 1 2 P M 1 **THE COURT:** He's explaining of his own personal
3 : 1 2 P M 2 knowledge. Overruled.

3 : 1 2 P M 3 Please continue.

3 : 1 3 P M 4 **THE WITNESS:** It gives the patient an opportunity to
3 : 1 3 P M 5 debate or challenge any necessity of a test that may be ordered
3 : 1 3 P M 6 or the expense of the test that's being conducted. So it gives
3 : 1 3 P M 7 an appropriate negative incentive for the patient in terms of
3 : 1 3 P M 8 participating in their care.

3 : 1 3 P M 9 **BY MS. STRAWN:**

3 : 1 3 P M 10 **Q.** All right. So now I'd like to talk a bit more about the
3 : 1 3 P M 11 Heritage Medical Partners. How did you know what the other
3 : 1 3 P M 12 doctors at Heritage were doing in terms of ordering tests,
3 : 1 3 P M 13 ordering labs?

3 : 1 3 P M 14 **A.** We would occasionally talk about things like that at our
3 : 1 3 P M 15 office meetings. And, also, I had a business role within the
3 : 1 3 P M 16 practice as well.

3 : 1 3 P M 17 **Q.** Okay. So let's take those one at a time, Dr. Mayes.
3 : 1 3 P M 18 How often were the staff meetings?

3 : 1 3 P M 19 **A.** They weren't staff meetings; they were physician meetings.
3 : 1 3 P M 20 And they would occur on Tuesday evenings after office hours,
3 : 1 4 P M 21 anywhere from on a weekly basis to sometimes just once a month.

3 : 1 4 P M 22 **Q.** And when you corrected me there, you said it was the
3 : 1 4 P M 23 physicians. Who were the other physicians participating in
3 : 1 4 P M 24 these meetings?

3 : 1 4 P M 25 **A.** It would vary. The physicians who were able to show up.

3 : 1 4 P M 1 If they had some other obligations, sometimes a family
3 : 1 4 P M 2 commitment, they wouldn't be able to. But, typically, it would
3 : 1 4 P M 3 be myself and Dr. Lenns, Dr. Long, Dr. Binamira, and Dr. Petty
3 : 1 4 P M 4 were the most common physicians who were attending the
3 : 1 4 P M 5 meetings. And our office manager would conduct and organize
3 : 1 4 P M 6 the meeting.

3 : 1 4 P M 7 Q. Maybe I should back up and ask, how many doctors practiced
3 : 1 4 P M 8 at Heritage?

3 : 1 4 P M 9 A. It could vary. Over the years that I was with Heritage,
3 : 1 4 P M 10 it would be anywhere from four on a low to six at a maximum.
3 : 1 4 P M 11 Most commonly, it was five or six at any one given time.

3 : 1 4 P M 12 Q. Now, in addition to discussing what the -- what yourself
3 : 1 4 P M 13 and the other physicians were ordering in terms of labs at the
3 : 1 5 P M 14 meetings, did you have any other occasions to know what your
3 : 1 5 P M 15 partners were ordering on their patients?

3 : 1 5 P M 16 A. I would know also because we would cross-cover for each
3 : 1 5 P M 17 other, so I would see data and results in their charts. But,
3 : 1 5 P M 18 also, I had a business role in the practice as well, so I would
3 : 1 5 P M 19 see things related to that.

3 : 1 5 P M 20 Q. Okay. So you just used a term, "cross-cover."

3 : 1 5 P M 21 A. Yes.

3 : 1 5 P M 22 Q. Can you explain to the jury what you meant by cross-cover?

3 : 1 5 P M 23 A. Well, in a group practice, there were always situations
3 : 1 5 P M 24 where a physician may be ill himself or herself or may be on
3 : 1 5 P M 25 vacation. And in that physician's absence from the group, his

3 : 1 5 P M 1 or her patients would need to be seen if they were ill or
3 : 1 5 P M 2 otherwise needed assistance. And that usually would take place
3 : 1 5 P M 3 among the remaining physicians who were still in the building,
3 : 1 5 P M 4 so we'd cross-cover and fill in for patients who needed to be
3 : 1 6 P M 5 seen.

3 : 1 6 P M 6 Q. When you and your partners at Heritage were cross-covering
3 : 1 6 P M 7 for each other, did you review those patients' medical records?

3 : 1 6 P M 8 A. Yes.

3 : 1 6 P M 9 Q. What kind of information would be found in those medical
3 : 1 6 P M 10 records?

3 : 1 6 P M 11 A. Well, you would find anything in a patient medical record,
3 : 1 6 P M 12 from a list of the medicines they were on to medical problems
3 : 1 6 P M 13 they had currently. In the past, you would find lab test
3 : 1 6 P M 14 results, of which -- or blood test results, I should say. You
3 : 1 6 P M 15 would find results of any other diagnostic studies. You would
3 : 1 6 P M 16 find referral information, referral letters from other
3 : 1 6 P M 17 subspecialty physicians, those types of things.

3 : 1 6 P M 18 Q. Were you a partner in Heritage?

3 : 1 6 P M 19 A. Yes, I was.

3 : 1 6 P M 20 Q. And what does it mean to be a partner as opposed to a
3 : 1 6 P M 21 non-partner?

3 : 1 6 P M 22 A. Well, the partners had an ownership role and a management
3 : 1 6 P M 23 role within the group. And usually you had to -- you know,
3 : 1 7 P M 24 justify to get to partnership -- you had to be invited to a
3 : 1 7 P M 25 certain extent -- but you had to have a busy practice that was,

3 : 1 7 P M 1 you know, generating enough revenue to cover your expenses and
3 : 1 7 P M 2 then some, and you had to be in good standing within the
3 : 1 7 P M 3 community to be able to -- to be invited to be a partner.

3 : 1 7 P M 4 Q. And as a partner at Heritage, did you have the right to
3 : 1 7 P M 5 vote on hiring employees?

3 : 1 7 P M 6 A. Yes.

3 : 1 7 P M 7 Q. And did that mean also that you had to vote on the hiring
3 : 1 7 P M 8 of phlebotomists?

3 : 1 7 P M 9 A. Yes.

3 : 1 7 P M 10 Q. Did you also get to vote on staff salaries, how much
3 : 1 7 P M 11 salary to offer the staff members?

3 : 1 7 P M 12 A. Yes.

3 : 1 7 P M 13 Q. Now, you mentioned in an earlier answer that you had some
3 : 1 7 P M 14 particular management responsibilities at Heritage. What
3 : 1 7 P M 15 was -- what was that -- what were those responsibilities?

3 : 1 7 P M 16 A. I also carried the title as CFO, chief financial officer,
3 : 1 8 P M 17 to a certain extent.

3 : 1 8 P M 18 Q. And why were you the CFO?

3 : 1 8 P M 19 A. I also have a business degree.

3 : 1 8 P M 20 Q. And where did you get the business degree?

3 : 1 8 P M 21 A. I have a business degree from the Wharton School of
3 : 1 8 P M 22 Business at the University of Pennsylvania.

3 : 1 8 P M 23 Q. When did you get that?

3 : 1 8 P M 24 A. I graduated in 1989 from Wharton.

3 : 1 8 P M 25 Q. So was that before medical school?

3 : 1 8 P M 1 A. That was before medical school, yes.

3 : 1 8 P M 2 Q. Now, in your role as the CFO of Heritage, did you have
3 : 1 8 P M 3 occasion to review Heritage's books?

3 : 1 8 P M 4 A. Yes.

3 : 1 8 P M 5 Q. Did you have any other duties as CFO of Heritage?

3 : 1 8 P M 6 A. Well, one of the main things they wanted me to do each
3 : 1 8 P M 7 month was look over checks that were going out to other vendors
3 : 1 8 P M 8 that Heritage was associated with or owed bills to -- or had to
3 : 1 8 P M 9 pay bills to. And so I would also have to pay bonus checks and
3 : 1 8 P M 10 salary checks to physicians as well. So I'd have to sign off
3 : 1 9 P M 11 all the checks that went out.

3 : 1 9 P M 12 Q. Now, Dr. Mayes, you said you had not ordered from HDL or
3 : 1 9 P M 13 Singulex, but have you ever ordered so-called advanced
3 : 1 9 P M 14 cardiovascular testing, to use the term, from an outside lab?

3 : 1 9 P M 15 A. Yes. In the past, I have.

3 : 1 9 P M 16 Q. And from what lab?

3 : 1 9 P M 17 A. I ordered from Berkeley HeartLab in the past.

3 : 1 9 P M 18 Q. When did you order from Berkeley?

3 : 1 9 P M 19 A. It was between, I believe, December of 2009 and either
3 : 1 9 P M 20 November or December of 2010.

3 : 1 9 P M 21 Q. Dr. Mayes, why did you order those tests from Berkeley?

3 : 1 9 P M 22 A. Well, at that point, Berkeley was -- it was new
3 : 1 9 P M 23 technology. They were offering things called particle sizes of
3 : 1 9 P M 24 cholesterol particles, particle concentration analysis of both
3 : 1 9 P M 25 the LDL cholesterol and the HDL cholesterol, which are the bad

3 : 1 9 P M 1 and the good cholesterol. And this technology was very new at
3 : 2 0 P M 2 that point within medicine. And there was some discussion
3 : 2 0 P M 3 among many physicians as to whether or not improving the
3 : 2 0 P M 4 profile on these particle concentrations as to whether or not
3 : 2 0 P M 5 that would improve your patient's risk of having fewer heart
3 : 2 0 P M 6 attacks or strokes or dying. So I was ordering to that extent.

3 : 2 0 P M 7 Q. Did your view change?

3 : 2 0 P M 8 A. Yes, it did.

3 : 2 0 P M 9 Q. And why did it change?

3 : 2 0 P M 10 A. Well, over time, I -- on my own research --

3 : 2 0 P M 11 MR. COOKE: Your Honor, object to relevance. And
3 : 2 0 P M 12 he's now giving an opinion that's not relevant --

3 : 2 0 P M 13 THE COURT: I think that sounds like an opinion.
3 : 2 0 P M 14 I'll sustain as to that.

3 : 2 0 P M 15 BY MS. STRAWN:

3 : 2 0 P M 16 Q. Dr. Mayes, did Berkeley pay a so-called processing and
3 : 2 0 P M 17 handling, or P&H, fee?

3 : 2 0 P M 18 A. Yes, they did.

3 : 2 0 P M 19 Q. How much did Berkeley pay?

3 : 2 0 P M 20 A. They paid \$11.50 per patient per draw.

3 : 2 0 P M 21 Q. And why did you stop ordering from Berkeley?

3 : 2 1 P M 22 A. I stopped, really, for three reasons.

3 : 2 1 P M 23 One is that, even though we were assured from the
3 : 2 1 P M 24 Berkeley representative that those fees were legal, I was
3 : 2 1 P M 25 concerned that the amount they were paying might exceed

1 Medicare's allowable amount for the same work. And the -- by
2 the research I was doing, I could only see that Medicare was
3 justifying and allowing a \$3 payment for that same work.

4 MR. COOKE: I'm going to continue to object to his
5 using opinions.

6 THE COURT: It's not an opinion. It's his own
7 testimony. Overruled.

8 Please proceed.

9 THE WITNESS: Another concern that I had and another
10 reason that I stopped is, again, what was happening is I
11 started ordering this because I was interested in cholesterol
12 particle sizes and concentrations of LDL and HDL, but what was
13 happening over time is Berkeley was developing genetic tests
14 and other inflammatory mediator tests, and they were routinely
15 adding each new test they were developing to their profiles.

16 So the patients that I was sending for the
17 particle size and particle concentration were having tests
18 added that I never ordered and that were quite expensive to
19 Medicare and, frankly, were not even relevant to those
20 patients' medical problem.

21 THE COURT: This is about Berkeley?

22 THE WITNESS: That was Berkeley.

23 THE COURT: How is that relevant? I'm going to -- is
24 there an objection?

25 MR. COOKE: I thought I did object, but, yes, I

3 : 2 2 P M 1 object again.

3 : 2 2 P M 2 THE COURT: I'll sustain that objection as to
3 : 2 2 P M 3 Berkeley.

3 : 2 2 P M 4 BY MS. STRAWN:

3 : 2 2 P M 5 Q. Dr. Mayes, what did you do when you became concerned about
3 : 2 2 P M 6 the legality of Berkeley's P&H fees?

3 : 2 2 P M 7 A. I did a few things. One is I went to my partners first,
3 : 2 2 P M 8 and I said, "We need to stop ordering these tests. I don't
3 : 2 2 P M 9 think the fees they're paying are legal. I don't think the
3 : 2 2 P M 10 results are relevant. I don't like that they're adding these
3 : 2 2 P M 11 tests that we're not ordering."

3 : 2 2 P M 12 And when my partners wouldn't do anything about it, I
3 : 2 2 P M 13 sought legal advice myself.

3 : 2 2 P M 14 Q. And after you got legal advice, what did you do?

3 : 2 3 P M 15 A. I filed a False Claims Act suit with the government -- or
3 : 2 3 P M 16 to the government.

3 : 2 3 P M 17 Q. And when did you do that?

3 : 2 3 P M 18 A. That was in the summer of 2011.

3 : 2 3 P M 19 Q. Now, was that a publicly filed lawsuit?

3 : 2 3 P M 20 A. That was filed, and the suit was kept under seal for a
3 : 2 3 P M 21 number of years.

3 : 2 3 P M 22 Q. What does -- to your understanding, what does it mean to
3 : 2 3 P M 23 be under seal?

3 : 2 3 P M 24 A. To my understanding, under seal means I was not permitted
3 : 2 3 P M 25 to discuss any of the details of the case with anyone for the

3 : 2 3 P M 1 period during which it was kept under seal by the judge.

3 : 2 3 P M 2 Q. Dr. Mayes, what happens if the United States is successful
3 : 2 3 P M 3 in this action?

3 : 2 3 P M 4 A. There's a possibility I could get a percentage of the
3 : 2 3 P M 5 award.

3 : 2 3 P M 6 Q. You also testified earlier that there was a period of time
3 : 2 3 P M 7 in which you did accept processing and handling fees. By the
3 : 2 3 P M 8 time you stopped accepting it, how much had you received?

3 : 2 4 P M 9 A. Over time, the total amount was \$14,400.

3 : 2 4 P M 10 Q. And where is that money now?

3 : 2 4 P M 11 A. I put that into an escrow account.

3 : 2 4 P M 12 Q. Why did you do that?

3 : 2 4 P M 13 A. Because it was my opinion that I don't think it was legal
3 : 2 4 P M 14 for any of the physicians to accept -- to have accepted that
3 : 2 4 P M 15 money.

3 : 2 4 P M 16 Q. And did your partners stop ordering from Berkeley?

3 : 2 4 P M 17 A. Eventually.

3 : 2 4 P M 18 Q. And when did they stop?

3 : 2 4 P M 19 A. They stopped at the end of January of 2012.

3 : 2 4 P M 20 Q. What happened in January 2012?

3 : 2 4 P M 21 A. Berkeley stopped paying the processing and handling fees.
3 : 2 4 P M 22 They could still have ordered the labs beyond then, but they
3 : 2 4 P M 23 would not have been compensated to do so.

3 : 2 4 P M 24 Q. Now, did your partners at Heritage ever order tests from
3 : 2 4 P M 25 HDL and Singulex?

3 : 2 4 P M 1 A. Yes, they did.

3 : 2 4 P M 2 Q. And when did they start doing that?

3 : 2 4 P M 3 A. I believe that started in the summer of 2012, July or
3 : 2 5 P M 4 August of 2012.

3 : 2 5 P M 5 Q. Did your partners also accept P&H fees from HDL and
3 : 2 5 P M 6 Singulex?

3 : 2 5 P M 7 A. Yes, they did.

3 : 2 5 P M 8 Q. And how much did they accept?

3 : 2 5 P M 9 A. They were being paid a total of \$30.

3 : 2 5 P M 10 Q. And what made up those 30 -- \$30?

3 : 2 5 P M 11 A. \$20 was paid through HDL and \$10 through Singulex, for a
3 : 2 5 P M 12 total of \$30. And that was per patient per blood test draw.

3 : 2 5 P M 13 Q. Did your partners -- well, did -- I'm sorry -- did
3 : 2 5 P M 14 Heritage actually receive those P&H payments from HDL and
3 : 2 5 P M 15 Singulex?

3 : 2 5 P M 16 A. Yes, they did.

3 : 2 5 P M 17 Q. Did you personally see any of those checks from HDL or
3 : 2 5 P M 18 Singulex?

3 : 2 5 P M 19 A. Yes, I did.

3 : 2 5 P M 20 Q. Now, what happened to that money when Heritage received
3 : 2 5 P M 21 it?

3 : 2 5 P M 22 A. well, the checks would be paid monthly to Heritage. That
3 : 2 6 P M 23 money would be deposited in the bank account of Heritage. And
3 : 2 6 P M 24 then there were two employees of Heritage who were assigned the
3 : 2 6 P M 25 task of ascribing any and all expenses related to the drawing

3 : 2 6 P M 1 of those fees on a monthly basis and subtract -- and that would
3 : 2 6 P M 2 include things like the phlebotomist's salary, the
3 : 2 6 P M 3 phlebotomist's benefits, the supplies that were used, the cost
3 : 2 6 P M 4 of the space of the phlebotomist. And they would subtract
3 : 2 6 P M 5 those total expenses from the total amount received from HDL
3 : 2 6 P M 6 and Singulex each month.

3 : 2 6 P M 7 The remaining amounts were considered to be profit
3 : 2 6 P M 8 and were distributed back to the physicians who had ordered
3 : 2 6 P M 9 those tests based upon the number they had ordered per month.

3 : 2 6 P M 10 Q. Now, as CFO of Heritage, did you personally have a role in
3 : 2 6 P M 11 that process?

3 : 2 6 P M 12 A. I did not have a role of calculating the profits, but it
3 : 2 6 P M 13 was my responsibility to sign those checks.

3 : 2 6 P M 14 Q. And how much profit was that left over after those
3 : 2 7 P M 15 expenses had been deducted?

3 : 2 7 P M 16 A. It would vary, but, many months, it would be from 3 to
3 : 2 7 P M 17 \$5,000 per physician per month -- per participating physician
3 : 2 7 P M 18 per month.

3 : 2 7 P M 19 Q. And at this time were you a participating physician?

3 : 2 7 P M 20 A. No, I was not.

3 : 2 7 P M 21 Q. Did the amount of the profit that each physician got, did
3 : 2 7 P M 22 that vary by the number of tests that they had ordered from HDL
3 : 2 7 P M 23 and Singulex?

3 : 2 7 P M 24 A. Yes. The amount they were paid was in direct proportion
3 : 2 7 P M 25 to the number of tests they had ordered each month.

3 : 2 7 P M 1 Q. Now, Dr. Mayes, what did you observe about your patients'
3 : 2 7 P M 2 ordering when they first began ordering tests from HDL and
3 : 2 7 P M 3 Singulex?

3 : 2 7 P M 4 A. I observed that, when they started to get checks, their
3 : 2 7 P M 5 ordering frequency of these tests seemed to increase and the
3 : 2 7 P M 6 number of patients on whom they were ordering these tests over
3 : 2 7 P M 7 time seemed to increase.

3 : 2 8 P M 8 MR. COOKE: Your Honor, object that there's no
3 : 2 8 P M 9 foundation for that question.

3 : 2 8 P M 10 THE COURT: Why don't you lay a foundation for that,
3 : 2 8 P M 11 Ms. Strawn.

3 : 2 8 P M 12 BY MS. STRAWN:

3 : 2 8 P M 13 Q. From your work cross-covering with your fellow partners at
3 : 2 8 P M 14 Heritage, did you have occasion to see what lab tests your
3 : 2 8 P M 15 Heritage partners were ordering?

3 : 2 8 P M 16 A. Yes, I did.

3 : 2 8 P M 17 Q. And did you see when they were ordering from HDL?

3 : 2 8 P M 18 A. Yes, I did.

3 : 2 8 P M 19 Q. And when they were ordering from Singulex?

3 : 2 8 P M 20 A. Yes, I did.

3 : 2 8 P M 21 Q. Which of your partners were ordering from HDL?

3 : 2 8 P M 22 A. Dr. Long, Dr. Lenns, Dr. Petty, and doctor -- those three
3 : 2 8 P M 23 mainly.

3 : 2 8 P M 24 Q. Those are your partners who were ordering?

3 : 2 8 P M 25 A. Yes. The partners were ordering.

3 : 2 8 P M 1 Q. And were those partners also accepting P&H fees?

3 : 2 8 P M 2 A. Yes, they were.

3 : 2 8 P M 3 Q. And in your observations of those patient medical records,
3 : 2 9 P M 4 did you form an observation about the trends of those -- of
3 : 2 9 P M 5 your partners' ordering of HDL and Singulex tests?

3 : 2 9 P M 6 A. Yes, I did.

3 : 2 9 P M 7 MR. COOKE: I still object to his testimony --

3 : 2 9 P M 8 THE COURT: Overruled. Foundation laid.

3 : 2 9 P M 9 Please continue.

3 : 2 9 P M 10 BY MS. STRAWN:

3 : 2 9 P M 11 Q. What did you observe about your Heritage partners'
3 : 2 9 P M 12 ordering when they first began ordering and receiving P&H from
3 : 2 9 P M 13 HDL and Singulex?

3 : 2 9 P M 14 A. I observed that over a period of time the frequency of
3 : 2 9 P M 15 ordering of the tests for patients, per patient, was
3 : 2 9 P M 16 increasing, and the number of patients of theirs on whom they
3 : 2 9 P M 17 were ordering the tests were increasing over time.

3 : 2 9 P M 18 Q. Now, I was asking you about your partners at Heritage.
3 : 2 9 P M 19 Were there any other doctors working for Heritage who were not
3 : 2 9 P M 20 a partner?

3 : 2 9 P M 21 A. Yes.

3 : 2 9 P M 22 Q. How many?

3 : 2 9 P M 23 A. There was one at that time.

3 : 2 9 P M 24 Q. Who was that?

3 : 2 9 P M 25 A. That was Dr. Andrew Binamira.

3 : 3 0 P M 1 Q. Did Dr. Binamira order tests from HDL and Singulex?

3 : 3 0 P M 2 A. He did in the beginning, yes.

3 : 3 0 P M 3 Q. And did Dr. Binamira -- well, I should say, did HDL and
3 : 3 0 P M 4 Singulex pay Heritage P&H fees for Dr. Binamira's orders?

3 : 3 0 P M 5 A. Yes.

3 : 3 0 P M 6 Q. Did Heritage turn around and pass along the profit from
3 : 3 0 P M 7 that P&H to Dr. Binamira for his orders?

3 : 3 0 P M 8 A. No.

3 : 3 0 P M 9 Q. Did Dr. Binamira keep ordering from HDL and Singulex?

3 : 3 0 P M 10 A. No. Once he was told he would not receive P&H fees, his
3 : 3 0 P M 11 ordering dwindled down.

3 : 3 1 P M 12 Q. Dr. Mayes, have you -- actually, do you recognize anyone
3 : 3 1 P M 13 in the courtroom on the defendants' side there?

3 : 3 1 P M 14 A. Yes.

3 : 3 1 P M 15 Q. And who would that be?

3 : 3 1 P M 16 A. Cal Dent.

3 : 3 1 P M 17 Q. Who is Cal Dent?

3 : 3 1 P M 18 A. He, I believe, is one of the owners of Bluewave.

3 : 3 1 P M 19 Q. And you testified earlier that -- about Tony Carnaggio?

3 : 3 1 P M 20 A. Yes.

3 : 3 1 P M 21 Q. And who is Tony Carnaggio?

3 : 3 1 P M 22 A. Tony Carnaggio is one of the regional marketing reps for
3 : 3 1 P M 23 Bluewave who would market the tests directly to physicians.

3 : 3 1 P M 24 Q. Did Tony Carnaggio market the test directly to you?

3 : 3 1 P M 25 A. Yes.

3 : 3 1 P M 1 Q. When did he do that?

3 : 3 1 P M 2 A. There were two separate phone conversations that I had
3 : 3 1 P M 3 with Tony Carnaggio.

3 : 3 1 P M 4 Q. Do you remember approximately when those were?

3 : 3 1 P M 5 A. I believe they were August of 2012 and November of 2012.

3 : 3 2 P M 6 Q. During those conversations, did Tony Carnaggio recommend
3 : 3 2 P M 7 that you refer your patients -- or order tests for your
3 : 3 2 P M 8 patients from HDL and Singulex?

3 : 3 2 P M 9 A. Yes, he did.

3 : 3 2 P M 10 Q. And did Tony Carnaggio offer you a processing and handling
3 : 3 2 P M 11 fee?

3 : 3 2 P M 12 A. Yes, he did.

3 : 3 2 P M 13 Q. How much did he offer you?

3 : 3 2 P M 14 A. \$30 per test per patient.

3 : 3 2 P M 15 Q. So is that the same deal your partners were already
3 : 3 2 P M 16 getting?

3 : 3 2 P M 17 A. Yes, it was.

3 : 3 2 P M 18 Q. Did Tony Carnaggio tell you how much money you could make
3 : 3 2 P M 19 from the P&H fees?

3 : 3 2 P M 20 A. He gave an example. He said if you or your office is
3 : 3 2 P M 21 ordering this on just 100 patients a week, or 400 patients a
3 : 3 2 P M 22 month, you'll generate \$12,000 a month in P&H fees as
3 : 3 2 P M 23 additional supplemental income for your practice.

3 : 3 2 P M 24 Q. Would it have cost Heritage \$12,000 a month to do the
3 : 3 2 P M 25 processing and handling work?

3 : 3 2 P M 1 A. No.

3 : 3 3 P M 2 Q. But how do you know that?

3 : 3 3 P M 3 A. Because I've seen the cost analysis that was done by my
3 : 3 3 P M 4 bookkeeper and my office manager which showed it was
3 : 3 3 P M 5 substantially less than that per month.

3 : 3 3 P M 6 Q. Now I'd like to move on to another aspect of that sales
3 : 3 3 P M 7 pitch. During those phone calls, did Tony Carnaggio say
3 : 3 3 P M 8 anything about no-balance billing?

3 : 3 3 P M 9 A. Yes, he did.

3 : 3 3 P M 10 Q. And what did he say?

3 : 3 3 P M 11 A. I believe he said there would be zero-balance billing for
3 : 3 3 P M 12 my patients.

3 : 3 3 P M 13 Q. And what did you understand him to mean by "zero-balance
3 : 3 3 P M 14 billing"?

3 : 3 3 P M 15 A. He stated that there would be no fee to the patients
3 : 3 3 P M 16 whatsoever, no copays, no deductibles, that they would accept
3 : 3 3 P M 17 whatever the insurance paid from that patient's insurance or
3 : 3 3 P M 18 whatever Medicare paid to them, but the patient would have no
3 : 3 3 P M 19 financial responsibility.

3 : 3 3 P M 20 Q. What did zero-balance billing mean for you, the ordering
3 : 3 3 P M 21 physician?

3 : 3 3 P M 22 A. Well, for physicians, zero-balance billing can be an
3 : 3 4 P M 23 attractive thing because your patients aren't going to complain
3 : 3 4 P M 24 about the tests you're ordering or the cost of those tests or
3 : 3 4 P M 25 the necessity of those tests because they're never going to see

3 : 3 4 P M 1 a financial bill themselves.

3 : 3 4 P M 2 Q. Did Tony Carnaggio say anything about how often you should
3 : 3 4 P M 3 order the HDL and Singulex tests?

3 : 3 4 P M 4 A. Yes.

3 : 3 4 P M 5 Q. And what did he say?

3 : 3 4 P M 6 A. He said you could order them up to every three months, or
3 : 3 4 P M 7 quarterly, that Medicare would reimburse that often.

3 : 3 4 P M 8 Q. You said earlier that you recognized Cal Dent. Have you
3 : 3 4 P M 9 met him before?

3 : 3 4 P M 10 A. I met him one time before.

3 : 3 4 P M 11 Q. Was that an in-person meeting?

3 : 3 4 P M 12 A. That was an in-person meeting, yes.

3 : 3 4 P M 13 Q. Do you remember when that was?

3 : 3 4 P M 14 A. I believe that was February of 2013.

3 : 3 4 P M 15 Q. Where was that meeting?

3 : 3 4 P M 16 A. That was at a restaurant meeting in Alexander's Restaurant
3 : 3 5 P M 17 in Hilton Head Island.

3 : 3 5 P M 18 Q. Who all was there?

3 : 3 5 P M 19 A. Most of the -- I believe all the physicians from Heritage
3 : 3 5 P M 20 Medical Center were there. The purpose of the meeting was a
3 : 3 5 P M 21 physician talk that was sponsored by BlueWave and HDL, who was
3 : 3 5 P M 22 explaining the science behind their tests. So they had a
3 : 3 5 P M 23 physician-sponsored meeting.

3 : 3 5 P M 24 And I believe it was Dr. Long, Dr. Lennox, Dr. Petty,
3 : 3 5 P M 25 Dr. Binamira, myself. Our office manager, Michele Gaudette,

3 : 3 5 P M 1 was there. Tony Carnaggio was there. Cal Dent was there. And
3 : 3 5 P M 2 their physician speaker Dr. Hollins was there.

3 : 3 5 P M 3 Q. Now, during that meeting in February of 2013, during that
3 : 3 5 P M 4 meeting, did the subject of the legality of the HDL and
3 : 3 5 P M 5 Singulex P&H fees, did that come up?

3 : 3 5 P M 6 A. Yes.

3 : 3 5 P M 7 Q. And how did it come up?

3 : 3 5 P M 8 A. I was having -- with so many people in the room, obviously
3 : 3 6 P M 9 there would be separate discussions. I was having a separate
3 : 3 6 P M 10 discussion with Dr. Lenns about why I was not ordering the
3 : 3 6 P M 11 tests and believing that the P&H fee payments would be illegal.
3 : 3 6 P M 12 And that was one of the reasons I stated to Dr. Lenns that I
3 : 3 6 P M 13 was not ordering it. And then Dr. Lenns asked a question to
3 : 3 6 P M 14 Mr. Dent about the legality of the P&H fees.

3 : 3 6 P M 15 Q. And how did Cal Dent respond to Dr. Lenns?

3 : 3 6 P M 16 A. Mr. Dent responded that the insurance company for HDL had
3 : 3 6 P M 17 spent several hundred thousand dollars running a time and
3 : 3 6 P M 18 motion study and that the time and motion study justified the
3 : 3 6 P M 19 P&H fees that they were paying. He also made a comment that
3 : 3 6 P M 20 they had cleared the legality of these payments with the OIG.

3 : 3 6 P M 21 Q. Did Mr. Dent use that phrase, "cleared," that phrase?

3 : 3 6 P M 22 A. Yes.

3 : 3 6 P M 23 Q. What did you understand him to mean by "OIG"?

3 : 3 7 P M 24 A. I meant -- I understood him to mean the office of
3 : 3 7 P M 25 inspector general.

3 : 3 7 P M 1 Q. And what's, to your knowledge, your understanding of the
3 : 3 7 P M 2 office of inspector general?

3 : 3 7 P M 3 A. My understanding is it's a department of the government
3 : 3 7 P M 4 which is entrusted with overseeing fraud and abuse related to
3 : 3 7 P M 5 divisions of the Social Security Administration.

3 : 3 7 P M 6 Q. So what did you understand him to mean when he -- when
3 : 3 7 P M 7 Mr. Dent used the phrase "cleared by the OIG"?

3 : 3 7 P M 8 A. I understood him to mean that their company had properly
3 : 3 7 P M 9 vetted the legality of these excessive -- my opinion, these
3 : 3 7 P M 10 excessive payments and that OIG had signed off on claiming they
3 : 3 7 P M 11 were legal.

3 : 3 7 P M 12 Q. Now, did that phrase, "cleared by the OIG," did that sound
3 : 3 7 P M 13 familiar to you when Cal Dent used it?

3 : 3 7 P M 14 A. Yes, I --

3 : 3 7 P M 15 Q. And why was it familiar to you?

3 : 3 7 P M 16 A. On both of my phone conversations with Tony Carnaggio, he
3 : 3 8 P M 17 had also stated that they had done these expensive time and
3 : 3 8 P M 18 motion studies and they had spent several hundred thousand
3 : 3 8 P M 19 dollars on these time and motion studies and submitted those
3 : 3 8 P M 20 time and motion studies to the OIG to verify and justify the
3 : 3 8 P M 21 payment they were making to physicians to order the tests.

3 : 3 8 P M 22 Q. Did Bluewave ever provide anything else, like any other
3 : 3 8 P M 23 benefit to Heritage in exchange for Heritage ordering from HDL
3 : 3 8 P M 24 and Singulex?

3 : 3 8 P M 25 A. well, Bluewave at one time arranged for a phlebotomist to

3 : 3 8 P M 1 be placed at Heritage Medical Center to actually draw the labs
3 : 3 8 P M 2 for HDL and Singulex.

3 : 3 8 P M 3 Q. When you say they hired, who paid that phlebotomist's
3 : 3 8 P M 4 salary?

3 : 3 8 P M 5 A. HDL actually paid the phlebotomist's salary.

3 : 3 9 P M 6 Q. And then who -- who actually made the arrangements for
3 : 3 9 P M 7 identifying the phlebotomist, the actual hiring part?

3 : 3 9 P M 8 A. One of my partners contacted Tony Carnaggio, I believe, at
3 : 3 9 P M 9 BlueWave. And then Tony, I guess, reached out to HDL because
3 : 3 9 P M 10 HDL then procured a phlebotomist for us. And that phlebotomist
3 : 3 9 P M 11 stayed in our office for three and a half months.

3 : 3 9 P M 12 Q. When was that three and a half --

3 : 3 9 P M 13 A. -- or longer. I'm sorry.

3 : 3 9 P M 14 Q. How long was the phlebotomist in your office
3 : 3 9 P M 15 approximately?

3 : 3 9 P M 16 A. I'm thinking that she started at the office November of
3 : 3 9 P M 17 2012, and she was there for several months.

3 : 3 9 P M 18 Q. Do you know approximately how many months?

3 : 3 9 P M 19 A. I'm thinking she was there at least until May, but she --
3 : 3 9 P M 20 she was under different employment circumstances through that
3 : 3 9 P M 21 time.

3 : 3 9 P M 22 Q. Do you know how long HDL paid her salary for
3 : 4 0 P M 23 approximately?

3 : 4 0 P M 24 A. Yeah. HDL actually paid her salary for, I believe, three
3 : 4 0 P M 25 and a half months.

3 : 4 0 P M 1 Q. For that three-and-a-half-month period when the
3 : 4 0 P M 2 phlebotomist's salary is being paid by HDL, was that
3 : 4 0 P M 3 phlebotomist doing all of the draw processing and handling work
3 : 4 0 P M 4 for tests referred to HDL and Singulex?

3 : 4 0 P M 5 A. Yes, she was.

3 : 4 0 P M 6 Q. For that three-and-a-half-month period where the
3 : 4 0 P M 7 phlebotomist's salary was paid by HDL, were HDL and Singulex
3 : 4 0 P M 8 still paying the -- your partners at Heritage the P&H fees?

3 : 4 0 P M 9 A. Yes, they were.

3 : 4 0 P M 10 MS. STRAWN: Nothing else on direct, Your Honor.

3 : 4 0 P M 11 THE COURT: You're finished, Ms. Strawn?

3 : 4 1 P M 12 MS. STRAWN: Sorry. Yes, Your Honor.

3 : 4 1 P M 13 THE COURT: Very good.

3 : 4 1 P M 14 Cross-examination.

3 : 4 1 P M 15 MR. COOKE: Thank you.

3 : 4 1 P M 16 CROSS-EXAMINATION

3 : 4 1 P M 17 BY MR. COOKE:

3 : 4 1 P M 18 Q. Good afternoon, Dr. Mayes. You didn't hurt my feelings
3 : 4 1 P M 19 that you didn't remember me when Your Honor asked if you
3 : 4 1 P M 20 recognized me.

3 : 4 1 P M 21 A. I'm sorry. I should have mentioned you as well.

3 : 4 1 P M 22 Q. On the last point that you mentioned about that at one
3 : 4 1 P M 23 point your partners were -- they both had a phlebotomist
3 : 4 1 P M 24 supplied and they were being paid P&H fees, do you happen to
3 : 4 1 P M 25 know whether it was, in fact, Cal Dent who told them that they

3 : 4 1 P M 1 cannot have both a phlebotomist and a -- receive P&H fees?

3 : 4 1 P M 2 A. He told them that after three and a half months.

3 : 4 1 P M 3 Q. And you're aware that their processing and handling fee
3 : 4 2 P M 4 agreement provides that they cannot receive processing and
3 : 4 2 P M 5 handling fees if they are compensated by any other means for
3 : 4 2 P M 6 processing and handling?

3 : 4 2 P M 7 A. I haven't read their processing and handling fee
3 : 4 2 P M 8 agreement.

3 : 4 2 P M 9 Q. Let's talk -- you started your testimony with this fact
3 : 4 2 P M 10 that you had filed a lawsuit.

3 : 4 2 P M 11 And that was back in, you said, 2011?

3 : 4 2 P M 12 A. Yes.

3 : 4 2 P M 13 Q. And that was actually the genesis of this lawsuit; right?

3 : 4 2 P M 14 A. Yes.

3 : 4 2 P M 15 Q. That's part of this lawsuit?

3 : 4 2 P M 16 A. Yes.

3 : 4 2 P M 17 Q. I want you to talk to this jury a little bit about what
3 : 4 2 P M 18 that meant. You filed a lawsuit. And not only could you not
3 : 4 2 P M 19 talk about the details of it --

3 : 4 2 P M 20 A. Right.

3 : 4 2 P M 21 Q. -- you couldn't even tell anybody that you had filed a
3 : 4 2 P M 22 lawsuit?

3 : 4 2 P M 23 A. That's correct.

3 : 4 2 P M 24 Q. So you continued to practice with your partners while you
3 : 4 3 P M 25 had already filed a lawsuit claiming that they were receiving

3 : 4 3 P M 1 illegal kickbacks, and you continued to practice with them as a
3 : 4 3 P M 2 partner in that law firm for three years --

3 : 4 3 P M 3 A. Partner in the medical practice.

3 : 4 3 P M 4 Q. I'm sorry. Partner in the medical practice for three
3 : 4 3 P M 5 years --

3 : 4 3 P M 6 A. Yes.

3 : 4 3 P M 7 Q. -- while you had a secret lawsuit pending where you're
3 : 4 3 P M 8 seeking to recover who knows how much money because based on
3 : 4 3 P M 9 illegal kickbacks that your practice was continuing to accept.
3 : 4 3 P M 10 That was the basis of your secret lawsuit?

3 : 4 3 P M 11 A. well --

3 : 4 3 P M 12 MS. STRAWN: Objection. Compound question.

3 : 4 3 P M 13 THE COURT: Overruled. It's okay. I think it's
3 : 4 3 P M 14 understandable.

3 : 4 3 P M 15 THE WITNESS: I submitted my resignation to Heritage
3 : 4 3 P M 16 Medical Center in April 2012, but my practice would not let me
3 : 4 3 P M 17 resign, number one.

3 : 4 3 P M 18 Number two, I warned my partners several
3 : 4 3 P M 19 times -- although I could not tell them I was the
3 : 4 3 P M 20 whistle-blower, I cautioned them several times that, although
3 : 4 3 P M 21 I'm not an attorney either to give them legal advice, that I
3 : 4 4 P M 22 was concerned about the legality of what they were doing and to
3 : 4 4 P M 23 stop doing it and/or at least, if you were ordering these labs,
3 : 4 4 P M 24 not to accept the P&H fees.

3 : 4 4 P M 25 So I -- other than that, I can't control what my

3 : 4 4 P M 1 partners do or don't do, but I did try to leave the practice.
3 : 4 4 P M 2 I resigned in April of 2012.

3 : 4 4 P M 3 **BY MR. COOKE:**

3 : 4 4 P M 4 **Q.** And am I guessing correctly that you didn't happen to
3 : 4 4 P M 5 share that little bit of information with Cal Dent or Tony
3 : 4 4 P M 6 Carnaggio either, did you?

3 : 4 4 P M 7 **A.** You know, all I could do at that meeting was share my
3 : 4 4 P M 8 concern about the legality of the P&H fees during that
3 : 4 4 P M 9 discussion. We asked to get a copy of the time and motion
3 : 4 4 P M 10 study. We also asked to get a copy of the letter from OIG that
3 : 4 4 P M 11 said they had been cleared in terms of their legality.

3 : 4 4 P M 12 **Q.** And the meeting occurred when?

3 : 4 4 P M 13 **A.** I believe that meeting was February of 2013. But,
3 : 4 4 P M 14 otherwise, keep in mind I had -- since I was not ordering the
3 : 4 4 P M 15 tests, I had very little contact with either Cal Dent or Tony
3 : 4 5 P M 16 Carnaggio. That was the first time I had met Cal Dent was at
3 : 4 5 P M 17 that meeting. I just was not ordering the tests.

3 : 4 5 P M 18 **Q.** So let me get this right. You had already filed a secret
3 : 4 5 P M 19 lawsuit?

3 : 4 5 P M 20 **A.** Yes.

3 : 4 5 P M 21 **Q.** Nobody in the room knew that you had done this.

3 : 4 5 P M 22 So you go to a meeting with this gentleman over here,
3 : 4 5 P M 23 and you get one of your partners to ask him a question after
3 : 4 5 P M 24 you're already suing him?

3 : 4 5 P M 25 **A.** Well, I didn't get my partner to ask the question. It's a

3 : 4 5 P M 1 question I would have asked myself. I was already having a
3 : 4 5 P M 2 side discussion with Dr. Lenns about the legality, and
3 : 4 5 P M 3 Dr. Lenns asked the question before I could get it out of my
3 : 4 5 P M 4 mouth.

3 : 4 5 P M 5 I was already sharing it separately again with my
3 : 4 5 P M 6 partner, but it's a question that would have come out of my
3 : 4 5 P M 7 mouth if it had not from Dr. Lenns.

3 : 4 5 P M 8 And, fortunately, not only was that meeting to be a
3 : 4 5 P M 9 presentation about their science, but we were having a business
3 : 4 5 P M 10 meeting after that as well. And I -- to the extent that I can,
3 : 4 5 P M 11 I was attending Heritage business meetings.

3 : 4 6 P M 12 Q. So that meeting came and went without your ever mentioning
3 : 4 6 P M 13 to Cal Dent or Tony Carnaggio or anybody else that was there
3 : 4 6 P M 14 that you had already filed a secret lawsuit?

3 : 4 6 P M 15 A. I couldn't mention that I filed a secret lawsuit. My
3 : 4 6 P M 16 lawsuit was still under seal. So I was prevented from telling
3 : 4 6 P M 17 anyone, including my partners, that I had filed suit.

3 : 4 6 P M 18 Q. And it stayed under seal until 2015?

3 : 4 6 P M 19 A. That was probably about when it came out from under seal,
3 : 4 6 P M 20 yes.

3 : 4 6 P M 21 Q. Now, you had some disagreements with your partners
3 : 4 6 P M 22 unrelated to the processing and handling fees and advanced
3 : 4 6 P M 23 lipid testing; right?

3 : 4 6 P M 24 A. Sure.

3 : 4 6 P M 25 Q. You had broad-based financial disputes with them?

3 : 4 6 P M 1 A. We did, yes.

3 : 4 6 P M 2 Q. You had a lawsuit with them?

3 : 4 6 P M 3 A. I had a lawsuit with my partners after the fact, after I
3 : 4 6 P M 4 left Heritage.

3 : 4 6 P M 5 Q. And you got sued by -- you got sued by your landlord?

3 : 4 7 P M 6 MS. STRAWN: Objection. 402, 403.

3 : 4 7 P M 7 THE COURT: I'm sorry?

3 : 4 7 P M 8 MS. STRAWN: Relevance 402, 403.

3 : 4 7 P M 9 THE COURT: What's the relevance?

3 : 4 7 P M 10 MR. COOKE: The relevance is he's assigned part of
3 : 4 7 P M 11 the proceeds of this lawsuit to satisfy that obligation.

3 : 4 7 P M 12 MS. STRAWN: How is that relevant?

3 : 4 7 P M 13 THE COURT: I'll overrule the objection.

3 : 4 7 P M 14 BY MR. COOKE:

3 : 4 7 P M 15 Q. Isn't it true that you've actually assigned part of your
3 : 4 7 P M 16 expected recovery in this lawsuit to pay some of your debts?

3 : 4 7 P M 17 A. It's -- that's absolutely the case, yeah. As a result of
3 : 4 7 P M 18 my affiliation with my partners, my partners had protected
3 : 4 7 P M 19 their assets; I had not.

3 : 4 7 P M 20 And once they found out I was the whistle-blower in
3 : 4 7 P M 21 this case, they -- and seemingly when they thought that I had
3 : 4 7 P M 22 interfered with their ability to be employed by a hospital,
3 : 4 7 P M 23 which I had not, they walked away from their debts and left me
3 : 4 7 P M 24 primarily responsible for their debts. And, of course, one of
3 : 4 7 P M 25 the possible ways that I could satisfy the debt was from any

3 : 4 8 P M 1 qui tam payment I would have coming.

3 : 4 8 P M 2 Q. That would, of course, assume that you win this case;
3 : 4 8 P M 3 right?

3 : 4 8 P M 4 A. No. That's not solely dependent on winning this case, no.

3 : 4 8 P M 5 Q. You don't get any money out of this case unless you settle
3 : 4 8 P M 6 it or win the case?

3 : 4 8 P M 7 A. I've already satisfied the vast majority of the debt with
3 : 4 8 P M 8 my landlord.

3 : 4 8 P M 9 Q. That meeting that you said you went to, did you record the
3 : 4 8 P M 10 meeting?

3 : 4 8 P M 11 A. No, I did not.

3 : 4 8 P M 12 Q. Did anybody record it?

3 : 4 8 P M 13 A. Not to my knowledge, no.

3 : 4 8 P M 14 Q. You said that -- you said that Tony Carnaggio told you
3 : 4 8 P M 15 that you could have \$30 per patient --

3 : 4 8 P M 16 A. Yes.

3 : 4 8 P M 17 Q. -- for processing and handling fees?

3 : 4 8 P M 18 A. Yes.

3 : 4 8 P M 19 Q. That would be if you thought it was medically indicated to
3 : 4 9 P M 20 order both the HDL test and the Singulex test at the same time;
3 : 4 9 P M 21 correct?

3 : 4 9 P M 22 A. He didn't say that. He just said if I ordered the tests.

3 : 4 9 P M 23 Q. You don't recall whether he ever recommended ordering both
3 : 4 9 P M 24 sets of tests together?

3 : 4 9 P M 25 A. He encouraged me to.

3 : 4 9 P M 1 Q. Do you remember your deposition being taken?

3 : 4 9 P M 2 A. Yes, I do.

3 : 4 9 P M 3 MR. COOKE: Your Honor, may I use a copy rather than
3 : 4 9 P M 4 the original? I got several copies of the deposition, but I
3 : 4 9 P M 5 don't happen to have the original.

3 : 4 9 P M 6 THE COURT: You don't have the original?

3 : 4 9 P M 7 MR. COOKE: Oh, we do have it. Okay.

3 : 4 9 P M 8 MS. STRAWN: Can you tell me what pages you're on?

3 : 4 9 P M 9 MR. COOKE: Yeah. We're going to look at page 118.

3 : 4 9 P M 10 MS. STRAWN: Thank you.

3 : 4 9 P M 11 THE COURT: Miss Eunice, you want to open it, please?

3 : 4 9 P M 12 THE DEPUTY CLERK: Yes.

3 : 4 9 P M 13 (Pause.)

3 : 5 0 P M 14 THE COURT: Mr. Cooke?

3 : 5 0 P M 15 MR. COOKE: Thank you. Whoa. Watch that step there.

3 : 5 0 P M 16 THE COURT: We're not paying a worker's comp claim
3 : 5 0 P M 17 here, Mr. Cooke.

3 : 5 0 P M 18 MR. COOKE: My neck is a little sore.

3 : 5 0 P M 19 THE WITNESS: What page do you --

3 : 5 0 P M 20 BY MR. COOKE:

3 : 5 0 P M 21 Q. Go to page 118. Let's just start up at 117.

3 : 5 0 P M 22 A. 117?

3 : 5 0 P M 23 Q. Yes.

3 : 5 0 P M 24 A. Okay.

3 : 5 0 P M 25 Q. You were asked something about --

3 : 5 1 P M 1 MS. STRAWN: Objection. Hearsay.

3 : 5 1 P M 2 THE COURT: He's asking him a question. Overruled.
3 : 5 1 P M 3 Please continue.

3 : 5 1 P M 4 BY MR. COOKE:

3 : 5 1 P M 5 Q. Beginning at line 13 -- I'll do this the right way.

3 : 5 1 P M 6 Do you recall testifying in your deposition that you
3 : 5 1 P M 7 do not recall whether Mr. Carnaggio recommended ordering both
3 : 5 1 P M 8 labs together?

3 : 5 1 P M 9 A. I recall testifying to that at that time, yes.

3 : 5 1 P M 10 Q. Let's just cover -- and here it says --

3 : 5 1 P M 11 THE COURT: Well, he says he did it, so --

3 : 5 1 P M 12 BY MR. COOKE:

3 : 5 1 P M 13 Q. Okay. So you agree that, at your deposition hearing, you
3 : 5 1 P M 14 testified that you do not recall whether Mr. Carnaggio
3 : 5 1 P M 15 recommended both HDL and Singulex tests together?

3 : 5 1 P M 16 A. Since then, I've had the opportunity to review the
3 : 5 1 P M 17 transcripts of the conversation to improve my memory.

3 : 5 1 P M 18 THE COURT: Transcript of what conversation?

3 : 5 1 P M 19 THE WITNESS: The phone calls.

3 : 5 1 P M 20 BY MR. COOKE:

3 : 5 1 P M 21 Q. These are conversations that you recorded?

3 : 5 1 P M 22 A. Yes.

3 : 5 1 P M 23 Q. And do you have those with you?

3 : 5 1 P M 24 A. No, I do not.

3 : 5 2 P M 25 MS. STRAWN: They were provided to defendants, Your

3 : 5 2 P M 1 Honor.

3 : 5 2 P M 2 BY MR. COOKE:

3 : 5 2 P M 3 Q. Are you able to refer to the exact words that he -- that
3 : 5 2 P M 4 he used?

3 : 5 2 P M 5 A. No.

3 : 5 2 P M 6 Q. I wanted to talk to you about the trends that you referred
3 : 5 2 P M 7 to.

3 : 5 2 P M 8 You talked about this Dr. Binamira -- or you talked
3 : 5 2 P M 9 about the entire practice, that they increased the numbers of
3 : 5 2 P M 10 tests that they ordered over time; correct?

3 : 5 2 P M 11 A. Yes.

3 : 5 2 P M 12 Q. But the amount that they were paid for processing and
3 : 5 2 P M 13 handling fees remained constant; right?

3 : 5 2 P M 14 A. Yes.

3 : 5 2 P M 15 Q. So you mean that it just took them a while to realize that
3 : 5 2 P M 16 they were getting processing and handling fees, or is it just
3 : 5 2 P M 17 possible that your colleagues believed in these tests and saw
3 : 5 2 P M 18 the benefit of these tests?

3 : 5 3 P M 19 A. Well, I know that each time the processing and handling
3 : 5 3 P M 20 fees were discontinued, my partners' ordering of the tests
3 : 5 3 P M 21 dwindled down to zero within months.

3 : 5 3 P M 22 Q. Well, we're going to look at those numbers in a few
3 : 5 3 P M 23 minutes, and we're going to -- we're going to test your
3 : 5 3 P M 24 observations about cause and effect.

3 : 5 3 P M 25 But before I get there, I want to talk to you

3 : 5 3 P M 1 about -- you said that Cal Dent said that -- that time and
3 : 5 3 P M 2 money had been spent on doing a time and motion study; correct?

3 : 5 3 P M 3 A. Yes.

3 : 5 3 P M 4 Q. And did he happen to refer to --

3 : 5 3 P M 5 Can you get me -- John, can you get me 12 --
3 : 5 3 P M 6 Plaintiffs' Exhibit 1253, the LeClairRyan letter.

3 : 5 4 P M 7 Have you ever seen this before?

3 : 5 4 P M 8 A. I believe I have, yes.

3 : 5 4 P M 9 BY MR. COOKE:

3 : 5 4 P M 10 Q. Did you see it before the lawsuit?

3 : 5 4 P M 11 A. Did I see it before the lawsuit? I'm not aware that I saw
3 : 5 4 P M 12 it before the lawsuit.

3 : 5 4 P M 13 MR. COOKE: Okay. Can you scroll down a little bit?

3 : 5 4 P M 14 BY MR. COOKE:

3 : 5 4 P M 15 Q. See this -- the paragraph right -- right there says,

3 : 5 4 P M 16 "Historically, HDL has extended great time, effort, and
3 : 5 4 P M 17 resources to conduct a time and motion study to determine fair
3 : 5 4 P M 18 market value associated with these services."

3 : 5 4 P M 19 Do you see that?

3 : 5 4 P M 20 A. Yes, I do.

3 : 5 4 P M 21 Q. That's pretty close to what you said that Cal Dent said,
3 : 5 4 P M 22 which is that they had spent a great deal of time, effort, and
3 : 5 4 P M 23 money to conduct time and motion studies?

3 : 5 4 P M 24 A. Yes.

3 : 5 4 P M 25 Q. Did you see the time and motion study prior to the

3 : 5 4 P M 1 lawsuit?

3 : 5 4 P M 2 A. I don't think I've ever seen a time and motion study.

3 : 5 4 P M 3 I've only seen letters referencing a time and motion study.

3 : 5 5 P M 4 Q. Did you ask to see the time and motion study?

3 : 5 5 P M 5 A. Yes, I did.

3 : 5 5 P M 6 Q. Before the lawsuit became involved?

3 : 5 5 P M 7 A. We asked to see the time and motion study during the
3 : 5 5 P M 8 meeting at Alexander's.

3 : 5 5 P M 9 Q. And who did you ask?

3 : 5 5 P M 10 A. Well, it was a general question to Bluewave, which were
3 : 5 5 P M 11 Tony Carnaggio and Cal Dent.

3 : 5 5 P M 12 Q. Uh-huh. And did you follow up and ask if they'd send it
3 : 5 5 P M 13 to you?

3 : 5 5 P M 14 A. I believe they sent a letter regarding the time and motion
3 : 5 5 P M 15 study. They never sent any letter from the OIG, though. We
3 : 5 5 P M 16 asked for both.

3 : 5 5 P M 17 Q. Did they send you this letter from LeClairRyan?

3 : 5 5 P M 18 A. Again, this may have been the letter they sent. This is
3 : 5 5 P M 19 not the time and motion study. This is a letter referencing
3 : 5 5 P M 20 the time and motion study.

3 : 5 5 P M 21 Q. Did you ever tell Cal Dent that you thought that the time
3 : 5 5 P M 22 and motion study was exaggerated?

3 : 5 5 P M 23 A. I only spoke to Cal Dent that -- other than on a
3 : 5 5 P M 24 conference call after Heritage received a subpoena, I had only
3 : 5 6 P M 25 spoken to Cal Dent that one time when we asked him for the time

3 : 5 6 P M 1 and motion study.

3 : 5 6 P M 2 Q. So the answer to my question then is no, you did not tell
3 : 5 6 P M 3 Cal Dent or Tony Carnaggio that you thought the time and motion
3 : 5 6 P M 4 numbers were exaggerated?

3 : 5 6 P M 5 A. No, I did not.

3 : 5 6 P M 6 Q. Is it true that you were not a party to the discussions
3 : 5 6 P M 7 about paying the phlebotomist and also receiving P&H fees?

3 : 5 6 P M 8 A. I'm sorry. Can you repeat that question?

3 : 5 6 P M 9 Q. Is it true that you were not actually party to the
3 : 5 6 P M 10 conversations within your practice concerning the paying of a
3 : 5 6 P M 11 phlebotomist as well as receiving a P&H fee at the same time?

3 : 5 6 P M 12 A. I was there at the meeting when our office manager said
3 : 5 6 P M 13 that HDL offered to pay for the phlebotomist, and I was there
3 : 5 6 P M 14 when my partners asked does that mean that they're not going to
3 : 5 6 P M 15 pay the P&H fees. And she said yes, they're still going to pay
3 : 5 7 P M 16 the P&H fees.

3 : 5 7 P M 17 Q. And did you call that to the attention of anybody at
3 : 5 7 P M 18 Bluewave?

3 : 5 7 P M 19 A. Again, it was -- I was not in communication with people at
3 : 5 7 P M 20 Bluewave.

3 : 5 7 P M 21 Q. Do you ever remember being party to a conference call
3 : 5 7 P M 22 where there was -- where your attorney was -- excuse me -- your
3 : 5 7 P M 23 practice's attorney was on the call -- on the line with HDL's
3 : 5 7 P M 24 attorney?

3 : 5 7 P M 25 A. Are you referring to after Heritage received a subpoena in

3 : 5 7 P M 1 May of 2013?

3 : 5 7 P M 2 Q. Anytime. I want to know if you've ever been on a
3 : 5 7 P M 3 conference call where both the Heritage attorney and the HDL
3 : 5 7 P M 4 attorney were on the call.

3 : 5 7 P M 5 A. That -- I believe that occasion that I'm referring to was,
3 : 5 7 P M 6 I believe, to my recollection, the only time I was on a
3 : 5 7 P M 7 conference call with both of those attorneys on the call.

3 : 5 7 P M 8 Q. And would it be fair to say that you did not disclose
3 : 5 7 P M 9 during that call that you were a party to a secret lawsuit
3 : 5 7 P M 10 against HDL?

3 : 5 7 P M 11 A. Again, my lawsuit was still under seal at that time, and I
3 : 5 7 P M 12 was not under permission or authorization to reveal that to
3 : 5 8 P M 13 anybody.

3 : 5 8 P M 14 Q. You've talked a lot about how your partners felt about
3 : 5 8 P M 15 P&H -- receiving P&H fees and what they did with them.

3 : 5 8 P M 16 You don't recall Mr. Carnaggio emphasizing P&H fees
3 : 5 8 P M 17 as a revenue source, though, do you?

3 : 5 8 P M 18 A. I didn't until I reviewed the transcripts, which reminded
3 : 5 8 P M 19 me that he suggested, if we did 400 patients a month within the
3 : 5 8 P M 20 practice, we would generate \$12,000 a month in additional
3 : 5 8 P M 21 income to the practice.

3 : 5 8 P M 22 Q. Well, that's just math; right?

3 : 5 8 P M 23 A. Yeah.

3 : 5 8 P M 24 Q. So let me see if I can do this.

3 : 5 8 P M 25 If you do one test, you'll get \$20 dollars?

3 : 5 8 P M 1 A. Yes.

3 : 5 8 P M 2 Q. If you do a hundred, you'll get how many? 2,000?

3 : 5 8 P M 3 A. 3,000.

3 : 5 8 P M 4 Q. If you bill everything but --

3 : 5 9 P M 5 A. If it's \$30, yeah.

3 : 5 9 P M 6 Q. And have you checked all the patient files to make sure
3 : 5 9 P M 7 that they were, in fact, ordering both HDL and Singulex tests
3 : 5 9 P M 8 on all their patients?

3 : 5 9 P M 9 A. Have I checked all the files?

3 : 5 9 P M 10 Q. Yeah.

3 : 5 9 P M 11 A. No, I have not.

3 : 5 9 P M 12 Q. All right. I do want to look at the trends of the
3 : 5 9 P M 13 ordering.

3 : 5 9 P M 14 Can you pull that up, Chris and John, the exhibit
3 : 5 9 P M 15 with the --

3 : 5 9 P M 16 MS. STRAWN: Objection. Foundation, Your Honor. He
3 : 5 9 P M 17 just testified that he had not looked at all of them.

3 : 5 9 P M 18 THE COURT: well, let's see what the question is.

3 : 5 9 P M 19 MR. COOKE: I'm going to ask him about an exhibit.

3 : 5 9 P M 20 THE COURT: And then you can make an objection. Let
3 : 5 9 P M 21 me hear the question.

3 : 5 9 P M 22 If you'd lay the foundation for this exhibit
3 : 5 9 P M 23 before you show it to the jury.

3 : 5 9 P M 24 MR. COOKE: I don't believe there was an objection to
3 : 5 9 P M 25 this exhibit. This is one of --

3 : 5 9 P M 1 THE COURT: well, I'm just hearing her raise the
3 : 5 9 P M 2 issue.

4 : 0 0 P M 3 MR. COOKE: What's the number? Could he have --
4 : 0 0 P M 4 could he have 524.

4 : 0 0 P M 5 MS. STRAWN: May I have just a moment? Is it
4 : 0 0 P M 6 Plaintiffs' Exhibit 524?

4 : 0 0 P M 7 MR. COOKE: It's a defense.

4 : 0 0 P M 8 MS. STRAWN: Defense 524. I'm sorry.

4 : 0 0 P M 9 (Pause.)

4 : 0 0 P M 10 MS. STRAWN: This might take a moment. Can we see
4 : 0 0 P M 11 what the question is before we --

4 : 0 0 P M 12 THE COURT: Sure. Just lay your foundation.

4 : 0 0 P M 13 BY MR. COOKE:

4 : 0 0 P M 14 Q. Is it your contention that you were familiar with the
4 : 0 0 P M 15 ordering practices of Heritage during the time that you were a
4 : 0 0 P M 16 partner there.

4 : 0 0 P M 17 A. For the most part, yes.

4 : 0 0 P M 18 Q. And it's your belief that they stopped ordering tests
4 : 0 0 P M 19 after P&H fees were discontinued?

4 : 0 1 P M 20 A. well, in speaking with them, within a month or two after,
4 : 0 1 P M 21 they said that they did realize that they had given several
4 : 0 1 P M 22 patients orders on previous office visits and that they would
4 : 0 1 P M 23 still trickle through well after the May date. But they made
4 : 0 1 P M 24 comments to us that -- or to me that they probably were not
4 : 0 1 P M 25 going to be ordering any more of these tests. So I --

4 : 0 1 P M 1 Q. well --

4 : 0 1 P M 2 A. which led me to believe that there's still going to be
4 : 0 1 P M 3 labs that were ordered on the patient during their office visit
4 : 0 1 P M 4 in March that the patient may show up for in June or July for
4 : 0 1 P M 5 their lab test that still had an HDL and Singulex on it.

4 : 0 1 P M 6 Q. The special fraud alert came out on June 25th, 2014;
4 : 0 1 P M 7 correct? Do you remember the special fraud alert?

4 : 0 1 P M 8 A. Yes, I do.

4 : 0 1 P M 9 Q. And do you remember that it was at that time that HDL and
4 : 0 1 P M 10 Singulex stopped paying P&H fees?

4 : 0 2 P M 11 A. Yes.

4 : 0 2 P M 12 Q. Okay. So would it surprise you to learn that your
4 : 0 2 P M 13 practice had stopped ordering tests from HDL prior to that?

4 : 0 2 P M 14 A. No, that would not surprise me. Do you want to know the
4 : 0 2 P M 15 reason?

4 : 0 2 P M 16 Q. Let me rephrase the question.

4 : 0 2 P M 17 THE COURT: Let him answer the question. You asked
4 : 0 2 P M 18 the question. Let him answer it.

4 : 0 2 P M 19 THE WITNESS: well, my practice received a subpoena
4 : 0 2 P M 20 from the government in May of 2013, and the subpoena was
4 : 0 2 P M 21 related to P&H fees that my partners were receiving.

4 : 0 2 P M 22 So on a discussion among our attorney and the
4 : 0 2 P M 23 HDL attorney and CEO of HDL, the decision was made that maybe
4 : 0 2 P M 24 it would be better if HDL didn't pay processing and handling
4 : 0 2 P M 25 fees to my partners and they just employed the phlebotomist in

4 : 0 2 P M 1 our office and let her draw the labs. And my partners could
4 : 0 3 P M 2 still order the labs through the phlebotomist and not receive
4 : 0 3 P M 3 the P&H fees.

4 : 0 3 P M 4 And that was the discussion, one of the
4 : 0 3 P M 5 discussions from that conversation.

4 : 0 3 P M 6 **BY MR. COOKE:**

4 : 0 3 P M 7 **Q.** Doctor, am I hearing you right? Are you -- are you now
4 : 0 3 P M 8 testifying that rather than -- when your practice stopped
4 : 0 3 P M 9 ordering these tests when HDL stopped paying P&H fees, you're
4 : 0 3 P M 10 now agreeing that they stopped ordering these tests because
4 : 0 3 P M 11 they received a subpoena from the federal government?

4 : 0 3 P M 12 **A.** That's in part part of reason they stopped, yes.

4 : 0 3 P M 13 **Q.** And when did they receive that subpoena?

4 : 0 3 P M 14 **A.** They received the subpoena in May of 2013.

4 : 0 3 P M 15 **Q.** But in your mind, as what we call a relator or qui tam
4 : 0 3 P M 16 plaintiff in this lawsuit, in your mind, you would like for
4 : 0 3 P M 17 this jury to conclude that your practice, your partners, your
4 : 0 3 P M 18 former partners that you were suing, that they quit ordering
4 : 0 3 P M 19 tests because they weren't getting processing and handling fees
4 : 0 3 P M 20 before, not because they got a subpoena from the United States
4 : 0 4 P M 21 government because of this lawsuit that you had secretly filed?

4 : 0 4 P M 22 **MS. STRAWN:** Object. Compound and argumentative.

4 : 0 4 P M 23 **THE COURT:** Overruled. Cross-examination.

4 : 0 4 P M 24 Go ahead and answer.

4 : 0 4 P M 25 **THE WITNESS:** well, recall they did stop ordering

4 : 0 4 P M 1 Berkeley labs after Berkeley stopped paying the P&H fees in
4 : 0 4 P M 2 January 2012. When they still ordered the same or similar
4 : 0 4 P M 3 profile for Berkeley at no penalty, they just wouldn't receive
4 : 0 4 P M 4 compensation to do so. And one of the discussions from my
4 : 0 4 P M 5 partners was not just related to the subpoena, but related to
4 : 0 4 P M 6 if they weren't going to be compensated for it, they weren't
4 : 0 4 P M 7 going to be taking the risk of ordering the labs.

4 : 0 4 P M 8 So it was a combination of the subpoena and --
4 : 0 4 P M 9 and a potential decision not to receive the P&H fees.

4 : 0 4 P M 10 **BY MR. COOKE:**

4 : 0 4 P M 11 **Q.** Have you ever gotten a subpoena from the Justice
4 : 0 4 P M 12 Department before?

4 : 0 4 P M 13 **A.** The -- Heritage, I believe, received a subpoena. The
4 : 0 4 P M 14 practice that I was in previous -- this same practice received
4 : 0 4 P M 15 a subpoena on one occasion.

4 : 0 4 P M 16 **Q.** Are you willing to indulge with me, even for the sake of
4 : 0 5 P M 17 argument, that just possibly -- just possibly your partners
4 : 0 5 P M 18 stopped ordering these tests because they didn't want any part
4 : 0 5 P M 19 of this litigation that you had secretly filed or they didn't
4 : 0 5 P M 20 want any part of any federal investigation, not because of a
4 : 0 5 P M 21 lousy \$20 processing and handling fee?

4 : 0 5 P M 22 **A.** If I were just speculating and not knowing my partners,
4 : 0 5 P M 23 maybe I would entertain that. But I had been partners with
4 : 0 5 P M 24 them and privy to conversations they had with my office manager
4 : 0 5 P M 25 where they were requesting my manager call HDL to send the

4 : 0 5 P M 1 check or call Bluewave to overnight the check to them. So they
4 : 0 5 P M 2 were very interested in the P&H fee compensation.

4 : 0 5 P M 3 Q. Well, your partners aren't a party to this lawsuit, are
4 : 0 5 P M 4 they?

4 : 0 5 P M 5 A. No, they're not.

4 : 0 5 P M 6 Q. And you're blaming all of this on these guys right here;
4 : 0 5 P M 7 right?

4 : 0 5 P M 8 A. Again, it's not my lawsuit; it's the government's lawsuit.
4 : 0 5 P M 9 I brought the case to the government.

4 : 0 5 P M 10 Q. And you filed a lawsuit, didn't you?

4 : 0 5 P M 11 A. I filed a lawsuit on behalf of the government.

4 : 0 6 P M 12 Q. Secretly in 2011?

4 : 0 6 P M 13 A. Again, it was under seal. It was not my decision to have
4 : 0 6 P M 14 it under seal; I just followed the instructions.

4 : 0 6 P M 15 MR. COOKE: Just a moment.

4 : 0 6 P M 16 (Pause.)

4 : 0 6 P M 17 MR. COOKE: That's all. Thank you.

4 : 0 6 P M 18 THE COURT: Mr. Ashmore?

4 : 0 6 P M 19 MR. ASHMORE: Thank you, Your Honor. May it please
4 : 0 6 P M 20 the Court.

4 : 0 6 P M 21 CROSS-EXAMINATION

4 : 0 6 P M 22 BY MR. ASHMORE:

4 : 0 6 P M 23 Q. Dr. Mayes, I'm Beattie Ashmore. How are you?

4 : 0 6 P M 24 A. I'm very good. How are you?

4 : 0 6 P M 25 Q. Good. Doctors have different opinions, don't they?

4 : 0 6 P M 1 A. Yes.

4 : 0 6 P M 2 Q. And you, after some time, formulated an opinion that P&H
4 : 0 6 P M 3 fees are improper?

4 : 0 6 P M 4 A. Yes.

4 : 0 6 P M 5 Q. Yet there are some 3500 other doctors across the southeast
4 : 0 6 P M 6 that were using HDL and accepting the P&H fees. You're aware
4 : 0 7 P M 7 of that?

4 : 0 7 P M 8 A. Yes.

4 : 0 7 P M 9 Q. So, obviously, you would differ with them?

4 : 0 7 P M 10 A. I know that a lot of people are financially motivated, and
4 : 0 7 P M 11 that can be a driver for doing things that could be
4 : 0 7 P M 12 questionable.

4 : 0 7 P M 13 Q. So you think those 3500 doctors are doing that just for
4 : 0 7 P M 14 financial reasons?

4 : 0 7 P M 15 A. I would not say all. I don't know all the doctors'
4 : 0 7 P M 16 experiences, but I do know that it happens in any profession.

4 : 0 7 P M 17 Q. And even you yourself at one time accepted P&H fees?

4 : 0 7 P M 18 A. Yes.

4 : 0 7 P M 19 Q. From Berkeley?

4 : 0 7 P M 20 A. Yes.

4 : 0 7 P M 21 Q. And that was when Berkeley was paying, back in 2009 and
4 : 0 7 P M 22 2010, 11.50?

4 : 0 7 P M 23 A. Yes.

4 : 0 7 P M 24 Q. Don't know what that is in today's dollars, but a little
4 : 0 7 P M 25 bit more; right?

4 : 0 7 P M 1 A. \$11.60 in today's dollars, not much.

4 : 0 8 P M 2 Q. You went to the Wharton School of Business. All right.

4 : 0 8 P M 3 So I'll accept that answer.

4 : 0 8 P M 4 So what's the tipping point, where you get from 11.50
4 : 0 8 P M 5 to the \$17 that you now object to that is paid by HDL?

4 : 0 8 P M 6 A. Well, no, the 11.50 included the \$3 phlebotomy fee. So if
4 : 0 8 P M 7 you're comparing apples to apples, it's really -- you're
4 : 0 8 P M 8 comparing it to the \$20 that HDL was paying and then also \$10
4 : 0 8 P M 9 that Singulex was adding to it. So \$30.

4 : 0 8 P M 10 Q. Just want to talk to you about HDL --

4 : 0 8 P M 11 A. Sure.

4 : 0 8 P M 12 Q. -- for now. We'll talk about Singulex later, but HDL paid
4 : 0 8 P M 13 \$17 and a \$3 draw fee?

4 : 0 8 P M 14 A. For a total of 20, yes.

4 : 0 8 P M 15 Q. Total of 20?

4 : 0 8 P M 16 A. Yes.

4 : 0 8 P M 17 Q. And so your clarification was that Berkeley was paying
4 : 0 8 P M 18 8.50 and a \$3 draw fee to get to the 11.50?

4 : 0 8 P M 19 A. Yes.

4 : 0 8 P M 20 Q. Okay. So 8.50 versus \$17?

4 : 0 9 P M 21 A. Yes.

4 : 0 9 P M 22 Q. Okay. So, again, that's the spectrum: 8.50, 17. Where's
4 : 0 9 P M 23 the tipping point? Where does it go from legal to illegal?

4 : 0 9 P M 24 A. Well, again, when I was receiving that from Berkeley, I
4 : 0 9 P M 25 was assured again and again that this was legal. It was my own

4 : 0 9 P M 1 research to make sure that what he was telling me was accurate
4 : 0 9 P M 2 before I accepted and kept that money. And all I could find to
4 : 0 9 P M 3 justify that fee and that process was \$3. So, on that basis, I
4 : 0 9 P M 4 wasn't going to accept anything above \$3.

4 : 0 9 P M 5 Q. You did your own research?

4 : 0 9 P M 6 A. I did my own research.

4 : 0 9 P M 7 Q. And your own research disclosed to you that there was a
4 : 0 9 P M 8 great deal of chaos and confusion in the industry concerning
4 : 0 9 P M 9 P&H fees, didn't it?

4 : 0 9 P M 10 A. Well, it revealed to me, if my research was accurate,
4 : 0 9 P M 11 there was potentially a lot of fraud in that industry, yes.

4 : 0 9 P M 12 Q. Sure. Potentially; right?

4 : 0 9 P M 13 A. Yes, yes.

4 : 0 9 P M 14 Q. But the problem is nobody knew for sure?

4 : 0 9 P M 15 A. I didn't know for sure. I'm not an attorney.

4 : 1 0 P M 16 Q. Nobody knew for sure until June 25th of 2014.

4 : 1 0 P M 17 A. That's why I approached legal counsel.

4 : 1 0 P M 18 Q. Sure. You went to a lawyer to get good, solid legal
4 : 1 0 P M 19 advice on whether or not you could do this; correct?

4 : 1 0 P M 20 A. That's part of what I was doing, yes. But also to take my
4 : 1 0 P M 21 concerns to the government because I thought this was probably
4 : 1 0 P M 22 nationwide.

4 : 1 0 P M 23 Q. And lawyers are like doctors. They have different
4 : 1 0 P M 24 opinions too, don't they?

4 : 1 0 P M 25 A. I'm sure they do.

4 : 1 0 P M 1 Q. Sure. So two eminently qualified lawyers could disagree
4 : 1 0 P M 2 on a fairly fine point of law; correct?

4 : 1 0 P M 3 A. Sure.

4 : 1 0 P M 4 Q. Sure. So which lawyer should you believe?

4 : 1 0 P M 5 A. which lawyer -- what are my options?

4 : 1 0 P M 6 Q. If you've got two lawyers telling you diametrically
4 : 1 0 P M 7 opposed things, which one do you believe?

4 : 1 0 P M 8 MS. STRAWN: Objection, Your Honor.

4 : 1 1 P M 9 THE COURT: Restate your question.

4 : 1 1 P M 10 BY MR. ASHMORE:

4 : 1 1 P M 11 Q. If you have two lawyers that both represent you telling
4 : 1 1 P M 12 you two diametrically opposed opinions, which one do you
4 : 1 1 P M 13 believe?

4 : 1 1 P M 14 MS. STRAWN: Objection. Relevance here, Your Honor.

4 : 1 1 P M 15 THE COURT: Overruled. Let him answer.

4 : 1 1 P M 16 THE WITNESS: The one that is in accordance with the
4 : 1 1 P M 17 law.

4 : 1 1 P M 18 BY MR. ASHMORE:

4 : 1 1 P M 19 Q. How do you know that?

4 : 1 1 P M 20 A. well, you have to have a little bit of gut instinct, I
4 : 1 1 P M 21 guess as well, that your lawyer also does proper research.

4 : 1 1 P M 22 Q. One would hope.

4 : 1 1 P M 23 Now, you testified earlier that, for about a
4 : 1 1 P M 24 three-and-a-half-month period, your practice had a phlebotomist
4 : 1 1 P M 25 provided by HDL and your partners were getting P&H fees;

4 : 1 1 P M 1 correct?

4 : 1 1 P M 2 A. Yes, that is correct.

4 : 1 1 P M 3 Q. And we can all agree that that is highly improper?

4 : 1 1 P M 4 A. Yes.

4 : 1 2 P M 5 Q. Now, what -- what happened? what was the final resolution
4 : 1 2 P M 6 of that?

4 : 1 2 P M 7 A. The final resolution of that was a discussion between my
4 : 1 2 P M 8 office manager and Tonya Mallory.

4 : 1 2 P M 9 Q. And were any monies refunded by your practice?

4 : 1 2 P M 10 A. Tonya Mallory told our practice that she was going to send
4 : 1 2 P M 11 us an invoice for the employment salary of the phlebotomist but
4 : 1 2 P M 12 she didn't care if we ever paid it back. She just wanted it
4 : 1 2 P M 13 documented that she had sent the invoice and wanted to protect
4 : 1 2 P M 14 Heritage.

4 : 1 2 P M 15 Q. And are you aware that HDL reported all of this to the
4 : 1 2 P M 16 government?

4 : 1 2 P M 17 A. I'm not aware of what HDL reported and when.

4 : 1 2 P M 18 Q. So you wouldn't disagree with me that HDL self-disclosed
4 : 1 2 P M 19 this improper double payment, I'll call it, for lack of a
4 : 1 3 P M 20 better phrase, to the United States government?

4 : 1 3 P M 21 A. I'm not aware of that.

4 : 1 3 P M 22 Q. And you wouldn't be aware of whether or not they refunded
4 : 1 3 P M 23 \$979,471.70 to the government?

4 : 1 3 P M 24 A. For?

4 : 1 3 P M 25 Q. For improperly paying your practice.

4 : 1 3 P M 1 A. They -- they refunded all that money just from my
4 : 1 3 P M 2 practice? That's a lot of money just from my practice -- my
4 : 1 3 P M 3 partnership practice. \$979,000?

4 : 1 3 P M 4 Q. Do you have any knowledge one way or the other?

4 : 1 3 P M 5 A. I would find it hard to believe that my practice was paid
4 : 1 3 P M 6 anywhere near -- my partners were paid anywhere near that kind
4 : 1 3 P M 7 of money from HDL.

4 : 1 3 P M 8 Q. Well -- and I'm not making that -- that assertion.

4 : 1 3 P M 9 A. So maybe there were other practices involved in the
4 : 1 3 P M 10 figure?

4 : 1 4 P M 11 Q. Where do you practice now?

4 : 1 4 P M 12 A. I'm in solo practice.

4 : 1 4 P M 13 Q. How long have you been doing that?

4 : 1 4 P M 14 A. Since August of 2014.

4 : 1 4 P M 15 Q. What do you do for your blood tests?

4 : 1 4 P M 16 A. I give my patients a lab order which has the labs that I'm
4 : 1 4 P M 17 ordering and the diagnosis codes. And I let them take it to
4 : 1 4 P M 18 any lab that they choose, whether it's LabCorp, Quest, or a
4 : 1 4 P M 19 hospital, or any other lab they want to. Sometimes that's
4 : 1 4 P M 20 dictated by their insurance and what their insurance requires
4 : 1 4 P M 21 them to do.

4 : 1 4 P M 22 Q. And do your patients go use those labs to get blood tests
4 : 1 4 P M 23 done 100 percent of the time?

4 : 1 4 P M 24 A. They don't get it done 100 percent of the time, no.
4 : 1 4 P M 25 Obviously, we recommend that we do it based upon certain

4 : 1 4 P M 1 medical problems. But, you know, sometimes patients forget or
4 : 1 4 P M 2 they're delaying for one reason or the other. But --

4 : 1 4 P M 3 Q. But, of course, that wouldn't happen if you had an on-site
4 : 1 4 P M 4 blood draw?

4 : 1 4 P M 5 A. Oh, it still happens even if you have on-site blood draw.
4 : 1 4 P M 6 They still walk out or decide not to do it. So --

4 : 1 5 P M 7 Q. Okay. Thanks a lot.

4 : 1 5 P M 8 A. Okay.

4 : 1 5 P M 9 MR. ASHMORE: Thank you, Your Honor.

4 : 1 5 P M 10 THE COURT: Ms. Strawn, anything on redirect?

4 : 1 5 P M 11 REDIRECT EXAMINATION

4 : 1 5 P M 12 BY MS. STRAWN:

4 : 1 5 P M 13 Q. Now, Dr. Mayes, when you were cross-examined by
4 : 1 5 P M 14 Mr. Ashmore just there, he asked you about a hypothetical, if
4 : 1 5 P M 15 you have one lawyer giving you one opinion and another lawyer
4 : 1 5 P M 16 giving you another opinion, which lawyer you go to. I'd like
4 : 1 5 P M 17 to follow up with a similar question.

4 : 1 5 P M 18 what would you do if you had one lawyer tell you
4 : 1 5 P M 19 something was legal and then you had 17 lawyers telling you
4 : 1 5 P M 20 that that was illegal? which one would you go with?

4 : 1 5 P M 21 A. I would go with the 17 lawyers who said it was illegal.

4 : 1 5 P M 22 MS. STRAWN: Nothing further, Your Honor.

4 : 1 5 P M 23 THE COURT: Thank you.

4 : 1 5 P M 24 You may step down, Doctor.

4 : 1 5 P M 25 THE WITNESS: Thank you.

4 : 1 5 P M 1 (Witness excused.)

4 : 1 5 P M 2 THE COURT: Call your next witness.

4 : 1 5 P M 3 MS. SHORT: Your Honor, the United States calls
4 : 1 6 P M 4 Dr. Michael Handrigan.

4 : 1 6 P M 5 THE DEPUTY CLERK: Please state your full name for
4 : 1 6 P M 6 the record, please.

4 : 1 6 P M 7 THE WITNESS: Michael Thomas Handrigan.

4 : 1 6 P M 8 THE DEPUTY CLERK: Would you spell your last name for
4 : 1 6 P M 9 the record, please?

4 : 1 6 P M 10 THE WITNESS: H-a-n-d-r-i-g-a-n.

4 : 1 6 P M 11 THE DEPUTY CLERK: Thank you.

4 : 1 6 P M 12 (Witness sworn.)

4 : 1 6 P M 13 THE DEPUTY CLERK: You may be seated.

4 : 1 6 P M 14 THE WITNESS: Thank you.

4 : 1 6 P M 15 THE DEPUTY CLERK: Be careful. There's a step right
4 : 1 6 P M 16 there.

4 : 1 6 P M 17 MS. SHORT: Your Honor, two quick pieces of
4 : 1 6 P M 18 housekeeping before we get started.

4 : 1 6 P M 19 THE COURT: Yes.

4 : 1 6 P M 20 MS. SHORT: The first is I have not had an
4 : 1 7 P M 21 opportunity to introduce myself to the jury. My name is
4 : 1 7 P M 22 Jennifer Short. I represent the United States in this matter.

4 : 1 7 P M 23 The second piece of housekeeping are some
4 : 1 7 P M 24 exhibits that we'll be using with this witness. The United
4 : 1 7 P M 25 States moves for the admission of U.S. Trial Exhibit 4001,

4 : 1 7 P M 1 4030, 4039, and 4048.

4 : 1 7 P M 2 THE COURT: Any objection from the defense?

4 : 1 7 P M 3 MR. GRIFFITH: No objection, Your Honor.

4 : 1 7 P M 4 THE COURT: Mr. Ashmore?

4 : 1 7 P M 5 MR. ASHMORE: No, sir.

4 : 1 7 P M 6 THE COURT: Very good. The Court admits without
4 : 1 7 P M 7 objection Plaintiffs' Exhibits 4001, 4030, 4039, and 4048.

4 : 1 7 P M 8 Pleads proceed, Ms. Short.

4 : 1 7 P M 9 MS. SHORT: Thank you, Your Honor.

4 : 1 7 P M 10 MICHAEL THOMAS HANDRIGAN, MD,
4 : 1 7 P M 11 called on behalf of the plaintiff, being first duly
1 1 : 0 3 A M 12 sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

4 : 1 7 P M 14 BY MS. SHORT:

4 : 1 7 P M 15 Q. would you please introduce yourself to the jury?

4 : 1 7 P M 16 A. Yes.

4 : 1 7 P M 17 Good afternoon. I am Dr. Michael Handrigan. I am a
4 : 1 7 P M 18 chief medical officer and emergency physician at the Centers
4 : 1 7 P M 19 for Medicare & Medicaid Services at the Center for Program
4 : 1 8 P M 20 Integrity. And the Centers for Medicare & Medicaid Services is
4 : 1 8 P M 21 the federal agency that runs the Medicare program, which is the
4 : 1 8 P M 22 health insurance program for seniors and some disabled folks.

4 : 1 8 P M 23 Q. Dr. Handrigan, what do you do at your office, the Center
4 : 1 8 P M 24 for Program Integrity?

4 : 1 8 P M 25 A. So program integrity describes all the activities that CMS

4 : 1 8 P M 1 conducts looking for ways to prevent fraud, waste, and abuse
4 : 1 8 P M 2 and help providers understand how to properly bill Medicare for
4 : 1 8 P M 3 the services that they provide.

4 : 1 8 P M 4 Q. Do your -- do your duties at the Center for Program
4 : 1 8 P M 5 Integrity include investigating allegations of Anti-Kickback
4 : 1 8 P M 6 Statute violations?

4 : 1 8 P M 7 A. No. CMS isn't an investigatory function of the government
4 : 1 8 P M 8 where we administer the insurance program. But when there's
4 : 1 8 P M 9 patterns of behavior that look like it might be a violation of
4 : 1 9 P M 10 anti-kickback or other law, we rely on our federal partners,
4 : 1 9 P M 11 such as the Department of Justice and the Office of the
4 : 1 9 P M 12 Inspector General, to pick up those issues. And we work with
4 : 1 9 P M 13 them, but we don't actually do any kind of investigation.

4 : 1 9 P M 14 Q. Getting to the role of CMS, or the Centers for Medicaid &
4 : 1 9 P M 15 Medicare Services more generally, let's talk about, what is
4 : 1 9 P M 16 Medicare?

4 : 1 9 P M 17 A. So Medicare is the federal health insurance program that
4 : 1 9 P M 18 covers folks when they retire. So people over 65 years of age
4 : 1 9 P M 19 are generally eligible to participate in Medicare and have
4 : 1 9 P M 20 their health care covered by Medicare.

4 : 1 9 P M 21 Medicare also covers health insurance costs for
4 : 1 9 P M 22 people with disabilities, sometimes with renal failure, folks
4 : 1 9 P M 23 that are on dialysis or who need kidney transplants, that kind
4 : 2 0 P M 24 of thing.

4 : 2 0 P M 25 Q. What is a Medicare beneficiary?

4 : 2 0 P M 1 A. So a beneficiary just describes a patient being taken care
4 : 2 0 P M 2 of that Medicare pays for the services for.

4 : 2 0 P M 3 Q. What is a Medicare provider?

4 : 2 0 P M 4 A. A provider is anybody that provides a health care service
4 : 2 0 P M 5 to a Medicare patient or beneficiary and receives a payment
4 : 2 0 P M 6 from Medicare for those services.

4 : 2 0 P M 7 Q. Can you give us some examples? Who are the providers?

4 : 2 0 P M 8 A. So we typically think about doctors and nurses as being
4 : 2 0 P M 9 providers, but anybody that provides a service and bills
4 : 2 0 P M 10 Medicare and receives payments, we consider a provider. So
4 : 2 0 P M 11 laboratory services, radiology services, folks that make
4 : 2 0 P M 12 medical equipment are providers. Anybody that gets a payment
4 : 2 0 P M 13 from Medicare for a service is a provider.

4 : 2 0 P M 14 Q. Does Medicare pay for any type of health care service that
4 : 2 1 P M 15 a beneficiary might receive?

4 : 2 1 P M 16 A. Generally speaking, Medicare describes the kinds of health
4 : 2 1 P M 17 care that we pay for. Just like any health insurance company,
4 : 2 1 P M 18 health insurance companies don't pay for whatever people want,
4 : 2 1 P M 19 but Medicare does pay for the health care services that are
4 : 2 1 P M 20 reasonable and necessary in their care. But not everything
4 : 2 1 P M 21 gets covered, as you know.

4 : 2 1 P M 22 So there's a list of covered services that Medicare
4 : 2 1 P M 23 publishes every year so that people know what is covered and
4 : 2 1 P M 24 how much they get coverage for for those procedures and
4 : 2 1 P M 25 services.

4 : 2 1 P M 1 Q. Earlier you talked about CMS as being the administrator or
4 : 2 1 P M 2 the administrative agency for Medicare. How, functionally,
4 : 2 1 P M 3 does CMS administer the Medicare program?

4 : 2 2 P M 4 A. The agency within the Department of Health and Human
4 : 2 2 P M 5 Services is relatively small. And the Medicare program, as you
4 : 2 2 P M 6 know, is very, very big. There's millions and millions of
4 : 2 2 P M 7 beneficiaries around the country getting services every day.

4 : 2 2 P M 8 In order to administer or manage the program, we rely
4 : 2 2 P M 9 on health insurance companies called Medicare administrative
4 : 2 2 P M 10 contractors. These are private companies that contract with
4 : 2 2 P M 11 Medicare to actually run the nuts and bolts of the program. So
4 : 2 2 P M 12 the MACs, or the Medicare administrative contractors, are the
4 : 2 2 P M 13 organizations that providers deal with in terms of applying to
4 : 2 2 P M 14 become Medicare providers. The MACs are the ones that receive
4 : 2 2 P M 15 the claims, process the claims, and make payments on the
4 : 2 2 P M 16 claims.

4 : 2 2 P M 17 Currently, there's 14 different MACs, Medicare
4 : 2 3 P M 18 administrative contractors, around the country that divide up
4 : 2 3 P M 19 the states in regions so that we can manage through those
4 : 2 3 P M 20 contractor organizations.

4 : 2 3 P M 21 Q. Now, Dr. Handrigan, this case focuses on a couple of
4 : 2 3 P M 22 laboratory companies. Can a laboratory company be a Medicare
4 : 2 3 P M 23 provider?

4 : 2 3 P M 24 A. Sure. As I said before, anybody that provides a service
4 : 2 3 P M 25 to a Medicare beneficiary or a patient and receives a payment

4 : 2 3 P M 1 is a Medicare provider.

4 : 2 3 P M 2 Q. How would a laboratory become a Medicare provider?

4 : 2 3 P M 3 A. The same way anybody else becomes a Medicare provider.

4 : 2 3 P M 4 They fill out a provider enrollment form. That form number is

4 : 2 3 P M 5 855. And for a laboratory service, it would be the 855b. The

4 : 2 3 P M 6 laboratory is a little bit different than a doctor's office.

4 : 2 3 P M 7 So those forms are a little bit different, but they're all just

4 : 2 4 P M 8 about the same.

4 : 2 4 P M 9 The form describes who the provider is, where they

4 : 2 4 P M 10 are, what kind of services they render, and how they intend to

4 : 2 4 P M 11 bill Medicare.

4 : 2 4 P M 12 Q. And I want to take a look at one of those enrollment

4 : 2 4 P M 13 applications. Can you turn in the binder in front of you and

4 : 2 4 P M 14 we can bring up on the screen U.S. Exhibit 4001.

4 : 2 4 P M 15 A. Yes.

4 : 2 4 P M 16 Q. And, Dr. Handrigan, did you have an opportunity to review

4 : 2 4 P M 17 this document before your testimony today?

4 : 2 4 P M 18 A. I did.

4 : 2 4 P M 19 Q. And what is it?

4 : 2 4 P M 20 A. This looks like a -- the 855, the enrollment form for HDL,

4 : 2 4 P M 21 if I'm not mistaken.

4 : 2 4 P M 22 Q. And if you turn to the page number at the bottom that ends

4 : 2 4 P M 23 in the numbers 95 --

4 : 2 5 P M 24 A. Okay.

4 : 2 5 P M 25 Q. -- is that the -- the cover page of that CMS-855b that you

4 : 2 5 P M 1 referenced earlier?

4 : 2 5 P M 2 A. Yes.

4 : 2 5 P M 3 Q. Turn back a couple of pages to the page that's numbered 47
4 : 2 5 P M 4 at the end.

4 : 2 5 P M 5 A. Okay.

4 : 2 5 P M 6 Q. Is this part of the same form application?

4 : 2 5 P M 7 A. It is. It is Section 2 of that enrollment form, and it's
4 : 2 5 P M 8 listed as the Health Diagnostic Laboratory and signed by Tonya
4 : 2 5 P M 9 Mallory.

4 : 2 5 P M 10 Q. Okay. If we go over next to the page that's marked at the
4 : 2 5 P M 11 bottom with the number 125, is this also part of the Medicare
4 : 2 6 P M 12 enrollment application?

4 : 2 6 P M 13 A. It is. It's Section 14. And as you can see on the
4 : 2 6 P M 14 monitor, this is the part that describes the penalties for
4 : 2 6 P M 15 providing false information.

4 : 2 6 P M 16 Q. Do you see the reference on this page to the civil False
4 : 2 6 P M 17 Claims Act?

4 : 2 6 P M 18 A. I do. That's item number 3 in this Section 14.

4 : 2 6 P M 19 Q. What is the purpose of this Section 14 of the application?

4 : 2 6 P M 20 A. This particular item in the enrollment application is
4 : 2 6 P M 21 really to demonstrate to the providers who are applying to be
4 : 2 6 P M 22 Medicare providers how important it is to be performing
4 : 2 6 P M 23 services appropriately and in accordance with the law.

4 : 2 6 P M 24 And the False Claim Act is very important to

4 : 2 7 P M 25 Medicare. And we want to make sure that providers who are

4 : 2 7 P M 1 billing Medicare understand why it's so important. And the
4 : 2 7 P M 2 reason is that we need to rely on providers providing services
4 : 2 7 P M 3 in the best interests of their patients and their
4 : 2 7 P M 4 beneficiaries.

4 : 2 7 P M 5 And for a provider to engage in a financial scheme
4 : 2 7 P M 6 would undermine the ability of that provider to make the best
4 : 2 7 P M 7 decisions for those patients. On behalf of taxpayers who pay
4 : 2 7 P M 8 for the program, and mostly on behalf of beneficiaries who rely
4 : 2 7 P M 9 on those providers, we think it's so important that it's
4 : 2 7 P M 10 specifically highlighted here so that there's -- we minimize
4 : 2 7 P M 11 even the risk that a financial scheme can get in between a
4 : 2 8 P M 12 doctor and their patient.

4 : 2 8 P M 13 Q. Dr. Handrigan, let's look next at the page marked at the
4 : 2 8 P M 14 bottom 129.

4 : 2 8 P M 15 A. Okay.

4 : 2 8 P M 16 Q. Is this also part of the enrollment application form?

4 : 2 8 P M 17 A. It is.

4 : 2 8 P M 18 Q. And what is this section? What is the purpose of this
4 : 2 8 P M 19 section?

4 : 2 8 P M 20 A. This is -- describes the certification statement.

4 : 2 8 P M 21 Q. All right. If you look at the top paragraph on this page,
4 : 2 8 P M 22 can you tell us what an authorized official is for purposes of
4 : 2 8 P M 23 this application.

4 : 2 8 P M 24 A. So when an organization such as a laboratory company
4 : 2 8 P M 25 applies to be an enrolled provider, the company itself can't

1 sign the document, can't take responsibility for the company.
2 One of the individuals in the company is designated as the
3 official to take responsibility and bind the whole of the
4 organization to the enrollment agreement that the individual
5 signs.

6 Q. Okay. If we turn to the next page, this appears to be a
7 continuation of that same certification statement; is that
8 correct?

9 A. Yes.

10 Q. And if we focus on paragraph 3 of what the company is
11 certifying to, do you see a reference there to the federal
12 Anti-Kickback Statute?

13 A. I do.

14 Q. And can you tell us why that is there?

15 A. For exactly the same reason. We want to be sure to
16 minimize even the possibility or the risk of a financial scheme
17 getting in between a health care provider and the best
18 interests of the patient.

19 Q. If you would turn over to the last one on this exhibit,
20 the page that's marked 195 at the bottom.

21 A. Yes.

22 Q. And is this also part of that same section, the
23 certification section?

24 A. It is. It's the signature section.

25 Q. And who has signed this application form on behalf of HDL?

4 : 3 0 P M 1 A. As you can see on the monitor, it's Tonya Mallory.

4 : 3 0 P M 2 Q. I want to look at the -- very quickly at the next tab in
4 : 3 0 P M 3 your binder. It's U.S. Exhibit 4030.

4 : 3 0 P M 4 THE COURT: Were you intending to offer 4001 as -- I
4 : 3 0 P M 5 guess it's already in. I'm sorry.

4 : 3 0 P M 6 MS. SHORT: We did. Thank you. We just marked right
4 : 3 0 P M 7 through it.

4 : 3 0 P M 8 BY MS. SHORT:

4 : 3 0 P M 9 Q. Looking at the next document, 4030, Dr. Handrigan, did you
4 : 3 0 P M 10 have an opportunity to review this document before your
4 : 3 0 P M 11 testimony today?

4 : 3 0 P M 12 A. I did.

4 : 3 0 P M 13 Q. And what is this document?

4 : 3 0 P M 14 A. This is the same form, the 855b. It's an enrollment
4 : 3 0 P M 15 application.

4 : 3 0 P M 16 Q. Okay. And if we turn to the page that's marked at the
4 : 3 1 P M 17 bottom with the numbers 921 in the bottom right-hand corner --

4 : 3 1 P M 18 A. Uh-huh. Yes.

4 : 3 1 P M 19 Q. -- who submitted this application to become a Medicare
4 : 3 1 P M 20 provider?

4 : 3 1 P M 21 A. This was from Singulex, Inc.

4 : 3 1 P M 22 Q. Is this document roughly the same, with the same
4 : 3 1 P M 23 certifications and recommendations, as the HDL document that we
4 : 3 1 P M 24 looked at?

4 : 3 1 P M 25 A. It is the same document.

4 : 3 1 P M 1 Q. So I wanted to spend just a couple of minutes talking
4 : 3 1 P M 2 about how health care providers get paid by Medicare. And we
4 : 3 1 P M 3 have some slides that the jury saw during opening. And we want
4 : 3 1 P M 4 to focus -- if we can pull those up, we want to focus your
4 : 3 1 P M 5 attention on the part of this process that involves the claims
4 : 3 1 P M 6 submission, when the claims actually go to Medicare.

4 : 3 1 P M 7 Can you walk us through that process?

4 : 3 1 P M 8 A. Sure.

4 : 3 1 P M 9 As you can see on the monitor, physicians have an
4 : 3 2 P M 10 office. And it works almost I'm sure exactly as you would
4 : 3 2 P M 11 think it would work. When you go to your doctor's office, they
4 : 3 2 P M 12 provide services in the office to evaluate you, decide how to
4 : 3 2 P M 13 treat you. And for the services that the physician provides in
4 : 3 2 P M 14 his or her office, he sends or she sends a bill to Medicare for
4 : 3 2 P M 15 rendering those services.

4 : 3 2 P M 16 The bill is sent to the regional MAC for his or her
4 : 3 2 P M 17 office. It's processed. And so long as all of the information
4 : 3 2 P M 18 is filled out on the claim properly, the claim gets processed
4 : 3 2 P M 19 automatically and Medicare turns it around and sends a payment
4 : 3 2 P M 20 back to the physician for his or her services that they
4 : 3 2 P M 21 rendered during the office visit.

4 : 3 2 P M 22 Now, during that office visit, oftentimes a doctor
4 : 3 3 P M 23 will decide that they need laboratory services, a laboratory
4 : 3 3 P M 24 test. And sometimes they can do that in the office, and
4 : 3 3 P M 25 sometimes they can't.

4 : 3 3 P M 1 If they need to send the patient's blood or the
4 : 3 3 P M 2 patient themselves to a lab, then the patient would go to a lab
4 : 3 3 P M 3 to have that test done. The lab then will provide a separate
4 : 3 3 P M 4 service, a different service, a laboratory service. They will
4 : 3 3 P M 5 provide that service to create a claim and send a claim
4 : 3 3 P M 6 directly to the MAC, the Medicare administrative contractor,
4 : 3 3 P M 7 for those services that the lab rendered. And the system works
4 : 3 3 P M 8 exactly the same.

4 : 3 3 P M 9 The Medicare administrative contractor processes the
4 : 3 3 P M 10 lab's claim and, so long as it's filled out completely, it will
4 : 3 3 P M 11 be processed automatically, and then Medicare will send a check
4 : 3 3 P M 12 directly to the lab for the services that the lab rendered.
4 : 3 4 P M 13 But they're separate services from what the doctor did. So a
4 : 3 4 P M 14 separate check goes to the lab for the services that they
4 : 3 4 P M 15 rendered.

4 : 3 4 P M 16 Q. I also want to talk about -- you started talking about the
4 : 3 4 P M 17 claims forms. Let's take a look at the claims form, and we
4 : 3 4 P M 18 have a couple of slides on this as well.

4 : 3 4 P M 19 Can you tell us what this is that's showing up on the
4 : 3 4 P M 20 monitors now?

4 : 3 4 P M 21 A. Sure. This is an example of the paper claim form. Back
4 : 3 4 P M 22 in the olden days, we used to use paper to do these. And the
4 : 3 4 P M 23 provider, for whatever service they rendered, would fill out
4 : 3 4 P M 24 this paper claim form, send it to the MAC, and it would be
4 : 3 4 P M 25 processed. And somebody at the MAC would reenter all of the

1 information fields into the computer.

2 Now, there's a lot of blank spaces here to be filled
3 in, but essentially the top of the form provides information
4 about who the beneficiary is. The middle of the form defines
5 who the provider is, and then the bottom of the form describes
6 what the provider did for the beneficiary that they're
7 requesting payment for.

8 Q. Okay. I want to look at the bottom part of that form. So
9 if we can pull that out.

10 And Dr. Handrigan, talk to us about some of the
11 fields that are put in this section about the services that
12 were provided.

13 A. Sure. So as you can see, there's a series of rows. Each
14 are numbered up to 6. And each row represents a particular
15 procedure or service that the provider provided to the patient
16 on the day that they saw them.

17 So the first part of the row on the left-hand side
18 would be the date that those services were provided. In the
19 middle is something called the CPT code, which is just a code
20 that defines exactly what service was provided.

21 And then further down, it describes the -- the
22 charges for what the provider hopes he receives from Medicare.
23 And then the last bit of information would be the number
24 assigned to that particular provider so the money can make its
25 way to the right person.

4 : 3 6 P M 1 Q. And you mentioned CPT code.

4 : 3 6 P M 2 Can you tell us what CPT stands for?

4 : 3 6 P M 3 A. So the way that Medicare defines what is being done for
4 : 3 6 P M 4 patients is called the common procedural terminology. And
4 : 3 6 P M 5 that's just the computer code term for what happens.

4 : 3 6 P M 6 So, for example, an appendectomy has a CPT code
4 : 3 6 P M 7 assigned to it. Certain blood tests have a certain CPT code
4 : 3 6 P M 8 assigned to it. And that helps us to keep everything straight.

4 : 3 7 P M 9 CPT codes are created by the American Medical
4 : 3 7 P M 10 Association. It's a little bit of an odd system, but Medicare
4 : 3 7 P M 11 doesn't actually own the CPT code process. That's an AMA
4 : 3 7 P M 12 function. So we use AMA's CPT codes for Medicare claims.

4 : 3 7 P M 13 Q. You talked a second ago about the charge column, the
4 : 3 7 P M 14 charge field.

4 : 3 7 P M 15 Is that what Medicare pays the provider?

4 : 3 7 P M 16 A. No. And as part of the claim process, the provider has to
4 : 3 7 P M 17 put in what they would like to charge the patient for the
4 : 3 7 P M 18 service that they rendered. But the charge is entirely decided
4 : 3 7 P M 19 by the provider. It has absolutely nothing to do with what
4 : 3 7 P M 20 Medicare actually pays for a particular service.

4 : 3 7 P M 21 Every year, there's something called the fee
4 : 3 8 P M 22 schedule. And that's just the list of fees that are associated
4 : 3 8 P M 23 with every CPT code so everybody knows what Medicare pays for
4 : 3 8 P M 24 each of the CPT codes.

4 : 3 8 P M 25 But the charges don't relate to what Medicare

4 : 3 8 P M 1 actually pays.

4 : 3 8 P M 2 Q. All right. Last question on the front of this form. If
4 : 3 8 P M 3 you look at the lower left-hand corner, there's a place for a
4 : 3 8 P M 4 signature of the physician or supplier.

4 : 3 8 P M 5 Can you explain what that is for.

4 : 3 8 P M 6 A. Sure. Each time a provider submits a claim to Medicare,
4 : 3 8 P M 7 they have to take responsibility for that claim. And this is
4 : 3 8 P M 8 the place for the signature, and it's used just like you
4 : 3 8 P M 9 imagine. This is where the provider is saying that, this is my
4 : 3 8 P M 10 claim, this is what I did for the beneficiary, and please pay
4 : 3 9 P M 11 me for those services.

4 : 3 9 P M 12 It also specifically points to the attestations on
4 : 3 9 P M 13 the back of the form and reminds the provider that, when they
4 : 3 9 P M 14 are filling out a claim and submitting it to Medicare and
4 : 3 9 P M 15 they've signed this and sent it to us at Medicare, they are
4 : 3 9 P M 16 attesting every single time that they do that to the fact that
4 : 3 9 P M 17 it is an appropriate claim, it's honest and truthful, it is not
4 : 3 9 P M 18 breaking any laws and follows all of Medicare's rules, and that
4 : 3 9 P M 19 it is a medically necessary service in the care of a patient.

4 : 3 9 P M 20 Q. Okay. And I think we've already brought up the back of
4 : 3 9 P M 21 that claim form and highlighted the language that corresponds
4 : 3 9 P M 22 with that signature block.

4 : 3 9 P M 23 Can you take a look at that and explain to us the
4 : 3 9 P M 24 call-out language and why it's there?

4 : 3 9 P M 25 A. Sure. And, again, as I said a moment ago, each time the

4 : 3 9 P M 1 provider fills in a claim form and sends it in and signs the
4 : 4 0 P M 2 document in that section for the signature, they are stating
4 : 4 0 P M 3 all of these things to be true: That it's a true and accurate
4 : 4 0 P M 4 claim; that the claim follows all of the rules and regulations,
4 : 4 0 P M 5 it's not breaking any of the laws; and, specifically, it's not
4 : 4 0 P M 6 breaking the anti-kickback law because we feel that that really
4 : 4 0 P M 7 is so important; and finally that the services that were
4 : 4 0 P M 8 rendered were really needed by the patient.

4 : 4 0 P M 9 Q. Let's look at an example, if we can. In your binder, it's
4 : 4 0 P M 10 behind the tab at 4039, but we also have it up on the screen.
4 : 4 0 P M 11 we've highlighted a couple of fields.

4 : 4 0 P M 12 Dr. Handrigan, is this an example of a Medicare
4 : 4 0 P M 13 claim?

4 : 4 0 P M 14 A. It is.

4 : 4 0 P M 15 Q. Okay. Focusing again on that bottom section -- we blacked
4 : 4 0 P M 16 out the top section with the patient information for the jury.

4 : 4 0 P M 17 But looking at the bottom section, what can you tell
4 : 4 1 P M 18 us about what you see in that bottom section?

4 : 4 1 P M 19 A. This is a completed claim form. And as you can see on the
4 : 4 1 P M 20 monitor, the date that the claim was generated and that the
4 : 4 1 P M 21 services were rendered for this claim is there. Each of the
4 : 4 1 P M 22 CPT codes represent a different procedure performed on that
4 : 4 1 P M 23 particular day of service for this particular beneficiary. And
4 : 4 1 P M 24 you can see in the final column the provider's identification
4 : 4 1 P M 25 number is there.

4 : 4 1 P M 1 Q. And who submitted this claim to Medicare?

4 : 4 1 P M 2 A. Health Diagnostic Laboratory.

4 : 4 1 P M 3 Q. And they filled out the signature block with the
4 : 4 1 P M 4 certification?

4 : 4 1 P M 5 A. They did.

4 : 4 1 P M 6 Q. Okay. This is a little hard to see on the monitors, but
4 : 4 1 P M 7 looking in your binder, how long is this claim?

4 : 4 1 P M 8 A. It is several pages. I think the -- it looks like it's
4 : 4 2 P M 9 about six pages, and that happens when there are too many
4 : 4 2 P M 10 procedures or services performed by the provider on a
4 : 4 2 P M 11 particular day to fit on one form. So if there's more than six
4 : 4 2 P M 12 CPT codes, they would print them on separate forms to fill them
4 : 4 2 P M 13 in.

4 : 4 2 P M 14 Q. Okay. Let's pull up -- so we can see those pages put
4 : 4 2 P M 15 together, can we pull up the next slide? Let's pull up the
4 : 4 2 P M 16 next slide. Sorry.

4 : 4 2 P M 17 So on this particular example form, once you've added
4 : 4 2 P M 18 up all of the procedures that were recorded here, the charges
4 : 4 2 P M 19 that HDL was seeking were how much?

4 : 4 2 P M 20 A. So if you add up each of the rows and each of the
4 : 4 2 P M 21 procedures, it looks like they're saying, for this particular
4 : 4 3 P M 22 beneficiary on this particular day, they did \$4,370.95 worth of
4 : 4 3 P M 23 procedures.

4 : 4 3 P M 24 Q. Dr. Handrigan, you mentioned earlier that those paper
4 : 4 3 P M 25 claim forms were used mostly in the good old days.

1 How are most Medicare claims submitted today?

2 A. So there's an electronic data entry system that most
3 providers use now, and it is essentially the same thing except
4 someone sits at their computer and enters all of the claim
5 field data points instead of writing them into a paper form.

6 The data is exactly the same data required. It's
7 really the same form. It's just in a different system. So the
8 providers can enter that, and there's no risk of making an
9 error when it gets to the MAC and a person has to take that
10 paper form and reenter it back into the computer.

11 So it's an improved system. Providers do that in
12 their office and send it electronically to CMS. But it's all
13 the same information.

14 Q. If you turn in your binder to Plaintiffs' Exhibit 4048.

15 A. Okay.

16 Q. Can you tell us what this document is?

17 A. So this looks like it's the electronic data system
18 enrollment form for HDL.

19 Q. Okay. Are you looking at the page that's marked at the
20 bottom 2793628?

21 A. I am.

22 Q. What is this form? What does this mean?

23 A. So this is the signature section for the electronic
24 enrollment form, and it's been signed by Tina [verbatim]
25 Mallory with Health Diagnostic Laboratories.

4 : 4 5 P M 1 Q. And what does this application form allow a provider to
4 : 4 5 P M 2 do?

4 : 4 5 P M 3 A. It allows the provider to participate in the electronic
4 : 4 5 P M 4 system as opposed to filling out paper forms.

4 : 4 5 P M 5 Q. You mentioned that, once the claim is filled out or sent
4 : 4 5 P M 6 electronically to the contractor, to the MAC, that data is
4 : 4 5 P M 7 received.

4 : 4 5 P M 8 And then what happens next in the claims process?

4 : 4 5 P M 9 A. The claims process really is not that complicated. Once
4 : 4 5 P M 10 the computer has the information, whether that's vetted from a
4 : 4 6 P M 11 paper form or transmitted electronically from the provider, the
4 : 4 6 P M 12 computer makes sure that all of the data fields are entered
4 : 4 6 P M 13 properly, and so long as they are and so long as the claim is
4 : 4 6 P M 14 valid by itself, the computer system processes it
4 : 4 6 P M 15 automatically, provides a check back to the provider for those
4 : 4 6 P M 16 services, and the information is put into what's called the
4 : 4 6 P M 17 common working file. And that's the big data file that
4 : 4 6 P M 18 contains all of the claims for all providers across the
4 : 4 6 P M 19 country.

4 : 4 6 P M 20 Along the way when the MAC receives the claim and
4 : 4 6 P M 21 processes it, it enters information like the date that it was
4 : 4 6 P M 22 received and the date that it was processed, the date that it
4 : 4 6 P M 23 was paid and how much was paid or if it was denied for some
4 : 4 6 P M 24 reason or returned to the provider.

4 : 4 6 P M 25 So the common working file, the big data file has all

4 : 4 7 P M 1 that information in it.

4 : 4 7 P M 2 Q. In the context of this case, this litigation, was CMS
4 : 4 7 P M 3 asked to find claims data related to HDL?

4 : 4 7 P M 4 A. CMS was, yes.

4 : 4 7 P M 5 Q. And what did CMS do with that request?

4 : 4 7 P M 6 A. So we had our data folks run a query of the common working
4 : 4 7 P M 7 file to find all of the claims submitted by the providers that
4 : 4 7 P M 8 were requested. We compiled all of those claims and the data
4 : 4 7 P M 9 associated with those claims into a collected file, an
4 : 4 7 P M 10 electronic file, which was huge. It was too big to put on a
4 : 4 7 P M 11 CD-ROM or print out on paper. So that was put onto a hard
4 : 4 7 P M 12 drive. That hard drive was then transmitted to the Department
4 : 4 7 P M 13 of Justice for use here.

4 : 4 7 P M 14 Q. Did CMS receive a similar request for claims data from
4 : 4 8 P M 15 Singulex?

4 : 4 8 P M 16 A. Yes.

4 : 4 8 P M 17 Q. And did CMS conduct a similar search?

4 : 4 8 P M 18 A. Well, I believe it was just one search. It was the same
4 : 4 8 P M 19 search for both organizations, and it was provided in one big
4 : 4 8 P M 20 data file on the hard drive.

4 : 4 8 P M 21 Q. So in all of the claims that are represented in that big
4 : 4 8 P M 22 data file, did the labs HDL and Singulex certify that they
4 : 4 8 P M 23 complied with the Anti-Kickback Statute?

4 : 4 8 P M 24 A. So every single time a provider submits a claim, you know,
4 : 4 8 P M 25 to Medicare, by signing the bottom of this form and turning it

4 : 4 8 P M 1 in to Medicare, they are making that attestation. They are
4 : 4 8 P M 2 saying this is a true and faithful claim; it is appropriately
4 : 4 8 P M 3 submitted; it does not break any of the rules, regulations, or
4 : 4 8 P M 4 the laws associated with the Medicare program; and these
4 : 4 8 P M 5 services were medically necessary.

4 : 4 9 P M 6 The provider does that every single time that they
4 : 4 9 P M 7 submit a claim to Medicare.

4 : 4 9 P M 8 Q. And why is that certification important?

4 : 4 9 P M 9 A. As you can imagine, there's lots of Medicare patients
4 : 4 9 P M 10 across the country. We receive enormous numbers of claims
4 : 4 9 P M 11 every single day. And we rely on that automatic system, the
4 : 4 9 P M 12 automatic turnaround, in order to process all of those claims
4 : 4 9 P M 13 and make sure providers get paid quickly for the services that
4 : 4 9 P M 14 they're rendering to patients.

4 : 4 9 P M 15 In order to do that, though, we can't stop every
4 : 4 9 P M 16 single claim and call the provider and say, "Did you follow the
4 : 4 9 P M 17 rules?" We have to rely on what we assume to be honest and
4 : 4 9 P M 18 diligent providers doing the best they can for Medicare
4 : 4 9 P M 19 beneficiaries.

4 : 4 9 P M 20 So we must rely on that attestation so that we can
4 : 4 9 P M 21 process all these claims, make sure the providers get payment
4 : 5 0 P M 22 for the services that they're rendering.

4 : 5 0 P M 23 Q. Thank you, Dr. Handrigan.

4 : 5 0 P M 24 THE COURT: Ladies and gentlemen, we've been going
4 : 5 0 P M 25 for a little while. I'd like to try to finish Dr. Handrigan

4 : 5 0 P M 1 today.

4 : 5 0 P M 2 Do we need a break?

4 : 5 0 P M 3 A JUROR: I do.

4 : 5 0 P M 4 THE COURT: We do. Okay. Let's take about a
4 : 5 0 P M 5 10-minute break. Okay.

4 : 5 0 P M 6 (Recess.)

5 : 0 0 P M 7 THE COURT: Please be seated.

5 : 0 1 P M 8 Any matter we need to take up before we bring
5 : 0 1 P M 9 back the jury?

5 : 0 1 P M 10 MR. LEVENTIS: No, Your Honor.

5 : 0 1 P M 11 THE COURT: Please bring in the jury.

5 : 0 3 P M 12 (Whereupon the jury entered the courtroom.)

5 : 0 3 P M 13 THE COURT: Please be seated.

5 : 0 3 P M 14 Mr. Griffith, cross-examination.

5 : 0 3 P M 15 MR. GRIFFITH: Thank you, Your Honor.

5 : 0 3 P M 16 CROSS-EXAMINATION

5 : 0 3 P M 17 BY MR. GRIFFITH:

5 : 0 3 P M 18 Q. Good afternoon again. Try not to keep us any longer than
5 : 0 3 P M 19 we have to be here. Going to make it short.

5 : 0 3 P M 20 Dr. Handrigan, you were talking about -- in your
5 : 0 3 P M 21 testimony, you said that you had a partnership with the DOJ and
5 : 0 4 P M 22 the OIG involving matters of Anti-kickback Statute; right? Do
5 : 0 4 P M 23 you recall that?

5 : 0 4 P M 24 A. I don't think I said we had a partnership. I think I said
5 : 0 4 P M 25 we relied on our federal partners. I suppose that might be the

5 : 0 4 P M 1 same thing.

5 : 0 4 P M 2 It's big organization, and we try to work together
5 : 0 4 P M 3 when we can on big issues like this.

5 : 0 4 P M 4 Q. I'm sorry. If I said "partnership" and you said
5 : 0 4 P M 5 "partner," I apologize. I wasn't trying to --

5 : 0 4 P M 6 A. Sure.

5 : 0 4 P M 7 Q. -- be cute on that in any way.

5 : 0 4 P M 8 The -- you're familiar with the special fraud alert
5 : 0 4 P M 9 that was issued in this case; right?

5 : 0 4 P M 10 A. I'm familiar with a special fraud alert. Can you be
5 : 0 4 P M 11 specific?

5 : 0 4 P M 12 Q. Okay. On the processing and handling fee fraud alert.

5 : 0 4 P M 13 A. If you have a document that you'd like to show me, I'd be
5 : 0 4 P M 14 happy to respond to it.

5 : 0 5 P M 15 MR. GRIFFITH: May I approach, Your Honor?

5 : 0 5 P M 16 THE COURT: What's the number?

5 : 0 5 P M 17 MR. GRIFFITH: 508.

5 : 0 5 P M 18 THE COURT: Thank you, sir.

5 : 0 5 P M 19 THE WITNESS: Thank you.

5 : 0 5 P M 20 BY MR. GRIFFITH:

5 : 0 5 P M 21 Q. Are you familiar with that?

5 : 0 5 P M 22 A. Yes, I've seen it.

5 : 0 5 P M 23 Q. Okay. Did CMS have any role in the process of issuing
5 : 0 5 P M 24 that special fraud alert?

5 : 0 5 P M 25 A. well, as you can tell by the heading of the document --

1 the beginning of the document, it's a document that was created
2 and prepared by the office of the inspector general, which is a
3 separate component of the Department of Health and Human
4 Services but not -- you know, aside from Medicare.

5 Q. The -- and when was the first time that you learned about
6 that particular fraud alert?

7 A. I believe it was about June or July when I was asked to
8 participate in this particular case.

9 Q. Okay.

10 THE COURT: June or July of this year?

11 THE WITNESS: Yes, sir.

12 THE COURT: Thank you.

13 THE WITNESS: Well, no. Last year.

14 THE COURT: Last year.

15 BY MR. GRIFFITH:

16 Q. And if I could direct your attention to Footnote 10. Can
17 you read Footnote 10 for me.

18 A. Footnote 10 states, "CPT Code 36415 is included in the
19 clinical laboratory fee schedule. As of the date of issuance
20 of this special fraud alert, Medicare pays a specimen
21 collection fee of \$5 for samples collected from individuals in
22 skilled nursing facilities and by laboratories on behalf of
23 home health agencies and a specimen collection fee of \$3 for
24 all -- for all other samples."

25 And it goes on to say, "See, e.g., Clinical

1 Laboratory Fee Schedule, January 2014 Release, available at" --
2 it provides the web link.

3 Q. All right. Thank you. And so you remember when we -- and
4 so as a layman -- because I don't claim to be well versed on
5 this. But as a layman, when I read that, I see CMS is agreeing
6 to pay between 3 and \$5 for a venipuncture.

7 Is that how you interpret it?

8 A. I don't think -- I'm not sure I understand your question.
9 I can tell you that CPT Code 36415 is a long-standing CPT code.
10 It does describe the venipuncture process and the work involved
11 in venipuncture, which is to use a needle to draw blood.
12 That's all venipuncture is.

13 Q. But is -- excuse me. Go ahead.

14 A. The CPT code, it can be billed by a laboratory if the
15 laboratory performs that or a physician in their office if the
16 physician in their office performs that work.

17 But, again, I'm not sure I understand your question.

18 Q. My question was -- and I'll try to make it simple. But
19 does that footnote say that the venipuncture code pays -- that
20 CMS pays \$5 for venipuncture in skilled nursing facilities?

21 A. I'm happy to reread what the footnote says, but I'm not
22 sure a footnote in a document prepared by the OIG takes
23 official position for Medicare. Medicare pays \$3 for the CPT
24 code described here for venipuncture. It's always paid \$3 for
25 that procedure, so I'm not sure I understand.

5 : 0 9 P M 1 Q. Okay. Because you can't rely on a publication by OIG;
5 : 0 9 P M 2 correct?

5 : 0 9 P M 3 A. No.

5 : 0 9 P M 4 Q. Are you saying you -- maybe I asked that --

5 : 0 9 P M 5 A. I'm not trying to be difficult. I'm just trying to
5 : 0 9 P M 6 understand what the question is.

5 : 0 9 P M 7 The CPT code on the fee schedule published by
5 : 0 9 P M 8 Medicare sets a fee of \$3 for this particular procedure whether
5 : 1 0 P M 9 that's provided in a lab or in a physician's office. If the
5 : 1 0 P M 10 physician performs that venipuncture service and submits a
5 : 1 0 P M 11 bill, they get \$3. If a lab performs the service and they
5 : 1 0 P M 12 submit a bill, they get \$3.

5 : 1 0 P M 13 I'm not sure where the mention of \$5 comes from --

5 : 1 0 P M 14 Q. Okay. Well --

5 : 1 0 P M 15 A. -- in this particular footnote. I'm sorry.

5 : 1 0 P M 16 Q. All right. Well, would you read the footnote one more
5 : 1 0 P M 17 time specifically -- to me, I thought the footnote said --

5 : 1 0 P M 18 THE COURT: Don't testify. Ask your question.

5 : 1 0 P M 19 BY MR. GRIFFITH:

5 : 1 0 P M 20 Q. Please read the footnote again.

5 : 1 0 P M 21 A. Sure. And just pointing out that a footnote in another
5 : 1 0 P M 22 agency's document is not official CMS policy.

5 : 1 0 P M 23 But the footnote states, "CPT Code 36415 is included
5 : 1 0 P M 24 on the clinical laboratory fee schedule. As of the date of
5 : 1 0 P M 25 issuance of this special fraud alert, Medicare pays a specimen

5 : 1 0 P M 1 collection fee of \$5 for samples collected from individuals in
5 : 1 1 P M 2 skilled nursing facilities and by laboratories on behalf of
5 : 1 1 P M 3 home health agencies and a specimen collection fee of \$3 for
5 : 1 1 P M 4 all other samples."

5 : 1 1 P M 5 Q. And so my question to you was -- I'll try to make it more
5 : 1 1 P M 6 simple.

5 : 1 1 P M 7 Based on what you read, does it appear that at least
5 : 1 1 P M 8 the OIG thinks that CMS pays between 3 and \$5 for a
5 : 1 1 P M 9 venipuncture?

5 : 1 1 P M 10 A. Not trying to be flippant, but what this means to me is
5 : 1 1 P M 11 that someone who prepared this document in 2014 on behalf of
5 : 1 1 P M 12 the office of the inspector general jotted this statement down
5 : 1 1 P M 13 as a footnote in their document.

5 : 1 1 P M 14 This doesn't mean to me that this is official CMS
5 : 1 1 P M 15 policy or that it is in any way the fee schedule for CMS,
5 : 1 2 P M 16 although it does say \$3, which is what CMS pays for
5 : 1 2 P M 17 venipuncture.

5 : 1 2 P M 18 Q. So you're basically saying you can't rely on it, on --

5 : 1 2 P M 19 THE COURT: Mr. Griffith, the document -- the witness
5 : 1 2 P M 20 has read it several times. He says it identifies a very narrow
5 : 1 2 P M 21 area, which is referring to these home health care and nursing
5 : 1 2 P M 22 homes -- skilled nursing homes and that everything else is \$3.
5 : 1 2 P M 23 I don't know why that's relevant to this case beyond that.

5 : 1 2 P M 24 MR. GRIFFITH: I'll move on, Your Honor.

5 : 1 2 P M 25 THE COURT: Okay.

5 : 1 2 P M 1 BY MR. GRIFFITH:

5 : 1 2 P M 2 Q. So remember when we had your deposition?

5 : 1 2 P M 3 A. I do.

5 : 1 2 P M 4 Q. And so didn't you tell me that the fee schedule represents
5 the fair market value of the services rendered?

5 : 1 2 P M 6 A. I didn't memorize the deposition. But what I would have
7 said is that CMS publishes the fee schedule on an annual basis,
8 which prints out what CMS will pay for for any particular CPT
9 code, which is the services rendered for beneficiaries.

5 : 1 3 P M 10 MR. GRIFFITH: May I approach?

5 : 1 3 P M 11 THE COURT: You may.

5 : 1 3 P M 12 MR. GRIFFITH: May I give him a --

5 : 1 3 P M 13 THE COURT: Do you have the original?

5 : 1 3 P M 14 MR. GRIFFITH: Do we have the original?

5 : 1 3 P M 15 BY MR. GRIFFITH:

5 : 1 3 P M 16 Q. And I'm on -- let me refer you specifically to page 153,
5 : 1 4 P M 17 if you don't mind.

5 : 1 4 P M 18 A. Okay. I'm there.

5 : 1 4 P M 19 Q. I'm sorry. The bottom of 152.

5 : 1 4 P M 20 A. Okay.

5 : 1 4 P M 21 Q. So did you say in that deposition that the fee schedules
5 : 1 4 P M 22 are set to represent the actual services and work involved in
5 : 1 4 P M 23 the performing of service and set fair market value for these
5 : 1 4 P M 24 services in the fee schedule?

5 : 1 4 P M 25 A. Yes. That's on 153.

5 : 1 4 P M 1 Q. Okay. Thank you.

5 : 1 4 P M 2 A. And the question, as you pointed out, how did CMS come to
5 : 1 5 P M 3 place a \$3 value?

5 : 1 5 P M 4 And my response was, "So, again, the folks that made
5 : 1 5 P M 5 the determination at that time are no longer around. But
5 : 1 5 P M 6 generally speaking, fee schedules are set to represent the
5 : 1 5 P M 7 actual resources and work involving -- involved in performing a
5 : 1 5 P M 8 service and set the fair market value for the services in the
5 : 1 5 P M 9 fee schedule."

5 : 1 5 P M 10 Q. Okay. Thank you. And so can we pull up Defendants'
5 : 1 5 P M 11 Exhibit 511. Can we go to page 15.

5 : 1 5 P M 12 Are you able to see that, Doctor? I'll bring you a
5 : 1 6 P M 13 sheet that's a little bigger if you need to read it.

5 : 1 6 P M 14 Can you read that?

5 : 1 6 P M 15 A. I can read it. Can you tell me what document it comes
5 : 1 6 P M 16 from?

5 : 1 6 P M 17 Q. Yeah. This is from the common carrier manual that was in
5 : 1 6 P M 18 1992, which is the predecessor to the claims processing manual.

5 : 1 6 P M 19 And do you see that in 1992, in Section D, they set
5 : 1 6 P M 20 the draw fee or collecting fee at \$3?

5 : 1 6 P M 21 A. I can see where the \$3 is described.

5 : 1 6 P M 22 Q. Do you see that?

5 : 1 6 P M 23 A. Yes, I see it.

5 : 1 6 P M 24 Q. Oh, okay. Thank you. And so -- and so the \$3 was at
5 : 1 7 P M 25 least set in 1992, as best we know; is that right?

5 : 1 7 P M 1 A. well, according to the document here, it looks like it
5 : 1 7 P M 2 indicates that. I have no idea when or by whom the \$3 was set.

5 : 1 7 P M 3 Q. Okay. And if you go to the next page, on the second -- I
5 : 1 7 P M 4 guess the second paragraph, it says you are no longer -- "you
5 : 1 7 P M 5 no longer have authority to make payment for routine handling
5 : 1 7 P M 6 charges where a specimen is referred by one laboratory to
5 : 1 7 P M 7 another. Preparatory services -- e.g., where a referring
5 : 1 7 P M 8 laboratory prepares a specimen before transfer to a reference
5 : 1 7 P M 9 laboratory -- are considered an integral part of the testing
5 : 1 8 P M 10 process, and the costs of such services are included in the
5 : 1 8 P M 11 charge for the total testing service."

5 : 1 8 P M 12 Do you see that?

5 : 1 8 P M 13 A. I do.

5 : 1 8 P M 14 Q. Okay. And so does that appear to say that, when
5 : 1 8 P M 15 laboratory services are done, processing and handling, that
5 : 1 8 P M 16 they are included in the fee to the lab? Do you read it that
5 : 1 8 P M 17 way?

5 : 1 8 P M 18 A. I would actually need to spend some time with the document
5 : 1 8 P M 19 to see it in its context. But this is talking about when one
5 : 1 8 P M 20 lab sends a test to another lab, so I don't think that relates
5 : 1 8 P M 21 to a physician's office.

5 : 1 8 P M 22 When a physician provides a service in their office
5 : 1 8 P M 23 and decides that they would like to perform a lab test, they
5 : 1 9 P M 24 have an option. They can perform the phlebotomy, they can do
5 : 1 9 P M 25 the blood draw in their office and then send that blood to the

1 lab, or they can send the patient directly to the lab and the
2 lab can draw the blood.

3 Now, whoever draws the blood is responsible for
4 preparing that specimen. The way that CMS pays physician's
5 offices for that kind of work is to pay a physician -- a
6 portion of that office visit fee is designed to cover all of
7 those services. So we're paying physicians. Whether they do
8 the blood draw and prepare the specimen in an office or send
9 the patient to the lab, those preparation fees are part of what
10 CMS has determined to be general office kind of work necessary
11 to maintain an office. For that work to happen, we have to
12 support physicians in order to do that. And the office visit
13 fee contains a component for the physician to be able to
14 support those kinds of work. So the preparation fees for lab
15 samples get paid for in that office visit fee.

16 Now, if they do the blood draw, they're also allowed
17 to add the blood draw and get that additional \$3. But they get
18 paid for the -- for preparing the specimen in the office visit
19 fee. We call that bundling. We bundle that payment in.

20 In fact, it has a separate code, 99000. I think you
21 might have already spoken about it. That code describes the
22 work involved in preparing samples within -- for a transfer.

23 Now, 99000 is a code that's already bundled in,
24 already paid for when a physician gets paid for their office
25 visit. So when a physician chooses to put that code in their

5 : 2 1 P M 1 claim so that they can track the work that their office is
5 : 2 1 P M 2 doing, CMS identifies that code but pays \$1 -- pays zero
5 : 2 1 P M 3 dollars for that work because it's already been paid for.

5 : 2 1 P M 4 The document that we have up on the screen is talking
5 : 2 1 P M 5 about what happens when a laboratory sends blood to another
5 : 2 1 P M 6 laboratory. And that doesn't really relate to the question
5 : 2 1 P M 7 that has -- I understand it is what happens when a physician
5 : 2 1 P M 8 sends blood to a laboratory.

5 : 2 1 P M 9 Q. But there's no guidance whatsoever from CMS that says that
5 : 2 1 P M 10 the physician gets reimbursed for the processing and handling
5 : 2 1 P M 11 fee and that it's not incident to the lab test; is that true?

5 : 2 1 P M 12 A. I didn't understand that question.

5 : 2 2 P M 13 But, yes, there's guidance that describes the
5 : 2 2 P M 14 bundling of procedures that comprise the office visit component
5 : 2 2 P M 15 of what they get paid. And there's guidance on the 99000 code
5 : 2 2 P M 16 which describes the work of performing the preparation of a
5 : 2 2 P M 17 sample.

5 : 2 2 P M 18 So physicians understand what that means. They
5 : 2 2 P M 19 understand that there is no additional money to be paid even
5 : 2 2 P M 20 though they -- for accounting, they can put that code on their
5 : 2 2 P M 21 claim. Physicians understand that.

5 : 2 2 P M 22 Q. Okay. So -- but I just want to be clear. So if a -- if a
5 : 2 2 P M 23 physician does a -- files an E&M claim and he has not done any
5 : 2 2 P M 24 processing and handling fee, he'll get \$100; right?

5 : 2 2 P M 25 A. So as a hypothetical, if they're claiming certain services

5 : 2 3 P M 1 that amount to \$100, a component of that \$100 will be the
5 : 2 3 P M 2 office visit fee that is comprised of all of the typical duties
5 : 2 3 P M 3 and services rendered in maintaining an office. Part of that
5 : 2 3 P M 4 is preparing laboratory samples. So even though it's not a
5 : 2 3 P M 5 separate line item, the physician is getting paid to do that
5 : 2 3 P M 6 whether he puts it on a claim or not.

5 : 2 3 P M 7 Q. Okay. Well, that's not my question. Under E&M, if a
5 : 2 3 P M 8 physician files an E&M --

5 : 2 3 P M 9 THE COURT: When is an E&M?

5 : 2 3 P M 10 MR. GRIFFITH: An evaluation and management code.

5 : 2 3 P M 11 THE COURT: I just want to make sure the jury
5 : 2 3 P M 12 understands.

5 : 2 3 P M 13 BY MR. GRIFFITH:

5 : 2 3 P M 14 Q. If he files an evaluation and management code claim and he
5 : 2 3 P M 15 has not performed any kind of blood processing and handling, he
5 : 2 3 P M 16 gets the same fee as -- as he does if he does do the processing
5 : 2 3 P M 17 and handling; correct?

5 : 2 4 P M 18 A. That's right. He gets paid for it whether he does it or
5 : 2 4 P M 19 not.

5 : 2 4 P M 20 Q. Well, that's what you're saying, that he's not getting
5 : 2 4 P M 21 paid --

5 : 2 4 P M 22 A. No, no. He's getting paid the composite rate for the
5 : 2 4 P M 23 office visit, which includes all of those services. So, in
5 : 2 4 P M 24 fact, he is getting paid for it whether he does it or not.

5 : 2 4 P M 25 Q. But he's getting zero dollars?

5 : 2 4 P M 1 A. well, he's getting paid an amount that is in the composite
5 : 2 4 P M 2 rate for the office visit. He's certainly getting money to
5 : 2 4 P M 3 support that activity.

5 : 2 4 P M 4 Q. Code 99000 has a zero dollar payment, does it not?

5 : 2 4 P M 5 A. If he chooses to put Code 99000 down for accounting
5 : 2 4 P M 6 purposes --

5 : 2 4 P M 7 Q. Just answer my question.

5 : 2 4 P M 8 Code 99000 has a zero dollar payment; correct?

5 : 2 4 P M 9 A. That code has a zero dollar payment.

5 : 2 4 P M 10 Q. Thank you.

5 : 2 4 P M 11 Now, you went over the claims forms and the provider
5 : 2 5 P M 12 agreements previously of HDL, Health Diagnostic Laboratories,
5 : 2 5 P M 13 and Singulex. Do you recall that?

5 : 2 5 P M 14 A. What do you mean by "claims forms"?

5 : 2 5 P M 15 Q. Well, did you -- did you not go over some claim forms --

5 : 2 5 P M 16 A. A moment ago we looked at an example of a claim form.

5 : 2 5 P M 17 Q. Right.

5 : 2 5 P M 18 A. Okay. Did you want to look at that one again?

5 : 2 5 P M 19 Q. No. Let me -- I'm trying to be specific. Did anybody on
5 : 2 5 P M 20 Bluewave sign any claim form that you're aware of on behalf of
5 : 2 5 P M 21 HDL?

5 : 2 5 P M 22 A. Not to my knowledge. That's not how the claim process
5 : 2 5 P M 23 would work.

5 : 2 5 P M 24 Q. Did Cal Dent sign any claim form on behalf of HDL?

5 : 2 6 P M 25 A. To my knowledge, no.

5 : 2 6 P M 1 Q. Did Brad Johnson sign any claim form on behalf of HDL?

5 : 2 6 P M 2 A. No.

5 : 2 6 P M 3 Q. Did Brad Johnson sign any claim form on behalf of
5 : 2 6 P M 4 Singulex?

5 : 2 6 P M 5 A. Again, that's not how CMS claims processing works.

5 : 2 6 P M 6 Q. Just answer my question. If you don't --

5 : 2 6 P M 7 MR. LEVENTIS: Your Honor, can he let the witness
5 : 2 6 P M 8 finish his answer?

5 : 2 6 P M 9 THE COURT: Yeah. And I know it's sort of late in
5 : 2 6 P M 10 the day. Sometimes we get tired, Mr. Griffith. Let's turn it
5 : 2 6 P M 11 down just a notch here. Let him finish his answer. I sustain
5 : 2 6 P M 12 the objection.

5 : 2 6 P M 13 BY MR. GRIFFITH:

5 : 2 6 P M 14 Q. Okay. Well, finish your answer, then, please.

5 : 2 6 P M 15 A. Again, a claim is signed by the individual performing the
5 : 2 6 P M 16 service, and the claimant -- you know, a payment for the
5 : 2 6 P M 17 service that they performed.

5 : 2 6 P M 18 So unless any of these individuals you mentioned were
5 : 2 6 P M 19 the providers and they were enrolled in Medicare providing
5 : 2 6 P M 20 services to the beneficiaries, then I wouldn't expect them to
5 : 2 7 P M 21 have signed the claim forms.

5 : 2 7 P M 22 Q. Yeah. And I understand you wouldn't expect it. But I
5 : 2 7 P M 23 just want to -- I mean, would you just verify for me that you
5 : 2 7 P M 24 have no knowledge that Mr. Dent or Mr. Johnson or Bluewave
5 : 2 7 P M 25 signed on behalf of -- any claim on behalf of Singulex.

5 : 2 7 P M 1 A. So there was an enormous number of claims. And while I
5 : 2 7 P M 2 would be surprised that they were the providers on any of those
5 : 2 7 P M 3 claims, it's certainly possible that they may have been
5 : 2 7 P M 4 providers in the past. I did not look at that enormous
5 : 2 7 P M 5 database of claims, so I can't confirm to you that they were
5 : 2 7 P M 6 not involved in any of those claims.

5 : 2 7 P M 7 Q. well, do you have --

5 : 2 7 P M 8 THE COURT: Doctor, you would not expect them to be;
5 : 2 7 P M 9 correct?

5 : 2 7 P M 10 THE WITNESS: I would not expect them to be, for
5 : 2 7 P M 11 sure.

5 : 2 7 P M 12 THE COURT: Thank you.

5 : 2 7 P M 13 BY MR. GRIFFITH:

5 : 2 7 P M 14 Q. And you don't have any information that they were? You
5 : 2 7 P M 15 personally have no information that they were --

5 : 2 7 P M 16 A. I personally have no information to that effect.

5 : 2 7 P M 17 Q. And so I just want to make sure. They not only didn't
5 : 2 8 P M 18 sign it, but you would not -- you would not have expected them
5 : 2 8 P M 19 to have anything to do with any kind of certification on the
5 : 2 8 P M 20 claims forms of Singulex or HDL; correct?

5 : 2 8 P M 21 A. Again, if they at some point in their past were Medicare
5 : 2 8 P M 22 providers enrolled in the program, then, yes, I would expect
5 : 2 8 P M 23 them to sign forms for claims. If they have never been
5 : 2 8 P M 24 enrolled Medicare providers, I would not expect them to sign
5 : 2 8 P M 25 and submit claims.

5 : 2 8 P M 1 Q. And so the process, as I understand it, is -- is automatic
5 : 2 8 P M 2 in terms of if the claim is valid on its face and it's got the
5 : 2 8 P M 3 proper information and the proper attestation, as you said,
5 : 2 8 P M 4 then it gets paid automatically; correct?

5 : 2 8 P M 5 A. That's correct.

5 : 2 8 P M 6 Q. Okay. And so you don't have any information yourself
5 : 2 9 P M 7 that -- what was the -- who caused the claims to be filed;
5 : 2 9 P M 8 true?

5 : 2 9 P M 9 A. Well, you're talking about a violation of -- a kickback
5 : 2 9 P M 10 kind of a scheme. I don't think I have personal knowledge that
5 : 2 9 P M 11 the -- that anyone or -- I'm not sure how to answer that
5 : 2 9 P M 12 question. I don't think it's a question for Medicare.

5 : 2 9 P M 13 Q. Okay.

5 : 2 9 P M 14 MR. GRIFFITH: Bear with me one second, Your Honor.

5 : 3 0 P M 15 (Pause.)

5 : 3 0 P M 16 MR. GRIFFITH: Okay. I appreciate it. That's all I
5 : 3 0 P M 17 have.

5 : 3 0 P M 18 THE COURT: Thank you, Mr. Griffith.

5 : 3 0 P M 19 MR. GRIFFITH: Thank you.

5 : 3 0 P M 20 THE COURT: Mr. Ashmore, cross-examination?

5 : 3 0 P M 21 MR. ASHMORE: No questions, Your Honor.

5 : 3 0 P M 22 THE COURT: Yes, sir.

5 : 3 0 P M 23 Anything on redirect?

5 : 3 0 P M 24 MS. SHORT: No, Your Honor.

5 : 3 0 P M 25 THE COURT: Doctor, you may step down. Thank you,

5 : 3 0 P M 1 sir.

5 : 3 0 P M 2 THE WITNESS: Thank you, Your Honor.

5 : 3 0 P M 3 (Witness excused.)

5 : 3 0 P M 4 THE COURT: Ladies and gentlemen, we're going to call
5 : 3 0 P M 5 it a day. It's a long day. Thank you all. I want to just
5 : 3 0 P M 6 thank you all. Y'all are really paying attention. This is not
5 : 3 0 P M 7 easy material. It's obviously an important case for all the
5 : 3 0 P M 8 parties, and I know they appreciate your great attentiveness.

5 : 3 1 P M 9 Can we start at 9:00 tomorrow morning? Can we
5 : 3 1 P M 10 do that? We will be here bright and early. Please do not
5 : 3 1 P M 11 discuss the case and do not do any independent research. You
5 : 3 1 P M 12 are excused for the day.

5 : 3 1 P M 13 (Whereupon the jury was excused from the courtroom.)

5 : 3 1 P M 14 THE COURT: Please be seated. Any matters we need to
5 : 3 1 P M 15 address --

5 : 3 1 P M 16 MR. LEVENTIS: No, Your Honor.

5 : 3 1 P M 17 THE COURT: -- at this point, from the government?
5 : 3 1 P M 18 From the defense?

5 : 3 1 P M 19 MR. GRIFFITH: Your Honor --

5 : 3 1 P M 20 THE COURT: Mr. Griffith, did you want those exhibits
5 : 3 1 P M 21 you used to be in evidence, because we didn't -- you didn't
5 : 3 2 P M 22 offer them.

5 : 3 2 P M 23 MR. GRIFFITH: We did not offer them. I mean, I can
5 : 3 2 P M 24 offer them now.

5 : 3 2 P M 25 THE COURT: Would you like to?

5 : 3 2 P M 1 MR. GRIFFITH: I would like to, Your Honor.

5 : 3 2 P M 2 THE COURT: Okay. Let's go back through these. And
5 : 3 2 P M 3 I didn't want to interrupt your examination, but I thought you
5 : 3 2 P M 4 really wanted them in, so which exhibits are those?

5 : 3 2 P M 5 MR. GRIFFITH: 508 and 511.

5 : 3 2 P M 6 THE COURT: BlueWave 508 and 511.

5 : 3 2 P M 7 Does the government object?

5 : 3 2 P M 8 MS. SHORT: Your Honor, I don't think we have a
5 : 3 2 P M 9 foundation for 511.

5 : 3 2 P M 10 MR. GRIFFITH: Your Honor, I'd ask you to take
5 : 3 2 P M 11 judicial notice. It's a government document.

5 : 3 2 P M 12 THE COURT: Can I see the document?

5 : 3 2 P M 13 Can I see the document?

5 : 3 2 P M 14 MR. GRIFFITH: We can print one out, Your Honor.

5 : 3 2 P M 15 MS. SHORT: You want to have this one?

5 : 3 2 P M 16 THE COURT: I don't know how to take judicial notice
5 : 3 2 P M 17 of something I haven't seen.

5 : 3 2 P M 18 MS. SHORT: Is that a complete copy of that?

5 : 3 2 P M 19 THE DEPUTY CLERK: Also, Mr. Cooke brought up 524.

5 : 3 2 P M 20 THE COURT: I'll ask him about 524 also.

5 : 3 3 P M 21 THE DEPUTY CLERK: Okay. Right here.

5 : 3 3 P M 22 MR. GRIFFITH: These are excerpts, Your Honor, pages.

5 : 3 3 P M 23 THE COURT: Do you want the excerpt or the whole
5 : 3 3 P M 24 document in?

5 : 3 3 P M 25 MR. GRIFFITH: It would suit me just for the

5 : 3 3 P M 1 excerpts. The document is about 150 pages long.

5 : 3 3 P M 2 THE COURT: Do we know what it is? I see it looks
5 : 3 3 P M 3 like a -- I know you're representing to me what it is, but I
5 : 3 3 P M 4 don't know what it is. How do I take judicial notice of
5 : 3 3 P M 5 something -- Ms. Short, do you know what this is?

5 : 3 3 P M 6 MS. SHORT: No, Your Honor.

5 : 3 3 P M 7 MR. GRIFFITH: It's the common carriers manual, which
5 : 3 3 P M 8 was the predecessor to the claims processing manual.

5 : 3 3 P M 9 THE COURT: You need to bring me something that shows
5 : 3 3 P M 10 me the face of it or something for me to take judicial notice.
5 : 3 3 P M 11 I don't have any problem taking judicial notice of this, but
5 : 3 3 P M 12 why don't you, overnight --

5 : 3 3 P M 13 MR. GRIFFITH: I'll do that, Your Honor.

5 : 3 3 P M 14 THE COURT: I don't have any problem. If you can
5 : 3 3 P M 15 establish for me what it is, I'll take judicial notice of it.

5 : 3 3 P M 16 Any objection regarding 508, the special fraud
5 : 3 3 P M 17 alert?

5 : 3 3 P M 18 MS. SHORT: No, Your Honor.

5 : 3 3 P M 19 THE COURT: Mr. Ashmore, any objection?

5 : 3 3 P M 20 MR. ASHMORE: No, Your Honor.

5 : 3 3 P M 21 THE COURT: BlueWave 508 is admitted without
5 : 3 4 P M 22 objection.

5 : 3 4 P M 23 And then there was a 524 reference. What was
5 : 3 4 P M 24 that?

5 : 3 4 P M 25 THE DEPUTY CLERK: Mr. Cooke did that one.

5 : 3 4 P M 1 **THE COURT:** Mr. Cooke, did you make a reference to
5 : 3 4 P M 2 BlueWave 524? We just want to make sure your documents come
5 : 3 4 P M 3 in.

5 : 3 4 P M 4 **MR. COOKE:** What was 524? We did not introduce that.
5 : 3 4 P M 5 That was going to be the spreadsheet showing the --

5 : 3 4 P M 6 **THE COURT:** We're not going to worry about it.

5 : 3 4 P M 7 Folks, I don't want to -- particularly when
5 : 3 4 P M 8 somebody is in the middle of cross-examination, I just don't
5 : 3 4 P M 9 want to interrupt you. But let's make sure. Again, I know at
5 : 3 4 P M 10 the end of the day we'll check with Ms. Ravenel to make sure
5 : 3 4 P M 11 we're straight on all the government exhibits.

5 : 3 4 P M 12 What's tomorrow look like, Mr. Leventis?

5 : 3 4 P M 13 **MR. LEVENTIS:** Yes, Your Honor. We're going to start
5 : 3 4 P M 14 off with Mr. Paul Mincey. He's a former HDL sales rep. I
5 : 3 4 P M 15 think we're going to work overnight to see if we can shorten it
5 : 3 4 P M 16 to try to catch back up. After Mr. Mincey, it will be the
5 : 3 5 P M 17 defendant, Ms. Mallory. So those are the first two we'll have
5 : 3 5 P M 18 in the morning.

5 : 3 5 P M 19 **THE COURT:** Okay. Folks, let's -- I know towards the
5 : 3 5 P M 20 end of a day we all get tired and maybe we get a little short,
5 : 3 5 P M 21 but I think it never looks good for anybody to get short with
5 : 3 5 P M 22 the witnesses.

5 : 3 5 P M 23 And, Mr. Griffith, I didn't mean to jump in
5 : 3 5 P M 24 front of you in front of the jury, because I wanted to get you
5 : 3 5 P M 25 to back off because I didn't think you were helping yourself.

5 : 3 5 P M 1 **MR. GRIFFITH:** Thank you, Your Honor.

5 : 3 5 P M 2 **THE COURT:** But we got to just maintain a level of
5 : 3 5 P M 3 courtesy here. There's enough emotion in this case among the
5 : 3 5 P M 4 parties not to have the lawyers worked up. We got to maintain
5 : 3 5 P M 5 a certain level of civility.

5 : 3 5 P M 6 Let me mention something that I'm hoping is just
5 : 3 5 P M 7 simply not going to be an issue but which I'm prepared to deal
5 : 3 5 P M 8 with. There is -- unfortunately, we could have a government
5 : 3 5 P M 9 shutdown at the end of this week. And to the extent we do
5 : 3 5 P M 10 that, I will enter an order declaring everybody who is a
5 : 3 5 P M 11 government employee to be an essential employee, including the
5 : 3 6 P M 12 entire DOJ team.

5 : 3 6 P M 13 **MR. LEVENTIS:** Thank you, Your Honor. I was not
5 : 3 6 P M 14 essential last time.

5 : 3 6 P M 15 **THE COURT:** But only as long as this trial goes,
5 : 3 6 P M 16 Mr. Leventis. After that, you're on your own.

5 : 3 6 P M 17 And what we might need to do -- y'all need to
5 : 3 6 P M 18 check with the DOJ. Let's just hope this doesn't come up, but
5 : 3 6 P M 19 to the extent y'all need to identify to me your critical staff
5 : 3 6 P M 20 at some point that you will need, and I will designate y'all in
5 : 3 6 P M 21 an order to be essential.

5 : 3 6 P M 22 I've already cleared that my entire staff will
5 : 3 6 P M 23 be essential, and the clerk's staff, the marshal's staff, the
5 : 3 6 P M 24 court security staff, all of that. I will -- we'll keep the
5 : 3 6 P M 25 courthouse open and we'll have proper security and maintenance

5 : 3 6 P M 1 of the building and all of that. But I will need a little help
5 : 3 6 P M 2 with the DOJ to the extent that's an issue. They may -- I
5 : 3 6 P M 3 mean, I imagine if you tell them you're in the middle of a jury
5 : 3 6 P M 4 trial, they'll declare you essential on the basis of that. If
5 : 3 6 P M 5 not, I'll solve that problem. Okay?

5 : 3 7 P M 6 Anything else we need to take up this afternoon?

5 : 3 7 P M 7 Yes, Mr. Ashmore?

5 : 3 7 P M 8 MR. ASHMORE: Your Honor, I believe at this time I
5 : 3 7 P M 9 can introduce all the Mallory exhibits without objection.

5 : 3 7 P M 10 THE COURT: Okay. We can -- if we can stipulate
5 : 3 7 P M 11 those in, I'm glad to do it right now.

5 : 3 7 P M 12 MR. ASHMORE: I provided a list to Ms. Ravenel, but
5 : 3 7 P M 13 I'm happy to articulate the individual --

5 : 3 7 P M 14 THE COURT: Do you have the -- is this -- do you have
5 : 3 7 P M 15 the list right there, Miss Eunice? Let me take a look at this.

5 : 3 7 P M 16 Has the government seen this exhibit?

5 : 3 7 P M 17 MR. SHAHEEN: Your Honor, we've seen an exhibit with
5 : 3 7 P M 18 track changes in it. I'm not sure if that's what you're
5 : 3 7 P M 19 looking at.

5 : 3 7 P M 20 THE COURT: Yes.

5 : 3 7 P M 21 MR. SHAHEEN: It's our understanding that the track
5 : 3 7 P M 22 changes ones have been withdrawn. And to the extent that
5 : 3 7 P M 23 that's what Mr. Ashmore is trying to do and only introduce the
5 : 3 7 P M 24 exhibits that haven't been -- or X'd out, we don't have an
5 : 3 8 P M 25 objection, Your Honor.

5 : 3 8 P M 1 **THE COURT:** Okay. I won't be giving the jury the
5 : 3 8 P M 2 list because it will have reference to the documents; but for
5 : 3 8 P M 3 use for Ms. Ravenel, I don't think you need to go through this.
5 : 3 8 P M 4 We'll call this document for purposes a Court's exhibit, but
5 : 3 8 P M 5 it's not going to the jury.

5 : 3 8 P M 6 And do you move everything on this document
5 : 3 8 P M 7 titled "Latonya Mallory's exhibit list," you move this into
5 : 3 8 P M 8 evidence?

5 : 3 8 P M 9 **MR. ASHMORE:** I do, Your Honor. There's 63 of them,
5 : 3 8 P M 10 and I agree with Mr. Shaheen. The ones with the line through
5 : 3 8 P M 11 them, we don't seek to introduce.

5 : 3 8 P M 12 **THE COURT:** Is there an objection from the
5 : 3 8 P M 13 government?

5 : 3 8 P M 14 **MR. SHAHEEN:** No, Your Honor.

5 : 3 8 P M 15 **THE COURT:** Objection from BlueWave?

5 : 3 8 P M 16 **MR. COOKE:** No, Your Honor.

5 : 3 8 P M 17 **THE COURT:** Very good. All the documents on this
5 : 3 8 P M 18 exhibit are admitted.

5 : 3 8 P M 19 Anything further?

5 : 3 8 P M 20 **MR. COOKE:** I do have a -- I do have a question.

5 : 3 8 P M 21 **THE COURT:** Yes, sir.

5 : 3 8 P M 22 **MR. COOKE:** Just has to do with preparation.

5 : 3 8 P M 23 You know, in opening, the government didn't
5 : 3 8 P M 24 mention the waiver of copays for TRICARE, and Mr. Hines
5 : 3 8 P M 25 testified that they were not going to put up damages for that,

5 : 3 8 P M 1 but the government is still asking questions of witnesses about
5 : 3 9 P M 2 that. And I wondered, would it be all right to ask if that's
5 : 3 9 P M 3 still an issue in the case?

5 : 3 9 P M 4 THE COURT: Is it an issue in the case?

5 : 3 9 P M 5 MR. SHAHEEN: Your Honor, it's still an issue. We
5 : 3 9 P M 6 are not bringing a distinct claim in regards to --

5 : 3 9 P M 7 THE COURT: Does it go to state of mind?

5 : 3 9 P M 8 MR. SHAHEEN: Yes, Your Honor. They were advised
5 : 3 9 P M 9 against doing this practice and they ignored that advice, so we
5 : 3 9 P M 10 are bringing --

5 : 3 9 P M 11 THE COURT: I think that's all into this whole bundle
5 : 3 9 P M 12 of issues regarding state of mind. And, as I told y'all
5 : 3 9 P M 13 before, no one's happy with what comes in on all of that. So
5 : 3 9 P M 14 the government's not so happy with my rulings and y'all aren't,
5 : 3 9 P M 15 but I think it's relevant to that point. But you are -- you
5 : 3 9 P M 16 certainly in closing argument can point out they haven't
5 : 3 9 P M 17 alleged any damage from that.

5 : 3 9 P M 18 Okay. Anything further?

5 : 3 9 P M 19 Very good. We'll -- let's be here at 9
5 : 3 9 P M 20 tomorrow. I've asked that my court security staff allow the
5 : 3 9 P M 21 lawyers in without being strip-searched before they come in.
5 : 3 9 P M 22 Apparently, Mr. Cooke had his shoes off and everything today.
5 : 4 0 P M 23 We will do our best to try to get you through without body
5 : 4 0 P M 24 examinations when you come in tomorrow.

5 : 4 0 P M 25 Anything else?

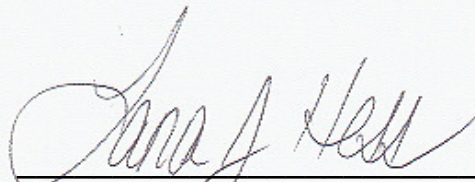
1 Okay. We'll see you tomorrow morning at 9.

2 **MR. GRIFFITH:** Thank you, Your Honor.

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4 * * * * *

5 **CERTIFICATE**

6 I, Tana J. Hess, CCR, FCRR, Official Court Reporter
7 for the United States District Court, District of South
8 Carolina, certify that the foregoing is a true and correct
9 transcript, to the best of my ability and understanding, from
10 the record of proceedings in the above-entitled matter.

11
12 

13 Tana J. Hess, CRR, FCRR, RMR
14 Official Court Reporter
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