

1 THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of:)

4) File No. SF-04030-A

5 THERANOS, INC.)

6

7 WITNESS: Elizabeth Holmes

8 PAGES: 1 through 301

9 PLACE: Securities and Exchange Commission

10 44 Montgomery Street, Suite 2600

11 San Francisco, CA 94104

12 DATE: Tuesday, July 11, 2017

13

14 The above entitled matter came on for hearing,

15 pursuant to notice, at 9:00 a.m.

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24 Diversified Reporting Services, Inc.



1 APPEARANCES:

2

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14 (b)(6);(b)(7)(C)

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1 C O N T E N T S

2

3 WITNESS:	EXAMINATION
4 Elizabeth Holmes	10

5

6 EXHIBITS:	DESCRIPTION	IDENTIFIED
7 191	Subpoena	15
8 192	Background Questionnaire dated July 2, 2017	15
9		
10 193	January 22, 2010, e-mail with attachment from (b)(6);(b)(7)(C)	28
11		
12	(b)(6);(b)(7)(C) to Elizabeth Holmes with a subject line "For (b)(6);(b)(7)(C)	
13		
14	(Starting Bates No. THPFM0000690035)	
15		
16 194	Organizational Chart (Bates No. TS0000001)	40
17		
18 195	Document entitled "Theranos	70

19		Confidential Summary	
20		Capitalization" (Starting	
21		Bates No. TS-000603)	
22	196	Spreadsheet titled "Detailed	77
23		2917" (Starting Bates No.	
24		TS-0558077)	
25			



1 C O N T E N T S (CONT.)

2			
3	EXHIBITS:	DESCRIPTION	IDENTIFIED
4	197	June 11, 2013, e-mail from	124
5		Sunny Balwani to Elizabeth	
6		Holmes, subject line	
7		"Forward: Demo next Tuesday	
8		6/11 at noon" (Starting	
9		Bates No. TS-0902539)	
10	198	January 23, 2014, e-mail	139
11		from (b)(6);(b)(7)(C) to	
12		Elizabeth Holmes with	
13		various copy e-mails	
14		(Starting Bates No.	
15		TS-0469692)	
16	199	Theranos, Inc.'s responses	142

17 and objections to
18 plaintiff's first set of
19 interrogatories filed in the
20 Court of Chancery in the
21 state of Delaware in Partner
22 Investments LP v. Theranos,
23 Inc. (Starting Bates No.
24 SEC-PRM-E-0003430)
25

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1 C O N T E N T S (CONT.)

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3	EXHIBITS:	DESCRIPTION	IDENTIFIED
4	200	Theranos, Inc.'s first 5 supplemental responses and 6 objections to plaintiff's 7 first set of interrogatories 8 filed in the Court of 9 Chancery in the state of 10 Delaware in Partner 11 Investments v. Theranos, 12 Inc. (Starting Bates No. 13 SEC-PRM-E-0005120)	149
14	201	Theranos, Inc., responses	155

15 and objections to
16 plaintiff's second set of
17 interrogatories filed in the
18 Court of Chancery of the
19 state of Delaware in Partner
20 Investments v. Theranos,
21 Inc. (Starting Bates No.
22 SEC-PRM-E-0003334)
23
24
25



7

1 C O N T E N T S (CONT.)

2

3 EXHIBITS:	DESCRIPTION	IDENTIFIED
4 202	August 13, 2013, e-mail 5 from Elizabeth Holmes to 6 (b)(6);(b)(7)(C) with a copy to 7 Sunny Balwani, (b)(6);(b)(7)(C) 8 and (b)(6);(b)(7)(C) Subject 9 line "Re devices in the demo 10 room for tomorrow's meeting" 11 (Bates No. TS-0375316)	201
12 203	October 10, 2014, e-mail	206

13 from (b)(6);(b)(7)(C) to
14 Sunny Balwani and Elizabeth
15 Holmes, subject line "Re BDT
16 visitors to WAG Saturday."
17 (Starting Bates No.
18 TS-0830981)

19
20
21
22
23
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1 C O N T E N T S (CONT.)

2

3 EXHIBITS: DESCRIPTION IDENTIFIED

4 204 October 13, 2014, e-mail 217

5 from (b)(6);(b)(7)(C) to
6 Elizabeth Holmes with a copy
7 to Sunny Balwani and
8 (b)(6);(b)(7)(C) subject
9 line "Re testing in Arizona
10 for (b)(6);(b)(7)(C) (Starting

11 Bates No. THPFM0001308054)
12 205 December 31, 2014, e-mail 227
13 from Elizabeth Holmes to
14 (b)(6);(b)(7)(C) with a copy to
15 (b)(6);(b)(7)(C) Sunny
16 Balwani, and (b)(6);(b)(7)(C)
17 (b)(6);(b)(7)(C) subject line "Re VIP
18 tomorrow-PT/PTT" (Starting
19 Bates No. THPFM0000331112)
20
21
22
23
24
25

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1 C O N T E N T S (CONT.)

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3 EXHIBITS: DESCRIPTION IDENTIFIED

4 206 March 29, 2010, e-mail 264

5 with attached presentation

6 from (b)(6);(b)(7)(C) to (b)(6);(b)(7)(C)

7 (b)(6);(b)(7)(C) subject

8 "Forward: Follow-up to our

9 meeting today" (Starting
10 Bates No. WAG-TH-00006784)
11 207 May 7, 2010, e-mail with 284
12 attachment from Elizabeth
13 Holmes to (b)(6);(b)(7)(C) with a
14 copy to Sunny Balwani,
15 subject "Regulatory Overview
16 Summary" (Starting Bates
17 No. THPFM0000416490)
18 208 E-mail with attachment from 292
19 Elizabeth Holmes to (b)(6);(b)(7)(C)
20 (b)(6);(b)(7)(C) with a copy to Sunny
21 Balwani, subject "Forward:
22 Hopkins" (Starting Bates No.
23 THPFM0005620882)
24
25

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1 P R O C E E D I N G S
2 THE VIDEOGRAPHER: We are on the record at the
3 beginning of Media No. 1, Volume I. My name is
4 (b)(6);(b)(7)(C) contracted by Hahn & Bowersock.
5 Please begin.
6 MS. CHAN: This is the testimony of Elizabeth

7 Holmes. Going on the record in San Francisco,
8 California, at 9 o'clock a.m. on July 11th, 2017.

9 Ms. Holmes, please raise your right hand. Do
10 you swear to tell the truth, the whole truth, and nothing
11 but the truth?

12 MS. HOLMES: I do.

13 MS. CHAN: Thank you.

14 Whereupon,

15 ELIZABETH HOLMES

16 was called as a witness and, having been first duly
17 sworn, was examined and testified as follows:

18 EXAMINATION

19 BY MS. CHAN:

20 Q My name is Jessica Chan, and with me are Rahul
21 Kolhatkar, Monique Winkler, Michael Foley, Marc Katz in
22 the back, and Jason Habermeyer. I and Rahul Kolhatkar
23 are staff attorneys in this office. Mr. Foley is a staff
24 accountant. Ms. Winkler is an assistant director in this
25 office, and Mr. Habermeyer and Mr. Katz are trial counsel

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1 in the San Francisco regional office of the United States
2 Securities and Exchange Commission. We are officers of
3 the Commission for the purposes of this proceeding.

4 This is an investigation by the Securities and

5 Exchange Commission in the matter of Theranos, Inc., SF
6 4030 to determine whether there have been violations of
7 certain provisions of the federal securities laws.
8 However, the facts developed in this investigation might
9 constitute violations of other federal or state, civil or
10 criminal laws.

11 Prior to the opening of the record, you were
12 provided with a copy of the formal order of investigation
13 in this matter. The formal order will be available for
14 your examination during the course of this proceeding.

15 Have you had an opportunity to review the
16 formal order?

17 A I'm not sure if I have reviewed it, but I know
18 our team has it.

19 Q Do you have any questions about it?

20 A I don't.

21 Q Prior to the opening of the record, you were
22 also provided with a copy of the Commission Supplement
23 Information Form 1662, which has been marked as Theranos
24 Exhibit 1.

25 Have you had an opportunity to review Exhibit



1 1?

2 A I have.

3 Q You also received this Form 1662 with your
4 subpoena for testimony, correct?

5 A Yes.

6 Q Do you have any questions about Exhibit 1?

7 A I don't.

8 Q Ms. Holmes, are you represented by counsel
9 today?

10 A I am.

11 MS. CHAN: Would counsel please identify
12 themselves and if you wouldn't mind providing your firm
13 name, address, and phone number as well.

14 MR. NEAL: I'm Stephen Neal with Cooley. My
15 phone number is (650) 843-5182, and I'm one of the
16 attorneys representing Ms. Holmes.

17 MR. DWYER: John Dwyer also with Cooley at
18 (650) 843-5000.

19 MR. TAYLOR: I'm David Taylor, the general
20 counsel of Theranos.

21 MR. DAVIES: Chris Davies of Wilmer. (202)
22 663-6187.

23 MR. MCLUCAS: Bill McLucas, Wilmer. (202)
24 663-6622.

25 MS. LEEPER: Ali Leeper with Cooley. I'll need

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1 a minute for my phone number. (650) 843-5376.

2 MS. CHAN: And would you also provide your
3 office addresses as well?

4 MR. NEAL: For all three Cooley people our
5 office address is 3175 Hanover Street, Palo Alto, 94304.

6 MR. TAYLOR: For Theranos? 1701 Page Mill
7 Road, Palo Alto 94304.

8 MR. DAVIES: And Bill and I are at 1875
9 Pennsylvania Avenue, Washington, D.C. 20006.

10 MS. CHAN: Do you represent Ms. Holmes in her
11 personal capacity?

12 MR. NEAL: I represent Ms. Holmes in all
13 capacities.

14 MS. CHAN: Okay. And what about Mr. Taylor and
15 the attorneys from Wilmer?

16 MR. TAYLOR: I represent the company Theranos.

17 MR. DAVIES: I represent the company and Ms.
18 Holmes as CEO.

19 MR. MCLUCAS: Same. Company and Ms. Holmes.

20 BY MS. CHAN:

21 Q Before we start today, I want to go over some
22 ground rules with you. The court reporter will be
23 recording and transcribing what we say, so it's important
24 for us to talk only one at a time. So if you could
25 please wait until I finish my question before you answer

1 and I'll try and do the same. I won't ask the next
2 question before you finish your answer as well. For the
3 same reason, it's important that you answer audibly and
4 don't respond with gestures.

5 Even though it's a less formal setting, the
6 oath you just made has the same effect as if you were
7 testifying in court and carries with it the same
8 penalties of perjury. It is also a crime to knowingly
9 present false information during the course of this
10 investigation.

11 Do you understand?

12 A I do.

13 Q If there is anything you don't understand,
14 please let me know so that I can repeat or rephrase the
15 question. If you don't tell me you don't understand,
16 then I'll just assume you do understand the questions
17 asked.

18 If you need to take a break at any time, just
19 let me know and we can take a break. The only thing I
20 ask is you not ask to take a break before a question is
21 pending before you.

22 A Yeah.

23 Q Are you taking any medications that would

24 impair your ability to understand my questions or answer
25 fully and truthfully?

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15

1 A No.

2 Q Is there any reason why you can't give full,
3 complete, and truthful testimony today?

4 A No.

5 Q I'm handing to you what's been marked as
6 Theranos Exhibit 191.

7 (SEC Exhibit No. 191 was marked for
8 identification.)

9 MS. CHAN: I have one more copy.

10 MR. DWYER: That's all right. Thank you.

11 BY MS. CHAN:

12 Q This is a subpoena we issued for your
13 testimony. Are you appearing here today pursuant to this
14 subpoena?

15 A I am.

16 Q Thank you. And you can put that to the side
17 over here. I'll start making a pile in the center of the
18 table.

19 I'm also going to hand to you what's been
20 marked Exhibit 192.

21 MR. DWYER: Thank you.

22 (SEC Exhibit No. 192 was marked for
23 identification.)

24 BY MS. CHAN:

25 Q Exhibit 192 purports to be a background

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1 questionnaire that's dated July 10th, I believe. Or is
2 it July 2nd?

3 A July 2nd.

4 Q July 2nd, 2017.

5 Did you also send us a revised questionnaire
6 yesterday, which is July 10th?

7 A We did.

8 Q Okay. Have you seen Exhibit 192 before?

9 A I have.

10 Q What is Exhibit 192?

11 A The completed background questionnaire.

12 Q Did you complete the questionnaire on or about
13 July 2nd, 2017?

14 A Yes.

15 Q Is the information in Exhibit 192 true and
16 correct, to the best of your knowledge?

17 A It is.

18 Q And if you would turn to page four of the
19 questionnaire, under "Securities Accounts," No. --

20 Question No. 15.

21 A Yes.

22 Q You noted here in this questionnaire that there

23 (b)(6);(b)(7)(C)

24 A (b)(6);(b)(7)(C)

25 Q (b)(6);(b)(7)(C)



17

1 A Yes.

2 Q (b)(6);(b)(7)(C)

3 A Yes.

4 Q (b)(6);(b)(7)(C)

5 A I'm not sure exactly. (b)(6);(b)(7)(C)

6 (b)(6);(b)(7)(C)

7 (b)(6);(b)(7)(C) but I'm not completely sure. (b)(6);(b)(7)(C)

8 (b)(6);(b)(7)(C)

9 Q Okay. (b)(6);(b)(7)(C)

10 (b)(6);(b)(7)(C)

11 A (b)(6);(b)(7)(C)

12 (b)(6);(b)(7)(C)

13 Q (b)(6);(b)(7)(C)

14 A (b)(6);(b)(7)(C)

15 (b)(6);(b)(7)(C)

16 Q And if you would look over at page five, then.

17 There are two bank accounts listed there. What are the

18 source of funds for these accounts?

19 A Just my paycheck from Theranos.

20 Q If you turn to page seven, is this an accurate
21 reflection of the bottom, your answer to Question 26
22 regarding your educational history?

23 A Yes.

24 Q And then going on to page nine under your
25 employment history, which is Question 32, and going on to

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1 page ten, is that an accurate reflection of your
2 employment history?

3 A Yes.

4 Q You can put that aside. Thank you.

5 So I wanted to start with the time period
6 starting in 2010, and let's just focus on the year 2010
7 for a moment.

8 If you could just tell us the state of Theranos
9 at that time, I think that would be helpful, just in
10 terms of how many employees you had, where you were
11 located, if you had an office. Just some information
12 about where the company was at that time.

13 A Absolutely. It was seven years ago, so I don't
14 remember exactly. I think our offices were at 3200
15 Hillview. We were probably about 100 employees or so, I

16 would guess. Maybe 150. And we were beginning to engage
17 with retail pharmacies on the idea that we had to bring
18 our technology to retail locations.

19 Q Who was working with you in management at that
20 time?

21 A I believe Sunny Balwani was our president at
22 that time and chief operating officer.

23 Q Was there anyone else who was operating the
24 company with you besides Mr. Balwani?

25 A I'm trying to remember. I don't think we had



1 other senior management members at that time. We had, I
2 think, a couple of (b)(6),(b)(7)(C) side from
3 a technology perspective.

4 Q And who were they?

5 A I believe (b)(6),(b)(7)(C) on the assay development
6 side, (b)(6),(b)(7)(C) may still have been there, and I
7 believe (b)(6),(b)(7)(C) was there at that time. I don't
8 know if he was (b)(6),(b)(7)(C) There's probably a
9 couple others.

10 Q What were (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) roles at
11 that time?

12 A (b)(6),(b)(7)(C) was focused on the two aspects of our
13 hardware, which is the consumables and the device. I

14 think at that point more on the consumables than the
15 device. (b)(6);(b)(7)(C) started focusing on computational
16 biosciences, which is sort of the algorithms, and then
17 expanded into a broader product role over time.

18 BY MR. KOLHATKAR:

19 Q Just wanted to -- what do you mean by
20 "consumables"?

21 A Sorry. The pieces of plastic that go into the
22 device. We call them cartridges. It's the plastic
23 pieces that our chemicals go into for our distributed
24 testing device.

25 BY MS. CHAN:

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1 Q So tell us what products Theranos had at that
2 time -- had developed at that time.

3 A So we had an earlier version of what we call
4 our miniLab system. That is the distributed testing
5 device. And we'd invested in development of a large
6 number of chemistries for a very broad range of different
7 tests and then the associated software sort of
8 foundational pieces for doing predictive modeling.

9 Q What did the miniLab do?

10 A The miniLab in 2010?

11 Q Yes.

12 A It ran a set of -- we had two versions of it, I
13 think, at that point. There was the 3.5 device which ran
14 a set of immunochemistries. And then there was a 4
15 series platform that we were working on that could run a
16 broad range of test methods.

17 Q So the 3.5 version, how many tests could it run
18 at that time in 2010?

19 A I don't know exactly what the number was. I
20 think, just from the development reports that I've seen,
21 that there was probably tens of tests. I mean, we got up
22 to about somewhere between 70 to 90 immunochemistries.
23 I'm not sure exactly what time we finished them, so it
24 would have been tens at least in that period of time.

25 Q And you say that you reviewed some development

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1 reports. What are those development reports?

2 A The reports for all the chemistries that we had
3 worked on for our small sample testing method.

4 Q Are these -- are these development reports, are
5 they put together by the chemistry groups at Theranos?

6 A Yes.

7 Q Okay. So they're the development of an assay
8 and the chemistries that go along with it?

9 A Exactly.

10 Q Had you -- had you transferred those
11 chemistries onto the platform, onto the miniLab platform
12 at that time?

13 A Yes, a number of them. There's probably some
14 that we hadn't, but yes.

15 Q How many had been transferred on the 3.5?

16 A I don't know specifically in 2010. But, again,
17 I think it's probably at least tens of tests.

18 Q So when you say "tens of tests," you mean
19 something less than 100?

20 A Yes.

21 Q And who would know how many of these tests had
22 been transferred onto your platform?

23 A As of 2010?

24 Q Yes.

25 A I don't know specifically. I'm sure as a team

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1 we could go back and try to look at all the dates of all
2 the development reports. I don't know that there's one
3 person that necessarily knows that now. I'm not sure.

4 Q Had those tests -- you said "tens of tests."
5 Had those tests been validated on the miniLab at that
6 time on the 3.5?

7 A They had, to what we understood validation to

8 mean. Our understanding of what was required for
9 validation changed later, but at that point we thought
10 they were.

11 Q Okay. And what was your understanding of what
12 validation meant in 2010?

13 A There was a basic guidance document that we had
14 become familiar with through the work we were doing for
15 pharmaceutical companies on assay development, and we
16 thought that if we developed and tested or validated the
17 test to that guidance document, the test was validated.

18 Q What guidance document is that?

19 A I don't know specifically. I think it's based
20 on FDA guidelines for development of a test.

21 Q Who provided that guidance document to you?

22 A I believe through the development work that we
23 did for either Centocor or Celgene, it at least affirmed
24 our understanding of that guidance document. Yeah, I'm
25 not sure if we had it specifically before that.

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23

1 Q Did you review that document?

2 A Did I personally review it?

3 Q Did you personally review that document?

4 A I don't think so.

5 Q Who reviewed it on your team?

6 A Whoever was leading the assay development at
7 that time.

8 Q Who do you think that was? Was it (b)(6),(b)(7)(C)
9 (b)(6),(b)(7)(C)

10 A I don't know. I don't know.

11 Q Okay. And then also for your minilab, I think
12 you mentioned was it a 4.0 device?

13 A So I called it 4 series.

14 Q 4 series?

15 A Which is, there's been many of them in that
16 iteration that we've been working on.

17 Q Okay. So what could the 4 series minilab do?

18 A So at that point I think what we'd shown was
19 the capability of the different detectors that are in it
20 to function with these different methods; namely,
21 different tests used different methods to measure things,
22 and we were trying to get a range of methods so that we
23 could measure more things on the device.

24 Q Okay. So how many tests could that device
25 perform in 2010?

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1 A I don't know.

2 Q Was that -- is it fair to say that the device
3 was still in development then?

4 A Absolutely.

5 Q Okay. What were you using the 3.5 device to
6 do? Were you using it for patient testing or for any of
7 your clinical trials?

8 A We did. And to be clear, I'm not sure if it
9 was the 3.5 or the 3.0 at that time in 2010. We used
10 that system for pharmaceutical clinical studies and then
11 also for a study we did for the DOD at Fort Sam Houston
12 and a series of burn hospitals.

13 Q So you were using -- you said there was a 3.0
14 and a 3.5. What was the difference between the two
15 versions?

16 A They were very similar. The core architecture
17 was the same. I think it was essentially more robust.

18 Q Robust in what way?

19 A I don't know specifically. I believe we
20 improved our manufacturing processes, and I'm not sure
21 what else we did.

22 Q Who would know what the difference was between
23 the 3.0 and the 3.5?

24 A I believe (b)(6);(b)(7)(C) would know,

25 (b)(6);(b)(7)(C)

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1 Q (b)(6);(b)(7)(C)

2 A Yeah.

3 Q Would (b)(6),(b)(7)(C) know as well?

4 A Depending on when we cut over to the 3.5, I'm
5 just not sure. I can't remember in the 2010 time period
6 where we were on that, and I don't remember when exactly
7 he left the company.

8 BY MR. KOLHATKAR:

9 Q You mentioned -- you used the term "miniLab"?

10 A Yeah.

11 Q Is that what you called it back in 2010?

12 A So when Walgreens asked us to go to Johns
13 Hopkins for due diligence, they called it a miniLab at
14 that time, and we began using that term. But there were
15 other terms that were also used.

16 Q So just because I'm not a scientist, so I want
17 to understand the different terms --

18 A Sure.

19 Q -- that might be used.

20 So we got the miniLab. I think you said 3.5
21 and a 4 series. Were there any other kind of terms that
22 the company called its distributing testing device in the
23 2010 time frame?

24 A I know that people refer to it as an Edison
25 device, and we later referred to it as a TSPU device.



1 There may have been others.

2 Q Thank you.

3 BY MS. CHAN:

4 Q So you mentioned that the company was doing
5 some work for pharmaceutical companies. What type of
6 work was the company doing?

7 A We were developing chemistries to work on small
8 volumes of sample and then in some cases putting them
9 onto this distributed testing platform, an earlier
10 version of miniLab. We were also working on models to
11 simulate the way that drugs would work in people.

12 Q You said you were working on models to simulate
13 the way drugs were working on people.

14 What were you trying to understand in that
15 process? Or what were the pharmaceutical companies
16 trying to understand, and how were you helping them?

17 A Yeah. They're trying to understand if they
18 dose in a certain way; is it going to work, or is it
19 going to have a safety issue? And we were building
20 simulations that you could feed data into to help predict
21 that so that you could speed up the amount of time that
22 it would take to actually test it in humans.

23 Q And then you also mentioned a second project
24 you were working on was being able to test smaller

25 samples.

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1 Was that something that pharmaceutical
2 companies were discussing with you, the possibility of
3 doing clinical trials for?

4 A Yes.

5 Q Okay. And was this something that they
6 initiated or something that you initiated where you were
7 requesting their help to conduct these clinical trials?

8 A I think both. I mean, it was a number of
9 interactions over -- over multiple years before 2010. We
10 certainly sought partnerships earlier on and then had the
11 opportunity to look at other partnerships as we started
12 to build relationships with those pharmas.

13 Q How many companies did you have contracts with
14 at that time?

15 A In 2010?

16 Q In 2010.

17 A I don't -- I don't know specifically, but I
18 would guess it was around ten.

19 Q Was the company generating any revenues in
20 2010?

21 A I don't think so. I -- again, I don't remember
22 specifically. Maybe a little bit from -- from the burn

23 study.

24 Q When you say "burn study," what are you
25 referring to?

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1 A That was the DOD study at -- through Fort Sam
2 Houston.

3 Q Okay. And who were you dealing with on that
4 study?

5 A At the DOD?

6 Q At the DOD.

7 A (b)(6),(b)(7)(C)

8 Q What was that study for?

9 A It was seeing if the ability to test smaller
10 samples would allow you to get more frequent time points
11 in people who'd been burned so that you could tell
12 whether the filters that you were putting into their
13 kidneys worked well enough to flush out their systems.

14 Q Do you know how much money the company was
15 generating in revenues from that study?

16 A It would have been very small, yeah.

17 Q When you say "very small," what do you mean?

18 A I think the whole contract was a few hundred
19 thousand dollars.

20 Q Okay. I'm going to hand to you what's been

21 marked Theranos Exhibit 193.

22 (SEC Exhibit No. 193 was marked for
23 identification.)

24 MR. DWYER: Thank you.

25 BY MS. CHAN:

↑

29

1 Q Exhibit 193 purports to be a January 22nd,
2 2010, e-mail from (b)(6),(b)(7)(C) to Elizabeth Holmes with a
3 subject line "For (b)(6),(b)(7)(C) There's an attachment to the
4 e-mail, but the starting Bates number is THPFM0000690035,
5 and the attachment starts with 39.

6 Have you seen Exhibit 193 before?

7 A I don't recognize it, but I might have seen it
8 a long time ago.

9 Q What is Exhibit 193?

10 A I'm not quite sure. Do you mind if I take a
11 minute --

12 Q Sure.

13 A -- to read the e-mail?

14 It looks like some type of draft financials
15 (b)(6),(b)(7)(C) prepared for the communications referenced in
16 the e-mail.

17 Q Okay. And did you receive Exhibit 193 on or
18 about January 22nd, 2010?

19 A Yes.

20 Q So you'll see that you're preparing to give a
21 presentation to ATA Ventures. Do you know who ATA
22 Ventures was?

23 A They're one of our investors.

24 Q And had you given a presentation regarding
25 Theranos -- Theranos' financial situation before this?

↑

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1 MR. NEAL: To them or to anybody?

2 MS. CHAN: I'm sorry?

3 MR. NEAL: To them?

4 BY MS. CHAN:

5 Q To ATA Ventures. Was this a regular
6 occurrence? Were you expected to give presentations to
7 their board?

8 A No.

9 Q So if you turn to attachment, there are some
10 financial statements. And if you turn to the monthly PL,
11 which is the second page of the financial statements,
12 you'll see that Theranos is on track to generate about \$5
13 million in revenues in 2009.

14 Is that consistent with your understanding with
15 the revenues that Theranos is generating at that time?

16 A You know, I don't remember what my

17 understanding was at that time.

18 Q Do you have any reason to believe that this
19 is -- isn't an accurate representation of the revenues
20 that the company was generating at that time?

21 A Do I have a reason to believe it's inaccurate?
22 Is that the question?

23 Q Yeah. Do you have any reason to believe that
24 it's inaccurate?

25 A No.

↑

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1 Q And would these revenues be -- have been
2 generated from those pharmaceutical companies and from
3 DOD?

4 A It looks, just based on the e-mail exchange
5 reading it here, that they're all associated with
6 pharmaceutical companies.

7 Q And if you look back at the e-mail, since
8 you're looking at it right now, the third e-mail down on
9 the first page, from (b)(6),(b)(7)(C) she says, "This revenue
10 includes potential adjustments (need to agree with KPMG)
11 for Celgene, Centocor, Schering Plough, and Novartis."
12 And there's a number of dates that she puts next to those
13 pharmaceutical company names. "Some in 2009. Assume
14 completion. Some in June 2010."

15 Were all of these contracts coming to a
16 conclusion around the 2009/2010 time frame?

17 A I don't know. I just can't remember.

18 Q What is your -- what is your knowledge of when
19 these contracts came to an end?

20 A I have in my mind that the Celgene relationship
21 went on for a period longer, and I thought that Centocor
22 was also looking at doing additional programs with us.
23 I'm not sure about the other two.

24 Q So if you go back to the financial statements,
25 which is the attachment to the e-mail, the monthly BS,

↑

32

1 which do you understand BS to mean -- to stand for
2 balance sheet?

3 A Yes.

4 Q And if you look in December of 2009, cash and
5 investments. It's three point -- about \$3.7 million.

6 Is that consist -- do you see that?

7 A I'm sorry. I'm not -- oh, sorry. December
8 2009?

9 Q Yes.

10 A Yes.

11 Q Is that consistent with your understanding that
12 Theranos had about \$3.7 million in cash at the end of

13 20 -- 2009?

14 A I can't remember.

15 Q Do you remember Theranos being short on cash
16 around this time frame?

17 A In December of '09?

18 Q Or late 2009.

19 A I'm -- you know, I remember that when Sunny
20 joined the company, he bridged the company. So I'd
21 actually thought that we'd ended up getting cash in
22 before the end of '09. I'm not sure from this e-mail --
23 I'm not sure.

24 Q So you said Sunny Balwani joined the company,
25 and he bridged the company. What do you mean by that?

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1 A He did a bridge loan for the company when he
2 joined the board, which I thought was before the end of
3 2009. But my dates could be wrong. It was a long time
4 ago.

5 Q When did Sunny Balwani join the company?

6 A I thought in about September of 2009 or August
7 of 2009. But that's from memory. It might be off.

8 Q Why did Sunny Balwani need to provide a bridge
9 for the company?

10 A Well, I knew that we needed cash. And we were

11 deciding whether to do an equity raise or not, and he had
12 offered to do this for the company.

13 Q Okay. So you knew sometime towards the end of
14 2009 that the company was short on cash?

15 A Yes. Yeah.

16 Q What was his bridge to the company? What was
17 the amount of the loan?

18 A I don't remember specifically. I think it was
19 about \$20 million.

20 Q What were the terms of that loan?

21 A I don't remember.

22 Q Was it paid back?

23 A Yes.

24 Q When was it paid back?

25 A I don't know specifically.

↑

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1 Q Has it been paid back, though?

2 A Yes.

3 Q Did there come a time when around the 2010 time
4 frame that you decided to change the business model from
5 working for the pharmaceutical companies to a different
6 business model?

7 A We decided we were going to work to bring our
8 technology to patients and physicians. We thought we

9 would always continue the pharmaceutical studies around
10 the retail model but that that could serve as a channel
11 for it.

12 Q Okay. And so you said you decided to change
13 the model to provide services to physicians and
14 consumers?

15 A Uh-huh.

16 Q So what did you do to realize that vision?

17 A So I can best answer the question, what do you
18 mean by that?

19 Q So it sounds like, you know, you were -- the
20 company was focused on the pharmaceutical trials, I
21 guess, pre 2010. And it sounds like you might have done
22 a little bit of work after that period but that the
23 company was looking then to reach out to consumers and
24 physicians to provide its blood testing to them.

25 Was there -- at that point did you decide that

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35

1 you were going to reach out to some business partners to
2 realize that vision? What happened?

3 A We did. We thought a lot about what the right
4 channel was to make lab testing more accessible, and we
5 became very interested in the retail pharmacy as a
6 channel for lab testing. I know we reached out to some,

7 and I think some may have reached out to us at that time
8 as well, and we engaged in discussions around
9 partnership.

10 Q Whose idea was it to start focusing on the
11 retail pharmacy business?

12 A I -- I don't remember specifically. I mean,
13 it -- it related to what we were doing with testing of
14 drug levels, and so it almost became a progression from
15 that.

16 Q Okay. So now I want to sort of focus on the
17 state of the company in 2013. So this is three years
18 later.

19 What had changed about the company?

20 A So 2013 was the year that we launched our
21 retail infrastructure. So we'd spent a lot of time
22 getting ready for that and figuring out how to
23 operationalize that and, most importantly, moving to a
24 different business model which we've referred to as a
25 Phase 1/Phase 2 approach to introducing our technologies,

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1 where you start with centralized testing and then you
2 work to get your distributed testing platform out.

3 Q Okay. How many -- how many employees did you
4 have at the company at that time?

5 A I don't know specifically.

6 Q Had it grown?

7 A Absolutely.

8 Q And, you know, in terms of, I guess, what
9 divisions of the company had grown since 2010?

10 A I know we'd grown our assay divisions in terms
11 of the work on the chemistries that we were doing. We at
12 that point had established a clinical lab and had brought
13 in a lab director to run it. And I'm sure there was --
14 there was growth across the board.

15 Q Were there any changes in management at that
16 time?

17 A I don't know specifically whether there had
18 been changes on the product leadership side by that
19 point. Sunny was still our president and COO and was
20 largely running operations.

21 BY MR. KOLHATKAR:

22 Q Were you still at the Hillview location in
23 2013, or had Theranos moved itself to another location?

24 A I think it may have been in 2013 that we moved
25 to 1601 California. I'm not sure exactly when we moved.

↑

1 BY MS. CHAN:

2 Q And from the time in 2010 to 2013, had the

3 company also raised money?

4 A I believe we raised money in 2010, and then
5 George as a director invested in 2011 and then again I
6 think in the end of '13 or early '14.

7 Q Okay. So you did some fund-raising in 2010,
8 some in 2013, and then some in 2014?

9 A Yes. I'm not sure if it closed in the end of
10 2013 or early '14.

11 Q So --

12 BY MR. KOLHATKAR:

13 Q I'm sorry. When you said George as a director,
14 are you referring to George Shultz?

15 A Yes. Sorry.

16 BY MS. CHAN:

17 Q So I just want to turn for a moment to
18 management of the company.

19 So you mentioned that you and Mr. Balwani
20 were -- would it be fair to say that you were the senior
21 most executives at the company?

22 A We were.

23 Q This is during the 2013 time frame. So I just
24 want to focus on the 2013 time frame.

25 A Yeah.

↑

1 Q Who else were senior managers at the company at
2 the time?

3 A Well, you said in the 2013 time period?

4 Q Yes.

5 A By that point (b)(6),(b)(7)(C)
6 clinical lab, and on the product side there would have
7 been a number of technical leaders. I don't know who
8 specifically was in leadership in 2013.

9 Q Who did (b)(6),(b)(7)(C) report to?

10 A I'm not sure. In his offer letter Sunny
11 managed him as part of his oversight of the clinical
12 labs.

13 Q And then we talked a little bit about when Mr.
14 Balwani was hired. But why was he hired?

15 A He originally joined our board. And at that
16 point, because we thought we were going to really be
17 building out these models and that the ultimate value of
18 the company was data, that a large portion of our
19 business was going to be being a software company, and we
20 thought he had a really good background in software, and
21 we thought he would bring that leadership as we worked to
22 build on that.

23 Q So you just mentioned a large part of the
24 company was the software and you were going to become a
25 data company. Explain --

1 A That we thought we would be.

2 Q Okay. So explain that a little bit more.

3 A The purpose of what we tried to do with miniLab
4 and getting people access to the health data is that so
5 they can use it hopefully for the purposes of early
6 detection, and the way that will be realized is through
7 models and algorithms. And we had started with Celgene
8 and building out those models, and we'd done it in a
9 couple other places, and we saw that as the ultimate
10 product for the company as we went to go towards serving
11 consumers and physicians.

12 And so we thought that Theranos would be a
13 sensors and software company and that the investment in
14 decision support was how ultimately people would be able
15 to use this data for early detection.

16 Q What were Sunny Balwani's qualifications for
17 the job? You mentioned that, you know, the company was
18 hoping to be a software company?

19 A Yeah.

20 Q Did he have qualifications in that sector?

21 A He did. He built a software company, and he
22 had worked at Microsoft and I believe Lotus when it had
23 started out here.

24 Q And did he have any qualifications in the lab
25 testing business?

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1 A He did not.

2 Q Or in pathology or anything like that?

3 A Not to my knowledge.

4 Q I'm handing to you what's been marked Theranos
5 Exhibit 194.

6 (SEC Exhibit No. 194 was marked for
7 identification.)

8 BY MS. CHAN:

9 Q Exhibit 194 purports to be an organizational
10 chart of some sort, but at the top of that chart is you,
11 Elizabeth Holmes, as founder and CEO with Bates No.
12 TS0000001.

13 Have you seen Exhibit 194 before?

14 A I don't know.

15 Q You don't know that you've seen this before?

16 A Yeah. I don't recognize it, but I might have.

17 Q Did the company keep organizational charts for
18 the business?

19 A Very -- very loosely.

20 Q As you look at the people on this chart, when
21 do you think this structure might have existed? Was

22 this -- this was produced to the SEC by the company in, I
23 believe, 2015.

24 Would this have been an accurate reflection of
25 the managers who were present at the company at that



41

1 time?

2 A I'm just looking at it. So it must have been
3 as of 2015. Yes, these people were all managers in the
4 company.

5 Q Were there any -- you know, going back to 2013,
6 were there -- would there be any changes to this chart
7 for the 2013 time frame?

8 A Yes.

9 Q What were those changes?

10 A Many of these people didn't work for the
11 company at that time, and I thought of our operating
12 structure a little bit differently than this.

13 Q How did you think of your operating structure
14 in 2013?

15 A I was very externally focused at that point in
16 time, and we essentially had -- we didn't have marketing
17 or even internal general counsel at that point. We had a
18 product organization that was really partnering with the
19 CLIA lab to try to get assays to go live under the LDT

20 model. So there was sort of one thing that the company
21 was doing at that point which was taking these assays
22 live in the CLIA lab.

23 BY MR. KOLHATKAR:

24 Q Sorry. You used a couple acronyms? I just
25 want to --

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1 A I'm sorry.

2 Q CLIA and LDT. Could you just explain to us
3 what those are?

4 A Absolutely. CLIA I used in the context of
5 referring to the CLIA lab, which was our clinical lab.
6 CLIA is the Clinical Lab Improvement Act, which is the
7 regulations for labs.

8 LDT is laboratory developed tests, and those
9 are tests that are developed and validated in-house. And
10 so that's why I was referring to essentially the product
11 and clinical lab organization as being very tightly
12 integrated as of 2013.

13 BY MS. CHAN:

14 Q So who was in charge of that product team in
15 2013?

16 MR. NEAL: I didn't hear that.

17 BY MS. CHAN:

18 Q Who was in charge of the product team in 2013?

19 A There would have been assay leads, and I'm
20 trying to think of whether there was a single hardware
21 lead at that point. I'm not sure. We didn't have a
22 senior vice president of product.

23 Q Who were the assay leads?

24 A I -- I'm not -- I'm not sure. I think (b)(6);(b)(7)(C)

25 (b)(6);(b)(7)(C) I believe was her last name, was still

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1 there. (b)(6);(b)(7)(C) was there. (b)(6);(b)(7)(C) was
2 working really closely with the assay teams at that
3 point, and there would have been others.

4 Q What was (b)(6);(b)(7)(C) role at Theranos in
5 2013?

6 A You know, again, it's hard to pinpoint at
7 specific points in time. (b)(6);(b)(7)(C)
8 (b)(6);(b)(7)(C) got involved in product
9 development and was, I believe, at that point helping
10 with the core product development initiatives.

11 Q Did he have any qualifications in lab testing
12 or in pathology?

13 A I don't believe he had prior experience in lab
14 testing. I had understood that he ultimately met the
15 requirements for someone to be a lab director.

16 Q What was his background?

17 A He had a -- so this is my memory of it. This
18 could be incorrect.

19 I understood that (b)(6);(b)(7)(C)

20 (b)(6);(b)(7)(C)

21 (b)(6);(b)(7)(C) predictive

22 modeling I was talking about for modeling biology systems
23 and then had had experience at Theranos.

24 Q So you mentioned that you understood that he
25 had the qualifications to be a lab director. Was he a

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1 lab director at Theranos?

2 A He was, yeah.

3 Q (b)(6);(b)(7)(C)

4 A

5 Q What were the dates between which he was the
6 lab director (b)(6);(b)(7)(C)

7 A I don't know exactly. Certainly until we
8 closed it. I don't know when he became the lab director.

9 Q And what was your understanding as to how he
10 was qualified to be a lab director? What sorts of
11 degrees did he have that made him qualified to be in that
12 role?

13 A I didn't know specifically. I just knew that

14 Sunny and the team that had looked at that said that he
15 was.

16 Q And then you mentioned that you weren't sure
17 who was in charge of the hardware of the manufacturing
18 side at that time.

19 A Yeah.

20 Q Is that right?

21 A Yeah.

22 Q Was it (b)(6);(b)(7)(C) Was he still around?

23 A (b)(6);(b)(7)(C) I don't know
24 whether he'd started at that point. I'm not sure.

25 Q Was there a team that was in charge of putting

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1 the chemistries onto the hardware?

2 A I don't know.

3 Q Who would have done that?

4 A It would have been part of the clinical lab
5 operation.

6 Q Part of the CLIA lab operation; is that right?

7 A Yeah. I mean, the product team, because we
8 were focused on lab developed tests, was very tightly
9 integrated with the clinical lab at that point. I don't
10 know if they had a specific team that was -- that was
11 focused on that.

12 Q Okay. And the person who was in charge of the
13 clinical lab would have been (b)(6);(b)(7)(C)

14 A Yes.

15 Q How did you split up your responsibilities with
16 Mr. Balwani?

17 A He was focused on operations. I was focused on
18 our vision to the extent I was involved on the technology
19 side and inventing and on ultimately some of the policy
20 work, like the work to change the law in Arizona, and in
21 strategy.

22 Q Were there particular areas that you managed
23 versus areas that he managed?

24 A I tried to stay involved with all of the
25 creative aspects in terms of the creative through

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1 invention side of the technology and the creative side of
2 the way we were trying to change the way people thought
3 about their right to access lab results along the line of
4 the Arizona law that we passed.

5 He was focused on the clinical lab operations
6 and the internal operations of the business.

7 Q Okay. So if you look back at Exhibit 194, and
8 I know this is probably sometime in the later time period
9 rather than 2013.

10 A Yeah.

11 Q But it looks like a number of -- for instance,
12 the chief creative officer was reporting to you. The
13 marketing -- the chief marketing officer and general
14 counsel. So there were a lot of corporate functions --

15 A Yes.

16 Q -- that reported to you at that time.

17 Was that the same in 2013?

18 A We --

19 Q For instance, the controller also was reporting
20 to you at that time?

21 A I don't know where on the org chart they were.
22 We didn't have a general counsel in 2013. We didn't have
23 any of these -- I don't think we had any of those
24 marketing people in-house at that time. They may have
25 been -- I think they joined after that. I -- I'm not

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1 sure who functionally was reporting to me in 2013 on the
2 products side.

3 Q Okay. And then you'll see there are (b)(6);(b)(7)(C)
4 (b)(6);(b)(7)(C) who looked to
5 be on the -- and I guess (b)(6);(b)(7)(C) as well?

6 A Uh-huh.

7 Q So these were all products, you know, and

8 assays people. Were they all reporting to you back in
9 2013 as well?

10 A I don't know. I don't know. I can't remember.

11 Q Was there some -- even if on paper they were
12 reporting to you or Sunny Balwani, was there often some
13 crossover between who people reported to, whether it was
14 you or to Mr. Balwani? How did -- how did -- how did the
15 reporting structure work?

16 A We did not do a good job at maintaining org
17 charts. And I think there was an understanding of how
18 functionally we were operating, especially pre 2015,
19 which was essentially along the lines of what I
20 described.

21 Q Okay. So you mentioned before that Mr. Balwani
22 was overseeing the lab and some of the product
23 development, particularly also on the software side.

24 You know, what were you overseeing in that
25 process? Were you also involved in product development?

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1 A I mean, I was the CEO of the company. So I
2 would engage with different teams. My sort of
3 involvement, to the extent I was engaged on the product
4 side, was mostly on the creative parts and the invention
5 sort of side. Or if we ran into challenges, could we

6 figure out a way to solve them technically from an
7 invention standpoint? And then -- and then on some of
8 the other things that I was alluding to from a strategy
9 perspective.

10 Q Were you kept apprised of developments in the
11 products area and in the clinical lab?

12 A Generally yes.

13 Q Who would apprise you of those developments?

14 A Mostly Sunny but occasionally others.

15 Q Okay. What about the company's partnerships?
16 Who was overseeing that process?

17 A I had a very close relationship with Steve Burd
18 at Safeway. Sunny managed the Walgreens relationship.

19 Q What about other business partners? Did you
20 also similarly split up the other partners?

21 A I would have to think of who specifically to
22 think of who managed them. Those were, to my memory, the
23 two major relationships that we were interfacing with at
24 this period of time.

25 Q What about the DOD, the Department of Defense?

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1 A We had board members who were very engaged on
2 talking to people within DOD. And then we had -- I was
3 certainly in some of those meetings. And then internally

4 we had at least one project manager who was helping to
5 coordinate logistics. We spent a lot of time developing
6 technology there. But we never really focused on getting
7 those systems off the ground because we were so focused
8 on the retail deployments.

9 Q When you say that you were -- you never got
10 those systems off the ground, what do you mean by that?

11 A You were asking about managing partnerships,
12 and it wasn't the same kind of, you know, active
13 partnership that Walgreens was.

14 Q Okay. So for -- so when you say -- this is for
15 the Department of Defense projects?

16 A Yeah.

17 Q You weren't able to get the projects off the
18 ground. Do you mean that you weren't able to deploy
19 Theranos' services with the Department of Defense in the
20 end?

21 A We -- besides the Institute For Surgical
22 Research and a couple others, we didn't fulfill the
23 contract opportunities that we had.

24 Q Why didn't you fulfill those contract
25 opportunities?

↑

1 A We didn't have the bandwidth to do anything

2 except try to make the retail relationship successful.

3 Q What were the other two divisions within the
4 Department of Defense that you had contracts with that
5 you were able to fulfill besides the Institute For
6 Surgical Research?

7 A From memory, we did a little bit of testing
8 with Africom, and we did a little bit associated with the
9 NASA space program that someone else within DOD had
10 referred us to.

11 Q And what happened to those relationships?

12 A They were positive. We just didn't take any
13 next steps with them based on focus and bandwidth
14 internally.

15 Q Did Theranos receive any revenues from Africom
16 or NASA for those projects?

17 A I don't believe from -- I don't think so. I
18 don't know about Africom.

19 Q But you think for NASA Theranos didn't receive
20 any revenues?

21 A I don't think so.

22 Q Okay. What -- oh, sorry.

23 BY MR. KOLHATKAR:

24 Q You mentioned Theranos board members were
25 involved in facilitating your communications with the



1 DOD. Who on Theranos' board took on that role?

2 A I'm sorry. I meant to respond to her question
3 about who was managing the relationships. We -- and I
4 made that comment in that context.

5 Who on our board? George Shultz primarily.

6 BY MS. CHAN:

7 Q Who was managing the regulatory strategy for
8 the company?

9 MR. NEAL: Again, in the 2013 --

10 MS. CHAN: I'm just talking about the 2013 time
11 frame.

12 THE WITNESS: We had -- we tried to hire some
13 of the best outside lawyers in the medical device and
14 clinical lab space.

15 BY MS. CHAN:

16 Q And who from the company was overseeing that
17 process?

18 A You know, I don't remember specifically in
19 2013. I believe -- I'm not sure. I'm not sure.

20 Q Were you and Sunny Balwani jointly involved in
21 the regulatory strategy, thinking about what approvals
22 needed to be obtained and so forth?

23 A Yes, absolutely.

24 Q What about the company's financial condition?

25 Who was overseeing -- for instance, I think in 2015 it

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1 looks like (b)(6),(b)(7)(C) was
2 reporting to you. Was she also reporting to you in 2013?

3 A To the extent Sunny was at the company, he
4 primarily interfaced with her on just financial
5 operations and cash management. So as of 2015 -- I'm
6 sorry. The question was 2015?

7 Q I'm actually talking about 2013.

8 A Yeah.

9 Q I want to understand who was in charge of the
10 financial conditions of the company, making sure that the
11 company was -- the operations were going smoothly, that
12 there was enough cash and things were being paid?

13 A Sunny and (b)(6),(b)(7)(C)

14 Q It would be Sunny Balwani and (b)(6),(b)(7)(C)

15 A Yes.

16 Q Were you at all involved in that process? Were
17 you consulted?

18 A I may have been. I had very constant
19 interactions with Sunny.

20 Q What about human resources, personal issues?
21 Who was overseeing that?

22 A I don't know when she joined. (b)(6),(b)(7)(C)

23 was our (b)(6);(b)(7)(C) for a period of time, and she may have
24 been there in 2013.

25 Q Did she have the authority to hire or fire

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1 personnel?

2 A She had the authority to make recommendations.
3 I don't -- I believe there's a couple instances in which
4 she hired directly but not regularly.

5 Q Did she need to obtain approval from either you
6 or Sunny Balwani before she hired anyone?

7 A That was certainly the expectation, yeah.

8 Q And what about if she needed to fire anyone?
9 Did those instructions come from you or Mr. Balwani?

10 A Or the manager, if there was a manager who felt
11 that an employee had a performance issue.

12 Q Were the managers at the company who were below
13 you and Mr. Balwani, were they -- did they have the
14 authority to fire personnel under them without running
15 that by you and Mr. Balwani first?

16 A You know, I -- maybe on the manufacturing side
17 with assemblers, but generally we would have wanted to be
18 involved in those conversations.

19 Q So generally you and Mr. Balwani would be
20 involved in firing personnel?

21 A I think so, yeah.

22 Q How would you and Sunny Balwani communicate
23 with respect to your work?

24 A Just help me understand the question.

25 Q Just the method of communication. Did you text

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1 each other? Did you call each other on the phone? What
2 did you do typically?

3 A All of the above. We texted. We were working
4 in a very open space format. Our offices were near each
5 other, and we would talk.

6 Q Were there times when you would meet
7 face-to-face? And were there regular meetings when you
8 did?

9 A Yes. We met face-to-face a lot.

10 Q Were there regular meetings that were set up
11 maybe weekly or monthly?

12 A I don't think they were scheduled like that. It
13 was very sort of dynamic.

14 Q How did -- how did Mr. Balwani keep you
15 apprised of the areas of the business that he was
16 responsible for?

17 A We would talk. But as you -- we operated as
18 peers, and so he would run the areas that he was

19 operating and talk to me about the things that he thought
20 were relevant.

21 Q So were you consulted about decisions he would
22 be making on the product development and clinical lab
23 side?

24 A Depends on what they were. On some of them,
25 yes.

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1 Q Did you expect him to run those decisions by
2 you?

3 A I expected him to share with me anything that
4 would be material to making sure we were properly
5 executing on our plans.

6 Q Were there areas on which you disagreed?

7 A Yes.

8 Q What were those areas?

9 A We disagreed all the time about a lot of
10 things. We have very different leadership styles.

11 Q What would -- and how would you resolve that
12 discussion if you disagreed on an issue?

13 A It depends on what the issue was. I would
14 generally defer to him because he was there as our
15 president and COO.

16 Q Were there areas that he would defer to you?

17 A I'm sure there were. I don't -- I would need
18 to think specifically about, you know, a specific issue
19 to better answer the question.

20 Q So I think we mentioned a number of different
21 areas of the company.

22 But, for instance, on business partnerships,
23 you know, who would be the one who would make the
24 ultimate decision if the two of you disagreed?

25 A If it pertained to Walgreens, it was Sunny. If

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1 it pertained to Safeway, probably me. But it depends on
2 what the issue was. If it had to do with something that
3 was in a functional area that he was managing, I would
4 defer to him.

5 Q What about the Department of Defense?

6 A I think it would depend on what it was. Again,
7 that was a different type of relationship than the active
8 commercial partnerships that we deployed.

9 Q What about your regulatory strategy with either
10 FDA or the Center for Medicare and Medicaid Services?

11 A In general we would defer to outside counsel on
12 that.

13 Q Were there times when you would decide that you
14 wouldn't follow counsel's advice?

15 A Not that I -- well, not during that period.

16 Q What about your -- the financial condition of
17 the company? Were there any -- who would be the ultimate
18 decision maker with respect to the company's operational
19 and financial progress?

20 A In general Sunny was.

21 Q It sounds like you had a very dynamic
22 relationship and you were -- you would talk with Mr.
23 Balwani a lot about different areas that you were working
24 on.

25 Were there times when you would also draft

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1 e-mail communications to third parties? For instance, I
2 think you said that you were in charge of the Safeway
3 relationship, that Mr. Balwani would then edit and revise
4 before sending out?

5 A Yes.

6 Q And did that happen in the other way around
7 where he would be drafting e-mails to third parties that
8 you would also revise for him before sending out?

9 A I'm trying to -- I'm trying to think of a
10 specific instance. I mean, our dynamic was that I
11 generally sought his advice on how to handle things.

12 Q But were there instances in which he would

13 draft e-mails which you would then review and edit and
14 approve before he sent them out?

15 A I wouldn't be surprised if there were. I can't
16 remember a specific instance sitting here, but it was, as
17 you said, a dynamic interaction.

18 Q Where on Theranos' electronic system did you
19 keep your working files?

20 A What do you mean by that?

21 Q So is there a document management system at
22 Theranos?

23 A There is. And there's shared drives that
24 different people have access to as well as local document
25 files for a given person's computer.

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58

1 Q Okay. Was there a particular folder on that
2 shared drive that you would use to keep, for instance,
3 notes from meetings or draft documents that you were
4 working on?

5 A I generally kept my documents in my document
6 folder. My assistants also had a drive that they would
7 put documents on.

8 Q Okay. So you had a document folder. Was this
9 on your hard drive, or was it on the shared drive?

10 A It was specific to my computer. I think it was

11 technically hosted on a network, but it was -- it was --
12 only I had access to it.

13 Q What did you call that folder?

14 A My documents.

15 Q It was called "My Documents"?

16 A Yeah.

17 Q Okay. And you think it might have been backed
18 up by the system? Is that what you mean?

19 A I expect it would have been, yeah.

20 Q Are you aware of a folder called the CEO
21 folder?

22 A Generally. I think so.

23 Q And is that the other folder that you're
24 talking about which your assistant would put documents
25 into?

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1 A I think so.

2 Q Would you ever edit documents in that folder?

3 A I don't think so.

4 Q So these were -- this was -- this folder was
5 only for your assistants and others to put documents
6 into?

7 A Yes.

8 Q And would you access the documents in that

9 folder?

10 A I could access it. I don't know that I ever
11 have.

12 Q I guess, what is the purpose of that CEO
13 folder?

14 A If we had documents from a meeting and they
15 were trying to scan them because they were going to get
16 rid of a hard copy, they would put them in that folder or
17 other documents that they felt should go in there. They
18 had control over it.

19 Q And did Sunny Balwani also have a working
20 folder as well?

21 A I believe so, yes.

22 Q What folder was that called?

23 A I don't know.

24 Q Are you aware of a folder called the 300
25 folder?

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1 A I am.

2 Q What is that folder?

3 A I think that is where he kept strategic
4 documents, and I think he had some of his models in there
5 too.

6 Q Did you have access to that folder?

7 A I did.

8 Q And did you go in from time to time to review
9 or edit those documents?

10 A I don't think I have.

11 Q Did you ever review documents in that folder?

12 A He would show me documents from that folder
13 before certain meetings.

14 Q Okay. When you say he would show you certain
15 documents from the folder, do you mean that he would
16 print them out and show them to you?

17 A No. I would sit in front of his computer, and
18 he would open it from that folder.

19 Q Would you ever sit at your own computer and
20 review files from his -- in his 300 folder?

21 A I mean, it's possible. I can't remember that,
22 but it's possible.

23 Q But you don't think that you might have edited
24 any of his files from that folder?

25 A I don't think so.

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61

1 Q So I wanted to talk about the clinical lab for
2 a minute.

3 So you mentioned that (b)(6);(b)(7)(C) was the
4 lab director in 2013?

5 A Uh-huh.

6 Q Was there somebody who was in charge of the
7 clinical lab before he came on board?

8 A Yes.

9 Q Who was that?

10 A I believe it was (b)(6),(b)(7)(C) There may have been
11 someone in between them, but at least (b)(6),(b)(7)(C)

12 Q What was the clinical lab doing before it was
13 certified?

14 A Before it was certified?

15 Q Before it obtained CLIA certification.

16 A Nothing.

17 Q Okay. So it was just -- was it just
18 constructed? Was it processing any blood samples?

19 A So the CLIA certification was in 2011, and it
20 didn't exist before it obtained CLIA certification. Post
21 2011 I believe there was some what we call reference
22 testing, which is traditional testing, for Safeway while
23 we were working to refine our operational procedures.
24 And then otherwise we were -- we were trying to put good
25 systems in place to launch the lab.

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1 Q So you mentioned that you were doing some
2 reference testing for Safeway. What do you mean by

3 "reference testing"?

4 A They had a wellness center at their
5 headquarters, and they asked us to be the place that
6 would process the samples that were drawn traditionally.
7 And we would either process them at our lab or send them
8 out to a reference lab and report them back to the
9 ordering practitioner there.

10 Q Okay. And so you mentioned that the blood
11 draws would be done traditionally. What do you mean by
12 "traditionally"?

13 A Venipuncture on commercially available
14 machines.

15 Q So the blood would be drawn via venipuncture,
16 and the blood samples would then be tested on third-party
17 commercially available devices?

18 A Or a reference lab, yes.

19 BY MR. KOLHATKAR:

20 Q What is a reference lab?

21 A It's a place where you can send samples to have
22 analyzed by a third-party lab, and they will report them
23 back to your lab, and you pass those results on to the
24 ordering practitioner.

25 BY MS. CHAN:



1 Q Who is (b)(6);(b)(7)(C)

2 A (b)(6);(b)(7)(C)

3 Q And does he have a role at the company as well?

4 A He does.

5 Q What was his role in 2013?

6 A I don't know in 2013. I think it was in
7 product management, but I'm not sure.

8 Q What did that mean, "product management"?

9 A I believe his role was primarily focused on
10 managing business relationships with people who are
11 important to the company, but I'm not completely clear.
12 The product managers worked on sort of important projects
13 for the company, and there was a wide range of projects
14 that they worked on.

15 Q Who did (b)(6);(b)(7)(C) report to in 2013?

16 A He reported to Sunny.

17 Q And you mentioned there were a number of
18 project managers?

19 A Uh-huh.

20 Q These were project managers that reported to
21 (b)(6);(b)(7)(C)

22 A They reported to (b)(6);(b)(7)(C) for a period of
23 time -- I don't know when -- and then directly to Sunny
24 after that.

25 Q Who were these project managers?

1 A I'm not going to get them all by name. At what
2 period of time?

3 Q In 2013?

4 A (b)(6),(b)(7)(C) I believe (b)(6),(b)(7)(C)
5 was there at that time, (b)(6),(b)(7)(C)
6 (b)(6),(b)(7)(C) There were others. I don't -- I don't
7 remember them all by name.

8 Q Just wanted to go through each of the people
9 that you just named --

10 A Yeah.

11 Q -- and just understand what they were
12 responsible for.

13 A Sure.

14 Q So I think you mentioned (b)(6),(b)(7)(C) first.
15 So what was his role?

16 A So I -- outside of knowing that Sunny was using
17 them to help manage key projects, I don't know
18 specifically what they were doing. I believe they were
19 generally involved in retail operations and management of
20 relationships, but I -- I wouldn't be able to say that
21 (b)(6),(b)(7)(C) was doing this and Sunny was doing that.

22 Q Were you familiar with what (b)(6),(b)(7)(C) was
23 doing?

24 A (b)(6);(b)(7) worked closely with me in supporting
25 meetings that I was doing and communications.

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1 Q Okay. What kind of meetings was he involved
2 in?

3 A A broad range of meetings. Could have been
4 with partners, with investors, with others. I don't know
5 if he was working closely with me yet in 2013. He was
6 before he left.

7 Q What about (b)(6);(b)(7)(C)

8 A Again, I believe operational projects related
9 to the retail rollout.

10 Q You mentioned (b)(6);(b)(7)(C) What was his role?

11 A I believe same thing.

12 Q And (b)(6);(b)(7)(C)

13 A Yep.

14 Q He was also an operations person?

15 A I don't know what he was doing in 2013.

16 Q What about (b)(6);(b)(7)(C) Is he also a
17 project manager, or was he also a project manager in
18 2013?

19 A I don't know that he was. He was working
20 within the software organization, and I don't know
21 exactly what he was doing within 2013.

22 Q And when you say "software organization," what
23 do you mean?

24 A We had a team that we called the software team,
25 and he was part of that team.



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1 Q And who did he report to?

2 A Up to Sunny. I don't know if he directly
3 reported to Sunny.

4 Q Did all of these project managers have a prior
5 relationship with (b)(6);(b)(7)(C)

6 A Not all of them. Some of the ones I just
7 listed did.

8 Q Okay. What was that prior relationship?

9 A (b)(6);(b)(7)(C)

10 Q

11 A

12 Q Were you involved in hiring all of them?

13 A I was. That group, yes.

14 Q That group, yes.

15 A Yeah.

16 Q When did you hire them?

17 A I don't know. I think 2011 maybe, 2012. I'm
18 not quite sure.

19 Q Why did you hire them?

20 A Because we were working 24/7 almost trying to
21 do something good, and we needed people who wanted to
22 work that hard and who would put their heart and soul
23 into it.

24 Q Did you use the project managers as sort of a
25 liaison between you and Sunny Balwani and other employees

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67

1 at the company?

2 A No, not to my knowledge.

3 Q Were there specific areas that the project
4 managers would be overseeing, sort of a way for you and
5 Sunny Balwani to delegate particular responsibilities to
6 another group of people?

7 A I don't know specifically how he was using
8 them. I -- I don't know.

9 Q How did you use them?

10 A The only one --

11 Q I think you mentioned you had a relationship
12 with (b)(6);(b)(7)(C)

13 A Yeah. I used him generally for follow-ups.

14 Yeah.

15 Q What do you mean by you used him generally for
16 follow-ups?

17 A In a support role. So if we had a meeting,

18 setting things up for the meeting, making sure if we
19 needed to send a note to follow up on the meeting the
20 note was sent, those types of things.

21 Q Was he also having communications directly
22 with, for instance, some of your business partners or
23 even the Department of Defense?

24 A I think he did, yeah.

25 Q Okay. And what kind of communications was he

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68

1 having with them?

2 A I mean, it was many years, so I'm sure it's a
3 broad range. Generally coordination with different
4 people who we were interfacing with.

5 Q So when you say "coordination," do you mean
6 coordination of meetings?

7 A Coordination of -- I mean, it could be
8 meetings, could be discussions, could be follow-up, could
9 be response to a request.

10 Q Would he run -- every time that he was
11 communicating with them, would you expect that he would
12 run that by you first?

13 A I wanted generally for him to do that. He did
14 not always do that.

15 Q Were there times, though, when he would send

16 you, for instance, draft e-mails that he was planning to
17 send out to a business partner that you would then review
18 and edit and send back to him?

19 A I'm sure there were.

20 MR. NEAL: We've been going a little over an
21 hour. Should we take a short break?

22 MS. CHAN: Let me just take a look. I just
23 have a few more questions, and then we can take a break.

24 MR. NEAL: Okay.

25 BY MS. CHAN:

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69

1 Q So did you have regular meetings with the
2 project managers?

3 A I did not, to my memory.

4 Q Do you know if Sunny Balwani did?

5 A I would expect that he would have. I don't
6 know whether it was meetings that were regularly
7 scheduled.

8 MS. CHAN: Okay. We can take a quick break
9 now.

10 THE VIDEOGRAPHER: This concludes Media 1 of
11 Elizabeth Holmes. We're off the record at 10:16.

12 (A brief recess was taken.)

13 THE VIDEOGRAPHER: We are back on the record at

14 the beginning of Media No. 2 of Elizabeth Holmes. The
15 time is 10:30.

16 BY MS. CHAN:

17 Q And, Ms. Holmes, I just wanted to confirm: We
18 didn't have any substantive conversations during the
19 break, did we?

20 A No.

21 Q Okay. And I just want to make that -- give you
22 that question after every break, just to make sure that
23 nothing was said off the record.

24 A Absolutely.

25 Q Okay. So I'm going to hand to you what's been

↑

70

1 marked as Theranos Exhibit 195.

2 (SEC Exhibit No. 195 was marked for
3 identification.)

4 MS. CHAN: For everyone else, this is Tab 10.

5 BY MS. CHAN:

6 Q Exhibit 195 purports to be a document entitled,
7 "Theranos Confidential Summary Capitalization." The
8 starting Bates number is TS-000603. I'll represent to
9 you that this was produced by Theranos to the SEC as part
10 of the binder that was provided by Theranos to Rupert
11 Murdoch when he was considering whether to invest in

12 Theranos in December 2014 and January 2015. The cover
13 letter to the binder states that it was signed as of
14 December 4th, 2014.

15 Have you seen Exhibit 195 before?

16 A You know, I didn't recognize this first sheet
17 sitting here now, but I'm sure I did.

18 Q What is Exhibit 195?

19 A It looks like our cap table and behind it a
20 series of projections.

21 Q Did you review Exhibit 195 on or about December
22 4th, 2014?

23 A You know, I don't have memory of whether I
24 reviewed it at that time, but I know I've seen it.

25 Q So I'm actually just going to start on the

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71

1 first page which is -- 603 is the Bates number on the
2 bottom.

3 A Yes.

4 Q Is this an accurate reflection of Theranos'
5 capital raising since its -- since the company was
6 founded?

7 A As of what period of time?

8 Q I guess as of 2013. That's a good point.

9 A As of 2013. No. I think this was as of a

10 later period of time.

11 Q Okay. So what -- what was the date at which
12 this document was prepared, then?

13 A The C2 didn't happen until -- I think 2014 was
14 the first part of the C2.

15 Q Okay. So you think that this is an accurate
16 reflection of the capital raising the company did as of
17 2014 as --

18 A No.

19 Q No?

20 A No.

21 Q Okay. So what happened in 2014?

22 A Oh, I'm sorry. As of 2014. I was missing my
23 years. Yes, I think that as of the end of 2014 this
24 looks about right.

25 Q This looks about right?

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72

1 A Yes. Yeah.

2 Q And how much was raised during the C2 round?

3 A It was several hundred million dollars. I
4 don't know exactly the end number. I think it was over
5 500 million.

6 Q So if it was over 500 million, then do you
7 think that this chart maybe isn't an accurate reflection,

8 at least it doesn't include some of the C2 round?

9 A Correct. It doesn't include some of the C2. I
10 don't know exactly when this was prepared and what period
11 of time it was supposed to be reflective of.

12 Q Okay. But you think that the total for the C2
13 round would have been something like over \$500 million?

14 A I believe so.

15 Q So I just want to focus for a period on the C1
16 and C2 rounds. What were those financing rounds? What
17 was the purpose of raising money during those rounds?

18 A So they were -- they were different at
19 different points in time. C1 we began developing
20 strategic relationships with long-term shareholders, and
21 some of the hospital systems that we wanted to partner
22 with came in through a fund.

23 And then C2 we had decided that we wanted to
24 try to structure Theranos as a private company, and we
25 were looking for family-owned businesses or

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73

1 family-controlled companies and leadership who wanted to
2 invest in something for the really long-term. And we
3 identified a group of people to try to bring in for that.

4 Q Okay. So you said for the C1 round -- I just
5 want to make sure that I understand.

6 For the C1 round, that was mainly money coming
7 from strategic partners like hospitals and other
8 businesses?

9 A When it started, yes, yeah. I mean, we had
10 also another family that invested through one of the
11 funds that came in in C1. And then a couple of hospital
12 systems that we were hoping to partner with came in in
13 that as well.

14 Q Which family came in in C1 that you're thinking
15 of?

16 A (b)(6);(b)(7)(C) family.

17 Q And did the (b)(6);(b)(7)(C) family and the hospital
18 systems, did they all come in through Peer Venture Group?

19 A They did.

20 Q What is Peer Venture Group?

21 A It is a fund (b)(6);(b)(7)(C)
22 (b)(6);(b)(7)(C)

23 Q What was your relationship with them?

24 A (b)(6);(b)(7)(C)
25 (b)(6);(b)(7)(C) for a long time, and I met him

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1 through (b)(6);(b)(7)(C)

2 Q And so how did that relationship come about?
3 You know, who initiated talks of potentially investing in

4 Theranos and, you know, what happened? How did you --
5 how were you able to get that information from Peer
6 Venture Group?

7 A The first one was in 2010, so I don't remember
8 specifically. But my memory is (b)(6);(b)(7)(C) had expressed
9 interest to (b)(6);(b)(7)(C) about investing in Theranos and
10 specifically having a fund that focused on investing in
11 Theranos. (b)(6);(b)(7)(C) had strongly encouraged me to meet
12 with him and the people that I think he was working to
13 raise money from and to let (b)(6);(b)(7)(C) invest.

14 Q Okay. And then you mentioned for C2, that was
15 mainly for you to raise money in order to establish a
16 long-term shareholder gaze; is that right? Can you
17 explain a little more about that?

18 A Yeah. Over a period of time we became
19 convinced that becoming a private company for the
20 long-term would best allow us to do something that was
21 going to be a very long-term venture. And so we were
22 trying to find investors who wanted to invest in private
23 companies and wanted to make really long-term investments
24 and generally who had built family companies. And so we
25 identified a series of people who had done that and went

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1 to meet with them to talk about this vision. And so that

2 was the majority of the C2.

3 Q What was the money that you raised during the
4 C1 and C2 rounds used for?

5 A A lot of R & D and operational investments,
6 like we built a big manufacturing facility in Newark,
7 California, where we do our injection molding and
8 machining and reagent production and -- primarily those
9 two things.

10 Q Going into both of these rounds of financing,
11 did you have a particular target that you were aiming to
12 raise? And what were those targets?

13 A I don't -- I don't know. I'm sure we did. I
14 can't remember exactly what the -- what the numbers were.
15 I think it was also a bit dynamic in terms of responding
16 to interest and people who had expressed interest in
17 being shareholders in the company.

18 Q So if you look at the price at which the shares
19 were sold during these two rounds, the first C1 round
20 that took place in 2010, the price was \$3 a share. The
21 second C1 round, it went up to \$15.

22 What precipitated the change in price?

23 A So my memory is that that was a price per share
24 that was established through the relationships with the
25 retail pharmacy partners who were thinking about what the



1 value of Theranos could be if we had these retail
2 frameworks in place and that that's where that number
3 came from.

4 Q So are you saying, then, that the retail
5 partners actually valued Theranos at the \$15 a share?

6 A I don't know if they valued it. But to the
7 extent that there were provisions in the contract that
8 gave them potential rights to equity, that was the value
9 that they put on the equity rights that they had.

10 Q Who came up with the \$15 per share valuation?

11 A I don't -- I don't know. I'm not sure.

12 Q Was that a number that Theranos requested of
13 its retail partners?

14 A You know, I don't remember. I know there was a
15 lot of work with the retail partners to create models
16 together of what this could be. I'm not sure if -- I'm
17 not sure who settled on that number in the end.

18 Q Was it negotiated?

19 A I don't think so.

20 Q Who would know the answer to that question?

21 A I mean, I assume our team could look back at
22 documents and try to figure it out. I don't remember.
23 I'm not sure.

24 Q Would you have been involved in those

25 discussions with your retail partners?

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77

1 A I would have, yes.

2 Q Would Sunny Balwani have been involved?

3 A Yes.

4 Q Okay. I'm going to hand to you another
5 document. You can put that one aside. I'm handing to
6 you what's been marked as Theranos Exhibit 196.

7 (SEC Exhibit No. 196 was marked for
8 identification.)

9 BY MS. CHAN:

10 Q Exhibit 196 purports to be a spreadsheet. The
11 title at the top is "Detailed 2917." Starting Bates
12 number is TS-0558077.

13 Have you seen Exhibit 196 before?

14 A You know, I don't remember seeing this version,
15 but I recognize it as our cap table.

16 Q Did you review Exhibit 196 on or around
17 February 9th, 2017?

18 A I don't remember doing that.

19 Q I'll represent to you that that's the date at
20 which that appears on the document.

21 A Okay.

22 Q And would have been around the date that

23 Theranos produced the document to the SEC?

24 A Yep.

25 Q So I want to focus on some of the C1 and C2



78

1 investors on this list. So if you go down, there's an
2 investor called Bendel Fund.

3 Do you see that on the first page?

4 A I do.

5 Q And they invested it looks like 249,998 shares
6 in the C2 round.

7 Who is the Bendel Fund?

8 A I believe this is (b)(6);(b)(7)(C)

9 Q Who's (b)(6);(b)(7)(C)

10 A He's an individual (b)(6);(b)(7)(C)

11 (b)(6);(b)(7)(C)

12 company.

13 Q How do you know him, or how did you get to know
14 him?

15 A I met him through this process of trying to
16 find family-controlled companies and investors, and I'm
17 trying to remember who made the introduction. He knows a
18 number of people affiliated with the company. I'm not
19 quite sure who made the final introduction to him.

20 BY MR. KOLHATKAR:

21 Q Who does he know at the company?

22 A He knows some of our investors. He knows some
23 of our board members. (b)(6),(b)(7)(C)
24 (b)(6),(b)(7)(C) specifically. I'm just not sure who made the
25 first introduction to him.

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79

1 BY MS. CHAN:

2 Q Who are the investors that he knew?

3 A I -- my understanding is he knows -- he knows
4 most of our C2 investors, the other large family
5 investors.

6 Q What about Central Valley Administrators? Who
7 are they? It's on the second page.

8 A So I think that is (b)(6),(b)(7)(C)
9 (b)(6),(b)(7)(C) that Walgreens introduced us to when they were
10 talking about deploying in California.

11 Q Who's (b)(6),(b)(7)(C)

12 A (b)(6),(b)(7)(C)

13 Q Okay. And what -- why was he interested in
14 Theranos?

15 A I think he really believes in the need for
16 lower-cost, more distributed testing.

17 Q Were you in talks to partner with him in any
18 way?

19 A It was our hope that had we deployed in Los
20 Angeles with Walgreens, we would work with his physician
21 groups.

22 Q So was this -- was he also considered a
23 strategic partner, a possible strategic partner?

24 A Yes.

25 Q So, in other words, even though he invested in

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1 the C2 round, it looks like there were also opportunity
2 for strategic partners to come into the C2 round in
3 addition to some of those families?

4 A I'm trying to think if there were any others
5 beside him. I know generally the focus of C2 was the
6 families, but had there been a strategic -- I mean,
7 there's no reason we wouldn't have looked at that in the
8 context of involvement.

9 Q If you turn the page to page three, what about
10 Dynasty Financial? It's also a C2 round investor.

11 A I believe that's the DeVos family.

12 Q The DeVos family. How did you know them?

13 A I met them at a conference for
14 family-controlled companies, and I talked to 'em about
15 our vision.

16 Q What conference was that?

17 A That was the (b)(7)(C) conference. I think it was in
18 Chicago.

19 Q And what is (b)(6)

20 A (b)(6);(b)(7)(C)

21 (b)(6);(b)(7)(C)

22 (b)(6);(b)(7)(C)

23 Q So they invited a number of family offices to
24 come for a conference?

25 A I think so, yes.

↑

81

1 Q When did that happen?

2 A In the fall of 2014 or maybe winter of 2014.

3 Q Why did you attend?

4 A I was asked to speak at it.

5 Q What did you speak about?

6 A (b)(6);(b)(7)(C)

7 I think, about innovation. I don't remember what I
8 talked about.

9 Q Who's (b)(6);(b)(7)(C)

10 A I'm sorry. (b)(6);(b)(7)(C)

11 (b)(6);(b)(7)(C)

12 Q You don't recall what you talked about at that
13 conference?

14 A I don't. I mean, I could guess. I don't

15 remember it specifically.

16 Q Did you meet the DeVos family at that
17 conference?

18 A I did.

19 Q Who was your main contact there?

20 A Initially it was (b)(6);(b)(7)(C) Now it's (b)(6);(b)(7)(C)

21 (b)(6);(b)(7)(C)

22 Q Who's (b)(6);(b)(7)(C)

23 A She's, my understanding, is (b)(6);(b)(7)(C)

24 (b)(6);(b)(7)(C)

25 Q And (b)(6);(b)(7)(C)



1 A Her boss.

2 Q Is he (b)(6);(b)(7)(C)

3 A I don't know.

4 Q Or at (b)(6);(b)(7)(C)

5 A I think so. I'm not sure.

6 Q What about Hall Black Diamond 2, which is
7 towards the bottom of page three? Who are they?

8 A So that is a fund that was created for one of
9 the limited partners of Black Diamond to be able to have
10 direct holdings in Theranos. (b)(6);(b)(7)(C)

11 Q And who is (b)(6);(b)(7)(C)

12 A (b)(6);(b)(7)(C) Black Diamond and I think a

13 successful business person (b)(6);(b)(7)(C)

14 Q How did you meet him?

15 A I believe I met him after he had invested in
16 Black Diamond's fund that invested in Theranos. So
17 through Black Diamond.

18 Q And was there somebody else at Black Diamond
19 that you knew prior to relationship?

20 A (b)(6);(b)(7)(C)

21 Q (b)(6);(b)(7)(C) Who's (b)(6);(b)(7)(C)

22 A (b)(6);(b)(7)(C)

23 (b)(6);(b)(7)(C)

24 Q If you turn the page to page four at the very
25 top, who is (b)(6);(b)(7)(C)

↑

83

1 A That is -- my understanding it's the foundation
2 affiliated with (b)(6);(b)(7)(C) and his family.

3 Q And who's (b)(6);(b)(7)(C)

4 A He's a businessman (b)(6);(b)(7)(C)

5 Q When did you first contact with him?

6 A I think in 2014, but I'm not completely sure.

7 Q How did you meet him?

8 A I met him -- I think I met him at someone's
9 house, and we started having a conversation about health
10 care.

11 Q Do you recall whose house you met him at?

12 A I think (b)(6),(b)(7)(C) a Silicon Valley venture
13 capitalist.

14 Q What did you talk about?

15 A We talked about the need to make lab testing
16 lower cost and more accessible and the need to invest in
17 technologies that can leapfrog over traditional lab
18 infrastructure, kind of like cell phones did over
19 landlines, and how important that's going to be for
20 health care.

21 Q Is he in the health care business?

22 A He is, yes.

23 Q What is his business?

24 A (b)(6),(b)(7)(C) and also a
25 number of other businesses. He owns retail grocery

↑

84

1 stores (b)(6),(b)(7)(C) that include pharmacies and many other
2 businesses.

3 Q Did you ever have any discussions with (b)(6),(b)(7)(C)
4 about partnering with his businesses (b)(6),(b)(7)(C)

5 A We did.

6 Q And how did those -- how did those discussions
7 go?

8 A Very positive. He has a foundation that we've

9 interacted with, most closely that's talked to us about a
10 number of different projects including our current focus
11 on Zika virus testing in low-income and distributed areas
12 (b)(6),(b)(7)(C)

13 Q Did you end up entering into a contract with
14 him or his companies?

15 A I don't know if we have a contract with their
16 foundation. I'm not sure. Not his laboratory business.

17 Q Let's turn the page to page six. Towards the
18 top of the page, there's an investor called Sand Hill
19 Financial Company, Sandbox Co-Investment Fund. Who are
20 they?

21 A So these are two different ones.

22 Q Oh, they're two different ones?

23 A Yeah.

24 Q Okay. Then I'm asking about Sandbox
25 Co-Investment Fund, since they're a C1 investor.

↑

85

1 A Yes. So they are, as I understand it, the fund
2 that manages the investments for the Blue Cross Blue
3 Shield Association.

4 Q And how did you get in contact with them?

5 A This was I think in 2010. And I -- I'm not
6 sure. I think it was our board member, Robert Shapiro,

7 was an advisor to the Blue Cross Blue Shield Association
8 Fund and part of Sandbox, and I think he made the
9 introduction. It may have come from somewhere else, but
10 that sounds right.

11 Q What was your understanding of why they were
12 interested in investing in Theranos?

13 A Because the lab companies have been charging
14 them extremely high rates, and they've been negotiating
15 for years to try to break up the duopoly of pricing
16 between Quest and LabCorp, and they thought that we could
17 build a lab company that would offer really low-cost
18 testing.

19 Q And then further down the page, Soda Spring
20 Partners. Who are they?

21 A That is Alice Walton, part of the Walton
22 family.

23 Q Part of the Walton family?

24 A Yes.

25 Q And how did you get to know the Walton family?

↑

1 A I can't remember the first introduction. I
2 think my first contact with them was with Greg Penner,
3 who's the chairman at Walmart. I don't know who
4 introduced me to him. He was certainly one of the

5 families that as we brainstormed on who were the types of
6 people that would want to be part of taking something
7 like this on that we thought about.

8 Q When you're -- I think you just said he was one
9 of the people. So do you mean the Walton family, or do
10 you mean Walmart?

11 A Well, what I was referring to was that the
12 Walton family is one of the great, you know, sort of
13 family-controlled businesses that's been built in this
14 country. We absolutely were also interested in the
15 relationship with Walmart, and that was early on part of
16 our discussions with Greg.

17 Q Part of your discussions with Greg were to
18 potentially partner with Walmart in the retail pharmacy
19 space?

20 A Yes. And specifically I think he wanted them
21 to evaluate the promise of this.

22 Q Did you ever enter into a contract with
23 Walmart?

24 A I don't think so.

25 Q Did you have any other business relationship

↑

87

1 with them aside from having these discussions?

2 A Prior to meeting Greg, we'd had a fair amount

3 of interaction with them. There was no formal contract
4 about how you would roll out. The concept was \$4 lab
5 testing like they'd done \$4 pharmacy prescriptions.

6 Q And did anything come of that? Did you end up
7 either piloting or rolling out any services even if you
8 didn't have a contract?

9 A No. We were prohibited under the terms of our
10 Walgreens and Safeway contracts initially from doing that
11 for some period of time.

12 BY MR. KOLHATKAR:

13 Q Did Greg Penner introduce you to Alice Walton,
14 or did someone else introduce you to the Walton family
15 members?

16 A I believe (b)(6);(b)(7)(C) was the point person for
17 Alice. I met Alice at a dinner separately. I think she
18 was sitting near me. But (b)(6);(b)(7)(C) works with her.

19 Q Did you ever meet Rob Walton?

20 A I did.

21 Q What do you recall about that?

22 A I recall talking to him about this concept of
23 \$4 lab testing and the vision for what we were trying to
24 do in the lab space in terms of access to health
25 information. I recall telling him about the technology

↑

1 we were working to implement, and I recall initially
2 focusing on what this could be if we did have the
3 opportunity at some point to partner with Walmart. And
4 then later he became an investor. He's Greg's
5 father-in-law.

6 Q How did he become an investor?

7 A So --

8 MR. NEAL: You mean what vehicle?

9 BY MR. KOLHATKAR:

10 Q Yeah. Is he on the list, or was there an
11 entity invested through?

12 A Yes. The Madrone entity is him and Greg and
13 the associated fund partners.

14 BY MS. CHAN:

15 Q So in looking through Exhibit 196, we actually
16 noticed that Rupert Murdoch doesn't appear on here. Do
17 you know why? Is he an investor, or was he an investor
18 in Theranos?

19 A He was an investor in Theranos, yes.

20 Q Was he taken out -- is he still an investor in
21 Theranos today?

22 A He is not.

23 Q Is that the reason why he doesn't appear on
24 this list?

25 A I don't know why he doesn't appear on this

1 list.

2 Q Do you know who prepares, you know, the
3 capitalization table for Theranos or who maintains it?

4 A It's changed over time. (b)(6),(b)(7)(C) used to. I
5 think now it's done by one of our legal firms.

6 Q But in the 2013/2014 time frame, it would have
7 been (b)(6),(b)(7)(C) who would have maintained it?

8 A I believe so, yes.

9 Q So were you involved in discussions with the
10 investors in the C1 and C2 round to invest in Theranos?

11 A I was.

12 Q What was your involvement?

13 A I would talk about the kind of company we were
14 trying to build, talk about the vision, talk about why we
15 were interested in structuring this as a private company,
16 and sort of the long-term nature of it and what we
17 thought we have the potential to do here.

18 Q Were you involved in providing materials to
19 them for their due diligence purposes?

20 A I was involved -- just so I answer the question
21 correctly, what do you mean by that?

22 Q So were you aware that these investors would
23 sometimes request materials or documents from Theranos?

24 A Yes.

25 Q And were you involved in compiling that

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90

1 information or collecting that information for them?

2 A I don't know if I specifically did that, but I
3 knew that the materials were going to investors.

4 Q Okay. Would you review those materials or
5 documents before they were sent to investors?

6 A You know, I would need to think about a
7 specific instance to be able to speak about it
8 specifically. I certainly was generally aware of the
9 types of content that we were sending to investors.

10 Q What were the types of content that you were
11 sending to investors?

12 A I mean, we had a very informal process in place
13 which was, you know, decks that we used for a number of
14 different purposes. In terms of slides we would share,
15 they had data on the performances of our chemistries. We
16 would share other information that we thought just gave
17 people a perspective of what we were trying to do. It
18 was -- it was -- it was a start-up, so we didn't have the
19 systems in place to do this in a formal way.

20 Q Did you -- would you sometimes be the person
21 sending the materials to investors either through e-mail

22 or --

23 A I could have been. I don't -- I can't sit here
24 and say I remember a specific instance in which I did,
25 but it wouldn't surprise me if I did.



91

1 Q What was Sunny Balwani's role in those
2 discussions with investors?

3 A I would generally do the first meeting or two
4 and talk about the vision, and then he would follow up on
5 any questions that they had from a diligence perspective
6 and provide them with that information.

7 Q Did he attend those initial meetings that you
8 had with investors?

9 A Most of the time, yes.

10 Q Did he participate in those meetings? Would he
11 be presenting material as well, or was it mostly just you
12 talking?

13 A The meetings that I was, which were sort of the
14 initial meetings, we didn't frequently present anything.
15 It was just discussion. And, yes, he would be involved
16 in the discussion as well.

17 Q Was there anyone else in the company who was
18 involved in those investor discussions besides you and
19 Mr. Balwani?

20 A I'm sure there were others in the room for
21 certain meetings. I would need to think about a specific
22 meeting to be able to talk about who else was in there.

23 Q Would there be others who would be making a
24 presentation to investors during those meetings? I'm
25 more interested in the people who would have been

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92

1 speaking at those meetings.

2 Can you think of anyone who would have --
3 besides you and Mr. Balwani, who would have been speaking
4 at those meetings?

5 A If you give me a specific meeting, I could try
6 to think back to it. There was -- there was a lot of
7 meetings over a period of many years. We had people
8 to -- we generally tried to respond to any questions that
9 an investor had. So if they wanted to focus on a
10 specific area, we might have had people who were specific
11 to that area engaged. But I can't sit here and recall a
12 specific example.

13 Q Were there particular areas that you would
14 present on and particular areas that Mr. Balwani would
15 present on? And what were those areas?

16 A Yeah. I presented the vision, what we're
17 trying to build, what we've invented, and what we think

18 it could do. Sunny would present on our projections and
19 what we thought it could mean financially and on the
20 operations of the business, whether it be on
21 manufacturing or the clinical lab.

22 Q When you were sitting in meetings with Mr.
23 Balwani and you're having these discussions with
24 investors, were there times when Mr. Balwani would
25 present something to investors that you thought was not

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93

1 right or inaccurate?

2 A I don't -- I don't remember an instance in
3 which that ever happened. I -- I generally understood at
4 least what I thought to be the assumptions behind how he
5 characterized our potential.

6 Q So when you say you saw the assumptions behind
7 how he would characterize your potential, what do you
8 mean by that?

9 A Our projections were generally based on an
10 assumption that we would have a certain retail footprint,
11 and I knew that we had the ability to get that footprint
12 if we executed. And so I assumed that those numbers made
13 sense in that context.

14 Q So you would -- you would have reviewed the
15 assumptions before Mr. Balwani was presenting these

16 financials to investors?

17 A Not necessarily. I'm sure sometimes I did but
18 not as a necessary normal operating cadence.

19 Q But you can't think of an instance in which Mr.
20 Balwani would have presented, for instance, the
21 financials for investors that you thought was incorrect
22 or inaccurate?

23 A You're talking about the projections?

24 Q I'm talking about the financial projections
25 now, yes.

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94

1 A Not at that time, no.

2 Q Can you think of any instance in which Mr.
3 Balwani made any other inaccurate or incorrect statements
4 to investors, setting aside the financial projections?

5 A I mean, not when I was in the room that I can
6 remember.

7 Q Had he made an inaccurate or incorrect
8 statement to investors, would you have corrected him?

9 A Absolutely.

10 Q And were there times when Mr. Balwani corrected
11 you while you were making your presentation to investors?

12 A He was not shy about jumping in on things that
13 I would say. So he was definitely very vocal in those

14 meetings.

15 Q Was there ever a topic in those discussions
16 with investors in which you felt like you were not
17 sufficiently familiar with it and so couldn't speak to
18 it?

19 A Me personally?

20 Q Yes.

21 A For sure.

22 Q What were those topics?

23 A I mean, this is why I deferred to other people
24 on the operations of our clinical lab, on our operational
25 infrastructure internally in terms of production, on

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95

1 financials and financial modeling. I didn't have any
2 training or background in that.

3 Q Were there any other areas?

4 A I'm sure there were. I mean, I'm -- I'm -- I
5 try to be good in a couple things which generally have to
6 do with inventing and sort of ideas and vision. I tried
7 to surround myself with people who I thought were better
8 than I was in other areas.

9 Q What about the product development area? Were
10 you sufficiently familiar with that area to be able to
11 speak to investors about it?

12 A Insofar as the architect of our technology,
13 like the idea of, for example, putting a robot in a
14 distributed testing system, yes. Insofar as how to
15 interpret the data or the standards, I relied on our
16 teams.

17 Q Okay. And so I think you said two things. In
18 terms of the data and what standards should be applied,
19 you relied on your team?

20 A Yeah.

21 Q So who was in charge of those two things at the
22 company?

23 A So it depended on what data and what standards.
24 From the perspective of R & D, it was our development or
25 product leads who were the different team leads that were

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96

1 in place at different points in time. From the
2 perspective of our clinical lab, it was (b)(6);(b)(7)(C)

3 Q So in the 2013 time frame that would have been
4 are you talking about (b)(6);(b)(7)(C) -- was
5 there another person that you mentioned earlier?

6 A I'm trying to go back and remember who the team
7 leads were in 2013 because it evolved. And we were
8 generally trying to promote the scientist from within.

9 But, yes, those are the types of people who

10 would ensure that the assays were developed to the
11 standards that we thought we were developing them to.

12 Q Okay. And then you said the lab director for
13 the clinical lab. So was that (b)(6),(b)(7)(C) then, in
14 the 2013 time frame?

15 A At that time, yes.

16 Q Would you be kept apprised of what assays had
17 been developed over the course of time? Was that
18 something you would be apprised of?

19 A It was, yes. We had sort of tracking
20 spreadsheets at different periods of time to say, okay,
21 how many assays have sort of hit these different steps
22 that we thought were required to develop and validate the
23 assays?

24 Q And then would you also be kept apprised of how
25 many of those had been transferred onto the hardware onto

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97

1 the devices, the analyzers that would be analyzing the
2 blood samples?

3 A I don't know that we ever tracked it like that.
4 We always thought about it as you're developing
5 chemistries that could work on small samples. And with
6 these standardized tube types, you didn't need all the
7 different colored tubes, and then you could put them onto

8 different hardware platforms. And that ultimately became
9 a business decision around the business model that we
10 decided to go with.

11 Q So you just said that you didn't think about
12 that too much. But why wasn't that important to the
13 process, you know, actually putting the assays onto the
14 machine? Because the machine is the device that would
15 actually be conducting the testing.

16 A Well, you first need to know what your
17 deployment is, right? So if you're trying to deploy for
18 a pharmaceutical clinical trial and you're trying to put
19 machines in a distributed setting, then getting those
20 assays validated on those machines makes sense.

21 And during that period of time, we were mostly
22 trying to develop a wide assay menu to show this belief
23 that we had that any of these chemistries could be made
24 to work with small samples was possible. And so that was
25 our primary focus. And then when it became time to go



1 into the clinical lab, we focused on putting them onto
2 the specific hardware platforms that we decided to put
3 them on.

4 Q So were you kept apprised as to -- you said at
5 some point it was important to actually validate the

6 tests?

7 A Yes.

8 Q But were you apprised of that process and how
9 many tests had been validated on the platforms?

10 A I think generally yes. Just in terms of the
11 total number of tests that we were working to bring up in
12 the lab initially is what I'm thinking about.

13 Q So generally you were apprised of the number of
14 tests that were validated on each of the platforms?

15 A I don't think I knew specifically how many were
16 on each platform. I knew, for example, when we launched,
17 that generally we were working to bring up a menu of 70
18 tests on fingerstick, and we thought that would cover the
19 ordering patterns we were going to see. I knew there were
20 certain general numbers on certain platforms, but it
21 wasn't like today something came up on this platform and
22 I was alerted to that.

23 Q Okay. And were there any areas -- going back to
24 my question about areas that you weren't familiar with to
25 speak with investors about, were there any areas that you

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99

1 had an understanding Mr. Balwani wouldn't have felt
2 familiar with or comfortable talking to investors about?

3 A No.

4 Q So he would have been familiar with all aspects
5 of the company including, for instance, the vision and
6 the mission of the company as well?

7 A Yeah. I mean, he's very confident, and he was
8 confident that he was able to fill the role that he was
9 in and supplement the knowledge that he needed with other
10 people.

11 Q So you can put that aside now. So I want to go
12 back to the 2010 time period for the time being. And I
13 want to start by asking sort of a series of questions.

14 But, you know, if I use the word "analyzers,"
15 would you understand that that's what I mean as the
16 device that's used to process blood tests?

17 A Yeah. I would then ask you which -- which
18 ones?

19 Q Which analyzer?

20 A Yeah.

21 Q Okay. So I think we'll go through, and it
22 would be helpful if you could actually explain what the
23 different devices are and the versions. And if I'm not
24 being sufficiently clear, please let me know if I'm not
25 being clear.

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1 A Sure.

2 Q So in the 2010 time period, had -- I think you
3 mentioned previously there were two devices that had been
4 developed and that were in use. There was the 3.5
5 miniLab and the 4 series miniLab.

6 Do you remember that testimony earlier?

7 A Yes.

8 Q Okay.

9 A And just to be clear, that's referring to what
10 I'm sort of generally referring to as this miniLab family
11 or the devices that were intended to be distributed.

12 Q Okay. So and then you mentioned there was also
13 a 3.0, but that was similar to the 3.5 version?

14 A Yes.

15 Q But were not sure as to what the differences --
16 differences are between those two versions. Do you have
17 any understanding?

18 A I don't -- I don't know specifically.

19 Q Okay. So starting with the 3.5 machine.

20 A Yeah.

21 Q Was that the machine that you believed would be
22 used for clinical testing or was ready for clinical
23 testing at that time?

24 MR. NEAL: In 2010, we're talking about?

25 MS. CHAN: Yeah, I'm just talking about 2010.

1 THE WITNESS: Used for clinical? What do you
2 mean by used for clinical testing?

3 BY MS. CHAN:

4 Q Well, you know, in 2010 were you thinking about
5 getting into a relationship with Walgreens and Safeway
6 and thinking about rolling this out to retail pharmacy
7 partners?

8 A We were.

9 Q Okay. So that's the clinical testing that I'm
10 thinking of.

11 A Got it. Yep.

12 Q So what kind of clinic -- what kind of -- well,
13 let me step back.

14 So the 3.5 version, was that the version that
15 you were thinking would be used for clinical testing
16 purposes at the retail pharmacies?

17 A At that time we believed it could be.

18 Q Okay. You believed it could be?

19 A Yes.

20 Q What do you mean by that?

21 A What I understood as of that period of time is
22 that the standards that we're required to satisfy the
23 assay criteria for a pharma trial were the FDA standards,
24 I thought. And the FDA standards, that meant you -- your

25 data was good enough for clinical decision-making.

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102

1 So we believed that the exact process that we'd
2 gone through for validating the assays there would allow
3 it to be used. In a clinical setting we knew you would
4 need to get the CLIA waiver and regulatory approval from
5 the FDA.

6 Q I'm sorry. So you said you knew that you
7 needed to get approval from the FDA?

8 A Yes.

9 Q Before using it for clinical testing?

10 A Yes.

11 Q This was back in 20 --

12 A In a distributed setting.

13 Q In a distributed setting?

14 A Yeah.

15 Q So what do you mean by "distributed setting"?

16 A Outside of a certified clinical lab.

17 Q And we're talking about 2010; is that right?

18 A I think so. I think so.

19 Q Okay. And then you mentioned that your
20 understanding as to how the machines needed to be
21 validated was how they were validated for the clinical
22 trials you were doing for pharmaceutical companies; is

23 that right?

24 A Yes. How the tests were, yes.

25 Q Okay. So what was that validation process that

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103

1 you undertook for the pharmaceutical companies?

2 A There's -- my understanding was there's a FDA
3 guidance document on a series of steps. There's like 15
4 steps on sensitivity and specificity and other
5 measurements that ensure that the data is good enough to
6 be used for clinical decision-making. And at that time
7 we thought that was what was in our development reports
8 and what was going to be required for FDA submission.

9 Q Okay. And who was in charge of the process of
10 validating the devices to make them ready for clinical
11 testing? Who was overseeing that process?

12 A In 2010?

13 Q In 2010.

14 A I don't know. We always think about it in
15 terms of tests, not devices. And I, again, defer to
16 whoever was leading the assay initiatives at that time.

17 Q Who was leading the assay initiatives?

18 A I can't remember in 2010. I don't know.

19 Q Who would know who was in charge of that
20 process?

21 A I'm sure we can look back and tell you. I
22 don't -- I don't know if Sunny would remember. I -- we
23 could talk to some of our other scientists internally.

24 Q Okay. And then on that Version 3.5 miniLab --

25 A Yes.

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104

1 Q -- I think you mentioned previously earlier in
2 testimony that that version could conduct, you said, tens
3 of tests?

4 A I think so.

5 Q Okay. What -- and I think we talked about how
6 that was something less than 100?

7 A Yes.

8 Q What types of tests could it conduct?

9 A So that version of device was focused on a
10 method called immunochemistry. And it was running those
11 types of tests for, I believe, small molecules, proteins,
12 maybe metabolites and antibodies. I'm not completely
13 sure.

14 Q So what about -- and then I guess we talked a
15 little bit about the 4 series as well, the 4 series
16 miniLabs?

17 A Yes.

18 Q So I think you mentioned that that was in

19 development, and there were different sectors that were
20 being developed in the machine. Do you remember that
21 discussion?

22 A I do.

23 Q So what was being done with the 4 series
24 miniLab?

25 A So the core of our invention was the concept of

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105

1 taking a robot that could replicate what a human does and
2 putting it into a small box that could be used outside of
3 a lab. The 3 series detected the signals from the
4 chemistries through one form of detection called
5 luminescence, which is measuring light, measuring
6 photons. And what we wanted to do was add other
7 detectors or capability of other light forms like
8 fluorescents. So we were mounting other detectors around
9 it, and that's what the 4 series is.

10 Q Okay. So what could the 4 series test in terms
11 of -- like, what were the numbers of tests that the 4
12 series could perform at that time?

13 A I don't know. I think we -- I'd be guessing.
14 Yeah.

15 Q Could it perform any number of tests?

16 A We had essentially -- I mean, my memory is we'd

17 essentially shown proof of concept of the ability to do
18 what I just said. I don't know how many chemistries we'd
19 actually put on it at that time.

20 BY MR. KOLHATKAR:

21 Q I guess, just so I understand, the adding the
22 additional, let's say, the fluorescents capability --

23 A Yep.

24 Q -- would that enable the 4 series to conduct
25 tests, in theory, beyond the immunochemistry set? Is

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106

1 that a fair understanding?

2 A Yes. And, most importantly, we were trying to
3 invent a platform that could do -- the objective was
4 anything that a lab could do. So we needed the full
5 range of options that are in a lab so that if a test came
6 along that we hadn't tried to develop yet, we had a box
7 that could do it -- right? -- architecturally.

8 Q And I mean just broadly. What kind of tests
9 are immunochemistry tests?

10 A So those are the ones I was talking about:
11 proteins, antibodies, small molecules, drug levels. Could
12 be metabolites. Essentially anything you bind to with an
13 antibody.

14 Q And that what were sort of -- other than the

15 category of immunochemistry tests, what were the other
16 kind of categories of tests that were sort of in that
17 universe that you wanted to have the architecture for for
18 the 4 series?

19 A Yeah. And so just to be clear, immunochemistry
20 is a method, right? It's not a category of tests.
21 There's many different types of tests that can be done
22 with the method of immunochemistry. We wanted to -- we
23 wanted to be able to do essentially a broad range of
24 methods, right? So we wanted to have what's called a
25 microscopy method for imaging of cells. We wanted to

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107

1 have fluorescents as a read-out for measuring RNA and DNA
2 for pathogen detection.

3 And I can list the other detectors that were in
4 there and what they're for, if it's useful.

5 Q Sure. That would be great.

6 A Okay. So imaging, fluorescents, microscopy. We
7 still had the luminescence capability and absorbents.
8 Essentially the full range of readouts. What we were
9 trying to do is take the lab and put it in a box, right?

10 BY MS. CHAN:

11 Q Did you ever use that phrase when talking to
12 other people, "lab in a box"?

13 A I wouldn't be surprised if I did. I can't sit
14 here and say I remember a specific conversation. Yeah,
15 we most often talked about the concept of miniLab, which
16 was miniaturized laboratory.

17 Q So I want to skip forward, then, to a few years
18 later now, and we're talking again about 2013.

19 So tell us what devices Theranos had developed
20 to process blood tests at that time.

21 A So when the clinical lab went live, which I
22 believe was in -- I think we did our first sort of
23 official patient testing around the end of October of
24 2013. That date is probably not exact. We had both our
25 3.5 miniLab devices as well as what we called at that

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108

1 time high-throughput platforms which are open systems
2 that you can put your proprietary protocols on to run
3 small sample testing.

4 And so those included a number of different
5 devices, one of which was the ADVIA 1800. There was a
6 cytometry one that was made by Becton Dickinson, and I
7 believe there was a couple others.

8 Q Okay. So just going back, so you said there
9 was a TSPU or the miniLab. What are we calling it at
10 this time?

11 A At that time we were calling it the TSPU.
12 Q Okay. There was a TSPU. Which version was it?
13 A I believe that was the 3.5 version.
14 Q It was still the 3.5 version?
15 A Yes.
16 Q Okay. And how many tests could be run on the
17 3.5?
18 A Do you mean how many were run in the clinical
19 lab or could be run?
20 Q I mean how many were validated to be run for
21 clinical testing?
22 A I believe that we brought up about 15 in the
23 clinical lab at that time.
24 Q About 15?
25 A Yes.

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109

1 Q Okay. And what time frame in 2013 are you
2 referring to when you say "about 15"?
3 A So I --
4 Q Are you thinking about before the launch of
5 Theranos services in Walgreens?
6 A I was thinking of sort of the initial launch of
7 the services in Walgreens. So when the lab formally
8 started seeing patients through to the next few months,

9 let's say, three to four months after. I'm not -- I
10 don't know exactly when the tests were validated in that
11 range.

12 Q So you think about 15 tests were validated on
13 the TSPU 3.5?

14 A Yes.

15 Q And then you mentioned there were other open
16 platforms, including the ADVIA 1800, some machine that
17 was manufactured by -- what was it? Beckman?

18 A Yes.

19 Q What's the name of the company?

20 A Not the ADVIA. But there was another one --

21 Q There was another one?

22 A -- that was manufactured by Beckman Coulter.

23 Q Coulter. So what did Theranos do to those
24 machines?

25 A You know what? It could have been Becton

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110

1 Dickinson. I'm not sure. One of the two.

2 Q Okay. So what had Theranos done to those open
3 platform machines in order to make it capable for these
4 machines to be processing tests on smaller stamps?

5 A Yeah. So different modifications for different
6 platforms. Speaking about the ADVIA specifically, we had

7 taken our protocol, which is essentially our formula for
8 how to make the chemistry work with the small volume,
9 and, as I understand it, overtaken essentially the
10 software in the instrument to implement our protocol.

11 And then we modified the physical hardware.
12 There's little cups that are used to contain the sample,
13 and one of the reasons that people take so much blood in
14 blood testing is that those cups have a lot of loss. So
15 even though you only take out a tiny amount, you have to
16 leave behind a lot of loss in the cup. So we changed the
17 geometry so that you didn't have that loss.

18 And then on other open platforms, like for the
19 cells, it was our chemistries that were run on them too.
20 So we actually made, like, the antibody in the chemistry
21 that binded to the cell that lit up to go into the assay.

22 Q So the ADVIA 1800 or you mentioned a couple
23 other machines that were made by another company, these
24 were -- these were all machines that weren't manufactured
25 by Theranos; is that right?

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1 A Correct. We purchased the machines, and then
2 we modified the hardware.

3 Q You modified the hardware?

4 A Correct.

5 Q So we might be talking about this a lot --

6 A Yeah.

7 Q -- during today. So if I said -- if I referred
8 to these machines as, you know, third-party commercially
9 available machines, would you understand that I'm talking
10 about the ADVIA 1800? Anything that Theranos had not
11 manufactured, would you understand that?

12 A So are you -- I think it's important to
13 distinguish that there were also actual third-party
14 commercial machines that were not modified that were in
15 the laboratories as well.

16 Q Okay.

17 A So we had both platforms that were doing
18 hardware modifications as well as unmodified commercial
19 machines.

20 Q Okay. So it sounds like there were three
21 categories of machines, then, right? There's the TSPU
22 3.5 version?

23 A Yes.

24 Q That Theranos had manufactured; is that right?

25 A Correct.

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1 Q And then there was the -- some third-party
2 commercially available machines that Theranos had

3 modified?

4 A Correct.

5 Q And then there were also just other third-party
6 commercially available machines that Theranos had
7 purchased in order to conduct testing. Would that be --

8 A Yes.

9 Q -- via venous draw?

10 A Yes.

11 Q So these machines would be conducting testing
12 in sort of the traditional venipuncture way?

13 A Yes. And I believe there was also a couple of
14 point-of-care devices that were in the lab, like -- I
15 don't think it was a glucose meter but kind of like a
16 glucose meter. But they were commercial unmodified. You
17 just wouldn't be putting venous blood on there. Does that
18 make sense?

19 Q Okay. I think I understand that.

20 BY MR. KOLHATKAR:

21 Q Can I ask for just a clarification on the
22 hardware-modified commercially available devices, sort of
23 that second category that she just referenced?

24 A Yes.

25 Q And you mentioned the hardware modification

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1 was -- I guess, that the modifications were sort of the
2 software, programming the machine, and then the geometry
3 of the cup; is that fair?

4 A Yes. And on other instruments it was also our
5 what I sometimes called chemistry, which is essentially
6 we did the work to make the antibody or the binder, and
7 then we made all the other reagents, like for the
8 cytometry assays, and then put them on these platforms
9 that could then run our tests.

10 Q Okay. It -- you know, earlier we sort of
11 talked about the idea of, you know, a consumable being,
12 you know, what was put in the device?

13 A Yes.

14 Q Is the -- is the modified geometry to, for lack
15 of a better word on my part, is that sort of also a
16 consumable for that platform?

17 A It is. I was speaking specifically to the
18 conversation about the TSPU and what a consumable was to
19 it. But there's consumables there, and there's other
20 consumables like the nanotainers.

21 Q Okay. And is it -- would you consider at the
22 time a reagent to be a consumable as well?

23 A No.

24 Q Okay.

25 A I don't think so. I mean, I wouldn't now.

1 MR. NEAL: We've been going about an hour.
2 Could we take another break, short break?

3 MS. CHAN: Sure.

4 THE VIDEOGRAPHER: We're off the record at
5 11:30.

6 (A brief recess was taken.)

7 THE VIDEOGRAPHER: We are back on the record at
8 11:46.

9 BY MS. CHAN:

10 Q Ms. Holmes, did you have any substantive
11 conversations with the SEC staff during the break?

12 A I did not.

13 Q So we were talking about modifying some of
14 these third-party commercially available machines --

15 A Yes.

16 Q -- in order to test smaller samples before we
17 left on the break.

18 When was -- where were these machines modified?

19 A So I believe the -- I mean, the way I think
20 about it is the implementation on our protocols onto them
21 happened in 2013 before the clinical lab went live, I
22 think.

23 Q And why did Theranos have to develop these

24 modified protocols during that time period?

25 A Well, just to be clear, the protocols

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115

1 themselves date back to our original inventions in, like,
2 2005. The reason that we had to implement them on those
3 open platforms was because we needed to process large
4 numbers of samples in a centralized lab environment, as
5 opposed to the TSPUs are designed to be near a patient
6 and process one sample at a time. And I think it takes,
7 like, 30 minutes to an hour per sample.

8 And we needed to be able to run a lot of
9 samples at the same time in a centralized setting. So
10 that was why we were trying to figure out how to do this
11 in a high-throughput way.

12 Q So the TSPU could only process one sample at a
13 time?

14 A That's right.

15 Q And you mentioned -- how long would it take to
16 process that sample?

17 A It depends on the chemistry. It could be
18 anywhere from 18 minutes to an hour.

19 Q And I think you mentioned --

20 A It could be different times too. I mean, it
21 varied per test.

22 Q Okay. You mentioned before we took the break,
23 at the time in 2013 when you were getting ready to launch
24 Theranos' services through Walgreens, that the TSPU was
25 validated to run about 15 tests.



116

1 Do you remember that earlier testimony?

2 A I do. And, again, forgive me. I think there
3 were 15 tests in the clinical lab that were validated on
4 the TSPU, if that makes sense.

5 Q Okay.

6 A Yeah.

7 Q What was the distinction between what I was
8 saying and what you were saying?

9 A Yeah. Sorry. The way that I think about it is
10 that the TSPU itself we had thought at that time was
11 validated to run a lot of tests, which at one point we
12 got up to about three -- over 300 chemistries that we'd
13 developed. And many of them, like 90 or so I think, were
14 actually on the TSPU. 15 we had validated as laboratory
15 developed tests in the clinical lab as of that time, I
16 believe.

17 Q Okay. Just so that I'm clear and I understand
18 what you're saying.

19 A Yeah.

20 Q So you're saying there were about 300 or so
21 that the TSPU was or that Theranos had developed assays
22 for?

23 A Right.

24 Q About something -- I think we had talked about
25 in 2010 something like less than 100 were -- maybe you

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117

1 should explain it again.

2 A Sure.

3 Q Because I'm not really understanding what the
4 difference is between what was validated in 2010 and what
5 was validated in 2013.

6 A Yeah. So by the end of 2013, I believe that
7 from an R & D standpoint about 90 or so tests had been,
8 we thought, validated at that time on the TSPU. A subset
9 of those went live in the clinical lab on the TSPU. I
10 believe that was about 15 around 2013. There were also
11 other chemistries that we had developed that were running
12 on other platforms beside the TSPU. Does that make
13 sense?

14 Q So 90 tests were validated to run on the TSPU
15 in 2013?

16 A I believe so. About 90.

17 Q Okay. But only 15 were being run in the

18 clinical lab?

19 A Yes.

20 Q Why weren't you running the other remaining
21 tests out of the 90?

22 A So we put -- well, out of the 90?

23 Q Why weren't you running the other 75 tests on
24 the TSPU?

25 A So the reasons changed over time. Around 2013

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118

1 I think we were initially working to bring up in the
2 clinical lab setting additional tests on the TSPU. And
3 then at some point in time, we stopped and focused on the
4 modified platforms as well as just trying to get those
5 tests through the FDA so that they could be used in the
6 Phase 2 setting. So different -- the business model
7 evolved, and the strategy evolved.

8 Q Okay. So even though you had 90 tests
9 validated on the TSPU, you decided only to run 15 on the
10 TSPU because you had to get approval for the tests, and
11 you decided to focus more on the modified protocol with
12 the third-party commercially available machines?

13 A Yeah. And so just on that point, there were, I
14 believe, about 90 development and validation reports with
15 tests on the TSPU. The remainder we had done through

16 other platforms. The subset of those went live in the
17 clinical lab on the TSPU.

18 The remainder of the focus in the clinical lab,
19 as I understand it, was on the systems that could process
20 a lot of samples at the same time. I think there was
21 some work to get more than 15 up, but I know that that
22 work stopped, and I don't know when.

23 BY MR. KOLHATKAR:

24 Q You mentioned sort of the distinction between
25 the 15 tests that were ready to go as LDTs versus the 90

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119

1 that were, in your words, validated on the platform.

2 In your mind, what was the difference between
3 having a test be an LDT versus it being validated for the
4 platform? I guess, what's the difference between the
5 two?

6 A Sure. So when I use the words "validated for
7 the platform," I was referring to our understanding of
8 the development guidelines that were required for these
9 tests, namely the FDA assay development reference. The
10 clinical lab had its own separate validation process for
11 any tests that went live, and so there were separate
12 activities that were underway for each of those 15 prior
13 to the lab director signing off on them.

14 Q And did you have an understanding at the time
15 about substantively what that meant, I mean, in terms of,
16 I mean, what the folks in the lab were doing to --

17 A No. I knew that they had a separate validation
18 process. I don't -- I didn't know what the differences
19 between the two were in a substantive way.

20 BY MS. CHAN:

21 Q So it sounds like there were two different
22 kinds of validation processes that were being performed
23 on the TSPU. The first was according to what? You said
24 the FDA guidelines?

25 A I think in retrospect it's what we had

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120

1 interpreted to be FDA's guidance document for assay
2 development. So when I used the words "developed" and
3 "validated," that's what I'm referring to.

4 Q Okay. But you mentioned before there were some
5 characteristics of that validation process including
6 certain measures, like test specificity --

7 A Yeah.

8 Q -- and precision and some of these other
9 categories?

10 A Correct.

11 Q That was what your understanding was with

12 respect to how to validate the device under the FDA
13 guidelines?

14 A Yes. Those are elements of that process, and
15 then there was certain criteria that were acceptable for
16 each of those sets of experiments, that we had used that
17 guidance document as an indicator of making sure that we
18 were as good as we had wanted to be.

19 Q And then you mentioned there was a separate
20 validation procedure that the CLIA lab was doing?

21 A Yes.

22 Q Is that right?

23 A Correct.

24 Q And so as of 2013, only 15 tests had been
25 validated under the CLIA procedure?

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121

1 A Correct.

2 Q On the TSPU?

3 A Yes. I think.

4 Q But you're -- but you have no understanding as
5 to what that CLIA procedure for validation is?

6 A My understanding is that it's similar but that
7 there's some parts that are different and that it's
8 specific to essentially what the lab director determines
9 are the acceptance criteria for a lab-developed test. I

10 don't know specifically what aspects were different from
11 our own development and validation of the assays.

12 Q Okay. And then going back to, then, the
13 third-party commercially available machines that Theranos
14 had modified, how many tests could those machines
15 perform?

16 A Just so I answer the question best, could they
17 perform; meaning, how many LDTs had we validated in the
18 clinical lab on them?

19 Q Yes.

20 A I believe there was about 60 or so. I'm not
21 sure what the exact number was.

22 Q Okay. So about 15 were validated pursuant to
23 the CLIA procedure on the TSPU --

24 A Yes.

25 Q -- at that time, and 60 were on the modified

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122

1 commercially available machines?

2 A Yes.

3 Q Okay. And then --

4 A Just to be clear, those numbers are not exact,
5 but it's about those numbers. I don't know the exact
6 numbers.

7 Q Okay. But in terms of the numbers, you would

8 think it would be something less than 100 on the modified
9 machines?

10 A I do, yeah.

11 Q Okay. And then in terms of the third category
12 of machines, which would have been just the regular
13 third-party commercially available machines that were
14 running venous blood, how many tests could those --
15 that -- those machines perform? Would it just be the
16 remainder of the test that Theranos is offering?

17 A Well, we ran the remainder either on those or
18 by sending out to the reference labs, and I don't know
19 exactly how many were on the commercial machines.

20 Q Okay. But they would either be performed on
21 the third-party commercially available machines or they
22 would be sent out to reference labs?

23 A Correct. Yeah.

24 BY MR. KOLHATKAR:

25 Q I just have a couple clarifications there.

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123

1 A Yeah.

2 Q So the 15 or so that were on the TSPU and the
3 60 or so that were on the modified commercially
4 available, are those mutually exclusive sets? Or is
5 there any overlap between the LDTs on those platforms?

6 A That's a great question. I think the way we're
7 counting them it's mutually exclusive. So the open
8 platforms were capable of running a couple of the tests
9 that we put on the TSPU. I don't know that we ever ran
10 them on both. I think for the purpose of this discussion
11 it's okay to consider them as different tests.

12 Q And then sort of just thinking back through
13 your answer about the -- you understood that there were
14 15 LDTs that were on the TSPU. There were about 90,
15 again, ballpark, that were validated in the company's
16 view at the time on the TSPU.

17 MR. NEAL: No -- oh, sorry. Yeah.

18 BY MR. KOLHATKAR:

19 Q Was there -- was there ever a situation where
20 someone at the company told you that additional LDTs
21 weren't being brought on to the TSPU because of
22 challenges in getting those, you know, one of those 90
23 validated, to the Theranos understanding, tests up to the
24 LDT standard?

25 A I -- so I can't remember any specific

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124

1 conversations. I knew that there were ongoing sort of
2 initiatives and challenges in general in bringing LDTs
3 up. But I thought that the fact that our lab director

4 had signed off on the reports for the first 15 meant that
5 there were no fundamental issues in the ability to bring
6 up more tests and certainly believed that, you know, as
7 we worked to then take those same tests that we'd done
8 the development on into the presubmission process for
9 FDA.

10 BY MS. CHAN:

11 Q I'm handing to you what's been marked Theranos
12 Exhibit 197.

13 (SEC Exhibit No. 197 was marked for
14 identification.)

15 MR. DWYER: Thank you.

16 MS. CHAN: This is Tab 3, for everyone.

17 BY MS. CHAN:

18 Q Exhibit 197 purports to be a June 11th, 2013,
19 e-mail from Sunny Balwani to Elizabeth Holmes. The
20 subject line is "Forward: Demo next Tuesday 6/11 at noon"
21 with starting Bates No. TS-0902539.

22 Have you seen Exhibit 197 before?

23 A You know, I don't remember it. I'm not sure.

24 Q Is this your e-mail address at Theranos,
25 Eholmes@Theranos.Com?

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1 A It is.

2 Q Do you have any reason to believe that you
3 might not have received this?

4 A I don't.

5 Q What is this e-mail about?

6 A Do you mind if I take just a second to read it?

7 Q Yes, of course.

8 A It looks like it's an exchange on trying to do
9 a demonstration of one of the miniLab devices.

10 Q Okay. And do you recall who that demonstration
11 was for?

12 A No.

13 Q So if you look at the initial e-mail on the

14 bottom of the second page, which is 540, (b)(6);(b)(7)(C)

15 is writing to (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C)

16 (b)(6);(b)(7)(C)

17 Do you see that e-mail?

18 A I do.

19 Q He states or writes, rather, "Sunny mentioned
20 that he'd like to run a demo during an exec meeting next
21 Tuesday. Run from 12:00 to 2:00 p.m. in our office
22 here."

23 Do you know what he's referring to when he says
24 "exec meeting"?

25 A I don't.



1 Q Is "exec" short for executive?

2 A I'm assuming so, yes.

3 Q And did you have exec meetings at Theranos?

4 A Honestly, I'm not quite sure what an executive
5 meeting is. I currently hold executive team meetings. I
6 don't think that's what this is referring to.

7 Q Do you think it might be referring to a meeting
8 with a business partner or someone from the outside?

9 A I'd be guessing. I have no idea.

10 Q So if you then flip to the first page, 539,
11 you'll see that as they're setting up this demonstration,
12 (b)(6);(b)(7)(C) is then writing on June 10th to a number of
13 individuals at the company including (b)(6);(b)(7)(C)
14 and he's copying Sunny Balwani.

15 At the bottom he says, "For tomorrow's demo, as
16 listed below, we'd like to have a miniLab and either a 4S
17 or monobay with the Normandy shell uploaded, whichever
18 works better."

19 So he's mentioning a number of different
20 devices. There's the 4S and the monobay. Do you know
21 what he's talking about here?

22 A So I'm not sure specifically. I think, just
23 looking at the chain here and the reference to Mobilelabs
24 up above, that he's distinguishing 4S as the device that

25 we'd been investing for the DOD deployments that we had

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127

1 wanted to do and the monobay as the version of it, which
2 we later began to think about as the miniLab, that could
3 be used as retail or physician offices.

4 Q What was the difference between the 4S and the
5 monobay?

6 A The 4S was designed to be much more compact and
7 to try to be developed to some of the standards that were
8 set by the Special Operations Command for things that
9 could be lifted and transported in a way that their
10 command could handle. And it also had a lot of
11 investment in things like vibration mounts to make it
12 more robust for use in more difficult settings.

13 Q Okay. And so how is the monobay different from
14 that?

15 A It was not intended to be used in sort of more
16 extreme environments. It was designed for sort of a
17 routine clinical setting, kind of like our wellness
18 centers.

19 Q So, in other words, was it bigger, then, than
20 the 4S?

21 A I think it was bigger, but also it just didn't
22 have the same vibration control and other things that

23 would ultimately be required if you were going to do
24 those types of deployments the DOD was interested in.

25 Q Were there any differences in capabilities

128

1 between the two devices?

2 A I don't know. There might have been. I'm sure
3 there was. I don't remember specifically what.

4 Q Who would know the answer to that question?

5 A I'm just looking at the e-mail to -- I don't
6 know specifically. The product teams that were working
7 on it at the time, (b)(6);(b)(7)(C) who's listed here, I'm
8 sure would have known what this was referring to at the
9 time.

10 Q Okay. And when (b)(6);(b)(7)(C) mentions "the
11 Normandy shell being uploaded on the machine," did you
12 understand what he meant by that?

13 A I'm not completely sure what he means by that.
14 I -- it's a piece of software, and I don't know why he
15 wants to put that software on it. It must have been for
16 some type of demonstration purposes.

17 Q What is the Normandy shell?

18 A I don't know. I'm not sure.

19 Q So you just said it's a piece of software. Did
20 you know what the software did?

21 A I don't. I know that there was a -- I know
22 it's software because it says Normandy shell, and so
23 that's probably some type of shell software system. I
24 don't know what code it refers to it. It might be a
25 version of the software that allows you to report results

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129

1 from the device, but I'm purely guessing based on looking
2 at the e-mail now.

3 BY MR. KOLHATKAR:

4 Q What is Normandy?

5 A Normandy is a word that was used to refer to a
6 number of different projects internally. Insofar as I
7 was familiar with it, it referred to the concept of
8 having samples sent to a central lab through the
9 nanotainer in Phase 1 of our sort of business model and
10 then later deploying the device.

11 I know Sunny used it in the software setting
12 and I think even in the lab setting for a number of
13 different purposes. I'm not quite sure exactly all the
14 use cases.

15 BY MS. CHAN:

16 Q So if you look at the response, then, back from
17 (b)(6),(b)(7)(C) which is just above (b)(6),(b)(7)(C) e-mail, he
18 says, "I've just finished getting the DeviceOS installed

19 with the Normandy app and properly running the null
20 protocols on Mobilelabs 4 and 8."

21 So what did you understand him to be saying
22 there?

23 MR. NEAL: You're asking her to interpret the
24 document now, or are you asking her whether it refreshes
25 her recollection going back to that time period?

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130

1 MS. CHAN: I'm asking her what her -- I mean,
2 it sounds like she doesn't --

3 MR. NEAL: Didn't remember.

4 MS. CHAN: -- necessarily recall this e-mail.

5 MR. NEAL: Yeah. Okay.

6 MS. CHAN: But I'm asking what her
7 understanding is of what's being written in this e-mail
8 now.

9 THE WITNESS: Yeah. I mean, looking at it now,
10 it says he's installed software on it. I don't know what
11 the null protocol was. And I think that the Mobilelabs
12 is a reference to the version of 4S at that time, but I'm
13 not sure.

14 BY MS. CHAN:

15 Q So you don't know what "null protocol" is
16 referring to?

17 A I don't.

18 Q Have you ever heard that -- that phrase before?

19 A I don't recognize it. I may have heard it
20 before. I'm not -- I don't know what it is.

21 Q Okay.

22 A I would guess it's a test protocol, but I'm not
23 sure.

24 Q What do you mean by "test protocol"?

25 A A lot of times when you want to make sure that

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131

1 the instrument is functioning properly, you have -- it's
2 like a QC protocol or a test protocol that allows you to
3 ensure that whatever software you've installed or
4 whatever configuration you've put the device in, it
5 operates properly.

6 Q Did you ever conduct demonstrations where a
7 blood sample was actually put into a device and the
8 device, you know, tested the blood sample? Did you ever
9 conduct a demonstration like that?

10 A Yes.

11 Q When did you do that?

12 A Very frequently. Many times over all the
13 years.

14 Q And would you, you know, after putting the

15 blood sample into the device, would that device then
16 generate a result?

17 A If we put a blood sample into it?

18 Q Yes.

19 A If it was programmed to, yes.

20 Q And were there times where you generated that
21 result while, you know, whoever you were conducting that
22 demonstration for was present?

23 A Yes.

24 Q Who do you recall doing that for?

25 A Well, I know we gave one of the early versions

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1 of the miniLab to Walgreens to keep at their headquarters
2 so that they could do that themselves whenever they
3 wanted.

4 I don't have specific recollections of the
5 meeting, but I believe we brought devices to at least
6 Safeway to use in their conference room and run samples
7 on when we were first forming that relationship. I know
8 we would do it -- we've done it for board members a few
9 times. I mean, whenever it was a relevant part of
10 talking about that part of our business model.

11 Q Do you ever recall instances where you -- where
12 you instructed others at Theranos to run a program on the

13 devices so that it would look like the machine was
14 running even though it wasn't actually processing a test?

15 A We have test protocols that essentially allow
16 you to show the device functioning. We will do that, I
17 mean, a lot including for open systems of the -- open
18 demonstrations of the device where you want people to see
19 the architecture.

20 Q Okay.

21 A So it runs essentially a, for lack of a better
22 word, dummy protocol so that you can see how the inside
23 of the instrument moves or see the user interface or
24 those types of things.

25 Q All right. So even if it's not processing a

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1 test, you would be able to see that the machine is
2 actually running inside? Is that what a test protocol is
3 for?

4 A Either running inside or seeing how the
5 software GUI works on the outside.

6 Q And do you recall using those test protocols a
7 lot during your demonstrations?

8 A I mean, again, we would do demonstrations in
9 response to questions or interest in certain parts of the
10 system. So we do it a lot now because we show open, sort

11 of, versions of the device to show people the
12 architecture. I know we did it at certain points in time
13 in the past depending on what the context of the meeting
14 was and what people were interested in seeing about the
15 device.

16 Q Was there a name for -- so in those instances
17 in which you were actually testing a blood sample and
18 it's going into the machine, was there a name for the
19 program or the software that would be uploaded into the
20 machine in order to do that?

21 A I don't know. I don't know.

22 Q Who would know the answer to that question?

23 A Name for the software to run the test protocol?

24 I was --

25 Q I'm actually talking about the instance -- it

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134

1 sounds like, from what I understand what you've just been
2 saying, is that the test protocol is something that can
3 be put on the machine to sort of mimic how the machine
4 would work --

5 A Yeah.

6 Q -- if it was testing a sample?

7 A Sure.

8 Q But is there a separate program that would be

9 put on the machine in the case you're conducting a
10 demonstration where you're actually putting in a blood
11 sample?

12 A So if you're putting in a blood sample and
13 you're reporting a test result, then the test result will
14 be specific to whatever chemistry is on that cartridge,
15 and that's what's reported out to the end user in the
16 end. If you're -- I'm not -- I'm not quite sure.

17 Q So maybe I don't understand how the machines
18 work.

19 Are they already as a default programmed to
20 conduct tests on blood samples? So, in other words, you
21 would put the blood sample in, the machine would conduct
22 the test, and the test result would be generated?

23 A So the way that our TSPU systems work is that
24 on each cartridge there's a bar code, and that bar code
25 can be specific to a chemistry that's loaded into the

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1 cartridge. It could be specific to a test protocol, like
2 a QC protocol or if it was going to go through the
3 movements but not actually run an actual chemistry and
4 anything else that you would want the instrument to do.
5 So it would be determined by what's ever on the
6 cartridge, if that makes sense, whatever bar code is on

7 the cartridge.

8 Q So the bar code on the cartridge determines
9 whether it's running one protocol versus another?

10 A Yes.

11 Q So when you're talking about the test protocol,
12 is it not a software that's being loaded onto the device?

13 A I'm not aware of soft -- so there's an
14 operating system on the device. The protocol -- I
15 believe the bar code calls a server, and then it
16 determines what protocol to run based on what's on the
17 bar code.

18 Q Okay. And then if you look back at Exhibit
19 197, then, (b)(6),(b)(7)(C) responds that same day. And he
20 says, "Right now we're not planning to run anything on
21 the miniLab, unfortunately. The general chemistry and
22 ELISA assays are not performing adequately for a demo at
23 the moment."

24 So is that right? Is "ML" referring to the
25 miniLab?

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136

1 A I think so. Given the references here to
2 Mobilelabs and miniLab, I'm not quite sure --

3 Q Right.

4 A -- exactly what it's referring to, but it could

5 be.

6 Q Okay. So he's -- he's actually referring back
7 to Sunny Balwani's question about what you're planning to
8 run on the ML.

9 Do you see that?

10 A I do.

11 Q Okay. So it sounds like the general chemistry
12 and the ELISA assays were not performing or were not, I
13 guess, performing accurately or adequately on the miniLab
14 at that time.

15 Does that refresh your recollection that the
16 miniLab was not actually performing assays in this time
17 frame?

18 A It doesn't. I mean, there's a lot of reasons
19 why they could have had issues with it. We've been, as
20 you know, doing immunochemistries for many years on
21 earlier versions of this platform.

22 Q Okay. But they're actually talking about the
23 4S and the monobay?

24 A I don't know.

25 Q Was it -- so is it your understanding that the

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137

1 4S and the monobay could conduct testing?

2 A Yes.

3 Q How many tests could -- we had this
4 conversation earlier.

5 A Yeah.

6 Q But how many tests could the 4S or the 4 series
7 miniLab perform?

8 A My understanding was that we were going through
9 the process to take all the chemistries that we had
10 developed, the few hundred that we were talking about,
11 and put them onto the 4 series platform -- I don't know
12 which of these this is referring to -- and begin the
13 process of getting them into the FDA later in 2013.

14 Q Okay. And so was it your understanding, then,
15 that those tests were validated on the miniLab 4S?

16 A The development and validation work I don't
17 think was on the 4S device, but it was my understanding
18 that the validation on the 3 series translated to the 4
19 series. So you would have to run it again on the 4
20 series hardware, but it was essentially the same
21 architecture of a robot moving fluid around now with more
22 detectors for different readouts.

23 Q So maybe I don't understand. So are -- was the
24 4 -- was the miniLab 4 series performing any tests in
25 2013? Was it capable of performing any tests?

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1 A I thought it was. I'm saying that just based
2 on remembering engaging with the FDA. We brought it to
3 the FDA, and we began the precision process on it with
4 the FDA that year.

5 Q And had you validated those tests on the
6 miniLab 4S?

7 A Again, I think the development and validation
8 reports were on earlier iterations of the hardware. But
9 we believed, and I believed, that you could basically
10 take the same chemistry that's been created and run it on
11 this iteration of the hardware.

12 Just to be clear, you said 4S. I'm speaking
13 generally about miniLab. I don't know if it was 4S or
14 another version of the 4 series platform.

15 Q Okay. I think probably we should clarify that.

16 When we're talking about the miniLab, at least
17 with respect to this e-mail, we're talking about the 4
18 series miniLab.

19 A Yeah. Exactly.

20 Q Okay. So you think that maybe during this time
21 frame there were some issues with being able to
22 adequately perform the general chemistry or ELISA assays
23 on the miniLab 4S but that, generally speaking, your
24 understanding was that these devices could conduct the
25 tests?

1 A My understanding was that architecturally what
2 we had created from the 4 series from a hardware
3 perspective was sound and that all of the chemistries
4 that we'd made over the years could be put on it and
5 taken through the FDA, as we later did with HSV which got
6 cleared.

7 I certainly knew that, like with any new
8 technology that was coming up, there would be issues. But
9 I was never aware that there were any showstoppers in
10 being able to do that with the 4 series platform.

11 Q Okay. You can put that one aside.

12 I'm going to hand to you what's been marked
13 Theranos Exhibit 198.

14 (SEC Exhibit No. 198 was marked for
15 identification.)

16 MS. CHAN: This is Tab 4.

17 BY MS. CHAN:

18 Q Exhibit 198 purports to be a January 23rd,
19 2014, e-mail from (b)(6);(b)(7)(C) to Elizabeth Holmes
20 with a copy to a number of individuals. Starting Bates
21 number is TS-0469692.

22 Have you seen Exhibit 198 before?

23 A I recognize it. I don't know if I've seen it

24 since sending it, but I recognize it.

25 Q What is Exhibit 198?

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140

1 A It's an e-mail exchange between me and (b)(6);(b)(7)(C)
2 (b)(6);(b)(7)(C) at the FDA.

3 Q So if you look at your initial e-mail on
4 January 22nd, 2014, you're noting in your e-mail -- I
5 think you're getting ready to provide a copy of some
6 updated plans for some presubmissions to the FDA.

7 Do you see that?

8 A I'm sorry. Where are you?

9 Q Your e-mail to (b)(6);(b)(7)(C)

10 A Okay.

11 Q Do you see that you're providing him with an
12 updated plan?

13 A Yes.

14 Q That's in the first sentence in the e-mail?

15 A Yes. Yes.

16 Q You then say, "As of now, Vit D" --

17 Is that short for Vitamin D?

18 A Yes.

19 Q -- "TSH, PSA, and fT4 are the only assays run
20 through the Theranos processing device in Theranos' CLIA
21 lab on patient samples."

22 Was that consistent with your understanding
23 that there were only four tests that were being run on
24 the Theranos -- I guess the TSPU from patient samples
25 being obtained from the wellness centers at Walgreens?



141

1 A I'm sure it was at that time. We were making
2 sure to keep the FDA completely apprised of everything we
3 were doing.

4 Q Okay. Do you know why only four of the assays
5 were being run on the TSPU during this time? And this is
6 January of 2014.

7 A I don't. If all 15 of them had been brought up
8 by then, then this is probably just based on the orders.
9 And we also hadn't really seen that many patients on
10 fingerstick by this period of time.

11 Q Did the -- was there a time when the number of
12 tests that were being performed on the TSPU changed? Was
13 it just a matter of bringing the next, you know, 11 or so
14 tests online and having them validated?

15 A No. We generally looked at this based on
16 ordering patterns. And our belief was, and still is,
17 that about 70 assays will cover almost 100 percent of the
18 orders that you'll get from the types of practice --
19 physician practices that we were trying to serve. So the

20 goal was to match that test menu.

21 As I said earlier, I think there was a period
22 of time in which we thought more than 15 would go up. I
23 know that that changed, and I'm not sure exactly when it
24 changed. But we weren't necessarily just linearly
25 looking at bringing up more assays on an ongoing basis.

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142

1 Q Okay. So what is your understanding as to the
2 maximum number of tests that the TSPU ever performed on
3 patient samples from Walgreens?

4 A I think that's that 15 number.

5 Q That's that 15?

6 A Yeah.

7 Q You can put that one aside.

8 I'm handing to you what's been marked Theranos
9 Exhibit 199.

10 (SEC Exhibit No. 199 was marked for
11 identification.)

12 MR. NEAL: Is the difference here that mine's
13 two-sided than hers?

14 MS. CHAN: Yes. That's why it's a little
15 thicker.

16 MR. NEAL: Okay. Thanks.

17 BY MS. CHAN:

18 Q Exhibit 199 purports to be defendant Theranos,
19 Inc.'s responses and objections to plaintiff's first set
20 of interrogatories that were filed in the Court of
21 Chancery in the state of Delaware in the Partner
22 Investments LP versus Theranos, Inc., case.

23 Have you seen Exhibit 199 before?

24 A I don't know. I might have.

25 Q Are you aware that there was a lawsuit that was

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143

1 filed by Partner Investments and PFM Healthcare Master
2 Fund against Theranos?

3 A Yes.

4 Q Would you have been involved in -- were you
5 involved in preparing responses to their interrogatories?

6 A I certainly was engaged with our legal team on
7 responding to them. I don't know what my specific role
8 was in responding to the interrogatories. I'm sure I
9 talked with our team about it. I may have seen some of
10 the documents. I don't have a specific memory of what
11 exact documents I looked at sitting here.

12 Q Sure. If you could just turn to the page with
13 Bates number ending 3465. And just for the record, the
14 starting Bates number on this document is
15 SEC-PRM-E-0003430.

16 So are you on 3465?

17 A Yes.

18 Q Okay. So here in Interrogatory No. 15,
19 Theranos has submitted a response. And it looks like PFM
20 is asking about the number of blood tests that were being
21 processed through the TSPU beginning in January 1st,
22 2013, for clinical patient testing.

23 Do you see the response here?

24 A I do.

25 Q Okay. And Theranos responds that there are a

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144

1 number of tests that were being performed on the TSPU.
2 And by my count there are about 12 of them that start in
3 those -- that list starts in -- at 3465 and ends on 3466.

4 A Yes.

5 Q Do you see that? Is that consistent with your
6 understanding of the tests that were performed on the
7 TSPU?

8 A Yeah. I mean, I don't have any reason to doubt
9 this.

10 Q Okay. And looking at the list, were there any
11 other tests that you believed were being tested or
12 performed on the TSPU that aren't being listed here?

13 A You know, if there's 12 here, I had the number

14 15 in my head. It may have been that either they weren't
15 up by this period of time or they were never run, they
16 weren't validated, or I could be wrong about the 15
17 number. I'm not sure.

18 Q So do you have any reason to believe that only
19 otherwise that only tests -- that only 12 tests were
20 being performed on the TSPU?

21 A I don't know. If that's what this says, I
22 don't have any reason to doubt it.

23 Q Did you ever share the fact that the TSPU was
24 only performing about 12 tests with Walgreens?

25 A I -- I don't -- I don't think so. I don't

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145

1 know.

2 Q You're not aware of an instance in which you
3 might have told Walgreens that the TSPU was only
4 performing 12 tests?

5 A I'm not. Yeah.

6 Q Are you aware of ever informing Safeway that
7 the TSPU was performing 12 tests in this time frame of
8 2013?

9 A After the CLIA lab went live, I don't think we
10 had any discussions with them about what we were doing in
11 the clinical lab.

12 Q Did you ever share or did you ever discuss the
13 fact that the TSPU was performing about 12 tests with
14 Sunny Balwani?

15 A I can't remember a specific discussion about
16 it. I know there were discussions that we had about sort
17 of stopping using the 3 series platform, working to get
18 the 4 series into the FDA, and then our hope and goal was
19 that we would be putting all the tests on that platform
20 as fast as we could.

21 Q So do you know whether Mr. Balwani knew that
22 the TSPU was only running something like 12 or 15 tests
23 at the time?

24 A I don't know, but I assume he would have.

25 Q Why do you say that you would have assumed he

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146

1 would have?

2 A Because he was managing the clinical lab.

3 Q What about others at the company? Did you ever
4 discuss the fact that the TSPU was running about 12 tests
5 with, for instance, (b)(6);(b)(7)(C)

6 A I don't think I ever had a specific discussion
7 about the number of tests on the TSPU with him that I can
8 recall. We had a lot of discussions about technology
9 including the TSPU. So it may have been an element of

10 the discussion, but I can't remember a specific
11 discussion about it only running 12.

12 Q What about the project managers? Did you ever
13 discuss with them the fact that the TSPU was running
14 something like 12 to 15 tests?

15 A I don't think so. I mean, what the chemistries
16 were running on in the clinical lab was not a focus of
17 any of our discussions internally or really externally at
18 that point in time.

19 Q Why wasn't it a focus of discussions?

20 A Because in Phase 1 of our model it was about
21 the chemistry. It was about redeveloping the assays to
22 work with small volumes. And then Phase 2 was about use
23 of the TSPU in a distributed setting, and that was the
24 vision; that was what we were spending most of our time
25 working on. But how we operationalize the tests in the

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147

1 clinical lab in the meantime was just not something that
2 any of us really focused on very much in conversation.

3 BY MR. KOLHATKAR:

4 Q So could you explain for me, I guess, why
5 Theranos decided to pursue commercial testing in Phase 1?
6 I think I understand what you described there. Phase 1 is
7 about getting the chemistries ready; Phase 2 is about the

8 TSPU being out there.

9 Why conduct commercial testing in Phase 1 at
10 all?

11 A Yeah. So I think there's two parts to that.
12 The first is our business model shifted when we formed
13 the partnership -- after we formed the partnership with
14 the retail pharmacies. And there was a lot of discussion
15 about getting CLIA waiver on the devices and a concern
16 about how long that would take and the regulatory model
17 for it. No one had done this before. And so the decision
18 was made to become a clinical lab.

19 The concept with Phase 1 was that the value is
20 the retail footprint, right? Bringing lab to the retail
21 footprint. And you've seen now Quest and LabCorp, you
22 know, immediately go partner with Walgreens and Walmart
23 to do that. To the extent we were focused on small
24 samples, we invented the nanotainer to be able to work
25 with the chemistries that we had redeveloped for small



1 assays, and that was the concept for fingerstick-based
2 testing in Phase 1.

3 In Phase 2 the value proposition was to bring
4 the device to the wellness centers to get tests even
5 faster, and so that's what TSPU was about because it

6 processed one sample at a time. And in Phase 1 you were
7 going to have a lot of samples coming in at the same
8 time.

9 So Phase 1 was retail footprint, access, low
10 cost, transparent pricing, the \$4 lab test concept, and
11 to the extent you were doing small samples, the
12 nanotainer implemented with our chemistries.

13 And then Phase 2 was distribute the device. And
14 Phase 2 was what we really wanted to do and is what we're
15 still trying to do right now.

16 BY MR. FOLEY:

17 Q Is there a business plan or anything that
18 articulated that, what you just described?

19 A Not in a systematic way at that time. We did
20 not have organized documents the way we do now that
21 really lay all of this out.

22 BY MS. CHAN:

23 Q Okay. You can put that aside. And, actually,
24 let's make a separate pile. Leave that there. Thanks.

25 I'm handing to you what's been marked Theranos

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1 Exhibit 200.

2 (SEC Exhibit No. 200 was marked for
3 identification.)

4 MS. CHAN: This is Tab 9.

5 BY MS. CHAN:

6 Q Exhibit 200 purports to be defendant Theranos,
7 Inc.'s first supplemental responses and objections to
8 plaintiff's first set of interrogatories in the -- filed
9 in the Court of Chancery in the state of Delaware in the
10 Partner Investments versus Theranos, Inc., case with
11 starting Bates No. SEC-PRM-E-0005120.

12 Have you seen Exhibit 200 before?

13 A I don't know. But, again, I worked with our
14 legal teams as we worked to respond to PFM.

15 Q So if you take a look at 5128, there's a
16 supplemental response to that same interrogatory that we
17 were just looking at in Exhibit 199, Interrogatory No.
18 15.

19 And it says here, "By way of further response,
20 Theranos states the Version 3.5 of the SPU is the only
21 version of the SPU used in January 1st, 2013, to process
22 blood tests for commercial testing in."

23 So that's consistent with your understanding
24 that the TSPU Version 3.5 was the only device ever used
25 for patient testing; is that right?

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1 A The only version of the miniLab --

2 Q Device.

3 A -- family --

4 Q Yes. Sorry.

5 A -- that was used, yes.

6 Q The only device that was manufactured by
7 Theranos that was used for patient testing; is that
8 right?

9 A That's right. And just for the sake of being
10 explicit, we considered the -- we actually
11 injection-molded and made the little cups that went into
12 the hardware ourselves in our factory. So we considered
13 ourselves as manufacturing some elements of the hardware
14 for the other platforms as well.

15 Q Okay. So the sample cups that you were using
16 with the ADVIA 1800?

17 A Correct.

18 Q Those were Theranos-manufactured --

19 A Yes.

20 Q -- cups as well?

21 A Yes. We made them.

22 BY MR. KOLHATKAR:

23 Q What were those called internally at the time?

24 A So I don't know. I've seen a lot of references
25 to different words used. I think, in describing the



1 general concept, I've seen the word "teacup." I don't
2 know if that explicitly refers to what I'm referring to.
3 I had understood that to refer to Theranos cup. But I --
4 I could be wrong about that.

5 BY MS. CHAN:

6 Q Okay. And then if you turn to -- actually,
7 yeah, turning to the next page, 5129. Actually, at the
8 bottom of 5128 if you want to follow through.

9 It says, "By further -- by way of further
10 response, Theranos identifies all other iterations of the
11 SPU since January 1st, 2013, as follows." And then
12 there's a list on 5129 which lists, you know, 3.0, the
13 4.0, the miniLab tower, the 4S, and the 4.1.

14 If you take a quick review of that, of the
15 descriptions of all of those versions, is this consistent
16 with your understanding of those versions and what they
17 were used for?

18 A I think so generally. I don't have any reason
19 to doubt it.

20 Q Okay. What did the TSPU look like? And maybe
21 there were different -- they looked differently.

22 So what did the 3.5 look like?

23 A So they all look like a box with a screen on it
24 with a hole on the front that has a door, and you can

25 stick what we call a cartridge, which is the piece of

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152

1 plastic that has all the chemicals in it, into it. And
2 the cartridge has a little hole where you can put
3 samples. You can put urine, or you can put blood from
4 your arm, or you can put the little nanotainers with the
5 fingerstick in there.

6 Q And you said they all look very similarly?

7 A Generally yes.

8 Q Generally. What was the size of one of the
9 3.5's?

10 A We used to --

11 Q What were the -- what were the dimensions of
12 that device?

13 A I don't know the specific dimensions, but we
14 would sort of refer to it as being similar in size to a
15 desktop computer that you would have under your desk.

16 Q And then turning to 5155 in Exhibit 200, you'll
17 see there's a supplemental response to Interrogatory No.
18 27.

19 Do you see that?

20 A I do.

21 Q And what PFM is asking Theranos is to identify
22 any nonproprietary or commercially available machine

23 equipment or technology that you used to perform tests.

24 Do you see that?

25 A Yes.

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153

1 Q And on the next page Theranos provides its
2 response with a table of devices purchased from third
3 parties, and it goes from 5156 to 5158.

4 Is this consistent with your understanding of
5 the third-party devices that Theranos was using to
6 conduct patient testing?

7 A You know, I wouldn't know. But I don't have
8 reason to doubt this document.

9 Q And was that also your understanding, you know,
10 in 2014? So this was as of 2013 or since January 1st,
11 2013.

12 But would this list be of devices that were
13 being used by Theranos that were purchased from
14 third-party companies? Was that consistent with your
15 understanding as of 2014?

16 A Again, I wouldn't know. I didn't have direct
17 involvement in what devices were being procured for the
18 clinical lab.

19 Q But you don't have any reason to believe that
20 this information is incorrect as of 2014 either?

21 A I don't know. I don't know. I know that the
22 business model shifted. I know that as of a period of
23 time, we were understanding the value proposition on low
24 cost and therefore trying to achieve automation and
25 standardization in the clinical lab. So there was a big

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154

1 investment on standardizing on Siemens equipment. I
2 don't know when exactly that happened. So it --
3 these might have been different in different periods of
4 time.

5 MS. CHAN: Do you need to switch the tape?

6 THE VIDEOGRAPHER: We got about two minutes.

7 MR. DWYER: You want to just break for lunch?
8 Does that make sense?

9 MR. NEAL: He's got two minutes.

10 MS. CHAN: Why don't we switch the tape. Go
11 ahead and switch the tape. We are off the record at --

12 THE VIDEOGRAPHER: This concludes Media 2 of
13 Elizabeth Holmes. We're off the record at 12:43.

14 (Whereupon, at 12:43 p.m., a luncheon recess
15 was taken.)

16 A F T E R N O O N S E S S I O N

17 THE VIDEOGRAPHER: We are back on the record at
18 the beginning of Media No. 3 of Elizabeth Holmes. The

19 time is 1:36.

20 BY MS. CHAN:

21 Q Ms. Holmes, did you have any substantive
22 conversations with the SEC staff during our break?

23 A No.

24 Q I'm going to hand to you what's been marked
25 Theranos Exhibit 201.

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1 (SEC Exhibit No. 201 was marked for
2 identification.)

3 MS. CHAN: Oh, sorry.

4 BY MS. CHAN:

5 Q Exhibit 201 purports to be defendant Theranos,
6 Inc., respond -- responses and objections to plaintiff's
7 second set of interrogatories filed in the Court of
8 Chancery of the state of Delaware in the case Partner
9 Investments versus Theranos, Inc., with starting Bates
10 No. SEC-PRM-E-0003334.

11 Have you seen Exhibit 201 before?

12 A I'm not sure.

13 Q If you turn to the page with ending -- or Bates
14 No. 3358, you'll see there, there is a request from PFM.

15 And you understand PFM to be Partner Fund
16 Management?

17 A I do.

18 Q Okay. There's a request from PFM to Theranos,
19 and PFM is asking Theranos to identify any commercially
20 available machine that Theranos has modified for use to
21 process tests on capillary or microsamples.

22 Do you see that?

23 A I do.

24 Q And Theranos then responds on 3362 which is --
25 well, there's a response starting on 3359, but there's

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1 also a list that starts on 3362. Theranos is responding
2 that there are four commercially available machines that
3 Theranos has modified on testing on smaller samples.

4 Do you see that? There's Siemens. I think
5 it's ADVIA 1 -- 1800?

6 A I believe so.

7 Q Does that look like a misspelling where it says
8 "ADVA"?

9 A I think it is.

10 Q Okay. And then there's the BD Biosciences LSR
11 Fortessa, the BD Biosciences FACSCanto II, and the Drew
12 Scientific Drew-3 Hematology System.

13 Do you see that?

14 A I do.

15 Q Was it your understanding that these were the
16 four machines that Theranos modified in order to conduct
17 testing on smaller samples and used these machines for
18 patient testing?

19 A Yes.

20 Q Okay. And did you have that understanding back
21 in 2014 as well?

22 A I'm not sure what my understanding was in 2014.
23 I know that I was aware of use of all four of these
24 platforms. I don't know when I became aware of each one.

25 Q Okay. But you were aware in 2014 that Theranos

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157

1 was modifying commercially available machines for use in
2 patient testing?

3 A I was. And certainly of the 1800 platform.
4 Again, I'm not sure when I was aware of the other ones.

5 Q Okay. And then if you turn the page again to
6 3369. I'm sorry. 33 -- I guess 3363, then, the next
7 page.

8 You'll see there is a list of a number of tests
9 here. And under little D towards the top of the page, it
10 says that, "Theranos states that the following blood
11 tests were available to run on modified Siemens ADVIA
12 1800 analyzers in the approximate time frames indicated

13 below." And there's a number of tests below that. About
14 49 tests that go over into page 3366.

15 Do you see that?

16 A I do.

17 Q And was it your understanding in 2014 that the
18 Siemens ADVIA 1800 analyzer was being used to conduct
19 testing for about 49 tests?

20 A I don't think I would have known in 2014 that
21 it was 49. I knew that we were using the ADVIA with our,
22 what we called, proprietary chemistries at that time.

23 Q So you knew you were modifying the Siemens
24 ADVIA?

25 A I did.

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158

1 Q To do that test?

2 A Yes.

3 Q And I think before you said it was something in
4 the range of about 60 tests?

5 A Yes.

6 Q Do you recall that?

7 A Yes.

8 Q So do you have any reason to believe that it
9 was something more like 49 tests?

10 A I don't have a reason to doubt anything that's

11 in this document.

12 Q And then further down on 3366, Theranos then
13 states, "By way of further response, Theranos states that
14 the BD Biosciences LSR Fortessa flow cytometer, the BD
15 Biosciences FACSCanto II flow cytometer, and the Drew
16 Scientific Drew-3 Hematology System were used to process
17 the complete blood count test panel."

18 So was that consistent with your understanding
19 in 2014 that these three devices were being modified in
20 order for Theranos to conduct testing on the complete
21 blood test -- the complete blood count test panel?

22 A So, again, I don't know when I understood that
23 we were using those platforms. I believe on these we
24 were putting our own proprietary chemistry. So these
25 were the ones that we were making the antibody ourselves

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159

1 and then making the chemicals and then making the test
2 and running it on these.

3 And just going back to your previous question,
4 my comment about the number 60. I don't remember your
5 question specifically, but it may have been just on any
6 open platform. Not just specific to the ADVIA. So it
7 may have included these Becton Dickinson devices.

8 Q Okay. So it might have included the test

9 panel?

10 A Yes.

11 Q The complete blood test count test panel.

12 Okay. And what do you understand that the CBC

13 test panel -- is that a short name for complete blood

14 count?

15 A I'm sorry. Where -- oh, here.

16 Yes.

17 Q I'm just using CBC because that's my experience

18 with that test.

19 Would you understand that I'm referring to the

20 complete blood count test panel --

21 A Yes.

22 Q -- if I say CBC test panel?

23 A Yes.

24 Q How many tests comprised the CBC test panel?

25 A I always get this wrong. I think -- I think

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1 there's 13, but I could be wrong. There may be more than

2 that.

3 Q So taken altogether, you know, the 13 --

4 A Might be 19. I'm not sure.

5 Q The 13 or the 19?

6 A Yeah.

7 Q Something like that?

8 A Yeah.

9 Q Something less than 20?

10 A Yes.

11 Q So taking the complete blood count test panel
12 together with the 49 tests and I think the additional,
13 say, 12 or 15 on the TSPU, so is it fair to say that, you
14 know, Theranos was offering something less than 100 tests
15 on all of its platforms through -- I'm sorry -- not all
16 of its platforms -- but on the TSPU and the modified
17 platforms? Is that fair?

18 A I think so, yes.

19 Q Okay. And with respect to the remaining tests,
20 then, that Theranos was offering during patient testing
21 in 2013, were those tests being conducted then on
22 commercially available machines that had not been
23 modified by Theranos?

24 A In 2013?

25 Q Yes.

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161

1 A Again, I think that they would have been both
2 in-house and sent to a third-party reference lab, but I
3 don't know that for sure.

4 Q How many of the tests that Theranos was

5 offering to clinical patients were being sent out to
6 reference labs?

7 A I don't know.

8 Q Who would know that information?

9 A Sunny and our lab directors should know.

10 Q Did Theranos ever try to patent the modified
11 protocols on these third-party machines?

12 A Yes.

13 Q And did you -- was Theranos successful in
14 patenting the methodologies?

15 A So I know we filed applications. I don't know
16 how many of them have issued and where they are in the
17 prosecution state.

18 Q Is this -- was the patent process something
19 that you would have been involved in?

20 A It depends. For the ones that I'm an inventor
21 on, yes. For ones that I'm not an inventor on, not
22 necessarily.

23 Q Were you an inventor on any of the modified
24 protocols?

25 A So I don't know. If they used some of my

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1 original IP, then I would have been because we would
2 have -- we essentially incorporated that into the

3 chemistries that we implemented on these big devices. But
4 to the extent it was specific to that implementation,
5 then I don't think so.

6 Q Did you ever tell investors or prospective
7 investors that Theranos was using third-party
8 commercially available machines to conduct a lot of its
9 testing?

10 A So I don't remember specific conversations to
11 that effect. But I know that we were very open about the
12 use of venipuncture essentially in our wellness centers,
13 including for people who would show up in the store, and
14 that people who are interested in the company would
15 sometimes go to the wellness centers and get a venous
16 draw.

17 Q Okay. But the venous draw would be -- whatever
18 blood samples were taken through venipuncture would be
19 put on -- that would be put on just commercially
20 available machines that hadn't been modified; is that
21 right?

22 A Generally yes. We did also sometimes put the
23 venous draw onto our proprietary platforms depending on
24 what the test order was and what period of time it was.

25 Q I see. When would you be putting the venous



1 draw samples on your own Theranos-manufactured devices?

2 A My understanding is that was mostly early on in
3 the process of launching the clinical lab and that later,
4 as we evolved the business model and sort of understood
5 that price was the most important factor and therefore
6 increased the venous draw testing, that we did not do
7 that as much or if at all at one point.

8 Q Did you ever tell investors or prospective
9 investors that Theranos was modifying these commercially
10 available machines to conduct patient testing?

11 A Again, I don't remember specific conversations
12 in which we discussed the modified hardware. I think I
13 generally talked about high-throughput ways of processing
14 assays or tests that we had modified for small sample
15 analysis, but I don't remember specific discussions.

16 Q What about Walgreens and Safeway? Did you ever
17 tell Walgreens and Safeway that Theranos had modified its
18 commercially available machines in order to conduct
19 testing on smaller samples and was using those devices?

20 A Yeah. Again, when we moved to sort of the
21 Phase 1/Phase 2 business model, we invented the
22 nanotainer to accommodate that. And I thought that I had
23 had discussions in which we explicitly talked about the
24 purpose of the nanotainer being -- to be run with those
25 assays we've developed for small samples in a

1 high-throughput setting and then that we would use the
2 device in Phase 2.

3 Q So you think that you would have talked about
4 developing a nanotainer for this, for use on the modified
5 machines?

6 A For use with the chemistries of the tests.

7 Q The chemistries?

8 A And using the chemistries in a centralized
9 setting where they could be run in -- with many samples
10 at a time.

11 Q Had Theranos developed a different nanotainer
12 that would be used with the modified machines that was
13 different from the nanotainer that was used for its TSPU?

14 A So before we created that Phase 1/Phase 2
15 business model, the nanotainer did not exist. You didn't
16 need it, right? You could put your sample directly into
17 the cartridge.

18 The nanotainer was created for Phase 1 where
19 the service offering became the chemistries with the
20 nanotainer. And the TSPU was intended at that point to
21 be used in Phase 2 primarily where you would collect the
22 sample right there and put it in the cartridge.

23 Q So the TSPU can actually take a sample from a

24 person without it going through nanotainer?

25 A At that time the version of it that we had,

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165

1 yes, you could deposit the blood sample directly into the
2 cartridge. You didn't need a nanotainer. It was
3 designed as a near-patient device. So you would put the
4 blood right in.

5 Q So what prompted development of the nanotainer,
6 then, was because Theranos had modified some of those
7 third-party machines in order to conduct smaller sample
8 testing? Is that what you're saying?

9 A What prompted the development of the nanotainer
10 was the business decision that instead of doing what we
11 had wanted to do, which is place our devices in the
12 retail stores, we would first become a clinical lab and
13 all these samples would be shipped at the same time to a
14 central location.

15 And the invention of the nanotainer was we can
16 still collect a small sample, because that's what the
17 patient cares about is the small sample, and then still
18 run the small sample chemistries that we'd invented. And
19 that was the purpose of the nanotainer.

20 And then in Phase 2, once we could get the
21 miniLab family through the FDA, use it in the wellness

22 centers. Does that make sense?

23 Q Sure. So whose decision was it to change the
24 business model to the Phase 1/Phase 2 business model in
25 which in Phase 1 it would be the development of the



166

1 clinical lab and Phase 2 would be deploying the Theranos
2 devices to stores?

3 A So a large part of it came out of our
4 discussions with Walgreens. There had been a lot of back
5 and forth about the business model and the timelines and
6 the regulatory framework. We also worked very closely
7 with FDA and regulatory counsel to try to figure out how
8 to do this right because we wanted to bring up a large
9 number, relatively speaking, of tests on small sample
10 analysis. And so it was in partnership with Walgreens
11 and some guidance from both of our counsels that we
12 decided to first become a clinical lab while we worked to
13 take the technology through the FDA.

14 Q And when you say "we" at the company, who --
15 who made that decision on behalf of the company?

16 A I don't -- I don't know that it was sort of a
17 single decision that was made. It was months of
18 engagement with Walgreens, feedback from counsel, and
19 ultimately a business decision that we -- I mean, I guess

20 you could say it was consummated with the amendment to
21 the Walgreens contract at a later point in time. I don't
22 think it was sort of a single meeting where we said,
23 okay, let's make the decision. It was sort of an
24 evolution over time.

25 Q Okay. But were you the decision maker on

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167

1 behalf of Theranos? And did you sign the Walgreens
2 contract or the amendment?

3 A I did. I signed many of the Walgreens
4 agreements. I don't know if I signed all of them. And
5 yes. I mean, I'm the CEO. I'm the ultimate decision
6 maker for the company.

7 I don't think this was a case where we sort of
8 sat down and had a meeting and said let's do this. I
9 think it was, after a lot of iterative feedback, a mutual
10 decision with Walgreens initially.

11 BY MR. KOLHATKAR:

12 Q I just want to circle back to a couple
13 questions. You mentioned sort of the Phase 1/Phase 2
14 model being sort of the genesis of the nanotainer
15 development?

16 A Yeah.

17 Q When did -- what time period did that take

18 place?

19 A So I don't know when the initial sort of idea
20 invention happened. I remember, as we worked with
21 Walgreens on how to solve the business model questions
22 that we were contemplating, bringing to them the
23 nanotainer and trying to convey that you could still do
24 small sample testing even in the centralized setting
25 while we were working to get the TSPU through the FDA.

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168

1 I can't remember exactly what year that was,
2 but I know it was certainly before 2013.

3 BY MS. CHAN:

4 Q Let me just ask a clarification question on
5 that.

6 A Yeah.

7 Q So what do you mean by "centralized lab
8 setting"?

9 A So the way I think about it is either you have
10 the TSPU intended use case, which is you're with the box
11 outside of a lab in a place where people don't
12 necessarily traditionally do lab testing, like a pharmacy
13 or a home or somewhere where a person is; you're just
14 going to want to do one sample at a time.

15 Or you're in a clinical lab, and you have

16 samples from other locations being sent in at the same
17 time. So 1,000 samples may show up or 10,000 samples may
18 show up, and you need to be able to process all of those
19 as fast as possible. That's a completely different use
20 case than when you're with one patient at a time.

21 Q So you were saying that the model changed. So
22 previously was the model that Theranos would be placing
23 these devices in Walgreens stores?

24 A Yes. When we signed the contract.

25 Q Right. And so how was Theranos envisioning

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169

1 processing all of these samples if they were going to
2 be -- you know, all of these people coming into Walgreens
3 stores to have their blood tested?

4 A So it's a different use case where you're doing
5 one patient at a time. So one person would come in,
6 their cartridge would be placed into the device right
7 there, the results would be reported, and then you'd do
8 the next one.

9 As opposed to at a lab you're collecting
10 samples all day. Then you ship them. And so a large
11 number of samples come in at the same time.

12 BY MR. KOLHATKAR:

13 Q I also want to follow up on another answer you

14 gave about being open about Theranos' use of
15 venipuncture.

16 A Yeah.

17 Q I think the question involved disclosing the
18 use of third-party analyzers.

19 I guess, in your mind, what was the
20 relationship between the use of venipuncture and the use
21 of third-party analyzers?

22 A So, in general, we associate and sort of talked
23 about venipuncture as being synonymous with the use of
24 third-party analyzers. I want to qualify that by saying
25 that we did take smaller samples and did sometimes run

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170

1 the smaller venous samples on our proprietary platforms.

2 But over time as we began to do more and more
3 venipuncture testing -- for example, our Arizona lab was
4 only commercially available equipment, and that was sort
5 of what we associated with being synonymous with
6 venipuncture for the most part.

7 Q And I guess did you -- so in answer to the
8 question of whether you ever disclosed to investors or
9 potential investors Theranos' use of third-party
10 commercial analyzers, did you ever discuss the fact that
11 venipuncture meant blood was being tested on predicate

12 devices?

13 A I don't know. I don't remember specific
14 conversations. I -- the best place that I can think of
15 where that would have been explicit is when people came
16 in for tests at Walgreens and got a venous draw. If
17 those samples were sent out to a reference lab, that
18 would have been part of the lab report that went back to
19 their physician, so they would have seen it there.

20 And, otherwise, I know our lab openly discussed
21 with physicians who were calling, if this test was run on
22 commercial equipment, what the commercial equipment was
23 and what the testing parameters of that commercial
24 equipment was.

25 Q You mean the lab report would identify the

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171

1 analyzer that was used to process the sample?

2 A The lab report would identify that a reference
3 lab was used, and so that some type of commercial lab was
4 used to do the samples. I don't know if the equipment
5 was spelled out. I actually don't think that labs
6 generally disclose what equipment they use.

7 Q Okay. So, I guess, just to walk through the
8 example.

9 A Sure.

10 Q If someone -- you know, if a potential investor
11 goes and gets a venipuncture at a Walgreens location --

12 A Yep.

13 Q -- the -- would the results ever get processed
14 in Theranos' lab? I guess, if a reference lab isn't used
15 in that situation, would the -- would the physician ever
16 be notified that a third-party device was used for that
17 sample?

18 A So the instances in which I'm aware of it is if
19 the physician had a question about the lab results and
20 the lab test was run on commercial equipment. It was my
21 understanding it was the practice of the lab to convey to
22 the physician that it was a commercially available piece
23 of equipment and what it was and any information about
24 the specifications of that equipment in conversation with
25 those physicians.

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172

1 BY MS. CHAN:

2 Q What was that understanding based on?

3 A Conversations that I've had internally with
4 people when we would talk about customer service and
5 trying to provide good customer service and answer
6 questions. And sometimes even to give competence to
7 people about lab results that, you know, this was a

8 commercial machine and this is how it performed and this
9 is why you can trust these results.

10 Q Who was in charge of customer service at
11 Theranos?

12 A So it changed at different points in time. At
13 one point there was a head of our call center. I believe
14 his name was (b)(6),(b)(7)(C)

15 (Court reporter clarification.)

16 THE WITNESS: I think it was (b)(6),(b)(7)(C) but I could
17 be wrong. And there would have been other people before
18 that who were serving on point for the call center. I
19 don't know who.

20 BY MS. CHAN:

21 Q So would you hear that from them, or would you
22 hear it through other people at the company that the
23 information would be provided to physicians as to which
24 equipment would be used for the testing?

25 A My memory is hearing it from the project

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173

1 managers who would talk about how sort of customer
2 relationships were going. I don't -- I don't remember a
3 specific conversation with call center personnel.

4 Q So you mentioned earlier in your testimony that
5 at some point Theranos developed a nanotainer, and it was

6 communicated to Walgreens that this nanotainer would be
7 used with a central lab model?

8 A Yeah.

9 Q Did you ever tell Walgreens that the nanotainer
10 would be used with third-party devices that Theranos had
11 modified?

12 A I thought I had conveyed that the nanotainer
13 would be used with hardware that could handle a lot of
14 samples at the same time. Again, it's, you know, my
15 recollection that people were really -- to the extent
16 that I was involved in conversation, the bulk of the
17 conversation was about the chemistry and not about what
18 hardware platform we were using in Phase 1.

19 Certainly, people were really interested in the
20 TSPU for Phase 2. But I don't remember specific
21 conversations about the hardware platform for Phase 1.

22 Q So you said people were interested in talking
23 about the chemistries more than the hardware. But what
24 do you mean by the chemistries?

25 A So if you take a step back, the value

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174

1 proposition to the customer, to the extent we're talking
2 about our proprietary technology, in Phase 1 was that
3 they get a fingerstick.

4 Q Right.

5 A The act of getting the fingerstick and then
6 trying to ensure that that data was good on the test was
7 the focus of discussions.

8 In Phase 2 it's about a box. You want to get
9 rapid results. You want to put it outside of the lab.
10 But in Phase 1 it was about, can you get a test to run
11 from a really small sample and can you do it well?

12 Q So -- but why -- I mean, there's no -- there's
13 no way to -- let me just step back a little bit.

14 So you're saying that the chemistry was really
15 important. But the way that it's being processed or the
16 way that a test is being processed and how it's being
17 processed and what machine is being used, how is that not
18 integral to the conversation?

19 A I think in terms of what people were interested
20 in for Phase 1, it wasn't, in any conversation that I was
21 in, ever a discussion point. It was about, do you have a
22 method for making this chemistry work on a small sample?
23 And part of that was the protocol. Part of that was,
24 instead of having to collect a lot of tubes,
25 standardizing that down to one or two tubes. And then

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1 can you implement it in a way in which you can handle

2 volume?

3 In Phase 2, because you're trying to not be in
4 a lab, there's a lot of focus on the machine because now
5 you're trying to put the lab in a box. But that was not
6 what we were trying to do in Phase 1.

7 And for the most part, most of our
8 conversations focused on Phase 2 because we were trying
9 to get there really fast and as fast as we could.

10 Q So what about -- what about other people at the
11 company? Did you ever have discussions with anyone at
12 the company about -- and maybe I should specify who.

13 Did you ever have any discussions with, for
14 instance, Sunny Balwani about the use of these
15 proprietary modified methods on these commercially
16 available machines and using those modified protocols for
17 patient testing?

18 A I don't remember a specific conversation, but
19 I'm sure I had interactions with him about it. I was
20 aware that we were doing it.

21 Q And what about with (b)(6),(b)(7)(C)

22 A I mean, I also don't remember specific
23 conversations with him. I don't know whether that's
24 something he and I would have talked about. To the
25 extent we had conversations about the lab, they were more



1 on the customer side.

2 Q Did you ever discuss the way the company was
3 modifying protocols on these third-party machines with
4 the project managers, like (b)(6);(b)(7)(C) or others?

5 A I don't think I did. I can't remember
6 instances in which I did directly.

7 Q What about with Theranos' sales team?

8 A I don't think I did. I didn't have much
9 interaction with our sales team.

10 Q And the marketing team as well?

11 A Did I discuss modifying protocols with the
12 marketing team?

13 Q Yes.

14 A I don't think so.

15 Q Were you over --

16 A It's possible, but I don't think so.

17 Q Were you overseeing the marketing team in the
18 2013/2014 time frame?

19 A I -- when (b)(6);(b)(7)(C)
20 (b)(6);(b)(7)(C) started, she reported to me.

21 Q And did you know what she was doing in
22 marketing?

23 A I did generally, yes.

24 Q Did you have regular meetings with her?

25 A I had occasional meetings with her, but I

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177

1 missed a lot of them.

2 Q Were there any times when Theranos -- I think
3 we -- I think we talked earlier about some of the
4 technology demonstrations that Theranos conducted for
5 certain third parties.

6 Did you conduct those demonstrations for
7 prospective investors?

8 A We did do technology demonstrations for
9 prospective investors when they were interested in it,
10 yes.

11 Q Did you also conduct these demonstrations for
12 business partners as well, like Walgreens and Safeway?

13 A We did.

14 Q Were there other people that you would conduct
15 technology demonstrations for?

16 A I'm sure there were. I can't -- I think I
17 mentioned earlier I know we showed the technology to our
18 board. I can't remember other general categories, but
19 I'm sure there were.

20 Q Did you conduct demonstrations for the
21 Department of Defense?

22 A I think -- I'm aware of one instance in which

23 we did. And then, of course, the deployment that I
24 mentioned earlier where the TSPUs were actually in a
25 number of burn hospitals.

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178

1 Q So you remember conducting demonstrations at
2 the burn hospitals?

3 A No. The burn hospitals were using the TSPU on
4 an ongoing basis.

5 Q Okay. Did you ever -- do you ever recall
6 conducting a demonstration for the Institute of Surgical
7 Research as part of that burn study?

8 A I don't know if we did a demonstration
9 before -- before we put -- I think that contract was
10 2008. I think we may have just shipped them the systems.
11 I'm not sure.

12 Q Which version of the TSPU was sent to the burn
13 hospitals for use?

14 A I don't know. I'm guessing the 3.0, just based
15 on how early the study happened. We may have later also
16 used the 3.5's. I'm not sure.

17 Q So take us through the process of a technology
18 demonstration for one of these groups of people.

19 First of all, was the demonstration always
20 conducted similarly? Did you make any distinction

21 between investors or business partners or the board?

22 A We didn't make distinctions that way. We made
23 distinctions based on what people were interested in
24 seeing.

25 So there were some people who really wanted us

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179

1 to sort of show them what the retail experience would be
2 like. There are some people who wanted to see what
3 decision support software would look like on the touch
4 screen. There were some people who wanted to see the
5 TSPU running right there.

6 Depending on what we were trying to show, we
7 would do different things. Some people just wanted to
8 test the experience themselves, so they would show up at
9 retail without scheduling something with us.

10 Q Okay. So I guess let's focus on the technology
11 demonstrations that were not done through people just
12 walking into a Walgreens store.

13 Did you conduct these demonstrations at your
14 office?

15 A Sometimes. And sometimes we would bring the
16 TSPU to other places and allow people to run it there.

17 Q Okay. So let's talk about the demonstrations
18 that happened at the Theranos office, then.

19 A Sure.

20 Q So take us through the process of how a
21 demonstration would occur. You know, would it be at the
22 end of a meeting with either the investor or the business
23 partner, whoever the third party is? And what would you
24 show them? And how would you show them that the device
25 worked?



180

1 A Yeah. Again, I don't think it was that
2 systematic. I think we were very reactive to the
3 audience and what we thought was most relevant to the
4 discussions that we were having. There were some
5 discussions that were focused on how you could deploy the
6 TSPU, in which case we would run a sample right there on
7 the TSPU. There were some discussions that were focused
8 on the user interface of the TSPU and how it could be
9 used for decision support, in which case we would show
10 that. There were some samples where we would try to
11 process the sample, like we would in the clinical lab,
12 and we would send it to the lab.

13 It was run through essentially the product
14 teams as a technology demonstration, and then we would
15 report the result back like they would have gotten it if
16 they had gone to a retail location.

17 Q So in that last example you said there would be
18 instances in which you would place the sample in, but the
19 results would be generated sometime later and shared with
20 whoever --

21 A So we had --

22 Q Sorry. Let me just finish.

23 A Sorry.

24 Q -- whomever was giving the sample? Is that
25 what she -- is that what you were describing just now?

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181

1 A The last example?

2 Q Yes.

3 A No. So that -- we had little rooms in one of
4 our facilities, the 1601 facility, that were intended to
5 replicate exactly what Walgreens looked like or was
6 intended to look like if we were able to roll it out
7 broadly. And you could collect a sample in there
8 similarly to how you would at Walgreens. And then it was
9 sent to our lab, just like the sample would be at
10 Walgreens, and then we would run it. Except it was
11 outside of the traditional clinical lab process. It was
12 actually product teams who were doing it. And we would
13 report results back to people, is my understanding of how
14 the process worked.

15 Q Okay. So in that circumstance, the blood would
16 be drawn in a room?

17 A Yes.

18 Q And then the sample would then be sent to the
19 CLIA lab to be processed?

20 A Yes.

21 Q Okay.

22 BY MR. KOLHATKAR:

23 Q So just --

24 A But it -- just to be clear, I don't think it
25 actually got processed through the lab. It was processed

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182

1 through equipment that was in the lab but not the same
2 way a sample that was collected at retail would be. Does
3 that make sense?

4 BY MS. CHAN:

5 Q Not really. So how was it different from how a
6 retail sample would be processed?

7 A There was some R & D activity that occurred in
8 the CLIA lab, and I believe that these technology
9 demonstrations were done through essentially the product
10 teams, as opposed to the way a sample that was collected
11 at retail would be accessioned, and then run through the
12 lab. So same physical space but not through the formal

13 clinical lab process.

14 Q Why wouldn't you put it through the same
15 clinical lab process as other patients?

16 A In the instances that I'm thinking of, you
17 didn't have a requisition from a physician, so it wasn't
18 an official lab worker.

19 Q But I guess I just don't understand.

20 Why wouldn't you just have that sample put on
21 the same types of machines that a clinical lab sample
22 would go onto?

23 A It was my understanding you're supposed to
24 treat R & D samples differently from the clinical
25 samples. The clinical samples have to be ordered by an

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183

1 ordering physician, and they have to go through your, you
2 know, essentially certified collection process, which
3 would include our service centers that were listed for
4 being able to collect samples, and then run through our
5 lab.

6 Q But it sounds like, you know, the clinical
7 samples were being put through sort of a higher standard
8 process than some of the R & D samples because there
9 were --

10 A It was a more controlled process.

11 Q It was a more controlled process?

12 A Yeah.

13 Q There was a difficult validation process that
14 the CLIA lab had to go through in validating the test?

15 A Yes.

16 Q Why wouldn't you just -- since you already had
17 that framework in place, why wouldn't you put the
18 demonstration samples through that same higher-standards
19 process?

20 A In some cases, if someone wanted to go to a
21 retail location, you would. It's my understanding there
22 had to be a separation between anything that was done
23 sort of in a research or demonstration-type setting and
24 something that was actually ordered clinically as an
25 official medical result.

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184

1 Q So what were the machines that were being used
2 to process the technology demonstration samples?

3 A I don't know specifically. It would have been
4 generally reflective of what we were doing in the
5 clinical lab but not necessarily the same.

6 Q So -- but were you aware of instances in which
7 those technology demonstration samples were run on
8 third-party but modified devices?

9 A I can't sit here and recall a specific
10 instance, but I certainly knew we were running our --
11 what we called our chemistries on modified systems in the
12 lab. So if that was used for a demonstration, it would
13 have been reflective of what we were doing for
14 traditional lab testing.

15 Q And were you also aware that sometimes these
16 technology demonstration samples were being tested on
17 just commercially available third-party machines without
18 any modifications?

19 A To the extent we were running fingerstick, I
20 don't think we generally did that. There may have been
21 an exception or two, but that wasn't our general
22 practice.

23 Q Okay. So if you were doing a fingerstick
24 demonstration, it would generally be put on -- or your
25 practice at least in what you were aware of was that they

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185

1 would be tested in using either the TSPU or the
2 third-party modified devices?

3 A Yes.

4 BY MR. KOLHATKAR:

5 Q You mentioned the building at 1601 a few
6 minutes ago and the -- if I understood your answer, you

7 said that there was a CLIA lab space there but that there
8 were some R & D activities conducted in there.

9 Did I understand that --

10 A Yes.

11 Q -- correctly?

12 Where was the CLIA lab at 1601?

13 A So I think originally it was -- it was upstairs
14 and downstairs. And I'm trying to remember if it started
15 upstairs and then expanded downstairs. I'm not
16 completely sure, but there was -- part of the clinical
17 lab was on our first floor, and then it -- I think it
18 later expanded to the second floor downstairs.

19 Q And where was the -- sort of the Walgreens
20 mock-up room?

21 A Right by the entry lobby to the building.

22 Q On the first floor?

23 A Yes.

24 Q Okay.

25 A That's what I'm calling upstairs.

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186

1 Q All right. I think I lost you.

2 A Yeah.

3 Q So the entrance to the building is on the --

4 A Ground floor.

5 Q The ground floor. And then there's a basement
6 to that?

7 A Yeah.

8 Q Okay. And so the -- is it the original CLIA
9 lab was in the basement?

10 A No.

11 Q I got it backwards?

12 A Yeah. Maybe I didn't explain it well. Sorry.
13 The original CLIA lab was on that ground floor which I
14 was calling the upstairs.

15 Q Okay.

16 A And then later we expanded to that downstairs
17 floor which I was calling downstairs.

18 Q Was there a separate R & D lab at that 1601
19 address?

20 A There was.

21 Q Where was that?

22 A That was also on the ground floor, the
23 upstairs.

24 Q Okay. And I guess, how are these -- how are
25 these labs separated in any way?

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1 A The CLIA lab that was on the ground floor was
2 physically isolated. We constructed it to be a dedicated

3 space, and then the R & D facility that was on that same
4 floor was also its own contained space.

5 The lab that was on the downstairs facility was
6 also self-contained; although, there was some R & D
7 equipment in it at different points in time that was
8 being used to evaluate new lab developed tests to come
9 up. And I think there were the dividers that you can put
10 in rooms that just separated off that space so that they
11 would be isolated.

12 Q And you mean contained space, there was, like,
13 a door or a wall?

14 A Yes.

15 Q Was there a distinction in terms of where the
16 commercially available analyzers were placed either on
17 the upstairs or downstairs labs at 1601?

18 A I believe the commercially available analyzers
19 were in the upstairs lab at 1601.

20 Q And were there ever, I guess -- actually, I
21 think I understand your answer. Thank you.

22 MS. CHAN: Actually, could we take a quick
23 break?

24 MR. DWYER: Sure.

25 THE VIDEOGRAPHER: We're off the record at

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1 2:18.

2 (A brief recess was taken.)

3 THE VIDEOGRAPHER: We are back on the record at

4 2:35.

5 BY MS. CHAN:

6 Q Ms. Holmes, did you have any substantive
7 conversations with the SEC staff during the break?

8 A No.

9 Q So we were just talking about the technology
10 demonstrations before we went on the break. And I think
11 we were talking a little bit about the instance in which
12 third parties would come to Theranos' office, and a
13 demonstration would be conducted there. So I just wanted
14 to talk a little bit more about that process.

15 A Yeah.

16 Q So when you did invite others to come to your
17 office -- and there might be a different purpose for that
18 visit, but part of the purpose was also to demonstrate
19 the technology -- what would you do to prepare for that
20 demonstration?

21 A I don't know. I didn't generally interface
22 that deeply in the preparations for anything that was
23 associated with the clinical lab or through the
24 demonstrations that ran in it.

25 Q So you mentioned there was a room at Theranos

1 somewhere on that -- that ground floor where, you know,
2 blood draws would be taken.

3 Was that also the room which, you know, if
4 devices would be shown to third parties that that room
5 would be used to show those devices as well?

6 A No. I believe there was a different room that
7 had the devices in it. And to my memory, it had a number
8 of different devices, the 3 series and the 4 series
9 models that we were working on.

10 Q Where was that room located?

11 A Also on the ground floor.

12 Q Was it next to the blood draw room?

13 A No. It was further down the hallway.

14 Q Okay. So you said there were some 3 devices,
15 some 4 devices in there. You're talking about Version 3
16 or 3.5 and Version 4 of the miniLab?

17 A Yes. And that would have changed at different
18 points in time. That's just a memory I have of the room,
19 but it wouldn't always be the same.

20 Q Okay. And so were there already devices in
21 that room, or before a demonstration would you need to
22 instruct somebody to bring the devices into that room?

23 A I think it depends on the specific

24 demonstration. I think there may have been devices in
25 there for periods of time, and then there wouldn't be.

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190

1 Q Okay. Were there ever -- did you recall any
2 times in which you would request for Theranos employees
3 to help prepare a room and to actually bring in sort of
4 rows of the TSPUs into the room to make it look like, you
5 know, they were sort of stacked one on top of each other
6 and in a row? Do you ever recall that ever happening?

7 A For a demonstration? I don't think so. I
8 mean, there were periods of time in which we had the
9 TSPUs on racks in the R & D lab and when we were at
10 different points in time thinking about how we could use
11 them in hubs. But I don't have any specific memories of
12 demonstrating that necessarily.

13 Q Okay. So you just mentioned that there was a
14 time in the R & D lab when they were on racks?

15 A Yes.

16 Q And you said you were thinking about using them
17 in the hub. What do you mean by that?

18 A We would look internally at if you were to try
19 to use a lot of them together what would it look like, so
20 they were on racks for that purpose. But I don't
21 remember demonstrating that at 1601.

22 Q Why were you looking at running all of them
23 together? What was the purpose of having them all on
24 racks?

25 A My memory was at different points in time we



191

1 were trying to see if you needed more than one in a
2 location, how you would put them together and looking at
3 things like whether they overheated and these types of
4 things.

5 Q Why were you looking into having them all
6 together, though? Were you having discussions with
7 another party about possibly putting these machines in a
8 room? Or why were you doing this exercise?

9 A I can't remember. I just -- I just remember
10 that early on we looked at a lot of different models of
11 what you could do with these TSPUs and what the best way
12 to build up the business model around them was.

13 Q Okay. So you mentioned also earlier before the
14 break that typically you would use the same types of
15 devices to conduct testing on demonstration samples as
16 you would use for clinical samples.

17 Do you remember that testimony?

18 A I do.

19 Q So sometimes there might be an instance in

20 which a commercially available machine that was modified
21 by Theranos would be used to conduct testing on a
22 demonstration sample?

23 A That's my understanding from what I've learned
24 about the demonstration process.

25 Q Okay. And did you ever bring one of those

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192

1 commercially available machines up to that demonstration
2 room with the other TSPUs or bring, you know, the third
3 party down to your lab to see that machine to say, you
4 know, this is the machine that's going to be conducting
5 the testing on your sample?

6 A You can't move the commercially available
7 machines. They're very large. I don't think we very
8 often walked people through the labs. There may have
9 been a couple of instances in which we did. I don't have
10 specific memory of visits in which I was ever in the lab
11 with people.

12 Q Okay. Do you ever recall telling the people,
13 whose blood was being drawn and tested, that their blood
14 would be tested on commercially available machines?

15 A Not in the context of a demonstration, no.

16 Q So you just mentioned that the commercially
17 available machines are typically very large?

18 A Yeah.

19 Q How large are they in comparison to the TSPU?

20 A Just to be clear, you're talking about
21 commercially available machines, meaning the ones that
22 were used for venous draws?

23 Q Well, are they any different from the ones that
24 you had modified? Were you using the ADVIA also for
25 venous draws?

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193

1 A We were, yes.

2 Q So I guess let's compare the ADVIA, the Siemens
3 ADVIA 1800 analyzer, to the TSPU.

4 A Yeah.

5 Q So what was -- how would you compare the two in
6 terms of size?

7 A The TSPU is about the size of a desktop. The
8 ADVIA is probably, I don't know, almost half of this
9 table. Maybe a little bit smaller.

10 Q Okay. So something like ten feet across? Would
11 that be --

12 A Six, maybe five.

13 Q Five or six feet across?

14 A Yeah.

15 Q And the TSPU is something like two feet?

16 A I'll be wrong about the dimensions. But, yeah,
17 two by half a -- I don't know. Less than one foot, I
18 think.

19 Q Okay. So it sounds like the Siemens ADVIA
20 machine was much larger?

21 A Yes.

22 Q By maybe five times the TSPU? Would that be
23 fair to say?

24 A Sure. About that, yeah.

25 Q Okay. Were you aware of times when Theranos

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194

1 would choose only tests that could be run by fingerstick
2 to be tested on people coming in for demonstrations
3 rather than tests that could only be run through a venous
4 draw?

5 A It was my understanding that, to the extent we
6 ran fingerstick, there were a limited number of tests
7 that we could run on fingerstick. And so we would only
8 run those tests on fingerstick.

9 Q Okay. But if somebody came in and asked to
10 have a test done and that test was only -- could only be
11 done through a venous draw, were you aware of occasions
12 when you or somebody at the company would make the
13 decision not to run that test because it would require a

14 venous draw?

15 A So it's my understanding our practice at retail
16 was that we would tell people that we would need to draw
17 up a test to be able to run the order on fingerstick, and
18 it was my expectation generally that the same thing was
19 done for demonstrations unless we were trying to do
20 something different. But that was my general
21 understanding of the process.

22 Q So your general understanding was that if
23 somebody came in for a demonstration and they requested a
24 test that could only be done by venous draw, that that
25 test would be dropped and they would be told?

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195

1 A Yes.

2 Q So what would they be told about why the test
3 was being dropped?

4 A I don't know specifically. I wasn't personally
5 involved in a lot of those conversations. I think
6 generally our messaging at retail was that if you want a
7 fingerstick order, you're going to need to drop this
8 analyte. Would you like to go ahead with the test? And
9 people would say yes or no, and we'd then fulfill the
10 order based on their response.

11 Q Were you -- were you present at these

12 technology demonstrations?

13 A I'm sure sometimes I was. If we were talking
14 about the TSPU and it was in the room, then, yes.

15 Q Was Sunny Balwani also present?

16 A In general, yes. I mean, I would want to talk
17 about a specific instance to respond completely. But
18 yes.

19 Q Okay. And were there instances in which
20 neither of you was present, that somebody else from
21 Theranos would be running the demonstration?

22 A It could have been.

23 Q Who -- who would have done it if it wasn't you
24 or Mr. Balwani?

25 A I don't know specifically. It could have been

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196

1 some of the different project managers, but I'm not sure.

2 BY MR. KOLHATKAR:

3 Q So we've been talking about the devices, and
4 you mentioned having a room with kind of multiple
5 iterations of the device.

6 A Yeah.

7 Q At one point in time did Theranos attempt to
8 develop a TSPU that had multiple ports or multiple
9 cartridge receptacles?

10 A We did.

11 Q When was that? And what was it called?

12 A So wonderfully it was, I believe, also called
13 miniLab. And I don't know what years we were working on
14 it. I -- I would guess it was between 2011 and 2013, but
15 I'm not sure.

16 Q Was it -- I mean, did you consider it to be a 4
17 series device or a 3.5 iteration? I guess, in your mind
18 what kind of -- what category did it fall under?

19 A I don't know if it was either. It was closer
20 to the 4 series than the 3 series. But it was sort of
21 its own category.

22 Q What was the -- did everyone -- did anyone ever
23 call it like a multi-bay device?

24 A I recognize that, that name. I think that was
25 an internal name.

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197

1 Q What was the purpose in designing that device?

2 A That was in response to Safeway's request to
3 invest in and develop a specific version of miniLab that
4 could fit into the cabinets that they were building in
5 the Safeway stores.

6 Q Did you have a sense, an understanding of why
7 Safeway was requesting kind of a TSPU of a specific kind

8 of cabinet size?

9 A The CEO at the time had a vision for what the
10 wellness centers in Safeway could look like, and he
11 thought that, based on the volume that they would be
12 seeing in the stores, that that multi-bay design would be
13 the best design for the Safeway stores. And so we began
14 investing in developing it.

15 Q Was -- is it fair to say that the multi-bay
16 TSPU was sort of another solution to sort of the
17 throughput problem that you've described earlier?

18 A Different throughput problem. This is a
19 throughput problem at the point of care. But, yes, it
20 also would allow for handling throughput at the point of
21 care.

22 Q What happened to the development of the
23 multi-bay?

24 A We stopped it at a certain point, and I don't
25 remember when and why specifically we stopped.

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198

1 BY MS. CHAN:

2 Q Okay. So heading back to the demonstrations
3 now, so were there times when you chose not to perform
4 certain tests because they could only be done on a venous
5 draw than a fingerstick or that you decided to pull them

6 from the list of tests that people would be coming in to
7 do during the demonstrations?

8 A I don't know that I completely understand. The
9 question is whether we stopped doing demonstrations
10 because we couldn't do it on fingerstick?

11 Q Were there any times that you can recall where
12 somebody came in with a list of tests that included a
13 venous draw, a test that could only be done through a
14 venous draw, and you chose not to perform that test
15 because you -- because it just couldn't be done through
16 the -- either the TSPU or the modified protocol on the
17 third-party device?

18 A I don't recall instances in which we chose to
19 do that. I recall instances in which we asked people
20 whether they would like it to be dropped. And they
21 indicated yes, and we proceeded.

22 Q Okay. Do you recall any instances in which you
23 chose to perform certain tests on the lists that people
24 were coming in with but to limit the number of
25 fingersticks that would be done so it would only be

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199

1 performing certain tests because it could only be done
2 using a limited number of fingersticks?

3 A I don't recall that. I know that -- I mean,

4 ultimately the number of tests you do correlates with how
5 much blood you can get.

6 Q Okay. And do you recall an instance in which,
7 you know, you or somebody else at Theranos made the
8 decision? It wasn't the decision of somebody who came in
9 to do the testing?

10 A You mean specifically what decision, just so I
11 best answer the question?

12 Q The decision to drop certain numbers of
13 fingersticks from the draws because -- or sorry. Let me
14 just start over again.

15 The -- was there ever any occasion where you or
16 somebody else at Theranos made the decision not to run
17 certain tests because it would require a larger number of
18 fingerstick draws, and so you would drop tests so that it
19 would only require, say, one or two fingerstick draws?

20 A So I know that generally we were trying to
21 limit the number of fingersticks you would do on a
22 patient, and we had different rules at different points
23 in time in our service center. I'm aware that generally
24 we focused on trying to have as few fingersticks as
25 possible to try and improve the demo experience.

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1 Q So why did you do that?

2 A It just makes it a better experience for the
3 patient.

4 Q But, you know, if somebody's coming in with,
5 say, ten tests and that required five fingersticks, even
6 if it doesn't create a better experience for them to do
7 the five fingersticks, why wouldn't you just do the five
8 fingersticks for them?

9 A We --

10 Q I'm kind of -- I'm just -- if you understand.
11 I'm not really understanding why the better patient
12 experience trumps what a patient would want to get done.

13 A I don't think we offered that. I think we, as
14 part of the service offering, set a limit of
15 fingersticks. I believe it was three at retail. And if
16 it was ever more than three, then we would just
17 automatically revert to the butterfly needle draw in the
18 arm. And for demos I think we generally tried to have it
19 be as few as possible.

20 Q How many tests could be run on a single
21 fingerstick draw?

22 A So it depends on how much blood comes out of
23 the person's finger which is different person by person.

24 Q Let's say you're able to get the max amount of
25 blood on a single fingerstick. How many tests could be



1 run on that fingerstick draw?

2 A A large number. I mean, you can get hundreds
3 of microliters out of a finger if you get the max amount
4 of blood. So a complete order.

5 Q What is a complete order?

6 A It's generally 3.2 CPT codes, which is
7 30-something tests or more.

8 Q So Theranos was able to run 30-something tests
9 on a single fingerstick draw of blood so long as it was
10 the maximum amount? Is that --

11 A That's my understanding.

12 Q -- your understanding?

13 A Yeah.

14 Q I'm going to hand to you what's been marked as
15 Theranos Exhibit 202.

16 A Do you want this one?

17 Q You can put that aside. Thank you.

18 (SEC Exhibit No. 202 was marked for
19 identification.)

20 MR. DWYER: Thank you.

21 BY MS. CHAN:

22 Q Theranos Exhibit 202 purports to be an August

23 13th, 2013, e-mail from Elizabeth Holmes to (b)(6);(b)(7)(C)

24 with a copy to Sunny Balwani, (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C)

25 (b)(6);(b)(7)(C) The subject line is "Re devices in the demo room

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202

1 for tomorrow's meeting" with starting -- with Bates No.
2 TS-0375316.

3 Have you seen Theranos Exhibit 202 before?

4 A I -- I don't recognize it. But I see -- I see
5 the e-mail to and from me.

6 Q Did you draft and send Exhibit 202 on or about
7 August 13th, 2013?

8 A I don't have any reason to doubt it.

9 Q Okay. You'll see in the bottom half of the
10 e-mail (b)(6);(b)(7)(C) is sending an e-mail to you and Sunny
11 Balwani. Do you see that e-mail?

12 A Yes.

13 Q And he writes, "The following devices are
14 planned to be in the demo interview room. No. 1, 3.5
15 Edison with demo app set to run null protocol; No. 2, 4S
16 with demo app set to run null protocol; and No. 3,
17 miniLab with demo app set to run null protocol; and then
18 finally, No. 4 is miniLab with demo app. Note that this
19 will not be able to run the null protocol due to old
20 pipette nozzles that fail once they initialize in the
21 protocol. We can keep this in the room for show, but if
22 we demo on a miniLab, it should be on the other miniLab."

23 Do you see that?

24 A I do.

25 Q What is the demo app that is being put on these

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203

1 machines?

2 A I don't know.

3 Q And what did you understand null protocol to
4 mean when you received this e-mail?

5 A I'm not -- I'm not sure what I understood at
6 the time. I was speculating earlier that it's probably
7 one of the test protocols or QC protocols.

8 Q Okay. Do you think the demo app and the null
9 protocol could be the same thing?

10 A I don't know. I'm not sure.

11 Q Did you ever ask (b)(6);(b)(7)(C) what he was talking
12 about after he sent this e-mail?

13 A I don't know. I assume I had some
14 understanding of it at the time, but I don't know.

15 Q You assume you had some understanding at the
16 time?

17 A That we were going to be showing miniLab
18 technology for some purpose. I don't know if I knew
19 specifically what this software was referring to or not.

20 Q So in No. 4 when (b)(6);(b)(7)(C) says that "the

21 miniLab will not be able to run the null protocol because
22 of old pipette nozzles that fail once they initialize in
23 the protocol," were you aware of this issue back then in
24 2013, an issue with the pipette nozzles?

25 A I don't know if this was a specific issue with

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204

1 pipette nozzles or just that this instrument hadn't been
2 maintained, that there was just old nozzles on a device.
3 So it wasn't, I'm inferring from this, able to run
4 whatever protocol the other ones were running.

5 Q Okay. And then No. 5, he writes, "We haven't
6 discussed this, but would you also like to have the 3.0
7 Edison that can run the H1N1 military demo on it?"

8 And so what is the H1N1 military demo?

9 A I believe this was the decision support
10 application that we'd built the user interface.

11 Q What is that decision in support?

12 A So when we were talking earlier about different
13 purposes of different demos on the software side, one of
14 the greatest utilities that we'd thought we'd have with
15 the device is the ability to have untrained operators put
16 a series of inputs in based on symptoms and be able to
17 show on the screen based on the inputs they put in what
18 condition they had. And so that one just ran, I think,

19 that specific software.

20 Q So the H1N1 military demo, that's where people
21 put in symptoms and, what, it tells you what test to run?

22 A No. This one I think tells you based on the
23 symptoms whether you have a certain infection.

24 Q Okay. So what does that -- what's the
25 connection with blood testing there?

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205

1 A So the same machine that had the decision
2 support could then also incorporate the technologies that
3 we were doing for laboratory testing. And the concept is
4 in remote settings you could use both the decision
5 support as well as the lab data to facilitate care.

6 Q Okay. So you then respond to (b)(6);(b)(7)(C) in your
7 e-mail, "Yes re 3.0. Thanks."

8 So you're telling him, yes, let's include the
9 3.0 miniLab. Is that your understanding of what you're
10 responding to here?

11 A Yeah, it looks like it.

12 Q Okay. So this e-mail chain was being sent
13 August 13th, 2013. Do you remember what demonstration
14 this was for?

15 A No, I don't.

16 Q It seems like (b)(6);(b)(7)(C) is preparing a number

17 of TSPUs to be put in a room.

18 Do you recall if he might have placed a
19 commercially available machine in the room for view by
20 whoever was coming by for the demonstration?

21 A No. Commercially available machines, to my
22 knowledge, were only in our clinical lab.

23 Q Okay. So they wouldn't have been in that same
24 room with these other machines?

25 A I don't -- I don't think so.

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206

1 Q You can put that one aside.

2 I'm handing to you what's been marked Theranos
3 Exhibit 203.

4 (SEC Exhibit No. 203 was marked for
5 identification.)

6 MR. NEAL: Thank you.

7 BY MS. CHAN:

8 Q Exhibit 203 purports to be an August -- I'm
9 sorry -- an October 10th, 2014, e-mail from (b)(6);(b)(7)(C)
10 (b)(6);(b)(7)(C) to Sunny Balwani and Elizabeth Holmes. Subject
11 line is "Re (b)(7) visitors to WAG Saturday" with starting
12 Bates No. TS-0830981.

13 Have you seen Exhibit 203 before?

14 A I have.

15 Q What is Exhibit 203?

16 A It's an e-mail from (b)(6),(b)(7)(C) to Sunny and
17 myself about a demonstration.

18 Q And did you receive and review Exhibit 203 on
19 or about October 10th, 2014?

20 A I don't know if I received it at that time. I
21 reviewed it later in preparation for testimony here.

22 Q How many documents did you review in
23 preparation for testimony?

24 A I don't know specifically. A number of them.

25 Q And what did they pertain to? What topics did

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207

1 they pertain to?

2 A Generally -- I don't know if I would categorize
3 them all in one area -- our operations of the business
4 over the course of the last many years. I'm trying to
5 refresh my own memory and recollection on a lot of
6 different areas, some of which I wasn't that involved in.

7 Q Were there any documents that you reviewed
8 outside of being shown by your counsel?

9 A No.

10 Q So if you take a look at this e-mail, you'll
11 see in the initial e-mail on 982, which is the second
12 page, there's an e-mail from (b)(6),(b)(7)(C) to you and

13 Sunny Balwani. And he says, "Where can I find the list
14 of names you mentioned from (b)(7) who could come into WAG
15 Saturday?"

16 Do you understand "WAG" to be referring to
17 Walgreens?

18 A Yes.

19 Q "We will send over the different work flows for
20 how we will accommodate fingerstick regardless what's on
21 the order and possible issues associated as requested."

22 First of all, who is (b)(6)

23 A (b)(6);(b)(7)(C)

24 (b)(6);(b)(7)(C) we were discussing earlier.

25 Q Okay. Were they at one point a potential

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208

1 investor in Theranos?

2 A They were.

3 Q So what --

4 BY MR. KOLHATKAR:

5 Q At this point in time were they a potential
6 investor of Theranos?

7 A I think at this point in time we'd engaged with
8 them to be an advisor to us, and then later they became a
9 potential investor.

10 Q When do you think they -- I guess, how were

11 they engaged? What advisory services were you engaged in
12 before?

13 A In general, the restructuring that we wanted to
14 do by bringing in family-controlled, sort of, funds or
15 companies, investors and then trying to structure
16 ourselves as a private company, and they were going to be
17 our financial advisor in that context.

18 Q And do you recall, I guess, how soon after the
19 time period they were sort of in that advisory role they
20 also became a potential investor in Theranos?

21 A My understanding is that the term sheet
22 discussions with them were in December of 2014. I don't
23 know when exactly the transition from thinking of them as
24 someone we wanted to retain as an advisor moved to when
25 they were looking at us as an investment.

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209

1 BY MS. CHAN:

2 Q Was there any discussion with (b)(7) about them
3 forming a fund through which these other families would
4 be investing through?

5 A I don't know. I don't know.

6 Q So when you said that they were performing an
7 advisory role to Theranos, was it mainly sort of a
8 finder's role to introduce Theranos to some of those

9 families that Theranos was looking to obtain as investors
10 in the company?

11 A Initially, when I first met (b)(6),(b)(7)(C) the concept
12 was that he would advise us and me on how to structure
13 the company as a private company for the long-term. And
14 he has an advisory role with a lot of the people behind
15 these companies, and so I thought he could be a partner
16 in helping us to think about who to bring in and how to
17 structure it and ultimately, if we tried to stay private,
18 how to structure the company.

19 Then, as some of those families became
20 interested, we were talking to him about it. And I think
21 they became interested in about potentially being an
22 investor. There was a lot of discussions about that.

23 Q Okay. So when (b)(6),(b)(7)(C) talks about the
24 different work flows that he'll be sending over for how
25 to accommodate fingerstick regardless of what's on the

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210

1 order, what did you understand him to be referring to
2 there?

3 A So I don't know if I read this at that time. In
4 having reviewed it recently, my understanding is he's
5 trying to communicate around doing a fingerstick for
6 whoever is coming to do the demonstration from (b)(6),(b)(7)(C)

7 Q And why was it important to accommodate
8 fingerstick regardless of what's on the order?

9 A My understanding is that this was the type of
10 situation in which whoever was coming wanted to
11 experience a fingerstick. So we were going to try to
12 offer a fingerstick for the demonstration.

13 BY MR. KOLHATKAR:

14 Q Just so I understand, that's your understanding
15 now after having reviewed the materials. What was your
16 understanding back at the time in October 2014?

17 A I don't remember receiving this e-mail or
18 engaging on this at that time.

19 BY MS. CHAN:

20 Q Okay. So then if you turn back to 981, there's
21 another e-mail from (b)(6);(b)(7)(C) to you and Mr.
22 Balwani. And he writes at the top, "Also wanted to send
23 along our thoughts for how to accomplish the FS in the
24 scenario if their orders prompt venous."

25 So do you understand "FS" to be referring to

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211

1 fingerstick?

2 A I do.

3 Q And would you sometimes use FS in your e-mails
4 to refer to fingerstick as well?

5 A I don't know. Maybe. I don't have memory of
6 that, but I wouldn't be surprised if I did.

7 Q Okay. And would you use -- would it be
8 surprising if you used it in other methods of
9 communication, whether in text messages or in other
10 documents?

11 A Again, I don't have memory of it. But I
12 believe that's what it's referring to here.

13 Q He goes on to say, "Assumptions here from EAH
14 are that we must not do venous draw, and we cannot tell
15 them that their orders -- order prompts venous if it
16 does."

17 Is "EAH" referring to you?

18 A Yes.

19 Q Are those your initials?

20 A Yes.

21 Q Okay. So what is he referring to here when he
22 says that the assumptions here from you are that "we must
23 not do venous draw, and we can't tell them that their
24 order prompts venous"?

25 A Honestly, I don't know. My understanding in



1 looking at this now is that this is a situation where
2 whoever was coming had told us that they were coming and

3 that they wanted to do a fingerstick, and we were trying
4 to be prepared to do a fingerstick. That's my best
5 understanding of it.

6 Q Do you recall telling (b)(6),(b)(7)(C) that a venous
7 draw must not be done?

8 A No.

9 Q Do you recall telling him that, you know, he
10 shouldn't tell them if the order prompts a venous draw?

11 A No.

12 Q Why would it be important not to tell people
13 that their order requires a venous draw?

14 A I think this was a case, and this is my best
15 understanding from having reviewed it recently, in which
16 whoever was coming wanted a fingerstick. And so we were
17 trying to communicate to our teams they've told us that
18 they're coming to do a fingerstick. Please do a
19 fingerstick.

20 BY MR. KOLHATKAR:

21 Q Did anyone from (b)(7)(C) communicate to you that
22 they wanted a fingerstick for this visit in the October
23 2014 time frame?

24 A I don't know. That was my best understanding
25 from looking at this document, that they'd communicated

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1 that to somebody.

2 Q But you don't have any memory of, back in your
3 mind back in the October 2014 time period, recalling a
4 conversation with anyone at (b)(7) about that?

5 A I don't. I don't.

6 BY MS. CHAN:

7 Q Okay. So if you look down toward the middle of
8 the page, there are two scenarios. I wanted to focus on
9 Scenario 1 first.

10 So Scenario 1 says, "Scanned order from (b)(6)
11 VIP contains tests that prompt for venous draw."

12 Do you see that?

13 A Uh-huh.

14 Q And then there are two use cases, Use Case A
15 and Use Case B. Why don't you take a look at that
16 section of the e-mail, and let me know when you're done.

17 A I read it.

18 Q What's the difference between Use Case A and
19 Use Case B here?

20 A I'm just looking at it again in that context.

21 I'm actually not sure.

22 Q So Use Case A says, "Venous is prompted due to
23 some tests not yet being on FS," or fingerstick, "but
24 would otherwise prompt FS."

25 Do you understand what that means?

1 A Reading it now, it looks like he's referring to
2 a hypothetical scenario in which there are some tests
3 that have not yet been brought up on fingerstick. But
4 I'm actually -- I'm not completely sure.

5 Q Okay. So in the next bullet point he says,
6 "Remove tests that are not yet on FS and complete
7 transcription."

8 Do you see that?

9 A Yes.

10 Q And then "The visit is completed per SOP."

11 And then he goes on to say, "Negatives. Need
12 to either tell the patient at the store that we will not
13 run a few tests. This would require (b)(6),(b)(7)(C) calling the
14 store to have them tell the patient since it cannot be
15 handled through the app or tell them on the back end that
16 we could not run certain tests."

17 Do you see that?

18 A Yes.

19 Q Okay. And then Use Case B. That's "venous is
20 prompted due to volume of test, but test would prompt FS
21 if ordered individually."

22 What did you understand that scenario to be
23 about?

24 A My understanding now is that if -- the tests
25 were validated on fingerstick but that there were so many

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215

1 of them that you wouldn't be able to run them all from a
2 single visit's worth of fingerstick.

3 Q Okay. So, in other words, I think you
4 mentioned something about, you know, a single fingerstick
5 draw if -- if the person was a good bleeder, you could
6 actually run 30 tests, or you think that in this scenario
7 this person might come in with more than 30 tests to be
8 performed?

9 A I mean, I'm speculating. I don't know what he
10 meant, but that's my best guess in looking at it right
11 now.

12 Q Okay. Fair enough. And then if you go to the
13 sub bullet points underneath, it says, "Remove enough
14 tests in SM to allow patient to proceed with FS."

15 What is SM?

16 A I don't know.

17 Q I'm not sure. Is that the name of some system
18 that Theranos uses?

19 A I mean, I could speculate that it's a piece of
20 software, but I'm not sure.

21 Q And the next sub bullet under that: (b)(6);(b)(7)(C) or

22 (b)(6),(b)(7)(C) will determine what combination of CTNs are required
23 to complete the full order and communicate this to (b)(6),(b)(7)(C)
24 before she brings the (b)(7)(C) VIP into the draw room."
25 What does -- what does CTN stand for?

216

1 A Capillary tubes and nanotainers.

2 Q And then the next bullet point: (b)(6),(b)(7)(C) will
3 collect the number of CTNs required with as few sticks as
4 possible. She will flag the samples so they are handled
5 with extra care when they arrive at the lab."

6 And finally there are the negatives. The first
7 bullet point: "If (b)(7)(C) VIP is a self-paid patient, cash
8 or credit, then the receipt printed by the app will only
9 show the tests transcribed which will not include all the
10 tests on the order."

11 And the second bullet point: "If they notice
12 missing tests on the receipt, they may ask the WAG tech
13 about it. Worse case, they would make a call to (b)(6),(b)(7)(C) and
14 (b)(6),(b)(7)(C) and tell them everything's fine. (b)(6),(b)(7)(C) will also be
15 able to come out of the draw room once check-in is
16 complete to welcome them into the room and distract them
17 from looking at the receipt."

18 Why was it necessary to have (b)(6),(b)(7)(C) distract the
19 person from looking at the capillary tubes and

20 nanotainers?

21 A I don't know why this was written here. My
22 understanding is that we followed exactly what the SOP is
23 that we did at retail, which is this Case A. That would
24 have been my expectation, and I believe that's what we
25 did for this visit.

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217

1 BY MR. KOLHATKAR:

2 Q What's your basis for that belief? Did you
3 review some other documents that suggest the SOP was
4 followed?

5 A I did not review other documents, but it's my
6 understanding that that's what we always did.

7 Q Have you spoken with (b)(6);(b)(7)(C) about
8 this document?

9 A I have not.

10 BY MS. CHAN:

11 Q And just to check on a couple of things.

12 So here when (b)(6);(b)(7)(C) is referring to

13 (b)(6);(b)(7)(C)

14 A I don't know. I think so, but I don't know.

15 Q And then (b)(6);(b)(7)(C)

16 A I think so.

17 Q And (b)(6);(b)(7)(C) at Theranos?

18 A She was, yes.

19 Q She was a (b)(6);(b)(7)(C)

20 A Yes.

21 Q Okay. You can put that one aside.

22 I'm handing to you what's been marked Theranos
23 Exhibit 204.

24 (SEC Exhibit No. 204 was marked for
25 identification.)

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218

1 BY MS. CHAN:

2 Q Exhibit 204 purports to be an October 13th,
3 2014, e-mail from (b)(6);(b)(7)(C) to Elizabeth Holmes with a
4 copy to Sunny Balwani and (b)(6);(b)(7)(C) Subject line
5 is "Re testing in Arizona for (b)(6);(b)(7)(C) with starting
6 Bates No. THPFM0001308054.

7 Have you seen Exhibit 204 before?

8 A I believe so. At least parts of it.

9 Q What is Exhibit 204?

10 A An e-mail exchange. It looks like it's
11 actually several e-mail exchanges. Originally between me
12 and Rob Walton and then it looks like later from our team
13 to me and others in the company.

14 Q Did you receive and review Exhibit 204 on or
15 about October 13th, 2014?

16 A I don't remember that, but I don't have any
17 reason to doubt this.

18 Q Okay. (b)(6);(b)(7)(C) on the subject line of
19 the e-mail.

20 Were there discussions between Theranos and Rob
21 Walton at this time in October 13, 2014?

22 A I'm looking back at the original e-mail which
23 is dated September. I believe that I met him in
24 September and had discussions with him at that time.

25 Q What were those discussions about?

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219

1 A Those were the conversations we were talking
2 about earlier about the vision initially for what this
3 could be with Walmart and what we were trying to do with
4 low-cost testing.

5 Q Were you also having discussions with him
6 possibly with the possibility of Mr. Walton investing in
7 Theranos as well?

8 A So we later had those discussions with Greg
9 Penner who's part of Madrone, which is the fund that Rob
10 is affiliated with.

11 Q Okay. And when were the discussions with
12 Madrone?

13 A I don't know specifically. Around this time

14 frame or slightly later.

15 Q Okay.

16 BY MR. KOLHATKAR:

17 Q Did you meet Rob Walton at that BDT
18 presentation or around that time?

19 A Yes.

20 BY MS. CHAN:

21 Q Which one was it? Did you meet him at the
22 presentation, or did you meet him around the time of the
23 presentation?

24 A Around the time of the presentation, I had a
25 physical meeting with him in Chicago while that

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1 conference was underway. I don't know that I met him
2 there, but I met him around then, if that makes sense.

3 BY MR. KOLHATKAR:

4 Q So I'm assuming your presentation was some
5 amount of time, but you spent more than that amount of
6 time in Chicago and --

7 A Had meetings.

8 Q And to the best of your recollection, he was
9 one of the people you met there, whether at a BDT
10 organized event or otherwise?

11 A Yes. I had a meeting with him during that

12 trip, yes.

13 Q Okay.

14 BY MS. CHAN:

15 Q So if you look at -- I think you're looking at
16 that, the last page of the document, which has Bates No.
17 63 on it. So the first e-mail from Rob Walton to you is
18 an e-mail where he says, "It was great to meet you in
19 Chicago last week."

20 Do you see that?

21 A Yes.

22 Q Then you respond back to him and you tell him
23 that it was great to meet him as well. You then write,
24 (b)(6),(b)(7) can arrange the tests and appointments for you, and
25 we'll follow up on this note directly."

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221

1 Do you see that?

2 A Yes.

3 Q So you're referring there to -- when you're
4 referring there to arranging the tests and appointments,
5 is -- had you discussed with him the possibility of him
6 coming in for some testing?

7 A So I don't remember specifically. Just looking
8 at this document now, it looks like it's referencing an
9 invitation that we'd made to try to show them what the

10 wellness center experience could be like in the context
11 of what we were trying to roll out and if we were to
12 partner with Walmart at that time.

13 Q So did you say that you believed that he wanted
14 to experience the experience if you were to roll out with
15 Walmart? Is that what you just said?

16 A What that experience would be like.

17 Q What that experience would be like. Okay.

18 And would that include testing on the Theranos
19 device?

20 A Not necessarily on the device but using the
21 nanotainer for fingerstick collection.

22 Q Okay. And so did he tell you, you know, "I
23 just want the experience with the nanotainer, but I
24 don't -- you know, I don't mind which device you're going
25 to be using to conduct the testing"?

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222

1 A I don't believe there were ever conversations
2 on what devices were being used to conduct testing in the
3 clinical lab. It was more we'll collect some samples
4 from fingerstick and show you the experience of
5 collecting a fingerstick.

6 Q So you never had any discussions with him about
7 the actual devices that would be rolled out as part of a

8 Walmart relationship with Theranos?

9 A I don't remember the specific conversations. To
10 the extent we would have discussed what we have been
11 referring to as Phase 2 of our model, we would have
12 talked about our TSPU twice. But I can't remember a
13 specific conversation with him about that. I, again,
14 believe that this conversation, particularly with
15 Walmart, was about low-cost testing.

16 Q Okay. So if you turn to 61, which is two pages
17 in front of the page you're looking at, there's an e-mail
18 from -- I think you're -- you've passed it already. So
19 it's the page after that page.

20 There's an e-mail in the middle of the page
21 from Rob Walton to (b)(6),(b)(7)(C) and he's listing a
22 number of tests that his doctor has ordered for him to
23 do. Do you see that list?

24 A I'm just reading it. Yes.

25 Q And if you turn another page over. Actually,



223

1 two more pages on 59. There's an e-mail towards the
2 bottom of the page that's written by you on October 6th.
3 And you're writing to (b)(6),(b)(7)(C) with a number of
4 questions, it looks like.

5 You ask, "Do we have our sign and branding on

6 the door to the wellness center?" You ask if there are
7 desktop little bamboo trees in the room and either a
8 small waterfall or LCD display or a fish.

9 Do you see that?

10 A Uh-huh.

11 Q Okay. Why are you asking him whether or not
12 those things are in the room?

13 A Because we wanted to make sure that the
14 specific wellness center that he would go to would be
15 representative of what we hoped to have discussions with
16 them about rolling out more broadly.

17 Q Okay. And then -- and, actually, you'll see
18 that before your e-mail is on the top of that page,
19 there's an e-mail from (b)(6),(b)(7)(C) writing back to you.
20 And he says, "Please see my comments below."

21 A Uh-huh.

22 Q So does it look like he incorporated some of
23 his answers into your questions in your e-mail?

24 A I think so. I can't --

25 Q So, for instance, on the first one: "Do we

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224

1 have our sign and branding on the door to the wellness
2 center over the wellness center?" And then there's a
3 dash. (b)(6),(b)(7)(C) is going to be going to the store today to

4 check it out. This will be there if it's not there
5 already."

6 Would that have been (b)(6);(b)(7)(C) response to
7 you?

8 A I think so.

9 Q Okay. So going back to that same page on 59?

10 A Yes.

11 Q So after you ask those questions you say, "You
12 should loop (b)(6);(b)(7)(C) in on this to make sure it's PM'd
13 perfectly" to which (b)(6);(b)(7)(C) describes, "Done."

14 And then you go on to say, "Also get his order
15 in the system in advance so his identity remains
16 confidential."

17 Do you see that?

18 A I do.

19 Q And (b)(6);(b)(7)(C) responds, "This will be done.
20 (b)(6);(b)(7)(C) indicated that she will need to call his physician
21 to confirm which liver function test to perform."

22 Do you see that?

23 A I do.

24 Q Okay. And then going up the page to your
25 response back to (b)(6);(b)(7)(C) So it's on the same page,

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1 and this is still October 6th, 2014. You then respond,

2 "Do not have (b)(6);(b)(7)(C) call the physician. Work with (b)(6);(b)(7)(C)
3 on which ones we can run from the least number of CTNs,
4 and we will do that."

5 Why were you telling (b)(6);(b)(7)(C) to instruct (b)(6);(b)(7)(C)
6 not to call the physician?

7 A I don't know. I can speculate just on reading
8 this now that it's because of the well-defined --

9 (Court reporter clarification.)

10 THE WITNESS: I'm sorry. I'm sorry. I can
11 speculate just in looking at this right now that these
12 are well-defined tests, so we didn't need to call a
13 physician to ask what they were. Liver function is a
14 defined panel.

15 BY MS. CHAN:

16 Q Okay. So you're saying that (b)(6);(b)(7)(C) was
17 asking -- was telling you (b)(6);(b)(7)(C) would call the
18 physician to see which tests would be performed under the
19 liver panel and that you thought that there was no reason
20 to call the physician because you knew which liver panel
21 tests needed to be performed?

22 A I'm guessing, but just in looking at here,
23 that's my interpretation of this.

24 Q Okay. So why would you say, "Work with (b)(6);(b)(7)(C)
25 on which ones we can run from the least number of CTNs,

1 and we will do that"?

2 A I think that in general we were trying to have
3 as few fingersticks and as little amount of blood as
4 possible for this in our demos.

5 Q Okay. Why -- and in the end did you end up
6 telling Mr. Walton that there were certain tests that you
7 decided to run and certain tests that were not run
8 because you were trying to reduce the number of
9 fingerstick draws that would be necessary?

10 A I don't know what tests ended up being
11 running -- being run for that.

12 Q Okay. But did you tell him that there might
13 have been certain tests that were dropped off the list?

14 A I don't know that the tests were dropped off
15 the list. I think we may have actually satisfied his
16 order. I'm not sure.

17 Q But you don't recall any conversation of that
18 nature happening with him?

19 A I don't. I don't think I specifically
20 interfaced with him on the demonstration. But, again, to
21 the extent we would do that, we had an SOP for that at
22 retail.

23 Q Okay. You can put that aside.

24 I'm handing to you what's been marked Theranos

25 Exhibit 205.

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227

1 (SEC Exhibit No. 205 was marked for
2 identification.)

3 BY MS. CHAN:

4 Q Exhibit 205 purports to be a December 31st,
5 2014, e-mail from (b)(6);(b)(7)(C) to -- I'm sorry -- from

6 Elizabeth Holmes to (b)(6);(b)(7)(C) with a copy to (b)(6);(b)(7)(C)

7 (b)(6);(b)(7)(C) Sunny Balwani, and (b)(6);(b)(7)(C) with

8 subject line "Re VIP tomorrow - PT/PTT" with starting

9 Bates No. THPFM0000331112.

10 Have you seen Exhibit 205 before?

11 A I believe so.

12 Q What is Exhibit 205?

13 A I think it's an internal series of e-mail
14 exchanges about a demonstration.

15 Q Did you draft and send Exhibit 205 on or about
16 December 31st, 2014?

17 A I don't remember, but I don't have reason to
18 question the document.

19 Q Okay. So if you turn to 1116, which is the
20 last page of the document, there's an e-mail from

21 (b)(6);(b)(7)(C) He writes in his e-mail, "There is a

22 VIP coming in tomorrow with PT/PTT on his lab order. It

23 would be greatly preferred to collect via fingerstick.

24 Would it be possible to run PT and PTT from a CTN?"

25 Was VIP a term that you used to refer to people

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228

1 coming in for demonstrations such as investors,

2 prospective investors, business partners, the board?

3 A I've seen the term. I'm not quite sure who
4 specifically they used it for. I can infer that it was
5 demonstrations that they thought were important, but I
6 don't know exactly what types of people generally fell in
7 that category.

8 Q Did you ever use the term "VIP"?

9 A I don't know. I don't have memory of it. I
10 might have. I don't think so. I may have adopted it if
11 other people were using it.

12 Q Did you ever tell the project management team
13 that certain demonstrations were important?

14 A I'm sure I did. I can't sit here and remember
15 one right now, but we always wanted to make the
16 demonstrations go really well.

17 Q So -- and, actually, going back to his
18 statement where he says, "It would be greatly preferred
19 to collect via fingerstick," why would that be preferred?

20 A Again, it's my understanding that sometimes

21 when people were telling us they were coming for a
22 demonstration, they would explicitly communicate, "We
23 really would like to experience a fingerstick." And we
24 tried to do that.

25 Q Okay. If you turn the page to 1115, you'll see

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1 there's some back and forth that follows to answer (b)(6);(b)(7)(
2 (b)(6);(b)(7)(C) questions.

3 So (b)(6);(b)(7)(C) do you know who she is?

4 A I do.

5 Q Who is she?

6 A She's a scientist and now a team lead at
7 Theranos.

8 Q Team lead. So what does that mean?

9 A She manages a group of scientists.

10 Q Okay. And what does she do? What kind of
11 science does she do?

12 A Clinical chemistry.

13 Q Clinical chemistry. So what does that mean in
14 terms of the Theranos business?

15 A There's certain tests that her group focuses on
16 that she has worked to get on the miniLab. And now we've
17 just hired a new head of product development, and he's
18 expanding her responsibilities to broader groups of

19 tests.

20 Q Okay. So does she work on the assays or the
21 chemistries?

22 A Yes.

23 Q She does. So she's a team lead for one of the
24 assay groups?

25 A She is now. At this point in time I'm not sure



230

1 exactly what her role was. She may have been affiliated
2 with the clinical lab at that point. I don't know.

3 Q Which of the assay groups is she a team lead of
4 now?

5 A Clinical chemistry.

6 Q Clinical chemistry.

7 A Yeah.

8 Q And what does that mean in terms of what types
9 of tests fall in the clinical chemistry group?

10 A Chemistry panels, like the metabolic panel.
11 Again, her responsibilities at this exact moment are
12 expanding because of the new leadership we've brought in
13 on the product side, and we're particularly focused on
14 only Zika right now. But the team of people that she's
15 leading right now have expertise on those types of
16 chemistries.

17 Q Okay. And there's also another person on here
18 that we haven't talked about before, (b)(6);(b)(7)(C) who is
19 she?

20 A I believe she worked in the clinical lab, but
21 I'm not sure what her official role was.

22 Q So (b)(6);(b)(7)(C) writes, "I don't think we can
23 run PT and PTT on a FS right now. Previous runs were on
24 Tecan in 1601. Since we pulled PT from Tecan a while
25 back, I'm not sure either PT or PTT is validated using

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231

1 that method. Also not sure if there is still a validated
2 loss of reagents and controls in Normandy. The last PT
3 demo I did was in October. I do have a good working PT
4 protocol on FS, but it is far from validated."

5 So there are a number of acronyms here. What
6 are PT and PTT?

7 A I believe this is referring to two tests for
8 prothrombin time. And I don't know what PTT stands for,
9 but I think it's affiliated with prothrombin time.

10 Q Okay. And the Tecan, what is that referring
11 to?

12 A I mean, reading this now, I believe this
13 references to another one of the open platforms on which
14 we could put our proprietary chemistries in the clinical

15 lab.

16 Q Okay. And then 1601, is that referring to your
17 office address?

18 A The building that we were in at that time, yes.

19 Q Okay. And then finally, she talks about how
20 "there are still validated loss of reagents and controls
21 in Normandy."

22 What is Normandy referring to?

23 A I'm not sure.

24 Q Is there a part of your CLIA lab that is called
25 the Normandy lab?

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232

1 A I know they used that word to describe the sort
2 of small sample fingerstick operations at that time, and,
3 yes, they may have referred to a part of the lab that
4 way. I'm not sure.

5 Q When you say "they," who are you referring to?

6 A Our team at Theranos.

7 Q You mean everyone at Theranos might have
8 referred to the lab as Normandy?

9 A I don't know who. I'm guessing. I don't know.

10 Q Did you ever refer to the lab -- to portions of
11 the lab as Normandy?

12 A I can't -- I can't remember specific instances

13 sitting here, but I could have. I don't -- I don't
14 remember.

15 Q So -- so is what she's trying to say here that
16 there was no validated method that can perform the PT and
17 PTT test on fingerstick?

18 A I don't know that that's what she's trying to
19 say. I, reading this now, read this as she's saying
20 they've pulled the PT and PTT proprietary tests that we
21 were, I assume, running, from this e-mail, on
22 fingerstick. But I'm not sure.

23 Q Okay. So how -- I'm sorry. How is that
24 different from what I was asking you?

25 A I understood the question to mean, is she

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1 saying you can't run PT and PTT? And I was responding
2 that I think she's talking specifically about the use of
3 our proprietary chemistry on Tecan. I believe there were
4 other ways to run PT and PTT in the lab at that time.

5 Q Okay. And would those other methods be on
6 fingerstick?

7 A I don't know.

8 Q Okay. So then if you go up one e-mail from (b)(6);(b)(7)(C)

9 (b)(6);(b)(7)(C) back to (b)(6);(b)(7)(C) he says, "Confirmed with

10 Sunny that we need to make this happen for this

11 particular patient." And then he says, "Note that we can
12 run and report this as a technology demonstration."

13 Why is he making that distinction?

14 A I'm not sure.

15 Q Do you know who the VIP patient was --

16 A I don't.

17 Q -- that came in?

18 A I don't know.

19 Q So if you keep going back, now we're on 1113
20 and 1114. At the bottom of 1113, you'll see an e-mail
21 from (b)(6);(b)(7)(C) back to the group. And she says on
22 1114, the next page, "I was thinking about this through
23 my whole workout. So fun. And I think the best use of
24 my time would be to practice doing the assays manually."

25 And then if you flip to 1113, on the e-mail

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1 that Sunny Balwani writes back to her -- back to her and
2 maybe (b)(6);(b)(7)(C) as well, he says, "Run manually but
3 needs to be accurate."

4 So do you recall that certain assays were being
5 run manually?

6 A I don't have specific recollections of it.
7 Again, I was trying to speculate earlier about my best
8 understanding of how these technology demonstrations were

9 done outside of the clinical lab process. But I'm -- I'm
10 not sure.

11 Q Okay. So who would have the best understanding
12 as to how the demonstrations were run in the CLIA lab?

13 A I believe Sunny would be the best person to
14 ask.

15 BY MR. KOLHATKAR:

16 Q For VIPs, would Sunny let you know how the
17 demonstrations went?

18 A I'm sure he did sometimes. I don't have memory
19 of specific conversations with him. I -- sitting here
20 now, I would assume that I would have heard if it was a
21 problem probably from the person I was interacting with
22 because to the extent I was involved in this, it was
23 because I had a relationship with that person generally.

24 Q Do you recall an instance where any sort of VIP
25 expressed any concerns or had an issue with their tech

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1 demonstration?

2 A I can't -- I can't remember any time where that
3 happened sitting here. I wouldn't be surprised if it
4 did. I mean, we've been a start-up, but I don't have a
5 specific memory of one.

6 Q How about any instances where Sunny

7 communicated that he had concerns about a demo to you?

8 Can you recall any instance of that?

9 A No.

10 BY MS. CHAN:

11 Q Okay. And then turning back one more page to
12 1112 -- sorry. The other way around. Turning to the
13 front page.

14 On December 30th, 2014, there's an e-mail from
15 (b)(6),(b)(7)(C) And he says, "All results are ready to
16 be released, but (b)(6),(b)(7)(C) mentioned we should not report CL
17 since it's so high."

18 What does CL refer to?

19 A I'm not sure. I could -- I could guess that
20 it's chloride. But I'm not -- I don't know that for
21 sure.

22 Q Okay. And then he goes on to write, "For added
23 background, there are no apparent anomalies in the daily
24 processing. Both ADVIAs passed QC and daily samples ISE
25 are within TAE with no consistent offset."

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236

1 Is QC quality control?

2 A I believe so.

3 Q And what does ISCE (sic) stand for?

4 A I don't know what it means in the context of

5 this sentence. I know those words to mean ion-selective
6 electrode, but I don't know if that makes sense in this
7 sentence.

8 Q And what about TAE?

9 A I believe it's a reference to total allowable
10 error.

11 Q And then he goes on to say, "Should we report
12 with CL pending re-draw per usual protocol or better in
13 this case to go another route, i.e., not including C" --
14 I think he means CL -- "on the report, et cetera?"

15 Do you see that?

16 A I do.

17 Q What does the -- what did he mean -- what do
18 you understand him to mean, "Should we report with CL
19 pending re-draw per usual protocol"? What was your usual
20 protocol?

21 A I don't know. Reading this now, I interpret it
22 to mean, do we include the value on the report and then
23 say pending re-draw or not? But I'm not sure.

24 Q Was that your practice for clinical testing if
25 something was out of range to include it on the report?

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1 A I don't know.

2 Q Who would know the answer to that?

3 A Our laboratory director.

4 Q Okay. Who else would know besides the
5 laboratory director?

6 A Sunny might. I'm not sure.

7 Q Okay. And then you respond back on December
8 30th as well. You write, "It was that high on rerun two.
9 What do you think happened?" To which (b)(6),(b)(7)(C) then
10 responds back to you, "Yes, high on rerun."

11 Do you see that?

12 A I do.

13 Q And then you respond back, "Okay. Don't
14 include a report."

15 So are you instructing the team there not to
16 include the CL test on the report?

17 A I'm not sure. Reading it now, I read this to
18 mean if you have concerns about the value, don't report
19 the value. But, again, I don't have recollection of this
20 e-mail exchange.

21 Q Okay. Why wouldn't you tell (b)(6),(b)(7)(C) to just
22 include it on the report but ask the patient for a
23 re-draw?

24 A So I'm speculating here, but my understanding
25 was if you think that the concentration is incorrect,

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1 then you should not include it.

2 Q Okay. But I guess I'm just wondering, why
3 wouldn't you just include it but say this is too high; we
4 can't rely on it; let's do a re-draw?

5 A I mean, I'm not a laboratory professional. But
6 my understanding is if you believe it's wrong, you can't
7 report it.

8 Q Okay. And so do you know if the person who was
9 tested here was told that this result wasn't reported on
10 his lab report?

11 A I don't.

12 Q Did you make decisions like this for lab
13 reports routinely?

14 A No.

15 Q Okay. Why were -- why were you making that
16 decision this time?

17 A Again, I can't remember this particular
18 exchange. If it was someone who I was communicating
19 with, then I would have been in the loop on these. And
20 in general my philosophy on all of this has been if
21 there's a question about a result, don't report it.

22 Q Okay. And you also mention that the -- you
23 know, the lab director would know what the practice was.

24 Who was the lab director at this time? Was it

25 still (b)(6),(b)(7)(C)

1 A I think so, but I'm not sure.

2 Q So why wasn't he included on this e-mail
3 exchange?

4 A I don't know. It looks like this was done as
5 what's being referred to as a technology demonstration.

6 Q Was the lab director not involved in technology
7 demonstrations?

8 A I don't know.

9 Q Who would know whether that was the case?

10 A Again, I would -- I would talk to Sunny.

11 Q Do you know if the same kind of review -- which
12 is, you know, certain tests results are coming back too
13 high. Should we remove it, or should we keep it on? --
14 do you know if those types of conversations were taking
15 place within Theranos with respect to regular patient
16 testing?

17 A They should have been, but I now know that we
18 had not effectively implemented our quality system.

19 Q And who would have been managing that process,
20 reviewing patient results?

21 A It was the job of the lab director and the
22 director of quality for the clinical lab.

23 Q Okay. And who did they report to?

24 A Functionally up to Sunny.

25 Q Okay. Did you have any supervision, or did you

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240

1 have any responsibility for overseeing that part of the
2 business?

3 A To the extent I'm the CEO of the company, I'm
4 responsible for the company. But, no, I was not engaged
5 in it.

6 MR. NEAL: Why don't we take a short break.
7 We've been going a little over an hour.

8 MS. CHAN: Sure.

9 THE VIDEOGRAPHER: This concludes Media No. 3
10 of Elizabeth Holmes. We're off the record at 3:46.

11 (A brief recess was taken.)

12 THE VIDEOGRAPHER: We are back on the record at
13 the beginning of Media No. 4 of Elizabeth Holmes. The
14 time is 4:03.

15 BY MS. CHAN:

16 Q Ms. Holmes, did we have any substantive
17 conversations off the record during the break?

18 A No.

19 Q So I want to turn gears a little bit -- and you
20 can put that exhibit aside. And I want to change gears a
21 little bit and now focus on Theranos' relationship with

22 Walgreens.

23 So, you know, why don't you tell us from the
24 beginning sort of why Theranos was interested in engaging
25 with Walgreens and, conversely, what your understanding



241

1 was of why Walgreens was interested in partnering with
2 Theranos.

3 A Well, it evolved over a long period of time. We
4 were interested in partnering with Walgreens because of
5 the retail footprint. And we understood that they were
6 interested in partnering with us to bring lab services to
7 retail.

8 Q Okay. So when did you first start discussions
9 with Walgreens?

10 A I don't know specifically. I believe it was in
11 2010.

12 Q Who were your contacts at Walgreens at that
13 time?

14 A So it evolved over a period of time. Amongst
15 others, (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C)

16 Q And did it -- you said it evolved over time.
17 Were there others that entered the mix after 2010?

18 A Yes.

19 Q Who else were you in conversations with at

20 Walgreens after that date?

21 A I know there was a team at Walgreens that was
22 dedicated to working with us, and we tried to put a team
23 in place on our side too.

24 Q Who was the main Theranos contact at Walgreens
25 that you were working with? I'm talking about besides

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242

1 (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C)

2 A I don't know who the point was. Sunny was the
3 point for our project team, and he had a counterpart at
4 Walgreens. I don't know who specifically it was.

5 Q Do you know someone named (b)(6),(b)(7)(C)

6 A I do.

7 Q Do you know what his role was at Walgreens?

8 A I believe it also changed over time. I think
9 we first met him when he was involved with construction
10 in the stores. And then after the Boots acquisition, he
11 took on a different role.

12 Q After the Boots acquisition. When was the
13 Boots acquisition?

14 A I don't know specifically. I want to guess in
15 2014, but I could be wrong. It might have been '15.

16 Q Was there a time when he became more closely
17 involved in the Theranos/Walgreens relationship?

18 A I think so, but I don't know. I didn't
19 interface with him very much directly.

20 Q And you don't know who Sunny Balwani was
21 interfacing with at Walgreens?

22 A I know he did interface with (b)(6),(b)(7)(C) I don't
23 know if (b)(6),(b)(7)(C) was his primary point of contact.

24 Q So, you know, at the time that the 2010
25 contract was signed, was there a contract that was signed

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243

1 in 2010?

2 A I think so.

3 Q Okay. At the time that it was signed in 2010,
4 what did you understand that contract to provide? What
5 services would Theranos provide? And, conversely, what
6 services would Walgreens provide to Theranos?

7 A The original concept was that we would take our
8 TSPU and place it in Walgreens stores to provide testing
9 and then try to bring other services, like pharmaceutical
10 trials and other things, around it.

11 Q Okay. You said the original concept was to put
12 the TSPU in stores. So at the time in 2010, I think you
13 mentioned earlier in testimony that the TSPU was
14 validated to perform about 15 tests. Do you recall that?

15 A In the -- 15 tests were brought up in the

16 clinical lab.

17 Q Right.

18 A In 2013.

19 Q But were being performed on the TSPU? Is
20 that --

21 A In the clinical lab.

22 Q Right. Is that your understanding in 2010,
23 that the TSPU was performing or was validated to perform
24 about 15 tests in the clinical setting?

25 A No. The CLIA lab didn't happen until after

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244

1 2010.

2 Q Okay. So when you said previously in testimony
3 that the TSPU could conduct 15 tests and was validated to
4 conduct 15 tests, do you recall that testimony earlier
5 today?

6 A Yeah. I'm sorry if I didn't say it clearly. My
7 understanding is there were 15 tests that were validated
8 in the clinical lab, and there were other tests that were
9 validated in an R & D setting.

10 Q Okay. So the 15 tests that were validated in
11 the clinical lab setting, then, that was your
12 understanding as to TSPU's capabilities to perform tests;
13 is that right?

14 A No. My understanding was based on the work we
15 did in the R & D setting and all the tests we developed
16 and we thought validated, including on the TSPU.

17 Q Okay. So what were the types of tests that you
18 understood the TSPU was capable of performing? What were
19 the categories of tests?

20 A In 2013?

21 Q In 2010.

22 A In 2010? By that time we'd invented the
23 architecture of the 4 series system, I believe. And so
24 we thought that we could run a broad range of methods on
25 it. I don't know how many of the 300 tests were

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245

1 validated at that time.

2 Q So now you just brought up the 4 series. So my
3 understanding of your earlier testimony was that the 4
4 series was still in development and was not actually
5 running tests at that time. Is that not correct?

6 A Maybe -- I'm sorry if I don't understand the
7 question. I thought you were asking about what we
8 thought the TSPU was capable of doing in 2010.

9 Q Yes. So I think you earlier said that the TSPU
10 was performing about 15 tests. Was validated to perform
11 15 tests in the clinical lab?

12 A We did, yes.

13 Q Okay. So now you're saying that there was the
14 miniLab 4 that was also conducting tests?

15 A I'm -- so we developed a few hundred tests in
16 an R & D setting and developed -- and I'm using the word
17 "validated" to refer to our understanding of how they
18 were validated at that time. About 90 or so of them went
19 on the TSPU, the 3 series version of it. The others were
20 on other hardware platforms. Later about 15 of those
21 were into the clinical lab.

22 Q Okay. So there are 90 that were developed for
23 the TSPU 3.5 but 15 were validated for the clinical lab,
24 and the rest were on -- on what devices?

25 A I don't know off the top of my head. I'm not

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246

1 sure.

2 Q Were these analyzers that Theranos developed
3 and manufactured?

4 A Some of them, like for the nucleic acid
5 testing, might have been. Some of them would have been
6 the reference platforms.

7 Q The reference platforms. What do you mean by
8 that?

9 A Hardware that was originally manufactured by

10 third parties.

11 Q Okay. So I think earlier you said that the --
12 so let me just step back because I want to make sure that
13 I understand this because this is an important point.

14 A Yeah.

15 Q So I want to understand, what were the
16 platforms that Theranos was using for clinical testing in
17 2010? I think we talked about the TSPU Version 3.5.

18 A So Theranos wasn't doing clinical testing in
19 2010.

20 Q Okay. So what platforms, then, did Theranos
21 have ready to perform clinical testing at that time?

22 A Our concept in 2010 was to take our TSPU
23 through the FDA to try to get FDA clearance and CLIA
24 waiver, which was what was contemplated in the original
25 Walgreens agreement.

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247

1 Q Right. Okay. But that -- I just want to go
2 back to my question.

3 A Yeah.

4 Q So what were the platforms that Theranos had
5 ready to conduct clinical testing in 2010?

6 A So the one done -- and I'm sorry I'm getting
7 hung up on the concept of clinical testing. Just to be

8 clear, we couldn't do clinical testing without either
9 having a CLIA lab or an FDA clearance. So until you have
10 those things, you can't do clinical testing.

11 We had put a large number of assays on our TSPU
12 3.5 and were planning on taking either that and/or our 4
13 series platform into the FDA.

14 Q Okay. So there's a 3.5, and there's the 4
15 series platform?

16 A Yes.

17 Q The 3.5, you said Theranos had developed how
18 many tests to run on that device?

19 A That's the one that I believe there were
20 ultimately 90 or so assays. I don't know exactly the
21 number.

22 Q Okay. So there were about 90 or so that had
23 been developed for the 3.5?

24 A Yes.

25 Q Of the 90, 15 had been validated in preparation

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248

1 for clinical testing. Is that -- is that fair to say?

2 A So I believe in 2011 we became certified as a
3 clinical lab. And then in 2013, 15 were brought up in
4 the clinical lab as laboratory developed tests. Or
5 around then. It may have been a few months after the

6 opening of the clinical lab.

7 Q Right. And so I don't want to talk about CLIA
8 certification or any of the regulatory approvals that you
9 would need to get in order to put these devices in
10 stores, but I wanted to focus on what the devices that
11 Theranos has manufactured, what those devices were ready
12 to perform in terms of testing.

13 Okay. So the 3.5 --

14 A Yeah.

15 Q -- you said 90 were developed to put on the
16 TSPU 3.5?

17 A Yeah.

18 Q Of those 90, 15 were validated in preparation
19 for clinical testing; is that right?

20 A Later, yes.

21 Q What do you mean by later?

22 A As I understood it, you were asking about the
23 2010 time frame. That work was specific to the clinical
24 lab being live in 2013.

25 Q Okay. So the 15 had not been validated yet at

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249

1 that time; is that right?

2 A In 2010.

3 Q In 2010?

4 A Not in a CLIA lab setting.

5 Q Okay. So only 90 had been developed at the
6 time but no validation work had happened yet in 2010?

7 A So I don't know exactly when all 90 were
8 developed. I know that ultimately about 90 were on the
9 TSPU 3.5. We had done what we internally referred to as
10 development and validation on the TSPU, which was to
11 these FDA guidance documents as we interpreted them.

12 And, again, there's a separate process that is
13 associated with validation of a lab developed test in a
14 clinical lab which we had not done in 2010.

15 Q Okay. So then there's a 4 series miniLab. So
16 what tests had you developed for the 4 series miniLab?
17 How many tests?

18 MR. NEAL: Again, in 2010?

19 MS. CHAN: Again, in 2010.

20 THE WITNESS: Again, I don't know if or how
21 many of the chemistries that we'd created we had put on
22 it in 2010. I believe what we were mostly focused on
23 then is demonstrating the ability to add these additional
24 detection systems and essentially proof of concept of the
25 additional capability of the miniLab.

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2 Q Okay. So you're not sure as to how many tests,
3 if even the tests, were put on the miniLab yet?

4 A Correct.

5 Q And you're not sure of how many tests could be
6 performed if they had already been put on the miniLab?

7 A Correct.

8 Q Okay. So what were the other platforms that
9 Theranos was using or was planning to use for clinical
10 testing besides the TSPU 3.5 and the 4 series miniLab?

11 A In 2010?

12 Q In 2010.

13 A As we saw in the e-mails, there may have been
14 other multiple iterations of the 4 series platforms. But
15 generally that was what we had intended to take into the
16 FDA.

17 Q Okay. So there were other platforms that were
18 similar to the 4 series?

19 A There were multiple 4 series platforms, yes.

20 Q Okay. And what is your understanding as to
21 what tests those devices were capable of performing?

22 A It's the same generally across the 4 series.

23 Q Meaning that you're not sure whether they could
24 perform the tests or how many?

25 A In 2010 I am not sure what tests we put on the



1 devices or how many, if any. I don't know.

2 Q Okay. Were there any other platforms besides
3 the TSPU 3.5 and the various 4 series miniLabs that you
4 were preparing for clinical testing in 2010?

5 A Our chemistries had previously run on open
6 systems like the Tecan-like robots. I don't think in
7 2010 we were preparing for testing on anything except for
8 these TSPU platforms that we wanted to get cleared for
9 use at point of care.

10 Q So besides the Tecan devices, then, was there
11 anything else?

12 A I don't know. That's what I can remember.

13 Q Okay. So as far as you know, then, in the 2010
14 time frame, there was one device that you know for sure
15 the TSPU that was performing -- or that was capable of
16 performing about 90 tests?

17 A There was the TSPU which ultimately we
18 developed about 90 tests for. There was the 4 series
19 platforms, and there were other hardware platforms we'd
20 used over the years in our laboratories.

21 Q Okay. But I'm trying to understand, you know,
22 out of all the platforms that you were using at the time,
23 as far as you know back in 2010, there was one platform
24 that you know for sure was capable of performing about 90

25 tests?

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252

1 A Yes.

2 Q And that was the TSPU 3.5?

3 A Yes.

4 Q Okay. And what were those 90 tests consists
5 of? Like, what kind of -- what category of tests were
6 they?

7 A Proteins, small molecules, antibody tests
8 generally.

9 Q Okay. Are those the same as general chemistry?
10 I think there's serology?

11 A Some of them are serology tests.

12 Q Okay.

13 A Some of them are immunology tests. They fall
14 into multiple categories as defined that way.

15 Q All right. And I think we'd talked a little
16 bit about how at some point -- so at first the parties
17 were considering putting the TSPUs in stores, in
18 Walgreens stores.

19 A Yes.

20 Q Is that right? And at some point that business
21 model changed. So what -- and you might have mentioned
22 this before, but I just want to make sure that we get

23 this right again.

24 So what caused the business model to change,
25 and when did the business model change?



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1 A I don't know specifically when it changed. It
2 was the result of continuous engagement with the
3 Walgreens team to address some of the business model
4 concerns that they had and to try to work with regulatory
5 counsel to figure out the right way to do this that led
6 to the decision to pursue what I've been referring to as
7 a Phase 1/Phase 2 approach.

8 Q Okay. So it was because of the regulatory
9 issue that you and Walgreens decided to go to a Phase
10 1/Phase 2 approach where in Phase 1 you would resort to a
11 central lab model where samples would be sent to a
12 central lab and processed there; is that right? And
13 Phase 2 the TSPUs would then be put in stores?

14 A Yes. And I don't know if it was only a
15 regulatory issue. There may have been other drivers as
16 well. But certainly working with regulatory counsel was
17 one of the drivers.

18 Q And so ultimately did Theranos roll out its
19 services in Walgreens stores?

20 A We did ultimately with the Phase 1/Phase 2

21 model, the clinical lab.

22 Q And when did that happen?

23 A The first patients were served toward the end
24 of 2013.

25 Q And how many stores -- what was the maximum

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254

1 number of stores that you were aware Theranos services
2 had been rolled out to?

3 A I think it was 41.

4 Q Why did it stop at 41?

5 A We couldn't make the relationship successful
6 beyond that.

7 Q Why was that?

8 A I think there were many reasons. The Boots
9 acquisition, the requirements that we had around what we
10 wanted the wellness centers to look like, and then
11 ultimately the issues that we had in our clinical lab and
12 disagreements about the contract.

13 Q Okay. So let's go through each one of those.

14 So the Boots acquisition. Why was that a
15 limiting factor to the rollout taking place beyond 41
16 stores?

17 A We had worked really closely with the original
18 Walgreens leadership around the vision for what this

19 partnership could look like. The new leadership had a
20 different vision for what they wanted to do with
21 Walgreens and wanted to reevaluate the contract we put in
22 place.

23 Q What was the new vision that new management had
24 at Walgreens?

25 A My impression is that the old leadership team

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255

1 was much more focused on health care services, and the
2 new leadership team was focused on instituting some of
3 the same services that Boots had employed in the UK.

4 Q And what is that?

5 A It was more of a health and beauty focus that
6 they had made really successful in Europe.

7 BY MR. KOLHATKAR:

8 Q How did you gain that understanding?

9 A I think it's my impression based on
10 conversations with people in the industry and people who
11 are familiar with the Boots leadership team.

12 Q I guess, did you have a lot of personal
13 interaction with the Boots leadership team when they came
14 on board?

15 A I have not had a lot of interaction with them.

16 BY MS. CHAN:

17 Q Who did you understand was leading the Boots
18 team?

19 A I don't know who was leading the Boots team.

20 Q And then you mentioned there were some clinical
21 lab issues?

22 A I know (b)(6),(b)(7)(C) is very actively
23 involved.

24 Q (b)(6),(b)(7)(C)

25 A Yes.

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256

1 Q I think you mentioned also there were some
2 clinical lab issues that came to light. What was that
3 about?

4 A Our lab. We failed in the implementation of
5 our quality systems and our execution, and Walgreens used
6 that as a means to terminate the contract.

7 Q Okay. And then there was a third factor which
8 is escaping me right now. So you mentioned --

9 MR. KOLHATKAR: Was it the store setup?

10 MS. CHAN: Oh, the store setup.

11 THE WITNESS: Yeah.

12 BY MS. CHAN:

13 Q So was that a significant issue in the
14 discussions with Walgreens?

15 A It's my understanding that it was, that
16 specifically we wanted to have effectively a leasing-type
17 relationship with them and that we wanted a certain
18 footprint and a certain build-out, like a bathroom near
19 where you're doing the collection. And there was a lot
20 of discussions around the kind of investments that would
21 be required to go into the stores for that.

22 Q When were those discussions occurring?

23 A They happened over a period of time, even
24 before the Boots acquisition happened with the old
25 Walgreens management team. And we had believed, based on

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257

1 amendments to our contract, that we were going to proceed
2 with rollout.

3 Q Okay. So you mentioned that the parties
4 started discussing a rental model. When did that happen?

5 A I don't know when those discussions started.

6 Q Who was involved in those discussions from
7 Theranos?

8 A Sunny Balwani led them.

9 Q Did he share whatever discussions he was having
10 with Walgreens with you at that time?

11 A I'm sure we had discussions about it. I don't
12 have memory of specific conversations with him about a

13 rental model, but I'm sure we talked about it.

14 Q And so what was the rental model about?

15 A Once we became a clinical lab, the wellness
16 centers in the stores were our service centers. And so
17 instead of trying to sell devices and cartridges to
18 Walgreens, which was the original concept, now we were
19 effectively just using their space to provide a lab
20 service. So, essentially, it was about amending our
21 contract to move to paying them for rent as opposed to a
22 more integrated model.

23 Q Okay. And what did that mean for Theranos?
24 Would Theranos then -- of course, Theranos would now be
25 paying rent where previously Theranos didn't have to pay

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258

1 rent; is that right?

2 A Previously we would have sold devices and
3 cartridges to Walgreens under the original model.

4 Q Previously you would have sold devices and
5 cartridges. So you would be receiving money from
6 Walgreens in exchange for the use of these. And when you
7 say "devices" --

8 A Correct.

9 Q -- are you talking about the nanotainer?

10 A TSPUs. TSPUs being placed at Walgreens.

11 Q Oh, you're talking about the actual analyzers?

12 A Correct.

13 Q Being placed at Walgreens?

14 A Yeah.

15 Q Okay. I thought we were -- we had been past

16 the phase where the parties were talking about putting

17 the TSPUs in Walgreens, and we were now on the Phase

18 1/Phase 2 business model.

19 A I'm sorry. I missed -- I didn't realize we had

20 switched to that.

21 Q Okay. Well, I guess maybe it makes sense.

22 So when did the rental model discussions happen

23 in relation to the Phase 1/Phase 2 business model taking

24 shape?

25 A After the establishment of the Phase 1/Phase 2

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1 business model.

2 Q Okay. So the Phase 1/Phase 2 model, though, no

3 devices were going to be sold to Walgreens; is that

4 right?

5 MR. KOLHATKAR: At least in the first phase.

6 THE WITNESS: In the first phase, correct.

7 BY MS. CHAN:

8 Q Okay. At least in the first phase?

9 A Yeah.

10 Q So how was -- how was, you know, changing it
11 around to the rental model, how was that different from
12 the Phase 1 model?

13 A It's the way the economics could have worked in
14 the Phase 1 model.

15 Q Okay. So in the Phase 1 model were you also
16 charging Walgreens for any of the consumables or the
17 cartridges?

18 A No.

19 Q Okay. So what -- how would Theranos be or how
20 was Theranos generating its revenues from the Phase 1
21 model?

22 A Billing insurance companies and occasionally
23 consumers directly.

24 Q And were those revenues split with Walgreens?

25 A We paid Walgreens for the services that they

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260

1 were providing, which is essentially the space and in
2 some occasions labor.

3 Q So Walgreens was providing labor for the
4 wellness centers?

5 A Correct.

6 Q What labor was that?

7 A In the beginning it was their technicians for
8 doing fingerstick and then, as we began doing venous
9 draws, it was -- I think we just used their check-in
10 labor. There may have been other things that they did in
11 the store.

12 Q And then when the parties started talking about
13 the rental model, then, was one of the changes that
14 Theranos would be taking over the labor costs?

15 A My understanding is that we took over the labor
16 when we decided to do venous draw in addition to
17 fingersticks. The rental model was a different way to
18 pay them for the services they were providing.

19 Q Okay. So maybe I should ask in a different
20 way.

21 So how did the economics change between the two
22 models, between Phase 1 and the rental model?

23 A I think that was something that was being
24 negotiated. It was never fully defined.

25 Q Okay. Were there other costs that you were

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1 discussing Theranos would be responsible for under the
2 rental model that Theranos previously wasn't responsible
3 for under Phase 1?

4 A I don't know.

5 Q Was Theranos -- were you discussing possibly
6 taking some share of the build-out costs in the rental
7 model?

8 A I think at points in time when we were
9 negotiating with them, we may have offered to do that.
10 But I don't know what our, sort of, end thinking on the
11 right way to do it was.

12 Q Were there any other factors besides the three
13 that we just talked about that led to the rollout being
14 limited to the 41 stores?

15 A I mean, I'm sure there were -- there were
16 multiple, you know, factors as with any business
17 relationship. I think of those three as the first that
18 come to mind sitting here right now.

19 Q Did Walgreens have any concerns about the
20 operations of the partnership and the fact that, you
21 know, not enough patients were coming out to the store?

22 A They had concerns after the initial Wall Street
23 Journal article about our clinical lab and operations
24 from that perspective. I don't recall discussion about
25 not enough patients. They might have. I don't remember

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262

1 any direct discussions about that.

2 Q You don't recall any discussions with Walgreens

3 where Walgreens expressed a concern about the number of
4 patients being too little or too few?

5 A I don't recall any that I was involved in. It's
6 possible that those conversations happened. I don't
7 know.

8 BY MR. KOLHATKAR:

9 Q Did Sunny Balwani ever explain to you that
10 Walgreens was concerned about patient traffic at the 41
11 stores?

12 A I don't think so. I mean, I know certainly
13 patient traffic was their primary financial driver. I
14 had in my head that they had originally wanted to see
15 something like ten patients a day, and we ended up in a
16 lot of the stores hitting much more than that.

17 Q I guess I'm just trying to understand. You
18 said you don't recall any direct conversations about this
19 kind of patient traffic issue.

20 Do you recall any indirect conversation about
21 the patient traffic issue?

22 A No. I was just trying to say that may have
23 been something that Walgreens talked to him and to others
24 at Theranos about, and I just don't know about it.

25 BY MS. CHAN:

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1 Q So you mentioned that you knew that one of the,
2 sort of, measures that Walgreens was using was number of
3 patients per day in the stores; is that right?

4 A I was saying that I know that they cared in
5 general about foot traffic. I think that was the value
6 of Theranos to them.

7 Q Okay. And you said that they were looking to
8 at least have about ten patients --

9 A That was the number --

10 Q -- in store per day?

11 A -- I had in my head as sort of the goal.

12 Q Okay. What was your understanding as to the
13 number of patients in store per day on average Theranos
14 was receiving in Walgreens stores?

15 A I don't know sitting here now exactly what it
16 was. I remember some stores hitting over 40 patients,
17 and I think there's some where there was, like, one or
18 two, which was part of trying to optimize the retail
19 footprint because there's some retail locations just that
20 nobody goes to and there's some that you get a lot of
21 traffic.

22 Q Do you recall ever having any discussions with
23 Walgreens about the venous draw percentage that they were
24 seeing in stores?

25 A I don't think I ever had any direct

1 conversations about it, but I know that that was
2 something that was discussed between us.

3 Q Okay. How do you know that?

4 A Just as I've gone back and tried to look at
5 documents and what happened.

6 Q Okay. At the time, though, in, you know, end
7 of 2013/2014, did you have any discussions with Mr.
8 Balwani about the fact that Walgreens was concerned about
9 how high the venous draw percentage was in stores?

10 A I don't remember direct -- a conversation --
11 any conversations with Sunny about that. I knew that
12 there were people at Walgreens who cared about how much
13 we were doing on fingerstick.

14 When I had engaged with Walgreens, which was
15 primarily with their executives and when the Boots team
16 got involved with their U.S. executive, the conversation
17 was largely about foot traffic. So I don't know
18 specifically what interactions happened around the
19 fingerstick percentage.

20 Q Okay. I'm going to go through some documents
21 with you. I'm handing to you what's been marked Theranos
22 Exhibit 206.

23 (SEC Exhibit No. 206 was marked for

24 identification.)

25 BY MS. CHAN:

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265

1 Q This is Tab 2. Exhibit 206 purports to be a
2 March 29th, 2010, e-mail from (b)(6),(b)(7)(C) to (b)(6),(b)(7)(C)
3 (b)(6),(b)(7)(C) Subject line is "Forward: Follow-up to our
4 meeting today" with a starting Bates No. WAG-TH-00006784
5 with an attached presentation starting at
6 WAG-TH-00006786.

7 Have you seen Exhibit 206 before?

8 A I don't recognize the first sheet.

9 Q Do you recognize the presentation that's
10 attached?

11 A Do you mind if I take a minute to look at it?

12 Q Sure.

13 A I don't remember it specifically, but it looks
14 like one of our slide decks.

15 Q And, actually, if you head back to the e-mail,
16 the parent e-mail to the attachment on the second page --
17 well, bottom of the first page to the second page of the
18 e-mail.

19 A Sorry. Yes.

20 Q On the first page at the bottom of the first
21 page is the heading for your e-mail. If you turn back to

22 the first page of the document, the very bottom --

23 A Yes.

24 Q -- you'll see that there's an e-mail from you

25 to (b)(6);(b)(7)(C) with a copy to (b)(6);(b)(7)(C)

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266

1 Do you recognize this e-mail?

2 A I don't. But I don't have any reason to doubt
3 it.

4 Q And did you send that e-mail on or about March
5 23rd, 2010?

6 A I don't know. But I, again, don't have any
7 reason to doubt it.

8 Q So in your e-mail, which is on 6785, the second
9 page of your e-mail --

10 A Yes.

11 Q -- you say, (b)(6);(b)(7)(C) it was great to meet you. As
12 promised, please find the presentation that will be
13 presented today."

14 Do you recall what meeting you were having that
15 day and who it was with?

16 A No, I don't.

17 Q It sounds like (b)(6);(b)(7)(C) attended. Do you
18 know if anyone else did?

19 A I don't remember.

20 Q And what was (b)(6),(b)(7)(C) role at Walgreens?

21 A I remember him (b)(6),(b)(7)(C) but I know he sort
22 of spearheaded a number of strategic initiatives there.

23 Q And what about (b)(6),(b)(7)(C) role? What was his
24 role there?

25 A He was (b)(6),(b)(7)(C) He was involved, I think,

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267

1 initially with (b)(6),(b)(7)(C) and then over time
2 I think in medical affairs or innovation. I'm not sure.

3 Q So do you think that this was around the time
4 of your initial discussions with Walgreens in March 2010?

5 A Again, I don't remember when exactly those
6 conversations started, but that sounds about right.

7 Q If you turn to the presentation, you mentioned
8 that it looked like a Theranos slide deck.

9 For -- with respect to slide decks that you
10 would be presenting on occasions such as this where
11 you're discussing with a potential business partner
12 certain opportunities, how would you prepare materials to
13 be presented?

14 A So my memory is we generally had a core set of
15 slides that we used based on what the discussion was with
16 different parties, and we would build on that deck. There
17 was a broad range of topics in it, and my memory is we

18 wouldn't actually present these whole decks. You would
19 just present subsections of it based on what we were
20 talking about at the meeting or use a slide to support a
21 discussion.

22 Q Okay. So you think that you might have had
23 this slide deck with you, but you might have only used a
24 portion at the meeting?

25 A Yes.

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268

1 BY MR. KOLHATKAR:

2 Q You referred to "we had the slide deck." Is
3 that you and Mr. Balwani?

4 A So my memory is that internally at Theranos
5 there was just sort of one master deck that we would just
6 add content to as the business grew and expanded. And
7 myself, Sunny, and anybody else who needed a deck to
8 support meetings would use certain content from that deck
9 depending on what the meeting was about and what content
10 was needed.

11 Q I guess, to your knowledge, was there anyone
12 other than yourself and Mr. Balwani who would make these
13 sort of external-facing presentations on behalf of
14 Theranos?

15 A When we were working with pharmaceutical

16 companies, we had a small sales team, and they would
17 create content that I think is in some of those decks and
18 make presentations themselves. And then it's likely that
19 other people within the company would have done the same.
20 I can't sit here with a specific memory of someone.

21 BY MS. CHAN:

22 Q Do you recall putting together this
23 presentation for that meeting?

24 A I don't.

25 Q So do you know who would have put this

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269

1 together?

2 A I don't.

3 Q Do you recall Sunny Balwani attending the
4 meeting with you?

5 A You know, I don't know what meeting this was. I
6 know that Sunny was generally involved, I think, in all
7 the meetings that we had at Walgreens at this time. But
8 I'm not sure.

9 Q Okay. So if you can turn to 6788, the slide
10 says in the first bullet point, "Theranos' proprietary
11 patented technology runs comprehensive blood tests from a
12 fingerstick in real time at the point of care outside of
13 traditional lab tests -- lab settings."

14 What do you mean here by "comprehensive blood
15 tests"?

16 A I think we were trying to convey that unlike
17 what was on the market for point of care, like a glucose
18 meter that could only run one test on the device, this
19 device was capable of handling a range of tests based on
20 how it was designed.

21 Q Okay. Instead of one, it could do several
22 tests?

23 A It could do a whole range.

24 Q Okay. By "comprehensive," were you trying to
25 convey that it could do all routine lab tests, that a

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270

1 patient could come into -- or could use Theranos'
2 technology to run a whole range of tests that would
3 otherwise be available through, you know, any commercial
4 lab?

5 A I don't think that's what this specific bullet
6 point was referring to. I think this bullet point was
7 just trying to distinguish the power of having robotics
8 inside a device from a traditional point-of-care device.

9 Q Okay. So maybe I don't understand that now.

10 So what do you mean by this was trying to
11 distinguish between having a robotic device?

12 A So my memory is the way we would introduce our
13 invention was that what was different about the miniLab
14 family was that it was capable because there was a robot
15 in it of running a broad range of tests, whereas a
16 glucose meter is only capable of running glucose, right?
17 And what we were trying to do was differentiate from
18 other point-of-care technology.

19 Q Okay. So you weren't talking about the fact
20 that your blood analyzers could conduct many, many tests.
21 It was just that there was a robotic arm in the machine
22 that could allow that machine to test many tests at the
23 same time?

24 A To test many types of tests which, to our
25 knowledge, had never been done in point of care before.

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271

1 Q Okay. So test many types of tests. But it
2 sounded when you were gesturing there -- and I know I
3 said before not to gesture -- but that you were trying to
4 depict a way for a machine to use a robotic arm to test
5 multiple -- perform many tests at the same time. Is that
6 what you were trying to convey by this?

7 A No. Just that we had invented technology that
8 could be programmed to do a range of different types of
9 tests. And we thought, and think, we were the first to

10 do that.

11 Q Okay. And what was -- what's the significance
12 of using the robotic arm, then?

13 A It's a different architecture that's used in
14 traditional point of care, and it creates versatility
15 with what tests can be run. So you can program it and
16 allow it to perform different steps, just like a tech
17 could in the lab. Versus a glucose meter or the
18 point-of-care devices that were on the market, it's a
19 little strip and you flow liquid over it so you could
20 never get it to perform other types of tests.

21 Q Okay. And then you go on to note on the same
22 slide in the third bullet point, "Our current and past
23 clients include 10 of the top 15 major pharmaceutical
24 companies. Mid-sized bio-pharmas, prominent research
25 institutes in the U.S. and foreign government, health,

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272

1 and military organizations."

2 Do you see that?

3 A I do.

4 Q What U.S. governmental, health, and military
5 organizations were clients of Theranos at this time in
6 2010?

7 A I think this was referring to the work that was

8 being done with the Institute of Surgical Research in San
9 Antonio, which is the burn study that we talked about.
10 And there may have been others at that time, like Walter
11 Reed. I'm -- I'm not sure. I can't remember in 2010.

12 Q What was Walter Reed?

13 A We had invested in a program, I think around
14 this time, for helping to do diabetes research. I'm not
15 sure exactly when it was or how many of those entities we
16 were working with as of 2010.

17 Q Okay. And what about the foreign government,
18 health, and military organizations. What are you
19 referring to there?

20 A I think the foreign government reference is to
21 modeling work that we had done for people at the IMSS in
22 Mexico for H1N1, and I believe we'd worked with some
23 health research institutes in Thailand around H1N1 as
24 well.

25 Q And you mention or you state here that they are

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273

1 clients of yours.

2 Did you receive money from them or revenues
3 from them for the work that you performed?

4 A We did from the Institute of Surgical Research.
5 We did not from IMSS or the entities in Thailand.

6 Q Okay. And then the fourth bullet point says,
7 "Theranos is launching Theranos systems with consumers in
8 2010."

9 What do you mean by that?

10 A What we had talked about with Walgreens is to
11 try to do that year, which is take the systems into FDA
12 and try to get CLIA waiver.

13 Q Okay. But this is one of the initial
14 presentations that was presented to Walgreens, right?
15 This was in March 2010. So --

16 A Yeah.

17 Q -- do you still think you were referring to
18 your relationship with Walgreens when this is one of the
19 initial presentations you're presenting to them?

20 A I don't know looking at it now what it meant
21 then. My read, sitting here now, is that that was our
22 objective for 2010.

23 Q And then turning to 6790, the title of the
24 slide is "Overview, Theranos Systems." And there's a
25 picture of the devices. Is this -- what is this a

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274

1 picture of?

2 A I believe it's a 3 series TSPU. I'm not sure
3 which one.

4 Q So are you trying to convey here that the
5 Theranos -- the devices that are a part of the Theranos
6 system that Theranos had developed, that that was the 3
7 series device?

8 A I think we were just trying to show that the
9 Theranos system had a device, a cartridge, and we were
10 investing in a lot of software.

11 Q Okay. But this was the device that was part of
12 the Theranos systems that you were hoping to roll out in
13 Walgreens?

14 A I don't think that's what we were trying to
15 convey with this slide. I think we were just trying to
16 convey that the system had multiple components to it. It
17 wasn't just a consumable or a piece of hardware. There
18 was a lot of software around it.

19 Q Okay. And then again on 6791, there's a bigger
20 picture of the device there. Were you -- what were you
21 trying to convey by including this in the presentation?

22 A I don't remember.

23 Q Okay. Turning the page to 6792. The title of
24 this slide is "Validation of Theranos Systems." This
25 slide says, "Theranos systems have been comprehensively

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1 validated over the course of the last seven years by ten

2 of the 15 largest pharmaceutical companies."

3 What did you mean by that? And what were you
4 referring to there?

5 A What we've been talking about here today, that
6 we had confidence in our ability to implement this
7 technology based on the experience we'd had with the
8 pharma companies we'd worked with.

9 Q Had the pharmaceutical companies validated the
10 Theranos -- I guess you say Theranos systems here. Did
11 that include the 3 series analyzer?

12 A Yes.

13 Q Okay. And did the pharmaceutical companies
14 validate the 3 series analyzer during the course of the
15 work you were performing for them?

16 A With the tests that were validated, yes.

17 Q Okay. So what do you mean by "with the tests
18 that they validated"?

19 A So the tests that we ran for the different
20 pharma companies that we worked with were on TSPUs. They
21 were on 3 series TSPUs.

22 Q Did you ever give a TSPU device to any of the
23 pharmaceutical companies that you were in contract with
24 so that they could run their own testing on those
25 machines?



1 A Yes.

2 Q Which ones did you give the devices to?

3 A This quote here from GSK was one of them, and
4 there were others as well. I believe at one point we
5 sent one to the lab at Schering Plough. And the program
6 that we did with Pfizer, the devices were actually in
7 people's homes. And I believe with Centocor I have in my
8 memory that we deployed for them in Belgium at one of
9 their facilities and I think in a U.S. site as well. But
10 I can't remember. It was multiple instances.

11 Q Any other pharmaceutical companies that you
12 recall sending a device to?

13 A I'm just thinking back. I'm not sure. We may
14 have. I know we -- I don't know. I'm not sure.

15 Q Okay. And then the third bullet point or the
16 third paragraph on this slide says, "Theranos systems are
17 GLP, GCP, and 21 CFR compliant and are validated under
18 FDA/ICH guidelines."

19 Do you see that?

20 A I do.

21 Q The FDA guidelines, is that the FDA guideline
22 document you're referring to earlier?

23 A I think so.

24 Q Okay. And what is -- what does it mean when

25 you say "Theranos systems are GLP, GCP, and 21 CFR

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277

1 compliant"?

2 A I'm not sure. I don't know.

3 Q Who drafted this?

4 A I don't know.

5 Q Did you ever ask questions about what that
6 meant?

7 A I can't remember at the time. I believe I, if
8 we were presenting on this slide, would have been
9 confident in it, but I can't remember interactions around
10 it.

11 Q And then you go on to say, "The systems are
12 classified as nonsignificant risk devices. Regulatory
13 filings are ongoing in preparation for launch to
14 consumers."

15 Do you see that?

16 A I do.

17 Q What did that mean to you?

18 A I'm not sure. Sitting here now, I believe the
19 nonsignificant risk classification was something we had
20 engaged either with the FDA or with regulatory counsel on
21 previously. And I'm assuming this was reflecting the
22 fact that we thought we were going to take the technology

23 into FDA to try to get clearance and CLIA waiver.

24 Q Were you involved in those FDA discussions
25 previously?

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278

1 A I don't think at this time I had been directly
2 involved with the FDA.

3 Q So you just mentioned that there was some
4 classification of the device's nonsignificant risk?

5 A Yeah.

6 Q In connection with the discussions with FDA?

7 A It was either with FDA or with outside counsel
8 or regulatory advisors that we had. I don't know which
9 one.

10 Q And then you say, "Regulatory filings are
11 ongoing in preparation for launch to consumer."

12 So which regulatory filings were you referring
13 to there?

14 A I don't know.

15 Q Okay. Let's turn to 6799. The title of the
16 slide is "Theranos Systems Products." And there are
17 three categories of tests there. There's general
18 chemistry tests, wellness tests, and diagnostic and
19 predictive women's and men's health tests.

20 So the general chemistry tests, were those part

21 of the 90 that could be conducted on the TSPU 3.5?

22 A So I was -- just as I was flipping through it
23 looking at another slide here where I read it as being
24 related to sort of a set of standardized tests that could
25 be run at retail. So I -- I'm not sure -- I'm not sure

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279

1 specifically what we meant by "general chemistry" at that
2 time.

3 Q What were you trying to convey from this slide?

4 A I don't know then. Sitting here now, my read
5 on it is that we were saying this is what we wanted to
6 try to do with whoever we partnered with at retail to
7 bring to consumers.

8 Q So you think that these were the tests that you
9 had told Walgreens that you were trying to achieve on the
10 TSPU?

11 A No. I think that this is -- and if I remember
12 it with Walgreens right, we had sort of designed a
13 multi-phased model in which we would start with routine
14 testing if we were going to put the device at Walgreens
15 and then over time ultimately do what we were referring
16 to as predictive tests. So I think this was sort of the
17 vision for what we would want to do with the TSPU at
18 retail.

19 Q Okay. And then if we turn to 6803 and 04, so
20 you've got some Theranos pricing here for various tests.

21 And you just said that you were hoping to be
22 able to develop the tests to be able to be used in
23 clinical testing; is that right?

24 A Generally yes. I mean, we'd obviously deployed
25 some tests for pharma companies and had others that we'd

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280

1 already developed. But, again, these had not been into
2 the FDA yet.

3 Q Were these tests already developed on the TSPU,
4 the ones on these two pages?

5 A On the pricing list?

6 Q Yes.

7 A I think these were just slides on the kind of
8 business model that you could have with representative
9 tests. I don't know what the status of these assays was.

10 Q Okay. So why would you have pricing if these
11 were tests that were supposed to be representative tests
12 that may or may not been developed at the time?

13 A Because we were -- reading this now, my
14 interpretation is we were trying to convey there could be
15 a really good business in competing with other labs like
16 Quest that charged much higher prices for lab tests.

17 Q Okay. But how would you know what price you'd
18 be able to offer those tests if you hadn't developed the
19 test yet?

20 A So, I mean, again, I don't remember this deck
21 or the meeting. But reading it now, my understanding of
22 this kind of content is we were saying we want to try to
23 bring these devices to retail. We make them ourselves.
24 We make the cartridge ours. We make the chemistry
25 ourselves. This is the kind of business that we think we

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281

1 could create with it.

2 Q Okay. So how did you come up with these
3 numbers if you weren't sure if the tests had been
4 developed yet?

5 A I don't know.

6 BY MR. KOLHATKAR:

7 Q Is it fair to say that this theme of reduced
8 cost testing was some -- I mean, whether or not you
9 remember it in the context of this particular Walgreens
10 meeting, that remained a constant throughout your
11 discussions with Walgreens; is that fair?

12 A Absolutely.

13 Q And that was true even after you sort of
14 switched to the Phase 1/Phase 2 approach? Is that --

15 A Yes.

16 Q Did Theranos sort of consider the pricing it
17 was offering customers in light of its switch to using
18 modified third-party devices?

19 A I don't know. I don't know.

20 Q I guess, do you recall doing any sort of
21 analysis about whether Theranos could, I guess,
22 sustainably offer cheaper tests under the model that it
23 was operating in the retail pharmacy in late 2013 or
24 2014?

25 A Yeah. I wouldn't have been the person that

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282

1 would have done that, but I believe based on my ongoing
2 conversations with Sunny that we thought it could be a
3 financially viable model and, in fact, a better model
4 than if you tried to use TSPUs in a centralized setting
5 because you'd need so many devices since they could only
6 process one at a time.

7 BY MS. CHAN:

8 Q Okay. Then turning to 6810, the title of this
9 slide is "Real-Time Fingerstick-Based Test for Launch At
10 Walgreens in 2010." And there are three categories of
11 tests. There's general chemistry panels and standard
12 blood tests, influenza, and fertility.

13 Were all of those tests being performed or were
14 those tests capable of being performed on the TSPU 3.5 at
15 this time?

16 A So, again, I don't know what exactly we were
17 referring to as general chemistry. I believe, yes, as to
18 influenza and fertility.

19 Q Okay. So all of these tests could be run on
20 the TSPU 3.5 in 2010?

21 A Again, yes, as to influenza and fertility. I
22 don't know what we meant by general chemistry at that
23 time.

24 Q Who would know -- I mean, you know, somebody
25 put together this presentation, and you ended up sending

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283

1 it to Walgreens. Who would know what you were talking
2 about in these slides?

3 A I mean, we could look back and try to piece it
4 together. I -- I mean, maybe Sunny. I don't know.

5 Q And was it your practice to be sending
6 materials to people where you weren't sure of the
7 information that was being presented in the materials?

8 A I don't think so.

9 Q So did you review this presentation prior to
10 sending it to Walgreens?

11 A I don't know. It was a long time ago.

12 Q Do you think, based on your practice in your
13 business, that you would have reviewed the materials
14 prior to sending it to Walgreens?

15 A I think that we would have had a deck that was
16 an amalgamation of slides that we shared very openly with
17 people. I don't know that we would have reviewed the
18 whole deck before we sent it out at that time.

19 Q Okay. And if you saw something in the slide
20 deck that you weren't sure of or that, you know, you
21 weren't as familiar with, would you have asked questions
22 about it and wondered why it was being included?

23 A Yes.

24 Q And have you done that before?

25 A On a slide deck?

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284

1 Q Yes.

2 A I can't sit here with a specific memory of that
3 now, but I'm sure I have on any content that I'm engaging
4 in.

5 Q Okay. You can put that one aside.

6 I'm handing to you what's been marked Theranos
7 Exhibit 209. I'm sorry. 207. 207.

8 (SEC Exhibit No. 207 was marked for

9 identification.)

10 BY MS. CHAN:

11 Q Exhibit 207 purports to be a May 7th, 2010,
12 e-mail from Elizabeth Holmes to (b)(6),(b)(7)(C) with a copy to
13 Sunny Balwani. Subject line is "Regulatory Overview
14 Summary" with starting Bates No. THPFM0000416490 with an
15 attachment with Bates number ending 416492.

16 Have you seen Exhibit 207 before?

17 A I don't remember it, but I don't have reason to
18 doubt this e-mail.

19 Q Did you draft and send Exhibit 207 on or about
20 May 7th, 2010?

21 A I don't know. But, again, I don't have reason
22 to doubt it.

23 Q So you mentioned in this e-mail that you're
24 attaching a document as requested.

25 What did (b)(6),(b)(7)(C) request?

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285

1 A I don't know.

2 Q If you look at the attachment, the title is
3 "Regulatory Summary." Did you -- do you remember
4 discussions with (b)(6),(b)(7)(C) about Theranos' regulatory
5 strategy?

6 A I know there were a lot of discussions with

7 Walgreens about our regulatory strategy. I don't have
8 memory about specific discussions with (b)(6),(b)(7)(C) about it,
9 but I know it was something we were actively engaged with
10 Walgreens on.

11 Q So as you look back at this attachment, do you
12 recall who put this together?

13 A I don't.

14 Q Did you put it together?

15 A Do you mind if I take a minute to read it?

16 Q Sure.

17 A I'm not sure. I don't know. I don't recognize
18 some of the content in it. I'm not sure.

19 Q If you didn't write this document, who would
20 have written it?

21 A I believe we were actively engaged with
22 regulatory counsel and advisors during this period,
23 including on helping us to figure out how best to
24 communicate with Walgreens on our regulatory strategy.

25 Q So you think it could be -- it could have been

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286

1 regulatory counsel that put this information together for
2 you?

3 A I don't know. It has reference to words I
4 don't recognize, so I'm not quite sure where the content

5 came from.

6 Q Who was your regulatory counsel at this time?

7 A 2010, I -- we may have been working with (b)(6);(b)(7)(C)

8 (b)(6);(b)(7)(C) at FDA and (b)(6);(b)(7)(C)

9 (b)(6);(b)(7)(C) who was an FDA expert. And I don't know if

10 we've yet engaged with (b)(6);(b)(7)(C) That may have been

11 later, but I think -- I think (b)(6);(b)(7)(C) at this time.

12 Q Okay. So if you look at the document, in the

13 first paragraph, it says, "Theranos systems were first

14 reviewed by FDA in 2005. At that time FDA determined

15 that Theranos systems were classified as nonsignificant

16 risk devices and noninvasive and, therefore, did not

17 require an IDE under this particular regulation."

18 Do you see that?

19 A I do.

20 Q What discussions did Theranos have with FDA in

21 2005?

22 A I believe this is referring to a meeting our

23 team did to determine the classification of the devices

24 for clinical studies with pharma partners.

25 Q Who was involved at that meeting?

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287

1 A I don't know everyone. I believe (b)(6);(b)(7)(C)

2 who worked for us at the time, was a part of or led it. I

3 know there was multiple people from Theranos. I don't
4 know who else was there.

5 Q And what did FDA review at that time to make
6 this determination that it was a nonsignificant risk
7 device?

8 A I don't know.

9 BY MR. KOLHATKAR:

10 Q Were you at that meeting?

11 A No.

12 BY MS. CHAN:

13 Q Were you involved at all in the preparation for
14 that meeting?

15 A I don't know.

16 Q Was (b)(6),(b)(7)(C) or (b)(6),(b)(7)(C) at that
17 meeting?

18 A In 2005?

19 Q Yes.

20 A I don't think we started working with them
21 until much later.

22 Q So I'm trying to bridge who would have had
23 knowledge of that and who would have been writing this
24 document.

25 So who do you think would have given you or

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1 whoever drafted this document information about a 2005
2 meeting?

3 A I don't know. I could speculate that there was
4 some documentation from this meeting that this language
5 was taken from because it's very specific. But I don't
6 know where it came from.

7 Q Okay. So let's move on to the fourth paragraph
8 down starting with "Assays." Do you see that?

9 A I do.

10 Q Okay. So it says, "Assays on Theranos systems
11 were validated for a broad range of tests, including PK
12 assays, PD assays, and general chemistries."

13 What are PK assays?

14 A Pharmacokinetic assays.

15 Q What are those?

16 A They're generally used to measure drug levels
17 or metabolites of drugs.

18 Q Okay. And what about PD assays?

19 A Pharmacodynamic assays.

20 Q What are those tests?

21 A Tests that look at the efficacy of the drug or
22 the safety of a drug.

23 Q Could Theranos' TSPU perform all three of those
24 tests: general chemistries, PK assays, and PD assays?

25 A Yes.

1 Q And then the next sentence after that, it says,
2 "After receiving endorsement from FDA," do you see that?

3 A I do.

4 Q What endorsement did you understand Theranos
5 received from FDA?

6 A I don't know. Reading this now, I can infer
7 this is about pharmaceutical partners talking to the FDA
8 about use of our systems in their studies, but I'm not --
9 I'm not sure.

10 Q I'm sorry. And so you're saying you can infer
11 that this was pharmaceutical partners talking to FDA?

12 A I think so, but I'm speculating. I'm not sure
13 what exactly it's referring to.

14 Q So how does that amount to an endorsement from
15 the FDA?

16 A Again, I'm not sure what it's referring to.
17 Sitting here now, I read it as meaning that we believed
18 we had blessing to use these types of systems in clinical
19 trials for data generation that would then be submitted
20 to FDA by pharma companies for their studies.

21 Q Okay. And then focusing now at the
22 second-to-last paragraph of the document starting,
23 "Theranos has confirmed --"

24 Do you see that?

25 A (No verbal response.)

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290

1 Q It says, "Theranos has confirmed with
2 regulatory authorities that the 510(k) in the U.S. and CE
3 Mark in Europe are not required for the systems to be
4 used as the sole platform for data collection and
5 analytics, including for all blood sample processing, in
6 registrational clinical studies or in certified lab
7 testing studies."

8 Do you see that?

9 A I do.

10 Q Which regulatory authorities are you talking
11 about here?

12 A Again, I don't know specifically. I, sitting
13 here now, believe this is referring to the discussions
14 with the pharma partners about what regulatory
15 certifications would be needed for data collection and
16 clinical studies.

17 Q Okay. But it says, "Theranos has confirmed
18 with regulatory authorities." So this wouldn't have been
19 a confirmation with your pharmaceutical partners.

20 Do you recall any discussions with the
21 regulatory authorities about this?

22 A I don't. Again, I believe that, both through
23 Theranos' early interaction with the FDA and through its
24 engagement with pharma companies, we understood that the
25 device did not need these certifications for use in



291

1 pharmaceutical clinical trials.

2 Q Okay. You can put that one aside.

3 MR. NEAL: Why don't we take a short break if
4 you're moving on to a different document.

5 MS. CHAN: Sure. We're off the record at
6 5:15 p.m.

7 (A brief recess was taken.)

8 THE VIDEOGRAPHER: We are back on the record at
9 5:27.

10 BY MS. CHAN:

11 Q Ms. Holmes, did you have any substantive
12 conversations with the SEC staff during the break?

13 A I did not.

14 Q I'm handing to you what's been previously
15 marked as Theranos Exhibit 44.

16 Theranos Exhibit 44 purports to be a document
17 titled "Theranos Master Purchase Agreement" dated July
18 30th, 2010, with starting Bates No. WAG-TH-00000006.
19 That's seven zero's and a six.

20 Have you seen Exhibit 44 before?

21 A I recognize it as what I believe is our
22 original contract with Walgreens.

23 Q And did you review and sign Exhibit 44 on or
24 about July 30th, 2010?

25 A I don't remember exactly when I signed it, but

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292

1 I see my signature here. I know that I did.

2 Q So this is your signature that you're seeing on
3 page seven?

4 A Yes.

5 Q If you turn to the page with Bates number
6 ending 8, which is the next page, this is a Schedule A to
7 the agreement. It's called "Program Overview."

8 And under background it says, "Theranos has
9 developed and is developing generations of miniLab
10 devices that can run any blood test in real time for less
11 than the traditional cost of central lab tests."

12 And then there's a picture of a device on the
13 right. Is that a picture of the miniLab device?

14 A The 3 series version of it, I believe.

15 Q Okay. Actually, you can actually set that one
16 aside.

17 I'm handing to you what's been marked Theranos

18 Exhibit 208.

19 (SEC Exhibit No. 208 was marked for
20 identification.)

21 MR. DWYER: Thank you.

22 BY MS. CHAN:

23 Q Exhibit 208 purports to be an e-mail from
24 Elizabeth Holmes to (b)(6),(b)(7)(C) with a copy to Sunny
25 Balwani. Subject line is "Forward: Hopkins" with

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293

1 starting Bates No. THPFM0005620882. And there's an
2 attachment with Bates number ending 5620883.

3 Have you seen Exhibit 208 before?

4 A I don't remember it, but I see it as an e-mail
5 forwarding an e-mail from (b)(6),(b)(7)(C)

6 Q And did you draft and send Exhibit 208 on or
7 about September 10th, 2010?

8 A Again, I don't have memory of it, but I don't
9 have any reason to doubt it.

10 MR. NEAL: Wait. Let me just clear something
11 up. When you say -- when you say "208," you mean the
12 first page of 208? Because there's an attachment to it.
13 Are you asking her if she drafted the attachment too?

14 MS. CHAN: No. I'm actually asking if she
15 drafted -- I'm sorry. You're right. Okay.

16 BY MS. CHAN:

17 Q So did you draft the e-mail that came with the
18 attachment on Exhibit 208?

19 MR. NEAL: Just the first page, she's asking.

20 THE WITNESS: Got it. I assume I did. I don't
21 remember it, but I don't have reason to doubt this chain.

22 MR. NEAL: You assume you drafted the e-mail?

23 THE WITNESS: Yes. Not the attachment. Thank
24 you. Sorry.

25 BY MS. CHAN:

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294

1 Q And did you send the e-mail with the
2 attachment, then, on or about September 10th, 2010?

3 A I believe so, based on this e-mail.

4 Q So what is this e-mail and the attachment
5 about?

6 A What is the attachment about?

7 Q Yes. Or what are the circumstances for which
8 you sent this e-mail to (b)(6);(b)(7)(C)

9 A I don't know what the circumstances were. I
10 read, from looking at it right now, that I was just
11 forwarding what I'd gotten from Walgreens.

12 Q And if you do turn to the attachment, then, the
13 attachment is titled "Summary of Hopkins Walgreens

14 Theranos meeting, April 27th, 2010."

15 Do you recall attending that meeting?

16 A I do.

17 Q Who else attended with you?

18 A I see the attendees here and don't have any
19 reason to doubt this list.

20 Q So do you think that -- do you recall Sunny
21 Balwani attending that meeting with you?

22 A I do.

23 Q And in terms of the attendee list on that first
24 page of these meeting minutes, is this an accurate
25 reflection of who would have attended that meeting?

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295

1 A I believe so. I don't remember all of them,
2 but I believe this is accurate.

3 Q What was the purpose of this meeting?

4 A Walgreens asked us to go to Johns Hopkins to
5 talk about what we'd invented.

6 BY MR. KOLHATKAR:

7 Q Who do you remember attending the meeting?

8 A I remember (b)(6);(b)(7)(C) and I remember (b)(6);(b)(7)(C)
9 being there.

10 Q So you think that should say (b)(6);(b)(7)(C) instead of

11 (b)(6);(b)(7)(C)

12 A I think so, yeah.

13 Q Okay.

14 A And then I recognize the other names, and I
15 have general memories of others being there.

16 Q What happened at this meeting?

17 A We presented essentially the architecture of
18 what we had invented, and the Hopkins team asked
19 questions about it and I believe looked at some of the
20 data on the chemistries that we had at that time.

21 Q And what did Hopkins do after the meeting?

22 A I don't know.

23 Q Did you ever present to Hopkins a device so
24 that they could run their own tests on the device?

25 A We brought a TSPU to this meeting, and I

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296

1 believe they did or we did run something on it in that
2 meeting. I'm not sure about that, but I think we did.
3 And then later we just gave the device to Walgreens to
4 run at their sites in Chicago.

5 Q Why was -- what was your understanding as to
6 why Walgreens was including Johns Hopkins at this
7 meeting?

8 A I don't know. My guess is that they were
9 asking Hopkins to assess the invention.

10 Q Okay. And if you go to page -- flip the page
11 to 884, there's a number of key findings here. What was
12 your understanding as to what these key findings were
13 based on?

14 A The meeting that we had the discussion that we
15 had during that meeting. I think some of the data on the
16 chemistries that we'd looked at, but mostly the
17 architecture of the invention.

18 Q And how long was the meeting?

19 A I don't know.

20 Q Do you know if it was a full day, a half a day,
21 an hour?

22 A I'm guessing. I -- I think about half a day.
23 At least half a day. It might have been a whole day. I'm
24 not sure.

25 Q And did Theranos ever enter into any

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297

1 relationship with Johns Hopkins?

2 A I don't think Theranos did formally. I know
3 Walgreens had one.

4 Q Was Theranos ever in discussions with Johns
5 Hopkins to enter into a relationship?

6 A I'm not sure. I think we might have been at
7 different points in time at Walgreens' urging, but I

8 don't think we ever did.

9 Q So in terms of Johns Hopkins, Johns Hopkins'
10 access or interactions with your device, would that have
11 taken place just at this meeting, then? Or were there
12 other opportunities in which they had a chance to review
13 your device and data?

14 A I don't know. I know that Walgreens had many
15 interactions with them. I don't know what they shared.

16 Q Okay. But in terms of your interactions with
17 Johns Hopkins, would that have just been this one meeting
18 with them?

19 A So we had previously known (b)(6);(b)(7)(C) We were
20 asked to do this meeting by Walgreens. Later, after we
21 had the partnership in place with Walgreens, there were
22 further interactions with Hopkins and then even later
23 with some of the Hopkins team as we worked and I worked
24 to build out scientific and medical advisory boards.

25 Q At any of those interactions with (b)(6);(b)(7)(C) or

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298

1 those conversations that you were just referring to, did
2 you present any additional data to them on Theranos'
3 analyzers?

4 A So I don't know what (b)(6);(b)(7)(C) had seen before
5 this. I know he was engaged with some people who were

6 working with Theranos. I -- I don't know in the course
7 of the Walgreens relationship what additional data
8 Hopkins had access to. I know that (b)(6),(b)(7)(C) was
9 involved, as I was working to build out the scientific
10 and medical advisory board, I think in early 2016, and he
11 saw a lot of Theranos data in that context.

12 Q Okay. So that was in 2016?

13 A Yeah.

14 Q Do you know as of, I guess, 2010 to 2014
15 whether there were any other discussions with -- or did
16 you have any other discussions with Johns Hopkins about
17 Theranos's analyzers or the data underlying those
18 devices?

19 A I don't know if it was in that time period. I
20 believe at one point Walgreens came with the person who
21 was doing pediatric testing at Hopkins to talk about what
22 generally the small sample assays could mean for
23 pediatric testing. And we did not have bandwidth to
24 follow up on focusing on that relationship and didn't.

25 But other than that, I don't know of any

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299

1 specific interactions. I wouldn't be surprised if there
2 were more, but I don't think I was involved personally in
3 any of them.

4 Q When did the meeting with the pediatric person
5 take place?

6 A Again, I don't know specifically when. I don't
7 know. It may have been around the 2014 time frame, but
8 it could have been 2015. I'm not sure.

9 Q Did you present data to that person during the
10 meeting?

11 A I don't know.

12 Q Was there any follow-up after this meeting in
13 April of 2010 between Theranos and Johns Hopkins?

14 A I don't think there was direct engagement with
15 Theranos. I know Walgreens had follow-up with them.

16 Q Did Walgreens ever relay what those discussions
17 were about to you?

18 A I don't think so, at least not to my knowledge.

19 MS. CHAN: You can put that one aside.

20 I think we have no further questions for today.

21 So we will be adjourning until Thursday, July 13th, 2017.

22 And you understand that you're still under subpoena --

23 THE WITNESS: I do.

24 MS. CHAN: -- to appear for that date?

25 THE WITNESS: Yes.

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1 MS. CHAN: I think we are off the record at

2 5:40 p.m.

3 THE VIDEOGRAPHER: This concludes Media No. 4
4 and Volume I of Elizabeth Holmes.

5 (Whereupon, at 5:40 p.m., the examination was
6 concluded.)

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PROOFREADER'S CERTIFICATE

In the Matter of: THERANOS, INC.
Witness: Elizabeth Holmes
File Number: SF-04030-A
Date: Tuesday, July 11, 2017
Location: San Francisco, CA 94104

This is to certify that I, (b)(6);(b)(7)(C)
(the undersigned), do hereby swear and affirm that the
attached proceedings before the U.S. Securities and
Exchange Commission were held according to the record and
that this is the original, complete, true and accurate
transcript that has been compared to the reporting or
recording accomplished at the hearing.

(Proofreader's Name) (Date)



1 THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of:)

4) File No. SF-04030-A

5 THERANOS, INC.)

6

7 WITNESS: Elizabeth Holmes

8 PAGES: 302 through 578

9 PLACE: Securities and Exchange Commission

10 44 Montgomery Street, Suite 2600

11 San Francisco, CA 94104

12 DATE: Thursday, July 13, 2017

13

14 The above entitled matter came on for hearing,

15 pursuant to notice, at 9:04 a.m.

16

17

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22

23

24 Diversified Reporting Services, Inc.



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304

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305

1 C O N T E N T S

2

3	WITNESS:	EXAMINATION
4	Elizabeth Holmes	314

5

6	EXHIBITS:	DESCRIPTION	IDENTIFIED
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7	209	Subpoena	316
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8 (previously marked as 191)

9	210	Background Questionnaire	316
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10 dated July 2, 2017

11 (previously marked as 192)

12	211	January 22, 2010, e-mail	316
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13 with attachment from (b)(6),(b)(7)(C)

14 (b)(6),(b)(7)(C) to Elizabeth Holmes with

15 a subject line "For (b)(6),(b)(7)(C)

16 (Starting Bates No.

17 THPFM0000690035)

18 (previously marked as 193)

19 212 Organizational Chart (Bates 316
20 No. TS0000001)
21 (previously marked as 194)
22
23
24
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306

1 C O N T E N T S (CONT.)
2

3 EXHIBITS: DESCRIPTION IDENTIFIED
4 213 Document entitled "Theranos 316
5 Confidential Summary
6 Capitalization" (Starting
7 Bates No. TS-000603)
8 (previously marked as 195)
9 214 Spreadsheet titled "Detailed 316
10 2917" (Starting Bates No.
11 TS-0558077)
12 (previously marked as 196)
13 215 June 11, 2013, e-mail from 316
14 Sunny Balwani to Elizabeth
15 Holmes, subject line
16 "Forward: Demo next Tuesday

17 6/11 at noon" (Starting
18 Bates No. TS-0902539)
19 (previously marked as 197)
20
21
22
23
24
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307

1 C O N T E N T S (CONT.)

2

3 EXHIBITS: DESCRIPTION IDENTIFIED

4 216 January 23, 2014, e-mail 316

5 from (b)(6);(b)(7)(C) to

6 Elizabeth Holmes with

7 various copy e-mails

8 (Starting Bates No.

9 TS-0469692)

10 (previously marked as 198)

11 217 Theranos, Inc.'s responses 316

12 and objections to

13 plaintiff's first set of

14 interrogatories filed in the

15 Court of Chancery in the
16 state of Delaware in Partner
17 Investments LP v. Theranos,
18 Inc. (Starting Bates No.
19 SEC-PRM-E-0003430)
20 (previously marked as 199)
21
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23
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308

1 C O N T E N T S (CONT.)

2

3 EXHIBITS:	DESCRIPTION	IDENTIFIED
4 218	Theranos, Inc.'s first 5 supplemental responses and 6 objections to plaintiff's 7 first set of interrogatories 8 filed in the Court of 9 Chancery in the state of 10 Delaware in Partner 11 Investments v. Theranos, 12 Inc. (Starting Bates No.	316

13 SEC-PRM-E-0005120)
14 (previously marked as 200)
15 219 July 12, 2013, e-mail with 342
16 attachments from (b)(6),(b)(7)(C)
17 (b)(6),(b)(7)(C) to (b)(6),(b)(7)(C) with a
18 copy to Elizabeth Holmes.
19 The subject line is "Re demo
20 results for 7/11" (Starting
21 Bates No. THPFM0000064613)

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309

1 C O N T E N T S (CONT.)

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3	EXHIBITS:	DESCRIPTION	IDENTIFIED
4	220	May 6, 2014, e-mail with 5 attachment from Sunny 6 Balwani to Elizabeth Holmes, 7 Subject "Forward: Final 8 Deck" (Starting Bates No. 9 THPFM0001558583)	366
10	221	Excel file of text	376

11		messages(Starting Bates No.	
12		TS-1036239)	
13	222	Handwritten notes dated	383
14		December 10, 2014 (Starting	
15		Bates No. TS-0480486)	
16	223	June 28, 2013, e-mail with	394
17		attachment from (b)(6);(b)(7)(C)	
18		to Elizabeth Holmes and	
19		Sunny Balwani, Subject line	
20		"Safeway/Theranos Meeting	
21		6/26/13" (Bates	
22		No. TS-0034026)	



1 C O N T E N T S (CONT.)

2

3	EXHIBITS:	DESCRIPTION	IDENTIFIED
4	224	May 1, 2014, e-mail from	404
5		Sunny Balwani to Elizabeth	
6		Holmes, Subject line "Re	
7		Safeway/Theranos" (Starting	
8		Bates No. THPFM0001558606)	

9	225	August 1, 2014, e-mail	412
10		from (b)(6);(b)(7)(C) to Elizabeth	
11		Holmes, Subject line	
12		"Safeway/Theranos" (Bates	
13		No. TS-0046261)	
14	226	Document titled "Theranos,	451
15		Inc., FMV as common stock as	
16		of March 25, 2015"; Report	
17		date April 6th, 2015.	
18		(Starting Bates No.	
19		TS-0021981)	
20	227	Document titled "Pro Forma	464
21		Projected Statement of	
22		Income" (Starting Bates No.	
23		TS-0021911)	
24			
25			



1 C O N T E N T S (CONT.)

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3	EXHIBITS:	DESCRIPTION	IDENTIFIED
4	228	Excel spreadsheet titled	511
5		"Theranos Confidential	
6		Market Assumptions"	

7		(Starting Bates No.	
8		THER-2550987)	
9	229	Letter with Hyman, Phelps &	527
10		McNamara letterhead dated	
11		November 26, 2013	
12		addressed to (b)(6);(b)(7)(C)	
13		(b)(6);(b)(7)(C) (Starting Bates	
14		No. TS-0995690)	
15	230	Letter from the Department	545
16		of Health and Human Services	
17		FDA to (b)(6);(b)(7)(C) dated	
18		June 13, 2014 (Starting	
19		Bates No. TS-0992588)	
20	231	Teleconference meeting	553
21		minutes between Theranos and	
22		FDA on June 19, 2014.	
23		It's a teleconference	
24		meeting (Starting Bates No.	
25		THER-0353763)	



312

1 C O N T E N T S (CONT.)

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3 EXHIBITS: DESCRIPTION IDENTIFIED

4	232	Letter from FDA to (b)(6);(b)(7)(C)	566
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(b)(6),(b)(7)(C) at Theranos dated
October 28, 2014 (Starting
Bates No. THER-0360329)



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P R O C E E D I N G S

THE VIDEOGRAPHER: We are on the record at the

3 beginning of Media No. 1, Volume II. My name is
4 (b)(6),(b)(7)(C) contracted, by Hahn and Bowersock.

5 Please begin.

6 MS. CHAN: We're on the record at 9:04 a.m. on
7 July 13th, 2017. I'm Jessica Chan, and with me are Rahul
8 Kolhatkar, Monique Winkler, Michael Foley, Jason
9 Habermeyer, and not yet with us is Marc Katz. But we are
10 officers of the Commission for the purposes of this
11 proceeding.

12 We are today resuming the examination of
13 Elizabeth Holmes, which was adjourned on July 11th, 2017.
14 Would counsel please identify themselves?

15 MR. NEAL: Stephen Neal Cooley, LLP, on behalf
16 of Elizabeth Holmes.

17 MR. DWYER: John Dwyer also for Cooley.

18 MR. TAYLOR: David Taylor of Theranos on behalf
19 of Theranos.

20 MR. DAVIES: Chris Davies from Wilmer.

21 MR. MCLUCAS: Bill McLucas, Wilmer.

22 MS. LEEPER: Ali Leeper, Cooley.

23 MS. CHAN: Testimony today is pursuant to a
24 commission subpoena which has previously been marked as
25 Exhibit 191.

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1 Ms. Holmes, do you understand that you remain
2 under oath?

3 MS. HOLMES: I do.

4 MS. CHAN: Let the record reflect that a copy
5 of the formal order of investigation in this matter as
6 supplemented will be available for examination during the
7 course of this proceeding.

8 Whereupon,

9 ELIZABETH HOLMES

10 was recalled as a witness and, having been previously
11 duly sworn, was examined and testified further as
12 follows:

13 EXAMINATION

14 BY MS. CHAN:

15 Q So before we get started, I wanted to give to
16 you what was previously marked as Theranos Exhibits 191
17 to 200. I'll give these all to you. If you could just
18 take a quick look, and just let me know if you recall
19 that we went through these exhibits earlier in your
20 testimony on Tuesday.

21 MR. KOLHATKAR: Just for the record, Counsel,
22 we just have to remark because of a numbering error.

23 MR. DWYER: Okay. Thank you.

24 THE WITNESS: Yeah.

25 BY MS. CHAN:

1 Q Do those exhibits look right to you?

2 A I think so.

3 Q Okay. Thank you. So as Mr. Kolhatkar just
4 explained, there was a numbering issue in our exhibits,
5 so we do need to remark these exhibits. So I'm just
6 going to do this in front of you.

7 MR. NEAL: You need to remark each of them?

8 MS. CHAN: Yes. Just the first ten.

9 So let the record show that I am marking what
10 was previously marked Theranos 191 as new Exhibit 209.
11 Hand that back to you. And I'm marking what was
12 previously marked as Theranos Exhibit 192 as new Exhibit
13 210. I'm marking what was previously marked as Exhibit
14 193 as 211. I'm marking what was previously marked as
15 Exhibit 194 as Exhibit 212. I'm marking what was
16 previously marked as Theranos Exhibit 195 as Exhibit 213.
17 I'm marking what was previously marked as Theranos
18 Exhibit 196 as Exhibit 214.

19 I'm marking what was previously marked as
20 Theranos Exhibit 197 as Exhibit 215. I'm marking what
21 was previously marked as Exhibit 198 as Exhibit 217 --
22 216. Excuse me. I'm marking what was previously marked
23 as Theranos Exhibit 199 as Exhibit 217. And I'm marking

24 what was previously marked as Theranos Exhibit 200 as
25 Exhibit 218.

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316

1 (SEC Exhibit Nos. 209 through 218
2 were marked for identification.)

3 BY MS. CHAN:

4 Q And then just to take back Exhibit -- new
5 Exhibit 209, Ms. Holmes, do you understand that you are
6 appearing here today pursuant to commission subpoena,
7 which is now Theranos Exhibit 209?

8 A I do.

9 Q Thank you.

10 MS. CHAN: Counsel, do you have any questions?
11 Okay. All right. So these will be here just in case we
12 need to go back. Pile.

13 MR. NEAL: Here, I'll put 'em over here.

14 MS. CHAN: Thank you.

15 BY MS. CHAN:

16 Q So when we left off on Tuesday, we were talking
17 about Theranos' relationship with Walgreens. Do you
18 recall that?

19 A I do.

20 Q Okay. I'm handing to you what has been
21 previously marked as Theranos Exhibit 50.

22 MR. DWYER: Thanks.

23 BY MS. CHAN:

24 Q Exhibit 50 purports to be a June 25th, 2012,

25 e-mail to (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C)



317

1 (b)(6);(b)(7)(C) with a copy to (b)(6);(b)(7)(C) Subject line is
2 "Meeting" with starting Bates No. WAG-TH-00002493. And
3 there are a number of attachments. The first attachment
4 has Bates number ending 2494. The second attachment has
5 Bates number ending 2499, and the third attachment has
6 Bates number ending 2500.

7 Have you seen Exhibit 218 before -- I'm sorry.
8 Have you seen Exhibit 50 before?

9 A I don't think the e-mail. I recognize one of
10 the attachments as our CLIA certificate which I've seen
11 before. I'm not sure about the meeting minutes in this
12 list of CPT codes.

13 Q Okay. So if you turn to the e-mail on 2493,
14 it's an e-mail from (b)(6);(b)(7)(C) Do you understand what
15 his role was at Walgreens?

16 A Generally, yes.

17 Q What was his role?

18 A It began, I believe, as (b)(6);(b)(7)(C)
19 part of (b)(6);(b)(7)(C) and then I understand

20 he got involved in medical affairs and general innovation
21 initiatives for Walgreens.

22 Q And you were in discussions or (b)(6),(b)(7)(C) was
23 part of the Walgreens team that you were in discussions
24 with pertaining to the Theranos/Walgreens relationship,
25 right?

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318

1 A For a period of time, yes.

2 Q Okay. So he -- it looks like he's sending some
3 minutes from a meeting that took place Thursday and
4 Friday. And so if you turn to the first attachment,
5 these are the meeting minutes. The attendees here appear
6 to be (b)(6),(b)(7)(C) Elizabeth, and Sunny.

7 So did you attend this meeting on June -- June
8 22nd and June 23rd of 2012?

9 A I don't remember it, but I don't have reason to
10 doubt the document.

11 Q Okay. And if you would turn to 2495, which is
12 the second page of the attachment, you'll see in the
13 middle of the page the second bullet point says "Contract
14 Terms and Timing." And then there are four diligence
15 items in 30 days.

16 Do you see that?

17 A I do.

18 Q One of those items is the test menu. "Theranos
19 will provide Walgreens with a copy of the test menu
20 incorporated as Schedule J, an operations manual that
21 Theranos-trained Walgreens technician will utilize during
22 the PSC."

23 Do you understand PSC to be patient service
24 center?

25 A I do.

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319

1 Q Okay. And then it goes on to say, "They gave
2 us a clean copy of the test menu, and (b)(6),(b)(7)(C) has it. (b)(6),(b)(7)(C)
3 estimates approximately 600 tests."

4 So if you then turn to the last attachment,
5 this appears to be a test menu. Do you see that?

6 A I do.

7 Q Do you recognize this test menu?

8 A I generally recognize that we had files that
9 were like this with CPT codes. I don't know necessarily
10 this one specifically, but we -- I've seen documents like
11 this before.

12 Q Did you give this test menu to the Walgreens
13 team during this meeting or after that meeting?

14 A I don't know.

15 Q Do you know if Sunny Balwani gave this test

16 menu to the team after that meeting or during the
17 meeting?

18 A I don't. I wouldn't be surprised if we did,
19 but I don't know for sure.

20 Q So there appear to be pages and pages of tests
21 here. Could Theranos' TSPU perform all of these tests at
22 this time in June 2012?

23 A So I think there's two parts to that, which we
24 were talking a little bit about in our -- the day before
25 yesterday. The first is the architecture of the system,

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320

1 and we were very focused on capability in terms of the
2 device itself or the platform with our small sample
3 methods being able to perform this range of tests.

4 There were additionally a number of these for
5 which we had already developed assay development and
6 validation reports which I can recognize on this list.

7 Q So you -- so your testimony is that Theranos
8 had developed all of these tests or at least assay
9 development, or all of these tests were in assay
10 development phase at this time in June 2012?

11 A I don't know if all of them were. I know that
12 at least a subset of them were or had development reports
13 associated with them at that time.

14 Q Did you tell (b)(6),(b)(7)(C) or any of the attendees at
15 this meeting that that was the case, that all of these
16 tests were actually in assay development mode and had not
17 actually been transferred to the TSPU yet?

18 A I don't know. I also note that this is now in
19 the time of the clinical lab. And based on the e-mail
20 you just showed me, I think we were talking at that point
21 about the lab being able to handle a whole set of tests.
22 So I don't know that we were even specifically talking
23 about all of these being on fingerstick.

24 Q Okay. You can put that aside.

25 Do you -- did you participate in a series of

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1 meetings in summer and fall of 2013 to advance the
2 Walgreens relationship?

3 A I don't -- I can't sit here now and remember
4 specific meetings, but I'm sure I was at a high level
5 engaged with Walgreens leadership during that time.

6 Q In the summer and fall of 2013, would that have
7 been around the time that Theranos had developed or
8 modified its commercially available machines in order to
9 test smaller samples?

10 A So my understanding is --

11 MR. NEAL: What was the time again?

12 MS. CHAN: Summer and fall of 2013.

13 THE WITNESS: My understanding is that in the
14 fall -- yeah, in that period is when we implemented our
15 small sample volume chemistries on those platforms.

16 BY MS. CHAN:

17 Q Okay. Do you remember when that was? What
18 month in 2013?

19 A I don't.

20 Q If I told you it was around -- sometime in July
21 of 2013, would that seem about right to you?

22 A I'm not sure. My memory is that the first LDTs
23 were coming up in the lab later very close to launch, but
24 it's possible that there was work toward it ongoing in
25 July.

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1 Q Okay. During --

2 BY MR. KOLHATKAR:

3 Q Sorry. When do you remember the LDTs coming
4 online?

5 A My memory is that it was right before we
6 actually began serving patients. Many of those
7 validation reports were right before the first patients
8 were coming in.

9 BY MS. CHAN:

10 Q Did you discuss with Walgreens some of those
11 throughput issues that you described earlier in your
12 testimony during those meetings in summer and fall of
13 2013?

14 A My memory is that at the time we invented the
15 nanotainer, at that time we discussed the invention of
16 the nanotainer and its ability to work with what we
17 talked about as high-throughput testing methods for our
18 small sample assays in Phase 1 and then focus on the
19 device in Phase 2.

20 Q So you developed the nanotainer in order to be
21 used with the modified protocols on the commercially
22 available platforms?

23 A I don't know if we knew exactly at the time we
24 developed the nanotainer what hardware the test would run
25 on, but the concept was that then a lot of samples could

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323

1 be collected from a lot of different locations and sent
2 to one place to all be run at the same time in a
3 high-volume type of way.

4 Q But it sounds like you recall having developed
5 the nanotainer around the same time that Theranos was
6 looking into potentially modifying these commercially
7 available machines; is that right?

8 A No. I think the nanotainer development
9 happened much earlier when we shifted our business model
10 with Walgreens from being focused on the TSPU at the
11 stores to being focused on a Phase 1/Phase 2-type
12 relationship that started with centralized labs.

13 Q Okay. So when did you develop the nanotainer?

14 A Yeah. We were talking about this the day
15 before yesterday. I don't know specifically. I believe
16 that it would have been around the time or shortly after
17 the initial CLIA certification as a centralized lab, but
18 I don't know.

19 Q Okay. So I asked you a question about whether
20 you'd discussed the throughput issues that you had
21 testified to earlier with Walgreens?

22 A Yep.

23 Q Did you discuss those issues with them?

24 A My memory is that I talked about it in the
25 context of the nanotainer invention prior to 2013 and

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324

1 that the nanotainer model would facilitate testing in a
2 high-volume way in that centralized lab, and we then
3 later picked what hardware platforms to implement our
4 chemistries on.

5 Q Okay. But did you actually talk to them about

6 some of the issues that you're experiencing with the fact
7 that the TSPU at that time could not conduct the same
8 number of tests that you would need to conduct in order
9 to receive a number of samples from lab -- from patient
10 service centers? Did you discuss that point with them?

11 A That the TSPU could only handle one sample at a
12 time?

13 Q Yes.

14 A I'm not sure. I can't remember a specific
15 conversation. I don't know.

16 Q Did you ever discuss with them the fact that
17 Theranos was in the process or had developed a solution
18 to this throughput problem or the fact that the TSPU
19 could only perform testing on one sample at a time?

20 A It's my understanding that part of our ongoing
21 communications with them were around the fact that we
22 were developing capacity to be able to handle large
23 sample -- large numbers of samples at a time. I don't
24 know what details were discussed in that context.

25 BY MR. KOLHATKAR:

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1 Q How did you gain that understanding?

2 A I have memory that one of the metrics that they
3 were looking at for moving beyond what they had initially

4 referred to as a pilot stage was our throughput
5 capability, how many samples we could handle in our labs,
6 and I know that that was important to them.

7 Q But you don't know, I guess -- if I understand
8 your testimony, you don't know whether, you know, the
9 Theranos team communicating more directly with Walgreens
10 disclosed Theranos' solution to the throughput issue?

11 A I don't.

12 BY MS. CHAN:

13 Q So you also don't know whether you or anyone
14 else at Theranos would have disclosed to Walgreens that
15 Theranos was using commercially available machines and
16 modifying the protocols on them?

17 A I don't. I mean, we generally considered that
18 implementation of our chemistries to be trade secret, and
19 we'd filed nonpublic patent applications on certain parts
20 of it, so I wouldn't expect that we would have gotten
21 into detail on that. I thought that we had talked about
22 it as ways we could implement our chemistries in
23 high-throughput fashion in the lab. I don't know the
24 extent to which anything further than that was discussed
25 with them.

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1 Q But why wouldn't you tell Walgreens -- I mean,

2 Walgreens was Theranos' most important business partner
3 at the time. Don't you think that Walgreens would have
4 wanted to know what device you were using to process
5 these samples?

6 A It was my understanding that they were very
7 interested in the TSPU for Phase 2. I am not aware that
8 they were very focused on what hardware that we were
9 using in Phase 1 at that time. We talked to them in
10 general about how we were operating our labs, but they
11 were not -- there were not specific conversations that
12 I'm aware of of what the hardware platform was in Phase
13 1.

14 Q But at the time you were marketing Theranos'
15 technology to Walgreens in 2010 --

16 A Yeah.

17 Q -- weren't the two parties envisioning that the
18 TSPU would be running the tests?

19 A In the stores, yes. And we were. Through
20 2015, when we got our first FDA clearance on the TSPU,
21 our thought even going into that year was that we were
22 going to start putting those TSPUs in the store. That
23 was the hardware focus --

24 Q Right.

25 A -- with Walgreens.



1 Q So why wouldn't it be important, though, to let
2 them know, just so you know, the TSPU is not going to be
3 the device that's going to be performing most of the
4 tests; it's actually going to be this modified
5 commercially available machine?

6 A Again, my understanding is we conveyed to them
7 when we invented the nanotainer that we would be shifting
8 to a model in which Phase 1 was the nanotainer and the
9 chemistries, small sample chemistries, and Phase 2 would
10 be the TSPU. We then also began adding commercial
11 equipment for doing traditional venipuncture testing.

12 It's my understanding that they were aware that
13 the lab in Phase 1 was doing a lot of different things to
14 be able to accommodate the business model of Phase 1,
15 which was foot traffic and low-cost testing and a better
16 patient experience including small samples.

17 BY MR. KOLHATKAR:

18 Q So you said a couple things there I just want
19 to follow up on.

20 A Yeah.

21 Q You mentioned that it was your understanding
22 that they understood Phase 1 was about implementing
23 Theranos chemistries. Did you ever use that language
24 with them, "implementing Theranos chemistries" in

25 connection with Phase 1?

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328

1 A I think so.

2 Q What was the context?

3 A My memory is the first time is when we were
4 talking about how to change the business model and the
5 creation of the idea of Phase 1 and Phase 2. And at that
6 time, as we discussed in our prior meeting, the purpose
7 of the nanotainer was to be able to run a lot of samples
8 at the same time.

9 And so the point we were trying to make is if
10 the value to the patient is that they get their
11 collection on a fingerstick, they don't care whether it's
12 processed on a device at the store or in a
13 high-throughput way in the lab, and so we could develop
14 this nanotainer product to allow the samples to be
15 processed in a high-throughput way and then use the
16 device in Phase 2 in the lab. And I believe that was
17 what generally led to the establishment of Phase 1 and
18 Phase 2.

19 Q Do you recall anyone at Walgreens that you used
20 that language with?

21 A So I thought that all of the conversations
22 around the invention of the nanotainer, this was part of

23 that discussion. I don't know who specifically was in
24 those meetings because it was many years ago, but I
25 believe that that was generally how we described the

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329

1 Phase 1/Phase 2 model to Walgreens and to others.

2 Q You also, in answer to an earlier question,
3 described sort of the architecture of the 4 series
4 miniLab --

5 A Yeah.

6 Q -- as something that was capable of performing
7 that -- that test menu we just looked at?

8 A Yes.

9 Q Did you ever use that language, "the
10 architecture" of the TSPU or the miniLab in connection
11 with any discussions with Walgreens?

12 A I don't know if I used that word. I know that
13 part of the Hopkins visit was, as I understood it,
14 essentially evaluating that because they were looking at,
15 is this truly differentiated from other point-of-care
16 technology? And whether the word "robotics" or
17 "architecture" or some other word was used, that was, I
18 believe, what they saw as differentiating Theranos and
19 why Walgreens was interested in partnering with us.

20 Q So just so I understand that, you understood

21 Hopkins' evaluation to focus on the, whether we call it
22 the architecture or the robotics, whatever the mechanism
23 of the point-of-care device as the focus of their
24 evaluation; is that fair?

25 A I'm sure there were other things, and I know

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1 Walgreens had multiple interactions with them. My
2 understanding was that one of the things they were
3 particularly focused on was, is this a platform that is
4 capable of running any combination of tests, in so many
5 words, given the way it's designed, essentially?

6 BY MS. CHAN:

7 Q Do you recall performing demonstrations for a
8 number of Walgreens executives during this time frame,
9 summer to fall of 2013?

10 A I don't have specific memory of them, but I'm
11 sure there were multiple interactions. I know I
12 mentioned that we -- we sent a TSPU to Walgreens in
13 Chicago for them to use at their facility as well. I
14 don't know if that was in 2013 or at a different period
15 of time.

16 Q Do you recall conducting these technology
17 demonstrations in Theranos' office during this time
18 frame?

19 A Again, I don't have memory of specific
20 demonstrations during that time.

21 Q But you do recall that there were
22 demonstrations that were done for Walgreens, correct?

23 A I don't recall specific ones. I know that
24 Walgreens is a partner for whom we would have done
25 demonstrations.

331

1 Q What did -- what was your understanding as to
2 the purpose of those demonstrations?

3 A I think, as we were discussing before, it
4 varied based on the audience that was there and what they
5 were interested in seeing. I know at certain periods of
6 time they were interested in seeing the software we were
7 working to build.

8 At other instances, like with the TSPU, they
9 were interested in seeing the TSPU. Over time a lot of
10 the focus became understanding the retail operation
11 itself, what collection would be like in store, what the
12 experience would be like in store, and trying to
13 replicate that.

14 Q Wasn't part of the reason why they wanted to
15 see a technology demonstration also because they wanted
16 to just see for themselves that Theranos' technology

17 worked and it could perform the blood tests that Theranos
18 said it could?

19 A I -- I don't know.

20 Q You don't know that Walgreens would have wanted
21 to know whether or not your technology worked?

22 A I know that that's why they had us go to
23 Hopkins, and they had Hopkins look at it and, I believe,
24 look at a number of different inputs that Walgreens was
25 getting on due diligence on Theranos. I don't know what

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332

1 they were thinking when they came to our site in terms of
2 what they were looking for in a specific instance.

3 BY MR. KOLHATKAR:

4 Q So in the -- I guess in summer/fall 2013 time
5 frame --

6 A Yeah.

7 Q -- if the focus of -- is it fair to say that
8 the focus from Theranos' side was on Phase 1 with respect
9 to Walgreens at that time?

10 A Yes.

11 Q Would there be any reason to send Walgreens a
12 TSPU in 2013 if that wasn't part of Phase 1 and not the
13 current focus on Theranos' side?

14 A So, again, I don't know if it was in 2013. It

15 may have been before then. But as I look back on that
16 time frame, what's really important to remember is we
17 really believed that we were going to get a large number
18 of tests into the FDA on the TSPU and cleared and moved
19 to Phase 2 very quickly.

20 So, yes, we were operating in Phase 1, but we
21 thought Phase 2 is the future of the business. This is
22 where we're going; this is what we're going to do. And
23 we thought, based on the assays that we had, that we were
24 really close to it.

25 Q I guess, did you ever explain, you know,

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1 whenever the machine was sent to Walgreens that -- that
2 it was more relevant to the Phase 2 context of the
3 relationship?

4 A I understood it was explicit that this is for
5 Phase 2. You're going to process a single patient sample
6 at a time. And I thought that had been conveyed well at
7 that time.

8 Q You thought -- did you think you had conveyed
9 that well to Walgreens at the time?

10 A So I was only in meetings with some of their
11 higher-level decision makers. I understood from those
12 meetings that at least I thought I had conveyed that the

13 TSPU was for Phase 2, yes.

14 I know now that there's been a lot of confusion
15 about this. And I've tried to spend a lot of time
16 thinking about, you know, how could we have done this
17 better? But at those times I thought -- I thought that
18 was understood.

19 BY MR. FOLEY:

20 Q During Phase 2, was there going to be a
21 slowdown in the throughput of tests?

22 A That's a good question. I don't know. I think
23 part of the concept was that there would be specific -- I
24 don't know. I think -- I think we thought that if you
25 were trying to get ten patients a day in the store, if

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334

1 that was the target, that you would be able to handle ten
2 patients a day in the store on the miniLab. There would
3 be potential issues if a lot of them came at the same
4 time, but I don't think we ever thought that there was
5 necessarily going to be a slowdown.

6 BY MR. KOLHATKAR:

7 Q Was ten patients a day your target in the
8 2013/2014 time period for Walgreens?

9 A It's the number that I had in my head as we
10 started out, what they thought would be a success. I

11 know certainly over time and as we moved toward more of a
12 venipuncture model, venous draws for Phase 1, that we
13 started thinking, how high can we get this number?

14 Q I guess, when did that in your mind shift when
15 you started thinking more about a venipuncture model?

16 A I don't know specifically. I believe it was
17 toward either the end of '14 or early '15, but I could be
18 wrong. I'm speculating.

19 Q Did you -- did you ever at any point
20 communicate to Walgreens that you were, I guess, making
21 this transition in your mind from thinking about the TSPU
22 to more of a venipuncture model for testing?

23 A Again, sorry if I didn't say this well.

24 It was my understanding that the TSPU was
25 always about Phase 2. Venipuncture was an alternative

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335

1 for nanotainer for Phase 1. And I believe that we did
2 have conversations with Walgreens, especially as we began
3 discussing what we called a rental model with the service
4 centers in the stores about the importance of
5 venipuncture.

6 I know also when we moved to all Theranos
7 labor, which as a start-up that meant we were hiring
8 hundreds of phlebotomists who were certified to draw

9 blood, that there was explicit discussion about
10 venipuncture.

11 And, in fact, (b)(6);(b)(7)(C)
12 said to me at one point that maybe we could get the
13 pharmacists to do the venipuncture, because a lot of them
14 had already been certified in doing venipuncture based on
15 their pharmacy training. So, yes, there was discussion
16 about venipuncture.

17 Q Sure. I guess -- I understood you earlier to
18 say sort of the value proposition early on was the
19 finger -- you know, the patient doesn't care about their
20 experience. If they go in the store and get the
21 fingerstick, it doesn't matter what device it gets tested
22 on, right?

23 A Yes.

24 Q So I guess when did that consideration become,
25 I guess, less important to you when analyzing the Phase 1

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336

1 Walgreens relationship?

2 A So, again, it's my understanding it was over
3 time. I think the ability to get a large number of
4 people getting only fingerstick depended on what the
5 order was. And so to get certain types of physician
6 practices, you needed insurance contracts because the

7 insurance contract would allow the physician to send the
8 patient to you.

9 And for the test menu we had, to get those
10 physician contracts, we needed contracts with the
11 insurance companies. And the insurance companies
12 essentially said what we care about is cost and an
13 end-to-end menu.

14 So as we got more experience trying to get
15 insurance contracts, we understood that the most
16 important thing in Phase 1 was the test menu and the
17 price and that, in large part, drove the move to
18 venipuncture.

19 BY MS. CHAN:

20 Q So is it your testimony, then, today that
21 Walgreens was aware that Theranos was moving away from
22 smaller samples and fingerstick draws to venipuncture?

23 A I can't sit here and say what Walgreens was
24 aware of. I can say what I thought we had communicated
25 and I had communicated in the interactions that we had. I

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337

1 thought that we'd communicated that first we were focused
2 on small samples, but that over time the real value to
3 Walgreens was foot traffic; and, therefore, venipuncture
4 made sense.

5 I think they agreed with it based on the fact
6 that they've now partnered with LabCorp to do just that.
7 But I -- I don't know what they were aware of or not.

8 Q So you keep saying that you thought you had
9 conveyed this to them?

10 A Yeah.

11 Q Do you think that you conveyed it, or do you
12 know that you conveyed it?

13 A The conversations -- I mean, this is many years
14 ago, and I can't sit here and say I know within this
15 meeting that I said this because I don't remember the
16 meetings well enough. But I know what the purpose of the
17 invention of the nanotainer was and then what the purpose
18 of, you know, building, for example, a venipuncture-based
19 lab in Arizona was.

20 And I really believe that Walgreens understood
21 that at that time because we were changing our entire
22 business model, getting away from being a technology
23 company for them, and that's one of the areas in which
24 we, and I, made a lot of mistakes was in doing that. And
25 it was because we were trying to make that partnership

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338

1 successful.

2 Q Okay. So you don't know whether you did convey

3 that to Walgreens, then?

4 A I can't sit here and recall specific
5 conversations and specific words.

6 BY MR. KOLHATKAR:

7 Q So you just mentioned something that I think,
8 you know, is interesting to me. The -- this idea that,
9 you know, once it became clear to you through the
10 insurance contracts and working with doctors' offices
11 that getting the full menu was important.

12 At that point in time, essentially your company
13 is just turning into a lab services company; is that
14 fair?

15 A Yes, it is.

16 Q And it moved away from its model of sort of the
17 droplets of blood being a differentiator, right?

18 A In some ways. Again, all the time we were
19 working toward getting the TSPU into the FDA and cleared
20 for Phase 2, right? So Phase 1 is you're trying to get
21 market share, essentially create a channel, and then come
22 in with this technology in Phase 2.

23 Q I guess I understand that. But it seems like
24 at that point in time the Phase 1 and Phase 2 are
25 somewhat on divergent paths. I mean, you're trying to

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1 gain market share but with a technology that's pretty
2 different from what you're considering in Phase 2.

3 In your mind, what was your -- how were you
4 going to bridge that gap?

5 A So if you look at our mission as a company,
6 it's access to health information. So access to us, what
7 we began to understand if you look at a lot of the
8 customer feedback, it was about cost. People couldn't
9 afford lab testing, and we were offering low-cost lab
10 testing. So cost, convenience, the experience. That was
11 all part of what we were building in Phase 1.

12 Still with venipuncture we were trying to do
13 smaller samples. We were using butterfly needles. We
14 were trying to invest in technology, which I can talk
15 about if it's relevant, to make that total draw still
16 smaller and then as fast as we could get to Phase 2 for
17 fingerstick and even smaller turnaround time ultimately,
18 was our plan.

19 BY MS. WINKLER:

20 Q Was your company making any money offering
21 low-cost lab testing?

22 A So at the volumes we were at, no. It was my
23 understanding that we believed we could if we hit volume,
24 and we thought that the retail footprint and some of what
25 we were doing on changing the law to allow consumers to

1 order tests would create that volume, but we never got to
2 that point.

3 BY MR. KOLHATKAR:

4 Q And so was the decision on, you know, how to
5 price Theranos tests in a Walgreens purely based on
6 capturing market share?

7 A So at a high level it was -- going back to my
8 example of the \$4 lab test, right? We wanted to provide
9 a technology business model in lab testing. So we
10 believed that we would ultimately be able to make money,
11 but we tried to figure out what is the lowest price that
12 we could possibly charge so that we're still breaking
13 even or getting a little bit of profit but changing
14 access for people.

15 So it's kind of like Walmart versus Neiman
16 Marcus in terms of the pricing and the business model.
17 Walmart is high volume, really low margin.

18 BY MS. CHAN:

19 Q Okay. So going back to the demonstrations,
20 then, did you instruct anyone at Theranos to move miniLab
21 devices or the TSPU into the CLIA lab in order to --
22 because you were preparing for a tour or a technology
23 demonstration? Do you recall ever doing that?

24 A Move them into the CLIA lab?

25 Q Yes.

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341

1 A I don't recall doing that. There were TSPUs in
2 the CLIA lab running some tests as we've discussed.

3 Q Okay. So you don't recall ever moving more
4 devices into the CLIA lab for that purpose?

5 A I don't -- I don't think so. I mean, I can't
6 sit here and say that we never did, but I can't sit here
7 and recall a specific instance. I don't think so, but I
8 don't know.

9 Q Do you recall a meeting that you had with
10 Walgreens executives in July 2013 in which you conducted
11 a technology demonstration?

12 A I don't. I don't remember.

13 BY MR. KOLHATKAR:

14 Q While she gets the document --

15 A Yeah.

16 Q -- would there be any reason to move miniLab
17 devices into either the CLIA lab or the R & D lab for the
18 purposes of a tour?

19 A I mean, I remember we were always really
20 focused on protecting sort of areas where we had open
21 devices or things we thought were trade secret. So it's

22 possible that we decided, okay, we're going to bring
23 people to one place, so anything we want to talk about
24 put there. I don't have specific memory of specific
25 instances and can try to talk about any specific

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342

1 instances that you want to talk about.

2 BY MS. CHAN:

3 Q Okay. So I'm handing to you what's been marked
4 Theranos Exhibit 219.

5 (SEC Exhibit No. 219 was marked for
6 identification.)

7 BY MS. CHAN:

8 Q Exhibit 219 purports to be a July 12th, 2013,
9 e-mail from (b)(6);(b)(7)(C) to (b)(6);(b)(7)(C) with a copy to
10 you, Elizabeth Holmes. The subject line is "Re demo
11 results for 7/11." And the starting Bates number is
12 THPFM0000064613, and there are two attachments. The
13 first has starting Bates No. 64618, and the second has
14 starting Bates No. 64620.

15 Have you seen Exhibit 219 before?

16 A I don't recognize it, but I don't have any
17 reason to doubt this e-mail.

18 Q What is Exhibit 219?

19 A It appears to be an exchange about demo

20 results.

21 Q Did you receive and review Exhibit 219 on or
22 about July 12th, 2013?

23 A I don't know.

24 Q So if you turn to the last page or the
25 second-to-last page in the e-mail, which is the first

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343

1 e-mail in the chain, you'll see there's an e-mail from
2 (b)(6);(b)(7)(C) who's writing to you and (b)(6);(b)(7)(C)

3 Do you see that?

4 A I do.

5 Q He says, "Hi, (b)(6);(b)(7)(C) and Elizabeth, attached
6 please find the six demo reports for today. All
7 out-of-range values are in red font." And then he goes
8 on to say, "Please note the following. Creatinine has
9 been removed for all reports as per (b)(6);(b)(7)(C) suggestion."

10 Do you see that?

11 A Yes.

12 Q He goes on to say, "Vitamin D has been removed
13 for all male health panels as per (b)(6);(b)(7)(C) suggestion."

14 Do you see that?

15 A I do.

16 Q He goes on to say, "TT4 and TT3 has been
17 removed for all thyroid panels as per (b)(6);(b)(7)(C)

18 suggestion."

19 Do you see that?

20 A I do.

21 Q And then he goes on to write, "fT4 has also
22 been removed from the thyroid panel in F2."

23 Do you see that?

24 A I do.

25 Q Did you understand this to mean that (b)(6);(b)(7)(C)

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344

1 was removing certain results from test reports?

2 A Yes.

3 Q What was your understanding as to why he did
4 this?

5 A Well, again, the clinical lab had not gone live
6 at this point. So, I mean, going back to my prior
7 comment, my understanding generally is if anyone was
8 reviewing the data had a concern about the data, don't
9 include it on the report.

10 Q And you said your understanding was that you
11 shouldn't include it in the report. Where was that --
12 what was that understanding based on?

13 A My general understanding of the fact that if
14 you have a result that you think might not be accurate,
15 it's not a good process to report the result.

16 Q So had the lab gone live and you were
17 conducting patient testing and a patient was coming to
18 you and they were coming to you for diagnostic testing,
19 and so their physician had ordered a number of tests,
20 including some of these like Vitamin D and TT4 and TT3,
21 and you had some questions about the results that came
22 out of those tests, would it be appropriate for you to
23 remove those tests from the report? Wouldn't the
24 patient -- I mean, the patient needs that for testing,
25 right? Why would you be removing results from reports?

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345

1 A So, again, I was not directly involved in this.
2 The laboratory director would make that decision based on
3 whatever the right thing to do in the lab is.

4 Q Who was the lab director at this time? This is
5 July 2013.

6 A Yeah, I don't know. I don't know if (b)(6);(b)(7)(C)
7 (b)(6);(b)(7)(C) had started or (b)(6);(b)(7)(C)
8 yet.

9 Q Okay. So you're not sure if he was the lab
10 director. But so who would have made that decision,
11 then, to remove test results if not him?

12 A Again, the lab wasn't live at this time. So I
13 don't know that we had all those processes and SOPs in

14 place yet.

15 Q Did you instruct (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C) to
16 remove results from test reports?

17 A I don't know if I specifically told them to do
18 that. Again, it was my general understanding that if
19 there was ever a concern about a result, you wouldn't
20 report it.

21 Q Where did you gain that understanding from? Did
22 somebody tell you that?

23 A I don't know. I think it was just basic
24 process that we wanted to make sure the results that we
25 were reporting were correct. And I don't know for demos

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346

1 like this that there were specific test orders even
2 coming in. I think -- I mean, this was -- this was in an
3 R & D environment.

4 BY MS. WINKLER:

5 Q But if some of the results came back incorrect,
6 how did you know that the results that he did report were
7 correct?

8 A I don't know. I'm not a laboratory, and I
9 didn't oversee the labs. I trusted my team to make those
10 decisions.

11 Q So who here were you trusting to make that

12 decision?

13 A In this case if (b)(6),(b)(7) was reviewing the data,
14 I would defer to him on his interpretation of the data.

15 Q You're talking about (b)(6),(b)(7),(C)

16 A Yes.

17 Q And what were his qualifications to do that?

18 A Again, I speculated a little bit on what I
19 thought his training was. I'm not completely sure, but
20 my understanding was that he was qualified to become
21 ultimately a lab director.

22 Q But at this point in time, what was your
23 understanding of his qualifications to make this
24 determination?

25 A His background in statistics and data analysis.

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347

1 Q Background in statistics and data analysis?

2 A Yeah.

3 Q And you hired him for this position, correct?

4 A No. We hired him many years before as a
5 scientist and promoted him up within our organization
6 over time.

7 Q So you promoted him to this position?

8 A We promoted him into product development, and
9 ultimately Sunny decided to make him a lab director.

10 Q But here as we're looking, July 2013, he was in
11 the role to make this decision because of you, correct?

12 A I mean, again, I was the CEO of the company, so
13 I take responsibility for this company. I did not place
14 (b)(6);(b)(7)(C) in this role. I did not directly oversee the
15 labs, but I tried to pick people who I trusted to do this
16 right. And --

17 Q So who was overseeing (b)(6);(b)(7)(C) at this time?

18 A To the extent that he was engaged in anything
19 in the clinical lab operations, (b)(6);(b)(7)(C) was the
20 ultimate decision maker at the time he became clinical
21 lab director. I don't know when that was. And Sunny was
22 overseeing anything associated with operations in the
23 laboratory.

24 Q But I don't see Sunny or (b)(6);(b)(7)(C) on this
25 e-mail.

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348

1 A I don't know.

2 BY MS. CHAN:

3 Q Why didn't you include them on the e-mail?

4 A Again, I -- I -- it's July of 2013. I read
5 this as a technology demo that was done in an R & D
6 setting prior to the lab going live.

7 BY MR. KOLHATKAR:

8 Q And, I guess, what's the -- what was the
9 difference in your mind between the importance of results
10 in an R & D setting versus the importance of the results
11 in a CLIA setting?

12 A I understand the results to be important across
13 the board. I believe there was a different process in
14 place once the lab went live for how decisions like this
15 were made based on the authority and discretion of the
16 lab director.

17 Q I -- did you communicate a distinction for --
18 to the Walgreens folks receiving these demonstrations
19 that, that Theranos didn't have those SOPs in place at
20 this time?

21 A I don't know.

22 Q Did you tell anyone at Theranos to communicate
23 that to these folks at Walgreens?

24 A I believe that Walgreens understood the lab
25 wasn't ready to go live yet because we hadn't gone live,

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349

1 and they were pushing us really hard to go live as soon
2 as possible. So they certainly knew we weren't
3 operational at that time. I don't know what else was
4 discussed or what the circumstance of this demo or, I
5 mean, frankly, I don't even know if this was for

6 Walgreens. I defer to you if you're saying it was.

7 BY MS. CHAN:

8 Q Well, why don't you take a look at the
9 attachments. So the attachments include lab reports for
10 (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C)

11 Does that ring a bell to you? Do those two
12 names sound familiar to you?

13 A I generally recognize (b)(6);(b)(7)(C) name. I don't
14 recognize (b)(6);(b)(7)(C)

15 Q Who is (b)(6);(b)(7)(C)

16 A I don't know.

17 Q You don't know whether he's a Walgreens
18 executive or not?

19 A I'm -- I'm not sure. I think so, but I'm not
20 sure.

21 Q So instead of removing the results entirely,
22 why didn't you just instruct (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C)
23 (b)(6);(b)(7)(C) to just include the results but maybe either
24 indicate that it's out of range or just indicate that
25 they needed to re-draw for those results? Why not go

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350

1 that route?

2 A Again, I'm not a laboratory. And we thought
3 the right thing to do, I believe, if there was a result

4 that was incorrect was not share the value. We thought
5 that was -- that was not proper.

6 Q But you -- you must have known that Walgreens
7 would want to know that all of the tests that they
8 were -- that were being performed would be performed
9 correctly.

10 So why wouldn't you want to be as transparent
11 as possible and let them know, actually, there were some
12 issues with, it looks like, at least six results? So
13 what's your answer to that?

14 A Again, the lab was not even live at this point
15 in time. I don't think they even came in with specific
16 test orders. I think that the team was picking tests to
17 do and made the decision that if test results were wrong,
18 they shouldn't be reported. I don't know anything
19 further than that.

20 Q But isn't another reason why you wouldn't want
21 to include any indication that there were questions about
22 the results that had you put something like an
23 out-of-range result or, you know, needs re-draw, that
24 that would raise questions with Walgreens?

25 A I mean, I'm speculating, but my guess is that

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1 the bigger issue would be that if you potentially

2 communicated something that there might be a medical
3 issue with someone and there actually wasn't.

4 BY MR. FOLEY:

5 Q You said this was for R & D purposes, right?

6 A Yes.

7 Q So no one was going to be relying on the
8 results of these tests anyway for medical treatment,
9 right?

10 A Correct.

11 Q So I guess why in an R & D setting would you
12 apply the protocols that are used for clinical lab
13 purposes?

14 A We were trying to do the right thing. We were
15 trying to report results that we believed in and not
16 report results if we thought there was any issue. And if
17 there was an issue, we would need to understand why. And
18 I believed that our team was trying to do the right
19 thing.

20 BY MR. KOLHATKAR:

21 Q Is it fair to say that at this time Theranos
22 was trying to demonstrate to Walgreens that it was
23 technologically capable of running tests in a lab
24 setting?

25 A I -- I don't know what the circumstances of



1 this demo were, so I would be speculating on that. I
2 know that we were very focused on showcasing the
3 fingerstick experience, on training their technicians, on
4 creating the front end. We certainly had gone through
5 the CLIA certification process and were very focused on
6 trying to put the right infrastructure in place from the
7 CLIA perspective on an ongoing basis as we led up to
8 launch.

9 Q Sure. I guess, just more basically, I mean,
10 if -- was it your understanding that if Walgreens didn't
11 think that Theranos could run tests, it wouldn't -- it
12 wouldn't allow Theranos to open in its stores?

13 A I mean, I don't know. We would be speculating.
14 I know that ultimately, you know, we ended up with an
15 all-venipuncture model. Had that -- you know, had we
16 talked about doing that at this point? I don't know what
17 that conversation would have been.

18 Q I guess, was it important to you in the summer
19 and fall of 2013 to demonstrate that Theranos could
20 perform clinical lab testing on blood samples to
21 Walgreens?

22 A Of course. Absolutely.

23 BY MS. CHAN:

24 Q And so when did Theranos end up rolling its

25 services out with Walgreens?

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353

1 A So I think the first patient in California was
2 in October of '15, and the first one in Arizona was
3 November -- I'm sorry -- of '13. And the first one in
4 Arizona was in November of '13.

5 Q Okay. So at the time of this technology
6 demonstration, you're about three months away from going
7 live --

8 A Yeah.

9 Q -- in the patient setting?
10 Did it concern you that a number of tests
11 weren't working on Theranos' devices?

12 A I know that we made mistakes in our clinical
13 lab, and I picked people who I trusted and believed in to
14 do the right thing here. I believed that as issues were
15 raised, we were looking into them, doing root cause
16 analysis, and solving them.

17 I believed that when our lab director signed
18 off on validation reports, it meant that we were -- we
19 were in good shape. And I know that we made so many
20 mistakes on this front, but we were trying to take this
21 forward and at that time thought that -- thought that we
22 were doing the right thing.

23 Q Do you know if any of these issues were ever
24 resolved, that the Theranos device was unable to test for
25 creatinine and Vitamin D and TT4 and TT3 and fT4?

354

1 Do you know if --

2 A I believe that we -- some of those --

3 Q -- all of those -- sorry. Let me just finish
4 my question.

5 A I'm sorry. I'm sorry.

6 Q Do you know if any of those issues were finally
7 resolved?

8 A I believe that at least a number of these were
9 validated in the lab as LDTs later, yes.

10 BY MR. KOLHATKAR:

11 Q On the TSPU?

12 A I think so. Some of them.

13 Q Which ones?

14 A I think Vitamin D was and I think some of the
15 thyroid markers. I don't know which ones specifically.

16 BY MS. CHAN:

17 Q So you'll see that -- you know, we looked at a
18 couple of reports that are attached to this e-mail.

19 A Yeah.

20 Q There are (b)(6),(b)(7)(C) reports.

21 And if you look in the -- if you look on 64613, which is
22 the first page of the e-mail, it looks like (b)(6);(b)(7)(C)
23 is getting ready to send these reports out.

24 Did you ever tell (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C)
25 that a number of tests that were run on the blood samples

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355

1 were actually removed from the reports?

2 A I don't know. Again, I don't remember
3 interactions around this.

4 Q Okay. You can put that one aside.

5 I'm handing to you what's been previously
6 marked as Theranos Exhibit 63.

7 Exhibit 63 is a letter agreement dated December
8 31st, 2013, titled "Amended and Restated Theranos Master
9 Services Agreement" with beginning Bates No.
10 WAG-TH-00000099.

11 Have you seen Exhibit 63 before?

12 A I think so.

13 Q What is Exhibit 63?

14 A I believe it's the amendment to our agreement
15 with Walgreens.

16 Q Did you receive and review Exhibit 63 on or
17 about December 31st, 2013?

18 A I don't know.

19 Q Okay. If you turn to 104, which is the last
20 page -- page of the agreement, is this your signature?

21 A It is.

22 Q On the right?

23 A Yes.

24 Q So do you believe that you would have received
25 this on or about December 31st, 2013, and signed it on

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356

1 that date as well?

2 A Yeah, I believe I signed it on that date.

3 Q So if you look at the second page of the
4 agreement, which is 100, under No. 1, "National Rollout,"
5 it says, "The parties shall work together to develop a
6 forecast that details the anticipated rollout dates for
7 Theranos services in individual U.S. states and
8 territories. The parties are committed to taking all
9 steps reasonably necessary to ensure a successful
10 national rollout of the Theranos services." And you can
11 go on and read the rest of the paragraph if you wish.

12 But nowhere in this paragraph does it say that
13 there is a binding agreement between the two parties to
14 roll out nationally, is there?

15 A I'm sorry. The question is does this paragraph
16 say whether there's a binding agreement to roll out

17 nationally?

18 Q Yes.

19 A Let me just read it for a second.

20 No. This paragraph says that they're committed
21 to taking all steps reasonably necessary to ensure a
22 successful national rollout.

23 Q Are you aware of any contracts or agreements
24 that would bind Walgreens to roll out Theranos services
25 in wellness centers nationally?

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357

1 A My understanding was that this agreement, and
2 even going back to our initial press release that said we
3 were going to roll out nationally, that was the intent of
4 this. And both of us had ways to get out of the contract
5 if we decided it wasn't going well.

6 Q Okay. So what's the answer to my question? Are
7 you aware of any contractual agreements between the two
8 companies that would bind Walgreens to roll out
9 nationally with Theranos?

10 A Honestly, that was my interpretation of what
11 this was.

12 Q What --

13 MR. NEAL: What this is referring to?

14 THE WITNESS: This agreement, yes. This

15 amendment was saying we're going to do this; we're going
16 to go out nationally. I think they say later in here
17 they're going to build out a certain number of what they
18 called gold spaces.

19 I recognize that this language does not say
20 this is a binding agreement to be national, but that was
21 my understanding of the purpose of this amendment.

22 BY MS. CHAN:

23 Q So if you turn to 101, there's a provision at
24 small D. It says, "Notwithstanding anything to the
25 contrary, Theranos agrees that it shall not, without

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358

1 Walgreens' prior written consent, offer services or
2 collect samples through CVS/caremark corporations and
3 MinuteClinic or the equivalent in exclusive Walgreens
4 markets. In the event Theranos desires to use such
5 clinics in nonexclusive Walgreens markets, it will inform
6 Walgreens in advance and review their rationale for doing
7 so and consider reasonable alternatives that Walgreens
8 may advance."

9 So you understood from this that Theranos
10 couldn't go out and enter into a contract with CVS
11 without giving prior notice to Walgreens, right?

12 A Yes.

13 Q And Theranos had to also consider reasonable
14 alternatives, if Walgreens offered reasonable
15 alternatives to Theranos, to rolling out with CVS,
16 correct?

17 A Yes.

18 Q Okay. Why don't you turn the page to 102,
19 under 3, "Innovation Fee." What did you understand as to
20 the innovation fee discussions that were taking place
21 between Walgreens and Theranos?

22 A My understanding was that ultimately in this
23 agreement this money was paid essentially, as it says
24 here, to be better prepared for national rollout and for
25 essentially exclusivity to Walgreens.

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359

1 Q Was Theranos asking Walgreens to accelerate the
2 innovation fee payments?

3 A I think we said to them that if they want us to
4 roll out at the pace that they wanted us to roll out,
5 that they were going to need to invest a lot and we
6 needed capital to do that.

7 Q So what were -- what was your understanding as
8 to the terms under which Theranos would earn the
9 innovation fee, though? Did you have any understanding
10 of that?

11 A My understanding was that essentially we were
12 earning it by being exclusive to them and by being
13 compliant with the contract. I know that there was a lot
14 of provisions in the agreement about, you know, targets
15 that we were both setting for rollout.

16 Q Did you understand that in the 2012 amended
17 master purchase agreement that Theranos wouldn't be
18 earning the innovation fee unless it hit certain revenue
19 targets?

20 A I know the provision that you're talking about.
21 I think we thought that when we moved to this agreement,
22 we were earning it based on exclusivity.

23 Q Where does it say that you'd be earning it
24 based on exclusivity?

25 A I believe the section -- what I had in my head

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360

1 was the section prior that talks about the exclusivity
2 commitments from Theranos and the associated commitment
3 from Walgreens.

4 BY MR. KOLHATKAR:

5 Q So just so I understand that.

6 A Yeah.

7 Q The -- by December 31st, 2013 --

8 A Yeah.

9 Q -- it was your understanding that Theranos --
10 Theranos' retention of the innovation fee from Walgreens
11 was based on exclusivity and not on revenue targets?

12 A I don't know that we focused on the revenue
13 targets provision in the 2012 agreement after that. I'm
14 not sure. I know to the extent that I talked about it
15 internally with Sunny, it was that, you know, this is
16 money that we're earning for exclusivity.

17 BY MS. CHAN:

18 Q So were you able to identify a portion of the
19 contract that did away with the earning event being tied
20 to revenue targets?

21 A No.

22 Q So if you turn --

23 BY MR. KOLHATKAR:

24 Q I'm sorry. I just want to make sure I
25 understand.

↑

361

1 A Yeah.

2 Q So at the end of 2013, in your mind the
3 innovation fee wasn't dependent on revenue targets with
4 Walgreens?

5 A I'm trying to remember whether we had any
6 conversations about the revenue targets again after this

7 agreement. I -- I remember associating it mentally with
8 exclusivity. I don't -- I don't know -- I don't know how
9 we addressed that.

10 Q I guess, in your mind at this time how did you
11 think Theranos was going to earn the innovation fee as of
12 year-end 2013?

13 A Honestly, what I have in my mind is that we
14 thought we would earn it based on exclusivity to
15 Walgreens.

16 Q What did that exclusivity in your mind provide?
17 I mean, how was Theranos going to be exclusive with
18 Walgreens?

19 A Working only with them for some agreed period
20 of time until we got permission from them to work with
21 other retailers.

22 Q What was that period of time?

23 A I don't remember it off the top of my head. I
24 could look back at these and try to piece it back
25 together.

↑

362

1 BY MS. CHAN:

2 Q So what was your understanding, then, as to
3 when Theranos would be able to earn the innovation fee
4 and count that as revenues?

5 MR. TAYLOR: Do you mean "earn" in a legal
6 sense or in an account? What --

7 BY MS. CHAN:

8 Q Do you understand what my question is?

9 A I'm -- I don't know. What is your -- if you
10 could clarify.

11 Q So you just answered Mr. Kolhatkar's question.

12 A Yes.

13 Q And you said exclusivity means that at a
14 certain point in time Theranos will have worked for
15 Walgreens for long enough and not with another retailer?

16 A Yeah.

17 Q And at that point in time Theranos would have
18 earned the innovation fee?

19 A Yeah. I mean --

20 Q Is that your answer?

21 A My answer is that by committing to Walgreens
22 that we would be exclusive to them, we were earning this
23 money, and that was why it was being paid at the end of
24 December as opposed to based on all these later targets
25 that we had previously put in place.

↑

363

1 Q Okay. So at what point in time would the
2 parties decide that Theranos would have earned it because

3 Theranos had stayed true to the exclusivity rights that
4 it had given to Walgreens?

5 A It was my understanding, based on conversations
6 with Sunny -- and he was the one who was looking at
7 this -- that because we had amended this agreement, we as
8 Theranos thought we'd earned it.

9 Q Through your conversations with Sunny?

10 A Yes.

11 Q Do you --

12 MR. KOLHATKAR: Go ahead.

13 BY MS. CHAN:

14 Q Did you have any independent conversations with
15 Walgreens?

16 A No.

17 BY MR. KOLHATKAR:

18 Q In other words, is it fair to say that the --
19 by the end of 2013, you understood the innovation fee to
20 belong to Theranos unencumbered?

21 A I did because we committed to them that we
22 would be exclusive to them, and that was how Sunny
23 believed the payment would be reflected.

24 BY MS. CHAN:

25 Q Okay. If you turn the page to 103, under 7,

↑

1 "Additional equity rights," it says, "The parties agree
2 that 50 million of the \$70 million (sic) payment made by
3 Walgreens pursuant to Section 3 above may be converted at
4 Walgreens' option into equity on such terms as are made
5 available to investors and Theranos' planned equity
6 financing in the first quarter of 2014. The parties also
7 agree that upon signing this agreement, that Walgreens
8 will receive an option to purchase up to \$50 million in
9 Theranos equity on the terms made available to investors
10 who invested in the prior equity financing, e.g., at \$15
11 per share."

12 Did you understand this provision to provide
13 that Walgreens would be given an option to purchase up
14 to -- or the option to convert about 50 of the \$75
15 million accelerated innovation fee to equity and then
16 would also have an option for an additional \$50 million
17 in equity in Theranos?

18 A Yes.

19 Q You testified earlier -- you can put that one
20 aside.

21 MR. NEAL: So let's take a break, then, after
22 that document. It's been a little over an hour.

23 MS. CHAN: Okay. So let's take a really short
24 break, if you don't mind. So five minutes? Does that
25 work?

1 MR. NEAL: Ten.

2 MS. CHAN: Off the record at 10:10 a.m.

3 (A brief recess was taken.)

4 THE VIDEOGRAPHER: We are back on the record at
5 10:25.

6 BY MS. CHAN:

7 Q Ms. Holmes, did you have any substantive
8 conversations with the SEC staff during the break?

9 A I did not.

10 Q So you testified earlier on Tuesday that you
11 understood that venous draw percentage and patient
12 traffic were important metrics for Walgreens in
13 evaluating the relationship.

14 Do you remember that?

15 A I think so.

16 Q So --

17 A I don't know if I said that venous draw
18 percentage was an important metric. I certainly know
19 that patient traffic is or was.

20 BY MR. KOLHATKAR:

21 Q Did you understand that venous draw percentage
22 was important to Walgreens?

23 A I understood that there was focus on it from

24 certain people within Walgreens and, frankly, not from
25 others.

↑

366

1 Q Who was it a focus for?

2 A I believe some of the early team that had been
3 focused on the Phase 1 -- I'm sorry -- the initial TSPU
4 business model. And then over time, as the Boots
5 leadership came in, it became, as I understand it, more
6 about foot traffic.

7 Q So I guess prior to -- prior to the Boots
8 merger, was -- did you understand that the venipuncture
9 percentage was an important metric for Walgreens?

10 A I know -- I don't know if it was an important
11 metric to them. I know that some of the lower-level team
12 members were interested in it over time.

13 Q I guess, who from the Walgreens team do you
14 remember that being important to?

15 A I don't know. I just remember Sunny talking
16 about it.

17 BY MS. CHAN:

18 Q I'm handing to you what's been marked Theranos
19 Exhibit 220.

20 (SEC Exhibit No. 220 was marked for
21 identification.)

22 BY MS. CHAN:

23 Q Exhibit 220 purports to be a May 6th, 2014,
24 e-mail from Sunny Balwani to Elizabeth Holmes. Subject
25 line is "Forward: Final Deck" with starting Bates No.

↑

367

1 THPFM0001558583 with an attachment with starting Bates
2 No. -- we maybe don't know what the Bates number is, but
3 I believe it's 1558584. It would be on the next page.

4 Have you seen Exhibit 220 before?

5 A I'm not sure.

6 MR. NEAL: Can I -- is this the way it was
7 produced to you guys? I mean, it's just -- that is, do
8 we know this is the attachment that's referred to in the
9 e-mail? Do you guys have a way of knowing that?

10 MS. CHAN: Yes.

11 MR. NEAL: How do we know that's the way we
12 turned it over to you or --

13 MS. CHAN: This -- it could be that some of the
14 attachments might have come in a different format. Maybe
15 native? They were in native files which is the reason
16 why the Bates stamp isn't on it. If you have a problem
17 with it, we can always prepare another copy.

18 MR. NEAL: No. I'm just curious whether you're
19 sure it's --

20 MR. KOLHATKAR: We'll check during a break.

21 MR. NEAL: Okay.

22 BY MS. CHAN:

23 Q Have you seen Exhibit 220 before?

24 A I don't know.

25 Q Is this your e-mail address at the top,

↑

368

1 EHolmes@Theranos.com?

2 A It is.

3 Q Do you have any reason to believe that you

4 didn't receive this on or about May 6th, 2014?

5 A I do not.

6 Q So you'll see in the e-mail there's a preceding

7 e-mail from (b)(6);(b)(7)(C) to Sunny Balwani. And he

8 writes, "Attached is the final deck." And then Sunny

9 Balwani then forwards it on to you.

10 Do you know why Sunny Balwani forwarded it on

11 to you?

12 A I don't. I would assume it's an FYI.

13 Q Okay. So he's trying to keep you in the loop

14 about the Walgreens relationship, right?

15 A I think so.

16 Q Okay. So if you turn to the attachment, and

17 the title is "Diagnostic Testing, Theranos Partnership."

18 If you look on page 4 of the presentation, I think you're
19 on it already, the top says "Diagnostic Testing Program
20 Governance," and there are a number of names.

21 Do you know who was a part of the executive
22 steering committee for Theranos?

23 A I can see here that it says Sunny, and I
24 believe that that was correct.

25 Q Okay. Were you aware that there was an

↑

369

1 executive steering committee that was formed between --

2 A I was.

3 Q -- Walgreens and Theranos?

4 A Yes.

5 Q And did you understand that they were convening
6 on a regular basis to discuss the Walgreens/Theranos
7 relationship?

8 A I did.

9 Q Okay. So why don't you turn to page six. And
10 the title of that slide is "Current Operations Metrics."

11 Do you see that?

12 A Yes.

13 Q And there's a table. One of the metrics here
14 is average patients per store per day. And do you see
15 that in February 2014 it's at .8, but in May of 2014 it

16 went up to 3.1?

17 Do you see that?

18 A I do.

19 Q So is that consistent with your understanding,
20 then, that in May of 2014 that there were about three
21 patients per day being seen per -- in each store per day?

22 A I didn't remember how many there were in May of
23 '14, but I don't have reason to doubt this.

24 Q Okay. But it appears that you would have been
25 aware of this in May of 2014, right?

↑

370

1 A I mean, I -- probably generally.

2 Q Okay. And then if you move down to venous
3 draws, it looks like the venous draw went from 43 percent
4 in February 2014 to 39 percent in May of 2014. Do you
5 see that? So it looks like the venous draw percentage
6 didn't actually change that much.

7 Do you see that?

8 A I do.

9 Q Were you aware that the venous draw percentage
10 in May of 2014 was 39 percent at the stores?

11 A I don't know. I don't remember what I was
12 aware of in May of '14.

13 Q Okay. But at the time that you received this,

14 you would have been aware of, from reviewing this, that
15 it was at 39 percent?

16 A Honestly, I don't know that I reviewed this at
17 this time. Sunny sent me a lot of documents, and I
18 didn't always open documents.

19 Q You didn't always open documents that Sunny
20 sent to you?

21 A I did not.

22 BY MR. KOLHATKAR:

23 Q Was it your general practice to review the
24 documents Sunny sent to you?

25 A Sometimes. Sometimes he would just tell me

↑

371

1 what he thought was relevant that I needed to know.

2 Q I guess, you know, did you ever tell him to
3 stop forwarding you information about the Walgreens
4 relationship?

5 A No, not at all.

6 BY MS. CHAN:

7 Q Do you have any reason to believe that you
8 didn't review this at the time in May 2014?

9 A I don't remember reviewing it in May 2014. So
10 I just don't know.

11 Q Do you remember the venous draw percentage for

12 patient testing at Theranos wellness centers being around
13 40 percent during the entire period of the relationship?

14 A I remember that when we responded to the Wall
15 Street Journal article, I asked a team to calculate it,
16 and they came back and used a number of about
17 60-something percentage on fingerstick. So I knew it
18 from that.

19 Q Okay. So you were generally aware it was
20 something like 30 to 40 percent venous draw, correct?

21 A Again, I don't know what exactly I was aware of
22 at that time. I know that in 2015 I asked a team to go
23 back and do analysis of it and got that number.

24 Q Okay. So why don't you turn to, then, the last
25 page, page 14. It's titled "The Path Forward." And

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372

1 it's -- there are a number of bullet points, the first
2 being "Operations Improvement."

3 Do you see that?

4 A I do.

5 Q It says, "Focus on venous draws reduction and
6 reduce new patient check-in time to less than eight
7 minutes and achieve 15 patients per day per store."

8 Was that consistent with your understanding
9 that Walgreens was looking at a target of about 15

10 patients per -- per day per store?

11 A I thought prior to reading this that it was
12 ten, but I don't doubt this.

13 Q Okay. Okay. You can put that one aside.

14 So you also testified earlier that Theranos
15 wellness centers were only ever opened in 41 stores. Do
16 you remember that testimony?

17 A At Walgreens.

18 Q At Walgreens?

19 A Yes.

20 Q Do you know when that last store was opened?

21 A I don't.

22 Q If I told you it was September of 2014, would
23 that seem about right?

24 A I actually don't know, but I don't doubt that.

25 Q You don't know when the last store was opened

↑

373

1 in Walgreens?

2 A I don't.

3 Q This was Theranos' most important business
4 relationship, and you have no idea when the last store
5 was opened?

6 A I genuinely don't remember it.

7 MR. NEAL: She didn't say she had no idea. You

8 asked her was it September, and she said she wasn't sure.

9 THE WITNESS: I'm trying to tell you exactly
10 what I remember and what I don't remember.

11 BY MS. CHAN:

12 Q Do you have any reason to doubt that it was
13 September, around September 2014?

14 A No.

15 Q Weren't you aware by that time, and certainly
16 by the end of 2014, that Walgreens would not agree to
17 open any new stores for Theranos?

18 A By the end of '14? No.

19 Q You weren't aware that Walgreens was having
20 concerns over opening new stores and providing Theranos
21 services in them?

22 A I mean, I knew we were going back and forth on
23 refining the model of the relationship, but I remember --
24 I don't know if the end of '14 or early '15, engaging
25 (b)(6);(b)(7)(C) on amending and expanding our contract

↑

374

1 potentially around a rental model.

2 BY MR. KOLHATKAR:

3 Q I guess, was it your understanding that
4 Walgreens wasn't going to open up any additional stores
5 at that time absent some sort of amendment?

6 A I don't know. I know there were a lot of
7 discussions of continuing amendments, and I know that
8 sometimes the models that we were following did not
9 reflect the exact contracts that we had in place at the
10 time. I don't know if I knew that there had to be an
11 amendment. I don't think that was my understanding.

12 Q What do you mean by the models you were
13 following didn't reflect the exact contracts?

14 A For example, with Safeway we moved to a
15 CLIA-certified lab model even though the contract
16 reflected a CLIA waiver model, and we never amended the
17 contract. So we had partnerships in place where we were
18 operating in a way that was not necessarily consistent
19 with exactly what was in the contract.

20 Q Sure. I guess, turning specifically to this
21 time period of, sort of, the September 2014 through the
22 end of 2014.

23 A Yep.

24 Q Can you think of any ways in which Theranos was
25 operating with Walgreens in a way that was not consistent

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375

1 with your understanding of the Walgreens contracts?

2 A I don't know if we had worked out exactly. As
3 we were collecting funds from people at retail, I think

4 Walgreens was collecting them, we hadn't yet created a
5 system where they were reimbursing Theranos for the
6 monies that they had collected. We figured we'd work
7 that out over time.

8 I -- I don't know if we were following exactly
9 the labor and staffing model in the agreement. We were
10 doing different things. I think there was some instances
11 in which Theranos was actually doing the labor for
12 check-in even though we contemplated that that would
13 be Walgreens generally. I'm sure there's probably
14 others.

15 BY MS. CHAN:

16 Q I'm going to hand to you what's been marked
17 Theranos Exhibit 221, and unfortunately they are all
18 loose-leaf and not clipped. Maybe we can clip this one.
19 It's not possible but --

20 A No worries.

21 Q -- if you can try to keep this together.
22 I'm handing to you what's been marked as
23 Theranos Exhibit 221.

24 MS. CHAN: Here are copies for the two of you.

25 MR. DWYER: Thank you.

↑

2 identification.)

3 BY MS. CHAN:

4 Q Exhibit 221 purports to be an Excel file that
5 includes a number of rows of font. The starting Bates
6 number is TS-1036239.

7 Have you seen Exhibit 221 before?

8 A I think I've seen some of the content in it.
9 I've never seen it like this.

10 Q Does this -- I'll represent to you that these
11 are -- this is the file that Theranos provided to the SEC
12 pursuant to subpoena which is supposed to reflect the
13 text messages between you and Mr. Balwani on your
14 Theranos-issued cell phone.

15 A Yep.

16 Q Do you have any reason to believe that this
17 isn't a true collection of those text messages from your
18 work cell phone?

19 A No.

20 Q So if you turn to the page with Bates No.
21 1036292.

22 MR. NEAL: 62 what?

23 MS. CHAN: 6292.

24 BY MS. CHAN:

25 Q Are you there?



1 A I am.

2 Q Yours looks a little different from mine.

3 A Maybe I'm --

4 Q Are you on 6292?

5 A Oh, I'm sorry. I was on the wrong page. Yeah,
6 got it.

7 Q Okay. So you'll see about five messages down
8 from the top, there's an SMS message on November 19th,
9 2014, and it appears to be from Sunny Balwani to
10 yourself.

11 Is this Sunny Balwani's e-mail address? Do you
12 recognize it? (b)(6);(b)(7)(C)

13 A I think so.

14 Q And he says, "We can't scale with WAG."

15 And WAG you understand is Walgreens?

16 A Yes.

17 Q Okay. And then in his next text message he
18 says, "They are terrible, and we need SWY and CVS."

19 Do you understand SWY to be Safeway?

20 A Yes.

21 Q And then you respond, "It is time. Let's get
22 SWY done this week. We can do it."

23 And then Mr. Balwani responds, "They told our
24 team in WAG meeting that they don't intend to open more

25 PSCs until July because we missed their IT integration

↑

378

1 deadline."

2 Do you see that?

3 A I do.

4 Q And PST again is patient service centers?

5 A Yes.

6 Q So you were aware in November 2014 that
7 Walgreens wasn't looking to expand Theranos services to
8 any other stores; isn't that right?

9 A Sitting here now reading this exchange, I don't
10 think I would have taken that as definitive that we
11 wouldn't be expanding. If we thought there was an issue,
12 I would have called their CEO or president and said we
13 need to expand.

14 Q So you didn't think, reading this, that there
15 was an issue?

16 A Clearly I thought there was an issue because
17 we're talking about Safeway and CVS, but I wouldn't take
18 a comment made in a WAG meeting as indicative that we
19 wouldn't be expanding with Walgreens.

20 Q Okay. Did you do anything to contact anyone at
21 Walgreens about this issue, the fact that they raised in
22 a meeting that they wouldn't be looking to roll out

23 Theranos services in any additional stores?

24 A I don't know. I don't know.

25 BY MR. KOLHATKAR:

379

1 Q So you don't remember contacting anyone at
2 Walgreens about this issue at this time?

3 A So I saw from the other document that you gave
4 me that (b)(6),(b)(7)(C) I believe, was already involved at
5 this time. I know I had fairly frequent interactions
6 with him that were generally positive. I don't remember
7 this text or remember what follow-up happened.

8 But certainly, unless it was coming from a
9 C-level executive, I wouldn't have taken it as indication
10 that we weren't going to be expanding in our
11 relationship. We would have tried to work through the
12 issue.

13 BY MS. CHAN:

14 Q So --

15 BY MR. KOLHATKAR:

16 Q Did you agree with Sunny's assessment in
17 November of 2014 that Walgreens was terrible?

18 A Sunny uses very strong words to express things.
19 I understood that he had been very frustrated with them
20 for a long time. Very specific frustrations about the

21 stores that we had and the fact that the rooms hadn't
22 been built out.

23 So I think I, just reading this now, interpret
24 it as I agreed that we should start engaging with the
25 other retail opportunities that we had. We always

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380

1 believed we were going to continue to work with
2 Walgreens.

3 Q What were Sunny's other frustrations with
4 Walgreens as of November 2014?

5 A So the ones I remember are -- we talked a
6 little bit the other day about the store footprint. Being
7 in locations where not a lot of people would come into
8 the stores, so they weren't ideally suited for success in
9 terms of foot traffic. We were supposed to have
10 bathrooms in our locations, and there was a commitment
11 around what was in the amendment around "gold,"
12 quote/unquote, stores, and I don't know if any of them
13 had been built out.

14 There was also a commitment in that amendment
15 to proceed I think with at least three geographies, and
16 they hadn't proceeded with retail construction in those
17 three geographies which we had understood to be a
18 commitment. So I think that was the basis of the

19 frustration.

20 Q So by this time did you have an understanding
21 of why Walgreens hadn't expanded to those three
22 geographies?

23 A My memory is that Boots had come in and that
24 they were looking at this again, and I think Boots had
25 different thoughts about the contract and the



381

1 relationship than Walgreens did and that that was driving
2 a sort of re-review of this which ultimately led to some
3 of the discussions about formally amending the contract
4 again.

5 Q And do you recall when Boots -- Boots came in?

6 A I don't.

7 Q The -- so it's your understanding that the
8 Boots team wanted to sort of re-review the
9 Walgreens/Theranos relationship to, I guess, reconsider
10 how to roll out the stores?

11 A I don't know whether they wanted to reconsider
12 rolling out. I understand that they did re-review the
13 relationship, and I don't know what they were
14 particularly thinking in it. I think they were sort of
15 reevaluating everything that the old Walgreens leadership
16 had done.

17 BY MS. CHAN:

18 Q And so that reevaluation, did you understand
19 that that was happening around this time in late 2014?

20 A I don't know when it happened.

21 Q So if you look back at that page, there is a
22 text from Mr. Balwani several lines down that says, "Need
23 CTN fixed, our root cause of issues."

24 Do you see that it's on the same date at 5:12?

25 A Yes.

↑

382

1 Q What did you understand him to mean by that?

2 A I -- I don't know.

3 Q And CTN, is that capillary tube and nanotainer?

4 A Yes.

5 Q So you respond -- he says, "I know. They --
6 seems like they are a mess."

7 And you respond, "Yes."

8 So it sounds like at that time you understood
9 what he was talking about. You have no recollection of
10 what he was talking about then?

11 A I don't. And I'm not quite sure whether those
12 are -- those two texts right back and back are referring
13 to the same thing. They may be referring to some of the
14 earlier texts.

15 Q Okay. Do you recall any issues with the
16 capillary tube and nanotainer?

17 MR. KOLHATKAR: At this time frame.

18 THE WITNESS: At this time period? I don't
19 know specifically at this time period. I know that they
20 were on an ongoing basis particularly focused on training
21 of phlebotomists and trying to minimize the number of
22 collections and redraws. And if you don't do it right,
23 the sample gets what's called hemolyzed, which is messed
24 up. So there was a huge ongoing focus on that.

25 BY MS. CHAN:

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383

1 Q Okay. You can set that aside, which I
2 understand might be difficult, but if you need any rubber
3 bands, here's some.

4 So earlier in your testimony we also discussed
5 that there was a time when Theranos and Walgreens started
6 discussing the possibility of a rental model?

7 A Yes.

8 Q Do you recall those discussions taking place
9 around December 2014?

10 A I don't. I don't know when they -- I remember
11 it as being on sort of a period of time, but I don't know
12 when it started.

13 Q Okay. I'm handing to you what's been marked
14 Theranos Exhibit 222.

15 (SEC Exhibit No. 222 was marked for
16 identification.)

17 BY MS. CHAN:

18 Q There's two copies there.

19 A Great. Thank you.

20 Q Exhibit 222 purports to be handwritten notes
21 from December 1st -- excuse me -- December 10th, 2014,
22 with starting Bates No. TS-0480486.

23 Have you seen Exhibit 222 before?

24 A Not like this. But it looks like these are my
25 notes.

↑

384

1 Q Is this your handwriting?

2 A It is.

3 Q Okay. And up on the upper right corner,
4 there's a date of December 10th, 2014. There's a time
5 of -- it looks like 8:00 a.m. to 10:00 p.m. And then
6 there's a conference room, and a number of people are
7 listed under there.

8 Do you think this was a meeting with Walgreens?

9 A I do think it was a meeting with Walgreens. I
10 don't think that is correct.

11 Q Which? Which is not correct?

12 A Well, at least the time and maybe not even the
13 conference room and the date. I'm not completely sure
14 whether this was at Theranos or somewhere else.

15 BY MR. KOLHATKAR:

16 Q Briefly, could you just walk us through how
17 your handwritten notes were treated by your assistants?

18 A Yes. So sometimes they would prepare a
19 letterhead for a meeting that had the date and the names
20 and the time on it. Sometimes, if we didn't have
21 letterhead, we would use letterhead that had been
22 previously produced for something else and I would write
23 on that. I would take notes, and I would give it to
24 them, and they were to scan those notes and put them on
25 the CEO drive that we discussed.

↑

385

1 BY MS. CHAN:

2 Q Okay. So why don't I just mark another
3 document for you. I'm going to hand to you also a
4 document that's been previously marked as Theranos
5 Exhibit 186.

6 Exhibit 186 purports to be a December 9th,
7 2014, e-mail from (b)(6),(b)(7)(C) to a number of individuals,
8 including yourself with a copy to, again, a number of

9 individuals. Subject line is "Copy 8:00 o'clock a.m. PT
10 Walgreens/Theranos meeting." And the Bates number is
11 WAG-TH-00037045.

12 Have you seen Exhibit 186 before?

13 A I don't recognize it.

14 Q Okay. And you'll see in the "to" line, it was
15 sent to EHolmes@Theranos.com. That's your e-mail
16 address, correct?

17 A It is.

18 Q Do you have any reason to believe that you
19 didn't receive this e-mail or it looks like a calendar
20 invitation on or about December 9th, 2014?

21 A No. I mean, calendar invitations automatically
22 went to my assistant, so I never saw them coming in, but
23 I don't doubt the e-mail.

24 Q Okay. So when you would receive calendar
25 invites, it wouldn't go to your inbox?

↑

386

1 A Correct.

2 Q It would go directly to your assistants?

3 A Yes.

4 Q Okay. Who is your assistant on the CC line? Is
5 she on there?

6 A She's not.

7 Q So where would this have gone to?

8 A As I understand it, my Outlook is configured in
9 such a way in which if a calendar invite comes in to
10 EHolmes, it shows up in the mailbox of my assistants
11 which is the EAH office.

12 Q Okay. Do you know who your assistant was at
13 that time?

14 A No. I think (b)(6);(b)(7)(C) had started by this
15 point, but I'm not sure.

16 Q So, in any case, in the body of the calendar
17 invitation it says "8:00 a.m. to 10:00 a.m. PT." It's a
18 meeting on December 10th, 2014.

19 Do you see that?

20 A I do.

21 Q And then your meeting notes have roughly the
22 same information except that it says 10:00 p.m. instead
23 of 10:00 a.m.

24 A Yep, yep. Got it.

25 Q Do you have any reason to doubt that these

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387

1 notes were from a December 10th, 2014, meeting?

2 A No.

3 Q Okay. So if you turn the page to page two of
4 your notes, that's 487. You see at the top it says "Lab

5 Data," and then I can't read the word next to it. What
6 is that?

7 A I don't know. I'm guessing it might be
8 "phase," but I'm not sure.

9 Q Okay. And then underneath it says, "Services
10 and Clinic;" is that correct?

11 A Yes.

12 Q Okay. And then underneath again in bullet
13 points it says "venipuncture" and "five per day."

14 Do you see that?

15 A Yes.

16 Q Did you -- does this refresh your recollection
17 that you would have been talking about venipuncture and
18 five patients per day in Walgreens stores or servicing --
19 providing Theranos services during this time?

20 A It doesn't refresh my recollection, but I
21 recognize the words on the page.

22 Q So halfway down the page, it says -- there's a
23 bullet point, and it says, "Rental AGMT model."

24 I assume AGMT is agreement; is that right?

25 A I'm sorry. Where are you?

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388

1 Q Halfway down the page.

2 MR. NEAL: Right here.

3 THE WITNESS: Yes.

4 BY MS. CHAN:

5 Q Do you see that?

6 A Yes.

7 Q Is AGMT agreement?

8 A Yes.

9 Q So does it look like you were discussing with
10 Walgreens executives the possibility of a rental
11 agreement model --

12 A Yes.

13 Q -- during this meeting? Okay.

14 And then it goes on to say, "Incentive early
15 years rental AGM -- agreement. Incentives both winning."

16 What were you referring to there when you wrote
17 that?

18 A I don't know.

19 BY MR. KOLHATKAR:

20 Q Did you view the rental agreement with
21 Walgreens as something that could be beneficial to both
22 parties?

23 A Absolutely.

24 Q Why?

25 A Because we understood ultimately from the

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1 experience we'd had by then that foot traffic was the
2 most important metric to Walgreens, and that for Theranos
3 we could have control over the space and ensure a good
4 experience. So some of the frustrations that had existed
5 in the store model we could resolve because we'd be
6 owning the space completely.

7 BY MS. CHAN:

8 Q Okay. So you can put that aside.

9 Did you tell prospective investors at this
10 time -- so this was December 2014 -- that Walgreens and
11 Theranos were considering modifying the contract to enter
12 into more of a rental agreement model?

13 A I don't remember specific conversations, but I
14 wouldn't be surprised if we did. We were excited and
15 proud of this. We thought this was going to be the way
16 that we would scale ultimately.

17 Q Okay. But you don't remember having any
18 conversations with prospective investors about this?

19 A I don't. I don't.

20 BY MR. KOLHATKAR:

21 Q You mentioned a minute ago that Sunny had had
22 some frustrations around the Walgreens relationship
23 around that late 2014 time period.

24 Did you ever share any of those frustrations
25 with prospective investors?

1 A I don't know because I don't remember specific
2 discussions. I wouldn't be surprised if we did because
3 people would ask, you know, what's limiting -- I'm
4 assuming people would want to know why we were in the
5 store footprint that we were and what was going to drive
6 growth; and, therefore, that would have been a likely
7 thing to discuss. But I don't have a memory of specific
8 discussions.

9 Q Do you recall Sunny ever sharing his
10 frustrations with Walgreens to any prospective investors
11 in any meetings you attended?

12 A Again, I can't remember specific conversations,
13 but I wouldn't be surprised if he did.

14 BY MS. CHAN:

15 Q So if the parties chose to restructure the
16 relationship so it was more of a rental model, would that
17 have had any impact on the timing of the rollout of
18 Theranos services to Walgreens stores?

19 A I'm sure it would have impacted, but I don't
20 know whether it would have made it better or worse.

21 Q In what way?

22 A I don't understand what was controlling the
23 rollout pace on the Walgreens side. And I don't know

24 exactly how fast we thought we could build out these
25 locations if we were building them out ourselves.

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391

1 Q Okay. But certainly it would have taken a few
2 months to get things rolling and to open another wellness
3 center in Walgreens stores?

4 A I don't know. It depends on whether we were
5 using, for example, their clinic spaces that had already
6 been built out or not.

7 Q Okay. You can put that one aside.

8 So I want to change gears now and start talking
9 about Theranos' relationship with Safeway.

10 A Okay.

11 Q Why was Theranos interested in entering into a
12 contract with Safeway?

13 A At a high level it was another vehicle for
14 building a retail footprint. And with our focus on
15 people's access to health information, we thought it
16 could be really meaningful to help people start linking
17 diet to their health data with the software applications
18 that we wanted to build.

19 Q Okay. And did you have any understanding as to
20 why Safeway wanted to enter into a relationship with
21 Theranos?

22 A My understanding is that they shared that
23 vision and also were interested in ways to expand there
24 and differentiate their pharmacy.

25 Q And in what way would they be able to



392

1 differentiate their pharmacy if they partnered with you?

2 A If people were able to access information about
3 their health, it could inform the decisions about what
4 foods they bought, and that data could be powerful for
5 people who are dealing with things like prediabetes or
6 diabetes that are diet-related.

7 Q So was what the parties was discussing -- and
8 by "parties," I mean Theranos and Safeway, of course --
9 at the time that you started the discussions, were you
10 contemplating sort of a similar model to what Theranos
11 had been discussing with Walgreens which is to roll out
12 with Theranos' TSPUs in Safeway stores?

13 A At the time we started, yes.

14 Q Who were your primary contacts with -- from
15 Safeway?

16 A My primary contract -- contact was with Steve
17 Burd.

18 Q Okay. And were any others involved beside
19 Steve Burd?

20 A He had a team that worked for him. I almost
21 entirely interacted directly with him.

22 Q Okay. What about after Steve Burd left
23 Safeway? Who did you interact with then?

24 A (b)(6),(b)(7)(C) and he was
25 supported by (b)(6),(b)(7)(C)

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393

1 Q And who was responsible for the Safeway
2 relationship from Theranos? Was that you?

3 A Until Steve Burd left, yes, and then Sunny once
4 Steve left.

5 Q So Sunny Balwani was responsible for the
6 Safeway relationship after Steve Burd left?

7 A Yes.

8 Q Would he keep you apprised of how the
9 relationship was going in his discussions with Safeway
10 once he took over the responsibilities?

11 A In general, yes. But after Steve left, we
12 didn't have the same kind of frequency of interactions
13 with them.

14 Q So what happened after Steve left?

15 A I believe that there was a fund that acquired
16 them, and (b)(6),(b)(7)(C) and I think he was working
17 with that fund to get their thinking about what and

18 whether they wanted to proceed with this vision of the
19 services in the pharmacy space.

20 And it's my memory that the fund really wanted
21 to restart the relationship, and we had a lot of
22 disagreements about that because we'd spent so much time
23 working with Steve over the past years and investing in
24 technologies at sort of his request that we didn't want
25 to restart it from scratch.

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394

1 Q Okay. So then what happened after those
2 discussions? Did Theranos ever end up rolling out its
3 services in Safeway stores?

4 A No.

5 Q Why not?

6 A We couldn't agree on a model to do that. And
7 ultimately, by the time we did agree, it was after the
8 Wall Street Journal articles, and we were dealing with
9 the issues in our clinical lab with CMS.

10 Q I'm handing to you what's been marked Theranos
11 Exhibit 223.

12 (SEC Exhibit No. 223 was marked for
13 identification.)

14 BY MS. CHAN:

15 Q Exhibit 223 purports to be -- oh, I'm --

16 MR. NEAL: No. That was previously marked as
17 186.

18 MR. KOLHATKAR: The calendar was? Oh, sorry.

19 BY MS. CHAN:

20 Q So I'm handing to you what's been marked
21 Exhibit 223. And Exhibit 223 purports to be a June 28th,
22 2013, e-mail from (b)(6);(b)(7)(C) to Elizabeth Holmes and
23 Sunny Balwani. Subject line is "Safeway/Theranos Meeting
24 6/26/13" with Bates No. TS-0034026. And there's an
25 attachment that starts at Bates ending 34016.

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395

1 Have you seen Exhibit 223 before?

2 A I don't know.

3 Q And, again, this is your e-mail address. Do
4 you have any reason to believe that you didn't receive
5 this e-mail?

6 A No.

7 Q So you can see in the parent e-mail (b)(6);(b)(7)(C)
8 is sending -- he's attaching some notes from a meeting
9 that you had, and he's asking you to "make any suggested
10 revisions that are necessary to make this an accurate
11 summary of our discussions."

12 Do you see that?

13 A I do.

14 Q And then he's attaching some notes that he took
15 or a summary of the meeting that took place on June 26th,
16 2013.

17 Do you recall this meeting?

18 A I don't specifically, but I know we were
19 engaging with him around this time.

20 Q Okay. So under "Central Lab Model" in this
21 summary, he says -- he writes, "Contrary to impressions
22 that some Safeway people have, there is no technological
23 problem with the devices and no plan to go without the
24 devices in the stores. Theranos has determined that the
25 use of a central lab model provides the quickest and

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396

1 easiest way to expand geographically. The central lab
2 contains the devices, and, in fact, the device is the
3 only way of obtaining the results from the nanotainers."

4 Do you see that?

5 A I do.

6 Q Did you make this comment during the meeting?

7 A I don't know.

8 Q Do you know if Sunny made this comment during
9 the meeting?

10 A I don't.

11 Q So when (b)(6),(b)(7)(C) writing and referring to

12 "devices," do you understand him to be referring to the
13 TSPU?

14 A Certainly in the context of this statement
15 "devices in the stores," yes.

16 Q Okay. Well, he uses "devices" throughout. So
17 you understand that "devices" here would be -- if he's
18 talking about placing devices in the store, he could only
19 be talking about the TSPU, right?

20 A So, as we discussed previously, there was a
21 version of the TSPU that could process six samples at a
22 time that we were designing for Safeway. So I'm assuming
23 that's what he's talking about in the context of the
24 device in the store.

25 Q Okay. So when you said that "Theranos has

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397

1 determined that the use of the central lab model provides
2 the quickest and easiest way to expand geographically,"
3 was this the reason why Theranos was looking to change
4 the model so that devices wouldn't be put in stores but
5 that samples would be sent to Theranos' lab?

6 MR. NEAL: Could you repeat that question for
7 me?

8 BY MS. CHAN:

9 Q Was this the reason why Theranos was proposing

10 to change the business model from putting the devices in
11 store to having samples taken at stores and sent to
12 Theranos' lab?

13 MR. NEAL: Was what the reason?

14 MS. CHAN: The reason that (b)(6);(b)(7)(C) is
15 writing in these notes, which is that it "provides the
16 quickest and easiest way to expand geographically."

17 THE WITNESS: At this point in time, it might
18 have been. It wasn't what -- I guess in a way it was
19 what drove the original decisions with Walgreens that had
20 happened earlier. I'm not sure whether that's how we
21 were thinking of it by mid-2013, but it might have been.

22 BY MS. CHAN:

23 Q Did you say that it was or was not the reason
24 why you switched to a central lab model for Walgreens?

25 A As we discussed, it was the result of a lot of

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398

1 engagement with both of our regulatory counsels and sort
2 of decisions about business model. In a way it was
3 because it was the quickest and easiest way to expand,
4 but there were a lot of factors that went into that.

5 Q Okay. So why don't you look at the next
6 paragraph, then. It says, "The reasons for starting with
7 a central lab model are as follows." And you can read it

8 for yourself, but it essentially describes a courier
9 model and the fact that "because Theranos would need to
10 be offering a full array of lab tests, including esoteric
11 tests, you would need a courier to pick up samples
12 anyway. And so if that's the case, why not start with a
13 courier model?"

14 Do you see that?

15 A I do.

16 Q Okay. So why didn't you tell (b)(6);(b)(7)(C) during
17 this meeting that it was the regulatory issues that were
18 prompting this move to a central lab model?

19 A I believe we had that conversation with them
20 previously when we sent our CLIA certificate and became a
21 CLIA-certified lab.

22 Q You believe that that was your conversation?

23 A Yes. That's why we moved away from what was
24 written in our contract into being a central CLIA lab.

25 Q So then why are you telling him a different

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399

1 story in the -- during this meeting?

2 A I don't read this as being different. We had
3 become a CLIA lab, and we were talking here about the
4 fact that, from a business perspective, this was the
5 fastest way to operationalize now. This is now mid-2013.

6 Q Okay. So when you say that "the device is
7 currently capable of performing the routine blood tests
8 90 percent or more of the demand," is that a true
9 statement?

10 MR. NEAL: So you keep prefacing these by
11 saying when she says it, and I'm just not clear that
12 you've established whether she's saying it, Sunny saying
13 it, or somebody else.

14 MS. CHAN: Sure.

15 BY MS. CHAN:

16 Q So do you recall making a statement to (b)(6);(b)(7)(C)
17 (b)(6);(b)(7)(C) that the TSPU is currently capable of performing
18 the routine blood tests 90 percent or more of the demand?

19 A I don't.

20 Q Was that true? Could the TSPU perform 90
21 percent or more of demand -- of the demand for tests?

22 A We believed it could at that time, yes.

23 Q What do you mean by "we believed they could"?

24 A This is a few months before we sent in a number
25 of presubmissions to the FDA trying to get a really broad

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400

1 range of tests into the presubmission process. So we
2 thought we had designed a system that was capable of
3 doing that.

4 Q Did you ever tell (b)(6);(b)(7)(C) that the TSPU --
5 that Theranos had only validated 12 tests on the TSPU?

6 A As we previously discussed, at this time no
7 tests were live in the CLIA lab. The CLIA lab was not
8 yet operational.

9 Q Okay. But this is June 2013. So Theranos
10 would have been preparing for the launch in Walgreens,
11 correct?

12 A Yes.

13 Q So you were preparing to or either had or were
14 in the process of validating those tests, correct?

15 A You know, I actually don't know if we'd started
16 our LDT evaluations by then. My memory is they started
17 after this.

18 Q Okay. So did you tell (b)(6);(b)(7)(C) then, or
19 anyone at Safeway that Theranos had not validated any of
20 its tests on the TSPU at this time frame, June 2013?

21 A I don't know if we said those words. I believe
22 he was aware at that point that the CLIA lab was not live
23 and that no tests were live in the CLIA lab yet.

24 Q But that's a different question, right? I was
25 asking whether he was aware that Theranos had not yet

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1 validated any tests on the TSPU.

2 A I don't know exactly what he was thinking. I
3 know that we were very clear that the lab was not yet
4 operational. It was my assumption that it would
5 therefore be clear that no tests were live.

6 Q So you never told him that Theranos had not
7 validated tests on the TSPU yet by this time frame?

8 A I don't know.

9 BY MR. KOLHATKAR:

10 Q What does "currently capable" mean to you?

11 A I'm just reading the rest of the paragraph to
12 try to get the context.

13 I think that this is in reference to the fact
14 (b)(6);(b)(7)(C) was still focused and Safeway was still focused
15 on taking the devices through the FDA to get the CLIA
16 waiver to be able to place them in the stores, and that
17 we were saying that the technology that we had we
18 believed was capable of going through that process of
19 getting the FDA clearance and CLIA waiver for these tests
20 that would cover the majority of the testing pattern,
21 which would have been a subset of the tests we ultimately
22 operationalized in the CLIA lab based on our
23 understanding of ordering at the time.

24 Q That's your understanding of what "currently
25 capable" refers to in this paragraph?

1 A Yes.

2 MS. CHAN: Why don't we change tapes.

3 THE VIDEOGRAPHER: This concludes Media No. 1
4 of Elizabeth Holmes. We're off the record at 11:13.

5 (Break taken at 11:13 a.m.)

6 THE VIDEOGRAPHER: We are back on the record at
7 the beginning of Media No. 2 of Elizabeth Holmes. The
8 time is 11:15.

9 BY MS. CHAN:

10 Q Ms. Holmes, during that very brief break, did
11 we have any substantive conversations, you and I or
12 anyone else on the SEC staff?

13 A No.

14 Q So did you review Exhibit 223 at that time?

15 A I don't know.

16 Q Do you know if you would have sent back
17 revisions as (b)(6),(b)(7)(C) requested?

18 A If we reviewed it, I believe we would have. I
19 don't know if we did.

20 Q Okay. Is there anything in that first section
21 on the central lab model that you believe would be
22 inconsistent with what you might have told him?

23 A I don't remember the meeting, so I can't -- I
24 can't answer that accurately.

25 Q Well, is there any statement in that first

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403

1 section of the meeting notes that you believe is not
2 true?

3 A If it's in the context of my understanding of
4 how we were talking about things at the time, then no. I
5 honestly don't know because I don't remember the meeting,
6 and I don't remember the context.

7 Q You can put that one aside.

8 Was there a time when Theranos and Safeway had
9 discussions about modifying the contract in order to
10 change the business model into a rental agreement model
11 sort of similar to what Theranos was -- had been
12 discussing with Walgreens?

13 A Yes.

14 Q When did that happen?

15 A I don't know specifically. I believe we were
16 already talking about it while Steve Burd was still at
17 Safeway and then on an ongoing basis after that.

18 Q So when did Steve Burd leave Safeway? Would
19 that have been --

20 A I don't know.

21 Q -- early 2014?

22 A I think it was --

23 Q Does that sound right to you?

24 A Before this meeting, which was in -- (b)(6);(b)(7)(C)

25 meeting was (b)(6);(b)(7)(C) I think it was before this.

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1 Q Okay. I'm handing to you what's been marked
2 Theranos Exhibit 224.

3 (SEC Exhibit No. 224 was marked for
4 identification.)

5 BY MS. CHAN:

6 Q Exhibit 224 purports to be a May 1st, 2014,
7 e-mail from Sunny Balwani to Elizabeth Holmes with
8 subject line "Re Safeway/Theranos." And starting Bates
9 number on the document is THPFM0001558606.

10 Have you seen Exhibit 224 before?

11 A I don't remember it, but I think so.

12 Q What is Exhibit 224?

13 A It looks like an e-mail exchange between Sunny
14 and (b)(6);(b)(7)(C) which he ultimately forwarded to me.

15 Q Did you review and -- receive and review
16 Exhibit 224 on or about May 1st, 2014?

17 A I don't know.

18 Q Do you have reason to believe that you didn't
19 receive it on that date?

20 A No.

21 Q Okay. If you look at the e-mail on the bottom
22 from Sunny Balwani to -- I'm sorry. Actually, why don't
23 you turn first to -- no. I was right. This was a very
24 long e-mail.

25 So there's an e-mail starting on the bottom of

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1 the first page from Sunny Balwani to (b)(6);(b)(7)(C) Do you
2 see that?

3 A I do.

4 Q And here it looks like he's proposing a number
5 of terms to Sunny -- to (b)(6);(b)(7)(C) Do you see that?

6 A I do.

7 Q So in the first section it's titled "Exclusive
8 Use of Theranos Wellness Centers." And he writes,
9 "Theranos is offering additional \$400 per week in rent
10 for the additional rooms in locations with two rooms for
11 a total of \$1,200 per week instead of \$800 per week that
12 Safeway proposed, an amount significantly greater than
13 any net margin Safeway may be making from immunizations
14 and consultations currently."

15 Do you know what he was referring to here?

16 A Just to make sure I answer the question you're
17 asking, what do you mean by that?

18 Q So did you understand at this time that he was

19 talking about the possibility of Theranos renting space
20 from Safeway?

21 A Yes.

22 Q And in that statement that I just read, did you
23 understand that he's proposing to offer more in rent per
24 week to Safeway in order to rent out both rooms in the
25 wellness center?

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406

1 A Yes. I don't know what it was more than, but
2 yes.

3 Q And this was taking place in April of 2014. So
4 does that refresh your recollection that these rental
5 discussions were still ongoing at this time?

6 A Yes.

7 Q And then if you look at No. 2 of his e-mail,
8 which is on 607 titled "Safeway Pilot," he writes,
9 "Safeway already knows about our concerns around agreeing
10 to a pilot now that we have already launched. We also can
11 agree to Safeway unilaterally deciding on the pilot
12 success."

13 Do you see that?

14 A I do.

15 Q So at this time was it your understanding that
16 the two biggest hurdles or the two issues that the

17 parties were discussing were really use of the wellness
18 center space and the fact that Theranos wanted exclusive
19 use of both rooms and also the fact that Safeway wanted
20 to pilot Theranos services?

21 A I know those were two of the issues. I don't
22 know if those were the only two. There may have been
23 others as well.

24 Q Can you think of any other issues that were
25 creating this disagreement between Safeway and Theranos?

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407

1 A Well, I haven't read this e-mail, and there may
2 be more in here.

3 I -- I know that we didn't have a good
4 essentially working relationship with the project team
5 there, and we were trying to sort of replicate what we'd
6 had with Steve Burd, with someone who is just deeply
7 engaged in making the partnership successful.

8 I think we were really concerned that the fund,
9 I saw in the e-mail here Cerberus, that was coming in may
10 have different sort of visions for what we were trying to
11 do, and that we'd invested so many years in trying to
12 build something for this that we really didn't want to
13 restart from scratch. There's probably others.

14 Q Okay. If you turn to 608, which is the next

15 page, under "Safeway exclusivity," do you know what this
16 issue was about?

17 A Do you mind if I take a minute to read it?

18 Q Sure.

19 A I interpret it as referring to our ability to
20 work with other grocery stores.

21 Q Okay. So Safeway was concerned about Theranos,
22 then, working with other grocery stores and that there be
23 some kind of provision that provides for a Safeway
24 exclusivity; is that right?

25 A Yes. And I also believe there was some

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408

1 complexities around what they had previously defined as
2 the Blackhawk Network, which were other grocers who
3 wanted to work with Theranos but not through Safeway.

4 Q What's the relationship between Blackhawk
5 Network and Safeway?

6 A Blackhawk was a program that Safeway had
7 created to try to sell ideas that it came up with to
8 other grocery stores. And they thought that if we
9 provided lab services through Safeway, they could then
10 essentially teach the other grocery stores how to roll
11 this out and take a fee on it. And the other grocery
12 stores came back and said, "We'd really love to do this,"

13 in so many words, "but we don't want to do it through
14 Safeway."

15 And so there was a lot of tension about whether
16 Theranos could have a direct relationship with those
17 grocery stores or not.

18 Q Okay. So if you look in the second paragraph
19 under Point 4, it says, "Theranos understands the concern
20 you share this morning that if Theranos succeeds in Bay
21 Area by the end of this year and if at that point
22 Theranos exercises the right exit right above, then it
23 will be free to go to any other grocer and not work with
24 Safeway, thus hurting Safeway.

25 "However, our concern is that if Safeway

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409

1 doesn't work with Theranos and our partnership with
2 Safeway is failing, as it has since May 2013, then we
3 can't restrict our growth with other retailers and
4 grocers just because Safeway doesn't want to work with us
5 or has proven difficult to work with."

6 Did you agree with Mr. Balwani that the
7 relationship with Safeway was failing and it had been
8 failing since May 2013?

9 A I wouldn't have used that word.

10 Q What word would you have used?

11 A That we had much higher expectations for what
12 we would have done by that point.

13 Q So it sounds like there were a number of
14 discussions and things weren't going that well starting
15 in May 2013?

16 A And even before then. I mean, we were -- we
17 thought we were going to have rolled out to this large
18 footprint that Safeway had done construction on much
19 faster.

20 Q Okay. And then if you turn back to the first
21 e-mail or I guess it's the latest e-mail. But on the
22 first page it looks like Sunny Balwani is then forwarding
23 you the e-mail that he sent to (b)(6),(b)(7)(C)

24 Did he have a practice of doing that?

25 A I'm just taking a look at the note.

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410

1 Q Sure.

2 A I don't know if it was a practice. I recognize
3 that he would do this sometimes.

4 Q Okay. And, you know, you also see in his
5 e-mail that he's sending you a draft e-mail that he's
6 planning to send to (b)(6),(b)(7)(C)

7 A Yes.

8 Q Do you see that?

9 A Yes.

10 Q So did he have a practice of also doing that?

11 A I'm sorry. I thought that was the question you
12 were asking.

13 Q Okay.

14 A Did he have a practice -- your first question
15 was did he have a practice of --

16 Q Forwarding to you communications that he's
17 having unilaterally with third parties to keep you
18 apprised?

19 A My read on that is that he sometimes did that
20 but not always.

21 Q And then my second question is: Did he have a
22 practice of sending you draft e-mails he was planning to
23 send out to third parties?

24 A Again, I wouldn't call it a practice. I know
25 that he did occasionally, but he was pretty focused on

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411

1 his ability to run things.

2 Q Okay. Did you on occasion -- when you would
3 receive these e-mails, would you edit them and send them
4 back to him before he sent them out?

5 A I wouldn't be surprised if there were instances
6 when I did. There was sometimes, like you referenced,

7 where I would disagree with the way he was attempting to
8 express things. But I wouldn't say that that was a
9 routine practice to my knowledge or to my memory.

10 Q Okay. You can set that one aside.

11 So at some point the rental model discussions
12 eventually failed; is that right?

13 A I don't know if I would say it that way. We
14 were having those discussions all the way through the
15 fall -- I'm sorry -- the winter of 2015, and it was
16 ultimately the CMS sanctions or I guess at that point it
17 wasn't sanctions but issues with our laboratory that
18 caused the final issue in the relationship with Safeway
19 overall.

20 Q Okay. And were you having discussions about
21 the rental model throughout 2014 and through 2015? Is
22 that your recollection?

23 A I don't know.

24 Q Do you remember a time when the communications
25 stopped and there was a period of basically no

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412

1 communication with Safeway?

2 A I don't -- I don't have a good memory of the
3 starts and stops of the interaction. I wouldn't be
4 surprised if there were sort of dead points in the

5 communications.

6 Q So I'm handing to you what's been marked
7 Theranos Exhibit 225.

8 (SEC Exhibit No. 225 was marked for
9 identification.)

10 BY MS. CHAN:

11 Q Exhibit 225 purports to be an August 1st, 2014,
12 e-mail from (b)(6);(b)(7)(C) to Elizabeth Holmes with Bates No.
13 TS-0046261, and the subject line is "Safeway/Theranos."

14 Have you seen Exhibit 225 before?

15 A It looks like an e-mail exchange between (b)(6);(b)(7)(C)
16 and me.

17 Q Did you receive and review Exhibit 225 on or
18 about August 1st, 2014?

19 A I don't know if I reviewed it then. I don't
20 have any reason to doubt that I received it then.

21 Q Do you have any reason to doubt that you also
22 received this e-mail on the bottom of the page from Bob
23 Gordon to you on June 6th, 2014?

24 A No.

25 Q Okay. So you'll see in this e-mail (b)(6);(b)(7)(C)

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413

1 (b)(6);(b)(7)(C) detailing the history of discussions
2 between Theranos and Safeway. And I'm not going to ask

3 you any questions about the content of the e-mail, but
4 you'll see then that he writes again on August 1st, 2014,
5 and he's asking for a response to his last e-mail.

6 Do you recall responding to him?

7 A I don't.

8 Q Do you know if you ever responded?

9 A My memory is that I, to the extent we were
10 engaging with Safeway, would call (b)(6),(b)(7)(C) during
11 this time, but I -- I don't have specific memory as to
12 whether that was around this August time frame or not.

13 Q Okay. So you don't remember responding either
14 way to (b)(6),(b)(7)(C)

15 A I don't.

16 Q Okay. Do you know if there were any
17 discussions with Safeway after this e-mail in August 1st,
18 2014?

19 A Whether there were discussions in August 1st
20 or --

21 Q In the 2014 time frame but after this August
22 1st, 2014 --

23 A I don't.

24 Q -- e-mail?

25 A I don't know.

↑

1 Q Do you recall between the first and second of
2 these e-mails, between June of 2014 and August of 2014,
3 having a conversation with Dick Kovacevich about possibly
4 terminating the Safeway agreement?

5 A I don't recall during that period of time. I
6 know that in the same way as I was talking with (b)(6),(b)(7)(C)
7 (b)(6),(b)(7)(C) I believe he was also having communications with
8 people on their board and providing guidance on the best
9 way to negotiate to make the rollout happen quickly.

10 Q Did you ever think about terminating the
11 agreement with Safeway?

12 A My memory of it is that was more of a
13 negotiation tactic to get them to roll out. Dick thought
14 that the space was a great asset and that we needed to
15 get into that space quickly.

16 Q Okay. What is your recollection as to the next
17 communication that you had with Safeway after this e-mail
18 in August 1st, 2014?

19 A I don't know.

20 Q I'm going to ask you to lift back that very
21 thick document over there, which I believe was --

22 MR. NEAL: 21.

23 BY MS. CHAN:

24 Q -- Theranos Exhibit 221. Thank you.

25 A Yes.

1 Q So if you would turn to 6337. Are you there?

2 A Yes.

3 Q There is a text message about a third of the
4 way down the page on February 27th, 2015, from you to
5 Sunny Balwani. And you say, "Do you think I should go up
6 to (b)(6);(b)(7)(C)

7 Do you see that?

8 A I do.

9 Q And you say no -- you say, "No harm if" -- I'm
10 sorry. Sunny Balwani then responds to you, and he says,
11 "No harm if you feel right."

12 And then you respond, "He's talking to someone
13 in the room. I'm going to wait outside."

14 Do you know who (b)(6);(b)(7)(C) was? Who were you
15 referring to here? Is that (b)(6);(b)(7)(C)

16 A No. I believe this is (b)(6);(b)(7)(C)

17 Q Oh, (b)(6);(b)(7)(C) Okay.

18 A Yes.

19 Q And then you then also say, "Very good convo.
20 He really wants to get done; says guy I talked to at
21 Cerberus is decision maker. That guy was apparently
22 pissed I said no" -- I think "to him" is what you meant.

23 Do you see that?

24 A Yes.

25 Q Do you remember that conversation with (b)(6);(b)(7)(C)

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416

1 (b)(6);(b)(7)(C)

2 A Just in reading this, I generally remember that
3 I met with him.

4 Q Okay. Apparently, there was some meeting that
5 was taking place that you both were attending?

6 A Yes.

7 Q Do you remember which meeting that was?

8 A It was either a business council or a business
9 roundtable meeting, and I was speaking there.

10 Q Okay. So you didn't expect to see (b)(6);(b)(7)(C)

11 (b)(6);(b)(7)(C) there?

12 A No.

13 Q Okay. So -- and it says, "Do you think I
14 should go up to (b)(6);(b)(7)(C)

15 Do you think that you hadn't had any
16 conversations with him in preceding months before this?

17 A Not necessarily. I may have been on the phone
18 with him. I just can't remember specifically whether I
19 was.

20 Q Okay. And then Mr. Balwani then responds,
21 "That's fine. We will send them letter and see if they

22 want to get moving or term."

23 Did you understand him to mean terminate --
24 terminated? Or what do you understand him to mean by
25 "term"?

417

1 A I'd be guessing. I'm not sure.

2 MR. NEAL: Well, don't guess.

3 BY MS. CHAN:

4 Q Well, did you have any understanding as to what
5 that meant?

6 A I would think I did at the time. I just don't
7 know sitting here now.

8 Q Okay. And then you write back to him, and you
9 say, (b)(6),(b)(7)(C) wants to come back with -- to me with how to
10 get done."

11 And Mr. Balwani says, "Come back where?" And
12 he says, "Okay. I get it. I assume you told him rent
13 model."

14 And then a couple text messages down, you then
15 respond, "It was implied."

16 Do you see that?

17 A I do.

18 Q What do you under -- what did you mean when you
19 said "how to get done"?

20 A I don't know. I'm assuming sitting here now
21 that it means rollout.

22 Q Would you be surprised if there -- if there
23 hadn't been any conversations or communications between
24 Theranos and Safeway from the August 2014 time frame to
25 this February 2015 encounter?

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418

1 A I -- I just don't know. I don't know when I
2 was on the phone with him. I don't know when Dick was
3 talking to some of their board members, and we had other
4 people who were interacting with them as well who were
5 affiliated with us.

6 BY MR. KOLHATKAR:

7 Q Who else was acting on behalf of Theranos to
8 communicate with Safeway, just so I understand?

9 A Yeah.

10 Q Mr. Kovacevich, yourself, Mr. Balwani?

11 A I have in my mind that some of our board
12 members knew some of their board members, and I'm trying
13 to remember who was having the interactions. I'd need to
14 think about it.

15 Q Well, if you think about it later, let us know.

16 A Yeah, yeah, yeah. I will. I will.

17 BY MS. CHAN:

18 Q Do you recall a letter from (b)(6);(b)(7)(C) to (b)(6);(b)(7)(C)

19 (b)(6);(b)(7)(C) in April of 2015?

20 A No.

21 Q Do you recall a letter that she might have sent
22 to restart the rental agreement model discussions?

23 A I don't.

24 Q Do you -- is there a practice of Theranos
25 employees sending you letters whenever they're, you

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419

1 know -- especially a letter to (b)(6);(b)(7)(C) on the Safeway
2 relationship, would you expect that somebody would send
3 to you a copy of that letter to keep you apprised of what
4 was going on?

5 A Generally, yes.

6 Q What happened to the Theranos/Safeway
7 partnership in the end?

8 A As we were discussing earlier, by the end of
9 2015, we had discussed a model for rolling out I think
10 about 30 stores under the lease rental model that we had
11 wanted to pursue. But by that time we had serious issues
12 with our lab operations that we were dealing with and
13 ultimately terminated with the discussion that if we were
14 to resolve the lab issues, we would go back and engage
15 with them on trying to rent out the space.

16 Q Okay. And so when did those discussions take
17 place on the lab issues?

18 A All the way through the end of 2015 and
19 potentially into January of '16.

20 MR. NEAL: Why don't we take our break. We've
21 been going an hour and ten.

22 MS. CHAN: I just have a couple more questions.

23 MR. KOLHATKAR: Can we just finish this topic?
24 I think we're close to being done with it.

25 MR. NEAL: Okay. All right.

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420

1 BY MR. KOLHATKAR:

2 Q I guess, at the end of 2014, did you have any
3 expectation that Safeway was imminently going to roll out
4 Theranos' services at Safeway?

5 A I think we always thought that we could if we
6 agreed to some of what they wanted from us, if we needed
7 that to supplement our footprint.

8 Q I guess, but did you have any kind of concrete
9 expectation that stores were going to open in early 2015?

10 A I think -- I mean, I don't remember exactly
11 what I was thinking at the end of '14. But I know that
12 because that footprint had already been completely built
13 out with very custom specific details that we'd designed

14 to our work flow, we knew that, you know, if we said,
15 okay, we agree to certain provisions or compromised on
16 our negotiating position, we would be able to get into it
17 and get a very large footprint very quickly.

18 BY MS. CHAN:

19 Q Do you know whether there were any preparations
20 underway between Safeway and Theranos to roll out stores
21 in the beginning of 2015?

22 A I don't.

23 Q You're not aware of any preparations?

24 A I can't remember anything specifically.

25 BY MR. KOLHATKAR:

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421

1 Q In your mind, did you have a geographic
2 location where you expected Safeway stores to roll out at
3 the start of 2015?

4 A At the start of 2015? What I remember is, to
5 the extent we were having sort of initial rollout
6 discussions, there were two options that we spent a lot
7 of time talking about. One was the Bay Area in
8 California. The other was Wyoming.

9 And it really depended on where some of these
10 things played out with respect to announcement rights and
11 how visible ultimately we thought this was -- the

12 deployment -- initial deployment was going to be if
13 Safeway maintained a right to terminate after it.

14 MS. CHAN: We can take our break now. We are
15 off the record at 11:42 a.m.

16 (A brief recess was taken.)

17 THE VIDEOGRAPHER: We are back on the record at
18 11:56.

19 BY MS. CHAN:

20 Q Ms. Holmes, did you have any substantive
21 conversations with the SEC staff during our break?

22 A No.

23 Q Do you recall a time when Theranos began
24 offering blood testing services to Safeway employees?

25 A I know that there was a period of time in which

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422

1 Theranos handled the samples that were collected by the
2 on-site clinic at Safeway.

3 Q Okay. What do you mean by "handled the
4 samples"?

5 A So it wasn't labeled, to my understanding,
6 Theranos. It was the clinic service. And then the
7 clinic would collect the samples and send them to
8 Theranos.

9 Q Was the clinic conducting fingerstick draws or

10 venous draws?

11 A Only venous draws for patient testing. I
12 believe people could also opt into a research study in
13 which we would collect fingerstick but not for data that
14 would be reported back to patients.

15 Q Okay. So the blood would be drawn at the
16 clinic, but then the samples would be sent to Theranos'
17 lab for testing?

18 A No, I don't think we were. I don't know what
19 we were doing with them when they came to the lab. I
20 think we were trying to focus on how to train someone to
21 do a fingerstick. So the collection happened. I do know
22 the samples came back. I don't know what happened after
23 that.

24 Q Do you know what devices were used to process
25 those samples?

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423

1 A I don't -- it's my memory that there generally
2 wasn't testing happening on those samples and just that
3 we were doing the collections for purpose of beginning to
4 refine that work flow and the training of the fingerstick
5 collection.

6 Q It's your understanding that there wasn't any
7 testing on the samples that Safeway employees were

8 providing?

9 A My memory is that there was some studying of
10 whether the samples had hemolyzed or lysed, you know,
11 clotted or did not have good integrity, but I don't think
12 there was actual testing done on those samples.

13 BY MR. KOLHATKAR:

14 Q And just so I understand, you mean the samples
15 that were done on the fingerstick --

16 A Correct.

17 Q -- at the Safeway?

18 MS. CHAN: Oh, okay.

19 BY MR. KOLHATKAR:

20 Q So people that --

21 A Yeah, I'm sorry if I --

22 BY MS. CHAN:

23 Q I misunderstood that.

24 A Yeah.

25 Q So with respect to the venous draws, then, that

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424

1 was done at the clinic --

2 A Yes.

3 Q -- was Theranos processing those samples?

4 A Yes. Those were processed on traditional
5 commercially available machines and/or sent to what I had

6 previously referred to as a reference lab, which is a
7 third-party lab.

8 Q Okay. Did you ever tell anyone at Safeway that
9 those samples were being processed by third-party
10 commercially available machines or being sent out to
11 reference labs?

12 A I believe so, yes.

13 Q Okay. Who did you tell?

14 A I don't know specifically. I can't remember.

15 Q Okay. So you don't know either way whether you
16 ever told anyone at Safeway that you were using
17 third-party machines or sending out to reference labs?

18 A I remember Safeway helping us to look at UCSF
19 as a closer reference lab, so I believe that there was
20 discussion about the use of a reference lab because of
21 that. But I don't remember specific conversations.

22 Q Okay. And what about whether you told Safeway
23 or anyone at Safeway that you were using commercially
24 available machines that Theranos would process the
25 samples?

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425

1 A I believe we did.

2 Q When did you do that?

3 A I think before we agreed to do the testing,

4 because there was a discussion about the fact that it
5 would just be venipuncture on traditional machines so
6 that we could work through some of the work flow
7 development that we were trying to do, that we would not
8 be collecting fingerstick for patient testing.

9 Q And who did you tell that to?

10 A I don't know. I mean, I would assume to the
11 extent that I had conversations, it was with Steve Burd.
12 But I don't know.

13 Q So now I want to change gears again and --

14 MR. NEAL: Did you offer these guys coffee?

15 THE WITNESS: I was about to say.

16 MR. DWYER: It's so funny. It's the most --
17 it's the least sincere thing that I ever do. Because I
18 almost always offer the staff coffee when I go down. No,
19 you can't accept it. But I didn't do it today. I took
20 the high road about offering.

21 BY MS. CHAN:

22 Q Okay. I wanted to change gears again now and
23 focus now on CVS.

24 Was there a time when Theranos began having
25 discussions with CVS?

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1 A Yes.

2 Q When was that?

3 A So there was a series of discussion over a
4 period of years. I don't know when the first one was,
5 but it may have been as early as 2010 or sooner. I don't
6 know.

7 Q So around the same time that you might have
8 started discussions with Walgreens and Safeway?

9 A I think so.

10 Q What were those discussions about? Was it
11 along the same lines as what you were discussing with
12 Walgreens and Safeway, to put a TSPU in CVS stores?

13 A Like all of our retail partners, conversations
14 had changed over time. I think in the earliest time
15 frame, my memory is that we were actually talking about
16 using the TSPU in their MinuteClinic because they had a
17 lot of point-of-care technology in their MinuteClinic and
18 that that was what they specifically were interested in.
19 It changed later.

20 Q Okay. So what did it change to later?

21 A Ultimately we were discussing a lease model in
22 which we would build out spaces within their stores, and
23 there was iterations of that in the meantime.

24 Q Who were your contacts at CVS?

25 A So I did not have the majority of direct



1 contact with them. My memory is that at least at the --
2 in our last contacts with them, (b)(6);(b)(7)(C) was one of
3 the principals who was engaged, I think, most directly
4 with Sunny. But I -- I don't -- I don't know by memory
5 all the people that were involved.

6 I had a little bit of contact with (b)(6);(b)(7)(C)
7 (b)(6);(b)(7)(C) toward the end of the engagement that we had
8 with them.

9 Q You just said the end of the engagement. Did
10 the engagement end?

11 A Just the interactions. We were interacting
12 around building a CLIA-certified lab collection center in
13 their stores. We may very well be interacting with them
14 again.

15 Q Okay. Did -- has Theranos entered into a
16 contract with CVS?

17 A Not to my knowledge.

18 Q Okay. And so when you just said the end of the
19 engagement or the end of the discussions, when did the
20 most recent discussions end?

21 A I believe in mid last year, but I'm not
22 completely sure.

23 Q What happened?

24 A We ended up receiving -- I think it was a

25 notification of sanctions from CMS and trying to work

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428

1 through those issues and decided to exit the clinical lab
2 business.

3 Q So did you terminate the discussions, or did
4 CVS terminate?

5 A I think the last e-mail was "keep us posted,"
6 and we -- our plan has been to reengage around what we're
7 trying to do right now with miniLab.

8 Q So the last e-mail was from CVS saying, "Please
9 keep us posted" to you?

10 A I don't know what the last e-mail was.

11 Q Okay.

12 A Yeah.

13 Q So you have no idea either way?

14 A It's my understanding that that's where it was
15 left and it's my understanding on good terms.

16 Q Okay. So I want to change topics again.

17 How did you keep yourself apprised of the
18 financial condition of the company?

19 A I trusted Sunny to run it and (b)(6);(b)(7)(C) from a
20 cash management perspective.

21 Q Would you get updates on how much in revenues
22 the company was making?

23 A Not in revenues. We were generally focused on
24 tracking our cash balance internally, and I would get
25 updates on that.

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1 Q Okay. How often would you get updates on your
2 cash balance?

3 A I'm sure it changed over the years, but at some
4 periodic frequency. I don't know specifically what the
5 frequency was.

6 Q Do you think it was, you know, every -- did you
7 ask her for updates every week or every month?

8 A I don't know. I don't know. It was at some
9 recurring frequency.

10 Q I mean, you wouldn't go for a year without
11 asking for the cash balance, right?

12 A No. No.

13 Q So do you think you would ask her maybe every
14 month or every couple months, something like that?

15 A It's my memory that I asked her to send it at a
16 recurring interval, like monthly. I don't know if it was
17 monthly. It was something like that.

18 Q And did you apprise the board of the company's
19 financial condition?

20 A We generally tracked our cash balance, and then

21 we'd talk about what we thought our potential was in
22 terms of what we were working to do.

23 Q Did you ever provide financial statements to
24 the board that included, you know, both historical
25 financials or financial projections?

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1 A Not financial statements in the way that we're
2 working to put them together now, but we would share
3 essentially what our cash balance was and what we --
4 models that would essentially have a series of
5 assumptions on what we thought we could do in terms of
6 potential revenues and if we'd received payments,
7 payments we'd received.

8 Q Who would prepare those financial documents
9 that you would present to the board?

10 A Well, just to be clear, I did not present
11 financial documents to the board. Sunny always presented
12 financial documents to the board, and he would prepare
13 the documents that he presented.

14 Q Okay. So there was never a time in the
15 company's existence when you presented financial
16 information to your board?

17 A Not that I can remember.

18 BY MR. KOLHATKAR:

19 Q In preparation for those board meetings, would
20 you go over Sunny's proposed presentation sort of as like
21 a dry run before presenting it to the board?

22 A We didn't do a dry run. Generally, a few
23 minutes before the board meeting he would show me what he
24 was going to be presenting, but I don't know that that
25 happened every time.

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1 Q As a general matter, whether before the board
2 meeting or during the board meeting, you paid attention
3 to the financial information that was being presented
4 about the company?

5 A Yes.

6 BY MS. CHAN:

7 Q Were there also times when prospective
8 investors would ask to see the financials for the
9 company?

10 A I can't remember a specific conversation in
11 which they asked for financials, but I'm sure -- I'm sure
12 there were investors who asked for financials at
13 different points in time.

14 Q Do you recall providing financials to
15 prospective investors?

16 A I don't -- I don't think so. We didn't have

17 audited financials for a period of time.

18 Q Okay. If not audited financials, do you
19 remember providing unaudited financials to prospective
20 investors?

21 A I think we generally provided projections, and
22 I know we generally communicated about receipt of the
23 payments that we'd gotten from retailers and where our
24 cash balance was.

25 Q Okay. So who was involved in putting together

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1 the financial projections that went to investors?

2 A Sunny.

3 Q Did you have any involvement in that?

4 A I saw what was in at least written material
5 that we shared and, as we discussed the other day,
6 generally understood that it was based on what we thought
7 we could realize with the retail footprints that we
8 thought we could build out.

9 Q Did you agree with Sunny's financial
10 projections with the company that you were showing to
11 investors?

12 A I mean, I don't -- he had a lot of different
13 models that he would create based on how things were
14 evolving. I think generally the assumption that we could

15 hit a certain footprint was something that I believed was
16 possible.

17 Q And, you know, if you had any problems with the
18 assumptions or how the model was being built, would you
19 discuss that with Sunny?

20 A Yes. But I generally deferred to him in this
21 area.

22 Q Can you recall an instance in which you did
23 discuss with him revising the model to be more in line
24 with assumptions that you thought were appropriate?

25 A I don't know that I was ever setting the

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433

1 assumptions for the model. I remember in the context of
2 board discussions generally that he would share what the
3 assumptions were. And they seemed reasonable just in
4 terms of, again, the retail footprint.

5 BY MR. KOLHATKAR:

6 Q So I guess I'm trying to put myself in your --
7 trying to understand your perspective as the CEO of the
8 company at the time.

9 A Yeah.

10 Q Was the financial condition of the company
11 something -- I understand your testimony to be that you
12 generally deferred to him on preparation of the

13 projections. Was it an area that you hoped to learn more
14 about or get more involved in over time?

15 A My thinking was that if I had someone who knew
16 how to do this well, I could defer that to that person
17 and that where I really should spend time in the company
18 is on what our board would always call my comparative
19 advantage, which was inventing and sort of the strategy
20 and the vision for how this could be rolled out.

21 Q And what gave you the belief that Sunny Balwani
22 was a good fit for preparing these financial projections?

23 A He was very confident in his ability to do it.
24 As I understood it, he had successfully built and sold
25 his own company; and, therefore, I thought he was

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434

1 qualified to do it.

2 Q I guess, did he ever -- did he ever explain
3 anything to you about his experience, you know,
4 growing -- growing and selling that prior company that
5 would relate specifically to the creation of financial
6 projections?

7 A No. But he understood, excelled really well,
8 and he seemed to be good at creating models. And I
9 didn't have experience or any background in that, so I
10 just deferred to him.

11 BY MS. CHAN:

12 Q So you mentioned earlier that you did see the
13 financial projections that Sunny would send out to
14 investors.

15 Did you ever send out financial projections to
16 investors directly or personally?

17 A To be clear, I don't know that I saw all of
18 them because he did have a lot of contact with investors
19 after I would meet them initially.

20 I don't know if they ever came from my e-mail
21 account. They might have. They would have been
22 documents that he prepared for that purpose.

23 Q Would you -- in those instances in which you
24 would be sending out the financial projections directly,
25 would you review them prior to sending them out?

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1 A I don't have specific memory of a situation in
2 which I was sending them out. So I don't know if I had
3 reviewed it beforehand. I would think that what we would
4 send would be generally consistent with sort of
5 assumptions that I would believe in in terms of, again,
6 the retail footprint.

7 Q Is it generally your practice to review
8 documents that you're attaching to e-mails when you're

9 sending them out to anyone in the company or outside of
10 the company?

11 A I think it depends on what it is. If I'm just
12 forwarding something that has already been reviewed by a
13 team of people, not necessarily. If I'm creating content
14 myself, clearly. If it's something I've never seen
15 before and I'm sending, maybe. I would need to look at a
16 specific example.

17 BY MR. KOLHATKAR:

18 Q I guess, turning back to the 2014 time frame,
19 who at Theranos had the ultimate sort of final say on the
20 company's financial projections?

21 A Sunny did.

22 Q And who had the ultimate final authority on --
23 in terms of when and how to recognize revenue?

24 A I don't know that we were really ever
25 recognizing revenue in a gap way. I mean, we've brought

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436

1 Alvarez & Marsal in over the course of the last year to
2 help us build systems to do this right. We were focused
3 on cash accounting and would generally describe payments
4 as they were received, but Sunny would figure out how
5 they should be reflected in the models that we were
6 building.

7 Q What about -- I mean -- what about just on the
8 books of the company? Who had -- who had ultimate
9 decision in terms of whether something should be treated
10 as cash that could be used for operations?

11 A Between Sunny and (b)(6);(b)(7)(C) they would have made
12 that decision.

13 BY MS. CHAN:

14 Q So what was the purpose of you reviewing the
15 cash balance of the company?

16 A As a young company, we were just trying to make
17 sure that we had enough cash. We were investing a lot in
18 R & D and operations and hiring people and wanted to get
19 ready for these rollouts and launches. And I needed to
20 make sure that we weren't going to have to either change
21 our operations or that we were going to run out of cash.

22 Q So you needed to generally make sure that, you
23 know, the company was running smoothly, that cash was
24 going where it needed to be going, and that there was
25 enough cash actually to run the business; is that right?

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437

1 A I was mostly making sure that there was enough
2 cash to run the business, yes. I wouldn't say that I was
3 necessarily the one managing where cash was going within
4 the business.

5 Q Who was managing where cash was going in the
6 business?

7 A We didn't have formal budgeting in place, but
8 the purchase order system reported in through Sunny, and
9 he saw all the POs that were going through the system.

10 Q What about employee salaries? Who was
11 reviewing that and making sure that there was enough cash
12 to pay your employees?

13 A The employee salaries were set based on
14 compensation recommendations from whoever we had working
15 in HR, and then we were monitoring that based on what the
16 cash balance was.

17 Q Who's "we"?

18 A Myself, Sunny, (b)(6),(b)(7)(C)

19 Q Okay. And who would be approving the
20 compensation recommendations that you were being given?
21 Who would have the ultimate say over that?

22 A I think it depends on the period of time. Early
23 on I would review and interview everybody. Then later I
24 didn't and Sunny did. I think ultimately he may even
25 have stopped interviewing and reviewing everyone and

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438

1 delegated some of that. I don't know when that happened.

2 Q Did you review projections, financial

3 projections, that were sent to Rupert Murdoch?

4 A I've seen them.

5 BY MR. KOLHATKAR:

6 Q I guess, before they were sent out to Mr.
7 Murdoch, did you review those projections?

8 A I don't remember, but I've seen the documents
9 in that binder.

10 Q Did you review them with Mr. Murdoch in any of
11 your meetings with him or something similar to the
12 document that was sent?

13 A I don't know. I'm not sure.

14 BY MS. CHAN:

15 Q What about with (b)(7) Capital? Did you review
16 financial projections that were sent to (b)(7) Capital at
17 the time they were sent?

18 A I remember that (b)(6) when we asked them to work
19 as an advisor to us, was actually helping us to build a
20 model. I don't know if I reviewed what was sent to them
21 beforehand. I remember -- I remember that they were
22 working on creating one for us.

23 BY MR. KOLHATKAR:

24 Q Was that your understanding of part of what the
25 purpose of the (b)(7) engagement was, was to help build a

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1 financial model?

2 A In the beginning, yes. As we discussed, it
3 changed over time.

4 Q Do you know if the company ever used the (b)(6)
5 model that was -- if one was provided?

6 A I think that we used parts of it. I don't know
7 that we used all of it.

8 Q And was that your understanding at the time
9 those discussions were taking place as well, or is that
10 just what you've come to understand now?

11 A It's what I've come to understand now.

12 Q Do you have any understanding, you know, back
13 in the 2014 time period of how the company was using the
14 information it was getting from (b)(6)

15 A I don't. I don't.

16 BY MS. CHAN:

17 Q Who would know that?

18 A I would talk to Sunny about it.

19 Q What about PFM, Partner Fund Management? Did
20 you review financial projections that went out to them at
21 the time that they were sent?

22 A I don't think I did. I think my current
23 understanding is that they had asked for some information
24 from Sunny to build their own model, and he sent
25 information to them that they thought would be useful for

1 that.

2 Q So you're not -- you're not -- you don't
3 remember either reviewing or receiving those projections
4 before they were sent to PFM?

5 A I don't.

6 Q In the fall of 2014, did you believe that
7 Theranos would be able to exceed \$100 million in revenues
8 by year-end?

9 A So I don't remember what I thought then, but --
10 I don't remember what I thought then.

11 Q What about -- did you have any understanding of
12 whether in -- strike that. Let me just start over again.

13 In August 2014 did you believe that Theranos
14 would break even by year-end?

15 A Again, I don't remember what I thought at that
16 time. I look back on how we were thinking about growth
17 based on retail footprint and that if we could hit a
18 certain number of locations, we would see a certain
19 number of -- certain amount of revenue.

20 Q What does "break even" mean to you?

21 A That we are getting as much cash into the
22 company as cash going out of the company.

23 BY MR. KOLHATKAR:

24 Q I guess, do you have any recollection from
25 August 2014 through the end of that year about whether

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441

1 you thought the company was going to break even in 2014?

2 A I can't -- I can't remember where my head was
3 in those months. You know, it was a long time ago. I'm
4 not sure.

5 Q Was that a concern of yours at the time?

6 A In 2014 whether we were going to break even?

7 Q Right.

8 A I think at that time I was more concerned about
9 how fast can we roll out the retail footprint and how
10 quickly can we start that ramp. And I believed that the
11 revenue and cash inflow would come from that.

12 BY MS. CHAN:

13 Q Why were you focused on the rollout of the
14 Theranos wellness centers at that time? Why was that
15 important to you?

16 A It was my understanding that our revenue
17 streams were based around that; so, if we could reach a
18 certain footprint, then we would see both people coming
19 into the stores as well as associated revenues from other
20 services that we could provide.

21 BY MR. KOLHATKAR:

22 Q What is that associated revenue?

23 A We thought we would be able to, in a geography
24 that we were in, see revenue from samples coming from
25 physician offices and hospitals and also begin to provide

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442

1 pharmaceutical trials around a retail footprint.

2 Q This was in -- this was in kind of that fall
3 2014 period you had that belief?

4 A I think we always thought -- I mean, going back
5 to when we put the contracts in place -- that you could
6 build services like the pharma studies around the retail
7 footprint.

8 Q I guess in the fall -- so by that point, in the
9 fall 2014, Theranos had a retail footprint in Arizona,
10 right?

11 A We did.

12 Q Had it done anything to build out a pharma
13 trial -- you know, trial business in Arizona at that
14 time?

15 A Walgreens had a team that was focused on
16 engaging with pharmaceutical companies to do clinical
17 studies through the stores. And as I understood it,
18 there -- I don't know if it was at that time
19 specifically, but there was a lot of very positive

20 engagement with those companies to run the clinical
21 trials.

22 Q Okay. But was it still sort of in the concept
23 stage rather than the actually -- actually
24 offering-services stage?

25 A The way I've always thought about it is that it

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443

1 was triggered by how many stores that we had. And so if
2 we had a bigger footprint, then we would be able to run
3 these studies.

4 Q So, in your mind, what was sort of the minimum
5 number of stores that Theranos would need to have in a
6 given geography to run those studies?

7 A I don't know if I ever thought of it as having
8 a minimum number. I think it was more that you would
9 need to be ramping up rollout. I mean, the 41 number we
10 sort of plateaued out was only associated with what was
11 initially a pilot, and we never really ramped beyond
12 that. So it was when we were getting into this national
13 ramp we thought we were going to do.

14 Q So I guess -- so as long as -- as long as
15 Theranos was just in those 41 stores, you didn't have any
16 expectation that it was going to gain any money -- gain
17 any revenue from these pharma services-associated revenue

18 kind of stream; is that fair?

19 A No. Both from our previous work with pharmas
20 as well as the engagement that Walgreens had with them we
21 thought that, for example, you could use it as a site to
22 enroll people. But we were, so far as projections were
23 concerned, really looking at the ramp as sort of the
24 trigger for realizing sort of the multiple streams of
25 revenue that we were thinking about.

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444

1 Q Yeah. I guess setting aside the projections,
2 just as a matter of, you know, this concept of thinking
3 about ramping up Walgreens --

4 A Sure.

5 Q -- did you think you were going to have any,
6 you know, pharmaceutical services business if Theranos
7 was just in the 41 stores?

8 A I honest -- I don't think we thought that we
9 were just going to be in 41 stores. I think we thought
10 that we were always about to ramp. I don't think we were
11 thinking about we're just going to be in 41 stores.

12 Q You also mentioned a minute ago sort of the
13 prior work that Theranos had done with those
14 pharmaceutical partners, sort of partners like GSK and
15 Schering Plough. Is that what you had in mind there?

16 A Specifically as I said that, I was thinking
17 about the opportunities that existed to do new programs
18 based on some of the people within those pharma companies
19 who had expressed interest based on the success of the
20 initial programs.

21 BY MR. FOLEY:

22 Q Did you discuss with anyone at Walgreens the
23 concept that Theranos would be the service provider for
24 their pharma relationships in these clinical trials?

25 A Just to answer the question best, what do you

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445

1 mean by "service provider"?

2 Q Well, how is it that -- you alluded to
3 Walgreens having relationships with the pharmaceuticals.

4 A Sure.

5 Q And that Theranos would earn money from that.

6 A Yes.

7 Q And I'm just trying to -- how is that supposed
8 to work? And who did you discuss that with at Walgreens?

9 A Yes. Yes. So specifically the concept was
10 that you allow people who walk into retail to enroll in a
11 clinical trial in a pharmaceutical study. They then
12 would have a lab order. It's not a physician-directed
13 lab order but for an investigational use, and they would

14 get their sample collected at Walgreens for the purpose
15 of the trial, and then the pharma company could use that
16 for their clinical trial.

17 So the concept was you're going to use the
18 stores as sites. And that was something that we
19 discussed way back into 2010 in the original agreement.

20 BY MS. CHAN:

21 Q From the time of Theranos' inception until the
22 present, has Theranos ever achieved break-even status?

23 A I don't think so.

24 Q Was there a time when Theranos engaged a
25 company called Aranca to prepare a 409A report to value

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446

1 the company's common stock?

2 A Yes.

3 Q And did you provide financial information to
4 Aranca for that purpose?

5 A I think so, yes.

6 Q Was it your intent --

7 A And just to be clear, by "you," you mean
8 Theranos? Or you mean me personally?

9 Q I meant you personally.

10 A I don't think I personally did, no.

11 Q Okay. Who did?

12 A I think (b)(6);(b)(7)(C) did.

13 Q Did you approve the financial information that
14 she provided to Aranca?

15 A In some cases I think so.

16 Q Was it your intent to provide accurate
17 information to Aranca for its purpose of valuing the
18 company's common stock?

19 A To the extent we were using it for issuing
20 options, yes. We also used Aranca for other purposes as
21 we worked to develop our own internal valuation models.

22 Q So I just asked you whether it was your intent
23 to provide accurate information to Aranca. Are you
24 saying that for other purposes it wasn't your intent to
25 provide accurate information?

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447

1 A I know that there was some instances in which
2 we would hold financial models constant to look at the
3 impact of certain events like the financing on the stock
4 price. We were not using those reports as 409As in the
5 traditional sense, but we were using them as an external
6 valuation methodology that we could then build our own
7 internal model from.

8 BY MR. KOLHATKAR:

9 Q Why use a 409A report as -- for that purpose?

10 A We'd received guidance that if we were to try
11 to structure ourselves as a private company and build our
12 own model for valuing our stock, it would be useful to
13 have a reference method that was done by a third party
14 that we could use in forming our own model.

15 Q Sure. But why -- why -- hire a valuation firm
16 to do that work?

17 A The specific guidance that we'd gotten was to
18 have this firm that had been working with us and already
19 built models for understanding how they valued our stock
20 to continue, but just look at the differential impact of
21 the financing events on the value of the stock that they
22 previously established.

23 Q Who gave you that advice?

24 A That may raise privilege issues. But --

25 Q To the extent it's not an attorney, I guess,

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448

1 is -- you know, looking back at that time, was --

2 MR. NEAL: So just tell him there was --if
3 there was a non-attorney or non-attorneys who gave that
4 advice, you can identify them but nothing else. You
5 could say yes or no to that. Were there non-attorneys?

6 THE WITNESS: Yeah. It was discussed by our
7 attorney with our board, but it was an attorney who gave

8 us the advice.

9 MR. NEAL: Okay. Let's not go into that.

10 BY MR. KOLHATKAR:

11 Q So did any of the non-attorney board members
12 express any concerns about using a 409A valuation for the
13 purpose you just described?

14 A There was some confusion about it, and we
15 discussed that too in at least one of our board meetings.

16 Q I guess, what do you mean by "confusion"?

17 A That we were using the model for the purpose of
18 developing an internal valuation method and that that was
19 why we were holding our projections constant in that
20 version of the model while we were sharing with our board
21 the projections that we hoped to be able to achieve.

22 Q Who expressed that confusion?

23 A Dick Kovacevich.

24 Q Anyone else?

25 A Not that I can remember. Others might have. He

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449

1 was the most vocal in the board meeting when this was
2 discussed.

3 Q Did you ever tell Aranca that you were using
4 their valuation report for the purpose you just
5 described?

6 A I don't know.

7 BY MR. FOLEY:

8 Q Just to clarify, when you say "internal
9 valuation model," are you saying that someone internally
10 was actually taking their reports and then putting them
11 into a model that the company then owned? Just trying to
12 understand what you mean by "internal valuation."

13 A Yes. So we believed that we were going to
14 structure ourselves as a private company. I was learning
15 about and trying to model some of that off of some of the
16 guidance I received from Riley Bechtel about how they
17 value their stock. They have an internal valuation model
18 to value their stock.

19 We thought that we would try to build one too,
20 and we actually thought that ultimately it would be great
21 to have the common stock and the preferred stock price be
22 the same so that we could stay as a private company.

23 And so the question was, how do we build an
24 internal model? And the process that was agreed upon was
25 to have some third party continue to do valuations over a

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450

1 period of time so that, for example, it wouldn't be just
2 us saying that if you raised a material amount of money,
3 it impacted your stock price in this way. You could

4 refer back to this as a reference source for how you were
5 building the model and the algorithm. I don't think we
6 ended up getting very far down that path.

7 Q So did anyone build an internal valuation
8 model, I guess is really my question?

9 A I don't know.

10 Q Who was taking that on?

11 A I don't know that we -- I mean, had we done it,
12 it would have been Sunny. I don't know that it started
13 because we were just beginning to go down creating sort
14 of the framework for that.

15 BY MS. CHAN:

16 Q And maybe I missed something.

17 A Yeah.

18 Q So why would the projections in your internal
19 model be different from the projections you'd be giving
20 Aranca in order to value the common stock of the company?

21 A As of a certain period of time, when we stopped
22 issuing options, we were trying to understand how much
23 the impact of a certain financing transaction would have
24 on the common stock price if all else were the same.

25 Q Okay. So when did you stop issuing stock

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1 options?

2 A I think it was in December of 2013.

3 Q Okay. So from 2014 onwards, were you then
4 sending these sort of -- sort of altered projections to
5 Aranca in order to provide information for this internal
6 model?

7 A I think so. I don't know exactly about every
8 interaction with Aranca, but I know that that was
9 happening after that period of time.

10 BY MR. KOLHATKAR:

11 Q Did you tell (b)(6);(b)(7)(C) that you were planning
12 on using the Aranca reports for this purpose after the
13 end of 2013?

14 A I don't know.

15 Q Do you know if Sunny did?

16 A I don't.

17 Q Do you think that's something that would have
18 been helpful for her to know?

19 A I don't know. I don't know very much about her
20 interactions with Aranca overall.

21 BY MS. CHAN:

22 Q So I'm going to hand to you what's been marked
23 Theranos Exhibit 226.

24 (SEC Exhibit No. 226 was marked for
25 identification.)



1 BY MS. CHAN:

2 Q Exhibit 226 purports to be a document titled
3 "Theranos, Inc., FMV as common stock as of March 25th,
4 2015." The date of the report is actually April 6th,
5 2015. And the starting Bates number is TS-00 --
6 TS-0021981.

7 Have you seen Exhibit 226 before?

8 A I don't have memory of it, but I recognize it
9 as an Aranca report.

10 Q Okay. I'll represent to you that this document
11 was a part of the April 15th, 2015, board meeting binder
12 that Theranos produced to the SEC pursuant to subpoena.

13 So if you turn to -- being a member of the
14 board, would you have reviewed this as part of the board
15 meeting binder materials?

16 A I definitely would have received it. I don't
17 remember if we reviewed it.

18 Q Okay. Who would have -- would anyone have
19 presented the Aranca report at the meeting?

20 A I don't think so.

21 Q Why not?

22 A I'm trying to remember if we ever had
23 presentations of the Aranca reports. I think they were
24 included in the binders. I don't think that anybody ever

25 presented on them.

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453

1 Q Would you have reviewed this report prior to
2 having it included in the board binder?

3 A Probably not.

4 Q Who would have -- maybe we should talk
5 generally about --

6 A Yeah.

7 Q -- who actually collects documents and puts
8 them in these board binders.

9 A At what period of time?

10 Q Did it change?

11 A Yes. We have a very different system in place
12 now.

13 Q Okay. So I'm not talking about now.

14 A Yeah.

15 Q So from the 2013 to 2014 period, who was in
16 charge of doing that?

17 A I don't know specifically. It was a pretty
18 informal process where I don't think we ever really
19 circulated materials in advance. They were put together
20 right before the meetings.

21 Q So you don't know who would have put together
22 the materials before the meeting?

23 A I don't. I can guess. I don't.

24 Q Aren't you the chair of the board?

25 A I am.

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454

1 Q So you had no knowledge as to how these board
2 binders were being put together?

3 A I'm sure I did then. I just don't remember in
4 the end of 2013 what group of people was doing it.

5 Q Okay. And as chair of the board, would you
6 have reviewed the materials prior to handing them out to
7 board members?

8 A Generally, yes. I don't know that I
9 specifically read these reports. I don't think I did.

10 BY MR. KOLHATKAR:

11 Q Why don't you think you did? What's the basis
12 for that answer?

13 A Because I don't think I've ever actually read
14 one of these reports end to end.

15 BY MS. CHAN:

16 Q Okay. If you turn to 22034 -- 22034.

17 A Yes.

18 Q You'll see that there is a page in here with
19 historical financials, and on this particular page it's
20 the income statement. You'll see there's a revenue line.

21 Looks like in December 2011 -- as of December 2011 or a
22 period ending December 2011 Theranos made 518,000 in
23 revenues. And then there was no revenues in 2012 and
24 2013 and then 150,000 in 2014.

25 Is that consistent with your understanding of

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1 the revenues that Theranos made in those years?

2 A I don't know what the actual revenues were in
3 those years.

4 Q You didn't keep track at all of what Theranos
5 was earning in revenues?

6 A I did not personally, no.

7 Q Did (b)(6),(b)(7)(C) ever provide you with any
8 updates as to what the company was generating in
9 revenues?

10 A We weren't really focused on revenue. We were
11 focused on cash management and retail rollout.

12 Q Do you have any reason to question whether
13 Theranos generated \$150,000 in revenue in 2014?

14 A I don't know what this is based on. I wouldn't
15 know what to question.

16 BY MR. KOLHATKAR:

17 Q I guess, in that -- a minute ago you said by
18 this time the Aranca reports were being used for a

19 different purpose; is that right?

20 A Yes.

21 Q And so what you were doing was keeping the
22 projections of future revenue constant with -- over time
23 to help build the valuation model, right?

24 A Generally, as I understand it, yes.

25 Q Did you ever intend to keep the company's

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1 income statement stagnant as well to help develop a
2 valuation model?

3 A I don't know what was done with that.

4 Q I guess, in your mind back at the time, did you
5 have any reason why the income statement should remain
6 stagnant or constant or unchanged to help that valuation
7 process you described?

8 A I don't know if I ever thought about it. I
9 don't know. I don't think this is something that I've
10 looked at before in terms of what the right way to handle
11 that in the model is. I know there was discussions about
12 that with respect to projections. I'm not aware of
13 conversations about that with respect to the income
14 statement one way or the other.

15 BY MS. WINKLER:

16 Q So you said you were focused on cash, not

17 revenue, right?

18 A Correct.

19 Q Is that true for 2011 through 2014?

20 A Yes.

21 Q So how was the company getting cash if not
22 through revenue?

23 A We received these, what we were previously
24 calling, exclusivity payments from the retailers, and
25 then in the end of '13 early '14 raised equity capital.

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457

1 Q And who did you receive the exclusivity
2 payments from?

3 A Those are the Walgreens and the Safeway
4 payments.

5 BY MR. FOLEY:

6 Q Are those reflected here?

7 A I don't know.

8 BY MS. WINKLER:

9 Q What was the amount of those payments?

10 A I think Walgreens paid us in total 140 million
11 including the convertible note that they had, and then
12 Safeway paid us I think 30 million.

13 Q And what year were those payments made?

14 A I know the 75 million from Walgreens was in

15 December of '13. The 25 million was before that. I
16 don't know when the 40 million note was. And the Safeway
17 payments I think were in the '11 or '12 time frame.

18 BY MS. CHAN:

19 Q Okay. So if you turn to 22009, which is
20 actually earlier in the document, you'll see there's an
21 income statement here as well. But it looks like this is
22 a projected --

23 A I'm sorry. I just also wanted to add in answer
24 to your question, I know we also received those payments
25 from insurance companies, and I'm not sure if it was

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458

1 during that time frame.

2 BY MS. WINKLER:

3 Q What do you mean by payments from insurance
4 companies?

5 A From certain Blue Cross Blue Shield plans.

6 Q And were those payments for testing that was
7 done?

8 A No. They were the same type of upfront
9 payments.

10 BY MS. CHAN:

11 Q Okay. So looking at 22009, there's an income
12 statement. It looks like it includes financial

13 projections for the years ended December 2015 to 2018.

14 Do you see that?

15 A Yes.

16 Q And actually it also includes a ten-month
17 projection or I think this is --

18 MR. FOLEY: That covers the ten-month period.

19 You're talking about December --

20 BY MS. CHAN:

21 Q It covers the ten-month period for 2015. Do
22 you see that as well?

23 A Yes.

24 Q So you'll see, you know, for 2015 to 2018
25 roughly you're projecting here to generate about 113

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459

1 million in 2015, 223 million in 2016, 323 million in
2 2017, and 503 million in 2018.

3 Did you approve of those financial projections,
4 that they be provided to Aranca?

5 A I don't know.

6 Q You can keep that in front of you for the
7 moment. I'm handing to you what's already been marked as
8 Theranos Exhibit 160.

9 Exhibit 160 purports to be a December 23rd,
10 2014, e-mail from Elizabeth Holmes to (b)(6);(b)(7)(C) subject

11 line "Re 409A" with starting Bates No. THPFM0000889870.

12 Have you seen Exhibit 160 before?

13 A I don't remember it, but I recognize my e-mail
14 here.

15 Q Okay. So you'll see about halfway down the
16 page there is an e-mail from (b)(6);(b)(7)(C) to you. And
17 she's saying that she sent over projections to Aranca the
18 night before because they have a deadline before the end
19 of the year. And then she writes, "I use the same
20 assumptions for revenue as in October. Roughly 100
21 million, 200 million, 300 million, and 500 million in
22 2015 through 2018."

23 Do you see that?

24 A I do.

25 Q And then you respond back to her, and you say,

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1 "100 million for '15", right?

2 So you're questioning whether or not -- or
3 you're confirming with her that it's \$100 million for
4 2015. Do you see that?

5 A I do.

6 Q And then she confirms, "Yes, that's correct."

7 And then you say, "Thanks."

8 So does that refresh your recollection that you

9 approved of these financial projections that were in this
10 April 2015 report to Aranca?

11 A It doesn't refresh my recollection, but I don't
12 have reason to doubt this e-mail.

13 Q What did you base these projections on, the
14 100, 200, 300, and 500 million?

15 A I don't know.

16 Q Did you have a financial model that you were
17 working with?

18 A I'm assuming that since she says "the same
19 assumptions," this is based on something else. I don't
20 know what it was.

21 Q You think it was based on something else that
22 you had worked on?

23 A I don't know.

24 Q So you have no idea how -- how she came up or
25 you came up with 100, 200, 300, and 500 million for those

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461

1 years?

2 A I don't. And I don't know what we were using
3 this report for at that time.

4 Q Did you think to ask her a question, why or
5 what is the purpose of this report? What was -- how were
6 you responding back to her and approving of the

7 projections if you didn't know what the purpose of the
8 report was?

9 A I can't remember now what the purpose of the
10 report was. I'm assuming at that time I had some
11 understanding of what the purpose of the report was. I
12 just can't remember what it was.

13 Q Are you aware of a financial model somewhere
14 that would have projected these revenue figures for 2015
15 to 2015 -- 2015 to 2018?

16 A Again, I don't know. And I didn't maintain
17 those models. And I don't even know that this
18 necessarily would have been consistent with any models
19 that we were maintaining on assumptions for retail
20 rollout.

21 Q Who was maintaining those assumptions?

22 A Sunny was.

23 BY MR. KOLHATKAR:

24 Q So if I understand, by this time period, to the
25 best of your memory, Aranca was being used to help --

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462

1 help build an internal valuation model; is that fair?

2 A They were.

3 Q And I think you said the goal was to have the
4 value of common stock be on par with the preferred at

5 some point in time?

6 A To ultimately get to that point.

7 Q I realize it's a long ramp.

8 A Yes.

9 Q But that was the goal you had in mind, right?

10 A That was what we thought the end -- end
11 objective was.

12 Q And that was important to your goal ultimately
13 of staying a private company in the long-term?

14 A Yes. And continuing to restructure ourselves
15 as a private company.

16 Q Is it fair to say that the company's valuation
17 was something that was important to you in this time
18 frame?

19 A Generally, yes.

20 Q Why was that?

21 A Because it's important to our shareholders.

22 Q And did shareholders from time to time --
23 people who invested earlier, whether when you first
24 started or in 2010, ask for copies of Aranca's 409A
25 reports?

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463

1 A Not to my knowledge.

2 Q Did anyone ever communicate to you that a prior

3 investor has asked for a 409A report?

4 A Sitting here now, I can't remember any. It's
5 possible that they did. I don't know.

6 Q I guess, if your ultimate goal is to have
7 common stock and be on par value with the preferred and
8 valuation of the company is something that's important to
9 you, I'm trying to understand why you never read one of
10 these Aranca reports cover to cover?

11 A So we began the process of structuring as a
12 private company in the end of '13, and we assumed this
13 was going to be a long multi-year process and that these
14 were just the first steps in beginning to develop a
15 formula for what the impact of capital infusion was on
16 some of these metrics around common stock price.

17 I was not primarily focused on the finance
18 aspects of our business. I trusted that if this was what
19 really smart people that we were paying a lot of money to
20 thought was a good idea to do, that that's what we would
21 do, and that at the time we would start building these
22 models internally, I would look at it and learn about it.
23 I don't have specific background in this area, and so it
24 wasn't something that I was focused on.

25 Q Did you track the Aranca's -- so you mentioned

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1 you wanted these reports to see how the equity events
2 impacted the common stock value.

3 A Uh-huh.

4 Q Did you track those final numbers as they came
5 in from report to report?

6 A I don't think so.

7 Q Do you know who at the -- if anyone at the
8 company did?

9 A I don't know that we even started this. I
10 think we were just trying to get the information at this
11 point and have it and that it would ultimately be used
12 for the purpose of an internal model.

13 BY MS. CHAN:

14 Q I'm handing to you what's been marked Theranos
15 Exhibit 227. And, actually, you can keep the Aranca
16 report in front of you.

17 (SEC Exhibit No. 227 was marked for
18 identification.)

19 BY MS. CHAN:

20 Q Exhibit 227 purports to be a spreadsheet. The
21 first page --

22 A I'm sorry. I just wanted to clarify.

23 I can't remember any instance in which someone
24 asked for a copy of a 409A, but it's possible over all
25 the years that they did.

1 BY MR. KOLHATKAR:

2 Q Is it something that you think Theranos would
3 have shared with its investors?

4 A I don't think that we did that generally. It's
5 possible that at some instance we did, but I don't
6 think -- certainly, it wasn't routine that I know about.

7 Q And I guess, why wouldn't the company generally
8 share these reports?

9 A I think we saw it as an internal tool for a
10 very specific purpose which was initially valuation of
11 options and then development of our own model. In
12 general. But there's so many years and so many
13 interactions that I just may not be remembering
14 something.

15 BY MS. CHAN:

16 Q So Exhibit 227 purports to be financial
17 statements. The first page is titled "Pro Forma
18 Projected Statement of Income" with starting Bates No.
19 TS-0021911.

20 Have you seen Exhibit 227 before?

21 MR. DAVIES: I mean, just to be clear for the
22 record, I don't think these purport to be financial
23 statements. I mean, they say what they say on the top of

24 them. But in the past when you said that, it's been,
25 like, an e-mail. These don't say financial statements on

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466

1 them, do they?

2 MS. CHAN: Sure. So Exhibit 227 purports to be
3 a document titled "Pro Forma Projected Statement of
4 Income."

5 THE WITNESS: I don't know if I've seen it
6 before.

7 BY MS. CHAN:

8 Q So I'll represent to you that this document was
9 part of the April 15th, 2015, board meeting materials
10 that Theranos produced to the SEC pursuant to subpoena.
11 So it was presented at the same time as Exhibit 225 --
12 sorry. Is that wrong? 226. It was presented at the
13 same time as Exhibit 226.

14 A To the board?

15 Q To the board.

16 A Okay.

17 Q So you'll see that there's a projected
18 statement of income, a pro forma and projected statement
19 of income, there's a pro forma statement of cash flow,
20 and a consolidated balance sheet here.

21 Did you review this at the time of the board

22 meeting?

23 A I don't know.

24 BY MR. KOLHATKAR:

25 Q Do you recognize this format generally? I



467

1 mean, whether or not you recall this specific document,
2 does the format of Exhibit 227 look like the kind of
3 projected statements of income, projected pro forma
4 statements of cash flow, and balance sheets that the
5 company maintained?

6 A It's actually different than what I had
7 remembered sharing -- that the Murdoch projections that
8 you showed me the other day in format, I think. But I
9 don't have reason to doubt it.

10 BY MS. CHAN:

11 Q Who prepared these financial statements?

12 A Sunny.

13 Q So if you look at the revenues for the period
14 ending 2014 -- this is on the first page in the statement
15 of income -- you'll see that total revenues projected to
16 be -- or not projected, actually, because this is in
17 2015. But total revenue for the year was \$108 million.

18 Do you see that?

19 A I do.

20 Q What was the basis for this number?

21 A I think it was he was believing that the
22 Walgreens payment could be earned within the 2014 time
23 frame, and then there was some retail revenue as well
24 that was associated with that. I don't know if he also
25 thought that some of the Safeway payment could have been

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468

1 earned. I'm not sure.

2 BY MR. KOLHATKAR:

3 Q What's your basis for that, for your
4 understanding of, I guess, what he believed?

5 A Because I remember conversations with him in
6 which he would talk about the fact that we'd earned the
7 Walgreens payment.

8 Q When do you recall those conversations taking
9 place?

10 A On an ongoing basis. Certainly by this 2015
11 time period that you're talking about.

12 BY MS. CHAN:

13 Q So you mentioned there were three different
14 components that you thought might go into this. There's
15 the Walgreens payments, the \$75 million innovation fee
16 payment. There's the Safeway payment. When was that
17 made?

18 A So just to be clear, I think that by 2015, this
19 number was based on thinking that, for whatever reason,
20 the 100 million from Walgreens was in this time period.

21 Q The 100 million from Walgreens?

22 A I think so.

23 Q When was the 25 million initial payment from
24 Walgreens? When did that come into the company?

25 A I don't know, but I know it was before December

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469

1 of 2013.

2 Q Okay. So why would that be included in the
3 revenues for 2014?

4 A You'd have to ask him. I don't know.

5 Q And then you said the remaining amount of
6 revenues would have come from the retail business. Is
7 this the retail pharmacy business?

8 A I think so, yes.

9 Q Okay. So if we're -- I'm sorry. And I
10 think -- I don't know if you answered my question about
11 the Safeway payment.

12 When did the Safeway payment come in?

13 A I don't know. I believe it was before 2013.

14 Q Okay. And how much was that payment?

15 A I think it was \$30 million, but I think there

16 was a 25 million and a 5 million component. I don't know
17 how he treated the 5.

18 Q So if we add up the 100 million that you think
19 Sunny might have put into this plus an additional 30,
20 that's already \$130 million. So --

21 A I --

22 Q -- what is --

23 A I don't know.

24 Q So what's the basis for your belief as to how
25 he came up with this \$108 million figure?

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470

1 A That he was treating the payments received from
2 retailers, I believe at least Walgreens, in this number
3 plus some retail services revenue. And I don't know how
4 he was treating that 5 million from Safeway.

5 Q Why do you think there was such a difference
6 between what we saw in the Aranca report, which had 2014
7 actual revenues as 150,000, and here you're seeing
8 revenues for \$108 million. Why was there such a
9 difference between the two?

10 A I don't know. I think this was in the context
11 of discussion about the fact that we thought that we
12 earned the Walgreens payment. I don't know what the
13 basis for the income statement in the Aranca document is.

14 Q Did you ever represent to prospective investors
15 in 2015 that Theranos generated over \$100 million in
16 revenues in 2014?

17 A I don't think we generally talked about
18 historical revenues very much. I know we openly talked
19 about having received \$100 million from Walgreens and
20 also the other payments from Safeway and probably the
21 insurance companies as well because we thought that
22 showed the interest and commitment of our partners.

23 Q Do you recall a meeting with Sutter Health in
24 August 2015 during which you showed their (b)(6);(b)(7)(C)
25 (b)(6);(b)(7)(C) financials for the company? Do

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471

1 you recall that meeting?

2 A I remember meeting with him. I don't know when
3 it was.

4 Q Okay. But do you remember a meeting in which
5 you showed him financial information for the company?

6 A I -- I'm trying to remember if I remember
7 showing him financial information. I'm not sure.

8 Q Do you remember showing him statements,
9 financial statements that indicated Theranos was making
10 or had made \$108 million in 2014 and was projected to
11 make 240 million in 2015 and another 750 million in 2016?

12 A I don't remember those numbers. But if those
13 were numbers we discussed, they would have been based on
14 whatever our internal models were at the time.

15 Q What do you mean by "based on whatever internal
16 models"?

17 A This type of understanding of the payments that
18 we'd received and what we thought we could achieve in
19 terms of retail footprint.

20 Q So you mean that you would have been relying on
21 whatever financial models Sunny Balwani was working on?

22 A Absolutely.

23 BY MR. KOLHATKAR:

24 Q Theranos paid taxes, right?

25 A Yes.

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472

1 Q And were you involved in the process of signing
2 off on Theranos' tax returns at different points in time?

3 A I don't know if my signature was required on a
4 document. I would have signed it, but I wasn't involved
5 in any detailed way.

6 Q Do you have any understanding of what Theranos
7 reported to the IRS in terms of revenues in 2014?

8 A I do not.

9 Q How about 2013?

10 A I do not.

11 Q Did you at the time?

12 A If I signed the tax returns, I would have. I
13 can't remember.

14 BY MS. CHAN:

15 Q You wouldn't provide inaccurate information to
16 the IRS, would you?

17 A No.

18 BY MR. KOLHATKAR:

19 Q I guess, is there any reason for the revenue
20 that Theranos was reporting to the IRS to be different
21 from the revenue figures shared with Sutter Health?

22 A I don't know. I think to the extent we were
23 making projections, we were talking about what we thought
24 could be done with payments that had been received.

25 I don't know if from -- I'm speculating from a

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473

1 government reporting standpoint, if we weren't completely
2 sure yet whether they could be recognized or not. I know
3 that we were transparent about what those payments were
4 and that there were these monies that had been received
5 from retail partners.

6 Q I guess, what do you mean by you remember that
7 you were transparent about?

8 A We thought that the fact that Walgreens had
9 paid us 100 million and another 40 in the note and
10 Safeway had paid us 30 was one of the most validating
11 pieces of information we could share. So openly
12 communicating that was a way of communicating that we
13 thought we had a real opportunity to roll out at retail.
14 Everybody knew we were only in 41 stores and that we were
15 trying to see, I thought, ten patients a day. We were
16 very open about that.

17 Q In other words, you viewed, not only the
18 existence of the Walgreens relationship, but Walgreens's
19 financial commitment as a sign of faith in Theranos?

20 A Absolutely.

21 Q And that's a sign of faith you wanted to share
22 with investors?

23 A Yes.

24 BY MS. CHAN:

25 Q Did you tell investors that the 108 million or

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474

1 \$100 million that were generated in revenues in 2014,
2 that that was made up of payments that were coming in
3 from Walgreens and Safeway?

4 A So I don't know if this was ever shared with
5 investors, but I know that, again, we openly talked about

6 the 100 million from Walgreens being a payment for
7 exclusivity.

8 Q Do you remember telling (b)(6);(b)(7)(C) at
9 Sutter Health that the 108 million consisted of payments
10 that were coming from Walgreens and Safeway?

11 A I don't remember that conversation very well. I
12 mean, again, at that time we still would have been only
13 in 41 stores, so we were very open about what we were
14 trying to do at retail.

15 MR. NEAL: So it's 1 o'clock. You guys want to
16 take a lunch break?

17 MS. CHAN: Sure. We can take a lunch break.

18 We are off the record at 1:00 p.m.

19 THE VIDEOGRAPHER: This concludes Media No. 2
20 of Elizabeth Holmes.

21 (Whereupon, at 1:01 p.m., a luncheon recess was
22 taken.)

23 A F T E R N O O N S E S S I O N

24 THE VIDEOGRAPHER: We are back on the record at
25 the beginning of Media No. 3 of Elizabeth Holmes. The

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475

1 time is 1:55.

2 BY MS. CHAN:

3 Q Ms. Holmes, did you have any substantive

4 conversations with the SEC staff during the break?

5 A No.

6 Q Was that a no?

7 A Correct.

8 Q Sorry. So we were talking before the lunch
9 break about the financials of the company.

10 A Yep.

11 Q And what you knew about how they were
12 maintained and who was preparing them for prospective
13 investors. Do you remember that?

14 A I do.

15 Q Okay. Do you recall providing financial
16 information to prospective investors in late 2014 showing
17 Theranos on the road to achieving over \$100 million in
18 revenues?

19 A I don't have specific memory of that, but I
20 know we shared projections with investors in late 2014.

21 Q Do you recall providing financial information
22 to (b)(6),(b)(7)(C) in August 2014 that indicated that Theranos
23 was projecting to make \$140 million in revenues for 2014?

24 A I don't remember that specifically.

25 Q Do you recall providing financial information

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1 to Fremont Group in October 2014 that indicated that

2 Theranos was on track to make \$126 million in revenues
3 for 2014?

4 A Again, I don't have specific memory of it.

5 Q Do you recall providing financial information
6 to (b)(7) Capital in October 2014 that indicated that
7 Theranos was on track to make \$125 million in revenues
8 for 2014?

9 A No.

10 Q So I'm going to hand to you what's been
11 previously marked as Theranos Exhibit 195.

12 Exhibit 195 purports to be an October 13th,
13 2014, e-mail from Sunny Balwani to (b)(6);(b)(7)(C)
14 (b)(6);(b)(7)(C) with a copy to (b)(6);(b)(7)(C)
15 Elizabeth Holmes, and (b)(6);(b)(7)(C) Subject line is "Re
16 thanks." And the starting Bates number is
17 BDTSEC_PST0004140, and there is an attachment with Bates
18 number ending 4142.

19 Have you seen Exhibit 195 before?

20 A I -- I don't recognize it, but I don't have
21 reason to doubt it.

22 Q So you'll see here that Sunny Balwani is
23 sending a financial model to (b)(7) Capital.

24 Do you see that?

25 A I do.

1 Q And the model is attached to the e-mail. What
2 was your understanding as to how Mr. Balwani came up with
3 the financial projections?

4 A I don't know.

5 Q Did he send these to you prior to sending them
6 out to (b)(7) Capital?

7 A I don't think so. I don't remember him doing
8 that.

9 BY MR. KOLHATKAR:

10 Q Do you recall discussing them with him before
11 they were sent out to (b)(7) Capital?

12 A No.

13 Q You understand that you're copied on the -- I
14 just want to clarify one thing -- that you're copied on
15 the e-mail that appears at 195?

16 A I just saw that, yeah.

17 BY MS. CHAN:

18 Q Did you receive this attachment at the time
19 that you received the e-mail?

20 A I don't know.

21 Q So if you would turn to the income statement,
22 which is -- looks like four pages into the attachment,
23 you'll see here that revenue for 2014 is projected to be
24 \$125 million in 2014. Do you see that?

25 A I do.

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478

1 Q And you'll see that there's a breakout for the
2 revenues in 2014, and actually only \$30 million is coming
3 from U.S. retail pharmacies. Do you see that?

4 A Yes.

5 Q So U.S. retail pharmacies, would that be
6 capturing the Walgreens and Safeway revenues that you
7 were looking to achieve?

8 A It could be. I don't know what this was
9 specifically in this model.

10 Q You don't know what U.S. retail pharmacies is
11 referring to?

12 A Again, I don't remember going through any of
13 the assumptions that went into this with Sunny. So I'm
14 not sure exactly what he was referring to here.

15 Q Have you seen versions of the financial
16 projections that you were sending to prospective
17 investors that look similar to this?

18 A As I said earlier, I had in my mind the format
19 that was in the Murdoch binder documents that you showed
20 me, but I -- I mean, I generally recognize this as a
21 Theranos document.

22 Q Okay. So you have no idea as to how Mr.

23 Balwani was breaking out the revenue streams, for
24 instance, the U.S. retail pharmacies, physician offices,
25 and hospitals or what those categories were supposed to

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479

1 include or consist of?

2 A I don't. I was just flipping back to the
3 market assumptions page to look at what the assumptions
4 were in here, which my assumption sitting here now would
5 be that that's what this is based on.

6 Q Okay. So if you look at the market assumptions
7 page, it looks like for retail pharmacy -- so if you look
8 at the first page of the document, "Retail Pharmacy,"
9 you've got revenue per requisition and then the fully
10 loaded cost system in Rx.

11 If you turn the page, you'll see that there are
12 a number of assumptions related to the Walgreens and
13 other retail pharmacy services. Do you see that?

14 A I do.

15 Q I mean, is there -- can you think of anything
16 else that retail pharmacies could mean other than the
17 Walgreens and possibly Safeway relationships?

18 A I don't -- I don't know what he was thinking
19 when he was creating this model. It looks here, just
20 from reading this document sitting here, that he's

21 assuming these are going to be Walgreens locations.

22 Q Okay. So looking back at the income statement,
23 then, before the lunch break you had testified earlier
24 that you believe that Mr. Balwani arrived at over \$100
25 million in revenues in 2014 because he had included the

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480

1 \$75 million accelerated innovation fee payment there? Do
2 you remember that testimony?

3 A What I was attempting to communicate was that
4 the questions you were asking about the \$108 million
5 number and what it might have come from I believed was
6 associated with the Walgreens payment. I commented that
7 I'm not sure about how revenue should have been
8 recognized.

9 Q Okay. So here it doesn't look like that \$75
10 million accelerated payment was included in Mr. Balwani's
11 projection for 2014.

12 Do you see that?

13 A I do.

14 Q So do you know what the basis was for Mr.
15 Balwani's projection of \$125 million for 2014?

16 A I do not.

17 BY MR. KOLHATKAR:

18 Q I guess, just looking at this -- these

19 projected revenue sources, looks, you know, \$30 million
20 about from retail pharmacies, which looking back looks
21 like Walgreens, and then I think we talked earlier about
22 the associated revenues from physicians' offices,
23 hospitals, and pharma services.

24 In late 2014 was this your expectation about
25 how -- you know, whether meaning the gross numbers or

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481

1 not, just sort of the breakdown of, you know, about a
2 third from retail pharmacies, a tenth from physicians'
3 offices, a little more than a third from hospitals -- was
4 that in your mind how the revenue stream was going to
5 look like?

6 A I never thought about it that way specifically.
7 I thought about it in terms of number of retail stores.
8 And then assuming you had that footprint, what was a
9 reasonable assumption of number of samples that could get
10 sent to you by a given physician office or hospital
11 group, and how many of those was it reasonable to assume
12 you could get in a given geography?

13 Q So in that sort of assumption sample mind
14 frame, did you assume that more samples were going to be
15 run from hospital and pharma partners than were actually
16 being run from just the operational Walgreens retail

17 pharmacies?

18 A I don't know. I don't know if I ever focused
19 on what the differential would be between the two. I
20 remember looking at both the number of store assumption
21 as well as is it reasonable to pick up a certain number
22 of samples per day from a physician office group, then
23 was it reasonable to get a certain number of physician
24 office groups and focusing on that part of it.

25 BY MS. CHAN:

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482

1 Q What revenues had the company realized from
2 physicians' offices by this time in October 2014?

3 A I don't know.

4 BY MS. WINKLER:

5 Q Was there any?

6 A I don't know. At some point we started doing a
7 pickup from physician offices. I don't know when it
8 started.

9 BY MS. CHAN:

10 Q Did you have any contracts with physicians'
11 offices at this time?

12 A I don't know. As referenced, we had a sales
13 team in Arizona that was working on putting contracts in
14 place with groups. I don't know the dates on those

15 contracts with physician groups.

16 Q Would it surprise you if Theranos had no
17 contracts with physicians' offices during this time?

18 A I think generally, yes. I think we were -- we
19 believed that the relationships that we had in place
20 would give us the ability to realize the assumed number
21 of physician offices. So I generally thought that we had
22 the relationships that we needed to be able to put this
23 footprint in place.

24 Q What about from hospitals? Do you know how
25 much in revenues Theranos had realized in revenues from

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483

1 hospitals up until October 2014?

2 A I don't. I -- unless we had been doing the
3 same type of pickup that we had started doing in
4 physician offices and physician offices that were part of
5 hospital groups, I don't think there was any other
6 financial income from hospitals at that point in time.

7 Q Do you know if Theranos was picking up samples
8 from hospitals at this time?

9 A I don't. I don't know when we started the
10 pickups.

11 Q Did you start pickups with any hospital at any
12 time?

13 A I'm hesitating just because I think the word
14 "hospital" here was referring to health systems, and some
15 of the physician groups that we were working with may
16 have been part of health systems. I don't know when
17 those started and whether the physicians that we
18 ultimately did that were part of these health systems.

19 Q Okay. But do you remember Theranos ever
20 starting to process samples from hospitals?

21 A From physician groups that were affiliated with
22 health systems, I believe we did.

23 Q Okay. But not from hospitals themselves?

24 A So we were using, I think, the word "hospital"
25 and "health system" interchangeably. So the group would

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484

1 have been associated with a hospital chain, as I
2 understood it.

3 Q What are some of those physician groups?

4 A So I think Commonwealth in Arizona was one of
5 them, and there was another one I'm trying to remember.
6 There was another health system group. I don't remember
7 the name, but I know that was something that (b)(6);(b)(7)(C)
8 (b)(6);(b)(7)(C) was very focused on in Arizona.

9 Q So you recall there were two physician groups
10 that Theranos was processing samples for?

11 A I believe there were more than two. I just
12 don't know what all of them were.

13 BY MR. KOLHATKAR:

14 Q I guess, was this conflation of hospitals and
15 health systems sort of like the normal language of
16 Theranos at the time, or was this something that you just
17 come to understand reading the document now?

18 A It's certainly something that I've come to
19 understand now. I don't know at that time whether we
20 used those words interchangeably.

21 Q I guess, do you know that that's what
22 "hospitals" meant in this model?

23 A I don't know that. I'm assuming that.

24 Q Based on your -- based on information you've
25 gathered since this time?

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485

1 A Yes.

2 BY MS. CHAN:

3 Q Who would know as to how much Theranos had
4 realized from revenues from both physicians and
5 hospitals?

6 MR. DWYER: As of October 2014?

7 MS. CHAN: As of October 2014.

8 THE WITNESS: I would ask Sunny.

9 BY MS. CHAN:

10 Q Sunny would know?

11 A I don't know if he knows. But, I mean, if I
12 were trying to find that out and if I were still working
13 with him, he would be the first person that I would ask.

14 Q Who else besides Sunny would know? You
15 mentioned (b)(6);(b)(7)(C) Would she know?

16 A She would have known what relationships we had
17 in place with health systems or physician groups in
18 Arizona. I don't think she had engagement on any of the
19 national health system groups. She was focused only on
20 local groups.

21 So there were other chains, like Dignity and
22 others, that had a national presence that we were hopeful
23 that we would be able to ultimately engage with. And she
24 wouldn't have been involved, as I understand it, in
25 interactions with them.

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486

1 Q Okay. So who would have been responsible for
2 those other relationships besides the Arizona ones?

3 A Sunny was.

4 Q Okay. Let's go down to, then, pharmaceutical
5 services. What had Theranos realized in the
6 pharmaceutical service space in terms of revenues for

7 2014 by this time?

8 A I don't know. I don't remember doing much on
9 the pharmaceutical services side in 2014.

10 Q Did you have any contracts in place with any
11 pharmaceutical companies at this time?

12 A I don't know. I know that we had some
13 relationships from our prior work that we were hopeful we
14 were going to reconstitute. I don't know if there had
15 been specific conversations with them or the group I was
16 referencing within Walgreens that was dedicated to
17 working with pharma companies at that time.

18 Q What is your understanding as to the last year
19 that Theranos received revenues from pharmaceutical
20 companies?

21 A So, again, I want to be careful about "payment"
22 and "revenue" because I know we received payments at
23 certain periods of time, and then there was discussion
24 and revision about when to recognize them.

25 I think the last years that we were paid was

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487

1 certainly prior to '14, and I don't know what year it
2 was.

3 Q Would 2011 sound right to you?

4 A I wouldn't be surprised if it's wrong.

5 Q You wouldn't be surprised if it's wrong?

6 A Yeah. I don't know.

7 Q Okay. So you don't know at all when you might
8 have received payments from the pharmaceutical companies?

9 A When the last payments were? I don't. Again,
10 if you said 2011, I wouldn't doubt it.

11 Q Who was responsible for those pharmaceutical
12 company relationships in this time frame, if there was
13 anyone?

14 A So I don't know what this specifically is
15 referring to here. If it was an assumption around the
16 pharmaceutical relationships that Walgreens had been
17 working to foster, then it would have been Walgreens'
18 relationships with pharma companies.

19 Otherwise, we had originally had a sales force
20 that had relationship with the pharma companies. We then
21 get rid of that sales force and built a new one that was
22 retail-focused. And had we reinstated those
23 relationships, we -- I don't know who we would have used.
24 Sunny would have made that suggestion because (b)(6),(b)(7)(C)
25 reported to him.

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488

1 Q So you think that Sunny Balwani would have
2 known about the status of the pharmaceutical

3 relationships that Theranos had at this time?

4 A I believe so.

5 Q So it sounds like Sunny Balwani would have
6 known about the physicians' office contracts that
7 Theranos might have had, hospital system contracts, and
8 the pharmaceutical service contracts, and Sunny was also
9 involved in the Walgreens relationship and responsible
10 for that as well and that after a certain period of time,
11 he was also responsible for the Safeway relationship.

12 So what were you responsible for?

13 A I was CEO of the company. I, from a technology
14 perspective, was focused on inventions and named on a
15 large number of our patents. I tried to contribute
16 creatively to technical issues when we were dealing with
17 technical issues that would require invention.

18 I was very focused on the restructure to become
19 a private company. I was focused on our vision and our
20 strategy. And I ultimately became very focused on
21 policy-related initiatives, like the law change in
22 Arizona and the work to try to build Medicare at lower
23 prices and the work to try to advocate for regulation of
24 LDTs.

25 Q What was the last patent that you appeared on



1 for Theranos?

2 A I don't know. I'm still writing memoranda of
3 invention right now.

4 Q So if you turn back to the macro market
5 assumptions, which is the first page of the attachment,
6 you'll see there's a list of, it looks like, device cost.
7 So for 2014 the device cost is 40,000; for 2015, the
8 device cost is 35,000.

9 Do you see that?

10 A I do.

11 Q What do these costs depict? What device are
12 these costs for?

13 A I don't know. Again, I didn't prepare this
14 document. I'm not sure what these are referring to.

15 Q Was this consistent with the cost for a TSPU or
16 a miniLab?

17 A I don't know.

18 BY MR. KOLHATKAR:

19 Q How much did it cost to manufacture a miniLab
20 in 2014?

21 A I could -- I don't know. I can tell you what
22 it is right now. I don't know what it was then.

23 Q How much did it cost to purchase a Siemens
24 ADVIA 1800 in 2014?

25 A I don't know. I would assume it was more than

1 \$40,000, but I don't know.

2 Q Why do you make that assumption?

3 A I just have general understanding that the
4 Siemens equipment was expensive.

5 BY MS. WINKLER:

6 Q How did you gain that understanding?

7 A Because we're trying to liquidate a lot of it
8 right now. And I have generally been in touch with our
9 operations teams on how much money we can get from it.

10 Q Did you know how expensive Siemens equipment
11 was back in 2014?

12 A I probably didn't know the exact amount, no.

13 Q Did you know that they were more expensive than
14 the cost to manufacture a TSPU in 2014?

15 A Yes.

16 Q And how did you know that back in 2014?

17 A Because I was generally aware of the cost of
18 traditional lab equipment.

19 BY MR. KOLHATKAR:

20 Q Can you think of any reason why the -- why the
21 cost for a TSPU would be relevant to Theranos'
22 projections for -- at the end of 2014?

23 A I was -- I was just trying to look at that in

24 here. I don't know if that was an assumption that we
25 were building a certain number of devices for R & D. I

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491

1 don't know if that's in the R & D number. I don't know.

2 Q I mean, at the time it wasn't -- it wasn't
3 Theranos' plan to -- in your mind, in October of 2014
4 Theranos was still very much in Phase 1 of its Walgreens
5 rollout; is that fair?

6 A We were.

7 Q And you didn't have a specific date in mind at
8 the time of when Phase 2 would start; is that fair?

9 A I don't know at that time. I know that we were
10 just focused on engaging with FDA as much as we could to
11 try to get the technologies through the FDA process. I
12 don't know if we thought there was a specific date or
13 not.

14 Q I guess, in October of 2014 did you expect to
15 move to Phase 2 by the end of the year, by the end of
16 2014?

17 A Again, I don't know exactly what my mind-set
18 was in 2014. I, I mean, sitting here now, don't think
19 so, but I don't know.

20 BY MS. CHAN:

21 Q So if you were still in the Phase 1 part of the

22 model with Walgreens where you were continuing to use,
23 for a majority of the tests, the modified version of
24 commercially available machines and there was some venous
25 draw testing being done on reference machines during that



492

1 time as well, why wouldn't the device costs for a Siemens
2 machine appear here under your assumptions?

3 A Again, I didn't create this document. I don't
4 know what was selected for the assumptions. I know Sunny
5 was working interactively with the (b)(7) team in trying to
6 build models. I'm looking at it as we're talking and
7 noting that this also includes things about number of
8 Theranos units per hospital location in 2015, so it may
9 have been associated with that assumption of Phase 2. I
10 don't know.

11 BY MR. KOLHATKAR:

12 Q I guess, in October of 2014 was Theranos
13 planning on sending any TSPUs to any hospitals
14 imminently?

15 A We were planning on trying to get FDA clearance
16 to do that. Again, I'm looking at this sitting here now
17 and noting it says "hospital location 2015." So I'm
18 assuming sitting here now that the assumption in this
19 document is that that would happen if we got FDA

20 clearance in time to do so in 2015.

21 BY MS. CHAN:

22 Q But you'll see that the assumptions also use a
23 device cost in 2014 of 40,000. So I think Mr.
24 Kolhatkar's question is: Were you aware that Theranos
25 was imminently in the last two months of 2014 going to be

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493

1 sending TSPUs to hospitals?

2 A No. We had to get FDA clearance prior to doing
3 that.

4 BY MR. KOLHATKAR:

5 Q You always understood that Theranos needed FDA
6 clearance of Theranos' TSPU before it could distribute
7 them broadly, right?

8 A Yes.

9 Q Did Sunny share that understanding with you?

10 A I think so.

11 Q What's your basis for that understanding?

12 A I'm trying to think of a specific conversation
13 to answer that. It was my general understanding that
14 that was our plan as a company, that the reason we were
15 working so hard to get technology into the FDA was
16 because it was required for Phase 2 of our model.

17 Q Sitting here today, do you believe these

18 assumptions about device costs and devices for hospitals
19 could give a potential investor the impression that
20 Theranos was using the TSPU for patient testing
21 exclusively at the time?

22 A I don't.

23 Q Why not?

24 A Because we were so focused on the TSPU for
25 Phase 2. The only other thing I can think of here is

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494

1 that we might have been talking about building large
2 numbers of them for use in our R & D and clinical
3 studies. I don't know what else would have gone into it.
4 I know, especially in this case of (b)(6) there was very
5 interactive engagement on the assumptions and the model,
6 and I would have expected that there was very active
7 discussion about these assumptions because I think they
8 were trying to build their own model.

9 Q I mean, did you ever share with anyone at (b)(6)
10 that Theranos was using either modified or unmodified
11 commercially available analyzers?

12 A I don't know. I -- I don't know.

13 BY MS. CHAN:

14 Q So if you turn to the next page, the "Theranos
15 market assumptions" page, you'll see that there are some

16 assumptions here for Walgreens, and there are other Rx
17 locations.

18 What did you understand the "other Rx
19 locations" to be referring to here?

20 A Some other retail pharmacy beside Walgreens.

21 Q Okay. So what other contracts did you have in
22 place at this time other than Walgreens? Wouldn't that
23 be Safeway?

24 A Yes. We had the Safeway relationship in place.

25 Q Okay. So do you think that the "other" would

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495

1 have been referring to Safeway?

2 A It could have been. Again, I don't know.

3 Q If you look at the Walgreens line, the
4 assumption here for December '14 is that Theranos
5 services would have been rolled out to Walgreens store --
6 Walgreens stores in 300 locations.

7 Do you see that?

8 A Yes.

9 Q Is that consistent with your understanding of
10 where things were headed with the Walgreens relationship,
11 that by December 2014 Theranos services would have been
12 offered at 300 stores?

13 A I generally remember that at that time we were

14 really focused on rapidly ramping. I don't know if 300
15 was the number that we thought we would be at by the end
16 of the year.

17 Q So we talked in your earlier testimony about
18 how at some point the parties were renegotiating the
19 contract and so -- and those talks started happening and
20 that the last store actually opened in the fall of 2014.

21 Do you remember that testimony?

22 A I do.

23 Q Okay. So do you think that it was achievable
24 to open 300 stores, you know, a month later after opening
25 the last 41st store?

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496

1 A Again, I don't know what was behind these
2 numbers in this model. I know that through the end of
3 '14 I continued to believe that there was an opportunity
4 to ramp rapidly with Walgreens. I don't know what the
5 specific numbers that we were thinking at that time was.

6 Q And then you remember our earlier -- your
7 earlier testimony in which we established that by
8 December 2014 the parties were talking about converting
9 the business model to a rental agreement model.

10 Do you remember that?

11 A I do.

12 Q Okay. So that would have required some
13 modification of the contract if it came to pass, correct?

14 A Correct.

15 Q Okay. So if you turn the page to the next
16 page, you'll see that by December 2015, the assumption
17 was that Theranos services would be rolled out to 900
18 stores.

19 Do you think that was reasonable in light of
20 the fact that the parties were just beginning to talk
21 about the rental agreement model in December 2014?

22 A I do.

23 Q Why?

24 A Because Walgreens used to refer to itself as an
25 execution machine. They rolled out injections for

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497

1 vaccines in 8100 stores in 12 months. We thought that
2 you could roll out nationally within 12 to 18 months at
3 the time you made a decision to do that.

4 BY MR. KOLHATKAR:

5 Q So turning back to the store assumptions for
6 the end of 2014, did Mr. Balwani ever tell you that he
7 expected Theranos to open 200 Walgreens locations by
8 November 2014 or 300 by the end of the year?

9 A I don't remember specific conversations about

10 those numbers. I remember feeling generally optimistic
11 going into the fall of '14 that we were going to be
12 ramping quickly.

13 Q When did that optimism fade in your mind?

14 A I don't know that it ever faded. I mean,
15 looking at the notes from the December meeting with
16 Walgreens, the fact that they were endorsing the kind of
17 model that we wanted to pursue we continued to see as a
18 really positive sign.

19 BY MS. CHAN:

20 Q So you'll see, turning back to the first market
21 assumptions page, so we just talked about how "other" was
22 likely Safeway since Theranos had no other contracts with
23 other retail pharmacies, correct?

24 A Again, I don't know what Sunny was thinking
25 when he built this model. I can sit here and guess, but

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498

1 I don't know.

2 Q But Theranos didn't have any other contracts
3 with other retail pharmacies at this time besides
4 Walgreens and Safeway, correct?

5 A Not that were signed.

6 Q Okay. So based on what we saw before and the
7 fact that things had slowed down with Safeway and the

8 parties seemed to be disagreeing on a number of issues,
9 do you think that it was reasonable to think that 135
10 stores would be rolling out in Safeway with Theranos'
11 services in January 2015?

12 A I don't know that this was Safeway.

13 Q Who else could it be?

14 A Well, I don't know what the date of this was.
15 The Walton family had just, I think by this time,
16 invested. We were in talks with executives at Walmart
17 about the potential to roll out there. We still had
18 really good relationships with others from the grocery
19 network at Safeway who wanted to work with us if it
20 didn't have to be from Safeway. I just genuinely don't
21 know what this was referring to.

22 Q You didn't have any contracts with any other
23 retail pharmacy besides Walgreens and Safeway. What
24 would make you believe that in October 2014 you'd be able
25 to open 135 stores -- wellness centers in January 2015?

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499

1 That's three months away.

2 MR. NEAL: She just answered your question.

3 THE WITNESS: I don't know what this assumption
4 was based on. I do know that by this point in time, we'd
5 spent years working with -- in terms of meetings; there

6 was a physical contract in place -- multiple retailers on
7 what this could look like, and I don't know what Sunny
8 was thinking when he put this together or what its
9 purpose was.

10 BY MS. CHAN:

11 Q Okay. So we're not asking you to speculate
12 here. So if you don't know, then you can just state that
13 you don't know.

14 So you have no idea as to how these assumptions
15 came about?

16 MR. NEAL: She's answered your question.

17 THE WITNESS: I do not know.

18 BY MR. KOLHATKAR:

19 Q So you mentioned the conversations with
20 Walmart. What was your view of the initial conversations
21 with the Walmart folks?

22 A My understanding was that first the people
23 affiliated with the Walton family wanted to understand
24 whether Walmart thought that this could be valuable and a
25 potentially viable business model and then wanted to

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500

1 understand whether there was any conflict with them
2 investing.

3 If Walmart at some point was to proceed with

4 this and I believe both of those things turned out
5 positively, that Walmart thought that there was potential
6 here and that it was also okay for the Walton family to
7 invest.

8 Q In other words, there was potential, but I
9 guess specifics of a framework for agreement weren't
10 being discussed in October 2014, were they?

11 A I don't know. Walmart had a team of executives
12 that came to Theranos, and we had specific conversations
13 about what a pilot could look like and how many stores
14 and these types of things.

15 I, sitting here now, think that that probably
16 would have required follow-up with other retailers, but I
17 know that we generally believed that, based on having had
18 years of multiple interactions with multiple retailers,
19 there were opportunities to engage with other retailers
20 quickly if we needed or wanted to do that.

21 Q And with CVS in October 2014, had you shared
22 with Walgreens the potential for contracting with CVS on
23 any retail pharmacy locations?

24 A I think we talked a lot with people at
25 Walgreens about whether or not we would engage with CVS

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1 in trying to be respectful of the fact that Walgreens

2 wanted us not to but also trying to say to them unless we
3 get the kind of rollout that you described to us, we're
4 going to need to have another partner.

5 Q Do you recall personally having any of those
6 conversations?

7 A I don't know whether I did or not. I'm not
8 sure.

9 BY MS. CHAN:

10 Q So if you look down on that first page again of
11 the market assumptions page, do you see that?

12 A I'm sorry. The first page?

13 Q The first page.

14 A Yes.

15 Q You'll see there's a line called "Rx test per
16 day per location." Is that requisitions per day per
17 location?

18 A I think so.

19 Q And is that a good proxy for patients per day
20 per location?

21 A I don't know. I'm just trying to look at
22 what's underneath it. I think it could be.

23 Q Okay. So here in the assumptions, it looks
24 like Mr. Balwani's using 40 for October 2014; and, in
25 fact, I think that stays pretty constant through December



1 2015, if you look on the next page?

2 A Uh-huh.

3 Q So do you remember your earlier testimony that
4 you had seen a document showing that Walgreens was
5 actually seeing about three patients per store per day in
6 2014?

7 MR. NEAL: Tests and patients are different.
8 Totally different.

9 MS. CHAN: I don't --

10 BY MS. CHAN:

11 Q Do you understand my question?

12 A I don't. I'm sorry. Could you clarify?

13 Q My question was: Do you remember your earlier
14 testimony in which we discussed that by May 2014 you were
15 aware that Walgreens was seeing three patients per store
16 per day?

17 A I remember the document that you showed me. I
18 don't know if I was aware of that at that time.

19 Q Okay. And also you said you were aware that
20 Walgreens was trying -- or the goal for Walgreens was to
21 reach ten patients per store per day. Do you remember
22 that?

23 A Yes.

24 Q Okay. Do you think it was reasonable for these

25 financials to be assuming that Walgreens would have --

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503

1 would have seen or would be seeing 40 patients per day in
2 the stores by October 2014?

3 A Again, I'm not sure if this is patients per day
4 because it says "tests per day," and I'm not exactly sure
5 what that means.

6 I do know that our numbers ultimately crossed
7 in the stores that were in the right locations, I believe
8 above 60 patients per day and higher. So if this is
9 patients per day, then, yes.

10 Q Rx, what does that mean to you?

11 A It means prescription or pharmacy. I don't
12 know.

13 Q Okay. And so, I mean, 40 tests per day. That
14 would seem pretty low, don't you think?

15 A I'm just saying I don't know why it says
16 "tests" as opposed to "patients." If it said "patients,"
17 I would assume it would say -- if he meant patients, I
18 would assume he would write "patients." I don't know
19 what this is.

20 Q But don't you think 40 tests per day per
21 location, that would seem a little bit low to you, right?

22 A In terms of what?

23 Q It would seem a little bit low to be using an
24 assumption of 40 tests per day per location?

25 A I don't know. I don't know what assumptions

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504

1 were going into this and what it was based on. As I
2 said, I know that we ultimately saw more than 60 patients
3 per day in a number of locations that were the models for
4 how we thought we were going to be rolling out.

5 BY MR. KOLHATKAR:

6 Q And at the time did you have a sense of how
7 many tests each of those patients ordered on average?

8 A I don't know what my understanding was at the
9 time. I generally understand now that there was about
10 3.2 CPT codes per order on average.

11 Q Did you have any understanding at the time
12 about how the patients per day translated in terms of
13 numbers of tests Theranos had actually run?

14 A At that time?

15 Q Right.

16 A I'm not sure. I generally understood that as
17 Sunny built models, he tried to study what other
18 laboratories were doing and seeing in terms of number of
19 patients per day and other metrics, so I believed that he
20 was judging assumptions in general based on that

21 research.

22 BY MS. CHAN:

23 Q So if you turn back to the first page of the
24 macro market assumptions, you'll see under "retail
25 pharmacy," the revenue per requisition is \$40.

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505

1 We were just talking about how Theranos was
2 looking to offer tests for \$4. Does that seem a little
3 high to you?

4 A I think it depends on how many tests are
5 assumed in that requisition.

6 Q Okay. So then do you think, based on these
7 numbers, that actually -- because as you can tell, 40 is
8 being multiplied by the 41 -- the 40 -- 41 locations --
9 Walgreens locations and also another 40 tests per day per
10 location.

11 So do you think that maybe "Rx tests" actually
12 does mean requisition?

13 A I'm sorry. I didn't follow you. You said 40
14 is being multiplied by what?

15 Q So if you see what Mr. Balwani is doing here,
16 he's multiplying the number of locations for Walgreens of
17 41 in October of 2014 --

18 A Yep.

19 Q -- by the number of tests per day per location
20 by the amount of money that you're receiving per
21 requisition in order to get to the revenue figures.

22 A Where is that?

23 MR. NEAL: Here's what she's trying to show you
24 by those columns.

25 THE WITNESS: So the number of stores? Yep.

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506

1 MR. NEAL: She's saying 41 times 40 equals
2 1600. That's what you're pointing to?

3 THE WITNESS: I think you also said --

4 BY MS. CHAN:

5 Q And if you multiply that again by the amount of
6 money that you're receiving per requisition, you would
7 get the revenue figure of 1.968.

8 A Okay.

9 Q So do you think it makes sense, then, that "Rx
10 test" is actually requisition?

11 A It could be.

12 Q Okay. So you don't know one way or the other
13 how these assumptions came about?

14 A I don't. Again, I was not involved in setting
15 these.

16 BY MR. KOLHATKAR:

17 Q Did you have any concerns about these having
18 been provided to potential investors, you know, if you
19 weren't involved in preparing them? These went out in
20 the Theranos name and provided to potential investors.
21 Does that give you any pause?

22 A I don't know that they were provided to any
23 potential investors. I see they were going back and
24 forth to (b)(7) here. I don't know what the context of
25 sending these to (b)(7) was. Whether this was in the

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507

1 context of interactive engagement on building a model or
2 not, I don't recognize this as the format of the final
3 (b)(7) model.

4 Q If something similar had been provided to other
5 investors at the time or around the time, would that give
6 you any concern?

7 A It depends on what the assumptions were based
8 on.

9 BY MS. CHAN:

10 Q If the same assumptions were used, would that
11 concern you?

12 A The same assumptions as this?

13 Q Yes.

14 A Meaning, 40 patients per day and \$40

15 requisition?

16 Q Yes. And the 300 Walgreens stores by the end
17 of 2014 and then 900 by 2015. Did any of that give you
18 pause?

19 A I don't -- I don't think that 900 by 2015 would
20 have given me pause. 40 patients per day, sitting here
21 now, given that I know that we beat that number in the
22 right stores, that would not have given me pause. The
23 requisition of \$40, I don't know how many tests that was
24 assuming, but I know that our per requisition income was
25 higher than \$40.

↑

508

1 Q Well, so you saw that you knew that some stores
2 were receiving 60 patients per day. Were you also aware
3 that some stores --

4 A Later. I don't know if it was at this time.

5 Q Okay.

6 BY MR. KOLHATKAR:

7 Q Do you have a sense of when you came to a more
8 granular patients-per-store understanding?

9 A I think it was in 2015.

10 Q Just geographically when? Early 2015? Late
11 2015?

12 A I'm not sure. I'm not sure. By late 2015 we

13 were completely focused on engagement with CMS and FDA
14 and the Wall Street Journal, so I would think at least
15 middle of 2015. I don't know how early in 2015.

16 BY MS. CHAN:

17 Q You can put that one aside.

18 I'm going to hand to you what was previously
19 marked as Theranos Exhibit 213.

20 A Yep.

21 Q Exhibit 213 we had talked about earlier in your
22 testimony, but you'll see that the first page --

23 MR. DWYER: So I'm sorry. I got -- is this the
24 document you just handed them?

25 MR. KOLHATKAR: No.

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509

1 MR. DWYER: Oh, you're going back to one that
2 was earlier marked today?

3 MS. CHAN: Yes. Or not today.

4 MR. NEAL: I don't think --

5 MS. CHAN: But Tuesday.

6 MR. NEAL: On Tuesday.

7 BY MS. CHAN:

8 Q You'll see the first page is Theranos
9 confidential summary capitalization?

10 A Yes.

11 Q And then there's some financial information in
12 the back. So I represented to you at the time that we
13 marked this exhibit that this was produced by Theranos to
14 the SEC pursuant to subpoena. It's part of a binder that
15 was provided by Theranos to Rupert Murdoch when he was
16 considering whether to invest in Theranos in December
17 2014 and January 2015.

18 So if you turn to the projected statement of
19 income, which is 605, you'll see here that these -- this
20 document is projecting almost a billion dollars of
21 revenue in 2015 and almost 2 billion dollars of revenue
22 in 2016.

23 Do you see that?

24 A I do.

25 Q Okay. And if you turn back to the market

↑

510

1 assumptions page -- oh, I'm sorry. I will be giving that
2 to you just shortly.

3 But just so that you have this in front of you,
4 you'll see that half of the revenues from 2015 and 2016
5 are from the retail pharmacy business. Do you see that?

6 A I do.

7 Q Okay. Do you know what assumptions were used
8 to get to those numbers: \$425 million in 2015 and \$993

9 million in 2016?

10 A I don't, sitting here now.

11 BY MR. KOLHATKAR:

12 Q Just looking further down the page, you see
13 there's a number that's listed next to EBITDA, E-B-I --

14 A Yes.

15 Q Did you have an understanding in late 2014 of
16 what that number meant?

17 A I don't know. I don't think I focused on that.
18 I don't know.

19 Q Do you understand today what it means?

20 A I understand that it's our earnings, and I
21 think the percent margin means our profit margin.

22 Q Did you have an expectation in late 2014 that
23 Theranos would be -- would have \$300 million, over \$300
24 million in earnings at the end of 2015?

25 A I think that I believed in whatever assumptions

↑

511

1 went into getting this kind of footprint and understood
2 from the model that if we did that, we would be
3 profitable.

4 Q You see the item below that about depreciation?

5 A Uh-huh.

6 Q Sorry. Was that a yes?

7 A I do. I see it. Yes.

8 Q Sorry. Did you have an understanding of what's
9 being depreciated there?

10 A No.

11 BY MS. CHAN:

12 Q Okay. So I'm going to hand to you what's been
13 marked as Theranos Exhibit 228, and you can keep Exhibit
14 213 in front of you.

15 (SEC Exhibit No. 228 was marked for
16 identification.)

17 BY MS. CHAN:

18 Q Exhibit 228 purports to be an Excel
19 spreadsheet. On the first page there is a screenshot of
20 the metadata that's associated with this file, and on the
21 second page is where the actual document starts. The
22 title is -- on the top of the first page is "Theranos
23 Confidential Market Assumptions" with starting Bates No.
24 THER-2550987.

25 Have you seen Exhibit 228 before besides the

↑

512

1 first page which includes the metadata?

2 A I don't know.

3 Q I'll represent to you that this is the Excel
4 spreadsheet that was produced by Theranos to the SEC

5 pursuant to subpoena and represented by counsel to the
6 SEC to be the financial model that produced the financial
7 statements that are in the Rupert Murdoch binder. So
8 that would be Exhibit 213.

9 So if you look at the projected statement of
10 income, which is on the third-to-last page of the
11 document, you can go ahead and compare that to what
12 you're seeing on that same page in Exhibit 213.

13 Do they look identical to you?

14 A They do, without the highlighting or whatever
15 this is.

16 Q Do the numbers look identical to you?

17 A They do.

18 Q Okay. Why don't you turn back to the market
19 assumptions page, which is the --

20 MR. NEAL: Which exhibit?

21 MS. CHAN: Of Exhibit 228.

22 BY MS. CHAN:

23 Q I'm sorry. Why don't you turn -- you're
24 already on that page.

25 So on this page, this would be the second

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513

1 market assumptions page. You'll see here instead of
2 projecting 900 stores for Walgreens in December 2015, now

3 the projection is 1,340 stores in December 2015.

4 Do you see that?

5 A I do.

6 Q Do you know why this projection changed from
7 900 to 1,340 in the space of two months?

8 A I don't.

9 BY MR. KOLHATKAR:

10 Q You think Mr. Balwani would be the best person
11 to answer that question?

12 A Yes.

13 BY MS. CHAN:

14 Q Okay. And then also you'll see that instead of
15 opening 190 -- 135 stores -- other stores in January
16 2015, now the assumptions are that 135 stores will be
17 opened in April 2015.

18 Do you see that?

19 A I do.

20 Q Why do you think this change was made?

21 A I don't know.

22 Q And then if you look further down under "retail
23 pharmacies," there's some assumptions related to the
24 physician offices and retail clinics.

25 Do you see that?



1 A Yes.

2 Q So in March 2015 the assumption for the number
3 of physicians' offices is 500. Do you see that?

4 A I do.

5 Q What was the basis for believing that Theranos
6 would be in contract with 500 physicians' offices by
7 March 2015?

8 A I don't know specifically. Sitting here now
9 looking at it, I'm assuming there was some type of tie to
10 being at 100 retail locations by that time.

11 BY MR. KOLHATKAR:

12 Q What was the relationship between the retail
13 locations and the doctors?

14 A My general understanding has been that once we
15 had a certain retail footprint, around that retail
16 footprint we would then be able to contract with
17 physician offices both to send people to the stores as
18 well as to pick up samples.

19 Q And that was your understanding in late 2014?

20 A I think so, yes.

21 BY MS. CHAN:

22 Q Okay. So if you look at hospitals, there are
23 some assumptions there as well. And for January 2015 the
24 assumption is that there would be 10 sites that would be
25 using Theranos services.

1 Do you know what that relates to?

2 A I do not.

3 Q Okay. So if you turn back to Exhibit 213,
4 then, and turn to page with Bates ending 607.

5 A Yes.

6 Q You'll see there are a number of additional
7 comments at the bottom of the page, like footnotes. Do
8 you see them?

9 A I do.

10 Q Okay. And the first says, "Please note all
11 revenue projections are based on contracts already signed
12 and in place for 2015 and 2016. No additional contracts
13 are assumed signed."

14 Do you see that?

15 A I do.

16 Q And then if you go down to No. 3 here, it says,
17 "Theranos has an exclusive contract with second largest
18 grocery chain in the U.S. to be the only lab in those
19 locations."

20 Was that referring to Safeway?

21 A I don't know.

22 Q So would you agree, though, that investors who
23 would be receiving these financial statements, including

24 Rupert Murdoch, would believe that these numbers were
25 based on already signed contracts based on these

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516

1 additional comments?

2 A I don't think -- I can't speak for them. Our
3 understanding was that we engaged very directly with any
4 questions that investors had about what was important to
5 them in evaluating the investments.

6 Q But you -- if you had received these, would you
7 understand, then, based on these comments on this page
8 that the revenue projections were based on contracts
9 already signed by Theranos?

10 A I don't know. I'm reflecting in my head on the
11 kinds of conversations that happened with investors
12 around their investment in the company, and we were very
13 open about the state of our relationships with retail
14 pharmacy partners.

15 Q Okay. What about other businesses, like
16 hospitals and physicians' offices? Were you very
17 forthright with investors about those contracts as well?

18 A My understanding is that we generally discussed
19 the fact that Intermountain and Dignity had invested
20 through Peer and that we thought that there was
21 opportunity to engage with them in providing services

22 because they had an investment and that, therefore, we
23 would be able to rapidly do that as soon as we were
24 ready.

25 Q Besides Intermountain and Dignity, what other



517

1 hospitals did Theranos have contracts with?

2 A I don't know. As I said earlier, I know that
3 there was work in Arizona to engage what I was calling
4 hospitals or health systems. I don't know by memory
5 which ones the company ultimately signed contracts with.

6 BY MR. KOLHATKAR:

7 Q Do you recall discussing Exhibit 213 with Mr.
8 Murdoch and his associates?

9 A I don't recall discussing this specifically. I
10 know after we -- he invested, we had discussions about
11 what we thought we could do financially in terms of
12 projections.

13 Q What do you mean by that? When do you think he
14 invested?

15 A It's my memory that he communicated that he
16 wanted to invest as early as, I want to say, October, but
17 that's probably wrong specifically. And we later sent
18 him all these materials. We then -- I had a couple
19 meetings with him after he invested, I think, in early

20 2015. And generally discussed, you know, what we thought
21 the potential was for number of stores and associated
22 revenue. That's the only time I can remember
23 specifically discussing numbers with him.

24 Q So just so I understand, is it your general
25 understanding that you only discussed sort of the

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518

1 financial potential of the company after he had actually
2 invested in Theranos?

3 A That's the only time that I personally can
4 remember talking about it with him. He came to Theranos
5 before he invested, (b)(6);(b)(7)(C) And Sunny was
6 in the meeting, and I can't remember if financials were
7 discussed in that meeting or not.

8 But I remember after he invested sort of having
9 a conversation about how do you think you're doing and
10 talking about, you know, the challenges in rolling out in
11 retail and what we thought we were going to be able to do
12 or make up.

13 Q You mentioned sort of a meeting with him and
14 his son before he invested. Do you remember any other
15 in-person meetings with Mr. Murdoch at Theranos before he
16 invested?

17 A I don't remember any other meetings at

18 Theranos.

19 Q What other meetings do you recall?

20 A The first time I met him and then when he
21 decided to invest, which was a meeting at his ranch near
22 San Francisco.

23 Q Do you recall Sunny ever telling Mr. Murdoch
24 anything about the financial possibilities of the
25 company?

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519

1 A Again, I know he was in a meeting with Rupert
2 (b)(6);(b)(7)(C) I can't remember exactly whether Sunny
3 presented on the financials there or not or just
4 discussed them. I'm not sure.

5 Q Were you present for that meeting, I guess, or
6 are you --

7 A I was.

8 Q Okay.

9 A I was.

10 Q So if Sunny had presented, is that something
11 you would have been in attendance at least?

12 A I was, yes.

13 BY MS. CHAN:

14 Q What was the company's cash balance as of the
15 end of 2013?

16 A I believe we received the \$75 million payment
17 from Walgreens right at the end of 2013, so I think it
18 was at least 75 million.

19 Q Were you aware that the company was running out
20 of money at that time?

21 A Yes.

22 Q Okay. And was that part of the reason why
23 Theranos wanted to accelerate the innovation fee payments
24 from Walgreens?

25 A I think the initial reason for trying to

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520

1 accelerate the innovation fee payments from Walgreens was
2 that we were investing a lot of money into the Walgreens
3 relationship, and it was not going to be sustainable if
4 they didn't make this payment. So that was the primary
5 driver for it.

6 Q And was that -- was it also part of the reason
7 why you ended up going out to raise more capital from
8 investors?

9 A I'm sorry. Was what?

10 Q Was the fact that the company was running out
11 of money at the end of 2013 also the reason why you went
12 out to raise more capital from investors?

13 A The raises happened after that. So by that

14 time we'd received the payment from Walgreens, and we
15 didn't need capital to continue operations.

16 Q What was your burn rate on cash per month in
17 that time frame?

18 A I don't know.

19 Q You think it was something like \$10 million?

20 A In early '14?

21 Q In early '14.

22 A I don't know.

23 Q So even if you had, say, \$75 million from
24 Walgreens, that would likely only last, you know, say, a
25 year maybe at most.

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521

1 Is that consistent with what you would
2 understand?

3 A No. The payment of the 75 from Walgreens to us
4 meant we were going to be expanding nationally, so at
5 that point we thought financially the company was in a
6 strong position.

7 BY MR. KOLHATKAR:

8 Q So why did -- why did Theranos engage with
9 Partner Fund around the late 2013 early 2014 period in
10 connection with an investment?

11 A Partner Fund was introduced to us as someone

12 who was interested in investing, and our first meeting
13 with them was in, I think, December of 2013.

14 Q But is it your testimony today that sort of
15 their potential investment was not viewed as a potential
16 source of operating capital in your mind?

17 A I believe -- I'm speculating a bit here, but
18 knowing now that the first meeting was around December
19 10th, we certainly wouldn't have expected that we would
20 be closing investment from them before the end of
21 December. I think we thought that our business lived on
22 getting payment from Walgreens.

23 And then it was really a question of was PFM
24 going to be the kind of long-term investor that we wanted
25 to begin to bring in because at that point not only did

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522

1 we have the payment from Walgreens, we also had some
2 capital from existing shareholders that had been
3 invested.

4 BY MS. CHAN:

5 Q So I'm going to hand back to you -- and you can
6 put those two exhibits away, but I'm going to hand back
7 to you --

8 MR. NEAL: Could we take a break before we go
9 into that? We've been going a little over an hour.

10 MS. CHAN: There's actually just one thing I
11 want to look at in here.

12 MR. NEAL: All right.

13 BY MS. CHAN:

14 Q So this is Exhibit 221 that I'm handing back
15 over to you.

16 A These are the same ones?

17 Q Yes. These are the text messages between you
18 and Mr. Balwani.

19 A Yes.

20 Q So if you can turn to the page with Bates
21 ending 6263.

22 A 6263. Yes.

23 Q So you'll see towards the bottom of the page,
24 there is a text message from Sunny Balwani on November
25 21st, 2013, at 5:35. And he says, "You should make

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523

1 yourself comfortable with financial models.
2 Alternatively, you can cover everything else and I can
3 meet with him on Tuesday and answer any questions."

4 Do you see that?

5 A Yes.

6 Q And then a couple text messages down you say,
7 "I'll get myself comfortable. Let me know what file to

8 use."

9 And then if you go on to the next page, which
10 is 6264, there's a number of redactions. But about six
11 messages down, there's another text message from Mr.
12 Balwani to you. And he says, "Please close the file.
13 File under DST folder under fin. Not safe to give him
14 yet."

15 And another message where he says, "Under DST."

16 And then a few more messages down, you respond
17 to him, "Can I edit it? There are typos. Okay to open?"

18 Do you see that?

19 A I do.

20 Q What do you recall about what was going on
21 here?

22 A I'm not sure.

23 Q Does it look like you were opening a file on
24 Mister -- in Mr. Balwani's folder in order to edit some
25 files?

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524

1 A It looks like I was opening a file under his
2 folder, yes. I don't know if I edited it.

3 BY MR. KOLHATKAR:

4 Q What is DST?

5 A I think this refers to (b)(6);(b)(7)(C)

6 Q Did you understand them to be a potential
7 investor in Theranos at this time?

8 A I think so.

9 BY MS. CHAN:

10 Q So do you think that you opened the file and
11 reviewed it at the time?

12 A I don't know.

13 Q Does it look like you did? Mr. Balwani says,
14 "Please close the file."

15 A I'm sorry. Where does he say that?

16 Q On 6264 at 5:38 p.m.

17 A I -- I don't know.

18 Q Were there other instances in which you might
19 have opened a file and reviewed it?

20 A Yes.

21 Q And other instances in which you might have
22 opened a financial model that Sunny Balwani was working
23 on and reviewed it?

24 A Could have been.

25 Q Do you recall any instance in which you edited

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525

1 a financial model that he was working on?

2 A No.

3 MS. CHAN: Okay. We can take a short break.

4 We're off record at 3:03 p.m.

5 (Break taken at 3:02 p.m.)

6 THE VIDEOGRAPHER: We are back on the record at
7 3:25.

8 BY MS. CHAN:

9 Q Ms. Holmes, did you have any substantive
10 conversations with the SEC staff during the break?

11 A No.

12 Q So I want to switch gears again, and now we're
13 going to talk about Theranos' communications with FDA.

14 Do you recall communications that Theranos had
15 with FDA that started in 2012?

16 A Yes.

17 Q Why did you start having those conversations
18 with the agency?

19 A Do you mean generally or the ones in 2012
20 specifically?

21 Q The ones in 2012 specifically.

22 A I believe FDA had questions about information
23 that they had heard about Theranos, and we wanted to
24 answer their questions and give them any information on
25 our work that they wanted.

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1 Q What questions did they have?

2 A I think that they thought that we were trying
3 to sell our devices to other laboratories at the time,
4 and we tried to immediately convey to them that we
5 weren't and that we had actually hoped to come in and
6 start working with them when our lab developed tests came
7 live, and that we were hopeful that we could take them
8 through the regulatory process.

9 Q So why did the FDA have these questions? Did
10 somebody bring a concern to their attention?

11 A I think there was a miscommunication with
12 people that we had been interacting with in DOD.

13 Q In the Department of Defense?

14 A Yes.

15 Q What information would the DOD have given FDA
16 with respect to or concerning Theranos' possible sale of
17 devices?

18 A I don't know what information they gave the
19 FDA.

20 Q What were your talks with the DOD about that
21 led to DOD contacting FDA?

22 A I actually don't know why DOD contacted the
23 FDA. I -- I'm not sure.

24 Q I'm going to hand to you what's been marked
25 Theranos Exhibit 229.



1 Exhibit 229 purports to be a letter with Hyman,
2 Phelps & McNamara letterhead. It's dated November 26th,
3 2013. The letter's addressed to (b)(6);(b)(7)(C)
4 (b)(6);(b)(7)(C)
5 (b)(6);(b)(7)(C)
6 (b)(6);(b)(7)(C) at the FDA. And the starting Bates
7 number is TS-0995690.

8 (SEC Exhibit No. 229 was marked for
9 identification.)

10 BY MS. CHAN:

11 Q Have you seen Exhibit 229 before?

12 A I don't remember this letter specifically, but
13 I recognize the letterhead as (b)(6);(b)(7)(C)

14 Q Do you remember having discussions with Hyman
15 Phelps about sending a letter to FDA in this time frame?

16 A I have to read the letter to remember exactly
17 what this was referring to, but I know that (b)(6);(b)(7)(C)
18 was one of our regulatory counsel that was advising us as
19 we were engaging with the FDA in 2013.

20 Q How generally would you communicate with the
21 FDA? Would you include regulatory counsel, or would you
22 have discussions with FDA directly?

23 A I think both.

24 Q Okay. And what occasions would you be having

25 direct conversations with the FDA versus having your law

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528

1 firm communicate with them?

2 A The first one that comes to mind is we would
3 have interactive review with their teams, and in that
4 context we were directly engaged. We have had in-house
5 regulatory counsel involved in that but generally not
6 outside regulatory counsel.

7 Q Would you expect that a law firm that you hired
8 would discuss with you the possibility of sending a
9 letter to FDA before doing so?

10 A Yes.

11 Q Okay. And would you expect that that law firm
12 would also discuss what they were planning to say to the
13 FDA before going ahead and communicating with the FDA?

14 A On behalf of Theranos?

15 Q Yes.

16 A Yes.

17 Q So do you have any reason to doubt that you
18 knew at the time that Hyman Phelps was sending this
19 letter to FDA?

20 A No.

21 Q So if you turn to that, the attachment to the
22 letter which starts on 700.

23 A Yes.

24 Q You'll see that the attachment is some meeting
25 minutes for a meeting on October 15th, 2012, and the

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1 minutes themselves are dated November 16th, 2012.

2 Do you see that?

3 A Yes.

4 Q Were you present at this meeting in October
5 15th, 2012?

6 A Yes.

7 Q So it was a meeting between Theranos, then, and
8 CDRH, correct?

9 A Yes.

10 Q And in this --

11 A I didn't know they were CDRH. I thought of
12 them as FDA, but I see that here.

13 Q That's fine. So you understood that you were
14 at a meeting on this date with the FDA?

15 A Yes.

16 Q Okay. And your counsel wasn't involved in this
17 meeting, right?

18 A They were not present at the meeting.

19 Q Why not?

20 A Because we wanted to directly engage with the

21 FDA.

22 MR. DAVIES: Just a sec. I mean, to the extent
23 that you can answer that. But to the extent that you're
24 asking for communications that you had with counsel about
25 what your strategy was and why they showed up, then you

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530

1 shouldn't answer that.

2 BY MS. CHAN:

3 Q Right. And I'm not asking -- I'm not asking
4 about your conversations with counsel, but I'm wondering
5 if you can answer the question, why you didn't include
6 regulatory counsel in that meeting?

7 A I think in general we wanted to directly engage
8 with people at the agency.

9 Q Okay. So do you recall this meeting?

10 A Yes.

11 Q Okay. What was discussed?

12 A My memory is first their explicit concerns
13 based on information that they had heard. And then,
14 secondly, we attempted to communicate that we really
15 wanted to engage successfully with the FDA and try to
16 create a model for becoming the first company to take all
17 their LDTs through the FDA process.

18 Q Okay. So if you look at the first page of

19 these minutes on 700 -- oh, and actually before we look
20 at that.

21 Do you know who drafted these minutes?

22 A Someone at the FDA.

23 Q Okay. So if you look in that first paragraph,
24 "Following -- the following information is meant to
25 summarize the issues raised at the meeting." The first

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1 bigger paragraph starting with "FDA," about halfway
2 through the paragraph it says, "It was stated very early
3 in the meeting that the FDA does not consider the assays
4 to be ASRs and distribution of the Theranos system
5 (analyzer and reagents) in the U.S. as an LDT is not
6 appropriate."

7 Do you remember them telling you that?

8 A I don't remember this communication of this
9 sentence specifically.

10 Q Do you remember them telling you that they did
11 not believe that Theranos' system and its reagents would
12 be considered LDTs?

13 A I remember them saying that if we were
14 commercially distributing the device, that that would not
15 be an LDT; but that if we were running the tests in our
16 lab, that would be an LDT.

17 Q Okay. It goes on to say, "Theranos was also
18 informed that many of the potential assays that could be
19 used on their analyzer are nucleic acid-based or are
20 classified as Class II or Class III; therefore,
21 classification of the instrument as a Class I device is
22 incorrect and requires premarket clearance or approval
23 for marketing in the United States."

24 Do you see that?

25 A I do.

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532

1 Q Did they tell you that your assays would be
2 classified as Class II and Class III and wouldn't be
3 considered a Class I device?

4 A If I am reading this correctly sitting here
5 now, I think it's referring to the fact that the device
6 would be classified according to whatever test you were
7 pursuing clearance with.

8 Q Okay. But did you understand here, then, that
9 they were telling you that because the assays were not
10 considered Class I devices, that the system as well
11 wouldn't be considered a Class I device?

12 A I don't remember thinking about this at the
13 time. Sitting here now, I interpret it as if you file
14 for clearance on one of these assays, the whole test

15 system is going to be classified according to the
16 classification of the assay.

17 Q Okay. But in any case, it looks like because
18 of the types of assays that Theranos was thinking of
19 performing on its device, it was likely that they were
20 not going to be considered Class I devices. Isn't that
21 what they told you?

22 A Again, I don't remember this specific part of
23 the discussion with them.

24 BY MR. KOLHATKAR:

25 Q At the time you understood what a nucleic

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1 acid-based assay was, right?

2 A Yes.

3 Q And for a layman, is it fair to say that those
4 are more complicated than other types of assays? Or did
5 you have an understanding that they were generally run on
6 Class II devices at the time?

7 A Again, I'm not sure about this part of the
8 discussion. I don't have specific memory of it. I
9 believe that this is essentially saying that nucleic acid
10 tests in general are Class II or Class III. And,
11 therefore, if you file a piece of hardware with those
12 chemistries, that piece of hardware will be treated in

13 the same way as the chemistry is treated.

14 Q Okay. And, I guess, leaving that meeting with
15 the FDA, did you have that understanding that the type of
16 assay would dictate what sort of class treatment the
17 approval that you were seeking from the FDA would require
18 for the assays?

19 A Yes. And not necessarily the type of assay but
20 the specific assay itself, for example -- yeah.

21 Q I'm sorry. I was using type of assay because
22 that's the only way I can think about it, but I think I
23 understand your answer.

24 BY MS. CHAN:

25 Q And then in the second paragraph towards the

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1 bottom of the page, you'll see there's a sentence that
2 starts "However --"

3 Do you see that?

4 A Yes.

5 Q And it says, "However, it was pointed out that
6 the deployment of Theranos systems for research for
7 investigational use at U.S. military facilities in
8 Afghanistan for evaluation purposes is acceptable and
9 does not violate any regulations as long as the results
10 obtained during the evaluation are strictly not used for

11 patient diagnose -- diagnosis and management and Theranos
12 follows required labeling regulations stated in CFR
13 21809.10."

14 So here Theranos had told you that it was fine
15 to use the Theranos system for research purposes but not
16 fine to use it for patient testing. Is that what you
17 understand as to what they told you at this meeting?

18 MR. NEAL: You said Theranos. You want to
19 restate that?

20 MS. CHAN: Oh, I'm sorry.

21 BY MS. CHAN:

22 Q So here it seems that the FDA is telling you
23 that it was fine to use a Theranos system for research
24 purposes but not for patient diagnosis. Is that what you
25 understood that they told you that day?

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1 A No, it's not.

2 Q What is your understanding?

3 A My understanding was that the majority of the
4 meeting was based on a discussion about what an LDT is
5 and that our tests were able to be used as LDTs so long
6 as they were in the same facility as they were developed.
7 But that to the extent they would be distributed, they
8 would no longer be LDTs based on the commentary in this

9 meeting.

10 Q Okay. But you agree that that's not exactly
11 what is being written in these minutes, right?

12 A Do you mind if I take a minute just to look at
13 this document?

14 Q Sure.

15 A Yeah. If you look on the first page where it
16 says, "As Theranos has established a CLIA-certified
17 laboratory in Palo Alto, under enforcement discretion,
18 use of the tests developed and validated by the
19 laboratory and which meets the definition of an LDT can
20 be performed on clinical samples which are shipped back
21 to the CLIA lab in Palo Alto and results then can be
22 transmitted to an ordering physician."

23 Q So what was your understanding from that?

24 A That this model was consistent with FDA's
25 enforcement discretion for laboratory developed tests.

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1 Q Okay. So how do you square that with what FDA
2 then subsequently writes here which is that it's fine to
3 use the system for research purposes but not for
4 diagnosis purposes?

5 A It was my understanding that those are two
6 different discussion topics. The specific discussion

7 about investigational use was with respect to
8 distributing the devices for use in a U.S. military
9 facility outside of the U.S.

10 Q So you're saying that FDA told you that it was
11 fine to have the device here in the U.S., but it was not
12 fine to ship it overseas for patient diagnosis?

13 A No.

14 Q What's the distinction?

15 A My understanding is that FDA was saying that
16 distribution of the device in the U.S. makes it not an
17 LDT, that distribution of the device in the U.S. or
18 outside of the U.S. could be done in an investigational
19 basis and that the sentence that I just read was
20 consistent with their enforcement discretion for LDTs.

21 Q Okay. Why don't we go on to the paragraph that
22 starts, "To move forward --" It's the second full
23 paragraph down on 701.

24 So it says, "To move forward with the
25 regulatory process, the agency recommended that for their

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1 first submission, Theranos should pick an analyte or a
2 panel of analytes that may be of interest to DOD and
3 proceed to work interactively with the agency to develop
4 a regulatory pathway to achieve premarket clearance

5 approval status."

6 So FDA here was telling you that you did need
7 to achieve premarket clearance or approval status for the
8 system, correct?

9 A If we were going to distribute the device.

10 Q If you were going to distribute the device
11 where?

12 A Outside of Theranos' clinical laboratory
13 facilities.

14 Q Okay. So you were aware that you would need
15 to, at least by 2012, that you would need to obtain
16 either approval or clearance status from the FDA before
17 distributing the device to someplace besides the
18 laboratory; is that right?

19 A That was what was discussed in this meeting, as
20 we engaged with regulatory counsel a lot on that, to
21 understand how to interpret the regulations around that.

22 BY MR. KOLHATKAR:

23 Q So, again, without asking about your specific
24 conversations with counsel.

25 A Sure.

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1 Q Around this time in late 2012, was it your
2 understanding that Theranos would have to get approval

3 from the FDA before distributing its device outside the
4 CLIA lab?

5 A We understand -- I believe I understood that
6 that was what was said in this meeting.

7 Q Okay. What did you understand the FDA required
8 about -- from Theranos in order to distribute its TSPU as
9 of the end of 2012, whether at this meeting or otherwise?

10 A I want to make sure I'm answering your
11 question. What I understood in this meeting was the FDA
12 representatives there were saying to distribute our
13 device, we should get the FDA clearance that was
14 commensurate with whatever test we would try to get
15 through the clearance process.

16 Q Did you have any personal view that was
17 different from what the FDA described for you at this
18 meeting?

19 A So I don't know if that gets into privilege
20 questions. We had very active engagement with regulatory
21 counsel on this topic.

22 MR. NEAL: So I think you can -- you can tell
23 them what you understood at various points in time. Don't
24 get into the advice that you were given, but you can
25 explain what's your understanding. A huge amount of it

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1 is already in the public record through letters from
2 those counsel. So --

3 THE WITNESS: Okay. So our -- my understanding
4 was that there was certainly a belief that a clinical
5 laboratory could use technology within its patient
6 service centers even without receiving clearance with the
7 device. We engaged with the FDA a lot on that later, and
8 we ultimately responded to their request that we pursue
9 510(k) clearance on the device and the tests and did with
10 our first test.

11 BY MR. KOLHATKAR:

12 Q Is that what you're referring to with the
13 HSV-1?

14 A Yes.

15 BY MS. CHAN:

16 Q So you just said that they requested you submit
17 510(k) submissions. When did that happen?

18 A So we began engaging interactively with them
19 right before we announced our retail rollout and over a
20 period of months following that initial engagement.

21 Q So that would have been in 2013?

22 A I don't know. I know that in 2013 we sent in a
23 lot of presubmissions. I think there was initially a
24 focus on those and then on the nanotainer and then later
25 to get a test on the device cleared.

1 Q Okay. So they requested 510(k) submissions for
2 the test, you said, the nanotainer, and what was the
3 third?

4 A No. I'm sorry. I didn't say they requested
5 them. You asked when they asked us to submit the device,
6 and I said that I don't know when exactly they asked us
7 to submit the device.

8 I know that after we initially reached out to
9 them to let them know that we would be launching at
10 retail, the first focus with them was on the
11 presubmissions for the tests. They then requested that
12 we agree to do a 510(k) submission on the nanotainer, and
13 I know it was after that that they began to focus on the
14 importance of getting clearance on the device, based on
15 my memory.

16 Q Okay. So just to move back, then, you're
17 saying that you submitted presubmissions to FDA; they
18 asked for the device. And it was sometime after that
19 that they requested a 510(k) submission for the
20 nanotainer?

21 A No. I think the sequencing was first a general
22 discussion about the commitment to work with the agency
23 even though we were pursuing the model that was described

24 here as an LDT. That manifested in a lot of
25 presubmissions. The, as I remember it, initial specific

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1 request was to proceed with 510(k) on the nanotainers,
2 and later there was specific communication that it was
3 important to them to focus on clearance of the device.

4 Q Okay. So if you look --

5 A With a test.

6 Q If you look, then, back at the first page of
7 the letter from Hyman Phelps.

8 A Yes.

9 Q It looks like there was also a meeting on
10 November 4th, 2013. Do you see a reference to that in
11 the letter?

12 A Yes.

13 Q Did you attend that meeting as well?

14 A I don't know, but I think I did.

15 Q Okay. What happened at that meeting?

16 A I'm not sure which meeting this was. There was
17 a lot of engagement with FDA during this period.

18 Q Okay. Then why don't we just look back at
19 Exhibit 229. So about halfway down the paragraph,
20 second-to-last sentence: "Theranos has been working
21 closely with OIR for the past four months to develop a

22 plan for the submission and review of multiple 510(k)
23 premarket notifications to cover hundreds of assays.
24 Those discussions have been extremely productive due to
25 the open communications."



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1 So was this what you were referring to earlier
2 as the 510(k) presubmissions that Theranos had prepared?

3 A Yes.

4 Q Okay. And then it goes on to say, "We were
5 therefore very surprised to hear OIR for the first time
6 questioned whether the Phase 1 model Theranos' laboratory
7 testing complies with Federal Food, Drug, and Cosmetic
8 Act because in OIR's view, the company is not offering a
9 laboratory developed test."

10 And here the Phase 1 model, is that the Phase 1
11 model you had been describing to us with Walgreens?

12 A I think so. I, again, haven't -- I don't know
13 exactly what's described in here, but I think so.

14 Q Okay. I mean, we can turn to the next page,
15 which is 691. Under "background" and the second
16 paragraph there talking a little bit about the Phase 1
17 model which is that "testing is conducted only at the
18 Theranos laboratory on patient samples that are shipped
19 to the facility."

20 So is that consistent with your understanding
21 of what the Phase 1 model was?

22 A Yes.

23 Q Okay. So it sounds like FDA told Theranos at
24 this November 4th, 2013, meeting that the company was not
25 offering LDTs?

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543

1 A I don't know that they told us that we were not
2 offering LDTs. I think that one of the people in one of
3 the meetings said that they didn't know whether our LDTs
4 would warrant enforcement discretion by the FDA.

5 BY MR. KOLHATKAR:

6 Q Do you remember who that person was?

7 A I believe it was (b)(6);(b)(7)(C)

8 (b)(6);(b)(7)(C) division.

9 Q Did anyone at that meeting express any
10 different views, from what you can recall, from the FDA
11 side?

12 A I don't know who was in that meeting. We had a
13 lot of engagement with (b)(6);(b)(7)(C)
14 (b)(6);(b)(7)(C) division that we worked with, and
15 also with (b)(6);(b)(7)(C) as we went along to try to make
16 sure we were doing the right thing.

17 BY MS. CHAN:

18 Q So you just said that there were questions that
19 were raised as to whether your tests would be classified
20 as LDTs?

21 A Would get enforcement discretion as LDTs, as I
22 remember it.

23 Q Okay. Did FDA ever tell you subsequently that
24 it didn't consider your tests to be LDTs?

25 A I don't know. There was a large number of

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544

1 interactions with them. And I generally understood that
2 where this came out was that if we continued working with
3 them in good faith, that we would have enforcement
4 discretion.

5 Q Do you recall telling prospective investors in
6 2014 that Theranos' assays were LDTs that fell under
7 FDA's enforcement discretion?

8 A I don't have specific recollections of that,
9 but I know we would openly talk about the tests being
10 LDTs.

11 Q So did you also disclose to them that there
12 were talks back and forth, and FDA wasn't sure whether
13 Theranos' tests would be considered LDTs?

14 A I don't know. I don't remember specific
15 conversations on this. I believe at that time we'd been

16 operating for a year under enforcement discretion, so we
17 really believed at that point that we were in good faith
18 operating under enforcement discretion.

19 BY MR. KOLHATKAR:

20 Q I guess, at that time in late 2014, is it fair
21 to say you viewed Theranos' approach and plan to take all
22 of its LDTs through the FDA process as sort of a
23 differentiating factor between you and your competition?

24 A We did.

25 Q Why is that?

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1 A Because no other company that we knew of was
2 voluntarily saying to the FDA that they wanted to take
3 all these tests through the FDA clearance process. And,
4 in fact, they were actively campaigning to prevent FDA
5 from regulating LDTs.

6 Q And Theranos had taken sort of the opposite
7 approach, filing a comment to pursue FDA oversight over
8 LDTs; is that -- is that correct?

9 A We did.

10 Q And --

11 BY MS. CHAN:

12 Q You can put that one aside. I'm handing to you
13 what's been marked Theranos Exhibit 230.

14 (SEC Exhibit No. 230 was marked for
15 identification.)

16 BY MS. CHAN:

17 Q Exhibit 230 purports to be a letter from the
18 Department of Health and Human Services FDA to (b)(6);(b)(7)(C)
19 (b)(6);(b)(7)(C) at Theranos. The date
20 is June 13th, 2014, with starting Bates No. TS-0992588.

21 Have you seen Exhibit 230 before?

22 A I think so. I'm not sure.

23 Q Do you have any reason to believe that you
24 didn't receive this and didn't review it?

25 A No.

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546

1 Q So if you look on the second page of the
2 letter, FDA is now writing to Theranos about the
3 premarket protocol that Theranos had submitted for
4 review. And if you look on the second page, there is a
5 paragraph that starts with, "Based on prior
6 conversations --"

7 Do you see that?

8 A Yes.

9 Q So FDA writes here, "Based on prior
10 conversations between FDA and Theranos and documents sent
11 from Theranos to FDA, FDA had understood that you were

12 currently using mostly cleared or approved assays in your
13 laboratory. However, the more complete information you
14 recently sent per our request clarified that the tests
15 you perform are FDA-cleared assays running a Theranos
16 protocol, i.e., modified under the CLIA regulations or
17 are Theranos assays run on the TSPU.

18 "Therefore, most of the tests you're running in
19 your lab appear to be laboratory developed tests, LDTs,
20 currently under FDA's enforcement discretion. The rest
21 are tests run on your TSPU that require clearance or
22 approval prior to their use and are not under enforcement
23 discretion."

24 So here FDA is telling you that first it
25 misunderstood what devices Theranos was using, correct?

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1 A This specific person who wrote this memo is
2 saying that.

3 Q Yeah. And also that -- and also that,
4 actually, the rest -- the tests that are run on the TSPU
5 would not be considered LDTs, correct?

6 A Yes. That's what I understand this sentence to
7 mean.

8 Q Okay.

9 BY MR. KOLHATKAR:

10 Q Did you understand that at the time as well?

11 A So I don't remember exactly when I read this.

12 But I know that we engaged with FDA very frequently on
13 the fact that we were running these tests in our clinical
14 lab, what tests. We sent them spreadsheets with exactly
15 what platform was being used and how many tests per month
16 to make sure that we were still in good faith operating
17 under enforcement discretion.

18 Q By "platform," do you mean device?

19 A Yes.

20 Q Or -- and did you know (b)(6);(b)(7)(C) Is that
21 someone you've interacted with?

22 A I think that I started interacting with her to
23 the extent I joined calls on the clearance of the
24 nanotainer after this period of time, but I'm not
25 completely sure.

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1 BY MS. CHAN:

2 Q Who's (b)(6);(b)(7)(C)

3 A He is our (b)(6);(b)(7)(C)

4 now.

5 Q So was he maintaining the relationship between
6 Theranos and FDA during this time frame?

7 A He was one of the people. I think there were

8 others who were also involved. But, yes, he was a
9 constant in it.

10 Q Were there any interactions that you had with
11 FDA that he was not a part of?

12 A Probably. I don't know any specifically, but
13 there was a lot of interactions with FDA.

14 Q Okay. So at the bottom of the page there is a
15 sentence that starts, "Therefore --" Do you see that?

16 A Yes.

17 Q It says, "Therefore, based on this new
18 information, we recommend that clearance of your
19 capillary tubes and nanotainers be obtained over time as
20 you receive clearance or approval for each individual
21 assay as part of that test system.

22 "Please note that without clearance or
23 approval, you cannot continue to ship these collection
24 devices or nanotainers to your sample collection sites
25 for use with tests currently run in your laboratory."

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1 So did you understand from FDA at this time
2 that they were telling you that Theranos could not
3 continue shipping the nanotainers to -- from the patient
4 service centers to the Theranos lab because they weren't
5 cleared by FDA?

6 A I think our understanding at the time we got
7 this memo was that they were saying in this memo that
8 there was no way to get clearance, general clearance, on
9 the nanotainers if we needed to use LDTs to get that
10 clearance; and, therefore, we would need to do this. And
11 we immediately began to engage with them on that and on,
12 in fact, proceeding with general clearance of the
13 nanotainers.

14 Q Okay. So did you stop using the nanotainers,
15 then, while you were engaging with them on getting
16 approval or clearance?

17 A No.

18 Q Why not?

19 A Because we understood following this letter
20 that it was okay to do that if, instead of trying to use
21 the LDTs for the clearance of the nanotainer, we actually
22 used commercial machines and pooled the samples. And
23 that's what we ended up doing.

24 BY MR. KOLHATKAR:

25 Q What do you mean by that? Explain that

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550

1 distinction, I guess, between using the LDT and using the
2 commercial machine just so I understand it.

3 A Yeah. So it's my understanding that what this

4 letter was predicated on was a belief that if we needed
5 to use LDTs or uncleared tests to be able to show that
6 the nanotainers worked, then that would not be acceptable
7 to the FDA as a means to get the nanotainers cleared
8 because they wanted us to use a test system that had
9 already been cleared for those experiments.

10 So if we were comparing, for example,
11 nanotainer to somebody else's tube and we were using an
12 LDT, they didn't want the LDT if we're doing that
13 comparison. They wanted us to use a system that was
14 cleared.

15 My understanding is that after this, when we
16 agreed to use commercial machines for that purpose, that
17 there was a path to get the nanotainers cleared. And we
18 began working toward that. And the way that we
19 accommodated that is that to get enough sample to run the
20 cleared commercial machine, you would take, for example,
21 you know, five fingersticks from a single person, pool
22 them together to get enough sample. And then you could
23 run the commercial machine to do the comparison between
24 our tube and someone else's tube.

25 Q And when you say "run the commercial machine,"

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1 meaning an unmodified predicate device?

2 A Correct.

3 BY MS. CHAN:

4 Q So why was it your understanding, though, that
5 because you had agreed with FDA to use cleared assays in
6 order to provide this data for clearance of the
7 nanotainer, that it was appropriate to continue using the
8 nanotainer while you were submitting this data?

9 A Because once there was -- once we agreed that
10 there was a path to get clearance of the nanotainer, we
11 understood that we were in good faith operating under
12 enforcement discretion still.

13 Q And how did you gain that understanding?

14 A Based on our ongoing interactions with the FDA.

15 Q Who told you that?

16 A I believe there were multiple conversations in
17 which we wanted to make sure that we were okay continuing
18 to use the nanotainer and interpreted the feedback on
19 those conversations to mean that we were.

20 Q But who told you it?

21 A I specifically remember a conversation around
22 Christmas Eve with (b)(6);(b)(7)(C) in which he had
23 indicated that there was a path with the submissions that
24 we had sent in after this to move toward clearance, that
25 they wanted more data for, I think, two of the three



1 filings that we'd made but that we could potentially in
2 the short-term get clearance on hematology. And I had
3 asked, wanting to make sure we were continuing to be in
4 good standing, and I interpreted what he said to mean
5 that so long as we continued to work with them, it was
6 okay to do that.

7 Q So (b)(6);(b)(7)(C) never told you that you could
8 continue to use the nanotainers; you're just interpreting
9 the fact that he said there might be a path forward to
10 clearance as him telling you that you could continue
11 using --

12 A I thought that --

13 Q Wait. Just let me finish.

14 A I'm sorry.

15 Q -- that you could continue using the
16 nanotainers?

17 A I thought I had asked him on that call, is it
18 okay? We want to make sure we're doing the right thing
19 in continuing to operate while we're going through this
20 process. And I remember interpreting what he said as
21 being assuring of the fact that so long as we continued
22 to work with them in good standing, that we could
23 continue to operate under enforcement discretion.

24 BY MR. KOLHATKAR:

25 Q Was anybody else on that call?

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1 A No. But I remember sending notes to my team
2 immediately after it.

3 BY MS. CHAN:

4 Q You can put that one aside. I'm handing to you
5 what's been marked Theranos Exhibit 231.

6 (SEC Exhibit No. 231 was marked for
7 identification.)

8 BY MS. CHAN:

9 Q Exhibit 231 purports to be minutes of a meeting
10 that took place between Theranos and FDA on June 19th,
11 2014. It's a teleconference meeting, it looks like, and
12 the starting Bates number is THER-0353763.

13 Have you seen Exhibit 231 before?

14 A I don't remember it specifically, but I think
15 so.

16 Q Do you know who drafted these minutes?

17 A I don't.

18 Q Did you attend this meeting on June 19th, 2014,
19 with the FDA?

20 A I think so.

21 Q What was the purpose of the meeting?

22 A I don't know.

23 Q What was (b)(6);(b)(7)(C) role in the discussions
24 with FDA?

25 A It varied over time. He was our technical

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1 expert on a lot of the technology that we worked on and,
2 in certain areas, data analysis.

3 Q Okay. So why was he being included in this
4 meeting, though?

5 A I don't know specifically. I haven't read
6 these minutes, but I would assume for the purpose of
7 being a technical lead.

8 Q Okay. And do you recall if Mr. Balwani
9 attended?

10 A I don't. I don't remember this meeting
11 specifically.

12 Q So if you turn to page 4, or 3766 in the
13 document, towards the bottom of the page, about
14 two-thirds down from the top of the page, it says, "FDA
15 inquired whether Theranos was sending out the tubes for
16 use at this time. Are the tubes being used in commercial
17 testing?"

18 And then again it says, "FDA inquired as to
19 whether Theranos was shipping the capillary tubes and
20 nanotainers to the collection site. Theranos said yes.

21 FDA said that Theranos should not be shipping collection
22 devices for clinical use until Theranos obtains FDA
23 clearance. Theranos should use other cleared collection
24 devices and then transfer the sample to the other
25 containers if necessary for testing at the Theranos lab."

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1 So FDA here is telling you unequivocally that
2 Theranos should stop shipping these nanotainers, correct?

3 A I think that was what was said in this meeting.

4 Q Do you recall what was said in this meeting? Do
5 you recall that being said?

6 A I don't.

7 BY MR. KOLHATKAR:

8 Q I guess, do you have any recollection at any
9 point in time of FDA telling you specifically to stop
10 shipping the nanotainers in this time frame?

11 A Again, I remember that when the people on the
12 team that we were working with thought that we would not
13 be able to get general clearance for the nanotainers,
14 there was then discussion that we would then potentially
15 not be able to use the nanotainer because we could no
16 longer work interactively with the agency toward that.

17 But once we worked through that and moved to
18 the revised model that I was talking about earlier, it

19 was my understanding that we were okay continuing to use
20 the tubes under enforcement discretion.

21 Q And when do you think you transitioned to that
22 revised model?

23 A I know that we'd gotten feedback on those
24 submissions by December. I think we would have submitted
25 them months, I think, before that. I don't know exactly

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556

1 when the decision was made to do that.

2 Q Are you referring to December 2013 or December
3 2014?

4 A I think this was in 2014.

5 Q And you mentioned a Christmas Eve conversation
6 with (b)(6);(b)(7)(C)

7 A Yes.

8 Q Was that 2013 or 2014?

9 A I think it was 2014.

10 BY MS. CHAN:

11 Q Did you ever tell prospective investors in fall
12 of 2014 that it was -- that Theranos was not required to
13 obtain clearance or approval for its testing system?

14 A I don't think we would have said that. I think
15 we talked about our belief that the system was an LDT and
16 that we wanted to take the system and the tests through

17 the FDA.

18 BY MR. KOLHATKAR:

19 Q And when you're referring to "the system"
20 there, what were you -- what exactly were you referring
21 to as the Theranos system?

22 A In answer to her question, I was referring to
23 the tests that would be run on proprietary Theranos
24 devices.

25 Q Okay. So collecting device from a fingerstick,

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557

1 placing it in a nanotainer, testing it on a TSPU?

2 A Yes. And that -- that's consistent with the
3 clearance and CLIA waiver we got on the HSV-1 test
4 system.

5 BY MS. CHAN:

6 Q Did you ever tell prospective investors that
7 Theranos was seeking FDA approval voluntary?

8 A I'm trying to remember how we worded it. I
9 don't know specifically how we described it. I think we
10 talked about the fact that we believed our systems were
11 LDTs, and we wanted proactively to engage with the agency
12 on it on all our tests.

13 Q Did you ever tell investors that Theranos was
14 seeking FDA approval voluntarily because FDA approval was

15 the gold standard or the highest standard in the
16 industry?

17 A I think -- I think we would have said something
18 like that.

19 Q Why would you tell investors that Theranos was
20 seeking FDA approval voluntarily if that wasn't true?

21 A We thought it was.

22 Q Why did you think it was?

23 A Because we thought that the testing that we
24 were doing fell squarely within the definition of an LDT.
25 And we knew that that was a controversial field where

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558

1 regulations were evolving, but we engaged with multiple
2 of the top law firms in the country to research that, and
3 we really wanted to take the systems into the FDA and try
4 to get clearance.

5 Q But here FDA is telling you that you have to
6 get it approved before using the nanotainer devices and
7 sending them from the patient service centers to the
8 Theranos lab.

9 How does that square with you thinking that
10 approval was voluntary or that FDA wasn't requiring it?

11 A This is specific to the capillary tubes. I was
12 talking earlier about the tests in response to your

13 question.

14 My understanding is that, as I understood the
15 issue with the capillary tubes, there was a period of
16 time in which we were discussing with FDA whether it
17 would be possible to get general clearance at all on the
18 capillary tubes and that then presented these issues
19 about the inability to use the tubes.

20 And I understood that if we were able to find a
21 way to proceed with getting clearance, then we could
22 continue to operate under enforcement discretion because
23 we would be working in good faith with the agency.

24 Q So you're making a distinction here between the
25 tests and the nanotainer device?

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559

1 A Yes.

2 Q Did you ever tell investors that FDA thought
3 you needed to obtain approval or clearance for the
4 nanotainer?

5 A I don't remember specific conversations to that
6 effect, but I think we discussed the fact that we were
7 working to get the nanotainers cleared with investors.

8 Q Who did you discuss that with?

9 A Again, I don't remember specific conversations
10 about it.

11 Q You don't remember?

12 A I don't.

13 BY MR. KOLHATKAR:

14 Q I just want to have a clear sense of your
15 memory of your conversations about the FDA with
16 prospective investors.

17 It was -- the conversations about the FDA with
18 prospective investors was always about the Theranos
19 system as you just described it which was, you know,
20 proprietary nanotainer, proprietary TSPU; is that
21 correct?

22 A Yes. About the tests on the TSPU and
23 specifically the tests, the device and cartridge and the
24 software, and then also additionally on the nanotainer by
25 itself as a standalone product.

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560

1 Q Did you ever talk about regulatory requirements
2 for Theranos' tests, that it was running on modified
3 predicate devices?

4 A It was our understanding that those were
5 operating as traditional LDTs and that would -- clearly
6 we would not be distributing those and that sort of the
7 need for clearance was associated with the distribution
8 of the devices.

9 Q I mean, I guess, is it fair to say that your
10 discussions around FDA were about clearance for a system
11 that ultimately included the TSPU?

12 A Yes.

13 BY MS. CHAN:

14 Q Were any regulatory counsel involved in either
15 this meeting or any meeting talking about the
16 nanotainers?

17 A I --

18 MR. NEAL: Just answer that yes or no in the
19 first instance or --

20 THE WITNESS: I don't know.

21 BY MS. CHAN:

22 Q Did you share Exhibit 231 with any of your
23 counsel?

24 MR. DAVIES: Whoa. That -- you're now -- I
25 mean --

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561

1 MS. CHAN: Okay. I'll take that back.

2 MR. DAVIES: That may be an okay question, but
3 like, I gotta think about that for a second.

4 MS. CHAN: Well, Ms. Holmes was just talking
5 about how her understanding was based on things that
6 counsel had told her.

7 MR. DAVIES: Right. And you said you didn't
8 want to ask her about what counsel had told her, and now
9 you're asking what she gave them to elicit advice, which
10 is an attorney-client communication.

11 MS. CHAN: Well --

12 MR. DAVIES: And you're going to the
13 substance -- no, no. Just a sec. Wait just a sec,
14 please. You're going to the substance of the
15 correspondence, and you're asking whether she shared it
16 with a lawyer.

17 I'm not saying that I'm going to say no. But I
18 want to understand, like, where we're going with this
19 because it may be that that's an easy question and she
20 can answer it, and we're all fine. It may be that
21 we're -- this is the camel's nose going under the tent
22 before we get there. And I want to make sure I
23 understand what you're doing. That's all.

24 BY MS. CHAN:

25 Q Is your understanding as to whether or not

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1 Theranos was permitted to continue using the nanotainer,
2 is that -- was that predicated on any advice that you
3 received from counsel?

4 MR. DAVIES: How about just asking whether she

5 discussed the use of the nanotainer -- with the use of
6 nanotainer with counsel? Because you just asked what the
7 outcome of the advice was. I think you can ask whether
8 that topic was discussed with counsel, and you can ask
9 the time frame for it, the same way the -- kind of the
10 same information you would get on a priv log, and I think
11 that would be responsive to the question.

12 BY MS. CHAN:

13 Q Okay. Did you ever discuss the topic of
14 continuing to use the nanotainer after receiving Exhibit
15 231 with counsel?

16 A Yes.

17 Q Which counsel?

18 A I don't know how many different regulatory law
19 firms we had involved at this time. But whoever was
20 acting as counsel we would have discussed with probably
21 all of them, would be my guess.

22 Q And what were your regulatory counsel? Who are
23 you thinking of right now?

24 A I don't know who it was in June of '14. I
25 shared yesterday I know we started with (b)(6);(b)(7)(C) and

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563

1 (b)(6);(b)(7)(C)

2 (b)(6);(b)(7)(C) And then we went to

3 multiple law firms to get their advice on the definition
4 of an LDT and what could in good standing qualify as LDTs
5 and got opinion memos.

6 And then I think there were one or two others
7 who we started working with after that. There was a lot
8 of law firms we were asking for regulatory advice on
9 this.

10 BY MR. KOLHATKAR:

11 Q I'm going to try to be careful here again. But
12 did you ever seek any input from counsel about the kinds
13 of disclosures you should make to potential investors
14 about Theranos' status with the FDA?

15 MR. DAVIES: I mean, I understand what you're
16 asking. It's not 'cause I --

17 MR. KOLHATKAR: There's probably a better way
18 to ask that question, and I'm open to suggestions.

19 BY MR. KOLHATKAR:

20 Q I guess, I'm trying to get a sense of did you
21 talk to counsel about your disclosures to potential
22 investors concerning the FDA?

23 MR. DAVIES: I'm fine with that.

24 MR. NEAL: Just yes or no or I don't remember.

25 THE WITNESS: Yes.

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1 BY MR. KOLHATKAR:

2 Q Which ones?

3 MR. DAVIES: You can give the name of the firm
4 or the person.

5 THE WITNESS: Okay. Boies Schiller.

6 BY MR. KOLHATKAR:

7 Q Who at Boies Schiller?

8 A David Boies.

9 Q Do you recall the time frame for that
10 conversation?

11 A I mean, I believe he was actively attending
12 board meetings by this point, and we discussed these
13 topics in that context.

14 Q I guess more broadly, did you discuss what
15 could be disclosed with potential investors with the
16 board?

17 A I don't know if it was what could be disclosed
18 but just generally what we were disclosing, yes.

19 Q I guess, did you ever share, you know -- we
20 talked a little bit about the Murdoch financials before.

21 Did you ever share that exhibit with the board,
22 to your recollection?

23 A I don't know if it was the exact same document
24 but those general assumptions of the way the retail
25 footprint would ramp, yes.

1 BY MS. CHAN:

2 Q You can put that one aside.

3 THE VIDEOGRAPHER: Should we change before you
4 move on?

5 MS. CHAN: Sure. Let's take a quick break. We
6 are off the record at 4:17 p.m.

7 THE VIDEOGRAPHER: And this concludes Media
8 No. 3.

9 (A brief recess was taken.)

10 THE VIDEOGRAPHER: We are back on the record at
11 the beginning of Media No. 4 of Elizabeth Holmes. The
12 time is 4:17.

13 BY MS. CHAN:

14 Q Ms. Holmes, did we have any substantive
15 conversations during the break?

16 A No.

17 Q I'm going to --

18 MR. KOLHATKAR: Sorry. I didn't hear the
19 answer.

20 THE WITNESS: No.

21 MR. KOLHATKAR: Thank you.

22 BY MS. CHAN:

23 Q I'm going to hand to you what's been marked

24 Theranos Exhibit 232. Exhibit 232 purports to be a
25 letter from FDA to (b)(6);(b)(7)(C) at Theranos. The date

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1 of the letter is October 28th, 2014, with starting Bates
2 No. THER-0360329.

3 (SEC Exhibit No. 232 was marked for
4 identification.)

5 BY MS. CHAN:

6 Q Have you seen Exhibit 232 before?

7 A I don't know.

8 Q Would you have expected (b)(6);(b)(7)(C) to
9 forward a letter that he received from FDA to your
10 attention?

11 A Generally, yes.

12 Q If you look on the first page, this is 329, it
13 says, third paragraph down in the middle of that
14 paragraph, "The e-mail you received is your notification
15 that the submission has been placed on hold." And the
16 submission --

17 A I'm sorry. I didn't -- oh, I see. Yes.

18 Q Right. And the submission, this first
19 sentence, is for Theranos' capillary and nanotainer
20 tubes.

21 Were you aware in October 2014 that Theranos

22 had put this submission on hold?

23 A I don't think Theranos put it on hold. I read
24 this to mean that --

25 Q Oh, FDA.



567

1 A -- the FDA put it on hold.

2 Q Sorry. I keep getting confused.

3 Were you aware as of October 2014 that the FDA
4 had put Theranos' 510(k) premarket submission on hold for
5 the capillary and nanotainer tubes?

6 A I hadn't remembered that previously. I had
7 been thinking about that having happened in December, but
8 I see that here.

9 Q You thought that happened in December 2014?

10 A I did when I had the discussion with (b)(6);(b)(7)(C)

11 (b)(6);(b)(7)(C)

12 Q Okay. So if you turn to 330, which is the
13 second page of Exhibit 232 -- actually, why don't you --
14 sorry. If you can head back to 329 first.

15 Under "Modified Assays," it says here, "You
16 stated in the study design tables you provided in an
17 e-mail sent on November 20th, 2014, that you used
18 FDA-cleared or approved assays without any
19 modifications."

20 So is this what you were referring to earlier
21 in your testimony that Theranos agreed to provide data
22 based upon cleared or approved assays to support this
23 application?

24 A I'm confused by the date because I think this
25 is dated October of 2014. So I'm --

↑

568

1 Q You're right. Do you remember sending an
2 e-mail with study design tables that included data where
3 Theranos used FDA-cleared or approved assays without any
4 modifications?

5 A I'm honestly not sure what this is referring
6 to. I'm not clear.

7 Q Okay. If you continue reading in that
8 paragraph, it says, "However, we consider changing the
9 sample matrix from venous blood samples to capillary
10 blood samples to be an assay modification because the
11 assay was validated by the manufacturer and cleared by
12 the FDA for use with the venous blood. Changing the
13 sample type from venous blood to capillary whole blood
14 may have an impact on the performance of the assay that
15 is being cleared or approved by FDA."

16 And then if you turn the page to 330, the
17 letter goes on to talk about how glucose concentrations

18 and capillary blood are often higher than venous blood --
19 you can take a moment to read it if you haven't -- which
20 can have the effect of invalidating reference ranges.

21 Do you see that discussion?

22 A I do. I'm just reading it quickly.

23 Q Do you understand FDA to be saying here that it
24 was not okay for Theranos to be submitting data on
25 cleared devices if those cleared devices were being used

↑

569

1 to show the -- being used to show that data on Theranos'
2 devices were accurate because you were using those
3 cleared devices with capillary blood and not with venous
4 blood?

5 A So I actually don't remember this memo
6 specifically, but I know that at a certain point in time
7 FDA asked that we only submit on devices that were
8 cleared for capillary samples.

9 Q Okay. And when did you obtain that
10 understanding?

11 A I don't know.

12 Q Would it have been around this late 2014 time
13 frame?

14 A I thought it was after that because I believe
15 that we ended up getting agreement to send the

16 submissions in for which we got feedback in December, and
17 I don't think that all of those test systems were cleared
18 for capillary use, but I could be wrong.

19 Q Okay. So if you go on to 331, which is page
20 three of Exhibit 232, in the middle of the page under 2,
21 it says, "In your submission you've provided testing
22 using your Theranos capillary tubes and nanotainer tubes
23 for the following analytes with modified assays that are
24 not cleared for use with capillary blood samples." And
25 there's a list. "You should repeat testing for these

↑

570

1 analytes using unmodified assays cleared by the FDA for
2 use with capillary blood samples."

3 So here FDA is saying you need to use devices
4 that are cleared for capillary blood in order to submit
5 your data, correct?

6 A I'm sorry. I lost you. Where are you?

7 Q It's 2.

8 A Oh, I was in the wrong one. Okay.

9 Yes, I see the sentence.

10 Q So my question to you was: So FDA is saying
11 here to you that it was not okay to use modified assays
12 that are not cleared for use with capillary blood and
13 that you should cleared assays that had been cleared for

14 use with capillary blood, correct?

15 A I believe for the specific analytes that are
16 listed in the sentence above.

17 Q Is that a yes?

18 A For those analytes, yes.

19 Q And then if you turn to page 4 of Exhibit 232
20 or 3 -- Bates No. 332, for No. 3, the letter goes on to
21 say, "We have serious concerns with many of the method
22 comparison results provided in your submission. For
23 example, the regression analysis you provided for
24 albumin, potassium, and sodium obtained slopes of .829,
25 1.415 and .884 respectively.

↑

571

1 "We have not cleared a recent blood collection
2 device that obtained results with such high bias. This
3 high bias means there's a big difference between results
4 generated by your CTN and results generated by the
5 comparative tube. It's very important that results
6 obtained by your CTN generate accurate results because
7 patients could be harmed if an unnecessary medical
8 treatment is used based on inaccurate diagnostic
9 results."

10 Do you see that?

11 A I do.

12 Q Were you aware that there was a high bias in
13 your method comparison results and that this could lead
14 to patient harm if patients believed the inaccurate
15 results and then acted upon them?

16 A No. Actually, my memory in general was that
17 our team specifically disagreed with the statistics that
18 were being applied in some of the bias calculations
19 specifically.

20 Q Who on your team was disagreeing with the bias
21 data?

22 A I believe our biostatistics team.

23 Q And who is that?

24 A (b)(6);(b)(7)(C) But I
25 remember that we ended up having to engage directly with

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572

1 the FDA statisticians about that.

2 Q Was it just (b)(6);(b)(7)(C) or was there anyone
3 else on his team that was involved in this?

4 A I think that (b)(6);(b)(7)(C) was as well. I'm not
5 sure who else. I don't know who else.

6 Q Okay. Why don't you turn to page eight of the
7 document, which is 336 under "precision studies," No. 15.
8 Do you see that?

9 A I do.

10 Q So here the letter states, "We have serious
11 concerns with many of the precision results provided in
12 your submission. For example, the total precision
13 percent CVs you obtained for potassium and ferritin were
14 8.0 percent and 19.12 percent respectively. These
15 precision results were unusually -- unusually large and
16 unacceptable based on the comparison to the cleared
17 assay's performance."

18 And then a few lines down it says, "When
19 repeating the precision studies for these analytes with
20 unmodified assays, please ensure that you provide
21 acceptable precision studies with results that could
22 demonstrate your CTN. Do not contribute additional
23 imprecision or change the imprecision (sic) to the
24 results obtained by the cleared assay."

25 Do you see that?

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573

1 A I do.

2 Q Were you aware that FDA believed that the
3 precision data that Theranos had submitted was concerning
4 to them?

5 A I don't remember any specific discussions on
6 precision. I know that our teams, again, were engaging
7 with their statisticians, including on study design and

8 the effect of pooling samples and other things that could
9 impact variability and the results.

10 Q When was your team working with the FDA
11 statisticians?

12 A I don't know specifically.

13 Q Would it have been in this 2014 time frame, end
14 of 2014 time frame?

15 A I don't know.

16 Q Do you know whether the precision studies were
17 ever submitted again to the FDA?

18 A I think we did a submission after this that
19 resulted in the December call we were talking about, and
20 then I believe we did additional studies and submissions
21 in 2015.

22 Q What happened to the 510(k) submission for the
23 nanotainer in the end?

24 A The final submissions?

25 Q Yes. What happened to the submission? Did you

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574

1 receive clearance or approval for the nanotainer?

2 A Only in the HSV-1 clearance.

3 Q What about for the other assays?

4 A No.

5 Q So what happened to those submissions?

6 A I don't remember specifically. I think that
7 after we -- I don't remember. I believe that we -- I'm
8 trying to remember the sequencing of when we started
9 looking at potentially exiting the clinical lab business
10 and we stopped using the nanotainer.

11 They'd given us feedback on our final set of
12 submissions, and I think we decided to pause work on
13 everything except for trying to do root cause analysis of
14 our business operations and fix the issues. So I think
15 we didn't follow the last set of feedback from the
16 agency.

17 Q So and when did you stop using the nanotainer?

18 A I believe it was in the fall of '15 or summer.
19 Late summer/fall of '15.

20 Q Would it have been before or after FDA's
21 inspection of Theranos?

22 A I think it was when FDA said they were going to
23 issue quality systems observations on the nanotainer --
24 on one of the nanotainers.

25 Q So when FDA said they were going to issue a 483

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575

1 with the deficiency about Theranos' nanotainers, that
2 would have been the time where -- when you pulled the
3 nanotainer from use?

4 A Yes. And just to be clear, it was on one of
5 our nanotainers, not on the other one.

6 Q Did you ever tell prospective investors that
7 FDA had concerns with the data that Theranos had
8 submitted for the nanotainer device?

9 A Again, I don't remember conversations
10 specifically on this, but I know we were talking about
11 the fact that we were trying to get the nanotainers
12 through and trying to work with the agency on feedback
13 about them.

14 Q So you don't know either way whether you told
15 them that there were serious concerns from the FDA over
16 use of the nanotainer device?

17 A I don't know what we specifically said.

18 Q Okay.

19 MR. NEAL: So we've been going a little over an
20 hour. You done with that document?

21 MS. CHAN: Yeah. Why don't you put that aside.

22 MR. NEAL: Why don't we --

23 MS. CHAN: We are off record at 4:34 p.m.

24 (A brief recess was taken.)

25 THE VIDEOGRAPHER: We are back on the record at

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2 MS. CHAN: Ms. Holmes, we have no further
3 questions at this time. We will be --

4 MR. KOLHATKAR: Sorry. We didn't have any
5 substantive discussions with the staff during the break;
6 is that correct?

7 THE WITNESS: I did not.

8 MS. CHAN: Thank you.

9 MR. NEAL: During the break or all week?

10 MS. CHAN: We have no further questions at this
11 time. We will be adjourning testimony to a later date,
12 but thank you for coming in.

13 THE WITNESS: Absolutely.

14 THE VIDEOGRAPHER: This concludes Media No. 4
15 and Volume II of Elizabeth Holmes. We're off the record
16 at 5:26.

17 (Whereupon, at 5:26 p.m., the examination was
18 concluded.)

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PROOFREADER'S CERTIFICATE

In the Matter of: THERANOS, INC.
Witness: Elizabeth Holmes
File Number: SF-04030-A
Date: Thursday, July 13, 2017
Location: San Francisco, CA 94104

This is to certify that I, (b)(6);(b)(7)(C) (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

(Proofreader's Name) (Date)



1 THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of:)

4) File No. SF-04030-A

5 THERANOS, INC.)

6

7 WITNESS: Elizabeth Holmes

8 PAGES: 579 through 869

9 PLACE: Securities and Exchange Commission

10 44 Montgomery Street, Suite 2600

11 San Francisco, CA 94104

12 DATE: Wednesday, August 23, 2017

13

14 The above entitled matter came on for hearing,

15 pursuant to notice, at 9:13 a.m.

16

17

18

19

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21

22

23

24 Diversified Reporting Services, Inc.



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581

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582

1 C O N T E N T S

2

3	WITNESS:	EXAMINATION
4	Elizabeth Holmes	586

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6	EXHIBITS:	DESCRIPTION	IDENTIFIED
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7	261	Subpoena	586
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8	262	December 24, 2014, E-mail from	593
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9 (b)(6);(b)(7)(C) to Elizabeth

10 Holmes, copy to Sunny Balwani,

11 subject line "Re FYI" (Starting

12 Bates No. TS-099-7054)

13	263	Handwritten notes dated 12/23/14	595
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14 and 12/24/14, entitled (b)(6);(b)(7)(C)

15 TC" (Starting Bates No.

16 THPFM0005528637)

17	264	September 23, 2014, E-mail from	628
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18 Elizabeth Holmes to Sunny

19 Balwani with subject line "Re:
20 innovation payment letter"
21 (Starting Bates No.
22 THPFM0000696484)

23
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583

1 C O N T E N T S (CONT.)

2

3	EXHIBITS:	DESCRIPTION	IDENTIFIED
4	265	February 25, 2015, E-mail from 5 Sunny Balwani to Elizabeth 6 Holmes, Subject line "Forward: 7 Theranos, Walgreens, Boots 8 Alliance draft contract," 9 (Starting Bates No. 10 THER-0982058), with two 11 attachments (Starting Bates Nos. 12 THER-0982059 and THER-0982095)	635
13	266	December 19, 2014, E-mail from 14 Elizabeth Holmes to Sunny 15 Balwani, Subject line "Forward 16 project test company overview	776

17 memo, version 025.PDF" (Starting
18 Bates No. THPFM0003891168), with
19 attachment (Starting Bates No.
20 THPFM0003891169)

21
22
23
24
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584

1 C O N T E N T S (CONT.)

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3 EXHIBITS: DESCRIPTION IDENTIFIED

4 267 December 23, 2014, E-mail from 780

5 (b)(6);(b)(7)(C) to Elizabeth Holmes,

6 with copy to (b)(6);(b)(7)(C)

7 (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C)

8 Subject line "Re: follow-up to

9 our call" (Starting Bates No.

10 BDTSEC_PST0005074)

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585

1 P R O C E E D I N G S
2 THE VIDEOGRAPHER: We are on the record,
3 Media 1, Volume III.
4 My name is (b)(6);(b)(7)(C) I'm with
5 Veritext.
6 Please begin.
7 MS. CHAN: We're on the record at 9:13 a.m. on
8 August 23rd, 2017.
9 I am Jessica Chan.
10 And with me are Rahul Kolhatkar, Michael
11 Foley, Jason Habermeyer, and Monique Winkler.
12 We are officers of the Commission for the

13 purposes of this proceeding.

14 We are today resuming the examination of
15 Elizabeth Holmes, which was adjourned on July 13th,
16 2017.

17 Would counsel please identify themselves.

18 MR. NEAL: Stephen Neal, representing
19 Elizabeth Holmes.

20 MR. DWYER: John Dwyer, also for Elizabeth
21 Holmes.

22 MR. TAYLOR: David Taylor, Theranos.

23 MR. DAVIES: Chris Davies from Wilmer.

24 MR. McLUCAS: Bill McLucas from Wilmer.

25 MS. LEEPER: Ali Leeper from Cooley.

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586

1 MS. CHAN: Testimony today is pursuant to a
2 Commission subpoena, which has been marked as Exhibit
3 261.

4 (SEC Exhibit No. 261 was marked for
5 identification.)

6 MS. CHAN: And I am handing a copy of Exhibit
7 261 to you now.

8 Ms. Holmes, are you appearing here today
9 pursuant to Exhibit 261?

10 MS. HOLMES: Yes.

11 MS. CHAN: You can put that aside.

12 Ms. Holmes, do you understand that you remain
13 under oath?

14 MS. HOLMES: I do.

15 MS. CHAN: Let the record reflect that a copy
16 of the formal order of investigation in this matter, as
17 supplemented, will be available for examination during
18 the course of this proceeding.

19 Whereupon,

20 ELIZABETH HOLMES

21 was recalled as a witness and, having been previously
22 duly sworn, was examined and testified further as
23 follows:

24 EXAMINATION

25 BY MS. CHAN:

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587

1 Q Ms. Holmes, when was your last contact with
2 Sunny Balwani?

3 A I think early this year, 2017.

4 Q And how did you meet with him?

5 A It wasn't a meeting. I think I was running
6 the dish, and he was running it at the same time, and we
7 passed each other and said, "Hello."

8 Q Was there any other substance to your

9 conversation with him?

10 A I was walking with one of our investors, and I
11 just introduced him and said, "This is (b)(6);(b)(7)(C) who
12 was the investor.

13 And he said "Hello," and that was it.

14 Q Who was (b)(6);(b)(7)(C)

15 A One of our Series A investors.

16 Q In Theranos?

17 A Yes.

18 Q Why were you meeting with (b)(6);(b)(7)(C)

19 A He's a close friend. And we were taking a
20 walk on the dish.

21 Q Did you talk with (b)(6);(b)(7)(C) about Theranos?

22 A During that dish walk?

23 Q Yes.

24 A I'm trying to remember.

25 I think so. Yes, I'm sure I did.

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588

1 Q And what did you talk about?

2 A Probably where we were as a company at that
3 moment, what we were working to do, his thoughts on our
4 strategy, how we were working to see this vision
5 through.

6 Q What were his thoughts on your strategy?

7 A You know, I -- yes.

8 MR. NEAL: Only answer this if you actually
9 remember it. I don't want you speculating about what
10 you might have talked about.

11 THE WITNESS: Yeah.

12 I don't -- I don't remember the specifics of
13 the conversation.

14 I -- I remember him being there. I remember
15 walking with him. And I -- I know that I, you know,
16 generally always talk to him about how -- where we are
17 at a given point in time when I see him.

18 BY MS. CHAN:

19 Q Have you had conversations with Mr. Balwani
20 about the fact that you would be providing SEC
21 testimony?

22 A When he was still working for Theranos in
23 2016, we had already received subpoenas from the SEC,
24 and he was involved with the legal team with some
25 discussions. But we haven't had any substantive

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589

1 discussions since he left -- left the company.

2 Q So that would have been in 2016?

3 A Yeah.

4 Q Okay.

5 And so you wouldn't have had any conversations
6 with him about the substance of your SEC testimony in
7 July and today?

8 A No.

9 Q Besides counsel, have you had any
10 conversations with anyone about the substance of your
11 testimony for the SEC?

12 A I have not.

13 Q When we adjourned testimony on July 13th, we
14 were in the middle of discussing Theranos's interactions
15 with the FDA.

16 Do you remember that?

17 A I do.

18 Q Did Theranos submit minutes of meetings it had
19 with the FDA?

20 A I believe so.

21 Q Who drafted those minutes?

22 A I don't know it was the same person every
23 time. I know sometimes our regulatory counsel, but there
24 was likely other people, as well.

25 Q And who was your regulatory counsel?

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1 A It varied from time to time. Our internal
2 regulatory counsel was (b)(6);(b)(7)(C)

3 Q Who else would have been involved in drafting
4 those minutes besides (b)(6);(b)(7)(C)

5 A I don't know.

6 Q Were you involved in editing minutes?

7 A I -- I may have been. I -- I don't remember a
8 specific instance in which I did, but I'm -- it's likely
9 I would have reviewed documents over the course of the
10 time we were sending information to the FDA.

11 Q And what would be the process of drafting and
12 editing those minutes at Theranos?

13 A I don't -- I don't know there was a formal
14 process in the same way as we've instituted processes
15 now.

16 Someone would have taken notes. And to the
17 extent they were reviewed by the team, they were
18 reviewed and submitted.

19 Q Who was responsible for taking notes at the
20 meeting at Theranos?

21 A I believe it was different people for each
22 meeting. I don't think it was the same person each
23 time.

24 Q And the person who was taking the notes, would
25 they be the one who would also do the first draft of

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1 minutes?

2 A Not necessarily.

3 Q Okay.

4 And did you take notes of meetings with FDA?

5 A Sometimes.

6 Q When regulatory counsel would send letters to
7 the FDA on Theranos's behalf, were you ever involved in
8 providing input or edits to those letters?

9 A I can't sit here remembering a specific
10 instance, but it's likely I was.

11 Q And you would review correspondence before it
12 was sent to the FDA, correct?

13 A Not always, but sometimes.

14 Q You wouldn't review correspondence that
15 your -- your counsel would be sending to FDA on
16 Theranos's behalf?

17 A If, for example, it was internal counsel, not
18 every time.

19 But -- but sometimes I would.

20 Q Okay.

21 So if it was outside counsel, would you be
22 reviewing correspondence before it was sent out by
23 outside counsel?

24 A I don't -- I don't know if it was every time;
25 but, again, sometimes I would.

1 BY MR. KOLHATKAR:

2 Q Which would be the more likely scenario in
3 which you reviewed it?

4 Were you reviewing outside counsel's work more
5 closely or inside counsel's?

6 A I think it -- it's more what the -- the matter
7 was. If there was a really substantive document that
8 was going in, there's a higher probability that I would
9 look at it.

10 If it was a more tactical communication, then
11 I probably wouldn't.

12 BY MS. CHAN:

13 Q In earlier testimony, you testified that you
14 believe Theranos could continue using the nanotainer in
15 late 2014, even though FDA told Theranos to seek
16 clearance approval of the nanotainer.

17 Do you remember that testimony?

18 A I -- I don't remember the specific
19 conversation in here; but yes, that's true.

20 Q So you understood in late 2014 that
21 Theranos -- sorry. Let me repeat that question.

22 You understood in late 2014 that FDA believed
23 that Theranos needed to obtain clearance or approval for

24 the nanotainer, correct?

25 A I understood in late 2014 that the FDA had

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593

1 asked us to file 510(k)s for the nanotainer.

2 Q Is that a "yes"?

3 A Yes.

4 Q And you also understood in late 2014 that
5 FDA had asked Theranos to obtain clearance and approval
6 for any tests that it was performing on the TSPU,
7 correct?

8 A Yes. I -- I understood that we could continue
9 using our systems as LDTs, but that the FDA wanted to
10 make sure we were filing both the nanotainer, as well as
11 or tests, with the FDA.

12 (SEC Exhibit No. 262 was marked for
13 identification.)

14 BY MS. CHAN:

15 Q I'm handing to you what's been marked Theranos
16 Exhibit 262.

17 Exhibit 262 purports to be a December 24th,
18 2014, e-mail from (b)(6);(b)(7)(C) to Elizabeth Holmes,
19 with a copy to Sunny Balwani.

20 The subject line is "Re: FYI."

21 Starting Bates number is TS-0997054.

22 Have you seen Exhibit 262 before?

23 A I -- I'm not sure it was the document, but I
24 remember writing the e-mail in the bottom chain.

25 Q What is Exhibit 262?

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594

1 A It's two e-mails, one from me to our team and
2 one from (b)(6);(b)(7)(C) in response.

3 Q Did you receive and review Exhibit 262 on or
4 about December 24th, 2014?

5 A I -- I don't know.

6 I believe I drafted the e-mail on the bottom
7 on December 24th.

8 Q Is this the e-mail that you recall sending --
9 the e-mail on the bottom of 7054, is this the e-mail
10 that you recall sending after your Christmas Eve 2014
11 telephone conversation with (b)(6);(b)(7)(C) of the
12 FDA?

13 A I think so.

14 Do you mind if I take a quick minute to read
15 it?

16 Q Sure.

17 A Yes.

18 Q Is this the conversation that you recall in
19 which (b)(6);(b)(7)(C) told you that Theranos could

20 continue using the nanotainer while it was putting in
21 its 510(k) submissions?

22 A What I recall from this conversation is -- is
23 asking him whether we could continue running LDTs while
24 doing the submissions.

25 And what I understood from that conversation

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1 was that so long as we were actively working with them,
2 it would be okay to do that.

3 Q Did (b)(6),(b)(7)(C) tell you that it would be
4 okay for Theranos to continue using the nanotainers
5 while it was putting in its 510(k) submission?

6 A That was what I had understood from the
7 conversation. I -- I can't remember his exact words
8 sitting here now.

9 Q Did you take notes of this conversation?

10 A I think so.

11 (SEC Exhibit No. 263 was marked for
12 identification.)

13 BY MS. CHAN:

14 Q Handing to you what's been marked Theranos
15 Exhibit 263.

16 Exhibit 263 purports to be handwritten notes,
17 dated 12/23/14 and 12/24/14. The title of the notes is

18 (b)(6),(b)(7)(C) TC," with starting Bates number

19 THPFM0005528637.

20 Have you seen Exhibit 263 before?

21 A I think so.

22 Q What is Exhibit 263?

23 A I believe it's the notes of the call we were

24 just talking about with (b)(6),(b)(7)(C)

25 BY MR. KOLHATKAR:

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596

1 Q Does "TC" at the top mean telephone call?

2 A Yes.

3 Q Was that your -- was that your practice, to
4 abbreviate telephone call with "TC"?

5 A Often. Not necessarily always. No.

6 BY MS. CHAN:

7 Q Did you draft Exhibit 263 on or about December
8 23rd, 2014, and December 24th, 2014?

9 A I think so.

10 Q I just wanted to go through some of the
11 notations that you -- that we've seen in your notes.

12 So where it has a -- an exclamation mark and a
13 circle around it, if you see halfway down the page, it
14 says, "Go back."

15 What is that indicating to you?

16 A I'm sorry. What's -- what's the question?

17 Q Why do you put an exclamation mark with a
18 circle around it? Does that mean anything to you?

19 A It could be a number of reasons. It could be
20 something to follow up on. It could be something that I
21 wanted to particularly pay attention to. I mean, it --
22 I don't think there was a -- a consistent use of it.

23 Q Okay.

24 And when we're trying to read your note, how
25 do you usually write notes?

↑

597

1 Because we see a lot of words followed by
2 periods. What do those mean to you?

3 A I mean, I -- I free flow my thoughts what
4 someone's saying sort of mixed in. These were from
5 my -- my personal notebook where I was just trying,
6 realtime, to write things down as I was in a meeting or
7 on a call or jotting down thoughts.

8 I -- I don't -- there's not a methodical
9 system to it.

10 Q Do you carry around a Moleskine notebook for
11 that purpose, to write down notes of meetings and calls?

12 A I -- I -- I do now, yeah.

13 Q Okay.

14 And so how -- do you have separate notebooks
15 for different types of meetings or calls?

16 A No.

17 Q So it's just one notebook at any period of
18 time?

19 A Yes.

20 Q And when you're done with that notebook, do
21 you just then move to the next notebook?

22 A I -- I do. I don't know that that was always
23 true, going back all the years that we're talking about.

24 But that's what I do right now.

25 Q Okay.

↑

598

1 And then if you look back at your notes, some
2 of the words are in parentheses.

3 What does that mean?

4 A I need to look at a specific part of it to
5 walk you through.

6 I -- again, I don't really think there's a
7 general, like, language to these. It's just sort of
8 free-form jotting things down to try to write quickly
9 when I'm talking to someone.

10 Q Sure.

11 So why don't we look at, I think, the second

12 bullet point down.

13 So it says, "Options," period, "Say," and then
14 "letter," in parentheses.

15 A Mm-hmm.

16 Q So could you walk us through that bullet
17 point.

18 A Yes.

19 I'm just reading it.

20 Sitting here now, I -- I read it to mean that
21 we had a number of options that were in the letter and
22 that there was a range of data that we sent. There was
23 a concern from chemistry, but they were more comfortable
24 in the hematology division.

25 Q Okay.

↑

599

1 Why don't we go one more bullet point down
2 just so that we understand how your -- how you do write
3 your notes.

4 So what about the third bullet point down?

5 What does that say?

6 A Just reading it.

7 So I think there -- I think this is a
8 reference to -- for data we had generated for the
9 hematology assays.

10 For a couple of the assays, there was
11 repeatability issues with platelets not being very
12 tight.

13 But I think what this is saying, sitting here
14 now, is that the FDA was okay with that, in part,
15 because the assays were going to be measured as part of
16 the system later on in a -- in a separate FDA
17 submission.

18 And so the discordance in the assay data was
19 not as much of an issue for a nanotainer filing, which
20 is what we were talking about on that call.

21 Q And you'll -- if you turn to the next couple
22 pages, it looks like your notes span about three pages
23 of your notebook.

24 Is that consistent with your recollection?

25 MR. NEAL: Just so we're clear, I'm -- I'm not

↑

600

1 sure it's clear these came from a notebook. Maybe they
2 did, maybe they didn't.

3 She said she uses notebooks now, but I don't
4 think --

5 THE WITNESS: Yeah.

6 MR. NEAL: -- you've established whether this
7 actually came from a notebook. I just --

8 BY MS. CHAN:

9 Q Did this come from your notebook?

10 A I don't -- I don't know. I -- I mean, I'm
11 using Moleskines right now. At different periods of
12 time, I had just pieces of paper with Theranos
13 letterhead and I also had, like, pads of paper, like
14 yellow pads.

15 So I don't know.

16 Q Okay.

17 So it looks like these notes span three pages.

18 Is that consistent with your recollection as
19 to the note -- the notes that you took of that call with

20 (b)(6);(b)(7)(C)

21 A I -- I don't have memory of how many pages the
22 notes were.

23 BY MR. KOLHATKAR:

24 Q On the second page, there's kind of a diagonal
25 slash at the top of the page there, top left corner.

↑

601

1 I'm sorry. It might be covered by the staple.

2 Kind of far --

3 A Yes. Yes, I see it.

4 Q Does that -- does that kind of like a diagonal
5 dash have any purpose or use in your notes?

6 A I -- I don't know. I could sit here and try
7 to reconstruct it if it's useful. I --

8 Q I -- I guess I just -- you know, I'm just
9 trying to understand how your -- your process. I'm just
10 trying to understand if there's any meaning to -- is it
11 sort of a different topic or --

12 A Yeah. I mean, now -- I mean, if I -- if I
13 were doing that today, I would do it if I was sort of
14 changing thoughts on something. But I -- I don't know
15 that that necessarily means what it was here.

16 And it also doesn't necessarily mean that's
17 how the conversation went, you know.

18 Q Okay.

19 BY MS. CHAN:

20 Q Okay. You can put that one aside.

21 Is there a's time when Theranos stopped using
22 the nanotainer?

23 A Yes.

24 Q When was that?

25 A I believe it was in the fall of 2015.

↑

602

1 Q When in the fall of 2015?

2 A I don't know by memory. I -- I think August
3 or September, but I'm not sure.

4 Q Was it around the time of the FDA inspection
5 of Theranos?

6 A Yes.

7 Q Why did Theranos stop using the nanotainer?

8 A Because we had been operating under the
9 assumption that it was okay to be using it as an LDT,
10 and when FDA took the position that one of the
11 nanotainers, the heparin one, needed to be documented
12 under the FDA quality system, which we thought did not
13 have to happen until after we had clearance, we realized
14 that we had a fundamental disconnect with the FDA that
15 we didn't think we had.

16 So we stopped using it. Both of them, not --
17 not just the heparin one.

18 Q Did FDA tell you to stop using the nanotainer
19 at the inspection?

20 A Not that I am aware of.

21 Q So is it your testimony that it was Theranos's
22 decision to stop using the nanotainer in August or
23 September of 2015?

24 A Well, we -- we were -- I want to be careful
25 with how I answer that question. Because, clearly, FDA

↑

1 had concerns.

2 I'm not aware of any direct communication to
3 stop using it, but we stopped in response to the fact
4 that they had concerns.

5 Q FDA had told you in a number of letters prior
6 to that inspection to stop using the nanotainers,
7 though, correct?

8 A It was -- we've discussed previously our
9 understanding with those letters was that commentary was
10 coming because there were certain assumptions that would
11 mean we could not still apply for clearance.

12 And when we worked through those, we thought
13 we were still in good faith working with them and,
14 therefore, could still continue to use it.

15 Q Did you request in writing an opinion from FDA
16 that you could continue using the nanotainer after you
17 had worked out a path forward to gain clearance of the
18 nanotainer?

19 A I don't think so.

20 Q Did you ever receive any indication -- written
21 indication from FDA that it was okay for Theranos to
22 continue using the nanotainer?

23 A They continued to work with us on our filings
24 as we submitted them and obviously were actively using
25 them, and they were continuing to try to help us.



1 But outside of the continued engagement, I
2 don't think there was explicit communication about the
3 use of it as an LDT. In writing.

4 Q I'm going to hand to you what we've already
5 marked as Theranos Exhibit 221.

6 MS. CHAN: I only have one copy,
7 unfortunately, because --

8 MR. DWYER: Yes, it's big.

9 MS. CHAN: -- don't have a lot of trees.

10 BY MS. CHAN:

11 Q So if you turn to page ending 6450.

12 A I don't know if these guys have stamps on
13 them.

14 Q Oh.

15 MR. NEAL: Down at the bottom. Look down here
16 if you can't --

17 THE WITNESS: Not after this one.

18 MS. CHAN: Okay.

19 MR. NEAL: Really.

20 MS. CHAN: If you wouldn't mind just sharing
21 them.

22 THE WITNESS: Sure.

23 MS. CHAN: Sorry about that.

24 THE WITNESS: Yeah; no worries.

25 MR. NEAL: Do you have a -- do you have

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605

1 another copy of this that's got the numbers?

2 I mean, this is -- this is --

3 THE WITNESS: Or you might be able to figure
4 it out from the pages.

5 MR. NEAL: Yeah. Can you identify it -- if
6 you can identify it just by the page number.

7 Do you see the page -- not the Bates number,
8 but at the bottom of each page, there's a number.

9 MS. CHAN: Oh, yeah. 212?

10 MR. NEAL: Yeah.

11 So I need to take that one.

12 THE WITNESS: Got it.

13 MR. NEAL: So that's 212.

14 THE WITNESS: Yes.

15 Okay.

16 BY MS. CHAN:

17 Q So if you just take a look at the text
18 messages that are taking place between you and Mr.
19 Balwani on 212 and 213.

20 And just let me know when you're done.

21 A The whole page of 212 and -13?

22 Q Yes.

23 A Okay.

24 Okay.

25 Q Are these text messages being sent between you

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606

1 and Mr. Balwani during the FDA inspection of 2015?

2 A I don't know if it was during it, but I
3 believe it's around it or -- essentially, I don't know
4 if it was while the audit was happening.

5 Q Okay.

6 So if you look on Page 212 of your copy, which
7 is 6450 --

8 A Yes.

9 Q -- towards the bottom, about five messages up,
10 it says, "Are you getting a sense from (b)(6);(b)(7)(C)

11 Do you see that?

12 A Yes.

13 Q Do you understand that to be (b)(6);(b)(7)(C) who is
14 an inspector at the FDA?

15 A I -- I didn't, but I don't have reason to
16 doubt that.

17 Q You didn't know who the inspectors were from
18 the FDA who came to inspect Theranos in 2015?

19 A I knew who the one at the site that I was at
20 was.

21 Q Who was the one at your site?

22 A I believe her name was (b)(6);(b)(7)(C)

23 Q Okay.

24 And so you see her name also on 213?

25 A Yep.

↑

607

1 Q Right.

2 So --

3 BY MR. KOLHATKAR:

4 Q Which site were you at during the FDA visit?

5 A I was in Palo Alto.

6 Q Okay.

7 And was it your understanding that Mr. Balwani
8 was at the Newark site?

9 A Yes.

10 BY MS. CHAN:

11 Q Okay.

12 Do you have any reason to doubt that these
13 text messages were taking place while the inspectors
14 were at Theranos?

15 A Yeah, again, I -- I'm just not sure about the
16 timestamps. Based on the last time we went through
17 this, it could have been at the end of the day, but I
18 think it generally coincided with the FDA inspection.

19 Q Okay.
20 So back on Page 212, your copy --
21 A Mm-hmm.
22 Q -- a few messages up from where it references
23 (b)(6),(b)(7)(C) -- from Mr. Balwani, there's a text
24 message saying, "We should assess tonight turning CTN
25 off."

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608

1 And then you respond, "Been thinking about
2 it."
3 Do you see that?
4 A I do.
5 Q Then Mr. Balwani says, "We don't want them to
6 say we are marketing LDTs. At least we can stop CTN for
7 direct access."
8 What did you understand Mr. Balwani to -- to
9 mean by this?
10 A You know, sitting here now, I'm not completely
11 sure because there was a lot of conversations going on
12 at the same time during these inspections.
13 My reaction, reading it now, is that we were
14 trying to figure out why the FDA was there, and we
15 couldn't understand what they were interested in.
16 And it looks like, at this point, he might

17 have thought they were focused on the LDTs and that,
18 therefore, if they were looking at the nanotainer as a
19 corollary to the LDTs, then not using the nanotainer to
20 make sure that they weren't going after the LDTs.

21 Q So you -- you understood that he was talking
22 about stopping the use of the nanotainers in this
23 section of the text messages, correct?

24 A Again, I -- I don't know, you know, at that
25 moment, what I understood.

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609

1 I, sitting here now, think he's trying to
2 figure out why the FDA was there and talking about
3 stopping use of the nanotainers in that context.

4 Q Okay.

5 So I'm not asking about your understanding
6 now, but I -- I want to bring you back to 2015 and ask
7 you questions about what your understanding was back
8 then.

9 So was your understanding back then that he
10 was talking here about stopping the use of the
11 nanotainer?

12 A I -- I don't know.

13 I -- this audit happened at a time in which
14 there was a tremendous amount of chaos internally.

15 Because we thought we were in good standing with the
16 FDA. We were reacting. We had a lot of input.

17 I -- I don't know that I'm going to be able to
18 sit here and tell you what I was thinking when these
19 messages were going back and forth.

20 Q Okay.

21 So why don't we go to the next page, then.

22 So about halfway down the page, it says --

23 MR. NEAL: This is Page 213?

24 MS. CHAN: 213.

25 BY MS. CHAN:

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610

1 Q At 8:54 p.m., there's a message from Mr.
2 Balwani.

3 And he says, "We can build this business phase
4 software and JP and run circles around others and FDA by
5 manipulating their game."

6 Do you see that?

7 A I do.

8 Q What is "JP" referring to?

9 A I think it's a reference to Jurassic Park,
10 which is what he called the traditional medical lab
11 infrastructure.

12 Q Okay.

13 So what did you understand him to be saying
14 when he says, "We can build this business by software
15 and Jurassic Park"?

16 A I -- I think what he's talking about is
17 competing with Quest just based on the software
18 solutions that we had and traditional lab equipment
19 as -- as a model.

20 Q Okay.

21 But he's saying, we can -- Theranos can build
22 the business using just traditional lab devices --

23 A And software.

24 Q -- and software --

25 A Yeah.

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611

1 Q -- is that right?

2 A Yeah.

3 BY MR. KOLHATKAR:

4 Q So use -- in other words, managing the process
5 better than a traditional lab would without -- with the
6 addition -- with the aid of software; is that fair?

7 A I think it's a part of it.

8 The other part was all the consumer-directed
9 testing. Right?

10 So transparent pricing, consumer experience,

11 decision support, direct access, that we could basically
12 compete with Quest on their own game just through that.

13 BY MS. CHAN:

14 Q Okay.

15 And then the next part of his text says, "and
16 run circles around others and FDA by manipulating their
17 game."

18 What did you understand him to mean by that?

19 A I think, sitting here now, I -- I read it as
20 responding to we had been getting -- we thought that the
21 labs had been reaching out to FDA, and we'd been getting
22 a lot of attacks from them in Arizona.

23 And I think he's talking about how we would
24 competitively respond to the labs.

25 Q Okay.

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612

1 So you just said, "Sitting here now."

2 Did you have that same understanding back in
3 2015?

4 A I -- I can't tell you what my understanding
5 was in 2015. I don't remember.

6 I don't remember this text exchange.

7 Q You don't remember this text exchange --
8 exchange at all?

9 A I don't.

10 Q Okay.

11 He goes on, then, to say, "We just need a
12 fresh start and a giant step back, like we discussed
13 late" -- and I think that's last night -- "do CTN PMA on
14 our terms and then go intelligent on marketing."

15 "Intelligent."

16 What did you understand him to mean when he
17 says, "Go intelligent on marketing"?

18 A I don't know.

19 Q Did he ever use that phrase with you?

20 A I don't recognize it.

21 Q And then you respond, "We can definitely run
22 circles."

23 What did you mean by that?

24 A Again, sitting here now, I think we're talking
25 about Quest and our thought that they were getting

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613

1 regulators to come in and inspect us, and they were
2 doing things in Arizona like putting through bad press
3 about us on the door of patients, and they were going
4 after us really hard.

5 Q Were you referring to running circles around
6 the FDA?

7 A I definitely don't think so.

8 Q What were you referring to running circles
9 around?

10 A The lab companies.

11 BY MR. KOLHATKAR:

12 Q I guess why -- why don't you think you were
13 talking about running circles around the FDA?

14 A Because we were trying so hard to do the right
15 thing. And in engaging with the FDA, we hired all the
16 best regulatory counsel. We'd been trying to
17 proactively engage with them. We knew we were doing
18 something different, but we really wanted to do the
19 right thing in terms of working with them
20 constructively.

21 Q Okay.

22 I guess I'm just trying to understand that in
23 the context of what you recall about this conversation.

24 I mean, do you recall what you meant when --
25 when sending that message?

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614

1 A No. As I -- as I said, I don't recall this
2 text exchange at all. But I know -- I know what we were
3 trying to do. I know why we had worked so hard on
4 trying to proactively engage with the agency.

5 And I know that at this time, this is right
6 before the Wall Street Journal articles began, we were
7 aware that the labs had been really going after us. And
8 we thought that this, in part, was -- was part of that.

9 BY MS. CHAN:

10 Q So if you look up at Mr. Balwani's earlier
11 message at 8:54 p.m., he does talk about running circles
12 around others and the FDA.

13 Do you see that?

14 A I see the text, yes.

15 Q Did you understand him to mean that he was
16 suggesting that you run a circle -- run circles around
17 the FDA?

18 A Again, I don't remember the text conversation.
19 I do not believe that that's what he would have been
20 saying. That's completely inconsistent with everything
21 we were trying to do for all the years in which we had
22 been trying to engage with them successfully.

23 Q Did you ever have conversations with Mr.
24 Balwani outside of these text messages about running
25 circles around the FDA?

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615

1 A No, not that I know of.

2 Q So then a few lines down, at 8:56 p.m., you

3 write a text message to Mr. Balwani that says, "But all
4 our marketing now is for our lab."

5 Do you see that?

6 A Yes.

7 Q And then a couple lines down from that, same
8 time, 8:56, Mr. Balwani responds, "That's the
9 intelligent part."

10 He goes on to say, "We can market our lab in
11 everything, and people will talk about our fingerstick
12 without us talking about it."

13 What did you understand him to mean by that?

14 MR. NEAL: So she's already told you a dozen
15 times she doesn't recall this conversation.

16 So are you asking for her present
17 interpretation? Or are you asking her the same question
18 over and over as to whether she recalls it?

19 BY MS. CHAN:

20 Q Do -- do you have any recollection as to -- or
21 understanding as to what he would have been referring to
22 there?

23 A Again, I'm happy to tell you my interpretation
24 now. I don't remember this text exchange.

25 But looking at it now, I read it as, again,

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1 strategy for how to compete with full labs that we
2 thought were going after us.

3 I -- I don't remember the discussion or what I
4 was thinking at that moment.

5 Q Did you ever have conversations with Mr.
6 Balwani outside of this -- these text messages about how
7 even though Theranos couldn't market its nanotainers,
8 because FDA told Theranos to stop using them, that
9 Theranos could continue marketing its lab and that by
10 doing so, people would continue talking about the
11 fingerstick without Theranos needing to market the
12 fingerstick?

13 A I'm not sure I understand the question.

14 Q Did you ever have conversations with Mr.
15 Balwani outside of these text messages about how you
16 could continue marketing the lab and not talking about
17 the nanotainer and that by doing so, people would talk
18 about the fingerstick without you needing to market the
19 fingerstick?

20 A No. I don't think so.

21 BY MR. KOLHATKAR:

22 Q Did you ever talk with Mr. Balwani about
23 Theranos's marketing being primarily about fingerstick?

24 A This -- do you mind just giving me a little
25 bit more background on what -- what the question is?

1 I'm not sure. Are you referring to, like, the
2 ads or --

3 Q Yeah -- sure. Why don't we start with the
4 ads.

5 You know --

6 A Yeah.

7 Q -- did you -- did you ever have discussions
8 with Mr. Balwani about what the focus of Theranos's
9 marketing should be?

10 A Yes.

11 Q And -- and was the focus of that marketing in
12 your -- to your memory, fingerstick?

13 A No.

14 Q What was the focus?

15 A Small samples, low cost, better access.

16 Q Did you ever discuss the -- with Mr. Balwani
17 his view that -- that the marketing could lead one to
18 believe that Theranos was focused on fingerstick?

19 A Yes.

20 And we did, to be clear, have some
21 fingerstick-specific advertising.

22 But, in general, we were trying to have those
23 be the three themes of our advertising. And he and I

24 and the marketing team met and discussed that.

25 Q Who else -- I think we talked about this sort

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618

1 of before, but other than yourself, Mr. Balwani, and the
2 marketing folks at Theranos, was there anyone else
3 involved in those conversations?

4 A Counsel, regulatory counsel. And I'm sure
5 there were others from the teams internally.

6 I -- I don't have specific memory of a
7 conversation, sitting here now, but probably multiple
8 sort of cross-functional teams inside the company.

9 Q Who had final say at Theranos in terms of
10 marketing strategy?

11 A I'm trying to remember.

12 I mean, we at one point brought in a woman to
13 be chief marketing officer who had been CEO of a
14 marketing company. And she ran it.

15 We generally reviewed content before releasing
16 it, yeah, as a team.

17 Q When you say "we" as a team, meaning yourself
18 and Mr. Balwani, as well?

19 A Amongst others, yes.

20 MR. KOLHATKAR: Okay.

21 BY MS. CHAN:

22 Q Okay.
23 Going back to Page 213 of the -- of Exhibit
24 221, so at 8:57, you respond, "Yeah."
25 And then Mr. Balwani says, "Once we have 70

619

1 percent FS."

2 Is "FS" here referring to fingerstick?

3 A Sitting here now, I think so.

4 Q Okay.

5 Did you know -- strike that.

6 Did -- did you and Mr. Balwani use "FS" to
7 refer to anything else during your time managing the
8 company together?

9 A I -- I don't know. That's what I think it is,
10 sitting here now.

11 Q Okay.

12 At this time, in September of 2015, had the
13 company not developed a -- a method that was capable of
14 performing 70 percent of tests on fingerstick?

15 A We had developed methods that were capable of
16 performing 70 percent on fingerstick.

17 I -- I don't know that we had operationalized
18 them in the lab and/or that we were getting the ordering
19 pattern to be able to see that in the people who were

20 serving it at this time. I -- I don't know where we
21 were on it by September of '15.

22 Q Okay.

23 So your testimony is that Theranos had
24 developed a method to perform all tests -- or 70 percent
25 of all tests with fingerstick but had not

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620

1 operationalized that in the lab.

2 Is that your testimony?

3 A We'd developed multiple methods.

4 I believe by this point we'd operationalized
5 the menu that we thought would realize that, but we
6 never got the patient traffic that matched those
7 ordering patterns.

8 Q And then Mr. Balwani then goes on to write at
9 8:58 -- so directly after that text message -- "In
10 parallels from today onwards, we need legal strategy to
11 deal with (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) aggressive, through
12 lawyers only."

13 Do you see that?

14 A I do.

15 Q Was Mr. Balwani referring here to (b)(6),(b)(7)(C)
16 (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) of the FDA?

17 A I -- I don't know. I can, sitting here now,

18 guess that (b)(6);(b)(7)(C) but

19 I don't know.

20 Q Did you view your interactions with the FDA as
21 aggressive?

22 A You know, not up until this point. During
23 this inspection, and after it, I think we made very
24 significant mistakes in how we interacted with them.

25 And I regret that deeply and have tried to

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621

1 change our entire legal infrastructure to do it the
2 right way.

3 Q So back in September of 2015, did you agree
4 with Mr. Balwani that you need to engage on a legal
5 strategy to deal with the FDA aggressively?

6 A I -- I don't know.

7 I know that we, from this point, did not deal
8 with the FDA the right way. We made mistakes in how we
9 engaged with them.

10 Q Did you have any conversations outside of
11 these text messages with Mr. Balwani about dealing with
12 FDA aggressively?

13 A I -- I can't sit here now and remember
14 specific ones.

15 I remember, during this time, being really

16 upset that I thought we had been doing the right thing
17 in terms of how we were engaging with them and deferring
18 to others, including counsel, on things that I probably
19 shouldn't have in how we engaged with them.

20 And we didn't take a constructive approach,
21 and I think that really hurt us.

22 Q What do you mean by you didn't take a
23 constructive approach?

24 A We were -- we ended up being aggressive in our
25 responses. And that was the wrong thing to do.

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622

1 BY MR. KOLHATKAR:

2 Q So a minute ago, when you said sort of you'd
3 come to realize that Theranos made mistakes with -- in
4 connection with its interactions with the FDA, other
5 than sort of the aggressive responses, what -- what
6 mistakes are you referring to?

7 A We had a team of people who believed that we
8 were properly operating with the systems as LDTs and
9 that the fact that they had not yet been documented
10 under the quality system was consistent with public
11 guidance on LDTs.

12 And instead of responding to the FDA coming in
13 and saying, "Okay, you have concerns, we'll do whatever

14 it takes to fix it" and -- and do what we've ultimately
15 done in terms of how we've responded to the lab and
16 responded to FDA, they fought -- they fought the agency,
17 right, and they told them they didn't have jurisdiction.

18 And that was completely the wrong approach.

19 BY MS. CHAN:

20 Q Did you agree with your attorneys at the time
21 to fight with the agency?

22 (Simultaneous colloquy.)

23 MR. DAVIES: I mean, look, we -- we're not --
24 so far, we haven't gone into the content of
25 conversations with counsel. You're -- you're right at

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623

1 that line.

2 And asking whether she agreed with legal
3 advice is asking what the legal advice was.

4 So she's talked about approach and whether
5 the -- and -- and her reaction to the approach. That
6 doesn't go into the content of the legal advice.

7 MR. KOLHATKAR: I guess I wanted just one
8 clarification on the last answer, was when you referred
9 to just "a team," who did you mean by "the team"? Maybe
10 that --

11 MR. DAVIES: That's fine.

12 MR. KOLHATKAR: -- that'll help clear it up.

13 THE WITNESS: Yeah, it -- it was a team led
14 by -- by counsel. I think we -- we were --

15 MR. NEAL: Wait. Hold on a second. That was
16 a team led by counsel.

17 Going back to the -- it seems to me you
18 could -- if you want, you could ask whether she agreed
19 at the time with the -- with an aggressive approach or
20 didn't.

21 MR. DAVIES: That's fine.

22 MR. NEAL: Yeah.

23 THE WITNESS: Yeah, I -- I deferred to it.

24 I didn't know what to do when FDA came in to
25 inspect. I thought we'd been doing the right thing, and

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624

1 I tried to hire people I thought were the best in the
2 space to say, what -- how do you handle this.

3 BY MS. CHAN:

4 Q Who else was interacting with your counsel
5 besides yourself at the company?

6 A Sunny was, and then whatever internal teams
7 were dealing with the matters that the -- the counsel
8 were leading.

9 So (b)(6);(b)(7)(C) who was internal counsel,

10 and then probably some of the technical leads, as well.

11 Q Okay.

12 And who would have the authority at the
13 company to decide how to deal with the FDA?

14 A Well, as we discussed in prior meetings, I
15 was -- and am -- CEO of the company.

16 In this case, I made the mistake of deferring
17 to people on the strategy because I -- I didn't know
18 what the right thing to do was. And it was the wrong
19 strategy.

20 Q We discussed earlier in your testimony about
21 the number of Walgreens stores that Theranos believed it
22 would be rolling its services out to.

23 Do you remember that?

24 A The number -- would you say it one more time?
25 Switching to Walgreens. Yeah.

↑

625

1 Q The number of Walgreens stores that Theranos
2 would be rolling out to?

3 A Yes.

4 Q Do you remember the discussion about that --

5 A Generally, yes.

6 Q -- during your testimony?

7 A Yes.

8 Q Sorry. I just want to remind you not to talk
9 over each other, and I'll try and do the same thing.

10 A I'm sorry.

11 Q In order for us to have a clean record, I
12 think I have to ask the questions and then you should
13 answer and vice-versa.

14 I'll try, also, not to ask the next question
15 before you answer.

16 A Absolutely.

17 Q Okay.

18 A Sorry about that.

19 Q In your mind, what's the best source of
20 information on the number of Walgreens stores that
21 Theranos could roll out to in -- at any moment in time?

22 MR. NEAL: Could I hear -- could I have that
23 question read back?

24 (Record read as follows:

25 "In your mind, what's the best source

↑

626

1 of information on the number of Walgreens
2 stores that Theranos could roll out to at
3 any moment in time?")

4 THE WITNESS: So I don't -- I don't think
5 there was a single source of information on that.

6 As you know, the relationship was dynamic and
7 changed throughout the course of the relationship.

8 It -- at different points in time, there's --
9 there's indicators.

10 I -- I think the amendment that talked about
11 the number of what they called gold stores that they
12 were committing to build and the presence in multiple
13 states is sort of one indicator that we certainly
14 focused on a lot.

15 I think the other is that, for a long time, we
16 and they both actively described it as a relationship to
17 roll out nationally.

18 BY MS. CHAN:

19 Q So if we wanted to know as of, say, May 2014,
20 how many stores Theranos and Walgreens had discussed
21 rolling out to at that point, what would we need to look
22 to, or who would have that information?

23 A I -- I don't know.

24 If -- if Sunny were at the company, I would
25 have asked him that question.

↑

627

1 But I don't know.

2 I'm sure if -- if you would like us to piece
3 it back together for you, we could try to do that.

4 Q So in your mind, Sunny would have the best
5 information about that?

6 A When he was at the company, yes. That --
7 that's where I would have gone.

8 Q When did Walgreens make its first innovation
9 fee payment of \$25 million?

10 A I don't know specifically. I think in 2013.
11 Maybe before that.

12 Q So sometime in 2012 or 2013?

13 A Yeah.

14 Again, I don't know specifically.

15 Q Were you aware of discussions in 2012 whereby
16 Walgreens' auditor was asking for evidence that Theranos
17 would be able to repay the \$25 million fee if paid to
18 Theranos by Walgreens?

19 A I don't remember that.

20 Q Were you aware that Theranos had submitted a
21 letter from Fidelity evidencing its extension of a line
22 of credit to Theranos to show that Theranos would be
23 able to repay the \$25 million?

24 A I may have been at the time. I -- I don't
25 have memory of that, sitting here now.

↑

1 Q Were you aware that Walgreens' auditor asked

2 for evidence again in 2014 to show that Theranos would
3 be able to pay back the \$100 million innovation fee
4 Walgreens had paid in early 2014?

5 A I don't think so.

6 MR. NEAL: Are you done with this?

7 MS. CHAN: Yes. You can put that exhibit
8 aside.

9 (SEC Exhibit No. 264 was marked for
10 identification.)

11 BY MS. CHAN:

12 Q I'm handing to you what's been marked as
13 Theranos Exhibit 264.

14 Exhibit 264 purports to be a September 23rd,
15 2014, e-mail from Elizabeth Holmes to Sunny Balwani with
16 subject line "Re: innovation payment letter."

17 And starting Bates number THPFM0000696484.

18 Have you seen Exhibit 264 before?

19 A I don't remember it, but I don't have reason
20 to doubt the e-mail.

21 Q What is Exhibit 264?

22 A Do you mind if I take a minute to look at it?

23 Q Sure.

24 A It appears to be a set of e-mail exchanges
25 back and forth mostly between Sunny and Walgreens on the



1 innovation payment.

2 Q Did you draft Exhibit 264 and send it on or
3 about September 23rd, 2014?

4 MR. NEAL: Well, wait a minute.

5 When you say "264," you're referring to the
6 whole exhibit?

7 MS. CHAN: This is Exhibit 264.

8 MR. DAVIES: Yeah, you just asked for --

9 (Simultaneous colloquy.)

10 MR. NEAL: Yeah. Yeah, I know. But you said
11 did -- did she draft it. She didn't --

12 MR. DWYER: Are you just --

13 MR. NEAL: There's a whole bunch of stuff here
14 she clearly didn't draft.

15 MR. DWYER: Are you just asking about that top
16 e-mail?

17 BY MS. CHAN:

18 Q Did you draft and send Exhibit 264?

19 MR. NEAL: Same problem.

20 Are you talking about the first e-mail?

21 MS. CHAN: Yes, I'm talking about the first
22 e-mail.

23 MR. NEAL: Okay.

24 THE WITNESS: Again, I don't remember it, but

25 I don't have reason to doubt the document.

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630

1 BY MS. CHAN:

2 Q And did you receive and review Mr. Balwani's
3 e-mail to you on September 11, 2014, on or around that
4 date?

5 A I -- I don't remember receiving or reviewing
6 it.

7 Q Do you have any reason to doubt that you
8 received it on that date?

9 A No.

10 Q So if you look at the first page of Exhibit
11 264, there is an e-mail from (b)(6);(b)(7)(C) at Walgreens
12 to Mr. Balwani.

13 Do you see that?

14 A Yes.

15 Q And (b)(6);(b)(7)(C) works for Walgreens.
16 Did you understand that at the time?

17 A In 2014?

18 Q Yes.

19 A Yes.

20 Q Okay.

21 And who is (b)(6);(b)(7)(C)

22 A I'm not sure. I think he was in the finance

23 department at Walgreens.

24 Q So if you look at (b)(6);(b)(7)(C) e-mail to Mr.
25 Balwani, he says:

631

1 "I went back and took a look at the contract.
2 It doesn't offer much guidance on this point. Schedule
3 B, Section 66, includes the following sentence:

4 "Further, the parties shall agree upon the
5 appropriate measure in order to measure collectibility
6 as it relates to the initial \$25 million payment."

7 Did you understand this e-mail chain to be
8 referring to the collectibility by Walgreens of the \$25
9 million innovation payment that it made to Theranos in
10 2012?

11 A Again, prior to this conversation, I didn't
12 have memory of this e-mail exchange.

13 Sitting here now, yes, that looks like what it
14 appears to be.

15 Q Okay.

16 And now this is in 2014.

17 And at that time, you understood that
18 Walgreens had accelerated the \$75 million remaining
19 innovation fee to Theranos, correct?

20 A Yes.

21 Q Okay.

22 So he then goes on to copy a number of e-mails
23 from 2012 dealing with the initial \$25 million
24 innovation payment, correct?

25 A Yeah, I mean, I -- I don't know if he copied

↑

632

1 them or if it was a response to that exchange or what.

2 But I see the e-mails.

3 Q Okay.

4 And then the last paragraph of this e-mail, he
5 says:

6 "While the innovation fee has been paid, the
7 concept of a fee being earned is still at play within
8 the contract. As such, I would take the position that
9 the fee is outstanding as (b)(6);(b)
7(c) used that term."

10 Were you aware that Walgreens believed the
11 innovation fee, although paid to Theranos, still needed
12 to be earned?

13 A No.

14 My memory was that we thought because we had
15 provided exclusivity and amended the contract, that we
16 had earned payment.

17 Q So Mr. Balwani then sends this e-mail on to
18 you, correct?

19 A Yes.

20 Q And you respond back to him, and you say, "Do
21 we need to follow up here?"

22 Do you see that?

23 A Yes.

24 Q Why were you asking that question?

25 A I don't know.

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633

1 Q Did -- did you know whether Mr. Balwani ever
2 followed up with (b)(6),(b)(7)(C) on that?

3 A I don't.

4 Reading it now, I would assume he did.

5 Q Were you aware in 2014 that Theranos had
6 retained KPMG to conduct a review of its 2012 and 2013
7 financial statements?

8 A Sitting here now, I didn't remember the timing
9 of it, but I'm sure I was at the time.

10 Q Were you aware that KPMG was asked to
11 determine how the first Walgreens innovation fee payment
12 should be accounted for in Theranos's financial
13 statements?

14 A No.

15 Q Were you aware that KPMG --

16 A I don't know what it was at the time. I can't

17 remember the interactions in 2014 around it.

18 Q Were you aware that KPMG believed in 2014 that
19 the initial innovation fee payment should be accounted
20 for as a customer deposit on Theranos's balance sheets
21 and should not be recognized as revenue?

22 A No. I -- I don't have memory of that.

23 Q Who was managing the relationship with KPMG at
24 Theranos?

25 A I think it was (b)(6);(b)(7)(C)

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634

1 (Reporter clarification.)

2 BY MS. CHAN:

3 Q Was Mr. Balwani involved in managing that
4 relationship, as well?

5 A I think so.

6 Q Did you have any interactions with KPMG in
7 2014?

8 A I don't know.

9 Q You can put that exhibit aside.

10 Did Theranos and Walgreens have any further
11 discussions about the innovation fee in late 2014, early
12 2015?

13 A I can't remember specifically, but probably.

14 Q Did Theranos and Walgreens discuss the

15 innovation fee with respect to the new contract
16 amendment the parties were contemplating in late 2014,
17 early 2015?

18 A Again, I -- I can't remember specifically, but
19 I -- I would believe we would have.

20 Q Why do you believe you would have?

21 A First, looking at this e-mail; and then,
22 secondly, just generally remembering the Boots team
23 wanting to open back up the contract and that there were
24 negotiations certain about the contract overall as -- as
25 Boots came in.

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635

1 Q Do you recall the innovation fee payment being
2 one of the terms that the Boots team wanted to
3 renegotiate?

4 A I don't recall that specifically, but I know
5 they -- they wanted to renegotiate the whole contract.

6 BY MR. HABERMEYER:

7 Q Do you have recollection of what their
8 objectives were in that negotiation or what -- what they
9 wanted from Theranos?

10 A I -- I don't know what they wanted.

11 I -- I know that -- at least my impression was
12 that they were trying to restructure many things the old

13 Walgreens management team had done.

14 (SEC Exhibit No. 265 was marked for
15 identification.)

16 BY MS. CHAN:

17 Q I'm handing to you what's been marked Theranos
18 Exhibit 265.

19 Exhibit 265 purports to be a February 25th,
20 2015, e-mail from Sunny Balwani to Elizabeth Holmes.
21 Subject line is "Forward: Theranos, Walgreens, Boots
22 Alliance draft contract," with starting Bates number
23 THER-0982058.

24 And there are two attachments which start with
25 Bates number THER-0982059 and THER-0982095.

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636

1 Have you seen Exhibit 265 before?

2 A I don't know. I -- I don't have reason to
3 doubt the e-mail chain.

4 Q What is Exhibit 265?

5 A It looks like an e-mail exchange and a draft
6 of one of the Walgreens contract amendments.

7 Q Did you review and receive Exhibit 265 on or
8 about February 25th, 2015?

9 A I don't doubt that I received it. I don't
10 know that I reviewed it.

11 Q So here in this e-mail, you see that Mr.
12 Balwani is forwarding to you an e-mail he received from
13 (b)(6);(b)(7)(C) attaching a draft of the
14 Theranos/Walgreens amended contract.

15 Do you see that?

16 A I do.

17 Q Okay.

18 And if you turn to the second attachment at
19 2099 -- actually, the -- I think the two attachments
20 actually start on 2098.

21 But there's a section halfway down the page on
22 2098 on exclusivity and then on 2099, there are a number
23 of significant changes to the document in addition to
24 that exclusivity term.

25 Do you see that?

↑

637

1 A Yes.

2 Q So are these the additional exclusivity rights
3 that Theranos had granted to Walgreens earlier in 2013?

4 A I -- I don't know. I don't know that I have
5 ever seen -- have actually reviewed this document
6 before.

7 Q You don't think that you reviewed this at the
8 time you received it in February 2015?

9 A I don't.

10 Q And then if you turn the page to 2100 -- I'm
11 sorry -- and 2101, which is two pages later, you'll
12 see -- on 2100, starts at Paragraph 5. There is a
13 section for the innovation fee.

14 And it notes that Walgreens has paid to
15 Theranos an innovation fee of \$100 million.

16 Do you see that?

17 A Mm-hmm.

18 Q And going on to then little "b" of 5, which is
19 on the next page at 2101 --

20 A Yes.

21 Q -- it appears that Walgreens left in language
22 pertaining to how Theranos would earn the \$100 million.

23 And you can go ahead and read 5b to yourself.

24 MR. NEAL: Did you -- is there a question?

25 MS. CHAN: Oh. I asked Ms. Holmes to read 5b

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638

1 to herself.

2 BY MS. CHAN:

3 Q And let me know when you're done.

4 A Ready.

5 Q Was this consistent with your understanding
6 that even though Walgreens had paid the \$100 million to

7 Theranos, that Walgreens thought Theranos would still
8 need to hit certain revenue milestones in order to earn
9 the \$100 million innovation fee?

10 A No.

11 Q Did you also understand that Theranos would
12 need to refund the entire amount if those milestones
13 weren't met?

14 A I'm -- I'm familiar with this provision from
15 the -- I think it was the original contract agreement.

16 But as you can see, we were renegotiating
17 everything as we went through these different iterations
18 of the relationship.

19 And as I've said, we -- I believed, based on
20 my discussions with Sunny, that we were at a point in
21 which we'd earned it because of the exclusivity that
22 we'd provided to Walgreens.

23 Q So did you disagree with -- with having this
24 provision in, then?

25 A Again, I don't think I ever even read this

↑

639

1 draft of the amendment.

2 Q Did you ever communicate to Walgreens around
3 this time -- time frame, February 2015 or spring of
4 2015, that Theranos believed that \$100 (sic) innovation

5 fee was nonreturnable?

6 A I -- I don't know. I -- I was in a couple
7 meetings with them, but I wasn't in most of these
8 meetings.

9 Q So if you go back to Mr. Balwani's e-mail to
10 you, which is on the first page of Exhibit 265, he says,
11 "Just received this from WAG."

12 And he's referring to the draft contract,
13 correct?

14 A I think so.

15 Q Okay.

16 And then underneath, it says, "The innovation
17 payment language is closer to what he had wanted."

18 Do you see that?

19 A Yes.

20 Q What was Mr. Balwani referring to here?

21 A I don't know.

22 Q Why would he write this if you both disagreed
23 with the way that Walgreens was requiring as to Theranos
24 earning back the \$100 -- \$100 million innovation fee?

25 A Sitting here now, looking at this, I read this

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640

1 as in the middle of a negotiation. And so I -- I don't
2 think he's saying that it's what we wanted. There seems

3 to be something that is better than a prior draft. I
4 don't know what that was.

5 BY MR. KOLHATKAR:

6 Q Do you recall discussing the innovation
7 payment with Mr. Balwani in the context of
8 negotiating -- renegotiating this contract in early
9 2015?

10 A I don't recall specific conversations.

11 Q Generally, do you recall the nature of your
12 conversations with Mr. Balwani around this time
13 concerning the innovation payment?

14 A Again, my memory was that we thought we'd
15 earned it because of the exclusivity and the investments
16 that we'd made in the relationship.

17 Q Did -- did -- do you recall any general
18 strategy and on how you were going to effectuate that in
19 the next Walgreens memo?

20 A I don't.

21 I know that we were looking at changing a
22 number of things, including moving to a rental model,
23 and that there were a lot of different sort of
24 negotiating tactics that were at play. I -- I don't
25 know the specifics of the approach.

↑

1 I -- I would actually defer to Sunny on that.

2 BY MS. CHAN:

3 Q Was there ever a time when Theranos was
4 contemplating terminating the Walgreens contract?

5 A I don't know. I'm -- I'm not sure.

6 Q Do you remember that happening sometime in
7 early 2015, as the companies were renegotiating the
8 contract?

9 A I don't think we were actually intending to
10 terminate. I think that was a negotiating tactic that
11 Sunny, in particular, sometimes used in trying to get
12 better terms in a deal.

13 Q Okay.

14 If you wouldn't mind taking back Exhibit 221
15 over there.

16 MR. NEAL: I notice we've been going a little
17 over an hour. Can we take a break, or is this near the
18 end of a series for you?

19 MS. CHAN: Sure, we can take a break, short
20 break.

21 We're off the record at 10:17 a.m.

22 THE VIDEOGRAPHER: This ends DVD 1.

23 (A brief recess was taken.)

24 MS. CHAN: We're on the record at 10:32 a.m.

25 BY MS. CHAN:

1 Q Ms. Holmes, did you have any substantive
2 conversations with the SEC staff during the break?

3 A No.

4 Q Okay.

5 If you would turn to Exhibit 221, which you
6 have in front of you, and if you could please turn to --
7 let me find the page for you first, since I know the
8 Bates numbers are off.

9 So if you could turn to Page 116 of your copy.
10 And that is Bates number ending 6354.

11 Okay. And if you look, there is a number of
12 text messages between you and Mr. Balwani on April 9th,
13 2015, starting at 8:22.

14 Do you see that?

15 A Yes.

16 Q So Mr. Balwani is writing to you.

17 And he writes, "If contract terms and we don't
18 have 1,000 stores, what happens to 50 million remaining
19 innovation payment?"

20 And you respond, "Depends on Y terms."

21 What did you understand Mr. Balwani to be
22 asking you there?

23 A I have no idea.

24 Q Well, when Mr. Balwani is referring to 1,000
25 stores, is he talking about Walgreens here?

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643

1 A I don't know.

2 I'm-- sitting here now, I could infer that,
3 maybe, from the innovation payment comment, but I'm --
4 I'm not sure.

5 Q And did you understand "terms" to mean
6 terminated, so if contract terminates and you don't have
7 1,000 stores, what happens to 50 million remaining
8 innovation payment?

9 A I -- I don't know. I don't remember this
10 text. I don't know what the context was.

11 Q You don't remember these text messages at all?

12 A I do not.

13 BY MS. WINKLER:

14 Q Did you have a contract with anybody other
15 than Walgreens in April of 2015?

16 A In the retail space or in general?

17 Q In the retail space.

18 A In the retail space?

19 There was a Safeway contract that was still in
20 effect. And I don't think we'd signed contracts with
21 any of the other retailers.

22 Q And at that time, had you filled out any
23 stores at Safeway?

24 A I -- Safeway had built out their complete
25 national footprint. We had not operationalized it yet.

↑

644

1 BY MS. CHAN:

2 Q Okay.

3 And Walgreens would have been the only
4 retailer that you have a contract with where they paid
5 an innovation fee to you, correct?

6 A Again, I -- I don't know if he's talking about
7 negotiating a new contract here or if he's talking about
8 the existing contract.

9 I'm not sure what this -- what this is or if
10 it's with Walgreens.

11 We -- we were actively engaged in -- in
12 discussions on negotiating agreements with other
13 retailers.

14 BY MR. KOLHATKAR:

15 Q Did any those negotiations involve the payment
16 of an innovation fee to Theranos?

17 A I -- I -- I don't --

18 Q CVS or others?

19 A I don't know. I don't know.

20 Q Do you recall any that -- with that -- where
21 that was discussed as part of the negotiation?

22 A I -- I know there was -- there was ongoing
23 interaction and engagement with -- with Walmart and CVS
24 at different points in time. I don't remember whether
25 there was payment negotiations with them.

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645

1 BY MS. CHAN:

2 Q So at 8:54, going back to Exhibit 221, you
3 then write back to Mr. Balwani, "Scale now if need."

4 And Mr. Balwani responds, "So force-build
5 1,000 stores? I don't think that's intelligent."

6 Do you know what you were referring to here
7 when you said "scale now if need"?

8 A I don't.

9 Q You don't think you were referring to scaling
10 now with Walgreens?

11 A I have no idea.

12 Q And then a few more text messages down,
13 starting at 9:14 p.m., there's a text message from you.

14 And you say, "It terms because we term, then
15 they -- then we return. They term and we don't want to,
16 we keep."

17 Do you recall what this is referring to?

18 A No.

19 Q Were you talking about the fact that if they
20 were to terminate the agreement and Theranos didn't want
21 to, that you would get to keep the innovation fee
22 payment, but that if Theranos decided to terminate, that
23 you would have to return the payment to them?

24 A Again, I -- I don't remember these text
25 messages.

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646

1 Sitting here now, that -- that could be an
2 interpretation of it.

3 BY MR. KOLHATKAR:

4 Q Sitting here today, what is your
5 interpretation of it?

6 A Do you mind if I take a minute just to read
7 the whole string to try to get context?

8 Q Of course.

9 A Sitting here now, my interpretation is that
10 we're discussing terms to be negotiated for a possible
11 Walgreens amendment, just based on the context of the --
12 of the text.

13 Q Okay.

14 And how do you interpret that line, "If terms
15 because we term, then we return, they term and we don't

16 want to, we keep"?

17 A I'm speculating, but my read is that it's
18 saying that if they terminate the contract and we didn't
19 want to terminate the contract, we keep whatever
20 payments had been made; if we terminated, then we'll
21 refund payments to them.

22 BY MS. CHAN:

23 Q So it seems this text message chain is
24 suggesting that as of April 2015, neither you nor Mr.
25 Balwani were certain as to whether Theranos could keep

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647

1 the innovation fee that it received from Walgreens; is
2 that right?

3 A My read, in looking at this now, is that we
4 were talking about some terms that we would be
5 negotiating in the contract in renegotiating the whole
6 contract.

7 I -- I think -- my understanding is there was
8 many different sort of provisions and scenarios that we
9 talked with them about in terms of how the contract
10 would be amended.

11 Q If you can turn to a different page in 221,
12 which is Page 238 -- and for Mr. Neal, that is page
13 ending 6476 -- so you'll see that there are a number of

14 text messages on this page from October 16th, 2015.

15 Do you see that?

16 A I do.

17 Q And they're between you and Mr. Balwani again?

18 A Yes.

19 Q October 16, 2015, that would have been the day

20 after the Wall Street Journal article -- Wall Street

21 Journal article about Theranos was published, correct?

22 A It was about then. I -- I don't remember the

23 exact date.

24 Q Okay.

25 So if you look at the third text message down,

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648

1 at 7:26 p.m. from Mr. Balwani, he says, "Okay. WAG

2 freaking out. Lack of transparency."

3 Do you see that?

4 A Yes.

5 Q And do you understand that "WAG" is Walgreens?

6 A Yes.

7 Q What did you understand him to be referring to

8 here?

9 A I -- I don't know. I mean, I -- I don't --

10 I'm sorry; I don't remember my text exchanges with Sunny

11 from years ago.

12 I can sit here and try to reconstruct it now.

13 Q You -- you don't remember the text exchange at
14 all on this page?

15 A I don't.

16 BY MR. KOLHATKAR:

17 Q Do you remember discussing with Mr. Balwani
18 the concerns Walgreens had following Mr. Carreyrou's
19 article?

20 A I'm just thinking back.

21 I remember that -- I remember that I had
22 talked later to (b)(6);(b)(7)(C) about the fact that we were
23 very sorry that we hadn't proactively communicated with
24 them about the FDA engagement, but that we didn't know
25 at the time what to say about it because we thought that

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649

1 we were trying to figure out what the right way to
2 handle the agency was and we were waiting to communicate
3 on it back then.

4 I know Sunny had a lot of discussions with
5 him. I don't remember the specifics of any conversations
6 with Sunny.

7 Q Do you remember when that conversation with
8 (b)(6);(b)(7)(C) was?

9 A It was later in 2015.

10 Q What -- what about -- what about before that
11 conversation; were you familiar with what -- Walgreens's
12 concerns following the -- following the October Wall
13 Street Journal?

14 A Generally, yes.

15 Q How were you made generally aware of those
16 concerns?

17 A I mean, I don't -- I don't remember specific
18 conversations. I am sure Sunny would have talked to me
19 in general about his interactions with them.

20 Q Prior -- I guess between the article coming
21 out in October 2015 and your conversation with (b)(6),(b)(7)(C)
22 (b)(6),(b)(7)(C) do you recall any communications that you had
23 directly with -- with anyone at Walgreens?

24 A I don't think I would have communicated
25 directly with anyone at Walgreens --

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1 Q So --

2 A -- besides -- besides (b)(6),(b)(7)(C)

3 Q And -- and I think it was your prior testimony
4 that generally, Mr. Balwani would be the person
5 responsible for the relationship --

6 A Yes.

7 Q -- at that time?

8 A Yes.

9 Q And so is it fair to say that if someone was
10 updating you about the Walgreens situation at that time,
11 it was likely Mr. Balwani?

12 A Absolutely.

13 BY MS. CHAN:

14 Q Did you and Mr. Balwani discuss the fact that
15 Walgreens was upset that they didn't know Theranos had
16 stopped using the nanotainer prior to Mr. Carreyrou's
17 reporting in October 2015?

18 A Yeah, again, I can't remember specific
19 conversations with him about it, but I'm sure we had
20 interactions about it.

21 BY MR. KOLHATKAR:

22 Q Do you have a general sense of what Walgreens
23 was concerned about upon publication of the article?

24 A I think there were multiple issues. One was
25 they were reacting to the press in general. But then

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1 the other was that we hadn't disclosed the engagement
2 with FDA with them -- to them yet before it was in the
3 press.

4 BY MS. CHAN:

5 Q Which engagement with FDA?

6 A The inspection.

7 Q Did you tell Mr. Balwani to tell Walgreens --
8 that he should tell them the stopping of the nanotainer
9 just happened and that it hadn't happened several months
10 ago?

11 A I don't think so.

12 I mean, Walgreens was operating with us in the
13 stores. So they would have known locally that we were
14 doing venipuncture, to the extent we were doing
15 venipuncture, as I understand it.

16 BY MR. KOLHATKAR:

17 Q But they wouldn't necessarily know why; is
18 that correct?

19 A They didn't know about the FDA inspection.

20 BY MS. CHAN:

21 Q So I just want to point to a couple more text
22 messages here.

23 A Yeah.

24 Q If you go down to 7:30 p.m. on that same day,
25 it's a few lines down, Mr. Balwani writes to you, "But

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652

1 it was a matter of communication."

2 Do you see that?

3 A Yes.

4 Q "I had actually thought about it but got too
5 busy to chat with you."

6 And then you respond, "Then let's show them
7 that this is -- this literally is still up in the air,
8 so we literally just decided since the discussion is
9 getting aired out in the press."

10 Do know what you were referring to there?

11 What were you referring to when you said,
12 "Let's show them that this is literally still up in the
13 air"?

14 A Again, I can't remember the exchange, but from
15 reading it now, I think it's -- the text message right
16 above it, that we hadn't finalized the plan with FDA yet
17 and still haven't, namely that we were engaging with the
18 team advisers we had on FDA who basically said, "Don't
19 talk about this until you've successfully resolved it,"
20 in part because we thought there was a potential to not
21 get 483s in -- in the engagement with FDA.

22 Q Okay.

23 And a couple messages down, at 7:32, Mr.
24 Balwani then says, "However, issue is, we didn't tell
25 them in advance about switching."

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1 And you respond, "We'll have to present well

2 that we hadn't decided to."

3 And then he responds again, "Bad idea at this
4 point. They know. So we need to be transparent."

5 Why was Mr. Balwani concerned about being
6 transparent to Walgreens?

7 A So I'm -- I'm not sure exactly whether I'm
8 still referring to the -- the strategy with FDA or what
9 this is referring to.

10 I'm -- I think he's trying to say we need to
11 be directly communicating with -- with Walgreens,
12 reading it now.

13 Q Were you not being transparent with Walgreens
14 previously?

15 A Again, we did not tell them that the FDA had
16 come to inspect because we thought we were to try to
17 successfully resolve the engagement with FDA before
18 communicating about it.

19 But I -- I think he and I may actually be
20 talking about two different things. I'm talking about
21 FDA, and he's talking about not using the nanotainer,
22 just from reading it now.

23 Q Okay.

24 So that's your -- that's your impression of
25 what these text messages are about now?



1 You didn't have any understanding back in
2 2015?

3 MR. DWYER: Any understanding about what?

4 MS. CHAN: About what these text messages were
5 talking about.

6 THE WITNESS: I'm sure I did in 2015. I just
7 can't remember it.

8 BY MS. CHAN:

9 Q Okay.

10 So you don't remember what this text message
11 exchange was about in 2015?

12 A I don't.

13 Q You can put that one aside.

14 How much money has Theranos received from the
15 Department of Defense for services that it provided?

16 A I know there was a contract that was through
17 the Burn Association which was a few hundred thousand
18 dollars. And I -- I think that any of the other sort of
19 development work that we did, we funded ourselves.

20 Q Is it fair to say that Theranos historically,
21 at least prior to 2013, made most of its revenues from
22 either the DOD or pharmaceutical companies?

23 A Again, the term "revenues," I -- I know just
24 in terms of payments, of cash that came in, there were

25 cash payments from insurance companies, also, that we

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655

1 were contracting with.

2 And I believe some of the Walgreens or Safeway
3 money may have come prior to 2013, as well. I'm not
4 sure of the dates.

5 Q Had you received payments from insurance
6 companies prior to 2013?

7 A I think so.

8 Q How much money had you received from insurance
9 companies?

10 A There were -- there was a -- there was
11 multiple insurance company contracts with Blue
12 Cross/Blue Shield plans, and I don't know the total
13 number.

14 I think each of them were anywhere from 5- to
15 \$25 million, and I think there was three or four of
16 them.

17 Q When did you receive that money from the
18 insurance companies?

19 A I don't know by memory.

20 Q Would it have been after 2010?

21 A I think so.

22 Q Okay.

23 So let me just rephrase the question that I
24 asked you, then.

25 A Yeah.

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656

1 Q Would it be fair to say that Theranos, prior
2 to 2010, made most of its revenues from DOD or
3 pharmaceutical companies?

4 A Most of the payments we received, yes.

5 Q Did Theranos make more money from its work
6 with pharmaceutical companies or from the DOD in that
7 pre-2010 time frame?

8 A Pharmaceutical companies.

9 Q What was Theranos's relationship with SOCOM,
10 or Special Operations Command?

11 A We had invested a lot in trying to configure
12 one of our MiniLab devices --

13 (Reporter clarification.)

14 THE WITNESS: -- one of our MiniLab devices to
15 meet specifications that could allow it to be used by
16 SOCOM and at one point, worked directly with them.

17 I don't -- I think there was a -- a
18 contracting mechanism through which we had -- were
19 formally engaged.

20 But I don't think we ever sought payment from

21 them, to my knowledge, or at least we weren't paid by
22 them. We -- we funded the development work ourselves.

23 BY MS. CHAN:

24 Q Were any of Theranos's manufactured devices
25 ever deployed by SOCOM?

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657

1 A My memory is that we sent them two of them,
2 but I don't think they actually used them in a
3 deployment.

4 Q Why not?

5 A Many reasons.

6 We -- I mean, at the highest level, we're only
7 able to ultimately focus on trying to make the retail
8 relationship successful, and we took on way too many
9 things at the same time.

10 And then we de-prioritized some of the
11 functionality that you would ultimately really want to
12 have to use these devices in the field.

13 Q What functionality was that?

14 A There were further reductions on size and on
15 weight and other parameters that we could have kept
16 going in the investment of -- of the technology. And we
17 didn't do it.

18 Q So SOCOM was looking for a device that was

19 smaller and lighter than the device that you had
20 available for them at the time?

21 A I -- I don't know if that's the case. I mean,
22 we -- we invested in putting a lot of technology into
23 MiniLab to be able to use it in a distributed setting.

24 We could have kept going. We stopped and sort
25 of said, okay, you know, we need to put all our

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658

1 resources onto this retail initiative.

2 I actually think that what we've built is
3 still very applicable to what they're looking for, given
4 the way they're doing testing right now. We just
5 haven't followed back up on it yet.

6 Q What about Theranos's relationship with
7 AFRICOM; what do you know about that?

8 A We --

9 Q And AFRICOM, you understand, is Africa
10 Command?

11 A I do.

12 We had engaged with them on looking at whether
13 our devices could be transported into Africa and could
14 withstand the thermal profiles that you would see in
15 those types of deployments.

16 And my memory is also on some of the decision

17 support that we were trying to build.

18 And then later had discussions with people in
19 AFRICOM around Ebola and Ebola testing in Africa.

20 Q Did AFRICOM ever deploy any of Theranos's
21 manufactured devices?

22 A They took one or two devices to Africa to look
23 at, essentially, the thermal stability and the use for
24 the operator in -- in a -- sort of testing parts of the
25 functionality of the system.

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1 Q Was the -- were the MiniLabs that were given
2 to AFRICOM ever used in a patient-testing setting?

3 A Just so I answer the question that you're
4 asking, what do you mean by patient testing?

5 Q Were they ever used for patient testing and
6 diagnosis?

7 A No.

8 Q And when you say that Theranos provided two
9 devices to AFRICOM in order to test -- did you say
10 thermal --

11 A Can you withstand the temperatures.

12 Q Okay.

13 A Can the device still operate and withstand the
14 temperature.

15 Q So they were trying to evaluate whether
16 Theranos's devices could withstand extreme temperatures,
17 like there would be in Africa?

18 A That's -- that's my memory of it.

19 And I -- I also had memory that we had built
20 a -- a custom decision-support system for them, and they
21 wanted to try that out on the -- the touch screen of the
22 device.

23 I could be wrong. I'm not -- I don't remember
24 all the specifics.

25 Q What do you know about Theranos's relationship

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660

1 with CENTCOM?

2 A We talked with them about what the greatest
3 needs are for distributed testing in military medicine
4 and had engagement on how to apply our technology
5 towards some of those problems, and then did some
6 testing of the software in one of their facilities in
7 Florida.

8 Q Who were your contacts at CENTCOM?

9 A Originally, General Mattis. And then there
10 were multiple principals underneath him.

11 The name I remember was (b)(6);(b)(7)(C) But
12 there were -- there were many people that we engaged

13 with through CENTCOM as we were trying to figure out
14 whether we could apply the technology there.

15 Q Was there ever a plan to deploy Theranos's
16 manufactured devices in Afghanistan?

17 A We were working to do that at one period of
18 time, yes.

19 Q Did you end up deploying a device there?

20 A No.

21 Q Why not?

22 A Again, focus.

23 We were trying to execute on the retail
24 operation that was taking up more than all of our time,
25 and we couldn't put the continued development into the

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661

1 systems to be able to get them to the specifications to
2 get them into the field.

3 Q Was there also an issue that was brought to
4 your attention with respect to the fact that Theranos
5 had not received FDA approval for its devices yet and
6 that CENTCOM could not use or deploy Theranos's --
7 Theranos's devices if they did not have FDA approval?

8 A We engaged with the FDA specifically on
9 whether to -- and how to deploy technology in
10 Afghanistan.

11 The concept, if we had gone through with it,
12 was that those would be for research use only in an
13 investigational program.

14 But, in general, yes, we were aware that for
15 any military organization to adopt the technology in the
16 way in which it was being used for clinical use, you
17 would need FDA clearance.

18 Q Was --

19 A And that -- just to complete the answer, that
20 awareness happened over a period of time. Because we
21 actually went in and talked to them about whether they
22 could use us as a CLIA lab, like they used Quest or
23 LabCorp, and ultimately reached that conclusion.

24 Q Was a Theranos-manufactured device ever
25 deployed in the battlefield?

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662

1 A No.

2 Q Was it ever deployed in a medevac helicopter?

3 A No.

4 Q Was a Theranos-manufactured device ever
5 deployed in an Apache helicopter?

6 A No.

7 Q Were you ever working towards any of those
8 venues?

9 A Yes. Absolutely.

10 Q Okay.

11 And is the reason why they were never deployed
12 because Theranos was focused on the retail opportunities
13 at the time?

14 A Yeah. We couldn't keep investing on multiple
15 total different product lines.

16 Q In the end, did Theranos ever deploy any of
17 its devices with DOD, aside from the Burn Center?

18 A There's the use of the technology for the
19 thermal testing and, I think, decision support in
20 Africa.

21 I don't know -- there was some engagement with
22 Walter Reed around a diabetes program, and I don't know
23 where that ended up.

24 And then, otherwise, it was just a lot of
25 invention and development of technology around some of

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663

1 these sort of use cases that they have for how to
2 miniaturize and distribute technology.

3 Q Who was managing the relationship with the
4 Walter Reed Foundation?

5 A It was early.

6 Maybe one of the people in the commercial team

7 that we had at that time. I'm -- I'm not sure.

8 Q You're not aware of any deployment being made
9 of Theranos's manufactured devices with Walter Reed?

10 A I -- I don't think so. I can't remember how
11 it played out.

12 Q And then just going back, quickly, to Special
13 Operations Command, SOCOM, who were your contacts there?

14 A There was a principal within SOCOM. And I --
15 I can't remember his name, sitting here now, but he was
16 one of the people working in military medicine and
17 trying to be able to get distributed technologies that
18 can actually do testing.

19 Q Was that (b)(6);(b)(7)(C) or (b)(6);(b)(7)(C)
20 (b)(6);(b)(7)(C)

21 A I don't know. I don't -- I don't connect to
22 that name. But I'm -- it could be. I'm not sure.

23 Q Are you familiar with (b)(6);(b)(7)(C)

24 A I recognize the name.

25 Q Was she acting on behalf of SOCOM during your

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664

1 discussions with SOCOM?

2 A I think she was the contracting person to
3 facilitate the development work for SOCOM.

4 Q Who was on your team leading discussions for

5 Theranos with SOCOM?

6 A I -- I don't remember. I know (b)(6),(b)(7)(C) did
7 some of the follow-up and coordination with, I think,
8 (b)(6),(b)(7)(C) specifically.

9 I -- I don't remember who was actually
10 interacting with the SOCOM principals.

11 Q Were you involved in interacting with them?

12 A I was, yeah.

13 Q And what about for AFRICOM; who was your
14 contact at AFRICOM?

15 A I don't remember the name. It was a woman in
16 Special Operations, and then we also had contacts higher
17 up that knew people who were part of the company.

18 Q Okay.

19 Was this (b)(6),(b)(7)(C)

20 A I think so, yeah.

21 Q Was there a (b)(6),(b)(7)(C) who was also
22 involved in those discussions?

23 A I don't know.

24 Q Who on the Theranos side was involved in those
25 discussions besides yourself?

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665

1 A I -- I remember her coming to Theranos. And I
2 think she met with a team of people. I don't remember

3 who was in the meeting. And -- and then there may have
4 been some of our board members who were engaged with
5 AFRICOM, as well. I'm not sure specifically.

6 Q Who on your board would have been engaged with
7 AFRICOM?

8 A It was in an informal context. They just all
9 knew each other.

10 The board members who knew people at
11 AFRICOM -- and I don't know whether the specific
12 conversations happened -- were -- were George Schultz,
13 Gary Roughead, and Jim Mattis.

14 Q Did they have discussions with AFRICOM without
15 you?

16 A I don't know.

17 Q Would you have authorized your board to have
18 discussions with AFRICOM without you knowing?

19 MR. NEAL: Wait. I don't understand that
20 question.

21 BY MS. CHAN:

22 Q Did you authorize your board to have any
23 discussions with AFRICOM without you knowing?

24 A I don't think there was ever an interaction
25 with the board in which I was authorizing them to do

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1 things or not. They have a lot of relationships and
2 would actively and openly engage with people that they
3 knew, including ones who were engaging with Theranos.

4 So, I mean, we met, you know, many of these
5 people through the board members. And I -- I don't know
6 what conversations they had or didn't have.

7 Q Handing you to what's been previously marked
8 as Theranos Exhibit 246.

9 Exhibit 246 purports to be a document with the
10 title, "Exemplary reports from Pharmaceutical Partners,"
11 with starting Bates number TS-000496.

12 Have you seen Exhibit 246 before?

13 A I -- I don't recognize it in this format, but
14 I recognize some of the reports.

15 Q I'll represent to you that this is a copy of
16 the document that was included in Rupert Murdoch's
17 investor binder on or about December 4th, 2014.

18 Were you involved in compiling this document
19 for inclusion in the investor binder?

20 A I don't know.

21 BY MR. KOLHATKAR:

22 Q I guess -- sorry -- in a -- in your answer,
23 you said you recognized some of the reports.

24 So I guess, which ones do you recognize?

25 A I just flipped it open and saw the GSK report.

1 But I -- I generally remember that we had reports like
2 these.

3 Q I guess look -- looking through the rest of
4 the documents, do you recognize -- other than the GSK
5 report, do you recognize any of the other reports?

6 A I mean, at a high level, that there are
7 Theranos/Pharma sort of development or project reports,
8 yes.

9 BY MS. CHAN:

10 Q You'll see starting on 498 -- or, sorry, 497,
11 there is a report concerning Pfizer. And then starting
12 on 530, there is a report concerning -- there must be a
13 report in the middle.

14 On 524, there is a report concerning
15 GlaxoSmithKline.

16 And then on 530, there is a report concerning
17 Schering-Plough.

18 Do you see that?

19 A Yes.

20 Q What were these three reports about?

21 A They're -- they're all different.

22 At the highest level, they were about programs
23 in which the TSPU or MiniLab had been used for

24 pharmaceutical companies.

25 Q Who drafted the reports?

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668

1 A I think, again, all different.

2 I believe Theranos drafted the Pfizer
3 document.

4 GSK drafted the GSK document.

5 And I think the last one is an actual
6 development report done by Theranos for Schering-Plough.

7 BY MR. KOLHATKAR:

8 Q What do you mean by an actual development
9 report versus --

10 A It's -- it's literally a -- a document that is
11 purely about the developmental validation data comparing
12 the Theranos system to reference methods for
13 Schering-Plough, as opposed to the GSK one is sort of a
14 summary of what they thought, using the system in their
15 lab.

16 And the Pfizer one more broadly talks about
17 how the technology is being applied.

18 BY MS. CHAN:

19 Q Were you aware in 2014 and 2015 that these
20 reports were being included in investor materials?

21 A I think so.

22 Q Why did you include these reports in investor
23 materials?

24 A In general, we were trying to communicate with
25 investors about the broad potential of the technology.



669

1 And this is an area that described what could be done
2 with pharmaceutical companies and, we think, is -- is
3 important to how our technology can be applied.

4 Q So, in other words, the reports, in a way,
5 gave credibility to the functionality and the accuracy
6 of Theranos's manufactured devices?

7 A I don't -- I've never thought about it like
8 that.

9 But, I mean, sure. To the extent you look at
10 the actual data in the -- the Schering-Plough report, it
11 speaks to the performance of the test directly.

12 We also included a lot of data on our
13 chemistries, in general, to show people what we thought
14 the performance was.

15 Q Did you tell prospective investors that you
16 were providing this to that Theranos had drafted two,
17 three reports?

18 A I don't remember specific conversations about
19 it. But if we talked about it specifically, we would

20 have.

21 BY MR. KOLHATKAR:

22 Q Did you ever receive approval?

23 I mean, did you get feedback from -- did you
24 share the Pfizer report with Pfizer?

25 A Yes.

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670

1 Q Did you ever receive any feedback on this
2 report from Pfizer?

3 A I -- I don't remember. It was a long time
4 ago.

5 Q To your best recollection, when was this sent
6 to Pfizer?

7 A This is going to be wrong because I'm
8 guessing, but 2008.

9 Q Well before the C2 round?

10 A Yes. Yes.

11 BY MS. CHAN:

12 Q Did you send the assay development report to
13 Schering-Plough?

14 A I believe so. I don't think it would have
15 been me, personally. But yes.

16 Q Did they send you feedback?

17 A I don't know.

18 Q Did Pfizer, GSK, and Schering-Plough, did they
19 review these reports prior to you including it in the
20 binder?

21 A The GSK one was written by GSK, as I
22 understand it.

23 I believe that both Schering-Plough and Pfizer
24 had separately reviewed the Pfizer and Schering-Plough
25 reports as sent to them.

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671

1 Q Did you tell them that you were planning to
2 include them in presented investor materials?

3 A Not to my knowledge.

4 These are sort of the work product of those
5 relationships, so we had the ability to do what we
6 wanted with them, so long as we weren't publicly
7 disclosing it, in which case we would need their
8 permission, as I understood it.

9 BY MR. KOLHATKAR:

10 Q I'm -- I'm sorry. What -- what did you
11 understand your limitations were with respect to
12 disclosing your work with -- with these companies?

13 A Public statements.

14 Q In other words, your contracts with -- with
15 the pharmaceutical companies had -- had a provision like

16 that?

17 A That's my memory of it, yeah.

18 BY MS. CHAN:

19 Q Why did you label this section of the binder
20 "Exemplary Reports from Pharmaceutical Partners"?

21 A I -- I don't know that I personally labeled
22 it.

23 Sitting here now, I'm assuming that whoever
24 compiled it saw these as exemplary reports from the work
25 we did for Pharma.

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672

1 Q Were you ever concerned that the title and the
2 fact that these reports were included in the binder
3 would give the impression to potential investors that
4 these pharmaceutical companies had drafted these reports
5 and that Theranos had not drafted them?

6 A No.

7 Q Why not?

8 A Because to the extent that people were
9 interested in the reports, we were actively interested
10 in talking to them about them and we could have given
11 any context that -- that they needed.

12 Q You can put that aside.

13 Was there a time in 2015 when Theranos was

14 considering raising a C3 round of financing?

15 A I'm -- I'm not sure.

16 BY MR. KOLHATKAR:

17 Q Did Theranos ever consider raising a C3 round?

18 A What I remember, just in you asking the
19 question, is that we had done a charter amendment to
20 create a C3 series of stock. But I don't think we were
21 actually going to do a financing.

22 I think there was another reason that we were
23 doing it, to clean up things from the past. I -- I
24 can't remember specifically.

25 BY MS. CHAN:

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1 Q What do you mean by what you just said, you
2 weren't think -- you weren't thinking about doing an
3 actual financing but just to clean up things from the
4 past?

5 A There was a -- there was a reason that our --
6 our counsel had recommended that we create a new series
7 of stock. I think we were -- I'm just trying to
8 remember, sitting here now, retiring a series--

9 MR. DAVIES: Let --

10 THE WITNESS: Oh, okay.

11 MR. DAVIES: I mean, if it's what the lawyer

12 said to you, I don't think they're asking. I think
13 they're just asking more generally what your
14 understanding was as to why you said "clean up" stuff --

15 THE WITNESS: Yeah.

16 MR. DAVIES: -- is fair, and they're asking
17 you what you meant by "clean up."

18 THE WITNESS: I think it -- it had to do
19 generally with retiring certain shares that were
20 outstanding at a certain price.

21 BY MS. CHAN:

22 Q So maybe I don't -- I'm not following you
23 there.

24 What do you mean by retiring certain shares
25 that were outstanding at a certain price?

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1 A So I don't understand the details of this very
2 well, but I think that we had a series of stock that was
3 outstanding, and we wanted to not have that outstanding
4 anymore.

5 And so the solution that was recommended was
6 to file this charter amendment or certificate of
7 designation that would no longer have that stock
8 outstanding.

9 Q So you weren't actually intending to go out

10 and raise capital at that time?

11 A Correct. That's -- to my knowledge.

12 BY MR. KOLHATKAR:

13 Q Was there ever a time that -- after the C2
14 round, where Theranos considered raising more -- and
15 before 2016, where Theranos was considering raising
16 additional capital at \$20 per preferred share?

17 A Not that I can remember.

18 BY MS. CHAN:

19 Q Do you recall working with Roger Parloff on an
20 article that he was writing about Theranos for Fortune
21 Magazine in 2014?

22 A I do.

23 Q What was your involvement in the Parloff
24 article?

25 A I met with him at Theranos.

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675

1 Q And for what? For an interview?

2 A Yes.

3 David Boies had just completed a trial on our
4 IP defense, and I was to talk to him about our
5 inventions.

6 (Reporter clarification.)

7 BY MS. CHAN:

8 Q Did you reach out to Mr. Parloff, or did he
9 reach out to you initially?

10 A My understanding is David reached out to him.

11 Q David Boies?

12 A Yes.

13 Q What was the purpose of David Boies reaching
14 out to Mr. Parloff?

15 A To talk about Theranos's intellectual property
16 and how we were defending it and its potential.

17 Q So you said that you sat down for an
18 interview.

19 How many interviews did you do with Mr.
20 Parloff?

21 A I -- I don't know. At least one.

22 Q Who else was present during those interviews?

23 A I don't know.

24 Q Were they tape recorded?

25 A I don't know. I -- I can't remember.

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676

1 Q Did anyone transcribe the interview?

2 A Not that I know of.

3 Q Did you provide documents or other information
4 in response to questions from Mr. Parloff?

5 A I -- I think so.

6 Q What documents did you provide?

7 A I -- I don't know for sure.

8 I remember talking to him about the invention
9 and showing him a lot of the development reports that we
10 were working on when he was at Theranos, but I -- I
11 don't know what other materials were shared with him.

12 Q Who was helping you gather those documents?

13 A I don't know.

14 BY MR. KOLHATKAR:

15 Q At some point in time, did the scope of the
16 article change from that IP litigation to -- to other
17 issues with the company?

18 A When it was published, it was a much broader
19 piece on the company, but when I met with him, that was
20 the focus of the meeting and that was the reason that
21 David was reaching out to him, because he was a -- a
22 legal reporter for Fortune.

23 Q I guess before the publication of the article,
24 did you become aware that sort of the lawsuit angle
25 would no -- wasn't going to be the focus?

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677

1 A He -- David's PR person told me that it was
2 going to be a cover story and that it was going to be a
3 big piece on Theranos.

4 But that was the only specific sort of
5 interaction that would have conveyed that.

6 BY MS. CHAN:

7 Q So besides sitting for an interview with Mr.
8 Parloff and providing documents to him, did you do
9 anything else to help Mr. Parloff understand the company
10 and write his article?

11 A He spent a lot of time with David and David's
12 PR person.

13 And I -- I don't remember specifics of other
14 interactions with him.

15 Q And when you were just mentioning David,
16 that's David Boies again?

17 A Yes.

18 Q Did you review the article before it was
19 published?

20 A No.

21 BY MR. KOLHATKAR:

22 Q Did you review specific statements or phrases
23 that Mr. Parloff was planning on using in the article
24 before it was published?

25 A No, not that I know of.

↑

1 BY MS. CHAN:

2 Q Did you discuss the article with Mr. Balwani
3 while you were sitting for the interview and providing
4 information to Mr. Parloff?

5 A I don't remember specific conversations.
6 I'm sure there would have been discussion
7 about the fact that Roger was there. And I -- I think
8 Sunny also talked to him.

9 Q Oh, Mr. Balwani sat for an interview with Mr.
10 Parloff, as well?

11 A I think so.

12 Q Did he provide documents to Mr. Parloff?

13 A I don't know.

14 Q Did Mr. Balwani review the article before it
15 was published?

16 A No.

17 Q Did anyone at Theranos review the article
18 before it was published?

19 A It's my understanding it was not given to us
20 before it was published.

21 Q Did Mr. Boies review it?

22 A I don't believe anybody had access to it
23 before it was published.

24 Q Did you review the article after it was
25 published?



1 A I -- I read it, yes.

2 Q Did Mr. Balwani review the article after it
3 was published?

4 A I don't know.

5 Q What was your reaction after you reviewed the
6 article?

7 A Generally positive.

8 Q Why did you think it was positive?

9 A I thought it did a really good job of talking
10 about what we were trying to do.

11 Q What -- what did it do a good job of
12 explaining?

13 A Our vision.

14 Q What about your vision?

15 A How we were working to make live testing more
16 accessible.

17 Q Did you discuss the article and its contents
18 with Mr. Balwani after you read it?

19 A I don't remember doing so.

20 Q Did you believe that what was written about
21 the company was a true and correct representation of the
22 operations of the company?

23 A At the time that I read it, I thought it
24 was -- I was reading it thinking about it in the context

25 of our invention and what we were trying to do.

↑

680

1 Q So is that a "yes"?

2 A I never thought about it as reflective of the
3 operations of the company.

4 I -- I know that obviously, much later, it was
5 looked at in the context of the operations of the
6 company, and I have since read it in that context.

7 But no, at that time, I did not think about it
8 in the context of describing the operations of the
9 company.

10 BY MR. KOLHATKAR:

11 Q So is it -- I just want to understand, is it
12 your testimony that you read it at the time you viewed
13 it as sort of the fair reflection of Theranos's
14 aspirations but not its operations?

15 A Correct. And -- and its inventions. Because
16 that was the context in which I met Mr. Parloff.

17 Q And by "inventions," do you mean currently
18 in-place inventions or working on --

19 A Patents, what we created. Right?

20 The -- the discussion when he came to Theranos
21 was about our IP. Right?

22 BY MS. CHAN:

23 Q When did you review the article change?

24 A When did it change?

25 Q Yes.

↑

681

1 A After the Wall Street Journal.

2 Q Why did it change then?

3 A Because we got into a very specific discussion
4 about the operations of the clinical lab in the media
5 with the Wall Street Journal.

6 Q Okay.

7 And what does that have to do with the Parloff
8 article in Fortune?

9 A Parloff wrote another piece following that
10 article. And our team was engaged with him at -- at
11 that time again about the original piece.

12 Q What was the second piece that Mr. Parloff
13 wrote?

14 A It was intended to be a correction to his
15 original article.

16 Q Why did he need to correct the original
17 article?

18 A Because he felt there were statements in it
19 that were not correct.

20 Q Did you agree with that?

21 A You know, I think we, again, completely
22 mishandled it. Our team did not agree with it and
23 fought it.

24 I think that another huge mistake the company
25 has made has been its engagement with the press,

↑

682

1 including Roger and the Wall Street Journal.

2 Q Did you forward the Fortune article to anyone
3 after it was published?

4 A I don't remember.

5 Q Did you forward the article to employees at
6 Theranos?

7 A I don't know.

8 Q Did you forward it to the board?

9 A I don't know.

10 Q Did you forward it to investors and potential
11 investors?

12 A I don't remember doing that. I don't know.

13 Q I am handing to you what's been previously
14 marked as Theranos Exhibit 247.

15 Exhibit 247 purports to be a June 9th, 2014,
16 e-mail from Elizabeth Holmes to Sunny Balwani. Subject
17 line is, "Forward follow-up," with starting Bates No.
18 THPFM0001145643.

19 Have you seen Exhibit 247 before?

20 A I don't remember it, but I don't have any
21 reason to doubt the e-mail.

22 Q What is Exhibit 247?

23 A Do you mind if I take a quick look?

24 Q Sure. Go ahead.

25 A It looks like a series of e-mails related to

↑

683

1 Roger Parloff.

2 Q Did you receive and review Exhibit 247 on or
3 about June 9th, 2014?

4 A I don't remember doing that, but I don't have
5 reason to doubt the e-mail.

6 Q You'll see starting on 5646, there is an
7 e-mail on June 8th, 2014, from Roger Parloff to you.
8 And he is asking -- he's asking a number of questions.

9 Do you see that?

10 A Which -- which one are you on?

11 Q This is the June 8th, 2014, e-mail on 5645.

12 A Yes.

13 Q So if you look under five, it looks like he
14 has some questions about the description of the
15 analyzers.

16 And he says:

17 "When describing the analyzers, I think I'll
18 say they look like large desktop computer towers. I
19 don't want to say they are the size of desktop
20 computers, because I remember them being a bit larger
21 than most contemporary desktop computers I've seen."

22 Do you see that?

23 A Yes.

24 Q And then he asks whether there are dimensions
25 for the analyzer.

↑

684

1 Do you see that?

2 A I do.

3 Q And then if you go to the next e-mail, you're
4 responding to that question. And this is on 5644.

5 And about five paragraphs down in your e-mail,
6 you say, "With respect to the device size, I believe
7 best comparison might be the NeXT Computer desktop
8 called NeXTcube. You'll find images online."

9 Do you see that?

10 A Mm-hmm.

11 Q Is there a reason why you mentioned the NeXT
12 Computer desktop?

13 A In response to the size question?

14 Q Yes.

15 A I mean, I don't remember this e-mail exchange,
16 but I'm assuming it's because the sizes are similar.

17 Q Are you familiar with the NeXT Computer
18 desktop?

19 A Yes.

20 Q How are you familiar with it?

21 A As a beautifully-designed piece of technology.

22 Q Have you used one before?

23 A No.

24 Q Do you know anyone who has used one before?

25 A I'm sure I do. I just don't know who.

↑

685

1 Q Okay.

2 So are you describing here the size of
3 Theranos' TSP or MiniLab when you're comparing it to the
4 NeXT Computer desktop?

5 A I haven't read the whole e-mail exchange, but
6 sitting here now, I think so.

7 Q Then if you go to the preceding page, on 5643,
8 there is an e-mail from you to Mr. Parloff on June 9.

9 And about three paragraphs down, it starts,
10 "We've been spending time on the footprint questions."

11 You see that?

12 (Reporter clarification.)

13 BY MS. CHAN:

14 Q "We've been spending time on the footprint
15 questions. As you know, we don't really want to get
16 into the topic of the analytical systems very much at
17 all."

18 What did you mean by that?

19 A Again, I -- I don't remember the e-mail
20 exchange.

21 Sitting here now, I think this is referring to
22 the Phase 2, in which we were going to deploy the
23 devices in field, and we hadn't announced that yet. And
24 so we didn't want to talk about it in the press before
25 we actually had the FDA clearance to go do it.

↑

686

1 Q So reading this e-mail now, that's what you
2 think this is referring to?

3 A Yes.

4 We didn't want to preannounce it.

5 Q Okay.

6 And then a couple lines below, you say:

7 "The analytical systems look like large
8 desktop computers or analytical systems look much
9 smaller than in conventional laboratories or have a
10 smaller space requirement than conventional laboratories

11 is fine."

12 Do you see that?

13 A Yes.

14 Q Did you also discuss with Mr. Parloff that
15 Theranos had modified commercially available analyzers
16 to conduct testing on small samples?

17 A I don't think in those words.

18 Q Did you -- did you use other words to describe
19 that Theranos was using commercially-modified --
20 modified commercially available machines to conduct
21 patient testing?

22 A My memory is we generally talked about Phase 1
23 with the nanotainer being about the use of chemistries
24 in a high-throughput setting, and then this device was
25 what we were going to be deploying for sort of infield

↑

687

1 use of -- of tests.

2 Q Okay.

3 So where in that Phase 1/Phase 2
4 description -- Phase 1/Phase 2 description that you just
5 mentioned --

6 A Yeah.

7 Q -- are you referring to the modified
8 commercially available machines?

9 A Phase 1, with the nanotainer and the
10 chemistries running in a high-throughput way.

11 Q Okay.

12 And why did you think that Mr. Parloff would
13 make a connection between nanotainers and high
14 throughput and using commercially available machines to
15 conduct patient testing?

16 A We didn't use commercially available machines
17 for that. We modified them to run our proprietary
18 chemistry, is what -- what we attempted to communicate
19 was that in the first phase, we would be using these
20 chemistries that were proprietary with the nanotainer,
21 and in the second phase, we would be distributing the
22 device. And that was our vision for the company.

23 Q Did you ever tell Mr. Parloff that you were
24 modifying commercially available machines to conduct
25 patient testing?

↑

688

1 A I don't think so.

2 BY MR. KOLHATKAR:

3 Q Did you ever tell Mr. Parloff that Theranos
4 was using commercially available machines in any
5 capacity?

6 A I believe we did.

7 Q In what context?

8 A Use of venous draws.

9 Q The -- so what do you recall telling him?

10 A I don't recall conversations about it.

11 Q I guess -- well, what leads you -- what leads
12 you to the impression, then, that you told him about
13 Theranos's use of the commercially available machines?

14 A Because we were very open about it. At the
15 time, we thought that it was a feature to be able to do
16 both the fingerstick testing, as well as an end-to-end
17 menu, so patients didn't have to go to multiple
18 locations to get their full order done.

19 Q So I understand your answer, you -- you think
20 the discussions around having a venous draw capability
21 is -- is what you would have disclosed to Mr. Parloff?

22 A Yes.

23 At the time, we used the -- the word "venous
24 draw" to be synonymous with the use of commercial
25 analyzers.

↑

689

1 Q Did you explain that to Mr. Parloff?

2 A I don't know.

3 BY MS. CHAN:

4 Q Did you tell Mr. Parloff that most of

5 Theranos's tests were run on commercially available
6 analyzers?

7 A I -- I don't think so.

8 Q Why not?

9 A I don't think we talked about the breakdown of
10 what tests were run on what analyzer at all.

11 Q Were you worried that if Mr. Parloff wrote an
12 article mentioning only Theranos's manufactured devices
13 that people would be given an inaccurate impression of
14 how Theranos was conducting its patient testing, that it
15 was using its Theranos-manufactured devices to conduct
16 that patient testing?

17 A Not at the time. Because at the time I
18 thought it was all about the aspiration and the vision.

19 Looking back at it now, I absolutely wish we
20 had handled our communications differently.

21 MR. NEAL: It's been about an hour. If you're
22 switching to something else, could we take a break?

23 MS. CHAN: Sure, we can take a short break.

24 We are off the record at 11:30 a.m.

25 (A brief recess was taken.)

↑

690

1 (End DVD 2.)

2 MS. CHAN: We're on the record at 11:45 a.m.

3 BY MS. CHAN:

4 Q Ms. Holmes, did you have any substantive
5 conversations with the SEC staff during the break?

6 A No.

7 Q Thank you.

8 I'm going to hand to you what's previously
9 been marked Theranos Exhibit 248.

10 Have you seen Exhibit 248 before?

11 And just for the record, Exhibits 248 is a
12 document with Bates numbers starting TS-000613.

13 A Not in this form, but I've seen the article.

14 Q I'll represent to you that this is the copy of
15 the Fortune article that was included in Rupert
16 Murdoch's binder in the December 2014.

17 Were you aware that this article was included
18 in Mr. Murdoch's binder?

19 A I am now. I don't know at the time if I was.

20 Q Were you aware that this article was included
21 in binders of materials that Theranos sent to other
22 investors?

23 A I don't know.

24 Q Did you ever ask for this article to be
25 included in investor binders?

↑

1 A Not that I can remember. I -- I don't know.

2 Q So if you turn to the page with Bates number
3 ending 616, you'll see there's -- and there are two
4 columns on that page. I'm looking at the second column
5 on the right side, second paragraph down.

6 It says:

7 "Theranos runs what's called a high-complexity
8 laboratory certified by the Federal Centers for Medicare
9 and Medicaid Services, CMS, and it is licensed to
10 operate in nearly every state. It currently offers more
11 than 200, and is ramping up to offer more than 1,000, of
12 the most commonly ordered blood diagnostic tests, all
13 without the need for a syringe."

14 Is the statement that Theranos currently
15 offers more than 200, and is ramping up to offer more
16 than 1,000, of the most commonly ordered blood
17 diagnostic tests, all without the need for a syringe,
18 was that statement correct as of July 2014?

19 A Reading it now, I don't think it is.

20 Q Why not?

21 A Because I've -- I've read Roger's follow-on
22 articles and how he interpreted it in the context of the
23 Wall Street Journal articles. And it -- it's not
24 correct in that context.

25 Q What are the current numbers of tests that

1 Theranos was offering at this time without the need for
2 a syringe?

3 A I don't know.

4 BY MR. KOLHATKAR:

5 Q Did you have any reaction to this when you
6 read it at the time it was published?

7 A No.

8 Q Back then, what was your understanding of what
9 a syringe meant?

10 A It's the traditional way that blood is drawn.
11 It's different from the butterfly needles that we used.
12 It's a -- a traditional blood-draw mechanism.

13 Q So, I mean, earlier, we talked about "venous"
14 being kind of an internal synonymous term for
15 commercially available machines.

16 "Venous" didn't mean "syringe" at the time to
17 Theranos; is that right?

18 A No.

19 We did all of ours through what we called the
20 micro sample method, which was these little butterfly
21 needles.

22 BY MS. CHAN:

23 Q Do you understand that now, when blood testing

24 is done the traditional way through venipuncture, that
25 other lab companies don't use syringes anymore, that

↑

693

1 they use a vacutainer in a tube that goes into the arm?

2 A I don't know what other blood companies use.

3 Q You're -- you're in the blood-testing business
4 and you don't know what other lab testing companies use?

5 A I don't. I -- I know that people use a range
6 of needles. We -- we certainly didn't invent the
7 butterfly.

8 Q So if you look down a couple more paragraphs,
9 about four paragraphs down the same page, it says, "The
10 company has performed as many as 70 different tests from
11 a single draw of 25 to 50 microliters collected in a
12 tiny vial the size of an electric fuse."

13 Was that statement correct in -- or accurate
14 in July of 2014? Could the company perform as many as
15 70 different tests from a single draw of 25 to 50
16 microliters of blood?

17 A From an R and D or product development
18 standpoint, I think it was.

19 Q Earlier, you testified that 30 tests could be
20 conducted from a single draw of fingerprick blood and --
21 and sort of the maximum number of microliters of blood

22 that could be drawn on a fingerprick.

23 So how do you square the two numbers?

24 A If I remember the testimony correctly, I think
25 you were asking what an ordering pattern would be. And

↑

694

1 I was using the number 30 to be representative.

2 I think what, just sitting here now, this was
3 referring to is that in R and D we were developing and
4 validating assays to run on a microliter or less of
5 sample.

6 And you could also multiplex those assays to
7 be run simultaneously, which would, from a technology
8 standpoint, allow you to do this.

9 BY MR. KOLHATKAR:

10 Q I guess, had Theranos run 70 tests from a
11 single draw of 25 to 50 milliliters of blood by -- by
12 July 2014?

13 A You know, my -- my memory is that we had, but
14 again, in a -- in a product development or R and D
15 context, not in the context of our clinical lab.

16 Q Having connected -- collected using a
17 nanotainer?

18 A Yes. For a product development -- I mean --
19 well, let me see.

20 I don't know the specific experiments. So my
21 understanding was that from a product and technology
22 capability, we had the ability to run that many tests on
23 a small sample.

24 I don't know that we ever did it from a
25 nanotainer directly. I'm -- I'm not sure what was done.

↑

695

1 Q Do you know if anyone -- who at Theranos would
2 know?

3 A I would -- I would assume some of our -- our
4 product team leads or assay team leads.

5 BY MS. CHAN:

6 Q I just want to make sure I understand your --
7 your statement.

8 Was it your understanding that the company
9 could perform as many as 70 different tests on a single
10 drop of blood or that Theranos had developed 70
11 different tests that could be performed on a small
12 sample of blood?

13 A Just so I answer the question you're asking,
14 you're saying was it my understanding in reading this
15 article?

16 Q No. I'm just trying to understand what your
17 answer was.

18 A Yeah.

19 Q Are you saying that 70 tests can be performed
20 on one sample of blood and that Theranos had developed
21 the capability to do so in 2014?

22 A My understanding is that our chemistries,
23 because of how small the volume is per test, can get
24 down to a microliter or less per chemistry and that,
25 therefore, 70 could be performed on a small sample of

↑

696

1 blood that could come from a finger.

2 Q Okay.

3 If you turn the page, then, to 618, on the
4 right-hand side of the column, four -- the fourth full
5 paragraph down, it starts, "Importantly."

6 Do you see that?

7 It says:

8 "Importantly, it's not just the blood draws
9 that are tiny, it's also the analytical systems Theranos
10 uses to perform the test. They take up a small fraction
11 of the footprint required by a conventional lab today."

12 Was this statement true in July 2014?

13 A It's true as to the MiniLab systems that we
14 were using -- or the -- the prior version of the MiniLab
15 systems that we were using.

16 Q Okay.

17 But it wasn't true as to the commercially
18 available machines that Theranos was using --

19 A No.

20 Q -- for patient testing?

21 A Correct.

22 Q Were you concerned after reading this that
23 people who were reading Mr. Parloff's article might
24 think that Theranos was only using its own devices to
25 perform patient testing?

↑

697

1 A Again, we weren't concerned after reading
2 this. But later, in the context of looking back at it, I
3 wish that -- I wish that this had been done differently.

4 Q Why weren't you concerned?

5 A I think multiple reasons.

6 One, we were of the mindset that we were
7 talking about our vision and aspiration; two, we really
8 believed that we were farther along in executing it than
9 we were and really close to getting there; and three, we
10 were reading these statements in the context of our own
11 understanding of the technology and the conversations
12 we'd had with Roger and thinking about them as specific
13 to that.

14 Q But this statement isn't aspirational, right?
15 It's talking about the analytical systems that Theranos
16 uses to perform tests.

17 So how is this statement accurate as of July
18 2014?

19 A We were using earlier versions of MiniLabs to
20 perform some tests then, and it was --

21 (Interruption.)

22 (Reporter clarification.)

23 THE WITNESS: -- of MiniLabs to perform some
24 tests then, and it was true about the MiniLab technology
25 family.

↑

698

1 You know, at the time this came out, we were
2 not -- I think I read it once. We were not focused on
3 every sentence in the article.

4 BY MS. CHAN:

5 Q But it seems -- it does seem incomplete to you
6 because it doesn't mention the other commercially
7 available machines that Theranos was using; is that
8 right?

9 A Reading it now, I -- I would have communicated
10 differently with Roger to help him frame this in the
11 context of our Phase 1 and Phase 2 model. And that's

12 not clear in this article, as clear as I -- I wish it
13 had been.

14 Q At the time that you read it after it was
15 published, you thought it was clear?

16 A At the time I read it after it was published,
17 I just remember thinking, this talks about our vision
18 well.

19 Q So if you turn to 619, which is the next page,
20 third full paragraph down, it says, "Theranos, which
21 does not buy any analyzers from third parties, is
22 therefore in a unique position."

23 Was this statement true as of July 2014?

24 A No.

25 Q Why not?

↑

699

1 A We were using analyzers from third parties.

2 Q So were you worried about this statement when
3 it was published?

4 A No. I -- the first time that I paid attention
5 to this sentence was much later, in, I think, this year.

6 Q And then a couple of paragraphs down from
7 that, there's a paragraph that starts, "Moreover."

8 Do you see that?

9 A Yes.

10 Q It says, "Moreover, Holmes stresses Theranos
11 is currently seeking FDA clearance for every one of its
12 tests, even though it's under no legal obligation to do
13 so."

14 Was this statement true as of July 2014?

15 A My understanding of the sentence is that it's
16 talking about the fact that LDTs do not have to be
17 regulated by the FDA.

18 And so I believe so.

19 Q Where does it say that LDTs do not have to be
20 regulated by the FDA?

21 A I think it's the context of the last two
22 paragraphs, that if you make your own analyzers, then
23 they're LDTs, and that at that point in time there was
24 not a legal obligation for LDTs to be submitted to the
25 FDA.

↑

700

1 Q But FDA had told you by this time that
2 Theranos's tests on the TSPU were not LDTs and needed
3 clearance and approval from the FDA, correct?

4 A That was not our understanding of FDA's
5 official position.

6 Q You testified earlier that you understood that
7 FDA had told Theranos, and it was FDA's position, that

8 the tests on the TSP needed to be cleared and approved.

9 Is that not your testimony now?

10 A We understood that we could use them as LDTs
11 while we worked with the agency to take them through the
12 clearance process.

13 Q And FDA, at this point, had also told you that
14 you needed clearance and approval for the nanotainer;
15 isn't that correct?

16 A Again, we understood that we could continue
17 using the nanotainer while we were working toward
18 clearance and approval --

19 Q Okay.

20 A -- but that they wanted us to get it cleared.

21 Q I understand that part.

22 But FDA had told you that you would need
23 clearance and approval for using a nanotainer, correct?

24 Even though Theranos was continuing to use it
25 while it was submitting the 510(k)s, FDA had already

↑

701

1 told Theranos that it would need to obtain clearance and
2 approval, correct?

3 A My memory is that they told us that they
4 wanted us to file it, and we believed it was a Class 1
5 device, and they said that they wanted us to file it,

6 and we said, okay.

7 Q Okay.

8 So how is that not a legal obligation to do so
9 if FDA is telling you to file a 510(k) submission for
10 the nanotainer?

11 A I didn't read this sentence like that.

12 I read it in the context of the definition of
13 an LDT and that this comment that the ACLA was adamantly
14 opposing any effort by the FDA to start regulating LDTs
15 and that it was in that context.

16 Q Were you concerned that people reading that
17 statement would have the impression that Theranos was
18 not required to submit anything for approval and that it
19 was doing all of the submissions that it was submitting
20 to FDA voluntarily?

21 A Not at that time.

22 I think it was well known that LDTs were a
23 gray area for enforcement discretion. 23andMe had run
24 into issues. Everybody knew that, you know, there was
25 active discussions on regulation of LDTs.

↑

702

1 Q FDA had also told you by this time that they
2 questioned whether Theranos's tests were LDTs, correct?

3 A Again, my understanding was that by virtue of

4 the fact that we understood it was okay to continue
5 using them as an LDT, what they wanted was us taking it
6 through the system, but that they were then operating as
7 LDTs while we were taking them through the FDA.

8 Q When did you gain the understanding that you
9 could continue using the nanotainer while you were
10 putting submissions to the FDA?

11 A I -- I had that understanding throughout the
12 time that we were engaging with them while we were in
13 the retail infrastructure until the inspection in 2015.

14 Q Do you recall that Fortune shot a video for
15 this profile on its website?

16 A I -- I didn't remember that, but I wouldn't be
17 surprised if they did.

18 Q Did you have any involvement in choosing what
19 should go into that video or what shouldn't go into that
20 video?

21 A I don't know.

22 Q Did you have any involvement in the machines
23 or the analyzers that should be included in the video?

24 A I don't think there would have been any
25 machines in the video.

↑

1 We, at this time, didn't want to preannounce

2 our MiniLab.

3 Q If you turn to 617, there is a picture there
4 of a gloved hand holding what looks like a small tube.

5 Was this the nanotainer that Theranos was
6 using at that time to collect -- collect patient testing
7 samples?

8 A I don't know if it was the one we were using
9 at that time.

10 Q What is this a picture of?

11 A It's one of the nanotainers. I -- I can't
12 tell from the picture if it was the one we were using in
13 our clinical labs or not.

14 Q Did you submit that photo to Mr. Parloff for
15 inclusion in the article?

16 A I don't know. I -- I think they had a
17 photographer that took photos of what they wanted to
18 take photos of.

19 Q Were you involved in directing what that
20 photographer could take photos of and what he couldn't
21 take photos of?

22 A I don't know.

23 Q Did anyone tell you that this -- that
24 statements that were made in this article were
25 inaccurate at the time that it was published?



1 A No.

2 Q Did you end up sending -- oh.

3 BY MR. KOLHATKAR:

4 Q Did -- did anyone raise any concerns about the
5 article at all to you?

6 A Not that I can remember, until after the Wall
7 Street Journal.

8 BY MS. CHAN:

9 Q Did you end up sending this article to other
10 investors?

11 A I don't know.

12 Q Did you end up sending this article to
13 Theranos's shareholders?

14 A I don't know.

15 Q You can put that aside.

16 What's your role on Theranos's board?

17 A I'm the chairman of the board.

18 Q Who else from company management is on the
19 board?

20 A No one at this time.

21 Q Was there anyone else from company management
22 who was on the board in the 2013 to 2015 time period?

23 A Sunny was.

24 BY MR. KOLHATKAR:

25 Q Were you chairman of the board in that

↑

705

1 2013-2015 time period, as well?

2 A I was.

3 BY MS. CHAN:

4 Q Did Mr. --

5 A I'm sorry. You said 2013?

6 BY MR. KOLHATKAR:

7 Q Correct.

8 A I believe (b)(6);(b)(7)(C)

9 (b)(6);(b)(7)(C)

10

11 BY MS. CHAN:

12 Q Did Mr. Balwani have any other role on the
13 board?

14 Did he have a specific role on the board?

15 MR. DWYER: Specific what?

16 I'm sorry.

17 MS. CHAN: A specific role on the board.

18 THE WITNESS: I believe he was a member of the
19 executive committee.

20 BY MS. CHAN:

21 Q What did the executive committee do, or what
22 did they discuss?

23 A I don't know that it ever met. It was just a
24 committee that had certain authorities if it needed to
25 meet if a full board was not able to convene.

↑

706

1 Q Who was a member of the executive -- executive
2 committee besides Mr. Balwani?

3 MR. NEAL: At -- at what point in time?

4 BY MS. CHAN:

5 Q In 2013-2015.

6 So that's the time period we're talking about
7 here for all of the rest of the questions I'm going to
8 have about the board.

9 So --

10 A Yeah.

11 Q -- if you can just talk about the 2013 to 2015
12 time frame, who else was a member of the executive
13 committee besides Mr. Balwani at that time?

14 A I -- I don't know. I think it may have
15 changed.

16 My memory is that David Boies may have been a
17 member for a certain period of time. And I think later,
18 Riley Bechtel and maybe Jim Mattis.

19 We also renamed it to -- it was like a
20 management and development and strategy committee or

21 something like that. So I -- I don't think there was a
22 consistent structure during that period.

23 Q Did other members of the board understand that
24 there was an executive committee and only a subset of
25 the board was part of this executive committee?

↑

707

1 A I -- we certainly discussed it with -- with
2 the board.

3 Q When did you discuss it?

4 A I don't know specifically, but it -- it was an
5 open conversation point.

6 Q Was Mr. Balwani on any other committees of the
7 board besides the executive committee?

8 A I don't know. I don't think so, but I don't
9 know.

10 Q I'm sorry. Were you a member of the executive
11 committee? I'm not sure that --

12 A I was.

13 Q -- I remember you saying that.

14 Was Mr. Balwani the secretary of the board
15 at -- at some point?

16 A He -- he acted as secretary for certain
17 meetings.

18 Q Was there a time frame in which he was

19 secretary?

20 A I don't know.

21 BY MR. KOLHATKAR:

22 Q Was there anyone else who was acting as
23 secretary in that 2013 to 2015 time frame?

24 A I know when (b)(6);(b)(7)(C) our general counsel,
25 started, she was. And there may have been some

↑

708

1 instances in which David Boies was acting in that
2 capacity. I'm not sure.

3 BY MS. CHAN:

4 Q When did Theranos constitute its board? This
5 is going way back to probably before the 2013 time
6 frame.

7 A What do you mean by that?

8 Q When did Theranos first constitute its board?

9 A My first patent was in August of 2003. I
10 think we incorporated in June of '04.

11 And I asked (b)(6);(b)(7)(C)

12 (b)(6);(b)(7)(C) to join the board then.

13 Q (b)(6);(b)(7)(C)

14 and yourself?

15 A I think so, yeah.

16 Q And was this (b)(6);(b)(7)(C)

17 A Yeah.

18 Q And what was the purpose of the board back
19 then?

20 A In 2004?

21 Q Yes.

22 A To serve as the board of directors for the
23 company.

24 Q And what did the board of directors have the
25 authority to do on behalf of the company?

↑

709

1 A Anything that was in the -- the bylaws and the
2 charter at that time.

3 I don't remember the specific delineation in
4 the bylaws then.

5 Q Do you understand the board having a different
6 capacity in the 2013-2015 time frame than it did in the
7 prior time period?

8 A No.

9 Q What was your understanding of the purpose of
10 the board in the 2013 to 2015 time frame?

11 A That it was a board of directors.

12 Q Did you understand that the board of
13 directors -- the -- let me start again.

14 Did you understand that the board of directors

15 had a fiduciary duty to shareholders of the company?

16 A I did.

17 Q Did you communicate that to your board --
18 board members?

19 A I believe we had counsel communicate that
20 directly.

21 Q When -- when did that communication occur?

22 A I remember specifically meetings in October of
23 2013 in which there were dedicated discussions on this
24 and, I'm sure, on an ongoing basis as directors had
25 questions. They were often asking about D and O

↑

710

1 insurance and coverage in the context of their fiduciary
2 responsibilities.

3 Q Well, what do you understand "fiduciary duty"
4 to mean?

5 A Responsibility to the company and to the
6 shareholders as a board member.

7 Q How did you end up filling the board, or the
8 board that was in place in 2013 through 2015? How did
9 you pick who you would approach and ask to join the
10 board?

11 A People we thought could help us with strategy
12 who were -- who were wise, who understood that we were

13 trying to do something that no one had done before and
14 who understood that when you try to change a system, in
15 this case, with big incumbents in the medical space,
16 it's going to be really hard and you have to have a good
17 strategy.

18 Q I wanted to just go through your relationship
19 with each of the board members from that time frame.

20 What was your -- did you have a prior
21 relationship with George Schultz?

22 A Prior to?

23 Q Prior to him joining the Theranos board.

24 A I -- I -- I met him and discussed his book on
25 healthcare and healthcare policy, and then he joined the

↑

711

1 board.

2 Q How did you meet him?

3 A Through someone I knew at Stanford.

4 Q Who did you know at Stanford?

5 A (b)(6);(b)(7)(C)

6 Q Who was that?

7 (b)(6);(b)(7)(C)

8

9

10 Q And how do know (b)(6);(b)(7)(C)

11 A I think I met him through (b)(6),(b)(7)(C)

12 (b)(6),(b)(7)(C) at the time.

13 Q What about Richard Kovacevich, did you have a
14 prior relationship with him before he joined the board?

15 A I think we knew each other for six to nine
16 months or so and had met a few times and got to know
17 each other before he joined the board.

18 Q And how did you meet him?

19 A Through George Schultz.

20 Q Why did you think he would be a good addition
21 to the board?

22 A Our first meeting was in the context of the
23 fact he had been on the board at Cargill. And we were
24 trying to build a company to be private for the long
25 term, and so we had discussions in that context.

↑

712

1 I think he's also a great CEO and had amazing
2 experience building Wells Fargo, including in the
3 context of retail and retail footprint.

4 Q Did you have a relationship with Jim Mattis
5 prior to his addition to the board?

6 A Yes.

7 Q What was that relationship?

8 A I knew him initially at CENTCOM, and then a

9 little bit at Hoover, at Stanford, when he left the
10 military.

11 Q Why did you add him to the board?

12 A He's one of the most brilliant strategists
13 that I've ever met.

14 Q Did you have a relationship with Bill Perry
15 prior to him joining the board?

16 A Not directly. People had been telling me for
17 a long time to -- to meet him. But he -- he joined the
18 board shortly after I met him for the first time.

19 Q Why did you ask him to join the board?

20 A A number of reasons. He has a pretty amazing
21 engineering and technical backgrounds, going back to
22 some early companies he helped build in Silicon Valley.

23 He also is really focused on infectious
24 disease surveillance and how you could leverage
25 biotechnology to help actually build a surveillance

↑

713

1 infrastructure for this country and then, of course, has
2 policy experience, and I -- I think he's a very wise
3 person.

4 Q Did you have a prior relationship with Riley
5 Bechtel before he joined the board?

6 A Yes.

7 Q What was that relationship?

8 A We'd gotten to know each other, and I started
9 learning about building a private company more -- more
10 directly from him.

11 Q What about Bill Foege; did you have a
12 relationship with him prior to him joining the board?

13 A I don't know. I'm not sure.

14 Q Who introduced you to him?

15 A Sam Nunn.

16 Q Why did -- why were you introduced to Mr. --
17 Dr. Foege by Sam Nunn?

18 A I was trying to figure out who the best people
19 in global health are in this context and thinking about
20 how the technology could be used outside of the U.S. and
21 for people in places where there's not good health
22 infrastructure.

23 Q Did you have a relationship with Bill Frist
24 prior to him joining the Theranos's board?

25 A I think so.

↑

714

1 Q What was that relationship?

2 A I think, again, we -- we knew each other for
3 many months. He joined meetings with us with sort of
4 thought leaders in healthcare and got to know each

5 other.

6 Q Why did you ask him to join the board?

7 A Again, a thought leader in strategy. He has a
8 lot of healthcare policy experience. He has now gotten
9 very engaged with a number of different healthcare
10 companies. And in terms of trying to realize sort of a
11 leapfrog technology, he was a great strategist for that.

12 Q Did you have a relationship with Henry
13 Kissinger before he joined the board?

14 A No.

15 Q Who introduced you to him?

16 A George Schultz.

17 Q Why did you ask him to join the board?

18 A Same -- same thing, strategy.

19 Q What about Sam Nunn; did you have a prior
20 relationship with him?

21 A I did not.

22 Q Who introduced you to him?

23 A Also George.

24 Q And did you ask him to join the board also for
25 strategy purposes?

↑

715

1 A Yes.

2 And also, Sam's been on the board of a lot of

3 big companies, like Coca Cola and Chevron. And I
4 thought I could learn from him.

5 Q So we talked about the executive committee.

6 Were there any other committees of the board
7 that were functioning as of 2013 through 2015?

8 A I'm not sure.

9 At a certain point in time, I know we
10 established this sort of senior management development
11 compensation committee. I don't know what the name of
12 it was.

13 And I had in my memory that that ultimately
14 replaced the executive committee, but I am not sure.

15 Q You said a senior management compensation
16 committee?

17 A Yeah.

18 Q What was the purpose of that committee?

19 A To do compensation for myself and for Sunny.

20 Q So that committee -- would there be
21 recommendations made for your compensation that would be
22 taken up by the committee?

23 A No.

24 The committee would independently decide
25 compensation for me and for Sunny.

↑

1 Q Okay.

2 So would -- did you and Mr. Balwani have any
3 input in that process?

4 A We talked to the board about thoughts on
5 compensation.

6 Q Did you ever put forth a recommendation as to
7 a specific number that you wanted your salary to be at
8 Theranos?

9 A No.
10 We generally said we did not want cash
11 compensation. We wanted only equity compensation.

12 Q Who was on the compensation committee?

13 A So I'm not sure during that period of time.
14 I think, toward the end of that period of
15 time, it was Riley, Mattis, and maybe David. I'm not
16 sure.

17 Q Just the three of them?

18 A I think so.

19 BY MR. KOLHATKAR:

20 Q Other than those names that we have kind of
21 gone through, are there any other individuals that you
22 can remember being on Theranos's board from the 2013 to
23 2015 time frame?

24 A As I remember, it got up to 13 people, myself
25 and Sunny included. I didn't count as we were going

1 through the list now, but that was at its peak.

2 BY MS. CHAN:

3 Q I think there was also David Boies --

4 A Yes.

5 Q -- who I understood was previously your
6 counsel.

7 A Correct.

8 And -- and still our counsel when he was on
9 the board, as well.

10 Q Why did you end up asking him to join the
11 board?

12 A That was at the time, I think, that we were
13 creating the board of counselors, and we were trying to
14 begin the process of restructuring the company. And he
15 wanted to help us.

16 Q Why did you decide to rename the board the
17 board of counselors?

18 A We didn't. We removed certain individuals
19 from the board.

20 Q You removed certain individuals from the
21 board.

22 So certain individuals were removed from the
23 board and were put in the board of counselors?

24 A Correct.

25 Q Who were those individuals?

↑

718

1 A I'm not going to remember them all by name.

2 I -- I believe after we did this, the board
3 became myself, Sunny, Jim Mattis, Riley, David, and then
4 I think we removed but then added back Dick Kovacevich
5 and Bill Foegen.

6 I think. Yeah.

7 Q How often would the board meet?

8 A It varied over time. Initially, on a
9 quarterly basis, but there was a lot of one-on-one
10 individual interactions.

11 And later, in -- in 2015, significantly more
12 frequently.

13 Q What happened at those meetings? What topics
14 did you discuss with the board?

15 A At board meetings in general?

16 Q Yes.

17 A I mean, it varied based on, you know, where
18 the company was at those different points in time.

19 This group of people focused primarily on
20 strategy, but we would cover topics related to what we
21 were working to do, where we were having challenges in

22 some cases, and also structuring ourselves as a private
23 company.

24 Q Who decided what the board would discuss at
25 any one meeting?



719

1 A So we, as management, would produce an agenda.

2 Often, George Schultz would provide a lot of
3 input on it. And it was a combination of -- of those
4 two things, for the most part.

5 Q How would you go about putting together the
6 materials for a board meeting?

7 A They were put together by a team of people,
8 generally right before the meetings.

9 Q Who was directing that team of people?

10 A I don't know if it was consistent across
11 meetings.

12 I would have input; Sunny would have input;
13 and then, sometimes, the project managers who were
14 helping us gather specific content would work with
15 people.

16 Q Was the board allowed to take board materials
17 with them after a meeting?

18 A If they wanted to.

19 Q Would you send them a soft copy of the

20 materials after a meeting?

21 A I don't know as a matter of practice.

22 I know we sometimes sent soft copy materials.

23 Q Did you ever send them materials for the board
24 meeting in advance of the board meeting?

25 A Generally, I don't think so.

↑

720

1 Q Why not?

2 A We did not have the same kind of systems in
3 process that we have in place now. So it was very last
4 minute.

5 Q So, in other words, you didn't send them out
6 because they weren't compiled until right before the
7 meeting?

8 A Correct.

9 Q Did you ever keep track of what documents
10 board members were taking with them after a meeting?

11 A At different points in time, I think we -- we
12 tried to. I don't think we did it very systematically.

13 Q Why did you do that?

14 A Just to make sure that we had records of
15 materials that we were sharing with the board and trying
16 to help maintain good minutes.

17 Q Oh, I -- I guess my question was, were you

18 keeping track of what board members were taking from
19 their board materials after the meeting?

20 A I don't think in a -- in a systematic way.

21 Q But you were tracking it, generally?

22 A I mean, I -- I can remember certain instances
23 in which our team members would make notes of -- of
24 documents that were there and documents that were gone,
25 just in the context of making sure that they'd picked up

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721

1 all the materials properly and nothing was left behind.

2 But I don't think there was a -- a systematic
3 process for -- for tracking that.

4 Q Why were you keeping track of what board
5 members were taking with them after a board meeting?

6 MR. NEAL: Well, that --

7 THE WITNESS: Again, I don't think --

8 MR. NEAL: I'm not sure -- wait, wait. Hold
9 on a second.

10 I'm not sure that question is actually
11 consistent with the answer she just gave.

12 But if you understand it, go ahead and answer
13 it.

14 THE WITNESS: Yeah.

15 Again, I don't think we were keeping track. I

16 think that at the end of a meeting, assistants and other
17 people would come in and try to make sure that all the
18 material had been collected and that there wasn't
19 material that was lost.

20 And so for that purpose, they would, you know,
21 make sure that the material was accounted for one way or
22 the other. Because there would be long meetings with
23 tons of binders and paper. And so they were just trying
24 to make sure that we didn't misplace paperwork.

25 BY MS. CHAN:

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722

1 Q If materials from binders were -- were taken
2 out and were -- and board members would take them with
3 them, would you ask the board members or confirm that
4 those materials were taken?

5 A I don't think so.

6 Q So you mentioned that you had some one-on-one
7 meetings with certain board members, as well.

8 A Mm-hmm.

9 Q Who did you have these one-on-one meetings
10 with?

11 A I very frequently engaged with many members of
12 the board on a one-on-one basis. I -- I saw George
13 Schultz extremely frequently.

14 But I think in general, with every member I
15 had more frequent interactions outside of board meetings
16 than in the board meetings itself.

17 Q Was there anyone else you had one-on-one
18 meetings with?

19 A I -- I believe most of them, if not all.

20 Q What about Mr. Balwani; were you aware of any
21 meetings that he had with other board members
22 one-on-one?

23 A I -- I can't sit here and recall one today,
24 but I'm sure he did.

25 Q Was Mr. Balwani -- did he know any of the

↑

723

1 board members on a more social basis outside of work?

2 A He would attend the board dinners, which were
3 sort of social events (b)(6);(b)(7)(C) and
4 got to know them in that context.

5 Q Do you know if he had any social relationships
6 with any of the board members outside of Theranos?

7 A I mean, I -- I think all of our engagement
8 with that group of people was related to Theranos.

9 Q So is your answer "no"?

10 A I'm not sure I understand the question. I'm
11 sorry.

12 Q Were you aware of whether Sunny Balwani had
13 any social relationships with any of the other board
14 members?

15 A I think all of our social relationships with
16 the board members were related to Theranos.

17 MS. CHAN: Okay. Why don't we take a break
18 for lunch.

19 We are off the record at 12:23 p.m.

20 (Whereupon, at 12:23 p.m., a luncheon recess
21 was taken.)

22 A F T E R N O O N S E S S I O N

23 MS. CHAN: We're back on the record at
24 1:17 p.m.

25 BY MS. CHAN:

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724

1 Q Ms. Holmes, did you have any substantive
2 conversations with the SEC staff during the break?

3 A I did not.

4 Q Thank you.

5 Rupert Murdoch invested in the CT round of
6 Theranos, correct?

7 A Yes.

8 Q And he made his investment around January
9 2015?

10 A I had February in my mind; but, yes, around
11 then.

12 Q You were in discussions with him about
13 investing in Theranos around November, December, and
14 January of that time frame?

15 A Yes.

16 Q Did you review the binder of documents that
17 Theranos sent to Mr. Murdoch ahead of his -- his
18 investment?

19 A I don't know that I reviewed it before he
20 invested. I know I've seen it since then.

21 BY MR. KOLHATKAR:

22 Q Do you know who put the binder together?

23 A I don't.

24 Q Do you know if Theranos -- who at Theranos
25 would have had the responsibility to do something like

↑

725

1 that at the time?

2 A Again, similar to some of the other projects,
3 we had different project managers who would compile
4 materials before meetings or to follow up with people.

5 BY MS. CHAN:

6 Q Who would have instructed the project managers
7 as to what to put into these binders for investors?

8 A I don't know that we gave binders to all
9 investors.

10 My memory is that after Rupert had said he
11 wanted to invest, which was earlier, we then said we
12 would send him a set of background materials on what we
13 were trying to do.

14 Q Okay.

15 So you -- you might not have compiled and sent
16 out binders to all investors or potential investors, but
17 when you did, who would have been deciding what to
18 include in these binders?

19 A Again, I don't -- I don't think there was one
20 person who was making decisions about this. I'm sure I
21 had discussions with the team about it. Sunny may have,
22 as well. And people who were focusing on particular
23 areas of the business that we want to share material on
24 would have, also.

25 Q Besides you and Mr. Balwani, would there have

↑

726

1 been anyone else at Theranos who would have made
2 decision -- a decision as to what to include or not to
3 include in binders?

4 A Again, I don't have memory of one of these
5 specific interactions.

6 My general memory is that whoever the subject
7 matter point person was for a given area would aggregate
8 materials for that area and that would be included.

9 Q And who would have the final say as to what
10 went into the binders or didn't go into the binders to
11 investors?

12 A Again, I -- I don't know. I think it deferred
13 on a case-by-case basis. This was not a consistent
14 practice across all the investors that we engaged with.

15 Q Do you recall reviewing Mr. Murdoch's binder
16 before you sent it to him?

17 A I do not.

18 BY MR. KOLHATKAR:

19 Q What -- do you recall sending binders to any
20 other prospective investors other than Mr. Murdoch?

21 A No.

22 Q What about sort of similar binders -- similar
23 documents as what would be in a binder, just
24 electronically; do you remember sending electronic
25 documents to any potential investors?

↑

727

1 A I don't have memory of it, no.

2 BY MS. CHAN:

3 Q Okay.

4 If you would pick up Exhibit 221 again, which
5 is this large document over here.

6 If you can turn to the page with the Bates
7 number ending 6306, which is Page 58 of the document --

8 A 358?

9 Q 58.

10 A Yup.

11 Q -- do you see there are some text messages
12 here, dated December 16th, 2014, to December 17th, 2014?

13 Are you on that page?

14 A I'm sorry. Is this December 13th of 2015?

15 Q Are you on Page 58?

16 A Oh, I'm sorry. I was on 358.

17 Q Oh, okay. Page 58.

18 A Yup.

19 Okay.

20 Q Yours doesn't look the same as mine.

21 Are you sure you're on Page 58?

22 A 58 of 589?

23 Q All right. Is this -- the date should be
24 December 16th to 17, 2014.

25 A December 16th --

↑

1 MR. NEAL: What Bates number did you say it

2 was?

3 MS. CHAN: 6306.

4 MR. NEAL: 630- -- there's a difference.

5 MR. KOLHATKAR: It could be --

6 THE WITNESS: This is 68?

7 BY MS. CHAN:

8 Q Is it 68?

9 My -- my copy looks like 58, but it's probably
10 right.

11 A Okay.

12 Q Do you see December 16th to 17th, 2014?

13 MR. NEAL: Yup.

14 THE WITNESS: Yes.

15 BY MS. CHAN:

16 Q Text messages?

17 Okay.

18 A Yes.

19 Q So if you look halfway down the page, there is
20 a text message from you to Mr. Balwani on December 16th,
21 2014, at 11:34 p.m.

22 Do you see that?

23 It says, "Are there any materials in the
24 binders you think should be removed for Murdoch/News
25 Corp?"



1 Do you see that text message?

2 A I do.

3 Q Are you asking Mr. Balwani for input as to
4 what to include in the binder that you were going to
5 provide to Mr. Murdoch?

6 A Again, I -- I don't remember the specific
7 text.

8 But reading it now, I -- I read it as asking
9 for his advice on whether the right materials were in
10 the Murdoch binder.

11 Q So would -- does this refresh your
12 recollection that you would have reviewed Mr. Murdoch's
13 binder before you sent it out?

14 A No. I don't have memory of doing that.

15 Partner Fund Management, did you understand
16 that PFM was another way to -- that Partner Fund
17 Management was called -- or that PFM and --

18 A Yes.

19 Q -- Partner Fund Management are the same
20 entity?

21 A I do.

22 Q Okay.

23 PFM invested in the C2 round for Theranos,
24 correct?

25 A Yes.

↑

730

1 Q How much did they invest?

2 A I think it was 96 million.

3 Q You were in discussions with PFM in late 2014
4 and January 2000- -- sorry. Late -- let me start over
5 again.

6 You were in discussions with PFM in late 2013
7 and January of 2014 regarding their potential
8 investment?

9 A As I understand, I met them in December of
10 '14, and we had a meeting to discuss their potential
11 investment in January of -- I'm sorry -- December of '13
12 and met them for the first time.

13 And then in January of '14, we had a meeting
14 to discuss their potential investment.

15 Q Do you remember having a series of meetings
16 with them in January 2014 before their investment?

17 A As far as I know, there's only one that --
18 that I was in.

19 I -- I understand there were other
20 interactions, also.

21 Q Which meeting was that?

22 A The meeting in which they came to discuss

23 Theranos and our vision and whether -- get an
24 understanding of whether it would be the right
25 investment opportunity.

↑

731

1 Q Did you present any materials to PFM at that
2 meeting?

3 A I don't know.

4 Q What do you recall telling them about
5 Theranos?

6 A I -- I don't recall the discussion very well.
7 I've seen notes of those meetings since then.

8 Q What -- whose notes have you seen?

9 A Notes that were taken, I think, by members of
10 PFM's team.

11 Q Which members of PFM's team?

12 A I don't know.

13 Q How did you review those notes?

14 A With counsel in preparing for potential
15 litigation with PFM.

16 Q Did you review the notes anytime prior to
17 reviewing them with counsel?

18 A No.

19 BY MR. KOLHATKAR:

20 Q Do you remember who from PFM you met with in

21 that sort of subset meeting at Theranos that you
22 attended?

23 A I -- I believe that (b)(6),(b)(7)(C) was there,
24 as well as members of his team that were doing due
25 diligence.

↑

732

1 I -- I don't know what their names were by
2 memory, sitting here now.

3 Q Before that meeting with (b)(6),(b)(7)(C) do you
4 remember being introduced to him in the December time
5 frame?

6 A I do.

7 Q Were you introduced to anyone else from PFM?

8 A I think (b)(6),(b)(7)(C) was in the first meeting.

9 Q Do you recall whether he was at that second
10 meeting?

11 A I don't.

12 BY MS. CHAN:

13 Q Who was at that meeting from Theranos?

14 A Which meeting?

15 Q The meeting that you were talking about where
16 you met with PFM and talked about a vision for the
17 company.

18 A In January?

19 Q In January.

20 A At least myself and Sunny. I don't know if
21 anyone else was in the meeting.

22 Q I'm going to hand to you what's been
23 previously marked Theranos Exhibit 255.

24 Here's a copy.

25 Exhibit 255 purports to be -- and actually, I



733

1 also handed you Exhibit 256. I think both the e-mail
2 and the attachment were marked separately as exhibits.

3 255 purports to be a January 17, 2014, e-mail
4 from Sunny Balwani to (b)(6);(b)(7)(C) subject "re:" with
5 Bates number THPFM0003870572.

6 And Exhibit 256 purports to be a PowerPoint
7 presentation with title "Theranos," with starting Bates
8 number TS-0315637.

9 Have you seen Exhibit 255 before?

10 A I don't think so.

11 Q Have you seen Exhibit 256 before?

12 A I don't know. It looks like an internal
13 Theranos doc.

14 Q So if you turn back to Exhibit 255 --

15 A Is it all part of one -- or maybe it's just
16 two different types of paper.

17 Q I think it might have been printed on two
18 different types of paper because we ran out of paper.

19 A Okay.

20 Q But it is one -- one document.

21 A I understand that.

22 Okay.

23 Q If you turn back to Exhibit 255 --

24 A Mm-hmm.

25 Q -- you'll see there's an e-mail on 573, which

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1 is the second page of Exhibit 255, from (b)(6),(b)(7)(C)

2 to Sunny Balwani.

3 And he says:

4 "Sunny, thanks again for the time you spent
5 with our team walking us through the Theranos story.
6 It's amazing to see what you and Elizabeth and the rest
7 of the Theranos team have accomplished over the last ten
8 years."

9 Was the initial meeting between you, Mr.
10 Balwani, and the PFM team around January 10th, 2014?

11 A I think so.

12 Q Would he have been referring to that meeting
13 with you and Mr. Balwani?

14 A I don't know. I mean, I could infer that from

15 looking at this e-mail right now, but I don't know.

16 Q Okay.

17 And if you turn to Exhibit 256, then you'll
18 see that -- and actually, looking back at Exhibit 255,
19 you'll see that Mr. Balwani is sending a presentation to

20 (b)(6);(b)(7)(C)

21 He says, "Attached, please find a PDF, which
22 is a very confidential slide deck of discussions we
23 had."

24 Do you see that?

25 A Mm-hmm.

↑

735

1 Q And then he is attaching a very long
2 presentation, which is Exhibit 256.

3 Do you remember presenting this presentation
4 to (b)(6);(b)(7)(C) and the rest of the PFM team at that
5 January 2014 meeting?

6 A I don't think we presented it.

7 Q Okay.

8 What do you -- what do you recall presenting?

9 A My memory is that we did not present slides.
10 We had a discussion.

11 Q So your testimony is that you remember not
12 presenting the slides but having a discussion?

13 A Yes.

14 And I think there may have been one slide that
15 was pulled up which resulted in a request for the deck,
16 but I don't think we did a presentation to a slide deck.
17 I think we may have used a slide in support of a
18 discussion point.

19 Q Which slide do you recall using during that
20 meeting?

21 A I -- I don't know. I don't remember it.

22 Q So you recall a slide being the impetus for
23 PFM requesting the slide deck, but you don't remember
24 what that slide was?

25 A Yes.

↑

736

1 Q So looking through the presentation, you said
2 that this looks like some kind of internal Theranos
3 presentation.

4 Do you recall that --

5 A Yes.

6 Q -- testimony?

7 Who would have prepared this slide deck?

8 A I don't think it was one person. I think it
9 was an aggregation of content from different areas of
10 the company that we just kept on adding to over time.

11 Q Were you involved in preparing any part of
12 this presentation?

13 A I -- I don't know. I haven't gone through the
14 whole thing.

15 Just flipping through it, it looks like
16 it's -- it's a lot of content about different parts of
17 our company.

18 Q Was Mr. Balwani involved in preparing parts of
19 this presentation?

20 A I don't know.

21 Q Just generally, during that January 2014
22 meeting with PFM, were there parts that you discussed
23 with PFM versus parts that Mr. Balwani discussed with
24 them?

25 And what are -- what are some of those topics

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737

1 you recall discussing with PFM versus what Mr. Balwani
2 discussed?

3 A So I don't have recollection of specific
4 conversations in the meeting. I know, in general, in
5 these initial meetings with investors, I would talk
6 about our vision and what we were trying to do as a
7 company.

8 Q What did you recall Mr. Balwani talking about?

9 A Again, I -- I don't have specific recollection
10 of -- of what was said in the meeting.

11 BY MR. KOLHATKAR:

12 Q As a general matter, would he have a role in
13 certain topics or product?

14 A Yes, on the operations of the business and on
15 the models or projections that we were putting together.

16 BY MS. CHAN:

17 Q Okay.

18 So I just want to draw your attention to a
19 couple of slides in this presentation.

20 So if you turn to 644, the slide is titled
21 "Media."

22 Do you see that?

23 A Mm-hmm.

24 Q And the third bullet point -- was that a
25 "yes"?

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738

1 A Yes.

2 Q Okay.

3 And the third bullet down, it says, "Not
4 disclosing device, work with hospitals and/or the DOD or
5 future innovations or expansion plans."

6 Do you recall ever putting together slides or

7 documents with that statement?

8 A No.

9 Q Do you know -- do you have any understanding
10 as to what this is talking about?

11 A Sitting here now, I read it to mean that we
12 were not disclosing to the media essentially the -- the
13 plan for the MiniLab work with hospitals or other future
14 innovations or expansion plans.

15 Q Did you have that same understanding in
16 January 2014?

17 A I don't know.

18 Q Why don't you turn to Page 651.

19 So here, there's a slide titled "Same tests, a
20 whole new approach."

21 And the first line says, "Theranos runs any
22 test available in central laboratories and processes all
23 sample types."

24 Was this statement true in January 2014?

25 A I believe so. I don't know how much of our

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739

1 infrastructure had been operationalized in January, but
2 essentially the concept that you could collect any type
3 of sample and, through Theranos, have it processed was
4 certainly the business model.

5 Q Was it true that Theranos was -- could run
6 any -- or was running any test available in central
7 laboratories?

8 A Theranos, as a lab service offering, I -- I
9 believe so. Because we had, I think, at that point,
10 reference labs set up to process some of the samples.

11 Q So you see there's some pictures above that
12 statement with what looks like a collection device.

13 Is that part of the nanotainer or the
14 capillary tube --

15 A Yes.

16 Q -- that leads to the nanotainer?

17 Were you worried at all that this might create
18 an impression that Theranos was using its only -- its
19 manufactured devices to run tests?

20 A My general recollection is the point we were
21 trying to make here is that you could do collection
22 through fingerstick and have an end-to-end lab service
23 offering, and that was the discussion that would
24 accompany this type of slide.

25 Q Okay. But that --

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740

1 BY MR. KOLHATKAR:

2 Q When you say "that was the discussion that

3 would accompany it," do you recall accompanying this
4 slide with that discussion you just described?

5 A I don't. I don't have specific recollection
6 of discussing this slide.

7 But just sitting here now, reading it, and
8 knowing how we would generally describe what we were
9 trying to do, that's my read on it.

10 Q Okay.

11 But you don't recall providing that sort of
12 commentary in connection with this slide to anyone?

13 A I -- I don't think that these slides were
14 discussed with PFM.

15 Q What about any other investors?

16 A I don't think so.

17 Q So you -- I guess, to answer my question, you
18 didn't -- you don't recall providing that sort of
19 commentary that you just described in connection with
20 this slide with any potential investor in Theranos?

21 A I do not.

22 I actually think this may have been on our
23 website in the context of making that point, but I'm --
24 I'm not sure.

25 BY MS. CHAN:

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1 Q Was the statement true in January 2014 that
2 Theranos was running any test available in central
3 laboratories using one of your fingerstick methods?

4 A I don't think that's what this says.

5 I think the point that we were trying to make
6 here is that you could collect fingerstick for some
7 tests, and then also through Theranos, as a lab service
8 provider, we could accommodate any sample and do any
9 test, so people wouldn't have to go to two different
10 locations.

11 Q So you're saying that the pictures at the top
12 and the statement below it are actually two separate
13 statements?

14 A I believe so.

15 BY MR. KOLHATKAR:

16 Q What about the statement at the very top:
17 "Same tests, a whole new approach"; was Theranos
18 providing a whole new approach with respect to running
19 any test available on the central laboratory?

20 A Again, my -- my read on this, sitting here
21 now, is that the point we were trying to make was that
22 we were introducing this fingerstick methodology for
23 blood testing more broadly, and you could run any test
24 available in -- in a central -- or through Theranos as a
25 lab provider in a central lab.

1 Q So -- so with -- I guess my question is just,
2 with Theranos as a central lab provider, was it --
3 was -- as a central lab provider, was it offering a
4 whole new approach?

5 A We believed so, because we were the first to
6 introduce fingerstick, the first to do upfront
7 eligibility, telling people how much they were going to
8 owe, the first to create this consumer experience, and
9 we were trying to offer the ability to run any test
10 through our laboratory when patients came at retail.

11 BY MS. CHAN:

12 Q If you turn to 667 --

13 MR. NEAL: Did you say 57?

14 MS. CHAN: 667.

15 MR. NEAL: Thank you.

16 BY MS. CHAN:

17 Q -- you'll see there's a slide here with the
18 title "Commercial."

19 And the first line under that says, "Key
20 deployments."

21 And then there are a number of bullet points,
22 two of which are "Emergency rooms, hospitals and
23 provider offices," and the second bullet point,

24 underneath, is "DOD."

25 Do you see that?

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743

1 A Yes.

2 Q Was Theranos's technology deployed in
3 emergency rooms, hospitals, and provider offices?

4 A No.

5 Q Was Theranos's technology deployed at the DOD?

6 A I believe the burn study was underway at
7 multiple hospitals at this time, but not otherwise.

8 Q Is that what you would have been talking about
9 on this slide?

10 A No.

11 Sitting here now, my read on this is that this
12 is our aspiration for what we thought all the key
13 deployments would be in building out a commercial
14 infrastructure.

15 Q Was that your understanding at the time, too,
16 that these were aspirational targets?

17 A Again, I don't remember this specific slide,
18 but, yes, there's other lot of aspirational content in
19 this deck of what we were trying to do with the company.

20 BY MR. KOLHATKAR:

21 Q I guess, how -- how can you distinguish

22 between what was aspirational at the time and what
23 Theranos was actually doing at the time, when reviewing
24 this slide deck?

25 A I don't think these slides were intended to be



744

1 standalone. They were a whole set of content that we
2 would share as background material that were intended to
3 be supplemented with discussion and interaction.

4 Q Okay.

5 So do you -- but do you recall ever providing
6 that supplemental discussion and interaction with any
7 potential investors?

8 A I know that we had multiple follow-on meetings
9 in which investors would ask questions about areas of
10 the business that they were interested in.

11 I don't know that investors actually ever read
12 this deck end-to-end.

13 Q I guess, did you -- I'm -- just -- just back
14 to my question, do you recall ever having that sort of
15 discussion about this deck with any investors,
16 whether -- whether this whole thing or a subset of it?

17 A I don't believe an investor ever asked a
18 question about the deck that I know of.

19 BY MS. CHAN:

20 Q Did you ever provide a subset of this
21 presentation to any potential investors?

22 A I don't know.

23 Q Would it surprise you if you did?

24 A Not necessarily. I -- I don't have memory of
25 doing that.

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745

1 Q If you were providing -- to the extent that
2 you did provide a subset of this presentation to any
3 potential investors, how would that potential investor
4 know what was aspirational versus what was actually the
5 truth at the time that they were reviewing the
6 presentation?

7 A In general, my understanding is that these
8 materials were sent after we had meetings with investors
9 or potential investors or partners, and they followed
10 discussions about what we were trying to do, who we were
11 as a company, and were intended as background material
12 on exactly what we were trying to do.

13 Q If you turn to 682 and 683 --

14 MR. HABERMEYER: Can I just ask some
15 questions, Jess?

16 MS. CHAN: Sure.

17 BY MR. HABERMEYER:

18 Q So, Ms. Holmes, in your -- in these meetings
19 that you had with investors and potential investors, did
20 you talk about what was aspirational, what you wanted to
21 achieve?

22 A Yes.

23 Q And did you talk about specifically the
24 technology and blood draw and what was in place at that
25 time versus what was aspirational? Was there a clear

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746

1 delineation between those two?

2 A We tried to do that.

3 Looking back on it now, and especially in the
4 case of PFM, I wish we had done that even more
5 explicitly, including in writing. We didn't have the
6 same type of systems in place we have now on things like
7 sending out materials, but we thought we had at the
8 time.

9 Q And what specifically do you wish you would
10 have communicated to PFM at the time?

11 A What I -- I think we did communicate, which is
12 Phase 1/Phase 2, what we were doing in Phase 1, what the
13 business model was, what technology we were using and
14 what we were doing in Phase 2, and what technology we
15 were intending to use in Phase 2.

16 I -- I know that we also really thought we
17 were closer to Phase 2 than we were.

18 Q I just want to make sure I'm understanding.

19 So you -- is it your testimony that you did
20 communicate Phase 1 and Phase 2 to PFM, or you wish you
21 would have conveyed Phase 1 and Phase 2 to PFM?

22 A It's my testimony that I think I did -- we
23 did, Theranos did. I don't know if it was me
24 specifically.

25 And it's also my testimony that -- you know, I

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747

1 understand if you take this document in isolation, that
2 we could have done a much better job in creating
3 documents that we were sending to people.

4 We -- we didn't intend these documents to be
5 standalone.

6 And -- and, you know, sitting here now, I know
7 we could have been much better at the way we prepared
8 materials and shared them than we were at the time.

9 Q So is it your testimony that in the
10 discussions, the meetings that you had with PFM, that
11 you did describe Phase 1 and Phase 2, but that that's
12 not was -- what was -- that was not necessarily
13 reflected here in the document that we're looking at?

14 A Yes.

15 It's my testimony that I believe in the
16 meetings that we had with PFM, we did describe Phase 1
17 and Phase 2.

18 And, additionally, in looking at this slide
19 deck, I don't think this slide deck does a good job of
20 describing that on a standalone basis.

21 Q Okay. Thank you.

22 BY MR. KOLHATKAR:

23 Q Who bears responsibility for the failures in
24 the slide deck?

25 A It's my understanding that PFM understood,

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748

1 based on what we at least tried to communicate -- or, I
2 guess, I had thought that we had communicated that this
3 was an internal deck that we were sharing with them for
4 background purposes, not that it was intended to operate
5 as a standalone document.

6 And I -- I wish we had done a much better job
7 of, you know, documenting that in terms of the
8 communication with them.

9 But we had at least intended to be clear when
10 we sent it that this was supposed to be an internal sort
11 of compilation of materials that we were sharing for

12 background purposes.

13 Q Sure. I understand that.

14 But I guess you -- I think what you described
15 as you -- you know, you sort of wish it had been
16 communicated in a different way.

17 A Yup.

18 Q Whose responsibility would it have been to
19 communicate it in a different way to PFM at that time?

20 A I -- well, I -- I mean, in retrospect, I -- I
21 think we should have, in writing, documented what I
22 think we had said to them, which was that this was a
23 compilation of internal materials that we would share
24 and exactly what -- what the deck was.

25 I -- I think we -- we at least attempted to

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749

1 communicate that verbally, but we don't have a good
2 record of that.

3 Q Well, who is the "we" in that sentence, I
4 guess? Is it -- is it you and Sunny? Is it -- is it
5 Theranos, the company?

6 Who --

7 A Theranos, the company.

8 I -- I can't remember the specifics of the
9 conversations with PFM and, you know, the moment when

10 they -- they asked for the deck. I just know my general
11 understanding of what happened in the context of sending
12 this material.

13 Q Okay.

14 So can you point to anyone who'd be -- who you
15 think bears responsibility for -- for the way in which
16 this deck was sent and communicated to PFM?

17 A Well, I mean, Theranos, myself, Sunny, in the
18 context of the engagement with PFM. We were the
19 principals interacting with them.

20 Q Okay.

21 So I -- I mean, understanding that Theranos is
22 an entity and you and Sunny are individuals, other than
23 you and Sunny, are there any other individuals you feel
24 that bear responsibility for that?

25 A For what?

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750

1 Q For -- for -- you know, as you said, sort of
2 the -- the way in which the slide deck was communicated
3 to PFM.

4 A I don't -- I don't know if anybody else had an
5 interaction with them around it.

6 I mean, this was the way the company was
7 operating at this time, generally, and we believed at

8 that time that the people we were interacting with
9 understood what the content we were sharing was.

10 BY MS. CHAN:

11 Q If you turn to 682 and 683 -- I think you're
12 on 682 right now -- but we're also looking at -- oh,
13 683.

14 A Yeah.

15 Q We're also looking at 682, as well.

16 What were you trying to convey in these two
17 pages?

18 Have you -- have you seen these slides before,
19 whether it's outside of this presentation or not?

20 A I have.

21 I remember them as being from the slide deck
22 we were using with our retail partners to talk about
23 what the process would be at retail for doing a
24 fingerstick.

25 Q So here, are you trying convey that -- where

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751

1 it says "lab today" on 682, are you trying to convey
2 that, you know, today, blood testing is being done by a
3 venipuncture using a syringe?

4 Is that what you're trying to convey by the
5 first picture?

6 A I don't know. I think, in general, these were
7 slides describing fingerstick at retail.

8 Q Okay.

9 So what -- what is the message that you're
10 portraying by 6- -- through 682?

11 A Do you mind if I take a minute to look at the
12 slides before I answer it?

13 Q Sure.

14 A Sitting here now, my read is that it's a
15 description of what fingerstick testing would be like at
16 Walgreens.

17 BY MR. KOLHATKAR:

18 Q Does that -- does that mean aspirationally?

19 A I mean, my memory is that most of this deck is
20 aspirational. But yes, it's -- I mean, it starts with a
21 sort of Walgreens store and then the process of doing
22 the collection and what that process would be like.

23 And I, again, think these slides were from,
24 actually, a retail deck on what the service offering
25 would be.

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752

1 BY MS. CHAN:

2 Q So turning to 685, there's a slide titled "New
3 possibilities in the lab."

4 And it says, under "Routine, specialty, and
5 esoteric testing," "All 1,000-plus currently run tests'
6 CPT codes are available through Theranos."

7 And again, "Theranos runs any test available
8 in central laboratories."

9 Was that a true statement in January 2014,
10 that all 1,000-plus currently run tests or CPT codes
11 were available through Theranos?

12 A Again, I think it's the same comment, that the
13 whole range of tests can be run through Theranos's lab.
14 And I -- I think that was true in January '14. But I'm
15 not sure how much of that had been operationalized in
16 January '14, because we'd only been open for a couple
17 months at that point.

18 Q So this would have been including tests being
19 run on the modified commercially available machines,
20 tests being run on the unmodified commercially available
21 machines, and also tests being sent out to reference
22 labs?

23 A That's right.

24 Q Was that conveyed to potential investors when
25 you were talking about how 1,000-plus currently run

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1 tests were being offered through Theranos labs?

2 A I don't know that we were ever talking
3 specifically about this. I -- I thought that we had
4 talked about what we were running and that we were
5 including reference lab capabilities in our service
6 offering in Phase 1.

7 Q When you say you thought you had conveyed
8 that, do you know that you conveyed it to any potential
9 investors?

10 A Again, I don't remember specific conversations
11 on -- on these points.

12 Q Okay.

13 Going to 698, then, there's a slide here
14 titled "Validation of Theranos."

15 And at the bottom of the slide, it says,
16 "Excerpts from Johns Hopkins due diligence and
17 technology validation."

18 Do you see that?

19 A Yes.

20 Q Did Johns Hopkins conduct a validation of
21 Theranos's technology?

22 A As I understand it, they did for Walgreens.

23 Q What do you mean, as you understand it, they
24 did for Walgreens?

25 A Walgreens' team would talk about the Johns



1 Hopkins validation, meaning that Johns Hopkins had
2 signed off on -- through the architecture of the
3 technology as a platform, they could do all these
4 things.

5 Q Earlier in your testimony, you testified that
6 no devices were ever given to Johns Hopkins.

7 Do you remember that?

8 A We -- we brought one to the meeting, I
9 believe; but, yes, I don't think Theranos independently
10 shipped devices to Hopkins.

11 Q Okay.

12 So how did Johns Hopkins conduct a validation
13 of your technology if it didn't have access to your
14 device?

15 A Again, my understanding is that this was
16 really looking at the design and architecture of the
17 technology, would it be capable of doing something that
18 no other point of care technology had ever been able to
19 do.

20 Q You also testified earlier that your
21 understanding of validation included such factors as
22 linearity and precision and test specificity.

23 Do you remember that?

24 A The assay or chemistry validation, yes.

25 Q Okay.

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755

1 Do you remember Johns Hopkins doing any of
2 that --

3 A No.

4 Q -- study on your -- on -- of your -- either
5 your tests or your devices?

6 A No.

7 MR. NEAL: Wait, wait.

8 Any of the assays, you mean, as opposed to the
9 device?

10 MS. CHAN: So I'm asking her --

11 BY MS. CHAN:

12 Q Do you -- do you remember Johns Hopkins doing
13 any work on either validating the tests or the devices
14 under that framework, what we have just talked about --

15 A You're asking did --

16 Q -- looking at linearity, precision, test
17 specificity?

18 A They reviewed some of that data. They did not
19 perform validations themselves. They just reviewed
20 data.

21 Q If you turn to 700 --

22 MR. KOLHATKAR: Actually, can I ask another

23 question on 698?

24 BY MR. KOLHATKAR:

25 Q Do you see the line above that, it says,

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756

1 "Theranos's lab infrastructure is validated under FDA,
2 ICH, and World Health Organization guidelines"?

3 A Mm-hmm.

4 Q Was that a true statement as of January 2014?

5 A I don't know.

6 I -- I know that our understanding of the
7 standards that we were using to validate our LDTs, our
8 lab-developed tests, changed over time. And I think
9 this is what that is referring to.

10 But I'm -- we later learned that we should be
11 using different standards.

12 Q I guess what -- what do you take lab
13 infrastructure to mean?

14 A I'm not sure. I don't know. I -- I could
15 guess, sitting here now.

16 Q I mean, is it -- is -- is the reference -- is
17 the sentence here, "Theranos's lab infrastructure is
18 validated under FDA, ICH, and World Health -- World
19 Health Organization guidelines" a statement that
20 Theranos's TSPU has been validated under these

21 guidelines?

22 A No.

23 Sitting here now, my read is that it's talking
24 about the standards that we were using for validation of
25 the lab-developed tests.

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757

1 Q I -- were lab-developed tests often called
2 infrastructure?

3 A I don't know.

4 Q Did you ever use that word to call, in -- in
5 referring to lab-developed tests?

6 A I don't know.

7 Q Can you recall an instance where it was?

8 A I can't.

9 BY MS. CHAN:

10 Q Who drafted that slide?

11 A I don't know.

12 I think, again, like many of these slides,
13 it's an old slide that was carried through in a lot of
14 decks and/or updated over time.

15 Q If you turn to 700, there's a slide titled
16 "Products."

17 And here, under "Devices," there's a bullet
18 point that says, "MiniLab and 4S for automated

19 processing."

20 Do you see that?

21 A Yes.

22 Q These weren't the only devices that were used
23 by Theranos for patient testing, were they?

24 A I -- I don't think either of them were used
25 for patient testing.

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758

1 Q Okay.

2 Why didn't you include, for instance, 3.5 that
3 was being used for patient testing here?

4 A I believe that this is a specific slide
5 talking about what products the company wanted to
6 develop on a go-forward basis.

7 BY MR. KOLHATKAR:

8 Q What's the basis for that belief?

9 A I -- I generally recognize it. And I
10 generally have memory that we were trying to distinguish
11 sort of products from the clinical lab, that Theranos
12 was developing products and it also was operating a lab,
13 and that this part of the discussion was on the -- on
14 the technology or the products that we were trying to
15 build.

16 BY MS. CHAN:

17 Q Do -- did you ever talk to investors and show
18 them this particular slide?

19 A Again, I -- I don't remember ever having
20 conversations with investors about the slide deck.

21 Q Did you -- but did you ever have any
22 conversations with investors about this particular
23 slide?

24 A I don't think so.

25 Q What about 701, which is the next page. There

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759

1 are pictures of a number of things under the title,
2 "Overview of Theranos systems."

3 Under "Theranos analyzers," there's a picture
4 of two analyzers there.

5 What are these pictures of?

6 A One is of the -- the 3-series device -- I
7 don't know if it's a 3.0 or 3.5 -- and the other one is
8 one of the 4-series devices in MiniLabs.

9 Q Okay.

10 So here under -- you know, you're giving --
11 you're actually showing pictures of Theranos analyzers.

12 Why didn't you include other machines that you
13 were using, including the commercially available
14 machines here?

15 A Again, I don't think this part of the
16 presentation, these slides, were used to support
17 anything about the clinical lab.

18 I think this was talking about the proprietary
19 technologies that we were working to develop for
20 distributed testing.

21 Q Did you think that this might give the wrong
22 impression that the only Theranos analyzers Theranos was
23 using were its own proprietary devices and that Theranos
24 wasn't using commercially available machines to conduct
25 testing?

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760

1 A Not at the time. Because we weren't using
2 these decks for the purpose of trying to provide a
3 comprehensive overview of the company.

4 But again, were I preparing this content now,
5 we're -- we're being very careful to prepare this
6 content very differently now.

7 Q So do you think it could have been made
8 clearer that you were not providing an overall picture
9 of what the company was doing or using, in that you
10 could have been more specific as to the analyzers
11 Theranos was using at the time?

12 A At the time, we did not think that these

13 slides were ever going to be looked at as standalone
14 descriptions of what we were doing.

15 We thought they were tools to facilitate
16 different parts of the discussion.

17 Now, again, we are taking a very different
18 approach to how we're preparing any content.

19 Q Okay. Why don't you turn to 733.

20 BY MR. KOLHATKAR:

21 Q Sorry.

22 Before we leave this slide again, just the --
23 this slide is titled "Overview of Theranos systems."

24 A Mm-hmm.

25 Q Sorry. Is that a "yes"?

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761

1 A Yes.

2 Q Is it your basic testimony that this isn't an
3 overview of Theranos systems, it's an overview of
4 Theranos's planned systems?

5 A Theranos systems was the word that we
6 generally used to describe the proprietary family of
7 technologies that we were developing with MiniLab.

8 And, yes, it's my general memory that this --
9 this deck was about -- was aspirational.

10 So these were the technologies we wanted to

11 take into the FDA and distribute on the market, but
12 obviously had not done that yet.

13 BY MR. HABERMEYER:

14 Q One other follow-up, Ms. Holmes.

15 You just said, prior to Mr. Kolhatkar's
16 question, that the deck was a tool to facilitate
17 discussion?

18 A Yeah.

19 Q So I know you said that you didn't go over the
20 deck or -- other than that one slide.

21 Did you have the deck there in the meeting and
22 you were going through it with PFM?

23 Or how did that work?

24 A I -- I don't know that we had the deck with
25 us. It's my general understanding that we did not go

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762

1 through a deck with PFM at all.

2 I think that on a computer, I don't know if it
3 was mine or -- in fact, I'm -- it probably was not mine,
4 because I generally didn't bring computers to meetings,
5 but a slide was put up to support a conversation.

6 And I generally understand that, after that,
7 PFM asked, could you send the deck that that slide was
8 from, and we sent this big deck.

9 Q So when you were having the discussion with
10 PFM employees, did -- did you have the deck in front of
11 you? Even though you weren't projecting it or any of the
12 slides from it, did you have it as kind of a tool that
13 you would use -- either you or Mr. Balwani would use --
14 to facilitate the discussion that you previously
15 testified to?

16 A I don't think it was up on the screen. I
17 think it was literally brought up with a slide to
18 facilitate discussion.

19 I -- I can infer from that that it was on a
20 computer that was in the room at the time of the
21 meeting.

22 Q Okay.

23 BY MR. KOLHATKAR:

24 Q I guess -- did you -- did you have a copy for
25 yourself -- of the slide deck for yourself to use as

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763

1 sort of a --

2 A No.

3 Q -- set of talking points?

4 A No.

5 Q Did you generally have a prepared set of
6 talking points when meeting with investors?

7 A No.

8 Q What did you use to sort of guide the
9 discussion?

10 A I -- I would generally speak in -- in free
11 form, because part of the conversation that I had was --
12 was our vision. So it was about talking about who we
13 were, what we were trying to do.

14 And then I would talk about the inventions.

15 And then from there, there was generally
16 follow-on discussions where people would do diligence,
17 and I, for the most part, was not involved in those next
18 set of conversations.

19 Q Because they were with Mr. Balwani or someone
20 else from Theranos?

21 A Yes.

22 MR. HABERMEYER: Just real quick.

23 BY MR. HABERMEYER:

24 Q If -- if you didn't use the deck during the
25 meeting and you didn't use it yourself as a tool to

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764

1 facilitate a discussion, then my question would be,
2 what, then, is the point of the deck?

3 A The -- the deck was a -- an amalgamation of
4 slides that Theranos had. It was used by different

5 teams, different people, for different purposes.

6 It's -- it's literally a set of marketing
7 content, a set of content from the website, a set of
8 content about the labs, a set of content about our
9 retail relationships, you know, data.

10 And it was a working tool that different
11 people throughout the company would use if they needed
12 to pull a piece of information to support a discussion.

13 So if they wanted, for example, a picture of
14 the system, if they were trying to describe the system,
15 they would pull that slide from the deck to support
16 discussion.

17 Q So your testimony, as I understand it, is you
18 had this deck already in place and there was a
19 discussion during the meeting with PFM in which you
20 pulled out one slide, projected that, and then PFM, from
21 that point, said, "hey, can we get" -- later on, said,
22 "Can we get a copy of the deck that you used?"

23 A Yes.

24 Q Okay.

25 BY MS. CHAN:

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765

1 Q Who pulled up that slide?

2 A I don't know.

3 Q Was it Mr. Balwani?

4 A Again, I don't know.

5 I know that I generally didn't bring computers
6 to meetings, so probably. But I don't remember it
7 specifically.

8 Q Okay.

9 If you go to Page 733, there's a slide titled
10 "Clinical data," and then a whole section full of slides
11 behind it.

12 A Yes.

13 Q Do you see that?

14 And let's just take a look at a specific
15 slide.

16 So 754.

17 Looks like there's a chart for ferritin.

18 Do you see that?

19 A Yes.

20 Q What is this chart supposed to convey?

21 A Data that we thought was representative as to
22 the performance of the chemistry and that was designed
23 to be able to handle small sample volumes.

24 Q Okay.

25 So -- so take me through what's being compared

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1 here.

2 So is this a correlation graph?

3 A It's a method comparison graph.

4 Q A method comparison graph.

5 So what are you comparing here?

6 A You're comparing the Theranos assay to one by
7 ALPCO Diagnostics, I think is their name.

8 Q And what are each of these assays being tested
9 on?

10 What -- what device or platform are they being
11 tested on?

12 A I believe ferritin was on the Theranos TSPU,
13 and the ALPCO is on a kit.

14 Q Okay.

15 And the kit, is that -- what is that? Is that
16 like a manual kit?

17 A I -- I think so. I don't know for sure.

18 Q Okay.

19 So you're comparing the performance of the
20 Theranos assay on the TSPU versus a reference assay
21 using some other platform; is that fair?

22 A Yes.

23 Q Okay.

24 And so is this trying to show that the
25 Theranos method is quite close to the reference method?

1 A It's showing what the concordance is. At the
2 time, we thought this was really good.

3 Today, we actually wouldn't accept this as
4 being as good as we -- we thought it was.

5 Q Why do you say that?

6 A We used to believe that cutoffs, like R
7 squared in about this many samples, were sufficient to
8 show validation of a test, and we have much more
9 comprehensive mechanisms in place right now for the
10 standards to which we're validating.

11 Q So you understood in January of 2014, though,
12 that ferritin wasn't actually being tested on the TSPU
13 in patient testing, though, correct?

14 A I don't know that I understood that in January
15 2014.

16 I knew there was a limited number of tests on
17 the TSPU in the lab.

18 Q Would it surprise you if you knew that
19 ferritin was being tested, instead, on a commercially
20 available machine at that time?

21 A I don't think I would have known that, but it
22 wouldn't surprise me if it was being tested on a
23 commercial machine.

24 Q Do you think that the fact that you're
25 including these correlation graphs that compare the

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768

1 Theranos method to reference methods and Theranos
2 methods being on the TSPU would create the impression to
3 people who are reviewing these slides that Theranos was
4 using its TSPU for all of these tests --

5 A No.

6 Q -- at that time?

7 A No.

8 Q Why?

9 A Because these data were intended to reflect
10 the fact that we had worked on a large number of
11 chemistries to handle small sample volumes and that we
12 would work to bring those up in the lab over time.

13 This was not intended to reflect the clinical
14 lab.

15 BY MR. KOLHATKAR:

16 Q This is all under a section called "Clinical
17 data"?

18 A Yes.

19 Q Is that right?

20 Can you just differentiate for me, in your
21 mind, the difference between clinical lab and clinical

22 data?

23 A I believe clinical data is the term to reflect
24 plots when you're using actual clinical samples for the
25 plot, as opposed to some of the experiments that you



769

1 were referencing earlier, which are not done on -- on
2 actual live samples, they're done on contrived
3 materials.

4 This part of the discussion was broadly about
5 the -- the assays that we were developing to the extent
6 that we showed this data.

7 BY MS. CHAN:

8 Q So are you saying that patient samples were
9 being used in order to do this method comparison?

10 A Yes.

11 BY MR. KOLHATKAR:

12 Q So like leftover material from a -- from a
13 test run on a -- on a traditional machine could be used
14 in -- to test a Theranos assay; is that --

15 A So the last part of an assay sort of
16 validation process, as I understand it, is the method
17 comparison. And that's where you take an actual sample
18 and compare two methods. The rest of the steps, like
19 linearity or precision, are not done with actual patient

20 samples, and that's why it says "clinical data," since
21 that last step where you're actually doing the
22 comparison with the clinical sample.

23 MS. CHAN: Why don't we take a short break.

24 We're off the record at 2:06 p.m.

25 (A brief recess was taken.)

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770

1 MS. CHAN: We're back on the record at

2 2:20 p.m.

3 BY MS. CHAN:

4 Q Ms. Holmes, did you have any substantive

5 conversations with the SEC staff during the break?

6 A I did not.

7 Q Did you ever send a subset of the internal

8 slide decks, something similar to Exhibit 256, to (b)(6);(b)(7)(C)

9 (b)(6);(b)(7)(C)

10 A I don't know.

11 Q Would it surprise you if you did?

12 A No.

13 Q Why not?

14 A It was a tool that we used in supporting
15 discussions.

16 Q But you'd earlier said that you wouldn't
17 provide the slides without some sort of explanation

18 about those slides?

19 A No, I'm -- I'm sorry. What I was trying to
20 say --

21 MR. NEAL: I don't think that's what she said.
22 Go ahead and give your explanation.

23 THE WITNESS: Yeah.

24 What I was trying to say was that the slides
25 were not created to be standalone material.

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771

1 BY MS. CHAN:

2 Q Okay.

3 So what were they created for?

4 A They were created to support discussions.

5 Q Okay.

6 I don't know how that's any different from
7 what I just asked you.

8 A I'm sorry. Maybe I misunderstood the
9 question.

10 Q I had understood you to say that the slide
11 deck wasn't meant to be sent to other -- other people,
12 such as potential investors, without an explanation for
13 those slides.

14 Wasn't that -- wasn't that your testimony?

15 A Maybe I didn't communicate clearly.

16 I -- what I was attempting to communicate is
17 that when those slides were created, they were not
18 created to operate in a standalone way. We would share
19 them, and generally with people with whom we were in
20 active discussion.

21 BY MR. KOLHATKAR:

22 Q Do you recall sending materials to (b)(6);(b)(7)(C)
23 more generally, whether connected to Exhibit 256 or
24 otherwise?

25 A My -- I recall that he was advising me and --

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772

1 and us in the early days of my relationship with him. He
2 even acted as my counsel for a period of time. So we --
3 we shared a lot of information with him.

4 Q Did you share any information with him in
5 connection with obtaining potential investors in
6 Theranos?

7 A We shared information with him in the context
8 of the C2 round and the people who we were talking to.

9 And I remember asking for his advice on, you
10 know, what information would make sense to -- to share.

11 Q The -- I guess is it your testimony that you
12 retained (b)(6);(b)(7)(C) to -- to provide you with legal
13 advice on that issue?

14 A Um --

15 Q I'm just trying to be careful about how --

16 MR. NEAL: Yeah, (b)(6);(b)(7)(C) was Ms.
17 Holmes' lawyer for a certain amount of time on a number
18 of issues.

19 And -- we'd better talk about whether this
20 goes into it or not.

21 Let us have one -- one second.

22 There was a lot of stuff that was clearly
23 attorney-client privilege.

24 MS. CHAN: We're off the record at 2:23 p.m.

25 (A brief recess was taken.)

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773

1 MS. CHAN: We're on the record at 2:32 p.m.

2 BY MS. CHAN:

3 Q Ms. Holmes, did you have any substantive
4 conversations with the SEC staff during the break?

5 A No.

6 BY MR. KOLHATKAR:

7 Q So just to follow up on the question, did you
8 understand -- did you have an understanding in 2014 that
9 certain materials were provided to (b)(6);(b)(7)(C) in
10 connection with his potential investment in Theranos?

11 MR. NEAL: Yes or no.

12 THE WITNESS: Um --

13 MR. NEAL: If you can answer "yes" or "no."

14 THE WITNESS: I understood that they were
15 generally being provided for advice in connection with
16 the C2 round that we were -- that we were working
17 toward.

18 BY MR. KOLHATKAR:

19 Q What materials were those?

20 A I don't remember specifically. I know that he
21 had access to a number of documents, that we sent
22 documents to him.

23 Q Do you remember who at Theranos sent him those
24 documents?

25 A I don't, but I -- I would assume that I sent

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774

1 some of them to him.

2 Q Do you know if he passed those materials on to
3 potential C2 investors?

4 A I don't know if he passed them on. I think he
5 may have shown materials that he had to certain
6 potential investors.

7 BY MS. CHAN:

8 Q Did -- did you understand at the time that
9 materials were being provided to (b)(6),(b)(7)(C) that he was

10 intending to show those materials to potential
11 investors?

12 A No. I think he did that later.

13 BY MR. KOLHATKAR:

14 Q Did -- did (b)(6);(b)(7)(C) ever attend meetings
15 that you had with potential C2 investors at Theranos?

16 A Yes.

17 Q Would that include (b)(6);(b)(7)(C)

18 A Yes.

19 Q Would that include --

20 MR. DAVIES: Just for clarity's sake, since
21 there's a --

22 MR. KOLHATKAR: Sure.

23 MR. DAVIES: -- (b)(6);(b)(7)(C)

24 MR. KOLHATKAR: Sure.

25 BY MR. KOLHATKAR:

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775

1 Q (b)(6);(b)(7)(C) of Cox
2 Investments?

3 A Yes.

4 Q Who -- who else did he attend them with?

5 A He was at one of the meetings with (b)(6);(b)(7)(C)

6 (b)(6);(b)(7)(C) It wasn't at Theranos, but it was about
7 investing in Theranos.

8 And he may have been at -- at others, as well.

9 Q Did he attend a meeting with representatives
10 from the Niarchos Foundation?

11 A Yes.

12 Q I guess in --

13 A Actually, I think so. He may have been on the
14 phone. I'm not sure.

15 Q In any of those meetings, do you recall
16 presenting a selection of the slides that we saw in
17 Exhibit 256?

18 A I don't have memory of that, no.

19 BY MS. CHAN:

20 Q Earlier in your testimony, you testified that
21 BDT Capital was hired as a financial adviser to
22 Theranos.

23 Do you remember that testimony?

24 A As an adviser, initially, yes. Or that we
25 engaged with them. I don't know that we hired them, per

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776

1 se.

2 Q Okay.

3 And in late 2014, you understood that they
4 were considering to invest in Theranos, that they were a
5 potential investor, as well, correct?

6 A I did.

7 (SEC Exhibit No. 266 was marked for
8 identification.)

9 BY MS. CHAN:

10 Q I'm going to hand to you what's been marked as
11 Theranos Exhibit 266.

12 Exhibit 266 purports to be a December 6- --
13 I'm sorry -- December 19th, 2014, e-mail from Elizabeth
14 Holmes to Sunny Balwani. Subject line is "Forward
15 project test company overview memo, version 025.PDF,"
16 with starting Bates number THPFM0003891168, with an
17 attachment with Bates number starting THPFM0003891169.

18 Have you seen Exhibit 266 before?

19 A I don't know. I don't remember it. But I
20 don't have reason to doubt the e-mail exchange.

21 Q What is Exhibit 266?

22 A It looks like an e-mail exchange, with an
23 attachment, from (b)(6)

24 Q Did you receive the e-mail on December 18th,
25 2014, from (b)(6);(b)(7)(C) on or about December 18th, 2014?

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777

1 A Again, I don't remember it, but I assume I
2 did.

3 Q And you also received a following e-mail

4 around the same date from (b)(6);(b)(7)(C)

5 A It looks like I did, yes.

6 Q Do you understand (b)(6);(b)(7)(C)

7 (b)(6);(b)(7)(C) who were addressees on these
8 e-mails, (b)(6);(b)(7)(C)

9 A Yes.

10 Q So you'll see here at the bottom of 1168, on
11 Exhibit 266, there's an e-mail from (b)(6);(b)(7)(C) to you.

12 And he says, "Elizabeth, attached is the
13 preliminary draft of our company overview that we would
14 plan to send to the preapproved coinvestor targets."

15 Do you see that?

16 A I do.

17 Q Did you understand that information that they
18 were including on this memo that he's attaching to this
19 e-mail was based on conversations that he had with you
20 and Mr. Balwani?

21 A Again, I don't remember receiving this
22 e-mail, and I -- I don't know that I ever read the
23 attachment.

24 Q Had you had discussions with (b)(6);(b)(7)(C) Capital prior
25 to December 18th, 2014?

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1 A Yes.

2 Q And in those discussions, had you described
3 Theranos's vision and its operations?

4 A Yes.

5 Q Did you understand, by the time of this
6 e-mail, that (b)(7) Capital had prepared a memo in order to
7 send out to potential coinvestors?

8 A I don't know.

9 My memory generally is that we were deciding
10 whether or not to have (b)(7) invest, and ultimately
11 decided not to proceed.

12 Q Did you have any discussions with (b)(7) Capital
13 about them going out to find coinvestors to invest
14 together in Theranos with (b)(6)

15 A My memory is that they already had entities
16 that were interested in investing, but I don't remember
17 specific conversations about that.

18 Q Okay.

19 So in (b)(6),(b)(7)(C) e-mail, at the bottom, he
20 says, "Feel free to make any changes/edits."

21 Do you see that?

22 A Yes.

23 Q Did you end up making any changes to the
24 memorandum that he attached and sending -- and did you
25 ever send that back to (b)(7) Capital?



1 A Again, I don't recognize the document, so I
2 don't know that we ever went through it.

3 I think we ended up deciding not to proceed
4 with a financial investment from (b)(6)

5 Q Okay.

6 And after (b)(6),(b)(7)(C) sends his e-mail, (b)(6),(b)(7)(C)
7 (b)(6),(b)(7) sends another e-mail. And she attaches a set of a
8 PDV -- PDF version of the memorandum she sends, a Word
9 version of the document.

10 Do you see that?

11 A I do.

12 Q So she was intending to make it easier for you
13 and Mr. Balwani, or at least for you, to make changes to
14 the document, correct?

15 A Yes.

16 Q Okay.

17 And then you send it -- you forward the e-mail
18 to Mr. Balwani.

19 Do you see that, at the top?

20 A Yes.

21 Q What was your purpose in sending it to Mr.
22 Balwani?

23 A I don't know. I can't remember receiving this
24 e-mail.

25 Q You can keep that in front of you.

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780

1 (SEC Exhibit No. 267 was marked for
2 identification.)

3 BY MS. CHAN:

4 Q I'm going to hand to you what's been marked
5 Theranos 267.

6 Exhibit 267 purports to be a December 23rd,
7 2014, e-mail from (b)(6);(b)(7)(C) to Elizabeth Holmes, with
8 a copy to (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C)
9 Subject line is "Re: follow-up to our call," with
10 starting Bates number BDTSEC_PST0005074.

11 Have you seen Exhibit 267 before?

12 A I don't recognize it, but I don't have reason
13 to doubt the document.

14 Q And (b)(6);(b)(7)(C) was he also a member of the
15 BDT team?

16 A I think so.

17 Q So if you look on the bottom of Exhibit 267,
18 5074, there is an e-mail from you on December 23rd,
19 2014.

20 Did you send that e-mail on or about December
21 23rd, 2014?

22 A Again, I don't remember it, but I don't have

23 reason to doubt the document.

24 Q Okay.

25 And so you're sending an e-mail to, it looks

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781

1 like, (b)(6),(b)(7)(C)

2 And here, you note in your e-mail -- let's
3 see, one, two, three -- the fourth paragraph down, you
4 say:

5 "With respect to the investment memo, our team
6 had a mini heart attack seeing our complete strategy,
7 future plans, unannounced deals, and profit margins
8 delineated in a single document like that, especially
9 without any encryption of the document."

10 Do you see that?

11 A Yes.

12 Q Does this refresh your recollection that you
13 reviewed the memo at the time?

14 A No. No.

15 Q How would you know that the memo included all
16 of these things, like Theranos's complete strategy,
17 future plans, unannounced deals, and profit margins,
18 unless you reviewed it?

19 A Looks like our team reviewed it. I don't know
20 who.

21 Q Who on your team would have reviewed the memo?

22 A I don't know.

23 Q Who else received the memo besides you and Mr.

24 Balwani?

25 A I don't know.

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782

1 BY MR. KOLHATKAR:

2 Q If you look a little further down in that same
3 paragraph, it says:

4 "Let me know if the intent is for this to go
5 only to persons who have committed to participate
6 through co-investment to a broader group; I'd like to
7 get a sense of what the purpose of the document is at
8 this stage, and we can then send back our thoughts and
9 edits based on what we are trying to do with it at this
10 point."

11 Do you see that?

12 A Yes.

13 Q What -- what were you asking (b)(6),(b)(7)(C) there?

14 A Sitting here, reading it now, I assume I'm
15 saying what -- what is the purpose of the document, and
16 then we'll edit it based on the intended audience.

17 Q Did you not understand the purpose of the
18 document before asking him?

19 A I mean, I'm assuming not, given that I'm
20 asking here.

21 Q Okay.

22 BY MS. CHAN:

23 Q So going back to Exhibit 266, I want to turn
24 to the attachment to the e-mail --

25 A Yes.

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783

1 Q -- and look at the page number ending -- Bates
2 number ending 1172.

3 Oh. Actually, first, could you actually start
4 on 1169.

5 You'll see this is the cover page of the
6 memorandum. And it's titled "Project test."

7 Do you see that?

8 A Yes.

9 Q Did you understand your discussions with BDT
10 Capital that they were using "test" as a code name for
11 Theranos?

12 A I don't remember that, but it looks like they
13 were.

14 Q Okay.

15 Why don't you turn to 1172.

16 So I want to focus on the portion of this page

17 under "Compelling strategic plan."

18 You'll see, on the third paragraph down, it
19 says:

20 "In conjunction with its execution of its
21 seven-pronged strategic plan, the company is currently
22 negotiating the terms of a contract with the U.S.
23 government to provide testing services for Ebola within
24 U.S. airports and alongside the U.S. military and aid
25 agencies in West Africa."

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784

1 Did you tell (b)(7) this?

2 A I don't remember a specific conversation to
3 that effect.

4 Q Do you remember a general conversation to that
5 effect?

6 A I don't remember general conversations to that
7 effect.

8 I know at the time we were devoting a lot of
9 resources to the submission of an emergency-use
10 authorization for Ebola and were hopeful that we would
11 be able to engage in contracting opportunities.

12 Q So you remember that you were -- you were
13 hopeful about engaging in contract opportunities -- were
14 you -- were you negotiating the terms of a contract with

15 the U.S. government at that time with respect to Ebola?

16 A Not that I can recall.

17 Q So would this statement be true as of late
18 2014?

19 A I don't think so, but I -- I can't remember
20 exactly who we were engaging with on Ebola contracting.

21 Q Did you --

22 BY MR. KOLHATKAR:

23 Q Who would know the answer to that?

24 A I don't know. I don't know. We'd -- we'd
25 need to look back at how we were doing this at that

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785

1 time. I haven't thought about it for a long time.

2 BY MS. CHAN:

3 Q Did you hear Mr. Balwani make a statement to
4 this effect, that the company is currently negotiating
5 the terms of a contract with the U.S. government with
6 respect to Ebola?

7 A I can't remember any discussions to that
8 effect.

9 Q If you turn to the next page, which is 1173,
10 under "Technology and hardware," the second paragraph
11 down, the memorandum says:

12 "Samples for all tests are run on one

13 proprietary diagnostic machine, an unprecedented
14 capability in testing and a significant technological
15 competitive advantage versus peers."

16 Did you tell (b)(7) that?

17 A To the extent we were discussing the MiniLab,
18 yes. That's what the MiniLab is architected to do.

19 BY MR. KOLHATKAR:

20 Q It says, "All tests are run on one."

21 Is this an aspirational statement, then, in
22 your mind, or --

23 A Yes. It's a description of the design of the
24 MiniLab. We -- yes.

25 BY MS. CHAN:

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786

1 Q Did you tell (b)(7) Capital that Theranos was not
2 actually using its proprietary diagnostic machine to
3 perform patient tests -- or all patient tests, rather,
4 that it was only perform -- it was only being used to
5 perform a small subset of the tests?

6 A I don't think we had discussions about what it
7 was being used to do in the -- in the clinical lab.

8 Q Why not?

9 A Because the bulk of our focus was on Phase 2
10 of our model and getting the machine out and

11 distributed.

12 Q (b)(7) Capital wasn't interested in what Theranos
13 was doing at the time?

14 A I -- I don't know what they were interested
15 in.

16 Q Did they ever ask you questions about what
17 Theranos was doing at the time?

18 A Again, I can't remember the specifics of the
19 conversations with them.

20 Q Did you hear Mr. Balwani make a statement like
21 this to (b)(6) that samples of all tests are run on one
22 proprietary diagnostic machine?

23 A Again, I can't remember the specifics of
24 conversations with (b)(6)

25 Q If you'll turn to 1174.

↑

787

1 Under "Test accuracy," second paragraph down,
2 it says:

3 "A validation study published by Johns Hopkins
4 in 2010 concluded that the technology is novel and
5 sound, it can accurately run a wide range of routine and
6 special assays, and that no major weaknesses were
7 identified."

8 Did you tell (b)(7) that there was a validation

9 study that was published by Johns Hopkins in 2010 that
10 concluded that?

11 A I don't think we told them. My memory is they
12 actually got access to the -- the Johns Hopkins document
13 in and of itself.

14 Q Your memory is that they got access to the
15 Johns Hopkins document?

16 Are you talking --

17 A Yes.

18 Q -- about the April 2010 document?

19 A I think so, yeah.

20 Q How did they gain access to that document?

21 A I am not sure if we gave it to them or
22 somebody else gave it to them. I'm not sure.

23 Q Did you ever describe the April 2010 document
24 from Johns Hopkins as a validation study?

25 A I don't remember specific conversations to

↑

788

1 that effect.

2 BY MR. KOLHATKAR:

3 Q Other than the Johns Hopkins report, do you --
4 do you remember anything else that was provided at (b)(6)

5 A I don't.

6 I know we were actively engaged with them over

7 a period of months on a lot of different aspects of our
8 business, so I'm sure they had access to a lot of
9 content.

10 BY MS. CHAN:

11 Q Did you hear Mr. Balwani make the statement to
12 (b)(7) that there was a validation study that was published
13 by Johns Hopkins in 2010?

14 A Not that I can remember.

15 Q On that same page, under "Select clinical
16 correlations," the memorandum states, "The company has
17 validated all of its tests versus traditional laboratory
18 and reference methods to demonstrate their accuracy."

19 Did you tell (b)(7) this?

20 A I don't know.

21 Q Was this true in December 2014?

22 A My -- again, I haven't read the document so
23 I'm not sure specifically whether this is referring to
24 product development or the clinical lab.

25 We -- we thought we had done this, both in

↑

789

1 tests we'd developed on the product development side, as
2 well as tests we had validated as LDTs in the clinical
3 lab.

4 Q Did you make clear to (b)(7) at this time in

5 December, or late 2014, that the clinic had -- the
6 clinical data that you were showing them pertained to
7 data that was generated in the R and D lab and not in
8 the clinical lab that was performing patient testing?

9 A I don't know if we showed them data from the
10 lab, the LDTs or R and D data.

11 Certainly, to the extent that we showed R and
12 D data, my memory is we generally would describe it as
13 product development data on all the tests we created.

14 Q Turning to Page 1175, under "Manufacturing,"
15 the memorandum states, "Test currently manufactures 100
16 percent of its diagnostic machines and associated
17 consumables in a single plant in Newark, California."

18 Did you tell (b)(7) Capital that Theranos
19 currently manufactured 100 percent of its diagnostic
20 machines in Newark, California, as of December 2014?

21 A To the extent it's referring to the MiniLab
22 and all of the components in the MiniLab.

23 Q You did -- you did tell (b)(7) Capital that?

24 A I don't know that I personally said that, but
25 that was something that Theranos was very proud of, that

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790

1 every component of MiniLab was manufactured in this
2 Newark facility.

3 BY MR. KOLHATKAR:

4 Q MiniLab wasn't 100 percent of Theranos's
5 diagnostic machines at the time, was it?

6 A No.

7 Just 100 percent of the MiniLab was
8 manufactured in the Newark facility.

9 BY MS. CHAN:

10 Q So was this statement true as of December
11 2014?

12 A Only with respect to the MiniLab.

13 BY MR. KOLHATKAR:

14 Q This statement isn't qualified with respect to
15 the MiniLab, is it?

16 A No.

17 Again, I -- I don't think I've ever read this
18 whole document, so I'm not sure if this is talking about
19 the clinical lab or the technology we were working to
20 develop.

21 BY MS. CHAN:

22 Q Did you ever hear Mr. Balwani make this
23 statement to (b)(7) Capital?

24 A Not that I can remember.

25 Q The third paragraph down, it says:



1 "Unlike other sector participants, test
2 operates a vertically integrated manufacturing model.
3 The company receives raw materials, e.g., plastic,
4 aluminum, et cetera, and constructs each and every
5 component of the finished products, diagnostic machines,
6 and associated consumables."

7 Did you tell (b)(7) this?

8 A Again, I -- I don't remember specific
9 conversations with (b)(6)

10 Q Did you hear Mr. Balwani make this statement
11 to (b)(6)

12 A Not that I can remember.

13 Q Was this statement true as of December 2014?

14 A With respect to our MiniLab.

15 Q Is the statement in any way qualified with
16 respect to the MiniLab?

17 A Again, I haven't read this document, so I
18 don't know what the pretext to this is.

19 This section just talks about diagnostic
20 machines.

21 Q And Theranos was using other diagnostic
22 machines besides the MiniLab in December 2014, correct?

23 A In its clinical lab, yes.

24 Q If you turn to 1178 and 1179, starting on Page
25 1178, there's a section called "Walgreens."

1 Do you see that, halfway down the page?

2 A Yes.

3 Q Okay.

4 If you flip over to 1179, very top, at the
5 very top of the page, there's a sentence that starts,
6 "The contract does not limit --"

7 So the memo is talking about Walgreens.

8 And it says that "The contract does not limit
9 or restrict test from opening additional locations if
10 the company chooses to do so."

11 Did you tell (b)(7) Capital that in December --
12 around December 2014?

13 A I don't think so. My memory is we gave them
14 access to the Walgreens agreement, and they reviewed it
15 directly.

16 Q Did you hear Mr. Balwani make this statement
17 to (b)(7) Capital?

18 A No.

19 Again, I -- I don't remember any specifics of
20 the conversations with (b)(6)

21 Q Was this statement true as of December 2014?

22 A Do you mind if I read the paragraph?

23 Q Sure.

24 A I don't know.

25 Q Was it true that the contract -- the Walgreens

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793

1 contract didn't -- doesn't restrict Theranos from
2 opening additional locations if Theranos chose to do so?

3 A I don't know.

4 Q Wasn't it true that Walgreens and Theranos had
5 to work together to plan out additional locations to
6 open at?

7 A I -- I -- yes, I remember that in certain
8 versions of the contract.

9 I'm not really sure what this is referring to.

10 Q So if you look down another two paragraphs
11 from there, the memorandum states:

12 "As part of the agreement" -- and this is
13 talking about the Walgreens agreement again -- "the two
14 companies will partner together to make test the largest
15 clinical laboratory in the U.S. This development is on
16 target, and the two companies anticipate achieving this
17 milestone by the end of 2016."

18 Did you tell (b)(7) Capital that in late 2014?

19 A I don't think so.

20 Q Did you hear Mr. Balwani make this statement
21 to (b)(7) Capital?

22 A I can't remember the specifics of
23 conversations with (b)(6)

24 Q Was this statement true as of December 2014?

25 A I don't know.



794

1 BY MR. KOLHATKAR:

2 Q Do you ever recall a time in which Walgreens
3 stated it was going to make Theranos the largest
4 clinical laboratory in the U.S.?

5 A Certainly the -- the prior Walgreens
6 management team had that vision. I don't remember
7 specific conversations to that effect.

8 Q So the vision would be the -- sort of the
9 pre-Boots leadership?

10 A Yes.

11 BY MS. CHAN:

12 Q So if you look down another paragraph under
13 that -- in the middle of the next paragraph, it says,
14 "In 2015, the company plans to dramatically expand its
15 Wellness Center penetration to several hundred stores
16 across multiple states."

17 Did you tell (b)(6) Capital this?

18 A No. I don't think so.

19 Q Did you hear Mr. Balwani make that statement

20 to (b)(7) Capital?

21 A I can't remember any of the specifics of the
22 (b)(7) conversations.

23 Q Was that statement true as of December 2014?

24 A Again, my read on this, sitting here now, is
25 that this was the conclusions they drew from reading the

↑

795

1 contract themselves.

2 BY MR. KOLHATKAR:

3 Q But you don't have any recollection that
4 that's the basis for this statement here?

5 A I -- I don't. I just remember giving them
6 access to the agreement.

7 Q Okay.

8 So we -- now we've talked about the -- the
9 agreement and then the Johns Hopkins report.

10 Do you remember giving them access to any
11 other information?

12 A I'm just thinking.

13 I don't know specifically.

14 I -- I generally remember that because we had
15 met them in the context of wanting them to advise us,
16 that we gave them broad access to a lot of content
17 internally. I don't -- I can't sit here and remember

18 another specific document.

19 BY MS. CHAN:

20 Q So if you turn the page to 1180, about a third
21 down the page, there's a section on Safeway.

22 Do you see that?

23 A Mm-hmm.

24 Q The second paragraph starts, "The company
25 projects to launch Wellness Centers within Safeway

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796

1 stores in 2015, beginning in California."

2 Did you tell (b)(7) Capital that?

3 A I don't think so.

4 Q Did Mr. Balwani tell (b)(7) Capital that?

5 A I don't know.

6 Q Was that statement true as of December 2014?

7 A I don't know.

8 Q Going on to page with Bates ending 1183, you
9 see there's a table here in the middle of the page
10 that's titled "Company projections."

11 Do you see that?

12 A Yes.

13 Q And this shows that Theranos is earning \$8
14 million from physicians' offices and \$43 million from
15 hospital courier services in the fourth quarter of 2014.

16 Do you see that?

17 A I do.

18 Q Did you provide these projections to (b)(6)

19 A No.

20 Q Did Mr. Balwani provide these projections to
21 (b)(6)

22 A I don't know.

23 Q Were these projections reasonable in December
24 2014, that Theranos was set to make \$8 million in
25 revenue from physicians' offices and \$43 million from

↑

797

1 hospitals through couriering samples?

2 A I don't think so.

3 BY MR. KOLHATKAR:

4 Q Why not?

5 A I -- I don't think we deployed the retail
6 locations to do this in 2014.

7 Q Did Theranos end up earning any revenues from
8 these two sectors in fourth quarter 2014?

9 A I don't know.

10 Q You'll also see that -- on the same page, on
11 the company projections page, in that same table we were
12 looking at under "Pharmaceutical services," there's a
13 projection of \$8 million for pharmaceutical services in

14 fourth quarter of 2014 for a total of 40 million
15 projected revenues in 2014 for the year.

16 Do you see that?

17 A Mm-hmm.

18 Q Did you tell (b)(7) Capital that Theranos was on
19 the road to achieving \$40 million in revenues from
20 pharmaceutical services?

21 A I don't think so.

22 Q Did you hear Mr. Balwani make that statement
23 to (b)(6)

24 A Again, I can't remember any of the specifics
25 of the conversations with (b)(6)

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798

1 Q So if you look at those two numbers, it would
2 appear that Theranos would have generated about \$32
3 million in revenues from pharmaceutical services for the
4 rest of the year, first quarter to third quarter of
5 2014.

6 Do you see that?

7 A I do.

8 Q Had Theranos generated \$32 million from
9 pharmaceutical services in first quarter to third
10 quarter 2014?

11 A I don't think so.

12 Q So if you look on the bottom of the page,
13 under "Retail pharmacies," the memorandum states:

14 "Walgreens locations. Test currently has 41
15 Wellness Centers in Walgreens stores, 40 in Arizona, one
16 in Palo Alto, California, and plans to open Wellness
17 Centers in 900 total Walgreens pharmacies by year-end
18 2015."

19 Did you tell (b)(7) Capital this?

20 A I don't think so.

21 Q Did you hear Mr. Balwani make this statement
22 to (b)(7) Capital?

23 A Again, I can't remember any of the specifics
24 of the conversations with (b)(6)

25 Q Was this a true statement, that Theranos was

↑

799

1 planning to open Wellness Centers in 900 total Walgreens
2 pharmacies by year-end 2015?

3 A I don't know.

4 Q If you turn the page to 1184, under
5 "Physicians' offices," second bullet point down, it
6 says, "Locations. The company is currently in 101
7 physician offices and plans to be in approximately 700
8 offices by year-end 2015."

9 Did you tell (b)(7) Capital this?

10 A No.

11 Q Did you hear Mr. Balwani make this statement
12 to (b)(7) Capital?

13 A I don't think so.

14 Q Was this statement true as of December 2014?

15 A I don't know.

16 I think if -- if we were doing physician
17 pickup, it may have been reflective of that. I don't
18 know when we were doing that.

19 Q Was Theranos currently, at that time in
20 December 2014, in 101 physicians' offices?

21 A I don't know.

22 BY MR. KOLHATKAR:

23 Q Was it ever?

24 A We were picking up samples from physician
25 offices. I don't know how many physician offices we

↑

800

1 were picking up from.

2 BY MS. CHAN:

3 Q If you turn to the next page, 1185, under
4 "Pharmaceutical services," the first bullet point says,
5 "Cartridges. Test currently runs 3,000 samples per
6 month, 100 per day. Given current contracts, it expects
7 this number to increase to 5,000 in the second half of

8 2015."

9 Did you tell (b)(7) Capital that Theranos was
10 currently running 3,000 samples per month under
11 pharmaceutical services contracts?

12 A No.

13 Q Did you hear Mr. Balwani make this statement
14 to (b)(7) Capital?

15 A Not that I can remember.

16 Q Was this statement true as of December 2015?

17 A I don't think --

18 Q I'm sorry.

19 Was this -- was this accurate in December
20 2014?

21 A No, I don't -- I don't think so.

22 Q All right.

23 Did you ever tell (b)(7) Capital that given
24 current contracts in pharmaceutical services, that
25 Theranos expected the number of samples run each month

↑

801

1 to increase to 5,000 in the second half of 2015?

2 A I don't think so.

3 Q Did you ever hear Mr. Balwani make that
4 statement to (b)(7) Capital?

5 A Not that I can remember.

6 Q Was this statement true as of December 2014?

7 A I don't know.

8 Q You mentioned earlier that there were others
9 on your team who might have reviewed the memorandum and
10 told you that it included complete -- notes about
11 Theranos's complete strategy, future plans, unannounced
12 deals, and profit margins.

13 Do you remember that testimony?

14 A Just that I was inferring that from the e-mail
15 you showed me.

16 Q So you don't know whether somebody might have
17 told you that?

18 A Again, I don't remember sending this e-mail.
19 And just looking at the language in it now and the fact
20 that I said "our team" as opposed to "I" likely means
21 that.

22 Q Did anyone raise any issues with respect to
23 the accuracy of the statements made in this memorandum
24 to you or your team?

25 A I honestly don't know that we read the

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802

1 memoranda in detail. I mean, it looks like some people
2 looked at it, but I don't remember ever reading it.

3 BY MR. KOLHATKAR:

4 Q We spoke before about (b)(7)(C) having a lot of
5 access to information at Theranos, right?

6 A Yeah.

7 Q And at this time, they were -- had been
8 working with the company for some time; is that fair?

9 A Yes. A few months.

10 Q The -- in that -- in those few months, you met
11 with (b)(6);(b)(7)(C) several times; is that fair?

12 A Yes.

13 Q And with his associates several times?

14 A I think so, yes.

15 Q And it was your understanding Mr. Balwani did
16 the same?

17 A Yes.

18 Q Does it concern you at all that this is the
19 impression they formed on the company, given the level
20 of interaction they had by December 2014?

21 A I'm a little bit confused by it.

22 I'm not quite sure where it's coming from or
23 if it was just intended to be a sales piece that we were
24 to edit. I'm -- I'm not -- I'm not sure.

25 Certainly, I -- I don't think we conveyed

↑

1 some of the things that were in it.

2 BY MS. CHAN:

3 Q Did it concern you that they were intending to
4 send that memorandum to co-investors, even though it
5 included some inaccurate statements?

6 A Again, I don't know that I read it at the
7 time.

8 We certainly would have wanted to make sure it
9 was accurate if it were going to have gone out.

10 Q Why didn't you review it and -- and make
11 changes and edits to it, considering that they asked you
12 to do that?

13 A I think at this time, we were beginning to
14 think that we were not going to be doing a deal with
15 (b)(6) so we weren't paying a lot of attention to it.

16 Q Did you tell (b)(7) at that time that you weren't
17 going to be doing a deal with them?

18 A I think a couple weeks later, a week or so
19 later.

20 BY MR. KOLHATKAR:

21 Q Yet you continued to meet with (b)(7) in the late
22 December 2014 time period, right?

23 A I think so, yes.

24 Q Did (b)(6),(b)(7)(C) ask you again for your feedback
25 on those documents?



1 A I don't know.

2 Q Did anyone from (b)(6)

3 A I don't know.

4 BY MS. CHAN:

5 Q Did you ever tell PFM in early 2014 that

6 Theranos had 300 machines that were running in

7 Theranos's labs?

8 A Not that I can remember.

9 Q Did you hear Sunny Balwani make the statement
10 to PFM?

11 A Not that I can remember.

12 Q Did you ever tell PFM in early 2014 that
13 Theranos had the capability to manufacture 200 MiniLabs?

14 A Not that I can remember.

15 Q Did you hear Sunny Balwani make this statement
16 to PFM?

17 A Again, I can't remember specifics of the
18 conversation with PFM.

19 Q Was that statement true as of January 2014?

20 A I don't know.

21 Q Did you ever tell PFM that Theranos had a
22 roadmap to 1,300 assays?

23 A I don't know.

24 Q Did you hear Sunny Balwani make that statement

25 to PFM?

↑

805

1 A Not that I can remember.

2 Q Would the statement have been true as of
3 January 2014?

4 A In a product-development sense, yes.

5 Q Did you ever tell PFM in January 2014 that
6 Theranos had developed almost all of the 1,300 assays
7 and had launched some of the 1,300 assays?

8 A I don't remember specific discussions to that
9 effect.

10 Q Did you hear Mr. Balwani ever make that
11 statement to PFM?

12 A Not that I can remember.

13 Q Was that statement true as of January 2014?

14 MR. DWYER: It's actually compound, a compound
15 statement. There's multiple -- multiple statements in
16 there.

17 MS. CHAN: Sure. We can go through them
18 one-by-one.

19 THE WITNESS: Sure.

20 BY MS. CHAN:

21 Q So did you ever tell PFM that Theranos
22 developed 1,300 assays?

23 A No.

24 Q Did you ever hear Mr. Balwani make that
25 statement to PFM?

↑

806

1 A Not that I can remember.

2 Q Was that statement true as of January 2014?

3 A No.

4 Q Did you ever tell PFM that Theranos can put --
5 strike that.

6 Madrone Partners was a C2 investor, correct?

7 A Yes.

8 Q And -- and Greg Penner was the member of the
9 Walton family that was considering an investment in
10 Theranos on behalf of the Madrone Partners?

11 A I think Greg and Rob both, yes.

12 Q Greg and Rob, both?

13 A Yes.

14 Q You were in discussions with both Mr. Penner
15 and Mr. Walton in the fall of 2014 to invest in
16 Theranos?

17 A Yes.

18 Q Did you ever tell Mr. Penner that Theranos
19 could execute just with the cash that it had at the time
20 and the cash-flow that it had achieved through its

21 contracts?

22 A In the fall of 2014?

23 Q Yes.

24 A I don't know.

25 Q Did you ever hear Mr. Balwani make that

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807

1 statement?

2 A I don't know.

3 Q Would that have been true in late 2014?

4 A I don't know.

5 Q Did you ever tell (b)(7) Capital in September of
6 2014 that Theranos's goal was to be in 800 stores by the
7 end of 2015?

8 A I don't know.

9 Q Did you ever hear Mr. Balwani make that
10 statement?

11 A Not that I can remember.

12 Q Did you ever tell (b)(7) Capital that Theranos's
13 machines cost 35- to \$40,000 versus a million dollars
14 for Theranos's competitors?

15 A Not that I can remember.

16 Q Did you ever hear Mr. Balwani make that
17 statement to (b)(7) Capital?

18 A I don't know.

19 Q Was that statement true, that Theranos's
20 machines cost 35- to \$40,000?

21 A That's -- it's within the range of the -- what
22 the cost of goods of the MiniLab likely was at that
23 time.

24 Q That --

25 BY MR. KOLHATKAR:

808

1 Q What do you mean by "cost of goods"?

2 A The -- the cost to make a MiniLab.

3 Q Just the components? Or the labor and --

4 A I believe all of the above, the fully-loaded
5 cost of goods.

6 BY MS. CHAN:

7 Q Did you ever tell (b)(7) Capital that all of
8 Theranos's devices work on one box, which is a
9 significant advantage versus Theranos's competitors?

10 A I'm not sure I understand the question.

11 All the devices?

12 Q Maybe it's all of their tests?

13 Did you ever tell (b)(7) Capital that all of your
14 tests work in one box, which is different from your
15 competitors?

16 A I don't remember saying that, but that's what

17 the MiniLab is designed to do.

18 Q Did you ever hear Mr. Balwani make that
19 statement to (b)(7)(C) Capital?

20 A I don't know.

21 Q Did you ever tell (b)(7)(C) Capital that Theranos
22 solves a fundamental problem for the military because
23 Theranos can run tests quickly on one portable machine
24 where no one else can?

25 A I don't know if we said that.

↑

809

1 Q Did Mr. -- did you ever hear Mr. Balwani make
2 that statement?

3 A I don't know.

4 Q Did you ever tell (b)(7)(C) Capital that all of
5 Theranos's tests can be run on one machine with one
6 disposable cartridge?

7 A Again, I -- I don't remember the specifics of
8 conversations, but that's what MiniLab is designed to
9 do.

10 Q Did you ever hear Mr. Balwani make that
11 statement?

12 A I don't know.

13 Q So, of course, that wouldn't have applied to
14 the tests that Theranos was conducting in patient

15 testing, correct?

16 MR. NEAL: Can I hear that question again?

17 THE WITNESS: I'm sorry. What do you mean?

18 BY MS. CHAN:

19 Q So it's not true that all -- all of Theranos's
20 tests were being performed on the MiniLab, correct?

21 A Correct.

22 Q That a majority of the tests were actually
23 performed on commercially available machines, correct?

24 A Absolutely.

25 Q What is Fremont Group?

↑

810

1 A It's a fund that manages mostly the Bechtel
2 family money.

3 Q Were you in discussions in late 2014 about a
4 possible investment in Theranos from Fremont Group?

5 A Yes.

6 Q Who were your discussions with?

7 A Primarily with (b)(6);(b)(7)(C)

8 Q Was there anyone else who was involved in
9 those discussions?

10 A There was. And I -- I don't remember the
11 names of the principals.

12 Q Was (b)(6);(b)(7)(C) one of them?

13 A I think so.
14 (Reporter clarification.)

15 BY MR. KOLHATKAR:

16 Q Was (b)(6),(b)(7)(C) another?

17 A I don't know.

18 BY MS. CHAN:

19 Q Did you give Fremont Group a copy of
20 Theranos's financial model which showed projections?

21 A I did not. I -- I don't know if anyone else
22 at Theranos did.

23 (Reporter clarification.)

24 BY MS. CHAN:

25 Q Did Sunny Balwani provide financial

↑

811

1 projections to Fremont Group?

2 A I don't know.

3 Q Did you tell Fremont Group in late 2014 that
4 the financial numbers -- that Theranos's financial
5 numbers were based on no new contracts?

6 A I don't think -- no.

7 Q Did you hear Mr. Balwani make this statement
8 to Fremont Group in late 2014?

9 A Not that I can remember.

10 Q Was this statement true as of late 2014?

11 A I don't know.

12 BY MR. KOLHATKAR:

13 Q Did you tell anyone from the Fremont Group
14 that Theranos's assay run test time was always less than
15 one hour?

16 A I don't know.

17 Q Would that -- do you recall Mr. Balwani saying
18 that to anyone from Fremont Group?

19 A Not that I can recall.

20 Q Would that have been a true statement in
21 October of 2014?

22 A To the extent we were talking about the design
23 of the MiniLab, but not tests in our clinical lab.

24 BY MS. CHAN:

25 Q Did you tell Fremont Group in late -- let me

↑

812

1 start again.

2 Did you tell Fremont Group in late 2014 that
3 devices now cost \$40,000 fully-loaded?

4 A Not that I can remember.

5 Q Did you hear Mr. Balwani make that statement
6 to Fremont Group?

7 A I don't know.

8 Q Was that statement true in late 2014?

9 A I don't know.

10 Q Did you tell Fremont Group in late 2014 that

11 Theranos had put its TSPU on a medevac helicopter?

12 A No.

13 Q Why do you say "no"?

14 A Because I know I've never said that.

15 Q You've never said that. Okay.

16 Did you hear Sunny Balwani make the statement

17 to Fremont Group?

18 A No.

19 Q Would the statement have been true in late

20 2014?

21 A No.

22 Q Did you tell (b)(7) Capital in October 2014 that

23 Theranos had an auditor and that its financial

24 statements were audited, as well?

25 A I don't know.

↑

813

1 I know we were discussing a new audit with

2 (b)(7)

3 Q What do you recall about your conversations

4 regarding the new audit with (b)(7)

5 A That we were discussing with them engaging

6 with KPMG to get an audit done.

7 BY MR. KOLHATKAR:

8 Q Oh. In what context?

9 Were they surprised that Theranos wasn't
10 getting audits done?

11 A No.

12 I believe we were talking about getting audits
13 done on a go-forward basis.

14 Q Did they ever request to see audited
15 financials, historical financials?

16 A I don't know. They might have. I can't
17 remember.

18 BY MS. CHAN:

19 Q Did you ever tell (b)(7) Capital that KPMG was
20 Theranos's current auditor in late 2014?

21 A I don't know.

22 Q Did you hear Mr. Balwani make that statement
23 to (b)(7) Capital?

24 A Just so I understand what you mean, what do
25 you mean by "current" auditor?

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814

1 Q That KPMG had been hired by Theranos to act as
2 its auditor as of late 2014.

3 A We may have discussed it in terms of past
4 years, but I know we discussed with (b)(7) that we didn't

5 have certain years audited.

6 Q Did you hear Mr. Balwani make that statement
7 to (b)(7) Capital, that KPMG was Theranos's current auditor
8 as of late 2014?

9 A I'm not quite sure what "current" auditor
10 means; but, no, I don't remember the specifics of
11 conversations.

12 Q Did Theranos have an auditor as of late 2014?

13 A Not for calendar year 2014, no.

14 BY MR. KOLHATKAR:

15 Q Did you ever tell --

16 A We were engaged with KPMG at that time about
17 auditing recent years.

18 Q Did you ever tell any --

19 A Or engaging with them.

20 I'm sorry.

21 Q No. I apologize.

22 Does that cover it?

23 A Sorry.

24 Q No, no. I --

25 A I was trying to be complete.

↑

815

1 Q No, I appreciate it.

2 The -- did you ever tell any prospective

3 investors that they couldn't see Theranos's audited
4 financials because they would have revealed
5 commercially-sensitive information about the company?

6 A Not that I can remember.

7 I -- I believe that was a discussion about how
8 we would share go-forward financials but not historical
9 ones.

10 Q What do you mean by that?

11 A We were very focused in getting audits -- had
12 we proceeded with getting audits done at that time,
13 about the disclosure of those materials, once they were
14 complete, with respect to how they handled footnotes on
15 the Walgreens and Safeway contracts specifically.

16 Q So you were anticipating sharing audited
17 financials with shareholders on a go-forward basis?

18 A I'm not sure exactly. I don't remember the
19 discussions very specifically. But I -- I know that was
20 an area of focus when we were talking about starting to
21 get audited financials done at that time.

22 Q Did the board ever encourage you to get
23 completed audited financials?

24 A Not that I can remember.

25 Q Did you tell the board that Theranos had not

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1 completed its annual audits in some time?

2 A Yes.

3 BY MS. CHAN:

4 Q Did you ever tell potential investors that
5 Theranos couldn't share audited financials with them
6 because it wasn't sharing audited financials with other
7 investors?

8 A We generally disclosed that we didn't have
9 audited financials, is my memory.

10 I -- again, if there's a specific
11 conversation, I could try to speak to it more
12 specifically.

13 Q Who do you recall having a conversation with
14 about the fact that Theranos had no audited financials?

15 A I don't recall a specific conversation. I
16 just know that we were very open about it.

17 Q Did you ever tell (b)(7) Capital in late 2014
18 that there were no proximity -- sorry. Let me start
19 over again.

20 Did you ever tell (b)(7) Capital in late 2014
21 that there were no proximity limitations in the
22 Walgreens contract, just time exclusivity?

23 A I don't know what that means.

24 Q Did you ever tell (b)(7) Capital that -- that
25 there were no geographic limitations to the rollout of

1 Theranos' services at Walgreens locations in late 2014?

2 A I'm sorry. Just so I can answer the question,
3 what is a geographic limitation?

4 Q That there was no -- that the company -- that
5 the two companies had not discussed any limitations as
6 to the rollout of Theranos' services in Walgreens stores
7 in 2015.

8 MR. DAVIES: Sorry, I -- I just got a cell. I
9 don't understand what you're asking.

10 MS. CHAN: Okay. Let me start over again.

11 BY MS. CHAN:

12 Q Did you ever tell (b)(7) Capital that there were
13 no geographical limitations to where Theranos could roll
14 out its services in Walgreens stores?

15 A So just making sure I'm answering the question
16 you're asking, the question is that we could roll out
17 anywhere in the country?

18 Q Yes.

19 A I don't remember specifically saying that.

20 Q Did you ever hear Mr. Balwani making that
21 statement to (b)(7) Capital?

22 A Not that I can remember.

23 Q Was that true as of late 2014?

24 MR. DWYER: Was what true?

25 MS. CHAN: That statement.

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818

1 MR. DWYER: Could you say it one more time?

2 Because none of us -- we were all having a
3 hard time. So I want to make sure she knows what you're
4 asking, what statement.

5 BY MS. CHAN:

6 Q That there no geographic limitations to the
7 rollout of Theranos' services in Walgreens stores.

8 Did you ever hear Mr. Balwani make that
9 statement to (b)(7)(C) Capital?

10 A Not that I can recall.

11 Q Was that a true statement as of 2014?

12 A I don't really understand it.

13 But I -- I mean, again, I know (b)(7)(C) had access
14 to the Walgreens agreement.

15 Q And it was true that Theranos had to work with
16 Walgreens in order to decide which additional stores to
17 roll out Theranos' services in, correct?

18 A I mean, as we've discussed today, that
19 relationship evolved so much that I don't know what the
20 state of it was in December of '14 from memory.

21 BY MS. CHAN:

22 Q It's true that Theranos couldn't unilaterally
23 decide to roll out in any number of Walgreens stores
24 without Walgreens consent, correct?

25 A Of course. They had to work with us on it.



819

1 Q Okay.

2 BY MR. KOLHATKAR:

3 Q And you understood that in December 2014; is
4 that correct?

5 A Yes. It's their stores. They would have to
6 be compliant with us showing up in them.

7 BY MS. CHAN:

8 Q Did you ever tell (b)(7) Capital in late 2014
9 that you were fairly confident on hitting the 2014
10 financial projections?

11 A I don't think so.

12 Q Did you ever hear Mr. Balwani make that
13 statement?

14 A Not that I can remember.

15 Q Did you ever tell (b)(7) Capital in late 2014
16 that with respect to 2015 projections, you believed that
17 there could be a plus or minus 30 percent variance due
18 largely to risk of execution?

19 A I don't think so.

20 Q Did you ever hear Mr. Balwani make that
21 statement?

22 A Not that I can remember.

23 Q You testified earlier that RDV Corporation is
24 the DeVos family, correct?

25 A Yes.

↑

820

1 Q Who were your contacts at RDV Corporation?

2 A At what time?

3 Q Around the time that they were considering to
4 invest in Theranos.

5 A I believe (b)(6);(b)(7)(C)

6 Q Was (b)(6);(b)(7)(C) did you understand that (b)(6);(b)(7)(C)

7 (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C) were part of this team?

8 A I don't know if I knew that at that time.

9 I met (b)(6);(b)(7)(C) I think, later.

10 Q And Theranos was having discussions with RDV
11 Corporation in late 2014 about possibly investing in
12 Theranos, correct?

13 A Yes.

14 Q Did you tell RDV Corporation in late 2014 that
15 instead of vials of blood, one for every test needed,
16 that Theranos requires only a pinprick and a drop of
17 blood to perform hundreds of tests?

18 A I don't know.

19 Q Was that statement true as of late 2014?
20 Could you perform hundreds of tests on one pinprick of
21 blood?

22 A We had developed hundreds of tests to run on a
23 pinprick of blood at that time from a product
24 development standpoint.

25 Q So earlier we had talked about how it was 70

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821

1 tests on one pinprick of blood.

2 So now you're saying that hundreds of tests
3 could be performed on one finger prick sample of blood?

4 MR. DAVIES: You just mischaracterized one --
5 you mischaracterized the earlier testimony right now,
6 and what she just said in response to your question, two
7 different questions.

8 And I -- Elizabeth can answer, but if --

9 MS. CHAN: Why don't you --

10 MR. DAVIES: I think you can ask the question
11 rather than suggest she's saying one thing now versus
12 one thing earlier.

13 BY MS. CHAN:

14 Q Well, can you square those two -- that was
15 what I understood that you said. So can you square

16 those two?

17 Which one is accurate?

18 MR. NEAL: So you're assuming that only one
19 can be?

20 That's not true either.

21 BY MS. CHAN:

22 Q Okay.

23 So if both of them are accurate, how are they
24 both accurate?

25 A Yeah, I believe earlier today we were talking

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822

1 about how, from a product-development standpoint, the --
2 the novel chemistries that we developed could work with
3 a -- as low as a microliter or less of blood and,
4 therefore, if you -- you could run 70 of them, for
5 example, from a single sample.

6 Additionally, by this time, fall of '14,
7 Theranos had created, developed, and had development in
8 what we thought were validation reports for hundreds of
9 chemistries that we had actually made the reagents for,
10 made the chemistry for, shown that the chemistry worked
11 on small sample volumes from a product development
12 standpoint.

13 BY MR. KOLHATKAR:

14 Q So -- so your testimony is that the -- if
15 there's reference to hundreds off of a -- off of a drop
16 of blood, it's not hundreds of tests with the same drop
17 of blood, but one drop for each of those hundred tests,
18 or -- or something like that?

19 A That was my understanding of the statement
20 that you just made.

21 BY MS. CHAN:

22 Q Did you ever hear Mr. Balwani make the
23 statement that Theranos requires only a pinprick and a
24 drop of blood to perform hundreds of tests?

25 A I -- I don't know.

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823

1 Q Did you tell RDV Corporation in late 2014 that
2 Theranos's revenue for 2015 is projected to be \$990
3 million?

4 A I don't think so.

5 Q Did you ever hear Mr. Balwani make that
6 statement?

7 A Not that I can remember.

8 Q Did you ever tell RDV Corporation that
9 Theranos would open -- or was on the path to opening 900
10 Walgreens Theranos centers by 2015?

11 A I don't think so.

12 Q Did you ever hear Mr. Balwani make that
13 statement?

14 A Not that I can remember.

15 Q Did you ever tell RDV Corporation that
16 Theranos has no debt and has no plans to take on any
17 debt financing?

18 A I don't think so.

19 Q Did you ever hear Mr. Balwani make that
20 statement?

21 A Not that I can remember.

22 Q Was that statement true as of late 2014?

23 A I think so.

24 Q Did you consider the Walgreens convertible
25 note and the Safeway convertible note as debt?

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824

1 A I -- I don't know.

2 Q What did you consider that as, if not debt?

3 A I'm not sure. I don't know.

4 Q Was there interest that Theranos was paying on
5 that loan, those two loans?

6 A At that time, I -- I don't know if we were
7 thinking that that loan was going to convert into
8 equity. I'm not sure how we were thinking about it.

9 MR. NEAL: It's been a little over an hour.

10 Can we take a break? Or are you real --

11 MS. CHAN: You know, I'm still in the middle
12 of this document. So I only have a few more questions,
13 and then we can take a break.

14 MR. NEAL: About how far from the end,
15 totally, are you?

16 MS. CHAN: I have three more questions.

17 MR. KOLHATKAR: Not totally for the --

18 MR. NEAL: No, no.

19 MS. CHAN: Oh, from --

20 MR. DWYER: For -- for the day.

21 MR. NEAL: For the day.

22 MR. KOLHATKAR: Why don't we talk about that
23 at the break. And I think there are just a couple more
24 questions on this kind of theme then.

25 MR. NEAL: Okay.

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825

1 BY MS. CHAN:

2 Q Did you ever tell RDV Corporation in late 2014
3 that cash you would raise from them would be used to
4 redeem earlier investors with shorter-term investment
5 horizons?

6 MR. DWYER: Could you read that again?

7 BY MS. CHAN:

8 Q Did you ever tell (b)(7) Capital that --

9 MR. KOLHATKAR: Sorry. RDV.

10 MS. CHAN: I'm sorry.

11 BY MS. CHAN:

12 Q Did you ever tell RDV Corporation in late 2014
13 that cash you were going to raise from them and other
14 investors would be used to redeem earlier investors with
15 shorter-term investment horizons?

16 A I don't know if I said that, but that was
17 definitely one of the strategies for raising money from
18 long-term family sort of controlled companies, investing
19 entities.

20 Q Did you ever hear Mr. Balwani make that
21 statement?

22 A I don't know.

23 BY MR. KOLHATKAR:

24 Q Did Theranos ever redeem earlier investors
25 with C2 proceeds?

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826

1 A Not in the way we had wanted to, which was
2 clear to buy out certain entities that we had learned
3 did not have sort of a long-term interest in holding the
4 shares.

5 And we -- we did a little bit of exercising

6 the right of first refusal to make sure that shares
7 didn't end up in secondary markets.

8 Q I guess, why -- why didn't Theranos sort of
9 pursue that shareholder consolidation strategy more
10 aggressively?

11 A Because shortly after we closed this round, we
12 started dealing with the Wall Street Journal and then
13 very shortly after that were in crisis mode of trying to
14 deal with the issues with the Journal and then
15 regulators.

16 Q So just general timing?

17 A Yes. We didn't get the chance to execute on
18 the plan we had.

19 BY MS. CHAN:

20 Q Did you tell RDV Corporation in late 2014 that
21 Theranos uses its own analyzer equipment?

22 A I don't know if I did. I'm -- I'm not sure.

23 Q Did you ever hear Mr. Balwani make that
24 statement?

25 A Again, I can't remember the specifics of these

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827

1 conversations. I don't -- I don't know.

2 Q Did you ever tell RDV Corporation in late 2014
3 that the Theranos analyzer is a small fraction of the

4 size of a current lab?

5 A I can't remember the specifics of the
6 conversation, but that's reflective of MiniLab.

7 Q Did you ever hear Mr. Balwani make that
8 statement to (b)(7) -- I'm sorry -- to RDV Corporation?

9 A I don't know.

10 MR. NEAL: Okay?

11 MS. CHAN: Okay. We can take a break.

12 We are off the record at 3:34 p.m.

13 (A brief recess was taken.)

14 MS. CHAN: We're on the record at 3:55 p.m.

15 BY MS. CHAN:

16 Q Ms. Holmes, did you have any substantive
17 conversations with the SEC staff during the break?

18 A No.

19 Q I'm going to hand to you what's been marked --
20 or previously marked as Theranos Exhibit 260.

21 Exhibit 260 purports to be a December 4th,
22 2014, letter from Elizabeth Holmes to Mr. Rupert
23 Murdoch, with starting Bates No. KRM_SEC00000872.

24 Have you seen Exhibit 260 before?

25 A Not like this; but, yes, the letter.

↑

1 Q What do you mean by you haven't seen it like

2 this?

3 What part of it looks unfamiliar?

4 A Well, it looks like it's got checkmarks and
5 underlines.

6 Q Okay.

7 Did you draft and send the letter without the
8 checkmarks and underlines on Exhibit 260 on or about
9 December 4th, 2014?

10 A I don't know if -- if I drafted it, then I
11 think I may have worked with some people in drafting it,
12 but I did send this letter to Rupert Murdoch.

13 Q Okay.

14 So if you turn to second page, which is 873,
15 the first full paragraph down on that page, it says,
16 "Theranos has grown from cash from its contracts for
17 some time."

18 Do you see that?

19 A Mm-hmm.

20 Q Was this statement true in December 2014?

21 A I think so.

22 Q Why do you think so?

23 A Over the past years, we had received payments
24 from insurance companies and retailers that had helped
25 us to grow.



1 Q Isn't it true that Theranos was running out of
2 cash in 2010 and, therefore, had to go out and raise new
3 capital and again was running out of cash in 2013 and
4 had to go out and raise new capital?

5 A We -- we raised capital, yes, in 2010 and
6 2013, and needed to raise capital at different points in
7 time.

8 Q Okay.

9 Were you concerned that this sentence would
10 give the impression that Theranos was operating based on
11 cash it was receiving from business partners and other
12 customers and -- and not actually from investor capital?

13 A Not at the time.

14 Q You said "not at the time."

15 Are you concerned now that it would create
16 that impression?

17 A No.

18 I -- I understand the question that you're
19 asking, but we had also disclosed that we'd done equity
20 raises in 2010 and in 2013.

21 Q Did you ever tell investors or potential
22 investors that those equity raises -- that Theranos did
23 not conduct those equity raises because Theranos needed
24 money?

25 (Reporter clarification.)

830

1 MS. CHAN: Let me start again.

2 BY MS. CHAN:

3 Q Did you ever tell investors or potential
4 investors that Theranos conducted those equity raises
5 not because Theranos needed the money?

6 A No, not that I'm aware of.

7 Q Did you ever hear Mr. Balwani make that
8 statement?

9 A I don't think so.

10 Q And then here, you also note -- the next
11 sentence says, "The company has no debt and has no plans
12 to take on any debt financing."

13 Do you see that?

14 A Yes.

15 Q And so I think your earlier answer, you said
16 that you -- you believe that that was true because you
17 didn't consider the convertible notes to be debt?

18 Is that right?

19 A Yes.

20 I generally remember thinking that those notes
21 were going to be converting into equity.

22 BY MR. KOLHATKAR:

23 Q In the next paragraph there, it says, "As the
24 company gains visibility, we have had interest from a
25 large number of funds in acquiring an equity stake in

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831

1 Theranos."

2 What -- what were the -- what were the funds
3 that had expressed acquiring an equity stake in Theranos
4 in this time?

5 A I'm just reading the -- the next sentence.

6 I believe -- I -- so I don't remember, sitting
7 here now, what we were thinking when we wrote this.

8 I -- I think this is just a reference to
9 venture capital-type organizations or private equity
10 organizations that wanted the company to rapidly go
11 public. And we really wanted to stay private for an
12 extended period of time.

13 Q So do you recall any venture capital companies
14 that had expressed interest in stake -- in acquiring a
15 equity stake in Theranos in 2014?

16 A I -- I recall that there was a lot of
17 investors who were interested in Theranos in 2014. I --
18 I don't remember who specifically I was referring to in
19 this letter.

20 Q Sure.

21 My question was a little different.

22 Did you -- I mean, do you recall any venture
23 investors who were interested in acquiring a stake in
24 the company in 2014?

25 A Well, PFM was one, yeah. And that was sort of

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832

1 more short-term focused.

2 And -- and -- and then -- yes. In -- I -- I
3 need a minute just to think about it in the fall of '14.

4 Q And I guess while you're thinking about it --

5 A Yeah.

6 Q -- I don't mean to limit it unfairly by
7 venture, because I -- my follow-up question is going to
8 be about private equity companies. Because I think you
9 mentioned those, as well.

10 A Yeah.

11 I -- so what I'm -- what I'm thinking is, as
12 we engaged in doing the C2 round -- and I think this is
13 also just a -- a reference to is I had raised money over
14 the years. We would meet with a lot of funds, and they
15 would -- sort of one of the first questions was, "Are
16 you going to take the company public? How fast are you
17 going to take the company public?"

18 And we really did not want investors who were

19 focused on short-term liquidity, because we knew we
20 needed time and really wanted to remain private, with a
21 small shareholder base.

22 So, I mean, there was a lot of early-on
23 venture capital funds we met with in the 2014 time
24 frame.

25 There was a range of investment funds, some

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833

1 associated with the -- ultimately, the (b)(7) transaction
2 that we -- that we ended up not taking money from.

3 I -- I can't sit here and tell you names, but
4 I'm sure we could come back to you with some of them if
5 we had the chance to just go back and look at notes from
6 that time.

7 Q Okay.

8 So I guess other than the -- other than the
9 PFM and the -- and the groups affiliated with (b)(6) can
10 you -- can you recall any venture or private equity
11 funds that were -- that had expressed an interest in
12 acquiring an equity stake in Theranos in 2014?

13 A I'm -- I believe I'm -- so I -- I don't
14 know --

15 (Interruption in the proceedings.)

16 THE WITNESS: What?

17 MR. NEAL: Excuse me.

18 THE WITNESS: I hope you're not getting sick.

19 The -- I'm -- so I think there was discussions
20 with Mubadala at that time. I'm -- I -- I don't know if
21 Blackrock conversations had started at that time.

22 There -- there were others. I can't -- I
23 can't remember the names, sitting here now. But I'm
24 sure, again, we could -- we could come back to you with
25 some if we had the chance to go back and look at

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834

1 documents.

2 BY MR. KOLHATKAR:

3 Q I guess through this sentence, are you trying
4 to express to Mr. Murdoch that there's a lot of
5 potential interest in Theranos from -- from private
6 equity and venture-type funds in Theranos?

7 A No.

8 I think what we were trying to express was
9 that there was interest, but the interest was married
10 with an interest in going public or having shorter-term
11 returns, and that we didn't think this was going to be a
12 company that was going to have short-term returns.

13 And so, instead, we were trying to find
14 shareholders to be owners of the company long-term.

15 BY MS. CHAN:

16 Q You -- you mentioned that you drafted this
17 document with others.

18 Who did you -- who did you draft this document
19 with?

20 A I remember working on earlier versions of it
21 with Riley Bechtel.

22 Q Anyone else besides Mr. Bechtel?

23 A I don't know.

24 Q Did Mr. Bechtel review this document before it
25 was sent out to Mr. Murdoch and others?

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835

1 A I -- I don't know. I don't -- I don't know.

2 Q Okay. You can put that one aside.

3 Did you ever tell investors or potential
4 investors in 2013 or 2014 that Theranos had developed
5 proprietary devices that could conduct all of the blood
6 tests that a central lab can conduct using only a few
7 drops of blood?

8 A Would you mind said that one more time.

9 Q Did you ever tell investors or potential
10 investors in 2013 or 2014 that Theranos had developed
11 proprietary devices that could conduct all the blood
12 tests that a central lab could conduct using only a few

13 drops of blood?

14 A I don't know. Might have.

15 Q Did you ever hear Mr. Balwani make this
16 statement to investors or potential investors?

17 A I don't know.

18 Q Was that statement true in 2010 -- from 2010
19 to 2014?

20 A Yes, with respect to the design of the
21 MiniLab.

22 Q Did you ever tell investors or potential
23 investors in 2013 or 2014 that Theranos had developed
24 proprietary devices that could conduct all of the blood
25 tests that a central lab could conduct using a few drops

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836

1 of blood and that those devices were ready for patient
2 testing?

3 A I don't know that we said it in those words,
4 but generally, that was what we were working to do with
5 MiniLab going into the FDA in that time frame.

6 Q Was the MiniLab ready for patient testing in
7 2000- -- from 2010 to 2014?

8 A We thought it was at that time.

9 Q Even in 2010?

10 A The earlier version, which would have been the

11 3 series devices, we believed was, yes, at that time.

12 Q You believed -- you believed that the TSPU 3
13 series was ready to conduct patient testing on all of
14 the tests -- tests that a central lab could conduct?

15 A I think there's two different points: One is
16 the point about the -- the design and capability of the
17 TSPU architecture.

18 Separately, we thought we were ready -- in
19 2010, the concept was to take the technology into the
20 FDA to try to get CLIA waived to be able to do clinical
21 testing.

22 We ended up not doing that and changing our
23 business model, but we believed that we were in a place
24 in which we would have been able to do that.

25 BY MR. KOLHATKAR:

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837

1 Q I'm sorry. I -- I just want to make sure I
2 understand that.

3 The -- the -- when you say you believed you
4 had the infrastructure to do that, did -- was it your
5 belief that the TSPU 3 series was capable of running all
6 different kinds of lab tests?

7 A The -- the architecture, right, the -- the
8 concept of the way that that family of devices was

9 designed allowed that -- allowed end-to-end testing.

10 The 3 series was configured to run some tests.

11 The 4 series had a broader range of processors and

12 detectors in it to do what we thought was any test.

13 Q Right.

14 So just sticking with the 3 series, it was

15 never your understanding that the 3 series could run all

16 tests?

17 A I'm --

18 Q Or even -- or even that it had the

19 architecture to run all tests?

20 A It -- it had the core architecture.

21 It didn't have the other detector modules to

22 do it. So no, it was not -- it was not configured to do

23 it.

24 Q And had Theranos taken any steps to configure

25 a 3 series machine to -- to do all different kinds of

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838

1 tests?

2 A To do multiple ranges, in product development,

3 we did. But then that became the 4 series.

4 BY MS. CHAN:

5 Q Did you -- did you ever tell investors or

6 potential investors in 2013 or 2014 that Theranos

7 manufactured all of its blood analyzers?

8 A I -- I don't know.

9 Q Did you hear Mr. Balwani make that statement
10 to investors or potential investors?

11 A I don't know.

12 Q Was the statement true in 2013 and 2014?

13 A With respect to the MiniLab family, yes.

14 Q But it wouldn't have been true with respect to
15 the machines that Theranos was using for patient
16 testing, correct?

17 A There -- as you know, Theranos was using some
18 of the MiniLab family for patient testing. It was also
19 using other machines.

20 Q That it hadn't manufactured, correct?

21 A Correct. Yes.

22 Q Did you tell investors or potential investors
23 in 2013 or 2014 that demonstration tests of Theranos's
24 manufactured devices would be run on devices
25 manufactured by Theranos, even though they were not

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839

1 going to be tested on those devices?

2 MR. NEAL: Can we hear that question again?

3 MS. CHAN: Sure.

4 THE WITNESS: I don't -- I don't understand.

5 BY MS. CHAN:

6 Q Did you tell investors or potential investors
7 in 2013 or 2014 that demonstrations you were conducting
8 for investors or potential investors were -- would be
9 run on devices manufactured by Theranos, even though
10 they weren't being run on devices manufactured by
11 Theranos?

12 A No.

13 Q Did you ever hear Mr. Balwani say that?

14 A No.

15 Q Did you ever tell investors or prospective
16 investors that Johns Hopkins had validated Theranos's
17 devices?

18 A I don't remember using those words, no.

19 Q Did you ever hear Mr. Balwani say that?

20 A I don't think so.

21 Q Would that have been true in 2013 and 2014?

22 A As you know, they'd done an assessment. I
23 don't think we thought of it as validating the device.

24 BY MR. KOLHATKAR:

25 Q And the assessment, just to be clear, you

↑

840

1 understood was on a 3 series device, right?

2 A No.

3 At that time, we had the architecture of the 4
4 series, as well.

5 Q Which one did you bring?

6 A We brought a 3 series, but we presented on
7 some of the 4 series, the data and the architecture.

8 BY MS. CHAN:

9 Q Did you tell investors or potential investors
10 in 2014 that the Walgreens contract was going well and
11 that Theranos expected to open hundreds of stores by the
12 end of 2015?

13 MR. NEAL: You know, you've already covered
14 that ground two or three times with her.

15 THE WITNESS: I -- I don't think I said that.
16 I -- I don't think so.

17 BY MS. CHAN:

18 Q Did you ever hear Mr. Balwani say this?

19 A I don't know.

20 Q Would the statement have been true in 2014?

21 A Would you say it one more time?

22 Q Would the statement have been true in --

23 A No, I -- there's multiple pieces. I was
24 trying to remember all of it.

25 Q Okay.

↑

1 Did you tell investors or potential investors
2 in 2014 that the Walgreens contract was going well and
3 that Theranos expected to open hundreds of stores in
4 2015?

5 A I think so. I mean, I -- I think that it
6 would have been true at that time, at least we believed
7 it to be true at that time.

8 Q At that time, Theranos and Walgreens were in
9 the midst of renegotiating the contract, correct?

10 A In 2014?

11 Q Yes.

12 A I -- I don't know. I mean, there were
13 continual discussions about potential amendments to the
14 contract throughout the duration of our relationship.

15 Q So why did you think that you would be rolling
16 out hundreds of stores in 2015?

17 A At Walgreens?

18 Q Yes.

19 A Based on my interactions with Sunny and the
20 interactions that I personally had with Walgreens
21 leadership.

22 Q Did you tell investors or potential investors
23 in 2014 that the Safeway contract was going well and
24 that Theranos would be rolling out to Safeway stores in
25 early 2015?

1 A I don't think so.

2 Q Did you ever hear Mr. Balwani say that?

3 A I don't think so.

4 Q Would that statement have been true in 2014?

5 A I don't know about the second part in terms of
6 whether we thought we would be rolling out. And I don't
7 think we thought it was going well.

8 Q Did you tell investors or potential investors
9 in 2013 or 2014 that analyzers that Theranos
10 manufactured were being deployed in the battlefield?

11 A No.

12 Q Did you hear Mr. Balwani tell investors or
13 potential investors that?

14 A No.

15 Q Was that true in 2013 or 2014?

16 A No -- I mean, it -- it was not true. Yes.

17 Q Did you tell investors or potential investors
18 in 2013 or 2014 that analyzers that Theranos
19 manufactured were being deployed in Afghanistan?

20 A No.

21 Q Did you hear Mr. Balwani tell investors or
22 potential investors that?

23 A No.

24 Q Was this statement true in 2013 or 2014?

25 A It was not true.

↑

843

1 Q Did you tell Dignity Health that Theranos had
2 deployed the TSPU in the battlefield?

3 A No.

4 Q Did you hear Mr. Balwani tell Dignity Health
5 that?

6 A No.

7 Q Would that have been true in 2013 or 2014?

8 A No.

9 Q Did you tell Dignity Health that 75 percent of
10 Theranos's historical revenues was from the military?

11 A No.

12 Q Did you ever hear Mr. Balwani tell Dignity
13 Health that?

14 A No.

15 Q Would that have been true in 2013 or 2014?

16 A I don't think so.

17 Q Did you tell Steve Burd at Safeway that
18 Theranos had deployed its TSPU on the battlefield?

19 A No.

20 Q Did you hear Mr. Balwani -- Mr. Balwani tell
21 Steve Burd that?

22 A No.

23 Q Would that have been true in 2013 or 2014?

24 A No.

25 Q And would that also have been true in 2011 or



844

1 2012?

2 A It would not.

3 Q Did you tell (b)(6);(b)(7)(C) at Walgreens that
4 Theranos had deployed its TSPU on military helicopters?

5 A No.

6 Q Did you hear Mr. Balwani tell (b)(6);(b)(7)(C)
7 that?

8 A I did not.

9 Q Would that have been true anytime from 2010 to
10 2014?

11 A We did not deploy on helicopters.

12 Q You did not deploy on helicopters ever --

13 A Correct.

14 Q -- is that right?

15 A I think they were used to transport the
16 devices for AFRICOM to Africa, but we didn't deploy the
17 devices on helicopters.

18 Q Did you tell Intermountain Healthcare that
19 Theranos had a relationship with the DOD that spanned

20 about a decade?

21 A I don't think so.

22 Q Did you hear Mr. Balwani tell Intermountain
23 that?

24 A No.

25 Q Would that have been true in 2013 or 2014?

↑

845

1 A No.

2 Q Did you tell investors or potential investors
3 in 2013 or 2014 that Theranos had grown from cash from
4 its pharmaceutical and military contracts over time?

5 A You said did I tell potential investors in '13
6 or '14?

7 Q Yes.

8 A I don't know.

9 Q Did you hear Mr. Balwani make that statement?

10 A I don't know.

11 Q Would that have been true in 2013 or 2014?

12 A I think so.

13 Q Why?

14 A We had received payments from Pharma and from
15 the DOD study and used that to grow.

16 Q How much in combined payments had you made
17 from pharmaceutical companies and from military

18 contracts by the time of 2013, 2014?

19 A I don't know.

20 Q Did you tell investors or potential investors
21 in 2013 or 2014 that Theranos did not need to raise new
22 capital for the operations of its business?

23 A I don't think so.

24 Q Did you hear Mr. Balwani make this statement
25 to investors or potential investors?

↑

846

1 A I don't think so.

2 Q Would that have been true in 2013 or 2014?

3 A Not to execute on the plans we wanted to
4 execute on.

5 Q And which plans were those?

6 A The broad rollout at retail.

7 Q Did you tell investors or potential investors
8 in 2013 or 2014 that Theranos had enough cash for
9 working capital?

10 A I don't think so.

11 Q Did you hear Mr. Balwani make the statement to
12 investors or potential investors?

13 A I don't know.

14 Q Would that have been true in 2013 or 2014?

15 A I think it depends on when.

16 Q And why would it matter as to when?

17 A We received the Walgreens payment in the end
18 of '13, and that was an important event in the context
19 of having the working capital to execute on our plans.

20 Q Did you tell investors or potential investors
21 in late 2014 that Theranos was on track to make over
22 \$100 million in revenues by the end of the year?

23 A I don't think so.

24 Q Did you ever hear Mr. Balwani make that
25 statement?

↑

847

1 A I don't know.

2 Q Do you know if Mr. Balwani made that
3 statement?

4 A I don't.

5 Q Would that have been true in late 2014?

6 A I don't think so.

7 Q Did you tell investors or potential investors
8 that Theranos had made over \$100 million in 2014?

9 A No.

10 Q Did you ever hear Mr. Balwani make that
11 statement?

12 A I don't think so.

13 Q Is that a true statement?

14 A No.

15 Q Did you tell investors or potential investors
16 in 2013 or 2014 that Theranos was projected to make \$1
17 billion in 2015 and \$2 billion in 2016?

18 A I did not personally. I know that was in some
19 of the financial models, or numbers generally like that
20 were in some of the financial models that Theranos
21 shared.

22 Q And who shared those financial models with
23 investors?

24 A Generally, to the extent that we presented on
25 them, Sunny shared them.

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848

1 Q Did you ever present that information to
2 investors or potential investors?

3 A I personally did not.

4 Q Did you tell investors or potential investors
5 in 2013 or 2014 that Theranos's engagement with the FDA
6 was voluntary and there was no requirement to seek
7 clearance or approval for its tests on the TSPU?

8 A I don't think we said that in those words.

9 Q Which words did you use?

10 A We generally described being an LDT, and that
11 we wanted to, we thought, proactively engage with the

12 FDA on getting clearance of every LDT we would bring up.

13 Q Did you ever hear Mr. Balwani tell investors
14 or potential investors in 2013 or 2014 that Theranos's
15 engagement with FDA was voluntary?

16 A Again, I don't think so in those words.

17 Q Did you ever hear Mr. Balwani tell investors
18 or potential investors in 2013 or 2014 that there was no
19 requirement for Theranos to seek clearance or approval
20 of its tests on the TSPU?

21 A I don't think so.

22 Q Did you tell investors or potential investors
23 in 2013 or 2014 that Theranos's engagement with FDA was
24 voluntary and there was no requirement to seek clearance
25 or approval for any other Theranos devices, like the

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849

1 nanotainer?

2 MR. NEAL: You know, you've covered this at
3 length in other portions of this deposition, both today
4 and last month.

5 BY MS. CHAN:

6 Q Do you understand the question?

7 A Could I just repeat it back?

8 The question is, did I tell investors that we
9 did not have to get clearance on the nanotainer?

10 Q Yes.

11 A No.

12 Q Did you hear Mr. Balwani make that statement?

13 A I don't think so.

14 Q What is your current relationship with Sunny

15 Balwani?

16 A We haven't talked for a long time.

17 Q When did you first get to know him?

18 A I think I met him in 2002.

19 Q How did you meet him?

20 A I was studying at a program in Beijing

21 University in China, and he was there.

22 Q Were you introduced by friends?

23 A (b)(6);(b)(7)(C)

24 (b)(6);(b)(7)(C)

25 (b)(6);(b)(7)(C)

↑

850

1 But we weren't introduced.

2 Q (b)(6);(b)(7)(C)

3 (b)(6);(b)(7)(C)

4 A Yes.

5 Q When was that?

6 A Earlier in 2002.

7 Q Were you introduced by (b)(6);(b)(7)(C) then?

8 A No. We weren't -- we weren't introduced. I
9 just knew (b)(6),(b)(7)(C) had known him at Stanford.

10 Q So how did you get to know one another?

11 A We were in the same Stanford program at
12 Beijing University.

13 Q Were you and Sunny Balwani ever engaged in a
14 romantic relationship?

15 A Yes.

16 Q When?

17 A Over a long period of time, starting in
18 around -- I mean, shortly after I met him, I think more
19 seriously in around 2004, when I was starting the
20 company.

21 And then it was a complicated relationship
22 through the -- the time that he joined the company and
23 then later when he was working with the company.

24 Q How long were you and Mr. Balwani together in
25 a relationship?

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851

1 A It was -- there were -- it was on and off over
2 a period of time. But throughout the time that he was
3 at the company until he left in -- I guess it was last
4 year.

5 Q So you broke up with Mr. Balwani when he --

6 when he left the company?

7 A No. I think the personal relationship had
8 died before that, but it was on and off throughout the
9 time prior to him joining and then after he joined.

10 Q Did you live together?

11 A We did.

12 Q When did you start living together?

13 A I think in '05 or '06. I think '05.

14 Q For how long did you live together?

15 A On and off, between '05 and 2016.

16 Q And did you live together at the 2- -- is it
17 227 Park Avenue?

18 A We did.

19 Q Okay.

20 Where do you live now?

21 A (b)(6);(b)(7)(C)

22 Q Do --

23 BY MR. KOLHATKAR:

24 Q Sorry.

25 Were you living with Mr. Balwani the whole

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852

1 time he was as Theranos?

2 Or I guess I just want to --

3 A Almost all of it, yeah.

4 Q Okay.

5 A Yeah.

6 BY MS. CHAN:

7 Q Do you own your current residence?

8 A (b)(6);(b)(7)(C)

9 Q

10 A

11 Q Did Theranos employees know that you and Mr.

12 Balwani were dating?

13 A Some of them did.

14 Q Did they know that you were living together?

15 A Some of them did.

16 Q Did the board know that you were dating?

17 A Some of them did.

18 Q Who did?

19 A When he first joined the board, the board
20 members knew him as my boyfriend.

21 And then later, I talked with some of them
22 about it and -- I've had conversations with Riley
23 Bechtel about it, with David Boies, with Jim Mattis and
24 others.

25 Q Did you ever tell investors that you and Mr.

↑

1 Balwani had a romantic relationship at the time that you

2 were asking them to invest in Theranos?

3 A No.

4 Q Have you told any shareholders that you and
5 Mr. Balwani had a romantic relationship?

6 A Riley knew prior to investing. I --
7 generally, my personal life is my personal life.

8 Q Is that why you didn't share that information
9 with potential investors?

10 A Yes.

11 Q What happened to the relationship?

12 A What do you mean?

13 Q How did it end?

14 A The personal relationship?

15 Q Yes.

16 A You know, I think when he joined the company,
17 it was -- we had spent, I think it was, four or five
18 years together by that point and really understood that
19 our connection was about trying to create and work
20 together. It wasn't really about the romantic part.

21 And once we started working together, it was a
22 very intense working relationship. And there -- the
23 sort of romantic piece that was there at the very
24 beginning died.

25 I don't think it happened in one moment, but



1 it was very clear that we were colleagues.

2 Q And so when did you end up breaking off the
3 relationship with Mr. Balwani?

4 A The romantic relationship?

5 Q Yes.

6 A It happened over a period of time.

7 Q Mr. Balwani is no longer at Theranos, correct?

8 A That's right.

9 Q When did he leave?

10 A I believe around Memorial Day of 2016.

11 Q Why did he leave?

12 A I was trying to restructure the company. It
13 was time for new leadership and a different leadership
14 structure.

15 Q Was it mutual?

16 A Yes.

17 Q Why did he want to leave the company?

18 MR. NEAL: You could ask him that.

19 THE WITNESS: Yeah. I mean, I -- I'd be
20 speculating.

21 BY MS. CHAN:

22 Q Did you have any understanding as to why he
23 wanted to leave?

24 A I -- I think he knew it was time for a

25 different -- a different structure.

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855

1 BY MR. KOLHATKAR:

2 Q Did you ever tell investors or shareholders
3 that Mr. Balwani was asked to retire?

4 A Asked to retire. I -- I don't think I would
5 have said it in those words.

6 Q All right.

7 BY MS. CHAN:

8 Q Had Mr. Balwani previously been thinking about
9 leaving the company prior to Memorial Day 2016?

10 A We -- we had multiple conversations about it
11 over the years. I don't know -- I don't know what he
12 was thinking, actually. No.

13 Q So if you pick up Exhibit 221 again and you
14 turn to the page with Bates number ending 6427, which is
15 Page 189, so you'll see there are a number of text
16 messages between you and Mr. Balwani on July 15th, 2015.

17 A Mm-hmm.

18 Q If you look, maybe, nine messages down from
19 the top, at 4:44 p.m., Mr. Balwani writes to you.

20 And he says, "I worked for six years day and
21 night to help you. I thought it would be better. I
22 know you were angry in your way and upset with me for

23 not doing everything you wanted me to do."

24 Do you remember this conversation with him?

25 A Not specifically, no.

↑

856

1 Q And then you write back and you say -- there
2 are question marks, and you say, "I was just think" -- I
3 think you meant "thinking" -- "about texting you in that
4 minute. By the way, it's just hard to transition."

5 Do you see that?

6 A Yeah.

7 Q Do you recall why he was writing you about the
8 fact that he'd worked pretty hard for the company?

9 A No. I mean -- I don't.

10 Q And then he writes back to you at 4:46 p.m.

11 He says, "I am responsible for everything at
12 Theranos. All have been my decisions, too."

13 Do you see that?

14 A I do.

15 Q Did you agree that you and Mr. Balwani were
16 managing the company together and making decisions for
17 the company together?

18 A Yeah. I mean, we made him president of the
19 company. And he wanted to run the company and run
20 operations. And I let him do that.

21 Q And then if you look down a few more text
22 messages, there's one that's sent by Mr. Balwani at 4:49
23 p.m.

24 And he says, "I'm not leaving until we break
25 even. We will do this together, and I will be by

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857

1 yourself until then. Can't leave like this."

2 What did you understand him to mean by that?

3 MR. NEAL: Well, first of all, do you
4 remember?

5 THE WITNESS: I don't. I don't remember this
6 text exchange.

7 I'm just trying to read the text above it to
8 get context.

9 I mean, he's clearly talking about getting the
10 company to a point in which it's at break even.

11 I -- I don't know what else he means by that.

12 BY MS. CHAN:

13 Q Okay.

14 And then at 4:51, he writes again.

15 He says, "And, yes, I do dislike the direction
16 you've taken with all this PR and all legal work and a
17 lot of other things."

18 Do you see that?

19 A Yes.

20 Q Were you aware that he disagreed with the PR
21 strategy that the company had taken at this time?

22 A I'm -- I'm not sure that that's what that's
23 referring to. I think that he had specific strong
24 disagreements with certain people on our team who were
25 advising us to do certain things on both the PR and

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858

1 legal side.

2 Q Who -- who was he disagreeing with?

3 A I mean, you'd need to talk to him about this.
4 Because I'll be guessing what he's referring to
5 specifically. But -- but I -- I think you'd be able to
6 talk about it, you know.

7 Q Okay.

8 You just said that you -- you thought that
9 this was referring to him disagreeing with others.

10 Who were you thinking of when you said that?

11 A He -- he had disagreements with the general
12 counsel that I'd brought in, (b)(6);(b)(7)(C)

13 Q Anyone else?

14 A Some of the teams that she'd put in place on
15 the PR and legal side.

16 (Reporter clarification.)

17 BY MS. CHAN:

18 Q Then at 4:53 p.m., a few more text messages
19 down, he writes to you.

20 He says, "Things are different now. We need
21 to get the business to break even. And then I will
22 leave. We are different when it comes to business."

23 Did you agree that you and he had different
24 mindsets when it came to business strategy?

25 A I don't know if it's business strategy. We

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859

1 had different mindsets on how to run the company.

2 Q Okay.

3 And what were those differences?

4 A Just very different leadership styles,
5 management styles.

6 Q Was there anything else that was different
7 about how you and he wanted to run the business?

8 A I mean, we -- I'm sure many things. I -- I
9 would need to sit here and try to come up with a list.

10 But we were just very different in how we
11 approach it. And I -- I'm running the company very
12 differently now.

13 BY MR. KOLHATKAR:

14 Q I think this was something you mentioned last

15 time, that you had a very different leadership style
16 than Mr. Balwani.

17 How would you describe Mr. Balwani's
18 leadership style?

19 A He comes out of a pure tech sort of software
20 company environment, where there's very aggressive
21 schedules, very aggressive goals and, you know,
22 companies that have had a different sort of work
23 environment than the -- the kind of culture that -- that
24 I resonate with and I'm trying to build in the company
25 now.

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860

1 Q I guess, looking back, do you have concerns
2 about how his leadership style impacted the performance
3 of the company?

4 A I have concerns with the way that certain
5 people were treated, yeah.

6 Q And, you know, I -- I guess, is there a
7 category of people or sort of like a group --

8 A No, I -- I think that we were trained to do
9 something that's really hard and really big, and
10 everybody makes mistakes along the way. And the ability
11 to engage with people, to patiently and humbly and
12 nicely try to overcome hiccups is -- is a more

13 successful style.

14 And I'm -- I think we could have done a better
15 job of that.

16 BY MS. CHAN:

17 Q You can put that one aside.

18 Do you have an employment agreement with
19 Theranos?

20 A I do.

21 Q Has it been modified at any time during -- or
22 when was the first employment agreement that you signed
23 with Theranos?

24 A It would have been in 2004.

25 Q In 2004?

↑

861

1 A Yeah.

2 Q Has that agreement been modified several times
3 since then?

4 A I don't think so.

5 Q How are you compensated by Theranos?

6 A I have a salary. And over the years, I've
7 been given stock awards.

8 Q Okay.

9 Have you been compensated in any other way
10 besides your salary and the stock awards?

11 A I don't think so.

12 Q And what has been your salary in the last, I
13 guess, five years?

14 A I think it was \$200,000 a year for some period
15 of time. And then it was raised to 400,000, I think in
16 2015. And then recently, the board just a couple weeks
17 ago approved raising it again.

18 Q They approved raising it again?

19 A Yeah.

20 Q So what is your salary now?

21 A Well, we haven't made it effective because I
22 don't know whether I want to take a salary increase
23 right now or not. I've been thinking about it. But
24 they would have made it commensurate with other members
25 of the management team, which is \$600,000.

↑

862

1 Q So when was the board discussing this? You
2 said a few weeks ago?

3 A Yes.

4 Q And when is it supposed to go effective?

5 A It would have been effective a few weeks ago.
6 I hadn't had our teams process it.

7 Q Do you receive a paycheck every two weeks?

8 A I do.

9 Q And in terms of your ownership of the company,
10 have you always had a majority ownership of Theranos?

11 A Obviously, when I founded it, I did.

12 Then no.

13 And then I got stock awards over a period of
14 time and recently used my stock to -- to recapitalize
15 the company to reprice investors so that our A, B, and C
16 investors wouldn't be diluted.

17 So I -- I don't anymore.

18 Q What is your percentage ownership of the
19 company now?

20 A I think it's about 30 percent, somewhere 30 to
21 32 percent.

22 Q And do you hold a majority of the voting
23 rights for the company?

24 A I do.

25 Q And you still do now?

↑

863

1 A I do.

2 Q Have the other members of your senior
3 management received their salary increases already?

4 A Yes. Salary increases or stock awards we're
5 in the process of issuing. I wanted to give additional
6 stock awards to the management team.

7 MR. KOLHATKAR: Go off the record at 4:37 p.m.

8 (A discussion was held off the record.)

9 MS. CHAN: We are back on the record at
10 4:47 p.m.

11 BY MS. CHAN:

12 Q Ms. Holmes, did you have any substantive
13 conversations with the SEC staff during the break?

14 A No.

15 Q Have any of Theranos's investors complained to
16 you or are you aware of any investors complaining to
17 anyone at Theranos that statements that were made to
18 them prior to their investments were not true or were
19 accurate?

20 A Not outside of PFM.

21 Q What did you -- what do you understand PFM's
22 complaints to be?

23 MR. NEAL: Well, doesn't PFM's Complaint speak
24 for itself? I mean, it's a 75-page document, and you
25 can't ask her to try to summarize that.

↑

864

1 THE WITNESS: I mean, I -- I generally
2 understood it to replay the Wall Street Journal
3 narrative.

4 BY MS. CHAN:

5 Q Was there -- is there anything outside of
6 PFM's Complaint or any other conversations you might
7 have had with them in which you're aware that there were
8 other statements outside of the Complaint that they
9 believed were not true?

10 A That PFM believed were not true?

11 Q Yes.

12 A I -- I haven't had any conversations with PFM
13 directly about it. So I don't know anything besides the
14 lawsuit that they filed.

15 BY MR. KOLHATKAR:

16 Q Just more specifically, I think I understand
17 what your answer is going to be, but in connection with
18 sort of the tender offer process and the recapitalizing
19 some of those -- some of those investors, did any
20 investors express any concerns about the accuracy of the
21 information they had received from the company to date?

22 A Not to my knowledge.

23 BY MS. CHAN:

24 Q Ms. Holmes, we have no further questions at
25 this time. We may, however, call you again to testify

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865

1 in this investigation. And should that be necessary,
2 we'll contact your attorneys.

3 Ms. Holmes, do you wish to clarify anything?

4 MR. DWYER: Can we -- before you -- can we
5 take a quick break before she answers that question?

6 MS. WINKLER: There's a pending question.
7 Unless there's something --

8 MR. KOLHATKAR: I -- I guess the question is
9 whether she personally has anything to clarify, but then
10 we'll also ask the question whether counsel has anything
11 to clarify.

12 MR. DWYER: I -- I -- okay.

13 BY MS. CHAN:

14 Q Ms. Holmes, do you wish to clarify anything?

15 A No. I'm -- thank you.

16 Q Do you wish to add anything to the statements
17 that you've made today?

18 A I don't think so.

19 MS. CHAN: Mr. Neal and Mr. Dwyer, would you
20 like to ask any clarifying questions?

21 MR. DWYER: Can we just take a two-minute
22 break?

23 Everybody can stay here. We'll just take two
24 minutes.

25 MR. KOLHATKAR: Off the record at 4:49.

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1 (A discussion was held off the record.)

2 MS. CHAN: We are back on the record at
3 5:04 p.m.

4 BY MS. CHAN:

5 Q Ms. Holmes, did you have any substantive
6 conversations with the SEC staff during the break?

7 A No.

8 MR. NEAL: Okay. We have -- we don't have any
9 questions, but I will reiterate on the record what I
10 said just a minute ago to you-all outside the presence
11 of the record, which is that in your -- your questions
12 about whether Ms. Holmes had heard complaints from any
13 investors, we believe counsel received some complaints
14 from investors at various points.

15 And we're going to try and figure out whether
16 there is a way to identify for you who those
17 complainants were without waiving privileges.

18 Because we believe some of those were
19 communicated in a privileged way to Ms. Holmes.

20 So we'll get back to you with a -- with a --
21 either a confirmation that I just said is accurate or a
22 clarification.

23 MS. CHAN: Thank you.

24 Would any of the other counsel like to ask
25 clarifying questions today?



1 MR. DAVIES: No.

2 MR. TAYLOR: No.

3 MR. McLUCAS: Shockingly, no.

4 MS. CHAN: This ends DVD 5 of 5, and we are
5 off the record at 5:05 on August 23rd, 2017.

6 (Whereupon, at 5:05 p.m., the examination was
7 concluded.)

8 * * * * *

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PROOFREADER'S CERTIFICATE

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3 In the Matter of: THERANOS, INC.

4 Witness: Elizabeth Holmes

5 File Number: SF-04030-A

6 Date: Wednesday, August 23, 2017

7 Location: San Francisco, CA 94104

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9 This is to certify that I, (b)(6);(b)(7)(C)

10 (the undersigned), do hereby swear and affirm that the

11 attached proceedings before the U.S. Securities and

12 Exchange Commission were held according to the record

13 and that this is the original, complete, true and

14 accurate transcript that has been compared to the

15 reporting or recording accomplished at the hearing.

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18 (Proofreader's Name)

(Date)

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